

# Staff Report 16

## APPLICANT:

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South Yuba River Citizens League

## PROPOSED ACTION:

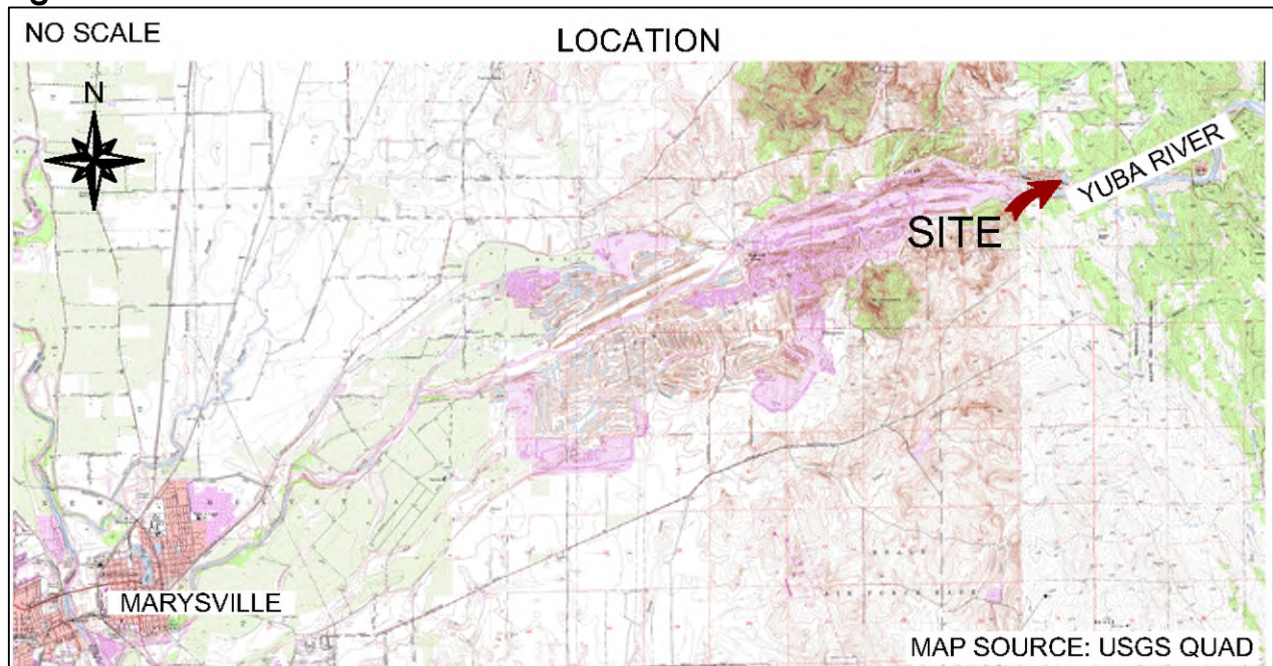
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Issuance of a General Lease – Other.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Yuba River channel and floodplain, adjacent to Assessor's Parcel Numbers 006-170-065, -119, -122, -139, -143, -144, near Marysville, Yuba County (as shown in Figure 1).

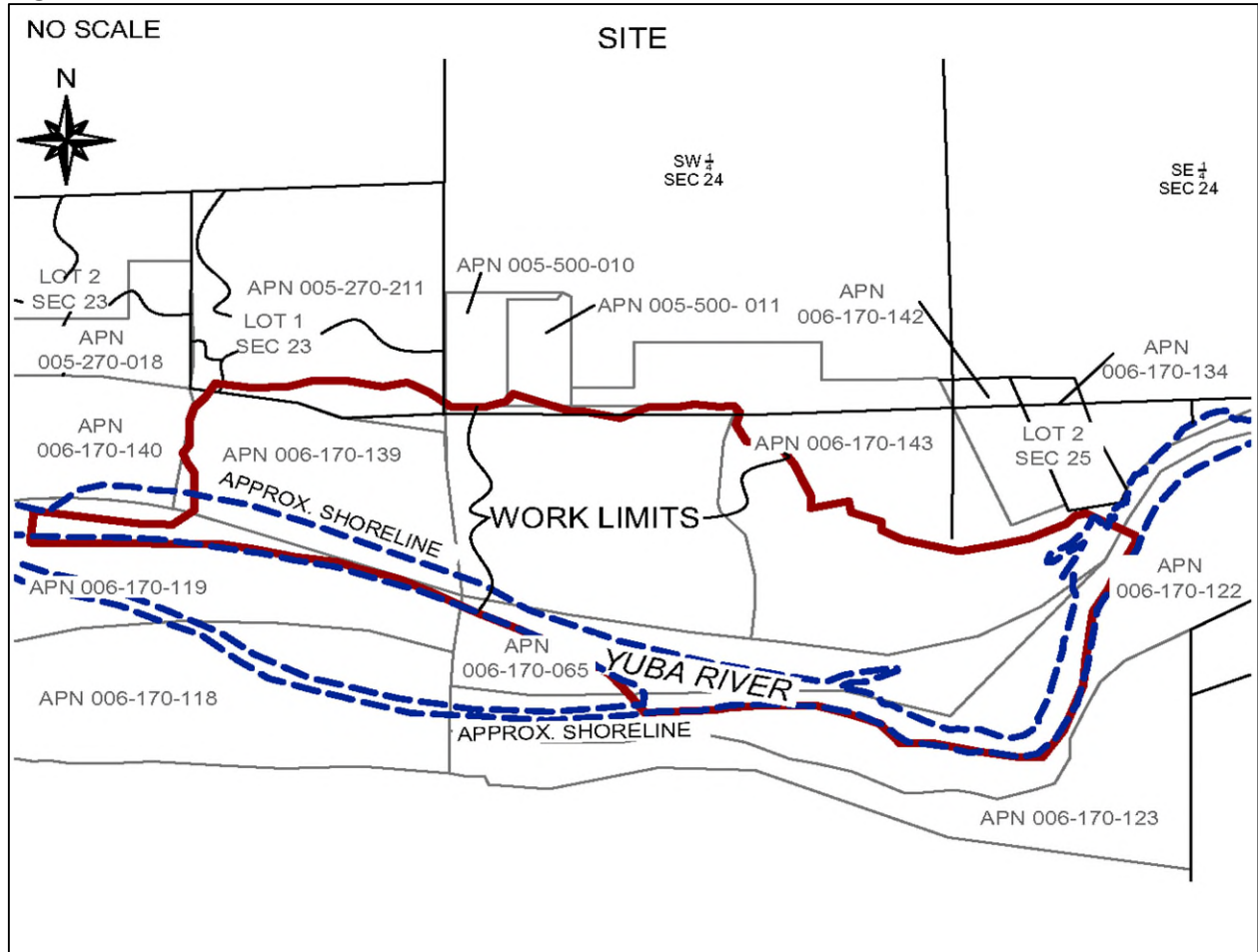
**Figure 1. Location**



**AUTHORIZED USE:**

Restoration and rehabilitation of the bed of the Yuba River channel and floodplain to improve wildlife and aquatic habitats (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:**

5 years; beginning April 2, 2025.

**CONSIDERATION:**

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 interest; dredged materials may not be kept or sold.

**SPECIFIC LEASE PROVISIONS:**

- Lessee will fully carry out, implement, and comply with all mitigation measures and reporting obligations applicable to the Lessee as set forth in the Mitigation Monitoring Program (MMP).
- Lessee will adhere to Best Management Practices to control turbidity and protect aquatic resources and habitats from excessive siltation in the general vicinity of the project.
- Lessee acknowledges that grading material from the Lease Premises is the property of the State of California and shall not be kept or sold, and that Lessee is not authorized to grade for purposes of commercial resale, environmental mitigation credits, or other private benefit without Lessor's prior written consent following further Commission approval. Grading material is to be used for the Project authorized by the proposed Lease.
- All construction activities shall be carried out in accordance with all applicable safety regulations, permits, and conditions of all other agencies.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6303, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

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

The South Yuba River Citizens League is applying for a General Lease – Other, for the proposed restoration and rehabilitation of the bed of the Yuba River channel and floodplain to improve wildlife and aquatic habitats, adjacent to Assessor's Parcel Numbers 006-170-065, -119, -122, -139, -143, -144, near Marysville, in Yuba County. The proposed work is affiliated with the Upper Long Bar Juvenile Salmonid Habitat Restoration Project (Project). The Project's goal is to improve the productivity, complexity, and diversity of anadromous salmonid rearing habitat within the Upper Long Bar project area to support diverse life history strategies, increased growth and survival, and population viability and resiliency. Further, the Project will restore and enhance ecosystem processes with a primary goal of augmenting and rehabilitating productive salmonid rearing habitat to increase

natural production of fall-run and spring-run Chinook Salmon and Central Valley steelhead in the Lower Yuba River.

According to the Commission's boundary determination officer, approximately 28 acres of the Project falls on state sovereign land in the Yuba River. The Project is located at approximately river mile 16 of the Lower Yuba River. The proposed work activities include restoration of natural habitats; creation of floodplain benches, side channels, and alcoves; excavating and grading; revegetation of riparian lands with native plants as needed and related measures. The proposed work will enhance the connection between the existing river channel and the adjacent wetland area. Mitigation measures will be implemented to minimize impacts to special status species. The project work is anticipated to begin in 2025 after permits are obtained from all agencies with jurisdiction over the project area. To minimize any potential negative effects on salmonids, the proposed in-water work will occur from June 15 to September 30 when flows are typically low and prior to the peak spring-run Chinook Salmon spawning period, as prescribed in the National Marine Fisheries Service Programmatic Biological Opinion for Restoration Projects. After completion, there may be post-project monitoring activities.

The proposed project design contains a variety of habitat features including alcoves, enhanced flood runner to increase connectivity across the bar, and edge habitat enhancement areas. Each of these features target juvenile salmonid habitat creation across a diverse range of ecological flows. The full restoration design involves the removal of approximately 82,207 cubic yards and fill of 90 cubic yards of earthen material to create the habitat features. In total, grading within the full Project site will yield approximately 12.43 acres of enhanced juvenile salmonid rearing habitat across the range of proposed habitat features.

The Project provides both local and statewide public benefits, as the primary objective is to improve the productivity, complexity, and diversity of anadromous salmonid rearing habitat within the Yuba River. This will improve ecological conditions adjacent to the river channel compared to their current degraded state. Additionally, the Project will improve public opportunities to participate in, learn about, and support salmonid habitat restoration and the value of functional riverine ecosystems. The proposed action is considered beneficial because it will enhance fisheries, which is a recognized Public Trust use. Furthermore, the action will not impede or impair any other Public Trust uses in the area. The Project will enhance the fishing experience by restoring and improving habitat in and connected to the river. This wildlife and aquatic habitat restoration project is a water-dependent use that is consistent with the common law Public Trust Doctrine.

Waterborne activities such as rafting, kayaking, and fishing are possible through access points. The public can fish in the Yuba River using boating vehicles such as kayaks and canoes.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. In addition, the lease has a limited 5-year term and does not grant the lessee's exclusive rights to the lease premises. Furthermore, the lessee will be subject to lease terms and conditions which promote public use and safety. The proposed lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon.

### **CLIMATE CHANGE:**

The project area is not tidally influenced and therefore, would not be subject to sea level rise. However, as stated in the [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. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow, as well as runoff, will likely increase scour, decreasing bank stability at a faster rate.

The Proposed Project would yield approximately 12.43 acres of enhanced juvenile salmonid rearing habitat. The habitat enhancement project activities are designed and intended to improve productivity, complexity, and diversity of salmonid rearing habitat in the lower Yuba River. The Project activities related to habitat enhancement will potentially improve off-channel rearing habitat for juvenile salmonids and provide high-flow refugia for adult salmonids in Upper Long Bar on the Lower Yuba River.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change.

### **CONCLUSION:**

For all the reasons above, staff believes that the issuance of the proposed lease will not substantially interfere with the public rights to navigation and fishing; or substantially interfere with the Public Trust needs and values at this location, at this

time, for the term of the lease; is consistent with the common law Public Trust Doctrine; 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 the 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 cannot restore and rehabilitate the bed of the Yuba River channel and floodplain as defined in project documents. The lessee has no right to a new lease or to renew the lease of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021 – 2025 Strategic Plan.
3. A Program Environmental Impact Report (PEIR), State Clearinghouse No. 2019100230, was prepared for a Clean Water Act Section 401 General Water Quality Certification and Waste Discharge Requirements for Implementation of Restoration Projects Statewide Order by the State Water Resources Control Board (SWRCB) and certified on September 12, 2022. As part of its Order approval, SWRCB made a Statement of Facts and Findings and Statement of Overriding Considerations and adopted a Mitigation Monitoring and Reporting Program. The Central Valley Regional Water Quality Control Board (CVRWQCB), then filed a Notice of Determination for the Upper Long Bar Salmonid Habitat Restoration Project (Project) on September 18, 2024. CVRWQCB determined that all impacts from the Project were analyzed in the PEIR and fell within the parameters laid out by SWRCB for restoration projects.

Staff have reviewed these documents and prepared an independent Mitigation Monitoring Program (MMP) (attached, Exhibit A) that incorporates SWRCB's document. Staff recommend 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.

Staff determined that the Project could cause potential impacts to one resource area (Hydrology and Water Quality) within the Commission's jurisdiction, but that

with the implementation of applicable measures those impacts would be less than significant. Staff also identified in the Findings that the project could cause potentially significant impacts to Air Quality and Greenhouse Gas Emissions, Biological Resources – Terrestrial, Biological Resources – Aquatic, Cultural Resources, and Tribal Cultural Resources from the excavation and fill of earth and other materials, despite the implementation of all applicable measures. Staff prepared a Statement of Overriding Considerations made pursuant to the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15093) that balances the benefits of the Project against its unavoidable impacts (as identified in the PEIR) and finds that the potential impacts are acceptable in light of the project benefits. Staff recommends the Commission adopt the Findings and Statement of Overriding Considerations 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 participation from the agency nominating such lands through the California Environmental Quality Act (CEQA) review and permitting 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
- U.S. Fish and Wildlife Service
- National Marine Fisheries Service
- State Office of Historic Preservation
- Regional Water Quality Control Board
- State Water Resources Control Board
- California Department of Fish and Wildlife
- City and County in the Project Area

## **EXHIBITS:**

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- A. Mitigation Monitoring Program
- B. Findings and Statement of Overriding Considerations

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that a PEIR, State Clearinghouse No. 2019100230, was prepared for this project by SWRCB and certified on September 12, 2022, and that the Commission has reviewed and considered the information contained therein; the Project was approved by CVRWQCB on September 18, 2024; that in the Commission's independent judgment, the scope of activities to be carried out under the lease to be issued by this authorization have been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impact have occurred; and, therefore no additional CEQA analysis is required.

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.

Adopt the Statement of Overriding Considerations made in conformance with California Code of Regulations, title 14, section 15093, as contained in the attached Exhibit B.

### **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 term of the lease; is consistent with the common law Public Trust Doctrine; 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 – Other to the Applicant beginning April 2, 2025, for a term of 5 years, for restoration and rehabilitation of the bed of the Yuba River channel and floodplain to improve wildlife and aquatic habitats to support the Upper Long Bar Juvenile Salmonid Habitat Restoration Project; consideration is the public use and benefit, with the State reserving the right to set a monetary rent at any time; such permitted activity is contingent upon Applicant's compliance with applicable permits, recommendations, or limitations issued by federal, state, and local governments.
2. Authorize the Executive Officer or designee to replace Exhibits in the lease, based on review and approval of "as-built" plans and post-completion reports detailing the final location of the new improvements, following restoration and rehabilitation activities.

**EXHIBIT A**  
**CALIFORNIA STATE LANDS COMMISSION**  
**MITIGATION MONITORING PROGRAM**  
**UPPER LONG BAR SALMONID HABITAT RESTORATION PROJECT**  
(A4639, State Clearinghouse No. 2019100230)

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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 Upper Long Bar Salmonid Habitat Restoration Project (Project). The CEQA lead agency for the Project is the State Water Resources Control Board (SWRCB).

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of measures for the portion(s) of the Project located on State lands. The purpose of an 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 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 a Program EIR (PEIR), State Clearinghouse No. 2019100230, adopted a Mitigation Monitoring and Reporting Program (MMRP) for the whole of the Project (see [Appendix E](#), Appendix F, and Appendix J of the [Final PEIR](#)), and, along with the State of California Central Valley Regional Water Quality Control Board, remains responsible for ensuring that implementation of the mitigation measures, general protection measures, and species protection measures occur in accordance with its program. The Commission's action and authority as a responsible agency apply only to the measures listed in Table A-1 below. The full text of each measure, as set forth in the MMRP, Appendix E, and Appendix F prepared by the CEQA lead agency, is incorporated by reference in this Exhibit A.

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

Potential Impact	Mitigation Measure (MM), General Protection Measure (GPM), and Species Protection Measure (SPM) <sup>1</sup>
Impact 3.4-4	<u>MM</u> AIR-1 and AIR-2 <u>GPM</u> GPM-8 and GPM-17
Impact 3.4-5	MM AIR-3
Impact 3.5-1	<u>GPM</u> GPM-5, GPM-7, GPM-8, GPM-12, WQHM-4, VHDR-2, and VHDR-3 <u>SPM</u> SPM-1, SPM-3, and SPM-4
Impact 3.5-2	<u>GPM</u> GPM-2, GPM-3, GPM-4, GPM-5, GPM-6, GPM-7, GPM-8, GPM-9, GPM-10, GPM-13, GPM-14, WQHM-1, WQHM-2, WQHM-4, WQHM-6, VHDR-1, VHDR-2, VHDR-3, VHDR-4, and VHDR-5 <u>SPM</u> SPM-1, SPM-3, SPM-4, AMP-2, AMP-3, AMP-6, AMP-10, AMP-11, REP-1, REP-5, REP-6, BIRD-1, BIRD-3, BIRD-4, BIRD-5, MAM-1, MAM-2, INVERT-3, and INVERT-4
Impact 3.5-3	<u>GPM</u> GPM-5, GPM-7, GPM-8, GPM-9, GPM-12, WQHM-4, VHDR-2, and VHDR-3 <u>SPM</u> SPM-1, INVERT-3, and INVERT-4
Impact 3.6-1	<u>GPM</u> GPM-2, GPM-3, GPM-4, GPM-5, IWW-1, IWW-2, IWW-3, WQHM-1, WQHM-2, WQHM-4, WQHM-6, VHDR-1, VHDR-2, VHDR-3, VHDR-4, and VHDR-5 <u>SPM</u> SPM-3, FISH-2, FISH-3, and FISH-4

<sup>1</sup> See [Appendix E](#), Appendix F, and Appendix J of the [Final PEIR](#) for the full text of each measure prepared by the CEQA lead agency.

<b>Potential Impact</b>	<b>Mitigation Measure (MM), General Protection Measure (GPM), and Species Protection Measure (SPM)<sup>1</sup></b>
Impact 3.7-1	MM CUL-1
Impact 3.7-2	<u>MM</u> CUL-2 and CUL-3
Impact 3.7-3	<u>MM</u> CUL-2, CUL-3, and CUL-4
Impact 3.11-1	<u>GPM</u> GPM-10, GPM-11, GPM-12, WQHM-1, WQHM-2, WQHM-4, WQHM-6, IWW-1, IWW-2, IWW-3, VHDR-2, VHDR-3, and VHDR-4
Impact 3.18-1	<u>MM</u> TRC-1, TRC-2, and CUL-4

# EXHIBIT B – Upper Long Bar Salmonid Habitat Restoration Project

## CALIFORNIA STATE LANDS COMMISSION

### STATEMENT OF FINDINGS AND

### STATEMENT OF OVERRIDING CONSIDERATIONS

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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 and this Statement of Overriding Considerations to comply with CEQA as part of its discretionary approval to authorize issuance of a General Lease - Other, to the South Yuba River Citizens League, for use of sovereign land associated with the proposed Upper Long Bar Salmonid Habitat Restoration Project (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines, § 15381.)<sup>1</sup> 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 on State land and because the State Water Resources Control Board (SWRCB), as the CEQA lead agency, has completed its environmental review under CEQA. The SWRCB analyzed the environmental impacts associated with the Project in a Program Environmental Impact Report (PEIR) (State Clearinghouse [SCH] No. 2019100230) and, on September 12, 2022, certified the PEIR and adopted a Mitigation Monitoring and Reporting Program (MMRP) and Findings, and a Statement of Overriding Considerations. The State of California Central Valley Regional Water Quality Control Board (CVRWQCB), as a responsible agency under CEQA, has the principal responsibility for approving the Project and has relied upon the SWRCB's environmental review and determination.

The Project involves the removal of approximately 82,207 cubic yards (CY) and fill of approximately 90 CY of earth material to create a variety of salmonid

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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.*

habitat features including alcoves, enhanced flood runner, and edge habitat enhancement areas.

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

- Agriculture and Forestry Resources
- Air Quality and Greenhouse Gas Emissions
- Biological Resources – Terrestrial
- Biological Resources – Aquatic
- Cultural Resources
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems and Public Services

Of the 12 resources areas noted above, Project components within the Commission's jurisdiction (i.e., dredging) could have significant environmental effects on 6 of the resource areas, as follows:

- Air Quality and Greenhouse Gas Emissions
- Biological Resources – Terrestrial
- Biological Resources – Aquatic
- Cultural Resources
- Hydrology and Water Quality
- Tribal Cultural Resources

In relying upon the SWRCB's certified Final PEIR and approving the Project, the CVRWQCB imposed various 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 measures such that the impacts would become less than significant for most resource areas. However, even with the integration of all feasible mitigation, the SWRCB concluded in the PEIR that some of the identified impacts would remain significant. As a result, the SWRCB/CVRWQCB adopted a Statement of Overriding Considerations to support its approval of a Clean Water Act Section 401 General Water Quality Certification and Waste Discharge Requirements for Implementation of Restoration Projects Statewide Order (Order), despite the significant and unavoidable impacts. The SWRCB determined that, after mitigation, Projects under the Order may still have significant impacts on Air Quality and Greenhouse Gas Emissions, Biological Resources – Terrestrial, Biological Resources – Aquatic, Cultural Resources, Hydrology and Water

Quality, Hazards and Hazardous Materials, and Tribal Cultural Resources. Because some of these significant impacts may occur for the Project and on lands under the jurisdiction of the Commission, the Commission also adopts the Statement of Overriding Considerations set forth in this Exhibit B as part of its approval.

As a responsible agency, the Commission complies with CEQA by considering the PEIR 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 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 PEIR 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's 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 PEIR certified by the SWRCB 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 PEIR, 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, subs. (f)-(g).)

Accordingly, because the Commission's exercise of discretion involves only issuing a General Lease - Other 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 PEIR fully complies with CEQA.

The Commission has reviewed and considered the information contained in the PEIR. All significant adverse impacts of the Project identified in the PEIR relating to the Commission's approval of a General Lease – Other, which would allow the removal of 82,207 CY and fill 90 CY of material, 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 Final PEIR.
- (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 Final PEIR.<sup>2</sup>

A discussion of supporting facts follows each Finding.

- Whenever Finding (1) occurs, the 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.
- Wherever Finding (3) is made, the Commission has determined that, even after implementation of all feasible measures and consideration of

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



feasible alternatives, the identified impact will exceed the significance criteria set forth in the PEIR. Furthermore, to the extent that potentially feasible measures have been alleged or proposed, the Findings explain why certain economic, legal, social, technological or other considerations render such possibilities infeasible. The significant and unavoidable impacts requiring Finding (3) are identified in the Final PEIR, discussed in the Responses to Comments, and explained below. Having done everything it can to avoid and substantially lessen these effects consistent with its legal authority and CEQA, the Commission finds in these instances that overriding economic, legal, social, and other benefits of the approved Project outweigh the resulting significant and unavoidable impacts. The Statement of Overriding Considerations adopted as part of this exhibit applies to all such unavoidable impacts as required by CEQA. (Pub. Resources Code, § 21081, subd. (b); State CEQA Guidelines, §§ 15092 and 15093.)

The measures are briefly described in these Findings; more detail on the measures is included in the Final PEIR and Appendices. For the full text of each measure, please refer to the hyperlinks that are found in Exhibit A.

#### A. SUMMARY OF FINDINGS

Based on public scoping and the PEIR, the proposed Project will impact all resource areas that were analyzed. The PEIR subsequently identified the impacts on the following resource area as Less Than Significant:

- Energy Resources
- Population and Housing

For the remaining potentially significant effects, the Findings are organized by significant impacts within the PEIR resource areas as presented below.

#### B. POTENTIALLY SIGNIFICANT IMPACTS

The impacts within the Commission's jurisdiction, identified in Table B-1, were determined in the Final PEIR to be potentially significant absent mitigation. After application of mitigation, however, several impacts were determined to be less than significant.

However, even with the integration of all feasible mitigation, the SWRCB concluded in the PEIR that other identified potentially significant impacts will remain significant. Table B-1 identifies those impacts within the Commission's jurisdiction that the SWRCB determined would be, with mitigation, significant and unavoidable (SU).

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

<b>Environmental Resource Area</b>	<b>Impact Nos. (LTSM)</b>	<b>Impact Nos. (SU)</b>
<b>Air Quality and Greenhouse Gas Emissions</b>		<b>3.4-4, 3.4-5</b>
<b>Biological Resources - Terrestrial</b>		<b>3.5-1, 3.5-2, 3.5-3</b>
<b>Biological Resources – Aquatic</b>		<b>3.6-1</b>
<b>Cultural Resources</b>		<b>3.7-1, 3.7-2, 3.7-3</b>
<b>Hydrology and Water Quality</b>	<b>3.11-1</b>	
<b>Tribal Cultural Resources</b>		<b>3.18-1</b>

As a result, the Commission adopts the Statement of Overriding Considerations set forth as part of this Exhibit to support its approval of the Project despite the significant and unavoidable impacts.

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

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

**1. HYDROLOGY AND WATER QUALITY**

**CEQA FINDING NO. 1**

Impact: **3.11-1. Implementing future restoration projects permitted under the Order could result in the release of pollutants into surface water and/or groundwater that could violate water quality standards or waste discharge requirements, substantially degrade water quality, or obstruct implementation of a water quality control plan.**

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 PEIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project will require the movement of earth and other materials and the use of heavy equipment that could degrade water quality or obstruct implementation of a water quality control plan. The PEIR identified general protection measures that will be integrated into the project design and plans to reduce impacts from construction activities on water quality by ensuring various pollutants are not used in the Project or are cleaned up after an inadvertent spill.

Implementation of GPM-10, GPM-11, GPM-12, WQHM-1, WQHM-2, WQHM-4, WQHM-6, IWW-1, IWW-2, IWW-3, VHDR-2, VHDR-3, and VHDR-4, has been incorporated into the Project to reduce this impact to a less than significant level.

**GPM-10: Equipment Maintenance and Materials Storage**

**GPM-11: Material Disposal**

**GPM-12: Fugitive Dust Reduction**

**WQHM-1: Staging Areas and Stockpiling of Materials and Equipment**

**WQHM-2: Storm Water Pollution Prevention Plan**

**WQHM-4: Hazardous Materials Management and Spill Response Plan**

**WQHM-6: Accidental Discharge of Hazardous Materials**

**IWW-1: Appropriate In-Water Materials**

**IWW-2: In-Water Vehicle Selection and Work Access**

**IWW-3: In-Water Placement of Materials, Structures, and Operation of Equipment**

**VHDR-2: Native and Invasive Vegetation Removal Materials and Methods**

**VHDR-3: Revegetation Materials and Methods**

**VHDR-4: Revegetation Erosion Control Materials and methods**

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

#### **D. SIGNIFICANT AND UNAVOIDABLE IMPACTS**

The following impacts were determined in the Final PEIR to be significant and unavoidable. The Statement of Overriding Considerations adopted as part of this exhibit applies to all such unavoidable impacts as required by CEQA. (Pub. Resources Code, § 21081, subd. (b); State CEQA Guidelines, §§ 15092 and 15093.)

## 2. AIR QUALITY AND GREENHOUSE GAS EMISSIONS

### CEQA FINDING NO. 2

Impact: **3.4-4. Emissions from future restoration projects permitted under the Order could expose sensitive receptors to substantial pollutant concentrations.**

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 PEIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.

### FACTS SUPPORTING THE FINDING(S)

Construction activities proposed as part of the Project have the potential to generate air pollutant emissions such as fugitive dust, carbon monoxide (CO), and toxic air contaminants (TACs) that could present health risks to sensitive receptors. The PEIR identified measures that could reduce the amount of air pollutant emissions during construction activities. However, the potentially significant short-term impacts on air quality and greenhouse gas emissions cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

Implementation of MM AIR-1, MM AIR-2, GPM-8, and GPM-17 has been incorporated into the Project and would reduce the severity of this impact, although not necessarily to a less than significant level.

#### **MM AIR-1: Minimize Conflicts with Applicable Air Quality Plans**

#### **MM AIR-2: Minimize Construction Air Pollutant Emissions**

#### **GPM-8: Work Area and Speed Limits**

#### **GPM-17: Fugitive Dust Reduction**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

**CEQA FINDING NO. 3**

Impact: **3.4-5. Implementing future restoration projects permitted under the Order could result in an increase in GHG emissions that may have a significant impact on the environment.**

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 PEIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Construction activities proposed as part of the Project have the potential to increase greenhouse gas (GHG) emissions in the short term from the equipment used for the construction of restoration projects. The PEIR identified measures that could reduce the amount of GHG emissions during construction activities. However, the potentially significant short-term environmental impacts to air quality and from greenhouse gas emissions cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

Implementation of MM AIR-3 has been incorporated into the Project and would reduce the severity of this impact, although not necessarily to a less than significant level.

**MM AIR-3: Minimize GHG Emissions**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

**3. BIOLOGICAL RESOURCES - TERRESTRIAL**

**CEQA FINDING NO. 4**

Impact: **3.5-1. Implementing restoration projects permitted under the Order could adversely affect habitat for special-status plant species.**

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 PEIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Construction activities proposed as part of the Project have the potential to inadvertently destroy special status plant species. In addition, construction activities may accidentally introduce invasive plant species, carried as seeds on construction equipment or personnel, or could spread invasive plant species through soil disturbance, which tends to promote the growth of invasive and other nonnative species. Invasive plant species can outcompete native plant species causing native plant species to lack the proper resources to thrive. The PEIR identified measures that could reduce the impact to special status plant species during construction activities. However, the potentially significant short-term impacts on special status plant species cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

Implementation of GPM-5, GPM-7, GPM-8, GPM-12, WQHM-4, VHDR-2, VHDR-3, SPM-1, SPM-3, and SPM-4 has been incorporated into the Project and would reduce the severity of this impact, although not necessarily to a less than significant level.

**GPM-5: Monitoring**

**GPM-7: Environmentally Sensitive Areas**

**GPM-8: Prevent Spread of Invasive Exotic Plants**

**GPM-12: Fugitive Dust Reduction**

**WQHM-4: Hazardous Materials Management and Spill Response Plan**

**VHDR-2: Native and Invasive Vegetation Removal Materials and Methods**

**VHDR-3: Revegetation Materials and Methods**

**SPM-1: Preconstruction Surveys**

**SPM-3: Species Protection Construction Work Windows**

**SPM-4: Species Capture, Handling and Translocation**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

**CEQA FINDING NO. 5**

Impact: **3.5-2. Implementing restoration projects permitted under the Order could result in adverse direct effects on special-status wildlife species.**

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 PEIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.

**FACTS SUPPORTING THE FINDING(S)**

Construction activities proposed as part of the Project have the potential to inadvertently result in adverse impacts to special status wildlife species due to the use of heavy construction equipment and the increased presence of humans in rural areas. The PEIR identified measures that could reduce the impact to special status wildlife species during construction activities. However, the potentially significant short-term impacts on special status wildlife species cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

Implementation of GPM-2 through GPM-10, GPM-13, GPM-14, WQHM-1, WQHM-2, WQHM-4, WQHM-6, VHDR-1 through VHDR-5, SPM-1, SPM-3, SPM-4, AMP-2, AMP-3, AMP-6, AMP-10, AMP-11, REP-1, REP-5, REP-6, BIRD-1, BIRD-3, BIRD-4, BIRD-5, MAM-1, MAM-2, INVERT-3, and INVERT-4 has been incorporated into the Project and would reduce the severity of this impact, although not necessarily to a less than significant level.

**GPM-2: Construction Work Windows**

**GPM-3: Construction Hours**

**GPM-4: Environmental Awareness Training**

**GPM-5: Environmental Monitoring**

**GPM-6: Work Area and Speed Limits**

**GPM-7: Environmentally Sensitive Areas**

**GPM-8: Work Area and Speed Limits**

**GPM-9: Environmentally Sensitive Areas**

**GPM-10: Equipment Maintenance and Materials Storage**

**GPM-13: Trash Containment and Removal**

**GPM-14: Equipment Maintenance and Materials Storage**

**WQHM-1: Staging Areas and Stockpiling of Materials and Equipment**

**WQHM-2: Storm Water Pollution Prevention Plan**

**WQHM-4: Hazardous Materials Management and Spill Response Plan**

**WQHM-6: Accidental Discharge of Hazardous Materials**

**VHDR-1: Avoidance of Vegetation Disturbance**

**VHDR-2: Native and Invasive Vegetation Removal Materials and Methods**

**VHDR-3: Revegetation Materials and Methods**

**VHDR-4: Revegetation Erosion Control Materials and Methods**

**VHDR-5: Revegetation Monitoring and Reporting**

**SPM-1: Preconstruction Surveys**

**SPM-3: Species Protection Construction Work Windows**

**SPM-4: Species Capture, Handling and Translocation**

**AMP-2: Rain Event Limitations**

**AMP-3: Pre-Construction Survey**

**AMP-6: Clearing and Grubbing Vegetation**



**AMP-10: Encounters with Species**

**AMP-11: Species Observations and Handling Protocol**

**REP-1: Pre-Construction Survey**

**REP-5: Species Observations and Encounters**

**REP-6: Species Handling and Relocation**

**BIRD-1: Habitat Assessment**

**BIRD-3: Work Area Limits**

**BIRD-4: Site Access Restrictions**

**BIRD-5: Monitoring**

**MAM-1: Conduct Habitat Assessment**

**MAM-2: Exclusion Areas**

**INVERT-3: Implement Valley Elderberry Longhorn Beetle Protocol**

**INVERT-4: Implement Butterfly Protection Measures**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

**CEQA FINDING NO. 6**

Impact: **3.5-3. Implementing restoration projects permitted under the Order could result in adverse direct effects on riparian habitat or sensitive natural communities.**

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 PEIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Construction activities proposed as part of the Project have the potential to adversely impact riparian habitat or other sensitive natural communities with ground disturbing activities such as excavation. The PEIR identified measures that could reduce the impact on riparian habitat and other sensitive natural communities during construction activities. However, the potentially significant short-term impacts on riparian habitat and other sensitive natural communities cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

Implementation of GPM-5, GPM-7, GPM-8, GPM-9, GPM-12, WQHM-4, VHDR-2, VHDR-3, SPM-1, INVERT-3, INVERT-4 has been incorporated into the Project and would reduce the severity of this impact, although not necessarily to a less than significant level.

**GPM-5: Environmental Monitoring**

**GPM-7: Environmentally Sensitive Areas**

**GPM-8: Work Area and Speed Limits**

**GPM-9: Environmentally Sensitive Areas**

**GPM-12: Fugitive Dust Reduction**

**WQHM-4: Hazardous Materials Management and Spill Response Plan**

**VHDR-2: Native and Invasive Vegetation Removal Materials and Methods**

**VHDR-3: Revegetation Materials and Methods**

**SPM-1: Preconstruction Surveys**

**INVERT-3: Implement Valley Elderberry Longhorn Beetle Protocol**

**INVERT-4: Implement Butterfly Protection Measures**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

#### 4. BIOLOGICAL RESOURCES - AQUATIC

##### **CEQA FINDING NO. 7**

Impact: **3.6-1. Implementing restoration projects permitted under the Order could result in substantial adverse effects to special-status fish species directly, or indirectly through habitat modifications.**

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 PEIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.

##### FACTS SUPPORTING THE FINDING(S)

Construction activities proposed as part of the Project have the potential to physically disturb aquatic habitat from excavation or fill. The PEIR identified measures that could reduce the impact to special status fish species during construction activities. However, the potentially significant short-term impacts on special status fish species cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

Implementation of FISH-2, FISH-3, FISH-4, GPM-2 through GPM-5, IWW-1, GPM IWW-2, IWW-3, SPM-3, WQHM-1, WQHM-2, WQHM-4, WQHM-6, and VHDR-1 through VHDR-5 has been incorporated into the Project and would reduce the severity of this impact, although not necessarily to a less than significant level.

##### **FISH-2: Habitat Assessment and Surveys**

##### **FISH-3: Fish Capture and Relocation**

##### **FISH-4: Reporting**

##### **GPM-2: Construction Work Windows**

##### **GPM-3: Construction Hours**

##### **GPM-4: Environmental Awareness Training**

##### **GPM-5: Environmental Monitoring**

**IWW-1: Appropriate In-Water Materials**

**IWW-2: In-Water Vehicle Selection and Work Access**

**IWW-3: In-Water Placement of Materials, Structures, and Operation of Equipment**

**SPM-3: Species Protection Construction Work Windows**

**WQHM-1: Staging Areas and Stockpiling of Materials and Equipment**

**WQHM-2: Storm Water Pollution Prevention Plan**

**WQHM-4: Hazardous Materials Management and Spill Response Plan**

**WQHM-6: Accidental Discharge of Hazardous Materials**

**VHDR-1: Avoidance of Vegetation Disturbance**

**VHDR-2: Native and Invasive Vegetation Removal Materials and Methods**

**VHDR-3: Revegetation Materials and Methods**

**VHDR-4: Revegetation Erosion Control Materials and Methods**

**VHDR-5: Revegetation Monitoring and Reporting**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

## **5. CULTURAL RESOURCES**

### **CEQA FINDING NO. 8**

Impact: **3.7-1. Implementing restoration projects permitted under the Order could cause a substantial adverse change in the significance of a historical resource pursuant to State CEQA Guidelines Section 15064.5.**

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 PEIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make

infeasible the mitigation measures or alternatives identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Construction activities proposed as part of the Project have the potential to inadvertently destroy or otherwise change the significance of a historical resource because of excavation and fill activities. The PEIR identified measures that could reduce the impact to historical resources during construction activities. However, the potentially significant short-term impacts on historical resources cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

Implementation of MM CUL-1 has been incorporated into the Project and would reduce the severity of this impact, although not necessarily to a less than significant level.

**MM CUL-1: Conduct Inventory and Significance Evaluation of Architectural Resources**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

**CEQA FINDING NO. 9**

Impact: **3.7-2. Implementing restoration projects permitted under the Order could cause a substantial adverse change in the significance of an archaeological resource pursuant to State CEQA Guidelines Section 15064.5.**

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 PEIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Construction activities proposed as part of the Project have the potential to inadvertently destroy or otherwise change the significance of an archeological resource because of excavation and fill activities. The PEIR identified measures that could reduce the impact on archeological resources during construction

activities. However, the potentially significant short-term impacts on archeological resources cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

Implementation of MM CUL-2 and MM CUL-3 has been incorporated into the Project and would reduce the severity of this impact, although not necessarily to a less than significant level.

**MM CUL-2: Conduct Inventory and Significance Evaluation of Archaeological Resources**

**MM CUL-3: Implement Measures to Protect Archaeological Resources During Project Construction or Operation**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

**CEQA FINDING NO. 10**

Impact: **3.7-3. Implementing restoration projects permitted under the Order could disturb any human remains, including those interred outside of dedicated cemeteries.**

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 PEIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.

**FACTS SUPPORTING THE FINDING(S)**

Construction activities proposed as part of the Project have the potential to inadvertently destroy or otherwise disturb human remains because of excavation and fill activities. The PEIR identified measures that could reduce the impact on human remains during construction activities. However, the potentially significant short-term impacts on human remains cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

Implementation of MM CUL-2, MM CUL-3, and MM CUL-4 has been incorporated into the Project and would reduce the severity of this impact, although not necessarily to a less than significant level.

**MM CUL-2: Conduct Inventory and Significance Evaluation of Archaeological Resources**

**MM CUL-3: Implement Measures to Protect Archaeological Resources During Project Construction or Operation**

**MM CUL-4: Implement Measures to Protect Human Remains during Project Construction or Operation**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

**6. TRIBAL AND CULTURAL RESOURCES**

**CEQA FINDING NO. 11**

Impact: **3.18-1. Implementing future restoration projects permitted under the Order could cause a substantial adverse change in the significance of a tribal cultural resource, as defined in PRC Section 21074.**

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 PEIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.

**FACTS SUPPORTING THE FINDING(S)**

Construction activities proposed as part of the Project have the potential to inadvertently destroy or otherwise adversely impact tribal cultural resources because of excavation and fill activities. The PEIR identified measures that could reduce the impact to tribal cultural resources during construction activities. However, the potentially significant short-term impacts on tribal cultural resources cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

Implementation of MM TRC-1, MM TRC-2, and MM CUL-4 has been incorporated into the Project and would reduce the severity of this impact, although not necessarily to a less than significant level.

**MM TCR-1: Conduct Inventory and Significance Evaluation of Tribal Cultural Resources with Tribes that are Culturally and Geographically Affiliated with the Project Vicinity**

**MM TCR-2: Implement Measures to Protect Tribal Cultural Resources during Project Construction or Operation. These measures include, but are not limited to, those outlined in PRC Section 21084.3**

**MM CUL-4: Implement Measures to Protect Human Remains during Project Construction or Operation**

**E. FINDINGS ON ALTERNATIVES**

The Commission, as a responsible agency and pursuant to State CEQA Guidelines section 15096, subdivision (g)(2), finds there are no feasible Project alternatives within its powers that would substantially lessen or avoid any outstanding significant effects that the Project, as proposed, would have on the environment.

**4.0 STATEMENT OF OVERRIDING CONSIDERATIONS**

**A. INTRODUCTION**

This section addresses the Commission's obligations under Public Resources Code section 21081, subdivisions (a)(3) and (b). (See also State CEQA Guidelines, §§ 15091, subd. (a)(3), 15093.) Under these provisions, CEQA requires the Commission to balance, as applicable, the economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the Lease approval related to the Upper Long Bar Salmonid Habitat Restoration Project against the backdrop of the Project's unavoidable significant environmental impacts. For purposes of CEQA, if the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable significant environmental effects, those effects may be considered acceptable, and the decision-making agency may approve the underlying project. (State CEQA Guidelines § 15092, subd. (b)(2)(B).) CEQA, in this respect, does not prohibit the Commission from approving the Lease even if the Project activities as authorized under the Lease may cause significant and unavoidable environmental effects.

This Statement of Overriding Considerations presents the (1) specific significant effects on the environment attributable to the approved Project that cannot feasibly be mitigated to below a level of significance, (2) benefits derived from the approved Project, and (3) specific reasons for approving the Project.



Although the SWRCB, CVRWQCB, and Commission have imposed measures to reduce impacts, impacts remain that are considered significant after application of all feasible mitigation. Significant impacts of the approved Project fall under 5 resource areas: Air Quality and Greenhouse Gas Emissions, Biological Resources – Terrestrial, Biological Resources – Aquatic, Cultural Resources, and Tribal Cultural Resources (see Table B-2). These impacts are specifically identified and discussed in more detail in the Commission’s CEQA Findings and in SWRCB’s Final PEIR. While the Commission has required all feasible measures, these impacts remain significant for purposes of adopting this Statement of Overriding Considerations.

**Table B-2 – Significant and Unavoidable Impacts Identified for the Approved Project**

Impact	Impact Description
<b>Air Quality and Greenhouse Gas Emissions</b>	
<b>3.4-4. Emissions from future restoration projects permitted under the Order could expose sensitive receptors to substantial pollutant concentrations.</b>	Construction activities proposed as part of the Project have the potential to generate air pollutant emissions such as fugitive dust, carbon monoxide (CO), and toxic air contaminants (TACs) that could present health risks to sensitive receptors. The SWRCB PEIR imposes MMs AIR-1 and AIR-2, as well as General Protection Measures (GPMs) GPM-8, and GPM-17, but discloses that those measures would be unlikely to mitigate the Project’s impacts to a less than significant level. Therefore, the impact would remain significant and unavoidable.
<b>3.4-5. Implementing future restoration projects permitted under the Order could result in an increase in GHG emissions that may have a significant impact on the environment.</b>	Construction activities proposed as part of the Project have the potential to increase GHGs in the short term from the equipment used for the construction of restoration projects. The SWRCB PEIR imposes MM AIR-3, but discloses that this measure would be unlikely to mitigate the Project’s impacts to a less than significant level. Therefore, the impact would remain significant and unavoidable.
<b>Biological Resources - Terrestrial</b>	
<b>3.5-1. Implementing restoration projects permitted under the Order could adversely affect</b>	Construction activities proposed as part of the Project have the potential to inadvertently destroy special status plant species. In addition, construction activities may accidentally introduce invasive plant species, carried as seeds on construction equipment or personnel, or could

Impact	Impact Description
<b>habitat for special-status plant species.</b>	spread invasive plant species through soil disturbance, which tends to promote the growth of invasive and other nonnative species. The SWRCB PEIR imposes GPMs GPM-5, GPM-7, GPM-8, GPM-12, WQHM-4, VHDR-2, and VHDR-3, as well as Species Protection Measures (SPMs) SPM-1, SPM-3, and SPM-4, but discloses that these measures would be unlikely to mitigate the Project's impacts to a less than significant level. Therefore, the impact would remain significant and unavoidable.
<b>3.5-2. Implementing restoration projects permitted under the Order could result in adverse direct effects on special-status wildlife species.</b>	Construction activities proposed as part of the Project have the potential to inadvertently destroy special status plant species. In addition, construction activities may accidentally introduce invasive plant species, carried as seeds on construction equipment or personnel, or could spread invasive plant species through soil disturbance, which tends to promote the growth of invasive and other nonnative species. The SWRCB PEIR imposes GPMs GPM-5, GPM-7, GPM-8, GPM-12, WQHM-4, VHDR-2, and VHDR-3, as well as Species Protection Measures (SPMs) SPM-1, SPM-3, and SPM-4, but discloses that these measures would be unlikely to mitigate the Project's impacts to a less than significant level. Therefore, the impact would remain significant and unavoidable.
<b>3.5-3. Implementing restoration projects permitted under the Order could result in adverse direct effects on riparian habitat or sensitive natural communities.</b>	Construction activities proposed as part of the Project have the potential to adversely impact riparian habitat or other sensitive natural communities with ground disturbing activities such as excavation. The SWRCB PEIR imposes GPMs GPM-5, GPM-7, GPM-8, GPM-9, GPM-12, WQHM-4, VHDR-2, and VHDR-3, as well as SPMs SPM-1, INVERT-3, and INVERT-4, but discloses that these measures would be unlikely to mitigate the Project's impacts to a less than significant level. Therefore, the impact would remain significant and unavoidable.
<b>Biological Resources - Aquatic</b>	
<b>3.6-1. Implementing restoration projects permitted under the Order could result in substantial adverse effects to</b>	Construction activities proposed as part of the Project have the potential to physically disturb aquatic habitat from excavation or fill. The SWRCB PEIR imposes SPMs SPM-3, FISH-2, FISH-3, and FISH-4 as well as GPMs GPM-2 through GPM-5, IWW-1, IWW-2, IWW-3, WQHM-1, WQHM-2, WQHM-4, WQHM-6, and VHDR-1 through VHDR-5, but discloses

Impact	Impact Description
<p><b>special-status fish species directly, or indirectly through habitat modifications.</b></p>	<p>that these measures would be unlikely to mitigate the Project's impacts to a less than significant level. Therefore, the impact would remain significant and unavoidable.</p>
<p><b>Cultural Resources</b></p>	
<p><b>3.7-1. Implementing restoration projects permitted under the Order could cause a substantial adverse change in the significance of a historical resource pursuant to State CEQA Guidelines Section 15064.5.</b></p>	<p>Construction activities proposed as part of the Project have the potential to inadvertently destroy or otherwise change the significance of a historical resource because of excavation and fill activities. The SWRCB PEIR imposes MM CUL-1, but discloses that this measure would be unlikely to mitigate the Project's impact to a less than significant level. Therefore, the impact would remain significant and unavoidable.</p>
<p><b>3.7-2. Implementing restoration projects permitted under the Order could cause a substantial adverse change in the significance of an archaeological resource pursuant to State CEQA Guidelines Section 15064.5.</b></p>	<p>Construction activities proposed as part of the Project have the potential to inadvertently destroy or otherwise change the significance of an archeological resource because of excavation and fill activities. The SWRCB PEIR imposes MMs CUL-2 and CUL-3, but discloses that these measures would be unlikely to mitigate the Project's impact to a less than significant level. Therefore, the impact would remain significant and unavoidable.</p>
<p><b>3.7-3. Implementing restoration projects permitted under the Order could disturb any human remains, including those interred outside of dedicated cemeteries.</b></p>	<p>Construction activities proposed as part of the Project have the potential to inadvertently destroy or otherwise disturb human remains because of excavation and fill activities. The SWRCB PEIR imposes MMs CUL-2, CUL-3, and CUL-4, but discloses that these measures would be unlikely to mitigate the Project's impact to a less than significant level. Therefore, the impact would remain significant and unavoidable.</p>

Impact	Impact Description
<b>Tribal and Cultural Resources</b>	
<p><b>3.18-1. Implementing future restoration projects permitted under the Order could cause a substantial adverse change in the significance of a tribal cultural resource, as defined in PRC Section 21074.</b></p>	<p>Construction activities proposed as part of the Project have the potential to inadvertently destroy or otherwise adversely impact tribal cultural resources because of excavation and fill activities. The SWRCB PEIR imposes MMs TRC-1, TRC-2, and CUL-4, but discloses that these measures would be unlikely to mitigate the Project's impact to a less than significant level. Therefore, the impact would remain significant and unavoidable.</p>

**B. BALANCING OF BENEFITS AND RISKS ASSOCIATED WITH LEASE APPROVAL**

State CEQA Guidelines section 15093, subdivision (a) requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. The Project would provide benefits as presented in SWRCB/CVRWQCB's Statement of Overriding Considerations, found in the Consolidated Final Restoration Projects Statewide Order Program Environmental Impact Report Appendix I, *Findings of Fact and Statement of Overriding Considerations*, pg. I-77 through I-79 at [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/2022/cwa/appendix-i-findings-of-fact-statement-of-overriding.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/2022/cwa/appendix-i-findings-of-fact-statement-of-overriding.pdf).

**C. COMMISSION ADOPTION OF STATEMENT OF OVERRIDING CONSIDERATIONS**

As noted above, under Public Resources Code section 21081, subdivisions (a)(3) and (b), and State CEQA Guidelines section 15093, subdivision (a), the decision-making agency is required to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or state-wide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve a project.

For purposes of CEQA, if these benefits outweigh the unavoidable significant environmental effects of a proposed project, the decision-making agency may approve the underlying project. CEQA, in this respect, does not prohibit the Commission from approving the Project, even if the activities authorized by that approval may cause significant and unavoidable environmental effects. This balancing is particularly difficult given the significant and unavoidable impacts on the resources discussed in the PEIR and these Findings. Nevertheless, the Commission finds, as set forth below, that the benefits anticipated by implementing the Project outweigh and override the expected significant effects.

The Commission has balanced the benefits of the Project, as described by the SWRCB at [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/2022/cwa/appendix-i-findings-of-fact-statement-of-overriding.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/2022/cwa/appendix-i-findings-of-fact-statement-of-overriding.pdf), against the significant unavoidable impacts that will remain after approval of the lease associated with the Approved Project and with implementation of all feasible mitigation in the PEIR that is adopted as enforceable conditions of the Commission's approval of the Project. Based on all available information, the Commission finds that the benefits of the approved Project outweigh the significant and unavoidable adverse environmental effects, and considers such effects acceptable.

The Commission adopts and makes this Statement of Overriding Considerations with respect to the impacts identified in the PEIR and these Findings that cannot be reduced to a less than significant level. Each benefit set forth by the SWRCB constitutes an overriding consideration warranting approval of the project, independent of the other benefits, despite each and every significant unavoidable impact.

## **5.0 CONCLUSION**

The Commission has considered the Final PEIR and all of the environmental impacts described therein including those that cannot be mitigated to a less than significant level and those that may affect Public Trust uses of State sovereign land. Based on the foregoing and pursuant to Public Resources Code section 21081 and State CEQA Guidelines sections 15096 subdivision (h) and 15093, the Commission has considered the fiscal, economic, legal, social, environmental, and public health and safety benefits of the Project and has balanced them against the Project's significant and unavoidable and unmitigated adverse environmental impacts and, based upon substantial evidence in the record, has determined that the benefits of the Project outweigh the adverse environmental effects. The Commission finds that the remaining significant unavoidable impacts of the Project are acceptable in light

of these benefits. Such benefits outweigh such significant and unavoidable impacts of the Project and provide the substantive and legal basis for this Statement of Overriding Considerations.

The Commission finds that to the extent that any impacts identified in the Final PEIR remain unmitigated, measures have been required to the extent feasible, although the impacts could not be reduced to a less than significant level.

Based on the above discussion, the Commission finds that the benefits of the Project outweigh the significant unavoidable impacts that could remain after mitigation is applied and considers such impacts acceptable. Based upon the objectives identified in the PEIR and the detailed measures imposed upon the Project, the Commission has determined that the expected benefits from the project outweigh the policy of reducing or avoiding significant impacts sufficient to warrant approving the Project.