

Cultural Appendix B

Draft Programmatic Agreement

Yuba River Ecosystem Restoration Feasibility Study

January 2018

DRAFT

U.S. Army Corps of Engineers

Sacramento District

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

WHEREAS, the U.S. Army Corps of Engineers, Sacramento District (Corps), is conducting an ecosystem restoration feasibility study (Study) as authorized by the Rivers and Harbors Act of 1962, P.L. 87-874, Section 209; and

WHEREAS, the Study is being conducted to identify and respond to problems and opportunities associated with ecosystem degradation in the Yuba River watershed; and

WHEREAS, it is anticipated that the Study will identify a National Ecosystem Restoration (NER) Plan; and

WHEREAS, the Corps proposes to study alternatives and measures that relate to improving and increasing the quality and quantity of riparian, aquatic, and general floodplain habitat which may include, but is not limited to, the following measures: improvements to the river channel, floodplain, backwater areas, and vegetation to expand riparian forest and aquatic habitat for anadromous fish species; and

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

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

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

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

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

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

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

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

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

WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(3), the Corps will notify and invite the Advisory Council on Historic Preservation (ACHP) per 36 C.F.R. § 800.6(a)(1)(C) to participate in consultation to resolve potential adverse effects of the Project, including development of this Agreement, and

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

NOW, THEREFORE, the signatories agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on Historic Properties and to satisfy the Corps' Section 106 responsibilities for all individual aspects of the undertaking.

The Corps shall ensure that the following measures are carried out:

STIPULATIONS

I. TIME FRAMES AND REVIEW PROCEDURES

For all documents and deliverables produced in accordance with the stipulations of this Agreement, the Corps shall provide a draft document to the SHPO, Concurring Parties, and Native American interested parties and Tribes for review. Any written comments provided by the SHPO, Concurring Parties, and Native American interested parties and Tribes shall be considered in the revision of the document or deliverable within thirty (30) calendar days from the date of receipt. The Corps shall document and report the written comments received for the document or deliverable and how the comments were addressed. The Corps shall provide a revised final document or deliverable to the SHPO for concurrence.

The SHPO shall have thirty (30) calendar days to respond. Failure of the SHPO, Concurring Parties, and Native American interested parties and Tribes to respond within thirty (30) calendar days of any submittal shall not preclude Corps from moving to the next step in this Agreement.

Should the SHPO object to the final document or deliverable submitted for concurrence, the Corps and SHPO shall consult for a period not to exceed fifteen (15) Calendar days following the receipt of the SHPO's written objection in an effort to come to agreement on the issues to which the SHPO has objected. Should the SHPO and the Corps be unable to agree on the issues to which the SHPO has objected, the SHPO and the Corps shall proceed in accordance with **Stipulation XV (Dispute Resolution)**, below. The timeframe to consult to resolve a disagreement or objection may be extended by mutual consent of the Corps and the SHPO.

II. AREA OF POTENTIAL EFFECTS

The APE for Project activities shall include the construction footprint of the activity and a reasonable buffer determined through consultation between SHPO and the Corps, and shall take into account the likelihood of direct and indirect effects to Historic Properties resulting from the Project. **Attachment 1** includes an overall APE map for the Project. It will be necessary to further refine the APE as design and construction proceed. Prior to activities under **Stipulation IV (Identification and Evaluation)**, the Corps shall submit to the SHPO, Concurring Parties, and Native American interested parties and Tribes a map of the APE, and a description of the Project activities that would occur within it, in accordance with **Stipulation I (Timeframes and Review Procedures)**. Revisions to the APE will not necessitate modifications to this Agreement.

A. The APE shall include:

- (1) The extent of all Project construction and excavation activity required to improve riparian, aquatic, and floodplain habitat and improve river drainage control features such as dams, fish

ladders, channels, and levees; and

- (2) The additional right-of-way/easements obtained by the Corps as part of the Project's features; and
- (3) All areas used for excavation of borrow material and habitat creation; and
- (4) All construction staging areas, access routes, spoil areas, and stockpiling areas, and
- (5) Any areas where indirect effects may be reasonably anticipated.

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

III. IDENTIFICATION AND EVALUATION

The Corps shall complete any identification and evaluation, and as necessary, any evaluation and resolution of effects to Historic Properties prior to proceeding with construction. Should the SHPO object to the identification and evaluation or evaluation and resolution of effects to Historic Properties, the Corps and SHPO shall consult for a period not to exceed fifteen (15) Calendar days following the receipt of the SHPO's written objection in an effort to come to agreement on the issues to which the SHPO has objected. Should the SHPO and the Corps be unable to agree on the issues to which the SHPO has objected, the SHPO and the Corps shall proceed in accordance with **Stipulation XV (Dispute Resolution)**.

A. Identification of Potential Historic Properties: An inventory of Historic Properties within the APE, consistent with the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716–44740) will be initiated for the Project, or for individual phases of the Project, as construction details become available.

Survey recordation shall include features, isolates, and re-recordation of previously recorded sites, as necessary. The survey shall ensure that potential Historic Properties such as historical structures and buildings, historical engineering features, landscapes, viewsheds, and traditional cultural properties (TCPs) with significance to Native American communities, are recorded in addition to archeological sites. Recordation of historic structures, buildings, objects, and sites shall be

prepared using the California Department of Parks and Recreation (DPR) 523 Site Record forms.

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

- B. Historic Context, Recordation, and Treatment of Levees, Daguerre Point Dam, and the Yuba Gold Fields:** The Yuba River levees, Daguerre Point Dam, and Yuba Gold Fields are a known potential Historic Properties within the APE that may be affected by the Project. While sections of these levees, Daguerre Point Dam, and Yuba Gold Fields have been recognized as potential cultural resources, no overall historic context or evaluations of these built features have been developed. To facilitate documentation of these features for evaluation, the Corps will develop historic contexts and recordation methods for these features as historic structures within the APE in order to evaluate the effects of the Project. The Corps shall consider these features in the contexts of the entire Yuba River Development Project and California's historic dredge mining industry. The context shall include clear and specific criteria for determining: (1) recordation guidelines for these features within the APE, (2) identification of contributing and non-contributing elements, and (3) thresholds of adverse effect.
- C. Property Types Exempt from Evaluation:** By agreement of the Signatories and through consultation between the Corps and SHPO, various property or feature types shall be exempt from evaluation. These include common property types that are situated throughout the APE, are still used and maintained, infrastructural features built during regular periods of maintenance that cannot be clearly ascribed a specific historical context, and features that will not be effected by the undertaking. These include functioning roads, signs, fences, and bridges and mine tailings that do not contribute to the NRHP eligibility of a mining site or landscape. The Corps shall evaluate all other identified properties in accordance with **Stipulation IV.C (Evaluation of Potential Historic Properties)**.
- D. Evaluation of Potential Historic Properties:** After recordation on DPR 523 Site Record forms, potential Historic Properties shall be evaluated by a qualified professional for their eligibility for listing in the NRHP consistent with the *Secretary of Interior's Standards for Evaluation*, 36 C.F.R. § 60.4. In accordance with Stipulation I (Timeframes and Review Procedures), the Corps shall submit a completed inventory and evaluation for each phase of Project work.

IV. DETERMINATION OF EFFECTS

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

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

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

V. HISTORIC PROPERTIES TREATMENT PLAN

If adverse effects are found, the Corps, in consultation with the SHPO, Concurring Parties, and Native American interested parties and Tribes, shall develop a Historic Properties Treatment Plan (HPTP), which would be appended to this agreement. The HPTP would outline the measures necessary to resolve adverse effects to Historic Properties. Development of appropriate measures shall include consideration of Historic Property types and provisions for avoidance or protection of Historic Properties where possible.

The HPTP may be amended and appended to this Agreement without amending the Agreement. If adverse effects are found, the HPTP would be developed and implemented before construction commences. The Corps would submit the HPTP for review, in accordance with **Stipulation I (Timeframes and Review Procedures)**.

- A. Review:** The Corps shall submit the Draft HPTP to the SHPO, Concurring Parties, and Native American interested parties and Tribes for review and comment pursuant to **Stipulation I (Timeframes and Review Procedures)**.
- B. Reporting:** Reports and other data pertaining to the inventory of Historic Properties and the treatment of effects to Historic Properties will be distributed to Concurring Parties to this Agreement, Native American Tribes, and other members of the public, consistent with **Stipulation XIV (Confidentiality)** of this Agreement, unless parties have indicated through consultation that they do not want to receive a report or data.
- C. Amendments/Addendums/Revisions:** If an Historic Property type that is not covered by the existing HPTP is discovered within the APE subsequent to an initial inventory effort for a phase, or if the Corps and SHPO agree that another modification to the HPTP is necessary,

the Corps shall submit an addendum to the HPTP to the SHPO and Concurring Parties for review and comment, and if necessary, shall follow the provisions of **Stipulation IX (Discovery of Unknown Historic Properties)**. The HPTP may cover multiple discoveries for the same property type.

- D. Data Recovery:** When data recovery is proposed, the Corps, in consultation with the SHPO, shall ensure that specific Research Designs are developed consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (ACHP, May 18, 1999)
- E. Final Phase Report Documenting Implementation of the Historic Properties Treatment Plan:** Within one year after the completion of all work for each phase of the Project, the Corps shall submit to the SHPO, Concurring Parties, and Native American interested parties and Tribes, a Final Phase Report documenting the results of all work prepared for that phase under the HPTP, and the information learned from each of the Historic Properties. The submittal of the Final Phase Report shall be in accordance with **Stipulation I (Timeframes and Review Procedures)**.

VI. QUALIFICATIONS

- A. Professional Qualifications:** All technical work required for historic preservation activities implemented pursuant to this Agreement shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of Interior's Professional Qualifications Standards* for archeology or history, as appropriate (48 FR 44739). "Technical work" here means all efforts to inventory, evaluate, and perform subsequent treatment such as data recovery excavation or recordation of potential Historic Properties that is required under this Agreement. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by SHPO and associated Project consultants.
- B. Historic Preservation Standards:** Historic preservation activities carried out pursuant to this Agreement shall meet the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716- 44740), as well as standards and guidelines for historic preservation activities established by the SHPO. The Corps shall ensure that all reports prepared pursuant to this Agreement will be provided to the Signatories, Concurring Parties, and Native American interested parties and Tribes and are distributed in accordance with **Stipulation XIV (Confidentiality)**, and meet published standards of the California Office of Historic Preservation, specifically, *Preservation Planning Bulletin* Number 4(a), "Archaeological Resources

Management Reports (ARMR): Recommended Contents and Format” (December 1989).

- C. Archeological Monitor Standards:** Archeological monitoring activities required for exploratory, construction, or construction related ground disturbing activities implemented pursuant to this Agreement shall be carried out by a person meeting, at a minimum, the *Secretary of Interior’s Professional Qualifications Standards* for prehistoric or historic archaeology, as appropriate (48 FR 44739). “Archeological monitoring” here includes monitoring ground disturbing activities that have been determined by the Corps to be occurring in areas potentially sensitive for Historic Properties or buried resources.

VII. NOTICES TO PROCEED WITH CONSTRUCTION

Notices to Proceed may be issued by the Corps for individual construction segments, defined by the Corps in its construction specifications, after a Historic Properties inventory has been completed [per **Stipulation V (Historic Properties Treatment Plan)** or **Stipulation IV (Identification and Evaluation)**], and prior to treatment of adverse effects on Historic Properties within the APE provided that:

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

VIII. DISCOVERY OF UNKNOWN HISTORIC PROPERTIES

The Corps is responsible for complying with 36 C.F.R. § 800.13(a) in the event of inadvertent discoveries of Historic Properties during implementation of the Project. The HPTP will provide specific procedures for complying with post review and inadvertent discoveries of Historic Properties. If the Corps authorizes work before the HPTP is finalized and there is a discovery of an unknown Historic Property, the Corps shall follow 36 C.F.R. § 800.13(b).

Additionally, the following procedures shall be followed:

- A. **Workforce Training:** During implementation of Project activities, the Corps, or archeologists meeting the professional qualifications as described in **Stipulation VI (Qualifications)**, will provide training to all construction personnel before they begin work, regarding proper procedures and conduct in the event that archeological materials are encountered during construction.
- B. **Human Remains:** Treatment of human remains is governed by **Stipulation XII (Tribal Consultation and Treatment of Human Remains)**.

IX. CURATION

To the extent that curation is determined to be appropriate mitigation to resolve adverse effects to Historic Properties, curation shall be conducted in accordance with 36 C.F.R. § 79, except those materials identified as Native American human remains and items associated with Native American burials. Archeological items and materials from State or privately owned lands shall be maintained in accordance with 36 C.F.R. § 79 until any specified analyses are complete. In portions of the APE that are federally owned and administered, the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001 et seq.) may apply in some instances during this Project. In such cases, the federal agency that owns or administers lands in which Native American burials are present, may be required to curate cultural materials subject to NAGPRA. This agreement incorporates by reference the definitions for “human remains” and “funerary objects” set forth in 43 C.F.R § 10.2(d) and those definitions shall apply to actions under this Agreement. Further treatment of human remains is addressed in **Stipulation XII (Tribal Consultation and Treatment of Human Remains)**.

X. TRIBAL INVOLVEMENT

- A. In consultation with Native American interested parties and Tribes, the Corps will make a reasonable and good-faith effort to identify Historic Properties of traditional religious and cultural importance. The Corps shall ensure that consultation with Native American Tribes is initiated early with respect to the Project and continues throughout the Section 106 process.
- B. In accordance with the guidance provided in National Register Bulletin 38 and Preservation Brief 36, the Corps will seek comments from all potentially interested Native American interested parties and Tribes in making determinations of NRHP eligibility for any Traditional Cultural Properties (TCPs) and Cultural Landscapes (as defined in Bulletin 38 and Preservation Brief 36). Review of documentation shall be consistent with **Stipulation I (Timeframes and Review Procedures)**.

- C. Pursuant to 36 C.F.R. § 800.6(c)(2)-(3), the Corps shall consider requests by Native American Tribes to become Concurring Parties to this Agreement. In accordance with **Stipulation XIV (Confidentiality)**, Concurring Parties to this Agreement will receive documents produced under this Agreement, as appropriate.
- D. Native American Tribes may choose not to sign this Agreement as a Concurring Party. Native American Tribes and individuals not acting as Concurring Parties to the Agreement will be contacted when the Corps identifies potential interest in a specific phase or action of the project. The Corps will make a good faith effort to identify any Native American organizations and individuals with interest in the proposed treatment of Historic Properties. The identification effort may include contacting the Native American Heritage Commission (NAHC), using online databases, and using personal and professional knowledge. The Corps will then contact each identified organization and individual by mail or email inviting them to consult about the specific Historic Properties. If interest from the contacted parties is received by the Corps, the Corps will proceed to consult in accordance with **Stipulation XI.A. (Tribal Involvement)**. Further consultation may also be carried out through either letters of notification, emails, public meetings, environmental assessments/environmental impact statements, site visits, and/or another method requested by a Native American interested party and Tribe. Failure of any contacted group to comment within thirty (30) calendar days shall not preclude the Corps from proceeding with the Project.
- E. The Corps shall make a reasonable and good-faith effort to ensure that Native American Tribes, acting as either Concurring Parties or those expressing interest in the project, will be invited to participate in the development and implementation of the terms of this Agreement, including, but not limited to, the identification of the APE, identification of potential Historic Properties, determinations of eligibility, findings of effect, and the resolution of adverse effect for those Historic Properties. Review periods shall be consistent with **Stipulation I (Timeframes and Review Procedures)** except in situations involving unanticipated discoveries and treatment, which shall follow the review schedules of **Stipulation IX (Discovery of Unknown Historic Properties)**. The Corps shall ensure that all interested Native American reviewers shall receive copies of all final survey and evaluation reports.

XI. TRIBAL CONSULTATION AND TREATMENT OF HUMAN REMAINS

In cases when human remains are discovered on non-federally owned property within the designated APE, NAGPRA would not apply. The YCWA and landowner shall ensure that Native American human remains and grave goods encountered during the Undertaking that are located on state or private land are treated in accordance with applicable state and local laws. If Native American

human remains are encountered within the context of a National Register eligible archaeological site, a clear means of identifying those remains and grave goods will be described in the HPMP. Any procedures described in the HPTP regarding the handling or treatment of human remains will be coordinated with the landowner to ensure that they are consistent with state and local law. In the event that any Native American human remains or associated funerary items are identified, the Most Likely Descendant (MLD), as identified by the Native American Heritage Commission, shall be invited to advise YCWA and landowner in the treatment of any Native American human remains and items associated with Native American burials.

XII. PUBLIC CONSULTATION AND PUBLIC NOTICE

- A.** Pursuant to 36 C.F.R. § 800.6(c)(2)-(3), the Corps will consider requests by interested parties to become Concurring Parties to this Agreement. Within thirty (30) calendar days of the effective date of this Agreement, the Corps shall consult with the SHPO to compile a list of members of the interested public who shall be provided notice of this Agreement.
- B.** The interested public will be invited to provide input on the identification, evaluation, and proposed treatment of Historic Properties. This may be carried out through either letters of notification, public meetings, environmental assessment/environmental impact statements, and/or site visits. The Corps shall ensure that any comments received from members of the public are taken under consideration and incorporated where appropriate. Review periods shall be consistent with **Stipulation I (Timeframes and Review Procedures)**. In seeking input from the interested public, locations of Historic Properties will be handled in accordance with **Stipulation XIV (Confidentiality)**. In cases where the release of location information may cause harm to the Historic Property, this information will be withheld from the public in accordance with Section 304 of the NHPA (54 U.S.C. § 307103).

XIII. CONFIDENTIALITY

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

XIV. DISPUTE RESOLUTION

- A.** Should any Signatory Party to this Agreement object in writing to any action proposed or carried out pursuant to this Agreement, the Corps will immediately notify the SHPO and the Concurring Parties of the objection and proceed to consult with the objecting party for a period of

time, not to exceed thirty (30) calendar days, to resolve the objection. If the objection is resolved through consultation, the Corps may authorize the disputed action to proceed in accordance with the terms of such resolution. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the ACHP. Within forty-five (45) calendar days after receipt of all pertinent documentation, the ACHP shall either:

- (1) Advise the Corps that the ACHP concurs in the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly; or
- (2) Provide the Corps with recommendations, which the Corps shall consider in reaching a final decision regarding the objection; or
- (3) Notify the Corps that the ACHP will comment in accordance with the requirements of Section 106 of the NHPA, and proceed to comment. Any ACHP comment provided in response shall be considered by the Corps, pursuant to the requirements of Section 106 of the NHPA.

B. Should the ACHP not exercise one of the options under **Stipulation XIV.A. (Dispute Resolution)** within forty-five (45) calendar days after receipt of all submitted pertinent documentation, the Corps' responsibilities under Section 106 of the NHPA are fulfilled upon implementation of the proposed response to the objection.

C. The Corps shall consider any ACHP recommendation or comment and any comments from the SHPO to this Agreement provided in accordance with this stipulation with reference only to the subject of the objection; the Corps' responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

D. The Corps shall provide the SHPO with a written copy of its final decision regarding any objection addressed pursuant to **Stipulation XIV.A. (Dispute Resolution)**.

E. At any time during implementation of the measures stipulated in this Agreement should an objection pertaining to the Agreement be raised by a Concurring Party, Native American Tribe, or a member of the public, the Corps shall notify the Signatory and Concurring Parties and take the objection under consideration, consulting with the objecting party and, should the objecting party request, any of the Signatory and Concurring Parties to this Agreement, for no longer than fifteen (15) calendar days. The Corps shall consider the objection, and in reaching its decision, will consider all comments provided by the other parties. Within fifteen (15) calendar days following closure of the comment period, the Corps will render a decision

regarding the objection and respond to the objecting party. The Corps will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. The Corps' decision regarding resolution of the objection will be final. Following issuance of its final decision, the Corps may authorize the action that was the subject of the dispute to proceed in accordance with the terms of that decision. The Corps' responsibility to carry out all other actions under this Agreement shall remain unchanged.

XV. NOTICES

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

XVI. AMENDMENTS, NONCOMPLIANCE, AND TERMINATION

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

All attachments to this Agreement, and other instruments prepared pursuant to this agreement including, but not limited to, the Project's description, initial cultural resource inventory report and maps of the APE, the HPMP, HPTPs, and monitoring and discovery plans, may be individually revised or updated through consultation consistent with **Stipulation I (Timeframes and Review Procedures)** and agreement in writing of the Signatories without requiring amendment of this Agreement, unless the Signatories through such consultation decide otherwise. In accordance with **Stipulation XI (Tribal Involvement)** and **Stipulation XIII (Public Consultation and Public Notice)**, the Concurring Parties, interested Native American Tribes, and interested members of the public, will receive amendments to the Project's description, initial cultural resource inventory report and maps of the APE, the HPMP, HPTPs, and monitoring and discovery plans, as appropriate, and copies of any amendment(s) to the Agreement.

- B. Termination:** Only the Signatories may terminate this Agreement. If this Agreement is not amended as provided for in **Stipulation XVII.A. (Amendment)**, or if any Signatory proposes termination of this Agreement for other reasons, the Signatory proposing termination shall notify the other Signatory in writing, explain the reasons for proposing

termination, and consult with the other Signatory to seek alternatives to termination, within thirty (30) calendar days of the notification. Should such consultation result in an agreement on an alternative to termination, the Signatories shall proceed in accordance with that agreement.

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

Beginning with the date of termination, the Corps shall ensure that until and unless a new agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 C.F.R. § 800.4-800.6.

C. Duration: This Agreement shall remain in effect for a period of ten (10) years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this ten-year period unless it is terminated prior to that time. No later than ninety (90) calendar days prior to the expiration date of the Agreement, the Corps shall initiate consultation to determine if the Agreement should be allowed to expire automatically or whether it should be extended, with or without amendments, as the Signatories may determine. Unless the Signatories unanimously agree through such consultation on an alternative to automatic expiration of this Agreement, this Agreement shall automatically expire and have no further force or effect in accordance with the timetable stipulated herein.

XVII. ANNUAL REPORTING

At the end of every calendar year following the execution of this Agreement, the Corps shall provide all parties to this Agreement a summary report detailing work carried out pursuant to its terms, if any. Such report shall describe progress made implementing the terms of the Agreement as well as include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Corps' efforts to carry out the terms of this Agreement. Any Signatory party may request to meet with the other Signatories to discuss implementation of this Agreement.

XVIII. EFFECTIVE DATE

This Agreement shall take effect on the date that it has been fully executed by the Corps and the SHPO.

EXECUTION of this Agreement by the Corps and the SHPO, its transmittal to the ACHP, and subsequent implementation of its terms evidence that the Corps has afforded the ACHP an opportunity to comment on the undertaking and its effects on Historic Properties, that the Corps has taken into account the effects of the undertaking on Historic Properties, and that the Corps has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations for all aspects of the undertaking.

SIGNATORIES TO THIS AGREEMENT:

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

BY: _____ DATE: _____

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

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: _____