

**CALIFORNIA STATE LANDS COMMISSION**  
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Governor's Office of Planning & Research

MAY 14 2019

STATE CLEARINGHOUSE

May 14, 2019

Contact Phone: (916) 574-1890

File Ref: SCH # 2019049093

Stephanie Ponce, Environmental Scientist  
California Department of Water Resources  
3310 El Camino Avenue, Room 140  
Sacramento, CA 95821

VIA REGULAR & ELECTRONIC MAIL ([Stephanie.Ponce@water.ca.gov](mailto:Stephanie.Ponce@water.ca.gov))

**Subject: Notice of Preparation (NOP) for an Environmental Impact Report (EIR) for the Tisdale Weir Rehabilitation and Fish Passage Project, Sutter County**

Dear Ms. Ponce:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for an EIR for the Tisdale Weir Rehabilitation and Fish Passage Project (Project), which is being prepared by the California 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, if 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 21153, 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. 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, the Sacramento River, at the Project location, is State sovereign land under the jurisdiction of the Commission. Any portion of the Project that extends waterward of the ordinary low-water mark of the Sacramento River will require a lease from the Commission and any portion between the ordinary low- and high-water marks must be compatible with the Public Trust easement.

### **Project Description**

The DWR Division of Flood Management proposes to construct, operate, and maintain the Project to meet the following objectives and needs:

- Integrate structural rehabilitation of the Tisdale Weir along with installation of fish passage facilities to allow upstream migrating fish (salmon and sturgeon)
- Allow public access to the Sacramento River

From the Project Description, Commission staff understands that the Project's footprint and staging areas described below have the potential to affect State sovereign land.

### **Project Footprint**

Within the Project footprint, structural rehabilitation to the Tisdale Weir would include replacing southern and northern abutment walls, removing and replacing the energy dissipation basin, and injection grouting and patching the weir. Fish passage facility installation would include:

- Reconstructing the energy dissipation basin on the downstream side of the weir to facilitate fish collection and passage through a notch in the weir
- Installing a notch in the existing weir
- Installing operable gates (for flow regulation) in the notch
- Installing an equipment access pad and attendant facilities at the north end of the weir
- Installing an access ramp
- Constructing a channel connecting the notch in the weir to the Sacramento River

### Project Staging Areas

To support the construction within the Project footprint, three staging areas have been identified which have the potential to affect State sovereign land within the Tisdale Weir and bypass. Two of these areas appear to be along the northwest edge of the Project footprint.

### 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 ordinary low-water mark. 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. Sensitive Species and Habitats: 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 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 mitigation measures 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 hull biofouling, wherein marine and aquatic organisms attach to and accumulate on the hull and other submerged 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 hull-cleaning. The CDFW's 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>).

In addition, in light of the recent decline of native pelagic organisms and in order to protect at-risk fish species, the EIR should examine if any elements of the Project would favor non-native fisheries.

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 side supporting structures. Mitigation measures 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) 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 mitigation measures that would reduce them to the extent feasible. For the proposed Project, it appears that DWR will utilize its Climate Action Plan (CAP) to account and mitigate for potential sources of GHGs that will be created during the construction of the Project. DWR's CAP should be used to address mitigation, adaptation, and consistency in the analysis of climate change for the proposed Project. This should include Phase I: Greenhouse Gas Emissions Reduction Plan; Phase II: Climate Change Analysis Guidance; Phase III: DWR's Climate Change Vulnerability Assessment and Adaptation Plan for the proposed Project.

During the proposed Project construction, Commission staff recommends DWR utilize The California Emissions Estimator Model® (CalEEMod) and reference local air quality management district's (AQMDs) guidance and criteria for reduction and monitoring.

6. Climate Change Effects: The Project area is not tidally influenced and therefore, would not be subject to sea-level rise. However, 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. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. On this basis, DWR should consider discussing in the EIR if and how various Project components might be affected by the effects of climate change and whether the rehabilitation of the Tisdale Bypass is designed to be resilient to future climate change effects. Existing river structures have been built to convey high water levels and flood waters from the upper Sacramento River watershed north of the Sacramento area. Because of their nature and location, the lands and resources within the river and bypass are already vulnerable to storms and high-water levels and will become more so into the future. Commission staff recommends that the EIR demonstrate how the Tisdale Weir's design will be sufficient to ensure function, safety, and protection of the environment over the expected life of the structure.

Governor Brown issued Executive Order B-30-15 in April 2015, which directs state government to fully implement the Safeguarding California Plan and factor in climate change preparedness in planning and decision making. The State of California released the 2018 Update to the Safeguarding California Plan in January 2018, to provide policy guidance for state decision-makers as part of continuing efforts to prepare for climate risks. The Safeguarding California Plan sets forth "actions needed" to safeguard inland ecosystems and resources as part of its policy recommendations for state decision-makers. Please note that when considering a lease application for the Project, Commission staff will:

- Request information from DWR concerning the potential effects of climate change on the Project
- If applicable, require DWR to indicate how they plan to address climate change effects and what adaptation strategies are planned during the projected life of the Project
- Where appropriate, recommend Project modifications that would eliminate or reduce potentially adverse impacts from climate change, including adverse impacts on public access

#### Cultural Resources

7. 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. Commission staff requests that DWR contact Staff Attorney Jamie Garrett (see contact information below) to obtain shipwrecks data from the database and Commission records for the Project site. 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 mitigation measure 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.

8. Title to Resources: The EIR should also mention 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 Commission (Pub. Resources Code, § 6313). Commission staff requests that DWR consult with Staff Attorney Jamie Garrett, 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."

#### Tribal Cultural Resources

9. Tribal Engagement and Consideration of Tribal Cultural Resources: Commission staff recommends DWR include a robust discussion of Tribal engagement efforts and potential impacts of the Project on 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.<sup>1</sup> The AB 52 provisions 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 mitigation measures to avoid or minimize impacts to these resources. Even if no Tribe has submitted a consultation notification request for the Project area, 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

According to the Commission's records, the United Auburn Indian Community includes the Project area in its geographic and cultural historic territory, with particular concerns around resources that may be within the materials used to construct the levees. Since the NOP does not disclose if notification or outreach to interested Tribes has occurred and does not 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.

10. Determination of Significance: Additionally, with respect to significance determinations, CEQA section 21084.2 states that, "A project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment." When feasible, public agencies must avoid damaging effects to Tribal Cultural Resources and shall keep information submitted by the Tribes confidential. Staff recommends DWR provide a discussion in

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<sup>1</sup> Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 were added to CEQA pursuant to AB 52.

the EIR on how it determined the appropriate scope and extent of resources meeting the definition of Tribal Cultural Resources and whether locally affiliated Tribes were consulted as part of this determination.

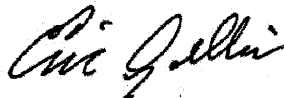
Mitigation and Alternatives

11. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures should either be presented as specific, feasible, enforceable obligations, or should be presented as formulas containing performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way (State CEQA Guidelines, §15126.4, subd. (a)).
12. Alternatives: In addition to describing mitigation measures 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).

Thank you for the opportunity to comment on the NOP for the Project. 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 notify Commission staff when the Draft EIR is available for public review and send any additional information on the Project to the Commission staff listed below as the EIR is being prepared.

Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or [Christopher.Huitt@slc.ca.gov](mailto:Christopher.Huitt@slc.ca.gov). For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at (916) 574-0398 or [Jamie.Garrett@slc.ca.gov](mailto:Jamie.Garrett@slc.ca.gov). For questions concerning the Commission's leasing jurisdiction, please contact Mary Jo Columbus, Public Land Management Specialist, at (916) 574-0204 or [MaryJo.Columbus@slc.ca.gov](mailto:MaryJo.Columbus@slc.ca.gov).

Sincerely,



Eric Gillies, Acting Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
J. Fabel, Commission  
M. J. Columbus, Commission  
C. Huitt, Commission

