

Cultural Comments to the Delta Plan Program

Environmental Impact Report

Yocha Dehe Wintun Nation

The Yocha Dehe Wintun Nation has reviewed the EIR of the proposed Delta Plan and prepared the following comments:

First, we would like to see language that supports and encourages entering into easements with Federally Recognized Tribes. These easements can be used to further tribal rights to access sacred sites, gathering areas, and areas of other cultural significance to Tribal people. Tribes are using these easements as co-management tools for areas that previously had been unkept or mismanaged. Here is proposed language to include:

California law gives Tribal governments that are the “most likely descendants” the legal ability and right to hold “cultural easements” in their own names. Private and public landowners can use these easements as a tool to accomplish mitigation required to protect sacred sites, by involving Native peoples and governments in the process. Other public agencies have, in fact, used cultural easements successfully, to minimize and avoid disturbance of culturally important sites to the greatest extent possible. The Delta Plan encourages the use of “cultural easements” to assist landowners in this endeavor, and will recognize the mitigating significance of such easements in the permitting process.

Second, Yocha Dehe Wintun Nation feels that the direction for tribal consultation is referenced but weak in this document. There are a number of federal and state laws that will require consultation and while these are referenced, the actual language should be included in the plan. Further, there is no reference to Tribal Historic Preservation Officers (THPO) in this EIR and there are clearly lands that will be affected by this plan that fall under the jurisdiction of some THPO programs.

The section specific comments are below:

- Section 10 Opening Statement

Please include a paragraph in the opening statement referring to consultation with federally recognized Tribes (not tribal organizations) and Tribal Historic Preservation Officers.

- Section 10.3.2.4 Yolo County line 20 21 22

This is strong language and we are appreciative of the effort to state that while there have been many surveys in the area, large amounts of land remain un-surveyed and there is a high potential for undiscovered archaeological sites.

Because of the importance of this language, we request that this statement to be in the opening paragraph of the section 10.

- Section 10.4.1 Assessment Methods line 36 37 38 39 40 41

The statements made here conflict. In lines 36 and 37 it is stated that “The Proposed Project (Delta Plan) and alternatives would not directly result in construction or operation of projects or facilities therefore would result in no direct impact on cultural resources”. This directly conflicts with the next statement of “The proposed project and alternatives could result in implementations of actions or development of projects, such as facilities or infrastructure.....”

Please revise this section to show that the proposed delta Plan could result in a direct impact on cultural resources and make a statement on how you propose to mitigate those impacts in accordance with state, federal and local law.

- Section 10.4.1.1 Records Search

Please include language encouraging consultation on records with Tribal Historic Preservation Officers.

- Section 10.4.1.2 Resource Types

Please include Traditional Cultural Properties (TCP) in resource types. An explanation of the definition of a TCP can be found in National Park Service Bulletin 38 on Traditional Cultural Properties.

“Traditional cultural properties are often hard to recognize. A traditional ceremonial location may look like merely a mountaintop, a lake, or a stretch of river; a culturally important neighborhood may look like any other aggregation of houses, and an area where culturally important economic or artistic activities have been carried out may look like any other building, field of grass, or piece of forest in the area. As a result, such places may not necessarily come to light through the conduct of archeological, historical, or architectural surveys. The existence and significance of such locations often can be ascertained only through interviews with knowledgeable users of the area, or through

other forms of ethnographic research. The subtlety with which the significance of such locations may be expressed makes it easy to ignore them; on the other hand it makes it difficult to distinguish between properties having real significance and those whose putative significance is spurious. As a result, clear guidelines for evaluation of such properties are needed.” NPS Guidelines for Evaluating and Documenting Traditional Cultural Properties

- Section 10.4.2 Thresholds of Significance

While Tribal Consultation in determination of effects is required in CEQA, we would prefer a Tribal consultation statement be included in the beginning of this section further supporting this important and necessary step to determining significance.

- Sections 10.4.3.1-5 Impact 10-1a, b, c, d and e: Disturbance of Prehistoric and Historic Era Archaeological Resources

We request a strong tribal consultation statement that conveys the importance of early and often consultation with Tribe, this statement should be made in the opening paragraph.

We would like to see criterion D of Section 15064.5 CEQA Determination of impacts to Archaeological and Historic Resources SHRC written out and not referenced only.

We would like to see the inclusion of language from CEQA Section 15064.5 (a)(4)

“(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.”

- Sections 10.4.3.1-5 impact 10-4a, b, c, d and e Disturbance or destruction of Cultural Landscapes or Traditional Cultural Properties

We request a strong tribal consultation statement be made in the opening of this section. Determination of proposed affects to TCP's or Traditional Landscapes can only be made through consultation with federally recognized tribes.

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important economic or artistic activities have been carried out may look like any other building, field of grass, or piece of forest in the area. As a result, such places may not necessarily come to light through the conduct of archeological, historical, or architectural surveys. The existence and significance of such locations often can be ascertained only through interviews with knowledgeable users of the area, or through other forms of ethnographic research. The subtlety with which the significance of such locations may be expressed makes it easy to ignore them; on the other hand it makes it difficult to distinguish between properties having real significance and those whose putative significance is spurious. As a result, clear guidelines for evaluation of such properties are needed.” National Park Service Guidelines for Evaluating and Documenting Traditional Cultural Properties

- Section 10.4.3.6 Mitigation Measure

Please include support of cultural easements in this section. Here is proposed language:

California law gives Tribal governments that are the “most likely descendants” the legal ability and right to hold “cultural easements” in their own names. Private and public landowners can use these easements as a tool to accomplish mitigation required to protect sacred sites, by involving Native peoples and governments in the process. Other public agencies have, in fact, used cultural easements successfully, to minimize and avoid disturbance of culturally important sites to the greatest extent possible. The Delta Plan encourages the use of “cultural easements” to assist landowners in this endeavor, and will recognize the mitigating significance of such easements in the permitting process.

- Section 10.4.3.6.1 Mitigation 10-1

Include language in initial bullet point that makes a strong tribal consultation statement.

Before any ground disturbance activities and during the initial planning stages of the project, a good faith effort at consultation with federally recognized tribes must occur and be documented. Tribal representatives should be given the right to attend surveys and participate in the evaluation of significance of prehistoric and/or historic sites.

Lines 9 and 10, page 10-47 should also include Tribal Historic Preservation Officers.

- Section 10.4.3.6.2 10-2 (also for 10.4.5.1.2 and 10.4.8.1.2) Mitigation Measures (Discovery of Human Remains)

Include a tribal consultation statement and include language that stresses the importance of keeping the location and details of the discovery confidential.