

**CALIFORNIA STATE LANDS
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July 28, 2023

File Ref: SCH # 2020110050

Gabrielle Duff, Branch Chief
Environmental Studies "B"
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Governor's Office of Planning & Research

July 28 2023

STATE CLEARINGHOUSE

VIA ELECTRONIC MAIL ONLY (gabrielle.duff@dot.ca.gov)

**Subject: Draft Environmental Impact Report/Environmental Assessment for I-40
Colorado River Bridge Replacement Project, San Bernardino County**

Dear Gabrielle Duff:

The California State Lands Commission (Commission) staff has reviewed the draft Environmental Impact Report/Environmental Assessment (EIR/EA) for the I-40 Colorado River Bridge Replacement Project (Project), which is being prepared by the California Department of Transportation (Caltrans). Caltrans, 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.), and the Federal Highway Administration is the lead agency under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 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.

Based on the EIR/EA, staff understands that the Project spans the Colorado River, which is non-tidal and within the Commission's jurisdiction. The lease (PRC 572) with Caltrans began December 20, 1950, for the protection, construction, and continued use and maintenance of the Red Rock Bridge on the Colorado River. On January 30, 1964, the lease was amended to add an additional 2 acres and further construction to the right-of-way, coinciding with the planning and construction of the I-40 Colorado River Bridge. The Project would require construction work within the Colorado River; therefore, a new or amended lease from the Commission will be required for the Project. An application may be submitted to the Commission through the online application portal ([OSCAR.slc.ca.gov](https://oscar.slc.ca.gov)). If you have questions specific to jurisdiction, lease provisions, or the application process, please contact Public Land Management Specialist, Drew Simpkin (contact information below).

Project Description

The lead agencies propose to replace the Colorado River Bridge due to safety and integrity concerns about the existing bridge structure, including deck deterioration, non-standard shoulder widths, and load rating.

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

- Temporary trestles. Trestles would be placed under the existing bridge to be used as a work platform for foundation construction, material hauling, falsework erection, and removal of the existing bridge.
- Geotechnical borings. Borings RC-20-009, -010, and -011 will be made from a barge in the Colorado River. At the boring locations, the method involves setting a casing, hammering the casing approximately 5 feet deep, sealing the inside with bentonite, and then drilling through the bentonite seal.
- Pier foundations on large diameter cast-in-drilled-hole (CIDH) piles will be installed for the new bridge.

Environmental Review

Commission staff requests that the lead agencies consider the following comments on the Project's EIR/EA, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR/EA when considering a future lease application for the Project.

General Comments

1. Project Description: The EIR/EA (section 1.3.2) states that "The pier foundations for each of the build alternatives would be on large diameter CIDH piles;" however, there are no details provided on the precise size of the CIDH piles or how the piers would be constructed. As mentioned in our comment letter on the Notice of Preparation dated December 2, 2020, 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. Commission staff request that more detailed descriptions of work within State sovereign lands be included in the EIR/EA's Project Description to facilitate agency and public review.
2. Alternatives: In accordance with CEQA requirements, an "environmentally superior alternative" must be identified among the alternatives analyzed in the EIR. The environmentally superior alternative is the alternative found to have an overall environmental advantage compared to the other alternatives based on the impact analysis in the EIR. The EIR/EA does not appear to identify an Environmentally Superior Alternative.

Air Quality

3. Criteria Pollutants: The Project is in a nonattainment area for particulate matter. In section 2.2.5 (EA), the document states that "During construction, short-term air quality degradation could occur due to the release of particulate emissions (airborne dust) generated by excavation, grading, hauling, and other construction-related activities," and air quality measures AQ-1, AQ-2, and AQ-3 are proposed to "minimize potential impacts." Please explain in section 3.2.3 (CEQA) why air quality impacts associated with Project construction are assumed to comply with Mojave Desert Air Quality Management District (MDAQMD) regulations and determined to be less than significant. The EIR should clarify the CEQA significance threshold for O3, PM10, and PM2.5 and explain how the Project activities are not potentially significant. MDAQMD has four possible approaches in their 2020 CEQA guidance document <https://www.mdaqmd.ca.gov/home/showpublisheddocument/8510/638126583450270000>). The EIR should indicate whether Caltrans applied one of MDAQMD's evaluation criteria or not. If so, please either include reference to

criteria number 1 (the default, quantitative approach) or explain the choice of criteria number 2, 3, or 4.

In addition, there does not appear to be a Section 2.2.6 as noted in the air quality analysis in section 3.2.3 (page 373).

Biological Resources

4. Special-Status Species: Section 3.2.4(a) states that impacts to State-listed species (razorback sucker, California black rail, and Yuma Ridgway's rail) would remain significant and unavoidable, because these species are California Department of Fish and Wildlife fully protected, and the proposed Project would result in "take," which is not allowed for fully protected species. Therefore, in addition to several mitigation measures, Caltrans is pursuing a Project-specific, one-time exemption to the California Fish and Game Code (CFGF) sections 3511, 4700, and/or 5515, and amendment of CFGF section 2081 that would allow the incidental take of these fully protected species. As temporary impacts to the Colorado River exceed 3 acres in each alternative, Commission staff request that the EIR/EA be more detailed regarding the type and extent of anticipated impacts to the razorback sucker.

Climate Change

5. Greenhouse Gas (GHG): Section 3.2.8 and Section 3.5 (page 423, under *Construction Emissions*) states that construction emissions for the proposed Project would be approximately 5,000 metric tons CO_{2e} over an estimated 24 months of construction. However, a threshold of significance on which to base the "less than significant impact" determination for construction emissions is not provided. Commission staff request that the EIR/EA provide an explanation as to why a threshold for construction emissions was not used, and how the less than significant determination for construction emissions was made. Commission staff recommends the EIR use the 2020 MDAQMD thresholds that include a short ton annual threshold and a daily pound threshold.

Cultural Resources and Tribal Cultural Resources

6. Submerged Resources: The EIR/EA should state that the title to archaeological sites and historic or cultural resources on or in the 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 lead agencies consult Commission staff should any cultural resources on State lands be discovered during construction of the proposed Project.

Staff also requests that the following statement be included in the EIR/EA's Mitigation Monitoring Program: "The final disposition of archaeological, historical, and paleontological resources recovered on State land under the

jurisdiction of the California State Lands Commission must be approved by the Commission.”

7. Tribal Consultation: As noted in sections 2.1.12 and 3.2.18, Caltrans initiated tribal consultation in June 2020 and consultation remains ongoing. However, the EIR/EA does not specify the issues requiring ongoing consultation or explain how Caltrans determined that impacts to tribal cultural resources would be less than significant. Commission staff recommend that Caltrans include this information in the EIR/EA to maintain a clear record of Caltrans' efforts to comply with AB 52 and to assist the Commission's Tribal Liaison with review of the conducted outreach per the Commission's Tribal Policy (<https://www.slc.ca.gov/wp-content/uploads/2018/07/Tribal.pdf>).

Hydrology and Water Quality

8. Construction Debris: Section 3.2.10(a) states that to avoid degradation of surface waters, “BMPs [best management practices] would be implemented during construction and operation of the project.” Because it is not expressly called out, please verify that the planned BMPs include a measure to prevent construction waste from the bridge falling into the Colorado River during construction, and what actions that measure would entail.

Recreation

9. River Use: Although, as stated in Section 3.2.16 of the EIR/EA, there would be no increased demand for parks or recreational facilities or increased physical deterioration of a recreational facility, the Project could have temporary, potentially significant impacts on recreational river users during bridge demolition and construction. The EIR/EA addresses this impact in Section 2.1.6, and recommends mitigation measure CI-2. Commission staff request that this potential impact be acknowledged in Section 3.3.16, and mitigation proposed to reduce the impact. In addition, Commission staff request that mitigation measure CI-2 include additional language requiring the placement of warning signs on the Colorado River up and downstream of the Project area and at nearby boat launches prior to construction to better ensure public safety.

Thank you for the opportunity to comment on the EIR/EA for the Project. As a responsible and trustee agency, the Commission will rely on the certified EIR/EA for issuing a lease as specified above (see Section “Commission Jurisdiction and Public Trust Lands”). We request that you consider our comments before certifying the EIR/EA.

Please send electronic copies of the certified EIR/EA, Mitigation Monitoring Program, Notice of Determination, approving Resolution, CEQA Findings, and, if applicable, Statement of Overriding Considerations when they become available. Please note that federal and state laws require all government entities to improve accessibility of information technology and content by

complying with established accessibility requirements. (29 U.S.C. § 794d; 36 C.F.R. § 1194.1 et seq.; Gov. Code, § 7405.) California State law prohibits State agencies from publishing on their websites content that does not comply with accessibility requirements. (Gov. Code, § 115467.) Therefore, any documents submitted to Commission staff during the processing of a lease or permit, including all CEQA documentation, must meet accessibility requirements for Commission staff to place the application on the Commission agenda.

Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at cynthia.herzog@slc.ca.gov or (916) 574-1310. For questions concerning Commission leasing jurisdiction, please contact Drew Simpkin, Public Land Management Specialist, at drew.simpkin@slc.ca.gov or (916) 574-2275.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Science,
Planning, and Management

cc: Office of Planning and Research
C. Herzog, Commission
D. Simpkin, Commission
L. Calvo, Commission