



U.S. Army Corps of Engineers Publishes a Draft Environmental Impact Statement for the Delta Conveyance Project

December 2022

The U.S. Army Corps of Engineers (USACE) issued a Draft Environmental Impact Statement (EIS) for the Delta Conveyance Project on December 16, 2022 for public review. The document is available [here](#) and the USACE Draft EIS public review and comment period lasts until February 14, 2023

USACE's Draft EIS assesses the exact same proposed Delta Conveyance Project analyzed in the Department of Water Resources' (DWR) Draft Environmental Impact Report (EIR) released on July 27, 2022. USACE's Draft EIS is different from DWR's Draft EIR as follows:

- The Draft EIS complies with the National Environmental Policy Act (NEPA) and the Draft EIR complies with the California Environmental Policy Act (CEQA).
- NEPA is a federal law and USACE is the federal lead agency for preparation of the Draft EIS, while CEQA is a state law and DWR is the state lead agency for preparation of the Draft EIR.

Nothing published in USACE's Draft EIS changes what has been published in DWR's Draft EIR. The Draft EIS is not an update to the Draft EIR. They are stand-alone documents. Here are some important things to know about the similarities and differences:

1. NEPA and CEQA have the same basic purpose: to evaluate the potential environmental effects of a proposed project and project alternatives, including a "no project" (or as NEPA calls it, the "no action") option.
2. While DWR is a project proponent seeking to study whether it should implement the proposed project, USACE is not a project proponent. Rather, USACE is a regulator with responsibility for deciding whether to authorize the proposed project. The scope of the Draft EIS is limited to only those aspects of the proposed project that are within USACE purview, including actions requiring authorization under:
 - a. Section 404 of the Clean Water Act
 - b. Section 10 of the Rivers and Harbors Act
 - c. Section 14 of the Rivers and Harbors Act (referred to as "Section 408" because it is located at 33 USC § 408)

3. DWR, as the project proponent, will ultimately determine whether or not to certify the EIR pursuant to CEQA and approve and implement the proposed project. USACE will not be involved in the initial project approval, nor will it implement the project, if approved. Rather, USACE will file a "Record of Decision" once the NEPA process is complete, and they will decide whether to issue authorizations under the Clean Water Act and Rivers and Harbors Act, if DWR has decided to approve and implement the action.
4. While USACE has determined that the proposed project operations and effects are outside USACE purview, these effects are briefly and qualitatively discussed in USACE's Draft EIS. A more in-depth analysis may be found in DWR's Draft EIR.
5. The Draft EIR and Draft EIS cover different topics and are organized differently. For example:
 - a. Some resource areas that have their own chapter in the Draft EIR are combined into one in the Draft EIS (example: Geology, Soils and Paleontological Resources)
 - b. Some resource areas that do not have their own chapter in the Draft EIR, do have their own under the Draft EIS (example: Navigation)
 - c. Some resource areas are unique to the Draft EIR and not required by NEPA (example: Tribal Cultural Resources and Other CEQA-Required Analyses)
 - d. Some resource areas are unique to the Draft EIS and not required by CEQA (example: General Conformity Determination)
 - e. The Draft EIR does include some information not required by CEQA but useful to USACE for NEPA compliance (example: Socioeconomic and Environmental Justice chapters, and appendices for Cultural Resources, Air Quality and Transportation effects)
6. While the Draft EIR evaluates 9 project alternatives, the Draft EIS evaluates 5 project alternatives. Both the Draft EIR and Draft EIS include analysis of not approving the proposed project (referred to in the Draft EIS as the "No Action" alternative).
7. Sometimes, an EIR and an EIS will be prepared by the state and federal lead agencies as a joint document. Other times, as is the case here, the documents are created and published separately. Although the Draft EIR and Draft EIS were prepared independently, DWR and USACE have coordinated throughout the CEQA and NEPA document preparation processes to ensure consistency between the Draft EIR and Draft EIS for ease of public review.

8. Many concepts are common to NEPA and CEQA, including their intent to disclose and consider potential environmental impacts prior to agency decision to approve a project and the requirement of a transparent agency preparation and public review process for the EIR and EIS. Both processes require:
 - a. a notice to the public announcing the preparation of the document
 - b. scoping to gain input on the contents of the document
 - c. development of alternatives to be considered in detailed evaluation in the document
 - d. development of an environmental document analyzing a wide range of environmental resources
 - e. publication of a draft document for review and comment
 - f. consideration of public and agency input
 - g. publication of a final document that includes responses to comments received on the draft document

9. Following issuance of the final environmental document, the agency completes the concluding findings and accompanying components that document the agency's decision on the proposed project. The laws sometimes use different terminology for common concepts, as illustrated in the table below on page 4. Application of similar concepts may not exactly match under NEPA and CEQA.

Correlated CEQA and NEPA Terminology

CEQA Term	NEPA Term
Environmental Impact Report	Environmental Impact Statement
Notice of Preparation	Notice of Intent
Notice of Completion/Notice of Availability	USEPA Filing/Federal Register Notice and Agency/ Public Review (also known as a Notice of Availability)
Notice of Determination/Findings/Statement of Overriding Considerations	Record of Decision
Responsible Agency; Trustee Agency	Cooperating Agency
Project Objectives	Purpose and Need; Objectives and Constraints
Proposed Project and Alternatives	Proposed Action and Alternatives
No Project Alternative	No Action Alternative
Environmental Impacts	Environmental Consequences
Environmental Setting	Affected Environment

More information on USACE's Draft EIS is available on the [USACE](#) and [DWR](#) websites.