



December 13, 2021

California Water Commission  
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**Re: Sites Project Continuing Eligibility and Feasibility Determination, December 15, 2021  
Commission Meeting**

Dear California Water Commission:

Thank you for the opportunity to comment on the Water Commission's consideration of the eligibility and feasibility of the Sites Reservoir Project. The following comments are submitted on behalf of the California Native Plant Society ("CNPS"), a non-profit environmental organization with more than 11,000 members in 35 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. We work closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices.

CNPS is interested in the Sites Reservoir Project because of its potentially significant and harmful impacts to plants and habitats. In reviewing the details of the project, we do not believe that the criteria for making a finding of eligibility and feasibility have been met. As a result, the Water Commission should not issue a determination that the project is eligible for Water Storage Investment Program ("WSIP") funding.

With an estimated price tag of \$3-3.5 billion Sites Reservoir is an exorbitantly expensive project with significant environmental impacts. The project would result in the harvest of more water from the Sacramento River than is sustainable for imperiled species including salmon. We are also concerned about the impacts of these diversions on riparian and aquatic ecosystems.

Additionally, we are concerned about the impacts to terrestrial habitats that will occur as a result of construction activities and subsequent inundation. The project's Revised Draft Environmental Impact Report ("RDEIR") makes it nearly impossible for the public to understand the magnitude of these impacts. Specifically, much of the area that will be inundated by Sites has not been surveyed for the presence of special status plant species, and the most recent surveys for rare plants (covering only a portion of the study area) were completed nearly 20 years ago. The

RDEIR (Section 9-13) squarely admits that “the full extent of impacts on special-status plants is currently unknown because recent botanical surveys for special-status plants have not been conducted throughout the study area.” This lack of survey data is counter to a primary intent of the California Environmental Quality Act, which is to disclose environmental impacts to the public and decision makers (Public Resources Code § 21000 et seq.). The lack of recent surveys is also counter to trustee agency guidelines, *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*<sup>1</sup>, issued by the California Department of Fish and Wildlife (“CDFW”). These guidelines state that surveys for rare species must be current (defined as within 5 years in many habitats), and that grassland habitats that are present on the much of the project site, “have annual and short-lived perennial plants as major floristic components, may require multiple annual surveys to fully capture baseline conditions.”

Grasslands in California’s Central Valley and adjacent foothills are among the most impacted habitats in the state. As a result, they are home to many imperiled species. Also, the nature of interannual variation in species composition in grasslands due to the impact of climatic conditions dictates that multiple years of surveys are necessary to document biodiversity. Many plant species will only be present and detectable by botanists in years with adequate precipitation. This fact is supported by CDFW’s Guidelines, which recommend multiple years of pre-project surveys (see above). The lack of recent and detailed surveys is not trivial. First, the RDEIR does not give decision makers and the public enough information to evaluate the level of impact to terrestrial habitats that Sites will cause. This obfuscates the ability of the lead agency to make an informed decision on the project. It also hinders the ability of the lead agency to make a mandatory finding of significance of the project’s level of impact (CEQA Guidelines Section 15065(a)). Second, inadequate impacts analysis hinders the project’s ability to adopt sufficient mitigation measures. Simply put, how can decision makers and the public evaluate if mitigation measures are sufficient for a particular impact if we don’t even know the magnitude of the impact in the first place? These conclusions are supported by case law including *Save the Agoura Cornell Knoll v. City of Agoura Hills*, 46 Cal.App.5th 665, 694 (Cal. Ct. App. 2020), which indicated that “an updated plant survey would not merely be helpful, but would be necessary to formulate an adequate mitigation measure for these affected plant species.” Other useful case law that supports the need for pre-approval surveys and non-deferred mitigation include *Friends of Gualala River v. Dep’t of Forestry & Fire Prot.*, A159903 (Cal. Ct. App. Feb. 22, 2021) and *Sierra Club v. Board of Forestry*, 7 Cal.4th 1215 (Cal.1994).

The RDEIR adopts mitigation measures that may be inadequate to mitigate the project’s impacts to special status plant species to less than significant. First, to compensate for the lack of surveys, RDEIR Mitigation Measure VEG 1.1 (Section 9-26) “will require qualified botanists to conduct special-status plant surveys of the Project footprint.” While this may seem sufficient, the

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<sup>1</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

presence of annual plant-dominated habitats on the site may make it impossible to complete this requirement. First, as the CDFW Guidelines state, “multiple annual surveys to fully capture baseline conditions.” Second, as has been witnessed in recent years, California experiences regular droughts. During periods of drought, protocol-level surveys for special status plants are likely impossible, as many species that would be present in years with adequate rainfall will not be detectable. The simple antidote to the need for multiple years of surveys in non-drought years is surveys conducted prior to the publication of an EIR. As presented in the RDEIR, Mitigation Measure VEG-1.1 is dubiously feasible.

We are also concerned about the feasibility of Mitigation Measure VEG-1.2 (Section 9-27), which states that the Authority, “will acquire and permanently protect compensatory mitigation habitat for each affected species at a minimum 2:1 ratio.” The RDEIR fails to provide rationale that a 2:1 mitigation ratio will be sufficient to compensate for the loss of habitat for all special status plants that occur or are likely to occur on the project site. This type of determination can only be made if a species-specific analysis of impacts is conducted. This analysis is absent from the RDEIR. Mitigation Measure VEG-1.2 also states that, “compensatory mitigation will be accomplished by procurement of existing offsite occupied habitat acquired in-fee.” This is a vague and conclusory mitigation measure that may not be possible, given the lack of information in the document. First, can the Authority guarantee that habitat for compensatory mitigation is available for all the special status plants that may be present on the project site? Second, can the Authority adequately guarantee that there are funds available for the purchase of vast amounts of land for mitigation that may be required? Vague and deferred mitigation measures, such as these, have been shown to be legally indefensible (see court cases cited above). The adoption of mitigation measures for special status plants in the RDEIR is based on an inadequate foundation, which is a lack of surveys. This lack of surveys makes it impossible to quantify impacts and determine levels of significance. This lack of quantification renders the adopted mitigation measures vague and inadequate.

We are very concerned that these deficiencies negatively impact the determination of project feasibility, which is required for WSIP eligibility. First, the project must show that it is environmentally feasible. The vague analysis of impacts to special status plants and concomitant vague mitigation measures leads us to conclude that the project is likely not environmentally feasible. Second, the project must show that it is economically feasible. The fact that compensatory mitigation measures for impacts to special status plant species will require land acquisition. Not only could these mitigation lands not be available for purchase, but their purchase price may be exorbitant. The unknown scale and cost of the land that must be purchased for compensatory mitigation leads us to also question the economic feasibility of the project.

In summary, the information that was recently made available about the project shows that it does not meet the requirements for WSIP funding and there is insufficient evidence to show that

the project is environmentally or economically feasible. The Water Commission thus does not have the necessary basis for making a feasibility determination and should not allow the project to proceed.

Lastly, we are concerned that by permanently destroying intact habitats, projects such as the Sites Reservoir may impede the state's ability to meet its conservation goals. In recent years, the state has embarked on ambitious endeavors such as the 30x30 effort and Governor Newsom's Executive Order N-82-20. These efforts highlight the importance of conserving California's remaining, intact habitats. We strongly encourage the Water Commission to pursue options to procure water, or ensure the availability of water via conservation strategies, that do not result in the destruction of habitat.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicholas Jensen', with a long horizontal flourish extending to the right.

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