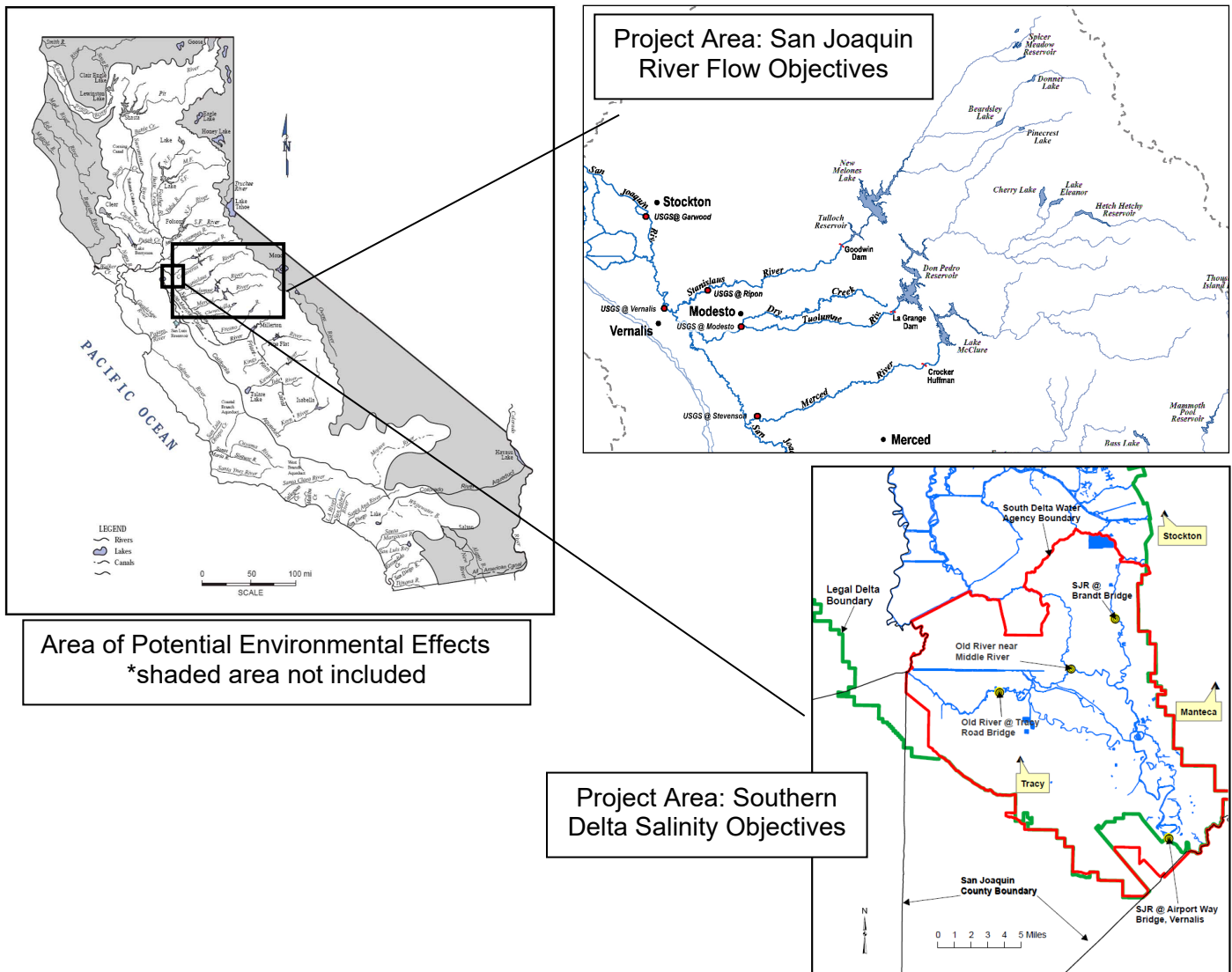


State Water Resources Control Board

**NOTICE OF PREPARATION AND  
CALIFORNIA ENVIRONMENTAL QUALITY ACT SCOPING MEETING**

**PROPOSED REGULATION TO IMPLEMENT LOWER SAN JOAQUIN RIVER FLOWS  
AND SOUTHERN DELTA SALINITY OBJECTIVES IN THE  
WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY/  
SACRAMENTO-SAN JOAQUIN DELTA**



Area of Potential Environmental Effects  
\*shaded area not included

Project Area: Southern  
Delta Salinity Objectives

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

## SCOPING MEETING

**NOTICE IS HEREBY GIVEN** that the State Water Resources Control Board (State Water Board) will hold a public scoping meeting to receive input and recommendations on the scope and content of the environmental information to be considered by the State Water Board, including significant environmental impacts, reasonable alternatives, and mitigation measures for a proposed regulation to implement lower San Joaquin River flows (LSJR) and southern Delta salinity objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan). The public scoping meeting has been scheduled for:

**Wednesday, August 10, 2022**

**10:00 a.m.–5:00 p.m. PST**

Joe Serna Jr. CalEPA Headquarters Building

Byron Sher Hearing Room

1001 I Street Sacramento, CA 95814

[Remote Meeting Participation Registration Link](#)

The meeting will consist of a presentation regarding the development of the proposed regulation, and an opportunity for meeting participants to provide oral comments regarding the scope and information to be included in the draft environmental impact report (EIR).

Participants wishing to comment at the scoping meeting may attend the meeting in person at the address listed above or may comment remotely by registering at the above link **by 12:00 p.m. PST (noon) on Friday, August 5, 2022**. Participants who register remotely will be provided with instructions and credentials for presenting remotely. A quorum of State Water Board members may be present at the scoping meeting. In order to allow adequate time for all presenters, oral comments will be limited to no more than 5 minutes. To accommodate all speakers, additional time limits may be imposed. Participants wishing only to view the scoping meeting should view the live webcast available at <https://video.calepa.ca.gov/>. Registration is not required to view the live webcast. The meeting will be recorded.

### **Accessibility and Interpretation Services**

Individuals requiring special accommodations for the scoping meeting, including interpretation services, should submit a request at least 10 business day before the meeting to [LanguageServices@waterboards.ca.gov](mailto:LanguageServices@waterboards.ca.gov). Telecommunications Device for the Hearing Impaired (TDD) users may contact the California Relay Service at (800) 735-2929 or voice line at (800) 735-2922.

## NOTICE OF PREPARATION (NOP)

**To:** State Clearinghouse, Governor's Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

**Lead Agency:** Agency Name: State Water Resources Control Board  
Street Address: P.O. Box 2000  
City/State/Zip: Sacramento, CA 95812-2000  
Contact: Chris Carr  
Phone: (916) 341-5305  
Email: [Chris.Carr@waterboards.ca.gov](mailto:Chris.Carr@waterboards.ca.gov)

**Subject: Proposed Regulation Implementing Lower San Joaquin River Flows and Southern Delta Salinity Objectives in the Bay-Delta Plan**

### PURPOSE OF THE NOP

The purpose of this NOP is: (1) to advise responsible and trustee agencies, Tribes, and interested organizations and persons, that the State Water Board or Board will be the lead agency and will prepare a draft EIR for a proposed regulation implementing the LSJR flow and southern Delta salinity components of the 2018 Bay-Delta Plan (Implementation Regulation or Regulation<sup>1</sup>) and (2) to seek input on significant environmental issues, reasonable alternatives, and mitigation measures that should be addressed in the EIR. For responsible and trustee agencies, the State Water Board requests the views of your agency as to the scope and content of the environmental information related to your agency's area of statutory responsibility that must be included in the draft EIR.

The State Water Board will accept written and oral comments regarding scoping elements. Written responses to this NOP must be received **12:00 p.m. PST (noon) on Friday, August 19, 2022**. Please see the instructions for submitting written comments in the section below entitled **“WRITTEN PUBLIC COMMENTS.”**

For additional information concerning the Bay-Delta Plan, please visit the State Water Board's website at: [San Francisco Bay/Sacramento – San Joaquin Delta Estuary \(Bay-Delta\) Watershed Efforts](#).

### Project Title

Bay-Delta Plan Implementation Regulation for Lower San Joaquin River Flows and Southern Delta Salinity

### Project Location/Regulation Area

The Implementation Regulation will cover the geographic area of the LSJR flow objectives including the watersheds of the three salmon bearing tributaries to the San

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<sup>1</sup> The use of the term “regulation” encompasses both the singular and the plural as the anticipated rulemaking could result in changes to the adoption or amendment of multiple regulatory sections.

Joaquin River: the Stanislaus, Tuolumne, and Merced Rivers to the San Joaquin River near Vernalis, and through the Delta.

The Implementation Regulation will also cover the geographic area for the southern Delta salinity objective, which encompasses the lands and channels from Vernalis north to Stockton, the bulk of which are within the boundary of the South Delta Water Agency including: the San Joaquin River from Vernalis to Brandt Bridge, Middle River from Old River to Victoria Canal, and Old River/Grant Line Canal from the Head of Old River to West Canal.

The Implementation Regulation will also cover areas receiving water exported from the LSJR and Bay-Delta that could be impacted by implementation of the LSJR flow objectives and southern Delta salinity objective.

A map of the Project area and the area of potential environmental effects is provided at the beginning of this notice.

### **Project Description**

The proposed project is adoption of regulations pursuant to the rulemaking procedures of the Administrative Procedure Act (Gov. Code, § 11340 et seq.) to allocate responsibility to water rights holders and claimants for implementing the Bay-Delta Plan LSJR flow and southern Delta salinity components of the 2018 Bay-Delta Plan (the proposed Project). The Bay-Delta Plan establishes water quality objectives for the protection of beneficial uses in the Bay-Delta watershed, a program of implementation to achieve those objectives, and monitoring, reporting, and study provisions. In 2018, the State Water Board amended the Bay-Delta Plan and adopted new and revised flow objectives for the reasonable protection of fish and wildlife beneficial uses in the LSJR and revised salinity objectives for the reasonable protection of agricultural beneficial uses in the southern Delta and associated updates to the program of implementation and monitoring, reporting, and study provisions.

The LSJR flow objectives and program of implementation require, from February through June, that at least 40 percent of the unimpaired flow be maintained in the Stanislaus, Tuolumne, and Merced Rivers, within an adaptive range of 30 to 50 percent of the unimpaired flow, inclusive. In addition, during February through June, the LSJR flow objectives and program of implementation require the maintenance of a minimum base flow of 1,000 cubic feet per second (cfs), with an adaptive range between 800 and 1,200 cfs, inclusive, as measured at Vernalis on the San Joaquin River. This means that if the percent of unimpaired flow is being met but flows are insufficient to achieve the base flow at Vernalis, then additional flows will be necessary (Table 3, Bay-Delta Plan, p. 15). During the month of October, the LSJR flow objectives and program of implementation require the maintenance of a minimum baseflow, as measured at Vernalis on the San Joaquin River, of 1,000 cfs, plus an additional 28 thousand acre-foot pulse flow or a minimum monthly average flow of 2,000 cfs, whichever is less (Table 3, Bay-Delta Plan, Footnote 13).

The 2018 adoption of amendments to the Bay-Delta Plan also revised the salinity water quality objectives and program of implementation for the reasonable protection of

agricultural beneficial uses in the southern Delta. The southern Delta salinity objective, expressed as a 30-day running average of electrical conductivity, is 1.0 (dS/m) and applies year-round in three river segments rather than specific point locations.

On December 12, 2018, the State Water Board adopted a substitute environmental document (SED) analyzing the potentially significant impacts of adopting the new and revised LSJR flow objectives, the southern delta salinity objective, and the programs of implementation for both. The State Water Board will evaluate and identify any potentially significant direct or indirect physical effects on the environment from implementing the LSJR flows and southern Delta salinity components of the Bay-Delta Plan including: assigning responsibility for achieving the LSJR flow and southern Delta salinity objectives; requiring the development and implementation of reservoir carryover storage targets, reservoir refill, or other requirements to help ensure that providing flows to meet the flow objectives will not have significant adverse temperature or other impacts on fish and wildlife or, if feasible, on other beneficial uses; implementation through a voluntary agreement, if proposed; and, other related components of the Bay-Delta Plan. As described in more detail below, the State Water Board anticipates that the EIR will tier from the SED supporting the 2018 update to the Bay-Delta Plan and provide the analysis to support a State Water Board decision regarding adoption of regulations that allocate responsibility for implementing the LSJR flow and southern Delta salinity components of the Bay-Delta Plan.

### **Potential Alternatives**

No California Environmental Quality Act (CEQA) alternatives involving the adoption of a regulation have yet been identified as of the issuance of this NOP. The State Water Board seeks additional data and input on CEQA alternatives from responsible and trustee agencies, Tribes, and the interested public. At a minimum, any proposed CEQA alternatives must fully implement through a regulation the revised LSJR flow objectives, southern delta salinity objective, and the programs of implementation for both. The State Water Board will consider all comments and available and relevant information received during the scoping process.

### **WRITTEN PUBLIC COMMENTS**

Written comments should be submitted by email to [LSJR-SD-Comments@waterboards.ca.gov](mailto:LSJR-SD-Comments@waterboards.ca.gov) (if less than 15 megabytes in total size) with the subject “**Comment Letter – 2018 Bay-Delta Plan Implementation NOP.**” In order to be fully considered, comments must be received by **12:00 p.m. PST (noon) on Friday, August 19, 2022**. Written comments may be delivered via mail or hand-delivered to the following address:

Division of Water Rights Mail Room  
Attn: San Joaquin Unit  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812-2000 (mail)  
1001 I Street, 2nd Floor, Sacramento, CA 95814 (hand-delivery)

## **QUESTIONS AND ADDITIONAL INFORMATION**

Questions concerning this notice may be directed to Chris Carr at (916) 341-5305 or [Chris.Carr@waterboards.ca.gov](mailto:Chris.Carr@waterboards.ca.gov).

## **PARKING, ACCESSIBILITY, AND SECURITY**

For directions to the Joe Serna, Jr. (CalEPA) Building and public parking information, please refer to the map on the [State Water Board web site](http://StateWaterBoardweb.site) at: <https://calepa.ca.gov/headquarters-sacramento/location>.

The Cal/EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Tod Rasmussen at [Tod.Rasmussen@waterboards.ca.gov](mailto:Tod.Rasmussen@waterboards.ca.gov).

All visitors to the CalEPA Building are required to sign in and obtain a badge at the Visitor Services Center located just inside the main entrance (10th Street entrance). Valid picture identification may be required. Please allow up to 15 minutes for receiving security clearance.

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Date

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Jeanine Townsend  
Clerk to the Board

## **Background**

This section provides background information on the Bay-Delta Plan, California water rights, and environmental documentation required pursuant to CEQA for this project.

The State Water Board is initiating preparation of a draft EIR pursuant to CEQA, Public Resources Code section 21000 et seq., to support implementation of the LSR flow and southern Delta salinity components of the Bay-Delta Plan. Implementation actions are proposed to proceed primarily through a regulation pursuant to the rulemaking procedures of the Administrative Procedure Act (Gov. Code, § 11340 et seq.) that will allocate responsibility to water rights holders and claimants for implementation actions. The CEQA documentation for implementation of the LSJR flows and southern Delta salinity components of the Bay-Delta Plan likely will tier from the SED adopted by the Board as part of the Bay-Delta Plan update in 2018. Pursuant to CEQA, the documentation may refer, incorporate, or build upon other existing environmental documentation. The State Water Board also intends to coordinate as appropriate with overlapping environmental review processes under CEQA and the National Environmental Policy Act, including consultation on Central Valley Project long-term operations pursuant to section 7 of the federal Endangered Species Act (ESA).

## **Bay-Delta Plan**

The Bay-Delta Plan establishes water quality objectives and a program of implementation for the reasonable protection of beneficial uses of water including fish and wildlife, agricultural, and municipal and industrial uses. Diversions of water within the Bay-Delta and upstream watershed are a primary driver of water quality and beneficial use protection in the Bay-Delta watershed. As a result, Bay-Delta Plan water quality objectives are primarily flow-dependent and implementation of Bay-Delta Plan water quality objectives relies on the combined water rights and water quality authorities of the State Water Board. The Bay-Delta Plan has been developed and updated over time, including most recently in 2018, through extensive public proceedings to provide for the reasonable protection of fish and wildlife populations living in or migrating through the watershed and agricultural and municipal and industrial uses that depend on adequate freshwater flow into and out of the Delta to prevent water in the Delta from becoming too salty to be diverted or exported from the Delta.

Currently, many of the flow-dependent water quality objectives in the Bay-Delta Plan are implemented through water right permit and license conditions placed on the water rights of the California Department of Water Resources (DWR) for the State Water Project and the United States Bureau of Reclamation (Reclamation) for the Central Valley Project following agreements among public water agencies regarding implementation of the 1995 Bay-Delta Plan. Specifically, State Water Board Revised Water Right Decision 1641 (D-1641) amends specific SWP and CVP water rights to achieve the water quality objectives specified in Tables 1, 2, and 3 of the 1995 Bay-Delta Plan as revised in 2006. D-1641 also includes requirements on the SWP and CVP to conduct monitoring, assessment, and reporting.

Since adoption of the 1995 Bay-Delta Plan and D-1641, native and migratory fish populations with high ecological, economic, and cultural value have declined substantially. Several of these species of fish are listed as threatened or endangered

under the California Endangered Species Act (CESA), the federal Endangered Species Act (ESA), or both, including Delta smelt, longfin smelt, green sturgeon, Central Valley steelhead, winter-run Chinook and spring-run Chinook salmon. In response to declining Bay-Delta ecosystem conditions and persistently low abundance of multiple fish populations, the State Water Board initiated proceedings to update the Bay-Delta Plan. The first update was completed in 2018 and focused on the reasonable protection of fish and wildlife on the LSJR and in the watersheds of its three salmon-bearing tributaries, the Stanislaus, Tuolumne, and Merced rivers. The 2018 amendments also revised salinity objectives in the southern Delta for the reasonable protection of agricultural beneficial uses.

The State Water Board is engaged in subsequent Bay-Delta Plan updates that focus on flow-dependent objectives and implementation measures for the reasonable protection of fish and wildlife in the Sacramento River and its tributaries, Delta eastside tributaries (including Calaveras, Cosumnes, and Mokelumne rivers), Delta outflows, and interior Delta flows.

The LSJR flow and southern Delta salinity updates to the Bay-Delta Plan are not self-implementing and require additional actions by the State Water Board. The proposed action to implement the 2018 Bay-Delta Plan is a regulation assigning responsibility to water rights holders and claimants. The State Water Board will also continue, as necessary and appropriate, to use its Clean Water Act section 401 water quality certification authority to implement objectives in the Bay-Delta Plan. Until the implementation process is complete, D-1641 requirements to meet the Lower San Joaquin River flow and southern Delta salinity requirements established in the 1995 Plan remain in regulatory effect.

### **California Water Rights**

California has two primary types of surface water rights, “appropriative” and “riparian,” and each has different attributes that affect the source of water that may be diverted, the amount of water that may be diverted, when and where the water may be diverted, the authorized purposes and place of use, and the priority of right relative to other water right holders, among other parameters. California’s water right priority system limits which water right holders may divert, and how much, when there is insufficient water in the stream for all users, including to meet instream flow requirements and other water quality requirements. For example, for appropriators, older water rights are more senior to, or have priority over, newer, more junior water rights. That means that in times of shortage senior water appropriators are more likely to be able to divert water and junior right holders must cease diversion if water is needed to meet flow requirements or protect higher-priority rights. Diverting water when it is unavailable under a diverter’s priority of right may constitute an unauthorized diversion and a trespass against the state.

Once water is diverted to storage or imported, only the entity that stored or imported the water has a right to it as against other water right holders, though other appropriators may acquire contingent junior rights to any abandoned or return flows. Riparian right holders, although generally senior to appropriative water right holders, are only entitled to divert natural flow. They are not entitled to divert water to storage or to redivert



storage releases, imported water, or the return flows from storage releases or imported water.

All water rights in California, including riparian and appropriative, are subject to overarching principles that may limit their scope or exercise, including: (1) the rule that all water use must be reasonable; and (2) the public trust doctrine. California Constitution, Article X, section 2, and Water Code section 100 establish the state policy that the water resources of the state must be put to beneficial use to the fullest extent possible, and that rights to the use of water are limited to such water as is reasonably required for the beneficial use served, and do not extend to the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of the water. The common law public trust doctrine requires the protection of public trust uses of navigable water bodies to the extent feasible and in the public interest.

The State Water Board is proposing to implement the LSJR flow and southern Delta salinity objectives through a regulation that would apply to water right holders and claimants in the lower San Joaquin River watershed and southern Delta consistent with applicable law.

### **California Environmental Quality Act (CEQA) Requirements**

This NOP is initiating the CEQA process to develop an EIR in support of a regulation to implement the new and revised LSJR flow and southern Delta salinity components of the Bay-Delta Plan. CEQA identifies various types of EIRs and provides the lead agency with discretion to craft the appropriate type of EIR for the project under review (Cal. Code Regs., tit. 14, §15160 et seq.). The types of EIRs listed in the State CEQA Guidelines are intended only as examples of the types of documents that can be used to satisfy the requirements of CEQA. The State CEQA Guidelines specify that the variations included in the guidelines are not meant to be exclusive and note that documents can be tailored for different situations and uses depending on circumstances (Cal. Code Regs., tit. 14, §15160).

Specifically, CEQA contemplates that programmatic planning decisions, like amending the Bay-Delta Plan, may be evaluated by master, program, or tiered EIRs, deferring review of more specific, related projects. A program EIR is an EIR that may be prepared on a series of actions that can be characterized as one large project and are related either geographically or in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, among other criteria. (Cal. Code Regs., tit. 14, § 15168.) The purpose of such programmatic EIRs is to allow a lead agency to focus on decisions ripe for review. (Pub. Resources Code, § 21093, subd. (a); Cal. Code Regs., tit. 14, § 15385, subd. (b).) An agency that chooses to tier may provide analysis of general matters in a broader EIR, then focus on narrower project-specific issues in later EIRs. (Cal. Code Regs., tit. 14, § 15152, subd. (a).)

A SED was adopted in 2018 to support the State Water Board's decision regarding adoption of LSJR flow and southern Delta salinity amendments to the Bay-Delta Plan. The SED was prepared pursuant to the State Water Board's certified regulatory program and is a program-level, not project-level evaluation. Information also was

included within the SED to assist the State Water Board in its water quality planning process and its decision-making as part of that process. Accordingly, the State Water Board anticipates tiering the EIR analysis for the proposed Bay-Delta Plan Implementation Regulation from the 2018 SED. This tiering allows the State Water Board to avoid redundancy and focus on project-specific impacts. Moreover, the analysis of general matters in the SED can help inform the project-level initial study for determining whether later activities may have any significant effects on the environment. (Cal. Code Regs., tit. 14, § 15168, subd. (d).)

**Potential Environmental Effects:**

Following is a list of potential environmental effects that are planned to be evaluated in the draft EIR for the Project. The State Water Board seeks input on specific issues within these areas, or others if applicable, that should be evaluated, alternatives that avoid significant impacts, and appropriate mitigation measures:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology / Soils
- Greenhouse Gas Emissions
- Hazard and Hazardous Materials
- Hydrology / Water Quality
- Land Use / Planning
- Mineral Resources
- Noise
- Population / Housing
- Public Services
- Recreation
- Transportation / Traffic
- Tribal Cultural Resources
- Utilities / Service Systems
- Mandatory Findings of Significance