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February 26, 2020

File Ref: SCH #2020019082

Cindy Fosi
Reclamation District 2091
P.O. Box 542
Modesto, CA 95354

Governor's Office of Planning & Research

FEB 26 2020

STATE CLEARINGHOUSE

VIA REGULAR & ELECTRONIC MAIL (cfosi@modestogov.com)

Subject: Environmental Assessment/Initial Study (EA/IS) for the RD 2091 Levee Repair Project, Stanislaus County

Dear Ms. Fosi:

The California State Lands Commission (Commission) staff has reviewed the subject EA/IS for the RD2091 Levee Repair Project (Project), which is being prepared by Reclamation District (RD) 2091. RD 2091, in partnership with the California Department of Water Resources (DWR) on a cost-share basis, is 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) is 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, if 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 available Project documents and internal records of the California State Lands Commission, the extent of the State's sovereign interest at the proposed location is undetermined at this time. Supplemental information is requested from the Project proponent for future review and assessment, including detailed site maps and existing easement documents. Should the scope of work or staging functions require use of State land below the low-water mark in the San Joaquin River, the Project proponent must submit an Application for Lease of State Land.

As the Project advances towards implementation, the Commission requests future communications related to the Project. Supplemental information should be forwarded to the attention of Joanne Holt (contact information is provided at the end of this letter). All communications should reference State Clearinghouse #2020019082 and Inquiry #1762.

Project Description

RD 2091 is proposing levee repair construction to address seepage and boil damage on the San Joaquin River at five Levee Mile (LM) locations in Stanislaus County that threaten the stability of approximately 11,038 feet of existing levee. The Project's objective is to repair seepage and stability issues.

From the Proposed Action, Commission staff understands that the Project would include repair at the following locations that, although unlikely, may have potential to affect State sovereign land:

- **Site JEN3.1 RD2091 01 0199 LM03.18**

This site extends from LM 2.87 to LM 3.94 and covers approximately 3.67 acres. It has experienced severe seepage and several boils running clear 30 feet from the landside toe. The length of the repair will be approximately 5,718 feet and would require approximately 16,403 cubic yards of material.

- **Site JEN4.8 RD2091 01 0199 LM04.80**

This site extends from LM 4.50 to 5.10 and covers approximately 3.6 acres. It has experienced severe seepage and boils carrying material during past high-water events. In 1997, crushed rock and filter fabric were placed on an existing landside berm to control seepage and sandbags were used to control the boils about 25 feet from the toe. This area sees high amounts of seepage and boils during every high-

water event. The length of the repair will be approximately 2,370 feet, requiring approximately 22,284 cubic yards of material.

- **Site JEN5.7 RD2091 01 0199 LM05.73**

This site extends from LM 5.70 to 5.75, covers approximately 0.33 acres and has experienced several boils carrying a small amount of material about 25 feet from the landside toe. Seepage and boils have occurred during every high-water event. The length of the repair will be approximately 542 feet and will require approximately 2,138 cubic yards of material.

- **Site JEN6.1 RD2091 01 0199 LM06.08**

The site at LM 6.08 has a 5-inch diameter boil that carries material during high flows. A sandbag ring has been placed around the boil during rain events. Rock and filter fabric have been used in the past to control seepage and boils carrying material. The repair length is approximately 253 feet, with approximately 570 cubic yards of material required.

- **Site JEN6.6 RD2091 01 0199 LM06.63**

This site extends from LM 6.38 to 6.88, and covers approximately 4.03 acres. It has experienced a total of 17 boils, some of which run clear and some of which carry materials. Severe seepage was noted in 1997. The site has experienced seepage and boils carrying material or running clear during past high-water events. Sandbag rings were used to control boils while rocks and fabrics were used to control seepage. The repair will be approximately 2,155 feet long, requiring approximately 21,514 cubic yards of material.

The proposed Project repairs, in accordance with DWR Division of Flood Management Rural Levee Repair Guidelines, would include clearing, grubbing, and stripping of the berm before placing a drainage system that includes a minimum 12-inch filter layer, a 12-inch drain rock layer, followed by a geotextile to prevent movement of material into the drain rock.

Environmental Review

Commission staff requests that the DWR consider the following comments on the Project's EA/IS, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EA/IS to support consideration of a future lease for the Project, should it be determined that a lease is required.

General Comments

1. **Proposed Action:** Although as noted in Section 3.1, The Project area lies on the landside of the east San Joaquin River levee, Figure 1. *Action Area* from the Biological Assessment (BA) indicates that activities may extend to onto State lands, which may include portions of the banks of the San Joaquin River. For example, the rebuilding of the levee crown could result in materials falling down the waterside of the levee onto adjacent State lands. Commission staff requests that this potential impact be addressed and specific measures (not just a reference to an erosion plan)

be provided on how this impact would be avoided during construction. Furthermore, access to the Project area through lands under the Commission's jurisdiction may be required at some time during construction.

2. Public Agency Approvals: Section 6 identifies the laws and regulations of federal, state, and local agencies; however, the EA/IS does not list what specific agency approvals are needed for Project implementation. Commission staff request that these agencies are clearly identified as public agencies that have a discretionary approval over the Project. As there is the potential for the Project to affect State lands, please include the Commission on the list.
3. Terminology and Clarity: Commission staff suggest that the following items be modified to provide for better reference and clarity throughout the EA/IS:
 - a. **Numbering Mitigation Measures (MMs)**. Although mitigation (as needed) is provided after the appropriate header (Mitigation) in Section 4, the lack of an identifying number (e.g., CR-1 BIO-1, etc.) makes it difficult to reference said mitigation throughout the document and also makes the MMs indistinguishable from Applicant Proposed Measures (APMs) or best management practices (BMPs). Commission staff request that each type of measure be clearly identified.
 - b. **APMs and BMPs as part of the Proposed Action**. APMs and BMPs are measures that are usually considered part of the Project Action (or Project Description) and, therefore, reduce potential impacts prior to a significance determination. When assessing environmental effects these measures should be referred to, but as they are not "mitigation" it is better if they do not appear under a Mitigation header. For example, under "CEQA Checklist: Recreation," specific measures are presented under section 4.3.4 *Mitigation*; followed by "No mitigation would be required." This can be very confusing to the reader. A suggested modification to this example would be to add a table of APMs and BMPs to the end of Section 3, and then state under *Mitigation* that "With the inclusion of BMP-1 outlined in Section 3.x, the impact is less than significant, and no mitigation is required."
4. Deferred Mitigation: In order to avoid the improper deferral of mitigation, MMs must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and "shall not be deferred until some future time." (State CEQA Guidelines, §15126.4, subd. (a)). For example, references to the preparation of a Stormwater Pollution Prevention Plan (SWPPP) to reduce an impact, without calling out the specific activities that will be included in the SWPPP to reduce that particular impact to a less than significant level, is considered deferral. Commission staff requests that more specific information be provided in such MMs to demonstrate how the MM is going to mitigate potential significant impacts to less than significant.

Wildlife, Fish, and Vegetation Resources

5. As stated in the provided BA on page 1, only federally listed species were considered in the BA; therefore, there is no documentation for surveys for state listed species conducted within the Action Area. Commission staff requests that DWR consult with the California Department of Fish and Wildlife (CDFW) prior to adoption of this EA/IS to verify what state-listed species have the potential to occur in the Action Area. In addition, staff suggests that CDFW and USFWS be consulted in regard to size and shape of proposed avoidance buffers, site restoration, etc., and a statement to that effect included in the MMs.

Hydrology and Water Quality

6. Table 11, *CEQA Checklist: Hydrology and Water Quality*, indicates that no MMs are required; however, Section 4.7.3 does not state that the impacts are less than significant, and measures are provided under Section 4.7.4. *Mitigation*. Please refer to Comment #3 regarding terminology and clarity.

Cultural Resources

7. Title to Resources: As noted on page 21, “...former or current riparian areas within the San Joaquin Valley are considered highly sensitive for prehistoric and historic-era cultural resources.” The EA/IS should also mention that the title to all abandoned 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 requests that the 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 EA/IS’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.”

Air Quality

8. Greenhouse Gas (GHG): Although page 54 of the EA/IS states that “*Emissions from construction related trips would fall well below the Small Project Analysis Level (SPAL) criteria for significance based on number of trips per day*,” 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 EA/IS. 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 MMs that would reduce them to the extent feasible.

In addition, under *CEQA Checklist: Air Quality*, there is one checklist category that was determined to be less than significant with mitigation (Criteria b). On page 54, under *Proposed Project* it states that "*Implementation of the SWPPP and BMPs would help to reduce impacts from dust-generating activities.*" However, a MM regarding a SWPPP is not proposed under Section 4.9.4 *Mitigation* and it is not clear whether the BMPs under that section are actually part of a MM reducing the Criteria (b) impact, or are just Project BMPs (please see Comment #3 regarding terminology and clarity).

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

Please send copies of future Project-related documents, including electronic copies of the adopted MND, Mitigation Monitoring and Reporting Program, 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 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 Joanne Holt Public Land Management Specialist, at (916) 574-1832 or Joanne.Holt@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Herzog, Commission
J. Garrett, Commission
J. Holt, Commission
T. Lagerquist, Parus Consulting (tom@parusconsulting.com)