



MIWOK United Auburn Indian Community
MAIDU of the Auburn Rancheria

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October 30, 2015

Nikki Polson, M.A., R.P.A.
Senior Archaeologist
U.S. Army Corps of Engineers, Sacramento District
1325 J Street
Sacramento, CA 95814

RE: USACE: CA Water Fix, Request for UAIC to be Invited Signatory

Dear Ms. Polson,

On behalf of my Tribe, the United Auburn Indian Community, I would like for the U.S. Army Corp of Engineers to formally consider this request to be added as an invited signatory to the California Water Fix and EcoRestore Project Programmatic Agreement and any other agreement documents that result from the project. As the Tribal Historic Preservation Officer (THPO), I have approval authority for any responsibilities or duties assumed under the agreement, or authority to represent the broad interests of our Tribe organization, as the case may be. We may also defer this responsibility to Chairman Gene Whitehouse if so requested by Tribal Council. The signature page of the agreement document should identify the UAIC as an invited signatory.

Invited signatory duties and responsibilities:

In accordance with 36 CFR § 800.6(c)(2), an invited signatory, upon signing, has the authority to amend and terminate the agreement. The agency official may invite additional parties to sign the agreement, such as an Indian tribe or NHO who attaches religious and cultural significance to historic properties affected by the undertaking (off tribal lands), or any party that assumes a responsibility under the agreement. The refusal of an invited signatory to sign the agreement does not prevent the agreement from being executed; however, an agreement cannot impose a duty or responsibility on a party that has not signed it. When an Indian tribe or NHO is asked to be an invited signatory to an agreement for which the undertaking will not occur on or affect historic properties on tribal lands, the THPO or a representative designated by the tribe or NHO, as the case may be, can sign the agreement on behalf of the tribe or NHO. The ACHP notes and accepts that some tribes may decline to sign agreement documents in principle but may participate in development of the agreement. Such decisions are within the rights of Indian tribes, and the ACHP recommends that agencies understand and accept such decisions.

Applicants are frequently asked to be invited signatories due to the responsibilities assigned to them under the agreement. In some instances, an

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agency may be able to condition the terms of its assistance or permit to an applicant as a means of compelling the applicant to take certain actions under a Section 106 agreement even if the applicant declines to sign the agreement. Federal agencies determine whether to invite additional signatories to sign the agreement and should weigh the decision carefully, since an invited signatory who actually signs an agreement has the same ability to amend or terminate the agreement as other signatories. Asking parties to be invited signatories to a Section 106 agreement can evidence a higher level of commitment to success in the agreement's implementation as well as continued engagement and partnership in the process.

If you have any questions or need additional information, please contact Marcos Guerrero, Cultural Resources Manager, at (530) 883-2364 or by email at mguerrero@auburnrancheria.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Camp". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Jason Camp,
Tribal Historic Preservation Officer
United Auburn Indian Community of the Auburn Rancheria

CC: Gene Whitehouse, Chairman
Marcos Guerrero, CRM

From: Marcos Guerrero <mguerrero@auburnrancheria.com>
Sent: Thursday, November 12, 2015 8:40 AM
To: Polson, Nikki SPK; Agustinez, Anecita S.@DWR (Anecita.Agustinez@water.ca.gov); Nelson, Tim@DWR (Tim.Nelson@water.ca.gov); Hess, Erin E SPK
Cc: Jason Camp; Melodi McAdams; BDCPcomments
Subject: RE: Ca Water Fix: Comments to EIR/EIS and PA/HPTP (UNCLASSIFIED)
Attachments: CA_Water_Fix PA Invited Sign Req 103015.pdf

I have attached the request from UAIC to be an invited signatory to the PA

-----Original Message-----

From: Polson, Nikki SPK [mailto:Nikki.Polson@usace.army.mil]
Sent: Thursday, November 12, 2015 6:56 AM
To: Marcos Guerrero; Agustinez, Anecita S.@DWR (Anecita.Agustinez@water.ca.gov); Nelson, Tim@DWR (Tim.Nelson@water.ca.gov); Hess, Erin E SPK
Cc: Jason Camp; Melodi McAdams; 'bdcpccomments@icfi.com'
Subject: RE: Ca Water Fix: Comments to EIR/EIS and PA/HPTP (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Marcos,

We are currently working on responses to your comments. If you have additional comments on the project I suggest you submit them as soon as you can so they can be addressed. The Corps will take under consideration any comments received from the UAIC.

For your information, Erin Hess will be taking over as the Corps point of contact on this project from here on out. I have briefed her on your comments and status of the project and she will be working with DWR to address them.

Thank you,

Nikki

-----Original Message-----

From: Marcos Guerrero [mailto:mguerrero@auburnrancheria.com]
Sent: Tuesday, November 10, 2015 5:49 PM
To: Agustinez, Anecita S.@DWR (Anecita.Agustinez@water.ca.gov); Nelson, Tim@DWR (Tim.Nelson@water.ca.gov)
Cc: Jason Camp; Melodi McAdams; 'bdcpccomments@icfi.com'; Polson, Nikki SPK
Subject: [EXTERNAL] RE: Ca Water Fix: Comments to EIR/EIS and PA/HPTP

Hello Anecita,

UAIC never received a response to the comments UAIC submitted on Wed 8/5/2015 9:03 AM. This prevented us from submitted comments last week.

Do you know if the consultation period was extended because of this? And will the comments we submitted as part of the BDCP be included in the CA Water Fix?

Thanks,

mg

From: Marcos Guerrero

Sent: Wednesday, October 28, 2015 10:18 AM

To: Agustinez, Anecita S.@DWR (Anecita.Agustinez@water.ca.gov); Nelson, Tim@DWR (Tim.Nelson@water.ca.gov); 'Polson, Nikki SPK'

Cc: Jason Camp; Melodi McAdams; 'Fancher, Zachary J SPK'; Gilfillan, Mark A SPK

Subject: Ca Water Fix: Comments to EIR/EIS and PA/HPTP

Importance: High

Hello All,

Below are UAICs some comments previously submitted to USACE, DWR and BoR regarding the RDEIR/SDEIS for the BDCP/CA Fix Project:

1. RDEIR/SDEIS does not appear to contact an Environmentally Preferred Alternative that is required under CEQA Guidelines 15126.6(e)(2) and NEPA. The tribe would like to be allowed to microsite or get other design features incorporated to reduce the potential for direct cultural impacts.
2. UAIC left out of RDEIR/SDEIS analysis as Tribe, government or partner. There is no discussion of the Tribe/tribal values in areas of controversy, construction timing, project and alternatives screening criteria (i.e., a tribal burial mound avoidance alternative), environmental commitments for cultural resources, social effects, environmental justice or identified as a viewer group for visual impacts. The UAIC requests to be allowed to participate in the RDEIR/SDEIS analysis.
3. On Alternatives, it appears that very little consideration was given to any others. The rationale for rejecting other design features and preservation in place falls short of what the Tribe considers a minimum level of effort. The Tribe requests a complete and full analysis of such preservation in place and avoidance alternatives as alternative siting locations for the intake tanks. The fact that the project is being approved with not adequately identifying all known resources and a finding of no adverse effect is of concern to the UAIC.
4. If the USACE materially revises any section of the RDEIR/SDEIS then the document should be recirculated. USACE shall evaluate, determine effects, and develop treatment before the project construction activities begin. The tribe does not consider data recovery, curation and testing/analysis appropriate which is in fact a negative effect and direct impact to the cultural resources. The RDEIR/SDEIS addresses solely scientific archeology, there is zero discussion regarding tribal

cultural values, sanctified cemeteries, or cultural landscapes. Include a section on why preservation in place is a feasible alternative. RDEIR/SDEIS does not admit that human remains could be impacted and that state law would be followed.

5. The RDEIR/SDEIS also will any new sections on PG&E utility relocation be in the RDEIR/SDEIS? Especially of this work includes use of cranes, land leveling, poll removal and relocation, tree replanting and vegetation removal - all activities that could have significant impacts on cultural resources.

6. The cumulative impact section is wholly deficient and also contains improper analysis such as cultural resources are typically not subject to cumulative effects which is unsupported in CEQA/NEPA. Yet RDEIR/SDEIS then admits impacts are cumulatively significant but then offers no mitigation for that impact. Again, there is no mention of tribes or cultural landscapes, the latter is especially relevant when dealing with cumulative effects or effects across several phases or projects over wide geography.

7. Specific borrow and staging sites were not identified in the RDEIR/SDEIS, it is not appropriate to recommend cultural resource areas for these types of activities;

8. Will there be a section on Wetland delineation.

9. Will the project be avoiding FEMA land use restrictions and are barges included in the project - use of barges could help to reduce impacts on cultural resources?

10. Other concerning points, we would like to discuss are:

- Admits no further federal action assumed, raises question of whether feds could assume the project without reopening the environmental review;
- No analysis of vibration or compression effects on project on cultural resources;
- No analysis of vegetation impacts that relate to native or cultural plants including those that might have been part of the burial mounds or part of the tribal cultural landscape;
- Will there be conservation bank purchased for giant garter snake - why not for cultural landscape;
- Please note that post approval technical studies are not okay;
- No section in climate change discussing whether it makes sense to consider alternative to proposed intakes;
- No text references to NPS Bulletin 38 (TCPs) or ACHP guidance on cultural landscapes, document takes a very stilted view of what Section 106 means. We understand this may be in the RDEIR/SDEIS, yet to be developed, but it would be good to include the important of place, setting, landscape, to the Tribe;

- NAHC not listed as a trustee agency.

In regards to the PA and Programmatic HPTPs, our main concerns are:

- the UAIC requests to be an invited signatory on the PA just as SHPO, DWR and CVFPB are listed;
- UAIC is a federally recognized tribe that has maintained it has sanctified cemeteries and burial sites within the project APE that are in immediate danger of irreparable harm;
- the UAIC is opposed to any type of curation, data recovery and testing/analysis of those sites determined to be or listed as sanctified cemeteries, shrines, places of worship, and burial sites;
- both the HPTP and PA have no mention about tribal monitoring;
- UAIC would like to be a partner in the PA and have the same comment and review;
- UAIC request to go their own survey to confirm the presence of additional resources in the project APE;
- consultation regarding adverse effect and alternatives analysis;
- discussion regarding the need for a burial treatment plan, tribal monitoring plan, and tribal cultural resources treatment plan;
- information for evaluation of Native American sacred and burial sites under Criteria A, B, C, and D should also be done prior to construction and in consultation with the tribes who may ascribe significant to a place in the APE for a particular event, person, aesthetic, or the resources ability to transmit knowledge;

Marcos Guerrero, RPA

Cultural Resources Manager

United Auburn Indian Community

Tribal Historic Preservation Department

10720 Indian Hill

Auburn, CA 95603

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Cell: 916-300-8792

Fax: 530-883-2390

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Classification: UNCLASSIFIED

Caveats: NONE

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