

Study 11.1

TRIBAL INTERESTS STUDY

February 2016

1.0 Project Nexus

South Sutter Water District's (SSWD) continued operation and maintenance (O&M) of the Camp Far West Hydroelectric Project (Project) has the potential to affect tribal interests.

For the purposes of this Tribal Interests Study (Study), tribal interests include Indian Trust Assets (ITA), Traditional Cultural Properties (TCPs), and agreements that may exist between tribes and other entities.¹ Each of these has the potential to be an historic property.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. While most ITAs are on reservations, they may also be found off-reservation. A characteristic of an ITA is that it cannot be sold, leased, or otherwise alienated without the U.S. government's approval. ITAs do not include things in which a tribe or individuals have no legal interest. For example, off-reservation sacred lands or archaeological sites in which a tribe has no legal interest are not ITAs.

TCPs are explained and defined in Parker and King (1998:1) as follows:

One kind of cultural significance a property may possess, and that may make it eligible for inclusion in the [National] Register, is traditional cultural significance. "Traditional" in this context refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice. The traditional cultural significance of a historic property, then, is significance derived from the role the property plays in a community's historically rooted beliefs, customs, and practices. Examples of properties possessing such significance include:

- a location associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world;
- a rural community whose organization, buildings and structures, or patterns of land use reflect the cultural traditions valued by its long-term residents;

¹ This Study does not address other cultural resources, which are addressed in Study 10.1, *Cultural Resources*.

² Historic Properties, as defined under 36 C.F.R. 800.16(l), are any prehistoric or historic sites, buildings, structures, objects, districts, or locations of traditional use or beliefs (i.e., TCPs) that are included in, or eligible for inclusion in, the National Register of Historic Places.

- an urban neighborhood that is the traditional home of a particular cultural group, and that reflects its beliefs and practices;
- a location where Native American religious practitioners have historically gone, and are known or thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice; and
- a location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historic identity.

A traditional cultural property, then, can be defined generally as one that is eligible for inclusion in the National Register 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.

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.

2.0 Study Goals and Objectives

The goal of the Study is to determine if continued Project O&M will affect tribal interests.

The objective of this Study is to gather the information necessary to meet the Study goal by filling gaps in the existing data using field and research methods to identify tribal interests.

This Study focuses only on obtaining the data necessary to meet the Study goal and is not intended to serve as the tool for conducting National Historic Preservation Act (NHPA) Section 106 informal consultation with the State Historic Preservation Officer (SHPO) or interested Native American tribes. Section 106 consultation will be conducted separately, outside of this Study.

The Study does not include the development of potential requirements in the new license.

3.0 Existing Information and Need for Additional Information

Existing, relevant and reasonably available information regarding tribal interests within the existing Federal Energy Regulatory Commission (FERC) Project Boundary plus an additional 0.25-mile (mi) radius around the boundary³ is provided in Section 3.2.11 of SSWD's Pre-Application Document (PAD). SSWD found that the area within the existing FERC Project

³ The PAD refers to this area as the "Initial Cultural Data Gathering Area." This area was included in the cultural literature review and records searches for the PAD.

Boundary did not include any Indian reservation lands, other lands under tribal ownership or sacred lands. Further, SSWD did not find any documented ITAs or TCPs within this area, or any tribal agreements that pertain to lands within this area. However, existing and relevant information indicates that lands within the existing FERC Project Boundary and the surrounding area are highly sensitive for both prehistoric and historic cultural resources. Previous studies did not include ethnographic or TCP investigations. It is important to perform these studies to determine whether unidentified tribal interests occur within the Study Area. A list of potentially interested tribes is provided in Table 4.3.2-1 below in Section 4.3.2.

4.0 Study Methods and Analysis

4.1 Study Area

The Study Area includes all lands, Project facilities, and Project features within the existing FERC Project Boundary, including the North Shore Recreation Area, South Shore Recreation Area, Camp Far West Dam and associated dikes and spillway, the Camp Far West Dam Powerhouse and the Camp Far West Reservoir, for a total of 2,280 acres. The Study Area is shown in Figure 4.1-1 below.

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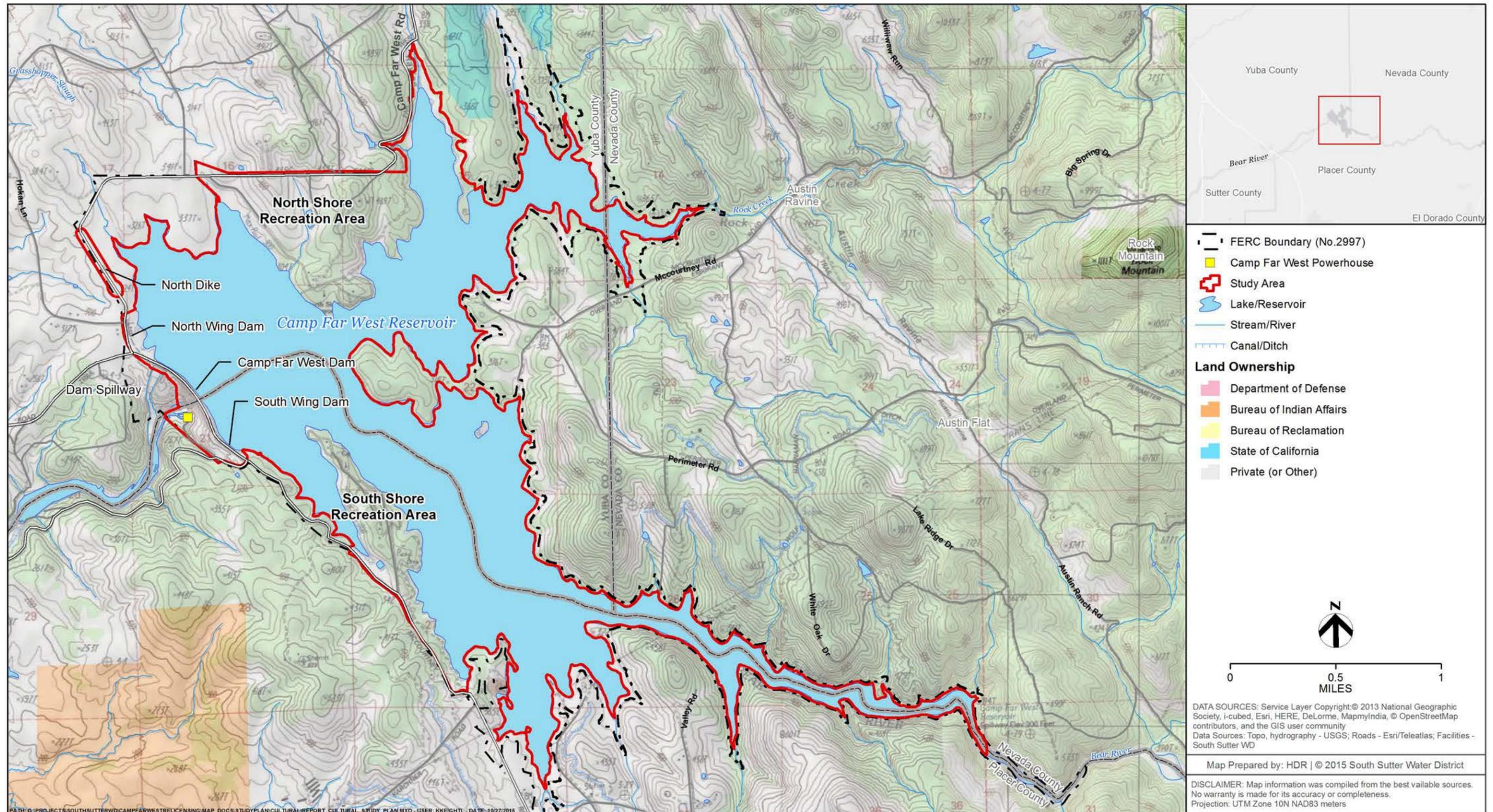


Figure 4.1-1. Study Area and Vicinity for Tribal Interests Study.

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It is anticipated that the Study Area and the Area of Potential Effects (APE), that will be defined during the NHPA Section 106 consultation, are synonymous, pending the SHPO's concurrence on the APE. As defined in 36 C.F.R. Section 800.16(d), an APE is:

...the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

If SSWD proposes an addition to the Project or Project-related effects are identified outside of the Study Area, the Study Area (and subsequently the APE) will be expanded as necessary to include areas potentially affected by the addition.⁴

4.2 General Concepts and Procedures

The following general concepts and practices apply to all SSWD relicensing studies:

- Personal safety is the most important consideration of each fieldwork team.
- If required for the performance of the study, SSWD will make a good faith effort to obtain permission to access private property well in advance of initiating the study. SSWD will only enter private property if such permission has been provided by the landowner.
- SSWD will acquire all necessary permits prior to beginning fieldwork for a study that requires them.
- Field crews may make variances to the study plan in the field to accommodate actual field conditions and unforeseen problems. When a variance is made, the field crew will follow to the extent applicable the protocols in the study plan.
- When SSWD becomes aware of a variance to the study plan, SSWD will issue an e-mail to FERC, United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), United States Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (Cal Fish and Wildlife) and State Water Resources Control Board (SWRCB) describing the variance and reason for the variance. SSWD will summarize in the Application for New License all study plan variances.
- SSWD's performance of the study does not presume that SSWD is responsible in whole or in part for measures that may arise from the study.
- If Global Positioning System (GPS) data are required by a study plan, they will be collected using either a Map Grade Trimble GPS (sub-meter data collection accuracy under ideal conditions), a Recreation Grade Garmin GPS unit (3-meter data collection

⁴ Outside of this Study and as part of its Section 106 consultation, if any changes to the APE are proposed, SSWD will consult with tribes and agencies regarding the modification, and consult with the SHPO for concurrence on the revised APE.

accuracy under ideal conditions), or similar units. GPS data will be post-processed and exported from the GPS unit into Geographic Information System (GIS) compatible file format in an appropriate coordinate system using desktop software. The resulting GIS file will then be reviewed by both field staff and SSWD's consultant's relicensing GIS analyst. Metadata will be developed for deliverable GIS data sets. Upon request, GIS maps will be provided to NMFS, USFWS, Cal Fish and Wildlife or SWRCB in a form, such as ESRI Shapefiles, GeoDatabases, or Coverage with appropriate metadata. Metadata will be Federal Geographic Data Committee (FGDC) compliant.

- SSWD's field crews conducting relicensing studies will record incidental records of aquatic and wildlife species observed during the performance of a study. All incidental observations will be reported in Application for New License. The purpose of this effort is not to conduct a focused study (i.e., no effort in addition to the specific field tasks identified for the specific study) or to make all field crews experts in identifying all species, but only to opportunistically gather data during the performance of a relicensing study. Species included for incidental observation will include, but are not limited to: bald eagle (*Haliaeetus leucocephalus*), golden eagle (*Aquila chrysaetos*), osprey (*Pandion haliaetus*), any bats or positive sign of bats, Chinook salmon (*Oncorhynchus tshawytscha*), steelhead (*O. mykiss*), including redds and carcasses; northern western pond turtle (*Actinemys marmorata*), foothill yellow-legged frog (*Rana boylei*), American bullfrog (*Lithobates catesbeianus*), and aquatic invasive species.
- Field crews will be trained on, provided with, and use materials (e.g., Quat disinfection) for decontaminating their boots, waders, and other equipment between water-based study sites. Major concerns are amphibian chytrid fungus, and invasive invertebrates (e.g., zebra mussel, *Dreissena polymorpha*).
- If in the performance of a study, SSWD observes an ESA-listed or special-status species, within 30 days of the observation SSWD will submit to Cal Fish and Wildlife's California Natural Diversity Database a record, on the appropriate form, of the observation.
- If a study plan requires collection and reporting of time series data, the data will be provided at a minimum in HEC-DSS format. A viewer for these files (HEC-DSSVue) can be obtained from the United States Army Corps of Engineers (USACE) at the following website as of March 2008: <http://www.hec.usace.army.mil/software/hecdss/hecdssvue-dssvue.htm> both Microsoft® Excel and *.DSS formats.
- If a field crew encounters human remains during field work, all work within a 100-foot radius of the discovery will stop immediately. The field crew will not disturb the remains in any way, secure the area to the best of its ability, mark the location with flagging tape in such a way as to not draw attention to the remains, and record the location using a GPS unit or plot the location by hand on a map if no GPS unit is available. As soon as possible thereafter, the field crew will contact SSWD and the relicensing Cultural Resources Lead to report the discovery. SSWD will report the finding and initiate the appropriate steps required under State of California and federal law to address the discovery. Any human remains encountered will be treated with respect, and the field crew members will keep the location confidential and will not disclose the location of the

discovery to the public or to any other study crews. The field crew will keep a log of all calls/contacts it makes regarding the discovery and that details the event. Work will not proceed in the secured area of the discovery until provided clearance by SSWD.

4.3 Methods

The Study will be performed in five steps: 1) archival research; 2) tribal consultation and identification of resources; 3) site visits; 4) identify and assess potential Project effects on tribal properties; and 5) reporting. Each of these steps is described below.

4.3.1 Step 1 – Archival Research

Information has been obtained from existing, relevant and reasonably available sources to assist in identifying data gaps relevant to identifying tribal interests. Additional archival research will be conducted to augment the existing data and may include the following repositories, if appropriate:

- University of California, Berkeley, the Bancroft Library
- California State Library, California Room
- North Central Information Center, California State University, Sacramento (CSU, Sacramento)
- National Archives and Records Administration, Pacific Region, San Francisco
- National Park Service Preservation Brief 36
- Phoebe Hearst Museum of Anthropology
- Other appropriate repositories identified during the research

4.3.2 Step 2 – Tribal Consultation and Identification of Resources

Following the ethnographic literature review discussed in Step 1, the next step in identifying potential tribal interests will involve tribal consultation and interviews. Consultation and any fieldwork and potential tribal interest documentation shall be consistent with National Register Bulletin No. 38, *Guidelines for Evaluating and Documenting Identification of Traditional Cultural Properties* (Parker and King 1998).

In order to facilitate tribal consultation, SSWD intends to retain a qualified, professional ethnographer who meets the standards for ethnography as defined in Appendix II of National Register Bulletin No. 38. SSWD will coordinate its selection of the ethnographer with the assistance of interested tribes and other interested cultural/tribal stakeholders.

This Study will include contacting the representatives identified during PAD preparation and listed in Table 4.3.2-1.

Table 4.3.2-1. Potentially Interested Tribes and tribal representatives identified by the NAHC for the Camp Far West Hydroelectric Project relicensing.

Tribe	Tribal Representative
Colfax-Todds Valley Consolidated Tribe	Pamela Cubbler
	Judy Marks
Tsi-Akim Maidu	Don Ryberg, Chairperson
	Eileen Moon, Vice Chairperson
	Greyson Coney
	Gene Whitehouse, Chairperson
United Auburn Indian Community of the Auburn Rancheria (UAIC)	Jason Camp, Tribal Historic Preservation Officer
	Marcos Guerrero, Tribal Preservation Committee
	Glenda Nelson, Chairperson
Enterprise Rancheria of Maidu Indians	Gary Archuleta, Chairperson
Mooretown Rancheria of Maidu Indians	Guy Taylor
	Laura Winner
	Richard Johnson, Chairperson
Nevada City Rancheria	Shelly Covert, Secretary

The ethnographer will coordinate with tribal representatives (i.e., tribal chairs, tribal councils, elders, as directed by the tribes) to define the scope and breadth of interviews. The ethnographer will arrange for interviews with identified tribal informants to establish times and locations acceptable to the tribal Interviewees. Tribal interviewees and the ethnographer may visit the Study Area together to accurately define potential tribal interests. If necessary, SSWD will arrange for an initial introductory meeting between SSWD, tribal representatives and the ethnographer.

Interviews may be conducted on a one-on-one basis with the ethnographer. The oral traditions and information collected during the interviews will be used to help define potential tribal interests in the Study Area, and assist in making sound judgments and management decisions in Project planning.

If participating tribes do not wish to disclose the locations of any potential tribal interests, the ethnographer will instead work with the tribes to identify the general issues and concerns that the tribe(s) may have regarding potential impacts of the Project upon resources identified by the tribe(s) and further work with the tribes to develop agreeable measures to address these concerns.

4.3.3 Step 3 – Site Visits

Tribal interviewees, or a physically capable tribal representative, and SSWD’s ethnographer may wish to visit cultural resource sites (i.e., locations containing artifacts, features, or other physical remains from past human activities) identified during the Study or during SSWD’s Study 10.1, *Cultural Resources*. The purpose of the visit would be to provide tribal representatives the opportunity to examine any sites of interest to the tribes that were encountered during the Cultural Resources Study fieldwork, and to enable the ethnographer to obtain additional information on potential tribal interests that may be associated with the sites. SSWD or SSWD’s ethnographer will make a reasonable effort to reach out to interested tribes to invite participation in cultural resources site visits by calling, sending letters by way of the U.S. Postal Service, or through electronic mail. If any ethnographic sites (e.g., locations of tribal interests or activities that may or may not contain the physical remains from past or present activities) are identified

during background research, tribal representatives may also wish to visit those locations. Depending on the tribes’ wishes, the ethnographer may also visit the ethnographic sites.

4.3.5 Step 4 – Identify and Assess Potential Project Effects on Tribal Interests

During Step 4, SSWD will document any Project-related effects identified at tribal interests located in the Study Area. This information will be used to inform the need to conduct any NRHP evaluations that may occur under the NHPA Section 106 consultation.

4.3.6 Step 5 – Reporting

SSWD will prepare a report that includes the following sections: 1) Study Goals and Objectives; 2) Methods; 3) Results of the study; and 4) Description of Variances from the FERC-approved study plan. The Study report will be a summary of findings that excludes sensitive, confidential, and privileged information for purposes of the public relicensing process.

A separate report will be filed as “Privileged” with FERC that contains the sensitive, confidential, and privileged information resulting from the study. The Privileged report will be distributed to interested tribes and the SHPO for review and comments as part of the NHPA Section 106 consultation process that will be conducted outside of this Study. A draft of the Privileged report will be provided to the tribes for a 30-day review and comments, and then submitted to the SHPO for 30-day review and concurrence on the report. With the tribes’ approval, the report will be submitted to the North Central Information Center. Any written comments received by SSWD within the review period will be addressed in the final Privileged report filed with FERC. Any TCPs identified during the Study will be evaluated for potential listing in the NRHP in the Privileged report to be filed with FERC.

7.0 Schedule

SSWD anticipates the schedule to complete the Study as follows:

Planning/Pre-field Arrangements (Step 1).....	March 2016 – June 2016
Field Work (Steps 2 & 3).....	June 2016 – September 2016
Office Work and Report Preparation (Steps 4 & 5).....	September 2016 – March 2017

The Study report will be included in SSWD’s DLA and FLA. As described above, a separate report will be filed as “Privileged” with FERC that contains all sensitive, confidential, and privileged information resulting from the Study.

8.0 Consistency of Methods with Generally Accepted Scientific Practices

This Study is consistent with the goals, objectives, and methods outlined for most recent FERC hydroelectric relicensing efforts in California, including for the Don Pedro Project (FERC No.

2299), Yuba River Development Project (FERC No. 2246) and Merced River Hydroelectric Project (FERC No. 2179) relicensings. The methods are consistent with the ACHP's guidelines.

9.0 Level of Effort and Cost

SSWD estimates the cost to complete this Study in 2015 dollars is between \$121,500 and \$139,000.

10.0 References Cited

Parker, Patricia L., and Thomas F. King. 1998. *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. Revised. National Register Bulletin 38. U.S. Department of the Interior, National Park Service, National Register, History, and Education Division, Washington, D.C.