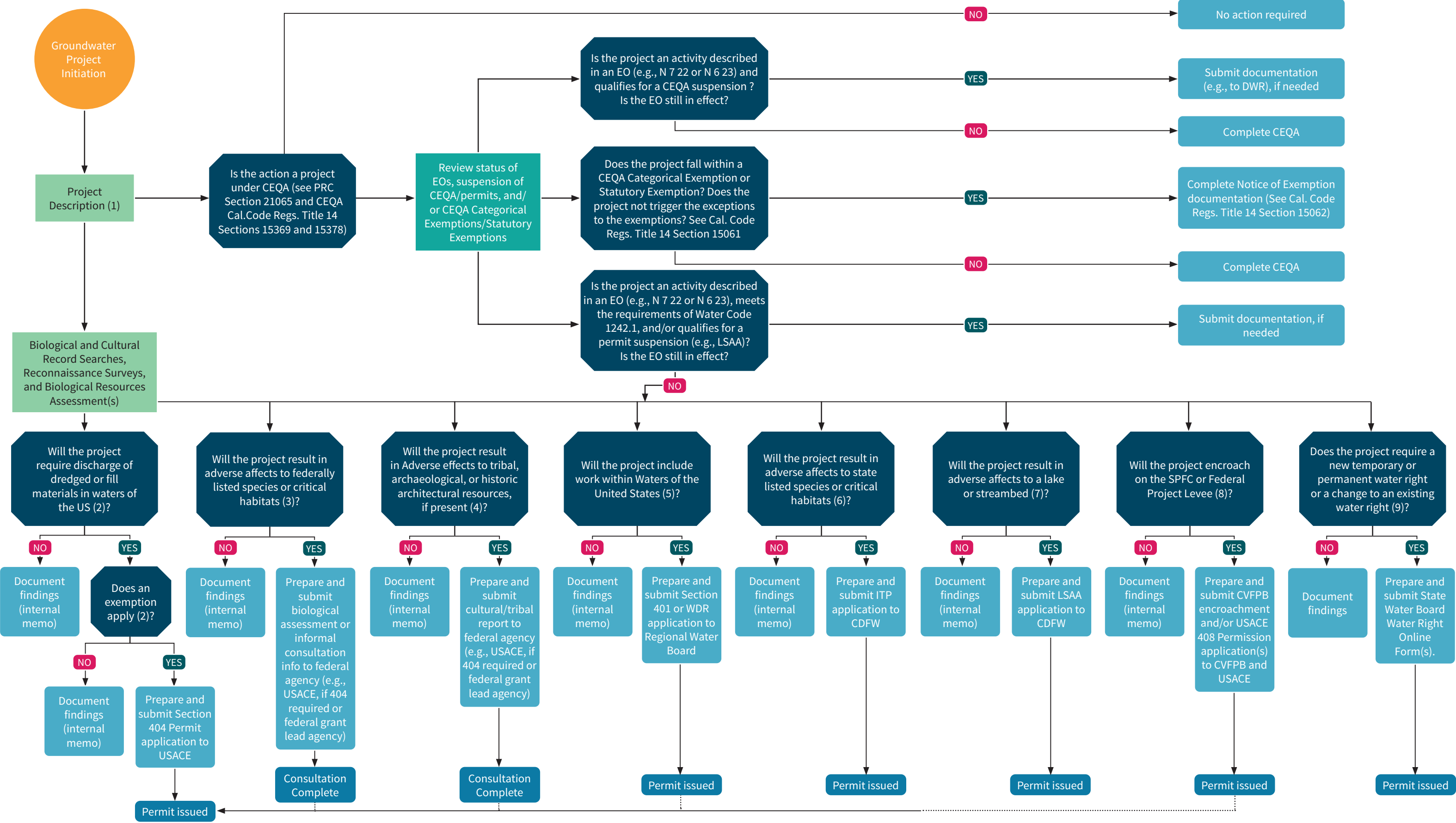


FloodMAR CEQA & Permitting Flow Chart



NOTE: See attached "Groundwater projects Federal and State Permit and Approval Options and Acquisition Estimates Estimates" Table for additional information.

**TABLE 1
GROUNDWATER PROJECTS FEDERAL AND STATE PERMIT AND APPROVAL OPTIONS AND ACQUISITION ESTIMATES**

Flowchart No	Agency	Regulations	Trigger	Permit/Approval Options	Acquisition Timeline Estimates ¹	Comments /Recommendations (for future projects)
1	All	Project description needs to include the project proponent and proposed project name; project study area, including project location and existing facilities; project components/elements, including construction activities, construction equipment and trips, and construction schedule; and project operations and maintenance activities.				
	Federal					
2	USACE	<p>CWA Section 404 Permit:</p> <p>NOTE: As federal lead agency², the USACE requires compliance with other related federal laws listed below, prior to permit issuance:</p> <ul style="list-style-type: none"> • Sec. 7 FESA (per USFWS/ NMFS) • Sec. 106 NHPA (SHPO) • 401 WQ Cert • NEPA 	Discharge (i.e., placement) of dredged or fill material (including structures, native soil, etc.) in waters of the U.S., including wetlands. Additional trigger-related information is available from USACE at: FAQs	<p><u>Nationwide Permit Program (NWP) coverage</u> can be issued for activities with no more than minimal individual and cumulative impacts.</p> <p><u>Possible NWP Options for the projects:</u> NWP 7 – Outfall/intake structures; PCN (notification) required. Requires NPDES permit. NWP 18 – Minor discharges (25 cubic yards and <10 cubic yards; PCN not required) NWP 40 – Ag activities, ½ acre limit, PCN required</p> <p><u>Possible Exemptions for the projects:</u> Section 404(f)(1) – Discharges of dredged or fill material associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant to and functionally related to irrigation ditches are included in the exemption for irrigation ditches.</p> <p>Must prove that the discharge isn't part of an activity whose purpose is to convert an area of the waters of the U.S. into a use to which it was not previously subject and that the activity does not impair the flow or circulation of waters of the U.S. or reduce the reach of such waters.</p>	<ul style="list-style-type: none"> • NWP non-reporting: N/A • Exemption: N/A • NWP Reporting: ~6-8 months <p>Requires NEPA compliance, CWA Section 401, and ESA Section 7 and NHPA Section 106 consultations. If using a NWP, NEPA compliance has already been completed by USACE.</p>	Not applicable to projects that use existing facilities (i.e., no new construction) and would not result in the fill or discharge of materials (e.g., dredging) to Waters of the US.
3	NMFS	Sec. 7 Compliance (FESA/MSA)	Adverse effects (harm, harassment, injury, mortality) to federally-listed aquatic species or critical habitats, typically due to in-water equipment operations, turbidity or water quality impacts, and hydroacoustic/vibratory effects.	Informal concurrence with NLTA determination (for avoidance of all construction-related 'take'). More information on consultation and informal concurrence is available from NMFS at: ESA Consultations	Informal concurrence with NLTA: ~3-6 months	Not applicable to projects that use existing facilities (i.e., no new construction or earth moving activities), unless there are changes to water operations/diversions
3	USFWS	Sec. 7 Compliance (FESA) Migratory Bird Treaty Act (MBTA) Compliance Bald/Golden Eagle Protection Act Compliance	Adverse effects (harm, harassment, injury, mortality) to federally-listed species and/or critical habitats. Killing or destroying migratory birds, bird nests, and eggs.	Informal concurrence with NLTA determination (for avoidance of all construction-related 'take'). More information on consultation and informal concurrence is available from USFWS at: Sec. 7 Consultation	Informal concurrence with NLTA: ~3-6 months	Not applicable to projects that use existing facilities (i.e., no new construction or earth moving activities).

¹ Timeline assumes a 'complete application' has been submitted. Does not include agency delays, which are common and can result from lack of staffing, workload challenges, budget or hiring freezes (including government shutdowns), and other unforeseen delays outside of ESA and the Project proponent's control. Also does not include time spent awaiting other agency permits or approvals required prior to final permit issuance.

² For the purposes of this table and flow chart it is assumed there is a federal nexus (e.g., USACE serving as the federal lead agency for the Section 404 Permit or the involvement of federal grant funds).

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4	SHPO	Sec. 106 Compliance (NHPA)	Required for CWA Sec. 404 compliance. Adverse effects to historic properties (tribal, archaeological, or historic architectural resources), if present Only triggered if project includes a federal "undertaking," which is effectively a federal action, (e.g. issuing a permit or funding a project). USFWS does not consider issuing BO biological opinion to be an undertaking and so FESA Sec. 7 compliance does not trigger the Sec. 106 process.	SHPO Concurrence More information on the Sec. 106 process is available from the Advisory Council on Historic Preservation at: Sec.106 Toolkit	Concurrence: ~3 months	The geographic scope of Sec. 106 compliance (the Area of Potential Effects [APE]) encompasses areas of potential effects to these resources, and thus, recharge areas would likely be part of APE.
State						
5	SWRCB/ RWQCB	401 WQ Certification/WDRs (CWA/Porter-Cologne) 2020 State Wetland Dredge/Fill Procedures CEQA Trustee and Responsible Agency	In-water work; discharge of structures or fill in waters; potential for degradation of waters of the State and designated Beneficial Uses (per Basin Plans), including TMDL implementation plans. May require mitigation for any 'net loss' of waters/wetlands, in compliance with State's 'No Net Loss' policy. Per Porter-Cologne – "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal More trigger-related information is available at: SWRCB: 401 Water Quality Certification and Wetlands Program: FAQs Central Valley RWQCB: Do I Need a Permit?	401 WQ Certification and WDRs in alignment with the USACE's 404 permit. NOTE: Central Valley RWQCB may require a CWA 404(b)(1) Alternatives Analysis to demonstrate the project is 'least environmentally damaging practicable alternative' (LEDPA), regardless of USACE permit type.	401 Certification/WDRs: ~6 months Requires CEQA compliance	Not applicable to projects that use existing facilities (i.e., no new construction) and would not result in discharge of materials (e.g., dredge wastes) to surface or groundwater.
6 & 7	CDFW	Sec. 1602 and 5937 (CFGC) Sec. 2080.1/2081(b) (CESA) CEQA Trustee and Responsible Agency	Sec. 1602: <ul style="list-style-type: none"> Substantial adverse effect to existing fish/wildlife resources due to: diversion/obstruction to natural stream/lake flow; change or use of material in bed, channel, or bank of any stream/lake; or debris, waste, or other material deposition where it may pass into any stream/lake. Including ephemeral/episodic channels/lakes. More trigger-related information is available from CDFW at: When is Notification required? Killing or destroying migratory birds, bird nests, and eggs. Sec. 2081: <ul style="list-style-type: none"> Adverse effects (harm, harassment, injury, mortality) to state-listed species or critical habitats. 	Sec. 1602 Lake and Streambed Alteration Agreement (LSA Agreement) ³ : <ul style="list-style-type: none"> Standard, long-term agreement for construction actions (i.e., long-term LSA Agreement for construction greater than 5 yrs) Routine Maintenance Agreement (RMA) for long-term operations and maintenance actions (potential for 10-15 years coverage for routine maintenance actions)Information on the LSA Agreement process is available at: LSA Agreement FAQs Sec. 2081 Incidental Take Permit (ITP): <ul style="list-style-type: none"> Incidental Take Permit covers potential take of State listed species. 	LSA Agreement: Standard for construction actions: ~6 months RMA: ~6 months Requires CEQA compliance ITP: Standard for construction actions: ~6 months Requires CEQA compliance	If using existing points of diversions (i.e., no new construction), discuss need for LSA Agreement notification with CDFW Region . New projects with construction or earth moving activities within the bed, channel, or bank of any stream/lake will require LSA Agreement notification and CDFW will determine if agreement is needed.

³ LSAA conditions include measures that support MBTA compliance.

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Flowchart No	Agency	Regulations	Trigger	Permit/Approval Options	Acquisition Timeline Estimates ¹	Comments /Recommendations (for future projects)
8	CVFPB/ USACE	California Code of Regulations, Title 23, Waters, Division 1, Article 3, Section 8, Applications, and Section 10, Environmental Review (CEQA Responsible Agency)	Proposed work or uses which encroach into rivers, waterways, and floodways, within and adjacent to federal and State authorized flood control projects, Regulated Streams (CCR Title 23, Waters, Division 1, Table 8.1) and within Designated Floodways (DF's) that have been adopted by the Board. Encroachments include placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment or works of any kind; also including the planting, excavation, or removal of vegetation. CVFPB's jurisdictional area can be viewed at: Central Valley Flood Protection Board's Jurisdictional Area – Best Available Maps – Central Valley Flood Protection Board (ca.gov) More trigger-related information is available at: Frequently Asked Questions – Central Valley Flood Protection Board (ca.gov)	Encroachment Permit	Encroachment Permit 3-5 months Requires CEQA Compliance	Not applicable to projects that use existing facilities (i.e., no new construction or earth moving activities within the SPFC or within a USACE Project levee).
		Section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended, and codified in 33 USC 408 (Section 408)	Proposed work constitutes an "alteration" per the EC-1165-2-220. "USACE project" refers to a USACE federally authorized Civil Works project, including those operated and/or maintained by USACE and those operated and maintained by a nonfederal sponsor. Alterations are any action that builds upon, alters, improves, moves, obstructs, or occupies an existing USACE project. Lists of USACE projects and information on an action's need for a Section 408 permission and the permissions process are available at: Los Angeles District: Corps Projects ; Section 408 Permissions Process San Francisco District: —. Sacramento District: Corps Projects ; Section 408 Permissions Process	Section 408 Permission	USACE 408 Permission 1-2 years Requires NEPA compliance, CWS Section 404, and ESA Section 7 and NHPA Section 106 consultations. NEPA compliance may fall under a Categorical Permission available at: Categorical Permissions	
9	State Water Board	California Water code (Division 2) California Water Code 1242.1 Sustainable Groundwater Management Act	A water right is needed whenever water is diverted from a surface water body (e.g., lake, river, stream, subterranean stream, or artificial channel operating as a natural channel) for a beneficial use. Groundwater recharge application types California Water Code Section 1242.1 states that diversion of flood flows for groundwater recharge shall not require an appropriative water right if all conditions (in Water Code Section 1242.1) are met. Water Code 1242.1	Temporary and Permanent Water Right Petitions	Temporary Water Right – No time (Water Code 1242.1) to 6 months Permanent Water Right – 5-10 years	

ACRONYMS:

CDFW California Department of Fish and Wildlife
CEQA California Environmental Quality Act
CESA California Endangered Species Act
CFVPB Central Valley Flood Protection Board
CWA Clean Water Act
EFH Essential Fish Habitat
FESA Federal Endangered Species Act
FDR Federally Delisted, continued monitoring
FT Federally Listed – Threatened
ITP Incidental take permit
LSA Lake and streambed alteration
MBTA Migratory Bird Treaty Act
MOA Memorandum of Agreement
MSA Magnuson-Stevens Fishery Conservation and Management Act

NEPA National Environmental Protection Act
NHPA National Historic Preservation Act
NMFS National Marine Fisheries Service
NLTA Not Likely to Adversely Affect
NWP Nationwide Permit
PCN Pre-Construction Notification
Reclamation United State Bureau of Reclamation
RGP Regional General Permit
RWQCB Regional Water Quality Control Board
SHPO State Historic Preservation Officer
SWB State Water Board USACE
WDRs Waste Discharge Requirements
WQ Cert Water Quality Certification
USACE U.S. Army Corps of Engineers

SOURCE: ESA, 2023