

CALIFORNIA STATE LANDS COMMISSION
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Established in 1938

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California Department of Water Resources
South Central Region Office
ATTN: Karen Dulik
3374 East Shields Avenue
Fresno, CA 93726

VIA ELECTRONIC MAIL ONLY (karen.dulik@water.ca.gov)



**Subject: Initial Study/Proposed Mitigated Negative Declaration (IS/MND) for
Merced River Robinson Reach Maintenance Project, Merced County**

Dear Karen Dulik:

The California State Lands Commission (Commission) staff has reviewed the Initial Study/Proposed Mitigated Negative Declaration (IS/MND) for the Merced River Robinson Reach Maintenance Project (Project), which is being prepared by the Department of Water Resources (DWR), South Central Region Office. DWR, 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 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.

The section of the Merced River where this project is proposed is sovereign land subject to Commission jurisdiction. As such, DWR will be required to obtain a lease from the Commission for the construction, use, and maintenance of the proposed project improvements prior to starting any construction. Please contact Commission staff identified below for information on submitting a lease application.

Project Description

DWR proposes to design, permit, and implement improvements described in the IS/MND to restore salmon spawning and rearing habitat in the floodplain and channel of the Robinson Reach of the Merced River to meet DWR's objectives as follows:

- Stabilizing and protecting an eroding bank
- Improving the salmon migratory path by addressing channel capacity and floodplain connection issues
- Improve salmon spawning and rearing habitat

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. Stabilize 700 feet of eroded bank
- Project Component 2. Improve the capacity of 1,600 feet of channel by excavating deposited sediment and removing a tree in the channel
- Project Component 3. Install a 900-foot shallow floodplain ditch to route low flows into the main river channel
- Project Component 4. Augment spawning habitat in two riffles in the downstream end of the reach

Environmental Review

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

Cultural Resources

1. Title to Resources Within Commission Jurisdiction: The IS/MND should state 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 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. Staff requests that the following statement be included in the IS/MND's Mitigation Monitoring and Reporting 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."

Recreation

2. On page 3-114 of the IS/MND, Item a, Increased Use of Existing Parks and Recreational Facilities, the IS/MND states that "The project would have no impact on existing parks or recreational facilities." However, Commission staff believes that there could be temporary potential impacts to recreational activities during the construction phase of the Project.

Because the Project area is within a recreational site, Commission staff suggests that DWR include additional analysis to address impacts to existing and ongoing recreational activities. For example, would the Project interfere with the existing use of in-river recreational opportunities? Mitigation to address potential impacts to recreational users may include safety and informational signage and a clear demarcation of the Project area during construction.

Thank you for the opportunity to comment on the IS/MND for the Project. As a responsible agency, the Commission will rely on the adopted IS/MND for issuance of a new lease as specified above (see Section "Commission Jurisdiction and Public Trust Lands"). We request that you consider our comments before adopting the IS/MND.

Please send electronic copies of the adopted IS/MND, Mitigation Monitoring and Reporting Program, Notice of Determination, and approving resolution 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.

Refer questions concerning environmental review to Christine Day, Environmental Scientist, at christine.day@slc.ca.gov or (916) 562-0027. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at Jamie.Garrett@slc.ca.gov or (916) 574-0398. For questions concerning Commission leasing jurisdiction, please contact Ken Foster, Public Land Manager, at Kenneth.Foster@slc.ca.gov or (916) 574-2555.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Day, Commission
J. Garrett, Commission
K. Foster, Commission
L. Calvo, Commission