CHAPTER 3. GUIDANCE FOR NEPA AND CEQA COMPLIANCE: TIERING FROM THE CALFED PEIS/EIR AND INTEGRATING PERMITTING INTO THE NEPA/CEQA COMPLIANCE PROCESS

It is expected that most CALFED actions will need to comply with NEPA and CEQA. As general instruction on NEPA and CEQA compliance, this chapter includes:

- an overview of the NEPA and CEQA compliance processes;
- guidance on tiering project-specific environmental documents from the CALFED PEIS/EIR, including a checklist of environmental consequences and mitigation strategies identified in the PEIS/EIR and the ROD; and
- guidance on integrating compliance with other environmental laws and regulations into the NEPA/CEQA compliance process.

OVERVIEW OF THE NEPA AND CEQA COMPLIANCE PROCESSES

This section provides a brief overview of the NEPA and CEQA compliance processes. It is intended to provide background information for the following discussions of tiering and integrating permitting processes with NEPA/CEQA compliance, and is not intended to provide complete information on the content or procedural requirements of NEPA and CEQA. Refer to Volume 2 of this guide for detailed information on NEPA, CEQA, and other laws and regulations that may apply to CALFED projects.

ACTIONS THAT ARE SUBJECT TO NEPA AND CEQA COMPLIANCE

NEPA requires that a federal agency assess the effects of a proposed action on the human environment. This requirement applies to actions that the federal agency would undertake directly, approve by issuing a permit or other authorization, or fund wholly or in part.

CEQA requirements apply to activities of State and local public agencies that are defined by CEQA as "projects". A project is an activity that causes a direct or indirect physical change in the environment, undertaken by (1) a public agency or (2) a private entity that must receive some discretionary approval from a government agency (meaning that the agency has the authority to deny the requested permit or approval).

GENERAL STEPS IN NEPA/CEQA COMPLIANCE

The first step in NEPA/CEQA compliance is determining the lead agencies. The NEPA lead agency is the federal agency with primary responsibility for NEPA compliance and is generally the federal agency with greatest responsibility for approving or denying approval of the proposed action. The CEQA lead agency is the State or local government agency with primary responsibility for carrying out or approving a project and, therefore, the primary responsibility for preparing CEQA documents. For a project or activity that is being carried out by a non-governmental entity through a grant or loan program, the lead agency will generally be the agency providing the funding.

It is not uncommon for projects to require both NEPA and CEQA compliance, in which case there will be a federal NEPA lead agency and a State or local government CEQA lead agency. A project carried out by a non-federal entity that requires federal permits or authorizations will often require NEPA compliance conducted by the federal agency with regulatory authority over the project. Similarly, if the funding source for a project conducted by a non-government entity is only State or only federal, it does not necessarily mean that there will only be a State or a federal lead agency, respectively. If both Sate and federal permits are required to carry out the project or activity, it is likely that both NEPA and CEQA will apply. If a project requires a variety of permits from different agencies, it is important that the project proponent identifies these agencies early so that the lead agency can be identified and confirmed.

For example, if a non-profit organization receives a grant from the California Department of Fish and Game to carry out a project, the Department of Fish and Game most likely would be the CEQA lead agency. If this hypothetical project includes activities that discharge dredged or fill material into waters of the United States, the project proponent would need to obtain a CWA Section 404 permit. The CWA Section 404 permits are administered through the U.S. Army Corps of Engineers (USACE). The USACE, therefore, would most likely be the lead federal agency for preparing a NEPA document if there are no other federal agencies involved in issuing permits. The non-profit organization would need to contact these agencies to confirm lead agency status.

The lead agency then determines the level of NEPA/CEQA compliance required. Under NEPA, if a project is not "categorically excluded" (i.e., in a category of actions considered by the lead agency to have no potential significant environmental effect) or otherwise exempt from NEPA, the NEPA lead agency must determine whether the proposed action may "significantly affect the quality of the human environment". This generally involves preparing an environmental assessment (EA) to determine whether the proposed action would result in any significant environmental effects. An EA is a concise public document that a lead agency prepares when it does not know whether impacts would be significant. The EA analysis leads to the preparation of either a finding of no significant impact (FONSI) or an EIS. The lead agency prepares a FONSI if it determines that no significant effects would occur as a result of the

proposed action, or prepares an EIS if it determines that the proposed action may have significant effects on the quality of the human environment. (An agency may, however, bypass the preparation of an EA and prepare an EIS for certain types of actions that it determines normally require preparation of an EIS.)

Similarly, the CEQA lead agency must determine whether a "categorical exemption" (similar to a categorical exclusion) applies to an action. If it does not, the lead agency prepares an initial study to determine whether the project may have a significant environmental effect. The initial study analysis leads to the preparation of either a negative declaration or an EIR. The agency prepares a negative declaration if it determines that the project would not have a significant effect. It prepares an EIR if it determines that the project may have a significant effect. (An agency may forgo preparing an initial study if it determines that the proposed project does have the potential to significantly affect the environment and that preparation of an EIR will therefore be required.)

SCOPING

Scoping entails public and agency outreach to determine the scope of issues to be addressed in an environmental document. It should be an open, public process to obtain the views of other agencies and the public. The Council on Environmental Quality's (CEQ's) NEPA regulations require that an EIS preparation process include scoping, but scoping is not a requirement when an agency prepares an EA or a CEQA compliance document. However, scoping is recommended as part of any CALFED project because it can be a useful tool for discovering alternatives to a proposal or potential significant impacts that may have been overlooked in the lead agencies' preliminary consideration of the project. Scoping should occur as early as possible after a lead agency decides to prepare an environmental document. Providing greater specificity about the alternatives to be analyzed will enhance the scoping process.

PROCEDURES FOR AND REQUIRED CONTENTS OF NEPA/CEQA DOCUMENTS

The preparation of NEPA/CEQA documents consists of a series of procedural steps to ensure that adequate analysis of environmental issues and public notification occurs.

NEPA requires that an EIS include a statement of the purpose of and need for the proposed action, and that an EA include a statement of the need for the proposed action. CEQA requires that the project description include a statement of objectives sought through implementation of the proposed project; this is analogous to the NEPA statement of purpose and need. CEQA does not require a statement of objectives for an initial study/Negative Declaration.

An EA/initial study or an EIS/EIR must describe:

- the affected environment/environmental setting for the proposed project;
- the environmental consequences/environmental impacts of the proposed project, including direct, indirect, and cumulative effects; and
- any feasible mitigation that exists for adverse environmental impacts.

NEPA requires that an EIS analyze the environmental effects of a reasonable range of alternatives that would meet the project purpose and need; an EA must analyze the effects of alternatives that would meet the project need (essentially the same as purpose and need in an EIS). A no-action alternative must also be analyzed in either document. CEQA requires that an EIR analyze feasible alternatives to the proposed project that would feasibly attain most of the project objectives and would avoid or substantially lessen one or more of the anticipated significant impacts of the proposed project; a no-project alternative must also be analyzed. An analysis of alternatives is not required for an initial study.

Once a draft EIS or EIR is prepared, the lead agencies must distribute the document for review and comment by other agencies and the public. The NEPA requirements for public notice of an EA/FONSI vary by agency; CEQA requires public circulation of an initial study/negative declaration.

NEPA requires that a lead agency hold a public hearing on a draft EIS if substantial environmental controversy exists concerning the proposed action, if many parties are interested in holding a hearing or another agency with jurisdiction over the action requests a hearing. CEQA does not require a public hearing on the draft EIR; however, in practice, most agencies conduct such hearings to receive comments on the draft EIR. Holding public hearings or meetings is generally permissive for NEPA EAs and CEQA initial studies.

After the NEPA/CEQA lead agencies review comments on the draft EIS/EIR, they prepare a final EIS/EIR. The final document must contain the lead agencies' responses to comments and discuss any opposing views on substantive issues raised. Generally, a final EIS consists of a rewrite of the draft EIS that incorporates the suggestions made in the comments and adds any new analysis and information that may be pertinent. A final EIR must include the draft EIR or a revision of the draft EIR, but CEQA does not require that the draft EIR be rewritten. Similarly, lead agencies consider comments made on EAs and initial studies, revise the documents accordingly, and consider the comments in deciding whether to issue a FONSI or Negative Declaration for the project.

The NEPA lead agency must circulate the final EIS before making a decision on the proposal. The final EIS must be provided to agencies with jurisdiction by law or special expertise, environmental regulatory agencies, the project applicant and those requesting copies, and anyone who submitted substantive comments on the draft EIS. After a 30-day waiting period, when the lead agency determines that the EIS meets the standards of the CEQs' NEPA regulations and the agency's own NEPA regulations, it files the final EIS and prepares the ROD,

a written public record that explains the agency's course of action. A FONSI generally requires a minimum 30-day public review before an action may start, but there are exceptions.

The CEQA lead agency must circulate the final EIR for 10 days and then may certify the document and make a decision on the project. The agency must prepare findings of fact for each significant impact identified in the EIR, and must prepare a statement of overriding considerations if it is approving the project with unavoidable significant environmental effects. The findings of fact identify the mitigation adopted to avoid or substantially lessen the impacts; recommended mitigation that is within the jurisdiction of another agency; or specific economic, social, legal, technical, or other considerations make the proposed mitigation measure or alternative infeasible. After the lead agency determines to approve or carry out a project for which an EIR or Negative Declaration has been prepared, the agency files a Notice of Determination. Filing this Notice begins the statutes of limitations on filing CEQA court challenges to approval of the project. The project may commence, however, after filing the Notice and other required permits have been obtained, unless ordered by a court not to proceed because of a valid CEQA challenge.

GUIDANCE FOR TIERING FROM THE CALFED FINAL PROGRAMMATIC EIS/EIR

PURPOSE OF GUIDANCE

These guidelines are provided to help agencies prepare tiered environmental documents for projects that implement the CALFED long-term Plan. The guidelines will help focus tiered environmental documents on the project-specific issues ripe for review by eliminating repetitive discussions of material covered in the CALFED PEIS/EIR. CALFED prepared the PEIS/EIR to address the overall environmental issues associated with a large-scale, long-term plan. The PEIS/EIR evaluated the general environmental consequences of the long-term plan and presented mitigation strategies that could be used to address the consequences. Specific projects that implement parts of the long-term plan will cause environmental consequences that are within the range of effects described in the PEIS/EIR. Mitigation measures for specific projects, likewise, will be within the range of mitigation described in the PEIS/EIR.

These tiering guidelines are intended to be used by federal agencies and State agencies (including regional, county, city, and other California public agencies). The guidelines do not affect the authorities or responsibilities of lead agencies under NEPA and CEQA, or other applicable laws or regulations. The following types of projects qualify for tiering from the PEIS/EIR:

- projects funded with money designated for meeting CALFED purposes; and
- projects carried out by CALFED agencies in furtherance of the CALFED long-term Plan.

Under some circumstances, projects undertaken by or subject to approval by federal or state agencies other than the CALFED agencies in furtherance of the CALFED long-term Plan may tier from the PEIS/EIR. In these cases, it will be important to assure that the location and kind of action, impacts (including cumulative effects), mitigation measures, and other commitments are in concert with the CALFED Program, impact documentation and ROD.

The remainder of this section is organized as follows:

1. "CALFED's Regulatory Compliance Process" provides a general overview of CALFED's regulatory compliance process.

2. "What is Tiering?" describes the concept of tiering and the regulations that pertain to tiering.

3. "General Tiering Guidance" provides general guidance about incorporating the tiering concept into the environmental compliance process for CALFED actions.

4. "Recommendations for Using the PEIS/EIR in Preparing Tiered Documents" discusses how to use specific components of the PEIS/EIR when preparing tiered environmental compliance documents for CALFED actions.

5. "NEPA/CEQA Monitoring" describes the relationship of CALFED's NEPA/CEQA Monitoring Plan to tiered environmental documents.

6. "Using the CALFED Record of Decision and Response to Comments Document" recommends ways to use the CALFED ROD and response to comments document in preparing tiered documents.

1. CALFED REGULATORY COMPLIANCE PROCESS

The CALFED process has established an important precedent in coordinated and cooperative State and federal agency relationships. The CALFED staff will continue these efforts by assisting, monitoring, coordinating, and tracking projects that carry out the CALFED long-term plan. Generally, the CALFED agencies will establish or participate in multi-agency teams to facilitate project implementation and assist with regulatory compliance. These teams provide a forum for tracking project development, coordination, identifying and resolving issues, and ensuring permit compliance.

CALFED will assist with environmental regulatory compliance as projects are proposed and developed. Environmental regulatory compliance includes NEPA/CEQA efforts as well as

the permits, consistency determinations, and other approvals that may be necessary for each project.

The Environmental Compliance Branch is an oversight and coordination unit within CALFED that will assist lead agencies in:

- ensuring consistent interpretation and approach,
- developing a preliminary constraints analysis,
- developing a regulatory strategy,
- ensuring that environmental considerations are an integral part of project formulation,
- communicating with regulatory agencies,
- developing contracts for environmental compliance efforts,
- helping with compliance monitoring,
- reviewing documents,
- establishing and maintaining a data management system, and
- providing issue resolution services.

The Environmental Compliance Branch can also help the project proponent work with the Science Branch of CALFED to:

- develop adaptive management strategies that can be included in mitigation measures and permit conditions,

- develop peer review for studies required under permit conditions or monitoring programs,

- develop measurable criteria that are project specific that can demonstrate project contributions to the CALFED long-term Plan, and

- interlink project monitoring with regional monitoring or with project monitoring on other nearby projects.

2. WHAT IS TIERING?

THE CONCEPT OF TIERING

Tiering of environmental documents refers to the process of addressing a broad, general program, policy, or proposal in an initial, general environmental document and analyzing site-specific proposals related to the initial program, plan, or policy in a subsequent document that focuses on the issues specific to the later project.

Federal agencies operating under NEPA originated the concept of a programmatic document. For large federal projects involving multiple smaller projects over large geographic

areas, it was recognized that a document addressing a program as a whole, rather than a number of documents on component pieces, would increase understandability. Having a broader perspective and assessing larger-scale impacts that might not be visible at the project document scale were central benefits of this approach. When individual, or "second-tier", project documents were undertaken, these documents could use analyses already completed to address many of the large-scale, non-site-specific issues. The use of a first-tier EIR, paralleling the NEPA program EIS, is authorized under CEQA and the CEQA Guidelines.

NEPA TIERING GUIDANCE. Section 1502.20 of the CEQ NEPA Regulations establishes federal tiering requirements. That section encourages tiering environmental documents to avoid repetition of issues that have already been evaluated. Subsequent, or second-tier, documents can summarize issues discussed in the broader statement, and may incorporate discussions from the higher-level document by reference. The emphasis in the second-tier document is on project-specific impacts. The CEQ has emphasized that second-tier NEPA reviews must still be carried out, but that tiering can avoid unnecessary duplication of analysis. Individual federal agencies have adopted their own NEPA guidelines that establish their tiering procedures.

CEQA TIERING GUIDANCE. CEQA Guidelines Section 15152 provides that the environmental documents for later related projects can be tiered from a first-tier EIR. Section 15152(a) provides that the level of detail contained in the first-tier EIR need not be greater than that of the program being analyzed. Subsections (b) and (c) provide that the first-tier EIR may defer the development of site-specific information until site-specific, second-tier projects are considered, as long as the deferral does not prevent adequate identification of significant effects. Subdivisions (d)–(h) of Section 15152 establish the rules for tiering later environmental documents.

Tiering is limited to situations where the later project is consistent with the program for which the first-tier EIR was certified. The second-tier document can be limited to project-specific effects that were not examined as significant effects in the first-tier EIR or that are susceptible to substantial reduction or avoidance through specific mitigation measures or revisions in the second-tier project. Subdivision 15152(f) provides that a second-tier EIR must be prepared when the later project may cause significant effects on the environment that were not adequately addressed in the first-tier EIR. Under the circumstances specified in subdivision 15152(f), it may not be necessary to discuss cumulative impacts in detail if they have been adequately addressed in the first-tier EIR.

CALFED'S TIERING STRATEGY

The CALFED PEIS/EIR describes the expected environmental effects of the CALFED Preferred Program Alternative. The CALFED agencies' strategy in preparing a PEIS/EIR was to discuss major program-level issues in the programmatic document, identifying significant impacts at the program level and suggesting mitigation strategies. Throughout the process of preparing the PEIS/EIR, holding public hearings, and responding to comments, CALFED indicated to all levels of government and to all stakeholders that site-specific projects will

undergo NEPA/CEQA review, using the program document as a guide and template. The CALFED agencies do not intend that lead agencies proceed with projects without appropriate project-specific environmental analysis.

LEVEL OF ANALYSIS. Tiering allows lead agencies to focus on the site-specific impacts of the project, rather than addressing broader, more general issues that have been addressed in the first-tier EIS/EIR. Issues that are ripe for decision at the time of preparation of the tiered document should be the focus; issues that were discussed and settled for the overall program need not be readdressed. For CALFED, projects appropriate for tiered analysis would include any that were included in the scope of the Preferred Program Alternative at the time of issuance of the ROD and CEQA certification, or in any later environmental document tiering from the program document. Tiered documents should focus on impacts on the local area, site-specific mitigation measures, and project design or alignment alternatives. Tiered documents should refer to PEIS/EIR discussions regarding broader program alternatives. Analyses of cumulative impacts, growth inducement, and areawide impacts in the tiered document may reference the PEIS/EIR as the basis of analysis, but in most cases will require more specific information about the particular project's potential to cause wide-ranging effects.

ADVANTAGES OF TIERING. Tiering from the PEIS/EIR means that a portion of the analysis that would be required for a stand-alone environmental document has already been prepared, and that many of the difficult larger issues have already been addressed. Duplicative consideration of larger policy issues contained in the program can be avoided, saving considerable time and expense.

CONSEQUENCES OF NOT TIERING. Preparing environmental documents for CALFED projects that are not tiered from the PEIS/EIR may require a substantial commitment of time and resources to reanalyze a full range of alternatives, cumulative impacts, and other issues that were addressed in the PEIS/EIR. Also, failure to consider significant impacts and mitigation strategies developed in the PEIS/EIR could lead to concerns that individual lead agencies' approaches to implementing mitigation and monitoring may be inconsistent. This could lead to document revisions, significant delays to the project, and substantial additional costs.

3. GENERAL TIERING GUIDANCE

The following are general tiering recommendations.

TIERING REFERENCE

A second-tier document must contain a conspicuous reference to the first-tier document. The cover page or introduction of the environmental document should: (1) provide the title of the previous program document; (2) state where a copy of the programmatic document can be found for review; (3) indicate that the second-tier lead agency is using the tiering concept, and (4) state that the document is being tiered from the original programmatic document. As a template, the following statement can be used:

> This document is tiered from the CALFED Bay-Delta Program Final Programmatic EIS/EIR and the Record of Decision issued August 28, 2000 (including CEQA certification). The Programmatic EIS/EIR can be reviewed at the CALFED Bay-Delta Program, 1416 Ninth Street, Room 1147, Sacramento, CA. Tiering is provided for in NEPA (CEQ) Regulations Section 1502.20 and CEQA Guidelines Section 15152.

SCOPING

An agency undertaking scoping for a project implementing a portion of the CALFED long-term Plan should state in scoping notices that the agency proposes to tier portions of the environmental analysis from the CALFED PEIS/EIR.

The PEIS/EIR may contain information that will help focus issues during the scoping process. This includes, for example, the scope of the proposed action, alternatives not considered, and impacts that are not considered significant.

DEVELOPING THE ADMINISTRATIVE RECORD

For environmental documents that tier from the PEIS/EIR, the PEIS/EIR becomes part of the administrative record. The agency should have on hand at least one, and preferably two, copies of the PEIS/EIR to which it may refer. If the agency's decision becomes the subject of litigation, a copy will need to be provided to the court.

INCORPORATION BY REFERENCE

Pertinent analysis of program alternatives, analysis of overall program planning-level effects, and analysis of cumulative impacts can be incorporated by reference into the second-tier environmental document. When document preparers are incorporating by reference, they should cite the discussion and findings of the PEIS/EIR and summarize them briefly (CEQ NEPA Regulations Section 1502.21 and CEQA Guidelines Section 15150).

The portions of the PEIS/EIR that may be incorporated by reference will vary depending on the characteristics of the site-specific project. Incorporation by reference is to be used only when the referenced subject is pertinent to the project at hand and incorporation by reference would avoid the need to repeat the full discussion from the PEIS/EIR in the project-specific document. Incorporation by reference does not substitute for project-specific analysis.

DETERMINING SIGNIFICANCE

Determining whether a project will have a significant effect on the environment is the key to both the NEPA and CEQA processes. When determining significance, the lead agency must consider both direct effects on the environment, such as habitat removal, and indirect effects, such as contribution to air quality degradation.

The PEIS/EIR identifies potentially significant, program-level environmental impacts that would occur as a result of the activities implementing the CALFED long-term Plan. Lead agencies tiering from the PEIS/EIR must review these impacts and determine whether their projects would result in any of the same significant effects. Chapter 3 of the PEIS/EIR summarizes the impacts of CALFED that were identified in Chapters 5, 6, and 7 of the document. The Environmental Consequences–Mitigation Strategies Checklist included at the end of this chapter can be used to help identify the significant effects that may apply to a project.

The lead agency must also follow its own standard NEPA or CEQA procedures to determine whether the project would result in any project-specific effects.

4. RECOMMENDATIONS FOR USING THE PEIS/EIR IN PREPARING TIERED DOCUMENTS

The following are recommendations regarding use of information in the PEIS/EIR in tiered environmental documents. The recommendations follow the chapters in the PEIS/EIR.

PROJECT DESCRIPTION, INCLUDING PURPOSE AND NEED STATEMENT

The project description of a tiered environmental document should include a discussion of the project's integration with the larger CALFED long-term Plan. The project description should discuss the CALFED mission, goals, and objectives and describe how the proposed action helps meet them. Related CALFED projects should also be described. These discussions and descriptions should be sufficiently detailed to allow a reader to understand where the tiered project fits into the larger CALFED plan as presented in the Programmatic Record of Decision.

The statement of purpose and need in tiered environmental documents should illustrate the linkage to the CALFED purpose and needs statement in the PEIS/EIR (CEQA's "project objectives" are analogous to the purpose and need statement). A tiered project's statement of purpose and need should be consistent with the overall CALFED objectives. CALFED's statement of purpose and need is in Chapter 1.2 of the PEIS/EIR.

The purpose and need statement of a tiered project will be a subset of the CALFED purpose and need statement. For example, a CALFED objective is to "improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species". This objective is further summarized in the PEIS/EIR. One sub-objective is to "improve the in-Delta, upstream, and downstream movement of larval, juvenile, and adult life stages of aquatic species". One means to partially achieving this sub-objective is to build a fish screen at a water diversion facility. The purpose and need statement in a tiered environmental document for such a fish screen project should trace the purpose and needs back to the PEIS/EIR. Information from the PEIS/EIR may be incorporated by reference.

See Attachment 1 for an example of how to develop a statement of purpose and need for a CALFED action.

ALTERNATIVES ANALYSIS

NEPA and CEQA require that EISs and EIRs identify a reasonable range of feasible alternatives that would meet the project purpose and need or objectives. Under CEQA, the alternatives selected are those that could feasibly attain most of the project objectives and would avoid or substantially lessen one or more of the anticipated significant impacts of the proposed project. The discussion of overall program alternatives from the PEIS/EIR should be incorporated by reference.

The following is an example of incorporation of the alternatives analysis by reference. Actual incorporation by reference would require a more complete summary of environmental consequences.

> Alternatives—Four alternatives for the overall CALFED long-term Plan are discussed in Section 2 of the CALFED PEIS/EIR (Record of Decision and CEQA certification issued August 2000). These alternatives represent differing approaches to conveying water through the Delta. Each of the alternatives addresses the eight elements of the program: Ecosystem Restoration, Water Quality, Levee System Integrity, Water Use Efficiency, Water Transfer, Watershed, Storage, and Conveyance.
>
> Alternative 1 relies primarily on the year 2000 configuration of the Delta channels. It also proposes a channel enlargement in the Old River adjacent to Victoria Island, flow control barriers along the Fabian Tract and the Middle River,

and fish screens at the Clifton Court Forebay. Environmental consequences of Alternative 1 would include disruption and fragmentation of vegetation and wildlife communities, conversion of up to 15,700 acres of farmland, etc.…

Alternative 2 adds improvements to north Delta channels, including possible setback levees or channel modifications on the North Fork adjoining Staten Island, to the south Delta changes contemplated in Alternative 1. Other features include a 10,000 cubic foot per second diversion facility on the Sacramento River near Hood. Environmental consequences would include greater adverse impacts on vegetation and wildlife than under Alternative 1, conversion of up to 19,500 acres of farmland, etc.…

Alternative 3 adds a canal connecting the Sacramento River in the north Delta near Hood to the SWP and CVP export facilities in the south Delta at the Clifton Court Forebay, in addition to the north and south Delta facilities contemplated in Alternatives 1 and 2. Consequences of this alternative include greater adverse impacts on vegetation and wildlife than under Alternative 2, conversion of up to 21,000 acres of farmland, etc.…

Alternative 4, the Preferred Program Alternative, incorporates elements similar to some of the elements in Alternatives 1 and 2. It includes possible setback levees or channel modifications on the North Fork and South Fork adjoining Staten Island, a new screened diversion facility on the Sacramento River and channel to the Mokelumne River as under Alternative 2, but on a considerably smaller scale. Consequences of this alternative include adverse impacts on vegetation and wildlife similar to those under Alternative 1, conversion of 15,700 to 19,500 acres of farmland, etc.…

Chapter 2 of the PEIS/EIR is incorporated by reference into this document.

ENVIRONMENTAL CONSEQUENCES

The environmental consequences of the Preferred Program Alternative and alternatives were presented in Chapter 5, "Physical Environment"; Chapter 6, "Biological Environment"; and Chapter 7, "Land Use, Social Issues and Economics", of the PEIS/EIR. Each of these chapters is divided into sections according to resource category. The following discussions describe how these sections of "environmental consequences" chapters were organized and recommends ways to use the information they provide in tiered environmental documents. Information from the PEIS/EIR may be incorporated by reference.

SUMMARY. At the beginning of each resource category section in the PEIS/EIR environmental consequences chapters, a summary of the conclusions of the detailed impact

analysis was provided. It gave an overview of the benefits and potentially significant adverse impacts that could result from implementing the program, and listed possible mitigation strategies to lessen potentially significant impacts. Information presented in the summary for each resource was the basis for the summary comparison of impacts presented in Chapter 3 of the PEIS/EIR. Tables in each resource section summarized the significant adverse impacts and mitigation strategies that apply to them.

Tiered environmental documents should follow this format. It provides a good overview of environmental consequences for readers not wishing to read the entire document. It also provides a convenient means of preparing a summary chapter and tracking environmental consequences and mitigation measures, and simplifies preparing the ROD and CEQA findings.

AREAS OF CONTROVERSY. This section was included in the PEIS/EIR to highlight the uncertainty in many areas of analysis of environmental consequences and discussed issues mentioned in the public review process. In most cases, the issues were addressed in the impact analyses. In some cases, the issues could not be addressed at the programmatic level and need to be addressed in tiered environmental documents.

Tiered environmental documents should follow this format. Identifying uncertainties and means of resolving them is essential to the adaptive management approach of the CALFED long-term Plan. Incorporating discussions of uncertainty, as applicable, in implementing projects will lead to development of research and monitoring programs to resolve them. Highlighting issues can help resolve them. Reviewing the response to comments document for the PEIS/EIR may help identify areas of controversy.

AFFECTED ENVIRONMENT/EXISTING CONDITIONS. The "affected environment/existing conditions" sections in the PEIS/EIR provided a historical perspective and an overview of current conditions for each resource. The discussions were organized by CALFED study regions:

- Delta region,
- Bay region,
- Sacramento River region,
- San Joaquin River region, and
- Other State Water Project (SWP) and CVP service areas.

Tiered environmental documents should identify the CALFED study region(s) where the Preferred Program Alternative–implementing project(s) would be located. Useful information for tiered documents may be extracted from the affected environment/existing conditions sections in the PEIS/EIR, with more specific detail added to fully describe the project area. Information from the PEIS/EIR may be incorporated by reference.

ASSESSMENT METHODS. Descriptions of assessment methods in the PEIS/EIR were resource-specific and provided the approach and analytical models used to identify and assess the environmental consequences for the resource category. Preparers of tiered environmental

documents should review the assessment methods used in the PEIS/EIR, and evaluate whether the programmatic methods can be used to develop more specific assessment methods to analyze environmental consequences in tiered projects.

SIGNIFICANCE CRITERIA. The thresholds of significance for many of the environmental resources discussed in the PEIS/EIR were described in qualitative terms and covered a broader spectrum of impacts than would be included in a site-specific, project-level analysis. Consequently, the thresholds for most resources could not be established with a quantitative measurement. The measure of significance will vary depending on the nature and type of the proposed actions, the site characteristics where the actions take place, and how they affect the existing conditions at the time of the proposed actions. The thresholds used in the PEIS/EIR were intended to identify potentially significant impacts at a programmatic level and to provide guidance for developing significance criteria at subsequent tiers of analysis. The thresholds also provided a tool to predict whether it was likely that the impacts identified as potentially significant at the programmatic level can be avoided, reduced, or mitigated to a less-than-significant level.

Preparers of tiered environmental documents should review the significance criteria used in the PEIS/EIR, and use them to the extent practicable to develop more specific significance criteria to analyze the environmental consequences of their projects.

NO-ACTION ALTERNATIVE. This section of the PEIS/EIR presented the environmental consequences of the No-Action Alternative compared to existing conditions. The No-Action Alternative makes predictions about the future condition of environmental resources, taking into consideration recently constructed projects and projects proposed for construction. For the No-Action Alternative, assumptions based on current expectations were made about existing trends that may continue into the future and about future water project operations. For example, urbanization that is expected to continue would require additional land and water resources, with consequences to a variety of environmental resources. A list of projects included in the PEIS/EIR No-Action Alternative impact analysis and water operation modeling assumptions was provided in Attachment A of the PEIS/EIR.

Preparers of tiered environmental documents should review the No-Action Alternative used in the PEIS/EIR. The broad assumptions and the analysis used for the PEIS/EIR No-Action Alternative may be useful for developing more specific assumptions or models for the No-Action Alternative for Preferred Program Alternative–implementing projects.

PROGRAM ALTERNATIVES ENVIRONMENTAL CONSEQUENCES.

The PEIS/EIR identified a number of significant environmental impacts. They are listed in the PEIS/EIR at the beginning of the environmental consequences chapters in the Summary section. For example, noise impacts are listed in the PEIS/EIR in Section 5.6.1. Other sections in Chapter 5.6 present the analysis of how these impacts were determined. These impacts are also included in the checklist at the end of this chapter.

Preparers of second-tier environmental documents should use the checklist or environmental consequences chapters of the PEIS/EIR in preparing their environmental documents. A logical time to do this is during preparation of environmental assessments or initial studies. If it is possible that a resource impact listed in the PEIS/EIR as significant also could result from the tiered project, the impact should be evaluated in the tiered document and mitigation measures for it derived from the PEIS/EIR mitigation strategies. The evaluation of the impacts of the PEIS/EIR may show that the impact is not significant for the tiered project. This conclusion should be documented and kept in the administrative record. It should also be noted that an impact of a Preferred Program Alternative–implementing project may be found to be significant at the site-specific level even if it was not found to be significant in the PEIS/EIR.

Preparers of tiered documents should also consider using the approach presented in the PEIS/EIR for economic and social issues. In the PEIS/EIR, economic and social effects were presented, and methods to avoid or reduce adverse social and economic effects were addressed, as applicable, in the text of each of the environmental consequences chapters. These effects were not included in the summary sections because social and economic changes resulting from a project are treated somewhat differently under NEPA and CEQA. Under NEPA, economic or social effects must be discussed if they are interrelated to the natural or physical environmental effects of a project. CEQA does not treat economic or social changes resulting from a project as significant impacts on the environment. However, if economic or social effects cause a physical change in the environment, the physical change may be regarded as a significant impact based on the same criteria used to determine the significance of other physical changes from the project. In addition, economic and social effects of a project may be used to assess the significance of a physical effect.

Note that the PEIS/EIR separated the description of environmental consequences into two categories: *Program Elements with Consequences Common to All Alternatives* and *Program Elements with Consequences That Differ Among Alternatives.* The first category was used because, at the program level, all program alternatives contained certain common elements. These common elements caused similar environmental consequences and grouping them together eliminated repetitive text. It is anticipated that environmental documents prepared for projects that implement the Preferred Program Alternative will not use this approach because project alternatives should be different enough to preclude considering a category such as *Program Elements with Consequences Common to All Alternatives.*

PROGRAM ALTERNATIVES COMPARED TO EXISTING CONDITIONS. Under CEQA, the existing conditions are normally the baseline for comparison of the effects of the project. In the PEIS/EIR, the No-Action Alternative was used as the primary baseline because of the long-term nature of the program. However, an analysis with existing conditions as the baseline was conducted and the results were presented in this section. This ensured that all potentially significant impacts were identified. In most cases, because of the general nature of the environmental assessment, the conditions under the existing conditions baseline were similar to those under the No-Action Alternative.

Most tiered environmental documents should be specific enough to differentiate between existing conditions and the No-Action Alternative. Tiered documents should be formatted to clearly describe the environmental consequences using both baseline conditions.

ADDITIONAL IMPACT ANALYSES. Four other topics were included in the PEIS/EIR environmental consequences chapters: cumulative impacts, growth-inducing impacts, the relationship between short-term uses of the environment and maintaining and enhancing long-term productivity, and irreversible and irretrievable commitments of resources. These topics generally are separate sections in EISs and EIRs, but need not be. Preparers of tiered environmental documents should review these sections to guide preparation of the tiered environmental documents.

In the PEIS/EIR, a summary of each of these topics was included in Chapter 3, "Summary Comparison of Environmental Consequences".

CUMULATIVE IMPACTS. The analysis of cumulative impacts in the PEIS/EIR considered the long-term environmental impacts of the CALFED Preferred Program Alternative and alternatives, including those that would be less than significant, together with similar impacts of other projects. The other projects reviewed were listed in Attachment A to the PEIS/EIR. Because CALFED actions affected a large geographic area over a 30-year time frame, many impacts of the program that might not be significant in a short-term, site-specific analysis were treated as significant at the programmatic level of review. No additional environmental impacts that individually would be minor, but collectively significant, were identified. As a result, the analysis of the contribution of the Preferred Program Alternative and alternatives to cumulative impacts was very similar to the analysis of their long-term impacts. The mitigation strategies identified for impacts were also applicable to mitigate cumulative impacts. Chapter 3 of the PEIS/EIR contained a table that identified, by region, the resource category in which potentially significant cumulative adverse impacts resulting from the incremental impact of the Preferred Program Alternative, when added to the impacts of applicable projects and activities listed in Attachment A of the PEIS/EIR, were anticipated.

Tiered EISs and/or EIRs should incorporate the relevant cumulative and long-term impact analyses of the PEIS/EIR and add detail about other "reasonably foreseeable future projects" and their contribution to cumulative impacts. Any significant environmental impacts, including contributions to a cumulative impact that the PEIS/EIR did not address, need to be evaluated in the tiered environmental reviews. Information from the PEIS/EIR may be incorporated by reference.

GROWTH-INDUCING IMPACTS. Water supply reliability and growth-inducing impacts were discussed in Chapter 5.1 of the PEIS/EIR. The effect of the Preferred Program Alternative on the majority of the resources discussed in this document would not induce additional growth; however, these resources could be affected by additional growth. There are wide differences of opinion regarding whether additional water supplies or improvements in water supply reliability cause growth-inducing impacts. The PEIS/EIR assumed that any

increase in water supplies or improvements in water supply reliability that are associated with the Preferred Program Alternative would stimulate growth.

Tiered EISs and EIRs will need to evaluate growth-inducing impacts based on their specific characteristics and location. Water supply reliability projects that increase the amount of water available for consumptive use will need to carefully evaluate the question of whether water supply availability fosters growth or accommodates growth. Growth-inducing impacts may have effects on ESA/CESA permitting processes, and consultation with ESA/CESA agencies about growth-inducing impacts should occur early in the NEPA/CEQA document preparation process (see Chapter 2).

RELATIONSHIP BETWEEN SHORT-TERM USES AND LONG-TERM PRODUCTIVITY AND IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS. These sections in the PEIS/EIR discussed the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity required by NEPA and the NEPA/CEQA requirement for discussion of irreversible and irretrievable commitments of resources. Resource-specific summaries were provided in Chapter 3 of the PEIS/EIR.

Preparers of tiered environmental documents should review these sections for useful information applicable to specific projects.

MITIGATION STRATEGIES. Because the PEIS/EIR did not evaluate site-specific actions, no specific mitigation measures were presented. Instead, general mitigation strategies were identified as ways to avoid, minimize, restore, or compensate for potentially significant adverse impacts. For some resources, specific mitigation measures were provided as examples to display the array of techniques available to carry out the strategy. For example, construction activities can cause erosion of soils that leads to adverse impacts on water quality. A mitigation strategy would be to avoid and minimize the impact. Mitigation measures available to carry out this strategy include conducting work during dry periods and using erosion-control fencing or straw bales, water detention basins, and so forth.

The analyses of economic and social information in the PEIS/EIR (agricultural economics, agricultural social issues, urban water supply economics, regional economics, and environmental justice) did not contain separate mitigation strategy sections. However, the PEIS/EIR presented possible methods to alleviate potential adverse effects on these resources within the discussion of potential effects.

Preparers of tiered environmental documents should use the mitigation strategies developed in the PEIS/EIR as a starting point to determine appropriate mitigation measures. Because all the potential actions and impacts for tiered projects cannot be anticipated at a programmatic level, each project needs to select the strategies and actions applicable to the specific location and type of action and to consider additional project-specific mitigation measures.

Attachment 2, "Environmental Consequences—Mitigation Strategies Checklist," lists the environmental impacts and mitigation strategies identified in the PEIS/EIR and ROD. According to CALFED's NEPA/CEQA Monitoring Plan (see "NEPA/CEQA Monitoring" below), Preferred Program Alternative–implementing projects will be monitored to determine whether mitigation strategies presented in the PEIS/EIR were considered in environmental documents and appropriate mitigation measures proposed for significant environmental impacts.

POTENTIALLY SIGNIFICANT UNAVOIDABLE IMPACTS. The PEIS/EIR contained a discussion of potentially significant unavoidable impacts for each resource category. This section identified potentially significant adverse impacts that were anticipated to remain significant even after mitigation strategies and measures are implemented. For the economic and social information analyses, this section is titled "Adverse Effects".

Preparers of tiered environmental documents should review these sections and determine whether they are applicable to specific projects. Including this section in EISs and EIRs is also recommended to ensure that unavoidable impacts are clearly disclosed and to aid in the preparation of CEQA findings.

5. NEPA/CEQA MONITORING

The CALFED agencies will use the mitigation monitoring plan described in Chapter 9 of the PEIS/EIR for projects that are within the scope of the PEIS/EIR and carried out or funded by CALFED agencies as part of the CALFED long-term Plan. In order to qualify for CALFED funding, any implementing project must be shown to comply with this mitigation monitoring plan. If and when a new governing agency with authority to carry out CALFED projects is created, this plan would apply to that new agency as well.

NEPA and CEQA require monitoring of mitigation measures that are incorporated into projects. Chapter 9 of the PEIS/EIR described a framework for monitoring mitigation strategies that were included in the programmatic document. Section 2.1.6 of the ROD also included this mitigation monitoring plan.

As required by NEPA and CEQA, projects that implement the CALFED long-term Plan will also need to contain their own mitigation monitoring plans. These plans will present how the lead agency will monitor and report on the implementation of specific mitigation measures adopted by the agency in approving a project. They will provide a schedule for implementing the adopted mitigation measures and for reviewing the implementation of those measures. The lead agencies will provide a written report periodically, but at least once a year, to CALFED for programmatic review by the lead scientist regarding the overall progress in implementing the mitigation measures and their effectiveness.

The PEIS/EIR mitigation monitoring plan includes CALFED review, guidance, and reporting components. CALFED has prepared the checklist of environmental consequences and

mitigation strategies from the PEIS/EIR and ROD that is included at the end of this chapter; it should be used by lead agencies preparing environmental documents that tier from the PEIS/EIR. The lead agencies for tiered documents should document the applicable programmatic mitigation strategies that are being adopted and explain why others are not being adopted. This checklist should be used early in the environmental process to focus impact analyses on pertinent issues and document that all environmental consequences and mitigation strategies in the PEIS/EIR were considered. CALFED will use the checklist to monitor whether all mitigation strategies were considered in implementation project development.

6. USING THE CALFED RECORD OF DECISION AND RESPONSE TO COMMENTS DOCUMENT

The ROD reflects the final selection of a long-term plan (Preferred Program Alternative) and sets out actions for implementing Stage 1 of the long-term plan. Actions will be carried out in a manner consistent with the ROD. The ROD can be used as a guide for formatting project-specific impact analyses so that creating project-specific findings from these impact analyses will be faster and easier.

The response to comments document contains responses to comments received on the CALFED draft PEIS/EIR, dated June 25, 1999. The response to comments document will be useful in preparing tiered environmental documents because it identifies concerns about specific resource categories expressed during the review of the draft PEIS/EIR. It will also allow review of comments made by specific agencies and individuals that may also be reviewing and commenting on specific implementation projects because of the nature or location of the projects. Using the response to comments document in this manner should facilitate the scoping process and preparation of the environmental analysis by focusing on issues very early in the process. However, it is not a substitute for consultation and scoping as required by NEPA and CEQA.

Within the response to comments document, the "common responses" provide information about concerns that were expressed by many reviewers. Comments about more specific concerns can be located using the index of the response to comments document. The indices of the PEIS/EIR and appendices were used to sort comments and responses by subject matter. For example, if an implementation project has potential environmental impacts on fishery resources, the preparers of the second-tier document should review the responses to comments on fishery impacts in Volume I, Impact Analyses, Chapter 6.1 of the response to comments document. Additionally, information concerning comments and responses about proposed actions for fishery restoration in CALFED's Ecosystem Restoration Program is available in Volume II: Technical Appendices of the response to comments document in the Ecosystem Restoration Program section. For more detailed information on how to use the response to comments document, please refer to the "How to Use the Response to Comments Document" guide in the PEIS/EIR.

INTEGRATING ENVIRONMENTAL PERMITTING INTO THE NEPA/CEQA COMPLIANCE PROCESS

OVERVIEW

Project proponents who must comply with NEPA and CEQA can integrate many of the steps involved in complying with other environmental laws and regulations into the NEPA/CEQA process. Tables 1 and 2 provide an outline for accomplishing this integration. Table 1 illustrates this integration for the preparation of an EIS, EIR, or EIS/EIR. Table 2 illustrates this integration for the preparation of a FONSI, negative declaration, or FONSI/negative declaration. This section provides more details about the EIS/EIR process, describing the integration possible with each step of the NEPA/CEQA process. There can be small variations for NEPA-only or CEQA-only processes, but the variations are relatively minor. Integration under the FONSI/negative declaration process is very similar to integration under the EIS/EIR process, although it is compressed into a smaller number of steps.

Please note that for FESA and CESA, the phrase "coverage under the Multi-Species Conservation Strategy" (MSCS) is used to refer to coverage under the programmatic biological opinions and programmatic Natural Community Conservation Plan (NCCP) determination.

Please also note that this discussion includes actions to be taken as part of the most important permitting processes. In many cases, individual projects will not need to comply with all these processes. Volume 2 of this guide provides detailed information on requirements and procedures of the permitting process that are anticipated to apply to various Preferred Program Alternative–implementing projects. Table 3 lists the laws and regulations that may apply to CALFED projects and are described in Volume 2.

INTEGRATION WHEN DETERMINING LEAD AGENCY OR AGENCIES

If a non-government entity is proposing a project that is funded by a government agency or requires government approvals, the project proponent must identify the government agencies involved in the project so that the NEPA and/or CEQA lead agency and permits required can be determined. A government agency carrying out a project is typically the lead agency and must also identify the permits required to carry out a project. Identifying the permits required and the lead agency begins the integration process by identifying environmental resource information needed to obtain the permits and identifying the NEPA and/or CEQA lead agency that can use and incorporate the environmental resource information in the NEPA and/or CEQA process.

After the NEPA and CEQA lead agencies have been identified, the project proponent should request species lists from the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and California Department of Fish and Game (DFG).

If the proposed project affects a watercourse or wetland, the U.S. Army Corp of Engineers (USACE) should be contacted to determine information requirements need for USACE permits.

At this time, a records search can be conducted by a cultural resources specialist to determine whether any known cultural resources exist on or near the project site. This information can be used to avoid impacts on these sites when the proposed project and alternatives are designed.

This early stage is also a useful time to elicit input from NMFS and USFWS and to request that they participate on an agency review team. Early and continuing participation by these agencies can reduce or eliminate the need to prepare a Fish and Wildlife Coordination Act report. The participation of these and other resource agencies, such as DFG, USACE, and others, starting early in the NEPA/CEQA process can help to define the proposed project in ways to avoid hurdles in permitting later in the process. As displayed in Table 2 and 3, many other regulatory agencies and permit processes may also be required for project approval. Early coordination with these agencies will also be helpful to elicit input early in the process. Specifically, early coordination with DFG should include a determination of whether take authorization for State endangered species will be provided through a tiered NCCP or a Section 2081 process under the MSCS.

INTEGRATION WHILE PREPARING ENVIRONMENTAL ASSESSMENT/INITIAL STUDY

As described above under "Overview of the NEPA and CEQA Compliance Processes", preparing an environmental assessment/initial study is a recommended step under both NEPA and CEQA to determine whether an EIS/EIR needs to be prepared. Often, however, lead agencies know from the beginning that the preparation of an EIS/EIR is needed because of the likelihood that the proposed project will result in significant effects. In such circumstances, the preparation of an opportunities and constraints analysis is strongly recommended. (See "3. Conduct a Preliminary Assessment to Identify Any Environmental, Physical, or Policy Constraints to Project Implementation" in Chapter 2.)

Whether this step involves preparing an EA/initial study or an opportunities and constraints analysis, several actions related to permitting processes can occur at this step. Surveys of the project site can be undertaken to determine whether "waters of the United States" exist on the site, an important step in the CWA Section 404 process.

Regarding FESA and CESA, once the species list has been received from NMFS, USFWS, and DFG, this list can be reviewed by a biologist to determine which endangered or

threatened species have the potential to occur at the project site. The CALFED Multi-Species Conservation Strategy (MSCS) should then be reviewed to determine whether the project meets the threefold test for coverage under the MSCS: whether the proposed project is a covered action in the MSCS, whether the species with the potential to occur at the project site are species covered under the MSCS, and whether the project proponent wants to adopt all of the pertinent conservation measures listed in the MSCS. Also, if the project proponent wants to confirm the species list, surveys can be conducted.

Regarding Section 106 of the NHPA, cultural resources records searches, surveys and consultations with Indian tribes will reveal whether any previously unidentified cultural resources exist at the project site. If the project area has not previously been adequately inspected for the presence of cultural resources, a pedestrian field survey should be conducted. If any cultural resources are identified on the project site, a Cultural Resources Inventory Report shall be prepared and submitted to the California State Historic Preservation Officer (SHPO) by the agency leading the Section 106 compliance effort.

The project proponent can contact the State Lands Commission (SLC) to determine whether the proposed project is on lands under the SLC's jurisdiction, and can contact the California Department of Toxic Substances Control to obtain early guidance on addressing any known hazardous materials in the vicinity of the proposed project.

Finally, any nonfederally sponsored project that takes place in the coastal zone or San Francisco Bay Area may require either a development permit from the California Coastal Commission (CCC) or from the San Francisco Bay Conservation and Development Commission (BCDC). A Coastal Zone Consistency Determination from one of those two agencies may also be needed for federally sponsored, permitted, or funded projects in the coastal zone. Coordination, at this early stage of project planning, with the CCC, BCDC, and local government agencies responsible for administering the federal and state coastal protection laws is valuable in ensuring that any environmental documentation or studies that are prepared appropriately address sensitive coastal resources and to determine whether a development permit or consistency determination will be required for the proposed project, and which agency will be responsible for overseeing these processes. In addition, the project proponent can hold discussions with agencies to determine whether changes to the proposed project should be made regarding sensitive coastal resources and public access.

INTEGRATION WHILE PREPARING STATEMENT OF PURPOSE AND NEED/PROJECT OBJECTIVES

Consideration of the requirements of the U.S. Environmental Protection Agency (EPA) Section 404(b)(1) Guidelines is critical in preparing a statement of project purpose and need/project objectives if a CWA Section 404 permit will be required for a proposed project. These guidelines provide very strict rules that are intended to lead to the selection by the project proponent of the least environmentally damaging practicable alternative that meets the project's

overall project purpose. The statement of purpose and need/project objectives will have a large influence on the range of alternatives that must be considered by the project proponent. A broad purpose and need will likely lead to a broad range of alternatives. A narrow purpose and need will likely lead to a more focused range of alternatives. Note that the EPA and Corps will reject a project purpose too narrowly stated. Considering the implications of this step in light of the EPA guidelines is essential at this point.

At this point in the process, the project proponent can also have the NEPA lead agency contact USFWS to determine whether the preparation of a Fish and Wildlife Coordination Act report will be required for the project. The proponent can also find out what steps can be taken to avoid the need to prepare a report.

INTEGRATION WHILE SCOPING

The scoping process is an excellent time for the project proponent to contact local agencies and other parties who may have an interest in or be affected by the proposed project. It is a good opportunity to learn which city and county codes and ordinances may apply to the project (helpful in formulating a compliance strategy) and to contact local reclamation districts, affected landowners, and other interested parties (helpful if a Reclamation Board Encroachment Permit is required).

INTEGRATION WHILE DEVELOPING THE NO-ACTION/NO-PROJECT ALTERNATIVE

During the development of the No-Action/No-Project Alternatives it is important to consider how the definition of this alternative matches what USFWS, NMFS, DFG, and the responsible coastal agency will consider baseline conditions during the MSCS consultations. Certain permits may require a definition of baseline conditions different from what NEPA and CEQA allow for a Lead Agency. Having these be as closely matched as possible will reduce the work needed in preparing the action specific implementation plan (ASIP), as the analysis of impacts on covered species and proposed mitigation measures in the EIS/EIR can be used in the ASIP analysis. Eliciting the input of USFWS, NMFS, DFG, and the responsible coastal agency as part of the agency review team in developing the No-Action/No-Project alternative will greatly assist in this effort.

INTEGRATION WHILE DEVELOPING A PRELIMINARY SET OF ALTERNATIVES

The development of a range of alternatives to be analyzed in the EIS/EIR is a critical step in integrating other important compliance efforts. As mentioned above under "Prepare Statement of Purpose and Need/Project Objectives", the EPA Section 404(b)(1) Guidelines provide strict rules that are intended to lead to the selection of the least environmentally damaging practicable alternative by the project proponent. The development of a reasonable range of alternatives is often undertaken by brainstorming alternatives that could potentially meet the project purpose and need, then eliminating those that are unacceptable. EPA guidelines define three valid reasons to eliminate alternatives: considerations of cost, existing technology and logistics. The EPA guidelines should be consulted for a more thorough understanding of the rules regarding alternatives development and screening.

FESA requires that impacts on listed species be addressed in the following order: avoidance, minimization, and mitigation. To the extent possible, alternatives should be developed that avoid adverse impacts on listed species or critical habitat. If avoidance is not possible, minimization of impacts should be attempted. This should make obtaining a permit under the MSCS easier by providing a record of evidence that the project proponent made reasonable efforts to reduce impacts in the prescribed order. Please note that for some species covered under the MSCS, avoidance of direct impacts is required.

Reasonable efforts should also be made to design alternatives that avoid impacts on the cultural resources identified on the project site. Avoiding impacts on cultural resources can reduce project compliance and mitigation costs and expedite the project compliance schedule by eliminating the need to undertake a mitigation process.

Similarly, designing alternatives to avoid or minimize impacts on rivers designated wild and scenic can reduce the effort needed to comply with the National and California Wild and Scenic Rivers Acts. Avoiding or minimizing effects on rivers, streams, or lakes can reduce or eliminate the effort needed to obtain a Section 1600 Lake or Streambed Alteration Agreement. Avoiding or minimizing affects on farmland can streamline compliance with the Farmland Protection Policy Act. Avoiding or minimizing construction where existing hazardous substances exist can reduce or eliminate the effort needed to comply with numerous laws and regulations related to hazardous materials.

Both the California Coastal Act and the McAteer-Petris Act require that project alternatives minimize impacts on resources in the coastal zone: public access, environmentally sensitive habitat areas, prime agricultural land, water- dependent resources, and visual resources. The project proponent ultimately must be able to demonstrate that the preferred alternative minimizes impacts on these coastal resources. It is important to note that these resources are often defined differently under these acts than they are under USACE and other agency regulations.

INTEGRATION WHILE FINALIZING THE SET OF ALTERNATIVES

The same recommendations described above under "Develop Preliminary Set of Alternatives" apply in finalizing the set of alternatives.

INTEGRATION WHILE PREPARING DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT

To facilitate compliance with CWA Section 404, the draft EIS/EIR should include an analysis of the impacts of the proposed project and alternatives on waters of the United States, including wetlands. If care has been taken to comply with the EPA Section 404(b)(1) Guidelines, this analysis can be used in preparing a draft Section 404 alternatives analysis. This analysis also will ensure that compliance with Executive Order 11990 is being completed. At this time, a Section 404 permit application can also be prepared.

The draft EIS/EIR should also analyze the impacts of the proposed project and alternatives on listed species, their potential habitat, and any critical habitat within the project area. Appropriate conservation measures from the MSCS should be included to mitigate any impacts identified for listed species. Also, if the EIS/EIR identifies the potential to affect listed species, an ASIP should be prepared for all listed species covered by the MSCS. Where CESA compliance will be through a tiered NCCP, nonlisted covered species should also be included.

The draft EIS/EIR should analyze the effects of the proposed project and alternatives on any identified cultural resources on the project site. At this same time, a Determination of Effects report can be prepared for resources listed or eligible for listing on the National Register of Historic Places. Resources listed on or eligible for listing on the California Register of Historic Resources should also be included in this report for projects complying with CEQA.

Effects of the proposed project and alternatives on farmland, floodplains, environmental justice, the observance of traditional American Indian religions, and Indian trust assets should also be addressed in the EIS/EIR, if appropriate. This consideration will ensure compliance with the Farmland Protection Policy Act, Executive Orders 11988 and 12898, the American Indian Religious Freedom Act of 1978, and Department of Interior guidelines regarding Indian trust assets. If needed, detailed geotechnical, soil, hydraulic, and sediment transport analyses can also be completed at this time for inclusion in the application for a Reclamation Board encroachment permit.

The draft EIS/EIR should analyze project-related effects of construction and stormwater runoff on water quality. Mitigation of water quality impacts should include standard best management practices.

If the project is in the coastal zone, the EIS/EIR provides an excellent opportunity to explicitly address concerns associated with coastal resources. Coastal resources are often considered more sensitive or valuable than inland resources, and, hence, are regulated more strictly. Therefore, the EIS/EIR provides a forum to discuss these distinctions and to develop appropriate mitigation measures to be developed for the project as a whole, not just for a coastal development permit. In addition, a draft Coastal Zone Management Act Consistency Determination can be prepared at this point.

INTEGRATION WHEN CIRCULATING THE DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT FOR REVIEW AND HOLDING PUBLIC HEARING

If a Section 404 permit application has been prepared, it can be submitted to USACE for review with a request that public review of the application be concurrent with the NEPA/CEQA review period. If a draft Section 404 alternatives analysis has been prepared, it can be circulated for public review as part of the EIS/EIR. These actions can assist USACE with the public involvement requirements associated with issuing a Section 404 permit.

If an ASIP has been prepared, it can also be circulated for public review with the draft EIS/EIR. At a minimum, it should be sent by the NEPA lead agency to USFWS and NMFS and by the CEQA lead agency to DFG for review. If comments are received on the draft ASIP, a final ASIP can be prepared and submitted to USFWS, NMFS, and DFG by the NEPA lead agency, along with a letter requesting formal consultation.

If a Determination of Effects report has been prepared under NHPA Section 106, it can be submitted by the NEPA lead agency to the SHPO.

If a draft Coastal Zone Management Act Consistency Determination has been prepared, it can be circulated with the EIS/EIR.

Although coastal development permits from the CCC, BCDC, or local governing body cannot be issued until a final EIS/EIR has been approved, incorporating a draft Coastal Zone Management Act Consistency Determination and any discussion of coastal-related concerns in the EIS/EIR allows for public and agency review of coastal issues.

INTEGRATION WHEN PREPARING AND PUBLISHING THE FINAL ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT

During this period, if comments were received on the draft Section 404 alternatives analysis, a final alternatives analysis can be prepared and submitted to USACE by the NEPA lead agency.

If biological opinions have been received from USFWS and NMFS, and an NCCP determination has been received from DFG, these can be circulated with the final EIS/EIR.

If a Section 106 Determination of Effects has been submitted to the SHPO, a memorandum of agreement can be negotiated with the SHPO during this time.

Depending on the type of federal action, if a consistency determination has been submitted to the CCC, an agreement or certification from the CCC may be circulated with the Final EIS/EIR.

INTEGRATION DURING THE AGENCY DECISION

The lead agencies should select as the preferred alternative the least environmentally damaging practicable alternative that meets the project purpose and need, as described in the EPA Section 404(b)(1) Guidelines. The lead agency should also incorporate into the preferred alternative the reasonable and prudent measures identified in the biological opinions and Section 2081 permit/NCCP determination.

INTEGRATION WHEN ISSUING THE RECORD OF DECISION/FINDINGS, STATEMENT OF OVERRIDING CONSIDERATIONS, AND NOTICE OF DETERMINATION

If a CWA Section 404 permit application has already been submitted to USACE and changes have occurred to the proposed project since the application was submitted, these changes should be communicated to USACE. USACE will then inform the project proponent if any additional information or resubmission of the application is required. If a permit application has not yet been submitted, it can be submitted at this time.

Other permit applications can also be submitted at this time; these include the Coastal Zone Consistency Determination and applications for coastal development permits, DFG Section 1600 Agreement, CWA Section 401 certification, SLC Land Use Lease, and National Pollutant Discharge Elimination System permits.

Go to Attachment 1