



**US Army Corps
of Engineers®**

Sacramento District
Planning Division

Yuba River Ecosystem Restoration Feasibility Study

Yuba County, California

Appendix B: Cultural Resources Appendix

December 2018

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**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING THE
YUBA RIVER ECOSYSTEMS RESTORATION FEASIBILITY STUDY, YUBA,
NEVADA, PLACER, AND SIERRA COUNTIES, CALIFORNIA**

WHEREAS, the U.S. Army Corps of Engineers, Sacramento District (USACE), is conducting a feasibility study (Study) as authorized by the Rivers and Harbors Act of 1962, P.L. 87-874, Section 209 and a Senate Resolution issued on 28 April 2016 clarifying that ecosystem restoration is to be included in the investigation; and

WHEREAS, the Study is being conducted to identify and respond to problems and opportunities associated with ecosystem degradation in the Yuba River watershed. It is anticipated that the Study will identify a National Ecosystem Restoration (NER) Plan; and

WHEREAS, USACE proposes to study alternatives and measures that relate to improving and increasing the quality and quantity of riparian, aquatic, and general floodplain habitat including, but not limited to, the following measures: improvements to the river channel, floodplain, backwater areas, and vegetation to expand riparian forest and aquatic habitat for anadromous fish species and measures that will allow passage of fish around some of the dams within the Yuba River Drainage; and

WHEREAS, USACE has determined that the Study, and any subsequent associated project activities (Project), constitute an Undertaking, as defined in 36 C.F.R. § 800.16(y), and therefore is subject to Section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. § 306108 (NHPA); and

WHEREAS, USACE has defined the undertaking's preliminary area of potential effects (APE) as the riverbed as defined by the ordinary high water mark from the base of Englebright Dam in the east to the eastern city boundary of Marysville to the west, with several extensions above the high water mark to account for staging areas and vehicle access from existing highways, as described in Attachment 1; and

WHEREAS, USACE has determined that the Project may have an adverse effect on properties listed or eligible for listing in the National Register of Historic Places (NRHP) and has consulted with the California State Historic Preservation Officer (SHPO) pursuant to the NHPA; and

WHEREAS, at least 11 properties are known to be present within the Area of Potential Effects (APE), most of these properties have not been evaluated for National Register eligibility, and although extensive archaeological inventory has been completed within the APE under other projects, large portions of the APE have not been inventoried for Historic Properties; and

WHEREAS, USACE, with the concurrence of SHPO, has decided to comply with Section 106 of the NHPA for the Project through the execution and implementation of this Programmatic Agreement (PA) because USACE cannot fully determine the effects of the Undertaking on Historic Properties [36 C.F.R. § 800.14(b)(1)(ii)], for all segments of the Project at this time; and

WHEREAS, this PA shall establish the process USACE shall follow for compliance with 54 U.S.C. § 306108 (formerly 16 U.S.C. § 470f, referred to hereinafter as "Section 106"), taking into consideration the views of the Signatories and Concurring Parties; and

WHEREAS the Yuba County Water Agency (YCWA) is the non-Federal Sponsor for the study and has been invited to be an Concurring Party to this PA; and

WHEREAS, in accordance with 36 C.F.R. §§ 800.2(c)(2)(ii)(A), 800.3(f)(2), and 800.14(b)(2)(i), USACE has contacted federal and state recognized Indian tribes, via letter(s), phone call(s), email(s), and meetings, to invite them to consult on the Project and this PA, including the Buena Vista Rancheria of the Me-Wuk Indians of California, the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, the Colfax-Todds Valley Consolidated Tribe, the Cortina Wintun Environmental Protection Agency, the El Dorado Miwok Tribe, the Enterprise Rancheria of Maidu Indians of California, the Lone Band of Miwok Indians of California, the Mechoopda Indian Tribe of Chico Rancheria, the Mooretown Rancheria of Maidu Indians, the Nashville-El Dorado Miwok, the Shingle Springs Band of Miwok Indians, the Strawberry Valley Rancheria, the T'si-Akim Maidu, the United Auburn Indian Community of the Auburn Rancheria, the Wilton Rancheria, the Yocha Dehe Wintun Nation, and interested Native American individuals; USACE has invited them (and others who may be identified in the future as appropriate Concurring Parties) to participate as Concurring Parties to this PA; and USACE will continue consultation throughout the duration of this PA; and

WHEREAS, the Enterprise Rancheria and the United Auburn Indian Community of the Auburn Rancheria (UAIC) have responded and agreed to consult on the development of this PA, and UAIC has provided a sensitivity map identifying areas of cultural and religious significance; and

WHEREAS, the definitions set forth in 36 C.F.R. § 800.16 are incorporated herein by reference and apply throughout this PA; and

WHEREAS, the definitions for Signatory Parties set forth in 36 C.F.R. § 800.6(c)(1), and the definitions for Concurring Parties set forth in 36 C.F.R. § 800.6(c)(3), are incorporated herein by reference and apply throughout this PA; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), USACE has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen to participate in the

consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(4) and 36 C.F.R. § 800.14(b)(2)(ii), USACE has notified the public of the Project and provided an opportunity for members of the public to comment on the Project and the Section 106 process as outlined in this PA;

NOW, THEREFORE, USACE, the SHPO, and the ACHP agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on Historic Properties.

STIPULATIONS

USACE shall ensure that the following stipulations are carried out:

I. TIME FRAMES AND REVIEW PROCEDURES

- A. For all documents and deliverables produced in accordance with the stipulations of this PA, including findings and effects determinations, USACE shall provide a draft document to the SHPO, Concurring Parties, and Indian tribes for review. Any written comments provided by the SHPO, Concurring Parties, and Indian tribes, within thirty (30) calendar days from the date of receipt, shall be considered in the revision of the document or deliverable. USACE shall document and report the written comments received for the document or deliverable and how comments were addressed. USACE shall provide a revised final document or deliverable to the SHPO, Concurring Parties, and Indian tribes. The SHPO, Concurring Parties, and Indian tribes shall have thirty (30) calendar days from receipt to respond. Failure of the SHPO, Concurring Parties, and Indian tribes to respond within thirty (30) calendar days of receipt of any submittal shall not preclude USACE from moving to the next step in this PA.
- B. Should the SHPO object to the final document or deliverable submitted for review, USACE and SHPO shall consult for a period not to exceed fifteen (15) Calendar days (or other agreed to time period) following the receipt of the SHPO's written objection in an effort to come to agreement on the issues to which the SHPO has objected. Should the SHPO and USACE be unable to agree on the issues to which the SHPO has objected, the SHPO and USACE shall proceed in accordance with **Stipulation XIV (Dispute Resolution)**, below. The timeframe to consult to resolve a disagreement or objection may be extended by mutual consent of USACE and the SHPO.

II. TRIBAL INVOLVEMENT

- A. In consultation with Indian tribes, USACE will make a reasonable and good-faith effort to identify properties of traditional religious and cultural importance. USACE has initiated consultation with Indian tribes with respect to the Project and will ensure that consultation continues throughout the implementation of this PA.
- B. In accordance with the guidance provided in National Register Bulletin 38 and Preservation Brief 36, USACE will seek comments from all Indian tribes in making determinations of NRHP eligibility for any Traditional Cultural Properties (TCPs) and Cultural Landscapes (as defined in Bulletin 38 and Preservation Brief 36). Review of documentation shall be consistent with **Stipulation I (Timeframes and Review Procedures)**.

- C. Indian tribes may choose not to sign this PA as a Concurring Party. Indian tribes and individuals not acting as Concurring Parties to the PA will be contacted when USACE identifies potential interest in a specific action of the project. USACE will make a good faith effort to identify any Native American organizations and individuals with interest in the proposed treatment of Historic Properties. The identification effort may include contacting the Native American Heritage Commission (NAHC), using online databases, and using personal and professional knowledge. USACE will then contact each identified organization and individual by mail or email inviting them to consult about the specific Historic Properties. If interest from the contacted parties is received by USACE, USACE will proceed to consult in accordance with **Stipulation II.A. (Tribal Involvement)**. Further consultation may also be carried out through either letters of notification, emails, public meetings, environmental assessments/environmental impact statements, site visits, and/or another method requested by a Native American interested party and Tribe. Failure of any contacted group to comment within thirty (30) calendar days shall not preclude USACE from proceeding with the Project.
- D. USACE shall make a reasonable and good-faith effort to ensure that Indian tribes, acting as either Concurring Parties or those expressing interest in the project, will be invited to participate in the development and implementation of the terms of this PA, including, but not limited to, the identification of the APE, identification of potential Historic Properties, determinations of eligibility, findings of effect, and the resolution of adverse effect for those Historic Properties. Review periods shall be consistent with **Stipulation I (Timeframes and Review Procedures)** except in situations involving unanticipated discoveries and treatment, which shall follow the review schedules of **Stipulation IX (Inadvertent Discoveries and Unanticipated Effects)**. USACE shall ensure that all interested Native American reviewers shall receive copies of all final survey and evaluation reports.

III. AREA OF POTENTIAL EFFECTS

The APE for Project activities includes the construction footprint of the activity and a reasonable buffer determined through consultation between SHPO, Concurring Parties, and Indian tribes, and USACE, and takes into account the likelihood of direct and indirect effects to Historic Properties resulting from the Project. **Attachment 1** includes an overall APE map for the Project. The current, overall APE includes the riverbed as defined by the ordinary high water mark from the base of Englebright Dam in the east to the eastern city boundary of Marysville to the west, with several extensions above the ordinary high water mark to account for staging areas and vehicle access from existing highways. It will be necessary to further refine the APE as design and construction proceed. Prior to activities under **Stipulation IV (Identification and Evaluation)**, USACE shall submit to the SHPO, Concurring

Parties, and Indian tribes a map of the revised APE, and a description of the Project activities that would occur within it, in accordance with **Stipulation I (Timeframes and Review Procedures)**. Revisions to the APE will not necessitate modifications to this PA.

A. USACE ensures the final APE includes:

- (1)** The extent of all Project construction and excavation activity required to improve riparian, aquatic, and floodplain habitat and improve river drainage control features such as dams, fish ladders, channels, and levees; and
- (2)** The additional right-of-way/easements obtained by USACE as part of the Project's features; and
- (3)** All areas used for excavation of borrow material and habitat creation; and
- (4)** All construction staging areas, access routes, spoil areas, and stockpiling areas, and
- (5)** Any areas where indirect effects may be reasonably anticipated.

B. After the final APE has been defined and consulted on in accordance with **Stipulation III (Area of Potential Effects) above, construction or other Project activities may require revisions to the APE. If the final APE is revised, USACE shall consult on that revision in accordance with **Stipulation I (Timeframes and Review Procedures)**, and USACE shall determine the potential for Project activities in a revised APE to affect potential Historic Properties, in accordance with **Stipulation IV (Identification and Evaluation)**.**

C. Amendment of the APE, by agreement of the SHPO and USACE, shall not require amendment of this PA.

IV. IDENTIFICATION AND EVALUATION

USACE shall complete any identification and evaluation of Historic Properties prior to proceeding with construction.

A. Identification of Historic Properties: An inventory of properties within the final APE, agreed to under Stipulation I, consistent with the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716–44740) will be initiated for the Project as construction details become available.

Survey recordation shall include features, isolates, and re-recordation of

previously recorded sites, as necessary. The survey shall ensure that Historic Properties such as historical structures and buildings, historical engineering features, landscapes, viewsheds, and traditional cultural properties (TCPs) with significance to Native American communities, are recorded in addition to archaeological sites. Recordation of historic structures, buildings, objects, and sites shall be prepared using the California Department of Parks and Recreation (DPR) 523 Site Record forms.

The inventory work shall include a geoarchaeological assessment of the potential that subsurface archaeological resources may exist in the APE, and an appropriate effort to find and identify such resources.

B. Property Types Exempt from Evaluation: Through consultation between USACE, SHPO, and the Concurring Parties, USACE has determined that the various property or feature types listed in **Attachment 2** shall be exempt from evaluation. USACE shall evaluate all other identified properties in accordance with **Stipulation IV.C (Evaluation of Properties)**.

C. Evaluation of Properties: After recordation on DPR 523 Site Record forms, identified properties shall be evaluated by a qualified professional for their eligibility for listing in the NRHP consistent with the *Secretary of Interior's Standards for Evaluation*, 36 C.F.R. § 60.4. In accordance with Stipulation I (Timeframes and Review Procedures), USACE shall submit a completed inventory and evaluation report to the SHPO and Concurring Parties.

1. If SHPO, any Concurring Parties, and/or Indian tribes disagree regarding eligibility, USACE shall notify all Signatories and Concurring Parties of the dispute and consult with the SHPO. If the dispute cannot be resolved, USACE shall seek a formal determination of eligibility from the Keeper of the National Register. The Keeper's determination will be final in accordance with 36 CFR 63.4.

V. DETERMINATION OF EFFECTS

Avoidance of adverse effects to Historic Properties is the preferred treatment approach. USACE will consider redesign of Project elements in order to avoid Historic Properties and Project effects that may be adverse. However, it may not be possible to redesign the Project in order to avoid adverse effects to Historic Properties.

USACE will apply the criteria of adverse effect, pursuant to 36 C.F.R. § 800.5(a)(1), to all Historic Properties within the APE. USACE shall prepare and submit the finding of effect document in accordance with **Stipulation I (Timeframes and Review Procedures)**.

If effects to Historic Properties are determined to be adverse, **Stipulation VI. (Historic Properties Treatment Plan)**, below, will be followed.

VI. HISTORIC PROPERTIES TREATMENT PLAN

If it is determined that project activities will result in adverse effects, USACE, in consultation with the SHPO, Concurring Parties, and Indian tribes, shall develop a Historic Properties Treatment Plan (HPTP) to resolve all adverse effects resulting from the Project, which would be appended to this PA. The HPTP shall outline the minimization and mitigation measures necessary to resolve the adverse effects to Historic Properties. Proposed mitigation measures may include, but are not limited to, oral history, historic markers, interpretive brochures, data recovery, and publications, depending on their criterion for eligibility. Development of appropriate measures shall include consideration of Historic Property types and provisions for avoidance or protection of Historic Properties where possible. If it is determined that archaeological and/or tribal monitors are appropriate, the HPTP shall include a Monitoring Plan.

If adverse effects are identified, the HPTP shall be in effect before construction commences. The HPTP may be amended and appended to this PA without amending the PA. USACE would submit the HPTP for review, in accordance with **Stipulation I (Timeframes and Review Procedures)**.

- A. Review:** USACE shall submit the Draft HPTP to the SHPO, Concurring Parties, and Indian tribes for review and comment pursuant to **Stipulation I (Timeframes and Review Procedures)**.
- B. Reporting:** Reports and other data pertaining to the treatment of effects to Historic Properties will be distributed to Concurring Parties to this PA, Indian tribes, and other members of the public, consistent with **Stipulation XIII (Confidentiality)** of this PA, unless parties have indicated through consultation that they do not want to receive a report or data.
- C. Amendments/Addendums/Revisions:** If a Historic Property that is not covered by the existing HPTP is discovered within the APE subsequent to the initial inventory effort, or if there are previously unexpected effects to a Historic Property, or if USACE and SHPO agree that a modification to the HPTP is necessary, USACE shall prepare an addendum to the HPTP. The USACE shall then submit the addendum to the SHPO, Concurring Parties, and Indian tribes for review and comment, and if necessary, shall follow the provisions of **Stipulation IX (Inadvertent Discoveries and Unanticipated Effects)**. The HPTP may cover multiple discoveries for the same property type.
- D. Data Recovery:** When data recovery is proposed, USACE, in consultation with the SHPO and Concurring Parties, shall ensure that specific Research

Designs are developed consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (ACHP, May 18, 1999)

- E. Final Report Documenting Implementation of the Historic Properties Treatment Plan:** Within one year after the completion of all work for the Project, USACE shall submit to the SHPO, Concurring Parties, and Indian tribes, a Final Report documenting the results of all work prepared under the HPTP, and the information learned from each of the Historic Properties. The submittal of the Final Report shall be in accordance with **Stipulation I (Timeframes and Review Procedures)**.

VII. QUALIFICATIONS

- A. Professional Qualifications:** All technical work required for historic preservation activities implemented pursuant to this PA shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of Interior's Professional Qualifications Standards* for archeology or history, as appropriate (48 FR 44739). "Technical work" here means all efforts to inventory, evaluate, and perform subsequent treatment such as data recovery excavation or recordation of potential Historic Properties that is required under this PA. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by SHPO and associated Project consultants.
- B. Historic Preservation Standards:** Historic preservation activities carried out pursuant to this PA shall meet the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716- 44740), as well as standards and guidelines for historic preservation activities established by the SHPO. USACE shall ensure that all reports prepared pursuant to this PA will be provided to the Signatories, Concurring Parties, and Indian tribes and are distributed in accordance with **Stipulation XIII (Confidentiality)**, and meet published standards of the California Office of Historic Preservation, specifically, *Preservation Planning Bulletin* Number 4(a), "Archaeological Resources Management Reports (ARMR): Recommended Contents and Format" (December 1989).
- C. Archeological Monitor Standards:** Archeological monitoring activities required for exploratory, construction, or construction related ground disturbing activities implemented pursuant to this PA shall be carried out by a person meeting, at a minimum, the *Secretary of Interior's Professional Qualifications Standards* for prehistoric or historic archaeology, as appropriate (48 FR 44739). "Archeological monitoring" here includes monitoring ground disturbing activities that have been determined by USACE to be occurring in areas potentially sensitive for Historic Properties

or buried resources.

VIII. NOTICES TO PROCEED WITH CONSTRUCTION

Notices to Proceed may be issued by USACE for individual construction segments, defined by USACE in its construction specifications, after the identification and evaluation of Historic Properties has been completed for the Project per **Stipulation IV (Identification and Evaluation)**, prior to resolution of adverse effects on Historic Properties within the APE provided that:

- A. The HPTP has been finalized for the Project in accordance with Stipulation VI; and
- B. Project development activities do not encroach within 30 meters (100 feet) of the known boundaries of any Historic Property as determined from archeological site record forms, other documentation, or as otherwise defined in consultation with the SHPO and other parties, as appropriate; and
- C. An archeological monitor meeting the professional qualifications as described in **Stipulation VII (Qualifications)**, is present during any Project activities that are anticipated to extend either vertically or horizontally into any areas designated to be archeologically sensitive by USACE, in consultation with SHPO, except in phases of construction where visual inspection of the construction area cannot be safely or feasibly accomplished.

IX. INADVERTENT DISCOVERIES AND UNANTICIPATED EFFECTS

- A. USACE is responsible for complying with 36 C.F.R. § 800.13(a) in the event of inadvertent discoveries of Historic Properties during implementation of the Project. Discoveries of previously unidentified historic properties or unanticipated adverse effects to known historic properties are not anticipated, however if there is an inadvertent discovery or unanticipated effect, USACE will ensure that the following stipulations are met. These provisions will be included in all construction, operations, and maintenance plans and project managers will brief field personnel.
- B. Inadvertent Discovery/Unanticipated Effect:
 - 1. Properties not previously identified which are discovered while conducting any Project action are subject to the terms outlined in this PA. If, at any point, such properties are discovered or an unanticipated effect occurs, all ground-disturbing activities within 100 feet of the initial location of discovery or effect will cease immediately. Activity within 100 feet of the initial location of the discovery or effect will remain halted until the USACE agency official issues a Notice to Proceed (NTP) following the procedure outlined in Stipulation VII.

2. Within 24 hours, a qualified archaeologist will inspect the discovery. If the find is of Native American origin, Indian tribes and interested individuals will be consulted. Inspection of the discovery could entail shovel tests, auger pits, limited backhoe trenching, or other similar methods, which may occur concurrently with consultation with Indian tribes and interested individuals. The purpose of the inspection is to determine 1) is the discovery at least 50 years old; if so, 2) is the find associated with other materials; and, if so 3) are the associated materials in an intact or potentially intact deposit. If all three are affirmatively answered or if the discovery is of special importance or significance to interested Native Americans, then the discovery shall be considered a potential Historic Property and be formally evaluated. If the discovery is not 50 years old, is not intact, and is not of special importance or significance to Native Americans, then the discovery will be documented, USACE will be notified, and no further notifications or consultations shall be required.
3. The USACE cultural resources point of contact (POC) shall be notified by email within 24 hours of the discovery of a potential Historic Property. The USACE POC will be provided sufficient information to determine if additional investigations are needed to determine if the resource is a Historic Property or if the available information is sufficient for that purpose. The USACE cultural resources POC will be informed if there was a Native American monitor was present and, if so, their views concerning the find. Based on this notification, the USACE cultural resources POC shall do the following:
 - i. Determine if sufficient information is available to determine if the find is a Historic Property.
 - ii. Determine if additional investigations are warranted before additional notifications and consultation is conducted.
 - iii. Determine if immediate Native American consultation is warranted and, if so, immediately initiate consultation with Indian tribes and interested parties.
 - iv. If in agreement with a determination that a find is a Historic Property, USACE will ensure work is stopped until appropriate treatment has been determined and implemented.
 - v. The USACE Project Manager shall then initiate communication with the project design team to determine if alternative design or construction methods can be implemented to avoid, protect, or minimize adverse effects to the resource.
4. USACE shall notify the Signatories, Concurring Parties, and Indian tribes and interested individuals through email or phone call within 48 hours of the discovery or unanticipated effect. This initial notification shall describe the

nature of the discovery or unanticipated effect, describe the plan to protect the discovery or the resource(s) subject to an unanticipated effect in order to reduce/minimize effects to the extent practicable, and provide a timeline for carrying out the rest of the provisions in this section. Tribal representatives will be invited to inspect the discovery or effect.

5. Once USACE has determined that sufficient information is available to determine that a cultural resources discovery is a Historic Property, USACE, or its professionally qualified consultant, shall prepare a document that includes 1) a description of the discovered resource (with attached DPR 523 forms); 2) an assessment of the find as a potential Historic Property or a NRHP evaluation of the find if sufficient data is available, citing appropriate evaluation criteria; and 3) recommended avoidance or treatment measures. USACE shall provide this document by email to the Signatories, Concurring Parties, and Indian tribes and interested parties. The Signatories, Concurring Parties, and Indian tribes and interested parties shall have five (5) working days from receipt of the emailed document to comment and review the document and provide comments or recommendations to the USACE cultural resources POC.
6. If USACE receives no response after the five (5) working day period, USACE shall assume that there are no concerns with the proposed resolutions and shall proceed with implementation.
7. If a mitigation/treatment plan or other measures are adopted, Project activities in the 100 foot buffer, or other appropriate distance determined by USACE, will remain suspended until USACE provides an NTP.

C. Workforce Training: During implementation of Project activities, USACE, or archeologists meeting the professional qualifications as described in **Stipulation VII (Qualifications)**, will provide training to all construction personnel before they begin work, regarding proper procedures and conduct in the event that archeological materials are encountered during construction.

D. Human Remains: Treatment of human remains is governed by **Stipulation XI (Tribal Consultation and Treatment of Human Remains)**.

X. CURATION

Archeological items and materials from State or privately owned lands shall be maintained in accordance with 36 C.F.R. § 79 until any specified analyses are complete. Due to the lack of federal property subject to the undertaking, the final disposition of any materials collected during the course of the undertaking will be determined by the landowners pursuant to the specific state regulations that apply.

XI. TRIBAL CONSULTATION AND TREATMENT OF HUMAN REMAINS

In cases when human remains are discovered on non-federally owned property within the designated APE, NAGPRA would not apply. The YCWA and landowner shall ensure that Native American human remains and grave goods encountered during the Project that are located on state or private land are treated in accordance with the requirements in California State Health and Safety Code, Section 7050.5 and Public Resources Code 5097.98. If Native American human remains are encountered within the context of a National Register eligible archaeological site, a clear means of identifying those remains and grave goods will be described in the HPTP. Any procedures described in the HPTP regarding the handling or treatment of human remains will be coordinated with the landowner to ensure that they are consistent with Public Resources Code 5097.98. In the event that any Native American human remains or associated funerary items are identified, the Most Likely Descendant (MLD), as identified by the Native American Heritage Commission, shall be invited to advise the YCWA and landowner in the treatment of any Native American human remains and items associated with Native American burials.

XII. PUBLIC CONSULTATION AND PUBLIC NOTICE

- A.** Within thirty (30) calendar days of the effective date of this PA, USACE shall consult with the SHPO to compile a list of members of the interested public who shall be provided notice of this PA.
- B.** The interested public will be invited to provide input on the identification, evaluation, and proposed treatment of Historic Properties. This may be carried out through either letters of notification, public meetings, environmental assessment/environmental impact statements, and/or site visits. USACE shall ensure that any comments received from members of the public are taken under consideration and incorporated where appropriate. Review periods shall be consistent with **Stipulation I (Timeframes and Review Procedures)**. In seeking input from the interested public, locations of Historic Properties will be handled in accordance with **Stipulation XIII (Confidentiality)**. In cases where the release of location information may cause harm to the Historic Property, this information will be withheld from the public in accordance with Section 304 of the NHPA (54 U.S.C. § 307103).

XIII. CONFIDENTIALITY

Confidentiality regarding the nature and location of the archaeological sites and any other cultural resources discussed in this PA shall be limited to appropriate USACE personnel, USACE contractors, Indian tribes, the SHPO, and those parties involved in planning, reviewing and implementing this PA in accordance with Section 304 of the NHPA (54 U.S.C. § 307103).

XIV. DISPUTE RESOLUTION

Should any Signatory or Concurring Party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, USACE shall consult with such party to resolve the objection. If USACE determines that such objection cannot be resolved, USACE will:

- A. Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP. The ACHP shall provide USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. USACE will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. USACE's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

XV. NOTICES

- A. All notices, demands, requests, consents, approvals or communications from all parties to this PA to other parties to this PA shall be personally delivered, sent by United States Mail, and all parties shall be considered in receipt of the materials five (5) calendar days after deposit in the United States mail, certified and postage prepaid, return receipt requested.
- B. Signatory and Concurring Parties agree to accept facsimiles or copies of signed documents and agree to rely upon such facsimiles or copies as if they bore original signatures.

XVI. AMENDMENTS, NONCOMPLIANCE, AND TERMINATION

- A. **Amendment:** Any Signatory Party to this PA may propose that the PA be amended, whereupon USACE shall consult with the SHPO to consider such amendment. The PA may be amended only upon written concurrence of all Signatories.

All attachments to this PA, and other instruments prepared pursuant to this

PA may be individually revised or updated through consultation consistent with **Stipulation I (Timeframes and Review Procedures)** and agreement in writing of the Signatories without requiring amendment of this PA, unless the Signatories through such consultation decide otherwise. In accordance with **Stipulation XI (Tribal Consultation and Treatment of Human Remains)** and **Stipulation XII (Public Consultation and Public Notice)**, the Concurring Parties, interested Indian tribes, and interested members of the public, will receive amendments to the Project's description, initial cultural resource inventory report and maps of the APE, HPTs, and monitoring and discovery plans, as appropriate, and copies of any amendment(s) to the PA.

- B. Termination:** Only the Signatories may terminate this PA. If this PA is not amended as provided for in **Stipulation XVI.A. (Amendment)**, or if any Signatory proposes termination of this PA for other reasons, the Signatory proposing termination shall notify the other Signatory in writing, explain the reasons for proposing termination, and consult with the other Signatory to seek alternatives to termination, within thirty (30) calendar days of the notification. Should such consultation result in an agreement on an alternative to termination, the Signatories shall proceed in accordance with that agreement.

Should such consultation fail, the Signatory proposing termination may terminate this PA by promptly notifying the other Signatory and Concurring Parties in writing.

Once the PA is terminated, and prior to work continuing on the undertaking, USACE must either (a) execute a new agreement pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. USACE shall notify the signatories as to the course of action it will pursue

- C. Duration:** This PA shall remain in effect for a period of five (5) years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this five-year period unless it is terminated or amended prior to that time. No later than ninety (90) calendar days prior to the expiration date of the PA, USACE shall initiate consultation to determine if the PA should be allowed to expire automatically or whether it should be extended, with or without amendments, as the Signatories may determine.

XVII. ANNUAL REPORTING

At the end of every calendar year following the execution of this PA, USACE shall provide all parties to this PA a summary report detailing work carried out pursuant to its terms, if any. Such report shall describe progress made implementing the terms of the PA as well as include any scheduling changes proposed, any problems

encountered, and any disputes and objections received in USACE' efforts to carry out the terms of this PA. Any Signatory party may request to meet with the other Signatories to discuss implementation of this PA.

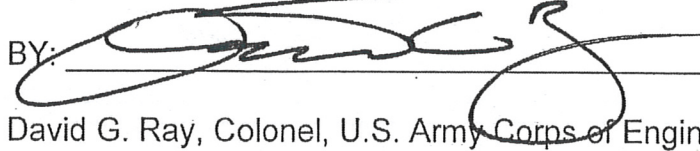
XVIII. EFFECTIVE DATE

This PA shall take effect on the date that it has been fully executed by USACE, the SHPO, and the ACHP.

EXECUTION of this PA by the USACE, SHPO, and the ACHP and implementation of its terms evidence that USACE has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

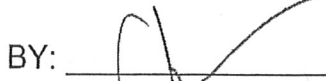
SIGNATORIES TO THIS PA:

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

BY:  DATE: 19 Nov 2018

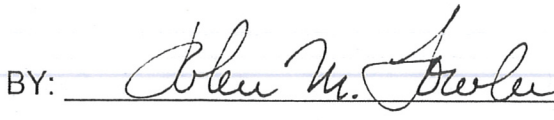
David G. Ray, Colonel, U.S. Army Corps of Engineers, District Engineer

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY:  DATE: 28 Nov 2018

Julianne Polanco, State Historic Preservation Office, State
Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY:  DATE: 12/11/18

John M. Fowler, Executive Director

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE YUBA RIVER ECOSYSTEMS RESTORATION, FEASIBILITY STUDY,
YUBA, NEVADA, PLACER, AND SIERRA COUNTIES, CALIFORNIA**

CONCURRING PARTIES:

YUBA COUNTY WATER AGENCY

BY: _____ DATE: _____

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE YUBA RIVER ECOSYSTEMS RESTORATION, FEASIBILITY STUDY,
YUBA, NEVADA, PLACER, AND SIERRA COUNTIES, CALIFORNIA**

CONCURRING PARTIES:

WASHOE TRIBE OF NEVADA AND CALIFORNIA

BY: _____ DATE: _____

Darrel Cruz, Tribal Historic Preservation Officer

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE YUBA RIVER ECOSYSTEMS RESTORATION, FEASIBILITY STUDY,
YUBA, NEVADA, PLACER, AND SIERRA COUNTIES, CALIFORNIA**

CONCURRING PARTIES:

GREENVILLE RANCHERIA

BY: _____ DATE: _____
Kyle Self, Chairperson

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE YUBA RIVER ECOSYSTEMS RESTORATION, FEASIBILITY STUDY,
YUBA, NEVADA, PLACER, AND SIERRA COUNTIES, CALIFORNIA**

CONCURRING PARTIES:

MOORETOWN RANCHERIA OF MAIDU INDIANS

BY: _____ DATE: _____
Gary Archuleta, Chairperson

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE YUBA RIVER ECOSYSTEMS RESTORATION, FEASIBILITY STUDY,
YUBA, NEVADA, PLACER, AND SIERRA COUNTIES, CALIFORNIA**

CONCURRING PARTIES:

ESTOM YUMEKA MAIDU TRIBE OF THE ENTERPRISE RANCHERIA

BY: _____ DATE: _____
Glenda Nelson, Chairperson

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE YUBA RIVER ECOSYSTEMS RESTORATION, FEASIBILITY STUDY,
YUBA, NEVADA, PLACER, AND SIERRA COUNTIES, CALIFORNIA**

CONCURRING PARTIES:

UNITED AUBURN INDIAN COMMUNITY OF THE AUBURN RANCHERIA

BY: _____ DATE: _____
Gene Whitehouse, Chairperson

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE YUBA RIVER ECOSYSTEMS RESTORATION, FEASIBILITY STUDY,
YUBA, NEVADA, PLACER, AND SIERRA COUNTIES, CALIFORNIA**

CONCURRING PARTIES:

TSI AKIM MAIDU.

BY: _____ DATE: _____
Don Ryberg, Chairperson

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE YUBA RIVER ECOSYSTEMS RESTORATION, FEASIBILITY STUDY,
YUBA, NEVADA, PLACER, AND SIERRA COUNTIES, CALIFORNIA**

CONCURRING PARTIES:

STRAWBERRY VALLEY RANCHERIA

BY: _____ DATE: _____
Cathy Bishop, Chairperson

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE YUBA RIVER ECOSYSTEMS RESTORATION, FEASIBILITY STUDY,
YUBA, NEVADA, PLACER, AND SIERRA COUNTIES, CALIFORNIA**

CONCURRING PARTIES:

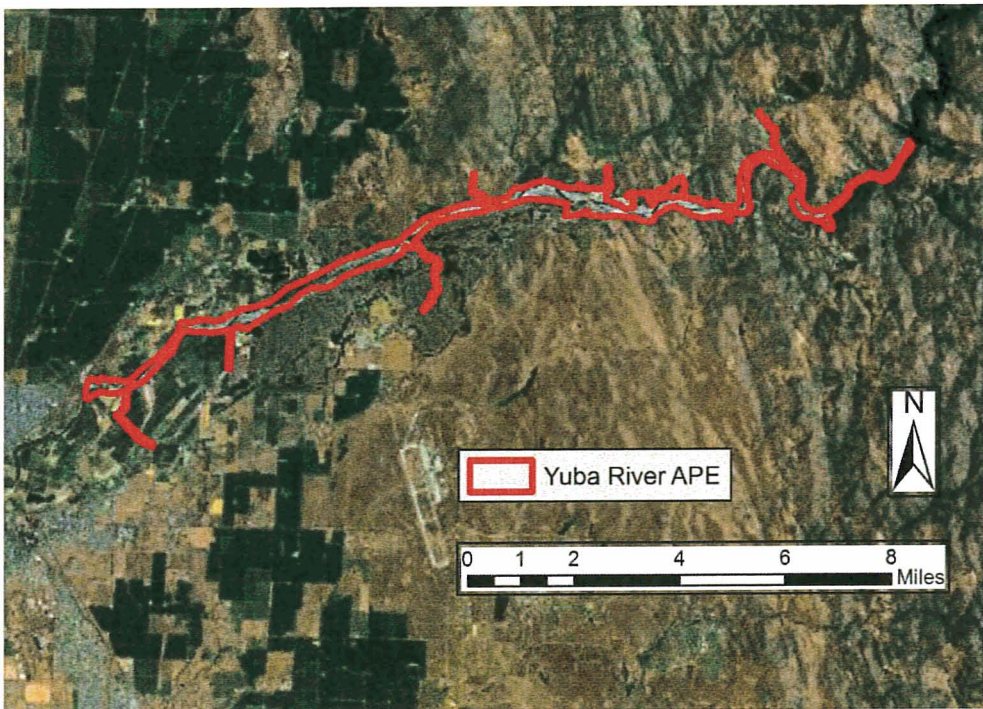
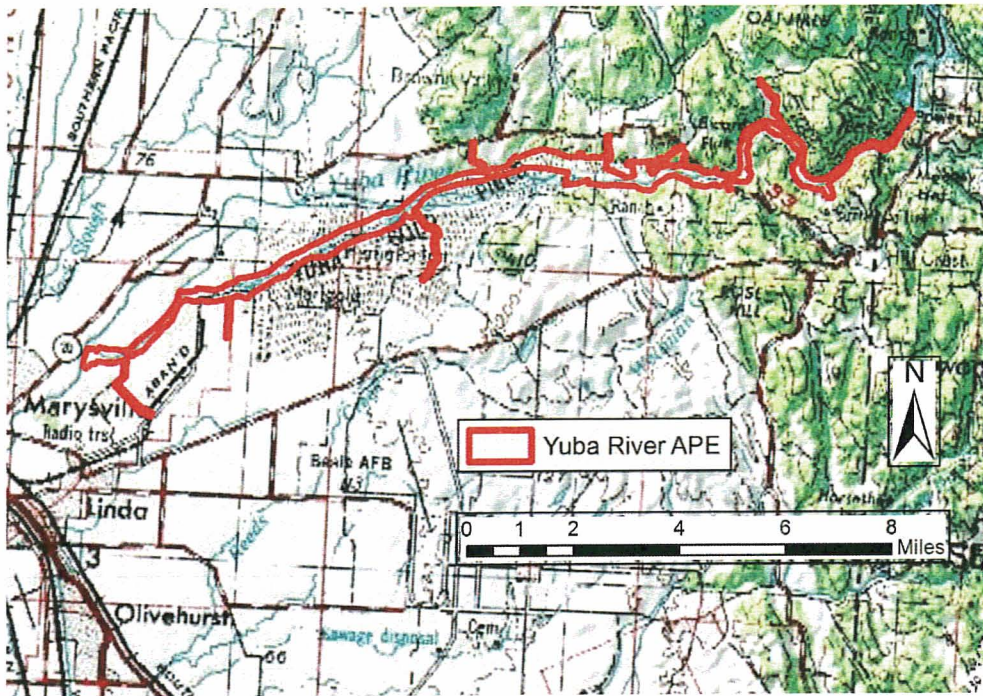
SHINGLE SPRINGS BAND OF MIWOK INDIANS

BY: _____ DATE: _____

Nicholas Fonseca, Chairperson

Attachment 1

Map of the Overall Project APE



Attachment 2

Property Types Exempted from Evaluation

This attachment defines categories of properties that do not warrant evaluation pursuant to Stipulation III.B of this Agreement. Only individuals meeting the Secretary of the Interior's Professional Qualification Standards pursuant to Stipulation VI.A of this agreement are authorized to determine whether properties meet the requirements of this attachment and are therefore exempt from evaluation and consultation with SHPO. Exempted properties may be documented, if documentation is warranted, at a level commensurate with the nature of the property (e.g., DPR 523 Primary Form, Location Map, memo). The USACE Cultural Resources staff shall make any final determinations on level of documentation required under this agreement.

Exempt Property Type 1: Archaeological Property Types and Features

1. Isolated prehistoric finds consisting of fewer than three items per 100 m²
2. Isolated historic finds consisting of fewer than three artifacts per 100 m² (several fragments from a single glass bottle, and similar vessels are to be counted as one artifact)
3. Refuse scatters less than 50 years old (scatters containing no material that can be dated with certainty as older than 50 years old)
4. Features less than 50 years old (those known to be less than 50 years old through map research, inscribed dates, etc.)
5. Isolated refuse dumps and scatters over 50 years old that lack specific associations
6. Isolated mining prospect pits
7. Placer mining features with no associated structural remains or archaeological deposits
8. Foundations and mapped locations of buildings or structures more than 50 years old with few or no associated artifacts or ecofacts, and with no potential for subsurface archaeological deposits

Exempt Property Type 2: Minor, Ubiquitous, or Fragmentary Infrastructure Elements

The following list does not apply to properties 50 years old or older that could be potentially important, nor does it apply to properties that may contribute to the significance of larger historic properties such as districts or cultural landscapes.

Water Conveyance and Control Features

- Natural bodies of water providing a water source, conveyance, or drainage
- Modified natural waterways

- Concrete-lined canals less than 50 years old and fragments of abandoned canals
- Roadside drainage ditches and secondary agricultural ditches
- Small drainage tunnels
- Flood storage basins
- Reservoirs and artificial ponds
- Levees and weirs
- Gates, valves, pumps, and other flow control devices
- Pipelines and associated control devices
- Water supply and waste disposal systems
- Rip-rap

Recent Transportation or Pedestrian Facilities

- Railroad grades converted to other uses, such as roads, levees, or bike paths
- Bus shelters and benches
- Vista points and rest stops
- Bike paths, off-road vehicle trails, equestrian trails, and hiking trails
- Parking lots and driveways

Highway and Roadside Features

- Isolated segments of bypassed or abandoned roads
- Retaining walls
- Highway fencing, soundwalls, guard rails, and barriers
- Drains and culverts, excluding culverts assigned a Caltrans bridge number
- Cattle crossing guards
- Roadside landscaping and associated irrigation systems
- Signs and reflectors
- Telecommunications services, including towers, poles, dishes, antennas, boxes, lines, cables, transformers, and transmission facilities
- Utility services, including towers, poles, boxes, pipes, lines, cables, and transformers
- Oil and gas pipelines and associated control devices

Adjacent Features

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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

Environmental Resources Branch

MAR 23 2018

Julianne Polanco
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Dear Ms. Polanco:

The U.S. Army Corps of Engineers, Sacramento District (Corps) is writing to initiate consultation on the development of a Programmatic Agreement (PA) for the Yuba River Ecosystem Restoration Feasibility Study (YRER) and request your participation as a signatory party to the PA, pursuant to 36 CFR §800.4(b)(2) and 36 CFR 800.14(b). At this time, the Corps has tentatively identified a selected plan for the partial restoration of the lower Yuba River. The PA is intended to guide the resolution of any adverse effects that YRER may have on historic properties.

This project will allow the Corps and the Yuba County Water Agency (YCWA) to restore conditions derived from almost 150 years of intense human degradation and to enhance and improve the Yuba River's ecosystem. The Corps is authorized to study the Sacramento River Basin, including the Yuba River, for flood control and allied purposes, including ecosystem restoration according to the Rivers and Harbors Act of 1962, P.L. 87-874, Section 209. A Senate Resolution issued on 28 April 2016 indicates that ecosystem restoration is to be included in the investigation. Most of the proposed project activities will take place within the stream bed and high flow channel of the Yuba River. Specifically, the areas under consideration for this feasibility study include a 24 mile stretch of the Yuba River downstream of Englebright Dam to the confluence of the Yuba and Feather rivers in Marysville, though the final APE will likely be much smaller. Because this federal action qualifies as an undertaking, compliance with Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. 306108) is required.

We are submitting to you a draft of the PA, including a map of the project area identifying the APE (enclosure) and are requesting any written comments you may have within 30 days of receipt of this letter. Please send comments and questions to Dr. Steven Highland, Archaeologist, U.S. Army Corps of Engineers, Sacramento District, 1325 J St. Sacramento, CA, 95814-2922, or by phone at (916) 557-5377 or by email at Steven.Highland@usace.army.mil. Project specific questions should be directed to Ms. Chelsea Stewart, Project Manager, at (916) 557-6979 or by email at Chelsea.D.Stewart@usace.army.mil.

Sincerely,

for Mark T. Ziminske
Chief, Environmental Resources Branch

Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

Environmental Resources Branch

MAR 23 2018

Christopher Daniel
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001-2637

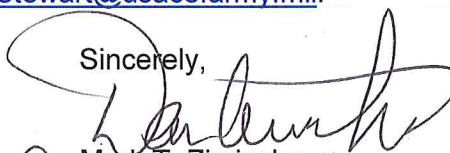
Dear Mr. Daniel:

The U.S. Army Corps of Engineers, Sacramento District (Corps) is writing to initiate consultation on the development of a Programmatic Agreement (PA) for the Yuba River Ecosystem Restoration Feasibility Study (YRER) and request your participation as a signatory party to the PA, pursuant to 36 CFR §800.4(b)(2) and 36 CFR 800.14(b). At this time, the Corps has tentatively identified a selected plan for the partial restoration of the lower Yuba River. The PA is intended to guide the resolution of any adverse effects that YRER may have on historic properties.

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Sincerely,



for Mark T. Ziminske

Chief, Environmental Resources Branch

Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

Environmental Resources Branch

MAR 23 2018

Gary Archuleta, Chairperson
Mooretown Rancheria of Maidu Indians
#1 Alverda Drive
Oroville, CA 95966

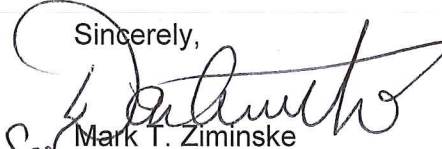
Dear Chairperson Archuleta:

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Sincerely,


Mark T. Ziminske
Chief, Environmental Resources Branch

Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

MAR 23 2018

Environmental Resources Branch

Cathy Bishop, Chairperson
Strawberry Valley Rancheria
P.O. Box 667
Marysville, CA 95901

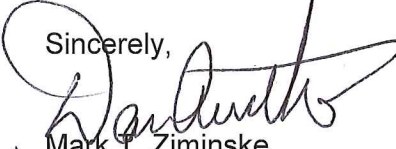
Dear Chairperson Bishop:

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Sincerely,


Mark T. Ziminske
Chief, Environmental Resources Branch

Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

MAR 23 2018

Environmental Resources Branch

Grayson Coney, Cultural Director
Tsi Akim Maidu
P.O. Box 510
Browns Valley, CA 95918

Dear Cultural Director Coney:

The U.S. Army Corps of Engineers, Sacramento District (Corps) is writing to initiate consultation on the development of a Programmatic Agreement (PA) for the Yuba River Ecosystem Restoration Feasibility Study (YRER) and request your participation in the development and review of this PA as a concurring party, pursuant to 36 CFR §800.4(b)(2) and 36 CFR 800.14(b). At this time, the Corps has tentatively identified a selected plan for the partial restoration of the lower Yuba River. The PA is intended to guide the resolution of any adverse effects that YRER may have on historic properties.

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Sincerely,

Mark T. Ziminske

Chief, Environmental Resources Branch

Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

MAR 23 2018

Environmental Resources Branch

Darrel Cruz, Cultural Resources Department, THPO
Washoe Tribe of Nevada and California
919 Highway 395 South
Gardnerville, NV 89410

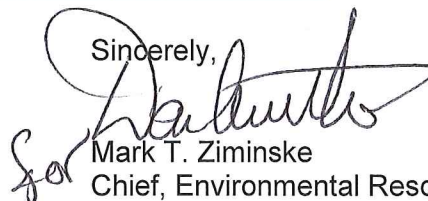
Dear Mr. Cruz:

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Sincerely,



Mark T. Ziminske
Chief, Environmental Resources Branch

Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

MAR 23 2018

Environmental Resources Branch

Nicholas Fonseca, Chairperson
Shingle Springs Band of Miwok Indians
P.O. Box 1340
Shingle Springs, CA 95682

Dear Chairperson Fonseca:

The U.S. Army Corps of Engineers, Sacramento District (Corps) is writing to initiate consultation on the development of a Programmatic Agreement (PA) for the Yuba River Ecosystem Restoration Feasibility Study (YRER) and request your participation in the development and review of this PA as a concurring party, pursuant to 36 CFR §800.4(b)(2) and 36 CFR 800.14(b). At this time, the Corps has tentatively identified a selected plan for the partial restoration of the lower Yuba River. The PA is intended to guide the resolution of any adverse effects that YRER may have on historic properties.

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Sincerely,

Mark T. Ziminske
Chief, Environmental Resources Branch

Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

Environmental Resources Branch

MAR 23 2018

Glenda Nelson, Chairperson
Estom Yumeka Maidu Tribe of the Enterprise Rancheria
2133 Monte Vista Avenue
Oroville, CA 95966

Dear Chairperson Nelson:

The U.S. Army Corps of Engineers, Sacramento District (Corps) is writing to initiate consultation on the development of a Programmatic Agreement (PA) for the Yuba River Ecosystem Restoration Feasibility Study (YRER) and request your participation in the development and review of this PA as a concurring party, pursuant to 36 CFR §800.4(b)(2) and 36 CFR 800.14(b). At this time, the Corps has tentatively identified a selected plan for the partial restoration of the lower Yuba River. The PA is intended to guide the resolution of any adverse effects that YRER may have on historic properties.

This project will allow the Corps and the Yuba County Water Agency (YCWA) to restore conditions derived from almost 150 years of intense human degradation and to enhance and improve the Yuba River's ecosystem. The Corps is authorized to study the Sacramento River Basin, including the Yuba River, for flood control and allied purposes, including ecosystem restoration according to the Rivers and Harbors Act of 1962, P.L. 87-874, Section 209. A Senate Resolution issued on 28 April 2016 indicates that ecosystem restoration is to be included in the investigation. Most of the proposed project activities will take place within the stream bed and high flow channel of the Yuba River. Specifically, the areas under consideration for this feasibility study include a 24 mile stretch of the Yuba River downstream of Englebright Dam to the confluence of the Yuba and Feather rivers in Marysville, though the final APE will likely be much smaller. Because this federal action qualifies as an undertaking, compliance with Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. 306108) is required.

We are submitting to you a draft of the PA, including a map of the project area identifying the APE (enclosure) and are requesting any written comments you may have within 30 days of receipt of this letter. Please send comments and questions to Dr. Steven Highland, Archaeologist, U.S. Army Corps of Engineers, Sacramento District, 1325 J St. Sacramento, CA, 95814-2922, or by phone at (916) 557-5377 or by email at Steven.Highland@usace.army.mil. Project specific questions should be directed to Ms. Chelsea Stewart, Project Manager, at (916) 557-6979 or by email at Chelsea.D.Stewart@usace.army.mil.

Sincerely,

Mark T. Ziminske

Chief, Environmental Resources Branch

Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

MAR 23 2018

Environmental Resources Branch

Don Ryberg, Chairperson
Tsi Akim Maidu
P.O. Box 510
Browns Valley, CA 95918

Dear Chairperson Ryberg:

The U.S. Army Corps of Engineers, Sacramento District (Corps) is writing to initiate consultation on the development of a Programmatic Agreement (PA) for the Yuba River Ecosystem Restoration Feasibility Study (YRER) and request your participation in the development and review of this PA as a concurring party, pursuant to 36 CFR §800.4(b)(2) and 36 CFR 800.14(b). At this time, the Corps has tentatively identified a selected plan for the partial restoration of the lower Yuba River. The PA is intended to guide the resolution of any adverse effects that YRER may have on historic properties.

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Sincerely,

Mark T. Ziminske
Chief, Environmental Resources Branch

Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

MAR 23 2018

Environmental Resources Branch

Kyle Self, Chairperson
Greenville Rancheria
P.O. Box 279
Greenville, CA 95947

Dear Chairperson Self:

The U.S. Army Corps of Engineers, Sacramento District (Corps) is writing to initiate consultation on the development of a Programmatic Agreement (PA) for the Yuba River Ecosystem Restoration Feasibility Study (YRER) and request your participation in the development and review of this PA as a concurring party, pursuant to 36 CFR §800.4(b)(2) and 36 CFR 800.14(b). At this time, the Corps has tentatively identified a selected plan for the partial restoration of the lower Yuba River. The PA is intended to guide the resolution of any adverse effects that YRER may have on historic properties.

This project will allow the Corps and the Yuba County Water Agency (YCWA) to restore conditions derived from almost 150 years of intense human degradation and to enhance and improve the Yuba River's ecosystem. The Corps is authorized to study the Sacramento River Basin, including the Yuba River, for flood control and allied purposes, including ecosystem restoration according to the Rivers and Harbors Act of 1962, P.L. 87-874, Section 209. A Senate Resolution issued on 28 April 2016 indicates that ecosystem restoration is to be included in the investigation. Most of the proposed project activities will take place within the stream bed and high flow channel of the Yuba River. Specifically, the areas under consideration for this feasibility study include a 24 mile stretch of the Yuba River downstream of Englebright Dam to the confluence of the Yuba and Feather rivers in Marysville, though the final APE will likely be much smaller. Because this federal action qualifies as an undertaking, compliance with Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. 306108) is required.

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Sincerely,

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Mark T. Ziminske

Chief, Environmental Resources Branch

Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

Environmental Resources Branch

MAR 23 2018

Gene Whitehouse, Chairperson
United Auburn Indian Community of the Auburn Rancheria
10720 Indian Hill Road
Auburn, CA 95603

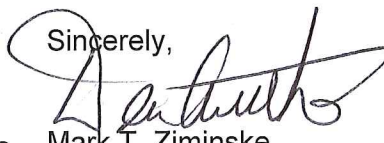
Dear Chairperson Whitehouse:

The U.S. Army Corps of Engineers, Sacramento District (Corps) is writing to initiate consultation on the development of a Programmatic Agreement (PA) for the Yuba River Ecosystem Restoration Feasibility Study (YRER) and request your participation in the development and review of this PA as a concurring party, pursuant to 36 CFR §800.4(b)(2) and 36 CFR 800.14(b). At this time, the Corps has tentatively identified a selected plan for the partial restoration of the lower Yuba River. The PA is intended to guide the resolution of any adverse effects that YRER may have on historic properties.

This project will allow the Corps and the Yuba County Water Agency (YCWA) to restore conditions derived from almost 150 years of intense human degradation and to enhance and improve the Yuba River's ecosystem. The Corps is authorized to study the Sacramento River Basin, including the Yuba River, for flood control and allied purposes, including ecosystem restoration according to the Rivers and Harbors Act of 1962, P.L. 87-874, Section 209. A Senate Resolution issued on 28 April 2016 indicates that ecosystem restoration is to be included in the investigation. Most of the proposed project activities will take place within the stream bed and high flow channel of the Yuba River. Specifically, the areas under consideration for this feasibility study include a 24 mile stretch of the Yuba River downstream of Englebright Dam to the confluence of the Yuba and Feather rivers in Marysville, though the final APE will likely be much smaller. Because this federal action qualifies as an undertaking, compliance with Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. 306108) is required.

We are submitting to you a draft of the PA, including a map of the project area identifying the APE (enclosure) and are requesting any written comments you may have within 30 days of receipt of this letter. Please send comments and questions to Dr. Steven Highland, Archaeologist, U.S. Army Corps of Engineers, Sacramento District, 1325 J St. Sacramento, CA, 95814-2922, or by phone at (916) 557-5377 or by email at Steven.Highland@usace.army.mil. Project specific questions should be directed to Ms. Chelsea Stewart, Project Manager, at (916) 557-6979 or by email at Chelsea.D.Stewart@usace.army.mil.

Sincerely,



Mark T. Ziminske
Chief, Environmental Resources Branch

Enclosure



Preserving America's Heritage

**Advisory Council on Historic Preservation
Electronic Section 106 Documentation Submittal System (e106) Form
MS Word format**

Send to: *e106@achp.gov*

I. Basic information

- 1. Name of federal agency** (If multiple agencies, state them all and indicate whether one is the lead agency):

United States Army Corps of Engineers (USACE), Sacramento District, Civil Works

- 2. Name of undertaking/project** (Include project/permit/application number if applicable)

Programmatic Agreement for the Yuba River Ecosystems Restoration Project (YRER)

- 3. Location of undertaking** (Indicate city(s), county(s), state(s), land ownership, and whether it would occur on or affect historic properties located on tribal lands):

Marysville; Yuba and Nevada Counties; California

The project is located on private lands; it will not occur on or affect historic properties located on tribal lands.

- 4. Name and title of federal agency official and contact person for this undertaking**, including email address and phone number:

Dr. Steven Highland
steven.highland@usace.army.mil
(916)557-5377

U.S. Army Corps of Engineers, Sacramento District
1325 J. Street
Sacramento, CA 95814-2922

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 □ Washington, DC 20001-2637
Phone: 202-517-0200 □ Fax: 202-517-6381 □ achp@achp.gov □ www.achp.gov

5. Purpose of notification. Indicate whether this documentation is to:

Propose to develop a project Programmatic Agreement (project PA) for complex or multiple undertakings in accordance with 36 C.F.R. 800.14(b)(3).

II. Information on the Undertaking*

6. Describe the undertaking and nature of federal involvement (if multiple federal agencies are involved, specify involvement of each):

The U.S. Army Corps of Engineers, Sacramento District, with its local partner, the Yuba County Water Agency (YCWA), is pursuing this project to partially restore parts of the Yuba River ecosystem after 150 years of intense human degradation. USACE is providing two-thirds of the funding for the project, while YCWA is providing one-third. Also, USACE is authorized to study the Sacramento River Basin for flood control and allied purposes, including ecosystem restoration according to the Rivers and Harbors Act of 1962, P.L. 87-874, Section 209. A Senate Resolution issued on 28 April 2016 indicates that ecosystem restoration is to be included in the investigation.

7. Describe the Area of Potential Effects:

The Area of Potential Effects (APE) of the project has yet to be fully determined as the project is currently in a feasibility phase in during which a clear APE will emerge as potential project actions are determined to be viable or not. The final APE will be located within 0.5 miles on either side of a 24 mile stretch of the Yuba River downstream of the Englebright Dam to the confluence of the Yuba and Feather Rivers in Marysville, CA.

8. Describe steps taken to identify historic properties:

In February 2017, records searches were conducted at the California Historical Resources Information System Northeast and North Central Centers in Chico, CA and Sacramento, CA, respectively. Additionally, consultation has been initiated with the California State Historic Preservation Officer and the tribes identified by the California Native American Heritage Commission (NAHC).

9. Describe the historic property (or properties) and any National Historic Landmarks within the APE (or attach documentation or provide specific link to this information):

As specific measures and the specific APE for the project are still being developed and substantial portions of the APE have likely not been surveyed for historic properties, USACE cannot accurately identify what historic properties may be present in the final APE.

10. Describe the undertaking's effects on historic properties:

As specific measures and the specific APE for the project are still being developed and substantial portions of the APE have likely not been surveyed for historic properties, the potential of YRER activities to adversely affect historic properties cannot currently be determined.

11. Explain how this undertaking would adversely affect historic properties (include information on any conditions or future actions known to date to avoid, minimize, or mitigate adverse effects):

As specific measures and the specific APE for the project are still being developed and substantial portions of the APE have likely not been surveyed for historic properties, the potential of adverse effects to historic properties as a result of this undertaking cannot currently be determined.

12. Provide copies or summaries of the views provided to date by any consulting parties, Indian tribes or Native Hawai'ian organizations, or the public, including any correspondence from the SHPO and/or THPO.

The United Auburn Indian Community has indicated that it wishes to continue consulting on the undertaking.

* see *Instructions for Completing the ACHP e106 Form*

III. Optional Information

13. Please indicate the status of any consultation that has occurred to date. Are there any consulting parties involved other than the SHPO/THPO? Are there any outstanding or unresolved concerns or issues that the ACHP should know about in deciding whether to participate in consultation?

14. Does your agency have a website or website link where the interested public can find out about this project and/or provide comments? Please provide relevant links:

15. Is this undertaking considered a “major” or “covered” project listed on the Federal Infrastructure Projects Permitting Dashboard or other federal interagency project tracking system? If so, please provide the link or reference number:

The following are attached to this form (check all that apply):

☐ Section 106 consultation correspondence

☐ Maps, photographs, drawings, and/or plans

☐ Additional historic property information

☒ Other: List of Native American Tribes sent the PA and asked to provide comments.

List of Native American Tribes provided by the California Native American Heritage Commission that may be interested in the development of the PA for the Yuba River Ecosystem Restoration:

Mailed 3/23/2018

Greenville Rancheria

Washoe Tribe of Nevada and California

Mooretown Rancheria of Maidu Indians

Estom Yumeka Maidu Tribe of the Enterprise Rancheria

United Auburn Indian Community of the Auburn Rancheria

Tsi Akim Maidu

Strawberry Valley Rancheria

Shingle Springs Band of Miwok Indians



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
1325 J STREET
SACRAMENTO, CALIFORNIA 95814

CESPK-PD-RC

June 11, 2018

SUBJECT: Yuba River Ecosystem Restoration Project Programmatic Agreement Response to Comments

General Comments

Any minor grammatical or punctuation changes or statement additions that were provided via track-changes were accepted, if agreed with, but are not specifically discussed below.

ACHP Comments

Whereas Clauses Comments

Whereas clauses have been changed to single sentences.

The term “cultural resources” has been changed to properties.

“Programmatic Agreement” has been shortened to “PA” once and PA is used throughout the rest of the document.

YCWA is the non-federal sponsor supporting this project. YCWA will pay a portion of the cost of the project, but the Corps will be responsible for the execution of the project, including all necessary cultural resources work. The Corps chooses to maintain the minimum number of signatories required, so will not invite the YCWA to be included as an invited signatory as their defined roles and responsibilities are not to the level of a signatory.

A Whereas clause has been inserted indicating what tribes responded and are participating.

Stipulation I

Concurring parties and Native American interested parties and Tribes were added to the statement concerning who will be provided final copies of the discussed documents, which include but are not limited to, findings and effects determinations.

Stipulation II

Concurring parties and Native American interested parties and Tribes were added to the statement concerning who will be consulted regarding the APE.

Stipulation III

The terms “Potential historic properties” and “cultural resources” have been replaced with “properties”.

The statement concerning the historic context, recordation, and treatment of levees, Daguerre Point Dam, and the Yuba Gold Fields has been removed as they, like all other properties, will be recorded and evaluated, as needed, during the 106 process.

A statement was added to III.C stating that the Keeper will be consulted if there is a disagreement regarding eligibility determinations.

Stipulation VII

All allusions to a historic properties management plan (HPMP) have been removed. The Corps plans to either avoid all historic properties or address any necessary mitigation through an HPTP.

Stipulation VIII

As there is the *potential* for a no adverse effect or no historic properties affected and, therefore, no need for an HPTP, a post-review discovery plan has been added directly to the PA.

Stipulation X.A

This has been altered to reflect that, yes, consultation with Native American Tribes has been initiated and that it will continue throughout the Section 106 process.

Stipulation XII

Allusions to the public or members thereof being a concurring party have been removed.

Stipulation XIV Dispute Resolution & Execution

The ACHP's language has been accepted.

SHPO Comments (minus any covered by answers to ACHP comments above)

Whereas Clauses Comments

Yes, this PA is intended to cover the study as well as implementation of the final design. All allusions to a phased approach have been removed. This Project requires a PA because it has not yet fully determined the final APE so, therefore, the eventual APE has not been fully inventoried for Historic Properties. Once the final APE has been determined, the Corps will re-consult on the APE, as stated in the PA, and fully inventory the APE all at once, without a phased approach.

Stipulation I

While Native American Tribes and interested parties are potential Concurring Parties, USACE will provide documents to all NAHC or otherwise interested Native American Tribes and interested parties, regardless of whether they sign the PA as a Concurring Party.

Stipulation III

As we do not yet have an agreed upon APE, USACE is leaving III.A in the PA. Stipulation III.B has been shortened and a list of exempted objects provided as Attachment 1.

Stipulation V

Stipulation V has been altered in an attempt to clarify it. USACE intends on having a single HPTP to address all adverse effects, thereby governing the effects of the entire Project. This, of course, could be one site, ten sites, etc. If an HPTP is needed, when the HPTP is developed, appropriate mitigation measures will be determined through consultation between USACE, SHPO, Concurring Parties, and Native American Tribes and interested individuals, rather than list out the intended mitigation measure for different potential property types in the PA.

Stipulation VII

The original VII.B was removed as a post-review discovery plan is now included as part of the PA.

The current VII.B only refers to Historic Properties (eligible properties).

Stipulation IX

As requested by UAIC, there will be no curation of Native American artifacts.

UAIC Comments

Request to be an invited signatory

USACE is extending the invitation to UAIC to be a Concurring Party. USACE wishes to maintain the minimum number of Signatories, limited to those with the roles and responsibilities that legally require them to be Signatories.

Amend PA to require no curation of Native American Objects

The PA has been amended to require no curation of Native American artifacts from lands owned and administered by the federal government. USACE can not control the ultimate destination of artifacts from State or private lands.

Identification and Evaluation

Any UAIC site information will be treated according to Stipulation XIII Confidentiality. Site information will only be shared with those individuals USACE deems appropriate and necessary for the implementation of the project. USACE has no intention of sharing any tribal knowledge with any unnecessary individuals or organizations. USACE will consider any requests by a tribe for stricter access to provided tribal information and will make every effort to respect the confidentiality requests of tribes. Under no circumstances would USACE unnecessarily disclose sensitive information shared by you to the public. USACE tribal policy states that to the extent allowable by law, USACE will protect the location

of historic properties, in consultation with tribes. USACE takes this obligation seriously. However, USACE is required to provide public access to its records under the Freedom of Information Act and can only withhold those records protected from disclosure under a statutory exemption or exclusion. Section 304 of the National Historic Preservation Act (NHPA) provides protection from disclosure for certain specific kinds of information about historic properties, but the application of that statute and the extent to which it applies, is finite. If UAIC has specific language regarding UAIC site confidentiality, please provide and USACE will consider including it.

USACE is open to the inclusion of a Tribal Perspectives section in any inventory, testing, and mitigation reports generated for this project, but does not consider the PA the location to identify and discuss it. Rather, such a topic is more appropriate during consultations regarding any inventory, testing, and mitigation actions and reports.

In regards to redeposited sites, the HPTP has not yet been developed. When one is developed, the Corps will consider adding a section on the identification and evaluation of redeposited sites.

All correspondence, meeting minutes, and emails are between USACE and any Tribe or interested party are included as part of the YRER administrative record as part of the consultation process.

Initiate Ethnographic Study

Stipulation III C refers to Property Types Exempt from Evaluation and never mentions an ethnographic study. Is this comment in reference to a different PA?

Recording and Testing Historic Properties in the Direct APE

The HPTP has not yet been developed and it is unclear whether testing will be required, so USACE cannot currently guarantee that testing will occur.

The Corps does not intend on testing any properties in the indirect APE, only properties directly affected would be potentially tested.

It is not yet clear if a forensic dog survey or any burial or culturally sensitive archaeological data recovery will be required. If so, it will be documented and discussed during the development of the HPTP.

It is unclear what Section A UAIC is referring to – is this in reference to another PA?

Preservation and avoidance is the Corps' preferred option as well.

Tribal Monitor Program

Stipulation X.F has been added to the PA, stating that a Tribal Monitoring Plan will be developed for the Project.

Notification and Participation regarding Notices to Proceed (NTPs)

NTPs are issued only by the Corps and only after Section 106 consultations are complete, but the Corps will inform the Tribes in advance of any NTPs.

Clarification on Consultants and Contractors

USACE, not YWCA, will select and hire any cultural resources consultants that are required for this Project, following standard USACE Sacramento contracting procedures.

Technical and Financial Responsibility for Reburial Coordination and Locations

USACE's responsibilities regarding the treatment of discovered human remains are outlined in Stipulation XI. USACE can take no financial responsibility for the treatment and reburial of human remains not discovered on federally owned property.

Memorandum of Agreement to Cover Agreed Upon Mitigation Options

The PA itself provides the mechanism for the development and approval of an HPTP, potentially including multiple mitigation options. UAIC will be consulted during the development of an HPTP, if one is necessary. An MOA in conjunction with the PA is not necessary.

ACHP Comments

APE – The current draft now includes a description of the current, overall APE in the Whereas clause and in Stipulation II and attempted to clarify that the overall APE as currently described will be likely reduced prior to finalization, so much of it may never be an active part of this project. The attachment showing this APE is included at the end.

Time Frames – The current draft includes the “or other agreed to time period” statement.

Identification and Evaluation – The current draft now includes the clarification that the *final* APE will be inventoried, not the current preliminary APE. Concurring parties have been included in determining property types exempt from evaluation.

NTP – The ACHP has been removed from development and finalization of the HPTP and the process for finalizing the HPTP has been clarified.

Termination – the results of termination have been clarified to reflect ACHP’s suggestion.

SHPO Comments

APE – See comments above.

Concurring Parties are now included in Stipulation III.B.

Stipulation VIII.B.2 – clarification concerning the treatment of potential Historic Properties, such as whether it will be treated as eligible or not, is provided in Stipulation VIII.B.3 through VIII.B.7.

USACE Responses to Comments on the Third Draft of the Yuba River Ecosystem Restoration Project PA

ACHP Comments

USACE has changed “SHPO, concurring parties, and Native American interested parties and Tribes” to “SHPO, concurring parties, and Indian tribes”, following ACHP’s suggestion and to more closely mirror the language in the regulations.

In Identification and Evaluation, USACE changed ”consulting parties” to “SHPO, concurring parties, and Indian tribes” as suggested.

In “Historic Properties Treatment Plan”, second paragraph, USACE shifted the order of sentences as suggested.

In “Historic Properties Treatment Plan C”, USACE removed “type” after “Historic Property”.

HPTP and NTP – USACE changed the statement “developed and implemented” to “in effect” to indicate that the HPTP will be written, consulted on, and agreed upon by all required parties prior to the commencement of construction; but, not all treatments will be completed prior to construction.

USACE added language to “Inadvertent Discoveries and Unanticipated Effects” to clarify the intent to evaluate all inadvertent discoveries, not just treat as eligible.

USACE moved “Tribal Involvement” from Stip X to Stip II and deleted Tribal Involvement C as recommended.

USACE moved all discussions of monitoring plans to the Historic Properties Treatment Plan stipulation, as USACE intends on including the monitoring Plan (archaeological and tribal) in the HPTP, not as a separate document.

SHPO Comments

USACE added language to “Inadvertent Discoveries and Unanticipated Effects” to clarify the intent to evaluate all inadvertent discoveries, not just treat as eligible.

UAIC Comments

Request to define “properties” in Whereas Clause 7 – Properties here refers to any of the resources described in the definition of “Historic Property” in 36 CFR 800.16, minus the evaluation of the resource as eligible or ineligible for inclusion in the NRHP. The use of this term follows the ACHP’s suggestion in comments on Draft 1 of this PA to use “properties” as that is the term used in the regulations, not “cultural resources” or another similar term.

USACE added language to Whereas Clause 12 indicating that UAIC provided a sensitivity map identifying areas of cultural and religious significance.

USACE continues to consider an invitation to UAIC to be a concurring party on the PA to be sufficient to accomplish the goals of the project and the protection of historic properties, including those identified by UAIC as culturally sensitive and important.

Concurring Parties Resolving Disputes – “Dispute Resolution” stipulation allows concurring parties to object at any time to any actions proposed or the manner in which the terms of this PA are implemented.

Tribal Involvement stipulation moved to Stipulation II.

Tribal Involvement Stipulation – The statement concerning the development of a Monitoring Plan has been moved to “Historic Properties Treatment Plan” as USACE intends on including any necessary plans in the HPTP, resulting in one single plan document rather than multiple documents. This will include an overall Monitoring Plan (archaeological and tribal), as well as any other plan that is deemed necessary when the HPTP is written, after the identification and evaluation stage.

Identification and Evaluation Stipulation – USACE considers the use of forensic dogs unnecessary to include in this PA as any property with previously observed human remains or

where burial associated objects have been physically proven to exist will be avoided by the actions of this project if at all possible. In the event that such a property could not be avoided, the use of forensic dogs would be considered.

Determination of Effects Stipulation – As stated, USACE will avoid any historic property, including unanticipated discoveries, if possible, given the constraints of the project. If a historic property cannot be avoided, USACE will consult with SHPO and Indian tribes, including UAIC, to determine an appropriate mitigation strategy, as described in Stipulation IX Inadvertent Discoveries and Unanticipated Effects. USACE can not guarantee that it can redesign the project to avoid a Historic Property.

Historic Properties Treatment Plan Stipulation – tribe cultural site locations – If a cultural site location identified by a tribe is not found to be a Historic Property, USACE can not state that it will treat them as such as USACE is limited by the regulations we must follow. USACE will attempt, though, to avoid impacts to those locations during project implementation.

Historic Properties Treatment Plan – Confidential Tribal Information – USACE will make every effort to maintain a tribe's wishes in regard to the confidentiality of tribally provided information. For example, when possible, USACE will limit the distribution of reports with tribally provided data to the signatories. USACE, as a federal agency, is subject to FOIA information requests, so has some limitations to its ability to maintain confidentiality (See Confidentiality stipulation).

Historic Properties Treatment Plan – Traditional Cultural Properties (TCPs) have to be identified by a tribe and then evaluated to determine whether it is or is not also a Historic Property. If it is not a Historic Property, USACE may would likely choose to try to avoid it, but is not required to avoid or mitigate it and somewhat limited in its behavior in regards to properties that are not eligible for inclusion in the NRHP.

Historic Properties Treatment Plan – An example of an unknown historic property type- If during the identification and evaluation of historic properties no placer mining related historic properties were identified, no mitigation strategy would be developed in the HPTP to address how to mitigate placer mining historic properties. So, if one is discovered after the identification and evaluation stage is complete, it is an unknown historic property type, requiring an amendment to the HPTP.

Historic Properties Treatment Plan – Data Recovery – USACE added “and Concurring Parties” after SHPO, but did not add “MLD” as any data recovery associated with known human remains falls under the “Tribal Consultation and Treatment of Human Remains” stipulation so is not relevant here.

Inadvertent Discoveries and Unanticipated Effects – USACE added “Tribal representatives will be invited to inspect the discovery or effect” to the end of B.4 as requested.

Curation – USACE can not direct or map out the decision making process for the potential curation of artifacts from State or private lands.

Curation - There is no federally owned property involved in this project, so no NAGPRA POA is relevant. If this changes, a NAGPRA POA will be developed. Also, as there is no federally owned property in this project, all allusions to curation related regulations as applied to federal property were removed from the Curation stipulation.

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