

## DELTA PROTECTION COMMISSION

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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](mailto:virginia.gardiner@delta.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Ray', with a long horizontal flourish extending to the right.

Dan Ray

Interim Executive Director

C: Commissioners

Delta Counties Coalition