

# **Master Response 1      CEQA and NEPA Process, Regulatory Requirements, and General Comments**

## **Overview**

The decision-making process for certifying the Final EIR/EIS for the Sites Reservoir Project (Project) and approving the preferred alternative requires the Authority and Reclamation to objectively consider the record of this proceeding, including all public comments received during the public comment period.

The purpose of each response to a comment on the RDEIR/SDEIS is to provide the opportunity for lead agencies to address the significant environmental issue(s) raised by each comment. The RDEIR/SDEIS was the subject of multiple general comments on substantially similar topics related to the public review and outreach process, the CEQA and NEPA process, regulatory requirements, and the Project's relationship with other plans, programs, policies, and agencies. Through this master response, the Authority and Reclamation are providing responses to these comments.

This master response also contains general responses to general comments, statements, and questions related to the RDEIR/SDEIS. These types of comments fit into one or more of the following categories:

- Opposed or supported the Project but did not (1) provide any rationale or (2) raise any issues related to the adequacy of the environmental impact analysis.
- Raised an environmental issue in a general manner but did not provide supporting information.
- Made conclusory statements but did not provide supporting information.
- Made recommendations without explanation, supporting information, or rationale.
- Made a statement of disagreement with an existing state or federal law.

Written or verbal general comments often included introductory information about the commenter's agency or organization's mission or background or the importance of the preferred alternative to the agency or organization. Multiple commenters provided a variety of personal and professional background information in their letters. The Authority and Reclamation appreciate receiving this type of information because it provides context in understanding the comments of a particular commenter that are pertinent to the RDEIR/SDEIS. The Authority and Reclamation acknowledge receipt of this information. Additionally, commenters often paraphrased or quoted directly from the RDEIR/SDEIS. Again, the Authority and Reclamation acknowledge receiving this information and provided responses to the portions of comments that raised significant environmental issues.

While this master response addresses general public comments, these comments were often related to additional subjects addressed in other master responses. Accordingly, this master response references related master responses, as appropriate, where recurring comments and common themes may overlap with other subject matter areas.

This master response includes, for ease of reference, a table of contents on the following page to help guide readers to specific subject areas. The table of contents is based on general recurring and common themes found in the comments that were received. It is provided to help guide readers in finding where the topics of their concern are addressed.

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## **Public Review and Outreach Process for the RDEIR/SDEIS**

This section addresses common issues raised regarding the Authority and Reclamation's public review and comment process for the RDEIR/SDEIS.

### **Adequacy of Public Outreach**

This section addresses common comments that expressed concerns regarding the adequacy of public outreach and notifications, duration of the comment period, and accessibility of public meetings. Some commenters suggested that the duration of the public review was insufficient. Other commenters requested that additional public meetings be held. Some commenters provided contact information in their letters for Authority or Reclamation use. The Authority and Reclamation have internal processes to identify commenters and track commenter contact information.

CEQA calls for a public review period for a draft EIR of between 30 and 60 days and no less than 45 days when a draft EIR is submitted to the State Clearinghouse for review by state agencies. NEPA requires a minimum of 45 days for public review and comment on an EIS (40 Code of Federal Regulations [C.F.R.] § 1502.19).<sup>1</sup>

The Authority and Reclamation circulated the RDEIR/SDEIS for public review in compliance with CEQA and NEPA, respectively, for an initial comment period of 60 days. The agencies then extended the comment period by 17 days, for a total of 77 days, to provide additional time for the public and agencies to review the RDEIR/SDEIS and submit comments. The RDEIR/SDEIS was made available on the Authority's website (<https://sitesproject.org/environmental-review/>) and on Reclamation's website ([https://www.usbr.gov/mp/nepa/nepa\\_base.php?location=ro](https://www.usbr.gov/mp/nepa/nepa_base.php?location=ro)). In addition, printed copies of the RDEIR/SDEIS were available for viewing at the locations identified in Table MR1-1.

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<sup>1</sup> The Council on Environmental Quality (CEQ) issued new regulations, effective September 14, 2020, updating the NEPA implementing procedures at 40 C.F.R. Parts 1500–1508. However, because Reclamation initiated the NEPA process for this Project before September 14, 2020, it is not subject to the new regulations. Reclamation is relying on the regulations as they existed prior to September 14, 2020. Therefore, all citations to CEQ regulations in this document refer to the 1978 regulations, pursuant to 40 C.F.R. Section 1506.13 (2020) and the preamble at 85 Federal Register 43340.

**Table MR1-1. Locations of Available Copies of the RDEIR/SDEIS**

Sites Project Authority	Reclamation
Sites Project Authority 122 West Old Highway 99 Maxwell, CA 95955	Bureau of Reclamation California-Great Basin Regional Office Library 2800 Cottage Way Sacramento, CA 95825
<b>Public Libraries</b>	
Glenn County Public Library, Willows Branch 201 North Lassen Street Willows, CA 95988	Colusa County Free Library, Main Branch 738 Market Street Colusa, CA 95932
Tehama County Library, Red Bluff Branch 645 Madison Street Red Bluff, CA 96080	Maxwell Branch Library 34 Oak Street Maxwell, CA 95955
Yolo Branch Library 37750 Sacramento Street Yolo, CA 95697	Sacramento Public Library 828 I Street Sacramento, CA 95814
Mary L. Stephens – Davis Branch Library 315 East 14th Street Davis, CA 95616	

Regarding public hearings, CEQA encourages, but does not require, public hearings as part of the CEQA process. The Council on Environmental Quality’s (CEQ) NEPA regulations, meanwhile, require agencies to make diligent efforts to involve the public in the NEPA process, including holding or sponsoring public hearings or meetings when appropriate and when there is substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing (40 C.F.R. § 1506.6(c) and (c)(1)). Neither CEQA nor NEPA require that meetings be held throughout the state.

The Authority and Reclamation conducted two CEQA/NEPA virtual public meetings on December 15 and 16, 2021, to provide information about the Project and the draft environmental analysis and to accept verbal public comments on the RDEIR/SDEIS. Each meeting began with a presentation, followed by an opportunity for the public to ask questions and provide comments. The virtual public meeting presentation was made available on the Environmental Review page of the Project website (<https://sitesproject.org/environmental-review/>). Community guides, fact sheets, and lists of frequently asked questions for the RDEIR/SDEIS in English and Spanish were also made available on the Environmental Review page of the Project website. The Authority and Reclamation chose to hold these public meetings virtually due to safety concerns related to the COVID-19 pandemic. However, the virtual format of the meetings provided an opportunity to facilitate broader participation to widespread stakeholders.

The Authority and Reclamation continue to engage in community and stakeholder outreach regarding the Project with the goal of expanding awareness of the Project, maintaining transparency and accountability to the public, and providing opportunities for public input at appropriate milestones (Table MR1-2).

**Table MR1-2. Public Outreach between 2018 and 2021**

<b>Outreach</b>	<b>Date</b>	<b>Purpose</b>
Sites Project Authority board meetings	Held monthly	Project progress and issues
Landowner meetings	Variable	Project awareness and progress; tribal feedback/concerns
Local agency briefings	Variable	Project awareness and coordination
NGO meetings and workshops	Variable	Project awareness and input
Study area tours	Variable	Project awareness and progress

NGO = non-governmental organizations

In compliance with CEQA Guidance Section 15087 subdivision (a), notifications regarding the availability of the RDEIR/SDEIS for review were distributed by the Authority to the Project email list of 659 members who had expressed interest in the Project. Direct mailed notices were sent to 282 property owners within the Project area, 8 federal agencies, 38 state agencies, 18 city and county governments, and 18 Tribes. In compliance with 40 C.F.R. Section 1506.6, the Notice of Availability of the SDEIS was published in the Federal Register on November 12, 2021, and Reclamation distributed a notification regarding the availability of the RDEIR/SDEIS and public meetings to its Project mailing list. The notification was sent to more than 1,000 interested groups and individuals.

The Authority and Reclamation also issued a joint press release announcing the availability of the RDEIR/SDEIS for review and comment. Additionally, newspaper notices were published in the Chico Enterprise Record, Red Bluff Daily News, Woodland Daily Democrat, Appeal-Democrat, Tri-County News, Pioneer Review, Record Searchlight, Sacramento Business Journal, and Sacramento Bee. The Notice of Availability was also posted at the Colusa, Glenn, Tehama, and Yolo County Clerks' offices.

The Authority and Reclamation have provided multiple opportunities for public engagement beyond the legal requirements of CEQA and NEPA. The Authority has hosted monthly board meetings since September 20, 2010. Board meetings are open to the public and include a public comment period. This open process has provided the public an ongoing opportunity to comment during the planning of the Project. The Authority met with non-governmental organizations multiple times between the Notice of Availability of the 2017 Draft EIR/EIS and prior to the Final EIR/EIS for additional input on key concerns. For more information, please see Chapter 33, *Consultation and Coordination and List of Preparers*.

### **Acknowledgement of Community Concerns and Recommendations**

Some commenters identified willingness to collaborate and cooperate with the Authority or Reclamation. Commenters generally requested that the Authority work with local elected officials, local agencies, stakeholders, irrigation districts, and municipal water providers, as well as energy producers and providers, to be inclusive of all ideas and viewpoints.

The Authority has a Public and External Affairs Manager who is focused on outreach at the local and regional levels. The Public and External Affairs Manager has engaged the community on a

regular basis through informal and formal meetings and will continue to do so throughout the construction and operation of the Sites Reservoir. Please also see other outreach activities summarized in Table MR1-2, including engagement that goes beyond the process prescribed by NEPA and CEQA. The Authority has and will continue to work with permitting and regulatory agencies as required by law and described in Chapter 4, *Regulatory and Environmental Compliance: Project Permits, Approvals, and Consultation Requirements* and Master Response 5, *Aquatic Biological Resources*. The Authority will also continue to work with various entities, including energy producers and providers, as coordinating with multiple stakeholders will be required for the operation of the reservoir. The Authority is committed to having a positive community impact and being an engaged participant with Glenn and Colusa Counties and local entities such as the Maxwell Fire Protection District, Maxwell Public Utility District, and Maxwell Unified School District. It recognizes the reservoir would be a key feature in these two counties and the community of Maxwell. The Authority looks forward to working with the counties and other interested stakeholders in developing future amenities. Please see Appendix 2D, *Best Management Practices, Management Plans, and Technical Studies*, for information regarding the plans and BMPs the Authority will implement, such as the Reservoir Management Plan; the Land Management Plan; the Recreation Management Plan; the Construction Equipment, Truck, and Traffic Management Plan; and BMP 17, *Implementation of Visual/Aesthetic Design, Construction, and Operation Practices*.

## **CEQA/NEPA Process and Document Development**

This section addresses commonly raised comments regarding compliance with required processes under CEQA and NEPA and development of the EIR/EIS. Master Response 2, *Alternatives Description and Baseline*, describes the CEQA and NEPA requirements related to alternatives.

### **Agency Coordination**

Multiple commenters stated that the Authority and Reclamation had not sufficiently coordinated with other agencies or that additional coordination should occur. Chapter 33, *Consultation and Coordination and List of Preparers*, describes the coordination the Authority and Reclamation performed between 2017 and 2021 for the purposes of the RDEIR/SDEIS, as well as coordination around the Final EIR/EIS. The Authority and Reclamation have coordinated throughout the preparation of the EIR/EIS (including the 2017 Draft EIR/EIS and the 2021 RDEIR/SDEIS) with cooperating agencies, responsible agencies, trustee agencies, and Native American representatives in compliance with NEPA, CEQA, and Public Resources Code Section 21080.3.1.

### **2017 Draft EIR/EIS**

Some comments received on the RDEIR/SDEIS contained references to the alternatives and/or analyses presented in the 2017 Draft EIR/EIS. As noted in Volume 3, Chapter 1, *Introduction*, the RDEIR/SDEIS completely revised the environmental analysis pursuant to CEQA and NEPA to reflect changes to the Project that have occurred since the issuance of the 2017 Draft EIR/EIS. Through the publication of the RDEIR/SDEIS, the 2017 Draft EIR/EIS was fully revised to reflect changes to the Project and recirculated for public review and comment in accordance with

Section 15088.5 of the CEQA Guidelines and 40 C.F.R. Part 1501. Reviewers were informed both in public meetings and in the document itself that comments should be limited to the RDEIR/SDEIS and should not include comments on the prior 2017 Draft EIR/EIS. Pursuant to CEQA, and given the full recirculation of the EIR, the Authority is not responding to comments on the 2017 Draft EIR. Reclamation responses to comments on the 2017 Draft EIS can be found in Volume 3, Appendix 4A, *Reclamation Responses to 2017 Draft EIS Comments*.

As identified in Appendix 2B, *Additional Alternatives Screening and Evaluation*, Table 2B-1, the following components identified in the 2017 Draft EIR/EIS were eliminated and therefore not evaluated in the RDEIR/SDEIS and the Final EIR/EIS:

- Delevan Intake
- Delevan Pipeline
- Transmission lines parallel to Delevan Pipeline
- Holthouse/Fletcher Reservoir

Given none of these components are part of the alternatives evaluated in the RDEIR/SDEIS or Final EIR/EIS, none of the impacts associated with them as previously disclosed in the 2017 Draft EIR/EIS would occur.

### **Length and Complexity of the RDEIR/SDEIS**

The Authority and Reclamation acknowledge the complexities of alternatives evaluated and have made every attempt to present the information in plain language and in a clear format with emphasis on the information that is useful to the public, agencies, and decision makers. CEQA recommends summarizing information to reduce paperwork and to make the environmental documents understandable. The Reclamation NEPA handbook provides guidance on the preparation, format, and organization of an EIS, as well as associated NEPA regulations (40 C.F.R. Parts 1501 through 1502, 43 C.F.R. § 46.415), to facilitate the understanding of decision makers and the public. The Authority and Reclamation attempted to do this by providing the following in the document:

- An *Executive Summary* that summarizes background information for the Project, identifies the purpose of preparing the EIR/EIS, describes the Project alternatives considered, and identifies the environmental effects that would result under each alternative.
- A table of contents that directs readers to information in the chapters, appendices, tables, and figures.
- A Chapter 3, *Environmental Analysis*, that describes the overall approach used in Chapters 5 through 27 (CEQA and NEPA resource analyses), Chapters 28 through 30 (NEPA-only resource analyses), and Chapters 31 and 32 (other CEQA and NEPA analyses).
- An alternatives comparison in Chapters 5 through 32 for readers to understand individual impacts associated with and between different alternatives.



- A description of the outreach to stakeholders and agencies in the *Adequacy of Public Outreach, CEQA/NEPA Process and Document Development*, and *Recirculation and Disclosure of Significant Impacts* sections of this master response.
- Appendices housing detailed technical information and analyses used to support impact analyses in chapters.

The lead agencies, in preparing the RDEIR/SDEIS, attempted to balance readability, the need for accurate and thorough technical analyses of the numerous complex issues involved for each resource potentially affected by the Project, and responses to public and agency requests for information. This balance has been accomplished through combining analyses and referencing similar information for alternatives.

### **General Methods and Modeling**

Multiple commenters expressed concerns that the modeling was insufficient, lacking in detail, or otherwise unreliable but did not provide supporting evidence. Other commenters generally stated that the RDEIR/SDEIS did not include the correct modeling assumptions, such as the operational assumptions, but commenters did not cite specific information that should be corrected or offer evidence supporting their preferred modeling approaches.

The Authority and Reclamation acknowledge that there is more than one way to approach modeling and analysis and that there are many data sources available. The Authority and Reclamation are not obligated to conduct an exhaustive analysis using every approach, modeling tool, and data set available. The Authority and Reclamation recognize that there may be differing opinions as to how to approach an analysis for a given resource or which data sets should be used, but these differing opinions do not equate to inadequacy. A disagreement among experts does not make an EIR or EIS inadequate.

Development of the preferred alternative and analysis of its environmental impacts utilized a wide range of relevant data, literature, and tools. The Authority and Reclamation used the best available scientific information to produce analyses of the effects of the Project, drawing on scientific and engineering disciplines that include geology, hydrology, biology, ecology, chemistry, engineering, and climatology. The data, models, and literature are publicly available, and the methodologies used to apply these tools and information are described in the analyses in Chapters 5 through 30 and the appendices. The data, models, literature, and analyses have been subjected to review either as part of the customary practices of scientific publication or as part of legal and regulatory processes. The impact analyses produced for the Project were themselves subject to review and comment by the general public (e.g., CEQA and NEPA), experts in relevant scientific disciplines, and expert staff from regulatory agencies having jurisdiction over one or more aspects of the Project or its permitting (e.g., National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife [CDFW], and U.S. Army Corps of Engineers). The modeling conducted for the RDEIR/SDEIS and Final EIR/EIS is credible because it is based on reasonable assumptions and appropriate, widely accepted modeling tools. Additional discussion regarding the modeling used in the RDEIR/SDEIS is provided in Master Response 3, *Hydrology and Hydrologic Modeling*, and all chapters and appendices have been updated with refined modeling results where appropriate (e.g., Chapter 5, *Surface Water Resources*, Section 5.4, *Hydrologic Modeling Results*, and Tables 5-30 and 5-31).

## Recirculation and Disclosure of Significant Impacts

Some commenters requested that the RDEIR/SDEIS be revised and recirculated for public review, alleging that comments had identified new significant environmental impacts not previously disclosed and analyzed by the RDEIR/SDEIS. Other commenters suggested decision makers could not approve the Project or certify the Final EIR/EIS because significant or significant and unavoidable impacts were identified. Comments that provided specific additional information in support of recirculation are addressed in topic-specific master responses or in the individual unique responses in Volume 3, Chapter 4, *Responses to Comments*. Please refer to Master Response 2, *Alternatives Description and Baseline*, for information regarding the selection of an appropriate and sufficient baseline and for responses to comments that generally stated that the RDEIR/SDEIS analysis is insufficient and must be reanalyzed and recirculated for public review.

According to the CEQA Guidelines, a lead agency is required to recirculate a draft EIR for additional comments if “significant new information” is added to the document after the notice of the draft EIR but before certification.

“Significant” new information that would require recirculation includes the following:

- (1) A new significant impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant impacts of the project, but the project proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (14 California Code of Regulations [CCR] 15088.5.)

The CEQA Guidelines further explain what is not considered “significant new information.”

New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. *Id.*

The CEQA Guidelines state that recirculation is not required “where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.” *Id.*

Under NEPA, action agencies shall prepare and circulate a supplement to a draft or final EIS when:

- An agency makes substantial changes to the proposed action that are relevant to environmental concerns; or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (40 C.F.R. § 1502.9)

As described above, and in Chapter 1, *Introduction*, the 2017 Draft EIR/EIS was recirculated for CEQA purposes and supplemented for NEPA purposes. Information and analysis presented in the Final EIR/EIS do not reveal new significant impacts, substantially increase the severity of an impact, or add a new feasible alternative or mitigation measure that is considerably different from others previously analyzed that would clearly lessen significant impacts and was rejected by the Authority or Reclamation. The Final EIR/EIS does not reveal substantial changes to the proposed action (i.e., Project) or significant new circumstances or information for environmental concerns that have implications for the Project and its potential effects. Further, the RDEIR/SDEIS allowed for meaningful public review and comment on substantial adverse environmental effects of the Project and ways to mitigate or avoid such impacts. New information in the Final EIR/EIS clarifies or amplifies previous information and analysis or makes insignificant modifications to the RDEIR/SDEIS mostly in response to the comments received. Therefore, the Authority and Reclamation are not required to recirculate the RDEIR/SDEIS.

## **Public Trust and California Reasonable Use Doctrines**

Commenters suggested that various public trust resources are important to consider. Some commenters defined what they considered to be public trust resources (e.g., threatened or endangered species), whereas other commenters did not. Some commenters cited the public trust or reasonable use doctrines as needing to be addressed as part of the CEQA/NEPA process. The State of California (State), as represented by the State Water Resources Control Board (State Water Board), holds the waters of the State in trust for the benefit of all Californians. Feasible protection for public trust resources and reasonable use is a determination made by the responsible state agency (e.g., State Water Board) after balancing public trust and competing interests and considering its statutory authority and responsibilities. Agencies such as the State Water Board and CDFW have the duty to take public trust values within their statutory roles into account when issuing permits for the Authority's proposed Project. These separate state agency processes would rely on the content of the Final EIR/EIS, as well as other content developed by the Authority and potential other stakeholders specifically for these state agencies.

## **Relationship with Other Plans, Programs, Policies, and Agencies**

The following section addresses comments that expressed general opposition or support of other water-related plans and programs that are being pursued by other state or local agencies. Multiple commenters expressed opposition to the Authority's preferred alternative in favor of other options such as conservation, addressing water waste resulting from leaky infrastructure, prioritizing environmental needs over consumptive needs, groundwater recharge, or amending existing water rights to ensure surface water resources are not overallocated, particularly in dry

or drought years. To the extent commenters express views on other water-related plans and programs, this response is intended to aid commenters in understanding the relationship, if any, between the Project and those plans and programs.

Many actions related to water management at the local, regional, state, and federal level are needed to comprehensively address water resource challenges in California. Comprehensively addressing all of the state's water management needs is outside of the Authority and Reclamation's purview and is beyond the scope of the analysis in the RDEIR/SDEIS. The State Water Board and the nine regional water quality control boards (collectively, the Boards) are charged with the comprehensive planning and allocation of water resources in California (Robie 2012).

The following sections address the relationship between the Authority's preferred alternative and other regional and statewide programs as raised by commenters. In general, for those agencies with permitting or approval authority over the Authority's preferred alternative, the Authority or Reclamation will need to obtain different permits and approvals prior to construction or operation of Sites Reservoir. Required permits, approvals, reviews, and consultations are identified in Chapter 4, *Regulatory and Environmental Compliance: Project Permits, Approvals, and Consultation Requirements* (Tables 4-1, 4-2, and 4-3).

### **California Water Commission and the Water Storage Investment Program (Proposition 1)**

The California Water Commission (CWC) advises the Director of the California Department of Water Resources (DWR) on matters within DWR's jurisdiction, approves rules and regulations, monitors and reports on the construction and operation of the SWP, and provides a public forum for discussing water issues. Proposition 1 gave the CWC responsibilities regarding the distribution of public funds set aside for the public benefits of water storage projects and quantification and management of those benefits. In 2018, CWC conditionally determined the amount the Project could receive if it completes its statutory obligations. Some commenters suggested that the Authority's preferred alternative does not meet the CWC's Water Storage Investment Program (WSIP) criteria for providing measurable benefits to the Delta ecosystem and therefore should not receive funding, but commenters did not provide supporting evidence. The Project meets Proposition 1 conditions and continues to meet all the eligibility requirements for investment by the State. This includes having achieved the following milestones prior to January 1, 2022: releasing the draft environmental documentation for public review, securing commitments for at least 75% of the non-public benefit cost shares of the Project, and completing all feasibility studies (California Water Commission 2021). In December 2021, the CWC deemed the Project feasible (Sites Project Authority 2022a). The Authority will submit all information needed to comply with Proposition 1, Chapter 8 requirements, then the CWC will schedule a final award hearing. The CWC encourages interested parties to participate in these hearings. More information about the selection process is available on the CWC's website ([www.cwc.ca.gov/Water-Storage](http://www.cwc.ca.gov/Water-Storage)).

Although completion of environmental review is a requirement for Proposition 1 funding, the CWC's processes are separate from the Project's CEQA/NEPA environmental review process. However, some commenters confused the processes, submitting comments related to CWC

decision making or other projects selected for funding by the CWC. These comments are outside the scope of this EIR/EIS and, therefore, are not addressed further.

### **Bay-Delta Water Quality Control Plan Updates**

Some commenters confused the State Water Board's 2006 *San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan*, as amended in 2018, (Bay-Delta Plan) (State Water Resources Control Board 2006, 2018) update process with the Project's environmental review process. The Bay-Delta Plan is one of the four statewide water quality control plans issued by the State Water Board and designates beneficial uses through a water quality control planning process. One of the Board's responsibilities is to ensure that the State's water is put to beneficial use to the fullest extent possible, in the interest of the people and for the general welfare. The Bay-Delta Plan describes beneficial uses of the Bay-Delta and water quality objectives for the reasonable protection of those beneficial uses. The State Water Board identifies a program of implementation for achieving the objectives. The Bay-Delta Plan protects water quality in the region and includes water quality objectives to protect fish and wildlife beneficial uses through inflows to the Delta from the Sacramento and San Joaquin Rivers and Delta outflows. The State Water Board is updating the 2006 Bay-Delta Plan, as amended in 2018, and, presently, there is no definitive proposed Sacramento/Delta update of the Bay-Delta Plan. In addition, State Water Board staff have not yet released the Sacramento Water Allocation Model (SacWAM) files which could be used to evaluate proposed Sacramento/Delta update alternatives (Sites Project Authority 2022b).

It is anticipated that implementation of the updated Bay-Delta Plan would be a watershed-wide effort involving numerous stakeholders and water users; it would not be the sole responsibility of the operators of Sites Reservoir to implement the updates to the Bay-Delta Plan. The Authority recognizes that amendments to the Bay-Delta Plan could result in restrictions on diversions for Sites Reservoir (Sites Project Authority 2022b), for instance, through the water rights application and issuance process and implementation of Standard Permit Term 96 (Sites Project Authority 2022b). This term recognizes that the Bay-Delta Plan is being updated and provides that the amount authorized for diversion under any permit may be reduced due to implementation of future updates to the Bay-Delta Plan (Sites Project Authority 2022b).

The Bay-Delta Plan and update process is a discrete effort that is not part of the Project or its environmental review process. The Bay-Delta Plan is, however, considered in the RDEIR/SDEIS for the cumulative impact analysis in Chapter 31, *Cumulative Impacts*. More information regarding the State Water Board's ongoing process to update the Bay-Delta Plan is found in Master Response 2, *Alternatives Description and Baseline*, and Master Response 9, *Alternatives Development*.

### **State Water Board 2018 Framework**

Multiple commenters indicated the Project should consider or apply the State Water Board's *July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan* (Framework). As stated in the Authority's Water Rights Application to the State Water Board:

In October 2017, State Water Board staff issued its Scientific Basis Report in support of updates to the Bay-Delta Plan which included an unimpaired flow approach. Specifically,

the Scientific Basis Report recommends that unimpaired flows be used to dedicate a portion of the watershed inflow to protect instream fish and wildlife. State Water Board staff then prepared and released its ... (Framework). The Framework identifies a proposed (Delta) inflow level of 45(%)–65% of unimpaired (Sacramento River watershed) flow, with a starting point of 55%. (Sites Project Authority 2022b).

The State Water Board's Framework provides initial estimates of water supply costs, and the estimates presented are annual averages for the entire Sacramento/Delta region. However, there is not enough information provided to disaggregate the estimated water supply cost to evaluate the potential change to water available for Sites Reservoir at its proposed points of diversion on the Sacramento River, Funks Creek, and Stone Corral Creek, nor is there enough information to evaluate the water supply cost during the Project's proposed diversion season. The Framework also does not provide or describe operational objectives or compliance locations for how the regulations would be met. As such, it is unclear exactly how the system would be operated to meet these objectives and how and when they could specifically affect the Project's ability to divert (e.g., changes in operations to Lake Oroville and Shasta Lake have not been described). Without additional information (e.g., SacWAM results) to calculate water availability, the benefit of evaluating impacts of such changes on the Project is questionable. On January 6, 2023, the Authority submitted information to supplement its water right application to the State Water Board. This included use of the Alternative 4 CALSIM II model of the Reinitiation of Consultation (ROC) on the Coordinated Long-Term Operation (LTO) of the Central Valley Project and State Water Project (ROC on LTO) to estimate water availability under a 55% unimpaired flow requirement as proposed in potential updates to the Bay-Delta Plan. This analysis showed a reasonable likelihood of water available to the Project during the proposed diversion season of September 1 through June 14.

### **Voluntary Agreements**

Multiple commenters identified that voluntary agreements would occur or noted the process for voluntary agreements as related to the updates to the Bay-Delta Plan. The California Natural Resources Agency and the California Environmental Protection Agency are working to negotiate voluntary agreements to improve conditions for native fish through a commitment to increased flows for the environment, the creation of 60,000 acres of new and restored habitat, and approximately \$5 billion in additional funding for environmental improvements and science. It is anticipated that the voluntary agreements would be incorporated into the Bay-Delta Plan update process. The goals of the voluntary agreements are to improve conditions for native fish through integrated watershed-level actions including river flows, habitat enhancements, and funding for scientific research. As with the Bay-Delta Plan update process, development of voluntary agreements is a distinct effort that is not part of the Project or its environmental review process.

There is no available representation of the voluntary agreements, as it is envisioned currently, in the CALSIM II modeling framework. While the DCP EIR completed a sensitivity analysis of a possible implementation of the voluntary agreements, this analysis was completed in CALSIM 3 (California Department of Water Resources 2022). On January 5, 2023, the State Water Board released a *Draft Scientific Basis Report Supplement in Support of Proposed Voluntary Agreements for the Sacramento River, Delta, and Tributaries Update to the San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan (SBRS)* (State Water Resources

Control Board et al. 2023). The SBRS includes modeling of the proposed voluntary agreements in CALSIM 3, including the changes in Delta outflow under the proposed agreements. Due to the complexity of the modeling, it is not feasible to simply take the representation of the voluntary agreements in CALSIM 3 and implement that representation in the CALSIM II model. Further, as explained in Chapter 3, *Environmental Analysis*, it is not feasible to redo all the extensive Project modeling in the new CALSIM 3 model for the Final EIR/EIS.

As part of its January 6, 2023, supplemental water right application submittal to the State Water Board, the Authority performed a qualitative analysis, which described how the Project is consistent with proposed voluntary agreements (Sites Project Authority 2023a).

After receiving the Authority's January 6, 2023, submittal, the State Water Board staff requested that the Authority prepare a quantitative analysis regarding (1) how the Sites Reservoir Project diversions may interact with the voluntary agreement flow assets and (2) how the Sites Reservoir Project may affect Delta outflow under the voluntary agreements. The Authority completed these quantitative analyses and submitted them to the State Water Board on June 16, 2023 (Sites Project Authority 2023b). The Authority prepared the June 16, 2023, quantitative analyses in the context of the water right application process, and they are not suitable for CEQA/NEPA impact analyses for several reasons.

First, the assumptions for Project diversions in the daily comparison are not based on a model of Project operations but rather are targeted at isolating the Project's potential effects on Delta outflow using simplified assumptions. Thus, the analysis is not an operational based analysis and does not represent how the Sacramento River system and Delta would actually operate. For example, the daily comparison does not account for travel time or attenuation between the Sites points of diversion and the Delta, nor does the analysis simulate operations of other reservoirs and diversions by other water right holders.

Second, results for the monthly comparison were combined from separate CALSIM II and CALSIM 3 models, which allowed for comparison of the general trends and general changes for the purposes of conceptually describing how Project diversions may affect Delta outflow under the voluntary agreements. As noted above, however, a comparison between these two models for the purpose of an impact assessment is not appropriate as each model has its own baseline and own parameters. Thus, it is not possible to compare results from the two models for the level of precision of an impact analysis because there are too many other variables that are also changing to reliably determine potential Project impacts.

Notwithstanding these limitations, the June 16, 2023, quantitative analyses generally found that potential Project diversions and voluntary agreement flow assets have limited interaction, as Project diversions generally occur during periods of higher Delta outflow, while voluntary agreement flow assets are proposed to be deployed during times of lower Delta outflow when additional flow are expected to be most beneficial to the system.

### **Human Right to Water**

Some commenters indicated that the RDEIR/SDEIS should discuss the Human Right to Water (HRTW). First issued in 2012 via the signing of Assembly Bill (AB) 685, the HRTW states that

“every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” The State’s commitment to the HRTW was codified in Section 106.3 of the California Water Code. Comments specifically referenced the State Water Board and DWR HRTW policies.

Multiple state and regional agencies have adopted agency-specific resolutions and policies related to the HRTW commitment made in AB 685, including the State Water Board in 2016 and DWR, which updated its policy in 2021. The State Water Board’s HRTW policy classifies water systems that are failing to meet the provisions of the HRTW by consistently failing to meet primary drinking water standards. The policy also provides internal direction to the State Water Board on how it should consider the HRTW criteria in agency actions, including revising or establishing water quality control plans, policies, and grant criteria; permitting; site remediation; monitoring; and water right administration. The Project would not result in new or changed determinations of failing water systems as identified by the State Water Board’s HRTW program because the Project would not affect existing groundwater wells as identified in Chapter 8, *Groundwater Resources*, or existing utilities, as identified in Chapter 26, *Public Services and Utilities*.

The stated intent of DWR’s HRTW policy is to “guard against discriminatory practices and policies, foster meaningful public participation, and ensure effective accountability mechanisms” within DWR’s internal operations and in its projects and programs. This policy identifies related actions that DWR commits to, including “Establish a permanent HR2W Program that develops and applies consistent HR2W approaches and strategies across all [DWR] projects and programs.”

The Authority and Reclamation are the lead agencies with discretionary decision-making authority over the Project, and other agencies’ internal policies and initiatives do not apply to the Project. The Authority and Reclamation acknowledge and support a human right to water in the state of California. Through the development and implementation of the Project, the Authority and Reclamation are working to supply safe, clean, affordable, and accessible water to Storage Partners’ service areas in California. As acknowledged in the Authority’s Strategic Plan, the water supply made available through the Project would provide safe, clean, affordable, and accessible water for multiple uses (Sites Project Authority 2020). The Storage Partners represent a diverse group of agricultural and urban water users, landowners, households, and businesses in northern, central, and southern California (Sites Project Authority 2020).

### **Sustainable Groundwater Management Act**

Chapter 8, *Groundwater Resources*, describes the Sustainable Groundwater Management Act (SGMA). Under Section 354.24 of the SGMA, Groundwater Sustainability Plans (GSPs) must be written to include measurable objectives, minimum thresholds, and undesirable results determinations for chronic lowering of groundwater levels, reduction in groundwater storage, degradation of groundwater quality, depletion of surface water connections, land subsidence, and saltwater intrusion. Applicable GSPs in the study area are discussed in Appendix 8A, *Groundwater Resources Basin Setting*, Section 8A.3, *Sustainable Groundwater Management*. Compliance with SGMA during Project construction and operation is discussed in Chapter 8 under Impact GW-3. Subbasin GSPs and the corresponding project management actions are



directed under a separate process from the Project by the discretion of local groundwater authorities. The Authority and Reclamation are the lead agencies of the Project with discretionary decision-making authority; other agencies' internal policies and initiatives do not apply to the Project.

### **State Water Resources Control Board Diversity, Equity, and Inclusion Resolution**

Some commenters indicated that they thought the RDEIR/SDEIS should discuss the State Water Board's Diversity, Equity, and Inclusion Resolution (DEI Resolution). Other terms commenters used that likely refer to this policy include but are not limited to the State Water Board Racial Equality Initiative and the State Water Board DEI Resolution. The State Water Board's DEI Resolution was adopted in November 2021. This resolution lays out the State Water Board's commitment to addressing and remedying racial inequity within the agency and developing an internal action plan to include the "actions the State Water Board will take to address Water Boards systems that perpetuate racial inequities while establishing new, resilient systems." This resolution does not contain policies or requirements that apply to specific projects, including the Project.

The Authority and Reclamation are the lead agencies with discretionary decision-making authority over the Project and other agencies' internal policies and initiatives do not apply to the Project. The Authority and Reclamation consider diversity, equity, and inclusion as part of their respective missions and collective decision-making process for the Project.

The Authority's Strategic Plan identifies Diversity and Inclusivity among its eight central values that are implemented in its actions and decisions (Sites Project Authority 2020). These values support the mission of the Authority to build and operate a climate-resilient, 21st century water storage system to responsibly manage and deliver water, improve the environment, and provide flood control and recreational benefits (Sites Project Authority 2020). In carrying out its mission regarding the Diversity and Inclusivity value, the Authority will foster inclusion, respect, and appreciation for the state's diverse demographics and geographies to create a project serving all of California (Sites Project Authority 2020). In addition, the Authority has conducted stakeholder meetings that include a diverse array of non-governmental organizations and local community groups to foster inclusion and communication regarding the Project.

Reclamation also considers diversity, equity, and inclusion as part of its mission and decision-making process. Executive Order 12898 directs all federal agencies to "make achieving environmental justice part of its mission by identifying and addressing as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income population." CEQ provides six principles for environmental justice analyses in NEPA documents, including consideration of disproportionate impacts to low-income, minority or Tribal populations; current and historic public health exposures; socioeconomic connections; effective public participation; meaningful and early community participation; and seeking Tribal representation in the process. Executive Order 12898 and CEQ guidance (Council on Environmental Quality 1997) are identified in Chapter 30, *Environmental Justice and Socioeconomics*, and Appendix 4A, *Regulatory Requirements*. Chapter 22, *Cultural Resources*, and Appendix 4A describe and include requirements of Section 106 of the National Historic Preservation Act and Tribal consultation.

Chapter 33, *Consultation and Coordination and List of Preparers*, lists the federally recognized Tribes with which Reclamation consulted. In addition, Reclamation follows the U.S. Department of the Interior's *Departmental Manual on Environmental Quality Programs*, which provides implementation guidance with these policies and other related environmental justice guidance (U.S. Department of the Interior 2017).

## **Permitting Timeline and Processes**

Some commenters observed that the Authority and Reclamation will need to obtain various permits before implementation of the Project. Chapter 4, *Regulatory and Environmental Compliance: Project Permits, Approvals, and Consultation Requirements*, summarizes the federal, state, and local permits, approvals, and consultation processes that are potentially applicable to the Project. Issuance of permits for a project of this scale and complexity generally occurs after the CEQA/NEPA process is complete, and, in fact, many permitting agencies rely on EIRs and EISs for decision making and implementation. The Authority and Reclamation will secure all necessary permits prior to Project implementation. Please see Figure MR1-1 for the Project's anticipated permitting timeline.

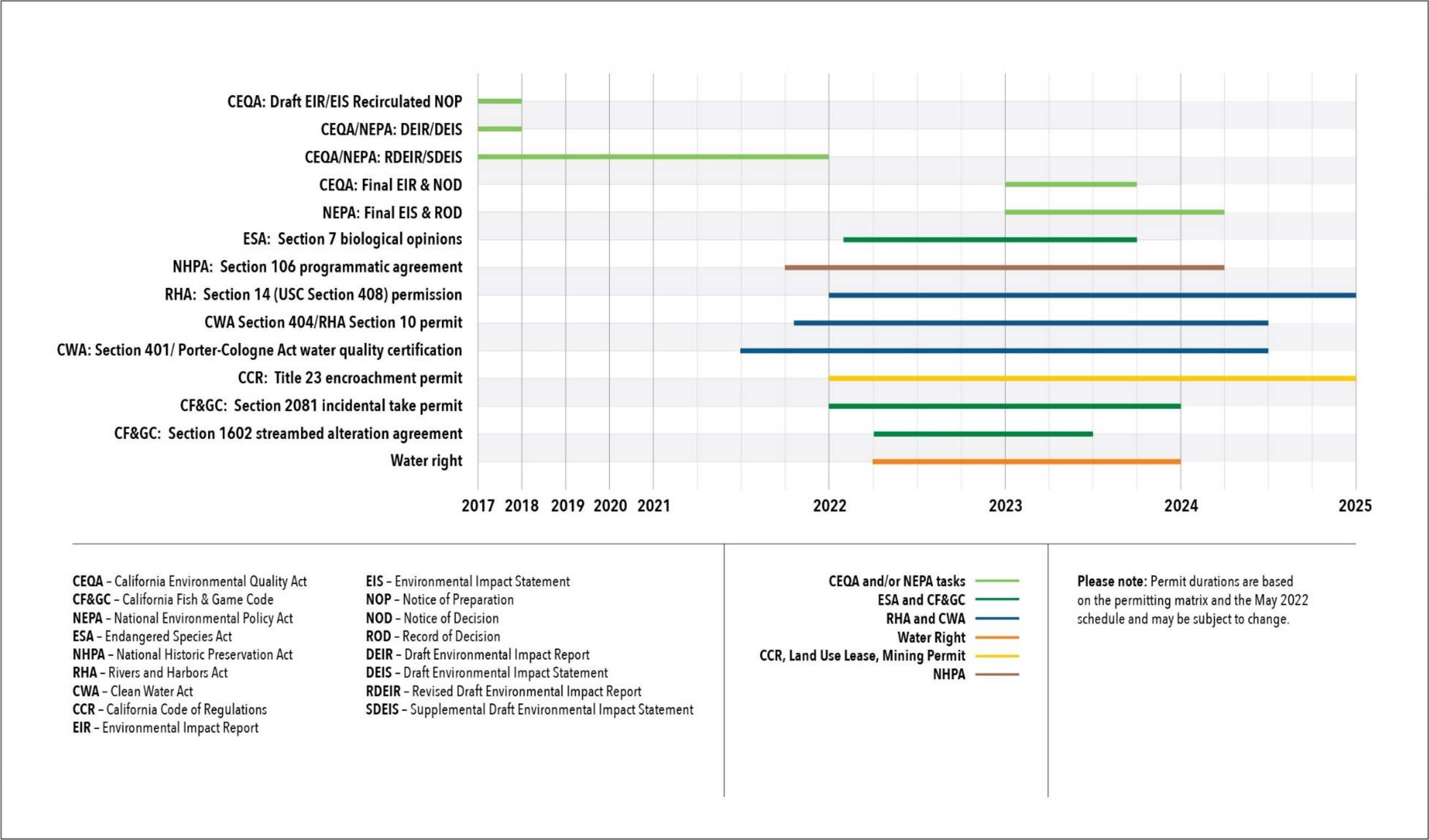


Figure MR1-1. Sites Reservoir Project Anticipated Permitting Timeline

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## **Water Rights**

As identified in Chapter 2, *Project Description and Alternatives*, and Chapter 4, *Regulatory and Environmental Compliance: Project Permits, Approvals, and Consultation Requirements*, the Project requires a water right. Consideration of a water right application is a discretionary action taken by the State Water Board that requires a determination that unappropriated water is available, a review of potential impacts to public trust resources, and a determination that the appropriation of water is in the public interest. The discretionary action by the State Water Board regarding issuance of the water right is a separate and distinct process from the CEQA and NEPA processes. The State Water Board may use content and information in the EIR to inform its decision regarding the water right application, but it will arrive at a separate and distinct decision from the decision of the Authority to approve the Project and certify the EIR. The timing and activities of the State Water Board depend on the complexity of the Project in need of the water right. In general, the water rights process includes:

- Processing the water right application submitted by the Authority and deeming it complete.
- Public noticing of 60 days, allowing stakeholders and water rights holders an opportunity to file protests against approval of the application.
- Resolution of protests within a minimum of 180 days, which may result in the water right applicant and/or the protestants providing additional information to support their findings and/or claims. (Water Code § 1334.)
- If outstanding protests remain or if a petition for assignment of a State-filed application is filed, requirement of a water right hearing (Water Code § 1350, 1351; 23 CCR 739).

The Authority has been working, and will continue to work, directly with the State Water Board in the separate water rights process. The Authority submitted the Application to Appropriate Water for the Sites Reservoir Project to the State Water Board Division of Water Rights on May 10, 2022, via the Water Rights Online Forum and directly to the State Water Board Division of Water Rights (Sites Project Authority 2022c). On August 26, 2022, the State Water Board provided an “Acceptance of Incomplete Application” in a letter that requested additional information be submitted by the Authority. The Authority responded to the letter and submitted materials to supplement the application on January 6, 2023 (Sites Project Authority 2023a). The application supplement included an updated water availability analysis using multiple analytical methods with varying levels of conservatism developed by the Authority (Sites Project Authority 2023a). The Authority developed the methods described below to provide estimates of unappropriated water based on historical hydrology and current regulatory conditions.

- A calculation of unappropriated water using historical stream gage data minus downstream demands through the Delta (equal to the face value of water rights or maximum historical diversion) with Project-specific instream flow requirements incorporated.
- Water availability based on CALSIM II modeling.

- A comparison of unimpaired flow at three points of interest and the aggregated face value of water rights in the Sacramento River to address the State Water Board's request of a watershed-wide analysis.

The water availability analysis also provided three additional water availability analyses to evaluate future conditions: two using CALSIM II model runs with Sites Reservoir under different sets of climate change hydrology (2035 CT climate change hydrology and WSIP 2070 climate change hydrology) and a third using the Alternative 4 CALSIM II model of the ROC on LTO to estimate water availability under a 55% unimpaired flow requirement as proposed in potential updates to the Bay-Delta Plan. Finally, the updated water availability analysis also describes how the Project is consistent with proposed voluntary agreements.

All of the methods show a reasonable likelihood of water available for the Project to divert a maximum combined diversion of 4,200 cubic feet per second at the Red Bluff Pumping Plant and Glenn-Colusa Irrigation District's Hamilton City Pump Station during the diversion period of September 1 through June 14 (i.e., outside of the fully appropriated stream designation period) (Sites Project Authority 2023a).

After receiving the Authority's January 6, 2023, submittal, the State Water Board staff requested that the Authority prepare a quantitative analysis regarding (1) how the Sites Reservoir Project diversions may interact with the voluntary agreement flow assets and (2) how the Sites Reservoir Project may affect Delta outflow under the voluntary agreements. The Authority completed these quantitative analyses and submitted them to the State Water Board on June 16, 2023 (Sites Project Authority 2023b). The Authority may provide supporting materials to the State Water Board as part of the ongoing and separate water rights application process. The Authority acknowledges that as part of the water right permitting decision, the State Water Board will consider the public interest; public trust; and the relative benefit to be derived from all beneficial uses of the water concerned, including irrigation, municipal, industrial, recreation, preservation and enhancement of fish and wildlife resources, and the water quality needed to protect beneficial uses.

For comments related to water rights and the Trinity River, please refer to Master Response 8, *Trinity River*.

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