



Meeting: **Joint Reservoir Committee & Authority Board  
Agenda 3.2**

**June 16, 2023**

Subject: **Biological Assessment (BA)/Biological Opinion (BO) and State  
Operations Incidental Take Permit (ITP) Application**

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**Requested Action:**

Receive an update on the Federal Biological Assessment / Biological Opinion and State Operations Incidental Take Permit application.

**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. This staff report provides an update on these critical permitting activities.

**Biological Assessment / Biological Opinion**

Staff has been working with the Bureau of Reclamation (Reclamation) on review of the Draft Biological Assessment as they are the Federal Endangered Species Act, Section 7 consultation lead for construction and operations. As part of this effort and in consideration of the ongoing reconsultation of the Central Valley Project (CVP) and State Water Project (SWP) operations, the Authority is revising its approach to the Project's Section 7 consultation by implementing a two-step process to obtain incidental take authorization for the Project.

Step one consists of a mixed programmatic approach to the Sites Project Biological Assessment / Biological Opinion. This would result in Sites' operational effects being analyzed programmatically in the CVP/SWP reconsultation, and Sites' construction effects analyzed at a project level in a stand-alone Biological Assessment / Biological Opinion. Including the Sites analysis in the LTO BiOp is for efficiency and would not tie Sites operations to the operations of the State and Federal Projects. It is expected that an incidental take statement would be issued for construction of the Project but not for the operations, which would be issued after step two of this approach. The operations evaluation would include a non-jeopardy determination and would be concurrent to the State ITP for Operations which would demonstrate a clear path to final operations permitting.

Step two consists of reinitiating consultation for Sites' operations after the CVP/SWP Reconsultation Biological Opinion is issued. The consultation would provide a project-level operational analysis of the Sites Project, independent of, but informed by, the final LTO BiOp. The result of this is expected to be issuance

of a new Biological Opinion that would provide incidental take authorization for operations of the Sites Project.

Staff is revising the stand-alone construction Biological Assessment and expects it to be completed and Reclamation to submit it to the federal resource agencies in the coming months. Staff is currently coordinating with Reclamation and the federal resource agencies on the mixed programmatic approach and how best to address the Project in the CVP/SWP Reconsultation Biological Assessment. Delays in the CVP/SWP reconsultation process would directly affect the Step One Sites Project Section 7 consultation schedule given its dependence on that process. The Step Two consultation is expected to be complete within six months of Step One completion.

### **Operations ITP Application**

The consultant team has largely completed the Operations ITP application and staff expects to submit it to the California Department of Fish and Wildlife (CDFW) July 2023. 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 using Calsim II modeling and the current CVP/SWP operations baseline. CDFW concurs with this approach.

Following conclusion of the CVP and SWP reconsultation effort, the Authority may need to amend the Operations ITP analysis and application with an updated analysis using Calsim 3 modeling with the new CVP/SWP operations baseline. Should this be required, staff will coordinate with CDFW on the approach for the amendment and the revised analysis and will take an approach that avoids impacting the project schedule. Even with possibly amending the application, an ITP for Operations is expected in Spring 2024.

Staff has revised the Project schedule to reflect Investor Commitment after completion of step one (as described above) for the Federal Endangered Species Act and receiving both the Construction and Operations ITPs. The Project schedule has also been revised to show completion of step two for the Federal Endangered Species Act compliance as a condition necessary for execution of the Proposition 1 Funding Agreement. Overall, this does not result in schedule changes at this time. However, as these processes both have a number of external factors that are outside of the control of the Authority, staff will continue to keep the Reservoir Committee and Authority Board apprised of progress, adjustments, and associated schedule implications.

### **Prior Action:**

September 2022: Received an update on the Federal Biological Assessment and State Incidental Take Permit applications.

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:**

Staff is currently assessing costs. Efforts to prepare one Biological Assessment and the Operations ITP application and work with the agencies to receive the Biological Opinion and Operations ITP are covered in the Amendment 3 Work Plan. However, the revised process adds a number of additional documents and steps to these efforts. Staff is working with the federal agencies and CDFW to firm up these steps and processes. Once these are firmed up, staff will work with the consultant team to assess if additional funding is needed to complete these efforts and if funds can be reallocated within tasks orders to cover these additional efforts.

**Staff Contact:**

Ali Forsythe

**Primary Service Provider:**

ICF and HDR

**Attachments:**

None.