

**CALIFORNIA STATE LANDS COMMISSION**  
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Governor's Office of Planning & Research

*Established in 1938*

**APR 17 2020**

April 17, 2020

## **STATE CLEARINGHOUSE**

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File Ref: SCH # 2020010227

Delta Conveyance Scoping Comments  
Attn: Renee Rodriguez, Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236

VIA ELECTRONIC MAIL ONLY ([DeltaConveyanceScoping@water.ca.gov](mailto:DeltaConveyanceScoping@water.ca.gov))

**Subject: Notice of Preparation (NOP) for a Draft Environmental Impact Report (EIR) for the Delta Conveyance Project, Alameda, Contra Costa, Sacramento, San Joaquin, Solano, and Yolo Counties**

Dear Ms. Rodriguez:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for a Draft EIR for the Delta Conveyance Project (Project), which is being prepared by the Department of Water Resources (DWR). DWR is the lead agency under the California Environmental Quality Act (CEQA) (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, since the proposed Project potentially involves work on State sovereign land, the Commission will act as a responsible agency (Cal. Code Regs., tit. 14, § 15386). The proposed Project includes State-owned sovereign lands and a lease from the Commission may be required for the Project (see Commission jurisdiction below).

### **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, §§ 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.

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 navigable non-tidal waterways, including lakes and rivers, 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. Such boundaries may not be readily apparent from present day site inspections.

On September 26, 1979, the Commission approved a Memorandum of Understanding (MOU), effective October 19, 1979, between DWR and the Commission providing for the utilization by DWR of State-owned sovereign lands under the jurisdiction of the Commission for the Central Valley Project and the State Water Resources Development System. The MOU was negotiated pursuant to the provisions of Water Code Sections 11130, 11131, and 12931. DWR is required to provide notification of the proposed use of State lands to the Commission. The notification shall include the following: (a) a general plan of the facility to be constructed; (b) if available, specific right of way maps and legal descriptions of State lands DWR proposes to use for the facility; (c) the proposed operational criteria for the project; and (d) the expected duration of the use of the State lands affected by the project. From the information provided to staff, it is not clear whether the 1979 MOU would apply to the Project. If staff determines that the project does not qualify under the 1979 MOU, then a lease from the Commission would be required.

### **Project Description**

DWR proposes to develop new diversion and conveyance facilities in the Delta necessary to restore and protect the reliability of State Water Project (SWP) water deliveries and, potentially, Central Valley Project (CVP) water deliveries south of the Delta, consistent with the State's Water Resilience Portfolio to meet its objectives and needs as follows:

- To address anticipated rising sea levels and other reasonably foreseeable consequences of climate change and extreme weather events.
- To minimize the potential for public health and safety impacts from reduced quantity and quality of SWP water deliveries, and potentially CVP water deliveries, south of the Delta resulting from a major earthquake that causes breaching of Delta levees and the inundation of brackish water into the areas in which the existing SWP and CVP pumping plants operate in the southern Delta.
- To protect the ability of the SWP, and potentially the CVP, to deliver water when hydrologic conditions result in the availability of sufficient amounts, consistent with the requirements of state and federal law, including the California and federal Endangered Species Acts and Delta Reform Act, as well as the terms and conditions of water delivery contracts and other existing applicable agreements.
- To provide operational flexibility to improve aquatic conditions in the Delta and better manage risks of further regulatory constraints on project operations.

The proposed project would construct and operate new conveyance facilities in the Delta that would add to the existing SWP infrastructure. New intake facilities as points of diversion would be located in the north Delta along the Sacramento River between Freeport and the confluence with Sutter Slough. The new conveyance facilities would include a tunnel to convey water from the new intakes to the existing Banks Pumping Plant and potentially the federal Jones Pumping Plant in the south Delta. The new facilities would provide an alternate location for diversion of water from the Delta and would be operated in coordination with the existing south Delta pumping facilities, resulting in a system also known as "dual conveyance" because there would be two complementary methods to divert and convey water. New facilities proposed for the Delta Conveyance Project include, but are not limited to, the following:

- Intake facilities on the Sacramento River
- Tunnel reaches and tunnel shafts
- Forebays
- Pumping plant
- South Delta Conveyance Facilities

The Project Description identifies these five Project aspects that would potentially affect lands under the Commission's jurisdiction and an evaluation for their impacts must be included in the Draft EIR.

### **Environmental Review**

Commission staff requests that DWR consider the following comments when preparing the Draft EIR, to ensure that impacts to Public Trust resources and State sovereign land are adequately analyzed.

### **General Comments**

1. **Project Description**: A thorough and complete Project Description should be included in the Draft EIR in order to facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives. 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 and lay-down areas, as well as timing and length of activities, etc.). In addition, the Draft EIR should include the maximum area of impact, including loss of land and habitat due to flooding and the volume of sediment and vegetation removed or disturbed, inclusive of impacts not previously analyzed.

The Draft EIR should also include figures illustrating the total footprint of the preferred and alternative projects (preferably aerial overlays), so that public agencies and the public can visualize the proposed Project effects on existing land uses. In addition, the Draft EIR should include engineering plans and a detailed written description of activities. Thorough descriptions will facilitate a more robust analysis of the work that may be performed and minimize the potential for subsequent environmental analysis to be required.

### Biological Resources

2. The Draft EIR should disclose and analyze all potentially significant effects on sensitive species and habitats in and around the Project area, and if appropriate, identify feasible mitigation measures to reduce those impacts. Sensitive species include special-status wildlife, fish, and plants which will be present within the proposed Project footprint. DWR should conduct queries of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database and U.S. Fish and Wildlife Service's (USFWS) Special Status Species Database to identify any special-status plant or wildlife species that may occur in the Project area. Identification of rare and sensitive plant species should be reviewed with various California Native Plant Society databases and information sources. The Draft EIR should also include a discussion of consultation with CDFW, USFWS, and National Marine Fisheries Service (NMFS) as applicable, including any recommended mitigation measures and potentially required permits identified by these agencies.
3. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the Draft EIR should consider the Project's potential to encourage the establishment or proliferation of aquatic invasive species (AIS) such as the quagga mussel, or other nonindigenous, invasive species including aquatic and terrestrial plants. For example, construction equipment brought in from long stays at distant projects may transport new species to the Project area via hull biofouling or found in soil transport of work and hauling vehicles. Marine and aquatic organisms attach to and accumulate on the hull and other submerged parts of a vessel. Plant invaders may disperse seeds from one area to another via dried mud/soils attached to vehicles from previous work areas. If the analysis in the Draft EIR finds potentially significant AIS and plant impacts, possible mitigation could include contracting vessels from nearby, or requiring contractors to perform a certain degree of hull and vehicle-cleaning. The CDFW's Invasive Species Program could assist with this analysis as well as with the development of appropriate mitigation (information at <https://www.wildlife.ca.gov/Conservation/Invasives>).
4. Construction Noise: The Draft EIR should also evaluate noise and vibration impacts on wildlife and birds from construction. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, and NMFS. Again, staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species.

### Climate Change

5. Commission staff recognizes the importance of California's transition from traditional energy generation to renewable energy generation, consistent with the state's bold target of 100 percent "zero-carbon" energy procurement by 2045 (Senate Bill 100, statutes of 2018). Nonetheless, Project construction could potentially result in significant impacts due to greenhouse gases (GHGs) produced during construction. Therefore, DWR should ensure a GHG emissions analysis consistent with the

California Global Warming Solutions Act (Assembly Bill [AB] 32) and required by the State CEQA Guidelines is included in the Draft EIR. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible.

### Cultural Resources

6. The Project's NOP indicates that the Project may affect Cultural and Tribal properties within the proposed Project footprint. Commission staff suggest that Tribal outreach be implemented as soon as possible with representatives from Tribal groups identified by the Native American Heritage Commission as having cultural or geographic affiliation in the Project area. Commission staff notes that even if none of the affiliated Tribes has requested notification of CEQA projects, the AB 52 provisions in CEQA require lead agencies to evaluate the potential for the project to impact Tribal cultural resources and avoid such impacts to the extent feasible. Details of Tribal Consultation and outreach, and any mitigation measures agreed to as a result of such Consultation and outreach, should be included in the Draft EIR.

### Tribal Cultural Resources

7. *Tribal Engagement and Consideration of Tribal Cultural Resources.* Commission staff recommends that DWR expand the discussion of Tribal engagement and consideration of Tribal cultural resources in order to demonstrate compliance with AB 52 (Gatto; Stats. 2014, ch. 532), which applies to all CEQA projects initiated after July 1, 2015.<sup>1</sup> Commission staff notes that the NOP does not contain sufficient information as to how DWR has complied with AB 52 provisions, which provide procedural and substantive requirements for lead agency consultation with California Native American Tribes, consideration of effects on Tribal cultural resources (as defined in Pub. Resources Code, § 21074), and examples of mitigation measures to avoid or minimize impacts to these resources. Even if no Tribe has submitted a consultation notification request for the Project area covered by the NOP, DWR should:

- Contact the Native American Heritage Commission to obtain a general list of interested Tribes for the Project area
- Include the results of this inquiry within the Draft EIR
- Disclose and analyze potentially significant effects to Tribal cultural resources and avoid impacts when feasible

Since the NOP does not disclose if notification or outreach to interested Tribes has occurred and does not document their response, Commission staff recommends that DWR include this information in the Draft EIR to maintain a clear record of DWR's efforts to comply with AB 52.

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<sup>1</sup> Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 were added to CEQA pursuant to AB 52.

### Recreation

8. A thorough impact analysis should be included in the Draft EIR to evaluate impacts to proposed Project footprint during construction. Commission staff encourages a robust analysis of potential impacts to public access sites within the footprint of the proposed Project and any future maintenance requirements with the below surface construction of the conveyance tunnel. The analysis should consider how the public may be affected by the proposed Project relating impacts as a result of impacts to navigation and any mitigation proposing improvements along the impacted reaches within the San Joaquin Delta.

### Mitigation and Alternatives

9. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and “shall not be deferred until some future time.” (State CEQA Guidelines, §15126.4, subd. (a)).

All identified mitigation measures included in the Draft EIR should comply with the State CEQA Guidelines, as noted above.

10. Alternatives: The Draft EIR should evaluate any and all possible alternatives to reduce temporary and permanent impacts as a result of the proposed Project construction. A description of the Preferred Project as well as the environmentally superior alternative should be clearly identified and evaluated with mitigation to reduce significant impacts to the lowest possible level.

### Environmental Justice

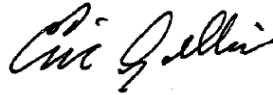
11. The NOP does not state whether DWR intends to discuss and analyze potential environmental justice related issues, including an assessment of public access and equity implications and who would bear the burdens or benefits from the proposed Project. Commission staff believes the Draft EIR, as an informational 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 NOP for the Project. As a responsible agency, Commission staff requests that you keep us advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the Draft EIR is being prepared.

Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or [christopher.huitt@slc.ca.gov](mailto:christopher.huitt@slc.ca.gov). For questions concerning Commission leasing jurisdiction, please contact Marlene Schroeder, Public Land Management Specialist, at (916) 574-2320, or

[marlene.schroeder@slc.ca.gov](mailto:marlene.schroeder@slc.ca.gov). For questions concerning archaeological or historic resources under the Commission's jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or [jamie.garrett@slc.ca.gov](mailto:jamie.garrett@slc.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Gillies". The signature is written in a cursive, flowing style.

Eric Gillies, Acting Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
J. Garrett, Commission  
C. Huitt, Commission  
M. Schroeder, Commission  
L. Calvo, Commission