

Requested Action:

Review and comment on the draft contracting strategy for terrestrial biological mitigation.

Detailed Description/Background:

As the Authority prepares for Project construction, Staff are preparing to implement the mitigation measures in the Project's Environmental Impact Report/Environmental Impact Statement and those measures expected in the Project's key permits. The Project's largest construction mitigation cost is expected to be compensatory mitigation for terrestrial biological resources. As implementing compensatory terrestrial biological mitigation can take time, Staff has continued to formulate a terrestrial biological mitigation contracting strategy consistent with the Authority's adopted Construction Contracting Strategy with the goal of ensuring mitigation is in place with sufficient time to avoid construction delays. Staff are nearing completion of a draft terrestrial biological mitigation contracting strategy and are seeking Board feedback prior to consulting the contracting community.

As a reminder, the Board reviewed and concurred with the following planning principles in its August 2023 meeting, and Staff has been using these principles to guide the development of a more specific strategy targeted on addressing terrestrial species:

- Planning Principle #1 – Mitigation acquisition will be sequenced and timed to avoid impacting progress of critical path construction.
- Planning Principle #2 – The Project remains open to permit allowed approaches to providing mitigation; owner and/or third party provided.
- Planning Principle #3 – The mitigation contracting strategy needs to align with the July 2022 Board adopted Contracting Strategy.

Following the Board's consideration of the principles, a workshop was held in Maxwell in October 2023 which was open to the entire mitigation contracting industry to receive their feedback on the principles and discuss a general

strategy for mitigating terrestrial species under the Project. After the October 2023 workshop, the team held 14 one-on-one meetings with mitigation providers in late 2023 to solicit individual feedback. Staff reviewed other similar projects being conducted in the US and several mitigation contracts issued by other agencies. Staff have also sought feedback from the Environmental Planning and Permitting Work Group throughout this process.

Based on all of this information, Staff is recommending the following structure for contracting for terrestrial biological mitigation as best suited for the Sites Reservoir Project:

- **One, Prime Contractor Responsible to Deliver Terrestrial Species Requirements** – One contract, as a single point of responsibility to the Authority, allows for the development of a long-term partnership between the Authority and the prime contractor, but also between the prime contractor and facilities construction contractors, regulatory agencies, and the local and regional communities. One contract also helps to centralize communication and outreach for mitigation lands, which avoids confusing landowners and can provide creative and innovative solutions. Staff recognize that with a large project and a single prime contractor, the field of eligible firms is limited. However, Staff have confirmed that multiple firms are interested, available, and capable of serving in this capacity, providing strong competition for the selection. One prime contractor may also more easily facilitate changing needs as the Authority gains access to Project lands and refines its understanding of impact acres and resulting mitigation needs. With one prime contractor, fit/approach, continuity of individuals, succession planning, and measured, sustained performance are critical factors.

It is important to note that this prime contractor approach will continue to allow for a suite of mitigation actions, such as mitigation on Authority lands, banking credits, easement purchase and permittee responsible mitigation. The Authority would work in partnership with the prime contractor to determine how best to accomplish each action. For example, the prime contractor may identify a portion of the mitigation to be accomplished via an existing bank and assist in the procurement process with the Authority ultimately purchasing the credits within the prime contract. Similar to the anticipated Construction Manager At Risk contract, the one, single prime contractor approach will allow for either self-performance by the prime contractor or allow for subcontracting to another firm. The prime contractor would have the responsibility to package the work and each package would have its own transparent

provider and price development under a process that still gives the Authority control.

- **Qualifications Based Competitive Selection Process with First Task Focused on Developing an Implementation Plan** – The competition for this work can lead to land speculation during the solicitation process which needs to be avoided. To this end, Staff is currently considering awarding the initial mitigation contract based on qualifications only. Subsequent individual task orders could be issued to the prime contractor for each of the packages. The first task would be a technical assistance task to establish at least the following parameters:
 - Primary and secondary goals to provide an overall framework for mitigation actions; this effort would include a regional opportunities assessment to assess the ability to accomplish the goals;
 - Implementation of mitigation relative to land access, permit approvals and construction contract components, such as timelines, payment schedules, timing for developing pricing and offramps, how the contractor will meet specified targets for local hires and small business engagement, how to avoid over mitigation, and similar.
- **Mitigation Prime Contractor Would be Responsible for Meeting Performance Criteria For Restoration Activities** – Staff proposes that responsibility for meeting permit conditions and performance criteria for any restoration activities and providing any remedies for non-conformance set by the agencies for any restoration activities be transferred to the prime contractor. This functionally means that the mitigation prime contractor would have life-cycle responsibilities past initial mitigation acquisition activities and into management of mitigation lands for the Authority. Having the prime contractor be responsible for performance criteria set by the agencies incentivizes thoughtful design and effective implementation of these actions.
- **Authority to be Long-term Landowner for New Fee Title Purchases on a Case-by-Case Basis** – If new fee title purchases are completed for mitigation, the Authority should generally be the long-term fee title landowner. The Authority owning additional lands has pros and cons and should be considered on a case-by-case basis. However, and in general, the Authority retaining the ownership of mitigation lands would allow the Authority to accomplish more secondary goals on these lands now or in the future. This could include Tribal access to these lands, partnerships with schools and universities for study activities, achieving additional

future mitigation requirements on the same lands, stacking with greenhouse gas emissions requirements, and re-marketing any excess lands. It is recognized that owning fee title also comes with long-term management costs and risks (such as Staffing needs, natural risks of fire and liability risk such as injuries). The Authority retaining fee title should be considered on a case-by-case basis.

- **Mitigation Prime Contractor Responsible for Preparing Any Necessary Follow on CEQA/NEPA and Permit Applications** – The Authority (and Reclamation as needed) would retain their responsibilities under law, but it would be most efficient to have the prime contractor be responsible for preparing any necessary follow-on planning and permitting documents.

The draft strategy would be made available for additional mitigation contractor feedback and refined based on this feedback. Staff anticipate that a final biological mitigation contracting strategy would come for consideration by the Reservoir Committee and Authority Board in July 2024.

Prior Authority Board Action:

August 2023: Review and comment on the approach for further developing the contracting strategy for terrestrial biological mitigation.

September 2022: Approved a new consulting agreement/contract with HDR to provide Environmental Mitigation Planning Services.

Fiscal Impact/Funding Source:

Further development of the contracting strategy for terrestrial biological mitigation can be completed within the total budget of the Amendment 3 Work Plan.

Staff Contact:

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Primary Service Provider:

HDR

Attachments:

None