



Meeting: **Reservoir Committee & Authority Board**
Agenda Item 3.1

January 19, 2024

Subject: **Project's Incidental Take Permits and Biological Opinions**

Requested Action:

Receive an update on the State Incidental Take Permit applications and Federal Biological Assessments / Biological Opinions.

Detailed Description/Background:

Receiving the Project's State Operations Incidental Take Permits and Federal Biological Opinions are high priority Work Plan actions in Amendment 3 and conditions precedent to Participants execution of the Benefits and Obligations Contract, among other things. This staff report provides an update on these critical permitting activities.

State ITP Applications

The Authority submitted an Incidental Take Permit (ITP) application in June 2023 for the construction of the Project to the California Department of Fish and Wildlife (CDFW). On July 27, 2023, CDFW identified the application incomplete and requested additional information. The Authority worked with Department staff to better understand and address the request for additional information. On November 29, 2023, the Authority submitted supplemental information to its July application to address CDFW's information requests. On December 8, 2023, CDFW deemed the Authority's Construction ITP application complete.

The Authority team and CDFW have and will continue to hold regularly scheduled meetings to discuss the Construction ITP application and address questions and concerns as CDFW develops the Project's Construction permit. To date, no substantial issues have been raised that vary from the approach the Authority has proposed in its application and supplemental materials. The schedule for issuance of the Construction ITP has been adjusted this month to reflect that Authority staff anticipate CDFW to issue both the Construction ITP and the Operations ITP in a similar timeframe. Thus, while the Construction ITP development is ahead of the Operations ITP efforts, Authority staff expect the issuance of the two permits in a similar timeframe.

The Authority submitted its Operations ITP application to CDFW on October 24, 2023. On November 22, 2023, CDFW identified the application incomplete and requested additional information. The Authority and CDFW have established bi-weekly technical team meetings and bi-weekly management team meetings to better understand and address the request for additional information. The Authority is working to provide information to CDFW just as quickly as possible and staff feel that CDFW's requests to date are reasonable and in good faith. Staff do note that the Project's ITP requires

extensive, detailed technical policy and legal analysis due to the size of the Project and its connection with not only the SWP and CVP, but also to operations of existing facilities along the Sacramento River. Previously, staff identified the possible need to amend the Project's Operations ITP application to include modeling using the new 2023/2024 CVP/SWP reconsultation operations as the baseline (which also requires CalSim 3 modeling as this baseline is only represented in CalSim 3). Based on discussions with CDFW, this amendment will be necessary. The status of the CalSim 3 work is described in Agenda Item 3-2 in today's materials.

The schedule for issuance of the Operations ITP has been adjusted this month based on discussions with CDFW staff to reflect issuance in mid-July. While this is later than hoped, this is a timeframe that does not push the water right schedule out, and continues to be aggressive in staff's opinion given the complexity of the ITP and the need to amend with CalSim 3 modeling.

Biological Assessments / Biological Opinions

As a reminder, the Authority is consulting under Section 7 of the Federal Endangered Species Act for both construction and operations and the Bureau of Reclamation (Reclamation) is the federal lead agency for consultation. The Board will recall that a two-step approach to receiving the operations permit is reflected in the Project Schedule. Reclamation submitted the Project's Construction Biological Assessment (BA) to the USFWS on November 16, 2023. At this time, Reclamation staff has confirmed that the technical and management staff at USFWS received the document but have not heard further. Reclamation also submitted the Sites Project as a programmatic action in the 2023/2024 CVP/SWP Reconsultation BA on November 9, 2023 (Step 1). Authority staff has not heard any concerns or feedback yet on the Sites Project's programmatic components in that document. Authority staff anticipate that additional quantitative analysis may be needed using the new 2023/2024 CVP/SWP Reconsultation Proposed Action as the baseline for the Sites programmatic analysis and continue to work to develop this in anticipation of the request.

The schedule for issuance of the Construction BiOp and the Sites Project programmatic components in the 2023/2024 CVP/SWP Reconsultation BiOp have been adjusted this month to reflect issuance in mid-July and reflect that the Authority staff anticipate USFWS to issue both BiOps in a similar timeframe. The schedule for the Sites project level components (Step 2) is expected within 9 months of the 2023/2024 CVP/SWP Reconsultation BiOp.

Prior Action:

June 2023: Received an update on the Federal Biological Assessment / Biological Opinion and State Operations Incidental Take Permit application.

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:

The Amendment 3 Work Plan includes sufficient budget to cover required resources and activities.

Staff Contact:

Ali Forsythe & John Spranza

Primary Service Provider:

ICF and HDR

Attachments:

None.