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Common Response 16: Tribal Cultural Resources

Overview

This Common Response addresses the common themes and topics raised in public comments regarding Tribal engagement and Tribal cultural resources, including the following.

- State policies and actions that affect Native American Tribal people in California.
- The adequacy of the California Department of Water Resources' (DWR) efforts to engage California Native American Tribes (Tribes).
- The methods that DWR employed to identify Tribal cultural resources, including the identification of the boundary for the Sacramento–San Joaquin Delta Tribal Cultural Landscape (Delta TCL).
- How DWR evaluated potentially significant impacts on Tribal cultural resources.
- How Tribal cultural resources were considered in other resource chapters beyond Chapter 32, *Tribal Cultural Resources*.

Given the importance of consultation to DWR's identification and analysis of potential impacts on Tribal cultural resources and its identification of appropriate mitigation measures, including avoidance, this Common Response also addresses the consultation process and DWR's approach to the identification of Tribal cultural resources.

Other themes related to Tribal cultural resources or Tribal comments are addressed in whole or in part in the following Common Responses.

- The Delta Conveyance Project Environmental Impact Report's (EIR) approach to selecting the study areas for resource evaluation is addressed in Common Response 1, *CEQA Process, General Approach to Analysis, and Other Environmental Review Issues*.
- Statements in opposition to the Delta Conveyance Project (project) are addressed in Common Response 1.
- Comments regarding the approval of projects with significant and unavoidable impacts are also addressed in Common Response 1.
- Comments regarding the adequacy of mitigation measures are also addressed in Common Response 1.
- Comments regarding the No Project Alternative description and analysis are addressed in Common Response 4, *No Project Alternative Description and Analysis*.
- Comments regarding the effects on terrestrial species are addressed in Common Response 11, *Terrestrial Biological Resources and Compensatory Mitigation Plan*.
- Comments regarding effects on water flows and hydrology are addressed in Common Response 9, *Hydrologic Modeling and Approach*, and Common Response 10, *Surface Water Quality and Groundwater Resources*.

Consistency with Current State Policies Regarding Indigenous People in California

Some comments expressed concerns regarding how the EIR considered Tribal concerns. Several comments provided statements in opposition to the project and portrayed the project as a continuation of historical State policies of Tribal genocide. Many of these comments expressed concerns regarding the incorporation of Tribal perspectives into the EIR analysis and the view that the project's potential benefits did not outweigh the significant and unavoidable impacts on Tribal cultural resources.

As described in Executive Order N-15-19, issued by Governor Gavin Newsom on June 18, 2019, the State of California recognizes that the State historically sanctioned over a century of depredations and prejudicial policies against California Native Americans. This Executive Order apologized on behalf of the citizens of the State of California to all California Native Americans for the many instances of violence, maltreatment, and neglect California inflicted on Tribes. Executive Order N-15-19 also established the Truth and Healing Council and reaffirmed and incorporated by reference the principles of Executive Order B-10-11, issued by Governor Jerry Brown on September 19, 2011, regarding communication and government-to-government consultation with Tribes on policies that may affect Tribal communities.

Additionally, on April 29, 2019, Governor Gavin Newsom issued Executive Order N-10-19, which directed the preparation of a water resilience portfolio that meets the needs of California's communities, economy, and environment through the twenty-first century and directed agencies to inventory and assess current planning to modernize conveyance through the Delta with a new single tunnel project. Executive Order N-10-19 also directed agencies to conduct extensive outreach to inform the water resilience portfolio process, including to Tribes.

The State of California, including DWR, is committed to strengthening and sustaining effective government-to-government relationships between the State and Tribes. DWR recognizes that Tribal engagement is an important component of every major project led by the State of California, providing an opportunity for government-to-government consultation, collaboration, and coordination between Tribal governments and the State. Guided by the Executive Orders described above (N-15-19, B-10-11, and N-10-19) and other state policies (including the California Natural Resources Agency's Tribal Consultation Policy and DWR's Tribal Engagement Policy), the Delta Conveyance Project planning process included significant Tribal engagement and outreach. For more information on the Tribal consultation and engagement conducted for the project, please see the Chapter 32, *Tribal Cultural Resources*, section titled *Consultation and Engagement with Tribes*. Additionally, Appendix 32A, *Tribal Consultation and Engagement Log*, presents a nonconfidential table that lists the Tribal consultation and informational meetings that have occurred for the project to date.

As the California Environmental Quality Act (CEQA) lead agency, DWR must assess the project's potential impacts on Tribal cultural resources as they are defined under Public Resources Code Section 21074. Pursuant to the state policies and Executive Orders described above, and in consideration of Public Resources Code Section 21074 regarding the identification of Tribal cultural resources, DWR developed a set of principles for conducting environmental review of the proposed Delta Conveyance Project, which laid out a thoughtful process and methods for identifying Tribal cultural resources in preparation of the development of the EIR. These principles are included in the EIR as Appendix 32D, *Principles for the Identification of Tribal Cultural Resources for the Proposed*

1 *Delta Conveyance Project.* As Tribal expertise regarding Native American heritage has not
2 traditionally been applied to CEQA cultural resources evaluations, these principles ensured that
3 Tribal perspectives would be incorporated into the application of the CEQA criteria for evaluating
4 significance. These principles and the associated steps for identifying Tribal cultural resources offer
5 a framework for recognizing subconscious historical biases and reframing the context in which
6 Tribal resources are evaluated as part of DWR's good faith effort to meet both the letter and the
7 intent of Public Resources Code Section 21074. DWR recognizes the expertise of Tribes regarding
8 their histories and cultures and the importance of meaningful consultation about the significance of
9 resources from Tribal perspectives, and for the Delta Conveyance Project, DWR sought to conduct
10 meaningful and culturally sensitive consultation with Tribes for the purpose of identifying potential
11 Tribal cultural resources in the CEQA process.

12 Throughout consultation, Tribes expressed to DWR that impacts on culturally important resources
13 would occur regardless of whether those resources are defined as Tribal cultural resources under
14 the Public Resources Code. DWR reflected on Tribes' identification of resources with cultural
15 significance when identifying character-defining features of the Delta TCL, and consulting Tribes'
16 input had the greatest influence for characterizing the cultural value and importance of the Delta
17 TCL. DWR's finding that the Delta TCL is eligible to be included in the California Register of
18 Historical Resources (CRHR) demonstrates DWR's recognition of what Tribes expressed regarding
19 the integrity of those features despite long-term alterations of those features from colonial and post-
20 colonial development.

21 The primary objective of CEQA is to disclose to decision makers the environmental impacts of a
22 proposed project and alternatives, evaluating the potential adverse change to existing conditions
23 and determining if mitigation is available to offset the potential impact. As the EIR will provide
24 information for use in DWR's decision on whether to approve the project, DWR has prepared the EIR
25 with analysis to disclose the potential impacts associated with the proposed project and alternatives
26 in order to provide decision makers with information that enables them to make a decision that
27 takes account of potential environmental impacts. In light of this, DWR included various statements
28 on Tribal perspectives in Chapter 32 to ensure the decision makers have reviewed this information
29 prior to making a decision on the project. For example, Chapter 32 acknowledges that consulting
30 Tribes oppose the project due to the unmitigable impacts on the Tribal cultural landscape and to the
31 resources Tribes have called out as foundational. Chapter 32 also recognizes that Tribes perceive
32 that project effects would extend beyond the study area due to the interconnectedness of
33 waterways, and describes Tribal perspectives expressed during consultation regarding the
34 significance of the Delta.

35 As disclosed and analyzed in Chapter 32, DWR recognizes the significant and unavoidable impacts of
36 the project and project alternatives on Tribal cultural resources, including the Delta TCL. Under
37 CEQA, DWR must and will consider such impacts before determining whether to approve the
38 project. If DWR approves the project or a project alternative, it must adopt a statement of overriding
39 considerations to detail and explain the overriding considerations that led DWR to approve a project
40 notwithstanding the significant and unavoidable impacts. Please refer to Common Response 1
41 regarding the approval of projects with significant and unavoidable impacts.

42 DWR is committed to continuing consultation and engagement with Tribes as part of the project's
43 mitigation measures, and DWR will continue to consult with affiliated Tribes regarding the
44 implementation of the mitigation measures to minimize and mitigate the project's significant
45 impacts.

Role of Meaningful Tribal Consultation in DWR's Identification and Evaluation of Tribal Cultural Resources

Several comments criticized DWR's approach to identifying and evaluating the project and project alternatives' potential impacts on Tribal cultural resources. While most comments acknowledged the presence of a Tribal cultural landscape centered on the Delta, several comments questioned whether the Delta TCL is the appropriate mechanism for evaluating the potential impact on all the resources that commenters on the EIR identify as having Tribal significance. Some comments also questioned whether DWR fully appreciates the Tribal perspective regarding the connection between resources such as biological habitats, water resources, the landscape, and other resources. While the comments generally concurred with DWR's conclusions that these resources are interrelated and interconnected, they questioned whether the full scope of project impacts were fully acknowledged through the Delta TCL. Comments also sought recognition in other resource chapters of those resources that are culturally important to Tribes, rather than having the Tribal cultural resources impact analysis limited to Chapter 32. A central theme of these comments is to query whether DWR fully considered Tribal input during consultation.

Guiding Principles for Tribal Consultation

As part of DWR's commitment to meaningful consultation with Tribes and to identifying, evaluating, and, as needed, mitigating potential impacts on Tribal cultural resources, DWR developed *Principles for the Identification of Tribal Cultural Resources for the Proposed Delta Conveyance Project* (Principles), included as Appendix 32D to the EIR, which describes principles and methods underlying DWR's approach to identifying Tribal cultural resources. The Principles reflect the regulatory framework applicable to the identification of Tribal cultural resources, including DWR's responsibility as the CEQA lead agency to determine whether a resource is a Tribal cultural resource by applying the CEQA definition (Public Resources Code [Pub. Resources Code] § 21074). The Principles set forth the importance of Tribal consultation to identifying Tribal cultural resources. Good-faith, confidential consultation provides DWR with a critical source of information for identifying resources that are important to Tribes. As set forth in Section 21074(a)(1) of the Public Resources Code, to be a Tribal cultural resource, a site, feature, place, landscape, or object must have cultural value to a Tribe and meet eligibility criteria for listing in the CRHR or already be listed in a qualified local register. Understanding the cultural value provided DWR with a basis to satisfy the CEQA-defined criteria applicable to the definition of Tribal cultural resources.

The Principles also recognize that because designated Tribal representatives have Tribal expertise and Tribal perspectives due to their unique cultural and geographical affiliations, Tribes may be a source of technical expertise that can contribute to a determination of whether a resource qualifies for listing on the CRHR, which is a key component of CEQA's definition of a Tribal cultural resource.

Substantial Tribal Consultation Conducted by DWR

Meaningful consultation was more than an abstract goal. DWR engaged in continuous, multiyear consultation with 13 Tribes pursuant to Public Resources Code Section 21080.3.1 or DWR's Tribal Engagement Policy. As explained in Chapter 32, in the section titled *Consultation and Engagement with Tribes*, DWR sent notification letters and a copy of the Notice of Preparation to all Tribes traditionally and culturally affiliated with the geographic project area identified in the Notice of Preparation that had submitted a written request for notification to DWR in accordance with the

Public Resources Code, inviting these Tribes to consult on the project pursuant to the Public Resources Code. DWR also sent notification letters and a copy of the Notice of Preparation to additional Tribes based on the Local Government Tribal Consultation List received from the Native American Heritage Commission for the counties of the project area as identified in the Notice of Preparation, inviting these Tribes to consult on the project pursuant to DWR's Tribal Engagement Policy.

DWR reached out to 121 Tribes in total with invitations to consult on the project and received responses from 13 Tribes requesting consultation on the project. A limited number of these Tribes chose to have sustained engagement with DWR. Consultation meetings took several forms to accommodate Tribes, including videoconferences to maintain COVID-19 social distancing recommendations, in-person meetings, and site visits. Tribal leaders, Tribal Historic Preservation Officers, and other Tribal representatives attended these meetings at the Tribe's discretion. For the Tribes that chose to engage in consultation on the project, DWR engaged in consultation meetings as often as requested and solicited Tribal feedback, which was incorporated into the Draft EIR and the Final EIR. DWR frequently reached out to consulting Tribes to provide project updates and request consultation to discuss project information. Specifically, DWR provided information about the project to each of the consulting Tribes and invited each Tribe to provide DWR with information about resources of concern, including their location and significance, what impacts might occur from project activities, and ways that impacts could be avoided or mitigated. Any information consulting Tribes chose to share with DWR regarding Tribal resources of concern, traditional lifeways, and cultural practices factored into DWR's finding that the Delta TCL meets the criteria for listing in the CRHR, and thus qualifies as a Tribal cultural resource under CEQA. DWR also conducted site visits, to accessible parcels, with interested Tribes. Information collected during site visits also factored into DWR's finding that the Delta TCL meets the criteria for listing in the CRHR. In addition, DWR provided interested consulting Tribes that contributed to Tribal Cultural Resources identification opportunities to review portions of the draft confidential *Tribal Cultural Resources Identification Report* (Appendix 32C) and to provide data and technical input, as was acknowledged in several comments on the Draft EIR. Moreover, DWR continued to engage in consultation with Tribes following publication of the Draft EIR to discuss any additional information Tribes chose to share regarding appropriate mitigation for the Delta TCL. Since January of 2020, DWR has conducted over 150 formal government-to-government Tribal consultation meetings with interested California Tribes affiliated with the Delta and the project area as well as several informational meetings to provide Tribal representatives with general project updates.

Consideration of Tribal Perspectives on Identification of Tribal Cultural Resources

DWR appreciates the investments made by consulting Tribes to build a relationship with DWR leading to finalization of the EIR. DWR is committed to extending these relationships beyond CEQA review of the Delta Conveyance Project through close collaboration on and engagement during the implementation of the mitigation measures if the project is approved.

DWR's role in the identification of Tribal cultural resources is to apply the criteria outlined in Public Resources Code Section 21074 and its approach for this process, including consideration of the significance of a resource to a Tribe, which is discussed in the introduction and the *Methods for Resource Identification* section in Chapter 32. The principles and methods DWR applied to identifying Tribal cultural resources are described in greater detail in Appendix 32D. DWR's regulatory responsibility for identifying and determining whether a resource is a Tribal cultural

resource under CEQA is described in Appendix 32D and in the section titled *CEQA Requirements for Identifying Tribal Cultural Resources* in Chapter 32. DWR engaged in consultation with Tribes, as described in Chapter 32 in the section titled *Consultation and Engagement with Tribes* and as documented in Appendix 32A, to inform the identification of Tribal cultural resources and to fulfill DWR's statutory obligation to engage in government-to-government consultation with Tribes that request it (Pub. Resources Code § 21080.3.1).

Many commenters agreed with DWR's finding that there is a Delta TCL comprising multiple interrelated and interdependent natural and cultural resources. However, several comments also suggested that the EIR should recognize the natural and cultural features identified as character-defining features by DWR as individual Tribal cultural resources. As discussed in the section titled *Cultural Significance of the Landscape* in Chapter 32, throughout consultation multiple Tribes expressed that the Delta is at the heart of multiple Tribes' traditional areas and storyscapes and that its interconnected and interdependent natural and cultural resources carry the cultural, spiritual, and physical lifeblood of Tribes' heritage, livelihood, and identity. Several Tribes frequently and clearly expressed to DWR that the Delta is significant in the context of Tribal heritage and in the present-day lives of Tribal members. DWR was told that, in both ancestral and present-day contexts, the Delta region's elements and features (e.g., gathering areas, archaeological sites, villages, plant species, and trails) are interconnected and interdependent, creating a holistic and culturally important landscape that recognizes the association between resources, places, practices, and cultural beliefs. The connection between and among these resources is fundamental to the EIR's finding that the study area includes a Tribal cultural landscape that qualifies as a Tribal cultural resource under CEQA. The individual ecological resources, which all have Tribal significance, contribute to the Delta TCL and form both the physical foundation and the ceremonial and spiritual foundation of the Delta TCL. The resources analyzed in the EIR as character-defining features provide a feeling of association and contribute to the integrity of the landscape; hence, they contribute to DWR's finding that the Delta TCL is eligible for listing under the CRHR criteria.

As explained in Chapter 32, DWR assessed the potential for individual Tribal cultural resources and will implement Mitigation Measure TCR-2: *Perform an Assessment of Significance, Known Attributes, and Integrity for Individual CRHR Eligibility* to ensure that any potential individual Tribal cultural resources are identified and addressed through mitigation.

Consideration of Tribal Perspectives on the Cultural Importance of Ecological Resources

DWR understands and recognizes that native species and habitats are key species to Tribes. Accordingly, DWR has consulted with Tribes and considered the impacts on Tribally identified terrestrial and aquatic species' associated habitats, including salmon and other native fish species habitats, as a character-defining feature of the Delta TCL. In addition to considering salmon and other native fish species habitats, Chapter 32 considers the multitude of resources identified by Tribes and the Tribal values associated with these resources, as discussed in the *Cultural Significance of the Landscape* section in Chapter 32. For example, Impact TCR-1: *Impacts on the Delta Tribal Cultural Landscape Tribal Cultural Resource Resulting from Construction, Operations, and Maintenance of the Project Alternatives* considers multiple character-defining features as part of the Delta TCL, including those identified in the table titled Tribal Views on Delta TCL Character-Defining Features. Among these features are terrestrial and aquatic plant and animal species habitats, including that of salmon, which are part of the Delta's ecosystem and the heritage of Tribes pertaining to sustenance, traditional knowledge, ceremony and spiritual practices, and stewardship.

As such, the impact analysis in Chapter 32 considers the various resources identified by Tribes and the values these resources contribute to the Delta TCL.

Pursuant to Public Resources Code Section 21074, Tribal cultural resources include sites, features, places, cultural landscapes, sacred places, and objects. An ecological resource, such as salmon and other native fish species, is not included in CEQA's definition of a Tribal cultural resource. Furthermore, a cultural landscape must have a geographical boundary and, therefore, species themselves cannot be Tribal cultural resources (Pub. Resources Code § 21074(b)). Because of CEQA's direction to define a cultural landscape by geographical boundary, DWR utilized species habitats as the appropriate ecological feature for its landscape evaluation. As explained in Chapter 32, species habitats were evaluated for their potential to be individual Tribal cultural resources, but it was determined that the significance, as described by Tribes, was only attributable to the Delta TCL. DWR determined that it did not have evidence in the record to support identifying species habitat as a Tribal cultural resource separately from its significance as a character-defining feature attributed to the Delta TCL. DWR's approach to the evaluation process for Tribal cultural resources is further documented in the EIR and supporting documentation, including in the public Appendix 32D.

Consideration of Tribal Perspectives in the Analysis of Impacts on Tribal Cultural Resources

As required by CEQA, DWR made a good-faith effort to foster meaningful consultation with Tribes in a manner that recognizes that Tribal designated representatives bring special expertise to the consultation process due to their unique cultural and geographical affiliation with the Delta. Tribal consultation informed DWR's identification of potential Tribal cultural resources and the potential impacts on Tribal cultural resources. As discussed in Chapter 32, the thresholds for impacts and analysis approaches are based on Public Resources Code Sections 21084.1 and 21084.2, with further refinement to the understanding of "substantial adverse change" provided in CEQA Guidelines Section 15064.5. These thresholds and impact analysis approaches are applied in the section titled *Impacts and Mitigation Approaches* in Chapter 32.

DWR provided information about the project to each of the consulting Tribes and invited each Tribe to provide DWR with information about resources of concern, including their location and significance, what impacts might occur from project activities, and ways that impacts could be avoided or mitigated. Any information consulting Tribes chose to share with DWR regarding Tribal resources of concern and potential impacts factored into DWR's Tribal cultural resource findings under CEQA, and ultimately supported DWR's significant and unavoidable impact determination for the Delta TCL.

Just as meaningful Tribal consultation that encompassed Tribes' spiritual and cultural perspectives informed DWR's identification of Tribal cultural resources and consideration of project impacts on such resources, continued engagement and collaboration with Tribes will ensure that, if the project is approved, the necessary mitigation measures are implemented in a manner that considers Tribal knowledge and Tribals perspectives. Through the development of mitigation measures and during consultation, DWR committed to continue Tribal engagement to implement the EIR's mitigation measures. For example, Mitigation Measure TCR-1b: *Plans for the Management of Tribal Cultural Resources* ensures Tribal participation in drafting and implementing the Tribal Cultural Resources Management Plan (TCRMP), and Mitigation Measure TCR-1d: *Incorporate Tribal Knowledge into Compensatory Mitigation Planning (Restoration)* will seek and include Tribal knowledge into future

restoration planning efforts laid out in the Compensatory Mitigation Plan through scoping workshops, Tribal participation in field visits conducted as part of restoration planning, and other Tribal engagement.

Tribal Cultural Landscape Boundary

Several comments questioned the boundary DWR selected for the Delta TCL. Some commenters expressed the opinion that the boundary is not based on a Tribal definition or that it is, in general, too limited because some Tribes do not recognize any physical boundary. Other comments expressed the concern that the Delta TCL boundary is too broad.

Public Resources Code Section 21074(b) articulates the definition of a Tribal cultural resource as a “cultural landscape that meets the criteria of subdivision (a) . . . to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.” However, CEQA does not define what constitutes a cultural landscape, nor does it recognize or define a traditional cultural landscape or a traditional cultural property. DWR articulates in Chapter 32 a cultural landscape is as defined under Section 21074(b) of the Public Resources Code.

DWR concluded that a Delta TCL exists and, consistent with the Public Resources Code, found that the Delta TCL can be geographically defined. The section titled *Delta Tribal Cultural Landscape Boundary* in Chapter 32 explains how the size and scope of the Delta TCL were determined based on the information DWR received through consultation and through literature review and ethnographic research. As explained in the *Sacramento–San Joaquin Delta Tribal Cultural Landscape* section in Chapter 32, the Delta TCL may include areas subject to urban development but that still retain integrity from a Tribal perspective.

It is important to note that although DWR is required to identify a boundary for the purposes of a landscape evaluation under CEQA, DWR acknowledges that Tribes do not recognize geographical boundaries, especially for the Delta landscape. Tribes expressed that the concept of clear-cut spatial boundaries separating cultural groups has been forced on Tribes continuously since the time of Euroamerican colonization of California. The Delta is a shared, co-managed, and expansive landscape to the Indigenous communities who reside there, without a defined geographical boundary.

Impact Analysis

Comments regarding the Draft EIR’s conclusion that the project will result in significant and unavoidable impacts on Tribal cultural resources expressed the commenters’ position that the benefits of the project do not outweigh the significant and unavoidable impacts on Tribal cultural resources.

Recognition of a Significant Unavoidable Impact

As discussed in this Common Response in the section titled *Consistency with Current State Policies Regarding Indigenous People in California*, Chapter 32 recognizes the significant and unavoidable impacts of the project alternatives on Tribal cultural resources, including the Delta TCL. DWR must consider such impacts before it determines whether to approve the project; and if DWR approves the project, DWR must explain, in a statement of overriding considerations, the policy considerations that led DWR to approve a project notwithstanding the significant and unavoidable

1 impacts. Based on the comments received on the Draft EIR and DWR's ongoing Tribal consultation,
2 DWR has not identified any further mitigation measures that substantially lessen impacts on Tribal
3 cultural resources. Neither has DWR identified any potentially feasible alternatives that both
4 achieve most of the basic project objectives and substantially reduce the proposed project's
5 significant and unavoidable Tribal cultural resource impacts.

6 **Consideration of Individual Resources in Impact Analysis**

7 Several comments asserted that resources identified as part of the Delta TCL also warrant
8 recognition as individual Tribal cultural resources and that not identifying them as such may result
9 in understating the potential impacts on Tribal cultural resources.

10 As explained in Chapter 32, DWR assessed whether potential individual Tribal cultural resources,
11 including character-defining features of the TCL, rise to the level of being analyzed as individual
12 Tribal cultural resources. DWR considered whether the evidence in its record supported a finding
13 that any of the landscape features, or other resources, qualify for listing in the CRHR as individual
14 resources. DWR applied a three-step CRHR screening process to all of the landscape's currently
15 known character-defining features that included assessing information about significance,
16 description including boundaries, and integrity. After applying the three-step screening process,
17 further described in Chapter 32, DWR concluded that all of these features are important as part of
18 the Delta TCL and that the information in DWR's record at the time of the development of the EIR
19 did not support a finding that these features are CRHR-eligible separate from the Delta TCL.

20 In the first step of the three-step screening criteria presented in Chapter 32, in order to evaluate
21 whether a landscape feature or other resource qualifies as an individually eligible Tribal cultural
22 resource, DWR would need evidence that it is a discrete resource that has cultural value
23 (significance) separate and apart from the holistic Delta TCL. The significance of the Delta TCL
24 cannot be applied to individual resources because the Delta TCL conveys an interconnected
25 significance shared by multiple Tribes, which is why a cultural landscape approach to Tribal cultural
26 resources identification was used. In the second step, if a discrete resource that has cultural value
27 (significance) separate and apart from the holistic Delta TCL were to be identified, DWR would need
28 to establish a physical, geo-referenced boundary that can be field verified. Finally, in the third step,
29 DWR would need evidence, including knowledge shared by authorized Tribal representatives, that
30 the resource retains historical integrity (i.e., its ability to convey its significance to the affiliated
31 Tribe).

32 Each time a discrete location was discussed in consultation, the record shows that Tribes described
33 the traditional, spiritual, ceremonial, historical, and architectural qualities that are so meaningful to
34 the Tribe about the Delta as a whole. Tribes also described important plant and animal species
35 habitats and gathering areas that have cultural value to Tribes in relationship to the Delta
36 waterways, trails, and villages, and that archaeological sites exist because of their relationship with
37 the biological habitats, waterways, and aspects of the Delta landscape that brought people to the
38 place historically and traditionally. This evidence supports recognition of these places as vital and
39 important contributors to the Delta TCL's eligibility for listing in the CRHR. Because the significance
40 described is not separate from the significance of the landscape, these locations did not proceed past
41 this step in the screening process.

42 Furthermore, identifying individual resources that are important to Tribes as character-defining
43 features of the Tribal cultural landscape does not dilute the recognition of their importance to Tribes

or their recognition as separate Tribal cultural resources. The EIR is not understating the potential impacts on Tribal cultural resources by expressing these resources as character-defining features of the Delta TCL. Treating individual resources that have Tribal cultural value as part of the Delta TCL does not in any way diminish those resources. Rather, the importance of each single resource that is included in the Delta TCL is reflected in the impact significance threshold that considers project activities that may have physical, spiritual, or ceremonial consequences to an individual character-defining feature as an activity that results in a significant impact on the Delta TCL. This would require the impact to be avoided, minimized, or mitigated at both the character-defining feature scale, and also at the landscape scale, whereas a discrete impact on an individually eligible Tribal cultural resources would only require consideration on a narrower scale. As a result, DWR's recognition of resources as character-defining features of an interrelated and interconnected landscape does not understate the impact, but rather considers multiple levels of impact.

As stated in Mitigation Measure TCR-2 in Chapter 32, DWR is committed to continuing Tribal consultation and recognizes that during the course of ongoing consultation, DWR may gain greater understanding of the significance of particular Delta TCL character-defining features, or other resources, that have cultural value to an affiliated Tribe. If this occurs, DWR would reevaluate a character-defining feature, or evaluate a resource, for individual CRHR eligibility using the three-step assessment of significance, known attributes, and integrity.

Adequacy of Mitigation Measures

Some comments criticized DWR's proposed mitigation measures but did not recommend other specific measures in lieu of or in addition to DWR's proposed measures. Other themes in comments addressing mitigation measures included broad concerns that the mitigation measures fail to mitigate at a landscape or individual resource level; that despite being legally sufficient, the proposed measures do not provide sufficient mitigation from a Tribal perspective; and that Tribes should be the lead authors documenting Tribal knowledge for inclusion in the Tribal cultural resources management plan.

As the CEQA lead agency, DWR is responsible for implementing the mitigation measures and will therefore be responsible for preparing any mitigation planning documents identified in the EIR. However, as described above and in Chapter 32, DWR is committed to continuing consultation and engagement with Tribes as part of the project's mitigation measures. DWR will continue to consult with affiliated Tribes regarding the implementation of the mitigation measures to minimize and mitigate the project's significant impacts. DWR will collaborate with Tribes regarding documenting Tribal knowledge for inclusion in applicable mitigation planning documents. As set forth in the mitigation measures for Tribal cultural resources, Tribes will have the opportunity to participate in every element of the mitigation, including avoidance.

Throughout consultation, DWR has acknowledged Tribal perspectives on the project alternatives' potential impacts on Tribal cultural resources, and Chapter 32 recognizes Tribal perspectives on the relationship between various resources, identified as character-defining features. (For a discussion of DWR's approach to identifying Tribal cultural resources and the importance of Tribal consultation, see the section titled *Role of Meaningful Tribal Consultation in DWR's Identification and Evaluation of Tribal Cultural Resources* in this Common Response.) Consistent with Tribal input, DWR proposed mitigation measures that would avoid impacts on Tribal cultural resources, in part by avoiding impacts on character-defining features such as archaeological or ethnohistorical locations (Mitigation Measure TCR-1a: *Avoidance of Impacts on Tribal Cultural Resources*), by

reducing impacts on Tribal cultural resources through specific plans for the management of Tribal cultural resources (Mitigation Measure TCR-1b), and by implementing measures to restore and enhance the physical, spiritual, and ceremonial qualities of the Delta TCL's character-defining features or individual Tribal cultural resources (Mitigation Measure TCR-1c: *Implement Measures to Restore and Enhance the Physical, Spiritual, and Ceremonial Qualities of Affected Tribal Cultural Resources*). The purpose and objective of the mitigation measures are quite clear: to avoid physical impacts on character-defining features and Tribal cultural resources where it is feasible through project design and engineering; to incorporate plans that minimize physical and other impacts on character-defining features and Tribal cultural resources; and to restore or enhance specific aspects of character-defining features and Tribal cultural resources.

Mitigation Measure TCR-1b requires development of a TCRMP, which will be prepared in consultation with culturally affiliated Tribes, including co-creation of the procedures for ongoing consultation regarding implementation of the TCRMP. Additionally, as described in Chapter 32, DWR is committed to continuing Tribal consultation throughout construction of the project to provide culturally affiliated Tribes the opportunity to review and comment on future, yet to be developed, documents developed for construction and mitigation of the project, as applicable. This consultation will include implementation of specific construction elements and mitigation components, in which culturally affiliated Tribes have expressed interest in coordinating with DWR.

At a minimum, DWR will facilitate quarterly meetings with culturally affiliated Tribes to provide project updates and discuss opportunities for Tribal participation in aspects of project construction and mitigation measure implementation, including development of compensatory mitigation site-specific performance monitoring and management plans and adaptive management plans. The purpose of these meetings will be to clearly identify coordination opportunities and roles for culturally affiliated Tribes to participate in implementation of the project.

As mentioned above, as the CEQA lead agency, DWR is responsible for implementing the mitigation measures and will therefore be responsible for preparing the compensatory mitigation plan. As described in Chapter 32, Mitigation Measure TCR-1d commits to incorporation of Tribal knowledge, including Tribal Ecological Knowledge, into the preparation and implementation of the *Compensatory Mitigation Plan for Special-Status Species and Aquatic Resources* (Appendix 3F) and other measures for mitigating impacts on terrestrial biological resources, fish and aquatic resources, and cultural resources. DWR's commitment to receiving Tribal input on the compensatory mitigation planning (restoration) for the entire project, reflected in Mitigation Measure TCR-1d, mitigates the Delta TCL at the landscape level by restoring species habitat on a large scale in collaboration with Tribes.

Consideration of Tribal Cultural Resources in Other Resource Chapters

CEQA does not require the evaluation of Tribal cultural resources in multiple resource chapter evaluations. Tribal cultural resources, unlike most other environmental resources, may be composed of several elements, including other environmental resources. Because of the unique nature of Tribal cultural resources and Tribal values associated with other environmental resources, DWR analyzed Tribal cultural resources as a separate resource in its own individual chapter. Chapter 32 acknowledges that Tribal values are associated with other environmental resources including surface water, water supply, groundwater, fish and aquatic resources, terrestrial biological resources, aesthetics and visual resources, and cultural resources. As explained in the introduction

to Chapter 32, because character-defining features comprise natural environmental resources and built or human-made resources and the relationship between these features, some aspects of Tribal cultural resources overlap with other environmental resources evaluated in the EIR. The potential impacts of the project alternatives on the other resources identified in Chapter 32 (such as surface water and changes to surface water, water quality, and biological and fish resources) informed the EIR's assessment of potential impacts on Tribal cultural resources, such as whether impacts on other resources may result in a material change to a character-defining feature of the Delta TCL.

Although CEQA does not require DWR to specifically include Tribal concerns or Tribal values ascribed to these resources throughout the EIR, DWR has clarified the environmental impact discussions in the following chapters of the Final EIR to acknowledge the importance of these resources to Tribes and their Tribal values: see the *Surface Water Changes* section in Chapter 5, *Surface Water*, and the section titled *Environmental Impacts* in Chapter 8, *Groundwater*; Chapter 12, *Fish and Aquatic Resources*; Chapter 13, *Terrestrial Biological Resources*; Chapter 18, *Aesthetics and Visual Resources*; and Chapter 19, *Cultural Resources*. Recognizing the importance of these environmental resources to Tribes in the EIR does not change DWR's determinations regarding the potential impacts of the project alternatives on these resources or on Tribal cultural resources.

References Cited

None.