Section 1
Introduction

1.1 Background and Context for the RDEIR/SDEIS

The Sacramento–San Joaquin Delta (Delta), shown in Figure 1-1, is a vitally important ecosystem that is home to hundreds of aquatic and terrestrial species, many of which are endemic to the area and a number of which are threatened or endangered, as identified by the California Endangered Species Act (CESA) and the federal Endangered Species Act (ESA). The watersheds of the Sacramento and San Joaquin Rivers are at the core of California's water system, which conveys water to millions of Californians throughout the San Francisco Bay Area (Bay Area), the Central Valley, and southern California. Water conveyed through the Delta supports farms and ranches from the north Delta to the Mexican border that are a source of financial stability for the state and that produce roughly half the nation's domestically grown fresh produce. These watersheds capture runoff from approximately 40% of the land in California (Department of Water Resources 2009). That water is used in the Delta, the Sacramento River watershed, the San Joaquin River watershed, the San Francisco Bay Area, the central coast region, and Southern California.

The Delta region is a key recreational destination. Its waterways and managed wetlands support many activities including fishing, boating, and hunting. It sustains distinctive geographical and cultural characteristics and supports extensive infrastructure of statewide importance, such as aqueducts, natural gas pipelines, and electricity transmission lines; railroads, commercial navigation (ports and shipping channels), and recreational navigation (marinas, docks, launch ramps); agricultural production and distribution; wildlife refuges; public and private levee systems; and highways. The Delta contains the largest natural gas production field in California, as well as California's largest natural gas storage facility (below McDonald Island in the central Delta), producing 20% of California's natural gas–powered electricity. Major electricity transmission lines in the Delta interconnect California with the Pacific Northwest and carry roughly 10% of the state's summer electricity load. Gasoline and aviation fuel pipelines crossing the Delta supply large portions of northern California and Nevada. The ports of Stockton and Sacramento are focal points of regional economic development and rely on through-Delta shipping channels. State Route (SR) 12, SR 4, and through-Delta railways are also important links in the Delta transportation system (Delta Protection Commission 2011).

Regarding long-standing conflicts over how best to use and conserve its water and biological resources, the Delta remains a center of controversy. Several fish species, including delta smelt (*Hypomesus transpacificus*) and winter-run Chinook salmon (*Oncorhynchus tshawytscha*), are listed under the ESA and CESA and have recently experienced the lowest population numbers in their recorded history; levees and the Delta infrastructure they protect are at risk from earthquake damage, continuing land subsidence, and rising sea level. The biological opinions (BiOps) that U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) issued significantly changed the manner in which the Central Valley Project (CVP) and State Water Project (SWP) operate, influencing the amounts of water conveyed through the south Delta. USFWS issued the current Biological Opinion on the Coordinated Long Term Operation of the CVP and SWP on December 15, 2008. NMFS issued its BiOp on Long-Term Operation of the Central Valley Project and State Water Project on June 4, 2009. The BiOps called for changes in water pumping operations to

avoid jeopardizing the continued existence of delta smelt (issued by USFWS) and winter and spring-run Chinook salmon, Central Valley steelhead (*Oncorhynchus mykiss*), the southern population of North American green sturgeon (*Acipenser medirostris*), and southern resident killer whales (*Orcinus orca*) (issued by NMFS), and to avoid adverse modification or destruction of designated critical habitat. Operational changes are tied to water year type, and exceptions are provided for drought and health and safety issues.

The California Department of Water Resources (DWR), in coordination with the U.S. Bureau of Reclamation (Reclamation), and several state and federal water contractors proposed to implement a comprehensive strategy to advance the planning goal of restoring ecological functions of the Delta and improving water supply reliability in the state of California. The initial approach focused on the development of a conservation plan, referred to as the Bay Delta Conservation Plan (BDCP), including modifications to the SWP to add intakes in the north Delta, and achieving compliance with the ESA through application of a permit from the USFWS and NMFS under Section 10 of the ESA and state endangered species laws through request for approval from the California Department of Fish and Wildlife (CDFW) under the California Natural Community Conservation Plan Act (NCCPA). DWR, acting as lead agency for compliance with the California Environmental Quality Act (CEQA), and Reclamation, USFWS, and NMFS, acting as lead agencies for compliance with the National Environmental Policy Act (NEPA), in December 2013 released a joint draft environmental impact report/environmental impact statement (EIR/EIS) to analyze and disclose the potential environmental effects associated with the alternatives to achieving the goals of restoring the ecological functions of the Delta and improving water supply reliability, and to identify potentially feasible ways to avoid, minimize, or mitigate adverse effects.

DWR and Reclamation, as state and federal lead agencies (Lead Agencies) under CEQA and NEPA, respectively, are issuing this Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft EIR/Supplemental Draft EIS (RDEIR/SDEIS) for the BDCP Draft EIR/EIS. The primary purposes of the RDEIR/SDEIS are to provide the public and interested agencies with updated environmental analysis to address certain revisions to the previously issued documents related to the BDCP and Draft EIR/EIS, to introduce new sub-alternatives (Alternative 4A, 2D, and 5A), and to address certain issues raised in comments received on the Draft EIR/EIS. The California WaterFix[1] (Alternative 4A), which has been developed in response to public and agency input, is the new CEQA Preferred Alternative, replacing Alternative 4 (the proposed BDCP). Alternative 4A is also the NEPA Preferred Alternative, a designation that was not attached to any of the alternatives presented in the BDCP Draft EIR/EIS.

The RDEIR/SDEIS considers project revisions that were developed in response to input from the Draft EIR/EIS comment period (see below) as well as from agencies' comments regarding the challenges with meeting the standards required to issue long term assurances associated with compliance with Section 10 of the ESA and the NCCPA. These challenges related to the difficulties in assessing species status and issuing assurances over a 50 year period, in light of climate change, and accurately factoring in the benefits of long term conservation in contributing to the recovery of the species. There were also questions raised as to the ability to implement large-scale habitat restoration and an interest in exploring multiple regulatory approaches that could facilitate expeditious progress on Delta solutions. To address these concerns, and due to the desire to explore alternative regulatory approaches that could facilitate expeditious progress on Delta solutions, the

[1] Hereafter in this document and in associated documents, California WaterFix will be referred to as Alternative 4A.

Lead Agencies revised the proposed project to allow for an alternative implementation strategy for the new alternatives in this RDEIR/SDEIS. The alternative implementation strategy relates to achieving the project goals and objectives, focusing on the conveyance facility improvements necessary for the SWP to address more immediate water supply reliability needs in conjunction with related ecosystem improvements, such as significantly reducing reverse flows and direct fish species impacts associated with the existing south Delta intakes. The alternative implementation strategy allows for other state and federal programs to address the long term conservation efforts for species recovery in programs separate from the proposed project. The alternative implementation strategy added three new alternatives to the RDEIR/SDEIS analysis. The alternatives in the Draft EIR/EIS are retained for the original conservation plan implementation strategy. If the Lead Agencies ultimately choose the alternative implementation strategy and select an alternative presented in the RDEIR/SDEIS after completing the CEQA and NEPA processes, elements of the conservation plan contained in the alternatives in the Draft EIR/EIS may be utilized by other programs for implementation of the long term conservation efforts.

The three alternatives, Alternatives 4A, 2D, and 5A are included to ensure that a reasonable range of alternatives are considered. These new alternatives are considered "sub-alternatives" to Draft EIR/EIS alternatives 4, 2A, and 5 because they generally adopt the same conveyance facility features as the original Draft EIR/EIS alternatives but with different operational characteristics. The new alternatives are not presented as habitat conservation /natural community conservation plans according to ESA Section 10 and the NCCPA. The proposed BDCP habitat restoration and stressor reduction measures (i.e., CM2 through CM21) that are presented in the Draft BDCP are not carried forward fully for new sub-alternatives 4A, 2D, and 5A, except where elements of the former conservation measures are retained to mitigate the potential impacts of the proposed project in compliance with CEQA, NEPA, and other environmental regulatory permitting requirements. Many of these original BDCP conservation measures may, however, be implemented through the California EcoRestore (EcoRestore) program[2]. The sub alternatives would achieve federal and state endangered species act compliance using a shorter duration through the "Section 7" process under the ESA, and the "Section 2081" process under the CESA.

This RDEIR/SDEIS will be circulated for an additional public review to disclose impacts and mitigation measures of the new alternatives and other changes. The original Draft BDCP and Draft EIR/EIS were released together for public review on December 13, 2013, for a 120-day public review period. The review period was extended in April 2014 for an additional 60 days. In June 2014, the Lead Agencies decided to further extend the review period to July 29, 2014, for a total review period of approximately 7½ months. During the latter portion of the extended public review period, the Lead Agencies issued a draft Implementation Agreement (IA) for a 60-day public review period to coincide with the last 60 days of the BDCP review period. The duration of the overall public review period reflected the Lead Agencies' desire to ensure that agencies, members of the public, and other entities had sufficient time in which to provide meaningful comments on all the draft documents, many of which were lengthy, reflecting the complexity of the issues involved.

Public comment received on the draft documents comprised a total of 12,204 comment letters—1,518 unique letters from individual members of the public and 432 letters from agencies, organizations, and stakeholder groups. The balance of responses consisted of form letters sent by individuals and organized by various organizations. A total of 18,532 separate comments on the

[2] https://s3.amazonaws.com/californiawater/pdfs/ECO_FS_Overview.pdf

draft documents were received during the public review period. All the comments were considered in the decision to circulate this RDEIR/SDEIS. Formal responses to the comments received on the Draft BDCP and Draft EIR/EIS, as well as comments received on this RDEIR/SDEIS, will be published in the Final EIR/EIS.

Subsequent to the commencement of the Draft BDCP and EIR/EIS review period, DWR also decided that certain portions of the proposed conservation strategy, including Conservation Measure (CM) 1 (water conveyance facilities), should be revised and modified to reduce environmental impacts, to increase the effectiveness of the proposed conservation strategy, and to improve the feasibility of conveyance facilities. The Lead Agencies determined that, in light of these changes and the importance of other substantive modifications made to the Draft EIR/EIS, members of the public and other interested agencies and entities should have a formal opportunity to review and comment on these revisions to the Draft EIR/EIS.

1.1.1 Addition of New Alternatives 4A, 2D, and 5A

As noted above, in response to public and agency comment, the Lead Agencies have decided to consider an alternative implementation strategy. Additional sub-alternatives for this alternative implementation strategy are presented in this RDEIR/SDEIS due to the desire to explore alternative regulatory approaches that could facilitate expeditious progress on Delta solutions. The new sub-alternatives incorporate an alternative implementation strategy to achieve the project goals and objectives, focusing on the conveyance facility improvements necessary for the SWP and CVP to address more immediate water supply reliability needs in conjunction with ecosystem improvements to significantly reduce reverse flows and direct fish species impacts associated with the existing south Delta intakes. The alternative implementation strategy allows for other state and federal programs to address the long term conservation efforts for species recovery in programs separate from the proposed project. Section 4*, New Alternatives: Alternative 4A, 2D, and 5A*, of this RDEIR/SDEIS provides a description of the new alternatives and presents analysis of their potential environmental effects.

As the CEQA and NEPA Preferred Alternative, Alternative 4A entails the construction and operation of north Delta intakes and associated tunnel conveyance facilities, and the operation of the SWP, as a dual conveyance facility consistent with those proposed under the updated Alternative 4, as identified in RDEIR/SDEIS Appendix A. Alternatives 2D and 5A, entail similar conveyance facilities as proposed under Alternatives 2A and 5 but with alignment and other improvements proposed under Alternatives 4 and 4A. Proposed facility operations and other actions reflect that revised approach: Alternatives 4A, 2D, and 5A do not include CM2 through CM21 as they are described for proposed BDCP alternatives. Compliance with the ESA would be achieved by Reclamation as the federal lead action agency under Section 7 of that act. Pursuant to the Coordinated Operations Agreement (COA), by which DWR and Reclamation coordinate their operations of the SWP and CVP, Reclamation, and DWR as the project applicant, would consult with both the USFWS and NMFS. This consultation also is intended to cover the U.S. Army Corps of Engineer's (USACE's) issuance of permits under the Clean Water Act (CWA) and Rivers and Harbors Act for the construction of the necessary diversion and conveyance facilities. Under the other action alternatives in the Draft EIR/EIS, in contrast, DWR would submit a Habitat Conservation Plan (HCP) in a request for a 50 year incidental take permit and appropriate assurances from the Services under ESA Section 10, while Reclamation would separately consult with USFWS and NMFS under Section 7. Compliance with state endangered species laws under Alternatives 4A, 2D, or 5A would be through a request for

authorization of the incidental take of species listed under the CESA in the form of an incidental take permit issued by CDFW under Section 2081(b) of the CESA. Under the original conservation plan implementation strategy represented by the other action alternatives in the Draft EIR/EIS, in contrast, DWR would submit a Natural Community Conservation Plan (NCCP) for a 50-year plan term under the NCCPA for approval by CDFW.

Because Alternative 4A now represents the preferred strategy being pursued by DWR and Reclamation, those two agencies remain Lead Agencies, while USFWS and NMFS have assumed roles as cooperating agencies for purposes of NEPA review of this RDEIR/SDEIS. The consultation and application processes with USFWS/NMFS and CDFW, respectively, will utilize, to the extent possible, analyses developed to date for the purposes of the BDCP, as updated, modified, and augmented to address attributes unique to the new alternatives. New information to address the potential change in the implementation strategy will also be incorporated.

When reviewed together with the Draft EIR/EIS, this RDEIR/SDEIS sufficiently describes and discloses the effects of implementing Alternatives 4A, 2D, and 5A for the purposes of CEQA and NEPA. Where appropriate, the RDEIR/SDEIS references the Draft BDCP EIR/EIS. Any new information developed for the proposed BDCP since the December 2013 public draft that is needed to adequately disclose environmental effects is included in this RDEIR/SDEIS in Appendix D. Accordingly, the entire BDCP has not been further revised, nor will it be re-released to the public at this time. Should the final agency decision makers choose not to pursue the alternative implementation strategy, but instead choose the original conservation plan implementation strategy and a corresponding action alternative (e.g., Alternative 4) that includes an HCP and NCCP, the current BDCP documents would be updated as necessary. The change of the Preferred Alternative does not make the existing conservation plan alternatives analyzed in the Draft EIR/EIS infeasible. The Lead Agencies will consider those conservation plan alternatives, in addition to the three new alternatives presented in this RDEIR/SDEIS, in their ultimate selection of the implementation strategy when preparing the Final EIR/EIS and completing the project approval process.

1.1.2 Legal Basis for Recirculation

In accordance with Public Resources Code Section 21092.1 and State CEQA Guidelines Section 15088.5, a CEQA lead agency must "recirculate" a revised Draft EIR or chapters or portions thereof for additional comments if, subsequent to the commencement of public review but prior to final EIR certification, the lead agency adds "significant new information" to an EIR. (See PRC Section 21092.1; State CEQA Guidelines Section 15088.5; *Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California* [1993] 6 Cal.4th 1112 [*Laurel Heights II*].) State CEQA Guidelines Section 15088.5 provides four examples of disclosure that constitute "significant new information" for purposes of requiring recirculation of a revised EIR.

1. A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
2. A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
3. A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.

4. The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

The revised environmental document must be subjected to the same "critical evaluation that occurs in the draft stage," so that the public is not denied "an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions." (*Sutter Sensible Planning, Inc. v. Board of Supervisors* [1981] 122 Cal.App.3d 813, 822.) Neither NEPA nor the NEPA Regulations adopted by the Council on Environmental Quality (CEQ) use the term "recirculation," but the CEQ NEPA Regulations do require or permit the preparation of a "supplement" to a draft EIS in some circumstances. Such a document must be prepared when either of the two conditions below applies.

1. The agency makes substantial changes in the proposed action that are relevant to environmental concerns.
2. There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 Code of Federal Regulations [CFR] 1502.9[c][1]).

A supplement to a draft EIS *may* be prepared "when the agency determines that the purposes of NEPA would be furthered by doing so" (40 CFR 1502.9[c][2]).

Although neither CEQA nor the State CEQA Guidelines include language describing optional grounds for recirculation, nothing in these laws prohibits recirculation solely to further "the purposes of CEQA," at least where, as here, there is no private permit applicant concerned with the economic costs of "voluntary" recirculation, and the proposed project is not subject to the 1-year deadline for completing EIRs found in PRC Sections 21100.2(a)(1) and 21151.5(a)(1).

The RDEIR/SDEIS is being circulated, noticed, and filed in the same manner as the Draft BDCP and Draft EIR/EIS. No additional scoping is necessary under CEQA for a Recirculated Draft EIR and under NEPA for a Supplemental Draft EIS. DWR filed a notice of availability (NOA) with the State Clearinghouse on July 10, 2015 and Reclamation filed the RDEIR/SDEIS with EPA on July 10, 2015 and submitted an NOA to the Federal Register on July 10, 2015 announcing the availability of the document for public review.

1.1.3 Identification of a Preferred Alternative

As was true at the time the Draft EIR/EIS was issued, the existence of a preferred alternative—or a proposed project—does not mean that the remaining alternatives from that document are no longer under active consideration. The choice of a preferred alternative is purely provisional and subject to change. The designation simply conveys that, based on information available at the time of the designation, one particular alternative appeared to the Lead Agencies to represent the likely best outcome compared to the other alternatives and does not in any way convey project approval. New information gained through additional public or agency input—such as will occur in response to this RDEIR/SDEIS—could ultimately lead to the approval and implementation of an entirely different alternative.

Under the NEPA Regulations for DOI, the *preferred alternative* is "the alternative which Reclamation believes would best accomplish the purpose and need of the proposed action while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as Reclamation's proposed action, the non–Federal

entity's proposal or the environmentally preferable alternative."[3] Although a federal lead agency within DOI *may* identify a preferred alternative in a Draft EIS, the Lead Agency *must* do so in a Final EIS, unless prohibited from doing so by a law other than NEPA.[4]

Under CEQA, a *proposed project* is generally, though not always, the preferred CEQA alternative, in that the other alternatives are typically framed as "alternatives *to* the project[.]"[5] California courts have recognized that lead agencies for public projects often have "high esteem" for their proposals even prior to the preparation of an EIR, as "it is inevitable that the agency proposing a project will be favorably disposed to it."[6] Such unavoidable enthusiasm for a proposed outcome does not represent an impermissible pre-commitment, however, unless the agency has taken other steps that "effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project."[7]

1.1.4 Project Objectives and Purpose and Need

One of the primary challenges facing California is how to comprehensively address the increasingly significant and escalating conflict between the ecological needs of a range of at-risk Delta species and natural communities that have been and continue to be adversely affected by a wide range of human activities, while providing for more reliable water supplies for people, communities, agriculture, and industry.

This challenge must be addressed, in decisions made by DWR, CDFW, and the State Water Resources Control Board (State Water Board), as they endeavor to strike a reasonable balance between these competing public policy objectives and various actions taken within the Delta, including the proposed project. State policy regarding the Delta is summarized in the Sacramento–San Joaquin Delta Reform Act of 2009, which states:

> "it is the intent of the Legislature to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan." (California Water Code, Section 85001, subd. [c]).
>
> The Delta "serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America." (California Water Code, Section 85002).

The ecological health of the Delta continues to be at risk, the conflicts between species protection and Delta water exports have become more pronounced, as amply evidenced by the continuing court decisions regarding the intersection of the ESA, the CESA, and the operations criteria of the SWP and the CVP. Other factors, such as the continuing subsidence of lands within the Delta, increasing seismic risks and levee failures, and sea level rise associated with climate change, serve to

[3] 43 C.F.R. § 46.420(d).

[4] 43 C.F.R. § 46.425(b).

[5] Cal. Code Regs., tit. 14, § 15126.6[a].

[6] Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 136–137 (Save Tara), quoting City of Vernon v. Board of Harbor Commissioners (1998) 63 Cal.App.4th 677, 688.

[7] Save Tara, supra, 45 Cal.4th at p. 139.

further exacerbate these conflicts. Simply put, the overall system as it is currently designed and operated does not appear to be sustainable from an environmental perspective, and so a proposal to implement a fundamental, systemic change to the current system is necessary. This change is necessary if California is to "[a]chieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem." (California Public Resources Code Section 29702, subd. [a]).

This section presents the Lead Agencies' Project Objectives, which are required by the State CEQA Guidelines, and the Purpose and Need Statement, which is required by the CEQ NEPA Regulations.

1.1.4.1 Project Objectives

CEQA requires that an EIR contain a "statement of the objectives sought by the proposed project." Under CEQA, "[a] clearly written statement of objectives will help the Lead Agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations. The statement of objectives should include the underlying purpose of the project" (State CEQA Guidelines Section 15124[b]). Here, as the CEQA lead agency, DWR is adopting project objectives separately from the federal agencies' Purpose Statement as set forth in Section 1.1.4.2, *Purpose and Need*, as well as the description of Project Need as set forth in Section 1.1.4.2.

DWR's fundamental purpose in proposing the proposed project is to make physical and operational improvements to the SWP system in the Delta necessary to restore and protect ecosystem health, water supplies of the SWP and CVP south of the Delta, and water quality within a stable regulatory framework, consistent with statutory and contractual obligations.

The fundamental purpose is informed by past efforts taken within the Delta and the watersheds of the Sacramento and San Joaquin Rivers, including those undertaken through the CALFED Bay-Delta Program and Delta Risk Management Strategy. The fundamental purpose, in turn, gives rise to the following project objectives.

- Address adverse effects to state and federally listed species related to:
  - The operation of existing SWP Delta facilities and construction and operation of facilities for the movement of water entering the Delta from the Sacramento Valley watershed to the existing SWP and CVP pumping plants located in the southern Delta.
  - The implementation of actions to improve SWP and/or CVP conveyance that have the potential to result in take of species that are listed under the ESA and CESA.
- Improve the ecosystem of the Delta by reducing the adverse effects to certain listed species of diverting water by siting additional intakes of the SWP and coordinated operations with the CVP.
- Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of state and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements.

In addition to the project objectives enumerated above, the project objectives listed below guide the development of the proposed project and alternatives.

- To meet the standards identified in the ESA and the California Fish & Game Code, including the CESA or NCCPA, by, among other things, minimizing and fully mitigating the impacts of take, and, if possible, protecting, restoring, and enhancing aquatic and terrestrial natural communities and

ecosystems that support listed and sensitive species within the geographic scope of the proposed project.

- To make physical improvements to the conveyance system in anticipation of rising sea levels and other reasonably foreseeable consequences of climate change.
- To make physical improvements to the conveyance system that will minimize the potential for public health and safety impacts resulting from a major earthquake that causes breaching of Delta levees and the inundation of brackish water into the areas in which the SWP and CVP pumping plants operate in the southern Delta.
- To develop projects that restore and protect water supply and ecosystem health and reduce other stressors on the ecological functions of the Delta in a manner that creates a stable regulatory framework under the ESA and either the CESA or NCCPA.
- To identify new operations and a new configuration for conveyance of water entering the Delta from the Sacramento River watershed to the existing SWP and CVP pumping plants in the southern Delta by considering conveyance options in the north Delta that can reliably deliver water at costs that are not so high as to preclude, and in amounts that are sufficient to support, the financing of the investments necessary to fund construction and operation of facilities and/or improvements.

1.1.4.2 Purpose and Need

Just as CEQA requires an EIR to include a statement of "project objectives" as described above, NEPA requires that an EIS include a statement of "purpose and need" to which the federal agency is responding in proposing the alternatives, including the proposed action (40 CFR 1502.13). This purpose statement of the proposed action and project need described below, are consistent with the above project objectives in Section 1.1.4.1.

Purpose Statement

The purposes of the proposed actions are to achieve the following.

1. Construction and operation of facilities and/or improvements for the movement of water entering the Delta from the Sacramento Valley watershed to the existing SWP and CVP pumping plants located in the southern Delta.
2. Operation of the existing and potential new SWP facilities and existing CVP Delta facilities.
3. The activities described in 1) and 2) occurring in a manner that minimizes or avoids adverse effects to listed species, and allows for the protection, restoration and enhancement of aquatic, riparian and associated terrestrial natural communities and ecosystems.
4. Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of state and federal law and the terms and conditions of water delivery contracts held by SWP contractors and certain members of San Luis Delta Mendota Water Authority, and other existing applicable agreements.

The above Purpose statement reflects the intent to advance the coequal goals set forth in the Sacramento–San Joaquin Delta Reform Act of 2009 of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The above phrase—*restore and protect the ability of the SWP and CVP to deliver up to full contract amounts*—is related to the upper limit of legal CVP and SWP contractual water amounts and delineates an upper bound for development of EIR/EIS alternatives, not a target. It is not intended to imply that increased quantities of water will be delivered under the proposed project. As indicated by the "up to full

contract amounts" phrase, alternatives need not be capable of delivering full contract amounts on average in order to meet the project purposes. Alternatives that depict design capacities or operational parameters that would result in deliveries of less than full contract amounts are consistent with this purpose.

Project Need

The need for the action is derived from the multiple, and sometimes conflicting, challenges currently faced within the Delta. The Delta has long been an important resource for California, providing municipal, industrial, agricultural and recreational uses, fish and wildlife habitat, and water supply for large portions of the state. However, by several key criteria, the Delta is now widely perceived to be in crisis. There is an urgent need to improve the conditions for threatened and endangered fish species within the Delta. Improvements to the conveyance system are needed to respond to increased demands upon and risks to water supply reliability, water quality, and the aquatic ecosystem.

Delta Ecosystem Health and Productivity

Variability in the location and timing of flows, salinity, and habitat was common in the pre-European Delta. But for the past 70 years, the Delta has been managed as a tidal/freshwater system. During the same period, the ecological productivity for Delta native species and their habitats has been in decline. Removal of much of the variable pre-European heterogeneous mix of fresh and brackish habitats, necessary to support various life stages of some of the Delta native species, has had a limiting effect on the diversity of native habitat within the Delta. In addition, urban development, large upstream dams and storage reservoirs, diversions, hydraulic mining, and the development of a managed network of navigation, flood control, and irrigation canals have all affected water flow patterns and altered fish and wildlife habitat availability. Most of the original tidal wetlands and many miles of sloughs in the Delta were removed by channelization and levee construction between the 1850s and 1930s. These physical changes, coupled with higher water exports and declines in water quality from urban and agricultural discharges and changes in constituent dilution capacity from managed inflows and diversions, have stressed the natural system and led to a decline in ecological productivity.

Significant declines have been reported in economically important fish species such as Chinook salmon. Delta smelt, considered by many to be an indicator species for the health of the Delta ecosystem, is just one component species in the community-wide pelagic organism decline. Fishery resource changes may be attributable to numerous factors, including water management systems and facilities, water quality/chemistry alterations, and nonnative species introductions.

Water Supply Reliability

The distribution of precipitation and water demand in California is unbalanced. Most of the state's precipitation falls in the north, yet substantial amounts of water demand are located south and west of the Delta, including irrigation water for southern Central Valley agriculture, and municipal and industrial uses in southern California and the Bay Area. This supply/demand imbalance led to development of two major water projects: the SWP and the CVP.

Together, the SWP and CVP systems are two of the largest and most complex water projects in the nation and provide the infrastructure for the movement of water throughout much of California. They function under a suite of Congressional authorizations, interagency agreements, regulatory

requirements, and contractual obligations that govern daily operations and seasonal performance. These include various authorizing legislation, the USFWS and NMFS BiOps, including the Reasonable and Prudent Alternatives, and the water right permits issued by the State Water Board, among others. Regulations for the combined SWP and CVP operations are intended to protect the beneficial uses of Delta water, which include municipal, industrial, and agricultural water uses, fish and wildlife uses, environmental protection, flood management, navigation, water quality, power, and recreation.

The water rights of the SWP and CVP are conditioned by the State Water Board to protect the beneficial uses of water within the Delta under each respective project's water rights. In addition, under the COA, DWR and Reclamation coordinate their reservoir releases and Delta exports to enable each project to achieve benefit from their water supplies and to operate in a manner protective of beneficial uses as required by their water right permits. It is the responsibility of the SWP and CVP to meet these obligations regardless of hydrologic conditions. In 2006, Governor Schwarzenegger's Executive Order S-17-06 created the Delta Vision Task Force to address some of the issues facing the Delta. In the closing days of the Task Force's work, the State Water Board presented information indicating that quantities totaling several times the average annual unimpaired flows in the Delta watershed could be available to water users based on the face value of water permits already issued. However, the hydrology, the SWP and CVP water contracts, and environmental regulations control actual quantities that could be made available for use and diversion.

The current and projected future inability of the SWP and CVP to deliver water to meet the demands of certain south of Delta CVP and SWP water contractors is a very real concern. More specifically, there is an overall declining ability to meet defined water supply delivery volumes and water quality criteria to support water users' needs for human consumption, manufacturing uses, recreation, and crop irrigation.

Delta Hydrology and Water Quality

Generally, Delta hydrodynamics are defined by complex interactions between tributary inflows, tides, in-Delta diversions, and SWP and CVP operations, including conveyance, pumping plants, and operations of channel barriers and gates. The degree to which each variable impacts the overall hydrology of the Delta varies daily, seasonally, and from year to year, depending on the magnitude of inflows, the tidal cycle, and the extent of pumping occurring at the SWP and CVP pumping plants. Changes in water inflow and outflow throughout the Delta affect the water quality within the Delta, particularly with regard to salinity. It has been estimated that seawater is pushing 3 to 15 miles farther inland since development began in the Delta over 150 years ago (Contra Costa Water District 6 2010).

Additionally, other water constituents of concern in the Delta have been identified through ongoing regulatory, monitoring, and environmental planning processes such as CALFED, planning functions of the State Water Board, and the CWA Section 303(d) list of state water bodies that do not meet applicable water quality standards. In June 2007 (with updates in February and May 2009), EPA gave final approval of a list of 18 chemical constituents identified in the Section 303(d) list for impaired Delta waters (State Water Resources Control Board 2007). Included in this list are dichlorodiphenyltrichloroethane (DDT) and other pesticides, mercury, polychlorinated biphenyls (PCBs), and selenium.

To further compound these challenges, fundamental changes to the Delta are certain to occur; the Delta is not a static ecological system. The anticipated effects of climate change will result in elevated sea levels, altered annual and inter-annual hydrological cycles, changed salinity and water temperature regimes in and around the Delta, and accelerated shifts in species composition and distribution. These changes add to the difficulty of resolving the increasingly intensifying conflict between the ecological needs of a range of at-risk Delta species and natural communities and the need to provide adequate and reliable water supplies for people, communities, agriculture, and industry. Anticipating, preparing for, and adapting to these changes are key underlying drivers for the proposed project.

1.1.5 Roles and Responsibilities of Key Federal and State Agencies

This document is a joint RDEIR/SDEIS prepared in compliance with the requirements of CEQA and NEPA. Before the selection and approval of an alternative considered, the lead agencies must comply with the necessary state and federal environmental review requirements. This document, along with the BDCP Draft EIR/EIS, and expected Final EIR/EIS are intended to provide sufficient CEQA and NEPA support for approval of the proposed project or any of the action alternatives for either compliance strategy. As implementation of the proposed project or any of the action alternatives will require permits and approvals from public agencies other than the lead agencies, the CEQA and NEPA documents are prepared to support the various public agency permit approvals and other discretionary decisions. These other public agencies are referred to as responsible agencies and trustee agencies under CEQA (State CEQA Guidelines Sections 15381 and 15386) and cooperating agencies under NEPA (e.g., USACE and EPA). The key agencies roles and responsibilities are summarized below.

Responsible agencies are state or local public agencies other than the CEQA lead agency that have discretionary approval over the project. In most circumstances, CEQA requires a responsible agency to use the lead agency's CEQA document to support its own decision-making process (State CEQA Guidelines Section 15096). Trustee agencies include state agencies that have jurisdiction by law over natural resources affected by a project that are held in trust for the people of California. As described in CEQ's NEPA regulations (40 CFR 1501.6), federal agencies other than the NEPA lead agency that have jurisdiction by law or special expertise with respect to the environmental effects anticipated from the project can be included as cooperating agencies. Federal agencies may use the lead agency's NEPA document to support their own decision-making process, if appropriate. A cooperating agency participates in the NEPA process and may provide input (i.e., expertise) during preparation of the NEPA document. Federal agencies may designate and encourage nonfederal public agencies, such as state, local, and tribal agencies that meet the same criteria as federal cooperating agencies, to participate in the NEPA process as cooperating agencies (40 CFR 1508.5).

Additionally, other federal and state agencies may contribute to and rely on information prepared as part of the environmental compliance process, including, but not limited to, this RDEIR/SDEIS and supporting materials. A listing of the agencies and respective potential review/approval responsibilities, in addition to those under CEQA and NEPA, is provided in Table 1-1.

1.1.5.1 Lead Agencies

Before the selection and approval of one of the alternatives considered through the CEQA and NEPA process, the lead agencies must comply with the necessary state and federal environmental review requirements. This document, along with the BDCP Draft EIR/EIS issued in December 2013, and the expected Final EIR/EIS are intended to provide sufficient CEQA and NEPA support for project approval and to inform permit decisions for the issuance of various project permits and authorizations. DWR is lead agency for CEQA compliance purposes and Reclamation is lead agency for NEPA compliance purposes.

DWR has the responsibility to operate and maintain the SWP and would be responsible for all construction activities associated with the proposed project and alternatives, including new intakes and associated conveyance facilities. DWR would operate and maintain any new SWP facilities and may also partake in discretionary actions related to coordination with Reclamation or its contractors. DWR may also have other actions related to contract amendments to fund the selected action.

While DWR would be responsible for construction of all water conveyance facilities, Reclamation would operate the relevant CVP Delta facilities in coordination with the SWP, including new intake and conveyance facilities, through the COA[8]. SWP operation of new conveyance facilities and/or flow patterns proposed under the proposed project or alternatives would require changes in existing CVP operations specific to the Delta that provide for diversion, storage, and conveyance of CVP water consistent with applicable law and contractual obligations. Reclamation's action in relation to the proposed project or alternatives would be to adjust CVP operations in the Delta to accommodate new conveyance facility operations and/or flow requirements, in coordination with SWP operations. At this time it is anticipated that CVP upstream operations will not change to accommodate construction and operation of new water conveyance facilities as may be proposed. However, if Reclamation determines that changes in upstream operations are warranted to maintain operational efficiencies or for other reasons, Reclamation may undertake additional environmental analysis.

1.1.5.2 U.S. Fish and Wildlife Service and National Marine Fisheries Service

The United States Congress passed the ESA in 1973 to provide a means for conserving endangered and threatened species and the ecosystems on which they depend. The ESA has three major components relevant to the BDCP.

- Section 7 requires that federal agencies, in consultation with the federal fish and wildlife agencies, ensure that their actions are not likely to jeopardize the continued existence of species or result in modification or destruction of critical habitat.
- Section 9 prohibits the taking of listed species.
- Section 10 allows permits to be issued that authorize the incidental take of threatened and endangered species.

[8] COA was entered into at the direction of Congress by the United States of America and the State of California in November 1986.

Section 7 of the ESA provides that each federal agency must ensure, in consultation with the Secretary of the Interior or Commerce, that any actions authorized, funded, or carried out by the agency are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of areas determined to be critical habitat (16 United States Code [USC] 1536(a)(2)). Section 7 requires federal agencies to engage in formal consultation with USFWS and/or NMFS for any proposed actions that are likely to adversely affect listed species. A BiOp is issued by USFWS or NMFS at the completion of formal consultation. The BiOp can conclude that the project as proposed is either likely or not likely to jeopardize the continued existence of the species or destroy or adversely modify designated critical habitat. If the BiOp concludes no jeopardy, the action can proceed as proposed consistent with the incidental take statement, which authorizes a specified level of take. The incidental take statement contains "reasonable and prudent measures" that are designed to minimize the level of incidental take and that must be implemented as a condition of the take authorization (50 CFR 402.14(i)(5)). If the BiOp concludes jeopardy, USFWS or NMFS will identify "reasonable and prudent alternatives" to the proposed action that would avoid jeopardizing the species.

Section 9(a)(1)(B) of the ESA prohibits the take by any person of any endangered fish or wildlife species; take of threatened fish or wildlife species is prohibited by regulation. The ESA prohibits the take of any listed threatened fish or wildlife species in violation of any regulation promulgated by USFWS or NMFS. Take under ESA is defined broadly to mean harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 USC 1532 [1988]). Harm is defined by regulation to mean an act that actually kills or injures wildlife, including those activities that cause significant habitat modification or degradation resulting in the killing or injuring of wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The take prohibitions of the ESA apply unless take is otherwise specifically authorized or permitted pursuant to the provisions of Section 7 or Section 10 of the ESA. The protections for listed plant species under the ESA are more limited than for fish and wildlife.

Section 10 of the ESA provides the basis for nonfederal entities to obtain authorization for the take of listed species. For those actions for which no federal nexus exists, private individuals, corporations, state and local government agencies, and other nonfederal entities that wish to conduct otherwise lawful activities that may incidentally result in the take of a listed species must first obtain a Section 10 permit from USFWS and/or NMFS. The nonfederal entity is required to develop an HCP as part of the permit application process.

Under Section 10(a)(1)(B) of the ESA, USFWS and NMFS may permit the incidental take of listed species that may occur as a result of an otherwise lawful activity. To obtain a Section 10(a)(1)(B) permit, an applicant must prepare an HCP that meets the following five issuance criteria.

- The taking will be incidental to an otherwise lawful activity.
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.
- The applicant will ensure that adequate funding for the Plan will be provided.
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.
- Other measures, if any, which USFWS and NMFS require as being necessary or appropriate for purposes of the Plan will be met (16 USC 1539(a)(2)(A)).

The proposed action and action alternatives will require ESA compliance, including the requirement to obtain incidental take authorization. The following discussion presents the alternative compliance strategies, depending on the particular alternative.

Section 7 of the Endangered Species Act

Where the alternative does not include preparation of an HCP, ESA compliance for construction and operation of water intakes in the north Delta and associated conveyance facilities would be achieved solely through Section 7. For these alternatives, USFWS and NMFS would not issue a permit and would not act as a lead agency for NEPA compliance. Where Section 7 is the ESA compliance strategy, USFWS and NMFS will assume roles as cooperating agencies for purposes of the NEPA review.

Reclamation would be the lead federal action agency for Section 7 compliance where a non-HCP alternative is selected. Reclamation's Section 7 compliance would be expected to also address the Section 7 compliance needs for the USACE permit actions. In cooperation with DWR, Reclamation would prepare a biological assessment (BA) for submission to USFWS and NMFS requesting formal consultation under ESA Section 7. It is expected that USFWS and NMFS would ultimately prepare a BiOp authorizing incidental take of federally listed species.

Section 10 of the Endangered Species Act

Where the alternative involves preparation of an HCP, ESA compliance will occur primarily through Section 10. Under this alternative compliance strategy, DWR and certain federal and state water contractors[9] would submit permit applications to USFWS and NMFS for authorization, over a 50-year permit term, to take endangered or threatened species and non-listed "covered species" related to a broad range of conservation measures, including construction and operation of water intakes in the north Delta and associated conveyance facilities, and would also request certain assurances over the 50 year permit term related to the proposed covered species. For this alternative compliance strategy, USFWS and NMFS would, along with Reclamation, act as lead agencies for NEPA compliance. The compliance process under Section 10 is separate from Section 7 consultations but under this approach, USFWS, NMFS and Reclamation would all require compliance with Section 7 but much of the same information developed during the Section 10 process would be utilized for the Section 7 consultations.

Magnuson-Stevens Fishery Conservation and Management Act

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires federal agencies to consult with NMFS on activities that may affect essential fish habitat (EFH) for species that are managed under federal fishery management plans in United States waters. The statutory definition of EFH includes *those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity*, which encompasses all physical, chemical, and biological habitat features necessary to support the entire life cycle of the species in question. Waters potentially affected by either alternative compliance strategy include EFH for Pacific salmon, groundfish, and coastal pelagic

[9] Kern County Water Agency; Metropolitan Water District of Southern California; San Luis & Delta-Mendota Water Authority; Santa Clara Valley Water District; State and Federal Contractors Water Agency; Westlands Water District; and Alameda County Flood Control and Water Conservation District (Zone 7 Water Agency).

fishes, and it is expected that compliance with the Magnuson-Stevens Act for the proposed project or any of the action alternatives will be through NMFS' issuance of the BiOp through Section 7 of the ESA.

1.1.5.3 U.S. Army Corps of Engineers[10]

USACE has regulatory authority over activities within certain waters within the project area. Depending on the activity and the location of that activity in relation to particular resources, USACE may be required to issue an authorization for that activity under:

- Section 404 of the CWA (discharge of dredged or fill material into waters of the United States).
- Section 10 of the Rivers and Harbors Act (activities in, under, or over navigable waters of the United States).
- Section 14 of the Rivers and Harbors Act (activities that have the potential to affect USACE civil works projects, including project levees).

Section 404 of the Clean Water Act

Activities that would result in the discharge of dredged or fill materials into "waters of the U.S." must obtain authorization from USACE pursuant to Section 404 of the CWA (33 USC 1251 et seq.). A permit issued under Section 404 can take the form of either a General Permit or an Individual Permit. Individual Permits are designed for activities that have the potential to have more than a minimal effect on jurisdictional waters or that otherwise do not qualify to proceed under a General Permit. The discharge activities that would occur in connection with either alternative compliance strategy, including that of the proposed project, or any action alternatives, would require an Individual Permit.

Section 10 of the Rivers and Harbors Act

Activities that would involve the construction of any structure in or over any navigable water of the United States must obtain authorization from USACE pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC §403 et seq.; 33 CFR §§ 322 et seq.). Structures or work outside the limits defined for navigable waters of the United States require a Section 10 permit if "the structure or work affects the course, location, or condition of the water body" (33 CFR §322.3(a)). The law applies to any dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification of a navigable water of the United States, and applies to all structures, from the smallest floating dock to the largest commercial undertaking (33 CFR §322.2(b)).

Where the activities overlap, the process for obtaining a permit under Section 10 of the Rivers and Harbors Act is combined with the process for obtaining a permit under Section 404 of the CWA and compliance with the 404 permitting criteria will cover the substantive requirements of the Rivers and Harbors Act permitting process. The activities related to navigable waters would occur in connection with either alternative compliance strategy, including that of the proposed project, or any action alternatives, and would require permit under Section 10 of the Rivers and Harbors Act. DWR would apply to USACE for issuance of one permit consistent with both Section 10 of the Rivers and Harbors Act and Section 404 of the CWA.

[10] See Appendix E, for more detailed discussion of the USACE permit process and the specific informational needs of USACE under its various regulatory authorities.

Section 14 of the Rivers and Harbors Act

Section 14 of the Rivers and Harbors Act (33 USC § 408) requires permission from the Secretary of the Army, acting through USACE to alter an existing USACE civil works project. To grant permission under Section 408, USACE must determine that the proposed alteration does not impair the usefulness of the USACE project, and would not be injurious to the public interest. This is generally referred to as "Section 408 permission." Section 408 permission would be required for alteration and/or modification of Federally constructed levees associated with either alternative compliance strategy, including that of the proposed project, or any action alternatives. The informational requirements under the Section 408 process necessarily includes a detailed level of engineering design, as well as a detailed level of analysis related to effects to the USACE civil works projects and indirect hydraulic effects. The information contained in the current CEQA/NEPA documents may not fully meet this level of detail and additional informational submittals and analysis may be necessary. As a result of these submittals, prior to issuance of final 408 permission, additional NEPA compliance by USACE may be required.

For USACE engagement in the permit and authorization activities described above, NEPA compliance will be necessary. USACE will be acting as a Cooperating Agency within the current NEPA process for the proposed project and all action alternatives. In addition, USACE has designated Reclamation as the lead federal action agency for purposes of compliance with Section 7 of the ESA.

1.1.5.4 Environmental Protection Agency

CWA Section 404

USACE is solely responsible for making final Section 404 (and Rivers and Harbors Act) permit decisions, including final determinations of compliance with USACE permit regulations, and the Section 404(b)(1) Guidelines (33 USC § 1344; 40 CFR 230.11; Clean Water Act Section 404(q) Memorandum of Agreement Between The Environmental Protection Agency and The Department of the Army to "Minimize, to the Maximum Extent Practicable, Duplication, Needless Paperwork and Delays in the Issuance of Permits" (August 11, 1992)) (404(q) MOA). However, in conjunction with USACE, EPA promulgates guidelines (and guidance on those guidelines) that USACE applies to the Section 404 permit process, and EPA may provide USACE with comments during the permitting process (33 USC § 1344(b)(1); 40 CFR 230, 40 CFR 230.2(c)). The EPA may elevate an Individual Permit (in relation to Section 404) in the event that the EPA Regional Administrator believes that the issuance of the permit would result in substantial and unacceptable impacts to "aquatic resources of national importance" pursuant to Section 404(q) (33 USC § 1344(q)) and the 404(q) MOA. Under Section 404(c) of the CWA, if the EPA determines, after notice and opportunity for public hearings, that the permitted activity would have unacceptable adverse impacts on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or on fishing, wildlife or recreation areas (33 USC 1344(c); 40 CFR 231.2(e), 231.3, 231.4), the EPA may "veto" the Individual Permit (in relation to Section 404). Specifically, EPA may 1) prohibit the specification (including the withdrawal of specification) of any defined areas as a disposal site and 2) deny or restrict the use of any defined area for specification (including the withdrawal of specification as a disposal site) (33 USC § 1344(c)).

NEPA Review

Section 309 of the Clean Air Act (codified at 42 USC § 7609) requires EPA to review and publicly comment on the environmental impacts of major Federal actions. EPA interprets Section 309 as requiring it to review and comment on all draft EISs. EPA's *Policy and Procedures for the Review of Federal Actions Impacting the Environment* published in 1984 establishes rating system criteria for EISs that establishes two separate determinations. The first basis of review is the environmental impacts of the action and results in one of the following ratings: LO (Lack of Objections), EC (Environmental Concerns), EO (Environmental Objections), and EU (Environmentally Unsatisfactory). The second area of review rates the adequacy of the draft EIS and results in one of the following ratings: 1 (adequate), 2 (Insufficient Information), or 3 (Inadequate).

Section 309 requires that when EPA determines that a proposed action "is unsatisfactory from the standpoint of public health or welfare or environmental quality, the matter shall be referred to the Council on Environmental Quality (CEQ)." CEQ has issued rules establishing a process for handling referrals from EPA. The rules encourage agencies to make concerted efforts to resolve their NEPA disputes informally and limit the CEQ to resolving referrals only for those interagency disputes that rise to the level of national importance (42 USC § 7609; 40 CFR 1504).

Water Quality Control Plans

In California, the State Water Board has the authority to adopt water quality control plans. Under the CWA, new or revised water quality standards must be approved by EPA. Therefore, EPA's Section 309 review of a federal agency's EIS will necessarily encompass its authority under the CWA.

1.1.5.5 California Department of Fish and Wildlife

The CESA prohibits the take of wildlife or plant species designated as threatened or endangered by the California Fish and Game Commission (Fish & Game Code 2080). Take under the CESA is defined as any action or attempt "to hunt, pursue, catch, capture, or kill" (Fish & Game Code 86). Like the ESA, the CESA allows for exceptions to the take prohibitions for otherwise lawful activities. The requirements of an application for incidental take under the CESA are described in Section 2081 of the Fish & Game Code. Incidental take of endangered, threatened, or candidate species may be authorized if an applicant demonstrates, among other things, that the effects of the proposed take will be minimized and fully mitigated (Fish & Game Code 2081(b)(2)). The NCCPA provides a mechanism for compliance with state endangered species regulatory requirements through the development of comprehensive, broad-scale NCCPs that focus on the needs of natural communities and the range of species that inhabit them (Fish & Game Code 2800 et seq.). Take of species listed under the CESA and covered by the NCCP may be authorized by CDFW (Fish & Game Code 2835).

California Fish and Game Code Section 2081 (b)

Where the alternative does not include preparation of an HCP, CESA compliance for construction and operation of water intakes in the north Delta and associated conveyance facilities would be achieved through Fish & Game Code Section 2081(b). The CESA allows CDFW to issue an incidental take permit for a State-listed threatened and endangered species only if specific criteria are met. For this alternative compliance strategy, CDFW would be a Responsible Agency for CEQA compliance purposes.

These criteria are reiterated in Title 14 of California Code of Regulations (CCR), Sections 783.4(a) and (b):

- The authorized take is incidental to an otherwise lawful activity;
- The effects of the authorized take are minimized and fully mitigated. The measures required to minimize and fully mitigate the effects of the authorized take;
    - Are roughly proportional in extent to the effect of the taking on the species.
    - Maintain the applicant's objectives to the greatest extent possible.
    - Are capable of successful implementation.
- Adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with and the effectiveness of the measures;
- Issuance of the permit will not jeopardize the continued existence of a state-listed species.

As a component of Alternative 4A, an adaptive management and monitoring program would be implemented to use new information and insight gained during the course of construction and operation of water conveyance facilities to ensure that the proposed project continues to meet CESA Section 2081(b) standards.

Natural Community Conservation Plan Act

Where the alternative includes preparation of an HCP, compliance with the Fish & Game Code Section 86 take prohibition for construction and operation of water intakes in the north Delta and associated conveyance facilities would be achieved through NCCPA. The NCPPA requires preparation of an NCCP that identifies and provides for the regional or area wide protection of covered plants, animals, and their habitats, while allowing compatible and appropriate economic activity.

Under this alternative compliance strategy, DWR and certain federal and state water contractors would request NCCP approval from CDFW for authorization, over a 50-year permit term, to take endangered or threatened species and non-listed "covered species" related to a broad range of conservation measures, including construction and operation of water intakes in the north Delta and associated conveyance facilities, and would also request certain assurances over the 50 year permit term related to the proposed covered species. For this alternative compliance strategy, CDFW would be a Responsible Agency for CEQA compliance purposes.

California Fish and Game Code Section 1600 ***et seq.***

California has adopted regulations to address impacts to many of the resources subject to Section 404 of the CWA. Although not entirely overlapping, these programs intersect frequently. Project proponents are required to obtain separate authorizations from USACE and CDFW.

Section 1602 of the Fish & Game Code requires any person, state, or local government agency to provide advance written notification to CDFW prior to initiating any activity that would cause the following actions.

- Divert or obstruct the natural flow of, or substantially change or remove material from the bed, channel, or bank of any river, stream, or lake.
- Result in the disposal or deposition of debris, waste, or other material into any river, stream, or lake (Fish & Game Code 1602).

The state definition of *lake, rivers, and streams* includes all rivers or streams that flow at least periodically or permanently through a bed or channel with banks that support fish or other aquatic life, and watercourses with surface or subsurface flows that support or have supported riparian vegetation (14 CCR 1.72.). Certain actions that will be implemented under the proposed project or any of the action alternatives under either compliance strategy will require a Lake and Streambed Alteration Agreement under Section 1602. As part of that process, CDFW will review notifications of actions to determine if the proposed action would substantially adversely affect existing fish and wildlife resources that are directly dependent on a lake, river, or stream. If CDFW determines that the proposed activity would not substantially adversely affect an existing fish and wildlife resource, it will notify DWR that no Lake and Streambed Alteration Agreement is required and the project may proceed (Fish & Game Code 1602(a)(4)(A)(i)). If CDFW determines that the project may substantially adversely affect an existing fish and wildlife resource, it will require, as part of a Lake and Streambed Alteration Agreement, reasonable measures necessary to protect the fish and wildlife resource (Fish & Game Code 1603(a)). As the issuance of a Lake and Streambed Alteration Agreement is subject to CEQA, CDFW would be a Responsible Agency for CEQA compliance purposes.

1.1.5.6 State Water Resources Control Board

Change Point of Diversion

DWR and Reclamation hold appropriative water rights permits, issued by the State Water Board, to divert water for the SWP and CVP, respectively. The water right permits identify specific points where water may be diverted from the stream system. The locations of the north Delta intake facilities that would be constructed as a part of the proposed project or any of the action alternatives are not currently identified as points of diversion in DWR's and Reclamation's water right permits. Thus, DWR and Reclamation must file petitions with the State Water Board, seeking State Water Board approval to add to the points of diversion in their affected water right permits.

The change petition process is described in Chapter 10 of Division 2, Part 2 of the California Water Code (Sections 1700-1707) and Title 23 of the California Code of Regulations Article 15 (Sections 791-799). DWR and Reclamation will provide notice of the proposed changes as the State Water Board requires, including written notice to CDFW. Other water right holders and the public will have the opportunity to object to the proposed changes by filing a protest with the State Water Board. If a protest is filed, the State Water Board will hold a hearing on the petitions before determining whether to grant or deny permission to make the requested changes. The State Water Board must find that there is a reasonable likelihood the proposed changes will not injure any legal user of the water and reasonably protect fish and wildlife, as identified in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan (Bay-Delta WQCP).

In addition, the Delta Reform Act states that an order by the State Water Board approving the change petitions shall include appropriate Delta flow criteria and shall be informed by the analysis performed in Section 85086 of the Water Code:

> Any order approving a change in the point of diversion of the State Water Project or the federal Central Valley Project from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria and shall be informed by the analysis conducted pursuant to this section. The flow criteria shall be subject to modification over time based and monitoring results, including the contribution of habitat and other conservation measures, into ongoing Delta water management.

Cal. Water Code § 85086(c)(2).

Many of the existing State Water Board requirements for operation of the SWP and CVP are contained within Water Rights Decision 1641 (D-1641). This decision places the responsibility upon the SWP and CVP to provide water to meet current Delta flow standards. This responsibility, however, is not assumed in the appropriate flow requirement of the Delta Reform Act. It is anticipated that many parties, including the SWP and CVP, will share in the requirement to meet Delta flow standards. Thus, appropriate flow standards, as required through the process described in Section 85086 of the California Water Code, would likely contribute only a portion of the total flow standards adopted by the State Water Board consistent with the Bay-Delta WQCP update.

The State Water Board is in the process of developing and implementing updates to the Bay-Delta WQCP that protect beneficial uses in the Bay-Delta watershed. The Bay-Delta WQCP ultimately sets the Delta flow standards for all water users in the Delta. This update is broken into four phases, some of which are proceeding concurrently. Phase 1 of this work, currently in progress, involves updating San Joaquin River flow and southern Delta water quality requirements for inclusion in the Bay-Delta WQCP. Phase 2 will involve comprehensive changes to the Bay-Delta WQCP to protect beneficial uses not addressed in Phase 1, focusing on Sacramento River driven standards. Phase 3 will involve implementation of Phases 1 and 2 through changes to water rights and other measures; this phase requires a hearing to determine the appropriate allocation of responsibility between water rights holders within the scope of the Phase 1 and Phase 2 plans. It is expected that in setting appropriate allocation of flow responsibilities in Phase 3, the State Water Board will consider the flow standards set in the SWP/CVP change petition process, as required in Section 85086 of the California Water Code. Phase 4 will involve developing and implementing flow objectives for priority Delta tributaries upstream of the Delta.

Section 401 of the Clean Water Act – Water Quality Certification

Pursuant to Section 401, states can certify or deny federal permits or licenses that might result in a discharge to state waters, including wetlands (33 USC 1341). Section 404 permit applicants must obtain a "water quality certification" from the state water quality agency indicating that the proposed activity complies with all applicable state water quality standards, limitations, and restrictions. In California, the Regional Water Quality Control Boards (RWQCBs) issue water quality certifications within their jurisdictions. Appeals to the decisions of the RWQCBs are heard by the State Water Board. The State Water Board will issue the Section 401 certification, however, in certain cases, for example where projects cross multiple RWQCB jurisdictions or where issuance of water right authorization is required.

Because the proposed project and any of the action alternatives in either compliance strategy will require a permit under Section 404, they will necessarily require obtaining 401 certification from the State Water Board. DWR will submit a request for water quality certification for the project to the State Water Board when it submits an application for a permit under Section 404. As part of this request to the State Water Board, DWR will provide a completed application form, a plan that describes how unavoidable effects to waters of the State will be minimized or mitigated, copies of CWA Section 404 permit application materials that are pertinent to the CWA Section 401 certification, and the appropriate permit fee. Once the State Water Board receives the application, it has 30 days to determine if it is complete; once complete, the State Water Board has 60 days to review all documentation and issue certification. The State's 401 water quality certification is

subject to CEQA, and the State Water Board is a Responsible Agency under CEQA compliance purposes.

Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Control Act (California Water Code 13000 et seq.) sets out a comprehensive regulatory, planning, and management program to protect water quality and beneficial uses of the State's water. The act established the State Water Board's authority to preserve and enhance the quality of California's water resources, and to ensure proper allocation and efficient use of water.

Under the Porter-Cologne Water Quality Control Act, the State Water Board is required to prepare a water quality control plan for the Bay-Delta WQCP. While the RWQCBs have primary responsibility for formulating and adopting water quality control plans for their respective regions, the State Water Board also is authorized to develop and adopt water quality control plans. In such instances, the water quality control plan adopted by the State Water Board supersedes regional plans developed for the same waters, to the extent that they conflict.

Beneficial uses include uses such as domestic, agricultural, and industrial supply; power generation; recreation and aesthetic use; navigation; and preservation and enhancement of fish, aquatic, and wildlife resources. Water quality objectives or standards reflect the levels of water quality constituents that have been determined to be necessary to protect beneficial uses. Implementation plans describe actions to be taken to achieve the objectives and set out programs for monitoring, management, and enforcement.

The State Water Board is vested with primary regulatory authority over flows, water quality, and other water rights issues outlined in the Bay-Delta WQCP. As stated above, the actions described in the proposed project or any of the action alternatives include modifications to the water conveyance system and will require the approval of the State Water Board.

Discharges to waters that are not considered "waters of the United States" are not subject to the CWA and therefore do not need a permit under Section 404 or 401 certification from the State Water Board. These discharges, however, still must meet the State's water quality requirements as prescribed in the WQCPs under Porter-Cologne. DWR will submit a request for water quality certification for the project to the State Water Board when it submits an application for a permit under Section 404. As part of the request to the State Water Board for 401 certification, DWR will also request authorization for discharges to state waters under Porter-Cologne.

1.1.5.7 Delta Stewardship Council

The Delta Reform Act gave the Delta Stewardship Council (Council) direction and authority to serve two primary governance roles: 1) set a comprehensive, legally enforceable direction for how the State manages important water and environmental resources in the Delta through the adoption of a Delta Plan, and 2) ensure coherent and integrated implementation of that direction through coordination and oversight of State and local agencies proposing to fund, carry out, and approve Delta-related activities.

Delta Plan

Delta Reform Act compliance for the non-HCP alternatives 2D, 4A, and 5A, involving construction and operation of water intakes in the north Delta and associated conveyance facilities would, be achieved through either the Delta Plan Consistency certification process or through a possible future amendment to the Delta Plan.

The Delta Reform Act requires state and local actions that fit the legal definition of a covered action to be consistent with the policies included in the Delta Plan. In contrast to how many other governmental plans are implemented, the Council does not exercise direct review and approval authority over covered actions to determine their consistency with the regulatory policies in the Delta Plan. Instead, State or local agencies self-certify Delta Plan consistency, and the Council serves as an appellate body for those determinations.

For a State or local agency to determine whether its proposed plans, programs, or projects are covered actions under the Delta Plan and, therefore, subject to the regulatory provisions in the plan, it must start with the Delta Reform Act, which defines a covered action as (Water Code Section 85057.5(a)):

> ...a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:
>
> - Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;
> - Will be carried out, approved, or funded by the state or a local public agency;
> - Is covered by one or more provisions of the Delta Plan;
> - Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

A State or local agency that proposes to carry out, approve, or fund a plan, program, or project is the entity that must determine whether that plan, program, or project is a covered action. That determination must be reasonable, made in good faith, and consistent with the Delta Reform Act and relevant provisions of the Delta Plan. If requested, Council staff will meet with an agency's staff during early consultation to review consistency with the Delta Plan and to offer advice as to whether the proposed plan, program, or project appears to be a covered action, provided that the ultimate determination in this regard must be made by the agency.

Once a state or local agency has determined that its plan, program, or project is a covered action under the Delta Plan, it is required to submit a written certification to the Council, with detailed findings, demonstrating that the covered action is consistent with the Delta Plan (Water Code Sections 85225 et seq.). The Council has developed a discretionary checklist that agencies may use to facilitate the process, as well as certification forms and related materials, available on the Council website.

If an agency determines that a proposed plan, program, or project is not a covered action that determination is not subject to Council regulatory review, but is subject to judicial review. Any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the Council.

Delta Plan Appeals Process

The process for an appeal to the Delta Stewardship Council includes submittal of an appeal that clearly and specifically sets forth the basis for the claim, including specific factual allegations, that the covered action is inconsistent with the Delta Plan. The appeal must be filed no later than 30 days after the submission of the certification of consistency and if no person appeals the certification of consistency, the state or local public agency may proceed to implement the covered action.

The appeal shall be heard by the Council within 60 days of the date of the filing of the appeal, unless the Council, or by delegation the executive officer, determines that the issue raised on appeal is not within the Council's jurisdiction or does not raise an appealable issue. The Council shall make its decision on the appeal within 60 days of hearing the appeal. The Council, or by delegation the executive officer, may also dismiss the appeal for failure of the appellant to provide information requested by the Council within the period provided, if the information requested is in the possession or under the control of the appellant.

After a hearing on an appealed action, the Council shall make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the Council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the Council. According to the Council, if the covered action is found to be inconsistent, the project may not proceed until it is revised so that it is consistent with the Delta Plan. The Council's position on this issue has been challenged in court by the State Water Contractors.

Delta Plan BDCP Requirements

Where the alternative involves preparation of an HCP, such as the BDCP, Delta Reform Act compliance for all elements of the conservation plan would likely be achieved through the Council's consideration of the BDCP for inclusion in the Delta Plan. The Delta Reform Act sets out the conditions under which the Council is to incorporate the BDCP into the Delta Plan. To be considered for inclusion in the Delta Plan, CDFW must find that the BDCP complies with specified requirements, including compliance with NCCPA and CEQA, and review and analysis of certain flow requirements and alternatives. Upon CDFW's findings and approval of the BDCP as an NCCP (and as an HCP under the ESA), the Council is required to incorporate the BDCP into the Delta Plan. However, the determination by the CDFW that the BDCP meets the requirements of the Delta Reform Act may be appealed to the Council.

If the Council decides that it was incorrectly determined that the BDCP meets all of the requirements of Water Code Section 85320 for inclusion in the Delta Plan, and consequently grants the appeal, the determination may be revised to meet the issues raised by the Council, or Council's findings may be responded to in detail, setting forth reasons why the BDCP meets all of the requirements of Section 85320 for inclusion in the Delta Plan. Unless the Council on appeal decides that the BDCP meets all of the requirements of Section 85320 for inclusion in the Delta Plan, the BDCP shall not be

incorporated in the Delta Plan and the public benefits associated with the BDCP shall not be eligible for State funding.

Table 1-1. Summary of Agencies and Review, Approval, or Other Responsibilities, in Addition to Those under CEQA and NEPA

Agency	Permit, Decision, Approval, or Other Action[a]
Federal	
Bureau of Reclamation (NEPA lead agency)	Permits or Consultations ESA Section 7 consultation Section 106 of the National Historic Preservation Act Other considerations Fish and Wildlife Coordination Act, 16 USC 661-667e (applies to restoration activities and not water operations) Archaeological Resource Protection Act Indian Trust Assets Central Valley Project Improvement Act Federal Water Project Recreation Act (16 USC 460(L) 12-21)
U.S. Fish and Wildlife Service (NEPA lead or cooperating agency[11])	Permits or Consultations All provisions of the Endangered Species Act, including: Biological Opinion (Section 7 of ESA) Incidental Take Permit (Section 10 [a][1][B] of ESA) for BDCP or other conservation plan alternatives Other considerations Fish and Wildlife Coordination Act, 16 USC 661-667e Migratory Bird Treaty Act EO 13186 Migratory Birds EO 13112 Invasive Species Central Valley Project Improvement Act
National Marine Fisheries Service (NEPA lead or cooperating agency[12])	Permits or Consultations All provisions of the Endangered Species Act, including: Biological Opinion (Section 7 of ESA) Incidental take permit (Section 10 [a][1][B] of ESA) for BDCP or other conservation plan alternatives Other Considerations Essential Fish Habitat under Magnuson-Stevens Fisheries Conservation and Management Act Fish and Wildlife Coordination Act, 16 USC 661-667e

[11] NEPA lead agency for actions involving BDCP or other conservation plan alternatives. NEPA cooperating agency for actions involving Alternative 4A or other non-conservation plan alternatives.

[12] NEPA lead agency for actions involving BDCP or other conservation plan alternatives. NEPA cooperating agency for actions involving Alternative 4A or other non-conservation plan alternatives.

Agency	Permit, Decision, Approval, or Other Action[a]
U.S. Army Corps of Engineers (NEPA cooperating agency)	Permits or Consultations Clean Water Act Section 404 Rivers and Harbors Act Section 10 Rivers and Harbors Act Section 14, 33 USC 408 ESA Section 7 consultation Section 106 of the National Historic Preservation Act Other Considerations Federal Water Project Recreation Act 16 USC 460(L) 12-21 Flood Control Act (Public Law 78-534 Stat. 890) Protection of Wetlands (EO 11990) Fish and Wildlife Coordination Act, 16 USC 661-667e
U.S. Environmental Protection Agency (NEPA cooperating agency)	NEPA Review (Clean Air Act, Section 309) Clean Water Act Review; and Clean Water Act Section 404 permitting oversight
State Historic Preservation Officer	Permits or Consultations Consultation under National Historic Preservation Act, Section 106; California State Projects (Public Resources Code Sections 5024, 5024.5)
U.S. Coast Guard (Potential NEPA cooperating agency)	Permits Rivers and Harbors Act Section 9 Bridge Permits Construction in Navigable Waters Navigational Aids – Private Aids to Navigation
Natural Resources Conservation Service	Farmland Protection Policy Act
State	
California Department of Water Resources (CEQA lead agency)	Other considerations Water Code Sections 11100 et seq. (Central Valley Project Act) Water Code Sections 12930 et seq. (California Resources Development Bond Act) Water Code 11451 (Control of Project) Approval of SWP water supply contract amendment and funding agreements
California Department of Fish and Wildlife (CEQA responsible agency, trustee agency)	Permits or Consultations NCCP Findings and Approval, Fish & Game Code Sections 2800 et seq. for BDCP or other conservation plan alternatives California Endangered Species Act, Incidental Take Permit – Section 2081(b) for Alternative 4A or other non-conservation plan alternatives Streambed Alteration Master Agreement (Fish & Game Code Section 1602) Scientific Collection permits under Fish and Game Code State wildlife areas Encroachment Permit Other considerations Instream Flow – Public Resources Code Section 10000 et seq. Fish & Game Code Section 5650 – water pollution Fish & Game Code Section 1790 – wetlands Fish & Game Code Section 3503 – Nests and Eggs Fish and Wildlife Coordination Act, 16 USC 661-667e Migratory Birds, Fish & Game Code Section 3513 Raptors, Fish & Game Code Section 3503.5 Code Section 1002 and California Code of Regulations Title 14 Sections 650 and 670.7 (Plan implementation)

Agency	Permit, Decision, Approval, or Other Action[a]
State Water Resources Control Board (CEQA responsible agency)	Permits or Consultations Section 401 Water Quality Certification and Waste Discharge Requirements, Porter-Cologne Act Water Right Change Petitions Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Compliance and NPDES Construction Stormwater General Permit Petitions for Extension of Time for Existing Water Right Permits Water Quality Order 99-08-DWQ: General Permit for Storm Water Discharges Associated with Construction Activity (33 USC 1342) Water Right for Long-term Transfer Petitions Other considerations Water Quality Control Plan for San Francisco Bay/Sacramento-San Joaquin Delta Estuary Basin Plan Amendment (33 USC 13240) General Certification Order for Dredging for Restoration Projects Groundwater Quality Monitoring Act, Water Code Sec 10780-10782.3 Porter-Cologne Act, California Water Code Sec 13000 et seq. Surface Water Rights, California Code of Regulations Section 303 State Water Board Decision 1641 (Water Quality)
Central Valley Regional Water Quality Control Board (potential CEQA responsible agency)	Permits or Consultations Discharges Associated with Construction Activity (33 USC 1342) Regional General Permits Waste Discharge Requirements for Dredging Projects or Fill-Related Activities Other considerations Basin Plan Amendment (33 USC 13240)
San Francisco Bay Regional Water Quality Control Board (potential CEQA responsible agency)	Permits or Consultations National Pollutant Discharge Elimination System (316(b) Permit) Stormwater Permit Waste Discharge Requirements for Dredging Projects or Fill-Related Activities Other considerations Basin Plan
Delta Stewardship Council (CEQA responsible agency)	Other considerations Determining, on appeal, whether the BDCP meets statutory criteria in the Delta Reform Act for inclusion in the Delta Plan Determining, on appeal, whether Alternative 4A or other action alternative or plan amendment is consistent with Delta Plan
State Lands Commission (CEQA responsible agency, trustee agency)	Other considerations Possible lease involving granted tide and submerged lands
California Department of Parks and Recreation (potential CEQA responsible agency, trustee agency)	Permits or Consultations Encroachment Permit
California Department of Boating and Waterways (potential[b] CEQA responsible agency)	Other considerations Coordination on construction and placement of gates, signage, and use of gates

Agency	Permit, Decision, Approval, or Other Action[a]
California Department of Transportation (CEQA responsible agency)	Permits or Consultations Encroachment Permit for realignment of State Route 160
Central Valley Flood Protection Board and Port of Stockton	Permits or Consultations Coordination consistent with local sponsor requirements under USACE Section 408 requirements
Regional Air Pollution Control Districts, California Air Resources Board (potential CEQA responsible agencies)	Permits or Consultations Permit to Operate an Internal Combustion Engine Stationary Source Permit Use of Portable Equipment During Construction Other considerations Clean Air Act
California Department of Public Health (potential CEQA responsible agency)	Permits or Consultations Water Supply Permits for Operations of Public Drinking Water Systems Other considerations State Drinking Water Program
San Francisco Bay Area Conservation and Development Commission (potential CEQA responsible agency)	Other considerations California Coastal Act/McAteer-Petris Act
Division of Safety of Dams (potential CEQA responsible agency)	Permits or Consultations California Code of Regulations Title 23, Section 310
California Public Utilities Commission	Permits or Consultations Right of way; potential relocation of utilities
Local and Other	
State and Federal Contractors Water Agency (NEPA cooperating agency)	Joint Powers Authority created for purposes of pursuing BDCP research and study
Contra Costa County (NEPA cooperating agency)	Floodplain development regulations (required by National Flood Insurance Program) Williamson Act cancellations Surface Mining and Reclamation Act
Sacramento County (NEPA cooperating agency)	Floodplain development regulations (required by National Flood Insurance Program) Williamson Act cancellations Surface Mining and Reclamation Act
Solano County (NEPA cooperating agency)	Floodplain development regulations (required by National Flood Insurance Program) Williamson Act cancellations Surface Mining and Reclamation Act
Yolo County (NEPA cooperating agency)	Floodplain development regulations (required by National Flood Insurance Program) Williamson Act cancellations Surface Mining and Reclamation Act
Reclamation District 999 (NEPA cooperating agency)	Easement/Right of way
Reclamation District 150 (NEPA cooperating agency)	Easement/Right of way

Agency	Permit, Decision, Approval, or Other Action[a]
Reclamation District 551 (NEPA cooperating agency)	Easement/Right of way
Reclamation District 3 (NEPA cooperating agency)	Easement/Right of way
North Delta Water Agency (NEPA cooperating agency)	Interest in resource issues
Individual SWP contractors	
Alameda County Flood Control and Water Conservation District, Zone 7 (potential CEQA responsible agency)	Possible actions related to the BDCP or other conservation plan alternatives
Santa Clara Valley Water District (potential CEQA responsible agency)	Possible actions related to the BDCP or other conservation plan alternatives
Kern County Water Agency (potential CEQA responsible agency)	Possible actions related to the BDCP or other conservation plan alternatives
Metropolitan Water District of Southern California (potential CEQA responsible agency)	Possible actions related to the BDCP or other conservation plan alternatives
Individual CVP contractors[c]	
San Luis & Delta-Mendota Water Authority (potential CEQA responsible agency)	Possible actions related to the BDCP or other conservation plan alternatives
The Westlands Water District (potential CEQA responsible agency)	Possible actions related to the BDCP or other conservation plan alternatives

[a] This list is not all inclusive and the agencies may use the EIR/EIS for other requirements not identified in this table.

[b] The term *potential* is used in this table generally. Whether particular entities are responsible agencies will be determined when a final BDCP is approved.

[c] To be determined when financing agreements are identified.

1.2 Purpose of Recirculated/Supplemental Documents

As explained above, the Draft EIR/EIS has been partially revised and is being recirculated for additional public review to address and evaluate the critical changes to Alternative 4 and the addition of Alternatives 4A, 2D, and 5A. Alternative 4A is now the CEQA and NEPA Preferred Alternative. With respect to Alternative 4, the RDEIR/SDEIS describes and analyzes the following: changes to conveyance facility design; revisions to proposed operations; changes to the proposed conservation strategy and habitat mitigation approach; and revisions and corrections to the analyses of certain impacts. Alternative 4A would entail the same conveyance facility design