

Environmental Planning and Permitting Work Group

August 9, 2023



Agenda

- 1.1 Review and Comment on the Public Release Process and Admin Record for the Final EIR/EIS
- 1.2 Review and Comment on the Approach for Further Developing the Contracting Strategy for Terrestrial Biological Mitigation
- 2.0 EPP Manager's Report
 - Key Planning and Permitting Activities Report

Final EIR/EIS Public Release Process and Admin Record

Ali Forsythe / Laurie Warner Herson

Final EIR/EIS Briefings in Preparation for Approval of Project

- February 2023, Part 1
 - Review Final EIR/EIS requirements and format
 - Provide overview of changes to the project based on design refinements and operations
 - Discuss revisions to modeling
- March 2023, Part 2
 - Overview of key comments and master responses; ongoing public and local community, tribal and NGO outreach
- April 2023, Part 3
 - Overview of refinements to impacts and mitigation measures; Mitigation Monitoring and Reporting Program
- May 2023, Part 3, Continued
 - Statement of Overriding Considerations
- June 2023, Part 3, Continued
 - Overview of Findings; Water Quality and Tribal Cultural Resources
- August 2023
 - Public Release and CEQA Administrative Record
- September 2023
 - Any last items
- October 2023, Board Hearing
 - EIR Certification
 - Decision to Approve Project
 - Next steps post EIR

Release of Final EIR/EIS no Later than October 9

- Final EIR/EIS is almost in review with Reclamation's DC Office
- Once Reclamation is authorized to release the document, Authority will post on our website
- Under CEQA, Authority must make responses to agency comments available for 10 days prior to certifying the document
 - Planning to meet requirement by publicly posting the Final EIR/EIS no later than October 9

Public Roll Out Similar to RDEIR/SDEIS Roll Out

- Notices in development
 - Required CEQA and NEPA notices
 - Joint Authority/Reclamation press release
 - Landowner mailers and e-blasts
- Video segments
- Written materials
 - Fact sheets, community guide and FAQs
 - These plus Executive Summary will be translated to Spanish

Admin Record is Important in Litigation

- CEQA admin record, formally called the “Record of Proceedings,” is the entire body of evidence presented to the decision-making agency
- The admin record is important because:
 - Provides the evidence that the agency considered, either directly or indirectly, in making a decision on the project
 - Judicial review is limited to the record, with minor exceptions
- Following admin record content requirements in SB 149 and California Rules of Court for organization

Content is Broad and Record will be Fairly Extensive

- Notice of Determination
- Project approval resolutions
- Findings and Statement of Overriding Considerations
- Draft and Final Environmental Impact Report, notices, comments and references cited in the documents
- Staff reports, in chronological order
- Transcripts and minutes of hearings, in chronological order
- “Remainder” of the record, in chronological order, such as any other written materials relevant to CEQA compliance or project approval
 - Drafts of documents that have been released for public review
 - Additional studies relied upon for CEQA analysis
 - All internal agency communications, including staff notes and memoranda

Limited Materials are Excluded

- Attorney-client privileged communications to or from the agency's legal counsel
- Deliberative process privileged communications
- Confidential documents including trade secrets, national security, cultural and tribal resource locations and details
- Administrative drafts that are not released to the public are excluded from the record
- Post-decision documents

Under SB 149, Must Be Certified Within Five Days of Project Approval

- Typically, records are collected parallel to the EIR process and the indexing and population of the record would take place if a lawsuit is filed and led by litigation attorneys
- Under SB 149, projects that are certified by the Governor are to:
 - Prepare the record by the lead agency concurrent with the EIR process, to the extent possible
 - Ongoing posting of the record, in downloadable form, on an internet website maintained by the lead agency
 - With complete record posted on a website
 - Certification of the complete record within five days of approval of the project

Web Posting of Record is in Progress and on Schedule

- Web posting of Project documents has been ongoing:
 - Staff reports and supporting documents from 2010 onward
 - 2017 Draft EIR/EIS and 2021 RDEIR/SDEIS
 - CEQA public notices, scoping and outreach materials
 - Other Project documents, including Value Planning report, water right information and application links
- Web posting comment letters and references in progress
- Records associated with the CEQA process to-date will be posted by early September
- On track for complete record and ability to certify within 5 days of Project approval

Next Steps in Briefing Process

- September 2023, Update on Final EIR/EIS
 - Final preparations for the October approval and process for approval hearing
- October 2023, Board Hearing
 - Any last items
 - EIR Certification
 - Adoption of Findings, Statement of Overriding Considerations and Mitigation, Monitoring and Reporting Program
 - Decision to Approve Project

Terrestrial Biological Mitigation Contracting Strategy Development

Ali Forsythe

Summary of Key Mitigation Actions to be Implemented by the Authority

Resource Area	Construction	Operations
Agricultural	Purchase conservation easements	--
Air Quality	MOU with air districts and offset emissions	MOU with air districts and offset emissions
Biological Resources		
- Terrestrial	Survey, design considerations, avoid, compensate	Monitor and avoid
- Aquatics	--	Monitor, adaptive management, compensate
Cultural and Tribal Cultural Resources	Survey, avoid, minimize, mitigate	Survey, avoid, minimize, mitigate
Greenhouse Gas Emissions	Calculate, minimize, achieve net zero emissions	Calculate, minimize, achieve net zero emissions
Water Quality	Pre-construction monitoring	Monitor and adaptive management

** Does not include mitigation actions and BMPs implemented by construction contractors

Terrestrial Biological Resources – Permanent Construction Impacts

Land Cover Type Impacted	Modeled Acres of Impact*	Listed Species that May be found in the Project Area
Annual Grassland	13,108	Swainson's hawk, Tricolored blackbird, Red-legged frog, Golden eagle, Crotch's bumble bee, Monarch butterfly
Wetlands/vernal pools	386	Fairy shrimp, Giant garter snake
Blue Oak Woodlands	315	Golden eagle, White-tailed kite
Riparian	56	Valley elderberry longhorn beetle, Tricolored blackbird
Stream/Pond	229	Red-legged frog, Bald eagle
Oak Savanna	646	Swainson's hawk, Tricolored blackbird, Red-legged frog, Golden eagle, Crotch's bumble bee, Monarch butterfly

*Actual impacts to be revised post field verification of landcover

State and Federal Agencies with Jurisdiction over Project Terrestrial Biological Impacts

- State Agencies
 - California Department of Fish and Wildlife
 - State Endangered Species Act
 - Lake and Streambed Alteration Agreement
 - State Water Resources Control Board
 - Water Rights
 - Clean Water Act and Related State Laws
- Federal Agencies
 - U.S. Fish and Wildlife Service
 - Endangered Species Act
 - Bald and Golden Eagle Act
 - U.S. Army Corps of Engineers
 - Clean Water Act

Approach to Addressing Terrestrial Biological Impacts

- Survey
 - Land cover types
 - Protocol-level species surveys
- Refine impact numbers based on survey results
- Avoid and minimize impacts where possible
 - Design refinements
 - Construction fencing and monitoring
- Compensatory mitigation for impacts that cannot be avoided
 - Likely to be required in advance of impact occurring
 - By year AND a 10% stay ahead
 - Likely to be our single largest mitigation cost
 - Longest lead requirement prior to construction actions

Compensatory mitigation planning and contracting should begin early to minimize the risk of possible construction delays

Key Decisions on Contracting

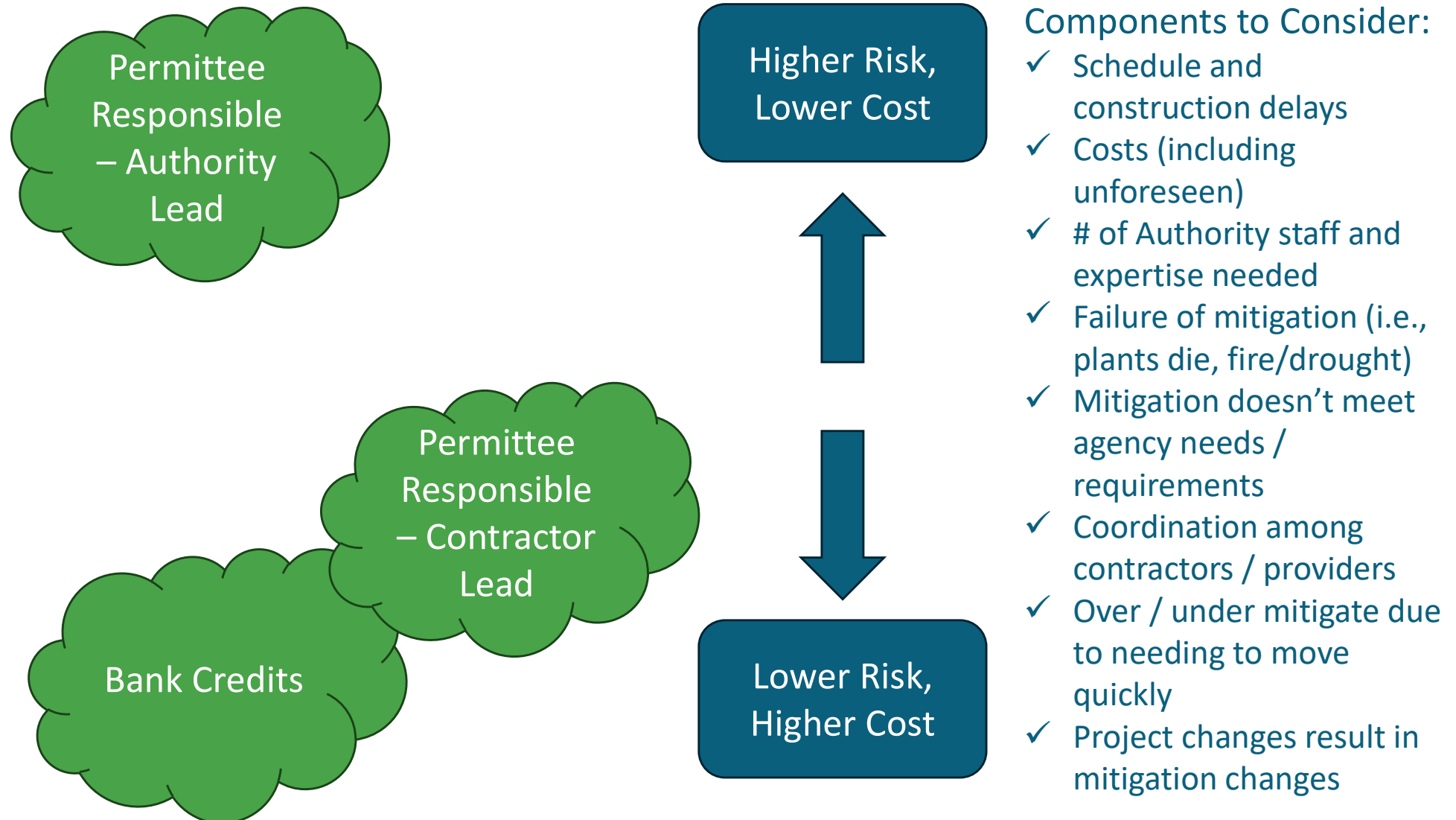
1. Approach to mitigation

- Purchase bank or in-lieu credits
- Permittee-responsible mitigation
 - Authority undertake and lead effort
 - Contractor undertake and lead effort
- Combination of all depending on land cover/species

2. Contract type for permittee-responsible mitigation

- Design-bid-build
- Design-build
- Design-build-operate (including progressive)

Trade Offs in Decisions on Mitigation Approach and Contracting



Contracting Strategy – Approved July 2022

- Effort undertaken in early to mid 2022 to develop the Authority's contracting strategy
- Established following values, reflecting high-level vision and preference for packaging work and delivery methods:
 - Oversight – to remain streamlined and efficient, the Authority will engage in an oversight role during design and construction
 - Construction Contracts – the number and size of construction contracts must prioritize qualified contractors and management of cost and risk
 - Project Cost – cost certainty must be established as soon as possible
 - Project Schedule – look for opportunities to expedite schedule to reduce Project Cost
 - Project Risks – balance risks with values

Are these values applicable to contracting for terrestrial biological mitigation?

Further Refine Contracting Strategy for Compensatory Terrestrial Biological Mitigation

- Build upon 2022 Contracting Strategy and further refine the mitigation component with an initial focus on terrestrial biological impacts

No.	Package	Estimated Value (2021\$)	Major Facilities	Recommended Delivery Method	Key Risk Areas
9	Mitigation	\$600 M	Implement Environmental Mitigation Commitments	Various	Schedule

Approach to Refining Contracting Strategy for Compensatory Terrestrial Biological Mitigation

1. Establish values
2. Prepare draft strategy
3. Seek contractor and industry input on draft strategy
 - a. Workshop
 - b. One-on-one meetings
4. Refine and prepare final strategy
5. Return to RC/AB for approval of final strategy

Approach similar to approach for developing July 2022 Contracting Strategy







Next Steps

- Prepare draft strategy guided by Authority's values
 - Working with legal on available contracting mechanisms
 - Assessing a number of factors to determine how to lump and split needs for contracting
 - Stacking of mitigation requirements important for cost control
 - Construction schedule considerations and timing for getting mitigation in place
- Prepare for contractor and industry input on draft strategy
 - Workshop preparations
 - One-on-one meetings

Environmental Planning and Permitting Manager Report

Ali Forsythe

Dashboard Update

Deliverable	Finish	Status	Notes, New or Potential Issues
Water Right Application			
• Submit to State Board	May-22		Application Submitted May
• Complete Protest Resolution Period	Jan-24		Notice issued June 2, 2023, closing Aug 31
• Receive Water Right Permit	Dec-24	N/S	
Federal ESA			
• Construction – Biological Opinion	Feb-24		
• Operations – Programmatic Biological Opinion	Feb-24		Working with agencies on approach; tied to CVP/SWP Reconsultation efforts
• Operations – Project-level Biological Opinion	Apr-25	N/S	
State ITPs			
• Receive Construction ITP	Dec-23		
• Submit Operations ITP to CDFW	Aug-23		Will be submitted shortly
• Receive Operations ITP	Apr-24	N/S	Date adjusted

N/S = Not Started;  = On track;  = Area of Potential Concern;  = Delayed;  = Completed

Dashboard Update

Deliverable	Finish	Status	Notes, New or Potential Issues
Section 106 – Cultural Resources			
• Final Programmatic Agreement	Apr-24	●	Not on critical path, but stuck for a while. Expect to start moving again shortly
• Programmatic Historic Properties Management Plan	Apr-24	●	
Clean Water Act 404/401			
• Submit Final Permit Applications	Nov-23	●	
• Receive 404 and 401 Permits	Nov-24	●	
Streambed Alteration Agreement			
• Prepare and Submit Application	Aug-23	●	Submitting shortly (Ops ITP app is priority)
• Receive Master Agreement	Jan-24	●	
Eagle Permit			
• Short-Term and Nest Take Permits	April-23	●	
• Long-Term Permit Issued	Mar-24	●	

N/S = Not Started; Green = On track; Yellow = Area of Potential Concern; Red = Delayed; Blue = Completed

Dashboard Update

Deliverable	Finish	Status	Notes, New or Potential Issues
Final EIR/EIS			
• Complete Final EIR/EIS	Oct-23	●	
• Certify Final EIR/EIS and approve preferred project and MMRP	Oct-23	●	

N/S = Not Started; **Green** = On track; **Yellow** = Area of Potential Concern; **Red** = Delayed; **Blue** = Completed

Upcoming Meetings

- Next Work Group Meeting –
October 11, 2023, 10 to 11 AM
 - Topics –
 - Final EIR/EIS – Consideration of certification of the document and adopting the Project
 - Clean Water Act Section 404 and 401 permit applications
 - Section 106 (Cultural Resources) Programmatic Agreement
- Other upcoming meetings
 - Engineering and Operations Workgroup
 - Wednesday, August 9, 2023 – 1:30 to 3:30 PM
 - Joint Reservoir Committee and Authority Board
 - Friday, August 18, 2023 – 9 AM to 12 PM

Thank you!

