

NATIVE AMERICAN HERITAGE COMMISSION

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February 27, 2015

VIA EMAIL AND OVERNIGHT MAIL

The Honorable Gene Whitehouse, Chairman
The United Auburn Indian Community of the Auburn Rancheria
10720 Indian Hill Road
Auburn, CA 95603

Mike Inamine, Executive Director
Sutter Butte Flood Control District
Post Office Box M
Yuba City, CA 95991

Colonel Michael Farrell, District Commander
U.S. Army Corps of Engineers, Sacramento
District
1325 J Street, Room 1420
Sacramento, CA 95814

Andrea Clark, Esq.
Downey Brand
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

Lisa Clay, Esq.
Office of Counsel
U.S. Army Corps of Engineers, Sacramento
District
1325 J Street, Room 1440
Sacramento, CA 95814

Re: Native American Heritage Commission Public Resources Code sections 5097.9, 5097.94(g), 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)

Dear Chairman Whitehouse, Mr. Inamine, Colonel Farrell, Ms. Clark, and Ms. Clay:

Pursuant to California Public Resources Code sections 5097.9, 5097.94 (g) and 5097.97, the United Auburn Indian Community of the Auburn Rancheria (UAIC), the Sutter Butte Flood Control Agency (SBFCA), and the U.S. Corps of Army Engineers (Corps) are hereby given notice that the California Native American Heritage Commission (NAHC) will commence an investigation of and public hearing on the Feather River West Levee Project (FRWLP) as described in the project area definition in Section ES.1.2 of the U.S. Army Corps of Engineer's Feather River West Levee Project Final 408 Permission Environmental Impact Statement dated June, 2013 and the project area definition in Section ES.1.2. of the Final Feather River West Levee Project Environmental Impact Report dated April, 2013. The purpose of the investigation and public hearing is to determine whether the FRWLP will result in severe and irreparable harm to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property. Additionally, in consideration of the NAHC's ongoing role pursuant to Public Resources Code section 5097.94 (k) in mediating the dispute between

UAIC and SBFCA regarding the treatment and disposition of Native American remains and associated grave goods removed from the FRWLP project area, you, your representatives, or interested parties may also submit any evidence regarding any unlawful taking or possession of Native American artifacts or remains from the FRWLP project area that may 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.

The investigation and public hearing have been requested by UAIC. A public hearing will be held on this matter on March 20, 2015 at the North Natomas Meeting Room, North Natomas Library, 4660 Via Ingoglia, Sacramento, CA 95835 from 9:00 am to 2:00 pm. **Depending on the expected attendance, the location for this meeting may change; please check the NAHC website (nahc.ca.gov) and the formal public meeting notice prior to the meeting.** The NAHC may meet in closed session following the public hearing to decide whether to seek injunctive relief against the Sutter Butte Flood Control District pursuant to Public Resources Code section 5097.94, subdivision (g) and section 5097.97. The NAHC is a state "trustee agency" pursuant to California Public Resources Code section 21070 for the protection and preservation of California's Native American cultural resources, (See *Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 625-626), and has standing to seek injunctive relief for the protection of Native American cultural resources under its jurisdiction.

The investigation and public hearing will address the following issues:

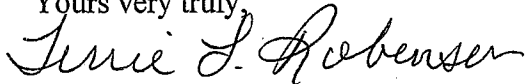
- 1) Whether the property encompassing the FRWLP project area is, in whole or in part, under the NAHC's jurisdiction pursuant to Public Resources Code section 5097.9;
- 2) Whether the property encompassing the FRWLP project area includes a Native American sanctified cemetery, place of worship, religious 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 or community, and whether the NAHC should formally declare any sites within the FRWLP project 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, the Sutter Butte Flood Control Agency, and the California State Historic Preservation Officer Regarding the Feather River West Levee Project, Sutter and Butte Counties; the July 3, 2014 Burial Treatment Plan for the Feather River West Levee Project; 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 remains or associated grave goods, or a pattern or practice of the taking and/or possession of Native American remains or

artifacts in violation of Public Resources Code sections 5097.9, 5097.94 (g), and/or 5097.99

Any documents or written testimony that you, your representatives, or interested parties would like to have considered as part of the investigative report and/or the public hearing should be received by the NAHC no later than March 6, 2015. The investigative report will issue on or about March 13, 2015. Information regarding the location and nature of Native American sites that would be eligible for inclusion in the NAHC's Sacred Lands Inventory will be received in confidence and kept confidential under Government Code sections 6254 (r), 6254.10, and any other applicable statutes or common law privileges. If you or your representative(s) would like to present oral testimony at the public hearing, please let us know. The hearing will be open to the public, and any member of the public can present oral or written testimony relevant to the issues stated above. I remain hopeful that a resolution will be reached before March 20, 2015.

Attached please find a copy of UAIC's letter requesting this investigation. This notice will be shared with all California Native American tribes that are culturally affiliated with the area encompassing the FRWLP project area or are culturally affiliated with Sutter, Butte, Yuba or Plumas counties, posted on the NAHC website, included in the public meeting notice for this meeting, and included in press releases. If you have any questions, I may be reached at (916) 373-3716 or by email at Terrie.Robinson@nahc.ca.gov.

Yours very truly,



Terrie L. Robinson, General Counsel
Native American Heritage Commission

cc: The Honorable James Edwards, Chairperson, Berry Creek Rancheria of Maidu Indians
The Honorable Glenda Nelson, Chairperson, Enterprise Rancheria of Maidu Indians
The Honorable Kyle Self, Chairperson, Greenville 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, Chairperson, T'si-Akim Maidu
The Honorable Stacy Dixon, Chairperson, Susanville Indian Rancheria
The Honorable Darrell Kizer, Chairperson, Washoe Tribe of Nevada and California
The Honorable Carol Roland-Nawi, State Historic Preservation Officer
Brigadier General Mark Toy, South Pacific Division Commander, U.S. Army Corps of Engineers
Valerie Hauser, Director, Office of Native American Affairs, Advisory Council on Historic Preservation
Jason Camp, Tribal Historic Preservation Officer, United Auburn Indian Community Commissioners, Native American Heritage Commission
Cynthia Gomez, Executive Secretary, Native American Heritage Commission and Tribal Advisor, Office of the Governor
Antonette Cordero, Department of Justice
Anecita Augustinez, Tribal Policy Advisor, Department of Water Resources



MIWOK United Auburn Indian Community
 MAIDU of the Auburn Rancheria

Gene Whitehouse
 Chairman

John L. Williams
 Vice Chairman

Danny Rey
 Secretary

Brenda Adams
 Treasurer

Calvin Moman
 Council Member

September 15, 2014

Cynthia Gomez
 Executive Secretary
 California Native American Heritage Commission
 1550 Harbor Blvd., Suite 100
 West Sacramento, CA 95691

Subject: Request to pursue PRC 5097.97

Dear Cynthia Gomez,

Pursuant to Public Resources Code (PRC) subdivision (g) 5097.94 - 5097.97 the United Auburn Indian Community of the Auburn (Tribe) requests the Native American Heritage Commission (NAHC) formally investigate concerns regarding the treatment and disposition of human remains and funerary objects for the Feather River West Levee project (FRWLP).

This is a formal notice advising the NAHC that a proposed action by the Sutter Butte Flood Control Agency (SBFCA) and the U.S. Army Corps of Engineers (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 the Tribe requests the NAHC conduct an investigation as to the effect of the proposed action.

If the SBFCA and the USACE fail to agree to the proposed plan that is under review regarding treatment and final disposition of human remains and funerary objects, then it is the Tribe's recommendation that the NAHC seek the legal opinion of the commissions and ultimately the Attorney General's Office.

The Tribe is currently in the process of preparing an inventory of Native American sacred places that are located on public lands along the Feather River and Honcut Creek corridor and we request the NAHC review the current administrative and statutory protections accorded to such sacred and traditional cultural places. We would like these findings reported back to the Tribe. Please contact Marcos Guerrero, Cultural Resources Manager, at (530) 883-2364 or by email at mguerrero@auburnrancheria.com if you have any questions.

Sincerely,

Gene Whitehouse,
 Chairman

CC: Marcos Guerrero, CRM
 Terrie Robinson, NAHC General Counsel
 Carol Roland-Nawi, California SHPO
 Wayne Donaldson, ACHP Chair
 Jason Camp, UAIC THPO