

Long-Term Operation – Final Environmental Impact Statement

# **Chapter 7 – Indian Trust Assets**

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# Chapter 7 Indian Trust Assets

This chapter is based on the background information and technical analysis documented in Appendix J, *Indian Trust Resources Technical Appendix*, which includes additional information on Indian Trust Assets and technical analysis of the effects of each alternative.

## 7.1 Affected Environment

Federal Indian Trust Asset policies have been used to identify potential areas of change to Indian Trust Assets (ITAs) that could occur due to changes in long-term operation of the Central Valley Project (CVP) and/or State Water Project (SWP) facilities.

The 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 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 U.S. government. The characterization and application of the U.S. 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.

The U.S. Government's trust responsibility for Indian resources requires Reclamation and other agencies to take measures to protect and maintain trust resources. These responsibilities include taking reasonable actions to preserve and restore tribal resources. Table J.1-1 in Appendix J lists federally recognized Tribes in the vicinity of the study area. The analysis focuses on changes in reservoir and channel erosion and water quality conditions in all project rivers, and salmon fisheries in the Trinity River. There are no ITAs in the rivers in the Central Valley that would be affected by the project.

## 7.2 Effects of the Alternatives

The impact analysis considers changes in ITAs related to changes in CVP and SWP operation under the alternatives as compared with the No Action Alternative.

The No Action Alternative is based on 2040 conditions. Changes that would occur over that time frame without implementation of the action alternatives are not analyzed in this chapter.

However, the changes to ITAs that are assumed to occur by 2040 under the No Action Alternative are summarized in this section.

The changes to Indian Trust Assets that are assumed to occur by 2040 under the No Action Alternative conditions would be different than existing conditions because of the following factors:

- Climate change and sea-level rise
- General plan development throughout California, including increased water demands in portions of the Sacramento Valley

In the long term, it is anticipated that climate change, and development throughout California, could affect water supply deliveries.

Under the No Action Alternative, Reclamation would continue with the current operation of the CVP, as described in the 2020 Record of Decision and subject to the 2019 Biological Opinions. The 2020 Record of Decision for the CVP and the 2020 Incidental Take Permit for the State Water Project represent current management direction or intensity pursuant to 43 Code of Federal Regulations Section 46.30.

Although the No Action Alternative included habitat restoration projects at a programmatic level, the 2020 ROD did not provide environmental coverage for these projects, and all of the habitat projects considered under the No Action required or will require additional environmental documentation. Thus, ground disturbance for habitat restoration projects did not materialize as a result of implementing the No Action Alternative. For the purpose of the analysis, these habitat restoration projects are considered independent projects that will be considered under cumulative effects.

The No Action Alternative, thus, is expected to result in potential changes to erosion or degradation of sites of religious or cultural importance to federally recognized Tribes, quality of water used by a federally recognized Tribe, and salmonid populations. These changes were described and considered in the 2020 Record of Decision.

### **7.2.1 Potential Changes in Erosion or Degradation of Land or Sites of Religious or Cultural Importance to Federally Recognized Tribes**

Appendix W, *Geology and Soils Technical Appendix*, describes in detail channel (bed and bank) erosion in rivers in the project area due to changes in the operation of the CVP/SWP under Alternatives 1 through 4 relative to the No Action Alternative. Under the No Action Alternative, peak flows in the rivers analyzed would remain as under current conditions and the nature and extent of erosion of the bed and banks of these rivers would not change. Alternative 1 would result in a potential decrease (-1.8% average annually in wet periods to -3.1% average annually in dry periods) in erosion in the Trinity River. Under Alternatives 2 through 4, while there could be negligible increased potential of erosion in some of the rivers, including the Trinity River which has ITAs, there would likely be negligible to no resulting change in degradation of land or sites of religious or cultural importance caused by changes in erosion.

## **7.2.2 Potential Changes in Quality of Water Used by a Federally Recognized Tribe**

Appendix G, *Water Quality Technical Appendix*, describes changes in flow in the study area rivers and resulting changes in water quality due to changes in the operation of the CVP/SWP under Alternatives 1 through 4 relative to the No Action Alternative. Under the No Action Alternative, there would be no anticipated change in water quality. Under Alternatives 1 through 4, the water quality in the Trinity River would be similarly affected by changes in flow caused by changes in operations compared with the No Action Alternative.

## **7.2.3 Potential Changes to Salmonid Populations**

A detailed analysis is provided in Appendix O, *Aquatic Resources Technical Appendix*. Under Alternatives 1, 3, and 4, relative to the No Action Alternative, the seasonal operations would have similar effects on salmonid populations in the Trinity River compared with the No Action Alternative. Under Alternative 2 with TUCP without VA, relative to the No Action Alternative, the seasonal operations would have similar effects on most species and life stages but would result in minor adverse effects on spawning and incubating Southern Oregon/Northern California Coast Coho salmon. Therefore, Alternative 2 with TUCP without VA would have minor adverse effects on the federally recognized Tribes which have fishing rights for Coho salmon.

# **7.3 Mitigation Measures**

Appendix D includes a detailed description of mitigation measures identified for Indian Trust Assets per alternative. These mitigation measures include avoidance and minimization measures that are part of each alternative and, where appropriate, additional mitigation to lessen impacts of the alternatives. For Indian Trust Assets, no avoidance and minimization measures have been identified. Additional mitigation measures have been identified for Indian Trust Assets.

## **7.3.1 Avoidance and Minimization Measures**

### **7.3.1.1 Alternatives 1-4**

No avoidance and minimization measures have been identified.

## **7.3.2 Additional Mitigation**

### **7.3.2.1 Alternatives 1-4**

The following mitigation measures have been identified for Environmental Justice:

#### **Mitigation Measure EJ-3: Increasing Participation with Trinity River Parties**

Reclamation will hold a public meeting in Trinity County to hear from local interests on Trinity River-specific alternatives and potential impacts.

## 7.4 Cumulative Impacts

The No Action Alternative would continue with the current operation of the CVP and may result in potential changes to erosion or degradation of land or sites of religious or cultural importance to federally recognized Tribes, quality of water used by a federally recognized Tribe, and salmonid populations. Under the action alternatives, flow changes and water fluctuations would not be of a magnitude that would be expected to result in changes to erosion or degradation of land or sites of religious or cultural importance to federally recognized Tribes, quality of water used by a federally recognized Tribes, and salmonid populations in the Trinity River. As such, the No Action Alternative may contribute to cumulative impacts to Indian Trust Assets while the action alternatives would not result in cumulative impacts to Indian Trust Assets as described in Appendix J, *Indian Trust Assets* and Appendix Y, *Cumulative Impacts Technical Appendix*. Any cumulative impacts resulting from the No Action Alternative and the action alternatives on salmonids are discussed in detail in Appendix O.