

# Chapter 15

## Indian Trust Assets

### 15.1 Affected Environment

This section describes the affected environment related to Indian Trust Assets (ITA) for the proposed dam and reservoir modifications at Shasta Lake.

The affected environment for ITAs is the primary study area, within which all construction activities will take place, and which includes Shasta Lake's expanded inundation area, relocations within approximately 0.25 miles of the shoreline, and the upper Sacramento River from Shasta Dam to the Red Bluff Diversion Dam.

The extended study area would only be affected by changes in CVP and SWP operations, and includes the Sacramento River to the Delta and the CVP and SWP water service areas. For additional details on the primary and extended study areas, please refer to Section 1.3 and Figures 1-1 and 1-2 of the PDEIS. The action alternatives are not anticipated to have impacts on ITAs as a result of changes in CVP and SWP operations; therefore, the extended study area was not evaluated for ITAs.

Indian Trust Lands in the region around the primary study area are shown in Figure 15-1.

Several Federally recognized tribes are located in the region surrounding the primary study area (Table 15-1).

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**Table 15-1. Federally Recognized Tribes in Region Surrounding Primary Study Area**

| Tribe  | Affiliation               |
|--|---------------------------|
| Grindstone Indian Rancheria of Wintun- Wailaki Indians | Wintun, Wailaki           |
| Paskenta Band of Nomlaki Indians                       | Nomlaki                   |
| Pit River Tribe Environmental Office                   | Pit River, Wintun         |
| Pit River Tribe  | Pit River Achumawi Wintun |
| Redding Rancheria                                      | Wintu, Pit River, Yana    |

## 15.2 Regulatory Framework

ITAs are legal interests in property held in trust by the U.S. 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.

The Federal Government, through treaty, statute, or regulation, may take on specific, enforceable fiduciary obligations that give rise to a trust responsibility to Federally recognized tribes and individual Indians possessing trust assets. Courts have recognized an enforceable Federal fiduciary duty with respect to Federal supervision of Indian money or natural resources, held in trust by the Federal Government, where specific treaties, statutes, or regulations create such a fiduciary duty.

Consistent with President William J. Clinton’s 1994 memorandum, *Government-to-Government Relations with Native American Tribal Governments* (Federal Register, Vol. 59, No. 85, May 4, 1994, pages 22951–22952), Reclamation assesses the effect of its programs on tribal trust resources and Federally recognized tribal governments. Reclamation is tasked to actively engage Federally recognized tribal governments and consult with such tribes on government-to-government level when its actions affect ITAs. The U.S. Department of the Interior Departmental Manual, Part 512.2 (1995), ascribes the responsibility for ensuring protection of ITAs to the heads of bureaus and offices. The Department of the Interior is required to “protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion”

(Secretarial Order No. 3215, *Principles for the Discharge of the Secretary's Trust Responsibility*, Reclamation 2000). It is the general policy of the Department of the Interior to perform its activities and programs in such a way as to protect ITAs and avoid adverse effects whenever possible. Reclamation complies with procedures contained in Departmental Manual, Part 512.2, guidelines, which protect ITAs. Reclamation carries out its activities in a manner that protects trust assets and avoids adverse impacts, when possible. When Reclamation cannot avoid adverse impacts, it will provide appropriate mitigation or compensation. Reclamation is responsible for assessing whether action alternatives CP1 through CP5 have the potential to affect ITAs. Reclamation will comply with procedures contained in Departmental Manual, Part 512.2, guidelines, which protect ITAs.

### **15.3 Environmental Consequences and Mitigation Measures**

This section discusses environmental consequences and potential mitigation associated with ITAs that could result from implementing the alternatives described in this PDEIS.

#### **15.3.1 Methods and Assumptions**

A detailed description of both the primary and extended study areas was provided to the Bureau of Indian Affairs' Regional ITA Coordinator. The Regional ITA Coordinator examined both the project area descriptions and records held by the Bureau of Indian Affairs and Reclamation, and determined that the proposed action does not have potential to affect ITAs. There are no ITAs in the primary study area.

#### **15.3.2 Direct and Indirect Effects**

The following section describes the potential environmental consequences of the project.

##### ***No-Action Alternative***

Under the No-Action Alternative, there are no impacts to ITAs because no new facilities would be constructed and existing operations would continue as historically.

##### ***CP1 Through CP5***

There are no tribes possessing legal property interests held in trust by the United States in the study area for any of the proposed comprehensive plans (CP1 through CP5). The nearest ITA is a Public Domain Allotment approximately 5 miles north-northwest of the project location.

##### ***Cumulative Impacts***

There are no impacts to ITAs as a result of the proposed action; therefore, the proposed action would not contribute to cumulative impacts to ITAs.