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East Bay Dischargers Authority
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Governor's Office of Planning & Research

March 3 2023

VIA ELECTRONIC MAIL ONLY (jzipkin@ebda.org)

STATE CLEARING HOUSE

**Subject: Draft Environmental Impact Report for the Cargill Mixed Sea Salts
Processing and Brine Discharge Project, Alameda County**

Dear Jacqueline Zipkin:

The California State Lands Commission (Commission) staff has reviewed the Draft Environmental Impact Report (EIR) for the Cargill Mixed Sea Salts Processing and Brine Discharge Project (Project), which is being prepared by the East Bay Dischargers Authority (EBDA). EBDA, as the joint powers public agency with the principal responsibility for approving the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on State sovereign land, the Commission will act as a responsible agency.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 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 Doctrine.

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.

After review of the information contained in the Draft EIR and in-house records, Commission staff has determined that portions of the proposed Project's mixed sea salts (MSS) brine transport pipeline may cross State-owned sovereign land under Commission leasing jurisdiction, including but not limited to those areas identified in the Draft EIR as crossing numbers 1, 3, 4, 6 through 10, 12 through 14, 18, 19, and 21, and Plummer Creek. Therefore, a lease from the Commission will be required for the Project. An application may be submitted to the Commission through the online application portal ([OSCAR.slc.ca.gov](https://oscar.slc.ca.gov)).

It is also important to note that the Commission has an existing Master Lease in this vicinity with Cargill. On April 26, 2005, the Commission authorized the issuance of a 25-year General Lease – Right-of-Way Use, Lease 8596.1, for the continued use and maintenance of an existing overhead electric transmission line; 12 existing steel, rubber, and plastic (PVC) pipelines; siphons; water intakes; three dredge locks; and four horizontally-drilled brine and water pipelines. Please contact Public Land Management Specialist George Asimakopoulos (contact information below) for further information on the extent of the Commission's jurisdiction and lease application requirements. Commission staff notes that the Draft EIR anticipates a construction timeline that would start in summer 2023 and urges EBDA to submit a lease application at their first opportunity.

Project Description

EBDA proposes to accept residual brine from Cargill, Incorporated's (Cargill) proposed enhanced salt processing and removal process, with Cargill transferring the remaining brine through a new MSS brine pipeline to EBDA's combined effluent pipeline for discharge into San Francisco Bay under EBDA's National Pollutant Discharge Elimination System permit. This Project would meet objectives and needs as follows:

- Provide wastewater disposal capacity and services to Cargill.
- Further EBDA's sustainability objectives by facilitating permanent infrastructure that could be available for future regional water recycling.
- Balance any impacts due to disruption to local jurisdictions with impacts to sensitive environments.

- Develop new infrastructure to process MSS brine with minimal exposure to disruptions, including connecting with and optimizing existing EBDA infrastructure.
- Utilize an existing deep-water outfall for the MSS brine to minimize impacts to water quality and aquatic resources.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

- HDD/Microtunneling for Trenchless Crossings. At least 14 brine pipeline crossings may be under Commission jurisdiction. Horizontal directional drilling (HDD) is a trenchless construction method being considered for most of the potential crossings, except for crossings under railroad tracks, which would use another trenchless method called microtunneling.
- Bridge Crossings. The Proposed Project would attach the MSS brine transport pipeline to existing bridges that cross Plummer Creek and Bockman Channel. The Draft EIR does not provide sufficient information to specify or evaluate these construction activities.

The Draft EIR identifies Alternative 1 (In-Pipe Alternative), which would reduce the MSS brine transport pipeline length to 7.5 miles, as the Environmentally Superior Alternative.

Environmental Review

Commission staff requests that EBDA consider the following comments on the Project's Draft EIR, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the Final EIR when considering a future lease application for the Project.

General Comments

1. Project Description – Bridge Crossings: The Draft EIR identifies Plummer Creek and Bockman Channel as two locations where the MSS brine transport pipeline would be attached to an existing bridge. The document notes an "existing pipe bridge" at Plummer Creek and "a bridge over the channel" for Bockman Channel but does not describe how the pipeline would be attached to the bridges and what construction equipment would be required. The Project Description should include a discussion of these brine transport pipeline bridge attachment activities in Section 2.6.8, *Construction*. In addition, the EIR should analyze any potential impacts from construction materials falling from the bridge work area into the waterways in Section 3.3, *Biological Resources*, Section 3.7, *Hazards and Hazardous Materials*, and Section 3.8, *Hydrology and Water Quality*, and provide or identify any needed mitigation.

2. Project Description – Open-Water Excavation: Please clarify the following discussion from page 2-37: “The MSS brine transport pipeline is anticipated to cross multiple drainages throughout the alignment...The majority of these crossings are at culverts, where open-water excavation is not required. Exceptions include the Old Alameda Creek and Alameda Creek Flood Control Channels, which would be crossed using trenchless technologies.” Commission staff cannot determine whether the Project would require open-water excavation at Old Alameda Creek and Alameda Creek Flood Control Channels, given that trenchless construction is very different from open-water excavation. If the Project includes any open-water excavation, then please have the EIR identify those activities and areas in the Project Description as well as evaluate the potential in-water work impacts in Section 3, *Environmental Impacts and Mitigation Measures*.

Section 3.3, *Biological Resources*, also notes on page 3.3-65 that “construction would occur outside of waterbodies, with the exception of small areas of temporary effects from pipeline disturbance (approximately 0.2 acre based on preliminary design and CARI mapping).” Please have the Project Description include a description or figure showing these disturbances within the waterbodies. Commission staff is concerned that the Draft EIR states work will be done within waterbodies in certain discussions, but then asserts that the Project would avoid directly impacting waterbodies. For example, this appears to occur within the same paragraph on page 3.3-65.

3. Project Description - Microtunneling: Microtunneling, as discussed in the Draft EIR, includes simultaneously drilling the borehole and laying the HDPE pipe into the hole. However, the document also notes that steel casing pipes would be used to protect the brine pipeline. There is no further information regarding the casing pipes. Please include information on the steel pipes' length(s), whether they would require laydown areas and welding prior to insertion, if they would be installed prior to the HDPE pipe, if the casings would be temporary or permanent, and the method of installation. If dynamic pipe ramming or a similar method would be used, then please evaluate any potential impacts to biological resources and sensitive noise receptors in Section 3, *Environmental Impacts and Mitigation Measures*.
4. Project Description – HDPE Pipe: Page 2-36 of the Draft EIR explains that the brine transport pipeline HDD activities would require a laydown area of half the crossings' length to string and fuse the HDPE pipe segments. Please confirm whether the pipe segments would be assembled in two phases as it is pulled through the borehole, and how the fused pipe segments would be assembled during pipe pullback. In addition, please clarify whether the HDPE pipe segments would be tested for integrity (i.e., hydrotesting) prior to or after

HDD installation. If the Project will include hydrotesting, then please discuss that information in Section 3, *Environmental Impacts and Mitigation Measures*.

Biological Resources

5. Pre-Construction Bird Survey: Mitigation Measure (MM) 3.3-4 requires preconstruction surveys for the California Ridgway's rail if Project activities, which could include HDD and microtunneling pits as well as pipe segment laydown areas, occur during the breeding season. The timing for the second survey is noted as "...at least 14 days prior to construction in the areas where suitable habitat is present" (emphasis added), but Commission staff notes that the other preconstruction surveys are required within a set number of days before Project activity commencement. Please confirm that it was intended the California Ridgway's rail surveys would be 14 days or greater from the start of Project activities, or modify MM 3.3-4 accordingly.

Cultural and Tribal Cultural Resources

6. Assembly Bill (AB) 52 Tribal Consultation: The Draft EIR identifies three tribal representatives who responded to EBDA's notification letters and requested consultation. EBDA initiated consultation with the three groups, and two tribal representatives requested cultural resource reports and/or assessments while the third recommended a Native American Monitor during all ground disturbing activities. All three tribal groups also had concerns "for the areas in the project where the pipeline crosses the creek" and indicated that the Project area is sensitive, particularly around water features. EBDA subsequently sent the cultural resources report on October 27, 2022, and followed up with communications on November 14 and 18, 2022, to request input by December 16 and schedule meetings to discuss. No response was received.

According to the Draft EIR, "because none of the three tribes responded by December 16, 2022, EBDA considered AB 52 consultation to be closed" (page 3.4-17). However, page 3.4-5 of the Draft EIR sets forth the conditions under Public Resources Code Section 21080.3.2 wherein a CEQA lead agency can conclude AB 52 tribal consultation. Commission staff does not believe that either of the two conditions have been satisfied: no parties have agreed to mitigation measures since the tribal consultations did not result in feedback on tribal cultural resource impacts or mitigation, and EBDA has not shown that a mutual agreement cannot be reached after acting in good faith and with reasonable effort. Commission staff is concerned that EBDA has effectively dismissed tribal concerns and engagement and recommends that EBDA 1) continues to reach out to the three tribes for dialogue,

feedback, and mitigation measure development; and 2) modifies the language in the EIR to indicate that AB 52 tribal engagement is ongoing.

In the absence of continued tribal consultation, Commission staff would need to conduct additional outreach and consultation/coordination which could result in additional or modified CEQA mitigation measures to address tribal cultural resource impacts.

7. Tribal Cultural Resources Mitigation: MM 3.4-2b requires EBDA to retain a qualified professional archaeologist to assess the significance of any unanticipated discovery. It appears that this archaeologist would determine whether the resource was of Native American origin, and then contact potentially affected Tribes. Commission staff requests that MM 3.4-2b be modified to require both archaeological and Tribal monitors (if requested by a culturally affiliated Tribe) onsite to jointly evaluate any unanticipated discovery. In addition, MM 3.4-2b should be modified to provide for Native American monitors during all ground disturbing activities, consistent with the request from the Indian Canyon Mutsun Band of Costanoan Ohlone People.

Finally, Commission staff recommends that MM 3.4-2b require development of an Unanticipated Discoveries Evaluation and Treatment Plan prior to ground-disturbing Project activities, if further tribal consultation deems it necessary.

8. Title to Resources Within Commission Jurisdiction: The EIR should state that the title to all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that EBDA consult with Staff Attorney Jamie Garrett should any cultural resources on state lands be discovered during construction of the proposed Project.

Staff requests that the following statement be included in the Final EIR's Mitigation Monitoring Program: "The final disposition of archaeological, historical, and paleontological resources recovered on State land under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Geology, Soils, Mineral Resources, and Paleontological Resources

9. Soil Stability Hazards: The Project site's soils create potential liquefaction, expansion, and seismic shaking hazards for the brine transport pipeline. These hazards could occur to pipeline segments crossing waterbodies at a depth of up to 40 feet. However, the Draft EIR determines the hazards are less than significant because a "site-specific geotechnical and engineering report will be prepared to identify geologic hazards along the MSS brine transport

pipeline alignment, including hazards related to soil stability." Commission staff does not understand why a geotechnical and engineering report was not prepared prior to release of the Draft EIR. This is of particular concern because "many of the soils underlying the project site have a low soil-bearing strength, are frequently water saturated, have a high percentage of clay and organic materials, and are unstable," which may require Project design or construction changes to avoid or minimize the hazard.

While the Project would incorporate the design and engineering recommendations contained in the California Building Code and local codes, the geotechnical report could provide recommendations that would alter existing impacts or add new impacts that are not discussed in the Draft EIR. For example, if the pipeline crossings contain unstable soils, the HDD borehole activities may need to include metal pipeline casings or other protective devices as temporary construction methods or as permanent components to ensure the pipeline's long-term structural integrity. Commission staff recommends that the EIR include a geotechnical and engineering report (draft or final) or, in the alternative, identify possible actions that the report may recommend to address soil stability. Any identified actions should be analyzed for potential impacts and mitigated, if necessary and feasible.

Hazards and Hazardous Materials

10. Drilling Fluid – Aquatic Hazards: The bentonite used for HDD drilling is a naturally occurring, nontoxic, inert substance and is not identified as a potentially hazardous material. However, other chemicals included in drilling mud may be acutely hazardous to aquatic environments (e.g., DRILL-TERGE). Commission staff recommends the EIR discuss how MM 3.3-10 would mitigate a potentially toxic inadvertent release of drilling mud into a waterbody during pilot hole drilling or borehole reaming. Alternatively, the document could incorporate the requirement that the HDD drilling mud contain no chemicals that are acutely hazardous to aquatic environments, which would be confirmed by Material Safety Data Sheets.

Recreation

11. Water-based recreation: Please have the EIR discuss whether there is any water-based recreation that occurs in the waterbodies that have potential brine pipeline crossings. If so, the EIR should discuss and analyze whether any water-based recreation could be affected by HDD, microtunneling, or pipeline bridge installation activities and propose feasible mitigation.

Environmental Justice

12. Environmental justice is defined by California law as “the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code § 65040.12) This definition is consistent with the Public Trust Doctrine’s principle that management of trust lands is for the benefit of all people. The Commission adopted an updated [Environmental Justice Policy and Implementation Blueprint](#) in December 2018 to ensure that environmental justice is an essential consideration in the agency’s processes, decisions, and programs. The twelve goals outlined in the Policy reflect an urgent need to address the inequities of the past, so they do not continue. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations.

Although not legally required in a CEQA document, Commission staff suggests that EBDA include a section in the Final EIR describing any environmental justice community outreach and engagement undertaken and the results of such outreach. The California Office of Environmental Health Hazard Assessment developed the [CalEnviroScreen](#) mapping tool to assist agencies with locating census tracts near proposed projects and identifying the environmental burdens, should there be any, that disproportionately impact those communities. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the project planning process. Commission staff strongly recommends using the [BCDC Community Vulnerability Tool](#) and the climate change map developed by the Delta Stewardship Council, [Vulnerability to Climate Change in the Delta](#). Then, as applicable, EBDA should reach out through local community organizations, such as the [California Environmental Justice Alliance](#). In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures. Commission staff will review the environmental justice outreach and associated results as part of any future Commission action.

Thank you for the opportunity to comment on the EIR for the Project. As a responsible and trustee agency, the Commission will rely on the Final EIR to issue a new lease as specified above (see Section “Commission Jurisdiction and Public Trust Lands”). We request that you consider our comments before certifying the EIR.

Please send electronic copies of the Final EIR, Mitigation Monitoring Program, and Notice of Determination, approving resolution, CEQA Findings, and, if applicable, Statement of Overriding Considerations when they become available. Please note that federal and state laws require all government entities to improve accessibility of information technology and content by complying with established accessibility requirements. (29 U.S.C. § 794d; 36 C.F.R. § 1194.1 et seq.; Gov. Code, § 7405.) California State law prohibits State agencies from publishing on their websites content that does not comply with accessibility requirements. (Gov. Code, § 115467.) Therefore, any documents submitted to Commission staff during the processing of a lease or permit, including all CEQA documentation, must meet accessibility requirements for Commission staff to place the application on the Commission agenda.

Refer questions concerning environmental review to Alexandra Borack, Senior Environmental Scientist, at Alexandra.Borack@slc.ca.gov or (916) 574-2399. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at Jamie.Garrett@slc.ca.gov or (916) 574-0398. For questions concerning Commission leasing jurisdiction, please contact George Asimakopoulos, Public Land Management Specialist II, at George.Asimakopoulos@slc.ca.gov or (916) 574-0990.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Science,
Planning, and Management

cc: Office of Planning and Research
A. Kershen, Commission