

**CALENDAR ITEM
C31**

A 21

12/06/16
C2016-009
W 26795
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D. Cook
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CONSIDER DELEGATING AUTHORITY TO THE EXECUTIVE OFFICER TO ENTER INTO AN AGREEMENT WITH THE TUOLUMNE RIVER PRESERVATION TRUST FOR PHASE III OF THE DENNETT DAM REMOVAL PROJECT, LOCATED ON THE TUOLUMNE RIVER, CITY OF MODESTO, STANISLAUS COUNTY AND AUTHORIZATION FOR A GENERAL LEASE – OTHER

PARTIES:

California State Lands Commission

Tuolumne River Preservation Trust

BACKGROUND:

Dennett Dam is located on a non-tidal section of the Tuolumne River (River) between the cities of Modesto and Ceres in Stanislaus County. The dam was initially built in 1933 to create a 97-acre swimming area that no longer exists. The dam washed out in 1935, was rebuilt in 1937, and is now in an advanced state of disrepair. The dam remnants form a low-lying metal and concrete barrier across the River. The approximate middle of the structure has either been breached or has collapsed which has caused a fast current to flow through the breach and turbulent conditions on the other side of the dam. These conditions pose a serious danger to recreational users of the River, including swimmers, boaters, rafters, and anglers.

The dam is a threat to public health and safety. Since 2006, two children and one adult have drowned in the area of the dam. As a result of these deaths there have been two lawsuits naming the State of California. The dam also poses a physical barrier to recreational navigation and migrating fish (Chinook salmon, steelhead, pacific lamprey and river lamprey). Central Valley steelhead is an anadromous fish listed under both the State and Federal Endangered Species Act, and Central Valley fall-run Chinook salmon and Pacific lamprey are anadromous species of concern or candidates for listing. The River has

CALENDAR ITEM NO. **C31** (CONT'D)

historically supported the largest run of Chinook salmon in the San Joaquin Valley.

In addition to the ongoing health and safety risk, the liability, and the impediment to recreational users and fish passage associated with the dam, the dam also impacts critical fish habitat. The Central Valley Regional Water Quality Control Board states one of the River's beneficial uses is that of a cold water habitat. This habitat is crucial for supporting trout and salmon populations. The pooling that occurs due to the dam contributes to increased water temperatures due to slow water movement and increased solar heating.

The Tuolumne River Preservation Trust (Trust) has taken a lead role in planning and coordinating the removal of the dam. The Trust prepared a three-phase removal plan and subsequently solicited financial partners in the project. The Commission received \$133,000 in its budget in fiscal year 2014-15 for Phase II removal activities. These funds were used to prepare the California Environmental Quality Act (CEQA) documentation, engineering plans, and a sediment toxicity report. The Phase II activities have been completed and the Trust is ready to move into Phase III, the actual dam removal activities.

The Commission received additional funding of \$367,000 in the budget for fiscal year 2016-17 to remove the dam, contingent on another entity providing an equal amount of funding. The Trust has secured matching funds from the Department of Water Resources and the Department of Fish and Wildlife for the removal of the dam. The proposed agreement will transfer the \$367,000 to the Trust to fund the actual removal activities. The Trust will act as the sole source provider for the Commission and be responsible for managing and coordinating consultants and contractors for Phase 3 of the Dennett Dam Removal Project. The proposed lease will authorize the Trust to conduct the actual removal.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6216.1, 6301, 6106 (delegation to execute written instruments); California Code of Regulations, title 2, section 2000, subdivision (b); State Contracting Manual Volume 1, section 3.15 (authorization to contract with other government entities).

Public Trust and State's Best Interests Analysis:

The Commission is a responsible agency under CEQA for the Dennett Dam Removal Project (Project). The CEQA lead agency for the Project is

CALENDAR ITEM NO. **C31** (CONT'D)

the City of Modesto (City). The Project proponent is the Trust. The Project is on sovereign land within the channel of the River, and thus requires Commission authorization.

The Project consists of removing Dennett Dam during projected low flow periods in the summer. Specific actions include installing a temporary upstream channel block, re-routing of mainstem flows along the constructed overflow channel north of the dam, and expeditious demolition of the existing structure. The Dam is a partially failed structure spanning the River that no longer serves a function, and has been an in-stream barrier to fish passage for more than 60 years. It has also been a navigational hazard to recreational boating and other non-motorized activities due to the powerful hydraulic forces associated with the concentrated overflow near the failed middle section of the dam. Removal of the dam will facilitate the Lower Tuolumne River Parkway development concept for a 500-acre park extending for seven miles along the River, immediately adjacent to Dennett Dam, to increase recreational opportunities within the region.

The proposed Project involves construction of coffer dams above and below the dam within the channel of the River. The installation of the cofferdams will allow the flow of the River to bypass the area around the dam to isolate the dam and facilitate its demolition and removal. The excavated material from the river channel will be placed adjacent to the channel on the south bank and replaced in the river channel after the dam is removed. The river channel will be restored and the cofferdams will be removed to allow the River to resume its natural flow.

The proposed lease is of a limited term, two years, and contains terms designed to minimize potential impacts to Public Trust resources during construction, including prohibiting refueling and regulating equipment use on the lease premises. Staff believes the removal of Dennett Dam by the Trust, for the public benefit is consistent with the common law Public Trust Doctrine. For all the reasons above, Commission staff believes issuance of this lease will not interfere with Public Trust needs at this time and at this location, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the

CALENDAR ITEM NO. **C31** (CONT'D)

protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction, and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

2. A Mitigated Negative Declaration, State Clearinghouse No. 2016062030, was prepared by the City of Modesto and adopted on August 10, 2016, for this Project. The California State Lands Commission staff has reviewed such document.

A Mitigation Monitoring Program was adopted by the City of Modesto.

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

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring Program
- D. Photographs of the Existing Condition

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Execution of Contract and Issuance of Lease: Find that a Mitigated Negative Declaration, State Clearinghouse No. 2016062030, and a Mitigation Monitoring Program were prepared by the City of Modesto and adopted on August 10, 2016, for this Project and that the Commission has reviewed and considered the information contained therein.

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed activities will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public

CALENDAR ITEM NO. **C31** (CONT'D)

Trust needs and values at this location, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

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

AUTHORIZATION:

1. Delegate authority to the Executive Officer or her designee to execute an agreement with the Tuolumne River Preservation Trust, in accordance with State Policies and Procedures, for the removal of Dennett Dam.
2. Authorize the Executive Officer or her designee to transfer funds to the Tuolumne River Preservation Trust for Phase III of the Dennett Dam removal project.
3. Authorize a General Lease – Other to the Tuolumne River Preservation Trust, beginning December 6, 2016, for a term of two years, for the removal of Dennett Dam on the Tuolumne River, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; consideration to be the public use and benefit.

EXHIBIT A

W 26795

LAND DESCRIPTION

A parcel of submerged land situated in the bed of the Tuolumne River, lying adjacent to Section 33, Township 3 South, Range 9 East, Mount Diablo Meridian, County of Stanislaus, State of California, and more particularly described as follows:

Bounded on the west by the northerly prolongation of the westerly line of that certain parcel described in Grant Deed recorded May 1, 2009 in Document No. 2009-0043130-00 Official Records of said County;

Bounded on the east by a line parallel with and 150 feet westerly from the northerly prolongation of the westerly line of that certain Parcel No. 1 described in Affidavit - Death of Trustee and Certificate of Successor Trustee recorded February 9, 2016 in Document No. 2016-0010026-00 Official Records of said County;

Bounded on the north by the low water mark of the right bank of the Tuolumne River;

Bounded on the south by the low water mark of the left bank of the Tuolumne River.

END DESCRIPTION

Prepared 10/18/16 by the California State Lands Commission Boundary Unit

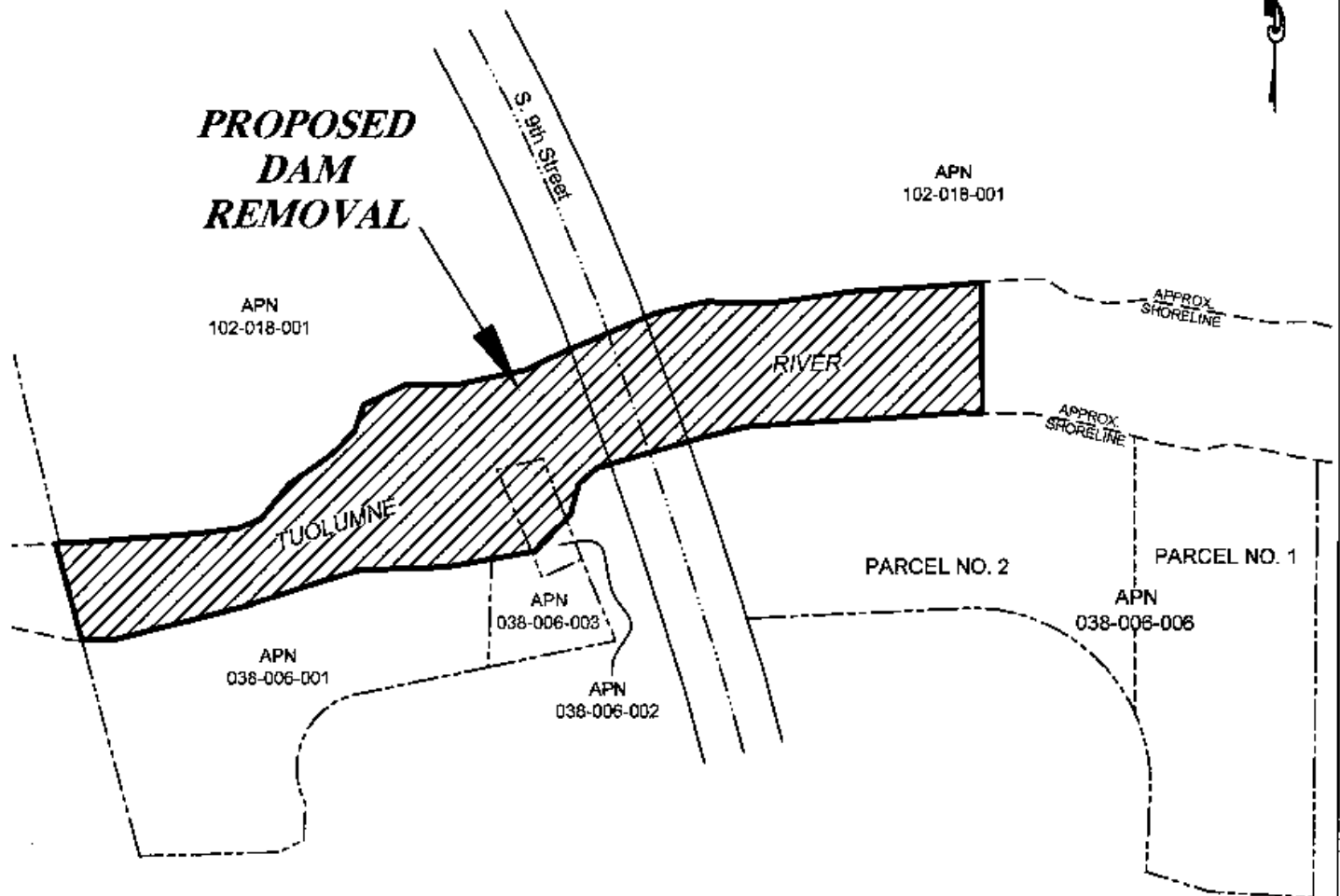


NO SCALE

SITE



PROPOSED DAM REMOVAL



DENNETT DAM AT 9TH STREET BRIDGE, MODESTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 26795
 DENNETT DAM
 APN 038-006-006
 GENERAL LEASE -
 OTHER USE
 STANISLAUS 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 C
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM
DENNETT DAM REMOVAL PROJECT
(W 26795, State Clearinghouse No. 2016062030)

The California State Lands Commission (Commission) is a responsible agency under the California Environmental Quality Act (CEQA) for the Dennett Dam Removal Project (Project). The CEQA lead agency for the Project is the city of Modesto (City). The proponent is the Tuolumne River Preservation Trust. The Project is on sovereign lands within the channel of the Tuolumne River. The lease being considered by the Commission involves construction of coffer dams above and below the dam within the channel of the Tuolumne River. The installation of the cofferdams will allow the flow of the river to bypass the area around the dam to isolate the dam in order to facilitate excavators to remove the sediments around the dam to be moved to access the depth of the dam. The excavated material from the river channel will be placed adjacent to the channel on the south bank and replaced in the river channel after the dam is removed from the channel of the Tuolumne River. River channel will be restored and the cofferdams will be removed to allow the natural flow of the river to resume its natural flow.

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on Commission lands. The purpose of a MMP is to discuss 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:¹

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 has adopted an MND; State Clearinghouse No. 2016062030, and adopted a MMP for the whole of the Project (see Exhibit C, Attachment C-1) and remains responsible for ensuring that implementation of the mitigation measures and Project commitments occurs in accordance with its program. The Commission's action and authority as a responsible agency apply only to the mitigation measures and Project

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

commitments listed in Table C-1 below. The full text of each mitigation measure and Project commitment, as set forth in the MMP prepared by the CEQA lead agency and listed in Table C-1, is incorporated by reference in this Exhibit C. Any mitigation measures and Project commitments adopted by the Commission that differ substantially from those adopted by the lead agency would be listed in Table C-1. There are no changes to the lead agency proposed Mitigation Measures or Project commitments for this MMP.

Table C-1. Project Impacts and Applicable Mitigation Measures.

Potential Impact	Mitigation Measure (MM) ²	Difference Between CSLC MMP and Lead Agency MMP
Biological Resources		
Potential Impacts to Western Pond Turtles (<i>Actinemys marmorata</i>)	BR-1 (see page 2 of Attachment C-1)	None
Potential Impacts to Riparian areas	BR-2 (see page 2 of Attachment C-1)	None
Protection of Valley Oak (<i>Quercus lobata</i>) trees within the Project footprint	BR-3 (see page 2 of Attachment C-1)	None
Impacts to graded and disturbed areas within Project footprint	BR-4 (see page 2 of Attachment C-1)	None
Implementation of Best Management Practices (BMPs) during construction.	BR-5 (see pages 2 and 3 of Attachment C-1)	None
Cultural Resources		
Impacts to undiscovered cultural material	CR-1 (see page 3 of Attachment C-1)	None
Impacts as a result of human remains discovery	CR-2 (see page 3 of Attachment C-1)	None
Hazards and Hazardous Materials		
Implementation of construction BMPs and development of Spill Prevention Control Countermeasures (SPCC)	HHM-1 (see page 3 of Attachment C-1)	None
Hydrology/Water Quality		
Avoid or minimize impacts to increased turbidity and settleable material.	HWQ-1 (see page 4 of Attachment C-1)	None
Avoid free-flowing river from cofferdams, sediment berms,	HWQ-2 (see page 4 of Attachment C-1)	None

² See Attachment C-1 for the full text of each MM and Project commitment taken from the MMP prepared by the CEQA lead agency.

Potential Impact	Mitigation Measure (MM) ²	Difference Between CSLC MMP and Lead Agency MMP
filter fabric and/or grass straw bales.		
Revegetate and stabilize disturbed soils to include seeding and mulching with native grass species.	HWQ-3 (see page 4 of Attachment C-1)	None

ATTACHMENT C-1
Mitigation Monitoring Program Adopted by the
City of Modesto

Dennett Dam Removal Mitigation Monitoring and Reporting Plan, 7-7-16

Mitigation Measure	Mitigation Responsibility	Implementation Action	Monitoring/ Reporting Responsibility	Schedule
<p>MIT-AQ-1: Prior to initiating dam removal, a certified asbestos contractor will survey the project site to assess the site for Category I or II asbestos-containing material. The likelihood of asbestos occurring on site is considered de minimus, but is a requirement of the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). The absence of asbestos-containing material will be documented on an Asbestos Notification form and submitted to the SJVUAPCD. If asbestos-containing material is identified, it will be removed by a Cal-OSHA licensed contractor and disposed in an appropriate facility.</p>	Tuolumne River Trust	Tuolumne River Trust retains qualified asbestos contractor to survey the site and provides survey to SJVUAPCD and City of Modesto	SJVUAPCD to review survey and informs City of Modesto	Prior to start of construction or demolition
<p>MIT-AQ-2: Prior to initiating dam removal, the Tuolumne River Trust will submit a Demolition Permit Release for the site. The Demolition Permit Release will confirm that the dam removal footprint is less than 5 acres and that less than 2,500 cubic yards of materials moved on any single day, and not more than 7,500 cubic yards moved during the project. If either the 5-acre or 2,500 / 7,500 cubic yard thresholds are exceeded, then the project will need to complete a dust control plan for the project. A dust control plan would outline means for maintaining regular watering of dust-prone areas and for managing track-out at road-dirt access points.</p>	Tuolumne River Trust	Tuolumne River Trust provides Permit to SJVUAPCD and City of Modesto. Any required remediation to be done by project contractor	SJVUAPCD to review permit and informs City of Modesto	Complete Demolition Permit Release prior to start of construction or demolition. Remediation of dust control plan during construction or

				demolition.
MIT-AQ-3: All portable equipment with independent generation capacity used on site will be registered with either the California Air Resources Board (CARB) or the SJVUAPCD.	City of Modesto	Project contractor shall register portable equipment with CARB or SJVUAPCD	SJVUAPCD or CARB review registrations and informs City of Modesto	Prior to the start of and during construction or demolition
MIT-BR-1: A qualified biologist shall survey the project site for western pond turtles. Should any turtles be identified they will be relocated to an area outside of the project site.	Tuolumne River Trust	Tuolumne River Trust retains qualified biologist to conduct survey and provides survey to CDFW and City of Modesto. Tuolumne River Trust hires qualified consultant to implement required remediation.	CDFW to review survey and informs City of Modesto	Prior to start of construction or demolition
MIT-BR-2: Prior to initiating construction, snow fence shall be installed along the limits of work to prevent encroachment into the riparian areas adjacent to the construction site.	City of Modesto	Project contractor to install snow fence.	CDFW, City of Modesto	Prior to start of construction or demolition
MIT-BR-3: The large valley oak west of the project site shall be protected during all construction activities. Prior to initiating construction, snow fence shall be installed around the tree at the dripline.	City of Modesto	Project contractor to install snow fence.	CDFW, City of Modesto	Prior to start of construction or demolition
MIT-BR-4: All graded or disturbed areas in the riparian corridor along the Tuolumne River resulting from project implementation (approximately 1,210 square meters/ 0.3 acre) shall be revegetated with riparian species in accordance with project	Tuolumne River Trust, Consultant	Consultant to prepare revegetation plan. Project contractor to install ne	City of Modesto	Complete revegetation plan prior to start of construction or

design specifications.		vegetation.		demolition. Install new vegetation after completion of construction or demolition work
MIT-BR-5: Contract specifications will include the following BMPs, where applicable, to reduce erosion during construction: a. During project activities, all trash that may attract predators shall be properly contained, removed from the work site, and disposed of regularly. Following construction, all trash and construction debris shall be removed from work areas. b. All fueling and maintenance of vehicles and other equipment and staging areas shall occur at least 20 meters from any riparian habitat or water body. All workers shall be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.	City of Modesto	Project contractor to remove trash and fueling requirements.	City of Modesto	During construction or demolition
MIT-CR-1: Should any cultural or archaeological resources be found during excavation, work would stop immediately.	City of Modesto	Project contractor to stop work if any cultural or archaeological items are found	City of Modesto	During construction or demolition
MIT-CR-2: Should any human remains be found during dam removal, work would stop immediately.	City of Modesto	Project contractor to stop work if any human remains are found	City of Modesto	During construction or demolition

<p>MIT-HHM-1: Implementation of construction BMPs and development of a Spill Prevention Control and Countermeasures (SPCC) plan would minimize the risk of an uncontrolled spill and consequent contamination of the river during project operations. SPCC would include identification of staging areas for fueling and maintenance of heavy equipment would limit potential spills to designated areas where observation and cleanup could be readily accomplished. Additionally, should an oil or fuel spill occur during construction or maintenance activities, all work would cease immediately, the Central Valley Regional Water Quality Control Board (CVRWQCB) would be notified if the quantity of the spill were above state and/or federal reporting requirements, and cleanup procedures would begin immediately.</p>	<p>City of Modesto</p>	<p>City to SPCC Plan. Project contractor to implement plan</p>	<p>City of Modesto, CVRWQCB</p>	<p>Develop SPCC Plan prior to start of construction or demolition.</p> <p>Implement BMP and SPCC during construction or demolition.</p>
<p>MIT-HWQ-1: To avoid or minimize impacts to potential increases in turbidity and settleable materials, the proposed project shall include, at a minimum, the following measures:</p> <ul style="list-style-type: none"> a. Equipment would not be operated in the stream channels of flowing live streams except as may be necessary to construct crossings, cofferdams, and the interim diversion berm necessary to implement the proposed project. b. All construction equipment would be cleaned prior to use on site. c. When work in a flowing stream is unavoidable, the entire stream flow would be gradually diverted around the work area into the existing alternate channel to the north. The alternate channel would be prepared to minimize sediment discharges. 	<p>City of Modesto</p>	<p>Project contractor to implement construction requirements</p>	<p>City of Modesto, CVRWQCB</p>	<p>During construction or demolition</p>
<p>MIT-HWQ-2: Construction areas would be isolated from the free-flowing river through construction of cofferdams, sediment berms, filter fabric and/or grass straw bales. Uncrushed, cleaned gravels would be used to construct an equipment work support floor, if necessary, inside the cofferdam. The support floor would help ensure construction equipment inside the</p>	<p>City of Modesto</p>	<p>Project contractor to implement construction requirements</p>	<p>City of Modesto, Central Valley Flood Control District</p>	<p>During construction or demolition</p>

cofferdam did not get stuck or fail in the river sediments.				
MIT-HWQ-3: Complete revegetation and stabilization of disturbed soils would include seeding and mulching of disturbed areas with native grass species.	City of Modesto	Project contractor to install vegetation and stabilize soil.	City of Modesto	Install new vegetation and soil stabilization after completion of construction or demolition
<p>MIT-N-1: The noise ordinance prohibits the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and state or federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):</p> <ul style="list-style-type: none"> a. A hammer, or any other device or implement used to pound or strike an object. b. An impact wrench, or other tool or equipment powered by compressed air. c. A hand-powered saw. d. Any tool or piece of equipment powered by an internal-combustion engine such as, but not limited to, chain saw, backpack blower, and lawn mower. e. Any electrically powered (whether by alternating current electricity or by direct current electricity) tool or piece of equipment used for cutting, drilling, or shaping Chapter V. Environmental Analysis Modesto General Plan Update Final Master EIR V-3-13 Section 3. Generation of Noise October 2008 wood, plastic, metal, or other materials or objects, such as, but not limited to, a saw, drill, lathe, or router. f. Any of the following: heavy equipment (such as but not 	City of Modesto	Project contractor to follow noise ordinance rules	City of Modesto	During construction or demolition

limited to bulldozer, steam shovel, road grader, back hoe), ground drilling and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), pile driving equipment, vibrating roller, sand blaster, gunite machine, trencher, concrete truck, and hot kettle pump.

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EXHIBIT D
DENNETT DAM

