

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

January 6, 2021

File Ref: SCH #2019049093

Stephanie Ponce, Environmental Scientist
Dept. of Water Resources
3310 El Camino Ave, Room 140
Sacramento, CA 95821

VIA ELECTRONIC MAIL ONLY (TisdaleWeirRehabProject@water.ca.gov)

Subject: Draft Environmental Impact Report for the Tisdale Weir Rehabilitation and Fish Passage Improvement Project, Sutter County

Dear Ms. Ponce:

The California State Lands Commission (Commission) staff has reviewed the subject Draft Environmental Impact Report (EIR) for the Tisdale Weir Rehabilitation and Fish Passage Improvement Project (Project), which is being prepared by the California Department of Water Resources (DWR). DWR, in proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State-owned sovereign land and its accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign land, the Commission will act as a responsible agency.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 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 Doctrine.

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 ordinary high-water mark, which is generally depicted by 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.

Based upon the information provided and a preliminary review of our records, the Sacramento River, at the Project location, is State-owned sovereign land under the jurisdiction of the Commission. Any portion of the Project that extends into the Sacramento River will require a lease from the Commission.

Project Description

DWR proposes to rehabilitate and reconstruct the Tisdale Weir. Included in the proposed Project is the installation and operation of fish passage facilities, and various associated project site improvements to meet the agency's objectives and needs as follows:

- Structurally rehabilitate Tisdale Weir to extend its design life by an additional 50 years
- Reduce fish stranding at Tisdale Weir by improving fish passage through the weir to the Sacramento River with minimal effects on facility maintenance and recreational access

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

- Construction of Project Site Improvements
- Tisdale Weir Rehabilitation
- Construction of Energy Dissipation and Fish Collection Basin
- Construction of Weir Notch and Operable Gate
- Connection Channel Construction

Environmental Review

Commission staff requests that DWR consider the following comments on the Project's Draft EIR to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR to support a future lease approval for the Project.

General Comments

1. Project Description: A thorough and complete Project Description should be included in the EIR 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. Specifically, the Project Description does not indicate where and when appropriate sediment characterization will occur during the Project schedule. There are several locations identified within the Draft EIR, section 2 (pages 2-15 and 2-17) which do not identify how sediment or native material will be tested for possible contamination prior to removal and placement in the designated spoils site. A sampling and analysis plan should be prepared and approved in accordance with U.S. Army Corps of Engineers and Regional Water Quality Control Board regulatory permit oversight to ensure the safety and cleanliness of the removed material during construction.

Biological Resources

2. Earthmoving/Sediment Movement Impacts: The Draft EIR should be as precise as possible describing the amount, duration, and timing of the proposed sediment and soil removal. Impacts from earthmoving and sediment discharge would affect the intensity of any environmental impacts. For example, excavating activities along the edge of the Sacramento River may impact aquatic and terrestrial species and their habitat in several ways. Disturbance of fine sediments may generate turbidity; wherein suspended particulates can impede light penetration and photosynthesis of submerged vegetation and impede organisms' ability to respire in aquatic environments. Also, excessive turbidity may react with and reduce dissolved oxygen in the water column. If toxic metals lay buried in the sediment from historic gold mining activities, they may be reintroduced into the environment and, potentially, enter the food chain, affecting both water quality and the health of aquatic organisms. The Draft EIR should analyze these potential impacts to biological resources and water quality during construction phases of the Project. If impacts prove potentially significant, possible mitigation could include the employment of silt curtains or other best management practices.

Cultural Resources

3. Title to Resources: The Draft EIR should mention that the title to all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the state and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that DWR consult with Staff Attorney Jamie Garrett should any cultural resources on State lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the EIR's Mitigation Monitoring and Reporting Program: "The final disposition of archaeological, historical, and

paleontological resources recovered on State lands under the jurisdiction of the California State Lands Commission must be approved by the Commission.”

Environmental Justice

4. The Draft EIR does not state whether DWR intends to discuss and analyze potential environmental justice related issues, including an assessment of public access and equity implications and who would bear the burdens or benefits from the proposed Project. Commission staff believes the Draft EIR, as an informational public document, is an appropriate vehicle to disclose and discuss how the proposed Project would attain or be consistent with DWR’s equity goals and statewide policy direction.

Thank you for the opportunity to comment on the Draft EIR for the Project. As a responsible and trustee agency, the Commission will need to rely on the Final EIR for the issuance of any new lease as specified above and, therefore, we request that you consider our comments prior to certification of the EIR.

Please send copies of future Project-related documents, including electronic copies of the Final EIR, Mitigation Monitoring and Reporting Program, Notice of Determination, and CEQA Findings when they become available. Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or christopher.huitt@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Mary Jo Columbus, Land Management Specialist, at (916) 574-0204 or maryjo.columbus@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Huitt, Commission
M.J. Columbus, Commission
J. Garrett, Commission