

## **CHAPTER 7**

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# **Environmental Review and Agency Consultation/Coordination**

Since the initial phases of project development beginning in 2001, CCWD and Reclamation have engaged and consulted with agencies, stakeholders, landowners, and the general public. These consultations assisted the lead agencies in determining the scope of the EIS/EIR, identifying the range of alternatives and mitigation measures, and defining potential environmental impacts and impact significance. Consultation included informal agency communications, formal interagency meetings, and public meetings. CCWD and Reclamation will continue to solicit public and agency input on the project by encouraging review of this Draft EIS/EIR. As noted previously, CCWD is the lead agency pursuant to CEQA and Reclamation is the lead agency pursuant to NEPA.

This chapter summarizes public and agency involvement activities undertaken by CCWD and Reclamation that have been conducted to date for this project, and which satisfy NEPA and CEQA requirements for public scoping and agency consultation and coordination. Appendix F, EIS/EIR Distribution List presents the entities receiving a copy of the Draft EIS/EIR.

### **7.1 Stakeholder Consultation**

The Los Vaqueros Reservoir Expansion Project communication strategy involves informing the public about the project, as well as engaging agencies and stakeholders to partner and collaborate together to move the project forward for public and agency review. An extensive public and stakeholder involvement process was implemented, which included a Customer and Stakeholder Feedback Group, an Agency Coordination Work Group (ACWG), public workshops, stakeholder and agency meetings, newsletters and a project website. Between 2001 and the public scoping process in early 2006, the lead agencies conducted more than 170 meetings with regional water task forces, city and county governments and local water agencies (approximately 100), elected officials (approximately 15), media (approximately 10), other Delta-related projects, environmental and stakeholder groups, homeowners associations in the project area, and potentially affected landowners (approximately 45).

Outreach activities have included continuous coordination with and input from public agencies including the Department of Water Resources (DWR), U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (DFG), National Marine Fish Service (NMFS), and local water agencies through regularly held ACWG meetings and additional briefings. CCWD has presented at various CALFED-related public meetings including environmental justice workshops and tribal forums. Meetings have been held with agency staff working as part of

multi-agency CALFED workgroups, as well as staff working only for their respective agencies on non-CALFED-related activities. CCWD regularly participates in the CALFED Bay-Delta Public Advisory Committee, Water Supply Subcommittee together with representatives from Reclamation, DWR, CALFED Bay-Delta Authority, statewide water agencies, and stakeholders.

## 7.2 Notice of Preparation and Notice of Intent

Reclamation and CCWD notified interested parties of the scoping period and upcoming public scoping meetings through electronic and postal service mailings and through publication of a Notice of Intent (NOI) and Notice of Preparation (NOP) consistent with NEPA and CEQA, respectively.

Reclamation published a NOI in the Federal Register on December 20, 2005 to advise interested agencies and the public that an EIS would be prepared. On January 10, 2006, CCWD published and distributed a NOP to advise interested agencies and the public that an EIR would be prepared. CCWD distributed the NOP to approximately 80 agencies, elected officials, and interested parties.

## 7.3 Public Scoping

Public scoping activities are conducted as part of compliance with both NEPA and CEQA, but are more formalized under NEPA. Scoping is intended to assist in identifying the final range of actions, alternatives, site design options, environmental resources, and mitigation measures that will be analyzed in an environmental document. The scoping process helps ensure that problems are identified early and properly studied and also helps to eliminate from detailed study those issues that are not critical to the decision at hand.

The approximately 70-day scoping comment period extended from December 20, 2005 through February 28, 2006. The public was invited to submit written comments on the scope, content, and format of the environmental document by mail, fax, or email to representatives at CCWD and Reclamation.

### 7.3.1 Scoping Meetings

During the Public Scoping Process, Reclamation and CCWD conducted four formal scoping meetings to gather input and comments prior to the development of the EIS/EIR. The tabulation below shows the dates and locations of the four meetings. Approximately 55 people attended the four meetings.

**Sacramento, CA**  
Tuesday, January 24, 2006  
1:30 to 3:30 p.m.  
Department of Water Resources  
Bonderson Building  
(Public Hearing Room – 1st Floor)  
901 P Street  
Sacramento, CA 95814

**Antioch, CA**  
Tuesday, January 24, 2006  
6:00 to 8:00 p.m.  
Veteran's Memorial Building, Legion Hall  
403 West 6th Street  
Antioch, CA 94509

**Livermore, CA**

Wednesday, January 25, 2006  
 6:00 to 8:00 p.m.  
 Martinelli Event Center  
 Agricultural Center  
 3583 Greenville Road  
 Livermore, CA 94550

**Concord, CA**

Thursday, January 26, 2006  
 6:00 to 8:00 p.m.  
 Contra Costa Water District  
 1331 Concord Avenue  
 Concord, CA 94520

The format of each public meeting program was identical and began with a 45-minute open house during which participants could view exhibit boards with project information including an overview of the regional context, project objectives and purposes, possible alternatives, environmental issues, the environmental review process, and the project schedule. Participants were also encouraged to ask informal questions of project team members to understand the project objectives and alternatives.

Participants were encouraged to sign in and were provided with materials including an agenda, open house program, presentation slides, comment card, and speaker card. Copies of the NOI and NOP were available upon request.

A formal 15-minute presentation focused on the process, schedule, and role of public comments. Following the presentation, 60 minutes were allotted for public comments on the scope, content, and format of the environmental document. Comments were accepted in writing; a court reporter recorded oral comments. The informational materials, presentation slides, and exhibit boards used during the scoping meetings as well as the written and oral scoping comments, attendance sheets and meeting summaries are included in the project Scoping Report, described below.

### 7.3.2 Scoping Report

A Scoping Report was prepared and is included in Appendix A, Notices and Public Involvement of this Draft EIS/EIR. The report outlines the process and outcome of the scoping meetings and other activities.

Specifically, this report includes an overview of scoping requirements; a list of all documents / products generated for project outreach; a summary of all comments made during the scoping process, both written and verbal; a description of the issues anticipated to be addressed in the EIS/EIR; and an appendix that includes hard copies of all written comments, summaries of the scoping meetings, and other project-related print materials used to inform interested parties about the project alternatives and the EIS/EIR.

### 7.3.3 Public Information Materials

In addition to the NOP, NOI, and Scoping Report, numerous informational materials were publicly distributed to inform stakeholders about the Los Vaqueros Reservoir Expansion Project and to solicit their input. These materials are described below.

## **Press Release**

Interested parties were notified about the public scoping meetings through a press release. The press release provided basic information; date, time, and location of meetings; and a brief explanation of the public scoping process and encouraged recipients to attend the open house/public scoping meetings. Reclamation distributed the press release on January 5, 2006.

## **CCWD Newspaper Notices**

CCWD published a display advertisement in the Central Zone and East Zone editions of the *Contra Costa Times*, the primary newspaper in CCWD's service area, on Wednesday, January 18, 2006, and Sunday, January 22, 2006. In addition, a legal advertisement was published Thursday, January 19, 2006. The advertisements announced CCWD and Reclamation's intention to prepare an EIS/EIR, the places and times of the scoping meetings, CCWD contact information, and the availability of information on CCWD's project web site.

## **Reclamation News Release**

Reclamation issued a news release on January 27, 2005, announcing the scoping meetings and soliciting public input on the project. The distribution list included 48 recipients, including newspapers; radio stations; television stations; water districts; and interested agencies, groups, and organizations.

## **Web Sites**

An electronic copy of the meeting display advertisement was posted on the CCWD project web site, [www.lvstudies.com](http://www.lvstudies.com), and the Reclamation project web site, [www.usbr.gov/mp/vaqueros](http://www.usbr.gov/mp/vaqueros).

## **General Notification Flyer**

Reclamation prepared and CCWD mailed a notification flyer to approximately 2,000 interested organizations, agencies, elected officials, and residents on January 12, 2006.

## **7.4 Additional Steps in the Environmental Review Process**

In accordance with CEQA and NEPA requirements, this Draft EIS/EIR will be circulated for public and agency review and comment for a 60-day period following the publishing of the Notice of Availability (NOA) of the EIS by the U.S. Environmental Protection Agency (EPA), and filing of the Notice of Completion (NOC) with the California State Clearinghouse.

Similar to the approach to public scoping, public hearings have been scheduled throughout the greater project area to receive public input on the Draft EIS/EIR. Public hearings, to be located in Concord, Dublin, Livermore, Oakley, and Sacramento, will be held during the public comment period so that any comments received at the meetings can be addressed in the Final EIS/EIR. In addition, written comments from the public, reviewing agencies and stakeholders will be accepted

during the public comment period. Following consideration of these comments by CCWD and Reclamation, a Final EIS/EIR will be prepared and circulated per NEPA and CEQA requirements that will include responses to all comments. CCWD and Reclamation will use the Final EIS/EIR when considering approval of one of the project alternatives. Once a project is approved, CCWD will adopt CEQA findings and issue a Notice of Determination (NOD) and Reclamation will issue a Record of Decision (ROD) to document that decision.

## 7.5 Ongoing Agency and Stakeholder Consultation and Coordination

CCWD and Reclamation will continue to proactively engage interested agencies and stakeholders throughout the NEPA, CEQA, and project permitting processes. In particular, CCWD and Reclamation will continue to have regular meetings with NMFS, USFWS, and DFG. CCWD will continue regular interactions with local, state and federal agencies through the ACWG. CCWD will also meet as needed with other agencies with potential permitting authority over the approved project including U.S. Army Corps of Engineers (USACE), Regional Water Quality Control Board, State Water Resources Control Board, Reclamation Districts 2040 and 800, California State Office of Historic Preservation, Bay Area Air Quality Management District, and others.

## 7.6 Compliance with Federal Statutes and Regulations

The following sections describe relevant federal laws, executive orders, and policies, and the status of compliance. **Table 7-1** summarizes the status of consultation for the requirements that must be met by Reclamation and CCWD before the Los Vaqueros Reservoir Expansion project can be built and operation of facilities implemented.

Compliance with most of these regulations is an ongoing process being conducted in coordination with preparation of this EIS/EIR. The information and analysis in relevant sections of this Draft EIS/EIR will be used in the regulatory compliance process. For example, Section 4.6 Biological Resources identifies loss of wetlands under Section 404 of the Clean Water Act as an issue for the reservoir expansion project, assesses the potential for impacts and recommends mitigation measures to address those impacts. This analysis will be used to apply for a USACE permit under Section 404 of the Clean Water Act. During and after construction, relevant permit conditions will be adhered to as a requirement for project implementation.

### 7.6.1 Federal Endangered Species Act

Pursuant to the Federal Endangered Species Act (FESA), USFWS and NMFS have authority over projects that may result in take of a federally listed species. Under FESA, the definition of “take” is to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” USFWS has also interpreted the definition of “harm” to include significant habitat modification that could result in take. If there is a likelihood that a project would result in take of a federally listed species, either an incidental take permit, under Section 10(a) of FESA, or a federal interagency consultation, under Section 7 of FESA, is required.

**TABLE 7-1**  
**SUMMARY OF ENVIRONMENTAL COMPLIANCE FOR THE PROPOSED PROJECT**

<b>Requirements</b>	<b>Status of Compliance/Expected Completion</b>
National Environmental Policy Act	Ongoing until this EIS/EIR Record of Decision published.
California Environmental Quality Act	Ongoing until this EIS/EIR document certified and mitigation met.
Federal Endangered Species Act and California Endangered Species Act	Ongoing until project Biological Opinion issued (see Sec. 4.6 Biological Resources).
Magnuson-Stevens Fishery Conservation and Management Act	Ongoing until project Biological Opinion issued (see Sec. 4.3 Delta Fisheries and Aquatic Resources).
Fish and Wildlife Coordination Act	Ongoing until Fish and Wildlife Coordination Act Report issued (see Sections 4.3 Delta Fisheries and Aquatic Resources and 4.6 Biological Resources).
Clean Water Act Section 401	CCWD will apply for Water Quality Certification after EIS/EIR is approved and project design underway (see Sec. 4.5 Local Hydrology, Drainage, and Groundwater).
Clean Water Act Section 404	CCWD will apply for Wetland Permit after the EIS/EIR is approved and project design underway (see Sec. 4.6 Biological Resources).
Clean Air Act	In compliance. Conformity analysis is not required. (see Sec. 4.10 Air Quality).
National Historic Preservation Act and Native American Consultation	Ongoing. Once Section 106 review process is completed, the project will proceed in accordance with conditions stipulated in the agreement with the State Historic Preservation Officer and appropriate agencies (see Section 4.16 Cultural and Paleontological Resources).
Executive Order 11988 - Floodplain Management	Ongoing. The project complies by using this EIS/EIR to identify and assess project effects (see Section 4.5 Local Hydrology, Drainage, and Groundwater).
Executive Order 11990 - Protection of Wetlands	CCWD will apply for Wetland Permit after the EIS/EIR is approved and project design underway (see Sec. 4.6 Biological Resources).
Executive Order 12898 - Environmental Justice	In compliance based on EIS/EIR Sec. 4.18 Environmental Justice.
Migratory Bird Treaty Act	Reclamation and CCWD will comply with provisions of the Migratory Bird Treaty Act (see Sec.4.6 Biological Resources).
California Fish and Game Code (Section 1600 Lake or Streambed Alteration Agreement Program)	Ongoing. The project complies with Section 1600 by using this EIS/EIR to identify and address expected project effects (Sec.4.6 Biological Resources).
Caltrans Encroachment Permit	As needed, CCWD will apply for a Caltrans Encroachment Permit to construct within Caltrans right-of-way prior to construction (see Sec. 4.9 Transportation and Circulation).
Disabilities Regulations - Americans with Disabilities Act, Rehabilitation Act, and Architectural Barriers Act	Project will adhere to the construction guidelines of the Uniform Federal Accessibility Standards and comply with regulations proposed for incorporation into the Americans With Disabilities Act Accessibility Guidelines as a part of design for individual facilities.
Farmland Protection Policy Act	Ongoing. (see 4.8 Agriculture).
Section 10 of the Rivers and Harbors Act of 1899	Ongoing. This regulation is addressed in coordination with wetlands regulations (see Clean Water Act, Section 404, above).
NPDES Construction Stormwater Permit	CCWD will comply by preparing and using a Storm Water Pollution Prevention Plan at the time of construction (see Sec. 4.5 Local Hydrology).
General Order for Dewatering and Other Low Threat Discharge to Surface Waters	CCWD will comply by preparing and using a permit at the time of construction (see Sec. 4.5 Local Hydrology, Drainage and Groundwater).

Either an Action Specific Implementation Plan (ASIP) or a Biological Assessment (BA) could be used to address both FESA and the California Endangered Species Act (CESA) as well as the California Natural Community Conservation Planning Act (NCCPA) consultation requirements of federal and state agencies. The ASIP or BA will be prepared for the selected project alternative. Reclamation will initiate formal consultation with USFWS and NMFS. USFWS and NMFS will then use the ASIP or BA to develop biological opinions for the selected project alternative. DFG will use the ASIP or BA to address compliance with CESA and NCCPA.

## 7.6.2 Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (FWCA) ensures that fish and wildlife receive equal consideration during planning and construction of federal water projects. The FWCA requires that USFWS's views be considered when evaluating impacts and determining mitigation needs. USFWS is preparing the FWCA Report and has conducted Habitat Evaluation Procedures analyses for most of the proposed project facility sites to date. USFWS continues to participate in ACWG meetings reviewing preparation of the Draft EIS/EIR impact analysis. USFWS also participates in additional work group meetings focused on the analyses and documentation conducted in compliance with related environmental regulations including the ASIP process for compliance with FESA and CESA.

## 7.6.3 Clean Water Act

The Clean Water Act (CWA) is the primary surface water protection legislation throughout the country. The CWA aims to restore and maintain the chemical, physical, and biological integrity of surface waters to support "the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water." The U.S. Environmental Protection Agency (EPA) is the federal agency with primary authority for implementing regulations adopted pursuant to the CWA, and has delegated the authority to implement and oversee most of the programs authorized or adopted for CWA compliance to USACE and the Regional Water Quality Control Boards (RWQCB).

Under Section 404(b)(1) of the CWA, the Least Environmentally Damaging Practicable Alternative (LEDPA) must be identified from among those alternatives considered in detail in the EIS/EIR. If a federal agency is a partner in the implementation of a project, then the Proposed Action/Project must be recognized as the LEDPA. A 404(b)(1) evaluation will be included with the Final EIS/EIR pursuant to the CWA to provide required information on the potential effects of the proposed action/project regarding water quality and rationale in support of identifying the LEDPA. This Draft EIS/EIR will be reviewed by concerned public and stakeholders with the opportunity to provide comments on the alternatives and documentation before making determinations of the Proposed Action/Project, LEDPA, environmentally preferred alternative, and environmentally superior alternative in the Final EIS/EIR.

Construction of the proposed project, including construction of the proposed intake facilities, pipelines, expanded reservoir, appurtenant facilities, and other associated facilities, would be subject to regulation under Sections 401, 402, and/or 404 of the Clean Water Act. CCWD and Reclamation have participated in a pre-application meeting with USACE, and CCWD will

prepare and submit an application for Section 404 compliance in the near future. CCWD will also be seeking a Section 401 water quality certification from the Central Valley RWQCB.

### **7.6.4 Section 10 of the Rivers and Harbors Act of 1899**

Under Section 10 of the Rivers and Harbors Act of 1899, the construction of structures in, over, or under, excavation of material from, or deposition of material into “navigable waters” are regulated by USACE. Navigable waters of the United States are defined as those waters subject to the ebb and flow of the tide shoreward to the mean high-water mark or those that are currently used, have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. A Letter of Permission or permit from the USACE is required prior to any work being completed within navigable waters.

CCWD will obtain the necessary permits from USACE prior to beginning any project-related work in navigable waters.

### **7.6.5 Section 106 of the National Historic Preservation Act**

Section 106 of the National Historic Preservation Act (NHPA) of 1966 (as amended in 1992) requires federal agencies to evaluate the effects of federal undertakings on historical, archaeological, and cultural resources, and to consult with the Advisory Council on Historic Preservation concerning potential effects of federal actions on historic properties. Before federal funds are approved for a particular project or prior to the issuance of any license, the effect of the project on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register shall be evaluated. The effects of the proposed Los Vaqueros Reservoir Expansion Project on historical, archeological, and cultural resources are evaluated in Section 4.16 Cultural and Paleontological Resources.

To comply with the NHPA, notices of public meetings for this project will be sent to the State Historic Preservation Officer (SHPO), which acts as an intermediary for the Advisory Council on Historic Preservation. A copy of this Draft EIS/EIR will be sent to SHPO, as a unit of the California Department of Parks and Recreation, requesting its review and soliciting input on the project. CCWD and Reclamation will coordinate with the Advisory Council on Historic Preservation and SHPO, consistent with Section 106 of the NHPA.

### **7.6.6 Indian Trust Assets and Native American Consultation**

#### **Indian Trust Assets**

An Indian Trust Asset (ITA) is defined by Reclamation as a legal interest in an asset that is held in trust by the U.S. Government for Indian tribes or individual tribal members. Examples include land assets held in trust for individual tribal members, more specifically referred to as allotments, or as in the case of allotments created out of public domain lands - Public Domain Allotments (PDAs). An Indian trust has three components: 1) the trustee, 2) the beneficiary, and 3) the trust asset. ITAs can include water rights, lands, minerals, hunting and fishing rights, money, and claims.



Beneficiaries of the Indian trust relationship are federally recognized Indian tribes and individual tribal members with trust land; the United States is the trustee.

By definition, ITAs cannot be sold, leased, or otherwise encumbered without approval of the United States. The definition and application of the U.S. trust relationship has been defined by case law that supports Congressional acts, executive orders, and historical treaty provisions. The project alternatives would not be implemented on or affect tribal lands, areas where mineral or water rights may be held by a tribe, traditional hunting or fishing grounds, or other ITAs. The potential for the project to affect significant Native American sites is addressed in Section 4.19 Indian Trust Assets.

## **Native American Consultation**

Implementing regulations for Section 106 require that federal agencies identify potentially affected Indian tribes that might have knowledge of sites of religious and cultural significance in the area of potential effects (APE) (36 CFR 800.3[f][2]). If any such properties exist, the regulations require that federal agencies invite Indian tribes to participate in the Section 106 process as consulting parties. Consultation with the Native American Heritage Commission is ongoing.

### **7.6.7 Farmland Protection Policy Act**

The Farmland Protection Policy Act (FPPA) is intended to minimize the impact of federal programs with respect to the conversion of farmland to nonagricultural uses. It ensures that, to the extent possible, federal programs are administered to be compatible with state, local, and private programs and policies to protect farmland. The Natural Resources Conservation Service (NRCS) is the agency primarily responsible for implementing the FPPA. Agricultural resources are addressed in Section 4.8 “Agriculture”. CCWD and Reclamation will submit this Draft EIS/EIR to the NRCS for its comment.

### **7.6.8 Executive Order 11988 (Floodplain Management)**

Executive Order 11988—Floodplain Management (May 24, 1977) directs federal agencies to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the Order is provided in the floodplain management guidelines of the U.S. Water Resources Council (40 CFR 6030; February 10, 1978) and in *A Unified National Program for Floodplain Management*, prepared by the Federal Interagency Floodplain Management Taskforce.

CCWD and Reclamation have considered Executive Order 11988 in their development of this Draft EIS/EIR and have complied with this order.

### **7.6.9 Executive Order 11990 (Protection of Wetlands)**

The purpose of Executive Order 11990 is to “minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands.” To meet these objectives, the Order requires federal agencies, in planning their actions, to consider alternatives to wetland sites and limit potential damage if an activity affecting a wetland cannot be avoided. The Order applies to:

- acquisition, management, and disposition of federal lands and facilities construction and improvement projects which are undertaken, financed or assisted by federal agencies; and
- federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

CCWD and Reclamation have considered Executive Order 11990 in their development of this Draft EIS/EIR and have complied with this order. CCWD has taken a number of actions to minimize project effects on wetlands (see Section 4.6 Biological Resources) and will be pursuing a CWA Section 404 permit from the USACE.

### **7.6.10 Executive Order 12898 (Environmental Justice)**

Executive Order 12898, Section 2-2, requires all federal agencies to conduct programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons the benefits of, or subjecting persons to discrimination because of their race, color or national origin. Section 1-101 requires federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of programs on minority and low-income populations. This Draft EIS/EIR has identified and described the project’s potential to result in disproportionately high and adverse human health or environmental effects on minority and low-income populations (see Section 4.18 Environmental Justice), as required by this order.