

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



PAUL D. THAYER, Executive Officer
(916) 574-1800 FAX (916) 574-1810
Relay Service From TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1814
Contact FAX: (916) 574-1885

April 16, 2008

File Ref: SCH# 2008032062

Delores Brown
Department of Water Resources
PO Box 942836
Sacramento, CA 94236

Subject: Comments on the NOP for a joint EIR/EIS (California Department of Water Resources and the Bureau of Reclamation) for the Bay Delta Conservation Plan

Dear Ms. Brown:

The purpose of this letter is to provide you with preliminary comments on the Notice of Preparation (NOP) for the Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Sacramento-San Joaquin Bay Delta (Delta) Conservation Plan (BDCP). We will provide additional comments, as the scoping process continues until the end of May. For this project, the California State Lands Commission (Commission) is both a trustee agency and a responsible agency under the California Environmental Quality Act (CEQA).

The State acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all the people of the State for statewide Public Trust purposes which include waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. The landward boundaries of the State's sovereign interests in areas that are subject to tidal action are generally based upon the ordinary high water marks of these waterways as they last naturally existed. In non-tidal navigable waterways, the State holds a fee ownership in the bed of the waterway between the two ordinary low water marks as they last naturally existed. The entire non-tidal navigable waterway between the ordinary high water marks is subject to the Public Trust Easement. Both the easement and fee-owned lands are under the jurisdiction of the Commission. The locations of the ordinary high and low water marks are often related to the last natural conditions of the river, and may not be apparent from a present day site inspection.

To the extent the proposed project involves State-owned sovereign lands, a lease may be required. However, Public Resources Code (PRC) section 6327 provides that if a facility is for the "procurement of fresh-water from and construction of drainage facilities into navigable rivers, streams, lakes and bays," and if the applicant obtains a permit from the local reclamation district, State Reclamation Board, the U.S. Army Corps of Engineers, or the Department of Water Resources, then an application shall not be required by the Commission. Until the BDCP is fully reviewed, we will not be able to determine whether the project in whole, or in part, falls under PRC section 6327, or if leases will be required for implementation of various alternatives and their mitigation measures. It is likely that some of the mitigation measures would entail the use of lands under the Commission's jurisdiction. The EIR/EIS should analyze the effect of the implementation of mitigation measures on State-owned sovereign lands, and if those measures would preclude future uses of these Public Trust lands.

The proposed project lies in an area that is subject to the public navigational easement. This easement provides that members of the public have the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but not be limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses. The EIR/EIS should analyze the effect of the proposed project on the navigational easement right of the public.

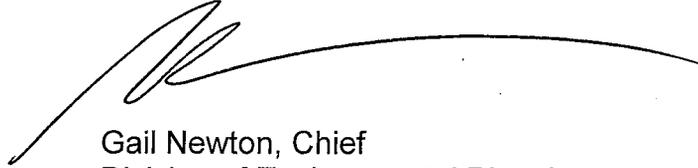
The EIR/EIS will consider alternatives for water conveyance through the Delta, and as part of the analyzes the EIR/EIS should identify desirable aquatic habitat sites and examine, for each alternative, how increased water flows, levels, and temperatures expected from recent climate change models may affect these sites.

One of the major stressors of the Delta is introduced species. Therefore, the EIR/EIS should consider a range of alternatives for prevention programs for aquatic invasive species (including quarantine, early detection and early response) to slow the introduction of invasive species, such as the quagga mussel, into high demand and sensitive areas. The programs considered should include adequate detail to determine if their effectiveness will exceed that currently in place in the Delta. As part of the alternative analysis, the design of new conveyance routes should take into consideration the current and proposed aquatic invasive species prevention programs. In addition, in light of the recent decline of pelagic organisms and in order to protect at-risk fish species, the EIR/EIS should re-examine the objectives of maintaining certain non-native fisheries within the Delta.

Greenhouse gas emissions information consistent with the California Global Warming Solutions Act (AB 32) should be included in the EIR/EIS. This would include a determination of the greenhouse gases that will be emitted as a result of construction and ongoing operations and maintenance, a determination of the significance of the impact, and mitigation measures to reduce that impact.

If you have any questions concerning leasing, please contact Diane Jones, Public Land Manager, at (916) 574-1843 or by e-mail at jonesd@slc.ca.gov. If you have any question on comments on the environmental review, please contact Valerie VanWay at (916) 574-2274 or by e-mail at vanwayv@slc.ca.gov.

Sincerely,

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

Gail Newton, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
State Clearinghouse

D. Jones, CSLC
V. VanWay, CSLC