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Michael Dietl
U.S. Bureau of Reclamation
Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95825

RE: Sites Reservoir Project Draft EIS / EIR

Dear Mr. Watson and Mr. Dietl,

On behalf of Klamath Riverkeeper, please accept the following comments about the Draft Environmental Impact Statement and Draft Environmental Impact Report for the Sites Reservoir Project (“DEIS/DEIR”).

Compliance with CA & Federal Endangered Species Acts

The DEIS/DEIR fails to demonstrate how the project would comply with the California and Federal Endangered Species Acts.

According to the best available science, increased Sacramento River flows and increased outflows from the Delta are necessary to protect and restore native fish and wildlife. Specifically, the latest Bay-Delta Water Quality Control Plan, and the State Water Resources Control Board’s 2016 draft scientific report recommends increasing Sacramento River flows and Delta outflows to protect native fish and wildlife. The DEIS mentions this scientific evidence, but fails to provide an operational plan consistent with it.

The DEIS also fails to provide an operational plan consistent with evolving Endangered Species Act flow requirements in the Trinity and Klamath River systems. To date, flow regimes in these river systems have failed to recover endangered Salmon populations. To prevent fish kills in the lower Klamath River, the Bureau of Reclamation has had to release emergency pulse flows from Trinity River dam. The Bureau of Reclamation is currently reviewing a long-term flow plan for the Trinity River and biological opinions that will determine long-term flow regimes for the Klamath River. The operation plans in the DEIS/DEIR fail to consider potential long-term water allocation

plans that could provide less Trinity River water to the Sacramento River in order to protect and restore Klamath and Trinity River salmon populations.

Compliance with California Reasonable Use Doctrine

The DEIS/DEIR does not demonstrate how the project would comply with the California Reasonable Use Doctrine. California's Reasonable Use Doctrine requires reasonable use of California waters. Reasonableness requires evaluation of alternative water supplies to meet a given need, and evaluation of the impacts new water uses would have upon existing legal uses and users of water.

The DEIS/DEIR is inadequate on both counts. The DEIS/DEIR does not adequately evaluate whether alternative water supplies are available to meet the needs outlined by the project proponents. An evaluation of alternatives must include water supplies from water conservation, water recycling and groundwater recharge, and whether such alternatives are more cost-effective.

The DEIS/DEIR does not adequately evaluate the impact of proposed water diversion and use upon existing instream beneficial uses of water for fish, wildlife, recreation, and Tribal subsistence fishing and cultural practices.

Compliance with Public Trust Doctrine & Tribal Trust Obligations

Reduced flows in the Sacramento, Trinity and Klamath Rivers resulting from this project could violate the Public Trust Doctrine and Tribal Trust responsibilities of the Federal government and California.

The DEIS/DEIR fails to comply with the Public Trust Doctrine because it does not explain how the project would avoid unnecessary harm to fish, wildlife and recreation.

Similarly, the DEIS/DEIR fails to comply with both state and Federal obligations to protect Tribal trust resources. California recognizes Tribal cultural and subsistence fishing as beneficial uses of water for purposes of developing water quality control plans. The Federal government has an obligation to protect Tribal Trust resources including harvestable quantities of salmon. The DEIS/DEIR fails to address these state and Federal legal obligations.

Final EIS / EIR must Accommodate Humboldt County's Trinity River Water Right

Humboldt County holds a 50,000 acre-foot water right to Trinity River water. Humboldt County may wish to preserve its water right to augment, rather than satisfy, flows deemed necessary by federal agencies to comply with the Endangered Species Act and other laws. The DEIS/DEIR fails to account for the impact such a decision would have upon the operation of Sites Reservoir.

Final EIS / EIR Must Fully Analyze No Project Alternative

The California Environmental Quality Act and the National Environmental Policy Act require that the DEIS/DEIR consider a reasonable range of alternatives. The DEIS/DEIR violates NEPA and

CEQA because it fails to include operational plans that comply with the aforementioned laws. The DEIS/DEIR also violates NEPA and CEQA because it does not evaluate how a no-project alternative could satisfy consumptive and instream water supply needs.

Conclusion

The final EIS / EIR will violate CEQA and NEPA if it does not include an operation plan that satisfies instream flow requirements of the aforementioned laws. To the extent that instream flow requirements have not yet been quantified or enforced, the final EIS / EIR must demonstrate that future instream flow requirements will not render Sites Reservoir a “stranded asset,” and thus a financial loss for investors and/or taxpayers.

We wish to incorporate by reference comment submitted by the Pacific Coast Federation of Fishermen’s Associations, California Sportfishing Protection Alliance and Defenders of Wildlife.

Thank you for your consideration. Please do not hesitate to contact us with any questions.

Sincerely,



Konrad Fisher, Director
Klamath Riverkeeper