

Memorandum

Date : July 3, 2013

To : Dean F. Messer, Chief
Department of Water Resources
Division of Environmental Services

From : Department of Parks and Recreation
Director's Office
1416 9th Street, Room 1405
Sacramento, California 95814

Subject : Bay Delta Conservation Plan – Review of Environmental Impact Report and Environmental Impact Statement

Thank you for providing the Department of Parks and Recreation (DPR) with an Administrative Draft of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Bay Delta Conservation Plan (BDCP). In order to ensure that future drafts of the EIR/EIS incorporate current and specific data reflecting the BDCP's impact on existing, planned, and potential recreational uses, DPR must prepare an independent assessment of potentially affected recreational resources and legally mandated recreational enhancements in the project area. The State Historic Preservation Officer (SHPO)/the Office of Historic Preservation (OHP) and the Department of Boating and Waterways (DBW),¹ both divisions within DPR, must also prepare individual assessments of the impacts this project will have on historical resources and recreational boating, respectively. The following letter addresses the provisions in the California Environmental Quality Act (CEQA) and Davis-Dolwig Act that require DPR and its divisions to actively engage the Department of Water Resources (DWR) in the CEQA process in order to ensure that recreational opportunities are preserved and enhanced in association with state water projects. In carrying out these responsibilities, DPR and its divisions hope to work closely with DWR to proactively diffuse potential sources of controversy that would arise during the public comment phase by identifying and mitigating any currently unforeseen impacts that the project might have on the Delta's historic and recreational resources as well as other potential impacts to recreation along the entire State Water Project resulting from operational changes.

Under CEQA, DPR is a trustee agency for (a) units of State Park land affected by a project and (b) the preservation and enhancement of recreational opportunities in conjunction with any state water project. (Pub. Res. Code § 21070). DPR's status as a trustee for State Park lands is supported by explicit reference in Title 14, California Code of Regulations, section 15386. Furthermore, DPR is a trustee agency for recreational opportunities in the project area because DPR's enabling legislation and

¹ Effective July 1, 2013, the former Department of Boating and Waterways is a Division within the Department of Parks and Recreation. (Harbors and Navigation Code § 50).

the Davis-Dolwig Act provide DPR with the statutory jurisdiction to develop plans to preserve and enhance recreational opportunities. (Pub. Res. Code § 540; Water Code §§ 11901, 11910). This jurisdiction applies to the waterways within state water projects, a "natural resource" under Public Resources Code section 21070, since DWR must consult DPR to ensure that waterways within state water projects facilitate enhanced recreational opportunities. (Water Code § 11911). Or, said another way, when DWR undertakes a state water project, DPR has a legal mandate to consult with DWR in planning for the enhancement and preservation of recreational opportunities. (Water Code §§ 11901, 11910, 11911, 11913; Pub. Res. Code § 540). Therefore, DPR is a trustee agency both for State Park lands affected by the BDCP and the enhancement and preservation of recreational opportunities occurring within areas affected by state water projects.

Aside from DPR's primary roles, the SHPO and DBW have legal authority that pertains to public resources located within the proposed project area. DBW is a trustee agency that maintains jurisdiction over the development and operation of recreational boating trails and facilities and has authority to plan, design, and construct enhanced recreational boating facilities in any proposed state water project. (Harbors and Nav. Code §§68, 68.2, 70; Water Code § 11918; Pub. Res. Code § 5003.6). The SHPO has jurisdiction over state historic resources, and maintains the responsibility to consult with other agencies to ensure that federal projects, projects with federal funding, or projects with federal permits avoid, minimize, or mitigate any potentially adverse impacts to historical resources. (16 U.S.C. § 470, 36 C.F.R. § 800.6; Pub. Res. Code 5024, 5024.5.) These separate sources of legal jurisdiction require DBW and SHPO to assume distinct analytical roles from DPR in providing comments for the Administrative Draft of the BDCP EIR/EIS.

The Davis-Dolwig Act, codified in Water Code section 11900 et seq., declares a statewide policy that includes recreation as one of the purposes of state water projects. (Water Code § 11900). The Act requires DWR to secure funds "in the budget for the department . . . in connection with state water projects" for the planning, construction, operation, and maintenance of recreational features within state water projects as part of a coordinated plan for their multipurpose use. (Water Code §§ 11901, 11910, 11913). The Act also provides that recreational planning "shall be a part of the general project formulation activities . . . through the advance planning stage . . . in such a manner as to permit the use thereof for . . . recreational purposes upon completion of the project." (Water Code § 11911). Pursuant to Water Code section 11918 and Public Resources Code section 540, it is DPR's responsibility to design public recreation facilities at state water projects. In carrying out the BDCP, a state water project as defined in Water Code section 11903, DWR must allocate the funds necessary for DPR to plan the enhancement of recreational opportunities. (Water Code §§ 11911, 11913). DPR is mandated to use a portion of these funds to hire staff and/or consultants to ensure that plans for the enhancement of recreational opportunities within the project area for the BDCP are included in the project and to ensure existing recreational facilities are not compromised by the construction or operation of the proposed action alternatives. Accordingly, DPR requests that DWR

provide the Davis-Dolwig mandated funds necessary for DPR to hire additional staff and/or consultants to evaluate and make recommendations on these issues in conjunction with the implementation of the BDCP.

In the environmental review process, the SHPO and OHP have a federally mandated role under Section 106 of the National Historic Preservation Act (Section 106), and a state-mandated role under the Public Resources Code section 5024.5. (36 C.F.R. Part 800; Pub. Res. Code §§ 5024, 5024.5). Because the BDCP uses federal funding and requires federal permit approval, its implementation will require consultation with the SHPO to ensure that implementation of the action alternatives "avoids, minimizes, or mitigates adverse effects on historical properties." (16 U.S.C. § 470, 470(f); 36 C.F.R. § 800.6). The Public Resources Code section 5024.5 process requires state agencies, DWR in this instance, to initiate consultation with the SHPO regarding the effects of projects on state owned properties that are listed or eligible for listing in the National Register of Historic Places or registered or eligible for registration as a California State Historical Landmark. CEQA guidelines also provide DWR with firm criteria to ensure that any historical or archeological resources within the project area are identified and protected using specialized identification and mitigation techniques. (Pub. Res. Code § 21083.2, 20184.1). Section 106 requires consultation with SHPO regarding the effects of an undertaking on historic properties and those resources listed or eligible for listing on the National Register of Historic Places. Although consultation can be initiated by federal agencies, 36 Code of Federal Regulations Part 800.2(a)(3) allows federal agencies to delegate consultation authority to another party.² In this instance, it would be wise for the lead federal agency to delegate Section 106 consultation authority to DWR because this process could be coordinated with Public Resources Code section 5024.5 consultation. As neither has yet been initiated with the SHPO, it is recommended that consultation be initiated immediately in order to maintain a timeline relatively concurrent with the EIR/EIS review and certification. In anticipation of this increase in consultation requests from DWR pursuant to National Historic Preservation Act and CEQA, the SHPO requests that DWR fund additional staff time and/or outside consultants to allow the SHPO and OHP staff to expediently process forthcoming requests.

The DBW is a trustee agency for recreational boating opportunities by virtue of its jurisdiction over the planning and development of recreational boating trails, the construction and enhancement of recreational boating facilities in connection with state water projects, and its role as lead agency in mitigating the effects of aquatic invasive weed species in the Sacramento-San Joaquin Delta. (Harbors and Nav. Code §§ 64, 68, 68.2, 70; Water Code § 11918). Because the BDCP qualifies as a state water project, DWR must allocate the funds necessary for DBW to plan measures to preserve and enhance recreational boating opportunities in watercourses or reservoirs affected by physical developments or operational changes resulting from the BDCP. (Water Code §§ 11911, 11913). The DBW is entitled to use these funds to hire

² An important exception to federal delegation authority is the government to government consultation requirements that mandate the involvement of Tribal Authorities when Tribal Lands are affected. (16 U.S.C. 470, section 101(d)).

additional staff and/or consultants to make recommendations to ensure that recreational boating opportunities within these areas are not compromised by the construction or operation of the proposed action alternatives. DBW may also allocate these funds to hire additional staff and/or consultants to study the potential impacts that altered flow regimes will have on the spread of aquatic invasive weeds. Accordingly, DBW requests that DWR provide the Davis-Dolwig mandated funds necessary for DBW to comply with its legal mandate to make recommendations on these issues in conjunction with the implementation of the BDCP.

DPR has developed a preliminary estimate of the funding that will be needed to conduct a preliminary review of the BDCP EIR/EIS and begin carrying out DPR's legally mandated roles in conjunction with the BDCP EIR/EIS. DPR's initial estimate of the cost of this effort is **\$4,780,000**, and is described in more detail below:

The Department of Parks and Recreation

DPR's anticipated activities will include assessments of impacts to the recreational, cultural, archeological, and historical resources on State Park lands and an examination of the impacts that physical developments and operational changes will have on the preservation and enhancement of recreational opportunities. Estimated costs are separated by division as follows:

1. The **Planning Division** is responsible for planning enhanced recreational opportunities and assessing the impact that physical developments and operational changes resulting from the BDCP will have on recreational opportunities on State Park Lands and the watercourses and reservoirs adjacent to those lands. The Planning Division estimates that **\$3,700,000** in funding will be needed to cover the following activities:
 - A. Assess whether or not the EIR/EIS adequately addresses the impacts that the BDCP will have on implementing the Delta Recreation Proposal and Central Valley Vision.
 - B. Assess whether or not the EIR/EIS adequately addresses the impacts that the BDCP will have on policies of the California Water Plan and the California Outdoor Recreation Plan.
 - C. Assess whether or not the EIR/EIS adequately addresses the impacts that the BDCP will have on implementing the California Recreational Trails Plan.
 - D. Assess whether or not the EIR/EIS adequately addresses the impacts that the BDCP will have on implementing the General Plan for State Park Properties in the Delta region.
 - E. Assess whether or not the EIR/EIS adequately addresses the impacts that the BDCP will have on implementing the General Plan for State Park Properties affected by operational changes resulting from the project.
 - F. Participation in a multi-agency and business community Delta Recreation Collaborative to improve recreational opportunities in the Delta Region.
 - G. Amend the General Plan for Brannan Island SRA/Franks Tract.

- H. Prepare General Plans for four (4) new Delta parks as proposed in the BDCP EIR/EIS, and the Delta Meadows/Locke Boarding House.
 - I. Prepare a multi-agency Delta Recreation Plan and Acquisition Strategy.
2. The **Park Operations Division** is responsible for assessing the impact that physical developments and operational changes resulting from the BDCP will have on park operations in State Parks properties within the project area. The Park Operations Division estimates that **\$200,000** in funding will be needed to cover the cost of assessing whether or not the BDCP EIR/EIR adequately described existing conditions, park operations, and all potential impacts to State Park Properties impacted by physical developments and operational changes resulting from the project in both the Gold Fields and Northern Buttes Districts.
 3. **DBW** is responsible for assessing the impact that physical developments and operational changes resulting from the BDCP will have on recreational boating opportunities in watercourses and reservoirs, as well as any impacts that altered flow regimes will have on the spread of invasive aquatic weeds. **DBW** estimates that **\$700,000** in funding will be needed to cover the following activities:
 - A. Assess whether or not the EIR/EIS adequately addresses the impacts that the BDCP will have on recreational boating (existing access, boating safety, abandoned watercraft, navigation, law enforcement, new infrastructure needs).
 - B. Assess whether or not the EIR/EIS adequately addresses the impacts that the BDCP will have on the spread or control of aquatic invasive plants (water hyacinth, *Egeria densa*, and spongeplant).
 4. The **Archeology, History, and Museums Division** (AHM) is responsible for assessing the impact that physical developments and operational changes from the BDCP will have on cultural and historic resources by compiling a comprehensive survey of the cultural and historic resources located in the seven park units which fall within the project area. **AHM** estimates that **\$120,000** in funding will be needed for this effort.

State Historical Preservation Officer and the Office of Historical Preservation

The SHPO and OHP are responsible for providing consultation and concurrence with the lead agency's studies to ensure they properly identify and evaluate the effects of physical developments and operational changes to historic properties and resources listed or eligible for listing on the National Register of Historic Places. The SHPO and OHP estimate that **\$60,000** in increased funding will be necessary to cover the additional staff time and administrative support needed to process the anticipated increase in consultation and concurrence requests required by Public Resources Code section 5024.5 and Section 106 of the National Historic Preservation Act. This estimate **DOES NOT** include the costs associated with a Programmatic Agreement or the studies required to be completed by the lead agency, such as:

1. An ethnographic study and background of the Delta region;
2. An identification of potential Traditional Cultural Properties (TCP) and the resulting impacts to TCPs from the project;
3. A geoarchaeological study which identifies possible areas of the plan that are sensitive for subsurface archeological resources;
4. A complete archaeological and built environment survey of the project area; and,
5. An identification of rural landscapes that may be potential historic resources/properties.

DPR anticipates that the cost estimates described above will cover the initial phase of the effort to identify, evaluate, and mitigate impacts to recreational, cultural, and historic resources affected by the BDCP. They are, however, only estimates and will be subject to revision as studies and assessments proceed. We would be happy to meet with you to discuss the anticipated scope of our efforts in more detail.

Once again, thank you for providing DPR with a copy of the Administrative Draft of the BDCP EIR/EIS. Our staff looks forward to working with DWR in helping to ensure that later versions of the BDCP EIR/EIS thoroughly address any sources of potential controversy surrounding impacts to recreational and historical resources in the project area. Please feel free to contact either of us, Planning Division Chief Steve Musillami at (916) 653-6501, or Chief Counsel Claire P. LeFlore at (916) 653-6884 to discuss this further.

Sincerely,



Aaron S. Robertson
Chief Deputy Director

cc: Sylvia Hunter, Deputy Director, Boating and Waterways Division
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