

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426  
March 11, 2013

OFFICE OF ENERGY PROJECTS

Project No. 2079-069--California  
Middle Fork American River Project  
Placer County Water Agency

To The Parties Addressed:

**Reference: Final Programmatic Agreement for Section 106 Compliance**

Enclosed is the final Programmatic Agreement (PA) and associated final historic properties management plan (HPMP) for the Middle Fork American River Project operated by Placer County Water Agency (PCWA). The project is located in Placer and El Dorado Counties, California, and includes federal lands managed by the U.S. Department of Agriculture-Forest Service, Tahoe and El Dorado National Forests (National Forests).

We issued a draft PA for review on August 23, 2012, and proposed to execute this PA with the California State Historic Preservation Officer without the participation of the Advisory Council on Historic Preservation (Advisory Council) in accordance with the Advisory Council's regulations at 36 C.F.R. 800. On September 11, 2012, the Advisory Council responded back stating their participation was not warranted. We did not receive any other comments on the draft PA or associated HPMP.

In our August 23, 2012 letter, we also directed PCWA to make several revisions to its HPMP based on our review. On September 21, 2012, PCWA filed a revised final HPMP based on our comments.

Vincent E. Yearick, Director, Division of Hydropower Licensing, has signed the final PA. Please sign the appropriate signature page, make a copy for yourself, and return only the page bearing your original signature via overnight delivery as soon as possible to the following address: Frank Winchell, Federal Energy Regulatory Commission, Room 61-10, 888 First Street N.E., Washington, DC 20426. Upon receipt of all signatures, Dr. Winchell will forward a copy of the executed PA with signature pages to all signatories and to the Advisory Council for their records.

In order to incorporate implementation of the PA into any license issued for the project, I would like to have the PA signed no later than 30 days from the date of this letter.

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If you have any questions, please contact Dr. Winchell at 202-502-6104. Your assistance in completing this process expeditiously is appreciated.

Sincerely,

Timothy J. Welch, Chief  
West Branch  
Division of Hydropower Licensing

Addresses:

Carol Roland-Nawi, SHPO  
Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816

Tom Quinn, Forest Supervisor  
U.S. Forest Service, Tahoe National Forest  
631 Coyote Street  
Nevada City, CA 95959

David Keyser, Chairperson  
United Auburn Indian Community of the  
Auburn Rancheria  
10720 Indian Hill Road  
Auburn, CA 95603

Kathy Hardy, Forest Supervisor  
U.S. Forest Service, El Dorado National  
Forest  
100 Forni Road  
Placerville, CA 95667

Brigette Zellner, Chairperson  
Todd Valley Miwok-Maidu Cult. Found.  
P. O. Box 1490  
Foresthill, CA 95661

Wanda Batchelor, Chairwoman  
Washoe Tribe of Nevada and California  
919 Highway 395 South  
Gardnerville, NV 89410

David Breninger, General Manager  
Placer County Water Agency  
P. O. Box 6570  
Auburn, CA 95604

Levina Suehead, Tribal Chair  
Colfax Todds Valley Consolidated Tribes  
P.O. Box 4884  
Auburn, CA 95604-4884

Nicolas Fonseca, Chairman  
Shingle Springs Rancheria  
P.O. Box 1340  
Shingle Springs, CA 95682

Jeri Scrambler, Chairperson  
Miwok Tribe of the El Dorado Rancheria  
P.O. Box 1284  
El Dorado, CA 95623

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Don Ryberg, Chairman  
T'si-Akim Maidu  
152 Mill Street, Suite A  
Grass Valley, CA 95945

Enclosures: Final PA and HPMP

cc: Service List  
Public Files

**PROGRAMMATIC AGREEMENT  
BETWEEN THE  
FEDERAL ENERGY REGULATORY COMMISSION  
AND THE  
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
FOR  
MANAGING HISTORIC PROPERTIES THAT MAY BE AFFECTED  
BY ISSUING A LICENSE TO  
PLACER COUNTY WATER AGENCY  
FOR THE CONTINUED OPERATION OF THE  
MIDDLE FORK AMERICAN RIVER PROJECT  
IN PLACER AND EL DORADO COUNTIES, CALIFORNIA  
(FERC No. 2079-069)**

**WHEREAS**, the Federal Energy Regulatory Commission or its staff (hereinafter, "Commission") proposes to issue a new license to Placer County Water Agency (hereinafter, "Licensee") to operate the Middle Fork American River Project (hereinafter, "Project") as authorized by Part I of the Federal Power Act, 16 U.S.C. Sections 791(a) through 825(r) *as amended*; and

**WHEREAS**, the Commission has determined that issuing such a license may affect properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter, "historic properties"); and

**WHEREAS** the associated *Placer County Water Agency Middle Fork American River Project (FERC Project No. 2079) Final Historic Properties Management Plan* (hereinafter, "HPMP") dated September 2012 provides a description of the Project's area of potential effects, historic properties, and anticipated effects identified as of the date of this Programmatic Agreement; and

**WHEREAS** the area of potential effects for the project includes lands enclosed by the project boundary, and any other area beyond the project boundary where project operations or project-related recreational development or any other enhancements may cause changes in the character or use of historic properties, if any historic properties exist (see section 2.2 in the HPMP and Map 2).

**WHEREAS**, the U.S. Department of Agriculture, Forest Service, Tahoe and El Dorado National Forests (hereinafter, "National Forests") manage lands within the Project,

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and have responsibilities for the issuance of permits under the Archeological Resources Protection Act (16 U.S.C. 470aa to 470ll; hereinafter, "ARPA") to the Licensee for archeological work on their lands;

**WHEREAS**, the Commission has consulted with the California Historic Preservation Officer (hereinafter, "SHPO") pursuant to 36 C.F.R. Section 800.14(b) of the Advisory Council on Historic Preservation's (hereinafter, "Council") regulations (36 C.F.R. Part 800), implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter, "Section 106"); and

**WHEREAS**, the Licensee has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

**WHEREAS**, the National Forests have agreed to participate in the Section 106 consultation regarding the Project under the terms of this Programmatic Agreement, and have been invited to concur in the Programmatic Agreement; and

**WHEREAS**, the Project may affect lands important to the United Auburn Indian Community of the Auburn Rancheria, Washoe Tribe of Nevada and California, Shingle Springs Rancheria, Colfax Todds Valley Consolidated Tribes, Miwok Tribe of the El Dorado Rancheria, Todd Valley Miwok-Maidu Cultural Foundation, and T'si-Akim Maidu (hereinafter, "Tribes"), and the Tribes have participated in the consultation and have been invited to concur in this Programmatic Agreement; and

**WHEREAS**, the Commission will require the Licensee to implement the provisions of this Programmatic Agreement as a condition of issuing a new license for the Project;

**NOW THEREFORE**, the Commission and the SHPO agree that the Project will be administered in accordance with the following stipulations in order to satisfy the Commission's Section 106 responsibilities during the term of the Project's license.

## STIPULATIONS

The Commission will ensure that upon issuing a license for this Project, the Licensee implement the following stipulations. All stipulations that apply to the Licensee will

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similarly apply to any and all of the Licensee's successors. Compliance with any of the following stipulations does not relieve the Licensee of any other obligations they have under the Federal Power Act, the Commission's regulations, or its license.

## **I. HISTORIC PROPERTIES MANAGEMENT PLAN**

- A. Upon issuing a new license for this Project, the Licensee will implement the HPMP.<sup>1</sup>
- B. The Licensee will, within 30 days of every anniversary of the issuance date of the license, file a report with the SHPO, National Forests, and the Tribes of activities conducted under the implemented HPMP. The report will contain a detailed summary of any cultural resources work conducted during the preceding year; if no work was completed, a letter from the Licensee will be prepared to that effect, and will satisfy the intent of this stipulation.

## **II. DISPUTE RESOLUTION**

- A. If at any time during implementation of this Programmatic Agreement and the HPMP, the SHPO, National Forests, Tribes, or the Council object to any action or any failure to act pursuant to this Programmatic Agreement or the HPMP, they may file written objections with the Commission.
  1. The Commission will consult with the objecting party, and with other parties as appropriate, to resolve the objection. The Commission may initiate on its own such consultation to remove any of its objections.

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<sup>1</sup> When adverse effects to historic properties are identified which were not anticipated in the HPMP, the Licensee may amend the HPMP and file it for Commission approval, or in consultation with the SHPO, develop a historic properties treatment plan (HPTP). If consultation with the SHPO does not result in the development of a HPTP, the Licensee will consult with the Commission to either amend the HPMP or resolve the dispute, pursuant to Stipulation III of this Programmatic Agreement.

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- B. If the Commission determines that the objection cannot be resolved, the Commission will forward all documentation relevant to the dispute to the Council and request that the Council comment. Within 30 days after receiving all pertinent documentation, the Council will either:
1. Provide the Commission with recommendations, which the Commission will take into account in reaching a final decision regarding the dispute; or
  2. Notify the Commission that it will comment pursuant to 36 C.F.R. Section 800.7(c)(1) through (c)(3) and section 110(l) of the National Historic Preservation Act, and proceed to comment.
- C. The Commission will take into account any Council comment provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The Commission's responsibility to carry out all actions under this Programmatic Agreement that are not the subject of dispute will remain unchanged.

### **III. AMENDMENT AND TERMINATION OF THIS PROGRAMMATIC AGREEMENT**

- A. The Commission, SHPO, Licensee, National Forests, or the Tribes may request that this Programmatic Agreement be amended, whereupon these parties will consult in accordance with 36 C.F.R. Section 800.14(b) to consider such amendment.
- B. The Commission or the SHPO may terminate this Programmatic Agreement by providing 30 days written notice to the other parties, provided that the Commission, Licensee, SHPO, National Forests, Tribes, and the Council consult during the 30-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Commission will comply with 36 C.F.R. Sections 800.3 through 800.7(c)(3), with regard to individual actions covered by this Programmatic Agreement.

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Execution of this Programmatic Agreement evidences that the Commission has satisfied its responsibilities pursuant to Section 106 of the National Historic Preservation Act, *as amended*, for all individual actions carried out under the license. Provided, however, that unless and until the Commission issues the license for the Project and this Programmatic Agreement is incorporated by reference therein, this Programmatic Agreement has no independent legal effect for any specific license applicant or Project.



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**FEDERAL ENERGY REGULATORY COMMISSION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Vince E. Yearick

Director, Division of Hydropower Licensing

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**CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Carol Roland-Nawi  
California State Historic Preservation Officer

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**CONCUR: PLACER COUNTY WATER AGENCY**

By: \_\_\_\_\_ Date: \_\_\_\_\_

David A. Breninger  
General Manager

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**CONCUR: U.S. FOREST SERVICE, TAHOE NATIONAL FOREST**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Tom Quinn  
Forest Supervisor

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**CONCUR: U.S. FOREST SERVICE, EL DORADO NATIONAL FOREST**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Kathy Hardy  
Forest Supervisor

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**CONCUR: UNITED AUBURN INDIAN COMMUNITY OF THE AUBURN  
RANCHERIA**

By: \_\_\_\_\_ Date: \_\_\_\_\_

David Keyser  
Chairperson

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**CONCUR: WASHOE TRIBE OF NEVADA AND CALIFORNIA**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Wanda Batchelor  
Chairwoman

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**CONCUR: SHINGLE SPRINGS RANCHERIA**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Nicholas Fonseca

Chairman



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**CONCUR: COLFAX TODDS VALLEY CONSOLIDATED TRIBES**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Levina Suehead

Tribal Chair

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**CONCUR: MIWOK TRIBE OF THE EL DORADO RANCHERIA**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Jeri Scrambler  
Chairperson

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**CONCUR: TODD VALLEY MIWOK-MAIDU CULTURAL FOUNDATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Brigette Zellner  
Chairperson

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**CONCUR: T'SI-AKIM MAIDU**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Don Ryberg  
Chairman

Document Content(s)

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