

Environmental Planning and Permitting Work Group

October 11, 2023



Agenda

- 1.1 Final EIR/EIS Status
- 1.2 Clean Water Act Section 404 and 401 Permit Applications
- 1.3 Section 106 (Cultural Resources) Status Update
- 2.0 EPP Manager's Report
 - Key Planning and Permitting Activities Report

Final EIR/EIS Status

Ali Forsythe / Laurie Warner Herson

Final EIR/EIS Briefings in Preparation for Project Approval

- 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
 - Preparation for Board Hearing
- **October 2023 – Status Update**
- November 2023, Board Hearing
 - EIR Certification
 - Decision to Approve Project
 - Next steps post EIR

Final EIR/EIS Status

- Final EIR/EIS is in review with Reclamation's DC Office
- Once Reclamation is authorized to release the document, Authority will post on our website at www.sitesproject.org/environmental-review/
- Final EIR/EIS will be posted at least 10 days prior to Board hearing
- Targeting November Hearing
 - Reservoir Committee recommends action
 - Authority Board takes action

Ongoing Activities

- SB149 Application Submitted and Posted by OPR
 - Organizing and uploading the Administrative Record to the Authority's website
 - Requesting authorization for Executive Director to release required notices at this month's RC/AB meeting
- Preparation of Outreach Materials
 - Community Guide
 - Fact Sheets
 - FAQs
 - Eblast
 - Landowner Postcard
- Preparation of Board Resolution and Supporting Documentation
 - MMRP, Findings, Statement of Overriding Considerations

Clean Water Act 404 and 401 Permit Applications

Jelica Arsenijevic

Overview of Clean Water Act (CWA) Permitting Process

- Desktop delineation completed and under review by Corps since August 2022. Corps is nearly complete with review.
 - 688.63 acres of non-wetland waters
 - 1,846.71 acres of wetlands
- Corps, Water Board, and EPA provided comments on the permit applications, and 404(b)(1) compliance memorandum
- 404/401 permit applications, for the whole of the project to be submitted by end of 2023
- Surveyed over 1,000 acres of private property since January 2023. Began verifying desktop delineation.
- No surprises for Project team and agencies when permits submitted. Built trusting relationship built with Corps, Water Board, and EPA

Sackett vs. EPA and WOTUS – What is it?

- Waters of the United States (WOTUS)
 - Clean Water Act term that establishes the geographic scope of federal jurisdiction
 - Four Supreme Court decisions that have challenged the definition, the latest being Sackett
 - EPA and Corps revise the WOTUS definition and/or issued guidance after each
- Final rule issued on September 8, 2023 – amends the “Revised Definition of WOTUS” rule that was published in the Federal Register on January 18, 2023
- California is one of 23 states that have adopted this rule

Changes to WOTUS due to Sackett

- **Changes in WOTUS Categories:**
 - *Interstate Waters*: Removing interstate wetlands from the text of the interstate waters provision
 - *Tributaries*: Removing the “significant nexus” standard test established under the 2008 Rapanos’ WOTUS Guidance
 - *Adjacent Wetlands*: Removing the “significant nexus” standard
 - *Additional Waters*: Removing the “significant nexus” standard; removing wetlands and streams from the text of the provision
- **Changes in WOTUS Definitions:**
 - *Adjacent*: Revised definition to mean “having a continuous surface connection”
 - *Significantly Affect*: Deleted definition

Sackett – What does it mean to Project?

- No effects on the Project's current permitting process
 - Current Preliminary Jurisdictional Delineation (PJD) approach is still the most appropriate
 - Application does not need to be updated and can be submitted
 - Number and acreage of WOTUS features would be reduced from current estimate
 - Application continues to include an overestimate of impacts (based on desktop delineation)
 - No need to field verify each feature with the Corps – just a few locations
- WOTUS changes do not remove Waters of the State jurisdiction

Stay the Course

- Corps recommends that the Project stay on course
 - Submit 404 application at end of year
- Continue monthly coordination meetings with all 3 agencies after permits submitted
 - Share progress of verifying wetlands in field, schedule field verification of already completed delineations
 - Verification = reduction in impacts
 - Identify opportunities to extract project features to streamline permitting process
 - For example, nationwide permit(s) for existing or new roads
 - Transparency continues with agencies for successful receipt of permits with no surprises for any party

Section 106 (Cultural Resources) Status Update

Danielle Risse

Section 106 – The Basics

- Compliance with Section 106 of the National Historic Preservation Act (NHPA) is necessary prior to Reclamation signing a ROD
- Section 106 requires the lead federal agency to:
 - *“take into account the effects of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in”* the National Register of Historic Places (NRHP)

Section 106 – The Basics Continued

- Basic Section 106 compliance steps:
 - INITIATE Section 106 and determine if it applies to a given project
 - IDENTIFY historic properties in the project area
 - ASSESS the effect of the project on identified historic properties
 - RESOLVE adverse effects to historic properties by exploring alternatives to avoid, minimize, or mitigate the effects
- Key Component: Section 106 requires consultation with consulting parties
 - For the Project, consulting parties include: Tribes, agencies, the State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), the Authority, and other interested parties

Concluding Section 106 through a Programmatic Agreement

- Section 106 compliance for the Project will be concluded through the execution of a Programmatic Agreement (PA)
- The PA will allow the Project to use a phased approach for identifying and considering historic properties that could be affected by the Project
- A PA is needed because Project effects to historic properties cannot be readily determined
 - Large Project footprint
 - Private land without current access
 - Multiple alternatives, constructed in phases

Section 106 – PA Development

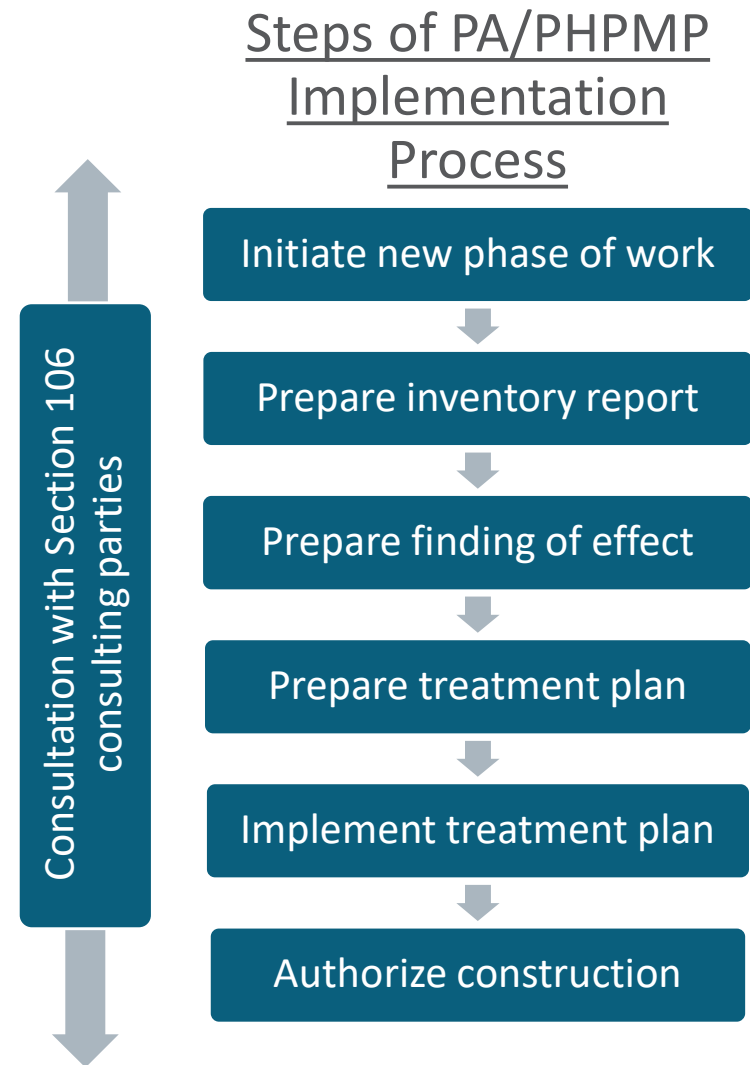
- PA is fully executed when Reclamation, SHPO, and the ACHP have signed
- Reclamation submitted a draft PA to the Section 106 consulting parties for review on March 3, 2022
- The following parties have provided comments: U.S. Army Corps of Engineers, SHPO, and the Cachil Dehe Band of Wintun Indians
- Next Steps:
 - Reclamation revises PA and resubmits revised Draft PA to Section 106 consulting parties for review
 - Section 106 consulting parties provide comments and Reclamation prepares and resubmits Final PA to Section 106 consulting parties for execution
- Timing of PA completion is dependent on consultation; when there are disagreements, Reclamation must attempt to resolve them

Section 106 – Authority Responsibilities in the PA

- The Authority will be an invited signatory to the PA and will be responsible for implementing much of the procedures and protocols outlined in the PA
- Specifically, the Authority's responsibilities under the Draft PA include:
 - “As the lead agency for the California Environmental Quality Act (CEQA) and the primary non-federal entity driving Project implementation, the Authority will implement the majority of document production measures outlined in this PA on behalf of Reclamation. These measures may include preparation of APE delineation and revision of the APE as needed; preparation of inventory, evaluation, and recommended finding of effect and resolution of adverse effect documents for Signatory review; preparation of annual reporting to SHPO, circulation of comments from Signatories; maintaining documentation of the Section 106 compliance for each phase of work; assisting in the consultation with local agencies, interested non-governmental organizations, and individuals; and development of the PHPMP and HPTPs as necessary, in which the specific technical roles and responsibilities of the Authority will be defined.”

Section 106 – PA and PHPMP Implementation







- The PA requires development of a **Programmatic Historic Properties Management Plan (PHPMP)**, which will include the details on how to implement the procedures outlined in the PA
- The draft PHPMP is currently under development by the Authority



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	Mar-24		Noticing closed; working with protestants
• Receive Water Right Permit	Jan-25	N/S	
Federal ESA			
• Construction – Biological Opinion	Apr-24		
• Operations – Programmatic Biological Opinion	Apr-24		Working with agencies on approach; tied to CVP/SWP Reconsultation efforts
• Operations – Project-level Biological Opinion	May-25	N/S	
State ITPs			
• Receive Construction ITP	Jan-23		
• Submit Operations ITP to CDFW	Oct-23		Will be submitted shortly
• Receive Operations ITP	May-24	N/S	

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	●	
• Programmatic Historic Properties Management Plan	Apr-24	●	
Clean Water Act 404/401			
• Submit Final Permit Applications	Dec-23	●	
• Receive 404 and 401 Permits	Dec-24	●	
Streambed Alteration Agreement			
• Prepare and Submit Application	Oct-23	●	Submitting shortly (Ops ITP app is priority)
• Receive Master Agreement	Apr-24	●	
Eagle Permit			
• Short-Term and Nest Take Permits	Apr-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	Nov-23	●	
• Certify Final EIR/EIS and approve preferred project and MMRP	Nov-23	●	

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

Upcoming Meetings

- Next Work Group Meeting –
December 6, 2023, 10 to 11 AM
 - Topics –
 - Terrestrial biological mitigation contracting approach
 - Environmental Compliance Plan
- Other upcoming meetings
 - Engineering and Operations Workgroup
 - Wednesday, October 11, 2023 – 1:30 to 3:30 PM
 - Joint Reservoir Committee and Authority Board
 - Friday, October 20, 2023 – 9 AM to 12 PM

Thank you!

