

6.0 CONSULTATION AND COORDINATION

This section describes the consultation and coordination undertaken for the Hetch Hetchy Communication System Upgrade Project.

6.1 COMPLIANCE WITH FEDERAL EXECUTIVE ORDERS

Executive Order 11593

Protection and Enhancement of the Cultural Environment

This Executive Order instructs all federal agencies to support the preservation of cultural properties. It directs them to identify and nominate cultural properties under their jurisdiction to the National Register of Historic Places (NRHP) and to “exercise caution to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished, or substantially altered.” Based on the conclusions of the Historical Context and Archaeological Survey Report for the Hetch Hetchy Communications System Upgrade Project (ART [revised by EDAW] 2007), resources at Lake Eleanor, O’Shaughnessy Dam, and Moccasin retain sufficient integrity and are excellent candidates for listing on the NRHP. Mitigation Measure 1 – Undocumented Cultural Resources, would ensure compliance with this order for any known or unknown resources.

Executive Order 11987

Exotic Organisms

This Executive Order requires federal agencies to restrict the introduction of exotic species into the natural ecosystems on lands and waters which they own, lease, or administer. This project would not result in the introduction of exotic species into Yosemite National Park or Stanislaus National Forest.

Executive Order 11988

Floodplain Management

This Executive Order requires federal agencies to avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplains, and to avoid development in floodplains whenever there is a practical alternative. If a proposed action is found to be in the applicable regulatory floodplain, the agency shall prepare a floodplain assessment, known as a Statement of Findings. This project would not result in the modifications of floodplains or development in a floodplain, therefore a floodplain assessment and statement of findings is not required.

Executive Order 11990

Protection of Wetlands

This Executive Order established the protection of wetlands and riparian systems as the official policy of the federal government. It requires all federal agencies to consider wetland protection as an important part of their policies and take action to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. The proposed action would not be

located within or result in the loss of wetlands. Therefore, no mitigation measures are necessary to ensure compliance with this order.

Executive Order 12898

Social/Environmental Justice

This Executive Order prohibits discrimination against or exclusion of individuals and populations during the conduct of federal activities. It requires all federal agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs and activities on minority and low income populations. The proposed action would not occur within or have any effect upon an identified community or area of minority and low income populations.

Executive Order 13007

Indian Sacred Sites

This Executive Order requires federal agencies to provide access to and ceremonial use of sacred Indian sites by Indian religious practitioners as well as promote the physical integrity of sacred sites.

Executive Order 13112

Invasive Species

This Executive Order prevents the introduction of invasive species and directs federal agencies to not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species. The proposed action includes measures to prevent the introduction and spread of invasive species.

6.2 REGULATORY COMPLIANCE REQUIREMENTS

6.2.1 Federal Laws

National Environmental Policy Act of 1970

The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. Regulations implementing NEPA are set forth by the Council on Environmental Quality. This Environmental Assessment (EA) serves as the proposed action NEPA compliance.

Wild and Scenic Rivers Act of 1968 as Amended

This act established the National Wild and Scenic Rivers System, which designated the first Wild and Scenic Rivers. The act requires a comprehensive management plan for designated rivers and contains guidance for their management, particularly with regard to free-flowing condition and Outstandingly Remarkable Values. The Tuolumne River is designated as Wild and Scenic within the project area (specifically at the O'Shaughnessy Stream Gauge site). Section 5.0 discusses the Wild and Scenic River compliance and Appendix C contains the Wild and Scenic River Section 7 determination.

Clean Air Act, as Amended

Section 118 of the Clean Air Act requires all federal facilities to comply with existing federal, state, and local air pollution control laws and regulations.

Federal Water Pollution Control Act of 1977

The Federal Water Pollution Control Act of 1977 (commonly referred to as the Clean Water Act) provides for the restoration and maintenance of the physical, chemical, and biological integrity of the nation's waters. Section 404 of the act prohibits the discharge of fill material into navigable waters of the United States, including wetlands, except as permitted under separate regulations by the U.S. Army Corps of Engineers (USACE) and U.S. Environmental Protection Agency. No fill will be placed in wetlands for the proposed action.

Endangered Species Act of 1973, as Amended

The Endangered Species Act protects threatened and endangered species, as listed by the U.S. Fish and Wildlife Service (USFWS), from unauthorized take, and directs federal agencies to ensure that their actions do not jeopardize the continued existence of such species. Section 7 of the act defines federal agency responsibilities for consultation with the USFWS and requires preparation of a biological assessment to identify any threatened or endangered species that is likely to be affected by the proposed action. A biological evaluation/biological assessment (BE/BA) has been prepared for the proposed action. Mitigation measures have been incorporated into the proposed action to minimize the potential for any adverse effects.

Federal agencies are required to consult with USFWS to ensure their actions will not jeopardize the continued existence of any federally listed or proposed threatened or endangered species, or designated or proposed critical habitat [ESA, Sec. 7 (a)(2), 16 USC 1531 et seq.]. If listed species are present, the Federal agencies must determine if the action will have “no effect,” “may affect, [but is] not likely to adversely affect,” or “may affect, [but is] likely to adversely affect” those species. The City and County of San Francisco and NPS made the determination of no effect on listed species (valley elderberry longhorn beetle) following guidance outlined in the Endangered Species Act Consultation Handbook: Procedures for Conducting Section 7 Consultations and Conferences (1998 USFWS and National Marine Fisheries Service).

Migratory Bird Treaty Act

The Migratory Bird Treaty Act regulates or prohibits taking, killing, possession of, or harm to migratory bird species listed in Title 50 Code of Federal Regulation (CFR) Section 10.13. This act is an international treaty for the conservation and management of bird species that may migrate through more than one country and is enforced in the United States by the USFWS. The act was amended in 1972 to include protection for migratory birds of prey (raptors).

Porter-Cologne Water Quality Control Act (California Water Code, Section 13020)

Under the authority of the Porter-Cologne Act and federal Clean Water Act, Regional Water Quality Control Boards act as regional agencies for the State Water Resources Control Board and are responsible for regional enforcement of water quality laws and coordination of water quality control activities. The regional board for the proposed action area is the Central Valley Regional Water Quality Control Board.

Archeological Resources Protection Act of 1979

This act secures the protection of archeological resources on public or Indian lands and fosters increased cooperation and exchange of information between private, government, and the professional community in order to facilitate the enforcement and education of present and future generations. It regulates excavation and collection on public and Indian lands. It requires notification of Indian tribes who may consider a site to have religious or cultural importance prior to issuing a permit. The act was amended in 1988 to require the development of plans for surveying public lands for archeological resources and systems for reporting incidents of suspected violations. Mitigation Measure 1 – Undocumented Cultural Resources, has been incorporated into the proposed action to comply with this act.

American Indian Religious Freedom Act

This act requires federal agencies to ensure that American Indians have access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites in the practice of their traditional religions.

National Historic Preservation Act of 1966, as Amended

The National Historic Preservation Act requires agencies to take into account the effects of their actions on properties listed in or eligible for listing in the National Register of Historic Places (NRHP). The Advisory Council on Historic Preservation has developed implementing regulations (36 CFR 800), which allow agencies to develop agreements for consideration of these historic properties. Based on the conclusions of the Historical Context and Archaeological Survey Report for the Hetch Hetchy Water & Power Communications Upgrade Project (ART [revised by EDAW] 2007), resources at Lake Eleanor, O'Shaughnessy, and Moccasin retain sufficient integrity and are excellent candidates for listing on the NRHP.

Native American Grave Protection and Repatriation Act

This act assigns ownership or control of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that are excavated or discovered on federal lands or tribal lands to lineal descendants or culturally affiliated Native American groups.

6.2.2 State Laws

California Environmental Quality Act

The California Environmental Quality Act (CEQA) is a state statute with the basic goal to develop and maintain a high-quality environment now and in the future. The CEQA process is intended to inform California's public agencies and the public about the potential, significant environmental effects of proposed activities, and to identify ways that environmental effects can be avoided or significantly reduced, or to identify feasible mitigation measures to prevent significant effects to the environment. Regulations implementing CEQA are set forth in the California Public Resources Code Division 13. This Initial Study and Preliminary Mitigated Negative Declaration serves as the proposed project's CEQA compliance.

California Endangered Species Act

The California Endangered Species Act expanded upon the original plant protection act and enhanced legal protection for plants and wildlife. The California Endangered Species Act parallels the policies of the federal Endangered Species Act. The state legislation was written to protect state endangered and threatened plant and animal species whose continued existence in California is in jeopardy. The California Endangered Species Act and Sections 2050 and 2097 of the Fish and Game Code prohibit “take” of plant and animal species designated by the California Fish and Game Commission as either endangered or threatened. The proposed action will be carried out in compliance with the California Endangered Species Act.

California Fish and Game Code

Sections 3511 (birds), 4700 (mammals), 5050 (reptiles and amphibians), and 5515 (fish) of the California Fish and Game Code designate certain species as “fully protected.” Fully protected species, or parts thereof, may not be taken or possessed at any time without permission by the California Department of Fish and Game. Section 3503 of the California Fish and Game Code affords protection to bird nests and birds of prey (orders Falconiformes or Strigiformes).

Section 1602 of the Fish and Game Code requires a Streambed Alteration Agreement to be granted prior to any action that may affect a river, lake or stream or its adjacent riparian vegetation. The proposed action does not include alteration to streambeds.

California Native Plant Protection Act

State listing of plant species began in 1977 with the passage of the Native Plant Protection Act. The act directed the California Department of Fish and Game to carry out the Legislature's intent to “preserve, protect, and enhance endangered plants in this state.” The act gave the California Fish and Game Commission the power to designate native plants as endangered or rare, and to require permits for collecting, transporting, or selling such plants. When the California Endangered Species Act was passed, it expanded upon the Native Plant Protection Act and enhanced legal protection for plants. To align with federal regulations, the California Endangered Species Act adopted the categories “threatened” and

“endangered” species. It grandfathered all “rare” animals into the act as threatened species, but did not do so for rare plants. Thus, there are three listing categories for plants in California: rare, threatened, and endangered. The proposed action will be carried out in compliance with the California Native Plant Protection Act.

6.3 NEPA PROJECT SCOPING HISTORY

The proposed action was listed in the USFS Schedule of Proposed Actions for the January 1, 2006 to March 31, 2006 period and on the NPS Park Management website on February 9, 2006. The public scoping period was from February 21, 2006 to March 27, 2006. In addition, as part of the public involvement process, NPS and USFS held joint public Open Houses in Yosemite Valley at the Visitor Center Auditorium on Wednesday, February 22, 2006, and Wednesday, March 22, 2006 (from 2 PM to 6 PM). In addition, a site tour of the proposed project siting options within Yosemite National Park in the Poopenaut Pass vicinity took place on March 10, 2006. The public was encouraged to submit scoping comments identifying key issues and potential alternatives that could be evaluated as part of the environmental analysis for the Proposed Action.

Results of Scoping

Written public scoping comments were received by fax, email, and U.S. mail. As a result of the public scoping period, the NPS received comments from 24 individuals, three organizations, one civic group, and one tribal group. The USFS received comments from five individuals of which four were duplicate letters sent to NPS. A total of 30 separate comments were received (not including duplicates). The analysis of these comments generated 29 general concern statements, which were categorized and considered for incorporation in the planning process.

All comments received in response to the scoping notices have been considered and will remain in the project record throughout this planning process. A summary and full report on the analysis of the public scoping comments is available to the public and can be obtained through the NPS.

6.4 PUBLIC REVIEW

Public Review of this Environmental Assessment and Project Updates

In addition to each of the agencies’ distribution lists, a Notice of Availability (NOA) and Intent to Adopt was mailed to interested agencies, groups, and individuals on October 2, 2007 by the San Francisco Planning Department, NPS, and USFS. Hard copies of the Environmental Assessment/Preliminary Mitigated Negative Declaration and Initial Study were mailed to agencies, groups, and individuals who requested it during the public scoping process.

This document is available for a thirty (30) day public review and comment period which begins on October 2, 2007. The availability of the EA/PMND and IS is being announced in the Mariposa Gazette, San Francisco Examiner, and Sonora Union Democrat; and the EA/IS is being mailed to the list of persons and agencies that have expressed interest in Yosemite National Park proposed actions and events. The EA/PMND and IS will also be available at local libraries in Mariposa and Oakhurst, and available

on-line at <http://www.nps.gov/yose/planning>, www.fs.fed.us/r5/stanislaus/projects/index.shtml, and www.sfgov.org/planning/mea

Comments will be documented and analyzed at the close of the public review period. If no significant impacts from the proposed action are identified, the EA will then be used to prepare a Finding of No Significant Impact (FONSI), which will be sent to the NPS Pacific West Regional Director for their approval.

Comments on the EA, or requests for additional copies of this EA (please specify CD or printed copy) should be directed to the agencies below.

Superintendent
Yosemite National Park
Attn: Hetch Hetchy Communication System Upgrade Project
P.O. Box 577
Yosemite, CA 95389
Phone: (209) 379-1365; Fax: (209) 379-1294
Email: yose_planning@nps.gov
www.nps.gov/yose/planning

District Ranger
Groveland Ranger District
Attn: Hetch Hetchy Communication System Upgrade Project
24545 Highway 120
Groveland, CA 95321
Phone: (209) 962-7825; Fax: (209) 962-7412
Email: comments-pacificsouthwest-stanislaus-groveland@fs.fed.us
www.fs.fed.us/r5/stanislaus/projects/index.shtml

City and County of San Francisco, Planning Department
1650 Mission Street, Suite 400, San Francisco,
California 94103
Phone: (415) 575-9028; Fax: (415) 558-6409
Email: jamie.dean@sfgov.org
www.sfgov.org/planning/mea

During the public review period, additional consultation will occur to affirm determinations of effect (if needed) with the California SHPO, the USFWS, and the U.S. Army Corps of Engineers. Notice of concurrence with the determinations of effect will be documented in the FONSI, if prepared, for this EA (see above).

6.5 AGENCY AND GOVERNMENT COORDINATION

U.S. Fish and Wildlife Service

The Endangered Species Act of 1973, as amended (16 USC 1531 et seq.), requires all federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the agency does not jeopardize the continued existence of listed species or critical habitat. On January 11, 2007 a list of federally listed and other sensitive species that may be affected by the project was acquired from the USFWS. This list is posted on the USFWS Sacramento Office's website (http://sacramento.fws.gov/es/spp_list.htm). The BE/BA and the species list retrieval described above initiate informal Section 7 consultation on this proposed action.

Native American Consultation

An inventory and evaluation of cultural resources (ART 2007) was prepared for the Hetch Hetchy Communication System Upgrade Project area in May 2007. The report provides the evaluation of the project sites. These sites were evaluated in compliance with applicable sections of the NHPA and the NRHP criteria (36 CFR 60.4). In addition, these resources were evaluated for significance using the criteria outlined in California Public Resources Code 5024.1 and in accordance with CEQA Guidelines §15064.5.

The San Francisco Planning Department initiated consultation with American Indian tribes having cultural association with the project area, including the Me-Wuk and Paiute Nations on proposed actions under the Hetch Hetchy Communication System Upgrade Project. The NPS has also initiated American Indian consultation with the tribes regarding the preferred alternative for the Poopenaut Pass site.

This document only partially fulfills Section 106 of the NHPA requirements. Formal Section 106 analysis will be conducted by Yosemite National Park and documented on the park's Preservation Assessment Form and attached to the Finding of No Significant Impact form. Public scoping meetings and open houses were held pursuant to the 1999 Programmatic Agreement described in the Regulatory Environment section below. Input has been received by the American Indian Council of Mariposa County, the Tuolumne Band of Me-Wuk Indians, Mono Lake Kutzadikaa Tribe, Bridgeport Paiute Indian Colony, and the Bishop Paiute Community, as well as members of the public who identified themselves as the Yosemite-Mono Lake Paiute. The consultation efforts led to the conclusion that the entire project area is considered to have cultural and religious significance to segments of the local American Indian population.

State Historic Preservation Officer / Advisory Council Consultation

In accordance with the 1999 Programmatic Agreement (NPS 1999), Yosemite National Park staff review activities determined by the park to have "No Effect" or "No Adverse Effect" to Historic Properties, as defined in 36 CFR Part 800. These activities may be implemented and are documented according to the agreement without further review by SHPO or the Advisory Council provided:

- a) that the undertaking is not subject to Stipulation VIII (B) – if any action 1) may affect a National Historic Landmark, or properties of national significance listed on the National Register, 2) may affect a human burial, 3) adversely affect a traditional cultural property, 4) generates significant public controversy, or 5) involves a disagreement among the park, SHPO, any Indian Tribe, or Interested persons regarding proposed use.
- b) that the applicable park management office has submitted a proposed undertaking to the park Section 106 Coordinator for review and concurrence.
- c) that the park Section 106 Coordinator has reviewed the undertaking to ensure that identification and evaluation of historic properties in the area of potential effect has been completed according to Stipulation VII (A) and (B) in the agreement, and that adequate information has been compiled to identify and evaluate the effects of proposed undertakings on Historic Properties.

- d) that the park ensures that decisions regarding proposed undertakings are made and carried out in conformance with the standards and guidelines in Stipulation 1 of the agreement.
- e) that the park shall ensure that recovery of archeological data is based on the existing Yosemite Archeological Research Design and Archeological synthesis and Revised Research Design.
- f) that the park has consulted with the appropriate Indian Tribe(s) regarding possible effects to Native American archeological or Traditional Cultural Properties.
- g) that the park has determined the proposed action either does not affect or does not adversely affect Historic Properties based on the criteria of adverse effect found in 36 CFR Section 800.9.
- h) Monitoring, when appropriate, shall be summarized in a brief letter report. If Historic Properties are discovered during implementation, a detailed monitoring report shall be prepared. Large-scale ground disturbing activities shall be monitored in accordance with a monitoring plan – that plan should include required elements listed in the agreement.

6.6 FUTURE INFORMATION

Information regarding the Hetch Hetchy Communication System Upgrade Project will be periodically distributed via newsletters, mailings, the Yosemite National Park web site (www.nps.gov/yose/planning), Stanislaus National Forest Schedule of Proposed Actions web site (www.fs.fed.us/sopa/forest-level.php?110516), San Francisco Planning Department web site (www.sfgov.org/site/planning/mea), and regional and local news media. Interested individuals, organizations, and agencies may also respond to:

City and County of San Francisco Planning Department

Mail: Bill Wycko, Acting Environmental Review Officer
1650 Mission Street, Suite 400
San Francisco, CA 94103

Email: jamie.dean@sfgov.org

Phone: 415-575-9028

Fax: 415-558-6409

Yosemite National Park

Mail: National Park Service
Superintendent, Yosemite National Park
ATTN: Hetch Hetchy Water and Power Communication System Upgrade & Replacement Project
P.O. Box 577
Yosemite, CA 95389

Email: YOSE_planning@nps.gov

Fax: 209-379-1294

Phone: 209-379-1365

Stanislaus National Forest

Mail: District Ranger, Groveland Ranger District
Attn: Hetch Hetchy Water and Power Communication System Upgrade & Replacement Project,
24545 Highway 120, Groveland, CA 95321

Email: jrswanson@fs.fed.us

Fax: 209-962-7412

Phone: 209-962-7825