

## CHAPTER 1. INTRODUCTION

### 1.1 OVERVIEW

The Butte Regional Conservation Plan (BRCP) is intended to establish and implement a comprehensive, coordinated, and efficient program to conserve ecologically important resources in the lowland and foothill region of Butte County (the “Plan Area”), including endangered, threatened, and other at-risk species and their habitats; natural communities and the ecological processes that support them; biodiversity; streams and ponds and the watersheds that support them; wetlands and riparian habitats; and ecological corridors. Important to the success of the BRCP is the continued ecological and economic function of working landscapes, including certain farming and ranching practices, and the preservation of open space. The BRCP addresses regulatory compliance with state and federal laws that protect species, wetlands, and streams for Butte County, cities within the Plan Area, water/irrigation districts within the Plan Area, the Butte County Association of Governments (BCAG),<sup>1</sup> the California Department of Transportation (Caltrans), and the BRCP Implementing Entity (collectively, the “Permit Applicants” prior to permit issuance or “Permittees” following permit issuance) for activities and projects in the Plan Area that they conduct or approve. As described in Chapter 9, *Implementation Structure*, BCAG will serve as the BRCP Implementing Entity.<sup>2</sup> The BRCP provides a more efficient, consistent, and effective alternative to mitigation planning and permitting on a project-by-project basis. Relative to the BRCP, the project-by-project approach is generally more costly and time-consuming for applicants and often results in uncoordinated and biologically inferior mitigation for biological resources. The BRCP offers a simpler process for mitigation of biological resources impacts and provides an additional conservation component for biological resources above the mitigation component.

Permit Applicants for permits under section 10 of the federal Endangered Species Act (ESA) and section 2835 of the California Natural Community Conservation Planning Act (NCCPA) are:

- County of Butte (County)
- City of Oroville
- City of Chico
- City of Biggs
- City of Gridley
- BCAG

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<sup>1</sup> BCAG is a joint powers authority formed pursuant to the Joint Exercise of Powers Act, California Government Code sections 6500 et seq.

<sup>2</sup> The BRCP Implementing Entity will be established to implement the Plan and will consist of a joint powers authority (JPA) created by the local agency permittees. BCAG will serve as the BRCP Implementing Entity at the direction of the BRCP JPA.

- California Department of Transportation (Caltrans)
- Western Canal Water District (WCWD)
- Biggs-West Gridley Water District
- Butte Water District
- Richvale Irrigation District

The BRCP ensures that all impacts on biological resources resulting from land development and other activities covered by the plan are fully mitigated. The BRCP also provides for additional measures beneficial to species occurrences and habitat to ensure the conservation of species in the Plan Area and an orderly development of a system of conservation lands based on the principles of conservation biology that will eventually total more than 90,000 acres (see Chapter 5, *Conservation Strategy*).

The BRCP's implementation by BCAG as a centralized Implementing Entity able to authorize use of the permits, collect fees, and implement conservation measures, monitoring, and adaptive management allows for a more effective and efficient process both for orderly growth and development and for the conservation of species and natural communities (see Chapter 8, *Implementation Plan*).

The BRCP offers a simple impact fee system for project proponents to comply with federal and state endangered species regulations (see Chapter 10, *Implementation Cost and Funding Sources*).

A parallel process was conducted with the BRCP development to develop a regional program for compliance with section 404 of the Clean Water Act regulation of wetlands and other waters of the United States and section 1602 of the California Fish and Game Code regulation of streams and riparian habitat.

### 1.1.1 Background

In 2007, the BRCP Planning Agreement (“Planning Agreement”) was entered into by and among the “Local Agencies” (i.e., the County of Butte, the City of Oroville, the City of Chico, the City of Biggs, and the City of Gridley), the California Department of Fish and Wildlife (CDFW<sup>3</sup>), the U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS) (Appendix H, *Butte Regional Conservation Plan Planning Agreement*). The Planning Agreement identifies the initial planning scope, goals, and preparation process for the BRCP. In 2010, WCWD, Biggs-West Gridley Water District, Butte Water District, Richvale Irrigation District and Caltrans became signatories to the Planning Agreement.

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<sup>3</sup> In 2013, during the development of the BRCP, “California Department of Fish and Wildlife” (CDFW) became the new name for the California Department of Fish and Game (DFG). Some use of the term DFG may be found in the BRCP chapters and appendices and these refer to CDFW. Publications that were published under the name DFG are cited with the DFG name.

An organizational structure was created to develop the BRCP efficiently and with substantial opportunity for input from stakeholders and the general public. This structure included a Steering Committee composed of the Permit Applicants; a Stakeholder Committee composed of parties with a broad range of interests in the Plan Area including concerns for biological resources, agriculture, land use and development, education, transportation, resource management, water delivery, and others; and an Agency Technical Committee comprised of the federal and state regulatory agencies (USFWS, CDFW, NMFS, U.S. Army Corps of Engineers [USACE], U.S. Environmental Protection Agency [EPA], and Central Valley Regional Water Quality Control Board [CVRWQCB]). BCAG served as the lead in coordination of the committee process and preparation of the BRCP, including contracting the lead consultant, Leidos, Inc., and other professionals to support drafting of the BRCP. The federal and state permitting agencies, USFWS, NMFS, CDFW, and USACE, provided input throughout the BRCP development and participated in Steering Committee and Stakeholder Committee meetings as well as separate Agency Technical Committee meetings with BCAG and consultants. Public involvement was encouraged through various means, including publicly open Stakeholder Committee meetings; several public workshops, newsletters, and a regularly updated website<sup>4</sup> (see Section 1.4.2.2, *Public Outreach* for more details).

The BRCP was developed in coordination with the development of general plans for the County, Chico, Oroville, Gridley, and Biggs with feedback loops between the BRCP and general plan development processes.<sup>5</sup> These feedback loops identified opportunities and constraints and allowed for improvements in the general plans regarding the avoidance and minimization of impacts on biological resources and the development of open space and conservation elements that dovetail with the BRCP (for a discussion of the interplay between general plan and BRCP development see Chapter 11, *Alternatives to Take*).

Compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) was conducted through the preparation of the BRCP Environmental Impact Report / Environmental Impact Statement (EIR/EIS). USFWS is the federal NEPA lead agency and BCAG is the CEQA lead agency. The BRCP EIR/EIS evaluates the environmental effects of implementation of the BRCP and provides for a public review process.

### 1.1.2 Purpose

The BRCP's Conservation Strategy provides a regional approach for the long-term conservation of covered species (see Section 1.3.3, *Covered Species*) and natural communities (including wetlands and streams) within the Plan Area while allowing for compatible future land use and development under county and city general plan updates and the regional transportation plans and programs.

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<sup>4</sup> <http://www.buttehpc.com/>

<sup>5</sup> General plans are required under the California Government Code Section 65300 et seq. "Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning." (section 65300)

The BRCP identifies and addresses the covered activities carried out by the Permittees and third parties authorized by the Permittees that may result in take of covered species within the Plan Area. Covered activities include those existing, planned and proposed land uses over which the Permittees have land use authority; state and local transportation projects; maintenance of water delivery systems (e.g., WCWD canals and similar delivery systems); habitat restoration, enhancement, and management actions; and adaptive management and monitoring activities. The permits issued under the BRCP will allow covered activities in the Plan Area to be carried out in compliance with the NCCPA, the California Endangered Species Act (CESA), and ESA. The BRCP also supports permitting under the Clean Water Act (CWA) section 404 for placement of dredged or fill material into waters of the United States, including wetlands, and authorization under California Fish and Game Code section 1602 for alteration of the beds and banks of streams and lakes.

The BRCP satisfies the requirements for a Habitat Conservation Plan (HCP) under section 10(a)(1)(B) of ESA, and a Natural Community Conservation Plan (NCCP) under the NCCPA, and serves as the basis for take authorizations under both Acts. Section 2835 of the California Fish and Game Code provides that after the approval of an NCCP, CDFW may permit the taking of any covered species, both CESA-listed and nonlisted, whose conservation and management are provided for in the NCCP. ESA provides that after the approval of an HCP, USFWS and NMFS may permit the taking of covered species (both ESA-listed and nonlisted) if the HCP meets the requirements of section 10(a)(2)(A) of ESA.

The regional approach to planning and development of the BRCP as a joint HCP/NCCP, in conjunction with general plan updates developed by the Local Agencies, provides significant benefits to biological resources conservation and regional growth and development over existing processes of planning and compliance. Conservation planning and implementation at a regional scale allows for more efficient and effective establishment of a system of conservation lands to meet the needs of species covered by the BRCP than the existing ad hoc project-by-project process. The BRCP allows for the integration of habitat conservation with the long-term general plan implementation to balance the need for growth of the built environment with species protection and to make future development compliance with endangered species regulations more predictable and certain. The regional BRCP also addresses the integration of species conservation into the existing agricultural working landscape and allows for compatible multiple uses within specific areas important for habitat conservation.

### **1.1.3 Overall Planning Goals and Conservation Objectives**

As described in the Planning Agreement, the BRCP planning goals include the following:

- Provide for the conservation and management of covered species within the Plan Area;
- Preserve aquatic and terrestrial resources through conservation partnerships with the Local Agencies;

- Allow for appropriate and compatible growth and development consistent with applicable laws;
- Balance open space, habitat, agriculture and urban development;
- Protect the rights of property owners;
- Provide a means to implement covered activities in a manner that complies with applicable state and federal fish and wildlife protection laws, including CESA (through the NCCPA) and ESA, CWA sections 404/401, and other environmental laws, including CEQA and NEPA;
- Provide a basis for permits necessary to lawfully take covered species;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements of ESA, NCCPA, CEQA, NEPA, and CWA within the Plan Area; and
- Provide a less costly, equitable, more efficient project review process that results in greater conservation values than project-by-project, species-by-species review.

The BRCP’s goal to “provide for the conservation and management of covered species” means that the BRCP will ensure the implementation of measures that will contribute to the recovery of covered species, taking into consideration the scope of the Plan Area in relation to the geographic range of the covered species, and the effect of covered activities on these species in relation to other activities not addressed by the BRCP.

As further described in the Planning Agreement, the conservation objectives intended to be achieved through the BRCP are as follows:

- Provide for the protection of species, natural communities, and ecosystems on a landscape level;
- Preserve the diversity of plant and animal communities throughout the Plan Area;
- Protect threatened, endangered or other special-status plant and animal species, and minimize and mitigate the take or loss of covered species;
- Identify and designate biologically sensitive habitat areas;
- Preserve habitat and contribute to the recovery of covered species;
- Reduce the need to list additional species;
- Set forth species-specific goals and objectives;
- Set forth specific habitat-based goals and objectives expressed in terms of amount, quality, and connectivity of habitat; and

- Implement an adaptive management and monitoring program to respond to changing ecological conditions.

## 1.2 REGULATORY CONTEXT

The BRCP operates within and assists in achieving the requirements of numerous applicable federal and state laws and regulations. This section describes the applicable federal and state laws and regulations with which the BRCP is intended to comply and other federal and state laws and regulations with which the BRCP implementation may need to comply.

### 1.2.1 Federal Endangered Species Act

The ESA has three major components relevant to the BRCP: the section 9 prohibition against the “taking” of listed species; the section 10 provisions for the permitting of nonfederal entities (the Permittees) for the incidental take of listed species; and the section 7 requirement that federal agencies (in this case, USFWS and NMFS by issuance of ESA section 10 permits) ensure, in consultation with the federal fish and wildlife agencies (USFWS and NFMS conduct intra-agency consultations), that their actions are not likely to jeopardize the continued existence of species or result in modification or destruction of critical habitat.

Section 9(a)(1)(B) of the ESA prohibits the take by any person of any endangered fish or wildlife species; take of threatened fish or wildlife species is prohibited by regulation. The ESA prohibits the take of any listed threatened fish or wildlife species in violation of any regulation promulgated by the USFWS or NMFS. “Take” is defined broadly to mean harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.<sup>6</sup> “Harm” is defined by regulation to mean an act which actually kills or injures wildlife, including those activities that cause significant habitat modification or degradation resulting in the killing or injuring of wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering.<sup>7</sup> The take prohibitions of the ESA apply unless take is otherwise specifically authorized or permitted pursuant to the provisions of section 7 or section 10 of the ESA. The protections for listed plant species under the ESA are more limited than for fish and wildlife.<sup>8</sup>

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<sup>6</sup> 16 U.S.C § 1532(19).

<sup>7</sup> 50 CFR § 17.3. NMFS has a similar definition that adds the concepts of spawning and migrating to examples of injury. NMFS defines “harm” as “an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering” (50 CFR § 222.102).

<sup>8</sup> Protection for threatened plant species is limited to areas under federal jurisdiction. Section 9(a)(2)(B) of the ESA prohibits removal, possession, or malicious damage or destruction of endangered plants in areas under federal jurisdiction, as well as actions that remove, cut, dig up, damage, or destroy endangered plants in areas outside of federal jurisdiction in violation of any state law or regulation, including state criminal trespass law (16 United States Code [U.S.C.] § 1538(a)(2)(B)). The ESA section 7(a)(2) prohibition against jeopardy applies to plants, wildlife, and fish equally, and USFWS and NMFS may not issue a section 10(a)(1)(B) permit if the issuance of that permit would result in jeopardy to any listed species (16 U.S.C. § 1536(a)(2)).

Section 10 of the ESA specifically addresses the authorization for take by nonfederal entities through the development of an HCP. For those actions for which no federal nexus exists (i.e., not authorized, funded, or carried out by a federal agency), private individuals, corporations, state and local government agencies, and other nonfederal entities who wish to conduct otherwise lawful activities that may incidentally result in take of a listed species must first obtain a section 10 incidental take permit from USFWS or NMFS. The nonfederal entity is required to develop an HCP as part of the permit application process. The BRCP is intended serve as a HCP and to meet all regulatory requirements necessary for USFWS and NMFS to issue section 10 permits to allow incidental take of all covered species as a result of covered activities undertaken by the permitted entities. Before issuing a section 10(a)(1)(B) incidental take permit, the USFWS and NMFS must make the following findings:

- The taking is incidental to an otherwise lawful activity;
- Impacts are monitored, minimized, and mitigated to the maximum extent practicable;
- Procedures are provided to deal with unforeseen circumstances;
- Adequate funds exist to implement the HCP; and
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.<sup>9</sup>

In June 2000, the USFWS and NMFS adopted the “Five-Point Policy” designed to clarify elements of the habitat conservation planning program as they relate to biological goals and objectives, adaptive management, monitoring, permit duration, and public participation.<sup>10</sup> The Five-Point Policy directs that the following elements be addressed in the development of habitat conservation plans:

- **Biological Goals and Objectives.** HCPs are required to define biological goals and objectives the plan is intended to achieve. Biological goals and objectives clarify the purpose and direction of the plan’s conservation program. The BRCP sets out biological goals and objectives, including specific measurable targets that the Plan is intended to meet. These targets are based on the best available scientific information and have been used as parameters and benchmarks to guide the conservation strategies for the species and natural communities covered by the Plan. The biological objectives of the BRCP are described in Chapter 5, *Conservation Strategy*.
- **Adaptive Management.** The Five-Point Policy encourages the inclusion of adaptive management strategies in HCPs in appropriate circumstances to address uncertainty related to species covered by a plan. The policy describes adaptive management as a “method for examining alternative strategies for meeting measurable biological goals and

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<sup>9</sup> 16 U.S.C. § 1539(a)(2)(B)

<sup>10</sup> Final Addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting, 65 *Federal Register* (FR) 106, June 1, 2000 (referred to as the “Five-Point Policy”).

objectives, and then, if necessary, adjusting future conservation management actions according to what is learned.”<sup>11</sup> The BRCP incorporates an adaptive management process designed to facilitate and improve decision-making during the implementation of the BRCP and identify adjustments and modifications to the Conservation Strategy, as defined in the BRCP, as new information becomes available over time. The framework for the BRCP adaptive management program is set out in Section 7.2, *Adaptive Management Plan*.

- **Monitoring.** HCPs are required to include provisions for monitoring to gauge the effectiveness of the plan in meeting the biological goals and objectives and to verify that the terms and conditions of the plan are being properly implemented. The monitoring provisions of the BRCP are found in Section 7.1, *Monitoring Program*.
- **Permit Duration.** Consistent with the Five-Point Policy, the USFWS and NMFS consider several factors in determining the term of an incidental take permit. The agencies, for instance, take into account the expected duration of the activities proposed for coverage and the anticipated positive and negative effects on covered species that will likely occur during the course of plan implementation. The agencies also factor in the level of scientific and commercial data underlying the proposed operating conservation program, the length of time necessary to implement and achieve the benefits of the operating conservation program, and the extent to which the program incorporates adaptive management strategies. The duration of the permits to be issued pursuant to the BRCP is anticipated to be 50 years and is discussed in more detail in Section 1.3, *Scope of the BRCP*.
- **Public Participation.** Under the Five-Point Policy, the federal fish and wildlife agencies have sought to increase public participation in the HCP process, including greater opportunity for the public to assess, review, and analyze HCPs and associated NEPA documentation. As part of this effort, the agencies have expanded the public review process for most HCPs, particularly those with regional scopes. As described in Section 1.4, *Overview of the BRCP Development Process*, the BRCP process afforded extensive opportunities for public involvement and input throughout the development of the BRCP as well as under the joint CEQA/NEPA process.

Section 7 of the ESA requires that all federal agencies (including USFWS and NMFS when they issue ESA section 10 permits) must ensure, in consultation with USFWS and/or NMFS, that any actions authorized, funded, or carried out by the agency are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of areas determined to be critical habitat.<sup>12</sup> Section 7 requires federal agencies to engage in formal consultation with the USFWS and NMFS for any proposed actions that are likely to adversely affect listed species. A biological opinion (BO) is issued by the USFWS and NMFS at the completion of formal consultation. The BO may conclude that the project as

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<sup>11</sup> 65 FR 35242.

<sup>12</sup> 16 U.S.C. § 1536(a)(2).

proposed (in this case the BRCP covered activities and Conservation Strategy) is either likely or not likely to jeopardize the continued existence of the species. If the BO concludes that the proposed action would jeopardize the continued existence of a listed species or adversely modify its critical habitat, the opinion must suggest “reasonable and prudent alternatives” that would avoid that result. If the BO concludes that the project as proposed would involve take of a listed species, but not to an extent that would jeopardize the species’ continued existence, it must include an “incidental take statement.” The incidental take statement specifies an amount of take that may occur as a result of the action and may include “reasonable and prudent measures” to minimize the impact of the take. If the action complies with the BO and incidental take statement, it may be implemented without violation of the ESA, even if incidental take occurs.

It is expected that, during BRCP implementation, covered activities with a federal nexus to federal agencies other than USFWS and NMFS will use the conservation measures described in the BRCP as conservation actions under future section 7 consultation processes. Unless otherwise required by law or regulation, USFWS and NMFS will ensure that the activities and conservation measures for the specific proposed project are consistent with the BRCP and the BO issued for the BRCP. For example, projects in the Plan Area that require a permit from the USACE under section 404 of the CWA have a federal nexus. The USACE, as the authorizing agency under CWA, must consult with USFWS or NMFS on the effects of their action on federally listed species. Similarly, projects in the Plan Area which are provided funding by the Federal Highway Administration (FHWA) should also be eligible to proceed with reliance on the BRCP conservation measures.

## 1.2.2 Natural Community Conservation Planning Act

The NCCPA provides a mechanism for compliance with state endangered species regulatory requirements through the development of comprehensive, broad-scale conservation plans that focus on the needs of natural communities and the range of species that inhabit them.<sup>13</sup> The NCCP program has provided the basis for successful collaborations throughout California between state and federal agencies, local governments, community groups, and private interests that have resulted in long-term, habitat-based protections for regional biodiversity and related ecosystems. It has also proved to be an effective tool in achieving these protections while reducing conflicts between conservation goals and the reasonable use of natural resources and lands for economic development. The BRCP adopts the approaches set out in the NCCPA and incorporates those elements necessary to meet regulatory requirements of the NCCPA.

Specifically, the BRCP has been developed in a manner consistent with the process identified in its Planning Agreement, including processes to ensure ample public participation and engagement throughout Plan development and review, input from independent scientists, and coordination with federal fish and wildlife agencies with respect to ESA requirements. Consistent with the requirements of the NCCPA, the BRCP further provides a comprehensive

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<sup>13</sup> Fish and Game Code § 2800 et seq.

approach to the conservation and management of covered species and their habitats, incorporating a Conservation Strategy that provides for the protection of habitat, natural communities, and species diversity on an ecosystem level; establishes conservation measures, including measures sufficient to mitigate the effects of covered activities; integrates adaptive management strategies that can be modified based on new information developed through monitoring and research; and sets out an implementation program, including provisions that ensure adequate funding to carry out the BRCP.

The BRCP addresses all of the requirements of the NCCPA for covered species of fish, wildlife, and plants and natural communities in the Plan Area. On that basis, CDFW may issue a permit under section 2835 of the NCCCPA for the taking of the BRCP covered species including species listed as threatened and endangered under CESA, species fully protected under California Fish and Game Codes (see discussion in Section 1.2.8, *California Fully Protected Species*, and nonlisted species).<sup>14</sup>

### 1.2.3 California Endangered Species Act

CESA prohibits the take of state-listed threatened and endangered species of fish, wildlife, and plants.<sup>15</sup> CESA also prohibits the take of candidate species.<sup>16</sup> “Take” is defined under CESA as “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” The CESA definition of “take” does not include the ESA’s concepts of “harm” or “harass.”<sup>17</sup> Take authorizations may be obtained under CESA, provided the permit applicant minimizes and “fully mitigates” the take that will be caused by the covered activities.<sup>18</sup> The NCCPA offers a separate means for authorization of take of CESA-listed species through development of a NCCP and take authorization under NCCPA section 2835.

Although the BRCP has been designed to comply with the NCCPA, and take authorizations are being sought under NCCPA section 2835, the Plan’s provisions have also been developed to be consistent with the regulatory standards of CESA. Specifically, the BRCP Conservation Strategy incorporates measures that adequately minimize and fully mitigate the effects of covered activities on state-listed species and includes other measures as required by CESA. As such, the actions set out in the BRCP are expected to be sufficient to allow for findings to be made by CDFW to support the issuance of incidental take authorizations under CESA, if necessary.

### 1.2.4 The National Environmental Policy Act

The purpose of NEPA is to ensure that federal agencies consider the environmental impacts of their actions and decisions.<sup>19</sup> NEPA requires that the federal government use all practicable

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<sup>14</sup> Fish and Game Code § 2835.

<sup>15</sup> Fish and Game Code § 2080.

<sup>16</sup> Fish and Game Code § 2085.

<sup>17</sup> Fish and Game Code § 86.

<sup>18</sup> Fish and Game Code § 2081(b)(2).

<sup>19</sup> 42 U.S.C § 4321 et seq.

means and measures to protect environmental values and makes environmental protection a part of the mandate of every federal agency and department. To accomplish this goal, NEPA establishes a process and approach to analyze and determine the environmental impacts associated with proposed federal actions that significantly affect the quality of the human environment.

The permitting and implementation of the BRCP involve several federal actions and decisions that constitute a major federal action and are subject to review under NEPA. USFWS and NMFS will make decisions regarding the issuance of incidental take permits under section 10(a)(1)(B) of the ESA. USFWS is the lead federal agency under NEPA; NMFS, USACE, and EPA are cooperating agencies; and BCAG is the CEQA lead agency for the preparation of the BRCP EIR/EIS to satisfy CEQA and NEPA concurrently.

### **1.2.5 The California Environmental Quality Act**

CEQA serves to inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities and to identify the ways that environmental damage can be avoided or significantly reduced.<sup>20</sup> CEQA applies to all discretionary activities proposed to be carried out or approved by California public agencies. CEQA requires state and local agencies to identify significant environmental impacts of their actions and to take all feasible steps to avoid or mitigate those impacts. CEQA sets forth both procedural and substantive requirements, and its procedures are intended to ensure adequate public participation and input into the decision making process.

The BRCP is a project subject to CEQA, as are numerous BRCP-related actions that will be implemented over the term of the Plan.<sup>21</sup> BCAG is the CEQA lead agency for the preparation of the EIR/EIS on the BRCP, which will include analyses of the proposed adoption of the Plan. CDFW is participating in the preparation of the EIR/EIS as both a CEQA responsible and trustee agency. The EIR/EIS will also serve as the CEQA document for the purpose of regulatory permits issued by CDFW pursuant to the BRCP. USFWS and NMFS are joint federal lead agencies and BCAG is the CEQA lead agency for the preparation of the BRCP EIR/EIS to satisfy CEQA and NEPA concurrently.

### **1.2.6 Sections 404 and 401 of the Clean Water Act**

In 1972, Congress passed the Federal Water Pollution Control Act, commonly known as the CWA, with the goal of “restor[ing] and maintain[ing] the chemical, physical, and biological integrity of the Nation’s waters.”<sup>22</sup> In furtherance of this goal, the CWA prohibits the discharge of any pollutants into navigable waters, except as allowed by permit issued under certain sections

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<sup>20</sup> Section 15002 General Concepts, Title 14. California Code of Regulations Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

<sup>21</sup> California Public Resources Code section 21000 et seq. and CEQA Guidelines, 14 Code of California Regulations (CCR) 15000 et seq.

<sup>22</sup> 33 U.S.C § 1251(a).

of the CWA.<sup>23</sup> Specifically, section 404 authorizes the USACE to issue permits for and regulate the discharge of dredged or fill materials into “waters of the United States.” Under the CWA and its implementing regulations, “waters of the United States” are broadly defined to consist of rivers, creeks, streams, and lakes extending to their headwaters, including adjacent wetlands.<sup>24</sup>

Many of the actions that will be implemented under the BRCP may result in the discharge of dredged or fill materials into waters of the United States and will need to be authorized by the USACE. These BRCP actions may receive such authorizations through General Permits or Standard Permits (also referred to as “Individual Permits”). Typically, General Permits apply to specific classes of activities that have been determined to cause no more than minimal impact to the aquatic environment (e.g., construction of road crossings, installation of utility lines, and operations and maintenance activities).<sup>25</sup> Standard Permits are designed for activities that have the potential to have more than a minimal effect on jurisdictional waters or that otherwise do not qualify under the conditions of a General Permit. Substantively, the USACE must evaluate applications for Standard Permits to determine their consistency with the requirements of the section 404(b)(1) guidelines<sup>26</sup> and the USACE regulations.<sup>27</sup>

All permits issued under section 404 of the CWA must include a certification under section 401 of the CWA that water quality standards will be met by the activities permitted.<sup>28</sup> In the Plan Area, section 401 water quality certifications are provided by the CVRWQCB. The CVRWQCB also regulates waters in the Plan Area under the Porter-Cologne Water Quality Control Act (see Section 1.2.14, *Porter-Cologne Water Quality Control Act*).

A CWA permitting process was conducted by BCAG with USACE, EPA, and CVRWQCB in parallel with the development of the BRCP. BCAG is applying to USACE to issue a Regional General Permit (RGP) such that CWA compliance of implementing the BRCP covered activities (see Section 1.3.5, *Covered Activities*) is streamlined. In addition to the avoidance, minimization, and mitigation measures to address impacts on wetlands and other waters, the BRCP provides for measures to the conserve wetlands, streams, and other waters and the watersheds that support them in the Plan Area. The Section 404 permitting process will also include a request for certification of the RGP by the CVRWQCB under CWA section 401.

## 1.2.7 California Fish and Game Code Section 1600 et seq.

Section 1602 of the California Fish and Game Code requires any person, state or local governmental agency to provide advance written notification to CDFW prior to initiating any activity that would (1) divert or obstruct the natural flow of, or substantially change or remove material from the bed, channel, or bank of any river, stream, or lake; or (2) result in the disposal

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<sup>23</sup> See 33 U.S.C §§ 1311, 1342, and 1344.

<sup>24</sup> 33 CFR § 328.3(a)(3).

<sup>25</sup> 33 CFR § 325.5(c).

<sup>26</sup> 40 CFR Part 230.

<sup>27</sup> 33 CFR Part 325.

<sup>28</sup> 33 USC 1341.

or deposition of debris, waste, or other material into any river, stream, or lake.<sup>29</sup> The State definition of “lakes, rivers, and streams” includes all rivers or streams that flow at least periodically or permanently through a bed or channel with banks that support fish or other aquatic life, and watercourses with surface or subsurface flows that support or have supported riparian vegetation.<sup>30</sup>

Certain actions that will be implemented under the BRCP may require Streambed Alteration Agreements under section 1602. The BRCP and Aquatic Resources Program (ARP) include measures to avoid, minimize, and compensate for impacts on streams, ponds, wetlands, and riparian habitats that may be regulated under section 1602. BCAG is working with CDFW to develop a Master Streambed Alteration Agreement to address specific activities within the Plan Area that would adversely affect these resources and streamline the process of compliance with California Fish and Game Code Section 1600 et seq.

### 1.2.8 California Fully Protected Species

In the 1960s, before the CESA was enacted, the California Legislature identified species for specific protection under the California Fish and Game Code. These “fully protected species” may not be taken or possessed at any time, and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock. Fully protected species are described in sections 3511 (birds), 4700 (mammals), 5050 (reptiles and amphibians), and 5515 (fish) of the California Fish and Game Code. These protections state that “...no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected [bird], [mammal], [reptile or amphibian], [fish].”

The BRCP includes specific measures to avoid take as defined under section 86 of the California Fish and Game Code and to provide for the conservation and management of fully protected species to comply with the specific sections of the California Fish and Game Code that protect these species. On October 8, 2011 California Senate Bill 618 (SB618) was signed into law. The bill revises the definition of “covered species” under the NCCPA to include fully protected species. As a result of SB618, the “taking” of fully protected species can now be authorized in cases where the take is incidental and the fully protected species is being conserved and managed under a NCCP approved by the CDFW. The BRCP seeks take authorization for the following fully protected species: greater sandhill crane, California black rail, American peregrine falcon, white-tailed kite, and bald eagle.

### 1.2.9 Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) of 1918 implements four international treaties for the conservation and management of bird species that may migrate through more than one country.<sup>31</sup>

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<sup>29</sup> Fish and Game Code §1602.

<sup>30</sup> 14 CCR § 1.72.

<sup>31</sup> 16 U.S.C § 703 et seq.

The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 *Code of Federal Regulations* (CFR) Part 10, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations.<sup>32</sup> For federally listed migratory bird species covered under the BRCP for which an ESA section 10(a) permit has been issued, the Permit Applicants may also obtain an MBTA Special Purpose Permit for those species. Measures set forth in the BRCP Conservation Strategy to minimize and mitigate impacts to covered species will provide a significant “benefit to the migratory bird resource” as required by the MBTA regulations to obtain a Special Purpose Permit.<sup>33</sup> Therefore, if any of the covered birds become listed under the ESA during the permit term, the ESA permit would also constitute an MBTA Special Purpose Permit for that species for a three-year term as specified under 50 CFR section 21.27 of the regulations, subject to renewal by the Permittees. Until a covered bird species is listed under the ESA, however, it will be the responsibility of individual project applicants to fully comply with the MBTA.

### **1.2.10 Bald Eagle and Golden Eagle Protection Act**

The Bald Eagle and Golden Eagle Protection Act (BGEPA) prohibits the taking or possession of and commerce in bald and golden eagles, with limited exceptions. Under the Act, it is a violation to “...take, possess, sell, purchase, barter, offer to sell, transport, export or import, at any time or in any manner, any bald eagle commonly known as the American eagle, or golden eagle, alive or dead, or any part, nest, or egg, thereof...” Take is defined to include pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, and disturb. The BRCP includes specific measures to avoid take of eagles to comply with provisions of the BGEPA.

### **1.2.11 California Fish and Game Code 3503 (Bird Nests)**

Section 3503 of the California Fish and Game Code makes it unlawful to take, possess or needlessly destroy the nests or eggs of any bird, unless otherwise authorized under the Fish and Game Code or regulations. The BRCP includes conservation measures to avoid and minimize take of covered species and specifically nests and eggs that serve as the basis for compliance with section 3503. The section 2835 permit under the NCCPA will serve as CDFW’s authorization for take of nests or eggs of birds under the BRCP.

### **1.2.12 California Fish and Game Code 3503.5 (Birds of Prey)**

Section 3503.5 of the California Fish and Game Code prohibits the take, possession or destruction of any birds of prey or their nests or eggs, unless otherwise authorized under the Fish and Game Code or regulations. The CDFW may issue permits authorizing take pursuant to CESA or NCCPA. The BRCP includes conservation measures to avoid and minimize such take and will serve as a basis for compliance with section 3503.5. The section 2835 permit under the

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<sup>32</sup> 50 CFR § 21.

<sup>33</sup> Likewise, migratory birds that are not specifically covered by the BRCP will benefit from seasonal restrictions on construction and other conservation measures described in this Plan.

NCCPA will serve as CDFW's authorization for take of birds of prey or their nests or eggs under the BRCP.

### 1.2.13 National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended,<sup>34</sup> requires federal agencies to take into account the effects of their actions on properties eligible for inclusion in the National Register of Historic Places. The issuance of incidental take permits by the USFWS and NMFS are actions subject to Section 106 of the NHPA. Therefore, compliance with the NHPA is required as part of the BRCP environmental review process. The BRCP EIR/EIS describes the potential effects on resources subject to the NHPA that could result from implementing the BRCP and includes programmatic section 106 NHPA compliance process.

### 1.2.14 Porter-Cologne Water Quality Control Act

Section 13000 of the California Water Code (the Porter-Cologne Water Quality Control Act, or "Porter-Cologne Act") outlines the State's interest in the "conservation, control, and utilization of the water resources of the state" and the protection of the quality of all the waters of the state "for use and enjoyment by the people of the state." The law controls all "waters of the state" which are defined as "any surface water or groundwater, including saline waters, within the boundaries of the state" (Section 13050[e]). The overall responsibility for water rights and water quality protection is assigned to the State Water Resources Control Board (SWRCB), which in turn delegates its authority to nine geographically discrete, semi-autonomous Regional Water Quality Control Boards (RWQCB) to develop and enforce water quality standards within their boundaries. The CVRWQCB covers nearly one-fifth of the state, including the BRCP Plan Area.

RWQCBs are required by the Porter-Cologne Act to prepare and adopt water quality control plan, known as "basin plans," that include water quality objectives and an implementation program. The CVRWQCB Basin Plan for the Sacramento River and San Joaquin River Basins was last revised in 2011.<sup>35</sup> The BRCP and ARP address the objectives of and are consistent with the CVRWQCB Basin Plan.

In addition to basin planning, the SWRCB and RWQCBs have been delegated the following federal responsibilities:

- Administration of National Pollutant Discharge Elimination System (NPDES) permits described in section 402 of the CWA; and
- Water quality certification of section 404 permits issued by the USACE to place fill in waters under federal jurisdiction (which includes some but not all waters of the state), pursuant to section 401 of the CWA (discussed in Section 1.2.6, *Sections 404 and 401 of the Clean Water Act*).

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<sup>34</sup> 16 U.S.C 470 et seq.

<sup>35</sup> Fourth Edition of the Water Quality Control Plan (Basin Plan) for the Sacramento River and San Joaquin River Basins. California Regional Water Quality Control Board Central Valley Region, 15 September 1998, as revised October 2011.

## 1.3 SCOPE OF THE BRCP

This section identifies and describes the boundaries and rationale for the geographic scope of the BRCP, defined as the Plan Area; the list of and rationale for the natural communities addressed in the BRCP; the covered species selection process and selected covered species; the activities to be covered under the BRCP; and the anticipated permit duration and rationale for that duration.

### 1.3.1 Geographic Scope

The BRCP Plan Area is shown in Figure 1-1, *Plan Area for the Butte Regional Conservation Plan* (see separate file), and encompasses 564,203 acres (228,352 hectares) of land. The Plan Area includes the western lowlands and foothills of Butte County bounded on the west by county boundaries with Tehama, Glenn, and Colusa counties; bounded on the south by boundaries with Sutter and Yuba counties; bounded on the north by the boundary with Tehama County; and bounded on the east by the upper extent of landscape dominated by oak woodland natural communities. The eastern oak woodland boundary is defined by a line below which land cover types dominated by oak trees comprise more than one-half of the land cover present (referred to hereafter as the oak woodland zone) plus a small portion of the City of Chico that extends above the oak woodland zone. The upper elevation range of the oak woodland zone varies from about 800 to 1,500 feet above mean sea level. Typically, oak tree-dominated land cover types are replaced with either chaparral or conifer-dominated land cover types at higher elevations.

Although the Plan Area includes portions of the Sacramento River within Butte County, the BRCP does not address activities that could affect listed fish species in the Sacramento River; such activities are addressed under other regional conservation planning efforts for the Sacramento River (e.g., the USFWS Anadromous Fish Restoration Program). The Sacramento River floodplain within Butte County is included in the BRCP for implementing conservation measures for covered species and natural communities that would not have adverse effects on fish. Similarly, the Plan Area includes portions of the Feather River within Butte County below Oroville Dam, but the BRCP does not address the activities of the California Department of Water Resources (DWR) or other federal or state agencies involved in the operations of Oroville Dam and Reservoir, Thermalito Forebay, Thermalito Afterbay, and all appurtenant facilities (known as the “Oroville-Thermalito Complex”) for operating the system along the Feather River or activities affecting the levees along Feather River.

The Plan Area was designed to encompass the area within which covered activities would be implemented and to provide sufficient land and resources to implement measures to provide for the conservation of covered species and habitats impacted by the covered activities.

### 1.3.2 Natural Communities

The natural communities addressed under the BRCP include oak woodland and savanna, grassland, riparian, wetland, aquatic, and agriculture (although agriculture is not a natural community, it provides important habitat for a number of covered species and so is included

here). Each of the natural communities is comprised of certain land cover types. The classification, description, and mapping procedures for natural communities and land cover types, listed below, are provided in Chapter 3, *Ecological Baseline Conditions*.

- Oak Woodland and Savanna
  - Blue oak savanna
  - Blue oak woodland
  - Interior live oak woodland
  - Mixed oak woodland
- Grassland (primarily the working Rangeland landscape)
  - Grassland
  - Grassland with vernal swale complex
- Riparian
  - Cottonwood-willow riparian forest
  - Valley oak riparian forest
  - Willow scrub
  - Herbaceous riparian and river bar
  - Dredger tailings with riparian forest/scrub
- Wetland
  - Emergent wetland
  - Managed wetland
  - Managed seasonal wetland
- Aquatic
  - Streams and channels
  - Open water
  - Major canal
  - Pond
- Agriculture
  - Rice
  - Cropland
  - Irrigated pasture
  - Orchard/vineyard
  - Nonnative woodland

The urban (e.g., residential, commercial, and industrial development) and disturbed land cover types (e.g., recently graded development land, mining sites, and landfills) are not considered natural communities because they typically provide low-value habitat for native species and are subject to ongoing human disturbances.<sup>36</sup> Chaparral and conifer forests are natural communities not addressed in the Plan, as the BRCP is focused on the conservation of lowland natural communities. Chaparral and conifer forests are higher elevation communities distributed primarily outside of the Plan Area and are found in the Plan Area only as relatively small inclusions within the oak woodland–dominated landscape.

### 1.3.3 Covered Species

Species identified for coverage under the BRCP (“covered species”) are those for which incidental take authorizations may be required under the ESA and NCCPA to implement the covered activities over the term of the BRCP. The evaluation process used to select the covered species is described in Section 3.6, *Proposed Covered Species* and Appendix B, *Evaluation of Species Considered for Coverage*. Species considered for coverage were special-status species that could be present in the BRCP Plan Area. Consideration for coverage of nonlisted species was limited to special-status species because, by definition, they are recognized by federal and state wildlife agencies as declining, and therefore are more likely than other nonlisted species to become listed at some time during implementation of the covered activities. Special-status species are defined as species that are:

- Listed as threatened or endangered under ESA;
- Proposed or candidates for listing under ESA;
- Listed as threatened or endangered under CESA;
- Candidates for listing under CESA;
- Fully protected species under California Fish and Game Code;
- California species of special concern (SSC) as identified by CDFW;<sup>37</sup>
- Plants listed as rare under the California Native Plant Protection Act; or
- Plants included in the CNPS California Rare Plant Rank 1A, 1B, or 2.

Sources of information used to identify the special-status species that could be present in the Plan Area are as follows:

- CDFW’s California Natural Diversity Database (CNDDDB),<sup>38</sup>
- USFWS list of endangered and threatened species that occur in or may be affected by projects in Butte County,<sup>39</sup>

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<sup>36</sup> Although the urban and disturbed land cover types are not included as natural communities, some lands supporting these land cover types are suitable for restoration of covered species’ habitats and may be acquired for this purpose.

<sup>37</sup> <http://www.dfg.ca.gov/wildlife/nongame/ssc/>

<sup>38</sup> Source: CNDDDB RareFind 3 database (2006) and [http://imaps.dfg.ca.gov/viewers/cnddb\\_quickviewer](http://imaps.dfg.ca.gov/viewers/cnddb_quickviewer).

- Butte County General Plan Background Report, and
- Recorded observations of special-status species provided by local resource experts.

A total of 108 special-status species (61 animals and 47 plants) were identified as being present or having the potential to be present in the Plan Area based on the sources of information described above (see Chapter 3, *Ecological Baseline Conditions* and Appendix B).

Four criteria (listed below) were used to evaluate the species identified as special-status species. All four of the criteria had to be met for the species to be covered under the BRCP.

- 1. Occurrence in the Plan Area.** Species is known to occur in the Plan Area or could occur based on presence of habitat in the Plan Area and known occupied habitat near the Plan Area.
- 2. Potential for Listing.** The species is listed as threatened or endangered under ESA or CESA or is reasonably likely to become listed under these laws during the term of the permit, or is fully protected under the California Fish and Game Code.
- 3. Potential to be Affected.** The species or its habitats could be affected by the types of activities anticipated to be covered under the BRCP.
- 4. Sufficient Information.** Sufficient scientific information and data are available to determine the likely impacts of the covered activities on the species and to formulate conservation measures that could effectively mitigate impacts and conserve the species.

A total of 38 species met all four of the selection criteria and constitute the covered species under the BRCP. The covered species are provided in Table 1–1 *BRCP Covered Species* below.

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<sup>39</sup> Source: [http://www.fws.gov/sacramento/es/spp\\_lists/auto\\_list.cfm](http://www.fws.gov/sacramento/es/spp_lists/auto_list.cfm).

Table 1-1. BRCP Covered Species

Common Name		Scientific Name	Status <sup>1</sup> (Federal/State/CNPS)
<b>Birds</b>			
1	Tricolored blackbird	<i>Agelaius tricolor</i>	-/SSC/-
2	Yellow-breasted chat	<i>Icteria virens</i>	-/SSC/-
3	Bank swallow	<i>Riparia riparia</i>	-/T/-
4	Western burrowing owl	<i>Athene cunicularia hypugea</i>	-/SSC/-
5	Western yellow-billed cuckoo	<i>Coccyzus americanus occidentalis</i>	T/E/-
6	Greater sandhill crane	<i>Grus canadensis tabida</i>	-/T,FP/-
7	California black rail	<i>Laterallus jamaicensis coturniculus</i>	-/T,FP/-
8	American peregrine falcon	<i>Falco peregrinus anatum</i>	D/D,FP/-
9	Swainson's hawk	<i>Buteo swainsoni</i>	-/T/-
10	White-tailed kite	<i>Elanus leucurus</i>	-/FP/-
11	Bald eagle	<i>Haliaeetus leucocephalus</i>	D/E,FP/-
<b>Reptiles</b>			
12	Giant garter snake	<i>Thamnophis gigas</i>	T/T/-
13	Blainville's horned lizard	<i>Phrynosoma blainvillii</i> <sup>40</sup>	-/SSC/-
14	Western pond turtle	<i>Actinemys marmorata</i>	-/SSC/-
<b>Amphibians</b>			
15	Foothill yellow-legged frog	<i>Rana boylei</i>	-/SSC/-
16	Western spadefoot toad	<i>Spea hammondi</i>	-/SSC/-
<b>Fish</b>			
17	Central Valley steelhead	<i>Oncorhynchus mykiss</i>	T/-/-
18	Central Valley spring-run Chinook salmon	<i>Oncorhynchus tshawytscha</i>	T/T/-
19	Central Valley fall/late fall-run Chinook salmon	<i>Oncorhynchus tshawytscha</i>	-/SSC/-
20	Green sturgeon	<i>Acipenser medirostris</i>	T/SSC/-
<b>Invertebrates</b>			
21	Valley elderberry longhorn beetle <sup>2</sup>	<i>Desmocerus californicus dimorphus</i>	T/-/-
22	Vernal pool tadpole shrimp	<i>Lepidurus packardii</i>	E/-/-
23	Conservancy fairy shrimp	<i>Branchinecta conservatio</i>	E/-/-
24	Vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	T/-/-
<b>Plants</b>			
25	Ferris' milkvetch	<i>Astragalus tener</i> var. <i>ferrisiae</i>	-/-/1B
26	Lesser saltscale	<i>Atriplex minuscula</i>	-/-/1B
27	Hoover's spurge	<i>Chamaesyce hooveri</i>	T/-/1B
28	Ahart's dwarf rush	<i>Juncus leiospermus</i> var. <i>ahartii</i>	-/-/1B
29	Red Bluff dwarf rush	<i>Juncus leiospermus</i> var. <i>leiospermus</i>	-/-/1B
30	Butte County meadowfoam	<i>Limnanthes floccosa</i> ssp. <i>californica</i>	E/E/1B
31	Veiny Monardella	<i>Monardella douglasii</i> ssp. <i>venosa</i>	-/-/1B
32	Hairy Orcutt grass	<i>Orcuttia pilosa</i>	E/E/1B
33	Slender Orcutt grass	<i>Orcuttia tenuis</i>	T/E/1B
34	Ahart's paronychia	<i>Paronychia ahartii</i>	-/-/1B
35	California beaked-rush	<i>Rhynchospora californica</i>	-/-/1B
36	Butte County checkerbloom	<i>Sidalcea robusta</i>	-/-/1B

<sup>40</sup> Formerly California horned lizard (*Phrynosoma coronatum frontale*).

Table 1-1. BRCP Covered Species (continued)

	<i>Common Name</i>	<i>Scientific Name</i>	<i>Status</i> <sup>1</sup> <i>(Federal/State/CNPS)</i>
37	Butte County golden clover	<i>Trifolium jokerstii</i>	-/-1B
38	Greene's tuctoria	<i>Tuctoria greenei</i>	E/R/1B

<sup>1</sup> Status:

Federal

E = Listed as endangered under ESA

T = Listed as threatened under ESA

C = Candidate for listing under ESA

D = Delisted under ESA

California Native Plant Society (CNPS) California Rare

Plant Rank

1B = rare or endangered in California and elsewhere

State

E = Listed as endangered under CESA

T = Listed as threatened under CESA

D = Delisted under CESA

R = Listed as rare under the California Native Plant Protection Act

SSC = California species of special concern

FP = Fully protected under the California Fish and Game Code

<sup>2</sup> Valley elderberry longhorn beetle was proposed for de-listing by USFWS in October 2006. If it is removed from federal protection status, it may no longer meet the criteria for coverage under the BRCP.

### 1.3.4 Local Concern Species

In addition to the species selected as covered species, the Stakeholder Committee identified species they desire to be conserved within the Plan Area. These species were identified as “Local Concern Species” (Table 1-2, *Local Concern Species*) and each of these species is evaluated in the BRCP for the expected conservation outcome with implementation of the Conservation Strategy.

Table 1-2. Local Concern Species

	<i>Common Name</i>	<i>Scientific Name</i>	<i>Status</i> <sup>1</sup> <i>(Federal/State)</i>
<b>Birds</b>			
1	Yellow warbler	<i>Dendroica petechia</i>	-/SSC
2	California thrasher	<i>Toxostoma redivivum</i>	-/-
3	Purple martin	<i>Progne subis</i>	-/SSC
4	California horned lark	<i>Eremophila alpestris actia</i>	-/-
5	Yellow-billed magpie	<i>Pica nuttalli</i>	-/-
6	Loggerhead shrike	<i>Lanius ludovicianus</i>	-/SSC
7	Willow flycatcher <sup>2</sup>	<i>Empidonax traillii</i>	-/E
8	Short-eared owl	<i>Asio flammeus</i>	-/SSC
9	Long-eared owl	<i>Asio otus</i>	-/SSC
10	Greater roadrunner	<i>Geococcyx californianus</i>	-/-
11	Golden eagle <sup>3</sup>	<i>Aquila chrysaetos</i>	-/FP
12	Northern harrier	<i>Circus cyaneus</i>	-/SSC
13	Merlin	<i>Falco columbarius</i>	-/-
14	Prairie falcon	<i>Falco mexicanus</i>	-/-
<b>Fish</b>			
15	Tule perch	<i>Hysterocarpus traski</i>	-/-
16	Hitch	<i>Lavinia exilicauda</i>	-/-
17	Hardhead	<i>Mylopharodon conocephalus</i>	-/SSC

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<sup>1</sup> Status:

State

E = Listed as endangered under CESA

SSC = California species of special concern

FP = Fully protected under the California Fish and Game Code

<sup>2</sup> Although listed, this species was not included as a covered species because the species only occurs as a migrant in the Plan Area and will not be affected by the covered activities.

<sup>3</sup> Although a CDFW-designated fully protected species, this species was not included as covered because it is not expected to become listed over the term of the BRCP and is not expected to be adversely affected by covered activities.

### 1.3.5 Covered Activities

The types of covered activities within the Plan Area of the BRCP for which incidental take permit coverage is requested from USFWS, NMFS, and CDFW in compliance with the ESA and the NCCPA are summarized below and described in more detail in Chapter 2, *Covered Activities*. The covered activities are grouped by geographic location within the Plan Area:

- **Within urban permit areas (UPAs).** UPAs are those mapped locations in the Plan Area within which the cities and county anticipate concentrated urban and infrastructure development under their respective general plan updates. The UPAs are discussed in more detail in Chapter 2, *Covered Activities*.
- **Outside UPAs.** This designation includes all areas of the County within the Plan Area but outside of the UPAs. It includes covered activities such as linear utilities, transportation construction and maintenance projects, and agricultural services; it does not include areas that become part of the BRCP conservation land system.
- **Within conservation lands.** This area includes new conservation lands established under the BRCP. It includes conservation actions within conservation lands such as habitat restoration, enhancement, and management.

The covered activities include the construction and maintenance of public and private facilities and infrastructure that are consistent with local general plans, transportation plans, and local, state, and federal laws. The covered activities are divided into activities that result in permanent development and activities involving maintenance measures that happen periodically over the duration of the permit. The reason for these two categories is that the impacts on covered species and natural communities resulting from such activities and the conservation measures used to address such impacts tend to differ based on the permanence or ongoing nature of the activity.

### 1.3.6 Permit Duration

The Permittees are seeking permits from USFWS, NMFS, and CDFW to implement the BRCP covered activities and retain incidental take coverage under those permits for a term of 50 years. This timeframe provides necessary and sufficient duration for the implementation of covered activities (Chapter 2, *Covered Activities*), mitigation actions to address the covered activities, and conservation actions that contribute to the recovery of covered species (Chapter 5, *Conservation Strategy*). This timeframe takes into account the expected time necessary to implement proposed

land development under the cities and county general plans and the regional transportation plan. The general plans for the County, City of Chico, City of Oroville, and City of Gridley have planning horizons to 2030. Biggs' draft general plan also has a planning horizon to 2030. The BCAG Regional Transportation Plan is a four-year plan with projections and planning policies aimed through 2035. The permit duration also provides the time necessary to assess the impacts of covered activities on the covered species and natural communities and to implement measures to mitigate those impacts.

The BRCP includes a large conservation component that will provide for the conservation of natural communities and contribute to the recovery of covered species in the Plan Area (Chapter 5, *Conservation Strategy*). The BRCP Conservation Strategy requires the orderly creation of a landscape-level system of conservation lands with ecological connectivity through the acquisition (easement and fee title) and management of land. The Conservation Strategy includes habitat protection, enhancement, and restoration; impact minimization and avoidance measures; and the implementation of monitoring and adaptive management to ensure success in the achievement of biological goals and objectives. Due to the scale of the program, including acquisition of over 90,000 acres of land, the 50-year duration is necessary to provide for sufficient time to accumulate the funds and find the willing sellers needed to implement the Conservation Strategy and achieve its biological goals and objectives. In addition, time is needed to build an endowment during the permit term to provide funding for management of conservation lands after the 50-year permit term. See Chapter 8, *Plan Implementation*, for the implementation schedule for conservation measures and Chapter 10, *Implementation Cost and Funding Sources*, for the necessary amount and timing of funding over the permit term.

## **1.4 OVERVIEW OF THE BRCP DEVELOPMENT PROCESS**

This section describes the composition of the Steering Committee and Stakeholder Committee and the role of these committees in developing the BRCP; the participation of CDFW, USFWS, and NMFS as technical advisors to the planning process; public involvement and outreach (e.g., website, public newsletters, and public informational workshops); and the integration of science to inform the development of the BRCP.

### **1.4.1 Organizational Structure for Planning**

#### **1.4.1.1 Stakeholder Committee**

The Stakeholder Committee was responsible for reviewing draft sections of the BRCP and providing comments and recommendations for BRCP development to BCAG and the Steering Committee. The role of the Stakeholder Committee's members included representing the interests of their organizations at meetings and reporting on development of the BRCP to other members of their organizations on a regular basis.

The member organizations of the Stakeholder Committee are listed below.

- Butte County Builders Association
- Butte County Farm Bureau
- Ducks Unlimited
- Butte Environmental Council
- Altacal Audubon Society
- Sierra Club
- CSU Chico
- Butte Glenn Community College District
- Butte County Agricultural Commissioner's Office
- The Nature Conservancy
- California Native Plant Society (CNPS)
- Butte County Resource Conservation District
- Caltrans
- WCWD
- Biggs-West Gridley Water District
- Butte Water District
- Richvale Irrigation District

The names of members and alternates of the Stakeholder Committee over the time of BRCP development are provided in Chapter 13, *List of Preparers*.

Between 2007 and 2013, the Stakeholder Committee met 45 times to discuss the preparation of the BRCP. All such meetings were open to the public and provided for public participation in addition to input from Stakeholder Committee members. The Stakeholder Committee provided oral and written comments on multiple working drafts of all chapters of the BRCP prepared between 2008 and 2012 and on the full Preliminary Public Draft BRCP released in November 2012.

#### **1.4.1.2 Steering Committee**

The Steering Committee served in an administrative capacity and was responsible for the preparation of the BRCP. Responsibilities of the Steering Committee include the following:

- Managing the consultants and working with the consultants to establish timelines, work products and outreach processes;

- Reviewing key BRCP elements (e.g., covered species, Plan Area, covered activities, Conservation Strategy, impact assessment, implementing entity, implementation plan, costs and funding sources);
- Providing guidance as requested by other committees;
- Monitoring the BRCP development budgets;
- Providing oversight of the BRCP development;
- Communicating BRCP progress and issues to the County and City Administrators Committee, Stakeholder Committee, and Planning Directors Group;
- Providing for public participation and outreach;
- Reviewing the BRCP scopes of work, budgets, and scope modifications of the Consultants.

Membership of the Steering Committee over the course of BRCP development included the following:

- Butte County, Supervisor District 1
- Butte County, Supervisor District 2
- Butte County, Supervisor District 4
- City of Chico, Mayor
- City of Oroville, Mayor or City Council Member
- Caltrans District 3, Director
- Western Canal Water District, District Manager
- BCAG, Executive Director

The names of members and alternates of the Steering Committee over the time of BRCP development are provided in Chapter 13, *List of Preparers*.

## **1.4.2 Coordination with Agencies and Public Outreach**

### **1.4.2.1 Agency Coordination**

Regular technical agency meetings with USFWS, CDFW, NMFS, USACE, EPA, and CVRWQCB were held to discuss specific agency concerns related to administrative draft document sections. These agencies provided technical input on the baseline data, covered species list, covered species accounts, existing ecological conditions report, covered activities, impact analysis, Conservation Strategy, implementation plan, and implementation costs and funding sources.

### 1.4.2.2 Public Outreach

The NCCPA requires the establishment of a process for public participation and outreach throughout the development of a plan. Similarly, policies governing the ESA emphasize the importance of public involvement in the development of large-scale HCPs and encourage plan participants to facilitate the engagement of the public. Under the Five-Point Policy, USFWS and NMFS have sought to increase public participation in the HCP process, including greater opportunity for the public to assess, review, and analyze HCPs and associated NEPA documentation.

Beginning at the initial stage of the BRCP planning process, the public has been afforded a wide range of opportunities to learn about the various elements of the BRCP and provide input during the course of its development. In addition to the public involvement associated with the Stakeholder Committee meetings discussed above, other public outreach and involvement has occurred throughout the development of the Plan. A pair of public workshops were held early in the BRCP development process on September 5, 2007 in Chico, and September 12, 2007 in Oroville. A series of public workshops were held following the release of the Preliminary Public Draft BRCP on January 15, 2013 in Oroville, January 15, 2013 in Gridley, and January 16, 2013 in Chico. The purposes of the workshops were to do the following:

- Educate and involve the public in the BRCP development process including project scope, timing, and objectives;
- Answer community questions regarding the process;
- Provide an opportunity for the public to understand and participate in the BRCP development process;
- Secure support for the BRCP through education, interaction, and sharing of ideas and materials; and
- Update the community on BRCP developments and share community feedback with the Steering Committee.

BRCP Newsletters were made available to the public regularly to keep interested parties up-to-date with the latest information on the development of the Plan. The following newsletters were released: Summer/Fall 2007, Winter 2008, Summer 2008, Spring 2009, Fall 2009, Spring 2010, Winter 2011, Winter 2012, and Winter 2013. An informational brochure describing the major elements and objectives of the BRCP was released in fall of 2007. Two subsequent brochures describing the BRCP and highlighting benefits of the BRCP for the participating cities and the County will be released following release of the Public Draft BRCP.

To further facilitate the dissemination of information, the BRCP maintained a project website ([www.buttehcp.com](http://www.buttehcp.com)) that provided access to administrative draft chapters of the BRCP and other documents, information about Stakeholder and Steering Committee meetings, background and benefits of the BRCP, information on public workshops, access to newsletters and detailed

informational brochures, contact information and links to other important websites, and other relevant information associated with the BRCP. The Preliminary Public Draft BRCP was posted on the website in December 2012 and the Public Draft BRCP will be posted on the website following its anticipated release in June 2015.

Additionally, an “interested parties” email distribution list containing 50 to 75 individuals, including landowners, environmentalists, agriculturalists, developers, hunting advocates, members of academia, and others, was maintained to provide these individuals with the same information the Stakeholder Committee received.

As part of the CEQA/NEPA public process, BCAG and USFWS prepared and released a Notice of Preparation and Notice of Intent.<sup>41</sup> These documents underwent a required 45-day public review period between December 14, 2012 and January 30, 2013 to receive input from the general public. Public scoping meetings were held on January 9, 2013 in Oroville and Chico to disseminate information about the BRCP and BRCP EIR/EIS development process and to take public input. A public scoping report was prepared BCAG and USFWS and included additional information pertinent to public scoping process that was undertaken.

### 1.4.3 Integration of Science

Use of the best available science is a priority for the BRCP. To ensure the best scientific information was being used, the Steering Committee and Stakeholder Committee, in 2007, coordinated to assemble an independent science advisors group composed of experts in conservation ecology and the specific biological resources in the Plan Area. A science advisor facilitator was hired to assist in the formation of and to coordinate with the Science Advisory Group. A draft of the science advisory report was provided to the Steering Committee and Stakeholder Committee in September of 2007, and the final science advisory report on the BRCP was released in January 2008 (Appendix G, *Independent Science Advisors Reports*).

The Independent Science Advisors Reports summarize recommendations from the group of independent science advisors for the BRCP. This NCCPA-required scientific input was provided early in the planning process, before preparation of the draft conservation strategy, to help ensure that the BRCP was developed using the best available science. To ensure objectivity, the advisors operated independent of the Permit Applicants and stakeholders, their consultants, and other entities involved in the BRCP development. The advisors reviewed information prepared by the BRCP consultants, attended a workshop, completed subsequent information searches, and engaged in discussions. The science advisors met in June of 2007 to review information gathered for the BRCP planning process, hear the concerns of Plan participants, tour portions of the Plan Area, and begin formulating recommendations for BRCP development and implementation. The advisors were encouraged to seek expert input from other scientists. Recommendations were provided in the report related to the Draft Ecological Baseline Report,

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<sup>41</sup> Notice of Intent was made available online in the Federal Register at <http://www.gpo.gov/fdsys/pkg/FR-2012-12-14/pdf/2012-30182.pdf>

the scope of the BRCP, information gaps, the conservation design, the conservation analyses, and the adaptive management and monitoring. Refer to Appendix G for additional details.

In May 2011, the Independent Science Advisors were again assembled to review a draft of the BRCP Conservation Strategy (including biological goals and objectives, conservation measures, monitoring program, and adaptive management program) and to respond to specific questions regarding the proposed approach for conserving the covered species and natural communities. In July 2011, The Independent Science Advisors published the *Report of Independent Science Advisors for Butte County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP)* (Appendix G). This report provided recommendations for improving the Conservation Strategy and provided responses to specific questions regarding assumptions and uncertainties associated with the proposed conservation measures. The Independent Science Advisors, in their responses to the questions regarding key assumptions used and uncertainties considered in the development of the Conservation Strategy, generally concurred with the overall conservation approach. Some components of the Conservation Strategy were revised to address input from the Independent Science Advisors.

More detail on the 2007-2008 and 2011 processes and input from the Independent Science Advisors is provided in Chapter 12, *Independent Science Advisory Process*.

## 1.5 ORGANIZATION OF THE BRCP

This section provides a brief overview of the contents of the BRCP document chapters and appendices. Clear and consistent use of terminology is important, and a glossary of terms as defined in this document is included in the appendices. Specifically, the document includes the following components:

- Chapter 1, *Introduction* provides the context for the development of the BRCP, including the background, purpose, goals and objectives; regulatory context; scope of the Plan; the process that guided the development of the BRCP; and an overview of the document contents and organization.
- Chapter 2, *Covered Activities* describes the activities identified for regulatory coverage in the Plan Area, including activities within and outside of the UPAs, and activities within habitat preserves.
- Chapter 3, *Ecological Baseline Conditions* describes the existing environmental conditions within the Plan Area, providing the context in which the BRCP and its various elements have been developed.
- Chapter 4, *Impact Assessment and Estimated Level of Take* includes an analysis of the beneficial and adverse effects of the covered activities and conservation measures on covered natural communities and covered species within the Plan Area. The chapter also

describes the cumulative and indirect effects resulting from the implementation of the BRCP Conservation Strategy and the covered activities.

- Chapter 5, *Conservation Strategy* sets out the BRCP Conservation Strategy, including the biological goals and objectives of the BRCP, approach to conservation adopted by the BRCP, and the range of conservation measures for terrestrial and aquatic species and habitats.
- Chapter 6, *Conditions on Covered Activities*, describes survey requirements and the avoidance and minimization measures that must be implemented by project proponents as a condition of receiving a take authorization under the BRCP for implementing covered activities.
- Chapter 7, *Monitoring and Adaptive Management Program*, describes the monitoring requirements for lands conserved under the BRCP and the adaptive management decision making process.
- Chapter 8, *Plan Implementation* addresses matters relating to the implementation of the BRCP including the schedule for the implementation of conservation actions; the monitoring and reporting process to ensure compliance; regulatory assurances anticipated by the entities seeking authorizations; the description of changed circumstances and remedial actions; the approach to unforeseen circumstances; a section discussing permit duration, amendment, renewal and enforcement; the process for implementing the BRCP including applications by project proponents; allowable activities within BRCP conservation lands; and the neighboring landowner assurance program.
- Chapter 9, *Implementation Structure* describes the implementing entity, structure and decision-making process.
- Chapter 10, *Implementation Costs and Funding Sources* estimates the costs of BRCP implementation and describes the sources of funding that will be relied on by the BRCP participants.
- Chapter 11, *Alternatives to Take* sets out the alternatives to take of covered species that were developed and considered and the reasons why they were not adopted including an overview of the relationship between the development of the Local Agencies' general plans and the BRCP.
- Chapter 12, *Independent Science Advisory Process* describes BRCP coordination with the BRCP independent science advisors and other science bodies that provided input during BRCP development.
- Chapter 13, *List of Preparers* lists the preparers of the BRCP.

- Chapter 14, *References* lists the printed references and personal communications cited in the BRCP.
- The following appendices are also included:
  - Appendix A, *Covered Species Accounts*
  - Appendix B, *Evaluation of Species Considered for Coverage*
  - Appendix C, *Common and Scientific Names of Species Mentioned in the Text*
  - Appendix D, *Native Species Supported by BRCP Natural Communities*
  - Appendix E, *Survey Protocols*
  - Appendix F, *Implementation Cost Supporting Materials*
  - Appendix G, *Independent Science Advisors Reports*
  - Appendix H, *Butte Regional Conservation Plan Planning Agreement*
  - Appendix I, *Vernal Pool and Other Seasonal Wetland Mapping Methods*
  - Appendix J, *Biological Constraints Analysis*
  - Appendix K, *Temporary Direct and Permanent Indirect Effects of Covered Activities*
  - Appendix L, *Implementing Agreement*
  - Appendix M, *Conservation Easement Template*
  - Appendix N, *Benefits of Conservation Measures for Local Concern Species*
  - Appendix O, *Conservation Outcome Figures*
  - Appendix P, *Glossary of Term*