

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

March 29, 2022

JENNIFER LUCCHESI, *Executive Officer*

(916) 574-1800

TTY CA Relay Service: 711 or Phone **800.735.2922**

from Voice Phone **800.735.2929**

or for Spanish **800.855.3000**

Contact Phone: (916) 574-1890

File Ref: SCH #2003012112

California Department of Water Resources
In-Delta Investments/North Delta Program
ATTN: Anitra Pawley
1146 9th Street
Sacramento, CA 95814

Governor's Office of Planning & Research

Mar 29 2022

STATE CLEARINGHOUSE

VIA ELECTRONIC MAIL ONLY (anitra.pawley@water.ca.gov)

Subject: Supplemental Environmental Impact Report (SEIR) for the McCormack-Williamson Tract Levee Modification and Habitat Restoration Project - Phase B, Sacramento and San Joaquin Counties

Dear Anitra Pawley:

The California State Lands Commission (Commission) staff has reviewed the Supplemental Environmental Impact Report (SEIR) for the Initial McCormack-Williamson Tract (MWT) Levee Modification and Habitat Restoration Project - Phase B (Project), which is being prepared by the Department of Water Resources (DWR), In-Delta Investments/North Delta Program. DWR, as the public agency proposing to carry out 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. 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.

The Phase B Project consists of levee modifications and habitat restoration. Levee modifications include lowering sections of the MWT East and Southwest Levees and a section of the Mokelumne River Levee and repairing a small section of the MWT West Levee. Habitat restoration consists of enhancing the landside levee slope and habitat for the MWT East and Southwest Levees and modifying landform to restore previous agriculture land to habitats—subtidal open water/shallow subtidal, tidal marsh, and riparian scrub/mixed riparian woodland/valley oak woodland habitats. Additionally, the Phase B Project includes decommissioning utilities on MWT, including abandoned gas lines and gas wells and relocating SMUD distribution lines off MWT. The section of the Mokelumne River where this project is proposed is identified as sovereign land subject to Commission jurisdiction. As such, DWR will be required to obtain a lease from the Commission for the construction, use, and maintenance of the proposed project improvements prior to starting any construction. Please contact Commission staff identified below for information on submitting a lease application.

The Commission provided comments for the North Delta Improvements Project Draft EIR in March 2008. That comment letter is attached to this letter.

Project Description

DWR proposes to design, permit, and implement improvements described in the SEIR to implement flood control improvements in a manner that benefits aquatic and terrestrial habitats, species, and ecological processes, and incorporates landscape scale restoration of Delta habitat. DWR's objectives as follows:

Activities planned for Phased B with changes and/or refinements covered in the Supplemental EIR:

- Degrade MWT East Levee to Function as a Weir
- Breach Mokelumne River Levee
- Completely Degrade MWT Southwest Levee to Match Elevation of Island Floor
- Enhance Landside Levee Slope and Habitat (Implemented in Phase A and planned for Phase B at new locations)
- Modify Landform and Restore Agricultural Land to Habitat

New Phase B activities covered in the Supplemental EIR:

- Repair MWT West Levee
- Relocate and Decommission Utilities
- Incorporate Vehicular Turnaround Area
- Import Borrow Material from Other Sources (Optional for Phase B)
- Manage Water in the Northeast Corner of MWT (Optional for Phase B)

From the Project Description, Commission staff understands that the Project would include the following components that are identified to affect State sovereign land from the document:

- Project Component 1. Breach Mokelumne River Levee and improve riparian habitat along the Eastern levee of the MWT parcel.

Environmental Review

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

Cultural Resources

1. Title to Resources Within Commission Jurisdiction: The SEIR should state that the title to all abandoned shipwrecks, 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 DWR 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 SEIR's Mitigation Monitoring and Reporting 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."

Thank you for the opportunity to comment on the SEIR for the Project. As a responsible agency, the Commission will rely on the Certified SEIR for issuance of a new lease as specified above (see Section "Commission Jurisdiction and Public Trust Lands"). We request that you consider our comments before adopting the SEIR.

Please send electronic copies of the Certified SEIR, Mitigation Monitoring and Reporting Program, Findings, Notice of Determination, and approving resolution 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 Christopher Huitt, Senior Environmental Scientist, at christopher.huitt@slc.ca.gov or (916) 574-2080. 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 Ninette Lee, Public Land Manager, at ninette.lee@slc.ca.gov or (916) 574-1869.

Sincerely,

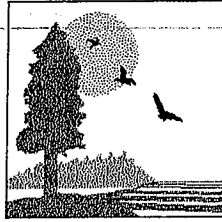


Nicole Dobroski, Chief
Division of Environmental Planning
and Management

Attachment

cc: Office of Planning and Research
C. Huitt, Commission
J. Garrett, Commission
N. Lee, Commission

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



PAUL D. THAYER, Executive Officer
(916) 574-1800 FAX (916) 574-1810
Relay Service From TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1814
Contact FAX: (916) 574-1885

March 28, 2008

File Ref: SCH# 2003012112

Gwen Knittweis
Department of Water Resources
901 P Street
Sacramento, CA 95814

Subject: North Delta Improvements Project

Dear Ms Knittweis:

The State acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all the people of the State for statewide Public Trust purposes which include waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. The landward boundaries of the State's sovereign interests in areas that are subject to tidal action are generally based upon the ordinary high water marks of these waterways as they last naturally existed. In non-tidal navigable waterways, the State holds a fee ownership in the bed of the waterway between the two ordinary low water marks as they last naturally existed. The entire non-tidal navigable waterway between the ordinary high water marks is subject to the Public Trust Easement. Both the easement and fee-owned lands are under the jurisdiction of the State Lands Commission. The locations of the ordinary high and low water marks are often related to the last natural conditions of the river, and may not be apparent from a present day site inspection.

To the extent the proposed North Delta Flood Control and Ecosystem Restoration Project involves State-owned sovereign lands, a lease will be required. Staff of the Commission will need to review each of the proposed sites prior to making that determination a lease is required. If you have any questions, please contact Diane Jones, Public Land Manager, at 916-574-1843, to discuss the Commission's leasing requirements.

Environmental Planning and Management Comments:

The State Lands Commission recommends that any of the proposed mitigation and project construction activities consider timing of the proposed work to account for state and federally listed endangered species. All arrangements with pertinent regulatory agencies should coincide with specific protection policies regarding incidental

take and avoidance measures. Consideration should include, but not limited to, seasonality of migratory or nesting species within the footprint of the project (i.e. Swainson's hawks, Salmonids, etc.). Any construction activities along the water-side bank of restoration or Flood protection improvements shall consider water quality issues affecting clarity and chemical reactions within the waters and make all the necessary arrangements to reduce or mitigate for these concerns.

In addition, greenhouse gas emissions information consistent with the California Global Warming Solutions Act (AB 32) should be included. This would include a determination of the greenhouse gases that will be emitted as a result of construction and ongoing operations and maintenance, a determination of the significance of the impact, and mitigation measures to reduce that impact.

If you have any questions with the environmental review, please contact Christopher Huitt, Staff Environmental Scientist, at 916-574-1938, to discuss these comments or questions.

Sincerely,



Marina R. Brand, Assistant Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
State Clearinghouse

Diane Jones, CSLC
Christopher Huitt, CSLC