



Requested Action:

Reservoir Committee and Authority Board consider authorizing the Executive Director to:

1. Execute the short-term Eagle Take permit when issued, and,
2. Enter into a contract with Eagle Electrocutation Solutions, LLC to provide the compensatory mitigation anticipated to be required by the permit with a total four-year authority of \$450,000.

Detailed Description/Background:

Eagle surveys performed in 2022 identified four bald eagle and five golden eagle nesting territories within five miles of the Project footprint. Although the Authority's geotechnical work has been planned to avoid and minimize impacts to eagles to the extent possible, the Project team determined that it was not possible to complete all of the geotechnical work within the buffer areas¹ of active nests outside of the nesting season. In June of 2022 the Reservoir Committee and Authority Board authorized staff to submit a short-term Eagle Act incidental take permit application to the USFWS requesting take for disturbance to active nests as a result of geotechnical work within the buffer areas.

On February 10, 2023, the USFWS posted the Authority's permit application and the associated Environmental Assessment/Finding of No Significant Impact documentation for a 30-day notification period. Once the notification period is complete, the USFWS is expected to issue the permit to the Authority for the Authority's execution. Although the permit had not be issued as of the time of preparation of this staff report, the permit is expected to have the following conditions:

- Permit term of 4 years;
- Authorization of take of one active nest for all four years and an additional active nest for two years;
- Avoidance and minimization of activities within the buffer areas of active nests during the breeding season to the extent possible;
- If activities need to occur within the buffer area of an active next during the breeding season, then the Authority will need to monitor the nest to

¹ The buffer area for golden eagle nests is 1 mile. The buffer for bald eagle nests is 660 feet.

minimize disturbance to the eagles and determine if the nesting season was successful (if the eggs hatched and the eaglets successfully fledged); and,

- Compensatory mitigation required on an annual basis in advance of potential impacts to eagles occurring.

Once the final permit is received, staff will review the permit to ensure that the conditions of the permit remain in the parameters previously discussed with the Reservoir Committee and Authority Board. If the conditions vary substantially, such that costs are projected to increase above \$450,000 or the ability to implement the geotechnical program is compromised, staff will return to the Reservoir Committee and Authority Board at a future meeting prior to signing the permit and entering into the compensatory mitigation contract.

Mitigation Requirements

The permit is expected to require compensatory mitigation for geotechnical work that cannot be avoided within the buffer of active nests during the breeding season. Compensatory mitigation will be accomplished by the purchase of credits in the Bald Eagle and Golden Eagle Electrocutation Prevention In-lieu Fee Program (Eagle ILF Program).

It is proposed that the Authority purchase Eagle ILF Program credits for disturbance of up to six eagle nests over the permit term. The number of credits to be purchased will be evaluated each year to avoid as much as possible payment for credits not needed in that year. There are no refunds once credits are purchased. Should any credits not be used in a year, the unused credits would be rolled over into the next year. If unused credits exist at the end of the 4-year permit term, they would be rolled over into the Project's construction permit to be issued in the future. Credits remain unused if the Authority can avoid work in the buffer area of an active eagle nest that it has already purchased credits for or if the nesting season was successful (if the eggs hatched and the eaglets successfully fledged) even with work in the buffer area. The permit is expected to require securing compensatory mitigation within 45 days of permit issuance.

On February 28, 2023, the Authority released a Request for Proposal to solicit bids from mitigation contractors authorized by USFWS to provide the compensatory mitigation services. This a very limited pool of USFWS-approved vendors but, to ensure transparency, the Authority also posted the RFP on its website. The Authority received a single proposal. Staff performed an evaluation of qualifications. Eagle Electrocutation Solutions, LLC possesses the capabilities and certifications necessary to fulfill the needs of the Project. Price was evaluated after the qualifications review and was determined to be a fair and reasonable price. The contract for compensatory mitigation will not be signed until after the permit is issued and signed.

Prior Action:

June 2022: Authorize the Executive Director to submit the Project's 2023-2026 Bald and Golden Eagle Protection Act Short-Term Disturbance Take Permit for Geotechnical Activities to the USFWS.

Fiscal Impact/Funding Source:

Eagle monitoring and compensatory mitigation costs are included in the Amendment 3 budget. The total anticipated cost for mitigation would be no more than \$450,000 for all 4 years. The selected contractor would be issued a base contract with task orders issued annually for the mitigation credits to be purchased in that year. The per unit cost will include an agreed-upon escalation factor per year. The contractor will assume all liability and responsibility for fulfilling the required compensatory mitigation requirements upon payment of the fee.

Staff Contact:

Ali Forsythe

Primary Service Provider:

ICF, HDR

Attachments:

None