

3.9 Indian Trust Assets

3.9.1 Introduction and Summary

This section addresses existing Indian Trust Assets (ITAs) in the LCR and Salton Sea geographic subregions and potential impacts to ITAs associated with the implementation of federal components of the Proposed Project: (1) Reclamation's approval of the change in the point of diversion of up to 300 KAFY of Colorado River water conserved by IID (this action has the potential to affect ITAs along the LCR); and (2) USFWS' approval of an Incidental Take Permit, under Section 10 of the ESA (this action has the potential to affect ITAs in the IID water service area and AAC and Salton Sea geographic subregions).

ITA impacts in the IID water service area and AAC geographic subregion are not evaluated in this section because this subregion does not contain any reservation lands or ITAs. ITA impacts in the SDCWA service area geographic subregion are also not evaluated in this section because no construction or operation of new facilities will occur in this subregion. The indirect effects of the Proposed Project within the MWD and CVWD service areas are related to local actions and decisions made by non-federal entities. For this reason, an evaluation of potential ITA effects was not conducted for the indirect Project effects that could occur within these subregions. During scoping for the Proposed Project, representatives of the Agua Caliente Band of Cahuilla Indians questioned the effect of the Proposed Project on groundwater pumping by CVWD. Although the CVWD service area is outside the scope of this ITA analysis, it is noted that the Proposed Project could benefit the groundwater aquifer in the CVWD service area if conserved water is transferred to CVWD pursuant to the QSA.

Section 3.9.2 describes the applicable regulations and standards that pertain to ITAs. Section 3.9.3 presents the ITA characteristics. Table 3.9-1 below presents a summary of the potential ITA impacts that could result from implementation of the Proposed Project and/or alternatives.

ITAs are legal assets associated with rights or property held in trust by the US for the benefit of federally recognized Indian Tribes or individuals. The US, as trustee, is responsible for protecting and maintaining rights reserved by, or granted to, Indian Tribes or individuals by treaties, statutes, and executive orders. All federal bureaus and agencies share a duty to act responsibly to protect and maintain ITAs. Reclamation's policy is to protect ITAs from adverse impacts resulting from its programs and activities whenever possible. Reclamation, in cooperation with Tribe(s) potentially impacted by a given Project, must inventory and evaluate assets, and then mitigate, or compensate, for adverse impacts to the asset. While most ITAs are located on a reservation, they can also be located off-reservation. Examples of ITAs include lands, minerals, water rights, and hunting and fishing rights. ITAs include property in which a Tribe has legal interest.

For example, tribal entitlements to Colorado River water rights established in each of the Basin States pursuant to water rights settlements are considered trust assets, although the reservations of these Tribes may or may not be located along the River. A Tribe may also have other off-reservation interests and concerns that must be taken into account.

TABLE 3.9-1
Summary of Indian Trust Assets Impacts¹

| Proposed Project: 300 KAFY All Conservation Measures | Alternative 1: No Project | Alternative 2: 130 KAFY On-farm Irrigation System Improvements Only | Alternative 3: 230 KAFY All Conservation Measures | Alternative 4: 300 KAFY Following Only |
|---|--------------------------------------|--|--|--|
| LOWER COLORADO RIVER | | | | |
| No impact. | Continuation of existing conditions. | No impact. | No impact. | No impact. |
| IID WATER SERVICE AREA AND AAC | | | | |
| No impact. | Continuation of existing conditions. | No impact. | No impact. | No impact. |
| SALTON SEA | | | | |
| Impact ITA-1: Potential adverse and/or beneficial on ITAs from reduced inflow to Salton Sea. | Continuation of Baseline conditions. | Impact A2-ITA-1: Potential adverse and/or beneficial on ITAs from reduced inflow to Salton Sea. | Impact A3-ITA-1: Potential adverse and/or beneficial on ITAs from reduced inflow to Salton Sea. | Impact A4-ITA-1: Potential adverse and/or beneficial on ITAs from reduced inflow to Salton Sea. |
| SDCWA Service Area | | | | |
| No impact. | Continuation of existing conditions. | No impact. | No impact. | No impact. |

¹ Programmatic level analyses of USFWS' biological conservation measures in LCR subregion and HCP (Salton Sea Portion) Approach 1: Hatchery & Habitat Replacement in Salton Sea subregion are not summarized in the table because no significance determinations have been made. Subsequent environmental documentation will be required if potential impacts are identified.

Reclamation has entered into government-to-government consultations with potentially affected Tribes to identify and address concerns for ITAs. These include Tribes along the LCR and other Tribes within the Project region of influence in California and Arizona. Based on meetings and discussions among the Tribes, US Bureau of Indian Affairs (BIA), and Reclamation staff, the this section describes ITAs that have the potential to be impacted by the federal actions associated with the Proposed Project (Reclamation 2002).

3.9.2 Regulatory Framework

3.9.2.1 Federal Standards and Regulations

As stated above in Section 3.9.1, Reclamation's policy is to protect ITAs from adverse impacts of its programs and activities whenever possible.

3.9.3 Existing Setting

The following section provides a description Tribes within the LCR and Salton Sea geographic subregions that are associated with the Project.

3.9.3.1 Lower Colorado River

FORT MOHAVE INDIAN TRIBE

The Fort Mohave Indian Reservation is located in the Lower Basin of the Colorado River where Nevada, Arizona, and California meet. The Tribe possesses PPRs from the mainstem of the Colorado River in all three of the states that contain reservation land, pursuant to the Decree in *Arizona v. California* and supplemental Decrees (1979 and 1984). Since the original Decree was entered in 1964, 1,102 acres of land have been added to the reservation, along with rights to 6.464 AF of water per acre of land as specified in the 1979 Decree. The amounts, including added lands, priority dates, and state where the water rights are listed in the Draft IA EIS in Section 3.10 (Reclamation 2002).

The Fort Mohave Indian Tribe has exercised its water rights in California in excess of the amounts currently decreed. In its June 19, 2000 Opinion, the US Supreme Court accepted the Special Master's uncontested recommendation and approved the Proposed settlement of the dispute respecting the Fort Mohave Indian Reservation . Under the settlement, the Tribe is awarded the lesser of an additional 3,022 AF of water or enough water to supply the needs of 468 acres.

CHEMEHUEVI TRIBE

The Chemehuevi Indian Reservation is located in Southern California on the plateau above the shoreline of Lake Havasu. The Tribe possesses PPRs from the mainstem of the Colorado River pursuant to the Decree in *Arizona v. California* and supplemental Decrees (1979 and 1984). The amounts, priority dates, and state where the rights are perfected are listed in the Draft IA EIS in Section 3.10 (Reclamation 2002).

COLORADO RIVER INDIAN TRIBES (CRIT)

The Colorado River Indian Reservation is located in southwestern Arizona and Southern California south of Parker, Arizona. The Tribes possess PPRs from the mainstem of the Colorado River pursuant to the Decree in *Arizona v. California* and supplemental Decrees (1979 and 1984). The amounts, priority dates, and state where the rights are perfected are in the Draft IA EIS in Section 3.10 (Reclamation 2002).

QUECHAN INDIAN TRIBE

The Fort Yuma Indian Reservation (Quechan Tribe) is located in southwestern Arizona and Southern California near Yuma, Arizona. The Tribe possesses PPRs from the mainstem of the Colorado River pursuant to the Decree in *Arizona v. California* and supplemental Decrees (1979 and 1984). The amounts, priority dates, and state where the rights are perfected are in the Draft IA EIS in Section 3.10 (Reclamation 2002).

A Supreme Court decision issued on June 19, 2000 allows the Tribe to proceed with litigation to claim rights to an additional 9,000 acres of irrigatable lands. Proving this claim would increase the water rights for the reservation.

COCOPAH INDIAN TRIBE

The Cocopah Indian Reservation is located in southwestern Arizona near Yuma, Arizona. The Tribe possesses PPRs from the mainstem of the Colorado River pursuant to the Decree in *Arizona v. California* and supplemental Decrees (1979 and 1984). The amounts, priority dates, and state where the rights are perfected are in the Draft IA EIS in Section 3.10 (Reclamation 2002).

The rights listed in the Draft IA EIS include only that water diverted directly from the Colorado River at Imperial Dam. In addition to these rights, the Tribe has numerous well permits that divert groundwater that may be connected to the Colorado River within the boundaries of the US (studies are ongoing). The 1974 PPR for the Cocopah Indian Reservation is unique because of its more recent priority date. The 1979 supplemental Decree in *Arizona v. California* specifies that in the event of a determination of insufficient mainstream water to satisfy PPRs pursuant to Article II (B) (3) of the 1964 Decree, the PPRs set forth in paragraphs (1) through (5) of Article II (D) of the Decree must be satisfied first.

The 1984 supplemental Decree in *Arizona v. California* recognized the PPR for the Cocopah Indian Reservation dated June 24, 1974, and amended paragraph (5) of Article II (D) of the Decree to reflect this 1974 right. The Tribe is involved in litigation to claim rights to a total of 2,400 acres of irrigatable lands. Proving this claim would further increase the water rights for the reservation.

3.9.3.2 Salton Sea

TORRES MARTINEZ DESERT CAHUILLA INDIANS

The Torres Martinez Reservation is located on about 24,000 acres along the northern shore of the Salton Sea. About 11,800 acres of the reservation are currently inundated by the Sea. The Torres Martinez Indians have sought damages and compensation for lands claimed to be inundated or damaged by the Salton Sea. In 1996, a Settlement Agreement was reached to provide compensation to the Tribe and provide a permanent flowage easement to IID and CVWD over the Indian Trust lands. The issue was resolved when legislation required to implement the settlement was passed in 2001 as Title VI of Public Law 106-568 (Torres Martinez Desert Cahuilla Settlement Claims Act).

The Tribe's existing water rights are held in trust by the US. In 1908, the US Supreme Court (*Winters v. US*, 207 US 564) ruled that when Congress created Indian reservations, water rights needed to develop and support these reservations were reserved. The Winters Doctrine has been extended by rulings of the US Supreme Court to include groundwater rights as well as surface water rights. Additional federal - and state-reserved water rights are provided through Executive Orders, Supreme Court decisions, and statutes and regulations, all of which may apply to the Torres Martinez Reservation (Reclamation and SSA 2000).

No specific hunting or fishing rights other than those granted to all citizens with proper permits from CDFG have been identified in the subregion. CDFG regulates hunting and fishing in and around the Salton Sea, except within the Torres-Martinez Indian Reservation, where the Tribe is the primary regulatory and management authority. Significant gold deposits have been located on the Torres Martinez Reservation and are considered an ITA. The Torres Martinez Indians have indicated that they consider cultural resources located within the Torres Martinez Reservation to be ITAs as well (Reclamation and SSA 2000).

Reclamation's ITA Policy and NEPA Implementing Procedures (1994) indicate that cultural resources on tribal lands are frequently considered ITAs. Regardless, Torres-Martinez owns such resources on lands owned by the Tribe. Currently, approximately 70 archaeological resources are known to exist on the Torres Martinez Reservation (Reclamation and SSA 2000). Cultural resources located off-reservation are unlikely to be considered trust assets of the Torres Martinez Band.

3.9.4 Impacts and Mitigation Measures

3.9.4.1 Methodology

The federal actions proposed by USFWS and Reclamation associated with the Proposed Project and alternatives were reviewed to determine whether their implementation would result in adverse effects on ITAs.

Subregions Excluded From Impact Analysis. The IID water service area and AAC geographic subregion is not discussed in this section because it does not contain Indian reservation lands or ITAs. In addition, as described in Section 3.9.1 above, the SDCWA, MWD, and CVWD service area geographic subregions were also excluded from the analysis.

3.9.4.2 Proposed Project

LOWER COLORADO RIVER

Water Conservation and Transfer

There would be no significant adverse impact to ITAs from approval of the water transfers and change in point of diversion from the Colorado River. Hunting and fishing rights, tribal lands, cultural resources, and tribal water rights would not be affected.

The change in the water diversion point could result in LCR flows between Parker Dam and Imperial Dam. The riparian and marsh resources along the River are important to many Native American tribes. CRIT has an ongoing riparian restoration program along the River and has expressed concern that the potential reduction in Colorado River water surface elevation could affect its ability to divert water for the restoration program. The fluctuation in water surface elevations that would result from changes in the points of diversion would be within the historic variations experienced on the River. For this reason, CRIT's ability to divert water from the River should not vary from what has occurred in the past. It is anticipated that the biological conservation measures identified to reduce the impact to sensitive species and riparian /aquatic habitats, some of which could be implemented on tribal lands if agreed to by the Tribe, would also mitigate any impact to biological resources within tribal lands.

The results of the analysis by Reclamation (2002) indicate that salinity levels at Imperial Dam would increase as compared to the Baseline. This change in salinity would have the potential to affect tribal lands located along the Colorado River between Parker Dam and Imperial Dam. However, this increase falls within the normal range of fluctuations that occur along the reach. Further, mitigation in the form of additional salinity control Projects would ensure that water quality targets established by the Salinity Control Forum would not be exceeded.

Biological Conservation Measures in USFWS' Biological Opinion

Construction of biological conservation measures has the potential for short-term, localized impacts associated with construction of habitat restoration sites. Although these effects could occur on tribal lands, they would not be substantial and would be short-term in duration. In addition, implementation of the biological conservation measures could convert some lands from agricultural use to backwaters or cottonwood-willow habitat. These habitat areas could be constructed on tribal lands. However, because the lands would only be provided by willing landowners, this conversion would not be an adverse effect on tribal land uses (Reclamation 2002).

SALTON SEA

Water Conservation and Transfer

Impact ITA-1: Potential adverse and/or beneficial impacts on ITAs from reduced inflow to Salton Sea. Under the Proposed Project, the Salton Sea is expected to decline to about elevation -250 feet msl over the 75-year duration of the Proposed Project compared to the Baseline elevation of -235 feet msl. This would result in the exposure of land containing natural and cultural resources that are considered by the Torres Martinez to be ITAs. This could have both adverse and beneficial impacts. Beneficial impacts could result from allowing scientific investigations of exposed resources, including archaeological data collection and natural resource exploitation. Exposure also could result in damage from vandalism and erosion, however (this impact is discussed in Section 3.8, Cultural Resources).

The Torres Martinez also have expressed concerns that exposed land might be spoiled by salts, DDT, or other contaminants in the soils. If this is true, Torres Martinez may seek provisions to reclaim exposed lands so that the lands may be used for purposes that suit the needs of the Torres Martinez Reservation; use of the lands, however, would be subject to the provisions of the Torres Martinez Desert Cahuilla Settlement Claims Act (see Section 3.9.3.2). The soils have not been tested for contamination. If this land were found to be suitable for agriculture or other purposes, exposure of the land would be a beneficial impact to the Torres Martinez. The Torres Martinez also have indicated that possible benefits could result if lower water levels prevented the use of existing boat launching facilities that are not tribally owned. If public boat ramp access is lost and access moved onto tribal lands, the Torres Martinez Indians would be able to charge boaters to launch their boats from tribal lands obtain revenues from public use of tribally-owned recreation facilities (Reclamation and SSA 2000).

HCP (Salton Sea Portion) Approach 1: Hatchery and Habitat Replacement

This HCP approach would provide for construction of 5,000 acres of ponds and one or more fish hatcheries on the Salton Sea. Final locations for the ponds have not been determined, but all would be located on the south end of the Sea, and none would impact the lands of the Torres Martinez Indian Reservation. Fish hatchery locations have also not been determined, but would not be located on the Torres Martinez Indian Reservation without the approval and cooperation of the Tribe. Supplemental environmental review will occur once final locations and design of this HCP alternative are complete, and prior to construction. However, based on the above information, there would be no impacts to ITAs under this approach.

HCP (Salton Sea Portion) Approach 2 (HCP2): Use of Conserved Water as Mitigation

This HCP approach would totally compensate for reduced inflow to the Sea, so that the impacts described in Impact ITA-1 would not occur. Since the inflow to the Sea would be maintained at Baseline levels, the impact from the reduced water surface elevation would be identical to the No Project condition, and there would be no impact to ITAs from the Proposed Project.

HCP impacts would be the same for Alternatives 2, 3, and 4; therefore, they are not discussed under each alternative.

3.9.4.3 Alternative 1: No Project

LOWER COLORADO RIVER

Under the No Project alternative, Baseline conditions would continue and no impacts to ITAs would occur.

SALTON SEA

Under the No Project alternative, the elevation of the Salton Sea is expected to decline to about elevation -235 feet msl over the 75-year study period, which is the same as the Baseline elevation of -235 feet msl. Potential impacts to ITAs would be the same as described for the Proposed Project, although the drop in elevation over the life of the project would be more gradual, and would not be as great. For example, the decline to elevation -233 feet msl is expected to take 9 years under the Proposed Project, versus 28 years under No Project conditions.

3.9.4.4 Alternative 2 (A2): Water Conservation and Transfer of Up To 130 KAFY to SDCWA (On-farm Irrigation System Improvements as Exclusive Conservation Measure)

LOWER COLORADO RIVER

For the same reasons as listed under the Proposed Project, no impacts to ITAs would occur in the LCR geographic subregion with implementation of this alternative.

SALTON SEA

Water Conservation and Transfer

Impact A2-ITA-1: Potential adverse and/or beneficial impacts on ITAs from reduced inflow to Salton Sea. Under Alternative 2, the elevation of the Salton Sea is expected to decline to about elevation -242 feet msl over the 75-year study period compared to the Baseline elevation of -235 feet msl. Potential impacts to ITAs would be the same as described for the Proposed Project, although the drop in elevation over the life of the project would not be as great. The initial rate of decline, however, would be identical. For example, the decline to elevation -233 feet msl is expected to take 9 years under the Proposed Project and 9 years under Alternative 2.

3.9.4.5 Alternative 3 (A3): Water Conservation and Transfer of Up To 230 KAFY to SDCWA, CVWD, and/or MWD (All Conservation Measures)

LOWER COLORADO RIVER

For the same reasons as listed under the Proposed Project, no impacts to ITAs would occur in the LCR geographic subregion with implementation of this alternative.

SALTON SEA

Water Conservation and Transfer

Impact A3-ITA-1: Potential adverse and/or beneficial impacts on ITAs from reduced inflow to Salton Sea. Under Alternative 3, the elevation of the Salton Sea is expected to decline to about elevation -247 feet msl over the 75-year study period compared to the Baseline elevation of -235 feet msl. Potential impacts to ITAs would be the same as described for the Proposed Project, although the drop in elevation over the life of the project would not be as great. The initial rate of decline, however, would be identical. For example, the decline to elevation -233 feet msl is expected to take 9 years under the Proposed Project and 9 years under Alternative 3.

3.9.4.6 Alternative 4 (A4): Water Conservation and Transfer of Up To 300 KAFY to SDCWA, CVWD, and/or MWD (Following As Exclusive Conservation Measure)

LOWER COLORADO RIVER

For the same reasons as listed under the Proposed Project, no impacts to ITAs would occur in the LCR geographic subregion with implementation of this alternative.

SALTON SEA

Water Conservation and Transfer

Impact A4-ITA-1: Potential adverse and/or beneficial impacts on ITAs from reduced inflow to Salton Sea. Under Alternative 4, the elevation of the Salton Sea is expected to decline to about elevation -241 feet msl over the 75-year study period compared to the Baseline elevation of -235 feet msl. Potential impacts to ITAs would be the same as described for the Proposed Project, although rate of decline and drop in elevation over the life of the project would not be as great. For example, the decline to elevation -233 feet msl is expected to take 10 years under the Proposed Project, versus 14 years under Alternative 4.