



Subject: **Update on Record of Decision (ROD)**

Requested Action:

Receive an update on the steps leading to a Record of Decision.

Detailed Description/Background:

Prior to the Bureau of Reclamation (Reclamation) signing the Partnership Agreement, the Sites/DWR/Reclamation Operations Agreement and executing other agreements for the Project, Reclamation must comply with all aspects of the National Environmental Policy Act (NEPA). Even though the EIS has been completed, there are still a number of items outstanding that are necessary for Reclamation to complete prior to signing the ROD. The current status of these is described below:

- Prepare and finalize an Environmental Impact Statement (EIS) and comply with related statues and Executive Orders – This activity was completed with the issuance of the Project’s Final EIR/EIS and related Federal Register notice in November 2023.
- National Historic Preservation Act, Section 106 Compliance (Cultural Resources) – This activity is underway. Reclamation is the lead federal agency responsible for Section 106 compliance for the Project and will address compliance needs for both Reclamation’s and the U.S. Army Corps of Engineers’ (USACE) actions related to the Project.

For the Project, the Section 106 process will be completed through execution of a Programmatic Agreement. The Programmatic Agreement is anticipated to identify a process for identifying historic properties once land access is obtained, assessing the effects of the Project on these properties, and committing to resolving any adverse effects. As currently envisioned and drafted, the Programmatic Agreement works in conjunction with (would have functionally the same requirements as) the Final EIR/EIS Cultural Resources mitigation measures and the two would be implemented at the same time. The Final EIR/EIS Tribal Cultural Resources mitigation measures would largely also be implemented at the same time; however, some measures in the Tribal Cultural Resources section are expected to go beyond those called for in the Programmatic Agreement as the Authority complies with AB 52 and State law.

Reclamation submitted a draft Programmatic Agreement to the Section 106 consulting parties in March 2022. The Cachil Dehe Band of Wintun Indians (Colusa Indian Community Council; Cachil Dehe), Paskenta Band of Nomlaki Indians (Paskenta), Yocha Dehe Wintun Nation (Yocha Dehe), and Shingle Springs Band of Miwok Indians have requested consultation under Section 106. It is the Authority's understanding that Cachil Dehe, Paskenta, USACE, and the State Historic Preservation Officer have provided comments on the draft Programmatic Agreement. The Authority has also reviewed the draft Programmatic Agreement and had no comments.

Reclamation has been considering all comments and conducting consultation with Tribes. The Authority understands that Reclamation is very close to issuing a revised Programmatic Agreement to the consulting parties for a second round of review. Reclamation will then prepare the Final Programmatic Agreement for signature. The Authority and the consulting parties will be invited to sign the Programmatic Agreement. The Agreement is considered executed when Reclamation, the State Historic Preservation Officer has signed. In addition, the Authority understands that the Advisory Council on Historic Preservation is being consulted at the request of one of the parties and will need to sign the Programmatic Agreement as well. The Authority expects the Programmatic Agreement to be executed in 2025, likely in the first quarter.

- Endangered Species Act (ESA) Compliance – This activity is underway. Reclamation is the lead federal agency for consultation.

Reclamation submitted the Project's Construction Biological Assessment (BA) to the U.S. Fish and Wildlife Service (USFWS) on November 16, 2023. USFWS, Reclamation and the Authority have been meeting biweekly since early 2024 to work through questions and approaches for issuance of the Construction Biological Opinion. At this time, the Authority expects USFWS to issue the Construction Biological Opinion in December 2024.

While not typical, early in our discussions, a two-step approach was developed to achieve the necessary ESA operations compliance, primarily due to workload and staffing challenges. Reclamation submitted the Sites Project operations as a programmatic action in the 2023/2024 CVP/SWP Reconsultation BA on November 9, 2023 and in the recently released Draft EIS for the 2023/2024 CVP/SWP Reconsultation. Last the Authority heard, a Biological Opinion from the USFWS is expected in October 2024 and from the National Marine Fisheries Service (NMFS) in December 2024. These two documents would complete Step 1 of the Sites Project's Operations ESA consultation.

Step 2 of the Sites Project's Operations ESA consultation includes issuance of project-level Operations Biological Opinions by USFWS and NMFS. Step 2 would be initiated with the submittal of a Biological Assessment in first quarter of 2025 and would conclude with the issuance of Biological Opinions by USFWS and NMFS in the last quarter of 2025.

At this time, the Authority is working with Reclamation to evaluate whether the ROD would be signed after completion of Step 1 or Step 2 of the ESA process.

As noted in last month's condition precedent report, the ROD and Biological Opinions are permits and approvals currently identified as being needed to receive investor commitment so these schedules are being monitored very closely.

Prior Authority Board Action:

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

October 2023: Receive an update on the Project's Section 106, cultural resources compliance efforts.

Fiscal Impact/Funding Source:

The Authority's efforts in preparation of the materials and completion of the activities necessary for Reclamation to sign the ROD can be completed within the Amendment 3 Work Plan total budget.

Staff Contact:

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Primary Service Providers:

ICF, HDR, Perkins Coie

Attachments:

None