

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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August 12, 2020

File Ref: SCH #2020079017

Patrick W. Ervin, P.E.
Reclamation District No. 800
c/o Wagner & Bonsignore, Consulting Civil Engineers
2151 River Plaza Drive, Suite 100
Sacramento CA 95833

8/12/2020

Governor's Office of Planning & Research

Aug 12 2020

STATE CLEARINGHOUSE

VIA ELECTRONIC MAIL ONLY (pwervin@wbecorp.com)

Subject: Initial Study/Mitigated Negative Declaration (IS/MND) for the Cosumnes River Critical Repairs Project, Sacramento County.

Dear Mr. Ervin:

The California State Lands Commission (Commission) staff has reviewed the subject IS/MND for the Cosumnes River Critical Repairs Project (Project), which is being prepared by the Reclamation District No. 800 (RD 800). RD 800, 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 involves work on State 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 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.

After reviewing the IS/MND, it is our understanding RD 800 is proposing levee repairs located along the Cosumnes River in southeastern Sacramento County. The sites identified for the Project are in an unincorporated area that is generally east of the city of Elk Grove, near the communities of Wilton and Sloughhouse. The Cosumnes River at the nine proposed project sites is natural, subject to artificial conditions (levees, dam, diversions), navigable, non-tidal, meandered on the south bank only on the U.S. Township Plats, and meandered on both banks on the Rancho plats. As the placement of rock slope protection (RSP) below the ordinary low water mark of the Cosumnes River would impact State sovereign land, an application to the Commission would be required. The application is available on our website at [OSCAR.slc.ca.gov](https://oscar.slc.ca.gov). Additional questions may be directed to Marlene Schroeder, Public Land Management Specialist (contact information provided below).

Project Description

RD 800 proposes to make repairs on approximately 3,370 linear feet of levees that have severely eroded at nine separately accessed locations along the Cosumnes River. Proposed repair work would consist of re-grading and reconstruction of the existing levee sections to correct past erosion and the placement of new RSP to prevent future erosion. The Project's objective is to lower the risk for flooding, levee failure, and riverbank erosion

From the Project Description, Commission staff understands that the placement of fill and RSP in sections of the Cosumnes River have potential to affect State sovereign land. Construction would occur in and adjacent to the existing river channel, bed, and banks, which have been eroded during high flow events.

Environmental Review

Commission staff requests that RD 800 consider the following comments on the Project's IS/MND, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the adopted MND to support a future lease approval for the Project.

General Comments

1. Project Description: Please provide additional clarification as to the amount of RSP that will be placed below the ordinary low water mark of the Cosumnes River.

2. Public Agency Approvals: Page 2-7 identifies required permits and approvals; however, the Commission is not listed. Commission staff requests that the IS/MND identify the Commission as a public agency with jurisdiction and with discretionary approval over the Project.

Cultural Resources

3. Title to Resources: The IS/MND 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). In addition, Commission staff requests that the following statement be included in the MND's Mitigation and Monitoring Plan (MMP): "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." Finally, Commission staff requests that RD 800 consult with Staff Attorney Jamie Garrett (see contact information below) should any cultural resources on State lands be discovered during construction of the proposed Project.

Tribal Cultural Resources

4. Per Public Resources Code section 21074, subdivision (a), "*A Tribal cultural resource is defined to include 'sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe.'*" Therefore, a Tribal cultural resource is not limited to archaeological resources as Mitigation Measure (MM) CULT-1 suggests. Commission staff requests that CULT-1 be modified to say "If any subsurface cultural resources or Tribal cultural resources are ~~encountered~~ identified prior to or during construction of the project, all construction activities within 50 feet of the encounter shall be halted until a qualified archaeologist and Tribal monitor can examine ~~these materials~~ the resources, make a determination of their significance, and, if significant, recommend measures that would reduce potential effects to a level that would be less than significant." This modification would allow for the protection of any Tribal cultural resources that may not have been identified due to incomplete Tribal outreach.

In addition to the procedural requirements related to notification and consultation, AB 52 (Gatto; Stats. 2014, ch. 532) requires lead agencies to identify and evaluate effects on Tribal Cultural Resources (as defined in Pub. Resources Code, § 21074), and develop MMs to avoid or minimize impacts to these resources. Because RD 800 did not contact the all of the individuals listed by the California Native American Heritage Commission (NAHC), culturally affiliated tribes did not have the opportunity to provide meaningful input with respect to the project's potential to adversely affect tribal cultural resources. Therefore, Commission staff is concerned that the IS/MND falls short of its disclosure and analysis obligations under CEQA.

Commission staff urges RD 800 to send outreach letters to all 10 Tribal contacts on the NAHC list. Outreach to potentially affiliated Tribes, as well as documentation of

any Consultation or other relevant comments or suggestions received from Tribes, is necessary prior to the Commission's consideration of a lease. In its Tribal Consultation Policy, the Commission has committed to meaningfully engage with Tribal communities to better understand and minimize impacts to Tribal cultural resources. This commitment exceeds the requirements of AB 52. If the RD 800 is unwilling or unable to conduct the required outreach and consultation, Commission staff will undertake that process; however, this would likely delay processing and consideration of your application.

Thank you for the opportunity to comment on the IS/MND for the Project. As a responsible and trustee agency, the Commission will need to rely on the adopted MND for the issuance of any lease as specified above and, therefore, we request that you consider our comments prior to adoption of the MND.

Please send copies of future Project-related documents, including electronic copies of the adopted MND, Mitigation Monitoring and Reporting Program, and Notice of Determination, when they become available. Please refer questions concerning the 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 Jamie Garrett, Staff Attorney, at (916) 574-0398 or jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Marlene Schroeder, Public Land Management Specialist, at (916) 574-2320 or marlene.schroeder@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Herzog, Commission
M. Schroeder, Commission
J. Garrett, Commission