

CHAPTER 20

INDIAN TRUST ASSETS

ITAs are legal interests in property held in trust by the United States for federally recognized Indian tribes or individual Indians. An Indian Trust has three components: (1) the trustee; (2) the beneficiary; and (3) the trust asset. ITAs can include land, minerals, federally reserved hunting and fishing rights, federally reserved water rights, and instream 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.

All bureaus are responsible for, among other things, identifying any impact of their plans, projects, programs or activities on ITAs; ensuring that potential impacts are explicitly addressed in planning, decision, and operational documents; and consulting with recognized tribes who may be affected by proposed activities. Consistent with this, Reclamation's Indian Trust policy states that Reclamation will carry out its activities in a manner which protects ITAs and avoids adverse impacts when possible, or provides appropriate mitigation or compensation when it is not. To carry out this policy, Reclamation incorporated procedures into its NEPA compliance procedures to require evaluation of the potential effects of its proposed actions on trust assets (Reclamation 1997).

20.1 ENVIRONMENTAL SETTING/AFFECTED ENVIRONMENT

Information regarding traditional cultural properties, historic properties, ITAs, and ethnographic resources located in the project area can be used to characterize the prehistoric, ethnographic, and historic cultural resources and ITAs that may be affected by implementation of the Proposed Project/Action and alternatives. The information provided below is organized by waterbody, and also identifies the early human and Native American groups that lived in the area; cultural surveys performed at locations of archeological interest; and number and nature of sites of cultural or historical importance. Because of ongoing, severe problems of pothunting or vandalism to cultural resources, documents describing site locations are exempt from public review under the California Public Records Act (PRC 6254.10). Therefore, cultural resource descriptions are discussed in general, by region.

20.1.1 YUBA REGION

The Yuba Region includes New Bullards Bar Reservoir, lower Yuba River downstream to the confluence with the Feather River, and groundwater well locations within Yuba County.

Federally recognized tribal interests in Yuba County include the Rumsey Rancheria, Strawberry Valley Maidu Tribe, and Estom Yumeka Maidu Tribe. In the existing EWA EIS/EIR (Reclamation *et al.* 2003), it was reportedly determined that the nearest Indian Trust land is located 9.2 miles from reservoirs (e.g., New Bullards Bar Reservoir) identified as providing EWA assets. Reclamation (2003) further presumed there were no off-reservation, federally reserved hunting, fishing, or gathering rights near reservoirs proposed for stored reservoir

water transfer. Additionally, Reclamation's existing records indicate that there are no Indian Trust lands in Yuba County (Reclamation 2005). However, a fee-to-trust transfer involving a 40-acre parcel of land located southeast of the Community of Olivehurst in Yuba County is proposed by the Estom Yumeka Maidu Tribe and the BIA (70 FR 29363 (May 20, 2005)).

20.1.1.1 NEW BULLARDS BAR RESERVOIR

Investigation of the area around New Bullards Bar Reservoir revealed prehistoric evidence of the Northwestern Maidu settlements and earlier distinct Mesilla and Martis cultural complexes. The east side of New Bullards Bar Reservoir, which experienced a recent fire, was subject to an intense pedestrian survey of cultural resources; inventories of the reservoir's west side are few. The reservoir contains 12 recorded prehistoric sites, two of which also are historic sites. Ten of the sites are inundated. Nine studies comprise the body of literature pertaining to the area within reservoir boundaries (Baldrice 2000; Deal 1980; Meals 1978; Riddell and Olsen 1966).

20.1.1.2 LOWER YUBA RIVER

The Maidu and Nisenan occupied the areas around the Yuba River. The Maidu is the Native American group indigenous to Yuba County. Nisenan villages were generally located along the watercourses in the county with a major political Nisenan site near the mouth of the Yuba River. Eels and salmon were caught in immense quantities in the larger watercourses and the Nisenan were able to transform huge seasonal surpluses of salmon into a reliable year-round staple by drying the fish and pounding it into a meal that could be preserved for at least a year.

20.1.1.3 NORTH YUBA AND SOUTH YUBA SUBBASINS

The groundwater wells in Yuba County would be utilized under the conjunctive use component of the Yuba Accord Alternative. Under this program, groundwater pumping would remain within the safe yield of the groundwater aquifer to safeguard local agricultural, domestic, and municipal wells (see Chapter 6 for a description of groundwater operations). Because the groundwater table would remain within adequate levels to support federally reserved water rights and Indian Trust lands that may be within the groundwater basins, these areas do not warrant additional evaluation.

20.1.1.4 YUBA COUNTY

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Reclamation's existing records indicate that there are no Indian Trust lands in Yuba County (Reclamation 2005).

20.1.2 CVP/SWP UPSTREAM OF THE DELTA REGION

The CVP/SWP Upstream of the Delta Region includes the Sacramento River Basin (i.e., Sacramento River downstream from the confluence of the Feather River to the Delta) and the Feather River Basin (i.e., Oroville Reservoir and associated facilities, and the lower Feather River from the Oroville facilities downstream to the confluence with the Sacramento River).

With respect to ITAs, the activities associated with the Proposed Project/Action would make additional water supplies available for state and federal water contractors; however, existing

water supplies would not be reduced (see Chapter 5 for additional information on water supply). Because water supplies would not be reduced below existing levels, changes in river flows and reservoir operations would not decrease opportunities for the exercise of federally reserved water, hunting, gathering and fishing rights, and there would be no additional impacts on the ITAs located in this region. Groundwater pumping activities associated with the Proposed Project/Action would be limited to existing groundwater wells located in Yuba County. Therefore, Indian Trust lands or federally reserved water rights associated with surface water and groundwater use in the CVP/SWP Upstream of the Delta Region would not be affected beyond the effects that occur under existing conditions, and further consideration of ITAs in this region is not warranted. Because potential hydrologic changes could affect cultural resources in each of the waterbodies listed above, the discussion presented below primarily focuses on cultural resources, and will be used to support the evaluations to be conducted in subsequent sections of this chapter.

20.1.2.1 FEATHER RIVER BASIN

OROVILLE RESERVOIR

All of the prehistoric archaeological periods are represented at Oroville Reservoir, including the ethnographic settlement pattern of the village community and the period of historic contact with Euro-American settlers (Kroeber 1925; Riddell 1978). Several archaeological studies have been conducted in the area. Hines (1987) conducted an archaeological analysis and concluded that there were 196 sites, with 127 seasonally exposed during low pool elevations or completely above the inundation zone (i.e., 78 sites in the fluctuation zone between elevation 640 and 900 feet and 49 sites above the high pool elevation). Including surveys conducted since then, a revised total of 173 sites are now completely or periodically accessible (DWR 2001). Site types include lithic scatters, quarries and toolstone source locales, caves and rockshelters, seasonal camps, large village settlements and burial grounds. Associated elements include milling features, structural remains and rock art. The Oroville Reservoir area also has significant historic record. With the discovery of gold in 1849, thousands of gold seekers poured into the hills around Oroville and many foothill mining towns were established. These towns were short lived and later deserted when the gold was depleted and the effort moved to river dredging at lower elevations. Remains of several of these towns were inundated by the reservoir.

Several historic properties associated with Oroville Reservoir have qualified for local, state, and federal recognition. Notable historic objects include the Bidwell Bar Bridge, Old Toll House, and Mother Orange Tree. However, no historic properties at Oroville Reservoir have been determined eligible or are listed on the NRHP (DWR 2001).

LOWER FEATHER RIVER

Ethnohistory

Evidence indicates that the Wintun and Maidu people inhabited the Feather River region for thousands of years. The southernmost Maidu called themselves the Nisenan people, and occupied the lower drainages of the Feather River.

The Maidu occupied areas near the Feather River headwaters, and the Nisenan lived in the downstream areas south of the Middle Fork Feather River. Traditional cultural practices of the Maidu and Nisenan include weaving baskets and tule mats. Maidu and Nisenan would coil peeled willow and peeled and unpeeled redbud in a clockwise manner to form baskets. Baskets were made to hold water by overlaying hazel shoots, pine roots, and maidenhair fern shoots and covering with pitch (Swartz 1958). Maidu also wove tule mats that they used for seats, beds, camp roofing, and doors (Kroeber 1925).

20.1.2.2 SACRAMENTO RIVER BASIN

SACRAMENTO RIVER

Ethnohistory

Native Americans initiated California's rich cultural heritage many generations before Europeans settled in the area. A third of all Native Americans within current United States boundaries lived in California. The Sacramento Valley includes a broad geographic area that encompassed a great deal of environmental and cultural diversity in prehistoric times and during the contact period when Native Americans encountered Spanish and Euro-American explorers and settlers. Native American tribes that occupied the areas around the Sacramento River at the time of contact included the Wintu, Yana, Nomlaki, and Patwin.

The Wintu territory covered parts of what is now Trinity, Shasta, Siskiyou, and Tehama counties, including the area north of Cottonwood Creek and extending from Cow Creek on the east to the South Fork of the Trinity on the west (Access Genealogy Website 2007). The Yana extended from Pit River to Rock Creek, and from the edge of the upper Sacramento Valley to the headwaters of the eastern tributaries of Sacramento River (Access Genealogy Website 2007). The Nomlaki consisted of two groups. The River Nomlaki lived in the Sacramento River Valley in present Tehama County, south of Cottonwood Creek, while the Hill Nomlaki lived in the foothills to the west, extending to the summit of the Coast Range in what is now Tehama and Glenn counties (Wikipedia Website 2007a). The Patwin were a southern branch of the Wintu group and native inhabitants of Northern California who occupied what is now Suisun, Vacaville, and Putah Creek (Wikipedia Website 2007b)

The climate and topography north of the Delta area supports a variety of forest, grassland, savannah, riparian, and wetland habitats. Native American groups that occupied the Sacramento River drainage survived on non-domesticated plants and animals that provided food and material for baskets, houses, and clothing. For generations, Native Californians created baskets from willows, sedge root, bulrush root and new shoots of the western redbud. Some modern Native Americans maintain their culture by gathering vegetation and wildlife formerly used by their ancestors and performing traditional ceremonies. USFS policy encourages, protects, and perpetuates traditional tribal practices by reserving areas on USFS lands for gathering basketry materials and practicing cultural traditions.

Euro-American History

Many areas in the northern Sacramento Valley saw the first major wave of Euro-American colonization following the Gold Rush. By the time the local Indians had been forcibly taken to reservations, many small towns and settlements had already been established. Copper replaced

gold as the main mineral produced in Shasta County in 1897. Smoke and fumes from Shasta County smelters killed vegetation, fish, and fruit trees as far south as Anderson and Cottonwood. All the smelters were closed by court order by 1919.

Through the late nineteenth and twentieth centuries, the spread of riverboat and ferry transportation and later railroad and highway transportation infrastructure increased access to more distant markets. The northern end of the Sacramento Valley developed a growing population sustained by a mix of mineral and timber extraction industries and farm and ranch operations. Large-scale irrigation was made possible in the mid-20th century by completion of Shasta Dam and other large water reservoirs and aqueduct projects.

Following the Gold Rush, Euro-American colonists developed the rich farmland in the central region and made use of its abundant water. After the Gold Rush, many disappointed miners became permanent settlers who raised cattle, sheep, wheat, and barley. Initially, the location of towns and settlements was influenced by access to water and water transportation routes. Emphasis shifted from livestock grazing to growing grain and orchard crops in the late nineteenth century.

The railroad progressed northward in the 1870s, carrying new settlers to the area and enabling such towns as Arbuckle, Williams, Maxwell, Willows, and Orland to be established. Large-scale, diversified farming was introduced as new lands were irrigated and brought into production and as shipment of local products to domestic and international markets increased as a result of the improved railroad and highway transportation system.

20.1.3 DELTA REGION

Because there are no Indian Trust lands located in the Delta (Reclamation *et al.* 2003), and no actions potentially affecting ITAs are planned in the Delta, this geographic area is removed from further consideration. However, because potential hydrologic changes could affect cultural resources in the Delta, the discussion presented below primarily focuses on cultural resources, and will be used to support the evaluations conducted in subsequent sections of the chapter.

The Delta is one of the most intensely investigated areas of California because of its high prehistoric population density and proximity to population centers. Although the bulk of cultural sites were recorded prior to 1960, there has been little systematic inventory for cultural resources. Most of the early archeological work in the region focuses on prominent prehistoric mounds. Documentation of historic sites has largely occurred within the last 20 to 30 years. At least 171 sites within the Delta Region have been listed in the NRHP as individual properties or districts. Six sites in the region also have been listed as California Historical Landmarks and four are listed as California Points of Historical Interest (CALFED 1998). Prehistoric site types include village sites, temporary campsites, milling-related activity sites, and lithic scatters. Potential historic resources in the Delta Region are largely related to agriculture; however, other types are present including farmsteads, labor camps, landings for the shipment of agricultural produce, canneries, pumping stations, siphons, canals, drains, unpaved roads, bridges, and ferry crossings. Forty known historic sites coincide with prehistoric sites (CALFED 1998).

Several Native American burial and cremation sites have been discovered in the Delta Region. Native Americans in the Delta at the time of European contact were Northern Valley Yokuts who were settled along the San Joaquin River. Plains Miwok people lived primarily in the

north with territory extending nearly to Sacramento (DWR and Reclamation 1996). Wintun and Nisenan occupied areas on the north and northeastern Delta. Those in the south Delta proper were the Chulamni or Nochochomne.

20.1.4 REGULATORY SETTING

Preserving the culture and history of our nation's past are the goals of regulations including ITAs and the United States Trust Responsibility to Indian Tribes. There are no state or local regulations pertaining to ITAs.

The laws, policies and other regulatory requirements that pertain to ITAs are discussed below.

20.1.4.1 FEDERAL

INDIAN TRUST ASSETS

In accordance with the Presidential Memorandum of April 29, 1994, agencies assess the impacts of programs on tribal trust resources and tribal governmental rights and concerns. Agencies must actively engage federally recognized tribal governments and consult with such tribes on a government-to-government level before taking actions that affect those governments. The Interior's Department Manual, Part 512, Chapter 2, (DOI Website 1995) ascribes the responsibility for ensuring protection and preservation of ITAs from loss, damage, and unlawful alienation, waste, and depletion to the heads of Department of the Interior bureaus and offices. Interior's policy is to carry out activities in a manner that protects ITAs and avoids adverse impacts whenever possible.

UNITED STATES TRUST RESPONSIBILITY TO INDIAN TRIBES

The unique and distinctive political relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and differentiates tribes from other entities that deal with, or are affected by, the federal government. The relationship has given rise to a special federal trust responsibility, involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights.

20.2 INDIAN TRUST ASSETS ENVIRONMENTAL IMPACTS/ ENVIRONMENTAL CONSEQUENCES

For those regions where ITAs are identified, potential impacts of the Proposed Project/Action include actions or activities that would affect Indian Trust lands and federally reserved hunting, fishing, gathering, water, or other rights. Groundwater pumping activities associated with groundwater substitution could result in increased depth in the groundwater table or increase costs of groundwater pumping, potentially interfering with federally reserved water rights and Indian Trust lands. Changes in reservoir operations associated with water deliveries, carry-over storage, and refill criteria could interfere with federally reserved water rights for Indian lands located in the vicinity of upland reservoir sites. River flow fluctuations associated with deliveries to water diverters and changes in instream flow requirements could degrade the

water quality or adversely affect fish, vegetation and wildlife, thereby decreasing opportunities for federally reserved water, hunting, gathering and fishing rights.

20.2.1 IMPACT ASSESSMENT METHODOLOGY

20.2.1.1 ANALYTICAL APPROACH FOR EVALUATING INDIAN TRUST ASSETS

ITAs are legal interests in property held in trust by the United States for federally recognized Indian tribes or individual Indians. An Indian Trust has three components: (1) the trustee, (2) the beneficiary, and (3) the trust asset. ITAs can include land, minerals, federally reserved hunting and fishing rights, federally-reserved water rights, and instream 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.

Consistent with the President's 1994 Memorandum, "*Government-to-Government Relations with Native American Tribal Governments*," 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 (59 FR 440 (January 4, 1994)) when its actions affect ITAs. The Interior Departmental Manual Part 512.2 ascribes the responsibility for ensuring protection of ITAs to the heads of bureaus and offices (DOI Website 1995). Part 512, Chapter 2 of the Departmental Manual states that it is the policy of the Interior to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and tribal members. All bureaus are responsible for, among other things, identifying any impact of their plans, projects, programs or activities on Indian Trust assets; ensuring that potential impacts are explicitly addressed in planning, decision, and operational documents; and consulting with recognized tribes who may be affected by proposed activities. Consistent with this, Reclamation's Indian Trust policy states that Reclamation will carry out its activities in a manner which protects Indian Trust assets and avoids adverse impacts when possible, or provides appropriate mitigation or compensation when it is not. To carry out this policy, Reclamation incorporated procedures into its NEPA compliance procedures to require evaluation of the potential effects of its proposed actions on trust assets (Reclamation July 2, 1993) (pers. comm., Rivera, Reclamation 2007).

Reclamation is responsible for assessing whether the actions taken to resolve instream flow issues associated with operation of the Yuba Project have the potential to affect ITAs. Reclamation will comply with procedures contained in Departmental Manual Part 512.2, Guidelines, which protect ITAs. The Proposed Project/Action does not affect ITAs. The nearest Indian Trust Asset to this action is located at the Mooretown Rancheria and the distance is approximately 10 miles north.

20.3 POTENTIAL CONDITIONS TO SUPPORT APPROVAL OF YCWA'S WATER RIGHTS PETITION

No unreasonable adverse effects to ITAs would occur under the Proposed Project/ Action or an action alternative and, thus, no impact avoidance measures or other protective conditions are identified for the SWRCB's consideration in determining whether or not to approve YCWA's petitions to implement the Yuba Accord.

20.4 MITIGATION MEASURES/ENVIRONMENTAL COMMITMENTS

No adverse effects would occur to ITAs under the Proposed Project/Action or an action alternative and, thus, no mitigation measures are required.

20.5 POTENTIALLY SIGNIFICANT UNAVOIDABLE IMPACTS

There are no potentially significant unavoidable impacts to ITAs associated with the implementation of the Proposed Project/ Action or an action alternative.