Section 4 Consultation and Coordination

4.1 Fish and Wildlife Coordination Act (16 USC. 651 et seq.)

The Fish and Wildlife Coordination Act (FWCA) requires that Reclamation consult with fish and wildlife agencies (federal and state) on all water resource development projects that could affect biological resources. The Proposed Action does not involve any new impoundment or diversion of waters, channel deepening, or other control or modification of a stream or body of water as described in the statute, but only the movement of non-CVP water through CVP facilities. Therefore the FWCA does not apply.

4.2 Endangered Species Act (16 USC. 1521 et seq.)

Section 7 of this Act requires Federal agencies to ensure that all federally associated activities within the United States do not jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of the critical habitat of these species. Action agencies must consult with the Service, which maintains current lists of species that have been designated as threatened or endangered, to determine the potential impacts a project may have on protected species. The Proposed Action would have no effect to threatened or endangered species or designated critical habitats.

4.3 National Historic Preservation Act (16 USC 470 et seq.)

Cultural resources is a term used to describe both 'archaeological sites' depicting evidence of past human use of the landscape and the 'built environment' which is represented in structures such as dams, roadways, and buildings. The National Historic Preservation Act (NHPA) of 1966 is the primary Federal legislation which outlines the Federal Government's responsibility to cultural resources. Other applicable cultural resources laws and regulations that could apply include, but are not limited to, the Native American Graves Protection and Repatriation Act, and the Archaeological Resources Protection Act. Section 106 of the NHPA requires the Federal Government to take into consideration the effects of an undertaking listed on cultural resources on or eligible for inclusion in the National Register of Historic Places (National Register). Those resources that are on or eligible for inclusion in the National Register are referred to as historic properties.

The Section 106 process is outlined in the Federal regulations at 36 CFR Part 800. These regulations describe the process that the Federal agency (Reclamation) takes to identify cultural resources and the level of effect that the proposed undertaking will have on historic properties. In summary, Reclamation must first determine if the action is the type of action that has the potential to affect historic properties. If the action is the type of action that has the potential to affect historic properties, Reclamation must identify the area of potential effects (APE), determine if historic properties are present within that APE, determine the effect that the undertaking will have on historic properties, and consult with the State Historic Preservation Office, to seek concurrence on Reclamation's findings. In addition, Reclamation is required through the Section 106 process to consult with Indian Tribes concerning the identification of sites of religious or cultural significance, and consult with individuals or groups who are entitled

to be consulting parties or have requested to be consulting parties. No construction, new land use, or new ground disturbing activities would occur as a result of the Proposed Action. Therefore, the proposed action has no potential to affect historic properties (36 CFR 800.3(a)(1).

The DMC is a component of the CVP which is being evaluated for the National Register. The DMC, completed in 1951, carries water southeasterly from the Tracy Pumping Plant along the west side of the San Joaquin Valley for irrigation supply, for use in the San Luis Unit, and to replace SJR water stored at Friant Dam and used in the Friant-Kern and Madera systems. The canal is about 117 miles long and terminates at the Mendota Pool, about 30 miles west of Fresno. The initial diversion capacity is 4,600 cubic feet per second (cfs), which is gradually decreased to 3,211 cfs at the terminus (Reclamation 2007).

4.4 Indian Trust Assets

ITAs are legal interests in property held in trust by the United States for federally-recognized Indian tribes or individual Indians. An Indian trust has three components: (1) the trustee, (2) the beneficiary, and (3) the trust asset. ITAs can include land, minerals, federally-reserved hunting and fishing rights, federally-reserved water rights, and in-stream flows associated with trust land. Beneficiaries of the Indian trust relationship are federally-recognized Indian tribes with trust land; the United States is the trustee. By definition, ITAs cannot be sold, leased, or otherwise encumbered without approval of the United States. The characterization and application of the United States trust relationship have been defined by case law that interprets Congressional acts, executive orders, and historic treaty provisions.

There are no tribes possessing legal property interests held in trust by the United Sates in water involved with this action, nor is there such a property interest in the lands designated to receive the water proposed in this action. The nearest ITA is Santa Rosa Rancheria, which is approximately 20 miles east of the Proposed Action.

4.5 Migratory Bird Treaty Act (16 USC Sec. 703 et seq.)

The MBTA implements various treaties and conventions between the U.S. and Canada, Japan, Mexico and the former Soviet Union for the protection of migratory birds. Unless permitted by regulations, the Act provides that it is unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not. Subject to limitations in the Act, the Secretary of the Interior (Secretary) may adopt regulations determining the extent to which, if at all, hunting, taking, capturing, killing, possessing, selling, purchasing, shipping, transporting or exporting of any migratory bird, part, nest or egg will be allowed, having regard for temperature zones, distribution, abundance, economic value, breeding habits and migratory flight patterns.

The Proposed Action would have no effect on birds protected by the MBTA.

4.6 Executive Order 11988 – Floodplain Management and Executive Order 11990 - Protection of Wetlands

Executive Order 11988 requires Federal agencies to prepare floodplain assessments for actions located within or affecting flood plains, and similarly, Executive Order 11990 places similar requirements for actions in wetlands. This action would not adversely affect floodplains or wetlands.

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