

# RECLAMATION

## *Managing Water in the West*

### Categorical Exclusion Checklist

## Sutter National Wildlife Refuge Geotechnical Investigation

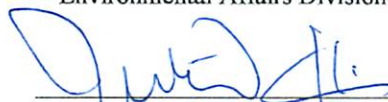
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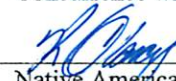
Date: 3-1-16

Concurred by:

  
Archaeologist  
Mid Pacific Regional Office  
Environmental Affairs Division  
Concurrence with item 8


Date: 3/1/16

Concurred by:

  
Native American Affairs Program Manager  
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Division of Resources Management  
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Date: 3/7/2016

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Date: 3/7/2016

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U.S. Department of the Interior  
Bureau of Reclamation  
Mid Pacific Region

March 2016

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## Proposed Action

Reclamation proposes to perform geotechnical investigations (Project) at the Sutter National Wildlife Refuge (SNWR). These investigations will provide data for design of future construction of the East Borrow Ditch Lift Station (EBDLS). The EBDLS is being considered for construction to deliver the volume of water required by the Central Valley Project Improvement Act to SNWR. The geotechnical investigation will include 7 drill-hole locations, with five drill holes to approximately 20 feet (ft.) deep and two to approximately 40 ft deep. The maximum diameter of each hole will be 11 inches. Four drill holes will be backfilled with drill cuttings and bentonite or grout upon completion. Three of the holes will be completed as groundwater observation monitoring wells. Two test pits will be excavated with a maximum ground disturbance of 8 ft. x 8 ft. to a depth of 14 ft. Both test pits will be backfilled and compacted with excavated material. Soil from the test pits will be sampled and sent to the Materials Engineering Research Lab for testing.

## Project Location

The proposed project location is located at the Sutter National Wildlife Refuge approximately 50 miles north of Sacramento, 4.5 miles south of Sutter, California and about 1 mile west of the intersection of McClatchy Road and Clements Road in Sutter County.

## Exclusion Category

516 DM 14.5 B (3): Data collection studies that involve test excavations for cultural resources investigations or test pitting, drilling, or seismic investigations for geologic exploration purposes where the impacts will be localized.

## Extraordinary Circumstances

Below is an evaluation of the extraordinary circumstances as required in 43 CFR 46.215.

1. This action would have a significant effect on the quality of the human environment (40 CFR 1502.3). No ☒ Uncertain ☐ Yes ☐
2. This action would have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources (NEPA Section 102(2)(E) and 43 CFR 46.215(c)). No ☒ Uncertain ☐ Yes ☐
3. This action would have significant impacts on public health or safety (43 CFR 46.215(a)). No ☒ Uncertain ☐ Yes ☐

- |   |  |
|---|--|
| 4. This action would have significant impacts on such natural resources and unique geographical characteristics as historic or cultural resources; parks, recreation, and refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); flood plains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas (43 CFR 46.215 (b)). | No <input checked="" type="checkbox"/> Uncertain <input type="checkbox"/> Yes <input type="checkbox"/> |
| 5. This action would have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks (43 CFR 46.215(d)).   | No <input checked="" type="checkbox"/> Uncertain <input type="checkbox"/> Yes <input type="checkbox"/> |
| 6. This action would establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects (43 CFR 46.215 (e)).  | No <input checked="" type="checkbox"/> Uncertain <input type="checkbox"/> Yes <input type="checkbox"/> |
| 7. This action would have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects (43 CFR 46.215 (f)).  | No <input checked="" type="checkbox"/> Uncertain <input type="checkbox"/> Yes <input type="checkbox"/> |
| 8. This action would have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by Reclamation (LND 02-01) (43 CFR 46.215 (g)).  | No <input checked="" type="checkbox"/> Uncertain <input type="checkbox"/> Yes <input type="checkbox"/> |
| 9. This action would have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated critical habitat for these species (43 CFR 46.215 (h)).   | No <input checked="" type="checkbox"/> Uncertain <input type="checkbox"/> Yes <input type="checkbox"/> |
| 10. This action would violate a Federal, tribal, State, or local law or requirement imposed for protection of the environment (43 CFR 46.215 (i)).  | No <input checked="" type="checkbox"/> Uncertain <input type="checkbox"/> Yes <input type="checkbox"/> |
| 11. This action would affect Indian Trust Assets (ITA) (512 DM 2, Policy Memorandum dated December 15, 1993).   | No <input checked="" type="checkbox"/> Uncertain <input type="checkbox"/> Yes <input type="checkbox"/> |
| 12. This action would have a disproportionately high and adverse effect on low income or minority populations (EO 12898) (43 CFR 46.215 (j)).   | No <input checked="" type="checkbox"/> Uncertain <input type="checkbox"/> Yes <input type="checkbox"/> |
| 13. This action would limit access to, and ceremonial use of, Indian sacred sites on Federal lands by Indian religious  | No <input checked="" type="checkbox"/> Uncertain <input type="checkbox"/> Yes <input type="checkbox"/> |

practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007, 43 CFR 46.215 (k), and 512 DM 3)).

14. This action would contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act, EO 13112, and 43 CFR 46.215 (l)).
- No ☒ Uncertain ☐ Yes ☐

## NEPA Action Recommended

☒ CEC – This action is covered by the exclusion category and no extraordinary circumstances exist. The action is excluded from further documentation in an EA or EIS.

☐ Further environmental review is required, and the following document should be prepared.

☐ EA

☐ EIS

## Special Considerations

### Clean Water Act Permits

As the Project will occur within a flood bypass (Waters of the United States), it is subject to sections 404 and 401 of the Clean Water Act. The actions within the Project qualify under Nationwide Permits (NWP) 5 (Scientific Measurement Devices) and 6 (Survey Activities). Neither NWP requires pre-construction notification to the U.S. Army Corps of Engineers, as the project activities meet all general and regional conditions. Both NWPs are pre-certified by the California Central Valley Regional Water Quality Control Board. Reclamation submitted a Certified Nationwide Permit Notification Form to the California Central Valley Regional Water Quality Control Board December 21, 2015, and received a confirmation letter January 29, 2016 stating Certification would be issued once the Categorical Exclusion has been received.

### Endangered Species Act of 1973 Consultation

There is potential for the Project to adversely affect two federally listed as threatened species, the western distinct population segment of the yellow-billed cuckoo (*Coccyzus americanus*) and the giant garter snake (GGS). Reclamation initiated formal consultation with the United States Fish

& Wildlife Service (USFWS) on January 22, 2016 on the determination that the Project may affect, and is likely to adversely affect the federally listed as threatened western distinct population segment of the yellow-billed cuckoo, and a may affect, but is not likely to adversely affect the federally listed as threatened giant garter snake (*Thamnophis gigas*). Additionally, the Project is not likely to destroy or adversely modify proposed critical habitat for the cuckoo; critical habitat for GGS has not been designated or proposed. A small amount of suitable habitat (riparian forest) exists within the project footprint, but there is no woody vegetation removal associated with the project; any impacts would be indirect (e.g. harassment and potential nest abandonment). Because work will occur during the active season for GGS, it is unlikely Project activities would result in impacts to the snake. Any potential impacts to either species are anticipated to be less than significant. The USFWS issued a biological opinion on February 25, 2016 agreeing with the above mentioned findings.

## **Migratory Bird Treaty Act**

The raptor nesting season in the Project area is from March 1 to July 31, and there are occurrences of Swainson's hawk within the general vicinity of the Project area. Equipment noise from project activities has potential to disturb nesting migratory birds. The below avoidance and minimization measures would ensure any impacts to migratory birds would be minimal:

- A Reclamation biologist will perform a pre-Project survey for active raptor and migratory bird nests no more than 15 days prior to the start of Project activities if the Project occurs during nesting season between March 1st and July 31st. The survey area will include all accessible areas within ¼-mile of the Project area. If active raptor or migratory bird nests are observed within ¼-mile of the Project area, a biologist will be on-site to monitor the nests during Project activities and ensure that nesting birds are not disturbed.
- If a nesting raptor or migratory bird is disturbed, work will be stopped until the biologist permits work to continue.

**Attachment 1**

**Biological Concurrence Memo**



# United States Department of the Interior




In Reply Refer to:  
08ESMF00-  
2016-F-0526-1

FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Suite W-2605  
Sacramento, California 95825-1846

FEB 25 2016

## Memorandum

To: Regional Environmental Officer, Mid-Pacific Regional Office  
U.S. Bureau of Reclamation, Sacramento, California

From:  Field Supervisor, Sacramento Fish and Wildlife Office  
U.S. Fish and Wildlife Service, Sacramento, California

Subject: Formal Consultation on the Proposed Geologic Investigations for the Sutter  
National Wildlife Refuge Water Supply Conveyance Study, Sutter County, California

This letter is in response to the Bureau of Reclamation's (Reclamation), January 22, 2016, request for initiation of formal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed Geologic Investigations for the Sutter National Wildlife Refuge Water Supply Conveyance Study (proposed project), in Sutter County, California. Your request was received by the Service on January 22, 2016. At issue are the proposed project's effects on the federally-listed as threatened giant gartersnake (*Thamnophis gigas*) (snake) and western distinct population segment (DPS) of the yellow-billed cuckoo (*Coccyzus americanus*) (cuckoo) and proposed critical habitat for the cuckoo. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR §402).

The federal action we are consulting on is Reclamation's geologic investigations that will be conducted to determine the final location of a lift station and pipeline supplying water to the Sutter National Wildlife Refuge (refuge). Pursuant to 50 CFR §402.12(j), you submitted a biological assessment and requested concurrence with the findings presented therein. These findings conclude that the proposed project may affect, and is likely to adversely affect the cuckoo. The findings also conclude that the proposed project may affect, but is not likely to adversely affect the snake or proposed critical habitat for the cuckoo.

In considering your request, we based our evaluation on the following: (1) your January 22, 2016, letter requesting initiation of formal consultation and the enclosed *Biological Assessment – 2016 Geologic Investigations for Proposed Sutter National Wildlife Refuge Water Supply Conveyance Study* (biological assessment); (2) the December 23, 2015, meeting between representatives of the Service and Reclamation; and (3) other information available to the Service.

### *Giant Gartersnake*

After reviewing all the available information, we concur with your determination that the proposed project is not likely to adversely affect the snake. The proposed project reached the 'may affect' level, and the subsequent requirement for a biological assessment, due to the fact that the proposed project occurs within the potential range of the snake, suitable habitat is present in the action area, and snakes may be present in the action area. The proposed project area is located within the Sutter



Basin, identified as a “snake population unit” in the June 2012 snake 5-year review (Service 2012). The closest known occurrence of the snake in the California Natural Diversity Database (CNDDDB) is approximately 1 mile southwest of the proposed project, along the west levee road (CNDDDB 2016). Two additional occurrences are just over 3 miles to the southeast, along irrigation ditches within and adjacent to the refuge.

Although snakes may use the East and West Borrow Ditch on either side of the refuge to move between foraging locations, they are more likely to be in the smaller, slower-moving irrigation ditches in the surrounding landscape. Work will occur along the bank of the East Borrow Ditch; however, the bank is lined with riparian vegetation, which snakes are unlikely to utilize due to excessive shade, lack of burrows and basking sites, and absence of prey. Work will only occur during the snake’s active season.

In addition, Reclamation has proposed the following measures to avoid effects to the snake.

- Within 24 hours prior to the commencement of construction activities, the project area will be surveyed for snakes by a Service-approved biologist. The project area will be re-inspected by the monitoring biologist whenever a lapse in construction activity of two weeks or greater has occurred;
- A Worker Environmental Awareness Training Program for construction personnel will be conducted by a Service-approved biologist for all construction workers, including contractors, prior to the commencement of construction activities. The training will include information regarding the appearance, ecological requirements, and status of the snake;
- The Service-approved biologist will advise work crews where drilling and test pits, along with spoils piles, should be completed to avoid effects to the snake;
- If a snake is encountered, all work will cease and the snake will be allowed to leave the area on its own. The Service-approved biologist will be immediately contacted to provide further guidance before work continues;
- During construction operations, stockpiling of construction materials, portable equipment, vehicles, and supplies will be restricted to designated construction staging areas and all operations will be confined to the minimal area necessary;
- Project-related vehicles will observe a 20-mile-per-hour speed limit within construction areas, except on existing paved roads where they will adhere to the posted speed limits; and
- After completion of drilling activities, Reclamation will remove any construction debris and, wherever feasible, restore disturbed areas to pre-project conditions. Restoration will be coordinated with refuge staff to ensure that refuge management goals are reflected.

Due to the presence of unsuitable riparian habitat within the action area and the conservation measures proposed by Reclamation, the Service believes that any potential adverse effects to the snake from the proposed project are unlikely to occur, and are therefore discountable for purposes of this consultation.

*Proposed Critical Habitat for the Western DPS of the Yellow-billed Cuckoo*

The proposed project is located within Unit 3 of proposed critical habitat for the cuckoo. The Primary Constituent Elements (PCEs) of proposed critical habitat for the cuckoo are: (1) riparian woodlands with mixed willow-cottonwood vegetation that contain habitat for nesting and foraging in contiguous patches that are greater than 100 feet in width and 200 acres or more in extent; (2) presence of a prey base consisting of large insect fauna and tree frogs for adults and young in breeding areas during the nesting season and in post-breeding dispersal areas; and (3) river systems that are dynamic and provide hydrologic processes that encourage sediment movement and deposits that allow seedling germination and promote plant growth, maintenance, health, and vigor.

The proposed project reached the 'may affect' level, and the subsequent requirement for a biological assessment, due to the fact that the proposed project occurs within proposed critical habitat for the cuckoo and that the PCEs are present within the action area. The proposed project involves the digging of seven drill holes and two test pits, which will be located such that no riparian vegetation will be disturbed. The limited amount of work and ground-disturbance will not lead to a decrease in prey base for the cuckoo or alter the hydrologic processes of the area. Due to the fact that the proposed project is limited in scope and does not include components that will affect the PCEs, the Service believes that adverse effects to proposed critical habitat for the cuckoo are unlikely to occur, and are therefore discountable for purposes of this consultation.

**Consultation History**

- December 3, 2015:* The Service received the December 2, 2015, letter from Reclamation requesting initiation of informal consultation with the 2015 biological assessment enclosed.
- December 23, 2015:* At a meeting attended by representatives of the Service and Reclamation, changes to the proposed project timing and subsequent effects on the cuckoo were discussed. Reclamation stated that they would submit an updated biological assessment.
- January 22, 2016:* The Service received the January 22, 2016, revised letter from Reclamation requesting initiation of formal consultation with the revised 2016 biological assessment enclosed. This date also confirms the receipt of all of the complete information in order for consultation to begin.

The remainder of this document provides our biological opinion on the effects of the proposed project on the cuckoo.

**BIOLOGICAL OPINION****Description of the Action**

The proposed project is located on the Sutter National Wildlife Refuge, within the Sutter Bypass, approximately 50 miles north of Sacramento and 4.5 miles south of the community of Sutter. A future lift station will be constructed to divert water from the East Borrow Ditch to deliver required water supply through a pipeline to the refuge. The proposed project includes geologic investigations in order to assess the feasibility of two potential future pipeline alignments.

The geologic investigations include drilling seven holes and excavating two test pits. Drilling will be accomplished using a mounted drill rig. Five holes will be drilled to a depth of 20 feet and two will

be drilled to a depth of 40 feet. The maximum drilling outer diameter will be 11 inches. Three of the drill holes will be developed into groundwater wells. Spoils will be used to refill the drill holes, collected for sampling, or spread thinly over the ground surface. The two test pits will be excavated to approximately 8x8 feet in area and a maximum of 14 feet deep. The pits will be excavated using a rubber tire backhoe with a toothed bucket. Both pits will be backfilled with the excavated material and compacted.

Work is expected to occur over three 10-day work shifts between May 1 and August 1. Equipment will be staged at the existing refuge storage yard, which will be accessed via existing dirt and paved roads. Work will begin closest to the East Borrow Ditch and proceed westward out of the riparian corridor.

### *Conservation Measures*

Reclamation has proposed the following measures to minimize effects on the cuckoo. The measures proposed below are considered part of the proposed action evaluated by the Service in this biological opinion.

- A Worker Environmental Awareness Training Program for construction personnel will be conducted by a Service-approved biologist for all construction workers, including contractors, prior to the commencement of construction activities. The training will include information regarding the appearance, ecological requirements, and status of the cuckoo;
- The Service-approved biologist will advise work crews where drilling and test pits, along with spoils piles, should be completed to minimize effects to the cuckoo;
- During construction operations, stockpiling of construction materials, portable equipment, vehicles, and supplies will be restricted to designated construction staging areas and all operations will be confined to the minimal area necessary;
- No standing woody vegetation will be trimmed or removed during proposed project actions. Drill sites and test pits can and will be moved if it appears that woody vegetation might be affected by project activities; and
- After completion of drilling activities, Reclamation will remove any construction debris and, wherever feasible, restore disturbed areas to pre-project conditions. Restoration will be coordinated with refuge staff to ensure that refuge management goals are reflected.

### **Action Area**

The action area is defined in 50 CFR §402.02 as, “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.” For the proposed project, the action area encompasses the entire project site, plus the refuge storage yard and access route. The action area also includes all areas up to 165 feet from the construction footprint in which noise from construction activities is expected to exceed ambient levels (derived from Service 2006).

### **Analytical Framework for the Jeopardy Determination**

The following analysis relies on four components to support the jeopardy determination for the cuckoo: (1) the *Status of the Species*, which evaluates the species’ range-wide condition, the factors

responsible for that condition, and its survival and recovery needs; (2) the *Environmental Baseline*, which evaluates the condition of the cuckoo in the action area, the factors responsible for that condition, and the role of the action area in the species' survival and recovery; (3) the *Effects of the Action*, which determines the direct and indirect effects of the proposed federal action and the effects of any interrelated or interdependent activities on the cuckoo; and (4) *Cumulative Effects*, which evaluates the effects of future, non-federal activities in the action area on the cuckoo.

In accordance with the implementing regulations for section 7 and Service policy, the jeopardy determination is made in the following manner: the effects of the proposed federal action are evaluated in the context of the aggregate effects of all factors that have contributed to the current status of the cuckoo. Additionally, for non-federal activities in the action area, we will evaluate those actions likely to affect the species in the future, to determine if implementation of the proposed action is likely to cause an appreciable reduction in the likelihood of both their survival and recovery in the wild.

The following analysis places an emphasis on using the range-wide survival and recovery needs of the cuckoo, and the role of the action area in providing for those needs as the context for evaluating the significance of the effects of the proposed federal action, taken together with cumulative effects, for purposes of making the jeopardy determination.

### **Status of the Species**

For the most recent comprehensive assessment of the range-wide status of the cuckoo, please refer to the *Proposed Threatened Status for the Western Distinct Population Segment of the Yellow-billed Cuckoo* (Service 2013). Threats discussed in the proposed rule and finalized in the *Determination of Threatened Status for the Western Distinct Population Segment of the Yellow-billed Cuckoo* continue to act on the cuckoo, with loss and fragmentation of habitat being the most significant effect (Service 2014b). While threats continue to act upon the cuckoo throughout its range, to date no project has proposed a level of effect for which the Service has issued a biological opinion of jeopardy for the cuckoo.

Cuckoos may begin arriving in California in May, but most birds arrive in June. Nesting rarely begins before mid-June and continues through August. Most birds have left their breeding grounds by mid-September. Based on surveys conducted in 2012 and 2013, it is estimated that 27-28 pairs of cuckoos occur along the Sacramento River (Dettling et al. 2015), where the majority of habitat is available in the Sacramento Valley. The range-wide breeding population is difficult to determine, but it is estimated to be between 680 and 1,025 pairs (Service 2013).

### **Environmental Baseline**

The action area is located within Unit 3 of proposed critical habitat for the cuckoo, proposed due to the fact that it is one of the most regularly occupied sites in the Sacramento Valley (Service 2014a). Cuckoos have been detected during surveys conducted by Service staff on the refuge. As many as six pairs were detected on the refuge in July 2000, with the closest detection to the action area 0.25 mile to the west. In July 2015, one or two individuals were detected, with the closest 1.2 miles southwest of the action area.

### **Effects of the Action**

The construction of the proposed project will result in the disturbance of any cuckoos that enter the action area and initiate nesting in between work shifts, which will then be disturbed when work resumes. The activity and noise associated with construction would likely cause the cuckoos to

abandon nesting attempts and leave the area. Based on the recent survey results, it is likely that only one pair of cuckoos would be disturbed by the proposed project.

### **Cumulative Effects**

Cumulative effects include the effects of future state, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act, including the final construction of the lift station and pipeline. During this consultation, the Service did not identify any future non-federal actions that are reasonably certain to occur in the action area of the proposed project.

### **Conclusion**

After reviewing the current status of the cuckoo, the environmental baseline for the action area, the effects of the proposed project, and the cumulative effects, it is the Service's biological opinion that the Geologic Investigations for the Sutter National Wildlife Refuge Water Supply Conveyance Study, as proposed, is not likely to jeopardize the continued existence of the cuckoo. The Service reached this conclusion because the project-related effects to the cuckoo, when added to the environmental baseline and analyzed in consideration of the lack of cumulative effects, will not rise to the level of precluding recovery or reducing the likelihood of survival of the species. The proposed project may adversely affect one pair of cuckoos by disrupting their nesting attempt in the action area, which represents a small percentage of the population in the Sacramento Valley and a much smaller percentage of the range-wide population. In addition, the cuckoos will be able to attempt nesting again in the future.

## **INCIDENTAL TAKE STATEMENT**

Section 9 of the Act and federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by the Service regulations at 50 CFR §17.3 as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined by the same regulations as an act which actually kills or injures wildlife. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by Reclamation so that they become binding conditions of any grant or permit issued for the proposed project, as appropriate, for the exemption in section 7(o)(2) to apply. Reclamation has a continuing duty to regulate the activity covered by this incidental take statement. If Reclamation (1) fails to assume and implement the terms and conditions or (2) fails to require adherence to the terms and conditions of the incidental take statement through enforceable terms that are added to the permits or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, Reclamation must report the progress of the action and its impact on the species to

the Service as specified in the incidental take statement. [50 CFR §402.14(i)(3)]

### **Amount or Extent of Take**

The Service anticipates that incidental take of cuckoo will be difficult to detect due to the fact that the birds are secretive and may enter and leave the action area unnoticed. The activity and noise associated with the proposed project will result in the harassment of any cuckoos in the action area by disrupting attempts at breeding. Based on the limited extent of the action area and the recent survey data from the refuge, it is likely that only a single pair of cuckoos may attempt breeding within the action area. Therefore, the Service is authorizing incidental take to the proposed action as the harassment of two cuckoos.

Upon implementation of the following *Reasonable and Prudent Measures*, incidental take of the cuckoo associated with the Geologic Investigations for the Sutter National Wildlife Refuge Water Supply Conveyance Study will become exempt from the prohibitions described in section 9 of the Act. No other forms of take are exempted under this opinion.

### **Effect of the Take**

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the cuckoo.

### **Reasonable and Prudent Measures**

All necessary and appropriate measures to avoid or minimize effects to the cuckoo resulting from implementation of this project have been incorporated into the project's proposed conservation measures. Therefore, the Service believes the following Reasonable and Prudent Measure is necessary and appropriate to minimize incidental take of the cuckoo:

1. The conservation measures for the cuckoo, as described in the biological assessment and restated here in the *Description of the Action* section of this biological opinion, shall be fully implemented and adhered to. Further, this Reasonable and Prudent Measure shall be supplemented by the Terms and Conditions below.

### **Terms and Conditions**

In order to be exempt from the prohibitions of section 9 of the Act, Reclamation must ensure compliance with the following terms and conditions, which implement the Reasonable and Prudent Measure described above. These terms and conditions are nondiscretionary.

1. Reclamation shall include full implementation and adherence to the conservation measures as a condition of any permit or contract issued for the proposed project.
2. In order to monitor whether the amount or extent of incidental take anticipated from implementation of the proposed project is approached or exceeded, Reclamation shall adhere to the following reporting requirement. Should this anticipated amount or extent of incidental take be exceeded, Reclamation must immediately reinitiate formal consultation, as per 50 CFR §402.16.
  - a. For those components of the action that result in direct encounters between cuckoos and project workers and their equipment whereby incidental take in the form of

harassment is anticipated, Reclamation shall immediately contact the Service's Sacramento Fish and Wildlife Office (SFWO) at (916) 414-6631 to report the encounter. If the encounter occurs after normal working hours, Reclamation shall contact the SFWO at the earliest possible opportunity the next working day.

### **REINITIATION - CLOSING STATEMENT**

This concludes formal consultation on the Geologic Investigations for the Sutter National Wildlife Refuge Water Supply Conveyance Study in Sutter County, California. As provided in 50 CFR §402.16, reinitiation of formal consultation is required and shall be requested by the federal agency or by the Service where discretionary federal agency involvement or control over the action has been retained or is authorized by law and: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in the biological opinion; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action.

If you have questions regarding this biological opinion, please contact Lily Douglas, Fish and Wildlife Biologist ([lily\\_douglas@fws.gov](mailto:lily_douglas@fws.gov)), or Kellie Berry, Chief, Sacramento Valley Division ([kellie\\_berry@fws.gov](mailto:kellie_berry@fws.gov)) at the letterhead address, (916) 414-6631, or by e-mail.

**LITERATURE CITED**

- California Natural Diversity Database (CNDDB). 2015. Biogeographic Data Branch, Department of Fish and Wildlife. Sacramento, California. Accessed 27 January 2016.
- Dettling, M.D., N.E. Seavy, C.A. Howell, and T. Gardali. 2015. Current Status of Western Yellow-billed Cuckoo along the Sacramento and Feather Rivers, California. PLoS ONE 10: e0125198. doi: 10.1371/journal.pone.0125198. April 27, 2015.
- U.S. Fish and Wildlife Service (Service). 2006. Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California. Arcata Fish and Wildlife Office, Arcata, California. July 26, 2006. 61 pp.
- \_\_\_\_\_. 2012. Giant Garter Snake (*Thamnophis gigas*) 5-Year Review: Summary and Evaluation. Sacramento Fish and Wildlife Office. Sacramento, California. June 2012. 62 pp.
- \_\_\_\_\_. 2013. Proposed Threatened Status for the Western Distinct Population Segment of the Yellow-billed Cuckoo (*Coccyzus americanus*). Federal Register 78:61622-61666. October 3, 2013.
- \_\_\_\_\_. 2014a. Designation of Critical Habitat for the Western Distinct Population Segment of the Yellow-billed Cuckoo; Proposed Rule. Federal Register 79:48548-48652. August 15, 2014.
- \_\_\_\_\_. 2014b. Determination of Threatened Status for the Western Distinct Population Segment of the Yellow-billed Cuckoo (*Coccyzus americanus*). Federal Register 79:59992-60038. October 3, 2014.



## **Attachment 2**

### **Cultural Resources Concurrence Memo**

# **CULTURAL RESOURCES COMPLIANCE**

## **Division of Environmental Affairs**

### **Cultural Resources Branch (MP-153)**

**MP-153 Tracking Number:** 15-NCAO-183

**Project Name:** Sutter National Wildlife Refuge Lift Station and Water Conveyance

**NEPA Document:** MP-CEC-15-03

**NEPA Contacts:** Kylene Lang, Natural Resources Specialist  
Timothy Blair, Project Manager  
Kevin Clancy, Project Manager

**MP-153 Cultural Resources Reviewer:** James D. Collis, Archaeologist

**Date:** February 3, 2016

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Reclamation intends to fund and construct a lift station and fish screen facility on the west bank of the East Borrow Ditch (EBD) that is associated with the Sutter National Wildlife Refuge (NWR) in Sutter County. This project is proposed to improve water delivery and to help satisfy the Central Valley Project Improvement Act requirement to supply water to specific refuges in the Central Valley. The lift station would discharge its flows via pipeline into a concrete-lined distribution basin which will connect to the existing internal Sutter NWR water distribution system. Geological field investigations involving drill holes and test pits will be needed to characterize foundation conditions and collect design data for final placement of the proposed lift station.

Reclamation has defined the area of potential effects (APE) as encompassing the combined footprints of all elements of the proposed project, including a buffer to allow for final refinement in project element placement, with a total of approximately 10.6 acres. The maximum vertical APE for the proposed project varies, with a maximum depth of approximately 40 feet to bore drill holes to that depth for geological analysis.

In an effort to identify historic properties within the APE, Reclamation conducted archival research and visited the Northeast Information Center in Chico, California (September 8, 2015; #010679). Two cultural resources inventories were conducted partially within the current APE for a California Department of Water Resources water control project. Three structures—Bridge EL-5 Pilings, the EBD, and Weir #2—were identified and recorded within the current APE as a result of these prior inventories. All three sites were determined not eligible for the National Register of Historic Places (National Register) with State Historic Preservation Officer consensus.

Reclamation sent a Sacred Lands File and Native American Contacts List Request to the Native American Heritage Commission (NAHC) on June 24, 2015. On July 17, 2015, Reclamation sent letters to the United Auburn Indian Community of the Auburn Rancheria (UAIC) and the Enterprise Rancheria of Maidu Indians. Upon receipt of a response from the NAHC on July 22, 2015, Reclamation sent additional letters to the Mooretown Rancheria of Maidu Indians and the Maidu Band of Strawberry Valley Rancheria on August 5, 2015. On August 7, 2015 and October 22, 2015, the UAIC sent responses requesting that Reclamation send them copies of cultural resource inventory reports and other environmental documents and notification regarding any Native American cultural resources of which Reclamation may be aware. On September 1, 2015, Reclamation notified Mr. Marcus Guerrero, UAIC cultural resources contact, that the inventory accomplished for this project had not identified any such resources and a copy of the inventory report will be sent to the UAIC.

On August 20 and November 24, 2015, Mr. James D. Collis, Reclamation Archaeologist, conducted a Class III intensive pedestrian inventory of the entire APE for the proposed project. An existing booster pump was identified and recorded (Primary Number 51-000245/CA-SUT-245H). This structure was built in 1953 as a separate system to distribute water from the EBD to the internal Sutter NWR water distribution system. The waterways that comprise the integrated internal water distribution system that would be receiving the water supplied by the lift station are generally excluded from the APE. Only small portions where the new pipelines would enter the Main Canal and the Highline Canal are within the APE, so the canals were not recorded. Based on several considerations, Reclamation has determined that the probability of intact buried cultural resources existing within the APE to be very low. The APE lies entirely within a naturally dynamic zone that regularly receives heavy flooding of up to 12 feet deep.

For purposes of this undertaking, Reclamation is assuming that the existing NWR internal water distribution system, including the Main Canal and Highline Canal, are eligible for listing on the National Register. The existing booster pump (Primary Number 51-000245/CA-SUT-245H) is not eligible for listing as it does not meet any of the criteria for eligibility. This is a small pump of common construction used only for a portion of the Sutter NWR distribution system. Installing a lift station and pipelines to connect to the existing Sutter NWR water distribution system will not adversely affect any of the characteristics that would make that system eligible for listing on the National Register. This project is consistent with the purpose of the Sutter NWR to provide migratory bird habitat and consistent with the use of water distribution facilities within the Sutter NWR. No other cultural resources will be impacted by construction of this project.

Reclamation has determined that the proposed undertaking would result in no adverse effect to historic properties pursuant to 36 CFR § 800.5(b). Reclamation consulted with (1/7/2016) and received concurrence from (2/3/2016) the California SHPO for this finding. Consultation

**CULTURAL RESOURCES COMPLIANCE**  
**Division of Environmental Affairs**  
**Cultural Resources Branch (MP-153)**

correspondence between Reclamation and the SHPO has been provided with this cultural resources compliance document for inclusion in the administrative record for this action.

I concur with Item 8 of NEPA document MP-CEC-15-03; this action will not have significant impacts to properties listed, or eligible for listing, on the National Register. This document conveys the completion of the cultural resources review and NHPA Section 106 process for this undertaking. Please retain a copy in the administrative record for this action. Should changes be made to the proposed action, additional review under Section 106, possibly including consultation with the State Historic Preservation Officer, may be required.

Attachments

Letter: Reclamation to SHPO dated 12/30/2015

Letter: SHPO to Reclamation dated 2/3/2016

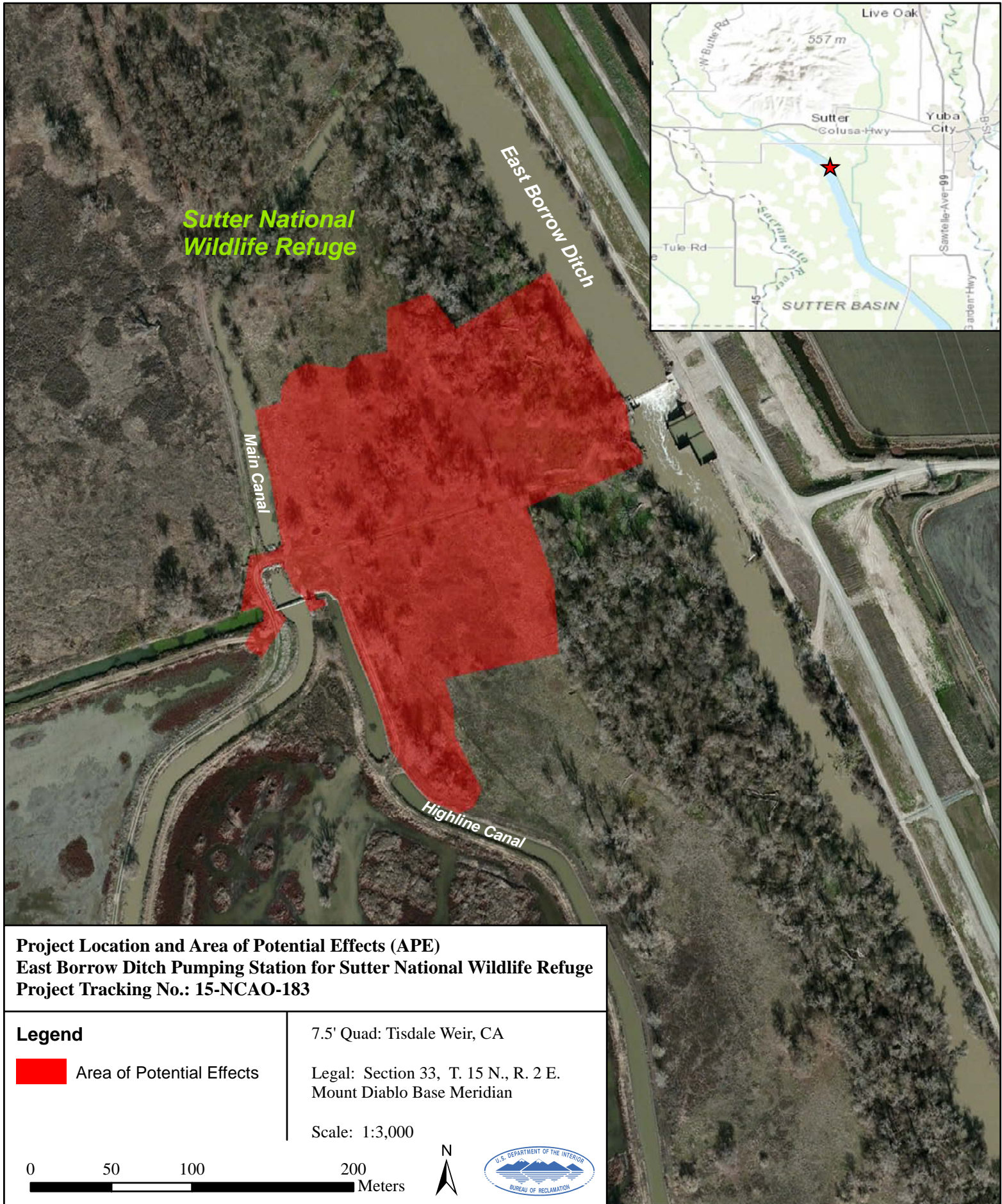
References

Collis, James D.

2015 A Class III Intensive Pedestrian Cultural Resource Inventory for the East Borrow Ditch Lift Station and Water Conveyance in the Sutter National Wildlife Refuge Project, Sutter County, California. Project Number: 15-NCAO-183. U.S. Bureau of Reclamation, Sacramento, California.

# RECLAMATION

*Managing Water in the West*



## **Attachment 3**

### **Indian Trust Assets Concurrence Memo**



## Indian Trust Assets Request Form (MP Region)

**Date: 10-28-2015**

<b>Requested by</b> (office/program)	Joshua Black
<b>Fund</b>	16XR5173F7 (SUTTER WILDLIFE) 16XR5173F7 (SUTTER WLDLF PLNG)
<b>WBS</b>	RX021420210000000 (SUTTER WILDLIFE) RX021420200000000 (SUTTER WLDLF PLNG)
<b>Fund Cost Center</b>	RR02015200
<b>Region #</b> (if other than MP)	Mid-Pacific - 152
<b>Project Name</b>	Sutter National Wildlife Refuge Water Supply Conveyance Study
<b>CEC or EA Number</b>	MP-CEC-15-03
<b>Project Description</b> (attach additional sheets if needed and include photos if appropriate)	<p>Reclamation is proposing to perform geotechnical and cultural resources investigations at the Sutter National Wildlife Refuge (SNWR). These investigations are being done to gather data for construction of the East Borrow Ditch Lift Station (EBDLS). The EBDLS is being considered for construction to deliver the amount of water required by the Central Valley Project Improvement Act to SNWR. The geotechnical investigation will include 7 drill hole sites. Five drill holes will be drilled to about 20 feet deep and two drill holes will be drilled to about 40 feet deep. The maximum diameter of each hole will be about 11 inches. Four drill holes will be backfilled with drill cuttings and Bentonite or grout upon completion. Three of the holes will be used for groundwater observation monitoring wells and backfilled with hydrated Bentonite chips. The two test pits will be excavated to refusal, which is about 14 feet deep. All test pits will be backfilled and compacted with excavated material. Soil from the test pits will be sampled and sent to the Materials Engineering Research Lab for testing. The cultural resources investigation will include excavation of 13 shovel test pits (STP). The STPs will each have a diameter of 11.8 inches and be dug to an approximate depth of 50 cm. One or more STPs may be excavated with a diameter of 19.7 inches and a depth of 39.4 inches if this is deemed necessary by the field archaeologist to further examine the soil deposition. Upon completion of the excavation, the soil will be returned to the STPs, the surface tamped down, and the organic cap replaced in its original position.</p>

10/27/2015

<b>*Project Location (Township, Range, Section, e.g., T12 R5E S10, or Lat/Long cords, DD-MM-SS or decimal degrees). Include map(s)</b>	Approximately located at: Lat. 39°06'09.36" N, Long. 121°45'37.33" W  The proposed project site is located approximately 50 miles north of Sacramento, 4.5 miles south of Sutter, California and about 1 mile west of the intersection of McClatchy Road and Clements Road in Sutter County.
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_____	Joshua Black	10/27/15
Signature	Printed name of preparer	Date

**ITA Determination:**

The closest ITA to the proposed **Sutter National Wildlife Refuge Water Supply Conveyance Study** activity is the **Cachil DeHe Band of Wintun Indians of the Colusa Indian Community** about **17 miles** to the **Northeast**. (see attached image).

Based on the nature of the planned work it **does not** appear to be in an area that will impact Indian hunting or fishing resources or water rights nor is the proposed activity on actual Indian lands. It is reasonable to assume that the proposed action **will not** have any impacts on ITAs.

<i>K. Clancy</i>	Kevin Clancy	10-28-2015
Signature	Printed name of approver	Date



10/27/2015

