



Meeting: **Joint Reservoir Committee & Authority Board**
Agenda Item 2.2

May 19, 2023

Subject: **National Marine Fisheries Service Reimbursable Agreement**

Requested Action:

Reservoir Committee and Authority Board consider authorizing the Executive Director to enter into an agreement with the National Marine Fisheries Service to reimburse for dedicated staff support to prepare and implement Biological Opinion permitting for a total of up to \$1,388,277 through September 30, 2028, with a not-to-exceed of \$65,400 for fiscal year 2023.

Detailed Description/Background:

NMFS's funding for technical assistance under the Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA), and issuing the associated permits is generally provided by Congress. Due to current workload in California, NMFS has a backlog of permit applications and does not have sufficient funding (and thus staff resources) to provide the pre- and post-consultation technical assistance to the extent needed to support the Project schedule. This constraint would likely substantially delay issuance of the Biological Opinion and implementation of the Project's Adaptive Management Program. The NMFS Biological Opinion is one of the critical permits the Board has identified as necessary to proceed to investor commitment. The proposed action is to establish a reimbursement agreement to pay for NMFS staff dedicated to support the Project permitting.

Under the agreement, NMFS would dedicate staff to the Project. Their actual time working on the Project would be reimbursed by the Authority. Dedicated staff from NMFS would be comprised of senior scientists and scientific staff.

Staff believes that the reimbursable agreement offers the following benefits to the Authority:

- NMFS staff have extensive knowledge of key issues affecting salmonids and sturgeon within northern California and will be able to provide insight and advice on many of the issues/challenges associated with ESA and MSA consultation, mitigation and adaptive management resulting in less permit processing time and more certainty in the permitting outcomes.
- Stability of NMFS staff working on the Project reduces the Authority costs in having to re-educate and build relationships with new NMFS staff members as they change.

- A path forward with dedicated NMFS staff working on the Project that are not being pulled away by other large projects in California, delaying permit certainty.
- Quality and seniority of NMFS staff working on the Project. Having qualified and more senior staff on the Project brings experience and creativity to the complex issues associated with this Project.

Authority staff worked with NMFS staff to develop a scope of work, budget, and schedule for the reimbursable agreement. The resulting agreement would have NMFS provide the following services:

- Technical assistance with the Authority's environmental compliance as it relates to analysis of listed anadromous species, including but not limited to ESA, MSA, National Environmental Policy Act, and California Environmental Quality Act.
- Completion of ESA and MSA consultation(s) for listed anadromous species.
- Technical assistance with the Authority's implementation of commitments and requirements as part of the Project and in the Authority's NEPA, CEQA, ESA, and MSA documents. This could include the following:
 - Scientific studies and implementation of the Project's Adaptive Management Plan related to effects on anadromous fish and their habitat associated with the operations of the Project;
 - Identifying and evaluating the value of proposed habitat restoration and other actions as it relates to implementing Project mitigation;
 - Implementing best available science to fill in gaps in scientific knowledge of listed species and associated habitats.

Prior Action:

None.

Fiscal Impact/Funding Source:

This activity was not included in the Amendment 3 Work Plan. Funds would come from unrestricted contingency. As the Authority is considering delays in completion of Amendment 3 and the need to stretch funds into 2025, this agreement may compete for limited funding and the agreement will allow authorized amounts to be changed in future years.

The agreement with the Authority would reimburse for actual NMFS staff time through up to September 30, 2028. NMFS would be authorized to proceed with

work with a not to exceed of \$65,400 for fiscal year 2023. Additional notices to proceed would be issued for future years based on the Authority's work plan cycles. Staff has reviewed NMFS' budget proposal and have determined the costs and overhead rates are reasonable. The budget proposal is based on one full-time equivalent at a senior scientist level. Costs would be reimbursed after the fact through invoices submitted by NMFS to the Authority and the Authority would only pay for the time spent on the Project.

Staff Contact:

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Primary Service Provider:

N/A

Attachments:

None.