

**CALENDAR ITEM
C11**

A Statewide

08/15/14

W 26767

S Statewide

W. Hall

GENERAL LEASE – PUBLIC AGENCY USE

APPLICANT:

California Department of Water Resources

AREA, LAND TYPE, AND LOCATION:

Sovereign land in various waterways as a subset of the Sacramento River Flood Control Project (SRFCP) along approximately 300 miles of levees in Butte, Colusa, Glenn, Placer, Sacramento, Solano, Sutter, Yolo, and Yuba Counties.

AUTHORIZED USE:

Annual repairs of up to 15 small erosion sites per year under Phase 1 of the Small Erosion Repair Program (SERP) on levees within the Sacramento River Flood Control Project (SRFCP).

LEASE TERM:

Beginning August 15, 2014 and expiring December 31, 2019.

CONSIDERATION:

No monetary consideration will be charged as the project will result in a public benefit.

OTHER PERTINENT INFORMATION:

1. The California Department of Water Resources (DWR) has applied for a lease for the programmatic authorization of the initial five-year Phase 1 of the Small Erosion Repair Program (SERP), a streamlined regulatory review and authorization process that would facilitate implementation of annual repairs of small erosion sites on levees within the SRFCP area. This program will provide a public benefit by maintaining the design integrity of the existing levees and flood management system for public safety, as well as enhance fish and wildlife resources along the waterways of the SRFC. The SERP Manual, Appendix B of the Draft Programmatic Environmental Impact Report (Draft PEIR), which was subsequently certified by DWR, provides a definitive description of the program.

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2. The Applicant proposes the programmatic authorizations of a maximum of 15 individual repair projects implemented annually under SERP, along various waterways over a nine-county area within the SRFCP. Only projects requiring disturbance of 0.5 acre or less, with a maximum linear foot limit of 1,000 feet would qualify for permitting and other authorizations under the SERP. For each proposed site, SERP project design, construction, site restoration, and mitigation would need to comply with the SERP Manual, developed in coordination with other responsible agencies. Construction activities at each individual site will require no more than one to four weeks of active construction, and will take place between April 15 and November 1 of each year.

3. Each year by July 1, SERP project notification packages for implementation of up to 15 repair sites will be submitted to the applicable permitting agencies and the California State Lands Commission (Commission), containing individual project application materials for each site proposed for SERP authorization that year. As part of the notification package, a California Environmental Quality Act (CEQA) Compliance Checklist will be issued by DWR to determine whether an erosion site is eligible for implementation under the SERP. If existing program-level analysis in the SERP Final PEIR provide adequate environmental analysis, no additional CEQA documentation will be required. For each SERP project, the Commission staff will respond in writing to DWR within 30 days with a determination of the State's jurisdiction over each proposed site and whether the Commission staff: a) Concur the project qualifies under the SERP programmatic authorization, b) Concur the project qualifies under SERP programmatic authorization with additional conservation measures, or c) Do not concur the project qualifies under SERP programmatic authorization. If Commission staff determine a project does not qualify under the SERP programmatic authorization, and the project cannot be modified to conform to the SERP Final PEIR for full CEQA compliance, then a new lease will be required from the Commission for that project.

4. A PEIR, State Clearinghouse No. 2009112088, was prepared for this project by the DWR and certified on February 13, 2014. The Commission staff has reviewed such document and Mitigation Monitoring Program prepared pursuant to the provisions of the CEQA (Pub. Resources Code, § 21081.6) and adopted by the lead agency.

CALENDAR ITEM NO. **C11** (CONT'D)

5. Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096) are contained in Exhibit D, attached hereto.
6. 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 the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

U.S. Army Corps of Engineers
Regional Water Quality Control Board
U.S. Fish and Wildlife Service
National Marine Fisheries Service
California Department of Fish and Wildlife
Central Valley Flood Protection Board

EXHIBITS:

- A. Site and Location Map
- B. Mitigation Monitoring Program
- C. CEQA Findings

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a PEIR, State Clearinghouse No. 2009112088, was prepared for this Project by DWR and certified on February 13, 2014, and that the Commission has reviewed and considered the information contained therein.

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

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

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

CALENDAR ITEM NO. **C11** (CONT'D)

SIGNIFICANT LANDS INVENTORY FINDING:

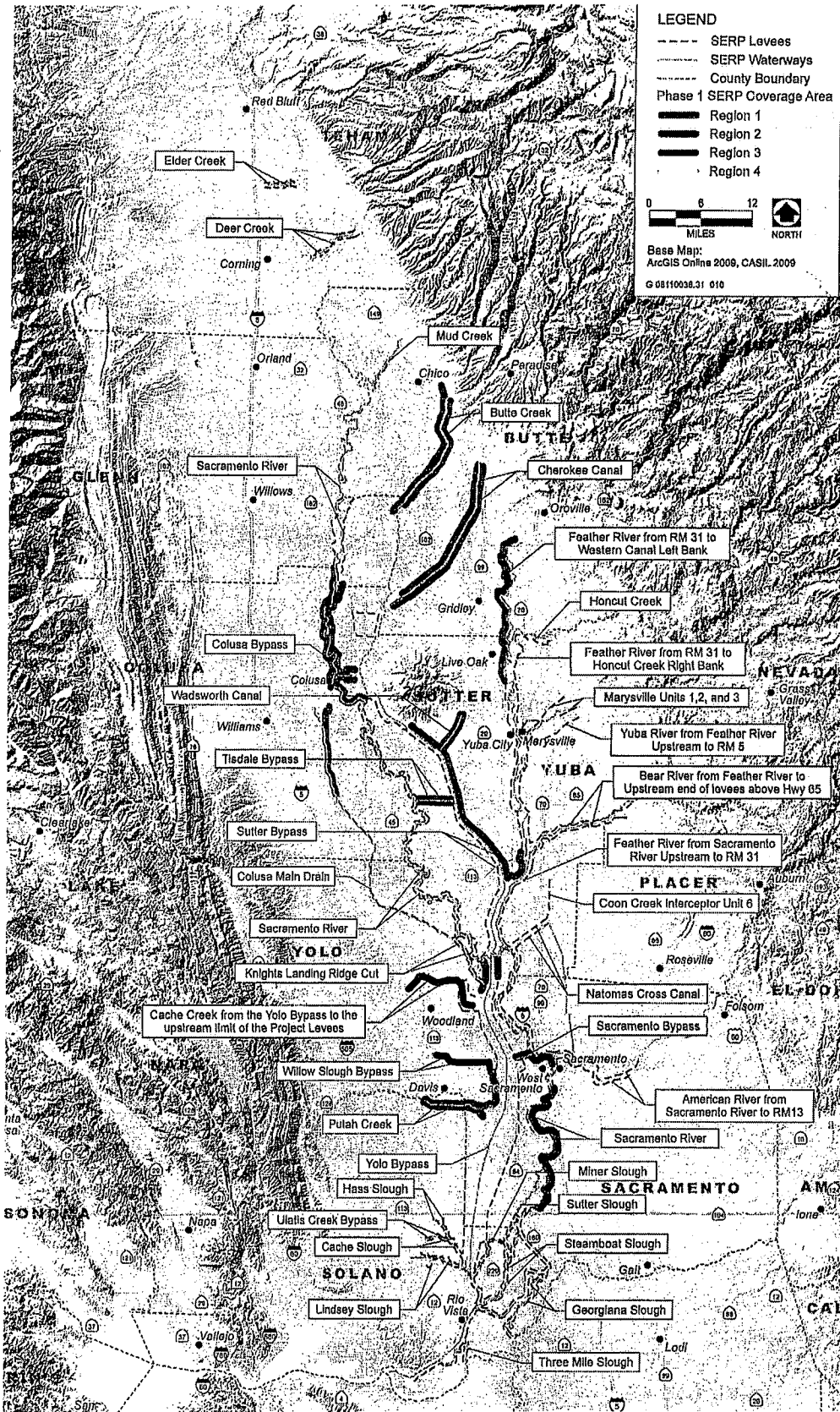
Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize the issuance of a General Lease – Public Agency Use to the California Department of Water Resources beginning August 15, 2014 and ending on December 31, 2019, for the annual repairs of up to 15 small erosion sites per year under Phase 1 of the SERP on levees within the SRFCP as shown on Exhibit A (for reference purposes only) and as described in Exhibit B attached and by this reference made a part hereof; no monetary consideration will be charged as the project will result in a public benefit.
2. Authorize staff to determine whether a project qualifies under the SERP programmatic authorization and issue written approval to proceed with work.

NO SCALE

SITE



LEGEND

- SERP Levees
- ... SERP Waterways
- - - County Boundary
- Phase 1 SERP Coverage Area
- Region 1
- Region 2
- Region 3
- Region 4

0 6 12
MILES

▲ NORTH

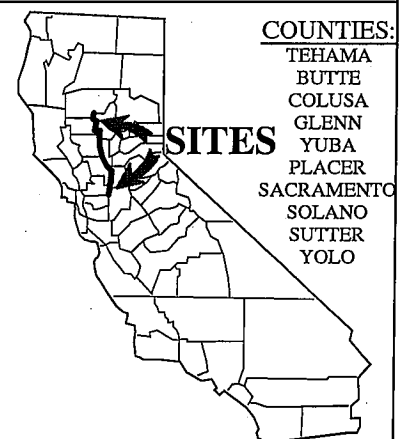
Base Map:
ArcGIS Online 2009, CASIL 2009
G 08110038.31 010



Exhibit A

W 26767

DEPARTMENT OF
WATER RESOURCES
GENERAL LEASE -
PUBLIC AGENCY USE
VARIOUS COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

**EXHIBIT B
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM**

**DEPARTMENT OF WATER RESOURCES (DWR) SMALL EROSION REPAIR PROGRAM
(State Clearinghouse No. 2009112088)**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/Reporting Action	Timing	Responsible Party	Effectiveness Criteria
Air Quality						
Impact 3.2-1: Construction-Related Emissions that Could Exceed Local thresholds of Significance	<p>MM 3.2-1: Implement Applicable Air District–Recommended Mitigation Measures for Particulate Matter and Exhaust Emissions.</p> <p>DWR will incorporate the following measures to reduce exhaust emissions and emissions of fugitive dust (PM₁₀ and PM_{2.5}) during construction activities: Implementation of Mitigation Measure 3.2-1 will minimize these temporary direct impacts by Implementing Applicable Air District–Recommended Mitigation Measures for Particulate Matter and Exhaust Emissions.</p> <ul style="list-style-type: none"> • Comply with applicable air district rules and regulations that pertain to construction activities (e.g., asphalt ROG requirements, administrative requirements, and fugitive dust management practices). As applicable, implement construction-related requirements from air districts or local governments with authority over the project at the commencement of and during each construction activity. • When using barges to deliver materials to a project site, DWR will enter into an agreement with SMAQMD to pay an off-site mitigation fee for the portion of construction-generated emissions of NOX that exceed SMAQMD’s daily emissions threshold of 85 lbs/day. The calculation of the fee shall be determined annually in coordination with the SMAQMD and paid within 30 days (or a different time that might be negotiated) of the occurrence of 	Sacramento River Flood Control Project	Compliance Monitoring	1-during, and 2-post construction	Construction Manager, Project Sponsor, and Project Contractor(s)	Exhaust and dust emissions are minimized

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>construction-related activities.</p> <ul style="list-style-type: none"> Do not use open burning to dispose of any excess materials generated during site preparation or other project activities. Schedule construction truck trips during nonpeak traffic hours to reduce peak-hour emissions and traffic congestion to the extent feasible. Follow air pollution regulations, which includes the use of diesel-powered construction equipment and equipment idle times, that meet CARB's 1996 or newer certification standard for in-use off-road heavy-duty diesel engines (Cal. Code Regs., tit. 13, art. 4.8, ch. 9, div. 3). Maintain all construction equipment in proper working condition and perform all preventative maintenance. Required maintenance includes compliance with all manufacturer's recommendations, proper upkeep and replacement of filters and mufflers, and maintenance of all engine and emissions systems in proper operating condition. Check all tires and maintain for proper inflation. 					
Cultural Resources						
<p>Impact 3.4-1: Potential Impacts on Identified Cultural Resources</p>	<p>MM 3.4-1: Comply with the Programmatic Agreement (PA) prepared by USACE, SHPO, and DWR and/or otherwise comply with Section 106; Consult with Stakeholders as Required under Section 106 and/or a PA; Perform Site-specific Technical Studies to Identify and Evaluate Cultural Resources; and Implement Avoidance or Treatment Protocols as Necessary to the Extent Feasible.</p> <p>Management of cultural resources for the SERP would be performed under the PA prepared by USACE, and/or otherwise in compliance with the standard section 106 process. DWR will perform technical studies and treatment required to identify and manage impacts on cultural resources subject to the input of stakeholders</p>	<p>Sacramento River Flood Control Project</p>	<p>Compliance Monitoring</p>	<p>1-during, and 2-post construction</p>	<p>Construction Manager, Project Sponsor, and Project Contractor(s)</p>	<p>Avoid Identified Cultural Resources</p>

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>and the approval of USACE and the SHPO. Management of cultural resources required under CEQA would be combined with the management protocols stipulated in the PA and/or otherwise during section 106 consultation. Prior to implementation of individual small erosion repair activities, DWR will perform the following steps:</p> <ul style="list-style-type: none"> • conduct an inventory of the individual small erosion repair site and define an APE as required under section 106; • evaluate identified resources eligible for listing in the NRHP and CRHR; • consult with CSLC staff should any cultural resources on state lands be discovered during construction of any of the SERP projects; • determine if the proposed activity would result in significant impacts on resources eligible for the CRHR or adverse effects on historic properties within the meaning of section 106; • resolve significant impacts either by developing resource-specific treatment protocols or by selecting and implementing treatment measures from a palette of treatment protocols developed pursuant to the PA; and • consult with stakeholders and consulting parties in accordance with section 106 requirements and/or the PA, as applicable, such as the SHPO. The inventory, evaluation, and selection of treatment will include a review of relevant local land use policies regarding cultural resources. <p>DWR will employ methods for inventory efforts and consultation that are appropriate for the sensitivity of the individual small erosion repair site and the probable resources that may occur. Such methods may include geomorphological studies, subsurface testing, and consultation with appropriate Native American</p>					

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>organizations and representatives (for example in the identification of TCPs).</p> <p>Inventory efforts shall include consulting CSLC's shipwreck database to gather information on known and potential vessels located on the State's tide and submerged lands. Abandoned shipwrecks, archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and is under the jurisdiction of CSLC, although CSLC's jurisdiction does not negate the responsibilities of DWR or the USACE for compliance with CEQA and with section 106, respectively.</p> <p>As necessary, specific technical studies prepared for individual small erosion repairs will define important historic themes relevant to individual repair sites. Mitigation efforts will include, when feasible, avoidance of the resource rather than data recovery excavations or other work that would require disturbance of the deposit.</p>					
<p>Impact 3.4-3: Impacts on Previously Unidentified Cultural Resources</p>	<p>MM 3.4-3: Train Construction Workers before Construction Begins, Monitor Construction Activities, Stop Potentially Damaging Activities, Evaluate Discovery(ies), and Resolve Adverse Effects on Significant Resources.</p> <p>DWR will implement the following measures to minimize potential impacts on previously undiscovered cultural resources:</p> <ul style="list-style-type: none"> • Every 2 years or before construction begins, construction crews will be given a presentation and training session incorporated into the environmental awareness training before performing work in areas sensitive for previously unidentified resources so that they can assist with identifying undiscovered cultural resource materials and avoid them where possible. • A DWR archaeologist, where appropriate, will monitor all ground-disturbing construction activities at 	<p>Sacramento River Flood Control Project</p>	<p>Compliance Monitoring</p>	<p>1-prior to construction and 2-post construction</p>	<p>Construction Manager, Project Sponsor, and Project Contractor(s)</p>	<p>Stop Potentially Damaging Activities, Evaluate Discovery(ies), and Resolve Adverse Effects on Significant Resources</p>

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>locations determined to be sensitive for unidentified cultural resources. If a previously unidentified archaeological resource is uncovered during construction, construction activities will be halted within 100 feet of the find and USACE, and other appropriate parties, will be notified regarding the discovery.</p> <ul style="list-style-type: none"> • Consult with CSLC staff should any cultural resources on state lands be discovered during construction of any of the SERP projects. • DWR will then consult with USACE and the SHPO to determine the eligibility of the resource for listing in the NRHP or qualification as a unique archaeological resource. If DWR and USACE, in consultation with the SHPO, concur that the resource is eligible for listing and the project may result in adverse effects or significant impacts on the resource, DWR either will implement one of the treatment protocols developed under the PA for the resource or will prepare a resource-specific treatment plan. <p>Work may only resume when either all necessary treatment has been performed under the treatment method selected, or approved by the appropriate entity, or construction in the vicinity of the resource will not result in adverse effects or encroach within an appropriate distance from the known boundaries of the resource.</p>					
<p>Impact 3.4-4: Impacts on Previously Unidentified Human Remains</p>	<p>MM 3.4-4: Stop Work in the Event of a Discovery of Human Remains, Notify the Applicable County Coroner and Most Likely Descendant, and Treat Remains in Accordance with State Law and Measures Stipulated in the Programmatic Agreement Prepared by USACE and the SHPO.</p> <p>DWR will ensure that the following measures are implemented to address the potential discovery of human remains during construction:</p>	<p>Sacramento River Flood Control Project</p>	<p>Compliance Monitoring</p>	<p>1-prior to construction and 2-post construction</p>	<p>Construction Manager, Project Sponsor, and Project Contractor(s)</p>	<p>Notify the Applicable County Coroner and Most Likely Descendant, and Treat Remains in Accordance</p>

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<ul style="list-style-type: none"> • If human remains are uncovered during ground-disturbing activities, all ground-disturbing activities will cease within an appropriate radius of the find. DWR will notify the county coroner of the county in which the remains are uncovered and a professional archaeologist to determine the nature of the remains. DWR shall notify CSLC staff if the discovery is on State land. The coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or state lands (Health & Saf. Code, § 7050.5, subd. (b)). If the coroner determines that the remains are those of a Native American, he or she will contact the NAHC by phone within 24 hours of making that determination ((Health & Saf. Code, § 7050, subd. (c)). The NAHC will designate a most likely descendant (MLD) to dispose of the remains with appropriate dignity (Pub. Resources Code, § 5097.98). • After a determination that the remains are of prehistoric Native American origin, DWR will coordinate with the MLD for reburial of the remains and associated grave goods in an appropriate location. If, within 48 hours, the MLD fails to make a recommendation or reinter the remains, DWR will coordinate with the landowner to reinter the remains in a location not subject to further disturbance as provided for in Public Resources Code section 5097.98. • The discovery of prehistoric burials often reveals locations sensitive for the occurrence of additional archaeological material. After the initial discovery and management of human remains, a professional archaeologist working on behalf of DWR will record the site with the NAHC and the appropriate information center and, if possible, use project features to protect the site from future disturbance. 					<p>with State Law and Measures Stipulated in the Programmatic Agreement Prepared by USACE and the SHPO.</p>

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/Reporting Action	Timing	Responsible Party	Effectiveness Criteria
Greenhouse Gases and Climate Change						
Construction-Generated Greenhouse Gas Emissions	<p>MM 5-1: Implement Pre-Construction, Final Design, and Construction Best Management Practices (BMPs).</p> <p>Pre-construction and Final Design BMPs are designed to ensure that individual projects are evaluated and their unique characteristics are taken into consideration when determining whether specific equipment, procedures, or material requirements are feasible and efficacious for reducing GHG emissions from a project. In addition to mitigation measures defined in the various sections of the Program EIR, the following BMPs will be applied as applicable and appropriate:</p> <ul style="list-style-type: none"> • BMP 1. Evaluate project characteristics, including location, project work flow, site locations, and equipment performance requirements, to determine whether specifications for the use of equipment with repowered engines, electric drive trains, or other high-efficiency technologies are appropriate and feasible for the project or specific elements of the project. • BMP 2. Evaluate the feasibility and efficacy of performing on-site material hauling with trucks equipped with on-road engines. • BMP 3. Coordinate opportunities to carpool to the construction site. • BMP 4. Reduce electricity use in temporary construction offices by using high-efficiency lighting and requiring that heating and cooling units be Energy Star compliant. Require that all contractors develop and implement procedures for turning off computers, lights, air conditioners, heaters, and other equipment each day at close of business. • BMP 5. For deliveries to project sites where the haul distance exceeds 100 miles and a heavy-duty class 7 or class 8 semi-truck or 53-foot or longer box-type 	Sacramento River Flood Control Project	Compliance Monitoring	1-prior to construction and 2-post construction	Construction Manager, Project Sponsor, and Project Contractor(s)	Greenhouse Gasses are reduced and eliminated

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>trailer is used for hauling, a SmartWay certified truck will be used to the maximum extent feasible.</p> <ul style="list-style-type: none"> • BMP 6. Recycle construction debris to reduce construction waste. • BMP 7. Maintain all construction equipment in proper working condition and perform all preventative maintenance. Required maintenance includes compliance with all manufacturer’s recommendations, proper upkeep and replacement of filters and mufflers, and maintenance of all engine and emissions systems in proper operating condition. Maintenance schedules shall be detailed in an Air Quality Control Plan prior to commencement of construction. • BMP 8. Implement tire inflation program on jobsite to ensure that equipment tires are correctly inflated. Check tire inflation when equipment arrives on-site and every two weeks for equipment that remains on-site. Check vehicles used for hauling materials off-site weekly for correct tire inflation. Procedures for the tire inflation program shall be documented in an Air Quality Management Plan prior to commencement of construction. Construction BMPs would apply to all construction and maintenance projects that DWR completes or for which DWR issues contracts. All the SERP projects are expected to implement all construction BMPs. 					

**EXHIBIT C – DEPARTMENT OF WATER RESOURCES (DWR)
SMALL EROSION REPAIR PROGRAM (SERP)**

**CALIFORNIA STATE LANDS COMMISSION
STATEMENT OF FINDINGS**

1.0 INTRODUCTION

The California State Lands Commission (CSLC), acting as a responsible agency under the California Environmental Quality Act (CEQA), makes these findings to comply with CEQA as part of its discretionary approval to authorize issuance of a General Lease – Public Agency Use for the annual maintenance of small erosion sites on levees within the Sacramento River Flood Control Project Area (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines, § 15381.)¹ The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

The CSLC is a responsible agency under CEQA for the Project because the CSLC must approve a lease for the Project to go forward and because the California Department of Water Resources (DWR), as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA. The agency analyzed the environmental impacts associated with the Project in the Final Program Environmental Impact Report (PEIR) (State Clearinghouse [SCH] No. 2009112088). On February 14, 2014, DWR certified the Program EIR, adopted the Project Summary of Environmental Impacts and Mitigation, and adopted Findings.

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

- Air Quality and Climate Change;
- Biological Resources;
- Cultural Resources;
- Geology, Soils and Paleontological;
- Hydrology and Water Quality; and
- Noise.

Of those six resources areas, Project components within the CSLC's jurisdiction could have significant environmental effects on three of the above resource areas:

- Air Quality

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

- Cultural Resources
- Greenhouse Gasses and Climate Change (Cumulative Impact)

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

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

2.0 FINDINGS

The CSLC'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 Program EIR certified by DWR for the Project identifies potentially significant impacts that fall within the scope of the CSLC's approval, the CSLC makes the Findings set forth below as a responsible agency under CEQA. (State CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. v. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

While the CSLC must consider the environmental impacts of the Project as set forth in DWR's Program EIR, the CSLC'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 CSLC's exercise of discretion involves only the bed of the Sacramento River, the CSLC is responsible for considering only the environmental impacts related to lands or resources subject to the CSLC's jurisdiction. With respect to all other impacts associated with implementation of the Project, the CSLC is bound by the legal presumption that the EIR fully complies with CEQA

The CSLC has reviewed and considered the information contained in the Program EIR. All significant adverse impacts of the Project identified in the Program EIR relating to the CSLC's approval of a General Lease – Public Agency Use authorizing annual maintenance of small erosion sites on levees within the Sacramento River flood control project area, are included herein and organized according to the resource affected.

These Findings, which reflect the independent judgment of the CSLC, 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. The possible findings on each significant effect are (see Pub. Resources Code, § 21081, subd. (a) and State CEQA Guidelines, § 15091, subd. (a)):

- (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 Program EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. 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 EIR.²

A discussion of supporting facts follows each Finding.

- Whenever Finding (1) occurs, the mitigation measures that lessen the significant environmental impact are identified in the facts supporting the Finding.
- Whenever Finding (2) occurs, the agencies with jurisdiction are specified. These agencies, within their respective spheres of influence, have the responsibility to adopt, implement, and enforce the mitigation discussed.
- Whenever Finding (3) is made, the CSLC has determined that sufficient mitigation is not practicable to reduce the impact to a less than significant level, and even after implementation of all feasible mitigation measures, there will be or could be unavoidable significant adverse impact due to the Project. Significant impacts requiring Finding (3) were not identified in the Program EIR; therefore, a Statement of Overriding Considerations was not adopted by DWR, and one is not required by the CSLC.

These Findings are based on the information contained in the Program EIR, as well as information provided to CSLC staff by the Project proponent, all of which is contained in the administrative record. The mitigation measures are briefly described in these Findings; more detail on the mitigation measures is included in DWR's Final Program EIR.

The CSLC is the custodian of the record of proceedings upon which its decision is based. The location of the CSLC's record of proceedings is in the Sacramento office of the CSLC, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825.

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

A. SUMMARY OF FINDINGS

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

- Aesthetics
- Agricultural Resources
- Hazards Hazardous Materials
- Land Use
- Public Services
- Recreation
- Traffic/Transportation
- Utilities and Service Systems

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

- Biological Resources
- Geology, Soils and Paleontological
- Hydrology and Water Quality

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

B. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION

The impacts identified below were determined in the Final EIR to be potentially significant absent mitigation; after application of mitigation, however, the impacts were determined to be less than significant.

1. Air Quality	3.2-1
2. Cultural Resources	3.4-1, 3.4-3, 3.4-4
3. Greenhouse Gas and Climate Change (Cumulative Impact)	5-1

1. AIR QUALITY

CEQA FINDING NO. IMPACT 3.2-1	
Impact:	Impact 3.2-1. Construction-Related Emissions that Could Exceed Local thresholds of Significance. The SERP could result in temporary construction-related emissions of ROG, NOX, PM10, and PM2.5 that could exceed local air district thresholds of significance.
Finding(s):	(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 Program EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in an increase in exhaust emissions and emissions of fugitive dust (PM10 and PM2.5) during construction activities. DWR will incorporate the following measures to reduce exhaust emissions and emissions of fugitive dust (PM10 and PM2.5) during construction activities. Implementation of **Mitigation Measure (MM) 3.2-1** will minimize these temporary direct impacts by Implementing Applicable Air District–Recommended Mitigation Measures for Particulate Matter and Exhaust Emissions.

MM 3.2-1: Implement Applicable Air District–Recommended Mitigation Measures for Particulate Matter and Exhaust Emissions.

- Comply with applicable air district rules and regulations that pertain to construction activities (e.g., asphalt ROG requirements, administrative requirements, and fugitive dust management practices). As applicable, implement construction-related requirements from air districts or local governments with authority over the project at the commencement of and during each construction activity.
- When using barges to deliver materials to a project site, DWR will enter into an agreement with SMAQMD to pay an off-site mitigation fee for the portion of construction-generated emissions of NOX that exceed SMAQMD's daily emissions threshold of 85 lbs/day. The calculation of the fee shall be determined annually in coordination with the SMAQMD and paid within 30 days (or a different time that might be negotiated) of the occurrence of construction-related activities.
- Do not use open burning to dispose of any excess materials generated during site preparation or other project activities.
- Schedule construction truck trips during nonpeak traffic hours to reduce peak-hour emissions and traffic congestion to the extent feasible.
- Follow air pollution regulations, which includes the use of diesel-powered construction equipment and equipment idle times, that meet CARB's 1996 or newer certification standard for in-use off-road heavy-duty diesel engines (Cal. Code Regs., tit. 13, art. 4.8, ch. 9, div. 3).
- Maintain all construction equipment in proper working condition and perform all preventative maintenance. Required maintenance includes compliance with all manufacturer's recommendations, proper upkeep and replacement of filters and mufflers, and maintenance of all engine and emissions systems in proper operating condition.
- Check all tires and maintain for proper inflation.

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

2. CULTURAL RESOURCES

CEQA FINDING NO. IMPACT 3.4-1

Impact: **Impact 3.4-1. Potential Impacts on Identified Cultural Resources.** The Phase 1 SERP coverage area encompasses lands that were inhabited for at least the past 10,000 years by prehistoric Native American populations and potentially significant historical resources. Therefore, repair of small erosion sites could affect significant prehistoric or historic resources.

Finding(s): (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 Program EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in an increased chance of impacting identified cultural resources within the Project boundaries during construction activities. Management of cultural resources for the SERP would be performed under a Programmatic Agreement (PA) prepared by the U.S. Army Corps of Engineers (USACE), and/or otherwise in compliance with the standard section 106 process. DWR will perform technical studies and treatment required to identify and manage impacts on cultural resources subject to the input of stakeholders and the approval of USACE and the State Historic Preservation Officer (SHPO). Management of cultural resources required under CEQA would be combined with the management protocols stipulated in the PA and/or otherwise during section 106 consultation. Implementation of **MM 3.4-1** will address the concerns related to construction.

MM 3.4-1: Comply with the PA Prepared by USACE, SHPO, and DWR and/or Otherwise Comply with Section 106; Consult with Stakeholders as Required under Section 106 and/or a PA; Perform Site-specific Technical Studies to Identify and Evaluate Cultural Resources; and Implement Avoidance or Treatment Protocols as Necessary to the Extent Feasible. Prior to implementation of individual small erosion repair activities, DWR will perform the following steps:

- conduct an inventory of the individual small erosion repair site and define an area of potential effects as required under Section 106 of the National Historic Preservation Act (NHPA);
- evaluate identified resources eligible for listing in the National Register of Historic Places (NRHP) and California Register of Historical Resources (CRHR);
- consult with Staff at the California State Lands Commission (CSLC) should any cultural resources on state lands be discovered during construction of any of the SERP projects;

- determine if the proposed activity would result in significant impacts on resources eligible for the CRHR or adverse effects on historic properties within the meaning of section 106;
- resolve significant impacts either by developing resource-specific treatment protocols or by selecting and implementing treatment measures from a palette of treatment protocols developed pursuant to the PA; and
- consult with stakeholders and consulting parties in accordance with section 106 requirements and/or the PA, as applicable, such as the SHPO. The inventory, evaluation, and selection of treatment will include a review of relevant local land use policies regarding cultural resources.

DWR will employ methods for inventory efforts and consultation that are appropriate for the sensitivity of the individual small erosion repair site and the probable resources that may occur. Such methods may include geomorphological studies, subsurface testing, and consultation with appropriate Native American organizations and representatives (for example in the identification of traditional cultural properties [TCPs]).

Inventory efforts shall include consulting CSLC's shipwreck database to gather information on known and potential vessels located on the State's tide and submerged lands. Abandoned shipwrecks, archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and is under the jurisdiction of CSLC, although CSLC's jurisdiction does not negate the responsibilities of DWR or the USACE for compliance with CEQA and with section 106, respectively.

As necessary, specific technical studies prepared for individual small erosion repairs will define important historic themes relevant to individual repair sites. Mitigation efforts will include, when feasible, avoidance of the resource rather than data recovery excavations or other work that would require disturbance of the deposit.

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

CEQA FINDING NO. IMPACT 3.4-3	
Impact:	Impact 3.4-3. Impacts on Previously Unidentified Cultural Resources. Previously unidentified cultural resources have the potential to be affected by repair of individual erosion sites.
Finding(s):	(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 Program EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in an increased chance of impacting previously unidentified cultural resources within the Project boundaries during construction activities. DWR will reduce the potential for identifying previously undiscovered cultural resources during construction. Implementation of **MM 3.4-3** will minimize these impacts upon a discovery of a previously unidentified cultural resource during construction.

MM 3.4-3: Train Construction Workers before Construction Begins, Monitor Construction Activities, Stop Potentially Damaging Activities, Evaluate Discovery(ies), and Resolve Adverse Effects on Significant Resources. DWR will implement the following measures to minimize potential impacts on previously undiscovered cultural resources:

- Every 2 years or before construction begins, construction crews will be given a presentation and training session incorporated into the environmental awareness training before performing work in areas sensitive for previously unidentified resources so that they can assist with identifying undiscovered cultural resource materials and avoid them where possible.
- A DWR archaeologist, where appropriate, will monitor all ground-disturbing construction activities at locations determined to be sensitive for unidentified cultural resources. If a previously unidentified archaeological resource is uncovered during construction, construction activities will be halted within 100 feet of the find and USACE, and other appropriate parties, will be notified regarding the discovery.
- Consult with Staff at CSLC should any cultural resources on state lands be discovered during construction of any of the SERP projects.
- DWR will then consult with USACE and the SHPO to determine the eligibility of the resource for listing in the NRHP or qualification as a unique archaeological resource. If DWR and USACE, in consultation with the SHPO, concur that the resource is eligible for listing and the project may result in adverse effects or significant impacts on the resource, DWR either will implement one of the treatment protocols developed under the PA for the resource or will prepare a resource-specific treatment plan.
- Work may only resume when either all necessary treatment has been performed under the treatment method selected, or approved by the appropriate entity, or construction in the vicinity of the resource will not result in adverse effects or encroach within an appropriate distance from the known boundaries of the resource.

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

CEQA FINDING NO. IMPACT 3.4-4

Impact: **Impact 3.4-4. Impacts on Previously Unidentified Human Remains.** Prehistoric archaeological deposits that occur along the waterways often contain interred human remains. Therefore, repair of individual erosion sites could affect unidentified human remains.

Finding(s): (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 Program EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in an increase chance of impacting previously unidentified human remains within the Project boundaries during construction activities. DWR will ensure that the following measures are implemented to address the potential discovery of human remains during construction. Implementation of **MM 3.4-4** will minimize these impacts upon a discovery of a previously unidentified cultural resource during construction.

MM 3.4-4: Stop Work in the Event of a Discovery of Human Remains, Notify the Applicable County Coroner and Most Likely Descendant, and Treat Remains in Accordance with State Law and Measures Stipulated in the Programmatic Agreement Prepared by USACE and the SHPO. DWR will ensure that the following measures are implemented to address the potential discovery of human remains during construction:

- If human remains are uncovered during ground-disturbing activities, all ground-disturbing activities will cease within an appropriate radius of the find. DWR will notify the county coroner of the county in which the remains are uncovered and a professional archaeologist to determine the nature of the remains. DWR shall notify CSLC staff if the discovery is on State land. The coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or state lands (Health & Saf. Code, § 7050.5, subd. (b)). If the coroner determines that the remains are those of a Native American, he or she will contact the NAHC by phone within 24 hours of making that determination (Health & Saf. Code, § 7050, subd. (c)). The NAHC will designate a most likely descendant (MLD) to dispose of the remains with appropriate dignity (Pub. Resources Code, § 5097.98).
- After a determination that the remains are of prehistoric Native American origin, DWR will coordinate with the MLD for reburial of the remains and associated grave goods in an appropriate location. If, within 48 hours, the MLD fails to make a recommendation or reinter the remains, DWR will coordinate with the landowner to reinter the remains in a location not subject to further disturbance as provided for in Public Resources Code section 5097.98.
- The discovery of prehistoric burials often reveals locations sensitive for the occurrence of additional archaeological material. After the initial discovery

and management of human remains, a professional archaeologist working on behalf of DWR will record the site with the NAHC and the appropriate information center and, if possible, use project features to protect the site from future disturbance.

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

3. GREENHOUSE GASES AND CLIMATE CHANGE

CEQA FINDING NO. 5-1

Impact: **Impact 5-1. Construction-Generated Greenhouse Gas Emissions.** Activities of the Project have the potential to result in an increase in greenhouse gas emissions and effect climate change during construction activities.

Finding(s): (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 Program EIR.

FACTS SUPPORTING THE FINDING(S)

Because the specific number and exact characteristics of future projects done under SERP cannot be known at this time, a detailed greenhouse gas (GHG) inventory and accounting of GHG emissions from the projects cannot be completed. However, the project criteria established for the program provide an upper bound for the scale and scope of erosion repair projects that could qualify under the program. Therefore, an analysis of the potential worst-case emissions from projects under SERP was performed.

The modeled URBEMIS worst-case construction-generated emissions of GHGs would be 973.0 metric tons of CO₂ equivalent (MT CO₂e) per year. This worst-case scenario evaluates potential emissions from the maximum number of sites (15) at the maximum size and intensity allowed under the program.

The Greenhouse Gas Emissions Reduction Plan (GGERP) framework allows for projects that emit less than 12,500 MT CO₂e per year to be considered part of DWR's regular on-going construction and maintenance activities, which have been analyzed and accounted for in DWR's long-term GHG emissions trajectory. The SERP projects individually and in aggregate would necessarily fall under this classification.

The GGERP has already provided programmatic GHG emissions reduction measures for activities that fall into the "regular on-going construction and maintenance activities" category. Those measures are therefore incorporated as part of **MM 5-1**.

MM 5-1: Implement Pre-Construction, Final Design, and Construction Best Management Practices (BMPs). Pre-construction and Final Design BMPs are

designed to ensure that individual projects are evaluated and their unique characteristics are taken into consideration when determining whether specific equipment, procedures, or material requirements are feasible and efficacious for reducing GHG emissions from a project. In addition to mitigation measures defined in the various sections of the Program EIR, the following BMPs will be applied:

- **BMP 1.** Evaluate project characteristics, including location, project work flow, site locations, and equipment performance requirements, to determine whether specifications for the use of equipment with repowered engines, electric drive trains, or other high-efficiency technologies are appropriate and feasible for the project or specific elements of the project.
- **BMP 2.** Evaluate the feasibility and efficacy of performing on-site material hauling with trucks equipped with on-road engines.
- **BMP 3.** Coordinate opportunities to carpool to the construction site.
- **BMP 4.** Reduce electricity use in temporary construction offices by using high-efficiency lighting and requiring that heating and cooling units be Energy Star compliant. Require that all contractors develop and implement procedures for turning off computers, lights, air conditioners, heaters, and other equipment each day at close of business.
- **BMP 5.** For deliveries to project sites where the haul distance exceeds 100 miles and a heavy-duty class 7 or class 8 semi-truck or 53-foot or longer box-type trailer is used for hauling, a SmartWay certified truck will be used to the maximum extent feasible.
- **BMP 6.** Recycle construction debris to reduce construction waste.
- **BMP 7.** Maintain all construction equipment in proper working condition and perform all preventative maintenance. Required maintenance includes compliance with all manufacturer's recommendations, proper upkeep and replacement of filters and mufflers, and maintenance of all engine and emissions systems in proper operating condition. Maintenance schedules shall be detailed in an Air Quality Control Plan prior to commencement of construction.
- **BMP 8.** Implement tire inflation program on jobsite to ensure that equipment tires are correctly inflated. Check tire inflation when equipment arrives on-site and every two weeks for equipment that remains on-site. Check vehicles used for hauling materials off-site weekly for correct tire inflation. Procedures for the tire inflation program shall be documented in an Air Quality Management Plan prior to commencement of construction.

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

REFERENCES

URBEMIS 2007 version 9.2.4. (Rimpo and Associates 2008).