



Meeting: **Reservoir Committee & Authority Board
Agenda Item 3.2**

March 21, 2025

Subject: **Master Lake & Streambed Alteration Agreement**

Requested Action:

Review and discuss the Project's anticipated Master Lake and Streambed Alteration Agreement (Master LSA Agreement or Agreement).

Detailed Description/Background:

California Fish and Game Code Section 1602 (Section 1602) requires notification to California Department of Fish and Wildlife (CDFW) before beginning any activity that will substantially divert or obstruct the natural flow, change or use material from the bed, channel, or bank, or deposit or dispose of debris, waste, or other material into any river, stream, or lake. In March 2023, the Reservoir Committee and Authority Board authorized the Executive Director to submit a Master LSA Agreement Application to CDFW and pay the associated filing fees. This item is intended to receive Board feedback on the expected Master LSA Agreement permit terms prior to issuance.

Staff and the Authority's consultants have been working with CDFW on the Master LSA Agreement and the Agreement is nearly completed. The Master LSA Agreement covers the entirety of Project construction actions, identifies avoidance, minimization and reporting requirements, and establishes compensatory mitigation requirements by resource type. Where similar resources are involved, Authority staff and CDFW have worked to maintain consistency in the Project's Construction ITP, Final EIR/EIS, Clean Water Act 404/401, and the Master LSA Agreement. This includes consistency in the avoidance and minimization measures required during construction, the types of compensatory mitigation allowed (bank credits, permittee responsible, easements, etc), and to the extent possible, consistency in the resources for which mitigation is needed and the compensatory mitigation ratios for these resources. The Master LSA Agreement is anticipated to include a 10-year term with the possibility of one extension of up to 5-years.

The majority of the key terms and conditions of the Master LSA Agreement are expected to be substantially consistent with the Authority's 2023 Application, the Project's Final EIR/EIS, the Project's Construction ITP, and with other recent Master LSA Agreements issued for large infrastructure projects. Attachment A provides an overview of the key terms and conditions of the anticipated Agreement.

Although consistent with other permits and approvals as noted above, Authority staff feel its important to make the Reservoir Committee and Authority Board aware of the following in the anticipated Master LSA Agreement:

- **Financial Security (Letter of Credit) Requirements** – The Authority will be required to establish a financial security in cases where the compensatory mitigation is not completed prior to undertaking the proposed specific construction activities. A CDFW approval covering the specific activities plus establishment of the financial security for the related mitigation must occur prior to initiating the specific construction. Financial securities, although burdensome, are standard practice and have standard terms. Typically there would about 5 individual letters of credits for each mitigation component. For the Project, where a financial security is needed, the cost and accumulation may be quite substantial in bank fees (typically 1-2% of the letter of credit value) and administration time considering the total amount of mitigation needed. There will be several active mitigation components at any one time. Historically CDFW is slow to act on removing financial securities. The anticipated Agreement states that it allows for the release of a portion of the security as progress on mitigation is made, but it does not explicitly state that the security shall be released with such progress. This will be solely at CDFWs discretion. CDFW staff have stated that it is possible to release portions of the security as progress is being made, but it would depend on a number of factors and is not common due to the risk of permittees (primarily private developers) not following through on mitigation actions. CDFW has noted that partial security release could be negotiated for those phases of construction where a security is needed (i.e., those phases where mitigation cannot be completed prior to construction activities).
- **Stacking of Mitigation Actions** – Although the revised mitigation cost estimate is still in progress, preliminary cost estimate for implementation of the compensatory mitigation in the anticipated Agreement is around 40 percent higher than the 2021 cost estimate. This cost increase is due to a number of factors primarily including (1) the anticipated Agreement requires higher mitigation ratios than proposed in the Application and in other similar permits, and (2) inflation and increase in cost of banking credits that has generally increased at a rate higher than inflation. As discussed in the Biological Terrestrial Mitigation Strategy discussion item at this same meeting, it is imperative that the Authority's compensatory biological mitigation required in all of its permits and approvals be "stacked" to control mitigation costs (meaning, the same acre of land is used for mitigation in multiple permits). The anticipated Agreement allows for this. However, there is risk that CDFW may not always be timely in its approval of mitigation and may have additional requirements for approval

that result in inefficiencies and possibly increase the Authority's costs. Possible mitigating circumstances within the Authority's control are to (1) continue to reimburse CDFW's staff time while working on the Project and reach agreement on decision making timeframes and (2) place high value on these considerations in the selection of the mitigation contractor as relationships with agencies and innovative approaches will be important to controlling the Authority's mitigation costs.

The Master LSA Agreement is undergoing final review in CDFW. The Authority must sign the Master LSA Agreement for it to be valid. Staff anticipates returning to the Reservoir Committee and Authority Board in the near term to seek approval for the Executive Director to sign the Agreement. Staff is planning to work with TCCA and GCID on components of the anticipated Agreement that may affect their facilities prior to seeking the Reservoir Committee and Authority Board approval.

Receiving the Master LSA Agreement is a high priority Work Plan action in Amendment 3 and a condition precedent to California Water Commission executing a Funding Agreement.

Prior Action:

March 2023: Reservoir Committee and Authority Board authorized the Executive Director to submit the Master LSA Agreement Application and pay associated fees.

December 2022: Reviewed the approach for complying with the State's Lake and Streambed Alteration requirements in the form of a near term Master Agreement followed up with site specific agreements through construction.

Fiscal Impact/Funding Source:

The Amendment 3 Work Plan includes sufficient budget to implement the near-term actions in the Master LSA Agreement. Subsequent funding for annual Master Agreement fees and development of Subnotification packages beyond 2025 (as noted in the key terms) will need to be addressed on an annual basis in the project budgeting through completion of construction. These costs are being accounted for in the mitigation cost estimate to be included in the upcoming update Project cost estimate.

Staff Contact: John Spranza/Ali Forsythe

Primary Service Providers: ICF and HDR

Attachments: Attachment A – Key Terms of the Master LSA Agreement

Key Terms of the Project's Anticipated Master Lake and Streambed Alteration Agreement (Master LSAA)

Below is a summary of the key terms anticipated in the Project's Master LSA Agreement.

- **Project Location and Description** – The anticipated Master LSA Agreement is anticipated to cover the entirety of the construction of the Project, including inundation of the reservoir footprint. Project activities are those activities that were anticipated at the time of the application and included in the Final EIR/EIS. As design efforts progress, amendments to the Master LSA Agreement may be necessary to adjust for changes in the Project footprint and refine required compensatory mitigation when field verification of potentially jurisdictional resources has occurred.
- **Project Activities Subject to the Agreement** – Only those Project construction activities (including reservoir inundation) that will (1) substantially divert or obstruct natural flows of any stream, (2) change the bed, channel or bank of any stream or lake, or (3) use or deposit materials in any stream or lake are subject to the Master LSA Agreement.
- **Subnotification Packages** – For the Project activities subject to the Agreement, the Authority is to submit a subnotification package to CDFW and CDFW has to approve the subnotification prior to the Authority undertaking the activity. The subnotification package is to include at least 60% design for the activities covered in the subnotification; a biological report including land cover and species survey and mapping results for the areas included in the subnotification; avoidance and minimization measures consistent with the Agreement; proposed compensatory mitigation for those resources that cannot be avoided; and anticipated construction schedule. The anticipated Agreement identifies specific timeframes for the Authority and CDFW to ensure timely and effective review and approval of the subnotification packages.
- **Avoidance and Minimization Measures** – The Agreement is anticipated to include standard administrative, biological resource-specific, land cover-specific avoidance and minimization measures. Administrative avoidance and minimization measures include such things as identifying an Authority's designated individual who is responsible for communicating with CDFW, compliance with the California Endangered Species Act, stop work authority, on-site worker training, and similar standard measures. Biological resource-specific avoidance and minimization measures include both general measures such as pre-construction wildlife surveys and wildlife relocation measures

along with species specific measures such as nesting bird surveys, bat habitat assessments, plant surveys, species-specific surveys and similar. Land cover-specific avoidance and minimization measures include measures for in-stream work, vegetation removal and restoration, erosion control, avoiding effects of equipment (such as requirements around maintenance and refilling), and debris management and removal. Many of these measures were proposed by the Authority in its application, are included in the Final EIR/EIS, or are included in the Project's Construction ITP. Care has been taken by the team and CDFW to ensure consistency across the Project's permitting requirements with regard to these measures in particular.

- **Compensatory Mitigation** – The anticipated Agreement includes the requirement to compensate for certain impacts that cannot be avoided. The Agreement is anticipated to specify the ratios of compensation with ratios ranging from 1:1 to 4:1 (compensate 4 acres for every acre impacted), depending on the specific resource affected. Compensatory mitigation can be completed through the same means as was identified in the Project's Construction ITP – purchase of habitat credits and/or permanent protection and funding for perpetual management of habitat mitigation lands (in easement or in fee title). Compensatory measures are to be completed before starting the Project activity, or within 24 months of CDFW's approval of the subnotification if a security is provided. The anticipated Agreement includes specific criteria for approval of the compensatory mitigation and for the financial security.
- **Consistency with Final EIR/EIS** – The anticipated Agreement is largely consistent with the Project's 2023 Final EIR/EIS. The Final EIR/EIS included an analysis of the Project's effects to resources such as streams and landcover that were anticipated to be jurisdictional under Section 1602. The anticipated Agreement includes those same resources, only with updated effects based on ground surveys conducted since completion of the Final EIR/EIS. Where there are differences between the two documents, they largely fall in the amount of compensatory mitigation required between the Final EIR/EIS and anticipated Agreement. As discussed above, compensatory mitigation for effects to 1602 resources range from 1:1 to 4:1, depending on resource type. The Final EIR/EIS indicated that compensatory mitigation would be at a ratio of 1:1 or by an equivalent or greater requirement as determined through coordination with state and federal agencies during permit processing.
- **Reporting Requirements** – The anticipated Agreement includes standard reporting requirements.
- **Term of Agreement** – The anticipated Agreement includes a term of 10-years from CDFW's signature with the possibility for an extension of up to 5 years.