

Chapter 17

Consultations and Public Outreach

This chapter provides an overview of the agency consultation and other regulatory requirements and the scoping and public involvement process for the proposed action.

17.1 Consultation and Requirements

17.1.1 Federal Endangered Species Act

Threatened and endangered species are listed under the provisions of Section 4 of ESA; prohibitions in Section 9 provide for substantial protection of these listed species. Through Section 7 and Section 10 processes, USFWS and NMFS ensure that activities undertaken by federal agencies and nonfederal entities do not result in jeopardy of listed species or adverse modification of critical habitat.

If federally listed species may be affected, the federal lead agency must informally consult with USFWS and/or NMFS to assess the consequences of its actions and to determine whether formal consultation is warranted. USFWS is proposing to issue a Section 10 ITP, which is a federal action that triggers Section 7 consultation requirements under the proposed action. As the federal action agency for the proposed action and permit, USFWS will consult internally pursuant to Section 7. USFWS will initiate internal consultation following the submission of the Section 10 permit application package by the Habitat Conservation Plan Association. If USFWS concludes that the proposed action is not likely to adversely affect a listed species, then no formal consultation will be conducted and no BO will be prepared. If the proposed action is likely to result in adverse effects on a listed species, then USFWS will prepare a biological opinion describing how the proposed action will affect the listed species. The USFWS's opinion will be either a *jeopardy opinion* or a *no-jeopardy opinion*. A jeopardy opinion concludes that the proposed action would jeopardize the continued existence of a federally listed species or would adversely modify designated critical habitat. Under this finding, the BO must suggest "reasonable and prudent alternatives" that would avoid jeopardy. If the USFWS issues a no-jeopardy opinion, this opinion may include "reasonable and prudent measures" to minimize adverse effects on listed species and an "incidental take statement" that specifies the allowable amount of take that may occur as a result of the proposed action.

17.1.2 National Historic Preservation Act

Section 106 of the NHPA requires federal agencies to inventory historic properties and evaluate the eligibility of those properties for listing in the NRHP. The potential effects of the proposed action or action alternatives on cultural resources, including properties listed or eligible for the NRHP, and any necessary measures to avoid or reduce impacts on these resources, are described in Chapter 7, *Cultural Resources*. As presented in that chapter, the proposed action is not expected to result in any significant effects on cultural resources. And a cultural resources management plan would be developed as a basis for establishing a programmatic memorandum of agreement between USACE, SHPO, and ACHP for compliance with the requirements of the NHPA Section 106 process such that no NRHP-listed eligible or potentially eligible resources would be affected.

17.1.3 Farmland Protection Policy Act

The Farmland Protection Policy Act (FPPA) of 1981 requires federal agencies to consider project alternatives that minimize or avoid adverse impacts on important farmland. As described in Chapter 4, *Agricultural and Forestry Resources*, the FPPA does not apply to federal permitting (7 CFR § 658.2[a][1][i]).

17.1.4 Clean Air Act

Section 176(c) of the Clean Air Act requires federal agencies to ensure that their actions are consistent with the Clean Air Act and with federally enforceable state implementation plans (SIPs) (air quality management plans). The conformity review process is intended to ensure that federal agency actions will not cause or contribute to new violations of any federal ambient air quality standards; will not increase the frequency or severity of any existing violations of federal ambient air quality standards; and will not delay the timely attainment of federal ambient air quality standards.

The proposed action is within an area designated by EPA as a partial non-attainment area for ozone and PM 2.5 and a maintenance area for CO. Consequently, to fulfill general conformity requirements, a General Conformity evaluation would be required to identify whether the total ozone, CO, and PM2.5 emissions for the action alternatives are subject to the General Conformity rule.

As described in Chapter 5, *Air Quality and Greenhouse Gases*, a conformity analysis was performed, and emissions were evaluated to determine if they would exceed the General Conformity *de minimis* thresholds. A conformity determination is not required, as it was concluded emissions would likely not exceed the *de minimis* thresholds.

17.1.5 Migratory Bird Treaty Act

Migratory birds are protected by USFWS under the provisions of the MBTA of 1916 as amended (16 U.S.C. Chapter 7, 703-712) which governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. The take of all migratory birds is governed by the MBTA's regulation of taking migratory birds for educational, scientific, and recreational purposes and requiring harvest to be limited to levels that prevent over utilization. Section 704 of the MBTA states that the Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing take. The Secretary of the Interior, in adopting regulations, is to consider such factors as distribution and abundance to ensure that take is compatible with the protection of the species. This guidance would be utilized in informal consultation on any such activities within the Plan Area for the proposed action.

17.2 Lead and Cooperating Agencies and Stakeholders

The BRCP EIS/EIR was prepared under the combined efforts of the following partners.

- USFWS
- NMFS

- USACE
- BCAG

BCAG is the CEQA lead agency. USFWS is the federal lead agency pursuant to NEPA. CDFW is a CEQA responsible and trustee agency. USACE and NMFS are cooperating agencies pursuant to NEPA. To comply with both CEQA and NEPA, these agencies combined efforts to notify stakeholders, the public, agencies, and tribes of the proposed permits and intent to prepare a joint EIS/EIR.

The BRCP was prepared under the combined efforts of the following partners (collectively known as the Permit Applicants).

- BCAG
- Butte County
- The Cities of Oroville, Chico, Biggs, and Gridley
- Western Canal Water District
- Biggs–West Gridley Water District
- Butte Water District
- Richvale Irrigation District
- Caltrans District 3

An organizational structure that allowed for input from stakeholders and the general public was created to develop the BRCP. This organizational structure consisted of a steering committee composed of the Permit Applicants and a stakeholder committee composed of parties with a broad range of interests in the Plan Area. These interests include biological resources, agriculture, land use and development, education, transportation, resource management, and water delivery. USFWS, NMFS, and CDFW provided input throughout the development of the BRCP and participated in steering committee and stakeholder committee meetings as well as in separate meetings with BCAG and the consultant team that helped draft the BRCP. Public involvement was encouraged through open stakeholder committee meetings, public workshops, newsletters, and a regularly updated website.

The BRCP was developed in coordination with the development of county and city general plans in the Plan Area, allowing for feedback between the BRCP and general plan processes. This feedback process 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.

17.3 NEPA/CEQA Scoping

The NOI for the purposes of NEPA and the NOP for the purposes of CEQA served to inform the public of scoping meetings and the public comment period regarding the scope of the EIS/EIR (Appendix A). Additional details regarding meeting locations and times and the public comment period were provided in the NOI/NOP.

In compliance with the requirements set forth in CEQA, BCAG prepared an NOP. The NOP contained a brief description of the proposed action, the anticipated timeframe, probable environmental

effects, the date, time, and place of the public scoping meeting, and contact information. The NOP solicited participation in determining the scope and content of the environmental content of the EIR. On December 14, 2012, the NOP was sent to Responsible and Trustee Agencies and involved federal agencies, to the State Clearinghouse, and parties previously requesting notice in writing. The comment period on the NOP was December 14, 2012, to January 30, 2013.

In compliance with the requirements set forth in NEPA, USFWS prepared an NOI describing its intent to prepare an EIS, the proposed action, the possible alternatives, and relevant scoping meeting and contact information. The NOI was posted in the Federal Register, the United States Government's official noticing and reporting publication, on December 14, 2012. The official comment period for the NOI was December 14, 2012, to January 28, 2013.

17.3.1 Notifications, Publicity, and Scoping Meetings

Legal notices of the NOP were run in the Gridley Herald, Chico Enterprise, and Oroville Mercury on Friday, December 14, 2012. The NOI/NOP and information about scoping meetings were sent via mail to BCAG's BRCP distribution list, posted on the BRCP website (www.buttehcp.com), and sent via email to USFWS' media contacts and BCAG's email distribution list. Publication of the NOI in the Federal Register constitutes public notice of that document. Additionally, the USFWS posted a media release on its website.

On January 6, Chicoer.com published a news article about the BRCP and the scoping meetings at: http://www.chicoer.com/ci_22320033/conservation-plan-would-alter-butte-county-environmental-permit?IADID=Search-www.chicoer.com-www.chicoer.com.

Two scoping meetings were held during the NOI/NOP public comment period. They were held on Wednesday, January 9, 2013, at the following locations and times:

Oroville

Wednesday, January 9, 2013
2:00 p.m. to 4:00 p.m.
Oroville City Council Chambers
1735 Montgomery Street
Oroville, CA 95965

Chico

Wednesday, January 9, 2013
6:00 p.m. to 8:00 p.m.
BCAG Conference Room
2580 Sierra Sunrise Terrace, Suite 100
Chico, CA 95928

Nine people in total attended the two meetings. Three people attended the meeting in Oroville and six attended the meeting in Chico. Two comments, summarized below, were received from stakeholders regarding the EIS/EIRs during the scoping period.

- Nitrogen deposition in the Plan Area could contribute to growth of invasive plant species.
- Compliance with CEQA should be ensured in terms of adherence to laws related to historic resources and notification of appropriate tribal governments.

The Office of Planning and Research sent a courtesy letter to reviewing agencies to encourage them to submit comments on the scope and content of the NOP in a timely manner.