June 8, 2026

Administrative Hearing Office
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Submitted via email to: sites-wr-application@waterboards.ca.gov

Re: Comments on Draft Decision and Draft Permit for Sites Project Authority, Water Right Application 25517X01 and Petitions for Release from Priority of State-Filed Applications 25513, 25514, 22235, 23780, and 23781 of Sites Project Authority

Dear Administrative Hearing Office,

Cachil Dehe Band of Wintun Indians of the Colusa Indian Community Council, Chhé'ee Fókaa Band of Northeastern Pomo, Paskenta Band of Nomlaki Indians, Winnemem Wintu Tribe, California Indian Environmental Alliance, and Save California Salmon ("Tribal Interest Parties")[1] submit the following comments on the Draft Decision and Draft Permit for Sites Project Authority ("the Authority"), Water Right Application 25517X01 and Petitions for Release from Priority of State-Filed Applications 25513, 25514, 22235, 23780, and 23781 for the Sites Reservoir Project ("Project"). For the reasons stated below, it is the position of the Tribal Interest Parties that the State Water Resources Control Board ("State Water Board") should not adopt the Administrative Hearing Office ("AHO") Draft Decision and Draft Permit for the Sites Reservoir Project as drafted.

I. INTRODUCTION

[1] "Tribal Interest Parties" include Tribes and organizations that work with Tribes and Tribal communities to advocate for and protect Tribal Cultural Resources, traditional practices, and related elements of Tribal cultures. The Tribal Parties do not purport to speak on behalf of all California Tribes and recognize the uniqueness that exists between Tribes. The Tribal Parties have developed these comments with knowledge that has been gathered through working with Tribes and with sensitivity regarding individual Tribal cultural practices and knowledge.

The undersigned Tribes oppose the Project and their concerns were presented in the Administrative Hearing proceeding through witnesses and exhibits specific to tribal concerns and through witnesses and exhibits addressing broader concerns shared by the Tribes. Tribes recognize that significant permit conditions imposed by the AHO will make the Project somewhat less destructive, but those conditions do not allay the Tribes' concerns.

Unfortunately, it is a given that destruction of cultural resources by the Project cannot be mitigated and hence make the Project unacceptable to Tribes. Unmitigable impacts do not mean, as the Draft Permit states, that additional consultation requirements would not have added benefits for Tribes and address aspects of Tribal concerns that have been elided to date, or offer opportunities for the maintenance and fulfillment of Tribal traditional religious and cultural practices and obligations. There are still necessary Tribal protocols and procedures that must be followed in the treatment of cultural resources. This includes those resources slated for destruction such as certain ancestral heritage materials that may be documented, recorded, or otherwise coded as "archaeological," raptor habitats and nesting sites, ancestral cemeteries, burials, remains, and associated grave goods, and modified soils. Use of Tribal monitors on site during pre-construction sampling and when heavy equipment or hand tools are used for ground disturbing activities is standard procedure for Tribes and a plan to use Tribal monitors frequently should be explicitly included in the Draft Permit.

Consultation by the State and the Authority as an arm of the State is also required under the terms of Executive Order B-10-11, wherein State entities are charged to recognize and reaffirm "the inherent right of…[California] Tribes to exercise sovereign authority over their members and territory." The State Water Board must incorporate this important jurisdictional distinction in the Draft Permit to ensure Tribal sovereignty is adhered to and respected during the development of the Project.

The Draft Permit relies on the California Environmental Quality Act ("CEQA") determinations and definitions, including for consultation and mitigation. The National Historic Preservation Act ("NHPA") Section 106 process and all associated regulations, policies, and guidance for Tribal properties of traditional religious and cultural importance have yet to be completed. This should serve as the foundation for Tribal rights, opportunities, involvement, and input through appropriate consultation channels and authorities. Mitigation under CEQA is designed to bring the threshold of impacts to the environment, including impacts Tribal Cultural Resources, to a less than significant level—this is what could not be accomplished for unmitigable impacts. Under the undergoing (early stage) NHPA Section 106 process, however, adverse effects must be resolved following the sequential process of Section 106 codified at 36 Code of Federal Regulations ("CFR") Part 800. Importantly, consultation and mitigation efforts abiding by this sequential process have different requirements and possible outcomes for reconciliation of impacts/adverse effects than CEQA. The Draft Permit does not take this into account in its findings. This should be rectified prior to adoption by ensuring permit conditions

align with all federal requirements of Section 106, including the requirement for agency officials to acknowledge and defer to the special expertise of Tribes regarding evaluations of their own cultural resources and properties of traditional religious and cultural importance.

The Tribal Interest Parties are concerned with the lack of effective mitigation measures for the Project. An additional concern is that no aspect of the Environmental Mitigation Management and Assessment ("EMMA") addresses Tribal rights, opportunities, and concerns. The EMMA system was not developed inclusive of Traditional Ecological Knowledge ("TEK") or in consultation with Tribes. Guiding terms and operations for consultation related to Tribal Cultural Resources and properties of traditional religious and cultural importance, the nature of natural resources as cultural resources that must be accounted for in the NHPA Section 106 process, including but not limited to water, raptor habitats and nesting sites, ancestral burials and associated grave goods, certain plant and animal species and habitats, and any and all project undertakings that have Tribal implications should be clearly outlined and defined by the AHO and in directives to revise the EMMA appropriately and inclusively.

Further, the Tribal Interest Parties believe the Permit should incorporate additional language regarding TEK and groundwater monitoring, including soil sampling before initiating ground disturbing activities and downstream monitoring during construction and operation of the Project, that will impact Tribal Lands. For the reasons detailed below, it is the position of the Tribal Interest Parties that the State Water Board should not adopt the Draft Decision and Draft Permit for the Project as drafted.

II. CONSULTATION

The Draft Permit creates a structural problem for Tribal sovereignty because many operational decisions are delegated to the Executive Director or Deputy Director through adaptive-management style permit terms, but the Draft Permit does not consistently require government-to-government Tribal consultation before those discretionary approvals occur. This is significant for discretionary approval authority over operational plans.

The Draft Permit repeatedly authorizes the Executive Director or Deputy Director to: approve plans, require amendments, impose conditions, determine adequacy of compliance, approve adaptive management updates, and revise operational requirements. Examples include: Water Quality Portfolio approval and updates, feasibility assessments for harmful algal blooms ("HABs") and methylmercury, compliance plan approvals and amendments, broad authority to approve "in whole or in part," deny, or condition required submissions, and reservation of authority to modify permit terms to protect Tribal Beneficial Uses.

The legal problem is that these delegated approvals are not merely ministerial but are in the nature of quasi-adjudicative governmental decisions affecting Tribal interests regarding Tribal Beneficial Uses, fisheries, culturally significant waterways, groundwater, mercury and methylmercury exposure, HAB exposure, flow for salmon and other key anadromous fish,

traditional practices and religious freedoms, and associated cultural resource consideration, treatment, protection, and preservation. These affect the health and safety of Tribal members, cultural continuance related to safely eating traditional foods and practicing cultural lifeways

A. Permit Term 34, Water Quality Portfolio

While the Draft Permit requires Tribal consultation by the Authority for the development of the Water Quality Portfolio, it does not define what consultation must consist of. The required consultation process should be described in detail to assure good faith, reasonable, and meaningful consultation in contrast to the process engaged in leading up to the issuance of the Permit. The Tribal Interest Parties suggest the following language should be added as an additional permit term:

> "Prior to approval, amendment, renewal, suspension, or material modification of any operational plan, monitoring plan, compliance plan, feasibility assessment, adaptive management measure, or reporting methodology that may affect Tribal Beneficial Uses, fisheries, water quality, groundwater, cultural resources, or federally reserved rights, the Executive Director shall conduct government-to-government consultation with affected Tribes, and at the request of Tribes that the Executive Director participate also participate in consultation meetings with regulatory agencies including but not limited to the Department of Water Resources, State Water Control Board, California Department of Fish and Wildlife, related to human health the California Department of Fish and Wildlife and Office of Environmental Health and Hazard Assessment, and federal agencies as appropriate."

The language should be included as a permit term separate from Permit Term 34, which is limited in its subject matter to the Water Quality Portfolio. Without the above language, it is not possible to identify the triggers for Tribal consultation, the impacts to Tribes that will be in need of mitigation and Tribal participation becomes contingent upon Authority and agency preference.

Additionally, Permit Term 34 requires the Authority to create a notification list of representatives of California Tribes "by submitting requests to the Native American Heritage Commission (NAHC) for a search of the Sacred Lands Inventory and the NAHC Contact List for Tribal Consultation, to identify Tribes with current or ancestral lands in any county that overlies either the Delta, as defined by Water Code section 12220, or the Sacramento River watershed." This notification list is seemingly meant to assist the Authority in contacting all of the correct Tribes for any type of consultation. However, the NAHC Contact List is not a fixed list and may be updated as needed to correct a Tribe's contact information or to add a Tribe to the list. To ensure effective consultation, the Authority should be required to request new contact information from the NAHC yearly to confirm accurate contact information is being used for consultations. We further recommend that this notification list also include Tribes in source and

receiving waters of the reservoir because water quality degradation downstream and movement of anadromous fish upstream impacted by this degradation.

B. Permit Terms Which Require Tribal Consultation

One of the challenges is that many permit terms affecting Tribal interests do not specifically mention Tribes but do hold Tribal implications and affect Tribal interests. As just one example, pursuant to Permit Term 55 regarding the Compliance Plan, the Deputy Director approves compliance mechanisms for operational terms affecting flows, fisheries, bypasses, and water quality protections. Even though the Permit Term does not say "Tribal," these operational decisions have direct implications and affect to salmon and other fish and shellfish, cultural and ceremonial resources, public trust resources, and Tribal Beneficial Uses themselves, including subsistence and cultural uses.

Relatedly, it is the Regional Water Quality Control Boards' mandate to issue new permits or revise existing ones to ensure Beneficial Uses are protected. This authority includes considering whether an activity could affect existing or expected Beneficial Uses, and these protections extend to protect against degradation even if the waterbody has not yet been formally designated with Tribal Beneficial Uses. Tribes are raising the concerns of probable degradation or Sacramento River water in relation to the Project as part of the permit process to help the State Water Board understand potential impacts on cultural or subsistence practices. A permit term which addresses this concern should be included in the Draft Permit.

The Authority assertion that "operation of the Project in compliance with federal and state regulations and project-specific requirements as described in the Final Environmental Impact Report ("Final EIR") and as modified by the 2024 ITP, will not cause unreasonable adverse impacts on fish and aquatic species" (2025-05-27 Sites Closing Br., pp. 72–73) is predeterminate and premature. The cultural resource aspects of fish and aquatic species as contributing resources to Tribal historic districts and traditional cultural landscapes is still subject to ongoing NHPA Section 106 review. As such, all claims of adverse impacts are speculative and still subject to federal assessment and analysis. The Draft Permit should be amended to state potential adverse impacts to fish and aquatic species as subsistence and cultural resources are subject to the terms of consultation described in this letter.

C. Recommendations Incorporating Consultation into Permit Terms

The requirement for tribal consultation must be based on the impacts of a potential decision currently left to the discretion of the Executive Director or Deputy Director and the requirement cannot be left to their discretion. Consultation should be required whenever such decisions may affect:

1. Tribal Beneficial Uses;
2. Culturally significant fisheries for Tribes;

3. Culturally significant species or resources;
4. Water quality affecting Tribal consumption or nonconsumptive uses such as for cultural practice and ceremonies;
5. Reserved rights;
6. Public trust resources linked to Tribal uses; and
7. Cultural resources, as defined by Tribes and broadly understood as elements of a Tribe's traditional and cultural lifeway which is lived and practiced, or in process of being restored by a Tribe and its members.

The consultation structure contained within Permit Term 34 should be improved and should be generalized permit-wide.

Mandatory terms for Tribal consultation should be outlined in the Permit and based on established policies and protocols, particularly those promulgated by the Advisory Council on Historic Preservation ("ACHP") in *Consultation with Indian Tribes in the Section 106 Process: The Handbook* (2021), *ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects* (2023), and *ACHP Policy Statement on Indigenous Knowledge and Historic Preservation* (2024). Because all cultural resources, broadly understood, for affected Tribes are still subject to the ongoing NHPA Section 106 process, the Authority is beholden—and must be deferential—to the guiding regulations of Section 106 promulgated by the ACHP. ACHP guidance therefore should serve as a foundational baseline for consultation. This includes how consultation should be defined and where authority and special expertise for identification, evaluation, adverse effect/impact assessments, reconciliation of adverse effect/impact assessments, and appropriate avoidance, minimization, and mitigation measures lie. The Permit should not conflict with or create inconsistencies, but rather align with Federal review processes that are still required and occurring for the project. To achieve this, the Permit should include the following requirements for consultation.

1. Consultation shall be defined as actionable opportunities for a Tribe to meaningfully influence project, policy, and decision-making processes, protocols, and designs, including but not limited to:
    a) Consultation during plan development, implementations, and outcomes from ideation stages to completion to operations,
    b) Opportunity to comment on draft approvals,
    c) Written Tribal responses to agency actions,
    d) Treatment of cultural resources, as broadly practiced, understood, and lived by affected Tribes, and

e) Treatment of ancestral burials and associated grave goods and modified soils.

2. The Authority shall not unilaterally delegate responsibilities to conduct consultation with a California Tribe or Tribes to non-State entities or parties.
3. In consultation with a California Tribe the Authority shall recognize the government-to-government relationship between the State of California and Tribe; the Authority officials shall consult with representatives designated or identified by a Tribal government.
4. The Authority shall recognize the government-to-government relationship between the Federal government and Tribes, and acknowledge that it has no role or authority in fulfilling Federal agency obligations and responsibilities unless explicitly agreed to by a California Tribe for solely that Tribe's interests, rights, and concerns.
5. The Authority shall provide full transparency in initiating consultation, including full descriptions of why consultation is occurring, what decisions are on the table for Tribal recommendations, what geographies they involve (including providing maps and GIS data to the Tribe), what the guiding laws and regulations and/or agreement documents are, and agree with the Tribes engaging in consultation what are the goals of consultation, confirm which activities recommended by the Tribe are and are not going to be implemented with explanation when not included, and clearly understand that the Tribes engaged will identify when that consultation has concluded.
6. When the Tribe provides data, information, and remarks to the Authority, the Authority shall provide transparent and orderly responses through comment tables to facilitate organized, transparent, and efficient steps of consultation. Any changes in documents should be accessibly tracked, and any disagreements with a Tribe's responses fully explained in detail and supported by guiding laws, regulations, agreement documents, and best available science, including their responses to Tribally provided TEK. It is recommended that the Authority support the incorporation of TEK in the documents. It is also recommended that a table-format comment and response matrix tracking comments and responses is provided to the Tribe to make such communications clear, efficient, and accessible.
7. Because consultation is a matter of law, and legal requirements and obligations for consultation flow in responsibility from the Authority to Tribes, the Authority does not have sole authority to define terms under consultation. While much terminology arguably has clear and common meanings, others do not.

Interpretations are often culturally saturated in their applications and understandings, and may not align with those of a Tribe or Tribes. As such, reasonable, meaningful, and good faith consultation may require discussions of applied language and their implications and explications for Tribal rights, opportunities, and concerns.

8. The Authority shall document all efforts to initiate and carry out consultation with a California Tribe or Tribes; the Authority shall keep detailed notes of all consultation with California Tribes that include the content of consultation meetings, site visits, and phone calls in addition to information about dates and who participated. The Authority shall hold a pre-consultation meeting for all potential consulting Tribes to encourage intertribal participation and avoid siloing consulting Tribes for the benefit of effective consultation.
9. The Authority shall provide notes to the consulting California Tribe in a timely manner to review proceedings and correct any errors or omissions; Tribes shall have no less than ninety (90) days to comment on and correct notes.
10. The Authority shall provide sixty (60) days advance notice to California Tribes on any matter that may have tribal implications, and associated processes of free, prior, and informed consent when requested by a California Tribe or Tribes.
11. The Authority shall disclose any and all draft and deliberation materials except where prevented under California or Federal law, including but not limited to data and information concerning:
    a) Consultant experience and expertise,
    b) technical appendices,
    c) modeling assumptions,
    d) monitoring data,
    e) proposed approval conditions.
12. The Authority shall follow Tribal confidentiality protocols requested by a California Tribe or Tribes.
13. The Authority shall provide detailed explanations of where and why Tribal recommendations, if rejected, were rejected, according to what criteria including best available science, and name the specific subject matter experts who came to this determination and their training and experience to comment on each specific California Tribe's recommendations, including those related to TEK.
14. The Authority shall seek to adhere to each Tribes' own consultation policy. For example, the Karuk Tribe has the "Karuk Tribe Consultation Policy" which the

Karuk Tribe expects consulting agencies to follow. (https://www.karuk.us/departments/self-governance/consultation-policy).

The Tribal Parties believe that the inclusion of above language provides the Authority with clear parameters for Tribal consultation. Alternatively, the State Water Board should ask the Authority to develop consultation procedures consistent with the above language that will be used throughout the development, construction, and operation of the Project.

III. TRADITIONAL ECOLOGICAL KNOWLEDGE

The Draft Decision expressly recognizes Traditional Ecological Knowledge ("TEK") as scientifically valuable and consistent with best available scientific information, admissible, and appropriate for future permit implementation decisions. (Draft Decision, p 147.) TEK inclusion must be conceptually and methodologically integrated into and operationalized as an integral part of decision-making standards and permit terms. Principles and practices of established partnership-based research models adopted throughout the State, including the California Natural Resources Agency's *Tribal Stewardship Policy & Toolkit*, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) should serve as baselines.

The Permit should operationalize the understanding that TEK is scientifically valuable and consistent with best available scientific information, admissible, and appropriate for future permit implementation decisions, and include the following provisions:

A. TEK is an independent, self-supporting line of evidence;

B. TEK will be conceptually and methodologically incorporated in coordination with or alongside technical modeling by appropriate and Tribally selected and approved TEK subject matter experts;

C. TEK submitted by Tribes will be held confidential, unless or until expressly stated otherwise by the Tribe in writing; and

D. The Executive Director must justify why and how TEK was incorporated or rejected, according to what body of evidence and by whom.

E. TEK can only be developed, incorporated, evaluated, and/or rejected by Tribally selected and approved TEK subject matter experts.

The Tribes support the Draft Decision's position and explicit acknowledgement "that any federal reserved rights, including Cachil DeHe's rights, are senior to the water right to be developed and authorized by the Permit." (Draft Decision, p. 66) However, in support of this acknowledgement, it is necessary to amend the terms of the Draft Permit to provide clear protocols and procedures to respect and adhere to these rights through consultation, Tribal collaboration, and the integration of TEK into all aspects of the Project that have Tribal implications.

IV. MITIGATION MEASURES

A. Lack of Protection for Tribal Cultural Resources and Tribal Health

The Draft Decision discusses consultation and why additional consultation is not needed. It goes on to state that "certain of the Project's impacts on cultural resources within the immediate Project footprint cannot be mitigated and therefore further consultation would not be beneficial to discuss impacts that cannot be mitigated." (Draft Decision, p. 144) This is troubling for the Tribal Interest Parties because it implies irreparable harm to Tribal Cultural Resources and cultural sites and landscapes with no form or even attempt to mitigate the harm to an entire Tribe, entire cultural group. This only perpetuates the harm that the State of California has inflicted on Tribes since the State's founding. Tribes and the resources and places of importance to them have continually been placed below the priorities of the State. Each time the State allows the desecration or destruction of Tribal Cultural Resources, it further contributes to the cultural genocide that Tribes have been fighting against for generations. The State Water Board must take action to rectify the loss of irreplaceable resources for the Tribes. The Draft Permit should include appropriate mitigation and/or reparations for Tribes that will have Tribal Cultural Resources, cultural sites, or burial sites disturbed or destroyed by the Project.

The Draft Permit also creates potential harm to Tribal health. It does not integrate state public health agencies or the health impacts that the Project will create for Tribal communities. This not only includes physical health impacts from unhealthy or polluted air and water, but also cultural health that impacts Tribes face when cultural resources are not safe to use in their traditional way. Further, the loss of cultural resources manifests in Tribal communities in ways that affect the physical and mental health of Tribal members. The Draft Permit fails to account for the health impacts to Tribes and should acknowledge and offer mitigation strategies for these potential impacts.

B. Environmental Mitigation Management And Assessment (EMMA) System

As currently designed, the mitigation measures and associated actions and activities outlined in the EMMA, which have been developed without Tribal consultation or approvals, will impose adverse impacts/effects themselves on both cultural resources and associated Tribal traditional religious and cultural practices, freedoms, and obligations. No entity or party can state what best practices or mitigation are for Tribal Cultural Resources, broadly understood, for a Tribe but that Tribe. The EMMA should be revised through consultation, coordination, and collaboration with affected Tribes for the appropriate integration of Tribal protocols, living practices, stewardship and treatment obligations, and TEK concepts and methodologies throughout.

The Tribal Parties recommend the following general requirements and amendments to the EMMA to ensure adverse impacts/effects are avoided and minimized to the extent possible, to respect Tribal stewardship obligations and living traditional religious and cultural practices and

observations, and for appropriate mitigation measures to be developed under the NHPA Section 106 process:

1. Tribes must be provided the right of first refusal to conduct their own cultural resource studies to facilitate compliance, including for those ancestral resources that may be identified, recorded, documented, defined, or otherwise coded as "archaeological."
2. Tribal monitoring and post-review/inadvertent discovery plans must be developed in consultation with, and in deference to, Tribes for Tribal Cultural Resources and properties of traditional religious and cultural importance, including but not limited to those that may be coded as "archaeological."
3. No Tribe shall monitor for another Tribe unless explicitly approved to do so in writing by that Tribe's leadership or otherwise delegated decision-makers.
4. There must be at least one Tribal monitor for each piece of heavy equipment in operation on a given day.
5. "Qualified personnel and staff" working on an area of Tribal concern shall be approved by a related Tribe. No consultants may manage or make plans for Tribal Cultural Resources, including but not limited to those that may be coded as "archaeological," without Tribal approval or explicit written approval.

Ultimately, the Tribal Interest Parties are concerned with the level of, or lack of attention to the undergoing NHPA Section 106 process and mitigation, and mitigation procedures within the Draft Permit. Additional language is needed to ensure Tribal Cultural Resources and the associated traditional religious and religious and cultural practices and freedoms that will be impacted by the Project are adequately protected, treated, and respected.

V. GROUNDWATER MONITORING AFFECTING TRIBAL RESERVED RIGHTS AND RESERVATION LANDS (Permit Term 52)

Permit Term 52 fails to adequately address several issues which the Tribal Interest Parties would like it to address. As with all actions involving Tribes, Tribal sovereignty, including governmental sovereignty, knowledge sovereignty, and data/information sovereignty, should be acknowledged and respected. Water is a cultural resource for Tribes and Tribal water rights extend to groundwater. This should be addressed in Permit Term 52 and the Authority should consult with local Tribes whose groundwater use may be impacted by the Project.

The Draft Decision and Permit Term 52 acknowledge the lack of information presented at the hearing regarding the impacts to groundwater throughout the project area and require the development of a groundwater monitoring program. The development of this program should be subject to Tribal consultation and include integration of TEK analysis and expertise.

The required monitoring relies in part on Sustainable Groundwater Management Act ("SGMA") monitoring stations but ignores the jurisdictional issue in that SGMA does not grant jurisdiction to Groundwater Sustainability Agencies over lands held in trust for Tribes. Such monitoring stations do not exist on Tribal trust lands or reservations. No outside groundwater authority should exercise jurisdiction on Tribal trust lands or reservations and monitoring on reservation lands should be conducted through sovereign-to-sovereign agreements with the Authority. Such agreements should include the following terms:

A. Monitoring wells on Tribal trust lands and reservations should be owned or controlled by the Tribe;
B. Tribes should control access to Tribal trust lands and reservations;
C. Tribes should retain primary custody of raw monitoring data generated on reservation, Tribally owned, and Tribally managed lands;
D. Sampling protocols should be jointly developed with the local Tribe and the Authority;
E. Confidentiality protections should apply to Tribal data and information.

Further, the Authority as the Permittee, should pay for the monitoring on reservations and tribal lands because the monitoring obligation belongs to the Authority, not the Tribe.

Permit Term 52 imposes the obligation on the Authority to determine its own thresholds for whether the Project causes detriment to groundwater and hence places the monitoring obligations on the Authority. Approval of the groundwater impact thresholds is left to the discretion of the Deputy Director, however Tribal consultation should be required in keeping with legal mandates for oversight by the State Water Board, Department of Water Resources, California Department of Public Health, Office of Environmental Health Hazard Assessment, California Fish and Wildlife and any appropriate federal agency. The Permit repeatedly delegates future decisions to agency discretion but for groundwater this is problematic and hence permit terms should be revised to define:

1. Measurable drawdown thresholds;
2. Pumping interference standards;
3. Monitoring frequency and locations (in reservoir, downstream in regional fish tissue
4. Corrective action water quality triggers for human and animal health, and for those of fish and shellfish;
5. Mandatory curtailment water quantity triggers; and
6. Emergency response obligations.

Given the potential fate of cultural resources, the impacts to which are impossible to mitigate according to the Draft Decision and Draft Permit, the Authority should provide mitigation in the form of financial compensation. Additional potential costs for to be covered by

the Authority include costs related to monitoring, capital, installation, maintenance, telemetry, hydrogeologic analysis, independent expert review which includes independent TEK practitioners and subject matter experts, such as Tribal hydrogeologists, and legal review tied to monitoring implementation and study reviews.

VI. RACIAL EQUITY

In discussing the Final EIR, the Draft Decision highlights that impacts to Tribal Cultural Resources cannot be fully mitigated and that the Project will cause unavoidable impacts with no mitigation measures available to avoid such impacts. The Draft Decision states that, "[i]n support of approval of the proposed appropriation, there is significant evidence that changes in climate and resulting impacts on the water supplies of the state support the development of additional supplies through diversion and storage of high flows, if appropriately conditioned." (Draft Decision, p. 148-149.) Tribes understand the threat that climate change poses, yet the Draft Permit for the Project proposes a way forward in which Tribes and Tribal concerns are not being adequately considered. Tribes have suffered and will continue to suffer cultural loss at the hand of the State because of the Project, and Tribes are being asked to sacrifice once again for circumstances not of their cause or creation. The historical atrocities and forced sacrifices made by Tribes will continue if the Project proceeds under the proposed permit terms, and the attempted genocide of California Tribes by the State acknowledged in Executive Order N-15-19 will continue through slower yet just as violent means of destruction. The State Water Board has the opportunity to provide relief to Tribes and help provide protections to Tribal Cultural Resources and associated traditional religious and cultural practices, freedoms, identities, and capacities for health and wellbeing that are at risk of severe harm, damage, and loss because of the Project.

VII. CONCLUSION

The Draft Permit is attempting to govern sovereign Tribal interests and matters with Tribal implications through unilateral discretion granted to the Executive Director and Deputy Director through adaptive management rather than enforceable substantive standards.

That creates three recurring problems:

1. Consultation becomes procedural rather than outcome-oriented, putting at risk adherence to scientific rigor and integrity;
2. Tribal rights become subsumed to agency interpretations and discretions, wherein any challenge puts undue mandates and financial and cultural burdens on Tribes;
3. Critical protections are deferred into future plans approved by Authority staff rather than fixed permit standards informed by best available science inclusive of Tribal expertise and TEK.

The Draft Permit defers substantive protections for Tribal Beneficial Uses, cultural resources, reserved rights, fisheries, water quality, and groundwater into future discretionary approvals lacking mandatory consultation standards, and agreed upon enforceable thresholds. Further, the Authority should not be rewarded, nor given the benefit of the doubt given the administrative record, for the poor consultation practices and failures to include informed cultural concerns, including on the nature of cultural resources and impacts to them, to date. Failure to incorporate the suggested revisions for consultation and deference to Tribes regarding treatment of Tribal Cultural Resources and properties of traditional religious and cultural importance, as broadly understood, practiced, and lived by Tribes into the permit terms will result in harm to Tribal concerns, interests, opportunities, practices, rights, and freedoms. For that reason, the proposed revisions to permit terms regarding the above issues are necessary to protect Tribal interests and the continuation of impacted Tribes.

Respectfully,

Wayne Mitchum, Jr.
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