

October 16, 1996

Ms. Wendy Halverson Martin
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, California 95814

Dear Wendy:

Thank you for the opportunity to review the draft Permit Handbook for the CALFED program. It reflects a tremendous amount of effort to include all relevant information. We do have several comments which we hope will clarify the role of the State Lands Commission in the Bay-Delta area. We have organized these comments according to page numbers in the draft Handbook.

Page 1-3: The matrix reflecting Phase II Compliance Requirements lists several legislative and executive acts and policies, then includes the State Lands Commission, the only agency on the list. As we understand this chart, it attempts to identify the policies, laws, and regulations which could impact project implementation. It therefore seems more appropriate to list the Public Trust Doctrine, rather than the State Lands Commission, in the first column. We suggest that the following language be included in the second column:

Coordination with the State Lands Commission ("SLC") should be pursued at the early stages of project planning to determine whether mitigations are necessary to protect Public Trust values, and whether SLC authorization is required for project implementation.

We note also that because water law may well impact implementation projects, it might be helpful to include reference to laws and policies regarding water rights in the matrix. Pursuant to the California Supreme Court decision regarding Mono Lake and other recent court decisions, water rights deliberations by the State Water Resources Control Board are also subject to the Public Trust doctrine.

Page 1-12: Please show in Column 5 (Terrestrial Habitat) and Column 8 (Control Introduced Species) that the SLC *may* have compliance requirements. Also, in Columns 10 -

13 (Anadromous Fish Habitat, Fish Passage, Riparian Habitat, and Wetland Habitat), the chart indicates the SLC most likely will have compliance requirements; please amend this to state that the SLC *may* have such requirements.

Page 1-13: Please eliminate indications that the SLC will or may have compliance requirements in the following columns: 14 (Delta Inflow/Outflow Export); 15 (Modify Diversion Timing Patterns); 17 (Long-term Water Supplies); 20 (Improve Fish Salvage Operations); 23 (Fish Harvest); 25 (Water Conservation); and 26 (Water Reclamation). Please indicate that the SLC *may* have compliance requirements under Columns 16 (Increase Rates of Capacity); 18 (Install and Improve Fish Screens); and 24 (Desalinization).

Page 1-14: Please indicate under Column 31 (New or Expanded Offstream Storage) that the SLC *may* have compliance requirements, rather than most likely will have such requirements. Also, under Column 34 (Construction and Improvement of Conveyance Facilities), please indicate that the SLC most likely will have compliance requirements.

Page 1-15: Under Columns 44 (Urban/Industrial Drainage and Wastewater Discharge) and 45 (Dredged Material Management), please indicate that the SLC most likely will have compliance requirements.

Page 2-10 - 2-11:

As we understand this section, it is intended to give an overview of various agency roles relative to the Bay Delta Program; later sections deal with agency roles at the project level. The description of the SLC's jurisdiction and responsibilities is more concisely drafted in Section 3 (Page 3-66) of the draft than it is here in Section 2. It might be more helpful to the reader to be given the more detailed information earlier in the document than later. However, if you wish to describe the SLC in more summary fashion in Section 2, we request that you amend the first four paragraphs relating to the SLC to read as follows.

The State Lands Commission (SLC) is charged with administration of certain State owned lands: sovereign lands, which lie in the beds of tidal and navigable water bodies within the State's boundaries; and school lands, which were granted to the State by the federal government to support the public schools. Within the Bay-Delta area, lands under SLC jurisdiction are generally limited to sovereign lands.

California received title to its sovereign lands upon its admission to the United States, to be held for the benefit of all of its people, subject to the Public Trust for water related commerce, navigation, fisheries, recreation, and open space.

The boundaries of the State's sovereign lands are generally based upon the extent and location of the subject waterways as they last naturally existed, prior to artificial accretions. On tidal waterways, the State owns fee title to the bed of the river below the last natural ordinary high water mark. In some cases, particularly in the Bay area, during the 1800's, the State sold some of its tidelands, lands lying between the ordinary high and low water marks. In these cases, the State retains a Public Trust easement over the sold tidelands. On non-tidal navigable waterways, the State holds fee title to the bed below the last natural ordinary low water mark, and holds a Public Trust easement over privately owned lands between the last natural ordinary low and ordinary high water marks. Very often, the precise location of these boundaries is uncertain. Boundaries may be established through agreement or court judgment.

The State can no longer sell its sovereign lands, but the SLC may lease the sovereign fee lands for various Public Trust purposes. A lease will be required for any projects involving the construction of structures on the sovereign fee lands, and for some activities which do not include such improvements. SLC leases and other agreements may be designed to encompass activities or projects that will occur over an extended period or geographic scope, provided such activities meet specific criteria.

Private owners may use their lands which remain subject to the State's Public Trust easement for any purpose not inconsistent with Public Trust needs in the area. The SLC may become involved in assessing Public Trust needs in evaluating projects proposed to be located within the easement area.

Page 2-11: The last paragraph on this page indicates that CALFED's selection of the preferred alternative during Phase II is not an activity affecting the Public Trust. We are uncertain as to the meaning of this statement. While it may be true that planning in itself will not affect the Public Trust, the existence of the Public Trust will certainly impact the propriety of various land uses which may be considered in the planning process, and may be reason to favor one alternative over another. This concept is acknowledged toward the end of this paragraph. It is further true, as stated in the second sentence of the paragraph, that implementation of projects on State owned Public Trust lands will often require prior approval by the SLC.

Page 3-66: We suggest that the fourth sentence under "Jurisdiction and Duties" be eliminated. While the statement is true, most, if not all, of the SLC's jurisdiction in the Bay-Delta Program area relates to sovereign lands. The reference to swamp and overflowed lands and school lands may be confusing and does not add anything to this discussion.

The next sentence, beginning “SLC’s Land Management Division. . .” may also benefit from clarification. We suggest the following.

SLC’s Land Management Division administers the surface uses of State owned sovereign lands under the SLC’s jurisdiction. Examples of activities which would require SLC authorization include, but are not limited to, implementation of habitat management plans, installation of structures, sand and gravel extraction, and dredging or disposal of dredged materials on the State’s lands.

Page 3-66: The paragraph entitled “Land Use Lease” seems to be repetitive of the information cited at the end of the previous paragraph and revised immediately above. We suggest you either eliminate this paragraph or revise it as follows.

As indicated above, SLC authorization is required for the implementation of habitat management plans, construction of improvements, sand and gravel extraction, and dredging or disposal of dredged material, and other similar activities on State owned lands under the SLC’s jurisdiction. Such authorization is most often in the form of a SLC lease; occasionally, the SLC may enter into other types of agreements which authorize specific uses. Implementation of specific CALFED projects may be subject to SLC leasing requirements.

Page 3-66: The paragraph entitled “How to Apply for a Permit” should be revised as follows. Note that the following language can be applied equally to dredging and sand and gravel extraction lease applications, thus eliminating the need to include a separate section to cover these activities.

Project proponents who wish to undertake activities on State owned lands under the SLC’s jurisdiction should consult with the SLC early in their planning process to determine whether SLC authorization will be necessary. If it is, the proponents will be provided an application form and guidance on how to complete and submit the form. The application will ask for information including, but no limited to, the following:

- ▶ A description of the State owned land upon which the project is to be located, where possible by reference to a legal description, assessor’s parcel number, deed, or map;
- ▶ A project description, including proposed use, the nature and extent of proposed improvements, methods of construction, anticipated project life, and any relevant time constraints;
- ▶ Evidence of the proponent’s entitlement to use adjoining uplands to access the State owned parcel; and

- ▶ Environmental information, including, but not limited to, a description of the environmental setting, and potential environmental impacts of the proposed project.

The applicant will also be requested to submit a \$25.00 non-refundable filing fee, and will be asked to reimburse the SLC for its costs in processing the application. Application processing costs generally range from approximately \$400 for simple leases involving small parcels and projects without any possibility of environmental impact, to several thousands of dollars for complex agreements which resolve title issues and authorize large projects with significant environmental impacts.

SLC staff will review project applications relative to several standards, including, but not limited to, the following:

- ▶ Whether the proposed project is consistent with the trusts under which the SLC holds the lands (in the case of sovereign lands, the Public Trust for water related commerce, navigation, fisheries, recreation and open space);
- ▶ Whether the proposed land use may have a significant effect on the environment;
- ▶ Whether the proposed use will be subject to rental requirements, and if so, whether the State is assured a fair return for the use of its lands; and
- ▶ Whether authorization of the proposed project is in the best interests of the State.

After staff review of the project application, a lease or other authorizing agreement is prepared and presented to the SLC for formal approval. The application process may take as little as two to three months for simple transactions, or as much as a year or more for complex projects.

Page 3-67: Please amend the paragraph entitled "Where to Apply for a Permit" as follows.

Applications may be obtained from the State Lands Commission, Land Management Division at the following address:

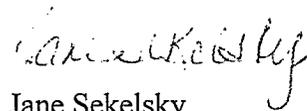
100 Howe Avenue, Suite 100 South
Sacramento, California 95825

Telephone: (916) 574-1940
FAX: (916) 574-1945

Finally, the chart you have included at Page 3-68 is not fully reflective of our current application process, and thus may not provide useful information to potential applicants. Please let us know if you wish to include such a chart in the Permit Handbook, and we will attempt to update it.

Again, we thank you for the opportunity to comment, and appreciate your including our revisions to the text of the draft Permit Handbook. Please feel free to call me at (916) 574-1940, Diana Jacobs at (916) 574-1877, or Diane Jones at (916) 574-1843, if you have any questions, or if we can be of any further assistance.

Very truly yours,



Jane Sekelsky
Chief, Land Management Division

cc: Diana Jacobs
Diane Jones

bcc: Bob Hight
Bill Morrison
Bob Lynch
Dwight Sanders
Mary Griggs