



KEEPING YOUR HEAD ABOVE WATER

BEST CEQA PRACTICES FOR WATER PROJECTS

ASSOCIATION OF CALIFORNIA WATER AGENCIES
DECEMBER 4, 2024



INTRODUCTION



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COMPREHENSIVE IMPACT ANALYSIS

OBJECTIVES

- ✓ Provide sufficient information for decision makers and public
- ✓ Identify ways to reduce or prevent potential environmental impacts
- ✓ Disclose the reason why a project would be approved, if there are significant environmental impacts
- ✓ Facilitate future discretionary actions by other Responsible/Trustee Agencies

COMPREHENSIVE IMPACT ANALYSIS – CASE STUDY

PROJECT ELEMENTS

- 1) Linear project
- 2) Private party developer
- 3) Granting easement for a small portion of a larger project
- 4) Other discretionary actions within the larger project (e.g., crossing of other utilities)



COMPREHENSIVE IMPACT ANALYSIS – DISCRETIONARY APPROVALS

- Approval for granting of easement
- Approval for encroachment into existing ROW/other utility easement(s)
- Approval for supplying funds to facilitate a project
- Other permitting approvals
 - ❖ CDFW - Lake or Streambed Agreement/Incidental Take Permit
 - ❖ Regional Water Quality Control Board – Clean Water Act
 - ❖ Central Valley Flood Protection Board – Encroachment
 - ❖ State Lands Commission – Land use lease
 - ❖ Caltrans – Encroachment into ROW



COMPREHENSIVE IMPACT ANALYSIS – THE "WHOLE" OF THE ACTION

The lead agency must consider the ***whole of an action***, not simply its constituent parts, when determining whether it will have a significant environmental effect.

The **Lead Agency** is the public agency which has the principal responsibility for carrying out or approving a project (sometimes there could be more than one potential lead agency).

- If the project will be carried out by a public agency, that agency shall be the **Lead Agency** even if the project would be located within the jurisdiction of another public agency (CEQA Guidelines, §15051(a)).
- If the project is to be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the **greatest responsibility** for supervising or approving the project as a whole (CEQA Guidelines, §15051(b)).

COMPREHENSIVE IMPACT ANALYSIS – CONSIDERATION OF THE WHOLE OF THE ACTION

Project, as defined by CEQA Guidelines §15378, is ***the whole of an action***, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect ***physical change in the environment***:

- ***An activity directly undertaken by any public agency*** including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local general plans or elements thereof.
- ***An activity undertaken by a person which is supported in whole or in part*** through public agency contacts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- ***An activity involving the issuance to a person*** of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

COMPREHENSIVE IMPACT ANALYSIS



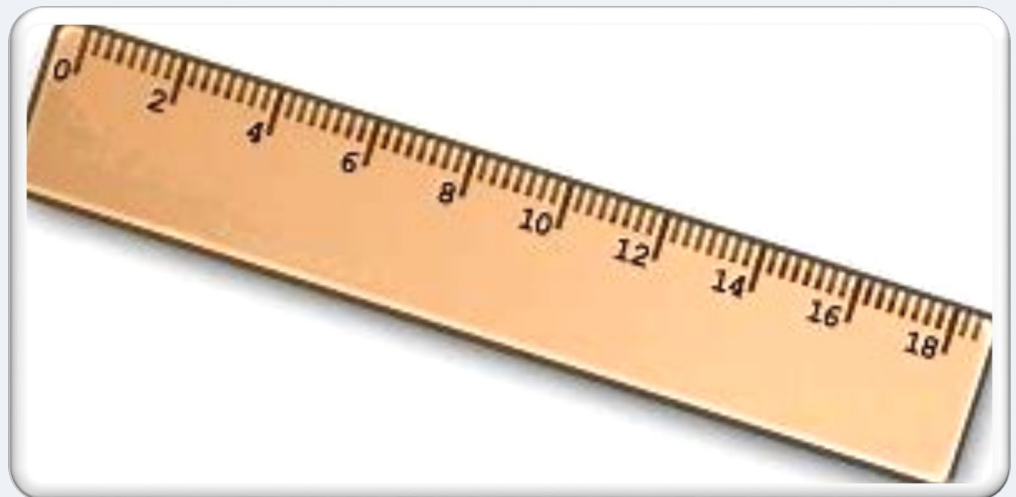
If a discretionary action may culminate in an activity that would subsequently result in changes to the environment, the Lead Agency must:

1. Obtain full information about the whole of the project that your discretionary action will further;
2. Ensure full compliance with CEQA, including identification of project alternatives that may potentially avoid or lessen significant environmental effects.

OBJECTIVES

- ✓ Provide a "starting point" against which the impacts of the project are measured.
- ✓ Identify and isolate the impacts that are caused by or attributable to the project.
- ✓ Identify the scope of appropriate mitigation.

BASELINE



BASELINE – AGING INFRASTRUCTURE CASE STUDY



PROJECT COMPONENTS

- 1) Rehabilitation project for existing Corps of Engineers authorized flood control reservoir
 - north-of-Delta
 - Reconstruction
 - New operations
- 2) Addition of storage
- 3) Local lead agency will issue bonds to finance participation

BASELINE – CASE STUDY

CONTEXT

- 1) Ongoing regulatory updates
 - Water Quality Control Plan update
 - Biological Opinions
 - CESA Incidental Take Permit for SWP
- 2) Climate change seems to be making the system flashier
- 3) Project will capture incidental Delta outflow
- 4) Modeling of Delta conditions usually relies on CALSIM
- 5) Initial Study based on Appendix G of the CEQA Guidelines



BASELINE – CASE STUDY

PROJECT ELEMENTS

- 1) Act of Congress to expand the Corps of Engineers flood control authorization to include storage
- 2) Application for water-right permit
- 3) ESA – Biological Opinion
- 4) CESA – Incidental Take Permit



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115TH CONGRESS
1ST SESSION

H. R. 4586

To provide for the National Academies to study and report on a research agenda to advance the understanding of albedo modification strategies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 7, 2017

Mr. McNERNEY (for himself and Mr. EDDIE BERNICE JOHNSON of Texas) introduced the following bill, which was referred to the Committee on Science, Space, and Technology

A BILL

To provide for the National Academies to study and report on a research agenda to advance the understanding of albedo modification strategies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Geoengineering Re-
5 search Evaluation Act of 2017”.

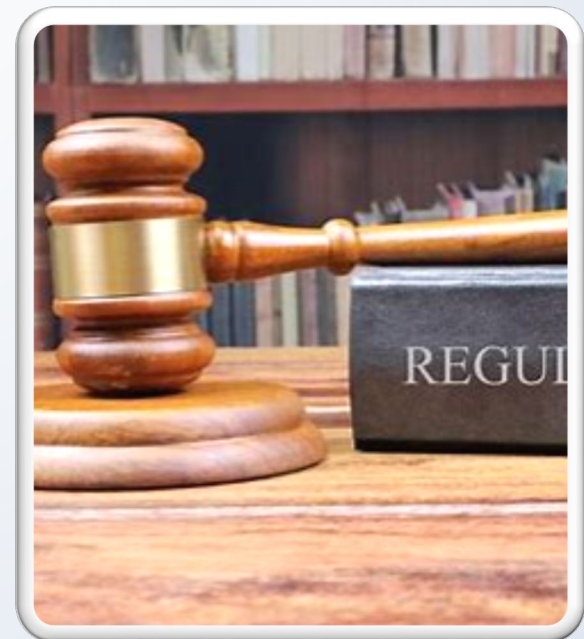
6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Many significant scientific studies have con-
9 cluded that the climate is changing. The Fifth As-

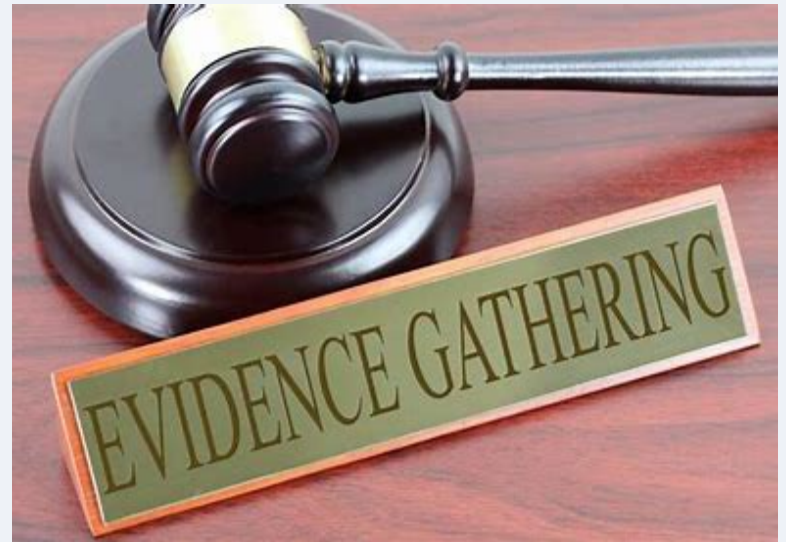
BASELINE – DEFINITION

- Generally, the baseline consists of the **physical environmental conditions** as they exist at the time the Notice of Preparation is published / environmental analysis is commenced. (CEQA Guidelines, § 15125.)
- When existing conditions change or fluctuate over time, and when necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define "existing conditions" by referencing
 - historic conditions,
 - conditions expected when the project becomes operational,
 - both historic and anticipated future conditions, or
 - both existing conditions and projected future conditions that are supported by reliable projections



BASELINE – SUBSTANTIAL EVIDENCE

- Choice of baseline must be supported with substantial evidence:
 - **Facts**
 - **Reasonable assumptions** predicated upon facts, and
 - **Expert opinion supported by facts**
- "Enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384.)



BASELINE – SUBSTANTIAL EVIDENCE

- **Not** Substantial Evidence:
 - argument,
 - speculation,
 - unsubstantiated opinion or narrative,
 - evidence which is clearly erroneous or inaccurate, or
 - evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment



BASELINE V. NO PROJECT/NO ACTION

- No Project is not the same as baseline
- No Project is **what would be reasonably expected to occur in the foreseeable future if the project were not approved**, based on current plans and consistent with available infrastructure and community services. (CEQA Guidelines, § 15126.6.)

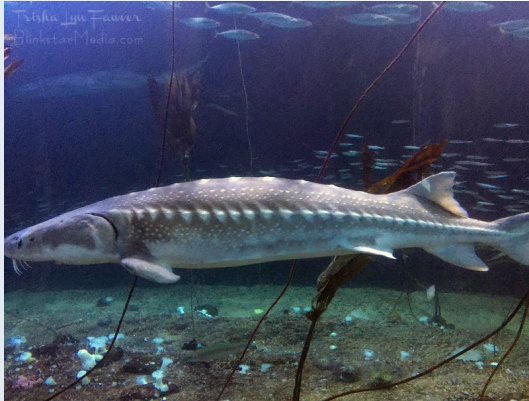


BASELINE V. NO PROJECT/NO ACTION

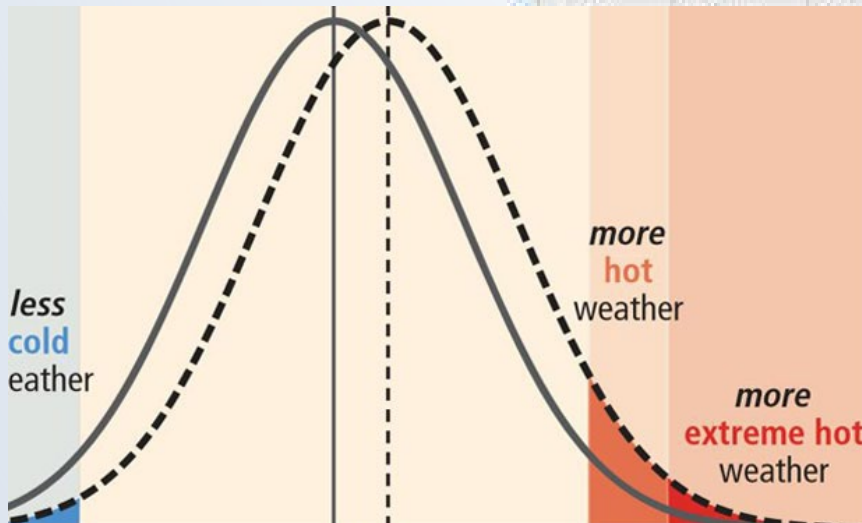
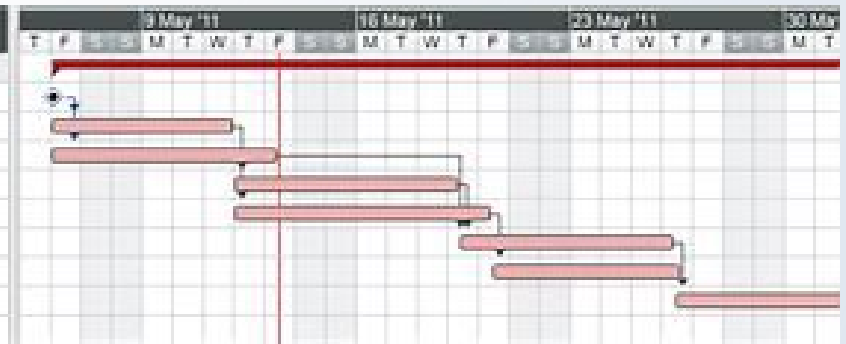
- When the "project" is the revision of an existing plan, policy or ongoing operations, the "no project" alternative will be the continuation of the existing plan, policy or operations.
- For all other projects, the "no project" alternative is what would occur if the project is not approved.
 - May need to identify conditions that would have to occur for the existing physical environment to be preserved.



BASELINE ISSUES



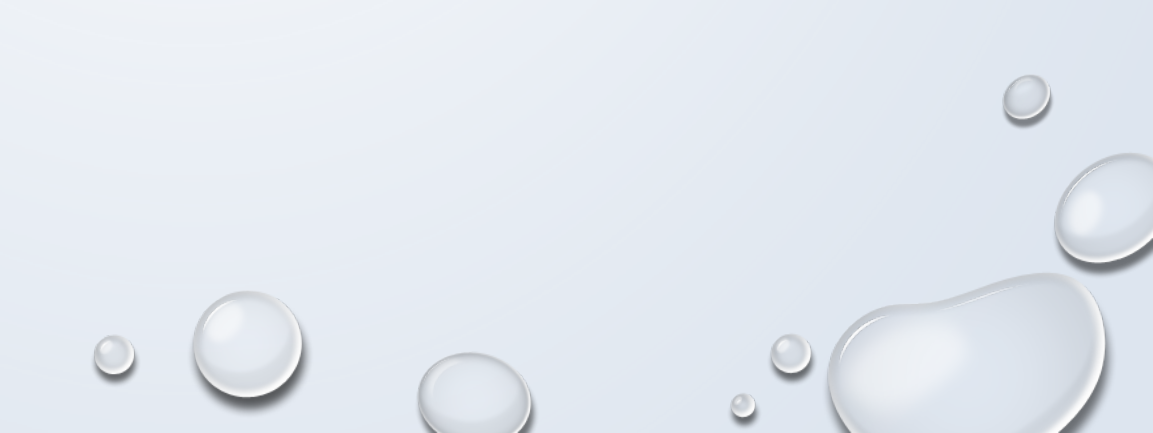
Task Name	Duration	Start
Project	19.47 days	5/6/2011
Start	0 day	5/6/2011
Task A	4 days	5/6/2011
Task B	6.3 days	5/6/2011
Task C	6.16 days	5/12/2011
Task D	6.32 days	5/12/2011
Task E	6.16 days	5/19/2011





MAXIMIZING UTILITY OF CEQA DOCUMENTS FOR LONG-TERM PROJECTS

OBJECTIVES

- ✓ Provide sufficient information for decisionmakers and public
 - ✓ Presented in manner reasonably calculated to inform
 - ✓ Simplify later environmental review for multiple and/or phased projects
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MAXIMIZING UTILITY OF CEQA DOCUMENTS – CASE STUDY

PROJECT ELEMENTS

- 1) Shifting diversions to existing upstream diversion
- 2) Near term construction:
 - A. Improvements to existing upstream diversion
 - B. Infiltration basin for groundwater recharge
- 3) Future projects:
 - A. Groundwater well(s) for recovery of stored water
 - B. Water treatment plant
 - C. Distribution facilities



MAXIMIZING UTILITY OF CEQA DOCUMENTS – DISCRETIONARY APPROVALS

- 1) Approval of project (Water District as CEQA lead agency)
- 2) Water Right Change Petition (SWRCB)
 - 1) Change in point of diversion
 - 2) Groundwater storage supplement
- 3) Lake and Streambed Alteration Agreement(s)
 - 1) For modifications to existing diversion structure and operation (permitted diversion of water) (CDFW).
- 4) Grading and well permits (County)
- 5) Addition of new municipal well(s) to District public water system permit (DDW or County)

MAXIMIZING UTILITY OF CEQA DOCUMENTS – STREAMLINING/TIERING

- Using the EIR for future projects: within the scope analyses; addenda; subsequent negative or mitigated negative declarations.
- Staged environmental analysis for long term multiphase project: overall impacts analyzed in first tier EIR don't need to be reevaluated in approvals for subsequent narrower phases. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 429
 - But, not enough to say information will be provided in the future. *Vineyard*, 40 Cal.4th at 431.
- First tier may be followed by EIR for site specific EIR or MND for specific projects. (Pub. Resources code, §21094(a); CEQA Guidelines, §15152(b); §15385(a).)

MAXIMIZING UTILITY OF CEQA DOCUMENTS – STREAMLINING/TIERING

- **Cannot defer:** analysis of reasonably foreseeable significant impacts . (CEQA Guidelines, §15152(b).)
 - Reasonably foreseeable consequences must be analyzed if agency has “sufficient reliable data to permit preparation of a meaningful and accurate report”. (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1028; *Vineyard*, 40 Cal.4th at 431.)
- **May defer:** detailed analysis of impacts not foreseeable at time first tier EIR is prepared.

MAXIMIZING UTILITY OF CEQA DOCUMENTS – CERTAINTY V. SPECULATION

CEQA Principles:

- Forecasting: agency must make good faith effort to find out and disclose all it reasonably can (CEQA Guidelines, §15143)
- Speculation not required (CEQA Guidelines, §15145)

Strategies:

- Information from similar projects
- Mitigation measures applicable to future activities (e.g., construction impacts)
- Rely on General Plan EIR for growth inducing impacts

MAXIMIZING UTILITY OF CEQA DOCUMENTS – TYPE OF DOCUMENT

Presentation of Information

- Utility for public/decisionmakers and use in future approvals
- Agency discretion to determine form of EIR
- Staged EIR (CEQA Guidelines, §15167)
- Program EIR (CEQA Guidelines, §15168)
- Single EIR v. multiple volumes

MAXIMIZING UTILITY OF CEQA DOCUMENTS – FUTURE PHASES

- Later project consistent with program evaluated in the EIR?
- No changes or new information necessitating a subsequent or supplemental EIR? (Pub. Resources Code, §21166; §21094(b)(3).)
- Significant impact that have been “adequately addressed” need no further review if they were either:
 1. Mitigated or avoid through prior EIR findings; OR
 2. Examined in sufficient detail in prior EIR to be mitigated or avoided through project revisions, conditions or other means when later project is approved. (Pub. Resources Code, §21094(a)(1); CEQA Guidelines, §15152(f)(3))

MAXIMIZING UTILITY OF CEQA DOCUMENTS – PROCESS

- Analyze whether later project may cause significant impacts not examined in prior EIR. (Pub. Resources Code, §21094(c); CEQA Guidelines, §§15162, 15168.)
- “Within the Scope” analysis & determination
 - Factual question based on substantial evidence
 - Document through written checklist (CEQA Guidelines, §15168(c)(4).)
- Addendum: minor changes or clarifications to EIR (CEQA Guidelines, §15064.)
- Initial study if effects not considered in program EIR (CEQA Guidelines, §15168(c)(1).)
- Later EIR or MND must (Pub. Resources Code, §21094(f).)
 - Identify prior EIR,
 - State it is relying on tiering procedure and that is being tiered with earlier EIR;
 - State where copy of prior EIR may be reviewed.



QUESTIONS?