

**CALIFORNIA STATE LANDS COMMISSION**  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



*Established in 1938*

July 28, 2014

JENNIFER LUCCHESI, *Executive Officer*  
(916) 574-1800 Fax (916) 574-1810  
California Relay Service TDD Phone 1-800-735-2929  
from Voice Phone 1-800-735-2922

**Contact Phone: (916) 574-1890**  
**Contact FAX: (916) 574-1885**



File Ref: SCH #2008032062

BDCP Comments  
Ryan Wulff, NMFS  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

**Subject: Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS)  
for the Bay Delta Conservation Plan**

Dear Mr. Wulff:

The California State Lands Commission (CSLC) staff has reviewed the subject EIR/EIS for the Bay Delta Conservation Plan (BDCP), which is being prepared by the California Department of Water Resources (DWR), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS). DWR, as a public agency proposing to implement the BDCP, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). Reclamation, USFWS and NMFS, as public agencies proposing to implement the BDCP and/or issue incidental take permits to DWR, are the co-lead agencies under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). The CSLC is a trustee agency because of its trust responsibility for projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters. Additionally, because implementation of the BDCP involves work on sovereign lands, the CSLC will act as a responsible agency.

**CSLC Jurisdiction and Public Trust Lands**

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

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the

United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

### **Project Description**

DWR and Reclamation propose to implement various activities, including physical and operational improvements, related to their joint operation of the State Water Project (SWP) and Central Valley Project (CVP), which together make up the water conveyance system for much of the water supply in the State. Because SWP/CVP improvements and operations result in the incidental take of species listed under the State and federal endangered species acts, DWR prepared the BDCP as part of its applications for incidental take permits from the USFWS, NMFS, and California Department of Fish and Wildlife (CDFW). The BDCP sets out a comprehensive conservation strategy for the Delta to restore and protect ecosystem health, water supply, and water quality over the next 50 years.

The BDCP includes the following components:

- Water Flow. Manage the routing, timing and amount of flow through the Delta while establishing an interconnected system of conservation lands across the BDCP area, including the Yolo Bypass Fisheries Enhancement;
- Habitat Restoration. Restore, enhance and manage physical habitat to expand the extent and quality of intertidal, floodplain, channel margin, riparian, vernal pool, grassland, and marsh habitat;
- Manage Negative Stressors. Reduce the adverse effects of various stressors on covered species through methylmercury management, invasive aquatic vegetation control, localized reduction of predatory fishes, and urban stormwater treatment; and
- Avoidance and Minimization Measures. Avoid or minimize direct take of covered species and minimize impacts on natural communities that provide habitat for covered species.

The EIR/EIS identifies the Alternative 4 as the Environmentally Superior Alternative.

### **Comments**

1. Jurisdiction. After reviewing the information contained in the EIR/EIS, CSLC staff has determined that some BDCP activities will occur on State-owned sovereign land in various waterways under the jurisdiction of the CSLC. Please be advised that California Code of Regulations, Title 2, section 2030, subdivision (a) prohibits the CSLC from selling sovereign tide and submerged lands. Additionally, there are complex legal issues relating to the location and extent of sovereign lands within the BDCP area which may affect the use, conveyance, and/or encumbrance of these

lands. CSLC staff requests that DWR submit additional information such as detailed current and historical maps, title reports, intended use, and engineering designs as soon as possible to help CSLC staff determine the extent of sovereign lands in the BDCP area as well as the exact components of the BDCP that will require a lease or other authorization. Please contact Wendy Hall (see contact information below) for further questions about the extent of the CSLC's sovereign ownership and leasing or other authorization requirements.

2. Navigational easement. Please also be advised that the waterways in the BDCP are subject to a public navigational easement. This easement provides that the public has the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but are not limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses.
3. Public Trust coordination. CSLC staff has been involved in ongoing coordination with DWR regarding the BDCP and its potential to impact public trust uses and values. The EIR/EIS discloses the impacts of implementing the BDCP on public trust uses including navigation and water-based recreation, commerce, and transportation. CSLC staff is available for further coordination to ensure that impacts to public trust uses are minimized during the implementation of Conservation Measure 1 in the BDCP. CSLC staff will also be available for coordination during future project-level CEQA analysis for BDCP Conservation Measures 2-22.

Thank you for the opportunity to comment on the EIR/EIS for the BDCP. As a responsible and trustee agency, the CSLC will need to rely on the Final EIR/EIS for the issuance of any new lease or other authorization as specified above and, therefore, we request that you consider our comments prior to certification of the EIR/EIS.

Please send copies of future project-related documents, including electronic copies of the Final EIR/EIS, Mitigation Monitoring and Reporting Program (MMRP), Notice of Determination (NOD), CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available, and refer questions concerning environmental review to Holly Wyer, Environmental Scientist, at (916) 574-2399 or via e-mail at [holly.wyer@slc.ca.gov](mailto:holly.wyer@slc.ca.gov). For questions concerning CSLC leasing jurisdiction, please contact Wendy Hall, Public Land Management Specialist, at (916) 574-0994, or via email at [wendy.hall@slc.ca.gov](mailto:wendy.hall@slc.ca.gov).

Sincerely,



Cy R. Oggins, Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
Wendy Hall, LMD, CSLC  
Holly Wyer, DEPM, CSLC

