

# Chapter 29 Indian Trust Assets

## 29.1 Introduction

This chapter discusses the affected environment, methods of analysis, and environmental consequences for Indian trust assets (ITAs) in the study area. The study area for ITAs includes areas that would experience ground disturbance (i.e., Project inundation area and construction footprint of the appurtenant facilities). The study area also encompasses areas where Project operations could affect ITAs that are along rivers and reservoirs that could be affected by SWP or CVP operational changes.

Tribal human remains and tribal cultural resources are not ITAs and are evaluated respectively in Chapter 22, *Cultural Resources*, for both CEQA and NEPA, and Chapter 23, *Tribal Cultural Resources*, for CEQA only.

Assessment of potential Project consequences for ITAs is unique to the NEPA analysis. Tables 29-1a and 29-1b summarize the NEPA conclusions for construction and operations effects, respectively, for each alternative.

**Table 29-1a: Summary of Construction Effects on ITAs by Alternative**

Alternative	NEPA Conclusion	Rationale
Effect ITA-1: Affect Current Activities within an ITA		
No Project	No effect	If the Project is not constructed, no changes to the affected environment related to construction would occur.
Alternative 1, 2, or 3	No effect	No ITAs present.

ITA = Indian trust asset; NEPA = National Environmental Policy Act

**Table 29-1b: Summary of Operations Effects on ITAs by Alternative**

Alternative	NEPA Conclusion	Rationale
Effect ITA-1: Affect Current Activities within an ITA		
No Project	No effect	If the Project is not constructed, no changes to the affected environment related to Project operations would occur.
Alternative 1, 2, or 3	No adverse effect	The nature of the planned work does not occur in an area that would affect Indian hunting or water rights, nor is the alternative on Indian trust lands. Pulse flow protection measures applied to precipitation-generated flow events from October through May, a fish monitoring program to inform real-time operational adjustments and limit the potential for adverse effects on fishing resources (i.e., juvenile salmonids), and a minimum flow criterion at Wilkins Slough will further reduce effects on juvenile salmonid rearing and migrating habitat.

NEPA = National Environmental Policy Act.

## 29.2 Affected Environment

The United States has a unique legal and political relationship with Indian tribes as provided for in the Constitution, treaties, and other federal laws and policies. *ITAs* are legal interests in property held in trust by the United States for Indian tribes or individuals. Interior's policy is to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and individual Indians, to the extent required by relevant statutes and regulations; and to consult with tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health and safety (Department of Interior 1995). *Trust assets* are trust lands, natural resources, trust funds, or other assets held by the federal government in trust for Indian tribes and individual Indians (25 Code of Federal Regulations § 115.002).

An ITA has three components: (1) the trustee, (2) the beneficiary, and (3) the trust assets. The terms *Indian trust responsibility* or *trust responsibility* mean the federal government's obligation to protect and maintain ITAs or trust resources (Department of Interior 1997). For most Reclamation purposes, ITAs and trust resources are functionally equivalent. Actions located on federal lands or implemented, funded, or approved by federal agencies need to be compliant with appropriate federal policies and regulations, including policies associated with ITAs. Reclamation is responsible for assessing whether the Project has the potential to affect ITAs. Lands or other real property held in trust for a federally recognized Indian tribe within the study area constitute the affected environment.

## 29.3 Methods of Analysis

### 29.3.1. Construction

Reclamation maintains geographic information system (GIS) coverage of federally recognized Indian reservations and rancherias in the state of California. The analysis for ITAs was based on this GIS coverage and the ITAs within the area of disturbance for construction (Bureau of Reclamation 2021a, 2021b). The Reclamation GIS data of ITAs were overlaid by all potential locations of ground disturbance associated with the construction of each alternative. This approach allowed identification of ITAs that would be potentially affected by Project construction.

### 29.3.2. Operations

The description of Project operations and the results of the impact analysis presented in Chapter 5, *Surface Water Resources*, Chapter 7, *Fluvial Geomorphology*; and Chapter 11, *Aquatic Biological Resources* are incorporated in the discussion regarding operations and potential effects on ITAs. In addition, modeling results presented in Appendix 5A, *Surface Water Resources Modeling of Alternatives*; Appendix 5B1, *Project Operations*; Appendix 5B2, *River Operations*, are referenced and incorporated into the evaluation of potential effects on ITAs.

### 29.3.3. Evaluation Criteria

To determine the potential environmental consequences of the Project related to ITAs and assess the level of these effects, the following question was considered:

- If an ITA is present, would construction or operation of the Project affect current activities within an ITA?

## 29.4 Environmental Consequences

### Effect ITA-1: Affect Current Activities within an ITA

#### *No Project*

Under the No Project Alternative, there would be no changes to the affected environment for ITAs because the construction and operation of the Project or its appurtenant facilities would not occur. Therefore, the No Project Alternative would have no effect on ITAs.

#### *Alternatives 1, 2, and 3*

##### Construction

There are no ITAs within or adjacent to the potential areas of construction disturbance for the facilities under Alternative 1, 2, or 3. The Paskenta Rancheria near Black Butte Lake is the nearest ITA to Alternatives 1 and 3. It is approximately 8 miles away and would not be affected by construction activities; therefore, there is no potential for ITAs to be affected by the construction of Alternative 1 or 3 (Bureau of Reclamation 2021a). The closest ITA to the Alternative 2 Project footprint is 50F SF17. It is approximately 7 miles away and would not be affected by construction activities; therefore, there is no potential for ITAs to be affected by the construction of Alternative 2 (Bureau of Reclamation 2021b). There would be no construction effects because none of the ITAs identified would be affected by construction activities as compared to the No Project Alternative. Therefore, there is no potential for ITAs to be affected by the construction of Alternative 1, 2, or 3.

##### Operations

Project operations will not affect ITAs. The following discussion details how each relevant ITA evaluated is not affected by Project operations under Alternatives 1, 2, and 3. The Project would not affect any operations of the Trinity River Division or the Lower Klamath River that serve ITAs. As described in Chapter 2, *Project Description and Alternatives*, the Project would not affect or result in changes in the operation of the CVP Trinity River Division facilities (including Clear Creek). Trinity River Division operations would not be affected by the Project (Appendix 5B2, Tables 5B2-1-1a to 5B2-4-4c, Figure 5B2-1-1 to Figure 5B2-1-12, Tables 5B2-5-1a to 5B2-6-4c) as compared to the No Project Alternative. The Trinity River Division operation is assumed to be operated pursuant to the 2000 Trinity River Division Record of Decision (ROD) (Bureau of Reclamation 2000). The 2017 ROD for the Long-Term Plan to Protect Adult Salmon in the Lower Klamath River indicated that the flow augmentation identified in the plan would be provided under the current Trinity River ROD, including the adaptive management provisions (Bureau of Reclamation 2017). Although the Long-Term Plan to Protect Adult Salmon in the Lower Klamath River has not been fully implemented under the affected environment, it is assumed that the augmentation of flows would be completed prior to the Project (Appendix 5A, *Surface Water Resources Modeling of Alternatives*). Similarly, Project operations would have no effect on the provision of not less than 50,000 AF identified in the 1955 Trinity River Division of

the Central Valley Project Act to be made available to Humboldt County and downstream water users. Reclamation will continue to operate the Trinity River Diversion pursuant to its contracts and RODs.

Some ITAs receive water from municipalities that use SWP or CVP water. SWP and CVP water deliveries to municipal water users are not anticipated to decline due to the operation of Alternative 1, 2, or 3, as compared to the No Project Alternative. Furthermore, operation of Alternative 1, 2, or 3 would not change the amount of water obligated to any water rights holder under any contract in effect at the time of operations. Right(s) and agreement(s) as part of Alternative 1, 2, or 3 would protect existing beneficial uses associated with existing water rights, and obtaining new or modified water rights, water supply, and operating agreements would be evaluated pursuant to the State of California's water rights laws. Alternatives 1, 2 and 3 would make water deliveries more reliable. On average, CVP and SWP deliveries are expected to increase with the Project, with greater increases expected in association with CVP participation, particularly with Alternative 3, as compared to the No Project Alternative. Therefore, Alternatives 1, 2, and 3 could have a beneficial effect on ITAs that receive water deliveries in the various storage participant service areas.

Flows in several rivers (e.g., Sacramento, Feather, and American Rivers) would experience changes as a result of Alternative 1, 2, or 3. Analysis in Chapter 11, *Aquatic Biological Resources*, shows that the majority of these flows would be within the historical range experienced by the rivers and similar to the No Project Alternative and thus would not have substantial adverse effects on fish. Alternatives 1, 2, and 3 include pulse flow protection measures applied to precipitation-generated pulse flow events from October through May and a fish monitoring program to inform real-time operational adjustments to limit the potential for negative effects on juvenile salmonids (Chapter 11) as compared to the No Project Alternative. The Wilkins Slough flow criterion, described in Chapter 11, will prevent Project diversions from reducing the Sacramento River flow to below 10,700 cubic feet per second at Wilkins Slough from October 1 to June 14, which will limit the potential for negative flow survival effects on winter-run Chinook salmon, spring-run Chinook salmon, fall-/late fall-run Chinook salmon, and Central Valley steelhead during dispersal to rearing habitat and/or migration downstream toward the Delta (Section 11P.2 of Appendix 11P, *Riverine Flow-Survival*) compared to the No Project Alternative. Operation of Alternative 1, 2, or 3 would have no adverse effect on these fish species with mitigation incorporated.

Modeled changes in flood flows during operations are minor when considered in the context of the larger system and would not represent a substantial increase in the amount or rate of runoff that would result in flooding or alter natural river geomorphic processes or existing geomorphic characteristics as compared to the No Project Alternative. Accordingly, potential adverse changes in erosion or quality of land or sites of religious or cultural importance to a federally recognized Indian tribe are not expected under Alternative 1, 2, or 3. Maintenance activities during operations have the potential to release sediments and other contaminants into water courses that could harm fish. Required permits from the Central Valley Regional Water Quality Control Board and implementation of BMPs for water quality and aquatic resources, such as avoiding or minimizing sediment and contaminant releases, ensuring activities occur away from receiving waters, and containing sediment or otherwise reducing soil disturbance, as described in

Chapter 6, *Surface Water Quality*, and Chapter 11 would also serve to protect resources that could occur in ITAs.

During operation and maintenance activities for Alternative 1, 2, or 3, the Wilkins Slough flow criterion, pulse flow protection measures, a fish monitoring program, and BMPs would minimize effects on aquatic species (e.g., Chinook salmon and Central Valley steelhead) important to federally recognized Indian tribes and could beneficially affect ITAs that receive CVP and SWP deliveries. Alternative 1, 2, or 3 would not result in adverse effects from operations and maintenance activities on fish and aquatic species important to a federally recognized Indian tribe.

## 29.5 References

### 29.5.1. Printed References

Bureau of Reclamation. 2000. *Record of Decision, Trinity River Mainstem Fishery Restoration Final Environmental Impact Statement/Environmental Impact Report*. U.S. Department of Interior, Washington D.C. Available: <https://www.trrp.net/library/document/?id=227>. Accessed: October 17, 2020.

Bureau of Reclamation. 2017. *Record of Decision, Long-Term Plan to Protect Adult Salmon in the Lower Klamath River, Final Environmental Impact Statement*. Available: [https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=28314](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=28314). Accessed: October 17, 2020.

Bureau of Reclamation. 2021a. *Indian Trust Assets Determination, North of Delta Offstream Storage/Sites Reservoir (Alternatives 1 and 3)*. Approved June 21, 2021.

Bureau of Reclamation. 2021b. *Indian Trust Assets Determination, North of Delta Offstream Storage/Sites Reservoir (Alternative 2)*. Approved June 21, 2021.

Department of Interior. 1995. *Departmental Manual 512, Chapter 2: Departmental Responsibilities for Indian Trust Resources*.

Department of Interior. 1997. *Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act*.