

Chapter 31

Other CEQA/NEPA Required Sections

This chapter provides an overview of other CEQA and NEPA considerations based on the technical analyses presented in Chapters 5–30. This chapter addresses any new significant irreversible and irretrievable changes, short-term uses versus long-term productivity, selection of the environmentally superior alternative under CEQA, significant and unavoidable impacts, and potential impacts of project commitments and mitigation measures presented in Chapters 5–30 of this Supplemental EIR/EIS and measures to reduce those impacts.

The detailed analysis of the effects of the additions or changes to California WaterFix necessary to make the California WaterFix Supplemental EIR/EIS adequate, is provided in Chapters 5–30.

This chapter also addresses a topic that does not need to be addressed under either CEQA or NEPA, but may be relevant to the proposed project under California law: “public trust” considerations.

31.1 Irreversible and Irretrievable Commitments of Resources/Significant Irreversible Environmental Changes

State CEQA Guidelines (14 California Code of Regulations [CCR] Section 15126.2[c]) and the Council on Environmental Quality’s (CEQ’s) NEPA Implementing Procedures (40 Code of Federal Regulations [CFR] Section 1502.16) require analysis of significant irreversible and irretrievable commitments of resources that would be caused by the proposed project. CEQA requires evaluation of irretrievable commitments of resources to ensure that their use is justified. NEPA requires an explanation of which environmental impacts are irreversible or would result in an irretrievable commitment of resources.

The proposed project would involve a similar commitment of a range of natural, physical, and fiscal resources as disclosed in the Final EIR/EIS. For a more detailed discussion, see Chapter 31, *Other CEQA/NEPA Required Sections*, in the Final EIR/EIS. Differences from the proposed project would be minor and would be as follows:

- Approximately 4,435 acres of land variously designated as agricultural, residential, commercial/industrial, public, and recreational/open space would be permanently altered under the proposed project, as opposed to 4,576 acres of land under the approved project.

The benefits of the proposed project would remain the same as discussed for the approved project in the Final EIR/EIS.

31.2 Summary of Significant and Unavoidable Adverse Impacts

Pursuant to Section 15126.2(b) of the State CEQA Guidelines, an EIR is required to identify the unavoidable significant environmental impacts of a project. An EIR shall:

Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their direct effect, should be described.

There would be no new significant and unavoidable impacts under the proposed project.

31.3 Environmental and Other Commitments and Mitigation Measures with the Potential for Environmental Effects under CEQA and NEPA

Section 15126.4(a)(1)(D) of the State CEQA Guidelines provides that, “[i]f a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed.” This directive is consistent with the general principle under NEPA that federal agencies should identify reasonably foreseeable impacts of proposed major federal actions. This section is intended to satisfy these mandates.

For each impact considered significant under CEQA or adverse under NEPA, mitigation measures have been designed that would reduce the severity of the impact. Further, as part of the planning and environmental assessment process, the lead agencies will incorporate environmental commitments and best management practices into the proposed project to avoid or minimize potential significant impacts and adverse effects. Some of these environmental commitments and mitigation measures could have the potential themselves to result in significant impacts and adverse effects. However, this Supplemental EIR/EIS does not have any new commitments or mitigation measures for the proposed project that could result in a significant impact or adverse effect that was not previously discussed in the Final EIR/EIS. The analysis of potential impacts resulting from environmental commitments and mitigation measures that were described in the Final EIR/EIS is considered to still be applicable to the proposed project and are not discussed further in this chapter.

31.3.1 Mitigation Measures

The mitigation measures with potential for significant environmental effects under CEQA or adverse effects under NEPA are discussed in Chapter 31, Section 31.5.2 in the Final EIR/EIS, and that analysis remains the same. Mitigation Measure WQ-7e is discussed below because it would be implemented in a slightly different way under the proposed project. These mitigation measures are described in the associated resource chapter.

1 **31.3.1.1 Mitigation Measure WQ-7e: Implement Terms of the Contra**
2 **Costa Water District Settlement Agreement**

3 Under this mitigation measure, DWR would construct an Interconnection facility at Victoria Island
4 or Clifton Court Forebay to convey water to Contra Costa Water District (CCWD) that meets
5 specified water quality requirements, in quantities and on a schedule defined in the settlement
6 agreement entered into between DWR and CCWD. For more detail on this mitigation measure and a
7 discussion of any impacts that may occur as a result of implementing this mitigation measure, please
8 see Appendix 31B, *Mitigation Measure WQ-7e: CCWD Settlement Agreement* in the Final EIR/EIS. The
9 changes in footprint of the proposed project being analyzed in this Supplemental EIR/EIS would
10 necessitate some footprint changes to the interconnection facility, but would result in fewer impacts
11 because the same alignment for the interconnection facility would be utilized, but would be shorter
12 since it would connect to the new Byron Tract Forebay which is northwest of the existing Clifton
13 Court Forebay. There would be no new or more severe impacts.

14 **31.4 Public Trust Considerations**

15 As discussed in Chapter 31, *Other CEQA/NEPA Required Sections*, of the Final EIR/EIS, the actions
16 undertaken by state agencies involving the planning and allocation of water resources could
17 implicate the common law “public trust doctrine.” This Supplemental EIR/EIS sets forth sufficient
18 analyses for allowing DWR, as lead agency, to consider the public trust doctrines. The Supplemental
19 EIR/EIS should also be helpful in assisting both the State Water Resources Control Board and the
20 California Department of Fish and Wildlife, as CEQA responsible agencies, to satisfy their own
21 obligations under both the common law public trust doctrine and the statutory public trust doctrine
22 aimed at protecting wildlife and fish species.

23 Compliance with CEQA, with its mandate to mitigate significant environmental effects to the extent
24 feasible,¹ tends to ensure compliance with the public trust doctrine, at least with respect to public
25 projects involving public use of public trust resources.² This is because the public trust doctrine
26 gives the state an “affirmative duty” to project public trust uses whenever *feasible*.³

27 DWR as CEQA lead agency continues to ensure that the proposed project will implement
28 environmental commitments, conservation measures, avoidance and minimization measures, and
29 mitigation measures intended to reduce otherwise “significant environmental effects” to less-than-
30 significant levels whenever feasible. These effects include effects on the following public trust
31 resources: water quality; fish and aquatic resources; terrestrial biological resources; in-water
32 recreational resources; and in-river transportation. In this Supplemental EIR/EIS, these topics are
33 addressed in Chapters 8, 11, 12, 15, and 19.

34 Most of the impacts at issue can be mitigated to less-than-significant levels, thereby resulting in
35 protection of the public trust resources at issue. Some impacts, however, would remain significant
36 and unavoidable. The existence of such impacts is also consistent with the public trust doctrine in

¹ California Public Resources Code Section 21002; State CEQA Guidelines Sections 15002[a][3], 15021[a][2].

² *Citizens for East Shore Parks*, *supra*, 202 Cal.App.4th at pp. 576-577, citing *National Audubon*, *supra*, 33 Cal.3d at p. 446, fn. 27; *Carstens v. Coastal Commission* (1986) 182 Cal.App.3d 277, 289-291; *SF Baykeeper*, *supra*, 242 Cal.App.4th at pp. 241-242 [leases authorizing a private lessee to mine sand from the San Francisco Bay].

³ *National Audubon*, *supra*, 33 Cal.3d at p. 446, italics added.

1 that there are no *feasible* means by which such impacts can be mitigated to less-than-significant
2 levels. However, under the proposed project described in this Supplemental EIR/EIS there would be
3 no new impacts on public trust resources beyond what was described in the Final EIR/EIS. See
4 Section 31.6.2, *Public Trust Doctrine Considerations*, in the Final EIR/EIS for a description of impacts
5 relating to public trust resources.

6 **31.5 Indian Trust Assets**

7 Chapter 31 of the Final EIR/EIS discusses the importance behind Indian Trust Assets (ITAs). All
8 bureaus under the Department of the Interior are responsible for, among other things, identifying
9 any impact of their plans, projects, programs or activities on ITAs; ensuring that potential impacts
10 are explicitly addressed in planning, decision, and operational documents; and consulting with
11 recognized tribes who may be affected by proposed activities.

12 Reclamation's existing records indicate that there are no Indian Trust lands in the proposed project
13 area. No adverse effects on ITAs would result under the proposed project/action and, thus, no
14 mitigation measures are required. There would be no potentially significant and unavoidable
15 impacts on ITAs associated with the implementation of the proposed project/action.

16 **31.6 References Cited**

17 None.