



Meeting: **Reservoir Committee & Authority Board**
Agenda Item 3.1

November 15, 2024

Subject: **Project Incidental Take Permits (ITP) for Construction and Operations**

Requested Action:

Receive an overview of the Project's Incidental Take Permits for construction and operations.

Detailed Description/Background:

The California Department of Fish and Wildlife (CDFW) issued an ITP for construction of the Project on October 22, 2024 and an ITP for operations of the Project on October 24, 2024. Receiving the Project's ITPs for construction and operation are high priority Work Plan actions in Amendment 3 and conditions precedent to Participants execution of the Benefits and Obligations Contract, among other things. This staff report provides an overview of the Project's ITPs.

Construction ITP Permit

Key components of the Construction ITP are discussed below.

Species Covered and Permit Term

The Authority received incidental take coverage in compliance with the California Endangered Species Act (CESA) for all species and associated habitats requested in the ITP application. This includes Giant garter snake, Swainson's hawk, and Tricolored blackbird, as well as Crotch's bumble bee (candidate species). The Construction ITP is effective upon issuance and, unless renewed by CDFW, will expire on December 31, 2034.

Compensatory Mitigation Requirements

The Construction ITP requires that the Authority implement species-specific minimization and avoidance measures that the Authority proposed in its ITP application and that are generally included in the Final EIR/EIS. The compensatory mitigation required by the issued Construction ITP is consistent in the types, acreage, and anticipated costs that were estimated within the Authority's ITP application. Compensatory mitigation will be phased with the Project's construction activities and anticipated impacts for up to a two-year period. (i.e., Phase). The Construction ITP allows the Authority to use a variety

of methods to implement compensatory mitigation as we had requested in our application.

Conditions of Approval

In addition to the required compensatory mitigation, the Construction ITP contained Conditions of Approval that must be implemented and/or complied with to maintain the ITP take coverage for the duration of the permit term. The conditions identify the types and timing of required biological studies and plans, minimum qualifications for biological technical staff working under the ITP, impact avoidance and minimization measures, and biological survey, monitoring, and reporting requirements for construction activities. Many of the conditions are standard and the Authority expects to be able to comply with all of the conditions of approval.

It is important to note that the Project activities covered in the Construction ITP are those activities as we anticipated them at the time of the ITP application and included in the Final EIR/EIS. As design efforts progress, and especially efforts around road improvements and construction traffic routing, amendments to the Construction ITP may be necessary to adjust for changes in the Project footprint.

Operations ITP Permit

Key components of the Operations ITP are discussed below.

Species Covered and Permit Term

The Authority received incidental take coverage in compliance with CESA for all species requested in the Operations ITP application and 2024 Supplemental application. This includes the Winter-run Chinook Salmon, Spring-run Chinook Salmon, Delta Smelt, Longfin Smelt, and White Sturgeon (candidate species). The Operations ITP is effective upon issuance and, unless renewed by CDFW, will expire on December 31, 2039.

Key Minimization and Avoidance Measures

The following are the key minimization and avoidance measures in the issued Operations ITP.

- Wilkins Slough Bypass Flows. To protect outmigrating juvenile salmonids the Authority had included a Wilkins Slough minimum bypass flow of 10,700 cubic feet per second (cfs) from October 1 through June 14, and 5,000 cfs in September in its ITP Application. CDFW adjusted the minimum flow at Wilkins Slough to 10,930 cfs for the entire Project diversion season (September 1 to June 14) to account for the uncertainty associated with model output.

- Flow-dependent Diversions. The Authority proposed a pulse flow protection measure to protect all qualified precipitation-generated flow events at Bend Bridge from October to May. The goal of this was to protect migrating juvenile salmon. Upon review by CDFW, pulse flow protection did not perform well under certain conditions such as brief periods of very high flow pulses. To account for this, CDFW replaced pulse flow protection with flow-dependent diversions that scale maximum diversion rates on flows in the river at each diversion location. This limits the proportion of river flow that may be diverted for the Project during lower flows, when listed salmonids, if present, may be more likely to come in contact with the diversion screens, while allowing maximum diversions when total river flows are high at the diversion location. Generally, the performance of the project using the flow-dependent criteria vs the pulse flow protections result in approximately the same outcome.
- Plans and Technical Studies. The Operations ITP added specificity to the Authority's proposed Adaptive Management Program by identifying specific plans, required technical studies, and effects monitoring requirements. Key areas where specificity was added include salmonid and juvenile White Sturgeon survival studies, Sutter and Yolo Bypass juvenile salmonid entrainment studies, exchange and temperature management plan, White Sturgeon monitoring, and participation in regional Longfin Smelt and Delta Smelt science program. The Authority consulted with GCID and TCCA throughout the development of the permit to ensure requirements related to plans and studies did not implicate their existing operations. This collaboration will continue throughout the term of the permit.

Compensatory Mitigation Requirements

The compensatory mitigation contained within the issued Operations ITP is consistent in the types, acreage, and anticipated costs that were estimated within the ITP Application and previously reported to the Board.

Authority staff have reviewed both ITPs and feel that they are generally consistent with the Authority's ITP applications and previous briefings to and direction provided by the Board. Staff will continue to evaluate operational considerations in light of the issued Operations ITP along with recently issued 2024 SWP ITP and the upcoming changes to the CVP operations.

Prior Action:

April 2024 – Received an update on the State Incidental Take Permit applications and Federal Biological Assessments / Biological Opinions for the Sites Project.

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

Fiscal Impact/Funding Source:

The Amendment 3 Work Plan includes sufficient budget to implement the near term actions in the ITPs.

Staff Contact:

Ali Forsythe & John Spranza

Primary Service Provider:

ICF and HDR

Attachments:

None.