

CALIFORNIA STATE LANDS COMMISSION

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Michael King
Director of Public Works
City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

Governor's Office of Planning & Research

Dec 01 2020

STATE CLEARINGHOUSE

VIA ELECTRONIC MAIL ONLY (mking@ci.lathrop.ca.us)

Subject: Draft Environmental Impact Report (EIR) for Lathrop Consolidated Treatment Facility (CTF) Surface Water Discharge Project, San Joaquin County

Dear Mr. King:

The California State Lands Commission (Commission) staff has reviewed the subject Draft EIR for the Lathrop Consolidated Treatment Facility Surface Water Discharge Project (Project), which is being prepared by the city of Lathrop (City). The City, as the agency that oversees the Consolidated Treatment Facility (CTF) and the public agency 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 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 staff requests that the City consult with us on preparation of the Draft EIR as required by CEQA section 21153, subdivision (a), and the State CEQA Guidelines section 15086, subdivisions (a)(1) and (a)(2).

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 mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

As previously mentioned in our letter dated December 17, 2019, Commission staff determined that the San Joaquin River at this location, over which a portion of the Project will extend, includes State-owned sovereign land. It is important to note that the Commission has a lease in this vicinity with Califia, LLC, a California Limited Liability Company. On June 19, 2014, the Commission authorized the issuance of a 25-year General Lease – Right-of-Way Use, Lease No. PRC 2854.1, for the continued maintenance of an existing non-operational 20-inch drainage outlet. A lease from the Commission will be required for the portion of the Project encroaching on State-owned lands. Please contact George Asimakopoulos, Public Land Management Specialist (see contact information below) for further information on the extent of the Commission's jurisdiction and lease application requirements.

Project Description

The City is proposing to establish a direct discharge of CTF-generated and dechlorinated disinfected, tertiary-treated effluent to the San Joaquin River for use when generation of treated CTF effluent would exceed the capacity of the City's recycled water system to store and reuse treated effluent for landscape irrigation. The majority of CTF effluent would be discharged to the San Joaquin River during winter, when irrigation demands are low and river flow is relatively high, and less would be discharged during the irrigation season, when reuse of CTF-recycled water would be maximized for landscape irrigation. This approach would allow land designated under the general plan for urban uses to be developed in accordance with the plan.

The 2013 CTF Initial Study/Mitigated Negative Declaration considered all impacts related to the construction and operation of the expanded CTF using land disposal, but it did not evaluate impacts associated with modification of the CTF to dechlorinate treated effluent and discharge that effluent to the San Joaquin River. This Draft EIR analyzes impacts associated with the construction and operation of the proposed dechlorination system, effluent pipeline, and outfall. Project objectives include:

- Providing for planned City buildout and development based on the City's General Plan by providing effluent discharge to the San Joaquin River
- Providing efficient and cost-effective wastewater services through buildout of the City
- Maximizing use of recycled water in the City presently and in the future

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

- Installation of sheet pile coffer dam
- Installation of a new effluent discharge outfall

Per the Draft EIR, the proposed Project would be the environmentally superior alternative.

Environmental Review

Commission staff requests that the City consider the following comments when preparing the Final EIR to ensure that impacts to State-owned 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. As noted above, the Commission has a lease in this vicinity with Califia, LLC (Lease No. PRC 2854.1) for continued maintenance of an existing non-operational 20-inch drainage outlet in the vicinity of the Project. Commission staff request clarification as to why this existing outfall was not considered as an alternative to the proposed Project, as its use would likely result in reduced environmental impacts.

Recreation

2. Under section 3.1.2, *Effects Found Not to Be Significant*, it was determined that the proposed Project would have no impact on recreation; however, the Draft EIR should include a section describing the potential for the Project to affect recreational uses and public access to the San Joaquin River. The Draft EIR should discuss recreational uses and access points in the Project vicinity, whether and to what extent these uses would be facilitated or disrupted by the Project, and what, if any, measures could be implemented by the City to reduce any potential negative impacts. This discussion should also identify any safety measures the City will put in place to ensure public safety for recreational activities in the area. Measures could include a public notice and Project area signage provided in advance of the Project, notifying the public of any disruptions or creation of alternate access points or use areas during construction.

Aquatic Biological Resources

3. On page 3.4-25, the Draft EIR provides an example of a project in Fort Bragg conducted in 2015 to illustrate the likely underwater noise levels for the proposed Project during sheet pile installation. Although the two projects may be similar, it is unknown what equipment or procedures were used for the Fort Bragg project; therefore, Commission staff cannot assume that the peak sound pressures in the

water of 170 to 174 dB are representative of the proposed Project. Commission staff requests additional information on the Fort Bragg project cofferdam installation and whether environmental conditions at the Fort Bragg site are similar to those at the Project site. River depth, sediment type, and salinity can impact sound propagation, which would affect the noise levels at various distances from the cofferdam/pile driving source.

Cultural Resources

4. The Draft EIR proposes Mitigation Measure (MM) 3.5-2 to address inadvertent discoveries of archeological resources. 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 the following statement be added to MM 3.5-2: “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.”

Hydrology and Water Quality

5. Impact 3.9-1 (p. 3.9-13) states that the proposed Project would require regulatory permits from the U.S. Corps of Engineers, the Regional Water Quality Control Board, and the California Department of Fish and Wildlife, and that these permits would contain best management practices and measures that would avoid and minimize impacts to water quality. Therefore, the impacts were found to be less than significant, and no MMs were required.

In order to avoid the improper deferral of mitigation, MMs must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and “shall not be deferred until some future time.” (State CEQA Guidelines, §15126.4, subd. (a)). For example, references to obtaining permits from regulatory agencies to reduce an impact, without calling out the specific activities in the Draft EIR to reduce that particular impact to a less than significant level, may be considered deferral. Commission staff suggest that Impact 3.9-1 be reanalyzed and if best management practices or measures are required to reduce the impact to a less than significant level, that they are clearly detailed as part of the Project plans or called out as MMs.

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 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, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available.

Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or cynthia.herzog@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 George Asimakopoulos, Public Land Management Specialist, at (916) 574-0990 or george.asimakopoulos@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Herzog, Commission
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