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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

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VIA REGULAR & ELECTRONIC MAIL Delta Soil ISMND@WATER.CA.GOV

Subject: Initial Study Proposed Mitigated Negative Declaration (IS/MND) for Soil Investigations for Data Collection in the Delta, Alameda, Contra Costa, Sacramento, Solano, San Joaquin, and Yolo Counties

Dear Ms. Marquez

Staff of the California State Lands Commission (Commission) has reviewed the IS/MND for the Soils Investigations for Data Collection in the Delta Project (Project) proposed by the California Department of Water Resources (DWR), located within the legal Delta in Alameda, Contra Costa, Sacramento, San Joaquin, Solano, and Yolo Counties. Based on this review, we offer the following comments.

Commission Jurisdiction

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, §§ 6301 and 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.

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 ordinary high-water mark as generally shown by 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 decision. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court decision. Such boundaries may not be readily apparent from present day site inspections.

After review of the information contained in the IS/MND, and of our in-house records, Commission staff has determined that the proposed Project will involve lands along tributaries and sloughs that include State-owned sovereign lands under the jurisdiction of the Commission. However, more detailed mapping will be required in order to determine the extent or location of any sovereign ownership interests of the State within the Project area. The IS/MND identifies proposed locations of soil sampling and geophysical surveys on Figures 2a, 2b, and 2c. All tide and submerged lands and certain upland parcels that are under jurisdiction of the California State Lands Commission will require data collection permits including, but not limited to the following:

- General Geologic Sampling Permit for Tide and Submerged Lands
- General Geologic Sampling Permit for upland parcels

As the Project proceeds, Commission staff requests that DWR contact our office to determine whether the project or any components of the project will require a lease or permit and formal authorization from the Commission for the use of State-owned sovereign land. Page 2 of the IS/MND notes that the 1979 Memorandum of Understanding (MOU) between the State Lands Commission and the Department of Water Resources for the Use of State Lands for Facilities of the Central Valley Project and the State Water Resources Development System would apply to this Project. From the project description, it is unclear how the Project falls within the activities contemplated in the MOU. Please contact Commission staff and provide additional information about how the MOU applies here. We additionally request to be placed on any future distribution mailing list for the Project.

In addition, please be advised that the waterways involved in the Project area, are subject to a public right of navigation. This public right 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 are not be limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses (*People ex rel. Baker v. Mack* (1971) 19 Cal. App.3d 1040). The proposed Project must not unduly restrict or impede the navigation and recreational rights of the public (Civil Code, § 3479).

Project Description

The Applicant proposes to conduct both on-land and overwater soil investigations as well as several on-land geophysical studies located within the Study Area (Figures 2a, 2b, and 2c of the IS/MND).

The soil investigations will consist of the following:

- 67 soil borings from 50 feet to 200 feet below ground surface;
- 103 cone penetration tests (CPTs) from approximately 50 feet and 200 feet below ground surface; and
- Up to 5 noninvasive geophysical survey investigation arrays on up to five Impact Areas within a location on Bouldin Island as provided in Figure 2b of the IS/MND.

The Project objectives stated in the IS/MND are as follows:

- Determine the composition, location, and geotechnical properties of soil materials commonly found in the Delta which would inform the design, environmental analysis, and development of alternatives for a potential Delta conveyance project and contribute to DWR's overall understanding of Delta geology.
- This work will further inform DWR on how to construct a project while avoiding, minimizing, or mitigating impacts to the surrounding residents and environment.
- Ultimately, this work will help to determine project features, potential alignment options and environmental impacts for analysis of a future single tunnel project consistent with Governor Newsom's new approach to modernize Delta water conveyance.

Environmental Review

Commission staff requests that DWR consider the following comments on the Project's IS/MND.

Project Description

1. A thorough and complete Project Description identifying the specific areas of investigation should be included in the IS/MND in order to facilitate meaningful environmental review of potential impacts and mitigation measures. The Project Description should be as precise as possible in describing the details of all allowable activities (e.g., types of equipment or methods that may be used, seasonal work windows, locations for material disposal, staging areas, as well as timing and length of activities, etc.). In addition, the IS/MND should include the maximum area of impact, including any temporary and permanent impacts from vegetation removal or disturbance.

Water Quality

2. Mercury/Methylmercury: Commission staff requests the IS/MND include avoidance and minimization measures to reduce potential release from Project activities of mercury and other toxins into waterways and onto State lands underlying those waterways. 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 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 or methylmercury suspension within the Sacramento-San Joaquin Delta Estuary may affect the Commission's efforts to comply with the CVRWQCB TMDL.

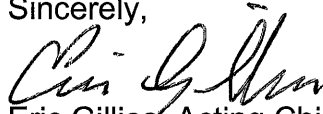
Environmental Justice

3. The IS/MND does not state whether DWR intends to discuss and analyze potential environmental justice related issues, including an assessment of public access and equity implications and who would bear the burdens or benefits from the proposed Project. Commission staff believes the IS/MND, as an informational public document, is an appropriate vehicle to disclose and discuss how the proposed Project would attain or be consistent with DWR's equity goals and statewide policy direction.

Thank you for the opportunity to comment on the IS/MND. As a responsible and trustee agency, the Commission will need to rely on the adopted MND for the consideration and issuance of any geologic survey permit or lease as specified above and, therefore, we request that you consider our comments prior to adoption of the MND.

Please send copies of future Project-related documents, including electronic copies of the adopted MND, Mitigation Monitoring and Reporting Program, and signed Notice of Determination when they become available. Should you have any questions concerning the leasing jurisdiction of the Commission, please contact George Asimakopoulos, Public Land Management Specialist, at (916) 575-0990 or george.asimakopoulos@slc.ca.gov. Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or christopher.huitt@slc.ca.gov and for questions concerning the Commission's geologic permitting, please contact Richard Greenwood, Associate Mineral Resource Engineer, at (562) 256-5897 or richard.greenwood@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
R. Greenwood, Commission
G. Asimakopoulos, Commission
J. Garrett, Commission
C. Huitt, Commission