

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

Lilly Allen
City of Sacramento
Water Forum, 1330 21st Street
Sacramento, CA 96811

VIA REGULAR & ELECTRONIC MAIL (lallen@cityofsacramento.org)

Subject: Draft Environmental Assessment/Initial Study/Mitigated Negative Declaration (EA/IS/MND) for the Lower American River Anadromous Fish Habitat Restoration Project, Sacramento County

Dear Ms. Allen:

The California State Lands Commission (Commission) staff has reviewed the Draft EA/IS/MND for the Lower American River (LAR) Anadromous Fish Habitat Restoration Project (Project), which is being prepared by the City of Sacramento (City) and the Bureau of Reclamation (Reclamation). The City, 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.), and Reclamation is the lead agency under the National Environmental Policy Act (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.

After reviewing the EA/IS/MND, portions of the Project area include the bed of the LAR, which is subject to the Commission's leasing jurisdiction. Proposed work within the Commission's jurisdiction will require a lease from the Commission, and work within these areas must be compatible with the Public Trust easement. As such, an application should be submitted to the Commission as soon as possible. Please contact Dobri Tutov for additional information (see contact information at end of letter). A copy of the Commission's lease application can be found at the following website: <https://www.slc.ca.gov/wp-content/uploads/2018/07/LeaseApp.pdf>.

Project Description

The lead agencies propose to restore and replenish salmonid spawning gravel lost due to the construction and operation of Central Valley Project dams and other actions that have reduced the availability of spawning gravel and rearing habitat in the LAR. The Project's time frame is not a single year but would extend through 2034. The Project would:

- Replenish spawning gravel and create and enhance side channel and floodplain habitat and in-stream habitat structures, as needed, in the LAR.
- Facilitate continued operation of Folsom and Nimbus dams in compliance with Central Valley Project Improvement Act Section 3406(b)(13) and Endangered Species Act Section 7 requirements.

From the Project Description, Commission staff understands that the Proposed Action would entail three primary activities in the LAR that have potential to affect State sovereign land:

- Spawning gravel replenishment
- Floodplain and side channel creation/enhancement
- Instream habitat structure (e.g., trees, trunks, rootwads, and willows) placement

Gravel borrow would occur at two sites (Sailor Bar and Mississippi Bar), previously used as borrow areas for restoration actions implemented by Reclamation and the Water Forum. In-river gravel placement along the entire Project reach would not exceed

approximately 30,000 tons annually and would not exceed approximately 450,000 tons total over the 16-year (2019 to 2034) duration of the Project. Restoration activities are anticipated to be completed at up to three sites per year through 2034. Gravel placement would occur using the "Spawning Habitat Integrated Rehabilitation Approach" (SHIRA) developed by the University of California, Davis. SHIRA allows the use of bulldozers in the river to grade the surface as needed to reach design specifications.

Environmental Review

Commission staff requests that the lead agencies consider the following comments on the Draft EA/IS/MND, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the MND to support a future lease approval for the Project.

General Comments

1. Project Description. Page 8 of the Draft EA/EIS states "The restoration sites are accessible by Gold Country Boulevard, Nimbus Road, Illinois Avenue, Olive Avenue, South Bridge Street, El Manto Drive, and Rod Beaudry Drive and are located on lands held by Sacramento County." However, the LAR is also under the jurisdiction of the Commission. As noted above, a lease will required for activities within the bed of the LAR.

On page 16, under *Construction and Operational Safety*, this section describes how recreational boat traffic will be addressed during construction. The two solutions presented include 1) verbally communicating with recreational boaters to warn them of ongoing downstream in-river work, and 2) communicating via radio with downstream construction equipment operators to temporarily stop in-river work until boater traffic has safely passed the restoration site. Additionally, signs would be posted upstream of construction areas to warn boaters of the location and schedule of upcoming in-river work. Commission staff suggest that in addition to these practices, the City and Reclamation present the Project schedule with maps of the locations and a schedule of activities on their websites to further notify recreational users of the construction activities.

2. Public Agency Approvals: A few responsible agencies are identified in the Introduction (page 6); however, no table was included to fully identify all agency approvals required for the Project to proceed. Commission staff request that this table be compiled and included in the EA/IS/MND and identify the Commission as a responsible agency.

Agriculture and Forestry Resources

3. The Draft EA/IS/MND states that up to 20 trees may need to be removed at each site, although trees removal would be avoided to the extent feasible. The document further states that the removal of up to 20 trees per site over the 16 years of the

Proposed Action would not convert forest land to a non-forest use and would, therefore, be a less-than-significant impact.

The impacts to trees are only evaluated under Agriculture and Forestry Resources, not under Biological Resources. Commission staff disagree that the removal of approximately 60 trees per year (based on three sites per year) is a less-than-significant impact. Especially since the diameter and species of the trees is not disclosed. Commission staff request that tree removal impacts be treated as a potentially significant impact, with mitigation requiring a certified arborist to do a pre-construction survey to identify the species of trees and any sensitive habitats (i.e., nesting, critical habitat designations, etc.), and an acceptable replacement ratio determined in coordination with the California Department of Fish and Wildlife (CDFW).

Biological Resources

4. Plants: The EA/IS/MND states that Sanford's arrowhead is the only special-status plant species known to occur in the Project vicinity and that the species has been found along the river, within 3 miles of restoration sites. The document concludes that, "Because Sanford's arrowhead occurs in slow-moving waters, it is very unlikely to occur in areas of project-related disturbance, and unlikely to be adversely affected by project implementation. Therefore, impacts to plants are less than significant."

As Project construction would be conducted along the river in various locations, and the species has been found relatively close to the Project, Commission staff believe that the species has the potential to occur; therefore, the impact should be considered potentially significant and mitigation for pre-construction surveys and coordination with CDFW should be required if the species is identified.

5. Fish: Impacts to fish from accidental spill or exposure to hazardous materials, and suspended sediment and turbidity levels are discussed on page 31 of the EA/IS/MND and page 33 discusses nursery sites for juvenile fish. Both impacts conclude that with inclusion of mitigation measure (MM) GEO-1, the impacts would be reduced to a less-than-significant level.

MM GEO-1 begins with the words "if required." The MM does not address what measures will be implemented if the particular Project site does not require a Stormwater Pollution Prevention Plan, which is often the case for sites less than one acre. In order to effectively reduce impacts to fish species, the EA/IS/MND must clearly lay out what measures will be implemented to avoid exposure to hazardous materials and turbidity. As written, the MM does not appear to be sufficient.

6. Reptiles: The EA/IS/MND states that Western pond turtle habitat on the restoration and borrow sites is unlikely to be used for nesting, due to unsuitable substrate conditions. Therefore, impacts to reptiles including Western pond turtle are less than significant.

Although the EA/IS/MND does mention that Western pond turtle basking may take place within the Project sites, there is no mitigation provided for potential impacts to the species during construction. Commission staff believe this impact is potentially significant and mitigation is needed to compensate for possible disturbance of this species.

Cultural Resources

7. Discovery of Unknown Cultural Artifacts: Page 35 of the EA/IS/MND discusses cultural resources in the Project area and concludes that "...given the physical context of the site, situated in the river and modern sand bars and sediment, archaeological sensitivity is extremely low. Therefore, the proposed project would have no impact."

Commission staff disagrees with the City's conclusion. Since dredging will occur during flood plain and side channel creation and enhancement, there is the potential (however small) for discovery of unknown cultural artifacts. Commission staff recommend the impact be change to potentially significant with incorporation of MM TCR-1b, which appears to mitigate this impact.

8. Title to Cultural Resources: The EA/IS/MND should mention that the title to all archaeological sites, and historic or cultural resources on or in submerged lands of California is vested in the state and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff request that the City 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 request that the following statement be included in the EA/IS/MND's Mitigation and Monitoring Program (MMP): "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."

Thank you for the opportunity to comment on the Draft EA/IS/MND for the Project. As a responsible and trustee agency, the Commission will need to rely on the adopted MND for the issuance of any lease as specified above, and therefore, we request that you consider our comments prior to adoption of the MND.

Please send copies of future Project-related documents, including electronic copies of the adopted MND, MMP, Notice of Determination, and approving resolution when they become available. Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or via email at 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 via email at jamie.garrett@slc.ca.gov.

For questions concerning Commission leasing jurisdiction, please contact Dobri Tutov, Land Management Specialist, at (916) 574-0722 or via email at dobri.tutov@slc.ca.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia Herzog per".

Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

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