



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

April 19, 2024

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

Requested Action:

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

Detailed Description/Background:

Receiving the Project's State ITP 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

On December 8, 2023, CDFW deemed the Authority's Construction ITP application complete. The Authority's team and CDFW have continued to hold regularly scheduled meetings to discuss the processing of the Construction ITP application and no substantial issues have been raised that vary from the approach the Authority has proposed in its application and supplemental materials. To date staff have received a draft ITP Project Description for review and comment with the remainder of the Construction ITP under internal review by CDFW senior staff.

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. This delay does not impact the project schedule.

The Authority is awaiting CDFW's determination of a complete Operation ITP application. CDFW previously identified the application as incomplete, and the Authority is working to provide the requested additional information. The Authority and CDFW are continuing to hold bi-weekly meetings, and the Authority's team continues to address CDFW's information requests. Currently, the Authority team anticipates that CDFW will issue a final and complete Operations ITP in October 2024.

The project schedule has been adjusted this month to reflect issuance of the Sites Operations ITP (and Construction ITP) in October 2024. While this is later than previously planned, this is a timeframe that allows both the Operations and Construction ITP to be introduced during the water right hearing process. A request has been made to the AHO to accommodate an October 2024 permit issuance into the

water rights hearing schedule, without causing the final conclusion of the hearing to stretch past December 2024. We are awaiting the AHO's response to this request.

Biological Assessments / Biological Opinions

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 Biological Opinion (BiOp) is reflected in the Project schedule. Reclamation submitted the Project's Construction Biological Assessment (BA) to the USFWS on November 16, 2023. Reclamation also submitted the Sites Project as a programmatic action in the 2023/2024 CVP/SWP Reconsultation BA on November 9, 2023 (Step 1). Currently Reclamation staff, USFWS staff and the Authority have established reoccurring bi-weekly meetings to discuss USFWS' initial comments on the Construction BA. To date, no substantial issues have been raised that vary from the approach the Authority has proposed. The Authority is working to provide information to USFWS just as quickly as possible, and staff feel that USFWS' requests to date are reasonable and in good faith.

The project schedule has been revised this month to show issuance of the Construction BiOp and the Sites Project programmatic components in the 2023/2024 CVP/SWP Reconsultation BiOp in December 2024. This reflects Reclamation's anticipated issuance of the CVP/SWP Reconsultation efforts. Staff anticipate the USFWS to issue Sites' Construction BiOp in a similar timeframe.

Prior Action: January 2024: Receive an update on the State Incidental Take Permit applications and Federal Biological Assessments / Biological Opinions.

Fiscal Impact/Funding Source:

With the Task Order Amendment as Item 1-4 on today's agenda, the Amendment 3 Work Plan includes sufficient budget to cover required resources and activities.

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Primary Service Provider: ICF and HDR

Attachments: None.