

## 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

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

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

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

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

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<sup>1</sup> Hereafter in this document and in associated documents, California WaterFix will be referred to as Alternative 4A.

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

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

29 This RDEIR/SDEIS will be circulated for an additional public review to disclose impacts and  
30 mitigation measures of the new alternatives and other changes. The original Draft BDCP and Draft  
31 EIR/EIS were released together for public review on December 13, 2013, for a 120-day public  
32 review period. The review period was extended in April 2014 for an additional 60 days. In June  
33 2014, the Lead Agencies decided to further extend the review period to July 29, 2014, for a total  
34 review period of approximately 7½ months. During the latter portion of the extended public review  
35 period, the Lead Agencies issued a draft Implementation Agreement (IA) for a 60-day public review  
36 period to coincide with the last 60 days of the BDCP review period. The duration of the overall  
37 public review period reflected the Lead Agencies’ desire to ensure that agencies, members of the  
38 public, and other entities had sufficient time in which to provide meaningful comments on all the  
39 draft documents, many of which were lengthy, reflecting the complexity of the issues involved.

40 Public comment received on the draft documents comprised a total of 12,204 comment letters—  
41 1,518 unique letters from individual members of the public and 432 letters from agencies,  
42 organizations, and stakeholder groups. The balance of responses consisted of form letters sent by  
43 individuals and organized by various organizations. A total of 18,532 separate comments on the

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<sup>2</sup> [https://s3.amazonaws.com/californiawater/pdfs/ECO\\_FS\\_Overview.pdf](https://s3.amazonaws.com/californiawater/pdfs/ECO_FS_Overview.pdf)

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

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

### 13 **1.1.1 Addition of New Alternatives 4A, 2D, and 5A**

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

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

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

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

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

## 27 **1.1.2 Legal Basis for Recirculation**

28 In accordance with Public Resources Code Section 21092.1 and State CEQA Guidelines Section  
 29 15088.5, a CEQA lead agency must “recirculate” a revised Draft EIR or chapters or portions thereof  
 30 for additional comments if, subsequent to the commencement of public review but prior to final EIR  
 31 certification, the lead agency adds “significant new information” to an EIR. (See PRC Section  
 32 21092.1; State CEQA Guidelines Section 15088.5; *Laurel Heights Improvement Association of San*  
 33 *Francisco, Inc. v. Regents of the University of California* [1993] 6 Cal.4th 1112 [*Laurel Heights II*].)  
 34 State CEQA Guidelines Section 15088.5 provides four examples of disclosure that constitute  
 35 “significant new information” for purposes of requiring recirculation of a revised EIR.

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

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

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

- 11 1. The agency makes substantial changes in the proposed action that are relevant to environmental  
12 concerns.
- 13 2. There are significant new circumstances or information relevant to environmental concerns and  
14 bearing on the proposed action or its impacts (40 Code of Federal Regulations [CFR]  
15 1502.9[c][1]).

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

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

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

### 29 **1.1.3 Identification of a Preferred Alternative**

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

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

1 entity’s proposal or the environmentally preferable alternative.”<sup>3</sup> Although a federal lead agency  
 2 within DOI *may* identify a preferred alternative in a Draft EIS, the Lead Agency *must* do so in a Final  
 3 EIS, unless prohibited from doing so by a law other than NEPA.<sup>4</sup>

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

## 12 1.1.4 Project Objectives and Purpose and Need

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

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

23 “it is the intent of the Legislature to provide for the sustainable management of the Sacramento-San  
 24 Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and  
 25 enhance the quality of water supply from the Delta, and to establish a governance structure that will  
 26 direct efforts across state agencies to develop a legally enforceable Delta Plan.” (California Water  
 27 Code, Section 85001, subd. [c]).

28 The Delta “serves Californians concurrently as both the hub of the California water system and the  
 29 most valuable estuary and wetland ecosystem on the west coast of North and South America.”  
 30 (California Water Code, Section 85002).

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

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<sup>3</sup> 43 C.F.R. § 46.420(d).

<sup>4</sup> 43 C.F.R. § 46.425(b).

<sup>5</sup> Cal. Code Regs., tit. 14, § 15126.6[a].

<sup>6</sup> *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.

<sup>7</sup> *Save Tara*, supra, 45 Cal.4th at p. 139.

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

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

#### 9 **1.1.4.1 Project Objectives**

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

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

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

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

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

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



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

#### 18 **1.1.4.2 Purpose and Need**

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

#### 24 **Purpose Statement**

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

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

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

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

## 5 **Project Need**

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

## 14 **Delta Ecosystem Health and Productivity**

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

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

## 34 **Water Supply Reliability**

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

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

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

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

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

### 26 **Delta Hydrology and Water Quality**

27 Generally, Delta hydrodynamics are defined by complex interactions between tributary inflows,  
28 tides, in-Delta diversions, and SWP and CVP operations, including conveyance, pumping plants, and  
29 operations of channel barriers and gates. The degree to which each variable impacts the overall  
30 hydrology of the Delta varies daily, seasonally, and from year to year, depending on the magnitude  
31 of inflows, the tidal cycle, and the extent of pumping occurring at the SWP and CVP pumping plants.  
32 Changes in water inflow and outflow throughout the Delta affect the water quality within the Delta,  
33 particularly with regard to salinity. It has been estimated that seawater is pushing 3 to 15 miles  
34 farther inland since development began in the Delta over 150 years ago (Contra Costa Water District  
35 6 2010).

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

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

### 10 **1.1.5 Roles and Responsibilities of Key Federal and State** 11 **Agencies**

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

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

37 Additionally, other federal and state agencies may contribute to and rely on information prepared as  
38 part of the environmental compliance process, including, but not limited to, this RDEIR/SDEIS and  
39 supporting materials. A listing of the agencies and respective potential review/approval  
40 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<sup>8</sup>. 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.

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<sup>8</sup> COA was entered into at the direction of Congress by the United States of America and the State of California in November 1986.

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

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

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

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

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

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

#### 4 **Section 7 of the Endangered Species Act**

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

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

#### 17 **Section 10 of the Endangered Species Act**

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

#### 30 **Magnuson-Stevens Fishery Conservation and Management Act**

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

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<sup>9</sup> 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).

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

### 4 **1.1.5.3 U.S. Army Corps of Engineers<sup>10</sup>**

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

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

#### 13 **Section 404 of the Clean Water Act**

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

#### 22 **Section 10 of the Rivers and Harbors Act**

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

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

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<sup>10</sup> 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)).

## 1 NEPA Review

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

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

## 17 Water Quality Control Plans

18 In California, the State Water Board has the authority to adopt water quality control plans. Under the  
 19 CWA, new or revised water quality standards must be approved by EPA. Therefore, EPA's Section  
 20 309 review of a federal agency's EIS will necessarily encompass its authority under the CWA.

### 21 1.1.5.5 California Department of Fish and Wildlife

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

### 34 California Fish and Game Code Section 2081 (b)

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

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

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

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

## 16 **Natural Community Conservation Plan Act**

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

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

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

31 California has adopted regulations to address impacts to many of the resources subject to Section  
32 404 of the CWA. Although not entirely overlapping, these programs intersect frequently. Project  
33 proponents are required to obtain separate authorizations from USACE and CDFW.

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

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

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

### 17 **1.1.5.6 State Water Resources Control Board**

#### 18 **Change Point of Diversion**

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

26 The change petition process is described in Chapter 10 of Division 2, Part 2 of the California Water  
 27 Code (Sections 1700-1707) and Title 23 of the California Code of Regulations Article 15 (Sections  
 28 791-799). DWR and Reclamation will provide notice of the proposed changes as the State Water  
 29 Board requires, including written notice to CDFW. Other water right holders and the public will have  
 30 the opportunity to object to the proposed changes by filing a protest with the State Water Board. If a  
 31 protest is filed, the State Water Board will hold a hearing on the petitions before determining  
 32 whether to grant or deny permission to make the requested changes. The State Water Board must  
 33 find that there is a reasonable likelihood the proposed changes will not injure any legal user of the  
 34 water and reasonably protect fish and wildlife, as identified in the San Francisco Bay/Sacramento-  
 35 San Joaquin Delta Estuary Water Quality Control Plan (Bay-Delta WQCP).

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

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

1 Cal. Water Code § 85086(c)(2).

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

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

## 24 **Section 401 of the Clean Water Act – Water Quality Certification**

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

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

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

### 3 **Porter-Cologne Water Quality Control Act**

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

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

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

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

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

#### 32 **1.1.5.7 Delta Stewardship Council**

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

## 1 **Delta Plan**

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

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

12 For a State or local agency to determine whether its proposed plans, programs, or projects are  
13 covered actions under the Delta Plan and, therefore, subject to the regulatory provisions in the plan,  
14 it must start with the Delta Reform Act, which defines a covered action as (Water Code Section  
15 85057.5(a)):

16 ...a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that  
17 meets all of the following conditions:

- 18 • Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;
- 19 • Will be carried out, approved, or funded by the state or a local public agency;
- 20 • Is covered by one or more provisions of the Delta Plan;
- 21 • Will have a significant impact on the achievement of one or both of the coequal goals or the  
22 implementation of government-sponsored flood control programs to reduce risks to people,  
23 property, and state interests in the Delta.

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

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

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

## 1 **Delta Plan Appeals Process**

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

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

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

## 26 **Delta Plan BDCP Requirements**

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

37 If the Council decides that it was incorrectly determined that the BDCP meets all of the requirements  
38 of Water Code Section 85320 for inclusion in the Delta Plan, and consequently grants the appeal, the  
39 determination may be revised to meet the issues raised by the Council, or Council's findings may be  
40 responded to in detail, setting forth reasons why the BDCP meets all of the requirements of Section  
41 85320 for inclusion in the Delta Plan. Unless the Council on appeal decides that the BDCP meets all  
42 of the requirements of Section 85320 for inclusion in the Delta Plan, the BDCP shall not be



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

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

<b>Agency</b>	<b>Permit, Decision, Approval, or Other Action<sup>a</sup></b>
<b>Federal</b>	
Bureau of Reclamation (NEPA lead agency)	<u>Permits or Consultations</u> ESA Section 7 consultation Section 106 of the National Historic Preservation Act <u>Other considerations</u> 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 <sup>11</sup> )	<u>Permits or Consultations</u> 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 <u>Other considerations</u> 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 <sup>12</sup> )	<u>Permits or Consultations</u> 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 <u>Other Considerations</u> Essential Fish Habitat under Magnuson-Stevens Fisheries Conservation and Management Act Fish and Wildlife Coordination Act, 16 USC 661-667e

<sup>11</sup> 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.

<sup>12</sup> 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.

<b>Agency</b>	<b>Permit, Decision, Approval, or Other Action<sup>a</sup></b>
U.S. Army Corps of Engineers (NEPA cooperating agency)	<u>Permits or Consultations</u> 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 <u>Other Considerations</u> 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	<u>Permits or Consultations</u> 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)	<u>Permits</u> 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
<b>State</b>	
California Department of Water Resources (CEQA lead agency)	<u>Other considerations</u> 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)	<u>Permits or Consultations</u> 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 <u>Other considerations</u> 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)

<b>Agency</b>	<b>Permit, Decision, Approval, or Other Action<sup>a</sup></b>
State Water Resources Control Board (CEQA responsible agency)	<p><u>Permits or Consultations</u></p> <p>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</p> <p><u>Other considerations</u></p> <p>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)</p>
Central Valley Regional Water Quality Control Board (potential CEQA responsible agency)	<p><u>Permits or Consultations</u></p> <p>Discharges Associated with Construction Activity (33 USC 1342) Regional General Permits Waste Discharge Requirements for Dredging Projects or Fill-Related Activities</p> <p><u>Other considerations</u></p> <p>Basin Plan Amendment (33 USC 13240)</p>
San Francisco Bay Regional Water Quality Control Board (potential CEQA responsible agency)	<p><u>Permits or Consultations</u></p> <p>National Pollutant Discharge Elimination System (316(b) Permit) Stormwater Permit Waste Discharge Requirements for Dredging Projects or Fill-Related Activities</p> <p><u>Other considerations</u></p> <p>Basin Plan</p>
Delta Stewardship Council (CEQA responsible agency)	<p><u>Other considerations</u></p> <p>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</p>
State Lands Commission (CEQA responsible agency, trustee agency)	<p><u>Other considerations</u></p> <p>Possible lease involving granted tide and submerged lands</p>
California Department of Parks and Recreation (potential CEQA responsible agency, trustee agency)	<p><u>Permits or Consultations</u></p> <p>Encroachment Permit</p>
California Department of Boating and Waterways (potential <sup>b</sup> CEQA responsible agency)	<p><u>Other considerations</u></p> <p>Coordination on construction and placement of gates, signage, and use of gates</p>

<b>Agency</b>	<b>Permit, Decision, Approval, or Other Action<sup>a</sup></b>
California Department of Transportation (CEQA responsible agency)	<u>Permits or Consultations</u> Encroachment Permit for realignment of State Route 160
Central Valley Flood Protection Board and Port of Stockton	<u>Permits or Consultations</u> Coordination consistent with local sponsor requirements under USACE Section 408 requirements
Regional Air Pollution Control Districts, California Air Resources Board (potential CEQA responsible agencies)	<u>Permits or Consultations</u> Permit to Operate an Internal Combustion Engine Stationary Source Permit Use of Portable Equipment During Construction <u>Other considerations</u> Clean Air Act
California Department of Public Health (potential CEQA responsible agency)	<u>Permits or Consultations</u> Water Supply Permits for Operations of Public Drinking Water Systems <u>Other considerations</u> State Drinking Water Program
San Francisco Bay Area Conservation and Development Commission (potential CEQA responsible agency)	<u>Other considerations</u> California Coastal Act/McAteer-Petris Act
Division of Safety of Dams (potential CEQA responsible agency)	<u>Permits or Consultations</u> California Code of Regulations Title 23, Section 310
California Public Utilities Commission	<u>Permits or Consultations</u> Right of way; potential relocation of utilities
<b>Local and Other</b>	
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

<b>Agency</b>	<b>Permit, Decision, Approval, or Other Action<sup>a</sup></b>
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
<b><i>Individual SWP contractors</i></b>	
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
<b><i>Individual CVP contractors<sup>c</sup></i></b>	
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
<sup>a</sup> This list is not all inclusive and the agencies may use the EIR/EIS for other requirements not identified in this table. <sup>b</sup> The term <i>potential</i> is used in this table generally. Whether particular entities are responsible agencies will be determined when a final BDCP is approved. <sup>c</sup> To be determined when financing agreements are identified.	

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## 1.2 Purpose of Recirculated/Supplemental Documents

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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

1 changes, but it would not include the same kinds of changes to Alternative 4 related to BDCP CM2  
2 through CM21.

3 To provide the public with the information necessary to understand revisions to the various  
4 documents and to limit extraneous information, the Lead Agencies have chosen not to republish  
5 complete revisions to the original Draft EIR/EIS, but rather to prepare materials focusing on new  
6 contents of the Draft EIR/EIS. The Lead Agencies' primary reason for undertaking additional public  
7 review of this RDEIR/SDEIS is to further the purposes of both CEQA and NEPA. Because the  
8 RDEIR/SDEIS addresses a project of interest and importance to the people, economy, and  
9 environment of the State of California, the Lead Agencies determined that additional formal public  
10 input was both desirable and appropriate.

11 Pursuant to the directives of CEQA, where a lead agency recirculates only revised portions of an EIR,  
12 the lead agency may require commenters to limit their new comments to the new material in the  
13 recirculated portions of the prior document and may preclude the commenters from commenting  
14 anew on topics or text not subject to a partial recirculation. After the additional round of public  
15 review is over and the CEQA lead agency is preparing its final EIR, "[t]he lead agency need only  
16 respond to (i) comments received during the initial circulation period that relate to chapters or  
17 portions of the document that were not revised and recirculated, and (ii) comments received during  
18 the recirculation period that relate to the chapters or portions of the earlier EIR that were revised  
19 and recirculated" (State CEQA Guidelines Section 15088.5[f][2]).

20 NEPA and the CEQ NEPA Regulations are silent on these issues, but the concept of a "supplement" to  
21 a Draft EIS strongly suggests that comments should be limited to material found within the bounds  
22 of that new document, and should not address matters already subjected to public review as part of  
23 the original Draft EIS.

24 In light of the foregoing, the Lead Agencies direct that public comments be restricted to the newly  
25 circulated information contained in the RDEIR/SDEIS. In other words, *the partial recirculation is not*  
26 *an opportunity to resubmit comments on previously published topics, or to add additional comments*  
27 *on previously published topics.* The comments previously submitted on the Draft EIR/EIS remain a  
28 part of the record and will be responded to in the Final EIR/EIS. Readers are therefore directed not  
29 to make comments on issues not directly contained in this RDEIR/SDEIS. The Lead Agencies do not  
30 intend to respond to any new comments on the original Draft EIR/EIS that are not addressed in the  
31 RDEIR/SDEIS. The Final EIR/EIS will include written responses to comments on both the  
32 RDEIR/SDEIS and the original Draft EIR/EIS. If comments on the original Draft EIR/EIS no longer  
33 apply based on the RDEIR/SDEIS analyses or project changes, the response will indicate that the  
34 comment has been addressed by the RDEIR/SDEIS or that the comment was not addressed because  
35 of the changes presented in the RDEIR/SDEIS.

### 36 **1.3 Contents of the RDEIR/SDEIS**

37 Following the extended public review of the Draft EIR/EIS, the Lead Agencies reviewed public and  
38 agency comments and continued to identify ways in which the BDCP and Draft EIR/EIS could be  
39 improved or alternative implementation strategies could be proposed to increase benefits and  
40 reduce potential environmental effects. The following is an overview description of the topics and  
41 types of revisions presented in the RDEIR/SDEIS, including additional context that describes the  
42 reasons why specific topics are included. For a visual representation of how the document is laid out

1 and how various segments relate to one another, please see the [Document Review Road Map](#) at the  
2 beginning of this document.

3 The RDEIR/SDEIS presents new information and addresses project revisions in several  
4 complementary ways. First, in many instances, new information and project changes are addressed  
5 in a series of discussions of particular topics that lend themselves to a narrative format (presented  
6 in [Section 2.0, Substantive Draft EIR/EIS Revisions](#)). Each of these discussions is a standalone essay  
7 on a discrete topic that has received substantive public comment. The Lead Agencies have taken this  
8 approach to make this document as user friendly as possible, and to avoid reprinting thousands of  
9 pages on which, under a different approach, minor modifications might have been made. Second,  
10 where the “essay” format was not workable or appropriate, or where actual text changes were  
11 necessary to complement particular essays, this RDEIR/SDEIS includes modified excerpts of text  
12 that originally appeared in the Draft EIR/EIS, with underlining showing new language and strikeout  
13 showing text being eliminated. These underline/strikeout revisions are referenced in the main text  
14 of the RDEIR/SDEIS as Appendix A, *Revisions to the Draft EIR/EIS*, which contains the actual text  
15 revisions. To give readers the best possible sense of the context in which such text changes occur,  
16 Appendix A includes section headings before and after modified passages, so that readers can  
17 understand precisely where, within Draft EIR/EIS chapters, the revisions occur. Appendix A does  
18 not include text changes that are either repetitive with the text presented in the RDEIR/SDEIS or are  
19 non-substantive. The Final EIR/EIS will include the entire presentation of all text changes made to  
20 the Draft EIR/EIS.

21 Many of the RDEIR/SDEIS revisions are focused on changes made to CM1 under Alternative 4 (i.e.,  
22 related to modification of the north Delta intakes or water conveyance facilities) or to Alternatives  
23 4A, 2D, and 5A (related to the alternative implementation strategy). This is appropriate because  
24 revisions are limited in most cases to Alternatives 4, 4A, 2D, and 5A and Alternative 4A is now the  
25 Preferred Alternative for CEQA and NEPA purposes. Consistent with the ongoing environmental  
26 review through CEQA and NEPA, Reclamation and DWR continue to modify the proposal to improve  
27 it from an environmental standpoint, and such changes in the proposed project do not necessitate  
28 parallel revisions to other alternatives addressed in the Draft EIR/EIS. There are some instances,  
29 however, in which changes to the description, analysis, or assumptions relating to Alternative 4, as  
30 well as changes made in response to relevant comments, have also required revisions to the  
31 descriptions or discussion of other alternatives. The categories of revisions presented in the  
32 RDEIR/SDEIS are described below.

### 33 **1.3.1 Substantive Draft EIR/EIS Revisions**

34 This RDEIR/SDEIS presents revisions to the Draft EIR/EIS in Section 2, *Substantive Draft EIR/EIS*  
35 *Revisions*, in a variety of ways, as indicated above. Based on public and technical review, a number of  
36 resource topics requiring revision are presented in a narrative format to highlight important  
37 revisions, provide sufficient context about the revisions, and add an explanation about how the  
38 revision improved the analysis. Each subsection, where appropriate, references Appendix A, which  
39 contains the in-text analysis changes. The topical essays in Section 2 of this RDEIR/SDEIS are listed  
40 below.

- 41 • Section 2.1, *Improved Fish and Aquatic Habitat Analyses*, summarizes revisions made to Chapter  
42 11, *Fish and Aquatic Resources*, of the Draft EIR/EIS, including a discussion about improvements  
43 to the rationale provided for impact conclusions and methods for determining impacts on fish  
44 and aquatic habitat.

- 1       • Section 2.2, *Water Quality Revisions*, describes additional analyses undertaken to more  
2       accurately characterize the potential for exceedances of water quality standards and  
3       summarizes associated revisions.
- 4       • Section 2.3, *Air Quality, Health Risk Assessment, Transportation, and Noise Revisions*, presents  
5       revised emissions calculations based on improved construction assumptions and updates the  
6       health risk assessment, traffic, and noise analyses to reflect improved construction data.
- 7       • Section 2.4, *Revised Project Description and Enhanced Level of Detail*, presents additional  
8       revisions that explain how, for the purposes of CEQA and NEPA, project-level detail is included  
9       for water conveyance facilities and provides additional information about early implementation  
10      actions including examples of habitat restoration and enhancement activities.
- 11      • Section 2.5, *Analysis of Geotechnical Investigations*, provides an explanation about the method for  
12      incorporating analyses of geotechnical investigations into the analysis of the water conveyance  
13      facilities construction.

### 14      **1.3.2                   Alternative 4 Revisions**

15      Following presentation of these topical essays, [Section 3, Conveyance Facility Modifications to](#)  
16      [Alternative 4](#), provides an overview of the optimized design of water conveyance facilities  
17      associated with Alternative 4, and a discussion of the impacts and other associated text revisions  
18      made in each affected resource chapter. This summary provides references to the applicable text  
19      revisions presented in Appendix A. All the resource topics substantively affected by the modified  
20      conveyance facility design are addressed in this discussion. These topics are surface water,  
21      groundwater, water quality, fish and aquatic resources, terrestrial biological resources, land use,  
22      agricultural resources, recreation, aesthetics and visual resources, cultural resources,  
23      transportation, public services and utilities, energy, air quality, noise, hazards and hazardous  
24      materials, public health, minerals, and paleontological resources. As noted previously, Alternative  
25      4A, and to some extent Alternatives 2D and 5A, incorporate Alternative 4's conveyance facility  
26      elements, including the revisions contained herein.

### 27      **1.3.3                   Alternative 4A, 2D, and 5A Analyses**

28      Description and analysis of Alternatives 4A, 2D, and 5A are presented in [Section 4, New](#)  
29      [Alternatives: Alternatives 4A, 2D, and 5A](#). Analyses presented in this section address impacts for all  
30      the resource topics considered in the Draft EIR/EIS. Impacts for which substantive differences than  
31      those under Alternative 4 have been identified are presented in full impact format with CEQA  
32      conclusions and NEPA effects and proposed mitigation measures where they are feasible and  
33      required to reduce a significant impact. This RDEIR/SDEIS is intended to provide project-level  
34      assessment of the potential effects of these three new alternatives, including project-specific  
35      mitigation. Impact analyses also include revisions made to the No Action Alternative for the limited  
36      purpose of providing a logical point of comparison for the NEPA analysis of Alternatives 4A, 2D, and  
37      5A.

### 37      **1.3.4                   Cumulative Impact Analyses**

38      In response to comments and in light of new information since the release of the Notice of  
39      Preparation (NOP) in 2009, this RDEIR/SDEIS includes additional probable or reasonably  
40      foreseeable proposed projects that, when considered together with the action alternatives  
41      (including Alternatives 4A, 2D, and 5A), could have a significant cumulative effect. The analysis



1 includes a discussion of the California Water Action Plan, California EcoRestore and the Sustainable  
 2 Groundwater Management Act to describe the roles of the new Delta conveyance facilities and the  
 3 habitat restoration in the context of the state’s comprehensive vision for water management in  
 4 California. [This section](#) also addresses the potential for cumulative effects of implementing the  
 5 action alternatives in conjunction with these parallel efforts. The Draft EIR/EIS cumulative impact  
 6 analyses have been revised to consistently reflect the two-step process required by CEQA.

- 7 1. Are the combined effects from both the proposed project and other projects “cumulatively  
 8 significant”?
- 9 2. If yes, is the proposed project’s incremental effect “cumulatively considerable” and thus  
 10 significant?

11 The cumulative impact analysis is prefaced with a supplemental discussion summarizing any effects  
 12 on a resource area associated with implementing other project actions concurrently with  
 13 conveyance facility construction.

### 14 **1.3.5 Draft EIR/EIS In-Text Chapter Revisions**

15 Table 1-2 provides an overview of the Draft EIR/EIS chapters in which substantive changes have  
 16 been made in this RDEIR/SDEIS and the topics that are addressed in each chapter as shown in  
 17 Appendix A. Although text in many Draft EIR/EIS chapters is likely to be revised consistent with the  
 18 approach in the RDEIR/SDEIS, portions of chapters and associated appendices that are recirculated  
 19 include only those portions of text requiring substantial revisions and needed to convey the new  
 20 information or analyses. This presentation allows for a more streamlined approach to conveying  
 21 additional information in the RDEIR/SDEIS. Additional revisions may appear in the Final EIR/EIS.

22 **Table 1-2. Summary of Portions of Draft EIR/EIS Revised in RDEIR/SDEIS**

<b>Revised Chapter(s)</b>	<b>Topics Revised or Added</b>
<a href="#">Chapter 3, <i>Description of Alternatives</i></a>	<ul style="list-style-type: none"> <li>• Revisions to water conveyance facilities under Alternative 4</li> <li>• Analysis of geotechnical investigations</li> <li>• Revisions to discussion of environmental commitments</li> <li>• Improvements to description/analysis level of detail</li> <li>• Revisions to construction assumptions associated with Alternative 4</li> <li>• Revisions to other aspects of the BDCP conservation strategy</li> </ul>
<a href="#">Appendix 3B, <i>Environmental Commitments, AMMs and CMs</i></a>	<ul style="list-style-type: none"> <li>• This appendix has been substantially revised and expanded to include a discussion of how these measures reduce impacts.</li> </ul>
<a href="#">Chapter 5, <i>Water Supply</i></a>	<ul style="list-style-type: none"> <li>• Revisions to cumulative impact analysis</li> <li>• Other revisions based on technical comments</li> <li>• Discussion of water rights modifications as they pertain to consumptive water use from restored habitat</li> </ul>

Revised Chapter(s)	Topics Revised or Added
Chapters 6, 7, 9, 13, 16, 17, 18, 20, 21, 24, 25, 26, 27, 28, 30, <i>Surface Supply, Groundwater, Geology and Seismicity, Land Use, Socioeconomics, Aesthetics and Visual Resources, Cultural Resources, Public Services and Utilities, Energy, Hazards and Hazardous Materials, Public Health, Minerals, Paleontological Resources, Environmental Justice, Growth Inducement and Other Indirect Effects</i>	<ul style="list-style-type: none"> <li>• Revisions to water conveyance facilities under Alternative 4</li> <li>• Analysis of geotechnical investigations</li> <li>• Revisions to cumulative impact analysis</li> <li>• Other revisions based on technical comments</li> </ul>
Chapter 8, <i>Water Quality</i>	<ul style="list-style-type: none"> <li>• Revisions to assessment of key water quality constituents</li> <li>• Revisions to water conveyance facilities under Alternative 4</li> <li>• Analysis of geotechnical investigations</li> <li>• Revisions to cumulative impact analysis</li> <li>• Other revisions based on technical comments</li> </ul>
Chapters 10, 12, 14, 15, <i>Soils, Terrestrial Biological Resources, Agricultural Resources, Recreation</i>	<ul style="list-style-type: none"> <li>• Revisions to water conveyance facilities under Alternative 4</li> <li>• Analysis of geotechnical investigations</li> <li>• Revisions to cumulative impact analysis</li> <li>• Other revisions based on technical comments</li> </ul>
Chapter 11, <i>Fish and Aquatic Resources</i>	<ul style="list-style-type: none"> <li>• Revisions to aquatic species impact discussion based on technical comments</li> <li>• Revisions to water conveyance facilities under Alternative 4</li> <li>• Analysis of geotechnical investigations</li> <li>• Revisions to cumulative impact analysis</li> <li>• Improvements to description/analysis level of detail</li> </ul>
Chapters 19, 22, 23, <i>Transportation, Air Quality and Greenhouse Gas Emissions, Noise</i>	<ul style="list-style-type: none"> <li>• Revised analysis based on updated construction assumptions</li> <li>• Revisions to water conveyance facilities under Alternative 4</li> <li>• Analysis of geotechnical investigations</li> <li>• Revisions to cumulative impact analysis</li> <li>• Other revisions based on technical comments</li> </ul>
Chapter 31, <i>Other CEQA/NEPA Required Sections</i>	<ul style="list-style-type: none"> <li>• Improvements to description/analysis level of detail</li> <li>• Other revisions based on technical comments</li> </ul>

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## 1.4 Revisions to be Included in the Final EIR/EIS

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The Lead Agencies have identified a number of additional issues raised in public and technical review of the Draft EIR/EIS that do not warrant inclusion in the RDEIR/SDEIS but would be explained or addressed in the Final EIR/EIS revisions. As explained in Section 1.1.2, *Legal Basis for Recirculation*, the additional information and analyses in the RDEIR/SDEIS are included if they meet the CEQA definition of significant new information or NEPA requirements for preparing a supplement to the EIS. The following issues will be addressed in the Final EIR/EIS, but not in this RDEIR/SDEIS.

## 1.4.1 Comments and Responses on the Public Draft EIR/EIS

Comments received on the Draft EIR/EIS and all comments received on the RDEIR/SDEIS will be presented with responses in the Final EIR/EIS as required by CEQA and NEPA.

## 1.4.2 Additional Alternatives

The RDEIR/SDEIS includes revisions to Alternative 4 and new sub-alternatives, Alternatives 4A, 2D, and 5A in response to comments received on Alternative 4 in the Draft EIR/EIS and the change in ESA regulatory compliance approach. No other alternatives are included in the RDEIR/SDEIS because the original 15 action alternatives, along with Alternatives 4A, 2D, and 5A and the no action/no project alternative, meet CEQA and NEPA requirements to present and consider a reasonable range of alternatives to the proposed action. Draft EIR/EIS Appendix 3A, *Identification of Water Conveyance Alternatives, Conservation Measure 1*, and Appendix 3G, *Background on the Process of Developing the BDCP Conservation Measures*, discuss how alternatives were developed for inclusion in the Draft EIR/EIS. Responses to comments received on the adequacy of alternatives addressed in the Draft EIR/EIS will be provided in the Final EIR/EIS.

## 1.4.3 Comparison of Alternatives Summary

The Final EIR/EIS will include summary alternative comparison tables in the Executive Summary and resource chapters that compare selected impact information across all the alternatives presented in the Draft EIR/EIS and RDEIR/SDEIS.

## 1.4.4 Additional Discussion of Climate Change Uncertainties and Outcomes

A number of comments requested that additional information be provided presenting the reasoning for the Lead Agencies' decision to assume current operations and current regulations in the modeling for future SWP and CVP operations given the potential influence of climate change on future operations and in light of the requested 50 year permit assurances with the BDCP. An explanation and analysis describing potential scenarios for future SWP/CVP system operations and uncertainties will be provided in the Final EIR/EIS.

## 1.5 Format of the RDEIR/SDEIS

The RDEIR/SDEIS is organized as shown below. Note that main portions of the RDEIR/SDEIS are called *Sections* rather than *Chapters*. This is to distinguish references to chapters in the Draft EIR/EIS from references to other sections in the RDEIR/SDEIS.

**Section 1, Introduction.** This section contains an overview of the background and context and purpose for the RDEIR/SDEIS, a summary of contents and topics addressed and not addressed in the document, and the organization and public review process for the document.

**Section 2, Substantive Draft EIR/EIS Revisions.** This section provides narrative text describing the approach and consequences of the substantive revisions made in the RDEIR/SDEIS.

1 **Section 3, Conveyance Facility Modifications to Alternative 4.** This section provides a summary  
2 of the Alternative 4 revisions by resource chapter with references to Appendix A in-text revisions.

3 **Section 4, New Alternatives: Alternatives 4A, 2D, and 5A.** This section describes the  
4 new Alternatives 4A, 2D, and 5A actions, ESA compliance approach, and impacts and  
5 mitigation measures.

6 **Section 5, Revisions to Cumulative Impact Analyses.** This section presents analyses  
7 considering additional cumulative projects, and analyses and discussion of the California Water  
8 Action Plan, California EcoRestore and Sustainable Groundwater Management Act.

9 **Section 6, List of Preparers.** This section identifies the individuals who prepared the RDEIR/SDEIS.

10 **Appendix A, Revisions to the Draft EIR/EIS.** This appendix provides text changes and additions  
11 made to each applicable chapter and appendix of the Draft EIR/EIS, including revisions to Appendix  
12 3B.

13 **Appendix B, Supplemental Modeling Results for New Alternatives.** This appendix provides  
14 additional CALSIM II, DSM2, and other modeling results referenced for Alternative 4A, 2D, and 5A  
15 operations impacts.

16 **Appendix C, Supplemental Modeling Requested by the State Water Resources Control  
17 Board Related to Increased Delta Outflows.** This appendix provides supplemental modeling for  
18 use in the State Water Board permit process.

19 **Appendix D, Substantive BDCP Revisions.** This appendix provides BDCP revisions that have  
20 been made following circulation of the Draft EIR/EIS and that are referenced in the RDEIR/SDEIS.

21 **Appendix E, Supplemental Information for U.S. Army Corps of Engineers Permitting  
22 Requirements.** This appendix provides additional information needed for USACE  
23 wetland, navigation, levee modification and cultural resources permitting processes.

24 **Appendix F, Supplemental Modeling Results at ELT for Alternative 4.** This appendix provides  
25 supplemental CALSIM II and DSM2 results for Alternative 4 at the early-long-term that describe H1  
26 and H2 operations scenarios.

27 **Appendix G, Alternative 4A (Proposed Project) Compatibility with the Delta Plan.** This  
28 appendix discusses an approach that may be considered for Alternative 4A, the proposed project, to  
29 meet the Delta Plan Consistency requirements.

## 30 **1.6 Public Review Process for RDEIR/SDEIS**

31 This RDEIR/SDEIS is being noticed and circulated for public review, in the same manner as the draft  
32 documents that were issued for public review on December 13, 2013. The steps in the public review  
33 process are listed below.

- 34 • Prepare an NOA for the RDEIR/SDEIS for CEQA purposes and file it with the State Clearinghouse  
35 (already completed).
- 36 • Transmit published RDEIR/SDEIS to State Clearinghouse and EPA; EPA publishes an NOA in the  
37 Federal Register announcing availability and the review period for the revised documents  
38 (already completed).

1       • Provide notices of the revised document’s availability in newspapers, in public locations, and to  
2 agencies and individuals (already completed).

3       • Circulate the RDEIR/SDEIS for no less than a 45-day public review period.

4 Following the close of the public review period, the lead agencies will:

5       • Consider and respond to all significant environmental issues raised in comments on the  
6 RDEIR/SDEIS (along with comments previously received on the Draft EIR/EIS).

7       • Incorporate revisions and response to comments into the Final EIR/EIS.

8 Following incorporation of supplemental information and response to comments into the final  
9 documents, the Final EIR/EIS will be circulated for a 30-day NEPA review period.

## 10 **1.7       References**

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16 [http://www.delta.ca.gov/res/docs/ESP\\_10\\_10\\_11.pdf](http://www.delta.ca.gov/res/docs/ESP_10_10_11.pdf).

