

# Chapter 7

## Tribal Cultural Resources

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Tribal cultural resources were added as a distinct resource subject to review under the California Environmental Quality Act (CEQA), as amended, effective January 1, 2015, under Assembly Bill (AB) 52, Statutes of 2014, in Public Resources Code (PRC), Section 21074. The amendments to CEQA established a new category of resources and included sites, features, places, cultural landscapes, and sacred places or objects, which are of cultural value to affiliated California Native American Tribes.

Identifying Tribal cultural resources and analyzing the Proposed Project's impacts on them requires consideration of multiple features (generally referred to in this chapter as "character-defining features") that include both natural environmental resources and built or human-made resources, and the relationship between these features.

Some aspects of Tribal cultural resources overlap with other environmental resources, and the analysis of Tribal cultural resources was, therefore, informed by the resource analyses contained in other chapters in this Environmental Impact Report (EIR) and Initial Study. Chapter 4, "Surface Water Hydrology," provides a description of the changes to surface water due to the Proposed Project to provide a basis for understanding the potential impacts on environmental resources evaluated in this EIR. Chapter 5, "Surface Water Quality," analyzes the direct and indirect impacts on surface water quality due to the Proposed Project. Chapter 6, "Aquatic Biological Resources," analyzes the direct and indirect impacts on aquatic biological resources due to the Proposed Project.

The Initial Study for the Proposed Project (Appendix 3A, "Initial Study") presents the analysis of direct and indirect impacts on terrestrial biological resources, aesthetics, cultural resources (which includes archaeological and historic built resources), agriculture and forestry, air quality, energy, geology and soils, greenhouse gas emissions, hazards and hazardous materials, land use and planning, mineral, noise, population and housing, public services, recreation, transportation, utilities and service systems, and wildfire.

## 7.1 Environmental Setting

This section describes the environmental setting and study area for Tribal cultural resources.

As described in Chapter 2, "Project Description," and shown in Figure 2-1, the Proposed Project area includes the Sacramento River from the confluence with the Feather River to the Sacramento-San Joaquin Delta (Delta), the Delta, and the State Water Project (SWP) facilities in Suisun Marsh and Suisun Bay. This EIR evaluates potential impacts associated with long-term operations of the SWP including:

- Updated operating criteria, including operations of SWP facilities in the Delta such as the Harvey O. Banks Pumping Plant (Banks Pumping Plant), John E. Skinner Delta Fish Protective Facility (Skinner Fish Facility), the Clifton Court Forebay, Suisun Marsh Salinity Control Gates, and the Barker Slough Pumping Plant.

No new infrastructure facilities are included in the Proposed Project and long-term SWP operations would not change the California Department of Water Resources' (DWR's) water rights or affect the

water rights of any other legal user of water. The Tribal cultural resources study area is defined by the area in which Proposed Project-related impacts on Tribal cultural resources may occur, which includes the Sacramento River from the confluence with the Feather River to the Delta, the Delta, and the SWP facilities in Suisun Marsh and Suisun Bay.

Under CEQA, DWR must identify Tribal cultural resources in accordance with PRC Section 21074 and in consultation with Tribes that are traditionally and culturally affiliated with the Proposed Project area pursuant to PRC Section 21080.3.1 (i.e., “affiliated Tribes”). In accordance with CEQA, DWR has identified a Tribal cultural resource that may be affected by the Proposed Project. The information summarized in this section is drawn from publicly available information prepared by DWR for the Delta Conveyance Project (DCP) and the ongoing Tribal consultation for the Proposed Project, which documents identification of Tribal cultural resources in the study area.

### 7.1.1 Methods for Resource Identification

DWR is committed to the identification of Tribal cultural resources as part of a good-faith Tribal consultation under CEQA and according to DWR’s *Tribal Engagement Policy* (which incorporates by reference the California Natural Resources Agency’s [CNRA] *Tribal Consultation Policy*) (California Department of Water Resources 2016). DWR’s Tribal consultation and engagement for the Proposed Project recognizes the unique expertise and perspectives held by Tribes about resources of cultural value to Tribes, and the importance of this expertise in identifying potential Tribal cultural resources. DWR also acknowledges that Tribes collect, store, maintain, and manage their own Tribal databases which may be used in the identification of Tribal cultural resources. DWR also considered previous California Register of Historical Resources (CRHR) eligibility evaluations completed by DWR for the DCP EIR to identify known Tribal cultural resources within the study area (California Department of Water Resources 2023).

No physical surveys or record searches have been conducted for this EIR because no site-specific construction actions are proposed. Further, the California Historical Resources Information System record search focuses on archaeological and historical resources and does not necessarily provide comprehensive information regarding Tribal cultural resources. DWR has implemented a broader approach to identifying potentially affected Tribal cultural resources by conducting comprehensive outreach and consultation with local Tribes. DWR’s Tribal consultation has driven the identification of Tribal cultural resources and the Tribal cultural resources impact analysis for the Proposed Project. DWR has not identified any individual Tribal cultural resources during Tribal consultation to date. DWR is currently conducting consultation and will not certify the EIR until after the AB 52 consultation concludes. DWR is committed to ongoing consultation under the CNRA and DWR Tribal policies which could result in the identification of additional Tribal cultural resources for the Proposed Project.

#### 7.1.1.1 Application of the Requirements for Identification of Tribal Cultural Resources

DWR considered whether a resource qualifies as a Tribal cultural resource by the definitions established by CEQA. Under PRC Section 21074(a),

(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, or
- (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 [of the Public Resource Code]. 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.

Under PRC Section 21074(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.”

Under PRC Section 21074(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).”

In general, a resource needs to be significant to a Tribe and eligible for listing in the CRHR to be a Tribal cultural resource. DWR consulted with affiliated Tribes to identify resources that have cultural value to one or more Tribes.

The PRC section was additionally applied to consider whether any resources in the study area qualified as a cultural landscape per the requirements of Section 21074(b). If DWR determined that the resource met the criteria for listing in the CRHR and that it could be geographically defined in terms of the size and scope of the landscape, it was characterized as a Tribal cultural resource. A “cultural landscape” is not defined under CEQA or the CRHR. A cultural landscape is a type of heritage resource that has been defined by the National Park Service as “a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values” (Birnbaum and Peters 1996:4). An understanding of its characterization and affiliated heritage is needed to understand this type of resource. Through previous consultation conducted by DWR with Tribes on the DCP during 2019 and into 2023, the Delta Tribal Cultural Landscape (TCL) was identified.

### 7.1.1.2 Confidentiality Considerations

California law limits the information regarding Tribal cultural resources that can be disclosed in an EIR to avoid public dissemination of confidential Tribal information and to avoid vandalism that could occur as a result of public dissemination of locational data (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 220-221). The State CEQA Guidelines prohibit an EIR from including “information about the location of archaeological resources and sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code” (State CEQA Guidelines, Section 15120(d)). California Government Code (CGC), Section 7927.000 does not require a public agency to disclose under the California Public Records Act any records “of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the [California] Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency” (CGC, Section 6254(r)).

PRC Sections 5097.9 and 5097.993 list the Native American places, features, and objects, the records of which should not be publicly disclosed under the California Public Records Act: “any Native American sanctified cemetery, places of worship, religious or ceremonial site, or sacred shrine located on public property” (PRC, Section 5097.9) and any “Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources ..., including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural, or sacred site ...” (PRC, Section 5097.993(a)(1)).

The California Public Records Act also generally protects archaeological site locations and records from public disclosure. CGC, Section 7927.005 provides: “Nothing in [the Act] requires disclosure of records that relate to archaeological site information and reports maintained by, or in the possession of ... another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American Tribe and a state or local agency.”

These regulations do not require the disclosure of records and specific information concerning Tribal cultural resources and archaeological, cultural, and historical resources in public documents, including this EIR. In accordance with these requirements, confidentiality of the site locations and details of certain archaeological, cultural, and historical resources found in the region is necessary to prevent vandalism to the resources. Public release of information about the resources may allow their discovery by trespassers, leading to potential looting and vandalism, and also may publicly disclose information about confidential activities or information associated with Tribal cultural resources. Therefore, full descriptions of Tribal cultural resources are not provided in this chapter.

DWR recognizes its responsibility under California law to protect confidential information regarding Tribal cultural resources and has implemented protocols for managing confidential information. These protocols include maintaining sensitive Tribal information obtained through consultation and engagement independently for each Tribe. All such information is treated as confidential, and thus is not described in public documents.

### **7.1.1.3 Consultation and Engagement with Tribes**

Tribal engagement is an important component of every major project led by the State of California, providing an opportunity for government-to-government consultation, collaboration, and coordination between Tribal governments and the State. DWR is committed to proactive and meaningful consultation with Tribes. Guided by Executive Orders (B-10-11, N-10-19, N-15-19), DWR conducted government-to-government consultation with Tribes under two different processes: PRC Section 21080.3.1 and DWR’s Tribal Engagement Policy. Appendix 7A, “Tribal Consultation and Engagement Log,” presents a nonconfidential table that lists the Tribal consultation and informational meetings that occurred for the Proposed Project throughout development of the EIR.

PRC Sections 21080.3.1 and 21080.3.2 establish a formal consultation process between CEQA lead agencies and Tribes to, among other things, identify and evaluate Tribal cultural resources and mitigate a project’s potential environmental impacts on Tribal cultural resources. The PRC recognizes Tribal expertise concerning their Tribal cultural resources and the importance of incorporating Tribal knowledge in the analysis of potentially significant impacts on Tribal cultural resources. Because of this, PRC Section 21080.3.1 requires consultation with Tribes that are traditionally and culturally affiliated with the geographic area of the Proposed Project and that have

requested consultation. To participate in consultation under PRC Section 21080.3.1 on projects for which DWR is the CEQA lead agency, a Tribe must have submitted a written request to DWR for notice of proposed projects in the geographic area with which a Tribe is traditionally and culturally affiliated and responded to DWR's written project notification.

In 2016, DWR adopted the DWR Tribal Engagement Policy to guide Tribal consultation and to strengthen and sustain collaboration with Tribes, consistent with Executive Order B-10-11, the CNRA Tribal Consultation Policy, and the previously enacted PRC sections addressing Tribal cultural resources and Tribal consultation. These policies include maintaining consistent and clear communication in Tribal outreach efforts, establishing guidelines for sharing confidential information, providing cultural competency training for DWR staff, and facilitating Tribal participation with communication plans and grant funding. In particular, the DWR Tribal Engagement Policy recognizes Tribes' knowledge of cultural and natural resources and requires DWR to consult with Tribes to identify and protect Tribal cultural resources where feasible, develop treatment plans for impacts on Tribal cultural resources, and enable Tribes to manage and act as caretakers of Tribal cultural resources.

### **Contact Lists and Initial Outreach**

DWR requested a contact list for Tribes traditionally and culturally affiliated with the Proposed Project area from the Native American Heritage Commission (NAHC). The NAHC responded on October 10, 2019, and provided a list of Tribes to contact.

The contact list provided by the NAHC, DWR's AB 52 notification list, and DWR's Internal Contact list were used to guide Tribal consultation outreach on the Proposed Project.

In accordance with CNRA's Tribal Consultation Policy and DWR's Tribal Engagement Policy, DWR sent letters by certified mail, return receipt, on June 2, 2023, to 32 California Native American Tribes that had requested formal notification of proposed projects from DWR under CEQA and were in the Proposed Project Tribal area of interest. The following Tribes were contacted either pursuant to AB 52 (9 Tribes, as marked by an asterisk) or DWR and CNRA's policies.

- Amah Mutsun Tribal Band
- Amah Mutsun Tribal Band of Mission San Juan Bautista
- Buena Vista Rancheria of Me-Wuk Indians\*
- Cachil Dehe Band of Wintun Indians of the Colusa Indian Community
- Calaveras Band of Mi-Wuk Indians
- California Valley Miwok Tribe (Sheep Ranch Rancheria of Me-Wuk)
- Chicken Ranch Rancheria of Me-Wuk Indians
- Colfax-Todds Valley Consolidated Tribe
- Cortina Rancheria—Kletsel Dehe Band of Wintun Indians
- Costanoan Runsen Carmel Tribe
- Estom Yumeka Maidu Tribe of the Enterprise Rancheria
- Guidiville Indian Rancheria

- Indian Canyon Mutsun Band of Costanoan
- Ione Band of Miwok Indians\*
- Mechoopda Indian Tribe of Chico Rancheria\*
- Mooretown Rancheria
- Muwekma Ohlone Indian Tribe of the SF Bay Area
- Nashville Enterprise Miwok-Maidu-Nishinam Tribe
- Nevada City Rancheria Nisenan Tribe
- North Valley Yokuts Tribe\*
- Pakan'yani Maidu of Strawberry Valley Rancheria
- Shingle Springs Band of Miwok Indians\*
- Southern Sierra Miwuk Nation
- The Confederated Villages of Lisjan
- The Ohlone Indian Tribe
- Tsi Akim Maidu
- Tule River Indian Tribe
- Tuolumne Band of Me-Wuk Indians
- United Auburn Indian Community of the Auburn Rancheria (UAIC)\*
- Wilton Rancheria\*
- Winnemem Wintu Tribe\*
- Yocha Dehe Wintun Nation\*

Return receipts, confirming delivery of the letters, were received from all but three Tribes. Those three Tribes (Indian Canyon Mutsun Band of Costanoan, Pakan'yani Maidu of Strawberry Valley Rancheria, and Tsi Akim Maidu) were also contacted by email on July 5, 2023. Five Tribes (Mooretown Rancheria, The Confederated Villages of Lisjan, UAIC, Wilton Rancheria, and Yocha Dehe Wintun Nation) provided a response letter and/or email to DWR's invitation for consultation letter requesting consultation on the Proposed Project.

### **Tribal Consultation**

DWR engaged with all Tribes who requested consultation with DWR in accordance with PRC Section 21080.3.1 or DWR and CNRA's policies. Letters acknowledging requests for consultation were sent on September 29, 2023, to Mooretown Rancheria, The Confederated Villages of Lisjan, UAIC, Wilton Rancheria, and Yocha Dehe Wintun Nation. DWR conducted the following consultation meetings with participating Tribes:

- Wilton Rancheria: 2 virtual meetings
  - October 18, 2023
  - November 17, 2023

- Yocha Dehe Wintun Nation: 2 virtual meetings
  - November 13, 2023
  - April 3, 2024
- The Confederated Villages of Lisjan Nation: 2 virtual meetings
  - January 17, 2024
  - April 24, 2024

Additionally, informational updates have been provided by DWR via email including an opportunity for early review of the Administrative Draft EIR prior to release for public comment to all Tribes that have requested consultation. DWR will continue to offer and accommodate consultation meetings with all five Tribes, based on each Tribe's interest and availability, during development of the Draft EIR and will continue to do so through finalization of the EIR.

The consultation meetings to date between DWR and Wilton Rancheria, Yocha Dehe Wintun Nation, and The Confederated Villages of Lisjan have resulted in information sharing and discussion about the Proposed Project. DWR has provided background information about the Proposed Project, including discussion of the Project description, Project purpose, schedule, and analysis that will be discussed in the Draft EIR. DWR answered questions from the Tribes and clarified that there will not be any construction related to the Proposed Project and that the adjustments to the SWP operations would be minimal and result in no noticeable changes to the waterways in the Project area. The Tribes provided information and input on how important the salmon, smelt, water flow, and quality of the Delta is to the Tribes. Information about the incidental take permit was clarified, and information shared about the fisheries studies included in the Project description.

## **Tribal Perspectives**

During consultation with DWR, Tribes have expressed that waterways and surrounding areas are highly culturally sensitive, including for ceremonial, trade, and subsistence activities as well as sensitive for encountering archaeological resources.

The Tribes have an interest in the criteria, timing, and volume of water for operations coinciding with Tribal ceremonies. These ceremonies may take place during certain fish runs. The Tribes would like to be included in the future discussions about the timeframe of operations/flows to consider Tribal ceremonies. Each Tribe's goal is to protect Tribal cultural resources both in the short-term and long-term. To date, consultation meetings and discussions with the Tribes have not identified any individual Tribal cultural resources or concerns with the Proposed Project and the Tribes have been supportive of the Delta as a TCL.

UAIC provided written comments via email during the review of the Administrative Draft EIR. UAIC's Tribal Historic Information System has many Tribal cultural resources registered along the Sacramento and Feather Rivers, including named villages and Sacred Land. UAIC has identified known and recorded Tribal cultural resources in the northern portion of the Project area, along both rivers. UAIC and DWR have been unable to discuss the Project in detail through consultation, despite several attempts to schedule consultation meetings to discuss the Project and clarify the Tribe's comments regarding Tribal cultural resources known to them in the Project area. DWR followed up with UAIC via phone call and email and it was agreed that the locations and potential impacts on the Tribal cultural resources mentioned in the email were not clearly identified. The Tribe confirmed

that since the Project does not have a construction component (ground disturbance), UAIC concurs with the initial determination in the Administrative Draft Tribal Cultural Resources chapter that the Project would result in no impact on Tribal cultural resources. DWR confirmed consultation will continue with consulting Tribes including UAIC, as needed and upon request of the Tribe. No other written feedback was provided by the other four consulting Tribes after review of the Administrative Draft chapters of the EIR.

## 7.1.2 Delta Tribal Cultural Landscape

Through consultation with Tribes on DWR's DCP during 2019 and into 2023, the Delta TCL was identified (California Department of Water Resources 2023). In the DCP EIR, DWR concluded that a geographically defined cultural landscape, which meets the PRC criteria (PRC, Section 21074(b)) for a Tribal cultural resource, exists (the Delta TCL). The Delta TCL is a large, complex, multi-component Tribal cultural resource that comprises diverse natural and human-made character-defining features.

Most of the Proposed Project area is located in the Delta TCL. A portion of the Proposed Project located in Solano County west of the Roaring River Distribution System and Suisun March Salinity Control Gates is outside of the designated boundary of the Delta TCL.

During Tribal consultation for the Proposed Project, the Tribes confirmed the relationship between the natural and human-made features of the Delta and that it continues to retain culturally valuable physical, spiritual, and ceremonial features. Based on this information and DWR's previous determination as a result of the DCP Tribal consultation, DWR reaffirms the Delta is a geographically defined TCL, which meets the CEQA criteria for a Tribal cultural resource.

Recognizing the Delta TCL as a cultural landscape respects the consulting Tribes' willingness to discuss Tribal history, ceremony, and sacred Tribal affiliations with the Delta that are typically only discussed within a Tribe, and their willingness to discuss sensitive Tribal perspectives about being displaced from ancestral lands and the loss of Tribal lands to non-Tribal people. The impact analysis presented in this chapter evaluates whether the Proposed Project may materially impair character-defining features of the Delta TCL. The character-defining features may be located in discrete known locations or throughout all or parts of the study area.

The nature of character-defining features are as follows:

- The Delta as a Tribal homeland and place of origin.
- The rivers and waterways within the Delta that are sacred.
- Terrestrial species habitats that are part of the Delta's ecosystem and Tribal heritage.
- Fish and aquatic species habitats that are part of the Delta's ecosystem and Tribal heritage.
- Ethnohistorical locations that are sacred places and historically important.
- Archaeological sites that are sacred or important historical places.
- Views and vistas of and from the Delta that are sacred and important to Tribal heritage.

DWR's understanding of the types of physical features that define Tribal cultural resources (i.e., the character-defining features of a Tribal culture resource), how the Proposed Project and alternatives may affect character-defining features, and the cultural values they embody is informed by DWR's consultation with Tribes who are traditionally and culturally affiliated with the study area and chose



to consult with DWR about the Proposed Project. A list of the “consulting Tribes” is provided in Section 7.1.1.3, “Consultation and Engagement with Tribes.” DWR acknowledges that a Tribe’s participation in consultation does not imply the Tribe’s approval or acceptance of the Proposed Project.

### 7.1.3 Potential Tribal Cultural Resources

DWR has determined the Delta TCL is a Tribal cultural resource which overlaps with most of the Proposed Project study area. Although UAIC has identified Tribal cultural resources in the Project area, UAIC confirmed that because the Proposed Project does not include construction there would be no impact on the Tribal cultural resources. As of the preparation of this EIR, other Tribes actively consulting with DWR on the Proposed Project have not identified an individual resource that may qualify as a Tribal cultural resource, or that they feel could be affected by the Proposed Project. Tribal consultation completed for the Proposed Project has not yielded information to determine if other resources exist in the study area. While individual Tribal cultural resources have been identified by UAIC, DWR is continuing consultation with all consulting Tribes and may learn additional information that leads to identification of a resource that is determined to qualify for listing in the CRHR as an individual Tribal cultural resource. DWR is committed to continuing consultation and engagement with Tribes throughout implementation of the Proposed Project, but formal consultation under PRC Sections 21080.3.1 and 21080.3.2 will conclude prior to certification of the Final EIR. DWR will make its CEQA determinations and Project approvals based on the information received through consultation before the time of Project approval and certification.

## 7.2 Regulatory Setting

### 7.2.1 California Environmental Quality Act

CEQA requires public agencies to consider the impacts of their actions on Tribal cultural resources. Under PRC Section 21084.2, 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.” PRC Section 21074 states the following:

- (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).

As defined in PRC Section 21074, to be considered a Tribal cultural resource, a resource must be either:

1. Listed or determined to be eligible for listing, on the national, state, or local register of historic resources; or
2. A resource that the lead agency determines, in its discretion and supported by substantial evidence, to treat as a Tribal cultural resource pursuant to the criteria in PRC Section 5024.1(c). PRC Section 5024.1(c) provides that a resource meets criteria for listing as an historic resource in the California Register if any of the following apply:
  - a. It is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage.
  - b. It is associated with the lives of persons important in our past.
  - c. It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
  - d. It has yielded, or may be likely to yield, information important in prehistory or history.

## **7.2.2 California Natural Resources Agency Tribal Consultation Policy**

The CNRA Final Tribal Consultation Policy, adopted November 12, 2012, was developed in response to Governor Edmund G. Brown Jr.’s Executive Order B10-11 (September 19, 2011), which states, “[t]he purpose of this policy is to ensure effective government-to-government consultation between the Natural Resources Agency, its Departments...and Indian Tribes...to provide meaningful input into the development of regulations, rules, policies, programs, projects, plans, property decisions, and activities that may affect Tribal communities.”

## **7.2.3 California Department of Water Resources Tribal Engagement Policy**

DWR adopted the Tribal Engagement Policy, effective March 8, 2016, to strengthen DWR’s commitment to improving communication, collaboration, and consultation with California Native American Tribes. This policy is consistent with Executive Order B-10-11, the CNRA’s Tribal Consultation Policy, and CEQA, and includes principles that facilitate early and meaningful Tribal engagement with California Native American Tribes.

## 7.3 Environmental Impacts

This section describes the environmental impacts associated with Tribal cultural resources that would result from the Proposed Project. It describes the methods used to determine the impacts of the Proposed Project and lists the thresholds used to conclude whether an impact would be significant. Where appropriate, measures to mitigate (i.e., avoid, minimize, rectify, reduce, eliminate, or compensate for) potentially significant impacts are provided.

This section also describes the methods used to evaluate changes to Tribal cultural resources associated with the Proposed Project. These changes would be associated with long-term operations of the SWP, including operations of SWP facilities in the Delta (i.e., Banks Pumping Plant, Skinner Fish Facility, Clifton Court Forebay, Suisun Marsh Salinity Control Gates, and the Barker Slough Pumping Plant). No new infrastructure facilities are included in the Proposed Project. The methods discussed in this section were used to assess the potential for operations-related changes resulting from the Proposed Project in the physical environment to materially impair character-defining features, as further described in Section 7.3.2, "Thresholds of Significance."

### 7.3.1 Impact Mechanisms for Tribal Cultural Resources

This section presents the mechanisms by which the Proposed Project could affect Tribal cultural resources. Impact mechanisms involve the following:

- Activities that materially impair character-defining features of a Tribal cultural resource by disturbing, damaging, or destroying it. This may include activities such as ground disturbance that physically displaces buried cultural materials, burials or grave goods, or habitats that support important plant or animal species. This can also include activities that reduce the abundance or distribution of culturally important species or their habitats (terrestrial or aquatic biological resources) in such a way that affiliated Tribes' ability to perform ceremonies associated with the plant or animal species or gather the plant or animal for traditional medicinal or other uses is materially impaired.
- Activities that physically alter character-defining features of a Tribal cultural resource in ways that materially impair an affiliated Tribe's spiritual or ceremonial experience even if the character-defining feature is not destroyed or otherwise physically damaged. This may include limiting access to the resource, changing a character-defining feature in a way that disassociates the feature from its cultural meaning, or introducing a barrier between features that are meant to be experienced together.
- Activities that would be visible from character-defining features of a Tribal cultural resource that introduce incongruent features to, or remove important visual cues from, the surrounding setting in ways that interfere with the ability to understand or experience the full meaning of the feature may materially impair the character-defining feature.

The Proposed Project would not require construction of any new facilities and long-term SWP operations would not affect the water rights of any other legal user of water. Therefore, the impact analysis does not evaluate construction impacts, but rather focuses on the short- and long-term direct and indirect operations-related impacts compared to existing conditions. The following impact analysis considers the potential impacts of the Proposed Project.

This impact analysis incorporates the information and results presented in Chapter 4, Chapter 5, and Chapter 6. CEQA requires that a project's impacts on Tribal cultural resources be considered as part of the overall analysis of project impacts (PRC Sections 21080.3.1(a), 21084.2, and 21084.3).

California Native American Tribes are considered experts with respect to Tribal cultural resources. Thus, the analysis of whether Proposed Project impacts may result in a substantial adverse change to the significance of a Tribal cultural resource depends heavily on consultation between the lead agency and culturally affiliated California Native American Tribes during the CEQA process.

## 7.3.2 Thresholds of Significance

While CEQA defines a significant impact on a Tribal cultural resource as a "substantial adverse change in the significance of the Tribal cultural resource" (PRC, Section 21084.2), the meaning of a substantial adverse change in the significance of a Tribal cultural resource is not defined further by the State CEQA Guidelines. However, CEQA uses a similar definition for evaluating potential environmental impacts on historical resources: "a project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment" (PRC, Section 21084.1). Section 15064.5 of the State CEQA Guidelines goes on to explain that a substantial adverse change in the significance of an historical resource means the physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be "materially impaired."

The State CEQA Guidelines further recognize that an historical resource may be materially impaired if it is altered in a manner that adversely affects the physical characteristics that convey its historical significance and that justify its eligibility for inclusion in the CRHR or its inclusion in a local register of historical resources. *Materially impaired*, as commonly understood and applied in this context, means a project would result in a change to the resource that goes beyond a nominal change and results in a change to the characteristics of the resource such that the historical resource no longer conveys its historical significance, or a change in an intrinsic characteristic that makes it eligible for listing under the CRHR. Although Tribal cultural resources are distinct from historical resources, CEQA guidance on how a project may materially impair a historical resource, and therefore result in a significant impact, is instructive for evaluating whether the project would have a potentially significant impact on Tribal cultural resources.

For the purposes of this analysis, impacts are evaluated for both the Delta as a TCL (the Delta TCL) and for potential individual Tribal cultural resources that may be identified through ongoing Tribal consultation. Tribal cultural resources are defined in PRC Section 21074 as "sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe" that is: listed or eligible for listing in the CRHR, or in a local register of historical resources as defined in PRC Section 5020.1(k); or 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 PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American Tribe.

The following criteria were used to determine whether the Proposed Project would cause a substantial adverse change in the significance of a Tribal cultural resource as defined in PRC Section 21074.

- A substantial adverse change to the significance of the Delta TCL would occur if the Proposed Project would materially impair character-defining features; character-defining features would be materially impaired if the Proposed Project substantially limits or eliminates an affiliated Tribe's ability to spiritually, physically, or ceremonially experience the Delta as a whole.
- A substantial adverse change to the significance of a Tribal cultural resource would occur if the Proposed Project would materially impair character-defining features that qualify the resource for listing in the CRHR; character-defining features would be materially impaired if the Proposed Project substantially limits or eliminates an affiliated Tribe's ability to spiritually, physically, or ceremonially experience those features.

### 7.3.3 Impact Analysis

#### Impact TCR-1: Impacts on the Delta Tribal Cultural Landscape Tribal Cultural Resource

DWR has engaged 32 California Native American Tribes to provide information on the Proposed Project and request that they notify DWR if they have any concerns regarding potential impacts of the Proposed Project on Tribal cultural resources. DWR has received responses from five Tribes requesting consultation with DWR on the Proposed Project. Input received from consulting Tribes was included in this analysis.

The nature of how the Proposed Project could materially impair character-defining features of the Delta TCL varies as it depends on the features themselves and the effects of the Proposed Project, as follows:

- *The Delta as a Tribal homeland and place of origin.* The scale of the Project does not have the potential to materially impair the Delta as a Tribal homeland and place of origin character-defining feature.
- *The rivers and waterways within the Delta that are sacred.* The Proposed Project would not cause physical changes from long-term operation of the SWP; however, the proposed long-term operation of the SWP would alter surface water flows in the Delta to a limited extent that would remain within the range of historical operations. As detailed in Chapter 5, the Project would result in less-than-significant impacts on water quality; however, a less-than-significant adverse change or degradation in water quality would occur. These changes in hydrodynamics and water quality within the Delta TCL do not materially impair the river and waterways character-defining features.
- *Terrestrial species habitats that are part of the Delta's ecosystem and Tribal heritage.* The Project would not result in any impacts on terrestrial species and habitats. The Project would not materially impair an affiliated Tribe's ability to physically, spiritually, or ceremonially experience these character-defining terrestrial species habitats.
- *Fish and aquatic species habitats that are part of the Delta's ecosystem and Tribal heritage.* The effects of the Proposed Project on fish and aquatic species and habitats (some of which are character-defining features of the Delta TCL) are addressed in Chapter 6. The nominal effects of the Proposed Project on character-defining fish and aquatic species habitats identified in Chapter 6 would be less than significant from a biological resources perspective. The Project would not materially impair an affiliated Tribe's ability to physically, spiritually, or ceremonially experience these character-defining features of the Delta TCL.

- *Ethnohistorical locations that are sacred places and historically important.* The Proposed Project would not cause physical impacts that may alter locations of villages, ceremonies, paths and trails, or trade and subsistence activities that are character-defining features of the Delta TCL, or introduce incongruent features that materially impair the spiritual or ceremonial qualities of these character-defining features.
- *Archaeological sites that are sacred or important historical places.* The Proposed Project would not involve the construction of new facilities, and would not include earth-moving activities. The Proposed Project would not result in disturbance of archaeological resources. It would not materially impair the spiritual or ceremonial aspects of these character-defining features.
- *Views and vistas of and from the Delta that are sacred and important to Tribal heritage.* The Proposed Project would not involve the construction of new facilities and would not impair views and vistas that are character-defining features of the Delta TCL.

Based on consultation and input received by the Tribes to date, the Proposed Project would have **no impact** on the Delta TCL Tribal cultural resource.

### **Impact TCR-2: Impacts on Individual Tribal Cultural Resources**

As discussed in Section 7.1.3, “Potential Tribal Cultural Resources,” in addition to the Delta TCL as a known Tribal cultural resource, DWR recognizes that character-defining features of the Delta TCL, or other identified resources, such as those disclosed by UAIC, may be identified or better understood through ongoing Tribal consultation efforts. DWR would apply a three-step assessment of significance, known attributes, and integrity using the information shared by consulting Tribes and collected independently by DWR to assess which individual landscape components (character-defining features) would warrant further CRHR evaluation as potential individual Tribal cultural resources. DWR may conclude that the current evidence in DWR’s record would support a finding that individual resources hold significance for consulting Tribes primarily, or exclusively, when considered holistically from a landscape perspective. However, consultation on the Proposed Project is still underway and DWR will not certify the EIR until after this consultation concludes. As a part of this ongoing consultation, Tribes may continue to share their knowledge and thus expand DWR’s understanding regarding the importance of these resources, which may result in identification of additional individual Tribal cultural resources.

Although Tribal consultation for the Proposed Project has been ongoing, consulting Tribes may continue to provide DWR with a greater depth of understanding regarding the cultural significance of the Delta TCL character-defining features, or identify other sites, features, places, cultural landscapes, sacred places, and objects with cultural value to consulting Tribes that are not character-defining features of the Delta TCL. If additional information is made available to DWR during consultation on the Proposed Project, based on this more in-depth understanding, DWR may determine that character-defining features should be reevaluated for individual CRHR eligibility or that a new resource should be evaluated for individual CRHR eligibility.

The features that make an individual resource eligible for CRHR listing, its significance, attributes and location, and integrity, and the precise nature of the impact on an individual Tribal cultural resource would need to be determined if an individual Tribal cultural resource is identified through consultation. In general, DWR anticipates that if an individual resource is identified, the Proposed Project has the potential to materially impair an affiliated Tribe’s ability to physically, ceremonially, or spiritually experience the resource.

As of the preparation of this EIR, only UAIC has identified known and recorded Tribal cultural resources in the northern portion of the Project area, along both the Sacramento and Feather Rivers; however, UAIC has confirmed that the Tribal cultural resources would not be affected by the Proposed Project.

DWR's Tribal consultation process is ongoing, and the potential remains for a Tribal cultural resource to be identified that could be affected by the Proposed Project.

Based on consultation and input received by the Tribes to date, the Proposed Project would have **no impact** on individual Tribal cultural resources.