

**STAFF REPORT**

**66**

A 5

08/23/19

S 12

W 6005.195

R. B. Greenwood

**NON-EXCLUSIVE GEOLOGICAL SURVEY PERMIT**

**APPLICANT:**

Madera County Public Works Department

**BACKGROUND:**

Madera County Public Works Department (Applicant) has applied for a 1-year Non-Exclusive Geological Survey Permit (Permit). The Applicant is a public agency, and this authorization would allow the Applicant to collect geotechnical design data for a proposed project, known as the Common Diversion Facility Project, to replace seven existing and adjoining water intake pipes on the San Joaquin River, within Madera County, with a single intake pipe. The Applicant has submitted a separate lease application to the Commission for that project. That lease application is being processed and will be considered by the Commission at a subsequent Commission meeting.

In April 2019, the Commission authorized a 3-month Non-Exclusive Geological Survey Permit ([Item C63, April 19, 2019](#)), but the Applicant was unable to conduct the geological survey work before the permit expired on July 1, 2019, because it was not able to receive Section 404 authorization from the Army Corps of Engineers in time. This proposed 1-year permit is intended to provide enough time for the Applicant to obtain 404 authorization.

The proposed geological survey (test bore) involves drilling one 6.5-inch borehole, less than 50 feet deep. The boring would be drilled over a period of 5 days. The boring would be drilled at a location depicted in attached Exhibit A, using hollow stem auger drilling methods, down-hole sampling, and standard penetration testing. The truck-mounted drill rig would drill on the riverbank, below the historic ordinary low water mark. All drilling would isolate all activities from river waters. The bore hole would be abandoned by filling and sealing with bentonite, per permit requirements. Excess drill cuttings and wash water would be retained and properly disposed off-site. Upon request, the Commission would receive copies of all data collected under this permit.

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**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, 6212.2, and 6301; California Code of Regulations, title 2, section 2100.

**Public Trust and State's Best Interests Analysis:**

Madera County Public Works Department is a public agency and this authorization would allow the Applicant to collect geologic core samples. Collection of scientific data is a use recognized by the courts to be consistent with the common law Public Trust Doctrine. (See, for example, *Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260.) The Permit contains restrictions that protect public rights and environmental resources; for example, the Permit would be non-exclusive and is limited to 1 year. Staff believes that granting the Permit will not substantially interfere with the Public Trust needs at this location, at this time, and for the foreseeable term of the Permit.

For all the reasons above, staff believes the approval of the Permit application is consistent with the common law Public Trust Doctrine and is in the best interests of the State. Staff recommends approval of this Non-Exclusive Geological Survey Permit application.

**TERM OF PROPOSED PERMIT:**

1 year, beginning August 23, 2019, through August 22, 2020.

**OTHER PERTINENT INFORMATION:**

1. An Environmental Impact Report (EIR), State Clearinghouse No. 2018031001, was prepared for this project by Madera County Department of Public Works and certified on March 5, 2019. Staff has reviewed this document and Mitigation Monitoring Program prepared pursuant to the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21081.6) and adopted by the lead agency. The test bore to collect geotechnical information for the project was a component of the EIR; however, there were no significant impacts resulting from the specific boring activity. As a result, no mitigation measures were identified for the test bore activity.
2. 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.

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3. This action is consistent with the Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction.
4. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the permit, the applicant has no right to a new permit or to renewal of any previous permit.

**EXHIBIT:**

- A. Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDINGS:**

Find that an EIR, State Clearinghouse No. 2018031001 was prepared for this project by Madera County Department of Public Works and certified on March 5, 2019, and that the Commission has reviewed and considered the information contained therein; that in the Commission's independent judgement, the scope of activities to be carried out under the geological survey permit to be issued by this authorization have been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impact has occurred; and, therefore no additional CEQA analysis is required.

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

Find that proposed Permit will not substantially interfere with Public Trust needs and values, 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.

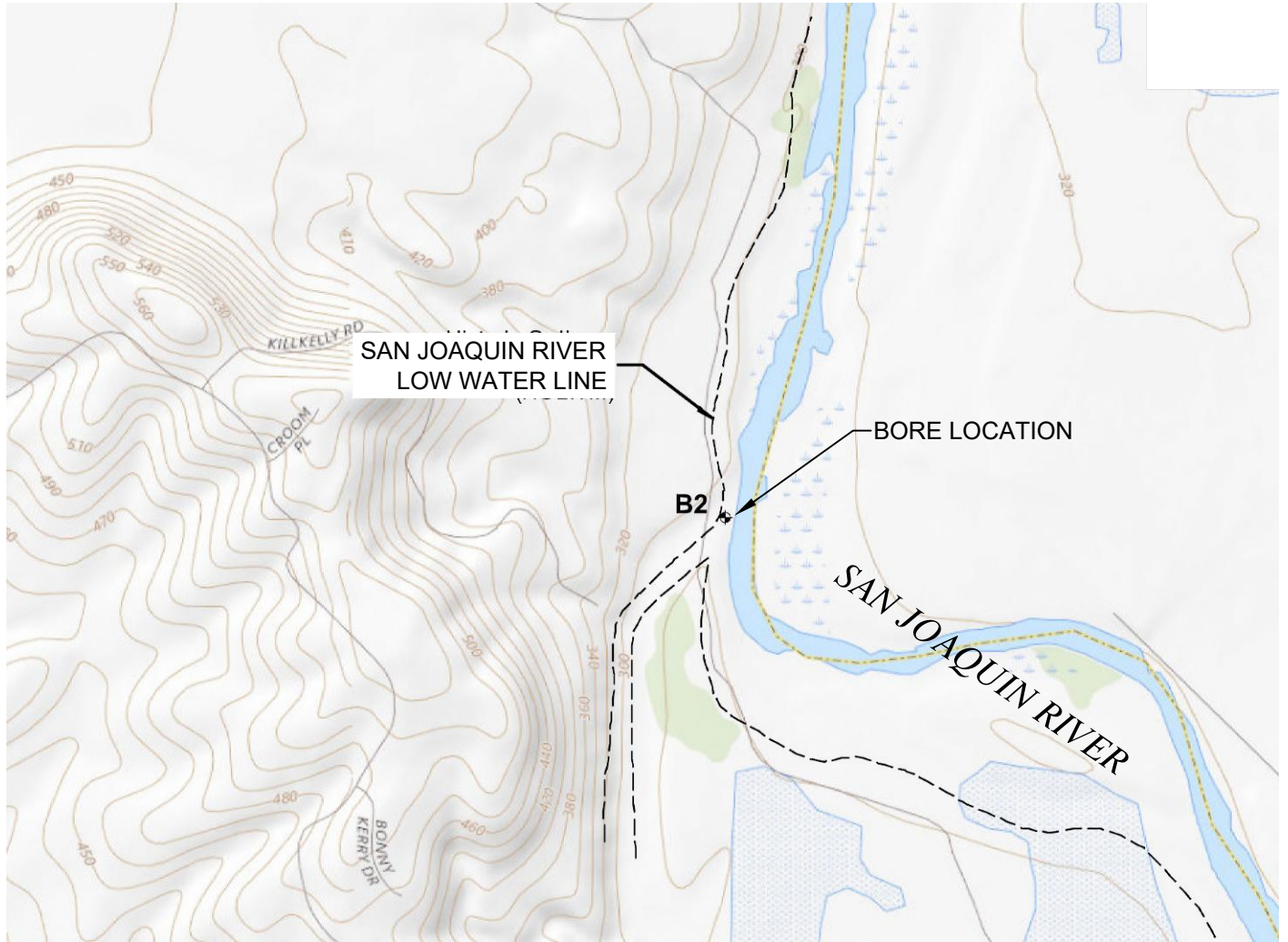
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**AUTHORIZATION:**

Authorize issuance of a Non-Exclusive Geological Survey Permit to Madera County Public Works Department for the period August 23, 2019, through August 22, 2020, within the project locations as shown on Exhibit A, attached and incorporated by reference herein.

NO SCALE

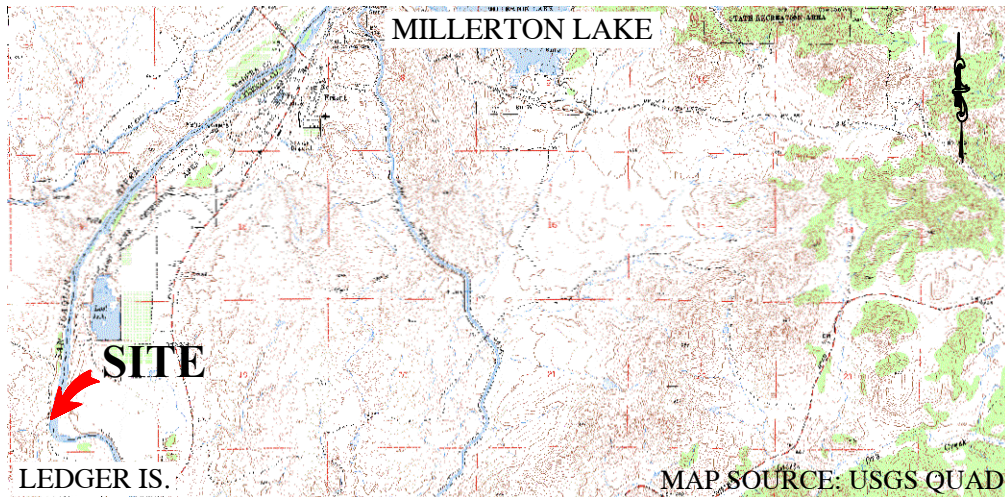
# SITE



**COMMON DIVERSION FACILITY BORE HOLE**

NO SCALE

# LOCATION



# **EXHIBIT A**

W6005.195  
 MADERA COUNTY  
 PUBLIC WORKS  
 GEOLOGIC SURVEY  
 PERMIT APPLICATION  
 MADERA 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.

JAK 7/19