

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 #2005072046

Mr. Miles Claret
Central Valley Flood Protection Board
3310 El Camino Avenue, Suite 170
Sacramento, CA 95821

VIA ELECTRONIC MAIL ONLY: PublicCommentARCF16@water.ca.gov

Subject: Draft Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS/EIR) for the American River Common Features, Water Resources Development Act of 2016, Sacramento Weir Modification, Sacramento County

Dear Mr. Claret:

The California State Lands Commission (Commission) staff has reviewed the subject Draft SEIS/EIR for the American River Common Features Development Act of 2016, Sacramento Weir Modification Project (Proposed Action), which is being prepared by the Central Valley Flood Protection Board (CVFPB), as the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), and the U.S. Army Corps of Engineers (USACE) as 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 sovereign lands and their accompanying Public Trust resources or uses. Additionally, because the Proposed Action involves work on sovereign lands, 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.

Based on the information submitted in the SEIS/EIR, State sovereign land within the Proposed Action area is located below the ordinary high-water mark of the Sacramento River, which at this location is natural, navigable, and tidally influenced. To the extent that any portion of the Proposed Action involves State-owned sovereign lands in the Sacramento River, a lease will be required. If you have any questions, please contact Joanne Holt, Public Land Management Specialist (see contact information below) to discuss the Commission's leasing requirements.

Please also be advised that the waterways involved in the Proposed Action are subject to a public navigational easement. This easement provides that the public has the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but are not limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses. The activities completed under the Proposed Action must not restrict or impede the easement right of the public.

Proposed Action Description

The Proposed Action includes constructing a 1,500-foot-long passive weir, with associated levee, roadway, rail, and fish passage improvements. The overall purpose is to construct a new weir upstream of the existing weir along the Sacramento River to reduce flood risk by lowering high water surface elevations against urban levees and reducing flow farther downstream in urbanized areas. Proposed Action objectives include the following:

- Reduce the chance of flooding and damages, once flooding occurs, and improve public safety preparedness, and emergency response.
- Reduce maintenance and repair requirements by modifying the flood management system in ways that are compatible with natural processes.
- Integrate the recovery and restoration of key physical processes, self-sustaining ecological functions, native habitat, and species.
- Ensure that technically feasible and cost-effective solutions are implemented to maximize the flood risk reduction benefits given the practical limitations of applicable funding sources.

Commission staff understands that the Proposed Action would include the following components that have potential to affect State sovereign land:

- Erosion protection (riprap, articulated concrete mats, or a similar material) would be placed on the Sacramento River side of the weir to prevent erosion.
- Two fish passage channel exits: One channel would accommodate fish passage when Sacramento River stages are relatively higher, and one fish passage channel would accommodate fish passage when Sacramento River stages are relatively lower.
- Debris management features on the Sacramento River side of the structure that would include a floating boom, debris control berm, retaining walls, and deflection walls,
- Temporary cofferdams, or sheet pile installation during construction.

The Draft SEIS/EIR identifies Alternative 1 (Proposed Action) as the Environmentally Superior Alternative.

Environmental Review

Commission staff requests that the lead agencies consider the following comments on the Proposed Action's Draft SEIS/EIR.

Mercury/Methylmercury:

1. On April 22, 2010, the Central Valley Regional Water Quality Control Board (CVRWQCB) identified the Commission as both a State agency that manages open water areas in the Sacramento-San Joaquin Delta Estuary and a nonpoint source discharger of methylmercury (Resolution No. R5-2010-0043), because subsurface lands under the Commission's jurisdiction are impacted by mercury from legacy mining activities dating back to California's Gold Rush. Pursuant to a CVRWQCB Total Maximum Daily Load (TMDL), the CVRWQCB required the Commission to participate in studies to identify potential methylmercury control methods in the Delta and to participate in an Exposure Reduction Program. The goal of the studies is to evaluate existing control methods and evaluate options to reduce methylmercury in open waters under jurisdiction of the Commission.

The Commission appreciates the inclusion of Mitigation Measure GEO-1 to address the potential release of mercury or methylmercury, as any action taken that may result in mercury or methylmercury suspension within the Sacramento-San Joaquin Delta may affect the Commission's efforts to comply with the CVRWQCB TMDL.

Cultural Resources

2. **Tribal Consultation:** Mitigation Measure CR-5 (page 103) states that "CVFPB will consult with culturally affiliated Tribes concerning Tribal Cultural Resources that may be impacted, if these types of resources are discovered prior to or during construction." 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.'"

The wording of CR-5 suggests that CVFPB would be making the decision as to whether there is a resource that requires Tribal consultation. Commission staff requests that this sentence be revised as follows: "CVFPB will consult with culturally affiliated Tribes concerning Tribal Cultural Resources that may be impacted, if the Tribal Monitor ~~these types of~~ identifies such resources ~~are discovered~~ prior to or during construction."

3. Title to Resources: Commission staff requests the Archaeological Discovery Plan (Mitigation Measure CR-2, found on page 3-96) include a statement 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), as follows: "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 the lead agencies consult with staff attorney Jamie Garrett (see contact information below) should any cultural resources on State lands be discovered during construction of the Proposed Action.

Thank you for the opportunity to comment on the Draft SEIS/EIR for the Proposed Action. As a responsible and trustee agency, the Commission will need to rely on the Final SEIR for the issuance of any lease as specified above and, therefore, we request that you consider our comments prior to certification of the SEIR.

Please send copies of future project-related documents, including electronic copies of the final SEIS/EIR, Mitigation Monitoring and Reporting Program, Notice of Determination, Findings, Statement of Overriding Considerations (if applicable), and approving resolution when they become available. Please refer questions concerning 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 Staff Attorney Jamie Garrett, at (916) 574-0398 or jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Joanne Holt Public Land Management Specialist, at (916) 574-1832 or Joanne.Holt@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

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