

Chapter 5 Consultation, Coordination and Compliance

This chapter summarizes public and agency involvement activities undertaken for the proposed project by Reclamation and the NVRRWP Partner Agencies. As noted previously, Bureau of Reclamation (Reclamation) is the lead agency for NEPA compliance, and the City of Modesto is the CEQA lead agency.

The NVRRWP was formed in 2010 as a collaborative partnership between the Cities of Modesto, Ceres, and Turlock, as well as Stanislaus County, and Del Puerto Water District (DPWD). Since that time the Project Partners have engaged with local landowners and organizations on an ongoing basis. The Partners have also consulted with key state and federal agencies regarding the feasibility of the NVRRWP, and to identify environmental issues associated with project implementation. The NVRRWP Project Partners will continue to solicit public and agency input on the project by encouraging review of this EIR/EIS.

5.1 Scoping

The CEQA Notice of Preparation (NOP) and NEPA Notice of Intent (NOI) were released on April 22, 2014, and distributed to 27 agencies. Postcards with information on where the NOP could be viewed and notification of the scoping meeting were also sent to 32 organizations and 84 property owners. The release of the NOP and NOI, along with postings of these notices in the local newspapers and on the websites of Partner Agencies, began the 30-day public review period which ended on May 22, 2014. A joint public scoping meeting for the EIR/EIS was held at on May 13, 2014 at the City of Modesto (2nd Floor Conference Room 2001 at 1010 10th Street). The Scoping Report is included in **Appendix A**.

5.2 EIR/EIS Distribution

Upon completion of the Draft EIR/EIS, the City of Modesto filed a Notice of Completion (NOC) with the State Office of Planning and Research to begin a 60-day public review period, which exceeds the review period required by CEQA (Public Resources Code, Section 21161). Reclamation filed a Notice of Availability (NOA) of the EIS. Concurrent with issuance of the NOC and NOA, this Draft EIR/EIS was distributed to responsible and trustee agencies, other affected agencies, surrounding cities, and interested parties, as well as all parties requesting a copy of the EIR/EIS in accordance with Public Resources Code 21092(b)(3). During the public review period, the Draft EIR/EIS is available for review at the Partner Agencies' main offices, or online at the following locations and links:

City of Modesto, Utilities Department
1010 Tenth Street, 4th Floor
Modesto, CA 95354

City of Turlock
156 S. Broadway
Turlock, CA 95380

Del Puerto Water District
17840 Ward Ave
Patterson, CA 95363

U.S. Bureau of Reclamation
1243 "N" Street
Fresno, CA 93721

Project website: <http://www.nvr-recycledwater.org/documents.asp>

Appendix H presents the distribution list, which identifies the entities receiving a Notice of Availability of the Draft EIR/EIS.

Agencies, organizations, and interested parties, including those not previously contacted, or who did not respond to the NOP, currently have the opportunity to comment on the Draft EIR during the public review period.

5.3 Future Public Involvement

In accordance with CEQA/NEPA public review requirements, the Draft EIR/EIS has been circulated for public and agency review and comment for a 60-day review period, starting January 8, 2015. During the public review period a meeting will be held on Wednesday, February 11, 2015 at Modesto City Hall, 1010 Tenth Street, Modesto, to receive comments on the Draft EIR/EIS. Comments made at that meeting, along with any written comments received by the City of Modesto or by Reclamation, will be addressed in the Final EIR/EIS, which will be prepared and circulated in accordance with NEPA and CEQA requirements. The City of Modesto will hold a public hearing to consider certification of the EIR.

The Project Partners and Reclamation will use the Final EIR/EIS when considering approval of the proposed project. If the proposed project or another alternative is approved, the Project Partners will make CEQA findings and issue a Notice of Determination and Reclamation will issue a Record of Decision.

5.4 Compliance with Federal Statutes and Regulations

This section describes the status of compliance with relevant federal laws, executive orders, and policies.

5.4.1 Federal Endangered Species Act

Section 7 of the Federal Endangered Species Act (FESA) (16 U.S.C. § 1531 *et seq.*) requires federal agencies, in consultation with and with the assistance of the Secretary of the Interior and or Commerce, to ensure that their actions do not jeopardize the continued existence of endangered or threatened species, or result in the destruction or adverse modification of the critical habitat of these species. Under section 7, if a project could result in incidental take of a listed threatened or endangered species, federal agencies must consult with the United States Fish and Wildlife Service (USFWS) and the NOAA's National Marine Fisheries Service (NMFS) to obtain a Biological Opinion (BO).

Chapter 3.4, Biological Resources, describes the sensitive species that have the potential to occur in the area, and potential effects to federal endangered and threatened species. Impacts to species will be avoided through the implementation of Mitigation Measures, or through measures established in the BO. This EIR/EIS will support section 7 consultation with USFWS and NMFS. Reclamation will not initiate any action that would affect a species federally listed without first completing the appropriate consultation(s) with USFWS or NMFS and receiving formal notice that the action would not jeopardize the continued existence of the listed species or adversely modify designated critical habitat.

5.4.2 Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (FWCA) of 1934, as amended (16 U.S.C. § 661 *et seq.*) is intended to promote conservation of fish and wildlife resources by preventing their loss or damage, and to provide for development and improvement of fish and wildlife resources in connection with water projects. Federal agencies undertaking water projects are required to fully consider recommendations made by USFWS, NMFS, and State wildlife agencies when any waterbody is impounded, diverted, controlled, or modified for any purpose.

Based on surveys and investigations to be conducted by the federal and state agencies charged with administering wildlife resources, a report addressing any potential impacts to fish and wildlife species and

appropriate mitigation measures would be provided to Reclamation for the Proposed Project. Compliance with FWCA will be coordinated with Endangered Species Act consultation, as described above.

5.4.3 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) of 1976 as amended (16 U.S.C. § 1801 *et seq.*), is the primary act governing federal management of fisheries in federal waters, from the 3-nautical-mile state territorial sea limit to the outer limit of the U.S. Exclusive Economic Zone. It establishes exclusive U.S. management authority over all fishing within the Exclusive Economic Zone, all anadromous fish throughout their migratory range except when in a foreign nation's waters, and all fish on the continental shelf. The Magnuson-Stevens Act establishes eight Regional Fishery Management Councils responsible for the preparation of fishery management plans to achieve the optimum yield from U.S. fisheries in their regions. The act also requires federal agencies to consult with NMFS on actions that could damage Essential Fish Habitat (EFH), as defined in the 1996 Sustainable Fisheries Act (Public Law 104-297). EFH includes those habitats that support the different life stages of each managed species. A single species may use many different habitats throughout its life to support breeding, spawning, nursery, feeding, and protection functions. EFH can consist of both the water column and the underlying surface (e.g., streambed) of a particular area. The San Joaquin River in the Study Area is designated EFH for Chinook salmon. As described in *Section 3.4, Biological Resources*, the project is not expected to have adverse effect on fish habitat in the San Joaquin River.

5.4.4 National Historic Preservation Act, Section 106

The purpose of the National Historic Preservation Act (NHPA) (16 U.S. Code § 470) is to protect, preserve, rehabilitate, or restore significant historical, archeological, and cultural resources. Section 106 of the act requires Federal agencies to take into account effects on historic properties. Once an undertaking has been established, the Section 106 review involves a step-by-step procedure described in detail in the implementing regulations (36 CFR Part 800). As described in *Section 3.5, Cultural Resources*, a historic property survey report for the proposed project was prepared. This analysis includes a Section 106 evaluation for the proposed project. Completion of the cultural resources report and concurrence by SHPO would ensure compliance with the NHPA.

5.4.5 Clean Air Act

The U.S. Congress adopted general conformity requirements as part of the Clean Air Act (CAA) Amendments in 1990 and the USEPA implemented those requirements in 1993 (Sec. 176 of the CAA (42 U.S.C. § 7506) and 40 CFR Part 93, Subpart B). General conformity requires that all federal actions "conform" with the State Implementation Plan (SIP) as approved or promulgated by USEPA. The purpose of the general conformity program is to ensure that actions taken by the federal government do not undermine state or local efforts to achieve and maintain the national ambient air quality standards. Before a federal action is taken, it must be evaluated for conformity with the SIP. All "reasonably foreseeable" emissions predicted to result from the action are taken into consideration. These include direct and indirect emissions, and must be identified as to location and quantity. If it is found that the action would create emissions above de minimis threshold levels specified in USEPA regulations (40 CFR § 93.153(b)), or if the activity is considered "regionally significant" because its emissions exceed 10 percent of an area's total emissions, the action cannot proceed unless mitigation measures are specified that would bring the proposed Project/Action into conformance. As described in *Section 3.3, Air Quality*, the study area lies within the San Joaquin Valley Air Basin. The results of the air quality modeling showed that NO_x emissions could exceed Federal General Conformity significance thresholds. With implementation of Mitigation Measure AIR-1 (reduce NO_x emissions), impacts would be reduced to less than significant. Thus, the project is in compliance with this Act.

5.4.6 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) (16 U.S.C. § 1451 *et seq.*), passed by Congress in 1972 and managed by the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management, is designed to balance completing land and water issues in coastal zones. It also aims to "preserve, protect, develop, and where possible, to restore or enhance the resources of the nation's coastal zone." Within California, the CZMA is administered by the Bay Conservation and Development Commission, the California Coastal Conservancy, and the California Coastal Commission. No portion of the proposed project is within the coastal zone, as the study area is located approximately 70 miles east of the coast. Therefore the Coastal Zone Management Act does not apply to the proposed project.

5.4.7 Farmland Protection Policy Act

The Farmland Protection Policy Act (FPPA) (7 U.S.C. § 4201 *et seq.*) requires a federal agency to consider the effects of its actions and programs on the nation's farmlands. The FPPA is intended to minimize the impact of federal programs with respect to the conversion of farmland to nonagricultural uses. It assures that, to the extent possible, federal programs are administered to be compatible with state, local, and private programs and policies to protect farmland. As described in *Section 3.1, Agriculture and Forestry Resources*, no long term conversion of farmland to non-agricultural use would occur. There could be temporary impacts to soil resources during construction where activities would occur within agricultural land, but such effects would be mitigated to less-than-significant levels with implementation of Mitigation Measure AG-1. Thus, the project would be in compliance with this Act.

5.4.8 Executive Order 11988 – Floodplain Management

Executive Order (EO) 11988 requires federal agencies to recognize the values of floodplains and to consider the public benefits from restoring and preserving floodplains. Because pipelines would need to cross under the San Joaquin River, there would be facilities located within the floodplain, but the buried pipelines and associated small appurtenances such as air release valves, would not increase flood hazards or interfere with floodplain management. The NVRRWP and Reclamation have considered Executive Order 11988 in their development of this EIR/EIS and have complied with this order.

5.4.9 Federal Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and Executive Order 13168

The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712) and the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668c) prohibit the take of migratory birds (or any part, nest, or eggs of any such bird) and the take and commerce of eagles. EO 13168 requires that any project with federal involvement address impacts of federal actions on migratory birds. As described in *Section 3.4, Biological Resources*, the proposed project could have potential to impact burrowing owls and tricolored blackbirds. However, with mitigation measures BIO-9 and BIO-10, impacts would be reduced to less than significant. *Section 3.4* also evaluated the impacts on golden eagle and bald eagle and determined that potential impacts on these species would be less than significant. Thus, the lead agency would be in compliance with this EO.

5.4.10 Executive Order 13112: Invasive Species

EO 13112 directs all federal agencies to prevent and control introductions of invasive non-native species in a cost-effective and environmentally sound manner to minimize their economic, ecological, and human health impacts. As directed by this EO, a national invasive species management plan guides federal actions to prevent, control, and minimize invasive species and their impacts (NISC 2008). To support implementation of this plan, the U.S. Army Corps of Engineers (USACE) has recently released a memorandum describing the U.S. Army Corps of Engineers Invasive Species Policy (USACE 2009). This policy includes addressing invasive species effects in impact analysis for civil works projects. No

invasive species that warrant removal have been identified in the study area. In areas where revegetation is required, use of native species will be required so as to insure that invasive non-native plant species are not introduced to the area. Discharge of recycled water would not entail any risk of introducing invasive aquatic species to the DMC. The project would thus be in compliance with this EO.

5.4.11 Executive Order 11990 – Protection of Wetlands

Under EO 11990, federal agencies must avoid affecting wetlands unless it is determined that no practicable alternative is available. The EO directs federal agencies to provide leadership and take action to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in implementing civil works. As described in *Section 3.4, Biological Resources*, wetlands likely occur in the study area. A jurisdictional wetland delineation will be conducted to evaluate each drainage on a case-by-case basis. The delineation will be submitted to USACE for verification. Mitigation measures have been identified to reduce potentially significant impacts to less than significant levels. These include avoidance of federally protected wetlands to the extent possible through alignment adjustments and use of trenchless construction techniques, compensatory mitigation for losses of aquatic resources, and measures to reduce impacts of a frac-out. Thus, the lead agency would be in compliance with EO 11990.

5.4.12 Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act (6 U.S.C. § 1271 *et seq.*) was passed in 1968 to preserve and protect designated rivers for their natural, cultural, and recreational value. There are no designated Wild and Scenic Rivers within the study area, nor will any designated rivers be adversely affected by the proposed project. As such, the Wild and Scenic Rivers Act does not apply to the proposed Project/Action.

5.4.13 Safe Drinking Water Act - Source Water Protection

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*) established the USEPA's Sole Source Aquifer Program. This program protects communities that have no alternative source of water from groundwater contamination from federally-funded projects. Within USEPA's Region 9, which includes California, there are nine sole source aquifers. None of these sole source aquifers are located within the proposed project study area (USEPA, 2014), therefore the Sole Source Aquifer Program does not apply to the proposed project, and the lead agency is in compliance with Section 1424(e) of the Safe Drinking Water Act.

5.4.14 Executive Order 13195 - Trails for America in the 21st Century

The EO on Trails for America requires federal agencies to protect, connect, promote, and assist trails of all types throughout the United States. The proposed project would not result in any impacts on trails. Thus, no adverse effects on trails would occur and the lead agency is in compliance with this EO.

5.4.15 Executive Order 13007 - Indian Sacred Sites

Sacred sites are defined in EO 13007 (May 24, 1996) as "any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site." The proposed project would not be located on or impact any Federal lands and therefore would not affect any Indian sacred sites.

5.5 Cooperating Agencies

Under NEPA cooperating agencies are agencies other than the lead agency that have jurisdiction by law or special expertise with respect to the environmental impacts expected to result from a proposed project.

For the NVRRWP, the following agencies are cooperating with Reclamation in preparation of the EIR/EIS:

- City of Modesto, the lead agency for CEQA and one of the partners in the NVRRWP
- DPWD, a partner in the NVRRWP
- USFWS, responsible for biological consultation regarding effects on terrestrial and freshwater aquatic species
- NMFS (cooperating agency agreement pending), responsible for biological consultation regarding effects on anadromous fish

In addition, Reclamation is consulting with the USACE regarding necessary permits under Section 404 of the Clean Water Act. The USACE has designated Reclamation as the NEPA lead for permitting under both section 7 and Section 106.

5.6 References

United States Environmental Protection Agency (USEPA). 2014. Pacific Southwest, Region 9. 2014. Ground Water – Sole Source Aquifer. Last updated September 25, 2013. Available at: <http://epa.gov/Region9/water/groundwater/ssa.html>

Chapter 6 EIR/EIS Preparers

A list of persons who prepared or reviewed various sections of the EIR/EIS, prepared significant background materials, or participated substantially in preparing the EIR/EIS is presented below.

6.1 North Valley Regional Recycled Water Program Partner Agencies

City of Modesto, CEQA Lead Agency

William Wong, P.E.	Engineering Division Manager, Utilities Department
Larry Parlin, P.E.	Director of Utilities
Richard Ulm, P.E.	Former Director Utility and Planning Projects

City of Turlock

Michael Cooke	Municipal Services Director
Dan Madden	Former Municipal Services Director
Garner Reynolds, P.E.	Regulatory Affairs Manager

Del Puerto Water District

Anthea Hansen	General Manager
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City of Ceres

Michael Brinton, P.E.	Deputy Director of Public Works
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6.2 EIR/EIS Preparation Team

Table 6-1: List of Preparers

Name	Qualifications	Project Role
Bureau of Reclamation, NEPA Lead Agency		
Scott Taylor, Repayment Specialist	M.S. Economics, 6 years experience	Project Manager
Ben Lawrence, Natural Resource Specialist	B.S. Chemical Engineering, 16 years experience	NEPA Review- South-Central California Area Office
Liz Vasquez, Natural Resource Specialist	M.S. Environmental Science and Management, 10 years experience	NEPA Review- Mid-Pacific Regional Office
Jennifer Lewis, Wildlife Biologist	B.A. Biology, Ph.D. Entomology, 5 years experience	Review: Biology
Mark Carper, Archaeologist	M.A. Archaeology, 15 years experience	Review: Cultural Resources
Mary Johannis, Deputy Regional Planning Officer	B.S. Civil Engineering, Professional Engineer, 20 years experience	Review: Energy
Lisa Rainger, Geologist	B.S. Geology, 27 years experience	Review: Geology
Michael Mosley, Physical Scientist	B.S. Geological and Environmental Science, 6 years experience	Review: Water Quality
Tim Rust, Fish and Wildlife Program Manager	B.S. Biology, M.S. Environmental Engineering, 34 years experience	Review: Refuges and Water
Chris Eacock, Project Manager/Soil Scientist		Review: Water Quality
Patricia Rivera, Native American Affairs Program Manager	B.A. Social Work, Anthropology, and Sociology; M.S. Public Policy and Administration; J.D., 8 years experience	Review: Indian Trust Assets
Andrea Meier, Natural Resource Specialist	B.S. Environmental Toxicology, M.S. Public Policy and Administration, 12 years experience	Review: Project Description
David Woolley, Land Resource Specialist		Review: Recreation
RMC Water and Environment		
Robin Cort	B.S. Biology, Ph.D. Ecology; over 30 years experience in water resources planning, environmental documentation and permitting	Manager of EIR/EIS preparation
Lyndel Melton	M.S. Environmental Engineering, B.S., Civil Engineering: Over 36 years experience in civil, environmental and water resources planning and design and environmental compliance	Project Manager and Technical Reviewer
Carrie Del Boccio	M.S. Environmental Engineering, B.S., Civil Engineering, Education Abroad; Over 9 years experience in water planning and treatment design, pipeline design	Project Engineer

Sue Chau	B.A. Environmental Science; over 15 years experience in water resources including water/wastewater treatment, storage, conveyance, and water supply, CEQA and NEPA compliance and water planning	Population and Housing; Growth Inducement
Katie Cole	M.S. Environmental Science and Management, B.S. Sociology and Environmental Studies; 1 year experience in water resources planning	Land Use, Energy, Geology and Soils, Public Services and Utilities, Hazards and Hazardous Materials,
Phoebe Grow	M.S. Environmental Management, B.S. and B.A.; Over 10 years experience in environmental engineering in water resources planning, regulatory compliance, environmental permitting, stormwater management, and regional watershed planning	Hydrology and Water Quality
Reza Namvar	Ph.D. Civil Engineering, M.S., B.S.; Over 19 years experience in environmental and water resources planning, management and engineering, development and application of groundwater flow and contaminant transport models	Groundwater analysis
Ryan Doyle	B.S. Civil and Environmental Engineering; Over 1 year experience water resources planning and design to groundwater modeling and remediation	GIS
Lindsey Wilcox	B.S. Environmental Resources and Forest Engineering; Over 8 years experience in water resource planning and permitting	Document preparation
Basin Research		
Colin Busby	Ph.D. Anthropology, 38 years cultural resources management experience	Cultural Resources, Historic Property Survey Report
Donna Garaventa	Ph.D. Anthropology, 35 years experience in cultural resources assessment	Cultural Resources, Historic Property Survey Report
Horizon Water and Environment		
Michael Stevenson	M.S., Environmental Science, 17 years experience in environmental compliance	Technical oversight, QA/QC
Kevin Fisher	M.S., Ecology, 14 years experience in biological assessments	Biological Resources
Jen Schulte	Ph.D., Chemical Engineering, 8 years experience in air and noise impact assessment	Air Quality, Global Climate Change/GHGs, Noise
Allison Chan	M.S., Environmental Management, 7 years experience in environmental analysis	Aesthetics
Jacob Finkle	B.S., Environmental Sciences, 3 years experience in environmental analysis	Traffic/Transportation
Patrick Donaldson	M.S., Environmental Management, 3 years experience in environmental analysis	Environmental Justice, Agriculture and Forestry Resources
Pam Rittlemeier	M.A., Geography, 6 years experience in environmental analysis	Recreation
Catherine Schnurrenberger	M.S. Ecology, 24 years experience in environmental analysis	Biological Resources
Brian Piontek	M.S., Environmental Management, 3 years experience in environmental analysis	Biological Resources
Corrina Lu	M.A., Geography, 13 years experience in environmental analysis	Biological Resources
Paul Glendening	B.A., Geography, 13 years experience in environmental analysis	GIS
Scott Walls	MLA, 6 years experience in environmental analysis	Biological Resources

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