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Meeting: **Reservoir Committee & Authority Board** **September 19, 2025**
Agenda Item 3.1

Subject: **Biological Terrestrial Mitigation Strategy**

Requested Action:

Review and comment on the continued development of components of the contracting strategy for terrestrial biological mitigation.

Detailed Description/Background:

As the Authority prepares for Project construction, staff are preparing to implement the mitigation measures in the Project's Final EIR/EIS and key permits. The Project's largest construction mitigation cost is expected to be compensatory mitigation for terrestrial biological resources. As implementing compensatory terrestrial biological mitigation has the potential to delay construction, staff have continued to work towards awarding a terrestrial biological mitigation contract with the goal of ensuring mitigation is in place with sufficient time to avoid construction delays.

Staff received input from the Authority Board and Reservoir Committee at its March 2025 meeting that resulted in refinement to the Project's draft terrestrial biological mitigation contracting strategy. The draft strategy was subsequently released for industry review on May 20, 2025, via email to an interested parties/industry representatives list being maintained by the Authority and posted to the Authority's website. Comments were requested by June 11, 2025. The Authority received comments from four industry organizations. The general themes in the comments received and staff's proposed revisions to approach are summarized below.

- **Minimum Acreage Commitment –** Several commenters requested the Authority provide a minimum acreage commitment for different types of mitigation (i.e., providing assurances to the contractor for guaranteed minimum demand). Providing a minimum acreage commitment would provide greater cost predictability and efficiency for both the Authority and the contractor. It would also have the potential to remove barriers to early mitigation and securing larger contiguous mitigation areas (i.e., larger areas held by one landowner), both of which may increase construction schedule certainty and reduce the risk of needing financial securities. For these reasons, staff recommends the inclusion of minimum acreage commitments and is working to determine appropriate phasing of

the mitigation agreement and minimum acreage commitments by phase. Staff is carefully considering how to structure the minimum acreage commitments by phase to avoid the Authority over-mitigating.

- Bonding Requirements – Some commenters strongly recommended that the Authority allocate separate bonding requirements per Task Order rather than requiring that the entire contract value be covered by a single bond. Other contractors make the opposite recommendation. Requiring a single bond for such a large contract value could limit the bond carrier options, and in turn limit the potential prime mitigation contracts that can access such bond capacity. Phasing the bonding requirement into smaller, incremental bonds can potentially put the Authority at a greater risk if the mitigation contractor does not perform. To increase competition, staff recommends bonding at the Task Order level. This will continue to require decently large bonds to protect the Authority as staff is considering a limited number of Task Orders, but won't require the contractor to bond the entire contract value, potentially allowing for additional competition in the procurement process.

- Labor Considerations – Some commentors raised questions about the need/desirability for the Mitigation Contractor to comply with specific skilled and trained workforce requirements and/or enter into a project labor agreement. The Mitigation Contract is largely expected to be a professional services effort (i.e., acquiring land rights, recording easements, working with regulatory agencies, establishing endowments, and similar). The extent of construction activities undertaken by the Mitigation Contractor is unknown at this time, but is not expected to be expansive. However, as the Mitigation Agreement is being procured through the AB 2251/Public Contact Code Section 20928 RFQ/RFP process, the Mitigation Contractor must comply with the skilled and trained workforce requirements for construction activities as set forth in that legislation. The Mitigation Contractor must also comply with the Authority's Construction Workforce Policy relative to construction activities.

- Use of Sites-Owned Property and Annual Price Adjustments – Several commentors requested clarification on the potential use of land already acquired by the Authority to provide compensatory mitigation and how price adjustments would be made in this situation. Mitigation on remanent parcels acquired by the Authority should be considered and should result in a price adjustment. This would be evaluated at the RFP and contract negotiation stage. This will be addressed as part of the Mitigation

Agreement and pricing structure. Several commentors also requested clarification on how the Mitigation Agreement will address annual price increases since the contract will span multiple years. It is reasonable for the Mitigation Agreement to include price adjustments over time and this would be evaluated at the RFP and contract negotiation stage.

Staff continues to work with the Environmental Planning and Permitting Work Group and an Ad Hoc Mitigation Contracting Subgroup to review and discuss the approach to the procurement process. Staff and the Ad Hoc Subgroup continue to develop the contracting approach and complete the contracting checklist items. At this time, staff is anticipating returning to the Authority Board and Reservoir Committee at its October 2025 meeting to request approval for the Executive Director to issue the Request for Qualifications.

Prior Authority Board Action:

March 2025: Reviewed and commented on the continued development of components of the contracting strategy for terrestrial biological mitigation.

May 2025: Reviewed and commented on the Biological Terrestrial Mitigation Contractor Procurement checklist of items to be completed before issuing the Request for Qualifications.

Fiscal Impact/Funding Source:

Further development of the contracting strategy for terrestrial biological mitigation can be completed within the total budget of the Amendment 3 Work Plan.

Staff Contact:

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Primary Service Provider:

Cox Castle

Attachments:

None