

19. Indian Trust Assets

19.1 Introduction

This chapter discusses the Indian Trust Assets (ITAs) in the Extended, Secondary, and Primary study areas, and includes a discussion of the regulatory framework associated with ITAs. For this resource, the Extended Study Area is defined as the portions of the CVP and SWP service areas that could be affected by the North of the Delta Offstream Storage (NODOS) Project operations, located within 39 counties. The Secondary Study Area is defined as the CVP and SWP reservoirs, rivers, creeks, and associated floodplains that could be affected by Project operations, located in 22 counties.

The Primary Study Area (in Glenn and Colusa counties) is considered to be the footprint of the proposed Project facilities, the land immediately surrounding these facilities that could be affected by construction and/or maintenance activities (construction disturbance area), and the land parcels surrounding those areas that would be purchased (the Project Buffer). The NODOS Investigation focuses on offstream storage north of the Delta. Offstream storage located north of the Delta would require conveying water from the Sacramento River or one of its major tributaries to the new storage location. Offstream storage located north of the Delta would require conveying water from the Sacramento River or one of its major tributaries to the new storage location. An offstream storage conveyance system could either use existing diversions and canals and/or new diversions and conveyance. Water would be diverted during periods of relatively higher flow through the conveyance system, into the new offstream storage reservoir, and stored until it is needed to meet the planning objectives.

19.2 Regulatory Setting

Indian Trust Assets (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 instream flows associated with trust land. Beneficiaries of the Indian trust relationship are federally-recognized Indian tribes with trust land; the U.S. is the trustee. By definition, ITAs cannot be sold, leased, or otherwise encumbered without approval of the U.S. 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.

Consistent with President William J. Clinton’s 1994 memorandum, “Government-to-Government Relations with Native American Tribal Governments,” the U.S. Bureau of Reclamation (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 (Federal Register, 1994). The U.S. Department of the Interior (DOI) Departmental Manual Part 512.2 (1995) ascribes the responsibility for ensuring protection of ITAs to the heads of bureaus and offices. DOI is required to “protect and

preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion” (DOI Office of the Secretary, 2000). It is the general policy of the DOI 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 the NODOS Investigation for surface storage to support restoration of ecological health and improvement of water management for beneficial uses in the Bay-Delta system has the potential to affect ITAs. Reclamation will comply with procedures contained in Departmental Manual Part 512.2, guidelines, which protect ITAs.

There are no potential impacts to ITAs in the vicinity of the Extended, Secondary, and Primary study areas.

19.3 Environmental Consequences

This section addresses the concern of whether any ITA, including Public Domain Allotments (PDAs), would be adversely affected or beneficially affected by any of the alternatives being considered. Types of actions that could affect ITAs and PDAs include interference with the exercise of a reserved water right, degradation of water quality where a water right exists, impacts to fish and wildlife where hunting and fishing rights exist, or noise near a land asset where it adversely impacts use of the reserved land.

19.3.1 Key Impact and Evaluation Criteria

To address environmental consequences related to ITAs, the following issues have been evaluated to determine potential impacts and their level of significance:

- Are ITAs present in or adjacent to the water development area?
- If an ITA was present, would any of the alternatives being considered impede, change, or potentially benefit current activities within the ITA?

19.3.2 Impact Assessment Assumptions and Methodology

19.3.2.1 Assumptions

The following assumptions were made regarding Project-related construction, operation, and maintenance impacts to ITAs:

- Direct Project-related construction, operation, and maintenance activities would occur in the Primary Study Area.
- Direct Project-related operational effects would occur in the Secondary Study Area.
- The only direct Project-related construction activity that would occur in the Secondary Study Area is the installation of an additional pump into an existing bay at the Red Bluff Pumping Plant (RBPP).
- The only direct Project-related maintenance activity that would occur in the Secondary Study Area is the sediment removal and disposal at the two intake locations (i.e., GCID Canal Intake and RBPP).
- No direct Project-related construction or maintenance activities would occur in the Extended Study Area.

- Direct Project-related operational effects that would occur in the Extended Study Area are related to San Luis Reservoir operation; increased reliability of water supply to agricultural, municipal, and industrial water users; and the provision of an alternate Level 4 wildlife refuge water supply. Indirect effects to the operation of certain facilities that are located in the Extended Study Area, and indirect effects to the consequent water deliveries made by those facilities, would occur as a result of implementing the alternatives.
- The existing bank protection located upstream of the proposed Delevan Pipeline Intake/Discharge facilities would continue to be maintained and remain functional.
- No additional channel stabilization, grade control measures, or dredging in the Sacramento River at or upstream of the Delevan Pipeline Intake/Discharge facilities would be required.

19.3.2.2 Methodology

Reclamation maintains GIS coverage of Indian reservations and rancherias for the State of California. The impact assessment for ITAs was based on this GIS coverage and maps of ITAs for the three study areas.

19.3.3 Topics Eliminated from Further Analytical Consideration

No Project facilities or topics that are included in the significance criteria listed above were eliminated from further consideration in this chapter.

19.3.4 Environmental Impacts

None of the water development areas, i.e., the Extended, Secondary or the Primary Study Area contain ITAs.

19.3.4.1 Impacts Associated with the No Project/No Action Alternative

Implementation of the No Action/No Project Alternative would entail no change from Existing Conditions.

Extended Study Area – No Project/No Action Alternative

There would be **no potential impacts** in the Extended Study Area because there are no ITAs within the vicinity of the Extended Study Area.

Secondary Study Area – No Project/No Action Alternative

There would be **no potential impacts** in the Secondary Study Area because there are no ITAs within the vicinity of the Secondary Study Area.

Primary Study Area – No Project/No Action Alternative

There would be **no potential impacts** to the Primary Study Area because there are no ITAs within the vicinity of the Primary Study Area.

19.3.4.2 Impacts Associated with Alternatives A, B and C

Alternative A: 1.27-MAF Sites Reservoir with Delevan Pipeline, Alternative B: 1.81-MAF Sites Reservoir with Release-only Delevan Pipeline, and Alternative C: 1.81-MAF Sites Reservoir with Delevan Pipeline

There would be **no potential impacts** associated with any of the three alternatives because there are no ITAs within the vicinity of the Extended, Secondary, or Primary study areas.

19.4 Mitigation Measures

Because no significant or potentially significant impacts were identified, no mitigation is required or recommended.

19.5 References

Federal Register. 1994. Vol. 59, No. 85, May 4. Pages 22951-22952.

U.S. Department of the Interior (DOI). 1995. Departmental Manual. Part 512.2.

U.S. Department of the Interior (DOI), Office of the Secretary. 2000. Order No. 3215, Principles for the Discharge of the Secretary's Trust Responsibility. April.