Appendix H
Regulatory Context

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When undertaking any type of ground-disturbing or vegetation-manipulating activities, it is important to consider that the action taken may affect resources regulated by one or more agency and may require one or more regulatory permits. Long-term management solutions for the Salinas River, including flood risk management, water resource management, and threatened and endangered species managemxent, will require compliance with various environmental laws and regulations. This appendix provides an overview of the regulatory agencies and key environmental laws and regulations that are likely to apply to implementation of management actions proposed in the Salinas River Long-Term Management Plan.

H.1 Federal and State Agencies with Regulatory Authority

The following agencies have regulatory authority over one or more of the laws and regulations discussed in this appendix.

- California Coastal Commission
  - California Coastal Act (coastal development permit)
- California Department of Fish and Wildlife (CDFW)
  - California Endangered Species Act (CESA) (incidental take permit)
  - California Fish and Game Code Section 1602 (lake or streambed alteration agreement)
- Regional Water Quality Control Boards (Regional Water Boards)
  - Clean Water Act (CWA) Section 401 (water quality certification)
  - CWA Section 402 (National Pollutant Discharge Elimination System [NPDES] permit)
  - Porter-Cologne Water Quality Control Act (Porter-Cologne Act) (waste discharge requirement)
- State Water Resources Control Board (State Water Board)
  - California Water Code (water rights)
- U.S. Army Corps of Engineers (USACE)
  - CWA Section 404 (dredge and fill authorization)
  - Rivers and Harbors Act Section 10 (conversion of navigable waters authorization)
- U.S Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)
  - Endangered Species Act (ESA) Section 7 (incidental take statement and biological opinion)
  - ESA Section 10 (incidental take permit and habitat conservation plan [HCP])

- USFWS
  - Migratory Bird Treaty Act of 1918 (MBTA) (special purpose permit)
- Federal Emergency Management Agency (FEMA)
  - National Flood Insurance Act (floodplain development permit)
- California State Lands Commission (CSLC)
  - California State Lands Act (lease of surface and submerged lands)

H.2 Federal Laws and Regulations

H.2.1 Clean Water Act

The CWA is the primary federal law that protects the physical, chemical, and biological integrity of the nation's waters, including lakes, rivers, wetlands, and coastal waters. Programs conducted under the CWA are directed at both point-source pollution (e.g., waste discharged from outfalls and filling of waters) and nonpoint-source pollution (e.g., runoff from parking lots). Under the CWA, the U.S. Environmental Protection Agency (EPA) and state agencies set effluent limitations and issue permits under CWA Section 402 governing point-source discharges of wastes to waters. USACE, applying its regulations under guidelines issued by EPA, issues permits under CWA Section 404 governing under what circumstances dredged or fill material may be discharged to waters. These Section 402 and 404 permits are the primary regulatory tools of the CWA. EPA has oversight over all CWA permits that USACE issues.

H.2.1.1 Section 404

Under Section 404 of the CWA, a permit is required from the USACE for the placement of dredged or fill material into waters of the United States, including wetlands. USACE issues two types of permits under Section 404: general permits (typically nationwide permits or regional permits) and standard permits (either letters of permission or individual permits). General permits are issued to streamline the Section 404 process for nationwide, statewide, or regional activities that have minimal direct or cumulative environmental impacts on the aquatic environment. Standard permits are issued for activities that do not qualify for a general permit (i.e., that may have more than a minimal adverse environmental impact).

Issuance of a Section 404 permit often requires USACE to consult with NMFS and/or USFWS to comply with Section 7 of ESA. This consultation addresses the federally listed species that may be affected by the action requiring a permit from USACE. For cases in which a federal species permit already exists that addresses the action requiring a permit from USACE (such as is the case for regional HCPs established under ESA Section 10), the consultation under ESA Section 7 may be greatly streamlined.

Penalties may result if fills are placed within USACE jurisdiction without permit approval or if an applicant fails to follow the terms and conditions of an approved Section 404 permit. Under Section 309(a), EPA can issue administrative compliance orders requiring a violator to stop any ongoing illegal discharge activity and, where appropriate, to remove the illegal discharge and otherwise restore the site. Under Section 309(g), EPA can assess administrative civil penalties of up to $16,000

per day of violation, with a maximum cap of $187,500 in any single enforcement action. In judicial enforcement, Sections 309(b) and (d) and 404(s) give EPA and the USACE the authority to take civil judicial enforcement actions, seeking restoration and other types of injunctive relief, as well as civil penalties. The agencies also have authority under Section 309(c) to bring criminal judicial enforcement actions for knowingly or negligently violating Section 404 (U.S. Environmental Protection Agency 2018).

H.2.1.2 Section 401

Section 401 of the federal CWA requires that applicants for a federal license or permit to conduct activities that may result in the discharge of a pollutant into waters of the United States must obtain water quality certification from the state in which the discharge would originate or, if appropriate, from the interstate water pollution control agency with jurisdiction over affected waters at the point where the discharge would originate. Therefore, all projects that have a federal component and may affect state water quality (including projects that require federal agency approval, such as issuance of a Section 404 permit) must also comply with CWA Section 401.

California is a state in which Section 401 is regulated by a state agency: the State Water Board and its nine Regional Water Boards. In Monterey County, the Central Coast Regional Water Board is responsible for issuing Section 401 water quality certifications, which certify that a proposed action is compliant with state water quality standards. Although the Regional Water Board has its own application forms, in practice, the application for Section 401 certification and for issuance or waiver of waste discharge requirements (WDRs) (see Section H.3.1, *Porter-Cologne Water Quality Control Act*) are combined, and can use much of the same information as the CWA Section 404 permit application. For projects occurring within multiple state and federal agency jurisdictions, the Joint Aquatic Resources Permit Application may also be used. In either case, the Regional Water Board cannot provide Section 401 certification until after California Environmental Quality Act (CEQA) review is complete. The USACE will require compliance with Section 401 as a prerequisite to authorization of the project under Section 404.

Failure to seek approval or follow terms and conditions under Section 401 may result in civil fines, jail time, and/or judicial enforcement actions as described by Section 309 of the CWA.

H.2.1.3 Section 402

Regulated by the local Regional Water Board, CWA Section 402 requires a NPDES permit for all construction projects disturbing 1 acre or greater of land, as well as municipal, industrial, and commercial facilities that discharge wastewater or stormwater into a surface water of the United States. All NPDES permits are written to ensure that receiving waters meet the state's water quality standards. The NPDES Program is a federal program delegated to the State of California for implementation by the State and Regional Water Boards.

H.2.2 Rivers and Harbors Act, Section 10

Regulated by USACE, Section 10 of the Rivers and Harbors Act requires authorization from USACE for the construction of any structure, dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification in or over any defined navigable current or historical waters of the United States. Historical waters are defined by diked areas that used to be part of a tidal navigable system that are still at or below the mean high water elevation. The Salinas River is

considered a traditional navigable water up to River Mile 7. Thus, a Section 10 permit would be required for work proposed at or below the mean high water line from River Miles 0 through 7. A Section 10 permit is also required for structures or work outside the limits defined for navigable waters if the structure or work affects the course, location, or condition of the waterbody. Similar penalties as described for Section 404 of the CWA would apply.

H.2.3 Endangered Species Act

The purpose of ESA is, in part, to provide a means to conserve the ecosystems upon which endangered species and threatened species depend. USFWS and NMFS administer the ESA. The ESA requires these agencies to maintain lists of threatened and endangered species and affords substantial protection to listed species. NMFS's jurisdiction under ESA is limited to the protection of marine mammals, marine fishes, and anadromous fishes;[1] all other species are subject to USFWS jurisdiction. The ESA includes mechanisms that provide exceptions to take prohibitions identified in Section 9 of ESA. These are addressed in ESA Section 7 for federal actions and ESA Section 10 for nonfederal actions, as described in more detail below.

H.2.3.1 Section 7

Section 7 of ESA requires all federal agencies to ensure that any action they authorize (including issuance of any federal permit), fund, or carry out is not likely to jeopardize the continued existence of any species listed as threatened or endangered, or result in the destruction or adverse modification of habitat critical to the survival of such species. To ensure that its actions do not result in jeopardy to listed species or in the adverse modification of critical habitat,[2] each federal agency must consult with USFWS and/or NMFS regarding federal agency actions that may affect listed species regulated by the respective agencies. Consultation begins when the federal agency (often the USACE) submits a written request for initiation to USFWS or NMFS, along with the agency's biological assessment of its proposed action, and when USFWS or NMFS accepts that biological assessment as complete. If USFWS or NMFS concludes that the action is not likely to adversely affect a listed species, the action may be conducted without further review under the ESA. Otherwise, USFWS or NMFS must prepare a written biological opinion describing how the agency's action will affect the listed species and its critical habitat.

If the biological opinion concludes that the proposed action would jeopardize the continued existence of a listed species or adversely modify its critical habitat, the opinion will suggest "reasonable and prudent alternatives" that would avoid that result. If the biological opinion concludes that the proposed action would take a listed species but would not jeopardize its continued existence, the biological opinion will include an incidental take statement. *Incidental take* is take that is "incidental to, and not intended as part of, an otherwise lawful activity."[3] The incidental take statement specifies an amount of take that is allowed as a result of the action and whether reasonable and prudent measures may be required to minimize the impact of the take.

[1] *Anadromous fishes* are fish that spend part of their life cycle in the ocean and part in fresh water. NMFS has jurisdiction over anadromous fish that spend the majority of their life cycle in the ocean.

[2] *Critical habitat* is defined as specific geographic areas, whether occupied by listed species or not, that are determined to be essential for the conservation and management of listed species, and that have been formally described in the *Federal Register*.

[3] 64 Code of Federal Regulations 60728

Under Section 11 of the ESA, any person who knowingly violates the ESA may be assessed a civil penalty by the Secretary of the Interior of not more than $25,000 for each violation (U.S. Fish and Wildlife Service 2018a).

H.2.3.2 Section 10

In cases where federal land, funding, or authorization is not required for an action by a nonfederal entity, the take of listed fish and wildlife species can be permitted by USFWS and/or NMFS through the Section 10 process. Private landowners, corporations, state agencies, local agencies, and other nonfederal entities may choose to obtain a Section 10(a)(1)(B) *incidental take permit* for take of federally listed fish and wildlife species "that is incidental to, but not the purpose of, otherwise lawful activities." A HCP must accompany an application for an incidental take permit. The purpose of the HCP, and the HCP's planning process, is to ensure that the effects of the authorized incidental take is adequately minimized and mitigated (U.S. Fish and Wildlife Service 2005).

Section 10 also addresses the problem of maintaining regulatory assurances and provides certainty to landowners through the HCP process. It is known as the "No Surprises" regulation. Essentially, private landowners are assured through Section 10 (a)(1)(B) that if "unforeseen circumstances" arise, USFWS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed to in the HCP without the consent of the permittee. The government will honor these assurances as long as a permittee is implementing the terms and conditions of the HCP, permit, and other associated documents in good faith (U.S. Fish and Wildlife 2005).

The take prohibition for listed plants is more limited than for listed fish and wildlife. Under Section 9(a)(2)(B) of the ESA, endangered plants are protected from "removal, reduction to possession, and malicious damage or destruction" in areas that are under federal jurisdiction. Section 9(a)(2)(B) of the ESA also provides protection to plants from removal, cutting, digging up, damage, or destruction where the action takes place in violation of any state law or regulation or in violation of a state criminal trespass law. Thus, the ESA does not prohibit the incidental take of federally listed plants on private or other nonfederal lands unless the action requires federal authorization or is in violation of state law. Although Section 10 incidental take permits are only required for wildlife and fish species, the Section 7(a)(2) prohibition against jeopardy applies to plants, and issuance of a Section 10(a)(1)(B) incidental take permit cannot result in jeopardy to a listed plant species.

Under Section 11 of the ESA, any person who knowingly violates the ESA may be assessed a civil penalty by the Secretary of the Interior of not more than $25,000 for each violation (U.S. Fish and Wildlife Service 2018a).

H.2.4 Migratory Bird Treaty Act

The MBTA, as amended, implements various treaties and conventions between the United States and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the MBTA, taking, killing, or possessing migratory birds is unlawful, as is taking of any parts, nests, or eggs of such birds (16 U.S. Government Code [U.S.C.] § 703). Take is defined more narrowly under the MBTA than under ESA and includes only the death or injury of individuals of a migratory bird species or their eggs. As such, take under the MBTA does not include the concepts of harm and harassment as defined under ESA. The MBTA defines migratory birds broadly.

USFWS provides guidance regarding take of federally listed migratory birds in the *Habitat Conservation Planning and Incidental Take Permit Processing Handbook* (HCP Handbook)(U.S. Department of the Interior Fish and Wildlife Service and U.S. Department of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service 2016). According to the HCP Handbook, an ESA incidental take permit can authorize take of an MBTA species where such take is otherwise prohibited.

A person, association, partnership or corporation which violates the MBTA or its regulations is guilty of a misdemeanor and subject to a fine of up to $500, jail up to 6 months, or both. Anyone who knowingly takes a migratory bird and intends to, offers to, or actually sells or barters the bird is guilty of a felony, with fines up to $2,000, jail up to 2 years, or both (U.S. Fish and Wildlife Service 2018b).

H.2.5 National Environmental Policy Act

Federal agencies are required to consider all effects on the human environment of a proposed action under the National Environmental Policy Act (NEPA). NEPA documentation of the environmental impact analysis (e.g., Environmental Impact Statement) must be made available for public notice and review. Issuance of an incidental take permit under ESA Section 10 constitutes a federal action and would require compliance with NEPA. The lead federal agency would be USFWS and/or NMFS.

H.2.6 National Historic Preservation Act

Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 et seq.), requires federal agencies to take into account the effects of their actions proposed on properties eligible for inclusion in the National Register of Historic Places. *Properties* are defined as cultural resources, which includes prehistoric and historic sites, buildings, and structures that are listed on or eligible to be listed on the National Register of Historic Places. An undertaking is defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; those requiring a federal permit, license or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency. The issuance of a permit by a federal agency (such as for a Section 404 permit) is an undertaking subject to Section 106 of the National Historic Preservation Act.

H.2.7 National Flood Insurance Act

FEMA administers the National Flood Insurance Act, which requires that local governments covered by federal flood insurance enforce a floodplain management ordinance that specifies minimum requirements for any construction within the 100-year flood zone (one percent chance of occurring in a given year). FEMA delineates regional flooding hazard areas in Monterey County as part of the National Flood Insurance Program. FEMA prepares Flood Insurance Rate Maps (FIRMs) that that indicate areas prone to flooding or areas that have a 1 percent chance of flooding in any given year (100-year flood hazard zone). The 100-year flood hazard zones along the coast experience flooding coincident with high tide events typically combined with a wintertime storm surge. A permit is required before construction or development begins within any Special Flood Hazard Area. Permits are required to ensure that proposed development projects meet the requirements of the National

Flood Insurance Program and the community's floodplain management ordinance. Local municipalities are responsible for permitting development on floodplains within their jurisdictions.

H.3 State Laws and Regulations

H.3.1 Porter-Cologne Water Quality Control Act

Regulated by the local Regional Water Board, the Porter-Cologne Act is the primary state law concerning water quality. It authorizes the State Water Board and Regional Water Boards to prepare basin plans under the Porter-Cologne Act, federal CWA, and general provisions of California Water Code Section 13000 (California State Water Resources Control Board 2017). Through the basin plan, each Regional Water Board designates beneficial uses and establishes water quality objectives.

Under the Porter-Cologne Act, the Regional Water Board regulates the discharge of waste to waters of the state. The terms *discharge of waste* and *waters of the state* are broadly defined in the Porter-Cologne Act such that discharges of waste include fill, any material resulting from human activity, or any other discharge that may directly or indirectly affect waters of the state. While all waters of the United States that are within the borders of California are also waters of the state, the converse is not true—waters of the United States are more narrowly defined, with the result that, in practice, they are a subset of waters of the state.

All parties proposing to discharge waste that could affect waters of the state must file a report of waste discharge with the local Regional Water Board, which will then respond by issuing a WDR in a public hearing or by waiving them (with or without conditions). Any activity that results or may result in a discharge that directly or indirectly affects waters of the state or the beneficial uses of those waters are subject to WDRs, even if they are not also waters of the United States. Thus, the WDRs are more broadly applicable. The Central Coast Regional Water Board has produced a combined application form for Section 401 certification and waiver of WDRs to ensure that applicants do not need to file both a report of waste discharge and an application for Section 401 certification.

In addition to issuing Section 401 certifications on Section 404 applications to fill waters (see Section H.2.1.1, *Section 404*), the Regional Water Boards may also issue waste discharge requirements for such activities. Because the authority for waste discharge requirements is derived from the Porter-Cologne Act and not the CWA, waste discharge requirements may apply to a somewhat different range of aquatic resources than do Section 404 permits and Section 401 water quality certifications. Applicants that obtain a permit from USACE under Section 404 must also obtain certification of that permit by the Regional Water Board with jurisdiction over the project site. The Central Coast Regional Water Board has jurisdiction over the study area.

H.3.2 Lake or Streambed Alteration Agreement

CDFW has jurisdictional authority over streams, lakes, and wetland resources associated with these aquatic systems under California Fish and Game Code Section 1600 et seq., which was repealed and replaced in October 2003 with new Sections 1600–1616 that took effect on January 1, 2004. CDFW has the authority to regulate work that will "substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground

pavement where it may pass into any river, stream, or lake." Activities of any person, state, or local governmental agency, or public utility are regulated by CDFW under Section 1602. Because CDFW includes under its jurisdiction streamside habitats that may not qualify as wetlands under the CWA definition, CDFW jurisdiction is typically broader than USACE jurisdiction.

The lake or streambed alteration agreement is not a permit, but rather a mutual agreement between CDFW and a project proponent made before construction. However, it serves a similar regulatory and protective function. CDFW determines a specific fee schedule and can impose conditions on the agreement to ensure no net loss of values or acreage of the stream, lake, associated wetlands, and associated riparian habitat. CDFW also uses the conditions on a lake or streambed alteration agreement to comply with other authorities it has as California's designated trustee agency for fish and wildlife. As such, many of the concerns raised by CDFW during streambed alteration agreement negotiations are related to special-status species. CDFW cannot provide a streambed alteration agreement until after the CEQA review is complete.

H.3.3 California Endangered Species Act

Regulated by CDFW, CESA prohibits take of wildlife and plants listed as threatened or endangered by the California Fish and Game Commission. Take is defined under the California Fish and Game Code (more narrowly than under ESA) as any action or attempt to "hunt, pursue, catch, capture, or kill." Therefore, take under CESA does not include "the taking of habitat alone or the impacts of the taking." Rather, the courts have affirmed that under CESA, "taking involves mortality."

Like ESA, CESA allows exceptions to the prohibition for take that occurs during otherwise lawful activities. The requirements of an application for incidental take under CESA are described in Section 2081 of the California Fish and Game Code. Incidental take of state-listed species may be authorized if an applicant submits an application that proposes an approach to minimize and "fully mitigate" the impacts of this take. Similar to ESA, CESA has penalties for violators and CDFW has the authority to impose civil liability as described under California Fish and Game Code 12159.5. CDFW may take civil judicial enforcement actions, seeking restoration and other types of injunctive relief, as well as civil penalties.

H.3.4 California Environmental Quality Act

Like NEPA, CEQA requires applicants to evaluate environmental impacts associated with a proposed project. In addition, CEQA requires significant environmental impacts associated with proposed projects to be reduced to a less-than-significant level through implementation of avoidance, minimization, or mitigation measures unless overriding considerations are identified and documented that make the mitigation measures or alternatives infeasible. CEQA applies to certain activities in California undertaken by either a public agency or a private entity that must receive some discretionary approval from a California government agency.

H.3.5 Sustainable Groundwater Management Act

On September 16, 2014, Governor Jerry Brown signed into law a three-bill legislative package, collectively known as the Sustainable Groundwater Management Act (SGMA).[4] Under SGMA (pronounced "sigma"), California established a framework for achieving sustainable

[4] The three bills were AB 1739 (Dickinson), SB 1168 (Pavley), and SB 1319 (Pavley).

groundwater management. The purpose of the legislation is focused on brining groundwater basins into balanced levels of pumping and recharge to reverse aquifer depletion, while supporting and enhancing local management of groundwater basins. As such, SGMA requires local agencies to form Groundwater Sustainability Agencies (GSAs) to manage basins sustainably, and requires those GSAs to develop and adopt Groundwater Sustainability Plans (GSPs).

As defined by Bulletin 118 (Department of Water Resources 1980), "A basin is subject to critical overdraft when continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts." Overdraft occurs where the average annual amount of groundwater extraction exceeds the long-term average annual supply of water to the basin. Effects of overdraft result can include seawater intrusion, land subsidence, groundwater depletion, and/or chronic lowering of groundwater levels. SGMA requires that all Bulletin 118 basins designated as medium- or high-priority that are subject to critical conditions of overdraft be managed under a GSP, or coordinated GSPs, by January 31, 2020. All other medium- and high-priority basins must be managed under a GSP, or coordinated GSPs, by January 31, 2022 (Department of Water Resources 2016).

SGMA authorizes the intervention of the State Water Resources Control Board in the event that a GSA is not formed for a high- or medium-priority basin, or that an inadequate GSP is submitted for those basins.

H.3.6 California Coastal Act

Administered by the California Coastal Commission, the California Coastal Act outlines standards for development within the Coastal Zone. Their jurisdiction encompasses 1.5 million acres of land and stretches from 3 miles at sea to a defined inland boundary. The California Coastal Act is the primary law that governs the decisions of the California Coastal Commission. Development activities in the Coastal Zone, such as building construction, land division, and activities that change the intensity of use of land or public access to coastal waters, require a coastal development permit from the California Coastal Commission.

H.3.7 California State Lands Act

Administered by the CSLC, the California State Lands Act summarizes the standards to sell, lease, or dispose of the public lands owned by the state or under its control, including not only school lands but tidelands, submerged lands, swamp and overflowed lands, and beds of navigable rivers and lakes. CSLC has statutory authority (as described under Division 6 of the California Public Resources Code) to approve appropriate uses for public property rights within these sovereign lands, such as water-borne commerce, navigation, fisheries, open space, recreation, or other recognized public trust purposes. CSLC management responsibilities include activities within submerged lands (from the mean high-tide line) as well as activities within 3 nautical miles offshore. These activities include oil and gas development, harbor development and management oversight, construction and operation of offshore pipelines or other facilities, dredging, reclamation, use of filled sovereign lands, topographical and geological studies, and other activities that occur on these lands. Development activities in this jurisdiction would require either a CSLC survey permit or a lease agreement.

H.3.8 Water Rights

Regulated by the State Water Board, the California Water Code requires a water right to take water from a lake, river, stream, or creek, or from underground supplies for a beneficial use (e.g., fishing, farming, or industry). Some modifications to the dams and corresponding reservoirs on the Salinas River may require a water right.

H.3.9 Other California Fish and Game Code Regulations

H.3.9.1 California Fully Protected Species

In the 1960s, before CESA was enacted, the California legislature identified specific species for 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 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 only allowance for take of fully protected species is through an incidental take permit from CDFW through an approved natural community conservation plan. Similar to CESA, violations associated with California fully protected species as described under California Fish and Game Code 12159.5, are administered by CDFW, and include civil judicial enforcement actions and civil penalties.

H.3.9.2 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, except as otherwise provided by this code or any regulation made pursuant thereto." Therefore, CDFW may issue permits authorizing take.

H.3.9.3 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 "except as otherwise provided by this code or any regulation adopted pursuant thereto." CDFW may issue permits authorizing take of birds of prey or their nests or eggs pursuant to CESA or the Natural Community Conservation Planning Act.

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