

RESERVOIR COMMITTEE AGENDA ITEM 5.1

FEBRUARY 2020

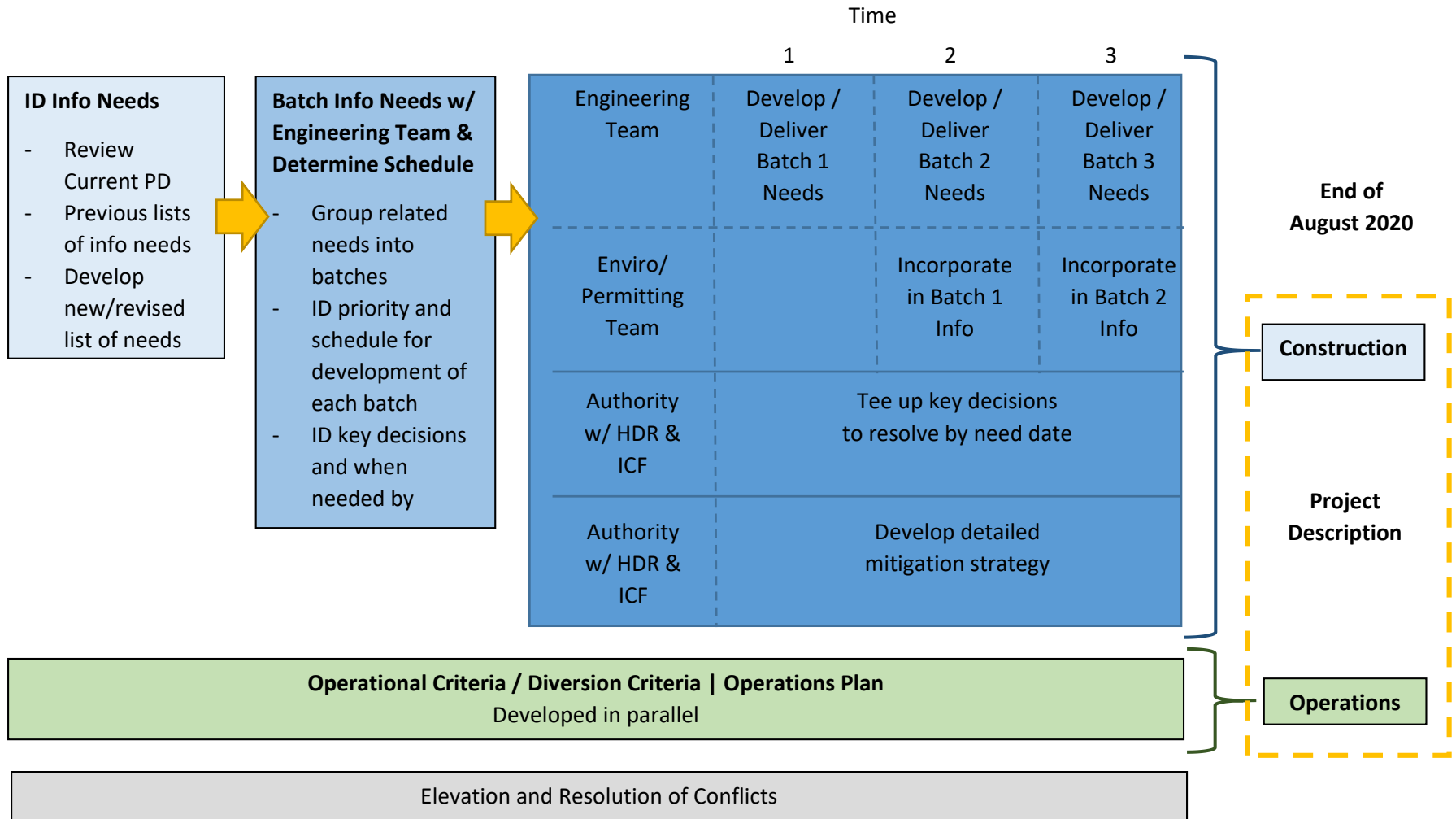


Requested Action

Approve recommendation to the Sites Authority to:

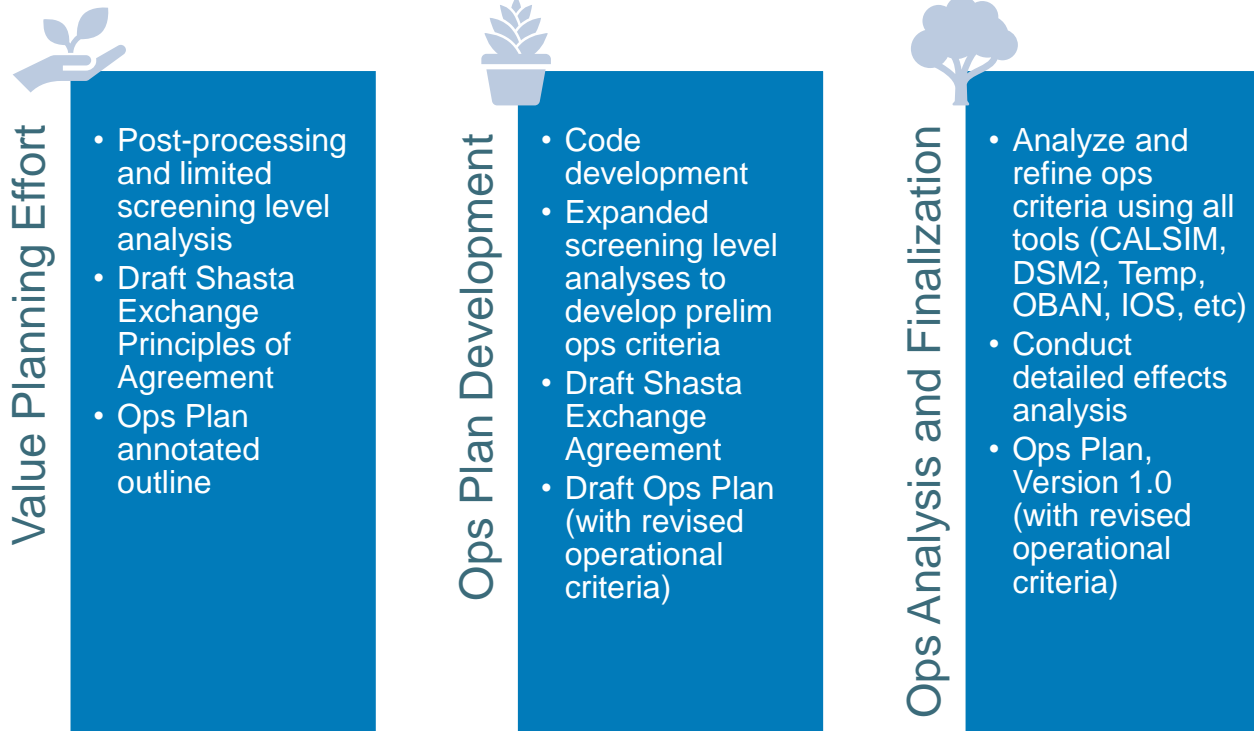
1. Re-start efforts on the Environmental Impact Report (EIR)
2. Determine the most appropriate approach for completing the EIR
 - Final EIR
 - Partial recirculation
 - Full recirculation
3. Continue working with the Bureau of Reclamation on their Environmental Impact Statement (EIS), presumably as a joint EIR/EIS document

Project Approach: Restart Approach



Project Approach: Operations Criteria

- Developed in parallel to “construction” project description
- Need to ID specific steps, but generally as follows



Restarting Environmental Work: Planning

- Options to move the CEQA/NEPA process forward include:
 - Preparation of the Final EIR/EIS
 - Partial Recirculation of the Draft EIR/EIS
 - Full Recirculation of the Draft EIR/EIS

Restarting Environmental Work: Planning (cont)

CEQA Standards for Recirculation – Pub. Res. Code § 21092.1 & CEQA Guidelines § 15088.5

- A lead agency is required to recirculate if “significant new information” is added after publication of the Draft EIR.
- “Significant new information” is defined as information showing any of the following:
 - A new significant impact resulting from the project or from a mitigation measure
 - A substantial increase in the severity of a previously identified significant impact resulting from the project or from a mitigation measure
 - A feasible project alternative or mitigation measure considerably different from others previously analyzed would lessen the project’s impacts, but the project proponents decline to adopt it
 - The Draft EIR “is so fundamentally flawed and basically inadequate and conclusory in nature that meaningful public review and comment were precluded”
- Recirculation is “not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR”

Restarting Environmental Work: Planning (cont)

CEQA Recirculation – Examples from Case Law

- Change in project footprint that has the potential to create new impacts
E.g., Residents Against Specific Plan 380 v. County of Riverside, 9 Cal. App. 5th 941 (2017): Recirculation not required where project revisions would not change project footprint or increase any of the project's impacts
- Significant project design changes, even where impacts are found to be less than significant
Spring Valley Lake Ass'n v. City of Victorville, 248 Cal. App. 4th 91 (2016): Complete redesign of project stormwater management plan triggered recirculation, even though resulting impacts were found to be insignificant and even beneficial, since the public did not have an opportunity to review the redesign and provide comments.

Restarting Environmental Work: Planning (cont)

CEQA Recirculation – Examples from Case Law (cont.)

- Failure to evaluate a potentially significant impact in the Draft EIR
Spring Valley Lake Ass'n v. City of Victorville, 248 Cal. App. 4th 91 (2016): Recirculation required where Draft EIR omitted discussion of applicable air quality policies and implementation measures.

Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova, 40 Cal. 4th 412 (2007): Recirculation required where Draft EIR did not discuss impact of groundwater extraction on salmon; Final EIR found the impact would be insignificant, but there was information suggesting this finding might not apply during periods of low water flows.
- Changes in mitigation measures that may create new impacts or that are not shown to be feasible
Gray v. County of Madera, 167 Cal. App. 4th 1099 (2008): Recirculation required where revised mitigation measure to address water supply impacts could create new impacts that were not previously evaluated, and where the revised mitigation was not shown to be a feasible way to reduce the water supply impacts.

Restarting Environmental Work: Planning (cont)

Partial vs. Complete Recirculation

- Recirculation may be partial – limited to revised portions of Draft EIR
 - Lead agency need not respond to comments submitted on unrevised portions of original draft
 - Lead agency may limit future comments to the revised portions
But as a practical matter, all comments submitted prior to project approval are part of the administrative record in litigation
- Complete recirculation
 - Lead agency need not respond to comments on original draft
 - Provides an opportunity to improve the EIR

Restarting Environmental Work: Planning (cont)

Coordination with Reclamation Necessary to Complete NEPA

NEPA “Recirculation” (Supplementation of Draft EIS) – 40 C.F.R. § 1502.9(c)

- Supplementation of Draft EIS required for:
 - Substantial changes in the proposed action that are relevant to environmental concerns
 - Significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts
- NEPA guidance recommends supplementation if there is a new alternative that is not within the spectrum of alternatives studied in the Draft EIS
 - *This could be an important consideration for any alternatives that involve more than a “minor variation” of an alternative studied in the Draft EIR/EIS*

Restarting Environmental Work: Planning (cont)

Table 1 in Staff Report 6.2 –
Range of Options to Finalize the EIR as a Joint
Document with Reclamation

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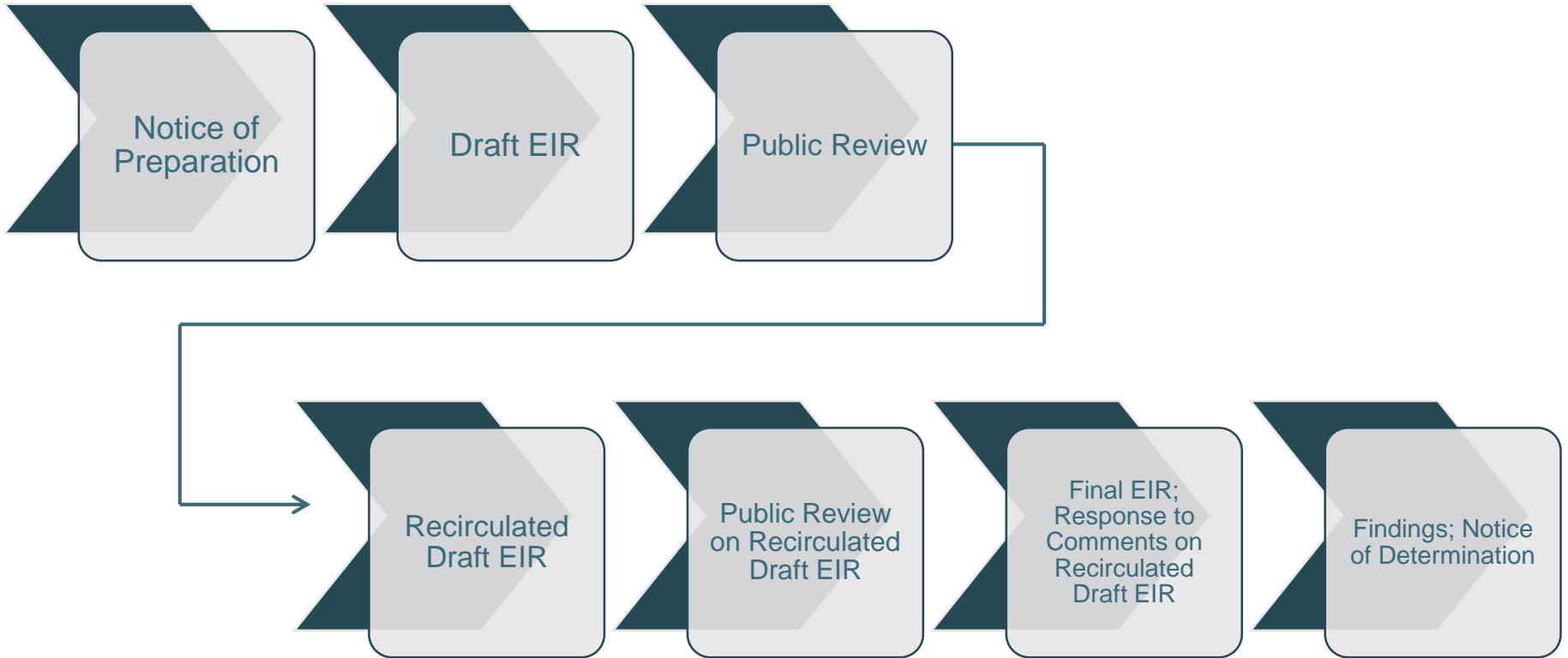
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Backup Slides

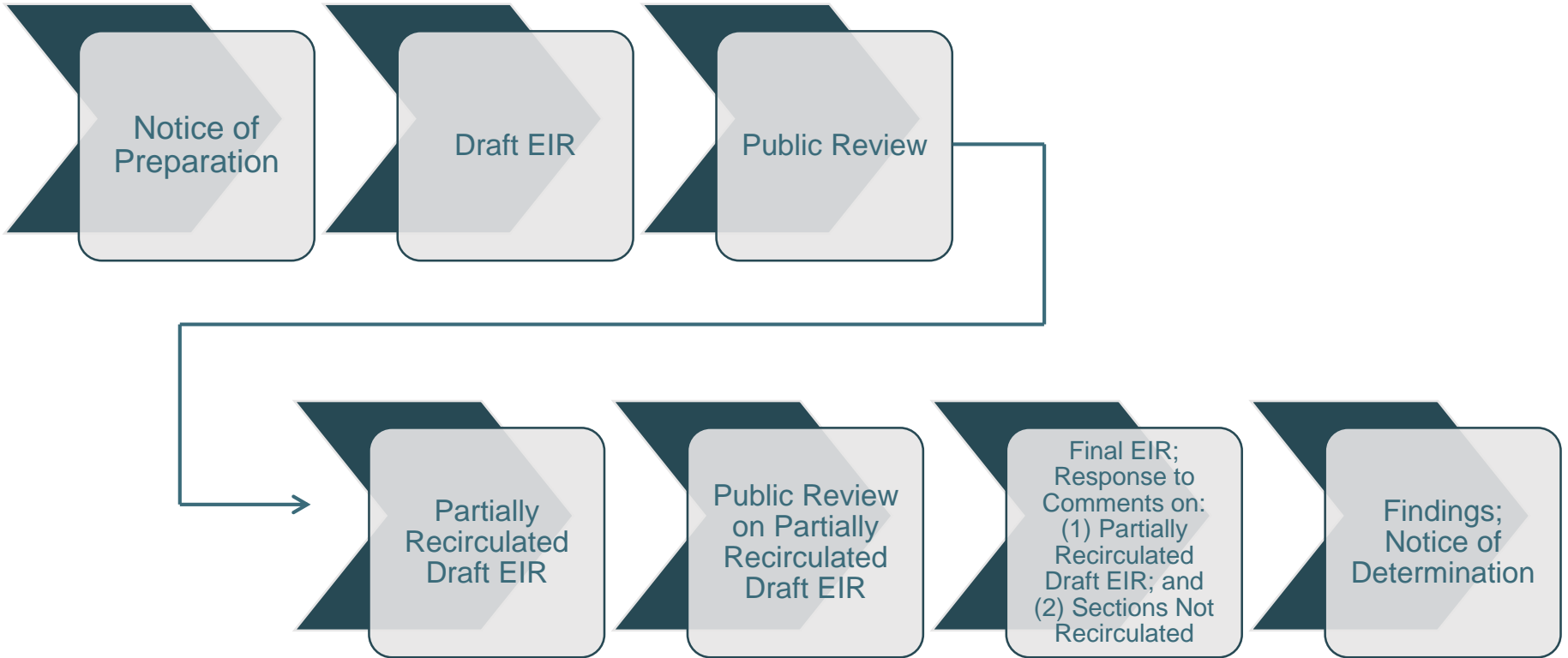
CEQA Process



CEQA Process – Full Recirculation



CEQA Process – Partial Recirculation



Restarting Environmental Work: Permitting 2020-21

- Section 7 ESA (Biological Assessment)
 - Why Important Now – Potential to affect reservoir yield and necessary for Reclamation to sign Record of Decision (ROD)
 - Approach:
 - Develop analysis and effects for new alternative
 - Reclamation submits BA to initiate consultation
- 2081 ITP Application (CESA)
 - Why Important Now – Potential to affect reservoir yield
 - Approach:
 - Develop analysis and effects for ITP application packet
 - Develop proposed mitigation
 - Submit application packet
- Section 106 (NHPA)
 - Why Important Now – Necessary for Reclamation to sign ROD
 - Approach:
 - Collaborate with Reclamation and Army Corps on Programmatic Agreement (PA)
 - Coordination with Tribes (Federal to Federal)
 - Draft and Final PA
 - Final PA signed by signatory parties

Restarting Environmental Work: Permitting 2020-21 (cont)

- Water Right Application
 - Why Important Now – Potential to affect reservoir yield
 - Approach:
 - Prepare required technical analyses
 - Prepare and submit application
- USACE Authorizations 404/408 Coordination
 - Why Important Now – Ensure Corps can use EIS under preparation for 404/408 actions
 - Approach:
 - Cooperating Agency Agreement between Corps and Reclamation for EIS, PA, BA and respective agency responsibilities
 - Confirm approach for alternatives analysis (Least Environmentally Damaging Practicable Alternative [LEDPA])
 - Incorporate LEDPA into EIS (note, assumes recirculation)
- Geotechnical Analysis
 - Identify and permit next phase of Geotech
 - Complete commitments and requirements in any permits / approvals