



May 10, 2016

## Summary of Chapter Nine Shasta Lake Water Resources Investigation (SLWRI) Final Feasibility Report and Environmental Impact Statement (EIS)

Chapter Nine of the U.S. Bureau of Reclamation's SLWRI final feasibility report<sup>1</sup> reviews unresolved issues and is summarized and discussed below.

### No Recommendation at this time

Because of the outstanding unresolved considerations, “the Secretary [of the Interior] is unable to provide a recommendation” on any of the Shasta Dam raise project alternatives until the outstanding considerations are addressed.<sup>2</sup> This section does note that the projects are feasible from an engineering perspective, and alternative CP4A is the NED (National Economic Development) Alternative.<sup>3</sup>

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<sup>1</sup> Chapter 9, Considerations and Recommendations, Department of the Interior, *Final Shasta Lake Water Resources Investigation, Feasibility Report*, July 2105.

<sup>2</sup> “In light of the outstanding considerations articulated below, the Secretary is unable to provide a recommendation for implementation of the SLWRI NED Plan until these considerations are addressed. Although there is no recommendation at this time for Congressional action, all of the alternatives analyzed are feasible from an engineering standpoint. Based on the economic analysis of the alternatives, alternative CP4A has the highest net NED benefits.” (*Final SLWRI Feasibility Report*, p. 9-1) The feasibility report makes no reference to a preferred alternative. Reclamation, however, is anything but consistent. In the final environmental impact statement, it identifies CP4A as the preferred alternative: “CP4A would best balance and meet both of the primary objectives. CP4A, formulated to address both anadromous fish survival and water supply reliability, would have relatively high increases in water supply reliability (equal to CP2) and the second highest increase in anadromous fish survival of all of the alternatives. CP4A would have the ability to meet the secondary project objectives, which were considered to the extent possible through pursuit of the primary project objectives. Secondary objectives include ecosystem enhancement, flood damage reduction, improved Delta water quality, increased hydropower generation and increased recreation. As an 18.5-foot raise, CP4A would best maximize benefits relative to costs. For these reasons, CP4A is the preferred alternative.” (*Final SLWRI Environmental Impact Statement (FEIS)*, p. S-34.) Taken together, the Feasibility Report and the FEIS identify a preferred alternative with no recommended alternative.

<sup>3</sup> *SLWRI Feasibility Report*, p. 9-1. Under the Federal *Principles and Guidelines*, “the plan with the greatest NED benefits is...usually selected for recommendation to Congress for approval, unless the Secretary of the Interior grants an exception based on overriding considerations and merits of another plan.” The NED plan also “define[s] the extent of Federal financial interest in the plan for recommendation.” (*Final SLWRI Feasibility Report*, p. 6-1) The new *Principles and Requirements*, which became effective 180 days after its December 2014 release, purports to change the emphasis of Federal water resources planning:

## Outstanding Considerations

Funding Concerns: This section of chapter nine then notes that Reclamation's budget is too constrained to fully fund any of the dam-raise projects considered in the feasibility report. Instead, "[a]lternative means of financing (primarily non-Federal) for a majority of the construction costs of the NED Plan would have to be identified and secured in order for the Secretary of the Interior to be able to recommend a construction authorization to Congress."<sup>4</sup> In other words, Reclamation needs an *up-front non-federal cost-sharing partner* in order to proceed with this project.<sup>5</sup>

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Heretofore, Federal investments in water resources have been mostly based on economic performance assessments which largely focus on maximizing net economic development gains and typically involve an unduly narrow benefit-cost comparison of the monetized effects. Non-monetized and unquantified effects are often included in the overall analysis process, but are not necessarily weighted as heavily or considered key drivers in the final decision making process. As a result, decision making processes are, at this point in time, unnecessarily biased towards those economic effects that are generally more easily quantified and monetized. A narrow focus on monetized or monetizable effects is no longer reflective of our national needs, and from this point forward, both quantified and unquantified information will form the basis for evaluating and comparing potential Federal investments in water resources to the Federal Objective. This more integrated approach will allow decision makers to view a full range of effects of alternative actions and lead to more socially beneficial investments. (*Principles and Requirements* p. 7)

<sup>4</sup> "Current Federal Budget conditions and the impacts those conditions have on Reclamation's budgetary resources significantly constrain Reclamation's ability to fully fund new construction activities of the scope and magnitude required by the SLWRI. As a result, the traditional model under Federal reclamation law, with Congress providing funding from annual appropriations to cover all the costs of construction over a relatively short period of time, and a portion of those funds being repaid to the Treasury over 40–50 years, is unrealistic for the identified SLWRI NED Plan. Alternative means of financing (primarily non-Federal) for a majority of the construction costs of the NED Plan would have to be identified and secured in order for the Secretary of the Interior to be able to recommend a construction authorization to Congress. These alternative financing arrangements are being actively explored at a conceptual level." (*Final SLWRI Feasibility Report*, p. 9-1)

<sup>5</sup> This is the federal funding model instituted by President Ronald Reagan for Corps of Engineers floodwater-management projects in the Water Resources Development Act of 1986. A federal agency perspective on the Reagan reform years is the 216-page Reshaping National Water Politics: The Emergence of the Water Resources Development Act of 1986, IWR, Policy Study 91-PS-1, U.S. Army Corps of Engineers Institute for Water Resources, Martin Reuss, Office of History, Headquarters, USACE, October 1991. The Corps of Engineers funding and cost-sharing model departs from Reclamation's traditional funding model—Reclamation pays for the project, determines what costs are reimbursable, and attempts to recover federal costs from water and power sales and other arrangements. §112(a)(3)(b) of Senator Feinstein's 2/10/2016 "drought" bill (S. 2533) requires up-front non-federal funding of the capital costs of federal projects that the Secretary of the Interior chooses to construct under the §112 authority. At least a 50% non-federal cost share is required (§ 112(a)(2)).

Discussion: The lack of such a partner or partners to provide up-front funding for the Shasta Dam raise project is one stated reason for the lack of a recommended alternative on this project. This may not be from a lack of effort by Reclamation, which concludes the first paragraph of this section with, “[t]hese alternative financing arrangements are being actively explored at a conceptual level.” This exploration may be being pursued within Reclamation, but since the publication of the final feasibility report, Reclamation’s effort to keep California Water Commission funding eligibility assistance for non-federal partners has been rebuffed.<sup>6</sup> In addition, no non-Federal partners have yet to emerge for the project since the publication of the final feasibility report.

The Funding Concern section of chapter nine also discusses *Central Valley Project Contractor (CVP) contractor concerns*: According to chapter nine of the feasibility report,

[s]ignificant concerns have been raised by existing CVP water service and repayment contractors regarding water-supply benefits from the proposed project being made available to California SWP contractors outside the existing service area of the CVP. In part, their concern emanates from a desire to have water supply developed under any of the alternatives meet existing demands of Federal contractors within the existing CVP service area before being utilized to meet water supply needs of public water agencies that do not currently contract for delivery of CVP water. (p. 9-1)

Discussion: In other words, CVP contractors are concerned that Reclamation intends to contract with State Water Project (SWP) contractors such as the Metropolitan Water District of Southern California (MWD) for deliveries from Shasta Dam, a facility of the Federal Central Valley Project (CVP). These deliveries are displayed in the feasibility report.<sup>7</sup>

The CVP’s 7-million acre-feet or so of annual deliveries have traditionally been delivered to farms and cities of the Central and Santa Clara Valleys, nearby San Felipe Division lands, some east San Francisco Bay area communities, and Coalinga Canal

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<sup>6</sup> For example, the California Water Commission’s January 29, 2016 proposed *Water Storage Investment Program Quantification Regulations*, do not include the Shasta Dam raise within the definition of CalFed storage projects (§6000(a)(12), p. 12) for Commission purposes. Additionally, §6002(c)(4)(B)(1) requires the Commission to review funding eligibility to avoid adverse effects to rivers protected within the California and National Wild & Scenic Rivers Acts (p. 17). Projects that fail to meet §6002(c)(4) standards are not reviewed further (§6002(c)(5)(a), p. 17). See <https://cwc.ca.gov/Pages/QuantificationRulemaking.aspx>. When read in concert with the California Wild & Scenic Rivers Act, the language of the water bond statute is even more broad. See footnotes 16 and 17.

<sup>7</sup> Table ES-4, (*Final SLWRI Feasibility Report*, p. 4-30)

areas, not to SWP service areas in Southern California, some north and south San Francisco Bay area communities, and parts of Kern and Tulare Counties, which have been receiving average deliveries of somewhat more than 2-million acre-feet annually, about half the water that the SWP has contracts to deliver.<sup>8</sup> Reclamation's and the SWP's service areas and water-rights places of use reflect that division of labor.<sup>9</sup> If the CVP water-rights place of use was expanded to the comparatively water-poor SWP service areas, CVP deliveries and reliability to the traditional CVP service areas would be expected to be diminished.

These contractor concerns are not particularly allayed by Reclamation's concluding remarks in this section:

To address this concern, Reclamation will work with public water agencies that do currently contract for the delivery of CVP water, and other interested governmental and non-governmental organizations to explore alternative, non-traditional methods of financing. The alternative ultimately chosen as the recommended plan will need to be consistent with State water law and include the use of new storage to provide increased cold water protection for anadromous fish in the Sacramento River. Additionally, it should include water supply benefits for those public water agencies that are willing to contribute non-Federal funds for the construction of the project, with preference given to those agencies that are within the existing service area of the CVP. (p. 9-2)

In other words, Reclamation has not worked through this issues, including applying for a water-right place-of-use expansion with the State Water Resources Control Board,<sup>10</sup> but intends to offer water-supply benefits to the agencies willing to help finance the Shasta Dam raise project, including agencies outside of the CVP. Given the small marginal yield (increased deliveries) of the dam-raise project (51,300 acre-feet average

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<sup>8</sup> *The California State Water Project*, California Department of Water Resources, 1989. *Final SLWRI Feasibility Report*, pp. 1-24-25.

<sup>9</sup> For Reclamation's map of the SWP & CVP service areas, see Figure ES-3, p. ES-6, *Final SLWRI Feasibility Report*. It is not clear whether this map corresponds to the water-rights place of use, but there is at least some rough correspondence between these project service areas and their legal state water-rights place of use.

<sup>10</sup> Reclamation has similarly not resolved potential place-of-use expansion issues raised in its draft Environmental Impact Statement (DEIS) for the Temperance Flat Dam on the San Joaquin River gorge. Four of the five action alternatives in the DEIS deliver water to SWP contractors. See Friends of the River et al. comments on the draft EIS, pp. 6-7. See Resources, Comments & Documents, Comments by FOR & Other Environmental groups on the Draft Environmental Impact Statement (DEIS) <http://www.friendsoftheriver.org/our-work/rivers-under-threat/san-joaquin-threat/>

annual deliveries<sup>11</sup> compared to typical CVP deliveries and project influence<sup>12</sup>) in relation to project costs (equivalent to the outstanding CVP repayment debt<sup>13</sup>), this project is not likely to be attractive to CVP customers without substantial subsidies. Its attraction to SWP customers would come from service-area and water-rights place-of-use expansions that could open up access to the rest of the CVP supply — thus the concern of CVP contractors.

State of California Participation: According the feasibility report,

Section 103(d)B(i) of Public Law 108-361 makes clear the intent of Congress that the Secretary consult with the State prior submitting the report. From discussions with the State, it is our understanding there has been a determination that the PRC protecting the McCloud River prohibits State participation in the planning or construction of enlarging Shasta Dam other than participating in technical and economic feasibility studies. (p. 9-1)

Discussion: It is not clear what Reclamation believes to be consultation with the State prior to submitting the Report and whether that had been completed.<sup>14</sup> In addition, the legislative reference refers to 2004 federal statute<sup>15</sup> authorizing the Secretary of the Interior to, in consultation with the Governor of California, submit the feasibility report of this and other named federal projects to the Congress once the Secretary determines that it should be constructed<sup>16</sup> using in whole or in part federal funds. In an action

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<sup>11</sup> Table ES-4, (*Final SLWRI Feasibility Report*, p. 4-30)

<sup>12</sup> The CVP “[m]anages some 9 million acre-feet of water” and [a]nnually delivers about 7 million acre-feet of water for agricultural, urban, and wildlife use.” *About the Central Valley Project*. USBR MidPacific Region website, accessed 12/7/2015 <http://www.usbr.gov/mp/cvp/about-cvp.html>

<sup>13</sup> As of 2011, unpaid reimbursable costs for irrigation and municipal and industrial purposes was \$1.3 billion. *Central Valley Project, California: Repayment Status And Payoff*, Office of the Inspector General, U.S. Department of the Interior, Report No.: WR-EV-BOR-0003-2012, March 2013, p. 2.

<sup>14</sup> In February of 2015, The California Department of Fish & Wildlife’s (CDFW) commented on its failure to be notified of the development of a SLWRI preferred alternative, in spite of its belief that it was part of the SLWRI Project Coordination Team. In internal Department of the Interior correspondence (available at <http://www.friendsoftheriver.org/our-work/rivers-under-threat/sacramento-threat/>, Shasta Dam raise, Agency Comments, 20150214 Fwd\_CDFW cmts (Adobe OCR)), Reclamation staff notes that CDFW no longer had a review function except through the Fish & Wildlife Coordination Act Report once the federal FEIS was no longer accompanied by a California Environmental Quality Act (CEQA) environmental impact report. Since the Coordination Act had been “rescinded to allow for higher level review,” CDFW had no current role in project planning.

<sup>15</sup> HR 2828, 108<sup>th</sup> Congress. The “Water Supply, Reliability, and Environmental Improvement Act.” P.L. 108–361.

<sup>16</sup> “(i) IN GENERAL.—If on completion of the feasibility study for a project described in clause (i) or (ii) of subparagraph (A), the Secretary, in consultation with the Governor, determines that the project should

inconsistent with this statutory direction, she has not made this recommendation nor determined it should be constructed but still transmitted the final feasibility report to Congress.<sup>17</sup>

The feasibility report properly notes DWR's determination that the California Public Resources Code (PRC) state wild & scenic river chapter prohibits California's Department of Water Resources (DWR) from further participating in planning and construction of the expansion of Shasta Reservoir. It does not note that the PRC prohibits Reclamation and any other party, including political subdivisions of the state such as irrigation and municipal utility districts and cities, from undertaking a project to expand the reservoir.<sup>18</sup> These public entities have traditionally been project sponsors or cosponsors for, or major beneficiaries of, the large storage projects in the state. Furthermore, the feasibility report does not note that the reservoir expansion project is

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be constructed in whole or in part with Federal funds, the Secretary shall submit the feasibility study to Congress." (Public Law 108-361, §103(d)(1)(B)(i) (HR 2828) The Shasta Dam raise is listed in clause (i).

<sup>17</sup> *MP-15-122 Reclamation Transmits to Congress Final Report on Proposed Shasta Dam Raise*, U.S. Bureau of Reclamation, Mid Pacific Region News Release, July 29, 2015. *MP-720, ENV-6.00, United States Department of the Interior, Bureau of Reclamation, Mid-Pacific Regional Office, November 24, 2015*, letter to Interested Parties: "The U.S. Department of the Interior has released the Final Feasibility Report and Final EIS for the SLWRI for review by the general public and U.S. Congress." "The Final Feasibility Report does not include a recommendation for Congressional action, but rather describes outstanding issues the Secretary of the Interior has identified for resolution before making a recommendation."

<sup>18</sup> PRC §5093.542 (b) No dam, reservoir, diversion, or other water impoundment facility shall be constructed on the McCloud River from Algoma to the confluence with Huckleberry Creek, and 0.25 mile downstream from the McCloud Dam to the McCloud River Bridge; nor shall any such facility be constructed on Squaw Valley Creek from the confluence with Cabin Creek to the confluence with the McCloud River.

See SLWRI FEIS pp. 25-1-5, 25-8-9 25-36-41 for maps and Reclamation's view of the geographic PRC impacts.

PRC §5093.61(in part): All local government agencies shall exercise their powers granted under any other provision of law in a manner consistent with the policy and provisions of this chapter [the PRC code wild & scenic river chapter].

ineligible for California Water Bond funds,<sup>19</sup> funding that Reclamation has desired for its non-federal partners for the Shasta Dam raise project.<sup>20</sup>

This failure to properly appreciate that it is illegal under California law for Reclamation, DWR, state agencies, and others to participate in the expansion of the reservoir is systemic in the feasibility report. It is perhaps best represented by Reclamation's "acceptability" ratings for the reservoir expansion alternatives. The NED/preferred project scores "high," while most of the rest score "moderate to high."<sup>21</sup> If an illegal project scores "high," one does wonder what it would take to score "low" or "unacceptable."

That failure to understand that they lack any partner by state law is evident in other sections of the feasibility report. For example, in Reclamation's discussions on "special considerations" in chapter six on the NED plan, their concerns about state agency action to comply with the PRC is evident but not concerns about other political subdivisions of the state:

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<sup>19</sup> Chapter 4, 79711(e) Nothing in this division [bond act] shall be construed to affect the California Wild and Scenic Rivers Act (Chapter 1.4 (commencing line 5 with Section 5093.50) of Division 5 of the Public Resources Code) or the federal Wild and Scenic Rivers Act (16 U.S.C. Sec. 1271 line 7 et seq.) and funds authorized pursuant to this division shall not be available for any project that could have an adverse effect on the values upon which a wild and scenic river or any other river is afforded protections pursuant to the California Wild and Scenic Rivers Act or the federal Wild and Scenic Rivers Act.

In chapter six of the final SLWRI feasibility report, Reclamation does note that "[w]hether the State of California can use Proposition 1 funds in support of any plan potentially authorized related to enlargement of Shasta Dam and Reservoir is outside of Reclamation's authority and to be determined by the State of California." (p. 6-40) Subsequent to the publication of the feasibility report, the California Water Commission's state counsel has told the Commission and its Water Storage Investment Program Stakeholder Advisory Committee that the PRC and bond language prohibit funding the reservoir expansion.

Of additional interest, the Senator Feinstein, February 10, 2016, "drought" bill (S. 2533) makes Federal funding for State-led (including its political subdivisions) projects contingent—so long as bond funds are available—on a California Water Commission determination that the project is consistent with the bond act (See §112(e)).

<sup>20</sup> "Reclamation is most concerned that the draft regulations appear to preclude funding of public benefits associated with the potential enlargement of Shasta Dam. For the reasons enumerated in our comments, Reclamation requests that you consider revising this portion of the proposed regulations in the development of the next draft." Among the concerns expressed by Reclamation were the following: (1) "[I]t will be extremely difficult to determine that any of the public benefits associated with the five 'public benefits' will be cost effective (benefits exceed costs) based on our experience with economic analyses with large storage projects," and, paraphrasing, (2) the state and the commission should take a fresh look at Shasta Dam raises contemplated by Reclamation because of their merits that counterbalance California Wild & Scenic Rivers Act concerns. (United State Department of Interior, Bureau of Reclamation letter to the California Water Commission, January 31, 2014.)

<sup>21</sup> *Final SLWRI Feasibility Report*, table ES-5, p ES-31.

If the NED Plan or another plan is ultimately authorized and approved, it is possible that some State agencies will be unable to process and issue permits and approvals. This could preclude Reclamation from obtaining State approvals and permits, which could impede a project and frustrate Congressional intent. (p. 6-39)

What is not evident is any recognition by Reclamation that other parties cannot participate in the project, making the feasibility report's conception of joining cost-sharing partners unviable.

## Environmental Considerations

According to chapter nine of the feasibility report,

While the Fish and Wildlife Coordination Act process has been completed through the exchange of comments and responses outlined in an appendix to the EIS, there are listed species under both the Federal and State endangered species laws that may be affected by this action. (p. 9-2)

Discussion: There were also draft Fish and Wildlife Coordination Reports prepared. At this writing, it appears that the latest draft was prepared on November 14, 2014, well before the release of the feasibility report. It was only released as a result of a Freedom of Information Act request and is available on the Friends of the River website.<sup>22</sup> The U.S. Fish & Wildlife Service said that the claimed benefit to salmonids was not “substantial” downstream of the Red Bluff pumping plant and “only provides minimal benefit” for spring and winter-run chinook salmon upstream. However, the proposed action, “by further restricting high water flows will result in additional losses of salmonid rearing and riparian habitat and adversely affect the recruitment and natural succession of riparian habitat along the Sacramento River and bypasses.” The Service “was unable to support the adoption of any of the proposed [dam-raise] alternatives.”<sup>23</sup>

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<sup>22</sup> <http://www.friendsoftheriver.org/our-work/rivers-under-threat/sacramento-threat/>, Resources, Comments & Documents, Shasta Dam raise, Fact Sheets.

<sup>23</sup> United States Department of the Interior, *Fish and Wildlife Service Draft Fish and Wildlife Coordination Act Report For the Shasta Lake Water Resources Investigation*, Prepared for U.S. Bureau of Reclamation Sacramento, California, Prepared by U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, California, November 14, 2014, p. xiii. This document was “rescinded to allow for higher level review” according to internal Department of the Interior correspondence. See footnote 14.



Reclamation adopted a cost allocation of 49% to fish & wildlife enhancement to the \$1.265 billion project.<sup>24</sup> This would not be a reimbursable cost, meaning that the project's water and power beneficiaries would not have to provide upfront financing or repayments for 49% of this project<sup>25</sup> and this cost would, instead, be borne by taxpayers. The U.S. Fish & Wildlife Service's draft Fish & Wildlife Coordination Act conclusions, although not available in the feasibility report, could imply a failure to endorse Reclamation's cost allocation, in addition to not supporting any of the dam-raise alternatives. This may represent another challenge to complete a Secretarial Record of Decision.

The feasibility report then goes on to say,

While it is clear that a consultation under Section 7 of the Federal Endangered Species Act will be required prior to implementation of any alternative, until the financing issues are resolved, it is unclear whether California's endangered species laws and other State environmental statutes will apply. Should any State legal requirements apply, the costs of attaining compliance with these State laws shall be the responsibility of the non-Federal participant. (p. 9-2)

Discussion: It is curious that Reclamation believes that compliance with California's environmental statutes is contingent on resolution of financing issues. Under existing law, compliance with environmental statutes is also Reclamation's responsibility:

Fish and Wildlife Restoration Activities. — The Secretary, immediately upon the enactment of this title, shall operate the Central Valley Project to meet all obligations under state and federal law, including but not limited to the federal Endangered Species Act, 16 U.S.C. s 1531, et seq., and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the project. (Central Valley Improvement Act, §3406(b) (in part)).<sup>26</sup>

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<sup>24</sup> *Final SLWRI Feasibility Report*, tables ES-7 & ES-8, p. ES-35.

<sup>25</sup> Under Reclamation's allocations, power beneficiaries would be responsible for 19% of project costs, irrigation customers 8%, and municipal and industrial customers 24%. (*Final SLWRI Feasibility Report*, tables ES-7 & ES-8, p. ES-35.) The California Water bond provides the California Water Commission with the authority to commit state funds up to 50% for environmental benefits for eligible projects. However, as discussed earlier, the expansion of Shasta Reservoir is not eligible for bond act funds.

<sup>26</sup> The "Central Valley Improvement Act" was title 34 of Public Law 102-575 enacted in 1992. §112(i) of the February 10, 2016, Senator Feinstein "drought" bill (S. 2533) includes the following language: Consistency with state law.—Nothing in this [water storage project construction] section preempts or modifies

As noted many times in chapter nine and elsewhere in the feasibility report, Reclamation also envisions that the dam raise will have a non-federal partner,<sup>27</sup> which presumably would also be subject to state law.

Of course nothing in Federal law prevents Reclamation from requiring its non-federal partner(s) to bear any of the costs of compliance with state environmental statutes. This is the substance of the concluding sentence of this section of chapter nine of the feasibility report.

Should any State legal requirements apply, the costs of attaining compliance with these State laws shall be the responsibility of the non-Federal participant. (p. 9-2)

## **Process Considerations and Required Authorities**

### Preauthorization issue resolution and Secretarial recommendation

The concluding section of chapter nine of the feasibility report summarizes the chapter:

Prior to a recommendation, the Secretary is of the view that there must be resolution of the outstanding considerations raised. In the absence of a Congressional authorization to the contrary, resolution of these issues could be achieved through an agreement between the Secretary and appropriate non-Federal entities on a specific alternative and how the funding will be provided for that specific alternative. Any such agreement must address: total funding, payment up-front by the non-Federal partner, ability to use the non-Federal funds in the construction process, a plan to meet all environmental commitments, and agreement on the operations of the revised facility and conveyance of the associated water to the intended beneficiary. Such an agreement would then be presented to Congress for authorization. (p. 9-2)

Again, the resolution of the identified unresolved issues is conceived by Reclamation as a prerequisite for presentation of the Secretary's recommendation to the Congress. However, Table 6-15 from Chapter six, "Timeline and Status of Feasibility Study," states that the study will identify a preferred alternative and be reviewed and processed by Interior and OMB before public release. Congressional review and authorization and

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any obligation of the United States to act in conformance with applicable State law.

<sup>27</sup> *Final SLWRI Feasibility Report*, pp. ES-2, ES-32, ES-35, ES-37, ES-39, 6-32–33 9-1.

Presidential approval will then follow, followed by a Record of Decision by the Secretary.<sup>28</sup>

The Chapter six timeline does not appear to make any provisions for an FEIS with a preferred alternative and a Final Feasibility Report with no recommended alternative. Seemingly unconcerned with the disconnect, the public release of the Feasibility Report and FEIS and forwarding to Congress was made without “the Secretary...[making a] determin[ation] that the project should be constructed in whole or in part with Federal funds...,” the conditions of the study authorization.

Discussion: On Capitol Hill, matters are proceeding without a Secretarial recommendation. The pending House and Senate California “drought” bills authorize the Secretary to participate in projects for which half (S. 1894 §312, the February 10, 2016, Senator Feinstein “drought” bill (S. 2533) §112(a)(2)) or all (HR 2898 §404) the costs are borne by the non-federal party and, in the case of the Senate bill, comply with environmental laws.<sup>29</sup> Participation would be a discretionary action by the Secretary, although the pending authorization bills, by their very introduction, contemplate Congressional “authorization” being made in advance of her recommendation.

As discussed earlier, the Department of the Interior’s actions to release the SLWRI Feasibility Report/FEIS without identifying a recommended alternative is inconsistent with the study authorization statute (P.L. 108-361, The Water Supply, Reliability, and Environmental Improvement Act) and the portions of the Feasibility Report itself. Given the Department’s actions, it is unclear how the Department intends to inform the Congress and public of its recommendations on any potential authorization actions being considered by the Congress. Nevertheless, it should be clear that it is the preference of the Secretary that a recommendation based on resolution of unresolved issues or, presumably, determination that they are unresolvable precede Congressional deliberations.

In order to accomplish this consistent with authorizing statute and her preferences in chapter nine, the Secretary could withdraw the Feasibility Report/FEIS until such time

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<sup>28</sup> “This Final Feasibility Report evaluates and compares comprehensive plans and identifies the NED Plan. The Final EIS includes responses to public comments and identifies the Preferred Alternative.” Described as future activities are the following sequential steps: “The Final Feasibility Report and Final EIS will be reviewed and processed within the Department of the Interior and the President’s Office of Management and Budget before public release.” “Congress will review and vote on whether to authorize the project. Legislation containing construction authorization would be sent to the President for approval.” “Interior will issue a ROD for the SLWRI.” *Final SLWRI Feasibility Report*, pp. 6-45, 46.

<sup>29</sup> §112(a)(4) and §112(b)(3) Senator Feinstein February 10, 2016, “drought” bill, (S. 2533)

as she wishes to recommend the no-action alternative or, once unresolved key issues are resolved, to recommend an action alternative. If the Secretary now wished to use the Record of Decision to communicate the resolution or non-resolution of critical issues necessary for a recommendation, she may believe this to be an option as well; although, presumably given the nature of the issues around the action (dam-raise) alternatives, if it was made in the foreseeable future, the Record of Decision would, necessarily, be used to reject the action alternatives.

As just suggested, it is likely that the unresolved issues noted in chapter nine of the feasibility report will remain unresolved. This will be true if Congress establishes deadlines for the completion of the feasibility reports (studies) or not. Again, if key issues remain unresolved, it would be consistent with the chapter six final feasibility-report language and the powers of the executive branch for the Secretary to forward to the Congress a feasibility report with a finding of infeasibility because of the lack of non-federal partners and the illegal status of the project according to state law.

Because the expectations of the feasibility report differed from actions taken by report itself and subsequent actions by the Department, it is unclear how the Secretary now intends to use a Record of Decision before Congress, on the basis of Reclamation's final feasibility report and environmental impact statement, decides to authorize or not authorize the Shasta Dam raise project — or authorize the Secretary to make that decision herself. Chapter nine is equally unclear how long the Secretary intends to wait before making a decision that the unresolved issues cannot be resolved. However, it seems that the Congress, in spite of established Federal water project law and policy, may be disinclined to wait for the Secretary's Record of Decision before making an authorization decision — or in what form the authorization would take.

#### Postauthorization work

Finally, chapter nine of the feasibility report concludes with a note that there will be additional work by Reclamation if Congress authorizes the dam-raise project consistent with the Secretary's recommendation.

If Congress were to authorize construction based on an agreement that addresses the Secretary's outstanding concerns, additional technical issues would need to be considered and addressed regarding Federal appropriations and the associated ceiling, treatment of additional operations and maintenance costs, completion of applicable State and Federal permitting actions, and Congressional authorization of required authorities. (p. 9-2)