

**CALIFORNIA STATE LANDS
COMMISSION**

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Established in 1938

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File Ref: SCH # 2023060369

California Department of Water Resources
c/o Lori Price, Division of Multibenefit Initiatives
P.O. Box 942836
Sacramento, CA 94236-0001
littleegbertmbp@water.ca.gov

Subject: Notice of Preparation for an Environmental Impact Report for the Little Egbert Multi-Benefit Project, Solano County

Dear Lori Price:

The California State Lands Commission (Commission) staff has reviewed the subject Notice of Preparation (NOP) for an Environmental Impact Report (EIR) for the Little Egbert Multi-Benefit Project (Project), which is being prepared by the Department of Water Resources (DWR). 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 staff requests that DWR consult with us on preparation of the Draft EIR as required by CEQA section 21104, 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.

Cache Slough, Lindsey Slough, Miner Slough, Steamboat Slough, and the Sacramento River are State sovereign lands under the jurisdiction of the Commission. An application for a lease will be required for any portion of the Project located on State sovereign land. Please contact Ninette Lee (information provided below) for information on the Commission's leasing jurisdiction, and reference Inquiry No. 3626.

Project Description

DWR proposes to actively manage the transition of the land from agriculture to tidal wetlands, subtidal habitat, and riparian habitat. DWR's project goals are to enhance public safety; protect and enhance natural ecosystem process to increase habitat and support species; and project and enhance opportunities for recreation.

Commission staff understands that all of the Project elements identified in the NOP have the potential to affect State sovereign land. The Project elements noted below are not considered to be a final, exhaustive list of Project elements, components, or activities:

- Grade portions of the existing levee along Cache Slough and construct inflow and outflow openings along Cache Slough to connect the floodplain and improve conveyance during flood events.
- Improve and/or repair existing levees and other local infrastructure and flood features to accommodate increased on-site flows.
- Grade and place fill material to construct subtidal swales and habitat berms.
- Revegetate with native trees, shrubs, and marsh plant species to restore and enhance upland, tidal, and floodplain habitat.
- Provide new or enhanced opportunities for recreation consistent with flood protection and habitat restoration goals.

Environmental Review

Commission staff requests that DWR 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. In particular, illustrate on figures and engineering plans and provide written description of activities occurring below the mean high tide line for Project area waterways. Thorough descriptions will facilitate Commission staff's determination of the extent and locations of its 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. 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 (MM) to reduce those impacts. DWR 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 MMs 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 encourage the establishment or proliferation of aquatic invasive species (AIS) such as the quagga mussel, or other nonindigenous, invasive species including aquatic and terrestrial plants. For example, construction boats and barges brought in from long stays at distant projects may transport new

species to the Project area via vessel biofouling, wherein marine and aquatic organisms attach to and accumulate on the hull and other wetted 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 vessel cleaning. The CDFW's Invasive Species Program and the Commission's Marine 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> and <https://www.slc.ca.gov/misp/>).

4. Construction Noise: The EIR should also evaluate noise and vibration impacts on fish and birds from construction, restoration, or flood control activities in the water, on the levees, and for land-based supporting structures. MMs could include species-specific work windows as defined by CDFW, USFWS, and NMFS. Again, staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species.

Climate Change

5. Greenhouse Gas (GHG): A GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32; Nuñez, Chapter 488, Statutes of 2006) 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 of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify MMs that would reduce them to the extent feasible.

Cultural Resources

6. 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. Please contact Commission staff to obtain shipwrecks data from the database and Commission records for the Project site (see contact information at end of letter for Environmental Review information). 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 MM 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.

7. Title to Resources: The EIR should also identify 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 consultation with DWR 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."

Mitigation and Alternatives

8. Deferred Mitigation: 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 the preparation of a Stormwater Pollution Prevention Plan (SWPPP) to reduce an impact, without calling out the specific activities that will be included in the SWPPP 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 MMs to demonstrate how the MM is going to mitigate potential significant impacts to less than significant.
9. Alternatives: In addition to describing MMs that would avoid or reduce the potentially significant impacts of the Project, DWR 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).

Tribal Cultural Resources

10. Tribal Engagement and Consideration of Tribal Cultural Resources: Commission staff recommends that DWR includes a 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. Commission staff notes that the EIR should contain sufficient information as to how DWR 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 MMs 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, DWR 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
- Disclose and analyze potentially significant effects to Tribal Cultural Resources and avoid impacts when feasible

The EIR should disclose if notification or outreach to interested Tribes has occurred and document their response. Commission staff recommends that DWR include this information in the EIR to maintain a clear record of DWR's efforts to comply with AB 52.

Environmental Justice

11. Environmental justice is defined by California law as “the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code § 65040.12) This definition is consistent with the Public Trust Doctrine's principle that management of trust lands is for the benefit of all people.

The Commission adopted an updated [Environmental Justice Policy and Implementation Blueprint](#) in December 2018 to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs. The twelve goals outlined in the Policy reflect an urgent need to address the inequities of the past, so they do not continue. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations.


Although not legally required in CEQA document, Commission staff suggests that DWR include a section describing the environmental justice community outreach and engagement undertaken in developing the EIR and the results of such outreach. The California Office of Environmental Health Hazard Assessment developed the [CalEnviroScreen](#) mapping tool to assist agencies with locating census tracts near proposed projects and identifying the environmental burdens, should there be any, that disproportionately impact those communities. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the project planning process. Commission staff strongly recommends using the [CalEnviroScreen](#) tool and then, as applicable, reaching out through local community organizations, such as the [California](#)

[Environmental Justice Alliance](#). Engaging in early outreach will facilitate more equitable access for all community members. In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures. Commission staff will review the environmental justice outreach and associated results as part of any future Commission action.

Thank you for the opportunity to comment on the NOP for the Project's EIR. 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, and please include Commission staff with the noticing for the Draft EIR.

Please refer questions concerning environmental review to Christine Day, Environmental Scientist, at (916) 562-0027 or via email at christine.day@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Ninette Lee, Public Land Manger, at (916) 574-1869 or via email at Ninette.Lee@slc.ca.gov. Please send inquiries regarding the Commission's shipwrecks database to Shipwre@slc.ca.gov.

Sincerely,



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

cc: Office of Planning and Research
C. Day, Commission
N. Lee, Commission