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Via Email

Governor's Office of Planning and Research
Infrastructure Streamlining Program
California.Jobs@opr.ca.gov

Re: Comments on the Infrastructure Streamlining Project Application for the Sites Reservoir Project

To Whom It May Concern:

On behalf of North Coast Rivers Alliance, Winnemem Wintu Tribe, Pacific Coast Federation of Fishermen's Associations, San Francisco Crab Boat Owners Association, and the Institute for Fisheries Resources ("Conservation and Native American Commenters") we submit the following comments on the Sites Project Authority's ("Authority's") Request for Certification of the Sites Reservoir Project ("Project") as an Infrastructure Project under Senate Bill No. 149 (Infrastructure Streamlining Program). These comments supplement the comments by the Conservation and Native American Commenters previously submitted on the environmental review documents that have been released under the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") to date, including but not limited to the comments submitted in January 2022.

The CEQA process depends on truthful disclosure and fair analysis of a proposed project's environmental impacts. The proposed appropriation will have numerous negative environmental impacts, including but not limited to significant impacts to imperiled salmonid species. Furthermore, the appropriation will adversely affect the public trust, is not in the public interest, and contrary to applicable laws including the Water Code (including the Delta Reform Act), Fish and Game Code (including the Endangered Species Act), and Public Resources Code ("PRC") (including CEQA), among other statutes, regulations, and orders. Streamlining the Project under the Infrastructure Streamlining Program magnifies the potential to overlook the significant impacts the Project will cause. Many of these significant impacts were identified in comments on the Draft Environmental Impact Report/Environmental Impact Statement ("DEIR/DEIS") as well as comments on the Revised Draft EIR/ Supplemental Draft EIS ("RDEIR/SDEIS"). Despite these numerous problems, the Authority now proposes to streamline the Project – an action that will gloss over the Project's many negative impacts. The Project should not be streamlined under the Infrastructure Streamlining Program, and in any event, the Project's significant impacts and deficient environmental review cannot be ignored.

I. The Project Does Not Meet The Requirements For Streamlining

Contrary to the requirements of PRC section 21189.81(h)(1)(B)(ii), the Project will not “minimize intake or diversion of water except during times of surplus water” nor will it “prioritize[] the discharge of water for ecological benefits . . . or other public benefits.” Rather, the Project proposes to appropriate water from an already overtapped water resource that cannot support the imperiled species that currently use the waterway.

The Application asserts that “Project diversions would only occur during the season that the Sacramento River is not fully appropriated,” but that does not comply with section 21189.81(h)(1)(B)(ii). Minimizing intake or diversions does not mean appropriating as much water as possible during all times of the year. *Id.* To the contrary, section 21189.81(h)(1)(B)(ii) demands that water only be diverted “during times of surplus.” The Application does not demonstrate that there is surplus water available during the anticipated times of diversion. Application 17-19. Rather, it focuses on what the Authority calls limitations to diversion. *Id.* But many of those “limitations” to diversion are merely window dressing to create the appearance of compliance with other laws; they do not limit diversions in any way. And even those terms that do limit diversions provide very little information about how or when those limitations will be triggered. Even if the terms identified in the Application were limitations, it would still not meet section 21189.81(h)(1)(B)(ii)’s requirement that the Project divert water only during times of surplus. As noted above, the Application does not provide any evidence of surplus water flows. Application 17-19. Therefore, the Project does not meet the requirements for streamlining under section 21189.81(h)(1)(B)(ii).

Similarly, the Application fails to demonstrate that the Project will prioritize discharge for ecological benefits. PRC section 21189.81(h)(1)(B)(ii); Application 19-20. The Application argues that a yet-to-be-developed contract between the Authority and the California Department of Fish and Wildlife (“CDFW”) will ensure ecological benefits of the Project. Application 20. But a promise of some yet-to-be-developed contract, without any identification of terms or requirements, cannot ensure that the Project will prioritize discharge for ecological benefits. Without such a guarantee, the Project cannot be certified for streamlining.

Furthermore, the Application admits that the Authority has not prepared the record of proceedings in accordance with PRC section 21189.86, as required in order to certify the Project for streamlining. Application 21. The Applications states that “the Authority is working to ensure compliance with the provisions of Section 21189.86 as expeditiously as possible.” Application 21. But that “assurance” by the Authority does not meet the requirements of PRC section 21189.82(a)(4)(B)(iii). While the Authority may be “working to gather the complete record of proceedings and make the record available on its website as quickly as possible,” the fact that it is not currently available puts the public at a disadvantage should streamlining be approved. Application 21. Streamlining the Project limits the time available for the public to review and evaluate its impacts and decide whether to challenge the Project. In the absence of a

complete record, granting streamlining status leaves the public with insufficient time to assure applicable laws will be followed. As the Authority admits, this Project has been in the works since August 2010. Application 21. Compiling 13 years of records is no small task and the Authority cannot guarantee that the record will be available in a reasonable amount of time. For this reason alone, the request to certify the Project under the Infrastructure Streamlining Program should be denied.

The Application also fails to meet the requirements under PRC section 21189.82(c)(1), which demands that the Project “avoid or minimize significant environmental impacts in any disadvantaged community.” Yet the Application admits that the “Project would result in significant impacts in disadvantaged communities both within the Project Area and within the regional area,” and even with mitigation some “impacts will remain significant and unavoidable.” Application 27. Indeed, the Project will lead to significant and unavoidable impacts to air and water quality, at a minimum. Application 33-41. Without assurance that these impacts will be less than significant – which the Authority cannot provide – its request for certification of the Sites Reservoir Project as a streamlined Project must be denied.

For each of these reasons, the Authority's request for certification of the Project as an infrastructure project must be rejected.

II. The Project's Impacts Are Significant And Cannot Be Brushed Aside During Streamlined Judicial Review

In addition to the ample grounds set forth above for denying the Authority's request for certification of the Project as an infrastructure project, certification should also be denied because the Project threatens to unleash many significant impacts that may be overlooked in an expedited review process.

Notably, the salmonid species that rely on the Sacramento River already face significant hardships, especially in dry or critically dry years. As CDFW explained, “the Proposed Project, as currently described, and the mitigation measures currently proposed in the RDEIR/SDEIS are not sufficient to reduce impacts to less than significant for salmonids, Delta Smelt, and Longfin smelt.” CDFW Comments, January 28, 2022, Appendix A at 1. CDFW also expressed its concern that “reductions in flow due to Proposed Project operations are most pronounced in critically dry years, when biological aquatic resources are stressed and most vulnerable to further reductions in flow.” *Id.* at Appendix A at 5. With a shortened review period under the streamlined timeline, the Authority cannot ensure that CDFW's recommendations to “increase minimum bypass flow requirements,” perform additional analysis regarding flooding, create additional monitoring plans, and perform many other requested reviews will receive adequate analysis. *Id.* at Appendix A, 1-28. Even if these recommendations are incorporated into the Final EIR/EIS, the public will be denied the opportunity to adequately review these significant changes, and a streamlined judicial review process will certainly impede any post-approval

consideration of these highly technical and complicated recommendations by the courts.

The Project will also cause severe ecological harm to non-aquatic species. In addition to reducing flows in the Sacramento River and Delta, the reservoir would drown nearly 14,000 acres of existing oak woodlands, grasslands, wetlands, and agricultural land in the western Sacramento Valley. This huge footprint would negatively impact the federally protected golden eagle, along with a host of other sensitive wildlife species, and several rare plants. The Project's impacts are vastly underestimated and understudied in the RDEIR/SDEIS. For example, the RDEIR/SDEIS proposed future helicopter surveys for golden eagles, but provides no reason why those surveys could not have already been completed. RDEIR/SDEIS at 10-97 to 10-98. By deferring those surveys, the Authority prevents both the public and decisionmakers from fully understanding the Project's impacts and the efficacy of any proposed mitigation measures. Instead of painting a complete picture of the Project's impacts, the RDEIR/SDEIS makes the conclusory statement that golden eagles and other protected avian species would face mortality risks, but that those impacts would be reduced by mitigation. RDEIR/SDEIS at 10-95 to 10-97. But as noted above, these impacts and efficacy of the proposed mitigation measures cannot be understood or effectively analyzed without adequate information. The RDEIR/SDEIS fails to provide that information and therefore violates CEQA. Any streamlining of the Project both for environmental and judicial review will only exacerbate the RDEIR/SDEIS's shortcomings.

These shortcomings also hinder the RDEIR/SDEIS analysis of impacts to rare plants. RDEIR/SDEIS at 9-26. Rare plants are highly reliant on specific rainfall and temperature conditions, and surveys for those plants can significantly underestimate their presence when the required conditions for conducting adequate surveys are not achieved. Without expanded surveys to adequately identify and quantify the presence of rare plants, the Project's impacts to these plants cannot be adequately assessed or analyzed.

These failures in the RDEIR/SDEIS analysis, along with the many other deficiencies identified in the comments provided during the CEQA comment period, will all be exacerbated by the streamlining process.

III. Conclusion

This Project does not meet the requirements for Infrastructure Streamlining under SB 149, and the numerous deficiencies in the environmental analysis make streamlining inappropriate. The failure to provide adequate time to review the environmental documents, and the demand on the courts to expedite review of these highly-technical and complicated issues cannot be ignored simply because the Legislature recently allowed for streamlined analysis of certain projects. Even if this Project met the requirements for the Infrastructure Streamlining Program – which it does not – the Authority's failure to fill in the many gaps in its environmental analysis of its impacts despite having 13 years in which to remedy them raises too many red flags. During that time numerous agencies, organizations, and individuals have identified

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extensive deficiencies in the environmental review process and profound concerns regarding the Project's impacts. Streamlining the Project at this late phase in its review, when the environmental review is still inadequate, will only harm the public and the environment by limiting the resources that can be devoted to understanding and evaluating this complicated Project. For these reasons, along with those identified in the comments provided during the environmental review process, the Authority's request for certification under SB 149 should be denied.

Respectfully submitted,

A handwritten signature in black ink that reads "Stephan C. Volker". The signature is written in a cursive, slightly slanted style.

Stephan C. Volker
Attorney for North Coast Rivers Alliance, Winnemem
Wintu Tribe, Pacific Coast Federation of Fishermen's
Associations, San Francisco Crab Boat Owners
Association, and Institute for Fisheries Resources