STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

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May 28, 2008

File Ref: SCH# 2008052034

Deborah Condon
Department of Water Resources
Division of Flood Management
2825 Watt Avenue
Sacramento, CA 95821

Subject: The Erosion Repairs of 13 Bank Protection Sites, 2008 and 2009, Sacramento River Bank Protection Project

Dear ~~Ms. Condon~~ Deborah:

The purpose of this letter is to provide you with comments on the jointly-prepared Federal/State Environmental Assessment (EA), Initial Study (IS), and Mitigated Negative Declaration (MND) for the Erosion Repairs of 13 Bank Protection Sites, 2008 and 2009, Sacramento River Bank Protection Project. For this project, the California State Lands Commission (Commission) is both a trustee agency and a responsible agency under the California Environmental Quality Act (CEQA).

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.

The proposed project involves RM 16.6 in Steamboat Slough; RM 21.8 in Cache Slough, and RM's 49.7, 53.5, and 177.8 in the Sacramento River. Each of these sites will be located on State-owned sovereign lands under the jurisdiction of the Commission. An application for these sites has been received from the Central Valley

Flood Protection Board and is scheduled to be considered for approval at the Commission's June 24, 2008, meeting through an Amendment to General Lease – Public Agency Use, PRC 7203.9.

The additional sites in the Sacramento River at RM's 16.8, 42.7, 55.2, and 77.2 are in the Commission's jurisdiction and will require a lease from the Commission. The sites in the Lower American River at LAR's 0.3 and 2.8, as well as F 28.5 in the Feather River may require a lease from the Commission. Therefore, the Department of Water Resources should submit an application for all of the aforementioned sites.

The 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 be limited to, seasonality of migratory or nesting species within the footprint of the project (e.g., Swainson's hawk, salmonids, etc.). Any construction activities along the water-side bank or flood protection improvements should 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 February 2008, longfin smelt (*Spirinchus thaleichthys)* was declared a candidate species for listing under the California Endangered Species Act (CESA), as defined by section 2068 of the Fish and Game Code (FGC). FGC sections 2080 and 2085 prohibit the take of candidate species, unless: (1) the take is authorized in a regulation adopted by the Fish and Game Commission pursuant to FGC Section 2084, or (2) the Department of Fish and Game authorizes the take through incidental take permits issued on a project-by-project basis pursuant to FGC 2081.

The Errata Report for the Draft EA/IS/MND for the project removes many sections of the document that pertain to longfin smelt as a sensitive species. While the species is not yet a candidate under the Federal Endangered Species Act, and therefore, not subject to Section 7 consultation nor designations of Essential Fish Habitat, this species and mitigations for impacts to the species need to be considered under CESA.

Incidental take regulations for longfin smelt were promulgated by the Fish and Game Commission in February 2008. These regulations allow individuals and entities engaged in any lawful activity listed in the regulations to take longfin smelt without obtaining a project-level take permit pursuant to FGC section 2081. The activities covered under the 2084 regulations include research and monitoring, dredging and extraction of sand or gravel resources, or water diversion (local, State and Federal Water Projects). The Sacramento River Bank Protection Project was not included in the CESA incidental take regulations pursuant to FGC section 2084, and therefore, will need to obtain an incidental take permit pursuant to FGC section 2081 for this project.

In addition, greenhouse gas emissions information consistent with the California Global Warming Solutions Act (AB 32 2006) 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. The URBEMIS program utilized by the Sacramento Air Quality Management District (SAQMD) models the detailed amounts of emissions during the various construction phases to predict and determine mitigation for the project. A detailed modeling of the project is recommended through the SAQMD and the other regional air quality management districts within the area of this project.

If you have any questions regarding leasing or jurisdiction, please contact Diane Jones, Public Land Manager, at (916) 574-1843 or by e-mail at jonesd@slc.ca.gov. If you have any questions on the environmental review, please contact Christopher Huitt at (916) 574-1938 or by e-mail at huittc@slc.ca.gov.

Sincerely,

Gail Newton, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
State Clearinghouse

D. Jones, CSLC
C. Huitt, CSLC