

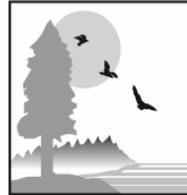
CALIFORNIA STATE LANDS COMMISSION

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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

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File Ref: SCH # 2020060424

Sutter Butte Flood Control Agency
Attn: Michael Bessette, PE, Executive Director
P.O. Box M
Yuba City, CA 95992

VIA ELECTRONIC MAIL ONLY (m.bessette@sutterbutteflood.org)

**Subject: Notice of Preparation (NOP) for an Environmental Impact Report (EIR)
for the Yuba City Boat Ramp Sediment Removal Project, Sutter County.**

Dear Mr. Bessette:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for an Environmental Impact Report (EIR) for the Yuba City Boat Ramp Sediment Removal Project (Project), which is being prepared by the Sutter Butte Flood Control Agency (Agency). The Agency, as 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 State sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project may involve work on State sovereign land, the Commission may act as a responsible agency. Commission staff requests that the Agency 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. 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 on the information provided and a review of in-house records, the proposed project extends into the beds of the Feather and Yuba Rivers which at this location is within the jurisdiction of the Commission. According to the project description, sediment buildup in portions of the Feather River, exacerbated by the Oroville Dam Spillway incident of 2017, has created dangerous conditions for recreational users, made some boat launch facilities nearly unusable, and has hampered public safety as it has affected emergency vessel launching capabilities. Currently, the Commission does not have a detailed project plan and sufficient information to determine the extent of the proposed dredging project. Once more detailed plans are prepared, please submit them to Commission staff for further review. These detailed plans are necessary to determine whether a lease or other authorization will be required by the Commission.

Project Description

The Proposed Project will improve access to the Feather River by removing sediment at the Yuba City boat ramp facility. The Project will use hydraulic or mechanical dredging to remove approximately 65,600 cubic yards (cy) of sediment and debris within approximately 13.5 acres adjacent to and downstream of the Yuba City Boat Launch.

The material removed from the Project site would require offsite disposal. Two dredging methods (hydraulic and mechanical) and three alternatives for disposal are being considered (landfills, soil for farmlands, and/or placement in the City of Marysville's closed northern wastewater ponds).

The Agency proposes the proposed project to meet its objectives and needs as follows:

- Remove sediment at the Yuba City boat ramp facility within the Feather River.
- Remove sediment from the Yuba River and within the confluence of the Feather and Yuba Rivers with mechanical and hydraulic techniques.
- Dispose of the dredge spoils at three potential sites.

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

- Project Component 1. Dredging in the river channels of the Feather and Yuba Rivers.

- Project Component 2. Disposal locations of the sediment will potentially include landfills, farmlands, or City of Marysville's closed northern wastewater ponds.

Environmental Review

Commission staff requests that the Agency consider the following comments when preparing the 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 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. Specifically, show on figures and engineering plans and provide written description of activities occurring waterward of the mean high tide line for Project area waterways. Thorough descriptions will facilitate Commission staff's determination of the extent of the Commission's 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.

Biological Resources

2. General: For land under the Commission's jurisdiction, the 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 Agency should conduct queries of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database 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 EIR should also include a discussion of consultation with the CDFW, USFWS, and National Marine Fisheries Service (NMFS) as applicable, including any recommended mitigation measures and potentially required permits identified by these agencies.
3. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the EIR should consider the Project's potential to establish or proliferate aquatic invasive species (AIS) such as the quagga mussel, or other nonindigenous, invasive species including aquatic and terrestrial plants. For example, construction boats, barges, and construction heavy earth-moving equipment brought in from long stays at distant projects may transport new species to the Project area via hull biofouling, wherein marine and aquatic organisms attach to and accumulate on the hull and other submerged parts of a vessel. If the analysis in the EIR finds potentially significant AIS impacts, possible mitigation could include

contracting vessels and barges from nearby or requiring contractors to perform a certain degree of hull-cleaning. The CDFW's Invasive Species Program could assist with this analysis as well as with the development of appropriate mitigation (information at <https://www.wildlife.ca.gov/Conservation/Invasives>).

4. Construction Noise: The EIR should also evaluate noise and vibration impacts on fish and birds from construction, restoration, and flood control activities in the water, on the levees, and for landside supporting structures. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, or NMFS. Again, staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species.
5. Dredging Impacts: The EIR should be as precise as possible in describing the amount, duration and timing of the proposed dredging, as these would affect the intensity of any environmental impacts. For example, dredging activities may impact aquatic and terrestrial species and their habitat several ways. Disturbance of fine sediments may generate turbidity; wherein suspended particulates can impede light penetration and photosynthesis of submerged vegetation and impede organism's 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 humans and wildlife. Finally, dredging equipment can entrain and kill organisms in the sediment and water column when removing dredge material. An extensive sediment sampling evaluation of the proposed Project area within the riverbeds of the Feather and Yuba Rivers will determine if sediment is suitable for beneficial reuse or must be disposed of in the appropriate disposal site.

The EIR should analyze these potential impacts to biological resources and water quality from the dredging component of the Project. If impacts prove potentially significant, possible mitigation could include the employment of silt curtains or other best management practices.

Climate Change

6. Greenhouse Gases (GHG): A GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill 32) and required by the State CEQA Guidelines should be included in the EIR. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result Project activities, 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.

Cultural Resources

7. Submerged Resources: The EIR should evaluate potential impacts to submerged cultural resources in the Project area. The Commission maintains a shipwrecks database that can assist with this analysis. Commission staff requests that the Agency contact Staff Attorney Jamie Garrett (see contact information below) to

obtain shipwrecks data from the database and Commission 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.

8. Title to Resources: The EIR should also mention that the title to all abandoned shipwrecks, 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 California State Lands Commission (Pub. Resources Code, § 6313). Commission staff requests that the Agency 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 and Monitoring Plan: "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."
9. Tribal Cultural Resources: *Tribal Engagement and Consideration of Tribal Cultural Resources*. Commission staff recommends that the Agency include information and impact analyses in the EIR to reflect the September 2016 update to the State CEQA Guidelines Appendix G Checklist Form (see https://www.opr.ca.gov/s_ab52.php) and include the discussion of Tribal engagement and consideration of Tribal Cultural Resources in order to demonstrate compliance with AB 52 (Gatto; Stats. 2014, ch. 532), which applies to all CEQA projects initiated after July 1, 2015.¹ Commission staff notes that the NOP does not identify or mention how the Agency has complied or will comply with AB 52 provisions, which provide procedural and substantive requirements for lead agency consultation with California Native American Tribes, consideration of effects on Tribal Cultural Resources (as defined in Pub. Resources Code, § 21074), and examples of mitigation measures to avoid or minimize impacts to these resources. Even if no Tribe has submitted a consultation notification request for the Project area covered by the EIR, the Agency should:
 - contact the Native American Heritage Commission to obtain a general list of interested Tribes for the Project area;
 - include the results of this inquiry within the EIR; and
 - disclose and analyze potentially significant effects to Tribal Cultural Resources; and avoid impacts when feasible.

Since the NOP does not disclose if notification or outreach to interested Tribes has occurred and does not document their response, Commission staff recommends that the Agency include this information in the EIR to maintain a clear record of the Agency's efforts to comply with AB 52.

¹ Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 were added to CEQA pursuant to AB 52.

Mitigation and Alternatives

10. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures 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 the preparation of a permit from the CDFW to reduce an impact, without calling out the specific activities that will be included in the permit to reduce that particular impact to a less than significant level, is considered deferral. Commission staff requests that more specific information be provided in such mitigation measures (MMs) to demonstrate how the MM is going to mitigate potential significant impacts to less than significant.
11. Alternatives: In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the Agency 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). Consider evaluating the uses of the removed sediment as potential substrate for restoration projects within the Feather and Yuba River system.

Thank you for the opportunity to comment on the NOP for the Project. As a trustee and responsible agency, Commission 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 Commission staff listed below as the EIR is being prepared.

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.Garret@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Mary Jo Columbus, Public Land Management Specialist, at (916) 574-0204 or MaryJo.Columbus@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

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