



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

December 20, 2024

Subject: **Reclamation Reimbursement Agreements, Sites Project BiOps and
Clean Water Act (CWA) 404 and 401 Permits Update**

Requested Action:

Review and discuss the conditions precedent for Reclamation reimbursement agreements, Sites Project BiOps Step 2, and CWA 404/401 permit approvals.

Detailed Description/Background:

Staff created the conditions precedent earlier this year to focus attention on permits and approvals Storage Partners identified as important for their sign-off during investor commitment. The conditions precedent report is updated quarterly with the next report in January 2025. Ultimately the items required for signing contract documents lies with each Storage Partner. However, a process has been proposed involving a Resolution to Offer Capacity that would be adopted by this Board and would signify substantial completion of permits and approvals that would kick-off the six-month investor commitment process. Recently three conditions precedent were identified as possibly coming in later than expected. Staff would like to get Board's confirmation that there is flexibility to still start investor commitment prior to completion of these items as long as they complete within the six month escrow period.

The Reservoir Committee/Authority Board and Reclamation identified the Reclamation reimbursement agreements for Sites Project participation and receiving Project-specific Operations Biological Opinions (BiOps) as conditions precedent to executing the Benefits and Obligations (B&O) Contract. Additionally, the California Water Commission staff suggested that receiving the Clean Water Act Section 404 and 401 permits is preferred as conditions precedent to executing its Funding Agreement.

The status of each item is described below.

- **Reclamation Reimbursement Agreements for Sites Project Participation**
– These are the agreements necessary for Reclamation to enter into agreements for reimbursement of its Sites Project costs, assuming that all Reclamation costs are not nonreimbursable. Both the Participants and Reclamation have identified the need for these agreements prior to execution of the B&O Contract and the Partnership Agreement (Reclamation's version of the B&O Contract). Authority staff continue to

encourage Reclamation to move these efforts forward. However, Authority staff are unclear if Reclamation will complete this effort prior to the escrow period. Individual Participants will need to consider how this uncertainty will affect their Participation decision, with this likely creating the greatest uncertainty for our Central Valley Project (CVP) Participants.

- **Receiving Project-Specific Operations Biological Opinions** – The Sites Project was included as a programmatic action in the recent CVP/SWP Reconsultation BiOps (referred to as Step 1). The Authority and Reclamation will also be working to obtain project-level operations BiOps (referred to as Step 2), which are not expected until the end of calendar year 2025, mainly due to the requirement to model in the CalSim 3 platform. All parties have identified these project-level operations BiOps as a condition precedent to execution of their respective funding agreement. However, the Authority just received its State’s Operations ITP, which covers similar species to the Project’s Operations BiOps. Although the Authority anticipates receiving the Project’s Operations BiOps at the end of calendar year 2025, they will not be available at the start of the escrow period and individual Participants will need to consider how this uncertainty will affect their Participation decision.
- **Clean Water Act Section 404 and 401 Permits** – Only the California Water Commission staff indicated that receiving “conditional approval” of the Clean Water Act Section 404 and 401 permits may be a condition precedent to executing its Funding Agreement. The Authority currently anticipates to receive these permits late 2025 or early 2026. Authority staff are working with the CWC staff to define an acceptable conditional approval (e.g. an application deemed complete) and continue to work with the Army Corps and US EPA on the schedule and needs for issuance of the Project’s Section 404 and 401 permits.

Prior Action:

September 2024: Received a quarterly update on conditions precedent.

Fiscal Impact/Funding Source:

None. The efforts to complete the conditions precedent are including in the Amendment 3 Work Plan.

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Primary Service Provider: HDR and ICF