

# Staff Report 33

## APPLICANT:

City of Stockton

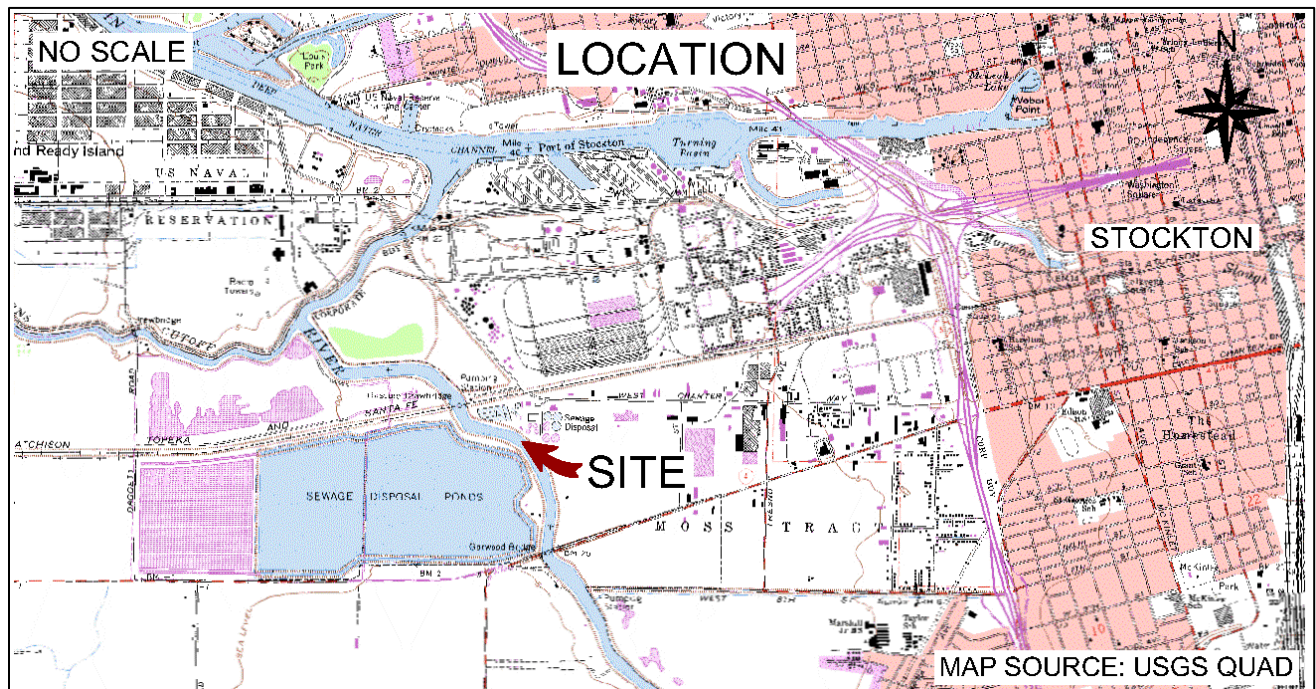
## PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in the San Joaquin River, adjacent to Assessor's Parcel Number 163-330-030, Stockton, San Joaquin County (as shown in Figure 1).

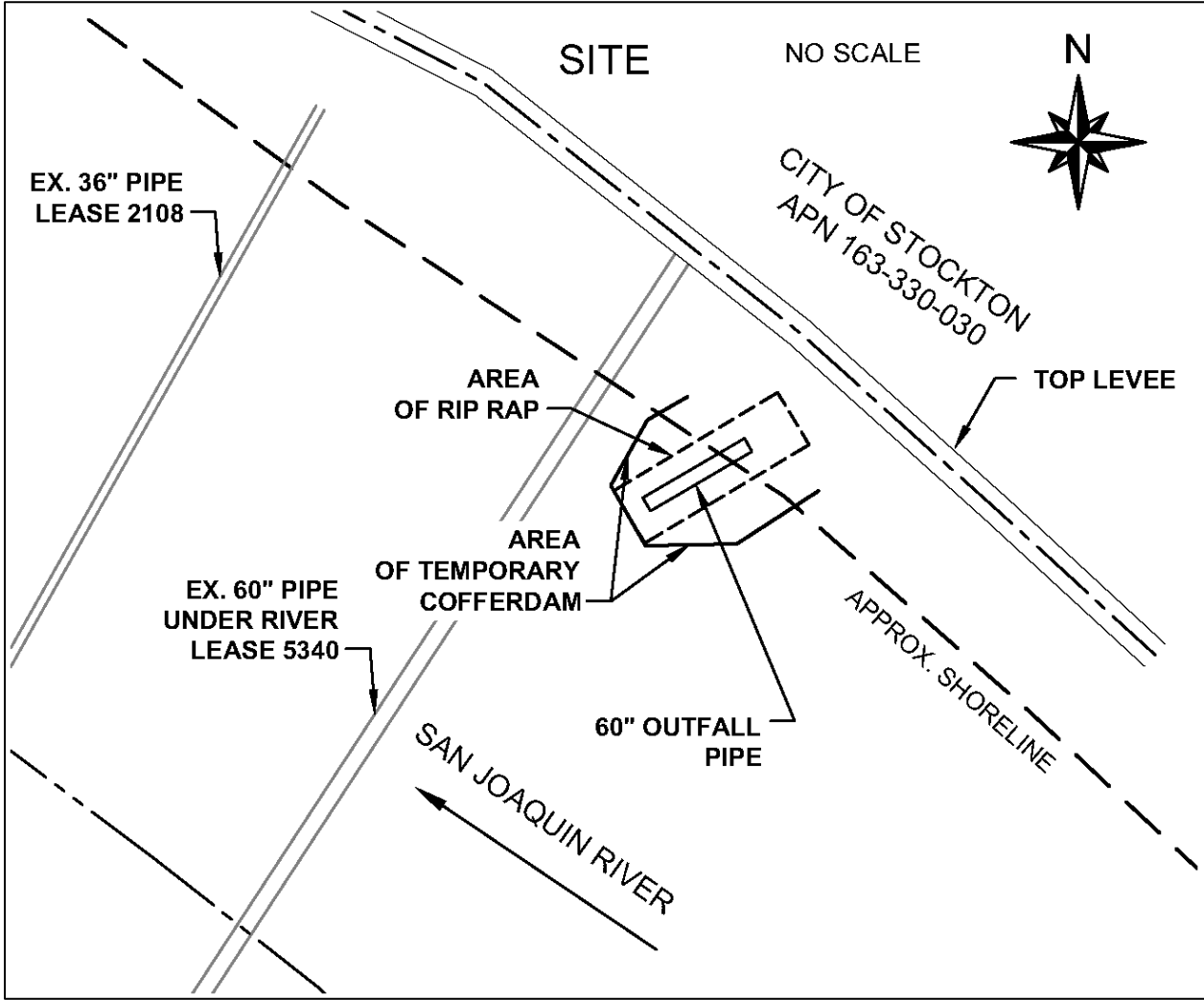
Figure 1. Location



## AUTHORIZED USE:

Construction and use of a 60-inch-diameter outfall pipeline, bank protection, and a temporary cofferdam; removal of an existing apron and use of existing bank protection not previously authorized by the Commission (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**  
20 years; beginning June 5, 2023.

**CONSIDERATION:**  
The public health and safety, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest; dredged materials may not be sold.

**SPECIFIC LEASE PROVISIONS:**

- Prior to beginning construction of the authorized Improvements, Lessee shall fully remove the existing apron from state-sovereign land in the San Joaquin River.
- Lessee agrees and acknowledges that the hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- All construction activities shall be carried out in accordance with all applicable safety regulations, permits, and conditions of other involved agencies.
- Lessee will fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Lessee's, Applicant's, or Responsible Party's responsibility as set forth in the Mitigation Monitoring Program (MMP), as attached in Exhibit A.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Lease Exhibit A (Land Description) and Lease Exhibit B (Site and Location Map) to this Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The revised Exhibits shall be incorporated in this Lease as though fully set forth herein.

**BACKGROUND:**

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In October 2022, the City of Stockton (City) applied for a General Lease – Public Agency Use, for the construction and use of a 60-inch-diameter outfall pipeline, bank protection, and a temporary cofferdam; and use of existing bank protection not previously authorized by the Commission. The proposed work activities are affiliated with the City's Regional Wastewater Control Facility (RWCF) Modifications Project which includes consolidation of the larger wastewater conveyance system. The Project's goals and objectives will offer local, regional, and statewide benefits to the public. These benefits include providing essential infrastructure for wastewater conveyance purposes; consolidating sanitation processes; improving efficiency of treatment operations at RWCF; reducing energy requirements and greenhouse gas emissions; enhancing public health and safety; and other pertinent items. The RWCF provides service to residents and businesses in the City of Stockton, the Port of Stockton, and surrounding unincorporated areas of San Joaquin County.

It serves a population of approximately 314,000. The Project is coordinated by the City and its affiliates which include a team of environmental and engineering specialists.

The project site is located at and adjacent to the City's RWCF, along the bank of the San Joaquin River, south of the Santa Fe Railroad bridge in Stockton, California. The Project involves a small area of state-sovereign land in the San Joaquin River, supplemented by an upland area owned by the City. The portion which falls on state-sovereign land includes approximately 30-linear-feet for a proposed 60-inch-diameter outfall pipeline (to discharge final, tertiary-treated effluent from the City's RWCF), approximately 747 square feet for bank protection, and 1,552 square feet for a temporary cofferdam. The cofferdam will be removed after construction of the proposed improvements. The work activities include construction of a new outfall pipeline and a temporary cofferdam; removal of an existing apron and placement of additional bank protection. "Permanent impacts below the OHWM include placement of 75 cubic yards of riprap within 0.02 acre of riverine area. Temporary impacts below the OHWM include placement of 125 linear feet of interlocking sheet piles for the cofferdam and dewatering 0.04 acres of riverine area for excavation and demolition of the existing outfall apron and installation of new structures." (AECOM W.M. Lyles Co, 2022). An existing apron, not previously approved by the Commission, partially resides on State land but will be removed as part of the work. Prior to beginning construction of the authorized Improvements, Lessee shall fully remove the existing apron from state-sovereign land in the San Joaquin River. The work activities occurring beyond state jurisdiction include addition of a gate well structure; rehabilitation of an existing 60-inch-diameter pipeline; and removal of other aging improvements. The Project's main staging area will be located on property located immediately south of RWCF's main plant. For the outfall construction, an approximately 15,000-square-foot staging area will be set up on the landward side of the levee within the RWCF grounds and adjacent to the outfall work area. The proposed in-water work activities will occur between July 1 and October 31, 2023, once permits are obtained from all applicable regulatory agencies. The proposed project will enhance the connection between the existing wastewater conveyance system and the adjacent RWCF plant owned and operated by the City. The project will also help the City meet new National Pollutant Discharge Elimination System permit requirements,

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

The proposed project will enhance water treatment and conveyance systems for sanitation purposes, thereby increasing public health and safety. Further, the proposed enhancements will result in low power usage and less greenhouse gas emissions, therefore having a positive impact on the larger ecosystem. The proposed action is beneficial because it will facilitate enhanced public health and safety. Furthermore, the action will not impair any other Public Trust uses in the area based on the type and location of improvements. The majority of work will take place on the adjacent upland owned by the City. Although the project is not a water-dependent use, the subject improvements will not impair public access to the river and therefore will not impede the Public Trust needs and resources at this location. Waterborne activities such as rafting, kayaking, and fishing in the river are possible through nearby access points. Although the subject location is not frequented by water recreators, the public can fish in the San Joaquin River using boating vehicles such as kayaks and canoes. The project area will include signage near work areas to inform the public about project-related equipment in the vicinity. As needed, project work will pause operations to accommodate safe passage of boaters and recreators in the river. "A site-specific safety and environmental awareness plan will be developed prior to the start of the Project. All workers and subcontractors will be required to attend orientation prior to working on the Project. Daily Job Hazard Analysis forms will be completed for each crew prior to starting work. Safety will be monitored and evaluated by Project Supervision and Management. A full-time, dedicated Safety Representative will be onsite throughout the course of the work to provide additional oversight and support," (AECOM W.M. Lyles Co, 2022). Mitigation measures will be implemented to minimize impacts to special status species and the environment at large.

The proposed lease includes certain provisions protecting the public's use of the proposed lease area by requiring the City to obtain necessary permits. The lease also has a limited term of 20 years that allows the Commission flexibility to determine if the Public Trust needs of the area have changed over time. Upon termination of the lease, the Lessee may be required to remove all improvements from State land and restore the lease premises to its natural condition.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, more frequent and intense storm events, and increased flooding and erosion affect both open coastal areas and inland waterways in California. The subject facilities are located on the San Joaquin River in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea level rise.

The California Ocean Protection Council updated the *State of California Sea Level Rise Guidance* in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea level rise scenario for the region as listed in Table 1.

**Table 1. Projected Sea Level Rise for San Francisco**

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events, and could increase the San Joaquin River's inundation levels within the lease area over the term of the lease. In addition, 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 and storms (especially when coupled with sea-level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions could affect access to structures within the lease premises during the term of the lease. Depending on the depth of the pipeline, scour from increased storm surges and flooding could expose the parts of the pipeline that is buried. Additionally, increased storm surges and

flooding could dislodge pieces of the pipeline, impacting navigation within the San Joaquin River.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the applicant acknowledges that the lease premises and adjacent upland (not within the lease area) are located in an area that may be subject to effects of climate change, including sea level rise.

**TRIBAL COORDINATION AND CONSULTATION:**

The Applicant contacted the California Native American Heritage Commission (NAHC) to request a search of the sacred lands file and an updated list of Native American contacts for the project area. The NAHC response letter indicated that the Sacred Lands record search was negative and provided the contact information for twelve tribes associated with the project area which were contacted by letter dated June 3, 2013, and September 12, 2018. In addition, the City sent out AB 52 letters on September 7, 2018. The City received two responses, one from the North Valley Yokuts Tribe and one from the United Auburn Indian Community of Auburn Rancheria. On October 1, 2018, the City sent another letter offering an on-site meeting to answer questions, concerns, and continuing consultation. In the Supplemental Environmental Impact Report (EIR) prepared by the Applicant for the project, the Applicant evaluated impacts to cultural resources and imposed mitigation measures which provide inadvertent discovery measures for protection of archeological and tribal cultural resources, which were acceptable to those interested Tribal governments.

**CONCLUSION:**

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant will not be authorized to construct the improvements as defined in project documents. Further, the Applicant may be required to

remove unauthorized improvements from state land. The Applicant has no right to a new lease or a renewal of any previous lease.

2. This action is consistent with the “Leading Climate Change Activism and “Meeting Evolving Public Trust Needs,” Strategic Focus Areas of the Commission’s 2021-2025 Strategic Plan.
3. An EIR, State Clearinghouse No. 2018092017, was prepared for this project by the City of Stockton (City) and certified on March 26, 2019. Additionally, a Supplemental EIR was prepared for this project by the City and certified on October 18, 2022. As part of its project approval, the City made a Statement of Facts and Findings and adopted a Mitigation Monitoring and Reporting Program.

Staff has reviewed these documents and prepared an independent Mitigation Monitoring Program (MMP) (attached, Exhibit A) that incorporates the City’s document. Staff recommends adoption of Exhibit A by the Commission.

Staff also prepared Findings made in conformance with the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096), contained in the attached Exhibit B.

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff’s consultation with the persons nominating such lands and through the CEQA review process, it is staff’s opinion that the project, as proposed, is consistent with its use classification.

## **APPROVALS REQUIRED:**

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U.S. Army Corps of Engineers  
Central Valley Regional Water Quality Control Board  
Central Valley Flood Protection Board  
California Department of Fish and Wildlife  
Reclamation District 404  
San Joaquin Council of Governments

## **EXHIBITS:**

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- A. Mitigation Monitoring Program
- B. Statement of Findings



## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that a Supplemental EIR, State Clearinghouse No. 2018092017, was prepared for this project by the City of Stockton and certified on October 18, 2022, and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in the attached Exhibit A.

Adopt the Findings, made in conformance with California Code of Regulations, title 14, sections 15091 and 15096, subdivision (h), as contained in the attached Exhibit B.

Determine that the project, as approved, will not have a significant effect on the environment.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

### **SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

### **AUTHORIZATION:**

1. Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning June 5, 2023, for a term of 20 years, to authorize the construction and use of an outfall pipeline, bank protection, and a temporary cofferdam; removal of an existing apron and use of existing bank protection; consideration being the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; such permitted activity is contingent upon Applicant's compliance with applicable permits, recommendations, or limitations issued by federal, state, and local governments; grading material shall be used for the benefit of the Project and may not be sold.

2. Authorize the Executive Officer or designee to replace Exhibits in the lease and review and approve “as-built” plans and post-completion reports detailing the final location of the improvements, following project completion.

**EXHIBIT A**  
**CALIFORNIA STATE LANDS COMMISSION**  
**MITIGATION MONITORING PROGRAM**  
**REGIONAL WASTEWATER CONTROL FACILITY MODIFICATIONS PROJECT – OUTFALL**  
**RELOCATION**

(A3628, State Clearinghouse No. 2018092017)

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The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the Regional Wastewater Control Facility Modifications Project – Outfall Relocation (Project). The CEQA lead agency for the Project is the City of Stockton.

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on State lands. The purpose of a MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines<sup>1</sup> section 15097, subdivision (a), states in part:

*In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.*

The lead agency certified an EIR and a Supplemental EIR, State Clearinghouse No. 2018092017, adopted a Mitigation Monitoring and Reporting Program (MMRP) for the whole of the Project (see Exhibit A, Attachment A-1), and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission's action and authority as a responsible agency apply only to the mitigation measures listed in Table A-1 below. The full text of each mitigation measure, as set forth in the MMRP

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<sup>1</sup> The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

prepared by the CEQA lead agency and provided in Attachment A-1, is incorporated by reference in this Exhibit A.

**Table A-1. Project Impacts and Applicable Mitigation Measures**

<b>Potential Impact</b>	<b>Mitigation Measure (MM)<sup>2</sup></b>
<u>Terrestrial Biological Resources</u>	
Impact 4.2-1	MM 4.2-1
Impact 4.2-2	MM 4.2-2
Impact 4.2-4	MM 4.2-4
Impact 4.2-5	MM 4.2-5
Impact 4.2-6	MM 4.2-6
Impact 4.2-7	MM 4.2-7
Impact 4.2-8	MM 4.2-8
<u>Aquatic Biological Resources</u>	
Impact 4.3-3	MM 4.3-3
<u>Cultural and Tribal Cultural Resources</u>	
Impact 4.8-2	MM 4.8-2
Impact 4.8-3	MM 4.8-3
Impact 4.8-4	MM 4.8-4

<sup>2</sup> See Attachment A-1 for the full text of each MM taken from the MMRP prepared by the CEQA lead agency.

**ATTACHMENT A-1**

**MITIGATION MONITORING AND REPORTING PROGRAM ADOPTED BY THE  
CITY OF STOCKTON**



**ROBERTSON - BRYAN, Inc.**  
*Solutions for Progress*



City of Stockton  
Regional Wastewater Control Facility  
Modifications Project

Outfall Relocation Project  
Mitigation Monitoring and Reporting Program

State Clearinghouse No. 2018092017

Prepared for:

City of Stockton  
Municipal Utilities Department  
2500 Navy Drive  
Stockton, CA 95206

September 2022

**City of Stockton  
Regional Wastewater Control Facility Modifications Project  
Outfall Relocation Project**

**Mitigation Monitoring and Reporting Program**

State Clearinghouse No. 2018092017

Prepared for:

City of Stockton Municipal Utilities Department  
2500 Navy Drive  
Stockton, CA 95206

Contact: Deedee Antypas, Deputy Director of Wastewater Operations  
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September 2022

# MITIGATION MONITORING AND REPORTING PROGRAM

## INTRODUCTION

In accordance with the California Environmental Quality Act (CEQA) (Public Resources Code [PRC] Section 21000 et seq.), the City of Stockton (City) prepared a supplement to the Regional Wastewater Control Facility (RWCF) Modifications Project Environmental Impact Report (EIR), which evaluates the relocation of the RWCF outfall from the west bank of the San Joaquin River to the east bank. The Supplemental EIR identified potentially significant impacts and mitigation measures that would reduce identified impacts to less-than-significant levels.

CEQA and the State CEQA Guidelines (PRC Section 21081.6 and State CEQA Guidelines Sections 15091[d] and 15097) require public agencies "to adopt a reporting and monitoring program for changes to the project which it has adopted or made a condition of project approval to mitigate or avoid significant effects on the environment." A Mitigation Monitoring and Reporting Program (MMRP) is required for the project because the Supplemental EIR identifies potential significant impacts related to the project implementation, and mitigation measures have been identified to reduce those impacts. This MMRP will be adopted by the Stockton City Council when it approves the project and will be kept on file at the City of Stockton Municipal Utilities Department, 2500 Navy Drive Stockton, CA 95206.

## PURPOSE OF MITIGATION MONITORING AND REPORTING PROGRAM

This MMRP has been prepared to ensure that all required mitigation measures are implemented and completed in a satisfactory manner before, during, and after project construction. The attached table has been prepared to assist the responsible parties in implementing the mitigation measures. The table identifies the impact, mitigation measures (as amended through the Final Supplemental EIR), monitoring responsibility, mitigation timing, and provides space to confirm implementation of the mitigation measures. The numbering of mitigation measures follows the numbering sequence found in the Supplemental EIR. Mitigation measures that are referenced more than once in the Supplemental EIR are not duplicated in the MMRP table.

## ROLES AND RESPONSIBILITIES

Unless otherwise specified herein, the City is responsible for taking all actions necessary to implement the mitigation measures under its jurisdiction according to the specifications provided for each measure and for demonstrating that the action has been successfully completed.

Inquiries should be directed to:

Deedee Antypas, Deputy Director of Wastewater Operations  
City of Stockton Municipal Utilities Department  
2500 Navy Drive  
Stockton, CA 95206  
Email: [deedee.antypas@stocktonca.gov](mailto:deedee.antypas@stocktonca.gov)

The location of this information is:

City of Stockton Municipal Utilities Department  
2500 Navy Drive  
Stockton, CA 95206



## MMRP RELATION TO SAN JOAQUIN COUNTY MULTI-SPECIES CONSERVATION AND OPEN SPACE PLAN COVERAGE

The City of Stockton is a permittee of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and has opted for coverage under the SJMSCP for incidental take of covered species associated with future urban growth within the City's service area. As such, the City is required to mitigate for project-related conversion of natural lands and special-status species through in-lieu fees, habitat land dedication, purchase of mitigation bank credits, or by proposing an alternative mitigation plan consistent with the goals of the SJMSCP. The mitigation measures in this MMRP that address species covered by the SJMSCP are intended to be consistent with the goals of the SJMSCP, as required.

The City of Stockton is following the process for SJMSCP coverage for project-related impacts. The Habitat Technical Advisory Committee approved the project on January 12, 2022, after which the San Joaquin Council of Governments (SJCOG), Inc. approved the outfall project's participation in the SJMSCP at its January 27, 2022, Board meeting. The City understands that SJCOG, Inc. will dispatch a qualified biologist to the project site to conduct a pre-construction biological survey prior to project-related ground disturbance. The information collected during the survey will be used to create the project-specific Incidental Take Minimization Measures (ITMMs). Because this MMRP has been prepared to be consistent with the SJMSCP, it is anticipated that the ITMMs will be consistent with this MMRP. However, because impacts to species covered in the SJMSCP will be mitigated through that program, if the ITMMs differ from this MMRP, the ITMMs will supersede the mitigation measures herein.

## MITIGATION MONITORING AND REPORTING PROGRAM TABLE

The categories identified in the attached MMRP table are described below.

- ▶ Mitigation Measure – This column provides the verbatim text of the adopted mitigation measure
- ▶ Implementation Responsibility – This column identifies the party responsible for implementing the mitigation measure.
- ▶ Timing – This column identifies the time frame in which the mitigation will be implemented.
- ▶ Verification – This column is to be dated and signed by the person (either project manager or his/her designee) responsible for verifying compliance with the requirements of the mitigation measure.

**Mitigation Monitoring and Reporting Program**

Mitigation Measures <sup>1</sup>	Implementation Responsibility	Timing	Verification
Terrestrial Biological Resources			
<p>Mitigation Measure 4.2-1: Protect and Mitigate Impacts on Special-Status Plants</p> <p>Consistent with the avoidance and minimization measures in the SJMSCP, the City will implement the following measures to mitigate the potential impact on special-status plant species:</p> <ul style="list-style-type: none"> <li>Before project implementation, habitat suitable for special-status plants on the project site shall be surveyed by a qualified botanist when the species' distinguishing characteristics are identifiable, such as during their typical blooming periods. This survey will be conducted no more than 1 year before the start of construction.</li> </ul>	City of Stockton and qualified botanist	Conduct preconstruction survey no more than one year before the start of construction of each project element that could affect habitat for special status plants or that changes the flow of effluent. Conduct these surveys when the species' distinguishing characteristics are identifiable, such as during their typical blooming periods.	
<ul style="list-style-type: none"> <li>If no special-status plants are observed on the project site, a letter report documenting the survey methods and results shall be submitted to the City, and no further mitigation is required.</li> </ul>	City of Stockton and qualified botanist	Following the preconstruction survey, prepare a letter report documenting survey methods and results.	
<ul style="list-style-type: none"> <li>All populations of slough thistle shall be avoided in accordance with the identified measures in Section 5.5.9(F) of the SJMSCP. The SJMSCP does not permit destruction of this species. If avoidance is not feasible, a compensation plan for slough thistle shall be developed in conjunction with California Department of Fish and Wildlife (CDFW). The plan shall determine the appropriate measures to minimize direct and indirect impacts that could occur as a result of project construction and shall describe measures to achieve no net loss of occupied habitat or individuals. Measures may include preserving and enhancing existing populations, creating off-site populations on project mitigation sites through seed collection or transplantation, restoring or creating suitable habitat in sufficient quantities, or paying an in-lieu fee to achieve no net loss of occupied habitat and/or individuals.</li> </ul>	City of Stockton and qualified botanist	Avoid populations of slough thistle throughout construction. If slough thistle cannot be avoided, prepare and implement a compensation plan for slough thistle before the start of construction.	
<ul style="list-style-type: none"> <li>If impacts on special-status plant species cannot be avoided, the City will implement compensation requirements provided in the SJMSCP, which may include species relocation to SJMSCP preserves, seed collection for propagation on SJMSCP preserves, or payment of SJMSCP fees such that no net loss of occupied habitat and/or individuals would occur.</li> </ul>	City of Stockton and qualified botanist	Implement compensation requirements provided in the SJMSCP before the start of construction.	
<ul style="list-style-type: none"> <li>If watershield, which is not covered under the SJMSCP, is found and cannot be avoided during construction, the City will consult with CDFW to determine the appropriate measures to achieve no net loss of occupied habitat or individuals. Mitigation measures may include preserving and enhancing existing populations,</li> </ul>	City of Stockton and qualified botanist	Consult with CDFW prior to project initiation to determine appropriate measures; develop mitigation and monitoring plan before the start of	

Mitigation Measures <sup>1</sup>	Implementation Responsibility	Timing	Verification
<p>creating off-site populations on mitigation sites through seed collection or transplantation, and/or restoring or creating suitable habitat in sufficient quantities to achieve no net loss of occupied habitat and/or individuals. A mitigation and monitoring plan shall be developed describing how unavoidable losses of special-status plants will be compensated.</p>		<p>construction.</p>	
<p>Mitigation Measure 4.2-2: Conduct Western Pond Turtle Preconstruction Surveys and Relocation</p> <p>The City will implement the following measures to avoid the potentially significant impact on western pond turtle, consistent with the avoidance and minimization measures in the SJMSCP. All mitigation listed below shall be limited to construction within 0.3 mile of potential aquatic habitat:</p> <ul style="list-style-type: none"> <li>▲ A preconstruction survey for western pond turtle shall be conducted by a qualified biologist before work in suitable aquatic habitat.</li> </ul>	<p>City of Stockton and qualified biologist</p>	<p>Before construction activities for project elements in suitable aquatic habitat.</p>	
<ul style="list-style-type: none"> <li>▲ If no western pond turtles are observed, a letter report documenting the survey methods and results shall be submitted to the City, and no further mitigation is required.</li> </ul>	<p>City of Stockton and qualified biologist</p>	<p>Following the preconstruction survey, prepare a letter report documenting survey methods and results.</p>	
<ul style="list-style-type: none"> <li>▲ During the dewatering of the river, a qualified biologist shall be present to survey for western pond turtles. If western pond turtles are observed, a qualified biologist, with approval from CDFW, shall relocate the turtles to the nearest area with suitable aquatic habitat that will not be disturbed by project-related construction activities.</li> </ul>	<p>City of Stockton and qualified biologist</p>	<p>At the time of dewatering activities during construction.</p>	
<ul style="list-style-type: none"> <li>▲ If nesting areas for western pond turtles are identified on the project site, a buffer area of 300 feet shall be established between the nesting site (which may be immediately adjacent to wetlands or extend up to 400 feet away from wetland areas in uplands) and the wetland located near the nesting site. These buffers shall be indicated by temporary fencing if construction has or will begin before nesting periods are ended (the period from egg laying to emergence of hatchlings is normally April to November).</li> </ul>	<p>City of Stockton</p>	<p>If nesting areas for pond turtles are identified, the buffer for those nesting sites shall be established before construction begins.</p>	
<p>Mitigation Measure 4.2-3: Protect Burrowing Owls</p> <p>The City will implement the following measures consistent with the SJMSCP to avoid, minimize, and mitigate impacts on burrowing owl:</p> <ul style="list-style-type: none"> <li>▲ The City will retain a qualified biologist to conduct focused breeding and nonbreeding season surveys for burrowing owls in areas of suitable habitat on and within 150 meters of project activities. Surveys will be conducted before the start of construction activities. Surveys will be conducted before project activity in accordance with Appendix D of CDFW's <i>Staff Report on Burrowing Owl Mitigation</i> (CDFG 2012).</li> <li>▲ If no occupied burrows are found, a letter report documenting the survey methods</li> </ul>	<p>City of Stockton and qualified biologist</p>	<p>Conduct focused breeding and nonbreeding season surveys in areas that could provide burrowing owl habitat before the start of construction activities in these areas during the breeding season; if owls are discovered, establish protective buffer around the burrow before construction begins; do not disturb occupied burrows during the</p>	

Mitigation Measures <sup>1</sup>	Implementation Responsibility	Timing	Verification
<p>and results shall be submitted to the City, and no further mitigation is required.</p> <ul style="list-style-type: none"> <li>▲ If burrowing owls are discovered during preconstruction surveys and can be avoided during project activities, a protective buffer around the burrow shall be established in conjunction with the Joint Powers Authority and consistent with the SJMSCP.</li> <li>▲ During the breeding season (February 1 through August 31), occupied burrows shall not be disturbed. The development of a protective buffer shall be supported by a qualified biologist. The protective buffer will be informed by monitoring the burrowing owls' sensitivity and will be put in place to prevent burrow destruction and disturbance to nest sites (including nest abandonment and loss of eggs or young). The 2012 CDFW staff report identifies variables to consider for the buffer, such as habitual disturbances (visual and audible), existing vegetation, and type and extent of disturbance and impact. The staff report gives general guidelines for buffers during the breeding season. It recommends that, at minimum, the protective buffer during the breeding season be 200 meters; moving up to 500 meters for high levels of disturbance. These guidelines shall be followed. If activities are allowed closer than these recommended setback distances, then a broad-scale, long-term, scientifically rigorous monitoring program that ensures that the owls are not detrimentally affected by the alternative approach shall be conducted. The protective buffer shall remain until the end of the breeding season unless a qualified biologist approved by the permitting agencies verifies through noninvasive means that either (1) the birds have not begun egg-laying or (2) juveniles from the occupied burrows are foraging independently and are capable of independent survival. After the fledglings are capable of independent survival, the burrow can be destroyed.</li> </ul>		<p>breeding season (February 1 through August 31); maintain protective buffer until the end of the breeding season (August 31)</p> <p>If construction does not begin, or is delayed for several months in an area of burrowing owl habitat, this survey would need to be done again.</p>	
<p>Mitigation Measure 4.2-4: Protect Swainson's Hawk, White-Tailed Kite, and Other Nesting Raptors</p> <p>The City will implement the following measures consistent with the SJMSCP to avoid, minimize, and mitigate impacts on Swainson's hawk, white-tailed kite, and other nesting raptors:</p> <ul style="list-style-type: none"> <li>▲ If removal of a known nest tree is required, it shall be removed between September 16 and February 14.</li> <li>▲ If project activity would commence between February 15 and September 15, a qualified biologist shall be retained to conduct preconstruction surveys for active nests on and within 0.5 mile of the project site no more than 14 days and no less than 7 days before commencement.</li> <li>▲ If no active nests are present in the survey area, a letter report documenting the survey methods and results shall be submitted to the City, and no further mitigation</li> </ul>	<p>City of Stockton and qualified biologist</p>	<p>Remove known nest tree between September 16 and February 14; conduct preconstruction surveys for active nests no more than 14 days and no less than 7 days before commencement of construction of project elements in the vicinity of nesting trees; establish appropriate buffers around active nests before construction begins; monitor active nests throughout construction if the activity has potential to adversely affect the nest.</p>	

Mitigation Measures <sup>1</sup>	Implementation Responsibility	Timing	Verification
<p>is required.</p> <ul style="list-style-type: none"> <li>▲ If an occupied nest is present, a buffer area will be established around the nest site. CDFW guidelines recommend implementation of a 0.25-mile buffer for Swainson’s hawk and a 500-foot buffer for other raptors, but the size of the buffer may be adjusted if a qualified biologist and CDFW determine that project activities would not be likely to adversely affect the nest with a smaller buffer. No project activity will commence within the buffer area until a qualified biologist confirms that the nest is no longer active or that the young have fully fledged. Monitoring of the nest by a qualified biologist will be required if the activity has potential to adversely affect the nest.</li> </ul>			
<p>Mitigation Measure 4.2-5: Protect Song Sparrow (“Modesto” Population) and Other Nesting Birds</p> <p>The City will implement the following measures consistent with the SJMSCP to avoid, minimize, and mitigate impacts on song sparrow (“Modesto” population) and other nesting birds:</p> <ul style="list-style-type: none"> <li>▲ A qualified biologist shall conduct a preconstruction survey for any project activity that would occur during the nesting bird season (March 1–August 31) and within 500 feet of suitable nesting habitat, including shrubs, riparian vegetation, and trees. The survey shall be conducted within 14 days before project activity begins.</li> <li>▲ If no nesting birds are found, a letter report documenting the survey methods and results shall be submitted to the City, and no further mitigation is required.</li> <li>▲ If nests are found, the qualified biologist shall establish a no-disturbance buffer around the nest. A 10-foot buffer for songbirds is typically sufficient to protect the nest from disturbance, but the size of the buffer shall be determined by a qualified biologist. Buffer size may vary based on bird species, listing status of the species, and other factors, including distance from construction activity, type and duration of construction activity, and whether the nest is within the line-of-sight of construction activity. The size of the buffer may be adjusted if the qualified biologist and the City, in consultation with CDFW, determine that such an adjustment would not be likely to adversely affect the nest.</li> </ul>	<p>City of Stockton and qualified biologist</p>	<p>Conduct preconstruction survey within 14 days before construction of project elements in the vicinity of suitable nesting habitat; establish buffer around the nesting colony, if present, before construction begins; maintain setbacks during the nesting season for the period encompassing nest building and continuing until fledglings leave nests.</p>	
<p>Mitigation Measure 4.2-6: Protect Special-Status Bats</p> <p>The City will implement the following measures to avoid, minimize, and mitigate impacts on special-status bat species, consistent with the SJMSCP:</p> <ul style="list-style-type: none"> <li>▲ A qualified biologist shall be retained to conduct surveys for roosting bats before construction implementation near potential bat roosting structures, such as bridges. Surveys will consist of daytime pedestrian surveys to look for visual signs of bats (e.g., guano) and/or evening emergence surveys to note the presence or absence</li> </ul>	<p>City of Stockton and qualified biologist</p>	<p>Conduct surveys before demolition of buildings; if roosts are present and must be removed, exclude bats from the roosting site before the building is removed or renovated; seal nursery sites before the nursery season (April through August); seal hibernation sites before the</p>	

Mitigation Measures <sup>1</sup>	Implementation Responsibility	Timing	Verification
<p>of bats, if determined necessary. If evidence of bat use is observed, the number and species of bats using the roost will be determined.</p> <ul style="list-style-type: none"> <li>▲ If no evidence of bat roosts is found, a letter report documenting the survey methods and results shall be submitted to the City, and no further study shall be required.</li> <li>▲ If roosts of pallid bat or other special-status bats are determined to be present, activities that could cause roost abandonment shall occur outside of the nursery and/or hibernation seasons and shall occur during dusk and/or evening hours after bats have left the roosting site.</li> </ul>		<p>hibernation season (November through March); remove colonial roosting sites outside of the nursery and/or hibernation seasons and during dusk and/or evening hours after bats have left the roosting site.</p>	
<p>Mitigation 4.2-7: Compensate for Loss of Waters of the United States and State<sup>2</sup></p> <p>The City will implement the following measures to compensate for the loss of waters of the United States and state:</p> <ul style="list-style-type: none"> <li>▲ Based on aquatic resources delineation, the City will determine the exact acreage of waters of the United States and waters of the state that would be filled because of project implementation.</li> <li>▲ The City will replace on a “no net loss” basis (minimum 1:1 ratio) (in accordance with USACE and/or the regional water quality control board [RWQCB]) the acreage and function of all wetlands and other waters that would be removed, lost, or degraded as a result of project implementation. Wetland habitat will be replaced at an acreage and location agreeable to USACE and the Central Valley RWQCB and as determined during the Section 401 and Section 404 permitting processes.</li> <li>▲ The City will obtain a USACE Section 404 permit and RWQCB Section 401 water quality certification before any groundbreaking activity within 50 feet of waters of the United States or state. The City will implement all permit conditions.</li> </ul>	<p>City of Stockton and qualified biologist</p>	<p>Prepare an aquatic resources delineation prior to construction; replace wetlands and other waters prior to project completion; obtain a USACE Section 404 permit and RWQCB Section 401 water quality certification before groundbreaking activities; implement permit conditions throughout project construction.</p>	
<p>Mitigation Measure 4.2-8: Minimize Loss of Riparian Habitat</p> <p>The City will implement the incidental take and avoidance measures in the SJMCSP for riparian habitat and the following measures:</p> <ul style="list-style-type: none"> <li>▲ The City will submit a notification of Lake and Streambed Alteration to CDFW for work within the San Joaquin River and its levee. The City will comply with all conditions of the Lake and Streambed Alteration Agreement issued by CDFW for the project.</li> <li>▲ The City will replace the 0.04 acre of valley foothill riparian woodland habitat to be removed from the project site with habitat comprising similar ecological conditions to those provided by the habitat removed from the project area, including similar species composition and diversity and functional organization. Riparian habitat replacement shall be at a minimum 1:1 mitigation ratio for a total of 0.04 acres.</li> </ul>	<p>City of Stockton and qualified biologist</p>	<p>Submit a notification of Lake and Streambed Alteration and obtain a Lake and Streambed Alteration Agreement before groundbreaking activities; comply with all conditions of the agreement throughout project construction; conduct habitat restoration, enhancement, and/or replacement prior to project completion.</p>	

Mitigation Measures <sup>1</sup>	Implementation Responsibility	Timing	Verification
<p>Habitat restoration, enhancement, and/or replacement shall be at a location and by methods agreeable to CDFW. This may include onsite restoration of riparian habitat; restoration or enhancement of riparian habitat elsewhere on the river in the project vicinity; purchase of mitigation credits at a CDFW-approved mitigation bank; or any combination thereof.</p> <p>▲ The City will require restoration of preconstruction contours and herbaceous understory vegetation.</p>			
Aquatic Biological Resources			
<p>Mitigation Measure 4.3-3: Conduct Fish Rescue and Relocation Operation</p> <p>The City will implement the following measures to avoid, minimize, and mitigate this potentially significant impact on San Joaquin River special-status fishes:</p> <p>▲ A fish rescue operation will be completed as water elevations within the cofferdam reach low levels. Fish rescue will be completed by qualified biologists using dip and seine nets to remove any fish remaining within the cofferdammed area. All fish rescued from inside the cofferdammed area will be placed into the San Joaquin River away from construction activities.</p> <p>▲ After the dewatered area has been deemed free of any entrained fishes, the area will be completely dewatered using the submersible pumps. Depending on the amount of leakage between the sheet piles, the submersible pumps may have to be operated at regular intervals to keep the work area dry.</p>	City of Stockton and qualified biologist	During construction activities when dewatering is required.	
Cultural and Tribal Cultural Resources			
<p>Mitigation Measure 4.8-2: Halt Ground-disturbing Activity Upon Discovery of Subsurface Archaeological Resources and Tribal Cultural Resources.<sup>3</sup></p> <p>The City shall implement cultural resource training of construction personnel to make them aware of the cultural value of the area, including the potential for tribal cultural resources to be present near the project site, and to educate them on how to best avoid impacting such resources, if encountered. If archaeological resources and/or tribal cultural resources are discovered during project-related construction activities all ground disturbance within a minimum of 100 feet of the find shall be halted until a qualified professional archaeologist can evaluate the discovery. The archaeologist shall examine the resources, assess their significance, and recommend appropriate procedures to either further investigate or mitigate adverse impacts. If the find is determined to be a significant historical resource and the archaeological resource cannot be avoided, then applicable mitigation measures for significant resources shall be completed (e.g., preservation in place, data recovery program pursuant to PRC Section 21083.2[i]). In the event that tribal cultural resources are discovered during ground disturbing activities, the</p>	City of Stockton and qualified archaeologist	Conduct cultural resource training before construction begins; halt ground disturbance during construction activities when archaeological resources and/or tribal cultural resources are discovered. Immediately following the discovery of a resource, coordinate with the appropriate entity regarding the disposition of the resource.	

Mitigation Measures <sup>1</sup>	Implementation Responsibility	Timing	Verification
<p>City shall notify the United Auburn Indian Community of the Auburn Rancheria and the Northern Valley Yokuts Tribe by email. During evaluation or mitigative treatment, ground disturbance and construction work could continue on other parts of the project area.</p> <p>The title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission (Commission) (Pub. Resources Code, Section 6313). In the event that archaeological, historical, and paleontological resources are discovered on State land during project construction, the City will notify and consult with the Commission’s Staff Attorney. The final disposition of archaeological, historical, and paleontological resources recovered on State land under the jurisdiction of the California State Lands Commission must be approved by the Commission.</p>			
<p>Mitigation Measure 4.8-3: Halt Ground-disturbing Activity Upon Discovery of Human Remains.</p> <p>If human remains are discovered, all work within a minimum of 100 feet of the discovery site shall halt immediately. The City shall notify the County Coroner, as stipulated in Section 7050.5 of the California Health and Safety Code. The Coroner shall determine whether the remains are Native American and, if so, shall contact the Native American Heritage Commission by telephone within 24 hours. The Commission shall follow the stipulations in PRC Section 5097.98, including determination of a most likely descendent. If the Commission is unable to identify a descendant, the descendant is unable to make a recommendation, or the landowner rejects the recommendation, the Commission shall mediate any dispute between the parties. Where such mediation fails to provide measures acceptable to the landowner, the landowner shall reinter the human remains and associated funerary items with appropriate dignity on the property, in a location not subject to further subsurface disturbance.</p>	<p>City of Stockton and qualified archaeologist</p>	<p>During construction activities when human remains are discovered.</p>	
<p>Mitigation Measure 4.8-4: Halt Ground-disturbing Activity Upon Discovery of Paleontological Resources.</p> <p>If fossils or other paleontological resources are encountered during construction, all work shall be halted within a 100-foot radius of the find and a qualified paleontologist shall be contacted to examine the find and evaluate its significance. If the find is deemed to have significant scientific value, the paleontologist and the City shall formulate a plan to either avoid impacts or to continue construction without disturbing the integrity of the find (e.g., by carefully excavating the material containing the resources under the direction of the paleontologist followed by routine conservation, laboratory preparation, and curation). Recommendations determined by the City to be necessary and feasible shall be implemented before construction activities can resume</p>	<p>City of Stockton and qualified paleontologist</p>	<p>During construction activities when paleontological resources are discovered.</p>	



Mitigation Measures <sup>1</sup>	Implementation Responsibility	Timing	Verification
at the site where the paleontological resources were discovered.			
Transportation and Circulation			
<p>Mitigation Measure 4.11-1: Implement a Construction Traffic Management Plan.</p> <p>The City of Stockton will prepare and implement a Traffic Management Plan (TMP) that addresses the specific steps to be taken before, during, and after construction to minimize temporary construction traffic impacts. The City will be responsible for developing the TMP in consultation with the applicable transportation entities, including the following:</p> <ul style="list-style-type: none"> <li>▲ Caltrans for state and federal roadway facilities, and</li> <li>▲ City of Stockton Fire Department and Police Department for emergency services.</li> </ul> <p>The City shall prepare the TMP before construction. The TMP shall ensure that acceptable operating conditions on local roadways and freeway facilities are maintained during construction activities. At a minimum, the TMP shall include:</p> <ul style="list-style-type: none"> <li>▲ construction schedule and time;</li> <li>▲ description of material delivery routes, number of truck trips, and specification of construction vehicle travel hour limits;</li> <li>▲ maintenance of safe and efficient access routes for emergency vehicles;</li> <li>▲ manual traffic control when necessary;</li> <li>▲ submittal of the construction TMP to local emergency response agencies and notification to such agencies shall at least 14 days before the commencement of construction that would partially or fully obstruct roadways; and</li> <li>▲ posting of contact information in case of emergency or complaint.</li> </ul> <p>If necessary to minimize unexpected operational impacts or delays experienced during real-time construction, the City will also be responsible for modifying the TMP to address such effects.</p>	<p>City of Stockton</p>	<p>Prepare TMP before construction; implement TMP throughout construction.</p>	

Notes:

1. Mitigation measures related to Terrestrial and Aquatic Biological Resources, Cultural and Cultural Tribal Resources, and Transportation and Circulation are from the RWCF Modifications Project MMRP and would continue to be applicable to the project.
2. Mitigation Measure 4.2-7 has been adapted from the RWCF Modifications Project Supplemental EIR to reflect that a jurisdictional determination is not necessary because the portion of the San Joaquin River that would be affected by project implementation is a navigable waterway, and hence a water of the United States and state.
3. Mitigation Measure 4.8-2 has been adapted from the RWCF Modifications Project Supplemental EIR in response to comments from the California State Lands Commission on the Supplemental EIR.

**EXHIBIT B – REGIONAL WASTEWATER CONTROL FACILITY  
MODIFICATION PROJECT – OUTFALL RELOCATION  
CALIFORNIA STATE LANDS COMMISSION  
STATEMENT OF FINDINGS**

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**1.0 INTRODUCTION**

The California State Lands Commission (Commission or CSLC), acting as a responsible agency under the California Environmental Quality Act (CEQA), makes these findings to comply with CEQA as part of its discretionary approval to authorize issuance of a General Lease – Public Agency Use, to the City of Stockton, for use of sovereign land associated with the proposed Regional Wastewater Control Facility (RWCF) Modification Project – Outfall Relocation (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines<sup>1</sup>, § 15381.) 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, §§ 6301, 6306, 6009, subd. (c).) 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.

The Commission is a responsible agency under CEQA for the Project because the Commission must approve a lease for the Project to go forward and because the City of Stockton (City), as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA. The City analyzed the environmental impacts associated with the Project in an Environmental Impact Report (EIR) (State Clearinghouse [SCH] No. 2018092017) and, in March 26, 2019, certified the EIR and adopted a Mitigation Monitoring and Reporting Program (MMRP) and Findings. In addition, the City also analyzed the environmental impacts associated with the Project, after making changes to the Project, in a Supplemental Environmental Impact Report (SEIR) and, in August 18, 2022, certified the SEIR and adopted a separate MMRP and Findings.

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<sup>1</sup> CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in California Code of Regulations, title 14, section 15000 et seq.

The Project involves reinstating an existing 60-inch-diameter reinforced concrete pipe running from the Regional Wastewater Control Facility (RWCF) to the abandoned outfall apron on the east bank of the San Joaquin River, modification of the outfall apron structure to create a new outfall outlet, and construction of a pipeline running from the Effluent Pump Station to the reinstated 60-inch reinforced concrete pipe.

The City determined that the Project could have significant environmental effects on the following environmental resources:

- Terrestrial Biological Resources
- Aquatic Biological Resources
- Cultural Resources/Tribal Cultural Resources
- Transportation

Of the four resources areas noted above, Project components within the Commission's jurisdiction could have significant environmental effects on three of the resource areas, as follows:

- Terrestrial Biological Resources
- Aquatic Biological Resources
- Cultural Resources/Tribal Cultural Resources

In certifying the Final EIR and Final SEIR and approving the Project, the City imposed various mitigation measures for Project-related significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of these mitigation measures such that the impacts would be less than significant.

As a responsible agency, the Commission complies with CEQA by considering the EIR and SEIR and reaching its own conclusions on whether, how, and with what conditions to approve a project. In doing so, the Commission may require changes in a project to lessen or avoid the effects, either direct or indirect, of that part of the project which the Commission will be called on to carry out or approve. In order to ensure the identified mitigation measures and/or Project revisions are implemented, the Commission adopts the Mitigation Monitoring Program (MMP) as set forth in Exhibit A as part of its Project approval.

## **2.0 ADMINISTRATIVE RECORD OF PROCEEDINGS AND CUSTODIAN OF THE RECORD**

These Findings are supported by substantial evidence contained in the Final EIR and the Final SEIR and other relevant information provided to the Commission or existing in its files, all of which is contained in the administrative record. The administrative record is located at the California State Lands Commission, 100

Howe Avenue, Suite 100-South, Sacramento, CA 95825. The custodian for the administrative record is the California State Lands Commission Division of Environmental Science, Planning, and Management.

### 3.0 FINDINGS

The Commission's role as a responsible agency affects the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each "public agency" that approves a project for which an EIR has been certified that identifies one or more significant impacts on the environment (Pub. Resources Code, § 21081, subd. (a); State CEQA Guidelines, § 15091, subd. (a).) Because the EIR and SEIR certified by the City for the Project identifies potentially significant impacts that fall within the scope of the Commission's approval, the Commission makes the Findings set forth below as a responsible agency under CEQA. (State CEQA Guidelines, § 15096, subd. (h); *Riverwatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1202, 1207.

While the Commission must consider the environmental impacts of the Project as set forth in the EIR and SEIR, the Commission's obligation to mitigate or avoid the direct or indirect environmental impacts of the Project is limited to those parts which it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1, subd. (d); State CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because the Commission's exercise of discretion involves only issuing a General Lease – Public Agency Use for this Project, the Commission is responsible for considering only the environmental impacts related to lands or resources subject to the Commission's jurisdiction. With respect to all other impacts associated with implementation of the Project, the Commission is bound by the legal presumption that the EIR and SEIR fully comply with CEQA.

The Commission has reviewed and considered the information contained in the Project EIR and SEIR. All significant adverse impacts of the Project identified in the EIR and SEIR relating to the Commission's approval of a General Lease – Public Agency Use, which would allow reinstating the 60-inch reinforced concrete pipe, modification of the outfall apron, and construction of a pipeline are included herein and organized according to the resource affected.

These Findings, which reflect the independent judgment of the Commission, are intended to comply with CEQA's mandate that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects unless the agency makes written findings for each of those significant effects. Possible findings on each significant effect are:

- (1) Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR and SEIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the Commission. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the EIR and SEIR.<sup>2</sup>

A discussion of supporting facts follows each Finding.

- Whenever Finding (1) occurs, the mitigation measures that lessen the significant environmental impact are identified in the facts supporting the Finding.
- Whenever Finding (2) occurs, the agencies with jurisdiction are specified. These agencies, within their respective spheres of influence, have the responsibility to adopt, implement, and enforce the mitigation discussed.

The mitigation measures are briefly described in these Findings; more detail on the mitigation measures is included in the EIR and SEIR.

## A. SUMMARY OF FINDINGS

Based on public scoping, the proposed Project will have No Impact on the following environmental issue areas:

- Aesthetics
- Agricultural and Forestry Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Land Use and Planning
- Mineral Resources
- Population and Housing
- Public Services
- Recreation
- Utilities and Service Systems

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<sup>2</sup> See Public Resources Code section 21081, subdivision (a) and State CEQA Guidelines section 15091, subdivision (a).

The EIR subsequently identified the following impacts as Less Than Significant:

- Air Quality
- Greenhouse Gas Emissions and Climate Change
- Hydrology and Water Quality
- Energy
- Noise

For the remaining potentially significant effects, the Findings are organized by significant impacts within the EIR and SEIR issue areas as presented below.

**B. POTENTIALLY SIGNIFICANT IMPACTS**

The impacts within CSLC jurisdiction identified in Table B-1 were determined in the SEIR to be potentially significant absent mitigation. After application of mitigation, however, all impacts were determined to be less than significant (LTSM). For the full text of each mitigation measure (MM), please refer to Exhibit A, Attachment A-1.

**Table B-1 – Significant Impacts by Issue Area**

<b>Environmental Issue Area</b>	<b>Impact Nos. (LTSM)</b>
<b>Terrestrial Biological Resources</b>	<b>4.2-1, 4.2-2, 4.2-4, 4.2-5, 4.2-6, 4.2-7, 4.2-8</b>
<b>Aquatic Biological Resources</b>	<b>4.3-3</b>
<b>Cultural Resources and Tribal Cultural Resources</b>	<b>4.8-2, 4.8-3, 4.8-4</b>

**C. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION**

The impacts identified below were determined in the Supplemental EIR to be potentially significant absent mitigation; however, the impacts were determined to be less than significant with mitigation (LTSM).

## 1. TERRESTRIAL BIOLOGICAL RESOURCES

### CEQA FINDING NO. 4.2-1

Impact: **Impact 4.2-1. Potential for Project Construction to Result in Disturbance to or Loss of Special-Status Plant Species and Habitat.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the SEIR.

#### FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in removal or damage to special-status species if present because of temporary dewatering and ground disturbance. MM 4.2-1 would require that the project not result in unapproved take of these species and that any species losses will be compensated for.

#### **MM 4.2-1: Protect and Mitigate Impacts on Special-Status Plants**

Implementation of MM 4.2-1 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

### CEQA FINDING NO. 4.2-2

Impact: **Impact 4.2-2. Potential for Project Construction to Result in Disturbance to or Loss of Western Pond Turtle.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the SEIR.

#### FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in disturbance to or direct loss of western pond turtle, if present, within aquatic and upland habitat because of temporary dewatering and ground disturbance. MM 4.2-2 would require that western pond turtles are removed from the site and that nest sites are protected so that the project construction will not result in mortality of individuals.

**MM 4.2-2: Conduct Western Pond Turtle Preconstruction Surveys and Relocation**

Implementation of MM 4.2-2 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 4.2-4**

Impact: **Impact 4.2-4. Potential for Project Construction to Result in Disturbance to or Loss of Swainson’s Hawk, White-Tailed Kite, and Other Nesting Raptors.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the SEIR.

**FACTS SUPPORTING THE FINDING(S)**

Activities proposed as part of the Project have the potential to result in disturbance to or direct loss of nesting Swainson’s hawk, white-tailed kite, and other nesting raptors potentially resulting in nest abandonment, failure, or mortality of chicks and eggs because of tree and other vegetation removal and construction noise. MM 4.2-4 would require that project activities will not involve removing an active nest tree or disturbing nest sites.

**MM 4.2-4: Protect Swainson’s hawk, White-Tailed Kite, and Other Nesting Raptors**

Implementation of MM 4.2-4 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.



**CEQA FINDING NO. 4.2-5**

Impact: **Impact 4.2-5. Potential for Project Construction to Result in Disturbance to or Loss of Song Sparrow (“Modesto” Population) and other Nesting Birds.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the SEIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in disturbance to or direct loss of nesting song sparrow (“Modesto” population) and other nesting birds, potentially resulting in nest abandonment, nest failure, or mortality of chicks and eggs. MM 4.2-5 would require that project activities will not involve removing an active nest tree or disturbing nest sites.

**MM 4.2-5: Protect Song Sparrow (“Modesto” Population) and Other Nesting Birds**

Implementation of MM 4.2-5 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 4.2-6**

Impact: **Impact 4.2-6. Potential for Project Construction to Result in Disturbance to or Loss of Special-Status Bats.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the SEIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to disturb active bat colonies. This can cause them to abandon their roosts or young or affect foraging behavior, affecting the survival of young or adult bats because of construction noise near a bridge and other structures that could potentially provide roost habitat for common and special-status bats. MM 4.2-6 would require surveys to confirm that bats are absent from potential roost sites or avoid disturbance during sensitive periods for bats.

**MM 4.2-6: Protect Special-Status Bats**

Implementation of MM 4.2-6 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 4.2-7**

Impact: **Impact 4.2-7. Potential for Project Construction to Result in Disturbance to or Loss of Waters of the United States and State.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the SEIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in temporary dewatering of approximately 0.04 acre of the San Joaquin River and permanent fill of approximately 0.02 acre of waters of the United States and state because of apron demolition and placement of a steel pipe and riprap to create the new outfall. MM 4.2-7 would require no net loss of functions and acreage of waters of the United States and waters of the state.

**MM 4.2-7: Compensate for Loss of Waters of the United States and State**

Implementation of MM 4.2-7 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 4.2-8**

Impact: **Impact 4.2-8. Potential for Project Construction to Result in Disturbance to or Loss of Riparian Habitat**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the SEIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in direct removal of riparian vegetation along the San Joaquin River levee. MM 4.2-8 would require replacement planting of riparian trees and restoration of understory vegetation and channel contours at the site.

**MM 4.2-8: Minimize Loss of Riparian Habitat**

Implementation of MM 4.2-8 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**2. AQUATIC BIOLOGICAL RESOURCES**

**CEQA FINDING NO. 4.3-3**

Impact: **Impact 4.3-3. Potential for Project Construction to Cause Direct Fish Injury or Mortality, Resulting in Impacts on Fish Populations.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the SEIR.

**FACTS SUPPORTING THE FINDING(S)**

Activities proposed as part of the Project have the potential to result in direct mortality or injury to special-status fishes or other fish of the lower San Joaquin River. MM 4.3-3 would require construction to occur during the July 1 through October 31 in-water work window when no Endangered Species Act-listed salmonid juveniles or delta smelt are expected to be in the project reach of the river and thus are not expected to become entrained within the cofferdam area. Any juvenile green sturgeon present in the river during construction that become entrained are hardy and will handle being rescue-seined and placed back into the river. Most, if not all non-special status fishes that become entrained within the cofferdam area will be safely removed and returned to the San Joaquin River before the start of construction work within the cofferdam area. Any losses of small numbers of individual non-special-status fishes within the cofferdam area will have no population-level effects on the species.

**MM 4.3-3: Conduct Fish Rescue and Relocation Operation**

Implementation of MM 4.3-3 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**3. CULTURAL AND TRIBAL CULTURAL RESOURCES**

**CEQA FINDING NO. 4.8-2**

Impact: **Impact 4.8-2. Effects on Previously Undiscovered Archaeological Resources and Tribal Resources.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to encounter as-yet undiscovered prehistoric archaeological resources and/or tribal resources or historic resources that could be eligible for listing in the National Register of Historic Places or the California Register of Historic Resources. MM 4.8-2 would ensure that any undocumented cultural resources or inadvertent discoveries of cultural resources during construction or ground disturbing activities would be properly recorded and the historical significance of the resources documented.

**MM 4.8-2: Halt Ground-disturbing Activity Upon Discovery of Subsurface Archaeological Resources and Tribal Cultural Resources**

Implementation of MM 4.8-2 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 4.8-3**

Impact: **Impact 4.8-3. Effects on Previously Undiscovered Human Remains.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in uncovering or disturbing unanticipated human remains, including those interred outside of formal cemeteries. MM 4.8-3 would ensure that any undocumented

or inadvertent discoveries of human remains during construction or ground disturbing activities would be properly mitigated in accordance with the laws of the State of California.

**MM 4.8-3: Halt Ground-disturbing Activity Upon Discovery of Human Remains**

Implementation of MM 4.8-3 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 4.8-4**

Impact: **Impact 4.8-4. Effects on Paleontological Resources.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to disturb or destroy newly discovered paleontological resources within the Modesto Formation geologic unit, which underlies the RWCF main plant. MM 4.8-4 would ensure that any inadvertent discoveries of paleontological resources during construction or ground-disturbing activities are properly documented and salvaged.

**MM 4.8-4: Halt Ground-disturbing Activity Upon Discovery of Paleontological Resources**

Implementation of MM 4.8-4 has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

D. FINDINGS ON ALTERNATIVES

As explained in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1000:

*When it comes time to decide on project approval, the public agency's decisionmaking body evaluates whether the alternatives [analyzed in the*

*EIR] are actually feasible.... At this final stage of project approval, the agency considers whether '[s]pecific economic, legal, social, technological, or other considerations...make infeasible the mitigation measures or alternatives identified in the environmental impact report.' Broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives [citations omitted].*

The two alternatives analyzed in the SEIR represent a reasonable range of potentially feasible alternatives that could reduce one or more significant impacts of the Project. These alternatives include:

- 1) No-Project Alternative
- 2) Diffuser Outfall Alternative

As presented in the SEIR, the alternatives were described and compared with each other and with the proposed Project.

Under State CEQA Guidelines section 15126.6, subdivision (e)(2), if the No Project Alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative among the other alternatives. Based on the analysis contained in the EIR, there is no clear environmentally superior alternative to the proposed Project that is capable of achieving the Project objective. No one alternative would eliminate the significant and adverse impacts of the proposed Project.

The City independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects the City's independent judgment as to alternatives. The City found that the Project provides the best balance between the Project goals and objectives and the Project's benefits. The two CEQA alternatives proposed and evaluated in the Supplemental EIR were rejected as being infeasible for the following reasons provided in the City's Findings Regarding Alternatives (incorporated herein by reference).

1) No- Project Alternative

The No-Project Alternative constitutes no change to the RWCF Modifications Project; thus, the City would continue to implement the project as described in the RWCF Modifications Project EIR. Under the No-Project Alternative, the existing outfall on the west bank of the San Joaquin River would be used to discharge effluent from the RWCF to the San Joaquin River. This would require the installation of 2,000 linear feet of pipeline to connect the final effluent pump station to the outfall on the west bank of the river. The new construction would occur on land, and no

in-river construction would occur. After the modified RWCF on the east side of the river is operational, the siphon and pumps would be required to operate 100 percent of the time to move effluent to the existing west-bank outfall. Because the existing west-bank outfall would continue to be used, requiring continued pumping of final RWCF effluent for discharge to the river, and compliance with the RWCF NPDES permit temperature limitations would be less certain, the No-Project Alternative does not meet any of the project objectives. For the reasons provided above, this alternative was rejected.

2) Diffuser Outfall Alternative

The Diffuser Outfall Alternative would move the outfall to the same new location identified for the project and would involve the same primary construction and installation elements described for the project except that the discharge of treated effluent to the San Joaquin River would go through a multiport bottom diffuser outfall instead of the side bank outfall as planned for the project. The preliminary design efforts identified a 72-inch diffuser outfall with a length of 130 feet and ten 16-inch ports in alternating directions as the most applicable configuration for wastewater discharge. The diffuser would be oriented perpendicular to river flow and centered in the river channel. Additionally, the diffuser ports would be angled 15 degrees from horizontal. The Diffuser Outfall Alternative may not fully achieve compliance with the RWCF NPDES permit temperature limitations, thus would not achieve all the project objectives. For the reason provided above, this alternative was rejected.

Based upon the objectives identified in the Final EIR and the detailed mitigation measures imposed upon the Project, the Commission has determined that the Project should be approved, subject to such mitigation measures (Exhibit A, Mitigation Monitoring Program).