



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

July 21, 2023

Subject: **Request Certification as an SB149 Eligible Infrastructure Project**

Requested Action:

Reservoir Committee and Authority Board consider authorizing the Executive Director to submit the request to receive the Governor’s certification as an SB149 eligible infrastructure project including agreeing to pay costs of 1) trial court and court of appeal and 2) preparing record of proceedings.

Detailed Description/Background:

On July 10, 2023, the Governor signed into law a set of bills aimed at reforming permitting with the end goal of building critical infrastructure in California faster. Among the package were two bills of specific interest to Sites (1) SB149 includes a streamlined process related to CEQA lawsuits for certain water infrastructure projects deemed eligible by the Governor, (2) SB147 allows CDFW to issue take authorization for fully protected species for certain projects (including critical regional or local water agency infrastructure) until December 31, 2033. The focus of the proposed Board action relates to SB149. Staff recommends the Authority request the Governor’s certification for SB149 eligibility which includes committing to pay certain court costs should a lawsuit be filed against the project and early preparation of the admin record for the purpose of CEQA.

Within SB149 certain categories of water infrastructure projects, including all Prop 1 storage projects, are identified as potentially eligible for CEQA streamlining subject to a certification process. The process of securing certification involves the Authority making a request to the Governor which includes submitting certain information related to the project. Attachment A is a matrix showing the applicable bill provisions and how Sites complies with each requirement.

A specified condition in SB149 is that the Authority must commit to pay all costs for the trial court and the appeals court, should a CEQA lawsuit be filed. The estimated costs for these commitments is \$180,000 for the trial court, and \$215,000 for the appeals court. If the Authority were to be involved in a CEQA lawsuit outside of this SB149 process, court costs may or may not be borne by the Authority.

Another specified condition is that the CEQA admin record must be compiled and made available to the public as the project progresses. SB149 allows for projects like Sites where the CEQA process is already underway to be certified for streamlining if the record 'is being' developed in accordance with the law's provisions. For new documents generated after passage of the bill (July 10), Sites is complying 'in real time' with the specified requirements. For prior documents, preparing the record is underway and the record is being assembled in the form and content specified in the streamlining legislation.

Proceeding immediately with making the request to the Governor is necessary because the SB149 certification must occur prior to the approval of the Final EIR/EIS by the Authority which is currently scheduled for September. It is estimated that the Governor's review of the request will take approximately 60 days, inclusive of the 30-day Leg Budget Committee review of the request. There are prior legislative streamlining actions that can be repeated for the SB149 process and allow the Sites request to be expedited.

Prior Action:

June 2023 (Special Meeting): The Board took a support position on legislation to streamline CEQA and reclassify State Protected Species which was introduced by the Governor as a package of bills to reform permitting for certain water infrastructure projects, like Sites.

Fiscal Impact/Funding Source:

The funds needed to cover court costs are not currently included in the Amendment 3 work plan, and if they were to occur, budget adjustments would be necessary to cover them. The preparation of the admin record is in the project cost estimate but needs to be accelerated to meet the legislative timelines. Additional costs necessary for Perkins Coie's efforts to accelerate the preparation of the admin record were included in Item 1.4 of today's Joint Reservoir Committee and Authority Board meeting. At this time, costs for other consultants to collect portions of the admin record are expected to be covered within their existing Amendment work plan budgets and accelerating these efforts into 2023 are not expected to require new budget in 2023 because these efforts are conducted by "staff" like resources.

Primary Service Provider:

ICF/HDR

Attachments:

Attachment A: SB149 Eligibility Requirements for Water-Related Projects

SB149 Requirements for Water Related Projects Analysis of Sites Reservoir Project	
Areas Specific to Eligibility of Water Related Projects	Does Sites comply with requirement?
<p>CHAPTER 7. Infrastructure Projects 21189.81</p> <p>(h) (1) "Water-related project" means any of the following:</p> <p>(B) (i) A water storage project funded by the California Water Commission pursuant to Chapter 8 (commencing with Section 79750) of Division 26.7 of the Water Code.</p>	<p>Yes, Sites Reservoir Project has been conditionally awarded Prop 1 funds by the California Water Commission</p>
<p>(ii) In addition to clause (i), the applicant shall demonstrate that the project will</p> <p>minimize the intake or diversion of water except during times of surplus water and</p> <p>prioritizes the discharge of water for ecological benefits or to mitigate an emergency, including, but not limited to, dam repair, levee repair, wetland restoration, marshland restoration, or habitat preservation, or other public benefits described in Section 79753 of the Water Code.</p>	<p>Yes, as follows:</p> <ul style="list-style-type: none"> • The Sites water right will include various conditions that limit diversions to surplus water (e.g., no diversion in 'balanced' conditions, multiple diversion criteria, Term 96, Term 91, special Trinity River term, etc). • The Sites Board has adopted storage principles to release water for public benefits in a manner that is coordinated with other releases and the project design includes sufficient means to meet, at all times, the water demands of Storage Partners including the water demands to serve the public benefits that have been awarded by the CWC. This demonstrates a public benefit priority commensurate to the public investment which is consistent with the beneficiary pays foundation in Prop 1. Also the Public Benefit Agreement will include conditions ensuring delivery of the ecological benefits.
<p>21189.82.(a) (4) (A) The Governor may certify a project as water-related project for purposes of this chapter if the project meets the requirements of subdivision (h) of Section 21189.81.</p> <p>(4) (A) The Governor may certify a project as a water-related project for purposes of this chapter if the project meets the requirements of subdivision (h) of Section 21189.81.</p>	<p>Yes, Sites is a Prop 1 project funded by the CWC</p>

**SB149 Requirements for Water Related Projects
Analysis of Sites Reservoir Project**

Areas Specific to Eligibility of Water Related Projects	Does Sites comply with requirement?
(i) The applicant agrees to pay the costs of the trial court and the court of appeal in hearing and deciding any case challenging a lead agency’s action on a certified project under this division, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner as provided in the rule of court adopted by the Judicial Council under Section 21189.85.	As determined by Sites Authority
(ii) The applicant agrees to pay the costs of preparing the record of proceedings for the project concurrent with the review and consideration of the project under this division, in a form and manner specified by the lead agency for the project.	As determined by Sites Authority
(iii) For a project for which environmental review has commenced, the applicant demonstrates that the record of proceedings is being prepared in accordance with Section 21189.86.	Yes, substantial compliance as noted below
(C) In addition to subparagraphs (A) and (B), the Governor may certify a project as a water-related project for purposes of this chapter only if the Governor finds that greenhouse gas emissions resulting from the project will be mitigated to the extent feasible.	Yes, the Final EIR/EIS confirms that greenhouse gas emissions resulting from the project will be mitigated to less than significant.
(c) An applicant for certification of an infrastructure project under this chapter shall do all of the following: (1) Avoid or minimize significant environmental impacts in any disadvantaged community.	N/A, There are no disadvantaged communities in the Project Area as defined by the CalEPA designations and there are no disadvantaged unincorporated communities in the Project Area according to the Government Code.
(2) If measures are required pursuant to this division to mitigate significant environmental impacts in a disadvantaged community, mitigate those impacts consistent with this division, including Section 21002. Mitigation measures required under this subdivision shall be undertaken in, and directly benefit, the affected community.	N/A
(3) Enter into a binding and enforceable agreement to comply with this subdivision in its application to the Governor and to the lead agency prior to the agency’s certification of the environmental impact report for the project.	N/A

**SB149 Requirements for Water Related Projects
Analysis of Sites Reservoir Project**

Areas Specific to Eligibility of Water Related Projects	Does Sites comply with requirement?
(d) The Office of Planning and Research shall make evidence and materials submitted for the certification of a project available to the public on its internet website at least 15 days before the certification of the project.	Noted
(e) The Governor’s decision to certify a project shall not be subject to judicial review.	Noted
<p>21189.83.</p> <p>(c) In addition to the requirements of Section 21189.82, with respect to any project that is located in whole or in part in a disadvantaged community, the Governor may certify the project pursuant to this chapter only if the project minimizes negative environmental or public health impacts on the disadvantaged community and benefits the disadvantaged community. A project is deemed to meet the requirements of this section if the applicant demonstrates to the satisfaction of the Governor that the applicant has a binding commitment that it will minimize the environmental burdens in any disadvantaged community.</p> <p>(d) The applicant shall be responsible for the costs of preparing an analysis of the emission of greenhouse gases or the impacts on a disadvantaged community resulting from the project.</p>	N/A
Other Consideration Regarding Eligibility	
<p>21189.84. (a) This chapter applies to a project that is certified by the Governor as an infrastructure project.</p> <p>(b) An applicant may apply to the Governor for certification and shall provide evidence and materials deemed necessary by the Governor in making a decision on the application for certification.</p>	Noted
(c) The Governor shall submit the Governor’s proposed certification, and any supporting information, to the Joint Legislative Budget	Noted Tentative schedule for Sites certification:

SB149 Requirements for Water Related Projects Analysis of Sites Reservoir Project	
Areas Specific to Eligibility of Water Related Projects	Does Sites comply with requirement?
Committee for review and concurrence or nonconcurrence. Within 30 days of receiving the determination, the Joint Legislative Budget Committee shall concur or nonconcurrence in writing on the certification. If the Joint Legislative Budget Committee fails to concur or nonconcurrence on a certification within 30 days of the submittal, the project is deemed to be certified.	Sites submits for certification 7/21 30 day Leg Review 8/1-8/31 Gov's Certification issued 9/6 Sites Approves Final EIR/EIS 9/22
(d) The Office of Planning and Research may charge a fee to an applicant seeking certification under this chapter for the costs incurred by the Governor's office in implementing this chapter.	Noted
21189.85. (a) An action or proceeding brought to attack, review, set aside, void, or annul the certification of an environmental impact report for an infrastructure project subject to this chapter or the granting of any project approvals, including any potential appeals to the court of appeal or the Supreme Court, shall be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.	Noted
(b) On or before December 31, 2023, the Judicial Council shall adopt a rule of court to implement this section.	Noted
21189.86. Notwithstanding any other law, the preparation and certification of the record of proceedings for an infrastructure project shall be performed in the following manner: (a) The lead agency for the project shall prepare the record of proceedings under this division concurrently with the administrative process.	Noted
(b) All documents and other materials placed in the record of proceedings shall be posted on, and be downloadable from, an internet website maintained by the lead agency commencing with the date of the release of the draft environmental impact report.	Yes, Sites will comply with respect to any new documents from the effective date of the legislation. For documents occurring prior to the date of the legislation, Sites will comply by the date of the Governor's certification.

**SB149 Requirements for Water Related Projects
Analysis of Sites Reservoir Project**

Areas Specific to Eligibility of Water Related Projects	Does Sites comply with requirement?
(c) The lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to, or relied on by, the lead agency in preparing the draft environmental impact report.	Yes, Sites will comply with any new documents from the effective date of the legislation. For documents occurring prior to the date of the legislation, Sites will comply by the date of the Governor’s certification.
(d) Any document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record of proceedings shall be made available to the public in a readily accessible electronic format within five days after the document is released or received by the lead agency.	Yes, Sites will comply with any new documents from the effective date of the legislation. For documents occurring prior to the date of the legislation, Sites will comply by the date of the Governor’s certification.
(e) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five days of its receipt.	Yes, Sites will comply with any new documents from the effective date of the legislation. For documents occurring prior to the date of the legislation, Sites will comply by the date of the Governor’s certification.
(f) Within seven days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.	Yes, Sites will comply with any new documents from the effective date of the legislation. For documents occurring prior to the date of the legislation, Sites will comply by the date of the Governor’s certification.
(g) Notwithstanding subdivisions (b) to (f), inclusive, documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright-protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index shall specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.	Yes, Sites will comply with any new documents from the effective date of the legislation. For documents occurring prior to the date of the legislation, Sites will comply by the date of the Governor’s certification.

**SB149 Requirements for Water Related Projects
Analysis of Sites Reservoir Project**

Areas Specific to Eligibility of Water Related Projects	Does Sites comply with requirement?
(h) The lead agency shall certify the final record of proceedings within five days of its approval of the project.	Noted
(i) Any dispute arising from the record of proceedings shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record of proceedings shall file a motion to augment the record of proceedings at the time it files its initial brief.	Noted
(j) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.	Noted
(k) The applicant shall pay the costs of preparing the record of proceedings for the project concurrent with review and consideration of the project under this division, in a form and manner specified by the lead agency for the project. The cost of preparing the record of proceedings for the project shall not be recoverable from the plaintiff or petitioner before, during, or after any litigation.	Noted