



# Update on California WaterFix

Special Committee on Bay-Delta

Item 3a

October 25, 2016

# Update

- California WaterFix Key Decisions
- ESA & CESA Authorizations
  - Take of threatened/endangered species
- Sequence of ESA, CESA, and CEQA/NEPA

# California WaterFix - Key Decisions

- USBR | DWR – Environmental Documents
  - Environmental documents and project approval under CEQA and NEPA
- USFWS | NMFS | CDFW – ESA/CESA Authorizations
  - “Section 7” Biological Opinion – Federally-listed species
  - “Section 2081” Permit – State-listed species
- SWRCB – Water Rights  
Change in Point of Diversion Permit
  - Water right permit for new point of diversion for new intakes
- USACE – Permits
  - Placement of fill in waters of the U.S. under the Clean Water Act (404)

# Terms

## ● Take

- Federal ESA definition “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”
- California ESA definition “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”

## ● Incidental take

- “Take” that is incidental to an otherwise lawful activity

## ● Jeopardy

- Occurs when an action is reasonably expected, directly or indirectly, to reduce a species' reproduction, numbers, or distribution so that the likelihood of survival and recovery in the wild is appreciably reduced

# Terms

- Section 2081(b)
  - Refers to a section of the California ESA that allows CDFW to issue incidental take permits for state-listed species
- Biological Assessment
  - Document prepared under the Federal ESA to determine whether a proposed Federal action is likely to adversely affect listed species, proposed species, or designated critical habitat
- Biological Opinion
  - Product of formal consultation, stating the opinion of FWS/NMFS on whether or not a Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat

# ESA Section 7 – Federal Species

- Biological Assessment (BA) – Prepared by USBR and DWR
  - Focus - whether or not potential effect “likely to adversely affect” species and habitats
  - January 15: Working Draft BA submitted
  - April 5 & 6: Independent Science Peer Review
  - August 2: Revised BA submitted
- Formal Consultation – Analysis by FWS and NMFS
  - September 6: BA deemed sufficient & consultation initiated
- Biological Opinion (BiOp)
  - FWS and NMFS determination of whether the action avoids/  
can avoid “jeopardy”
  - Basis for take authorization

# CESA Section 2081 – State Species

- 2081 Permit Application - Prepared by DWR
  - Focus - whether or not potential effects on species “minimized and fully mitigated”
  - October 5: Application submitted
- Processing of Application
  - Upon CDFW deeming application “complete”
- 2081 Permit & Findings – Incidental take permit issued if CDFW finds:
  - Take is incidental to an otherwise lawful activity;
  - Impacts will be minimized and fully mitigated;
  - Adequate funding for required mitigation; and
  - Issuance of permit will not jeopardize the continued existence of the species.

# Sequence





