

1.0 Purpose and Need

1.1 Introduction

This joint draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS; No. 2003121012) has been prepared to evaluate the potential environmental effects from the issuance of Federal and State permits for incidental take of Covered Species for the proposed San Diego County Water Authority (Water Authority) Subregional Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP or Plan). This draft EIR/EIS describes the potential environmental issues that would be affected by issuance of permits and discusses the potential environmental consequences associated with this action.

This draft EIR/EIS has been prepared in compliance with the California Environmental Quality Act (CEQA) (California Public Resources Code Section 21000 *et seq.*) and the National Environmental Policy Act (NEPA) as implemented by the Council on Environmental Quality Regulations (Title 40 Code of Federal Regulations [CFR] Parts 1500–1508).

1.1.1 Lead Agencies and Actions Needed

The Water Authority, as lead agency under CEQA, the U.S. Fish and Wildlife Service (USFWS), as lead agency under NEPA, and California Department of Fish and Game (CDFG), as a responsible agency under CEQA, collectively referred to as the Wildlife Agencies, will use this draft EIR/EIS to make the following decisions:

- Whether the Water Authority, as a lead agency under CEQA, should adopt the Plan and Implementing Agreement (IA);
- Whether USFWS, as a lead agency under NEPA, should issue or deny a permit under section 10 of the Federal Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*); and
- Whether CDFG, as a responsible agency under CEQA, should issue or deny incidental take authorization under Section 2835 of the Natural Community Conservation Planning Act (NCCPA), and utilize the provisions in the Plan when determining lake and stream avoidance and impact minimization measures and compensatory mitigation when administering Section 1600 *et seq.* of the California Fish and Game Code.

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1.2.1 Purpose and Need for the NCCP/HCP

The goal of the Water Authority Plan is to establish and implement a long-term agreement with the Wildlife Agencies for the conservation and management of Covered Species habitats necessary to maintain the continued viability of biological communities. Proposed actions associated with the proposed Plan include:

- The proposed Water Authority action is adoption of the Plan and its IA, the implementation of which could result in the take of Covered Species and their habitats. With the proposed Plan, the Water Authority seeks the approval of an incidental take permit from USFWS pursuant to section 10(a)(1)(B) of the ESA and management authorizations from CDFG pursuant to Section 2835 of the NCCPA (Permits). The Water Authority is requesting a 55-year permit term to cover the incidental take of species that would occur over the permit period.
- The proposed USFWS action is the issuance of a section 10(a)(1)(B) permit for the incidental take for Covered Species within the Plan Area. The proposed take would be incidental to otherwise lawful Covered Activities that are, or would be, necessary to provide water to the Water Authority's Member Water Agencies.
- The proposed CDFG action is the authorization of take under Section 2835 of the NCCPA by the CDFG. Also, CDFG will rely on the provisions in the Plan when issuing Agreements Regarding Proposed Stream or Lake Alteration pursuant to Division 2, Chapter 6, Sections 1600 *et seq.* of the California Fish and Game Code.

The proposed actions would allow incidental take of Covered Species (including federally and/or state-listed species) that would result from implementation of the Plan and the Covered Activities. Covered Species are listed and non-listed species whose conservation and management are provided for by the NCCP/HCP and for which limited take is authorized by the Wildlife Agencies pursuant to the Permits. This draft EIR/EIS analyzes the proposed issuance of the Permits for activities that would result in the take of Covered Species. Covered Activities could require subsequent review and approvals, which would be determined in individual environmental review as required by CEQA and NEPA.

The purpose of the proposed NCCP/HCP is to comply with the HCP provisions of the ESA of 1973, as amended, and the NCCPA of 1991, as amended (California Fish and Game Code Section 2800 *et. seq.*).

In the NCCP/HCP, the Water Authority proposes a streamlined approach to project permitting and environmental compliance. Take of Covered Species could result from implementation of the following Covered Activities:

1. Capital Improvement Program (CIP) Projects – includes the construction of new projects and the expansion of existing facilities required to meet the water demands of the Member Water Agencies;
2. Operation and Maintenance (O&M) – includes activities essential to operating, maintaining, and repairing Water Authority facilities and ancillary infrastructure; and
3. Preserve Area Management, Monitoring, and Adaptive Management.

1.2.2 Purpose and Need (Water Authority and USFWS)

1.2.2.1 Purpose (Water Authority)

The purpose for which this draft EIR is being prepared for the Water Authority is to analyze the impacts of the Proposed Action and other alternatives in order to decide whether or not to adopt the proposed NCCP/HCP and sign the IA. The specific purpose of the Proposed Action is to:

- Increase the level of certainty regarding mitigation and endangered species permitting so that the Water Authority can efficiently fulfill its mission, including the need to conduct construction, O&M, and rights-of-way management for various Covered Activities;
- Have a regulatory mechanism for allowing incidental take of currently listed species and Covered Species that may become listed in the future; and
- Maintain their autonomy from land use jurisdictions.

1.2.2.2 Need (Water Authority)

The need for the Water Authority's Proposed Action is based on the potential that activities proposed by the Water Authority as covered under the draft NCCP/HCP could result in the take of species, thus providing the need for take authorizations from the Wildlife Agencies.

1.2.2.3 Purpose (USFWS)

The purpose for which this draft EIS is being prepared for USFWS is to analyze the impacts of the Proposed Action (i.e., permit issuance) and other alternatives in response

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to the application for an Incidental Take Permit for the Covered Species related to activities that have the potential to result in incidental take, pursuant to section 10(a)(1)(B) of the ESA and its implementing regulations and policies. The specific purposes of the Proposed Action are:

- Respond to the Water Authority's application for an incidental take permit for the proposed Covered Species related to activities that have the potential to result in take, pursuant to the ESA section 10(a)(1)(B) and its implementing regulations and policies;
- Protect, conserve, and enhance the proposed Covered Species and their habitat for the continuing benefit of the people of the U.S.;
- Provide a means and take steps to conserve the ecosystems depended on by the proposed Covered Species;
- Ensure the long-term survival of the proposed Covered Species through protection and management of the species and their habitat;
- Ensure compliance with the ESA, NEPA, and other applicable federal laws and regulations.

1.2.2.4 Need (USFWS)

The need for the USFWS's Proposed Action is based on the potential that activities proposed by the Applicant could result in the take of federally listed species, thus providing the impetus for an Incidental Take Permit.

At the same time, the USFWS, with concurrence from CDFG, must also meet a set of objectives related to the Plan and compliance with the ESA and NCCPA:

- Satisfy the legal requirements under the ESA and the NCCPA for incidental take of Covered Species and adverse modification of critical habitat during otherwise lawful activities conducted by the Water Authority;
- Ensure measures to avoid and minimize the level of incidental take occurring as a result of Water Authority actions such that Water Authority actions would not appreciably reduce the survival and recovery of federally and/or state-listed, candidate, or otherwise Covered Species; and
- Provide measures which will contribute to the recovery of listed species.

1.2.3 Purpose of the Joint Draft EIR/EIS

This joint draft EIR/EIS is an informational document intended to provide public decision-makers, responsible and trustee agencies, other interested agencies and parties, and the general public with an assessment of potential environmental effects of the Proposed Action. This joint EIR/EIS identifies the proposed project and alternatives. This joint EIR/EIS evaluates the potential environmental consequences and impacts associated with implementation of the Proposed Action and alternatives. If it is determined that potential significant environmental impacts would result from the project or any of the alternatives, this draft EIR/EIS identifies feasible mitigation measures available to reduce impacts to a level less than significant.

This joint draft EIR/EIS concurrently satisfies the requirements of both CEQA and NEPA in one document. As required by both CEQA and NEPA, lead agencies would be responsible for review and approval of the environmental document. The Water Authority is identified as the lead agency for the CEQA compliance requirements of the proposed project. USFWS is identified as the lead NEPA agency for the proposed project.

As required by Section 15096 of the CEQA guidelines, CDFG, as a responsible agency, is required to utilize the analysis contained within this EIR/EIS and make findings as required by CEQA.

Once approved, the Water Authority would be responsible for implementation of the Plan. The Water Authority and the Wildlife Agencies would have cooperative implementation obligations under the IA.

1.3 Background

1.3.1 San Diego County Water Authority

The mission of the Water Authority is to provide a safe and reliable supply of water to San Diego County. San Diego voters approved the formation of the San Diego County Water Authority as a public agency on June 9, 1944, pursuant to the County Water Authority Act of 1943. The Water Authority's initial interest was to manage the region's Colorado River water rights. The Water Authority became a member agency of the Metropolitan Water District of Southern California (MWD) in 1946 to gain access to Colorado River water. The Water Authority continues to purchase imported water from MWD today and receives water from the Colorado River and the Sacramento-San Joaquin River Delta area in Northern California.

San Diego County is one of the fastest growing areas in the country. The County's approximately three million residents typically rely on imported water for up to 90 percent of their total supply. The Water Authority provides imported water to its 24 Member

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Water Agencies which deliver the water to individual homes and businesses in the county. Because the San Diego region has more rare, threatened, and endangered species than any comparable land area in the continental U.S., no other environmental issue holds more uncertainty with respect to implementation of Water Authority actions than federally and state-listed endangered and threatened species.

Federal and state Endangered Species Acts (ESA and CESA, respectively) prohibit the “take” of threatened and endangered species except by permit. Regarding the take prohibition under section 9 of the ESA, the term take means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” “Harm” is further defined by USFWS regulation (50 CFR 17.3) to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. “Harass” is defined by USFWS as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take refers to taking of listed species that results from, but is not the purpose of, carrying out an otherwise lawful activity by a federal agency or applicant (50 CFR 402.02). Take is defined in Section 86 of the California Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Activities and projects undertaken by the Water Authority could result in direct impacts to species as well as the loss of habitat resulting from facility development, operations, maintenance, and repair of facilities and ancillary infrastructure. A long-term solution to ensure compliance with these Acts, particularly in areas such as San Diego County where there are multiple listed species, is to develop a multi-species habitat conservation plan.

1.3.1.1 Water Authority Planning Documents

To ensure that the Water Authority is able to fulfill its mission, the Water Authority prepares, reviews, and updates the following documents and plans:

- The **Regional Water Facilities Master Plan (Master Plan)** serves as a roadmap for implementing major capital improvements necessary to ensure a safe and reliable water supply through 2030 and beyond. The Master Plan evaluation is based on current plans for water supply and facility improvements, with consideration of additional facility improvements and new facilities needed to cost-effectively meet the Water Authority’s mission. The Master Plan focuses on long-term planning for the entire system rather than construction of individual projects.
- The **Capital Improvement Program** outlines how best to provide the facilities necessary for meeting water demands. The CIP is reviewed on an annual basis

and has the flexibility to be adjusted for changes in demand projections, economic factors, and the needs of Member Water Agencies. The current CIP includes the construction of new projects and the expansion of existing facilities. Individual projects in the CIP are subject to environmental review under the appropriate CEQA and/or NEPA requirements.

- The **Long-range Financing Plan** is a comprehensive policy document that guides how the Water Authority funds its CIP and operations over an extended period of time. It is supported by a Financial Rate Modeling program, which helps develop the most cost-effective financial strategy to fund capital projects and operating costs.

1.3.2 Conservation Planning History

The California NCCPA of 1991, and subsequent amendments, is the impetus behind regional conservation efforts in southern California. Prompted by the loss of coastal sage scrub in California, and the listing of the coastal California gnatcatcher (*Polioptila californica californica*) pursuant to the ESA, the State responded with an approach to balance development and conservation interests by developing comprehensive programs for the conservation of regional ecosystems and streamlining the regulatory process.

As early as 1991, the Water Authority committed to participating in regional conservation planning efforts under the NCCPA. The Water Authority understood that the development and implementation of NCCPA conservation plans have the potential to prevent future listing of Covered Species, assist in the recovery of listed species, and streamline the compliance with regulations and protection of biological resources. Prior to the decision to prepare an NCCP/HCP, the Water Authority contributed to multiple regional planning efforts in San Diego County, as described below.

In 1991, the Water Authority's Board of Directors authorized \$250,000 for Multiple Species Conservation Program (MSCP) planning costs. At the time, this contribution represented 8 percent of the anticipated planning cost to develop a regional multi-species conservation plan covering the southern half of the Water Authority Service Area. On December 5 of the same year, the Board of Directors also agreed to participate in the northern San Diego County Multiple Habitat Conservation Program (MHCP), which covered the northern half of the service area. Water Authority records indicate that the Board of Directors contributed a total of \$300,000 for the planning effort. Several years later in 1995, the Board of Directors authorized an additional \$75,000 for MHCP planning which was subsequently allocated and paid.

In consideration of its project types and on-going maintenance and operation activities (i.e., collectively covered activities), together with its geographic scope, statutory authority as it pertains to implementing water related projects, and its need to serve its

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Member Water Agencies, the Water Authority began developing a comprehensive conservation plan for Water Authority activities that would meet the issuance of take requirements under section 10(a)(1)(B) of the ESA and Section 2835 of the California Fish and Game Code. In 1995, while the MSCP and MHCP planning efforts were still underway, the Water Authority started preparation of its own NCCP/HCP to fulfill federal and state ESA requirements and serve as a model for Member Water Agencies.

A comprehensive approach allows the Water Authority to plan and implement projects and perform routine operations with increased certainty as it relates to protection and mitigation of biological resources. Based on the types of facilities that the Water Authority constructs and operates to meet its mission, the Water Authority began the planning process by reviewing other conservation plans in the region. To formulate the approach, coverage, and terms for the proposed Plan (i.e., projects, species, habitat-based mitigation, species-specific measures, etc.) and project alternatives, regular meetings and consultations were held between Water Authority staff, environmental consultants, and the Wildlife Agencies. Several draft plans prepared for administrative review and development in the late 1990's were refined and further revised due to the added specificity and requirements for regional conservation plans.

The passage of Senate Bill (SB) 572 (Ducheny) in July 2003 reconciled inconsistencies regarding the NCCP planning process for water agencies and the NCCPA. Specifically, Section 2830 of the NCCPA exempts the Water Authority, along with other water districts, from having a planning agreement in place with CDFG; however, the Water Authority's NCCP/HCP conforms with and fulfills all other requirements and obligations of the NCCPA. Also in 2003, the Water Authority initiated the EIR/EIS process for the NCCP/HCP, held a scoping meeting, and prepared but did not circulate or certify a draft EIR/EIS. Subsequent revisions to the proposed NCCP/HCP have resulted in the preparation of a new draft EIR/EIS.

1.3.3 Plan Summary

The Water Authority's proposed Plan is a comprehensive program designed to facilitate conservation of Covered Species and habitats anticipated to be impacted by the Covered Activities identified in the Plan. The Plan covers necessary Water Authority activities, including O&M Activities, rights-of-way activities, covered CIP project construction, and Preserve Area management. The Plan provides measures for the conservation of Covered Species and Water Authority lands for the benefit of Covered Species. In addition, species-specific measures contribute to the ongoing conservation and management efforts in San Diego County and southwestern Riverside County. The Plan contains an amendment process that provides mechanisms for the following: updates and additions of activities and projects; expansion of the region of Plan coverage and boundaries to cover activities of future facilities, if necessary; and for adding species to be covered as information becomes available or as the need arises.

One of the most important aspects of Plan development has been the acquisition of the Preserve Area which consists of strategic parcels which contribute to regional conservation planning. Water Authority lands also include undeveloped rights-of-way and habitat in and around facilities which provide connectivity to other open space lands and supplement the existing preserve system in the region.

The Notice of Preparation/Intent (NOP/NOI; 68 FR 66478) indicated that the Water Authority was seeking coverage for a total of 84 species; however, a total of 89 species are reviewed in the conservation analysis of this draft EIR/EIS (Appendix A). Of the species analyzed, the Water Authority is seeking permit coverage for 63 species (26 plant species and 37 wildlife species). Three additional species (two plant species and one wildlife species) occur within the NCCP/HCP's Major Amendment Area in Riverside County. Take authorization for these two species will require a Major Amendment to the NCCP/HCP and Permits.

To ensure the protection of Covered Species, the proposed Plan describes the conservation strategy as well as the protection measures designed to avoid and minimize potential impacts to biological resources and to provide appropriate mitigation where impacts are unavoidable. The Water Authority estimates that activities covered under the Plan would impact up to 373 acres of habitat that will require mitigation as described in Section 2.3.2.1 of this draft EIR/EIS.

The proposed Plan contains a draft IA to establish a long-term commitment among the Water Authority, USFWS, and CDFG. The IA reflects the decisions, terms, and conditions of the Permits. The Plan also includes a separate Conservation Analysis; a list of Covered Projects, including existing and planned CIP projects; and supporting documents and information. The Plan and all its appendices are included as Appendix B.

Compared to almost all other conservation plans in the region, the Water Authority Plan is unique as it is not a land-use-based plan. The nature of linear water delivery systems and regionally-significant Preserve Area require Planned and Future Projects and management that involve multiple jurisdictions. The Water Authority's Plan was developed to function as an independent permitting process for Water Authority projects and activities (i.e., Covered Activities), but one that is compatible with and complementary to the other regional plans. Unlike other conservation plans in preparation or approved in San Diego and Riverside Counties, the Water Authority's Plan does not impose new regulations on local, state, federal, or independent land-use agencies, private citizens, or other parties of interest within the Plan Area.

1.3.4 Planning Area

To accomplish its mission of providing safe and reliable drinking water to the San Diego region, the Water Authority must maintain and operate existing facilities, plan and

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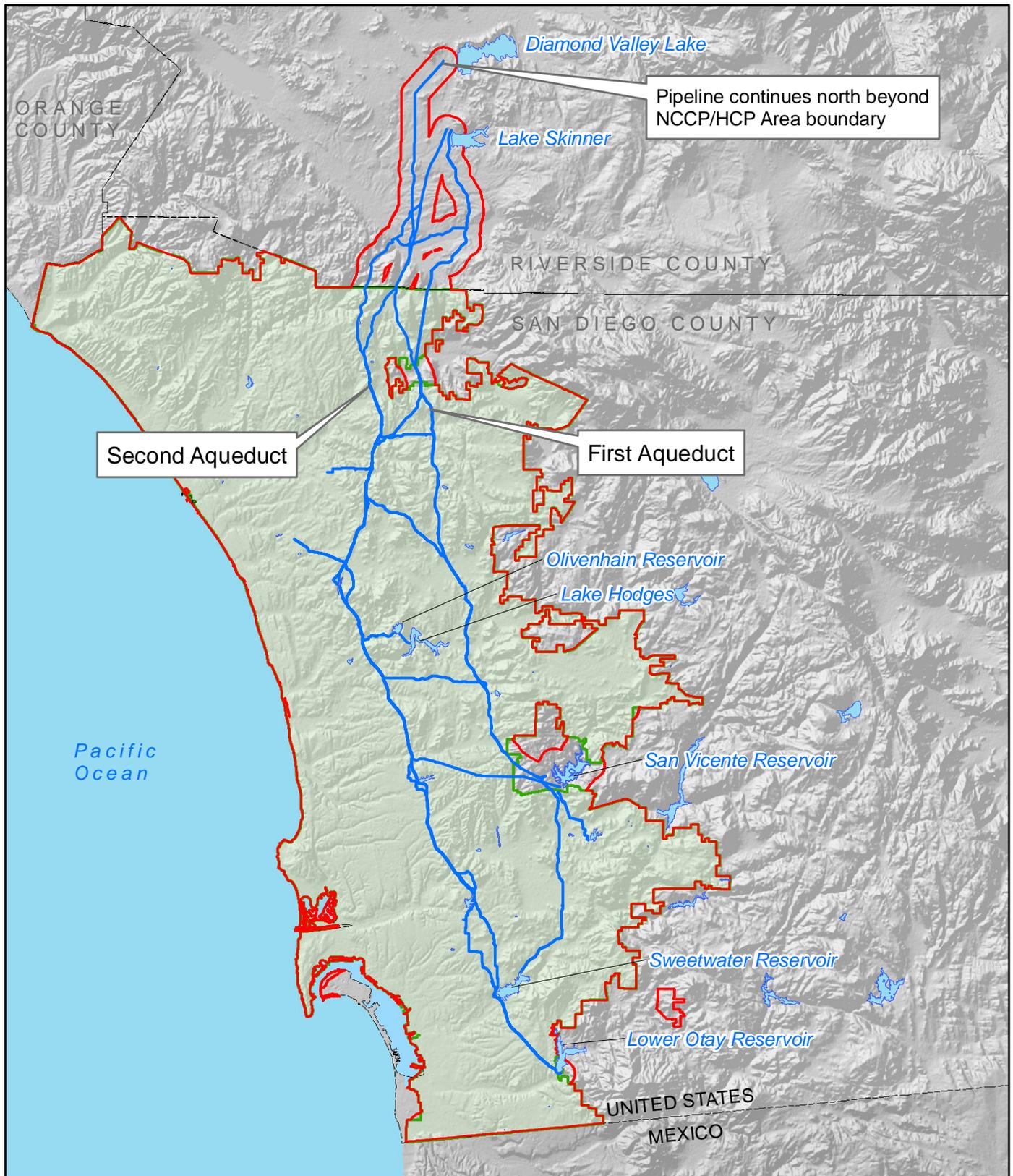
construct new facilities, and be responsive to projected future regional water demands. The Water Authority distributes water to its Member Water Agencies through 286 miles of pipeline, including five main aqueduct pipelines, and associated facilities. These pipelines carry both treated and untreated water to San Diego from MWD's storage, treatment, and conveyance facilities in southwestern Riverside County. The Water Authority's Service Area extends over 920,463 acres of western San Diego County and encompasses the Service Areas of its Member Water Agencies and in-holding Service Areas of non-Member Agencies. Figure 1-1 shows the locations of major Water Authority features and the Water Authority's Service Area.

In addition to their Service Area, the Water Authority identified several boundaries. The boundaries, which are defined below, include a Plan Area, which is the area that would be covered by the proposed HCP and NCCP Permits. The Water Authority also identified a Probable Impact Zone (PIZ) and Survey Area, within which HCP/NCCP impacts are most likely to occur, a Preserve Area, and Managed Mitigation Areas (MMA). Finally, a portion of the Plan Area in Riverside County has been identified as a Major Amendment Area.

In order to develop the Plan, the Water Authority identified the geographic area for which coverage is needed based on the location of Water Authority activities and potential for sensitive species. The variation in landform and vegetation communities affects the type and number of species within the Plan Area that require coverage under the Permits. Originally, the proposed planning area included approximately two million acres, extending east to the San Diego watershed boundary in the Laguna Mountains. The Plan Area was modified to better reflect the Service Area of the Water Authority, lands under Water Authority control, and the areas where species and their habitats are most likely to require coverage.

Key terms related to the Plan are described below and displayed on Figure 1-2.

- **Plan Area.** The Plan Area is an area of approximately 992,000 acres in western San Diego and southwestern Riverside counties within which incidental take will be permitted. The Plan Area encompasses the Service Area and those lands that extend northward into Riverside County within a one-mile area on each side of the First and Second Aqueducts originating at Lake Skinner and Diamond Valley Reservoir, as well as a one-mile area on each side of the rights-of-way and exterior boundaries of other facilities within San Diego County that are outside the Service Area boundary. The Plan Area includes the Survey Area and the PIZ.



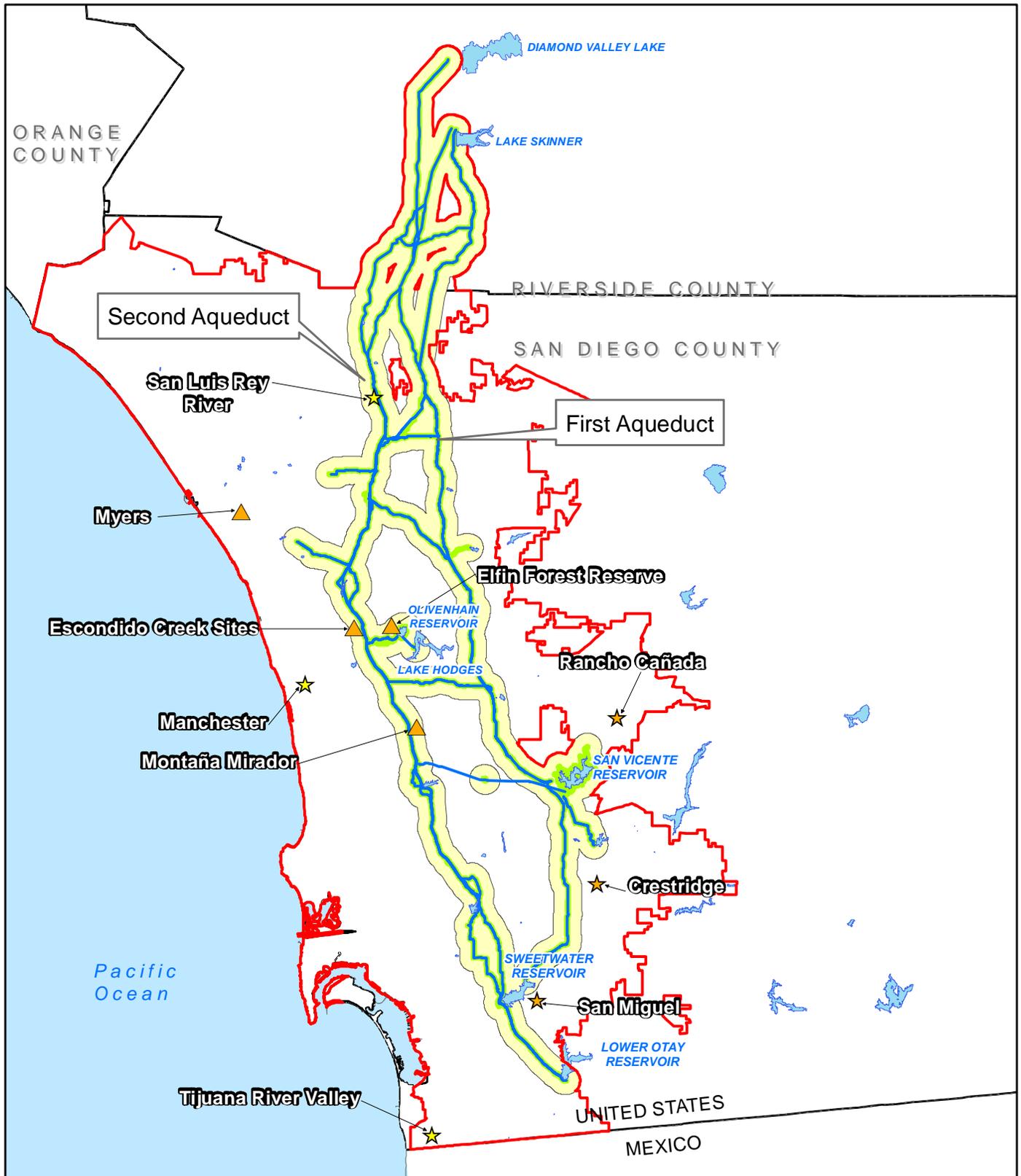
- NCCP/HCP Plan Area*
- ~ Existing/Planned Aqueducts and Pipelines
- Water Authority Service Area Boundary

*Boundary displayed represents Plan Area under Alternatives 1, 2, and 3. See Figure 1-4 for the boundary of the Plan Area under Alternative 4.



FIGURE 1-1

Water Authority Service Area



- NCCP/HCP Plan Area*
- ~ Existing/Planned Aqueducts and Pipelines
- Probable Impact Zone (PIZ)
- Survey Area
- ★ Wetland HMA Sites
- ★ Upland HMA Sites
- ▲ Upland MMA Sites



*Boundary displayed represents Plan Area under Alternatives 1, 2, and 3. See Figure 1-4 for the boundary of the Plan Area under Alternative 4.

FIGURE 1-2

Location of Water Authority Preserve Area and MMAs

- **Survey Area.** The Survey Area is a planning designation within the Plan Area that provides the basis for determining which species would be appropriate for inclusion in the Covered Species list. The Survey Area encompasses 272,648 acres in western San Diego and southwestern Riverside counties that encompasses existing facilities and lands owned by or under control of the Water Authority, including infrastructure rights-of-way (with and without underlying fee ownership) together with MWD's rights-of-way originating in Lake Skinner and Diamond Valley Reservoir that serve San Diego County, and a one-mile area on each side of rights-of way and facilities. The Survey Area includes the PIZ.
- **Probable Impact Zone (PIZ).** The PIZ is the linear, inter-connected configuration of the Water Authority's water supply system that constrains nearly all Covered Activities to be located along or close to the system's rights-of-way and other infrastructure (estimated to be 1,000 feet on either side of the rights-of-way/facilities). For that reason, the Plan identifies an area of approximately 64,600 acres in western San Diego and southwestern Riverside counties as the PIZ, where most of the Covered Activities and take are expected to occur.
- **Preserve Area.** Within the Plan Area, the Water Authority has designated specific areas as the Preserve Area. The Preserve Area consists of the combined area of the Habitat Management Areas (HMAs), which were acquired as part of the Water Authority's NCCP/HCP development, and any future permanently conserved and managed lands (i.e., new HMAs) that are subsequently added to the Plan's commitments as a result of satisfying mitigation obligations pursuant to the Plan. The Preserve Area contributes to other regional conservation efforts in San Diego County based on the type and quality of habitat and connectivity of the HMAs to other large scale preserve lands. Within the 1,920-acre Preserve Area (also referred to as mitigation properties or HMAs), over 700 acres are available or will be created to be used as credits to compensate project impacts to upland and wetland habitats. The remaining acreage is defined as existing mitigation areas created to address impacts of previous projects, as they have been dedicated to conservation as a requirement of previous endangered species take permits or authorizations.
- **Managed Mitigation Areas (MMAs).** While not part of the Preserve Area described above, the Water Authority has also permanently conserved approximately 1,147 acres of regionally important habitat lands. The MMAs serve as previous mitigation contributions to regional habitat conservation and are not included in the Preserve Area for the Plan. As such, they are not used as mitigation for Covered Activities. The MMAs exist to mitigate previous projects. MMAs are defined as follows: properties that were acquired and/or funded by the Water Authority as biological resource mitigation for the Emergency Storage Project or other Water Authority projects, and provide baseline conservation

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associated with this Plan. MMAs were priority acquisitions that significantly contributed to regional conservation, but do not provide mitigation credits for the Plan's Planned or Future Projects.

- **Major Amendment Area – Riverside County.** Future Covered Activities (Projects and O&M Activities) in Riverside County could not be analyzed and permitted at the time of drafting this proposed NCCP/HCP; therefore, an area of approximately 48,700 acres in Riverside County within the Plan Area has been designated as a “Major Amendment Area” and no take of Covered Species is proposed under the Plan. Therefore, future Covered Activities within that portion of the Plan Area will be processed as Major Amendments to the NCCP/NCP and Permits. The Major Amendment Area excludes the Pipeline 6 alignments and their associated PIZ. Because three species (vernal pool fairy shrimp, California Orcutt grass, and Munz's onion) primarily occur within the Riverside County portion of the Plan Area, they would require a Major Amendment and have been categorized as Major Amendment Species.

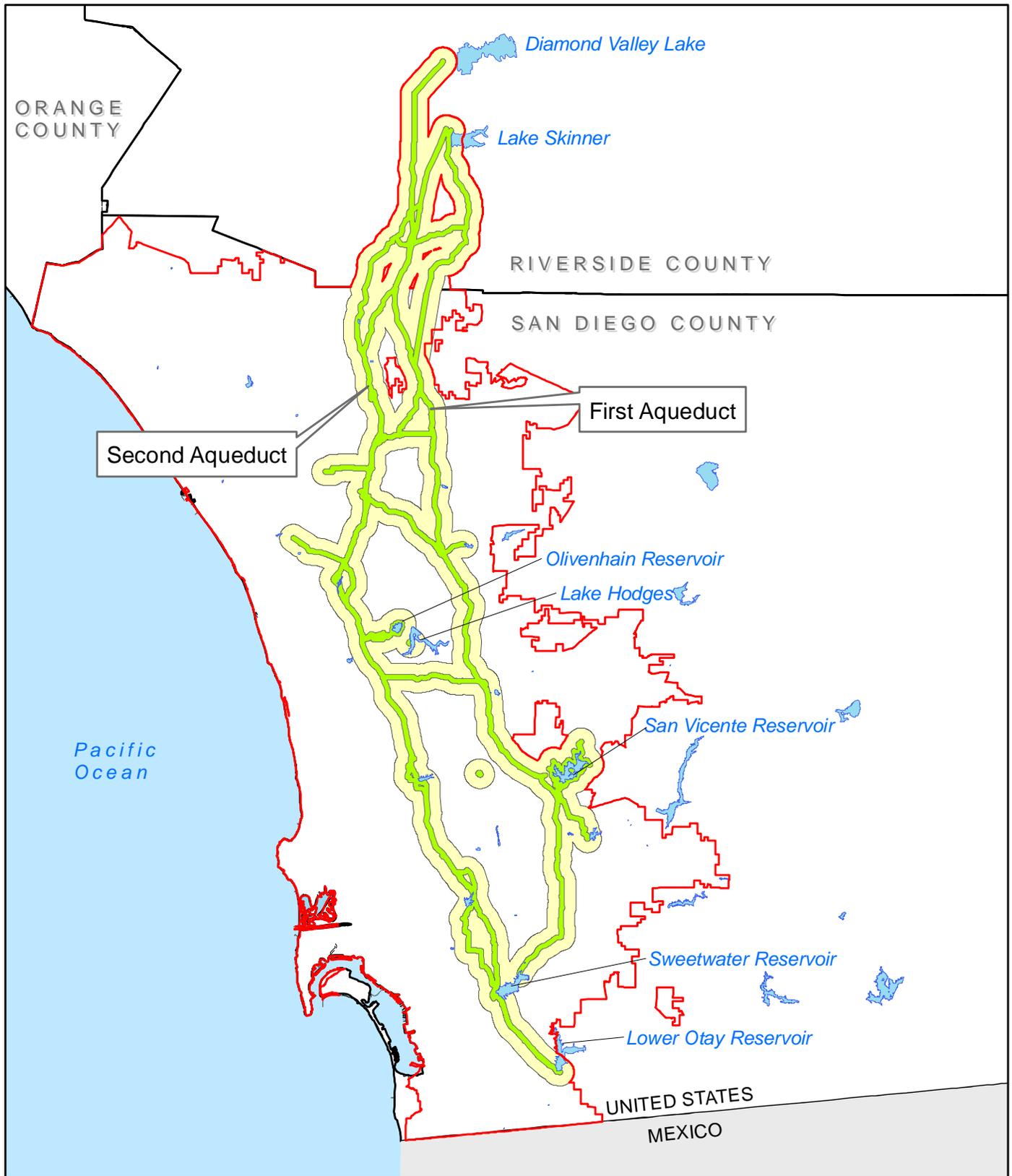
The Plan Area would be different under one of the four alternatives analyzed in this EIR/EIS. Therefore, Figure 1-3 displays the Plan Area in relation to the Survey Area and PIZ for Alternatives 1, 2, and 3, and Figure 1-4 displays the Plan Area under Alternative 4. Alternative 4, the Reduced Plan Area Alternative, identifies the 64,600-acre PIZ as the Plan Area.

It is anticipated that the Plan Area will eventually need to be modified to reflect future facilities, rights-of-way adjustments, additions to the Preserve Area, etc. In particular, the Water Authority may annex additional lands to the Plan Area to incorporate lands which will receive imported water service (Water Authority's Service Area). Areas annexed will likely be adjacent to the existing Service Area and would, therefore, be representative of the Plan Area analyzed by the NCCP/HCP. Annexation, in and of itself, does not necessarily require the Water Authority to undertake any activities that may result in take since it only serves to rectify the Water Authority Service Area boundary with that of its Member Water Agencies. However, in the event that the Water Authority needs to undertake activities that affect Covered Species within those annexed areas, take would be processed under the Major Amendment process.

1.4 NCCP/HCP Regulatory Framework

1.4.1 Federal Requirements

The proposed Plan was prepared to fulfill the federal mandatory requirements of an HCP pursuant to section 10(a)(1)(B) of the ESA, as amended. Section 10(a)(1)(B) allows the issuance of Permits for the incidental take of threatened or endangered species, and the



- NCCP/HCP Plan Area
- Probable Impact Zone (PIZ)
- Survey Area



FIGURE 1-3

Plan Area Boundaries under Alternatives 1, 2, and 3



- Survey Area
- Probable Impact Zone (PIZ)
- NCCP/HCP Plan Area

FIGURE 1-4
Plan Area Boundaries under Alternative 4

inclusion of unlisted species in the permit (in anticipation of their potential to be listed in the future) so long as conservation actions for these species treat them as if they were listed.

In accordance with the USFWS HCP Handbook (USFWS 1996), the Water Authority included the following required elements in the Plan:

- Identification and quantification of impacts likely to result from the proposed taking of the species for which permit coverage is requested;
- Measures to monitor, minimize, and mitigate such impacts; the funding that will be made available to undertake such measures; and the procedures to deal with Changed and Unforeseen Circumstances;
- Alternative actions considered that would not result in take, and the reasons why such alternatives are not being utilized; and
- Additional measures USFWS may require as necessary or appropriate for purposes of the Plan.

USFWS will be responsible for deciding whether to issue or deny a section 10(a)(1)(B) incidental take permit, based on approval of the proposed HCP. USFWS may choose to issue a permit conditioned on implementation of the HCP, to issue a permit conditioned on implementation of the HCP together with other measures specified by USFWS, or to deny the permit. The decision to issue an incidental take permit is based upon whether the proposed habitat conservation plan assures the following (50 CFR 17.22(b)(2) and 50 CFR 17.21(b)(2)):

- Take will be incidental to otherwise lawful activities;
- The Water Authority will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- The Water Authority has ensured that adequate funding will be provided to implement the measures proposed in the Plan and provide procedures to deal with Unforeseen Circumstances;
- The proposed take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The Water Authority will ensure that any other measures required as a condition of the permit will be implemented.

As part of the “other measures” required for an HCP, an IA between the USFWS and the Water Authority would serve as a legal contract. The IA would also need to be approved

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and signed by USFWS, CDFG, and the Water Authority prior to implementation of the Plan.

HCPs are also required to distinguish Changed Circumstances from Unforeseen Circumstances in accordance with the HCP Assurances (“No Surprises”) Final Rule published in the *Federal Register* on February 23, 1998 (63 FR 8859-8873). The “No Surprises” policy provides assurances to HCP permit holders that no 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, would be required even if Unforeseen Circumstances arise after the permit is issued. For an approved HCP that adequately addresses species mitigation, no further mitigation would be required as long as the permittee is implementing the terms and conditions of the HCP, permit, and IA. The “No Surprises Rule” was re-affirmed in January 2005 and again in August 2007.

1.4.2 State Requirements

In addition to federal ESA requirements, the Water Authority Plan was prepared pursuant to the NCCPA of 1991, as amended (California Fish and Game Code Section, 2800 *et. seq.*). The purpose of the NCCPA is to sustain and restore those species and their habitat identified by CDFG that are necessary to maintain their continued viability (California Fish and Game Code, Section 2801). Under the NCCPA, the State of California can authorize the take of listed or unlisted species (California Fish and Game Code, Section 2835). In addition, the impacts of the authorized take must be minimized and fully mitigated. The Plan must ensure adequate funding to implement all required measures, to monitor plan compliance, and to monitor plan effectiveness in meeting its conservation goals and standards.

CDFG will be responsible for deciding whether to issue or deny take authorization pursuant to California Fish and Game Code Section 2835. Authorizations for activities which would result in the take of state-listed species would be granted by the CDFG under Section 2835 of the NCCPA for listed and non-listed species conserved under the Plan. The decision to issue an NCCP Permit is based upon whether the conservation plan assures the following:

- The Plan is consistent with the approved San Diego MSCP and MHCP, and has been developed and is otherwise in conformance with the NCCPA.
- Independent scientific review of the Conservation Analysis has been conducted by a panel of Independent Science Advisors with a focus on those species which are proposed for coverage under the Plan and that are not otherwise covered by the MSCP or MHCP.

- Coverage of all species has been documented at a level of detail equal to or greater than that of other subregional habitat planning, such as the MSCP or MHCP.

1.5 Other Required Actions

As outlined in Section 1.1.1 of this draft EIR/EIS, the Water Authority action is the adoption and implementation of the proposed conservation plan and authorizing execution of the IA to obtain and maintain the Permits. The USFWS action would be whether to issue an incidental take permit under section 10(a)(1)(B) of the ESA. The CDFG action would be whether to authorize incidental take under section 2835 of the Fish and Game Code (NCCPA). If the Water Authority does not approve the Plan, there is no need for USFWS or CDFG action.

Before a decision can be made regarding the issuance of section 10(a)(1)(B) permit, the USFWS must comply with the consultation requirements stipulated in section 7 of the ESA. No other formal federal, state, or local permits or approvals would be required prior to the decision by the USFWS.

The proposed NCCP/HCP identifies streamlined procedures for CDFG and the Water Authority to process Covered Activities that are subject to California Fish and Game Code Sections 1602 and 1603(a). Although the Plan does not identify equivalent procedures to address Federal Clean Water Act permits, such as those pursuant to sections 401 and 404, it does include policies for wetlands preservation and mitigation to facilitate ESA section 7 consultations.

While no other permits or approvals are required for implementation of the Plan, the following sections discuss additional regulations that may apply to Planned and Future Projects conducted under the Plan.

1.5.1 Section 404 of the Clean Water Act

The Clean Water Act provides authority to the U.S. Army Corps of Engineers (USACE) to regulate the discharge of dredged or fill material into waters of the U.S., including wetlands and jurisdictional non-wetland waters. Permits for impacts to wetlands or jurisdictional non-wetlands are issued through section 404 of the Clean Water Act. As a condition of the 404 permitting process, USACE is required to consult with USFWS under section 7 of the ESA if the proposed permit action may affect federally listed species. It is expected that all future section 7 consultations will be consistent with the terms of the Plan and the IA.

1.5.2 Section 1600 *et seq.* of the California Fish and Game Code

CDFG regulates streambed and lake alterations through the development of an Agreement Regarding Proposed Stream or Lake Alteration pursuant to Division 2, Chapter 6, Sections 1600 *et seq.* of the California Fish and Game Code. The statutes cover all lakes, rivers, streams, and streambeds that flow at least intermittently through a bed or channel, including ephemeral streams, desert washes, and water courses with subsurface flow. The draft NCCP/HCP outlines and directs species-specific protection measures, as well as habitat based minimization measures and mitigation measures. Measures in the Plan include habitat restoration measures and wetland protection (including a no-net-loss wetland standard). The Water Authority has also conserved wetland habitat within the Preserve Area. The Plan contains Preserve Area management and adjacency guidelines, plan monitoring and reporting, and adaptive management for Water Authority Covered Activities. The comprehensive measures in the Plan ensure protection of areas covered by Section 1600 *et seq.*, thus narrowing the focus of Section 1602 agreements to address the following: substantial adverse impact to non-covered aquatic or riparian dependent species that the Plan does not otherwise provide adequate avoidance, minimization or mitigation; or for impacts to riparian or wetland habitats not covered under this EIR/EIS. This draft EIR/EIS may be utilized by CDFG to issue a master or long-term Agreement Regarding Proposed Stream or Lake Alteration for Covered Activities identified in the NCCP/HCP.

1.5.3 Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703-712), is the domestic law that affirms, or implements, the United States' commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of a shared migratory bird resource. Each of the conventions protect selected species of birds that are common to both countries (i.e., they occur in both countries at some point during their annual life cycle). The most prominent regulatory elements of the MBTA require the protection of active nest sites, eggs, and young of species covered under MBTA. USFWS has regulatory authority over implementation and enforcement of the MBTA. For species that are listed under both the ESA and MBTA, USFWS has the authority to authorize incidental take with special terms and conditions under section 10(a)(1)(B) and have this permit also serve as a Special Purpose Permit under 50 CFR 21.27 of the MBTA. Special Purpose Permits are required in the event that an action would take, possess, or involve the sale or transport of birds protected by MBTA. The Water Authority's Plan would serve as the basis for incorporation of the MBTA Special Purpose Permit into the 10(a)(1)(B) permit for species that are protected by the MBTA. If the section 10(a)(1)(B) permit is issued, any such take would not be in violation of the MBTA.

1.5.4 Bald and Golden Eagle Protection Act of 1940, as Amended

The Bald and Golden Eagle Protection Act of 1940 (BEPA), as amended (16 U.S.C. 668–668d), prohibits the taking of bald or golden eagles and provides for criminal and civil prosecution if taken. There are no provisions within the BEPA that are comparable to the Special Purpose Permit of the MBTA. The Covered Activities described in the Plan do not anticipate take of bald or golden eagles.

1.6 Scoping Process

1.6.1 NCCP/HCP Public Input and Scoping Process

The proposed adoption of the Water Authority Plan provides for various public noticing, review, and comment opportunities. The Plan requires public review pursuant to CEQA and NEPA. Public review and comment can occur during plan adoption, project review process, and plan modifications.

CEQA and NEPA regulations require an early and open process for determining the scope of issues related to a proposed action. To identify key issues and concerns relevant to the scope of this draft EIR/EIS, the Wildlife Agencies and Water Authority encouraged public participation in the environmental review process from many different public agencies, organizations, and members of the public. In addition to the required notices, a scoping meeting was held. The Water Authority's NOP/NOI, notices, and comments received on the NOP/NOI are attached to this draft EIR/EIS (Appendix A) and are summarized below.

A NOP of an EIR for the Water Authority's NCCP/HCP was published on November 28, 2003, in the *San Diego Union-Tribune*, *San Diego Transcript*, and the Coastal and Inland editions of the *North County Times*. In addition, an NOP was filed with the county of San Diego Recorder/County Clerk on December 3, 2003, and submitted to the State Clearinghouse in the Office of Planning and Research at the State of California, which distributed the NOP to various state government agencies. A Notice of Intent (NOI) to prepare a joint EIR/EIS in compliance with NEPA was published in the Federal Register on November 26, 2003 (USFWS 2003; 68 FR 66478).

On December 11, 2003, the Water Authority and Wildlife Agencies held a public scoping meeting to solicit public comments during the 30-day NOP/NOI public scoping period. The meeting was advertised in both the NOP and NOI and held at the San Diego County Water Authority offices, located at 4677 Overland Avenue, San Diego, California 92123.

1.0 Purpose and Need for Action

In response to this scoping process, one letter of comment was received. Additionally, three people spoke at the public meeting. A transcript of the meeting is included in the Scoping Report (Appendix A). Various issues were identified, including:

- Importance of determining the baseline to use to evaluate the potential impacts of the alternatives;
- Water resource potential impacts including water quality, wetlands, floodplains, and aquatic ecosystems;
- Air quality including standards, ambient conditions, and potential air quality impacts;
- The need for consultation and coordination with Tribal Governments;
- Discussion of Plan funding and administration;
- Plan coordination and potential impact on other conservation efforts;
- Adequate protection of rare and sensitive species and vegetation;
- Cumulative and growth inducing effects; and
- Contribution to regional funding for conservation efforts.

1.6.2 Identification of the Potentially Significant Issues

Issues and concerns raised through the public involvement and scoping process contributed to the development of the overall scope of this draft EIR/EIS, in conjunction with an evaluation of the potential for significant impacts on the affected environment. After analyzing the potential for significant impacts to federally listed species, the Water Authority and USFWS jointly determined that the following issues could be significantly affected by the proposed action:

- Biological resources;
- Water resources and water quality;
- Land use;
- Public services and utilities (water distribution);
- Socioeconomics; and
- Environmental justice.

All of these issues are analyzed in this draft EIR/EIS. For potential significant environmental impacts that could result from the project or any of the alternatives, this EIR/EIS identifies mitigation measures available to reduce impacts to a level less than significant. A Mitigation Monitoring and Reporting Program (MMRP) will be prepared with the Final EIR/EIS.

1.7 Relevant Statutes, Regulations, and Guidelines

This joint EIR/EIS has been prepared in compliance with the following statutes and guidelines:

- NEPA of 1969, as amended (42 U.S.C. 4321 *et. seq.*);
- Council on Environmental Quality (CEQ) NEPA regulations (Title 40 CFR Parts 1500–1508);
- CEQA of 1970, as amended (California Public Resources Code Section 21000 *et. seq.*);
- State of California CEQA Guidelines, as amended (California Code of Regulations, Section 15000 *et. seq.*);
- NCCPA of 1991, as amended (California Fish and Game Code, Section 2800 *et. seq.*);
- HCP guidelines pursuant to Section 10(a)(1)(B) of the ESA, as amended in 1982; and
- Fish and Wildlife Act of 1956 (16 U.S.C. Section 742(a)-754).

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