

## Public Involvement, Consultation, and Coordination

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This chapter provides a summary of the public involvement and outreach activities conducted for the BDCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS). This chapter also contains information regarding the federal and state agencies that are participating in the CEQA and NEPA processes leading to the development of the Draft EIR/EIS for the BDCP. Additionally, the BDCP planning process has included public involvement, consultation, and coordination activities with a variety of stakeholders. Some of these outreach efforts have been conducted in collaboration with the EIR/EIS process to provide the stakeholders with information on the BDCP planning process, including the Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). In many other cases, BDCP stakeholder groups have included outreach independent of the EIR/EIS process. This chapter provides a summary of some of the activities conducted in the BDCP outreach process that are relevant to the EIR/EIS process; however, this chapter is not intended to provide an exhaustive review of the BDCP outreach process.

### 32.1 Public Involvement

Public participation is a cornerstone of both CEQA and NEPA, with opportunities for public participation required throughout the environmental review process. During the preparation of this EIR/EIS, the lead agencies provided numerous avenues for public participation.

Scoping is a public participation element of CEQA and NEPA that is intended to assist the lead agencies preparing an EIR/EIS with determining the topics that the document should address. The scoping process invites public comment during a public review period. Comments received during the public scoping process are considered in the preparation of the EIR/EIS. The EIR/EIS lead agencies conducted a total of 22 public scoping meetings throughout California during 2008 and 2009. A summary of the public scoping activities and an overview of comments received during the public scoping process are provided in Section 32.1.1.

In addition to the required public participation opportunities, such as scoping, that were conducted as required under CEQA and NEPA, the lead agencies provided numerous other ways for individuals, stakeholders and agencies to participate. Those public participation opportunities are summarized in Section 32.1.2.

#### 32.1.1 EIR/EIS Scoping Meetings and Comments

Public scoping activities conducted as part of compliance with both CEQA and NEPA are intended to provide an open process for determining issues to be addressed and alternatives to be considered in the EIR/EIS. Between April 2008 and March 2009, the EIR/EIS lead agencies conducted a total of 22 scoping meetings throughout California.

On January 24, 2008, the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) issued a Notice of Intent (NOI) to prepare an EIS. A second NOI was issued on April 15, 2008 to include the Bureau of Reclamation (Reclamation) as a federal co-lead agency, update the status of the planning process, and provide updated information related to scoping meetings. On

1 March 17, 2008, the California Department of Water Resources (DWR) issued a Notice of  
 2 Preparation (NOP) of an EIR. The March 17, 2008, NOP and the April 15, 2008, NOI identified  
 3 scoping meeting locations and stated that written comments would be accepted until May 30, 2008.

4 At the time of the publication of the NOP and NOI in 2008, the BDCP was in development, and  
 5 information related to the alternatives to be considered in the EIR/EIS was not available. Additional  
 6 information was developed to describe the BDCP, and subsequent scoping activities were initiated  
 7 on February 13, 2009 with the publication of a second NOP and a third NOI. The second NOP and  
 8 third NOI identified scoping meeting locations and stated that written comments would be accepted  
 9 until May 14, 2009. Copies of the NOPs and NOIs, as well as the press releases and newspaper  
 10 notifications related to the scoping meetings, are included in Appendix 1D, *Final Scoping Report*. The  
 11 *Final Scoping Report* also provides a list of agencies, stakeholders, and individuals that provided  
 12 written and verbal comments; the letters, emails, and comment cards; and transcripts of the  
 13 meetings.

### 14 **32.1.1.1 2008 Scoping Meetings**

15 Scoping meetings were conducted during 2008 throughout California. Interested parties were  
 16 encouraged to attend the scoping meetings to provide verbal comments. The locations, dates, and  
 17 number of registered attendees at each scoping meeting are presented in Table 32-1.

18 **Table 32-1. Locations and Dates of 2008 Scoping Meetings**

Meeting Locations	Date	Attendees that Registered
Sacramento – California Resources Building Auditorium	April 28, 2008	117
Chico – Chico Masonic Family Center	April 29, 2008	25
Clarksburg – Clarksburg Middle School	April 30, 2008	167
Stockton – San Joaquin Farm Bureau	May 5, 2008	57
San Jose – Santa Clara Valley Water District	May 6, 2008	32
Los Banos – City of Los Banos Senior Center	May 7, 2008	7
Los Angeles – Junipero Serra State Office Building	May 8, 2008	31
San Diego – Marina Village Conference Center	May 12, 2008	13
Fresno – Four Points hotel	May 13, 2008	25
Bakersfield – Kern County Board of Supervisors Chamber	May 14, 2008	19

19  
 20 To announce the scoping meetings and encourage public participation, advertisements ran in  
 21 12 newspapers in key affected areas and press releases were distributed to media outlets  
 22 throughout California for publication.

23 The format for these scoping meetings included a 30-minute time period during which the attendees  
 24 could view informational posters and discuss issues pertaining to the BDCP with staff of DWR,  
 25 California Department of Fish and Wildlife (CDFW), Reclamation, USFWS, and NMFS. CDFW  
 26 participated in the scoping meetings because of their oversight and involvement in the NCCP. After  
 27 public review of the posters, the agencies made a 20-minute formal presentation. Following the  
 28 presentation, the public was invited to make verbal comments. Comments provided during the  
 29 formal comment period of the meeting were recorded and transcribed. Following the formal portion  
 30 of the scoping meeting, attendees could further discuss issues and ask questions of the DWR, CDFW,  
 31 Reclamation, USFWS, and NMFS staff.

### 1 **32.1.1.2 2009 Scoping Meetings**

2 Scoping meetings also were conducted during 2009 throughout California. As with the 2008  
3 meetings, interested parties were encouraged to attend the scoping meetings to provide verbal  
4 comments. The locations, dates, and number of registered attendees at each 2009 scoping meeting  
5 are presented in Table 32-2.

6 **Table 32-2. Locations and Dates of 2009 Scoping Meetings**

Meeting Locations	Date	Attendees that Registered
Chico – Chico Masonic Family Center	March 9, 2009	13
San Jose – San Jose Marriott at the Convention Center	March 10, 2009	14
Bakersfield – Bakersfield Marriott at the Convention Center	March 11, 2009	24
Los Angeles – Junipero Serra State Office Building	March 12, 2009	6
San Diego – Marina Village Conference Center	March 16, 2009	14
Merced – Merced High School	March 17, 2009	9
Davis – Davis Veterans Center	March 18, 2009	43
Sacramento – Sacramento Hyatt Regency	March 19, 2009	61
Brentwood – Brentwood Community Multipurpose Room	March 23, 2009	90
Stockton – Stockton Civic Memorial Auditorium	March 24, 2009	112
Fairfield – Fairfield Hilton Garden Inn	March 25, 2009	50
Clarksburg – Clarksburg Middle School	March 26, 2009	352

7  
8 To announce the scoping meetings and encourage public participation, advertisements ran in  
9 newspapers in key affected areas and press releases were distributed to media outlets throughout  
10 California for publication.

11 The scoping meetings provided a 30- to 60-minute time period during which the attendees could  
12 informally view informational posters and discuss issues pertaining to the project with staff of DWR,  
13 CDFW, Reclamation, USFWS, and NMFS.

14 During the meetings, representatives of the BDCP Steering Committee made a short formal  
15 presentation and requested comments on the proposed BDCP. These comments were recorded for  
16 all of the meetings. The transcriptions were provided by the BDCP Steering Committee to DWR,  
17 Reclamation, USFWS, and NMFS and are included in Appendix 1D, *Final Scoping Report*.

### 18 **32.1.1.3 Summary of Scoping Comments Received**

19 During the 2008 scoping process, 123 letters, emails, and comment cards were submitted.  
20 Transcripts from the 2008 scoping process included comments from 94 commenters. During the  
21 2009 scoping process, 182 letters, emails, and comment cards were submitted. During 5 of the  
22 meetings, 84 comments were recorded. Based on all of this input, there were a total of 2,950  
23 separate comments identified, which were grouped into 28 categories, as summarized in Table 32-3.

1 **Table 32-3. Summary of Comments Received During 2008 and 2009 Scoping Processes**

Topics Addressed by Comments	Number of Comments
Scoping Process	69
Participation in EIR/EIS Process	100
Interaction with Other Processes	95
Preparation of the EIR/EIS	37
Issues to be Considered in Development of BDCP Concepts	1,051
Study Area Concepts	16
Future Conditions without BDCP Concepts	40
Biological Resources	540
Surface Water Resources	316
Water Quality Conditions	324
Flood Management Concepts	156
Groundwater Concepts	52
Sediment Concepts	21
Seismic Concepts	23
Soils Resources	21
Agricultural Resources	256
Socioeconomic, Population, and Land Use Resources	264
Utilities and Public Services Resources	118
Recreation Resources	67
Transportation Resources	46
Regional Economic Resources	198
Potential Risk from Mosquitoes and Other Hazards	44
Air Quality Resources and Potential for Odors	16
Aesthetic Resources	30
Natural, Historical, and Cultural Resources	3
Climate Change Concepts	44
Energy Use and Greenhouse Gas Emissions Concepts	14
Secondary Growth Concepts	11

Note: The total number of comments presented in this table exceeds the number of categorized comments because many comments are included in several categories.

- 2
- 3 Agency representatives and members of the public at these scoping meetings raised issues in six key
- 4 areas.
- 5
- 6 • Development of BDCP concepts.
  - 7 • Biological resources.
  - 8 • Surface water resources and water quality conditions.
  - 9 • Agricultural resources.
  - 10 • Socioeconomics, population, and land use.
  - Regional economic resources.

1 More detailed information regarding the scoping comments, including the specific comments  
 2 organized by category and topic, is provided in Appendix 1D, *Final Scoping Report*.

### 3 **32.1.2 Public Outreach Activities**

4 The lead agencies have proactively engaged stakeholders, agencies, and individuals interested in the  
 5 project throughout the CEQA/NEPA process. Additionally, the BDCP Steering Committee and  
 6 working groups have encouraged public participation through a variety of ways in order to provide  
 7 an overview of the BDCP and to solicit input during the development of the plan.

#### 8 **32.1.2.1 BDCP Steering Committee and Working Groups**

9 From 2006 through 2010, the BDCP planning process was guided by a Steering Committee  
 10 consisting of representatives of many agencies and stakeholder organizations. Members of the  
 11 Steering Committee are listed on the BDCP website in the Steering Committee Agendas/Handout  
 12 section. All meetings of the Steering Committee were open to the public, and all presentations and  
 13 documents discussed at the meetings were available on the BDCP website. Interested parties were  
 14 initially notified of Steering Committee meetings through a group email list. Later, an electronic  
 15 mailing list was developed and maintained to ensure that interested members of the public were  
 16 notified of upcoming meetings and that draft documents pertaining to the planning process were  
 17 distributed as they became available. At the Steering Committee meetings, both oral and written  
 18 public comments were accepted, and comments received in writing were posted to the website.  
 19 Meeting notes also reflected comments and input offered by the public.

20 The Steering Committee formed a number of standing working groups, technical teams and *ad hoc*  
 21 groups to focus on approaches and solutions to specific issues related to BDCP development. The  
 22 working groups dealt with broad topics, such as conservation strategies and water conveyance, and  
 23 developed recommendations that were presented to the Steering Committee for consideration.  
 24 Technical teams were tasked with developing proposed approaches to technical and scientific  
 25 issues. These teams were co-chaired by subject-matter experts who often represented Steering  
 26 Committee members, and were staffed by appropriate technical experts. Meetings of the working  
 27 groups and technical teams were noticed on the BDCP website and open to the public. The working  
 28 groups and technical teams listed below were convened.

- 29 • Analytical Tools Technical Team.
- 30 • Conservation Strategy Work Group.
- 31 • Fish Facilities Technical Team (FFTT).
- 32 • Goals and Objectives Work Group.
- 33 • Habitat and Operations Technical Team (HOTT).
- 34 • Habitat Restoration Program Technical Team (HRPTT).
- 35 • Conservation Strategy Integration Team.
- 36 • Logic Chain.
- 37 • Metrics Group.
- 38 • Modeling for Modelers.

- 1 • Other Stressors Conservation Measures.
- 2 • Science.
- 3 • Science Liaison Group.
- 4 • Synthesis Team.
- 5 • Terrestrial Species Subgroup.

6 At the beginning of 2011, the BDCP Steering Committee was disbanded under a new state  
 7 administration; however, the public participation component of the planning process remained  
 8 heavily focused on incorporating public input from varying interest groups. A new series of working  
 9 groups was formed to formulate solutions to outstanding issues that needed to be resolved in order  
 10 to inform the draft environmental documents. The working groups were comprised of stakeholders  
 11 with a key interest in the working groups' charge. The stakeholders' input at working group  
 12 meetings contributed to elements of the Draft BDCP. The working group meetings were open to the  
 13 public, and each working group meeting included an opportunity for public comment. Working  
 14 group meetings were publicized on the BDCP website and meeting notices were sent to the BDCP  
 15 electronic mailing list. Various small groups and many focused meetings are ongoing as led by the  
 16 Natural Resources Agency leaders. Below are some of the group meetings noticed on the BDCP  
 17 website.

- 18 • Biological Goals and Objectives.
- 19 • Yolo Bypass Fishery Enhancement Planning Team.
- 20 • Governance Structure.
- 21 • South Delta Habitat.
- 22 • Financing.
- 23 • Delta Agriculture.
- 24 • Economic Impacts – Cost/Benefits Analysis.
- 25 • Adaptive Limits.

### 26 **32.1.2.2 Stakeholder Briefings and Presentations**

27 Over the course of the planning process, the BDCP Steering Committee and working groups have  
 28 conducted more than 250 briefings for community organizations, local jurisdictions within and  
 29 adjacent to the Plan Area, elected officials, environmental organizations, urban and agricultural  
 30 water users groups, recreational and commercial fishing organizations, and professional  
 31 conferences or association meetings. These public presentations were made throughout the state,  
 32 and information about the BDCP was regularly distributed, including updated fact sheets explaining  
 33 the purpose of the Plan and describing its various components.

### 34 **32.1.2.3 Public Meetings**

35 In addition to the scoping meetings conducted during 2008 and 2009, the BDCP Steering Committee  
 36 and working groups have conducted numerous public meetings associated with the development of  
 37 the BDCP at different milestones in the planning process to share information and solicit input.

- 1 • During June 2008, the Natural Resources Agency hosted three town hall meetings in the Delta to  
2 discuss the major programs and projects underway throughout the Delta.
- 3 • During August and November 2008, eight landowner meetings were conducted to discuss the  
4 required field studies needed to support the environmental review process.
- 5 • Prior to the 2009 scoping meetings, a webinar was held to provide background information  
6 about the purpose, approach, and status of the BDCP. The webinar took place on February 18,  
7 2009, and was broadcast from the California Natural Resources Agency auditorium in  
8 Sacramento. Following the presentation, participants submitted questions online for a question  
9 and answer session.
- 10 • During March 2009, the BDCP staff hosted informational sessions in conjunction with the  
11 EIR/EIS scoping meetings about the purpose, approach, and status of the BDCP.
- 12 • During September 2009, BDCP Steering Committee and working groups conducted four public  
13 workshops throughout the Delta to review the Draft BDCP Conservation Strategy. Input from the  
14 workshops was compiled and conveyed to the BDCP Steering Committee and posted on the  
15 BDCP website.
- 16 • Throughout 2011, the Natural Resources Agency conducted six public meetings to discuss the  
17 progress of the working groups that were established earlier in the year, update stakeholders on  
18 issues being resolved and incorporated into the BDCP, and provide an opportunity for public  
19 comment and questions. The meetings focused on plan development, schedule update,  
20 alternatives for analysis, conveyance facilities and sizing, and water demand management. In  
21 addition, other agencies provided updates on Delta-related issues.
- 22 • In 2012, public meetings continued to update stakeholders and the public on elements of the  
23 administrative draft BDCP and EIR/EIS. Six meetings were held during the year focused on the  
24 administrative draft EIR/EIS and BDCP chapters available for public review, alternatives  
25 undergoing analysis, BDCP Effects Analysis, decision tree analysis related to the preliminary  
26 proposal, biological goals and objectives, and funding.
- 27 • In 2013 additional public meetings have occurred and will continue to provide public briefings  
28 of BDCP developments. The public version of this chapter will be updated with those meetings.

#### 29 **32.1.2.4 Environmental Justice**

30 As discussed in Chapter 28, *Environmental Justice*, public outreach is central to the principles of  
31 environmental justice. During the document preparation process, public outreach activities were  
32 conducted that considered minority and low-income populations. A survey was conducted to assess  
33 possible impacts and identify future outreach opportunities. These activities included:

- 34 • Providing notification and announcements of scoping meetings in ethnic newspapers on ethnic  
35 radio stations.
- 36 • Conducting scoping meetings within affected communities during evening hours in an effort to  
37 involve low-income and minority communities outside of working hours.
- 38 • Providing translators at public scoping meetings.
- 39 • Providing the BDCP Website in Spanish.

- 1       • Providing a multilingual information hotline for project information in English, Spanish, Tagalog,  
2       Vietnamese, or Chinese (Mandarin).

3       Prior to the release of the Draft EIR/EIS, additional public outreach efforts were targeted to minority  
4       and low-income communities to make them aware of the document availability and contents.  
5       Activities included briefings with leaders of affected communities, translation of materials, and  
6       notification of document availability in ethnic media.

### 7       **32.1.2.5           Additional and Ongoing Public Participation Opportunities**

8       To further facilitate the dissemination of information about the BDCP, the BDCP Steering Committee  
9       and working groups maintained a project website at [www.baydeltaconservationplan.com](http://www.baydeltaconservationplan.com). The  
10      website was updated on a weekly basis with information about upcoming meetings, documents of  
11      interest, including preliminary draft chapters of the EIR/EIS, announcements, and project schedule  
12      information and continues to be updated with current information relating to the BDCP and the  
13      BDCP EIR/EIS. In recognition of the fact that the BDCP is an enormous endeavor and in an effort to  
14      ensure an open and transparent process, draft chapters of the EIR/EIS and the HCP/NCCP were  
15      posted on the website in 2011 and 2012 to provide the public an opportunity to review the  
16      administrative draft documents. Disclaimers were posted on the website to advise the public that  
17      the chapters were preliminary and subject to change, and that the posting of the draft versions of  
18      the chapter would not take the place of a formal public review required under CEQA and NEPA once  
19      the public draft EIR/EIS was released. In July 2012, information released by California Governor  
20      Jerry Brown, Secretary of the Interior Ken Salazar, and Eric Schwaab, National Oceanic and  
21      Atmospheric Administration (NOAA) Acting Assistant Secretary for Conservation and Management,  
22      outlining changes to the proposed BDCP from the February 2012 administrative draft was posted to  
23      the project website.

24      An email list was used regularly to communicate information of significance to interested  
25      stakeholders.

26      Numerous fact sheets and brochures were developed during the BDCP planning process and  
27      distributed to stakeholders at public meetings or project briefings. All fact sheets and brochures are  
28      available for review on the project website.

29      Additional public participation opportunities will continue during the preparation of the EIR/EIS,  
30      including public hearings to receive formal comments on the Draft EIR/EIS, and during other  
31      activities conducted in association with the BDCP. Informational materials provided through the  
32      public involvement process are included in Appendix 32A.

## 33      **32.2   Compliance with Agency Consultation** 34      **Requirements**

35      The following sections describe relevant federal and state consultation requirements and the  
36      consultation that has occurred to date, or that will occur, for the lead agencies to achieve  
37      compliance.

## 1 **32.2.1 Federal Requirements**

2 Below is a summary of relevant federal laws, executive orders, and policies requiring agency  
3 consultation.

### 4 **32.2.1.1 Clean Water Act**

5 The Clean Water Act (CWA) is the primary federal surface-water protection legislation. The CWA  
6 aims to restore and maintain the chemical, physical, and biological integrity of surface waters to  
7 support “the protection and propagation of fish, shellfish, and wildlife ... and recreation in and on the  
8 water.” The U.S. Environmental Protection Agency (USEPA) is the federal agency with authority for  
9 implementing regulations adopted pursuant to the CWA. USEPA has delegated the authority to  
10 implement and oversee most of the programs authorized or adopted for CWA compliance to the U.S.  
11 Army Corps of Engineers (USACE) or the Regional Water Quality Control Boards (RWQCB). The  
12 USACE, through the Regulatory Program, administers and enforces Section 404 of the CWA. Under  
13 CWA Section 404, a permit is required for the discharge of dredged or fill materials into water of the  
14 United States.

15 Project applicants will participate in one or more pre-application meetings with USACE and will  
16 prepare applications for permits under Section 404 of the CWA. In addition, these applications will  
17 include the relevant information to obtain Section 401 Water Quality Certifications from the State  
18 Water Resources Control Board (State Water Board), the San Francisco Bay RWQCB, and the Central  
19 Valley RWQCB.

### 20 **32.2.1.2 Federal Endangered Species Act**

21 The federal Endangered Species Act (ESA) provides a program for the conservation of threatened  
22 and endangered plants and animals, and the habitat in which they live. Pursuant to ESA, USFWS and  
23 NMFS have authority over projects that may result in the take of a species listed as threatened or  
24 endangered. Under ESA, the definition of “take” is to “harass, harm, pursue, hunt, shoot, wound, kill,  
25 trap, capture, or collect, or to attempt to engage in any such conduct.” USFWS has also interpreted  
26 the definition of “harm” to include significant habitat modification that could result in take. If a  
27 project is likely to result in a take of a federally listed species, either an incidental take permit under  
28 Section 10(a) of the ESA or a federal interagency consultation under Section 7 of the ESA is required.

29 The BDCP has been prepared as a joint HCP/NCCP consistent with ESA and the California Natural  
30 Community Conservation Planning Act (NCCPA). The BDCP is intended to meet all regulatory  
31 requirements necessary for USFWS and NMFS to issue Section 10 permits and for CDFW to issue an  
32 NCCPA permit to allow incidental take of all proposed covered species as a result of covered  
33 activities undertaken by the permit applicants.

34 Federal policy to implement the ESA Section 10 known as the “5-Point Policy” requires a 90-day  
35 public review period for all draft HCPs that are accompanied by an EIS. If the HCP includes an  
36 Implementing Agreement, a draft of that Agreement will also be released for public review. The  
37 release of the draft BDCP and Implementing Agreement concurrent with the publication of the draft  
38 EIR/EIS satisfies this requirement.

39 Prior to issuance of a Section 10 incidental take permit, the Bureau of Reclamation must engage in  
40 formal consultation with both USFWS and NMFS, leading to issuance of a biological opinion  
41 authorizing Reclamation activities covered by BDCP under Section 7. Similarly, the USFWS and

1 NMFS must engage in formal consultation both internally and with each other. These consultations  
 2 are expected to result in a single biological opinion prepared jointly by USFWS and NMFS and issued  
 3 to USFWS, NMFS, and Reclamation. The NEPA lead agencies cannot issue a Record of Decision for  
 4 this EIR/EIS until these formal consultations are concluded.

### 5 **32.2.1.3 Fish and Wildlife Coordination Act**

6 The Fish and Wildlife Coordination Act (FWCA) ensures that fish and wildlife receive equal  
 7 consideration with water resources development during planning and construction of federal water  
 8 projects by requiring that the federal agencies consult with USFWS and the State wildlife resources  
 9 agency before the waters of any stream or other body of water are impounded, diverted, deepened  
 10 or otherwise controlled or modified. The FWCA requires that the views of USFWS and the State  
 11 agency be considered when evaluating impacts and determining mitigation needs. NEPA regulations  
 12 further require that an EIS meet the consultation requirements of the FWCA (40 CFR 1502.25[a]).  
 13 The FWCA consultation requirements are being satisfied through the EIR/EIS process.

### 14 **32.2.1.4 Magnuson-Stevens Fishery Conservation and Management Act**

15 The Magnuson-Stevens Fishery Conservation and Management Act (MSA) establishes a management  
 16 system for national marine and estuarine fishery resources. Section 305(b)(2) of the 1996  
 17 reauthorization of the MSA added a provision for federal agencies to consult with NMFS on impacts  
 18 to Essential Fish Habitat (EFH), which applies to commercial fisheries. EFH includes specifically  
 19 identified waters and substrate necessary for fish spawning, breeding, feeding, or growing to  
 20 maturity. The BDCP (Appendix 5.I) includes an assessment of BDCP effects on Essential Fish Habitat.  
 21 The lead agencies cannot issue a Record of Decision for this EIR/EIS until the NMFS issues a  
 22 statement of concurrence with the findings of that assessment.

### 23 **32.2.1.5 Rivers and Harbors Act**

24 The Rivers and Harbors Act of 1899, addresses projects and activities in navigable waters and  
 25 harbor and river improvements.

26 Section 9 of the Rivers and Harbors Act prohibits the construction of dams, bridges, dikes, and other  
 27 structures across any navigable water, or placing obstructions to navigation outside established  
 28 federal lines in the absence of Congressional consent and approval of the plans by the Chief of  
 29 Engineers and the Secretary of the Army. Where the navigable portions of the water body lie wholly  
 30 within the limits of a single state, the structure may be built under authority of the legislature of that  
 31 state, if the location and plans or any modification thereof are approved by the Chief of Engineers  
 32 and by the Secretary of the Army. Excavating from or depositing material in navigable water  
 33 requires permits from USACE. Section 9 also pertains to bridges and causeways but the authority of  
 34 the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was  
 35 transferred to the Secretary of Transportation under the Department of Transportation Act of  
 36 October 15, 1966.

37 Section 10 prohibits the unauthorized obstruction or alteration of any navigable water in the United  
 38 States. This section provides that the construction of any structure in or over any navigable water of  
 39 the United States, or the accomplishment of any other work affecting the course, location, condition,  
 40 or physical capacity of such water, is unlawful unless the work has been authorized by the Chief of  
 41 Engineers. Project applicants will coordinate with USACE for issuance of a Section 10 permit.

1 Section 14 provides that the Secretary of the Army, on the recommendation of the Chief of  
 2 Engineers, may grant permission for the temporary occupation or use of any sea wall, bulkhead,  
 3 jetty, dike, levee, wharf, pier or other work built by the United States. This permission will be  
 4 granted by an appropriate real estate instrument in accordance with existing real estate regulations.  
 5 To initiate the Section 408 permission process, the Federal lead agencies will submit the following.

- 6 • A written request for approval of the modification that includes a description of the modification  
 7 and the purpose of and need for the modification.
- 8 • A technical analysis of the adequacy of the proposed design; a real estate analysis.
- 9 • A discussion of residual risk.
- 10 • Information supporting compliance with other applicable Federal laws.

11 Activities that require Section 408 permission typically also require authorization under Section 404  
 12 of the CWA and Section 10 of the RHA. Project applicants will participate in one or more pre-  
 13 application meetings with USACE and will prepare applications for permits under Section 408 of the  
 14 RHA.

### 15 **32.2.1.6 National Historic Preservation Act**

16 Section 106 of the National Historic Preservation Act (NHPA) of 1966 (as amended in 1992)  
 17 requires federal agencies to evaluate the effects of federal undertakings on historic, archaeological,  
 18 and cultural resources, and to consult with the Advisory Council on Historic Preservation (ACHP)  
 19 concerning potential effects of federal actions on historic properties. Before federal funds may be  
 20 approved for a particular project and prior to the issuance of any license, the effect of the project on  
 21 any district, site, building, structure, or object that is included in or eligible for the National Register  
 22 of Historic Places shall be evaluated.

23 To comply with the NHPA, notices of public meetings for this project will be sent to the State  
 24 Historic Preservation Officer (SHPO), a unit of the California Department of Parks and Recreation  
 25 that acts as an intermediary for the ACHP. In addition, a copy of this Draft EIR/EIS will be sent to  
 26 SHPO requesting review and soliciting input on the project. Reclamation, USFWS, NMFS, and DWR  
 27 will coordinate with ACHP and SHPO consistent with Section 106 of the NHPA.

### 28 **32.2.1.7 Native American Consultation**

29 The regulations for Section 106 of the NHPA require federal agencies to consult with Indian Tribes  
 30 that attach cultural or religious significance to cultural resources subject to management during the  
 31 Section 106 process (see 36 CFR 800.2). Each federal agency performing an action that constitutes  
 32 an undertaking as defined in the Section 106 regulations will consult with relevant Indian Tribes  
 33 regarding that undertaking (36 CFR 800.16[y]). Government-to-government consultation would  
 34 take place to determine interests, concerns, impacts, applicable tribal regulations, and appropriate  
 35 avoidance measures.

### 36 **32.2.1.8 Executive Order on Environmental Justice (E.O. 12898)**

37 Executive Order (EO) 12898, *Federal Actions to Address Environmental Justice in Minority*  
 38 *Populations and Low-Income Populations* (59 CFR 7629), requires federal agencies to analyze federal  
 39 actions that have the potential to result in disproportionately high and adverse effects on minority  
 40 and low-income populations. Public outreach is an important component of meeting the goals

1 identified in EO 12898. As Reclamation’s NEPA Handbook states, “scoping and public involvement  
 2 activities should be carried out to ensure adequate opportunity for minority and low-income  
 3 populations in the affected area to participate in the NEPA process. The participation of these groups  
 4 can be particularly important when assessing the significance of impacts and the adequacy of  
 5 contemplated mitigation measures.”

## 6 **32.2.2 State Requirements**

7 Below is a summary of relevant state laws and policies requiring agency consultation.

### 8 **32.2.2.1 Natural Community Conservation Planning Act**

9 The NCCPA is part of the California Fish and Game Code, Section 2800–2835. The NCCPA authorizes  
 10 and encourages conservation planning on a regional scale in California. The NCCPA addresses the  
 11 conservation of natural communities as well as individual species. The mechanism for this regional  
 12 conservation is the development of NCCPs that provide for early coordination efforts to protect  
 13 natural communities that contain species listed for protection under ESA or the California  
 14 Endangered Species Act (CESA), as well as unlisted species. To be approved by CDFW, an NCCP must  
 15 adequately conserve species and natural communities within the plan area, as is required under ESA  
 16 and CESA. An NCCP differs from the individual project approach to ESA and CESA compliance, in  
 17 which impacts of taking a listed species caused by individual projects are addressed on a project-by-  
 18 project basis. The NCCPA also provides an alternative to incidental take permits under CESA. Under  
 19 the NCCPA, CDFW may issue “NCCPA authorizations” for actions that would result in the take of any  
 20 species, including listed species that are adequately conserved by an approved NCCP.

21 In December 2006, the members of the BDCP Steering Committee entered into a formal Planning  
 22 Agreement consistent with requirements of the NCCPA for the development of the BDCP. Among  
 23 other things, the Planning Agreement defined the goals, commitments, and expectations of the  
 24 parties regarding the BDCP planning process. It also reiterated the goal of the Steering Committee to  
 25 develop a conservation plan that would meet the requirements of ESA and the NCCPA.

26 The BDCP has been prepared as a joint HCP/NCCP consistent with ESA and the NCCPA, to support  
 27 the issuance of incidental take authorizations from USFWS and NMFS pursuant to ESA (see Section  
 28 32.2.1.3), and to support the issuance of take authorizations from CDFW under Section 2835 of the  
 29 NCCPA. The BDCP has also been designed to meet the standards of Section 2081 of CESA.

### 30 **32.2.2.2 California Endangered Species Act**

31 CESA (Fish and Game Code Section 2050 et. seq.) establishes state policy to conserve, protect,  
 32 restore, and enhance threatened or endangered species and their habitats. CDFW is responsible for  
 33 administering this act and for maintaining the California threatened and endangered species listings.  
 34 CESA prohibits the *take* of listed and candidate (petitioned to be listed) species. As defined by CESA,  
 35 take is to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch capture, or kill.”  
 36 To ensure that actions proposed by an agency do not jeopardize the continued existence of any  
 37 endangered or threatened species or result in destruction or adverse modification of essential  
 38 habitat, lead agencies must seek consultation with CDFW prior to project implementation. For  
 39 projects that would affect a species that is federally and state-listed, compliance with ESA satisfies  
 40 CESA if CDFW determines that the federal incidental take authorization is consistent with CESA

1 (Fish and Game Code Section 2080.1). For projects that would result in take of a state-listed species,  
2 the project proponent must apply for a take permit under Fish and Game Code Section 2081(b).

3 The BDCP has been prepared as a joint HCP/NCCP that will support the issuance of incidental take  
4 authorizations from USFWS and NMFS pursuant to the ESA (Section 32.2.1.3), and that will support  
5 the issuance of take authorizations from CDFW under Section 2835 of the NCCPA (see Section  
6 32.2.2.2). The BDCP has also been designed to meet the standards of Section 2081 of CESA.

### 7 **32.2.2.3 Porter-Cologne Water Quality Control Act**

8 In 1967, the Porter-Cologne Act established the State Water Board and nine Regional Water Quality  
9 Control Boards (Regional Water Boards) as the primary state agencies with regulatory authority  
10 over California water quality and appropriative surface water rights allocations. The State Water  
11 Board administers the Porter-Cologne Act, which provides the authority to establish Water Quality  
12 Control Plans (WQCP) that are reviewed and revised periodically. The Porter-Cologne Act also  
13 provides the State Water Board with authority to establish statewide plans.

14 The nine Regional Water Boards carry out State Water Board policies and procedures. The State  
15 Water Board and the Regional Water Boards also carry out sections of the federal CWA  
16 administered by USEPA, including the National Pollutant Discharge Elimination System (NPDES)  
17 permitting process for point source discharges and the CWA Section 303 water quality standards  
18 program.

19 WQCPs, also known as basin plans, designate beneficial uses for specific surface water and  
20 groundwater resources, and establish water quality objectives to protect those uses. These plans can  
21 be developed at the state or regional level. Regional Water Boards issue waste discharge  
22 requirements for the major point source waste dischargers, such as municipal wastewater  
23 treatment plants and industrial facilities. In acting on water rights applications, the State Water  
24 Board may establish terms and conditions in a permit to carry out WQCPs.

25 Basin plans adopted by Regional Water Boards are primarily implemented through the NPDES  
26 permitting system and through issuance of waste discharge requirements to regulate waste  
27 discharges so that water quality objectives are met. Basin plans provide the technical basis for  
28 determining waste discharge requirements and authorize the Regional Water Boards to take  
29 regulatory enforcement actions if deemed necessary. The basin plans are subject to a triennial  
30 review and may be amended under a structured process involving full public participation and state  
31 environmental review. The Delta is under the jurisdiction of the Central Valley Water Board and the  
32 San Francisco Bay Regional Water Board, which carry out policies and procedures adopted under  
33 their respective basin plans.

## 34 **32.3 Agency Involvement and Coordination**

### 35 **32.3.1 Agency Involvement in the EIR/EIS**

36 The Delta Habitat Conservation and Conveyance Program (DHCCP) was formed in 2008 as a result  
37 of Governor Schwarzenegger's calls for studies to assess potential habitat restoration and water  
38 conveyance options in the Delta. The DHCCP is a partnership between DWR and Reclamation to  
39 evaluate the ecosystem restoration and water conveyance alternatives identified by the BDCP.

1 USFWS, USBR, and NMFS are participating in the BDCP planning process as advisors and are co-lead  
2 agencies for the EIR/EIS. The DHCCP has three primary goals.

- 3 • Analyze BDCP proposed actions and alternatives through a formal EIR/EIS process.
- 4 • Analyze options and consider areas of concern presented by the public during the EIR/EIS  
5 process.
- 6 • Develop preliminary engineering options for habitat restoration, other stressors, and water  
7 conveyance.

8 In June 2008, the BDCP Environmental Coordination Team (BECT) was founded as a project working  
9 group consisting of the BDCP EIR/EIS lead agencies and responsible, cooperating, and interested  
10 agencies to provide environmental planning and review. More specifically, the BECT includes  
11 representatives from DWR, CDFW, Reclamation, NMFS, and USFWS, and other interested,  
12 responsible, and cooperating agencies (e.g., State Water Board, USACE, and USEPA). The goal of the  
13 BECT was to identify and implement a collaborative process that would result in the issuance of  
14 applicable permits. The process involved environmental analyses of potential conservation  
15 measures, including conveyance and habitat restoration, and other options in support of agency  
16 decision-making. More than 60 BECT meetings occurred between 2008 and 2013.

17 Ongoing agency consultation and coordination activities are continuing during preparation of the  
18 environmental documents for the BDCP. The lead agencies continue to proactively engage interested  
19 agencies throughout the NEPA, CEQA, and project permitting processes.

### 20 **32.3.2 Agency Involvement in the BDCP**

21 The history of agency involvement in BDCP development is summarized in BDCP Appendix 3.A,  
22 *Background on the Process of Developing the BDCP Conservation Measures*, and is here summarized.

23 From 2006 to 2010, the BDCP planning process was guided by the BDCP Steering Committee.  
24 Steering Committee membership included eight state and federal agencies (the Bureau of  
25 Reclamation, California Department of Fish and Wildlife, California Department of Water Resources,  
26 California Natural Resources Agency, National Marine Fisheries Service [ex officio], State Water  
27 Resources Control Board [ex officio], U.S. Army Corps of Engineers [ex officio], and U.S. Fish and  
28 Wildlife Service [ex officio]) as well as six public water agencies, six environmental non-  
29 governmental organizations, and five other regional member agencies. Steering Committee  
30 responsibilities included providing policy guidance and direction for the preparation of all elements  
31 of the BDCP. The Steering Committee formed various standing and *ad hoc* groups as needed to  
32 address specific technical issues related to BDCP development. Meetings of the Steering Committee  
33 and Steering Committee groups were noticed on the BDCP website and open to the public.

34 Following release of a preliminary administrative draft BDCP document in November 2010, the  
35 steering committee was replaced by a leadership group representing those parties seeking coverage  
36 under BDCP permits and authorizations, known as the *Authorized Entities*, and including  
37 Reclamation, DWR, and a number of public water agencies. The Authorized Entities at that time  
38 began consultation with the permitting and regulatory agencies, which include the lead and  
39 collaborating agencies for this EIR/EIS, and in particular those fish and wildlife agencies that would  
40 be reviewing the BDCP for proposed permits and authorizations to be issued pursuant to the ESA  
41 and NCCPA: the CDFW, USFWS and NMFS.

1 Consultations between the Authorized Entities and the fish and wildlife agencies have been frequent  
 2 from late 2010 to the present, featuring hundreds of communications on scores of issues. The  
 3 principal venues for this negotiation have been as follows:

- 4 • Principals meetings, which are biweekly meetings between senior staff of the Authorized  
 5 Entities and the fish and wildlife agencies, and which are primarily used to discuss broad issues  
 6 and those affecting agency policies.
- 7 • Working group meetings, which are meetings attended by technical staff representing both the  
 8 Authorized Entities and the fish and wildlife agencies, and which are focused on technical issues  
 9 in the analysis. Examples include meetings of the Fish Facilities Technical Team, which  
 10 addressed technical issues related to the proposed north delta diversions, and the Terrestrial  
 11 Technical Team, which addressed issues related to the conservation reserve program and  
 12 protection of natural communities and associated species. Both of these examples represent  
 13 meetings focused on developing the conservation strategy. Other working groups addressed  
 14 issues in the effects analysis (BDCP Chapter 5), Plan governance (BDCP Chapter 7), and Plan  
 15 costs and funding (BDCP Chapter 8).
- 16 • BDCP Draft documents. Complete or largely complete drafts of the BDCP were issued in  
 17 December 2010, February 2012, and March 2013. Each of these drafts provided the fish and  
 18 wildlife agencies with an opportunity to review the complete plan and to issue review  
 19 comments. Each successive draft addressed these comments. The process typically included  
 20 many emails and telephone conversations to discuss the review comments and the appropriate  
 21 response.

## 22 **32.4 Public Review of the Draft EIR/EIS**

23 The public Draft EIR/EIS will be available for review and comment following the filing of the Notice  
 24 of Availability (NOA) of the EIS with USEPA and the Notice of Completion of the EIR with the  
 25 California State Clearinghouse. The purpose of public review of the Draft EIR/EIS is to receive  
 26 comments from interested parties on the document's completeness and adequacy in disclosing  
 27 potential environmental impacts of the BDCP. After the close of the public comment period for the  
 28 Draft EIR/EIS, a Final EIR/EIS, which will contain responses to public and agency comments on the  
 29 Draft EIR/EIS, will be prepared. DWR is responsible for certifying the EIR as adequate by issuing a  
 30 Notice of Determination in compliance with CEQA. The agencies will use the EIR/EIS in addition to  
 31 ESA Section 7 consultations, and other appropriate information to make a decision on selecting  
 32 which alternative to implement regarding approval of the BDCP and issuance of the incidental take  
 33 permits.

34 A list of street addresses and websites where the Draft EIR/EIS will be available for review will  
 35 include these locations.

- 36 • Lead Agency Offices
- 37 • Libraries
- 38 • Websites
  - 39 ○ Bay Delta Conservation Plan (<http://baydeltaconservationplan.com>)
  - 40 ○ California Department of Water Resources

- 1       ○ Bureau of Reclamation
- 2       ○ National Marine Fisheries Service
- 3       ○ U.S. Fish and Wildlife Service