

5. Indian Trust Assets and Tribal Lands

5.1 Overview

5.1.1 Introduction

Indian Trust Assets (ITAs) are legal interests in property held in trust by the United States for Indian Tribes or individuals. The Secretary of the Interior, acting as the trustee, holds many assets in trust. Examples of objects that may be trust assets are lands, minerals, hunting and fishing rights, and water rights. While most ITAs are on-reservations, they may also be found off-reservations. The United States has an Indian trust responsibility to protect and maintain rights reserved by or granted to Indian Tribes or Indian individuals by treaties, statutes, and executive orders. These are sometimes further interpreted through court decisions and regulations.

Tribal lands are lands that have been deeded to tribes or upon which tribes have a historical claim. There are no such lands in the New Melones Lake Area.

5.1.2 Specific Mandates and Authority

Management of ITAs is based on the following regulations, Executive Orders, and agreements:

- **Executive Order 13751, Consultation and Coordination with Indian Tribal Governments, 63 F.R. 96.** Executive Order 13175 was issued to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications. When implementing such policies, agencies shall consult with tribal officials as to the need for Federal standards and any alternatives that limits their scope or otherwise preserves the prerogatives and authority of Indian tribes.
- **Government-to-Government Relations with Native American Tribal Governments (Memorandum signed by President Clinton; April 29, 1994).** Federal Register, Vol. 59, No. 85. The Memorandum directs Federal agencies to consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect Federally recognized tribal governments. Federal agencies must assess the impact of Federal government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during such development.
- **Secretarial Order No. 3175 – Departmental Responsibilities for Indian Trust Resources.** Secretarial Order 3175 requires Interior bureaus and offices to consult

with the recognized tribal government with jurisdiction over the trust property that a proposal may affect.

- **Secretarial Order No. 3206 – American Indian Tribal Rights, Federal -Tribal Trust Responsibilities, and the Endangered Species Act.** This order clarifies the responsibilities of the Interior agencies with regard to the effects of ESA compliance actions affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights. Interior agencies will carry out their responsibilities in a manner that harmonizes the Federal trust responsibility to tribes, tribal sovereignty, and statutory missions of the departments, and that strives to ensure that Indian tribes do not bear a disproportionate burden for the conservation of listed species.
- **Secretarial Order No. 3215 – Principles for the Discharge of the Secretary’s Trust Responsibility.** This order provides guidance to the employees of the Department of the Interior who are responsible for carrying out the Secretary’s trust responsibility as it pertains to ITAs.
- **Departmental Manual 512 DM Chapter 2 – Departmental Responsibilities for Indian Trust Resources.** This chapter of the manual establishes the policies, responsibilities, and procedures for operating on a government-to-government basis with Federally recognized Indian tribes for the identification, conservation, and protection of American Indian and Alaska Native trust resources to ensure the fulfillment of the Federal Indian Trust Responsibility.
- **Indian Policy of the Bureau of Reclamation.** Affirms that Reclamation will comply with both the letter and the spirit of Federal laws and policies relating to Indians; acknowledge and affirm the special relationship between the United States and Federally recognized Indian Tribes; and actively seek partnerships with Indian Tribes to ensure that tribes have the opportunity to participate fully in the Reclamation program as they develop and manage their water and related resources.
- **Bureau of Reclamation Protocol Guidelines: Consulting with Indian Tribal Governments.** The document provides guidance on the protocol for conducting consultation and maintaining government to government relationships with Indian tribes.
- **Bureau of Reclamation Indian Trust Asset Policy and Guidance – 1993**
Memorandum outlining National Environmental Policy Act Handbook Procedures to Implement Indian Trust Asset Policy.

5.1.3 Other Plans That Will Be Considered

Other Federal agencies that manage land in the vicinity of New Melones have similar responsibilities to identify and avoid impacting ITAs. The BLM manages 34,000 acres in Calaveras County and almost 46,000 acres in Tuolumne County, and the Stanislaus National Forest also manages land in Calaveras and Tuolumne Counties. Findings regarding ITAs in their management documents are as follows:

- **BLM** The recently released Folsom BLM-Sierra Draft RMP/EIS (BLM 2006) indicates that no ITA issues were identified.
- **USFS** The Stanislaus National Forest Land and Resource Management Plan (USDA 1991) and Forest Plan Direction Update (USDA 2005) do not identify any ITA issues.

5.1.4 Trends

There are no trends affecting ITAs that are known to specifically involve the New Melones Lake Area. Section 5.2 contains a discussion of trends relating to ITAs that may become relevant to management of lands within the New Melones Lake Area over the life of the RMP/EIS.

5.2 Current Conditions

There are no known ITAs or treaty rights exercised by tribes in the New Melones Lake Area and no reservation or trust lands border on New Melones. Although some treaties were made with California tribes in the Sierra Nevada in the 19th century, these were not ratified by the U.S. Congress and left native groups largely landless and without rights

There are three tribal groups recognized by the Federal government in Calaveras and Tuolumne counties. The California Valley Miwok Tribe (formerly Sheep Ranch Rancheria) has a very small reservation (0.92 acres) in Calaveras County. This land was purchased in 1916 as a reservation for landless Native Americans. There are two reservations in Tuolumne County. The Tuolumne Band of Miwok Indians governs the 356 acre Tuolumne Rancheria. The original 177 acres of land for the reservation was purchased in 1910 and additional lands were subsequently acquired. The Chicken Ranch Rancheria occupies 2.85 acres near Jamestown. Federal recognition of the Chicken Ranch Rancheria was restored as the result of a lawsuit in 1985. Both the Tuolumne Rancheria and the Chicken Ranch Rancheria have gaming operations.

There are no trends affecting ITAs that are known to specifically involve the New Melones Lake Area. Overall trends in California and elsewhere include the assertion of tribal sovereignty, aboriginal rights and Federal recognition. Many tribes were parties to unratified treaties or dispute the legal basis for the past loss of land and resources. Tribal groups such as the Calaveras County Band of Miwok Indians are seeking Federal recognition. As these tribes become recognized, they will be sovereign nations under Federal law. There have been attempts by other tribes to assert the Winters Doctrine named for a Supreme Court decision in 1908 that held that when a reservation is established under treaty, it is implicit that sufficient water is reserved for the tribe's present and future use. Tribes in many places have also sought and succeeded in acquiring Federal land in trust through transfer, exchange or legislation. Tribes are also purchasing land for economic development. Tuolumne Rancheria has expressed an interest in the acquisition of BLM-managed lands that adjoin the reservation (BLM

2006). As individuals and tribes continue to pursue and assert rights, local communities and state and Federal land and resource management practices will be affected.

5.2.1 Resource Management

As a Federal land management agency, Reclamation has the responsibility to identify and consider potential impacts of its plans, projects, programs, or activities on Indian Trust resources. When planning any proposed project or action, Reclamation must ensure that all anticipated effects on Indian trust resources are addressed in the planning, decision, and operational documents prepared for each project. Reclamation also has the responsibility to ensure that meaningful consultation and coordination concerning trust assets and treaty rights with Federally-recognized tribes is conducted on a government-to-government basis. In accordance with Reclamation Indian Trust Asset Policy and Guidance, consultation addressing trust assets is initiated with appropriate Indian tribal groups and the Bureau of Indian Affairs (BIA) and the presence or absence of Indian Trust resources are addressed explicitly in all NEPA documents.

Decision and Guidance Documents

Consideration of the potential presence ITAs were not discussed in the 1976 Master Plan (USACE 1976). Because no resources are believed to be present, there are no decisions guiding their management other than consultation incorporated into the planning process. The 1995 internal Draft RMP (Reclamation 1995) includes a brief description of current management practices for ITAs. Table R-29 summarizes current management actions for ITAs.

Table R-29: Current Decisions and Guidance for Indian Trust Assets

Guidance	Source
Early in the planning process, consultation should be initiated with appropriate Indian Tribes/Nations and the Bureau of Indian Affairs (BIA) concerning potential ITAs. The initial contact with the Indian Tribes/Nations in the immediate area should be government-to-government in a face-to-face meeting, if possible. Coordination should also occur with Reclamation's Native American Affairs Office and the BIA to identify other Indian Tribes/Nations outside the immediate area that may be interested or affected.	DRMP 1995