

**No. 522****Letter from Jay Harn, Red Bluff Tehama County Chamber of Commerce,  
Dated August 14, 2007**

>>> "reception" <rbchamber@tco.net> 3/14/2007 12:23:14 PM >>>  
Mr. Jeff Sutton, General Manager

Tehama - Colusa Canal Authority

P.O. Box 1025

Willows, CA 95988

Re: Written Comment on the Draft EIS/EIR for the Red Bluff Diversion  
Dam Fish Passage Improvement Project

} 522-1

Date: August 14, 2007

522-1 This comment letter is duplicate to Comment Letter 520.

Dear Mr. Sutton,

On behalf of the 400 plus members of the Red Bluff - Tehama County Chamber of Commerce, I am writing to officially re-affirm our organization's position, and incidentally, that of over 7,000 individuals from throughout Northern California, with respect to the operation of the Red Bluff Diversion Dam.

You will recall that in 2002, our Chamber, the City of Red Bluff, and thousands of individuals and businesses communicated to the Bureau of Reclamation and the Tehama Colusa Canal Authority our collective support of alternate I-A of the 6 Diversion Dam operation alternatives proposed at that time. I-A was (and is) the alternative which retains a gates-in operation for 4 months (from May 15 to September 15), improves the fish ladders, and provides for a pumping facility to meet the water needs of the TCCA into the future.

Our position has not changed. We still favor and recommend alternative 1-A and strongly oppose any alternative that reduces the operation of the Diversion Dam below 4 months which would cause an unacceptable level of economic and community development damage extending well beyond the local community and includes: loss of Tourism and the benefit of Tourism expenditures that generate sales tax and occupancy tax revenue to the City of Red Bluff; loss of recreational benefits including popular community events such as the Memorial Day Boat Drags, boat launching activity and shoreline leisure; loss of property value; degradation of the City's main community - gathering park; and negative impacts to the Downtown Red Bluff Revitalization process that includes river front pedestrian/trail access plans.

In that approximately 51% of the 7,000 people who signed petitions supporting the City of Red Bluff's Resolution No. 37-2002 expressing support for Lake Red Bluff, we feel it is extremely important that concern over the loss of Lake Red Bluff goes well beyond the interests of local individuals and businesses. The regional use of this Lake cannot be minimized and its loss affects persons and businesses well beyond the local community. Elimination or reduction in the gates operating period of the Red Bluff Diversion Dam must address the regional impacts, not just the local impacts. We ask what analysis does

**No. 522**

**Letter from Jay Harn, Red Bluff Tehama County Chamber of Commerce,  
Continued**

the DEIS/EIR provide to demonstrate the impacts outside of the local community, and what measures to mitigate regional losses are contemplated?

Finally, we respectfully request that the deadline for comments be extended in that: the announcement of the re-circulation of the Draft EIS/ER for the Fish Passage Improvement Project at the Red Bluff Diversion Dam for public review occurred during the height of the 2006/07 Holiday Season; public awareness of the availability of the document was (and is) extremely low; and the window of opportunity to comment was extremely short.

We believe that an extension would provide a greater opportunity for more people to review the issue and provide pertinent input.

Thank you for this opportunity to comment once again on this Draft DEIS/EIR.

Sincerely,

Jay Harn, President-Elect  
Marshall Pike, Chair

Red Bluff - Tehama County  
Red Bluff - Tehama County

Chamber of Commerce  
Convention & Visitors Bureau

cc: Paul Freeman, Bureau of Reclamation

Martin Nichols, City Manager, City of Red Bluff

No. 523

Letter from Justin Augustine, Center for Biological Diversity, Dated March 16, 2007

Letter 523



The Tehama-Colusa Canal Authority

March 16, 2007

Sent via e-mail and facsimile on March 16, 2007

Mr. David Bird  
General Manager  
Tehama-Colusa Canal Authority  
dbird@tccanal.com

Mr. Paul Freeman  
Bureau of Reclamation  
pfreeman@mp.usbr.gov  
Fax: 530-529-3895

Re: Comments on the Recirculation of the Red Bluff Diversion Dam Fish Passage Improvement Project Draft Environmental Impact Statement/Environmental Impact Report

These are the comments of the Center for Biological Diversity regarding the recirculation of the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the Fish Passage Improvement Project at the Red Bluff Diversion Dam (RBDD). The Center for Biological Diversity is a national science-based nonprofit organization with over 32,000 members that works to protect endangered species and wild places.

The DEIS/EIR acknowledges that RBDD creates a barrier in the Sacramento River that impedes and delays migratory fish passage to spawning and rearing habitats above the dam. The current 4-month gates-in operation of RBDD illegally blocks or delays both upstream and downstream fish migration and jeopardizes species listed under the federal Endangered Species Act and the California Endangered Species Act. The RBDD interferes with migration for threatened Central Valley spring run chinook salmon (*Oncorhynchus tshawytscha*), endangered Sacramento River winter run chinook salmon (*Oncorhynchus tshawytscha*), threatened California Central Valley steelhead trout (*Oncorhynchus mykiss*), and threatened southern green sturgeon (*Acipenser medirostris*). The dam also causes fish passage problems for other state and federal species of concern such as fall-/late-fall-run chinook salmon, Sacramento splittail, Pacific lamprey, and river lamprey.

523-1

The Center for Biological Diversity supports the complete removal of the RBDD and re-establishment of a free flowing Sacramento River through Red Bluff to provide adequate fish passage and ecosystem restoration. The complete removal of RBDD should be considered as an alternative in the final EIR/EIS. The Center for Biological Diversity believes removal of the RBDD should be the preferred alternative to improve fish passage for anadromous fish species and to come into compliance with the state and federal Endangered Species Acts and California Fish and Game Code. Removal of RBDD will prevent the illegal take of listed species, whereas retaining the RBDD infrastructure could result in future operations that continue to jeopardize the listed fish species in the Sacramento River and its tributaries. Alternative 3, the gates-out alternative, would provide the most efficient fish passage for listed salmonids and for green sturgeon of the alternatives in the current draft EIR/EIS.

523-2

- 523-1 Thank you for your comment. Your comment has been noted. No response is required.
- 523-2 At the present time, the selected project does not include an element to physically remove RBDD. In the future, should Reclamation choose to remove RBDD, this action would require environmental review including impact assessment and mitigation development under NEPA and CEQA; permitting and consultation would be required under ESA and CESA.

Tucson • Phoenix • San Francisco • San Diego • Los Angeles • Joshua Tree • Pinos Altos • Portland • Washington, DC

Justin Augustine, Staff Attorney • 1095 Market St., Suite 511 • San Francisco, CA 94103  
Phone: 415-436-9682 x302 • Fax: 415-436-9683 • jaugustine@biologicaldiversity.org

## No. 523

## Letter from Justin Augustine, Center for Biological Diversity, Continued

Maintaining a barrier that eliminates or impedes access to habitat or the ability to migrate for listed salmonid species, or operating a dam or water diversion structure with inadequate fish passage facilities in listed salmonid species' habitat is a violation under § 9 and § 4(d) protective regulations of the Endangered Species Act. Moreover, under California Fish and Game Code § 5901 it is illegal to maintain any device which prevents or impedes the passing of fish up and down stream.

The DEIS/EIR does not discuss consultation required with the National Marine Fisheries Service (NMFS) under § 7 of the Endangered Species Act regarding federally listed salmon species, steelhead trout and green sturgeon (see 16 U.S.C. § 1536). The re-designation of Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon and Central Valley steelhead trout (70 Fed. Reg. 37160-37204), the promulgation of new Endangered Species Act § 4(d) "take" rules for these salmonids (70 Fed. Reg. 37160-37204), the re-designation of critical habitat for these salmonids (70 Fed. Reg. 52487-52627), and the listing of southern green sturgeon (71 Fed. Reg. 17757) have occurred since the initial circulation of the 2002 DEIS/EIR. Given changes in the status, critical habitat, and take rules for listed anadromous fish species since 2002, a supplemental DEIS/EIR for the RBDD Fish Passage Improvement Project is clearly required (see 40 C.F.R. § 1502.9(c)(1)(ii); Cal. Pub. Res. Code 21166 (c)) and should be circulated for public comment. Endangered Species Act consultation should occur prior to circulation of the DEIS/EIR so that any new information or recommendations derived from § 7 consultation with NMFS can be included and evaluated.

#### Green sturgeon

The southern population of green sturgeon, which includes green sturgeon in the Sacramento River blocked or delayed by the RBDD, was listed as a federally threatened species on April 7, 2006 (NMFS 2006; 71 Fed. Reg. 17757). The Sacramento River contains the only known green sturgeon spawning population in the federally listed Distinct Population Segment of southern green sturgeon. The estimated abundance of green sturgeon in the Sacramento River has plummeted by 95 percent since 2001, when the species was first petitioned for Endangered Species Act listing. The California Department of Fish and Game estimated that only 25 or fewer female spawning green sturgeon would return to the Sacramento River in spring of 2006.<sup>1</sup> Since the Sacramento River green sturgeon population is near extinction, and since mature green sturgeon only spawn every 3-5 years and have low reproductive rates, any impediment to successful spawning is significant for the survival of the entire southern green sturgeon population. The current 4-month gates-in operations of RBDD from May 15 to September 14 interferes with both upstream and downstream migration of adult and juvenile green sturgeon.

According to the U.S. Fish and Wildlife Service (USFWS) and NMFS, spawning times for green sturgeon in the Sacramento River are late spring and early summer. Spawning occurs from March through July, with a peak from mid-April to mid-June (USFWS 1995; NMFS 2002, 2005, 2006). Green sturgeon spawning in the Sacramento River is concentrated in the upper Sacramento River above Hamilton City and perhaps as far upstream as Keswick Dam (NMFS 2002).

<sup>1</sup> See CDFG comments from March 2, 2006 California Fish and Game Commission meeting; also CDFG comments in *Rules Set To Protect Sturgeon Population*, Sacramento Bee, March 1, 2006.

523-3

523-3

Consultation with USFWS and NMFS has been underway throughout the EIS/EIR preparation process. The DEIS/EIR states on page 1-6 that among the required permits and approvals, that ESA Section 7 consultations with USFWS and NMFS would need to be conducted. As stated on page 5-6 of the DEIS/EIR, a pending BA and decision on terrestrial compliance is in progress. At the time of the release of the DEIS/EIR (2002), a Draft BA for federal species under the jurisdiction of USFWS was appended to the DEIS/EIR as Appendix L. Subsequently, in December 2006, Reclamation provided an updated BA to USFWS as part of the ongoing consultation for the project. Additionally, in December 2006, a BA was prepared and submitted by Reclamation to NMFS as part of the ongoing consultation for the project with that agency. These BAs are currently being evaluated by these federal agencies, and preparation of the BOs for the project is in progress.

523-4

Thank you for your comment. Your comment has been noted. No response is required.

523-4

**No. 523****Letter from Justin Augustine, Center for Biological Diversity, Continued**

The RBDD was a complete barrier to adult green sturgeon migration until recently (USFWS 1995). The seasonal opening of the RBDD gates to improve winter-run chinook salmon passage in 1986 is believed to have provided substantial increases in green sturgeon spawning habitat above RBDD (NMFS 2002, 2003). The current regime of the gates being closed from May 15 to September 14 started in 1992. The seasonal opening of the RBDD gates has helped adult green sturgeon passage in the Sacramento River during the early part of their spawning season (March through mid-May), but it is not known how effective this measure has been and spawning migration later in the season (mid-May through July) is likely partially or completely blocked by the gates (NMFS 2004, 2005, 2006). The RBDD fish ladders are thought to be too small for green sturgeon to negotiate during the latter part of the spawning season when the RBDD gates are closed (NMFS 2005).

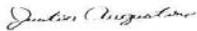
Under the current operations, RBDD completely blocks or delays adult upstream migration from May 15 through July. Under alternative 2B, RBDD would completely block or delay adult upstream migration throughout July. The proposed gates-out alternative for RBDD would allow unblocked upstream migration and significantly increase passage for adult green sturgeon by 54%.

Very little is known about juvenile green sturgeon migration or survival, but juvenile sturgeon have been captured in most years from 1995-2001 in traps at RBDD (NMFS 2002, 2003). These are juvenile sturgeon moving downstream from upstream spawning areas. NMFS assumes that all larval and juvenile sturgeon caught at the RBDD trap are green rather than white sturgeon because 136 juveniles collected and grown to identifiable size were all green sturgeon (NMFS 2002). Juvenile sturgeon between 24 and 70 mm mean FL are found in the RBDD trap from May through August, with peak counts in June and July (NMFS 2003). Juvenile green sturgeon have also been recovered from the diffuser on the East Ladder at RBDD in late October (Moyle et al. 1992).

Under the current operations, RBDD likely impedes or affects juvenile sturgeon downstream migration or creates conditions favorable to predators, from May 15 at least through August, and possibly later. Under alternative 2B, RBDD would impede or affect juvenile downstream migration from July 1 through August. The proposed gates-out alternative for RBDD would allow unimpeded downstream juvenile migration and significantly increase passage for juvenile green sturgeon by 38%.

The Center for Biological Diversity supports the complete removal of the RBDD or the gates out alternative (3) to provide adequate fish passage and to fully restore ecosystem functions to the Sacramento River. We look forward to reviewing a supplemental DEIS/EIR for this project that adequately addresses these Endangered Species Act issues.

Sincerely,



Justin Augustine  
Staff Attorney

- 523-5 Thank you for your comment. Your comment has been noted.  
No response is required.
- 523-6 Thank you for your comment. Your comment has been noted.  
No response is required.

523-5

523-6

**No. 523****Letter from Justin Augustine, Center for Biological Diversity, Continued**

## Citations:

Moyle, P. B., P. J. Foley, and R. M. Yoshiyama. 1992. Status of green sturgeon, *Acipenser medirostris*, in California. Final Report submitted to National Marine Fisheries Service, Terminal Island, CA.

National Marine Fisheries Service. 2002. Status Review for North American Green Sturgeon, *Acipenser medirostris*. Peter B. Adams, Churchill B. Grimes, Joseph E. Hightower, Steven T. Lindley, and Mary L. Moser. June 2002.

National Marine Fisheries Service. 2003. 12-Month Finding on a Petition to List North American Green Sturgeon as a Threatened or Endangered Species. 68 FR 4433, January 29, 2003.

National Marine Fisheries Service. 2004. Green Sturgeon (*Acipenser medirostris*) Status Review Update. Biological Review Team, Santa Cruz Laboratory, Southwest Fisheries Science Center. December 2004.

National Marine Fisheries Service. 2005. Proposed Threatened Status for Southern Distinct Population Segment of North American Green Sturgeon. 70 FR 17386, April 6, 2005.

National Marine Fisheries Service. 2006. Threatened Status for Southern Distinct Population Segment of North American Green Sturgeon. 71 FR 17757, April 7, 2006.

USFWS. 1995. Working paper on restoration needs: habitat restoration actions to double natural production of anadromous fish in the Central Valley of California. Volume 3. May 5, 1995. Prepared for USFWS under the direction of the Anadromous Fish Restoration Program Core Group. Stockton, CA.

Sent: Friday, March 16, 2007 10:04 AM  
To: jsutton@tccanal.com  
Subject: FW: Fish Passage Improvement Project at the Red Bluff Diversion Dam

**No. 524**

**Email from Michelle Clark, Dated March 16, 2007**

-----Original Message-----  
From: Michelle Clark [mailto:shellbearclark@hotmail.com]  
Sent: Friday, March 16, 2007 10:43 AM  
To: dbird@tccanal.com  
Subject: Fish Passage Improvement Project at the Red Bluff Diversion Dam

Mr. Bird,

As biologist and Red Bluff Citizen I support Alternative 1a endorsed by the Red Bluff City Council in its resolution adopted on May 7, 2002. I believe this alternative will serve in the best interest of all parties involved. You may accept and count this notice as my vote for alternative 1a.

Sincerely,

Michelle Clark

1360 Third St.  
Red Bluff, CA 96080

524-1

524-1

Thank you for your comment. Your comment has been noted.  
No response is required.

Watch free concerts with Pink, Rod Stewart, Oasis and more. Visit MSN Presents today.  
<http://music.msn.com/presents?icid=ncmsnpresentstagline&ocid=T002MSN03A07001>

LAW OFFICES OF  
RICHARD L. CRABTREE  
1395 RIDGEWOOD DRIVE, SUITE 300  
CHICO, CA 95973  
(530) 566-1111  
FAX: (530) 566-9203  
E-MAIL: RICK@CRABTREE.LAW.OFFICE.COM

#525  
W

No. 525

April 18, 2007

Jeffrey Sutton  
Tehama Colusa Canal Authority  
5513 Highway 162  
PO Box 1025  
Willows, CA 95988

Re: DEIR for the Fish Passage Improvement Project at the Red Bluff  
Diversion Dam

Dear Mr. Sutton:

This office serves as the Red Bluff City Attorney. You have previously agreed to accept, consider and respond to the following comments from the City of Red Bluff related to the Tehama Colusa Canal Authority's (TCCA) consideration of the Draft Environmental Impact Report (DEIR) for the above referenced Project. Please include these comments in the Administrative Record regarding the Project.

The DEIR Must Be Recirculated Pursuant To CEQA

First, as confirmed in your letter dated April 9, 2007 (copy enclosed), there has been no recirculation of the DEIR pursuant to the California Environmental Quality Act (CEQA). The original public review period for the DEIR was in 2002. Thereafter, the Project sat dormant for five years. The TCCA is now actively pursuing federal funds for the Project, with an obvious intention of moving forward with the construction of a massive water pumping facility. The DEIR should have been recirculated pursuant to the requirements of CEQA. (See, CEQA Guidelines, §15088.5.) Updated information from the last five years should have been included in the recirculated document. Significant new information regarding the potential impacts of the Project has become available during the past five years. However, the TCCA's decision not to recirculate pursuant to CEQA effectively prohibits the public from commenting on the Project and the newly available information.

525-1

Curiously, the TCCA's co-lead agency, the Federal Bureau of Reclamation, did recirculate the DEIR as a Draft Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Obviously, the Bureau of Reclamation recognized that the passage of time, combined with the availability of new relevant

525-2

Letter from Richard L. Crabtree, Dated April 18, 2007

525-1

The DEIS/EIR was the subject of an extensive review to determine the need for recirculation under CEQA. However, no new information or substantial changes were identified. Regardless, the lead agencies agreed to accept and consider public comments on the document to further the decisionmaking process. To date, no new information has been received to warrant re-analysis or recirculation.

525-2

As part of the NEPA process, Reclamation re-opened the public comment period. This was an independent decision by the NEPA lead agency. However, no changes were made to the original DEIS/EIR, reflective of a review of the document that found no changes that warranted changes to the analyses or conclusions.

Jeffrey Sutton  
4/18/2007  
Page 2

**No. 525**

**Letter from Richard L. Crabtree, Continued**

information regarding the Project's potential impacts and alternatives, warranted recirculation of the DEIS. The Bureau of Reclamation notes its decision to recirculate "given the length of lapsed time and the recent selection of Alternative 2B as Reclamation's preferred alternative." (Federal Register, Vol. 72, No. 19 (Jan. 30, 2007).) For these same reasons, recirculation of the DEIR was/is required pursuant to the requirements of CEQA.

525-2,  
cont'd

As the TCCA acknowledges, there were many, many commenters on the DEIR in 2002. Ironically, the TCCA has advanced as one of its excuses for not recirculating, the fact that the TCCA has received few comments recently regarding the Project or the DEIR. This flawed logic illustrates the problem: if you do not provide the public with adequate notice that the Project and its DEIR are being reconsidered, after five years with little or no Project activity, you are unlikely to receive many new comments from the public. The CEQA recirculation process is designed to make the public aware of the current status and available information regarding the Project and its impacts, and to provide a meaningful opportunity to comment. For example, proper recirculation pursuant to CEQA would require that the TCCA send a notice to every agency, person or organization that commented previously (five years ago) on the DEIR. (CEQA Guidelines §15088.5(f)(3).) Here, the public has been deprived of such notice and an opportunity to comment. Unless you are an avid reader of the Federal Register, you are unlikely to have received any notice regarding the resurrection of this Project and its DEIR.

525-3

Accordingly, the City of Red Bluff requests that the DEIR be recirculated, with the appropriate public notice, pursuant to the requirements of CEQA.

New Information Is Available Regarding Impacts And Alternatives.

Due to TCCA's failure to properly recirculate the DEIR, the City's ability to provide meaningful comments has been severely hampered. Nevertheless, the City provides the following comments regarding the impacts and alternatives related to the project.

525-4

There is significant new evidence that installation of the massive pumping facility proposed by the TCCA will actually hurt fish migration, not improve it. This is due, in part, to the impact of the water intake on out-migration fish. Young fish are not likely to survive their encounter with TCCA's proposed massive pumping facility or its fish screens. The DEIR does not provide an adequate analysis of this potential impact.

525-5

The DEIR also fails to adequately analyze the potential impacts related to new and annual dredging which will accompany the proposed water pumping facility. The DEIR fails to adequately consider the impacts of construction of this facility, and its ongoing maintenance. For example, the Draft EIR does not study the impacts of baffles which must be built in the river to divert water to the pumps. Nor has there been any

525-6

525-3

Your comment has been noted. The DEIS/EIR will not be recirculated. See CEQA Guidelines at Section 15088.5 for a discussion of the requirements for recirculation of an EIR.

525-4

The Lead Agencies made specific accommodations for the commentor to accept comments on the Draft EIS/EIR. The commentor was given additional time to prepare comments on the Draft EIS/EIR.

525-5

The commentor's claim of additional impact was reviewed and rejected. See Thematic Response No. 2 for a discussion of impacts to outmigrating fish.

525-6

The commentor's claim of additional impact was reviewed and rejected. See Thematic Response No. 2 for a discussion of impacts to outmigrating fish.

Jeffrey Sutton  
4/18/2007  
Page 3

**No. 525**

**Letter from Richard L. Crabtree, Continued**

analysis of the net impact on fisheries. In addition, the introduction of quagga mussels into the Sacramento River will likely affect the efficiency of the fish screens. The quagga mussels attach themselves to fish screens and can reduce the intake capacity.

525-6,  
cont'd

Another potential alternative which is feasible, meets the project objectives, and has less environmental impacts, should be analyzed. The "Connors Bypass" proposed in 2002, has been improperly ignored. This alternative would direct flow through an old channel which runs east of the current recreation area. Obviously, with the passage of more than five years, there has been ample opportunity to study this alternative. New research suggests that there are improved fish ladders available which will allow sturgeon and salmon to bypass the dam. There is also new evidence that the sturgeon are getting upriver from the dam. The Bureau of Reclamation recently hired UC Davis Professor Peter Moyie to further study sturgeon, and their related migration issues. Thus, the Bureau recognizes the need for more analysis before the Project moves forward.

525-7

If a new and more effective ladder system were constructed, the gates could stay in for longer periods of time and improve water delivery to the TCCA canal system. In fact, a gates-in during winter flow plan could provide water to the proposed Sites Reservoir. This proposed reservoir near Maxwell would significantly improve water storage and availability for the TCCA and its members. Yet, this promising alternative has not been studied or analyzed pursuant to CEQA. CEQA requires that this new alternative be studied and analyzed and that the resulting DEIR be recirculated. (CEQA Guidelines, §15088.5(a)(3).) The DEIR also has not adequately analyzed the possibility of obtaining more water from Stony Creek as an alternative to the TCCA's proposed Project.

525-8

The Gates-Out Alternative will allow striped bass (a non-native species) to move upriver and greatly increase salmon predation. Striped bass do not climb fish ladders. Allowing this predatory fish to proceed upstream unhampered, and its resulting potential impacts to the salmon population, have not been adequately addressed in the DEIR.

525-9

There is also information which suggests that Sacramento River water in the area known as Lake Red Bluff recharges the City's groundwater aquifers. Potential impacts to the City of Red Bluff's water supply and its groundwater aquifers, have not been analyzed.

525-9

As noted in the City's prior comment letter dated November 27, 2002, there will be significant unmitigated impacts to the City of Red Bluff and its citizens in the event of a gates-out alternative or implementation of the Bureau of Reclamation's new preferred Alternative 2B (i.e., two months with existing ladders alternatives). New data and information regarding the operation of Lake Red Bluff for the past five years has obviously been ignored in the DEIR. In addition, there has not been any updated analysis of the social and economic impacts on the City of Red Bluff related to the Bureau of Reclamation's recent selection of Alternative 2B as its preferred alternative. Although

525-10

525-10

The "Connor's Bypass" was given full consideration as an alternative, and was developed to a level of detail commensurate with the other alternatives. See the description of Alternative 1B on DEIS/EIR page 2-10. Also see the Fish and Wildlife CAR (Appendix I to the DEIS/EIR) for additional analysis of this alternative. Green sturgeon will continue to be the subject of additional study and research because of their new status as threatened under ESA.

Sites Reservoir is a potential project being evaluated by the state as part of a separate effort. Additional gates-in operation schemes were rejected following discussions with the resource agencies and because of ongoing concerns over fish migration. Likewise, Stony Creek diversions are not considered to be sustainable in the long term because of concerns about water supply reliability and the unscreened nature of the diversion. Striped bass currently have the ability to migrate upstream of the dam. The impact of the dam on striped bass, and the subsequent impact on predation rates, were considered as part of the analysis.

The influence of Lake Red Bluff on groundwater levels was reviewed as part of the analysis. The greatest area of influence is near the dam, with decreasing influence upstream, consistent with the "lake." The influence of gate operations on groundwater is minimal, with the exception of the area near the "Mill Site, which is currently an unpermitted landfill. The U.S. Environmental Protection Agency and other resource agencies have noted that the lake might be increasing water quality problems because of mixing in the landfill area.

The lead agencies acknowledge the significant, unavoidable impacts that would result from raising the gates year-round. This impact was identified in the DEIS/EIR.

No. 525

Letter from Richard L. Crabtree, Continued

Jeffrey Sutton  
4/18/2007  
Page 4

Alternative 2B will use a gates-in period of July 1 to August 31, this will reduce the seasonal existence of Lake Red Bluff by 50 percent. It also will eliminate the Memorial Day Drag Boat Races which are a significant source of income for the City of Red Bluff. These impacts need to be re-evaluated with updated information in a recirculated Draft EIR. Under CEQA, physical changes that cause adverse social or economic effects on people are considered significant environmental impacts. (CEQA Guidelines, §15064(e).) When there are feasible alternatives clearly available which would avoid these significant impacts to the City of Red Bluff, CEQA requires that those alternatives be pursued and adopted. (Pub. Res. Code §21002.)

525-10,  
cont'd

In addition, the massive water pumping facility proposed by the TCCA will obviously require a substantial amount of energy to operate. However, the DEIR fails to adequately analyze and mitigate the Project's energy use. (Pub. Res. Code §21100(b)(3); CEQA Guidelines Appendix F.) Furthermore, the California Legislature has determined that global warming is a serious environmental concern which requires immediate action by all levels of state and local government. (See, California Global Warming Solutions Act of 2006; Health & Safety Code §§38500, et seq.) The DEIR fails to address or analyze the Project's contribution to global warming, and also fails to analyze potential mitigation for these impacts.

525-11

All of these new issues and information should be analyzed in a revised DEIR which is then properly recirculated pursuant to the requirements of CEQA.

Conclusion.

The nearly silent resurrection of this Project and its DEIR, after five years, without any updating of the DEIR's analysis, without notice to the public, and without recirculation, violates the fundamental principals of CEQA. Among CEQA's main purposes are to foster public involvement and comment, and to inform decision makers and the public about a Project's potential impacts. (CEQA Guidelines, §§15002(a), 15003.) Accordingly, the City of Red Bluff requests that the Draft EIR be updated with current data and information regarding the Project's potential impacts, and the potential Project alternatives, and that the DEIR be recirculated pursuant to the requirements of CEQA. Please include this letter and its attachments in the Administrative Record for the project.

525-12

Very truly yours,

Richard L. Crabtree

RLC:jm  
Enclosure  
Cc: Martin Nichols, Red Bluff City Manager

- 525-11 Your comment has been noted. The DEIS/EIR has been amended to include a section on global climate change. That discussion is available in Appendix A to this FEIS/EIR.
- 525-12 Your comment has been noted. See Responses to Comments 525-1, 525-2, and 525-3.

Letter 526

# Tehama-Colusa Canal Authority

P.O. Box 1025 ~ 5513 Hwy 162 ~ Willows, CA 95988 ~ Phone: (530) 934-2125 ~ Fax: (530) 934-2355

April 9, 2007

Richard Crabtree  
Red Bluff City Attorney  
1395 Ridgewood Drive, Suite 300  
Chico, CA 95973

VIA FACSIMILE AND U.S. MAIL

Re: Public Records Act Request to Tehama Colusa Canal Authority ("TCCA")

Dear Mr. Crabtree:

This letter responds to your request on behalf of the City of Red Bluff for certain records from the TCCA pursuant to the Public Records Act (Government Code § 6250 *et seq.*).

First, please note that the Draft EIS/EIR document has not changed since its initial circulation in 2002. The decision to recirculate the Draft EIS/EIR document was made solely by the U.S. Bureau of Reclamation ("USBR") pursuant to the National Environmental Policy Act ("NEPA"). This is clear from the Federal Register notice published on January 30, 2007, advising that the document was still available for comment. The lapse of time since the initial circulation of the document and Reclamation's focus on Alternative 2B as its Preferred Alternative are the only reasons given for the new notice.

TCCA did not recirculate the document for purposes of CEQA because no significant new information was added to the document. In fact, as noted above, no new information has been added at all. Thus, the CEQA Guideline sections you cited in your letter are not applicable to the recirculation. TCCA is, however, the repository for comments on the document, including the comments the City previously submitted on it. TCCA will provide responses to all comments submitted prior to April 16, 2007.

The following responds to your specific requests for public records:

1. Request for "copies of any and all documents which the Tehama Colusa Canal Authority ("TCCA") created or circulated in compliance with CEQA Guidelines section 15088.5(f)(3)."

No such documents exist because the cited section of the CEQA Guidelines is inapplicable and the recirculation of the document was by the federal lead agency, USBR.

**No. 526**

**Letter from Jeffrey P. Sutton, Tehama-Colusa Canal Authority,  
Dated April 9, 2007**

526-1 This comment letter is a continuation of Comment Letter 525.

**No. 526****Letter from Jeffrey P. Sutton, Tehama-Colusa Canal Authority, Continued**

2. Request for "copies of any documents created by or distributed by the TCCA in compliance with CEQA Guidelines section 15088.5(g)."

No such documents exist because the cited section of the CEQA Guidelines is inapplicable and the recirculation of the document was by the federal lead agency, USBR. Further, no summary of revisions could occur because no revisions were made to the document.

3. Request for "copies of any and all documents created by or distributed by the TCCA in order to provide notice to the public of the recirculation of the Draft EIS/EIR."

No such documents exist because the cited section of the CEQA Guidelines is inapplicable.

Nonetheless even though the City had submitted comments in 2002 and there have been no changes to the draft since then, I offered the document to the Red Bluff City Manager and the City department heads at a meeting at City Hall on February 20, 2007. The offer was refused. Further, the TCCA sent the attached press release on February 6, 2007. In addition, I personally informed the Red Bluff City Manager of the renewed circulation by USBR during a phone conversation in mid-January.

4. Request for "copies of any documents related to the TCCA's efforts to acquire real property as a possible site for the Red Bluff Diversion Dam Pumping Plant."

The documents related to this effort are exempt from disclosure pursuant to sections 6254 and 6255 of the Government Code and the attorney client privilege. The foregoing determinations were made by me, in consultation with TCCA's general counsel, Mark Atlas.

We are, of course, mindful of the relationship you noted in your letter between CEQA and a public agency's acquisition of real property.

In sum, the Draft EIS/EIR document has not changed since the previous circulation, and the City will receive responses to its comments submitted in 2002, as well as to any additional comments submitted prior to April 16, 2007.

If you have questions or concerns regarding the foregoing, please do not hesitate to contact me directly.

Regards,



Jeffrey P. Sutton  
General Manager

No. 526

Letter from Jeffrey P. Sutton, Tehama-Colusa Canal Authority, Continued

*Tehama Colusa Canal Authority*

FOR IMMEDIATE RELEASE  
FEBRUARY 6, 2007

CONTACT: JEFFREY P. SUTTON  
TCCA-General Manager  
P.O. Box 1025  
Willows, CA 95988  
Ph. (530) 934-2125  
[jsutton@tccanal.com](mailto:jsutton@tccanal.com)

**PRESIDENT'S BUDGET INCLUDES \$5.5 MILLION FOR RED BLUFF FISH  
PASSAGE SOLUTION**

The Tehama Colusa Canal Authority (TCCA) is excited to announce that President Bush's 2008 Budget, released yesterday, includes \$5.5 million to address the Fish Passage Solution at the Red Bluff Diversion Dam (RBDD). This commitment of funds will assure continued progress towards a win-win, long term solution to improve the Sacramento Valley fishery resource and restore water supply reliability to farmers.

The RBDD, constructed in 1964, is a key component of the Central Valley Project and is owned and operated by the U.S. Bureau of Reclamation. The structure consists of spillway gates within the Sacramento River, that when lowered, raise the water elevation allowing the TCCA to divert water, via gravity flow, to 18 water districts throughout four Northern California counties. This 140 mile long, dual canal system services the needs of over 120,000 acres of irrigated farm and ranch lands in the western Sacramento Valley, supporting crops valued at over \$100 million annually. The lowered gates also create a temporary artificial lake that extends approximately six miles upstream through the town of Red Bluff.

A majority of the Sacramento River spawning habitat for listed fish species occurs upstream of RBDD, and fishery agencies believe the dam impedes fish passage both upstream and downstream. A biological opinion for endangered winter run Chinook salmon issued in 1993 required that the dam remain raised eight months of the year. Currently, diversions via the RBDD are only available from May 15<sup>th</sup> to September 15<sup>th</sup>. This has created severe operational difficulties and continues to threaten the water supply reliability of the TCCA water users. Additional regulatory concerns loom as a result of the addition of the green sturgeon to the endangered species list, which has the potential to result in an even more restrictive timeframe that the gates could be lowered. Any action that further reduces the timeframe during which the TCCA can divert water would

**No. 526****Letter from Jeffrey P. Sutton, Tehama-Colusa Canal Authority, Continued**

be disastrous for the landowners and agricultural communities served by the Authority along the west side of the Sacramento Valley.

In 2002, the TCCA, in partnership with the Bureau of Reclamation, began work on a policy to improve fish passage at RBDD and to enhance water supply reliability by reducing or eliminating reliance on the dam. After looking at over 100 alternatives, the TCCA and the Bureau of Reclamation have both selected preferred alternatives that would decrease or eliminate reliance on the gravity diversion, and instead rely on the installation of a pumping plant that would lift water out of the river through a state-of-the-art fish screen.

The news of the Administration's funding commitment is particularly timely considering the Bureau recently released the Notice of Availability of the Draft EIS/EIR in the Federal Register. Comments on the Draft EIS/EIR can be submitted from January 30<sup>th</sup> through March 16, 2007.

Ken LaGrande, Chairman of the TCCA Board, stated, "The Authority is greatly appreciative of the funding provided by the Bush Administration for this worthwhile project. It clearly illustrates the Administration's commitment to support projects that benefit both agriculture and the environment. It will allow the TCCA to make significant progress in the design and engineering of a permanent solution at the Red Bluff Diversion Dam, addressing both the issue of fish passage and water supply reliability. The Red Bluff situation is our highest priority."

---

## No. 527

## Letter from Wolfgang D. Rougle, Dated July 2, 2007

To whom it may concern,

I am writing to offer comment on the Red Bluff Diversion Dam Fish Passage Improvement Project. Thank you for extending the comment period, as I, like many locals, had no idea there was a comment period until our esteemed newspaper of record mentioned that it had ended.

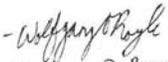
I am strongly in favor of doing whatever it takes to protect the green sturgeon. If "Lake" Red Bluff goes away entirely, well, so be it.

I admit that I'm not sure what "nitro boat races" are, but I know they are not living organisms which were around millions of years before Red Bluff. Green sturgeon are, and we owe them our protection. If fish ladders will not work for them (and the evidence seems to indicate that they won't), then, let's give them back their waters.

Red Bluff was a fast-growing, profitable, attractive little city long before "Lake" Red Bluff, and we will continue to muddle along after it is (again) dry.

In closing, I support the TCCA's "twelve-month gates-in" alternative as outlined in the EIS. You see, I expect to live another 50 years. A when I am an old woman, I would prefer to live beside a Sacramento River alive with green sturgeon than to live in a city where nitro boats are freely raced. That is all I ask.

Thank you for your consideration.

Sincerely,  
  
 Wolfgang D. Rougle  
 16395 Ridgewood Rd.  
 Coltonwood, CA 96022 (530) 721-0164

527-1

Thank you for your comment. Your comment has been noted. No response is required.

527-2

Thank you for your comment. Your comment has been noted. No response is required.

527-1

527-2

LAW OFFICES OF  
RICHARD L. CRABTREE  
1395 RIDGEWOOD DRIVE, SUITE 300  
CHICO, CA 95973  
(530) 566-1111  
FAX: (530) 566-9203  
E-MAIL: RICK@CRABTREELAWOFFICE.COM

March 28, 2007

No. 528

528-1

Letter from Richard L. Crabtree, Dated March 28, 2007

The DEIS/EIR was recirculated by the federal lead agency, Reclamation, and, thus, CEQA Guidelines Section 15088.5(f)(3) and Section 15088.5(g) do not apply. Furthermore, no summary of revisions could occur because no revisions were made to the document. The cited CEQA Guidelines section for public notice is inapplicable. However, TCCA did distribute a press release on February 6, 2007, notifying the public of the recirculation of the DEIS/EIR.

528-2

TCCA is aware of the relationship between CEQA and a public agency's acquisition of real property. The documents related to this effort are exempt from disclosure pursuant to Sections 6254 and 6255 of the Government Code and the attorney-client privilege.

Jeffrey Sutton  
Tehama Colusa Canal Authority  
5513 Highway 162  
PO Box 1025  
Willows, CA 95988

Re: Draft EIS/EIR for the Red Bluff Diversion Dam Fish Passage Improvement Project

Dear Mr. Sutton:

This office serves as the Red Bluff City Attorney. This letter will confirm your agreement to accept comments on the recirculated Draft EIS/EIR for the Red Bluff Diversion Dam Fish Passage Improvement Project ("Draft EIS/EIR") from the City of Red Bluff if such comments are received on or before April 16, 2007.

So that the City may have an opportunity to provide meaningful comments, we request your assistance in providing documents which explain any differences in the proposed project subject to current recirculation, as compared to the proposed project when the Draft EIS/EIR was originally circulated in the fall of 2002.

Specifically, we request copies of any and all documents which the Tehama Colusa Canal Authority ("TCCA") created or circulated in compliance with CEQA Guidelines section 15088.5(f)(3). In addition, we request copies of any documents created by or distributed by the TCCA in compliance with CEQA Guidelines section 15088.5(g). Also, please provide copies of any and all documents created by or distributed by the TCCA in order to provide notice to the public of the recirculation of the Draft EIS/EIR.

Finally, we request copies of any documents related to the TCCA's efforts to acquire real property as a possible site for the Red Bluff Diversion Dam Pumping Plant. In this regard, the City notes that any acquisition of such property prior to the completion of the CEQA process would be prohibited by law. (*Stand Tall on Principles v. Shasta Union High School District*, 235 Cal.App.3d 772 (1991).) Please include our office on the distribution list for all meeting notices and agendas for the TCCA.

#528

WB

528-1

528-2

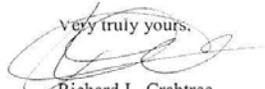
**Letter from Richard L. Crabtree, Continued**

**No. 528**

Jeffrey Sutton  
3/28/2007  
Page 2

Please consider these requests as being presented pursuant to the California Public Records Act, Government Code section 6250 et seq. The Public Records Act requires that responsive documents be made "promptly available." Any delay in providing copies of the requested records will inevitably hamper the City's ability to provide informed, meaningful comments on the recirculated Draft EIS/EIR. Finally, we request that this letter, and any response thereto, be included in the Administrative Record for the Fish Passage Improvement Project.

Thank you for your cooperation in this regard. If you have any questions or comments, please do not hesitate to contact this office.

Very truly yours,  
  
Richard L. Crabtree

RLC:jm

Cc: Martin Nichols, Red Bluff City Manager

# Tehama-Colusa Canal Authority

P.O. Box 1025 - 5513 Hwy 162 - Willows, CA 95988 - Phone: (530) 934-2125 - Fax: (530) 934-2155

April 9, 2007

Richard Crabtree  
Red Bluff City Attorney  
1395 Ridgewood Drive, Suite 300  
Chico, CA 95973

VIA FACSIMILE AND U.S. MAIL

Re: Public Records Act Request to Tehama Colusa Canal Authority ("TCCA")

Dear Mr. Crabtree:

This letter responds to your request on behalf of the City of Red Bluff for certain records from the TCCA pursuant to the Public Records Act (Government Code § 6250 *et seq.*).

First, please note that the Draft EIS/EIR document has not changed since its initial circulation in 2002. The decision to recirculate the Draft EIS/EIR document was made solely by the U.S. Bureau of Reclamation ("USBR") pursuant to the National Environmental Policy Act ("NEPA"). This is clear from the Federal Register notice published on January 30, 2007, advising that the document was still available for comment. The lapse of time since the initial circulation of the document and Reclamation's focus on Alternative 2B as its Preferred Alternative are the only reasons given for the new notice.

TCCA did not recirculate the document for purposes of CEQA because no significant new information was added to the document. In fact, as noted above, no new information has been added at all. Thus, the CEQA Guideline sections you cited in your letter are not applicable to the recirculation. TCCA is, however, the repository for comments on the document, including the comments the City previously submitted on it. TCCA will provide responses to all comments submitted prior to April 16, 2007.

The following responds to your specific requests for public records:

1. Request for "copies of any and all documents which the Tehama Colusa Canal Authority ("TCCA") created or circulated in compliance with CEQA Guidelines section 15088.5(f)(3)."

No such documents exist because the cited section of the CEQA Guidelines is inapplicable and the recirculation of the document was by the federal lead agency, USBR.

No. 529

## Letter from Jeffrey P. Sutton, Tehama-Colusa Canal Authority, Dated April 9, 2007

529-1

Thank you for your comment. Your comment has been noted.  
No response is required.

529-1

**No. 529****Letter from Jeffrey P. Sutton, Tehama-Colusa Canal Authority, Continued**

2. Request for "copies of any documents created by or distributed by the TCCA in compliance with CEQA Guidelines section 15088.5(g)."

No such documents exist because the cited section of the CEQA Guidelines is inapplicable and the recirculation of the document was by the federal lead agency, USBR. Further, no summary of revisions could occur because no revisions were made to the document.

3. Request for "copies of any and all documents created by or distributed by the TCCA in order to provide notice to the public of the recirculation of the Draft EIS/EIR."

No such documents exist because the cited section of the CEQA Guidelines is inapplicable.

Nonetheless even though the City had submitted comments in 2002 and there have been no changes to the draft since then, I offered the document to the Red Bluff City Manager and the City department heads at a meeting at City Hall on February 20, 2007. The offer was refused. Further, the TCCA sent the attached press release on February 6, 2007. In addition, I personally informed the Red Bluff City Manager of the renewed circulation by USBR during a phone conversation in mid-January.

4. Request for "copies of any documents related to the TCCA's efforts to acquire real property as a possible site for the Red Bluff Diversion Dam Pumping Plant."

The documents related to this effort are exempt from disclosure pursuant to sections 6254 and 6255 of the Government Code and the attorney client privilege. The foregoing determinations were made by me, in consultation with TCCA's general counsel, Mark Atlas.

We are, of course, mindful of the relationship you noted in your letter between CEQA and a public agency's acquisition of real property.

In sum, the Draft EIS/EIR document has not changed since the previous circulation, and the City will receive responses to its comments submitted in 2002, as well as to any additional comments submitted prior to April 16, 2007.

If you have questions or concerns regarding the foregoing, please do not hesitate to contact me directly.

529-1,  
cont'd

Regards,

  
Jeffrey P. Sutton  
General Manager

No. 530

**Letter from Natural Resources Defense Council,  
Dated March 16, 2007**



#530  
NATURAL RESOURCES DEFENSE COUNCIL

VIA ELECTRONIC AND FIRST CLASS MAIL

March 16, 2007

Mr. David Bird  
General Manager  
Tehama-Colusa Canal Authority  
P.O. Box 1025  
Willows, CA 95988  
[dbird@teccanal.com](mailto:dbird@teccanal.com)

Mr. Kirk Rodgers  
Mid-Pacific Regional Director  
U.S. Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825-1898  
[kr Rodgers@mp.usbr.gov](mailto:kr Rodgers@mp.usbr.gov)

Re: Comments on the Re-circulated DEIS/EIR for the Fish Passage Improvement Project at the Red Bluff Diversion Dam

Dear Mr. Bird and Mr. Rodgers:

I am writing on behalf of the Natural Resources Defense Council ("NRDC") and its more than 1.2 million members and on-line activists, including nearly 250,000 in California, with regard to the re-circulated Draft Environmental Impact Statement/Environmental Impact Report ("DEIS/EIR") for the Fish Passage Improvement Project at the Red Bluff Diversion Dam ("the Dam" or "RBDD"). NRDC is pleased that the Tehama-Colusa Canal Authority ("TCCA") and Bureau of Reclamation ("Bureau") have revived the proposed Fish Passage Improvement Project ("the Project") after close to five years of inaction. However, we have significant concerns with the analysis and conclusions presented in the DEIS/EIR. First, the Bureau recently selected two-months gates-in operation as its preferred alternative. Not only is this alternative less effective at achieving the Project purposes, but it differs from the year-round gates-out alternative preferred by TCCA. The DEIS/EIR provides no explanation of how co-lead agencies can select and implement differing (and incompatible) Project alternatives, or how this conflict between preferred alternatives will be resolved. Second, the DEIS/EIR does not explain the need or potential uses for the vastly expanded pumping capacity that it includes in every action alternative, nor does it adequately address all the impacts associated with that increased capacity. Third, the document fails to consider the Project in connection with the recent renewal of long-term water service contracts for delivery of Central Valley Project water through the Tehama-Colusa and Corning canals, or in connection with the proposed Sites Reservoir which could use the increased pumping capacity enabled by the Project, both of which are closely-related actions. Fourth, the DEIS/EIR fails to consider a reasonable range of alternatives, including those that would not require an excessive expansion of pumping capacity. Finally, the document omits analysis of several significant impacts.

530-1

530-2

530-3

530-4

530-5

- 530-1 The commentor is correct in noting that the stated alternatives are incompatible. This FEIS/EIR corrects the incompatibility by identifying a joint preferred alternative consisting of a pumping facility with a maximum capacity of 2,500 cfs. Reclamation anticipates a gates-in period between July 1 and the end of Labor Day weekend; TCCA has no position on changes to gate operations. This selection is described in Section 1.0 of this FEIS/EIR.
- 530-2 At its largest configuration, the project would match the existing diversion capacity of RBDD. Existing contracts for water delivery would also remain at current levels.
- 530-3 The proposed project is consistent with contract renewals for member districts of TCCA. The project could provide water to the proposed Sites Reservoir, which is currently under consideration by DWR. However, specific delivery scenarios are considered speculative at this time, and the proposed project at RBDD has independent utility regardless of a future determination on Sites Reservoir. This relationship was described in Section 4.1 of the DEIS/EIR under Cumulative Conditions.
- 530-4 The DEIS/EIR considered a full range of alternatives for water supply reliability, from 480 cfs (No Action) to 2,500 cfs (Alternative 3). The full capacity of the existing canal headworks is 2,500 cfs; no expansion of these headworks or the canals is a part of the Purpose and Need Statement (DEIS/EIR Section 1.2.1), nor is any expansion currently contemplated.
- 530-5 The DEIS/EIR includes a full accounting of environmental impacts, consistent with the requirements of NEPA and CEQA.

[www.nrdc.org](http://www.nrdc.org)

111 Sutter Street, 20th Floor  
San Francisco, CA 94102  
☎ 415 875-6400 f 415 875-6461

NEW YORK • WASHINGTON, DC • LOS ANGELES

## No. 530

## Letter from Natural Resources Defense Council, Continued

Mr. Bird and Mr. Rodgers  
March 16, 2007  
Page 2 of 11

Unfortunately, status quo operation of the Dam since the DEIS/EIR was completed has led to yet another imperiled anadromous fish in the Sacramento River – the Southern Population Segment of the North American Green Sturgeon – being listed as threatened under the federal Endangered Species Act. See 71 Fed. Reg. 17757 (April 7, 2006). As explained in the DEIS/EIR: “Placement of the dam gates into the river results in complete blockage of migrating adult green sturgeon.” DEIS/EIR, p. B-15. Moreover, “[w]ith the current gates-in operations, a total of approximately 99 percent of annual juvenile green sturgeon passing RBDD are subjected to the operational effects of the dam and its [sic] associated diversion facilities.” *Id.* These disastrous impacts of current Dam operation on green sturgeon are in addition to the admittedly adverse impacts of Dam operation on several other listed fish, including winter-run Chinook, spring-run Chinook, and steelhead. According to the DEIS/EIR, 72 percent of adult spring-run Chinook salmon and over 35 percent of juvenile winter-run Chinook and steelhead are affected by the operation of the Dam. DEIS/EIR, p. ix. These impacts are significant, irreversible, and irremediable, and must be addressed without further delay.

Thus, NRDC urges TCCA and the Bureau to implement immediately year-round, gates-out operation at the Dam in order to satisfy the agencies’ Endangered Species Act obligations, as well as other requirements of state and federal law. TCCA and the Bureau should also prepare a new NEPA/CEQA analysis that addresses the failures in the DEIS/EIR described below.

I. Year-round Gates-out Operation Is the Only Acceptable Alternative for Fish

The purpose of the Fish Passage Improvement Project, as described in the DEIS/EIR, is twofold: (1) to substantially improve the long-term ability to reliably pass anadromous fish and other species of concern, both upstream and downstream, past RBDD; and (2) to substantially improve the long-term ability to reliably and cost-effectively move sufficient water into the TC Canal and Corning Canal systems to meet the needs of the water districts served by TCCA. DEIS/EIR, p. iv. The DEIS/EIR provides the obvious answer to the first of these goals: year-round gates-out operation is the only alternative that substantially improves the long-term ability to reliably pass anadromous fish. See, e.g., DEIS/EIR, Table 3.2-6 to 3.2-10 (showing benefit of gates-out operation on various fish species as compared to other alternatives).

Year-round gates-out operation is the alternative endorsed by all of the expert fish agencies: the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, California Department of Fish and Game, and the California Advisory Committee on Salmon and Steelhead Trout. See, e.g., DEIS/EIR, pp. 1-13 to 1-14, Appendix G, Appendix I. As explained by these agencies, current Dam operations do not adequately protect or contribute to the recovery of anadromous fish and do not meet the requirements of section 3406(b)(1) of the Central Valley Project Improvement Act.

530-6

Your comment has been noted. No response is required. The DEIS/EIR considered effects on green sturgeon as if the then-candidate species were found to be threatened or endangered under ESA. Green sturgeon have since been found to warrant threatened status.

530-7

Thank you for your comment. Your comment has been noted. No response is required.

530-6

530-7

## No. 530

## Letter from Natural Resources Defense Council, Continued

Mr. Bird and Mr. Rodgers  
 March 16, 2007  
 Page 3 of 11

DEIS/EIR, App. I, Draft Report, p. 16. As CDFG explains, "The RBDD fish passage problem is considered one of the highest priority projects to attain the objectives for salmon and steelhead restoration." *Id.*, App. I. Moreover, several agencies note that a large amount of taxpayer funds has been expended for habitat restoration *upstream* of the Dam, but a large percentage of listed fish cannot reach that restored habitat due to the current operations of RBDD. DEIS/EIR, App. I, Draft Report, p. 16.

Nor do current Dam releases and operations meet the requirements of California Fish and Game Code § 5937, which requires any dam operator to keep fish in good condition below the dam. Both TCCA and the Bureau must comply with this requirement of state law. *See, e.g., Natural Resources Defense Council v. Patterson*, 333 F. Supp. 2d 906 (E.D. Cal. 2004). The DEIS/EIR provides ample evidence that current Dam operations – by impeding passage of numerous anadromous fish species, subjecting fish to impingement and entrainment at various pumping plants and canal headworks, and creating conditions that allow predators to consume vast amounts of listed fish – are *not* satisfying this requirement. For example, the DEIS/EIR acknowledges that lack of flow below the Dam during gates-in operation allows predators such as Sacramento pikeminnow and striped bass to congregate below the Dam and consume vast amounts of juvenile salmonids. DEIS/EIR, p. 3-15. It also recognizes that predation by avian species may be greater near the Dam than on undammed reaches of the Sacramento River, presumably because of the slackwater conditions and congregating fish caused by lack of flow. *Id.* The U.S. Fish and Wildlife Service has concluded that predation alone causes the death of up to 42% of migrating steelhead and more than 50% of Chinook salmon below the Dam. DEIS/EIR, p. B.-7.

All of the other alternatives analyzed, including the Bureau's preferred alternative 2B, continue to have unacceptably high adverse impacts on anadromous fish, including, in particular, listed green sturgeon, since the majority of green sturgeon juveniles would continue to be impacted by gates-in operation during the months of July and August. The DEIS/EIR acknowledges that the following percentages of listed fish and other salmonids would continue to be impacted by Dam operations during the months of July, August, and early September:<sup>1</sup>

Winter-run Chinook adults:	3% of the total run
Winter-run Chinook juveniles:	39% of the total run
Steelhead adults:	16% of the total run
Steelhead juveniles:	26% of the total run
Fall-run Chinook adults:	25% of the total run

<sup>1</sup> We have included early September since the DEIS/EIR acknowledges that the proposed gates-in scenarios analyzed are approximate, and that July and August gates-in operation could easily spill over into early September.

## No. 530

## Letter from Natural Resources Defense Council, Continued

Mr. Bird and Mr. Rodgers  
March 16, 2007  
Page 4 of 11

Fall-run Chinook juveniles:	3% of the total run
Late fall-run Chinook juveniles:	27% of the total run
Spring-run Chinook adults:	11% of the total run
Green Sturgeon juveniles:	61% of the total run

DEIS/EIR, pp. B-6 to B-16. The extent of these impacts is simply unacceptable for fish facing extinction, and fish which the Bureau is obliged to protect, conserve and recover under several applicable laws.

The DEIS/EIR provides no rational explanation for the Bureau's selection of this harmful alternative. The Bureau's co-lead agency in preparing the analysis, TCCA, has endorsed year-round gates-out operation. *Id.*, p. v. In fact, the DEIS/EIR concludes that the year-round gates-out alternative proposed in the DEIS/EIR "would have beneficial impacts to water deliveries within the CVP." *Id.*, p. 3-268. In contrast, by continuing to imperil affected fish species, implementation of Alternative 2B threatens the continued reliability and cost-effectiveness of water deliveries into the TC and Corning Canals, and thus fails to satisfy the second Project purpose.

Moreover, the DEIS/EIR fails to address how the bizarre situation of co-lead agencies selecting different preferred alternatives will be resolved, or whether the selection of incompatible alternatives by co-lead agencies complies with the requirements of CEQA and NEPA. The Bureau's selection of Alternative 2B as its preferred alternative in light of this evidence is arbitrary, capricious, and unlawful.

II. The DEIS/EIR Does Not Explain Why Additional Pumping Is Needed, What Diversions That Pumping Would Support, Or the Impacts Associated With Those Diversions

A fundamental flaw of the DEIS/EIR is that it fails to adequately define or justify the need for the second Project purpose, thus precluding identification of a reasonable range of alternatives or comprehensive discussion of impacts. The DEIS/EIR articulates this purpose as: to "substantially improve the long-term ability to reliably and cost-effectively move sufficient water into the TC Canal and Corning Canal systems to meet the needs of the water districts served by TCCA." DEIS/EIR, p. iv. However, the document does not define what constitutes "sufficient" water. Does "sufficient" mean allowing pumping capacity sufficient to satisfy recent historical diversions from the Dam? If so, then there is no need to increase capacity beyond current pumping capacity, as proposed in every action alternative. Does "sufficient" mean allowing increased deliveries under long-term contracts for the Sacramento River Division contractors as compared to historical deliveries, or increasing deliveries to other contractors, or allowing for new deliveries to the proposed Sites Reservoir? If so, then, not only has it been improperly piecemealed from analysis of those related

530-8

530-8

Alternatives considered in the DEIS/EIR are based solely on the need to deliver water to the contractors served by TCCA, at current quantities. Maximum diversion amounts are the sum total of the member districts' contracts, approximately 300,000 acre-feet per year, depending on water-year type. This is consistent with the current canal facilities' capacity and the selected alternative. This is also the meaning of "sufficient" and is consistent with the project description and the Purpose and Need Statement (DEIS/EIR Section 1.2.1). The diversion capacities of the alternatives are intended to replicate existing diversion capacity, which presently includes seasonal diversions from Stony Creek at the beginning of the irrigation season. However, diversions from Stony Creek are not considered to be reliable or sustainable and are not included in the No Action Alternative. See DEIS/EIR page 2-8 for a description of diversions from Stony Creek. "Increased deliveries" to "other contractors," whomever the commentor believes those may be, is speculative and not included in the Purpose and Need Statement (DEIS/EIR Section 1.2.1). The baseline used for analysis of project impacts was the current total water supply available to the TCCA member districts. No change in that total contract supply will result from the project. In addition, the project description does not include "delivery of water to other water users in the Sacramento Valley," nor are those "other water users" clear to the lead agencies. The commentor's reference to the Environmental Water Account to address potential impacts in the Delta is similarly irrelevant to this project. See Response to Comment 530-3 and DEIS/EIR Section 4.1 for a discussion of the project's relationship to the proposed Sites Reservoir.

No. 530

## Letter from Natural Resources Defense Council, Continued

Mr. Bird and Mr. Rodgers  
 March 16, 2007  
 Page 5 of 11

actions, but it will increase the total amount of diversions out of the Sacramento River and cause related environmental impacts that have not been disclosed or addressed.

To allow for an adequate project definition, development of a reasonable range of alternatives, and defensible impacts analysis, the DEIS/EIR should be revised to define a maximum diversion amount and limits on the use of those diversions. Once the document identifies a maximum diversion amount, it must fully analyze the potential impacts associated with those diversions. In the absence of a maximum diversion amount, the project must analyze the potential impacts associated with the full utilization of the diversion capacity. This analysis must include both the source and potential uses of this water. Potential uses for additional diversions above the requirements of the Sacramento River Division contractors include the delivery of water to other water users in the Sacramento Valley, and the diversion of water for storage in a new off-stream reservoir (e.g. Sites Reservoir). There are a variety of potential impacts associated with such additional water diversions, including, but not limited to:

- Impacts associated with diversions from the Sacramento River, including entrainment losses, predation, water quality, temperature, impacts on listed aquatic or terrestrial species, impacts from the re-operation of Shasta Dam or other upstream storage facilities, reductions in peak flows, impacts on channel morphology and impacts on riparian communities, especially the recruitment of riparian vegetation.
- Impacts associated with the storage of this water, such as the loss of wetlands, impacts to endangered species, water quality impacts and temperature impacts.
- Impacts associated with the use of that water in the Sacramento Valley.
- Impacts associated with use of this water, either directly or through exchange, downstream, particularly South of the Delta. Such impacts could include temperature impacts, as well as impacts from additional Delta diversions. This analysis should include a full review of investigations of the cause of the decline of Delta fisheries, including the listed delta smelt. The decline of this species has been linked with the increasing level of diversions in the Delta.

Any reliance on the Environmental Water Account to address potential impacts in the Delta must include a full analysis of the failure of the EWA to achieve the targets required by the CALFED Record of Decision. This failure is documented in a report entitled *Finding the Water*, prepared by Environmental Defense. ([http://www.environmentaldefense.org/documents/4898\\_FindingWater.pdf](http://www.environmentaldefense.org/documents/4898_FindingWater.pdf)) That report reveals that, since the CALFED ROD was signed, the EWA has received up to 500,000 acre-feet of water per year less than the amounts required for tiers 1 and 2 by

530-8,  
 cont'd