

Requested Action:

Consider Authorizing the Executive Director to (1) submit the Biological Assessment to Reclamation for consultation under the Federal Endangered Species Act (ESA) covering construction and operations and (2) submit the Operations Incidental Take Permit (ITP) application to the California Department of Fish and Wildlife (CDFW) and pay the associated application fee.

Detailed Description/Background:

The Project team is in the final phases of preparing the Biological Assessment in coordination with Reclamation, and once complete, Reclamation will review, finalize, and submit the Biological Assessment to the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). The federal agencies will review the Biological Assessment, including the analysis in the document, and are anticipated to issue separate Biological Opinions and Incidental Take Statements for the Project. Under statute, the federal agencies have 135 days after determining the Biological Assessment complete to issue a Biological Opinion.

The Project team is also nearing completion of the Operations Incidental Take Permit application. The Authority will finalize and submit the application to the California Department of Fish and Wildlife (CDFW).

The proposed action before the Board is to authorize submittal of the Biological Assessment and the Operations ITP application. A separate action will be sought later to authorize accepting the final permits.

These actions have scheduling significance as these are two of the critical approvals/permits that the Reservoir Committee and Authority Board have indicated are necessary to have in hand prior to initiating Phase 3. By making these submissions, the process of permit acquisition is initiated. These permits will also serve to inform the State Board's water right process.

Key Elements of the Biological Assessment and Operations ITP Application

The key elements of the Biological Assessment and Operations ITP application include the following:

- Species Requiring Take – State-listed species that are included in the Operations ITP which take will be requested for include winter and spring-run Chinook salmon, delta smelt, and longfin smelt. Federally listed species included in the operational analysis of the Biological Assessment that would require take authorization include Spring-run Chinook, Winter-run Chinook, Delta smelt, Central Valley Steelhead, Green sturgeon. Longfin smelt, a federal candidate for listing, is also included.
- Adaptive Management Program (AMP) – An AMP will be included to validate modeling results and effects analyses. The AMP creates a framework and process for addressing uncertainty associated with current scientific understanding of the needs of listed species and effects of construction and operations of the Project. The AMP will be part of the permit packages and will be included in the consultation negotiations and discussions associated with them; revisions to the methods identified in the proposed AMP could result from these agency discussions. Any revisions to the proposed AMP that can significantly affect average annual supplies and/or cost will be brought back to the Board for consideration. The results from AMP activities and studies arrive at during actual operations will be used in conjunction with existing and new aquatic monitoring to inform real-time Project operations and adjustments or refinements in Project operations for the protection of fish species. These adjustments would be mutually agreed upon by the Authority and the respective fishery agency.
- Conservation Measures and Compensatory Mitigation – The Project will implement several conservation measures to avoid and reduce potential take of listed species as well as implement compensatory mitigation to offset the Project’s direct and indirect effects to state and federally listed species. Compensatory mitigation will be primarily accomplished by procurement, restoration and/or enhancement of existing off-site aquatic/riverine habitat or by purchasing credits from a certified conservation bank or mitigation bank. The Authority intends to stack aquatic mitigation to the extent possible. For example, the Authority intends to mitigate for all similar aquatic/riverine effects under ESA and CESA in the same way.
- Term and Conditions for Making Changes – The Authority anticipates that the Biological Opinions would be subject to standard reconsultation terms authorized by law, such as the amount or extent of incidental take is exceeded, new information reveals effects of the project that may affect listed species or critical habitat, and similar. Changes to the Biological Opinions would be mutually agreed by the respective fishery agency, Reclamation and the Authority (working through Reclamation). The Operations ITP application will request an initial 10-year term with a 10-

year extension. This term begins at permit acceptance. Any changes to the Operations ITP would be mutually agreed to by CDFW and the Authority.

Addressing Uncertainty with CVP and SWP Operations Reconsultation

At the same time that the Sites Project is seeking consultation for its operations, the state and federal projects are in re-consultation on their operations. The Project team is actively engaged with Reclamation and the resource agencies to identify an appropriate approach and timing for these activities to occur concurrently. The outcome of these discussions is likely to impact the Project schedule and the scope of the consultation. Staff will come back to the Board with further information once a mutually agreeable approach is reached.

The Environmental Planning and Permitting Workgroup concurred with this request and requested that the workgroup be briefed on the AMP prior to document submittal. This briefing is planned for the August Workgroup meeting.

The Biological Assessment and Operations ITP application are expected to be completed and ready to submit in October 2022. Should any substantive changes in the analyses or effects outlined in this and previous reports change, staff will bring this item back to the Reservoir Committee and Authority Board for review.

Prior Action:

June 2022: Received an update on the status of the Federal Endangered Species Act Biological Assessment and California Endangered Species Act’s Incidental Take Permit Application for the Project’s operational components.

Fiscal Impact/Funding Source:

Efforts to prepare the application and work with the agencies to receive the Biological Opinion and Operations ITP are covered in the Amendment 3 Work Plan. The mitigation ratios proposed in the application will be within parameters previously discussed with the Board. As staff continues to work with the agencies and formulate the specific mitigation packages, staff will seek Board direction on any significant adjustments proposed by the resource agencies.

Staff Contact:

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Primary Service Provider:

ICF, Jacobs and HDR

Attachments:

None