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Established in 1938

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STATE CLEARINGHOUSE

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Glenn Gebhardt, City Engineer
City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

VIA REGULAR & ELECTRONIC MAIL (ggebhardt@ci.lathrop.ca.us)

**Subject: Notice of Preparation (NOP) for an Environmental Impact Report (EIR)
for Lathrop Consolidated Treatment Facility (CTF) Surface Water
Discharge Project, San Joaquin County**

Dear Mr. Gebhardt:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for an Environmental Impact Report (EIR) for the Lathrop Consolidated Treatment Facility Surface Water Discharge Project (Project), which is being prepared by the City of Lathrop (City). The City, as the agency that oversees the Consolidated Treatment Facility (CTF) and 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 sovereign land and its accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign land, the Commission will act as a responsible agency. Commission staff requests that the City 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.

After review of the information contained in the NOP, and of our in-house records, Commission staff has determined that the San Joaquin River at this location, over which a portion of the Project will extend, includes State-owned sovereign land. It is important to note that the Commission has a lease in this vicinity with Califia, LLC, a California Limited Liability Company. On June 19, 2014, the Commission authorized the issuance of a 25-year General Lease – Right-of-Way Use, Lease No. PRC 2854.1, for the continued maintenance of an existing non-operational 20-inch drainage outlet. A lease from the Commission will be required for the portion of the Project encroaching through State-owned lands. Please contact George Asimakopoulos, Public Land Management Specialist (see contact information below) for further information on the extent of the Commission's jurisdiction and lease application requirements.

In addition, please be advised that the San Joaquin River in the Project area, lies in an area subject to a public right of navigation. This public right provides that members of the public have the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but are not limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses (*People ex rel. Baker v. Mack* (1971) 19 Cal. App.3d 1040). The proposed Project must not unduly restrict or impede the navigation and recreational rights of the public (Civil Code § 3479).

Project Description

The City proposes the Lathrop CTF Surface Water Discharge Project to meet its objectives and needs by fulfilling its General Plan land use vision. Currently, the City has 10 storage ponds, one percolation pond, and approximately 297 acres of urban and agricultural irrigation area for storage and use of treated effluent. However, this land is designated under the City General Plan for some form of urban development and keeping the land for effluent storage precludes the City from fulfilling its land use vision.

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

- Project Component 1. Install a new river side-bank or bottom-diffuser outfall to discharge excess tertiary-treated, disinfected, and dechlorinated effluent from the CTF to the San Joaquin River.

Environmental Review

Commission staff requests that the City 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 high-water mark and ordinary low-water mark for Project area waterways. 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. Special Status Species: 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. The City 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 the introduction of nonindigenous species. Therefore, the EIR should consider the Project's potential to result in 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>).

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 landside 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 a majority of the sources for GHGs will be from construction equipment.

Cultural Resources

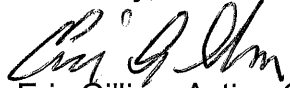
6. Submerged Resources: The EIR should evaluate potential impacts to submerged cultural resources in the Project area. The Commission maintains a shipwrecks database that can assist with this analysis. Commission staff requests that the City contact Staff Attorney Jamie Garrett (see contact information 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.
7. 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 California State Lands Commission (Pub. Resources Code, § 6313). Commission staff requests 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 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."

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 send additional information on the Project to the Commission staff listed below as the EIR is being prepared.

Please refer questions concerning environmental review to Christine Day, Environmental Scientist, at (916) 562-0027 or christine.day@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or at jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact George Asimakopoulos, Public Land Management Specialist, at (916) 574-0990 or george.asimakopoulos@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Day, Commission
G. Asimakopoulos, Commission
J. Garrett, Commission
E. Kennedy, Commission