

Chapter 32

Public Involvement, Consultation, and Coordination

This chapter provides a summary of the public involvement and outreach activities conducted for the *California WaterFix Draft Supplemental Environmental Impact Report/Environmental Impact Statement* (Supplemental 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 this Supplemental EIR/EIS. This chapter does not repeat descriptions of outreach and coordination activities already described in the *Bay Delta Conservation Plan/California WaterFix Final EIR/EIS* (Final EIR/EIS).

The California WaterFix planning process has included public involvement, consultation, and coordination activities with a variety of stakeholders. Some of the outreach efforts prior to 2014 were conducted in collaboration with the EIR/EIS process to provide the stakeholders with information on the Bay-Delta Conservation Plan (BDCP) planning process, including the then-proposed Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). In 2014, after receiving substantial public input the lead agencies modified the BDCP (Alternative 4) to reduce environmental impacts and developed three additional alternatives including California WaterFix (Alternative 4A) to be further studied via the Partially Recirculated Draft EIR/Supplemental EIS (RDEIR/SDEIS) process. Ultimately, California WaterFix was chosen as the preferred alternative. Even with the pivot to California WaterFix and now to its proposed modifications, the lead agencies are committed to ongoing public outreach.

32.1 Past Public Involvement

Public participation is a cornerstone of both CEQA and NEPA, with opportunities for public participation required throughout the environmental review process. Throughout the environmental review process for the Final EIR/EIS, the lead agencies provided numerous avenues for public participation. Public outreach activities included scoping in 2008 and 2009, public review and comment on the Draft EIR/EIS in 2013–2014, additional public review and comment on the RDEIR/SDEIS in 2015, and numerous public open house meetings. A complete summary of the public outreach activities related the environmental review process is provided in Chapter 32, *Public Involvement, Consultation, and Coordination*, of the Final EIR/EIS. The Final EIR/EIS discusses past outreach efforts that were conducted for the development of the BDCP (such as the BDCP Steering Committee meetings that were open to the public, Working Groups, stakeholder briefings and presentations, public meetings, and environmental justice outreach) as well as those activities conducted after April of 2015, when the lead agencies moved forward with California WaterFix as the preferred Alternative.

1 **32.2 Final EIR/EIS and Notice of Determination** 2 **Outreach**

3 **32.2.1 Public Review of the Final EIR/EIS**

4 The Final EIR/EIS includes responses to substantive public and agency comments on the Draft
5 EIR/EIS and RDEIR/SDEIS. The Final EIR/EIS was made public on December 22, 2016. The Final
6 EIR/EIS was posted to the website and an email notification sent to the project email listserv.¹ The
7 electronic version of the Final EIR/EIS was distributed to all commenting agencies, cities, counties,
8 and water districts. A postcard notice was sent out to the entire project mailing list, including those
9 that commented on the Draft EIR/EIS and RDEIR/SDEIS and provided a mailing address. The
10 electronic copy of the Final EIR/EIS was also sent to more than sixty libraries throughout the state.
11 Comments provided on the Final EIR/EIS were considered prior to adoption and certification of the
12 EIR and provided on the website as Comment Consideration Tables 3-1 through 3-3. An additional
13 document, *Developments after Publication of the Proposed Final Environmental Impact Report*,
14 includes further discussion of the comments received after the publication of the Final EIR/EIS.

15 **32.2.2 Notice of Determination Filing**

16 As explained in Section 32.4, *Public Review of the Final EIR/EIS*, of the Final EIR/EIS, DWR is
17 responsible for certifying the EIR portion as adequate in compliance with CEQA. Accordingly, DWR
18 certified the Final EIR on July 21, 2017, at the same time adopting findings, the mitigation
19 monitoring and reporting plan, and a statement of overriding considerations. The Notice of
20 Determination (NOD) for the California WaterFix (Alternative 4A) was filed with the State
21 Clearinghouse. Additionally, notice of the Certification of the Final EIR and the NOD were submitted
22 to the counties in which the project is to be located and email notices were distributed to the project
23 listserv.

24 **32.2.3 Public Information**

25 Since the Final EIR/EIS was released and the NOD filed, DWR has continued to provide project
26 updates to the public and stakeholders, using the project website at www.CaliforniaWaterFix.com
27 and through regular email updates. The website includes project factsheets and videos and provides
28 updates regarding project permitting, financing, and design and construction. The regulatory
29 website at www.BayDeltaConservationPlan.com continues to be available to the public to access
30 historic project information as well.

31 **32.3 Compliance with Agency Consultation** 32 **Requirements**

33 The following sections describe relevant federal and state consultation requirements and the
34 consultation that has occurred to date, or that will occur, for the lead agencies to achieve
35 compliance. No new agency consultation is expected to be necessary as a result of the proposed

¹ www.BayDeltaConservationPlan.com/FinalEIREIS/FinalEIR-EIS_VolumeI.aspx.

1 changes to the approved project that are evaluated in the Draft Supplemental EIR/EIS. The lead
2 agencies are working through the existing consultation and permitting processes to determine what
3 amendments to existing permits may be needed and what additional information may be necessary
4 to support those amendments in order to incorporate the proposed project changes.

5 Chapter 1, *Introduction*, of the Final EIR/EIS and this Supplemental EIR/EIS outline various
6 discretionary approvals and permit requirements of the proposed project.

7 **32.3.1 Federal Requirements**

8 The subsections below provide an update to Section 32.2.1 in the Final EIR/EIS of federal permitting
9 and agency consultation activities which have occurred.

10 **32.3.1.1 Clean Water Act**

11 In 2014, DWR began the preparing the 404 application, and held several pre-application meetings to
12 coordinate with U.S. Army Corps of Engineers (USACE) staff. On August 26, 2015, DWR submitted
13 the 404 permit application package to the USACE. The 404 application included information
14 sufficient for the USACE to issue a public notice eliciting comments from both agencies and the
15 general public. The USACE's public notice comment period ran from September 9, 2015 to
16 November 9, 2015.

17 On September 24, 2015, DWR submitted an application for water quality certification under Clean
18 Water Act (CWA) Section 401 (401 Application) to the State Water Resources Control Board (State
19 Water Board) for the California WaterFix. In its February 11, 2016, Pre-Hearing Conference Ruling,
20 the State Water Board Hearing Officers determined that "In order to ensure that parties do not have
21 to duplicate their participation in two proceedings [water right change petition and water quality
22 certification for the California WaterFix] with overlapping issues, and to allow the decisions on the
23 401 Application to be informed by the significant information that will be produced in the hearing
24 process, the Executive Director will not issue a decisions on the 401 Application until after the
25 hearing record for the water right petition closes ... the State Water Board plans to process and act
26 on the 401 Application separately."

27 For more detail on the CWA, please refer to Chapter 32 in the Final EIR/EIS.

28 **32.3.1.2 Federal Endangered Species Act Section 7**

29 The U.S. Bureau of Reclamation (Reclamation) is the lead federal action agency for Section 7
30 compliance for California WaterFix. In a letter dated April 2, 2015 (SPK-2008-00861), USACE
31 designated Reclamation to act on its behalf for the purposes of consultation to also address the
32 Section 7 compliance needs for the USACE permit actions.

33 Since 2006, there has been nearly continuous engagement among multiple agencies, including
34 Reclamation, DWR, the California Department of Fish and Wildlife (CDFW), the National Marine
35 Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (USFWS), among others, in
36 development of the approved project.

37 In September, 2014, planning efforts for the Endangered Species Act (ESA) Section 7 compliance
38 component of the BDCP, a Section 10 permit application, commenced with the formation of the
39 Section 7 Consultation Team (SCT). Attendees included representatives from Reclamation, DWR,

1 USFWS, NMFS, and CDFW. The purpose of the SCT was to coordinate the use of the BDCP Section 10
2 document for purposes of completing the Section 7 consultation. Meetings were held bimonthly
3 through December. In February 2015, Reclamation and DWR decided to pursue a Section 7
4 consultation in lieu of the Section 10 permit. At that time, the SCT began meeting weekly and was
5 focused on the development of a new document to support Section 7 consultation. Additionally,
6 technical teams were formed with the same membership as the SCT to allow USFWS and NMFS to
7 provide technical assistance in the development of the BA. Technical teams met regularly to discuss
8 the proposed action, analytical approaches, organization of the BA, and other topics pertinent to the
9 development of the BA. The SCT and technical teams continued to meet regularly through the
10 development of the Final BA. In addition, Principal meetings were held throughout the development
11 of the BA to discuss the Section 7 consultation as well as other topics pertinent to the proposed
12 action.

13 From March 2015 through November 2015, NMFS, USFWS, CDFW, DWR, and Reclamation
14 participated in collaborative meetings to develop appropriate technical approaches to the
15 evaluation of the approved project. These included the following:

- 16 • Weekly SCT meetings.
- 17 • Weekly ESA Technical Team meetings.
- 18 • Weekly Terrestrial Technical Team meetings.
- 19 • Weekly Aquatics Technical Team meetings.
- 20 • Various workshops to discuss specific topics, such as the inclusion of climate change, application
21 of specific modeling tools, modeling assumptions, and other technical topics.

22 Additionally, beginning in April 2015, USACE and the U.S. Environmental Protection Agency (USEPA)
23 also participated in technical discussions pertaining to relevant components of the consultation
24 through the weekly ESA technical team meetings.

25 On August 2, 2016, in cooperation with DWR, Reclamation prepared and submitted a biological
26 assessment (BA) to USFWS and NMFS requesting formal consultation under ESA Section 7. On June
27 26, 2017, after extensive formal consultation with the DWR and Reclamation, NMFS and USFWS
28 issued their biological opinions allowing the proposed construction and operation of California
29 WaterFix to move forward. The biological opinions recognize the uncertainty inherent in the
30 dynamic ecology of the Delta and include a strong adaptive management component, where
31 research, monitoring, and real-time tracking of fish populations and other factors will guide future
32 operation of the new intakes. The lead agencies are working with USFWS and NMFS to determine
33 the appropriate information necessary to supplement the record, consistent with the requirements
34 of Section 7 of the ESA and the biological opinions issued in 2017.

35 **32.3.1.3 Fish and Wildlife Coordination Act**

36 The Fish and Wildlife Coordination Act consultation requirements are being satisfied through the
37 EIR/EIS process for the Supplemental EIR/EIS.

38 **32.3.1.4 Magnuson-Stevens Fishery Conservation and Management Act**

39 The Magnuson-Stevens Fishery Conservation and Management Act (MSA) establishes a management
40 system for national marine and estuarine fishery resources. Section 305(b)(2) of the 1996

1 reauthorization of the MSA added a provision for federal agencies to consult with NMFS on impacts
2 to Essential Fish Habitat (EFH), which applies to commercial fisheries. EFH includes specifically
3 identified waters and substrate necessary for fish spawning, breeding, feeding, or growing to
4 maturity. Appendix 5.I of the Final EIR/EIS includes an assessment of BDCP/California WaterFix
5 effects on EFH.

6 As part of the ESA Section 7 consultation, NFMS conducted also completed an EFH assessment in
7 accordance with Section 305(b)(2) of the MSA (16 United States Code 1801 et seq.) and
8 implementing regulations at 50 Code of Federal Regulations (CFR) 600. After its review, NFMS
9 concluded that the project would adversely affect the EFH of Pacific Coast salmon, coastal pelagic
10 species, and Pacific Coast groundfish in the action area. Reclamation submitted a subsequent letter
11 describing the mitigation and avoidance measures that would be taken to offset the effects. It is
12 expected that compliance with the MSA for the proposed project will be through the information
13 determined necessary to supplement the record under Section 7 of the ESA, as discussed in Section
14 32.3.1.2.

15 **32.3.1.5 National Historic Preservation Act**

16 USACE, as the federal lead agency for CWA Section 404 permitting of the water conveyance facility,
17 is responsible for Section 106 compliance. Section 106 allows for the development of a
18 programmatic agreement (PA) that will govern the implementation of complex projects, such as
19 those with multiple phases of construction that will occur over a large area (36 CFR 800.14[b]) or
20 when nonfederal parties are delegated major decision-making responsibilities (36 CFR
21 800.14[b][1][iii]).

22 USACE, in collaboration with DWR and in consultation with the California State Historic
23 Preservation Office (SHPO), has developed a Section 106 PA for the conveyance facility. The PA was
24 executed by USACE, DWR, and the SHPO in March 2017. The PA provides for the identification of
25 historic properties within the Area of Potential Effect (APE) for each phase of construction prior to
26 initiating construction, and the development of avoidance, minimization, or mitigation measures for
27 those historic properties that could be adversely affected by the project. The PA details how many of
28 the day-to-day responsibilities for Section 106 compliance are delegated to DWR by USACE. USACE
29 conducted outreach to numerous potential stakeholders, including Native American tribes, local
30 historical societies, and heritage interest groups, to identify consulting parties on the PA. Those
31 parties that responded with a desire to participate were provided opportunities to review and
32 comment on the PA and will continue to be provided opportunities to review and comment on
33 documents developed in accordance with the PA.

34 A Programmatic Historic Properties Treatment Plan is currently being developed to guide
35 implementation of the PA. As needed, individual treatment plans will be prepared to address
36 adverse effects on NRHP-eligible archaeological, built environment, historic landscape, and
37 Traditional Cultural Property resources.

38 Since the adoption of the approved project, one PA has been executed with USACE, SHPO and DWR.
39 DWR is nearing the initiation of the Section 106 consultation for the first phase of construction of
40 the approved project and has conducted one site visit with three tribes. Should the proposed project
41 be approved and certified through the CEQA process, DWR will work with SHPO to incorporate
42 those project changes into the Section 106 consultation process.

1 **32.3.1.6 Native American Consultation**

2 The regulations for Section 106 of the National Historic Preservation Act require federal agencies to
3 consult with Indian tribes that attach cultural or religious significance to cultural resources subject
4 to management during the Section 106 process (see 36 CFR 800.2). Each federal agency performing
5 an action that constitutes an undertaking as defined in the Section 106 regulations will consult with
6 relevant Indian tribes regarding that undertaking (36 CFR 800.16[y]). Government-to-government
7 consultation would take place to determine interests, concerns, impacts, applicable tribal
8 regulations, and appropriate avoidance measures.

9 **32.3.1.7 Executive Order on Environmental Justice (EO 12898)**

10 Executive Order (EO) 12898, *Federal Actions to Address Environmental Justice in Minority*
11 *Populations and Low-Income Populations* (59 CFR 7629), requires federal agencies to analyze federal
12 actions that have the potential to result in disproportionately high and adverse effects on minority
13 and low-income populations. As with the Final EIR/EIS, the previously identified environmental
14 justice groups in the project area will receive notices and information about how to participate in
15 the Supplemental EIR/EIS process.

16 **32.3.2 State Requirements**

17 The subsections below provide an update to Section 32.2.2 in the Final EIR/EIS of state permitting
18 and agency consultation activities which have occurred.

19 **32.3.2.1 AB 52 Tribal Cultural Resources Coordination Requirement**

20 Approved on September 25, 2014, Assembly Bill 52 (AB 52) expands the definition of an
21 environmental resource under CEQA to include tribal cultural resources as a distinct resource
22 category that is separate from cultural resources, and that would require consideration.
23 Importantly, Section 11(c) of AB 52 indicates that that the “act shall apply only to a project that has a
24 notice of preparation or a notice of negative deceleration or mitigated negative declaration filed on
25 or after July 1, 2015.” A notice of preparation was prepared for the project in 2009, and the
26 proposed project changes will not require a new notice of preparation, negative declaration, or
27 mitigated negative declaration. Therefore, AB 52 is not applicable to the project.

28 However, DWR has been consulting with tribes to meet Section 106 requirements. As directed by
29 the Governor’s Executive Order B-10-11 and the California Natural Resources Agency’s policy
30 regarding consultation with California Native American tribes, DWR is conducting government-to-
31 government consultation on the Supplemental EIR/EIS.

32 **32.3.2.2 Delta Reform Act**

33 The Delta Plan has been developed by the Delta Stewardship Council (DSC), and is a legally
34 enforceable comprehensive management plan designed to meet the goals of providing a more
35 reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.
36 The Delta Plan generally covers five topic areas and goals: (1) increased water supply reliability, (2)
37 restoration of the Delta ecosystem, (3) improved water quality, (4) reduced risks of flooding in the
38 Delta, and (5) protection and enhancement of the Delta. The Delta Plan sets forth regulatory policies
39 and recommendations that seek to influence the actions, activities, and projects of cities and

1 counties and state, federal, regional, and local agencies toward meeting the goals in the five topic
2 areas.

3 As stated in the Delta Plan, the “California Delta is a unique place distinguished by its geography,
4 legacy communities, a rural and agricultural setting, vibrant natural resources, and a mix of
5 economic activities. Its 839,640 acres of land, sometimes centered on a wide river but laced with a
6 network of narrow channels and sloughs, stretch to the horizon, are bounded only by the levees that
7 were built to drain the Delta’s marshes and floodprone riversides. The Legislature has found that the
8 Delta’s uniqueness is particularly characterized by its hundreds of miles of meandering waterways
9 and the many islands adjacent to them, and has described the Delta’s highly productive agriculture,
10 recreational assets, fisheries, and wildlife as invaluable resources (Water Code Section 12981[b])”
11 (Delta Stewardship Council 2013).

12 State and local agencies are required to comply with the set of 14 regulatory policies contained
13 within the Delta Plan. Under the Act, it is the state or local agency approving, funding, or carrying out
14 the project in the Delta that must determine if a project is a "covered action" subject to regulations
15 of the Delta Plan. If the project is considered a covered action, the agency must certify consistency of
16 the project with Delta Plan policies by submitting a written certification to the Delta Stewardship
17 Council, with detailed findings demonstrating that the covered action is consistent with the Delta
18 Plan (Water Code Section 85225).

19 California WaterFix, located on the Sacramento River in the Delta Primary Zone, is expected to be
20 considered a “covered action,” as defined in the Delta Reform Act (Water Code Section 85057.5[a]).
21 In accordance with the Delta Plan and in coordination with DSC staff, DWR will prepare a Certificate
22 of Consistency that will discuss with specificity the Delta Plan policies applicable to the California
23 WaterFix and submit it for public review through the DSC’s website prior to implementation of the
24 project.

25 **32.3.2.3 California Endangered Species Act**

26 The California Endangered Species Act (CESA) (Fish and Game Code Section 2050 et seq.)
27 establishes state policy to conserve, protect, restore, and enhance threatened or endangered species
28 and their habitats.

29 DWR submitted an application for authorization of an incidental take permit for take associated
30 with construction and operation of the approved project on October 5, 2016. On July 28, 2017,
31 CDFW issued an incidental take permit for the construction and operation of California WaterFix in
32 compliance with Section 2081(b) of the CESA. This permit authorizes the incidental take of state-
33 listed species associated with future operation of the State Water Project (SWP) with the addition of
34 the California WaterFix, which includes construction of certain proposed water conveyance facilities
35 within the Sacramento-San Joaquin River Delta, along with operation of the SWP subsequent to and
36 incorporating the newly constructed facilities for California WaterFix and future SWP operations. As
37 described in the permit application, WaterFix will implement measures for construction and
38 operation of the project to fully mitigate the impacts of any incidental take of state-listed species,
39 and will provide additional protection through real-time operation of the facilities in a manner that
40 avoids and minimizes incidental take. The lead agencies are working with CDFW to determine what,
41 if any, amendments to the 2081 permit are necessary in order to incorporate the proposed project.

1 **32.3.2.4 State Water Resources Control Board Change in Point of**
2 **Diversion Permit**

3 On August 25, 2015, DWR and Reclamation jointly submitted a petition to add three new points of
4 diversion of water to specified existing water right permits for the SWP and the Central Valley
5 Project (CVP) associated with key elements of California WaterFix (Water Code Section 1701 and 23
6 California Code of Regulations 791 [e]). The petition requests the addition of three north Delta
7 points of diversion (intakes) on the Sacramento River but would not otherwise change the water
8 rights of the SWP or CVP.

9 The State Water Board is in the process of holding a series of hearings to receive evidence relevant
10 to determining whether it should approve, subject to terms and conditions, this petition for change
11 in point of diversion. In July of 2016 DWR and Reclamation submitted testimony and exhibits in
12 support of part one of the State Water Board’s proceedings to determine whether the petition
13 should be approved. The Water Board bifurcated the hearing to be conducted in two parts, with Part
14 1 focusing on impacts to human uses of water, flood control, and environmental justice issues, and
15 Part 2 addressing environmental impacts, fishery health, and recreation. The hearings will also
16 inform the consideration of an application for a water quality certification pursuant to CWA Section
17 401 for California WaterFix.

18 **32.4 Agency Involvement and Coordination**

19 **32.4.1 Agency Involvement in the EIR/EIS**

20 In June 2008, the BDCP Environmental Coordination Team (BECT) was founded as a project working
21 group to provide environmental planning and review. The BECT included representatives from
22 DWR, CDFW, Reclamation, NMFS, and USFWS, and other interested, responsible, and cooperating
23 agencies (e.g., State Water Board, USACE, and USEPA). The goal of the BECT was to identify and
24 implement a collaborative process that would result in the issuance of applicable permits. The lead
25 agencies are continuing to hold meetings and coordinate with the BECT group during the
26 preparation of this Supplemental EIR/EIS.

27 In addition, the lead agencies are continuing with regular meetings, consultation, and coordination
28 activities throughout preparation of this Supplemental EIR/EIS.

29 More information regarding past agency involvement activities from 2008–2016 is provided in
30 Chapter 32, *Public Involvement, Consultation, and Coordination*, of the Final EIR/EIS.

31 In 2018, DWR and participating public water agencies established a formal partnership to staff,
32 design, contract, construct and finance the California WaterFix project.

33 The Delta Conveyance Design and Construction Authority has been formed as a Joint Powers
34 Authority by the participating public water agencies. It will be charged with final design and
35 construction of WaterFix facilities, under the oversight of DWR. This model will allow the State and
36 the public water agencies funding the project to assign roles and responsibilities that align around a
37 shared vision to safely and transparently design and build WaterFix.

1 **32.5 Public Review of the Draft Supplemental EIR/EIS**

2 The Draft Supplemental EIR/EIS will be available for review and comment following the filing of the
3 Notice of Completion of the EIR with the California State Clearinghouse and the Notice of Availability
4 of the EIS with USEPA. Public noticing for the availability of the Draft Supplemental EIR/EIS and
5 comment period will comply with State CEQA Guidelines Section 15163 (c) as well as 40 CFR
6 1502.9(c)(4), guidance on noticing of supplemental documents under NEPA. Notification of the
7 dates, locations, and times of any public hearings will be distributed via email and social media and
8 may be distributed via newspaper notice and direct mailing. The purpose of public review of the
9 Draft Supplemental EIR/EIS is to receive comments from interested parties on the document's
10 completeness and adequacy in disclosing potential environmental impacts of the California
11 WaterFix. After the close of the public comment period for the Draft Supplemental EIR/EIS, a Final
12 Supplemental EIR/EIS will be prepared, which will contain responses to public and agency
13 comments on the Draft Supplemental EIR/EIS. DWR is responsible for certifying the EIR under
14 CEQA, adopting findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and
15 Reporting Program, and making a determination with regards to the proposed project. A NOD will
16 be filed with the California State Clearinghouse in compliance with CEQA.

17 A list of street addresses and websites where the Supplemental EIR/EIS will be available for review
18 will include these locations.

- 19 • Lead Agency Offices
- 20 • Libraries
- 21 • Websites
 - 22 ○ California WaterFix (<http://CaliforniaWaterFix.com>)
 - 23 ○ California Department of Water Resources
 - 24 ○ Bureau of Reclamation

25 **32.6 References Cited**

26 Delta Stewardship Council. 2013. *Proposed Final Delta Plan*. Available:
27 <<http://deltacouncil.ca.gov/delta-plan/>>. Accessed: June 21, 2013.