

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C. 20426

August 23, 2012

OFFICE OF ENERGY PROJECTS

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

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Wanda Batchelor, Chairwoman
Washoe Tribe of Nevada and California
919 Highway 395 South
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Placer County Water Agency
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Shingle Springs Rancheria
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Jeri Scrambler, Chairperson
Miwok Tribe of the El Dorado Rancheria
P.O. Box 1284
El Dorado, CA 95623

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

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

RE: Draft Programmatic Agreement for Section 106 Compliance

Dear Addressee:

Enclosed is the draft Programmatic Agreement (PA) and associated historic properties management plan (HPMP)¹ 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 have reviewed PCWA's November 2011 HPMP and, based on our analysis, find that PCWA, in consultation with the National Forests, participating Indian tribes, and California State Historic Preservation Office (SHPO), needs to revise their HPMP and provide the following procedures that include:²

- Requirements for National Register evaluation of all currently unevaluated resources subject to unavoidable project-related effects. These effects include those associated with reservoir drawdown for operation and maintenance purposes (such as sites FS-05-03-55-684 and FS-05-03-55-689), recreation activities, including trail maintenance and alignment (such as sites PL-03 and PL-19), and road construction (such as site FS-05-03-55-495), and documentation of California SHPO concurrences with all National Register recommendations.
- A plan for assessment of project effects to any properties that are determined to be eligible for listing on the National Register.
- A plan for the curation of any recovered archeological materials.
- A plan to develop mitigation measures in consultation with the California SHPO, National Forests, and participating Indian tribes for all eligible properties where effects are adverse.

We propose to execute this PA with the California SHPO, but without the participation of the Advisory Council on Historic Preservation (Council), in accordance with the Council's regulations at 36 C.F.R. Part 800. Although the Council may, at its

¹ Two associated reports (National Register of Historic Places Eligibility Report and Cultural Resources Supplemental Technical Study Report) are also enclosed.

² We give our justifications for HPMP revision in our Draft Environmental Impact Statement (issued July 23, 2012) in sections 3.3.6.2 (pages 261-266) and 5.2.2 (pages 339-340).

discretion, participate in the execution of this PA, we have determined that the issues, as they pertain to historic properties, do not warrant the Council's participation. We request that the Council concur in this determination simply by not objecting to this procedure.

As a result of our analysis of the HPMP, we direct PCWA to revise its HPMP, and file a final HPMP with the Commission within 30 days from the date of this letter.

For the remaining addressees listed above, please review the enclosed draft PA and associated HPMP and send us any comments you may have within 30 days from the date of this letter.

Please send your comments to:

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

If you have any questions, please contact Dr. Frank Winchell at (202) 502-6104.

Sincerely,

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

Enclosure: Draft PA, HPMP, and two Study Reports

Cc: letter and draft PA.

John Eddins
Office of Planning and Review
Advisory Council on Historic Preservation
1100 Penn. Ave., NW, Suite 809
Washington, DC 20004

Susan Stratton
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Public Files
Mailing List

**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) Draft Final Historic Properties Management Plan*, dated November 2011 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 U.S. Department of Agriculture, Forest Service, Tahoe and El Dorado National Forests (hereinafter, "National Forests") manage lands within the Project, 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

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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.

S T I P U L A T I O N S

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 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 Historic Properties Management Plan (hereinafter, "HPMP").³
- 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.
- 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:

³ 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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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.

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

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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

Acting Director, Division of Hydropower Licensing

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CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Milford Wayne Donaldson

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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