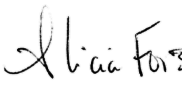


Response to Yocha Dehe Comments on the Final EIR/EIS



To: File
Date: November 16, 2023
From: Alicia Forsythe, Environmental Planning and Permitting Manger 
Subject: Response to Yocha Dehe Wintun Nation Comments on the Final EIR/EIS Dated November 14, 2023 (But Transmitted on November 15, 2023)

This memorandum responds to the written comments from the Yocha Dehe Wintun Nation (“Yocha Dehe” or “Tribe”), provided via email to the Sites Project Authority (“Authority”) during the afternoon of November 15, 2023, on the Final Environmental Impact Report/Environmental Impact Statement (“EIR” or “Final EIR”) for the Sites Reservoir Project (“Project”). The Authority’s Board of Directors is considering certification of the Final EIR/EIS and approval of the Project at its November 17, 2023, meeting.

As documented in the files in the Authority’s record of proceedings in this matter, the Authority has made continued and extensive efforts throughout its environmental review process to engage the Tribe in its review of the Project under the California Environmental Quality Act (“CEQA”) and Assembly Bill 52 (2014) (“AB 52”). In its one-page comment letter dated February 1, 2022, on the Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (“RDEIR”) for the Project, the Tribe indicated that it needed more time to conduct its review of the RDEIR and that it intended to submit further comments to the Authority. In four separate meetings from October 2022 to February 2023, the Tribe reiterated to the Authority that it would submit written comments on the RDEIR. Unfortunately, however, the Tribe stopped attending the regular consultation meetings with the Authority after February 2023, and it did not submit further written comments on the RDEIR.

The responses below address the numbered comments in the Tribe’s correspondence received on November 15 by the Authority concerning the Final EIR/EIS.

1. The EIR adequately describes the proposed Project and the alternatives, including the physical facilities and the manner of operations. These are not conceptual scenarios, but rather involve specifically identified reservoir sizes and footprints (ranging from 1.3 to 1.5 million acre-feet); physical facilities (including dams, regulating reservoirs, conveyance mechanisms, administrative and office buildings, recreation areas, roadways, and a project buffer); diversion criteria (including the minimum bypass flows for the Sacramento River at Wilkins Slough of 10,700 cubic feet per second); and level of federal investment in the Project from the U.S. Department of the Interior, Bureau of Reclamation. The EIR describes the components of each alternative, which components the alternatives have in common, and which components differ among the alternatives.

The EIR explains that Alternative 2 involves a different roadway configuration and a different configuration for the Dunnigan Pipeline than Alternatives 1 and 3, but that these distinct physical configurations for these two specific Project components could be evaluated under Alternatives 1 and 3 to provide additional options for consideration. The Final EIR proposes the specific components of Alternative 3 (including the bridge and pipeline configuration as described for that Alternative) for approval, and the Project as recommended for approval by the Authority's Board is Alternative 3, with one change in how that Alternative is described in the Final EIR – namely, a change in the proposed location for the Terminal Regulating Reservoir ("TRR") to avoid a significant impact on paleontological resources. The Project description is not vague or ambiguous and satisfies CEQA's requirements.

2. Chapter 23 of the EIR evaluates impacts to tribal cultural resources from Project construction and operation. The impact analysis discusses potential impacts from construction of the reservoir, associated dams and other physical facilities, roads, recreation facilities, and conveyance facilities (including the explanation that Alternative 2 would have greater impacts associated with the longer Dunnigan Pipeline alignment as compared to the other alternatives). The analysis finds that impacts from construction would be significant and unavoidable, and it notes Tribal concerns related to cemeteries, habitation (village) sites, and ceremonial sites within the Project footprint. The analysis further explains why operational impacts are determined to be less than significant, based on modeling of potential changes in river flows. The impact analysis provides a meaningful evaluation of potential impacts to tribal cultural resources and is based on the Authority's consultation with potentially affected tribes, including comments received from tribes (including Yocha Dehe) during the Authority's environmental review process.

The letter states that Yocha Dehe has "repeatedly expressed concerns about the Sites Authority's failure to investigate or meaningfully addressed substantial evidence regarding Tribal Cultural Resources . . ." In addition, the letter states that Yocha Dehe "has also noted that Authority's failure to evaluate all Project components." The record of proceedings documents the Authority's efforts to consult with the Tribe. As noted in the record of proceedings, the Tribe expressed concerns about burials and provided the Authority with its Burial Treatment Protocol and Monitor Agreement. The record also reflects that the Tribe was interested in information of sites and isolates in the Project footprint in the Antelope Valley. The Authority staff recognize that Yocha Dehe expressed general concerns about the Project in the consultation meetings. However, the Authority respectively disagrees that Yocha Dehe "repeatedly expressed concerns about the Sites Authority's failure to investigate or meaningfully address substantial evidence regarding Tribal Cultural Resources" and "noted that Authority's failure to evaluate all Project components".

3. The EIR analyzes a reasonable range of alternatives as required by CEQA. With respect to potential impacts outside the Reservoir inundation area, the impact analysis in Chapter 23 explains that the South Road alignment and longer Dunnigan Pipeline

alignment under Alternative 2 could have greater impacts to tribal cultural resources than the proposed bridge and shorter Dunnigan Pipeline alignment under Alternatives 1 and 3, since these features under Alternative 2 would expand the area where surface and subsurface tribal cultural resources could be located. The Project as proposed in the EIR (Alternative 3), and as proposed for approval (Alternative 3 with a change in the TRR location to reduce impacts to paleontological), includes the bridge and shorter Dunnigan Pipeline alignment, thereby reducing potential impacts to tribal cultural resources as compared to Alternative 2. The Authority has reviewed the Confidential Sites Project Cultural Resources Report previously provided to Yocha Dehe and finds that there are few site records for recreation areas and generally a low sensitivity for these areas to contain resources based on the site sensitivity analysis.

4. Chapter 23 of the EIR identifies extensive mitigation consisting of nine different measures, including (among other measures) tribal monitoring during ground-disturbing activities and working with tribes to implement agreed-upon protocols for treatment of human remains and cultural items. The mitigation measures are presented in the Mitigation and Monitoring Reporting Program (“MMRP”) for the Project, which is proposed for adoption by the Authority Board as binding commitments and conditions of Project approval. The Authority hereby reiterates its commitment, as set forth in the MMRP, to implement all of the applicable mitigation. With respect to operational impacts, the EIR determines that impacts are less than significant, based on modeling of potential changes in river flows, such that no mitigation is required. The mitigation measures are sufficient to comply with CEQA’s requirements.
5. The record of proceedings documents the Authority’s repeated and extensive efforts to engage the Tribe and it demonstrates compliance by the Authority with the requirements of AB 52, which included numerous government-to-government consultations between the Authority and the Tribe. The Tribe notes that it submitted written comments in February 2022 stating that the RDEIR “appears to have omitted important information.” These comments did not specify what information was missing, other than a reference to “village sites” within the Project footprint, which are specifically discussed in the Final EIR at page 23-19.

The Tribe’s February 2022 comments on the RDEIR explained that “Yocha Dehe will require a few weeks to identify, complete, and review specific information omitted from the [RDEIR], at which point the Tribe intends to submit further comments.” The Authority followed up on numerous occasions, requesting information and comments from the Tribe during four government-to-government consultation meetings from October 2022 to February 2023, so that the Authority could address the Tribe’s concerns in the Final EIR/EIS. No specific comments were provided in this timeframe, even verbally at consultation meetings. As noted above, the Tribe stopped attending these consultation meetings after February 2023 and did not provide the “further comments” referenced in their February 2022 letter.

With respect to the EIR's erroneous reference to a July 2023 letter from the Authority, that error has been corrected in an errata sheet to the Final EIR as part of the agenda package for the Board's November 17, 2023, meeting, which was published on the Authority's website on November 13, 2023.

Lastly, the materials in the Authority's record of proceedings show that there are two distinct grounds for determining that the AB 52 process has been completed pursuant to Public Resources Code Sections 21080.3.2(b)(1) (a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached); and 21082.3(d)(2) (tribe has not provided comments or has otherwise not engaged in the consultation process). The Authority does not "blame" the Tribe, and it is committed to a continued effort at working cooperatively with the Tribe over the course of Project construction, implementation, and operation. But the record shows that the grounds for proceeding with EIR certification and Project approval under AB 52 have been met.

6. The Authority recognizes that the Tribe appreciates the Authority's efforts to convene a Tribal Working Group – efforts that are not required by either CEQA or AB 52, and that are supplemental to the statutory requirements. With respect to the referenced Memorandum of Agreement ("MOA"), a proposal was presented to the Tribe in October 2022, and then this proposal was discussed at four government-to-government consultation meetings from October 2022 to February 2023. The Tribe did not submit comments on the proposal.
7. The EIR is adequate in its description of the Project, the alternatives considered, the analysis of impacts, and the formulation of mitigation measures, and the Authority has complied in good faith with the requirements of AB 52. Recirculation of the EIR is not required under CEQA.