



PUBLIC NOTICE AND MEETING AGENDA

Delta Protection Commission

Monday, November 3, 2025, 5-7 p.m. (end time is approximate)
Sacramento-San Joaquin Delta Conservancy Conference Room
1450 Halyard Drive, Suite 6, West Sacramento CA

Webcast via TEAMS

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Meeting ID: 286 017 851 259 0

Passcode: C4nJ9D59

Phone number: +1 916-573-2034

Access code: 352423131#

Agenda

1. Call to order and Flag Salute
2. Welcome Executive Director Amanda Bohl & Roll Call
3. Public Comment – an opportunity for members of the public to address the Commission regarding items not on the agenda

Consent Agenda

4. Approval of Draft September 18, 2025, Meeting Minutes ([p. 4](#))

Regular Agenda

5. Report on Delta Stewardship Council Activities – Chair Diane Burgis
6. Report on Delta Protection Advisory Committee (DPAC) Activities – DPAC Chair Anna Swenson
7. Executive Director's Report – Amanda Bohl, Executive Director ([p. 8](#))
8. Approval of 2026 Meeting Schedule– Amanda Bohl, Executive Director ([p. 53](#))

9. Consideration and Potential Approval of Proposed Consent Agreement with Department of Justice and Delegation of Authority to the Executive Director to Execute the Agreement – Amanda Bohl, Executive Director and Nicole Rinke, Counsel ([p. 55](#))
10. Discussion Regarding the Department of Water Resource’s Submittal of a Certification of Consistency for the Delta Conveyance Project to the Delta Stewardship Council on October 17, 2025, and the Commission’s Procedural Options for a Potential Response – Virginia Gardiner, Program Manager ([p. 65](#))
11. Commissioner Comments/Announcements
12. Adjourn

The agenda items listed above may be considered in a different order at the Commission meeting, subject to the discretion of the Chair. At the discretion of the Commission, all items appearing on this agenda, whether or not expressly listed for action, may be deliberated upon and may be subject to action. The Commission welcomes and encourages participation in its meetings. For each agenda item, the Commission will invite public comment; comment will be limited to not more than three minutes per person, or more time at the discretion of the Chair. Meeting materials will be made available on the Commission’s website prior to the meeting. Hard copies will also be available at the in-person meeting location.

Questions, Comments, and Requests

If you have any questions or have a request for reasonable modification or accommodation due to a disability, please contact the Delta Protection Commission at dpc@delta.ca.gov or (916) 375-4800. Attachments and additional information can be found on the Delta Protection Commission website: delta.ca.gov.

Comments submitted to submit@delta.ca.gov by noon on November 2, 2025, will be shared with Commissioners prior to the meeting to the extent possible. Public comments on each agenda item will follow the order of: 1) emailed comments, 2) those verbally requesting to make comments after notice offered by Chair during meeting.

Delta Protection Commission Members

Diane Burgis, Chair, Contra Costa County Board of Supervisors | **John Vasquez, Vice Chair**, Solano County Board of Supervisors | **Oscar Villegas**, Yolo County Board of Supervisors | **Patrick Hume**, Sacramento County Board of Supervisors | **Sonny Dhaliwal**, San Joaquin County Board of Supervisors | **Anissa Williams**, Cities of Contra Costa and Solano counties | **David Kent**, Cities of Sacramento and Yolo Counties |

Cameron Bregman, Cities of San Joaquin County | **Jim Paroli**, Central Delta Reclamation Districts | **Tom Slater**, North Delta Reclamation Districts | **TBD**, South Delta Reclamation

Districts | **Toks Omishakin**, CA State Transportation Agency | **Karen Ross**, CA Department of Food and Agriculture | **Wade Crowfoot**, CA Natural Resources Agency | **TBD**, CA State Lands Commission

EX OFFICIO MEMBERS: **Rhodesia Ransom**, California State Assembly | **Jerry McNerney**, California State Senate

DRAFT Meeting Minutes

Delta Protection Commission

Thursday, September 18, 2025, 5-7 p.m. (end time is approximate)
West Sacramento Community Center
1075 West Capitol Ave, West Sacramento, CA 95691

Agenda

1. Call to Order and Flag Salute

Chair Diane Burgis called the meeting to order at 5:08 p.m.

2. Welcome and Roll Call

Commission Clerk Heather McClure called the roll. Present at roll call: Chair Burgis, Vice Chair John Vasquez, Pat Hume, Anissa Williams, David Kent, Tom Slater, Gloria Sandoval (for Wade Crowfoot), Brian Bugsch (for State Lands Commission), and Gary Prost (for Ex Officio Member Senator Jerry McNerney). At this time, a quorum was present. Commissioner Christine Birdsong (for Karen Ross) arrived at 5:12 p.m., prior to closed session.

Also present were staff members Interim Executive Director Dan Ray, Commission Clerk/Finance and Administration Manager Heather McClure, Program Manager Blake Roberts, and Information Officer Holly Heyser.

Oscar Villegas, Sonny Dhaliwal, Cameron Bregman, Dean Ruiz, Jim Paroli, Toks Omishakin, and Ex Officio Member Assemblymember Rhodesia Ransom were absent with no alternates present.

3. Public Comment – an opportunity for members of the public to address the Commission regarding items not on the agenda

There was none.

Closed Session Agenda

4. The Commission will meet in closed session to interview candidates for the Executive Director position and to consider and take possible action on the appointment of an Executive Director. This closed session is authorized by Government Code section 11126, subdivision (a)(1).

5. If necessary, the Commission may meet in closed session to consider and take possible action on the appointment of an Interim Executive Director. This closed session is authorized by Government Code section 11126, subdivision (a)(1).

The Commission adjourned to closed session at 5:12 p.m. and returned from closed session at 7:36 p.m. Counsel Nicole Rinke reported that on Item 4, the Commission, by a roll call vote, selected a candidate for the Executive Director role, pending background checks and other administrative processes that will now begin. When negotiations have been finalized, there will be a public announcement.

Rinke reported that on Item 5, the Commission, by a roll call vote, unanimously agreed to appoint Holly Heyser as the Interim Executive Director starting at the end of the month when Interim Executive Director Dan Ray's service concludes until the new Executive Director is in place.

It was noted that Commissioner Bugsch left the meeting before the vote on Item 6.

Consent Agenda

6. Approval of Draft Commission Meeting Minutes for July 17, 2025, August 6, 2025, and September 4, 2025; and Draft Executive Director Selection Ad Hoc Committee Meeting Minutes for July 23, 2025, and July 29, 2025.

7. Consider Appointments to the National Heritage Area Advisory Committee

Chair Burgis asked for public comment and there was none.

Motion: It was moved by Vice Chair Vasquez and seconded by Commissioner Hume to approve the consent agenda; in a voice vote, the motion passed 8-0-0, all Commissioners present voting aye.

Regular Agenda

8. Discussion and possible action regarding appointment and salary for the Executive Director and subsequent steps in the hiring process.

Nicole Rinke noted that the salary ranges come from the state and recommended delegating authority to the Chair to engage on behalf of the Commission in any salary discussions that need to occur with the candidate and the approving entity.

Chair Burgis asked for public comment and there was none.

Motion: It was moved by Vice Chair Vasquez and seconded by Commissioner Williams to approve the state's salary range for the candidate and to delegate authority for

negotiating specifics about salary to the Chair. In a voice vote, the motion passed 8-0-0, all Commissioners present voting aye.

9. Report on Delta Stewardship Council Activities – Chair Diane Burgis

Chair Burgis reported that she did not attend the August Delta Stewardship Council meeting, but noted that the Council was being briefed in preparation for the Department of Water Resources's anticipated filing of its Certification of Consistency with the Delta Plan for the Delta Conveyance Project, and that the hearings would be in January.

Chair Burgis asked for public comment and there was none.

10. Report on Delta Protection Advisory Committee (DPAC) Activities – DPAC Chair Anna Swenson

DPAC Chair Anna Swenson reported that DPAC met on Staten Island, hosted by new DPAC member Jerred Dixon, and welcomed a new agricultural seat member, Jeff Iniguez from Wilson Farms.

She said Jay Ziegler presented on Open ET and surface water reporting, and member Russ Ryan reported on South Delta Sediment Remediation.

Chair Burgis asked for public comment and there was none.

11. Executive Director's Report – Dan Ray, Interim Executive Director

Interim Executive Director Dan Ray noted that Commission members had his written report, and added that the staff is working hard to wrap up the next edition of its report on farmland conversions. He said while there have been many questions about the data staff used, getting data to answer those questions isn't so simple. It may be November before staff receive all the information they have requested.

Commissioner Slater said he thinks it's good to wait until the staff can get it right.

Ray also stated how much he's appreciated the opportunity to do this job over the past months. He told the Commission it has a great staff, and that with a little bit of direction, they have really shown what they can do. He highlighted some of the contributions of each staff member:

He said Information Officer Holly Heyser has done a great job of getting the DPC's name and work out there, as well as bringing forward good ideas for engagement.

He said Program Manager Virginia Gardiner, whom he's known since 1982, has so much knowledge about what the Commission has done, and brings skill as a planner and environmental analyst.

On the Heritage Area team, Ray noted that Program Manager Blake Roberts has a firm handle on the program and a good vision for it, and Information Officer Kira O'Donnell has brightened up the program with her sense about how to market it, and her enjoyment learning new things about it.

He said Commission Clerk and Finance and Administration Manager Heather McClure has been a phenomenal guide to him as he learned to navigate new state online systems, and he was happy to have been able to promote her.

Senior Environmental Planner Rachel Vanderwerff, he said, has a great understanding of GIS systems and other analytical skills, and she really gets agriculture, with her Iowa background.

Chair Burgis told Ray he has been the glue for the Commission, and that she had heard from most of the staff how very happy they are with what he's done for the Delta Protection Commission.

Commissioner Gloria Sandoval noted that Ray had been very open to meeting with California Natural Resources Agency leadership, which was appreciated by all.

Chair Burgis asked for public comment and there were none.

10. Commissioner Comments/Announcements

There were none.

11. Adjourn

Chair Burgis adjourned the meeting at 7:50 p.m.

Delta Protection Commission Meeting

November 3, 2025

AGENDA ITEM 7: Executive Director's Report

Prepared by: Amanda Bohl, Executive Director

Presented by: Amanda Bohl, Executive Director

Recommended Action: Receive the Executive Director's Report

Type of Action: Receive

Commission Budget Update

Budget and Spending for Delta Protection Commission - FY 25/26 Projected Budget

FY 25/26 Categories	Budget Amount	Total Expenses and Projections	Difference
Salaries/Wages and Benefits	\$1,553,000	\$1,144,300	\$408,700
Operating Expenses	\$410,700	\$769,120	(\$358,420)
Reimbursements	\$10,000	\$0	\$10,000
Total	\$1,973,700	\$1,913,420	\$60,280

National Heritage Area Advisory Committee

The National Heritage Area (NHA) Advisory Committee met on Wednesday, October 29, 2025, at the Big Break Regional Shoreline in Oakley. The agenda included a presentation from our consultant Honey Agency Inc. on the Tourism Branding and Marketing Plan, a discussion of membership of Tourism Branding and Marketing Plan-related advisory task groups, reports from the Delta 250 and water tour ad hoc task groups, recognition of past committee members, and an update on the partnership and passport programs.

The next NHA Advisory Committee meeting is scheduled for Wednesday, December 17, from 1 to 3 p.m. at a location to be determined.

National Heritage Area Partnership Program

In March, the Commission delegated authority to the Executive Director to sign Memoranda of Understanding (MOUs) with NHA partners. Since the September

Commission meeting, the Executive Director signed MOUs with California Delta Chambers & Visitors Bureau, City of West Sacramento, Crockett Chamber of Commerce, and Solano County Library. The Commission also entered into a new cooperative agreement with National Park Service.

National Heritage Area Passport Program

Passport to Your National Parks is a popular nationwide program that encourages travelers to get special “passports” stamped at participating national parks and national heritage areas. The NHA is participating in this program; launch is pending successful order of the stamps from the approved National Park Service vendor.

As of this writing, staff have lined up 28 stamping station locations with NHA Partners. They have also prepared substantial materials to facilitate and promote the program and the NHA, including:

- A [webpage](#): When the program is live, the page will include an interactive map where visitors can find stamping stations and other attractions nearby.
- A [Delta NHA fact sheet \(PDF\)](#): The fact sheet includes a “By the Numbers” section, basic information about the NHA, and an updated NHA map that lists all cities and towns in the NHA.
- A [Delta reading list](#): This was designed especially for libraries hosting stamping stations.
- Two types of displays to house self-serve stamping materials. The displays include QR codes and links to the NHA webpage, VisitCADelta.com, the Delta reading list, and a website where people can purchase passports. The larger display will include a fact-sheet holder.

National Heritage Area Outreach

Commission staff and NHA Advisory Committee members participated in the following outreach efforts:

- **Sacramento Historical Society Presentation:** Blake Roberts spoke about the Delta and NHA on September 23 in Sacramento.
- **California Native American Day:** Committee member Karen Buhr and Blake Roberts helped staff a booth for the three Delta state agencies on California Native American Day (September 26) held on the steps of the State Capitol.
- **American Planning Association California Chapter (APACA) Conference:**

Blake Roberts was the moderator and panelist for a session entitled “More to the Story: Comprehensive Strategies for Cultural Heritage Planning” on September 30 in Monterey.

- **San Joaquin County Historical Society and Museum Docent Council:** Blake Roberts spoke about the NHA to the Docent Council on October 13.
- **Sacramento Valley Section American Planning Association Awards Ceremony:** The Commission received an Award of Excellence in Planning Excellence for the NHA Management Plan on October 15 in West Sacramento.

Delta Conveyance Project

Discussion of the Department of Water Resources (DWR) Delta Conveyance Project (DCP) is addressed in a separate staff report to address DWR’s filing of a Certification of Consistency with the Delta Plan on October 17, 2025.

As reported in September, the National Historic Preservation Act (NHPA) Section 106 Programmatic Agreement (PA) for the DCP was submitted to the National Advisory Council on Historic Preservation after it was signed in late August by the mandated signatories: US Army Corps of Engineers (Corps), DWR and the State Historic Preservation Office (SHPO). Staff’s most recent comments on the PA to the Corps, in consultation with the Delta counties, were submitted July 18 but omitted inadvertently from the September Commission packet (see Comment Letters section below). The Commission in future may wish to sign as a concurring party, as could others who have been consulting parties to the PA development such as the Delta Counties Coalition. However, there is no specific timeframe for signing as a concurring party, and the matter can be revisited when appropriate.

Recreational Striped Bass Regulation

At the Commission’s July 17, 2025, meeting, the Commission voted unanimously to submit a letter to the California Fish and Game Commission (FGC) in support of a proposed regulation change setting a maximum slot limit for recreational striped bass harvest. The proposed regulatory amendments requested through a petition by Delta anglers would have kept the minimum size limit at 18 inches and set a maximum length limit at 30 inches for harvest of striped bass in anadromous waters. The petition’s stated goal was to protect larger, mature fish. Striped bass are a popular recreational fishery in the Delta whose population in the Delta has been in decline. They are also a predator of Delta smelt and other listed fish species. Since 2020, the Commission has endorsed the need to support this popular recreational fishery, as well as the need for further research

on bass predation on listed Delta species. At the October 8-9, 2025, meeting, the FGC voted 3-2 not to approve the regulation change setting a maximum size limit.

Great California Delta Trail – Clarksburg Branch Line Trail Extension

The project description for initiating California Environmental Quality Act (CEQA) review is complete and separated into two segments that can be completed independently. The City of West Sacramento-owned portion of the trail could begin CEQA review in approximately November and December 2025, and the segment connecting to Clarksburg could begin CEQA process approximately February 2026, with publication of a draft document in approximately June 2026. The City's consultant team has made contacts with agricultural landowners along the proposed route. In respect of fall harvest, landowner meetings will begin in late October or November 2025. Outreach is also slated to begin with tribal representatives. The Clarksburg Branch Line Trail extension is a proposed 6.4-mile, Class I paved multi-use (bicycling, walking, and horseback-riding) trail within a rail corridor purchased by the City of West Sacramento in 2005. As envisioned, it would extend into unincorporated Yolo County along existing roads to the Clarksburg community and would include "dig-once" buried conduit to facilitate future much-needed fiber optic internet.

Commission Land Use Comments

Staff conduct weekly reviews of agendas and updates from 65 agency and local government departments to ensure land use proposals comply with the DPC's Land Use and Resource Management Plan, and send comment letters under authority delegated to the Executive Director in 2016.

Rio Vista 2045 General Plan Update and Draft Environmental Impact Report (EIR)

Staff provided comments to the City of Rio Vista about the Rio Vista 2045 General Plan Update and Draft EIR. The General Plan comprises comprehensive updates to the required elements under the State Planning and Zoning Law, as well as other optional elements that the City has elected to include. The updated plan consolidates goals and policies to guide development and conservation in Rio Vista through 2045. The city includes a portion of the Primary Zone. Staff noted that the plan appears to be consistent with the Land Use and Resource Management Plan, particularly since it allows continued grazing in Open Space/Natural Resources sections of the City's Primary Zone lands. Staff also appreciated the plan's support for biological diversity, cultural heritage, energy and water conservation, flood protection, open space, recreation, and water quality.

Delta Conveyance Pre-Final Programmatic Agreement v.2-7-2025

Staff provided comments (as noted above under Delta Conveyance Project) to the US Army Corps of Engineers (Corps), regarding the latest draft Programmatic Agreement (PA) as presented to the consulting parties in a meeting on July 10, 2025. Staff continued to express serious concerns in four areas: (1) The phasing in development of area of potential effects and potential resulting cumulative impacts of the project; (2) Acknowledgement of the National Heritage Area (NHA) in the recitals; (3) Notification of and adequate time for all consulting parties to provide feedback and comment at each stage; and (4) Inclusion of local history and culture experts including tribal experts in each phase.

Delta Leadership Program

Applications for the Delta Leadership Program, a joint effort of the Delta Protection Commission and the Delta Leadership Program, close on Nov. 21. [The program](#) supports sustained leadership development in the region. As of this writing in mid-October, no applications have been received, which is typical.

Commission Communications

This section covers newsletters and website articles published Aug. 27-Oct. 22, with engagement highlights.

Website articles

Sept. 12: [Apply for the 2026 Delta Leadership Program \(Deadline: Nov. 21\)](#)

Oct. 9: [Delta Protection Commission Names Amanda Bohl Executive Director](#)

Newsletters

Sept. 4: [Delta Heritage Courier](#) - NHA News, Spooky Tours, and Boozy Nuggets (*highest click rate – 12.1% of recipients clicked links; most-clicked link was about Anza Expedition 250th commemoration*)

Sept. 9: [Delta Happenings](#) - Delta Week, Airport Day, Harvest Table(s), Delta Canneries (*highest open rate – 50.4%; NHA fact sheet and Reading List were most-clicked links*)

Sept. 23: [Delta Happenings](#) - Antioch Desalination, Sutter Slough Bridge, DPC Interim Director (*most-clicked link was Antioch desalination facility and Sutter Slough bridge closure*)

Oct. 7: [Delta Happenings](#) - Draft Tunnel Certification, Delta Stewardship Council

Appointments, Shoreline Academy (*most-clicked links were Certification of Consistency and a Delta Stewardship Council presentation about the appeals process*)

Oct. 23: [Delta Happenings](#) - Delta Tunnel, New DPC Leader, RV Bridge, Mute Swans, Stripers (*no analytics available as of this writing*)

Upcoming Delta Events

For the most current event listings, subscribe to *Delta Happenings* at delta.ca.gov/get-connected. For access to recent newsletters, go to delta.ca.gov/newsletters.

DELTA PROTECTION COMMISSION

Diane Burgis, Chair (Contra Costa County Board of Supervisors)

2101 Stone Blvd., Suite 200, West Sacramento, CA 95691

(916) 375-4800 | delta.ca.gov



September 29, 2025

Krystine Ball
Public Works Program Manager
City of Rio Vista
One Main Street
Rio Vista, CA 94296-0001

Re: Rio Vista 2045 General Plan Update and Draft Environmental Impact Report

Dear Ms. Ball:

Thank you for providing the Delta Protection Commission (Commission) the opportunity to review the Rio Vista 2045 General Plan Update (Project). The Project includes comprehensive updates to the required elements under the State Planning and Zoning Law, as well as other optional elements that the City has elected to include in its General Plan. The updated plan consolidates goals and policies to guide development and conservation in Rio Vista through 2045.

The Commission is a state agency charged with ensuring orderly, balanced conservation and development of Delta land resources and improved flood protection. Proposed local government-approved projects within the primary zone of the Legal Delta must be consistent with the Commission's Land Use and Resource Management Plan (LURMP) (California Public Resources Code Sections 29700-29780). The Commission also provides comments on proposed projects in the secondary zone that have the potential to affect the resources of the primary zone. The City includes area within the primary zone of the Legal Delta.

The Project appears to be consistent with the LURMP, particularly given the inclusion of Policy LU-8:

Continue to allow grazing in the Open Space/Natural Resources Land Use designation, in the Delta Primary Zone north of Airport Road, to the extent it is compatible with other land uses in the zone and adjacent land uses.

This policy provides consistency with Public Resources Code Section 29763.5(k), which states that a general plan will not result in any increased requirements or restrictions upon agricultural practices in the primary zone. We appreciate the general plan's support for biological diversity, cultural heritage, energy and water conservation, flood protection, open space, recreation, and water quality.

Thank you for the opportunity to provide input. Please contact Blake Roberts, Program Manager, at (530) 650-6572 for any questions regarding the comments provided.

Sincerely,


Dan Ray (Sep 29, 2025 13:52:22 PDT)

Dan Ray
Interim Executive Director

cc: John Vasquez, Solano County Supervisor and Commission Vice Chair

DELTA PROTECTION COMMISSION

Diane Burgis, Chair (Contra Costa County Board of Supervisors)
2101 Stone Blvd., Suite 200, West Sacramento, CA 95691
(916) 375-4800 | delta.ca.gov



July 18, 2025

Leah Fisher
Regional Permit Specialist, Regulatory Division
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 860
Sacramento, CA 95814

SENT VIA EMAIL

Re: 201900899 – Delta Conveyance Pre-Final Programmatic Agreement v.2-7-2025

Dear Ms. Fisher,

Thank you for providing an overview for the most recent version of the proposed Programmatic Agreement (PA) at the meeting on July 10, 2025, and introducing new U.S. Army Corps of Engineers (Corps) staff working on it. The Delta Protection Commission (Commission) staff appreciates the opportunity to provide additional comments and suggestions on the revised “Pre-Final” Programmatic Agreement (PA) prepared in compliance with the National Historic Preservation Act’s (NHPA) Section 106 for the Department of Water Resources’ Delta Conveyance Project (DWR tunnel project). Significant work has been accomplished and we appreciate the Corps’ incorporation of some of our suggestions in previous comments provided since 2022, such as ensuring review of modifications to the Area of Potential Effect (APE) by consulting parties, providing more detail about standards for identification of historic properties including cultural landscapes, and identifying the specific consulting parties and their participation at each juncture.

The Delta Protection Commission (Commission) is a California state agency created by the Delta Protection Act of 1992, which declared the Delta “a natural resource of statewide, national, and international significance, containing irreplaceable resources, and that it is the policy of the state to recognize, preserve and protect those resources of the Delta for the use and enjoyment of current and future generations” (Public Resources Code § 29701). The Commission also has responsibilities under the Delta Reform Act of 2009, a fundamental guiding principle of which is to preserve and protect the unique characteristics that form the basis for what is referred to as “Delta as Place.” In partial fulfillment of that, the Commission manages the Sacramento-San Joaquin National Heritage Area (NHA) that Congress

recognized and designated in 2019. Since our most recent comments on the PA (July 10, 2024), an important milestone was achieved with approval of the Management Plan for the NHA by the Secretary for the Interior, and formation of a National Heritage Advisory Committee to begin its implementation.

After reviewing the revised document received June 27, 2025, we do continue to have serious concerns in four areas: (1) The phasing in development of area of potential effects and potential resulting cumulative impacts of the project; (2) Acknowledgement of the National Heritage Area (NHA) in the recitals; (3) Notification of and adequate time for all consulting parties to provide feedback and comment at each stage; and (4) Inclusion of local history and culture experts including tribal experts in each phase.

Neither the DWR tunnel project under consideration nor the culturally significant landscape it will affect are typical of those usually considered by the Sacramento District's regulatory program. Therefore, as discussed in the July 10 meeting, notwithstanding that some changes being requested by us and by others may be atypical for other project agreements, we urge the Corps to adopt them into the Final PA. We believe these suggestions are reasonable, practicable, and will help improve the functionality and durability of the PA over the many years it will be implemented.

We appreciate that the Corps has previously acknowledged comments by the consulting parties including the Commission, and incorporated some changes to the PA. However, some suggestions have not been incorporated that we continue to believe will compromise the protection of the unique characteristics of the Sacramento-San Joaquin Delta landscape.

APE Phasing - Avoiding Potential to Result in Cumulative Impacts:

The "Pre-Final" PA provides a useful mechanism for phasing management activities needed to comply with NHPA Section 106. We agree phasing appears necessary for completing Section 106 review. It is needed due to the sprawling nature of the project area, because the preliminary APE includes areas with restricted access, and because construction will be conducted over many years. Moreover, environmental review was conducted based on a conceptual level of design, anticipating future detailed design would occur in the "design phase." Therefore we strongly support Administrative Stipulations XII.D (Reporting and Review Requirements), especially the D.3. requirement for biannual meetings of the Signatories, Invited Signatories, consulting Tribes and consulting parties. This periodic review of phases and program elements will be critical to understanding and avoiding adverse cumulative effects of project segments.

The Delta is a largely agricultural and natural landscape composed of potential rural historic landscape districts. Where a residence or agricultural outbuilding constitutes a contributing

element of such a district, an adverse effect on that element may also diminish the integrity of the overall district. Likewise, the introduction of new, visually inconsistent elements may disrupt contiguous natural or agricultural scenic values that form the setting for historic properties. As the entire APE and project-level inventories of resources are developed, we believe that periodic reviews of the entire set of landscapes will be critical to identification of potential incremental destruction or compromise of elements.

Even with mitigation it identified, DWR's EIR conceded that the change to the character of the Delta visual setting will be significant and unavoidable. Recognising that adverse effects under Section 106 are not the same as aesthetic impacts under CEQA, we reiterate our previously suggested text addition below. We feel this proposed minor addition is appropriate given that landscape context is so critical.

V. AREA OF POTENTIAL EFFECTS (APE)

A. 1. In considering the potential for effects on historic properties that may require expansion of the APE, all elements of integrity shall be considered. However, specific consideration shall be given to impacts on setting, given the potential for historic properties that are part of a contiguous landscape, and for the agricultural and natural landscapes of the Delta to constitute part of the character defining elements of historic properties that may be encountered.

We remain concerned with the designation of a ¼-mile APE at this time despite the PA acknowledgement and process for APE modifications. We suggest that the PA and Appendix 2 be revised slightly, to indicate the APE as identified in Appendix 2 is PRELIMINARY.

Finally, the PA uses the terms "APE" and "Project segment APE". In addition to reaffirming our July 12, 2024 suggestion that the APE be referred to as preliminary, we suggest that for clarity and consistency throughout the document, both terms be used where appropriate to distinguish which. As well, for consistency with Stipulation V, we suggest the following change in Stipulation VI (red text substitution):

VI. IDENTIFICATION OF HISTORIC PROPERTIES

USACE, with support from DWR, shall be responsible for identifying historic properties present within ~~the~~ **each** APE prior to any ground disturbance associated with construction or other activities covered by the Undertaking. Identification efforts may be phased with Project activities and components of construction covered by the Undertaking in accordance with 36 C.F.R § 800.4(b)(2). Such efforts will be organized by project segment and as land within the APE is made accessible for surveys, as detailed below. DWR shall identify historic properties in accordance with The

Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 C.F.R Parts 44716–44742) and 36 C.F.R § 800.4.

Acknowledgement of the National Heritage Area (NHA) in PA recitals:

We strongly believe that acknowledgement of the existence of the Sacramento-San Joaquin National Heritage Area (NHA) should be included in the recitals. A suggestion for placement is below:

WHEREAS, pursuant to 36 C.F.R § 800.2(c)(1)(i) the California State Historic Preservation Officer (SHPO) reflects the interests of the State of California and its citizens in the preservation of their cultural heritage, administers the State Historic Preservation Program within California in accordance with 54 U.S.C. § 302303 and in accordance with 54 U.S.C. § 302303(b), advises and assists federal and state agencies in carrying out their historic preservation responsibilities under the NHPA, in cooperation with the Advisory Council on Historic Preservation (ACHP); and

WHEREAS, the Sacramento-San Joaquin Delta National Heritage Area (NHA) was designated by Congress in March 2019 in the John D. Dingell, Jr. Conservation, Management, and Recreation Act (P.L. 116-9, Sect 6001), with Delta Protection Commission as local coordinating entity; and

Notification of and Adequate Time for All Consulting Parties to Review, Analyze and Comment at Each Stage: The tunnel project is such a massive infrastructure project that the additional consulting parties have a particularly important role to play. The provisions in Stipulation XII for reporting and responses to comments are greatly appreciated. Yet, understanding that time is of the essence, the three weeks time that we and other consulting parties have had to respond to the “Pre-Final” PA underscores the challenges posed by responding to sudden episodic notifications of new information and input needed.

Include Consultation With Local Experts: In the Commission's comments on the Draft Environmental Impact Statement, we provided the document Draft Survey Of Cultural Resources of the Sacramento-San Joaquin Delta in the Delta Conveyance Project Area (Delta Protection Commission, 2023). The survey reflects some consultation with local experts from previous publications but is intended as a starting point. The listing of resources provided is intended to partially inform tunnel permitting within the Delta, specifically within the project area. Nearly three years have passed in which further outreach to residents by the project proponent could have been completed during the environmental review process. Since that did not occur, that outreach should begin now to continue to identify and understand the full scope of resources present. In keeping with the intent of Stipulation 1.C.b, c, and d, this should be clearly stated in the text of the PA, for example in Stipulation VI.A.2 and 3.

In closing, we noted some confusion in the meeting regarding the terms “consulting party” and “concurring party” and what each meant. This would be good to clarify in the final document.

Thank you again for your commitment to keep us and other consulting parties briefed on the status of the PA. Should you have any questions please contact Program Manager Virginia Gardiner at (530) 650-6471 or virginia.gardiner@delta.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Ray', with a stylized flourish extending from the end.

Dan Ray

Interim Executive Director

C: Commissioners

Delta Counties Coalition

**PROGRAMMATIC AGREEMENT BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE DELTA CONVEYANCE PROJECT, SACRAMENTO–SAN JOAQUIN DELTA,
CALIFORNIA**

WHEREAS, the California Department of Water Resources (DWR), an agency of the State of California, is proposing to construct new water diversion and conveyance facilities as part of the Delta Conveyance Project (Project); and

WHEREAS, the Project consists of the construction of new water diversion and conveyance facilities from the Sacramento River south of Sacramento, California, and through the Sacramento–San Joaquin Delta (Delta), along an alignment known commonly as the ‘Bethany Reservoir Alternative,’ with the intent to improve diversion and conveyance facilities in the Delta to ensure the reliability of State Water Project water deliveries south of the Delta consistent with the State’s Water Resilience Portfolio; and

WHEREAS, the United States Army Corps of Engineers, Sacramento District (USACE) under the authority of Section 404 of the Clean Water Act (33 United States Code [U.S.C.] § 1344) (Section 404), Sections 10 and 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403 and 33 U.S.C. § 408) (Section 10 and Section 408, respectively) anticipates issuing one or more permits and permissions to DWR; and

WHEREAS, the issuance of permits or permissions by USACE constitutes an Undertaking as defined at 36 Code of Federal Regulations [C.F.R] § 800.16(y) subject to review by the USACE under Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations, “Protection of Historic Properties” (36 C.F.R Part 800); and

WHEREAS, pursuant to 36 C.F.R § 800.2(c)(1)(i) the California State Historic Preservation Officer (SHPO) reflects the interests of the State of California and its citizens in the preservation of their cultural heritage, administers the State Historic Preservation Program within California in accordance with 54 U.S.C. § 302303 and in accordance with 54 U.S.C. § 302303(b), advises and assists federal and state agencies in carrying out their historic preservation responsibilities under the NHPA, in cooperation with the Advisory Council on Historic Preservation (ACHP); and

WHEREAS, limited property access and the phased design of the Project precludes the determination of effects by the USACE prior to its approval of the undertaking; and

WHEREAS, the USACE, in consultation with the SHPO, determined it shall fulfill its Section 106 responsibilities for the Undertaking through the development and implementation of this Programmatic Agreement (Agreement) pursuant to 36 C.F.R § 800.14(b)(1)(ii); and

WHEREAS, this Agreement provides for a phased process to conduct identification and evaluation of historic properties (as defined in 36 C.F.R. § 800.16(l)(1)) within each Project segment pursuant to 36 C.F.R § 800.4(b)(2), and a phased process to assess effects for each Project segment pursuant to 36 C.F.R § 800.5(a)(3); and

WHEREAS, the USACE determined and documented the Undertaking's area of potential effects (APE) in accordance with 36 C.F.R. § 800.4(a) as the location of surface impacts with an additional 0.25-mile buffer and the location of subsurface impacts with no buffer (see Stipulation V and Appendix 2); and

WHEREAS, the Project will be planned and constructed in phases where the term "segment" refers to a portion of the overall Project, and each segment will be initiated with a design package document that describes the Project features being planned for and/or designed, including specific footprint locations; and

WHEREAS, Project designs are being developed in segments due to the size and duration of the overall Project and property access is currently limited, and although DWR conducted a built-resources survey from the public right-of-way between 2020 and 2021 that identified 45 built resources within the APE that appear eligible for listing in the National Registry of Historic Places (NRHP) and 1 property that was already listed in the NRHP and further conducted a desk-top study to identify previously recorded archaeological resources that identified 9 archaeological resources within the APE, none of which have been evaluated for NRHP eligibility, and prepared a geoarchaeological overview of the APE to assess the likelihood of landforms in which there is a high potential for buried archaeological materials, there is insufficient detail or certainty about the entire Project to conduct comprehensive identification of historic properties that may be affected by the Project; and

WHEREAS, USACE, pursuant to 36 C.F.R § 800.2(c)(2)(ii) contacted Indian Tribes, also known as Native American Tribes (Tribes), listed in Appendix 1 and invited them to participate in the development of this Agreement as consulting Tribes and the United Auburn Indian Community of the Auburn Rancheria chose to participate in the development of this Agreement; and

WHEREAS, USACE, pursuant to 36 C.F.R § 800.2(c)(3) and (5), contacted the interested parties listed in Appendix 1 and invited them to participate in the development of this Agreement as consulting parties, and the Delta Protection Commission, Contra Costa County Water Agency, Sacramento County Community Services, San Joaquin County and Yolo County chose to participate in the development of this Agreement; and

WHEREAS, USACE proposed the development of this Agreement to the ACHP by letter on October 8, 2020, to request their participation in the development of this Agreement in accordance with 36 C.F.R § 800.6(a)(1), and the ACHP declined by letter of December 8, 2020; and

WHEREAS, DWR participated in the development of this Agreement and acknowledges and recognizes that execution of this Agreement is a necessary component of the USACE review process for determining whether and under what conditions to issue permits and permissions under its authority in compliance with Section 106 of the NHPA and, because this Agreement assigns substantial responsibilities to DWR, the USACE invited DWR to sign this Agreement as an Invited Signatory pursuant to 36 C.F.R § 800.6(c)(2); and

WHEREAS, pursuant to 36 C.F.R § 800.6(c)(3), USACE has consulted with the consulting Tribes concerning properties of traditional, religious, and cultural significance and has invited these Consulting Tribes to sign this Agreement as Concurring Parties; and

WHEREAS, pursuant to 36 C.F.R § 800.6(c)(3), the other consulting parties have participated in consultation and been invited to sign this Agreement as Concurring Parties; and

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

NOW, THEREFORE, the USACE and the SHPO agree that the proposed Undertaking shall be implemented in accordance with the following Stipulations to take into account the effects of the Undertaking on historic properties and to satisfy the USACE's Section 106 responsibilities for the Undertaking.

STIPULATIONS

The USACE shall ensure that the following measures are implemented.

I. ROLES AND RESPONSIBILITIES OF THE SIGNATORIES AND INVITED SIGNATORY

A. USACE

1. USACE shall be responsible for ensuring this Agreement is implemented consistent with requirements 36 C.F.R Part 800 in consultation with the SHPO. The USACE shall be responsible for the following:
 - a. Determining the APE or Project segment APE in consultation with DWR and the SHPO pursuant to Stipulation V. USACE may modify the APE as

necessary to account for Project changes, in accordance with Stipulation

V.B.1 of this Agreement, and shall notify all Signatories, Invited Signatories, consulting Tribes and consulting parties of any proposed change to the APE.

- b. Determining the NRHP eligibility of a historic property, issuing findings regarding the effects of the Undertaking on historic properties, resolving any adverse effects, all in consultation with the Signatories, Invited Signatories, consulting Tribes and consulting parties to this Agreement.
- c. Conducting government-to-government consultation with federally recognized Native American Tribes, whether a concurring party to this Agreement or not, throughout any activity of the Undertaking that might affect historic properties, particularly regarding sites that may have traditional, religious, and/or cultural importance to a Federally recognized Tribe. In meeting its Federal trust responsibility, the USACE alone shall conduct government-to-government consultation with Federally recognized tribes.
- d. Circulating draft documents, comments on documents, and final documents among the Signatories, Invited Signatories, consulting Tribes and consulting parties, as limited by confidentiality considerations outlined in Stipulation XII.E.
- e. Maintaining documentation of Section 106 compliance.
- f. Responding to written lead agency designation requests from other federal agencies under 36 C.F.R § 800.2(a)(2). If the USACE receives a written request from another federal agency that intends to carry out, fund, license, permit, or approve an Undertaking covered by this Agreement, the USACE shall notify the SHPO and DWR of such request within fifteen (15) calendar days. The USACE may invite such federal agency to become a Signatory party to this Agreement pursuant to 36 C.F.R § 800.6(c)(2). If such federal agency agrees to become a Signatory, the USACE shall comply with Stipulation XII.C to amend this Agreement. If such federal agency does not agree to become a Signatory, that agency remains individually responsible for complying with Section 106 for its Undertaking.

B. SHPO

- 1. In accordance with SHPO's role as defined in 36 C.F.R 800.2(c)(1)(i), SHPO shall be responsible for the following:
 - a. Advising and assisting USACE in carrying out their section 106 responsibilities, including:

- i. Planning to continue to involve the public in the Section 106 process pursuant to 36 CFR § 800.3(e) and consistent with 36 CFR § 800.2(d).
- ii. Determining the scope of identification efforts pursuant to 36 CFR §§ 800.4(a) - (b).
- iii. Evaluating historic significance pursuant to 36 CFR § 800.4(c).
- iv. Consulting with USACE on findings of no historic properties affected pursuant to 36 CFR § 800.4(d).
- v. Advising USACE on the resolution of disagreements on findings of no historic properties affected pursuant to 36 CFR § 800.4(d)(1).
- vi. Consulting on the application of the criteria of adverse effect with USACE pursuant to 36 CFR § 800.5.
- vii. Advising USACE on the resolution of disagreements on findings of no adverse effects to historic properties affected pursuant to 36 CFR § 800.5(c)(2).

C. DWR

1. DWR as the Project proponent shall be responsible for the following:
 - a. Coordinating with the USACE to provide information necessary for disseminating information about the Undertaking to Signatories, Invited Signatories, consulting Tribes and consulting parties.
 - b. Preparing and submitting to the USACE documentation of the identification and evaluation of historic properties in the APE in accordance with 36 C.F.R § 800.4, meeting federal documentation standards at 36 C.F.R § 800.11, including the preparation of necessary technical studies to support the evaluations, such as cultural resource inventory reports and resource eligibility and effect recommendations in accordance with Stipulations V–VI.
 - c. Preparing and submitting to the USACE resource-specific Historic Property Treatment Plans (HPTs) for the protection and treatment of any adversely affected historic properties within the APE, in accordance with Stipulation IX.A of this Agreement.
 - d. Coordinating with the USACE to hold informational meetings with federally recognized Native American Tribes, other California Native American Tribes, and as appropriate, other parties with a demonstrated interest in the heritage or cultural resources within the APE to provide Undertaking updates and identify potential consulting parties.
 - e. Maintaining documentation of DWR's compliance with this Agreement.

II. PROFESSIONAL QUALIFICATIONS STANDARDS

- A. The USACE shall ensure that all actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition for historic properties, or that involve reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meet at a minimum the U.S. Secretary of the Interior's (SOI) Professional qualifications standards (48 *Federal Register* [FR] 44738-44739; Appendix A to 36 C.F.R Part 61) in the appropriate discipline, or anyone with a demonstrated level of special expertise who may not be formally SOI qualified.
- B. The USACE and DWR shall ensure that the work outlined in this Agreement is conducted by individuals meeting these qualifications standards.
- C. The USACE acknowledges that Tribes possess special expertise in identifying properties of religious and cultural significance, pursuant to 36 C.F.R § 800.4(c)(1). In deference to Tribes, Tribes shall be considered the appropriate experts with respect to determining professional qualification standards for reporting or documentation that involves historic properties of religious and cultural significance. This includes the use of Tribal Monitors during construction. This also includes the identification, evaluation, and treatment of historic properties of religious and cultural significance by Tribes during consultation.

III. TIMEFRAMES AND REVIEW PROCEDURES

- A. The timeframes and communication protocols described in this Stipulation apply to all Stipulations in this Agreement unless otherwise specified (such as certain steps in Stipulation VI regarding identification of historic properties or Stipulation VII regarding assessments of effect). All time designations are in calendar days unless otherwise stipulated as business days. If a review period ends on a Saturday, Sunday, or Federal holiday, the review period will be extended until the end of the next business day. All review periods are concurrent and thirty (30) days, unless otherwise specified, starting on the day the documents are provided by the USACE and/or DWR, noting it is submitting on behalf of the USACE, to the reviewing parties electronically, or the day the documents are received by hard copy, if previously requested, which constitutes notification.
- B. The USACE shall review and provide comments on all documents and deliverables produced in accordance with the stipulations of this Agreement, in thirty (30) days, beginning on the date received, except as expressly identified in this Agreement. Upon receipt of the USACE comments, DWR will revise documents and deliverables to address those comments and provide revised documents and deliverables to USACE for further review until USACE deems the documents and deliverables acceptable.

- C. The USACE shall provide documentation (in accordance with Stipulation IV) of its determinations and findings to the Signatories, Invited Signatories, consulting Tribes and consulting parties for a review and comment period of thirty (30) days, while respecting confidentiality concerns in accordance with Stipulation XII.E.
 - 1. The USACE may extend this review and comment period up to an additional thirty (30) days, if requested in writing, unless a shorter extension period is expressly provided for in this Agreement.
 - 2. Any written comments provided within the review and comment period of thirty (30) days shall be considered in the revision of the determination or finding.
- D. The USACE shall document written comments received and communicate how comments were addressed.
 - 1. The USACE shall provide the comments, and any response document, with a final determination or finding to the SHPO for review and comment and/or concurrence. Should the SHPO determine that the final document or deliverable is not sufficient as set forth in 36 C.F.R § 800.11(a), the SHPO shall notify the USACE and specify the information needed, and the Signatories shall continue to consult on the document or deliverable in accordance with the timeframes established in the applicable Stipulation or with the dispute resolution procedures in Stipulation XII.B.1.
- E. Failure of the Signatories, Invited Signatories, consulting Tribes and consulting parties to respond within thirty (30) days of any submittal shall not preclude the USACE from proceeding with the next steps in compliance with this Agreement.
- F. Pursuant to 36 C.F.R § 800.3(g) and where the USACE and SHPO agree it is appropriate, the USACE may consult and address multiple steps in §§ 800.4 through 800.6 through the submission of documentation to Signatories, Invited Signatories, consulting Tribes and consulting parties. The decision to address multiple steps will be made during consultation on the Project segment APE in accordance with Stipulation V.A.
- G. If the Signatories do not agree or do not concur with the USACE determinations or findings in the final document or deliverable submitted for concurrence, the Signatories shall consult, in writing, for a period not to exceed fifteen (15) days following the receipt of the SHPO's written objection. If the Signatories do not reach agreement they shall proceed in accordance with Stipulation XII.B. Note that there may be exceptions specified in certain procedures; for example, resolution of objections to eligibility determinations will follow procedures as shown in Stipulation VI.B.5.

IV. DOCUMENTATION STANDARDS

- A. The USACE shall ensure that all historic preservation activities carried out pursuant to the PA shall meet the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716-44740) as well as standards and guidelines for historic preservation activities established by the SHPO and National Park Service.
- B. The USACE shall ensure that all reports prepared pursuant to this PA are consistent with 36 C.F.R § 800.11 and shall be in accordance with the document requirements provided for specific documents in their applicable Stipulations in this agreement.
- C. All documentation prepared under this Agreement shall be kept on file at DWR and the USACE, submitted to the California Historical Resources Information System, and made available to the public or tribes upon request, consistent with applicable confidentiality requirements referenced under Stipulation XII.E of this Agreement.
 - 1. Information released to the public shall comply with Stipulation XII.E of this Agreement, 36 C.F.R §§ 800.2(d) (1–2) and 800.11(c)(1) and (3), Section 6254.10 of the California Government Code and/or the Freedom of Information Act (5 U.S.C. § 552), as appropriate and applicable.

V. AREA OF POTENTIAL EFFECTS (APE)

- A. The USACE, in consultation with DWR, shall confirm the APE for each Project segment that proceeds through identification, evaluation, and assessment of effects in accordance with this Agreement. The USACE shall submit the APE for each Project segment to the Signatories, Invited Signatories, consulting Tribes and consulting parties for review prior to initiating historic property identification efforts. Reviews and comments shall be addressed in accordance with Stipulation III.
- B. As Project activities covered by the Undertaking progress, design changes or modifications may be necessary. DWR shall inform the USACE of any such design changes or modifications, and the USACE shall determine if the design changes or modifications affect additional areas that would necessitate modification of the APE.
 - 1. If the USACE determines additional areas shall be affected, the USACE shall submit a modified APE to the Signatories, Invited Signatories, consulting Tribes and consulting parties for a review and comment period of fifteen (15) days. Any written comments provided within the review and comment period shall be considered by the USACE in determining the modified APE. The USACE will notify the Signatories, Invited Signatories, consulting Tribes and consulting parties of the final modified APE within three (3) days of finalization.

VI. IDENTIFICATION OF HISTORIC PROPERTIES

USACE, with support from DWR, shall be responsible for identifying historic properties present within the APE prior to any ground disturbance associated with construction or other activities covered by the Undertaking. Identification efforts may be phased with Project activities and components of construction covered by the Undertaking in accordance with 36 C.F.R § 800.4(b)(2). Such efforts will be organized by project segment and as land within the APE is made accessible for surveys, as detailed below. DWR shall identify historic properties in accordance with *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 C.F.R Parts 44716–44742) and 36 C.F.R § 800.4.

A. Historic Property Surveys

1. Prior to the initiation of construction or ground-disturbing activities for any segment of the Project, DWR shall identify historic properties consistent with 36 C.F.R 800.4(b), including performing studies to identify and record all resources within the APE and evaluate whether they qualify as historic properties, including surveys within all areas of the APE not previously surveyed or areas within the APE where previous surveys are deemed inadequate by the USACE in consultation with the Signatories.
2. DWR shall conduct an updated records and literature search for each Project segment if more than five (5) years have passed since the prior records and literature search. The records and literature search shall be comprehensive and involve review of all appropriate documentation. The records and literature search shall be completed no more than one (1) year prior to beginning the historic property survey.
3. DWR and the USACE shall continue to solicit input to identify historic properties within the APE or Project segment APE through continued outreach, coordination, and consultation with local historical societies, local agencies, Tribes and individuals and newly identified parties that may have pertinent information. Historic properties that are identified by consulting Tribes and consulting parties shall be listed in the identification document with information regarding the location and significance of the historic property, subject to confidentiality considerations provided in Stipulation XII.E and in accordance with 36 C.F.R 800.11(c).
 - a. Historic properties that are identified by Tribes shall not be dismissed if archaeological survey fails to identify the properties. However, DWR shall reach out to ask Tribes if: (1) they believe that the historic property has physical components and what the general nature of those components may be (cultural soils, gathering areas, etc.); and

(2) if they would like to see any additional identification work done to locate the physical components of the historic property.

- b. DWR shall offer to conduct additional surveys to gain additional information regarding boundaries of historic properties that are identified by Tribes. Such surveys may include archaeological pedestrian survey, Tribal survey, sub-surface testing, canine forensic survey, etc.
4. DWR shall record all resources identified during surveys on the appropriate *California Department of Parks and Recreation 523 forms*. DWR shall document the results of the extent of historic property investigations in separate archaeological, architectural, and ethnographic technical reports. As surveys may be phased by Project segment, DWR may produce multiple survey reports related to specific Project segments or components. If resources can be evaluated based on survey level identification efforts, the survey report(s) may also include evaluation of those resources.
5. DWR shall offer to record all resources identified by Tribes on the appropriate *California Department of Parks and Recreation 523 forms*. DWR shall document the results of tribal identifications of historic properties in a separate ethnographic technical report. If properties in the report are also deemed to possess archaeological or other significance, they may be listed in multiple reports. Any information that is confidential to a Tribe may be separated into a confidential appendix. If resources can be evaluated based on tribal consultation, the ethnographic report(s) may also include evaluation of those resources.
6. The USACE shall provide copies of draft survey reports prepared by DWR for review and comment in accordance with Stipulation III.
7. Within thirty (30) days of approving the final survey reports, the USACE shall provide a copy of the final documents to the Signatories, Invited Signatories, consulting Tribes and consulting parties and submit the final documents to the SHPO for review and comment in accordance with Stipulation III.D.1. The USACE may provide the final reports concurrent with its determination of eligibility and finding of effect (FOE) in accordance with Stipulation III.F.

B. Evaluation of Historic Properties

1. DWR shall apply the *National Register Criteria* (36 C.F.R Part 63) and conduct evaluation of resources present within the APE or Project segment APE and prepare recommendations of eligibility for listing in the NRHP in accordance with 36 C.F.R § 800.4(c)(1).

- a. DWR shall evaluate recorded historic or cultural resources such as archaeological sites, architectural resources (buildings, structures, objects), districts or landscapes, ethnographic resources, places of religious and cultural significance to Tribes or the public, and Traditional Cultural Properties within the APE. If effects to resources can be avoided or unevaluated properties protected, or if properties cannot be evaluated in their entirety, DWR and the USACE, in consultation with Signatories, and consulting parties may treat them as eligible for inclusion in the NRHP for the purposes of the Undertaking.
2. DWR shall produce evaluation report(s) for resources not evaluated in the survey report(s) prepared according to Stipulation VI.A.
3. The USACE shall submit copies of draft evaluation reports for review and comment in accordance with Stipulation III.C. The USACE shall consider comments made by the Signatories, Invited Signatories, consulting Tribes and consulting parties in their determination(s) of eligibility.
4. The USACE, within thirty (30) days of acceptance of the final evaluation reports, shall provide a copy of the final documents and the USACE's determination(s) of eligibility for listing in the NRHP to the Signatories, Invited Signatories, consulting Tribes and consulting parties, in accordance with Stipulation III.D. The USACE shall make determinations of eligibility in accordance with the NRHP criteria set forth in 36 C.F.R § 60.4 for all unevaluated resources within the APE, consistent with the *Secretary of the Interior's Standards and Guidelines for Evaluation*.
5. The USACE shall make a final determination of eligibility (DOE). The USACE shall submit the final DOE to the SHPO for review in accordance with Stipulation III.D.1.
6. If the USACE and the SHPO are unable to agree on the NRHP eligibility of a resource, the USACE shall obtain a determination from the *Keeper* of the NRHP pursuant to 36 C.F.R §63.2(d)-(e) and 36 C.F.R § 800.4(c)(2).

VII. ASSESSMENTS OF EFFECTS

- A. The USACE shall make assessments of effects to historic properties from the Undertaking by applying the criteria of adverse effect pursuant to 36 C.F.R § 800.5(a). Such assessments will be grouped by project segment into a single FOE for each segment.
 1. DWR may coordinate preliminary assessments of effect with the identification efforts for each Project segment. DWR may incorporate the FOE into either

survey or evaluation reports if enough information is available to make the recommended FOE.

- B. DWR shall submit a draft FOE for each Project segment to the USACE for review and distribution in accordance with Stipulation III.B. The FOE report shall assess potential direct, indirect, and cumulative effects and optionally identify any measures that would avoid or minimize those effects found to be adverse.
 - 1. The FOE may include tables that list each historic property, including historic properties of religious and cultural significance. In populating the table for historic properties of religious or cultural significance, USACE will ensure that effects are correctly identified and characterized so that avoidance, minimization of effects, or mitigation can be considered based on the significance that the consulting Tribes or consulting parties ascribes to the site.
 - 2. For each historic property the table shall state the applicable NRHP eligibility criteria and identify whether the Undertaking may alter, directly or indirectly, any of the character-defining features of a historic property that qualify the property for inclusion in the NRHP in a manner that would diminish any of the seven (7) aspects of integrity.
 - 3. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the NRHP.
 - 4. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.
- C. The USACE shall provide the draft FOE(s) for review and comment in accordance with Stipulation III.C. The USACE shall consider recommendations made by the Signatories, Invited Signatories, consulting Tribes and consulting parties in its development of a revised FOE report. The USACE shall distribute the revised FOE in accordance with Stipulation III.D.
- D. The USACE shall make a final FOE within thirty (30) days of approving the revised FOE report. The USACE shall submit the final FOE to the SHPO for review in accordance with Stipulation III.D.1.
- E. If within the thirty (30)-day review period, the SHPO notifies the USACE official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the USACE shall consider those comments and consult with the party to resolve the disagreement in accordance with Stipulation XII.B.

- F. If within the thirty (30)-day review period the SHPO fails to respond in writing, in accordance with 36 C.F.R § 800.3(c)(4) the USACE and DWR shall proceed with any applicable next steps in accordance with Stipulation III.E.

VIII. UNANTICIPATED DISCOVERY PLAN

- A. Within two years of execution of this Agreement, pursuant to 36 CFR § 800.13(a)(1), the USACE, in consultation with SHPO, DWR, Tribes, and other consulting parties, will develop and finalize an Unanticipated Discovery Plan for the Undertaking.
- B. The Unanticipated Discovery Plan shall include measures to address the discovery of previously unknown cultural resources and unanticipated adverse effects or damage to historic properties.
- C. If a previously undiscovered archaeological, historical, or cultural property is encountered during the undertaking, or previously known properties will be affected or have been affected in an unanticipated adverse manner, the procedures in the Unanticipated Discovery Plan shall be followed.

IX. RESOLUTION OF ADVERSE EFFECTS

To the extent practicable, the USACE in consultation with Signatories, Invited Signatories, and all consulting parties shall seek ways to avoid and minimize adverse effects to historic properties. If a Project segment results in adverse effects to historic properties that cannot be avoided, the USACE will ensure DWR develops a Historic Properties Treatment Plan (HPTP) for the Project segment that outlines how the adverse effects will be resolved.

A. Historic Property Treatment Plans

1. USACE will ensure that DWR develops HPTPs in consultation with the consulting Tribes and consulting parties and tailor treatment efforts to the types and degree of anticipated effects. Mitigation shall address adverse effects (direct or indirect alterations) caused by the undertaking to the characteristics of the historic property that qualify it for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, setting, design, materials, workmanship, feeling, or association.
2. If an HPTP specifically addresses mitigation for adverse effects to historic properties to which Federally or non-Federally recognized Tribes attach religious or cultural significance, the USACE will consult with the appropriate tribe(s) on the distribution of the draft HPTP to the consulting Tribes and consulting parties. Following that consultation, the USACE shall submit the HPTP to the consulting Tribes and consulting parties for a thirty (30)-day review, subject to the

confidentiality provisions of 36 C.F.R § 800.11(c). After the consulting Tribes and consulting parties thirty (30)-day review period, the USACE shall consider and address the comments and then shall submit the HPTP to the SHPO.

3. The SHPO shall have thirty (30) days to review. If SHPO concurs, the USACE shall notify the Signatories, Invited Signatories, consulting Tribes and consulting parties that the HPTP is complete and shall provide the schedule for its implementation. If the SHPO does not concur with the HPTP, the USACE shall consult with the SHPO in an attempt to resolve the dispute. If an agreement on the HPTP cannot be reached within thirty (30) days, or as extended by the USACE, resolution of the issue may proceed by following the dispute resolution in Stipulation XII.B.
4. The USACE shall ensure that each HPTP is tailored to the specific historic property types within the Project segment and include the following framework, for consistency:
 - a. A description of the planned Project activities.
 - b. A map of the historic property(ies) locations, situating them in relationship to the planned Project activities.
 - c. A description of the historic property(ies) to which the HPTP applies, including associated primary number(s) and Trinomial(s) or other identifying names.
 - d. The results of previous research relevant to the historic property(ies). A summary of each historic property's effects assessment and character defining features that convey its eligibility to the NRHP; and SHPO concurrence of the determination of eligibility.
 - e. Information regarding the loss of values of the historic property as a result of the Project activities, including:
 - i. A statement of the significant values of the historic property that would be lost.
 - ii. For archaeological resources, include information regarding a Phase II research design or Phase III data recovery research design that evidences a knowledge of the resource structure and content.
 - f. The way(s) in which the historic property(ies) will be affected by the Project activities.

- g. A discussion regarding how the proposed resolution of adverse effects for each historic property type within the Project APE will be implemented.
 - h. Protocols for the treatment of human remains pursuant to Stipulation IX.
 - i. A suspension/termination protocol that stipulates the procedures to be followed if the Project activities are halted during fieldwork conducted under the HPTP, pursuant to this Agreement.
 - j. The timeline for the preparation of deliverables, review process and final distribution, as well as timelines agreed to in this Agreement.
 - k. Protocols to address the discovery of previously unknown cultural resources and unanticipated adverse effects or damage to historic properties.
5. If it is determined an HPTP requires amendment, the USACE, in consultation with Signatories, Invited Signatories, consulting Tribes and consulting parties, shall use the following process:
- a. The USACE, in coordination with DWR, shall notify the Signatories, Invited Signatories, consulting Tribes and consulting parties of any proposed change in the HPTP with a description of the proposed change. The Signatories, Invited Signatories, consulting Tribes and consulting parties shall then have fifteen (15) days from receipt, or as extended through agreement by the Signatories, to comment on the modified HPTP.
 - b. Once the USACE receives, considers, and addresses all comments regarding the modified HPTP, the Corps shall notify the SHPO and include a summary of the comments received for a ten (10)-day review period.
 - c. If the USACE and SHPO agree to the proposal, then the USACE will distribute copies to the Signatories, Invited Signatories, consulting Tribes and consulting parties within thirty (30) days of the day upon which agreement to the modification was reached or the close of the review period. The USACE will keep copies of the description on file for its administrative record.
 - d. If the USACE and SHPO cannot agree to a proposal for the modification of the HPTP within thirty (30) days, or as extended by the USACE, then they will resolve the dispute in accordance with Stipulation XII.B.
6. All finalized HPTPs will be included in the appropriate USACE files and included in the Agreement annual report, pursuant to Stipulation XII.D.

X. HUMAN REMAINS

- A. If human remains are inadvertently discovered, all construction, archaeological excavation, or other similar activities shall cease within 100 feet of the find and DWR shall immediately notify the appropriate parties in accordance with the unanticipated discovery protocols in the Unanticipated Discovery Plan (Stipulation VIII) or the applicable Project segment HPTP (Stipulation IX). Associated grave items shall be treated in accordance with the Unanticipated Discovery Plan or the applicable Project segment HPTP.
 - 1. For purposes of this Undertaking, this Agreement adopts the definitions found at 43 C.F.R § 10.2.
- B. Any Native American human remains, funerary objects, items of cultural patrimony, and sacred objects encountered during any activity of this Undertaking on federal lands will be the responsibility of the federal land management agency in accordance with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001, et seq., and its implementing regulations found at 43 C.F.R Part 10.
- C. DWR shall treat Native American human remains, funerary objects, objects of cultural patrimony, and sacred objects encountered during any activities of this Undertaking on non-federal lands in accordance with the requirements of Section 7050.5 of the California State Health and Human Safety Code, and Section 5097.98 of the Public Resources Code. DWR shall ensure that to the extent permitted by applicable law and regulation, the views of the Most Likely Descendant(s) are taken into consideration when DWR makes decisions about the disposition of the Native American human remains and funerary objects, which may include reburial of such items at the request of the Most Likely Descendant(s), and shall further ensure the respectful treatment of human remains and funerary objects.

XI. CURATION

- A. If materials are to be curated from federal lands, the USACE shall notify the appropriate federal land management agency of any cultural materials unrelated to burials or NAGPRA and associated records resulting from identification, evaluation, and treatment of historic properties on federal lands conducted under this Agreement. Such materials and records shall then be the responsibility of the federal land management agency to properly maintain in accordance with 36 C.F.R Part 79. The federal land management agency will be responsible for documentation of the curation of these materials. (See Stipulation IX.A of this Agreement for the treatment of items regulated by NAGPRA, such as human remains and funerary objects.)
- B. The disposition of any material collected off federal lands shall be determined in consultation with the property owner and consistent with 36 C.F.R Part 79.

- C. USACE shall ensure that if any cultural materials unrelated to burials and associated records resulting from identification, evaluation, and treatment of historic properties conducted under this Agreement are to be curated, they shall be properly maintained in accordance with 36 C.F.R Part 79 as detailed in the applicable HPTP. Objects or soils associated with a historic property of religious and cultural significance shall only be curated following consultation with Signatories and consulting Tribes per Stipulation III.A.

XII. ADMINISTRATIVE STIPULATIONS

A. Notices

1. All notices, requests, consents, approvals, or communications shall be personally delivered, delivered via email, or shall be deemed delivered after five (5) business days from deposit in the United States mail.

B. Dispute Resolution

1. Should any Signatory, Invited Signatory, or Concurring Party to this Agreement object, in writing to the USACE, to the manner in which the terms of this Agreement are carried out, to any action carried out or proposed with respect to implementation of this Agreement, or to any document prepared in accordance with and subject to the terms of this Agreement, the USACE shall immediately notify the other Signatories and Concurring Parties of the objection, request their comments on the objection within fifteen (15) days following receipt of the USACE notification, and proceed to consult with the objecting party for no more than thirty (30) days to resolve the objection. The USACE shall honor the request of the other parties to participate in the consultation and shall take any comments provided by those parties into account.
 - a. If the objection is resolved through consultation, the USACE may proceed in accordance with the terms of such resolution.
 - b. If, after initiating such consultation, the USACE determines that the objection cannot be resolved through consultation, the USACE shall forward all documentation relevant to the objection, including the USACE's proposed resolution, to the ACHP. The ACHP will provide the 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 objection, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the objection from the ACHP, Signatories, and Concurring Parties, and provide them with a copy of the written response. The USACE will then proceed according to its final decision.

If the ACHP does not provide its advice regarding the objection within the thirty (30)-day comment period, the USACE may make a final decision on the objection and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the objection from the Signatories and Concurring Parties to the Agreement and provide them and the ACHP a copy of such written response.

- c. The USACE's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.
2. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing to any Signatory party to this Agreement, pertaining to such implementation, that Signatory party shall immediately notify the USACE. The USACE shall immediately notify the other Signatories in writing within fifteen (15) days of receipt of their notification and provide Signatories fifteen (15) days to provide comments. The USACE shall consider the objection, and in reaching its decision, the USACE shall take all comments into account. Within fifteen (15) days following closure of the comment period, the USACE shall render a decision regarding the objection and respond to the objecting party. The USACE shall promptly notify the Signatories of its decision in writing, including a copy of the response to the objecting party. The USACE's decision regarding resolution of the objection shall be final. Following issuance of its final decision, the USACE may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

C. Amendments

1. This Agreement may be amended only upon written agreement of the Signatories. The amendment process shall comply with 36 C.F.R. § 800.6(c)(7).
2. Any Signatory or Invited Signatory to this Agreement may request, in writing, to the other Signatories that it be amended, whereupon the Signatories shall consult for no more than thirty (30) days to consider such amendment. The USACE may extend this consultation period upon agreement of the Signatories. This Agreement may be amended only upon written concurrence of all Signatories. If the Signatories cannot reach concurrence on the proposed amendment, the Signatories shall proceed in accordance with Stipulation XII.B.
3. This Agreement will be amended when such an amendment is agreed to in writing by all Signatories, including Invited Signatories. The amendment will be effective on the date a copy signed by all Signatories is filed with the ACHP.

D. Reporting and Review Requirements

1. DWR shall submit an annual report to the USACE and SHPO, no later than three (3) months following the end of the State fiscal year until the terms of the Agreement document are met or the Agreement is terminated. DWR shall also send the annual report to the consulting Tribes and consulting parties. There shall be a comment period of thirty (30) days and DWR shall produce a final report within thirty (30) days of receipt of comments. Report content shall include a summary of actions taken under this Agreement including all findings and determinations, public objections, inadvertent effects, post review discoveries, APE modifications, emergency actions, status of implementation of treatments and resolution of effects, list of qualified staff, status of Project schedule, and upcoming activities for the next year.
2. The annual report shall provide the opportunity for this Agreement's Signatories, Invited Signatories, consulting Tribes and consulting parties to review the effectiveness of this Agreement. If any of the Signatories believes amendments to this Agreement are required, they shall consult in accordance with Stipulation XII.C.
3. USACE shall organize biannual meetings for the Signatories, Invited Signatories, and Concurring Parties, with an agenda that summarizes the activities of the last six (6) months, to facilitate open communication and to provide regular updates on the progress of activities related to Section 106 compliance. One of the meetings shall occur following submission of the final annual report each year. The meetings can be cancelled upon mutual agreement by the Signatories. If a Signatory, Invited Signatory, or Concurring Party is unable to attend a biannual meeting as scheduled, they will be provided with a meeting summary.
4. Unless otherwise specified, all documents produced for the Undertaking shall be subject to the review process in Stipulation III.

E. Confidentiality

1. The parties to this Agreement acknowledge that information regarding historic properties, including data concerning the precise location and nature of the historic properties, is subject to the provisions of Section 304 of the NHPA, as amended (54 U.S.C. § 307103), 36 C.F.R § 800.6(a)(5), and 36 C.F.R § 800.11(c), relating to the public disclosure of such information, as well as Section 9 of the Archaeological Resources Protection Act (10 U.S.C. §§ 470aa–470mm), the Freedom of Information Act (5 U.S.C. § 552, as amended), and/or the Executive Order on Sacred Sites 13007 FR 61-104, dated May 24, 1996, as applicable.

2. Regarding sensitive information shared by Tribes, USACE, in accordance with the provisions of the federal law, will not share non-public information that is so designated by the Tribes, without first confirming (in writing with the provider of the information) the appropriateness of sharing.
3. Subject to the confidentiality limitations in Stipulation XII.E.1, DWR and the USACE may share studies and background documentation developed by DWR or the USACE with other federal or state agencies.

F. Emergencies

Should an emergency situation occur during construction that threatens a historic property, and which represents an imminent threat to public health or safety, or creates a hazardous condition, the USACE shall immediately notify the Signatories of the condition that has initiated the situation and the measures taken to respond to the emergency or hazardous condition. Should the Signatories desire to provide technical assistance to the USACE, they shall submit comments within seven (7) days from notification if the nature of the emergency or hazardous condition allows for such coordination.

G. Termination

1. If any Signatory or Invited Signatory to this Agreement determines that the terms of the agreement document will not or cannot be carried out, that party shall immediately notify the other Signatories in writing and proceed to consult with the other Signatories to attempt to develop an amendment in accordance with Stipulation XII.C. If within thirty (30) days (or other time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate this Agreement upon written notification to the other Signatories.
2. In the event of termination, if work remains to be completed under this Agreement, then the USACE shall consult in accordance with 36 C.F.R § 800.14(b) to develop a new Agreement. Beginning with the date of termination, the USACE shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, any activities related to the Undertaking shall be reviewed individually in accordance with 36 C.F.R §§ 800.4–800.6.
3. Upon a determination by the USACE, in consultation with the Signatories, Invited Signatories, consulting Tribes and consulting parties, that all of the terms of this Agreement have been satisfactorily fulfilled, the USACE shall notify in writing the Signatories, Invited Signatories, consulting Tribes and consulting parties of its intention to close out this Agreement. The USACE shall invite the parties to comment within thirty (30) days on the effectiveness of this Agreement in resolving the adverse effects on historic properties and take such comments under advisement in refining its approach to future Section 106 reviews.

H. Effective Date

This Agreement and its Appendices shall take effect on the date it has been fully executed by the Signatories. Amendments shall take effect on the dates they are fully executed by the Signatories.

I. Duration of this Agreement

Unless amended pursuant to Stipulation XII.C, this Agreement shall remain in force for ten (10) years after the effective date. If the terms of this Agreement are not carried out prior to expiration, the USACE will consult with the other signatories to this Agreement to consider amendment of the Agreement, at least sixty (60) days prior to expiration.

J. Authorizing Signatures

In witness hereof, the following authorized representatives of the Signatories have signed their names on the dates indicated, thereby executing this Agreement. This Agreement may be signed by the Signatories, Concurring Tribes, and Concurring Parties using counterpart signature pages. The USACE will distribute copies of all signed pages to the Signatories once this Agreement is fully executed.

XIII. EXECUTION AND ADMINISTRATION

Execution of this Agreement by the Signatories, its transmittal to the ACHP, and subsequent implementation of its terms demonstrate that the USACE has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, that the USACE has taken into account the effects of the Undertaking on historic properties, and that the USACE has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations for all aspects of the Undertaking.

**PROGRAMMATIC AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE DELTA CONVEYANCE PROJECT,
SACRAMENTO–SAN JOAQUIN DELTA, CALIFORNIA**

SIGNATORIES:

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

Name: _____ Date: _____

Chad W. Caldwell, P.E.

Title: Colonel, U.S. Army
District Commander

**PROGRAMMATIC AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE DELTA CONVEYANCE PROJECT,
SACRAMENTO–SAN JOAQUIN DELTA, CALIFORNIA**

SIGNATORIES:

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

Name: _____ Date: _____
Julianne Polanco
State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE DELTA CONVEYANCE PROJECT,
SACRAMENTO–SAN JOAQUIN DELTA, CALIFORNIA**

INVITED SIGNATORIES:

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Name: _____ Date: _____

Karla Nemeth

Title: Director

**PROGRAMMATIC AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE DELTA CONVEYANCE PROJECT,
SACRAMENTO–SAN JOAQUIN DELTA, CALIFORNIA**

CONCURRING TRIBE:

TRIBE TBD

Name: _____ Date: _____

First Last

Title: TBD

**PROGRAMMATIC AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE DELTA CONVEYANCE PROJECT,
SACRAMENTO–SAN JOAQUIN DELTA, CALIFORNIA**

CONCURRING PARTY:

PARTY TBD

Name: _____ Date: _____

First Last

Title: TBD

APPENDICES

- 1. Native American Indian Tribes and Other Parties Consulted**
- 2. Delta Conveyance Project APE Map**

Appendix 1: Native American Indian Tribes and Other Parties Consulted

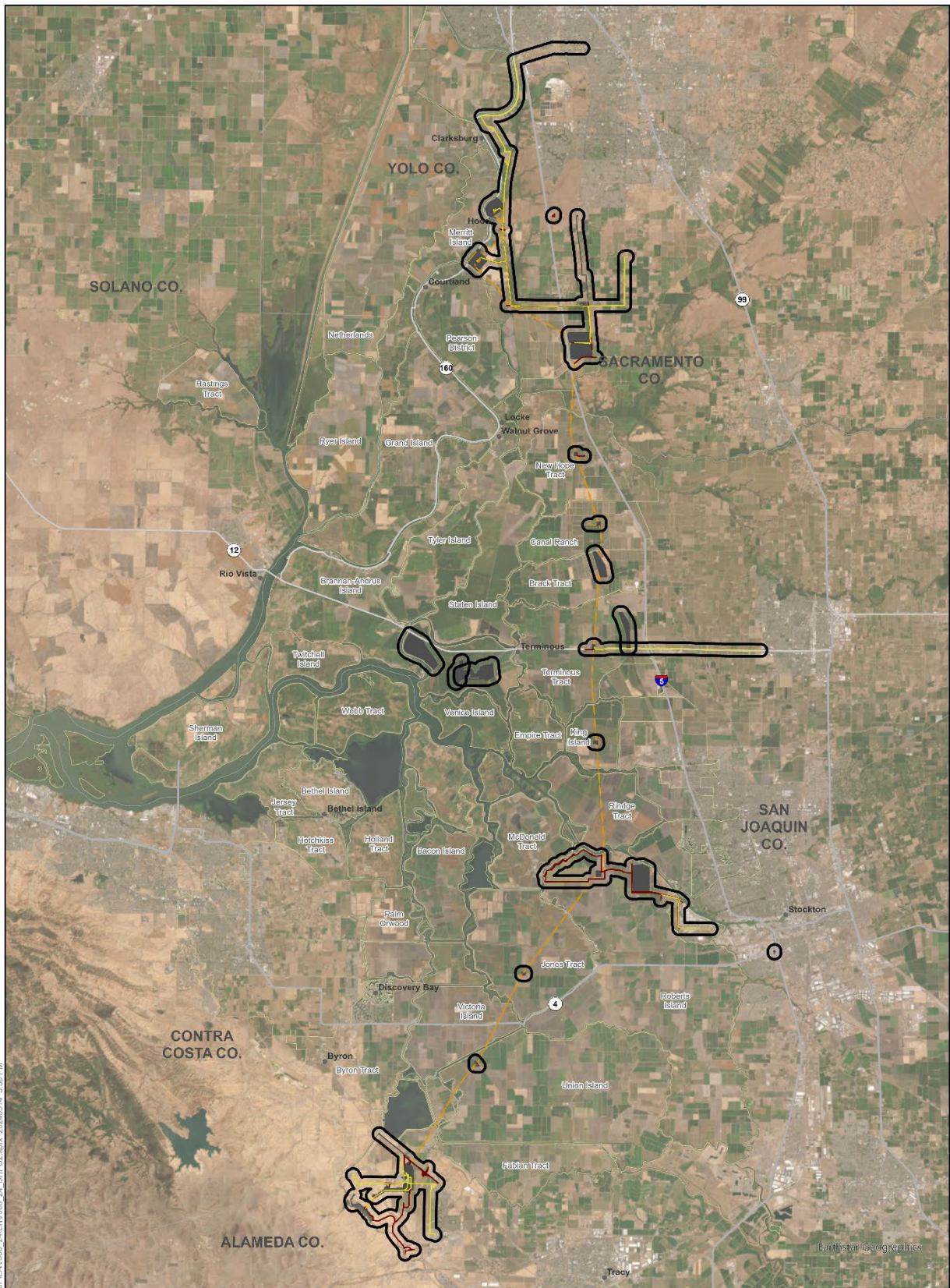
Native American Indian Tribes

- Buena Vista Rancheria of Me-Wuk Indians
- California Valley Miwok Tribe
- Kletsel Dehe Band of Wintun Indians
- Guidiville Rancheria of California
- Ione Band of Miwok Indians of California
- Jackson Band of MiWuk Indians
- Shingle Springs Band of Miwok Indians
- United Auburn Indian Community of the Auburn Rancheria of California
- Wilton Rancheria
- Yocha Dehe Wintun Nation

Other Parties Consulted

- Contra Costa County Water Agency
- Delta Protection Commission
- Locke Management Association
- North Delta CARES
- Sacramento County Department of Community Development
- San Joaquin County
- Yolo County

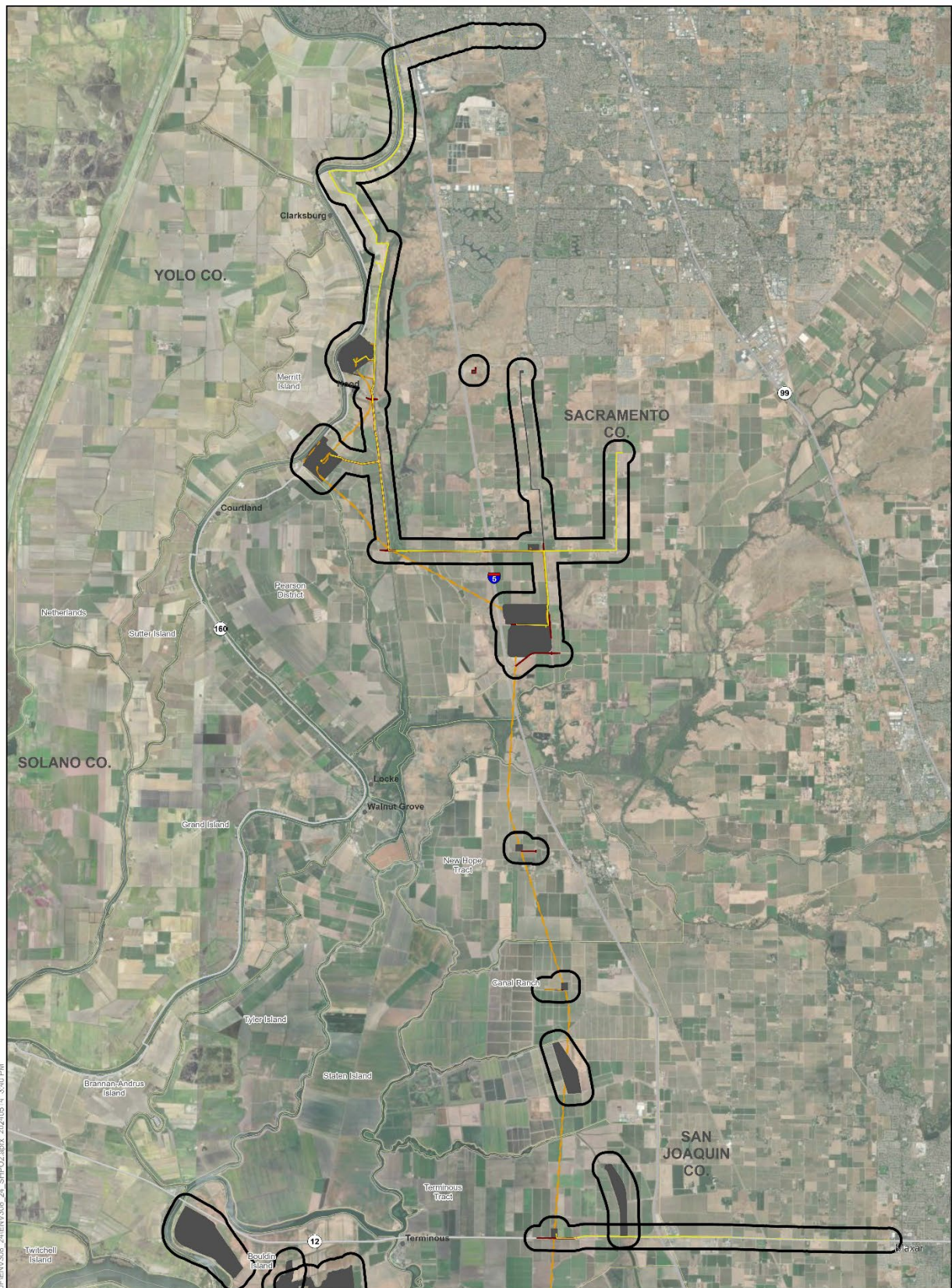
Appendix 2: Delta Conveyance Project Area of Potential Effect



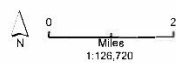
Sources: DCA, DWR, US Army Corps of Engineers



Prepared by Crystal Schiffbauer-Bowles;
Reviewed by Kristina Reese



- | | |
|----------------------------------|--------------------------|
| Approved Project | County Boundary |
| Surface Impact | Delta Islands |
| Subsurface Impact | Statutory Delta Boundary |
| Project Roads | |
| SCADA | |
| Quarter Mile of Approved Project | |



T:\WD\38\GIS_33_00\GISProject_11\ED\Delmarva_10\ENV208_24\ENV208_24_SHP02.aprx 2/24/2014 3:40 PM

Sources: DCA, DWR, US Army Corps of Engineers



Prepared by Crystal Schiffbauer-Bowles;
Reviewed by Kristina Reese

OVERVIEW
DWR Approved Project
Figure 2 of 3

Delta Protection Commission Meeting

November 3, 2025

AGENDA ITEM 8: 2026 Commission Meeting Dates

Prepared by: Holly Heyser

Presented by: Amanda Bohl

Requested Action: Approve Commission's 2026 meeting calendar

Type of Action: Vote

Generally, Commission meetings occur the third Thursday of odd-numbered months, with alternate meeting dates on the third Thursday of even-numbered months. Because the California State Association of Counties often holds its multiday conference in the third week of November, and many of our Commission members attend that conference, we typically schedule the November meeting for the second Thursday of that month.

A near-term scheduling adjustment the Commission may wish to consider is the timing of anticipated hearings by the Delta Stewardship Council (Council) regarding the Delta Conveyance Project Certification of Consistency with the Delta Plan: In the event the DWR Certification is appealed, the Council is generally required to hear appeals within 60 calendar days. If an appeal or appeals are filed, it is possible the Council would hold a hearing that could conflict with the Commission's usual third Thursday meeting in January. Given the Commission's critical role as an expert in matters that may affect the unique cultural, recreational, and agricultural values of the Delta, the Commission may wish to schedule the January meeting one week earlier.

- January 8 or 15, 2026
- March 19, 2026
- May 21, 2026
- July 16, 2026
- September 17, 2026
- November 12, 2026

In addition, the alternate Commission meeting dates would be scheduled as noted below. These meetings would only be held if called by the Commission Chair.

- February 19, 2026
- April 16, 2026
- June 18, 2026
- August 20, 2026
- October 22, 2026
- December 17, 2026

A visual calendar of these dates is shown on the next page.

2026

● Proposed meeting date

○ Proposed alternate meeting date

* Two options for January meeting date

JANUARY

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11	12	13	14	* 15	16	17
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25	26	27	28	29	30	31

FEBRUARY

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22	23	24	25	26	27	28

MARCH

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29	30	31				

APRIL

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MAY

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31						

JUNE

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JULY

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AUGUST

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SEPTEMBER

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27	28	29	30			

OCTOBER

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NOVEMBER

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22	23	24	25	26	27	28
29	30					

DECEMBER

S	M	T	W	T	F	S
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Recommended Action: Commission staff recommends the Commission approve the Commission meeting calendar.

Delta Protection Commission Meeting

November 03, 2025

AGENDA ITEM 9: Consent Agreement with the Department of Justice

Prepared by: Amanda Bohl, Executive Director

Presented by: Amanda Bohl, Executive Director

Recommended Action: Discussion and Vote

Type of Action: Vote

Background

The Commission relies on the California Department of Justice, Office of the Attorney General (AGO) to provide it with general legal advice, as the Commission does not have its own in-house counsel. The AGO also represents other state agencies with an interest in the Delta, the Delta Reform Act and Delta Plan, and the Delta Conveyance Project, including: the Delta Stewardship Council, Department of Water Resources, California Department of Fish and Wildlife, and State Water Resources Control Board.

Given the nature of the work that the AGO conducts for these state agencies and the potential for the agencies' positions to conflict, the agencies have been requested to provide informed written consent to authorize AGO to represent the agencies, to the extent permitted under the California Rules of Professional Conduct, Rule 1.7.

On June 25, 2012, former Executive Director Michael Machado signed the initial consent agreement. It's been over thirteen years since this agreement was signed and the Department of Justice has updated many of its own provisions referenced in the agreement. An updated agreement is needed to ensure that all parties have a current understanding of potential conflicts.

The 2025 Consent Agreement is attached.

Recommended Action

Approve updated consent agreement and authorize the Executive Director to sign the consent agreement on behalf of the Commission.

CONSENT AGREEMENT

This Consent Agreement (hereafter “Agreement”) is made this ____ day of November, 2025, between the California Department of Justice, Office of the Attorney General (the “AGO”) and the California Delta Protection Commission (“Commission”).

I. BACKGROUND

On June 25, 2012, the AGO and Commission executed a Consent Agreement (“2012 Consent Agreement”) in which the Commission waived “any duty held by AGO to avoid the representation of adverse interests,” under then-operable Rule 3-310 of the California Rules of Professional Conduct or any other rule of conduct or canon of ethics to the extent that AGO represents” the Delta Stewardship Council (“Council”), Department of Water Resources (“DWR”), Department of Fish and Wildlife (“CDFW”, formerly Department of Fish and Game), or the State Water Resources Control Board (“SWRCB”) in any matters arising from the Bay-Delta Conservation Plan (“BDCP”) process or the Sacramento-San Joaquin Delta Reform Act of 2009 (“Delta Reform Act”).

The 2012 Consent Agreement anticipated the potential for conflicts between the Commission and the Council, the Commission and DWR, the Commission and CDFW, and the Commission and SWRCB, related to DWR’s proposal for a two-tunnel water conveyance project within the BDCP. In 2016, the Commission engaged before the Council on the two-tunnel water conveyance project, renamed as California WaterFix, on the topic of consistency of that project with the Delta Reform Act. California WaterFix was ultimately discontinued in 2019. In 2020, DWR began review of a single-tunnel water conveyance project (“Delta Conveyance Project”).

In 2020, the Commission submitted comments to DWR on its Delta Conveyance Project notice of preparation of an environmental impact report (“EIR”). In 2022, the Commission submitted comments to DWR on its Delta Conveyance Project Draft EIR. In 2023, the Commission submitted comments to the Army Corps of Engineers on its draft environmental impact statement (EIS) and transmitted copies of those comments and attachments to DWR. In 2024, the Commission submitted a letter to the Council on appeals by other non-state entities of DWR’s 2024-2026 Proposed Geotechnical Activities Certification of Consistency and participated in the Council’s hearings addressing those appeals.

On October 3, 2025, DWR publicly posted on its website a draft certification of consistency with the Delta Plan for the Delta Conveyance Project. On October 13, 2025, Commission staff transmitted to DWR copies of its prior correspondence for inclusion in the record for its final consistency certification for the Delta Conveyance Project. On October 17, DWR filed its final consistency certification for the Delta Conveyance Project with the Council, starting a 30-day timeline during which there may be appeals filed with DSC pursuant to Water Code section 85225.10. Under the Delta Reform Act, any person can file an appeal. (Wat. Code, § 85225.10, subd. (a).) Newly enacted legislation clarifies that any person includes state and local agencies, consistent with the Council’s existing practice. (Sen. Bill. No. 650 (2025-2026 Reg. Sess.), § 2; see also Sen. Comm. On Nat. Resources and Water, Analysis on S.B. 650 (2025-2026 Reg. Sess.), p. 4.)

The AGO represents state agencies with an interest in the Delta, the Delta Reform Act and Delta Plan, and the Delta Conveyance Project, including the Commission, the Council, DWR, CDFW, and SWRCB. Because these agencies’ interests may potentially conflict with each other, and with the interests of the Commission, the AGO has directed that informed written

consent by such agencies under Rule 1.7 of the Rules of Professional Conduct is needed to authorize the AGO to represent each of these agencies, to the extent permitted under Rule 1.7.

This Consent Agreement supersedes the 2012 Consent Agreement and addresses potential conflicts between the Commission and other state agencies arising from the Delta Conveyance Project and Delta Reform Act.

II. RECITALS

AFFECTED STATE AGENCIES and AGO REPRESENTATION

A. Commission: The Commission is a state agency established by the Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 and governed by a multi-member body. (Pub. Resources Code, § 29700.) The Delta Reform Act requires the Commission to identify and provide recommendations to the Council on methods of preserving the Delta as an evolving place as the Council develops and implements the Delta Plan. (Pub. Resources Code, § 29703.5, subd. (a).) The Commission is granted authority to review and provide comments and recommendations to the Council on any significant project within the scope of the Delta Plan that may affect the unique cultural, recreational and agricultural values of the Delta. (Pub. Resources Code, § 29773, subd. (a).) The Commission has the general ability to provide comments to other public entities on other actions or projects of interest to the Commission, including on projects affecting land uses in the primary zone of the Delta. (Pub. Resources Code, § 29770, subd. (d).) The Commission may also appeal a certification of consistency with the Delta Plan. (Wat. Code, § 85225.10, subd. (a).)

B. Council: The Council is a state agency established by the Delta Reform Act and governed by a multi-member body. The Delta Reform Act requires the Council to prepare and

regularly update a Delta Plan. The Delta Plan, as adopted and subsequently amended, is a comprehensive resources management plan for the Delta . that contains measures to achieve the two “coequal goals” of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. (Wat. Code, § 85054.) The Delta Reform Act requires that state or local agencies proposing to undertake certain “covered actions” affecting the Delta prepare and submit to the Council a certification of consistency with the Delta Plan before they can be implemented. (*Id.*, § 85225.) Any person who claims a proposed covered action is inconsistent with the Delta Plan may appeal a certification of consistency to the Council. (*Id.*, § 85225.10, subds. (a), (d).) These “covered actions” include DWR’s Delta Conveyance Project. In addition to these responsibilities, the Council must consider the Commission’s recommendations on any significant project within the scope of the Delta Plan and adopt the recommendation if the Council, in its discretion, determines the recommendations to be feasible and consistent with the objectives of the Delta Plan (Pub. Resources Code, § 29773, subd. (b)), and determine the consistency under the Delta Reform Act of all covered actions when appealed to the Council (Wat. Code, § 85225.25).

C. DWR: DWR is a state agency governed by a director. (Wat. Code, § 120.) DWR operates the California State Water Project (SWP), a multi-reservoir and aqueduct system that delivers water to twenty-nine water supply contractors and over 20 million people within the State. DWR diverts and exports water south of the Delta from its point of diversion at Clifton Court Forebay, a DWR facility located near Tracy. DWR provides water to the San Francisco Bay Area, Santa Clara Valley, the Central Valley, the central California coast, and Southern California. DWR is the lead agency under CEQA for the Delta Conveyance Project. DWR has

submitted its certification of consistency with the Delta Plan for the Delta Conveyance Project to the Council as described in Section I of this Agreement.

D. CDFW: CDFW is a state agency governed by a director. (Fish & G. Code, § 700.) CDFW implements the California Endangered Species Act (“CESA”). (Fish & Game Code, § 2050, et seq.) CESA requires CDFW to determine whether the Delta Conveyance Project meets CESA requirements. CDFW issued an incidental take permit for the Delta Conveyance Project under section 2081 of CESA in February of 2025.

E. SWRCB: The SWRCB is a state agency governed by a multi-member body as reflected in the Porter-Cologne Water Quality Control Act. (Wat. Code, § 13000 et seq.) The SWRCB regulates the diversion and storage of water from surface streams in the State. DWR holds water right permits issued by the SWRCB for the diversion and storage of SWP water. Under its water quality and water rights authority, the SWRCB imposes terms and conditions on DWR water right permits for the protection of the beneficial uses of water, including public trust uses. Implementation of the Delta Conveyance Project will likely require changes in the SWP water right permits, including but not limited to changes in the authorized points of diversion contained in the permits. The SWRCB will review and act upon such water right change applications. The Delta Reform Act further requires that any SWRCB approval of the water right changes needed to implement a Delta conveyance alternative include appropriate Delta flow criteria, and that DWR may not commence construction of such a facility until the SWRCB has approved such water right changes.

F. AGO Representation: The AGO provides the Commission with legal advice and representation on all legal matters since the Commission does not employ its own in-house

counsel. The AGO provides legal advice and representation to the Council on matters related to the Delta Reform Act and review of covered actions, including the Delta Conveyance Project, and representation in litigation related to the Delta Plan. The AGO provides legal advice and representation to DWR regarding the Delta Conveyance Project, including administrative hearings and litigation related to the Delta Conveyance Project. Other state agencies may similarly ask the AGO for legal advice and representation regarding the Delta Conveyance Project and/or the Delta Reform Act.

III. POTENTIAL CONFLICTS

G. Potential Conflicts between the Commission and the Council. The Council has adopted the Delta Plan, which must further the coequal policy goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The Council has considered the Economic Sustainability Plan developed by the Commission as part of a proposal to protect, enhance and sustain the unique cultural, historical, recreational, natural resource, and agricultural values of the Delta as an evolving place, and has incorporated many of its recommendations into the Delta Plan. The Commission and the Council may hold differing views about how the Delta is to be protected, enhanced and sustained, and about what actions may or may not be consistent with the coequal goals. Further, the Council must adopt recommendations of the Commission on any significant project within the scope of the Delta Plan if the Council in its discretion determines the recommendations to be feasible and consistent with the objectives of the Delta Plan. The Commission and the Council may hold differing views as to what recommendations may be feasible and consistent with the objectives of the Delta Plan.

H. Potential Conflicts Between the Commission and DWR. The Commission has general authority as identified in Paragraph II.A to comment upon projects that may be of interest to it, as well as specific authority under the Delta Reform Act to comment upon any significant project within the scope of the Delta Plan. The Delta Conveyance Project is one such significant project. DWR and the Commission may hold differing views on the Delta Conveyance Project and whether it is consistent with the Delta Plan. The Delta Reform Act also required the Commission to prepare an Economic Sustainability Plan that contains comments and recommendations to DWR concerning DWR's periodic update of a flood management plan for the Delta. DWR and the Commission may hold differing views concerning flood management in the Delta and may also hold differing views concerning other aspects of the Delta Conveyance Project that affect land uses in the Delta.

I. Potential Conflicts Between the Commission and CDFW. The Commission and CDFW may hold differing views regarding the level and location of tidal habitat restoration that is necessary or appropriate for the Delta and may also hold differing views concerning other aspects of the Delta Conveyance Project that affect land uses in the Delta.

J. Potential Conflicts Between the Commission and the SWRCB. The Commission and the SWRCB may hold differing views as to the use of flow criteria in determining flow requirements or other measures necessary to protect the sustainability of agriculture in the Delta. The Commission and SWRCB may also hold differing views concerning other aspects of the Delta Conveyance Project that affect land uses in the Delta.

IV. AGREEMENT

In consideration of the recitals, mutual promises, and agreements, the parties agree as follows:

1. To the extent permitted by California Rules of Professional Conduct, Rule 1.7, the Commission provides its informed written consent to the AGO's representation of DWR, DSC, CDFW, and/or SWRCB in any matters arising from or related to the Delta Conveyance Project and/or the Delta Reform Act.

2. The AGO agrees to assign separate deputy attorneys general to represent the Commission, DWR, DSC, CDFW, and SWRCB as to any matters arising from or related to the Delta Conveyance Project and/or the Delta Reform Act.

3. If a conflict arises under California Rules of Professional Conduct, Rule 1.7(d)(3), between the Commission and another state entity arising from the Delta Conveyance Project and/or the Delta Reform Act, the AGO will work with the entities involved to ensure compliance with the California Rules of Professional Conduct and Government Code sections 11040 through 11045.

4. Notwithstanding any provision of this agreement, the Commission may employ counsel other than AGO to represent the Commission in any matters arising from the Delta Conveyance Project and/or the Delta Reform Act where the Commission and AGO have complied with all requirements of sections 11040 through 11044 of the California Government Code.

5. This agreement may be signed and executed by electronic signature and may be executed in counterparts.

CALIFORNIA DEPARTMENT OF
JUSTICE, OFFICE OF THE ATTORNEY
GENERAL

By _____

Danae J. Aitchison
Deputy Attorney General

CALIFORNIA DELTA PROTECTION
COMMISSION

By _____

Amanda Bohl
Executive Director

Delta Protection Commission Meeting

November 03, 2025

AGENDA ITEM 10: Discussion Regarding the Department of Water Resource's Submittal of a Certification of Consistency for the Delta Conveyance Project to the Delta Stewardship Council on October 17, 2025, and the Commission's Procedural Options for a Potential Response

Prepared by: Virginia Gardiner, Program Manager

Presented by: Amanda Bohl, Executive Director

Recommended Action: Discussion item only

Type of Action: Discussion

Background

The Legislature refined the Commission's mandate in 2009 when it amended the 1992 Delta Protection Act with passage of the Delta Reform Act of 2009 (Chapter 5, Statutes of 2009). That Act declared that the State's basic goals for the Delta are to provide a more reliable water supply for California and protect, restore, and enhance the Delta ecosystem "in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place" (Public Resources Code Section 29702(a) and Water Code Section 85054.)

In addition, state law identifies the Commission as a "forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, and agricultural resources of the Delta" (Public Resources Code Section 29703.5(a)) and directs the Commission to lead and support a variety of recommendations in the Delta Stewardship Council's Delta Plan, many related to protecting and enhancing the Delta's unique values. The Commission is also unique in its makeup. Although the Commission is a state agency, eleven of its members are locally elected representatives, four are from the state and two are ex officio. This means the Commission has a unique and more locally based perspective than other state agencies.

On October 17, 2025, the Department of Water Resources (DWR) submitted its final Certification of Consistency of the Delta Conveyance Project (DCP) with the Delta Plan to the Delta Stewardship Council (Council). The Council's consideration of the Certification is a significant step towards implementation.

The Commission has objected to predecessors of the current project, such as the Bay-Delta Conservation Plan (2013 to 2015), and more recently with California WaterFix, or the “Twin Tunnels,” in 2018. The Commission and staff have also actively commented on the DCP.

Current Status

The DWR Certification of Consistency filing on October 17 triggered a 30-calendar day appeal period during which parties may file appeal(s) challenging the consistency of the project with the Delta Plan. Because the 30th day falls on a weekend, the appeal deadline is Monday, November 17.

Pursuant to the Commission and the Council’s statutory authority, the Commission has several options for how it may now participate in the Council’s consideration of the Certification of Consistency.

- A. **Provide Comments and Recommendations to the Council** regarding the DCP’s consistency with the Delta Plan. (Public Resource Code 29773 and 23 Cal. Code of Regs. (The Council’s Regulations), Section 5028.)

These comments would likely address the DCP’s effects on the unique cultural, recreational, and agricultural values within the Primary and Secondary zones of the Delta with an emphasis on Delta as Place. We would likely seek to submit both written and oral comments to assist the Council in evaluating appeals that are pending regarding the DCP.

This option is the course of action the Commission took with respect to CA WaterFix, and with the appeal of the Geotechnical Investigations in 2024.

The timeline for this will not be known until after the November 17 appeals deadline has passed. We do, however, expect the appeals hearing to be scheduled for mid-January, and it may be a quick turnaround to meet Council deadlines, especially for the submittal of written comments.

- B. **Appeal the Certification of Consistency.** The Commission could file an appeal with the Council if it believes the proposed DCP is inconsistent with the Delta Plan and will, as a result, have significant adverse effects on the achievement of the coequal goals of the Delta Reform Act or on effective flood control within the delta. (23 Cal. Code of Regs., 5022.) The deadline for filing an appeal is November 17, 2025.

A draft appeal would be brought before the Commission at its regular meeting of November 13, 2025, for approval.

C. Appeal the Certification *and* Provide Comments and Recommendations to the Council Pursuant to PRC 29773. This option would include the same elements as both options B and C.

D. Take no action. The Commission's implementing authority does not require it to file an appeal or provide comments.

Recommended Action

This is a discussion item only. Staff is seeking to hear the Commission's discussion and consideration of the potential courses of action outlined above. We are also interested in receiving any information that Commissioners may be able to share regarding how their constituents may be reacting to the Certification of Consistency.

Relationship to Vision 2030 (Commission strategic plan)

The Commission's actions with respect to the DCP potentially touch upon the full range of strategic plan themes protecting the unique values that are Delta as Place, including those related to water, agriculture, levees, economy, heritage, recreation and tourism, education and outreach, summarized below:

Water

W.1 Support Delta water solutions that reduce reliance on Delta fresh water supplies, provide through-Delta fresh water conveyance to protect Delta water quality and water rights, and protect and enhance the Delta's natural resources, recreation, agriculture, adjacent urban areas and economies.

Agriculture

A.1 Protect and enhance long-term viability of commercial agriculture.

A.2 Protect agricultural lands from inappropriate development.

Levees

L.2 Advocate for reliable funding for Delta levee maintenance and improvements.

L.3 Work to ensure that Delta residents are represented in decision-making processes.

Economy

E.1 Lead the implementation and ongoing updates of the Economic Sustainability Plan.

E.2 Identify regional community needs and opportunities to maximize Delta regional benefits.

Delta Heritage

H.1 Protect the Delta's distinctive character and land uses through implementation of the Land Use and Resource Management Plan (LURMP).

H.2 Protect and promote the tribal, cultural, and historical resources of the Delta.

H.3 Support local governments in preparing and implementing Community Action Plans that emphasize the vitality and preservation of Legacy Communities.

H.4 Promote and enhance the Delta's heritage of natural resources, such as wildlife habitat, scenic value, soils, and water.

Recreation and Tourism

R.1 Partner with public agencies and private entities to increase and expand recreation and tourism in the Delta to all.

R.2 Encourage protection of private lands from unauthorized recreational uses by promoting and educating users on recreational opportunities on public lands and private recreation facilities.

Education and Outreach

O.1 Ensure consistent, proactive communication between and among Delta interests and decision-makers.