

a preferred alternative

NDC-14

NDCE.1

Introduction

1 4. The draft EIR was so fundamentally and basically inadequate and conclusory in nature that
2 meaningful public review and comment were precluded.

3 The revised environmental document must be subjected to the same “critical evaluation that occurs
4 in the draft stage,” so that the public is not denied “an opportunity to test, assess, and evaluate the
5 data and make an informed judgment as to the validity of the conclusions.” (*Sutter Sensible Planning,*
6 *Inc. v. Board of Supervisors* [1981] 122 Cal.App.3d 813, 822.) Neither NEPA nor the NEPA
7 Regulations adopted by the Council on Environmental Quality (CEQ) use the term “recirculation,”
8 but the CEQ NEPA Regulations do require or permit the preparation of a “supplement” to a draft EIS
9 in some circumstances. Such a document must be prepared when either of the two conditions below
10 applies.

- 11 1. The agency makes substantial changes in the proposed action that are relevant to environmental
12 concerns.
- 13 2. There are significant new circumstances or information relevant to environmental concerns and
14 bearing on the proposed action or its impacts (40 Code of Federal Regulations [CFR]
15 1502.9[c][1]).

16 A supplement to a draft EIS *may* be prepared “when the agency determines that the purposes of
17 NEPA would be furthered by doing so” (40 CFR 1502.9[c][2]).

18 Although neither CEQA nor the State CEQA Guidelines include language describing optional grounds
19 for recirculation, nothing in these laws prohibits recirculation solely to further “the purposes of
20 CEQA,” at least where, as here, there is no private permit applicant concerned with the economic
21 costs of “voluntary” recirculation, and the proposed project is not subject to the 1-year deadline for
22 completing EIRs found in PRC Sections 21100.2(a)(1) and 21151.5(a)(1).

23 The RDEIR/SDEIS is being circulated, noticed, and filed in the same manner as the Draft BDCP and
24 Draft EIR/EIS. No additional scoping is necessary under CEQA for a Recirculated Draft EIR and
25 under NEPA for a Supplemental Draft EIS. DWR filed a notice of availability (NOA) with the State
26 Clearinghouse on July 10, 2015 and Reclamation filed the RDEIR/SDEIS with EPA on July 10, 2015
27 and submitted an NOA to the Federal Register on July 10, 2015 announcing the availability of the
28 document for public review.

29 **1.1.3 Identification of a Preferred Alternative**

30 As was true at the time the Draft EIR/EIS was issued, the existence of a preferred alternative—or a
31 proposed project—does not mean that the remaining alternatives from that document are no longer
32 under active consideration. The choice of a preferred alternative is purely provisional and subject to
33 change. The designation simply conveys that, based on information available at the time of the
34 designation, one particular alternative appeared to the Lead Agencies to represent the likely best
35 outcome compared to the other alternatives and does not in any way convey project approval. New
36 information gained through additional public or agency input—such as will occur in response to this
37 RDEIR/SDEIS—could ultimately lead to the approval and implementation of an entirely different
38 alternative.

39 Under the NEPA Regulations for DOI, the *preferred alternative* is “the alternative which Reclamation
40 believes would best accomplish the purpose and need of the proposed action while fulfilling its
41 statutory mission and responsibilities, giving consideration to economic, environmental, technical,
42 and other factors. It may or may not be the same as Reclamation’s proposed action, the non-Federal