



Topic: **Authority Board Meeting Agenda Item 3.2**

August 25, 2021

Subject: **Update on Amendment 2 Permitting Activities**

Requested Action:

Receive an update on status of permitting activities as compared against the Amendment 2 Work Plan approved in February 2021.

Detailed Description/Background:

Securing the agreements and permits necessary to build and operate the Sites Reservoir Project was identified as a key goal in the Authority's Strategic Plan. In building upon this goal, the Amendment 2 Work Plan identified five key deliverables related to permitting. These five key deliverables are as follows:

1. Water Right Application
2. Biological Assessment
3. Section 106 Programmatic Agreement
4. Incidental Take Permits (ITPs) – Section 2081 Permit Applications
5. Clean Water Act 404/401 Applications

All of these deliverables are expected to be completed late in the calendar year. As the Reservoir Committee and Authority Board consider Amendment 3 and moving forward with the Project, staff wanted to provide an update on the status of these deliverables.

Water Right Application (ON TRACK)

The team has largely completed the key parameters for the water right application, including determining the place of use, purpose of use, points of diversion, points of rediversion, storage amount, and season of storage. The team has also developed a workable file to draft and review the application prior to submitting it on the State Water Resources Control Board's (State Board's) new online application portal. The team have been conducting monthly coordination meetings with State Board staff since early this calendar year to coordinate on a number of items related to the application approach. The team has also begun development of the Water Availability Analysis, including developing and discussing an approach with State Board staff. Data collection and analysis for the Water Availability Analysis is underway. Coordination with other water rights holders will continue with the primary focus on DWR and Reclamation. Submittal of the water right application remains on track for December 2021 and no major issues have been identified that would delay the planned submittal of the application.

Biological Assessment (POTENTIALLY DELAYED)

The team has prepared an administrative draft Biological Assessment (Admin Draft BA). The Admin Draft BA is currently under review by Authority staff, consultant team as part of an independent review process, and Authority legal counsel along with review by Reclamation. Comments on the Admin Draft BA are expected later this month at which time the team will make revisions and circulate a Revised Admin Draft BA for review by the National Marine Fisheries Service. The Authority and Reclamation continue to discuss how operations will be addressed under the Endangered Species Act. This issue is expected to be resolved by September 1. No technical issues have been identified that would delay the planned November 2021 submittal of the Biological Assessment to the U.S. Fish and Wildlife Service and NMFS. The uncertainty around Reclamation's involvement is an issue that could result in delays in achieving the November 2021 submittal timeline if not resolved in a timely manner. In addition, reflecting changes being made to Chapter 11 of the RDEIR/SDEIS into the Admin Draft Biological Opinion may also result in delays in achieving the November 2021 submittal timeline.

Section 106 Programmatic Agreement (ON TRACK)

In working with Reclamation, the team has identified a Programmatic Agreement as the appropriate approach to compliance with Section 106 of the National Historic Preservation Act. Reclamation sent consultation letters to the potentially affected Native American Tribes on April 5, 2021. No responses have been received from Tribes under Section 106 to date¹. Reclamation also sent a Section 106 initiation package to the State Historic Preservation Officer (SHPO) on June 3, 2021. SHPO responded on July 20, 2021 that a Programmatic Agreement was the appropriate mechanism for Section 106 consultation. The team (including Reclamation staff) is preparing a draft Programmatic Agreement for review by consulting parties. The team have been conducting biweekly coordination meetings with Reclamation and the U.S. Army Corps of Engineers (USACE) since early this calendar year to coordinate on the Section 106 approach and prepare the Programmatic Agreement. The Final Programmatic Agreement remains on track for December 2021, with Reclamation's signature on the document near the time of the signing of the Record of Decision for the Final Environmental Impact Report / Environmental Impact Statement (EIR/EIS). No major issues have been identified that would delay the finalization of the Programmatic Agreement in December 2021.

ITP – Section 2081 Permit Applications (ON TRACK)

The team is preparing administrative drafts of the ITP applications (Admin Draft ITP Applications). There will be one ITP application for construction and one for operations and maintenance. Admin Draft ITP Applications are expected from ICF in September and will be reviewed by the Authority staff, consultant teams, and Authority Legal Counsel. The team has re-initiated coordination meetings with California Department of Fish and Wildlife (CDFW) staff for both the construction

¹ Responses have been received from Tribes under the Authority's AB 52 process.

and operations ITP applications. Submittal of the ITP applications remains on track for December 2021 and no major issues have been identified that would delay the planned submittal of the applications.

Clean Water Act 404/401 Applications (ON TRACK)

The team is also preparing administrative drafts of the Clean Water Act Section 404 and 401 application packages. The team has prepared and provided a draft wetland delineation to the USACE and the State Board. The USACE and State Board are expected to provide comments on the wetland delineation to the Authority in September. The team has also prepared an administrative draft 404(b)(1) Analysis Memorandum and is currently reviewing that memorandum internally. Monthly coordination meetings with the USACE, State Board, and Regional Water Quality Control Board were initiated early this calendar year and are ongoing. Administrative drafts of the respective permit applications are also under preparation. In discussions with the State Board staff, the State Board will need the Final EIR and associated CEQA findings to issue a 401 Permit for the Project. Under new guidelines and recent court decisions, the State Board must act on the 401 Application within 1 year of submittal of the application. Therefore, the team has agreed to provide the State Board a draft 401 Application this December and submit the final application with the issuance of the Final EIR/EIS. As the USACE cannot issue a 404 Permit until the 401 Permit is completed, staff will also provide the USACE a draft permit application in December and a final with issuance of the Final EIS. Submittal of the draft applications remains on track for December 2021 and no major issues have been identified that would delay the planned submittal of the applications.

It is important to note that the U.S. Environmental Protection Agency (USEPA) and USACE jointly announced earlier this year that changes will be made to the Clean Water Act 404 implementing regulations. The team has been working with the Authority's Legal Counsel on how best to approach the development of the applications in light of these future changes. Changes to the approach and application may be necessary if the regulations are changed prior to submittal of the final application packages. Staff is also discussing the Clean Water Act approach with Reclamation, the Tehama-Colusa Canal Authority, and the Glenn Colusa Irrigation District as the owner and operators of some of the Project facilities.

Prior Action: None.

Fiscal Impact/Funding Source:

The permitting activities are tracking within the budgeted funds for this task within the Amendment 2 Work Plan.

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Attachments: None