



Meeting: **Reservoir Committee/Authority Board Agenda
Item 3.4**

July 19, 2024

Subject: **Conditions Precedent Reporting**

Requested Action:

Receive and comment on updated conditions precedent quarterly status report.

Detailed Description/Background:

In February 2024, Staff presented the approach that will guide activities and priorities leading up to the start of investor commitment, which would occur upon the Board adopting a “Resolution of Offer of Capacity”. This will be the point in time when the Board determines sufficient progress has been made on the elements critical to each agency making its decision to sign the Benefits & Obligations (B&O) Contract. Adopting the resolution would kick off an approximately 6-month (time certain) Investor Commitment escrow period where the Participants, State Government and Federal Government would execute their respective agreements committing to pay for their capacity shares in the Project. Upon closing of Investor Commitment Escrow, Phase 3/4/5 would be initiated and one of the first actions would be the Authority entering into agreements and taking out loans that would fund the Phase 3/4/5 activities.

In March 2024, Staff presented the conditions precedent report which includes the items the Board has identified as needed for their agency’s execution of the B&O Contract. Also presented in March was a Storage Partner Approvals Coordination Table to represent the permits and approvals needs across all of the Storage Partners – Participants – RC members, State- California Water Commission, and Federal- Reclamation.

Having a common list of expected deliverables ensures Sites Staff, consultants, and all Storage Partners prioritize their efforts in the right places. These logic connections have now been incorporated into the Amendment 3 schedule update, Agenda Item 4.4C.

This report is intended to provide an update on the progress of items listed in Attachment A since the March 2024 report. Please note that new items listed on Attachment A were added to ensure all of the Attachment B elements are reflected on Attachment A and status update is tracked. This reporting provides the opportunity for board members and state and federal representatives to confirm any changes or additions to their needs for executing contracts during

investor commitment escrow. This is all in an effort to avoid any last-minute surprises that could have the effect of delaying investor commitment. Also of note is that during the “investor commitment escrow” all approval documents will be frozen which means no changes will be accepted. It is important for efficiency that each agency take the opportunity and time to understand its agency’s needs in these documents and to communicate these needs with Sites staff to ensure these items are addressed prior to the start of the escrow period.

Prior Authority Board Action:

March 2024 – Received a quarterly update.

Fiscal Impact/Funding Source:

The Amendment 3 Work Plan includes sufficient budget to cover required resources and activities to achieve the supporting deliverables as listed in the Storage Partners Approvals Coordination Table.

Staff Contact:

Ali Forsythe/JP Robinette/Jerry Brown

Primary Service Provider:

None.

Attachments:

Attachment A: Activities to be Completed Prior to Resolution of Offer of Capacity and During Investment Commitment Escrow, Status Update

Attachment B: Storage Partners Approvals Coordination Table – working draft dated July 19, 2024

Attachment A

**Activities to be Completed Prior to Resolution to Offer Capacity & Service and During Investor Commitment Escrow
Status Update as of July 19, 2024**

Activity / Agreement	Target Completion	Status	Notes / Critical Issues
Contract and Supporting Documents:			
<ul style="list-style-type: none"> Benefits and Obligations Contract ready to execute 	Apr 25	Revised	Rescheduled to recognize that outcomes with other permits and approvals may affect document. Next draft to be released in Aug 2024
<ul style="list-style-type: none"> Phase 3, 4, 5 Bylaws 	same as B&O		
<ul style="list-style-type: none"> Amended Joint Exercise of Powers Agreement 	same as B&O		
<ul style="list-style-type: none"> Sites Reservoir Operations Plan (Version 2) 	Apr 25	Revised	Rescheduled to recognize that outcomes with other permits and approvals may affect document. Next draft to be released in Sept 2024
Actions:			
<ul style="list-style-type: none"> CEQA Notice of Determination 	Nov 23	Completed	Nov 17, 2023
<ul style="list-style-type: none"> NEPA Record of Decision 	Jan 25	Revised	Revised based on LTO ESA consultation schedule
<ul style="list-style-type: none"> Updated Cost Estimate and Updated Plan of Finance Forecast Tables 	Dec 24	Revised	
<ul style="list-style-type: none"> Resolution to Offer Capacity & Service 	Oct 25	Revised	Revised due to extended water rights hearing process
Permits and Approvals:			
<ul style="list-style-type: none"> Water Right decision by SWRCB 	Aug 25	Revised	Revised based on hearing notice schedule
<ul style="list-style-type: none"> State Construction and Operations Incidental Take Permits 	Oct 24 Oct 24	Revised	Revised based on discussions with CDFW
<ul style="list-style-type: none"> Federal Project Construction Biological Opinion 	Dec 24	Revised	Revised to align with issuance of the LTO ESA BiOp
<ul style="list-style-type: none"> Federal Programmatic Operations Biological Opinion (Step one) 	Oct 24 Dec 24	Revised	Revised based on discussions with USFWS
<ul style="list-style-type: none"> National Historic Preservation Act – Section 106 Programmatic Agreement 	Nov 24	Revised	Awaiting revised PA from Reclamation
<ul style="list-style-type: none"> DSOD Confirmation of Dam Design Criteria 	Aug 25	Revised	
<ul style="list-style-type: none"> County Developer Agreements 	Mar 25	Revised	Part one is complete, Part two is awaiting labor availability analysis
<ul style="list-style-type: none"> Clean Water Act – Section 401 	Mar 25	On Track	Application deemed complete
<ul style="list-style-type: none"> Clean Water Act – Section 404 	Jun 25	Revised	Revised based on discussions with USACE
<ul style="list-style-type: none"> Rivers and Harbors Act, Section 10 	Jun 25	Revised	Revised based on discussions with USACE
<ul style="list-style-type: none"> CVFPB Encroachment Permit 	Apr 25	On Track	

Activity / Agreement	Target Completion	Status	Notes / Critical Issues
• USC Section 408 Approval	Apr 25	On Track	Conceptual approval approach
• Eagle Long Term Permit	Sept 24	Revised	Revised based on application submittal date
• Air Board Permits to Construct/Operate	Jun 25	On Track	
• Lake and Streambed Alteration Agreement	Aug 24	On Track	
• Final written water right permit and order by SWRCB	Feb 25	On Track	Removed, included above
Executed Agreements:			
• Facilities Use Agreements – TC Canal System	Jan 25	Revised	See July 2024 Board Mtg Agenda Item 3.3
• Facilities Use Agreements – GCID System	Jan 25	Revised	See July 2024 Board Mtg Agenda Item 3.3
• Lower Colusa Basin Drain System Term Sheets	Sept 24	On Track	See July 2024 Board Mtg Agenda Item 3.3
• Operating Agreement with DWR and Reclamation	Jan 25	Revised	See July 2024 Board Mtg Agenda Item 3.1
Conditions To Occur During Investor Commitment Escrow:			
• B&O Contract executed by all parties	Apr 26	Revised	Revised to match current schedule and align with water rights schedule
• Executed Public Benefit Agreements with CDFW and DWR <ul style="list-style-type: none"> ○ Agreement with Reclamation for Pumping and Conveyance of Incremental Level 4 Refuge Water is anticipated to be on same timing with Public Benefit Agreement with CDFW 	DWR – Dec 24 CDFW - Apr 25	Revised	Rescheduled to Dec 2024 for DWR and CDFW deferred to Apr 2025 for workload mgmt.
• Prop 1 Resolution of Final Award by CWC	Apr 26	Revised	Revised to match current schedule and align with water rights schedule
• Final Prop 1 Funding Agreement executed by CWC Staff	Jun 26	Revised	Revised to match current schedule (close of investor commitment escrow)
• Reclamation Partnership Agreement executed	Oct 25	Revised	Revised to match current schedule. See July 2024 Board Mtg Agenda Item 3.1
• Execution of Loan Agreements for Project Financing	Apr 26	Revised	To follow completion of Investor Commitment Escrow period
• Final Biological Opinion for project level operations (Step Two)	Oct 25	Revised	Revised to reflect delays in LTO ESA schedule

Sites Project: Permits and Agreements by Agency
Status Update as of July 19, 2024

Permit Issued or Agreement Ready for Execution	Responsible Agency for Permit or Approval and/or Party Sites Authority enters into Contract with	Needed for Resolution for Offer of Capacity	Needed for CWC Funding Agreement	Needed for Reclamation Partnership Agreement
Complete CEQA	Sites Project Authority	Yes	Yes	No
Complete NEPA and Sign ROD	Reclamation	Yes	Yes	Yes
Sites / Reclamation / DWR Operations Agreement	Reclamation and DWR	Yes	Yes	Yes
Conveyance Agreement(s) (formerly called 'Warren Act' contract(s))	Reclamation	No	Partial, for refuge water deliveries	No
Land Lease/License Agreement for use of Federally Owned Property	Reclamation/TCCA	No	No	No
Partnership Agreement	Reclamation	Yes	Yes	Yes
Reimbursement Agreements within the CVP	Reclamation	Yes	No	Yes
Agreements Necessary for Pumping and Conveyance of IL4 Refuge Water	Reclamation	No	Yes	No
Design and Construction Agreement to Add Pumping Capacity at Red Bluff PP	Reclamation/ TCCA	No	No	No
Power Agreement(s)	Reclamation	No	No	No
Sites Reservoir Benefits and Obligations (B&O) Contracts PLUS all Necessary Annexes	Sites Project Authority and Sites Reservoir Committee Members	Yes	Yes	Yes
Revisions to JPA and Bylaws	Sites Project Authority and Sites Reservoir Committee Members	Yes	Yes	Yes
Sites / GCID Facilities Use Agreements	Glenn Colusa Irrigation District (GCID)	Yes	Yes	Yes
Sites / TCCA Facilities Use Agreements	TCCA/Reclamation	Yes	Yes	Yes
Sites / RD108 Lower Colusa Basin Drain Operations Agreement	Reclamation District No 108 (RD 108)	No	No	No
Biological Assessment/Biological Opinion Construction and Programmatic Operations (Step 1)	Reclamation, U.S. FWS, National Marine Fisheries Service	Yes	Yes	Yes
Biological Assessment/Biological Opinion Project-level Operations (Step 2)	Reclamation, U.S. FWS, National Marine Fisheries Service	Yes	Yes	Yes
Eagle Take Permit / Eagle Conservation Plan	U.S. Fish and Wildlife Service	No	No	Yes
State Incidental Take Permit – Operations	CA Department of Fish and Wildlife	Yes	Yes	Yes
State Incidental Take Permit – Construction	CA Department of Fish and Wildlife	Yes	Yes	Yes
Section 106 Programmatic Agreement	Bureau of Reclamation; State Historic Preservation Officer; Consulting Tribes	Yes	Yes	Yes
Water Right Permit SWRCB Decision	State Water Resources Control Board	Yes	Yes	Yes
Clean Water Act Section 404, wetlands and waters of the US (must have a Section 401 to get a 404)	Army Corps of Engineers	No	Partial, based on conceptual approval	No
Clean Water Act Section 401 and Porter Cologne Water Quality Control Act	State Water Resources Control Board	No	Partial, based on conceptual approval	No
Waste Discharge Requirements	Central Valley Regional Water Quality Control Board	No	No	No

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Permit Issued or Agreement Ready for Execution	Responsible Agency for Permit or Approval and/or Party Sites Authority enters into Contract with	Needed for Resolution for Offer of Capacity	Needed for CWC Funding Agreement	Needed for Reclamation Partnership Agreement
USC Section 408, if needed	Army Corps of Engineers	Partial, based on conceptual approval	Partial, based on conceptual approval	No
Central Valley Flood Protection Board Encroachment Permit	Central Valley Flood Protection Board	Partial, based on conceptual approval	Partial, based on conceptual approval	No
County General Plan and Zoning Changes	Colusa County	No	No	No
County General Plan and Zoning Changes	Glenn County	No	No	No
County Developer Agreements – Agreements on Zoning Changes, Road Maintenance and Ownership, Taxes, Etc	Colusa County	Yes	Yes	Yes
County Developer Agreements – Agreements on Zoning Changes, Road Maintenance and Ownership, Taxes, Etc	Glenn County	Yes	Yes	Yes
County Developer Agreements – Agreements on Zoning Changes, Road Maintenance and Ownership, Taxes, Etc	Yolo County	Yes	Yes	Yes
WSIP Public Benefits – Ecosystem	CA Department of Fish and Wildlife	Yes	Yes	Yes
WSIP Public Benefits – Flood and Recreation	CA Department of Water Resources	Yes	Yes	Yes
WSIP Final Funding Resolution by CWC		Yes	Yes	Yes
WSIP Final Funding Agreement (CWC staff approval)	California Water Commission	No	No	Yes
Lake and Streambed Alteration Agreement (Master)	CDFW	No	Partial, based on conceptual approval	No
WIFIA Master and Loan Agreement(s)	EPA	Yes	No	No
Permit to Construct/Operate	Air Districts	No	Yes (Construct) No (Operate)	No
Encroachment Permits	Caltrans	No	No	No
Transportation Permits	Caltrans	No	No	No
Permit to Construct/Operate	Division of Safety of Dams	No	Partial, based on conceptual approval	No
Interconnection Agreement	California ISO	No	No	No
Exemption from FERC	FERC	No	No	No
Lower Colusa Basin Drain – Knights Landing Outfall Gates Operations Term Sheet	DWR	Yes	Yes	No
Lower Colusa Basin Drain – Knights Landing Outfall Gates Operations Agreement	DWR	No	No	No
Lower Colusa Basin Drain - Wallace Weir Operations Term Sheet	RD108	Yes	Yes	No

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Lower Colusa Basin Drain - Wallace Weir Operations Agreement	RD108	No	No	No
Lower Colusa Basin Drain - White Paper Evaluation (Flowage Easements)	Various (landowners, RD108, Knights Landing Ridge Drainage District, Yolo County)	Yes	Yes	No
Lower Colusa Basin Drain - Real Estate Agreement (Flowage Easements)	Various (landowners, RD108, Knights Landing Ridge Drainage District, Yolo County)	No	No	No
Lower Colusa Basin Drain: Real Estate Term Sheet (Dunnigan Pipe Outlet Structure into CBD)	Morgan Twin Holdings LLC (landowner) & USDA (Conservation easement)	Yes	Yes	No
Lower Colusa Basin Drain: Real Estate Agreement (Dunnigan Pipe Outlet Structure into CBD)	Morgan Twin Holdings LLC (landowner) & USDA (Conservation easement)	No	No	No
Lower Colusa Basin Drain: Long Term Maintenance Agreement	TBD (Colusa Basin Drainage District or RD 108 and/or Knights Landing Ridge Drainage District)	No	No	No