

DEPARTMENT OF WATER RESOURCES

DIVISION OF ENVIRONMENTAL SERVICES
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**NOTICE OF PREPARATION****ENVIRONMENTAL IMPACT REPORT AND ENVIRONMENTAL IMPACT STATEMENT
FOR THE BAY DELTA CONSERVATION PLAN**

March 17, 2008

INTRODUCTION

Pursuant to the California Environmental Quality Act (CEQA) of 1970, as amended, the California Department of Water Resources (Department) is initiating preparation of a joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Sacramento-San Joaquin Bay Delta Conservation Plan (BDCP), 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 BDCP. The Department will serve as the State lead agency. The California Department of Fish and Game (CDFG) will be a responsible and trustee agency under CEQA. The Department will consult and fully cooperate with other State responsible and trustee agencies, such as the State Water Resources Control Board (SWRCB), as well as State Water Project contractors and certain federal Central Valley Project water contractors, as it prepares this document.

Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Bureau of Reclamation (Reclamation), the U. S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Services (NMFS) may serve as co-lead federal agencies. On January 24, 2008, the FWS and NMFS published a Notice of Intent (NOI) in the Federal Register (Vol. 73, No. 16, FR 4178-4180, January 24, 2008) to conduct public scoping and to prepare an EIR/EIS for the BDCP. To date, the Federal agencies have not decided which Federal agency will serve as the administrative lead.

The purpose of the scoping process is to solicit early input from the public and responsible, cooperating and trustee agencies regarding the development of reasonable alternatives and potential environmental impacts to be addressed in the EIR/EIS for the BDCP. The planning effort for the BDCP is in the preliminary stages of development, and further information regarding the various features of the BDCP may be provided to the public in subsequent public notices and/or in scoping meetings. The BDCP Steering Committee will continue work on the overall approach to the BDCP during 2008. These proceedings can be followed on the California Resources Agency website:

<http://resources.ca.gov/bdcp/>.

The BDCP is being developed through a collaboration of State, federal and local water agencies, and Mirant Delta LLC (Mirant Delta), owners of an electric power generating facility located in West Pittsburg, California, under: (1) Section 10(a)(1)(B) of FESA, and (2) the Natural Community Conservation Planning Act (NCCPA), California Fish and Game Code, Section 2800 et. seq. and/or Fish and Game Code Section 2081 of the California Endangered Species Act (CESA). The BDCP process is intended to provide the basis for the Department, State and federal water contractors, and Mirant Delta to apply for incidental take permits (ITPs) pursuant to Section 10 of FESA and California Fish and Game Code Section 2835 and/or 2081, and the BDCP is intended to provide Reclamation the ability to obtain Biological Opinions and incidental take statements (ITS) pursuant to Section 7 of FESA. These incidental take authorizations would allow the incidental take of threatened and endangered species resulting from covered activities and conservation measures that will be identified through the planning process, including those associated with water operations of the California State Water Project (SWP), as operated by the Department and the federal Central Valley Project (CVP), as operated by Reclamation, as well as operations of certain Mirant Delta power plants. Ultimately, the BDCP is intended to secure authorizations that would allow the conservation of covered species, the restoration and protection of water supply reliability, protection of certain drinking water quality parameters, and the restoration of ecosystem health to proceed within a stable regulatory framework.

The EIR/EIS will analyze the impacts of alternative conservation actions including improved water conveyance infrastructure in the Delta (e.g. dual or isolated conveyance systems). New dual or isolated conveyance systems would require a canal from the Sacramento River to the SWP Harvey O. Banks and the CVP C.W. Jones pumping plants near Tracy. The EIR/EIS will also analyze the impacts of alternative water operations and management actions to achieve conservation and water supply reliability goals.

BACKGROUND INFORMATION

In August of 2000, a broad array of State and federal agencies, including the Department, adopted the CALFED Program as a 30-year planning roadmap for restoring the Delta's ecology and improving water management. Since 2000, further studies and information has become available that can change our thinking about the Delta and has caused us to reexamine the conveyance component of the August 2000 CALFED decision. Pelagic organisms, including Delta smelt, have experienced a precipitous decline in recent years. Federal court litigation has resulted in the potential for temporary but substantial cuts in water exports. New research by the Department indicates a higher degree of risk to Delta levees from earthquakes than was previously understood, revealing a heightened risk to the State's water supplies that travel through

Delta channels. There is also growing consensus among scientific experts suggesting that climate change will cause considerable sea level rise that would adversely affect levees, water quality, and conveyance of water supplies through the Delta.

On September 28, 2006, Governor Arnold Schwarzenegger issued Executive Order 2-17-06, initiating the Delta Vision process to develop “a durable vision for sustainable management of the Delta.” In December 2007, the Delta Vision process resulted in a final set of recommendations by a Blue Ribbon Task Force of experts to a committee of State Agency Directors to chart a new course for the Delta. Among the recommendations is that the State should consider a different approach to conveying water to areas south of the Delta than the through-Delta alternative the State approved as part of the CALFED Record of Decision. On February 28, 2008, Governor Schwarzenegger, in a letter to State Senators Perata, Machado and Steinberg, stated his intention to direct the Department to proceed with the CEQA/NEPA process to evaluate at least four alternative Delta conveyance strategies in coordination with the BDCP efforts to better protect at-risk fish species, within the context of broad habitat conservation principles recognizing the importance of water supply reliability and other issues like seismic and flood durability, ecosystem health and resilience, water quality, schedule, cost and options, as suggested by the Delta Vision Task Force.

DESCRIPTION OF THE BDCP

The Department and Reclamation, along with the Metropolitan Water District of Southern California (MWD), the Kern County Water Agency (KCWA), the Santa Clara Valley Water District (SCVWD), Alameda County Flood Control and Water Conservation District, Zone 7 Water Agency (Zone 7), the San Luis and Delta Mendota Water Authority (SLDMWA), the Westlands Water District (WWD), and Mirant Delta (known collectively as the “Potentially Regulated Entities” or PREs) are currently preparing the BDCP for existing and proposed covered activities within the Statutory Delta.

The BDCP process is intended to meet the following regulatory authorizations:

1. The requirements of Section 10(a)(1)(B) of FESA for the non-federal PREs and result in the issuance of ITPs from FWS and NMFS;
2. The requirements of an ITP under the California fish and wildlife protection laws, either pursuant to Section 2835 or Section 2081, resulting in take authority under the Fish and Game Code; and
3. The requirements of the Section 7 consultation process under the FESA, resulting in the issuance of Biological Opinions, and ITSSs, from the NMFS and FWS on specific activities of certain members of the PREs.

Although the BDCP planning efforts are in the preliminary stages, the collective goals of the PREs will provide the basis for the project objectives under CEQA and the purpose and need statement under NEPA. Formal preparation of a draft EIR/EIS will commence when the BDCP has been further developed. The BDCP process is also intended to complement and support the actions identified in the Governor's Delta Vision Blue Ribbon Task Force process.

The BDCP is being prepared with the participation of the FWS, NMFS, California Resources Agency, CDFG, the State Water Resources Control Board (SWRCB), the PREs, and various stakeholders, including The Nature Conservancy, Environmental Defense, Defenders of Wildlife, the California Farm Bureau, the Natural Heritage Institute, American Rivers, Contra Costa Water District, and The Bay Institute. These organizations are members of the Steering Committee that is helping to guide preparation of the BDCP. The regulatory agencies, FWS, NMFS, CDFG and SWRCB are participating in the Steering Committee to provide technical input and guidance in support of the Steering Committee's efforts to complete the BDCP.

The participants are undertaking these planning efforts pursuant to: (1) the Planning Agreement that was signed in October 2006 and amended in April 2007 to guide the development of the BDCP process; and (2) the Points of Agreement for Continuing into the Planning Process, dated November 2007 (see California Resources Agency website, <http://resources.ca.gov/bdcp/> for these agreements). The Points of Agreement document provides a summary of the BDCP planning process to date, along with future direction and procedures. The website provides access to documentation of the planning process, and a schedule of past and future planning activities.

The BDCP is being developed to set out near-term and long-term approaches to meet the objectives of providing for the conservation of covered species and their habitats, addressing the requirements of the federal and State endangered species laws, and improving water supply reliability. Specifically, the BDCP will serve as a habitat conservation plan that satisfies the requirements of Section 10 of the FESA, and provide the basis for consultations between Reclamation, FWS and NMFS under Section 7. The BDCP will also provide the basis for compliance with State law under the NCCPA and/or CESA. Successful completion of the BDCP approval process will result in long-term take authorizations for covered activities, including certain water operations of the SWP and CVP, and operations of certain Mirant Delta power plants. The BDCP is also intended to support durable assurances regarding the long-term obligations of most of the PREs.

The BDCP will achieve these objectives through a number of anticipated actions: habitat restoration and enhancement to increase the quality and quantity of habitat in the Delta; other conservation actions to help address a number of stressors on covered

species; conveyance facilities to enhance operational flexibility and water supply reliability while providing greater opportunities for habitat improvements and fishery conservation; water operations and management actions to achieve conservation and water supply goals; and a comprehensive monitoring, assessment and adaptive management program guided by independent scientific input. Additional core purposes of the BDCP are to provide for the conservation of covered species within the planning area; to protect and restore certain aquatic, riparian and associated terrestrial natural communities that support these covered species; and to provide for water supplies and ecosystem health within a stable regulatory framework. Other applicants, co-applicants, or beneficiaries of an ITP, referred to as PREs, may be identified during the planning process. The EIR/EIS will evaluate the effects of implementing the BDCP, conveyance alternatives, power line alignments, other nonstructural alternatives, develop appropriate mitigation measures and describe the permits necessary for BDCP implementation.

The BDCP will likely consist of several major elements, including new capital improvements to the water supply conveyance system, a restoration program for important habitats within and adjacent to the Delta in order to improve the ecological productivity and sustainability of the Delta, and monitoring and adaptive management for the restoration program. The plan will also likely include operational improvements for the water supply system in the near-term and for the long-term once any capital improvements have been completed and are operational.

Covered Activities

The BDCP covered activities may include, but are not limited to, existing or new activities related to:

- Existing Delta conveyance elements and operations of the SWP and CVP;
- New Delta conveyance facilities;
- Operational activities of the SWP and CVP generally described in the BDCP November 2007 Points of Agreement;
- Emergency preparedness of the SWP and CVP in the Delta;
- Operational activities in the Delta related to water transfers involving water contractors or to serve environmental programs;
- Maintenance of the SWP, CVP, and other PREs' facilities in the Delta;
- Facility improvements of the SWP and CVP within the Statutory Delta (California Water Code Section 12220);
- Ongoing operation of and recurrent and future projects related to other Delta water users, as defined by the Planning Agreement;
- Projects designed to improve Delta salinity conditions;

- Existing power generation operations of the Mirant Delta power plants
- Conservation measures included in the BDCP, including, but not limited to, fishery related habitat restoration projects, adaptive management, and monitoring activities in the Delta; and
- New power lines and rights of way.

Covered Species

The covered species that are the initial focus of the BDCP include certain aquatic species such as:

- Central Valley steelhead *Oncorhynchus mykiss*;
- Central Valley Chinook salmon *Oncorhynchus tshawytscha* (spring-run and fall/late fall-runs);
- Sacramento River Chinook salmon *Oncorhynchus tshawytscha* (winter-run);
- Delta smelt *Hypomesus transpacificus*;
- Green sturgeon *Acipenser medirostris*;
- White sturgeon *Acipenser transmontanus*;
- Splittail *Pogonichthys macrolepidotus*; and
- Longfin smelt *Spirinchus thaleichthys*.

Other species that will be considered for inclusion in the BDCP include, but may not be limited to:

- Swainson's hawk *Buteo swainsoni*;
- Bank swallow *Riparia riparia*;
- Giant garter snake *Thamnophis gigas*; and
- Valley elderberry longhorn beetle *Desmocerus californicus dimorphus*.

This list identifies the species that will be evaluated for inclusion in the BDCP as proposed covered species; however, the list may change as the planning process progresses. The participants anticipate that species may be added or removed from the list once more is learned about the nature of the covered activities and the impact of covered activities on native species within the planning area.

BDCP Planning Goals

The BDCP includes goals and objectives related to the management of covered activities and the protection of covered species and their habitats. As described in the Planning Agreement, the planning goals include:

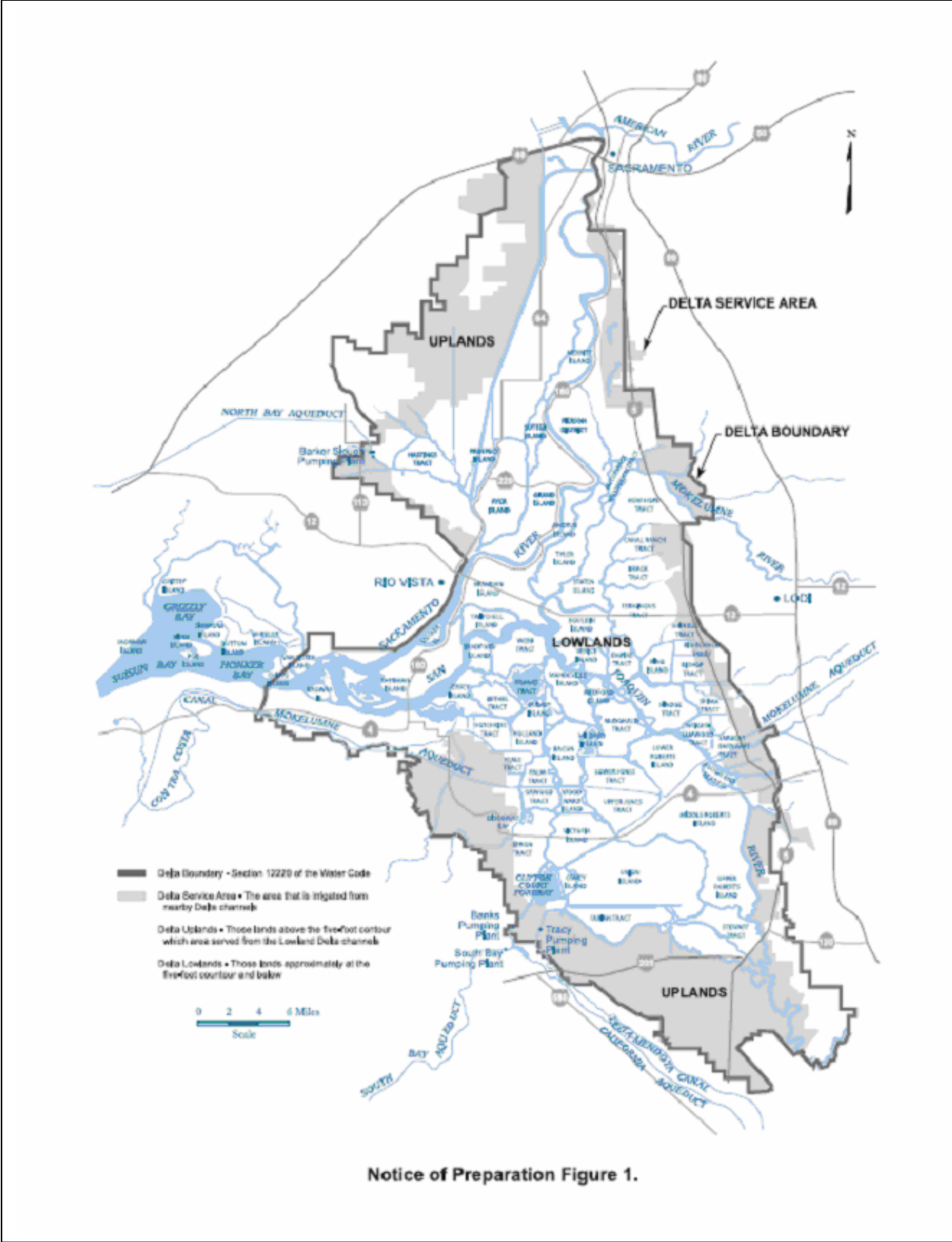
1. Provide for the conservation and management of covered species within the planning area;
2. Preserve, restore, and enhance aquatic, riparian, and associated terrestrial natural communities and ecosystems that support covered species within the planning area through conservation partnerships;
3. Allow for projects that restore and protect water supply, water quality, ecosystem, and ecosystem health to proceed within a stable regulatory framework;
4. Provide a means to implement covered activities in a manner that complies with applicable State and federal fish and wildlife protection laws, including the NCCPA or CESA, FESA, and other environmental laws, including CEQA and NEPA;
5. Provide a basis for permits necessary to lawfully take covered species;
6. Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for covered activities within the planning area;
7. Provide a less costly, more efficient project review process which results in greater conservation values than project-by-project, species-by-species review, and;
8. Provide clear expectations and regulatory assurances regarding covered activities occurring within the planning area.

PROJECT AREA

The planning area for the BDCP will consist of the aquatic ecosystems and natural communities, and potentially adjacent riparian and floodplain natural communities, within the Statutory Delta (Figure 1). The Statutory Delta includes parts of Yolo, Solano, Contra Costa, San Joaquin, and Sacramento counties. However, it may be necessary for the BDCP to include conservation actions outside of the Statutory Delta that advance the goals and objectives of the BDCP within the Delta, including as appropriate, conservation actions in the Suisun Marsh, Suisun Bay, and areas upstream of the Delta. Where appropriate, conservation actions outside the Statutory Delta would be implemented pursuant to cooperative agreements or similar mechanisms with local agencies, interested non-governmental organizations, landowners, and others as appropriate.

POTENTIAL ENVIRONMENTAL EFFECTS

The EIR/EIS for the BDCP will likely evaluate a range of measures to achieve the conservation goals, including new capital improvements to the water supply conveyance system both through and around the Delta; a significant restoration and enhancement program for important habitats within and adjacent to the Delta designed



to improve the long-term ecological productivity and sustainability of the Delta; and a monitoring and adaptive management program. The EIR/EIS will also likely evaluate a range of operational improvements for the water supply system in the near-term and for the long-term once the capital improvements have been completed and are operational. The lead agencies will assist with the design and implementation of new studies and analyses to support an evaluation of potential impacts of proposed actions and conservation measures to be undertaken as part of the BDCP and the development and evaluation of appropriate alternatives. The EIR/EIS will include an analysis of the effects of the proposed plan and other alternatives, including potential impacts to terrestrial resources that may or may not be addressed as covered species by the BDCP.

The EIR/EIS will analyze the reasonably foreseeable direct, indirect and cumulative effects (e.g. climate change, including sea level rise) of the BDCP (including habitat conservation measures and water conveyance facilities) and a reasonable range of alternatives on a wide range of resources, including but not limited to:

- BDCP covered species
- Other Federal and State Listed Species
- Aquatic Biological Resources
- Wetlands and Terrestrial Habitat
- Surface Hydrology including Water Rights
- Groundwater Hydrology
- Geology and Soils
- Water Quality
- Seismic Stability
- Aesthetics
- Air Quality, including Greenhouse Gas Emissions
- Land Use (e.g. Urban, Agricultural and Industrial Uses)
- Historic and Cultural Resources
- Environmental Health and Safety
- Public Services and Utilities
- Energy and Natural Resources
- Recreation
- Population/Housing
- Transportation/Traffic

Comments on the NOP, comments from the scoping meetings, and ensuing analyses may identify additional environmental resources to be evaluated. At present, sufficient information is not available to enable the Department to determine the detailed scope and significance of the effects related to the BDCP. An Initial Study is not included in this NOP.

SCOPING MEETINGS

The schedule for this EIR/EIS depends upon the development of the draft BDCP, which is expected to occur by early 2009. The federal Notice of Intent (NOI) for the BDCP was published in the federal Register on January 24, 2008. Additional notices will be published as more information regarding the Federal Lead Agencies and Cooperating Agencies are decided and additional details become available. Public Scoping meetings for this NOP are scheduled to take place at the following times and locations:

- April 28, 2008 at 10:00 am California Resources Building Auditorium
1416 Ninth Street
Sacramento, CA 95816
- April 29, 2008 at 5:00 pm Chico Masonic Family Center
1110 West East Avenue
Chico, CA 95926
- April 30, 2008 at 6:00 pm Clarksburg Middle School
52870 Netherlands
Clarksburg, CA 95612
- May 5, 2008 at 6:00 pm San Joaquin Farm Bureau
3290 N. Ad Art Road
Stockton, CA 95215
- May 6, 2008 at 6:00 pm Santa Clara Valley Water District
5700 Almaden Expressway
San Jose, CA 95118
- May 7, 2008 at 6:00 pm City of Los Banos
Public Services Department Main Office
Senior Center-Miller & Lux Building
830 6th Street
Los Banos, CA 93635
- May 8, 2008 at 1:00 pm Junipero Serra State Building
320 West Fourth, Carmel Room 225
Los Angeles, CA 90013

Please note that the format of the meetings will include a 30-minute time period where the public can informally view several informational posters and discuss certain issues pertaining to the project with staff. The formal presentation and public comment will begin after these discussions. Anyone interested in more information concerning the EIR/EIS process, or anyone who has information concerning the study or suggestions as to significant issues, should contact Delores Brown as provided below.

WRITTEN COMMENTS

This notice is being furnished to obtain suggestions and information from agencies and the public on the scope of issues and alternatives to be addressed in the EIR/EIS, and to identify important issues raised by the public related to the development and implementation of the BDCP.

Written comments from interested parties are invited to ensure that the full range of issues related to the development of the BDCP and issuance of the ITPs are identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public. Written comments on this part of the Scoping process will be accepted until **May 30, 2008**.

In accordance with Title 14, section 15082, subdivision (b)(1)(B) of the California Code of Regulations,, responsible and trustee agencies should indicate their respective level of responsibility for the project to the Lead Agency (Cal. Code Regs., title 14, div.6, ch. 3 (CEQA Guidelines), section 15082, subdivision (b)(1) (B)). Additionally, section 15082, subdivision (c)(1) and section 15206, subdivision (b)(4)(E), state that projects of statewide significance should provide notice to cities/counties within which the project would be located. The Guidelines, further provide that within 30 days after receiving the Notice of Preparation, each responsible and trustee agency shall provide the Lead Agency with specific detail about the scope, significant environmental issues, reasonable alternatives, and mitigation measures related to the Responsible Agency's area of statutory responsibility that will need to be explored in the EIR portion of the EIR/EIS (CEQA Guidelines, section 15082, subdivision (b)(1)(A)).

The Department's practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their name and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosures would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable

circumstances, this information will be released. The Department will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Written comments on the scope of the EIR/EIS should be sent to Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P. O. Box 942836, Sacramento, CA 94236 or by email at delores@water.ca.gov.



Barbara McDonnell
Chief, Division of Environmental Services
Department of Water Resources

Date March 17, 2008