

Reservoir Committee and Authority Board Meeting

Agenda Item 3.1: Biological Terrestrial Mitigation
Contracting Strategy

March 21, 2025



Background

- Compensatory mitigation for terrestrial biological resources expected to be Project's largest mitigation cost
- Planning principles reviewed and concurred by the Board in August 2023
- Strawperson Strategy, workshop and one-on-one feedback in late 2023 and early 2024
- Components of a draft strategy reviewed and concurred by the Board in May 2024
- Obtained legal counsel to assist in mid-2024
- Review of other mitigation projects and contracts
- Coordinating closely with the CMAR team and carefully considering similarities and differences

Continued Development of Components of the Contracting Strategy

Key refinements in these areas:

1. Single Prime Contractor Responsible to Deliver Terrestrial Species Requirements
2. Design-Build-Operate or Design-Build Mitigation Agreement; Selection Process; Guaranteed Maximum Price
3. Responsibility for Satisfaction of Permit Conditions

Development and refinement of other components has also continued consistent with Board's prior direction

Single Prime Contractor Responsible to Deliver Terrestrial Species Requirements

- Board previously concurred that one contract as a single point of responsibility was in the Project's best interest
- Proposed additions/refinements:
 - Delegate permit mitigation responsibilities to the Contractor
 - Contractor responsible for ensuring the mitigation implemented in the most cost and schedule efficient means possible
 - Includes working with agencies to “stack” resources with the minimum amount of purchased acres or bank credits
 - Contractor will need to possess the capabilities to successfully navigate the mitigation approval process with multiple agencies involved
 - “Marquee” conservation element
 - Mitigation has significance and adds value to the same level and degree that the water element of the Project contributes to CA water management
 - Accomplished at the lowest cost possible

Design-Build-Operate or Design-Build Mitigation Agreement; Selection Process; Guaranteed Maximum Price

- Board previously concurred with qualifications-based selection process
- Proposed additions/refinements:
 - Design-Build-Operate or Design-Build Mitigation Agreement
 - Consistent with the AB 2551 legislation
 - Selection process two-step - RFQ then RFP - generally following the CMAR process currently underway
 - Guaranteed maximum pricing (GMP) at the RFP stage based on total scope of mitigation needs currently known
 - Contract and GMP broken down into task orders for different components of the construction work and reservoir inundation
 - Task orders would stay ahead of the construction activity
 - Scoping task orders to “true up” final actual mitigation units towards the end of the contract
 - Payments made on a "pay for success" structure
 - Progress payments made at certain stages

Responsibility for Satisfaction of Permit Conditions

- Board previously concurred with shifting the responsibility for meeting permit conditions and performance criteria to the prime contractor
- Proposed additions/refinements:
 - Clarify that this includes responsibilities for:
 - Funding of endowments
 - Financial security
 - Achieving state and federal agency concurrence with “stacking” to minimize mitigation acres

Next Steps

- Staff to revise the strategy based on Board feedback and make draft strategy available for industry input
- Staff working to develop checklist of items that the Authority will complete prior to issuance of the RFQ and RFP
 - Will review and seek concurrence from EPP Workgroup
- Staff anticipating seeking RC/AB approval of strategy in June 2025 and RFQ in Aug/Sept 2025

Questions?