

Maxwell Intertie Section 106 Technical Memorandum



To: File
CC: Ali Forsythe
Date: August 31, 2022
From: Laurie Warner Herson
Subject: Status of Section 106 Activities for the Maxwell Intertie Project

1.0 Introduction

The U.S. Department of Agriculture (USDA), Rural Development (RD) has requested that the Sites Project Authority (Authority) demonstrate that Section 106 of the National Historic Preservation Act (Section 106 or Section 106 of the NHPA) compliance efforts for the Maxwell Intertie Project (MWI) have progressed since the 2018 Environmental Assessment/Finding of No Significant Impact (EA/FONSI) and the conditional approval of the Community Facilities direct loan application. This technical memorandum provides a summary of the EA commitments, Section 106 requirements under the USDA Nationwide Programmatic Agreement (NPA), and the status of Section 106 compliance activities relevant to the MWI.

2.0 Background

In 2018 the Authority applied for a USDA Rural Development Community Facilities direct loan to assist in the financing of the construction of the proposed MWI facilities, located in Colusa County, California. The proposed MWI facilities would connect the existing Tehama Colusa Canal (TC Canal) and the existing Glenn Colusa Irrigation District's (GCID) Main Canal to increase water management flexibility and improve water supply resiliency for Authority participants during dry years. The MWI would also increase the efficiency and reliability of water management in western Sacramento Valley.

2.1 NEPA Environmental Assessment

Prior to taking a federal action (i.e., providing financial assistance), USDA is required to complete an environmental impact analysis in accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's (CEQ) regulations for implementing NEPA, and USDA's NEPA implementing regulations, Environmental Policies and Procedures. After completing an independent analysis of an environmental report prepared by the Authority and its consultant, USDA concurred with its scope and content. USDA adopted the report and issued it as the Agency's EA for the proposed MWI, finding it consistent with federal regulations and that it met the standards for an adequate assessment. USDA released the Draft EA (USDA 2018a) for public review in August 2018. A Final EA (USDA 2018b) was completed in September 2018 and includes the USDA FONSI, dated September 24, 2018.

2.2 Section 106

As noted in the FONSI, the USDA considers the federal action (i.e., providing financial assistance) an undertaking subject to review under Section 106 of the NHPA, 16 USC 470(f), and its implementing regulation, "Protection of Historic Properties" (36 CFR Part 800). On August 17, 2018, the USDA sent a notification to the California State Historic Preservation Officer (SHPO), stating:

*"This memo is to inform you that the USDA has chosen to apply the Programmatic Agreement among the U.S. Department of Agriculture Rural Development Programs, National Conference of State Historic Preservation Officers, Tribal Signatories, and The Advisory Council on historic Preservation for Sequencing Section 106 (NPA) for the Project construction work plan."*¹

... Once we have determined the final Area of Potential Effect (APE), RHS [Rural Housing Service] and the Authority will initiate a section 106 review and provide you with a complete project description and a description of the APE"

A copy of the NPA was attached to the notification sent to SHPO. The NPA was also appended to the Final EA (USDA 2018, Appendix D). On August 17, 2018, the Authority's General Manager signed a NPA Applicant Awareness Certification acknowledging, among other items, that:

1. As the applicant the Sites Project Authority (Authority) understands that to use the NPA it must "initiate Section 106 no later than ninety (90) business days after the announcement of the Authority's obligation if it has not done so already; and to notify the appropriate RD agency that Section 106 has been initiated in accordance with 36 CFR Part 800.2(c)(4), and 7 CFR Part 1970.5(b)(2) of the regulations, "Environmental Policies and Procedures" (7 CFR Part 1970)", per Stipulation I.C of the NPA.

USDA's action consisted of the conditional approval of the Community Facilities direct loan and not a final project approval. The Authority is required to meet all conditions outlined by USDA in their letter of September 26, 2018 (USDA 2018c), before the closure of the loan and the loan funds are dispersed. This includes (but is not limited to) the completion of:

- Additional technical analyses
- Additional details on financing and participation
- All environmental reviews and permits

3.0 EA/IS and NPA Section 106 Requirements

The Maxwell Intertie EA (USDA 2018b) addresses a range of resources, including cultural resources. A preliminary APE was developed for the project and is shown in Attachments A and B (Figures 3.7-1a and 3.7-1b, respectively). As noted in Section 3.7.2.2 of the EA:

¹ Standard reasons cited for use of the NPA included: 1) Because the schedule may span one to five years or longer, can be composed of multiple projects that are rarely staked or precisely located and/or the nature of the undertaking is often unclear, prior to the obligation of funds; and 2) The applicant does not have the financial wherewithal to fund Section 106 reviews, and/or the analysis of alternatives, without some level of confidence that RD's low interest funding or grants will be available to assist them.

“Portions of the APE have been previously studied for archaeological and built environment cultural resources in support of the proposed Sites Reservoir Project (URS 2013a, 2013b) and their results are applicable to the MWI project. This section provides a summary of the results of those studies, as they pertain directly to the MWI project.”

Attachment C (Figure 3.7-2 of the EA) illustrates areas that were previously studied. Based on earlier studies, it was determined that the following known resources are located within or adjacent to the APE:

- The Glenn Colusa Irrigation District Main Canal appears eligible for inclusion to the National Register of Historic Places (NRHP) under Criteria A and C² (URS 2013a)
- Funks Dam as a built environment resource
- Archaeological resources, including human remains, are known to exist in the currently inundated Funks reservoir

No new or additional studies were undertaken in preparation of the EA. Nor was there any consultation with Native American tribes. Instead, the EA states that the Authority, under the direction of USDA, will comply with the requirements of Section 106 by implementing the NPA. These requirements include the following NPA stipulations and associated studies/activities, as described in the EA and summarized below:

Stipulation V. Identification and Evaluation of Historic Properties

“A. ...the Applicant [the Authority] working on RECDS’ [Rural Economic and Community Development Services] behalf shall consult with the appropriate Information Center and Interested Persons to identify historic properties within the APE. These identification efforts shall extend to all buildings, structures, objects, archeological sites, and sites that may have special importance to Native Americans or other Interested Persons and appear to be fifty (50) or more years old. RECDS will assess the recommendations of the Information Center and conduct any surveys that RECDS determines necessary...”

B. The RECDS shall evaluate each property identified pursuant to Stipulation V. A. by applying the National Register Criteria, 36 CFR 60.4, in consultation with the SHPO to each property within the APE. The RECDS shall notify the SHPO in writing of its determinations regarding the National Register eligibility...”

Specific activities identified in the EA include:

- The project applicant will request a record search from the Northwest Information Center of the California Historical Resources Information System at Sonoma State University to determine if additional cultural resources studies have been conducted, or if additional cultural resources have been recorded or evaluated, in addition to those reported herein, within the MWI APE and a 0.5-mile search buffer...
- In order to identify resources that may have special importance to tribes and the public, the Authority will contact local Native American tribes, historical societies, and other interested

² The RECDS has determined that there will be no adverse effect to the historic property, pursuant to 36 CFR 800.4(d)(1).

persons, as appropriate to gather additional information about potential cultural resources within the APE.³

- The USDA will ensure that the project proponent will conduct an archaeological survey of the acreage within the project's APE that has not previously been examined to identify previously unrecorded archaeological sites. All sites identified will be recorded on the appropriate pages of California Department of Parks and Recreation (DPR) form 523. Recordation will include photodocumentation, and the site location will be recorded with a global positioning system unit. Furthermore, any built environment resources that are 50 years old, or are soon to be 50 years old, that have not previously been recorded will be documented on appropriate DPR form 523 pages. At a minimum, Funks Reservoir and the TC Canal will be recorded.
- Should archaeological sites be identified during the survey effort, data would be gathered that would allow each site to be evaluated according to 36 CFR 60.4 criteria. Subsurface excavations, in consultation with associated Native American tribes, may be required at Native American archaeological sites. The need for subsurface excavations at historic-era archaeological sites would depend on the results of archival research conducted in support of the evaluations.
- Funks Dam, along with any other identified built environment resources that require evaluation, will be evaluated within the body of the DPR form 523 pages.
- Traditional cultural properties may be identified through future consultation with Native American tribes and other interested parties.
- Native American cultural sites that are not also archaeological sites would be evaluated through consultation with the affected tribe(s).

Stipulation VI. Assessment of Effects to Historic Properties

“A. The RECDs shall apply the Criteria of Effect and Adverse Effect, in accordance with 36 CFR 800.9 to all Historic Properties located in the APE...”

Specific activities identified in the EA include:

- The GCID Main Canal, appears eligible for listing in the NRHP under criteria A and C, and is being treated as eligible. If it is determined that other historic properties exist within the APE, the Authority will provide the SHPO with full documentation to assess the effects of the proposed action on the historic properties, per this stipulation, and, if necessary, develop mitigation measures pursuant to Stipulation VII.A, Standard Mitigation Measures of the PA.

Stipulation VIII, Discoveries and Unforeseen Effects

“A. The RECDs should plan for discoveries made during project implementation, particularly when an undertaking will take place within an area where buried archeologic deposits may be

³ According to the EA, the USDA NPA preamble acknowledges the need for USDA to retain government-to-government consultation with Native American tribes, but also “advocates” for project proponents to contact Native American tribes to discuss the potential for significant resources within a project APE.

encountered. Such discovery plans shall be prepared in consultation with the SHPO and interested Native American groups and shall be submitted to the SHPO for review and approved prior to the commencement of the undertaking.”

Specific activities identified in the EA include:

- The USDA will ensure that the Authority prepare a discovery plan for resources found during project construction, in accordance with Stipulation VIII.A., prior to initiating construction. The plan will detail the protocols for avoiding or treating archaeological sites discovered during construction, including notification of the Colusa County coroner if human remains are uncovered, such that there will be no adverse effect on the resources through implementation of mitigation measures that would be prepared in future consultation with the SHPO and Native American tribes.

The EA identifies the following mitigation measure that would be implemented to reduce or avoid adverse effects on cultural resources:

Mitigation Measure CR MM-1: Comply with National Programmatic Agreement Conditions

The NHPA Section 106 process will need to be fully concluded prior to ground disturbing action. The agency invoked the National Programmatic Agreement (NPA) on this project. All terms and conditions of the July 2018 NPA must be complied with prior to construction. The Authority signed the NPA Awareness Certificate on 8/17/2018.

4.0 Ongoing Activities as of August 2022 that Encompass the MWI

As noted above, prior cultural resource studies in the vicinity of the MWI have been undertaken as part of the Sites Reservoir Project⁴ and were relied upon in preparing the MWI EA analysis. The larger reservoir project encompasses the MWI footprint and adjacent areas. Studies prepared for the Sites Reservoir Project can and will be utilized to support the Section 106 process for the MWI.

4.1 Geotechnical Investigations that Encompass the MWI

As part of the Sites Reservoir Project, the Authority and the Bureau of Reclamation (Reclamation) have undertaken three separate geotechnical investigation efforts in the area of the MWI and for some of the same facilities as are included in the MWI. The Authority has also undertaken a fourth geotechnical investigation effort in the area of the MWI and for some of the same facilities as are included in the MWI. The cultural resources efforts for these geotechnical investigations are summarized below.

The initial, 2019 geotechnical investigation was a joint effort between the Authority and Reclamation. Six geotechnical sites were located in the area of the proposed Terminal Regulating Reservoir (TRR) and pipelines for the MWI. Section 106 compliance was completed by Reclamation. The Authority and Reclamation completed a cultural sensitivity study, entitled “Cultural Resources Sensitivity Analysis Report – North of Delta Offstream Storage/Sites Reservoir Feasibility Geotechnical Investigation Colusa

⁴ The Sites Reservoir Project is a proposed off-stream reservoir west of Maxwell, CA. It would divert water from the Sacramento River in higher flow conditions and store water in the new Sites Reservoir for later use by farms, cities, and the environment. Funded by State and Federal governments and public water agencies, the Sites Project Authority would build, own, and operate Sites Reservoir.

and Glenn Counties, California” (Horizon 2019). Reclamation also consulted with federally-recognized tribes that have been culturally or traditionally affiliated with the area. Based on the analysis in the study and considering the input of the tribes, Reclamation found no adverse effects to historic properties and SHPO concurred with Reclamation’s assessment (Office of Historic Preservation 2019). The Authority and Reclamation also prepared a Post Review Discovery Plan, Archeological Monitoring Plan, and Burial Treatment Plan for the effort; as well as conducted pre-construction surveys and cultural (tribal and archaeological) monitoring during the drilling activities. No inadvertent discoveries were made. As part of this effort, the Authority also consulted with tribes that have been culturally or traditionally affiliated with the area under State Assembly Bill (AB) 52 requirements.

Similar geotechnical investigation efforts that included portions of the MWI and for some of the same facilities as are included in the MWI were undertaken in 2020, 2021, and are being planned for 2022-2024. Similar efforts, reporting and processes have been conducted for the 2020 effort. There was no federal nexus for the 2021 geotechnical efforts, and thus, the Authority conducted a slightly abbreviated process. Similar efforts, reporting and processes have recently been conducted for the planned 2022-2024 geotechnical efforts with Reclamation as the lead Federal agency. These efforts included pre-construction surveys, a monitoring and inadvertent discovery plan, cultural (tribal and archaeological) monitoring during the drilling activities, and consultation with tribes through either Reclamation or the Authority or both agencies. To date, no inadvertent discoveries have been made during the geotechnical investigation efforts.

4.2 Other Sites Reservoir Project Activities that Encompass the MWI

The Authority has been moving forward in analyzing the effects of a revised footprint for the Sites Reservoir Project, including preparation of a joint Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS) and supporting studies. Activities conducted for the Sites Reservoir Project that encompass and support the Section 106 process for the MWI include the following:

- Preparation of a draft Cultural Resources Identification Summary 2001-2019 technical memorandum in August 2020. This provided a summary of cultural resources analyses completed for the Sites Reservoir Project from 2001 to 2020 and identified gaps in the work that will need to be addressed to satisfy Section 106 of the National Historic Preservation Act. Studies conducted for the Project from 2001 to 2019 include the following:
 - ODOSS I-Sites Reservoir Cultural Resources Investigation of the New Canal Conveyance Alternative, Colusa County, California (Westwood and White 2005)
 - Archaeological Overview, Inventory Report, And Research Design, Proposed Sites Reservoir APE, Colusa And Glenn Counties, California (White et al. 2009)
 - North-Of-The-Delta Offstream Storage Project Draft Archaeological Inventory Report (URS 2013a)
 - North-Of-The-Delta Offstream Storage Project Draft Built Environment Identification and Evaluation Technical Report (URS 2013b)

- Sites Reservoir Project Draft Environmental Impact Report/Environmental Statement (Sites Project Authority and U.S. Department of the Interior, Bureau of Reclamation 2017)
- Cultural Resources Sensitivity Analysis Report North of Delta Offstream Storage/Sites Reservoir Feasibility Geotechnical Investigation Colusa And Glenn Counties, California (Horizon 2019)
- Records searches at the California Historical Resources Information Center (CHRIS), as well as review of local and California Department of Water Resources (DWR) records:
 - The CHRIS records search area is defined as the study area for the Sites Reservoir Project with an additional 0.25-mile radius around the study area. On July 2, 2020, a CHRIS records search request was submitted to the Northwest Information Center (NWIC) in Rohnert Park and on November 10, 2020, to the Northeast Information Center (NEIC) in Chico to acquire shapefiles for reports, shapefiles for resources, data tables for resource records, data tables for reports, and PDFs of resource records. As data gaps were identified, additional follow-up records search requests were sent to the NWIC on August 21 and November 10, 2020.
 - Qualified local registers are inventories that a city, county, or other local entity has officially adopted, including as ordinance or as part of a general plan. Locally registered resources may require NRHP evaluations as part of a project’s cultural resources identification process. Of the counties in the study area, Yolo County and Glenn County maintain qualified local registers; however, no resources listed in those local registers are located in the study area.
 - California State University, Chico’s Archaeological Research Program previously conducted an intensive pedestrian survey of the Sites Reservoir Project area (except for lands that were inaccessible due to lack of landowner permission) on behalf of the DWR (White et al. 2009). Site records on file with DWR were shared with the Sites Authority for the purposes of continued study and Section 106 efforts.
- Data from historical maps, aerial imagery, and county assessor’s parcel records were reviewed in 2020. Historical topographic maps can be valuable sources for identifying potential cultural resources and areas of heightened sensitivity for archaeological resources. Qualified cultural resource specialists reviewed the earliest historical quadrangle maps available from U.S. Geological Survey’s online topoView program (ngmdb.usgs.gov/topoview) and downloaded them for use in geographic information system (GIS) mapping. The analysis includes 15-minute quadrangle maps covering the entire study area. These 15-minute maps range in date from 1904 to 1944. All structures on the historical maps within the records search area were digitized in GIS as points. All potential linear resources, such as levees, roads, railroads, and canals in the record search area, were digitized as lines except for linear resources that have already been recorded (based on records search results), though any unrecorded segments of a known linear resource were digitized. Isolated topographic mounds were digitized as polygons. If the historical map had a digitized feature labeled, that information was recorded as well.

- Preparation of the confidential Sites Reservoir Project Cultural Resources Report (ICF 2021) to support the RDEIR/SDEIS analysis. This study reports on cultural resources in the study area, including previously recorded resources, resources identified in desktop research, and areas of heightened sensitivity for cultural resources. It includes a summary of previously recorded cultural resources and new historical map research within the study area. It also identifies known and anticipated archaeological and built environment resource types. Existing Project data and CHRIS data were analyzed using GIS and other desktop methods to identify cultural resources within the study area. No new field survey was conducted for this effort due to lack of access.
- Development of a draft Programmatic Agreement (PA) for the Sites Reservoir Project, under review by SHPO. Reclamation has prepared a Draft PA. Reclamation distributed the draft PA to Section 106 consulting parties, including SHPO and the Advisory Council on Historic Preservation (ACHP), on March 4, 2022, and is currently working on revisions to the PA. Starting in 2021, Reclamation and the Authority attend a biweekly Section 106 working call to discuss PA development and Section 106 compliance for the Sites Reservoir Project.
- Native American consultation through Section 106 occurred during preparation of the the 2017 Draft EIR/EIS and more recently with the preparation of the RDEIR/SDEIS for the Sites Reservoir Project. Federally recognized tribes in the vicinity include the Cachil Dehe Band of Wintun (Colusa Indian Community) in Colusa; the Kletsel Dehe Wintun Nation (Cortina Indian Rancheria) west of Williams; the Yocha Dehe Wintun Nation (Rumsey Indian Rancheria) in Brooks; the Grindstone Indian Rancheria of Wintun-Wailaki Indians at Elk Creek; and the Paskenta Band of Nomlaki Indians (Nomlāqa Bōda) near Corning. As the lead federal agency for Section 106 of the NHPA compliance, Reclamation has consulted with potentially affected tribes, SHPO, and other interested parties pursuant to Section 106 consultation requirements. In addition to those federally recognized tribe listed above in the vicinity of the Sites Reservoir Project, Reclamation has also consulted with Enterprise Rancheria of Maidu Indians, Mechoopda Indian Tribe of Chico Rancheria, Shing Springs Band of Miwok Indians, United Auburn Indian Community, and Wilton Rancheria.

With the passage of Assembly Bill 52, California Native American Tribes were encouraged to notify local agencies of their desire to be notified of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe. On January 3, 2017, the Cachil Dehe Band of Wintun Indians submitted to the Authority a written request for formal notice of and information on proposed projects for which the Authority will serve as lead agency for California Environmental Quality Act (CEQA) compliance. No other tribes contacted the Authority to request notification of proposed projects. In February 2017, the Authority sent Project notification letters to the seven tribes identified by the California Native American Heritage Commission (NAHC) to have a traditional and cultural affiliation with the geographic area of the Project: the Cachil Dehe Band of Wintun Indians; Cortina Indian Rancheria of Wintun Indians; Grindstone Indian Rancheria of Wintun-Wailaki; Yocha Dehe Wintun Nation; Paskenta Band of Nomlaki Indians; Mechoopda Indian Tribe; and Estom Yumeka Maidu Tribe of the Enterprise Rancheria. One Tribe, the Cachil Dehe Band of Wintun Indians, requested consultation, and the Authority first met with Tribal representatives on July 12, 2017. Separately, the Yocha Dehe contacted Authority staff on May 19, 2017, for information, which the Authority provided on June 22, 2017. On November 14, 2020, the Authority mailed letters to all seven of the Tribes that the NAHC had previously identified to notify them of the Authority's decision to recirculate

the EIR to address modifications to the Project. Only the Yocha Dehe and Cahil Dehe replied, and the Authority continues to consult under AB 52 with those Tribes. The Authority's outreach efforts to Tribes are also ongoing as part of the overall public outreach efforts for the Sites Reservoir Project.

- Historical society and stakeholder outreach has been ongoing by both the Authority and Reclamation. Reclamation has invited the Colusa County Historical Society, Sacramento Valley Museum, Stonyford Museum, Tehama County Genealogical & Historical Society, Colusa County Genealogical Society, Yolo County Historical Society, and Willows Museum to participate in the development of the PA.

Future field efforts are dependent on access agreements and rights-of-entry. The Authority Board of Directors recently approved pursuing land access for future geotechnical, biological and cultural survey efforts. The Authority is working with individual landowners in some of the highest priority locations to obtain access and is hopeful to be able to conduct cultural resources surveys on these properties in the coming year. The Authority is committed to meeting the stipulations of the NPA and the MWI EA, and will complete many of these requirements, as they relate to Section 106 compliance, in tandem with Section 106 compliance for the Sites Reservoir Project, which will also require consideration and management of historic properties.

5.0 Citations

Horizon Water & Environment. 2019. Cultural Resources Sensitivity Analysis Report – North of Delta Offstream Storage/Sites Reservoir Feasibility Geotechnical Investigation Colusa and Glenn Counties, California. August.

ICF. 2021. Confidential Sites Reservoir Project Cultural Resources Report. November. Prepared for Sites Project Authority, Maxwell, CA.

Office of Historic Preservation, State of California, Department of Parks and Recreation. 2019. Letter to Reclamation Subject: Section 106 Consultation for the North of Delta Offstream Storage/Sites Reservoir Feasibility Geotechnical Investigation Project, Glenn and Colusa Counties, California (19-MPRO-043). September.

Sites Project Authority. 2021. Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Report. November.

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USDA. 2018c. Letter of Conditions for a Community Facilities Program Loan to Construct the Maxwell Intertie, dated September 26, 2018.

Westwood and White. 2005. ODOSS I-Sites Reservoir Cultural Resources Investigation of the New Canal Conveyance Alternative, Colusa County, California.

White et al. 2009, Archaeological Overview, Inventory Report, And Research Design, Proposed Sites Reservoir APE, Colusa And Glenn Counties, California.