



Meeting: **Joint Reservoir Committee & Authority Board**      **September 16, 2022**  
**Agenda 3.2**

Subject: **Biological Assessment (BA) and State Incidental Take Permit (ITP)**  
**Applications**

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**Requested Action:**

Receive an update on the Federal Biological Assessment and State Incidental Take Permit applications.

**Detailed Description/Background:**

The Reservoir Committee and Authority Board authorized the submittal of the Biological Assessment and Operations ITP application at their July 2022 meeting and the submittal of the Construction ITP application at their December 2021 meeting. This staff report provides an update on these critical permitting and approval activities.

**Biological Assessment**

Staff has been working with the Bureau of Reclamation (Reclamation) on review of the Draft Biological Assessment as they are the Section 7 consultation lead for construction and operations. As part of this effort and in consideration of the ongoing reconsultation on the Central Valley Project (CVP) and State Water Project (SWP), the Authority expects to take a mixed programmatic approach to the Sites Project Biological Assessment. This mixed programmatic approach would address Sites Project operations that are independent of the CVP and SWP operations at a project level of analysis. It is expected that an incidental take statement would be issued for these independent actions. Construction actions would also be covered at a project level of analysis in the Biological Assessment and also expected that an incidental take statement would be issued for construction actions. Actions that are dependent on the CVP and SWP operations would be covered at a programmatic level and no incidental take statement would be issued. For the actions covered at a programmatic level, additional consultation will be necessary once the reconsultation on the CVP and SWP operations is completed. Some mitigation actions and adaptive management actions are also expected to be covered at a programmatic level.

Staff is currently reviewing the Draft Biological Assessment and working with Reclamation and the federal resource agencies on the mixed programmatic approach. Currently, staff expects the Biological Assessment to be completed and Reclamation to submit it to the federal resource agencies in the November timeframe.

## **Operations ITP Application**

The consultant team has continued to develop the Administrative Draft Operations ITP application and staff expects this shortly to begin review. As there is no mixed programmatic approach under State law, the Operations ITP application is expected to cover all Sites Project activities at a project level of analysis. Once the CVP and SWP reconsultation efforts are completed, staff and the California Department of Fish and Wildlife (CDFW) would work together to determine if revised CVP and SWP operations, in combination with the Sites Project operations, triggers any of the standard reconsultation requirements under State law.

Currently, staff expects to submit the Operations ITP application to CDFW in the November timeframe.

## **Construction ITP Application**

The Reservoir Committee and Authority Board authorized the submittal of the Construction ITP application at their December 2021 meeting and the application was submitted to CDFW in January 2022. CDFW received the application fee in March. The Authority received a letter from CDFW in April 2022 requesting additional information in five areas of the application. These five areas include the following: (1) request for Project plans (design drawings) and more details on construction phasing; (2) request for a figure that was inadvertently omitted; (3) request for an impact map analysis and information on minimization measures for temporary impacts to tri-colored black bird and Swainson's hawk; (4) request for the Adaptive Management Plan or a plan to monitor compliance with the minimization and mitigation measures; and (5) request for detailed information on how the mitigation cost was calculated. Staff responded to CDFW in August and transmitted information for three of the five requests. Staff expects to transmit information on the remaining two requests by the end of the month.

Staff expects the Construction ITP to be issued shortly after the Authority completes the CEQA process.

### **Prior Action:**

July 2022: Authorized the Executive Director to (1) submit the Biological Assessment to Reclamation for consultation under the Federal Endangered Species Act covering construction and operations and (2) submit the Operations ITP application to CDFW and pay the associated application fee.

December 2021: Authorized the Executive Director to submit the California Endangered Species Act's Construction ITP Application to CDFW.

### **Fiscal Impact/Funding Source:**

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

**Staff Contact:**

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**Primary Service Provider:**

ICF and HDR

**Attachments:**

None