

**FINAL
SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT**

Feather River West Levee Project

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Acronyms and Abbreviations

AB 52	Assembly Bill 52
ARB	Air Resources Board
CCVFCA	California Central Valley Flood Control Association
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CVFPB	Central Valley Flood Protection Board
DFW	California Department of Fish and Wildlife
DWR	Department of Water Resources
Final SEIR	Final Supplemental Environmental Impact Report
FRWLP	Feather River West Levee Project
MLD	Most Likely Descendant
NAHC	Native American Heritage Commission
NOP	Notice of Preparation
O&M	operations and maintenance
RFP	Request for Proposals
SBFCA's	Sutter Butte Flood Control Agency's
TCRs	Tribal Cultural Resources
UAIC	United Auburn Indian Community
USACE	U.S. Army Corps of Engineers
Yuba City monitoring station	Yuba City-Almond Street station

This is the Final Supplemental Environmental Impact Report (Final SEIR) for the modifications to the Feather River West Levee Project (FRWLP) described in Chapter 2, *Project Description*, of the Draft SEIR. The Draft SEIR was prepared to supplement Sutter Butte Flood Control Agency's (SBFCA's) 2013 Final Environmental Impact Report (2013 FEIR) for the FRWLP (State Clearinghouse Number 2011052062), which required updated California Environmental Quality Act (CEQA) documentation to allow issuance of permits from state agencies for modifications to the originally analyzed project.

1.1 Purpose and Format of Final SEIR

The purpose of this Final SEIR is to provide SBFCA decision-makers and the public with information about the modifications to the FRWLP and to disclose any new significant environmental effects or substantially more severe environmental effects caused by these modifications or new information that was unknown at the time the 2013 FEIR was published.

Technically, the Final SEIR consists of two parts: this document and the Draft SEIR that was circulated for public review. For simplicity, the document you are reading will be called the Final SEIR. It contains three chapters: Chapter 1, *Introduction*; Chapter 2, *Comments and Responses to Comments*; and Chapter 3, *Draft SEIR Errata*. Both this Final SEIR and the Draft SEIR will be considered by SBFCA during their deliberations on the FRWLP project modifications.

1.2 Opportunities for Public Involvement

SBFCA issued a Notice of Preparation (NOP) on October 1, 2015, advising public agencies that a supplemental environmental impact report would be prepared for the FRWLP. The NOP was distributed for a 30-day comment period that ended November 3, 2015. The comments on the NOP were considered in the preparation of this SEIR.

Pursuant to Assembly Bill 52 (AB 52), SBFCA undertook consultation with the Enterprise Rancheria and United Auburn Indian Community (UAIC) over the potential effects of the modified FRWLP on Tribal Cultural Resources (TCRs). SBFCA's determinations of significance regarding the effects have been informed by the consultations. SBFCA also sent the Native American Heritage Commission (NAHC) a copy of the NOP and ensured that NAHC received a copy of the Draft SEIR through the State Clearinghouse because of their previous involvement in the FRWLP.

1.3 Contents and Organization of the Final SEIR

This Final SEIR is organized into three chapters.

- Chapter 1, *Introduction*, describes the intent of the Final SEIR, summarizes the opportunities for public involvement to date, and outlines the contents of the Final SEIR.

- Chapter 2, *Comments and Responses*, provides a list of, and includes the written comments of, all agencies, organizations, and individuals that commented on the Draft SEIR. Each comment letter is annotated with brackets that demarcate individual comments. Each letter is labeled according to the type of commenting entity (e.g. federal agency, tribe, state agency, or local agency), followed by the letter number and comment code. For example, comments in the first Federal agency letter are numbered F1-A, F1-B, F1-C, and so on.
- Chapter 3, *Draft SEIR Errata*, contains changes made to the content of the Draft SEIR in response to comments received during the public review period, or for purposes of clarification or correction. Changes to the Draft SEIR text are shown by ~~striketrough~~ of text that has been deleted and underlining of new text that has been inserted. The revisions contain clarifications and corrections that have been identified, either through public comments or by SBFCA, since publication of the Draft SEIR. The text revisions do not result in substantive changes to either the analyses or conclusions presented in the Draft SEIR.

In order to assist the reader and provide context for the revisions, Chapter 3 identifies the location in the Draft SEIR where each revision is being made, including the section number, paragraph, or paragraphs to which the revisions are being made.

1.4 CEQA Process

After the completion of the NOP review period, the Draft SEIR was issued for the public's review and comment for a period of 45 days, beginning April 20, 2016, and ending June 3, 2016. CEQA requires that SBFCA must complete and certify the adequacy of the Final SEIR before it can take action to approve the project modifications.

A special SBFCA board meeting will be convened on June 22, 2016, to consider this Final SEIR. The Final SEIR will be made available for public inspection on the SBFCA website before the scheduled date of the SBFCA board meeting.

The public can submit comments on the Final SEIR prior to or during the SBFCA board meeting. Those comments will not be responded to in writing; however, they will be considered by SBFCA's board prior to making a decision on the project modifications.

If the project modifications are approved, SBFCA will adopt findings of fact describing how it will address the new and substantially more severe effects that will result from the modifications to the FRWLP; a statement of overriding considerations describing the benefits that the project as modified would provide; and a mitigation monitoring and reporting program to ensure that the mitigation measures identified in the Final SEIR will be implemented.

Chapter 2 Comments and Responses

This chapter contains the comments on the Draft SEIR received by SBFCA during the SEIR's review period and responses to those comments. Five comment letters were submitted on the Draft SEIR, and Table 2-1 lists all of the comment letters received. The comment letters are numbered according to whether the commenter is a federal agency, a tribe, a state agency, or a local agency.

Table 2-1. Federal Agencies, Tribes, and State Agencies Commenting on the Draft SEIR

Letter Number	Commenter	Date
Federal Agencies		
F1	Gregor Blackburn, Federal Emergency Management Agency	April 25, 2016
Tribes		
T1	Gene Whitehouse, United Auburn Indian Community	June 3, 2016
State Agencies		
S1	Cy R. Oggins, California State Lands Commission	June 2, 2016
S2	Terrie L. Robinson, Native American Heritage Commission	June 3, 2016
Local Agencies		
L1	Jason Mandly, Butte County Air Quality Management District	June 1, 2016

Sections 2.1 through 2.4 present the full comments and detailed responses, organized by type of commenting entity. A single letter may contain several individual comments. Each comment within the letter has been assigned a unique code, noted in the margin. For example, the code "F1-A" indicates the first distinct comment (denoted by the letter "A" in the letter from the Federal Emergency Management Agency, which was the first letter (represented by the "1") received from a federal agency (indicated by the "F"). The sections are organized by presentation of each comment letter immediately followed by the responses to that letter. Each comment in the following sections has been considered and responded to individually.

2.1 Responses to Comments from Federal Agencies

Letter F1 – Federal Emergency Management Agency, Region IX, Gregor Blackburn, April 25, 2016

U.S. Department of Homeland Security
FEMA Region IX
1111 Broadway, Suite 1200
Oakland, CA. 94607-4052



FEMA

April 25, 2016

Michael Bessette, P.E., Director
Engineering, Sutter Butte Flood Control Agency
P. O. Box M
Yuba City, California 95991

Dear Mr. Bessette:

This is in response to your request for comments regarding the Draft supplemental Environmental Impact Report – Feather River West Levee Project, Sutter Butte Flood Control Agency Final Environmental Impact Report.

Please review the current effective countywide Flood Insurance Rate Maps (FIRMs) for the Counties of Butte (Community Number 060017), Maps revised January 6, 2011 and Sutter (Community Number 060394), Maps revised June 6, 2015. Please note that the Counties of Butte and Sutter, California are participants in the National Flood Insurance Program (NFIP). The minimum, basic NFIP floodplain management building requirements are described in Vol. 44 Code of Federal Regulations (44 CFR), Sections 59 through 65.

A summary of these NFIP floodplain management building requirements are as follows:

- F1-A } • All buildings constructed within a riverine floodplain, (i.e., Flood Zones A, AO, AH, AE, and A1 through A30 as delineated on the FIRM), must be elevated so that the lowest floor is at or above the Base Flood Elevation level in accordance with the effective Flood Insurance Rate Map.
- F1-B } • If the area of construction is located within a Regulatory Floodway as delineated on the FIRM, any **development** must not increase base flood elevation levels. **The term development means any man-made change to improved or unimproved real estate, including but not limited to buildings, other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of equipment or materials.** A hydrologic and hydraulic analysis must be performed *prior* to the start of development, and must demonstrate that the development would not cause any rise in base flood levels. No rise is permitted within regulatory floodways.

www.fema.gov

Michael Bessette, P.E., Director
 Page 2
 April 25, 2016

- F1-C
- Upon completion of any development that changes existing Special Flood Hazard Areas, the NFIP directs all participating communities to submit the appropriate hydrologic and hydraulic data to FEMA for a FIRM revision. In accordance with 44 CFR, Section 65.3, as soon as practicable, but not later than six months after such data becomes available, a community shall notify FEMA of the changes by submitting technical data for a flood map revision. To obtain copies of FEMA's Flood Map Revision Application Packages, please refer to the FEMA website at <http://www.fema.gov/business/nfip/forms.shtm>.

Please Note:

Many NFIP participating communities have adopted floodplain management building requirements which are more restrictive than the minimum federal standards described in 44 CFR. Please contact the local community's floodplain manager for more information on local floodplain management building requirements. The Butte County floodplain manager can be reached by calling Tom Fossum, Floodplain Administrator, at (530) 538-7266. The Sutter County floodplain manager can be reached by calling James Arkens, County Administrative Officer, at (530) 822-7450.

If you have any questions or concerns, please do not hesitate to call Xing Liu at (510) 627-7767 or Frank Mansell at (510) 627-7191 of the Mitigation staff.

Sincerely,

Gregor Blackburn, CFM, Branch Chief
 Floodplain Management and Insurance Branch

cc:

Tom Fossum, FPA, Butte County
 James Arkens, County Administrative Officer, Sutter County
 Raul Barba/Hien Thach, State of California, Department of Water Resources, Northern Region
 Office
 Ray Lee, WREA, State of California, Department of Water Resources, North Central Region
 Office
 Xing Liu, NFIP Planner, DHS/FEMA Region IX
 Frank Mansell, NFIP Planner, DHS/FEMA Region IX
 Alessandro Amaglio, Environmental Officer, DHS/FEMA Region IX

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Responses to Letter F1

Response to Comment F1-A

SBFCA appreciates FEMA's comments on the Draft SEIR, and views its mission in reducing flood risk to be compatible with FEMA's goals. The activities covered in the Draft SEIR represent modifications to the Feather River West Levee to improve the levee that do not involve construction of any buildings and therefore do not present any conflicts with the NFIP floodplain management building requirements.

Response to Comment F1-B

According to the latest obtainable Flood Insurance Rate Maps for Butte and Sutter Counties, the Feather River in the area of the project modifications is not identified as a regulatory floodway. However, the Feather River in this area is a floodway regulated by the Central Valley Flood Protection Board (CVFPB), and SBFCA is working closely with the CVFPB to obtain all necessary permits.

Response to Comment F1-C

Upon completion of the entire FRWLP, SBFCA will submit appropriate hydrologic and hydraulic data to the Counties of Sutter and Butte to support their floodplain management programs and will assist the counties as needed in providing the requested notice. However, this SEIR covers only the modifications to the overall FRWLP at the Laurel Avenue and Gridley Bridge Erosion sites. As described in Section 4.1.1.1 of the Draft SEIR, implementation of the project modifications themselves would not result in the removal of any additional land from the FEMA-mapped floodplain.

2.2 Responses to Comments from Tribes

Letter T1 – United Auburn Indian Community, Gene Whitehouse, June 3, 2016

UAIC Comments on FRWLP draft SEIR (April 2016)

June 3, 2016

These comments are aimed at addressing open issues, items needing clarification, and the completeness and accuracy of the project record after UAIC's review of the entire SEIR. A courtesy preview of this document was provided to SBFCA prior to formal submission in an effort to try and narrow the issues between the parties and encourage collaborative resolution within a tight project timeline. If after further consultation, agreement cannot be reached on how to resolve all the items, it may be appropriate to note items of disagreement and the parties' respective views in the TCR section or in an expanded Areas of Controversy section of the Final SEIR.

T1-A

Page 1-1: Alternatives: According to Table 2-1, project components for the modified project include: various staging and construction access: filling in a non jurisdictional swale at STA 199+50 to 300 feet beyond levee landside toe, deepening by 28 feet the slurry cutoff wall from STA 202+50 to STA 203+00, deepening by 38 feet the slurry cutoff wall at STA 203+00 to STA 211+00 and filling ditch, deepening by 37 feet the slurry cutoff wall at STA 211+00 to STA 224+00. Were these design changes specifically the subject of consultation? Do these project components affect the level and type of survey methods needed? Taken together, do these project components cause additional impacts requiring cumulative mitigation?

Pages 3.17-18: Project Design Alternatives: After discoveries in the earlier project phases, HDR did engineering memos. UAIC was not included in those engineering meetings or the development of the memos. The Tribe would like to ensure should any such memos become necessary for the modified project, that the Tribe will have the opportunity to be in those meetings and to review and comment on the engineering memos. Revise SEIR accordingly.

T1-B

Pages 2-1 to 2-3: Project Description: In prior project phases, the locations and impacts associated with slurry mixing areas and run-off ponds were an issue for UAIC. Please describe the number, location and size of these project components. If they cannot be identified prior to the construction contract being approved, please provide a mechanism for UAIC to have an opportunity to participate in the appropriate siting of these facilities. Revise SEIR accordingly. Also, did USACOE ask SBFCA to pursue the modified project?

Page 1-2: Addendum: states that the changes to the cultural resources mitigation measures were "consistent with discussions" with UAIC. However, UAIC was not made aware of the Addendum or the revisions to the mitigation measures at the time SBFCA was developing and approving them, therefore it should not be implied that UAIC somehow participated in the development of, or agreed to the language in, the Addendum measures. This is a repeat comment and the SEIR text must be revised to more accurately reflect the process that occurred.

T1-C

Page 1-3: Subsequent EIR: The SEIR asserts why a Subsequent EIR was not necessary. However, UAIC still believes that a Subsequent EIR was the correct form of EIR for project modifications, as was stated in its comment letter on the SEIR NOP. The SEIR text seems to imply that by doing a Supplemental EIR SBFCA didn't need to revisit the Alternatives analysis - this specific issue wasn't discussed between the parties in consultation and the Tribe is of the view that there may have been project alternatives that could have further reduced adverse impacts on issues of concern to the Tribe. In future projects, UAIC reserves the right to advocate for project alternatives that reduce impacts and not have the modified project be used as a precedent for the Alternative selected (slurry wall).

T1-D

Page 1-4: Cumulative Projects: The SEIR adds a reference to Yuba Goldfields 200-Year Flood Protection Project and Oroville Wildlife Area Flood Stage Reduction Project. UAIC agrees that Goldfields has potential cultural resource issues for UAIC and UAIC has submitted extensive comments on that project to the relevant lead agency. There are other projects that should be added to the cumulative projects that underscore the potential cumulative effects of the modified project. These include: all levee projects in UAIC traditional territory especially those within the Wollok District (to include its tributaries), basin feasibility studies and relicensing projects, and SAFCA and other TRLIA projects, which may have impacts to tribal cultural resources and ancestral human remains. Specific cumulative mitigation therefore must be proposed for the modified project.

T1-E

Page 1-6: NAHC Trustee Agency: In a footnote, the SEIR states that the NAHC is not considered a trustee agency for CEQA purposes. We believe this is incorrect and should be changed; please see Public Resources Code sections 21070 and 21080.4, CEQA Guidelines section 15086 and *Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App. 3rd 604; otherwise, please provide the authority for the asserted contrary view.

T1-F

Page 2-3: Construction Workers: The SEIR states that approximately 80 to 100 individuals would be onsite daily during construction. Page 2-5 states that private worker vehicles would be parked within the project right-of-way and easement limits. The Laurel Avenue project site incorporates a 30-foot-wide construction easement along the landslide of the levee and a 15-foot-wide construction easement along the waterside of the levee. Please show in a graphic the locations where these individuals would park. How will SBFCA ensure that parking occurs in designated areas only? (UAIC may also have special concerns about particular areas or compression).

T1-G

Table 2-2: Native Monitors: The SEIR seems to show about a 180-day construction schedule as well as the anticipated number and type of equipment. Has this schedule changed based on schedule slippages to date? Two Tribal Monitors are generally required for each piece of earth moving equipment. These numbers would change if the project gets into active discovery mode. UAIC will need to be provided the construction schedule and punch list, and any updates to them. Revise SEIR accordingly.

T1-H

Page 2-5: Borrow Sites: The SEIR states that offsite borrow material would be obtained from existing, permitted commercial sources in or near Yuba City area. At page 3.3-1, the SEIR states that the Nordic Industries' Park Bar Quarry is a potential source for the Gridley Bridge Erosion site. Yet, no specific sites are stated in the SEIR for the Laurel Avenue work. UAIC requested in consultation to know the exact borrow locations to ensure that material is not being taken from an offsite sacred place or historic property, both causing damage to the borrow site and then comingling with resources at the project site, which is included in the Wollok District. Please identify the specific potential source locations for project borrow sites, this could include providing a list and map of the existing permitted commercial sources and for the Tribe to provide feedback on which sources are problematic from a cultural point of view.

T1-I

Table 2-3: Export: States that 5,000 cubic yards of unsuitable material will be exported from the project site. What protocols will be in place for UAIC to have the opportunity to review the materials prior to their export to ensure that cultural materials are not included? Similarly, Tribal Monitors must have the opportunity to review the clearing and grub debris prior to their removal to commercial waste or recycling facilities. Revise SEIR accordingly.

T1-J

Table 2-4: Utility Removal and Replacement: Tribal Monitors must be in place to observe the removal and replacements of pipe crossing, utility pole and any other utilities and under and above ground infrastructure. Revise SEIR accordingly.

T1-K

Page 2-6: Operations & Maintenance: The SEIR states that operation and maintenance activities for the Laurel Avenue Critical project would be similar to those described in section 2.4.11 of the 2013 FEIR. Please confirm that this part of the project would also be subject to the Operation and Maintenance mitigation measure required by the NAHC.

T1-L

Page 3.0-1: NEPA: The SEIR notes that previously a joint environmental document EIS/EIR was prepared for the project. Will there be a companion federal document to the proposed SEIR? If not, how is SBFCA's federal partner evaluating the project modifications under NEPA and NHPA section 106 given the SEIR's findings at Table 3.0-2 that the modified project's effects to Cultural Resources are substantially more severe? To date, UAIC has not been consulted by USACOE on the modified project and last week the USACOE informed UAIC that it did not know whether a NEPA supplement or ESA Section 7 consultation was required or initiated. UAIC is concerned about the potential schedule impacts from the federal side.

T1-M

Table 3.0-4: Vegetation and Wetlands, Wildlife, Fish and Aquatic Resources: Many of the project activities in these categories can harm or impact natural and cultural resources of concern to UAIC including medicine plants. Please ensure that a Tribal Monitor has the opportunity to be present - not just a Biological Monitor - for activities that could impact these resources to ensure their respectful treatment. Revise SEIR accordingly.

T1-N

Table 3.0-4: Population, Housing and Environmental Justice: UAIC believes that the 2013 project and the proposed project modification pose a disproportionately high and adverse health

T1-O

and environmental direct and cumulative effect upon the UAIC and its tribal members. This is demonstrated by the project's disproportionate effect on UAIC burials and villages as well as the adverse health and spiritual effects to UAIC's Tribal Monitors who worked on prior phases of the project as discussed in consultation last week. Home acquisitions (SEIR, page 3.12-3) are not the only effect to be examined in environmental justice analysis. Please see, for example, California Attorney General *Environmental Justice at the Local and Regional Level, Legal Background, 07-10-12*). We believe that the impacts are significant, cumulative and that mitigation must be proposed. Finally, we appreciate that efforts have been made to ensure that crop dusting overspray effects as experienced during the prior project phase, will not occur to project workers as was discussed in consultation last week. Please explain how such adverse human health effects, as were encountered by Native Monitors and other workers on prior phases, will be avoided in the modified project. Revise SEIR accordingly.

T1-O
Cont'd

Table 3.0-4, 3.13, Visual Resources: The SEIR states that the project will have less than significant impacts related to substantial degradation of the existing visual character or Quality of the Site and Surroundings and no mitigation is being required. Yet, the SEIR admits that there would be permanent changes in views from the ground, levee slopes, levee crowns and the river (SEIR, page 3.13-6). It appears the SEIR's finding of no impact is based only on unprovided "recent photos of the areas" that would be affected by project modifications and also has not been informed by a consideration of the feeling and association of the TCRs and visual quality within the landscape and setting. The scant information provided in the SEIR does not constitute analysis or support by substantial evidence. Visual simulations of Laurel before/after might assist in this regard. Have these been prepared? Please see also, below, discussion on restoration mitigation and protocols.

T1-P

Table 3.0-3, 3.17, Effects on Cultural Resources: The summaries presented for CR-MM-1 to CR-MM-4 should be restated to show that avoidance through redesign/construction methods is the first step in any of these measures. CR-MM-5 to CR-MM-10 are new mitigation measures not in the 2013 FEIR and 2015 Addendum. These have been the subject of settlement discussions between UAIC and SBFCA related to the prior work done on the original FRWLP project, with policies and protocols to be applied to the SEIR project modifications. However, any mitigation for direct, indirect, cumulative and compensatory mitigation *for the additional project modifications themselves* does not appear to be addressed in the draft SEIR. Stated another way, it appears that SBFCA is not assessing any additional mitigation for the project additions which the SEIR admits will have more severe impacts on tribal resources. According to CEQA, compensatory mitigation can be a mitigation measure and therefore is appropriate to discuss in an EIR; see, CEQA Guidelines section 15370. UAIC provided several mitigation measures appropriate from UAIC's perspective in both project and program categories at the last consultation which must be considered pursuant to AB 52. The Tribe must also be assured that the measures from the Agreement in Principle, notably completing nomination paperwork and a

T1-Q

<p>look-back report, have mutually understood parameters and appear in an enforceable project document.</p>	<p>T1-Q Cont'd</p>
<p>Cultural Resources section: Specific, detailed comments have been provided in separate redline documents from UAIC to SBFCA pursuant to AB 52 consultations. Some open issues presently include: <u>1, mounds as part of the built historic environment,</u> <u>2, reference to a mixed Japanese/Nisenan site at the south end of the modified project (reference as a multi-component prehistoric and historic site based on consultation with UAIC and evaluate as such),</u> <u>3, additional survey methods, such as auguring and historic human remains detection canines and their optimal timing (i.e., given the specifics of the project, the canines may be appropriate to deploy both after grubbing and then if active discoveries are encountered during construction),</u> <u>4, role of the USACOE in the mitigation measures and decision making process,</u> <u>5, tapering of effects/site documentation/nomination of TCRs from prior and future phases,</u> <u>6, proper inclusion of tribal values and perspectives within the SEIR,</u> and <u>7, questioning the need for two ethnographic reports.</u> Also, as we discussed last week, relative to the Laurel work, <u>8, references in the SEIR should be made to the Wollok District which includes Ollash Village, a named place (village) within the District and project area.</u> The Tribe has weighed the issues and would prefer for the SEIR to specifically reference the presence of the named village site within the project area. This should be clarified by the Confidential Focused Sensitivity map.</p>	<p>T1-R (1) T1-S (2) T1-T (3) T1-U (4) T1-V (5) T1-W (6) T1-X (7) T1-Y (8)</p>
<p>Pages 3.2-2 to 3.2-4: Water Quality and Groundwater Resources: What did the monitoring and reports for the prior phases of the project show? Have any adjustments been made to the SWPPP, SPCCP, BSSCP or turbidity monitoring program based on that experience and if so what changes were made? Will the proposed increased depth of the slurry wall require plan or monitoring modifications?</p>	<p>T1-Z</p>
<p>Page 3.8-7: Vegetation: We note that for the Gridley project, there is a Table 3.8-2 (Effects on Riparian Trees) and a Figure 3.8-3 (Impacted Trees graphic). If there are impacts proposed, please provide a similar table and figure for the Laurel Avenue project so that we can understand tree species, diameters, number of trees affected and effects, etc., for that project of particular concern to UAIC. Also, please explain whether the referenced 20 foot buffer zone between the tree resource and construction activities will sufficiently protect roots for all species present. Also, how long is it estimated to take for the newly planted vegetation to reach maturity, i.e., how long in duration is the temporary loss of mature vegetation? How does this also relate to the duration of temporary aesthetic/visual impacts (SEIR, page 3.13-3, defines long-term adverse visual changes or contrasts to existing landscapes as those that persist for 2 years or more)?</p>	<p>T1-AA</p>
<p>Page 3.8-8: The SEIR states that floristic surveys for the construction footprint have not been conducted. Will appropriately-timed floristic surveys occur and if not, what identification and avoidance strategies will be employed during construction? UAIC is concerned in that some plants have cultural, medicinal and ceremonial values and should be treated with respect. How will this concern be addressed? (Please see biological, visual and restoration comments</p>	<p>T1-BB</p>

elsewhere in this document). Do the BMPs described in the Environmental Commitments from the 2013 FEIR need adjustment in this regard?

T1-BB
Cont'd

Page 3.13-6: The SEIR states that high-powered lighting would not be used near sensitive residential viewers. Would such lighting also not be used near cemetery sites identified by UAIC? As expressed to SBFCA in consultation, UAIC has serious concerns about night work in cultural areas and would prefer for that not to occur since artificial light makes it more difficult to identify cultural resources and places additional stress on Tribal Monitors as was experienced on prior phases of the project, notably slurry wall headings. If night work is necessary, UAIC must be consulted on the type of night lighting to be used and the pace of the construction work so Native Monitors can do their jobs. Revise SEIR accordingly.

T1-CC

SEIR References Environmental Commitments from 2013 FEIR section 2.4, yet claims these are best practices, not CEQA mitigation measures, *per se*. SBFCA says they will implement them in good faith (page 2-31), but the former statement may put in to question their legal enforceability under CEQA. Please explain how such measures will be enforced. Also, for project-related surveys and monitoring, UAIC Tribal Monitors should be compensated.

Protective Barrier Fencing: requires qualified biologist to put out protective fencing to be installed at least 20 feet from each sensitive biological resource (where feasible). This should be coordinated with qualified archaeologist and an opportunity for a UAIC Tribal Monitor to be present to ensure protection for cultural resources and appropriateness for protective fencing for both biological and cultural resources. Revise SEIR accordingly.

Avoidance Measures for Valley Elderberry Longhorn Beetle: UAIC requests an opportunity for UAIC Native Monitors to be present when the shrubs at 2013 FEIR Plate 3.9-1 (please provide - we could not find this - is it in FEIR bio appendix?) are fenced. Revise SEIR accordingly.

T1-DD

Avoidance Measures for Giant Garter Snake, Swainson's Hawk, Raptors, bats: UAIC requests the opportunity for Native Monitor participation. Revise SEIR accordingly.

Measures for Protected and Riparian Trees: requires protective fencing be installed if construction to occur within 20 feet of the dripline of an oak or native tree. This should be coordinated with qualified archaeologist and the opportunity for a UAIC Native Monitor to be present to ensure protection for cultural resources and appropriateness for protective fencing for both biological and cultural resources. UAIC should also be consulted during the development of any tree and riparian habitat mitigation and monitoring plans and potential mitigation areas. Revise SEIR accordingly.

Invasive Plant Species Prevention Methods: Please identify what entity will perform each of the stated BMPs, i.e., SBFCA, construction contractor, etc. Revise SEIR accordingly.

Revegetation of Disturbed Areas: UAIC has preferences on seed mixes and would prefer native plants be used whenever possible to do so. A draft preferred valley plant list was provided through consultation. Plants of concern to UAIC that may not receive protection are assemblages including oak, wormwood, sedge, willow, bedgrass, soaproot, etc. which should be identified, protected, mitigated and used in restoration. UAIC also requests to be similarly involved in replanting of trees and shrubs along PG&E utility line relocations. The revised SEIR must also address other restoration aspects which may crossover with cultural resource protection including protection in perpetuity of reburial areas which could include the use of permanent ESAs, development of final preservation plans, appropriate fencing and signage, and restrictions on public use/recreation in some areas¹, as was discussed in consultation last week. This should include restoration issues being put into the weekly forecasts that are shared with UAIC. Finally, it looks as though CUL 4 reburial area may have been recently looted. Issues with post-construction management were also documented in the UAIC 2015/2016 construction close-out surveys but it is unclear whether the noted restoration issues (at CUL-5 and -12 in particular) have been resolved to date. These contribute to cumulative effects. Revise SEIR accordingly.

T1-DD

Soil Borrow Site Reclamation Plan: Depending on the location of the offsite borrow site and its proximity to TCRs, TCPs or cultural landscapes as noted above, UAIC would want to be involved in reclamation plan development and implementation, particularly those involving Sutter Butte, a TCP. Sutter Butte should not be used as a borrow location as was observed by UAIC during prior phases of the project. (UAIC Preservation Office staff took photos of trucks and followed them from source locations). This also contributed to the cumulative effect of the project. For federal authority that offsite borrow locations must be considered as part of the project, please see: ACHP Memo to Vermont State Historic Preservation Officer on applicability of NHPA section 106 to off-site borrow and disposal areas (01-25-2002) and *The Hopi Tribe v. Federal Highway Administration, et al.* (Civ-98-1061).

Postconstruction Operations and Maintenance: Consistent with SBFCA's return on the NAHC mitigation measures, efforts must be made to protect tribal cultural resource locations (including reinterment areas) during post construction operations and maintenance. During DWR's twice yearly inspections, UAIC requests to have the opportunity for a Tribal Monitor to be present to report to UAIC any erosion in or near cultural sites or the appearance of possible cultural resource items, etc. Note that the 2013 FEIR states that erosion control and slope repair activities would include resloping and compacting, activities that would also require Native Monitors. Revise SEIR accordingly.

¹ For example, the SEIR also states new information from 2013 (pages 3.13-1, 13.14-2) that a gravel multiuse trail has been proposed for the top of the levee within the Laurel Avenue segment by the County of Sutter Pedestrian and Bicycle Master Plan.

Responses to Comment Letter T1

Response to Comment T1-A

The Draft SEIR describes areas of controversy in Section 1.5.3, Issues of Known or Expected Controversy. Section 1.5.2.2, United Auburn Indian Community, identifies the concerns of the UAIC. Specific concerns identified by UAIC in its comments on the Draft SEIR, and the responses to those concerns, are listed in the Final SEIR to ensure that the Tribe's comments, which were taken into consideration by SBFCA, are sufficiently documented in the record.

Response to Comment T1-B

The project description for the FRWLP with the proposed modifications was informed by the 2014 cultural resources that were encountered, the subsequent design modifications that SBFCA made during project construction, and the tribal consultation for and outside of CEQA. Design changes incorporated into the FRWLP were first made during project construction in 2014 for the purpose of avoiding and reducing impacts on cultural resources. These design modifications have been carried over into the FRWLP with the proposed modifications that is assessed in the Draft SEIR. Moreover, SBFCA and UAIC have recently prepared a Cultural Resources Treatment Agreement that includes a Burial Treatment Plan and Tribal Monitoring Program. These new documents were incorporated into the Draft SEIR.

Table 2-1 in the Draft SEIR describes the project components for the modified FRWLP. On October 12, 2015, SBFCA provided UAIC with a project description in the form of a 10-page memorandum prepared by HDR (dated March 19, 2015) as part of the "CEQA Statement" task that was related to the Settlement Agreement negotiations. This memorandum was sent to UAIC before the start of the AB 52 consultation. Table 2-1 in the Draft SEIR lists the FRWLP changes that were made between certification of the 2013 Final EIR and the Draft SEIR. The FRWLP changes were simply refinements of a preliminary design that evolved with new and detailed information/analysis, and through consultation with UAIC. The March 19, 2015, memo reflects the inclusion of the deeper slurry wall and removal of a berm that would have had extensive environmental and cultural impacts (due to an expanded project footprint); therefore this information was provided to the Tribe and was discussed with UAIC during AB 52 consultation. These refinements are part of the project, the SEIR identifies significant unavoidable impacts, and no additional cumulative impact analysis is required.

SBFCA will keep UAIC apprised of documents that concern cultural resources and will conduct weekly look-ahead meetings to address tribal concerns.

With regard to slurry ponds and other appurtenant features, SBFCA will continue to advise UAIC where the contractor is planning earth-moving activities through the contractor submittal process, and as indicated in the Cultural Resources Treatment Agreement, UAIC will be afforded the opportunity to inspect proposed areas of construction. All slurry ponds and other appurtenant features will be located within the study area analyzed in the Draft SEIR.

The Introduction and Project Description sections of the Draft SEIR provide the history and purpose of the FRWLP modifications.

Response to Comment T1-C

The text has been revised in the Final SEIR. See Chapter 3, *Draft SEIR Errata*.

Response to Comment T1-D

A supplemental EIR provides the same level of rigor and analysis as a subsequent EIR. Because the fundamental design alternatives to the overall project were approved in the 2013 Final EIR, and the proposed project is consistent with what was analyzed under the 2013 Final FEIR, the alternatives discussed in the Draft SEIR pertained to focused alternatives (e.g., the use of relief wells in lieu of slurry walls). Pages 2-11 to 2-13 provide a discussion of project alternatives that were discussed during the AB 52 consultation meetings.

Response to Comment T1-E

SBFCA has taken an approach to cumulative impacts that is consistent with CEQA Guidelines Section 15130(b), relying primarily on local general plans to describe probable future uses throughout the region while also identifying some large projects that are likely to have effects on Tribal Cultural Resources (TCRs). Because the FRWLP's contribution to cumulative impacts is similar or the same as the project's impacts, SBFCA has concluded that the mitigation measures identified for project impacts are the same mitigation measures that will be most effective to mitigate the project's contribution to cumulative impacts. A project is not required to mitigate in excess of its contribution to the cumulative impact.

Response to Comment T1-F

The Final SEIR has been revised to list NAHC as a trustee agency instead of a responsible agency. See Chapter 3, *Draft SEIR Errata*.

Response to Comment T1-G

The actual number of construction workers may be substantially less than the preliminary estimate provided in the Draft SEIR. SBFCA estimates that no more than 45 individuals will be present at the site at any given time.

SBFCA will limit parking to the areas within the project limits or within existing road rights-of-way when permitted by the pertinent city or county. UAIC will be apprised of contractor operations, including parking, as they are known and communicated through the weekly look-ahead meeting with UAIC.

Response to Comment T1-H

The overall construction contract schedule has not changed significantly, but may change based upon circumstances that SBFCA cannot predict. SBFCA will continue its weekly construction meetings with UAIC, as described in the Cultural Resources Treatment Agreement. Tribal monitors will be present as provided for in the Tribal Monitoring Program of the Cultural Resources Treatment Agreement.

Response to Comment T1-I

A general discussion of previously approved borrow sites is provided in Chapter 3.3 of the Draft SEIR, Geology and Soils. Although the specific sites that will be used have not yet been identified, SBFCA will provide a list of approved borrow sites to the Tribe. The borrow sites on this list consist of commercial borrow sites that possess appropriate permits and environmental clearance. The

selection of the specific borrow site from the list of approved borrow sites will be at the sole discretion of the contractor.

Response to Comment T1-J

UAIC monitors will have the opportunity to be present during excavation and export activities for purposes of identifying any cultural resources material prior to its removal from the FRWLP site, in accordance with the Cultural Resources Treatment Agreement. No material taken directly from the levee prism is proposed to be exported.

Response to Comment T1-K

UAIC monitors will have the opportunity to be present for utility removal and replacement activities within the FRWLP site.

Response to Comment T1-L

The mitigation measures proposed by NAHC and accepted by SBFCA will apply to the entire FRWLP; however, as UAIC and SBFCA have discussed at length, SBFCA is not the long-term operator of the project, but rather, is responsible only for the capital improvement project. Once constructed, the operations (both short- and long-term) and land itself will be transferred to numerous local districts and partner agencies whom SBFCA cannot bind. The adoption of a long-term operations and maintenance (O&M) plan falls outside the purview of SBFCA. However, SBFCA has written a letter to the Central Valley Flood Protection Board (CVFPB), stating its support for the Board's development of a long-term O&M plan that includes consideration of tribal cultural resources. SBFCA has also provided a draft template O&M plan with example language that can be used by the Tribe and CVFPB. Given SBFCA's limited legal authority with respect to O&M, SBFCA asserts it has met the long-term management requirement in Mitigation Measure CR-MM-9.

Response to Comment T1-M

The U.S. Army Corps of Engineers (USACE) has its own process for documenting compliance with the National Environmental Policy Act; this is not a CEQA issue.

Response to Comment T1-N

SBFCA will include in its weekly construction forecast meetings information about anticipated biological survey activities so that UAIC can determine whether or not it wishes to participate in such activities.

Response to Comment T1-O

CEQA does not require an analysis of environmental justice impacts as part of the analysis in the EIR. SBFCA and its contractors will comply with all applicable laws and regulations related to working conditions, including environmental hazards.

Response to Comment T1-P

Visual effects are less than significant, primarily because the levee is being reconstructed to existing line and grade, and nearly all visual effects are temporary. In light of the FRWLP's intent to return the levee to its pre-project condition, permanent visual effects would not result in significant

impacts on the existing visual character and quality of views. Visual simulations are not effective or warranted to address temporary visual impacts.

Response to Comment T1-Q

SBFCA maintains that avoidance is the preferred treatment method, and has discussed this with UAIC during consultation meetings for AB 52 and the Settlement Agreement.

The Draft SEIR has identified mitigation measures for the Project modifications (see Mitigation Measures CR-MM-1 through CR-MM-10). SBFCA considered a variety of potential mitigation measures and identified Mitigation Measures CR-MM-1 through CR-MM-10 as the feasible measures that will mitigate for the impacts of the FRWLP modifications. The mitigation measures proposed in the Draft SEIR (and further modified in the Final SEIR) that were not included in the 2013 Final EIR serve to mitigate for future impacts caused by the project modifications. However, SBFCA has concluded that a mitigation measure requested by UAIC would violate CEQA: UAIC requested a mitigation measure titled “other mitigation” whose details would be determined in the future through consultation with UAIC. Such a mitigation measure would violate CEQA’s requirement that mitigation measures be identifiable, enforceable, and roughly proportional to the impacts of a project (see CEQA Guidelines 15126.4) and therefore, the “other mitigation” measure proposed by UAIC was rejected for the purpose of the Final SEIR, but is being addressed separately through the Settlement Agreement negotiation process. See the revised Cultural Resources analysis, which is included in this Final SEIR as Appendix A.

Response to Comment T1-R

Section 3.17.1.2 of the Draft SEIR provides a discussion of impacts on the built environment. See the revised Cultural Resources Section in the Final SEIR, Appendix A, Changes to Section 3.17, *Cultural Resources*.

Response to Comment T1-S

In the absence of specific information provided by the Tribe, SBFCA has aggressively sought information to support information provided by UAIC that a sparse Japanese artifact scatter is associated with Nisenan culture. Please see the revised Cultural Resources section, included in this Final SEIR as Appendix A.

Response to Comment T1-T

Section 3.17.1.2 of the revised Cultural Resources section (included as part of this Final SEIR as Appendix A) provides a discussion regarding the investigatory methods SBFCA used in an attempt to locate cultural resources materials and explains why the use of canines trained in the detection of human remains was rejected as a method to locate cultural resources materials.

Response to Comment T1-U

Where, as here, the USACE is involved through a federal permit, the treatment of any historic property, as defined by federal law, is subject to consultation with USACE. SBFCA lacks the authority under federal law to remove or deny USACE’s jurisdiction and its associated consultation and mitigation of adverse impacts under Section 106 of the National Historic Preservation Act. Even where, as here, a Most Likely Descendant asserts that an entire project site constitutes human

remains or grave goods, USACE still plays a role that SBFCA cannot ignore without violating federal law.

Response to Comment T1-V

SBFCA acknowledges that UAIC has requested that SBFCA nominate the Wollok District for inclusion in the National Register of Historic Places as mitigation for FRWLP cultural resource impacts. The ethnographic study will document the Wollok District, however the nomination or listing of a resource is outside of SBFCA's control and will depend on the content of the ethnographic study. Moreover, the nomination of a resource does not constitute mitigation because it would not result in any additional protections for the resource; the ethnographic study itself does provide the documentation necessary to mitigate and is included as a mitigation measure (Mitigation Measure CR-MM-10).

Response to Comment T1-W

Throughout the TCR discussion in the Draft SEIR, SBFCA has recounted UAIC's perspective and views, particularly with regard to the identification and characterization of the Wollok District and Ollash Village, the Tribe's views on the built environment, and the Tribe's position on identification methods, as described in Section 3.17.1.2 of the revised Cultural Resources section, included in the Final SEIR as Appendix A. Some of the Tribe's views could not be provided in the Draft or Final SEIR for reasons of confidentiality.

Response to Comment T1-X

As SBFCA and UAIC have discussed, the ethnographic study contemplated in Mitigation Measure CR-MM-10 is separate from any resolution of adverse effects by USACE under Section 106 of the National Historic Preservation Act.

Response to Comment T1-Y

Although the identification of the Ollash Village is not reflected in the original identification of the Wollok District by both UAIC and NAHC, SBFCA included four references to Ollash Village in Section 3.17.1.2 of the revised Cultural Resources section (Appendix A of this Final SEIR).

Response to Comment T1-Z

During FRWLP construction to date, the monitoring results related to water quality issues have not resulted in adjustments in mitigation and monitoring programs. Project design and construction will comply with all applicable laws and regulations governing water quality, as described in Section 3.2.1.1 of the Draft SEIR.

Response to Comment T1-AA

SBFCA estimates that up to 20 riparian trees would be removed as part of the Laurel Avenue Critical Repair work (see page 3.8-5 of the Draft SEIR). A tree survey of the Laurel Avenue site will be completed prior to the start of construction, at which time specific information about the trees will be available. The buffer zone required to preserve tree roots, as well as the time needed for plantings to reach maturity, will be determined at the time of the tree survey, specified in the mitigation planting plan and will be reviewed by a certified arborist prior to implementation. The

species used in replacement plantings will also be determined in accordance with the local climate and the requirements of USACE, California Department of Water Resources (DWR), and the CVFPB to ensure the integrity and stability of the reconstructed levee. Section 3.13 of the Draft SEIR considers visual impacts caused by the temporary loss of vegetation.

Response to Comment T1-BB

SBFCA will perform a floristic survey for special-status plants prior to construction. The only special-status plant species identified as having potential habitat in the project area is Sanford's arrowhead (*Sagittaria sanfordii*). SBFCA will comply with all applicable laws and regulations for protected species.

Response to Comment T1-CC

The type and level of project lighting will be dictated by worker safety. SBFCA will consult with UAIC on lighting in order to implement lighting that primarily is consistent with FRWLP requirements but also accommodates the Tribe's concerns where feasible.

Response to Comment T1-DD

The Draft SEIR contains no new environmental commitments associated with the project modifications beyond those described in the 2013 Final EIR. Generally, environmental commitments are enforceable as part of the project itself. Mitigation measures are additional actions taken, beyond the project description, to reduce a project's environmental impacts.

Response to Comment T1-EE

SBFCA will include in its weekly construction forecast meetings information about anticipated biological survey activities so that UAIC can determine whether or not it wishes to participate in such activities.

The entity (e.g., SBFCA, construction contractor, etc.) that performs and ensures implementation of each of the stated best management practices is identified in the original Mitigation Monitoring and Reporting Program adopted for the FRWLP in 2013.

Monitors have been compensated by SBFCA in the past and will continue to be paid for their work.

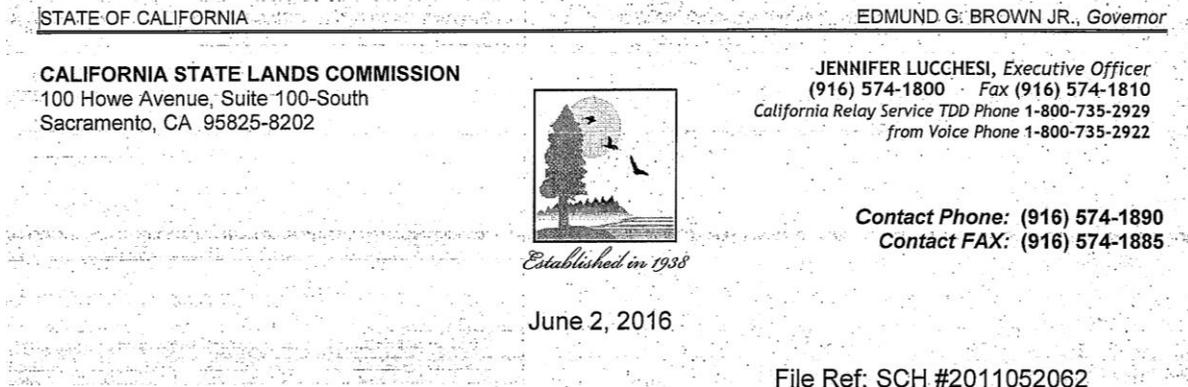
SBFCA will review UAIC's seed mix preferences and will utilize them where feasible and consistent with applicable requirements for revegetation. SBFCA will be consulting with UAIC on restoration issues consistent with the Cultural Resources Treatment Agreement.

SBFCA does not anticipate reclamation plans for borrow sites for the project modifications. UAIC's comments and preferences are noted if such plans become necessary.

SBFCA is not responsible for long-term operations and maintenance of the project but rather the capital improvement project only. Once constructed, the operations and maintenance (both short- and long-term) and land itself will be transferred to numerous local districts and partner agencies whom SBFCA cannot bind. SBFCA has no control over DWR inspections.

2.3 Responses to Comments from State Agencies

Letter S1 – California State Lands Commission, Cy R. Oggins, June 2, 2016



Michael Bessette
Sutter Butte Flood Control Agency
Post Office Box M
Yuba City, CA 95991

Subject: Draft Supplemental Environmental Impact Report (SEIR) for the Feather River West Levee Project, Sutter and Butte Counties

Dear Mr. Bessette:

The California State Lands Commission (CSLC) staff has reviewed the Draft SEIR for the Feather River West Levee Project (Project), which is being prepared by the Sutter Butte Flood Control Agency (SBFCA). The SBFCA, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The CSLC is a trustee agency for projects that could directly or indirectly affect sovereign lands and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign lands, the CSLC will act as a responsible agency.

CSLC Jurisdiction and Public Trust Lands

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c), 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion.

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or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

The purpose of the SEIR is to address two modifications to the previously approved Alternative Three of the 2013 EIR; therefore, the SEIR only analyzes new environmental effects associated with the modifications. The modifications include: (1) additional work for the Gridley Bridge erosion repair sites and (2) Laurel Avenue critical repairs along the Feather River West Levee (FRWL) (identified in Figure 1-1 of the SEIR). Based on information submitted in the Draft SEIR, CSLC staff has determined that a portion of the Gridley Bridge Erosion Repair Site is located on State-owned sovereign land in the Feather River under the jurisdiction of the CSLC. CSLC staff understands the Department of Water Resources (DWR) will submit a lease application on behalf of SBFCA. The site of the Laurel Avenue Critical Repair will not extend onto State-owned sovereign land; therefore, a lease is not required for this particular Project site.

Project Description

The SBFCA has identified the following goals and objectives for the Project:

- Provide physical repairs to the FRWL to address existing known deficiencies and improve maintenance operations;
- Make levee improvements to meet current State and federal standards, which includes 100-year flood protection; and
- Make levee improvements to conform with Senate Bill 5, which requires a 200-year level of flood protection by 2025.

From the Project Description, CSLC staff understands that the Project would include the following components.

- **Gridley Bridge Erosion Repair**: Two areas directly upstream and downstream of the Gridley Bridge were identified for erosion repair along the water side of the levee. The proposed repair work would include the placement of rock slope protection along the water side of the levee into the river bed (Figures 2-2 and 2-3 of the SEIR). This work would result in loss of shaded riverine aquatic and riparian habitat landward of the approximate ordinary high water mark. Use of a barge may be required for construction of the rock slope protection materials.
- **Laurel Avenue Critical Repair**: The Project would include an extension of the slurry wall beyond the original Project boundary, south of Laurel Avenue, but would not include the construction of a 100-foot seepage berm as proposed in the 2013 EIR.

Michael Bessette

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Environmental Review

CSLC staff requests that the SBFCA consider the following comments on the Draft SEIR pertaining to the Gridley Bridge Erosion Repair sites, which occur on State-owned sovereign land and are subject to a lease from the CSLC. In addition, the recreation and public access comment applies to the portion of the Project area south of Yuba City.

Water Quality and Groundwater Resources

1. **Mercury/Methylmercury:** The Draft SEIR should consider the Project's impacts on the movement of mercury and methylmercury in the Feather River. The Draft SEIR considers the Project's impacts on turbidity in the Feather River, but does not consider the link between turbidity and mercury transport. Since mercury and methylmercury are associated with small particulates, some Project construction activities may contribute to mercury transport in the Feather River.

S1-A

On April 22, 2010, the Central Valley Regional Water Quality Control Board (RWQCB) identified the CSLC as both a State agency that manages open water areas in the Sacramento-San Joaquin Delta Estuary and a non-point source discharger of methylmercury (Resolution No. R5-2010-0043), because subsurface lands under the CSLC's jurisdiction are impacted by mercury from legacy mining activities dating back to California's Gold Rush. Pursuant to a RWQCB Total Maximum Daily Load (TMDL), the CSLC, DWR, and Central Valley Flood Protection Board are required to reduce methylmercury concentrations in the Delta and open waters under jurisdiction of the CSLC. Consequently, any action taken that may result in continued mercury and methylmercury moving from upstream areas to the Sacramento-San Joaquin Delta Estuary may affect the CSLC's efforts to comply with the RWQCB TMDL.

Although the impact of excessive turbidity (Effect WQ-1), was found to be less than significant, the Draft SEIR should assess the impacts of mercury on water quality. If feasible, the assessment should include an estimate of the amount of mercury that may be mobilized by the Project activities. If mercury mobilization and transport are expected, the Draft SEIR should determine if mercury transport will rise to the level of a significant impact to water quality in the Feather River and downstream.

Traffic, Transportation, and Navigation

S1-B

2. **Public Navigation Easement:** The State considers the Feather River to be navigable to above the city of Oroville. In addition, the river for the entire Project area is subject to a public navigation easement. This means that members of the public have the right to navigate and exercise the incidences of navigation in a lawful manner on waters within the State, whether publicly or privately owned, that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but are not limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses. CSLC staff recommends the SEIR include an analysis of whether public navigation easement restrictions would occur as a result of construction activities in the Project area that would give rise to a

Michael Bessette

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S1-B | potentially significant impact. If significant impacts are determined, measures should be identified in order to minimize impacts to the public.

Recreation

3. Public Access: Section 1.5.3 of the Draft SEIR identifies public access to the Feather River as an area of controversy and directs the reader to Section 1.6.3 of the 2013 Final EIR for more information. However, Section 1.6.3 of the Final EIR does not address this controversy. Further, as stated in the CSLC's comment letter to the SFBCA on the Project's Notice of Preparation, there is demand for increased access to the Feather River corridor, and there are virtually no dedicated access points for the public to reach the river between Yuba City and the Sacramento River at Verona. The California Constitution adopted in 1879 provides in Article X, section 4:

S1-C | *"No individual, partnership, or corporation, claiming or possessing the frontage of tidal land of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to navigable waters of this State shall always be attainable for the people thereof."*

The SFBCA should provide a discussion in the SEIR regarding this area of public demand and consider the mandate in the Constitution and obligations under the Public Trust, to consider opportunities for reasonable access to the river in conjunction with the flood control goals.

Cultural Resources

S1-D | 4. Submerged Resources: The SEIR should evaluate potential impacts to submerged cultural resources in the Project area. The CSLC maintains a shipwrecks database that can assist with this analysis. CSLC staff requests that the SFBCA contact Assistant Chief Counsel Pam Griggs (see contact information below), to obtain shipwrecks data from the database and CSLC records for the Project site. The database includes known and potential vessels located on the State's tide and submerged lands; however, the locations of many shipwrecks remain unknown. Please note that any submerged archaeological site or submerged historic resource that has remained in State waters for more than 50 years is presumed to be significant.

S1-E | 5. Title to Resources: The SEIR should mention that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California are vested in the State and under the jurisdiction of the CSLC (Pub. Resources Code, § 6313). CSLC staff requests that the SFBCA consult with Assistant Chief Counsel Pam Griggs (see contact information below) should any cultural resources on State lands be discovered during construction of the proposed Project.

Michael Bessette

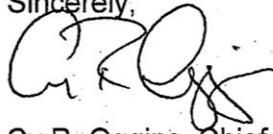
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June 2, 2016

Thank you for the opportunity to comment on the Draft SEIR for the Project. As a responsible and trustee agency, the CSLC will need to rely on the Final SEIR for the issuance of any amended/new lease as specified above. Therefore, we request that you consider our comments prior to certification of the Final SEIR.

Please send copies of future Project-related documents, including electronic copies of the Final SEIR, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available, and refer questions concerning environmental review to Kelly Keen, Environmental Scientist, at (916) 574-1938 or via e-mail at kelly.keen@slc.ca.gov. For questions concerning archaeological or historic resources under CSLC jurisdiction, please contact Assistant Chief Counsel Pam Griggs at (916) 574-1854 or via e-mail at pamela.griggs@slc.ca.gov. For questions concerning CSLC leasing jurisdiction, please contact Ninette Lee, Public Land Manager, at (916) 574-1869 or via e-mail at ninettee.lee@slc.ca.gov.

Sincerely,



Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
K. Keen, CSLC
N. Lee, CSLC
P. Griggs, CSLC
J. Fabel, CSLC

Responses to Comment Letter S1

Response to Comment S1-A

Average monthly turbidity (NTU) on the Feather River at Gridley during the months of July, August, September, and October (the months during which construction of the project modifications is anticipated to occur) ranges from approximately 7 to 22 NTUs (shown on Plate 3.2-1 in the 2013 FEIR). The applicable Basin Plan states that where ambient turbidity is between 5 and 50 NTUs, projects shall not increase turbidity on the Feather River by more than 20% above the ambient conditions¹. As discussed under Effect WQ-1 in the Draft SEIR, SBFCA does not anticipate that turbidity or total suspended solids would increase substantially above ambient conditions due to project construction. Site-specific erosion control measures will be developed as part of the Storm Water Pollution Prevention Plan in accordance with the California Regional Water Quality Control Board Field Manual, and SBFCA will implement a turbidity monitoring plan that would require mitigating actions to be taken if turbidity thresholds are exceeded. Effects due to turbidity and total suspended solids would be less than significant. The Lower Feather River (from the Lake Oroville Dam to the confluence with the Sacramento River) is on the 303(d) list of water quality limited segments for mercury². Sampling performed by the United States Geological Survey indicates that mercury is present in Lower Feather River streambed sediment in concentrations of approximately 0.2 micrograms per gram (or parts per million)³. Because mobilization of mercury would be associated with the mobilization of the sediments that create turbidity, and because increases in turbidity would be minimal, effects relating to mercury would also be less than significant. Overall, the implementation of the Gridley Bridge Erosion Repair should reduce turbidity due to erosion during storm events and any associated mobilization of mercury because the placement of rock slope protection would reduce bank erosion.

Response to Comment S1-B

No public navigation easement restrictions would occur as a result of construction activities in the project area. As described under Effect TRA-7: Temporary Changes to Navigation, the potential use of barges to place rock slope protection at the Gridley Bridge Erosion site would decrease the available space for navigation of other watercraft. The width of the Feather River at the Gridley Bridge Erosion site is approximately 300 feet; however, the approximate width of the barge that may be used at the site is only 30 feet, so other watercraft would still be able to safely pass by the site. This was determined to be a less-than-significant effect.

Response to Comment S1-C

It is generally agreed that the public has the right to use the Feather River and that it is navigable by small, recreational craft. It is further acknowledged that there are limitations to river access, including locked gates, lack of signage, lack of developed put-in/take-out points for non-motorized

¹ Central Valley Regional Water Quality Control Board. 2016. The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region, Fourth Edition. Revised April 2016.

² California State Water Resources Control Board. 2011. *2010 Integrated Report (Clean Water Act Section 303(d) List / 305(b) Report)*—Statewide. USEPA approved: October 11, 2011. Last Revised: August 27, 2015. Available: http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml. Accessed: June 8, 2016.

³ Domagalski, Joseph. 2001. Mercury and methylmercury in water and sediment of the Sacramento River Basin, California. *Applied Geochemistry* Volume 16 (Issue 15):1681-1682.

craft, lack of parking, and other amenities. It is acknowledged that there are public lands in the river corridor, including those controlled by the State of California, that are not accessible for public use. However, SBFCA does not have responsibility to address these issues as part of its proposed project modifications that are focused on flood risk-reduction measures to address documented levee deficiencies according to Federal and state criteria. With regard to the responsibility of SBFCA to address these circumstances in the SEIR, the fundamental analytical premise under CEQA is to establish a baseline condition and evaluate the changes that would occur as a result of the project modifications. It is not the intention of SBFCA to limit public access as part of these project modifications or any other action. The project modifications would result in no permanent change in public access. Any access effects would be temporary in nature and would be associated with precluding public access within the construction footprint and during the construction season in the interest of public safety.

SBFCA has committed to investigating opportunities to facilitate access as part of its overall approach for recreation and public access of the river corridor. This commitment is demonstrated in the Feather River Regional Flood Management Plan (published on August 7, 2014) for which SBFCA is a partnering agency. The Feather River Regional Flood Management Plan identifies opportunities for increasing public access and recreation options along the river corridor. SBFCA also commissioned and completed a recreation study as part of the Sutter Basin Feasibility Study as further demonstration of its commitment toward advancing recreation.

With regard to the specific citation from the California Constitution, it is included in the 2013 FEIR under Section 3.14.2.1, *Regulatory Setting*, applying language from both the United States and California constitutions, but it should be noted that SBFCA has no general or specific mandate to develop access. Moreover, the overall FRWLP and the proposed modifications are neutral because they do not change permanent public access.

Response to Comment S1-D

During preparation of the 2013 FEIR, ICF completed a query of the California State Lands Commission's shipwreck database (described on page 3.17-6 of the 2013 FEIR). The query results indicated that a historic-era shipwreck is located in the Feather River just west of Nicolaus and north of State Route 99. The FRWLP was not expected to affect this resource because no in-water work was planned as part of the original project. The project modifications analyzed in the Draft SEIR include in-water work (placement of rock slope protection) at the Gridley Bridge Erosion site; however, this work would occur more than 30 miles upstream of the recorded shipwreck, and would not affect it. On June 3, 2016, ICF conducted a follow-up search of the California State Lands Commission's shipwreck database for the Gridley Bridge Erosion site vicinity. The 2016 search confirmed that there are no known submerged resources within 1 mile of the Gridley Bridge Erosion site.

Response to Comment S1-E

Section 3.17.3.1, *Assessment Methods for Identifying Historical Resources*, of the 2013 FEIR states that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission.

Letter S2 –Native American Heritage Commission, Terrie L. Robinson, June 3, 2016

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

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June 3, 2016

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Re: Native American Heritage Comments, Draft Supplemental Environmental Impact Report, Feather River West Levee Project, April 2016

On behalf of the Native American Heritage Commission (NAHC), I provide the following comments regarding the Draft Supplemental Environmental Impact Report (SDEIR) for the Feather River West Levee Project. The NAHC has been steadfast in its belief that tribes are the ultimate authority on and protectors of their tribal cultural resources. It is with this belief in mind that these comments are provided.

S2-A

Since the NAHC’s Investigative Report on the Feather River West Levee Project from March 19, 2015, which I am incorporating by reference as Appendix A, the NAHC has been extremely concerned that the expertise and interests of affected tribes, in particular the United Auburn Indian Community (UAIC), have not been fully heard and considered. It is the lack of tribal consultation that resulted in the impacts to Native American burials and cultural resources during the first phase of the Feather River West Levee Project (FRWLP).¹ As a result, on April 17, 2015, the NAHC voted 5-0, pursuant to Public Resources Code section 5097.94, subdivision (g) and section 5097.97, to adopt findings of fact and propose five mitigation measures which, if not accepted by the Sutter Butte Flood Control Agency (SBFCA), would result in the NAHC seeking injunctive relief pursuant to Public Resources Code section 5097.97 to protect the Wollok Prehistoric District.² Since May of 2015, SBFCA and UAIC have been working towards implementing those five mitigation measures. Although the NAHC applauds the efforts at implementing those measures, it is disappointing at best that, more than a year later, those mitigation measures,

S2-B

¹ Native American Heritage Commission Investigative Report Concerning the Feather River West Levee Project, March 19, 2015 at p. 22 (“The only reference to tribal consultation in the preparation of the DEIS/DEIR is the inquiry sent by ICF to tribes based on NAHC coordination and correspondence received from Mooretown Rancheria and Enterprise Rancheria.”)

² April 21, 2015 Letter from Terrie L. Robinson, General Counsel, Native American Heritage Commission, to Mike Inamine, Executive Director, Sutter Butte Flood Control Agency. The April 21, 2015 letter is incorporated by reference as Appendix B.

incorporated in this SDEIR, have not been completely implemented. It is the hope and the expectation of the NAHC that complete progress will have been achieved before the SDEIR is certified and before the NAHC's July 15, 2016 meeting.

The NAHC also joins in and incorporates by reference the comments of UAIC, which are included as Appendix C. UAIC possesses a far greater detailed knowledge of the cultural resources in the project area, their history of engagement with SBFCA and the U.S. Army Corps of Engineers (USACE) on this project, and specific measures needed to protect the cultural resources as much as feasible. We respect and defer to their superior knowledge.

S2-C

Finally, the NAHC has and maintains a fundamental objection to data recovery with respect to Native American human remains and associated grave goods unless agreed to by the tribe designated as Most Likely Descendant (MLD) pursuant to Public Resources Code section 5097.98. The NAHC incorporates by reference the guidance provided by the Advisory Council on Historic Preservation in its March 31, 2015 letter to Alicia Kirchner of the USACE regarding the use of data recovery to resolve adverse effects for prehistoric archaeological sites.³

S2-D

The NAHC's specific comments are as follows:

1. Pages 3.17-10-11 Effect CR-1 and Mitigation Measure CR-MM-1

Although CR-MM-1 has been modified in the *Addendum to the Feather River West Levee Project Final Environmental Impact Report* to include alternative mitigation methods in lieu of data recovery, the terms under which any data recovery would be conducted should be clarified.

First, the NAHC objects to any data recovery on Native American human remains and associated grave goods without the advance consent of the tribe designated as MLD for those remains and associated grave goods. One of the problems encountered during the first phase of the FRWLP was who decided what an associated grave good was, which, in turn, was determinant as to who could decide whether data recovery could be conducted. The archaeologists for the USACE repeatedly ignored UAIC's determinations of what were or were not associated grave goods. The NAHC objects to any determination of what is or isn't an associated grave good by anyone other than the tribe designated as MLD.

Public Resources Code section 5097.98, subdivision (d)(2) provides, "Any items associated with human remains that are placed or buried with the Native American human remains are to be treated in the same manner as the remains, but do not by themselves constitute human remains." The NAHC submits that a tribe, which has most likely been practicing its funerary rites for thousands of years, is more likely to be expert as to what is or is not an associated grave good for the remains of their ancestors. Usurping the authority of a tribe to

³ March 31, 2015 letter from Charlene Dwin Vaughn, AICP, Assistant Director, Federal Permitting, Licensing and Assistance Sections, Office of Federal Agency Programs, Advisory Council on Historic Preservation, to Alicia E. Kirchner, Chief, Planning Division, U.S. Army Corps of Engineers, Sacramento District. This letter is incorporated by reference and included as Appendix D.

make such a determination, especially if the associated grave goods are subject to state jurisdiction, is tantamount to violating the MLD’s right to make recommendations as to treatment and disposition of the Native American human remains and associated grave goods under Public Resources Code section 5097.98. The issue of disregarding UAIC’s determinations as to which items were grave goods, and the testing of those goods without their consent, caused a great deal of emotional trauma to UAIC and its cultural monitors in what the ACHP ultimately showed was a misguided attempt at USACE’s idea of compliance with Section 106. The NAHC would like to see SBFCA, UAIC and USACE establish a protocol for determining which items are associated grave goods and for precluding any data recovery until such a protocol is in place and determinations can be made.

S2-D
Cont’d

The NAHC would also like to correct what appears to be a narrowing of legal options available to the MLD under Public Resources Code section 5097.98. On page 3.17-11, bullet number 5, the DSEIR states, “The MLD will be given the opportunity to reinter the remains with appropriate dignity.” Public Resources Code section 5097.98 doesn’t limit the options of the MLD with respect to the treatment and disposition of Native American human remains UNLESS the landowner rejects the recommendations of the MLD, in which case the remains shall be “reinterred . . . with appropriate dignity on the property in a location not subject to further *and future* subsurface disturbance.” (Emphasis added). An advance determination of what options are available to the MLD fly in the face of subdivision (2)(c) of Public Resources Code section 5097.98, which provides in relevant part, “For the purposes of this section, ‘conferral’ or ‘discuss and confer’ means the meaningful and timely discussion and careful consideration of the views of each party, in a manner that is cognizant of all parties cultural values, and where feasible, seeking agreement. . . .” Instead, Public Resources Code 5097.98 allows the MLD to “make recommendations or preferences for treatment.” (Public Resources Code section 5097.98, subdivision (a).). As such, the law does not limit the MLD to only “the opportunity to reinter the remains with appropriate dignity.”

S2-E

Finally, the NAHC submits that Native American human remains should be treated with appropriate dignity at all times. During the first phase of the FRWLP, disinterred Native American human remains were stored in buckets. This is not appropriate dignity for anyone’s ancestors’ remains and caused a great deal of emotional trauma to UAIC and its cultural monitors. The NAHC recommends that more respectful and culturally appropriate methods of storing and protecting disinterred Native American human remains, when disinterment is required, be employed.

S2-F

2. Pages 3.17-18-20, Mitigation Measures CR-MM-5 through CR-MM-9

Mitigation Measures CR-MM-5 through CR-MM-9 are the mitigation measures proposed by the NAHC on April 17, 2015 to SBFCA in lieu of seeking injunctive relief to protect the Wollok Prehistoric District. Because these measures were proposed by the NAHC as a package, the NAHC would like to see all of them implemented before certification of the DSEIR. NAHC’s more specific concerns are as follows:

S2-G

(a) Mitigation Measure CR-MM-5 Design Alternatives

There is no discussion of design alternatives in the DSEIR. It would seem appropriate that design alternatives, and the impacts caused by those alternatives, would be included and evaluated in the DSEIR. If at each phase of the FRWLP the consideration of design alternatives, if even to explain why they are not feasible, is delayed until the next phase, compliance with this mitigation measure proposed by the NAHC will be illusory and ultimately moot.

S2-H

(b) Mitigation Measure CR-MM-6 Tribal Consultation Policy

The NAHC believes that a tribal consultation policy is crucial to avoiding or mitigating impacts to tribal cultural resources. The counties in which the FRWLP is located are highly sensitive for tribal cultural resources. Tribal consultation, and the government-to-government relations that result from it, are a *sine qua non* of cultural resources protection.

S2-I

(c) Mitigation Measure CR-MM-9 Execute Cultural Resources Treatment Agreement with UAIC

The NAHC's greatest concern in this regard is with the creation of a long-term management plan for the protection of tribal cultural resources when future ground-disturbing work occurs within the FRWLP. Both the NAHC and UAIC have expended considerable effort in educating SBFCA and USACE on the state laws protecting Native American human remains and associated grave goods. This knowledge needs to be incorporated in any long-term maintenance protocols along with tribal consultation policies for any entities engaging in ground-disturbing maintenance work on the FRWLP so the past mistakes won't become future ones.

S2-J

3. Page 3.17-20 Mitigation Measure CR-MM-10 Ethnographic Study

It is deeply troubling that an ethnographic study had not been completed by the time the DSEIR was issued. The NAHC would expect that, given the mistakes of the past with respect to tribal cultural resources in the FRWLP, as much knowledge about the tribal cultural resources in the project area would be brought to bear in advance of any future ground-disturbing activities in order to avoid making the same mistakes in the future. The ethnographic study should be completed before certification of the DSEIR.

S2-K

Yours very truly,



Terrie L. Robinson, General Counsel
Native American Heritage Commission

cc: Commissioners, Native American Heritage Commission
Cynthia Gomez, Executive Secretary, Native American Heritage Commission
Brian Guth, Tribal Administrator, UAIC
Courtney Coyle, Outside Counsel, UAIC

Appendix A
Native American Heritage Commission Investigative Report Concerning the Feather River
West Levee Project, March 19, 2015



CALIFORNIA NATIVE AMERICAN HERITAGE COMMISSION
PUBLIC RESOURCES CODE SECTIONS 5097.9, 5097.94 (g), and 5097.97
INVESTIGATIVE REPORT CONCERNING THE
FEATHER RIVER WEST LEVEE PROJECT
SUTTER BUTTE FLOOD CONTROL AGENCY, CEQA LEAD AGENCY
STATE CLEARINGHOUSE NUMBER 2011052062
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT, NEPA LEAD
AGENCY
PURSUANT TO THE REQUEST OF THE
UNITED AUBURN INDIAN COMMUNITY OF THE AUBURN RANCHERIA
A FEDERALLY RECOGNIZED NATIVE AMERICAN TRIBE

MARCH 19, 2015.

“It is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.”

California Public Resources Code section 5097.991

**FEATHER RIVER WEST LEVEE PROJECT
State Clearing House Number # 2011052062**

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I. Executive Summary

The California Native American Heritage Commission (NAHC) has the duty and authority to take legal action to prevent severe or irreparable damage to Native American sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines¹ located on public property.² This investigative report is for the purpose of assisting the NAHC to determine whether it should take legal action to prevent severe or irreparable damage to any Native American sacred sites located in the area of the Feather River West Levee Project (FRWLP or Project). This investigative report and a scheduled public hearing³ are prerequisites for the NAHC to seek injunctive relief to protect any Native American sacred sites within the FRWLP project area (also "Area of Project Effect" or "APE") from severe or irreparable damage. The NAHC has no interest in impeding the FRWLP, or any public works project for that matter, solely to make a point. The FRWLP should, can and must continue if mitigation measures are taken to eliminate or reduce damage to Native American sacred sites.

This investigation and public hearing were requested by the United Auburn Indian Community of the Auburn Rancheria (UAIC),⁴ a federally recognized tribe,⁵ in order to prevent any future damage to Native American sacred sites within the FRWLP. UAIC has been negotiating with the project sponsor, the Sutter Butte Flood Control Agency (SBFCA), and the federal permitting agency, the U.S. Army Corps of Engineers (USACE), since the summer of 2014 to mitigate damages to Native American cultural resources in the FRWLP and to have Native American human remains and associated grave goods found in the FRWLP returned to UAIC without testing and analysis, among other requests. SBFCA has returned some, but allegedly not all, of the remains and associated grave goods, and agrees that they all should be returned to UAIC under state law. USACE has disputed which artifacts are or are not associated grave goods and has only recently agreed to return associated grave goods after testing and curation. The role of deciding what is or is not an associated grave good or whether they should be tested or

¹ For purposes of simplicity for those unfamiliar with cultural resources, we will refer to such sites as "Native American sacred sites," although a formal declaration by the NAHC that these sites are sacred has not yet occurred.

² See Public Resources Code sections 5097.94 (g) and 5097.97. Section 5097.94 (g) provides that the NAHC has the power and the duty "to bring an action to prevent severe and irreparable damage to, or to assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97."

³ A public hearing in this matter is scheduled for March 20, 2015 at the North Natomas Library, North Natomas Meeting Room, 4660 Via Inglogia, Sacramento, CA 95835 from 9:00 am to 2:00 pm. Colonel Michael Farrell, Commander of the Sacramento District of the USACE, has communicated through correspondence addressed to NAHC Chairman James Ramos that USACE has declined to appear at the hearing. See March 5, 2015 Letter from Colonel Michael Farrell, District Commander, Sacramento District, USACE, to NAHC Chairman James Ramos.

⁴ UAIC Request to Pursue Public Resources Code Section 5097.97, September 15, 2014.

⁵ Federally recognized Native American tribes have certain rights under federal law, such as the right to government-to-government consultation with federal agencies under Section 106, that are specific and limited to them as sovereign governments.

analyzed is a role the NAHC believes USACE does not have in this matter, since the discoveries have occurred on non-federal property, and both SBFCA and USACE agreed to follow state law for discoveries of Native American remains and associated grave goods that were not on federal property.

The implications for levee projects throughout the state, and for Native American tribes whose cultural resources are unearthed by those projects, are enormous. State and local agencies subject to the NAHC's jurisdiction, and not the federal government, own most of the levees,⁶ yet permits from the USACE are required to repair those levees. It is the USACE's role as a permitting agency for levee repairs, and its resultant exercise of dominion and control over Native American human remains and associated grave goods found on non-federal property within those levees, that represent an unwelcome intrusion on the state's policy of repatriating Native American human remains and associated grave goods. The NAHC's only hope at preventing or mitigating future damage to Native American sacred sites within the FRWLP that may contain Native American human remains or associated graves goods is to seek injunctive relief in the courts.

Before seeking injunctive relief, the NAHC must propose mitigation measures to SBFCA in order to protect Native American sacred sites in the FRWLP. SBFCA can either accept or reject the proposed mitigation measures. Legal action by the NAHC would be a last resort if the NAHC and SBFCA were unable to reach an agreement on mitigation measures.⁷ NAHC staff remain hopeful that a mutually agreed upon resolution between UAIC, SBFCA, and USACE is still possible, as negotiations are ongoing and any agreement reached will have implications for other levee repair projects throughout the state. The NAHC is mindful of the fact that SBFCA desires to return all Native American remains and associated grave goods to UAIC, but that USACE has threatened to revoke SBFCA's federal permits if it does so, which would effectively halt work on the FRWLP.

⁶ Feather River West Levee Project Final 408 Permission Environmental Impact State, June 2013, at ES-6.

⁷ See Public Resources Code section 5097.97. Public Resources Code section 5097.97 provides:

In the event that any Native American organization, tribe, group, or individual advises the commission that a proposed action by a public agency may cause severe or irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, or may bar appropriate access thereto by Native Americans, the commission shall conduct an investigation as to the effect of the proposed action. Where the commission finds, after a public hearing, that the proposed action would result in such damage or interference, the commission may recommend mitigation measures for consideration by the public agency proposing to take such action. If the public agency fails to accept the mitigation measures, and if the commission finds that the proposed action would do severe and irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, the commission may ask the Attorney General to take appropriate legal action pursuant to subdivision (g) of Section 5097.94.

The FRWLP is a project along a 41-mile stretch of the Feather River to increase flood protection by making improvements to the west levee of the Feather River.⁸ In order to implement the project, SBFCA was required to secure permits from the USACE under Section 404 of the Clean Water Act⁹ (Section 404) and Section 14 of the Rivers and Harbors Act of 1899 as amended¹⁰ (Section 408), among many other federal permits that were required. As a result, environmental impact review of the FRWLP was required under the federal National Environmental Policy Act of 1969 as amended¹¹ (NEPA) in addition to environmental impact review under the California Environmental Quality Act (CEQA).¹² USACE served as the lead agency for NEPA environmental impact review, while SBFCA served as lead agency for CEQA environmental impact review. Under NEPA, USACE was required to consult with the State Historic Preservation Officer (SHPO) to achieve compliance with Section 106 of the National Historic Preservation Act (Section 106).¹³ USACE's interpretation and application of Section 106 and associated regulations has created a point of contention: Who controls the treatment and disposition of Native American remains and associated grave goods found on non-federal property within the FRWLP?

UAIC and the NAHC have maintained that SBFCA and USACE must comply with California law regarding the treatment and disposition of Native American remains and associated grave goods found on non-federal property within the FRWLP. Under

⁸ 76 FR 29216 (May 20, 2011)

⁹ 13 U.S.C. § 1344.

¹⁰ 33 U.S.C. § 408.

¹¹ 42 U.S.C. § 4321 et seq.

¹² Public Resources Code § 21000 et seq.

¹³ 16 U.S.C. § 470f. Section 106 provides:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under part B of this subchapter a reasonable opportunity to comment with regard to such undertaking.

The Section 106 consultation process is governed by regulations at 33 CFR § 800.3 et seq. USACE's regulations implementing Section 106 are at 33 CFR § 325, Appendix C. The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation are found at 48 FR 44716-44740. Federal regulations governing the curation of federally-owned and administered archaeological collections are at 36 CFR § 79 et seq. The National Park Service is proposing to amend regulations for the curation of federally-owned and administered. At least one commentator has questioned whether USACE's regulations implementing Section 106 are valid, arguing, *inter alia*, that the Advisory Council on Historic Preservation did not have statutory authority to delegate rulemaking authority for the implementation of Section 106 to the USACE. See *Note, Engineering Exceptions to Historic Preservation Law: Why the Army Corps of Engineers Section 106 Regulations Are Invalid*, 40 Wm. Mitchell Law Rev. 1580 (2014).

California law, only Most Likely Descendants (MLDs)¹⁴ and landowners of the property where the remains and associated grave goods were found have a role in determining the treatment and disposition of those remains and any associated grave goods, not third parties such as USACE.¹⁵ USACE has maintained control over the treatment and disposition of Native American remains and associated grave goods found in the FRWLP project area, despite the fact that USACE, SBFCA, and the State Historic Preservation Office (SHPO) were signatories to a Section 106 Programmatic Agreement (PA) and a Historic Properties Treatment Plan (HPTP) for the FRWLP that provided that California's laws regarding the treatment and disposition of Native American remains and associated grave goods would be followed for Native American remains and associated grave goods found on non-federal property of the FRWLP.¹⁶ SBFCA, a California joint powers authority,¹⁷ claims ownership of the Project property in

¹⁴ A "Most Likely Descendant" is a person or persons the NAHC believes is most likely descended from a deceased Native American whose remains have been found. See Public Resources Code § 5097.98 (a).

¹⁵ Public Resources Code § 5097.98; *People v. Van Horn* (1990) 218 Cal.App.3d 1378, 1395. Although *Van Horn* involved the refusal of an archaeologist to return associated grave goods from a Native American burial, state law treats associated grave goods from a Native American burial the same as Native American remains. See Public Resources Code section 5097.98 (d)(2) ("Any items associated with the human remains that are placed or buried with the Native American human remains are to be treated in the same manner as the remains, but do not by themselves constitute human remains."). The *Van Horn* court held:

However, while we appreciate defendants' desire to preserve archaeological specimens in general, and these metates in particular, for the benefit of the public at large, the language of section 5097.99, including the references in that section to sections 5097.94 and 5097.98, clearly gives the choice of preservation or reburial to Native Americans, namely descendants of the Native American deceased or members of Native American groups, acting under the supervision of a commission which is controlled by Native Americans.

People v. Van Horn, 218 Cal. App. 3d at 1395.

¹⁶ See Historic Properties Treatment Plan for the Feather River West Levee Project, July 2014, at page 6-6 ("Both ER [Enterprise Rancheria] and UAIC have expressed a strong interest in the protection and preservation of the remains of their ancestors . . . Such remains along with any associated funerary objects would be treated in accordance with state law."); see also Programmatic Agreement Among the U.S. Army Corps of Engineers, Sutter Butte Flood Control Agency, and the California State Historic Preservation Officer Regarding the Feather West Levee Project, Sutter and Butte Counties, California, July 1, 2013 at page 6:

If human remains are present, treatment shall conform to the requirements of state law under California Health and Safety Code Section 7050.5 and Public Resources Code Section 5097.98, unless the discovery occurs on federal land. Discoveries on federal land shall conform to the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA, 25 U.S. Code Section 3001 et seq.), after complying with the requirements of the California Health and Safety Code Section 7050.5, which requires notice to the County Coroner so the coroner may determine if an investigation into the cause of death is required. These legal requirements, as well as appropriate monitoring, will be described in the plan, as indicated in Attachment 2.

¹⁷ See Sutter-Butte Flood Control Agency Joint Exercise of Powers Agreement, December 3, 2007, <http://sutterbutteflood.org/wp-content/uploads/2013/09/SBFCA-JPA-Formation-Agreement.pdf>; First Amendment to the Sutter-Butte Flood Control Agency Joint Exercise of Powers Agreement, July 14, 2009, http://sutterbutteflood.org/wp-content/uploads/2013/09/JPA_Signed-Amendment-1-B-10-09.pdf; Second

question.¹⁸ The handling, testing and analysis to which USACE has subjected discovered Native American remains and associated grave goods for which UAIC has been designated the MLD have been repugnant to the spiritual beliefs of UAIC. Under California law, such handling, testing or analysis by a third party such as USACE would not be permissible without UAIC's consent.¹⁹ An additional consideration is Public Resources Code section 5097.99,²⁰ which makes possession of Native American human remains except as provided by law or under an agreement pursuant to Public Resources Code sections 5097.98 (I) or 5097.98 punishable as a felony.

The matter of treatment and disposition of Native American remains and associated grave goods found on non-federal property within the FRWLP, if pursued to the fullest extent of the law, implicates issues of state sovereignty and federal preemption of California's laws that allow MLDs and landowners, and not third parties, to determine the treatment and disposition of Native American remains and associated grave goods found on non-federal lands within the state. The NAHC has asked for evidence and testimony on this issue to consider its legal options in this regard. Additional investigation by the NAHC may be necessary, as the USACE's practices regarding the treatment and disposition of Native American remains and associated grave goods on non-federal property within the state may implicate issues of environmental justice²¹ that are beyond the intended scope of this investigative report and the public hearing.

Amendment to the Sutter-Butte Flood Control Agency Joint Exercise of Powers Agreement, September 14, 2011, <http://sutterbutteflood.org/wp-content/uploads/2013/09/11.07.2011-Executed-JPA-Amendment-2.pdf>.

¹⁸ January 16, 2015 Letter from Mike Inamine, Executive Director, SBFCA, to Colonel Michael Farrell, District Commander, U.S. Army Corps of Engineers, Sacramento re Written Objections to Sutter Butte Flood Control Agency Regarding Implementation of Programmatic Agreement for Feather River West Levee Project ("As the landowner of the Project area, SBFCA is subject to California laws that protect cultural resources, and in particular Public Resources Code section 5097.97 . . .").

¹⁹ Public Resources Code section 5097.98, subdivision (b) provides that the landowner shall discuss and confer with the descendants all reasonable options regarding the descendants' preferences for treatment. It provides no role for third parties.

²⁰ Public Resources Code section 5097.99 provides in relevant part:

- (a) No person shall obtain or possess any Native American artifacts or human remains which are taken from a Native American grave or cairn on or after January 1, 1984, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (I) of Section 5097.94 or pursuant to Section 5097.98.
- (b) Any person who knowingly or willfully obtains or possesses Native American artifacts or human remains which are taken from a Native American grave or cairn after January 1, 1988, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (I) of Section 5097.94 or pursuant to Section 5097.98, is guilty of a felony which is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

²¹ The United States Environmental Protection Agency defines "environmental justice" as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies." See <http://www.epa.gov/environmentaljustice/>.

The remainder of Section One of this report includes a description of the FRWLP and SBFCA; a description of the NAHC's mission, duties and enforcement authority; a summary of the UAIC's Request for Investigation and Public Hearing pursuant to Public Resources Code section 5097.97; and the issues to be addressed in this report and at the public hearing as stated in the Notice of Investigation NOI 2015-1 and Notice of Hearing NOH 2015-1.

Section Two of this report details the environmental impact review the FRWLP underwent under both NEPA and CEQA and the efforts SBFCA and USACE made to determine the Native American cultural resources in the FRWLP project area prior to commencing construction and mitigate effects to them.

Section Three of this report chronicles the NAHC's involvement in the FRWLP and post-environmental review efforts by the parties to reach a consensus on mitigation measures for damage to Native American cultural resources within the FRWLP.

Section Four of this report summarizes UAIC's allegations as to past and potential severe and irreparable harm to Native American sacred sites within the FRWLP and SBFCA's response and position in this matter as derived from its submissions for this report. USACE has provided no such submissions.

Section Five of this report addresses evidence regarding whether SBFCA or USACE has a pattern or practice of causing severe or irreparable damage to Native American sacred sites.

A. Description of the Feather River West Levee Project (FRWLP) and the Sutter Butte Flood Control Agency (SBFCA)

The project area of the FRWLP is focused on a corridor along the west levee of the Feather River from Thermalito Afterbay on the north to approximately 4 miles north of the Sutter Bypass on the south.²² The corridor is approximately 41 miles long.²³ The regional setting of the FRWLP is the Sacramento River Flood Control Project (SRFCP), which begins as far north as Redding and extends south to the Sacramento-San Joaquin River Delta.²⁴ The FRWLP is a subset of the Sutter Basin, which is located in north-central California in Sutter and Butte Counties, covers 326 square miles, and is roughly bounded by the Feather River to the east and the Cherokee Canal, the Sutter Buttes, and Sutter Bypass to the west. Floodwaters threatening the basin originate from the Feather River watershed above Colusa Weir.

²² Feather River West Levee Project Final 408 Permission Environmental Impact State, June 2013, at ES-5.

²³ Id.

²⁴ Id.

The primary purpose of the FRWLP is to reduce flood risk for the entire planning area by addressing known levee deficiencies along the Feather River West Levee from Thermalito Afterbay downstream to approximately 4 miles upstream of the confluence with the Sutter Bypass.²⁵ SBFCA's goal is to achieve a minimum of 200-year level of performance for the more urbanized areas with population centers and 100-year level of performance for the remaining more rural agricultural parts of the planning area. A 200-year flood is a flood that has a .5% chance of occurring in any given year. A 100-year flood has a 1% chance of occurring in any given year.²⁶

According to the FRWLP Final Environmental Impact Statement (FEIS), Feather River's past history of flooding is substantial, and the risk of levee failure is real. According to the FEIS, major flood events have occurred along the Feather River in 1955, 1958, 1964, 1986, 1997 and 1998, the most significant of these occurring in 1955, 1986 and 1997.²⁷ Studies conducted by USACE, DWR or SBFCA over the past two decades to evaluate the condition of the levees protecting the planning area have indicated that the levee system is deficient and that the consequences of levee failure from a major flood event would be significant.²⁸ The December 1955 flood, reportedly the most significant flood event along the Feather River, caused major flooding of nearly all of Yuba City as well as flooding in Nicolaus.²⁹

There are several major flood risk-reduction projects being planned or implemented within the SRFCP, of which the FRWLP is one.³⁰

SBFCA was formed in 2007 to address flood risk reduction in the Sutter Basin.³¹ The cities and counties that formed SBFCA include Sutter County, Butte County, the cities of Yuba City, Live Oak, Biggs and Gridley, Levee Districts 1 and 9, and the Sutter County Water Agency.³² In 2010, SBFCA formed an assessment district to raise local funds for levee improvements from property owners, which facilitated SBFCA's advancement of the FRWLP.³³

According to the FRWLP FEIS, the Federal government maintains oversight but has no ownership of or direct responsibilities for performing maintenance of the Federal levee system, except for a few select features that continue to be owned and operated by

²⁵ Id. at ES-10.

²⁶ Id. at ES-9 to ES-10.

²⁷ Id. at ES-7.

²⁸ Id. at ES-7.

²⁹ Id.

³⁰ Id. at ES-9.

³¹ Id.

³² See Sutter-Butte Flood Control Agency Joint Exercise of Powers Agreement, December 3, 2007, http://sutterbutteflood.org/wp-content/uploads/2013/09/JPA_Signed-Amendment-1-8-10-09.pdf

³³ Feather River West Levee Project Final 408 Permission Environmental Impact State, June 2013, at ES-9.

USACE.³⁴ The great majority of levees, channels, and related flood risk management structures are owned, operated, and maintained by the State of California and local levee and reclamation districts as governed by USACE operations and maintenance manuals.³⁵

B. The Native American Heritage Commission's Mission, Duties and Enforcement Authority

The NAHC was created in 1976.³⁶ It consists of nine members appointed by the Governor with the advice and consent of the Senate.³⁷ The executive secretary of the NAHC is also appointed by the Governor.³⁸ The current NAHC Executive Secretary, Judge Cynthia Gomez, also serves as the Governor's Tribal Advisor.³⁹

The NAHC's powers and duties include, but are not limited to:

- Identifying and cataloging places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands;
- Making recommendations relative to Native American sacred places that are located on private lands, are inaccessible to Native Americans, and have cultural significance to Native Americans for acquisition by the state or other public agencies for the purpose of facilitating or assuring access thereto by Native Americans;
- To make recommendations to the Legislature relative to procedures which will voluntarily encourage private property owners to preserve and protect sacred places in a natural state and to allow appropriate access to Native American religionists for ceremonial or spiritual activities;
- To bring an action to prevent severe or irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97;
- To request and utilize the advice and service of all federal, state, local and regional agencies;
- To assist Native Americans in obtaining appropriate access to sacred places that are located on public lands for ceremonial or spiritual activities;

³⁴ Id. at ES-6.

³⁵ Id. This is especially noteworthy given that public lands owned by the State of California are subject to the jurisdiction of the NAHC. See Public Resources Code §§ 5097.9, 5097.94 (g), and 5097.97.

³⁶ Stats. 1976, c.1332, p. 6031, § 2.

³⁷ See Public Resources Code § 5097.91

³⁸ Id.

³⁹ http://tribalgovtffairs.ca.gov/About_Us/Biography.html

- To assist state agencies in any negotiations with agencies of the federal government for the protection of Native American sacred places that are located on federal lands;
- To mediate, upon application of either of the parties, disputes arising between landowners and known descendants relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials; and
- To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing, with appropriate dignity, of the human remains and any items associated with Native American burials.⁴⁰

The NAHC may also refer enforcement actions to the Attorney General pursuant to Public Resources Code section 5097.99 to secure the return of Native American artifacts or remains taken from a Native American grave or cairn after January 1, 1987 except as provided for by law.⁴¹

Public Resources Code section 5097.98 provides the process by which MLDs and landowners determine the treatment and disposition of Native American remains and associated grave goods. When the NAHC receives notification of the discovery of Native American human remains from a county coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it notifies the persons it believes to be most likely descended from the deceased Native American. The descendants may, with the permission of the owner of the land or his or her authorized representative, inspect the site of the discovery of the Native American remains and may recommend to the owner or the person or the persons responsible for the excavation works means for treatment or disposition, with appropriate dignity, of the human remains and any associated grave goods. The descendants shall complete their inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site.⁴²

Upon the discovery of Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred with the MLDs regarding their recommendations, if applicable, taking into account the possibility of multiple human remains. The landowner shall discuss and confer with the MLDs all reasonable options regarding the MLDs preferences for treatment. The MLDs' preferences for treatment may include the following: (A) The nondestructive removal and analysis of human remains and items associated with Native

⁴⁰ Public Resources Code § 5097.94.

⁴¹ Public Resources Code § 5097.99; *People v. Van Horn* (1990) 218 Cal. App. 3d 1378.

⁴² Public Resources Code § 5097.98 (a).

American remains; (B) Preservation of Native American human remains and associated items in place; (C) Relinquishment of Native American human remains and associated items to the MLDs for treatment; or (D) Other culturally appropriate treatment. The parties may mutually agree to extend discussion, taking into account the possibility that additional or multiple Native American human remains are located in the project area, providing a basis for additional treatment measures.⁴³

“Conferral” and “discuss and confer” means the meaningful and timely discussion and careful consideration of the views of each party in a manner that is cognizant of all parties’ cultural values, and where feasible, seeking agreement. Each party shall recognize the other’s needs and concerns for the confidential information provided to the other.⁴⁴

Human remains of a Native American may be an inhumation or cremation, and in any state of decomposition or skeletal completeness. Any items associated with the human remains that are placed or buried with the Native American human remains are to be treated in the same manner as the remains, but do not by themselves constitute human remains.⁴⁵

When the NAHC is unable to identify a descendant, or the descendants identified fail to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendants and the mediation provided for by the NAHC, if invoked, fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance. To protect the site, the landowner shall do one or more of the following: (1) Record the site with the NAHC or the appropriate Information Center; (2) Utilize an open-space or conservation zoning designation or easement; (3) Record a document titled “Notice of Reinterment of Native American Remains” with the county in which the property is located.⁴⁶

The California Legislature made a policy choice that Native American remains and associated grave artifacts shall be repatriated.⁴⁷ California’s laws on this subject reflect that the California Legislature left to Native Americans ultimate control over the treatment and disposition of Native American remains and associated grave artifacts and “created the presumption that all remains should be reburied without any discussion of their value to the scientific community.”⁴⁸

⁴³ Public Resources Code § 5097.98 (b).

⁴⁴ Public Resources Code § 5097.98 (c).

⁴⁵ Public Resources Code § 5097.98 (d).

⁴⁶ Public Resources Code § 5097.98 (e).

⁴⁷ Public Resources Code § 5097.991.

⁴⁸ See Bowman, *The Reburial of Native American Skeletal Remains: Approaches to the Resolution of a Conflict*, 13 Harv. Envtl. L. Rev. 147, 199 (citing Manuel Medeiros [former Solicitor General for the State of

C. The United Auburn Indian Community's Request for Investigation and Public Hearing Pursuant to Public Resources Code Sections 5097.9, 5097.94 (g), and 5097.97

On September 15, 2014, UAIC Chairman Gene Whitehouse sent a letter to NAHC Executive Secretary Cynthia Gomez requesting that the NAHC formally investigate concerns regarding the treatment and disposition of human remains and funerary objects for the FRWLP. Chairman Whitehouse stated that the letter was "formal notice advising the NAHC that a proposed action by SBFCA and USACE may cause severe or irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, or may bar appropriate access thereto by Native Americans" and requested that the NAHC conduct an investigation as to the effect of the proposed action.⁴⁹ The letter stated that if SBFCA and USACE failed to agree to a proposed plan under review regarding the treatment and final disposition of human remains and funerary objects, then UAIC's recommendation would be that the NAHC seek the legal opinion of the commissions (presumably the Commissioners) and ultimately the Attorney General's Office.⁵⁰

The investigation and public hearing were delayed in order to allow UAIC, SBFCA and USACE to continue negotiations to reach an agreement as to the treatment and disposition of Native American human remains and funerary objects, but to no avail. UAIC renewed its request for an investigation and hearing on January 9, 2015.⁵¹ The matter was placed on the NAHC's January 17, 2015 public meeting agenda, at which time Mike Inamine, Executive Director of SBFCA, and Melodi McAdams, Cultural Resources Associate for UAIC, made comments to the Commissioners prior to the Commissioners convening in closed session. No NAHC action was taken at that time.

D. Notice of Investigation/Notice of Public Hearing, Submissions of the Parties and Issues Before the NAHC

On February 27, 2015, NAHC General Counsel Terrie L. Robinson issued Notice of Investigation Number NOI 2015-1 and Notice of Public Hearing Number NOH 2015-1 advising UAIC, SBFCA, and USACE that the NAHC would commence an investigation of and public hearing on the FRWLP to determine if the FRWLP will result in severe or irreparable damage to a Native American sanctified cemetery, place of worship, religious

California], *Treatment of Ancient Native American Burials: The State of Law in California*, in *Symposium Proceedings: Law, Public Policy and the Management of Cultural Properties 7, 15* (1987).

⁴⁹ September 15, 2014 Letter from Chairman Gene Whitehouse, UAIC, to NAHC Executive Secretary Cynthia Gomez re Request to Pursue PRC 5097.97.

⁵⁰ *Id.*

⁵¹ January 9, 2015 Letter from Chairman Gene Whitehouse, UAIC, to NAHC Executive Secretary Cynthia Gomez re Request to Pursue PRC 5097.97.

or ceremonial site, or sacred shrine located on public property.⁵² In consideration of the NAHC's ongoing role pursuant to Public Resources Code section 5097.94 (k) in mediating the dispute regarding the treatment and disposition of Native American remains and associated grave goods removed from the FRWLP project area, the notice also stated that the parties, their representatives, or interested parties could submit evidence regarding the unlawful taking or possession of Native American artifacts or remains from the FRWLP project area that might be in violation of Public Resources Code section 5097.99, which the Commission may consider for referral to the Attorney General's Office for prosecution.⁵³

The notice stated that the investigation and hearing would address the following issues:

1. Whether the property encompassing the FRWLP project area is, in whole or in part, under the NAHC's jurisdiction pursuant to Public Resources Code section 5097.9;
2. Whether the property encompassing the FRWLP project area includes a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine on public property that has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe of community, and whether the NAHC should formally declare any sites within the FRWLP area as such;
3. Whether any action taken or to be taken in furtherance of the FRWLP poses a risk of severe and irreparable harm to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine on public property, including, but not limited to, adherence to and enforcement of the July 1, 2013 Programmatic Agreement among the U.S. Corps of Army Engineers (sic), the Sutter Butte Flood Control Agency, and the California State Historic Preservation Officer Regarding the Feather River West Levee Project, Sutter and Butte Counties; and the July 2014 Resource Specific Treatment Plan for Five Prehistoric Archaeological Sites in the Feather River West Levee Project, Contract C, in violation of Public Resources Code section 5097.98 and CEQA Guidelines section 15064.5, subdivisions (d) and (e);
4. What mitigation measures, if any, would reduce or eliminate the risk of severe and irreparable harm to any such site; and
5. Whether SBFCA or the Corps has a pattern or practice of causing severe and/or irreparable harm to Native American sanctified cemeteries, places of worship, religious or ceremonial sites, sacred shrines, Native American

⁵² February 27, 2015 NAHC Public Resources Code sections 5097.9, 5097.94(g) and 5097.97 Notice of Investigation and Notice of Public Hearing on March 20, 2015 regarding the Feather River West Levee Project (NAHC NOI 2015-1; NAHC NOH 2015-1).

⁵³ Id.

remains or associated grave goods or a pattern or practice of taking and/or possession of Native American remains or artifacts in violation of Public Resources Code section 5097.9, 5097.94(g), and/or 5097.99.⁵⁴

The Notice was sent to the following tribes:

- Berry Creek Rancheria of Maidu Indians
- Enterprise Rancheria of Maidu Indians
- Greenville Rancheria of Maidu Indians
- KonKow Valley Band of Maidu
- Mechoopda Tribe of Chico Rancheria
- Mooretown Rancheria of Maidu Indians
- Strawberry Valley Rancheria
- Tsi-Akim Maidu
- Susanville Indian Rancheria
- Washoe Tribe of Nevada and California⁵⁵

II. FRWLP Environmental Impact Review

Because of the state and federal permits required, the FRWLP was subject to both federal environmental impact review under NEPA and state environmental impact review under CEQA. Under those circumstances, both the federal and state lead agencies for environmental impact review usually produce a joint environmental impact review document – a joint NEPA/CEQA document. For purposes of brevity, the FRWLP NEPA/CEQA environmental impact review will be summarized for relevance to the Native American cultural resources at issue and this discussion may make reference to one or both environmental review documents; the Environmental Impact Statement (EIS) under NEPA review, and the Environmental Impact Report (EIR) under CEQA review.

A. Notice of Preparation

SBFCA filed its CEQA Notice of Preparation of an Environmental Impact Report (NOP) on May 20, 2011,⁵⁶ formally initiating the CEQA environmental review process. On July 15, 2011, NAHC analyst Katy Sanchez acknowledged the NAHC's receipt of the NOP via letter to Ingrid Norgaard, SBFCA, in care of ICF International (ICF), the consultant

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ This and other references to FRWLP's CEQA environmental documents are from the State Clearinghouse's website, <http://www.ceqanet.ca.gov>, under the State Clearinghouse number assigned to the FRWLP, 2011052062.

for SBFCA for this project. In the letter the NAHC recommended the following, among other recommendations (excerpted in part):

- Contact the appropriate regional archaeological Information Center for a record search. The record search will determine:
 - If a part or all of the area of the project effect (APE) has been previously surveyed for cultural resources.
 - If any known cultural resources have already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
- Contact the Native American Heritage Commission for:
 - A Sacred Lands File Check. **USGS 7.5 minute quadrangle name, township, range and section required.**
 - A list of appropriate Native American contacts for consultation concerning the project site and to assist in the mitigation measures. **Native American Contacts list attached.**
- Lack of surface evidence of archaeological resources does not preclude their subsurface existence.
 - Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archaeological resources, per California Environmental Quality Act (CEQA) §15064.5(f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.
 - Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans.
 - Lead agencies should include provisions for the discovery of Native American human remains in their mitigation plan. Health and Safety Code §7050.5, CEQA §15064.5(e), and Public Resources Code §5097.98 mandates the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.⁵⁷

⁵⁷ July 15, 2011 Letter from Katy Sanchez, Analyst, to Ingrid Norgaard, SBFCA, c/o ICF International re: SCH#2011025062 Sutter Basin Feasibility Study and Feather River West Levee Project Sutter and Butte Counties.

Mike Aviña of ICF sent a letter to the NAHC dated February 23, 2012 stating that ICF wanted to enlist the help of the Native American community in identifying cultural resources that may be affected by the FRWLP, noting that, because the project would require ground-disturbing construction, "identification of cultural resources early in the environmental review process is critical."⁵⁸ ICF requested that the NAHC perform a search of the NAHC's Sacred Lands File to find any Native American cultural resources within the FRWLP and provided meridian, township, range and section coordinates for the search. The letter concluded by stating "SBFCA would like to identify cultural resources in advance so they may be avoided where feasible," and asked for the most current Native American contact lists for Sutter and Butte counties via email.⁵⁹

NAHC Environmental Specialist Debbie Pilas-Treadway sent a letter dated March 22, 2012 to Mike Aviña stating that a record search of the Sacred Lands File failed to indicate the presence of Native American cultural resources in the immediate project area, but that the absence of specific site information in the Sacred Lands File does not indicate the absence of cultural resources in any project area. The letter provided a list of Native American individuals/organizations that might have knowledge of cultural resources in the project area and the recommendation that everyone on the list be contacted, as the list should provide a starting place in locating areas of potential adverse impact in the proposed project area.⁶⁰

Mr. Aviña sent a letter dated September 28, 2012 to the tribes from the list provided by Ms. Pilas-Treadway in which he requested information about cultural resources so that they could be identified in advance of any activity that might affect them, in order to protect and avoid them to the extent feasible.⁶¹ The recipient tribes included Enterprise Rancheria of Maidu Indians, Berry Creek Rancheria of Maidu Indians, Greenville Rancheria of Maidu Indians, KonKow Valley Band of Maidu, Butte Tribal Council, Maidu Cultural and Development Group, Maidu Nation, Mechoopda Indian Tribe of Chico Rancheria, Tsi-Akim Maidu, UAIC, Mooretown Rancheria of Maidu Indians, Strawberry Valley Rancheria, Cortina Indian Rancheria of Wintun Indians, Cachil DeHe Band of Wintun Indians (Colusa Rancheria), and the Paskenta Band of Nomlaki Indians.⁶²

⁵⁸ February 23, 2012 Letter from Mike Aviña, Associate, ICF International, to Katy Sanchez, Native American Heritage Commission.

⁵⁹ Id.

⁶⁰ March 22, 2012 Letter from Debbie Pilas-Treadway, NAHC Environmental Specialist, to Mike Aviña, ICF International, re Feather River West Levee Project, Sutter and Butte County.

⁶¹ September 28, 2012 Letters from Mike Aviña to Native American tribes re Sutter Butte Flood Control Agency, Feather River West Levee Project.

⁶² Id.

B. Draft Environmental Impact Statement/Environmental Impact Report (DEIS/DEIR)

The State Clearinghouse of the Governor's Office of Planning and Research received SBFCA's Draft EIS/EIR (DEIS/DEIR) on December 27, 2012. The Draft EIS/EIR stated that Enterprise Rancheria and Mooretown Rancheria responded to SBFCA's September 28, 2012 letter requesting cultural resources information and requested the opportunity to review cultural resources finds and technical documents.

The DEIS/DEIR stated that ICF cultural resources staff conducted a pedestrian survey of the project area during the spring and summer of 2012 during which they visited previously identified resources and recorded previously unidentified resources. Evaluation of affected resources was still in progress.⁶³

The DEIS/DEIR discussed "Effect CR-1: Effects on Identified Archaeological Sites Resulting from Construction of Levee Improvements and Ancillary Facilities" as an effect that might result from project Alternative 1. The discussion of Effect CR-1 included the following:

Identified prehistoric resources contain midden (habitation debris), human burials, hearths (charred remains from cooking) and lithic debris (remains from manufacture of stone tools). Deposits with these constituents often have data potential for archaeological research, which strives to describe human adaptations and their changes over time and to construct meaningful explanations for these changes. Because material in these sites may be useful for this purpose, it is likely that many of these sites have significance within the meaning of 14 CCR §4852(b)(4) (data potential). Furthermore, because many of these resources are expansive (each in excess of 30 meters across), they are likely to contain some portion of the deposit with sufficient integrity to yield meaningful data (14 CCR §4852[c]).⁶⁴

The discussion further noted that this effect could materially impair the resources under CEQA and result in significant effects under Section 106. Mitigation Measure CR-MM-1, discussed below, was stated as a means of reducing these effects and to address management steps necessary under Section 106 to resolve significant effects by attempting to avoid or minimize those effects or to recover consequential information where avoidance would not be feasible.⁶⁵

Mitigation Measure CR-MM-1 was stated as follows:

⁶³ Feather River West Levee Project Draft EIS/EIR, December 2012, at p. 3.17-6.

⁶⁴ Id. at 3.17-9.

⁶⁵ Id. at 3.17-10.

Mitigation Measure CR-MM-1: Perform Field Studies, Evaluate Identified Resources and Determine Effects, and Development Treatment to Resolve Significant Effects

Prior to the completion of the final environmental impact statement/final environmental impact report (FEIS/FEIR), SBFCA and USACE will complete the following mitigation and management steps to satisfy Section 106 (subject to revision based on coordination with SBFCA counsel).

- SBFCA and USACE will ensure that an inventory and evaluation report for cultural resources is completed within all areas of the right-of-way where effects on archaeological resources may occur.
- The work will be led or supervised by cultural resources specialists who meet the Secretary of the Interior's professional qualification standard provided in 36 CFR Part 61.
- Inventory methods will include pedestrian surveys and probabilistic subsurface sampling through excavation with augurs or hand excavating units where feasible.
- Identified resources and newly identified resources will be mapped and described on DPR forms. Mapping will be performed by recording data points with GPS hardware through which data can be imported and managed digitally. Mapping of previously identified resources will be limited to updates of existing records where necessary to describe the current boundaries of the resource.
- For all identified resources, SBFCA and USACE will perform an evaluation to determine if they qualify as historic properties per the criteria provided in 36 CFR Part 60.4.
- The recorded resources and the resource evaluations will be summarized in an inventory and evaluation report (unless testing is required to complete the evaluation, as described below).
- SBFCA and USACE will make a finding of effect; a significant effect will occur if the project would alter, directly or indirectly, the qualities that make a resource eligible for listing in the NRHP (36 CFR Part 800.5[a][1]).
- Where necessary, USACE and SBFCA will conduct test excavation to support the evaluation and finding of effect. Test excavation is typically performed to retrieve a suitable sample of material to determine the constituents and integrity of the resource. Test excavation will be conducted in consultation with SHPO and other relevant parties. Test excavation will follow a testing plan developed in consultation with SHPO, either for the specific resource or as part of the treatment methods developed pursuant to the programmatic agreement that USACE is preparing in consultation with SHPO.

- For all resources subject to significant effects, USACE and SBFCA will implement treatment in consultation with SHPO and other relevant parties such as Native American stakeholders and the public.

To satisfy the requirements of CEQA, SBFCA will also evaluate identified resources to determine if they are historical resources (State CEQA Guidelines §15064.5[a]), unique archaeological resources under CEQA (PRC §21083.2[g]), and/or eligible for local registers.

SBFCA will determine if the project will result in significant effects on historic properties, historical resources, or unique archaeological sites. A significant effect will be found if the project would result in one or more of the following:

- Demolish or materially alter the qualities that make the resource eligible for listing in the CRHR (State CEQA Guidelines §15064.5[b] [2] [A], [C]).
- Demolish or materially alter the qualities that justify the inclusion of the resource on a local register or its identification in a historical resources survey that meets the requirements of PRC §5024.1(g), unless SBFCA establishes by a preponderance of the evidence that the resource is not historically or culturally significant (State CEQA Guidelines §15064.5[b] [2] [B]).
- Alter, directly or indirectly, the qualities that make a resource eligible for listing in the NRHP (36 CFR Part 800.5[a] [1]).
- Demolish or materially impair the qualities that allow a resource to qualify as a unique archaeological site (PRC §21083.2).

For all resources qualifying as unique archaeological resources, historical resources, or historic properties that will be subject to significant effects, SBFCA will develop treatment methods. Such treatment will consist of the following, listed in order of the priority that SBFCA must follow under CEQA.

- Preservation in place will occur where feasible, through methods such as redesign of relevant facilities to avoid destruction or damage to eligible cultural resources, capping resources with fill, or deeding resources into conservation easements.
- Data recovery excavations will be conducted by qualified cultural resources specialists to retrieve the information that makes the resource eligible for CRHR or NRHP listing or that qualifies the site as a unique archaeological resource or a local register-eligible resource. If data recovery through excavation is the appropriate mitigation, a data recovery plan which makes provisions for adequately recovering the scientifically consequential information from and about the resource, will be prepared and adopted prior to any excavation being undertaken. Such studies will be deposited with the

relevant CHRIS center. The data recovery plan will specify the basis for the significance of the resource and methods for retrieving the consequential information from the site. After completion of excavation, SBFCA will synthesize the findings into a data recovery report describing the findings and will deposit the report at the relevant CHRIS center.

The treatment plan will identify treatment methods that are proposed by SBFCA and which measures are proposed by other public entities. The plan will also specify the basis for selecting a particular mitigation measure. Treatment need not be completed before the FEIS/FEIR is prepared, but the evaluation of effects and selection of treatment will be summarized in the FEIS/FEIR.

If preservation in place of archaeological sites that qualify as historical resources or unique archaeological resources is not feasible in light of costs, logistics, technological considerations, or location of the find, and the extent to which preservation of the find is consistent or inconsistent with the design and objectives of the FRWLP, SBFCA will include a discussion in the treatment plan describing why the selected mitigation serves the interests protected by CEQA better than preservation in place.

SBFCA currently estimates that data recovery may be necessary for all archaeological sites that may be affected by the project alternatives, because construction is constrained to existing levees and the vicinity; the durable nature of existing flood control works makes avoidance of cultural resources potentially infeasible. Data recovery thus serves the environmental protection goals of CEQA by ensuring that valuable information that would otherwise be lost will be retained to the extent feasible. Potential resource-specific treatments are identified in Appendix I, Table I-4.

Construction will also be monitored, and discovery of human remains will be treated as prescribed under Mitigation Measures CR-MM-2 and CR-MM-3, below.⁶⁶

The DEIS/DEIR discussed "Effect CR-3: Potential to Disturb Human Remains" across three project alternatives and the proposed mitigation measures for each project alternative. The DEIS/DEIR stated that the ground-disturbing work required to construct the proposed levee improvements could inadvertently damage and disturb human remains before they could be discovered. It was stated that slurry cutoff walls could disturb human remains at depths where they could not be identified, even during monitoring. The mitigation measures proposed could reduce, but not eliminate, the severity of the

⁶⁶ Id. at 3.17-10 - 3.17.12.

effect of the FRWLP on burials, and for that reason, the effect of the FRWLP on human remains would be significant and unavoidable.⁶⁷

The mitigation measure posed for Effect CR-3, CR-MM-3, was to “monitor culturally sensitive areas during construction and follow state and federal laws governing human remains if such resources [were] discovered.” The following actions were to be taken, as listed:

- If human remains are discovered as part of the deposit or in isolation, work will cease in the immediate vicinity and within the radius necessary to avoid further disturbance. SBFCA, USACE, and the contractors will coordinate with the county coroner and NAHC to make the determinations and perform the management steps prescribed in California Health and Safety Code §7050.5 and PRC §5097.98. This coordination requires the following steps:
 - The county coroner will be notified so that he/she may determine if an investigation regarding the cause of death is required. If the coroner determines that the remains are of prehistoric Native American origin, the coroner will notify the NAHC.
 - Upon notification, the NAHC will identify the most likely descendant (MLD), and the MLD will be given the opportunity to reinter the remains with appropriate dignity. If the NAHC fails to identify the MLD or the parties cannot reach agreement as to how to reinter the remains as described in PRC § 5097.98(e), the landowner will reinter the remains at a location not subject to further disturbance. SBFCA and USACE will ensure the protections prescribed in PRC § 5097.98(e) are performed, such as the use of conservation easements and recording of the location with the relevant county.
- If Native American human remains are discovered on Federal land, work in the immediate vicinity will cease, and SBFCA and USACE will contact the relevant representative of the Federal agency where the remains were discovered, as prescribed by 25 USC § 3002(d) (NAGPRA). After notification from the relevant agency representative and treatment of the remains as required under NAGPRA, work may continue. Disposition of the remains will follow ownership priority described in NAGPRA (25 USC § 3002[a]).
- SBFCA and USACE will include an overview of the potential for encountering human remains and an overview of this mitigation measure in the training performed under Mitigation Measure CR-MM-2.⁶⁸

The DEIS/DEIR also discussed Effect CR-2, “Potential to Disturb Unidentified Archaeological Sites,” noting that the footprint for the proposed project alternatives was

⁶⁷ Id. at 3.17-14.

⁶⁸ Id. at 3.17-15.

sensitive for buried and obscured archaeological sites that could not always be identified in advance of construction.⁶⁹ It further notes that, “because of the intensity of farming in the historic era, surface manifestations for prehistoric sites may have been obscured by cultivation, leaving portions of the site below grade with no visible indication above ground,” and that “[b]uried sites may contain human remains in addition to archaeological debris.”⁷⁰ While mitigation measures were available to minimize this effect of the FRWLP, the DEIS/DEIR noted that the mitigation measure proposed, CR-MM-2, would not ensure that the effect would be avoided, and it would be significant and unavoidable.⁷¹

The proposed mitigation measure for this effect, CR-MM-2, was stated as follows:

Mitigation Measure CR-MM-2: Implement a Cultural Resources Discovery Plan, Provide Related Training to Construction Workers, and Conduct Construction Monitoring

Prior to ground-disturbing construction, FRWLP proponents will include a cultural resources discovery plan in the contract conditions of the construction contractor, incorporating the following actions to be taken in the event of the inadvertent discovery of cultural resources.

- An archaeological monitor will be present to observe construction at geographic locations that are sensitive for unidentified cultural resources. Such locations will consist of construction areas near identified cultural resource(s) sites (within a 200-foot radius around the known boundaries of identified resources) and where ground-disturbing construction will occur within 1,500 feet of major water features.
- In the event of an archaeological resource discovery, work will cease in the immediate vicinity of the find, based on the direction of the archaeological monitor or the apparent distribution of cultural resources if no monitor is present. A qualified archaeologist will assess the significance of the find and make recommendations for further evaluation and treatment as necessary.
- Discovered resources will be mapped and described on DPR forms. Mapping will be performed by recording data points digitally with GPS hardware.
- SBFCA will evaluate identified resources to determine if they are unique archaeological sites or historical resources. In consultation with SHPO, USACE will evaluate identified resources to determine if they are historic properties. Test excavations will be performed where necessary to support evaluation. Evaluation and treatment will follow standards and order of priority described above for

⁶⁹ Id. at 3.17-13.

⁷⁰ Id.

⁷¹ Id.

Mitigation Measure CR-MM-1, with the exceptions of timing. Discoveries may occur after the FEIS/FEIR and thus need not be described in that document.

- If human remains are discovered as part of the deposit, SBFCA, USACE, and the contractors will coordinate with the county coroner and NAHC to make the determinations and perform the management steps prescribed in California Health and Safety Code Section 7050.5 and PRC §5097.98.
- If Native American human remains are discovered on Federal land, work in the immediate vicinity will cease, and SBFCA and USACE will contact the relevant representative of the Federal agency where the remains were discovered, as prescribed in 25 USC § 3002(d) (NAGPRA). After notification from the relevant agency representative and treatment of the remains as required under NAGPRA, work may continue. Disposition of the remains will follow the ownership priority described in NAGPRA (25 USC §3002[a]).

SBFCA and USACE will develop a list of cultural resources staff who can respond to cultural resources discoveries and SBFCA and USACE will also develop training materials for construction workers regarding management direction following discoveries. The staff list and training materials will be provided to the supervisory field staff. SBFCA and USACE, or their archaeological consultant, will conduct training for construction workers that provides an overview of cultural resources identification and this mitigation measure.⁷²

C. Native American Tribal Consultation

The only reference to tribal consultation in the preparation of the DEIS/DEIR is the inquiry sent by ICF to tribes based on NAHC coordination and correspondence received from Mooretown Rancheria and Enterprise Rancheria.⁷³

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⁷² Id. at 3.17-13 to 3.17-14.

⁷³ Id. at 6-2.

D. UAIC's Comments on the DEIS/DEIR⁷⁴

UAIC sent comments on the DEIS/DEIR dated February 12, 2013⁷⁵. UAIC stated that it was "very disheartening to find that our previous consultation efforts were not included in the Native American Consultation Sections of the report." It stated that UAIC met with USACE and ICF on two occasions to share resource location maps and was still waiting to complete a site visit to known resources. UAIC stated that more than one village site within the APE had been disclosed and consulted on with both ICF and USACE, and that certain archaeological features had been described as still being present and visible in the project area and below levees. UAIC wanted both ICF and USACE to include in the DEIS/DEIR a record consultation with UAIC and provide UAIC any cultural resources reports that had or would have been prepared for the project.⁷⁶ UAIC expressed its concern regarding the possibility for discovery of previously unidentified cultural resources and/or subsurface human remains and requested any archaeological reports or environmental documents in order to comment on potential impacts and proposed mitigation measures related to cultural resources.⁷⁷

UAIC made the following points for consideration in developing the scope and choosing the alternative for the DEIS/DEIR, as follows:

- The UAIC recommends that projects within the DEIS/DEIR FRWLP jurisdiction be designed to incorporate known cultural sites into open space or other protected areas;
- The UAIC would like the opportunity to provide Tribal representatives to monitor project if excavation and data recover are required for prehistoric cultural sites, or in cases where ground disturbance is proposed at or near sensitive cultural resources;

⁷⁴ The NAHC did not comment on the FRWLP DEIS/DEIR, nor was it listed as a potential trustee agency for purposes of reviewing the DEIS/DEIR. See FRWLP DEIS/DEIR at 1-28. For purposes of CEQA, the NAHC is a trustee agency for Native American cultural resources. See *Environmental Protection Information Center v. Johnson*, (1995) 170 Cal.App.3d 604, 626.

CEQA provides that agencies evaluating a project for its environmental impact consult with all agencies having jurisdiction over affected natural resources, including archaeological sites. (§21080.4; Guidelines, §15086.) The commission has that jurisdiction, and is specifically listed in appendix B to the [CEQA] Guidelines as a public agency with specific expertise regarding places of religious significance to Native Americans, including archaeological sites and burial grounds.

Id.

⁷⁵ February 13, 2012 Letter from Gene Whitehouse, Chairman, UAIC, to Alicia E. Kirchner, Chief, Planning Division, USACE, Sacramento District. The date on the letter was erroneously stated as February 13, 2012 instead of February 13, 2013.

⁷⁶ Id.

⁷⁷ Id.

- The UAIC is interested in receiving cultural materials from prehistoric sites where excavation and data recovery has been performed;
- The UAIC would like to receive copies of environmental notices and documents for projects within the jurisdiction of the DEIS/DEIR FRWLP.⁷⁸

UAIC also stated that if human remains were discovered, California Health and Safety Code section 7050.5 states that no further disturbance shall occur until the county coroner has made the necessary finding as to origin. If the remains were found to be of Native American origin, UAIC noted that the NAHC would notify an MLD, who would be responsible for recommending the appropriate disposition of the remains and any grave goods at that time.⁷⁹

E. Notice of Determination and Final Environmental Impact Statement/Environmental Impact Report (FEIS/FEIR)

The first of many Notices of Determination based on the Final EIR (FEIR) was received by the State Clearinghouse on April 13, 2013. The description and discussion of the cultural resources effects changed from the DEIS/DEIR. Deletions were in ~~strikeout~~, additions were underlined.

For “Effect CR-1: Effects on Identified and CRHR-eligible Archaeological Sites Resulting from Construction of Levee Improvements and Ancillary Facilities,” SBFCA concluded that preservation in place was not feasible:

SBFCA has assessed the feasibility of preserving these sites in place as required under CEQA Guidelines §15126.4(b)(3). This analysis is provided in the site descriptions in Appendix I, Section 1.4.1. Because levee improvement work or future activity within operations and maintenance corridors may disturb these sites[,] preservation in place is not feasible. Relocation of proposed levees to uplands in a manner that would avoid cultural resources is not feasible because of the substantial investment in existing facilities and the environmental and economic cost of acquiring new right of way and constructing setback levees. Preservation in place through the use of methods in CEQA Guidelines §15126.4(b)(3)(B) is not feasible because placement of these sites into protected easements would preclude necessary levee repair and landside operations and maintenance. Capping sites with sterile soil would create an obstruction to proposed and future levee improvements and maintenance work.⁸⁰

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id. at 3.17-11 – 3.17.13.

As a result, the mitigation measure was revised to “Mitigation Measure CR-MM-1: ~~Perform Field Studies, Evaluate Identified Resources and Determine Effects, and Develop Treatment to Resolve Significant Effects~~ Data Recovery to Retrieve Information Useful in Research” to include the following:

Mitigation Measure CR-MM-1: ~~Perform Field Studies, Evaluate Identified Resources and Determine Effects, and Develop Treatment to Resolve Significant Effects~~ Data Recovery to Retrieve Information Useful in Research

Prior to data recovery SBFCA will prepare a brief data recovery plan that describes how SBFCA will perform the following steps (CEQA Guidelines §15126.4(B)(3)[c]). Prior to the completion of the final environmental impact statement/final environmental impact report (FEIS/FEIR), SBFCA will perform the following steps to retrieve the material associated with these sites that is useful in research:

- Data recovery excavations will be performed to retrieve a sample of the affected portion of these sites, in order to retrieve scientifically important material. Excavation will be conducted in arbitrary levels, and material removed will be divided and screened through a combination of ¼” and 1/8” mesh screens, so as to capture both the gross cultural constituents and the finer materials that can only be captured in fine mesh. Excavation will be conducted in 10-centimeter levels so that the horizontal association of different cultural materials is recorded. Removed material will be segregated by type and bagged with labels noting their horizontal and vertical location relative to an established datum point. The datum point will be recorded in the field with GPS to at least 10-centimeter horizontal and vertical accuracy.
- Faunal material (animal bone) will be segregated and studied by a qualified faunal analyst to identify the species pursued, relative abundance and diversity of different species present, and the manner in which the prey were processed by prehistoric occupants.
- Obsidian glass will be retrieved and studied through both X-ray fluorescence (a method that allows the source of the obsidian to be identified) and obsidian hydration (a method that allows approximate determination of the time when the material was subject to human modification).
- Soil samples will be retrieved, with their horizontal and vertical location recorded, for flotation analysis (a method of separating light organic material such as fine plant remains from the deposit, in order to identify plant species pursued by prehistoric populations).
- Because some of the resources subject to treatment contain human remains, provisions for such remains are necessary. If human remains are discovered in these deposits during data recovery, the county coroner will be contacted as required in California Health and Safety Code Section 7050.5. After the

coroner confirms the remains are of prehistoric origin, the NAHC will be contacted and given the opportunity to identify a most likely descendant (MLD). The MLD will be given the opportunity to reinter the remains with appropriate dignity. If the NAHC fails to identify the MLD or if the parties cannot reach agreement as to how to reinter the remains as described in California PRC Section 5097.98(e), the landowner will reinter the remains at a location not subject to further disturbance. SBFCA will ensure the protections prescribed in California PRC Section 5097.98(e), are performed.

- If in the course of data recovery excavations, it is determined that, contrary to available evidence, the resource lacks integrity, data recover excavations will cease.
- After completion of data recovery excavations SBFCA will prepare a data recovery report and summarize the results of these studies relative to regional research questions in the data recovery report. The report will be filed with the relevant information center of the CHRIS. SBFCA will also store the recovered material (other than human remains) at an appropriate facility for curation, and USACE will complete the following mitigation and management steps to satisfy Section 106 (subject to revision based on coordination with SBFCA counsel).⁸¹

The remaining actions that were previously part of this mitigation measure in the DEIS/DEIR were stricken from the FEIR.

For “Effects CR-2: Potential to Disturb Unidentified Archaeological Sites,” the FEIR noted that SBFCA did not at that time have rights of entry for the entire footprint of the proposed alternative, and that these inaccessible areas were sensitive for archaeological sites that had not yet been identified through surveys.⁸² Because these sites may have been obscured by the deposition of sediment or the intensity of farming activity, surface manifestations of prehistoric sites may have been obscured by cultivation. Therefore, it was possible that some archaeological sites would not be identified in advance of construction because they are buried and obscured.⁸³

The following was added to the discussion:

In addition to the portions of the project where survey has not been feasible, ancillary facilities such as PG&E utilities may also be affected. Once all PG&E utility work has been identified, proposed relocations and other activities will be screened to determine if they fall within the areas previously surveyed for the presence of cultural resources in support of the EIR/EIS. In the event there are areas proposed for ground

⁸¹ Id. at 3.17-13 – 3.17.14.

⁸² Id. at 3.17-16.

⁸³ Id.

disturbance that fall outside of the EIR/EIS cultural survey area, a site-specific environmental review will be required to ensure that impacts to cultural resources are avoided. The review should consist of one or more of the following: literature review, records search and pedestrian survey. The precise method of review of each facility relocation will be decided in consultation with a PG&E Cultural Resources Specialist. If CRHR-eligible resources occur in the footprint of PG&E utility work[,] these activities may contribute to significant effects on cultural resources associated with the project.⁸⁴

The Mitigation Measure CR-MM-2 was revised to include the following:

Mitigation Measure CR-MM-2: Complete Surveys Prior to Construction, Implement a Cultural Resources Discovery Plan, Provide Related Training to Construction Workers, and Conduct Construction Monitoring.

SBFCA will complete the following management steps for currently inaccessible areas once rights of entry have been obtained:

- SBFCA will complete an inventory and evaluation report for cultural resources, including archaeological resources.
- The work will be led or supervised by cultural resources specialists who meet the Secretary of the Interior's professional qualification standards provided in 36 CFR Part 61.
- All newly identified resources will be mapped and described on DPR forms. Mapping will be completed by recording data points with GPS hardware through which data can be imported and managed digitally. Mapping of previously identified resources will be limited to updates of existing records where necessary to describe the current boundaries of the resource.
- SBFCA will evaluate the eligibility of identified resources for listing on the CRHR and determine if these resources can feasibly be preserved in place, or if data recovery following Mitigation Measure CR MM-1, above, is appropriate. The methods of preservation in place shall be considered in the order of priority provided in CEQA Guidelines § 15126.4(b)(3).⁸⁵

The only substantive revision made to the discussion of "Effect CR-3: Potential to Disturb Human Remains" was the deletion of USACE as having shared responsibility with SBFCA for certain measures, such as retaining a qualified archaeologist to monitor areas of sensitivity for previously unidentified archaeological resources and human remains, among other measures.⁸⁶

⁸⁴ Id. at 3.17-16 - 3.17-17.

⁸⁵ Id. at 3.17-17.

⁸⁶ Id. at 3.17-18.

III. NAHC Involvement and Post-Environmental Impact Review Actions

A. Execution of a Programmatic Agreement Among USACE, SBFCA, and the State Historic Preservation Officer (SHPO) Regarding the FRWLP, Sutter and Butte Counties

On July 1, 2013, USACE, SBFCA and the SHPO executed a Programmatic Agreement (PA) for the FRWLLP. Neither UAIC nor Enterprise Rancheria, both of which were listed as concurring parties, signed the PA as concurring parties.

Stipulation I(A)(4) addresses SBFCA's role regarding technical cultural resources management work :

SBFCA assumes responsibility for the contracting and supervision of technical cultural resources management work performed to satisfy the stipulation of this Agreement and Section 106 of the NHPA. SBFCA understands that all substantive management decisions and completion of Section 106 milestones are subject to the review, approval, and ultimate discretion of the Corps.⁸⁷

Stipulation I (B) governs conflicts with other Agreement documents:

It is possible that a conflict may arise between this Agreement and other agreement documents that govern associated undertakings. The Corps shall endeavor to avoid conflicts with other agreement documents, but in the event of a direct conflict, the Corps shall determine which standards govern and how to proceed. For the Project, SBFCA will only be responsible for implementing the terms of this Agreement.⁸⁸

Stipulation IV (E) addresses resolution of adverse effects:

For all identified historic properties that would be adversely affected by the project, the Corps and SBFCA shall develop treatments to resolve adverse effects. Treatment may consist of avoidance, documentation, data recovery excavations, preservation in place, or other methods identified by the Corps. The Corps may use treatment methods provided in the Plan or may develop, in consultation with the SHPO, interested Native American tribes, or other stakeholders as appropriate, property-specific treatment. If treatment methods described in the Plan are

⁸⁷ July 1, 2013 Programmatic Agreement Among the U.S. Army Corps of Engineers, Sutter Butte Flood Control Agency, and the California Historic Preservation Officer Regarding the Feather River West Levee Project, Sutter and Butte Counties, California (PA) at 2.

⁸⁸ Id.

adequate, the Corps may simply refer to those methods in the inventory report, finding of effect document, or stand-alone treatment plan and incorporate them by reference without repeating the full text of the relevant treatment methods.⁸⁹

Stipulation IV (G) addressed consultation with Native American individuals and organizations:

The Corps has consulted with the Native American community during the development of this Agreement document. During management milestones, such as completion of inventory reports, resource evaluations, findings of effect, and development and implementation of treatment, the Corps shall consult with the Native American individuals and organizations that may attach cultural significance to resources affected by relevant undertakings. The Corps will consider the results of these consultations and attempt to incorporate and follow suggestions regarding management of cultural resources.⁹⁰

Stipulation V (A) addressed workforce training and construction monitoring:

1. The Corps or qualified archaeologists retained by SBFCA will provide training to construction personnel regarding proper procedure and conduct in the event that archaeological materials are encountered during construction. This training will cover both the identification of resources that may be encountered during construction and procedures to be followed in the event of a discovery.
2. SBFCA shall conduct monitoring of construction where the Corps, in consultation with the SHPO, determines it is necessary to ensure that identified resources are protected or where there is a high sensitivity for previously unidentified resources. These determinations will be described in each phase or activity-specific inventory report and the plan.⁹¹

Stipulation V (B) addressed discovery procedures for resources encountered during construction:

1. If cultural resources are discovered during construction, all construction shall immediately stop within 100 ft. (30 m) of the discovery, the location of the discovery will be marked for avoidance, and efforts will be made to prevent inadvertent destruction of the find. The contractor must notify the Corps and SBFCA (if no Corps or SBFCA representatives are on location). The Corps shall determine whether the discovery is a potential NRHP-eligible resource per the criteria in 36 CFR Section 60.4. If the Corps determines that the

⁸⁹ Id. at 4.

⁹⁰ Id. at 5.

⁹¹ Id.

- discovery is not a potentially NRHP-eligible resource, the discovery will be documented and construction may proceed at the direction of the Corps.
2. If the Corps determines that human remains have not been encountered, that the discovery is not an isolated find, and that the discovery may be eligible for the NRHP, the Corps will notify the SHPO and other relevant parties within 48 hours of the discovery. Notification should include a description of the discovery, the circumstances leading to its identification, and recommendations for further action. Where feasible, the notification will also include a tentative NRHP-eligibility discussion per 36 CFR Section 60.4 and a finding of effect per 36 CFR Section 800.5(a)(1). If the resources cannot be evaluated based upon available evidence (for example, where test excavation is required), the Corps shall include a plan of action for further technical work necessary to determine the eligibility of the resource and make a finding of effect per 36 CFR Section 800.5(a)(1). Treatment shall be implemented where necessary to resolve adverse effects on inadvertently discovered historic properties. If treatment is necessary to resolve adverse effects, SBFCA and the Corps shall consult with Native American individuals and organizations that attach cultural significance to the relevant historic properties and with the SHPO prior to the implementing treatment. The SHPO shall have 15 calendar days to review findings of effect and treatment plans submitted under this stipulation, when treatment is selected from the attached historic property treatment plan. When new treatment methods are developed, review shall follow Stipulation IV (F) above.
 3. If human remains are present, treatment shall conform to the requirements of state law under California Health and Safety Code Section 7050.5 and Public Resources Code Section 5097.98, unless the discovery occurs on federal land. Discoveries on federal land shall conform to the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA, 25 US Code Section 3001 et seq.), after complying with the requirements of California Health and Safety Code Section 7050.5, which requires notice to the County Coroner so the coroner may determine if an investigation into the cause of death is required. These legal requirements, as well as appropriate monitoring, will be described in the plan, as indicated in Attachment 2.⁹²

Stipulation IV (B) addressed curation standards:

The Corps shall ensure that materials and records resulting from the activities prescribed in this Agreement are curated in accordance with 36 CFR Part 79, except where state law and regulations, including, but not limited to, California Public Resources Code Sections 5097.98 and 5097.991 for Native American human remains and associated grave goods discovered on non-federal land,

⁹² Id. at 5-6.

require different treatment. Non-burial associated archaeological materials removed from private land shall be subject to the control of the landowner. Additionally, the disposition of any abandoned shipwrecks and archaeological sites and historic resources on state lands under the jurisdiction of the California State Lands Commission (CSLC) shall be determined by CSLC as provided by California Public Resources Code Section 6313. The Corps will ensure that, to the extent permitted by applicable laws and regulations, the views of the appropriate Native American descendant group(s) are taken into consideration when decisions are made about the disposition of Native American archaeological materials and records.⁹³

B. Designation of UAIC as MLD for FRWLP in Sutter County

The NAHC received its first Request for Assistance from the Sutter County Coroner on May 2, 2014 to designate a MLD for Native American remains found on the FRWLP. UAIC was designated as the MLD for the Sutter County portion of the FRWLP on May 21, 2014 and has served as MLD for all subsequently discovered Native American remains in the Sutter County portion of the FRWLP since.

IV. Allegations of the United Auburn Indian Community

UAIC's allegations are comprehensive, detailed, and best represented by UAIC.⁹⁴ Although SBFCA submitted relevant documents, it did not provide a formal submission due to the shortness of time. A summary of UAIC's allegations follows.

A. NAHC Jurisdiction and Existence of a Sanctified Burial Ground or Cemetery in FRWLP Project Area

UAIC states that the FRWLP project area has been divided into four Contract Areas: A, B, C and D, with Contract Area A located at the southern end of the project and Contract D at the northern end.⁹⁵ According to UAIC, the design for Contract C began in 2013 and continues into 2015 with hydroseeding.⁹⁶ Improvements include the construction of cutoff walls, seepage berms, levee geometry corrections, and wet and dry utility modifications.⁹⁷ The property and easements in Contract C are owned by SBFCA and will be transferred to the Department of Water Resources (DWR) and the State of California,

⁹³ Id. at 6-7.

⁹⁴ UAIC's submission included numerous references to archaeological site locations and other confidential documents that are exempt from public disclosure under Government Code section 6254(r) and 6254.10.

⁹⁵ March 9, 2014 UAIC Submission in Support of Public Hearing and Investigation NAHC NOI 2015-1, NAHC NOH 2015-1 at 3 (hereinafter "UAIC Submission").

⁹⁶ Id.

⁹⁷ Id.

according to SBFCA representatives and DWR tribal liaison Anecita Agustinez.⁹⁸ In its confidential submission, UAIC has provided a map with ten areas within the FRWLP project area that it requests be designated as a sanctified cemetery, ceremonial site or sacred place⁹⁹ and reserves the right to have additional sanctified cemeteries, ceremonial sites or sacred places designated should additional evidence or discoveries coming to light.¹⁰⁰

UAIC states that knowledgeable UAIC Tribal Monitors state that the properties they've identified are sacred sites because of the existence of certain cultural items and associated grave goods.¹⁰¹ In its submission, UAIC provides a detailed description of Miwok and Nisenan burial practices and how many of the burials unearthed on this project reflect such practices.¹⁰² UAIC describes in detail a particular cultural landscape, which encompasses the project area, and its cultural significance to UAIC and the Nisenan-Miwok people.¹⁰³ UAIC maintains that burial areas and ceremonial-ancestral places have been historically regarded as sacred and sanctified places by UAIC's people.¹⁰⁴ The NAHC should decide whether to formally declare the ten sites as sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines.

B. Return of Human Remains and Cultural Items Recovered from a Sanctified Cemetery, Place of Worship, Religious or Ceremonial Site, or Sacred Shrine

UAIC notes SBFCA's January 16, 2015 objection to the implementation of the PA and SBFCA's agreement with UAIC's request not to curate the collection and to immediately return it for reburial. UAIC also alleges that USACE has expressed the opinion on conference calls and at meetings that state law does not apply.¹⁰⁵ UAIC states that, according to tribal tradition, everything at the site was dedicated to burials and is an associated grave good, and, under state law, neither archaeological analysis nor curation is an option.¹⁰⁶ UAIC urges that the landowner comply with state law and that the USACE step aside on this issue.¹⁰⁷ USACE provided a list of cultural items provided to representatives of USACE, ICF, Far Western Anthropological Research Group, and SBFCA in May of 2014 prior to the development of the draft BTP, HPMP and HPTP and states that they are the types of associated grave goods currently being held by SBFCA.

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ Id. at p. 4.

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id. at p. 6; Confidential Attachments A and B.

¹⁰⁵ Id. at p. 7.

¹⁰⁶ Id.

¹⁰⁷ Id.

C. Unlawful Possession of Native American Human Remains, Burial Soils and Associated Grave Artifacts

As stated above, UAIC states that SBFCA, at the request of USACE, continues to retain objects and soil they claim are not associated grave goods.¹⁰⁸ During a March 5, 2015 conference call to address SBFCA's objection letter, USACE agreed to ultimately return all material but insisted on scientific analysis that could take several years and thereby further delay repatriation.¹⁰⁹ SBFCA has indicated that it is willing to return the material before the March 20 hearing.¹¹⁰ On November 6, 2014, Far Western Anthropological Research Group, Inc. provided their inventory of the material that remain in the trailer, and it included 7,837 entries for objects, or groups of objects, that remain in its possession.¹¹¹ Based on the "count" associated with each entry, UAIC states that at least 243,555 associated grave artifacts remain in Far Western's possession.¹¹²

UAIC states that, according to its traditional beliefs, the FRWLP, by damaging and removing burials, burial soils and associated grave artifacts from the sites they've submitted for declaration as sacred sites, has transgressed their spiritual beliefs, and that handling, testing, and analyzing their cultural items will also transgress their spiritual beliefs.¹¹³

D. Severe and Irreparable Harm

UAIC states that the FRWLP has caused severe and irreparable harm to ancestors and current Tribal members in a variety of ways.¹¹⁴ The legal standard for seeking injunctive relief is to prevent a proposed action of a public agency that may cause severe or irreparable damage to a Native American sanctified cemetery, place of worship, or religious or ceremonial site or sacred shrine located on public property.

UAIC states that the 2016 phase of the FRWLP is scheduled to go through an area that UAIC's oral histories record as being two to three times more densely population than the area around Yuba City that was affected by the 2014 work.¹¹⁵ Additionally, UAIC states that irreparable damage would continue if the project were allowed to continue as proposed, with a slurry wall, pipeline, and a railroad crossing for Contract B, among other potential damage in Contract A.¹¹⁶ UAIC states, "Our professional staff and Tribal Monitors have concluded that direct and significant impacts from construction would

¹⁰⁸ Id. at 9.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Id.

¹¹³ Id.

¹¹⁴ Id. at 11.

¹¹⁵ Id. at 18.

¹¹⁶ Id. at 21.

effectively result in total destruction of the yet-to-be-properly identified and considered by the agencies, which is a prehistoric archaeological district and cultural landscape.¹¹⁷

E. Proposed Mitigation Measures

UAIC submitted thirteen¹¹⁸ proposed mitigation measures it states are reasonable and have been applied else to other California properties either through the CEQA process, settlement or NAHC action, in UAIC's words:

1. Require the agencies to respect the Tribe's authority to make determinations about what is sacred, cultural, or burial-associated, rather than allowing archaeologists to make these determinations in the field. All authority to determine what is sacred for our Indian community is the responsibility for our members.
2. All ancestral remains, objects, and soil removed from the burial grounds must be repatriated to the Tribe without delay and reburied with dignity as close as possible to the original site, with no scientific analysis.
3. Pedestrian Surveys must occur with UAIC Tribal Monitors to locate, interpret, and document sanctified cemeteries, places of worship, religious or ceremonial sites, sacred shrines, archaeological sites and cultural resources for Contracts A and B to assure resource preservation and inform management decisions for future FRWLP ground disturbing activities. Surveys must be conducted using non-invasive, non-destructive methods of analysis and burial exploration. This could include such technologies as trained forensic dogs, aerial and terrestrial ground penetrating radar, review of historic aerial maps, etc. Costs to be borne by SBFCA.
4. Rebuild damaged relationships between Indian tribes and state and federal agencies by requiring SBFCA's and USACE's employees and consultants to complete a mandatory sensitivity training conducted by UAIC prior to any future field deployment and paid for by SBFCA.
5. Since vandalism, theft, and looting and opportunistic damage continue to be a threat, consultation must occur regarding the transport, storage, materials, security, and equipment time for the treatment of any ancestral remains and grave goods which cannot be avoided on any phase of the Project.
6. An evaluation of the burial grounds, known village areas, TCPs and Sacred – Sites present at FRWLP should have been done during the historic property identification phase by a professional ethnographer satisfactory to UAIC – not required as after-the-fact mitigation for the harms incurred. Such reports should be undertaken now before any other phase of the Project is started.

¹¹⁷ Id.

¹¹⁸ Id. at p. 21.

7. A Tribal Cultural Resources Evaluation Report should be produced by an entity approved by UAIC. This report would have beneficial uses including: helping to better assess cumulative impacts on this and other projects, assisting in educating other project applicants and CRM firms as to what UAIC and potentially other Nisenan-Miwok groups expect an adequate tribal cultural resource analysis to look like in an environmental documents, and educating tribal members and youth on its tribal cultural survival and heritage beliefs. It also could be one way in which the Tribe and SBFCA could ask forgiveness of those who have been disturbed so that their disruption may not be in vain. Therefore, it could also contain "Lessons Learned," to identify the pitfalls and best practices for such a large complex linear project like the FRWLP.
8. Nomination of the archaeological district and cultural landscape at issue to the California and National Registers of Historic Places should occur without delay. Such nomination to be prepared by an entity acceptable to UAIC and paid for by the agencies.
9. A Tribal Monitoring Program should be drafted in consultation with the Tribe, whereby qualified Tribal Monitors participate in all survey and ground disturbing work at FRWLP regardless of whether Project archaeologists are present. Tribal Monitors should be compensated at a negotiated rate for their time and given all necessary authority in their field to perform their jobs, including the ability to stop work. The agencies and their consultants must commit to noninterference with the Monitors and their Tribes.
10. Alternatives such as levee setbacks and stability and seepage berms must be considered prior to the next phase of construction and micro-siting. Other design options must be aggressively pursued prior to any further Project work and within a transparent process that involves the UAIC.
11. Compensatory mitigation to the Tribe should be granted. Compensatory mitigation is authorized pursuant to CEQA (CEQA Guidelines section 15370) and CEQ Regulations (40 CFR 1508.20). It can involve restoration of a previously-existing cultural resource area, the enhancement of an existing cultural area's functions, the establishment (i.e., creation) of a new cultural area, or, in some cases, the preservation of an existing cultural area. Compensatory mitigation also could include mitigation banking on reservation lands, in-lieu fee program mitigation, permittee-responsible mitigation on and offsite as well as funds for acquisition and repatriation of other sensitive cultural lands in addition to other priorities of the Tribe to help repair and sustain its cultural health.
12. SBFCA, USACE, and their contacts must apologize to UAIC in writing for the harm caused by their actions during FRWLP and must commit to better communication and consultation on all aspects of the Project.
13. An emergency operations and maintenance plan must be developed in consultation with UAIC that addresses respectful site stewardship during

project operation into the future to help minimize future cumulative impacts and re-desecrations.

V. Pattern or Practice of the Sutter Butte Flood Control Agency and/or the U.S. Army Corps of Engineers of Causing Severe and/or Irreparable Damage to Native American Sacred Sites

No tribes have alleged that SBFCA has a pattern or practice of causing severe or irreparable damage to Native American sacred sites. The NAHC has received information that USACE may not be consistent across California districts in requiring testing and analysis of Native American associated grave goods found on non-federal property. In another matter, the Sacramento District Office of USACE failed to address exposed remains resulting from unpermitted work on a levee for which the office was considering granting an after-the-fact permit.

A. San Luis Rey Band of Mission Indians, 2012

In 2012, a project for which the Los Angeles division of the USACE issued a permit resulted in the discovery of Native American remains on private property for which the San Luis Rey Band of Mission Indians (SLR) was named MLD by the NAHC. SLR maintained the position that all Native human remains and cultural items recovered from the site, other than historic period trash, should be considered Native American human remains or associated grave goods and should not be subject to testing or analysis beyond sorting, visual inspection, and limited description. SLR requested repatriation of all cultural items recovered from the site. USACE proposed to the Advisory Council on Historic Preservation (ACHP) to honor SLR's determination and treat all cultural items recovered as burial related and requested to amend the Data Recovery Plan. Although the SHPO and ACHP were not convinced that sufficient justification was provided for the determination that all cultural items recovered were burial related, they both agreed to the Corps' request to honor SLR's request.¹¹⁹

B. Wilton Rancheria, 2014

Work performed on a levee on private property by a reclamation district within Wilton Rancheria's area of cultural affiliation resulted in a Native American sacred site being damaged. USACE had not provided any required permit for the work and stated that FEMA had been responsible for Section 106 compliance. Wilton Rancheria was named MLD for the Native American remains found at the site, and USACE was planning to

¹¹⁹ August 12, 2012 Letter from Charlene Dwin Vaughn, Assistant Director, Federal Permitting, Licensing and Assistance Section, Office of Federal Agency Programs, ACHP, to Therese Bradford, Chief, South Coast Branch, Los Angeles District, USACE. This letter includes confidential information about archaeological sites and Native American sacred sites and is exempt from disclosure under Government Code sections 6254(r) and 6254.10

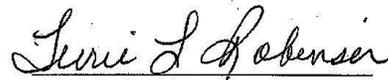
grant an "after-the-fact" permit to the reclamation district for the work that had been done, but without requiring any effort by the landowner to protect the Native American remains found. NAHC staff contacted Lisa Gibson in the Sacramento District Office on or about July 25, 2014 to voice NAHC's opposition to any such permit being granted while nothing was being done to protect the remains and the site. The NAHC contacted the landowner, who agreed to work with Wilton Rancheria to protect the remains and site, but no resolution has occurred yet. Wilton Rancheria has requested the NAHC's assistance in this matter.

C. Other Tribes

At the time of publication, a third tribe's cultural resources director was conferring with the tribe's Tribal Council about submitting evidence on the issue of whether USACE has a pattern or practice of causing severe or irreparable damage to Native American sacred sites. The evidence pertains to a site in Butte County.

Respectfully submitted,


Cynthia Gomez
Executive Secretary


Terrie L. Robinson
General Counsel

Appendix B
April 21, 2015 Letter from Terrie L. Robinson, General Counsel, Native American Heritage
Commission, to Mike Inamine, Executive Director, Sutter Butte Flood Control Agency

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

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VIA EMAIL AND U.S. MAIL

April 21, 2015

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Re: Feather River West Levee Project, Native American Heritage Commission's Findings of Fact and Proposed Mitigation Measures Pursuant to Public Resources Code Section 5097.97

Dear Feather River West Levee Project Interested Parties and Counsel:

On April 17, 2015, the Native American Heritage Commission voted 5-0 (Ramos, Chair, and Miranda, Tumamait-Stenslie, Pagaling and Attebery, Commissioners) to adopt the following findings of fact and propose the following mitigation measures to the Sutter Butte Flood Control Agency as a prerequisite to seeking injunctive relief pursuant to Public Resources Code section 5097.97 to protect Native American sacred sites within the Feather River West Levee Project:

I. Findings of Fact

The Native American Heritage Commission makes the following findings of fact

1. We find that there is a Wollok Prehistoric District that encompasses the Feather River West Levee Project from the confluence of the Honcut Creek and the Feather River to the confluence of the Feather River and the Sacramento River and includes the Feather River and its banks within these boundaries.
2. We find that the Wollok Prehistoric District is on property owned by the Sutter Butte Flood Control Agency, a public agency, in the project area for the entire Feather River West Levee Project, which is on public land.
3. We find that the Wollok Prehistoric District is a traditional cultural property and a traditional cultural landscape.
4. We find that the Wollok Prehistoric District includes Native American sanctified cemeteries, places of worship, religious and/or ceremonial sites, and/or sacred shrines.
5. We find that the Wollok Prehistoric District, and the Native American sanctified cemeteries, places of worship, religious and/or ceremonial sites contained within it, have been damaged and are at risk of continued severe and/or irreparable damage due to current, continuing, and/or planned ground-disturbing activities resulting from the Feather River West Levee Project.
6. We find that, based on Sutter Butte Flood Control Agency Executive Director Mike Inamine's March 20, 2015 testimony before this Commission, there are Native American sanctified cemeteries, places of worship, religious and/or ceremonial sites, and/or sacred shrines within the Project D area of the of the Feather River West Levee project that are at risk of severe and/or irreparable harm due to planned ground-disturbing activities;

We find it necessary to seek injunctive relief pursuant to Public Resources Code section 5097.97 to protect Native American sanctified cemeteries, places of worship, religious and/or ceremonial sites, and/or sacred shrines within the Feather River West Levee Project, including but not limited to the Wollok Prehistoric District.

II. Mitigation Measures Proposed to the Sutter Butte Flood Control Agency

The NAHC adopts and recommends the following appropriate mitigation measures for the Feather River West Levee Project (FRWLP or Project):

1. SBFCA will analyze and explore with the United Auburn Indian Community (UAIC) design alternatives on all components of the Project that could avoid or lessen the potential damage to the cemeteries, burial grounds and ceremonial sites before ground-disturbing activities commence and/or begin.
2. With and in agreement with the culturally affiliated tribes to the Feather River West Levee Project area, SBFCA must develop a tribal consultation policy.
3. SBFCA shall immediately repatriate all human remains, burial goods and soils from the Project site for which UAIC is the designated MLD, without further scientific testing or

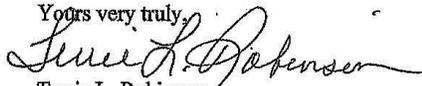
analysis, to the UAIC, and to allow for reburial as close to the original location they were obtained.

4. SBFCA will execute a Burial Treatment Agreement with UAIC based on the draft agreement authored by UAIC. The Agreement will govern the disposition and treatment of all human remains, objects, and soil disturbed or removed from the project areas for which UAIC has been or is later designated as the MLD. It is recommended that the Burial Treatment Agreement include provisions for reburial without scientific handling, testing or analysis as close as possible to the original location from which they were obtained.

5. SBFCA shall execute a Cultural Resources Treatment Agreement with UAIC, which will include a tribal monitoring program for UAIC representatives to participate in all survey and ground-disturbing work performed on the Feather River Levee Project to which they are culturally affiliated, and which will also include a long-term management plan for the ongoing protection of the culturally sensitive resources. This Agreement shall be executed prior to ground-disturbing work commencing on the Feather River West Levee Project.

May 13, 2015 is the final date for acceptance or rejection.

Yours very truly,



Terrie L. Robinson
General Counsel

cc: NAHC Commissioners

Cynthia Gomez, Executive Secretary, NAHC and Tribal Advisor, Office of the Governor

Carol Roland-Nawi, State Historic Preservation Officer

The Honorable James Edwards, Chairperson, Berry Creek Rancheria of Maidu Indians

The Honorable Glenda Nelson, Chairperson, Enterprise Rancheria of Maidu Indians

The Honorable Ronald H. Gramps, Chairperson, KonKow Valley Band of Maidu

The Honorable Dennis E. Ramirez, Chairperson, Mechoopda Tribe of Chico Rancheria

The Honorable Gary Archuleta, Chairperson, Mooretown Rancheria of Maidu Indians

The Honorable Cathy Bishop, Chairperson, Strawberry Valley Rancheria

The Honorable Don Ryberg, T'si -Akim Maidu

The Honorable Stacy Dixon, Chairperson, Susanville Indian Rancheria

The Honorable Darrell Kizer, Chairperson, Washoe Tribe of Nevada and California

Brigadier General Mark Toy, South Pacific Division Commander, U.S. Army Corps of Engineers

Ancita Agustinez, Tribal Policy Advisor, Department of Water Resources

Leslie Gallagher, Acting Executive Director, Central Valley Flood Protection Board

Valerie Hauser, Director, Office of Native American Affairs, Advisory Council on Historic Preservation

Dr. John Eddins, Ph.D., Advisory Council on Historic Preservation

Nancy Beninati, Supervising Deputy Attorney General, Department of Justice

Antonette Cordero, Deputy Attorney General, Department of Justice

Appendix C
United Auburn Indian Community Comments
Feather River West Levee Project DSEIR

(revised)

Re: Comments on Draft Supplemental Environmental Impact Report (SEIR) for the Feather River West Levee Project (FRWLP) (April 2016)

Dear Mr. Inamine:

This letter and the attached materials are submitted regarding the SEIR for the FRWLP, on behalf of UAIC. This letter is being sent as there are issues of concern to UAIC in the SEIR, including those beyond the SEIR's Tribal Cultural Resource (TCR) section. Further, discussions and negotiations between UAIC and SBFCA to date have not yet resulted in the finalization of settlement between us. Because of that, UAIC must preserve its rights under CEQA, while we continue to work to achieve agreement. I understand that my staff has been keeping you apprised of the submittal's contents, so this material should not be a surprise.

My staff and legal counsel have worked very diligently on this matter. We are concerned that some of SBFCA proposed revisions to the SEIR TCR section may be taking a step back and expanding areas of disagreement between us. We hope that the response to comment process and additional discussion between us can resolve at least some of these. Accordingly, we hope that the aggressive CEQA schedule has not been drawn too tight to fully consider comments from us and others as is required by CEQA.

Also, please know that the Tribe's recommendations regarding mitigation measures for prior phases and the modified project have been reviewed by our Tribal Council. Even meaningful mitigation cannot undo the harms that have occurred, and may unfortunately occur yet again, with the new and expanded phase of this public safety project. However, adopting the cultural mitigation proposed by UAIC would help to strengthen the Tribe in other ways and provide other public benefits that are important to UAIC and its members.

As I understand was discussed with you, we have marked the items in this submission the Tribe feels are part of the confidential record. If there are additional items SBFCA believes should be part of that confidential record, please contact Brian Guth, Tribal Attorney, at your earliest convenience. Through its submission, UAIC does not intend to violate any confidences.

I trust that you and the UAIC Team will continue to work together, and with any other necessary parties, to resolve as many of these outstanding items as is possible prior to project approval.

Attachments:

UAIC Comments on FRWLP draft SEIR
FRWLP TCR Section Remaining Open Issues
UAIC Cultural Affiliation Statement
UAIC Evaluation Criteria for Laurel Area
Confidential Laurel Avenue Focused TCR Sensitivity Map

Confidential Redline of TCR Section

UAIC Comments on FRWLP draft SEIR (April 2016)

June 3, 2016

These comments are aimed at addressing potentially open issues, items needing clarification, and the completeness and accuracy of the project record after UAIC's review of the entire SEIR. A courtesy preview of this document was provided to SBFCA prior to formal submission in an effort to try and narrow the issues between the parties and encourage collaborative resolution within a tight project timeline. If after further consultation, agreement cannot be reached on how to resolve all the items, it may be appropriate to note items of disagreement and the respective views of the parties, in the TCR section or in an expanded Areas of Controversy section of the Final SEIR.

Page 1-1: Alternatives: According to Table 2-1, project components for the modified project include: various staging and construction access: filling in a non jurisdictional swale at STA 199+50 to 300 feet beyond levee landside toe, deepening by 28 feet the slurry cutoff wall from STA 202+50 to STA 203+00, deepening by 38 feet the slurry cutoff wall at STA 203+00 to STA 211+00 and filling ditch, deepening by 37 feet the slurry cutoff wall at STA 211+00 to STA 224+00. Were these design changes specifically the subject of consultation? Does this affect the level and type of survey methods needed? Taken together, are these also additional impacts requiring cumulative mitigation?

Pages 3.17-18: Project Design Alternatives: After discoveries in the earlier project phases, HDR did engineering memos. UAIC was not included in those engineering meetings or the development of the memos. The Tribe would like to ensure should any such memos become necessary for the modified project, that the Tribe will have the opportunity to be in those meetings and to review and comment on the engineering memos. Revise SEIR accordingly.

Pages 2-1 to 2-3: Project Description: In prior project phases, the locations and impacts associated with slurry mixing areas and run off ponds were an issue for UAIC. Please describe the number, location and size of these project components. If they cannot be identified prior to the construction contract being approved, please provide a mechanism for UAIC to have an opportunity to participate in the appropriate siting of these facilities. Revise SEIR accordingly. Also, did USACOE ask SBFCA to pursue the modified project?

Page 1-2: Addendum: states that the changes to the cultural resources mitigation measures were "consistent with discussions" with UAIC. However, UAIC was not made aware of the Addendum or the revisions to the mitigation measures at the time SBFCA was developing and approving them, therefore it should not be implied that UAIC somehow participated in the development or agreed to the language in the Addendum measures. This is a repeat comment and the EIR text must be revised to more accurately reflect the process that occurred.

Page 1-3: Subsequent EIR: The SEIR asserts why a Subsequent EIR was not necessary. However, UAIC still believes that a Subsequent EIR was the correct form of EIR for project modifications, as was stated in its

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comment letter on the SEIR NOP. The SEIR text seems to imply that by doing a Supplemental EIR SBFCA didn't need to revisit the Alternatives analysis - this specific issue wasn't discussed between the parties in consultation and the Tribe is of the view that there may have been project alternatives that could have further reduced adverse impacts on issues of concern to the Tribe. In future projects, UAIC reserves the right to advocate for project alternatives that reduce impacts and not have the modified project be used as a precedent for the Alternative selected (slurry wall).

Page 1-4: Cumulative Projects: The SEIR adds reference to Yuba Goldfields 200-Year Flood Protection Project and Oroville Wildlife Area Flood Stage Reduction Project. UAIC agrees that Goldfields has potential cultural resource issues for UAIC and UAIC has submitted extensive comments on that project to the relevant lead agency. There are other projects that should be added to the cumulative projects that underscore the potential cumulative effects of the modified project. These include: all levee projects in UAIC traditional territory especially those within the Wollok District (to include its tributaries), basin feasibility studies and relicensing projects, and SAFCA and other TRLIA projects, which may have impacts to tribal cultural resources and ancestral human remains. Specific cumulative mitigation therefore must be proposed for the modified project.

Page 1-6: NAHC Trustee Agency: In a footnote, the SEIR states that the NAHC is not considered a trustee agency for CEQA purposes. We believe this is incorrect and should be changed; please see Public Resources Code sections 21070 and 21080.4, CEQA Guidelines section 15086 and *Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App. 3rd 604; otherwise, please provide the authority for the asserted contrary view.

Page 2-3: Construction Workers: The SEIR states that approximately 80 to 100 individuals would be onsite daily during construction. Page 2-5 states that private worker vehicles would be parked within the project right-of-way and easement limits. The Laurel Avenue project site incorporates a 30-foot-wide construction easement along the landslide of the levee and a 15-foot-wide construction easement along the waterside of the levee. Please show in a graphic the locations where these individuals would park. How will SBFCA ensure that parking occurs in designated areas only? (UAIC may also have special concerns about particular areas or compression).

Table 2-2: Native Monitors: The SEIR seems to show about a 180-day construction schedule as well as the anticipated number and type of equipment. Has this schedule changed based on schedule slippages to date? Two UAIC Monitors are generally required for each piece of earth moving equipment. These numbers would change if the project gets into active discovery mode. UAIC will need to be provided the construction schedule and punch list, and any updates to them. Revise SEIR accordingly.

Page 2-5: Borrow Sites: The SEIR states that offsite borrow material would be obtained from existing, permitted commercial sources in or near Yuba City area. At page 3.3-1, the SEIR states that the Nordic Industries' Park Bar Quarry is a potential source for the Gridley Bridge Erosion site. Yet, no specific sites are stated in the SEIR for the Laurel Avenue work. UAIC requested in consultation to know the exact borrow locations to ensure that material is not being taken from an offsite sacred place or historic property, both causing damage to the borrow site and then comingling with resources at the project

site, which is included in the Wollok District. Please identify the specific potential source locations for project borrow sites, this could include providing a list and map of the existing permitted commercial sources and for the Tribe to provide feedback on which sources are problematic from a cultural point of view.

Table 2-3: Export: States that 5,000 cubic yards of unsuitable material will be exported from the project site. What protocols will be in place for UAIC to have the opportunity to review the materials prior to their export to ensure that cultural materials are not included? Similarly, Native Monitors must have the opportunity to review the clearing and grub debris prior to their removal to commercial waste or recycling facilities. Revise SEIR accordingly.

Table 2-4: Utility Removal and Replacement: Native Monitors must be in place to observe the removal and replacements of pipe crossing, utility pole and any other utilities and under and above ground infrastructure. Revise SEIR accordingly.

Page 2-6: Operations & Maintenance: The SEIR states that operation and maintenance activities for the Laurel Avenue Critical project would be similar to those described in section 2.4.11 of the 2013 FEIR. Please confirm that this part of the project would also be subject to the Operation and Maintenance mitigation measure required by the NAHC.

Page 3.0-1: NEPA: The SEIR notes that previously a joint environmental document EIS/EIR was prepared for the project; will there be a companion federal document to the proposed SEIR? If not, how is SBFCA's federal partner evaluating the project modifications under NEPA and NHPA section 106 given the SEIR's findings at Table 3.0-2 that the modified project's effects to Cultural Resources is substantially more severe? To date, UAIC has not been consulted by USACOE on the modified project and last week the USACOE informed UAIC that it did not know whether a NEPA supplement or ESA Section 7 consultation was required or initiated. UAIC is concerned about the potential schedule impacts from the federal side.

Table 3.0-4: Vegetation and Wetlands, Wildlife, Fish and Aquatic Resources: Many of the project activities in these categories can harm or impact natural and cultural resources of concern to UAIC including medicine plants. Please ensure that a Native Monitor has the opportunity to be present - not just a Biological Monitor - for activities that could impact these resources to ensure their respectful treatment. Revise SEIR accordingly.

Table 3.0-4: Population, Housing and Environmental Justice: UAIC believes that the 2013 project and the proposed project modification pose a disproportionately high and adverse health and environmental direct and cumulative effect upon the UAC and its tribal members. This is demonstrated by the project's disproportionate significant effect on UAIC burials and villages as well as the adverse health and spiritual effects to UAIC's Native Monitors who worked on prior phases of the project as discussed in consultation last week. Home acquisitions (SEIR, page 3.12-3) are not the only effect to be examined in environmental justice analysis. Please see, for example, California Attorney General *Environmental Justice at the Local and Regional Level, Legal Background, 07-10-12*). We believe that the impacts are significant, cumulative and that mitigation must be proposed. Finally, we appreciate that efforts have

been made to ensure that crop dusting overspray effects as experienced during the prior project phase, will not occur to project workers as was discussed in consultation last week. Please explain how such adverse human health effects, as were encountered by Native Monitors and other workers on prior phases, will be avoided in the modified project. Revise SEIR accordingly.

Table 3.0-4, 3.13, Visual Resources: The SEIR states that the project will have less than significant impacts related to substantial degradation of the existing visual character or Quality of the Site and Surroundings and no mitigation is being required. Yet, the SEIR admits that there would be permanent changes in views from the ground, levee slopes, levee crowns and the river (SEIR, page 3.13-6). It appears the SEIR's finding of no impact is based only on unprovided "recent photos of the areas" that would be affected by project modifications and also has not been informed by a consideration of the feeling and association of the TCRs and visual quality within the landscape and setting. The scant information provided in the SEIR does not constitute analysis or support by substantial evidence. Visual simulations of Laurel before/after might assist in this regard. Have these been prepared? Please see also, below, discussion on restoration mitigation and protocols.

Table 3.0-3, 3.17, Effects on Cultural Resources: The summaries presented for CR-MM-1 to CR-MM-4 should be restated to show that avoidance through redesign/construction methods is the first step in any of these measures. CR-MM-5 to CR-MM-10 are new mitigation measures not in the 2013 FEIR and 2015 Addendum. These have been the subject of settlement discussions between UAIC and SBFCA related to the prior work done on the original FRWLP project, with policies and protocols to be applied to the SEIR project modifications. However, any mitigation for direct, indirect, cumulative and compensatory mitigation *for the additional project modifications themselves* does not appear to be addressed in the draft SEIR. Stated another way, it appears that SBFCA is not assessing any additional mitigation for the project additions which the SEIR admits will have more severe impacts on tribal resources. According to CEQA, compensatory mitigation can be a mitigation measure and therefore is appropriate to discuss in an EIR; see, CEQA Guidelines section 15370. UAIC provided several mitigation measures appropriate from UAIC's perspective in both project and program categories at the last consultation which must be considered pursuant to AB 52. The Tribe must also be assured that the measures from the Agreement in Principle, notably completing nomination paperwork and a look-back report, have mutually understood parameters and appear in an enforceable project document.

Cultural Resources section: Specific, detailed comments have been provided in separate redline documents from UAIC to SBFCA pursuant to AB 52 consultations. Some open issues presently include: mounds as part of the built historic environment, reference to a mixed Japanese/Nisenan site at the south end of the modified project (reference as a multi-component prehistoric and historic site based on consultation with UAIC and evaluate as such), additional survey methods such as auguring and historic human remains detection canines and their optimal timing (i.e., given the specifics of the project, the canines may be appropriate to deploy both after grubbing and then if active discoveries are encountered during construction), role of the USACOE in the mitigation measures and decision making process, papering of effects/site documentation/nomination of TCRs from prior and future phases, proper inclusion of tribal values and perspectives within the SEIR, and questioning the need for two ethnographic reports. Also, as we discussed last week, relative to the Laurel work, references in the SEIR

should be made to the Wollok District which includes Ollash Village, a named place (village) within the District and project area. The Tribe has weighed the issues and would prefer for the SEIR to specifically reference the presence of the named village site within the project area. This should be clarified by the Confidential Focused Sensitivity map.

Pages 3.2-2 to 3.2-4: Water Quality and Groundwater Resources: What did the monitoring and reports for the prior phases of the project show? Have any adjustments been made to the SWPPP, SPCCP, BSSCP or turbidity monitoring program based on that experience and if so what changes were made? Will the proposed increased depth of the slurry wall require plan or monitoring modifications?

Page 3.8-7: Vegetation: We note that for the Gridley project, there is a Table 3.8-2 (Effects on Riparian Trees) and a Figure 3.8-3 (Impacted Trees graphic). If there are impacts proposed, please provide a similar table and figure for the Laurel Avenue project so that we can understand tree species, diameters, number of trees affected and effects, etc., for that project of particular concern to UAIC. Also, please explain whether the referenced 20 foot buffer zone between the tree resource and construction activities will sufficiently protect roots for all species present. Also, how long is it estimated to take for the newly planted vegetation to reach maturity, i.e., how long in duration is the temporary loss of mature vegetation? How does this also relate to the duration of temporary aesthetic/visual impacts (SEIR, page 3.13-3, defines long-term adverse visual changes or contrasts to existing landscapes as those that persist for 2 years or more)?

Page 3.8-8: The SEIR states that floristic surveys for the construction footprint have not been conducted. Will appropriately-timed floristic surveys occur and if not, what identification and avoidance strategies will be employed during construction? UAIC is concerned in that some plants have cultural, medicinal and ceremonial values and should be treated with respect. How will this concern be addressed? (Please see biological, visual and restoration comments elsewhere in this document). Do the BMPs described in the Environmental Commitments from the 2013 FEIR need adjustment in this regard?

Page 3.13-6: The SEIR states that high-powered lighting would not be used near sensitive residential viewers. Would such lighting also not be used near cemetery sites identified by UAIC? As expressed to SBFCA in consultation, UAIC has serious concerns about night work in cultural areas and would prefer for that not to occur based on artificial light making it more difficult to identify cultural resources and the additional stress night work in such areas places on Native Monitors as was experienced on prior phases of the project, notably slurry wall headings. If night work is necessary, UAIC must be consulted on the type of night lighting to be used and the pace of the construction work so Native Monitors can do their jobs. Revise SEIR accordingly.

SEIR References Environmental Commitments from 2013 FEIR section 2.4, yet claims these are best practices, not CEQA mitigation measures, *per se*. SBFCA says they will implement them in good faith (page 2-31), but the former statement may put in to question their legal enforceability under CEQA. Please explain how such measures will be enforced. Also, for project-related surveys and monitoring, UAIC Native Monitors should be compensated.

Protective Barrier Fencing: requires qualified biologist to put out protective fencing to be installed at least 20 feet from each sensitive biological resource (where feasible). This should be coordinated with qualified archaeologist and an opportunity for a UAIC Native Monitor to be present to ensure protection for cultural resources and appropriateness for protective fencing for both biological and cultural resources. Revise SEIR accordingly.

Avoidance Measures for Valley Elderberry Longhorn Beetle: UAIC requests an opportunity for UAIC Native Monitors to be present when the shrubs at 2013 FEIR Plate 3.9-1 (please provide - we could not find this - is it in FEIR bio appendix?) are fenced. Revise SEIR accordingly.

Avoidance Measures for Giant Garter Snake, Swainson's Hawk, Raptors, bats: UAIC requests the opportunity for Native Monitor participation. Revise SEIR accordingly.

Measures for Protected and Riparian Trees: requires protective fencing be installed if construction to occur within 20 feet of the dripline of an oak or native tree. This should be coordinated with qualified archaeologist and the opportunity for a UAIC Native Monitor to be present to ensure protection for cultural resources and appropriateness for protective fencing for both biological and cultural resources. UAIC should also be consulted during the development of any tree and riparian habitat mitigation and monitoring plans and potential mitigation areas. Revise SEIR accordingly.

Invasive Plant Species Prevention Methods: Please identify what entity will perform each of the stated BMPs, i.e., SBFCA, construction contractor, etc. Revise SEIR accordingly.

Revegetation of Disturbed Areas: UAIC has preferences on seed mixes and would prefer native plants be used whenever possible to do so. A draft preferred valley plant list is attached with these comments (there needs to be focused consultation on the list). Plants of concern to UAIC that may not receive protection are assemblages including oak, wormwood, sedge, willow, bedgrass, soaproot, etc. which should be identified, protected, mitigated and used in restoration. UAIC also requests to be similarly involved in replanting of trees and shrubs along PG&E utility line relocations. The revised SEIR must also address other restoration aspects which may crossover with cultural resource protection including protection in perpetuity of reburial areas which could include the use of permanent ESAs, development of final preservation plans, appropriate fencing and signage, and restrictions on public use/recreation in some areas¹, as was discussed in consultation last week. This should include restoration issues being put into the weekly forecasts that are shared with UAIC. Finally, it looks as though CUL 4 reburial area may have been recently looted. Issues with post-construction management were also documented in the UAIC 2015/2016 construction close-out surveys but it is unclear whether the noted

¹ For example, the SEIR also states new information from 2013 (pages 3.13-1, 13.14-2) that a gravel multiuse trail has been proposed for the top of the levee within the Laurel Avenue segment by the County of Sutter Pedestrian and Bicycle Master Plan.

restoration issues (at CUL 5 and 12 in particular) have been resolved to date. These contribute to cumulative effects. Revise SEIR accordingly.

Soil Borrow Site Reclamation Plan: Depending on the location of the offsite borrow site and its proximity to TCRs, TCPs or cultural landscapes as noted above, UAIC would want to be involved in reclamation plan development and implementation, particularly those involving Sutter Butte, a TCP. Sutter Butte should not be used as a borrow location as was observed by UAIC during prior phases of the project. (UAIC Preservation Office staff took photos of trucks and followed them from source locations). This also contributed to the cumulative effect of the project. For federal authority that offsite borrow locations must be considered as part of the project, please see: ACHP Memo to Vermont State Historic Preservation Officer on applicability of NHPA section 106 to off-site borrow and disposal areas (01-25-2002) and *The Hopi Tribe v. Federal Highway Administration, et al.* (Civ-98-1061).

Postconstruction Operations and Maintenance: Consistent with SBFCA's return on the NAHC mitigation measures, efforts must be made to protect tribal cultural resource locations (including reinterment areas) during post construction operations and maintenance. During DWR's twice yearly inspections, UAIC requests to have the opportunity for a Tribal Monitor to be present to report to UAIC any erosion in or near cultural sites or the appearance of possible cultural resource items, etc. Note that the 2013 FEIR states that erosion control and slope repair activities would include resloping and compacting, activities that would also require Native Monitors. Revise SEIR accordingly.

Appendix D

March 31, 2015 letter from Charlene Dwin Vaughn, AICP, Assistant Director, Federal Permitting, Licensing and Assistance Sections, Office of Federal Agency Programs, Advisory Council on Historic Preservation, to Alicia E. Kirchner, Chief, Planning Division, U.S. Army Corps of Engineers, Sacramento District.



Preserving America's Heritage

March 31, 2015

Ms. Alicia E. Kirchner
 Chief, Planning Division
 U.S. Army Corps of Engineers
 Sacramento District
 1325 J Street
 Sacramento, CA 95814-2922

Ref.: Resolution of Adverse Effects for Eight Prehistoric Archaeological Sites
 Feather River West Levee Project, Contract C
 Sutter and Butte Counties, California

Dear Ms. Kirchner:

The Advisory Council on Historic Preservation (ACHP) has been contacted by the United Auburn Indian Community (UAIC) regarding the resolution of adverse effects from the Feather River West Levee Project (FRWLP) to a number of archaeological sites encountered as post-review discoveries during a phase of the undertaking implemented in 2014. UAIC has objected to the archaeological data recovery being carried out and has proposed that the entire archaeological assemblage recovered from the sites be considered human remains and associated grave goods. The tribe has requested that the archaeological assemblage not be subject to further analysis of any kind and should be turned over to the tribe for appropriate reburial. In response, the Corps has indicated that it is obliged, in order to comply with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, "Protection of Historic Properties" (36 CFR 800), to accomplish some aspects of the analysis associated with the data recovery agreed to for resolution of adverse effects to these archaeological sites. In considering this disagreement, the ACHP would like to offer a number of observations regarding the requirements of Section 106 as they relate to this undertaking, the importance of tribal concerns regarding the presence, significance, and treatment of human remains in archaeological sites, and the potential to use alternative mitigation to resolve adverse effects in cases like this.

A central issue in the dispute is the Corps' belief that it is obligated to carry out data recovery in order to resolve the adverse effect of the undertaking because the archaeological sites have been determined eligible under Criterion D for inclusion in the National Register of Historic Places (National Register). As part of the Section 106 review, it is important that federal agencies consider carefully the criteria of eligibility that are applicable for each of the historic properties identified in the Area of Potential Effects (APE) of the undertaking. The significance and characteristics that make a historic property eligible under each criterion of eligibility should inform the federal agency's assessment of effects and the consultation to develop appropriate resolution of adverse effects. A federal agency, however, is not required to ensure that the resolution of adverse effects specifically addresses each criterion of eligibility applicable for an historic property that is adversely affected; nor that it even specifically addresses each historic property adversely affected.

ADVISORY COUNCIL ON HISTORIC PRESERVATION
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Rather, the appropriate resolution of adverse effects is that set of measures which consulting parties agree upon. Further, the ACHP's Section 106 Archaeology Guidance (available online at www.achp.gov/archguide) clarifies that human remains, associated funerary objects, and the sites where they are found possess values beyond their importance as sources of information about the past. Thus, federal agencies should be aware that even when a property has been determined eligible for the National Register only under Criterion D, the special nature of burials, which are widely recognized in law and practice as having special qualities, may also possess a value to living groups that extends beyond the interests of archaeological research. Burial sites may be considered properties of traditional religious and cultural significance to Indian tribes or Native Hawaiian Organizations, which could make such sites eligible for the National Register under other criteria of eligibility in addition to Criterion D. Further, data recovery is not the only option to resolve adverse effects to an archaeological site found eligible under Criterion D. The ACHP is supportive of the use of reasonable alternative mitigation strategies that may not include archaeological data recovery and may not even focus directly on the historic properties that are affected or the locations or time periods represented by historic properties affected by an undertaking. This is particularly the case when alternative mitigation strategies are found to be appropriate by the consulting parties.

The UAIC, determined to be "Most Likely Descendent" (MLD) associated with the human remains by the California Native American Heritage Commission (NAHC), has concluded, based on oral history and ethno-historical information, that the burial practices of their ancestors often included cremation of the deceased with items of material culture that resulted in dispersal of fragmentary human remains and associated funerary objects throughout middens associated with their ancestral village sites. From the UAIC's perspective, the entire archaeological assemblage from each archaeological site and the soil matrix should be considered burial related and the archaeological sites should be considered cemeteries. Accordingly, the UAIC have requested that the Corps return all human remains and the entire archaeological assemblage to the tribes without any analysis or further disturbance. The Corps has turned over approximately one-half of the archaeological assemblage, prior to analysis, from the excavated sites, consisting of the portion not found in excavation unit levels in which human remains have been identified as well as excavation unit levels above and below such levels. The Corps, however, believes that it is obligated to follow through on some level of analysis for the remaining portion of the archaeological assemblages from the data recovery excavations in order to resolve the adverse effects of the undertaking to those sites because they were determined eligible under Criterion D.

The ACHP's "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects," states that human remains should not be knowingly disturbed unless absolutely necessary. If circumstances require that they must be disturbed, the remains should be removed carefully, respectfully, and in a manner developed in consultation with the consulting parties, including those who ascribe significance to the remains. In a case such as this, when human remains and associated funerary objects are dispersed throughout midden remains, the recovery can become extremely difficult. In reaching decisions about appropriate treatment measures, federal agencies should weigh a variety of factors, including the significance of the historic property, its value and to whom, and associated costs and project schedules. Since mitigation decisions are reached through consultation and represent the broader public interest, they should be considered appropriate so long as they are legal, feasible, and practical. By considering alternatives to data recovery, the federal agencies can address how the community or the general public will benefit from the expenditure of public funds for preservation treatments.

At the request of UAIC, and as provided for by state law, following the issuance of an investigative report on March 19, 2015, and a public hearing on March 20, 2015, the NAHC has determined that a geographical area identified as the "Wollock Prehistoric Archaeological District and Cultural Landscape," which includes the archaeological sites identified as post-review discoveries adversely affected by the FRWLP, constitutes a sanctified cemetery and associated resources as defined in Public Resources Code

(PRC) Sections 5097.97, 5097.94(g), 5097.9. The NAHC has also determined that if an agreement regarding appropriate treatment and disposition of the human remains and associated funerary material pursuant to state law is not reached between the Corps, the project proponent, and the UAIC by April 6, 2015, the NAHC will proceed with seeking injunctive relief pursuant to PRC 5097.94(g) and applicable statutes. It is apparent that the project proponent, the Sutter Butte Flood Control Agency (SBFCA), is a public agency carrying out a project on public land and thus subject to state law regarding treatment of human remains and the decisions of NAHC. The ACHP would like to remind the Corps that when human remains are encountered on non-federal or non-tribal land during review or implementation of projects subject to Section 106 review, the federal agencies involved should consider the obligations of project proponents under state law as well as their own obligations to comply with state law regarding the treatment and disposition of human remains.

It is clear that the FRWLP is a very important project intended to address public safety concerns, and its implementation should not be delayed unreasonably. We understand that the project proponent and the Corps do not believe that there are alternatives to the proposed methods for repairing and enhancing the levees that would enable avoidance of archaeological sites like the ones adversely affected in Contract C of the FRWLP. However, considering the significance of the sites to the UAIC and other tribes in the region, the Corps should reevaluate the alternatives for future phases of the project. Based on the information provided to us, a number of proposals for alternative mitigation in addition to or in place of data recovery have been considered including: (1) analysis of other archaeological site assemblages already in curation from nearby locations; (2) ethnohistoric / ethnographic study of these types of sites and their importance, to further clarify eligibility under other criteria; (3) development of future methods of identification and treatment for these types of sites that involve the tribes earlier and more directly in the review process. These are all reasonable proposals for resolving the adverse effect of the undertaking, which the Corps and consulting parties should give serious consideration to.

Finally, as the NAHC has suggested that all the archaeological sites determined to be adversely affected in Contract C of the FRWLP are part of a sanctified cemetery that extends throughout a proposed "Wollock Prehistoric Archaeological District and Cultural Landscape," the ACHP encourages the Corps to consider focusing on a resolution of adverse effects that further explores the relationship of the archaeological sites in the APE for the undertaking to such a property, and the tribal beliefs and burial practices that are the foundation of such an extensive property. The Corps should consider the criteria of eligibility that may be applicable, and protocols that may be appropriate for treatment of archaeological sites containing human remains when they cannot be avoided during implementation of future phases of the undertaking.

Should you have any questions or wish to discuss this matter further, please contact John T. Eddins, PhD at 202-517-0211, or by e-mail at jeddins@achp.gov.

Sincerely



Charlene Dwin Vaughn, AICP
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs

Responses to Comment Letter S2

Response to Comment S2-A

Comment noted.

Response to Comment S2-B

Because this paragraph does not provide a comment specific to the Draft SEIR, no response is necessary. However, as detailed in past correspondence between SBFCA and NAHC, SBFCA believes it did consult properly with Native American tribal interests prior to certification of the EIR, and that it has complied with all applicable laws in connection with review of the proposed project modifications.

Response to Comment S2-C

SBFCA notes that NAHC joins in, incorporates by reference, and attaches as part of its comments the comments of United Auburn Indian Community (UAIC).

Response to Comment S2-D

SBFCA acknowledges NAHC's objection to data recovery on Native American human remains and associated grave goods without the advance consent of the Most Likely Descendant (MLD). SBFCA similarly defers to the MLD on the treatment of human remains and grave goods pursuant to California law. Where, as here, the U.S. Army Corps of Engineers (USACE) is involved through a federal permit, treatment of any historical resource as defined by federal law is subject to consultation with USACE. SBFCA lacks the authority under federal law to remove or deny USACE's jurisdiction and its associated consultation and resolution of adverse effects under Section 106 of the National Historic Preservation Act. Even where, as here, an MLD asserts that an entire project site constitutes human remains or grave goods, USACE still plays a role that SBFCA cannot ignore without violating federal law.

Response to Comment S2-E

SBFCA's statement in bullet number 5 on page 3.17-11 of the Draft SEIR, regarding the MLD being given an opportunity to reinter remains with appropriate dignity is not intended to, nor does it, limit a Tribe's options with respect to recommendations or preferences for treatment. SBFCA acknowledges that Public Resources Code section 5097.98 allows the MLD to "make recommendations or preferences for treatment."

Response to Comment S2-F

NAHC's concerns about storage of human remains are noted. As detailed in section 3.17.2.3 of the revised Cultural Resources section (included as Appendix A of this Final SEIR), unanticipated human remains encountered during construction of the proposed project modifications will be handled in compliance with applicable state law and pursuant to the mitigation measures described in that section.

Response to Comment S2-G

SBFCA and UAIC continue to work diligently, as they have for over a year, to come to agreement on a set of documents that implement the mitigation measures proposed by NAHC and accepted by SBFCA in 2015 as part of a process that is separate from the review of the proposed project modifications and preparation of the SEIR. SBFCA has incorporated the measures into the Draft SEIR in response to UAIC's request to do so and modified them for the Final SEIR (see the revised Cultural Resources Section, which is included as Appendix A of this Final SEIR). Because they are measures designed in part to mitigate for impacts of the project modifications analyzed in the Draft SEIR, they cannot be implemented fully prior to approval of those modifications.

Response to Comment S2-H

Because the fundamental design alternatives to the overall project were approved in the 2013 Final EIR, and the proposed project modifications are consistent with what was analyzed under the 2013 Final EIR, the alternatives discussed in the Draft SEIR pertained to focused alternatives (e.g., the use of relief wells in lieu of slurry walls). Pages 2-11 to 2-13 provide a discussion of project alternatives that were discussed during the AB 52 consultation meetings.

Response to Comment S2-I

SBFCA adopted a tribal consultation policy in May 2015. In response to comments from UAIC about that policy, SBFCA adopted an addendum to the policy in April 2016 that incorporated language proposed by UAIC.

Response to Comment S2-J

SBFCA is not the long-term operator of the project, but rather, is responsible only for the capital improvement project. Once constructed, the operations (both short- and long-term) and land itself will be transferred to numerous local districts and partner agencies whom SBFCA cannot bind. The adoption of a long-term operations and maintenance (O&M) plan falls outside the purview of SBFCA, which has no legal authority over O&M. However, SBFCA wrote a letter to the Central Valley Flood Protection Board (CVFPB) (dated May 18, 2015), stating its support for the Board's development of a long-term O&M plan that includes consideration of tribal cultural resources. SBFCA has also provided a draft template O&M plan with example language that can be used by the Tribe and CVFPB. SBFCA facilitated a meeting with the Board's Executive Officer to advocate for long-term requirements in Board-approved O&M plans, advocated for the inclusion of O&M provisions to protect cultural resources to the California Central Valley Flood Control Association (CCVFCA) Board of Directors, facilitated a meeting with UAIC and the CCVFCA Executive Officer, and facilitated a meeting between UAIC and Levee District 1. A template O&M plan was provided to all parties. Given SBFCA's limited legal authority with respect to O&M, this is how SBFCA interprets the long-term management requirement in Mitigation Measure CR-MM-9.

Response to Comment S2-K

Upon project approval, an ethnographic study will be completed in a manner consistent with Mitigation Measure CR-MM-10. The timing of completion of the ethnographic study, which SBFCA anticipates could take up to 2 years, is not within SBFCA's control. The ethnography study was first suggested by UAIC during the preparation and negotiation of the Agreements in Principle between

SBFCA and UAIC in April 2015. Although the Agreements in Principle were not considered finalized until October 2015, SBFCA initiated the solicitation of qualified ethnographers in May 2015.

On May 15, 2015, after receiving recommendations from UAIC on ethnographers that the Tribe found acceptable, SBFCA advertised a Request for Proposals (RFP) for a period of 30 days. SBFCA advertised it publicly and mailed it to eight firms, including those named by UAIC. At the close of the advertisement period, no proposals had been received; the only responses were from firms who specifically stated that they declined to submit.

As a result, SBFCA contacted UAIC on June 30, 2015, and again on July 23, 2015, requesting that the Tribe assist in identifying and soliciting ethnographic proposals. The Tribe provided the names of several firms that it suggested be contacted, and on August 27, 2015, SBFCA re-advertised the RFP. By the close of the proposal period, September 14, 2015, SBFCA had received only one proposal.

Because the sole proposal submitted suggested a much broader scope of ethnographic research than anticipated, SBFCA discussed the general scope of the proposal with the Tribe. On October 12, 2015, during a meeting between SBFCA and UAIC, the Tribe indicated that it was consulting internally about the desired scope of ethnographic research. On November 3, 2015, UAIC reported to SBFCA that the Tribe supports a UAIC-only study that does not include input from other tribes. UAIC also indicated a desire to review the ethnographic RFP prior to recirculation.

Subsequently, SBFCA revised the RFP a third time and provided a copy to UAIC on December 10, 2015, to afford UAIC an opportunity to comment on the solicitation. On April 5, 2016, UAIC provided comments. SBFCA returned a revised RFP to UAIC on April 26, 2016. The same day, the Tribe returned the document to SBFCA with minor edits, and then on April 28, 2016, the RFP was released for a third time for 30 days. Upon the close of the proposal period on May 31, 2016, SBFCA had received three proposals.

SBFCA is currently reviewing the proposals and intends to submit them to the Tribe for review. The Tribe will have an opportunity to provide input on the selection of the firm and on the contracted scope of work.

2.4 Responses to Comments from Local Agencies

Letter L1 – Butte County Air Quality Management District, Jason Mandly, June 1, 2016

629 Entler Avenue, Suite 15
Chico, CA 95928

(530) 332-9400
(530) 332-9417 Fax



W. James Wagoner
Air Pollution Control Officer

Robert McLaughlin
Asst. Air Pollution Control Officer

June 01, 2016

Michael Bessette, P.E.
Director of Engineering
Sutter Butte Flood Control Agency
P.O. Box M
Yuba City, CA 95991

Re: Draft Supplemental Environmental Impact Report (Draft SEIR): Feather River West Levee Project

Dear Mr. Bessette,

Thank you for providing the Butte County Air Quality Management District (District) the opportunity to comment on the project noted above. Based on our review of the Draft SEIR, the District submits the following comments:

- L1-A
1. On page 3.5-4 of the Draft SEIR, the following statement is made: *The Gridley monitoring station data that was included in the 2013 FEIR was not available for this analysis because the California Air Resources Board no longer publishes data from that monitoring station.*
The California Air Resources Board publishes official data from the Gridley monitoring station (PM2.5 only) at <http://www.arb.ca.gov/adam/>. Official data reported from 2013 through 2015 include the State Annual Design Value for PM2.5 and the State Highest 24hr Average for PM2.5. Unofficial hourly data can also be found at: http://www.arb.ca.gov/qaweb/site.php?s_arb_code=04636.
 - L1-B 2. The District recognizes that implementation of Mitigation Measures AQ-MM-1 through AQ-MM-5 will reduce construction-related emissions associated with the proposed modifications. The District also recognizes that the proposed modifications will not result in a significant increase of air pollutants compared to what was discussed in the 2013 FEIR.

If you have any questions or comments, please contact the District at (530) 332-9400.

Sincerely,

 A handwritten signature in blue ink, appearing to read "Jason Mandly", is written over a faint, larger signature. Below the signature is the printed name and title of the signatory.

Jason Mandly
Associate Air Quality Planner

File 3452.B-1

Responses to Comment Letter L1

Response to Comment L1-A

Text was added to the Final SEIR to indicate that PM2.5 data at the Gridley monitoring station were published by the California Air Resources Board (ARB) from 2012–2014. Table 3.5-3 has been updated to reflect the inclusion of ARB's PM2.5 data from the Gridley monitoring station. These changes are shown in Chapter 3, *Draft SEIR Errata*. The additions clarify the air quality setting and do not result in any change in the findings of the air quality analysis for the project modifications.

Response to Comment L1-B

Comment noted. Thank you for taking the time to review the document.

This chapter contains revisions to the Draft SEIR that have been made in response to the comments received or to otherwise make minor changes to the Draft SEIR. The revisions are organized according to their order of appearance in the Draft SEIR.

3.1 Changes to the Draft SEIR

The revisions to the text of the Draft SEIR are identified by Draft SEIR page number and section number, as applicable. Where practical, revisions are included in the full paragraph where they are found in the Draft SEIR. Deletions from the Draft SEIR are shown as “strikeout” (e.g., ~~strikeout~~) text; additions are underlined (e.g., addition).

Chapter 1, Introduction

Page 1-2, under Section 1.1.2, *CEQA Addendum*, is revised as follows.

In June of 2015, SBFCA prepared an addendum to the 2013 FEIR to allow the California Department of Fish and Wildlife (DFW) to issue an incidental take permit for the FRWLP under Section 2081 of the California Endangered Species Act (CESA). The addendum addressed updates to two mitigation measures identified in the 2013 FEIR:

- Additional actions to avoid and minimize construction-related effects on giant garter snake (*Thamnophis gigas*) were added to *Mitigation Measure WILD-MM-6: Avoid and Minimize Construction Effects on Giant Garter Snake* in response to new information from the U.S. Geological Survey regarding how often the snakes utilize burrows during the active season.
- ~~Consistent with discussions with the United Auburn Indian Community of the Auburn Rancheria (UAIC),~~ *Mitigation Measure CR-MM-1: Perform Data Recovery to Retrieve Information Useful in Research* was modified to include alternative mitigation methods in lieu of data recovery.

Notices of Determination were filed with the State Clearinghouse by both SBFCA (on July 14, 2015) and DFW (on July 17, 2015) to approve the FRWLP with revised mitigation measures as described in the addendum, which is included as Appendix A of this Supplemental EIR.

Page 1-8, the last paragraph under Section 1.5.3, *Issues of Known or Expected Controversy*, is revised as follows.

Since the publication of the 2013 FEIR, one additional potentially controversial issue has come to light: the unanticipated discovery of human remains, grave goods and other artifacts, and tribal cultural resources during Project construction and ongoing discussions with UAIC (see summary above).

Page 1-6, Table 1-1 is revised as follows:

Table 1-1. Potential Responsible and Trustee Agencies for the FRWLP Project Modifications

Agency	Jurisdiction
Trustee Agency	
California Department of Parks and Recreation	State-owned parks and recreation areas
California Native American Heritage Commission	Tribal cultural resources
Responsible Agency	
U.S. Environmental Protection Agency*	CWA coordination
U.S. Fish and Wildlife Service*	Fish and wildlife and Endangered Species Act
National Marine Fisheries Service*	Anadromous fish and Endangered Species Act
U.S. Department of Agriculture*	Prime farmland conversion
California Department of Fish and Wildlife	Fish and wildlife Native plants designated as rare or endangered
Office of Historic Preservation	Historic and cultural resources
Central Valley Flood Protection Board	Levee modifications
Butte County Air Quality Management District/Feather River Air Quality Management District	Air quality
Regional Water Quality Control Board (#5)	Water quality and discharges to water bodies
California Department of Water Resources	State water and flood control interests
California State Lands Commission	State-owned "sovereign" lands beneath the Feather River
Sutter and Butte Counties/State Mining and Geology Board	County grading permits and surface mining and reclamation activities associated with borrow

¹—~~The California Native American Heritage Commission is not considered a trustee agency for CEQA purposes; however, it is listed here because they have been consulted regarding tribal cultural resources.~~

²* Federal agencies are not considered responsible agencies for CEQA purposes; however, they are listed here because permits may be needed from these agencies.

Chapter 2, Project Description

Figure 2-2, *Gridley Bridge Erosion Repair Area*, which appears after page 2-6, has a corrected station label, shown corrected here.

Section 3.0, Resource Analysis Baseline, Terminology, Structure, and Effect Summary

Pages 3.0-6 through 3.0-20, Tables 3.0-3 and 3.0-4, are modified as follows.

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Figure 2-2
Gridley Bridge Erosion Repair Area

Table 3.0-3. Summary of Changed, Substantially More Severe, and New Effects

Difference from FEIR	Document	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Effect FC-8: Decrease in Levee Erosion through Rock Slope Protection				
New	2013 FEIR	n/a	n/a	n/a
	SEIR	Beneficial	None required	Beneficial
Effect WQ-5: Allow the Spread or Introduction of Aquatic Invasive Species				
New	2013 FEIR	n/a	n/a	n/a
	SEIR	Significant	WQ-MM-2: Prevent the Spread or Introduction of Aquatic Invasive Species	Less than significant
Effect TRA-7: Temporary Changes to Navigation				
Changed	2013 FEIR	No effect	None required	No effect
	SEIR	Less than significant	None required	Less than significant
Effect VEG-1: Disturbance or Removal of Riparian Trees				
Substantially more severe	2013 FEIR	Significant	VEG-MM-1: Compensate for the Loss of Woody Riparian Trees VEG-MM-2: Install Exclusion Fencing and/or K-rails along the Perimeter of the Construction Work Area and Implement General Measures to Avoid Effects on Sensitive Natural Communities and Special-Status Species VEG-MM-3: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel VEG-MM-4: Retain a Biological Monitor	Significant and unavoidable (short term) Less than significant (long term after establishment of compensatory vegetation)
	SEIR	Significant	VEG-MM-1: Compensate for the Loss of Woody Riparian Trees VEG-MM-2: Install Exclusion Fencing and/or K-rails along the Perimeter of the Construction Work Area and Implement General Measures to Avoid Effects on Sensitive Natural Communities and Special-Status Species ¹ VEG-MM-3: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel VEG-MM-4: Retain a Biological Monitor	Significant and unavoidable (short term) Less than significant (long term after establishment of compensatory vegetation)

Difference from FEIR	Document	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Effect FISH-1: Loss or Degradation of Riparian and SRA Cover (including Critical Habitat)				
Changed	2013 FEIR	Less than significant	None required	Less than significant
	SEIR	Significant	FISH-MM-1: Compensate for Loss of California Central Valley Steelhead, Southern DPS North American Green Sturgeon, and Central Valley Spring-Run Chinook Salmon Critical Habitat	Less than significant
Effect CR-1: Effects on Identified and CRHR-eligible Archaeological Sites Resulting from Construction of Levee Improvements and Ancillary Facilities				
Substantially more severe	2013 FEIR	Significant	CR-MM-1: Perform Data Recovery or Alternative Mitigation to Retrieve Information Useful in Research ²	Significant and unavoidable
	SEIR	Significant	CR-MM-1: Perform Data Recovery or Alternative ² Mitigation to Retrieve Information Useful in Research	Significant and unavoidable
Effect CR-2: Potential to Disturb Unidentified or Known but not Located Archaeological Sites				
<u>Substantially more severe</u>	2013 FEIR	Significant	CR-MM-2: Complete Surveys Prior to Construction, Implement a Cultural Resources Discovery Plan, Provide Related Training to Construction Workers, and Conduct Construction Monitoring	Significant and unavoidable
	SEIR	Significant	CR-MM-2: Complete Surveys Prior to Construction, Implement a Cultural Resources Discovery Plan, Provide Related Training to Construction Workers, and Conduct Construction Monitoring ³	Significant and unavoidable
Effect CR-3: Potential to Disturb Human Remains, Including Known Tribal Cemeteries that Cannot be Located				
<u>Substantially more severe</u>	2013 FEIR	Significant	CR-MM-3: Monitor Culturally Sensitive Areas during Construction and Follow State and Federal Laws Governing Human Remains if Such Resources Are Discovered	Significant and unavoidable
	SEIR	Significant	CR-MM-3: Monitor Culturally Sensitive Areas during Construction and Follow State and Federal Laws Governing Human Remains if Such Resources Are Discovered ³	Significant and unavoidable

Difference from FEIR	Document	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Effect CR-5: Effects on Identified Tribal Cultural Resources, Including those that are Known but Cannot be Located				
New	2013 FEIR	n/a	n/a	n/a
	SEIR	Significant	CR-MM-1: Perform Data Recovery or Alternative Mitigation to Retrieve Information Useful in Research ² CR-MM-2: Complete Surveys Prior to Construction, Implement a Cultural Resources Discovery Plan, Provide Related Training to Construction Workers, and Conduct Construction Monitoring ³ CR-MM-3: Monitor Culturally Sensitive Areas during Construction and Follow State and Federal Laws Governing Human Remains if Such Resources Are Discovered ³ CR-MM-5: Design Alternatives ^{3,4} CR-MM-6: Tribal Consultation Policy ^{3,4} CR-MM-7: Repatriate Human Remains ^{3,4} CR-MM-8: Execute Develop a Burial Treatment Agreement with UAIC ^{3,4} CR-MM-9: Execute Develop a Cultural Resources Treatment Agreement with UAIC ^{3,4} CR-MM-10: Ethnographic Study ^{3,4}	Significant and unavoidable

n/a = not applicable

¹ Mitigation Measure VEG-MM-2 has been modified from the 2013 FEIR. The modifications to this mitigation measure are shown in underline and strikethrough for the reader’s convenience in Section 3.8, Vegetation and Wetlands, of the Draft SEIR.

² Mitigation Measure CR-MM-1 has been modified from the 2013 FEIR by the *Addendum to the Feather River West Levee Project Final Environmental Impact Report*, which is included in Appendix A of ~~this the Draft Supplemental EIR.~~ It has been further modified since publication of the Draft SEIR as shown in Appendix A, Revisions to Section 3.17, Cultural Resources, of the Final SEIR.

³ Mitigation Measures CR-MM-2 and CR-MM-3 have been modified from the Draft SEIR as shown in Appendix A, Revisions to Section 3.17, Cultural Resources, of the Final SEIR.

⁴ Mitigation Measures CR-MM-5, CR-MM-6, CR-MM-7, CR-MM-8, CR-MM-9, and CR-MM-10 are new mitigation measures that were not included in the 2013 FEIR, and have been modified since publication of the Draft SEIR as shown in Appendix A, Revisions to Section 3.17, Cultural Resources, of the Final SEIR.

Table 3.0-4. Summary of All Effects of FRWLP with Project Modifications

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
3.1, Flood Control and Geomorphic Conditions			
Effect FC-1: Change in Water Surface Elevations and Flood Safety Attributable to Project Design	No effect	None required	No effect
Effect FC-2: Increase in Channel Bed Incision and Bank Erosion Attributable to Project Design	No effect	None required	No effect
Effect FC-3: Decrease in Through- and Under-Seepage	Beneficial	None required	Beneficial
Effect FC-4: Decrease in Risk of Levee Failure as a Result of Erosion or Seepage	Beneficial	None required	Beneficial
Effect FC-5: Change in Stream Energy and Modification of Floodplain Scour/Deposition	No effect	None required	No effect
Effect FC-6: Alteration of the Existing Drainage Pattern of the Site or Area	Significant	FC-MM-1: Coordinate with Owners and Operators, Prepare Drainage Studies as Needed, and Remediate Effects through Project Design	Less than significant
Effect FC-7: Increase in Levee Slope Stability	Beneficial	None required	Beneficial
Effect FC-8: Decrease in Levee Erosion through Rock Slope Protection	Beneficial	None required	Beneficial
3.2, Water Quality and Groundwater Resources			
Effect WQ-1: Effects on Surface Water Quality from Excessive Turbidity or Total Suspended Solids	Less than significant	None required	Less than significant
Effect WQ-2: Release of Contaminants into Adjacent Surface Water Bodies from Construction-Related Hazardous Materials	Less than significant	None required	Less than significant
Effect WQ-3: Effects on Groundwater or Surface Water Quality Resulting from Contact with the Water Table	Significant	WQ-MM-1: Implement Provisions for Dewatering	Less than significant
Effect WQ-4: Effects on Groundwater Wells Due to Project Encroachment	Less than significant	None required	Less than significant

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Effect WQ-5: Allow the Spread or Introduction of Aquatic Invasive Species	Significant	WQ-MM-2: Prevent the Spread or Introduction of Aquatic Invasive Species	Less than significant
3.3, Geology, Seismicity, Soils and Mineral Resources			
Effect GEO-1: Beneficial Change in Levee Stability	Beneficial	None required	Beneficial
Effect GEO-2: Increase Exposure of People or Structures to Hazards Related to Strong Seismic Ground Shaking	Less than significant	None required	Less than significant
Effect GEO-3: Cause Accelerated Erosion and Sedimentation Resulting from Construction-Related Ground Disturbance	Less than significant	None required	Less than significant
Effect GEO-4: Cause Structural Damage and Injury Resulting from Development on Expansive Soils	Less than significant	None required	Less than significant
Effect GEO-5: Cause Accelerated Erosion and Sedimentation Resulting from Use of Imported Borrow	Less than significant	None required	Less than significant
Effect GEO-6: Loss, Injury, or Death from Slope Failure at Borrow Sites	Less than significant	None required	Less than significant
Effect GEO-7: Cause the Loss of a Known Mineral Resource of Regional or Local Importance as a Result of Construction of Proposed Project	Less than significant	None required	Less than significant
Effect GEO-8: Cause the Loss of a Known Mineral Resource of Regional or Local Importance as a Result of Placement of Proposed Project	Less than significant	None required	Less than significant

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
3.4, Transportation And Navigation			
Effect TRA-1: Temporary Increase in Traffic Volumes from Construction-Generated Traffic	Less than significant	None required	Less than significant
Effect TRA-2: Temporary Road Closures	Less than significant	None required	Less than significant
Effect TRA-3: Increase in Safety Hazards Attributable to Construction-Generated Traffic	Less than significant	None required	Less than significant
Effect TRA-4: Increase in Emergency Response Times	Less than significant	None required	Less than significant
Effect TRA-5: Inadequate Parking Supply to Meet Parking Demand for Construction Equipment and Construction Workers	Less than significant	None required	Less than significant
Effect TRA-6: Disruption of Alternative Transportation Modes as a Result of Temporary Road Closures	Less than significant	None required	Less than significant
Effect TRA-7: Temporary Changes to Navigation	Less than significant	None required	Less than significant
Effect TRA-8: Damage to Roadway Surfaces during Construction of Facilities	Less than significant	None required	Less than significant
3.5, Air Quality			
Effect AQ-1: Obstruction of an Applicable Air Quality Plan	Less than significant	None required	Less than significant

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Effect AQ-2: Exceedance of Applicable Thresholds for Construction Emissions	Significant	AQ-MM-1 Provide Advance Notification of Construction Schedule and 24-Hour Hotline to Residents AQ-MM-2: Implement Fugitive Dust Control Plan If Unmitigated Emissions Exceed PM10 or PM 2.5 Thresholds AQ-MM-3. General Measures to Reduce Emissions AQ-MM-4: Fleet-Wide Emission Reductions for Large Off-Road Equipment AQ-MM-5: Pay Fees to FRAQMD and BCAQMD Sufficient to Offset Annual Construction NO _x Emissions to Net Zero (0) for Emissions in Excess of General Conformity <i>de minimis</i> thresholds or to Quantities below Applicable FRAQMD and BCAQMD CEQA thresholds (where applicable)	Significant and unavoidable
Effect AQ-3: Exceedance of the Federal General Conformity Thresholds during Construction	Significant	AQ-MM-1 Provide Advance Notification of Construction Schedule and 24-Hour Hotline to Residents AQ-MM-2: Implement Fugitive Dust Control Plan If Unmitigated Emissions Exceed PM10 or PM 2.5 Thresholds AQ-MM-3. General Measures to Reduce Emissions AQ-MM-4: Fleet-Wide Emission Reductions for Large Off-Road Equipment	Less than significant
Effect AQ-4: Long-Term Operation and Maintenance Emissions of ROG, NO _x , and PM10	Less than significant	None required	Less than significant
Effect AQ-5: Exposure of Sensitive Receptors to Toxic Air Emissions	Less than significant	None required	Less than significant
Effect AQ-6: Exposure to Objectionable Odors from Diesel Exhaust	Less than significant	None required	Less than significant
3.6, Climate Change and Greenhouse Gas			
Effect CC-1: Increase in GHG Emissions during Construction Exceeding Threshold	Less than significant	CC-MM-1: Implement Measures to Minimize GHG Emissions during Construction	Less than significant
Effect CC-2: Conflict with an Applicable Plan, Policy, or Regulation Adopted for the Purpose of Reducing the Emissions of GHGs	Less than significant	None required	Less than significant

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
3.7, Noise			
Effect NOI-1: Exposure of Sensitive Receptors to Temporary Construction-Related Noise	Significant	NOI-MM-1: Employ Noise-Reducing Construction Practices	Significant and unavoidable
Effect NOI-2: Exposure of Sensitive Receptors to Temporary Construction-Related Vibration	Significant	NOI-MM-2: Employ Vibration-Reducing Construction Practices	Significant and unavoidable
3.8, Vegetation and Wetlands			
Effect VEG-1: Disturbance or Removal of Riparian Trees	Significant	VEG-MM-1: Compensate for the Loss of Woody Riparian Trees VEG-MM-2: Install Exclusion Fencing and/or K-rails along the Perimeter of the Construction Work Area and Implement General Measures to Avoid Effects on Sensitive Natural Communities and Special-Status Species ¹ VEG-MM-3: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel VEG-MM-4: Retain a Biological Monitor	Significant and unavoidable (short term) Less than significant (long term after establishment of compensatory vegetation)
Effect VEG-2: Loss of Wetlands and Other Waters of the United States as a Result of Project Construction	Significant	VEG-MM-2: Install Exclusion Fencing and/or K-rails along the Perimeter of the Construction Work Area and Implement General Measures to Avoid Effects on Sensitive Natural Communities and Special-Status Species ¹ VEG-MM-3: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel VEG-MM-4: Retain a Biological Monitor VEG-MM-5: Compensate for the Loss of Wetlands and Other Waters	Less than significant
Effect VEG-3: Disturbance or Removal of Protected Trees as a Result of Project Construction	Significant	VEG-MM-2: Install Exclusion Fencing and/or K-rails along the Perimeter of the Construction Work Area and Implement General Measures to Avoid Effects on Sensitive Natural Communities and Special-Status Species ¹ VEG-MM-3: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel VEG-MM-4: Retain a Biological Monitor VEG-MM-6: Compensate for Loss of Protected Trees	Less than significant

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Effect VEG-4: Potential Loss of Special-Status Plant Populations Caused by Habitat Loss Resulting from Project Construction	Significant	VEG-MM-2: Install Exclusion Fencing and/or K-rails along the Perimeter of the Construction Work Area and Implement General Measures to Avoid Effects on Sensitive Natural Communities and Special-Status Species ¹ VEG-MM-3: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel VEG-MM-4: Retain a Biological Monitor VEG-MM-7: Retain Qualified Botanists to Conduct Floristic Surveys for Special-Status Plants during Appropriate Identification Periods VEG-MM-8: Avoid or Compensate for Substantial Effects on Special-Status Plants	Significant and unavoidable
Effect VEG-5: Introduction or Spread of Invasive Plants as a Result of Project Construction	Less than significant	None required	Less than significant
Effect VEG-6: Conflict with Provisions of an Adopted HCP/NCCP or Other Approved Local, Regional, or State Habitat Conservation Plan	No effect	None required	No effect
3.9, Wildlife			
Effect WILD-1: Potential Mortality of or Loss of Habitat for Antioch Dunes Anthicid, Sacramento Anthicid, and Sacramento Valley Tiger Beetle	Significant	WILD-MM-1: Fence and Avoid Habitat for Antioch Dunes Anthicid, Sacramento Anthicid, and Sacramento Valley Tiger Beetle and Implement Protective Measures	Less than significant
Effect WILD-2: Potential Mortality or Disturbance of VELB and its Habitat (Elderberry Shrubs)	Significant	WILD-MM-2: Conduct VELB Surveys Prior to Elderberry Shrub Transplantation WILD-MM-3: Implement Measures to Protect VELB and its Habitat WILD-MM-4: Compensate for Effects on VELB and its Habitat	Less than significant
Effect WILD-3: Potential Mortality or Disturbance of Western Pond Turtle	Significant	WILD-MM-5: Conduct Preconstruction Surveys for Western Pond Turtle and Monitor Construction Activities if Turtles are Observed	Less than significant

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Effect WILD-4: Potential Disturbance or Mortality of and Loss of Suitable Habitat for Giant Garter Snake	Significant	WILD-MM-6: Avoid and Minimize Construction Effects on Giant Garter Snake ² WILD-MM-7: Avoid and Minimize Potential Maintenance Impacts on Suitable Habitat for Giant Garter Snake and Western Burrowing Owl WILD-MM-8: Compensate for Permanent Loss of Suitable Giant Garter Snake Habitat WILD-MM-9: Restore Temporarily Disturbed Giant Garter Snake Aquatic and Upland Habitat to Pre-Project Conditions WILD-MM-17: Implement Additional Protective Measures during Work in Suitable Habitat during the Giant Garter Snake Dormant Period ³ WILD-MM-18: Monitor Work in Giant Garter Snake Upland Habitat during the Active Period and/or Compensate for Temporary Loss of Suitable Giant Garter Snake Habitat ³	Less than significant
Effect WILD-5: Potential Loss or Disturbance of Nesting Swainson’s Hawk and Loss of Nesting and Foraging Habitat	Significant	WILD-MM-10: Conduct Vegetation Removal Activities outside the Breeding Season for Birds WILD-MM-11: Conduct Focused Surveys for Nesting Swainson’s Hawk prior to Construction and Implement Protective Measures during Construction WILD-MM-12: Compensate for the Permanent Loss of Foraging Habitat for Swainson’s Hawk	Less than significant
Effect WILD-6: Potential Mortality or Disturbance of Nesting Special-Status and Non-Special Status Birds and Removal of Suitable Breeding Habitat	Significant	WILD-MM-10: Conduct Vegetation Removal Activities outside the Breeding Season for Birds WILD-MM-12: Compensate for the Permanent Loss of Foraging Habitat for Swainson’s Hawk WILD-MM-13: Conduct Nesting Surveys for Special-Status and Non-Special Status Birds and Implement Protective Measures during Construction	Less than significant

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Effect WILD-7: Potential Loss or Disturbance of Western Burrowing Owl and Loss of Nesting and Foraging Habitat	Significant	WILD-MM-7: Avoid and Minimize Potential Maintenance Impacts on Suitable Habitat for Giant Garter Snake and Western Burrowing Owl WILD-10: Conduct Vegetation Removal Activities outside the Breeding Season for Birds WILD-MM-14: Conduct Surveys for Western Burrowing Owl prior to Construction and Implement Protective Measures if Found WILD-MM-15: Compensate for the Loss of Occupied Western Burrowing Owl Habitat	Less than significant
Effect WILD-8: Potential Injury, Mortality or Disturbance of Tree-Roosting Bats and Removal of Roosting Habitat	Significant	WILD-MM-10: Conduct Vegetation Removal Activities outside the Breeding Season for Birds WILD-MM-16: Identify Suitable Roosting Habitat for Bats and Implement Avoidance and Protective Measures ²	Less than significant
Effect WILD-9: Disturbance to or Loss of Common Wildlife Species and Their Habitats	Less than significant	None required	Less than significant
Effect WILD-10: Potential Disruption of Wildlife Movement Corridors	Less than significant	None required	Less than significant
Effect WILD-11: Conflict with Provisions of an Adopted HCP/NCCP or other Approved Local, Regional, or State Habitat Conservation Plan	No effect	None required	No effect
3.10, Fish and Aquatic Resources			
Effect FISH-1: Loss or Degradation of Riparian and SRA Cover (including Critical Habitat)	Significant	FISH-MM-1: Compensate for Loss of California Central Valley Steelhead, Southern DPS North American Green Sturgeon, and Central Valley Spring-Run Chinook Salmon Critical Habitat ³	Less than significant
Effect FISH-2: Construction-Related Erosion Resulting in Substantially Increased Sedimentation and Turbidity	Less than significant	None required	Less than significant
Effect FISH-3: Adverse Effects on Fish Health and Survival Associated with Potential Discharge of Contaminants during Construction Activities	Less than significant	None required	Less than significant

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Effect FISH-4: Adverse Effects Caused by Construction Equipment Noise and Vibration	Less than significant	None required	Less than significant
3.11, Agriculture, Land Use, and Socioeconomics			
Effect AG-1: Temporary Conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to Accommodate Construction Activities	Less than significant	None required	Less than significant
Effect AG-2: Irretrievable Conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance	Less than significant	None required	Less than significant
Effect AG-3: Conflict with Existing Zoning for Agricultural Use	Less than significant	None required	Less than significant
Effect AG-4: Conflict with Williamson Act Contract	Less than significant	None required	Less than significant
Effect AG-5: Loss of Agricultural Production	Less than significant	None required	Less than significant
Effect LU-1: Conflict with Applicable Land Use Plan, Policy, or Regulation	Less than significant	None required	Less than significant
Effect SOC-1: Employment Effects during Construction	Beneficial	None required	Beneficial
Effect SOC-2: Conflict with Applicable Land Use Plan, Policy, or Regulation	Less than significant	None required	Less than significant
3.12, Population, Housing, and Environmental Justice			
Effect POP-1: Displacement of Existing Housing Units	Significant	POP-MM-1: Property Acquisition Compensation and Resident Relocation Plan	Less than significant
Effect EJ-1: Result in a Disproportionately High and Adverse Human Health or Environmental Effect on Minority Populations and Low-Income Populations from Construction Activities	Less than significant	None required	Less than significant

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
3.13, Visual Resources			
Effect VIS-1: Result in Temporary Visual Effects from Construction	Less than significant	None required	Less than significant
Effect VIS-2: Adversely Affect a Scenic Vista	Less than significant	None required	Less than significant
Effect VIS-3: Substantially Degrade the Existing Visual Character or Quality of the Site and Its Surroundings	Less than significant	None required	Less than significant
Effect VIS-4: Create a New Source of Substantial Light or Glare That Would Adversely Affect Day and Nighttime Public Views	Less than significant	None required	Less than significant
3.14, Recreation			
Effect REC-1: Temporary Changes in Recreational Opportunities during Construction	Less than significant	None required	Less than significant
Effect REC-2: Long-Term or Permanent Loss of Recreation Opportunities in the Levee Corridor	Less than significant	None required	Less than significant
3.15, Utilities and Public Services			
Effect UTL-1: Potential Temporary Disruption of Irrigation/Drainage Facilities and Agricultural and Domestic Water Supply	Significant	UTL-MM-1: Coordinate with Water Supply Users before and during All Water Supply Infrastructure Modifications and Implement Measures to Minimize Interruptions of Supply	Less than significant
Effect UTL-2: Damage of Public Utility Infrastructure and Disruption of Service	Significant	UTL-MM-2: Verify Utility Locations, Coordinate with Utility Providers, Prepare a Response Plan, and Conduct Worker Training	Less than significant
Effect UTL-3: Increase in Solid Waste Generation	Less than significant	None required	Less than significant
Effect UTL-4: Increase in Emergency Response Times	Less than significant	None required	Less than significant

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
3.16, Public Health and Environmental Hazards			
Effect PH-1: Temporary Exposure to or Release of Hazardous Materials during Construction	Less than significant	None required	Less than significant
Effect PH-2: Exposure of the Environment to Hazardous Materials during Ground-Disturbing Activities	Significant	PH-MM-1: Complete Phase I and Phase II (if Necessary) Environmental Site Assessment Investigations and Implement Required Measures PH-MM-2: Employment of a Toxic Release Contingency Plan	Less than significant
Effect PH-3: Temporary Exposure to Safety Hazards from the Construction Site	Significant	PH-MM-3: Implementation of Construction Site Safety Measures PH-MM-4: Implementation of an Emergency Response Plan	Less than significant
Effect PH-4: Exposure of People or Structures to Increased Flood Risk	Beneficial	None required	Beneficial
3.17, Cultural Resources			
Effect CR-1: Effects on Identified and CRHR-eligible Archaeological Sites Resulting from Construction of Levee Improvements and Ancillary Facilities	Significant	CR-MM-1: Perform Data Recovery or Alternative Mitigation to Retrieve Information Useful in Research ⁴	Significant and unavoidable
Effect CR-2: Potential to Disturb Unidentified or <u>Known but not Located</u> Archaeological Sites	Significant	CR-MM-2: Complete Surveys Prior to Construction, Implement a Cultural Resources Discovery Plan, Provide Related Training to Construction Workers, and Conduct Construction Monitoring ⁵	Significant and unavoidable
Effect CR-3: Potential to Disturb Human Remains, <u>Including Known Tribal Cemeteries that Cannot be Located</u>	Significant	CR-MM-3: Monitor Culturally Sensitive Areas during Construction and Follow State and Federal Laws Governing Human Remains if Such Resources Are Discovered ⁵	Significant and unavoidable
Effect CR-4: Direct and Indirect Effects on Built Environment Resources Resulting from Construction Activities	Significant	Mitigation Measure CR-MM-4: Complete Inventory of Built Environment Resources in Inaccessible Parcels, Evaluate Identified Properties, Assess Effects, and Prepare Treatment to Resolve and Mitigate Significant Effects ⁵	Significant and unavoidable

Effect	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Effect CR-5: Effects on Identified Tribal Cultural Resources, <u>Including those that are Known but Cannot be Located</u>	Significant	CR-MM-1: Perform Data Recovery or Alternative Mitigation to Retrieve Information Useful in Research ⁴ CR-MM-2: Complete Surveys Prior to Construction, Implement a Cultural Resources Discovery Plan, Provide Related Training to Construction Workers, and Conduct Construction Monitoring ⁵ CR-MM-3: Monitor Culturally Sensitive Areas during Construction and Follow State and Federal Laws Governing Human Remains if Such Resources Are Discovered ⁵ CR-MM-5: Design Alternatives ^{3,6} CR-MM-6: Tribal Consultation Policy ^{3,6} CR-MM-7: Repatriate Human Remains ^{3,6} CR-MM-8: Execute <u>Develop a Burial Treatment Agreement with UAIC</u> ^{3,6} CR-MM-9: Execute <u>Develop a Cultural Resources Treatment Agreement with UAIC</u> ^{3,6} CR-MM-10: Ethnographic Study ^{3,6}	Significant and unavoidable

¹ Mitigation Measure VEG-MM-2 has been modified from the 2013 FEIR. The modifications to this mitigation measure are shown in underline and strikeout for the reader's convenience in Section 3.8, *Vegetation and Wetlands*.

² Mitigation Measures WILD-MM-6 and WILD-MM-16 have been modified from the 2013 FEIR. The modifications to these mitigation measures are shown in underline and strikeout for the reader's convenience in Section 3.9, *Wildlife*.

³ Mitigation Measures WILD-MM-17, WILD-MM-18, and FISH-MM-1, CR-MM-5, CR-MM-6, CR-MM-7, CR-MM-8, CR-MM-9, and CR-MM-10 are new mitigation measures that were not included in the 2013 FEIR.

⁴ Mitigation Measure CR-MM-1 has been modified from the 2013 FEIR by the *Addendum to the Feather River West Levee Project Final Environmental Impact Report*, which is included in Appendix A of ~~this the Draft Supplemental EIR. It has been further modified since publication of the Draft SEIR as shown in Appendix A, Revisions to Section 3.17, Cultural Resources, of the Final SEIR.~~

⁵ Mitigation Measures CR-MM-2, CR-MM-3, and CR-MM-4 have been modified from the Draft SEIR as shown in Appendix A, Revisions to Section 3.17, Cultural Resources, of the Final SEIR.

⁶ Mitigation Measures CR-MM-5, CR-MM-6, CR-MM-7, CR-MM-8, CR-MM-9, and CR-MM-10 are new mitigation measures that were not included in the 2013 FEIR, and have been modified since publication of the Draft SEIR as shown in Appendix A, Revisions to Section 3.17, Cultural Resources, of the Final SEIR.

Section 3.5, Air Quality

Pages 3.5-4 through 3.5-5, under *Local Air Quality Conditions*, are revised as follows.

The existing air quality conditions in the affected area can be characterized by monitoring data collected in the region. The air quality monitoring station in Sutter County nearest to the action areas is the Yuba City-Almond Street station (Yuba City monitoring station), which is located in Yuba City, 13.6 miles and 15.8 miles from the Laurel Avenue and Gridley Bridge Erosion sites, respectively. The majority of the Gridley monitoring station data that was included in the 2013 FEIR was not available for this analysis because the California Air Resources Board no longer publishes data (except for PM2.5 data) from that monitoring station.

Table 3.5-3 summarizes updated air quality monitoring data from the Yuba City monitoring station during 2012–2014, which are the last 3 years for which complete data are available. The 2013 FEIR summarized data for the years 2007–2009. As shown in Table 3.5-3, the Yuba City monitoring station has experienced occasional violations of the state 1-hour O₃ and 8-hour O₃ standards and national PM2.5 standards, and more frequent violations of the state PM10 standards. A comparison of the Yuba City monitoring station data used in the 2013 FEIR (i.e., 2007–2009) and the 2012–2014 data determined that there was one violation of the state 1-hour O₃ standard during 2007–2009 and that there were two violations during 2012–2014. For the national and state 8-hour O₃ standards from 2007–2009, there were five and nine violations, respectively. During the 2012–2014 monitoring period, there was one violation of the state 8-hour O₃ standard and there were five violations of the national 8-hour O₃ standard. No exceedances of the national PM10 standard were recorded during either monitoring period. However, there were 5 violations of the state PM10 standard from 2007–2009 and 10 violations from 2012–2014. Twenty violations of the national PM2.5 standard were experienced at the Yuba City monitoring station during the 2007–2009 monitoring period; however, there were only three violations of the standard during the 2012–2014 monitoring period.

Table 3.5-3. Ambient Air Quality Monitoring Data Measured at the Yuba City Monitoring Station

Pollutant Standards	Yuba City			Gridley		
	2012	2013	2014	2012	2013	2014
1-hour O₃ (ppm)						
Maximum 1-hour concentration	0.083	0.095	0.103	=	=	=
1-hour California designation value	0.08	0.08	0.08	=	=	=
1-hour expected peak day concentration	0.079	0.080	0.083	=	=	=
Number of days standard exceeded: ^a						
CAAQS 1-hour (>0.09 ppm)	0	1	1	=	=	=
8-hour O₃ (ppm)						
National maximum 8-hour concentration	0.073	0.067	0.088	=	=	=
National second-highest 8-hour concentration	0.073	0.063	0.071	=	=	=
State maximum 8-hour concentration	0.074	0.067	0.088	=	=	=
State second-highest 8-hour concentration	0.074	0.064	0.071	=	=	=
8-hour national designation value	0.066	0.064	0.066	=	=	=
8-hour California designation value	0.074	0.070	0.074	=	=	=
8-hour expected peak day concentration	0.074	0.073	0.075	=	=	=
Number of days standard exceeded: ^a						
NAAQS 8-hour (>0.075 ppm)	0	0	1	=	=	=
CAAQS 8-hour (>0.070 ppm)	2	0	3	=	=	=
CO (ppm)						
National ^b maximum 8-hour concentration	-	-	-	=	=	=
National ^b second-highest 8-hour concentration	-	-	-	=	=	=
California ^c maximum 8-hour concentration	-	-	-	=	=	=
California ^c second-highest 8-hour concentration	-	-	-	=	=	=
Maximum 1-hour concentration	-	-	-	=	=	=
Second-highest 1-hour concentration	-	-	-	=	=	=
Number of days standard exceeded: ^a						
NAAQS 8-hour (≥9.0 ppm)	-	-	-	=	=	=
CAAQS 8-hour (≥9.0 ppm)	-	-	-	=	=	=
NAAQS 1-hour (≥35.0 ppm)	-	-	-	=	=	=
CAAQS 1-hour (≥20.0 ppm)	-	-	-	=	=	=
Particulate matter (PM₁₀)^d (µg/m³)						
National ^b maximum 24-hour concentration	60.8	56.1	45.1	=	=	=
National ^b second-highest 24-hour concentration	42.5	48.0	44.4	=	=	=
State ^c maximum 24-hour concentration	63.0	58.4	77.6	=	=	=
State ^c second-highest 24-hour concentration	42.9	48.7	66.3	=	=	=
State annual average concentration ^e	20.3	-	-	=	=	=
National annual average concentration	19.8	23.9	21.5	=	=	=
Number of days standard exceeded: ^a						
NAAQS 24-hour (>150 µg/m ³) ^f	0	0	0	=	=	=
CAAQS 24-hour (>50 µg/m ³) ^f	1	1	8	=	=	=
Particulate matter (PM_{2.5}) (µg/m³)						
National ^b maximum 24-hour concentration	41.0	33.4	41.8	=	=	=
National ^b second-highest 24-hour concentration	31.8	28.2	37.6	=	=	=
State ^c maximum 24-hour concentration	50.2	39.3	45.3	<u>36.4</u>	<u>37.7</u>	<u>44.0</u>
State ^c second-highest 24-hour concentration	39.4	37.4	41.8	<u>31.1</u>	<u>35.1</u>	<u>42.6</u>
National annual designation value	6.9	7.7	-	=	=	=
National annual average concentration	6.9	8.2	-	=	=	=
State annual designation value	14	14	-	<u>9</u>	=	=
State annual average concentration ^e	9.9	-	-	<u>7.7</u>	=	=
Number of days standard exceeded: ^a						
NAAQS 24-hour (>35 µg/m ³) ^f	1	-	2	=	=	=

CAAQS = California Ambient Air Quality Standards.
CO = carbon monoxide.
NAAQS = National Ambient Air Quality Standards.
O₃ = ozone.

Section 3.8, Vegetation and Wetlands

Figure 3.8-2, *Land Cover Types at the Gridley Bridge Erosion Repair Area*, which appears after page 3.8-2, has a corrected station label, shown corrected here.

Section 3.9, Wildlife

Page 3.9-7, Effect WILD-3, under *Gridley Bridge Erosion Repair* and *CEQA Finding*, is corrected as follows.

Gridley Bridge Erosion Repair

Suitable upland habitat (grassland and riparian habitats) and aquatic habitat (Feather River) for western pond turtle are present within the Gridley Bridge Erosion Repair construction limits. Although most of the construction activity types at the Gridley Bridge Erosion site would be the same as those for Alternative 3, there would be some differences that could affect aquatic habitat for western pond turtle. Construction of the Gridley Bridge Erosion Repair has the potential for fill material to enter the river and may require the use of barges originating from outside the project area that could spread or introduce aquatic invasive species. SBFCA will implement environmental commitments to protect water quality in the Feather River: preparing a Stormwater Pollution Prevention Plan (Section 2.4.12 of the 2013 FEIR) and conducting turbidity monitoring (Section 2.4.15 of the 2013 FEIR). SBFCA will also implement Mitigation Measure WQ-MM-2 to, and reducing or eliminating the spread or introduction of aquatic invasive species (Described under Effect WQ-5 in Section 3.2-5, *Water Quality and Groundwater Resources*, 2-3-1 of this Supplemental EIR). With implementation of the environmental commitments and mitigation measure to protect aquatic habitat at the Gridley Bridge Erosion site, the potential effects of the construction activities on western pond turtle would be the same as those described in the 2013 FEIR.

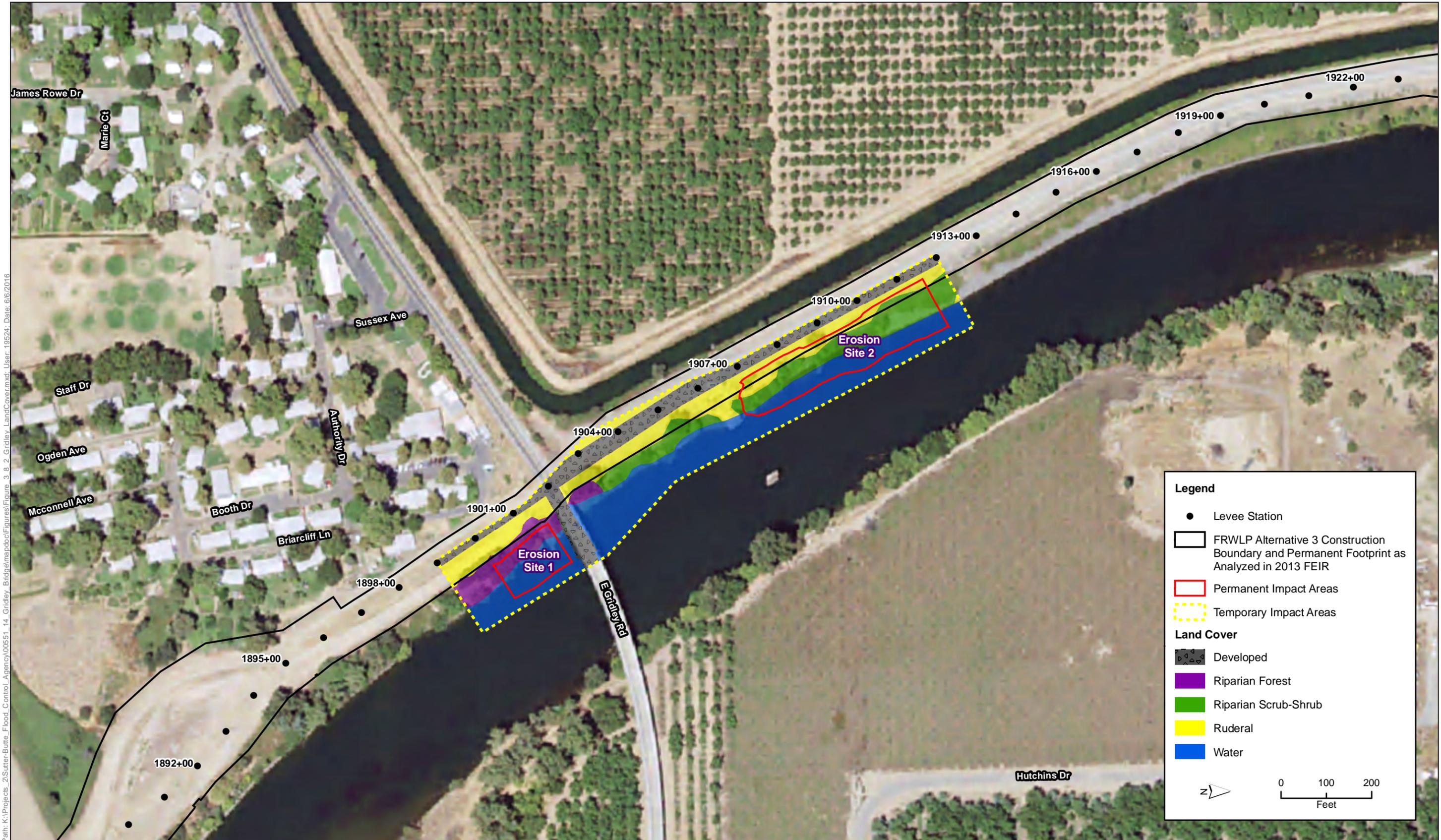
CEQA Finding

With implementation of Mitigation Measures WILD-MM-5 and WQ-MM-2 and the environmental commitments listed above for the FRWLP and Gridley Bridge Erosion ~~Repair~~, this effect would remain less than significant. The effect would be no more severe than disclosed in the 2013 FEIR.

Section 3.10, Fish and Aquatic Resources

Pages 3.10-6 to 3.10-7, Mitigation Measure FISH-MM-1 is corrected as follows.

SBFCA will implement off-site measures to compensate for permanent losses of riparian vegetation and SRA cover on the waterside slope of the levee. Compensation for riparian and SRA cover losses will be achieved through implementation of the riparian mitigation and monitoring plan described under Mitigation Measure VEG-MM-1 in the 2013 FEIR. Specific to the Gridley Bridge Erosion Repair, SBFCA will compensate for the permanent loss of 0.30 acre of riparian scrub-shrub habitat, 0.02 acre of riparian forest habitat, and 106 linear feet (0.2 acre) of SRA cover by purchasing mitigation credits at a 2:1 ratio at Wildland's Freemont Landing Conservation Bank in Yolo County to fulfill the requirements of ESA Section 7 consultation. Mitigation credits will be purchased prior to commencement of ~~within 6 months after construction activities have ended.~~



Path: K:\Projects_2\Sutter-Butte_Flood_Control_Agency\00551_14_Gridley_Bridge\mapdoc\Figures\Figure 3.8.2_Gridley_LandCover.mxd; User: 19524; Date: 6/6/2016

Figure 3.8-2
Land Cover Types at the Gridley Bridge Erosion Repair Area

Section 3.17, Cultural Resources

Numerous modifications have been made to Section 3.17, *Cultural Resources*. The entire section is reprinted, with changes shown, in Appendix A.

Chapter 4, Growth-Inducing and Cumulative Effects

Pages 4-7 through 4-8, under Section 4.2.3.17, *Cultural Resources*, has been modified as follows.

Since certification of the 2013 FEIR, new information has become available that changes the context of past, present, and reasonably probable future projects that informed the 2013 FEIR. Specifically, construction work on the FRWLP uncovered a significant volume of cultural resources whose existence had been assumed, but not verified before that time of great cultural value to UAIC. The identification of the Wollok Prehistoric District described in Section 3.17 established the existence of a tribal cultural resource that was unknown when the 2013 FEIR was certified and, more importantly, represents a resource that extends over a large area and that has therefore been adversely affected by many past and present activities. Probable future activities can be expected to adversely affect it as well.

Past and present actions within Sutter County have adversely affected ~~the Wollok Prehistoric District~~ sacred sites and cemeteries through the introduction of man-made structures and the direct loss of cultural materials. The FRWLP construction has contributed to this loss; despite implementation of the mitigation measures identified in Section 3.17, future construction including the Laurel Avenue Critical Repair will/would also contribute to the loss. Past, present, and reasonably foreseeable SBFCA projects can include general repairs to the levee system, such as slope protection, construction of slurry cutoff walls, seepage berms, and similar actions that serve to keep the levee system functioning as a flood protection resource. Additional effects, not associated with SBFCA work, will occur as a result of future development in the portion of the Wollok Prehistoric District beyond the Yuba Feather River, as indicated by local general plans and other levee improvement work within UAIC traditional territory. Although the potential for urbanization of the area is low, agricultural activities and rural residential development also contribute to adverse effects by introducing new structures into the environment and by physically disturbing recorded and currently unknown cultural features.

Because the modified project could result in a significant and unavoidable effect on cultural resources and tribal cultural resources, it could make a significant contribution to this cumulative effect. ~~While~~ Although mitigation is identified for the modified project, this mitigation does not reduce the contribution to less than significant. For these reasons, the modified project's contribution to this effect is cumulatively considerable (i.e., significant and unavoidable). The mitigation measures described above address the modified project's contribution to the cumulative effect.

The cumulative context for the built environment is unchanged from the 2013 FEIR. From the point of view of historical resources and the built environment, the modified project would be in keeping with the resource's historical integrity per the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines. The environmental consequences from the Laurel Avenue Critical Repair and Gridley Bridge Erosion Repair would result in less-than-significant effects on built environment resources for these reasons. The

contribution of the effects from the proposed project modifications would not increase the cumulative effect to a considerable or significant level because the resource would continue to function as a flood protection resource and thus retain its historical integrity.

Appendix A

Revisions to Section 3.17, *Cultural Resources*

3.17 Cultural Resources

This section provides updates to the cultural resources analysis pertinent to the proposed project modifications, including additions to the environmental setting. Cultural resources is an umbrella term for several types of resources that can qualify as CEQA historical resources, including built environment, archaeological resources, and tribal cultural resources. ~~The~~ This updated cultural resources analysis incorporates tribal cultural resources, which became ~~resources~~ a new type of resource requiring evaluation under CEQA with the ~~passing~~ passage of Assembly Bill (AB) 52 ~~since~~, which occurred after the certification of the 2013 FEIR. Accordingly, and as part of AB 52 consultation, the updated cultural resources analysis also considers new information, including that related to the United Auburn Indian Community (UAIC) regarding the Wollok Prehistoric District, a specific burial areas, and tribal cultural resource ~~resources~~ resources that ~~was~~ were not known ~~and could not have been known~~ at the time the 2013 FEIR was certified.

This section also evaluates previously analyzed effects as they pertain to the proposed project modifications. Implementing the proposed project modifications would not make the significant and unavoidable effects to historic-era (non-Native American) built environment resources disclosed in the 2013 FEIR substantially more severe; however, implementation of the proposed project modifications would result in substantially more severe effects on archaeological resources and a new significant and unavoidable effect on tribal cultural resources.

3.17.1 Affected Environment

This section describes the affected environment for cultural resources, including tribal cultural resources, in the affected areas for the proposed project modifications not previously discussed in the 2013 FEIR.

Key sources of new data and information used in the preparation of this section are listed below.

- Pedestrian archaeological and tribal survey of the Laurel Avenue ~~repair area~~ site with UAIC, which was conducted on September 2 and 3, 2015.
- Geophysical surveys using remote sensing at the Laurel Avenue site, and monitored by UAIC, which were conducted August 21–25, 2015, and February 3–5, 2016.
- Subsurface exploratory testing for archaeological sites at the Laurel Avenue site, monitored by UAIC, which were conducted from February 3–5, 2016.
- Pedestrian archaeological and tribal surveys at the Laurel Avenue site with UAIC, which were conducted on April 19, 2016.
- Pedestrian archaeological and tribal surveys of the Gridley Bridge Erosion ~~repair area~~ site with Enterprise Rancheria, which ~~was~~ were conducted on November 12, 2015.
- Searches of the Sacred Lands File by the California Native American Heritage Commission (NAHC) (~~searches requested of the NAHC~~) on February 29, 2016, and ~~again on~~ again on March 7, 2016), both of which failed to identify sacred lands within the project area.
- Records search data obtained on ~~May 13, 2015~~, June 22, 2011, from the California Historical Resources Information System's Northeast Information Center, ~~which was~~ and checked again on May 13, 2015, for updated information about previously recorded resources within the affected areas.

- Investigative Report Concerning the Feather River West Levee Project by the NAHC, dated March 19, 2015.
- ~~NAHC's November 3, 2015, letter to the Sutter Butte Flood Control Agency (SBFCA), care of ICF International (ICF), commenting on the Notice of Preparation (NOP) for this Supplemental EIR.~~
- March 31, 2015 letter from the Advisory Council on Historic Preservation (ACHP) relative to the FRWLP, offering guidance on burial treatment and alternative mitigation.
- Transcript of NAHC's Public Meeting on April 17, 2015.
- NAHC's April 21, 2015, letter regarding "Feather River West Levee Project, Native American Heritage Commission's Findings of Fact and Proposed Mitigation Measures Pursuant to Public Resources Code Section 5097.97" (Robinson 2015).
- UAIC's November 3, 2015, letter to SBFCA, and the NAHC's November 3, 2015, letter to SBFCA, care of ICF International (ICF), commenting on the Notice of Preparation (NOP) for this Supplemental EIR.
- Tribal consultation with the United Auburn Indian Community (UAIC) under AB 52 that has occurred since November 13, 2015, including meetings on January 8, 2016, and February 12, May 27, and June 3, 2016, and subsequent correspondence, including the confidential maps and record searches that have been provided to SBFCA by UAIC.
- Separate tribal consultation and additional meetings that have occurred between April 2015 and present to negotiate a Settlement Agreement with UAIC as it relates to the overall FRWLP.

3.17.1.1 Regulatory Setting

This section provides an update for Federal regulatory information, and summarizes key state regulatory information that is new or changed since publication of the 2013 FEIR that may apply to the proposed project modifications. There is no new or changed local regulatory information for cultural resources.

Federal

There is no new or changed Federal regulatory information since publication of the 2013 FEIR that would apply to the proposed project modifications. However, the National Historic Preservation Act regulations for Section 106 have been moved to a different section of the Federal Code since they were cited in the 2013 FEIR. Effective December 19, 2014, those regulations were moved from Title 16 to Title 54 of the United States Code (USC).

State

Assembly Bill 52

AB 52 (Chapter 532, Statutes of 2014) establishes a formal consultation process for California Native American tribes as part of CEQA and equates significant impacts on tribal cultural resources with significant environmental impacts (Public Resources Code [PRC] Section 21084.2). PRC Section 21074 defines tribal cultural resources as follows:

- Sites, features, places, sacred places, and objects with cultural value to descendant communities or cultural landscapes defined in size and scope that are:

- Included in or eligible for listing in the California Register of Historical Resources (CRHR); or,
- Included in a local register of historical resources.
- A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1.

Sacred places can include Native American sanctified cemeteries, places of worship, religious or ceremonial sites, and sacred shrines. In addition, both unique and non-unique archaeological resources, as defined in PRC Section 21083.2, can be tribal cultural resources if they meet the criteria detailed above. The lead agency relies upon substantial evidence to make the determination that a resource qualifies as a tribal cultural resource when it is not already listed in the CRHR or a local register.

AB 52 defines a “California Native American Tribe” (Tribe) as a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission (PRC Section 21073). Under AB 52, formal consultation with Tribes is required prior to determining the level/type of environmental document if a Tribe has requested to be informed by the lead agency of proposed projects and if the Tribe, upon receiving notice of the project, accepts the opportunity to consult within 30 days of receipt of the notice. AB 52 also requires that consultation, if initiated, address project alternatives and mitigation measures for significant effects, if specifically requested by the Tribe. AB 52 states that consultation is considered concluded when either the parties agree to measures to mitigate or avoid a significant effect to tribal cultural resources, or when either the Tribe or the agency concludes that mutual agreement cannot be reached after making a reasonable, good-faith effort. Under AB 52, any mitigation measures recommended by the agency or agreed upon with the Tribe may be included in the final environmental document and in the adopted mitigation monitoring program if they were determined to avoid or lessen a significant impact on a tribal cultural resource. If the recommended measures are not included in the final environmental document, then the lead agency must consider the four mitigation methods described in PRC Section 21084.3 (PRC 21082.3(e)). Any information submitted by a Tribe during the consultation process is considered confidential and is not subject to public review or disclosure. It will be maintained in a confidential administrative record or published in a confidential appendix to the environmental document unless the Tribe consents to disclosure of all or some of the information to the public.

3.17.1.2 Environmental Setting

This section provides updated environmental setting information related to the proposed project modifications. Included is a summary of new finds of significant cultural materials that were encountered during FRWLP construction activities that were initiated after certification of the 2013 FEIR, a description of archaeological pedestrian surveys conducted after certification of the 2013 FEIR, and the results of tribal cultural resources consultations per AB 52. Collectively, these represent substantial new information regarding the proposed project’s potential to adversely affect tribal cultural resources.

ICF identified no new historic-era built environment resources within the study areas for the Laurel Avenue Critical Repair and the Gridley Bridge Erosion Repair. As such, there is no new setting information; however, a discussion of existing built environment resources relevant to the proposed project modifications is provided below.

New Finds and Information

After the certification of the 2013 FEIR, construction activities commenced on the FRWLP. During ground-disturbing activities in 2014, a number of archaeological resources were unearthed, ~~which were not visible during project planning surveys~~ including resources subject to PRC section 5097.98. Specific information about the cultural resources found during construction is sensitive and is not subject to public disclosure (PRC Section 21082.3); ~~therefore, such information is summarized and generalized in this document.~~

~~These~~ Following the discoveries in 2014, the NAHC identified UAIC as the Most Likely Descendant (MLD) for all of the resources were determined, in subject to PRC section 5097.98 located in the portion of the project area within Sutter County (Nisenan sites). The NAHC named Enterprise Rancheria as the MLD for resources in the portion of the project area within Butte County (Konkow sites).

Through consultation with UAIC and Enterprise Rancheria, respectively, the resources in both counties were determined to be both archaeological and as well as associated with previous Native American use of, and present day association with, the property. In accordance with applicable state and Federal law, work at those locations halted and consultation between and with the U.S. Army Corps of Engineers (USACE), NAHC, UAIC, and Enterprise Rancheria ensued. Disputes arose between SBFCA, USACE, and UAIC regarding the appropriate treatment of cultural resources discovered in Sutter County under PRC section 5097.98(b) and regarding the interaction between state law and Federal law with respect to cultural resources. In January 2015, the NAHC initiated an investigation of FRWLP pursuant to PRC sections 5097.9, 5097.94(g), and 5097.97. This eventually led to the NAHC's issuance of a finding of fact (Robinson 2015), which found the following) and stop-work order by the USACE for all work in both Sutter and Butte Counties. The NAHC's report concluded the following:

- ~~The~~ the presence of the Wollok Prehistoric District¹, which encompasses the FRWLP from the confluence of Honcut Creek and the Feather River to the confluence of the Feather River and the Sacramento River, and which includes the Feather River and its banks;
- ~~The~~ that the area of the Wollok Prehistoric District includes SBFCA's property;²
- ~~The~~ that the Wollok Prehistoric District is a traditional cultural property and a traditional cultural landscape;
- ~~The~~ that the Wollok Prehistoric District includes Native American sanctified cemeteries, places of worship, religious and/or ceremonial sites, and/or sacred shrines; and
- ~~Aspects~~ that aspects of the Wollok Prehistoric District have been damaged or at risk of further damage from project activities associated with the FRWLP.

The NAHC adopted and recommended five mitigation measures for the FRWLP, ~~numbered as follows (Robinson 2015):~~

¹ The UAIC has subsequently referred to this as the "Wollok District"

² Property is only temporarily under the ownership of SBFCA for the purpose of construction of the FRWLP. It will be returned to local and state maintenance agencies upon completion of the project.

~~SBFCA will analyze and explore with the UAIC design alternatives on all components of the Project that could avoid or lessen the potential damage to the cemeteries, burial grounds and ceremonial sites before ground-disturbing activities commence and/or begin.~~

~~With and in agreement with the culturally affiliated tribes to the FRWLP, SBFCA must develop a tribal consultation policy.~~

~~SBFCA shall immediately repatriate all human remains, burial goods and soils from the project site for which UAIC is the designated MLD, without further scientific testing or analysis, to the UAIC, and to allow for reburial as close as possible to the original location from which they were obtained.~~

~~SBFCA will execute a Burial Treatment Agreement with UAIC based on the draft agreement authored by UAIC. The Agreement will govern the disposition and treatment of all human remains, objects, and soil disturbed or removed from the project areas for which UAIC has been or is later designated as the MLD. It is recommended that the Burial Treatment Agreement include provisions for reburial without scientific handling, testing, or analysis as close as possible to the original location from which they were obtained.~~

~~SBFCA shall execute a Cultural Resources Treatment Agreement with UAIC, which will include a tribal monitoring program for UAIC representatives to participate in all survey and ground-disturbing work performed on the FRWLP to which they are culturally affiliated, and which will also include a long-term management plan for the ongoing protection of the culturally sensitive resources. This Agreement shall be executed prior to ground-disturbing work commencing on the FRWLP.~~

Concurrently, the USACE, in compliance with a separate federal law (NHPA Section 106), prepared a draft Historic Properties Treatment Plan (HPTP) and several draft Resource Specific Treatment Plans (RSTPs) for sites damaged during construction. These plans are required by the Programmatic Agreement for FRWLP. Revision of these documents is ongoing.

~~Consultation between SBFCA and UAIC resumed in March 2015 in an effort to address the NAHC's mitigation measures, and to otherwise reach settlement with UAIC. Meetings were held between SBFCA and its consultants, and the UAIC on the following dates: April 34, April 10, April 16, May 5, June 9, July 23, October 12, November 2, November 30, and December 10, 2015, and January 8, January 28, February 12, March 10, and March 29, March 31, April 26, April 28, May 4, May 9, May 10, May 24, May 26, and June 3, 2016. Consultation is ongoing as of the date of the release of this Supplemental EIR.~~

~~Once SBFCA and UAIC agreed in principle to the issues raised by UAIC and the solutions thereto, consultation included development of focused on developing a comprehensive Settlement Agreement between SBFCA and UAIC (Settlement Agreement) that included includes a number of additional compensatory protective and restitutive measures beyond those mitigation measures recommended by the NAHC, and beyond what is required by CEQA and NHPA Section 106. The terms of the Settlement Agreement and its related documentation are confidential, but in general terms included include the following: a limited amount of excavation for archaeological data recovery an apology from SBFCA to UAIC; repatriation to and reburial by UAIC of all artifacts and cultural material by found in Sutter County for which UAIC was determined by NAHC to be MLD; development of a confidential-tribal cultural resources Cultural Resources Treatment Agreement, Burial Treatment Agreement, and Tribal Monitoring Program; a Work Plan for Tribal Surveys; compensatory mitigation identification of actions intended to mitigate the cultural and historical damage to UAIC caused by the destruction of the sacred sites, including the preparation of a project~~

ethnographic study; development of an expanded contractor awareness training program; and preparation of a project ethnographic study. adoption of a formal tribal consultation policy; and identification of measures intended to avoid or minimize tribal cultural resources within the project from being further disturbed. The Settlement Agreement is being negotiated.

As mentioned above, the The NAHC's five mitigation measures are being met through the following actions: NAHC's acceptance of them is pending.

1. On work completed to date during prior construction in Sutter County, SBFCA conducted engineering analyses and executed field design changes in consultation with UAIC to avoid and/or mitigate adverse effects on cultural resources, including: modifying the alignment of a slurry wall to avoid a cultural resource feature; raising levee degrade elevations to avoid potential effects on identified midden soils; completely redesigning a levee section to avoid excavation of a potential cultural resource site; and relocating or removing public safety monitoring instruments in the vicinity of cultural resources. SBFCA also revised clearing and grubbing procedures to limit ground disturbing activity; for example, trees were cut at the base and stumps left in place. On planned construction, SBFCA has provided preliminary boundary maps, reports, Area of Potential Effects drawings and for the proposed project area and preliminary schedules to UAIC, conducted onsite pedestrian surveys with UAIC, and performed ~~extensive~~ subsurface exploration in consultation with UAIC that included both geoarchaeological trenching and geophysical exploration. All of these activities were performed for the purpose of avoiding and minimizing tribal cultural resource effects. UAIC has been afforded the opportunity ~~on numerous occasions~~ to comment on preliminary documents; and has provided comments on numerous occasions.
2. SBFCA submitted to UAIC a draft policy statement on May 8, 2015, following discussion with UAIC on May 5, 2015. The policy statement, which was global and pertinent to all culturally-affiliated tribes, was approved by the SBFCA ~~board~~ Board of Directors on May 13, 2015. SBFCA subsequently consulted with Enterprise Rancheria on the policy on January 7, 2016; ~~and, on March 10, 2016.~~ In response to UAIC objections following SBFCA Board approval, SBFCA proposed a second tribal consultation policy specific to UAIC; the on March 10, 2016. The Tribe returned comments on April 5, 2016 and SBFCA is reviewing the revised document for consideration by, and the SBFCA Board of Directors in approved the addendum policy on April 20, 2016.
3. ~~Collections~~ Archaeological collections and human remains were turned over to UAIC upon release of the analysis requirement from the USACE on April 17, 2015. UAIC reburied the materials on July 3, 2015. UAIC ~~elected not to document the reburial with a re-interment record or DPR form~~ UAIC is still in the process of determining the most appropriate and dignified form of documenting the reburials on reinterment records or DPR forms.
4. SBFCA and UAIC began negotiating a Burial Treatment Agreement as part of the Settlement Agreement in April 2015. The Burial Treatment Agreement was approved by both parties on January 8, 2016, except for the enforcement and dispute resolution mechanisms, which are still being negotiated.
5. ~~The tribal cultural resources Treatment and Monitoring Agreement is Exhibit 2 of the Settlement Agreement. The Tribal Monitoring Agreement is provided in Attachments A and B to Exhibit 2 of the Settlement Agreement.~~ SBFCA and UAIC began negotiating a Cultural Resources Treatment Agreement as part of the Settlement Agreement in April 2015 and it was approved by both parties on August 18, 2015, except for Attachment E, the Work Plan

for Surveys (which was implemented in full prior to execution) and the enforcement and dispute resolution mechanisms, which are still being negotiated. The Agreement also includes a tribal monitoring agreement Tribal Monitoring Program, which has been implemented in both Sutter and Butte Counties since drafting (prior to approval) and has involved tribal monitoring by both UAIC and Enterprise Rancheria. Because SBFCA is not responsible for long-term operations and maintenance (O&M) and has no legal authority to commit other local levee agencies or landowners to an O&M plan, per an agreement with UAIC as part of the Settlement Agreement, SBFCA wrote a letter (including an ~~attached~~ O&M template regarding cultural resources) to the Central Valley Flood Protection Board (CVFPB) dated May 18, 2015, and facilitated two meetings with the Board's Executive Officer to advocate for long-term requirements in Board-approved O&M plans. In addition, SBFCA has advocated for ~~UAIC by advocating for~~ the inclusion of O&M provisions to protect cultural resources to the California Central Valley Flood Control Association (CCVFCA) Board of Directors, and facilitated a meeting with UAIC and the CCVFCA Executive Officer, and between UAIC and Levee District 1. A template O&M plan was provided to ~~both~~ all parties.

The balance of the components of the Settlement Agreement extend beyond those requirements recommended by the NAHC and for reasons of confidentiality, are not discussed in detail herein.

Laurel Avenue Critical Repair

The Laurel Avenue ~~repair area site~~ lies within the Wollok ~~Prehistoric~~ District.³ In addition, UAIC communicated to SBFCA that at least three sanctified cemeteries are known to be within the Laurel Avenue site based on oral histories. In an effort to ~~determine whether or not locate~~ tribal cultural resources are present resource features, such as these cemeteries, within the affected areas analyzed for this Supplemental EIR, and in accordance with the Tribal Monitoring Program and Work Plan for Tribal Surveys, SBFCA carried out the following identification efforts.

Remote Sensing

On May 8, 2015, SBFCA provided UAIC with low altitude, high-definition Light Detection and Ranging (LIDAR) aerial imagery of the Laurel Avenue site in order to assist the tribe in recognizing any laser-mapped indications of the presence of tribal resources within the repair site. SBFCA has not received any information from UAIC that was informed by its review of LIDAR imagery.

Tribal and Archaeological Surveys

Subsequently, on September 2 and 3, 2015, archaeologists, along with UAIC tribal representatives of the UAIC, conducted a pedestrian archaeological survey of the Laurel Avenue ~~repair area site~~ in Sutter County. The survey area extended between STAs 180+00 and 281+00, including the entire Feather River West Levee structure. The survey also examined areas adjacent to the levee between STAs 181+00 and 281+00, including a 10-foot-wide section along the landside levee toe, and on the waterside from the levee toe to the boundary of the Bobelaine Audubon Sanctuary. The entire ~~repair site area~~ was walked in parallel transects spaced from 2 to 5 meters apart. ~~The repair~~

³ The NAHC's findings of fact refer to the Wollok Prehistoric District. The remainder of the SEIR will reflect the tribe's views by referring to it as the Wollok District.

SBFCA subsequently retained Tremaine & Associates to conduct a geophysical survey of the Laurel Avenue site along with other sections of levee not yet improved. This survey was conducted on August 21–25, September 3, and September 5, 2015, (a total of 7 days) and included UAIC representatives. The purpose of the geophysical survey was to use non-invasive detection methods to determine if subsurface anomalies, which could signal the presence of buried tribal cultural resources, or buried pipes or engineering features, were present.

Geophysical Surveys and Trenching

ICF archaeologists reviewed the Tremaine & Associates geophysical survey along with a Subsurface Survey Investigation Plan and supporting documents to evaluate archaeological sensitivity within the Laurel Avenue site. Subsurface testing was performed by Far Western Anthropological Research Group, Inc. (Far Western) personnel along with representatives of UAIC on February 3–5, 2016. Exploratory trenches were excavated by a backhoe at 16 locations in an effort to determine the presence or absence of buried archaeological remains. Sixteen trenches were placed on the levee; UAIC tribal monitors were present at all times. The presence or absence of cultural materials was determined by examining and raking the deposits as they were removed from the trenches, and by examining trench walls. Trench locations were plotted using a Global Positioning System (GPS) receiver, and the depth and general nature of the exposed geologic deposits were recorded.

All trenches exposed a sequence of late Holocene and historic-era alluvium or fill, capped by modern fill. A buried soil, representing an intact former stable land surface, was sampled from Trench 2-5-13 for radiocarbon dating and submitted to Eckert & Ziegler Vitalea Science in Davis, California, for analysis. The sample was collected from the top of the organic-rich buried A horizon 2.1–2.2 meters below surface. The soil yielded a median calibrated age of 1290 cal BP. This buried soil is laterally continuous, appearing in 13 of the 16 backhoe trenches at an average depth of 1.6 meters below surface. Three of the 16 trenches were terminated before the buried soil was reached due to encountering loose, very fine sand that destabilized trench walls.

No trenches contained prehistoric archaeological material, and one trench contained a buried small domestic dump site or refuse deposit dating to around the turn of the twentieth century between 0.2 and 1.0 meter below surface. Identification of the artifacts, including a complete ceramic sake-type bottle, a possible sake bottle fragment, and two “rice” bowl fragments, suggests this small domestic dump site was from a Japanese or Japanese-American household. The modern and historic-era fills contained few historic-era artifacts, but in most trenches, these units were sterile. Far Western archaeologists determined that the artifacts were not *in situ* (in their original locations) and were the result of soil mixing and redistribution during either the construction of the levee in the 1800s or during reconstruction of the levee following several known and documented levee failures at that location. The fact that the artifacts were found just below the surface, as opposed to the toe or base of the levee and beneath it, further supports the notion that they were moved from other locations and incorporated into the levee build or rebuild. There were no associated and intact archaeological features or deposits observed during the trenching. Due to a lack of integrity, Far Western and ICF concluded, in consultation with the USACE, that the artifacts do not represent a historic archaeological site and do not qualify for inclusion in the CRHR or NRHP. As such, the artifacts are not historical resources under CEQA.

UAIC stated during tribal consultation that the Japanese artifacts represent Native American presence in the levee. UAIC’s view is that Nisenan Maidu people lived with Japanese people in order to escape harm or slavery. Because this information was not included in UAIC’s confidential tribal cultural resources information submittal under AB 52, SBFCA contacted the National Japanese

American Library, the Japanese American Citizens League, the Meriam Library at California State University-Chico, the Butte County Historical Society, a local Japanese American family with a long history in the region, and reviewed historical literature to determine if there is any information that corroborated this opinion. None of the individuals spoken to were familiar with this and none of the sources reviewed contained information to support the UAIC's opinion. Nonetheless, although the artifact scatter does not meet the eligibility criteria for consideration under federal or state law, the treatment of such will be handled under the Settlement Agreement and SBFCA will cooperate with UAIC in determining an appropriate method of treatment to respect the tribal views on the artifacts.

Although no prehistoric material was encountered during backhoe trenching, a buried landform, the top of which was between 1.1 and 2.0 meters below surface, represents the pre-levee land surface where one could encounter in situ prehistoric archaeological material. The late Holocene age of the soil is consistent with regional dates for the Canejo Soil, the dominant soil series mapped by the U.S. Department of Agriculture in this segment of the repair site. This buried landform was encountered in backhoe trenches along both sides of the levee. A second buried landform, exposed on the land side of the levee at 4.3 meters, represents a stable land surface older than late Holocene. No archaeological materials were observed in this buried land surface.

Additional Tribal and Archaeological Surveys

The repair site area was clear of vegetation and ground visibility was excellent, in part due to burning and dragging conducted by levee maintenance personnel as part of annual, routine maintenance before the survey took place. In addition, an artificial cut-bank into the natural floodplain, which parallels the entire levee on the waterside, was carefully inspected for cultural material. No a limited number of archaeological resources were located as a result of the surveys. Lithics, faunal bones, obsidian debitage, and no tribal cultural resources ground stone were identified by UAIC at the time of the survey.

Because UAIC expressed concern that visibility was hindered by maintenance activities, SBFCA's remedy was to carry out an additional survey to confirm locations of sanctified cemeteries within the Wollok District. This additional survey was conducted by UAIC on April 19, 2016, at which time SBFCA engaged Far Western to conduct a pedestrian survey of the Laurel Avenue site, accompanied by UAIC. The survey area extended for approximately 1.0 mile, between STAs 180+00 and 281+00, including the entire Feather River West Levee structure. The survey also examined areas adjacent to the levee between STAs 181+00 and 281+00, including a 10 foot-wide section along the land-side levee toe, and on the water-side from the levee toe to the boundary of the Bobelaine Audubon Sanctuary. -UAIC noted the presence of a village name, "Ollash⁴," as being associated with this area.

Geotechnical Boring

Between June 2007 and August 2011, URS (SBFCA) and California Department of Water Resources (as part of the state-funded Urban Levee Evaluations Program) carried out geotechnical boring and Cone Penetrometer Test Sounding (CPT) explorations of the Laurel Avenue site in an effort to assess subsurface stratigraphy of the levee. The studies included subsurface explorations, laboratory testing, geotechnical analyses, and historical research. A total of 29 hollow-stem, mud rotary, or hand auger borings have been completed along this length of the levee that extended to a maximum

⁴ The term "Ollash Village" was advanced by UAIC for the first time on May 20, 2016, during the public review period of this SEIR.

of 140 feet below the current levee surface. -The soil profiles mapped in each bore hole vary widely, supporting the fact that this segment of the levee previously failed on several occasions and was reconstructed. Soil types in and around the levee are predominately composed of poorly graded gravel, clayey sand, silty sand with gravel, poorly graded sand, and loamy clay. No evidence of dark midden soils or artifacts was observed by the geotechnical engineers carrying out the boring.

In addition, 26 CPTs were placed between the borings, which served to further characterize the stratigraphy down to a maximum of 130 feet below the current levee surface. The CPTs measured the friction ratio and resistance and did not reveal any substantial changes in resistance. In several locations, increased resistance was detected at the same level as an adjacent layer of loamy clay, which would be expected, given the different chemical and physical properties of clay compared to sand. Overall, there were no striking indications of subsurface features detected by the borings or CPTs.

Tribal Sensitivity Maps

On March 28, 2016, UAIC provided confidential information to SBFCA regarding the location of the Wollok District and specific sanctified cemeteries within the District. On June 3, 2016, UAIC provided clarifying confidential information to SBFCA about a broader distribution of tribal cultural resources adjacent to the Laurel Avenue site. This information included a delineation of the Ollash Village and Cemetery, which was provided to SBFCA for the first time. This information was taken into consideration by SBFCA but does not change the findings of this SEIR.

Summary and Conclusions

The professional and tribal archeological surveys located surface scatters at all three cultural areas included by the NAHC as part of the Wollok District. Two additional cemeteries (CA-SUT-56 and CA-SUT-57) that the Tribe indicates are associated with Ollash have been previously located adjacent, and in close proximity, to the Laurel Avenue site boundary and levee footprint. UAIC tribal monitors, technical staff, and tribal representatives believe that one of the sites had been bisected by a levee failure, resulting in four surface manifestations being present, which could indicate four possible buried cemeteries or cultural areas. The scatter could also be from a combination of levee construction, failure, or operation and maintenance; this has not been determined. Due to soil and safety conditions, the geophysical archaeological survey results were inconclusive.

UAIC has recommended the use of historical human remains detection canines and further subsurface exploration (auguring) prior to the start of construction, however, SBFCA has determined, in consultation with Enterprise Rancheria, that human remains detection canines are offensive to other tribes and would not detect human remains that are deeply below the ground surface, if present.

The identification efforts summarized above attempted to locate buried cultural resources that could be affected by project activities, including slurry wall construction. SBFCA has determined that additional and more extensive subsurface testing, beyond that which has already been carried out, might compromise the physical integrity of the levee as it would require excavation far deeper than can be safely accommodated. In addition, further auguring locations proposed by UAIC fall outside project excavation areas, potentially destroying or disturbing cultural resources where no ground disturbing activity is currently planned. Therefore, any further examination of deeply buried deposits is best accommodated at the start of project construction, when tribal monitors can observe initial excavations and, through the construction manager, halt activities if subsurface tribal resources are found. For the Sutter County reaches of this project, including the Laurel Avenue site,

this protocol is detailed in the aforementioned Tribal Cultural Resources Treatment Agreement, Tribal Monitoring Program and Burial Treatment Agreement.

Therefore, SBFCA concluded that pre-project methods of investigation (presented above) were carried out in good faith and have been exhausted, and that additional investigation to determine if there are buried resources in the project area would compromise the levee structure, and therefore, is not warranted. Government-to-government consultation will continue to discuss reducing any adverse project impacts to a less-than-significant level while achieving project design goals and the chosen alternative. Consultation will include discussion of appropriate mitigation or design alternatives if any buried resources are found along the levee prism that contribute to the significance of the Wollok District.

Gridley Bridge Erosion Repair

On November 18, 2015, archaeologists, ~~accompanied by~~ along with representatives of the Enterprise Rancheria, conducted a pedestrian survey of the Gridley Bridge Erosion ~~repair area~~ site in Butte County (this ~~repair area~~ site is outside of the Wollok ~~Prehistoric~~ District). The survey area covered the entire proposed ~~repair project~~ area, including staging. The entire ~~repair project~~ area was walked in parallel transects spaced from 2 to 5 meters apart. Most of the ~~repair project~~ area was covered in ~~rip rap~~ and as a result, ground visibility was poor. No archaeological resources were located as a result of the survey and no tribal cultural resources were identified by Enterprise Rancheria ~~at the time of the survey.~~

On November 12, 2015, Reno Franklin, Tribal Historic Preservation Officer for the Enterprise Rancheria, indicated that the Tribe requests that a tribal monitor be present during any ground-disturbing activities associated with the Gridley Bridge Erosion ~~repair area~~ site. Mr. Franklin also asked to receive the results of the Laurel Avenue ~~repair area~~ site archaeological inventory when ~~they become~~ it becomes available before commenting any further on the proposed project modifications. SBFCA will provide this information if UAIC consents to its release to Enterprise Rancheria. Otherwise, as part of consultation, the information would continue to be held in confidence by SBFCA. Mr. Franklin also indicated that the ~~tribe~~ Tribe would consult their internal records for any known resources in the vicinity of the Laurel Avenue ~~repair area~~ site. No information has been provided to SBFCA to date.

Tribal Cultural Resources

AB 52 Consultation

At the time of the filing of the Notice of Preparation (NOP) for this Supplemental EIR, which occurred on October 2, 2015, SBFCA had not received any requests from any Tribes to receive project notifications under AB 52 (see Section 3.17.1.1, above). After the issuance of the NOP, UAIC contacted SBFCA by letter on October 30, 2015, to indicate its desire to receive project notifications from SBFCA under AB 52 for all projects subject to CEQA (Whitehouse 2015). As of the date of the release of this Supplemental EIR, no other request letters from Tribes have been received by SBFCA.

As of the date of the release of this Supplemental EIR, one other request letter from a tribe has been received by SBFCA. On May 5, 2016, the Torres Martinez Desert Cahuilla Indian Tribe of Thermal, California (southern California) contacted SBFCA by letter to request notifications of all projects under CEQA. On May 17, 2016, SBFCA contacted the Tribe to confirm its interest in projects in Sutter

and Butte counties, in light of the distance between the Tribe and projects under SBFCA's jurisdiction. On May 18, 2016, Michael Mirelez, Cultural Resources Coordinator for the Tribe, replied to indicate that the Tribe wished to defer to tribes that are closer to the project area. Subsequently, SBFCA sent a letter to the Tribe to indicate that it will not notice the Tribe on future projects and considers the request rescinded. As such, no consultation under AB 52 occurred with the Torres Martinez Desert Cahuilla Indian Tribe on this project.

Consultation with UAIC was carried out within the context of compliance with AB 52 and Settlement Agreement negotiations (see dates above) and is discussed in detail below.

Thirteen days following the receipt of UAIC's request letter, on November 13, 2015, SBFCA ~~sent~~ responded to UAIC's request with a letter to UAIC that described the project to be analyzed under the Supplemental EIR and provided the NOP for the project (Inamine 2015). SBFCA invited UAIC to respond within 30 days to the offer to consult on the project. On December 11, 2015, SBFCA received a letter from UAIC, indicating acceptance of the offer to consult on the project. Because AB 52 requires that consultation, if requested, be initiated within 30 days of SBFCA's receipt of the request, the consultation was formally initiated at a meeting held at UAIC headquarters on January 8, 2016. A second consultation meeting was held by teleconference on February 12, 2016, ~~with subsequent~~ and a third was held in person on May 26, 2016, with numerous additional consultation discussions held by exchange of confidential emails and documentation. Topics discussed during these consultation meetings included, but were not limited to: a discussion of the structure and frequency of tribal consultation meetings and touchpoints; the proposed project description; the type of environmental review necessary and the scope of the Supplemental EIR; alternatives to project designs that are or were under consideration; design options to provide for avoidance of any tribal cultural resources; significant effects of the project, including cumulative effects; pre-project tribal surveys; comments from UAIC on the NOP; and mitigation measures for any direct, indirect, and cumulative effects. In accordance with PRC Section 21074, SBFCA requested information from UAIC during ~~both these~~ meetings on the presence of tribal cultural resources to inform this Supplemental EIR.

On March 28, 2016, UAIC provided confidential information to SBFCA regarding the location of the Wollok ~~Prehistoric District~~ District and specific sanctified cemeteries within the District. On June 3, 2016, on the final day of the comment period for this Supplemental EIR, UAIC provided new confidential information to SBFCA about a broader distribution of tribal cultural resources adjacent to the Laurel Avenue site. This information does not change the findings of this Supplemental EIR.

This information has been reviewed by SBFCA's technical consultants and was used to inform this Supplemental EIR; however, in accordance with Section 21082.3(c)(1) of the PRC, "... information, including, but not limited to, the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with subdivision (r) of Section 6254 of, and Section 6254.10 of, the ~~USC Government Code~~, and subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations, without the prior consent of the tribe that provided the information." Therefore, the specific information about the tribal cultural resource is not included in this Supplemental EIR, and remains within a confidential administrative record and ~~unavailable~~ not available for public disclosure under any circumstance.

In addition, the UAIC provided statements about the Wollok District and its association with the levee for this Supplemental EIR. According to UAIC, Nisenan village and cemetery sites are built

features that are examples of pre-contact architecture that is adapted to regular flooding. These sites are large, built-up mounds that created artificial high ground for villages and cemeteries. After contact, settlers and ultimately the Feather River Levee incorporated some of these mound sites into flood protection, so they have become a physical component of the Feather River Levee. The Tribe asserts that they are an example of the re-use of Nisenan sites during the post-contact period and, while these cemetery sites are a component of the Wollok District, they also contribute to the physical integrity of the levee prism. UAIC maintains that these sites are eligible under NRHP eligibility Criteria A and B (CRHR eligibility Criteria 1 and 2) for their association with important events and persons in tribal history that are represented by the Wollok District and for their association with the unratified treaties and the attempted removal of Nisenan people to reservations following treaty negotiation. The Tribe also states that they are eligible under NRHP Criterion C (CRHR Criterion 3) as an example of vernacular architecture. The period of significance includes the pre-contact ("prehistoric") period when the sites were built-up to the present, when the sites were incorporated into a contemporary levee system, making the Feather River Levee a structure that is both relatively modern and several millennia old. UAIC asserts that no other contemporary levee is known to incorporate and preserve Native American vernacular architecture in such a manner.

SBFCA determined that although there is overlap between Native American and European American cultural resources, the term "built environment" encompasses non-Native American historical resources or non-Native American components of resources that are not related to tribal cultural resources. In this SEIR, the built environment refers to buildings and structures from the historic period. This definition is expressed in numerous publications and technical advisories, including Sections IV and VIII of National Register Bulletin 15 (How to Apply the National Register Criteria for Evaluation), which defines the following:

- A building is a house, barn, church, hotel, or similar construction, is created principally to shelter any form of human activity. "Building" may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. If a building has lost any of its basic structural elements, it is usually considered a "ruin" and is categorized as a site.
- The term "structure" is used to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter and include dams and earthworks. If a structure has lost its historic configuration or pattern of organization through deterioration or demolition, it is usually considered a ruin and categorized as a site.
- A "site" is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure. They include village sites, cemeteries, rock art, habitation sites, camp sites, and other archaeological features.

Vernacular architecture is buildings or structures designed and constructed by someone who is not a professional architect or engineer. Buildings and structures that have lost their basic structural elements or pattern of organization are (archaeological) sites and are not built environment buildings, structures, or vernacular architecture.

Prior to Euroamerican contact, Native Americans constructed villages with cemeteries on earthen mounds along the river. When intact during the prehistoric period, the villages, cemeteries, and mounds likely could have been described as buildings and structures that were part of the prehistoric built environment, and perhaps as vernacular architecture. However, when the levees

were constructed in the late nineteenth century, any remaining above-ground buildings, structures, and mounds were destroyed by grading to form a stable base for the levee. Material from the buildings, structures, and mounds was incorporated into the levee, but without their “basic structural elements.” The levees themselves have been damaged by past flooding events and have been rebuilt in different locations or configurations. Therefore, the prehistoric elements of the built environment are no longer intact and are now defined as “sites.”

SBFCA reviewed and considered the information provided by UAIC regarding the statement that the levee is a structure that is several millennia year old and includes prehistoric vernacular architecture of the built environment. However, in light of the additional information cited above, SBFCA concluded that, for the purposes of CEQA and this Supplemental EIR, the Wollok District is a tribal cultural resource of the archaeological environment alone.

Built Environment Resources

~~The built environment encompasses historical resources that are not related to Tribal resources.~~ Although no new historic-era built environment resources were identified within the project boundary for the Laurel Avenue ~~repair area~~site, a 2,450-~~foot-long~~ segment of the Feather River Levee is located within the Laurel Avenue Critical Repair boundary. This 2,450 foot segment of the levee is a continuous extension of the 41-mile segment evaluated as part of the 2013 FEIR, the results of which determined that concluded the 41-mile segment is a historical resource eligible for listing in the ~~National Register of Historic Places (NRHP)~~ with concurrence by the State Historic Preservation Officer (SHPO). The resource is eligible under NRHP Criterion A for its association with advances in flood control in northern California as the creation and development of the Feather River Levee within Sutter and Butte Counties led to the expansion of agriculture and the formation and settlement of local cities and towns, including Yuba City and Marysville. The period of significance for the Feather River Levee is between 1868 and 1910, when the levee was initially constructed and vital to the settlement and development of the Sutter and Butte County regions.

3.17.2 Environmental Consequences

This section describes the analysis of environmental consequences related to cultural resources and tribal cultural resources for the proposed project modifications.

3.17.2.1 Assessment Methods

The assessment methods for this analysis included those described in Section 3.17.3.1 of the 2013 FEIR. These methods were also applied to the analysis of tribal cultural resources for this Supplemental EIR and incorporate the consultation with tribes in accordance with AB 52. Consistent with AB 52, the evaluation takes into consideration the confidential information submitted by UAIC during the consultation, and reflects the result of the consultation.

3.17.2.2 Determination of Effects

The following list was presented in the 2013 FEIR, and identifies the nature of effects on cultural resources that are significant under CEQA. These are the criteria upon which the cultural resources analysis in the 2013 FEIR was based, and are used for the analysis in this Supplemental EIR.

- Under CEQA, an effect is significant if it would demolish or materially alter the qualities that make a resource eligible for listing on the CRHR (State CEQA Guidelines §15064.5[b][2][A],[C]).

- Under CEQA, an effect is also significant if it would demolish or materially alter the qualities that make a resource eligible for listing on a local register (State CEQA Guidelines §15064.5[b][2][B]) or its identification as a historical resource survey meeting the requirements of PRC §5024.1(g).
- CEQA also covers effects on unique archaeological sites. Effects on unique archaeological sites are significant if they would demolish or materially impair the characteristics that allow a site to qualify as a unique archaeological resource (PRC §21083.2[g]).
- CEQA protects interred human remains. Under CEQA, an effect is significant if it would disturb human remains, including remains interred outside of established cemeteries (State CEQA Guidelines, Appendix G checklist).

Additional effect thresholds were used to analyze the proposed project modifications in this Supplemental EIR, pursuant to AB 52. ~~The threshold for a tribal cultural resource is meeting any of the criteria described in PRC Section 21074.~~ Also, effects on unique archaeological sites are significant if they would demolish or materially impair the characteristics that allow a site to qualify as a unique archaeological resource (PRC Section 21083.2[g]).

3.17.2.3 Effects and Mitigation Measures

Implementation of the proposed project modifications would result in a new effect on historical resources and tribal cultural resources related to the Wollok ~~Prehistoric~~ District. It is important to note that while SBFCA recognizes that effects on tribal cultural resources must be addressed separately from those to historical resources (PRC Section 21083.09[a] of the Public Resources Code), the Wollok ~~Prehistoric~~ District meets the statutory definitions for both historical resources and tribal cultural resources. Therefore, the effects and mitigation measures are discussed together below, even though the determination that the Wollok ~~Prehistoric~~ District constitutes a tribal cultural resource was made independently of historical resources considerations.

Summary of Effects from the 2013 FEIR and 2015 Addendum

All historic and cultural resources effects previously analyzed for Alternative 3 in the 2013 FEIR and the applicable mitigation measures are listed in Table 3.17-1. A full description of these effects and mitigation measures can be found in Section 3.17 of the 2013 FEIR. The 2013 FEIR concluded that the effects of the FRWLP on historic and cultural resources would be significant and unavoidable.

In June 2015, SBFCA issued an Addendum to the 2013 EIR, *Addendum to the Feather River West Levee Project Final Environmental Impact Report*, which is included in Appendix A of the Supplemental EIR. The Addendum was not subject to AB 52 or its noticing requirements. The Addendum's purpose was to update the project's CEQA documentation to allow the California Department of Fish and Wildlife to issue an incidental take permit for the FRWLP under Section 2081 of the California Endangered Species Act and to update the giant garter snake mitigation. At the same time, Mitigation Measure CR-MM-1 related to data recovery to retrieve information useful in research relative to cultural resources was modified by SBFCA.

Table 3.17-1. Previously Analyzed FRWLP Cultural Resources Effects

Effect	Finding	Mitigation Measures	With Mitigation
Effect CR-1: Effects on Identified and CRHR-eligible Archaeological Sites Resulting from Construction of Levee Improvements and Ancillary Facilities	Significant	CR-MM-1: Perform Data Recovery or Alternative Mitigation to Retrieve Information Useful in Research	Significant and unavoidable
Effect CR-2: Potential to Disturb Unidentified Archaeological Sites	Significant	CR-MM-2: Complete Surveys Prior to Construction, Implement a Cultural Resources Discovery Plan, Provide Related Training to Construction Workers, and Conduct Construction Monitoring	Significant and unavoidable
Effect CR-3: Potential to Disturb Human Remains	Significant	CR-MM-3: Monitor Culturally Sensitive Areas during Construction and Follow State and Federal Laws Governing Human Remains if Such Resources Are Discovered	Significant and unavoidable
Effect CR-4: Direct and Indirect Effects on Built Environment Resources Resulting from Construction Activities	Significant	CR-MM-4: Complete Inventory of Built Environment Resources in Inaccessible Parcels, Evaluate Identified Properties, Assess Effects, and Prepare Treatment to Resolve and Mitigate Significant Effects	Significant and unavoidable

Note: Mitigation Measure CR-MM-1 has been modified from the 2013 FEIR by the *Addendum to the Feather River West Levee Project Final Environmental Impact Report*, which is included in Appendix A of ~~this the Supplemental Draft SEIR.~~

Supplemental Analysis

The following supplemental analysis provides a brief reevaluation of each of the previously analyzed effects listed in Table 3.17-1 to account for inclusion of the proposed ~~FRWLP project~~ modifications in light of current information. Since certification of the 2013 FEIR, and in light of the discovery of burials and other cultural resources during construction of the FRWLP, now recognized as part of the Wollok ~~Prehistoric~~ District, a Sacred Site and tribal cultural resource, proposed project modifications may have more severe cultural resources effects (Effects CR-1, CR-2, and CR-3) than originally disclosed in the 2013 FEIR.

In addition, implementation of the proposed project modifications would result in ~~a new effect~~ direct, indirect, and cumulative effects on tribal cultural resources that ~~was~~ were not known at the time the 2013 FEIR ~~was or the Addendum were~~ certified. Effect CR-5 describes ~~that effect~~ those effects. The new mitigation measures described under this effect reflect the results of tribal consultation on the proposed project modifications and consultation following SBFCA's adoption of mitigation measures developed ~~during prior discussions over the FRWLP in 2015.~~

Previously Analyzed Effects

Effect CR-1: Effects on Identified Archaeological Sites Resulting From Construction of Levee Improvements and Ancillary Facilities

The analysis in the 2013 FEIR identified a range of archaeological resources that could be affected by implementation of Alternative 3, and that the contents of these known resources contain valuable data for archaeological research. Construction activities associated with implementation of Alternative 3 have the potential to directly disturb identified resources through ground-disturbing excavation or by placement of large, durable new features over these resources, which would materially impair these resources under CEQA. The 2013 FEIR determined that because these sites could not feasibly be preserved in place, and because mitigation cannot guarantee that all effects would be avoided, the effect would be significant and unavoidable, even with implementation of Mitigation Measure CR-MM-1. The effect was found to be significant and unavoidable.

Note that Mitigation Measure CR-MM-1 was modified in the *Addendum to the Feather River West Levee Project Final Environmental Impact Report* (contained in Appendix A of this Supplemental EIR) to include alternative mitigation methods in lieu of data recovery. The modification was in response to the March 31, 2015, letter from the ACHP to USACE, UAIC, and the NAHC that offered guidance on burial treatment and alternative mitigation. This guidance was provided under a separate compliance process for the project by the USACE under NHPA Section 106, following a formal objection by SBFCA to the manner in which USACE was administering cultural resources and requests from UAIC to ACHP to resolve the project's adverse effects.

The USACE is involved through a Federal permit and, treatment of any historical resource as defined by Federal law is subject to consultation with USACE. -SBFCA lacks the authority under Federal law to remove or deny USACE's jurisdiction and its associated consultation and mitigation of adverse impacts under NHPA Section 106. USACE still plays a role that SBFCA cannot ignore without violating federal law. In addition, the Native American Graves Protection and Repatriation Act (NAGPRA) does not apply to this project.

Laurel Avenue Critical Repair

AB 52's legislative intent language provides that "tribal knowledge about the land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources." In this case, the UAIC has asserted, with support from the NAHC, that the Laurel Avenue ~~repair~~ Critical Repair area contains ~~three~~ sacred sites that ~~is~~ are within the Wollok ~~Prehistoric~~ District and therefore, under PRC Section 21074(a)(2), SBFCA has determined, at its discretion and supported by substantial evidence, that a tribal cultural resource that is archaeological in nature is present within the project area subject to this Supplemental EIR. The specific information about the tribal cultural resource, including UAIC's statements of eligibility of the resource, is not included in this Supplemental EIR, and remains within a confidential administrative record and ~~unavailable~~ not available for public disclosure under any circumstance.

UAIC has requested formal identification, assessment, and mitigation of the Wollok District under NHPA Section 106 per 36 CFR Parts 800.3-800.5, and in compliance with Bulletin 38 and Preservation Brief 36. These considerations apply to the USACE under its separate compliance with NHPA Section 106.

The Laurel Avenue Critical Repair would result in a significant and unavoidable effect on tribal cultural resources. Therefore, SBFCA consulted with UAIC and contracted a number of identification efforts (summarized above) and then considered a number of design alternatives that would seek to minimize any effect. In particular, the alternatives discussions with UAIC focused on actions that SBFCA can take during slurry wall construction. This project element requires that the levee be substantially degraded before the slurry wall trench can be excavated and filled. Therefore, the pre-project identification of buried resources within the proposed slurry wall trench is extremely limited without extensive ground-disturbance of the levee to expose those areas. The design alternatives that SBFCA discussed with UAIC were modifications that could be made to slurry wall alignments and elevations during excavation and construction, if a tribal monitor recognizes the presence of a cultural feature. Modified design alternatives were exercised in 2014 during construction, when buried cultural features were located. SBFCA provided UAIC with a copy of guidance for contractors that assists in decision-making of feasible alternatives during project construction.

Gridley Bridge Erosion Repair

The Gridley Bridge Erosion repair areasite does not fall within the boundaries of the Wollok Prehistoric District as defined by UAIC, and lies within an area that Enterprise Rancheria is involved in for purposes of this project. However, implementation of the Gridley Bridge Erosion Repair would will involve ground-disturbing activities, and therefore has the potential to affect known archaeological sites. This effect would be similar to Effect CR-1 as described in the 2013 FEIR.

CEQA Finding

With implementation of Mitigation Measure CR-MM-1, as modified in the 2015 *Addendum to the Feather River West Levee Project Final Environmental Impact Report* (contained in Appendix A of this the Draft Supplemental EIR), and repeated below, this effect would remain significant and unavoidable with implementation of the proposed project modifications. However, because elements of the Wollok Prehistoric District, identified exclusively by UAIC and unknown and located at the time the 2013 FEIR was prepared, are now known to exist within the Laurel Avenue Critical Repair area, this effect would be more severe than as was identified in the 2013 FEIR.

Mitigation Measure CR-MM-1: Perform Data Recovery or Alternative Mitigation to Retrieve Information Useful in Research

Prior to data recovery, SBFCA will prepare a brief data recovery plan or alternative mitigation plan that describes how SBFCA will perform the following steps (CEQA Guidelines § 15126.4(B)(3)(c)). SBFCA will perform the following steps to retrieve the material associated with these sites that is useful in research(CEQA Guidelines § 15126.4(B)(3)(c)), which will include one of the following options in order to preserve and/or restore resources to the maximum extent feasible:

- Option 1: if UAIC (for Native American sites or tribal cultural resources associated with the Wollok District) or either UAIC or Enterprise (for Native American sites or tribal cultural resources not associated with the Wollok District) agree that data recovery excavation is appropriate and the USACE agrees, or if mitigation is necessary for non-Native American archaeological sites is necessary, then the following general parameters will apply:

- Data recovery excavations will be performed to retrieve a sample of the affected portion of these sites, in order to retrieve scientifically important material. Excavation will be conducted in arbitrary levels, and material removed will be divided and screened through a combination of ¼" and ⅛-1/8" mesh screen, so as to capture both the gross cultural constituents and the finer material that can only be captured in fine mesh. Excavation will be conducted in 10-centimeter levels so that the horizontal association of different cultural materials is recorded. Removed material will be segregated by type and bagged with labels noting their horizontal and vertical location relative to an established datum point. The datum point will be recorded in the field with GPS to at least 10-centimeter horizontal and vertical accuracy.
- Faunal material (animal bone) will be segregated and studied by a qualified faunal analyst to identify the species pursued, relative abundance and diversity of different species present, and the manner in which the prey were processed by the ~~prehistoric~~ occupants.
- ~~Obsidian~~ For Native American sites, if data recovery is allowed by tribes, obsidian glass will be retrieved and studied through both X-ray fluorescence (a method that allows the source of the obsidian to be identified) and obsidian hydration analysis (a method that allows approximate determination of the time when the material was subject to human modification).
- Soil samples will be retrieved, with their horizontal and vertical location recorded, for flotation analysis (a method of separating light organic material such as fine plant remains from the deposit, in order to identify plant species pursued by ~~prehistoric~~ historic populations).
- ~~Because some of the resources subject to treatment contain human remains, provisions for such remains are necessary. If human remains are discovered in these deposits during data recovery, the county coroner will be contacted as required in California Health and Safety Code Section 7050.5. After the coroner confirms the remains are of prehistoric origin, the NAHC will be contacted and given the opportunity to identify an MLD. The MLD will be given the opportunity to reinter the remains with appropriate dignity. If the NAHC fails to identify the MLD or if the parties cannot reach agreement as to how to reinter the remains as described in California PRC Section 5097.98(e), the landowner will reinter the remains at a location not subject to further disturbance. SBFCA will ensure the protections prescribed in California PRC Section 5097.98(e), are performed.~~
- If, in the course of data recovery excavations, it is determined that, contrary to available evidence, the resource lacks integrity, data recovery excavations will cease.
- After completion of data recovery excavations SBFCA will prepare a data recovery report and summarize the results of these studies relative to regional research questions in the data recovery report. The report will be filed with the relevant information center of the CHRIS. ~~SBFCA will also store the recovered material (other than human remains) at an appropriate facility for curation. For Native American sites, if data recovery is allowed by the tribes, SBFCA will then turn over the recovered material to UAIC (for Native American sites or tribal cultural resources associated with the Wollok District) or either UAIC or Enterprise (for Native American sites or tribal cultural resources not associated with the Wollok District) for reburial or storage at an~~

appropriate curation facility, to the extent consistent with NHPA Section 106 and USACE requirements. For non-Native American sites that are subjected to data recovery, artifacts will be analyzed and curated at a USACE-approved curation facility.

- Alternative Option 2: if, through consultation, UAIC (for Native American sites or tribal cultural resources associated with the Wollok District) or either UAIC or Enterprise (for Native American sites or tribal cultural resources not associated with the Wollok District) do not support recovery or analysis of materials from tribal cultural resources, then alternative mitigation to data recovery and analysis will include any or all of the following options, subject to approval from the USACE:
 - Writing a report based on any field notes and catalog information that may have been recorded during archaeological excavations to provide a descriptive record of the ~~archeological~~ archaeological deposits;
 - Analysis of culturally appropriate existing collections that are currently housed in curation facilities and are available for study from other archaeological sites of comparable size and antiquity to the affected sites;
 - ~~Alternative mitigation to data recovery analysis also may include the following options:~~
 - Hiring an ethnographer or other appropriate professional to work with UAIC to ~~evaluate~~ the affected tribe(s) to further document the sites and project area.
 - Other tribal history ~~recording~~ recording, reproduction, or form of public interpretation developed in collaboration with UAIC, the affected tribe(s).

Construction will also be monitored, and discoveries made during construction will be managed per Mitigation Measures CR-MM-2 and CR-MM-3.

Effect CR-2: Potential to Disturb Unidentified or Known but not Located Archaeological Sites

The 2013 FEIR determined that unidentified archaeological sites may possibly exist within the Alternative 3 right-of-way (ROW) because much of the ROW occurs within natural floodplains, where archaeological sites are subject to the geological processes associated with river systems and flooding. During prehistory, sites were formed over many millennia. When habitation ceased or flood events occurred, interrupting human occupation, these sites may have been ritually abandoned or obscured by the deposition of sediment. In addition, because of the intensity of farming activity and levee construction in the historic era, surface manifestations for prehistoric sites may have been obscured by cultivation or levee construction, leaving portions of the site below grade with little to no visible indication above ground. Geological processes may obscure historic-era sites as well.

Because these sites may contain important data useful in research, and may ~~have~~ retain integrity to convey this data, sites that are buried and obscured may be unique archaeological resources. The 2013 FEIR determined that disturbance of buried unique archaeological resources through direct excavation associated with Alternative 3 would materially impair these resources under CEQA by disrupting scientifically useful deposits. Mitigation Measure CR-MM-2 would not ensure that these effects would be avoided, and the effect was found to be significant and unavoidable.

The footprints of both areas of proposed modification are similarly located within previous or current floodplain and areas of agricultural cultivation. They are therefore also sensitive for archaeological sites that may be buried and obscured; for these it is possible that some

archaeological sites will not be identified in advance of construction because they are buried and obscured. The project modifications also involve excavation in and around the levee, and would therefore have the same potential to disturb unidentified archaeological sites as was described for Alternative 3 in the Final EIR. This includes tribal cultural resources that are known but cannot be located. It also includes archaeological sites that are not associated with the Wollok District that may be either prehistoric or historic in nature. Project design alternatives (described above) and Mitigation Measure CR-MM-2, as ~~described in~~ modified from the 2013 FEIR and repeated below, will be implemented for the project modifications, but the effect would remain significant and unavoidable. However, for the reasons described above relevant to the Laurel Avenue ~~repair~~ area site falling within the boundaries of the Wollok ~~Prehistoric~~ District, the effect to that portion of the modified project would be more severe than as identified in the 2013 FEIR. This potential for post-review discoveries is also present for the Gridley Bridge Erosion site in Butte County. Therefore, the following mitigation measure will apply.

Mitigation Measure CR-MM-2: ~~Complete Surveys Prior to Construction~~, Implement a Cultural Resources Discovery Plan, Provide Related Training to Construction Workers, and Conduct Construction Monitoring

SBFCA will complete the following management steps for currently inaccessible areas once rights of entry have been obtained:

- After legal right-of-entry or access is obtained, and in consultation with UAIC and Enterprise Rancheria (for Sutter County and Butte County, respectively), SBFCA will complete an inventory and evaluation report for cultural resources, including archaeological resources.
- The work will be led or supervised by cultural resources specialists who meet the Secretary of the Interior's professional qualification standards provided in 36 CFR Part 61 and UAIC and Enterprise Rancheria monitors will be afforded the opportunity to participate.
- All newly identified resources will be mapped and described on DPR forms in consultation with UAIC and Enterprise Rancheria. Mapping will be completed by recording data points with GPS hardware through which data can be imported and managed digitally. Mapping of previously identified resources will be limited to updates of existing records where necessary to describe the current boundaries of the resource.
- In consultation with UAIC and Enterprise Rancheria, SBFCA will evaluate the eligibility of identified resources for listing on the CRHR and determine if these resources can feasibly be preserved in place, or if data recovery or alternative mitigation following Mitigation Measure CR-MM-1, above, is appropriate. The methods of preservation in place shall be considered in the order of priority provided in CEQA Guidelines § 15126.4(b)(3).

~~Prior to and during ground-disturbing construction, FRWLP proponents~~ SBFCA will ~~include a cultural resources discovery plan in the contract conditions of the construction contractor, incorporating~~ take the following actions to ~~be taken~~ in the event of the inadvertent discovery of cultural resources.

- ~~An archaeological monitor will be present to observe construction at geographic locations that are sensitive for unidentified cultural resources. Such locations will consist of construction areas near identified cultural resource(s) sites (within a 200-foot radius around the known boundaries of identified resources) and where ground-disturbing construction will occur within 1,500 feet of major water features.~~

- ~~In the event of an archaeological resource discovery, work will cease in the immediate vicinity of the find, based on the direction of the archaeological monitor or the apparent distribution of cultural resources if no monitor is present. A qualified archaeologist will assess the significance of the find and make recommendations for further evaluation and treatment as necessary.~~
- ~~Discovered resources will be mapped and described on DPR forms. Mapping will be completed by recording data points digitally with GPS hardware.~~
- ~~SBFCA will evaluate identified resources to determine if they are unique archaeological sites or historical resources. Treatment will follow the standards and order of priority described in CEQA Guidelines §15126.4(b)(3).~~
- ~~If human remains are discovered as part of the deposit, SBFCA will coordinate with the county coroner and NAHC to make the determinations and perform the management steps prescribed in California Health and Safety Code Section 7050.5 and PRC §5097.98.~~
- ~~If Native American human remains are discovered on Federal land, work in the immediate vicinity will cease, and SBFCA will contact the relevant representative of the Federal agency where the remains were discovered, as prescribed in 25 USC §3002(d) (NAGPRA). After notification from the relevant agency representative and treatment of the remains as required under NAGPRA, work may continue. Disposition of the remains will follow the ownership priority described in NAGPRA (25 USC §3002{a}).~~
- All ground-disturbing work will be monitored by a qualified professional archaeologist and a tribal monitor from UAIC or Enterprise Rancheria for work in Sutter and Butte Counties, respectively. The monitors' tasks will include observing the active excavation of materials, as well as periodically checking excavated substrate and ensuring the respectful and culturally-appropriate treatment of finds. The tribal monitor will be provided sufficient work space and an unobstructed view of excavations. SBFCA will authorize the tribal monitor to pause construction, through the construction manager, periodically as needed for a closer examination of exposed sediments and/or artifacts. The tribal monitor will record their daily observations on a standard field form and may take photographs of project-related ground disturbance or activities that affect tribal resources or cultural items as needed.
- In the event that potential tribal cultural items or human remains are discovered, all work at the specific location will cease immediately. The tribal monitor(s) are empowered, through the construction manager, to stop and relocate excavation activities pending further investigation by coordinating with SBFCA's construction inspector. The tribal monitor and, if present, the on-site consulting archaeologist, will assess whether the discovery is an archaeological and/or tribal resource. If a consulting archaeologist is not present, the SBFCA employee, construction inspector, or contractor will immediately contact the SBFCA Project Manager and the consulting archaeologist.
- The tribal monitor, in cooperation with the consulting archaeologist, may photograph and describe the discovery and document its location. The discovery will be analyzed to determine whether it includes Burials, Burial Soils, Burial Objects, tribal cultural items or whether it is a non-tribal archaeological resource. Based on this analysis, the tribal monitor will recommend one of the following procedures:

- If the tribal monitor determines that the discovery does not include Burials, Burial Soils, Burial Objects, or tribal cultural items, and if the consulting archaeologist determines that the discovery is not a non-tribal archaeological resource, then project-related ground disturbance may continue in the location of the discovery without Tribal involvement and once unanticipated discovery measures are carried through.
- If the tribal monitor determines that the discovery includes Burials, Burial Soils, Burial Objects, or tribal cultural items, a 100-foot protective buffer area will immediately be established. SBFCA, in consultation with the Tribe, will take the necessary steps to protect the discovery and SBFCA will immediately initiate consultation with the tribes on feasible alternatives. Although immediate steps will be taken to protect the discovery from further damage, such as covering the discovery with a tarp, reburial, and cordoning-off a 100-foot area around the discovery from future ground disturbance, additional steps to be taken to protect the discovery will be determined through discussion between SBFCA, USACE, SHPO, and UAIC or Enterprise Rancheria.

The SBFCA Project Manager will contact the USACE Archaeologist. They will consult with the Tribe and SHPO concerning the nature, significance, and extent of the discovery. The Parties will develop and implement a plan to accommodate modifications to project activities and/or reburial. Neither ground-disturbing excavations nor other, non-ground-disturbing activities may continue at the location of the discovery until the SBFCA Project Manager receives approval from USACE after the appropriate consultation between the USACE, SHPO, and affected tribe(s) has occurred.

Authorization from the USACE will take the form of an email or hard copy document. Ground-disturbing activities are defined as those that have the potential to uncover cultural resources that may not be currently visible on the surface, and include the following: major or minor grading or earthwork; new or enlarged excavation for installation of fences, gates, utility poles, or culverts; and project activities defined as ground disturbing in the revised draft Project Historic Property Treatment Plan (HPTP) and revised draft Resource Specific Treatment Plans (RSTPs). Non-ground-disturbing activities include: repaving and associated minor grading, fence, pole, or culvert replacement, when such work or replacement does not displace or expose soils determined by SBFCA and the appropriate tribe to be composed of culturally sensitive fill material; installation of material and equipment that occurs solely above-ground; removal of project environmental and erosion control measures; equipment demobilization; and other project closeout activities that do not displace or expose soils determined to be composed of culturally sensitive fill material. However, unusual circumstances may render the above categories inapplicable for some activities in some locations. For example, many of the activities above could be considered ground-disturbing if done near or within a known cemetery or recorded archaeological site. If there is any question, SBFCA will consult with the appropriate tribe prior to work occurrence.

- In the event that suspected Native American human remains in any state of decomposition or skeletal completeness are found during project activities, SBFCA shall immediately contact the applicable County Coroner. The Coroner shall ensure that notification is provided to the NAHC as required by California Health & Safety Code § 7050.5 and Public Resources Code § 5097.98(a). Health and Safety Code Section 7050.5 establishes the

authority of the County Coroner regarding the discovery of human remains and the role of the NAHC if the coroner determines that the remains are that of a Native American. Public Resources Code § 5097.98 deals with the notification process used by the Native American Heritage Commission for the discovery of Native American human remains, descendants, and also provides guidance for the appropriate and dignified disposition of human remains and associated grave goods. The procedures in the Burial Treatment Agreement (Mitigation Measure CR-MM-8) between the UAIC and SBFCA shall be followed. In the case of Enterprise Rancheria as the tribal monitor, SBFCA shall consult with the tribe on appropriate treatment.

- If the discovery is determined to not be a tribal resource by the tribal monitor, but is determined by the consulting archaeologist or SBFCA to be a non-tribal cultural or archaeological resource subject to the terms of the Programmatic Agreement or any of its implementing documents, then the consulting archaeologist shall follow the procedures therein and as generally described above, without further involvement by the tribal monitor or tribe(s).
- All tribal monitor decisions about whether discoveries are tribal resources will be documented in writing. If there is a dispute about a tribal monitor's decision, including disputes arising from SBFCA's refusal to acknowledge or respect the tribal monitor's decision or conflicting recommendations from tribal staff or monitors, SBFCA must consult with the tribe to confirm or reject the tribal monitor's decision.
- If the discovery is an archaeological site not related to Native American culture, the Wollok District, or both, then SBFCA shall consult with the USACE on appropriate treatment, which will be in general conformance with CR-MM-1.

SBFCA will develop a list of cultural resources staff who can respond to cultural resources discoveries; SBFCA, in consultation with the tribes, will also develop training materials for construction workers regarding management direction following discoveries. The staff list and training materials will be provided to the supervisory field staff. SBFCA will conduct training for construction workers that provides an overview of cultural resources identification and this mitigation measure.

Effect CR-3: Potential to Disturb Human Remains, Including Known Tribal Cemeteries that Cannot be Located

The 2013 FEIR determined that the construction of levee improvements associated with Alternative 3 could disturb human remains, which would be a significant effect. Mitigation Measure CR-MM-3 ~~will~~ reduce the severity of this effect, but it cannot guarantee that the effect would be avoided. The 2013 FEIR concluded that this would be a significant and unavoidable effect.

Although they were subjected to a pedestrian survey by professional archaeologists and tribal representatives ~~for~~from UAIC and Enterprise Rancheria, respectively, the Laurel Avenue and Gridley Bridge Erosion ~~repair areas~~sites are located in an area of moderate to high sensitivity for archaeological cultural remains, including burials. This is largely due to their proximity to a major water course, and the nature of historic levee construction, which was done in 1868, prior to environmental laws and regulations that required consideration of cultural resources. Therefore, even though the landscape of the ~~affected~~project area has been modified significantly since the time that Native American villages and occupational areas were established and used, there remains the

possibility that there are cultural resources or tribal cultural resources that are contained within or near the existing levee prism, which are not visible on the surface. Therefore, ground-disturbing work necessary to ~~implement the project modifications~~ construct the proposed project modifications may inadvertently damage and disturb these resources before they can be discovered. In particular, slurry cutoff walls, which will be constructed at the Laurel Avenue ~~repair area site~~, may disturb these resources at depths where the resource cannot be identified, even during monitoring. Slurry cutoff wall construction occurs through use of a bentonite mixture that obscures artifacts and cultural material, making identification infeasible or at least unlikely during monitoring of these features in particular. Therefore appropriate and dignified treatment, and immediate reburial is, often the only appropriate measure. Mitigation Measure CR-MM-3, as ~~described~~ modified in from the 2013 FEIR and repeated below, will reduce the severity of this effect, but it cannot guarantee the effect would be avoided. Therefore, the identified effect would remain significant and unavoidable with implementation of the proposed project modifications. However, for the reasons described above relevant to the Laurel Avenue ~~repair area site~~ falling within the boundaries of the Wollok Prehistoric District, the effect to that portion of the modified project would be more severe than as identified in the 2013 FEIR.

Mitigation Measure CR-MM-3: Monitor Culturally Sensitive Areas during Construction and Follow State and Federal Laws Governing Human Remains if Such Resources Are Discovered

SBFCA will retain a qualified archaeologist and UAIC and/or Enterprise Rancheria monitor(s), as applicable, to monitor areas of sensitivity for previously unidentified archaeological resources and human remains, as required under Mitigation Measure CR-MM-2. The following actions will be taken.

- If human remains are discovered as part of the deposit or in isolation, work will cease in the immediate vicinity and within the radius necessary to avoid further disturbance, and the procedures in CR-MM-2 will apply. SBFCA, and the contractors will coordinate with the ~~county~~ Butte or Sutter County coroner, as appropriate, and NAHC to make the determinations and perform the management steps prescribed in California Health and Safety Code §7050.5 and PRC §5097.98. This coordination requires the following steps.
 - The local county coroner will be notified so that he/she may determine if an investigation regarding the cause of death is required. If the coroner determines that the remains are of prehistoric Native American origin, the coroner will notify the NAHC.
 - Upon notification, the NAHC will identify the MLD, ~~and~~ the MLD will be given the opportunity to provide recommendations, including reinterment of the remains with appropriate dignity. If the NAHC fails to identify the MLD or if the parties cannot reach agreement as to how to reinter the remains as described in PRC §5097.98(e), the landowner will reinter the remains at a location not subject to further disturbance. SBFCA will ensure the protections prescribed in PRC §5097.98(e) are performed, such as the use of conservation easements and recording of the location with the relevant county.
- ~~If Native American human remains are discovered on Federal land, work in the immediate vicinity will cease, and SBFCA will contact the relevant representative of the Federal agency where the remains were discovered, as prescribed in 25 USC §3002(d) (NAGPRA). After notification from the relevant agency representative and treatment of the remains as~~

~~required under NAGPRA, work may continue. Disposition of the remains will follow the ownership priority described in NAGPRA (25 USC §3002[a]).~~

SBFCA will include an overview of the potential for encountering human remains and an overview of this mitigation measure in the training performed under Mitigation Measure CR-MM-2.

Effect CR-4: Direct and Indirect Effects on Built Environment Resources Resulting from Construction Activities

The 2013 FEIR determined that a range of identified and potentially eligible built environment resources may occur in the Alternative 3 ROW and could be significantly affected by project ~~construction. Although~~ implementation. Although implementation of Mitigation Measure CR-MM-4 will reduce the severity of this effect, it cannot guarantee that the effect would be avoided. The 2013 FEIR concluded that the effect would be significant and unavoidable.

Laurel Avenue Critical Repair

The proposed project modifications at the Laurel Avenue ~~repair area~~ site would alter a segment of the historic component of the Feather River Levee, a ~~historical~~ resource that has been determined eligible for listing in the NRHP by the USACE with concurrence from SHPO.

Construction of a slurry cutoff wall and the filling of an existing non-jurisdictional swale as part of the Laurel Avenue Critical Repair construction involve improvements to the existing levee so the structure continues to function as a flood protection resource, the theme for which the structure is considered a historical resource. The proposed modification at the Laurel Avenue ~~Critical Repair~~ repair area site is geared toward maintaining, repairing, and stabilizing the levee and appears to be consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines. Construction of a slurry cutoff wall and ~~filling~~ infill of the swale at the Laurel Avenue ~~repair area~~ site would result in a less than significant effect to the historic levee.

Gridley Bridge Erosion Repair

The proposed project modifications at the Gridley Bridge Erosion ~~repair area~~ site have the potential to cause an indirect effect on the Gridley Unit Historic District, previously identified in the 2013 FEIR. The contributing resources associated with the historic district are 25 wood frame units constructed in 1938 by the Farm Security Administration. The district is eligible for listing in the NRHP and CRHR under Criterion A and Criterion 1, respectively, for the site's association with the Farm Security Administration's efforts during the Great Depression to address the health and housing crisis. The district is also eligible for the NRHP and CRHR under Criterion C and CRHR Criteria Criterion 3, respectively, as an excellent example of Farm Security Administration's vernacular architecture and landscape design.

The proposed modification of placement of rock slope protection (RSP) along the levee at the Gridley Bridge Erosion ~~repair area~~ site will occur within close proximity to the Gridley Unit Historic District. However, proposed modification activities will occur on the waterside water side of the levee and outside the direct line of sight from or to the Gridley Unit Historic District. For this reason, ~~RSP~~ placement of RSP along the Gridley Bridge Erosion ~~repair area~~ site would result in a less-than-significant effect.

CEQA Finding

Implementation of the FRWLP with proposed project modifications would not result in a substantially more severe effect on built environment resources than identified in the Final EIR. The effect would remain significant and unavoidable. Mitigation Measure CR-MM-4, as ~~described in~~ modified from the 2013 FEIR and ~~repeated~~ below, still applies to the overall FRWLP.

Mitigation Measure CR-MM-4: Complete Inventory of Built Environment Resources in Inaccessible Parcels, Evaluate Identified Properties, Assess Effects, and Prepare Treatment to Resolve and Mitigate Significant Effects

SBFCA will ensure that an inventory and evaluation report is completed for all ~~areas~~ currently inaccessible areas where effects on non-Native American built environment resources may occur.

- The scope of the inventory will include the entire area where effects may occur. Such effects consist of direct disturbance, damage through vibration, and/or changes to the setting.
- The work will be led or supervised by architectural historians who meet the Secretary of the Interior's professional qualification standards provided in 36 CFR Part 61.
- Inventory methods and evaluation will include pedestrian surveys, photographic documentation, and historical research using primary and secondary sources, interviews, and oral histories.
- Identified resources will be mapped and described on forms provided by DPR. Mapping will be performed by recording data points digitally with GPS hardware.
- For all identified resources, SBFCA will determine if they are historical resources (State CEQA Guidelines §15064.5[a]), significant historical resources under CEQA (PRC §21084.1), and/or eligible for local registers.
- The recorded resources and the resource evaluations will be summarized in an inventory report. In the inventory report, SBFCA will also determine if individual resources qualifying as historical resources will be subject to significant effects. SBFCA will make such a finding if the FRWLP would result in any of the following actions:
 - Demolish or materially alter the qualities that make the resource eligible for listing in the CRHR (State CEQA Guidelines §15064.5[b][2][A],[C]).
 - Demolish or materially alter the qualities that justify the inclusion of the resource on a local register or its identification in a historical resources survey meeting the requirements of PRC §5024.1(g), unless SBFCA establishes by a preponderance of evidence that the resource is not historically or culturally significant (State CEQA Guidelines §15064.5[b][2][B]).
 - Cause a substantial significant change in the significance of a historical resource (PRC §21084.1).
- For all resources subject to significant effects, SBFCA will develop and implement treatment. Treatment will prioritize avoidance and preservation in place or relocation of individual CRHR-eligible buildings (non-contributing or unaffected buildings would remain in place). Where avoidance or relocation is not feasible, standard treatment such as documentation through the Historic American Buildings Survey, Historic American Landscape Survey,

Historic American Engineering Record, or district documentation will be completed. Interpretive displays, online resource, and historic contexts or walking tours may also be used, as appropriate.

New Effect

Implementation of the proposed project modifications would result in a new effect (Effect CR-5) on tribal cultural resources that was not ~~known at the time~~ considered in the 2013 FEIR ~~was certified~~.

Effect CR-5: Effects on Identified Tribal Cultural Resources, Including those that are Known but Cannot be Located

The proposed project modifications would affect a portion of the Wollok ~~Prehistoric~~ District, a tribal cultural resource. ~~The determination as to whether or not the effect would be significant depends on the aspects of the sacred site's integrity that convey its significance. Integrity is expressed through one or more of seven aspects defined by the CRHR, including location, design, setting, materials, workmanship, feeling, and association. The significance of the~~ within the Sutter County portion of the District that is located within the repair area evaluated in this Supplemental EIR is conveyed ~~through its FRWLP, for which UAIC determined is eligible for inclusion in the NRHP and retains sufficient integrity. Diminishing the integrity of location and association. It possesses integrity of location because the~~ the Wollok District has been identified by the UAIC as being present within the project area. It possesses integrity of association because of its continued importance substantial consequences to the resource and to tribal culture the UAIC Native American community. According to UAIC, these include awakening sites that should be asleep, interfering with the burial traditions and history, practices of a community, preventing the spiritual journey through the afterlife, and other consequences. Such consequences adversely affect the spiritual and physical health of contemporary Native American communities and diminish the ability of these communities to practice their traditional religious beliefs.

The balance of the Wollok District, outside of the project area subject to this Supplemental EIR, may retain other aspects of integrity and would be analyzed under subsequent environmental documents for future projects, when proposed.

As a result, any project activities that have a negative effect on the characteristics of the resource that qualify it for consideration as a tribal cultural resource, which would diminish those qualities such that the resource would no longer be significant as a result, are considered to have a significant effect. As such, mitigation to lessen or avoid those significant effects would be required. A discussion of the effects of the project modifications to the Wollok ~~Prehistoric~~ District is discussed below, relative to the two ~~repair areas~~ new project locations in this SEIR. The discussion of project design alternatives considered is provided further above.

Laurel Avenue Critical Repair

Given that the Laurel Avenue ~~repair area~~ site falls within the boundaries of the Wollok ~~Prehistoric~~ District, as identified by the UAIC and the NAHC in their April 2015 Finding of Fact (Robinson 2015) ~~and by the UAIC~~, the proposed project modifications have the potential to result in an effect to significant contributing elements of this tribal cultural resource. While the pedestrian survey in September 2015 did not provide substantial evidence to identify specific Native American sites (e.g., cemeteries, shrines, etc.) within the portion of the District that falls within the Laurel Avenue ~~repair area~~ site, a pedestrian survey cannot reveal the subsurface and spiritual aspects of tribal cultural

resources. Furthermore, three sites are known to exist within the Laurel Avenue site, based on UAIC oral histories, and may exist below the area surveyed and at a depth below the locations where cultural materials are found, for which complete levee degrade is the only means by which they could be confirmed.

The proposed project modifications at the Laurel Avenue ~~repair area~~ site would alter the physical composition of the levee by introducing a new concrete slurry cutoff wall and fill material to an associated swale feature. Although the levee, as a whole, will not be moved, the relocation and disturbance of soils within the levee prism and its associated features would further disturb the matrix of the District ~~and~~, could unearth cultural deposits associated with the Wollok ~~Prehistoric District~~, and could adversely affect TCRs at depths beyond that which can be monitored. This would have ~~an effect~~ effects on the integrity of location, design, setting, materials, workmanship, feeling and association. However, the project modifications, if implemented, would not change the fact that the Wollok ~~Prehistoric~~ District is associated with tribal culture and history, ~~and therefore~~. However, by disrupting the physical elements of the Wollok District that create this association, the project would ~~not~~ have an effect on its integrity of association.

Because the project modifications at the Laurel Avenue ~~repair area~~ site could have a negative effect on ~~the integrity of location of a tribal cultural resource~~ resources, this would be a significant and unavoidable effect. Mitigation Measures CR-MM-1 through CR-MM-3 and CR-MM-5 through CR-MM-10 will reduce the effect, but not to a less-than-significant level.

Gridley Bridge Erosion Repair

The proposed project modifications at the Gridley Bridge Erosion ~~repair area~~ site do not fall within the boundaries of the Wollok ~~Prehistoric~~ District as defined by UAIC. Therefore, there ~~would~~ will be no effect on ~~the~~ that tribal cultural resource as a result of the proposed project modifications at the Gridley Bridge Erosion ~~repair area~~ site.

CEQA Finding

Implementation of the FRWLP with project modifications would result in an effect on tribal cultural resources that was not addressed in the 2013 FEIR. Mitigation Measure CR-MM-1, as revised in the 2015 *Addendum to the Feather River West Levee Project Final Environmental Impact Report* (contained in Appendix A of ~~this the Draft Supplemental EIR~~ and above), and Mitigation Measures CR-MM-2 ~~and through CR-MM-34, as modified from the 2013 FEIR (above)~~ still will apply to the project modifications. In addition, Mitigation Measures CR-MM-5 through CR-MM-9, recommended by the NAHC, ~~and Mitigation Measure CR-MM-10, developed in consultation between SBFCA and UAIC as part of the Settlement Agreement, and modified below from the Draft SEIR,~~ shall be implemented. Mitigation Measures CR-MM-1 through CR-MM-3 and CR-MM-5 through CR-MM-10 will reduce the effect on tribal cultural resources, but the effect ~~would remain~~ remains significant and unavoidable.

Mitigation Measure CR-MM-5: Design Alternatives

SBFCA has analyzed and will continue to analyze and explore with the UAIC, design alternatives on all components of the project that could avoid or lessen the potential damage to the cemeteries, burial grounds and ceremonial sites before ground-disturbing activities commence and/or begin. This may include, but is not limited to, discussions of alternatives as part of consultation meetings, providing copies of proposed project plans, and making adjustments to

plans during construction and construction methods during construction. Unforeseen discoveries of cultural resources may occur despite advance exploration, requiring the consideration of design adjustments during construction. Depending on the specific geotechnical conditions encountered during excavation activities, SBFCA will analyze and explore design modifications to the alignment and grade of these excavations to avoid or mitigate cultural resource effects, in consultation with UAIC.

Mitigation Measure CR-MM-6: Tribal Consultation Policy

With and in agreement with the culturally affiliated tribes to the FRWLP, SBFCA must develop a tribal consultation policy. The policy shall include statements regarding the importance of pre-project planning consultation and a commitment to meaningful consultation with all applicable tribes. SBFCA shall afford UAIC an opportunity to comment on the policy statement prior to adoption by the ~~SBFCA Board of Directors~~board of directors. The policy shall be in effect prior to ground-disturbing work commencing under this Supplemental EIR.

Mitigation Measure CR-MM-7: Repatriate Human Remains

SBFCA shall immediately repatriate all previously excavated human remains, burial goods, and soils from the Project site for which UAIC is the designated MLD, without further scientific testing or analysis, to the UAIC, and to allow for reburial as close to the original location they were obtained. This measure also applies to any additional human remains, burial goods and soils which may be encountered as indicated in Mitigation Measure CR-MM-8 below. Repatriation shall occur prior to ground-disturbing work commencing under this Supplemental EIR.

Mitigation Measure CR-MM-8: ~~Execute~~ Develop a Burial Treatment Agreement with UAIC

SBFCA will ~~execute~~ develop in agreement with UAIC a Burial Treatment Agreement (BTA) ~~with UAIC~~ based on the draft agreement authored by UAIC. The ~~Agreement~~BTA will govern the disposition and treatment of all human remains, objects, and soil disturbed or removed from the project areas for which UAIC has been or is later designated as the MLD. The ~~Burial Treatment Agreement~~BTA shall include provisions for reburial without scientific handling, testing, or analysis as close as possible to the original location from which they were obtained, and must be mutually agreed-upon by both SBFCA and UAIC prior to the commencement of ground-disturbing activities associated with the proposed project modifications. This BTA shall be approved by both parties prior to ground-disturbing work commencing under this Supplemental EIR.

Mitigation Measure CR-MM-9: ~~Execute~~ Develop a Cultural Resources Treatment Agreement with UAIC

SBFCA shall ~~execute~~ develop in agreement with UAIC a Cultural Resources Treatment Agreement ~~with UAIC~~, which will include a tribal monitoring program for UAIC representatives to participate in all survey and ground-disturbing work performed on the FRWLP to which they are culturally affiliated, ~~and which will also include a long-term management plan for the ongoing protection of the culturally sensitive resources.~~ This Agreement shall be executed agreed upon by both parties prior to ground-disturbing work commencing on the FRWLP.

All ground-disturbing activities shall be monitored by ~~one~~ an appropriate number of qualified tribal ~~monitor~~ monitors. By mutual agreement of the ~~Tribes~~ tribes, the UAIC shall monitor the Laurel Avenue site and Enterprise Rancheria shall monitor the Gridley Bridge Erosion site. SBFCA shall provide 7 calendar days' notice to tribes of planned ground-disturbing activities. The monitors' tasks will include observing the active excavation of materials, as well as periodically checking excavated substrate, and ensuring respectful and culturally-appropriate treatment. SBFCA will authorize the tribal monitor to pause construction, through the construction manager, periodically as needed for a closer examination of exposed sediments and/or artifacts. The tribal monitor will record their daily observations on a daily monitoring log and may take photographs of Project-related ground disturbance or activities that affect tribal resources or cultural items as needed.

In the event that potential tribal cultural items or human remains are discovered, all work at the specific location will cease immediately. The tribal monitor is empowered to stop and relocate excavation activities, through the construction manager, pending further investigation by coordinating with SBFCA's construction inspector. The tribal monitor and, if present, the on-site consulting archaeologist, will assess whether the discovery is an archaeological and/or tribal resource. If the determination is made that the find represents a cultural resource or tribal cultural resource, then the provisions in ~~Mitigation Measure~~ CR-MM-2 for unanticipated discoveries shall apply.

Mitigation Measure CR-MM-10: Ethnographic Study

An ethnographic study of the FRWLP will be conducted by an anthropologist who meets the Historic Preservation Professional Qualifications Standards for Cultural Anthropology, published by the National Park Service. Goals of the study will be to document the traditional lifeways of Native American groups with ties to the lower Feather River watershed and address the Wollok ~~Prehistoric~~ District. The study will include, but not be limited to, interviews with tribal elders, review of existing ethnographic literature, oral histories, historic documentation, historic maps, linguistic studies, and archaeological research. The ethnography will follow the Seven Principles of the American Anthropological Association's Statement on Ethics. ~~UAIC and Enterprise Rancheria shall be afforded an opportunity to provide input on the selection of the ethnographer, based on the ethnographer's qualifications and ability to work with the tribes.~~ The ethnography shall be completed and the ethnographic report finalized and distributed within 2 years of the completion of the project modifications and work authorized under this Supplemental EIR.