

# Joint Reservoir Committee and Authority Board Meeting

Agenda Item 3.2:  
Clean Water Act Permit Applications

October 20, 2023



# With Finalizing EIR/EIS, getting close to Clean Water Act permit application submittal

- CWA is intended to restore and maintain chemical, physical, and biological integrity of waters of the U.S.
  - Section 404 establishes a permit program regulating the discharge of dredged or fill material into waters of the U.S., including wetlands and other special aquatic sites such as vernal pools
    - For Sites, Administered by the U.S. Army Corps of Engineers
  - Section 401 requires applicants to obtain a state water quality certification that the activity complies with all applicable water quality standards, limitations, and restrictions
    - For Sites, administered by the State Water Resources Control Board
- Anticipate requesting approval to submit permit applications next month

# Clean Water Act compliance is a moving target

- Subject of extensive litigation and policy changes
- Most recent, U.S. Supreme Court's May 2023 decision in Sackett v. EPA
  - Changes definition of waters to reduce federal jurisdiction
- USEPA and the Corps recently issued final and conforming rules that amends definition of waters of the U.S. to bring it into conformance with Sackett
- Conforming Rule is effective in 23 states, including California
- With federal moving target, CA passed laws to bring many waters under state jurisdiction

# Sites and Sackett – Stay the course and adjust jurisdiction with field verification

- Project is perusing a preliminary jurisdictional determination for the Project footprint
  - Mapping submitted in August 2022
  - Extensive review; changing it now will take months / a year or more
- Path forward → Stay the course and adjust at/after final permit issuance
  - Impacts (and associated mitigation) included in the 404-permit application remains conservative
  - Refined through continued field verification and ongoing resource agency coordination
  - Authority will only be obligated to mitigate for impacts to waters of the U.S. as defined in the Sackett decision
  - Reminder, many of these waters will fall under state jurisdiction

# Target is to submit permit applications in December

- Staff are finishing the final permit applications
- Anticipate submitting to both the Corps and State Board after the issuance of the Final EIR/EIS
- Permit issuance is expected to take up to one year after submittal
- Staff anticipate requesting approval to submit permit applications next month

Questions?