

**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

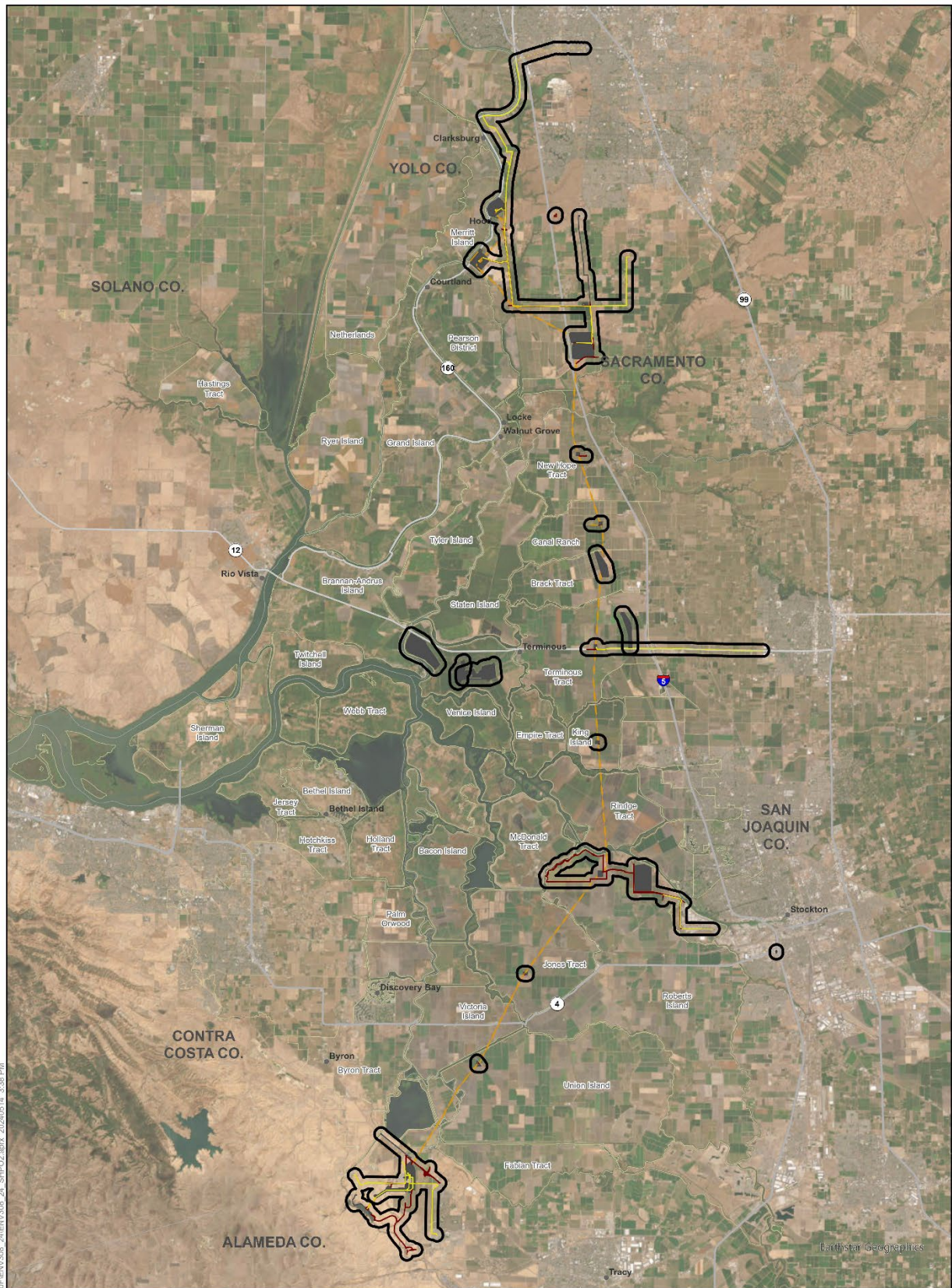
Native American Indian Tribes

- 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



T:\WG-38\GIS_38_0\GIS\SR\mapset_11\FDeliverable_10\FEN\2008_24\ENV\308_24_SUPD2.aprx 2024/05/14 3:38 PM

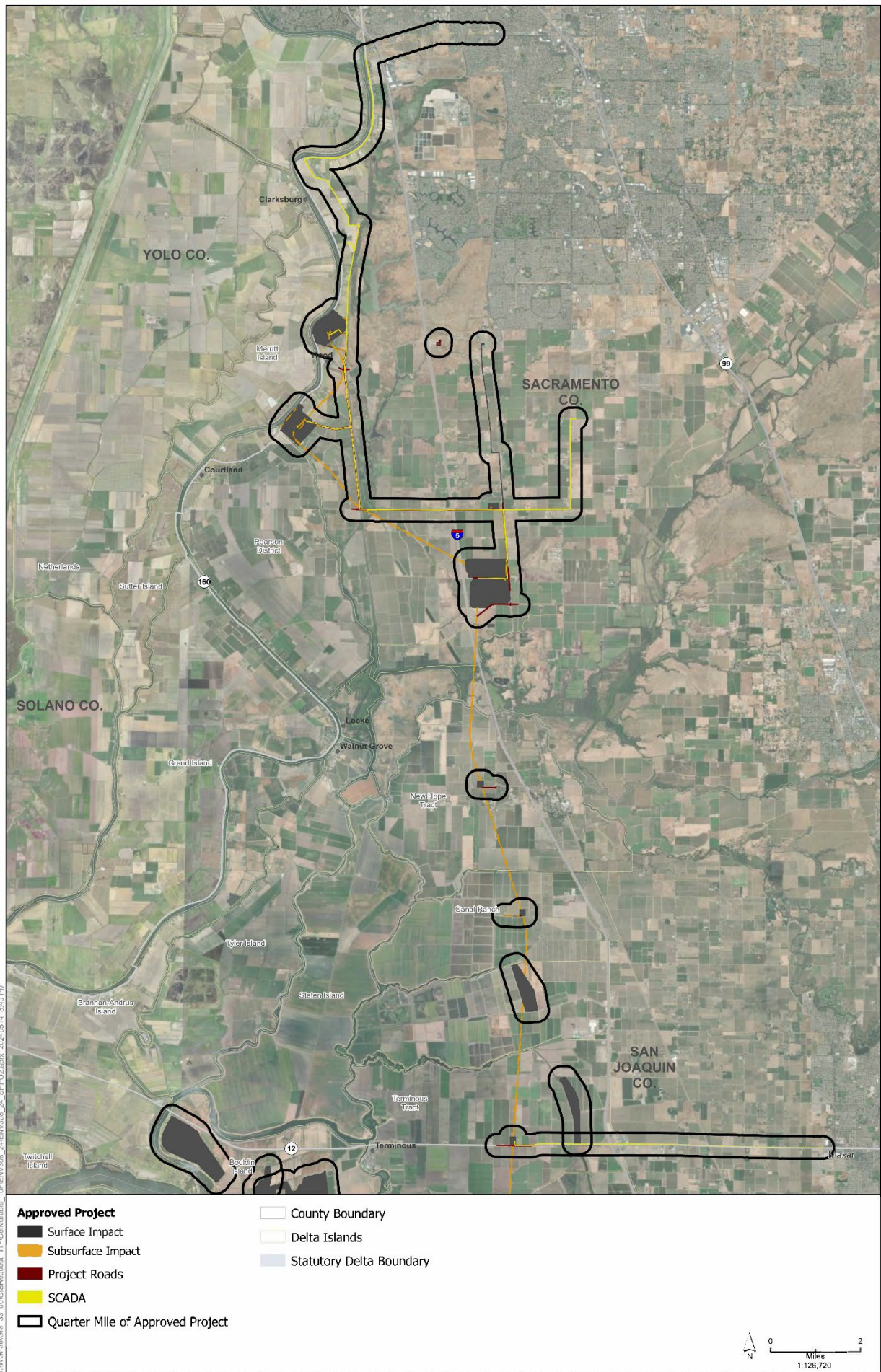
- | | |
|----------------------------------|--------------------------|
| Approved Project | County Boundary |
| Surface Impact | Delta Islands |
| Subsurface Impact | Statutory Delta Boundary |
| Project Roads | |
| SCADA | |
| Quarter Mile of Approved Project | |

Sources: DCA, DWR, US Army Corps of Engineers



Prepared by Crystal Schiffbauer-Bowles;
Reviewed by Kristina Reese

OVERVIEW
DWR Approved Project
Figure 1 of 3



T:\WD\38\GIS_33_00\GISProject_11\ED\Delaware_10\FIN\208_24\ENV\208_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



 County Boundary
 Delta Islands
 Statutory Delta Boundary



Sources: DCA, DWR, US Army Corps of Engineers



OVERVIEW
DWR Approved Project
Figure 3 of 3