

1.6 Intended Uses of this EIR/EIS and Agency Roles and Responsibilities

This document is a joint EIR/EIS prepared in compliance with the requirements of CEQA and NEPA. Before the selection and approval of one of the BDCP alternatives considered in this EIR/EIS, the lead agencies must comply with the necessary state and federal environmental review requirements. This document is intended to provide sufficient CEQA and NEPA support for approval of the proposed BDCP and to inform permit decisions for the issuance of the proposed ITPs/NCCP permit. The EIR/EIS is thus intended to provide complete “project level” analysis for actions by USFWS and NMFS permitting the BDCP under the ESA, and for action by CDFW approving the BDCP as an NCCP under the NCCPA. With respect to particular components of the BDCP that must be implemented separately through individualized permit actions or other discretionary decisions, the EIR/EIS provides a mixture of project- and program-level components. Specifically, the EIR/EIS is intended to provide project-level assessment of the potential effects of modified and/or new conveyance facilities (CM1), including project-specific mitigation, and SWP water supply contract amendments and/or funding agreements (described further in Chapter 3, *Description of Alternatives*, Section 3.8). In assessing environmental effects associated with CM1, the EIR/EIS also refers to environmental commitments, ~~and other~~ BDCP conservation measures, and BDCP avoidance and minimization measures (AMMs) that are intended to reduce, avoid, or minimize these effects. For CM2 through CM21, in contrast, the EIR/EIS provides program-level or programmatic review. Thus, aAdditional site-specific environmental compliance documents, ~~however~~, will likely be required for implementation of some conservation measures (including, for example, wetland permitting actions by the Corps of Engineers). Additional information and/or documentation may be necessary during consideration of related permit application and decision-making processes.

CEQA (Public Resources Code 21000 et seq.) requires preparation of an EIR when there is substantial evidence in light of the whole record that an agency action, such as approval and implementation of the BDCP, may have a significant impact on the environment. An EIR is a document disclosing and analyzing the potential environmental impacts of a project and discussing ways to mitigate or avoid the significant effects. Pursuant to Section 15126.6(a) of the State CEQA Guidelines, an EIR must describe a range of reasonable alternatives that would feasibly attain all or most of the basic project objectives but would avoid or substantially lessen any of the significant impacts of the project, and it must evaluate the comparative merits of the alternatives. Under CEQA, a *program EIR* may be prepared on a series of actions that can be characterized as one large project, such as for an NCCP (State CEQA Guidelines Section 15168). A program EIR generally establishes a framework for subsequent *tiered* or project-level environmental documents that are prepared in accordance with a program. It is meant to provide a basis for evaluating environmental effects and supporting a reasoned choice among alternatives when site-specific data may not yet be available. The degree of specificity in a program EIR’s impact analysis need only be as detailed as the description of the elements in the program (State CEQA Guidelines Section 15146). A *project EIR*, in contrast, “examines the environmental impacts of a specific development project,” so that, once the EIR is certified, no further CEQA analysis is required prior to construction. Nothing in CEQA

1 prohibits a single EIR from containing both program and project elements. In fact, documents taking
2 such an approach are common in California.

3 Similarly, under NEPA (42 U.S. Code (USC) 4321) and the Council on Environmental Quality's
4 regulations for implementing NEPA (40 CFR 1500-1508), federal agencies are required to prepare
5 an EIS for major federal actions significantly affecting the quality of the human environment. "The
6 EIS must rigorously explore and objectively evaluate (CEQ 40 questions) the environmental effects
7 of an action, including a range of reasonable alternatives, and identify mitigation measures to
8 minimize adverse effects for the range of impacts of the proposal when they propose to carry out,
9 approve, or fund a project that may have a significant effect on the environment. [T]o ensure
10 environmental effects of a proposed action are fairly assessed, the probability of the mitigation
11 measures being implemented must also be discussed and the EIS and Record of Decision should
12 indicate the likelihood that such measures will be adopted or enforced, and when they might be
13 available (40 CFR 1502.16[h] and 1505.2)." *A programmatic EIS* under CEQ regulations for
14 implementing NEPA (40 CFR 1500.4(i), 1502.4(b) and (c), 1502.20) may be prepared to analyze
15 broad-scope actions that are similar in terms of timing, geography, or other characteristics.
16 Subsequent analysis of more specific proposals is generally required under NEPA, and information
17 from a programmatic EIS can be referenced (tiered) in the subsequent NEPA document to reduce
18 redundancy. Like EIRs, however, a single EIS can contain both programmatic and site-specific
19 (project-level) elements.

20 Under both CEQA and NEPA, a combined joint document may be prepared to meet the requirements
21 of both CEQA and NEPA. As explained above, the joint EIR/EIS intends to provide a combination of
22 project-level and program-level analyses for individual elements of the BDCP, which in total is
23 intended to provide a sufficient level of detail to comply with NEPA and allow USFWS and NMFS to
24 make an informed decision on their action of considering issuance of an incidental take permit
25 under Section 10 of the ESA. Similarly this document is intended to provide sufficient level of detail
26 to comply with CEQA to allow for approval of the BDCP as an NCCP by CDFW under the NCCPA.

27 Design information for CM1, which consists of water conveyance facilities and existing facility
28 operational changes, is available at a project level; accordingly, this EIR/EIS analyzes the potential
29 environmental effects of this conservation measure at the project level of detail, and is meant to
30 provide the CEQA and NEPA lead agencies with sufficient information to make a decision on
31 whether to permit and/or carry out the water supply conveyance and operational changes to move
32 fresh water through and/or around the Delta (CM1) after the BDCP EIR/EIS has been completed
33 (and subject to the approval of related permits). Although the EIR/EIS is intended to provide
34 sufficient NEPA coverage for ESA permitting actions by the USFWS and NMFS, the Corps of
35 Engineers, in considering whether to grant "fill permits" under the Clean Water Act, may require
36 additional analyses for NEPA and other permitting necessary for the component pieces of CM1 that
37 affect federally protected wetlands.

38 Because of the sheer size of the land area affected by CM1, the Lead Agencies have used a mix of
39 different methods to ensure adequate project-level analysis for that conservation measure. For
40 example, in addition to narrative text describing both existing environmental conditions and the
41 extent of anticipated environmental effects, graphics in the Mapbook Volume accompanying this
42 EIR/EIS visually depict the footprints of proposed physical facilities and disturbance areas. These
43 footprint areas are sometimes oversized to some degree in order to conservatively depict probable
44 areas of impact. Readers should assume that, unless otherwise stated, the full areas beneath the
45 depicted footprints will be subject to surface impacts, even though the real physical impacts, if and

1 when they occur, may sometimes be more limited. Within the footprint areas associated with future
 2 physical facilities and the areas that will be disturbed during construction, temporary physical
 3 structures such as concrete batch plants, tunnel segment storage areas, and staging areas could be
 4 located, depending on the sensitivity of surrounding areas. The potential impacts of such temporary
 5 structures and uses on such potentially sensitive adjoining areas would be minimized or eliminated
 6 through the use of avoidance and minimization measures, environmental commitments, or
 7 mitigation measures. These means of reducing effects are described throughout this document.

8 Design information for CM2-CM~~2221~~, which includes restoration and conservation strategies for
 9 aquatic and terrestrial habitat and other stressor reduction measures, is currently at a conceptual
 10 level. Accordingly, although this EIR/EIS is intended to provide the full CEQA and NEPA analysis
 11 needed for the issuance of take permits for the BDCP, this EIR/EIS provides only programmatic level
 12 analysis of these conservation measures, describing what environmental effects may occur in this
 13 future phase of the BDCP. Consequently, although USFWS, NMFS, and CDFW may approve and issue
 14 permits under the BDCP based on this EIR/EIS, other authorizations by agencies subject to NEPA
 15 and CEQA necessary to implement CM2-CM~~2221~~ may not be obtained until a later date, when more
 16 detailed design information is available. At this later time, it will be determined whether more
 17 focused, project-level environmental review is required. Additionally, the USFWS and NMFS would
 18 determine whether to issue 50-year ITPs under ESA Section 10(a)(1)(B) for the incidental take of
 19 species covered under the BDCP related to the construction, operation, and maintenance associated
 20 with water conveyance, ecosystem restoration, and other activities as described in the BDCP.

21 With this project/program approach to preparing the BDCP EIR/EIS, this document intends to
 22 provide the NEPA/CEQA compliance necessary for approval of the entire BDCP (including both
 23 project and program elements), subject to and other pertinent laws and policies, and related permit
 24 approval processes. Accordingly, although this EIR/EIS is intended to provide the full CEQA and
 25 NEPA review necessary for approval of and issuance of take permits under the BDCP as an
 26 HCP/NCCP, this EIR/EIS provides only programmatic level analysis for CM2-~~2221~~. The following
 27 sections describe the relevant review, approval, and consultation requirements necessary to
 28 implement the BDCP.

29 1.6.2 Use of this EIR/EIS by Other Entities

30 **Table 1-2. Summary of Agencies and Review, Approval, or Other Responsibilities, in Addition to Those**
 31 **under CEQA and NEPA**

Agency	Permit, Decision, Approval, or Other Action ^a
Federal	
Bureau of Reclamation (NEPA lead agency)	ESA Section 7 consultation Federal Water Project Recreation Act (16 USC 460(L) 12-21) Section 106 of the National Historic Preservation Act 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

Agency	Permit, Decision, Approval, or Other Action ^a
U.S. Fish and Wildlife Service (NEPA lead agency)	All provisions of the Endangered Species Act, including: <ul style="list-style-type: none"> • Biological Opinion (Section 7 of ESA) • Incidental Take Permit (Section 10 [a][1][B] of ESA) Section 106 of the National Historic Preservation Act 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 agency)	All provisions of the Endangered Species Act, including: <ul style="list-style-type: none"> • Biological Opinion (Section 7 of ESA) • Incidental take permit (Section 10 [a][1][B] of ESA) Essential Fish Habitat under Magnuson-Stevens Fisheries Conservation and Management Act Fish and Wildlife Coordination Act, 16 USC 661-667e
U.S. Army Corps of Engineers (NEPA cooperating agency)	Clean Water Act Section 404 Rivers and Harbors Act Section 10 Rivers and Harbors Act Section 14, 33 USC 408 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. Coast Guard	Rivers and Harbors Act Section 9 Bridge Permits Construction in Navigable Waters Navigational Aids – Private Aids to Navigation (PATON)
U.S. Environmental Protection Agency (NEPA cooperating agency)	Clean Water Act Section 404 oversight
Natural Resources Conservation Service	Farmland Protection Policy Act
State	
California Department of Boating and Waterways (potential ^b CEQA responsible agency)	Coordination on construction and placement of gates, signage, and use of gates
California Department of Fish and Wildlife (CEQA responsible agency, trustee agency)	CA Fish & Game Code Section 5650 – water pollution CA Fish & Game Code Section 1790 – wetlands CA Fish & Game Code Section 3503 – Nests and Eggs Fish and Wildlife Coordination Act (FWCA), 16 USC 661-667e Instream Flow – CA Public Resources Code Section 10000 et seq. Migratory Birds, CA Fish & Game Code Section 3513 NCCP Findings and Approval, CA Fish & Game Code Sections 2800 et seq. Raptors, CA Fish & Game Code Section 3503.5 Streambed Alteration Master Agreement (CDFG Section 1602) Scientific Collection permits under Fish and Game Code Section 1002 and California Code of Regulations Title 14 Sections 650 and 670.7 (Plan implementation) State wildlife areas Encroachment Permit

Agency	Permit, Decision, Approval, or Other Action ^a
California Department of Parks and Recreation (potential CEQA responsible agency, trustee agency)	Encroachment Permit
California Department of Public Health (potential CEQA responsible agency)	State Drinking Water Program Water Supply Permits for Operations of Public Drinking Water Systems
California Department of Transportation (CEQA responsible agency)	Encroachment Permit for realignment of State Route 160
California Department of Water Resources (CEQA lead agency)	CA Water Code Sections 11100 et. Seq. (Central Valley Project Act) CA Water Code Sections 12930 et. Seq. (California Resources Development Bond Act); CA Water Code 11451 (Control of Project). Approval of SWP water supply contract amendment and funding agreements
<u>California Public Utilities Commission (CEQA responsible agency)</u>	<u>Approval of new power contracts</u>
Central Valley Flood Protection Board (potential CEQA responsible agency)	Issuance of an encroachment permit under California Code of Regulations, Title 23
Central Valley Regional Water Quality Control Board (potential CEQA responsible agency)	Discharges Associated with Construction Activity (33 USC 1342) Regional General Permits Basin Plan Amendment (33 USC 13240) Waste Discharge Requirements for Dredging Projects or Fill-Related Activities
Delta Stewardship Council (CEQA responsible agency)	Determining, on appeal, whether the BDCP meets statutory criteria in the Delta Reform Act for inclusion in the Delta Plan
Division of Safety of Dams (potential CEQA responsible agency)	California Code of Regulations Title 23, Section 310
Regional Air Pollution Control Districts, California Air Resources Board (potential CEQA responsible agencies)	Permit to Operate an Internal Combustion Engine Stationary Source Permit Use of Portable Equipment During Construction Clean Air Act
San Francisco Bay Area Conservation and Development Commission (potential CEQA responsible agency)	California Coastal Act/McAteer-Petris Act
San Francisco Bay Regional Water Quality Control Board (potential CEQA responsible agency)	Basin Plan National Pollutant Discharge Elimination System (316(b) Permit) Stormwater Permit Waste Discharge Requirements for Dredging Projects or Fill-Related Activities
State Lands Commission (trustee agency)	Lease involving granted tide and submerged lands

Agency	Permit, Decision, Approval, or Other Action ^a
State Water Resources Control Board (CEQA responsible agency)	Changes to Bay-Delta Water Quality Control Plan and Implementation (through Water Rights and other measures) Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Compliance General Certification Order for Dredging for Restoration Projects Groundwater Quality Monitoring Act, Water Code Sec 10780-10782.3 NPDES Construction Stormwater General Permit Petitions for Extension of Time for Existing Water Right Permits Porter-Cologne Act, California Water Code Sec 13000 et seq. Section 401 Water Quality Certification Surface Water Rights, California Code of Regulations Section 303 State Water Board Decision 1641 (Water Quality) Water Quality Control Plan for San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Order 99-08-DWQ: General Permit for Storm Water Discharges Associated with Construction Activity (33 USC 1342) Water Right Change Petitions Water Right for Long-term Transfer Petitions Basin Plan Amendment (33 USC 13240)
State Historic Preservation Officer (potential CEQA responsible agency)	Consultation under National Historic Preservation Act, Section 106
California Public Utilities Commission	Right of way
Local and Other	
State and Federal Contractors Water Agency (NEPA cooperating agency)	Joint Powers Authority created for purposes of pursuing BDCP research and study
Contra Costa County (NEPA cooperating agency)	Floodplain development regulations (required by National Flood Insurance Program) Williamson Act cancellations Surface Mining and Reclamation Act (SMARA)
Sacramento County (NEPA cooperating agency)	Floodplain development regulations (required by National Flood Insurance Program) Williamson Act cancellations Surface Mining and Reclamation Act (SMARA)
Solano County (NEPA cooperating agency)	Floodplain development regulations (required by National Flood Insurance Program) Williamson Act cancellations Surface Mining and Reclamation Act (SMARA)
Yolo County (NEPA cooperating agency)	Floodplain development regulations (required by National Flood Insurance Program) Williamson Act cancellations Surface Mining and Reclamation Act (SMARA)
Reclamation District 999 (NEPA cooperating agency)	Easement/Right of way
Reclamation District 150 (NEPA cooperating agency)	Easement/Right of way
Reclamation District 551 (NEPA cooperating agency)	Easement/Right of way
Reclamation District 3 (NEPA cooperating agency)	Easement/Right of way

Agency	Permit, Decision, Approval, or Other Action ^a
North Delta Water Agency (NEPA cooperating agency)	
Sacramento Municipal Utility District (CEQA responsible agency)	Approval of connection and service request
Western Area Power Administration (NEPA cooperating agency)	Approval of connection and service request
Individual SWP contractors	
Alameda County Flood Control and Water Conservation District, Zone 7 (potential CEQA responsible agency)	Possible actions related to the BDCP
Santa Clara Valley Water District (potential CEQA responsible agency)	Possible actions related to the BDCP
Kern County Water Agency (potential CEQA responsible agency)	Possible actions related to the BDCP
Metropolitan Water District of Southern California (potential CEQA responsible agency)	Possible actions related to the BDCP
Individual CVP contractors^c	
San Luis & Delta-Mendota Water Authority (potential CEQA responsible agency)	Possible actions related to the BDCP
The Westlands Water District (potential CEQA responsible agency)	Possible actions related to the BDCP

1 ^a This list is not all inclusive and the agencies may use the EIR/EIS for other requirements not identified in this
2 table.
3 ^b The term *potential* is used in this table generally. Whether particular entities are responsible agencies will be
4 determined when a final BDCP is approved.
5 ^c To be determined when financing agreements are identified.

1.6.3.3 U.S. Bureau of Reclamation

8 Reclamation will make decisions regarding operation of the CVP specific to the Delta. These would
9 include decisions regarding operations of Jones Pumping Plant, Delta Cross Channel and other CVP
10 facilities that would support implementation of coordinated operation of the CVP with the SWP.

11 [While DWR would be responsible for construction of water conveyance facilities, Reclamation may](#)
12 [implement or fund all or a portion of any conservation actions associated with the alternative](#)
13 [ultimately chosen for implementation. Reclamation may also conduct or fund monitoring efforts.](#)
14 [Actions or funding by Reclamation would be consistent with federal authorizations and](#)
15 [appropriations at the time the action is conducted.](#)

16 [As defined in the Draft BDCP, federal actions comprise those activities that are primarily the](#)
17 [responsibility of Reclamation, including actions that are carried out, funded, or authorized by](#)
18 [Reclamation in the Plan Area, and that would receive appropriate ESA coverage through Section 7.](#)
19 [These actions, relating to operation of the CVP's Delta facilities to meet CVP purposes, include](#)

1 operation of existing CVP Delta facilities to convey and export water for project purposes, associated
2 maintenance and monitoring activities, and the creation of habitat. The CVP is operated in
3 coordination with the SWP under the Coordinated Operations Agreement.

4 ~~Reclamation may also make decisions regarding wheeling CVP water through new Delta conveyance~~
5 ~~facilities as proposed by the BDCP. Reclamation may also use this document to make future~~
6 ~~decisions about implementing habitat restoration and monitoring actions that are consistent with~~
7 ~~Reclamation's regulatory requirements, programs, authorities and appropriations.~~

8 ~~Reclamation will use this document to make decisions on participation in the implementation and~~
9 ~~governance structure of the BDCP if the permits are issued.~~

10