

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

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File Ref: SCH #2005072046

Flood Projects Branch
Department of Water Resources
3464 El Camino Avenue Room 200
Sacramento, CA 95821

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

Subject: Draft Subsequent Environmental Impact Statement/Environmental Impact Report for the American River Common Features, Water Resources Development Act of 2016

To whom it may concern:

The California State Lands Commission (Commission) staff has reviewed the Draft Subsequent Environmental Impact Statement/Environmental Impact Report (SEIS/EIR) for the American River Common Features (ARCF), Water Resources Development Act of 2016 (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 (MHTL), except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court.

The American and Sacramento Rivers, at several of the locations within the proposed Project, are tidal 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(s) for issuance of a lease(s). The application can be found at our website at www.slc.ca.gov. As the Project proceeds, please submit additional information, including but not limited to MHTL and boundary surveys, for a determination of the extent of the Commission's jurisdiction. Please contact Ninette Lee, Public Land Manager, for jurisdiction and leasing requirements for the Project (see contact information at end of letter). Additionally, please ensure that Ninette is included on any future distribution mailing list for the Project.

Proposed Project Description

The SEIS/EIR analyzes design refinements to the authorized ARCF 2016 Project, including engineering design modifications, footprint expansions, and compensatory habitat mitigation approaches. The design refinements include actions within eight major project components:

- American River Erosion Contracts 3B, 4A, and 4B
- Sacramento River Erosion Contract 3
- Magpie Creek Project (MCP)
- American River Mitigation Site (ARMS)
- Sacramento River Mitigation Site (SRMS)
- Installation of a Piezometer Network

It is staff's understanding that areas within the American River Erosion Contracts 3B, 4A, and 4B, Sacramento River Erosion Contract 3, and portions of the ARMS and SRMS are within the jurisdiction of the Commission.

The Proposed Action (Alternative 2) would have the fewest overall environmental impacts, as well as the least environmentally damaging impacts, and therefore would be the environmentally superior alternative under CEQA.

Comments

Thank you for the opportunity to review the SEIS/EIR for the Project. As a responsible and trustee agency, the Commission will need to rely on the certified 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. Staff would also like to thank CVFPB and the USACE for the inclusion of the ordinary high-water mark on many of the SEIR maps, which assists Staff with our jurisdictional determination and assessment of project impacts that would occur on State lands.

Please send copies of future project-related documents, including electronic copies of the certified SEIS/EIR, an accessible version of the final 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 Commission leasing jurisdiction, please contact Ninette Lee, Public Land Manager, at (916) 574-1869 or ninette.lee@slc.ca.gov.

Sincerely,



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

cc: Office of Planning and Research
C. Herzog, Commission
N. Lee, Commission
J. Fabel, Commission