Appendix H

Cultural Resources Compliance

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

MP-153 Tracking Number: 13-SCAO-248

Project Name: Millerton New Town Residential Development, Fresno County, California

NEPA Contact: Rain Emmerson, Natural Resource Specialist

MP 153 Cultural Resources Reviewer: Scott Williams, Archaeologist

Date: January 6, 2016

Reclamation proposes the authorization to deliver municipal and industrial water and a long-term water transfer from the Arvin-Edison Water Storage District, Lower Tule River Irrigation District, and Terra Bella River Irrigation District to the Millerton New Town Development (Project), in Fresno County, changing the current land use from agricultural to residential for subdivision development. This action constitutes an undertaking with the potential to cause effects to historic properties, assuming such properties are present, requiring compliance with Section 106 of the National Historic Preservation Act (NHPA) as amended.

Reclamations efforts to fulfill NHPA requirements have involved consultation and/or consultation with the California State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation, the Table Mountain Rancheria, and the Santa Rosa Tachi Tribe. Based on historic properties identification efforts conducted by Sierra Valley Cultural Planning, supplemental information provided by ECORP Consulting, and extensive consultation with the above parties, Reclamation consulted with, and received concurrence from, the State Historic Preservation Officer (SHPO) on a finding of no historic properties affected on November 10, 2015, with the application of avoidance and protective measures for cultural resources, pursuant to Section 106 of the NHPA for approving water delivery for the Millerton New Town Residential Development (Project) in Fresno County. As a condition of SHPO concurrence on December 15, 2015, it was stipulated additional protective measures to the draft Cultural Resources Management Plan (CRMP). Reclamation and the Developers have agreed to the additional language and it has been incorporated in the enclosed final CRMP. The final CRMP has been distributed to the SHPO, the Advisory Council, the Army Corps of Engineers (Mr. Jason Deters), the Table Mountain Tribe, and the Santa Rosa Tachi Tribe. It is Reclamation's understanding that the delivery of the final CRMP to the SHPO fulfills the conditions of SHPO's concurrence with Reclamations finding of effect. The consultation correspondence between Reclamation and the SHPO has been provided with this cultural resources compliance document for inclusion in the administrative record for this action.

This document serves as notification that Section 106 compliance has been completed for this undertaking. Please note that if project activities subsequently change, additional NHPA Section 106 review, including further consultation with the SHPO, may be required.

Confidential Document Retained, MP Regional Office of Environmental Affairs:

Millerton New Town Cultural Resource Management Plan

Attachments:

Letter: Reclamation to SHPO dated November 10, 2015
Letter: SHPO to Reclamation dated December 15, 2015
Letter : Reclamation to SHPO dated January 4, 2016

United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

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IN REPLY REFER TO:
MP-153
ENV-3.00

NOV 10 2015

HAND DELIVERED

Ms. Julianne Polanco
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Subject: Continuing Consultation under Section 106 of the National Historic Preservation Act (NHPA) for the Millerton New Town Residential Development, Fresno County, California (13-SCAO-248) (SPK-1999-00726)(BUR_2014_1022_001)

Dear Ms. Polanco:

The Bureau of Reclamation is continuing consultation under Title 54 USC § 306108, commonly known as Section 106 of the NHPA and its implementing regulations found at 36 CFR Part 800, for issuing an authorization to deliver municipal and industrial water and a long-term water transfer from the Arvin-Edison Water Storage District, Lower Tule River Irrigation District, and Terra Bella River Irrigation District to the Millerton New Town Development (Project), in Fresno County (Enclosure 1: Figure 1). The Project is located on private land, just south of Reclamation's Millerton Reservoir, approximately 20 miles northeast of Fresno (Enclosure 1: Figure 2). The U.S. Army Corps of Engineers will also have a permitting role in the project, with Reclamation designated as the lead Federal agency for Section 106 compliance (Enclosure 2). On October 20, 2014, Reclamation initiated consultation with your office for the proposed undertaking (Enclosure 3). We are continuing consultation with you and are requesting concurrence with our finding of no adverse effect to historic properties pursuant to 36 CFR § 800.5(b).

October 20, 2015, Reclamation initiated consultation with your office and notified the Advisory Council on Historic Preservation (Advisory Council) concerning our proposal to enter into a Programmatic Agreement (PA) for this undertaking (Enclosures 3 and 4). At that time, a phased identification and effects assessment approach was proposed to accommodate construction development phases and a PA was proposed to fulfill Section 106 requirements. Through further historic property identification efforts and consultations with the Table Mountain Rancheria (Table Mountain), the Project Developers (Developers) proposed a different approach which involved the redesign of the project to avoid and protect the identified cultural resources. This alternative plan to the PA will treat all prehistoric resources sites as eligible for the National Register of Historic Places (National Register), avoid all ground disturbances at site locations by design, and protect the sites through covenants, conditions, and deed restrictions. Reclamation

also identified an indirect area of potential effects (APE) surrounding the direct APE to consider potential visual effects to cultural resources in the vicinity of the project area. (Avoidance and Preservation Proposal and Indirect APE map provided with Reclamation's March 4, 2015, submission in Enclosure 3.) On July 3, 2015, your office agreed to this approach in concept (Enclosure 3). Reclamation continued conversations with the Advisory Council regarding this approach, identification efforts, and tribal consultations. Due to the complexity of the many consultations with multiple entities, the Millerton New Town project consultation log has been included for your use (Enclosure 5).

The Developers employed a private cultural resource firm (Sierra Valley Cultural Planning) to conduct a cultural resource inventory of the project area. The inventory included a records search and archaeological pedestrian surveys, resulting in the identification of 44 cultural resources within the direct APE (Enclosure 1). The project proponent contacted Table Mountain and involved their cultural resources representatives in the inventory process. Of the total 44 cultural resources identified within the study area, all but three are Native American in origin. One historic-period ceramic, brick, and glass scatter was identified (MNT-27), as was a rock retaining wall along a dirt road (MNT-35). A third site, MNT-26, is a rock wall enclosure which may have functioned as a hunting blind; however, no lithic or other Native American materials were identified at this site making its Native American association unclear. The Native American cultural resources identified include milling features, rock art, a quarry, artifact scatters, and midden deposits.

In 2015, the Developers retained ECORP Consulting, Inc. (ECORP) and Sierra Valley Cultural Planning to carry out extended Phase 1 investigations and evaluate the significance of the MNT-27 (historic ranching site, P-10-6495 / CA-FRE-3751H) and MNT-35 (historic-age dirt road with rock retaining wall feature, P-10-6499). Site MNT-27, which was the only site of the two with a potential for associated archaeological deposits, was further subjected to an extended Phase 1 testing program by ECORP. ECORP also carried out extended Phase 1 testing at 22 locations throughout the APE to refine the geoarchaeological sensitivity model and to address areas identified by the Table Mountain as areas of concern for buried resources (Enclosure 6). The subsurface testing failed to reveal any buried cultural material, indications of cultural resources, or midden soil. As a result of the Phase 1 investigations, ECORP recommended that MNT-27 and MNT-35 are not eligible for inclusion in the National Register under any criteria (Enclosure 6). Reclamation agrees with this recommendation.

Reclamation contacted the California Native American Heritage Commission (NAHC) to request a data search of their sacred lands file and to obtain a Native American contact list. In a letter dated December 11, 2013, the NAHC failed to identify any resources within their sacred lands file and provided a Native American contact list (Enclosure 7). Reclamation submitted letters to each person on the list. Reclamation consulted extensively with the Table Mountain. The Santa Rosa Rancheria Tachi Tribe (Santa Rosa), although not identified on the NAHC list, later requested to be a consulting party and Reclamation entered into consultations with them for this undertaking. No responses beyond those of Table Mountain and Santa Rosa have been received to date. A consultation log and copies of correspondence with the tribes are enclosed for your information (Enclosures 5, 8, and 9).

On December 18, 2013, Reclamation formally accepted the Table Mountain as a consulting party under Section 106 of the NHPA and consultations have continued throughout this project review. Representatives of the Table Mountain participated in the cultural resources surveys with the Developers' consultant. On June 26, 2014, Reclamation cultural resource staff attended a project tour and open-dialog meeting with the Table Mountain Chairwoman, Tribal Council members, and other tribal representatives of the Table Mountain. Mr. Lalo Franco of the Santa Rosa also participated, although he stated that the Santa Rosa would not be a consulting party at that time. In a letter to Reclamation dated September 9, 2015, the Table Mountain expressed their support of the water transfer and stated that they are working with the Developers to ensure the protection culturally important sites. According to the letter, the Table Mountain and Developers have created a plan and an agreement and they requested Reclamation move forward with a water transfer agreement for the Millerton New Town Residential Development.

On June 16, 2015, the Santa Rosa contacted Reclamation requesting to be a consulting party in the NHPA Section 106 process for this undertaking. In a letter dated July 23, 2015, Reclamation recognized the Santa Rosa as a consulting party and provided copies of APE maps, draft reports and the cultural resources management plan. On September 17, 2015, Reclamation cultural resources staff met in the field with members of the Santa Rosa Cultural Department and with the Developers. The Cultural Department representatives voiced concerns regarding three locales considered sensitive due to their traditional and potential future use by tribal members. These areas were already excluded from development and were located in avoidance areas, as pointed out by the Developers. Mr. Franco indicated that written comments from the tribe could be provided to Reclamation by September 30, 2015. Reclamation contacted the Santa Rosa Cultural Department multiple times requesting the comments. On October 23, 2015, Reclamation a letter to the Santa Rosa requesting that they provide written comments or concerns by November 6, 2015, in order to consider such comments in making our finding of effect for the undertaking. Reclamation has considered all verbal concerns from the Santa Rosa. We have not yet received any written comments or concerns to date.

As proposed in previous consultations for this undertaking, Reclamation is treating all identified prehistoric cultural resources sites as eligible for listing on the National Register. The Developers re-designed their project to avoid or protect the prehistoric cultural resources, including the rock wall enclosure site MNT-26, through methods identified in the enclosed cultural resources management plan (Enclosure 10). The two historic sites are not eligible for the National Register and require no further management. A portion of one archaeological site, CA-FRE-2883, will be covered with geo-cloth and capped with sediment prior to any ground disturbing activities and subsequently covered with road bedding and asphalt. The three sensitive areas identified by the Santa Rosa lie within areas excluded from development in the management plan. To facilitate avoidance and preservation of the sites, the developer has redesigned the project to insure all prehistoric sites are within permanent open space and protected with deed restrictions or conservation easements. The developer will also establish covenants, conditions, and deed restrictions to memorialize the requirement for proper management and preservation in perpetuity. The developer will provide for the long-term funding mechanism through the county service area that has been set up to manage the easements (e.g. trash collection, fence repair). No comments or concerns in regards to adverse

indirect effects to sacred or significant cultural sites have been expressed by the Table Mountain or the Santa Rosa.

Based on the above discussion and the enclosed documentation, Reclamation finds the application of the avoidance and protective measures will result in no adverse effect to historic properties for the proposed undertaking. Reclamation requests your concurrence that sites MNT-27 and MNT-35 are not eligible for inclusion in the National Register We also request your concurrence on our finding of no adverse effect with the proposed conditions for avoidance and protections of cultural resources for this undertaking. If you have any questions or concerns, please contact Mr. Scott Williams, Archaeologist, at 916-978-5042 or sawilliams@usbr.gov if you have any questions.

Sincerely,

Anastasia T. Leigh
Regional Environmental Officer

Enclosures - 10

cc: Mr. Michael Jackson
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Fresno, CA 93721-1813

Mr. Zachary Simmons
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U.S. Army Engineer District Sacramento
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1325 J Street
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Mr. Reid Nelson
Director, Office of Federal Agency Programs
Advisory Council on Historic Preservation
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December 15, 2015

Reply in Reference To: BUR_2014_1022_001

Anastasia T. Leigh
Regional Environmental Officer
United States Department of the Interior
Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

Dear Ms. Leigh:

Re: Continuing Consultation for the Millerton New Town Residential Development, Fresno County, California (13-SCAO-248) (SPK-1999-00726)

Thank you for your November 10, 2015 letter continuing consultation with the State Historic Preservation Officer (SHPO) for the above referenced undertaking. In previous consultation with our office, the Bureau of Reclamation (Reclamation) proposed an alternate approach to their original proposal to enter into a Programmatic Agreement (PA) for this undertaking. The new approach proposed to treat the 42 prehistoric cultural resources within the area of potential effects (APE) as eligible and adverse effects would be avoided through project redesign and the implementation of several conditions. Reclamation also proposed an indirect APE that extends beyond the direct APE and invited SHPO comments on this new APE delineation. By letter dated July 3, 2015, the SHPO agreed to this alternative approach provided that:

- Reclamation continues SHPO consultation on the determination of eligibility of the two historic-era resources within the APE and finding of effect;
- Documentation is provided that shows how the undertaking will not adversely affect the 42 prehistoric resources within the APE that will be treated as eligible for the purposes of this undertaking only; and
- The historic-era resources are determined ineligible, or if found eligible, will not be adversely affected by this undertaking.

Presently, Reclamation requests SHPO concurrence on its determination of eligibility (36 CFR §800.4(c)(2)) and finding of no adverse effect to historic properties with conditions (36 CFR §800.5(b)) as a result of this undertaking.

Reclamation proposes to authorize the delivery of municipal and industrial (M&I) water and a long-term water transfer for the Millerton New Town Residential Development in Fresno County. Reclamation has determined the direct APE as the 1,272 acres that will receive the authorized delivery of M&I water and long-term water transfer. The direct APE encompasses the entirety of the parcel receiving the water. In consultation with Table Mountain Rancheria, Reclamation has identified an indirect APE that includes the viewshed from the surrounding peaks, which range from 475 ft west of the APE, to 1,365 ft east of the APE.

I find the Reclamation's determination and documentation of the direct and indirect APE to be sufficient (36 CFR §800.4(a)(1)).

Efforts to identify historic properties within the APE (36 CFR §800.4(b)(1)) were conducted by Sierra Valley Cultural Planning. These efforts are detailed in the *Cultural Resources Inventory Millerton New Town Specific Plan Area Fresno County, California* report (Roper 2015) submitted with your letter. Identification efforts consisted of a record and archival search, geoarchaeological research and an intensive pedestrian survey of the entire APE. Staff from the Table Mountain Rancheria Cultural Resources Department was heavily involved in identification efforts and 44 cultural resources were identified within the direct APE. Additional efforts included extended Phase I investigations conducted by ECORP Consulting, Inc. (ECORP) to evaluate the significance of two historic-era cultural resources according to National Register of Historic Places (NRHP) criteria. These efforts are detailed in the *Extended Phase I Investigations and Evaluation of Two Historic Period Sites in the Millerton New Town Specific Plan Area* report (Westwood et al 2015) submitted with your letter. CA-MNT-27 is a historic-era ranching site and CA-MNT-35 is a historic-era dirt road with associated rock retaining wall feature. Based on the results of the Phase I investigations, Reclamation has determined that CA-MNT-27 and CA-MNT-35 are ineligible for listing on the NRHP under Criteria A, B, C and D. I concur.

ECORP also conducted extended Phase I testing at 22 locations throughout the direct APE to refine the geoarchaeological sensitivity model and to address areas of concern identified by the Table Mountain for subsurface Native American resources. Of the areas tested, the extended Phase I testing failed to reveal subsurface cultural material or midden soil.

Reclamation also sought information from any Indian tribe or organization identified pursuant to 36 CFR §800.3(f)(2) and 36 CFR §§800.4(a)(4) to assist in identifying properties which may be of religious and cultural significance to them and may be eligible for listing in the National Register of Historic Places (NRHP). Reclamation consulted extensively with the Table Mountain Rancheria and they have been heavily involved in identification efforts. Table Mountain Rancheria has also expressed to Reclamation their involvement with the applicant in the development of a plan that will protect Native American cultural and sacred sites within the APE. Reclamation also sought information from the Santa Rosa Rancheria Tachi Tribe (Santa Rosa) pursuant to 36 CFR §800.4(a)(3). Reclamation has indicated that on June 16, 2015 Santa Rosa requested to be a consulting party in the National Historic Preservation Act (NHPA) Section 106 process for this undertaking. Documentation has been submitted with your letter supporting your efforts to involve and consult with Santa Rosa regarding this undertaking. I find the Reclamation's level of effort in identifying historic properties within the APE to be reasonable (36 CFR §800.4(b)(1)).

In consultation with Table Mountain, Reclamation has determined that the proposed development does not impinge on the line-of-site view from the surrounding peaks which define the indirect APE. Furthermore, the proposed development is not visible from the majority of the previously recorded resources within the indirect APE. Therefore, Reclamation has determined that there will be no adverse visual effect to resources within the indirect APE.

Based on the Reclamation's level of effort, they have determined a finding of no adverse effect to historic properties as a result of this undertaking (36 CFR §800.5(b)). A *Cultural Resources Management Plan Millerton New Town Development Project* (CRMP) was submitted with your letter and proposed the following conditions to avoid adverse effects:

- The preservation in perpetuity of the 42 prehistoric or Native American cultural sites, at a minimum, via deed restrictions, with or without capping. Deed restrictions will also

include on-going proper management of resources implemented by County Service Area personnel or manager;
- Capping and stabilization;
- Prohibition of public use;
- The development of an archaeological sensitivity training program to be given by qualified archaeological personnel during a pre-construction meeting for construction supervisors;
- Curation of all artifacts inadvertently discovered during construction at the Table Mountain Rancheria curation facility; and,
- The development of a Post-Review Discovery Plan.

Between December 3, 2015 and December 15, 2015 our office staff consulted with Reclamation staff through phone call and email about adopting additional language and incorporating supplementary conditions to the CRMP. In an email dated December 14, 2015 Reclamation has stated that they will add the following stipulations to the CRMP:

- For inadvertent discoveries, Reclamation will follow 36 CFR §800.13, which involves consultation with the SHPO. Wording in the CRMP will reflect Reclamation's responsibility to consult with SHPO;

- A qualified archaeologist will be involved in the placement of the exclusionary fencing. All 42 archaeological sites will be protected by temporary, construction, exclusionary (TCE) fencing and posted; however, strategies for TCE fencing placement may vary depending on construction scheduling and multipurpose TCE fencing for biological habitat preservation areas and cultural resources. The project will be constructed in phases, and although fencing will protect all of the 42 archaeological sites, only sites within 100 feet of any proposed construction activities, will be fenced, prior to starting any ground disturbing activities;

- Construction activities in the vicinity of cultural resources will be monitored by a qualified archaeologist. Any breach of the culturally sensitive exclusion areas will be reported to Reclamation (Regional Archaeologist) with a report on the extent of the breach and potential impacts to cultural resources. Reclamation will consult with SHPO and USACE and Tribes regarding impacts and treatments to cultural resources;

- A sentence will be added that design and final implementation of the capping plan will be developed and monitored by a qualified archaeologist;

- Native American monitoring would be in keeping with an agreement between Table Mountain and the Developer (applicant); and

- The Developer has committed to having all construction personnel, including new employees, receive cultural resource sensitivity and awareness training as a part of employee orientation along with safety training, prior to beginning any ground disturbing work on this project. The Santa Rosa Tribe will provide a 15-minute DVD to aid in the sensitivity training. Reclamation will follow-up with the Santa Rosa Tribe regarding this video.

Reclamation will instruct the Developer to revise the CRMP to include these additions. In the event the CRMP is modified in the future, the protective covenants, conditions, and restrictions will remain in place. Reclamation will also incorporate the CRMP, including the avoidance map

enclosed with the CRMP, as a condition of the Finding of No Significant Impact (FONSI) and Reclamation's approval of water delivery.

I concur with Reclamation's finding of no adverse effect to historic properties with conditions (36 CFR §800.5(b)) as a result of this undertaking. Our office would also like to commend the Developer in their decision to redesign their project to avoid all known historic properties and their continued tribal consultation in the future preservation and management of the properties.

Thank you for seeking my comments and considering historic properties as part of your undertaking. Please be advised that under certain circumstances, such as post-review discoveries or a change in the undertaking description, you may have future responsibilities for this undertaking under 36 CFR Part 800. If you require further information, please contact Alicia Perez at 916-445-7020 or at Alicia.Perez@parks.ca.gov.

Sincerely,

Julianne Polanco
State Historic Preservation Officer

United States Department of the Interior

BUREAU OF RECLAMATION
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IN REPLY REFER TO:
MP-153
ENV-3.00

JAN 4 2016

CERTIFIED MAIL

Ms. Julianne Polanco
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Subject: Continuing Consultation under Section 106 of the National Historic Preservation Act (NHPA) for the Millerton New Town Residential Development, Fresno County, California (13-SCAO-248) (SPK-1999-00726)(BUR_2014_1022_001)

Dear Ms. Polanco:

The Bureau of Reclamation made a finding of no adverse effect, on November 10, 2015, with the application of avoidance and protective measures for cultural resources, pursuant to Section 106 of the NHPA for approving water delivery for the Millerton New Town Residential Development (Project) in Fresno County (Enclosure 1). As a condition to your concurrence on December 15, 2015, you stipulated additional protective measures to the draft Cultural Resources Management Plan (CRMP)(Enclosure 2). Reclamation and the Developers have agreed to the additional language which has been incorporated in the enclosed final CRMP (Enclosure 3).

We appreciate you working with us through these consultations. It is Reclamation's understanding that the delivery of the final CRMP to you fulfills the conditions of concurrence with Reclamations finding of effect. If you have additional questions regarding this undertaking, please contact Ms. Laureen Perry, Regional Archaeologist, at 916- 978-5028 or lperry@usbr.gov.

Sincerely,

Anastasia T. Leigh
Regional Environmental Officer

Enclosures - 3

cc: See next page.

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