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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

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Flood Projects Office
Department of Water Resources
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VIA ELECTRONIC MAIL ONLY (PublicCommentARCF16@water.ca.gov)

Subject: Draft Supplemental Environmental Impact Statement/Report (Draft SEIS/EIR) for American River Watershed Common Features, Water Resources Development Act of 2016 Project, American River Contract 2, Sacramento County

To Whom It May Concern:

The California State Lands Commission (Commission) staff has reviewed the subject Draft SEIS/EIR for the American River Watershed Common Features, Water Resources Development Act of 2016 Project, American River Contract 2 Project (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 (Corps) 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 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 upon the information provided and a preliminary review of our records, we have determined that the Lower American River (LAR), located within Sacramento County near Sites 2-2 and 2-3 is likely in a natural condition, non-tidal in this vicinity, navigable, and meandered on both banks on Rancho Del Paso, U.S. Township, and S & O Survey plats. The extent of State sovereign ownership is likely waterward of the current low-water mark on the right bank of the LAR. The proposed Site 2-3 work area appears to be located landward of State sovereign land; therefore, no lease would be required for work at Site 2-3.

However, it appears the proposed Site 2-2 Work Area is located waterward of the current low-water mark on the LAR and would encroach onto State sovereign land. Therefore, a lease would be required for work in this area. Please contact Sandra Avila with the Land Management Division (contact information provided below) for further information on the Commission's leasing requirements.

In addition, we have determined that the LAR near the proposed Arden Pond and Rossmoor West mitigation sites is likely in a natural condition, non-tidal in this vicinity, navigable, and meandered on both banks on the rancho plats. The uplands at this location are within Rancho Del Paso and Rancho San Juan (right bank), and Rancho De Los Americanos and Rancho New Helvetia (left bank). The extent of State sovereign ownership is likely waterward of the current low-water mark. For the proposed Arden Pond mitigation site, the improvements appear to be located landward of the current low-water mark on the banks of the LAR and are not on State sovereign land. Also, for the proposed Rossmoor West mitigation site the improvements also appear to be located landward of State sovereign land. The improvements include excavation at, and landward of, a water surface elevation which is likely landward of the current low-water mark of the banks of the LAR near the proposed mitigation projects. Therefore, no lease would be required for work within these mitigation sites.

Project Description

CVFPB proposes to install erosion protection features along the LAR at levee sites 2-2 and 2-3. The purpose of the Project is to reduce the overall flood risk within the study area. The design objectives would:

- Minimize impacts on hydraulic capacity

- Maximize the width of the planting benches without impacting hydraulic capacity
- Minimize excavation into the existing berm and preserve existing resources where possible
- Minimize the footprint into the existing channel.

In addition, the Project includes the development of three sites to provide for the mitigation of impacts to biological resources in the LAR; the Arden Pond Mitigation Site, and the Rossmoor West and East Mitigation Sites. The mitigation sites would create riparian, shaded riverine aquatic, and valley elderberry beetle habitats.

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

- Positioning rock slope protection around the Howe Avenue Bridge piers.
- Depositing launchable rock on the existing bank at a 2:1 slope, extending below the ordinary low-water mark at Site 2-2.

Environmental Review

Commission staff requests that the CVFPB consider the following comments on the Project's Draft SEIS/EIR, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the SEIR to support a future lease approval for the Project.

Cultural Resources

1. Tribal Consultation: Page 3-103 states that consultation with Native American is ongoing at this time. Commission staff requests that the results of consultation be provided when complete.
2. Title to Resources: Commission staff requests the Archaeological Discovery Plan (Mitigation Measure [MM] CR-2, found on page 3-108) 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). Commission staff also requests that MM CR-4 include the following statement: "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 Project.

Climate Change

3. Climate change is mentioned in Section 3.10, *Greenhouse Gas Emissions and Energy Consumption* of the Draft SEIS/EIR; however, there is no distinct discussion of how the Project would address aspects of climate change other than greenhouse gases that are relevant to the Project. In addition, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time. Although relevant information is provided throughout the document, Commission staff suggests that CVFPB consider adding a separate discussion of how the work purposed at Site 2-2 addresses the potential effects of climate change noted above.

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

Please send copies of future Project-related documents, including electronic copies of the Final SEIS/EIR, Mitigation and Monitoring Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations 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 Sandra Avila Public Land Management Specialist, at (916) 574-0282 or 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
N. Lee, Commission
S. Avila, Commission