

3.14 Tribal Cultural Resources

This supplemental environmental impact report (SEIR) addresses proposed modifications to the B.F. Sisk Dam Safety of Dams Modification Project, which was previously evaluated in the B.F. Sisk Dam Safety of Dams Modification Project Environmental Impact Statement/Environmental Impact Report (2019 EIS/EIR). The project addressed in the 2019 EIS/EIR is referred to herein as the Approved Project; the Approved Project with proposed modifications identified since certification of the 2019 EIS/EIR is referred to herein as the Modified Project.

This section describes the existing tribal cultural resources conditions of the Modified Project site and vicinity, identifies associated regulatory requirements, evaluates potential impacts, and identifies any applicable mitigation measures related to implementation of the Modified Project.

3.14.1 Existing Conditions

3.14.1.1 Area of Potential Effect

The analysis provided in the 2019 EIS/EIR for the Approved Project included the area of potential effect (APE), which totaled 3,914 acres and represented the limits of the area with potential to be directly impacted as a result of the Approved Project (referred to herein as the Approved Project APE). Pacific Legacy Inc. conducted a pedestrian survey of portions of the Approved Project APE and completed a cultural resources report in May 2019 (Holm and Holson 2019).

The analysis in this section has been conducted with the intent of supplementing cultural resources studies completed to date and in support of the SEIR. The analysis focuses specifically on previously unsurveyed areas of the Approved Project, as well as additional impact areas that have been added since certification of the 2019 EIS/EIR (i.e., Modified Project). The proposed modifications associated with the Modified Project include the development of a new permanent public campground on the northwestern shore of O'Neill Forebay, improvements to the San Luis Creek Day Use Area, and the use of additional access roads and potential staging areas. The Modified Project also added two alternative on-site borrow areas—Borrow Area 12 and Borrow Area 14—within areas previously identified for construction staging in the 2019 EIS/EIR. While these borrow areas are within the Approved Project footprint, they represent an additional activity and would result in a greater level of disturbance than analyzed in the 2019 EIS/EIR. The additional impact areas associated would increase the overall APE by approximately 184 acres. The term Modified Project APE is used in this section to refer to both the Approved Project APE and the additional impact areas analyzed as part of the SEIR. See Figure 3.12-1, Approved Project and Modified Project Survey Areas, in Section 3.12, Cultural Resources.

3.14.1.2 Cultural Context

Please refer to Section 3.12.1, Existing Conditions, in Section 3.12, for a detailed cultural context of the Modified Project.

3.14.1.3 Native American Heritage Commission and Tribal Engagement

On June 5, 2020, Dudek requested a Native American Heritage Commission (NAHC) search of their Sacred Lands File for the Modified Project area. The NAHC responded on June 8, 2020, indicating the search did not identify any sacred sites in the vicinity of the Modified Project. The NAHC additionally provided a list of Native American tribes culturally affiliated with the Modified Project site. All NAHC correspondence materials are included in Confidential Appendix E of this SEIR.

The Modified Project is subject to compliance with Assembly Bill (AB) 52, which requires consideration of impacts to “tribal cultural resources” (California Public Resources Code, Section 21074) as part of the California Environmental Quality Act (CEQA) process and requires the CEQA lead agency to notify any groups (who have requested notification) of a proposed project who are traditionally or culturally affiliated with the geographic area of the proposed project. For the Modified Project, because AB 52 is a government-to-government process, all records of correspondence related to AB 52 notification and any subsequent consultation are on file with California Department of Water Resources (DWR). DWR has an established Tribal Engagement Policy and will contact NAHC-listed tribes independently of AB 52 outreach. The Bureau of Reclamation (Reclamation) has been consulting with federally recognized Native American tribes and Native American organizations as part of the Section 106 process since late 2017, including geotechnical work related to the Approved Project as well as for the development of the document titled, Programmatic Agreement Among The Bureau of Reclamation, Interior Region 10 California-Great Basin; and The California State Historic Preservation Officer Regarding Compliance with Section 106 of the National Historic Preservation Act Pertaining to the Implementation of the Safety of Dams B.F. Sisk Dam Project (Programmatic Agreement) (Reclamation and SHPO 2019).

3.14.2 Relevant Plans, Policies, and Ordinances

Please refer to Section 3.12.2, Relevant Plans, Policies, and Ordinances, for full regulatory context of the Modified Project.

3.14.2.1 Federal

Please refer to Section 3.12.2.1 for a discussion of the federal plans, policies, and ordinances related to cultural resources that are relevant to the Modified Project.

3.14.2.2 State

Assembly Bill 52

AB 52 of 2014 amended California Public Resources Code Section 5097.94, and added California Public Resources Code, Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3. AB 52 established that tribal cultural resources must be considered under CEQA, and also provided for additional Native American consultation requirements for the lead agency. California Public Resources Code, Section 21074, defines tribal cultural resources as follows:

- (a) “Tribal cultural resources” are either of the following:
 - (1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:
 - (A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.
 - (B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.

- (2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.
- (b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.
- (c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

AB 52 formalizes the lead agency–tribal consultation process, requiring the lead agency to initiate consultation with California Native American tribes that have requested notification under AB 52. This includes tribes that may not be federally recognized. Lead agencies are required to begin consultation prior to the release of a negative declaration, mitigated negative declaration, or EIR.

California Public Resources Code, Section 21084.2 establishes that “a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.” California Public Resources Code, Section 21080.3.2 states that parties may propose mitigation measures “capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource.” Further, if a California Native American tribe requests consultation regarding project alternatives, mitigation measures, or significant effects to tribal cultural resources, the consultation shall include those topics (California Public Resources Code Section 21080.3.2[a]). The environmental document and the mitigation monitoring and reporting program (where applicable) shall include any mitigation measures that are adopted (California Public Resources Code, Section 21082.3[a]).

Native American Human Remains

California Public Resources Code, Section 5097 et seq., addresses the disposition of Native American burials in archaeological sites and protects such remains from disturbance, vandalism, or inadvertent destruction; establishes procedures to be implemented if Native American skeletal remains are discovered during construction of a project; and established the NAHC.

In the event that Native American human remains or related cultural material are encountered, Section 15064.5(e) of the State of California CEQA Guidelines (CEQA Guidelines) (as incorporated from California Public Resources Code, Section 5097.98) and California Health and Safety Code, Section 7050.5, define the subsequent protocol. In the event of the accidental discovery or recognition of any human remains, excavation or other disturbances shall be suspended on the site or any nearby area reasonably suspected to overlie adjacent human remains or related material. Protocol requires that the county coroner or county-approved coroner be contacted in order to determine if the remains are of Native American origin. Should the coroner determine the remains to be Native American, the coroner must contact the NAHC within 24 hours. The most likely descendant may make recommendations to the landowner or the person responsible for the excavation work for means of treating, with appropriate dignity, the human remains and any associated grave goods as provided in California Public Resources Code, Section 5097.98 (14 CCR 15064.5[e]).

San Luis Reservoir State Recreation Area Resource Management Plan/General Plan

The California Department of Parks and Recreation (CDPR), in partnership with Reclamation, manages most of the San Luis Reservoir State Recreation Area (SRA). The CDPR planning process is integrated with Reclamation's resource management planning process. CDPR developed the San Luis Reservoir SRA Resource Management Plan/General Plan (San Luis Reservoir SRA RMP/GP) in partnership with Reclamation, and adopted the 25-year plan in 2013. The San Luis Reservoir SRA RMP/GP directs the future development, operations, and maintenance of the SRA, and CDPR and Reclamation continue to collaborate on the plan to guide future growth. Lands managed by CDPR for recreation are part of the state park system and comprise the SRA. The San Luis Reservoir SRA RMP/GP's primary objective is to identify general areas in which future development may occur for recreation management. The plan includes an overview of existing conditions, including a summary of opportunities and constraints, a plan for future use and management of the plan area, and the associated environmental analysis pursuant to the National Environmental Policy Act (NEPA) and CEQA (Reclamation and CDPR 2013).

The San Luis Reservoir SRA RMP/GP identifies a series of policies in the form of goals and guidelines. Goals and guidelines related to tribal cultural resources include the following (Reclamation and CDPR 2013):

Resource Management (RES)

Goal RES-H1: Protect and preserve significant prehistoric and historic resources, and collections within the Plan Area, including those that may be undocumented.

Guidelines:

- Maintain the existing inventory, mapping system, and database for cultural resources within the Plan Area.
- Provide for storage of collections and documentation and display of select cultural resources.
- Submit and complete site records to the State Historic Preservation Officer as necessary to determine eligibility for inclusion in the National Register of Historic Places, the California Register of Historical Resources, or for listing and recognition under CSP's [California Department of Parks and Recreation's] Cultural Resources Division, including under cultural landscapes.
- The District Superintendent may solicit the evaluation of potential cultural landscapes within the Plan Area using National Park Service (NPS) guidance on cultural landscapes as outlined in Protecting Cultural Landscapes. Prepare Cultural Landscape Reports when deemed appropriate and necessary.
- Consult with CSP's cultural resource specialists when planning the construction of new facilities and uses.
- When new development or improvements to existing facilities are proposed and may impact cultural resources, ensure compliance with NEPA and CEQA requirements.

3.14.2.3 Local

Merced Vision 2030 General Plan

As required by state law, Merced County has adopted a general plan to guide land use decisions within the county. The general plan provides goals, policies, standards, and implementation programs to guide the physical development of a county. At a minimum, the general plan must address the topics of land use, transportation, housing, conservation, open space, noise, and safety. The Merced Vision 2030 General Plan (Merced County General Plan), adopted in 2013, has established the year 2030 as the plan's time horizon. The Merced County

General Plan recognizes the rich archaeological and historic past of Merced County and understands that certain measures must be stated to ensure protection of these resources. The Merced County General Plan Recreation and Cultural Resources Element applies California Public Resources Code, Section 21083.2, and CEQA Guidelines Section 15064.5 for resource significance and cultural resources management in the county. The following goal and policies would apply to the Modified Project (Merced County 2013):

Recreation and Cultural Resources Element

Goal RCR-2: Protect and preserve the cultural, archaeological, and historic resources of the County in order to maintain its unique character.

- **Policy RCR-2.1 Archaeological Site and Artifact Protection:** Require development Projects that affect archaeological sites and artifacts to avoid disturbance or damage to these sites.
- **Policy RCR-2.5 Human Remains Discovery:** Require that, in the event of the discovery of human remains on any project construction site, all work in the vicinity of the find will cease and the County Coroner and Native American Heritage Commission will be notified.
- **Policy RCR-2.8 Historical Preservation Area/Site Designations:** Allow sites of historical and archaeological significance to be designated as historical preservation areas or sites during the Community Planning process or on individual sites in rural areas.
- **Policy RCR-2.9 Historical and Cultural Resources Investigation, Assessment, and Mitigation Guidelines:** Establish and adopt mandatory guidelines for use during the environmental review processes for private and public projects to identify and protect historical, cultural, archaeological, and paleontological resources, and unique geological features.
- **Policy RCR-2.10 Tribal Consultation:** Consult with Native American tribes regarding proposed development projects and land use policy changes consistent with Planning and Zoning Law at Government Code Section 65351, and the OPR Tribal Consultation Guidelines (2005).

3.14.3 Thresholds of Significance

The significance criteria used to evaluate the Modified Project impacts to tribal cultural resources are based on Appendix G of the CEQA Guidelines. According to Appendix G of the CEQA Guidelines, a significant impact related to tribal cultural resources would occur if the Modified Project would:

1. Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as a site, feature, place, or cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American Tribe, and that is:
 - a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or
 - b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

3.14.4 Impacts Analysis

Threshold 1

Would the Modified Project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

- i. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k)?*
- ii. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe?*

2019 EIS/EIR Impact Determination	Modified Project Impact Determination	New Significant Increase in Impact Severity?
N/A	Less than Significant with Mitigation Incorporated	No

Supplemental inventory efforts, including a Central California Information Center records search, intensive-level pedestrian survey, and NAHC Sacred Lands File search, did not result in the identification of any new cultural resources within the Modified Project APE. Central California Information Center records do indicate that prehistoric resources have been reported to be present in the immediate vicinity. It should be noted that human remains of Native American origin have been identified in fill soils located nearby; however, the origin of these fill soils is undocumented and, as such, the source of the human remains has not been determined.

While most areas within the Modified Project APE have been subject to substantial earth modification associated with B.F. Sisk Dam, geomorphic information suggests that undisturbed soils in some areas have a moderate potential to support the presence of buried cultural resources.

In September 2019, Reclamation executed a Programmatic Agreement (Reclamation and SHPO 2019), of which DWR is an invited signatory. The Modified Project would not impact any known historical resources of Native American origin. Existing procedures outlined in Title 43, Part 10.4 of the Code of Federal Regulations and Appendix E of the Programmatic Agreement would address the inadvertent discovery of unanticipated resources. Mitigation included as part of this SEIR pertaining to cultural resources are intended to supplement and work within the overall framework of stipulations provided within the approved Programmatic Agreement and future amendments that may be incorporated prior to, or during, Modified Project construction.

As previously noted, an NAHC Sacred Lands File search did not identify Native American resources within the Modified Project APE. The NAHC recommended contacting the following four Native American individuals and/or tribal organizations who may have direct knowledge of cultural resources in or near the Modified Project site:

- Valentin Lopez, Chairperson with the Amah Mutsun Tribal Band
- Katherine Perez, Chairperson with the North Valley Yokuts Tribe
- Timothy Perez, MLD Contact for the North Valley Yokuts Tribe
- William Leonard, Chairperson with the Southern Sierra Miwuk Nation

In compliance with DWR Tribal Engagement Policy, DWR staff sent letters to these NAHC-listed contacts on September 23, 2020. Letters contained a Modified Project description, summary of cultural resources findings, a summary of available cultural resources technical studies that could be provided upon request, and an offer to further discuss the Modified Project. No response was received to these outreach letters.

In addition, DWR maintains a list of traditionally geographically affiliated tribes for the purposes of AB 52. These contacts have specifically requested project notification pursuant to AB 52 requirements. The only tribe listed for the Modified Project area is the Santa Rosa Rancheria Tachi Yokut Tribe. On October 29, 2020, DWR staff sent a formal AB 52 notification letter to Shana Powers, the cultural resources representative for this tribe; DWR received an email response on the same day requesting to consult on the Modified Project. On December 4, 2020, a conference meeting was held between DWR and Ms. Powers, as representative for the Santa Rosa Rancheria Tachi Yokut Tribe. While no specific tribal cultural resources were identified during that meeting, Ms. Powers noted that human remains had been recently collected from the vicinity for repatriation by the tribe at another location of their choosing. Mitigation for cultural resources, including archaeological and Native American monitoring in designated areas, was discussed. DWR and Ms. Powers elected to have a future meeting, during which Reclamation cultural staff would also be present, so that the overall cultural resources management process for the Modified Project addressed by the Programmatic Agreement might be discussed in greater detail. Subsequent meetings were held with the tribe on February 1, 2021, and on April 9, 2021. Reclamation staff was included on these calls and directly addressed information pertaining to Section 106, federal regulations, and Reclamation cultural resource practices. Through this process of consultation, DWR provided the following for Santa Rosa Rancheria Tachi Yokut Tribe's review: a summary of the supplemental cultural resources report; a draft communication matrix with key contacts, roles and responsibilities, and communication scenarios; and draft copies of the Cultural Resources and Tribal Cultural Resources sections of this SEIR. No outstanding comments or questions pertaining to these documents remain unaddressed.

No known tribal cultural resources were identified by the Santa Rosa Rancheria Tachi Yokut Tribe that have potential to be impacted by Modified Project activities. As documented in detail within Section 3.12 of this SEIR, no known archaeological sites of Native American origin would be affected by the Modified Project. An appropriate approach to potential impacts to tribal cultural resources is developed in response to the identified presence of a tribal cultural resource by California Native American Tribes through the process of consultation. Government-to-government consultation initiated by DWR, acting in good faith and after a reasonable effort, has not resulted in the identification of a tribal cultural resource within the Modified Project site. Given that no tribal cultural resource has been identified to date, no resource-specific mitigation measures pertaining to known tribal cultural resources are necessary. However, as consultation remains ongoing, DWR's determination with regard to impacts to tribal cultural resources remains pending.

Cultural resources mitigation appropriately addresses comments by the Santa Rosa Rancheria Tachi-Yokut Tribe pertaining to potential inadvertent impacts to cultural resources of Native American origin. As described in Section 3.12, **Mitigation Measure SEIR-CR-1 (new mitigation measure)** requires implementation of the Programmatic Agreement and clarifies the processes to be implemented in the event that an inadvertent cultural resources discovery is made. In addition, Mitigation Measure SEIR-CR-1 requires that prior to construction, a communication matrix with primary and secondary cultural resources points of contact from Reclamation, DWR, consulting parties, and other pertinent personnel must be developed and circulated. A simple overview guide with roles and responsibilities, cultural resource management protocols, and a list of guiding documents must be prepared as a companion to this communication matrix prior to construction. Additionally, **Mitigation Measure SEIR-CR-2 (new mitigation measure)**, summarizes the required processes to be implemented should human remains and/or associated cultural items be encountered, ensuring compliance with federal and state regulatory requirements. Lastly, **Mitigation Measure SEIR-CR-3 (new mitigation measure)** requires archaeological monitoring and provides the opportunity for Native American monitoring within areas identified as potentially sensitive for buried cultural resources.

Impacts on archaeological resources would not be significant with incorporation of Mitigation Measures SEIR-CR-1, SEIR-CR-2, and SEIR-CR-3 (see Section 3.12.5 for full text of mitigation measures); impacts would be **less than significant with mitigation incorporated**.

Cumulative Impacts

Cumulative impacts on tribal cultural resources consider whether impacts of the Modified Project together with other related projects identified within the vicinity of the Modified Project APE, when taken as a whole, substantially diminish the number and/or integrity of such resources within the same or similar context or property type.

As discussed above, there are no known tribal cultural resources identified within the Modified Project APE. No archaeological resources of Native American origin or association have been documented by the Central California Information Center within the Modified Project APE, although prehistoric resources have been reported to be present in the immediate vicinity. Human remains of Native American origin have been identified in fill soils located nearby; however, the origin of these fill soils is undocumented and, as such, the source of the human remains has not been determined. While most areas within the Modified Project APE have been subject to substantial earth modification associated with the dam, geomorphic information suggests that undisturbed soils in some areas do have a moderate potential to support the presence of buried cultural resources.

Having considered these factors, other individual projects occurring in the vicinity of the Modified Project site would also be subject to the same requirements of CEQA as the Modified Project, and any impacts to tribal cultural resources resulting from those cumulative projects would be mitigated, as applicable. These determinations would be made on a case-by-case basis, and the effects of cumulative disturbances to these resources would be mitigated to the extent feasible in accordance with CEQA and other applicable legal requirements. Therefore, impacts on tribal cultural resources would not be cumulatively considerable with mitigation incorporated as Mitigation Measures SEIR-CR-1, SEIR-CR-2, and SEIR-CR-3; cumulative impacts would be **less than significant with mitigation incorporated**.

Comparison to 2019 EIS/EIR

The additional project components analyzed above would result in less-than-significant impacts with mitigation incorporated. The 2019 EIS/EIR did not address tribal cultural resources; however, impacts of the Modified Project would not result in a significant increase in the severity of impacts as determined in the 2019 EIS/EIR. Impacts of the Modified Project would be less than significant with mitigation incorporated (see Section 3.14.5, Mitigation Measures).

3.14.5 Mitigation Measures

Refer to the mitigation measures listed in Section 3.12 of this SEIR.

3.14.6 Level of Significance After Mitigation

With incorporation of Mitigation Measures SEIR-CR-1, SEIR-CR-2, and SEIR-CR-3, the Modified Project would result in less-than-significant impacts with respect to resulting in adverse effects to tribal cultural resources included in or eligible for inclusion in the National Register of Historic Places and/or the California Register of Historical Resources. Mitigation Measure SEIR-CR-1 requires a qualified archaeologist to be consulted in the event of an unanticipated cultural resource discoveries, Mitigation Measure SEIR-CR-2 outlines the procedure of notification in the event of human remains being uncovered, and Mitigation Measure SEIR-CR-3 requires archaeological monitoring in areas of high sensitivity.

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