APPENDIX H3: 2009 STATE AGENCIES SCOPING COMMENTS
May 14, 2009

Delores Brown  
Division of Environmental Services  
California Department of Water Resources  
901 P Street, Bonderson Building, 4th Floor  
PO Box 942836  
Sacramento, CA 95814

Dear Ms. Brown,

This letter is in response to the Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BCDP) Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH#2008032062). This project may include the development of new conveyance and diversion facilities, habitat restoration projects, changes in the operation of both the Central Valley Project and the State Water Project within the Delta, projects (such as tidal gates) to improve salinity conditions and other potential facilities.

The Gold Fields District of California State Parks owns and/or manages five State Park units or properties within the BCDP project area. These park properties include Delta Meadows, the Locke Boarding House, Brannan Island State Recreation Area (SRA), Franks Tract State Recreation Area and State Park property within the Stone Lakes Wildlife Refuge which is managed by the U.S. Fish and Wildlife Service. All of these park properties could be affected directly or indirectly by the BCDP project. Additionally, the Gold Fields District manages Folsom Lake State Recreation Area, which could be affected by the BCDP Project if the BCDP Project results in changes to the operation of the Folsom Dam and Reservoir which is part of the Central Valley Project (CVP).

State Parks concerns with the BCDP Project broadly include potential impacts to recreation use and facilities, impacts to the natural and cultural resources within all of these park units, and the potential loss of portions of the State Park units within the Delta to the facilities proposed as part of the BCDP Project. Below are some specific concerns regarding the park units within the Gold Fields District.

Delta Meadows is a 470-acre property adjacent to the Town of Locke and along portions of Snodgrass and Meadows Sloughs. State Parks acquired and manages the property primarily to preserve and protect one of the last remaining areas of the northern Sacramento-San Joaquin River Delta that exhibits remnants of the natural conditions that existed prior to Euro-American Settlement. The property contains important riparian and oak woodland habitat. Delta Meadows is enjoyed by an estimated 10,000 to 12,000 visitors annually. State Parks is concerned with the potential
impacts of BDCP project construction and operation on the natural resources of the Delta Meadows property.

The Locke Boarding House is an historic structure within the Town of Locke which was acquired by State Parks in 2005. State Parks has restored the Boarding House and it now serves as a visitor and interpretive center in the Town of Locke. State Parks is concerned with the potential impacts to access to the Locke Boarding House due to traffic and circulation impacts during the construction phase of BDCP Project facilities.

Brannan Island SRA is a 336-acre park unit on the southern end of Brannan Island which provides camping, picnicking, boat launching and other recreation activities to approximately 130,000 visitors annually. Brannan Island is an important recreation amenity in the Delta region. State Parks is concerned that the BDCP Project could impact recreation use and facilities at Brannan Island SRA either directly or indirectly, both during construction of BDCP facilities and during operation.

As part of the Franks Tract Project, the Department of Water Resources has already initiated planning and is considering locating one or more tidal gates which could directly or indirectly impact recreation use and facilities at Brannan Island. State Parks submitted a November 20, 2008 letter to DWR in response to the NOP for that project (SCH #2008092081). State Parks is unclear regarding the relationship of the Franks Tract Project and the BDCP Project, which also seems to include the potential for tidal gates in the vicinity of Brannan Island SRA. If the BDCP project is now encompassing the proposals made in the Franks Tract Project, please consider November 20, 2008 letter sent to DWR regarding the Franks Tract Project as part of our comments for this NOP. A copy of this letter is attached.

Franks Tract SRA is a 3,500-acre property consisting primarily of two flooded islands within the Delta, Franks Tract and Little Franks Tract. All types of boating, fishing, waterfowl hunting are the primary recreation activities at Franks Tract SRA. Visitation is estimated to be between 15,000 to 20,000 visitors annually. Again, State Parks is concerned how the BDCP may impact recreation use at Franks Tract. It is our understanding that tidal gates or other types of operable barriers across some of the sloughs connected to Franks Tract may be considered as part of the BDCP Project.

Folsom Lake SRA is comprised of the 17,300 acres of federal property around Folsom and Nimbus Dams and the two reservoirs, Folsom Lake and Lake Natoma. The SRA also includes and additional 2,200 acres of State-owned lands. California State Parks manages Folsom Lake SRA through and agreement with the U.S. Bureau of Reclamation. Folsom Lake SRA is one of the most heavily visited park units in the State Park System with approximately 1.5 million visitors annually. The SRA provides a wide range of recreation opportunities and facilities, but water dependent recreation activities account for about 85% of the park visitation. The extent of lake access and the quantity and quality of aquatic recreation opportunities available at Folsom Lake are directly connected to the operation of the reservoir and Folsom Lake levels, particularly during the primary recreation season, from April through October. To the extent that the BDCP Project could result in changes in CVP operations which would affect Folsom Lake levels, State Parks is extremely concerned about potential impacts on recreation and revenues.
Because the BDCP Project potentially involves State Park units, as delineated in the California Environmental Quality Act Guidelines (Section 15386), California State Parks is a trustee agency for the park units within the State Parks system and may also be a responsible agency for this project.

California State Parks requests that the lead agencies, DWR and Reclamation, consider both the direct and indirect impacts to recreation to all of the State Park units potentially affected by the BDCP, both during construction and operation. This could include direct use of State Park lands for BDCP facilities, temporary and permanent impacts to recreation use resulting from changes to traffic routes and circulation, impacts to recreation use and water access due to operable barriers or other facilities on waterways connected to State Park units. Additionally, State Parks requests that the potential impacts to the natural and cultural resources of any affected State Park units are addressed in the environmental analysis. Potentially significant effects, to recreation or resources, would need to be mitigated.

If you have any further questions regarding this matter, please contact the Gold Fields District Planner Jim Michaelis at (916) 988-0513. Thank you.

Sincerely,

Scott Nakaji
District Superintendent
Gold Fields District  
7806 Folsom Auburn Road  
Folsom, CA 95630  
(916) 988-0205, FAX (916) 988-9062

November 20, 2008

Mr. Ajay Goyal, Project Manager  
California Department of Water Resources  
1416 Ninth Street, Room No. 252-18  
Sacramento, CA 94236-001


The purpose of this letter is to provide comments regarding the Notice of Preparation for the Franks Tract Project for the Gold Fields District of California State Parks. The Gold Fields District manages Brannan Island State Recreation Area (SRA) and Franks Tract State Recreation Area. The Franks Tract Project is assessing five potential locations for flow control gates in the Delta, along Three Mile Slough and False River. Two of the proposed locations would directly involve portions of Brannan Island SRA. State Parks staff has had several meetings with Department of Water Resources (DWR) project managers regarding the Franks Tract Project. State Parks has granted a right of entry permit to DWR data gathering and geotechnical investigations at Brannan Island SRA associated with the environmental review of this Franks Tract Project.

State Parks supports the goals of the Franks Tract Project of improving the water quality conditions in the Delta and protecting and enhancing for fish species of concern which are dependent on the Delta environment. However, this project does have the potential to impact both existing and future recreation use and facilities at Brannan Island SRA and Franks Tract SRA.

Affected State Park Units
Brannan Island SRA is 328 acres of land owned by State Parks located at the confluence of Three Mile Slough and the Sacramento River. The average visitor attendance at Brannan Island SRA over the past dozen years is 130,000 visitors annually. Facilities at Brannan Island include a six lane paved boat ramp and parking, a small marina, a developed campground with 140 sites, a large group picnic area, a day use picnic and beach area, a group campground and a small visitor center. Camping, picnicking, swimming, beach use, and boating access for fishing and other aquatic recreation are all important recreation activities at Brannan Island SRA. The management of Brannan Island SRA is guided by several planning documents including the "General Plan for Brannan Island and Franks Tract State Recreation Areas" (February 1988) and the "Recreation Assessment, Brannan Island State Recreation Area" (June 2008). State parks can provide copies of these documents to DWR.

Franks Tract is 3,522 acres of primarily water, a flooded former reclaimed Delta island, also owned by State Parks. Franks Tract is only accessible via boat and the primary recreation uses are fishing and waterfowl hunting. Over the past twelve years attendance at Franks Tract has averaged 14,000 visitors annually.
As delineated in the California Environmental Quality Act Guidelines (Section 15386), California State Parks is a trustee agency for the park units within the State Parks system and may also be a responsible agency for this project.

**Potential Land Use and Construction Impacts**

As previously mentioned, two of the proposed flow gate locations would involve lands within Brannan Island SRA along Three Mile Slough and would have impacts to existing and future facilities and uses. Site 2 in the Franks Tract NOP would have impacts to the existing campground at Brannan Island SRA. Site 1 would impact an existing dirt service road which is used as an informal trail. Fishing and other informal use of the Three Mile Slough shoreline occurs in the area of both Sites 1 and 2. Use of Site 1 may have impacts to potential future facilities and use of this area for group camping area or trails. In addition to the potential direct impacts to facilities and future use of these areas for the purposes of the SRA, the construction of the flow gate facility may have impacts on public access to and recreation use of Brannan I SRA.

The construction of the gate facility at either Site 1 or 2 may involve impacts to vegetation within Brannan Island SRA, including elderberry which is the host of the federally listed Valley Elderberry Longhorn Beetle.

**Potential Operational Impacts – Boating and Recreation Use**

State Parks understanding of the operation of the flow gates is that they may be closed on a daily basis for periods of hours depending upon tides and season. We also understand that the gates would include a lock system to allow boating traffic to pass through the gate when closed. The operation of the gates, including the delays involved in use of the lock, has the potential to have substantial impact to recreational boating traffic along Three Mile Slough and the use of Brannan Island SRA as a launching point. This could have long term impact to the recreation use of Brannan Island SRA which in turn would impact revenues generated from park user fees. A gate facility at Sites 1 or 2 may affect the quality of the camping and other upland recreation experiences at Brannan Island SRA, including noise, lighting and other issues associated with the facility.

The operation of the flow gates could also impact boating access to and use of Franks Tract SRA, particularly if a gate were constructed at the False River site.

**Mitigation for Impacts to Recreation Use and Facilities**

State Parks believes there may be options to mitigate the impacts to recreation use resulting from project construction and operation. This could include development of new recreation facilities or improvements to existing facilities at Brannan Island SRA such as assistance with the development of a new small visitor center or other improvements to the existing day use or overnight facilities. State Parks believes that interpretation and education regarding the purpose of the flow gate, the resources it is designed to protect and the complex ecology, hydrology and human use of the Delta would help the recreating public better understand and accept the flow gate facility which will have impacts on recreation and boating use. A new visitor center would provide a better opportunity to provide this education and interpretation. State Parks could envision an ongoing partnership or collaboration with DWR regarding such a visitor center. Another option is to provide improved facilities for boating, such as improvements to the boat launch or marina which may help mitigate impacts to boating use. State Parks is interested in further exploring
mitigation possibilities with DWR.

State Parks looks forward to working with DWR and participating in the environmental review process for this project. If you have any questions regarding this letter, please contact Jim Micheaels, Senior Park and Recreation Specialist on the Gold Fields District at (916) 988-0513. Thank you.

Sincerely,

Scott Nakaji
District Superintendent
May 14, 2009

Delores Brown
Division of Environmental Services
California Department of Water Resources
901 P Street, Bonderson Building, 4th Floor
PO Box 942836
Sacramento, CA 95814

Dear Ms. Brown,

This letter is in response to the Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BCDP) Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH#2008032062). This project may include the development of new conveyance and diversion facilities, habitat restoration projects, changes in the operation of both the Central Valley Project and the State Water Project, and other potential facilities.

The Gold Fields District of California State Parks has already written to you outlining its recommendations about assessing the BDCP’s potential impacts on the State Park units or properties that it manages within the BDCP project area. In my role as California State Parks’ planning division chief, I am writing to alert you to other State Park units that may be affected by potential changes in CVP or SWP operations that may result from the BDCP. These include the following units at SWP or CVP reservoirs:

- **Bethany Reservoir SRA.** This State Park unit is comprised of 609 acres. About 45,000 visitors are estimated to recreate at this State Park annually.
- **Castaic Lake SRA.** This State Park unit is operated by Los Angeles County.
- **Lake Del Valle SRA.** This State Park unit is operated by the East Bay Regional Park District.
- **Lake Oroville SRA.** This State Park unit is comprised of 29,446 acres, including 902 acres owned by State Parks. Almost 1.05 million visitors recreate at this State Park annually.
- **Lake Perris SRA.** This State Park unit is comprised of 6674 acres, including 1429 acres owned by State Parks. Over 702,000 visitors recreate at this State Park annually.
- **Millerton Lake SRA.** This State Park unit is comprised of 6079 acres, including 303 acres owned by State Parks. Almost 312,000 visitors recreate at this State Park annually.
- **San Luis Reservoir SRA.** This State Park unit is comprised of 26,035 acres. About 542,000 visitors recreate at this State Park annually.
- **Silverwood Lake SRA.** This State Park unit is comprised of 2201 acres owned by State Parks. Over 354,000 visitors recreate at this State Park annually.
These State Park units provide a wide range of recreation opportunities and facilities, but water-dependent recreation activities account for most of the parks’ visitation. The extent of lake access and the quality and quantity of aquatic recreation opportunities available at these units are directly connected to the operation of the reservoirs and the reservoirs’ water levels, particularly during the primary recreation season, from April through October. To the extent that the BDCP could result in changes in CVP or SWP operations which would affect lake levels, State Parks is extremely concerned about potential impacts on recreation, other park resources, and revenues.

Other State Park units are located on rivers that may be affected by potential changes in CVP or SWP operations that may result from the BDCP. These include William B. Ide State Historic Park, Woodson Bridge SRA, Bidwell-Sacramento State Park (SP), the state park property at Butte City, Colusa-Sacramento SRA, and Great Valley Grasslands SP. To the extent that the BDCP could result in changes in CVP or SWP operations which would affect river flows suitable for recreation, State Parks is concerned about potential impacts on recreation and revenues at these units. The affects on other park resources caused by changes in river flows attributable to the BDCP should also be assessed.

Finally, California State Parks is completing its Central Valley Vision Implementation Plan, a 20-year plan for improving the State Park System in the Central Valley. The plan outlines potential projects to improve recreation and resource protection at existing State Park units in the Central Valley and identifies areas potentially suitable for addition to the State Park system. A draft of the plan is posted online at http://www.parks.ca.gov/default.asp?page_id=23483. Opportunities should be considered for synergies between the Central Valley Vision Implementation Plan’s recommendations and the habitat restoration or other projects recommended in the BDCP. The implementation plan’s recommendations may include some actions that might offset impacts to recreation or other park resources attributable to the BDCP.

Because the BDCP potentially involves State Park units, as delineated in the California Environmental Quality Act Guidelines (Section 15386), California State Parks is a trustee agency for the park units within the State Park System and may also be a responsible agency for this project.

California State Parks requests that the lead agencies, DWR and Reclamation, consider both the direct and indirect impacts to recreation to all of the State Park units potentially affected by the BDCP, both during construction and operation. This could include direct use of State Park lands for BDCP facilities, temporary and permanent impacts to recreation use resulting from changes to traffic routes and circulation, or impacts to recreation use and water access due to new water management facilities on waterways connected to State Park units. Additionally, State Parks requests that the potential impacts to the natural and cultural resources of any affected State Park units are
addressed in the environmental analysis. Potentially significant effects to recreation or resources would need to be mitigated.

If you have any further questions regarding this matter, please contact Dan Ray, Chief, Planning Division, California State Parks at (916) 651-0305. Thank you.

Sincerely,

Dan Ray
Chief, Planning Division
ELECTRONIC MAIL

May 15, 2009
Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 95236
delores@water.ca.gov

Dear Ms. Brown:

COMMENTS ON FEBRUARY 13, 2009 REVISED NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT AND ENVIRONMENTAL IMPACT STATEMENT FOR THE BAY DELTA CONSERVATION PLAN

This letter responds to the California Department of Water Resources’ (DWR) February 13, 2009 Revised Notice of Preparation (NOP) of a Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Bay Delta Conservation Plan (BDCP). As a responsible agency under the California Environmental Quality Act (CEQA) for this project, the State Water Resources Control Board (State Water Board) appreciates the opportunity to provide comments on the revised NOP and additional comments related to this project. Previously, the State Water Board provided comments to you on the March 17, 2008 NOP for the BDCP by letter dated May 30, 2008. The State Water Board reaffirms all of the comments in its May 30, 2008 letter and incorporates them by reference. I will not repeat those comments here.

Since the March 17, 2008 NOP was issued, additional information concerning the BDCP project has been made available. Specifically, as referred to in the revised NOP, a draft conservation plan for the BDCP was released. However, many specifics regarding the proposed project are still not available. Accordingly, the State Water Board continues to reserve the right to provide additional comments on the environmental review for the BDCP as additional information becomes available. Again, this information may be provided in writing or through participation in the BDCP Steering Committee, technical teams, workgroups, or environmental coordination team meetings.

Implementation of the BDCP will likely result in new water conveyance and habitat restoration measures. In addition to changes in water right terms and conditions to facilitate these measures, the State Water Board may need to consider changes to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta
Estuary (Bay-Delta Plan) and to water rights implementing that plan to ensure that beneficial uses are protected in light of those measures. Thus, as indicated in the State Water Board’s May 30, 2008 letter, the State Water Board will have discretionary approval over aspects of the BDCP project related to potential changes to the State Water Project’s (SWP) and Central Valley Project’s (CVP) water rights (such as changes to the points of diversion and operational requirements) and to water right conditions associated with water quality requirements for the two projects. In order for the State Water Board to consider any water quality and water right applications or petitions related to these aspects of the project, environmental documentation must be prepared that evaluates the environmental effects of the proposed actions, identifies a reasonable range of interim and long-term alternatives that would reduce or avoid the potential significant environmental effects of the actions, and discusses the significant effects of the alternatives. Similarly, any environmental analysis associated with changes to the Bay-Delta Plan must evaluate the significant environmental impacts of any such changes and identify a reasonable range of potentially feasible alternatives to such changes. The State Water Board and BDCP lead agencies will need to continue to coordinate their activities to assure that adequate environmental documentation is prepared to address the State Water Board’s and BDCP’s environmental review needs.

One issue in particular that will require coordination is environmental review of the SWP’s and CVP’s interim and long-term exports from the Delta. As noted in the State Water Board’s May 30, 2008 letter, a reduced diversion alternative should be analyzed to inform the State Water Board and others of the potential tradeoffs between delivering water for consumptive uses and protection of fish and wildlife beneficial uses. While SWP and CVP exports are not the only factor contributing to the current degraded state of the Bay-Delta ecosystem, exports remain an important factor requiring analysis. Uncertainty remains concerning the amount of water that can be diverted from the estuary without significantly impacting fish and wildlife beneficial uses. These impacts must be analyzed under CEQA before significant changes are made to the plumbing and hydrology of the Delta. In addition, independent of CEQA, the State Water Board has an obligation to consider the effect of the proposed project on public trust resources and to protect those resources.

A reduced diversion alternative should be lower than diversions allowed for in the current delta smelt biological opinion and soon-to-be released salmonid and green sturgeon biological opinions for the Long-Term CVP and SWP Operations, Criteria, and Plan. This reduced diversion alternative should be low enough to assure not only continued existence of the species, but also some level of rehabilitation for the estuary. To determine what this level should be, State Water Board staff suggests reviewing historic fisheries data and water export data to arrive at a low export level that is reflective of the quantity of water that could be diverted from the Delta with reasonable confidence of not causing significant or long term impacts to the estuary. Through environmental analysis of such an alternative and higher export alternatives, the State Water Board and other responsible agencies will have information on which to consider the various environmental tradeoffs related to export restrictions. Once the salmonid
and green sturgeon biological opinion has been finalized, staff would be willing to provide technical assistance to the BDCP environmental review team.

Combined with analyzing potential reductions in exports, an alternative for changes to Delta outflows (and potentially inflow requirements) should also be analyzed that reflects a more natural hydrograph. Current outflows and operations have tended to flatten the natural hydrograph and produce more static flow conditions in the Delta. Outflows and export regimes that support a more natural variable hydrograph should be analyzed, including both the naturally high outflow and naturally low outflow ends of the hydrograph for both the interim and long-term. One way to conduct this analysis would be to analyze the effects of providing various percentages of the unimpaired Delta inflow and outflow, and managing storage releases and exports to attempt to parallel this pattern.

As the State Water Board previously commented on the first BDCP NOP, the State Water Board is currently conducting a review of the southern Delta salinity and San Joaquin River flow objectives included in the Bay-Delta Plan. This review is not necessarily intended to address or inform the evaluation of any similar issues (i.e., salinity or other issues) that may arise during the BDCP process. Accordingly, the BDCP environmental review will need to address any southern Delta salinity or other issues associated with the BDCP project that are not addressed by the State Water Board in its water quality control planning review.

Finally, in order to assure that the environmental review and permitting activities associated with the BDCP project for which the State Water Board has regulatory authority are adequately addressed (water rights application and petitions, water quality certification pursuant to Clean Water Act section 401, and potentially others), State Water Board staff request additional focused discussions with the environmental review team on these issues.

State Water Board staff look forward to continue working with the BDCP environmental review effort for this project. If you have any questions concerning this matter, please contact Diane Riddle, Staff Environmental Scientist with the Division of Water Rights at (916) 341-5297 or driddle@waterboards.ca.gov.

Sincerely,

Dorothy Rice
Executive Director

cc: See next page.
cc: (First Class Mail)

Pamela Creedon
Central Valley Regional Water Board
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Please Print

Name: JACK BROADBENT
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City: SAC State: CA Zip: 95832

Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

______________________________
Work with CALTRANS on
______________________________
The visual impacts of
______________________________
Your proposal as you
______________________________
will be impacting a
______________________________
STATE SCENIC HIGHWAY
______________________________
RT 160.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 14, 2009.
March 13, 2009

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236

SUBJECT: Notice of Preparation for the Bay Delta Bay Delta Conservation Plan
Draft Environmental Impact Report (SCH# 2008032062)

Dear Ms. Brown:

The staff of the Delta Protection Commission (Commission) has received the subject document dated February 13, 2009.

As cited in the May 30, 2008 letter from staff of the Commission to you, the proposed project site is in the Primary and Secondary Zones of the Legal Delta. Therefore, the project is subject to consistency with the policies of the Delta Protection Act, and the Land Use and Resource Management Plan for the Primary Zone of the Delta. The May 30, 2008 letter is enclosed for your convenient reference and consideration in the processing of the subject proposal.

Please contact me at (916) 776-2292 or lindadpc@citlink.net if you have any questions about the Commission or the comments provided in the May 30, 2008 letter.

Sincerely,

[Signature]

Linda Fiack
Executive Director

Enclosure

cc: State Clearinghouse
May 30, 2008

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown,

SUBJECT: Notice of Preparation of Joint ERI/EIS for the Bay Delta Conservation Plan (BDCP)

The staff of the Delta Protection Commission (Commission) has reviewed the Notice of Preparation document dated March 17, 2008 in relation to the Commission’s Land use and Resource Management Plan for the Primary Zone of the Delta (Management Plan). The following information and comments are provided for your consideration in the environmental review process for the subject project.

The Delta Protection Act (Act) was enacted in 1992 in recognition of the increasing threats to the resources of the Primary Zone of the Delta from urban and suburban encroachment having the potential to impact agriculture, wildlife habitat, and recreation uses. Pursuant to the Act, a Management Plan was completed and adopted by the Commission in 1995.

The Management Plan sets out findings, policies, and recommendations resulting from background studies in the areas of environment, utilities and infrastructure, land use, agriculture, water, recreation and access, levees, and marine patrol/boater education/safety programs.

The goals, findings, policies, and recommendations from the Management Plan that are relevant to this project include, but are not limited to, the following:

Environment
- **Finding 1**: The physical environment which existed prior to 1850 has been permanently and irretrievably modified through levee construction, drainage of wetlands, and introduction of agriculture.
- **Finding 5**: While over 95% of all wetlands in the Delta have been lost, the Delta area is used by 10% of the wintering waterfowl traveling within the Pacific Flyway.
- **Finding 7**: The value to wildlife of levee habitat and habitat within the levees is lessened by on-going human impacts such as levee maintenance, farm practices, human habitation, and recreational use of the levees and waterways. Activities such as water transport and boating use have eroded Delta channel islands, berms, and levees destroying habitat areas. Without levee maintenance, the habitat on the levees and within the islands will be lost.
Finding 8: The native population of fish and other aquatic species has been modified by hydromodification including water diversion, etc., through introduction of exotic species and other causes. Numbers of both native and of some introduced fish have dropped dramatically since the late 1960's; numbers have dropped so low that winter-run Chinook salmon and Delta smelt have been listed as endangered and threatened, respectively. However, the population of some introduced species of fish and other introduced aquatic species throughout the aquatic food chain has substantially increased.

Finding 9: There is no Delta regionwide management plan for wildlife resources.

Finding 13: Delta channel islands and levees serve as habitat for several burrowing species, including beaver and muskrat. Some species have created burrows large enough to endanger levee stability.

Policy 3: Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Deltawide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.

Recommendation 1: Seasonal flooding should be carried out in a manner so as to minimize mosquito production. Deltawide guidelines outlining "best management practices" should be prepared and distributed to land managers.

Recommendation 2: Wildlife habitat on the islands should be of adequate size and configuration to provide significant wildlife habitat for birds, small mammals, and other Delta wildlife.

Recommendation 3: Undeveloped channel islands provide unique opportunities for permanent wildlife habitat in the Primary Zone. A strategy should be developed to encourage permanent protection and management of the channel islands. Protection may include: acquisition, conservation easements, or memoranda of understanding. Management may include: protection from erosion, controlling human access, or habitat management, such as planting native plants and removing exotic plants. Some larger, reclaimed channel islands may be suitable for mixed uses, such as recreation and habitat. Any development on channel islands must ensure long-term protection of the wildlife habitat.

Recommendation 4: Feasible steps to protect and enhance aquatic habitat should be implemented as may be determined by resource agencies consistent with balancing other beneficial uses of Delta resources.

Recommendation 5: Publicly-owned land should incorporate, to the maximum extent feasible, suitable and appropriate wildlife protection, restoration and enhancement as part of a Deltawide plan for habitat management.
• **Recommendation 6:** Management of suitable agricultural lands to maximize habitat values for migratory birds and other wildlife should be encouraged. Appropriate incentives, such as conservation easements, should be provided by nonprofits or other entities to protect this seasonal habitat through donation or through purchase.

• **Recommendation 7:** Lands currently managed for wildlife habitat, such as private duck clubs or publicly-owned wildlife areas, should be preserved and protected, particularly from destruction from inundation.

• **Policy 3:** Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Delta-wide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.

**Utilities and Infrastructure**

• **Finding 2:** High voltage transmission lines have disrupted wildlife use patterns and resulted in the loss of birds due to collision with those lines.

• **Recommendation 4:** Materials dredged from Delta channels should, if feasible, be stored at upland sites for reuse for levee maintenance and repair, and other feasible uses in the Delta. Impacts to wildlife caused by storage of dredged materials should be mitigated.

• **Recommendation 7:** Natural gas production will continue to be an important use of Delta resources. Structures needed for gas extraction should be consolidated to minimize displacement of agriculture and wildlife habitat. In compliance with existing laws, facilities no longer needed for gas extraction should be completely removed to allow restoration of agriculture or wildlife habitat uses. Counties should ensure that there are appropriate buffers between gas processing and storage facilities and residential and recreational uses to protect lives and property.

• **Policy 1:** Impacts associated with construction of transmission lines and utilities can be mitigated by locating new construction in existing utility or transportation corridors, or along property lines, and by minimizing construction impacts. Before new transmission lines are constructed, the utility should determine if an existing line has available capacity. To minimize impacts on agricultural practices, utility lines shall follow edges of fields. Pipelines in utility corridors or existing rights-of-way shall be buried to avoid adverse impacts to terrestrial wildlife. Pipelines crossing agricultural areas shall be buried deep enough to avoid conflicts with normal agricultural or construction activities. Utilities shall be designed and constructed to minimize any detrimental effect on levee integrity or maintenance.

**Land Use**

• **Recommendation 1:** A program by non-profit groups or other appropriate entities should be developed to promote acquisition of wildlife and agricultural conservation easements on private lands with the goal of protecting agriculture and wildlife habitat in the Delta.
Recommendation 2: Public agencies and non-profit groups have or propose to purchase thousands of acres of agricultural lands to restore to wildlife habitat. The amount, type, and location of land identified to be enhanced for wildlife habitat should be studied by wildlife experts to determine goals for future acquisition and restoration. Lands acquired for wildlife habitat should also be evaluated for recreation, access, research and other needed uses in the Delta. Habitat restoration projects should not adversely impact surrounding agricultural practices. Public-private partnerships in management of public lands should be encouraged. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.

Recommendation 3: Multiple use of agricultural lands for commercial agriculture, wildlife habitat, and, if appropriate, recreational use, should be supported, and funding to offset management costs pursued from all possible sources. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.

Policy 2: Local government general plans, as defined in Government Code Section 65300 et seq., and zoning codes shall continue to strongly promote agriculture as the primary land use in the Primary Zone; recreation land uses shall be supported in appropriate locations and where the recreation uses do not conflict with agricultural land uses or other beneficial uses, such as waterside habitat. County plans and ordinances may support transfer of development rights, lot splits with no increase in density, and clustering to support long-term agricultural viability and open space values of the Primary Zone. Clustering is intended to support efficient use of agricultural lands, not to support new urban development in the Primary Zone. Local governments shall specifically indicate when, how, and why these options would be allowed in the Primary Zone.

Agriculture

Finding 11: Programs at State and federal level support land management to enhance habitat values on private agricultural lands. Some programs will result in permanent conversion of agricultural land. Examples include: creation of wetlands on agricultural lands; seasonal flooding of agricultural lands; deferred tillage; deferred harvesting of grains; enhancement of field edges as habitat; and planting native plants along roadways and between fields. However, many of the existing programs do not reflect the unique Delta resources and opportunities.

Policy 7: Local governments shall encourage acquisition of agricultural conservation easements as mitigation for projects within each county, or through public or private funds obtained to protect agricultural and open space values, and habitat value that is associated with agricultural operations. Encourage transfer of development rights within land holdings, from parcel to parcel within the Delta, and where appropriate, to sites outside the Delta. Promote use of environmental mitigation in agricultural areas only when it is consistent and compatible with ongoing agricultural operations and when developed in appropriate locations designated on a countywide or Delta-wide habitat management plan.
Policy 8: Local governments shall encourage management of agricultural lands which maximize wildlife habitat seasonally and year-round, through techniques such as sequential flooding in fall and winter, leaving crop residue, creation of mosaic of small grains and flooded areas, controlling predators, controlling poaching, controlling public access, and others.

Water
- Goal: Protect long-term water quality in the Delta for agriculture, municipal, industrial, water-contact recreation, and fish and wildlife habitat uses, as well as all other designated beneficial uses.
- Finding 13: Water is needed to enhance seasonal and year-round wildlife habitat in the Delta such as flooding agricultural fields in fall and winter. Seasonal flooding is of particular value to migratory waterfowl.
- Finding 17: Transport of State and federal project water through the Delta does result in levee erosion and reverse flows and may detrimentally affect some fish species.
- Policy 1: Local governments shall ensure that salinity in Delta waters allows full agricultural use of Delta agricultural lands, provide habitat for aquatic life, and meet requirements for drinking water and industrial uses.
- Recommendation 3: Programs to enhance the natural values of the State's aquatic habitats and water quality will benefit the Delta and should be supported.
- Recommendation 5: Water for flooding to provide seasonal and year-round wildlife habitat should be provided as part of State and federal programs to provide water for wildlife habitat.

Recreation and Access
- Finding 5: The Delta waterways are recognized as valuable habitat for resident and migratory species, including fish, amphibians, birds, and mammals.
- Finding 6: Some recreational activities are detrimental to habitat values; such as those that create loud noises, create waves or wakes; or disturb sediments. Recreational boating adversely impacts the stability of some levees through creation of wakes increasing costs of maintenance. Wake erosion also adversely impacts wildlife habitat areas, such as channel islands.
- Finding 10: The marina permit application process is long, expensive and difficult due to: difficulty in obtaining upland sites and leases for underwater lands, land ownership issues, possible impacts to the environment including rare and endangered fish and plant species, limitations on dredging, and protection of riparian vegetation.
- Policy 2: To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water-oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.
- Recommendation 2: Support a scientifically-valid study of the carrying capacity of the Delta waterways for recreation activities without degradation of habitat values which minimize impacts to agriculture or levees.
Recommendation 5: To protect rare and endangered fish species from adverse impacts of poaching, the Department of Fish and Game (DFG) should study the feasibility and value of banning night fishing in the Delta.

Recommendation 10: New, expanded, or renovated marinas should minimize toxic discharges (including paint, paint chips, chemicals, heavy metals, tributin, oil, grease, and fuel) and prohibit discharges of untreated sewage as required under local, State, and federal laws and regulations.

Policy 2: To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water-oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.

Policy 3: Local governments shall develop siting criteria for recreation projects which will ensure minimal adverse impacts on: agricultural land uses, levees, and public drinking water supply intakes, and identified sensitive wetland and habitat areas.

Levees

Finding 8: Materials for levee construction and repair have routinely been dredged from adjacent waterways. Environmental regulations to protect endangered fish and other restrictions have limited access to this traditional source of material. Historically lower costs of using dredged material have been offset by increased regulatory costs. Other sources of levee maintenance material include: on-island deposits; quarries; construction projects, including habitat enhancement projects; and spoils from authorized maintenance dredging projects by ports or flood control districts.

Finding 13: Loss of Delta levees could result in loss of life; lowered water quality for water diverted by local water systems and for export through the State and federal water systems; loss of freshwater due to increased evaporation; loss of property, including crops and structures; and loss of habitat. Rodent dens and tunnels, particularly those created by beaver and muskrat, can adversely affect levee stability and are thought to have been the cause of numerous levee failures.

Policy 1: Local governments shall ensure that Delta levees are maintained to protect human life, to provide flood protection, to protect private and public property, to protect historic structures and communities, to protect riparian and upland habitat, to promote interstate and intrastate commerce, to protect water quality in the State and federal water projects, and to protect recreational use of the Delta area. Delta levee maintenance and rehabilitation shall be given priority over other uses of the levee areas. To the extent levee integrity is not jeopardized, other uses, including support of vegetation for wildlife habitat, shall be allowed.

Recommendation 1: Levee maintenance, rehabilitation, and upgrading should be established as the first and highest priority of use of the levee. No other use whether for habitat, trails, recreational facilities, or roads should be allowed to unreasonably adversely impact levee integrity or maintenance.
Recommendation 2: Landowners, through reclamation districts, should pay a portion of levee maintenance costs. The overall citizenry of California and the United States that benefits from the state and federal water projects, commerce and navigation, travel, production of crops, recreation, and protection of fish and wildlife habitat should also pay a substantial portion of the cost of maintaining the Delta levees. New programs of determining assessments on mineral leases and other beneficiaries should be evaluated by reclamation districts.

Recommendation 8: To lower levee maintenance costs, streamlined permitting systems for authorization of dredging for levee maintenance and rehabilitation work, including the improvement of wildlife habitat and habitat mitigation sites, and for levee upgrading to mandated standards to protect public health and safety, should be instituted, with one state agency designated as lead agency and one federal agency designated as lead agency. Federal agency concurrence in such designations should be obtained.

Recommendation 12: Levee maintaining agencies and fish and wildlife agencies should continue to cooperate to establish appropriate vegetation guidelines. Continuation of the SB 34 Program with its incentive funding for mitigation should be supported as the best way to accomplish the goals of levee maintenance with no net long term loss of habitat.

It is also worth noting, relative to the Commission’s Management Plan that pursuant to the Commission’s adopted 2006-2011 Strategic Plan and in response to the Governor’s recommendation in February of 2008, the process for updating the Management plan has been initiated with anticipated completion by the end of the year. Delta initiatives and processes underway (including DBCP and Delta Vision) that may be of relevance to the Commission’s policies and mandates are being taken into consideration in this process.

A copy of the Management Plan and the Act are available at the Commission's web site www.delta.ca.gov for your reference. Please contact me at (916) 776-2292 or lindadpc@citiink.net if you have any questions regarding the Commission or the comments provided herein.

Sincerely,

Linda Fiack
Executive Director
May 6, 2009

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236

Dear Ms. Brown:


The staff of the Delta Protection Commission (Commission) has reviewed the subject Notice of Preparation. Based on the information received at this time, staff has determined that portions of the potential area to be covered by the proposed Bay Delta Conservation Plan (Plan) will be located within the Primary and Secondary Zones of the Legal Delta (see enclosed maps). Pursuant to the Delta Protection Act (Act), approvals for projects in the Primary Zone shall take into consideration consistency with the provisions of the Commission’s Land Use and Resource Management Plan for the Primary Zone of the Delta (Management Plan).

The Commission serves as an appeal body in the event the actions of a local entity on a project within the Primary Zone are challenged as being inconsistent with the provisions of the Act or the policies of the Management Plan. While actions for approval or denial of projects in the Secondary Zone are not subject to appeal to the Commission, the analysis of the proposed project Plan scope should address any potential impacts to the resources of the Primary Zone resulting from activities in the Secondary Zone.

The May 30, 2008 comment letter from staff of the Commission relevant to the scope of the proposed Plan and potential area involved within the Primary and Secondary Zones is enclosed for your reference and consideration in the environmental review process.

Additionally, please consider the Commission’s comments provided to the Delta Vision Blue Ribbon Task Force on September 29, 2008 (cited below) relative to characteristics that should be taken into consideration when proposing to convert lands to habitat.
Programs proposing the conversion of lands to habitat should take into consideration characteristics of highly productive agriculture lands, and compatible uses, such as: nationally recognized wine growing regions; islands mapped out of the 100-year flood zone; lands with well/deep well drained soils; areas where permanent trees and vines are planted; levees maintained with state-of-the-art systems; areas of highly maintained water quality; outstanding crop yields regionally recognized; and lands supporting existing homes, shops and value added ag components.

Please note that the Commission is in the process of revising the policies of the Management Plan and it is anticipated that amendments will be considered for adoption by the Commission by the end of the year. It is therefore recommended that you take into consideration the intent of the draft revisions (available on the Commission’s website) in addition to adhering to the existing policies for consistency.

I am available at (916) 776-2292 or lindadpe@citlink.net if you have any questions about the comments provided herein or in the May 30, 2008 letter.

Sincerely,

Linda Fiack
Executive Director

Enclosures

cc: State Clearinghouse
Chair, Contra Costa County Board of Supervisors
Chair, Sacramento County Board of Supervisors
Chair, San Joaquin County Board of Supervisors
Chair, Solano County Board of Supervisors
Chair, Yolo County Board of Supervisors
Members, Delta Protection Commission
Proposed Conveyance Through Delta location relative to Delta Protection Commission Primary and Secondary Zone

LEGEND

- Delta Primary Zone
- Delta Secondary Zone

Note: The red arrows are for illustrative purposes only to highlight the path of the proposed conveyance location.

Note: Conveyance location provided by Bay Delta Conservation Plan maps presented during the March 2009 Scoping Meeting found at: https://www.water.ca.gov/deltahcn/maps0309.pdf
Proposed Conveyance East location relative to Delta Protection Commission Primary and Secondary Zone

LEGEND

- Delta Primary Zone
- Delta Secondary Zone

Note: The red arrows are for illustrative purposes only to highlight the path of the proposed conveyance location.

Note: Conveyance location provided by Bay Delta Conservation Plan maps presented during the March 2009 Scoping Meeting found at: http://www.water.ca.gov/deltainit/maps0309.cfm
Proposed Conveyance West location relative to Delta Protection Commission Primary and Secondary Zone

LEGEND

- Delta Primary Zone
- Delta Secondary Zone

Note: The red arrows are for illustrative purposes only to highlight the path of the proposed conveyance location.

Note: Conveyance location provided by Bay Delta Conservation Plan maps presented during the March 2009 Scoping Meeting found at:
http://www.water.ca.gov/deltainit/maps0309.cfm
May 30, 2008

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown,

SUBJECT: Notice of Preparation of Joint ERI/EIS for the Bay Delta Conservation Plan (BDCP)

The staff of the Delta Protection Commission (Commission) has reviewed the Notice of Preparation document dated March 17, 2008 in relation to the Commission’s Land use and Resource Management Plan for the Primary Zone of the Delta (Management Plan). The following information and comments are provided for your consideration in the environmental review process for the subject project.

The Delta Protection Act (Act) was enacted in 1992 in recognition of the increasing threats to the resources of the Primary Zone of the Delta from urban and suburban encroachment having the potential to impact agriculture, wildlife habitat, and recreation uses. Pursuant to the Act, a Management Plan was completed and adopted by the Commission in 1995.

The Management Plan sets out findings, policies, and recommendations resulting from background studies in the areas of environment, utilities and infrastructure, land use, agriculture, water, recreation and access, levees, and marine patrol/boater education/safety programs.

The goals, findings, policies, and recommendations from the Management Plan that are relevant to this project include, but are not limited to, the following:

Environment
- Finding 1: The physical environment which existed prior to 1850 has been permanently and irretrievably modified through levee construction, drainage of wetlands, and introduction of agriculture.
- Finding 5: While over 95% of all wetlands in the Delta have been lost, the Delta area is used by 10% of the wintering waterfowl traveling within the Pacific Flyway.
- Finding 7: The value to wildlife of levee habitat and habitat within the levees is lessened by on-going human impacts such as levee maintenance, farm practices, human habitation, and recreational use of the levees and waterways. Activities such as water transport and boating use have eroded Delta channel islands, berms, and levees destroying habitat areas. Without levee maintenance, the habitat on the levees and within the islands will be lost.
Finding 8: The native population of fish and other aquatic species has been modified by hydromodification including water diversion, etc., through introduction of exotic species and other causes. Numbers of both native and of some introduced fish have dropped dramatically since the late 1960’s; numbers have dropped so low that winter-run Chinook salmon and Delta smelt have been listed as endangered and threatened, respectively. However, the population of some introduced species of fish and other introduced aquatic species throughout the aquatic food chain has substantially increased.

Finding 9: There is no Delta regionwide management plan for wildlife resources.

Finding 13: Delta channel islands and levees serve as habitat for several burrowing species, including beaver and muskrat. Some species have created burrows large enough to endanger levee stability.

Policy 3: Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Deltawide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.

Recommendation 1: Seasonal flooding should be carried out in a manner so as to minimize mosquito production. Deltawide guidelines outlining "best management practices" should be prepared and distributed to land managers.

Recommendation 2: Wildlife habitat on the islands should be of adequate size and configuration to provide significant wildlife habitat for birds, small mammals, and other Delta wildlife.

Recommendation 3: Undeveloped channel islands provide unique opportunities for permanent wildlife habitat in the Primary Zone. A strategy should be developed to encourage permanent protection and management of the channel islands. Protection may include: acquisition, conservation easements, or memoranda of understanding. Management may include: protection from erosion, controlling human access, or habitat management, such as planting native plants and removing exotic plants. Some larger, reclaimed channel islands may be suitable for mixed uses, such as recreation and habitat. Any development on channel islands must ensure long-term protection of the wildlife habitat.

Recommendation 4: Feasible steps to protect and enhance aquatic habitat should be implemented as may be determined by resource agencies consistent with balancing other beneficial uses of Delta resources.

Recommendation 5: Publicly-owned land should incorporate, to the maximum extent feasible, suitable and appropriate wildlife protection, restoration and enhancement as part of a Deltawide plan for habitat management.
Recommendation 6: Management of suitable agricultural lands to maximize habitat values for migratory birds and other wildlife should be encouraged. Appropriate incentives, such as conservation easements, should be provided by nonprofits or other entities to protect this seasonal habitat through donation or through purchase.

Recommendation 7: Lands currently managed for wildlife habitat, such as private duck clubs or publicly-owned wildlife areas, should be preserved and protected, particularly from destruction from inundation.

Policy 3: Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Delta-wide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.

Utilities and Infrastructure

Finding 2: High voltage transmission lines have disrupted wildlife use patterns and resulted in the loss of birds due to collision with those lines.

Recommendation 4: Materials dredged from Delta channels should, if feasible, be stored at upland sites for reuse for levee maintenance and repair, and other feasible uses in the Delta. Impacts to wildlife caused by storage of dredged materials should be mitigated.

Recommendation 7: Natural gas production will continue to be an important use of Delta resources. Structures needed for gas extraction should be consolidated to minimize displacement of agriculture and wildlife habitat. In compliance with existing laws, facilities no longer needed for gas extraction should be completely removed to allow restoration of agriculture or wildlife habitat uses. Counties should ensure that there are appropriate buffers between gas processing and storage facilities and residential and recreational uses to protect lives and property.

Policy 1: Impacts associated with construction of transmission lines and utilities can be mitigated by locating new construction in existing utility or transportation corridors, or along property lines, and by minimizing construction impacts. Before new transmission lines are constructed, the utility should determine if an existing line has available capacity. To minimize impacts on agricultural practices, utility lines shall follow edges of fields. Pipelines in utility corridors or existing rights-of-way shall be buried to avoid adverse impacts to terrestrial wildlife. Pipelines crossing agricultural areas shall be buried deep enough to avoid conflicts with normal agricultural or construction activities. Utilities shall be designed and constructed to minimize any detrimental effect on levee integrity or maintenance.

Land Use

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- **Recommendation 2:** Public agencies and non-profit groups have or propose to purchase thousands of acres of agricultural lands to restore to wildlife habitat. The amount, type, and location of land identified to be enhanced for wildlife habitat should be studied by wildlife experts to determine goals for future acquisition and restoration. Lands acquired for wildlife habitat should also be evaluated for recreation, access, research and other needed uses in the Delta. Habitat restoration projects should not adversely impact surrounding agricultural practices. Public-private partnerships in management of public lands should be encouraged. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.

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- Finding 6: Some recreational activities are detrimental to habitat values; such as those that create loud noises, create waves or wakes; or disturb sediments. Recreational boating adversely impacts the stability of some levees through creation of wakes increasing costs of maintenance. Wake erosion also adversely impacts wildlife habitat areas, such as channel islands.
- Finding 10: The marina permit application process is long, expensive and difficult due to difficulty in obtaining upland sites and leases for underwater lands, land ownership issues, possible impacts to the environment including rare and endangered fish and plant species, limitations on dredging, and protection of riparian vegetation.
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**Levees**

• **Finding 8**: Materials for levee construction and repair have routinely been dredged from adjacent waterways. Environmental regulations to protect endangered fish and other restrictions have limited access to this traditional source of material. Historically lower costs of using dredged material have been offset by increased regulatory costs. Other sources of levee maintenance material include: on-island deposits; quarries; construction projects, including habitat enhancement projects; and spoils from authorized maintenance dredging projects by ports or flood control districts.

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It is also worth noting, relative to the Commission’s Management Plan that pursuant to the Commission’s adopted 2006-2011 Strategic Plan and in response to the Governor’s recommendation in February of 2008, the process for updating the Management plan has been initiated with anticipated completion by the end of the year. Delta initiatives and processes underway (including DBCP and Delta Vision) that may be of relevance to the Commission’s policies and mandates are being taken into consideration in this process.

A copy of the Management Plan and the Act are available at the Commission's web site www.delta.ca.gov for your reference. Please contact me at (916) 776-2292 or lindadpc@citlink.net if you have any questions regarding the Commission or the comments provided herein.

Sincerely,

Linda Fiack
Executive Director
May 14, 2009

Ms. Delores Brown  
Chief, Office of Environmental Compliance  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA  94236

SUBJECT:  Revised Notice of Preparation of an Environmental Impact Report and Environmental Impact Statement for the Bay-Delta Conservation Plan

Dear Ms. Brown:

On February 13, 2009, the State Clearinghouse, Governor’s Office of Planning and Research, received the Revised Notice of Preparation (NOP) of an Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Sacramento-San Joaquin Bay-Delta Conservation Plan (BCDP). Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the California Department of Water Resources (DWR), National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), and the U.S. Bureau of Reclamation (Reclamation) are preparing a joint EIR/EIS that will include analysis of improved water conveyance infrastructure and other habitat conservation measures that will be developed to advance the goals and objectives of the BCDP. DWR will serve as the State lead agency and the California Department of Fish and Game will be a responsible and trustee agency under CEQA. Reclamation is the lead agency and NMFS and FWS are co-lead agencies under NEPA.

Although the San Francisco Bay Conservation and Development Commission (Commission) itself has not reviewed the NOP, the staff comments discussed below are based on the McAteer-Petris Act, the Suisun Marsh Preservation Act, the Commission’s San Francisco Bay Plan (Bay Plan), the Suisun Marsh Protection Plan (Marsh Plan), the Commission’s federally-approved coastal management plan for the San Francisco Bay, and the federal Coastal Zone Management Act (CZMA).

The Commission staff supports the BCDP’s goal of enhancing and restoring ecosystem processes and functions, including seasonal floodplain habitat, subtidal and intertidal habitat, hydrologic conditions, and salinity within the Delta estuary, as well as reducing direct losses of fish and other aquatic organisms. The staff also supports the BCDP’s purpose of providing for the conservation of threatened and endangered species in the Delta and improving the reliability of the water supply within a stable regulatory framework. However, the staff believes it will be critical for the BCDP agencies to coordinate closely with other Bay and Delta initiatives, such as the Delta Vision Strategic Plan recommendations, the Delta Risk Management Strategy, and other ongoing and planned habitat restoration efforts in the estuary.
**Jurisdiction.** The Commission’s permit jurisdiction includes all tidal areas of the Bay up to the line of mean high tide or, in areas of tidal wetlands, up to five feet above Mean Sea Level or the extent of tidal wetland vegetation; all areas formerly subject to tidal action that have been filled since September 17, 1965; and the shoreline band that extends 100 feet inland from and parallel to the Bay jurisdiction. The Commission also has jurisdiction over certain managed wetlands adjacent to the Bay, salt ponds, and certain waterways, and the Suisun Marsh.

The proposed project would cross the eastern limit of the Commission’s Bay jurisdiction, which is defined by a line across the Sacramento River between Stake Point and Simmons Point, extending northeast to the mouth of Marshall Cut. A section of the proposed project would be located in portions of the Suisun Marsh and Suisun Bay within Solano County and, thus, also in the Commission’s primary management jurisdiction of the Suisun Marsh.

Commission permits are required for placement of fill, construction, dredging, and substantial changes in use within its jurisdiction. Permits are issued when the Commission finds proposed activities to be consistent with its laws and policies. In addition to any needed permits under its state authority, federal actions, permits, licenses and grants affecting the Commission’s coastal jurisdiction are subject to review by the Commission, pursuant to the federal CZMA, for their consistency with the Commission’s federally-approved coastal management program for the Bay.

From reviewing the NOP, it appears that the proposed project may include the following activities within the Commission’s Bay and Marsh jurisdictions: (1) maintenance, improvement or changes in operation of water management facilities, such as the Suisun Marsh Salinity Control Gates; (2) habitat restoration; and (3) new power lines and rights of way. In addition, new water conveyance facilities and changes in operation of existing facilities outside the Commission’s jurisdiction in the Delta have the potential to alter circulation patterns, affect water quality, or result in other impacts in the Commission’s Bay and Marsh jurisdictions.

**Fresh Water Inflow.** The Bay Plan and Marsh Plan policies call for adequate freshwater inflow to the Bay and Suisun Marsh and provide additional guidance regarding legal requirements promulgated by the State Water Resources Control Board.

The Bay Plan recognizes the importance of fresh water inflows to the ecosystem of the Bay. Bay Plan findings state that “conserving fish, other aquatic organisms and wildlife depends, among other things, upon availability of ... proper fresh water inflows, temperature, salt content, water quality, and velocity of the water.”

The Bay Plan’s Fresh Water Inflow policies state, in part:

- Diversions of fresh water should not reduce the inflow into the Bay to the point of damaging the oxygen content of the Bay, the flushing of the Bay, or the ability of the Bay to support existing wildlife....

- High priority should be given to the preservation of Suisun Marsh through adequate protective measures including maintenance of freshwater inflows....

- The impact of diversions of fresh water inflow into the Bay should be monitored by the State Water Resources Control Board, which should set standards to restore historical levels (1922-1967) of fish and wildlife resources. The Bay Commission should cooperate with the State Board and others to ensure that adequate fresh water inflows to protect the Bay are made available.
The Marsh Plan recognizes that the Suisun Marsh, located where salt water and fresh water meet and mix, contains "the unique diversity of fish and wildlife habitats characteristic of a brackish marsh."

Marsh Plan policies state, in part:

- There should be no increase in diversions by State or Federal Governments that would cause violations of existing Delta Decision or Basin Plan standards....
- Water quality standards in the Marsh should be met by maintaining adequate inflows from the Delta.

To address these policies, we recommend that the EIR/EIS include analysis of the fresh water flow needs of the entire estuary, not just the Delta. This includes the need for peak flows that transport sediment and nutrients to the Bay, increase mixing of Bay waters, and create low salinity habitat in Suisun Bay, San Pablo Bay and the upper part of central San Francisco Bay.

The *Delta Vision Strategic Plan* (October 2008) included recommendations regarding adequate flows for the Bay-Delta ecosystem. Strategy 3.4 calls for restoring Delta flows and channels to support a healthy Delta estuary, including:

- Flows to produce sufficient volumes of open water habitat of the appropriate water quality, including salinity, temperature, and concentrations of dissolved oxygen and contaminants, e.g., adequate low salinity fall habitat for the Delta smelt;
- Flows to reduce fish entrainment in pumps and other water facilities; and
- Flows to provide adequate fish migration cues, e.g., high flows that trigger migration of salmonids.

The EIR/EIS should analyze the flow recommendations in the *Delta Vision Strategic Plan* and other recent publications in order to determine the appropriate flows needed support ecosystem processes as well as the recovery of individual species in the Bay and Suisun Marsh.

**Wetland Restoration.** Much of the Bay’s historic tidal wetlands have been lost, including 80 percent of tidal marshes and 40 percent of tidal flats. The Bay Plan and Marsh Plan encourage wetland restoration and enhancement.

The Bay Plan’s policies state, in part:

Where and whenever possible, former tidal marshes and tidal flats that have been diked from the Bay should be restored to tidal action in order to replace lost historic wetlands or should be managed to provide important Bay habitat functions, such as resting, foraging and breeding habitat for fish, other aquatic organisms and wildlife. As recommended in the *Baylands Ecosystem Habitat Goals* report, around 65,000 acres of area diked from the Bay should be restored to tidal action....

If the owner of any managed wetland withdraws any of the wetlands from their present use, the public should make every effort to buy these lands and restore to tidal or subtidal habitat, or retain, enhance and manage these areas as diked wetland habitat for the benefit of multiple species. This type of purchase should have a high priority for any public funds available.
Ongoing large-scale efforts to restore Bay wetlands have great potential to benefit the entire estuary, including species of concern, yet these projects could inadvertently be adversely affected if Delta management actions, such as restoring Delta islands, result in the capture of sediments that would otherwise flow to the Bay. We request that the EIR/EIS include analysis of sediment dynamics throughout the whole system, including potential impacts on the Bay.

The Bay Plan’s dredging policies encourage the reuse of dredged material in wetland restoration projects, as appropriate, and support efforts to fund the additional costs associated with transporting dredged material to project sites. We suggest that the BDCP agencies encourage the coordination of use of dredged material in the Bay and Delta as part of a regional sediment management strategy.

The Commission has a long and successful history of managing natural resources in the Suisun Marsh. The Commission is currently participating in the Suisun Marsh Charter Group to develop a new Habitat Management, Preservation and Restoration Plan for Suisun Marsh. Our priorities for the new plan include enhancing seasonal and managed wetlands that provide essential wintering habitat for waterfowl of the Pacific Flyway, supporting tidal restoration, and supporting maintenance of Suisun Marsh levees.

_Suisun Marsh Protection Plan_ policies state, in part:

The diversity of habitats in the Suisun Marsh and surrounding upland areas should be preserved and enhanced wherever possible to maintain the unique wildlife resource.

Where feasible, historic marshes should be returned to wetland status, either as tidal marshes or managed wetlands. If, in the future, some of the managed wetlands are no longer needed for private waterfowl hunting, they should be restored to tidal or subtidal habitat, or retained as diked wetland habitat and enhanced and managed for the benefit of multiple species.

The Suisun Resource Conservation District should be empowered to improve and maintain exterior levee systems as well as other water control facilities on the privately owned managed wetlands within the primary management area.

Our staff urges the BDCP agencies to incorporate Marsh Plan and Bay Plan policies, as well as the information in the Commission’s draft staff report on climate change, as it develops the BDCP in order to ensure that wetland restoration in the Bay and Delta are coordinated to maximize public benefits.

**Climate Change.** Climate change and accelerating sea level rise could result in devastating impacts to the Bay and Delta. As the Commission has noted in the draft staff report _Living with a Rising Bay: Vulnerability and Adaptation in San Francisco Bay and on the Shoreline_ (April 2009):

Salinity increases due to climate change may dramatically impact the brackish and freshwater marshes found in Suisun Marsh.... Since brackish and freshwater tidal marshes tend to be more productive and provide habitat for a greater diversity of plants than salt marshes, elimination of these valuable wetlands or their conversion to salt marshes could reverberate throughout the food
web and reduce the habitat available to rare and endangered species (Callaway et al. 2007, Newcombe and Mason 1972, Baye et al. 2000, Lyons et al., 2005).

Efforts to use water control structures, such as salinity gates, to artificially reduce salinity in Suisun Marsh in dry years are likely to become increasingly difficult in the face of climate change. The Suisun Marsh Salinity Control Gates restrict the flow of higher salinity water from incoming tides and retain [lower salinity] Sacramento River water from the previous outgoing tide. An eastward shift of the salinity gradient caused by sea level rise will likely reduce opportunities for importing freshwater into the Suisun Marsh.

We therefore request that the EIR/EIS evaluate the proposed project in relation to potential climate change impacts on the Bay and Delta, particularly on the brackish wetlands of the Suisun Marsh.

**Multiple Levee Failures.** The Delta Risk Management Strategy and other recent publications have explored the potential impacts of multiple levee failures and the simultaneous flooding of several Delta islands. These analyses focused on the disruption of water exports and economic consequences. As the DRMS report states, “Impacts to aquatic species were not quantified in the DRMS Project and require further study.” Similarly, impacts to water quality were not quantified in the DRMS Project. The EIR/EIS should address the potential impacts of multiple levee failures on the ecosystems of Suisun Marsh and the Bay and how those impacts might vary in different conveyance and water project operations scenarios.

**Minimize Harmful Effects to the Bay.** The proposed project would need to be consistent with all applicable Bay Plan policies. Therefore, the EIR/EIS should address other applicable Bay Plan policies, including a discussion about the Commission’s regulatory requirements governing the protection of the Bay’s natural resources, including fish, other aquatic organisms, and wildlife, and certain habitat needed for their protection, including tidal flats and marshes and subtidal areas. The Bay Plan policies on fish, other aquatic organisms, and wildlife, state that marshes, mudflats, and subtidal habitat should be “conserved, restored, and increased.” Furthermore, the Commission must consult with and give appropriate consideration to the state and federal resource agencies, and not authorize any project resulting in a “taking” of a listed species unless the appropriate authorization has been issued by the resource agencies. According to the Bay Plan policies on tidal marshes and tidal flats, and subtidal areas, all projects subject to Commission consideration should also be sited and designed to minimize or avoid adverse resource impacts in these areas.

The EIR/EIS should analyze how the entire project, not just the portion within the Commission’s permit jurisdiction, will affect the hydrology, sediment dynamics, water quality and biological resources of the Bay. As mentioned above, it should include analysis of climate change impacts, including the potential impacts of sea level rise, precipitation patterns, and changes in air and water temperature. It should also analyze cumulative impacts, including the potential impacts of other projects being planned for the Bay-Delta estuary and its watershed, such as dam construction, habitat restoration, levee repairs and upgrades, and the deepening of the Stockton and Sacramento Ship Channels. The EIR/EIS should discuss the Commission’s regulatory authority governing the protection of the Bay’s and the Marsh’s natural resources and habitats.
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**Water Quality.** Pursuant to the Commission’s water quality policies in the Bay Plan, pollution in the Bay’s water “should be prevented to the greatest extent feasible.” Further, in considering this project, the Commission would need to consult with and base its decision on the San Francisco Bay Regional Water Quality Board’s evaluation of and advice on the proposed project and any potential water quality impacts. Therefore, the Commission encourages the project proponents to continue conducting early consultation with and working to obtain all necessary authorization from the Regional Board to aid the Commission in determining whether the project would adversely impact the Bay’s water quality. The EIR/EIS should analyze the impacts of the project on salinity, temperature and concentrations of dissolved oxygen and contaminants in the Bay.

**Utilities and Improvements.** The Marsh Plan policies on utilities, facilities and transportation state, in part, that “New electric power transmission utility corridors should be located at least one-half mile from the edge of the Marsh.” In light of this policy, the EIR/EIS should: (1) clearly show the location of any proposed new power lines in relation to the boundary of the Suisun Marsh; (2) identify any potential project-related impacts to wetlands in the Marsh and measures for mitigating these effects; and (3) provide a construction schedule for any work affecting wetland area in the Marsh.

**Mitigation.** In the event that the proposed project would result in adverse environmental impacts that cannot be avoided, the EIR/EIS should discuss mitigation measures. The Commission’s policies regarding mitigation state, in part, that “projects should be designed to avoid adverse environmental impacts to [the] Bay” and, further, that “[w]henever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable....[and] measures to compensate for...impacts should be required.”

**Coastal Zone Management Act.** We request that the EIR/EIS indicate that under CZMA (16 USC 1456(c) and (d)) the Commission is authorized to review any federal actions, permits, licenses and grants affecting any land or water use or natural resources within the Commission’s coastal jurisdiction (i.e., San Francisco Bay and Suisun Marsh) for consistency with the Commission’s laws and regulations.

Thank you for the opportunity to comment on this NOP. If you have any questions regarding this letter or the Commission’s policies, please call me at (415) 352-3660 or email me at jessicah@bcdc.ca.gov.

Sincerely,

[Signature]

JESSICA HAMBURGER  
Coastal Program Analyst

JH/rca

By U.S. Mail and e-mail (delores@water.ca.gov)