



Meeting: **Joint Reservoir Committee & Authority Board**
Agenda Item 2.13

December 17, 2021

Subject: **State ITP Construction Permit**

Requested Action:

Authorize the Executive Director to submit the California Endangered Species Act's (CESA) Construction Incidental Take Permit (ITP) Application to the California Department of Fish and Wildlife (CDFW).

Detailed Description/Background:

Staff is completing the development of the Construction ITP application. This is the last of a series of briefings and includes a discussion of the proposed mitigations identified in the application and the proposed funding assuring the implementation and long-term management of the Project's mitigation lands and/or sites pursuant to the Project's Construction ITP. This proposal is consistent with what is shown in the RDEIR/SDEIS and will be adjusted for any changes made in the Final EIR/EIS.

Authorization to submit the Construction ITP application to CDFW is being requested to facilitate early release of the permit and eliminate one of several constraints to starting construction.

Mitigation, Cost Estimates and Assurances Funding

Approach and Scope of Mitigation

In issuing an ITP, CDFW requires that the impacts of the authorized take are minimized and fully mitigated, and that the applicant "ensure adequate funding to implement the measures required ... and for monitoring compliance with, and effectiveness of, those measures" (Fish & Game Code Section 2081(b)(4)). The Authority is obligated to provide the mitigation and financial assurances for both (1) implementation and establishment of compensatory mitigation to account for the timing of the impacts relative to the implementation of the mitigation and (2) long-term management of all proposed mitigation typically provided in the form of an endowment, although as a public agency there may be means to address this without dedicating a large sum of money in a reserve account.

The proposed mitigation plan is customary and standard for the industry and uses common and standard ratios for the compensatory mitigation and estimate for financial assurance. Compensatory mitigation is planned to be accomplished by procurement of existing off-site occupied habitat acquired in-fee, acquisition

of conservation easements, or by purchasing credits from a certified conservation bank or mitigation bank. Mitigation within the Project Area would be done on an opportunistic basis but is anticipated to be limited due to most Project lands being used for other Project purposes. Also, contiguous mitigation has a higher value than bits and pieces scattered around a large area.

Updated Construction ITP Mitigation Cost Estimate

The cost estimate to implement the mitigation identified in the Construction ITP application for permanent impacts to the three covered species, Swainson's hawk, tricolored blackbird, and giant garter snake, has been prepared.

Total present value cost to implement the measures in the Construction ITP Application is approximately \$128,047,000 in 2021 dollars. Costs were estimated for the anticipated 10-year term of the permit. Costs were estimated based largely on the detailed cost estimate of relevant conservation measures. Costs of all mitigation measures for the permanent impacts to the three species covered in the application are included. Financial assurances and endowment costs are above and beyond these costs. Costs to implement mitigation measures for resource impacts other than the three species covered in the application are excluded from this estimate. For example, costs to implement the remainder of the terrestrial species impacts in the RDEIR/SDEIS are not included in the ITP Construction cost estimate. The Construction ITP application does not change or affect mitigation obligations outside of those identified for the three species covered in the application.

The cost estimate for implementing the measures in the Construction ITP Application is different than the June 2021 mitigation cost estimate for the specific species covered in the application. The differences to the updated costs are primarily due to the following:

- June 2021 estimate assumed that mitigation can be combined, or "stacked" between species. This accounts for about \$40,761,000 of the difference. The ITP application also assumes that mitigation can be stacked. However, CDFW request that stacking not be assumed in the cost estimate to represent a worst-case (more conservative) scenario cost as the cost estimate in the ITP Application represents the basis of costs for the financial assurances. Not including stacking in the ITP application cost estimate results in a higher financial assurance amount and represents a more conservative cost approach for the financial assurance from CDFW's perspective.
- June 2021 estimate did not include management and monitoring of about \$11,641,000. The management and monitoring post mitigation acquisition are included in the Project operations and management

costs. For the purposes completeness all 10 year cost of mitigation, these are included in the Construction ITP cost estimate.

- The remainder of the difference is in the Mitigation banking costs for Swainson's hawk foraging habitat was increased for this estimate based on recent feedback from a mitigation banking firm.

As reported by Staff in the November 2021 Authority Board and Reservoir Committee meetings, the Project's effects to these species and their habitat, as well as the corresponding compensatory mitigation are conservatively estimated due to lack of site access to perform species-specific presence/absence surveys. Prior to implementing any compensatory mitigation, focused biological and botanical surveys will be conducted, and the results used to refine the Project's effects and compensatory mitigation requirements within the Construction ITP.

Phasing Provisions

Prior to initiating ground-disturbing activities under the Construction ITP, the Authority would enter into a Memorandum of Agreement (MOA) with CDFW to specify the mechanism(s) by which appropriate financial assurances will be provided for coverage of all costs associated with the CESA mitigation. The MOA will include a mitigation phasing plan that aligns with the anticipated phasing of construction.

Construction ITP Financial Assurances

The funding assuring the implementation of the Project's mitigation lands and/or sites pursuant to the Project's ITP permit and authorizations is anticipated to be secured via a Letter of Credit (LOC), or equivalent that the Authority will provide to CDFW. The Authority is proposing that the LOC be provided no later than 12 months after the issuance of the Project's water right permit and prior to initiating ground-disturbing activities under the Construction ITP, whichever comes first. The long-term financial assurance will be similarly proposed as LOC but it will be noted the Authority will be seeking legislative authority or other means to assure these costs in a manner appropriate for a public agency which other large projects are pursuing as well.

Request for Authorization to Release

Staff is completing the final revisions to the Construction ITP application packet. Staff is recommending that the Reservoir Committee and Authority Board authorize the Executive Director to submit the Construction ITP Application to the CDFW once completed. The application is expected to be completed and ready to submit later this month.

Prior Authority Board Action:

None.

Fiscal Impact/Funding Source:

The estimated cost associated with mitigation required to meet the State's requirement to "fully mitigate" the Project's construction effects to State-listed species included in the Construction ITP is \$128,047,000 in 2021 dollars. Although this amount is different than the June 2021 mitigation cost estimate for the same species, staff will work to stack and implement mitigation such that overall Project costs are not expected to increase. This cost will also be refined during the permitting process as species-specific presence/absence surveys are performed.

Staff Contact:

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Primary Service Provider:

ICF

Attachments:

None