



September 24, 2010

The Honorable James Kellogg, President  
California Fish & Game Commission  
1416 9<sup>th</sup> Street, 13<sup>th</sup> Floor  
Sacramento, California 95814

Dear President Kellogg:

RE: Extend DEIR Comment Period

The California Fisheries Coalition and its partner organizations have constructively participated in the MLPA implementation since 2004. We were instrumental in each region working collaboratively with other stakeholders in developing an MPA alternative meeting the policy requirements of the Blue Ribbon Task Force (BRTF) while minimizing the resource and economic effects on our local communities.

Recognizing the central role the California Environmental Quality Act (CEQA) plays in public decisions<sup>1</sup> and that a comprehensive project analysis via an informative and accurate Environmental Impact Report (EIR) is the mechanism to ensure this, we request the Fish & Game Commission to extend the public comment period on the Draft EIR for the South Coast Region of the MLPAL for at least an additional 45 days beyond the current comment period ending October 4, 2010.

It is well established that CEQA is primarily a disclosure law, to ensure the public knows what their government is doing and protect the public's right to information. Former State Legislator Byron Sher understood the need for public agencies to provide complete EIR analyses when he wrote, "To require that the public produce evidence about a project when the public has little access to information is manifestly unfair."<sup>2</sup>

Many have testified to the central role public engagement plays in the CEQA process. "The concept behind CEQA is a relatively simple one. It requires a careful, public consideration of the impact of a proposed project..."<sup>3</sup> Likewise, for those supporting or opposing a project, CEQA does not guarantee a specific outcome, "it guarantees processes and procedures, and empowers the individual person to enforce them."<sup>4</sup>

There is a vast difference between recognizing the letter of the law and respecting the spirit of the law. CEQA mandates a minimum public review and comment period of 45 days. But no one can dispute that the spirit of the law requires that the public be granted sufficient time to adequately understand the project and how it may impact their community.

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<sup>1</sup> "The legislature finds and declares that this division is an integral part of any public agency's decision making process..." PRC §21006, CEQA Statutes

<sup>2</sup> "Everyday Heroes Protect the Air We Breathe, the Water We Drink, and Natural Areas We Prize," Planning & Conservation League Foundation, 2005, pg 163

<sup>3</sup> Ibid. John Van de Kamp, former CA Attorney General, pg 1

<sup>4</sup> Ibid. Senator Byron Sher, pg 163

No one can dispute that proposed Southern California MPAs is a significant project affecting nearly 1/3 of the California coast, five of our most heavily populated counties, millions of people, and hundreds of local governments and special districts. To presume they would have reviewed and understood a complex project and a complex DEIR within 45 days would be a mistake.

Some would argue that the BRTF and Regional Stakeholder Group process sufficiently covered all possible project effects and alternatives. But neither of these groups was created in law and neither, according to MLPAL management, can be held accountable to the openness and transparency requirements of law. Their work preceded and is separate from the CEQA process; it cannot satisfy the requirements of CEQA.

Similarly, comments and issues raised during BRTF proceedings do not give a person legal standing under CEQA. What has gone on before is gone and is not part of the official record.

We've been through CEQA and prepared EIRs twice in earlier MLPA regions. That does not mean that all the possible issues in the South Coast Region have been analyzed (or that all South Coast communities have been involved). Those were different projects and CEQA doesn't allow substituting the analysis of different, although similar, projects for new projects. If each MLPA region is actually part of some larger project that can rely on a common EIR analyses, it would seem the 'real' project has been segmented in a manner that circumvents and violates CEQA requirements.

Granting an extended comment period is not unusual for large complex projects and even not so complex projects. We compiled a short list of other controversial projects to demonstrate the rigor that is common in analyzing impacts and including the public.

The enclosed table shows that expanded comment time is not unusual and that public comments frequently lead to DEIRs being revised, improved and reissued. This is in stark contrast to experience with MPAs, in which the minimum public review and apparently minimum analysis time has been allowed.

The Fish & Game Commission, under the leadership of former President and Secretary of Natural Resources, Michael Chrisman, set an appropriate precedent in adopting MPAs at the Channel Islands. In 2002, the Commission granted an additional 48 days for public review of the DEIR on top of the original 46 days. They recognized that the additional time was insignificant in relation to the long term nature of MPAs.

We request no less than what was granted in 2002, an additional 45 days to ensure adequate time for the public to consider how the Southern California MPA project affects their communities. We urge you to heed the words of Meg Caldwell, a CEQA champion and original BRTF member: "CEQA documents provide invaluable information... Especially important are comments from other public agencies and the public..."<sup>5</sup>

Sincerely,

Trustees

*Jim Martin*

Recreational Fishing Alliance

*Bob Bertelli*

CA Sea Urchin Commission

*Steve Scheiblaue*

Alliance of Communities for Sustainable Fisheries

Enclosure

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<sup>5</sup> Ibid, pg 57.

Public Comment Periods on Selected Complex or Controversial CEQA Projects

| Project Name                               | Project Description  | Scoping Mtg(s)                | DEIR Issue Date                            | Public Comment End Date | # Public Comment Days | FEIR Issue Date       | # Days from Comments to FEIR |
|--|--|-------------------------------|--|-------------------------|-----------------------|-----------------------|------------------------------|
| Village @ Playa Vista, City of Los Angeles | Mixed use, approx 500 acres  | 12/12/02                      | 8/21/03                                    | 12/22/03                | 120                   | 4/8/04                | 106                          |
| Delta Wetlands (private project)           | Water storage & habitat restoration, 23,000 acres  | 10/11/95                      | orig 12/1990<br>rev 9/11/95<br>rev 5/31/00 | 12/21/95 Ext<br>7/31/00 | 160                   | 1/16/01               | 166                          |
| Forest Hill Community Plan, Placer Co.     | Community plan, Sierra foothills, proj'd 8,800 homes   | na                            | 11/07                                      | 2/28/08                 | 290                   | 7/30/08               | 150                          |
| Jackson Demo Forest, Mendocino Co.         | Management plan, 48,000 acres  | na                            | orig 12/16/05<br>rev 6/7/07                | 2/14/06<br>Ext 7/16/07  | 105                   | Jan 08                | 165 est                      |
| Sonoma-Marín Area Rail Transit             | Regional rail, 70 mi   | na                            | orig 11/21/05<br>Supp 3/6/08               | 1/23/06<br>Ext 4/24/08  | 110                   | Jun 08<br>Supp Jul 08 | 880 est (1st comments)       |
| Del Mar Fairgrounds, San Diego             | Expansion of facilities  | na                            | 10/8/09                                    | 1/8/10<br>Ext 2/8/10    | 120                   | not yet issued        |                              |
| Newhall Ranch Development (DFG lead)       | Mixed use, 1,000s acres  | na                            | 4/25/09                                    | 6/26/09<br>Ext 8/26/09  | 91                    | not yet issued        |                              |
| Caltrans I-5, San Diego                    | Highway widening, 27 miles   |                               | 7/9/10                                     | 10/7/10<br>Ext 11/22/10 | 135                   | na                    |                              |
| South Coast MPAs                           | Ocean use restrictions affecting 280 linear miles of CA coast and 5 counties and hundreds of local gov'ts & special districts.   | 7/23/10                       | 8/18/10                                    | 10/4/10                 | 45                    | 11/15/10 est          | 42                           |
| Central Coast MPAs                         | Ocean use restrictions affecting 233 linear miles of CA coast and 5 counties and hundreds of local gov'ts & special districts.   | 8/10/06<br>8/11/06            | 11/17/06                                   | 12/31/06                | 45                    | 3/9/07                | 68                           |
| North Central Coast MPAs                   | Ocean use restrictions affecting 180 linear miles of CA coast and 5 counties and hundreds of local gov'ts and special districts. | 6/17/08<br>6/18/08<br>6/19/08 | 3/20/09                                    | 5/4/09                  | 46                    | Jul 2009              | 60?                          |
| Channel Island MPAs                        | Ocean use restrictions affecting northern islands.   |                               | 5/30/02                                    | 7/15/02<br>Ext 9/1/02   | 94                    |                       |                              |

# Days from Comments to FEIR = approx # of days considering public comments.