

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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July 29, 2015

File Ref: SCH # 2015061103

Linda G. McIntyre, Moss Landing Harbor District
c/o Aspen Environmental Group
235 Montgomery Street, Suite 935
San Francisco, CA 94104

Subject: Notice of Preparation (NOP) for a Draft Environmental Impact Report (EIR) for People's Moss Landing Water Desalination Project, Monterey County

Dear Ms. McIntyre:

The California State Lands Commission (CSLC) staff has reviewed the subject NOP for a draft EIR for the People's Moss Landing Water Desalination Project (Project or PMLWDP), which is being prepared by the Moss Landing Harbor District (District). The District, who will be required to approve and issue a permit for Project-related construction performed within the District's jurisdiction, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq). The CSLC is a trustee agency for projects that could directly or indirectly affect sovereign lands and their accompanying Public Trust resources or uses. CSLC staff requests that the District consult with us on preparation of the draft EIR as required by CEQA section 21153, subdivision (a), and the State CEQA Guidelines section 15086, subdivision (a)(2).

CSLC Jurisdiction and Public Trust Lands

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

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.

It appears a portion of the proposed Project involves lands that have been legislatively granted to the District, pursuant to Chapter 1190, Statutes of 1947, and as amended, minerals reserved to the State. CSLC authorization is not required for the Project, as day-to-day administration of these lands has been granted to the District; however, as proposed, all activities involving lands granted to the District must be consistent with the Public Trust and the provisions of the applicable granting statutes. Please contact Reid Boggiano, Public Land Management Specialist (see contact information below) for more information.

Project Description

The Project proposes to rehabilitate existing facilities at the Moss Landing Green Commercial Park to develop a desalination project that would provide portions of Monterey County area, specifically to the North Monterey County Area and the Monterey Peninsula Area, with a desalinated water supply of approximately 12 million gallons per day (mgd).

Environmental Review

CSLC staff requests that the District consider the following comments when preparing the draft EIR.

General Comments

1. **Project Description**: A thorough and complete Project Description should be included in the draft EIR in order to facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives. The Project Description should be as precise as possible in describing the details of all allowable activities (e.g., types of equipment or methods that may be used, maximum area of impact or volume of sediment removed or disturbed, seasonal work windows, locations for material disposal, etc.), as well as the details of the timing and length of activities. Thorough descriptions will facilitate CSLC staff's determination of the extent and locations of its leasing jurisdiction, make for a more robust analysis of the work that may be performed, and minimize the potential for subsequent environmental analysis to be required.

In addition, more detail should be included in the draft EIR in regards to Project components. For example, Page 4 of the NOP says that "A new 30-inch pipeline would be slip-lined within the existing 36-inch intake pipeline to convey the seawater

to the PMLWDP desalination plant at the Moss Landing Green Commercial Park.” CSLC staff suggests that the draft EIR provide some history as to previous uses of the existing 36-inch pipeline and data supporting the conclusion that a single 30-inch pipeline is sufficient for ongoing seawater intake. In addition, the NOP states that “Brine produced during the desalination process would be conveyed back to the Bay through the existing approximately 2,700-foot-long 51-inch ocean outfall pipe that would be rehabilitated with new diffusers prior to discharging to the Monterey Bay.” Providing information that describes the prior use of this outfall pipe and how much of the 2,700-foot-long outfall pipe extends past the mean high tide line would be useful during Project analysis.

Water Quality

2. Page 4 of the NOP states that “The outfall would convey concentrate or brine from the reverse osmosis process to the Monterey Bay at a rate of approximately 17.5 mgd and at a salinity concentration of approximately 62,000 milligrams/liter (mg/L), which is approximately 1.8 times the ambient salinity of the Monterey Bay (i.e., approximately 34,000 mg/L);” however, the dilution of the brine (if any) is not discussed. CSLC staff requests that additional information in regards to brine discharge be included in the draft EIR and that the data be presented in a manner consistent with the State Water Resources Control Board’s May 6, 2015, Adopted Desalination Amendment to the Ocean Plan (Chapter III.M.3).

Biological Resources

3. According to the NOP (pp. 3 and 4) the intake diffusers are approximately 50 feet offshore and 15 feet below mean sea level (msl). Although the intake screens would have 0.5 millimeter wedge wire slots to minimize impingement and entrainment, the location and depth of the intake is of concern. The draft EIR should include a detailed analysis of the proposed design of the intakes, and alternatives to those intakes, in order to minimize the intake and mortality of all forms of marine life.
4. The draft EIR should disclose and analyze all potentially significant effects on sensitive species and habitats in and around the Project area, including special-status wildlife, fish, and plants, and if appropriate, identify feasible mitigation measures to reduce those impacts. The District should conduct queries of the California Department of Fish and Wildlife’s (CDFW) California Natural Diversity Database (CNDDDB) and U.S. Fish and Wildlife Service’s (USFWS) Special Status Species Database to identify any special-status plant or wildlife species that may occur in the Project area. The draft EIR should also include a discussion of consultation with the CDFW, USFWS, the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS), and the Monterey Bay National Marine Sanctuary, including any recommended mitigation measures and potentially required permits identified by these agencies.
5. Construction Noise: The draft EIR should also evaluate noise and vibration impacts on fish and birds from construction activities in the water and for land-side

supporting structures. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, and NMFS. Again, staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species.

Climate Change

6. Greenhouse Gases: A greenhouse gas (GHG) emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32) and required by the State CEQA Guidelines should be included in the draft EIR. This analysis should identify a threshold for significance for GHG emissions, quantify the construction and operational GHG emissions from the Project (both direct and indirect sources of emissions should be included in the calculations), determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible.
7. Sea Level Rise: Coastal lands and resources are already vulnerable to a range of natural events, such as storms and extreme high tides. According to a recent study by the National Research Council (2012), sea levels could rise by as much as 19 inches by 2050 and 56 inches by 2100 along the coast south of Cape Mendocino. Note that the State of California released the final "Safeguarding California: Reducing Climate Risk, an Update to the 2009 California Climate Adaptation Strategy" (Safeguarding Plan) on July 31, 2014, to provide policy guidance for state decision-makers as part of continuing efforts to prepare for climate risks. The Safeguarding Plan sets forth "actions needed" to safeguard ocean and coastal ecosystems and resources as part of its policy recommendations for State decision-makers. In addition, the California Coastal Commission (CCC) has developed and distributed a draft sea-level rise policy guidance document that provides the CCC's recommended methodology for addressing sea-level rise in its planning and regulatory actions. With this in mind, the District should consider discussing the effects of sea level rise on all resource categories potentially affected by the proposed Project in the draft EIR. Although the NOP notes (p. 4) that "a new pump house would be built on top of the existing intake structure at a height of approximately 15 feet above msl so that that the pumps would be outside of the tsunami zone of inundation," it is unclear if sea level rise could potentially affect the operation of the intake structure.

Cultural Resources

8. Submerged Resources: The draft EIR should evaluate potential impacts to submerged cultural resources in the Project area. The CSLC maintains a shipwrecks database that can assist with this analysis. CSLC staff requests that the District contact Assistant Chief Counsel Pam Griggs (see contact information below) to obtain shipwrecks data from the database and CSLC records for the Project site. The database includes known and potential vessels located on the State's tide and submerged lands; however, the locations of many shipwrecks remain unknown. Please note that any submerged archaeological site or submerged historic resource

that has remained in State waters for more than 50 years is presumed to be significant. Because of this possibility, please add a mitigation measure requiring that in the event cultural resources are discovered during any construction activities, Project personnel shall halt all activities in the immediate area and notify a qualified archaeologist to determine the appropriate course of action.

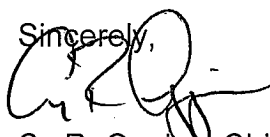
Mitigation and Alternatives

9. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures should either be presented as specific, feasible, enforceable obligations, or should be presented as formulas containing "performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way" (State CEQA Guidelines, §15126.4, subd. (b)).
10. Alternatives: In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the District should identify and analyze a range of reasonable alternatives to the proposed Project that would attain most of the Project objectives while avoiding or reducing one or more of the potentially significant impacts (see State CEQA Guidelines, § 15126.6). The NOP identifies two examples of possible alternatives. In addition to the alternatives listed, an alternative that reduces treatment capacity should also be considered.

Thank you for the opportunity to comment on the NOP for the Project. As a trustee and responsible agency, CSLC staff requests that you consult with us on this Project and keep us advised of changes to the Project description and all other important developments. Please send additional information on the Project to the CSLC staff listed below as the draft EIR is being prepared.

Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or via e-mail at cynthia.herzog@slc.ca.gov. For questions concerning archaeological or historic resources under CSLC jurisdiction, please contact Assistant Chief Counsel Pam Griggs at (916) 574-1854 or via email at Pamela.Griggs@slc.ca.gov. For questions concerning CSLC jurisdiction, please contact Reid Boggiano, in the Granted Public Trust Lands Program, at (916) 574-0450, or via email at Reid.Boggiano@slc.ca.gov.

Sincerely,



Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
R. Boggiano, CSLC
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