

Consultation and Coordination

This section presents the agencies and parties that were consulted during the environmental review process, the distribution list for the document, and public involvement. It will include responses to comments received on the Draft MND/EA.

6.1 CONSULTATION AND COORDINATION

The MND/EA were prepared in consultation with a number of entities, including USFWS, NMFS, USCG, Corps, DFG, SLC, Cal Boating, SJVAPCD, BAAQM, Metropolitan Water District of Southern California, and Reclamation Districts 2025, 2027, and 2028.

6.2 FEDERAL, STATE, AND LOCAL REQUIREMENTS

6.2.1 Federal Requirements

6.2.1.1 National Environmental Policy Act of 1970

The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. Regulations implementing NEPA are set forth by the Council on Environmental Quality (CEQ). Reclamation has followed NEPA and CEQ regulations in the development of this EA.

6.2.1.2 Fish and Wildlife Coordination Act (16 USC 651 et seq.)

The Fish and Wildlife Coordination Act (FWCA) requires that Reclamation consult with fish and wildlife agencies (federal and state) on all water development projects that could affect biological resources. Reclamation contacted USFWS regarding the need for a Coordination Act Report, and USFWS, NMFS, and DFG all provided input on the Project.

6.2.1.3 Endangered Species Act (16 USC 1521 et seq.)

Section 7 of the ESA requires federal agencies to ensure that all federally associated activities within the United States do not jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of the critical habitat of these species. A Biological Assessment (BA) has been prepared for the 2-Gates Project and will be submitted to the USFWS and NMFS for review. (Their review of the BA will result in BOs stating their conclusions regarding the Project's effects on federally listed species.)

6.2.1.4 Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1801 et seq.)

The Magnuson-Stevens Act requires federal agencies to consult with NMFS on activities that may adversely affect Essential Fish Habitat (EFH) (Section 305(b)(2)). Reclamation has determined that the Project would not adversely affect EFH; thus, no consultation is required.

6.2.1.5 Migratory Bird Treaty Act (16 USC 703 et seq.)

The Migratory Bird Treaty Act implements various treaties and conventions between the United States and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds (a full description is included in Section 4.5.2. The Project would comply with the Act because it includes mitigation that would prevent significant impacts to nesting birds.

6.2.1.6 National Historic Preservation Act (15 USC 470 et seq.)

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) requires federal agencies to take into account the effect of their undertakings on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. Implementing regulations at 36 CFR Part 800 detail the process for Section 106 compliance. Reclamation will determine whether the Project would adversely affect historic properties and will consult with the SHPO and seek their concurrence on its finding. At such time Reclamation receives concurrence from the SHPO on its finding, it will have completed the Section 106 process. Reclamation will complete the Section 106 process as outlined in the regulations at 36 CFR Part 800 prior to implementation of the Project.

6.2.1.7 Section 404 of the Clean Water Act

Section 404 of the CWA requires project proponents to obtain a permit from the Corps for activities that involve placement of dredged or fill material into waters of the U.S. The CWA requires the Corps, when issuing the permit, to follow the requirements of the EPA's guidelines for implementing Section 404(b)(1) of the CWA. EPA's guidelines prohibit discharges of dredged or fill material into waters of the U.S., if a practicable alternative to the proposed project exists that would have less adverse impacts on the aquatic ecosystem, so long as that alternative does not have other significant adverse environmental impacts. A Section 404 permit would be obtained from the Corps prior to the onset of Project construction.

6.2.1.8 Section 401 of the Clean Water Act

Pursuant to the CWA Section 401, any applicant for a federal license or permit for activities that may result in any discharge into waters of the U.S. shall provide the permitting agency (Corps) with a certification from the respective state. The CVRWQCB has permitting authority for the State of California. A 401 certification application will be completed to comply with this requirement upon completion of the MND/EA.

6.2.1.9 Section 10 of the Rivers and Harbors Act of 1899

Section 10 of the Rivers and Harbors Act requires authorization from the Secretary of the Army, acting through the Corps, for the construction of any structure in or over any navigable water of the U.S. Structures or work outside the limits defined for navigable waters of the U.S. require

Section 10 permits if the structure or work affects the course, location, or condition of the water body. The law applies to any dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification of a navigable water of the U.S., and applies to all structures, from the smallest floating dock to the largest commercial undertaking. It further includes, without limitation, any wharf, dolphin, weir, boom breakwater, jetty, groin, bank protection (e.g. riprap, revetment, bulkhead), mooring structures such as pilings, aerial or subaqueous power transmission lines, intake or outfall pipes, permanently moored floating vessel, tunnel, artificial canal, boat ramp, aids to navigation, and any other permanent, or semi-permanent obstacle or obstruction.

6.2.1.10 National Pollutant Discharge Elimination System

An NPDES permit would be required for discharges into local waterways.

6.2.1.11 Executive Order 11990, Protection of Wetlands

EO 11990 established the protection of wetlands and riparian systems as the official policy of the federal government. It requires all federal agencies to consider wetland protection as an important part of their policies and take action to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. Preliminary consultation with the Corps regarding Section 404 compliance has taken place. Any measures implemented to protect wetlands as part of the 404 permitting process will likely be sufficient to satisfy compliance with EO 11990.

6.2.1.12 Executive Order 11988, Floodplain Management

EO 11988 requires Reclamation to regulate development in floodplains and preserve the floodplains' natural and beneficial values. The Project has been designed to avoid affecting the function of floodplains.

6.2.1.13 Clean Air Act

The Project involves ground-disturbing activities that would result in fugitive dust and diesel emissions. Project impacts were evaluated according to the requirements of the BAAQMD and SJVAPCD, the local air districts and were found to comply; additionally, measures have been incorporated that would reduce impacts to the extent feasible.

6.2.2 State Requirements

6.2.2.1 California Environmental Quality Act

The CEQA process is intended to help public officials make decisions that are based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. This MND was prepared in compliance with CEQA requirements. The Project will require a Section 401 Water Quality Certification from the CVRWQCB, a lease from the SLC, and a Streambed Alteration Agreement and 2081 Permit from DFG. Issuance of such permits are actions subject to CEQA; additionally, SLDMWA would be responsible for Project construction and as such is the CEQA lead agency.

6.2.2.2 Section 1602 of the California Fish and Game Code

Fish and Game Code (Section 1602) requires an entity to notify DFG of any proposed activity that may substantially modify a river, stream, or lake. A Streambed Alteration Agreement would be required from DFG before the Project could be implemented.

6.2.2.3 California Endangered Species Act

An incidental take permit would be required from DFG under Section 2081(b) of CESA because the Project would have the potential to result in take of State-listed species.

6.2.3 State Lands Commission Lease

The State Lands Commission (SLC) has regulatory authority over land that is owned by the State of California. Old River is owned by the State, and its use would require a lease from the SLC prior to dredging or placement of fill on this land. Connection Slough is not under the jurisdiction of the SLC.

6.2.4 Local Requirements

6.2.4.1 Reclamation District Encroachment Permits

Encroachment permits would be required from Reclamation Districts 2025, 2027, and 2028 for modifications of levees under their jurisdiction.

6.2.4.2 Air Permits

A permit would be required from the SVAPCD for dredging and pile driving during construction.

6.3 PUBLIC INVOLVEMENT

The MND/EA is being issued for a 30-day public review period. *Expand when details known.*

6.4 DISTRIBUTION LIST

To be provided.

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