

**CALIFORNIA STATE LANDS COMMISSION**  
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*Established in 1938*

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April 22, 2019

File Ref: SCH #2019039136

Heather Green  
Department of Water Resources  
3500 Industrial Blvd.  
West Sacramento, CA 95691

Governor's Office of Planning & Research

APR 22 2019

STATE CLEARINGHOUSE

VIA REGULAR & ELECTRONIC MAIL ([Heather.Green@water.ca.gov](mailto:Heather.Green@water.ca.gov))

**Subject: Notice of Preparation (NOP) for the Lookout Slough Restoration Project,  
Solano County**

Dear Ms. Green:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for the Lookout Slough Restoration Project (Project), which is being prepared by the California Department of Water Resources (DWR). DWR, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly, or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, if the Project involves work on State sovereign land, the Commission will act as a responsible agency.

#### **Commission Jurisdiction and Public Trust Lands**

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The state holds these lands for the benefit of all

people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

After reviewing the NOP, additional research is needed by Commission staff to determine the extent of the Project area that may have potential to occur on State sovereign land. Potential State sovereign land may include, but may not be limited to, Cache Slough and Hass Slough. Please contact Nicholas Lavoie for jurisdiction and potential leasing requirements for the Project (see contact information at end of letter).

### **Project Description**

The Project intends to restore 3,000 acres of tidal wetlands at Lookout Slough in the Cache Slough region of the Delta, for fish habitat and flood protection by expanding flood conveyance and storage for the Yolo Bypass.

### **Environmental Review**

Commission staff requests that DWR consider the following comments during preparation of the Draft Environmental Impact Report (EIR) to ensure that potential impacts to State sovereign land are adequately analyzed.

### **Methylmercury Contamination**

1. Given the potential for known legacy pollutants, such as methylmercury and other toxins, and use of dredging spoils for proposed fill activities, sediment contaminant testing should be conducted now and evaluated in the Draft EIR, as sediment quality may further influence Project planning and proposed fill activities. Commission staff recommends the water quality section include this analysis.

Please be advised that on April 22, 2010, the Central Valley Regional Water Quality Control Board (CVRWQCB) identified the Commission as both a state agency that manages open water areas in the Sacramento-San Joaquin Delta Estuary and a nonpoint source discharger of methylmercury (Resolution No. R5-2010-0043), because subsurface lands under the Commission's jurisdiction are impacted by mercury from legacy mining activities dating back to California's Gold Rush. Pursuant to a CVRWQCB Total Maximum Daily Load (TMDL), the CVRWQCB is requiring the Commission to fund studies to identify potential mercury/methylmercury control methods in the Delta and to participate in an Exposure Reduction Program. The goal of the studies is to evaluate existing control methods and evaluate options to reduce methylmercury in open waters under the jurisdiction of the Commission. Any action taken that may result in mercury/methylmercury suspension within the Sacramento-San Joaquin Delta Estuary may affect the Commission's efforts to

comply with the CVRWQCB TMDL. Please include the above information in the water quality section of the Draft EIR to analyze potential Project impacts, and to disclose DWR's obligations to minimize or avoid releases of methylmercury from dredging and sedimentation impacts associated with the Project.

### Biological Resources

2. One of the major stressors in California waterways is introduced species. For example, construction boats and barges brought in from stays at distant projects may transport new species to the Project area via hull biofouling, wherein marine and aquatic organisms attach to and accumulate on the hull and other submerged parts of a vessel. Possible mitigation could include contracting vessels and barges from nearby, or requiring a certain degree of hull-cleaning from contractors. The California Department of Fish and Wildlife's Invasive Species Program could assist with this analysis as well as with the development of appropriate mitigation (information at <http://www.dfg.ca.gov/invasives/>). If barges and construction vessels will be used for Project construction, then the biological resources section of the Draft EIR should assess the potential for Project work vessels to spread and introduce non-native aquatic species.

Thank you for the opportunity to comment on the NOP. As a trustee and potential responsible agency, the Commission may need to rely on the certified EIR for the issuance of a lease as specified above.

Please send copies of future Project-related documents, including an electronic copy of the Draft EIR when it becomes available. Please refer questions concerning environmental review to Jason Ramos, Senior Environmental Scientist, at (916) 574-1814 or [Jason.Ramos@slc.ca.gov](mailto:Jason.Ramos@slc.ca.gov). For questions concerning Commission leasing jurisdiction, please contact Nicholas Lavoie, Public Land Manager at (916) 574-0452 or [Nicholas.Lavoie@slc.ca.gov](mailto:Nicholas.Lavoie@slc.ca.gov).

Sincerely,



Eric Gillies, Acting Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
N. Lavoie, Commission  
J. Ramos, Commission

