

Mendota Pool Bypass and Reach 2B Improvements Project

Technical Memorandum on Regulatory Compliance



Table of Contents

Summary.....	S-1
1.0 Introduction.....	1-1
1.1 Purpose of this Technical Memorandum	1-1
1.2 Overview of Mendota Pool Bypass and Reach 2B Improvements Project.....	1-1
1.3 Organization of Technical Memorandum.....	1-4
2.0 NEPA/CEQA Compliance.....	2-1
2.1 Application to Proposed Action.....	2-1
2.2 Purpose and Requirements.....	2-2
2.3 Project EIS/R Process	2-2
2.4 Submittal Package.....	2-5
2.4.1 Draft Project EIS/R.....	2-5
2.4.2 Final Project EIS/R	2-6
2.5 Fees	2-6
2.6 Critical Issues.....	2-6
2.7 Next Steps for NEPA/CEQA Compliance.....	2-7
3.0 Federal Agency Environmental Compliance.....	3-1
3.1 U.S. Army Corps of Engineers Regulations	3-1
3.1.1 Application to Proposed Action.....	3-1
3.1.2 Permit Purpose and Requirements	3-2
3.1.3 Permit Acquisition Procedure.....	3-3
3.1.4 Submittal Package.....	3-5
3.1.5 Critical Issues.....	3-7
3.1.6 Permit Fees.....	3-7
3.1.7 Next Steps for Permit Acquisition	3-7
3.2 Federal Endangered Species Act	3-8
3.2.1 Application to Proposed Action.....	3-8
3.2.2 Permit Purpose and Requirements	3-8
3.2.3 Permit Acquisition Procedure.....	3-10
3.2.4 Critical Issues.....	3-11
3.2.5 Permit Fees.....	3-12

3.2.6	Next Steps for Permit Acquisition	3-12
3.3	Fish and Wildlife Coordination Act.....	3-13
3.3.1	Application to Proposed Action.....	3-13
3.3.2	Purpose and Requirements.....	3-13
3.3.3	Compliance Procedure	3-13
3.3.4	Submittal Package.....	3-14
3.3.5	Critical Issues.....	3-14
3.3.6	Fees	3-14
3.3.7	Next Steps for Compliance	3-14
3.4	National Historic Preservation Act, Section 106.....	3-15
3.4.1	Application to Proposed Action.....	3-15
3.4.2	Purpose and Requirements.....	3-15
3.4.3	Compliance Procedure	3-15
3.4.4	Submittal Package.....	3-17
3.4.5	Critical Issues.....	3-17
3.4.6	Fees	3-17
3.4.7	Next Steps for Compliance	3-17
3.5	Rivers and Harbors Act Section 9 and General Bridge Act of 1946	3-18
3.5.1	Application to Proposed Action.....	3-18
3.5.2	Permit Purpose and Requirements	3-18
3.5.3	Permit Acquisition Procedure	3-18
3.5.4	Submittal Package.....	3-18
3.5.5	Critical Issues.....	3-19
3.5.6	Fees	3-20
3.5.7	Next Steps for Permit Acquisition	3-20
4.0	State Agency Environmental Compliance	4-1
4.1	Clean Water Act Section 401.....	4-1
4.1.1	Application to Proposed Action.....	4-1
4.1.2	Permit Purpose and Requirements	4-1
4.1.3	Permit Acquisition Procedure	4-1
4.1.4	Submittal Package.....	4-2
4.1.5	Critical Issues.....	4-2
4.1.6	Permit Fees.....	4-2
4.1.7	Next Steps for Permit Acquisition	4-3
4.2	Clean Water Act Section 402.....	4-4
4.2.1	Application to Proposed Action.....	4-4
4.2.2	Permit Purpose and Requirements	4-4

4.2.3	Permit Acquisition Procedure	4-5
4.2.4	Submittal Package.....	4-5
4.2.5	Critical Issues.....	4-6
4.2.6	Permit Fees.....	4-6
4.2.7	Next Steps for Permit Acquisition	4-6
4.3	California Endangered Species Act	4-7
4.3.1	Application to Proposed Action.....	4-7
4.3.2	Permit Purpose and Requirements	4-7
4.3.3	Permit Acquisition Procedure	4-8
4.3.4	Submittal Package.....	4-8
4.3.5	Critical Issues.....	4-9
4.3.6	Permit Fees.....	4-9
4.3.7	Next Steps for Permit Acquisition	4-10
4.4	California Fish and Game Code Section 1602.....	4-11
4.4.1	Application to Proposed Action.....	4-11
4.4.2	Permit Purpose and Requirements	4-11
4.4.3	Permit Acquisition Procedure	4-12
4.4.4	Submittal Package.....	4-12
4.4.5	Critical Issues.....	4-13
4.4.6	Permit Fees.....	4-13
4.4.7	Next Steps for Permit Acquisition	4-13
4.5	California Code of Regulations, Title 23.....	4-14
4.5.1	Application to Proposed Action.....	4-14
4.5.2	Permit Purpose and Requirements	4-14
4.5.3	Permit Acquisition Procedure	4-15
4.5.4	Submittal Package.....	4-15
4.5.5	Critical Issues.....	4-16
4.5.6	Permit Fees.....	4-16
4.5.7	Next Steps for Permit Acquisition	4-16
4.6	California Water Rights	4-17
4.6.1	Application to Proposed Action.....	4-17
4.6.2	Permit Purpose and Requirements	4-17
4.6.3	Permit Acquisition Procedure	4-18
4.6.4	Critical Issues.....	4-18
4.6.5	Next Steps for Compliance	4-18
4.7	State Lands Commission Land Use Lease.....	4-19
4.7.1	Application to Proposed Action.....	4-19
4.7.2	Permit Purpose and Requirements	4-19

4.7.3	Lease Acquisition Procedure	4-19
4.7.4	Submittal Package.....	4-19
4.7.5	Critical Issues.....	4-19
4.7.6	Permit Fee	4-19
4.7.7	Next Steps for Lease Acquisition	4-20
5.0	Local Agency Environmental Compliance	5-1
5.1	San Joaquin Valley Air Pollution Control District Regulations	5-1
5.1.1	Application to Proposed Action.....	5-1
5.1.2	Permit Purpose and Requirements	5-2
5.1.3	Compliance Procedure	5-3
5.1.4	Submittal Package.....	5-4
5.1.5	Critical Issues.....	5-5
5.1.6	Fees	5-6
5.1.7	Next Steps for Compliance	5-6
5.2	Surface Mining and Reclamation Act of 1975	5-7
5.2.1	Application to Proposed Action.....	5-7
5.2.2	Permit Purpose and Requirements	5-8
5.2.3	Permit Acquisition Procedure	5-8
5.2.4	Submittal Package.....	5-9
5.2.5	Critical Issues.....	5-9
5.2.6	Permit Fees.....	5-9
5.2.7	Next Steps for Permit Acquisition	5-9
5.3	Williamson Act	5-10
5.3.1	Application to Proposed Action.....	5-10
5.3.2	Permit Purpose and Requirements	5-10
5.3.3	Compliance Procedure	5-11
5.3.4	Submittal Package.....	5-11
5.3.5	Critical Issues.....	5-11
5.3.6	Permit Fees.....	5-12
5.3.7	Next Steps for Permit Acquisition	5-12
5.4	Fresno County Municipal Code	5-13
5.4.1	Code 13.08	5-13
5.5	Madera County Municipal Code.....	5-14
5.5.1	Code 14.50: Grading Permit	5-14
5.5.2	Code 17.32: Road Encroachment Permit.....	5-15

6.0 Applicable Laws, Policies, and Plans Not Requiring Specific Permit or Approval 6-1

6.1 Federal..... 6-1

6.1.1 Migratory Bird Treaty Act 6-1

6.1.2 Bald and Golden Eagle Protection Act 6-1

6.1.3 Executive Order 11990 (Wetlands Policy) 6-1

6.1.4 Executive Order 11988 (Flood Hazard Policy) 6-2

6.1.5 Executive Order 12898 (Environmental Justice Policy)..... 6-2

6.1.6 Executive Order 13112 (Invasive Species)..... 6-3

6.1.7 Executive Order 13186 (Migratory Birds)..... 6-4

6.1.8 Executive Order 13007 (Indian Sacred Sites)..... 6-4

6.1.9 Indian Trust Assets 6-4

6.1.10 Farmland Protection Policy Act..... 6-5

6.1.11 Native American Graves Protection and Repatriation Act..... 6-5

6.2 State..... 6-5

6.2.1 California Native Plant Protection Act 6-5

6.2.2 California Native Plant Society Species Designations 6-5

6.2.3 Porter-Cologne Water Quality Control Act 6-6

6.2.4 California Register of Historical Resources 6-6

6.2.5 California Native American Graves Protection and Repatriation Act 6-6

6.3 Local 6-7

7.0 References..... 7-1

Figures

Figure 1-1. Overview of SJRRP Restoration Area and Project Vicinity 1-2

Figure 1-2. Overview of Project Area..... 1-3

Tables

Table S-1. General Permitting Information Needs S-1

Table S-2. Summary of Permits and Approvals Required for the Project..... S-3

Attachments

- A Proposed Permitting Timeline

This Draft Technical Memorandum (TM) was prepared by the San Joaquin River Restoration Program Team as a draft document in support of preparing a Mendota Pool Bypass and Reach 2B Improvements Project Environmental Impact Statement/Report (Project EIS/R). The purpose for circulating this document at this time is to facilitate early coordination regarding initial concepts and approaches currently under consideration by the Program Team with the Settling Parties, the Third Parties, other stakeholders, and interested members of the public. As such, the content of this document may not necessarily be included in the Project EIS/R.

This Draft TM does not present findings, decisions, or policy statements of any of the Implementing Agencies. Additionally, all information presented in this document is intended to be consistent with the Settlement. To the extent inconsistencies exist, the Settlement should be the controlling document, and the information in this document will be revised prior to its inclusion in future documents. While the Program Team is not requesting formal comments on this document, all comments received will be considered in refining the concepts and approaches described herein to the extent possible. Responses to comments will not be provided and this document will not be finalized; however, refinements will likely be reflected in subsequent Program documents.

List of Abbreviations and Acronyms

ACHP	Advisory Council on Historic Preservation
Act	San Joaquin River Restoration Settlement Act
AIA	Air Impact Assessment
APE	Area of Potential Effects
BMPs	best management practices
CAA	Clean Air Act
CAD	Computer-Aided Design
CDFG	California Department of Fish and Game
CEQA	California Environmental Quality Act of 1970
CESA	California Endangered Species Act
CFR	Code of Federal Regulations
cfs	cubic feet per second
CNPS	California Native Plant Society
CRHR	California Register of Historical Resources
CVFPB	Central Valley Flood Protection Board
CVRWQCB	Central Valley Regional Water Quality Control Board
CWA	Clean Water Act
Delta	Sacramento–San Joaquin Delta
DWR	California Department of Water Resources
ECPWG	Environmental Compliance and Permitting Working Group
EFH	essential fish habitat
EIS/R	Environmental Impact Statement/Report
ESA	Endangered Species Act
ESRI	Environmental Systems Research Institute
FWCA	Fish and Wildlife Coordination Act
GIS	geographic information system
ID	identification
ISMP	Invasive Species Management Plan
ISR	Indirect Source Review
JD	jurisdictional delineation
MBTA	Migratory Bird Treaty Act
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding

Mendota Pool Bypass and Reach 2B Improvements Project

MSFCMA	Magnuson-Stevens Fisheries Conservation and Management Act
NEPA	National Environmental Policy Act of 1969
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOC	Notice of Completion
NOD	Notice of Determination
NOI	Notice of Intent
NOP	Notice of Preparation
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resources Conservation Service
NRDC	Natural Resources Defense Council
NRHP	National Register of Historic Places
NWP	Nationwide Permit
OFA	Office of Federal Activities
PEIS/R	Program Environmental Impact Statement/Report
PM ₁₀	particulate matter less than or equal to 10 microns in diameter
PRD	Permit Registration Document
Project	Mendota Pool Bypass and Reach 2B Improvements Project
Reclamation	U.S. Department of the Interior, Bureau of Reclamation
RHA	Rivers and Harbors Act
ROD	Record of Decision
RWQCB	Regional Water Quality Control Board
Settlement	Stipulation of Settlement
SHPO	State Historic Preservation Officer
SIP	State Implementation Plan
SJRRP	San Joaquin River Restoration Program
SJVAPCD	San Joaquin Valley Air Pollution Control District
SLC	State Lands Commission
SMARA	Surface Mining and Reclamation Act of 1975
SMARTS	Storm Water Multi-Application Report Tracking System
SWPPP	storm water pollution prevention plan
SWRCB	State Water Resources Control Board
TL	total length
TM	technical memorandum

URS	URS Corporation
USACE	U.S. Army Corps of Engineers
USC	U.S. Code
U.S. EPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service
WDID	waste discharger's identification

This page left blank intentionally.

Summary

The purpose of this technical memorandum is to identify permits and approvals required for implementation of the Mendota Pool Bypass and Reach 2B Improvements Project (Project) and to describe a comprehensive and coordinated approach to obtaining the necessary permits and approvals. Table S-1 identifies the basic information needs for the permitting process, including specific information required for major State and Federal permits. Table S-2 provides planning information for the permitting process, including the recommended prerequisites for application, the estimated time for processing, and the estimated fee. A proposed timeline of the permitting process is presented in Attachment A.

**Table S-1.
General Permitting Information Needs**

Item No.	Required Information
General Information (Multiple Permitting Tasks)	
G1	Applicant and agent information (name, address, phone number, fax number, and email address)
G2	Project description
G3	Project purpose
G4	Project location
G5	Project area and site boundaries (Section 404 and Section 106 require specific boundaries)
G6	Project size (acres)
G7	Site plan (including Project layout, offsite components, construction staging areas and access)
G8	Construction schedule (startup, duration, and completion dates)
G9	Preliminary or approved delineation of jurisdictional waters of the United States ¹
G10	Base map with aerial photograph ²
G11	Biological surveys completed for site including identification of habitat type, quality, quantity and indicated on the maps as in G9
G12	Design drawings (with percentage complete indicated)
G13	To-scale CAD-type cross section ³
G14	Bathymetric ⁴ data, if available (elevation, approximate bed profile)
G15	Contact information and status of other permit application processes
G16	Checks for permit fees ⁵
U.S. Army Corps of Engineers: Section 404 Individual Permit and Rivers and Harbors Act Section 10 and 14 Permit	
U1	Name of waterbody
U2	Reason for discharge
U3	Type(s) of material being discharged and the amount of each type in cubic yards
U4	Surface area in acres of wetlands or other waters filled
U5	Adjacent landowners
U6	Location of Federal project levees within the Project area

**Table S-1.
General Permitting Information Needs**

Item No.	Required Information
Regional Water Quality Control Board: 401 Certification	
R1	Names of receiving waterbodies
R2	Anticipated stream flow during Project activity (cfs)
R3	Acres of impacts to waters of the United States and non-Federal water by water body type
R4	Amount and type of fill material to be discharged/installed waters of the State/United States
R5	Amount and type of material to be dredged and/or removed from waters of the State/United States
R6	Compensatory mitigation
R7	Best Management Practices to avoid/minimize water quality impacts to waters of the United States
R8	Water right application or identification number
R9	Past projects conducted by the applicant in the same watershed within last 5 years
R10	Upcoming projects proposed by the applicant in the same watershed within next 5 years
California Department of Fish and Game: 1602 Notification	
C1	Project cost (used to calculate permit fee)
C2	Equipment and machinery that will be used to complete the Project
C3	Water diversion plan
C4	Impacted vegetation types and acreage of impact
C5	Techniques that will be used to prevent sediment from entering the watercourse during/after construction
C6	Avoidance and/or minimization measures to protect fish, wildlife and plant resources
1	Territorial seas, coastal and inland waters, lakes, rivers, and streams that are navigable waters of the United States, including their adjacent wetlands, tributaries to navigable waters (including adjacent wetlands), interstate waters and their tributaries, and all other waters not identified above, such as lakes, intermittent streams, etc.
2	GIS data are acceptable in any Environmental Systems Research Institute format; include datum, projection information, and metadata for all data.
3	If possible, project to a coordinate system, include a scale bar and legend on the drawing, include the cross references. A high-resolution, current, projected aerial image is preferred.
4	The water depth relative to sea level.
5	Fees are required for USACE individual permits, RWQCB 401 applications, and CDFG notifications, depending on project-specific variables.
CAD = Computer-Aided Design	
cfs = cubic feet per second	
GIS = geographic information system	
ID = identification	
RHA = Rivers and Harbors Act	

**Table S-2.
Summary of Permits and Approvals Required for the Project**

Agency and Associated Permit or Approval	Recommended Prerequisites for Submittal¹	Estimated Processing Time²	Anticipated Fees	Lead Agency for Submittal
Federal				
USACE Clean Water Act Section 404 Individual Permit Rivers and Harbors Act Section 10 Permit Rivers and Harbors Act Section 14 Permit (Section 408)	<u>Section 404 and Section 10</u> <ul style="list-style-type: none"> • Application • Biological Assessment for submittal to USFWS/NMFS • Section 401 Water Quality Certification permit or application • Draft NEPA document • Section 106 compliance documentation • Wetland delineation • Alternatives analysis • Mitigation and Monitoring Plan <u>Section 408</u> <ul style="list-style-type: none"> • Written request for approval of the Federal flood control project modification • Technical analyses and demonstration of adequate design • Description and maps of lands, easements, and right-of-way owned by the Federal project and required for the modification • Discussion of residual risk • Administrative record of decisions related to the Project proposal • Justification to construct in the floodplain • Demonstration of environmental protection compliance 	8 months	\$100 for Individual permit is waived for governmental agencies (none)	Reclamation
USFWS/NMFS Endangered Species Act Section 7 Consultation Magnuson- Stevens Fisheries Conservation and Management Act	<ul style="list-style-type: none"> • Ongoing technical assistance (pre-consultation) • Biological Assessment • EFH Assessment 	135 days	None	Reclamation

**Table S-2.
Summary of Permits and Approvals Required for the Project**

Agency and Associated Permit or Approval	Recommended Prerequisites for Submittal¹	Estimated Processing Time²	Anticipated Fees	Lead Agency for Submittal
USFWS/NMFS Fish and Wildlife Coordination Act Report	<ul style="list-style-type: none"> Ongoing informal technical consultation Biological impact assessments (as addressed in TM 2.3 Environmental Field Survey Report) 	N/A	None	USFWS/NMFS
SHPO/ACHP National Historic Preservation Act, Section 106	<ul style="list-style-type: none"> Cultural Resources Survey and Evaluation Report (if mitigation is necessary to resolve adverse effects to historic properties, then additional reports would be required for SHPO consultation that detail the results of these efforts) 	18 months	None	Reclamation
U.S. Coast Guard General Bridge Act and Rivers and Harbors Act Section 9	<ul style="list-style-type: none"> Bridge design Fish and Game Code Section 1602 Notification or Alteration Agreement CWA Section 404 permit or application Draft NEPA Document Section 401 Water Quality Certification application Biological Assessment for submittal to USFWS/NMFS or Biological Opinion 	3 months	None	Reclamation
State				
CVRWQCB Clean Water Act Section 401 Water Quality Certification	<ul style="list-style-type: none"> Application Fish and Game Code Section 1602 Notification or Alteration Agreement CWA Section 404 permit or application Draft CEQA Document Mitigation and Monitoring Plan 	2 months	\$500 or more	Reclamation/ DWR
SWRCB/ CVRWQCB Clean Water Act Section 402 Construction General Permit	<ul style="list-style-type: none"> Permit Registration Documents Design drawings (for SWPPP) 	1 to 2 weeks	Up to \$3,192	Reclamation/ DWR

**Table S-2.
Summary of Permits and Approvals Required for the Project**

Agency and Associated Permit or Approval	Recommended Prerequisites for Submittal¹	Estimated Processing Time²	Anticipated Fees	Lead Agency for Submittal
CDFG California Endangered Species Act Section 2080.1 Consistency Determination 2081 Incidental Take Statement	<ul style="list-style-type: none"> • Informal technical consultation • Biological Opinion, if requesting a consistency determination • Biological document for 2081 Permit, if requesting incidental take statement 	30 days for consistency determination, if appropriate 3 months for incidental take statement	None	DWR
CDFG Fish and Game Code Section 1602 Streambed Alteration Agreement	<ul style="list-style-type: none"> • Application • Section 401 Water Quality Certification permit or application • CWA Section 404 permit or application • Draft CEQA Document and Mitigation Plan 	2 months	Up to \$4,482.75	DWR
CVFPB California Code of Regulations, Title 23: Encroachment Permit	<ul style="list-style-type: none"> • Application • Section 401 Water Quality Certification permit or application • CWA Section 404 permit or application • Draft CEQA Document and Mitigation Plan • Fish and Game Code Section 1602 Notification or Alteration Agreement • Biological Assessment for submittal to USFWS/NMFS or Biological Opinion 	2 months	None	DWR
SWRCB Amended water right	<ul style="list-style-type: none"> • Application • Draft (possibly Final) CEQA Document 	3 months	\$200 or more	Reclamation/ DWR
State Lands Commission Land Use Lease	<ul style="list-style-type: none"> • Application • Draft CEQA Document • Property ownership determination 	4 to 5 months	\$25 application fee and possible leasing fees	Reclamation/ DWR

**Table S-2.
Summary of Permits and Approvals Required for the Project**

Agency and Associated Permit or Approval	Recommended Prerequisites for Submittal¹	Estimated Processing Time²	Anticipated Fees	Lead Agency for Submittal
Local				
SJVAPCD Air Impact Analysis Regulation VIII Dust Control Plan Federal Clean Air Act	<ul style="list-style-type: none"> • AIA Application • AIA Monitoring and Reporting Schedule • AIA Fee Deferral Schedule • Dust Control Plan • Dust Control Training Course • Pre-application meeting (encouraged) • List of construction equipment that may require Portable Equipment Registration 	1.5 months for Dust Control Plan and Air Impact Analysis	\$700 for Air Impact Analysis application ³ \$350 to process Dust Control Plan \$177 for Portable Equipment Registration	Reclamation/ DWR
Fresno/Madera Counties SMARA	<ul style="list-style-type: none"> • Permit application • Reclamation plan 	3 months	Varies	DWR
Fresno/Madera Counties Williamson Act Contracts	<ul style="list-style-type: none"> • Copy of applicable contracts 	2 months	None	DWR
Fresno/Madera Counties Municipal Code	<ul style="list-style-type: none"> • Project description • Engineering design 	6 weeks	Varies	DWR

¹ Items listed are the items recommended for submittal of the specified application, not for approval. Several permits require additional items for permit approval. Requirements for approval are discussed within the corresponding section of the document.

² Anticipated processing time is estimated based on the period from verified submission of completed application documents to permit issuance.

³ The \$700 filing fee has been paid as part of the AIA submittal for the SJRRP.

ACHP = Advisory Council on Historic Preservation

AIA = Air Impact Assessment

CDFG = California Department of Fish and Game

CEQA = California Environmental Quality Act of 1970

CVFPB = Central Valley Flood Protection Board

CVRWQCB = Central Valley Regional Water Quality Control Board

CWA = Clean Water Act

DWR = California Department of Water Resources

EFH = essential fish habitat

NEPA = National Environmental Policy Act of 1969

NMFS = National Marine Fisheries Service

SHPO = State Historic Preservation Officer

SJVAPCD = San Joaquin Valley Air Pollution Control District

SJRRP = San Joaquin River Restoration Program

SMARA = Surface Mining and Reclamation Act of 1975

SWPPP – storm water pollution prevention plan

SWRCB = State Water Resources Control Board

USACE = U.S. Army Corps of Engineers

USFWS = U.S. Fish and Wildlife Service

1.0 Introduction

This Technical Memorandum (TM) on Regulatory Compliance outlines the regulatory steps required to implement the Mendota Pool Bypass and Reach 2B Improvements Project (Project). The San Joaquin River Restoration Program (SJRRP) was established in late 2006 to implement the Stipulation of Settlement (Settlement) in *NRDC, et al., v. Kirk Rodgers, et al.*

The U.S. Department of the Interior, Bureau of Reclamation (Reclamation), as the Federal lead agency under the National Environmental Policy Act of 1969 (NEPA), and the California Department of Water Resources (DWR), as the State lead agency under the California Environmental Quality Act (CEQA), prepared this TM to address regulatory compliance procedures for the Project. In general, Reclamation will be the lead agency responsible for acquiring Federal permits, and DWR will be the lead agency responsible for acquiring State permits. The regulatory steps outlined in this TM are required to implement certain components of the Settlement. Federal authorization for implementing the Settlement is provided in the San Joaquin River Restoration Settlement Act (Act) (Public Law 111-11).

1.1 Purpose of this Technical Memorandum

The purpose of this TM is to identify permits and approvals required for implementation of the Project and to describe a comprehensive and coordinated approach to obtaining the necessary permits and approvals.

The TM identifies the permits and approvals needed to implement the Project; outlines the information necessary to apply for and successfully obtain the necessary permits and approvals; explains where and how this information will be developed; suggests approaches to obtaining the necessary permits and approvals; and includes a detailed schedule for permit application and approval agreement preparation and submittal. This TM builds upon the SJRRP Regulatory Compliance TM but highlights the specific regulatory compliance needs of the Project. The TM is intended to outline a clear approach to obtaining the necessary permits and approvals within the Project schedule and identify areas of possible efficiency and ways to expedite the permitting and approval process.

1.2 Overview of Mendota Pool Bypass and Reach 2B Improvements Project

Paragraph 11(a)(1) of the Settlement stipulates the creation of a bypass channel around the Mendota Pool to ensure conveyance of at least 4,500 cfs from Reach 2B downstream to Reach 3 (Figure 1-1). The Project includes the construction, operation, and maintenance of the Mendota Pool Bypass and improvements in the San Joaquin River channel in Reach 2B to convey at least 4,500 cubic feet per second (cfs) (Figure 1-2).

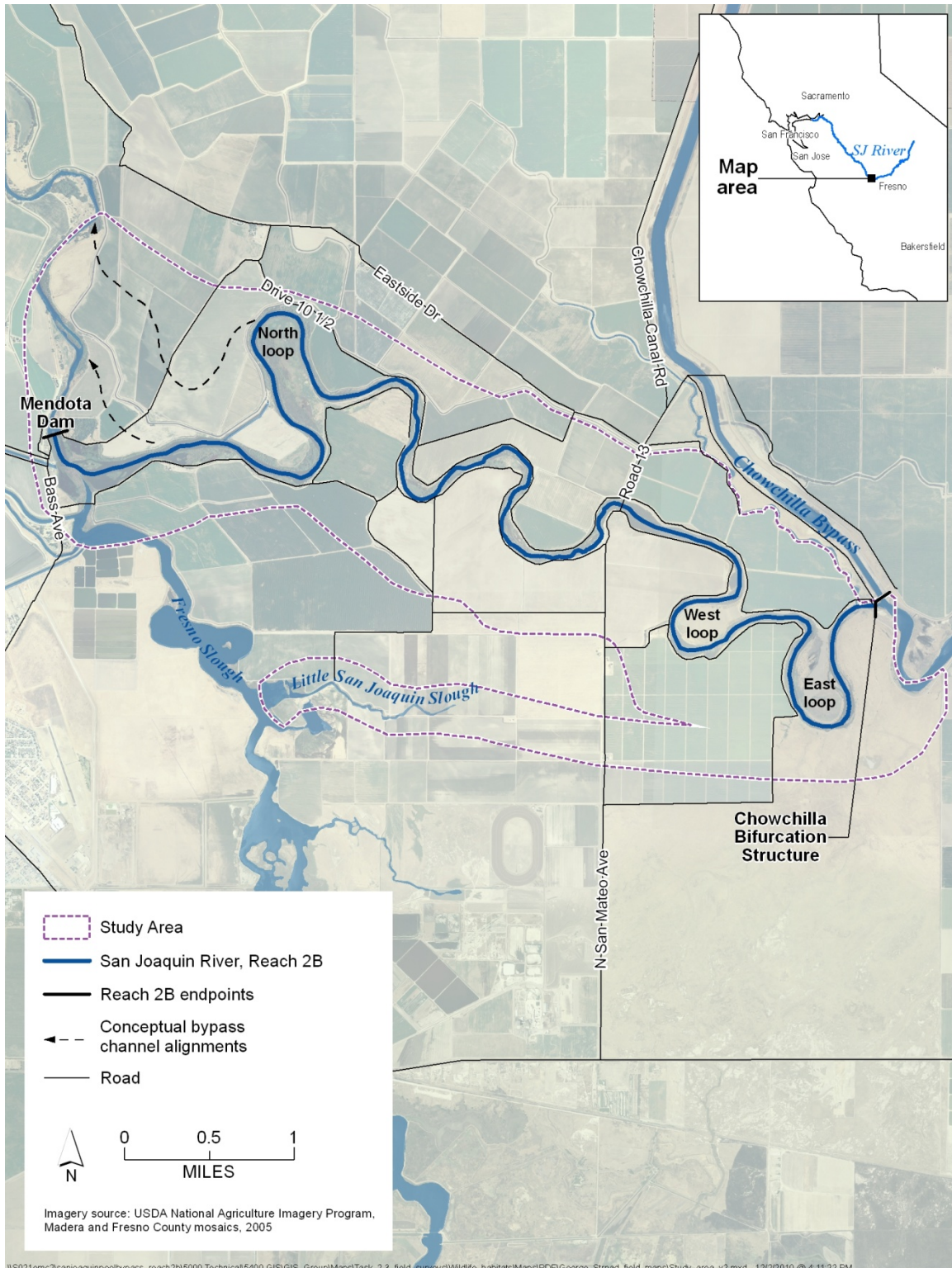


Figure 1-2.
Overview of Project Area

Paragraph 11(a)(2) of the Settlement stipulates modifications in channel capacity, incorporating new floodplain habitat and related riparian habitat, to ensure conveyance of at least 4,500 cfs between the Chowchilla Bypass Bifurcation Structure and the new Mendota Pool Bypass. Because the functions of these channels may be interrelated, the design, environmental compliance, and construction of the two are being addressed as one project. The Project would be implemented consistent with the Settlement and the Act, Public Law 111-11.

The Mendota Pool Bypass would include bypassing the Pool to convey at least 4,500 cfs from Reach 2B to Reach 3, and a method to direct immigrating adult salmon into the bypass channel. This action could also include constructing a bifurcation structure in Reach 2B to divert up to 2,500 cfs to the Pool. The bifurcation structure would be designed to direct fish into the bypass channel and minimize or avoid fish entrainment to the Pool. Specific bypass alignments and facilities locations will be determined through the course of this site-specific study.

Improvements to Reach 2B would include modifications to the San Joaquin River channel from the Chowchilla Bypass Bifurcation Structure to the new Mendota Bypass Bifurcation Structure to provide a capacity of at least 4,500 cfs, with integrated floodplain habitat. New levees would be constructed along Reach 2B to increase the channel capacity while allowing for new floodplain habitat. Because of the uncertainty of life history behavior of salmon in the San Joaquin River, modifications in Reach 2B may or may not emphasize floodplain habitat for juvenile salmon rearing.

The Project area is shown on Figure 1-2; the Project area extends from the Chowchilla Bypass Bifurcation Structure to approximately 1 mile below Mendota Dam. The extent of the Project area boundaries will depend on the final alternatives considered. The Project area is in Fresno and Madera counties, near the town of Mendota.

1.3 Organization of Technical Memorandum

This section describes the organization of the memorandum.

- **Summary** – provides a summary of the information in this TM
- **Section 1 Introduction** – introduces the TM, presenting background information, and describing its purpose and organization
- **Section 2 NEPA/CEQA Compliance** – discusses steps necessary to achieve NEPA/CEQA compliance
- **Section 3 Federal Agency Environmental Compliance** – discusses applicable Federal laws and the actions required to obtain necessary permits or approvals
- **Section 4 State Agency Environmental Compliance** – discusses applicable State laws and the actions required to obtain necessary permits or approvals

- **Section 5 Local Agency Environmental Compliance** – discusses applicable local laws and the actions required to obtain necessary permits or approvals
- **Section 6 Applicable Laws, Policies, and Plans Not Requiring Specific Permit or Approval** – discusses laws, policies, and plans that apply to the Project but do not require specific permits or approval
- **Section 7 References** – lists alphabetically all references cited in this TM

This page left blank intentionally.

2.0 NEPA/CEQA Compliance

Agency: NEPA Lead Agency: Bureau of Reclamation
CEQA Lead Agency: Department of Water Resources

Documents: Notice of Intent/Notice of Preparation, Notice of Public Hearing, Scoping Report, Notice of Availability (NOA)/Notice of Completion (NOC) of Draft and Final Project EIS/R, Draft and Final Project EIS/R, Record of Decision (ROD)/Notice of Determination (NOD), and subsequent Project-specific environmental compliance documents

Resources: Comprehensive environmental resources

Processing Time: Minimum of 24 months

Contacts:

Bureau of Reclamation	Michelle Banonis
California Department of Fish and Game	Gerald Hatler
Central Valley Regional Water Quality Control Board	Rudy Schnagl
Department of Water Resources	Karen Dulik
	Kevin Faulkenberry
National Marine Fisheries Service	Rhonda Reed
Restoration Administrator	Rod Meade
San Joaquin Valley Air Pollution Control District	Jessica Willis
U.S. Army Corps of Engineers	Kathy Norton
	Meegan Nagy
U.S. Environmental Protection Agency	Carolyn Yale
U.S. Fish and Wildlife Service	Bob Clark

2.1 Application to Proposed Action

NEPA applies to discretionary projects funded, authorized, or carried out by Federal agencies. The lead agency is responsible for construction, operation, and maintenance of the Mendota Pool Bypass and channel/floodplain improvements in Reach 2B of the San Joaquin River. Reclamation has the primary Federal responsibility for implementing the Project and is therefore the lead agency for NEPA purposes.

CEQA applies to discretionary projects performed by public State agencies (Public Resources Code §21001.1). DWR is a signatory to the Memorandum of Understanding (MOU) between the Department of the Interior and the State of California, designed to implement the Settlement and coordinate State and Federal authority. Under the MOU and Settlement, DWR would perform physical modifications to the river channel and construct related structures to improve fish habitat and survivability. DWR has the

primary responsibility among State agencies for implementing the Project and therefore is the lead State agency for CEQA compliance.

2.2 Purpose and Requirements

The SJRRP calls for both short-term actions to provide Interim Flows to enhance fish habitat, as well as long-term planning and physical changes to the channel and construction of associated structures to allow for the conveyance of Restoration Flows and provide fisheries habitat and passage needed to achieve the Restoration Goal. Because the SJRRP represents a broad Federal action that calls for implementing multiple project actions over a large geographic area and in several common stages over numerous years, the lead agencies are preparing a Program EIS/R (PEIS/R) that provides a top-down view of a series of related actions. This structure is useful in analyzing the cumulative effects associated with related actions. The PEIS/R provides a policy-level analysis for tiering from or incorporating by reference information from the PEIS/R into subsequent project-specific studies without duplicative analysis (CEQA Guidelines §15168(b)(3)).

Project improvements would be evaluated for environmental impacts in a Project EIS/R and reference the PEIS/R as appropriate. Because the Project proposes to physically modify the channel, bypass or modify Mendota Pool structures and related facilities, and provide for fish passage, specific alignments and facilities locations would be identified. These components of the Project need to be addressed at “Project level,” including all phases of the Project that could result in changes to the environment. Consequently, the Project EIS/R would address short-term construction and long-term maintenance and operation effects (CEQA Guidelines §15161).

2.3 Project EIS/R Process

The Project EIS/R would be used to satisfy both NEPA and CEQA; the flow of documents and public review would follow both frameworks. The Federal lead agency’s consultant would prepare the document on behalf of the State and Federal lead agencies, but the agencies would exercise independent judgment in approving and guiding the document (40 Code of Federal Regulations [CFR] 1506.5(c), Guidelines 15082(a)). Reclamation or Reclamation’s consultant would execute a conflict of interest statement disclaiming any financial interest in the program evaluated in the document (40 CFR 1506.5(c)). The major steps of the Project EIS/R are detailed below.

1. **Notice of Intent (NOI)/Notice of Preparation (NOP):** Both NEPA and CEQA provide for public notice of preparation of the Project EIS/R. Reclamation notified the U.S. Environmental Protection Agency (U.S. EPA) that the Project EIS/R is under preparation. U.S. EPA has published an NOI in the Federal Register, Vol. 74, No. 132 (July 13, 2009), and DWR filed the NOP with the Governor’s Office of Planning and Research on July 13, 2009 (State Clearinghouse #2009072044). The Federal Register is available online at <http://www.gpoaccess.gov/fr/index.html>. Parties were provided

30 days from the date of receiving the NOP to comment on the document; the comment period ended on August 14, 2009.

2. **Conduct Scoping:** NEPA process mandates a formal scoping effort (40 CFR 1508.25). The scoping effort uses the information solicited from the public and from other Federal agencies during NOI circulation, and also provides another vehicle for public and agency input. The scoping process contains the following elements:

- Invite affected Federal, State, and local agencies, as well as Native American Tribes and the general public and stakeholders, to participate in the EIS process
- Identify potentially significant effects to be analyzed in detail in the EIS, and identify and eliminate issues that are not significant or that have been covered by prior environmental review
- Allocate assignments among the lead agency and cooperating agencies regarding preparation of the EIS, including impact analysis and identification of mitigation measures
- Identify other permitting and environmental review requirements
- Formulate a decision making and review schedule
- Receive input on alternatives that should be analyzed during the NEPA process

Reclamation and DWR convened two public scoping meetings, one in Fresno (July 28, 2009) and one in Firebaugh, California (July 29, 2009) to inform the public and interested stakeholders about the Mendota Pool Bypass and Reach 2B Channel Improvements Project and to solicit public input on alternatives, concerns, and issues to be addressed in the EIS/R. Each scoping meeting began with a 30-minute presentation by Reclamation and DWR. The presentation explained the purpose of the meeting, provided a history of the Settlement, an overview of the key components of the Project, and described the public scoping process.

3. **Prepare Draft Project EIS/R:** The lead agencies, USFWS, NMFS, CDFG, and the Environmental Compliance and Permitting Working Group (ECPWG), with technical support from the URS Corporation (URS) team of consultants, would prepare the document. The lead agencies would exercise independent judgment in approving and guiding the document (40 CFR 1506.5(c), Guidelines 15082(a)). The draft document would incorporate the information and comments gathered during the noticing and scoping process to consider:

- The extent of the action
- A range of alternatives including a no-action alternative
- Potentially significant impacts and any associated mitigation measures

The Federal lead agency must file the draft EIS with the U.S. EPA Office of Federal Activities (OFA). OFA publishes a NOA of a draft EIR in the *Federal Register* the week after the document is received, opening the NEPA public review period for accepting public comments (40 CFR 1506.9). For projects of local or regional concern, the Federal lead agency may use the State noticing procedures under CEQA (40 CFR 1506.6(b)(3)(iii)). For a project with the complexity and public sensitivities of the Mendota Pool Bypass and Reach 2B Improvements Project, the Federal lead agency would employ a 60-day review period for the Project EIS/R.

The State lead agency would file a NOA with the Office of Planning and Research, State Clearinghouse, using the required NOC, and would provide the requested copies for the Clearinghouse to distribute to State responsible and trustee agencies. Both lead agencies would request comments from responsible agencies, trustee agencies, and other parties specified in the Guidelines §15086, and provide public notice of the draft per Guidelines §15087. The circulation period starts with the public NOA being accepted by the Clearinghouse. CEQA requires public circulation of the draft for 45 to 60 days (Guidelines §15105).

In practice, the CEQA and NEPA processes for public review should overlap as much as possible to avoid confusion. The lead agencies would jointly hold public hearings to receive input on the Draft Project EIS/R content. Public hearings are a useful tool for gathering comments on projects that are controversial or of public concern and are required by Reclamation policy. CEQA does not require public hearings but encourages them at the draft document stage (Guidelines §15087(i)).

4. **Preparation of the Final Project EIS/R:** The URS team of consultants would prepare the final document, incorporating and responding to significant public comments, as well as comments from cooperating, responsible, and trustee agencies.
5. **Circulation and Adoption/Certification of the Final Project EIS/R:** NEPA requires circulation of the final Project EIS/R for a minimum of 30 days among other Federal agencies and the public before a final decision is made on the document (40 CFR 1502.19) or the Project. After circulation of the Final Project EIS/R, the Federal lead agency would file the document with the U.S. EPA OFA, who would file a notice in the Federal Register, starting a 30-day “no action” review clock. Following the “no action” period the Federal lead agency may proceed to take action and approve the Project EIS/R, determine the preferred alternative, and prepare a Record of Decision (ROD) that satisfies the criteria provided in 40 CFR 1505.2.

CEQA, in contrast, provides for a one-time circulation, with no duty to make the final EIR available for review to the broad public. However, the State lead agency must provide written responses to public agency comments and give those agencies 10 days to review these responses (and a final opportunity to comment) prior to certifying the document (Guidelines §15088(b)). The State lead agency would certify the Project EIS/R after their decision-making body reviews the document per Guidelines §15090(a), and would prepare an NOD per §15094.

The State lead agency would also complete Findings of Fact (Guidelines §15091), approve the Project (Guidelines §15092), and prepare a Statement of Overriding Consideration (Guidelines §15093) if any impacts are determined to be significant and unavoidable.

2.4 Submittal Package

2.4.1 Draft Project EIS/R

The Project EIS/R must include the following components:

- A Cover Sheet (40 CFR 1502.10(a))
- Table of Contents (Guidelines §15122)
- Summary of the Proposed Actions and Their Consequences (Guidelines §15123, 40 CFR 1502.10 (b))
- Statement of Purpose and Need (40 CFR 1502.10(d))
- Project Description (Guidelines §15124)
- Affected Environment/Environmental Setting (40 CFR 1502.10(f), Guidelines §15125)
- Analysis of Alternatives ((40 CFR 1502.10(e))
- Evaluation of Environmental Consequences/Impacts (40 CFR 1502.10(g), Guidelines §15126)
- Significant Environmental Effects (Guidelines §15126.2)
- Effects Found Not to be Significant (Guidelines §15128)
- Mitigation Measures (Guidelines §15126.4)
- Analysis of Cumulative Impacts (Guidelines §15130)
- Alternatives to the Proposed Action (Guidelines §15126.6)
- Inconsistencies with Applicable Plans (Guidelines §15125(d))
- A Discussion of Growth Inducing Impacts (Guidelines §15126.2(d))
- A List of Preparers (40 CFR 1502.10(h))
- A List of Agencies, Organizations, and Persons Receiving the Project EIS/R and Organizations and Persons Consulted (40 CFR 1502.10(i), Guidelines §15129)

- Index
- For circulation of the Draft Project EIS/R and submittal to the U.S. EPA and State Clearinghouse, the following documents are to be provided as explained in Section 2.3 above: NOC, NOA.

2.4.2 Final Project EIS/R

The lead agencies would evaluate comments received on the Draft Project EIS/R and prepare written responses to those comments (Guidelines §15088). These responses would be prepared using good faith and reasoned analysis. Where appropriate, the text in the body of the Draft Project EIS/R would be revised. The response to comments may be provided as a revision to the Draft Project EIS/R or as a separate section in the Final Project EIS/R.

The contents of a final EIR are specified in the Guidelines §15132 and include:

- The draft EIR or a revision of the draft;
- Comments and recommendations received on the draft EIR;
- A list of persons, organizations, and agencies providing comments on the draft EIR; and
- The responses of the Lead Agency to key points raised in the public review and consultation process.

For circulation of the Final Project EIS/R, a NOA is published in the *Federal Register*.

2.5 Fees

Mandatory fees for the CEQA process are collected at the completion of CEQA process.

CDFG has a required fee of \$2,839.25 (effective January 1, 2011) for filing the NOD on the final EIR with the State Clearinghouse. The CEQA filing fee would be waived if a project would have no effect on fish and wildlife (Fish and Game Code §711.4(c)(2)(A)), and there is a process for making this determination. A request for exemption from the CDFG fee is to be made when the CEQA document is released for public review or as early as possible in the public comment period. The CDFG fee is paid only once, to the State Clearinghouse, when the State lead agency files the NOD.

All fees are subject to change and need to be verified at the time of filing the NOD.

2.6 Critical Issues

The Project EIS/R is to be written so as to be understandable to the broad public while relying on technical and often complex analyses to determine the effects on the physical,

biological, and human environments. Consequently, the text would be prepared to facilitate public understanding of the potential environmental concerns and impacts, with supporting technical information in appendices.

The Project EIS/R would focus on a range of reasonable alternatives for the Reach 2B channel and floodplain and for bypassing Mendota Pool. The project description section must clearly describe the Project-specific actions for these selected alternatives (and No-Project/No-Action). Because it must follow Reclamation's guidelines for implementing NEPA, all of the alternatives would be evaluated in equal depth. To meet CEQA requirements, alternatives that reduce potential impacts would also be identified.

While the Project is designed to meet the instream flow and fish passage requirements of the Settlement, the alternatives to be evaluated need to address the full range of potential effects and allow for a comparison among the alternatives of these effects. CEQA requires an evaluation of impacts based on the existing condition (July 2009 when the NOP was issued) baseline, while NEPA requires the Action Alternatives to be compared with No-Action. The No-Action Alternative would not be defined as the existing conditions. Instead, the No-Action Alternative would include projected conditions as they would exist in the study area at the end of the PEIS/R planning horizon (2030), including those projects and programs considered reasonably foreseeable by that time.

The environmental setting for each resource may vary from the July 2009 condition depending on the available data. For example, the Interim Flows have altered biological conditions in the channel, and Project photography and surveys have captured the altered condition as the baseline for analysis.

Under CEQA, the EIS/R needs to identify feasible mitigation for any potentially significant impacts. Agencies responsible for this mitigation must be identified. The ECPWG is a reasonable mechanism for coordination of mitigation action and responsibilities.

The technical analysis includes hydraulic/hydrologic modeling. Modeling the effects of sustained flows down the San Joaquin River on fish, the riparian ecosystem, groundwater, and adjacent landowners in Reach 2B, and interpreting that modeling, would provide critical input to the environmental impact analyses. It is assumed that the SJRRP PEIS/R would evaluate effects to the Delta; therefore, these effects would not be included in this analysis.

2.7 Next Steps for NEPA/CEQA Compliance

The Project EIS/R is scheduled to be prepared and published as follows.

- Completion of the selection of the reasonable range of alternatives is planned for February 2011. The description of the alternatives would be disseminated to and discussed with the EIS/R preparers.

Mendota Pool Bypass and Reach 2B Improvements Project

- Identification of environmental concerns, significance criteria, and additional projects for the cumulative impact analysis would occur in March 2011. This information drives the scope of the environmental impacts analysis and sets the stage for the environmental settings for the resources.
- Schedule completion of initial impact analyses to facilitate sharing of information between the EIS/R authors and promote consistency of assumptions used.
- Anticipate any significant and unavoidable impacts early, to scope all feasible mitigation.
- Establish scheduled meetings, appropriate reviewers (include NEPA and CEQA experts, and possibly attorneys; ECPWG); and adequate review times to discuss critical issues.
- Release the Public Draft EIS/R by the end of January 2012.

3.0 Federal Agency Environmental Compliance

3.1 U.S. Army Corps of Engineers Regulations

Agency:	U.S. Army Corps of Engineers (USACE)
Regulations:	Section 404 of the Clean Water Act (CWA) Section 10 of the Rivers and Harbors Act Section 14 of the Rivers and Harbors Act (also known as Section 408 of the U.S. Code [USC], Title 33) Section 208.10 of the CFR, Title 33
Permits:	Section 404 of the CWA Individual Permit Section 408 Permit
Resource:	Waters of the United States
Processing Time¹:	8 months
Contact:	U.S. Army Corps of Engineers 1325 J Street, Room 1480 Sacramento, CA 95814 (916) 557-5250 Attn: Ms. Kathy Norton (Section 404 and Rivers and Harbors) Ms. Meegan Nagy (Section 408 and Section 208.10)

3.1.1 Application to Proposed Action

The proposed action would result in fill and/or dredge of jurisdictional waters of the United States, including wetlands, especially within the San Joaquin River during any in-river construction activities (e.g., levee removal and potential construction of a culvert at San Mateo Road crossing) and at other locations, including Fresno Slough and Little San Joaquin Slough. As a result, this Project would require authorization from USACE pursuant to Section 404 of the CWA.

In addition to affecting waters of the United States, the proposed action would also result in construction in, over, or under; excavation of material from; or deposition of material into “navigable waters,” such as the San Joaquin River. As a result, the Project would

¹ Throughout this TM, anticipated processing time is estimated based on the period from verified submission of completed application documents to permit issuance.

require authorization from USACE pursuant to Section 10 of the Rivers and Harbors Act (RHA) (33 USC 403) for the construction of certain elements of the Project.

Additionally, since the Project would alter a Federal flood control project by potentially relocating or modifying an existing Federal project levee, USACE approval under Section 14 of the RHA (33 USC 408, referred to as Section 408) or under Section 208.10 (33 CFR 208.10) is required prior to proceeding with the Project.

3.1.2 Permit Purpose and Requirements

CWA Section 404 establishes a program to regulate the discharge of dredged material or placement of fill material into waters of the United States, including wetlands. Waters of the United States include surface waters such as navigable waters and their tributaries, all interstate waters and their tributaries, natural lakes, all wetlands adjacent to other waters, and all impoundments of these waters. Activities that require a permit under Section 404 include, but are not limited to, placing fill or riprap, grading, mechanized land clearing, and dredging in waters of the United States. Any activity that results in the deposit of dredged or fill material within the ordinary high-water mark of waters of the United States usually requires a permit, even if the area is dry when the activity takes place.

The USACE Regulatory Branch issues several types of Section 404 permits. Those most applicable to the proposed action are Nationwide Permits (NWP) and Individual Permits. Projects with only minimal adverse effects (i.e., fills of less than 0.5 acre of nontidal waters of the United States) can typically be authorized under USACE's NWP program to expedite the environmental compliance process, provided the project satisfies the terms and conditions of the particular NWP. Because the proposed Project would have more than minimal impacts, it would require an Individual Permit.

The CWA and guidelines outlined in a Memorandum of Agreement (MOA) between the U.S. EPA and USACE dated November 15, 1989, set forth a goal of restoring and maintaining existing aquatic resources. This MOA directs USACE to strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, to strive to achieve a goal of no overall net loss of values and functions. The MOA also noted the value of other waters of the United States, including streams, rivers, and lakes. Under the guidelines, all jurisdictional waters of the United States are afforded protection and requirements are outlined for practicable mitigation based on values and functions of the aquatic resources that would be affected.

U.S. EPA develops regulations with which USACE must comply and reviews the permits issued by USACE. Section 404(c) of the CWA authorizes U.S. EPA to veto a USACE decision to issue a permit if a proposed action "will have an unacceptable effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas."

Section 10 of the RHA (33 USC 403) requires authorization from USACE for the construction of any structure over, in, and under navigable waters of the United States. In addition, authorization is required for excavation/dredging or deposition of material or any obstruction or alteration in a navigable water. Navigable waters are those subject to the ebb and flow of the tide and those that are currently used, have been used in the past, or may be susceptible to use to transport interstate or foreign commerce (55 CFR 329.4). They include coastal and inland waters, lakes, rivers, and streams that are navigable, and

the territorial seas. Structures or work outside the limits defined for navigable waters would require a Section 10 permit if the structure or work affects the course, location, condition, or capacity of the water body.

Section 208.10 (33 CFR 208.10) provides regulations regarding encroachments on Federal flood control structures and facilities that are constructed for local flood protection. Minor, low impact modifications of Federal flood control projects that do not adversely affect the function of the protective system can be approved by the USACE under Section 208.10. These modifications cannot change the authorized geometry or the hydraulic capacity of the Federal project. Small alterations are typically approved under a Central Valley Flood Protection Board (CVFPB) Encroachment Permit (see Section 4.5) and are reviewed and approved by the USACE in accordance with Section 208.10.

Major alterations to a Federal flood control project, including alterations to channels and levees that change the Federal project's authorized geometry or the hydraulic capacity, would require a Section 408 permit. Section 408 requires authorization from USACE for the alteration of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by a Federal agency for the preservation and improvement of any of its navigable waters or to prevent floods. The types of alterations or modifications that require Section 408 approval include degradations, raisings, and realignments to the flood protection system or any modification where engineering analysis indicates that the system performance is adversely impacted. To receive authorization, the applicant must establish that the proposed alteration would not be injurious to the public interest and would not impair the usefulness of such work.

The USACE would initiate formal actions under Section 408 and Section 208.10 at the request of the CVFPB. The USACE is also consulted prior to initiating formal actions.

3.1.3 Permit Acquisition Procedure

A jurisdictional delineation (JD) of all waters of the United States, including wetlands, must be conducted to identify areas of USACE jurisdiction within the Project site. In preparation for the JD, wetland specialists have reviewed existing wetland data, which include the USFWS National Wetland Inventory maps; U.S. Department of Agriculture, Natural Resources Conservation Service soil survey information; U.S. Geological Survey 7.5-minute series topographic quadrangles; and existing topographic maps and aerial photographs of the Project site. The wetland delineation would be conducted in accordance with the 1987 USACE Wetland Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the USACE Wetland Delineation Manual: Arid West Region (USACE 2008). The 1987 manual describes the three-parameter approach to determining the location and boundaries of jurisdictional wetlands. This approach requires that an area support positive indicators of hydrophytic vegetation, hydric soils, and wetland hydrology to be considered a jurisdictional wetland. The Regional Supplement would be used for region-specific guidance on the classification of these indicators. Several data points would be collected to establish the jurisdictional edge of any wetland or other water of the United States. The wetland specialist would complete wetland determination forms for each data point. The delineation would include all areas that would be affected or potentially affected by the proposed action.

Once the JD is complete, the lead agency can choose to seek a preliminary JD or an approved JD from USACE to facilitate the permitting process. An approved JD is an official USACE determination that jurisdictional “waters of the United States,” or “navigable waters of the United States,” or both, are either present or absent on a particular site (33 CFR 331.2). Preliminary JDs are nonbinding “. . . written indications that there may be waters of the United States, including wetlands, on a parcel or indications of the approximate location(s) of waters of the United States or wetlands on a parcel” (33 CFR 331.2). The submittal and verification processes for each type of JD are similar; however, the preliminary JD allows greater flexibility to amend the determination and is, therefore, the recommended procedure. Following submittal of the JD, the Federal lead agency’s wetland specialist would coordinate and attend a field verification meeting with USACE, as needed.

The Federal lead agency has initiated informal consultation with USACE regarding the Project in the form of agency coordination meetings. To facilitate the permitting process, the Federal lead agency would continue to meet with USACE and would provide Project information and to allow USACE to give their recommendations and suggestions so that the permit process may be expedited. The federal lead agency’s wetland specialist would attend an agency coordination meeting to discuss Project characteristics, permit requirements, and permitting schedules.

To obtain an Individual Permit for the Project as required under Section 404, USACE must document, in compliance with the requirements of U.S. EPA’s Section 404(b)(1) Guidelines, that the permit is being issued in the absence of practicable alternatives to the proposed discharge that would have less adverse impacts on the aquatic ecosystem. According to the Guidelines, the practicability of an alternative is a function of cost and technical and logistical factors in light of overall project purposes. The applicant bears the burden of demonstrating that no practicable alternatives exist that would meet the proposed purpose and reduce effects to waters of the United States, including wetlands. An alternatives analysis report would need to be prepared by the Project team to document the analysis of alternatives in conformance with Section 404(b)(1) requirements. This alternatives report and additional alternatives analyses as part of the future feasibility studies and Project EIS/R would be submitted to USACE as part of the permit application package to support USACE decision making. Upon receiving an initial alternative analysis study from the applicant, the USACE would conduct a separate independent review of the materials and come to its own independent conclusion on what is the Least Environmentally Damaging Practicable Alternative for the Project.

The results of the JD and the Section 404(b)(1) analysis would be submitted along with an application for a Section 404 individual permit. Section 10 of the RHA is addressed within this permit application.

Section 408 consultations are handled by a different branch of USACE; therefore, the consultation would require a separate submittal process. Section 408 consultation must be initiated by the Project sponsor, which would be the CVFPB. A written request is required for approval of a modification to a Federal flood control structure, facility, or system. At the time the request is submitted, the adequacy of the modification design must be demonstrated. A risk analysis must be conducted for projects that would degrade,

raise, or realign a Federal flood protection system. Hydrologic and hydraulic impacts are determined by comparing performance parameters for the existing condition to the condition resulting from the project modification. Geotechnical and structural integrity must be demonstrated for a full range of loading conditions. A breach analysis would also be conducted for loading conditions where flood waters are in excess of the level of protection provided by the system. Seismic stability, impacts of the overtopping loading condition, and potential impacts to interior drainage would also be addressed.

3.1.4 Submittal Package

There would be two submittals to the USACE. The first submittal package described below is for a Section 404 Individual Permit; the second is for the Section 408 permit.

Using the results of the JD, the lead agency would prepare a submittal for USACE to request a preliminary JD or an approved JD. The submittal would summarize the methods, existing conditions, and findings of the JD. Final copies of all wetland data sheets would be included as attachments to the report. The report would include a wetland map showing the extent and location of all jurisdictional waters of the United States, including wetlands, within the Project site. This report and map would be prepared in accordance with USACE requirements. Additionally, this map would identify Federal project levees that fall under the jurisdiction of Section 408 and may be affected by the Project.

The following information is required for the Individual Section 404 permit application:

- a detailed description of the proposed activity, including the purpose, use, type of structures, composition, and quantity of dredged or fill material, and location of the disposal site
- names and addresses of adjoining property owners, others on the opposite side of streams or lakes, or those whose property fronts on a cove and who may have a direct interest because they could be affected by the Project
- enough detail about the location—street number, tax assessor’s description, political jurisdiction, and name of waterway—to allow the site to be easily located during a field visit
- a list of the status of all approvals and certifications required by Federal, State, and local governmental agencies, including:
 - Section 401 Water Quality Certification application (can be applied for concurrently)
 - Endangered Species Act (ESA) Section 7 Biological Assessment
 - NEPA document (Project EIS/R)
 - National Historic Preservation Act’s (NHPA) Section 106 report
- an explanation of any approvals or certifications denied by other governmental agencies

Mendota Pool Bypass and Reach 2B Improvements Project

- names and addresses of the applicant and the authorized agent (if any), and dates when the Project would begin and end
- one set of 8½-inch by 11-inch original drawings or good copies that show the location and character of the proposed activity
- three types of additional drawings: a vicinity map, plan view, and elevation and/or cross-section view
- any other NWPs, regional general permits, or individual permits used or intended to be used to authorize any part of the proposed action or any related activity

The following is required for the submittal under Section 408:

- A written request to the USACE for approval of the Federal flood control project modification, including a detailed description of the proposed modification, a statement of the purpose and need, and a map or drawing of the modification
- Technical analyses and demonstration of adequate design
 - The geotechnical evaluation would address stability, seepage, erosion control, and vegetation
 - The structural analysis would address bridges and abutments, pier penetrations of levee embankments, and gates or other operable features
 - The hydraulic and hydrology analysis would address changes in inflow, changes in water surface profiles and flow distributions, and local and system impacts
 - Operation and maintenance requirements would also be addressed.
- A description and maps of lands, easements, and right-of-way owned by the Federal project and required for the modification
- A discussion of residual risk, describing changes to the existing level of risk to life and properties as a result of the modification (as indicated by risk analysis)
- An administrative record of decisions related to the Project proposal (e.g., environmental reports and permitting decisions)
- A justification to construct in the floodplain (to address Executive Order 11988)
- Demonstration of environmental protection compliance with NEPA, ESA, Fish and Wildlife Coordination Act (FWCA), Wild and Scenic Rivers Act, Clean Air Act (CAA), NHPA, and the Noise Control Act. In addition, the U.S. EPA, State agencies, and tribal agencies must be given a reasonable opportunity to comment on the proposed action

3.1.5 Critical Issues

- Define boundaries of Project, the Project footprint, and extent and quantity of placement of fill and/or dredged material in waters of the United States.
- Determine whether Project impacts would be permanent or temporary.
- Determine the extent of necessary mitigation.

3.1.6 Permit Fees

If an individual permit is issued, the fee is normally \$100, but is waived for government agencies.

3.1.7 Next Steps for Permit Acquisition

The primary next steps to fulfill consultation requirements with USACE and comply with Section 404 of the CWA is to conduct a wetland delineation to identify jurisdictional areas within the Project site. Because an Individual permit is required, the permitting process would require additional time to allow for public notice and the 404(1)(b) process; therefore, it is important to initiate the Section 404 permit application process in a timely manner.

3.2 Federal Endangered Species Act

Agencies:	USFWS and NMFS
Regulations:	ESA, Section 7 Magnuson-Stevens Fisheries Conservation and Management Act (MSFCMA)
Compliance Document:	Concurrence letter or Biological Opinion
Resource:	Plant or animal species Federally listed as endangered or threatened
Processing Time:	135 days
Contact:	U.S. Fish and Wildlife Service Endangered Species Division 2800 Cottage Way, Room W-2605 Sacramento, CA 95825 (916) 414-6600 Attn: Mr. Bob Clark National Marine Fisheries Service 650 Capitol Mall, Suite 8-300 Sacramento, CA 95814 (916) 930-3600 or 930-3601 Attn: Ms. Rhonda Reed

3.2.1 Application to Proposed Action

Several species that are Federally listed as threatened or endangered potentially occur in the Project area. As described in the TM on Existing Environmental Conditions for the Project, implementation of the proposed action may result in adverse effects to these species or their habitat. Because the action is proposed by a Federal agency and requires Federal permits and approvals, and because Project implementation could adversely affect Federally listed species, Section 7 consultation with USFWS and NMFS is required. The lead agency would prepare a Biological Assessment to obtain concurrence or a Biological Opinion (with incidental take statements, as necessary) from USFWS and NMFS for the proposed action.

Under the MSFCMA, NMFS regulates essential fish habitat (EFH). Because the proposed action may have adverse effects to EFH, the lead agency would need to consult with NMFS under the MSFCMA along with the Section 7 consultation.

3.2.2 Permit Purpose and Requirements

The ESA of 1973, as amended (16 USC 1531 et seq.), is a mechanism for the protection and recovery of species threatened with extinction and includes, but is not limited to, the following:

- a process to list species in danger of becoming extinct (Section 4)
- a prohibition on “take” of threatened and endangered species (Section 9)
- processes for exemption from Section 9 take prohibitions when take is incidental to, and not the purpose of, otherwise lawful activities (Section 7 and Section 10)

The ESA is administered by USFWS and NMFS. USFWS is responsible for protection of birds, terrestrial, and resident (nonanadromous) freshwater species. NMFS is responsible for protection of marine species and anadromous fish.

Section 9 of the ESA prohibits “take” (i.e., harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct) of any threatened or endangered species. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering.

Section 7 of the ESA outlines procedures for Federal interagency cooperation to conserve Federally listed species and designated critical habitat. ESA mandates that all Federal agencies participate in the conservation and recovery of listed threatened and endangered species and that each agency ensure that any action it authorizes, funds, or carries out does not jeopardize the continued existence of a listed species or its critical habitat. Critical habitat is identified as specific areas that have the physical and biological features that are essential to the conservation of a listed species, and that may require special management considerations for protection. Section 7 outlines the required consultation procedures that provide Federal agencies with a mechanism for “incidental take,” provided the “taking” would not jeopardize the continued existence of any listed species, or destroy or adversely modify critical habitat. Depending upon the anticipated level of impact to Federally listed species, the Federal lead agency and the USFWS and/or NMFS would engage in different levels of consultation:

- If the Federal lead agency finds that the Project would have “no effect” on listed species, no formal consultation is initiated with USFWS or NMFS
- If the Federal lead agency finds that the Project is “not likely to adversely affect” listed species, informal consultation with USFWS and/or NMFS would be initiated by the Federal lead agency to determine appropriate avoidance and minimization measures (e.g., best management practices [BMPs]) for the Project. The desired outcome of informal consultation is a letter of concurrence with the findings presented by the Federal agencies from USFWS and/or NMFS
- If the Federal lead agency finds that the Project is “likely to adversely affect” a listed species, formal consultation is initiated with USFWS and/or NMFS. After determining whether the Project would jeopardize the continued existence of a listed species, the USFWS and/or NMFS would render either a jeopardy or nonjeopardy determination. The desired outcome of formal consultation is a signed nonjeopardy Biological Opinion, issued by USFWS and/or NMFS, stating

the acceptable level of impact to listed species, the conservation measures for the species, and the agreed upon mitigation ratios for anticipated impacts. A signed Biological Opinion would include a statement authorizing take of species that may occur as incidental to an otherwise legal activity (i.e., incidental take statement) and is issued on the basis of information provided to USFWS or NMFS by a lead agency, often in the form of a Biological Assessment, prepared by either the Federal lead agency or the applicant

The MSFCMA, also known as the Sustainable Fisheries Act (16 USC Section 1801 et seq.), requires NMFS and the eight regional Fishery Management Councils to minimize, to the extent practicable, adverse effects to EFH. EFH is defined as the waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (50 CFR 600 et seq.). The EFH provisions of the MSFCMA are designed to protect fisheries habitat from being lost due to disturbance and degradation. NMFS and the regional Fishery Management Councils identify and describe EFH for each of the commercially managed marine and anadromous fish species in published fishery management plans.

The MSFCMA requires all Federal agencies to consult with NMFS (under the stewardship of the Secretary of Commerce) on activities or proposed activities that are authorized, funded, or undertaken by that agency that may adversely affect EFH. NMFS must then provide conservation recommendations to conserve and reduce impacts to EFH. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. Federal agencies are required to respond to EFH Conservation Recommendations.

Guidelines from the MSFCMA direct NMFS to use a coordinated process to evaluate projects that may affect EFH under Section 305(b) of the MSFCMA (16 USC Section 1855[b]; 50 CFR 600 et seq.). EFH consultation would be included with the Section 7 consultation (16 USC Section 1536).

3.2.3 Permit Acquisition Procedure

Through preparation and review of the TM on Existing Environmental Conditions: Data Needs and Survey Approach, and the ongoing preparation and future USFWS and NMFS review of the Background Information and Field Survey Results TM, the Federal lead agency has received technical assistance from USFWS and NMFS, and provided the opportunity for agency feedback regarding study methods and conclusions. The federal lead agency should continue these working relationships with USFWS and NMFS staff to reduce potential conflicts between Project activities and listed species or critical habitat.

The Biological Assessment would be prepared in accordance with USFWS and NMFS guidelines. The Biological Assessment should be completed for formal and informal consultation with USFWS and NMFS pursuant to the ESA and the MSFCMA, as well as to provide information for consultations under the FWCA (see Section 3.3).

The Biological Assessment for the Project should include:

- The best available scientific and commercial data

- A detailed description of the proposed action
- A description of the specific area that may be affected by the action either directly or indirectly
- A list and description of any listed species, species proposed for listing, or critical habitat that may be affected by the action
- A description of the direct, indirect, and cumulative impacts on any listed species, species proposed for listing, or critical habitat occurring in the action area likely to result from the proposed action, as well as actions related to and dependent on the proposed action
- A description of any measures to be incorporated into the proposed action that the implementing entity would undertake to avoid, minimize, and compensate for effects to listed species, species proposed for listing, or critical habitat
- A description of any conservation measures that may be included as part of the proposed action to benefit or promote the recovery of a listed species
- A discussion of alternative actions the implementing entity considered that would not result in take, and the reasons why such alternatives are not being used
- Additional measures that USFWS and NMFS may require as necessary or appropriate for compliance with ESA

Upon submittal of the Biological Assessment, the lead agency would request informal/formal Section 7 consultation. USFWS and NMFS would review the Biological Assessment for compliance with ESA, under Section 7. The level of effort required to complete the consultation period can vary greatly, depending on a number of factors such as the extent of potential effects, proposed mitigation, agency staff assigned to the Project, and ongoing working relationships. If necessary, formal consultation by USFWS and NMFS would be complete when the Biological Opinion has been prepared on the species that the action is likely to adversely affect. As part of this Biological Opinion, USFWS and/or NMFS may authorize incidental take of endangered and threatened species, which would likely be the case for the proposed action.

3.2.4 Critical Issues

Due to the length of the ESA consultation process and the fact that the California Endangered Species Act (CESA) consultation may require the Federal Biological Opinion(s), consultation must be initiated before the NEPA Record of Decision is published. Therefore, consultation would begin before the final Project alternative is identified. Since USFWS will only consult on a single Project alternative, the lead agency would need to coordinate with USFWS to determine an approach that suits both parties. The recommended approach is to initiate consultation on a preferred alternative but wait until the Record of Decision is published before finalizing the Biological Opinion.

3.2.5 Permit Fees

None.

3.2.6 Next Steps for Permit Acquisition

The primary next step to comply with Section 7 of the ESA is to coordinate with USFWS and NMFS to develop a suitable approach and timeline for consultation. Following the completion of remaining environmental surveys, work on the Biological Assessment for USFWS and NMFS should begin. The Federal lead agency should continue to request technical assistance from USFWS and NMFS as the Biological Assessment is being prepared, to ensure that all necessary species are being addressed and that the agencies are satisfied with the conservation measures being proposed.

3.3 Fish and Wildlife Coordination Act

Agency: USFWS, NMFS, CDFG

Compliance

Document: FWCA Report, prepared by USFWS and incorporated into the NEPA process

Resource: Biological resources and surface waters

Contact: See Sections 3.2, “Federal Endangered Species Act,” and 4.3, “California Endangered Species Act”

3.3.1 Application to Proposed Action

The FWCA requires Federal agencies to consult with USFWS, NMFS, and CDFG before undertaking or approving water projects that would control or modify surface water. Because the proposed action would affect surface waters, the lead agency must conduct consultation pursuant to the FWCA.

3.3.2 Purpose and Requirements

Coordination under FWCA is intended to promote conservation of fish and wildlife habitats by preventing their loss or damage and to provide for development and improvement of fish and wildlife habitats in connection with water projects. Federal agencies undertaking water projects are required to fully consider recommendations made by USFWS, NMFS, and CDFG in project reports and include measures in project plans to reduce impacts on fish and wildlife habitat. Documentation of compliance with FWCA is a separate analysis of habitats of concern to USFWS and CDFG and does not replace the analysis required by Section 7 of the Federal ESA. The process would, however, help to ensure that impacts to species protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act (see Section 6.1.1 and 6.1.2) are considered and avoided as required by law.

3.3.3 Compliance Procedure

The Federal lead agency has initiated coordination with the USFWS, NMFS, and CDFG through agency coordination meetings. At these meetings, the agencies are given the opportunity to make recommendations regarding the preservation of fish and wildlife habitats early in the planning process.

Formal FWCA coordination is incorporated in the NEPA process. USFWS has indicated that they intend to prepare an FWCA Report for the Project. This report would present the current environmental conditions within the Project area and would include an assessment of the impacts of the proposed action on preservation, conservation, and enhancement of fish and wildlife habitat. Additionally, the report would include agency recommendations for preserving, mitigating losses of, and enhancing affected habitats. The lead agency is required to include this report with the Project EIS/R.

3.3.4 Submittal Package

A variety of information, including the Project's draft NEPA/CEQA document, the Project's Technical Memorandum on Field Survey Results, and a draft of the Biological Assessment, when available, would be provided to USFWS, NMFS, and CDFG. These documents would serve as a basis for USFWS' FWCA Report.

3.3.5 Critical Issues

- Determine whether and to what degree the proposed action would adversely affect fish and wildlife habitat.
- Ensure timely completion of FWCA Report by USFWS.

3.3.6 Fees

None.

3.3.7 Next Steps for Compliance

The primary next step for FWCA compliance is to determine the information required by USFWS for the preparation of the FWCA Report. The lead agency would have to provide information to serve as the basis for the report, including the Biological Assessment and draft Project EIS/R.

3.4 National Historic Preservation Act, Section 106

Agency: State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Compliance

Document: Archaeological Survey Report, Historic Resources Survey Report (Optional – reports on geo-archaeological testing, and reports on archaeological investigations to determine eligibility), Historic Properties Survey Report, Finding of Effect, and any required agreement documents

Resource: Prehistoric and historic-era archaeological resources, traditional cultural properties, and historic buildings

Processing Time: 9 months (up to 18 months, if mitigation is necessary)

Contact: California Department of Parks and Recreation
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001
(916) 653-6624
Attn: State Historic Preservation Officer

3.4.1 Application to Proposed Action

The proposed action may affect properties that are listed or eligible for listing on the National Register of Historic Places (NRHP).

3.4.2 Purpose and Requirements

Section 106 of the NHPA and implementing regulations at 36 CFR Part 800 require Federal agencies to take into account the effects of their undertakings on cultural resources (which include archaeological and architectural resources, and traditional cultural properties) that are listed on, are eligible for listing on, or are potentially eligible for listing on, the NRHP. During this process, the Federal agency is usually required to consult with the SHPO and in some instances the ACHP, an independent Federal agency that advises the President and Congress on national historic preservation policy and administers the NHPA's Section 106 review process. Section 101 of the NHPA establishes the responsibilities of the SHPO, which include consulting with Federal agencies regarding undertakings that may affect historic properties.

3.4.3 Compliance Procedure

To identify the archaeological resources that may be affected by the Project, the Federal lead agency's consultant archaeologists have defined an archaeological Area of Potential Effects (APE), which consists of the maximum extent of ground disturbance for all Project alternatives currently considered. A pedestrian survey of a portion of the APE has been completed. Additional surveys would be done when permission to enter is granted

for the remaining unsurveyed areas of the APE. To further inform archaeological surveys, Native American consultation has been undertaken to identify known resources, including Traditional Cultural Properties. Native American consultation is ongoing and no responses have been received to date.

Additionally, an APE for the built environment/architectural resources has been defined it consists of the maximum extent of ground disturbance for all Project alternatives currently considered. This APE is predicated on negligible visual, noise, and vibration effects from the proposed undertaking. Surveys of this APE have been conducted and a draft inventory and evaluation report has been produced. If future project descriptions/studies indicate that a larger APE is required for the built environment, then additional field work and report revision may be necessary.

After cultural resource surveys are complete, a determination must be made if the resources within the APE are eligible for the National Register (i.e., are historic properties), and if so, whether Project-related activities would affect the values that contribute to that eligibility, a procedure documented in a Finding of Effect. The lead agency would determine whether the proposed action would have an adverse effect by applying the criteria of adverse effect detailed at 36 CFR Part 800.5(a)(1). There are three possible findings:

- *No Historic Properties Affected.* If there are no effects, adverse or otherwise, to historic properties. A legitimate basis for this finding is that no historic properties are present within the area of potential effects. The lead agency would consult with the SHPO on a finding of no adverse effect. If the SHPO concurs with this determination, then the lead agency may proceed with the undertaking. If SHPO does not concur, consultation must continue until a consensus is reached, or the lead agency may forward the documentation to the ACHP for review
- *No adverse effect.* If there could be an effect, but that effect would not alter any of the characteristics that qualify the property for inclusion in the NRHP, the lead agency would consult with the SHPO on a finding of no adverse effect. If SHPO concurs with this determination, the lead agency may proceed with the undertaking. If SHPO does not concur, consultation must continue until a consensus is reached, or the lead agency may forward the documentation to the ACHP for review
- *Adverse effect.* If an adverse effect upon any historic properties is found, the lead agency must notify the ACHP of this finding. The ACHP may decide to participate in the consultation, or may decline to participate. Once an adverse effect is identified, the Federal lead agency, SHPO, and any other consulting parties continue the consultation to develop and evaluate ways to avoid, minimize, or mitigate the adverse effects

Once a determination has been made, the lead agency would consult with the SHPO and any other consulting parties to reach consensus on the Finding of Effect. If it is agreed that a “no historic properties affected” or “no adverse effect” determination is

appropriate, no further action is necessary. If it is determined that the undertaking would have an adverse effect on historic properties, the consultation is continued in an effort to find ways to address the adverse effects. If the consulting parties agree on the methods to be used to mitigate the adverse effects, the consulting parties would typically sign an MOA detailing how the adverse effects would be addressed. If the ACHP has not previously been participating as a consulting party, the MOA is forwarded to the ACHP. If the Section 106 review process results in an MOA accepted by the ACHP, the lead agency would proceed with the Project according to the terms of the MOA.

3.4.4 Submittal Package

The lead agency would submit a Finding of Effects for each resource group, archaeological and architectural, where the Project poses a potential effect. This report would be consistent with Section 106 requirements. If adverse effects are identified, mitigation reports may be required.

3.4.5 Critical Issues

- Determine whether any archaeological or architectural resources are present within the APE.
- Determine whether the proposed action may adversely affect any archaeological or architectural resources that are eligible for the National Register.

3.4.6 Fees

None.

3.4.7 Next Steps for Compliance

The next step to achieve compliance with NHPA's Section 106 is to complete the cultural resource surveys and determine whether properties eligible for the National Register are within the APE. Once these surveys are complete and Register Eligibility is either confirmed or assumed, a Finding of Effects should be prepared for submittal to the SHPO and the ACHP.

3.5 Rivers and Harbors Act Section 9 and General Bridge Act of 1946

Agency: U.S. Coast Guard

Permit: Bridge permit

Resource: Navigable waters

Processing Time: 3 months

Contact: U.S. Coast Guard, 11th District
Building 50-2
Alameda, CA 94501-5100
(510) 437-3516
Attn: Dave Sulouff, Commander

3.5.1 Application to Proposed Action

The General Bridge Act of 1946, as amended, and Section 9 of the RHA, as amended, require that the location and plans of bridges and causeways across the navigable waters of the United States be submitted to and approved by the Secretary of Transportation prior to construction. The proposed project would likely require the construction of a bridge at the intersection of San Mateo Avenue and the San Joaquin River; therefore, the lead agency would need to apply for a bridge permit.

3.5.2 Permit Purpose and Requirements

The purpose of regulating bridge construction under the General Bridge Act and Section 9 of the RHA is to preserve the public right of navigation and to prevent interference with interstate and foreign commerce. The authority to issue bridge permits was delegated by the Secretary of Transportation to the Commandant, U.S. Coast Guard, by Department of Transportation Order 1100.1 dated 31 March 1967 (49 CFR 1.46(c)). Project information and details about the proposed bridge must be submitted to the Commandant for approval prior to the construction of a bridge over navigable waters.

3.5.3 Permit Acquisition Procedure

To apply for a bridge permit, the lead agency must send a submittal letter to the Commandant of the local U.S. Coast Guard District. Once the submittal is received, the U.S. Coast Guard would issue public notice, coordination letters, and Notice to Local Mariners. Once they have reviews the comments, the U.S. Coast Guard would approve or deny the bridge permit application.

3.5.4 Submittal Package

The application letter to the U.S. Coast Guard must include the following:

- Applicant information (name, address, telephone number)

- Consultant information (name, address, telephone number)
- Project information:
 - Location
 - Name of the waterway that the bridge crosses
 - Number of miles and kilometers above the mouth of the waterway where the bridge is located
 - City(ies) or town(s), county, and State where the bridge is located at, near, or between
 - Description
 - Purpose
 - Cost
- The primary authority for the construction of the bridge and under what legislative authority the bridge is being built
- Proposed clearances and elevations:
 - Horizontal and vertical clearances, in the navigation span(s) measured at mean high water, 2 percent flowline, or other appropriate datum
 - Elevation of mean high water, the 2 percent flowline, or other appropriate datum
 - Depth and width of the waterway at the appropriate elevation
- Existing bridge structure at the bridge site (owner, type, mile point, navigational clearances)
- Construction Activity (dates, traffic plans, type and source of Project funding)
- Environmental effects and documentation
- General composition of fill and amount of fill above and below Mean High Water or Ordinary High Water in cubic yards
- Acreage of wetlands impacted and types of vegetation affected
- Adjacent property owners within ½ mile radius (names, addresses)
- Estimated total value of yearly commercial shipping on the waterway affected by the bridge
- Drawings of the proposed project

3.5.5 Critical Issues

- The bridge permit application must demonstrate compliance with numerous environmental regulations; therefore, the bridge permit would not be submitted

until the permitting process for most other key permits has been initiated or completed.

- The lead agency should coordinate with the U.S. Coast Guard to determine the estimated processing time for the permit.

3.5.6 Fees

None.

3.5.7 Next Steps for Permit Acquisition

The primary next step to comply with the General Bridge Act and Section 9 of the RHA is to determine whether or not a bridge would be included in the preferred alternative. If construction of a bridge is required, the priority for this permit would be to complete the engineering design for the bridge that includes the specifications required for the permit application.

4.0 State Agency Environmental Compliance

4.1 Clean Water Act Section 401

Agency: California Regional Water Quality Control Board, Central Valley Region

Permit: Section 401 Water Quality Certification

Resource: Waters of the State

Processing Time: 2 months

Contact: Central Valley Regional Water Quality Control Board
Sacramento Main Office
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114
(916) 464-3291
Attn: Rudy Schnagl

4.1.1 Application to Proposed Action

The proposed action would result in fill and/or dredging of jurisdictional waters of the State, including wetlands, particularly in the San Joaquin River and nearby channels such as the Fresno Slough and Little San Joaquin Slough. As a result, a Section 401 Water Quality Certification would be required for these actions.

4.1.2 Permit Purpose and Requirements

Under Section 401 of the CWA, an applicant for a Section 404 permit must obtain a certificate from the appropriate Regional Water Quality Control Board (RWQCB) stating that proposed fill is consistent with the State's water quality standards and criteria. In California, the authority to grant water quality certification is delegated by the State Water Resources Control Board (SWRCB) to the nine RWQCBs. Due to its location, the Project falls under jurisdiction of the Central Valley Regional Water Quality Control Board (CVRWQCB); therefore, the lead agency would consult with the CVRWQCB to obtain a Section 401 Water Quality Certification.

4.1.3 Permit Acquisition Procedure

The lead agency would prepare an application to CVRWQCB requesting water quality certification. The letter would describe the proposed action and construction techniques and methods to minimize or avoid erosion, turbidity, and other adverse water quality effects. This information would be drawn from the Project EIS/R and other available documentation, including subsequent environmental documents.

A pre-application agency coordination meeting is recommended to discuss Project characteristics, permit requirements, and permitting schedules. The lead agency would invite the appropriate CVRWQCB representative to attend the USACE pre-application meeting to facilitate discussion. Additional telephone coordination with USACE and CVRWQCB would be conducted to ensure that the permit application materials are complete, are technically accurate, and meet CVRWQCB needs.

The CVRWQCB is required to notify applicants within 30 days that the request for certification is complete or requires additional information. Once the request is complete, the CVRWQCB has 60 days to approve or deny the certification.

4.1.4 Submittal Package

The CVRWQCB Section 401 Water Quality Certification Application Package would include the following:

- a full, technically accurate description of the entire proposed activity, including:
 - the purpose and final goal
 - the Project location
 - affected water bodies
 - the total area of waters of the United States and/or waters of the State that would be directly affected
 - any proposed mitigation of adverse impacts
- copies of any draft or final Federal, State, and local agency licenses, permits, and agreements required for actions associated with the proposed activity (e.g., Fish and Game Code Section 1602 agreement)
- a copy of the CEQA document and notice of determination, if applicable
- a list of agencies that participated in the CEQA process as lead or responsible agencies

4.1.5 Critical Issues

- Define Project boundaries and the extent of discharge and/or discharge of dredged material in waters of the State as a result of the proposed action.
- Keep CVRWQCB engaged in process and providing timely review of the permit package.
- Dewatering during construction activities and subsequent quality of discharged water.

4.1.6 Permit Fees

\$640 base processing fee, plus additional fees depending on acreage and length of discharge and/or dredge areas.

4.1.7 Next Steps for Permit Acquisition

The primary next step to fulfill consultation requirements with the CVRWQCB and comply with Section 401 of the CWA is to complete the application for a water quality certification. Project details, including total acreage, volume of dredge and fill, and mitigation measures, must be determined before the application is complete. The certification would not be issued until the appropriate CEQA document is obtained.

4.2 Clean Water Act Section 402

Agency:	State Water Resources Control Board and California Regional Water Quality Control Board, Central Valley Region
Permit:	National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activity
Resource:	Waters of the State
Processing Time:	1 to 2 weeks
Contact:	State Water Resources Control Board Division of Water Quality, Stormwater 15th Floor 1001 I Street Sacramento, CA 95814 (916) 341-5536

4.2.1 Application to Proposed Action

The proposed action would result in discharges of waste into waters of the State, which include “any surface water or ground water, including saline waters, within the boundaries of the State.” An NPDES permit would be required for construction-related discharges to surface waters.

4.2.2 Permit Purpose and Requirements

Dischargers whose projects disturb 1 or more acres of soil or whose projects disturb less than 1 acre but are part of a larger common plan of development that in total disturbs 1 or more acres, are required to obtain coverage under the General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activity (Construction General Permit, 2009-0009-DWQ). Construction activity subject to this permit includes clearing, grading, and disturbances to the ground such as stockpiling or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The authority to regulate compliance with CWA Section 402 requirements is shared between the SWRCB and the nine RWQCBs. Most enforcement responsibilities are delegated to the RWQCBs; therefore, the lead agency would coordinate with the CVRWQCB to ensure compliance.

To acquire a Construction General Permit, applicants must submit Permit Registration Documents (PRDs), including an NOI Form to discharge stormwater, a storm water pollution prevention plan (SWPPP), and other documents. The SWPPP must be prepared by a Qualified SWPPP Developer and must list BMPs the discharger would use to protect stormwater runoff. Implementation of these BMPs must be overseen by a Qualified SWPPP Practitioner.

Compliance with the General Permit also requires on-site visual monitoring of stormwater and non-stormwater discharges and the submission of annual reports throughout the duration of the Project. Depending on the risk level of the Project, additional effluent monitoring or bioassessment sampling may be required. Once the Project is complete, the applicant must submit a Notice of Termination to be approved by the RWQCB.

4.2.3 Permit Acquisition Procedure

To acquire a Construction General Permit, the lead agency must submit PRDs on line through the Storm Water Multi-Application Report Tracking System (SMARTS) prior to commencement of construction activities. PRDs consist of an NOI, Risk Assessment, Post-Construction Calculations, a Site Map, the SWPPP, a certification statement signed by a designated legally responsible person, and the first annual fee. Once the PRDs are submitted, the lead agency would be emailed a receipt letter containing the waste discharger's identification (WDID) number. Issuance of the WDID number signifies that the Project is covered by the Construction General Permit.

4.2.4 Submittal Package

The following PRDs must be submitted through SMARTS prior to construction:

1. Notice of Intent
2. Site Map, including the following:
 - The Project's surrounding area (vicinity)
 - Site layout
 - Construction site boundaries
 - Drainage areas
 - Discharge locations
 - Sampling locations
 - Areas of soil disturbance (temporary or permanent)
 - Active areas of soil disturbance (cut or fill)
 - Locations of all runoff BMPs
 - Locations of all erosion control BMPs
 - Locations of all sediment control BMPs
 - ATS location (if applicable)

- Locations of sensitive habitats, watercourses, or other features that are not to be disturbed
- Locations of all post-construction BMPs
- Locations of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling, and water storage, water transfer for dust control and compaction practices

3. SWPPP

4. Risk Assessment

5. Post-Construction Water Balance Calculator

4.2.5 Critical Issues

- Define Project boundaries and the extent of discharge in waters of the State as a result of any of the proposed actions.
- Keep CVRWQCB engaged in process and provide timely review of the permit package.

4.2.6 Permit Fees

There is no application fee, but RWQCB assesses an annual fee for construction NOIs. This annual fee is calculated by the following formula: $\$238 + \$24/\text{acre}$ plus a 21 percent surcharge. Fees range from \$288 for a project that would disturb less than 1 acre to \$3,192 for a project that would disturb more than 100 acres. The fee is based on the “total acres to be disturbed” for the life of the project. Due to the scale of the Project, it is likely that the maximum fee would be required. Checks should be made payable to the “State Water Resources Control Board.”

4.2.7 Next Steps for Permit Acquisition

The primary next step to fulfill consultation requirements with the SWRCB and comply with Section 402 of the CWA is to complete the PRDs. Preparation of the SWPPP would be the most time-consuming task and should, therefore, be given priority once the Project design process is sufficiently complete.

4.3 California Endangered Species Act

Agency:	California Department of Fish and Game
Permit:	Authorization for incidental take of species that are State-listed as endangered or threatened (Section 2081) or consistency determination (Section 2080.1)
Resource:	State-listed endangered or threatened plant or animal species
Processing Time:	30 days for consistency determination; 3 months for incidental take statement
Contacts:	California Department of Fish and Game 1416 Ninth Street Sacramento, CA 95814 (916) 653-4875 Attn: Gerald Hatler

4.3.1 Application to Proposed Action

Several State-listed threatened or endangered species potentially occur in the Project area and particularly near the San Joaquin River and in adjacent waterways such as the Fresno Slough, Little San Joaquin Slough, and the Mendota Pool. Implementation of the proposed action may result in adverse effects to these species or their habitat. For species listed as “Fully Protected,” CDFG cannot issue take authorization and requires the Project proponent to completely avoid these species.

4.3.2 Permit Purpose and Requirements

CESA (Fish and Game Code Section 2050 et seq.) generally parallels the main provisions of the Federal ESA and is administered by CDFG. Under CESA, the term “endangered species” is defined as a species of plant, fish, or wildlife that is “in serious danger of becoming extinct throughout all, or a significant portion of, its range” and is limited to species or subspecies native to California.

CESA establishes a petitioning process for the listing of threatened or endangered species. The California Fish and Game Commission is required to adopt regulations for this process and establish criteria for determining whether a species is endangered or threatened. The California Code of Regulations, Title 14, Section 670.1(a) sets forth the required contents for such a petition. CESA prohibits the “taking” of listed species except as otherwise provided in State law. Unlike its Federal counterpart, CESA applies the take prohibitions to species petitioned for listing (State candidates). Section 86 of the Fish and Game Code defines “take” as to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.”

Sections 2080 and 2081 of the Fish and Game Code cover the “take” of State threatened and endangered species. One of two CESA-compliance processes is generally followed

when take of a State-listed species may occur, the Section 2080.1 consistency determination or Section 2081 incidental take permit processes. If all listed species potentially affected by the proposed action are protected under both the Federal ESA and CESA, the California legislation encourages cooperative and simultaneous consultation between USFWS and CDFG to coordinate the Federal ESA Section 7 process (see Section 3.2) and the CESA process so that consistent and compatible findings result. In this circumstance, authorization for take under CESA would be provided by a Section 2080.1 consistency determination. Section 2080.1 allows an applicant who has obtained a Federal incidental take statement through Section 7 consultation to request that CDFG issue a consistency determination stating that the Federal document is “consistent” with CESA. A Section 2081 incidental take permit is required if agreement cannot be reached about consistency, for example if the Biological Opinion allows for incidental take of a fully protected species or if the project may affect a species that is only listed by the State.

4.3.3 Permit Acquisition Procedure

The lead agencies have initiated preliminary consultation with CDFG through agency coordination meetings and have provided the opportunity for agency feedback regarding study methods and conclusions. The lead agencies would continue to work cooperatively with CDFG to facilitate the CESA consultation process.

The Project may qualify for a Section 2080.1 consistency determination from CDFG. To obtain consistency, the lead agency would submit a letter to CDFG requesting consistency along with the Federally issued Biological Opinions once they are received. CDFG would have 30 days to either confirm or deny consistency. In addition to a consistency determination, a Section 2081 permit would be required to address State-listed species that are not Federally listed (in this case, Swainson’s hawk). The application for a Section 2081 permit is very similar to a biological assessment that is typically prepared to meet Federal ESA requirements.

One issue that may prevent the Project from obtaining a Section 2080.1 consistency determination is the potential presence of blunt-nosed leopard lizard. Since it is a fully protected species, CDFG cannot authorize take of the species. If ESA consultation is required for this species and incidental take of blunt-nosed leopard lizard is permissible according to the Biological Opinion, CDFG may not be able to issue a consistency determination. In that case, a Section 2081 incidental take permit may be required for all State-listed species with potential to occur, instead of just the species that are not Federally listed.

4.3.4 Submittal Package

The following information should be included in the CESA Section 2081 take permit application or request for Section 2080.1 consistency determination:

- the common and scientific names of the species to be covered by the permit and the species status under CESA, including whether the species is subject to rules and guidelines pursuant to Section 2112 and Section 2114 of the California Fish and Game Code

- a complete description of the Project or activity for which the permit is sought
- the location where the Project or activity is to occur or be conducted
- an analysis of whether and to what extent the Project or activity for which the permit is sought could result in the taking of species to be covered by the permit
- an analysis of the impacts of the proposed taking of the species
- an analysis of whether issuance of the incidental take permit would jeopardize the continued existence of a species [This analysis would include consideration of the species capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of: (1) known population trends, (2) known threats to the species, and (3) reasonably foreseeable impacts on the species from other related projects and activities]
- proposed measures to minimize and fully mitigate the impacts of the proposed taking
- a proposed plan to monitor compliance with the minimization and mitigation measures and the effectiveness of the measures
- a description of the funding source and the level of funding available for implementation of the minimization and mitigation measures

The above information would be included in the USFWS and/or NMFS Biological Opinion that would be submitted as the basis for the consistency determination.

4.3.5 Critical Issues

- Determine whether take of blunt-nosed leopard lizard is anticipated to occur as a result of the proposed action. This may require either exclusion of specific lands from the Project area, or legal access at those locations so that protocol surveys can be initiated to determine whether the species is present.
- Determine whether CDFG can issue both a Section 2080.1 consistency determination for all species addressed in the Biological Opinion (assuming a finding of consistency) and a supplemental Section 2081 incidental take permit for State-listed species that are not Federally listed, or whether the Section 2081 incidental take permit would have to address all State-listed species if any are not addressed in the Biological Opinion (in which case a Section 2080.1 consistency determination would not be issued).

4.3.6 Permit Fees

None.

4.3.7 Next Steps for Permit Acquisition

The primary first step for fulfilling requirements of the CESA would be to determine which species would require consultation and whether or not a consistency determination can be sought. The next step would be to draft the USFWS/NMFS Biological Assessment and begin consultation under the Federal ESA and potentially CESA, if seeking a Section 2081 take permit.

4.4 California Fish and Game Code Section 1602

Agency:	California Department of Fish and Game
Permit:	Section 1602 Streambed Alteration Agreement
Resource:	State streams or lakes and associated plant, fish, and wildlife resources
Processing Time:	2 months
Contact:	California Department of Fish and Game Central California Region 1234 East Shaw Avenue Fresno, CA 93710 Attn: Gerald Hatler

4.4.1 Application to Proposed Action

The proposed action would substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of a river, stream, or lake or use materials from a streambed. As a result, a notification of Streambed Alteration Agreement pursuant to Section 1600 et seq. of the Fish and Game Code must be submitted for this Project.

4.4.2 Permit Purpose and Requirements

CDFG's Lake and Streambed Alteration Program (Fish and Game Code Section 1600 et seq.) requires any person, State or local governmental agency, or any public utility who proposes a project that would substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake or use materials from a streambed to notify CDFG.

Notification is generally required for any project that would take place in or in the vicinity of a river, stream, lake, or their tributaries. This includes rivers or streams that flow at least periodically or permanently through a bed or channel with banks and support fish or other aquatic life, and watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.

After CDFG determines that the Project would need a Lake or Streambed Alteration Agreement, Project activities within jurisdictional waters may not begin until a Lake or Streambed Alteration Agreement is developed and the Project described in that agreement is reviewed under CEQA. By working with CDFG to develop a draft Lake or Streambed Alteration Agreement, the Project applicant can modify the Project features to avoid or lessen potential impacts on fish and wildlife resources. This would simplify CEQA review of the Project and expedite the issuance of a final agreement.

4.4.3 Permit Acquisition Procedure

The lead agency would prepare the Notification of Streambed Alteration for submittal to CDFG and attend an agency coordination meeting to discuss Project characteristics, permit requirements, and permitting schedules. Within 30 days after the notification is submitted, CDFG would determine whether the notification is complete and inform the lead agency if further information is required. Once the notification is complete, CDFG would submit a draft Alteration Agreement to the lead agency for review within 60 days. If the Alteration Agreement is acceptable, the lead agency would sign it and return it to CDFG for their signature. If the Alteration Agreement is unacceptable, the lead agency can resolve the disagreement informally by writing to request a meeting with CDFG within 90 days or, if that fails, by requesting an arbitration panel. If necessary, an arbitration panel would be formed within 14 days and would issue a decision within an additional 14 days. Once potential disputes are resolved, the lead agency would sign the agreement and return it to CDFG. If the required fees have been paid and the final CEQA document has been issued, CDFG would sign and finalize the Agreement.

4.4.4 Submittal Package

The lead agency must complete a Notification of Lake or Streambed Alteration (i.e., form 2024). The form requires the following information:

- the applicant and the applicant's agents
- the property owner
- the location of the property where the Project would take place, the affected water body, and any water body to which it is a tributary
- Project description, including
 - estimated dates of Project initiation and completion
 - estimated Project cost
 - number of stream encroachments
 - methods of construction
 - types of equipment that would be used
 - anticipated impacts on wetland and/or riparian vegetation, and on fish and wildlife resources
 - pre- and post-Project site conditions
- a map that shows the location of the proposed action, with distances from the nearest city or town, known landmarks, access roads, and other information that identifies the location of the Project site
- detailed construction plans for the proposed action
- estimated construction start and finish dates
- any completed CEQA documents and CEQA certification

- copies and descriptions of any local, State, or Federal permits, agreements, or other authorizations that apply to the Project
- any additional information that CDFG deems necessary to assess potential effects of the proposed action on the wildlife resources, and to develop appropriate measures to protect affected wildlife resources

4.4.5 Critical Issues

- Determine whether the mitigation proposed in the Section 404 application being submitted to USACE is adequate to cover mitigation required by CDFG.
- To provide the draft Agreement within the specified timelines, CDFG would need access to the Project site. The current access permits do not allow CDFG access.

4.4.6 Permit Fees

Range between \$224.00 and \$4,482.75, depending on project cost.

4.4.7 Next Steps for Permit Acquisition

The primary next step for acquisition of an Alteration Agreement is to coordinate early with CDFG to ensure that the permit application materials are complete, are technically accurate, and meet the needs of CDFG.

4.5 California Code of Regulations, Title 23

Agency: CVFPB

Permit: CVFPB Encroachment Permit

Resource: Central Valley streams, including all tributaries and distributaries of the Sacramento and San Joaquin rivers and Tulare and Buena Vista basins, and rivers, waterways, and floodways within and adjacent to Federal and State authorized flood control projects and within designated floodways adopted by the CVFPB

Processing Time: 4 months

Contact: CVFPB
Floodway Protection Section
3310 El Camino Avenue, LL40
Sacramento, CA 95821
(916) 574-0609
Attn: Jay Punia, Executive Officer

The Lower San Joaquin Levee District
11704 West Henry Miller Avenue
Dos Palos, CA 93620
(209) 387-4545
Attn: Lloyd Roduner, Chairman

4.5.1 Application to Proposed Action

A permit is required for any project or plan of work that is: (1) within Federal flood control project levees and within a CVFPB easement, (2) or may have an effect on the flood control functions of project levees, (3) or is within a CVFPB designated floodway, (4) or is within regulated Central Valley streams listed in Table 8.1 in Title 23 of the California Code of Regulations. The San Joaquin River is listed in Table 8.1 and the proposed action could have an effect on the flood control functions of project levees just east and north of the Chowchilla Bifurcation Structure or downstream project levees. Therefore, an encroachment permit from the CVFPB (formerly known as the Reclamation Board) would likely be required for the proposed action. Approval by local reclamation districts may also be necessary.

4.5.2 Permit Purpose and Requirements

The CVFPB issues encroachment permits to maintain the integrity and safety of flood control project levees and floodways that were constructed according to the flood control plans adopted by the CVFPB or the California Legislature.

The CVFPB has jurisdiction over the levee section, the waterward area between project levees, a 10-foot-wide strip adjacent to the landward levee toe, within 30 feet of the top

of the banks of unleveed project channels, and within designated floodways adopted by the CVFPB. Activities outside of these limits that could adversely affect the flood control project also fall under the jurisdiction of the CVFPB.

4.5.3 Permit Acquisition Procedure

The lead agency would coordinate with the local reclamation district because they are the key stakeholders with flood control responsibilities. Since the Project falls within the Lower San Joaquin Levee District, the lead agency would seek their endorsement² for the proposed action. Such an endorsement is required to apply to for an Encroachment Permit from the CVFPB. If an endorsement cannot be obtained, the application may be submitted to the CVFPB without endorsement along with a written explanation as to why the application was not endorsed by the maintaining district.

After coordinating with the local reclamation district, the lead agency would prepare the Encroachment Permit application package for submittal to the CVFPB. The CVFPB would take approximately 50 to 60 days to process the permit. The CVFPB will not issue a permit until CEQA compliance has been met.

4.5.4 Submittal Package

The CVFPB Encroachment Permit application package must include:

- a description of the proposed work, including a statement of the beginning and ending dates of the planned construction, and four copies of exhibits and drawings that depict the Project or use
- an endorsement from the local reclamation board
- the location of the Project site and color photographs that show two views of the site
- a completed copy of the CVFPB's Environmental Assessment Questionnaire and a copy of any draft and final environmental review documents prepared for the Project
- complete plans and specifications that show the proposed work, a location map that shows the site of the work with relation to topographic features, a plan view of the area, and an adequate cross section through the area of the proposed work
- the names and addresses of all owners of land adjacent to the property where the Project is located

² For the purpose of this section, and consistent with language in the California Code of Regulations, "endorsement" means conceptual plan approval. This may include recommended permit conditions of the local maintaining agency.

Additional information, such as geotechnical exploration reports, soil testing results, hydraulic or sediment transport studies, biological surveys, environmental surveys, and other analyses, may be required at any time before the CVFPB acts on the application.

4.5.5 Critical Issues

- Determine whether the proposed action could affect levee integrity or have other flood control implications.
- Coordinate with the CVFPB and the Lower San Joaquin Levee District to determine whether any other permits or waivers are required for flood prevention provisions. The project would likely require a Section 408 permit (see Section 3.1), for which the CVFPB would act as the project sponsor.

4.5.6 Permit Fees

None.

4.5.7 Next Steps for Permit Acquisition

The primary first step to acquire a CVFPB Encroachment Permit is to coordinate with the Lower San Joaquin Levee District during the planning and design phase of the proposed action to identify compliance needs, commitments, and mitigation options. Once an endorsement from the Lower San Joaquin Levee District can be obtained for the Project, an application should be prepared and submitted to the CVFPB.

4.6 California Water Rights

Agency:	State Water Resources Control Board
Permit:	Amended water rights
Resource:	Surface water rights
Processing Time:	3 months (but highly variable depending on number of protests and the need for, and complexity of, any required water rights hearings)
Contact:	Ms. Barbara Evoy, Chief State Water Resources Control Board Division of Water Rights 1001 I Street Sacramento, CA 95814 (916) 341-5300

4.6.1 Application to Proposed Action

The SJRRP is coordinating with the SWRCB to amend water rights at the Program level; however, those negotiations do not require action on the Project level. Most or all of the water rights present within the Project area are not under jurisdiction of the SWRCB because they are pre-1914 or riparian water rights. Therefore, it is unlikely that the Project would require coordination with the SWRCB. If water rights under the jurisdiction of the SWRCB are present, and if the Project required that the diversion point for the water rights changed, it is possible that those water rights would have to be amended.

4.6.2 Permit Purpose and Requirements

A water right is a legally protected right, granted by law, to take possession of water and put it to beneficial use. Under the California Water Code, SWRCB is responsible for allocating surface water rights and permitting the diversion and use of water throughout the State. Through its Division of Water Rights, SWRCB issues permits to divert water for new appropriations or to change existing water rights. SWRCB attaches conditions to these permits to ensure that the water user prevents waste, conserves water, does not infringe on the rights of others, and puts the State's water resources to the most beneficial.

An applicant, permittee, or licensee who wishes to change the point of diversion, place of use, or purpose of use from that specified in an existing permit or license must petition SWRCB to amend a water right. When considering a petition for a water right amendment, SWRCB considers the same factors as those it considers when a water user applies for a new permit, such as waste prevention, water conservation, infringement on the rights of others, and public trust values.

4.6.3 Permit Acquisition Procedure

The lead agency would not apply to amend a water right on behalf of its owner. The owner of the water right would have to coordinate with the SWRCB to amend their water right, if required by the Project.

4.6.4 Critical Issues

- Determine whether any water rights under the jurisdiction of the SWRCB would be affected by the Project.
- Determine whether the proposed action would change the diversion point for existing water rights.

4.6.5 Next Steps for Compliance

The primary next step to comply with water rights regulations is to identify the nature, character, and ownership of any water rights involved in potential changes in water diversion associated with the Project.

4.7 State Lands Commission Land Use Lease

Agency:	State Lands Commission (SLC)
Permit:	Land use lease
Resource:	State-owned sovereign lands
Processing Time:	4 to 5 months
Contact:	State Lands Commission 100 Howe Avenue, Suite 100-South Sacramento, CA 95825-8202 (916) 574-1862 Attn: Ms. Diane Jones, Public Land Manager

4.7.1 Application to Proposed Action

The proposed action may directly affect lands, such as the San Joaquin River, under the jurisdiction of the SLC. The proposed action would therefore likely require a State lands lease agreement.

4.7.2 Permit Purpose and Requirements

The SLC was given authority and responsibility to manage and protect the important natural and cultural resources on certain public lands within the State and public's rights to access these lands. The public lands under the SLC's jurisdiction are of two distinct types—sovereign and school lands. Sovereign lands encompass approximately 4 million acres. These lands include the beds of California's naturally navigable rivers, lakes, and streams, as well as the State's tidal and submerged lands along the coastline.

4.7.3 Lease Acquisition Procedure

Further coordination with the SLC is needed to clearly define the lease acquisition procedure.

4.7.4 Submittal Package

The application must include a project description, supporting environmental data, and payment of appropriate fees.

4.7.5 Critical Issues

The lead agency would consult with the SLC to determine whether the proposed action would require a lease agreement. The issue of public lands versus private lands under the proposed modifications to the river bed would also be raised, as there could be disagreement between SLC's proposed area of jurisdiction and the affected property owners.

4.7.6 Permit Fee

The application fee is \$25. If needed, lease costs can be more.

4.7.7 Next Steps for Lease Acquisition

The lead agency will continue to coordinate with the SLC to determine whether a lease would be required.

5.0 Local Agency Environmental Compliance

5.1 San Joaquin Valley Air Pollution Control District Regulations

Agency: San Joaquin Valley Air Pollution Control District (SJVAPCD)

Regulations: Federal Clean Air Act
SJVAPCD Rule 9510
SJVAPCD Rule 2020
SJVAPCD Rule 8021

Compliance

Documents: Conformity analysis
Air Impact Assessment (AIA)
SJVAPCD Dust Control Plan
Portable Equipment Registration

Resource: Air quality

Processing Time: 1.5 months

Contact: SJVAPCD Northern Region Office
4800 Enterprise Way
Modesto, CA 95356
(209) 557-6400

5.1.1 Application to Proposed Action

The CAA establishes national ambient air quality standards. Under the CAA, the U.S. EPA is responsible for setting and enforcing the Federal ambient air quality standards for atmospheric pollutants. Most regulatory responsibilities under the CAA are delegated to State, regional, or local government bodies. For the Project, the SJVAPCD has the authority to issue permits and ensure compliance with air quality regulations.

Any Federal agency providing financial assistance, issuing a license or permit, or approving or supporting in any way a proposed project located in a nonattainment or maintenance area for a criteria air pollutant is required to issue a conformity analysis. The conformity analysis must certify that the Federally permitted project is consistent with the State Implementation Plan (SIP) developed pursuant to the CAA. A conformity analysis is required unless the proposed action's emissions are below the Federally established *de minimis* emissions thresholds, and the proposed action's emissions do not reach the level of 10 percent or more of the regional emissions budget for any given pollutant in the

nonattainment area. This is also applicable to short-term, construction-related emissions, and therefore applies to the Project.

The SJVAPCD is required by the California Clean Air Act to develop “indirect source” control programs in its attainment plans. The SJVAPCD committed to reducing emissions of particulate matter less than or equal to 10 microns in diameter (PM₁₀) and nitrous oxides emissions from indirect sources in the 2003 PM₁₀ Plan and the 2004 Extreme Ozone Attainment Demonstration Plan. The SJVAPCD’s Governing Board adopted District Rule 9510 as a result of this commitment. To comply with this rule, the Project would have to submit an AIA to the SJVAPCD.

Because the Project would not require the construction or operation of a major stationary source that is adding new emissions units or modifying existing emissions units, the Project would not require Construction or Operation Permits from the SJVAPCD. However, if the Project requires the use of equipment (i.e., a generator) with an internal combustion engine with a rated brake horsepower greater than 50 horsepower that would operate less than six months at one location, a Portable Equipment Certification from SJVAPCD would be necessary.

Finally, because the proposed action would likely involve the construction of a nonresidential development of more than 5 acres of disturbed surface area and could involve moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials on at least 3 days, a Dust Control Plan is required by SJVAPCD.

5.1.2 Permit Purpose and Requirements

The CAA requires areas with unhealthy levels of ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, and inhalable particulate matter to develop SIPs to comply with the national ambient air quality standards (42 USC §7410 et seq.). Federal agencies must conform to SIPs, meaning they must ensure that Federally supported activities would not cause or contribute to a new violation, increase the severity of an existing violation, or delay timely attainment of any standard in any area (42 USC §7506(c)(1)(B)).

A Federal action conforms with the applicable SIP if: (1) the total of direct and indirect emissions from the action are compliant and consistent with the requirements of the SIP, and (2) one of a list of enumerated, pollutant-specific requirements are satisfied (such as accounting for the Federal action’s projected emission of any criteria pollutant in the SIP, or offsetting ozone or nitrogen dioxide emissions within the nonattainment area) (42 CFR §93.158(a)). Ultimately, a conformity analysis may require revising the SIP, implementing mitigation measures to bring the Federal action’s emissions levels down, or altering the Project to reduce emissions to levels within the budgets established by the SIP for specific pollutants.

In accordance with SJVAPCD Rule 9510 Indirect Source Review (ISR), applicants must mitigate project impacts through the incorporation of on-site emission reducing design elements and/or the payment of fees that would be used to fund off-site emissions reduction projects. Applicants subject to the rule must submit an AIA application to the

SJVFCDD no later than when applying for final discretionary approval, and must pay any applicable off-site mitigation fees before issuance of the first grading/building permit.

In accordance with SJVAPCD Rule 2020 – Exemptions – emissions units that qualify and are registered as Portable Equipment do not require Construction and Operating Permits. If the Project requires the use of an internal combustion engine with a rated brake horsepower greater than 50 horsepower to operate for less than six months, it must be registered as Portable Equipment to be exempt from requirements under Rule 4702 – Internal Combustion Engines.

In accordance with SJVAPCD Rule 8021 – Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities, the owner or operator of a construction project is required to submit a Dust Control Plan to SJVAPCD if at any time the project would involve:

- residential developments of 10 or more acres of disturbed surface area;
- nonresidential developments of 5 or more acres of disturbed surface area; or
- moving, depositing, or relocating of more than 2,500 cubic yards per day of bulk materials on at least three days of the project

A Dust Control Plan identifies the fugitive dust sources at the construction site and describes all of the dust control measures to be implemented before, during, and after any dust-generating activity for the duration of the project. SJVAPCD would review and make a determination on the Dust Control Plan. Construction activities would not commence until the Dust Control Plan has been approved or conditionally approved.

At least one key individual representing the owner or operator, or any person who prepares a Dust Control Plan, must complete a Dust Control Training Course presented by SJVAPCD. SJVAPCD would be contacted to determine when courses are offered. For those who need to submit a Dust Control Plan but have not had the course, SJVAPCD would accept the Dust Control Plan with the contingency that the individual sign up for the next scheduled course.

Regardless of whether an SJVAPCD-approved Dust Control Plan is in place, the owner or operator is required to comply with all requirements of the applicable rules under Regulation VIII and SJVAPCD's Rules and Regulations at all times.

5.1.3 Compliance Procedure

The lead agency would consult and coordinate with the SJVAPCD on specific requirements for general conformity and mitigation requirements. A conformity analysis would be performed during the NEPA/CEQA process.

The State lead agency has submitted an AIA application and associated filing fees on behalf of the Federal lead agency for the entire SJRRP (District ISR Project No. C20100109). For the purposes of Rule 9510, each section of the river would be identified as a phase of the project. Rule 9510 allows 10 days for a determination of

application completeness and 30 days for application review. Therefore, the lead agency would submit project-related information for the Reach 2B/Mendota Pool phase of the program no later than 40 days prior to the start of construction activities. Construction activities would not begin until the SJVAPCD has approved the AIA application and off-site mitigation fees, if applicable, have been paid.

If an internal combustion engine with a rated brake horsepower greater than 50 horsepower is required to operate for less than six months on the Project, it would be registered as Portable Equipment with the SJVAPCD.

At least 30 days before beginning Project construction activities, the lead agency would submit the Dust Control Plan to SJVAPCD. The Dust Control Plan would be submitted to SJVAPCD's compliance division at the Northern Region Office (serving San Joaquin, Stanislaus, and Merced counties) in Modesto (see address above). The lead agency would designate at least one individual to complete SJVAPCD's Dust Control Training Course. Alternatively, SJVAPCD would accept the Dust Control Plan with the contingency that the individual sign up for the next course. SJVAPCD would review and approve, conditionally approve, or disapprove the Dust Control Plan within 30 days of submittal. A copy of the approved Dust Control Plan must be retained at the Project site and made available upon request by a SJVAPCD inspector. The lead agency would provide written notification to SJVAPCD via fax or mail within 10 days prior to the commencement of earthmoving activities (the notification form can be downloaded from SJVAPCD's website).

5.1.4 Submittal Package

An application for the AIA has already been submitted on behalf of the SJRRP. Supplemental information would have to be submitted to provide Project-specific information as well as a Monitoring and Reporting Schedule and a Fee Deferral Schedule.

If required, the submittal for Portable Equipment Registration would include the following information:

- info about portable equipment being registered including:
 - whether the unit would be used for rental purposes
 - where it is normally stored
 - the date it was initially operated in California
 - if it is an Equivalent Replacement of a previously registered unit
 - the source category
- general nature of the business being performed
- the Air Pollution Control Districts in which the unit may be operated

The submittal for the Dust Control Plan would include the following information:

- Project name, location, and expected construction start/end dates
- Project contacts, including property owner, developer, contractor, and Dust Control Plan preparer (also confirmation of training completed)
- description of Project operations
- plot plan(s) with Project boundaries, the relative locations of actual and potential sources of fugitive dust emissions, and the relative location of sensitive receptors within ¼ mile of the Project clearly delineated
- the total area of land surface to be disturbed, the daily throughput volume of earthmoving in cubic yards, and the total area in acres of the entire Project site
- expected start and completion dates of dust generating activities and soil disturbance activities to be performed on site
- identification of any other locations should be included with this plan that are involved with the Project (e.g., any site where materials would be imported from or exported to)
- proposed plans for limiting visible dust emissions from activities that cause fugitive dust emissions and plans for using bulk materials (check boxes)
- proposed plans for water application, dust suppressant products, other dust control methods, contingencies, and record-keeping (check boxes)
- treatments for preventing trackout and carryout, methods for cleaning up trackout and carryout, and record-keeping (check boxes)

5.1.5 Critical Issues

- The Project area is designated a serious nonattainment area for the Federal 8-hour ozone and PM₁₀ ambient air quality standards. In addition, the Project area is designated nonattainment for the Federal PM_{2.5} standard. A conformity determination would be required to show that emissions of air pollutants for which the region is in nonattainment would not conflict with the SIP's purpose of achieving expeditious attainment of those standards.
- Ensure that contractor specifications reflect the mitigation measures identified in the AIA.
- The specific equipment necessary for the Project should be identified to determine the need for Portable Equipment Registration.

- Include specific dust-control measures in contractor specifications to the extent feasible.
- Ensure that the contractor specifications and the Dust Control Plan reflect the SJVAPCD guidance described in the certified Project EIS/R air quality mitigation and subsequent CEQA compliance documents.

5.1.6 Fees

A \$700 fee is required for AIA application. This filing fee has been paid as part of the AIA submittal for the SJRRP.

\$177 per unit for Portable Equipment Registration.

\$350 for Dust Control Plan submittal. A \$71 fee is charged for any major modification made to an approved plan, such as modifying the size and scope of the project or making significant changes to the types of control or preventative measures. No fees are charged for administrative changes to an approved plan.

5.1.7 Next Steps for Compliance

The primary next step for compliance is to meet with SJVAPCD to consult and coordinate on specific requirements for general conformity with air quality regulations and mitigation requirements, including discussing the specific information required to run emissions analysis for ISR purposes. It is also important to identify the need for Portable Equipment Registration once the Project plans have been developed and equipment needs are known.

5.2 Surface Mining and Reclamation Act of 1975

Agency:	Fresno County and Madera County
Permit:	Mining permit, approval of Reclamation Plan, and/or site approval
Resource:	Mineral resources
Processing Time:	4 months
Contact:	Fresno County Water, Geology, and Natural Resources Section 2220 Tulare Street, Sixth Floor Fresno CA 93721 (559) 443-5345 Attn: Julie Condon, Program Technician II
	Fresno County Department of Public Works & Planning 2220 Tulare Street, Sixth Floor Fresno CA 93721 (559) 262-4078 Attn: Alan Weaver, Director
	Madera County Planning Department 2037 W. Cleveland Avenue Madera CA 93637-8720 (559) 675-7821 Ext. 3226 Attn: Robert Mansfield

5.2.1 Application to Proposed Action

The requirements of the Surface Mining and Reclamation Act of 1975 (SMARA) apply to anyone, including government agencies, engaged in surface mining operations in California (including those on Federally managed lands) that disturb more than one acre or remove more than 1,000 cubic yards of material. This includes, but is not limited to, prospecting and exploratory activities, dredging and quarrying, streambed skimming, borrow pitting, and the stockpiling of mined materials.

SMARA does not typically apply to on-site excavation and on-site earthmoving activities that are an integral and necessary part of a construction project and that are undertaken to prepare a site for construction of structures, landscaping or other land improvements, including the related excavation, grading, compaction or the creation of fills, road cuts and embankments. This is true whether or not surplus materials are exported from the site so long as required permits are approved by public agencies, the county's approval included consideration of the on-site excavation and on-site earthmoving activities

pursuant to CEQA, the project is consistent with the general plan or zoning of the site, and surplus materials are not exported from the site until actual construction work has commenced and cease when construction activities have terminated. However, the SMARA process may be required, as determined by the county, for earth-moving projects that exceed 1,000 cubic yards if greater than 80 percent of the material is disposed of off site.

5.2.2 Permit Purpose and Requirements

The SMARA (Public Resources Code, Sections 2710-2796) provides a comprehensive surface mining and reclamation policy with the regulation of surface mining operations to assure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. SMARA also encourages the production, conservation, and protection of the State's mineral resources. On a State level, the Department of Conservation's Office of Mine Reclamation and the State Mining and Geology Board are jointly charged with ensuring proper administration of the SMARA's requirements.

City and county lead agencies adopt ordinances for land use permitting and reclamation procedures that provide the regulatory framework under which local mining and reclamation activities are conducted. SMARA lead agencies review applications for permits and/or reclamation plans (or amendments thereto), submit reclamation plans and financial assurances to the State for technical review and comment prior to approval, annually review financial assurances, annually inspect mining operations for compliance, and take enforcement actions where necessary.

Financial assurances are required to ensure compliance with elements of the reclamation plan, including but not limited to revegetation and landscaping requirements, restoration of aquatic or wildlife habitat, restoration of water bodies and water quality, slope stability and erosion and drainage control, disposal of hazardous materials, and other measures, if necessary.

5.2.3 Permit Acquisition Procedure

If SMARA is necessary, the compliance process would be triggered during the county-level review of the Project. If necessary, a permit, reclamation plan, and financial assurances for reclamation must be approved by the county. Application forms would be provided by the county planning department.

Within 30 days of acceptance of an application as complete, the planning department notifies the State Department of Conservation of the filing of the application. Whenever mining operations are proposed in the 100-year floodplain of any stream, as shown in "Zone A" of the flood insurance rate maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any State highway bridge, the planning department also notifies the State Department of Transportation that the application has been received.

Subsequent to appropriate environmental review, the planning department prepares a staff report with recommendations for consideration by the planning commission. The

planning commission holds at least one noticed public hearing on the site approval and/or reclamation plan.

The planning commission certifies to the State Department of Conservation that the reclamation plan and/or financial assurance complies with the applicable requirements of State law, and submits the plan, assurance, or amendments to the State Department of Conservation for review. The State Department of Conservation is given 30 days to review and comment on the reclamation plan and 45 days to review and comment on the financial assurance.

The planning commission evaluates written comments received, if any, from the State Department of Conservation during the comment periods. The staff prepares a written response describing the disposition of the major issues raised by the State for the planning commission's approval.

The planning commission then takes action to approve, conditionally approve, or deny the site approval and/or reclamation plan, and to approve the financial assurances.

5.2.4 Submittal Package

If SMARA applies to the Project, the lead agency would have to submit a permit application, reclamation plan, and financial assurances for reclamation to be approved by the county.

5.2.5 Critical Issues

It is currently unclear whether the SMARA applies to the Project.

5.2.6 Permit Fees

The Development Fee for Fresno County for review of a Reclamation Plan is \$4,298.00 (effective January 4, 2008).

The Mining Permit fee for Madera County is \$ 9,325.00 (when over 25,000 tons) or \$4,668.00 (when under 25,000 tons).

5.2.7 Next Steps for Permit Acquisition

Fresno and Madera counties should be contacted to determine whether SMARA applies to the Project.

5.3 Williamson Act

Agency: Fresno County and Madera County

Permit: Petition for Cancellation

Resource: Agricultural lands

Contact: Fresno County Planning Department
2220 Tulare Street, Sixth Floor
Fresno, CA 93721
(559) 262-4211

Madera County Assessor's Office
2037 W. Cleveland Avenue M.S. G
Madera, CA 93637
(559) 675-7710 x2509
Attn: Brian Glover

5.3.1 Application to Proposed Action

Land within the Project area may be under a Williamson Act contract.

5.3.2 Permit Purpose and Requirements

The California Land Conservation Act (Government Code §51200 et seq.) of 1965, commonly known as the Williamson Act, provides a tax incentive for the voluntary enrollment of agricultural and open space lands in contracts between local government and landowners. The contract restricts the land to agricultural and open space uses and compatible uses defined in State law and local ordinances. Local government establishes an agricultural preserve defining the boundary within which a city or county would enter into contracts with landowners. Local governments calculate the property tax assessment based on the actual land use instead of the potential land value assuming full development.

Williamson Act contracts are for 10 years and longer. The contract is renewed automatically each year, maintaining a constant 10-year contract, unless the landowner or local government files to initiate nonrenewal. Should that occur, the Williamson Act contract would terminate 9 years after the filing of a notice of nonrenewal. Only a landowner can petition for a contract cancellation. Tentative contract cancellations can be approved only by a local government. The cancellation fee typically must be paid by the landowner.

California Government Code (§51290–51295) outlines the procedure for locating a public use on Williamson Act contracted land, which may apply to the Project and is described in the following section.

5.3.3 Compliance Procedure

As stipulated by the Government Code (§51290–51295), the lead agency must notify the Director of Conservation and the counties (Fresno and Madera) that administer the Williamson Act contracts of their intention to construct a public improvement within an existing preserve. While the Project may be considered a “compatible use” under the Williamson Act, existing Williamson Act contracts are deemed null and void upon acquisition by a government agency (Government Code §51295), on condition of two findings which should be addressed in the notice:

- The location of the public improvement is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve; and
- There is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement.

Once the Director of Conservation receives notification, the Director would provide any comments to the lead agency for consideration within 30 days.

Government Code Section 51293 excludes from the above findings “Flood control works, including channel rectification and alteration [and] Public works required for fish and wildlife enhancement and preservation [and] The acquisition of a fee interest or conservation easement for a term of at least 10 years, in order to restrict the land to agricultural or open space uses as defined by subdivisions (b) and (o) of Section 51201.” The notification requirements would still apply.

After the land under contract is acquired, the lead agency must notify the Director of Conservation within 10 working days. The notice should include any changes to the Project since the original submittal to the Director of Conservation. At this point, if the land has been acquired by a Federal agency, the existing contract would be deemed null and void.

5.3.4 Submittal Package

The notification to the counties and the Director of Conservation should include the following:

- a discussion of findings listed above in Section 5.3.3
- a general description, in text or by diagram, of the agricultural preserve land proposed for acquisition
- a copy of any applicable Williamson Act contracts

5.3.5 Critical Issues

- The Project does not require any cancellation procedure besides notification, because the land is needed by a public agency for a public use, as described in Government Code §51291.

- The Project may not require the making of the findings under §51292 because the public use can be defined as a flood control works, including channel rectification and alteration, and/or public works required for fish and wildlife enhancement and preservation. Acquisition of a fee interest or conservation easement for at least 10 years would also exempt one from making those same findings. It is recommended to voluntarily submit documentation of compliance to those findings, because they can be met and would be expected by the Department of Conservation.
- The Project may not require any cancellation procedure because the intended land use is considered a “compatible use” as defined in Government Code §51201. This could provide an additional mitigation option to allow the land owner to maintain ownership of the land under the understanding the land is subject to inundation, and cancellation of a Williamson Act contract would not be required.

5.3.6 Permit Fees

No permit fee is required if the land is acquired by a government agency.

5.3.7 Next Steps for Permit Acquisition

The critical next step for addressing the Williamson Act is to determine which properties within the Project area are currently under contract. The Assessor’s Offices can provide the status of Williamson Act contracts if the lead agency supplies a list of parcel numbers for the relevant properties. This information would be needed to make the findings under §51292.

5.4 Fresno County Municipal Code

Agency: Fresno County Public Works Department

Permit: Fresno County Municipal Code

Contact: Fresno County
 Department of Public Works & Planning
 2220 Tulare Street, Sixth Floor
 Fresno CA 93721
 (559) 262-4078
 Attn: Alan Weaver, Director

The Fresno County Code authorizes the Department of Public Works and Planning to regulate various construction-related activities within the county to ensure that all projects align with the Fresno County General Plan and other regulations. The Project would require multiple permits from the county. Certain permit requirements are identified below, but additional coordination with the county would be required to ensure that all Fresno County regulations are met.

5.4.1 Code 13.08

As stated in Fresno County Municipal Code Section 13.08, it is unlawful for any person, public utility, municipal corporation, or special district to construct, install, or cause to be constructed, installed, or repaired, any road surfacing, sidewalk, crosswalk, curb, gutter, driveway approach, cattleguard, railroad crossing, overhead pipeline, or underground conduit, or make any excavation on, in, or under any existing or proposed county maintained road or any improved public road not in the county's maintained road system, as defined in Chapter 10.35 of this code, without first securing a permit therefore as provided in this chapter.

Permits, as required by Section 13.08.010, would be issued by the director of public works. Such application would be in writing and would be signed by the permittee or an authorized representative. The application would set forth the nature of the Project, its exact location, dimensions, plot plan, and profile as the circumstances may require. The application would conform in every respect to the improvement standards applicable to the road then in force and effect. The director of public works, as a condition to the issuance of a permit, may require such person to provide the county with security in an amount not greater than 100 percent of the cost of constructing the work to ensure to the county its performance to the satisfaction of the county. Such security would be in the form of cash deposited with the county or in an approved irrevocable escrow, a surety bond or other approved security determined to be its equivalent by the county counsel. If the road is maintained by the county, then the security would be for the benefit of, and be payable to, the county. If the road is maintained by a county service area or special district, the security would be payable to the county for the benefit of such county service area or special district.

5.5 Madera County Municipal Code

Agency:	Madera County Resource Management Agency
Permit:	Madera County Municipal Code
Contact:	Madera County Resource Management Agency Cleveland Avenue Madera, CA 93637 Telephone: (559) 661-6333 Fax: (559) 675-763

The Madera County Municipal Code authorizes departments within the Resource Management Agency to regulate various construction-related activities within the county to ensure that all projects align with the Madera County General Plan and other regulations. Multiple Madera County permits would be required for the Project. Certain permit requirements are identified below, but additional coordination with the County would be necessary to ensure that all Madera County regulations are met.

The County has an online system for permit applications, which can be accessed at the following address: <http://www.madera-county.com/rma/permitsonlineinfo.html>. Once the application process for a particular county permit has been initiated, other departments would be made aware of the Project and would request further information for additional permits, if necessary.

5.5.1 Code 14.50: Grading Permit

Projects that require grading, leveling, earth moving, or specifically the removal of natural vegetation or disturbance of the soil, except for cultivation of crops where the area exceeds 15,000 square feet, must apply for a grading permit to be reviewed by the county engineer and by such county officials and departments as are necessary to determine that the requirements of Chapter 14 of the Madera County Code are met and that neither the proposed work nor the effects thereof would be detrimental to the public health, safety or welfare. Applications for a permit would be made by the property owner or the authorized agent to the county engineer on a form furnished for that purpose. Applications for permit would include the following information where applicable:

- An accurate plot plan showing the exterior boundaries of the area affected and the location of any buildings or improvements
- A description of the work to be done, together with the materials to be used therefore
- A description and location of the pattern of drainage to and from the site, the location of culverts and natural watercourses and the directions of flow
- The relocation plan for any existing waterway or drainage facility proposed to be altered

- Details of any proposed drainage structures
- An erosion and sediment control plan including a time frame for implementation

Where the complexity of the project requires additional information, the following additional information may be required:

- Drainage flow computations giving volume of runoff to and from the site
- Existing and proposed contours for the site
- Soils information describing type, depth, erodibility, and capability for establishing vegetation

5.5.2 Code 17.32: Road Encroachment Permit

Where road construction is proposed within an existing public right-of-way, the developer would apply for encroachment and construction permits at the road department. Prior to any construction, these permits must be approved by the road department. The application materials for these permits would include a plan and profile for all proposed road structure, or related improvements drawn to a scale approved by the road department, copies of R-value tests, calculations of storm drainage facilities, calculations of cut and fill, and an engineer's cost estimate. The plans would include:

- Existing and proposed property lines
- Topographic contours at intervals approved by the road department
- Existing fences, buildings, and any infrastructure
- Existing tree driplines and the identification of the types of trees
- A vicinity map
- Typical cross sections and construction details
- Proposed improvements
- Any other information deemed appropriate by the road commissioner or designee

This page left blank intentionally.

6.0 Applicable Laws, Policies, and Plans Not Requiring Specific Permit or Approval

6.1 Federal

6.1.1 Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA), first enacted in 1918, implements domestically a series of treaties between the United States and Great Britain (on behalf of Canada), Mexico, Japan, and the former Soviet Union that provide for international migratory bird protection. The MBTA authorizes the Secretary of the Interior to regulate the taking of migratory birds; the act provides that it shall be unlawful, except as permitted by regulations, “to pursue, take, or kill any migratory bird, or any part, nest or egg of any such bird...” (USC Title 16, Section 703). This prohibition includes both direct and indirect acts, although harassment and habitat modification are not included unless they result in direct loss of birds, nests, or eggs. The current list of species protected by MBTA includes several hundred species and essentially includes all native birds. The act offers no statutory or regulatory mechanism for obtaining an incidental take permit for the loss of nongame migratory birds.

6.1.2 Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act (16 USC 668-668d, 54 Stat. 250) as amended, provides protection for the bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*) by prohibiting the taking, possession, and commerce of such birds, their nests, eggs, or feathers unless expressly authorized by permit pursuant to Federal regulations.

6.1.3 Executive Order 11990 (Wetlands Policy)

Executive Order 11990 is an overall wetlands policy for all agencies that manage Federal lands, sponsor Federal projects, or provide Federal funds to State or local projects. The order requires Federal agencies to follow avoidance, mitigation, and preservation procedures with public input before they propose new construction in wetlands. Executive Order 11990 can restrict the sale of Federal land containing wetlands; however, it does not apply to Federal discretionary authority for non-Federal projects (other than funding) on non-Federal land.

Before implementing an action that is located in a wetland or may affect a wetland, Federal agencies must demonstrate that there is no practical alternative and that the proposed action includes all practical measures to minimize harm to the wetlands. To demonstrate compliance with Executive Order 11990, the Federal lead agency must make

such a demonstration if appropriate, provide the opportunity for early public review, and disclose its findings in the Project EIS/R and/or subsequent NEPA documents.

Projects requiring compliance with Executive Order 11990 (except USACE projects) are likely to require a permit under CWA Section 404. The assessment of effects of the proposed action on wetlands should be closely coordinated with the Section 404 process.

6.1.4 Executive Order 11988 (Flood Hazard Policy)

Executive Order 11988 is a flood hazard policy for all Federal agencies that manage Federal lands, sponsor Federal projects, or provide Federal funds to State or local projects. It requires that all Federal agencies take necessary action to reduce the risk of flood loss; restore and preserve the natural and beneficial values served by floodplains; and minimize the impacts of floods on human safety, health, and welfare. Specifically, Executive Order 11988 dictates that all Federal agencies avoid construction or management practices that would adversely affect floodplains unless that agency finds that there is no practical alternative and the proposed action has been designed or modified to minimize harm to or within the floodplain.

Before implementing a proposed action, Federal agencies are required to determine whether the action would occur in a floodplain. This determination must be made according to a floodplain map provided by the Department of Housing and Urban Development or, if available, a more detailed map of an area. If the Federal agency proposes an action in a floodplain, it must consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the agency finds that the only practicable alternative requires that the project be sited in a floodplain, it must:

- design or modify its action to minimize potential harm to or within the floodplain
- prepare and circulate a notice, not to exceed three pages in length, that includes:
 - reasons why the action is proposed to be located in a floodplain
 - a statement indicating whether the action conforms to applicable State or local floodplain protection standards
 - a list of alternatives considered

The agency should send the notice to the State Clearinghouse.

To demonstrate compliance, the Federal lead agency must conduct this determination and consider alternatives as appropriate, provide an opportunity for early public review by those who may be affected, and disclose its findings in the NEPA documentation.

6.1.5 Executive Order 12898 (Environmental Justice Policy)

Executive Order 12898 requires Federal agencies to identify and address disproportionately high and adverse human health and environmental effects of Federal programs, policies, and activities on minority and low-income populations. These effects are to be considered in terms of both their frequency and magnitude. Executive Order 12898 requirements apply to all Federal actions that are located on Federal lands,

sponsored by a Federal agency, or funded with Federal monies and may affect minority or low-income populations. This executive order was incorporated into California State Government through California Government Code, Section 65040.12, which codified a definition of environmental justice and established the Governor's Office of Planning and Research as the coordinating agency in State government for environmental justice programs.

To demonstrate compliance with Executive Order 12898, the lead agency must show that it has considered the effects of the proposed action on minority and low-income populations and must design the proposed action to ensure that the action does not result, either directly or indirectly, in discrimination on the basis of race, color, or national origin.

There is no single analytical approach to environmental justice analysis, but the approach chosen should be designed to incorporate any unique circumstances of the community potentially affected by a proposed project. The use of multiple approaches in this analysis is encouraged to ensure the accuracy and completeness of findings. In all cases, the agency must undertake specific outreach to any identified minority and low-income populations. This outreach is to be specifically targeted to allow environmental justice populations to fully participate in the public involvement process. The agency must also provide an opportunity for early public review by those who may be affected, and must include a description of the specific outreach undertaken and all findings in the Project EIS/R. If a proposed Federal action would not result in significant adverse impacts on minority and low-income populations, the Project EIS/R must describe how Executive Order 12898 was addressed during the NEPA process.

6.1.6 Executive Order 13112 (Invasive Species)

Executive Order 13112 requires Federal agencies to perform measures to minimize the spread of invasive species and to reintroduce native species where possible. This order applies to "actions [that] may affect the status of invasive species" (§2). Federal agencies must pursue the duties mandated under the order in consultation with the Invasive Species Council (§2(b)). The order also requires agencies to formulate their own Invasive Species Management Plan (ISMP) (§5). Restoration activities and planning would be integrated with the Federal lead agency's ISMP. The following list would be key species to be evaluated and have been observed in the Project area:

- tree tobacco (*Nicotiana glauca*)
- giant reed grass (*Arundo donax*)
- tamarisk (*Tamarix* sp.)
- perennial pepperweed (*Lepidium latifolium*)
- yellow star thistle (*Centaurea solstitialis*)
- Italian thistle (*Carduus pycnocephalus*)

- ripgut brome (*Bromus diandrus*)
- Bermuda grass (*Cynodon dactylon*)
- prickly lettuce (*Lactuca serriola*)
- Russian knapweed (*Rhaponticum repens*)
- rabbitsfoot grass (*Polypogon monspeliensis*)

6.1.7 Executive Order 13186 (Migratory Birds)

Executive Order 13186 directs Federal agencies to take certain actions to further implement the MBTA and outlines the responsibilities of Federal agencies to protect migratory birds. Specifically, this order directs Federal agencies with direct activities that would likely result in the take of migratory birds, to develop and implement an MOU with the USFWS that shall promote the conservation of migratory bird populations, with emphasis on species of concern. The Federal lead agency has not finalized the MOU required in this order pending Department of Interior guidance. The Federal lead agency has begun implementing the conservation measures set forth in this order, however, as appropriate and applicable.

Birds protected under the MBTA include all common songbirds, waterfowl, shorebirds, hawks, owls, eagles, ravens, crows, native doves and pigeons, swifts, martins, swallows, and others, including their body parts (feathers, plumes, etc.), nests, and eggs. A complete list of protected species is found at 50 CFR 10.13. Project activities that are most likely to result in take of migratory birds include, but are not limited to, clearing or grubbing of migratory bird nesting habitat during the nesting season when eggs or young are likely to be present. Efforts would be made to remove nesting habitat or inactive nests of migratory birds outside of the bird breeding season, and such activities would occur in coordination with the USFWS office with local jurisdiction.

6.1.8 Executive Order 13007 (Indian Sacred Sites)

Executive Order 13007 requires Federal land management agencies to “accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites.” Additionally, the order requires Federal agencies to provide notice of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. If an Indian sacred site is encountered within the Project area, measures would be implemented to prevent any restriction of access or effect on the site’s physical integrity.

6.1.9 Indian Trust Assets

All Federal agencies have a responsibility to protect Indian Trust Assets. Indian Trust Assets are legal interests in assets held in trust by the Federal government for Native American tribes or individuals. Assets may be owned property, physical assets, intangible property rights, a lease, or the right to use something and typically include lands, minerals, water rights, hunting and fishing rights, natural resources, money, and claims. If

Indian Trust Assets may be affected by the proposed action, mitigation or compensation measures are to be identified so that no net loss is incurred by the Native American beneficial owners of the asset.

6.1.10 Farmland Protection Policy Act

The Farmland Protection Policy Act requires that a Federal agency examine the potential impacts of a proposed action on prime and unique farmland, as defined by the Natural Resources Conservation Service (NRCS), and if the action would adversely affect farmland preservation, consider alternatives to lessen the adverse effects. As a Federal agency preparing an EIS, the Federal lead agency is required to include in its analysis a farmland assessment designed to minimize adverse impacts on prime and unique farmlands and provide for mitigation as appropriate. Compliance with the Farmland Protection Policy Act could include early consultation and coordination with NRCS.

6.1.11 Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (25 USC Sections 3001 to 3013) sets provisions for the removal and inadvertent discovery of human remains and other cultural items on Federal and tribal lands. The Native American Graves Protection and Repatriation Act clarifies the ownership of human remains and sets forth a process for repatriation of human remains and associated funerary objects and sacred religious objects to the Native American tribes or tribes likely to be lineal descendants or culturally affiliated with the discovered remains or objects.

6.2 State

6.2.1 California Native Plant Protection Act

Sections 1900-1913 of the Fish and Game Code (California Native Plant Protection Act of 1977) establish criteria for the preservation, protection, and enhancement of endangered or rare native plants of the State. The California Native Plant Protection Act protects endangered and rare species, subspecies, and varieties of wild plants native to California. This act requires all State agencies to use their authority to carry out programs to conserve endangered and rare native plants. Provisions of the California Native Plant Protection Act prohibit the taking of listed plants from the wild and require notification of the CDFG at least 10 days in advance of any change in land use. This allows the CDFG to salvage listed plant species that would otherwise be destroyed. The project sponsor is required to conduct botanical inventories and consult with the CDFG during project planning to comply with the provisions of this act and sections of CEQA that apply to rare or endangered plants.

6.2.2 California Native Plant Society Species Designations

The California Native Plant Society (CNPS) is a Statewide nonprofit organization that seeks to increase understanding of California's native flora and to preserve this rich resource for future generations. CNPS has developed and maintains lists of vascular plants of special concern in California. CNPS-listed species have no formal legal protection, but the values and importance of these lists are widely recognized. CNPS List 1 and 2 species are considered rare plants pursuant to Section 15380 of CEQA, and it is

recommended that they be fully considered while preparing environmental documents relating to CEQA.

6.2.3 Porter-Cologne Water Quality Control Act

Under the Porter-Cologne Water Quality Control Act, the RWQCBs have jurisdiction over State water quality permitting activities. The Porter-Cologne Water Quality Control Act specifies water quality provisions and discharge requirements for regulating the discharge of waste that could affect the quality of waters of the State. Under the act, the SWRCB has the ultimate authority over State water rights and water quality policy. However, the appropriate RWQCB is tasked with setting waste discharge requirements for projects and for updating basin plans (water quality control plans) for protected waters of the State. Waters of the State are defined as “any surface water or groundwater, including saline waters, within the boundaries of the State (Water Code section 13050(e)) which include all waters within the State’s boundaries, whether private or public, including waters in both natural and artificial channels.”

Under the act, RWQCB must prepare and periodically update water quality control basin plans. Each basin plan sets forth water quality standards for surface water and groundwater, as well as actions to control nonpoint and point sources of pollution to achieve and maintain these standards. Projects that affect wetlands or waters must meet RWQCB waste discharge requirements, which may be issued in addition to a water quality certification under Section 401 of the CWA.

6.2.4 California Register of Historical Resources

Public Resources Code Section 5024.1 establishes the California Register of Historical Resources (CRHR). The register lists all properties considered to be significant historical resources in the State. The CRHR includes all properties listed or determined eligible for listing on the NRHP, including properties evaluated under Section 106. The criteria for listing are similar as those of the NRHP. CEQA (Public Resources Code) Section 21084.1 requires a finding of significance for substantial adverse changes to historical resources and defines the term “historical resources.” CEQA Section 21083.2 and CEQA Guidelines Section 15064.5(c) provide further definitions and guidance for archaeological sites and their treatment. The lead agency is required to follow the established guidelines during the CEQA process.

6.2.5 California Native American Graves Protection and Repatriation Act

The California Native American Graves Protection and Repatriation Act (California Health & Safety Code Section 8010 et seq.) establishes a State repatriation policy intent that is consistent with and facilitates implementation of the Federal Native American Graves Protection and Repatriation Act. The act strives to ensure that all California Indian human remains and cultural items are treated with dignity and respect, and states an intent for the State to provide mechanisms for aiding California Indian tribes, including non-Federally recognized tribes.

6.3 Local

The counties of Fresno and Madera, and their respective public works departments, would require compliance with local plans and ordinances, such as County general plans, zoning ordinances, grading plan, and various use permits. Specifically, although neither county has ordinances requiring tree protection, both counties have provided voluntary guidelines for the protection of oaks and heritage trees.

This page intentionally left blank

7.0 References

Environmental Laboratory, 1987. Corps of Engineers Wetland Delineation Manual. Technical Report Y-87-1, U.S. Army Engineers Waterways Experiment Station, Vicksburg, Mississippi.

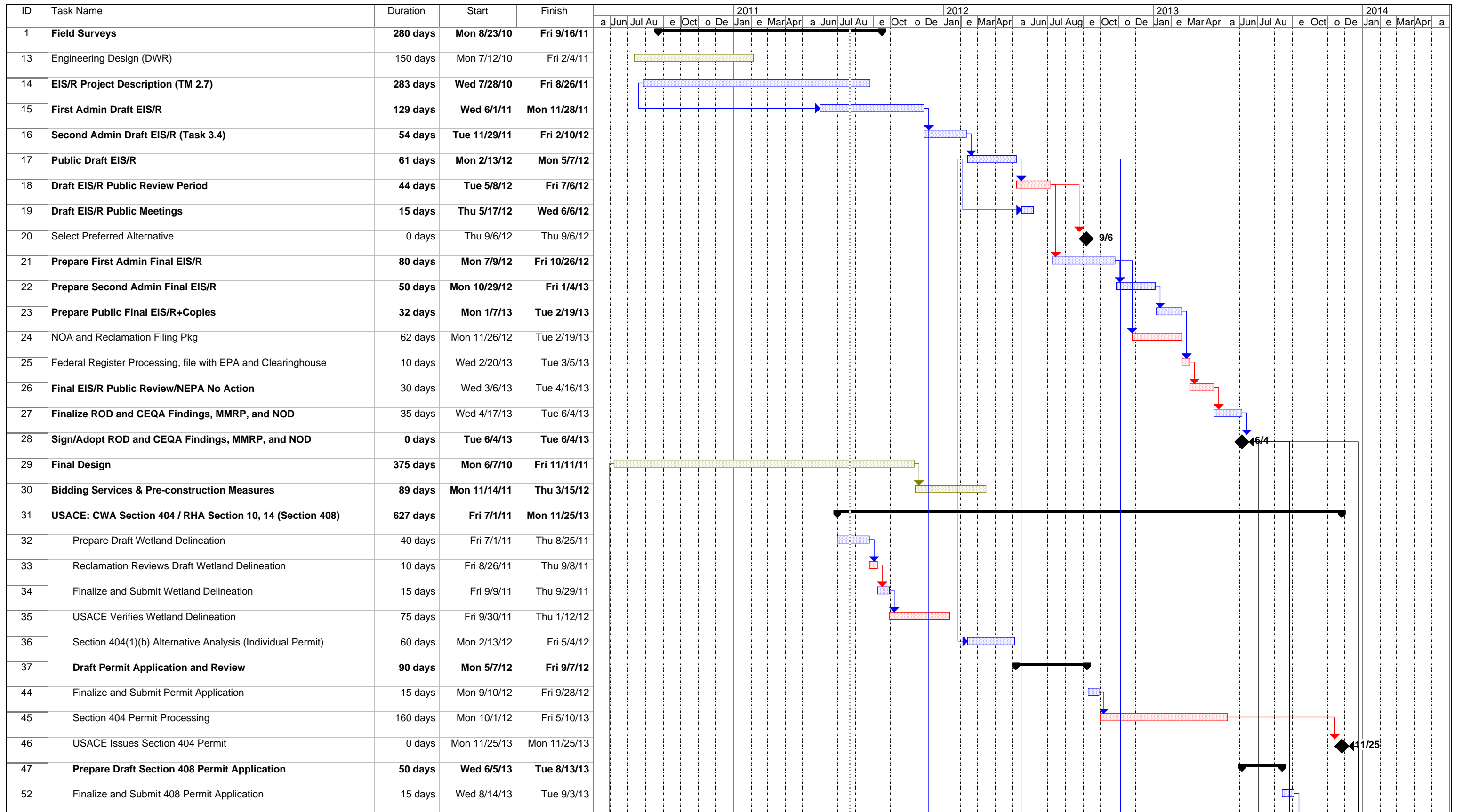
USACE. 2008. U.S. Army Corps of Engineers. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region. Final Report, U.S. Army Engineer Research and Development Center, Vicksburg, Mississippi. September.

This page left blank intentionally.

Attachment A

Proposed Permitting Timeline

This page left blank intentionally.



Project: Project2
Date: Fri 7/22/11

Progress		Summary		URS Tasks		External Review	
Milestone		Field Work		DWR Tasks			

SJRRP Reach 2B Permitting Timeline Assumptions

The following assumptions were made when developing the SJRRP Reach 2B Permitting Timeline:

1. In conjunction with the publication of the Public Draft EIS/R, the lead agencies will make an informal determination of the preferred Project alternative. This alternative will be used to complete the Section 7 consultation with USFWS.
2. Permitting agencies will complete their review and make approval/denial determinations for permit applications within any agency-published processing timelines.
3. For all permits, the final preparation and submittal step allows time for document production and submittal to the Federal lead agency or the necessary agency.
4. All permits for which agencies conduct a 30-day review to ensure that permit documents are complete are scheduled with an addition 10 days to resolve any issues that arise during this review period.
5. The SHPO consultation process will not result in significant requirements and, therefore, is estimated to last approximately 6 months. This assumption is based on preliminary surveys of the Project area. If significant mitigation efforts are required, the consultation process could last as long as 18 months.
6. The NPDES Construction General Permit is appropriate for the Project and an NPDES Individual Permit will not be required.
7. The SWPPP will not be required for the Section 401 permitting process. If the RWQCB requires the SWPPP to process the Section 401 permit, issuance of the Section 401 permit will be delayed until the SWPPP is complete.
8. The schedule for the county permit process is subject to change based on further consultation with Fresno and Madera counties.
9. Two procedures are described under “CDFG: CESA Section 2081 – Incidental Take/Consistency Determination.” Only one of these procedures will be required to comply with CESA, unless a request for a consistency determination is denied and an incidental take permit must be sought.

This page left blank intentionally.