

**CALIFORNIA STATE LANDS COMMISSION**

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*Established in 1938*

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July 27, 2021

File Ref: SCH #2005072046

Governor's Office of Planning & Research

**July 27 2021**

**STATE CLEARINGHOUSE**

Kalia Schuster  
Department of Water Resources  
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Sacramento, CA, 95821

VIA ELECTRONIC MAIL ONLY: [PublicCommentARCF16@water.ca.gov](mailto:PublicCommentARCF16@water.ca.gov)

**Subject: Draft Supplemental Environmental Impact Report/Environmental Assessment (SEIR/EA) for the American River Common Features, Water Resources Development Act of 2016, Sacramento River East Levee Contract 3, Sacramento County**

Dear Kalia Schuster:

The California State Lands Commission (Commission) staff has reviewed the Draft SEIR/EA for the American River Common Features Development Act of 2016, Sacramento River East Levee Contract 3 (Project), 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 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.

The Sacramento River, at the location of the proposed Project, is State sovereign land under the jurisdiction of the Commission. Based upon the information provided and a preliminary review of Commission records, Commission staff has determined that the Project will require submission of a lease application for issuance of a lease. The application can be found at our website at [www.slc.ca.gov](http://www.slc.ca.gov). As the Project proceeds, please submit additional information, including but not limited to ordinary high-water mark (OHWM) and boundary surveys, for a determination of the extent of the Commission's jurisdiction. Please contact Sandra Avila, Public Land Management Specialist, for jurisdiction and leasing requirements for the Project (see contact information at end of letter). Additionally, please ensure that the Commission's Land Management Division staff is included on any future distribution mailing list for the Project.

### **Proposed Project Description**

The USACE, CVFPB, and Sacramento Area Flood Control Agency propose to construct levee improvements along the Sacramento River East Levee to meet embankment and foundation stability requirements. Project 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 understand that some utility improvements at Sump 70 would take place on State sovereign land. Temporary waterside access below the OHWM of the river would be required to replace the three existing steel outfall pipes (two 24-inch and one 12-inch) with new steel pipes. Standby bypass pumping and piping would be required during construction activities. The new pipes would tie into the existing waterside outfall structure. No work would be performed within the wetted channel of the Sacramento River. However, dry areas below the OHWM are still considered habitat for Federally protected fish species. The replacement of municipal drainage system pipes would temporarily disturb 0.05 acres below the OHWM.

The Draft SEIR/EA identifies Alternative 1 (Proposed Action) as the Environmentally Superior Alternative.

### **Environmental Review**

Commission staff request that the lead agencies consider the following comments on the Draft SEIR/EA.

#### **General Comments**

1. Although Table ES-1. *Summary of Environmental Effects and Mitigation Measures for the Proposed Project* is provided in the Executive Summary, throughout the SEIR/EA, it states that adverse impacts are determined to be less than significant with mitigation measures described in the 2016 American River Watershed Common Features General Reevaluation Report (ARCF GRR) Environmental Impact Statement/Environmental Impact Report (EIS/EIR). Sacramento River East Levee (SREL) Contract 1 SEA/EIR, or SREL Contract 2 SEA/EIR, rather than calling out the specific individual measures used to reduce the significance of each impact.

Commission staff request that the lead agencies clearly specify exactly which measures are being used to reduce the significance of each impact, as Commission staff are required to prepare separate agency findings, a statement of overriding considerations (if applicable), and a Mitigation and Monitoring Program that rely on this level of detail.

#### **Water Quality**

2. On page 28, Section 3.5, it states “Mitigation Measures from the ARCF GRR EIS/EIR (referred to as GEO-1 and WATERS-1 in SREL Contract 1 and 2 SEA/EIRs) amended below in Section 3.5.3, would reduce sedimentation discharge concerns to a negligible level.” However, the amended mitigation measure text supposedly shown in Section 3.5.3, is unclear. Please clarify whether the mitigation measures noted above have been amended and if so, provide the complete amended text of each measure.

#### **Cultural Resources**

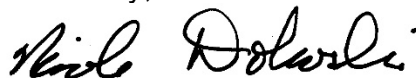
3. **Tribal Outreach:** Table 3-1 (page 25) states that Cultural Resources is one of the resource areas not discussed in detail in the SEIR/EA. Tribal Cultural Resources were somewhat discussed in the ARCF GRR EIS/EIR. However, due to changes to the Project as analyzed in the SEIR/EA and because it has been over 5 years since the original outreach occurred, Commission staff believe that updated tribal outreach should be conducted. In addition, the tribes’ concurrence with the Programmatic Agreement (PA) mentioned in the SEIR/EA should be confirmed, as the PA does not contain tribal signatures. Commission staff request that the results of this updated outreach be provided when complete.

4. **Title to Resources:** Commission staff request the Archaeological Discovery Plan (Mitigation Measure CR-2, mentioned in Table ES-1) 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 are 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 request that the lead agencies consult with Staff Attorney Jamie Garrett (see contact information below) should any cultural resources on State land be discovered during construction of the Project.

Thank you for the opportunity to comment on the Draft SEIR/EA for the Project. 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 SEIR/EA, 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](mailto: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](mailto:jamie.garrett@slc.ca.gov). For questions concerning Commission leasing jurisdiction, please contact Sandra Avila, Public Land Management Specialist, at (916) 574-0282 or [sandra.avila@slc.ca.gov](mailto:sandra.avila@slc.ca.gov).

Sincerely,



Nicole Dobroski, Chief  
Division of Environmental Planning  
and Management

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