

Appendix A
NOP and Comment Letters

NOTICE OF PREPARATION
ENVIRONMENTAL IMPACT REPORT FOR TISDALE WEIR
REHABILITATION AND FISH PASSAGE PROJECT
CALIFORNIA DEPARTMENT OF WATER RESOURCES

To: Responsible and Trustee Agencies and Interested Parties

The California Department of Water Resources (DWR) Division of Flood Management proposes to construct, operate and maintain the Tisdale Weir Rehabilitation and Fish Passage Project (Proposed Project) which would integrate structural rehabilitation of the Tisdale Weir along with installation of fish passage facilities to allow upstream migrating fish (salmon and sturgeon) access to the Sacramento River. The Tisdale Weir and Bypass are critical components of the Sacramento River Flood Control Project. The weir is located on the east side of the Sacramento River, south of the town of Meridian in Sutter County, and four miles west of the Sutter Bypass. Maps of the project location and project elements are attached.

Structural rehabilitation to the Tisdale Weir would include replacing southern and northern abutment walls; removing and replacing energy dissipation basin; and injection grouting and patching the weir. Fish passage facility installation would include a 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; an access ramp; and constructing a channel connecting the notch in the weir to the Sacramento River.

To satisfy California Environmental Quality Act (CEQA) (California Public Resources Code Section 21000 et seq.), requirements DWR, the Lead Agency under CEQA, has determined that the Proposed Project may have potentially significant impacts on the environment and that an Environmental Impact Report (EIR) will be required. This Notice of Preparation (NOP) for the proposed EIR is issued pursuant to Section 15082 of the State CEQA Guidelines.

The EIR will evaluate potential project-specific and cumulative environmental effects associated with the Proposed Project and analyze project alternatives. The Proposed Project may have potentially significant impacts on the following environmental resources including but not limited to: agriculture and forestry resources, air quality, biological resources, cultural resources and tribal cultural resources, greenhouse gas emissions, hydrology and water quality, recreation, and utilities and service systems.

DWR intends for the EIR to provide environmental analysis sufficient to support the issuance of state permits and other regulatory decisions applicable to constructing, operating and maintaining the Proposed Project, including but not limited to a Streambed Alteration Agreement pursuant to Fish and Game Code Section 1602, Federal Clean Water Act Section 404 Permit, Clean Water Act Section 401 Certification, and Biological Opinions. The following is a list of responsible and trustee agencies identified for this project: U.S. Army Corps of Engineers; U.S. Fish and Wildlife

Service; National Marine Fisheries Service; California Department of Fish and Wildlife; Central Valley Flood Protection Board; Central Valley Regional Water Quality Control Board; State Historic Preservation Office; and State Lands Commission.

DWR is soliciting the views of interested persons, organizations, and agencies regarding the scope and content of the environmental information in connection with the Proposed Project. In addition, each responsible agency shall provide DWR with specific detail about the scope, significant environmental issues, reasonable alternatives, and mitigation measures related to each responsible agency's area of statutory responsibility that must be explored in the EIR. In accordance with CEQA Guidelines Section 15082(b)(1)(B), responsible and trustee agencies should indicate their respective level of responsibility for the project in their response.

This NOP will be circulated for a 30-day public notice period beginning April 15, 2019 and ending May 15, 2019. At the end of the public notice period, DWR will consider all written comments received from interested persons, organizations, and agencies in preparing the environmental analysis to be included in the EIR.

Please submit your written comments on the scope of the EIR at the earliest possible date, but no later than 5 p.m. on Wednesday, May 15, 2019 to:

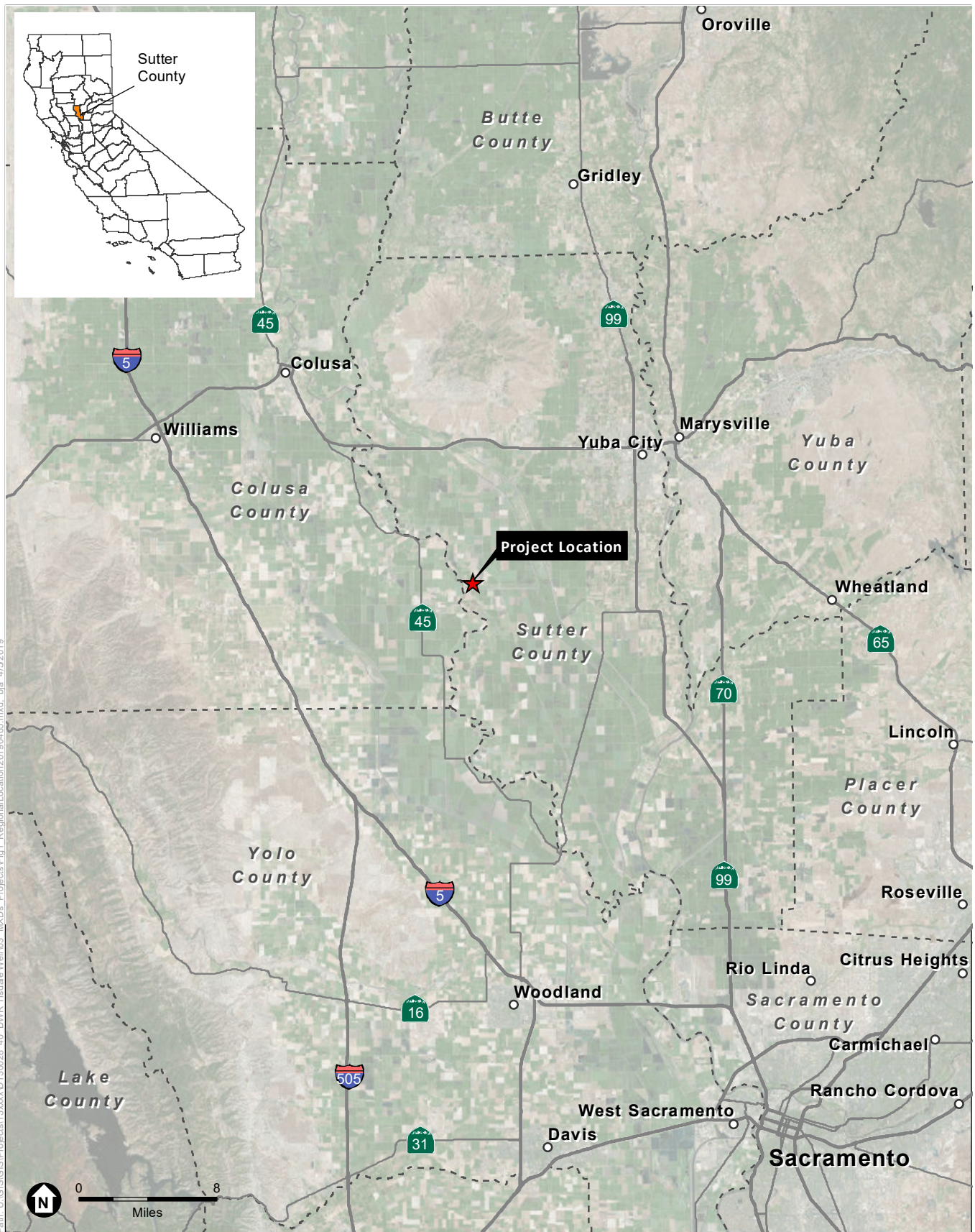
California Department of Water Resources
Division of Flood Management
Attention: Stephanie Ponce, Environmental Scientist
3310 El Camino Avenue, Room 140
Sacramento, CA 95821

Email address: TisdaleWeirRehabProject@water.ca.gov.

All comments received will be made available for public review in their entirety, including the names and addresses of the respondents. Individual respondents may request that their name and/or address be withheld from public disclosure. DWR will honor such requests to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. DWR will post NOP comment letters in their entirety on the DWR web page for the Proposed Project at <https://water.ca.gov/News/Public-Notices>.

Scoping Meeting

A public scoping meeting will be held to receive written and oral input on the scope and content of the EIR. The scoping meeting will be held on Thursday, April 25, 2019 from 2:30 p.m. to 4:30 p.m. at DWR's Sutter Maintenance Yard, 6908 Colusa Highway, Sutter, CA 95982.



SOURCE: Esri, 2015; ESA, 2019

Tisdale Weir Rehabilitation and Fish Passage Project

Figure 1
Regional Location





SOURCE: USDA, 2014; DWR, 2018; ESA, 2019

Tisdale Weir Rehabilitation and Fish Passage Project

Figure 2
Project Elements

From: [James Evans](#)
To: [DWR Tisdale Weir RehabProject](#)
Subject: Please put me on your list for updates on this project
Date: Thursday, April 25, 2019 4:20:55 PM

jwevans1959@gmail.com
Sent from my iPhone



April 26, 2019

State Clearinghouse

State.Clearinghouse@opr.ca.gov

PO Box 3044

Sacramento, CA 95812-3044

CEQA Project: SCH # 2019049093

Lead Agency: Department of Water Resources

Project Title: Tisdale Weir Rehabilitation and Fish Passage Project

The Division of Oil, Gas, and Geothermal Resources (Division) oversees the drilling, operation, maintenance, and plugging and abandonment of oil, natural gas, and geothermal wells. Our regulatory program emphasizes the wise development of oil, natural gas, and geothermal resources in the state through sound engineering practices that protect the environment, prevent pollution, and ensure public safety. Northern California is known for its rich gas fields. Division staff have reviewed the documents depicting the proposed project.

The Tisdale Weir Rehabilitation and Fish Passage Project would include replacing southern and northern abutment walls, removing and replacing an energy dissipation basin on the downstream side of the weir, and injection grouting and patching the weir. Fish passage facility construction 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 operable gates in the notch, installing an equipment access pad and attendant facilities at the north end of the weir, an access ramp, and constructing a channel connecting the notch in the weir to the Sacramento River. The Proposed Project would create habitat that is beneficial to wildlife including delta smelt, giant garter snake, and other fish and wildlife species, and widen a portion of the Yolo Bypass to increase flood storage and conveyance, increase the resiliency of levees, and reduce flood risk.

The attached map shows locations of four (4) known abandoned dry holes and one suspended well location (never drilled) within or adjacent to the project area. Based on the project map submitted by DWR, only one of these wells is within any of the areas of construction. It is located within the northeastern area designated for spoils storage. No other wells impact or are impacted by the proposed work. Since anticipated work involves placement of soil over the well (no excavation), no impact is likely. Note that the Division has not verified the actual location of the wells nor does it make specific. The Division of Oil, Gas, and Geothermal Resources (Division) oversees the drilling,

CEQA Project: SCH # 2019049093

Lead Agency: Department of Water Resources

Project Title: Tisdale Weir Rehabilitation and Fish Passage Project

operation, maintenance, and plugging and abandonment of oil, natural gas, and geothermal wells. Our regulatory program emphasizes the wise development of oil, natural gas, and geothermal resources in the state through sound engineering practices that protect the environment, prevent pollution, and ensure public safety. Northern California is known for its rich gas fields. Division staff have reviewed the documents depicting the proposed project.

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The attached map shows locations of four (4) known abandoned dry holes and one suspended well location (never drilled) within or adjacent to the project area. Based on the project map submitted by DWR, only one of these wells is within any of the areas of construction. It is located within the northeastern area designated for spoils storage. No other wells impact or are impacted by the proposed work. Since anticipated work involves placement of soil over the well (no excavation), no impact is likely. Note that the Division has not verified the actual location of the wells nor does it make specific statements regarding the adequacy of abandonment procedures with respect to current standards.

For future reference, you can review wells located on private and public land at the Division's website: <https://maps.conservation.ca.gov/doggr/wellfinder/#close> .

The local permitting agencies and property owner should be aware of, and fully understand, that significant and potentially dangerous issues may be associated with development near oil and gas wells. These issues are non-exhaustively identified in the following comments and are provided by the Division for consideration by the local permitting agency, in conjunction with the property owner and/or developer, on a parcel-by-parcel or well-by-well basis. As stated above, the Division provides the above well review information solely to facilitate decisions made by the local permitting agency regarding potential development near a gas well.

1. It is recommended that access to a well located on the property be maintained in the event re-abandonment of the well becomes necessary in the future. Impeding access to a well could result in the need to remove any structure or obstacle that prevents or impedes access. This includes, but is not limited to, buildings, housing, fencing, landscaping, trees, pools, patios, sidewalks, and decking.
2. Nothing guarantees that a well abandoned to current standards will not start leaking oil, gas, and/or water in the future. It always remains a possibility that

CEQA Project: SCH # 2019049093

Lead Agency: Department of Water Resources

Project Title: Tisdale Weir Rehabilitation and Fish Passage Project

any well may start to leak oil, gas, and/or water after abandonment, no matter how thoroughly the well was plugged and abandoned. The Division acknowledges that wells abandoned to current standards have a lower probability of leaking oil, gas, and/or water in the future, but makes no guarantees as to the adequacy of this well's abandonment or the potential need for future re-abandonment.

3. Based on comments **1** and **2** above, the Division makes the following general recommendations:
 - a. Maintain physical access to any gas well encountered.
 - b. Ensure that the abandonment of gas wells is to current standards.

If the local permitting agency, property owner, and/or developer chooses not to follow recommendation "**b**" for a well located on the development site property, the Division believes that the importance of following recommendation "**a**" for the well located on the subject property increases. If recommendation "**a**" cannot be followed for the well located on the subject property, then the Division advises the local permitting agency, property owner, and/or developer to consider any and all alternatives to proposed construction or development on the site (see comment **4** below).

4. Sections 3208 and 3255(a)(3) of the Public Resources Code give the Division the authority to order the re-abandonment of any well that is hazardous, or that poses a danger to life, health, or natural resources. Responsibility for re-abandonment costs for any well may be affected by the choices made by the local permitting agency, property owner, and/or developer in considering the general recommendations set forth in this letter. (Cal. Public Res. Code, § 3208.1.)
5. Maintaining sufficient access to a gas well may be generally described as maintaining "rig access" to the well. Rig access allows a well servicing rig and associated necessary equipment to reach the well from a public street or access way, solely over the parcel on which the well is located. A well servicing rig, and any necessary equipment, should be able to pass unimpeded along and over the route, and should be able to access the well without disturbing the integrity of surrounding infrastructure.
6. If, during the course of development of this proposed project, any unknown well(s) is/are discovered, the Division should be notified immediately so that the newly-discovered well(s) can be incorporated into the records and investigated. The Division recommends that any wells found in the course of this project, and any pertinent information obtained after the issuance of this letter, be communicated to the appropriate county recorder for inclusion in the title information of the subject real property. This is to ensure that present and future property owners are aware of (1) the wells located on the property, and (2) potentially significant issues associated with any improvements near oil or gas wells.

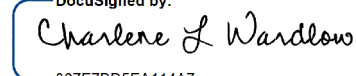
CEQA Project: SCH # 2019049093

Lead Agency: Department of Water Resources

Project Title: Tisdale Weir Rehabilitation and Fish Passage Project

No well work may be performed on any oil or gas well without written approval from the Division in the form of an appropriate permit. This includes, but is not limited to, mitigating leaking fluids or gas from abandoned wells, modifications to well casings, and/or any other re-abandonment work. (NOTE: The Division regulates the depth of any well below final grade (depth below the surface of the ground). Title 14, Section 1723.5 of the California Code of Regulations states that all well casings shall be cut off at least 5 feet but no more than 10 feet below grade. If any well needs to be lowered or raised (i.e. casing cut down or casing riser added) to meet this grade regulation, a permit from the Division is required before work can start.)

Sincerely,

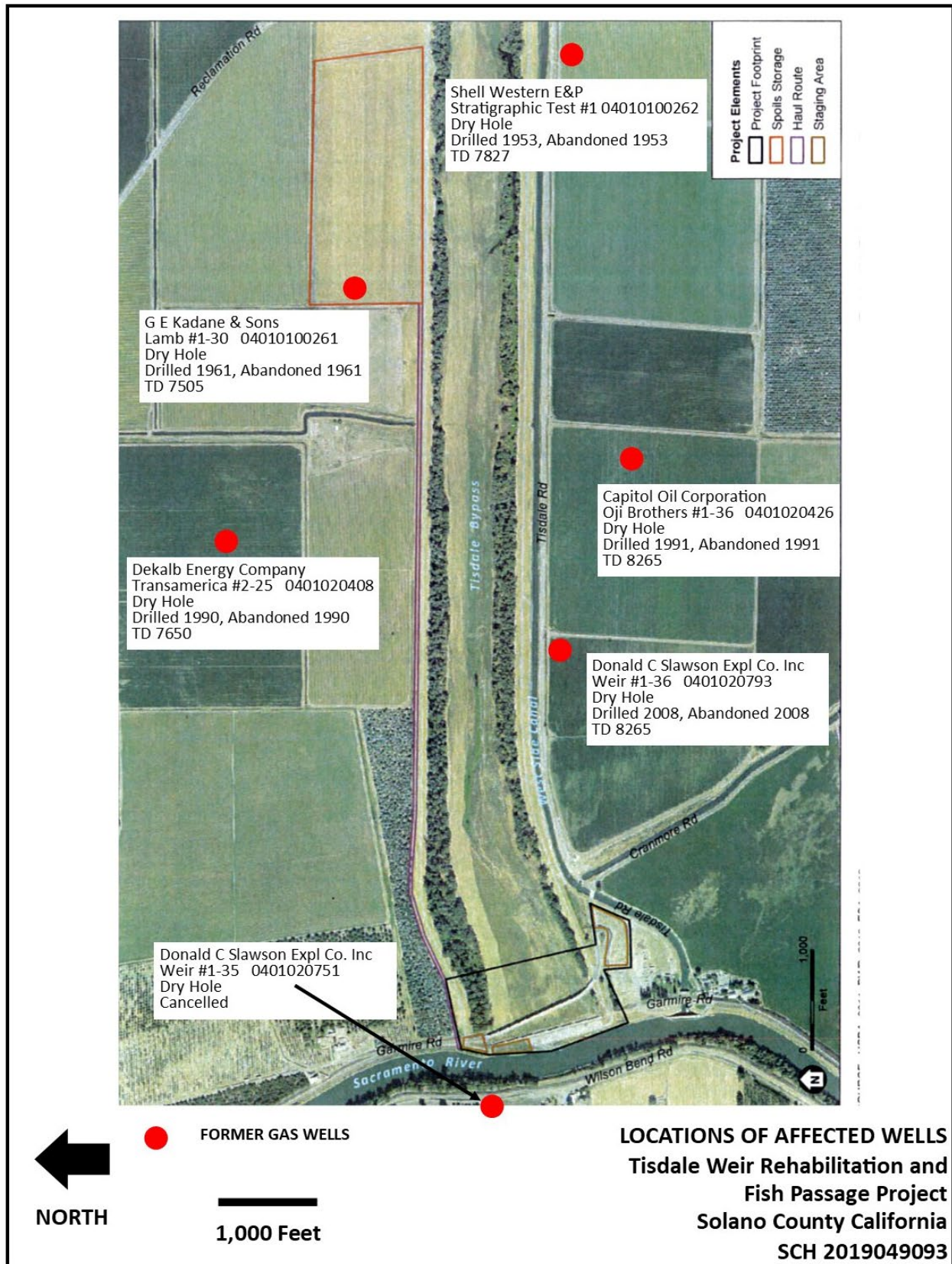
DocuSigned by:

067E7BD5EA11447
Charlene L Wardlow
Northern District Deputy

Attachment: Map

CC: Stephanie Ponce

TisdaleWeirRehabProject@water.ca.gov

Attachment





Central Valley Regional Water Quality Control Board

8 May 2019

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

CERTIFIED MAIL
7017 2620 0001 1359 2172

COMMENTS TO REQUEST FOR REVIEW FOR THE NOTICE OF PREPARATION FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT, TISDALE WEIR REHABILITATION AND FISH PASSAGE PROJECT, SCH#2019049093, SUTTER COUNTY

Pursuant to the State Clearinghouse's 15 April 2019 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Notice of Preparation for the Draft Environmental Impact Report* for the Tisdale Weir Rehabilitation and Fish Passage Project, located in Sutter County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases,

KARL E. LONGLEY ScD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.

For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:
http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:
https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_201805.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits¹

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

Industrial Storm Water General Permit

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ.

For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

¹ Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

For more information on the Water Quality Certification, visit the Central Valley Water Board website at:

https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/

Waste Discharge Requirements – Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at:

https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver) R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2013-0145_res.pdf

Regulatory Compliance for Commercially Irrigated Agriculture

If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program. There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at: https://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/regulatory_information/for_growers/coalition_groups/ or contact water board staff at (916) 464-4611 or via email at IrrLands@waterboards.ca.gov.
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 11-100 acres are currently \$1,277 + \$8.53/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at IrrLands@waterboards.ca.gov.

Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order.

For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

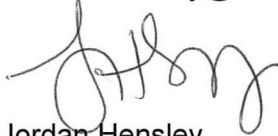
NPDES Permit

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit.

For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at:

<https://www.waterboards.ca.gov/centralvalley/help/permit/>

If you have questions regarding these comments, please contact me at (916) 464-4812 or Jordan.Hensley@waterboards.ca.gov.



Jordan Hensley
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento



Reclamation District No 1500
P.O. Box 96
Robbins, California 95676
530.738.4423

Sent Via email to: TisdaleWeirRehabProject@water.ca.gov

California Department of Water Resources
Division of Flood Management
Attention: Stephanie Ponce, Environmental Scientist
3310 El Camino Avenue, Room 140
Sacramento, CA 95821

May 14, 2019

Reclamation District 1500 is pleased to submit these comments on the Notice of Preparation (NOP) for the Environmental Impact Report (EIR) for the Tisdale Weir Rehabilitation & Fish Passage Project. We wish to highlight the following issues which we would like to see analyzed and addressed in the EIR:

- So potential impacts to downstream property owners, current land use practices, and maintenance operations and activities can be fully analyzed and described, we request that area of study of the EIR be expanded beyond the footprint shown on Figure 2 of the NOP to include:
 - The Tisdale and Sutter Bypass downstream of the weir
 - The Sacramento River directly upstream and downstream of the weir.
- We are concerned about potential impacts the additional amount and duration of flow through the proposed notch may create. We would request that the EIR and supporting studies, fully model, evaluate and document how the new flow regime(s) in the Sacramento River, through and over the weir and notch, and down the Bypass system, will differ from current weir operations and flow conditions. Topics of interest to RD 1500 include but are not limited to:
 - Notch flow volume
 - Notch flow duration
 - Notch flow frequency
 - Changes in Sacramento River flows during notch operation.
 - Water surface elevations/flow conditions which will trigger activation and deactivation of the notch.
 - Changes in extent, frequency, and duration of inundation with the Bypass system caused by notch operations.
- We ask that the EIR fully assess potential impacts within the Bypass system (Tisdale and Sutter) and the Sacramento River which may be caused by proposed changes in flow regime including but not limited to:
 - Erosion;
 - Siltation;
 - Vegetation management practices
 - Farming operations
 - Access to, from and through the Bypass system.

- We understand that the primary purpose of the proposed notch is to address adult fish passage and stranding issues. We request that the EIR fully describe and analyze other potential uses/purposes such as juvenile fish rearing, and juvenile fish passage back to the river, and how notch operations may be modified to accommodate other potential uses.
- The EIR should discuss how and by which agency(s), the condition of the weir and notch will be monitored during high-water events.
- In addition to notch construction impacts, we request that the EIR analyze the potential impacts of the operations and maintenance activities anticipated to be needed to operate and maintain the notch and weir.

These issues noted above are of special interest to Reclamation District 1500 and its landowners and we look forward to continued collaboration with the Department of Water Resources and their partners on this important project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad Mattson", with a stylized flourish at the end.

Brad Mattson

General Manager, Reclamation District 1500

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, *Executive Officer*
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1890

May 14, 2019

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)

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, 2015.¹ 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

¹ 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.

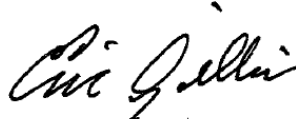
Mitigation and Alternatives

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. 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. 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.

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



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670-4599
916-358-2900
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 15, 2019

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

Dear Ms. Ponce:

SUBJECT: TISDALE WEIR REHABILITATION AND FISH PASSAGE PROJECT, NOP FOR ENVIRONMENTAL IMPACT REPORT

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of an Environmental Impact Report (EIR) from the California Department of Water Resources (DWR) for the Tisdale Weir Rehabilitation and Fish Passage Project (Project) in Sutter County pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants and their habitats. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. Code).

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802.). Similarly, for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.). The Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Tisdale Weir Rehabilitation and Fish Passage Project

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law (Fish & G. Code, § 86) of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Program, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project site is located at the Tisdale Weir, on the east side of the Sacramento River, south of the town of Meridian in Sutter County, and four miles west of the Sutter Bypass.

The Project consists of structural rehabilitation to the Tisdale Weir that would include replacing southern and northern abutment walls; removing and replacing energy dissipation basin; and injection grouting and patching the weir. Fish passage facility installation would include reconstructing the energy dissipation basin on the bypass 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; an access ramp; and constructing a channel connecting the notch in the weir to the Sacramento River.

Tisdale Weir and bypass serve an important role in flood flow conveyance in the Sacramento Valley, but has long been recognized to negatively impact fish migration. To address both, the Tisdale Weir and Bypass Program document labeled, "A Road Map for Multi-Benefit Flood and Ecosystem Management (Road Map)," was developed by DWR's Division of Flood Management and released in July of 2018 to outline mutually agreed-upon Project goals and a path forward for the Project. CDFW has been collaborating with DWR since October of 2018 in the Tisdale Weir Interagency Work Group to provide technical level guidance and support for the Project and help define how the Project could not only address fish migration impacts under current weir operations, but also meet the standards of "enhancement" as described in Chapter 11 of Proposition 1.

CDFW supports the original descriptions and intent laid out in the Road Map which outlined two important elements, the first being weir rehabilitation and fish passage improvements (Element 1), and the second being a Tisdale Bypass Management Plan (Element 2) and recommends building this framework into the Project description. Failing to integrate both elements into the overall Project planning effort (refurbishment and fish passage, as well as management of habitat within the bypass), could limit future management opportunities and needed flexibility. Specifically, CDFW recommends the EIR includes an in-depth discussion and analysis on how Element 1 is being designed to be inclusive of Element 2. CDFW also requests that a south notch be thoroughly analyzed in the EIR and that DWR demonstrate how the south channel at the toe of the bypass embankment will be connected to the new channel to maximize fish return to the river and eliminate or minimize fish stranding. CDFW recommends this analysis is completed before the Project design is finalized and included in the EIR in order to help demonstrated benefits or drawbacks to both Elements.

CDFW also recommends the following be analyzed and described in the EIR.

1. An operations plan that addresses fish passage for different scenarios:
 - Normal operations:
 - a. During weir overtopping
 - b. On the declining limb of the hydrograph when the bypass is draining
 - Outage situations:
 - a. Mechanical (Gate Failure)
 - b. Electrical (Gate Failure)
 - c. Debris lodging in notch causing dewatering and fish entrapment/stranding
 - d. Debris blocking the fish passage basin causing fish entrapment/stranding
 - e. Clarify how velocity and depth criteria will be maintained if a gate fails (i.e. Multiple gates? Additional notch?)
 - f. Dewatering the notch basin quickly to fix gates when the facility is operating as a fish passage structure

2. Weir stilling basin and apron design progression (including the following aspects):
 - Depth, Width, Slope, Side-slopes
 - Describe how the energy will be dissipated?
 - Describe how the southern toe drain will be connected and how the elevations work
 - Describe how the current design incorporates the future perennial channel design while maintaining fish passage requirements for depth

3. Current fish passage design progression (including the following aspects):
 - Depth, Width, Slope, Side-slopes
 - Number of gates (and the associated elevations)
 - Type of gate
 - Gate operations assumptions for design
 - Describe how energy will be dissipated
 - Describe how the current design incorporates the future perennial channel design while maintaining fish passage requirements for depth

Additionally, the Project description should include the whole action as defined in the CEQA Guidelines § 15378 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment stage area, spoils areas, adjacent infrastructure development, staging areas and access and haul roads if applicable.

As required by § 15126.6 of the CEQA Guidelines, the EIR should include appropriate range of reasonable and feasible alternatives that would attain most of the basic Project objectives and avoid or minimize significant impacts from the Project.

ENVIRONMENTAL SETTING

To identify a correct environmental baseline, the EIR should include a complete and current analysis of endangered, threatened, candidate, and locally unique species with potential to be impacted by the Project. CEQA guidelines § 15125, subdivision (c) requires lead agencies to provide special emphasis to sensitive habitats and any biological resources that are rare or unique to the area. This includes, but is not limited to vernal pools, streambeds, riparian habitats, and open grasslands that are known to be present within the Project boundaries or its vicinity. CDFW recommends that the environmental documentation identify natural habitats and provide a discussion of how the proposed Project will affect their function and value.

Recent surveys for the different species that have the potential to be present within the Project boundaries and its vicinity should be included within the EIR. Additional information regarding survey protocols can be found on our website here <https://www.wildlife.ca.gov/Conservation/Survey-Protocols> or by contacting CDFW.

IMPACT ASSESSMENT AND MITIGATION MEASURES

Based on habitat assessments and survey results, the EIR should clearly identify and describe all short-term, long-term, permanent, or temporary impacts to biological resources under CDFW's jurisdiction, including all direct and foreseeable indirect impacts caused by the proposed Project.

The EIR should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant (CEQA Guidelines, § 15064, subd. (f)). The EIR must demonstrate that the significant environmental impacts of the Project were adequately investigated and discussed. CDFW also recommends that the EIR provide scientifically supported discussion regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines Section 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions.

The EIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The EIR should include a list of present, past, and probable future projects producing related impacts to resources under CDFW's jurisdiction or shall include a summary of the projections contained in an adopted local, regional, or statewide plan, that consider conditions contributing to a cumulative effect. The cumulative analysis shall include impact analysis of vegetation and habitat reductions within the area and their potential cumulative effects.

The EIR should incorporate mitigation performance standards that would ensure that significant impacts are reduced as expected. Mitigation measures proposed in the EIR should be made a condition of approval of the Project. Please note that obtaining a permit from CDFW by itself with no other mitigation proposal may constitute mitigation deferral.

Threatened, Endangered, Candidate Species

The Project area as shown in the NOP includes habitat for state and federally listed species. If during the environmental analysis for the Project, it is determined that the Project may have the potential to result in "take", as defined in the Fish and Game Code, section 86, of a state-listed species, the EIR shall disclose an incidental take permit (ITP) or a consistency determination (Fish & G. Code, §§ 2080.1 & 2081) may be required prior to starting construction activities. In order to receive authorization for "take", the EIR must include all avoidance and minimization measures to reduce the impacts to a less than significant level. If impacts to listed species are expected to occur even with the implementation of these measures, mitigation measures shall be proposed to fully mitigate the impacts to state-listed species (Cal. Code Regs., tit. 14, § 783.2, subd.(a)(8)). CDFW encourages early consultation with staff to determine appropriate measures to offset Project impacts, facilitate future permitting processes and to coordinate with the U.S. Fish and Wildlife Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

Lake and Streambed Alteration Agreement Program

The EIR shall identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other features, and any associated biological resources/habitats present within the entire Project footprint (including access and staging areas). The environmental document should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resources/habitats that may occur because of the Project. If it is determined that the Project will result in significant impacts to these resources the EIR shall propose appropriate avoidance, minimization and/or mitigation measures.

Notification to CDFW is required, pursuant to Fish and Game Code section 1602 if the Project proposes activities that will substantially divert or obstruct the natural flow of water; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. CDFW approval of projects subject to Notification under Fish and Game Code section 1602, is facilitated when the EIR discloses the impacts to and proposes measures to avoid, minimize, and mitigate impacts to perennial, intermittent, and ephemeral rivers, streams, and lakes, other features, and any associated biological resources/habitats present within the vicinity of the Project.

Please note that other agencies may use specific methods and definitions to determine impacts to areas subject to their authorities. These methods and definitions often do not include all needed information for the CDFW to determine the extent of fish and wildlife resources affected by activities subject to Notification under Fish and Game Code section 1602.

CDFW recommends lead agencies to coordinate with us as early as possible, since potential modification of the proposed Project may avoid or reduce impacts to fish and wildlife resources and expedite the Project approval process.

CDFW relies on the lead agency analysis when acting as a responsible agency issuing a Lake or Streambed Alteration Agreement. Addressing CDFW's comments ensures that the EIR appropriately addresses Project impacts facilitating the issuance of an Agreement.

Migratory Birds and Birds of Prey

Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) (16 U.S.C., §§ 703-712). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Potential habitat for nesting birds and birds of prey is present within the Project area. The proposed Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its close vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the EIR. Measures to avoid the impacts should include species specific work windows, biological monitoring, installation of noise attenuation barriers, etc.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code § 711.4; Pub. Resources Code, § 21089.).

CONCLUSION

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670. CDFW appreciates the opportunity to comment on the NOP to assist in identifying and mitigating Project impacts on biological resources. As the Project moves forward, CDFW requests to be included in the Project design discussions. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

Tisdale Weir Rehabilitation and Fish Passage Project
May 15, 2019
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Questions regarding this letter or further coordination should be directed to Tanya Sheya, Senior Environmental Scientist (Specialist) at (916) 767-4617 or tanya.sheya@wildlife.ca.gov.

Sincerely,



Colin Purdy
Acting Environmental Program Manager

ec: Colin Purdy, colin.purdy@wildlife.ca.gov
Kelley Barker, [kelley.barker@wildlife.ca.gov](mailto:kelly.barker@wildlife.ca.gov)
Tanya Sheya, tanya.sheya@wildlife.ca.gov
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Jonathon Mann, jonathon.mann@wildlife.ca.gov
Department of Fish and Wildlife

Jean Castillo, jean.castillo@noaa.gov
Allison Lane, allison.lane@noaa.gov
NOAA Fisheries

James Early, james.early@usfws.gov
US Fish and Wildlife Service

Office of Planning and Research, State Clearinghouse, Sacramento

Oji Bros Farm Inc
8547 Sawtelle Ave.
Yuba City, CA 95993

Sent Via email to: TisdaleWeirRehabProject@water.ca.gov

California Department of Water Resources
Division of Flood Management
Attention: Stephanie Ponce, Environmental Scientist
3310 El Camino Avenue, Room 140
Sacramento, CA 95821

May 15th, 2019

Oji Brothers Farm Inc. sends these comments / requests on the Notice of Preparation (NOP) for the Environmental Impact Report (EIR) for the Tisdale Weir Rehabilitation & Fish Passage Project. We wish to highlight the following comments and issues which we would like to see considered, analyzed and addressed in the EIR:

- We request the EIR exhaust all other potential solutions that can address the problem without such a significant cost to taxpayers and potential operational impacts to area farmers.
- Analyze potential impacts to downstream property owners, water rights owners (specifically farmers), current land use practices, and maintenance operations. We request activities be fully analyzed, described and scheduled. We request the area of study of the EIR be expanded beyond the footprint shown on Figure 2 of the NOP to include:
 - The Tisdale and Sutter Bypass downstream of the weir
 - The Sacramento River directly upstream and downstream of the weir.
- In addition to the expansion of the area of study, the EIR should take into consideration existing issues that may be exacerbated as a result of the project i.e. excess erosion caused by the Sutter County boat ramp located at the bypass.
- We are concerned about potential impacts the additional amount and duration of flow through the proposed notch may create. We would request that the EIR and supporting studies, fully model, evaluate and document how the new flow regime(s) in the Sacramento River, through and over the weir and notch, and down the Bypass system, will differ from current weir operations and flow conditions.
- The EIR should discuss how and by which agency(s), the condition of the weir and notch will be monitored during high-water events.
- In addition to notch construction impacts, we request that the EIR analyze the potential impacts of the operations and maintenance activities anticipated to be needed to operate and maintain the notch and weir. This should include and not be limited to long term impacts and how they will be managed, addressed and funded.

Sincerely,

John Oji
Owner and Operator, Oji Bros Farm Inc.



SOMACH SIMMONS & DUNN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814
OFFICE: 916-446-7979 FAX: 916-446-8199
SOMACHLAW.COM

May 15, 2019

Via Electronic Mail

California Department of Water Resources
Division of Flood Management
Attn: Stephanie Ponce, Environmental Scientist
3310 El Camino Avenue, Room 140
Sacramento, CA 95821
TisdaleWeirRehabProject@water.ca.gov

Re: Comments on Notice of Preparation of Environmental Impact Report for
Tisdale Weir Rehabilitation and Fish Passage Project

Dear Ms. Ponce:

The following comments on the Notice of Preparation (NOP) for an environmental impact report (EIR) for the Tisdale Weir Rehabilitation and Fish Passage Project (Project) are submitted on behalf of the Sutter Bypass-Butte Slough Water Users' Association and its members, who are identified in Attachment A to this letter (collectively, "Association"). The Association is an unincorporated nonprofit voluntary association of landowners in proximity to the Sutter Bypass. The Association members hold common purposes to confirm, preserve and administer their respective water rights, to exchange educational and informational items related to the Sutter Bypass area, to conduct technical studies of common interest, and to cooperate with other nearby governmental entities and non-governmental organizations. Association members own property within, or immediately adjacent to, the Sutter Bypass downstream of the Tisdale Weir comprising over 5,000 acres of active farmland, open space, and wildlife habitat along the Sacramento River in Sutter County. The productive farmlands within the Sutter Bypass play an important role in the local economy as a steady source of revenue and labor. They also support recreational uses, including numerous duck clubs.

During wet years, water from the Sacramento River historically has been diverted through the Tisdale Weir and into the Sutter Bypass for a few weeks a year. The Association is concerned about adverse impacts to Sutter Bypass agricultural resources and recreational uses, as well as flood control and other critical infrastructure, that may result from the Project

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as described in the NOP and/or reasonably foreseeable future phases that would increase the extent and duration of inundation within the Sutter Bypass.

I. The EIR Must Describe and Analyze the Entire Project, Including Reasonably Foreseeable Future Phases that Could Increase Inundation of Lands Within the Sutter Bypass

CEQA defines “project” broadly to include “the whole of the action” that may result either directly or indirectly in physical changes to the environment. (CEQA Guidelines, § 15378(a).) CEQA specifically prohibits “piecemealing” a project into two or more components and evaluating each component in a separate environmental document, rather than evaluating the whole of the project in one environmental document. If an activity or facility is necessary for the operation of a project, or a reasonably foreseeable consequence of approving the project, then it is considered an integral project component that must be analyzed within an EIR. When future phases of a project are possible, the EIR must describe them and provide as much information as is available. Even if details about future phases are not known, the future phases must be included in the project description if they are a reasonably foreseeable consequence of the initial phase and will significantly change the initial project or its impacts. (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376.)

The NOP describes the Project as integrating structural rehabilitation of the Tisdale Weir along with installation of fish passage facilities, including a notch in the existing weir and channel connecting the notch to the Sacramento River, to allow upstream migrating fish access to the Sacramento River. The NOP does not describe the proposed operation of the modified weir. However, by notching the weir, the Project not only would allow fish to move from the flooded Sutter Bypass to the Sacramento River, but also would allow increased flows from the Sacramento River to enter the Sutter Bypass. If operated for the same purpose as the Department of Water Resources’ (DWR) proposed Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project, the Project would inundate portions of the Sutter Bypass for purposes other than flood control and could result in the inundation of up to 5,000 acres in non-flood years. Indeed, it is evident the Project is the first step in a larger habitat restoration project that would be similar to the Yolo Bypass fish habitat project.

In public presentations, DWR representatives have characterized the Project as “Phase 1” of a larger floodplain habitat enhancement project. Specifically, DWR has described a planned “Phase 2” that would include significantly expanded flooding of the Sutter Bypass, with flooding occurring over a much longer period of time than historical operation of the weir, throughout the months of December, January, and March, and continuing into April. The impact of such inundation is shown in Attachment B, which was presented to Sutter Bypass property owners and the State Water Resources Control Board

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(SWRCB) in March 2019 and shows the significantly increased amount of inundation time in the Sutter Bypass that is proposed to occur as a result of the weir modifications. Use of the Project facilities for floodplain habitat creation is specifically described as a proposed Sacramento River Habitat Project by DWR and California Department of Fish and Wildlife (CDFW) in documents submitted to the SWRCB in March 2019 in support proposed updates to the Bay-Delta Water Quality Control Plan.¹ In its list of proposed projects, DWR and CDFW describe the Project as an integral component of interrelated fish rearing projects designed to “enhance 2,000 acres of floodplain habitat in the Sutter Bypass” and “provide fish passage and floodplain habitat at Tisdale Weir within 5 years.”² (See excerpts in Attachment C.) The Project is specifically recognized as being “required to inundate Sutter Bypass Weir 2 Multibenefit Project, including weir modification to benefit migrating juveniles and adults.”³ Those documents show the habitat modification occurring within the same near-term timeline as the Project – 0 to 5 years.

It is clear that DWR plans to use the proposed Project facilities to implement an identified future phase within the same general timeframe as the proposed Project that would involve substantial floodplain habitat creation in the Sutter Bypass. As such, the future use is a reasonably foreseeable consequence of the Project. As discussed below, the habitat creation phase has the potential to significantly expand the scope of Project impacts, and it must be included in the Project description and evaluated with as much specificity as possible.

II. The EIR Must Evaluate and Mitigate Potentially Significant Impacts to Sutter Bypass Agriculture, Recreation and Critical Infrastructure from Increased Sutter Bypass Flooding

A. Agriculture Impacts

Increased inundation from use of Project facilities for floodplain habitat creation would impact agricultural production on lands within the Sutter Bypass. Impacts could occur from delayed planting, as changes in the seasonal timing of inundation of the Sutter Bypass could affect the cultivation of crops, particularly rice. This, in turn, could have adverse economic effects for Association members and also for the local economy. Depending on the extent of flooding, increased inundation could effectively convert portions of existing farmland to a non-agricultural use.

¹ See

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/proposed_voluntary_agreements.html and

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/bay_delta/va_project_description_appendices.pdf at pp. A-9, A-206 - A-207 (excerpts included as Attachment B).

² *Id.* at p. A-206.

³ *Id.*

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Reductions in crop yields are a driving factor in agricultural revenue losses due to flooding in the Sutter Bypass. Inundation during the months when the land is being prepared for planting and during the growing season can result in significant losses to crop yield. The months of March, April, and May are critically important in the rice farming season, as this is the time in which preparation and planting of the field begins. It takes at least 45 days to drain the land from the last day of inundation. An additional 30 days are needed to allow for groundwork. The ideal planting time is May 5 through May 15, and the last possible date for planting is approximately June 10. If Project facilities increase the extent or duration of inundation from historical patterns into March, planting could not begin until June. Based on Association members' experience farming rice, a delay in planting into June could lower crop yields significantly, by 10 to 20 percent, which would result in a gross reduction of income for Sutter Bypass farmers equal to hundreds of dollars per acre, along with reduced revenue to Sutter County and the local economy.⁴

In addition to reduced revenue, extended inundation poses the risk to Sutter Bypass farms of increases to bank loan rates and inability of to acquire production loans altogether, due to increases in production risks resulting from changes in flooding frequency and duration. Farmers within the Sutter Bypass also are likely to experience greater difficulty in obtaining crop insurance as flooding on the land increases, and they may be subject to higher insurance premiums. All of these reasonably foreseeable economic impacts have the potential to threaten the sustainability of agriculture in the Sutter Bypass.

The EIR should analyze the potential reduction in agricultural yields in addition to increased costs from use of Project facilities for habitat restoration, and ensure that use of proposed Project facilities do not result in unintended significant adverse impacts to agricultural resources, or a significant negative economic impact to Sutter Bypass farmers or Sutter County.

⁴ A 2013 report written jointly by representatives of the University of California, Davis, Yolo County, and Douglas Environmental, quantified agricultural impacts of flooding in the Yolo Bypass under a variety of possible flooding scenarios in order to evaluate future projects connected to the Bay Delta Conservation Plan. (*Howitt et al., Agricultural and Economic Impacts of Yolo Bypass Fish Habitat Proposals* (Apr. 2013), p. 1.) The study was based on a comprehensive economic, agronomic, and geo-referenced dataset of agricultural production in the Yolo Bypass between 2005 and 2009, and found that flooding with a flow of 6,000 cubic feet per second (cfs) through March 24 would result in total annual losses to the Yolo County economy — excluding other substantial costs associated with infrastructure maintenance and repairs — of over \$1.7 million. (*Id.* at iii, 22.) By comparing earlier and later flooding end dates, the study illustrated that flooding of the Yolo Bypass later into the planting season has a real and quantifiable impact on the local agricultural economy. This study supports the Association's concerns regarding impacts from the reasonably foreseeable future use of Project facilities for floodplain habitat creation in Sutter Bypass.

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B. Recreation Impacts

The use of Project facilities for floodplain habitat creation has the potential to result in substantial adverse impacts to recreation, by decreasing suitable duck hunting opportunities. Increased inundation of the Sutter Bypass would impact waterfowl hunting opportunities due to the reductions in availability of shallow-flooded wetlands during the hunting season. This would impact private hunting clubs economically and may disincentivize such clubs from managing shallow-flooded wetlands. Changes in water levels can also alter the habitat suitability for migratory waterfowl that utilize the Sutter Bypass, as different species of waterfowl prefer different water levels and water depth influences which species will utilize a particular area. The EIR must analyze these impacts and identify feasible mitigation measures to avoid or reduce impacts to waterfowl hunting opportunities in the Sutter Bypass and the associated habitat.

C. Impacts to Levees and Other Critical Infrastructure

More frequent flooding has the potential to impact critical infrastructure, including the Sutter Bypass levees (from seepage), drainage culverts, and ditches. Drainage culvert capacity likely would need to be increased, and general ditch maintenance, including sediment deposition removal, would need to occur more frequently. Additionally, by adding flows in the Sutter Bypass, levee freeboard would be further reduced and the level of flood protection provided by the east levee of the Sutter Bypass would be diminished. The Sutter Bypass's sole purpose when built was for flood protection, and it is a flood conveyance system for the surrounding communities. Currently, the local reclamation districts and DWR Sutter Yard struggle to navigate the environmental hurdles associated with maintaining the Sutter Bypass as flood control system. The EIR should address how ongoing maintenance will be handled for the new structures and the Sutter Bypass as a whole, under both phases of the Project, and evaluate all of these reasonably foreseeable consequences of the use of Project facilities for habitat creation.

III. Use of Project Facilities for Habitat Purposes Will Require Consent of Bypass Property Owners

The Sacramento-San Joaquin Drainage District holds a flowage easement on lands within the Sutter Bypass for flood control purposes. (See Attachment D.) Use of the Project facilities to flood the Sutter Bypass for fish habitat would constitute a use of Association member lands that is not authorized under the existing flood control easement. Civil Code section 806 states, "The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired." The existing flood easement grants a non-possessory interest in the underlying land for flood control purposes only and does not include

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any other uses. Use of the Project's notched weir to enhance fisheries rearing habitat would exceed the scope of the existing flood control easement.

Changing the nature of an easement, which results in an increased burden on the underlying land, is not permissible without the landowner's consent. (*Krieger v. Pacific Gas and Electric Co.* (1981) 119 Cal.App.3d 137, 145-146.) Enhancing fisheries rearing habitat by extending the geographic extent and duration of inundation would significantly increase the burden on Association members as the underlying landowners. As noted above, more frequent flooding has the potential to impact critical infrastructure and increase the frequency and extent of facility maintenance. Impacts to drainage and irrigation structures, such as levees, water control structure, and roads, would also result in increased maintenance activities and associated costs to Sutter Bypass property owners. If flooding results in a broader area of inundation, a larger portion of Sutter Bypass lands would need to be leveled periodically, at a cost of \$200 to \$300 per acre. Such costs directly affect potential profitability of rice and other crops grown in the Sutter Bypass. Finally, as discussed further below, use of the Project notch for habitat would increase the burden on Association members through increased regulatory risk of liability under the federal and state Endangered Species Acts (ESA).

It is critical that the EIR clearly explain all reasonably foreseeable future uses of the Project facilities, including the notch. As discussed, use of the Project notch for DWR's "Phase 2" habitat restoration project is not authorized by the existing flood control easement and would significantly expand the burdens imposed on the landowners. This would result in a taking of private property. This is pertinent to the feasibility of the Project and alternatives discussion. The EIR should clearly describe this future phase, including the full range of approvals required to implement it. This includes recognizing that any use of the Project facilities for habitat purposes will require that DWR consult with Sutter Bypass property owners and reach agreement regarding necessary amendments to the existing flood easement.

IV. Potential Introduction of New Species and Impacts to Existing Species' Habitat from Changes in Inundation Patterns Would Place Additional Burdens on Sutter Bypass Property Owners

Changes in the inundation pattern of the Sutter Bypass could reduce habitat for waterfowl and other terrestrial species, as well as disturb fish species and their habitat. They also threaten impacts to landowners within the Sutter Bypass resulting from changes in species and habitat management.

The introduction of additional aquatic and terrestrial endangered species from increased inundation within the Sutter Bypass would require additional coordination by property owners and managers with resource management agencies, even for routine

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operations and maintenance activities. Changes in inundation periods and frequencies would create a risk of “take” violations under the federal and state ESAs due to the introduction of protected species on the property or the creation of new risks to protected species. Property owners could be required to obtain permits to complete maintenance activities associated with increased flooding because of potential impacts to species. The introduction of protected fish species also could restrict the times when the operations and maintenance activities could take place. Additionally, changes to inundation and resulting challenges in delivering water to fields, or to drain water from fields, could impact existing conservation easements on privately owned land for a variety of terrestrial species.

Bypass property owners must not be forced to bear increased regulatory or cost burdens associated with the Project, including future habitat restoration phases. Use of Project facilities for habitat enhancement would require the property owners’ consent, and they would need to receive adequate regulatory assurances under both the federal ESA and California ESA, which could include formal consultation and issuance of a biological opinion under ESA Section 7, a Safe Harbor Agreement, and Enhancement of Survival Permit and state consistency determination, or other appropriate assurances.

V. Use of Project Facilities for Floodplain Habitat Creation Will Require Modification of DWR’s Water Rights

The reasonably foreseeable future use of the Project facilities for floodplain habitat creation likely will require modification of existing water rights to authorize a point of diversion at the Tisdale Weir. The Association has no information about the water rights that DWR might rely on to implement Phase 2 of the Project. However, none of DWR’s water rights for the State Water Project include a point of diversion at the Tisdale Weir. Diversion of water for floodplain habitat creation in the Tisdale Bypass and/or Sutter Bypass may also constitute a change in DWR’s permitted place of use for its water rights. Any changes to the point of diversion, place of use or purpose of use for DWR’s water rights will require approval by the SWRCB. (Wat. Code, §1701.) The EIR should identify a water right change petition among the approvals required to implement the reasonably foreseeable future floodplain habitat creation phase of the Project. (See CEQA Guidelines, §15124(d)(1)(B) [EIR project description to include list of permits and other approvals required to implement project].)

VI. Conclusion

As discussed above, the EIR must evaluate and disclose the Project’s reasonably foreseeable direct and indirect impacts to agricultural resources and crop yields, recreational facilities and critical infrastructure, such as levees and drainage ditches, including those from the identified floodplain habitat restoration phase. Alternatives and mitigation measures

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capable of avoiding or substantially lessening these potentially significant impacts must be included. The Association will continue its constructive engagement in the Project review process and requests to receive notice of all Project-related matters moving forward. Please provide a copy of all notices to me at the address on this letterhead; electronic notices should be provided to ktaber@somachlaw.com and jon@montnafarms.com. If you have questions about these comments, or require information for the EIR's analysis, please do not hesitate to contact Jon Munger at (530) 330-2827 to discuss this letter further.

Sincerely,



Kelley M. Taber
Attorney

Attachment A: List of Sutter Bypass-Butte Slough Water Users' Association Members

Attachment B: Potential of Tisdale Weir Modification (presentation handout)

Attachment C: Excerpts from March 2019 SWRCB Presentation Materials

Attachment D: Sutter Bypass Flowage Easement

KMT:mb

cc: Sutter County Board of Supervisors
1160 Civic Center Blvd.
Yuba City, CA 95993

Joel Farias, DWR-Sutter Yard
(Via Electronic Mail Only: Joel.Farias@water.ca.gov)

Brad Mattson, Reclamation District 1500
(Via Electronic Mail Only: brad@sutterbasinwater.com)

ATTACHMENT A

SUTTER BYPASS-BUTTE SLOUGH WATER USERS
ASSOCIATION MEMBERS

A & G Montna Properties LP
Anderson R & J Props LP
Bihlman, Dorene L. TR 97 et al.
Central Land Company
Chesapeake Gun Club LLC
Creps Rev '05 TR et al.
Davis, Helen M. Inc.
De La Torre Rev. Surv. 93' TR et al.
De Wit Farms
DNH Farms
Hanna Family TR et al.
Hilbers, Kurt
Kai Family Foundation
Kai, Mamie Rev TR et al.
King, Kathryn H. '96 Rev. TR et al.
Leal Family TR et al.
Matteoli Brothers
McClatchy Partners LLC
Melinda Nevis Combined Trust et al.
Nall, David and Janice-Denco
Nall Rev. I-V '03 TR et al.
Nordic Industries Inc. et al.
Odysseus Farms
O'Neill, Sean
Pat Laughlin Trust
Perry Family Rev '05 Trust et al.
Pieri Survivors LP et al.
Rai, L. David
Ratliff, James
Rhodes-Stockton Bean Co-op
Rogers, Frank A. Jr. et al.
Rogers, Frank/POSZ Ranch
Rogers, Maxi
Sandhu, Harmandeep & Handeep
Schnabel Revocable '00 Trust, et al.
Shelley Darrough Farmers LP
Sum M Seto Properties LLC et al.
Tarke Farms LP
Tarke, James
Tarke, Stephen
TJ Holdings LP
Tule Basin Farms LLC
Westervelt Ecological Services

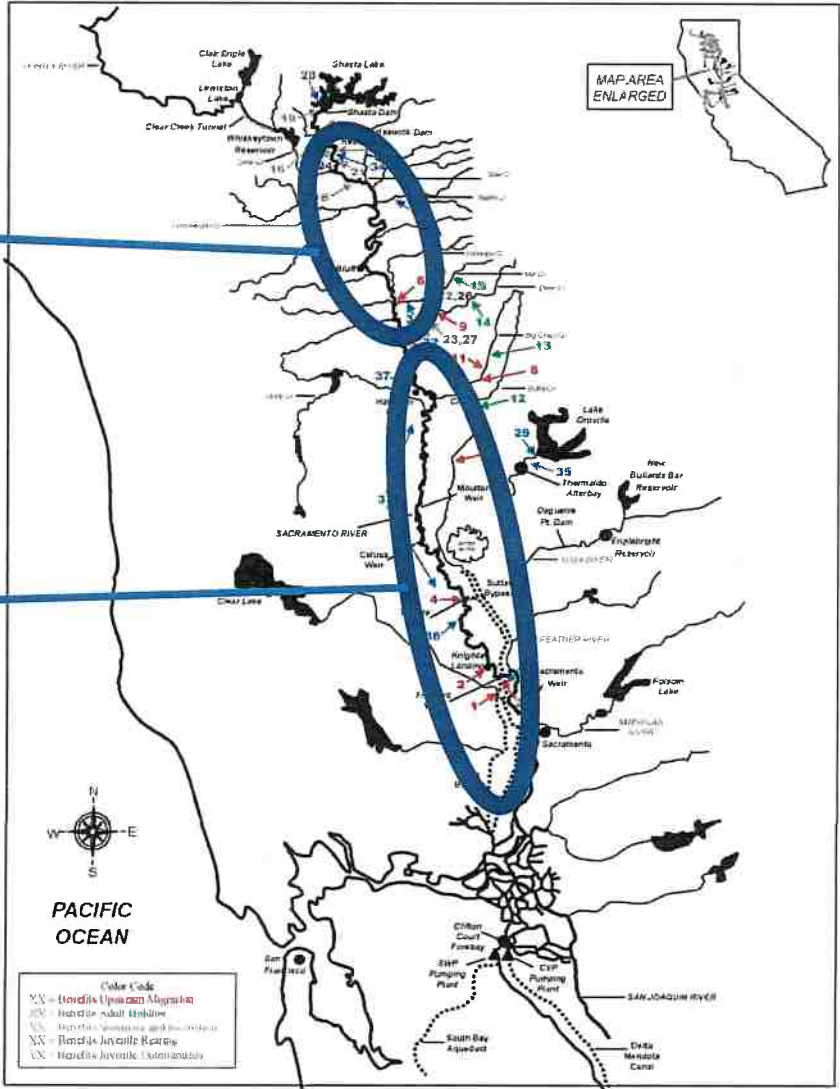
ATTACHMENT B

A Comprehensive Approach

❖ Upper River

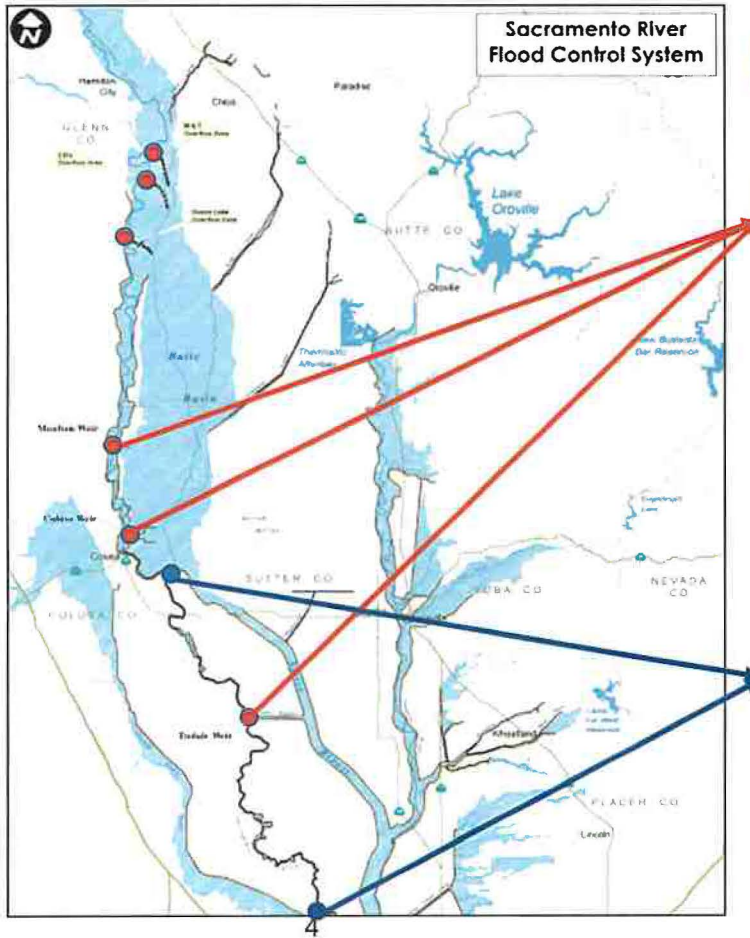
❖ In-River

❖ Floodplains



Landscape Scale Floodplain Opportunities

Examples



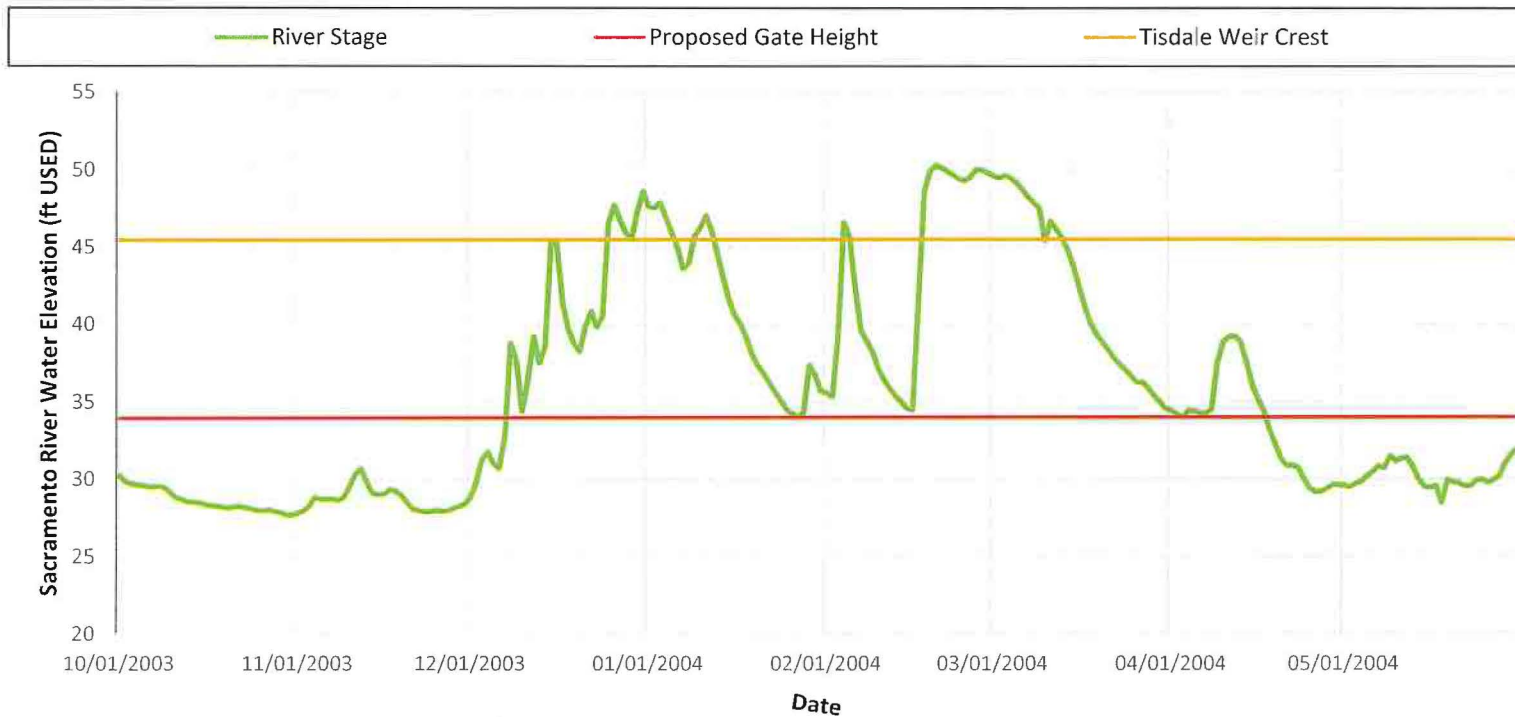
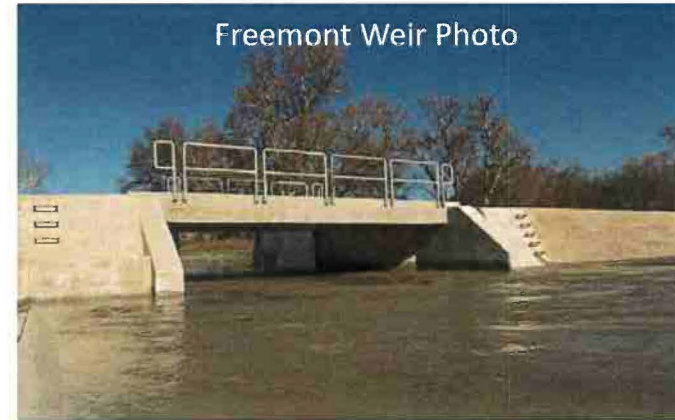
Goals

- ❖ Increase Entrainment
- ❖ Increase Frequency
- ❖ Increase Duration
- ❖ Minimize Predation
- ❖ Create Food
- ❖ Provide Adult Passage

Potential of Tisdale Weir Modification

Benefits

- ❖ Approximately 12,500 acres of downstream floodplain
- ❖ Enhances juvenile recruitment in non-irrigation season
- ❖ Expands duration of floodplain inundation
- ❖ Provides adult passage on receding limb of flood
- ❖ Similar opportunity at Colusa and Moulton Weirs



ATTACHMENT C

Appendices A1 – A10

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outflows at those times. Under certain circumstances, the water may be utilized to augment cold-water pool resources.

1.1.1.2.4 *Summer Flow Releases*

During the June through September summer period, flows in the Sacramento River mainstem and the releases from Shasta Reservoir would be established so as to meet the temperature and other downstream requirements in the then-current Biological Opinion(s), State Water Resources Control Board decision(s), and to meet CVP contract deliveries. This would primarily benefit winter-run Chinook salmon redds.

If a spring action is not taken or only a portion of the 100,000 acre-foot asset is used to meet the Wilkins Slough target, the water asset could also be using in the summer for delta outflow on the following schedule that the water is made available.

1.1.2 **Non-Flow Measures**

1.1.2.2 *Spawning Habitat (Keswick to Red Bluff Diversion Dam)*

Reclamation and the SRSCs propose annually to place 40,000 to 55,000 tons of gravel at the Keswick and/or Salt Creek injection sites. For comparison purposes, over the past 17 years, there has been a total of approximately 90,000 tons of gravel placed at various locations on the Sacramento River mainstem. Within five years, Reclamation and the SRSCs would create at least three site-specific gravel restoration projects upstream of Bonnyview Bridge.

1.1.2.3 *Rearing Habitat (Keswick to Red Bluff Diversion Dam)*

Reclamation and the SRSCs propose to create a total of 40-60 acres of side channel habitat at no fewer than 10 sites in Shasta and Tehama County.

1.1.2.4 *Rearing Habitat (Red Bluff Diversion Dam to Verona)*

The SRSCs believe that, at present, they can create 3,225 acres of floodplain habitat in existing areas. The additional spring flows described would inundate another 650 acres of rearing habitat within the current Sacramento River levee system. In-river restoration projects (of the type undertaken by River Garden Farms) would amount to 225 acres of rearing habitat over 15 years. Inundation of the lower portion of the Colusa Basin Drain would yield another 300 acres of floodplain habitat. The inundation of CDFW's Tisdale property would add another 500 acres of floodplain habitat while levee setbacks would add a further 200 acres. Finally, the inundation of the Sutter Bypass would provide 2,000 acres of floodplain habitat. That quantity of habitat is sufficient to support a population of 70,000 to 80,000 fall-run Chinook salmon adults, which is three times more than the current returns.

1.10.1 Sacramento River Habitat Projects

Project	Identified In...	Description	Targeted Habitat	Benefits	Years	Timeline without VSA
Spawning Habitat Keswick to Red Bluff Diversion Dam; Objective – Annually place 40,000 to 55,000 tons of gravel at the Keswick and/or Salt Creek injection site(s). Create at least three site-specific gravel restoration projects upstream of Bonnyview Bridge within 5 years.						
Salt Creek Gravel Injection	Upper Sac AFHRP	Improve substrate conditions for spawning salmonids at key riffles	up to 25,000 CY	Increase existing suitable spawning habitat area	Bi-Annually (1-10 years)	unknown
Market Street	Upper Sac AFHRP	Improve substrate conditions for spawning salmonids at key riffles	up to 12,000 CY	Increase existing suitable spawning habitat area	Tri-Annually	unknown
Turtle Bay Island Side Channels and Gravel	Upper Sac AFHRP	Improve substrate conditions for spawning salmonids at key riffles and side channel	place and shape 25,000 CY	Increase existing suitable spawning habitat area	Tri-Annually	unknown
Keswick Dam Gravel Injection	Upper Sac AFHRP	Improve substrate conditions for spawning salmonids at key riffles	up to 25,000 CY	Increase existing suitable spawning habitat area	Annually (1-15 years)	Yes currently (but annual funds are not assured)
Rearing Habitat Keswick to Red Bluff Diversion Dam; Objective – Create a total of 40 to 60 acres of side channel habitat at no fewer than 10 sites in Shasta and Tehama County						
South Shea Levee	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Increase existing suitable spawning habitat area; improve of natural river morphology; increase floodplain habitat, riparian habitat, and instream cover	0-5 years	unknown
Shea Levee	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Increase existing suitable spawning habitat area; improve natural river morphology and connection to historic side channel habitat	0-5 years	unknown
Tobiasson Island - Side Channel/South Bank	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Increase existing suitable spawning habitat area; improve of natural river morphology; increase floodplain habitat, riparian habitat, and instream cover	0-5 years	unknown
Side Channel Habitat - Cypress Ave. Bridge Downstream	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	0-5 years	Potentially in 2019
Shea Island Channel/Rearing	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	0-5 years	unknown
Anderson River Park Channel/Rearing	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	0-5 years	Potentially in 2020 but need permits
Kutras Lake Project	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	6-10 years	Potentially 2020
Tobiasson Island Channel Rearing	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	6-10 years	unknown
Kapusta Island and River Right Bank Channel/Rearing	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	6-10 years	unknown
Reading Island Channel/Rearing	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	6-10 years	Potentially in 2020 but need permits
Rancho Briesgau Channel/Rearing	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	11-15 years	unknown
China Gardens Side Channel	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Increase existing suitable spawning habitat area; improve of natural river morphology; increase floodplain habitat, riparian habitat, and instream cover	11-15 years	unknown
Rio Vista	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	11-15 years	unknown
East Sand Slough	Upper Sac AFHRP	Creation and improvement of side channel habitat	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	11-15 years	unknown
Rearing Habitat Red Bluff Diversion Dam to Verona; Objective – Enhance ~2,000 acres of floodplain habitat in the Sutter Bypass within the term of the Voluntary Agreement. Provide fish passage and floodplain habitat at Tisdale Weir within 5 years and Colusa Weir within 10-15 years. Inventory historic oxbows a						
Off-Channel Rearing Habitat Restoration Projects - Side Channel/Oxbow/Floodplain on Lower Battle Creek (below Coleman Hatchery) on Lands Owned by BLM and CDFW	SRS	Study and Determine potential oxbow restoration sites	TBD	Improve natural river morphology, riparian habitat, instream cover, and habitat complexity	6-10 years	No
Tisdale Weir and Bypass Multi-Benefit Project	SRS/SV3PP	Operable Weir	None, weir modification but required to inundate Sutter bypass	Operable weir to allow for adult passage for upstream migration, and instream habitat to access Sutter Bypass	0-5 years	2020

Sutter Bypass Weir 2 Multi-benefit Project	SRS/SVSRP	Operable Weir	None, weir modification to benefit migrating juveniles and adults	Operable weir to allow for adult passage for upstream migration, and out-migrating juveniles access Sutter Bypass	0-5 years	No	
Man Made Structures Keswick-Vernona; Objective – Complete remaining high-priority fish screen projects. Reduce lighting to 3 lux or less at fish screens and bridges within 5 years. Incorporate ongoing redd dewatering coordination with Anderson Cottonwood Irrigation District into a Voluntary Agreement. Address							
Reduced Lighting and Sacramento River Bridges	Upper Sac AFHRP	Perform study on bridges and lighting conditions and work with agencies to reduce lighting	TBD	Increase survival of migrating fish by reducing predation risks	0-5 years	No	
Screen Meridian Farms Water Company	SRS/SVSRP	Install fish screen	N/A	Fish screen, benefits based on the Sac Valley fish screen program	0-5 years	No	
Screen Natomas Mutual Water Company	SRS/SVSRP	Install fish screen	N/A	Fish screen, benefits based on the Sac Valley fish screen program	0-5 years	No	
Anderson Cottonwood Irrigation District Dam Operations to Project Salmon Redds	SVSRP	Weir and bypass operations	TBD	Increase existing suitable spawning habitat area	0-5 years	No	
Study, Design, and Implement Modifications to Known Redd Dewatering Locations	New	Perform study on redd locations and water elevations based on river stages	TBD	Increase existing suitable spawning habitat area	0-10 years (annual)	No	
Program for Identification of Predation Hot Spots, Adaptively Manage for the Reduction Improvement of Predator Contract Points at Man-Made Structures Where Predator Interactions Have Been Observed	New	Perform Study	TBD	Study, currently occurring	0-2 years	Yes	
Study Route-Specific Survival at Key Diversion Facilities and Implement Appropriate Devices that Reduce Route Selection Into Lower Survival Areas	New	Perform Study	TBD	Study	0-10 years, Annual plan within one year	No	

ATTACHMENT D

COPY

THIS INDENTURE, made and entered into this 23rd day of June, 1914, by and between SUTTER BASIN COMPANY and SUTTER BASIN IMPROVEMENT COMPANY, corporations formed and existing under the laws of the State of California, herein designated as the first parties, and SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, (a corporation created by that certain Act of the Legislature of the State of California, approved May 26, 1913, being Chapter 170 of the Statutes passed at the regular session of said Legislature in the year 1913), acting by and through the Reclamation Board, herein designated as the second party,

W I T N E S S E T H:

The first parties, for and in consideration of the sum of Ten Dollars (\$10.00) to them in hand paid, the receipt whereof is hereby acknowledged, have, subject to the conditions hereinafter set out, sold and conveyed, and by these presents do, subject to the conditions hereinafter set out, hereby sell and convey to the party of the second part, and its assigns forever, a perpetual right and easement over and upon the land hereinafter described, the same being situated within the boundaries of the Sutter By-pass as fixed by resolution of said Reclamation Board passed January 6, 1914, for all the purposes of such By-pass, in accordance with the general plan of flood control, approved by said Act. Said second party may clear any or all of said land and keep the same clear of any or all timber, brush, undergrowth, weeds, tules or other obstructions of any and every kind, whether natural or artificial, which will or may interfere with the free flow of water through said By-pass, and may level off or grade, or remove material from said land from time to time, in such manner and at such places as may in the judgment of said Reclamation Board be necessary or proper to permit or promote the free flow of water through said

*This Deed is for Easement in Sutter By Pass
North of Nelson Slough*

By-pass, and may use said land for the free flow of water over and upon the same in or through said By-pass, and by itself, or its employees, agents or contractors, or other persons acting under authority of said Reclamation Board, may enter upon said land with all such men, teams, dredgers, machines, tools, appliances and apparatus as may be found necessary or convenient for any of the purposes aforesaid. The said land is situate, lying and being in the County of Sutter, State of California, and is described as follows:-

Beginning at a point on the South line of Section nine (9), T. 12 N., R. 3 E., M. D. B. and M., from which the Southeast corner of said Section nine (9) bears N. 89° 58' E. 123.19 feet, said point being distant 325 feet Easterly at right angles from the center line of the East levee of Reclamation District No. 1500 and on the East line of the levee right-of-way of said District No. 1500, thence on said East right-of-way line, parallel to the said levee center line and distant 325 feet Easterly therefrom, N. 7° 51' W. 6826.3 feet, thence, on a curve to the left of radius 11068.0 feet, a distance of 6274.9 feet, thence N. 49° 40' E. 15.0 feet to a point distant 340.0 feet at right angles Easterly from the said levee center line, thence, along the said East boundary line of right-of-way, parallel to and distant 340.0 feet Easterly from the said levee center line, N. 40° 20' W. 13045.7 feet, thence, on a curve to the left of radius 17528.8 feet, a distance of 3395.9 feet, thence N. 51° 26' W. 2817.5 feet to a point on the South line of section thirteen (13), T. 13 N., R. 2 E., M.D.B. and M., said point being on the said Easterly boundary of levee right-of-way and distant 340.0 feet at right angles Easterly from the said levee center line, thence on said South line of Section thirteen (13), N. 89° 59-1/3' E. 895.89 feet to the Southeast corner of said Section thirteen (13), thence, on the South line of Section eighteen (18), T. 13 N., R. 3 E., M.D.B. and M., S. 88° 29' E. 4501.80 feet to a point from which the Southeast corner of said Section eighteen (18) bears S. 88° 29' E. 635.27 feet, said point being distant 325.0 feet Westerly at right angles from the center line of the East levee of the Sutter By-pass as the same is staked and located on the ground by the State Department of Engineering of California, said point being on the Westerly boundary of the right-of-way for said East levee, thence, following the said Westerly right-of-way boundary, on a line

parallel to the said levee center line and distant 325.0 feet Westerly therefrom, Southerly on a curve to the right of radius 20864.8 feet a distance of 2486.15 feet, thence, continuing on said parallel line, S. 40° 22' E. 6682.32 feet to a point on the East line of Section twenty-nine (29), T. 13 N. R. 3 E., M.D.B. and M. distant 325.0 feet at right angles Westerly from the said levee center line, thence, leaving the said West boundary line of right-of-way, on said East Section line, South 3673.21 feet to the Southeast corner of said Section twenty-nine (29), thence, on the South line of Section twenty-eight (28), T. 13 N., R. 3 E., M.D.B. and M., East 3122.45 feet to a point on the above mentioned right-of-way boundary, said point being distant 325.0 feet at right angles Westerly from the center line of the East levee of Sutter By-pass, thence on the said right-of-way Westerly boundary, parallel to the said levee center line and distant 325.0 feet Westerly therefrom, S. 40° 22' E. 5700.8 feet, thence, on a curve to the right of radius 4586.1 feet, a distance of 2075.1 feet, thence S. 14° 26½' E. 8838.4 feet thence, N. 75° 33½' E. 275.0 feet to a point on the west boundary line of the Southern Pacific Railroad Company's right-of-way, from which point the intersection of the center line of the said East levee, which is also the center line of the Southern Pacific Railroad track, with the South levee of the Rideout Reclamation District (No. 803) bears N. 75° 33½' E. 50.0 feet, said point of intersection being distant Northerly along said track 48.15 feet from the center line of the North Concrete Abutment (center line of pin) of the Nelson Slough Bridge, thence, along the said West boundary line of the railroad right-of-way, parallel to the center line of track and distant 50.0 feet westerly therefrom, S. 14° 26½' E. ^(401.1) 301.1 feet, thence, on a curve to the right of radius 2814.93 feet, a distance of 515.86 feet, thence S. 3° 56½' E. 245.54 feet to the intersection

of the said West boundary line of the railroad right-of-way with the South line of Section ten (10), T. 12 N., R. 3 E., M.D.B. and M., from which point of intersection the Southeast corner of said Section ten (10) bears N. $89^{\circ} 56\frac{1}{2}'$ E. 57.49 feet, thence on said South line of said Section ten (10), S. $89^{\circ} 56\frac{1}{2}'$ W. 5222.51 feet to the southeast corner of Section nine (9), T. 12 N., R. 3 E., M. D.B. and M., thence on the South line of said Section nine (9), S. $89^{\circ} 58'$ W. 123.19 feet to the point of beginning, and containing 2618.12 acres of land, more or less.

Also, beginning at the Northeast corner of Section ten (10), T. 13 N., R. 2 E., M.D.B. and M., thence East 1318.08 feet to the Southeast corner of the Southwest quarter of the Southwest quarter ($SW\frac{1}{4}$ of $SW\frac{1}{4}$) of Section two (2), T. 13 N., R. 2 E., M.D.B. and M., thence N. $0^{\circ} 02'$ E. 2640.0 feet to the Northeast corner of the Northwest quarter of the Southwest quarter ($NW\frac{1}{4}$ of $SW\frac{1}{4}$) of said Section two (2), thence on the north line of said quarter-quarter Section, East 61.97 feet to a point distant 375.0 feet at right angles westerly from the center line of the East levee of Sutter By-pass as the same is located on the ground by the State Department of Engineering of California, thence Southerly on a line parallel to the said levee center line and distant 375.0 feet westerly therefrom, on a curve to the left of radius 10126.0 feet a distance of 2886.72 feet, measured along curve, to a point on the South line of said Section two (2), thence on said south line East 41.73 feet to a point distant 340.0 feet at right angles westerly from the said levee center line, thence S. $32^{\circ} 46'$ E. 95.33 feet to a point on the line dividing Section eleven (11), T. 13 N., R. 2 E., M.D.B. and M., into East and West halves, from which the quarter corner on the North line of said Section eleven (11) bears N. $0^{\circ} 02'$ W. 79.9 feet, said point being distant 340.0 feet at right angles

westerly from the said levee center line, thence, leaving the west right-of-way boundary line, on said dividing line S. $0^{\circ} 02'$ E. 4887.03 feet to a point on the Easterly boundary line of right-of-way of East levee of Reclamation District No. 1500, said point being distant 340.0 feet at right angles Easterly from the said levee center line, thence, Northerly along said boundary line on curve to the right of radius 13411.0 feet a distance of 991.7 feet, measured along curve, thence N. $43^{\circ} 27'$ E. 30.0 feet to a point distant 370.0 feet at right angles Easterly from the said levee center line, thence on a curve to the right of radius 13381.0 feet a distance of 2935.0 feet, measured on curve to a point on the West line of Section eleven (11), T. 13 N., R. 2 E., M.D.B. and M., said point being distant 370.0 feet at right angles Easterly from the said levee center line, thence, leaving said Easterly right-of-way boundary, on the said West line of Section eleven (11), N. $0^{\circ} 02\frac{1}{2}'$ W. 2026. feet to the point of beginning, and containing 255.55 acres of land, more or less.

The easement and right-of-way hereinabove described, over the lands hereinabove described, are to be used for the purpose of the said Sutter By-pass, in accordance with the said plan of flood control.

It is understood and agreed that there shall be and is hereby reserved to the first parties the right to use said lands hereinabove described at any and all times and in any manner which will not in any way obstruct or interfere with the said right and easement for the purposes of said By-pass, nor with any of the said rights or privileges; and to that end the first parties shall forever have the right to the possession of said lands and the right to farm, cultivate and enjoy the same, and the rents, issues and profits thereof, the rights of the second party being confined to the right and easement hereinbefore described; provided, however, that nothing shall be done or constructed upon said land which will obstruct or interfere in any way with the free flow of water in or through said By-pass, nor with any of the rights or privileges hereby sold and conveyed to the second party.

IN WITNESS WHEREOF, the parties of the first part, pursuant to resolutions of their respective boards of directors, have caused this indenture to be signed, sealed and executed, under their respective corporate seals, by their respective officers, thereunto duly authorized, the day and year first hereinabove written.

SUTTER BASIN COMPANY

{ Corporate }
{ Seal }

By W. E. GERBER President

By Wm. H. DEVLIN Secretary.

SUTTER BASIN IMPROVEMENT COMPANY.

{ Corporate }
{ Seal }

By GEO. W. PELTIMER President.

By PHILIP JOHNSON Secretary.

Acknowledged June 23, 1914, before

F. A. Roblin, N.P. Sacto. County.

NATIVE AMERICAN HERITAGE COMMISSION
Cultural and Environmental Department

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West Sacramento, CA 95691 Phone (916) 373-3710

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May 10, 2019

RECEIVED
5/16/19

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

RE: SCH# 2019049093 Tisdale Weir Rehabilitation and Fish Passage Project, Sutter County

Dear Ms. Ponce:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides 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. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
 - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
 - a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
 - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
 - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf

Some of SB 18's provisions include:

1. **Tribal Consultation**: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation**. There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality**: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation**: Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email
address: Gayle.Totton@nahc.ca.gov.

Sincerely,



for

Gayle Totton

Associate Governmental Program Analyst

cc: State Clearinghouse