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March 24, 2022

Mr. Zachary Simmons, Senior Project Manager
Regulatory Division
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Suite 1350
Sacramento, CA 95814-2922

Re: 2021.12.07-201900899 -Delta Conveyance Project Draft Programmatic Agreement

Dear Mr. Simmons:

Thank you for inviting our comments on the draft Programmatic Agreement (PA) for compliance with the National Historic Preservation Act's Section 106 for the Department of Water Resources' Delta Conveyance Project.

The Delta Conveyance (Project) is a massive infrastructure project that will, if constructed, significantly affect a wide variety of historic properties over the decade or more of its construction. Those properties include not just architecturally significant structures but also natural resources and the associated wildlife, rural communities, agricultural landscapes such as farms and ranches, and linear features including transportation systems, such as the Sacramento River, the River Road, and local scenic routes, all of which contribute to a culturally significant landscape that Congress has recognized as a National Heritage Area. We believe that neither the project under consideration nor the culturally significant landscape it will affect are typical of those usually considered by the Sacramento District's regulatory program. Therefore, we suggest a less generic approach, commensurate with the magnitude of the project. Our recommendations are intended to ensure an agreement reflective of these unique characteristics of the project and the Delta.

We take seriously the Advisory Council on Historic Preservation's guidance that consultation under Section 106 should be an active exchange of ideas and information among participants. Rather than simply providing comments, we would appreciate an opportunity to discuss the recommendations in this letter with other parties, including the Corps, DWR, and, if they are willing, the affected tribes. Exchanging drafts and offering written comments is important, but discussion among all parties furthers understanding of others' views and facilitates agreement.

Notwithstanding this preference, our recommendations addressing five key points are provided here.

Acknowledge the Delta as a nationally significant cultural landscape. The agreement should recognize the national cultural significance of a landscape that Congress, in establishing the Sacramento-San Joaquin Delta National Heritage Area (NHA), has concluded forms a cohesive, nationally important landscape. As demonstrated in the survey of cultural resources that we provided to you previously, areas of the Delta potentially affected by the project meet the definition of a cultural landscape provided in the Secretary of the Interior's *Standards for Treatment of Cultural Landscapes* (DOI *Standards for Cultural Landscapes*).

This recognition of the NHA designation should be added to the PA's recitals section. Additionally, in Stipulation V regarding identification of historic properties, the opening paragraph should instruct DWR to utilize the DOI *Standards for Cultural Landscapes* as well as those for archaeology and historic preservation when evaluating historic properties. The DOI *Standards for Cultural Landscapes* should also guide development of the historic property treatment plans called for in Stipulation VIIA.

This recognition may also require adjustment of other parts of the agreement, such as the timeframes and review procedures, the drafting of a historic properties management plan (HPMP), and determination of the study area and area of potential effect (APE). For example, a technical report that DWR submits pursuant to Stipulation IV(A)(5) should address cultural landscapes.

Expand the Study Area and APE to Consider Indirect Impacts, Cumulative Effects, and Landscape Setting. We disagree with limiting the APE to areas that fall within the permit area of the Corps' Section 404, 10, and 408 permits, and with the proposal in Stipulation IV that the study area should be limited to a ¼ mile buffer around the proposed project and its alternatives. The Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Project's predecessor, the Bay Delta Conservation Plan/WaterFix, identified impacts of noise, visual impact, traffic congestion, and potential building abandonment that would have affected important components and features of the Delta's culturally significant landscape that are more distant than ¼ mile from either areas of the Corps' jurisdiction, or the project's footprint. Some of those impacts degraded entire landscape components and features, such as historic islands, historic communities, or the River Road.

Furthermore, this approach to the APE conflicts with the Corps' own 2020 application guidelines regarding determination of the APE/Permit Area that specifies including not only areas of direct and indirect effects, but the viewshed for the built environment. The guidelines state: "A viewshed APE may be different than a geographic APE and may require photographs looking toward and looking from the affected structure(s) as well as an analysis of how the viewshed was determined."

Finally, as we have previously noted, identifying a study area and APE now, prior to release of draft EIR or EIS documents that would more carefully describe the project's impacts and the resources affected, appears to us premature. All the impacts noted above need to be considered in defining the APE.

Include Consulting Parties' Roles and Responsibilities in Stipulations. The roles of Consulting Parties should be described, consistent with those provided in 36 CFR Part 800 section 800.2(c)(3) and (5). Where the current draft refers to additional consulting parties, we recommend it also specifically name the counties to

reflect the Corps' responsibility to consult with local governments per 36 CFR section 800.2(c)(5). Similarly, the Delta Protection Commission should be named because of our role as the Congressionally-designated NHA manager. The opportunity for local governments and the Commission to be consulted fully at each stage of the Section 106 process should be acknowledged, including receiving and commenting when appropriate on draft documents, comments on documents, surveys, and final documents, such as an HPMP, a determination of a study area or APE, identification of historic properties, historic property surveys, protocols to be used to evaluate cultural resources, draft evaluation reports, draft findings of effect, final findings of effect, and historic property treatment plans. We also suggest revising Stipulation IA(5) to provide that all drafts, comments on drafts, and final documents will be circulated to the counties and the Commission, rather than limiting circulation to only signatories and concurring parties and others chosen by the Corps.

Review and comment timelines proposed will sometimes be too short for our agency and potentially the counties to provide meaningful feedback on draft documents, especially if these are calendar, not working days. In many cases, we will want to consult both with local historians, other experts, and as needed, with our own Commission. When formal Commission approval of comment letters is required, consideration may need to occur at the Commission's bi-monthly meeting, with proper public notice in advance. The five-day review period to consider the effects of design changes or modifications proposed in Stipulation IVB is especially unworkable.

Describe Procedures for Involving the Public. Delta people care deeply about the region's historic and cultural resources, surveys of public attitudes confirm. In addition, they are often very knowledgeable about historic and cultural resources, including properties not documented in published accounts. The references to public involvement that conclude Stipulations VII and IXA should be expanded. The agreement should describe a more thorough process for low stress public involvement opportunities, in accessible venues and formats, where information about historical properties affected by the project, including historic property surveys, findings of effect and historic property treatment plans, can be obtained, reviewed, and commented on. Involvement opportunities should be culturally appropriate for the diverse Asian, Hispanic, white, and tribal communities whose cultural and historic sites the Project may affect. Contact information about especially knowledgeable or interested members of the public should be solicited from counties, the Commission, Tribes, and other consulting parties.

Consideration of Alternatives and Cumulative Effects. The process as proposed may reduce or eliminate opportunities to consider alternatives that may affect historic properties. Consideration of the Project's cumulative effects on the Delta's culturally significant landscape may also be compromised.

The HPMP proposed in Stipulation III appears key to addressing both alternatives and cumulative effects, especially if it is better linked to the Project's EIR/EIS. As proposed, a draft HPMP would be submitted within 120 days of the PA signing. A draft HPMP could potentially be submitted as soon as this summer, while the Project's draft EIR/EIS are still under review. Yet those documents will include critical information about historic and archaeological resources affected by the Project, impacts to those resources from direct disturbance, noise, visual effects, traffic congestion, and abandonment, and alternatives that may avoid or

reduce them. It is unlikely that the Commission or others can assess the adequacy of the HPMP in addressing the topics described in Appendix 3 prior to circulation and review of the draft EIR/EIS or potentially completion of final documents. A clear understanding of impacts and alternatives seems especially important to describing the APE, for example. A summary of expected types of adverse effects and standards and procedures for typical treatments of common features of the Delta landscape could also be more readily agreed upon with a clearer understanding of the types of properties that project may affect and the impacts they may suffer. While the draft PA provides for modification of the APE, it seems inefficient and costly for local governments and others with limited time and resources to be forced to do so due to premature development of the APE.

Cumulative effects might also be better addressed through regional assessments and, where appropriate, regional HPTs that address multiple properties or classes of property types. One region could address the project's northern sites in Sacramento County, including properties along the Sacramento River, the River Road, the tunnel intakes and diversion works, and the Twin Cities Road launch shaft. Yolo county properties affected by noise, traffic congestion, visual effects, and other impacts could also be considered here. A second regional assessment might address effects to primarily agricultural islands and tracts where reception/launch or maintenance shafts are proposed along the alternative central or eastern alignments. A third assessment could address the southern complex in Contra Costa County, including effects at Bethany Reservoir.

In conclusion, we appreciate this opportunity to review and comment on the draft PA and look forward to reviewing additional materials as part of this process. After reviewing the South Pacific Division's 2020 Section 106 application guidelines, it would greatly facilitate the consulting parties' input to the Corps if we had copies of the application materials submitted. Please consider this a request for these materials.

Should you have questions about our comments, please contact Program Manager Virginia Gardiner at (530) 650-6471.

Sincerely,



Erik Vink
Executive Director

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

Jaime Loichinger, Assistant Director, Advisory Council on Historic Preservation, 401 F Street NW, Suite 308, Washington DC 20001