

Staff Report 47

APPLICANT:

Merced Irrigation District

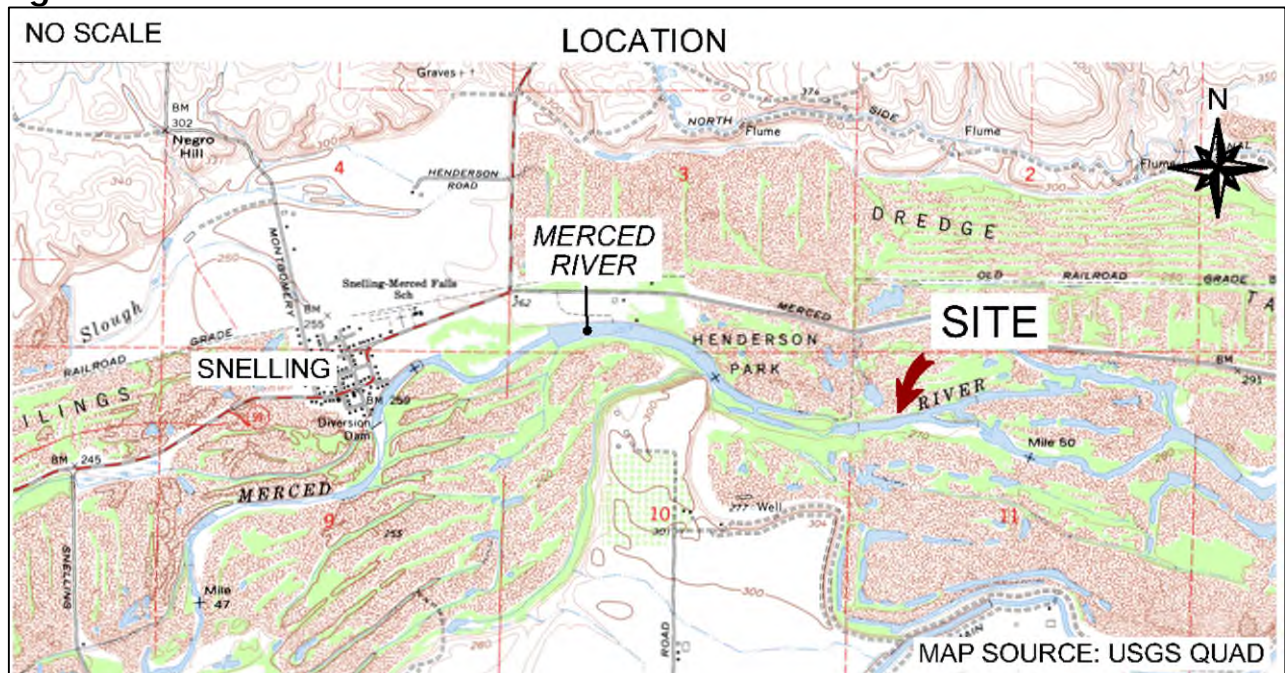
PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Merced River, adjacent to Assessor's Parcel Numbers 043-050-015, 043-060-018, 043-060-013, and 043-060-026, near Snelling, Merced County (as shown in Figure 1).

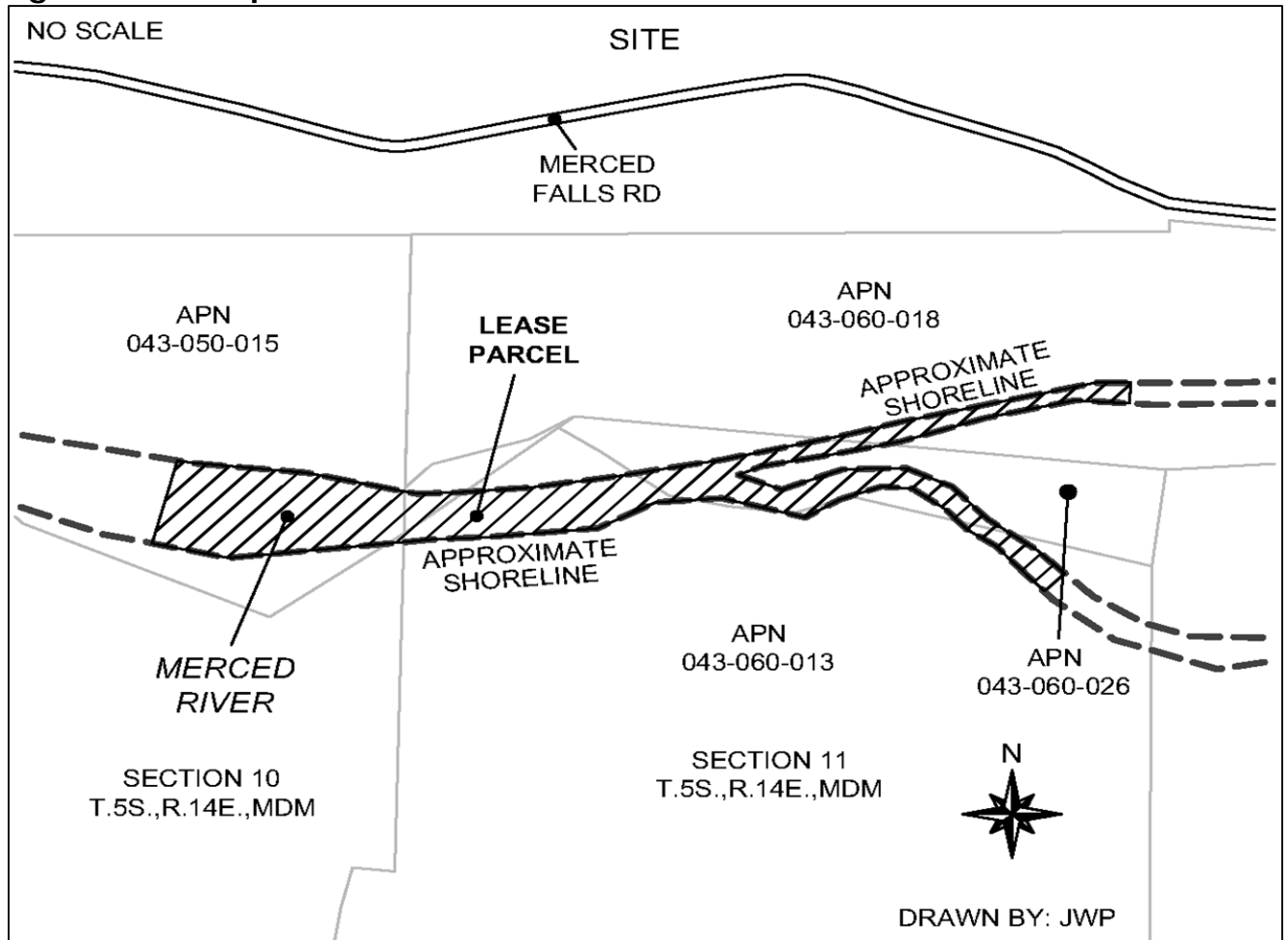
Figure 1. Location



AUTHORIZED USE:

Restoration and rehabilitation of the bed of the Merced River channel and floodplain to improve 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:

6 years, beginning August 21, 2025.

CONSIDERATION:

The public use and benefit; with the State reserving the right at any time to set 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:

- 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 materials from the Lease Premises is the property of the State of California and shall not be kept or sold, and that the 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 as stated in 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:

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 Applicant is applying for a General Lease – Public Agency Use, for restoration and rehabilitation of the bed of the Merced River channel and floodplain to improve aquatic habitats, adjacent to Assessor's Parcel Numbers 043-050-015, 043-060-018, 043-060-013, and 043-060-026, near Snelling, Merced County. The proposed project is affiliated with the Above Henderson Park Habitat Rehabilitation Project (Project). Through funding from the Department of Water Resources' San Joaquin Fish Population Enhancement Program (SJFPEP), the project's goal is to restore salmonid habitats on the Lower Merced River downstream of the Crocker Huffman Dam and above the town of Snelling to provide benefits to native anadromous fish. Specifically, the Project will design, implement, and monitor off-channel habitat restoration that will improve rearing habitat for native salmonids on the lower Merced River. The Project addresses restoration goals and priorities associated with

climate change, by improving water quality, spawning, and riparian habitats. The project is coordinated by the Merced Irrigation District and its affiliates which include environmental and engineering specialists.

Staff have determined approximately 15.1 acres of the Project falls on state-owned sovereign land in the Merced River and floodplain. The project will rehabilitate 7.5 acres of seasonal salmonid rearing habitat in the floodplain and side channel and place coarse sediment in the main channel to rehabilitate 2.5 acres of spawning and 2.85 acres of rearing habitat. The proposed work activities include restoration of natural habitats, creation of spawning and rearing habitats, including riffles, pools, and gravel bars, excavation of existing tailings, excavation and grading of flood plain areas, placement of new gravel and cobble, and revegetation of riparian lands with native plants as needed, and related measures. The constructed features will support a variety of ecological services, including salmonid rearing habitats and improve water quality and will function under a variety of flow conditions present on the lower Merced River. The proposed work is expected to restore the natural hydrogeomorphic processes that form and maintain salmonid habitat for each appropriate life stage to improve salmonid population size. 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 1 to October 31 when flows are typically low, river temperatures are generally not suitable for spawning salmonids, and active fall run Chinook Salmon spawning is not occurring. Following construction, post-project monitoring activities will take place to ensure the Project was built to design standards and specifications.

The Project provides both a local and statewide public benefit, as the primary objective is to augment, rehabilitate, and enhance productive Merced River salmonid spawning, incubation and rearing habitat quantity and quality. 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 lease does not alienate the State's fee simple interest or permanently impair public rights. In addition, the lease has a limited 6-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:

INTRODUCTION:

The climate crisis is impacting California's coastal and inland waterways now. Likely impacts to the lease premises include, but are not limited to prolonged drought, extreme heat, lower streamflow, runoff and river levels, as well as changes to the intensity and timing of precipitation events. These impacts can exacerbate natural hydrological processes such as erosion, scour, and sedimentation. These impacts may affect the salmonid habitat rehabilitation project subject to the proposed lease, located on the Merced River. However, the project is also designed to increase the area's resiliency to climate impacts by restoring and enhancing the complex river and riparian ecosystem to better manage flooding, provide habitat, and reduce water warming.

DATA & PROJECTIONS:

The changing climate is affecting California's weather patterns, leading to more severe droughts and floods. Warmer temperatures have led California to experience a megadrought from 2000 to 2022, measured as the driest 22 years in the past 1200 years, and more megadroughts are projected through the end of the century ([U.S. Global Change Research Program, Ch. 28. Southwest. In: Fifth National Climate Assessment. 2023](#)). Sustained droughts reduce streamflow and river levels due to increased evaporation, declines in snowpack volumes, higher-elevation snow lines, earlier snowmelt, and reduced overall runoff. These changes are pronounced in the Sierra Nevada, where the headwaters to many of the state's rivers are located. It is projected that temperatures in the Sierra Nevada will increase by six to ten degrees Fahrenheit on average by the end of the century, and the snowline will move 1,500 to 3,000 feet higher in elevation. It is projected that by 2100, the annual Sierra Nevada snowpack, a critical source of water supply to rivers, will decrease from today's average by 60 percent. Rivers will be drawn down farther as temperatures continue to rise and demand for water increases withdrawals. Despite the region's increasing aridity, flooding from extreme precipitation events is projected to increase, attributed to earlier snowmelt, and more intense and frequent atmospheric river.

ANALYSIS:

The lease area is likely to experience more extreme conditions over the lease term than in the past, due to climate change. Changes to the timing and amount of

runoff from the higher elevations of the watershed will result in higher flood risks. Bank stability may be compromised due to increased channel erosion and undercutting from more intense precipitation and floods. Conversely, drought could lower water levels for longer portions of the year and expose structures that were historically designed to be submerged to air, wind, and heat. By restoring salmonid habitat, the project will improve the area's capacity to adapt to these stressors. The project will create more varied and dynamic channel geometry, which will improve water quality and ecological functions, like nutrient cycling, and reduce water warming, lowering the risks to ecosystem health associated with extreme heat and drought, such as harmful algal blooms. It will restore hydrological connections between riparian areas, wetlands, and the river channel and restore native wetland vegetation which will improve flood management and reduce erosion, protecting adjacent upland areas better from extreme storms and floods.

This nature-based restoration project will reduce the exposure of the area to climate impacts and improve its resilience. In addition to providing salmonid habitat, it will reduce risks from extreme heat and provide flood management benefits. Any other future construction or activities on State land would require a separate authorization from the Commission.

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

CONCLUSION:

For all the reasons above, staff believes issuance of the proposed lease will not substantially interfere with the public's 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; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

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 Merced River channel and flood plain as defined in the project documents.

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 EIR (PEIR), State Clearinghouse No. 2019100230, was prepared for this Project by the State Water Resources Control Board (SWRCB) and certified on September 12, 2022. As part of its project approval, SWRCB made a Statement of Facts and Findings and Statement of Overriding Considerations and adopted a Mitigation Monitoring and Reporting Program. In addition, the California Regional Water Quality Control Board, Central Valley Fresno Region 5 filed a Notice of Determination (NOD) for the project on April 18, 2025. Impacts from the project were analyzed in the PEIR and fell within the parameters laid out by SWRCB for restoration projects.

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

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

Staff determined that 2 potential resource areas would have impacts that are less than significant with implementation of mitigation measures. 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, Noise, and Tribal Cultural Resources from the use of heavy construction equipment associated with removal of approximately 74,200 cubic yards (CY) and fill of approximately 33,400 CY of sorted earthen material and 13,700 CY of unsorted earthen fill, 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 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 CEQA review and permitting process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS REQUIRED:

- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service
- National Marine Fisheries Service
- California Department of Fish and Wildlife
- Regional Water Quality Control Board
- State Water Resources Control Board
- Central Valley Flood Protection Board
- City and County of the Project Area

EXHIBITS:

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

RECOMMENDED ACTION:

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 further approved on September 18, 2024, with the filing of the project-specific Notice of Determination; 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 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; 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 August 21, 2025, for a term of 6 years, for the restoration and rehabilitation of the bed of the Merced River channel and floodplain to improve aquatic habitats; consideration is the public use and benefit, with the State reserving the right to set a monetary rent at any time.
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
ABOVE HENDERSON PARK HABITAT REHABILITATION PROJECT
(A4995, State Clearinghouse No. 2019100230)

The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the Above Henderson Park Habitat Rehabilitation 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 Merced Irrigation District, 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) ¹
Impact 3.4-4	<u>MM</u> AIR-1 and AIR-2 <u>GPM</u> GPM-8
Impact 3.4-5	MM AIR-3
Impact 3.5-1	<u>GPM</u> GPM-5, GPM-7, GPM-8, 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, and MAM-1
Impact 3.5-3	<u>GPM</u> GPM-5, GPM-7, GPM-8, GPM-9, GPM-12, GPM-15, WQHM-4, VHDR-2, and VHDR-3 <u>SPM</u> SPM-1
Impact 3.6-1	<u>GPM</u> GPM-2, GPM-3, GPM-4, GPM-5, IWW-1, IWW-2, IWW-3, WQHM-1, 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
Impact 3.7-1	MM CUL-1

¹ 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.

Exhibit A – CSLC Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM), General Protection Measure (GPM), and Species Protection Measure (SPM) 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 3.14-1	<u>MM</u> NOISE-1 and NOISE-2
Impact 3.17-1	<u>MM</u> TRA-2
Impact 3.18-1	<u>MM</u> TCR-1, TCR-2, and CUL-4

EXHIBIT B – Above Henderson Park Habitat Rehabilitation Project

CALIFORNIA STATE LANDS COMMISSION

STATEMENT OF FINDINGS AND

STATEMENT OF OVERRIDING CONSIDERATIONS

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 – Public Agency Use, to the Merced Irrigation District, for use of sovereign land associated with the proposed Above Henderson Park Habitat Rehabilitation Project (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines, § 15381.)¹ 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 California Regional Water Quality Control Board, Central Valley Fresno Region 5 (RWQCB), 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 74,200 cubic yards (CY) and fill of approximately 33,400 CY of sorted earthen material and 13,700 CY of

¹ 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.*

unsorted earthen fill to create a mosaic of habitat units such as riffles, pools, and gravel bars.

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 8 of the resource areas, as follows:

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

In relying upon the **SWRCB's certified** Final PEIR and approving the Project, the RWQCB 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 and the RWQCB 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, subds. (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 72,000 CY and fill 47,100 CY (33,400 CY sorted; 13,700 CY unsorted) of earthen 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.²

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.

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

- 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 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 (LTSM).

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

Environmental Resource Area	Impact Nos. (LTSM)	Impact Nos. (SU)
Air Quality and Greenhouse Gas Emissions		3.4-4, 3.4-5
Biological Resources - Terrestrial		3.5-1, 3.5-2, 3.5-3
Biological Resources – Aquatic		3.6-1
Cultural Resources		3.7-1, 3.7-2, 3.7-3
Hydrology and Water Quality	3.11-1	
Noise		3.14-2
Transportation	3.17-1	
Tribal Cultural Resources		3.18-1

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.

2. TRANSPORTATION

CEQA FINDING NO. 2

Impact: 3.17-1. Implementing future restoration projects permitted under the Order could conflict with a plan, ordinance, or policy addressing the circulation system including transit, roadways, bicycle, and pedestrian facilities.

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 use of Henderson Park and areas within the Merced River. The PEIR identified mitigation measures to reduce impacts from construction activities on waterway traffic (i.e., vessels) within the Merced River so that vessels will be able to navigate safely and efficiently during construction.

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

TRA-2: Prepare Waterway Traffic Control Plan

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.)

3. AIR QUALITY AND GREENHOUSE GAS EMISSIONS

CEQA FINDING NO. 3

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, and GPM-8 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

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

CEQA FINDING NO. 4

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 from GHG 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.

4. BIOLOGICAL RESOURCES - TERRESTRIAL

CEQA FINDING NO. 5

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 non-native 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, 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

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. 6

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, and MAM-1 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

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

CEQA FINDING NO. 7

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, GPM-15, WQHM-4, VHDR-2, VHDR-3, and SPM-1 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

GPM-15: Revegetate Disturbed Areas

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

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

5. BIOLOGICAL RESOURCES - AQUATIC

CEQA FINDING NO. 8

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, IWW-2, IWW-3, SPM-3, WQHM-1, 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-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.

6. CULTURAL RESOURCES

CEQA FINDING NO. 9

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. 10

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. 11

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.

7. NOISE

CEQA FINDING NO. 12

Impact: 3.14-1. Implementing future restoration projects permitted under the Order could cause a temporary or permanent increase in ambient noise levels in excess of standards established in applicable plans and ordinances.

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 temporarily increase noise levels due to the use of heavy construction equipment. The PEIR identified measures that could reduce the impacts from noise during construction activities. However, the potentially significant short-term impacts from noise cannot be eliminated. There are no other feasible mitigation measures available to avoid or reduce this impact.

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

MM NOISE-1: Minimize Noise Conflicts

MM NOISE-2: Minimize Operations and Maintenance Noise Conflicts

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

8. TRIBAL CULTURAL RESOURCES

CEQA FINDING NO. 13

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 Above Henderson Park Habitat Rehabilitation 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, RWQCB, 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 6 resource areas: Air Quality and Greenhouse Gas Emissions, Biological Resources – Terrestrial, Biological Resources – Aquatic, Cultural Resources, Noise, 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
Air Quality and Greenhouse Gas Emissions	
3.4-4. Emissions from future restoration projects permitted under the Order could expose sensitive receptors to substantial pollutant concentrations.	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, 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.
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.	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.
Biological Resources - Terrestrial	
3.5-1. Implementing restoration projects permitted under the Order could adversely affect habitat for special-status plant species.	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, 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.

Impact	Impact Description
3.5-2. Implementing restoration projects permitted under the Order could result in adverse direct effects on special-status wildlife species.	Construction activities proposed as part of the Project have the potential to inadvertently destroy special status wildlife 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-2, through GPM-10, GPM-13, GPM-14, WQHM-1, WQHM-2, WQHM-4, WQHM-6, and VHDR-1 through VHDR-5, as well as Species Protection Measures (SPMs) 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, and MAM-1 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.
3.5-3. Implementing restoration projects permitted under the Order could result in adverse direct effects on riparian habitat or sensitive natural communities.	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, GPM-15, WQHM-4, VHDR-2, and VHDR-3, as well as SPM SPM-1, 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.
Biological Resources - Aquatic	
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.	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-4, WQHM-6, and VHDR-1 through VHDR-5, 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.

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

Impact	Impact Description
Noise	
3.14-1. 3.14-1. Implementing future restoration projects permitted under the Order could cause a temporary or permanent increase in ambient noise levels in excess of standards established in applicable plans and ordinances.	Construction activities proposed as part of the Project have the potential to increase noise levels because of the use of heavy construction machinery. The SWRCB PEIR imposes MMs NOISE-1 and NOISE-2, 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.
Tribal Cultural Resources	
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.	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.

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/RWQCB'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 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 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.