RECLAMATION

Managing Water in the West

Resighini Rancheria Culverts Replacement Project

Environmental Assessment

17-15-MP

U.S. Department of the Interior
Bureau of Reclamation

September 2017

Mission Statements

The mission of the Department of the Interior is to protect and manage the Nation's natural resources and cultural heritage; provide scientific and other information about those resources; and honor its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

U.S. Department of the Interior
Bureau of Reclamation

September 2017

1.0 Introduction

This Environmental Assessment (EA) was prepared by the Bureau of Reclamation (Reclamation) to examine the potential direct, indirect, and cumulative impacts to the affected environment associated with providing federal grant funding to the Resighini Rancheria for its Junior Creek Culverts Replacement Project (Project). Funding would be provided through a Public Law 63-638 Self-Determination Construction Contract with Resighini Rancheria.

The Project is located on Junior Creek, a third order stream flowing into Waukell Creek which flows into the Klamath River approximately 0.5 mile downstream (Figure 1). The culverts support access roads to a gravel bar and gravel processing yard. The Project is located approximately 1.25 miles south east of Klamath in Del Norte County, California (Figures 1 & 2). The center coordinates of the work area are approximately Latitude 41.513869ºN and Longitude -124.013342°W. The Project is located entirely on lands belonging to the Resighini Rancheria.

1.1 Need for the Project

The Project site is adjacent to a gravel processing yard belonging to the Resighini Rancheria. The degraded condition of the culverts blocks downstream flow and water is diverted into the gravel processing yard thereby impeding access to the area and impeding fish passage.

2.0 Proposed Action and Alternative

2.1 No Action Alternative

Under the No Action Alternative, Reclamation would not inter into a Public Law 63-638 Self-Determination Construction Contract with Resighini Rancheria. Although it is possible that the Resighini Rancheria may find alternative sources of funding for the Project, for the purposes of this EA, the consequence of Reclamation not providing funding for the Project would be no construction of the Project. Flooding in the gravel processing yard, and blocked fish passage would continue.

Figure 1. Vicinity map for the proposed action.

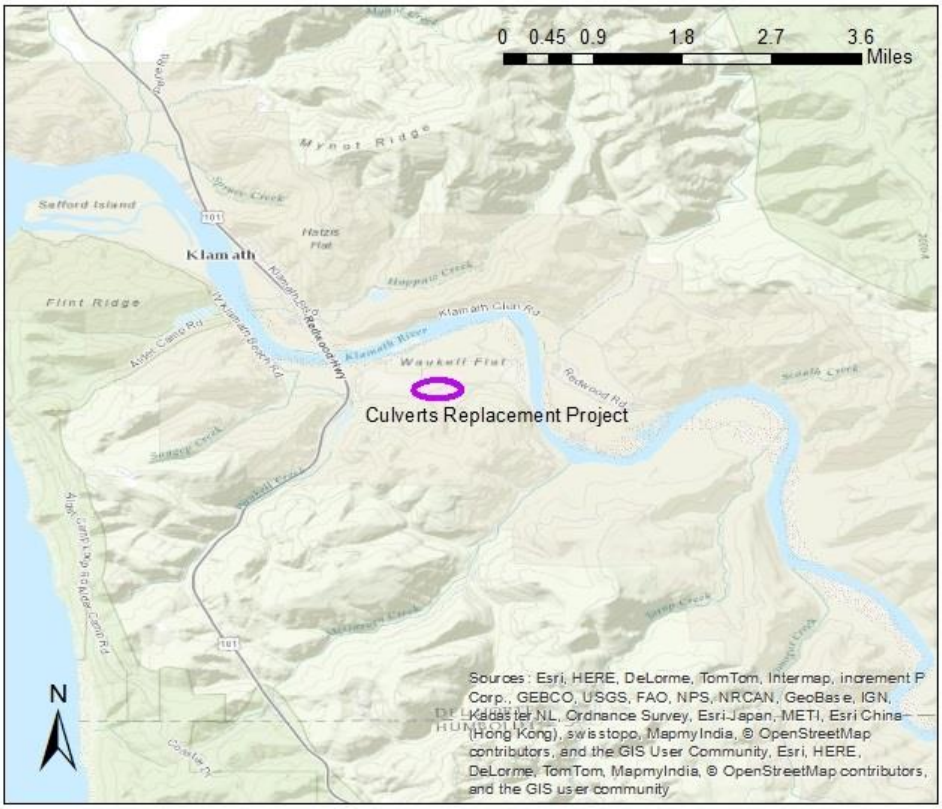
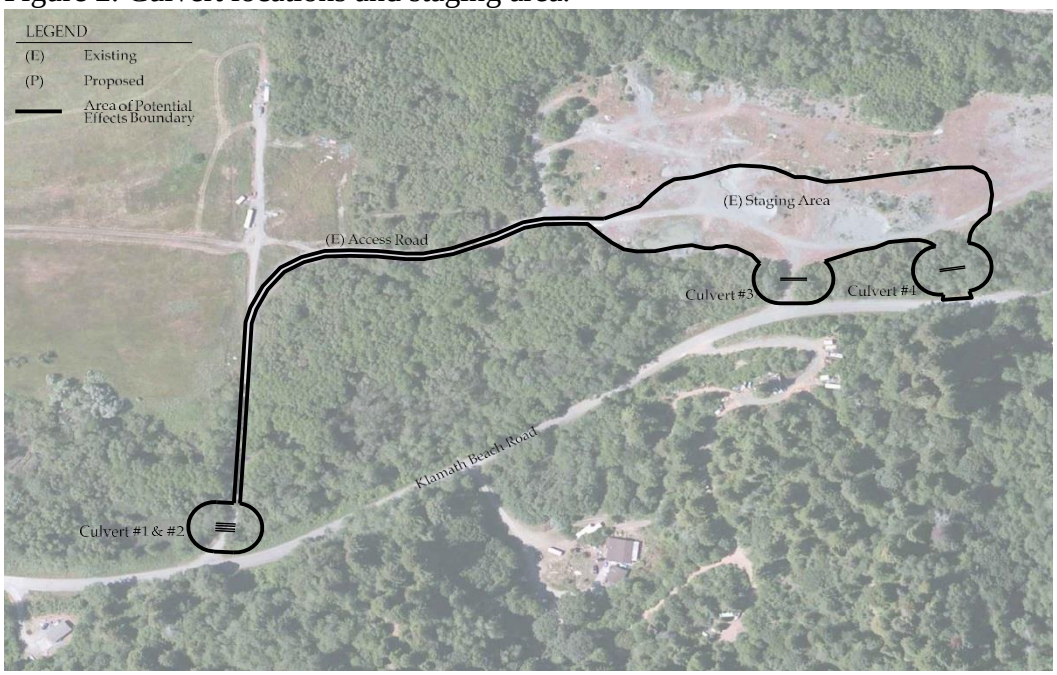


Figure 2. Culvert locations and staging area.



2.2 Proposed Action

The Project will replace three failing culverts with four culverts (4 foot diameter) designed to pass fish and flood flows. Culverts will be approximately 40 feet long. The new culverts will be in the same footprint as the culverts being removed. Each culvert will be backfilled using the materials from the site and sand and gravel (as needed) from the Resighini Rancheria sand and gravel stockpiles. The Project also includes the installation of a weir-like structure designed to retain the off channel habitat that exists along Junior Creek above Junior Pond area. The Project has been designed to pass the maximum flood possible before being overwhelmed by Klamath River floods, estimated to be approximately the 5-year flood. Providing the maximum access for fish was a goal of the Project design. The project will also maintain the backwater area currently available in Junior Creek. To maintain the backwater while also passing the maximum flood possible, a low weir-like structure or beaver pond analog is incorporated at the lower end of the project just below the last culvert (Figure 3). The "beaver dam" will act to back up small to moderate storm flows and late spring flows and would only have a 2.6 foot height at the deepest point.

Project implementation will require the disturbance of approximately 4 acres of land. Most of this will be for the staging and stockpiling areas. The area of potential effects from the culvert replacement is estimated as being fifty (50) feet upstream and downstream from the ends of each culvert, as well as the length of the culvert. This translates into an estimated 300 linear feet of Junior Creek streambed being impacted by the removal of all four culverts (two of which are side by side in the same location [Figure 2]), as well as an estimated additional 115 linear feet of culvert length, for a total of 415 linear feet of potential disturbance within the Junior Creek streambed. Project implementation will occur when Junior Creek in the Project footprint is dry. The culvert replacement will be accomplished with equipment such as a backhoe, small excavator, dump truck, and various hand tools. The adjacent gravel processing yard will be used for material storage and equipment staging. Access to the Project site will be via existing roads. The Project is expected to take 21 days to complete.

2.2.1 Environmental Commitments

a) All Project-related vehicle traffic will be restricted to the Action Area, which is the footprint of the Project, including staging areas, construction areas, and haul routes on established roads.
b) To reduce fugitive dust emissions, workers will implement and observe the following:
    a. Reduce vehicle speed to 15 mph on unpaved roads.
    b. Stabilize stockpiled materials if not used immediately.
c) A worker awareness training on the environmental commitments will be held prior to construction.

d) In the unlikely event that cultural resources or human remains are discovered during project implementation, work shall stop and the Reclamation Regional Archaeologist shall be contacted immediately.
e) No Project activities will take place between June 15 and August 31 to avoid work during the yellow-billed cuckoo breeding season.

3.0 Affected Environment and Consequences

3.1 Required Resource Discussions

Department of the Interior Regulations, Executive Orders, and Reclamation guidelines require a discussion of Indian sacred sites, Indian Trust Assets, and Environmental Justice when preparing environmental documentation. Impacts to these resources were considered and found to be minor or absent. Brief explanations for their elimination from further consideration are provided below:

3.1.1 Indian Sacred Sites

Executive Order 13007 (May 24, 1996) requires that federal agencies accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and avoid adversely affecting the physical integrity of such sacred sites. The Proposed Action is not on federal lands, and therefore, will not affect access to or use of Indian sacred sites.

3.1.2 Indian Trust Assets

Indian Trust Assets are legal interests in assets that are held in trust by the United States for federally recognized Indian tribes or individuals. The Proposed Action was proposed by the Tribe and is located on land held in trust for the Resighini Rancheria. The Proposed Action does not have the potential to affect ITAs (see Appendix A).

3.1.3 Environmental Justice

The Proposed Action will occur in and adjacent to a gravel processing yard. The closest residence is several hundred feet away from the culvert crossings and staging area. Impacts from the proposed action are expected to be localized, short-term in nature, and will not impact residential access, structures, or adversely affect recreation. Therefore, the Proposed Action would not have disproportionately negative impacts on low-income or minority populations within the Project area.

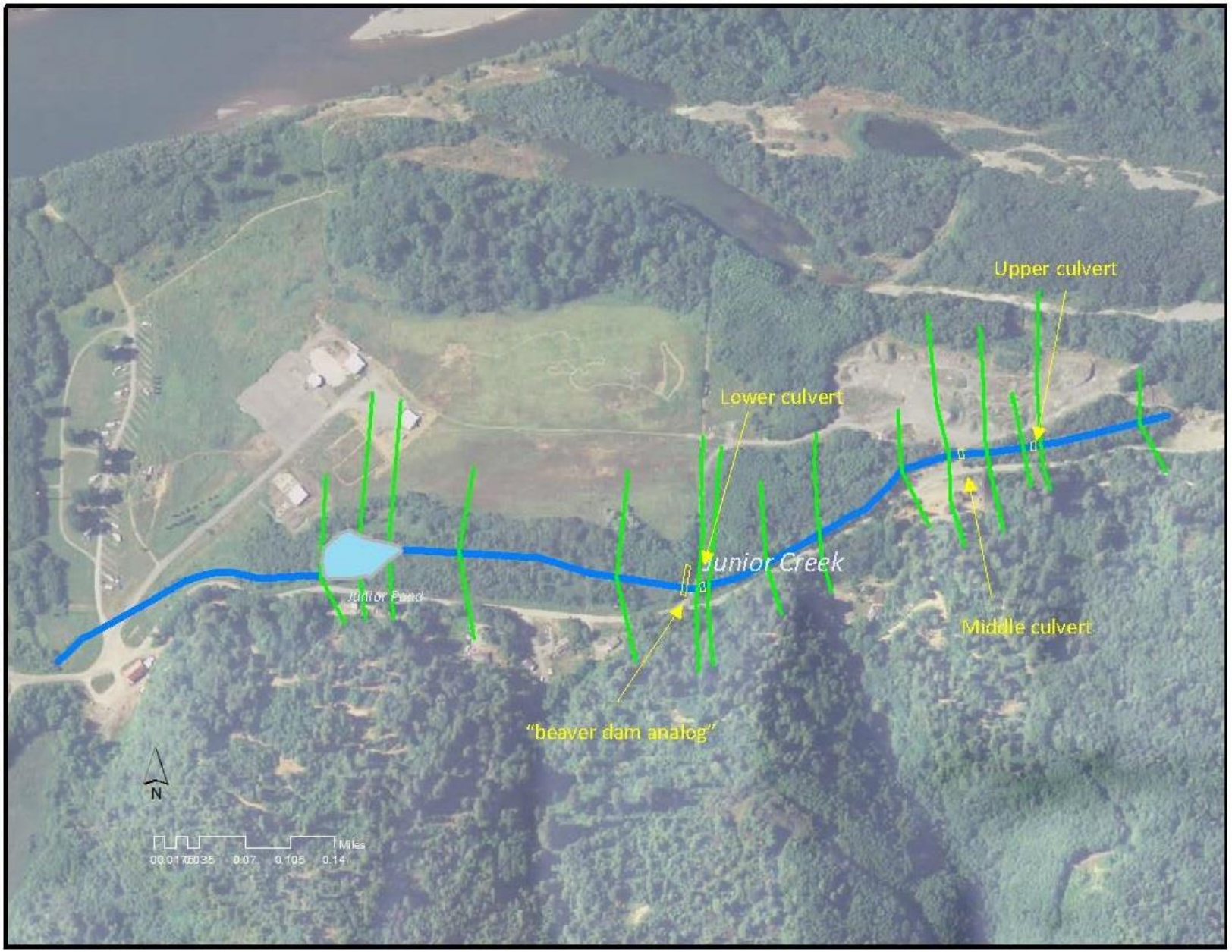


Figure 3. Junior Creek Culvert Replacement Project Plan (NOAA 2016)

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3.2 Biological resources

Information in this section is summarized from the *2016 Biological Survey for the Replacement of Four Culverts along Junior Creek, Resighini Rancheria, Del Norte County, CA* (SPC 2016). Wildlife observed in the Project area during surveys included great-blue heron, Pacific wren, osprey, red-tailed hawk, northern Pacific treefrog, and northern red-legged frog. The northern red-legged frog (*Rana aurora*) is listed by California as a species of special concern.

A list of threatened and endangered species that may occur in the action area or may be affected by the action was obtained from the U.S. Fish and Wildlife Service (Service) Information for Planning and Consultation (iPAC) website in November 2016 and again in August 2017. Additionally, the CNDDB was searched for special status species within and near the Action Area. Based on the habitat present in the Action Area and Project specific construction efforts, the following species were identified as having the potential to be affected by the project.

Table 1: Federally-Listed Species Identified by iPAC as Potentially Occurring within the Action Area

Scientific Name	Common Name	Federal Status	Effects	Potential habitat utilized by species in Action Area
BIRDS				
Brachyramphus marmoratus	Marbled murrelet	T	NE	**Absent.** Suitable habitat not present.
Charadrius nivosus nivosus	Western snowy plover	T	NE	**Absent.** Suitable habitat not present.
Coccyzus americanus	Western U.S. Distinct Population Segment yellow-billed cuckoo	T	NE	**Yes.** The Project area contains suitable foraging habit which consists of riparian woodlands with willow stands and cottonwoods
Strix occidentalis caurina	Northern spotted owl	T	NE	**Absent.** Suitable habitat not present.
FISH				
Eucyclogobius newberryi	Tidewater goby	T	NE	**Absent.** Suitable habitat not present.
Oncorhynchus kisutch	Southern Oregon/Northern California Coho salmon (SONCC)	T	NLAA	**Absent.** Project to be implemented when streambed is dry and fish passage is currently blocked at the downstream extent of the project area.
PLANTS				

Scientific Name	Common Name	Federal Status	Effects	Potential habitat utilized by species in Action Area
Lilium occidentale	Western lily	E	NE	**Absent.** Suitable habitat not present.

T= threatened, E=endangered, NE= no effect, NLAA=not likely to adversely affect

There is no designated critical habitat within the action area for the above listed species.

The proposed action would have both short-term and long-term effects on vegetation and wildlife. Short-term effects include disturbance during construction and the trimming or removal of herbaceous vegetation, if present, during construction activities. Construction equipment and vehicles would be restricted to the access roads and the gravel processing yard. Best management practices would be implemented during the entire operation to ensure biological resources are protected. Long-term effects of the Proposed Action are expected to be positive due to the restoration of Junior Creek flows at the three road crossings

Migratory birds and their habitats are protected under the Migratory Bird Treaty Act, as amended (16 U.S.C 703 et seq.). Construction activities could potentially result in direct and indirect effects to the migratory birds if they nest within and adjacent to the construction area. Construction activities in the vicinity of a nest have the potential to result in nest destruction, forced fledging, or nest abandonment by adults. To ensure that there would be no effect to migratory birds, work should not occur during the nesting season (February 1 thru August 31). If construction activities will occur during the nesting season, pre-construction surveys, buffer establishment, and monitoring by a qualified biologist will be implemented. If any breeding birds or active nests are found, a protective buffer of 250 feet would be maintained to avoid disturbances of the occupied nesting area, and the USFWS and CDFW would be consulted for further action prior to construction.

After construction has been completed, seasonal water flow down Junior Creek will be restored and would provide up to one half mile more of rearing habitat for juvenile SONCC salmon.

3.3 Water Resources

The project site is located on Junior Creek, an intermittent third order tributary to the Klamath River. Junior Creek flows into Waukell Creek and the Proposed Action is approximately 0.5 miles upstream from the confluence with the Klamath River. During the period when flows are active in the project site, culvert #3

blocks all flow and the water is diverted out of the streambed into the adjacent gravel processing area. During the summer months, the streambed is dry with ponding at the culverts drying after flow stops.

The Proposed Action will be implemented during the summer when the streambed is dry. Therefore, water resources will not be affected.

3.5 Air quality

The Proposed Action lies within the North Coast Air Basin (NCAB). Air basins share a common "air shed", the boundaries of which are defined by surrounding topography and meteorology. Although mixing between adjacent air basins inevitably occurs, air quality conditions are relatively uniform within a given air basin.

The U.S. Environmental Protection Agency (EPA) and California Air Resources Board developed Federal and State health-based air quality standards, known as National and California ambient air quality standards (NAAQS and CAAQS), for criteria air pollutants. Criteria air pollutants consist of carbon monoxide, ozone (volatile organic compounds [VOC] or reactive organic gas [ROG] are ozone precursors), sulfur dioxide, nitrogen dioxide, inhalable particulate matter between 2.5 and 10 microns in diameter (PM_{10}), particulate matter less than 2.5 microns in diameter ($PM_{2.5}$), and lead. The NCAB lies within the management area of the North Coast Unified Air Quality Management District (NCAQD), which was given authority by the California Air Resources Board, and thereby the EPA, to prepare elements of and regulate conformity to the State Implementation Plan (SIP). Section 110(a) of the Clean Air Act (42 U.S.C. 7401(a)) requires states to develop plans, known as State Implementation Plans (SIPs), that describe how areas with unhealthy levels of criteria air pollutants will attain NAAQS. Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) requires that any entity of the federal government that engages in, supports, or in any way provides financial support for, licenses or permits, or approves any activity to demonstrate that the action conforms to the applicable SIP before the action is otherwise approved. The EPA promulgated the General Conformity Rule to ensure that such federal actions are consistent with a SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS for criteria air pollutants and achieving expeditious attainment of those standards. If an action does not conform to the SIP, the Federal agency must submit a general conformity determination to the EPA, State and local air pollution control agencies, and to the public. The general conformity regulations apply to a proposed Federal action in a non-attainment or maintenance area if the total of direct and indirect emissions of the relevant criteria pollutants and precursor pollutant caused by a proposed action equal or exceed the NAAQS *de minimis* emissions thresholds, thus requiring the Federal agency to make a conformity determination. Federal actions that do not apply to the General Conformity Regulations include, but are not limited to, actions with

associated emissions clearly below specified *de minimis* levels, and activities covered under transportation conformity (40 CFR 93.153(c)).

The air in Del Norte County is considered to be "in attainment" with NAAQS for all criteria air pollutants. Therefore, conformance to the SIP is assumed.

3.4 Cultural resources

Cultural resources is a broad term that includes prehistoric, historic, architectural, and traditional cultural properties. Title 54 U.S.C. 300101 et seq., formerly and commonly known as the National Historic Preservation Act (NHPA) is the primary legislation for Federal historic preservation. Section 106 of the NHPA (54 U.S.C. 306108) requires Federal agencies to take into consideration the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation an opportunity to comment. Historic properties are those cultural resources that are listed in or are eligible for inclusion in the National Register of Historic Places (National Register). The Section 106 regulations at 36 CFR 800 outline the process the Federal agency takes to identify historic properties within the area of potential effects (APE), and to assess the effects the proposed undertaking will have on those historic properties. The Section 106 process involves consultations with the State Historic Preservation Officer, Indian tribes, and other identified consulting and interested parties. The APE for the current undertaking consists of approximately 4 acres (Figure 1 and 2) and includes the proposed stockpile and staging areas, culvert replacement sites, and access. In an effort to identify historic properties, Resighini Rancheria contracted William Rich and Associates to conduct a cultural resources inventory for the proposed project. The inventory included a records search at the Northwest Information Center (File No. 15-1879) and a pedestrian survey of the APE on September 14, 2016. The above efforts identified no cultural resources within the APE.

On March 30, 2017, an email was also sent to Tribal Chairman Rick Dowd and Administrative Secretary Kathy Dowd inviting the Tribe's participation in the Section 106 process, and requesting their assistance in the identification of sites of religious and cultural significance or historic properties that may be affected by the proposed undertaking pursuant to 36 CFR § 800.4(a)(4). Mrs. Dowd responded by email on May 12, 2016, at the direction of Chairman Dowd, stating the Tribe had no concerns of cultural resources in the project area. Reclamation is also consulting with the Resighini Rancheria on the same basis as the California State Historic Preservation Officer, pursuant to 36 CFR § 800.2(c)(2)(i)(B) for this project occurring on tribal lands. Chairman Dowd responded by letter dated June 23, 2017 concurring with Reclamation's determination.

Reclamation applied the criteria of adverse effect [36 CFR § 800.5(a)] for the proposed action and determined that it would result in no adverse effect to historic

properties. Utilizing these identification efforts, Reclamation initiated consultation with California the State Historic Preservation Officer (SHPO) on June 7, 2017 with a notification of a determination of no historic properties affected for the proposed project. SHPO concurred with the determination in a letter dated July 7, 2017 which completed the Section 106 process. A copy of the response letter detailing SHPO's findings is included in Appendix B.

3.5 Cumulative effects

According to the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA, a cumulative impact is defined as the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. Environmental commitments of the Proposed Action will reduce the likelihood of adverse effects to the environment and the long-term effect of the Proposed Action is expected to be wholly beneficial. Reclamation has not identified any cumulative effects.

4.0 Consultation and coordination

4.1 Agencies and groups consulted

Reclamation consulted with the NMFS, U.S. Fish and Wildlife Service, California State Historic Preservation Officer, and the Resighini Rancheria during the preparation of this EA.

4.2 Endangered Species Act (Act; 16 USC § 1531 et seq.)

Section 7 of the Endangered Species Act requires Federal agencies, in consultation with the Secretary of the Interior, to ensure that their actions do not jeopardize the continued existence of federally endangered or threatened species, or result in the destruction or adverse modification of the critical habitat of these species. Reclamation determined that the Project may affect, but is not likely to adversely affect the federally-listed as threatened Southern Oregon and Northern California Coast Evolutionarily Significant Unit of coho salmon (or its designated critical habitat. Reclamation also determined that the Project would not adversely affect Essential Fish Habitat designated under the Magnuson-Stevens Fishery Conservation and Management Act. The National Marine Fisheries Service (NMFS) was consulted on these determinations and issued a concurrence letter on December 12, 2016 (Appendix C).

The only federally-listed species under the jurisdiction of the U.S. Fish and Wildlife Service (FWS) identified as having the potential to be adversely affected by this Project is the western yellow-billed cuckoo. Consultants for the Resighini Rancheria contacted the U.S. Fish and Wildlife Service requesting Technical Assistance regarding potential Project effects on the yellow billed cuckoo. While the FWS did state that they considered the Project area suitable unsurveyed habitat for the species, they issued a memorandum (reference # AFWO-l6BO127-16TA0274; Appendix D) concluding that the potential effects of the Project on the yellow-billed cuckoo "do not warrant formal review under section 7 of the Act".

4.3 California Endangered Species Act (Fish and Game Code § 2050-2085 and 14 CCR §783-786.8)

Section 2080 of the California Fish and Game Code prohibits take of species listed under the California Endangered Species Act. This prohibition applies to local, state, and private entities. The California Department of Fish and Wildlife may issue a take permit for CESA-listed species under Fish and Game Code §2081 and 14 CCR 783, if there is determined to be take from a proposed action. Take is defined as to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill," (Fish and Game Code §86). If a CESA take permit were required, the Resighini Rancheria would be responsible for obtaining the permit as the local entity. Reclamation has determined that there would be no Project related effects on CESA listed species during implementation.

5.0 References

CDFW (California Department of Fish and Wildlife). 2016. California Natural Diversity Database (CNDDB), Commercial version, California Department of Fish and Wildlife, Sacramento, CA.

National Marine Fisheries Service. 2016. Junior Creek Culvert Replacement Project, Project Description. September 2016.

Streamline Planning Consultants. 2016. *2016 Biological Survey for the Replacement of Four Culverts along Junior Creek, Resighini Rancheria, Del Norte County, CA*. July 2016.

Appendix A

Indian Trust Assets Determination

Indian Trust Assets
Request Form (MP Region)

Submit your request to your office's ITA designee or to MP-400, attention Kevin Clancy.

Date: 10/7/16

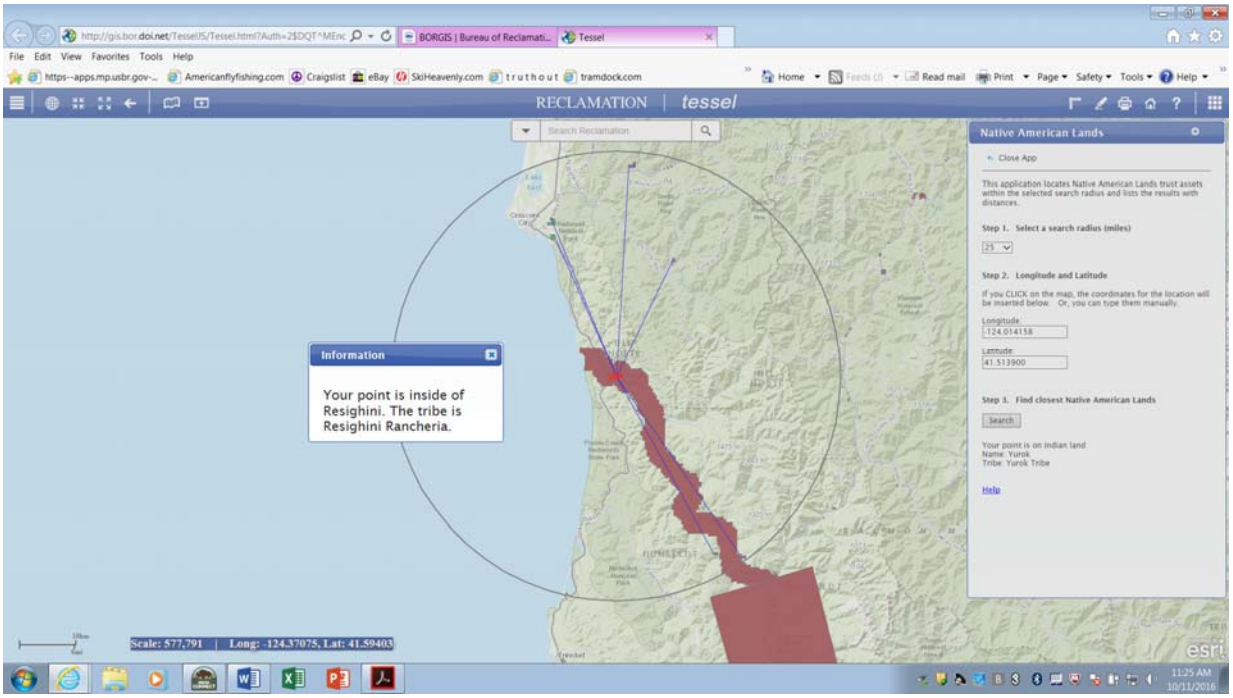
Requested by **(office/program)**	MP-152
Fund	17XR0680G1
WBS	RX152330000190001
Fund Cost Center	RR02015200
Region # (if other than MP)	
Project Name	Resighini Rancheria Culvert Replacement Project
CEC or EA Number	MP-CEC-16-04
Project Description (attach additional sheets if needed and include photos if appropriate)	Replacement of 4 failed culverts associated with roadway.
***Project Location (Township, Range, Section, e.g., T12 R5E S10, or Lat/Long cords, DD-MM-SS or decimal degrees). Include map(s)**	Latitude: 41.513900 Longitude: -124.014158

Signature	Daniel Cordova Printed name of preparer	Date

ITA Determination:

The **Resighini Rancheria Culvert Replacement Project** is located on land held in trust for the Resighini Rancheria. The Tribe has proposed this and supports the project. (Ssee attached image).

K. Clancy	Kevin Clancy	10/11/2016
Signature	Printed name of approver	Date



Appendix B

Section 106 Consultation for Resighini Rancheria Junior Creek Culvert Replacement Project

CULTURAL RESOURCE COMPLIANCE
Mid-Pacific Region
Division of Environmental Affairs
Cultural Resources Branch

MP-153 Tracking Number: 16-MPRO-186

Project Name: Resighini Rancheria Junior Creek Culvert Replacement Project

NEPA Document: EA 17-15-MP

MP 153 Cultural Resources Reviewer: Mark Carper

NEPA Contact: Dan Cordova

Determination: No Historic Properties Affected

Date: July 7, 2017

The Bureau of Reclamation is proposing to provide grant funding to the Resighini Rancheria for the proposed removal and replacement of four failing culverts along Junior Creek meeting National Oceanic Atmospheric Administration (NOAA) and West Coast Region Guidelines to improve habitat and water flow on Junior Creek. Reclamation determined that the use of federal funds is an undertaking as defined in 36 CFR § 800.16(y) and involves the type of activity that has the potential to cause effects on historic properties under 36 CFR § 800.3(a).

Replacement of the culverts will consist of: removing the existing non-functional culverts; using appropriate heavy equipment; insuring the natural streambed integrity is maintained; adding ¾ mud crush for the culvert bed (36-inch. diameter culverts); installing new culverts to NOAA fish passage West Coast Guidelines; installing trash guards at the upstream end of each culvert; adding base and sidewall fill material compacted to one culvert diameter on each side of the culvert; tamping backfill at regular intervals and adding a sufficient amount of road base gravel (tamped) to re-develop the roadbed crossings.

In an effort to identify historic properties, Resighini Rancheria contracted William Rich and Associates to conduct a cultural resources inventory for the proposed project. The inventory included a records search at the Northwest Information Center (NWIC) (File No. 15-1879) and a pedestrian survey of the APE on September 14, 2016. The above efforts identified no cultural resources within the APE.

Pursuant to the regulations at 36 CFR § 800.3(f)(2), Reclamation identified the Resighini Rancheria as an Indian tribe who might attach religious and cultural significance to historic properties within the APE. As the project is situated on Resighini Rancheria lands, Reclamation initially contacted Mr. William Patterson, Natural Resources Director for the Resighini Rancheria, by email and by telephone on March 30, 2017. Mr. Patterson was informed of the regulatory requirements of the Section 106 process and offered the opportunity to identify any concerns the proposed project might pose to cultural resources. None were identified. On March 30, 2017, an email was also sent to Chairman Rick Dowd and Administrative Secretary Kathy Dowd inviting the Tribe's participation in the Section 106 process, and requesting their assistance in the identification of sites of religious and cultural significance or historic properties that may be affected by the proposed undertaking pursuant to 36 CFR § 800.4(a)(4). Mrs. Dowd responded by email on May 12, 2016, at the direction of Chairman Dowd, stating the Tribe had no concerns of cultural resources in the project area. Reclamation is also consulting with the Resighini Rancheria on the same basis as the California State Historic Preservation Officer, pursuant to 36 CFR § 800.2(c)(2)(i)(B) for this project occurring on tribal lands. Chairman Dowd responded by letter dated June 23, 2017 concurring with Reclamation's determination.

Reclamation initiated consultation with California the State Historic Preservation Officer (SHPO) on June 7, 2017 with a notification of a determination of no historic properties affected for the proposed project. SHPO concurred with the determination in a letter dated July 7, 2017.

The proposed action would have no significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places.

This memorandum is intended to convey the completion of the NHPA Section 106 process for this undertaking. Please retain a copy in the administrative record for this action. Should changes be made to this project, additional NHPA Section 106 review, possibly including consultation with the State Historic Preservation Officer, may be necessary. Thank you for providing the opportunity to comment.

Appendix C

National Marine Fisheries Service Concurrence

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1655 Heindon Road
Arcata, California 95521-4573

Refer to NMFS No: WCR-2016-5865

DEC 12 2016

Anastasia T. Leigh
Regional Environmental Officer
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Steven Fishery Conservation and Management Act Essential Fish Habitat Response for the Resighini Rancheria Culvert Replacement Project

Dear Anastasia T. Leigh:

On November 14, 2016, NOAA's National Marine Fisheries Service (NMFS) received your request for a written concurrence that U.S. Bureau of Reclamation's (Reclamation) proposed Resighini Culvert Replacement Project (Project) is not likely to adversely affect (NLAA) species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402, and agency guidance for preparation of letters of concurrence.

NMFS also reviewed the proposed action for potential effects on essential fish habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), including conservation measures and any determination you made regarding the potential effects of the action. This review was pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation. In this case, NMFS concluded the action would not adversely affect EFH. Thus, consultation under the MSA is not required for this action.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The concurrence letter will be available through NMFS' Public Consultation Tracking System *https://pcts.nmfs.noaa.gov/pcts-web/homepage.pcts*. A complete record of this consultation is on file at NMFS' Northern California Office in Arcata, CA.

Proposed Action and Action Area

Reclamation is providing funding for the Project through a Public Law 63-368 Self-Determination Construction Contract with the Resighini Rancheria in Klamath, California. The Project consists of the replacement of failing culverts at 3 stream crossings over Junior Creek, an

intermittent 3rd order tributary to Waukell Creek which flows into the Klamath River. The Project is located approximately 1.25 miles southwest of the town of Klamath, California in Del Norte County on the Resighini Rancheria. The four failed culverts at three stream crossing locations would be removed and replaced with three 48-inch culverts and constructed to meet NMFS fish passage guidelines. The Project would be constructed when the stream is dry. There are no known interrelated or interdependent activities associated with the Project.

The action area for the Project is on Junior Creek, which is a tributary to Waukell Creek which is a tributary to the Klamath River. The Project area extends over approximately 1/2 mile of Junior Creek with the 3 culvert locations located approximately 100 to 300 meters apart from each other. The effects of the action will be confined to the culvert locations and include Junior Creek downstream to Junior Pond where any sediment produced from the Project would be expected to settle out. Junior Creek is an intermittent stream that has been affected by road construction and other rural development. Junior Creek does not provide spawning habitat, but does provide very important non-natal rearing habitat for coho salmon produced in the Klamath River and its tributaries. The proposed Project would increase the amount of habitat accessible for non-natal rearing coho salmon by approximately ½ mile.

Action Agency's Effects Determination Reclamation determined that the Project "may affect, but is not likely to adversely affect" Southern Oregon/Northern California (SONCC) coho salmon and "is not likely to destroy or adversely modify designated critical habitat" for SONCC coho salmon. The SONCC coho salmon ESU is listed as threatened (70 FR 37160; June 28, 2005). Designated critical habitat for SONCC coho salmon does not occur in the action area because Tribal land was excluded from the designation (64 FR 24049; May 5, 1999). Reclamation has made this determination based on their analysis of the effects of the Project which will be insignificant and discountable. Reclamation based this on Project implementation conditions which calls for construction only during the time when the work area is dry which will substantially reduce any sediment that will be mobilized as a result of the Project. Additionally, the culverts will be placed to meet NMFS fish passage guidelines which will eliminate any impediment to migration. Fish passage above the Project is currently significantly impeded or non-existent because of the failed culverts and the Project would benefit SONCC coho salmon by providing access to more habitat through the new culverts.

Consultation History
NMFS relied on documents provided in the consultation package provided by Reclamation which included their November 2, 2016, letter requesting informal consultation, a *2016 Biological Survey for the Replacement of Four Culverts along Junior Creek, Resighini Rancheria, Del Norte County, CA* prepared by Streamline Planning Consultants and a November 8, 2016, email from Daniel Cordova with Reclamation that included a detailed Project description. In addition, NMFS staff assisted Reclamation and the Resighini Rancheria with the culvert design to ensure consistency with NMFS Fish Passage Guidelines.

ENDANGERED SPECIES ACT

Effects of the Action

Under the ESA, "effects of the action" means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). The applicable standard to find that a proposed action is not likely to adversely affect listed species or critical habitat is that all of the effects of the action are expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur.

The Project will require minor tree trimming and removal of small alder and willow trees and other brush and the disturbance of soil and approximately 415 linear feet of streambed in the three culvert placement locations. All of this work will be completed when the stream is dry. The riparian area in the vicinity of the tree removal is dense so no reduction in shade or cover is anticipated as a result of the Project. The soil and streambed disturbance is expected to result in an insignificant amount of sediment that will be mobilized after significant rainfall which will be required for Junior Creek to begin flowing. This insignificant amount of sediment will dissipate very quickly downstream and is not expected to be encountered by any juvenile coho salmon because it will dissipate before fish will arrive in the action area. Therefore, the effects of riparian removal and temporary sediment mobilization are insignificant and discountable. The Project is expected to have an immediate benefit once fish arrive by providing fish passage to habitat that was previously unavailable for non-natal rearing coho salmon in Junior Creek.

Conclusion

Based on this analysis, NMFS concurs with Reclamation that the proposed action is not likely to adversely affect SONCC coho salmon.

Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by Reclamation or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) 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; (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA portion of this consultation.

Please direct questions regarding this letter to Daniel Free, Northern California Office, at Dan.Free@noaa.gov or (707)-825-5164.

Sincerely,

for/

Barry Thom
Regional Administrator

cc: Daniel Cordova, Reclamation

bcc: CHRON File (pdf)
Division- File copy
151422WCR2016AR00366

Appendix D

U.S. Fish and Wildlife Concurrence

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Arcata Fish and Wildlife Office
1655 Heindon Road
Arcata, California 95521
Phone: (707) 822-7201 FAX: (707) 822-8411

In Reply Refer To:
AFWO-16B0127-16TA0274

Mr. Stein Coriell
SHN Consulting Engineers and Geologists, Inc.
812 West Wabash Avenue
Eureka, California 95501

Subject: Technical Assistance on Four Proposed Culvert Replacements along Junior Creek on the Resighini Rancheria in Del Norte County, California.

Introduction

This letter is the response of the U.S. Fish and Wildlife Service (Service) to a request for technical assistance from SHN Consulting Engineers and Geologists, Inc., of Eureka, California (SHN) regarding potential project effects to the western yellow-billed cuckoo (WYBC; *Coccyzus americanus*; federally-listed as threatened) and potential occupancy of the project area by WYBC). The request was submitted in two parts via e-mail on June 22, and July 13, 2016. Each e-mail was received and viewed at the Service's Arcata Fish and Wildlife Office (AFWO) on the same respective dates that they were sent. Service action on the request was initiated on the date of the second e-mail: July 13, 2016. In an email to SHN dated July 12, 2016, the Service stated that we consider the project area to be suitable, but unsurveyed, habitat for WYBC.

Parties to the Proposed Action and Status of the Action

The proposed action (action) is the replacement of four culverts on Junior Creek on the Resighini Rancheria. The four culvert sites are found on three unnamed tributary roads connected to East Klamath Beach Road (EKBR). Three tribal, governmental and private entities are known to be parties to the action. (1) The Bureau of Reclamation (Bureau; U.S. Department of the Interior) administers a grant program that will be used to fund the action. The Bureau would be the designated Federal action agency in the event this project were to proceed and be reviewed under section 7 of the Endangered Species Act of 1973 (Act) as amended (16 U.S.C. *et seq.*). (2) The Resighini Rancheria (Rancheria) of Del Norte County, California, is the land holder, prospective grant applicant, and project proponent. (3) SHN is representing the Resighini Rancheria in the

grant application, project design, and in various Federal and State agency reviews. The Rancheria, through SHN, is in the process of developing the project design, the work plan, and the grant application, in coordination with the Bureau. All three products (project design, work plan, and grant application) are being developed concurrently and are in a draft stage.

Location and Details of the Proposed Action

The project sites on the Rancheria are located on the floodplain along the south bank of the Klamath River, approximately 1.8 air miles southeast of the center of the community of Klamath in Del Norte County, California. East Klamath Beach Road (EKBR) is accessed from U.S. Highway 101 (US 101) at an un-numbered interchange approximately 2,000 feet south of the highway's bridge over the Klamath River. The four proposed culvert sites are located as follows, using as a starting point the foot of the northbound exit ramp at the EKBR interchange on US 101. (Culverts 1 and 2) From the interchange, proceed approximately 0.4 mile (2,050 feet) east on EKBR to the junction of an unnamed tributary road, then proceed north on the tributary road 80-100 feet to arrive at the first and second culvert sites. (Culvert 3) From the interchange, proceed approximately 0.54 mile (2,850 feet) east on EKBR to the junction of a second unnamed tributary road, then proceed north on the tributary road 50-80 feet to arrive at the third culvert site. (Culvert 4) From the interchange, proceed approximately 0.59 mile (3,150 feet) east on EKBR to the junction of a third unnamed tributary road, then proceed north on the tributary road 50-80 feet to arrive at the fourth culvert site. SHN project planners estimate that all work can be completed within 21 days.

Service Response on WYBC Occupancy

In California, breeding populations of the WYBC are found primarily in extensive hardwood stands on river floodplains, specifically stands dominated by mixes of willow (*Salix spp.*) and cottonwood (*Populus spp.*) (Halterman et al. 2001). WYBC have been detected on the lower Eel River floodplain in Humboldt County. On coastal rivers between the Eel River and the Oregon state line, the largest concentration of potentially suitable habitat is found on the lower Klamath River floodplain which encompasses much of the Resighini Rancheria. The Service is currently funding a survey of the Klamath floodplain, but those results will not be available until later this year. If the in-progress survey yielded one or more positive WYBC detections we would be able to conclude that the area is occupied (Halterman et al. 2015). But past experience with multi-year WYBC surveys in other localities indicate that WYBC are "cryptic" in their habitats, not amenable to detection (Halterman 2009); as a result, detection frequencies are expected to vary considerably from year-to-year. Therefore, we would be unable to conclude that the lower Klamath River floodplain is unoccupied on the basis of a single survey season with no WYBC detections. Multiple consecutive years of negative survey results would be needed before we could consider a conclusion that an area is unoccupied. Currently, the Service considers the lower Klamath River floodplain to be suitable WYBC habitat with an inadequate survey history (effectively unsurveyed).

Service Response on Appropriate Conservation Measures

Proposed construction activity would take place on the existing road grades and on adjoining fill slopes. Furthermore, the proposed action would not result in alteration or removal of suitable WYBC habitat, so there is no need to apply conservation measures to address potential habitat losses. However, if the project area is occupied by WYBC, there is the potential for noise or visual disturbance to breeding WYBC during the proposed construction which could result in reduced nest attendance, reduced parental care, and elevated mortality rates in WYBC offspring. To avoid noise or visual disturbance to WYBC, we recommend establishing a limited operating period (LOP) in which work would occur outside the breeding season for the WYBC (i.e., the earliest start-work date would be September 1, after the breeding season, and work would be completed before June 15 the following year). Alternatively, surveys for WYBC could be conducted using the current Service-approved survey protocol (Halterman et al. 2015). The surveys would be designed to cover an area within a 100-meter (328 feet) radius of each culvert location, with a minimum of four survey visits per culvert location. If the results are negative (i.e., no WYBC detections) in all four visits, then project work could be started as soon as the final survey visit is completed in early-August. If results are positive in any survey visit, then the earliest permissible start-work date would be September 1. If surveys are initiated in June, but later survey visits cannot be completed for any reason (e.g., funding or unavailability of qualified surveyors), then the earliest permissible start-work date would be September 1.

Construction materials may be stockpiled and mechanized equipment may be staged at any time during the WYBC breeding season, provided that all stockpile and staging areas are located more than 100 meters (328 feet) from the nearest suitable WYBC habitat (i.e., *Populus-Salix* stands). There are large cleared areas meeting this criterion on the Rancheria between the proposed culvert sites and U.S. Highway 101.

Conclusion

The Service concludes that the potential effects of this proposed action on the WYBC do not warrant formal review under section 7 of the Act. However, our conclusion is based on the project proponent and SHN incorporating the conservation measures, as outlined above, into their project design and work plans, and implementing those measures on the ground. This conclusion applies to the WYBC only, and does not apply to any other federally-listed species under Service jurisdiction that may be identified in the project area as the planning process continues.

If you have any questions regarding this correspondence, please contact John Peters of my staff at (707) 822-7201.

Sincerely,

Bruce Bingham
Field Supervisor

Literature Cited

Halterman, M. 2009. Sexual dimorphism, detection probability, home range, and parental care in the yellow-billed cuckoo. Ph.D. dissertation. University of Nevada, Reno, NV. 135 pages.

Halterman, M., D.S. Gilmer, S.A. Laymon and G.A. Falxa. 2001. Status of the yellow-billed cuckoo in California: 1999-2000. Report to the U.S. Geological Survey. Dixon, CA. 73 pages.

Halterman, M., M.J. Johnson, J.A. Holmes and S.A. Laymon. 2015. A natural history summary and survey protocol for the western Distinct Population Segment of the yellow-billed cuckoo. U.S. Fish and Wildlife Techniques and Methods. 45 pages.