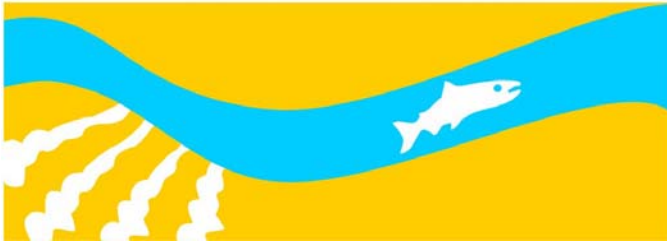


DRAFT Technical Memorandum

Regulatory Compliance Strategy

SAN JOAQUIN RIVER
RESTORATION PROGRAM



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

8
9 *This Draft TM does not present findings, decisions, or policy statements of any of the*
10 *Implementing Agencies. Additionally, all information presented in this document is*
11 *intended to be consistent with the Settlement. To the extent inconsistencies exist, the*
12 *Settlement should be the controlling document and the information in this document will*
13 *be revised prior to its inclusion in future documents. While the Program Team is not*
14 *requesting formal comments on this document, all comments received will be considered*
15 *in refining the concepts and approaches described herein to the extent possible.*
16 *Responses to comments will not be provided and this document will not be finalized;*
17 *however, refinements will likely be reflected in subsequent Program documents.*

18 **1 Regulatory Compliance Strategy**

19 **1.1 Introduction**

20 In 1988, a coalition of environmental groups, led by the Natural Resources Defense
21 Council (NRDC), filed a lawsuit challenging the renewal of the long-term water service
22 contracts between the United States and the Central Valley Project, Friant Division
23 contractors. After more than 18 years of litigation of this lawsuit, known as NRDC, et al.,
24 v. Kirk Rodgers, et al., a Stipulation of Settlement (Settlement) was reached. On
25 September 13, 2006, the Settling Parties reached agreement on the terms and conditions
26 of the Settlement, which was subsequently approved by the Court on October 23, 2006.
27 The “Settling Parties” include the NRDC, Friant Water Users Authority (FWUA), and the
28 U.S. Departments of the Interior and Commerce.

29 The San Joaquin River Restoration Program (SJRRP) will implement the San Joaquin
30 River litigation Settlement. The “Implementing Agencies” responsible for the
31 management of the SJRRP include the U.S. Department of the Interior, through the
32 Bureau of Reclamation and the Fish and Wildlife Service, U.S. Department of Commerce
33 through the National Marine Fisheries Service, and the State of California through the
34 Department of Water Resources (DWR) and the Department of Fish and Game (DFG).
35 The Settling Parties believe that the State, through DFG, DWR, the Resources Agency,
36 and the California Environmental Protection Agency (CalEPA) should play a major,
37 collaborative role in the planning, design, funding, and implementation of the actions
38 called for in the Settlement.

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1 The Settlement is based on two parallel goals, which together comprise the purpose of the
2 SJRRP. The purpose of the SJRPP is to implement the Settlement Agreement by meeting
3 two goals:

4 • Restoration Goal - Restore and maintain fish populations in “good condition” in
5 the main stem of the San Joaquin River below Friant Dam to the confluence of the
6 Merced River, including naturally reproducing and self-sustaining populations of
7 salmon and other fish (Restoration Goal); and

8 • Water Management Goal - Reduce or avoid adverse water supply impacts to all of
9 the Friant Division long-term contractors that may result from the Interim Flows
10 and Restoration Flows (Water Management Goal).

11 This Regulatory Compliance Strategy summarizes environmental compliance strategies
12 and permit information that can be used to help plan and guide implementation of the
13 SJRRP objectives and actions. The eventual proposed action and alternatives will be
14 subject to the requirements of both the National Environmental Policy Act (NEPA) and
15 the California Environmental Quality Act (CEQA). Reclamation will be the lead agency
16 for NEPA compliance, and DWR will be the lead agency for CEQA compliance.
17 Moreover, Reclamation and DWR will need to obtain various permits and regulatory
18 authorizations before beginning any project construction, as well as comply with a
19 number of additional environmental regulatory requirements as part of the NEPA
20 compliance process.

21 This Regulatory Compliance Strategy addresses all major Federal, state, and local
22 environmental regulations and related permits:

- 23 ▶ NEPA and CEQA compliance
- 24 ▶ Clean Water Act Sections 404, 402, and 401
- 25 ▶ Rivers and Harbors Act Section 10
- 26 ▶ Federal and California Endangered Species Acts (ESA/CESA)
- 27 ▶ Federal ESA, Experimental Population Designation – ESA Section 10(j)
- 28 ▶ Fish and Wildlife Coordination Act
- 29 ▶ Migratory Bird Treaty Act
- 30 ▶ National Historic Preservation Act, Section 106
- 31 ▶ Clean Air Act, Titles I and V
- 32 ▶ Federal Executive Orders and Administrative Policies
- 33 ▶ California Fish and Game Code Section 1602
- 34 ▶ California Code of Regulations, Title 23 Reclamation Board Encroachment Permit
- 35 ▶ California Water Rights
- 36 ▶ State Lands Commission Land Use Lease
- 37 ▶ San Joaquin Valley Air Pollution Control District

38 Other minor regulations and permits that are not addressed in this Plan but could be
39 required and added to subsequent versions of the Regulatory Compliance Strategy Plan as
40 needed are:

Regulatory Compliance Strategy

- 1 ▶ California Department of Toxic Substances Control - Hazardous Waste Facility
2 Permit;
- 3 ▶ California Department of Transportation – Encroachment Permit;
- 4 ▶ California Department of Conservation – Farmland Mapping and Monitoring
5 Program;
- 6 ▶ California Department of Parks and Recreation – Right-of-way Permit;
- 7 ▶ California Energy Commission/Public Utilities Commission – transmission lines and
8 power plants;
- 9 ▶ Fresno, Madera, and Merced Counties – land use, general plan, specific plan, zoning
10 ordinances, and conditional use permits; and
- 11 ▶ Local levee districts’ and other right-of-way, encroachment, and access
12 easements/agreements.

13 There are a wide range of potential action alternatives and resulting effects on the
14 environment that could be evaluated in the SJRRP’s program environmental impact
15 statement/environmental impact report (PEIS/R). Because action alternatives to be
16 carried into the PEIS/R will necessarily be water dependent, the eventual proposed
17 actions will trigger close scrutiny from the U.S. Army Corps of Engineers (USACE)
18 under Section 404(b)(1) of the Clean Water Act evaluations under NEPA and will require
19 permits from both Federal and state agencies that regulate natural resources. Depending
20 on the alternative selected and its effect on the environment, the types of permits may
21 vary. However, this plan is written to provide general strategic guidance and permit
22 information for environmental compliance of potential alternatives that will be included
23 in the PEIS/R and subsequent environmental documents. As one component of a
24 successful project implementation approach, this Regulatory Compliance Strategy
25 provides a blueprint to guide the acquisition of these permits and authorizations,
26 minimizes permitting surprises and delays, and maximizes the timeliness of permit
27 acquisition with acceptable permit terms.

28 The primary goal of the Regulatory Compliance Strategy is to provide an overall
29 framework, strategy, and information to guide successful permit acquisition for whatever
30 proposed actions are eventually pursued. It should be recognized that periodic (annual)
31 updates to this plan may be necessary to keep the plan current as the SJRRP proceeds;
32 this Regulatory Compliance Strategy Plan represents potential permit conditions and
33 strategies based on information available as of October 2007, when SJRRP
34 implementation was just underway.

Regulatory Compliance Strategy

1 1.2 Environmental Compliance and Permitting Work 2 Group

3 The Environmental Compliance and Permitting Work Group (ECPWG) is one of four
4 technical work groups that were established in the SJRRP Program Management Plan.
5 The ECPWG is responsible for developing Program-level environmental compliance
6 documents for implementation of the Program. This will include formulating and
7 evaluating alternatives based on the Program purpose and need and evaluation criteria.
8 The ECPWG will assure that all applicable environmental studies, permits, alternatives
9 formulation, and other requirements are met in order to implement Program-level actions
10 associated with the Restoration and Water Management Goals. This will involve
11 preparing information regarding the environmental effects, both beneficial and adverse,
12 that may result from Program alternatives. In this capacity, the ECPWG will closely
13 coordinate with other technical work groups focused on fisheries management, water
14 management, and engineering design and cost estimates. As Program alternatives are
15 formulated, the ECPWG will prepare project descriptions for further environmental and
16 engineering studies to be executed by the by the Fisheries Management and Engineering
17 and Design work groups.

18 1.3 Overview of Strategies

19 Regulatory compliance strategies are presented below as “general strategies” and
20 “specific strategies.” General strategies apply to all permits and approval processes, and
21 implementing these strategies during permit acquisition will improve the success of
22 acquiring each permit. Specific strategies apply to each specific permit and are
23 summarized from the permit discussions in Sections 2 and 3 for Federal and state
24 permits, respectively. Keep in mind, however, that permit strategies will change or be
25 modified over time, depending on the unique situations that apply to each particular
26 permit.

27 General permitting information needs, primarily related to project description
28 information, are presented in Table 1. Table 1 is a useful checklist for the type of
29 information that must be prepared and presented in permitting applications for various
30 permits. Table 2 summarizes major permits and approvals required for certain project-
31 specific actions, and provides a useful checklist of the types of permits that will be
32 needed. Table 3 presents the integration of environmental permitting into the
33 NEPA/CEQA process for certain project-specific actions. Tables 2 and 3 apply primarily
34 to project-specific actions to be implemented after the PEIS/R is certified and would be
35 completed concurrently with subsequent NEPA/CEQA compliance documents. Figures 1,
36 2, and 3 present permit requirements related to Clean Water Act Section 404 and the
37 Rivers and Harbors Act.

1 1.3.1 General Strategies

2 General strategies are as follows:

3 ▶ Plan for environmental compliance early in the SJRRP's development, and coordinate
4 with regulatory agencies early to verify list of permits/approvals that will need to be
5 obtained prior to project implementation.

6 ▶ Carefully determine the project's statement of purpose and need with consideration of
7 future environmental compliance, and conduct a logical, factual, and comprehensive
8 step-wise alternatives analysis with defensible screening criteria to consider the
9 widest range of possible alternatives and properly focus in on a reasonable range of
10 alternatives for more detailed analysis in the PEIS/R and subsequent environmental
11 documents.

12 ▶ Prepare a detailed and thorough description of all alternatives carried forward into the
13 PEIS/R and subsequent environmental documents, but include sufficient flexibility
14 such that simple changes in project design at later stages do not conflict with the
15 project description used for PEIS/R and subsequent environmental document
16 environmental analyses.

17 ▶ Incorporate adaptive management features into a project as needed to address
18 scientific uncertainties.

19 ▶ Share partial or complete administrative drafts of all environmental documents
20 (NEPA/CEQA documents, Biological Assessments, etc.) between Reclamation and
21 key regulatory agencies so that public drafts are less prone to errors and
22 disagreements.

23 ▶ Establish contacts between Program team members and regulators to:

24 • establish relationships and maintain historical and ongoing relationships to
25 minimize surprises in the permitting process,

26 • leverage existing Implementing Agencies' relationships from other permitted and
27 constructed projects,

28 • facilitate internal coordination as needed between Implementing Agencies' staff
29 to ensure consistency with respect to their consultations with regulators, and

30 • minimize confusion/improve understanding of the relationship between the
31 SJRRP and other various Implementing Agencies' projects, especially in the San
32 Joaquin River basin.

33 ▶ Integrate environmental considerations into the proposed action through appropriate
34 project design to:

35 • make the SJRRP actions more acceptable to permitting agencies; and
36

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- 1 • minimize impacts, schedule delays, environmental reviews, and mitigation costs.
- 2 ▶ Focus on resolving biological issues, which often drive the permitting process and
- 3 project implementation schedules, to:
 - 4 • help minimize schedule delays,
 - 5 • facilitate environmentally friendly engineering designs so as to minimize impacts
 - 6 and the need for mitigation,
 - 7 • ensure that the process has scientific integrity, and
 - 8 • expedite compliance with the Federal Endangered Species Act (ESA) and the
 - 9 California Endangered Species Act (CESA).
- 10 ▶ Cover permitting needs in the PEIS/R and engineering work products to the extent
- 11 possible to allow for the earliest possible formal input from agencies.
- 12 ▶ Obtain incremental agency review and approval of work products and decisions,
- 13 which would:
 - 14 • allow review and feedback on portions of the work as the project and permitting
 - 15 process progresses,
 - 16 • help ensure agency buy-in during the process,
 - 17 • minimize surprises, and
 - 18 • build teamwork between Implementing Agencies and permitting agencies.
- 19 ▶ Document all agency meetings and distribute notes formally to:
 - 20 • memorialize decisions and agreements, and
 - 21 • facilitate the maintenance of the administrative record.
- 22 ▶ Carefully develop biological mitigation that considers construction and listed species
- 23 schedule effects, provides flexibility for continued construction under certain cases,
- 24 and is presented in a single comprehensive plan.

25 **1.3.2 Specific Strategies**

26 Specific strategies for each applicable permit and approval process are summarized
27 below.

28 ***NEPA/CEQA Compliance***

- 29 ▶ Prepare a Purpose and Need statement as soon as practicable and with consideration
- 30 towards alternatives for meeting the purpose and alternatives screening criteria;

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- 1 ▶ Identify the range of reasonable alternatives as soon as practicable after public
2 scoping;
 - 3 ▶ Prepare a thorough project and alternatives description, yet with some flexibility to
4 account for potential changes;
 - 5 ▶ Prepare the Water Resources section of the PEIS/R first to inform other PEIS/R
6 preparers of the water-related changes that drive many other resource effects;
 - 7 ▶ Anticipate any significant and unavoidable impacts early, to scope all feasible
8 mitigation;
 - 9 ▶ Establish proper framework for developing the PEIS/R (regularly scheduled
10 meetings, appropriate reviewers, include NEPA and CEQA experts, and possibly
11 attorneys); and adequate review times to discuss critical issues;
 - 12 ▶ Ensure an appropriate discussion of climate change and its potential effects on the
13 SJRRP, and
 - 14 ▶ Develop actions sufficiently to carry forward into the PEIS/R.
- 15 ***Clean Water Act Section 404 and Rivers and Harbors Act Section 10***
- 16 ▶ Focus early on the NEPA/CEQA documents' PEIS/R "Purpose and Need", federal
17 and state listed species concerns, and Clean Water Act (CWA) Section 404(b)(1)
18 Alternatives Analysis as appropriate to:
 - 19 • facilitate compliance with Section 404 at later stages,
 - 20 • fulfill NEPA and CEQA requirements,
 - 21 • address listed species requirements,
 - 22 • provide a strong nexus between the project purpose and alternatives to meet the
23 project purpose, and
 - 24 • develop a strong suite of alternatives including proposed actions.
 - 25 ▶ Since individual permits will be required for certain SJRRP actions, alternatives
26 analyses will be prepared that meet Clean Water Act Section 404(b)(1) requirements.
 - 27 ▶ Submit a wetland delineation to USACE as soon as practicable for site-specific
28 actions (i.e., a project footprint can be defined) to expedite the Section 404/10 process
29 and related Federal actions by:
 - 30 • triggering early USACE involvement,
 - 31 • establishing USACE limits of jurisdiction,

Regulatory Compliance Strategy

- 1 • minimizing the substantial costs that would be necessary to delineate wetlands for
2 a large number of alternatives early in the alternatives evaluation stage, and
- 3 • providing information for a productive pre-application meeting.
- 4 ▶ Submit the Section 404 permit package to USACE as soon as the proposed action's
5 footprint is determined and the wetland delineations are completed, to initiate
6 USACE's review.
- 7 ▶ Use a staged approach to alternatives analysis and incorporate subsequent NEPA and
8 CEQA documents to the PEIS/R as final stages in compliance with Section 404(b)(1)
9 requirements (Note: compliance with Sections 404/10 is not expected to be necessary
10 for implementation of the Interim and Restoration flows but will be necessary for
11 other related SJRRP actions; technical analyses addressing Sections 404/10 issues
12 should be included in the NEPA/CEQA documents covering those actions to expedite
13 Section 404/10 permitting.)

14 ***Federal Endangered Species Act***

- 15 ▶ Request species lists early in the planning process for the project.
- 16 ▶ Conduct feasibility-level fieldwork, including listed species surveys and wetland
17 delineations, as soon as practical after general project footprints can be established
18 (note: evaluate trade-offs between substantial costs in collecting field data on
19 numerous alternatives early versus waiting for some alternatives to be screened out
20 prior to initiating fieldwork).
- 21 ▶ Develop a consistent internal strategy for meeting Federal ESA and CESA
22 requirements, including a consistent approach to developing measures that avoid,
23 minimize, and compensate for effects on listed species (both fish and terrestrial
24 species) and critical habitat.
- 25 ▶ Use programmatic Biological Opinions where feasible to streamline ESA compliance.
- 26 ▶ Establish working relationships with USFWS, NMFS, and DFG to:
 - 27 • identify issues early and help prevent future “surprises,” and
 - 28 • engage NMFS, USFWS, and DFG in constructive problem-solving in strategic
29 meetings involving all three agencies so that the approach for restoration,
30 avoidance, and minimization is streamlined and consistent.
- 31 ▶ Identify Reclamation as the lead Federal agency for Section 7 and initiate dialog as
32 soon as practicable to facilitate early agreement on field and analysis methodologies,
33 in particular.
- 34 ▶ Develop mechanisms to avoid, minimize, and compensate for effects to listed species
35 and include and circulate in the public draft NEPA/CEQA documents.

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- 1 ▶ Develop individual Biological Assessments for USFWS and NMFS that provide all
2 of the information necessary for Reclamation to seek formal Section 7 consultation
3 with USFWS and NMFS, and for USFWS and NMFS to develop programmatic
4 Biological Opinions for the SJRRP's ESA compliance.
- 5 ▶ Work closely with USFWS, NMFS, and DFG to ensure that any Biological Opinions
6 and incidental take statements are reviewed by the SJRRP ECPWG while they are in
7 the draft stage prior to finalization.

8 ***Federal ESA, Experimental Population Designation – ESA Section 10(j)***

- 9 ▶ USFWS to complete permit application including all necessary information related to
10 the introduction of spring-run Chinook salmon to the San Joaquin River by
11 September 30, 2010.
- 12 ▶ Fisheries Management Workgroup to gather necessary information on spring-run
13 Chinook salmon to assist in the completion of the ESA Section 10 permit.
- 14 ▶ NMFS to issue a final decision (or rule as appropriate) on ESA Section 10 permit for
15 reintroduction by April 30, 2012.

16 ***Fish and Wildlife Coordination Act***

- 17 ▶ Address USFWS, NMFS, and DFG concerns in the PEIS/R and Biological
18 Assessments, to enable USFWS to easily prepare a separate Fish and Wildlife
19 Coordination Act (FWCA) report.
- 20 ▶ Provide USFWS, NMFS, and DFG with a comprehensive list of activities undertaken
21 by Reclamation to avoid, minimize, and compensate potential impacts to fish and
22 wildlife species, including special status species.
- 23 ▶ Coordinate early with USFWS in planning process and in the scope of FWCA
24 evaluation methodologies.
- 25 ▶ Identify habitats that will be affected by proposed actions.
- 26 ▶ Develop acceptable methods to avoid, minimize, rectify, compensate, reduce or
27 eliminate over time the impacts of the proposed action.

28 ***National Historic Preservation Act, Section 106***

- 29 ▶ If possible, determine Area of Potential Effects (APE) for each alternative to be
30 carried into the PEIS/R and conduct records searches, contact appropriate Native
31 American representatives, and complete surveys early in the project investigation
32 stage.
- 33 ▶ If not possible to determine the APE, then Reclamation may not conduct field work
34 but wait until specific actions are selected and defined, but use existing data to
35 evaluate potential impacts to cultural resources and enter into a Programmatic

Regulatory Compliance Strategy

1 Agreement with the State Historic Preservation Officer (SHPO) detailing how the
2 Section 106 process would be implemented once action specifics are known and/or
3 may make commitments in the PEIS/R and Record of Decision to complete Section
4 106 as actions are fully identified.

- 5 ▶ Work closely with Reclamation archaeologists to ensure National Historic
6 Preservation Act (NHPA) Section 106 compliance.

7 ***Clean Water Act Section 401 Water Quality Certification***

- 8 ▶ Identify potential waters of the State at the project site during preliminary field visits.
- 9 ▶ Attend a USACE pre-application agency coordination meeting that includes Central
10 Valley Regional Water Quality Control Board (RWQCB) personnel to identify water
11 quality issues prior to application to RWQCB for water quality certification.
- 12 ▶ Submit a certified CEQA document and copies of other permit applications (e.g.,
13 Clean Water Act Section 404 application, Fish and Game Code Section 1602
14 application, if needed) to RWQCB along with the application for water quality
15 certification.
- 16 ▶ Work early and closely with RWQCB to determine an effective strategy for treating
17 water prior to discharge during construction, and utilize land disposal to the extent
18 possible to minimize permitting issues.
- 19 ▶ Work closely with RWQCB contacts to establish working relationships and quickly
20 respond to supplemental information requests.

21 ***Clean Water Act Section 402 National Pollution Discharge Evaluation System***

- 22 ▶ Identify potential waters of the State at the project site during preliminary field visits.
- 23 ▶ Attend a USACE pre-application agency coordination meeting that includes Central
24 Valley RWQCB personnel to identify issues related to potential discharges to surface
25 waters prior to application to RWQCB for an NPDES permit.
- 26 ▶ Work closely with RWQCB contacts to establish working relationships and quickly
27 respond to supplemental information requests.

28 ***California Endangered Species Act***

- 29 ▶ Search DFG's California Natural Diversity Data Base (CNDDB) to check for
30 previously recorded occurrences of State-listed species in the vicinity of the project.
- 31 ▶ Conduct biological surveys as early as possible after the project study area is defined
32 to determine the potential for State-listed species to occur on the project site.
- 33 ▶ Involve DFG at the early stages of the planning and permitting of the project for any
34 State-listed species that may be affected.

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- 1 ▶ Prepare Biological Assessments that meet the requirements of ESA, and CESA to the
2 extent possible. Seek DFG 2081 incidental take permit or 2080.1 consistency
3 determination with ESA.
- 4 ▶ Work closely with USFWS, NMFS, and DFG to ensure that any Biological Opinions
5 and incidental take statements are reviewed by the SJRRP ECPWG while they are in
6 the draft stage prior to finalization.

7 ***Fish and Game Code Section 1602 Streambed Alteration Agreement***

- 8 ▶ Coordinate early with DFG to ensure that the permit application materials are
9 complete, are technically accurate, and meet the needs of DFG.
- 10 ▶ Submit the certified CEQA document and copies of other permit applications (e.g.,
11 Clean Water Act Section 404 application, RWQCB Section 401 Certification
12 application) to DFG along with the Streambed Alteration Agreement application.

13 ***California Code of Regulations, Title 23: Encroachment Permit***

- 14 ▶ Coordinate with the local reclamation districts during the planning and design phase
15 of the proposed action to identify compliance needs, commitments, and mitigation
16 options and to resolve issues prior to contacting the State Reclamation Board for any
17 necessary permit processing with local reclamation districts.
- 18 ▶ Coordinate with the State Reclamation Board for areas along the San Joaquin River
19 without local reclamation districts.

20 ***Water Rights***

- 21 ▶ Determine the need for petitions for change to existing water rights for the CVP
22 Friant Division on the San Joaquin River. The potential changes may include the
23 following:
 - 24 • the designation of Interim Flows and Restoration Flows for instream use in the
25 San Joaquin River between Friant Dam and the confluence of the Merced River
26 (at a minimum) under Water Code Section 1707;
 - 27 • diversion and redirection of the Interim Flows and Restoration Flows at a
28 downstream location or multiple downstream locations that are consistent with the
29 water recapture plan developed as part of the Water Management Goal; and
 - 30 • place and/or purposes of use.
- 31 ▶ Coordinate with the State Water Resources Control Board (SWRCB) regarding CVP
32 water rights for temporary changes for implementing the Interim Flows, and
33 permanent changes for implementing the Restoration Flows. File any necessary
34 changes with the SWRCB leaving sufficient time for the SWRCB to make necessary
35 findings, hold a hearing if necessary, and to issue the proper orders.

Regulatory Compliance Strategy

- 1 ▶ Identify the nature, character, and ownership of any non-CVP water rights involved in
2 implementing the water recapture plan and work to voluntarily secure any necessary
3 changes to those rights to support the Water Management Goal.
- 4 ▶ If additional quantities of surface and/or underground storage are required to
5 implement the Water Management Goal, investigate the status of water rights on any
6 affected waterway, including the number, size, location, type of use, and season of
7 use of existing water rights, and coordinate with the SWRCB and apply for adequate
8 water rights amendments and/or new water rights, leaving sufficient time for the
9 SWRCB to make necessary findings, hold a hearing if necessary, and issue the proper
10 orders.
- 11 ▶ Recognize the potential for water right actions, necessary for protection of instream
12 and restoration flows and to implement the water recapture plan, to invite protests or
13 objections to such water right actions by parties, if any, opposed at the time to these
14 water right actions and/or project implementation. Prepare for preparation of adequate
15 and timely responses to such protests or objections, the potential need for settlement
16 negotiations, and the potential for water rights hearings to resolve protests.
- 17 ▶ Ensure that all environmental documentation, operational studies, consultations, and
18 other permitting activities being completed for the project provide adequate and
19 timely support for all water right actions necessary to protect instream and restoration
20 flows and to implement the Management Goal.
- 21 ▶ Investigate existing water rights on any affected waterway, including the number,
22 size, location, type of use, and season of use of existing water rights.
- 23 ▶ Approach SWRCB early to coordinate the needs for temporary change petition and
24 permanent change petition.

25 ***San Joaquin Valley Air Pollution Control District (SJVAPCD) Dust Control Plan***

- 26 ▶ Include specific dust-control measures in contractor specifications to the extent
27 feasible. Ensure that the contractor specifications and the Dust Control Plan reflect
28 the SJVAPCD guidance described in the PEIS/R air quality mitigation and
29 subsequent CEQA compliance documents.

30 ***Clean Air Act Title I, V; SJVAPCD Authority to Construct and Permit to Operate***

- 31 ▶ Determine need for Authority to Construct and Permit to Operate.
- 32 ▶ Develop detailed project descriptions with specific information on construction
33 equipment quantities, vehicle trips, project schedules, etc. as soon as practicable that
34 provides relevant information necessary to perform air quality modeling and the
35 associated conformity applicability analysis.

- 1 ▶ Participate in a pre-application meeting with SJVAPCD staff more than 6 months
2 before the planned equipment installation. Submit complete application material as
3 early as possible, but more than 6 months before the planned equipment installation.

4 ***State Lands Commission Land Use Lease***

- 5 ▶ Determine through early consultation the need for a state lands lease agreement.
- 6 ▶ If a lease agreement is needed, submit complete application material as early as
7 possible, at least 6 months prior to project implementation.

8 ***California Department of Boating and Waterways and U.S. Coast Guard***

- 9 ▶ Verify through early consultation whether approval from the Department of Boating
10 and Waterways and U.S. Coast Guard will be needed.

11 **1.4 Program and Project-Specific Environmental**
12 **Documents and Permitting**

13 **1.4.1 Program-Level Actions/Analysis in the PEIS/R**

14 Consistent with NEPA and CEQA, the Program will complete a programmatic evaluation
15 of alternatives and actions to implement the Settlement, resulting in development of a
16 Programmatic Environmental Impact Statement/Report (PEIS/R), a Record of Decision
17 (ROD) and a Notice of Determination (NOD). The programmatic NEPA/CEQA
18 evaluation will include a complete, system-wide analysis of alternatives designed to meet
19 both the Restoration Goal and the Water Management Goal prior to implementing any
20 new site-specific actions. This level of analysis should assure evaluation and
21 identification of beneficial and adverse impacts of all alternatives. In order to expedite
22 implementation, it is likely that several site-specific activities will be evaluated in the
23 programmatic NEPA/CEQA document. Reference to Program planning, evaluation, and
24 implementation in this document assumes it will be carried out within the NEPA/CEQA
25 process and be consistent with those regulations.

26 **1.4.2 Project-Specific Actions/Analysis in the PEIS/R**

27 The two key project-specific actions/resource areas to be covered at a project-specific
28 level of detail in the PEIS/R, and as explained below, are:

- 29 ▶ Environmental effects associated with Interim Flow releases that do not require in-
30 channel modifications,
- 31 ▶ Systemwide CVP and SWP operations-related cumulative effects from both Interim
32 Flow and Restoration Flow releases (but excluding attendant in-channel
33 modifications).

34 The differentiation of which SJRRP actions will be covered under the PEIS/R and which
35 will be covered under subsequent NEPA/CEQA documents is a critical decision for the

Regulatory Compliance Strategy

1 SJRRP team. Both NEPA and CEQA allow the use of program-level documents for
2 analysis of project-level work where the level of analysis in a program document
3 supports decision making for specific projects (40 CFR 1502.4(d), Guidelines §
4 15168(c)). Accordingly, the SJRRP PEIS/R will analyze several imminent actions
5 specified in the Settlement at a project-specific level of detail. For these actions, the
6 PEIS/R will be the sole NEPA/CEQA document to evaluate the environmental effects of
7 the actions.

8 Because of the need to release Interim Flows as an early physical action specified in the
9 Settlement, flow-related actions will be included in the PEIS/R at a project-specific level
10 of detail. Flow-related SJRRP actions (as specified in the Settlement) that could be
11 analyzed in total or in part at a project-specific level of detail in the PEIS/R are:

- 12 ▶ Paragraph 15 – Secretary shall begin a program of Interim Flows, including
13 additional releases from Friant Dam by 10/1/2009;
- 14 ▶ Paragraph 15 – Restoration Administrator shall develop and recommend to the
15 Secretary an Interim Flows program, in consultation with Technical Advisory Group,
16 Secretary, and appropriate Federal and local agencies by 10/1/2009;
- 17 ▶ Paragraph 15(a) – Secretary anticipated to release Interim Flows (10/1/2009 –
18 11/20/2009);
- 19 ▶ Paragraph 15(b) – Secretary anticipated to release Interim Flows (2/1/2010 –
20 12/1/2010);
- 21 ▶ Paragraph 15(c) – Secretary anticipated to release Interim Flows 2/1/-5/1 in 2011 and
22 2012, assuming in channel construction begins 5/1, release flows to wet channel
23 down to Chowchilla Bifurcation Structure to collect information regarding infiltration
24 losses 5/1 – 9/1 in 2011 and 2012;
- 25 ▶ Paragraph 15(d) – Secretary anticipated to release flows for entire year, if highest
26 priority channel improvements identified in 11(a) not completed (by 12/31/2013);
- 27 ▶ Paragraph 15(e) – Secretary shall, in consultation with Restoration Administrator,
28 determine existing channel capacity and impact of Interim Flows on channel
29 construction work (by 10/1/2009);
- 30 ▶ Paragraph 16(a) – Secretary, in consultation with the Plaintiffs and Friant Parties,
31 shall develop a plan for recirculation, recapture, reuse, exchange or transfer of the
32 Interim Flows and Restoration Flows to reduce impacts to water deliveries to long-
33 term Friant Division contractors per 16(a)(1)-(4) and
- 34 ▶ Paragraph 16(b) – Secretary to establish a Recovered Water Account (RWA) per
35 16(b)(1)-(5) to make water available to Friant Division long-term contractors who
36 provide water to meet Interim Flows and Restoration Flows (by 10/1/2009).

1 The PEIS/R could also be used to evaluate other types of actions or impacts other than
2 flow-related effects to obtain project-specific clearance, if sufficient and detailed
3 information was available to facilitate such an analysis. As an example, if construction
4 activities could be sufficiently described for the SJRRP, an air quality analysis could be
5 conducted for all of the SJRRP actions, project-level significance determinations made,
6 and mitigation proposed (under CEQA only) to reduce any significant impacts to air
7 quality to less-than-significant levels. In this hypothetical case, air quality impacts would
8 not need to be evaluated in any subsequent project-specific NEPA or CEQA documents
9 because the air quality impacts would have already been discussed and disclosed in the
10 PEIS/R. The ECPWG should evaluate whether there are any similar resources or issue
11 areas that are best covered in the PEIS/R.

12 At present, the PEIS/R is expected to provide environmental compliance for the release
13 of Interim Flows from Friant Dam to the San Joaquin River. Because this action involves
14 the release of water from Friant Dam, but no construction activities, the only permit that
15 is expected to be needed is a change in water rights from the SWRCB and possibly a
16 RWQCB Section 401 authorization. The Interim Flow releases would cause physical
17 effects to the Millerton Lake water elevations and to the channels downstream of Friant
18 Dam where the water will flow. Consequently, it will be important to cover the full range
19 of environmental effects associated with the release of the Interim Flows at a project-
20 specific level of detail in the PEIS/R.

21 Stipulation 15c specifies Interim Flow releases in 2011 and 2012 that assume in-channel
22 construction begins May 1, 2011. Restoration Flow releases also assume in-channel
23 construction work. The evaluation of in-channel construction work will not be
24 sufficiently developed to cover it at a project-specific level of detail in the PEIR/S.
25 However, system-wide flow impacts to CVP and SWP operations from the Interim Flows
26 and Restoration Flows are best covered in the PEIR/S at a project-specific level of detail
27 because of the broad-ranging regional and cumulative effects of modified San Joaquin
28 River, CVP, and SWP flow regimes. A subsequent NEPA/CEQA document would need
29 to be developed to cover the site-specific in-channel actions. Because in-channel
30 construction would likely trigger the potential for significant environmental effects, a
31 project-specific EIS/R would need to be completed soon after the PEIS/R. Identification
32 of specific in-channel modifications for 2011 is a critical path element. Irrespective of
33 whether the 2011 Interim Flow releases and in-channel modifications are addressed at a
34 project-specific level in the PEIS/R or a subsequent environmental document, permitting
35 for the in-channel modifications will likely require a Clean Water Act Section 404
36 individual permit and the requisite specific and detailed information on the physical
37 disturbances resulting from the in-channel modifications. A Rivers and Harbors Act
38 Section 10 permit would also be required for any channel modifications below Sycamore
39 Road (7 miles downstream of the Highway 99 bridge).

40 **1.4.3 Actions to be Implemented Prior to the PEIS/R**

41 Some actions will need to be implemented prior to the completion of the PEIS/R to
42 adhere to the schedule for release of Interim Flows and to implement specific projects
43 identified in the Settlement. Examples include installation of stream gages to collect

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1 hydrologic data during Interim and Restoration Flows and drilling to collect subsurface
2 information to assess existing conditions and develop information for project-specific
3 evaluations Site-specific NEPA/CEQA compliance documents will be developed for
4 these types of activities

5 **1.4.4 Programmatic Permitting Processes**

6 Programmatic permitting processes have not yet been discussed with regulatory agencies
7 to determine if they may be the most appropriate permitting vehicle for obtaining permits.
8 These discussions are needed. It is expected that a programmatic approach including
9 programmatic Biological Opinions would be used by USFWS and NMFS to streamline
10 and expedite the Federal ESA processes. Because programmatic permitting processes
11 can be complex, and are not typically used by many regulatory agencies, substantial
12 efforts would be necessary to determine programmatic applications to the SJRRP.
13 Meetings with regulatory agencies early in the process can be useful to determine
14 whether programmatic permitting strategies could be useful to streamline permitting for
15 SJRRP actions.

16 **1.4.5 Permitting Schedule for SJRRP Actions**

17 A permitting schedule for SJRRP actions needs to be developed as part of the overall
18 SJRRP master schedule; it was not attempted for this Regulatory Compliance Strategy.
19 The permitting schedule depends largely on the timing and bundling of the various
20 SJRRP actions. Some similar actions may be bundled and evaluated as a single project
21 for NEPA and CEQA compliance. It would logically follow that these actions would be
22 permitted as a single project. Insufficient information is available at this time to develop a
23 reasonably accurate schedule of individual permitting activities for the various SJRRP
24 actions. The SJRRP master schedule, however, is currently being modified to incorporate
25 the time frames for permit processing included in Sections 3-5 of this Regulatory
26 Compliance Strategy. When completed, the SJRRP master schedule can be used with this
27 technical memorandum to provide a specific framework and schedule for linking
28 activities that need to be conducted to initiate and obtain regulatory clearances of SJRRP
29 actions.

| Table 1 | |
|--|---|
| General Permitting Information Needs | |
| Item # | Information |
| General Information (Multiple Permitting Tasks) | |
| G1 | Project Description |
| G2 | Project Purpose |
| G3 | Project Location |
| G4 | Project Area and Site Boundaries (Section 404 and Section 106 require specific boundaries) |
| G5 | Project Size (acres) |
| G6 | Site Plan (including project layout, offsite components, construction staging areas and access) |
| G7 | Construction Schedule (start-up, duration, and completion dates) |
| G8 | Verified delineation of jurisdictional Waters of the U.S. ¹ |

Regulatory Compliance Strategy

| Table 1 General Permitting Information Needs | |
|---|--|
| Item # | Information |
| G9 | Base Map with aerial photograph ² |
| G10 | Biological assessments/surveys completed for site including identification of habitat type, quality, quantity and indicated on the maps as in G9 |
| G11 | Design drawings (with % complete indicated) |
| G12 | To-scale CAD-type cross section ³ |
| G13 | Bathymetric ⁴ data, if available (elevation, approximate bed profile) |
| G14 | Checks for permit fees ⁵ |
| U.S. Army Corps of Engineers (USACE) Section 404 Nationwide Permit and RHA Section 10 Permit | |
| U1 | Amount (cubic yards and/or length, width, height) of material being placed within jurisdictional waters |
| U2 | Acreage of material including temporary amount dredged ⁶ |
| U3 | Replacement quantities of native ⁷ and imported material, and net permanent change (cubic yards) |
| U4 | Type of material placed within jurisdictional waters (i.e., clean fill dirt, rock, clay, concrete, etc.) |
| U5 | Identification and dimensions of structures and materials to be used in construction |
| U6 | Construction equipment and methods by which work will be done |
| U7 | Adjacent landowners |
| Regional Water Quality Control Board (RWQCB) 401 Certification | |
| R1 | Anticipated stream flow during project activity (cfs) |
| R2 | Best Management Practices (BMPs) to avoid/minimize water quality impacts to Waters of the U.S. |
| R3 | Expected approval/filing date of EIR |
| R4 | Past projects conducted by the applicant in the same watershed within last 5 years |
| R5 | Upcoming projects proposed by the applicant in the same watershed within next 5 years |
| California Department of Fish and Game (DFG) 1602 Notification | |
| C1 | Will water need to be diverted from stream or ditch? If yes, how and will the diversion be permanent or temporary? |
| C2 | Will any riparian habitat or vegetation be altered, removed, or otherwise affected (i.e., directly or indirectly)? |
| C3 | Project cost for portion of project affecting stream, lake or river (used to calculate permit fee) |
| C4 | Will any equipment or construction activity be within the channel? |
| C5 | Is the project proposed pursuant to a water right application or permit? |
| <p>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.</p> <p>2 GIS data are acceptable in any ESRI format; include datum, projection information, and metadata for all data.</p> <p>3 If possible, project to a coordinate system, include a scale bar and legend on the drawing, include the x-ref's. A high-resolution, current, projected aerial image is preferred.</p> <p>4 The water depth relative to sea level.</p> <p>5 Fees are required for USACE individual permits, RWQCB 401 applications, and DFG notifications, depending on project-specific variables.</p> <p>6 Excavated, dug, or removed by any means from the water body.</p> | |

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| Table 1 General Permitting Information Needs | |
|---|---|
| Item # | Information |
| 7 | Material at the site, not brought in from off-site. |

Regulatory Compliance Strategy Plan

| Table 2 | | | |
|--|---|--|---|
| Summary of Major Permits and Approvals Required for Certain Project-Specific Actions | | | |
| Agency and Associated Permit or Approval | Recommended Prerequisites for Submittal | Estimated Processing Time (from Accepted Permit Application Submittal) | Anticipated Fees |
| Federal | | | |
| USACE Clean Water Act Section 404 Individual Permit Rivers and Harbors Act Section 10 Permit | <ul style="list-style-type: none"> • Application • Biological Assessments for submittal to USFWS/NMFS/DFG • Section 401 Water Quality Certification permit or application • NEPA document • Section 106 compliance documentation • Wetland delineation • Alternatives analysis • Mitigation and Monitoring Plan | 24 months | \$100 for Individual permit is waived for governmental agencies |
| USFWS/NMFS Endangered Species Act Section 7 Consultation | <ul style="list-style-type: none"> • Informal technical consultation regularly • Biological Assessments • Draft NEPA document | 135 days | None |
| USFWS Fish and Wildlife Coordination Act Report | <ul style="list-style-type: none"> • Informal technical consultation regularly • Biological impact assessments • Draft NEPA document | ~12 months | None |
| 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) | 9 months | None |
| State | | | |
| CVRWQCB Clean Water Act Section 401 Water Quality Certification | <ul style="list-style-type: none"> • Application • Fish and Game Code Section 1602 Application • CWA Section 404 permit or application • Draft CEQA Document • Mitigation and Monitoring Plan | 6 months | \$500+ |
| DFG California Endangered Species Act Section 2081: Incidental Take Permit or 2080.1 Consistency Determination | <ul style="list-style-type: none"> • Informal technical consultation • Application, if requesting a 2081 Incidental Take Permit • Biological opinion and incidental take statement, if requesting a consistency determination (preferred approach) | 6 months after Biological Opinions issued | None |

Regulatory Compliance Strategy Plan

| Table 2 | | | |
|---|--|--|--|
| Summary of Major Permits and Approvals Required for Certain Project-Specific Actions | | | |
| Agency and Associated Permit or Approval | Recommended Prerequisites for Submittal | Estimated Processing Time (from Accepted Permit Application Submittal) | Anticipated Fees |
| DFG 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 | 9 months | \$4,000 |
| The Reclamation Board California Code of Regulations, Title 23: Encroachment Permit | <ul style="list-style-type: none"> • Application | 9 months | None |
| State Water Resources Control Board Amended water right | <ul style="list-style-type: none"> • Application • Draft (possibly Final) CEQA Document | 12 months | \$200+ |
| State Lands Commission Land Use Lease | <ul style="list-style-type: none"> • Application • Draft CEQA Document | 9 months | \$25 application fee and possible leasing fees |
| Local | | | |
| SJVAPCD Dust Control Plan | <ul style="list-style-type: none"> • Dust Control Plan • Dust Control Training Course • Pre-application meeting (encouraged) | 2 months | \$300 |
| SJVAPCD Authority to Construct and Permit to Operate | <ul style="list-style-type: none"> • Application • Pre-application meeting (encouraged) | 6 months | \$60 |
| Note: All permit applications require detailed project description information. Anticipated processing time is estimated based on initial permit applications submittal to permit issuance. | | | |

Regulatory Compliance Strategy

**Table 3
Integration of Environmental Permitting into Subsequent NEPA/CEQA Documents
Covering Certain Project-Specific Project Actions**

| NEPA/CEQA Process Step | CWA Section 404 and RHA Section 10 | Federal ESA and CESA | CWA Section 401 | Fish and Game Code Section 1600 | National Historic Preservation Act Section 106 | Other / Rec Board / Executive Orders / Local Permits | FWCA |
|--|---|---|-----------------|---------------------------------|--|--|--|
| Prepare NEPA/CEQA Document (if needed for environmental documents subsequent to PEIS/R) | Conduct surveys to identify waters of the U.S., including wetlands on the project site. | Request species lists from USFWS, NMFS, and DFG. | - | - | Conduct records search. | Request input from appropriate agencies early in the process. | Coordinate planning early with USFWS, NMFS, and DFG. |
| | - | Determine the presence of listed species or their potential habitat and the extent of critical habitat on the site. | - | - | Conduct cultural resource surveys to determine what resources are on the project site. | Contact the State Lands Commission to determine whether the project is on land within its jurisdiction. | - |
| | - | Conduct surveys for listed species, if appropriate. | - | - | Consult with Native American organizations. | Contact the Department of Substances Control and other resource agencies regarding hazardous materials. | - |
| | - | | | - | - | Prepare Cultural Resources Survey and Evaluation Report and submit to the State Historic Preservation Officer (if necessary). If historic properties adversely | - |

Regulatory Compliance Strategy

| Table 3 Integration of Environmental Permitting into Subsequent NEPA/CEQA Documents Covering Certain Project-Specific Project Actions | | | | | | | |
|--|--|---|-----------------|---------------------------------|---|--|--|
| NEPA/CEQA Process Step | CWA Section 404 and RHA Section 10 | Federal ESA and CESA | CWA Section 401 | Fish and Game Code Section 1600 | National Historic Preservation Act Section 106 | Other / Rec Board / Executive Orders / Local Permits | FWCA |
| | | | | | effected, then additional consultation, documentation, and mitigation report is necessary to resolve the adverse effects. | | |
| Prepare Statement of Purpose and Need / Project Objectives | Consider implications of purpose and need statement on range of alternatives to be analyzed under the CWA Section 404(b)(1) Guidelines (if individual permit is required). | Request informal Technical Assistance from USFWS/NMFS and/or DFG. | - | - | - | - | Coordinate planning early with USFWS, NMFS, and DFG. |
| Complete Scoping (Including Notice of Intent / Notice of Preparation if needed) | - | - | - | - | - | Contact local agencies and other interested parties. Contact local reclamation districts, affected landowners, and other interested parties. | Coordinate with USFWS, NMFS, and DFG |
| Develop No-Action Alternative | - | Consider baseline conditions for Federal | - | - | - | - | Coordinate with USFWS, NMFS, and |

Regulatory Compliance Strategy

**Table 3
Integration of Environmental Permitting into Subsequent NEPA/CEQA Documents
Covering Certain Project-Specific Project Actions**

| NEPA/CEQA Process Step | CWA Section 404 and RHA Section 10 | Federal ESA and CESA | CWA Section 401 | Fish and Game Code Section 1600 | National Historic Preservation Act Section 106 | Other / Rec Board / Executive Orders / Local Permits | FWCA |
|--|--|--|-----------------|---------------------------------|---|--|--------------------------------------|
| | | ESA and CESA consultations. | | | | | DFG |
| Develop Preliminary Set of Alternatives | Ensure that alternative development and screening is done according to CWA Section 404(b)(1) Guidelines. | Ensure that alternatives are developed that avoid or minimize impacts on listed species and critical habitat. | - | - | Ensure that alternative(s) avoid or minimize effects on known cultural resources where practicable. | - | Coordinate with USFWS, NMFS, and DFG |
| Finalize Set of Alternatives | Ensure that alternative development and screening is done according to CWA Section 404(b)(1) Guidelines. | Ensure that alternatives are selected that avoid or minimize impacts on listed species and critical habitat. | - | - | Ensure that alternative(s) avoid or minimize effects on known cultural resources where practicable. | - | Coordinate with USFWS, NMFS, and DFG |
| Prepare Draft NEPA/CEQA Document | Analyze effects of alternatives on waters of the U.S. Prepare a draft Section 404 alternatives analysis. | Use information/r results from the species surveys to assists in analyzing the effects of alternatives on listed species and their habitats. | - | - | Analyze effects of alternatives on known cultural resources, where practicable. | - | Coordinate with USFWS, NMFS, and DFG |
| | - | | - | - | Prepare a determination of effects report (if required) for resources listed or | - | - |

Regulatory Compliance Strategy

**Table 3
Integration of Environmental Permitting into Subsequent NEPA/CEQA Documents
Covering Certain Project-Specific Project Actions**

| NEPA/CEQA Process Step | CWA Section 404 and RHA Section 10 | Federal ESA and CESA | CWA Section 401 | Fish and Game Code Section 1600 | National Historic Preservation Act Section 106 | Other / Rec Board / Executive Orders / Local Permits | FWCA |
|------------------------|------------------------------------|---|-----------------|---------------------------------|--|--|--------------------------------------|
| | | | | | eligible for listing on the National Register of Historic Places or California Register of Historical Resources. If Reclamation deferring Section 106 consultation until specific actions are detailed, then effects discussed in general fashion in PEIS/R, but unlikely effects report needed. | | |
| | - | Coordinate with USFWS, NMFS, and DFG. | - | - | - | - | Coordinate with USFWS, NMFS, and DFG |
| | - | Prepare and submit Draft Biological Assessments to USFWS, NMFS, and/or DFG for informal review if potential to affect listed species is identified. | - | - | - | - | - |
| | - | Submit draft | - | - | - | - | - |

Regulatory Compliance Strategy

**Table 3
Integration of Environmental Permitting into Subsequent NEPA/CEQA Documents
Covering Certain Project-Specific Project Actions**

| NEPA/CEQA Process Step | CWA Section 404 and RHA Section 10 | Federal ESA and CESA | CWA Section 401 | Fish and Game Code Section 1600 | National Historic Preservation Act Section 106 | Other / Rec Board / Executive Orders / Local Permits | FWCA |
|--|--|--|-----------------|---------------------------------|--|--|--------------------------|
| | | Biological Assessments for agency review. | | | | | |
| Circulate Draft NEPA/CEQA Document for Review | Circulate draft Section 404 alternative analysis. Prepare Section 404 and RHA Section 10 permit application. | Submit Final Biological Assessments to USFWS, NMFS, and/or DFG (initiate formal consultation). | - | - | - | - | Submit Draft FWCA Report |
| Hold Public Hearing (if needed) | - | - | - | - | - | - | - |

Regulatory Compliance Strategy

**Table 3
Integration of Environmental Permitting into Subsequent NEPA/CEQA Documents
Covering Certain Project-Specific Project Actions**

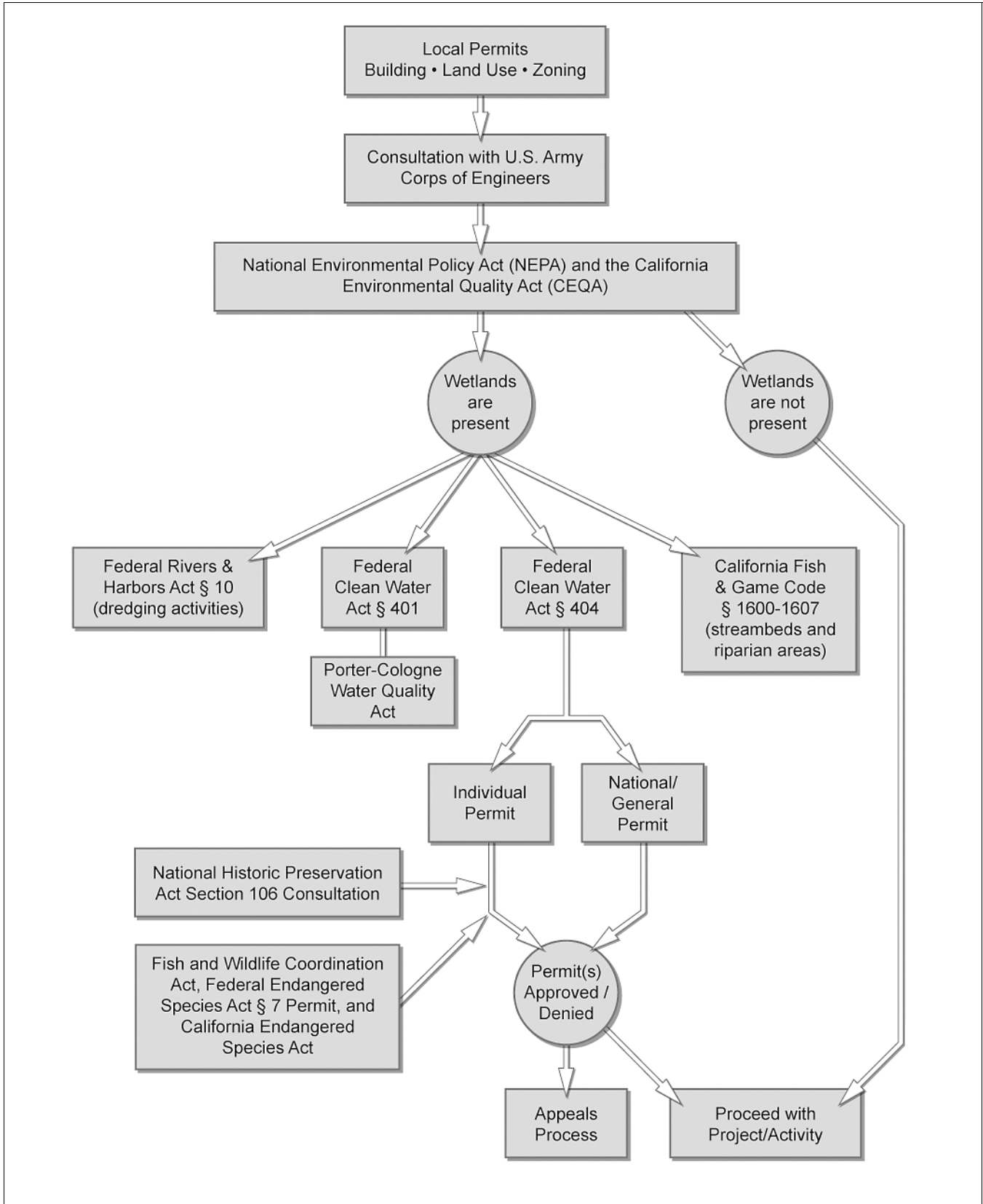
| NEPA/CEQA Process Step | CWA Section 404 and RHA Section 10 | Federal ESA and CESA | CWA Section 401 | Fish and Game Code Section 1600 | National Historic Preservation Act Section 106 | Other / Rec Board / Executive Orders / Local Permits | FWCA |
|---|--|---|--|--|--|--|--------------------------|
| Prepare and Publish Final NEPA/CEQA Document | Prepare final Section 404 alternatives analysis. | Circulate Biological Opinion / Section 2081 permit with Final PEIS/R. | - | - | Negotiate Memorandum of Agreement (MOA) with SHPO if adverse effects to historic properties are identified and Section 106 compliance is not deferred. Reclamation may negotiate Programmatic Agreement (PA) with SHPO to detail Section 106 compliance. | - | Submit Final FWCA Report |
| Adopt and/or Certify NEPA/CEQA Document | - | - | Submit 401 Water Quality Certification application | Submit 1602 Streambed Alteration Agreement application | - | - | - |
| Finalize Agency Decision | Ensure that the preferred alternative is selected according to the CWA Section 404(b)(1) Guidelines. | Obtain Section 2081 permit from DFG | - | - | - | - | - |
| Issue Final NEPA/CEQA Decision documents | Submit Section 404 alternatives analysis. USACE issues permit | - | - | - | If PEIS/R cannot identify all historic properties adversely | Prepare and submit other permit applications. | - |

Regulatory Compliance Strategy

**Table 3
Integration of Environmental Permitting into Subsequent NEPA/CEQA Documents
Covering Certain Project-Specific Project Actions**

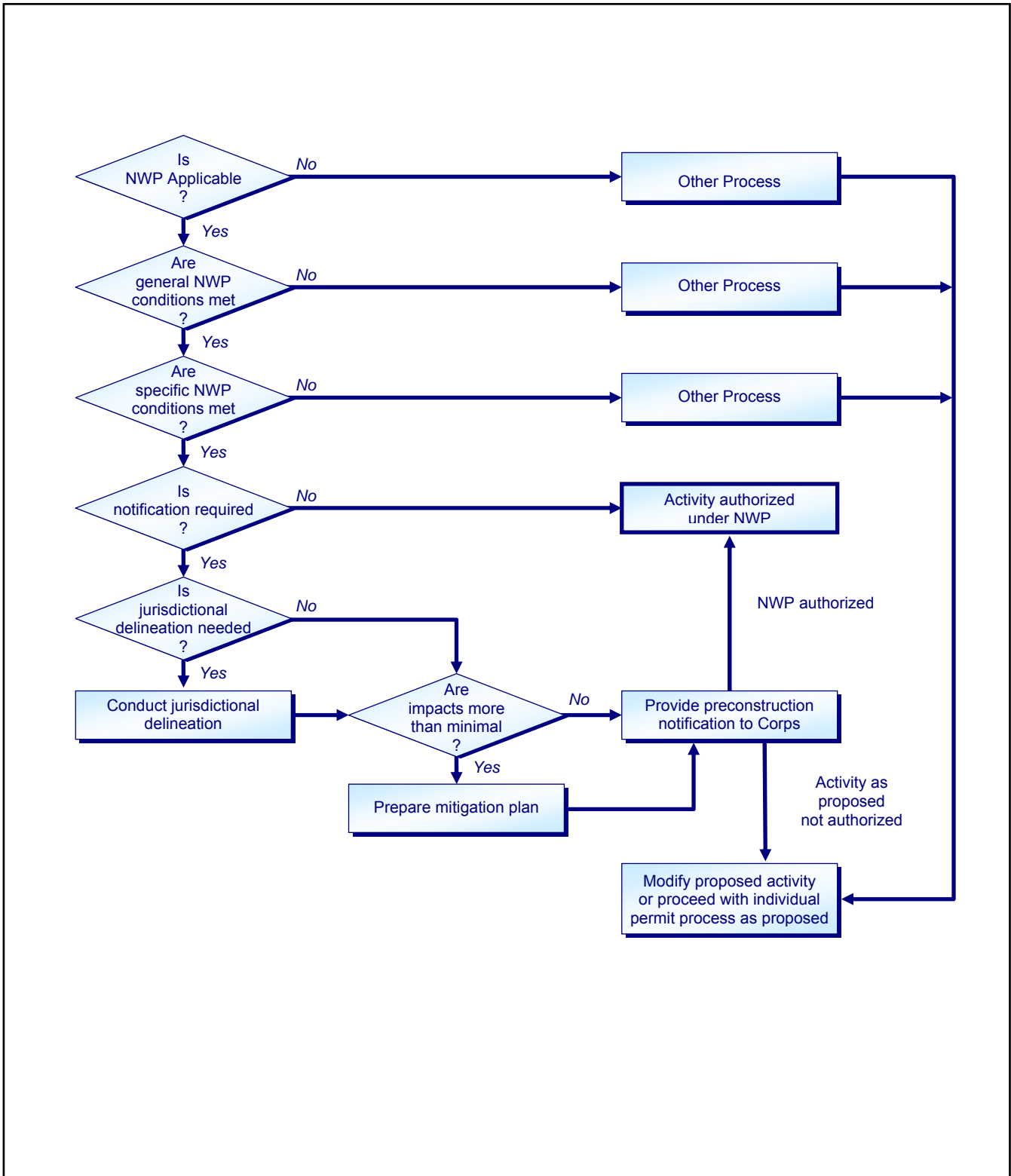
| NEPA/CEQA Process Step | CWA Section 404 and RHA Section 10 | Federal ESA and CESA | CWA Section 401 | Fish and Game Code Section 1600 | National Historic Preservation Act Section 106 | Other / Rec Board / Executive Orders / Local Permits | FWCA |
|------------------------|------------------------------------|----------------------|-----------------|---------------------------------|---|--|------|
| | after NEPA process is complete. | | | | affected, then the ROD must commit to do so as Program actions are defined. | | |

Regulatory Compliance Strategy



General Flowchart for Section 404 Permitting Activities

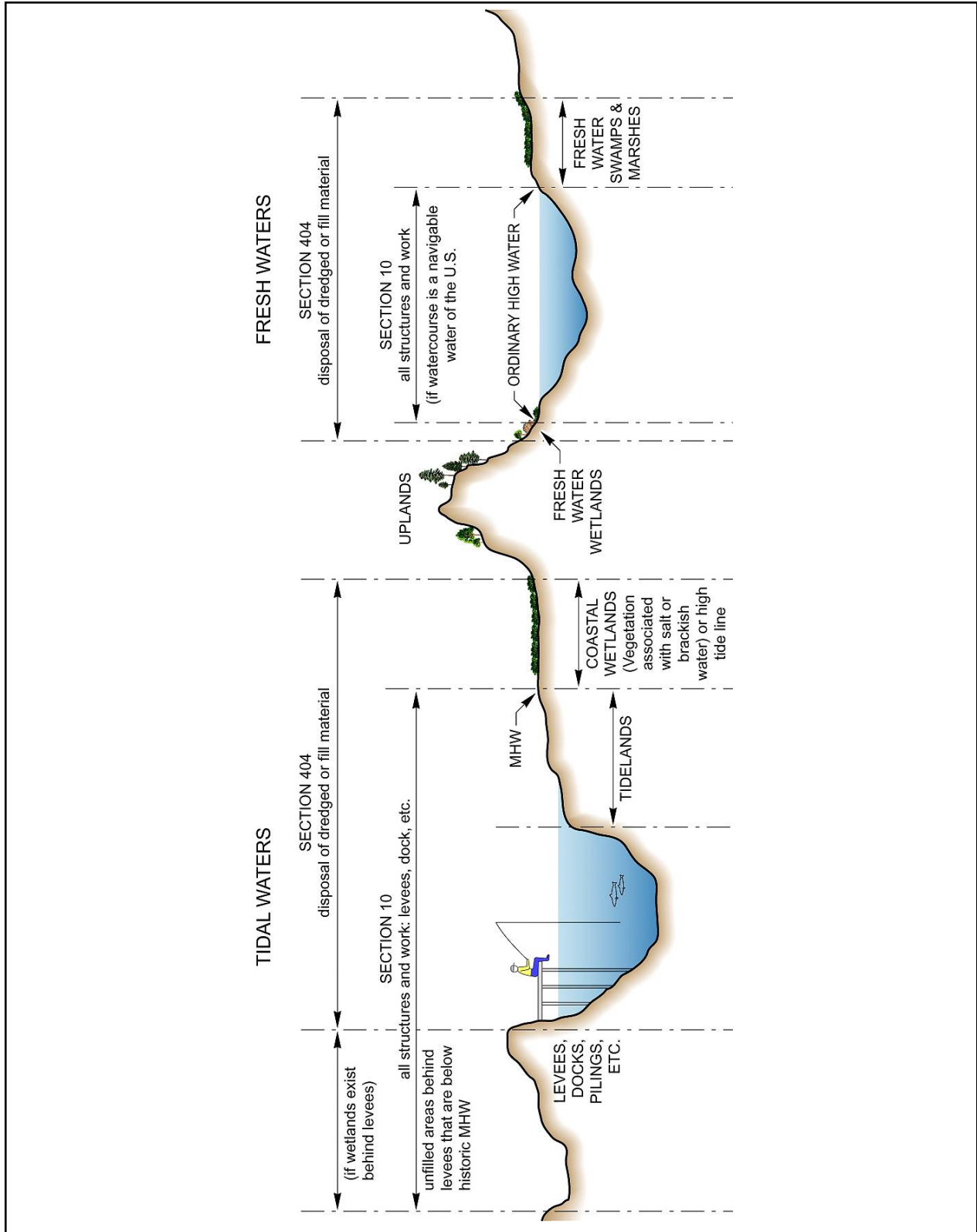
Figure 1



Source: California Environmental Resource Evaluation System (CERES), California Wetlands Information System (CWIS) 2004

Flowchart for Section 404 Nationwide Permit System

Figure 2



Source: California Environmental Resource Evaluation System (CERES), California Wetlands Information System (CWIS) 2004, USACE, San Francisco District

USACE Regulatory Jurisdiction

Figure 3

1 **2 NEPA/CEQA Compliance**

2 **Agency:** NEPA Lead Agency: Reclamation

3 CEQA Lead Agency: DWR

4 **Documents:** Notice of Intent/Notice of Preparation, Notice of Public Hearing, Scoping
5 Report, Notice of Availability/Notice of Completion of Draft and Final
6 PEIS/R, Draft and Final PEIS/R, Record of Decision (ROD)/Notice of
7 Determination (NOD), and subsequent project-specific environmental
8 compliance documents

9 **Resources:** Comprehensive environmental resources

10 **Processing**

11 **Time:** minimum 24 months

12 **Contacts:** Reclamation (Shane Hunt, Rosemary Stefani, Laura Myers)/DWR (Karen
13 Dulik, Kevin Faulkenberry)/other ECPWG members

14 **Application to Proposed Action:**

15 NEPA applies to discretionary projects funded or carried out by Federal agencies.
16 Reclamation owns and operates Friant Dam. As the owner-operator, Reclamation will be
17 responsible for releasing Interim Flows, analyzing associated effects, and subsequently
18 managing and operating the Dam consistent with the Settlement. Reclamation has the
19 primary Federal responsibility for performing the SJRRP and therefore is the lead agency
20 for NEPA purposes.

21 CEQA applies to discretionary projects performed by public agencies (Public Resources
22 Code § 21001.1). DWR is a signatory to the Memorandum of Understanding (MOU)
23 between the Department of the Interior and the State of California, designed to implement
24 the Settlement and coordinate state and Federal authority. Under the MOU and
25 Settlement, DWR will perform physical modifications to the river channel and construct
26 related structures to improve fish habitat and survivability. DWR has the primary
27 responsibility among state agencies for performing the SJRRP and therefore is the lead
28 state agency for CEQA compliance.

29 **Purpose and Requirements:**

30 The SJRRP calls for both short-term actions to provide Interim Flows to enhance fish
31 habitat, as well as long-term planning and physical changes to the channel and
32 construction of associated structures. Components of the Program include:

- 33 ▶ Releasing short-term Interim Flows from Friant Dam
- 34 ▶ Formulating and evaluating channel and structural improvements

NEPA/CEQA Compliance

- 1 ▶ Developing and implementing a Fisheries Management Plan
- 2 ▶ Developing procedures and guidelines governing the release of water from Friant
3 Dam
- 4 ▶ Formulating and implementing water management actions and a water management
5 account to recirculate and reuse water after in-stream use to reduce impacts to Friant
6 Division long-term contractors.

7 Because the SJRRP represents a broad Federal action that calls for implementing multiple
8 project actions over a large geographic area and in several common stages over numerous
9 years, a PEIS/R is the best approach for compliance with NEPA and CEQA. The Council
10 of Environmental Quality Regulations specify the use of a program NEPA document for
11 analysis of long-term programs adopted by Federal agencies (40 CFR 1502 *et. seq.*). The
12 program document provides a top-down view of a series of related actions. This structure
13 is useful in analyzing the cumulative effects associated with related actions that would
14 not emerge if each action were analyzed individually rather than as a group. The PEIS/R
15 is also used to evaluate policy-level alternatives and formulate program-level mitigation
16 measures. CEQA provides a similar mandate for program-level consideration of related
17 projects or “actions.” Under the CEQA guidelines (Guidelines), a program EIR is
18 appropriate for geographically and logically related actions, as well as actions carried out
19 by the same entity (Guidelines § 15168). The program EIR provides a policy-level
20 analysis for the tiering of subsequent project-specific studies without duplicative analysis
21 (Guidelines § 15168(b)(3)). Because DWR will participate actively in conducting certain
22 SJRRP actions, the program EIR is the appropriate document for CEQA compliance. See
23 Section 1.4, “Program and Project-Specific Environmental Documents and Permitting,”
24 for additional information.

25 **PEIS/R Process:**

- 26 **1. Document Preparation:** The PEIS/R will be used to satisfy both NEPA and CEQA;
27 the flow of documents and public review will follow both frameworks. MWH/EDAW
28 will prepare the document on behalf of Reclamation and DWR, but the agencies will
29 exercise independent judgment in approving and guiding the document (40 CFR
30 1506.5(c), Guidelines 15082(a)). As Reclamation’s consultant, MWH/EDAW will
31 execute a conflict of interest statement disclaiming any financial interest in the
32 program evaluated in the document (40 CFR 1506.5(c)).
- 33 **2. Notice of Intent (NOI)/Notice of Preparation (NOP):** Both NEPA and CEQA
34 provide for public notice of preparation of the PEIS/R). Reclamation notified the EPA
35 that the PEIS/R is under preparation. EPA has published an NOI in the *Federal*
36 *Register*, Vol. 72, No 148 (August 2, 2007), and DWR published an NOP on August
37 24, 2007. The *Federal Register* is available online at
38 <http://www.gpoaccess.gov/fr/index.html>. Agencies and the public were given 45 days
39 to provide comments.

40 Under CEQA, DWR has filed the NOP with the Governor’s Office of Planning and
41 Research (OPR) on August 24, 2007. Responsible and trustee agencies, as well as the

1 general public and stakeholders, have 30 days to comment on the NOP (Public
2 Resource Code §§ 21080.4, 21098.4, 21104.2, Guidelines 15082(a)).

3 **3. Conduct Scoping:** NEPA process mandates a formal scoping effort (40 CFR
4 1508.25). The scoping effort uses the information solicited from the public and from
5 other Federal agencies during NOI circulation, and also provides another vehicle for
6 public and agency input. The scoping process contains the following elements:

7 3.1 Invite affected Federal, state, and local agencies, as well as Native American
8 Tribes and the general public and stakeholders, to participate in the EIS process;

9 3.2 Identify potentially significant effects to be analyzed in detail in the EIS;

10 3.3 Allocate assignments among the lead agency and cooperating agencies regarding
11 preparation of the EIS, including impact analysis and identification of mitigation
12 measures;

13 3.4 Identify other permitting and environmental review requirements;

14 3.5 Formulate a decision making and review schedule; and

15 3.6 Receive input on alternatives that should be analyzed during the NEPA process.

16 The *Federal Register* NOI specifies the location and time of scoping meetings that
17 Reclamation will conduct. Reclamation will conduct four scoping meetings.

18 CEQA requires a public meeting for scoping projects of statewide, regional, or area-
19 wide significance as defined in the Guidelines § 15206. In conjunction with
20 Reclamation, DWR will conduct the four scoping meetings to satisfy the Guidelines
21 per § 15082(c)(1) and 15206.

22 **4. Prepare Draft PEIS/R:** Reclamation, DWR, USFWS, NMFS, DFG, and the
23 ECPWG, with technical support from MWH/EDAW, will prepare the document.
24 Reclamation and DWR will exercise independent judgment in approving and guiding
25 the document (40 CFR 1506.5(c), Guidelines 15082(a)). The draft document will
26 incorporate the information and comments gathered during the noticing and scoping
27 process to consider:

28 4.1 The extent of the action,

29 4.2 A range of alternatives including a no-action alternative, and

30 4.3 Potentially significant impacts and any associated mitigation measures.

31 Reclamation must file the draft EIS with the EPA, Office of Federal Activities
32 (OFA). OFA publishes a notice in the *Federal Register* the week after the document
33 is received, opening the public review period for accepting public comments (40 CFR
34 1506.9).

NEPA/CEQA Compliance

1 For projects of local or regional concern, Reclamation may use the state noticing
2 procedures under CEQA (40 CFR 1506.6(b)(3)(iii)). For a project with the stature of
3 the SJRRP, Reclamation will employ a 60-day review period for the PEIS/R.

4 Reclamation and DWR will request comments from responsible agencies, trustee
5 agencies, and other parties specified in the Guidelines § 15086, and provide public
6 notice of the draft per § 15087. The circulation period starts with the public notice of
7 availability. CEQA requires public circulation of the draft for 45-60 days (Guidelines
8 § 15105).

9 Public meetings are also a useful tool for gathering comments on projects that are
10 controversial or of public concern. CEQA does not require public meetings but
11 encourages them at the draft document stage (Guidelines § 15087(i)). Reclamation
12 will hold four public meetings to present findings and receive input on the Draft
13 PEIS/R, similar to the four scoping meetings.

14 **5. Preparation of the Final PEIS/R:** MWH/EDAW will prepare the final document,
15 incorporating and responding to significant public comments, as well as comments
16 from cooperating, responsible, and trustee agencies. While neither CEQA nor NEPA
17 mandate public hearings, public hearings are a useful tool for resolving concerns and
18 comments for projects with substantial controversy or public interest at the final
19 document stage (40 CFR 1506.6(c), Guidelines § 15202). It is expected that four
20 public meetings will be held to present the Final PEIS/R response to comments.

21 **6. Circulation and Adoption/Certification of the Final PEIS/R:** NEPA requires
22 circulation of the final PEIS/R for a minimum of 30 days among other Federal
23 agencies and the public before a final decision is made on the document (40 CFR
24 1502.19). After circulation of the final PEIS/R, Reclamation shall file the document
25 with the EPA OFA who will file a notice in the *Federal Register*, starting a second 30
26 day review clock. Upon adopting the PEIS/R, Reclamation shall prepare a ROD that
27 satisfies the criteria provided in 40 CFR 1505.2.

28 CEQA by contrast provides for a one-time circulation, with no duty to make the final
29 EIR available for review. Under CEQA however, the PEIS/R must provide written
30 response to public agency comments at least 10 days prior to certifying the document
31 (Guidelines § 15088(b)). DWR will certify the PEIS/R after their decision-making
32 body reviews the document per Guidelines § 15090(a)(2), and will prepare a NOD
33 per § 15094.

34 **Submittal Package:**

35 The PEIS/R must include the following components:

- 36 ▶ A Cover Sheet (40 CFR 1502.10(a))
- 37 ▶ Table of Contents (Guidelines § 15122)

NEPA/CEQA Compliance

- 1 ▶ Summary of the Proposed Actions and Their Consequences (Guidelines § 15123, 40
2 CFR 1502.10 (b))
- 3 ▶ Statement of Purpose and Need (40 CFR 1502.10(d))
- 4 ▶ Project Description (Guidelines § 15124)
- 5 ▶ Affected Environment/Environmental Setting (40 CFR 1502.10(f), Guidelines §
6 15125)
- 7 ▶ Analysis of Alternatives ((40 CFR 1502.10(e))
- 8 ▶ Evaluation of Environmental Consequences/Impacts (40 CFR 1502.10(g), Guidelines
9 § 15126)
- 10 ▶ Significant Environmental Effects (Guidelines §15126.2)
- 11 ▶ Effects Found Not to be Significant (Guidelines § 15128)
- 12 ▶ Mitigation Measures (Guidelines § 15126.4)
- 13 ▶ Analysis of Cumulative Impacts (Guidelines § 15130)
- 14 ▶ Alternatives to the Proposed Action (Guidelines § 15126.6)
- 15 ▶ Inconsistencies with Applicable Plans (Guidelines § 15125(d))
- 16 ▶ A Discussion of Growth Inducing Impacts (Guidelines § 15126.2(d))
- 17 ▶ A List of Preparers (40 CFR 1502.10(h))
- 18 ▶ A List of Agencies, Organizations, and Persons Receiving the PEIS/R and
19 Organizations and Persons Consulted (40 CFR 1502.10(i), Guidelines § 15129)

20 **Critical Issues:**

- 21 ▶ Meeting schedules identified in the Settlement for a complex project with numerous
22 agencies and stakeholders;
- 23 ▶ Formulating and screening alternatives;
- 24 ▶ Developing the PEIS/R with a mix of program-level and project-specific actions;
- 25 ▶ Identifying and implementing acceptable Water Management strategies;
- 26 ▶ Identifying appropriate project-specific and program-level mitigation;
- 27 ▶ Evaluating cumulative and growth-inducing impacts; and

NEPA/CEQA Compliance

- 1 ▶ Modeling the effects of sustained flows down the San Joaquin River on fish, the
2 riparian ecosystem, and adjacent landowners, as well as effects to the Delta.

3 **Specific Strategies for NEPA/CEQA Compliance:**

- 4 ▶ Prepare a Purpose and Need statement as soon as practicable and with consideration
5 towards alternatives for meeting the purpose and alternatives screening criteria;
- 6 ▶ Identify the range of reasonable alternatives as soon as practicable after public
7 scoping;
- 8 ▶ Prepare a thorough project and alternatives description, yet with some flexibility to
9 account for potential changes;
- 10 ▶ Prepare the Water Resources section of the PEIS/R first to inform other PEIS/R
11 preparers of the water-related changes that drive many other resource effects;
- 12 ▶ Anticipate any significant and unavoidable impacts early, to scope all feasible
13 mitigation;
- 14 ▶ Establish proper framework for developing the PEIS/R (regularly scheduled
15 meetings, appropriate reviewers (include NEPA and CEQA experts, and possibly
16 attorneys); and adequate review times to discuss critical issues;
- 17 ▶ Ensure a proper discussion of climate change and its potential effects on the SJRRP,
18 and the SJRRP's potential effects on climate change; and
- 19 ▶ Develop actions sufficiently to carry forward into the PEIS/R.

20

21

1 **3 Federal Agency Environmental**
2 **Compliance**

3 **3.1 Clean Water Act Section 404**

4 **Agency:** U.S. Army Corps of Engineers (USACE)

5 **Permit:** Section 404 Nationwide and Individual Permits

6 **Resource:** Waters of the United States

7 **Processing**

8 **Time:** 18 months for individual permits; 9 months for Nationwide permits

9 **Contact:** U.S. Army Corps of Engineers

10 Regulatory Branch
11 1325 J Street, Room 1480
12 Sacramento, CA 95814
13 (916) 557-5250
14 Attn: Ms. Kathy Norton

15 **Application to Proposed Action:**

16 The proposed action has the potential to result in fill and/or dredge of jurisdictional
17 waters of the United States, including wetlands, especially within the San Joaquin River
18 during any in-river construction activities.

19 As a result, this project will require authorization from USACE pursuant to Section 404
20 of the Clean Water Act (CWA). While a combination of nationwide permits (NWP) can
21 be used to minimize impacts to waters of the United States, it is highly probable that
22 some of the proposed actions will require individual permits. If the project is staged, it
23 could be possible that some earlier stage could be authorized under a combination of two
24 or more NWP) if less than 0.5 acre of waters of the United States would be filled. If the
25 terms and conditions for the particular nationwide permits (e.g., acreage limits) cannot be
26 met Reclamation will need to obtain an individual permit.

27 **Permit Purpose and Requirements:**

28 CWA Section 404 establishes a program to regulate the discharge of dredged or fill
29 material into waters of the United States, including wetlands (see Figure 1). Waters of the
30 United States include surface waters such as navigable waters and their tributaries, all
31 interstate waters and their tributaries, natural lakes, all wetlands adjacent to other waters,
32 and all impoundments of these waters.

33 Activities that require a permit under Section 404 include, but are not limited to, placing
34 fill or riprap, grading, mechanized land clearing, and dredging in waters of the United
35 States. Any activity that results in the deposit of dredged or fill material within the

Federal Agency Environmental Compliance

1 ordinary high-water mark of waters of the United States usually requires a permit, even if
2 the area is dry when the activity takes place (see Figure 3).

3 The USACE Regulatory Branch issues several types of Section 404 permits. Those most
4 applicable to the proposed action are NWPs and individual permits. Projects with only
5 minimal adverse effects (i.e., fills of less than 0.5 acre of nontidal waters of the United
6 States) can typically be authorized under USACE's NWP program to expedite the
7 environmental compliance process, provided the project satisfies the terms and conditions
8 of the particular NWP (see Figure 2). Project activities and the fills that do not qualify for
9 any NWP may require an individual permit.

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

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

23 **Permit Acquisition Procedure:**

24 1. A preliminary wetland delineation of all waters of the United States, including
25 wetlands, must be conducted to identify areas of USACE jurisdiction on the proposed
26 action project site. The delineation must provide USACE with the exact location and
27 boundary of all jurisdictional waters of the United States, including wetlands, which
28 could be affected by the project. This delineation is required as the first step to
29 acquisition of a permit under Section 404. The wetland delineation can be submitted
30 independent of, and prior to, submittal of the permit application.

31 a. Reclamation's or its consultant's wetland specialists will review existing wetland
32 data, which include the USFWS National Wetland Inventory maps; U.S.
33 Department of Agriculture, Natural Resources Conservation Service soil survey
34 information; U.S. Geological Survey 7.5-minute series topographic quadrangles;
35 and existing topographic maps and aerial photographs of the project site. This
36 literature search must be completed before the wetland delineation is conducted.

37 b. The wetland specialists will evaluate the proposed action project site to determine
38 potential effects to jurisdictional wetlands or other waters of the United States.
39 The wetland delineation will be conducted in accordance with the 1987 Corps of
40 Engineers Wetland Delineation Manual. The 1987 manual describes the three-
41 parameter approach to determining the location and boundaries of jurisdictional

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- 1 wetlands. This approach requires that an area support positive indicators of
2 hydrophytic vegetation, hydric soils, and wetland hydrology to be considered a
3 jurisdictional wetland. Several data points will be collected to establish the
4 jurisdictional edge of any wetland or other water of the United States. The
5 wetland specialists will complete wetland determination forms for each data
6 point. The delineation will include all areas that would be affected or potentially
7 affected by the proposed action.
- 8 c. Reclamation will prepare a wetland map showing the extent and location of all
9 jurisdictional waters of the United States, including wetlands, within the project
10 site. This map will be prepared in accordance with USACE requirements. The
11 preferred base map for this effort is a recent aerial photograph (scale of 1 inch to
12 100 or 200 feet).
- 13 d. Reclamation will prepare a preliminary wetland delineation report that
14 summarizes methodology, existing conditions, and findings. Final copies of all
15 wetland data sheets will be included as attachments to the report. The preliminary
16 wetland delineation will be submitted to the USACE before the Section 404
17 application is submitted.
- 18 e. Reclamation's wetland specialist will coordinate and attend a field verification
19 meeting with USACE, as needed. At this meeting, USACE will verify whether
20 the waters of the United States, including wetlands, present within the project site
21 are jurisdictional.
- 22 2. Although not required, a pre-application meeting with USACE (and other Federal and
23 State agencies, as appropriate) can be useful to provide project information to
24 attending agencies and to allow the agencies to give their recommendations and
25 suggestions so that the permit process may be expedited. Different agencies have
26 requirements that seem to conflict. The pre-application meeting provides an
27 opportunity to avoid potential conflict. This process is highly recommended.
28 Information that is generally requested by USACE about 10 days prior to this meeting
29 includes the following:
- 30 ▶ project description,
- 31 ▶ a list of local and regional agencies with authority over land use at the project
32 location, and
- 33 ▶ preliminary wetland delineation.
- 34 ▶ Reclamation's wetland specialist will attend one pre-application agency
35 coordination meeting, if necessary, to discuss project characteristics, permit
36 requirements, and permitting schedules. Additional telephone coordination with
37 USACE will be conducted to ensure that the permit application materials are
38 complete, technically accurate, and meet USACE needs.

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- 1 3. Reclamation will prepare an application for authorization under one or more NWP's or
2 an Individual permit and submit it to the USACE Sacramento District. The project
3 could possibly fall within one or more USACE NWP's, such as NWP 7 (outfall
4 structures and maintenance), NWP 12 (utility line activities), NWP 18 (minor
5 discharges), NWP 33 (temporary construction, access, and dewatering), and/or others.
6 Nationwide permits have thresholds that are aimed at having no more than a minimal
7 effect on the environment. These thresholds may include an acreage limitation (i.e.,
8 NWP's 12 and 18) or authorize only certain activities (i.e., NWP's 7 and 33). It is
9 highly likely that the project does not qualify for authorization under the NWP
10 program, and an individual permit from USACE will be required.
- 11 4. When applying for an individual permit, an applicant must show that the project is in
12 compliance with the EPA Section 404(b)(1) Guidelines. These include:
 - 13 ▶ avoiding wetland impacts where practicable,
 - 14 ▶ minimizing potential impacts to wetlands,
 - 15 ▶ providing compensation for any remaining unavoidable impacts through activities
16 to restore or create wetlands, and
 - 17 ▶ mandating that USACE can only issue a permit for the least environmentally
18 damaging practicable alternative (LEDPA).
- 19 5. While a Section 401 Water Quality Certification from Central Valley RWQCB is
20 required for the USACE to grant authorization to use NWP's or to issue an Individual
21 Permit, the 401 certification can be applied for concurrently and submitted to the
22 USACE upon receipt/approval (see Section 4.1, "Clean Water Act Section 401").
- 23 6. Because threatened or endangered species could be affected by the proposed activity,
24 Reclamation will prepare Biological Assessments, which will be submitted to
25 USACE with the Section 404 application. However, because Reclamation is the
26 Federal lead agency, Reclamation will initiate the Section 7 process rather than
27 USACE (see Section 3.3, "Federal Endangered Species Act").
- 28 7. USACE will need to conduct NEPA review of its permitting action. The appropriate
29 NEPA document for the project (i.e., the PEIS/R and or subsequent NEPA document)
30 will be submitted to USACE as an attachment to the 404 application package to
31 facilitate USACE's NEPA compliance.
- 32 8. USACE must also comply with NHPA's Section 106. Reclamation's archaeologists
33 will evaluate the potential for significant historical and archaeological resources to be
34 present in the Area of Potential Effect (APE) and for the project to adversely affect
35 such resources. The results of this evaluation will be documented in a format
36 appropriate for Section 106 consultation and will be provided to Reclamation and
37 USACE as part of the Section 404 application package (see Section 3.5, "National
38 Historic Preservation Act Section 106").

Federal Agency Environmental Compliance

1 9. If USACE determines that an individual permit is required under Section 404,
2 USACE must document, in compliance with the requirements of EPA’s Section
3 404(b)(1) Guidelines, that the permit is being issued in the absence of practicable
4 alternatives to the proposed discharge that would have less adverse impacts on the
5 aquatic ecosystem. According to the Guidelines, the practicability of an alternative is
6 a function of cost and technical and logistical factors in light of overall project
7 purposes. The applicant bears the burden of demonstrating that no practicable
8 alternatives exist that will meet the proposed purpose and reduce effects to waters of
9 the U.S., including wetlands. An alternatives analysis report will need to be prepared
10 by the project team to document the analysis of alternatives in conformance with
11 Section 404(b)(1) requirements. This alternatives report and additional alternatives
12 analyses as part of the future feasibility studies and PEIS/R will be submitted to
13 USACE as part of the permit application package to support USACE decision-
14 making.

15 **Submittal Package:**

16 The following information is required for the NWP Section 404 permit:

- 17 ▶ a detailed description of the proposed activity, including the purpose, use, type of
18 structures, composition, and quantity of dredged or fill material, and location of the
19 disposal site;
- 20 ▶ names and addresses of adjoining property owners, others on the opposite side of
21 streams or lakes, or those whose property fronts on a cove and who may have a direct
22 interest because they could be affected by the project;
- 23 ▶ enough detail about the location—street number, tax assessor’s description, political
24 jurisdiction, and name of waterway—to allow the site to be easily located during a
25 field visit;
- 26 ▶ a list of the status of all approvals and certifications required by Federal, State, and
27 local governmental agencies;
- 28 ▶ an explanation of any approvals or certifications denied by other governmental
29 agencies;
- 30 ▶ names and addresses of the applicant and the authorized agent (if any), and dates
31 when the project will begin and end;
- 32 ▶ one set of 8½-inch by 11-inch original drawings or good copies that show the location
33 and character of the proposed activity;
- 34 ▶ three types of additional drawings: a vicinity map, plan view, and elevation and/or
35 cross-section view;
- 36 ▶ information regarding species Federally listed as endangered or threatened at or near
37 the project site (i.e., Biological Assessments);

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- 1 ▶ information regarding cultural resources at or near the project site (i.e., NHPA
2 Section 106 report);
- 3 ▶ any other NHPAs, regional general permits, or individual permits used or intended to
4 be used to authorize any part of the proposed action or any related activity; and
- 5 ▶ any other requirements specified for the particular NHPAs (e.g., wetland delineation).

6 **Critical Issues:**

- 7 ▶ Define boundaries of project and extent and quantity of placement of fill and/or
8 dredged material in waters of the United States.
- 9 ▶ Determine whether project impacts would be permanent or temporary.
- 10 ▶ Determine to what extent NHPAs can be used, and whether an individual permit is
11 required. If an individual permit is required, USACE may prefer that the NEPA ROD
12 has been issued by Reclamation.
- 13 ▶ Determine the extent of mitigation necessary.
- 14 ▶ Complete requirements of the FWCA, ESA Section 7, CWA Section 401, Fish and
15 Game Code Section 1602, and NHPA Section 106.

16 **Permit Fees:**

- 17 ▶ If an individual permit is issued, the fee is normally \$100, but is waived for
18 government agencies. There is no filing fee if NHPAs can be used exclusively.

19 **Specific Strategies for Permit Acquisition:**

- 20 ▶ Focus early on the NEPA/CEQA documents' PEIS/R "Purpose and Need" and Clean
21 Water Act (CWA) Section 404(b)(1) Alternatives Analysis as appropriate to:
 - 22 • facilitate compliance with Section 404 at later stages,
 - 23 • fulfill NEPA and CEQA requirements,
 - 24 • provide a strong nexus between the project purpose and alternatives to meet the
25 project purpose, and
 - 26 • develop a strong suite of alternatives including proposed actions.
- 27 ▶ Since individual permits will likely be required for certain SJRRP actions,
28 alternatives analyses will be prepared that meet Clean Water Act Section 404(b)(1)
29 requirements.

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- 1 ▶ Submit a wetland delineation to USACE as soon as practicable for site-specific
2 actions (i.e., a project footprint can be defined) to expedite the Section 404/10 process
3 and related Federal actions by:
 - 4 • triggering early USACE involvement,
 - 5 • establishing USACE limits of jurisdiction,
 - 6 • minimizing the substantial costs that would be necessary to delineate wetlands for
7 a large number of alternatives early in the alternatives evaluation stage, and
 - 8 • providing information for a productive pre-application meeting.
- 9 ▶ Submit the Section 404 permit package to USACE as soon as the proposed action's
10 footprint is determined and the wetland delineations are completed, to initiate
11 USACE's review.
- 12 ▶ Use a staged approach to alternatives analysis and incorporate subsequent NEPA and
13 CEQA documents to the PEIS/R as final stages in compliance with Section 404(b)(1)
14 requirements (Note: compliance with Sections 404/10 is not expected to be necessary
15 for implementation of the Interim Flows but will be necessary for other SJRRP
16 actions; technical analyses should be included in the NEPA/CEQA documents
17 covering those actions to expedite Section 404/10 permitting.)

Federal Agency Environmental Compliance

1 **3.2 Rivers and Harbors Act Section 10**

2 **Agency:** U.S. Army Corps of Engineers (USACE)
3 **Permit:** Permit under Section 10 of the Rivers and Harbors Act
4 **Resource:** Navigable waters of the United States
5 **Processing**
6 **Time:** 18 months
7 **Contact:** U.S. Army Corps of Engineers
8 Regulatory Branch
9 1325 J Street, Room 1480
10 Sacramento, CA 95814
11 (916) 557-5250
12 Attn: Ms. Kathy Norton

13 **Application to Proposed Action:**

14 The proposed action will likely result in construction in, over, or under; excavation of
15 material from; or deposition of material into ‘navigable waters’ regulated by USACE.
16 The San Joaquin River in particular will be affected by the proposed action.

17 As a result, Reclamation will require authorization from USACE pursuant to Section 10
18 of the Rivers and Harbors Act for the construction of certain elements of the proposed
19 action. This authorization can be concurrently requested as part of the application
20 package submitted to USACE for Section 404, which is the recommended approach.

21 **Permit Purpose and Requirements:**

22 Section 10 of Rivers and Harbors Act (RHA) (33 U.S.C. 401 et seq.) requires
23 authorization from USACE for the construction of any structure over, in, and under
24 navigable waters of the United States. In addition, authorization is required for
25 excavation/dredging or deposition of material or any obstruction or alteration in a
26 navigable water. Navigable waters are those subject to the ebb and flow of the tide and
27 those that are presently used, have been used in the past, or may be susceptible to use to
28 transport interstate or foreign commerce (55 CFR 329.4) (see Figure 3). They include
29 coastal and inland waters, lakes, rivers and streams that are navigable, and the territorial
30 seas. Structures or work outside the limits defined for navigable waters would require a
31 Section 10 permit if the structure or work affects the course, location, condition, or
32 capacity of the water body.

33 **Permit Acquisition Procedure:**

34 Portions of navigable waters fall under the jurisdiction of both RHA Section 10 and
35 CWA Section 404, and USACE combines the permit process for both acts. As a result,
36 the request for a permit under Section 10 of the RHA can typically be included in the
37 Section 404 application package.

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1 **Submittal Package:**

2 See Section 3.1 (Clean Water Act Section 404) for detailed explanation of submittal
3 package.

4 **Critical Issues:**

5 See Section 3.1 (Clean Water Act Section 404) for detailed explanation of submittal
6 package.

7 **Permit Fees:**

8 None

9 **Specific Strategies for Permit Acquisition:**

10 See Section 3.1 (Clean Water Act Section 404) for detailed explanation of specific
11 strategies for permit acquisition.

Federal Agency Environmental Compliance

1 3.3 Federal Endangered Species Act

2 **Agencies:** U.S. Fish and Wildlife Service (USFWS)
3 National Marine Fisheries Service (NMFS)

4 **Permit:** Biological opinion with permit conditions (including authorization for
5 incidental take of Federally listed endangered or threatened species for
6 Reclamation's own protection)

7 **Resource:** Federally listed endangered or threatened plant or animal species

8 **Processing**

9 **Time:** 135 days after Reclamation provides sufficient biological information to
10 either NMFS or USFWS

11 **Contact:** U.S. Fish and Wildlife Service
12 Endangered Species Division
13 2800 Cottage Way, Room W-2605
14 Sacramento, CA 95825
15 (916) 414-6600
16 Attn: Ms. Susan Jones, Fish and Wildlife Branch Chief

17
18 National Marine Fisheries Service
19 650 Capitol Mall, Suite 8-300
20 Sacramento, CA 95814
21 (916) 930-3600 or 930-3601
22 Attn: Mr. Rodney R. McInnis, Acting Regional Administrator

23 **Application to Proposed Action:**

24 Several Federally listed threatened or endangered species potentially occur in the project
25 area and particularly near the San Joaquin River and in adjacent waterways such as
26 blunt-nosed leopard lizard, giant garter snake, least Bell's vireo, Fresno kangaroo rat, San
27 Joaquin kit fox, and valley elderberry longhorn beetle. Implementation of the proposed
28 action may result in adverse affects to these species or their habitat. A species list must be
29 developed that shows special-status species of interest for the proposed action.

30 Because the proposed action requires Federal permits and approvals and project
31 implementation could adversely affect Federally listed species, Section 7 consultation
32 with USFWS and NMFS would be required. Reclamation will prepare Biological
33 Assessments to obtain a Biological Opinion (with incidental take statements, as
34 necessary) from USFWS and NMFS for the proposed action.

35 **Permit Purpose and Requirements:**

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

- 39 ▶ a process to list species in danger of becoming extinct (Section 4);

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- 1 ▶ a prohibition on “take” of threatened and endangered species (Section 9); and
- 2 ▶ processes for exemption from Section 9 take prohibitions when take is incidental to,
- 3 and not the purpose of, otherwise lawful activities (Section 7 and Section 10).

4 ESA is administered by USFWS and NMFS. USFWS is responsible for protection of
5 birds, terrestrial, and resident (non-anadromous) freshwater species. NMFS is responsible
6 for protection of anadromous fish.

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

12 Section 7 of ESA outlines procedures for Federal interagency cooperation to conserve
13 Federally listed species and designated critical habitat. ESA mandates that all Federal
14 agencies participate in the conservation and recovery of listed threatened and endangered
15 species and that each agency ensure that any action they authorize, fund, or carry out
16 does not jeopardize the continued existence of a listed species or its critical habitat.
17 Critical habitat identifies specific areas that have the physical and biological features that
18 are essential to the conservation of a listed species, and that may require special
19 management considerations for protection.

20 Section 7 provides a mechanism for “incidental take,” provided the “taking” will not
21 jeopardize the continued existence of any listed species, or destroy or adversely modify
22 critical habitat.

23 For example, if the issuance of a CWA Section 404 permit by USACE could affect any
24 listed species, USACE must consult with USFWS and/or NMFS on the effects of the
25 issuance of that permit.

26 Upon request, USFWS and NMFS will provide a list of species that are listed, proposed
27 for listing, or candidates for listing under the Federal ESA and have a potential to occur
28 in a given area. Federal Biological Assessments will be developed pursuant to Section 7
29 of the ESA to evaluate the effects of the project on listed and proposed threatened and
30 endangered species. The Biological Assessments would be submitted to Reclamation as
31 the Federal lead agency, and to USFWS, NMFS, and DFG. Reclamation would then
32 make a “no effect” or “may affect” determination if the project would affect a listed
33 threatened or endangered species. Based on this determination Reclamation will initiate
34 Section 7 consultation through the request to USFWS and NMFS of a not likely to
35 adversely affect concurrence and/or issuance of a biological opinion. If a “may affect”
36 determination is made by USFWS and/or NMFS, the agency would then prepare a
37 biological opinion stating whether the project would jeopardize the continued existence
38 of the species. If the Federal lead agency does not concur with the findings in the
39 biological opinion, it may request further discussion to resolve the issue. The Biological
40 Opinion may authorize a certain level of incidental take contingent upon the

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1 implementation of specified terms and conditions to minimize such take and mitigate for
2 its effects.

3 The proposed action could affect Federally listed fish and wildlife species. The steps
4 required in the permit acquisition procedure are described below.

5 **Permit Acquisition Procedure:**

6 The following describes the procedure for preparing a Biological Assessment to obtain
7 Biological Opinions from USFWS and NMFS.

- 8 1. Once the project area has been clearly defined, Reclamation biologists will conduct a
9 field visit of the entire project site to verify the potential for the proposed action to
10 result in take of Federal and/or State listed terrestrial and aquatic species. Information
11 regarding the status of listed species in the project vicinity will be compiled and
12 reviewed as part of this effort.
- 13 2. Because the project would require Federal authorizations and permits, Section 7
14 consultation with USFWS and NMFS may be required. USFWS and NMFS will be
15 consulted regarding potential effects to terrestrial and aquatic (including anadromous)
16 species that are Federally listed or proposed for listing as threatened or endangered
17 and species that are considered candidates for listing. Separate meetings should be
18 conducted with these agencies regarding terrestrial and anadromous species. This
19 initial consultation will include discussion of the anticipated approach for the overall
20 process and will provide the opportunity for agency feedback regarding preliminary
21 study methodologies and conclusions. Reclamation should identify and establish
22 working relationships with USFWS, NMFS, and DFG staff.
- 23 3. Early consultation with USFWS and NMFS is an optional process that occurs before
24 a prospective applicant files for a Federal permit or license. This process is intended
25 to reduce potential conflicts between proposed actions (projects) and listed species or
26 critical habitat. Initiation of early consultation with USFWS and NMFS occurs when
27 the project applicant provides the following in writing to the “action” agency
28 responsible for carrying out the project:
 - 29 ▶ a definite proposal that outlines the action and its anticipated effects, and
 - 30 ▶ a statement showing that the project applicant intends to implement the proposal
31 if it is authorized.
- 32 4. Biological Assessments will be prepared for terrestrial and aquatic species in
33 accordance with USFWS and NMFS guidelines. The Biological Assessments will
34 include a summary of consultation to date, a description of the proposed action, an
35 account of each species addressed, an assessment of project effects, a description of
36 measures to minimize and compensate for potential effects, and an effect
37 determination for each species.

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1 Biological Assessments should be completed for formal and informal consultation
2 with USFWS and NMFS pursuant to the ESA, DFG pursuant to CESA and NCCPA,
3 and as information for consultations under the Fish and Wildlife Coordination Act
4 and the Magnuson-Stevens Fisheries Conservation and Management Act. Informal
5 consultation would identify covered species and endangered, threatened, and
6 proposed or candidate species that may occur in the project vicinity or action area,
7 and would assist in developing the appropriate approach for assessing species listed
8 and proposed for listing as part of the Section 7 consultations required by ESA.
9 Informal consultation also would assist in determining to what extent the proposed
10 action may affect any of the identified species.

- 11 5. After submittal of the Biological Assessments, formal Section 7 consultation will be
12 requested by Reclamation. The effort required to complete the consultation period can
13 vary greatly, depending on a number of factors, such as the extent of potential effects,
14 proposed mitigation, agency staff assigned to the project, and ongoing working
15 relationships.

16 USFWS and NMFS will review the Biological Assessments for compliance with
17 ESA, under Section 7. NMFS will also utilize the Biological Assessments for
18 compliance with the Magnuson-Stevens Fishery Conservation Act. Formal
19 consultation by USFWS and NMFS will be complete when Biological Opinions have
20 been prepared on the species that the action is likely to adversely affect. As part of
21 these Biological Opinions, USFWS and NMFS may authorize incidental take of
22 endangered and threatened species, which will likely be the case for the proposed
23 action.

24 A Biological Assessment for the SJRRP should include:

- 25 ▶ best available scientific and commercial data in developing the Biological
26 Assessment;
- 27 ▶ A detailed description of the proposed action or group of actions to be considered,
28 including site-specific and operational information;
- 29 ▶ A description of the specific area that may be affected by the action either
30 directly or indirectly;
- 31 ▶ A list and description of any listed species, species proposed for listing, or critical
32 habitat that may be affected by the action;
- 33 ▶ A description of the direct, indirect, and cumulative impacts on any listed species,
34 species proposed for listing, or critical habitat occurring in the action area
35 (including Essential Fish Habitat) likely to result from the proposed action or
36 group of actions, as well as actions related to and dependent on the proposed
37 action;

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- 1 ▶ A description of any measures to be incorporated into the proposed action that
2 the implementing entity will undertake to avoid, minimize, and compensate for
3 effects to listed species, species proposed for listing, or critical habitat;
- 4 ▶ A description of any conservation measures that may be included as part of the
5 proposed action to benefit or promote the recovery of a listed species;
- 6 ▶ A discussion of alternative actions the implementing entity considered that would
7 not result in take, and the reasons why such alternatives are not being utilized;
- 8 ▶ Additional measures that USFWS, NMFS, and DFG may require as necessary or
9 appropriate for compliance with ESA and CESA; and
- 10 ▶ A discussion of whether the proposed action might adversely affect Essential Fish
11 Habitat, including all habitats necessary to allow commercially valuable aquatic
12 species production needed to support a long-term sustainable fishery and
13 contributions to a healthy ecosystem (e.g., Chinook salmon in the lower San
14 Joaquin River).

15 **Critical Issues:**

- 16 ▶ Keep ESA-related documents and agency reviews on schedule.
- 17 ▶ Provide detailed biological information, impact analysis, and mitigation sufficient for
18 resource agency review and concurrence.
- 19 ▶ Achieve concurrence on mitigation measures that lead to acceptable Biological
20 Opinions.

21 **Permit Fees:**

- 22 ▶ None.

23 **Specific Strategies for Permit Acquisition:**

- 24 ▶ Conduct feasibility-level fieldwork, including wetland delineations, as soon as
25 practical after general project footprints can be established (note: evaluate trade-offs
26 between substantial costs in collecting field data on numerous alternatives early
27 versus waiting for some alternatives to be screened out prior to initiating fieldwork).
- 28 ▶ Develop a consistent internal strategy for obtaining Federal ESA and CESA
29 approvals, including a consistent approach to developing measures that avoid,
30 minimize, and compensate for effects on listed species (both fish and terrestrial
31 species) and critical habitat.
- 32 ▶ Use programmatic Biological Opinions where feasible to streamline ESA compliance.

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- 1 ▶ Establish/leverage working relationships with USFWS, NMFS, and DFG to:
 - 2 • identify issues early and help prevent future “surprises,” and
 - 3 • engage NMFS, USFWS, and DFG in constructive problem-solving in strategic
 - 4 meetings involving all three agencies such that biological efforts are streamlined
 - 5 and consistent.
- 6 ▶ Identify Reclamation as the lead Federal agency for Section 7 and initiate dialog as
- 7 soon as practicable to facilitate early agreement on field and analysis methodologies,
- 8 in particular.
- 9 ▶ Develop and negotiate agreements of terms for avoiding, minimizing, and
- 10 compensating for effects on listed species as part of agency review of the
- 11 administrative draft PEIS/R, such that these terms can be included and circulated in
- 12 the public draft PEIS/R.
- 13 ▶ Develop individual Biological Assessments for USFWS and NMFS that provide all
- 14 of the information necessary for Reclamation to seek formal Section 7 consultation
- 15 with USFWS and NMFS, and for USFWS and NMFS to develop programmatic
- 16 Biological Opinions for the SJRRP’s ESA compliance.

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1 **3.4 Federal Endangered Species Act, Experimental** 2 **Population Designation - ESA Section 10(j)**

3 **Agency:** National Marine Fisheries Service (NMFS)

4 **Designation:** Experimental populations of Central Valley spring-run Chinook salmon,
5 pursuant to Section 10(j) of the Endangered Species Act (ESA)

6 **Resource:** Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*)

7 **Processing**

8 **Time:** 3-4 years (develop regulations, rulemaking, and NEPA compliance)

9 **Contact:** National Marine Fisheries Service

10 650 Capitol Mall, Suite 8-300

11 Sacramento, CA 95814-4708

12 (916) 930-3600

13 Attn: Mr. Russ Strach, Assistant Regional Administrator

14 **Application to Proposed Action:**

15 Paragraph 14 of the San Joaquin River Litigation Settlement (Settlement) indicates that
16 the Restoration Goal of the Settlement shall include the reintroduction of spring-run and
17 fall-run Chinook salmon to the San Joaquin River between Friant Dam and the
18 confluence of the Merced River. Because spring-run Chinook salmon are listed as
19 federally threatened, it is subject to ESA requirements. The USFWS is required to submit
20 a Section 10 permit application for reintroduction to NMFS no later than September 30,
21 2010, and NMFS is required to issue its decision on the permit no later than April 30,
22 2012. Reintroduction is to occur no later than December 31, 2012.

23
24 In addition, the draft legislation (H.R. 24, January 4, 2007) indicates that spring-run
25 Chinook salmon are to be reintroduced into the San Joaquin River pursuant to Section
26 10(j) of the Endangered Species Act, provided that the Secretary of Commerce “finds that
27 a permit for the reintroduction of California Central Valley spring Run Chinook salmon
28 may be issued pursuant to section 10(a)1(A) of the Endangered Species Act.”

29 Furthermore, legislation indicates that the Secretary of Commerce is to issue a final rule
30 pursuant to Section 4(d) of the ESA governing incidental take.

31 **Purpose and Requirements of Section 10(j):**

32 Section 10 of the ESA permits the establishment and maintenance of experimental
33 populations. The Secretary may authorize the release (and the related transportation) of
34 any population (including eggs, propagates, or individuals) of an endangered species or a
35 threatened species outside the current range of such species if the Secretary determines
36 that such release will further the conservation of such species. Before authorizing the
37 release of any experimental population, the Secretary must identify the population and
38 determine, on the basis of the best available information, whether or not such population
39 is essential to the continued existence of an endangered species or a threatened species.

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1 **Procedure:**

2 While the USFWS has promulgated Section 10(j) regulations and designated
3 experimental populations, NMFS has not done so. Reclamation, USFWS, and NMFS are
4 currently evaluating an experimental population designation strategy.

5 **Critical Issues:**

- 6 ▶ Addressing biological and other informational needs (such as genetic impacts on
7 existing populations and changes in abundance and distribution) to address the
8 regulations and rulemaking potentially required for the Section 10(j) process.
- 9 ▶ Developing supporting information to determine whether the Central Valley spring-
10 run Chinook salmon population is considered "essential" or "nonessential" for species
11 survival.
- 12 ▶ Completion of all NEPA-related steps in the process for facilitating a Section 10(j).

13 **Permit Fees:**

- 14 ▶ None.

15 **Specific Strategies for Permit Acquisition:**

- 16 ▶ USFWS to complete permit application including all necessary information related to
17 the introduction of spring-run Chinook salmon to the San Joaquin River by
18 September 30, 2010.
- 19 ▶ Fisheries Management Workgroup to gather necessary information on spring-run
20 Chinook salmon to assist in the completion of the ESA Section 10 permit.
- 21 ▶ NMFS to issue a final decision (or rule as appropriate) on ESA Section 10 permit for
22 reintroduction by April 30, 2012.
- 23 ▶ MWH to develop a workplan with an overall strategy, scope of work, budget, and
24 schedule to complete required NEPA process in parallel with Section 10
25 reintroduction.
- 26 ▶ MWH, to identify the universe of affected landowners and other stakeholders, to open
27 dialogue with them during the NEPA process. Assistance will come from public
28 affairs staff at USFWS and Reclamation.

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1 **3.5 Fish and Wildlife Coordination Act**

2 **Agency:** USFWS, NMFS, and DFG

3 **Permit:** Fish and Wildlife Coordination Act Report, prepared by USFWS and
4 incorporated into the NEPA process

5 **Resource:** Biological resources and surface waters

6 **Processing**

7 **Time:** Typically 12 months. A draft FWCA Report should be completed during
8 Draft NEPA compliance document review and a final FWCA Report to be
9 included in the final NEPA documentation.

10 **Contact:** See Sections 3.3, “Federal Endangered Species Act,” and 4.2, “California
11 Endangered Species Act”

12 **Application to Proposed Action:**

13 The Fish and Wildlife Coordination Act (FWCA) requires Federal agencies to consult
14 with USFWS, NMFS, and DFG before undertaking or approving water projects that
15 would control or modify surface water. Because the Investigation would affect surface
16 waters, Reclamation must conduct consultation pursuant to the Act.

17 **Permit Purpose and Requirements:**

18 Coordination under FWCA is intended to promote conservation of fish and wildlife
19 habitats by preventing their loss or damage and to provide for development and
20 improvement of fish and wildlife habitats in connection with water projects. Federal
21 agencies undertaking water projects are required to fully consider recommendations made
22 by USFWS, NMFS, and DFG in project reports and include measures to reduce impacts
23 on fish and wildlife habitat in project plans.

24 **Compliance Procedure:**

25 FWCA coordination is typically incorporated into the NEPA process but may require the
26 preparation of a separate FWCA report by USFWS based on information contained in the
27 PEIS/R and Biological Assessments.

28 Compliance with FWCA includes assessing the impacts of the proposed action on
29 preservation, conservation, and enhancement of fish and wildlife habitat. Reclamation
30 will be required to include recommendations for preserving, mitigating losses of, and
31 enhancing affected habitats in its documentation of compliance. Documentation of
32 compliance with FWCA is a separate analysis of habitats of concern to USFWS and DFG
33 and does not replace the analysis required by Section 7 of the Federal ESA.

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1 **Submittal Package:**

2 Various information including the project's NEPA/CEQA document and associated
3 biological assessments are provided to USFWS as a basis for USFWS' FWCA Report.

4 **Critical Issues:**

- 5 ▶ Determine whether and to what degree the proposed action would adversely affect
6 fish and wildlife habitat.
- 7 ▶ Determine evaluation methodologies to be used by USFWS, NMFS, and DFG. If
8 methodologies are not able to rely solely on biological assessment and PEIS/R
9 analyses, other time analyses (e.g., HEP) may be required.
- 10 ▶ Ensure timely completion of FWCA Report by USFWS.

11 **Fees:**

- 12 ▶ None.

13 **Specific Strategies for Compliance:**

- 14 ▶ Address USFWS, NMFS, and DFG concerns in the PEIS/R and Biological
15 assessments, to enable USFWS to easily prepare a separate Fish and Wildlife
16 Coordination Act (FWCA) report.
- 17 ▶ Provide USFWS, NMFS, and DFG with a comprehensive list of activities undertaken
18 by Reclamation to avoid, minimize, and compensate for potential impacts to fish and
19 wildlife species.
- 20 ▶ Coordinate early with USFWS to plan and scope FWCA evaluation methodologies.
- 21 ▶ Identify habitats to be analyzed.
- 22 ▶ Identify methods to avoid, minimize, rectify, reduce or eliminate over time, or
23 compensate for the impacts of the proposed action.

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1 **3.6 National Historic Preservation Act, Section 106**

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

4 **Permit:** Section 106 Compliance

5 **Resource:** Historical, archaeological, and cultural resources

6 **Processing**

7 **Time:** 3-6 months if complete, adequate package submitted; 9-12 months if not

8 **Contact:** California Department of Parks and Recreation

9 Office of Historic Preservation

10 P.O. Box 942896

11 Sacramento, CA 94296-0001

12 (916) 653-6624

13 Attn: State Historic Preservation Officer

14 **Application to Proposed Action:**

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

17

18 **Section 106 Compliance Purpose and Requirements:**

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

28

29 **Section 106 Compliance Procedure:**

30 The Section 106 process will consist of the following four basic steps:

31 **1. Identify and Evaluate Cultural Resources.** Reclamation's archaeologists will
32 review all available information that could help determine whether there may be historic
33 properties in the Area of Potential Effects (APE). As part of the process, a cultural
34 resources survey and evaluation will be conducted consistent with Reclamation Cultural
35 Resources Management Policy (LDN P01) and Directives and Standards (LND 02-01),
36 and the Secretary of the Interior's Standards and Guidelines for Archeology and Historic
37 Preservation (48 FR 44716-742). The resultant report must be approved by Reclamation
38 and will be used for Section 106 consultation with SHPO.

39 **2. Assess Effects.** If historic properties are identified within the APE, Reclamation will
40 determine whether the proposed action would have an adverse effect by applying the

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1 criteria of adverse effect detailed at 36 CFR Part 800.5(a)(1). There are three possible
2 findings:

- 3 ▶ *No adverse effect.* If there could be an effect, but that effect would not alter any of
4 the characteristics that qualify the property for inclusion in the NRHP,
5 Reclamation will consult with the SHPO on a finding of no adverse effect. If
6 SHPO concurs with this determination, then Reclamation may proceed with the
7 undertaking. If SHPO does not concur, consultation must continue until a
8 consensus is reached, or Reclamation may forward the documentation to the
9 ACHP for review by the ACHP
- 10 ▶ *Adverse effect.* If an adverse effect upon any historic properties is found,
11 Reclamation must notify the ACHP of this finding. The ACHP may decide to
12 participate in the consultation, or may decline participation. Once an adverse
13 effect is identified, Reclamation, SHPO, and any other consulting parties continue
14 the consultation to develop and evaluate ways to avoid, minimize, or mitigate the
15 adverse effects.

16 Typical steps for completing a cultural resources survey that would meet Section
17 106 requirements are as follows:

- 18 • define the APE,
- 19 • notify any concerned or potentially interested Native American persons or
20 groups,
- 21 • conduct a records search to determine whether the APE has already been
22 surveyed and whether there are any recorded sites in the APE,
- 23 • conduct a site survey of the APE if one has not already been conducted,
- 24 • record any cultural resources identified during the survey during the survey,
- 25 • evaluate all cultural resources identified within the APE to determine whether
26 they are historic properties, and
- 27 • develop recommendations for additional work if further survey or evaluation
28 efforts are needed.

29 **3. Complete Consultation.** During this step, Reclamation, the SHPO, and any other
30 consulting parties either reach consensus on a no historic properties affected finding or
31 finding of no adverse effect. If it has been determined that the undertaking will have an
32 adverse effect on historic properties, the consultation is continued in an effort to find
33 ways to resolve the adverse effects. If the consulting parties agree on the methods to be
34 used to resolve the adverse effects, the consulting parties usually sign a Memorandum of
35 Agreement (MOA) detailing how the adverse effects will be resolved. If the ACHP has
36 not previously been participating as a consulting party, the MOA is forwarded to the
37 ACHP.

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1 **4. Proceed.** If the Section 106 review process has resulted in an MOA accepted by
2 ACHP, Reclamation would proceed with the project according to the terms of the MOA.

3 **Submittal Package:**

4 ▶ Survey report consistent with Section 106 requirements with findings and
5 recommendations (it is likely that multiple reports will be required. Survey report
6 may or may not include resource significance evaluations; if not, a separate
7 evaluation report is prepared. If adverse effects identified, then mitigation reports also
8 required.

9 **Critical Issues:**

- 10 ▶ Identify the APE.
- 11 ▶ Determine whether any historic properties are present within the APE.
- 12 ▶ Determine whether the proposed action may adversely affect any historic properties.
- 13 ▶ Reclamation, as lead Federal agency, must make submittals to SHPO and ACHP.

14 **Fees:**

- 15 ▶ None

16 **Specific Strategies for Compliance:**

- 17 ▶ If possible, determine APE for each alternative to be carried into the PEIS/R and
18 conduct records searches, contact appropriate Native American representatives, and
19 complete surveys early in the project investigation stage.
- 20 ▶ If not possible to determine the APE, then Reclamation may not conduct field work
21 but wait until specific actions are selected and defined, but use existing data to
22 evaluate potential impacts to cultural resources and enter into a Programmatic
23 Agreement with the SHPO detailing how the Section 106 process would be
24 implemented once action specifics are known and/or may make commitments in the
25 PEIS/R and Record of Decision to complete Section 106 as actions are fully
26 identified.
- 27 ▶ Work closely with Reclamation archaeologists to ensure NHPA Section 106
28 compliance.

1 **3.7 Clean Air Act, Title I**

2 **Agency:** Any Federal agency issuing a permit (i.e., Reclamation for SJRRP)

3 **Permit:** Clean Air Act Conformity Analysis

4 **Resource:** National air resources

5 **Processing**

6 **Time:** Depends on Federal permit, 6 to 12 months

7 **Contact:** See Section 5.2, “SJVAPCD Authority to Construct and Permit to
8 Operate”

9 **Application to Proposed Action:**

10 Any Federal agency providing financial assistance, issuing a license or permit, or
11 approving or supporting in any way a proposed project located in a nonattainment or
12 maintenance area for a criteria air pollutant will be required to issue a conformity
13 analysis. The conformity analysis must certify that the Federally permitted project is
14 consistent with the State Implementation Plan (SIP) developed pursuant to the Federal
15 Clean Air Act (CAA). A conformity analysis is required unless the proposed action’s
16 emissions are below the Federally established *de minimis* emissions thresholds, and the
17 proposed action’s emissions do not reach the level of 10% or more of the regional
18 emissions budget for any given pollutant in the nonattainment area. This is also
19 applicable to short-term, construction-related emissions. The CAA applies to the SJRRP.

20 **Permit Purpose and Requirements:**

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

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

36 **Permit Acquisition Procedure:**

37 A conformity analysis is performed concurrently with the permitting process of the
38 federal permit that is being sought. More than likely for this project, a conformity
39 analysis will be completed concurrently with the RHA Section 10 and CWA Section 404

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1 permit process. The project applicant should consult and coordinate with the San Joaquin
2 Valley Air Pollution Control District on specific requirements for general conformity and
3 mitigation requirements.

4 **Submittal Package:**

5 A conformity analysis can be submitted with the permit application package for the
6 federal permit that is being sought.

7 **Critical Issues:**

8 The project area is designated a serious nonattainment area for the Federal 8-hour ozone
9 and PM10 ambient air quality standards. In addition, the project area is designated
10 nonattainment for the Federal PM2.5 standard. A conformity determination will be
11 required to show that emissions of air pollutants for which the region is in nonattainment
12 would not conflict with the SIP's purpose of achieving expeditious attainment of those
13 standards.

14 **Permit Fees:**

15 None

16 **Specific Strategies for Permit Acquisition:**

17 ▶ See Section 5.2, "SJVAPCD Authority to Construct and Permit to Operate."

1 **3.8 Executive Orders and Administrative Policies**

2 **Agency:** Reclamation, as Federal lead agency, must document compliance

3 **Orders/**

4 **Policies:** Executive Order 11990 (Protection of Wetlands)
5 Executive Order 11988 (Floodplain Management)
6 Executive Order 12898 (Environmental Justice in Minority and Low-
7 Income Populations)
8 Executive Order 13112 (Invasive Species)
9 Executive Order 13186 (Protection of Migratory Birds)
10 Indian Trust Assets
11 Farmland Protection Policy Act

12 **Resources:** Wetlands, floodplain management, environmental justice, migratory birds,
13 Indian Trust Assets, and farmland.

14 **Processing**

15 **Time:** The above Executive Orders are not separate processes, but rather, are
16 usually incorporated into the NEPA process.

17 **Application to Proposed Action:**

18 As NEPA lead agency for the proposed action, Reclamation must address the project's
19 compliance with these executive orders and policies.

20 **Purpose, Requirements, and Compliance:**

21 ***Executive Order 11990***

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

29 Before implementing an action that is located in a wetland or may affect a wetland,
30 Federal agencies must demonstrate that there is no practical alternative and that the
31 proposed action includes all practical measures to minimize harm to the wetlands. To
32 demonstrate compliance with Executive Order 11990, Reclamation must make such a
33 demonstration if appropriate, provide the opportunity for early public review, and
34 disclose its findings in the PEIS/R and/or subsequent NEPA documents.

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

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1 **Executive Order 11988**

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

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

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

25 The agency should send the notice to the State Clearinghouse.

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

29 **Executive Order 12898**

30 Executive Order 12898 requires Federal agencies to identify and address
31 disproportionately high and adverse human health and environmental effects of Federal
32 programs, policies, and activities on minority and low-income populations. Executive
33 Order 12898 requirements apply to all Federal actions that are located on Federal lands,
34 sponsored by a Federal agency, or funded with Federal monies and may affect minority
35 or low-income populations.

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

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1 origin. The agency must also provide an opportunity for early public review by those who
2 may be affected, and must include its findings in the PEIS/R. If a proposed Federal action
3 will not result in significant adverse impacts on minority and low-income populations,
4 the PEIS/R must describe how Executive Order 12898 was addressed during the NEPA
5 process.

6 ***Executive Order 13112***

7 Executive Order 13112 requires Federal agencies to perform measures to minimize the
8 spread of invasive species and to reintroduce native species where possible. This order
9 applies to “actions [that] may affect the status of invasive species” (§ 2). Federal agencies
10 must pursue the duties mandated under the order in consultation with the Invasive
11 Species Council (§ 2(b)). The order also requires agencies to formulate their own
12 Invasive Species Management Plan (ISMP) (§ 5). Restoration activities and planning will
13 be integrated with Reclamation’s ISMP. Scarlett wisteria will be a key species to be
14 evaluated, as well as any new invasive noxious aquatic species.

15 ***Executive Order 13186***

16 Executive Order 13186 directs Federal agencies to take certain actions to further
17 implement the Migratory Bird Treaty Act (MBTA) and outlines the responsibilities of
18 Federal agencies to protect migratory birds. Specifically, this order directs Federal
19 agencies with direct activities that will likely result in the take of migratory birds, to
20 develop and implement a Memorandum of Understanding (MOU) with the USFWS that
21 shall promote the conservation of migratory bird populations, with emphasis on species
22 of concern. Reclamation has not finalized the MOU required in this order pending
23 Department of Interior guidance. Reclamation has begun implementing the conservation
24 measures set forth in this order, however, as appropriate and applicable.

25
26 Birds protected under the MBTA include all common songbirds, waterfowl, shorebirds,
27 hawks, owls, eagles, ravens, crows, native doves and pigeons, swifts, martins, swallows,
28 and others, including their body parts (feathers, plumes, etc.), nests, and eggs. A complete
29 list of protected species is found at 50 CFR 10.13. SJRRP activities which are most likely
30 to result in take of migratory birds include, but are not limited to, clearing or grubbing of
31 migratory bird nesting habitat during the nesting season when eggs or young are likely to
32 be present, and bridge reconstruction where bird nests are present (for example,
33 swallows). Efforts will be made to remove nesting habitat or inactive nests of migratory
34 birds outside of the bird breeding season, and such activities will occur in coordination
35 with the USFWS office with local jurisdiction.

36 ***Indian Trust Assets***

37 All Federal agencies have a responsibility to protect Indian Trust Assets. Indian Trust
38 Assets are legal interests in assets held in trust by the Federal government for Native
39 American tribes or individuals. Assets may be owned property, physical assets, intangible
40 property rights, a lease, or the right to use something and typically include lands,
41 minerals, water rights, hunting and fishing rights, natural resources, money, and claims. If
42 Indian Trust Assets may be affected by the proposed action, mitigation or compensation
43 measures are to be identified so that no net loss is incurred by the Native American
44 beneficial owners of the asset.

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1 ***Farmland Protection Policy Act***

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

10

11

1 **4 State Agency Environmental**
2 **Compliance**

3 **4.1 Clean Water Act Section 401**

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

5 **Permit:** Section 401 Water Quality Certification

6 **Resource:** Waters of the State

7 **Processing**

8 **Time:** 6 months after receipt of all required documents by RWQCB

9 **Contact:** Central Valley Regional Water Quality Control Board

10 Sacramento Main Office

11 11020 Sun Center Drive #200

12 Rancho Cordova, CA 95670-6114

13 (916) 464-3291

14 Attn: Patrick Gillum, Environmental Scientist

15 **Application to Proposed Action:**

16 The proposed action has the potential to result in fill and/or dredge of jurisdictional
17 waters of the State, including wetlands, particularly in the San Joaquin River and nearby
18 channels. As a result, a Section 401 water quality certification from RWQCB would be
19 required for these actions.

20 **Permit Purpose and Requirements:**

21 Under Section 401 of CWA, an applicant for a Section 404 permit must obtain a
22 certificate from the appropriate RWQCB stating that proposed fill is consistent with the
23 State's water quality standards and criteria. In California, the authority to grant water
24 quality certification is delegated by SWRCB to the nine RWQCBs. The proposed action
25 will require Section 401 Water Quality Certification.

26 **Permit Acquisition Procedure:**

27 Reclamation will prepare a letter to RWQCB requesting water quality certification. The
28 letter will describe the proposed action and construction techniques and methods to
29 minimize or avoid excessive erosion, turbidity, and other adverse water quality effects.
30 This information will be drawn from the PEIS/R and other available documentation,
31 including subsequent environmental documents.

32 A pre-application agency coordination meeting is recommended to discuss project
33 characteristics, permit requirements, and permitting schedules. Reclamation will invite
34 the appropriate RWQCB representative to attend the USACE pre-application meeting to
35 facilitate discussion. Additional telephone coordination with USACE and RWQCB will

State Agency Environmental Compliance

1 be conducted to ensure that the permit application materials are complete, are technically
2 accurate, and meet RWQCB needs.

3 After submission of the request for certification, response to questions and data requests
4 will be provided.

5 **Submittal Package:**

6 ▶ RWQCB Section 401 Water Quality Certification Application Package.

7 ▶ Generally, the applicant must provide the following:

- 8 • a full, technically accurate description of the entire proposed activity, including:
 - 9 – the purpose and final goal,
 - 10 – the project location,
 - 11 – affected water bodies,
 - 12 – the total area of waters of the United States and/or waters of the State that will
 - 13 be directly affected, and
 - 14 – any proposed mitigation of adverse impacts;
- 15 • copies of any draft or final Federal, State, and local agency licenses, permits, and
- 16 agreements required for actions associated with the proposed activity (e.g., Fish
- 17 and Game Code Section 1602 agreement);
- 18 • a copy of the CEQA document and notice of determination, if applicable; and
- 19 • a list of agencies that participated in the CEQA process as lead or responsible
- 20 agencies.

21 **Critical Issues:**

- 22 ▶ Define project boundaries and the extent of discharge and/or discharge of dredged
- 23 material in waters of the State as a result of the proposed action.
- 24 ▶ Keep RWQCB engaged in process and providing timely review of the permit
- 25 package.
- 26 ▶ Dewatering during construction activities and subsequent quality of discharged water.

27 **Permit Fees:**

- 28 ▶ \$500 base processing fee, plus additional fees depending on acreage and length of
- 29 discharge and/or dredge areas.

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1 **Specific Strategies for Permit Acquisition:**

- 2 ▶ Identify potential waters of the State at the project site during preliminary field visits.
- 3 ▶ Attend a USACE pre-application agency coordination meeting that includes Central
4 Valley Regional Water Quality Control Board (RWQCB) personnel to identify water
5 quality issues prior to application to RWQCB for water quality certification.
- 6 ▶ Submit a certified CEQA document and copies of other permit applications (e.g.,
7 Clean Water Act Section 404 application, Fish and Game Code Section 1602
8 application, if needed) to RWQCB along with the application for water quality
9 certification.
- 10 ▶ Work early and closely with RWQCB to determine an effective strategy for treating
11 water prior to discharge during construction, and utilize land disposal to the extent
12 possible to minimize permitting issues.
- 13 ▶ Work closely with RWQCB contacts to establish working relationships and quickly
14 respond to supplemental information requests

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1 **4.2 Clean Water Act Section 402**

2 **Agency:** State Water Resources Control Board (SWRCB)
3 **Permit:** National Pollutant Discharge Elimination System (NPDES) General
4 Permit for Stormwater Discharges Associated with Construction Activity
5 (General Permit)
6 **Resource:** Waters of the State
7 **Processing**
8 **Time:** 6 months after receipt of all required documents by the SWRCB
9 **Contact:** State Water Resources Control Board
10 Division of Water Quality, Stormwater 15th Floor
11 1001 I Street
12 Sacramento, CA 95814
13 (916) 341-5536

14 **Application to Proposed Action:**

15 The proposed action has the potential to result in discharges of waste into waters of the
16 State, which include “any surface water or ground water, including saline waters, within
17 the boundaries of the State.” An NPDES permit would be required for discharges to
18 surface waters.

19 **Permit Purpose and Requirements:**

20 Dischargers whose projects disturb 1 or more acres of soil or whose projects disturb less
21 than 1 acre but are part of a larger common plan of development that in total disturbs 1 or
22 more acres, are required to obtain coverage under the General Permit for Discharges of
23 Stormwater Associated with Construction Activity (Construction General Permit, 99-08-
24 DWQ). Construction activity subject to this permit includes clearing, grading, and
25 disturbances to the ground such as stockpiling or excavation, but does not include regular
26 maintenance activities performed to restore the original line, grade, or capacity of the
27 facility.

28 Before construction of such projects, applicants must submit a Notice of Intent (NOI)
29 Form to discharge stormwater to the RWQCB and must prepare a storm water pollution
30 prevention plan (SWPPP). The SWPPP should contain a site map that shows the
31 construction site perimeter, existing and proposed buildings, lots, roadways, stormwater
32 collection and discharge points, general topography both before and after construction,
33 and drainage patterns across the project. The SWPPP must list Best Management
34 Practices (BMPs) the discharger will use to protect stormwater runoff and the placement
35 of those BMPs. Additionally, the SWPPP must contain a visual monitoring program, a
36 chemical monitoring program for “non-visible” pollutants to be implemented if there is a
37 failure of BMPs, and a sediment monitoring plan if the site discharges directly to a water
38 body listed on the 303(d) list for sediment.

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1 The NPDES permitting process for general construction activities requires the applicant
2 to:

- 3 ▶ file a notice of intent to discharge stormwater;
- 4 ▶ prepare a SWPPP that identifies BMPs to prevent or minimize the discharge of
5 sediments and other contaminants with the potential to affect beneficial uses or lead
6 to violations of water quality objectives; and
- 7 ▶ complete a self-implemented inspection, monitoring, and reporting program for BMP
8 performance.

9 **Permit Acquisition Procedure:**

10 The submittal to obtain coverage under the General Permit must include a completed
11 NOI Form, a vicinity map, and the appropriate annual fee. The NOI must be completely
12 and accurately filled out; the vicinity map and annual fee must be included with the NOI
13 or the submittal is considered incomplete and will be rejected. A construction site is
14 considered to be covered by the General Permit upon filing a complete NOI submittal,
15 and implementation of a defensible SWPPP. Upon receipt of a complete NOI submittal,
16 the discharger will be sent a receipt letter containing the waste discharger's identification
17 (WDID) number.

18 **Submittal Package:**

19 The permit application, "[Construction General Permit, 99-08-DWQ](#)," can be downloaded
20 from the SWRCB's website. The NOI is Attachment 2 in the General Permit.

21

22 The NOI package to be mailed to the SWRCB must include the following:

- 23 ▶ NOI with all applicable sections completed and original signature of the landowner or
24 signatory agent,
- 25 ▶ Permit fee, and
- 26 ▶ Site map of the facility (see NOI instructions). Blueprints are not acceptable.

27 NOIs are processed in the order they are received. An NOI receipt letter will be mailed to
28 the landowner within approximately 2 weeks. Incomplete NOI submittals will be returned
29 to the landowner's address within the same timeframe and will specify the reason(s) for
30 return. If a receipt letter is needed by a specific date (for example, to provide to a local
31 agency), the NOI should be submitted 30 days prior to the date the receipt letter is
32 needed. A copy of the NOI receipt letter will be available on the SWRCB's website
33 within 24 hours of processing.

34

State Agency Environmental Compliance

1 **Critical Issues:**

- 2 ▶ Define project boundaries and the extent of discharge in waters of the State as a result
3 of any of the proposed actions, including the release of Interim and Restoration
4 Flows.
- 5 ▶ Keep RWQCB engaged in process and provide timely review of the permit package.

6 **Permit Fees:**

- 7 ▶ There is no application fee, but RWQCB assesses an annual fee for construction
8 NOIs. This annual fee is calculated by the following formula: $\$200 + \$20/\text{acre}$ plus an
9 18.5% surcharge. Fees range from \$237 for a project that would disturb less than 1
10 acre to \$2,607 for a project that would disturb more than 100 acres. The fee is based
11 on the “total acres to be disturbed” for the life of the project. Checks should be made
12 payable to the “State Water Resources Control Board.”

13 **Specific Strategies for Permit Acquisition:**

- 14 ▶ Identify potential waters of the State at the project site during preliminary field visits.
- 15 ▶ Attend a USACE pre-application agency coordination meeting that includes
16 CVRWQCB personnel to identify issues related to potential discharges to surface
17 waters prior to application to RWQCB for an NPDES permit.
- 18 ▶ Work closely with RWQCB contacts to establish working relationships and quickly
19 respond to supplemental information requests.

1 **4.3 California Endangered Species Act**

2 **Agency:** California Department of Fish and Game

3 **Permit:** Authorization for incidental take of State-listed endangered or threatened
4 species (Section 2081) or consistency determination (Section 2080.1)

5 **Resource:** State-listed endangered or threatened plant or animal species

6 **Processing**

7 **Time:** 6 months after Biological Opinions issued and submittal of permit
8 application or request for consistency determination

9 **Contacts:** California Department of Fish and Game

10 1416 Ninth Street
11 Sacramento, CA 95814
12 (916) 653-4875
13 Attn: Director

14 California Department of Fish and Game
15 Central California Region
16 1234 E. Shaw Avenue
17 Fresno, CA 93710
18 Attn: Mrs. Julie Vance, Senior Environmental Scientist

19 **Application to Proposed Action:**

20 State-listed threatened or endangered animal species potentially occurring on the project
21 site and in adjacent waterways include giant garter snake, Swainson’s hawk, blunt-nosed
22 leopard lizard, willow flycatcher, greater sandhill crane, bald eagle, Least bell’s vireo,
23 Fresno kangaroo rat, and San Joaquin kit fox. Similarly, certain threatened or endangered
24 plant species may potentially occur on the project site, include the State Endangered
25 Delta button-celery. For species listed as “Fully Protected,” such as blunt-nosed leopard
26 lizard, bald eagle, and greater sandhill crane, DFG cannot issue take authorization and
27 requires the project proponent to display full avoidance of these species.

28 **Permit Purpose and Requirements:**

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

34 CESA establishes a petitioning process for the listing of threatened or endangered
35 species. The California Fish and Game Commission is required to adopt regulations for
36 this process and establish criteria for determining whether a species is endangered or
37 threatened. The California Code of Regulations, Title 14, Section 670.1(a) sets forth the
38 required contents for such a petition. CESA prohibits the “taking” of listed species except
39 as otherwise provided in State law. Unlike its Federal counterpart, CESA applies the take

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1 prohibitions to species petitioned for listing (State candidates). Section 86 of the Fish and
2 Game Code defines “take” as to “hunt, pursue, catch, capture, or kill, or attempt to hunt,
3 pursue, catch, capture, or kill.”

4 Sections 2080 and 2081 of the Fish and Game Code cover the “take” of State threatened
5 and endangered species. One of two CEQA-compliance processes is generally followed
6 when take of a State-listed species may occur, the Section 2080.1 consistency
7 determination or Section 2081 incidental take permit processes, as described below under
8 “Permit Acquisition Procedure.” The proposed action will likely require take
9 authorization from DFG because potential take of State-listed endangered or threatened
10 fish species is likely to occur during project construction. Additional Fish and Game
11 Code sections (21,50, 15301), as well as Sections 2080 and 2081 described above, may
12 apply to the reintroduction of spring- and fall-run Chinook salmon into the San Joaquin
13 River (Sections 2150 and 15301). Additional work by the ECPWG and led by DFG is
14 necessary to determine policies and procedures for introducing these species into the San
15 Joaquin River, as well as the potential role that hatchery spawning and rearing could play
16 in reintroduction.

17 **Permit Acquisition Procedure:**

18 Assuming the proposed action could result in take of a State-listed threatened or
19 endangered species, a request for incidental take authorization shall be sent to DFG using
20 the procedure outlined below.

21 If the species affected is protected under both the Federal ESA and CESA, the California
22 legislation encourages cooperative and simultaneous consultation between
23 USFWS/NMFS and DFG to coordinate the Federal ESA Section 7 process (see Section
24 2.3) and the CESA process so that consistent and compatible findings result.
25 Authorization for take under CESA could be provided by a Section 2080.1 consistency
26 determination. Section 2080.1 allows an applicant who has obtained a Federal incidental
27 take statement pursuant to a Federal Section 7 consultation to submit the Federal opinion
28 incidental take statement or permit to the DFG Director and request issuance of a
29 consistency determination in writing that the Federal document is “consistent” with
30 CESA. In circumstances in which the Federal document does not meet CESA consistency
31 requirements (for example, when there is the potential for a project to result in take of a
32 species that is State listed but not Federally listed), a Section 2081 permit must be
33 obtained. The application for a Section 2081 permit is very similar to a biological
34 assessment that is typically prepared to meet Federal ESA requirements.

35 The proposed action will likely require take authorization from DFG because potential
36 take of State-listed endangered or threatened fish species is likely to occur during project
37 construction.

38 **Permit Acquisition Procedure:**

39 Assuming the proposed action could result in take of a State-listed threatened or
40 endangered species, a request for incidental take authorization shall be sent to DFG using
41 the procedure outlined below.

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1 If the species affected is protected under both the Federal ESA and CESA, the California
2 legislation encourages cooperative and simultaneous consultation between
3 USFWS/NMFS and DFG to coordinate the Federal ESA Section 7 process (see Section
4 2.3) and the CESA process so that consistent and compatible findings result.
5 Authorization for take under CESA could be provided by a Section 2080.1 consistency
6 determination. Section 2080.1 allows an applicant who has obtained a Federal incidental
7 take statement pursuant to a Federal Section 7 consultation to notify DFG that an
8 incidental take statement pursuant to ESA has been issued and request issuance of a
9 consistency determination. For DFG to issue a consistency determination, DFG must
10 conclude that the conditions specified in the Federal incidental take statement are
11 consistent with CESA. Alternatively, a separate incidental take permit under Section
12 2081 of CESA could be obtained. The appropriate process for obtaining incidental take
13 under CESA is determined, based on DFG recommendations.

14 **Submittal Package:**

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

- 17 ▶ the common and scientific names of the species to be covered by the permit and the
18 species status under CESA, including whether the species is subject to rules and
19 guidelines pursuant to Section 2112 and Section 2114 of the California Fish and
20 Game Code;
- 21 ▶ a complete description of the project or activity for which the permit is sought;
- 22 ▶ the location where the project or activity is to occur or be conducted
- 23 ▶ an analysis of whether and to what extent the project or activity for which the permit
24 is sought could result in the taking of species to be covered by the permit;
- 25 ▶ an analysis of the impacts of the proposed taking of the species
- 26 ▶ an analysis of whether issuance of the incidental take permit would jeopardize the
27 continued existence of a species. This analysis shall include consideration of the
28 species capability to survive and reproduce, and any adverse impacts of the taking on
29 those abilities in light of: 1) known population trends, 2) known threats to the species,
30 and 3) reasonably foreseeable impacts on the species from other related projects and
31 activities;
- 32 ▶ proposed measures to minimize and fully mitigate the impacts of the proposed taking;
- 33 ▶ a proposed plan to monitor compliance with the minimization and mitigation
34 measures and the effectiveness of the measures;
- 35 ▶ a description of the funding source and the level of funding available for
36 implementation of the minimization and mitigation measures.

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1 **Critical Issues:**

- 2 ▶ Determine whether take of a State-listed species is anticipated to occur as a result of
3 the proposed action.

4 **Permit Fees:**

- 5 ▶ None

6 **Specific Strategies for Permit Acquisition:**

- 7 ▶ Search DFG's California Natural Diversity Data Base (CNDDDB) to check for
8 previously recorded occurrences of State-listed species in the vicinity of the project.
- 9 ▶ Conduct surveys as early as possible after the project study area is defined to
10 determine the potential for State-listed species to occur on the project site.
- 11 ▶ Involve DFG at the early stages of the planning and permitting of the project for any
12 State-listed species that may be affected.
- 13 ▶ Prepare Biological Assessments that meet the requirements of ESA, and CESA to the
14 extent possible. Seek DFG take permit.
- 15 ▶ Work closely with USFWS, NMFS, and DFG to ensure that any Biological Opinions
16 and incidental take statements are reviewed by the SJRRP ECPWG while they are in
17 the draft stage prior to finalization.

1 **4.4 California Fish and Game Code Section 1602**

- 2 **Agency:** California Department of Fish and Game
- 3 **Permit:** Section 1602 Streambed Alteration Agreement
- 4 **Resource:** State streams or lakes and associated plant, fish, and wildlife resources
- 5 **Processing**
- 6 **Time:** 60 days to complete after receipt of all required project information by
- 7 DFG
- 8 **Contact:** California Department of Fish and Game
- 9 Central California Region
- 10 1234 East Shaw Avenue
- 11 Fresno, CA 93710
- 12 Attn: Julie Means, Senior Environmental Scientist

13 **Application to Proposed Action:**

14 The proposed action will substantially divert or obstruct the natural flow or substantially
15 change the bed, channel, or bank of a river, stream, or lake or use materials from a
16 streambed.

17 As a result, a notification of Streambed Alteration Agreement pursuant to Section 1600
18 et. seq. of the Fish and Game Code must be submitted for this project.

19 **Permit Purpose and Requirements:**

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

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

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

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1 **Permit Acquisition Procedure:**

2 Reclamation will prepare the Notification of Streambed Alteration for submittal to DFG
3 and attend an agency coordination meeting to discuss project characteristics, permit
4 requirements, and permitting schedules.

5 **Submittal Package:**

6 ▶ The applicant must complete a Notification of Lake or Streambed Alteration (i.e.,
7 form 2024). The form requires the following information:

- 8 • the applicant and the applicant's agents;
- 9 • the property owner;
- 10 • the location of the property where the project would take place, the affected water
11 body, and any water body to which it is a tributary; and
- 12 • project description, including
 - 13 – estimated dates of project initiation and completion;
 - 14 – estimated project cost;
 - 15 – number of stream encroachments;
 - 16 – methods of construction;
 - 17 – types of equipment that will be used;
 - 18 – anticipated impacts on wetland and/or riparian vegetation, and on fish and
19 wildlife resources; and
 - 20 – pre- and post-project site conditions.

21 ▶ The application package must also include:

- 22 • a map that shows the location of the proposed action, with distances from the
23 nearest city or town, known landmarks, access roads, and other information that
24 identifies the location of the project site;
- 25 • detailed construction plans for the proposed action;
- 26 • estimated construction start and finish dates;
- 27 • any completed CEQA documents and CEQA certification;
- 28 • copies and descriptions of any local, State, or Federal permits, agreements, or
29 other authorizations that apply to the project; and

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- 1 • any additional information that DFG deems necessary to assess potential effects
2 of the proposed action on the wildlife resources, and to develop appropriate
3 measures to protect affected wildlife resources.

4 **Critical Issues:**

- 5 ▶ Determine whether the mitigation proposed in the Section 404 application being
6 submitted to USACE is adequate to cover mitigation required by DFG.

7 **Permit Fees:**

- 8 ▶ Ranges between \$200 and \$4,000, depending on project cost. The fee for the
9 proposed action would be the maximum \$4,000.

10 **Specific Strategies for Permit Acquisition:**

- 11 ▶ Coordinate early with DFG to ensure that the permit application materials are
12 complete, are technically accurate, and meet the needs of DFG.
- 13 ▶ Submit the certified CEQA document and copies of other permit applications (e.g.,
14 Clean Water Act Section 404 application, RWQCB Section 401 Certification
15 application) to DFG along with the Streambed Alteration Agreement application.

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1 **4.5 Clean Air Act, Title V**

2 **Agency:** California Air Resources Board, under authority of the Federal
3 Environmental Protection Agency, Region 9

4 **Permit:** Construction Permits and Operating Permits

5 **Resource:** National air resources

6 **Processing**

7 **Time:** 6 months

8 **Contact:** See Section 5.2, “SJVAPCD Authority to Construct and Permit to
9 Operate”

10

11 **Application to Proposed Action:**

12 Construction permits are required for all new stationary sources and all existing
13 stationary sources that are adding new emissions units or modifying existing emissions
14 units. Operating permits are required for all major stationary sources. Some local
15 agencies also require operating permits for minor sources. These permits, known as Title
16 V permits, are issued by the state or local air pollution control agency responsible for the
17 area where the source is located. In this case, the local agency issuing Title V permits
18 would be the San Joaquin Valley Air Pollution Control District (SJVAPCD). More
19 information about this agency and the permitting process is provided in Section 5.2. In
20 some cases, EPA is the permitting authority, for example, in Indian nations. The EPA
21 Regional Office also has oversight responsibility over State programs. Some of the
22 SJRRP actions will involve construction activities that will add new emissions of criteria
23 air pollutants. Consequently, the Clean Air Act, Title V, applies to the SJRRP.

24 **Permit Purpose and Requirements:**

25 A Title V permit grants an applicant with a pollutant source permission to operate. The
26 permit includes all air pollution requirements that apply to the source, including
27 emissions limits and monitoring, record keeping, and reporting requirements. It also
28 requires the source to report its compliance status with respect to the permit conditions to
29 the agency that issues the permit and the EPA. See Section 5.2, “SJVAPCD Authority to
30 Construct and Permit to Operate,” for more information.

31 **Permit Acquisition Procedure:**

32 See Section 5.2, “SJVAPCD Authority to Construct and Permit to Operate.”

33 **Submittal Package:**

34 See Section 5.2, “SJVAPCD Authority to Construct and Permit to Operate.”

35 **Critical Issues:**

36 See Section 5.2, “SJVAPCD Authority to Construct and Permit to Operate.”

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1 **Permit Fees:**

2 None

3 **Specific Strategies for Permit Acquisition:**

4 See Section 5.2, “SJVAPCD Authority to Construct and Permit to Operate.”

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1 **4.6 California Code of Regulations, Title 23**

2 **Agency:** The Reclamation Board

3 **Permit:** Reclamation Board Encroachment Permit

4 **Resource:** Central Valley streams, including all tributaries and distributaries of the
5 Sacramento and San Joaquin Rivers and Tulare and Buena Vista basins,
6 and rivers, waterways, and floodways within and adjacent to Federal and
7 State authorized flood control projects and within designated floodways
8 adopted by the Board

9 **Processing**

10 **Time:** 9 months

11 **Contact:** The Reclamation Board
12 Floodway Protection Section
13 3310 El Camino Avenue, LL40
14 Sacramento, CA 95821
15 (916) 574-0609
16 Attn: Jay Punia, General Manager

17 **Application to Proposed Action:**

18 A permit is required for any project or plan of work that is: 1) within Federal flood
19 control project levees and within a Board easement, 2) or may have an effect on the flood
20 control functions of project levees, 3) or is within a Board designated floodway, 4) or is
21 within regulated Central Valley streams listed in Table 8.1 in Title 23 of the California
22 Code of Regulations. The proposed action could have an effect on the flood control
23 functions of downstream project levees or meet other criteria requiring Reclamation to
24 acquire a Reclamation Board Encroachment Permit. Therefore, an encroachment permit
25 from the Reclamation Board will likely be required for the proposed action. Additionally,
26 approval by local reclamation districts may be necessary.

27 **Permit Purpose and Requirements:**

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

31 The Reclamation Board has jurisdiction over the levee section, the water-ward area
32 between project levees, a 10-foot-wide strip adjacent to the landward levee toe, within 30
33 feet of the top of the banks of un-leveed project channels, and within designated
34 floodways adopted by the Reclamation Board. Activities outside of these limits that could
35 adversely affect the flood control project also fall under the jurisdiction of the
36 Reclamation Board.

37 **Permit Acquisition Procedure:**

38 Reclamation will contact the Reclamation Board to determine its jurisdiction for any
39 permitting needs for the proposed action. If an encroachment permit is required,

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1 Reclamation should coordinate with the local reclamation districts because they are the
2 key stakeholders with flood control responsibilities.

3 Reclamation will prepare the application package for submittal to the Reclamation Board.
4 An endorsement from the reclamation, levee, or flood control district responsible for
5 levee maintenance will be sought. If an endorsement cannot be obtained, the application
6 may be submitted to the Reclamation Board without endorsement along with a written
7 explanation as to why the application was not endorsed by the maintaining district.

8 **Submittal Package:**

- 9 ▶ Reclamation Board Encroachment Permit application package, including project
10 description, maps, and a completed Environmental Assessment Questionnaire. The
11 application package must include:
- 12 • a description of the proposed work, including a statement of the dates the planned
13 construction will begin and end, and four copies of exhibits and drawings that
14 depict the project or use;
 - 15 • the location of the project site and color photographs that show two views of the
16 site;
 - 17 • a completed copy of the Reclamation Board's environmental questionnaire and a
18 copy of any draft and final environmental review documents prepared for the
19 project;
 - 20 • complete plans and specifications that show the proposed work, a location map
21 that shows the site of the work with relation to topographic features, a plan view
22 of the area, and an adequate cross section through the area of the proposed work;
23 and
 - 24 • the names and addresses of all owners of land adjacent to the property where the
25 project is located.

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

30 **Critical Issues:**

- 31 ▶ Determine whether the proposed action could affect levee integrity or have other
32 flood control implications.
- 33 ▶ Determine need for encroachment permit.

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1 **Permit Fees:**

- 2 ▶ None

3 **Specific Strategies for Permit Acquisition:**

- 4 ▶ Coordinate with the local reclamation districts during the planning and design phase
5 of the proposed action to identify compliance needs, commitments, and mitigation
6 options and to resolve issues prior to contacting the State Reclamation Board for any
7 necessary permit processing with local reclamation districts.
- 8 ▶ Coordinate with the State Reclamation Board for areas along the San Joaquin River
9 without local reclamation districts.

1 **4.7 California Water Rights**

2 **Agency:** State Water Resources Control Board (SWRCB)

3 **Permit:** Amended and/or new water rights (temporary and permanent)

4 **Resource:** Implementation of Interim Flows and Restoration Flows, and water
5 recapture plan

6 **Processing**

7 **Time:** 12 months (but highly variable depending on number of protests and the
8 need for, and complexity of, any required water rights hearings)

9 **Contact:** Ms. Victoria Whitney, Chief
10 State Water Resources Control Board
11 Division of Water Rights
12 1001 I Street
13 Sacramento, CA 95814
14 (916) 341-5300

15 **Application to Proposed Action:**

16 To protect Interim and Restoration Flows released from Friant Dam, Reclamation will
17 submit a petition for change to include instream use as one of the purposes of use
18 identified for the water rights permits #A000023, A000234, A001465, and A005638. The
19 designation of instream use is under Water Code Section 1707. The change in place of
20 use would be, at a minimum, the section between Friant Dam and the confluence of the
21 Merced River; however, it could be extended farther downstream to be consistent with
22 the water recapture plan developed as part of the Water Management Goal. The petition
23 for change will also include point(s) of rediversion for implementing the water recapture
24 plan.

25 It is likely that annual temporary petition for change needs to be filed for the
26 implementation of Interim Flows because the petition for 2009 implementation would
27 need to be filed while the PEIS/EIR is under preparation. The annual petition of
28 temporary change would be exempt from the CEQA process and thus, the processing
29 time and procedure could be largely reduced. The implementation of Restoration Flows
30 on a long-term basis, however, requires a permanent change in Reclamation's water
31 rights for Friant Division. This petition would require a complete environmental review
32 and demonstration of no injury to other water right holders from this proposed change.

33 Depending on the final selected water recapture plan, additional petitions for
34 new/amended water rights may be required. The associated strategy for new water rights
35 application would be developed only when needed.

36

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1 **Permit Purpose and Requirements:**

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

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

16 **Permit Acquisition Procedure:**

17 The steps in the approval process are as follows:

- 18 1. The applicant files an application for a new or amended water right with SWRCB.
- 19 2. SWRCB notifies the applicant within 30 days whether the application is incomplete
20 or is accepted.
- 21 3. SWRCB reviews the application and considers the environmental impacts of the
22 proposed appropriation in compliance with CEQA.
- 23 4. SWRCB or the applicant, depending on the size of the project, publishes a notice of
24 the applicant's intent and invites comment.
- 25 5. If SWRCB receives protests, it may refer the dispute to mediation, nonbinding
26 arbitration, or a field investigator. If protests cannot otherwise be resolved, SWRCB
27 holds a formal or informal hearing. SWRCB has the discretion to hold a hearing on an
28 unprotested application as well. The purpose of a hearing is for SWRCB to obtain
29 evidence necessary to support its decision on the application.
- 30 6. To issue a permit, SWRCB must find that unappropriated water is available to supply
31 the applicant and that the applicant's appropriation is in the public interest. If
32 SWRCB approves the application and the applicant has paid the permitting fees,
33 SWRCB issues a permit. A reasonable amount of time is allowed for the applicant to
34 begin construction of the diversion works, complete the construction, and make full
35 beneficial use of the water. In most cases, the applicant is required to begin project
36 construction within 2 years of permit issuance.
- 37 7. When the project is completed, the terms of the permit are met, and the largest
38 volume of water allowed under the permit is put to beneficial use, SWRCB confirms

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1 the terms and conditions and issues a license to the appropriator. The license is the
2 final confirmation of the water right and remains effective as long as its conditions
3 are fulfilled and beneficial use continues.

4 **Submittal Package:**

5 For implementing the Interim Flows, the package will require the following:

- 6 ▶ Petition for change form
- 7 ▶ Environmental Information Form

8 For implementing the Restoration Flows, the package will require the petition for change
9 and PEIS/R:

- 10 ▶ Petition for change form
- 11 ▶ PEIS/R

12 **Critical Issues:**

- 13 ▶ Determine and document the nature of any potential effects on the appropriation of
14 water by downstream water right holders, on downstream beneficial uses, and on
15 public trust values.

16 **Permit Fees:**

- 17 ▶ The SWRCB charges water right applicant fees in numerous “annual” and “one-time”
18 fee categories. The fee schedules are relatively complex and some are fixed fees,
19 while others are based on the volume of water used. SWRCB fees have been
20 increased recently and SWRCB should be contacted to determine the specific filing
21 and permit fees that would be incurred for the proposed action.

22 **Specific Strategies for Permit Acquisition:**

- 23 ▶ Determine the need for petitions for change to existing water rights for the CVP
24 Friant Division on the San Joaquin River. The potential changes include the
25 following.
 - 26 • The designation of Interim Flows and Restoration Flows for instream use in the
27 San Joaquin River between Friant Dam and the confluence of the Merced River
28 (at a minimum) under Water Code Section 1707.
 - 29 • Diversion and redirection of the Interim Flows and Restoration Flows at a
30 downstream location or multiple downstream locations that are consistent with the
31 water recapture plan developed as part of the Water Management Goal.
 - 32 • Place and/or purposes of use.
- 33 ▶ Coordinate with the SWRCB regarding CVP water rights for temporary changes for
34 implementing the Interim Flows, and permanent changes for implementing the

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- 1 Restoration Flows. File any necessary changes with the SWRCB leaving sufficient
2 time for the SWRCB to make necessary findings, hold a hearing if necessary, and to
3 issue the proper orders.
- 4 ▶ Identify the nature, character, and ownership of any non-CVP water rights involved in
5 implementing the water recapture plan and work to voluntarily secure any necessary
6 changes to those rights in time to meet the Water Management Goal.
- 7 ▶ If additional quantities of surface and/or underground storage are required in the
8 water recapture plan developed as part of the Water Management Goal, investigate
9 the status of water rights on any affected waterway, including the number, size,
10 location, type of use, and season of use of existing water rights, and coordinate with
11 the SWRCB and apply for adequate water rights amendments and/or new water
12 rights, leaving sufficient time for the SWRCB to make necessary findings, hold a
13 hearing if necessary, and issue the proper orders.
- 14 ▶ Recognize the potential for water right actions, necessary for protection of instream
15 and restoration flows and to implement the water recapture plan, to invite protests or
16 objections to such water right actions by parties, if any, opposed at the time to these
17 water right actions and/or project implementation. Prepare for preparation of adequate
18 and timely responses to such protests or objections, the potential need for settlement
19 negotiations, and the potential for water rights hearings to resolve protests.
- 20 ▶ Ensure that all environmental documentation, operational studies, consultations, and
21 other permitting activities being completed for the project provide adequate and
22 timely support for all water right actions necessary to protect instream and restoration
23 flows and to implement the water recapture plan.
- 24 ▶ Investigate existing water rights on any affected waterway, including the number,
25 size, location, type of use, and season of use of existing water rights.
- 26 ▶ Approach SWRCB early to coordinate the needs for temporary change petition and
27 permanent change petition.

1 **4.8 State Lands Commission Land Use Lease**

2 **Agency:** State Lands Commission
3 **Permit:** Land use lease
4 **Resource:** State-owned sovereign lands
5 **Processing**
6 **Time:** 9 months
7 **Contact:** State Lands Commission
8 100 Howe Avenue, Suite 100-South
9 Sacramento, CA 95825-8202
10 (916) 574-1862
11 Attn: Ms. Diane Jones, Public Land Manager

12 **Application to Proposed Action:**
13 The proposed action may directly affect lands (e.g., Millerton Lake and the San Joaquin
14 River) under the jurisdiction of the State Lands Commission.

15 **Permit Purpose and Requirements:**
16 The California State Lands Commission (SLC) was given authority and responsibility to
17 manage and protect the important natural and cultural resources on certain public lands
18 within the state and public’s rights to access these lands. The public lands under the
19 Commission’s jurisdiction are of two distinct types- sovereign and school lands.
20 Sovereign lands encompass approximately 4 million acres. These lands include the beds
21 of California’s naturally navigable rivers, lakes, and streams, as well as the state’s tidal
22 and submerged lands along the coastline.

23 The proposed action will likely require a state lands lease agreement.

24 **Submittal Package:**
25 The application must include a project description, supporting environmental data, and
26 payment of appropriate fees.

27 **Critical Issues:**
28 Reclamation will consult with the State Lands Commission to determine if the proposed
29 action would require a lease agreement.

30 **Permit Fee:**
31 ▶ The application fee is \$25. If needed, lease costs can be more.

32

1 **5 Local Agency Environmental**
2 **Compliance**

3 **5.1 SJVAPCD Dust Control Plan**

4 **Agency:** San Joaquin Valley Air Pollution Control District

5 **Permit:** Dust Control Plan

6 **Resource:** Air quality

7 **Processing**

8 **Time:** 2 months

9 **Contact:** SJVAPCD Northern Region Office

10 4800 Enterprise Way

11 Modesto, CA 95356

12 (209) 557-6400

13 **Application to Proposed Action:**

14 Because the proposed action would likely involve the construction of a non-residential
15 development of more than 5 acres of disturbed surface area and could involve moving,
16 depositing, or relocating of more than 2,500 cubic yards per day of bulk materials on at
17 least 3 days of the project, a Dust Control Plan is required by SJVAPCD.

18 **Permit Purpose and Requirements:**

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

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

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

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

7 Regardless of whether a SJVAPCD-approved Dust Control Plan is in place or not, the
8 owner or operator is required to comply with all requirements of the applicable rules
9 under Regulation VIII and SJVAPCD's Rules and Regulations at all times.

10 **Compliance Procedure:**

- 11 1. Reclamation shall designate at least one individual to complete SJVAPCD's Dust
12 Control Training Course. Alternatively, SJVAPCD will accept the Dust Control Plan
13 with the contingency that the individual sign up for the next course.
- 14 2. At least 30 days before beginning project construction activities, Reclamation shall
15 submit the Dust Control Plan to SJVAPCD. The Dust Control Plan shall be submitted
16 to SJVAPCD's compliance division at the Northern Region Office (serving San
17 Joaquin, Stanislaus, and Merced Counties) in Modesto (see address above).
- 18 3. SJVAPCD will review and approve, conditionally approve, or disapprove the Dust
19 Control Plan within 30 days of submittal.
- 20 4. Reclamation shall provide written notification to SJVAPCD via fax or mail within 10
21 days prior to the commencement of earthmoving activities (the notification form can
22 be downloaded from SJVAPCD's website). A copy of the approved Dust Control
23 Plan must be retained at the project site and made available upon request by a
24 SJVAPCD inspector.

25 **Submittal Package:**

26 The Dust Control Plan form can be downloaded from SJVAPCD's website. The
27 following information is requested on the form:

28 ▶ Section 1: General Information

- 29 • project name, location, and expected construction start/end dates;
- 30 • project contacts, including property owner, developer, contractor, and Dust
31 Control Plan preparer (also confirmation of training completed); and
- 32 • description of project operations.

33 ▶ Section 2: Plot Plan

- 34 • plot plan(s) with project boundaries, the relative locations of actual and potential
35 sources of fugitive dust emissions, and the relative location of sensitive receptors
36 within ¼ mile of the project clearly delineated.

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1 ▶ Section 3: Fugitive PM10 Sources

- 2 • the total area of land surface to be disturbed, the daily throughput volume of
3 earthmoving in cubic yards, and the total area in acres of the entire project site;
- 4 • expected start and completion dates of dust generating activities and soil
5 disturbance activities to be performed on site;
- 6 • identification of any other locations should be included with this plan that are
7 involved with the project (e.g., any site where materials will be imported from or
8 exported to); and
- 9 • proposed plans for limiting visible dust emissions from activities that cause
10 fugitive dust emissions and plans for using bulk materials (check boxes).

11 ▶ Section 4: Dust Control Methods

- 12 • proposed plans for water application, dust suppressant products, other dust control
13 methods, contingencies, and record-keeping (check boxes).

14 ▶ Section 5: Carryout and Trackout

- 15 • treatments for preventing trackout and carryout, methods for cleaning up trackout
16 and carryout, and record-keeping (check boxes).

17 ▶ Section 6: Certification

18 **Critical Issues:**

- 19 ▶ None.

20 **Fees:**

- 21 ▶ \$300 for Dust Control Plan submittal. A \$60 fee is charged for any major
22 modification made to an approved plan, such as modifying the size and scope of the
23 project or making significant changes to the types of control or preventative
24 measures. No fees are charged for administrative changes to an approved plan.

25 **Specific Strategies for Compliance:**

- 26 ▶ Include specific dust-control measures in contractor specifications to the extent
27 feasible. Ensure that the contractor specifications and the Dust Control Plan reflect
28 the SJVAPCD guidance described in the PEIS/R air quality mitigation and
29 subsequent CEQA compliance documents.

30

1 **5.2 SJVAPCD Authority to Construct and Permit to**
2 **Operate**

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

4 **Permit:** Authority to Construct and Permit to Operate

5 **Resource:** Air quality

6 **Processing**

7 **Time:** 6 months

8 **Contact:** SJVAPCD Northern Region Office

9 4800 Enterprise Way

10 Modesto, CA 95356

11 (209) 557-6400

12 **Application to Proposed Action:**

13 If the proposed action would involve the use of certain types of emissions-generating
14 equipment (see list below) either during construction or operation, an Authority to
15 Construct and Permit to Operate would be required from SJVAPCD. The proposed action
16 would likely require this permit.

17 **Permit Purpose and Requirements:**

18 Facilities with equipment that may emit air pollution or would be used for controlling air
19 pollution are subject to SJVAPCD permit requirements. SJVAPCD grants two types of
20 permits:

- 21 ▶ Authority to Construct, and
- 22 ▶ Permit to Operate

23 An Authority to Construct must be obtained before building or installing a new emissions
24 unit or modifying an existing emissions unit that requires a permit. A Permit to Operate is
25 issued after all construction is completed and the emission unit is ready for operation.
26 Certain equipment is exempt from permit requirements. Equipment typically requiring
27 permits includes the following:

- 28 ▶ internal combustion engines greater than 50 horsepower;
- 29 ▶ boilers and steam generators;
- 30 ▶ mixing, blending, or processing of any organic solvents, adhesives, or coatings;
- 31 ▶ operations creating dust or smoke or involving incineration of any material;
- 32 ▶ metal reclamation or refining of any liquids or solids;
- 33 ▶ storage or use of solvents or motor fuels (except diesel);
- 34 ▶ storage or use of acids;

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- 1 ▶ operations involving chemical reactions;
- 2 ▶ equipment handling asbestos, beryllium, hexavalent chromium, mercury, vinyl
3 chloride, fluorides, sulfuric acid mist, and hydrogen sulfide or other sulfur
4 compounds; and
- 5 ▶ use of solvents for cleanup.

6 Rules applying to various operations are adopted by SJVAPCD as part of a plan to meet
7 State and Federal air quality standards and are listed in the SJVAPCD Rulebook.

8 Though not required, applicants are encouraged to meet with SJVAPCD staff before
9 submitting applications. These meetings allow applicants to fully explain proposed
10 projects; can assist applicants to submit complete applications; encourage discussion of
11 compliance options; and provide an opportunity for SJVAPCD staff to explain permit
12 requirements. A pre-application meeting may be scheduled by contacting the Permit
13 Service Division at the nearest SJVAPCD office, or by contacting one of SJVAPCD's
14 regional Business Assistance Offices.

15 **Compliance Procedure:**

- 16 1. Reclamation should schedule and participate in a pre-application meeting with
17 SJVAPCD staff before submitting an application.
- 18 2. Reclamation shall submit the completed application to SJVAPCD. A permit
19 application and instructions may be obtained by mail or in person from any of the
20 three SJVAPCD offices (see Northern Region Office address above), or may be
21 downloaded from the SJVAPCD website. Applications may be submitted to any of
22 the three regional SJVAPCD offices by mail or in person.
- 23 3. SJVAPCD will conduct a preliminary review of the application within two weeks of
24 receipt to determine if the application contains sufficient information to process.
25 Reclamation will be notified of SJVAPCD's completeness review within 30 days of
26 the date received. Additional information will be requested if the application is
27 deemed incomplete. Complete applications are assigned for engineering review in the
28 order they are deemed complete, unless they have been assigned for priority
29 processing.

30 Most permits will be issued within 30 days of applications being assigned for final
31 review. Projects can also be expedited, if there is economic or environmental
32 justification. State law requires SJVAPCD to act on an application (approve or deny)
33 within 180 days of when the application was deemed complete, or when CEQA has
34 been satisfied, whichever is later. Due to the potential length of time it may take to
35 issue an Authority to Construct, SJVAPCD recommends submitting applications as
36 early as possible.

- 37 4. **Authority to Construct.** If the project meets all applicable requirements,
38 Reclamation will be mailed an Authority to Construct. Reclamation shall notify the

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1 Compliance Division at the SJVAPCD office in its region when the installation or
2 modification is complete.

3 The Compliance Division will have an inspector visit the site. The inspector will
4 determine whether the completed project was built in accordance with the design
5 specified in the application and/or if the completed project complies with SJVAPCD
6 rules and conditions contained within the Authority to Construct. The inspector will
7 then give a recommendation on the Permit to Operate.

8 Projects approved by Permit Services Division and the Compliance Division will be
9 billed for an annual permit fee. The permit fee schedules are contained in District
10 Rule 3020 in Regulation III of the SJVAPCD Rulebook.

11 5. **Permit to Operate.** Upon receipt, Reclamation should review the permit carefully as
12 permit holders are responsible for complying with all terms and conditions of the
13 permits. Comments on the permit should be submitted to the Permit Services Division
14 within 10 days of receiving the permit.

15 The Permit to Operate, renewable every 5 years, must be posted at the operation
16 whenever possible. If the permit cannot be posted on the equipment, the Permit to
17 Operate must be posted within 25 feet of the equipment or be kept readily available
18 on-site at all times.

19 The frequency of routine inspections by the SJVAPCD's Compliance Division will
20 vary depending on the size and category of the facility.

21 **Submittal Package:**

22 The following information is requested on the application form:

23 ▶ applicant information (name and address), project location, and proximity to sensitive
24 receptors, description of equipment to be used, and other supporting information.

25 **Critical Issues:**

26 ▶ Determine need for Authority to Construct and Permit to Operate.

27 **Fees:**

28 ▶ A non-refundable application-filing fee of \$60 per emissions unit is required and may
29 be submitted with the application. If the fee is not submitted with the application,
30 SJVAPCD will bill the applicant. Checks or money orders should be payable to
31 SJVAPCD.

32 **Specific Strategies for Compliance:**

33 ▶ Participate in a pre-application meeting with SJVAPCD staff more than 6 months
34 before the planned equipment installation. Submit complete application material as
35 early as possible, but more than 6 months before the planned equipment installation.

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- 1 ▶ Develop detailed project descriptions with specific information on construction
- 2 equipment quantities, vehicle trips, project schedules, etc. as soon as practicable that
- 3 provides relevant information necessary to perform air quality modeling and the
- 4 associated conformity applicability analysis.

Local Agency Environmental Compliance

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6 Compliance with Applicable Laws, Policies, and Plans

6.1 Federal

6.1.1 Section 404 of the Clean Water Act

In accordance with Section 404 of the Clean Water Act (CWA), the U.S. Army Corps of Engineers (USACE) regulates discharge of dredged or fill material into waters of the United States. Waters of the United States and their lateral limits are defined in Title 33, Part 328.3(a) of the Code of Federal Regulations to include:

- ▶ navigable waters of the United States,
- ▶ interstate waters,
- ▶ all other waters where the use or degradation or destruction of the waters could affect interstate or foreign commerce,
- ▶ tributaries to any of these waters, and
- ▶ wetlands that meet any of these criteria or that are adjacent to any of these waters or their tributaries.

Waters of the United States are often categorized as “jurisdictional wetlands” (i.e., wetlands over which USACE exercises jurisdiction under Section 404) and “other waters of the United States” when habitat values and characteristics are being described. “Fill” is defined as any material that replaces any portion of a water of the United States with dry land or that changes the bottom elevation of any portion of a water of the United States. Any activity resulting in the placement of dredged or fill material within waters of the United States requires a permit from USACE.

In accordance with Section 401 of the Clean Water Act, projects that apply for a USACE permit for discharge of dredged or fill material must obtain water quality certification from the appropriate regional water quality control board (RWQCB) indicating that the project will uphold state water quality standards.

6.1.2 Rivers and Harbors Act Section 10

Section 10 of Rivers and Harbors Act (RHA) (33 U.S.C. 401 et seq.) 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 presently used, have been used in the past, or may be susceptible to use to

Compliance with Applicable Laws, Policies, and Plans

1 transport interstate or foreign commerce (55 CFR 329.4). They include coastal and inland
2 waters, lakes, rivers, and streams that are navigable, and the territorial seas. Structures or
3 work outside the limits defined for navigable waters would require a Section 10 permit if
4 the structure or work affects the course, location, condition, or capacity of the water
5 body.

6 **6.1.3 Federal Endangered Species Act**

7 The U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service
8 (NMFS) share responsibility for implementing the Federal Endangered Species Act
9 (ESA). Generally, USFWS manages land and freshwater species, while NMFS manages
10 marine and "anadromous" species, such as Chinook salmon. Both agencies ensure that
11 ESA requirements are followed and evaluate projects that may affect the continued
12 existence of a Federally listed (threatened or endangered) species. Section 9 of ESA
13 prohibits the take of Federally listed species; take is defined under ESA, in part, as
14 killing, harming, or harassment. Under Federal regulations, take is further defined to
15 include habitat modification or degradation where it actually results in death or injury to
16 wildlife by significantly impairing essential behavioral patterns, including breeding,
17 feeding, or sheltering. Section 7 of ESA outlines procedures for Federal interagency
18 cooperation to conserve Federally listed species and designated critical habitat. Section
19 7(a)(2) requires Federal agencies to consult with USFWS to ensure that they are not
20 undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued
21 existence of listed species. NMFS also ensures that projects do not adversely affect
22 Essential Fish Habitat, as defined in the 1996 Sustainable Fisheries Act (Public Law 104-
23 297), to stop or reverse the continued loss of fish habitats through the goals of habitat
24 protection, conservation, and enhancement.

25 **6.1.4 National Historic Preservation Act, Section 106**

26 Section 106 of the National Historic Preservation Act of 1966 and its implementing
27 regulations (36 Code of Federal Regulations [CFR] Part 800, as amended in 1999)
28 requires Federal agencies to consider the effects of their actions, or those they fund or
29 permit, on properties that may be eligible for listing or are listed in the National Register
30 of Historic Places (NRHP). The NRHP is a register of districts, sites, buildings,
31 structures, and objects of significance in American history, architecture, archaeology,
32 engineering, and culture. The regulations provided in 36 CFR Part 60.4 describe the
33 criteria to evaluate cultural resources for inclusion in NRHP. Cultural resources can be
34 significant on the national, state, or local level. Properties may be listed in NRHP if they
35 possess integrity of location, design, setting, materials, workmanship, feeling, and
36 association, and:

- 37 (A) are associated with events that have made a significant contribution to the broad
38 patterns of our history;
- 39 (B) are associated with the lives of persons significant in our past;
- 40 (C) embody the distinctive characteristics of a type, period, or method of construction,
41 or represent the work of a master, or possess high artistic values, or represent a
42 significant and distinguishable entity whose components may lack individual
43 distinction; or

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1 (D) have yielded, or may be likely to yield, information important in prehistory or
2 history.

3 **6.1.5 Migratory Bird Treaty Act**

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

16 **6.1.6 Fish and Wildlife Coordination Act**

17 Coordination under the Fish and Wildlife Coordination Act (FWCA) is intended to
18 promote conservation of fish and wildlife resources by preventing their loss or damage
19 and to provide for development and improvement of fish and wildlife resources in
20 connection with water projects. Federal agencies undertaking water projects are required
21 to fully consider recommendations made by USFWS, NMFS, and the appropriate fish
22 and wildlife agency, in this case, the California Department of Fish and Game (DFG) in
23 project reports and include measures to reduce impacts on fish and wildlife in project
24 plans.

25 **6.1.7 Executive Order 11990 (Wetlands Policy)**

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

33 **6.1.8 Executive Order 11988 (Flood Hazard Policy)**

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

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1 **6.1.9 Executive Order 12898 (Environmental Justice Policy)**

2 Executive Order 12898 requires Federal agencies to identify and address
3 disproportionately high and adverse human health and environmental effects of Federal
4 programs, policies, and activities on minority and low-income populations. Executive
5 Order 12898 requirements apply to all Federal actions that are located on Federal lands,
6 sponsored by a Federal agency, or funded with Federal monies and may affect minority
7 or low-income populations.

8 **6.1.10 Executive Order 13112 (Invasive Species)**

9 Executive Order 13112 requires Federal agencies to perform measures to minimize the
10 spread of invasive species and to reintroduce native species where possible. This order
11 applies to “actions [that] may affect the status of invasive species” (§ 2). Federal agencies
12 must pursue the duties mandated under the order in consultation with the Invasive
13 Species Council (§ 2(b)). The order also requires agencies to formulate their own
14 Invasive Species Management Plan (ISMP) (§ 5). Restoration activities and planning will
15 be integrated with Reclamation’s ISMP.

16 **6.1.11 Executive Order 13186 (Migratory Birds)**

17 **Executive Order 13186 directs Federal agencies to take certain actions to**
18 **further implement the Migratory Bird Treaty Act (MBTA) and**
19 **outlines the responsibilities of Federal agencies to protect**
20 **migratory birds. Specifically, this order directs Federal agencies**
21 **with direct activities that will likely result in the take of migratory**
22 **birds, to develop and implement a Memorandum of**
23 **Understanding (MOU) with the USFWS that shall promote the**
24 **conservation of migratory bird populations, with emphasis on**
25 **species of concern. Reclamation has not finalized the MOU**
26 **required in this order pending Department of Interior guidance.**
27 **Reclamation has begun implementing the conservation measures**
28 **set forth in this order, however, as appropriate and applicable.**

29 **6.1.12 Indian Trust Assets**

30 All Federal agencies have a responsibility to protect Indian Trust Assets. Indian Trust
31 Assets are legal interests in assets held in trust by the Federal government for Native
32 American tribes or individuals. Assets may be owned property, physical assets, intangible
33 property rights, a lease, or the right to use something and typically include lands,
34 minerals, water rights, hunting and fishing rights, natural resources, money, and claims. If
35 Indian Trust Assets may be affected by the proposed action, mitigation or compensation
36 measures are to be identified so that no net loss is incurred by the Native American
37 beneficial owners of the asset.

38 **6.1.13 Farmland Protection Policy Act**

39 The Farmland Protection Policy Act requires that a Federal agency examine the potential
40 impacts of a proposed action on prime and unique farmland, as defined by the Natural
41 Resources Conservation Service (NRCS) and, if the action would adversely affect
42 farmland preservation, consider alternatives to lessen the adverse effects. As a Federal
43 agency preparing an Environmental Impact Statement (EIS), Reclamation is required to

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1 include in its analysis a farmland assessment designed to minimize adverse impacts on
2 prime and unique farmlands and provide for mitigation as appropriate. Compliance with
3 the act could include early consultation and coordination with NRCS.

4 **6.2 State**

5 **6.2.1 Clean Water Act Section 401**

6 Under Section 401 of CWA, an applicant for a Section 404 permit must obtain a
7 certificate from the appropriate RWQCB stating that proposed fill is consistent with the
8 State's water quality standards and criteria. In California, the authority to grant water
9 quality certification is delegated by the State Water Resources Control Board (SWRCB)
10 to the nine RWQCBs.

11 **6.2.2 California Endangered Species Act**

12 Pursuant to the California Endangered Species Act (CESA), a permit from DFG is
13 required for projects that could result in the take of a plant or animal species that is state-
14 listed as threatened or endangered. Under CESA, "take" is defined as an activity that
15 would directly or indirectly kill an individual of a species, but the CESA definition of
16 take does not include "harming" or "harassing," as the Federal ESA definition does. As a
17 result, the threshold for take is higher under CESA than under ESA (i.e., habitat
18 modification is not necessarily considered take under CESA).

19 California Fish and Game Code Sections 3503 and 3503.5 state that it is unlawful to take,
20 possess, or needlessly destroy the nest or eggs of any bird, and that it is unlawful to take,
21 possess, or destroy any raptors (i.e., species in the orders Falconiformes and
22 Strigiformes), including their nests or eggs. Typical violations of these codes include
23 destruction of active nests resulting from removing vegetation in which the nests are
24 located. Violation of Section 3503.5 could also include failure of active raptor nests
25 resulting from disturbance of nesting pairs by nearby project construction. This statute
26 does not provide for the issuance of any type of incidental take permit.

27 **6.2.3 California Fish and Game Code—Fully Protected Species**

28 Protection of fully protected species is described in Sections 3511, 4700, 5050, and 5515
29 of the California Fish and Game Code. These statutes prohibit take or possession of fully
30 protected species. DFG is unable to authorize incidental take of fully protected species
31 when activities are proposed in areas inhabited by those species. DFG has informed non-
32 Federal agencies and private parties that they must avoid take of any fully protected
33 species in carrying out projects.

34 **6.2.4 California Fish and Game Code Section 1602—Streambed** 35 **Alteration**

36 All diversions, obstructions, or changes to the natural flow or bed, channel, or bank of
37 any river, stream, or lake in California that supports wildlife resources are subject to
38 regulation by DFG under Section 1602 of the California Fish and Game Code. Under
39 Section 1602, it is unlawful for any person, governmental agency, or public utility to do
40 the following without first notifying DFG:

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1 ...substantially divert or obstruct the natural flow of, or substantially
2 change or use any material from the bed, channel, or bank of any river,
3 stream, or lake, or deposit or dispose of debris, waste, or other material
4 containing crumbled, flaked, or ground pavement where it may pass into
5 any river, stream, or lake.

6 A stream is defined as a body of water that flows at least periodically or intermittently
7 through a bed or channel that has banks and supports fish or other aquatic life. This
8 definition includes watercourses with a surface or subsurface flow that supports or has
9 supported riparian vegetation. DFG’s jurisdiction within altered or artificial waterways is
10 based on the value of those waterways to fish and wildlife. A DFG streambed alteration
11 agreement must be obtained for any project that would result in an impact on a river,
12 stream, or lake.

13 **6.2.5 Porter-Cologne Water Quality Control Act**

14 Under the Porter-Cologne Water Quality Control Act, “waters of the state” fall under the
15 jurisdiction of the appropriate RWQCB (in this case, the Central Valley RWQCB). Under
16 the act, RWQCB must prepare and periodically update water quality control basin plans.
17 Each basin plan sets forth water quality standards for surface water and groundwater, as
18 well as actions to control nonpoint and point sources of pollution to achieve and maintain
19 these standards. Projects that affect wetlands or waters must meet RWQCB waste
20 discharge requirements, which may be issued in addition to a water quality certification
21 under Section 401 of the CWA.

22 **6.2.6 California Native Plant Society Species Designations**

23 The California Native Plant Society (CNPS) is a statewide nonprofit organization that
24 seeks to increase understanding of California’s native flora and to preserve this rich
25 resource for future generations. CNPS has developed and maintains lists of vascular
26 plants of special concern in California. CNPS-listed species have no formal legal
27 protection, but the values and importance of these lists are widely recognized. CNPS List
28 1 and 2 species are considered rare plants pursuant to Section 15380 of the California
29 Environmental Quality Act (CEQA), and it is recommended that they be fully considered
30 while preparing environmental documents relating to CEQA.

31 **6.2.7 Reclamation Board Encroachment Permit**

32 Under the California Code of Regulations, Title 23, the Reclamation Board issues
33 encroachment permits to maintain the integrity and safety of flood control project levees
34 and floodways that were constructed according to the flood control plans adopted by the
35 Reclamation Board or the California Legislature.

36 **6.2.8 California Water Rights**

37 A water right is a legally protected right, granted by law, to take possession of water and
38 put it to beneficial use. Under the California Water Code, SWRCB is responsible for
39 allocating surface water rights and permitting the diversion and use of water throughout
40 the State. Through its Division of Water Rights, SWRCB issues permits to divert water
41 for new appropriations, change existing water rights, or store water for a certain length of
42 time. SWRCB attaches conditions to these permits to ensure that the water user prevents

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1 waste, conserves water, does not infringe on the rights of others, and puts the State's
2 water resources to the most beneficial use in the best interest of the public.

3 **6.2.9 State Lands Commission Land Use Lease**

4 The California State Lands Commission was given authority and responsibility to
5 manage and protect the important natural and cultural resources on certain public lands
6 within the state and public's rights to access these lands. The public lands under the
7 Commission's jurisdiction are of two distinct types- sovereign and school lands.
8 Sovereign lands encompass approximately four million acres. These lands include the
9 beds of California's naturally navigable rivers, lakes, and streams, as well as the state's
10 tidal and submerged lands along the coastline, extending from the shoreline out to 3 miles
11 offshore.

12 **6.3 Local**

13 **6.3.1 SJVAPCD Dust Control Plan**

14 In accordance with San Joaquin Valley Air Pollution Control District (SJVAPCD) Rule
15 8021 – Construction, Demolition, Excavation, Extraction, and Other Earthmoving
16 Activities – the owner or operator of a construction project is required to submit a Dust
17 Control Plan to SJVAPCD if at any time the project would involve:

- 18 ▶ residential developments of ten or more acres of disturbed surface area;
- 19 ▶ non-residential developments of five or more acres of disturbed surface area; or
- 20 ▶ moving, depositing, or relocating of more than 2,500 cubic yards per day of bulk
21 materials on at least 3 days of the project.

22 **6.3.2 SJVAPCD Authority to Construct and Permit to Operate**

23 Facilities with equipment that may emit air pollution or would be used for controlling air
24 pollution are subject to SJVAPCD permit requirements. SJVAPCD grants two types of
25 permits: Authority to Construct, and Permit to Operate. An Authority to Construct must
26 be obtained before building or installing a new emissions unit or modifying an existing
27 emissions unit that requires a permit. A Permit to Operate is issued after all construction
28 is completed and the emission unit is ready for operation. Certain equipment is exempt
29 from permit requirements. Equipment typically requiring permits includes the following:

- 30 ▶ internal combustion engines greater than 50 horsepower;
- 31 ▶ boilers and steam generators;
- 32 ▶ mixing, blending or processing of any organic solvents, adhesives, or coatings;
- 33 ▶ operations creating dust or smoke or involving incineration of any material;
- 34 ▶ metal reclamation or refining of any liquids or solids;

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- 1 ▶ storage or use of solvents or motor fuels (except diesel);
- 2 ▶ storage or use of acids;
- 3 ▶ operations involving chemical reactions;
- 4 ▶ equipment handling asbestos, beryllium, hexavalent chromium, mercury, vinyl
5 chloride, fluorides, sulfuric acid mist, and hydrogen sulfide or other sulfur
6 compounds; and use of solvents for cleanup.

7 **6.3.3 Other Local Permits and Requirements**

8 Several other local permits and requirements may apply to the proposed action. The
9 Counties of Fresno, Madera, and Merced, and their respective Public Works
10 Departments, will require compliance with local plans and ordinances, such as the
11 County general plan, zoning ordinances, grading plan, and various use permits. Utility
12 easements and various encroachments, such as for reclamation districts, also may be
13 required.