

3.3.11 Tribal Interests

The discussion of tribal interests is divided into four sections. The affected environment (environmental baseline) is discussed in Section 3.3.11.1, environmental effects of the Project are discussed in Section 3.3.11.2, unavoidable adverse effects are addressed in Section 3.3.11.3, and proposed measures recommended by agencies, Indian tribes and other interested parties in written comments on that DLA that were not adopted by SSWD are discussed in Section 3.3.10.4

Existing, relevant, and reasonably available information was not sufficient to determine the potential effects of the Project on tribal interests so SSWD conducted one study; Study 11-1, *Tribal Interests Study*.

3.3.11.1 Affected Environment

Relicensing the Project with FERC is considered to be a federal undertaking, subject to compliance with Section 106 of the NHPA of 1966 (Section 106), as amended, and its implementing regulations at 36 C.F.R. Part 800. Section 106 requires federal agencies to take into account the effects of their undertakings on historic properties. On May 13, 2016, FERC designated SSWD as its non-federal representative for purposes of consultation under Section 106 in accordance with 36 C.F.R. 800.2(c)(4). SSWD contracted HDR to oversee and manage the *Tribal Interests Study* to assist FERC in identifying and assessing Project-related effects to historic properties, pursuant to meeting its Section 106 compliance requirements and Albion Environmental, Inc. (Albion) to implement the *Tribal Interests Study*.

The *Tribal Interests Study* was conducted to investigate, describe, and evaluate areas of tribal interest, including Traditional Cultural Properties (TCPs),¹ Indian Trust Assets (ITAs),² and tribal agreements³ as potential historic properties in the Project relicensing APE. The California State Historic Preservation Officer (SHPO) agreed with the delineation of the Project relicensing APE in a letter dated September 2, 2016 (SHPO Reference Number: FERC_2016_0701_001). A separate study (Study 10-1, *Cultural Resources Study*) was conducted to investigate other cultural resource types (i.e., archaeological and built environment resources) as potential historic properties and is discussed in Section 3.3.10.

The *Tribal Interests Study* was initiated with a “kick-off” meeting held on June 29, 2016. SSWD invited Native American tribes, SHPO, and FERC to participate. Attendees included HDR and Albion, on behalf of SSWD, FERC, a SHPO representative, UAIC representatives, and representatives of the Nevada City Rancheria. The *Tribal Interests Study* Plan, prepared by

¹ A TCP is a property “that is eligible for inclusion in the National Register [NRHP] because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community” (Parker and King 1998:1).

² ITAs are legal interests in property held in trust by the United States (U.S.) for Indian tribes or individual Native Americans. The U.S. Secretary of the Interior, acting as the trustee, holds many assets in trust. ITAs can be real property, physical assets, or intangible property rights. Examples of ITAs are lands, including reservations and public domain allotments; mineral or water rights; hunting and fishing rights; other natural resources; and money or claims.

³ Agreements that are considered tribal interests consist of contracts between a tribe and private land owner or land-managing agency that provide tribes with access to a landowner or agency’s property for fishing, gathering of traditional plants, or other tribal practices.

SSWD and included in the PAD filed with FERC, was reviewed at the meeting.⁴ The plan outlines the steps for implementing and completing the *Tribal Interests Study*. The Albion research team was also introduced at that meeting.

Following the kick-off meeting, Albion sent follow-up emails and made phone calls in September and October 2016 to determine interest in *Tribal Interests Study* participation. Four tribal groups, UAIC, Nevada City Rancheria, Tsi-Akim Maidu, and the Colfax-Todds Valley Consolidated Tribe, chose to participate in the *Tribal Interests Study*. Albion conducted several one-on-one and group interviews with tribal respondents between 2017 and 2018. To supplement respondent interviews and provide background information on tribal interests in the Project APE, Albion ethnographers conducted extensive archival research, focusing on the notes and manuscripts of pioneering ethnographers, who worked with the Native American communities in the Project area early in the Twentieth Century, and on ethnohistoric accounts of Native Americans in the area during the time of contact.

The *Tribal Interests Study* Report, a final version of which was filed with FERC on June 7, 2019,⁵ documents the study efforts and findings and are presented in this section. The report includes a Public version that summarizes the methods and results, and a Privileged version that presents the complete methods and results of the study. A draft of the report was submitted to potentially-affected Native American tribes on August 11, 2018. United Auburn Indian Community (UAIC) contacted SSWD with concerns regarding the draft report findings on August 30, 2018. No other Indian tribes commented or responded to the report submittal. SSWD worked with UAIC to address their concerns and revised the draft report, and subsequently submitted the draft report to SHPO on March 22, 2019. SHPO provided comments in a letter dated May 2, 2019, requesting additional information regarding consultation efforts before it could continue consultation. SSWD provided additional information and clarifications in a letter package on May 14, 2019. The SHPO provided a response letter dated May 24, 2019.

The extensive archival research and interviews conducted for the *Tribal Interests Study* identified no tribal interests (i.e., TCPs, ITAs, or tribal agreements) within the Project APE. Although no tribal interests were identified, tribal interviews revealed overall concern about the treatment and preservation of archaeological sites and other cultural resources important to the tribal groups. All respondents wish to be included in the long-term preservation of these places. Moreover, many of the respondents wish to connect or reconnect to the spiritual power inherent in the APE and Project Area, values that they believe have not been diminished by historical events or the construction of the Project.

There is always the possibility that new evidence of properties that fit the criteria of a TCP or other tribal interest may come to light. This may come through new archival sources containing location-specific information about traditional places or through oral testimony from someone who has not come forward during the initial investigation. Regular communications with tribal members and open lines of dialogue is essential for the long-term management of cultural resources. The future management of the cultural resources within the Project APE should include continued involvement of the interested Native communities that value the area.

⁴ The *Tribal Interests Study* Plan was modified slightly after the kick-off meeting and re-filed with FERC in January 2017 (none of the steps outlined in the plan for implementing the study changed).

⁵ See FERC's ELIBRARY Accession No. 201906075078 and Accession No. 201906075079.

3.3.11.2 Environmental Effects

This section discusses the potential resource effects of SSWD's proposed Project, as described in Section 2.2 of this Exhibit E. As part of the Project relicensing, SSWD proposes a Pool Raise of 5 feet, modifications of existing recreation facilities, and modification of the existing Project boundary. SSWD proposes to include in the new license one measure related to tribal interests, implementation of the HPMP. The purpose of an HPMP is to outline actions and processes to manage historic properties within the APE under the new license. It is intended to serve as a guide for the licensee's operating personnel when performing necessary O&M activities and identify resource treatments designed to address potential ongoing and future effects to historic properties. Resource-specific management measures included in the HPMP for treatment of historic properties include avoidance and monitoring, NRHP evaluation efforts, and mitigation measures for resolving adverse effects. An HPMP should also describe a process of consultation with appropriate state and federal agencies, as well as with Native Americans who may have interests in historic properties within the APE. Following the *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects* issued by FERC and ACHP in 2002 (ACHP and FERC 2002), an HPMP should include: management measures; training for all O&M staff; routine monitoring of known cultural resources, and periodic review and revision of the HPMP.

Continued operation and maintenance (O&M) of the Project and/or proposed changes to the Project may affect tribal interests that are listed on or eligible for listing on the NRHP (i.e., historic properties). The effect may be direct (e.g., result of ground disturbing activities), indirect (e.g., public access to recreation areas), or cumulative (e.g., caused by a Project activity in combination with other non-Project activities).

Adverse effects are activities that may alter those characteristics of an historic property that contribute to its NRHP eligibility in a manner diminishing the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Examples of adverse effects would include road maintenance that affects a previously undisturbed archaeological deposit, or a facilities upgrade that removes the windows or doors of an historic powerhouse and does not replace them in kind, with new windows and doors of a similar style and material. There are a number of such activities that could potentially affect historic properties within the APE, including use and maintenance of Project facilities and roads, maintenance to historic buildings or other structures, vegetation management activities, recreational site use, issuance of grazing leases, emergency actions, looting/vandalism, and erosion caused by wave action and fluctuating water levels of the reservoir. In addition, certain kinds of Project-related activities may not have a direct impact on historic properties, but may create the conditions by which damage occurs. For example, a Project road may not directly impact historic properties, but may enable public access to areas that contain historic properties.

By contrast, there are Project activities that may not have an adverse effect on historic properties and there may also be historic properties within the APE that are not subject to Project activities. For example, the continued use of a paved access road that is closed to the public and travels through an historic property that is an archaeological site, will likely not be considered an adverse effect. As well, a historic property comprised of a recreation facility will likely not be adversely affected by continued use and maintenance of the facility, if the facility is used as it

has been in the past and any maintenance activities maintain the existing integrity of the facility. Furthermore, there may be historic properties located within the APE that are substantially above the high waterline of the Camp Far West Reservoir and nowhere near any other Project facility or within the vicinity of Project activities. Subsequently, Project activities may not adversely affect these historic properties.

As there are currently no tribal interests identified within the APE that are historic properties or potential historic properties, SSWD's proposed Project, as described in Section 2.2 of this Exhibit E, will not effect any tribal interests that are historic properties or potential historic properties.

3.3.11.2.1 Schedule for HPMP Revisions

Though no tribal interests that are historic properties have been identified within the APE, such resources could be identified in the future (e.g., the tribes may offer new information, or new individuals that have pertinent information on tribal interests may come forward) and could be potentially affected by the Project. Accordingly, SSWD is developing a HPMP in consultation with Native American tribes and SHPO to manage potential effects on historic properties throughout the term of any new license. FERC typically completes Section 106 by entering into a Programmatic Agreement (PA) or Memorandum of Agreement (MOA) with the licensee, the Advisory Council on Historic Preservation (ACHP), if it chooses to participate, and the SHPO that requires the licensee to develop and implement an HPMP. Additionally, FERC requires the licensee to consult with various federal, state, tribal, and non-government parties in the development of any HPMP.

With regards to completion of the final HPMP, SSWD submitted the draft HPMP to Native American tribes on March 28, 2019, and SSWD submitted the draft HPMP to SHPO on June 7, 2019, for 30 review and concurrence. SSWD anticipates it will file with FERC a final HPMP by September 2019, after SHPO concurrence is received. A copy of the HPMP submitted to SHPO on June 7, 2019, is provided as Volume III of this Application for New License.

A copy of the HPMP submitted to SHPO on June 7, 2019 is provided as Volume III of this Application for New License.

3.3.11.3 Unavoidable Adverse Effects

There are no unavoidable adverse effects to tribal interests. No tribal interests, including TCPs, ITAs, or tribal agreements occur in the APE. Therefore, no tribal interests that are historic properties have been identified within the APE and there are no unavoidable adverse impacts to such properties.

3.3.11.4 Measures or Studies Recommended by Agencies and Not Adopted by SSWD

As described in Appendix E4 in this Exhibit E, USFWS, NMFS, CDFW, SWRCB and FWN each submitted written comments on SSWD's December 29, 2018, DLA. None of the written

comments recommended tribal interest resources-specific PM&E measures or studies. SHPO and Indian tribes did not submit any written comments on the DLA.

3.3.11.5 List of Attachments

None.

Page Left Blank