



Requested Action:

Receive an update on the draft Contract for Public Benefits (CAPB) with the California Department of Fish and Wildlife (CDFW) for ecosystem benefits.

Detailed Description/Background:

Under Proposition 1, \$2.7 billion was dedicated to water storage projects that provide measurable public benefits, with at least 50% of those benefits required to be ecosystem improvements. The California Water Commission (CWC) administers the Water Storage Investment Program (WSIP) and made a Maximum Conditional Eligibility Determination (MCED) for the Sites Reservoir Project. Final WSIP funding requires execution of contracts with each administering public agency responsible for identified public benefits.

As trustee agency for fish and wildlife resources, CDFW is responsible for (1) making findings that the public ecosystem benefits meet statutory requirements; and (2) entering into a contract with the Authority to administer those benefits. The Ecosystem CAPB will fulfill this statutory requirement. The Ecosystem CAPB will establish: the specific public ecosystem benefit for the Project; monitoring and reporting requirements; and an Adaptive Management framework.

This report is intended to provide an overview of the draft CAPB terms, which are not yet finalized but the CAPB is fully drafted and being negotiated by Staff. Staff is seeking any final input from Board members on key terms before Staff comes back to the Board for authorization to sign the CAPB, which is expected to occur within the next couple of months.

The Ecosystem CAPB is anticipated to identify the ecosystem benefit as “wetland habitat enhancement – to enhance seasonal wetlands, permanent wetlands, or riparian habitat for aquatic and terrestrial species on either state or federal wildlife refuges, other public lands, or private lands”. (Note that water into the Yolo Bypass for the benefit of Delta smelt is no longer being considered as the California Department of Water Resources has found in its study effort that this action can have mixed and uncertain ecosystem benefits.) The wetland habitat enhancement benefit can be achieved through delivery of Incremental Level 4 water under the Central Valley Project Improvement Act or through delivery of

water to enhance other seasonal wetlands, permanent wetlands, and riparian habitat under specific, measurable criteria. This is terminology pulled directly from the technical regulations adopted by the State and will be incorporated into the CAPB.

The Ecosystem CAPB is structured to ensure delivery of public benefits which is different than Participants whom are acquiring a Capacity Interest and Share in the Project facilities. It will be Authority's obligation under the CAPB to deliver the public benefits using the Sites Facilities and Agreements. The financial and operational risk for this delivery will be passed on to Participants and Reclamation through the B&O Contract and the Partnership Agreement respectively. The CAPB is anticipated to identify two key Authority obligations as follows:

1. **Water Delivery Commitment** – 17.3 percent of the Project's base facilities along with downstream facility capacity are being dedicated to achieving the ecosystem benefits. The CAPB terms are expected to identify that regulatory, hydrologic, and system operations that are outside of the control of the Authority and can be different than modeled, would be a consideration in determined adaptive management and contract compliance. Staff has completed preliminary modeling identifying target deliveries that 17.3% of the Project can achieve, without impacting other Storage Partners, which then translates to economic valuation (see Attachment A). The target deliveries of ecosystem water need to be defined by water year type, with a 5 and 10-year running average targets. These delivery targets are identified for both north and south of Delta with a conversion to adjust deliveries from north of Delta to south, and vice versa.
2. **Agreements Required to Deliver the Benefits** – The Authority would be required to maintain key agreements necessary to deliver the ecosystem benefits. These include such things as: (1) an agreement with Reclamation to accept the refuge water at certain locations and convey the water to the refuges; (2) an exchange agreement with DWR to exchange water with Oroville for the purposes of the Upper Butte Basin Wildlife Area; (3) "will serve" commitments from water districts that serve the Upper Butte Basin. Termination or modification of these agreements that *prevent* the Authority from being able to deliver the ecosystem benefits triggers adaptive management or dispute resolution processes.

The Ecosystem CAPB will include an Adaptive Management Plan that defines performance thresholds, adaptive management "early warning" triggers, limits exposure by focusing on actions, not guaranteeing ecological outcomes, provides

multiple off-ramps before any finding of insufficient benefit, uses dispute escalation only after collaborative adaptive management fails through a meet and confer process. The specifics of the Adaptive Management Plan are still under development, but the Authority anticipates that the Plan will be structured in a manner similar to that described in Attachment B.

Staff is continuing to work on the: (1) term of the Agreement; (2) the water delivery commitment values and targets (to be updated following the release of the Sites Draft Water Right Order); and (3) the Adaptive Management Plan. Staff expects to have a complete draft Ecosystem CAPB in March for Reservoir Committee/Authority Board review. The draft Ecosystem CAPB is also transmitted by CDFW to the CWC and posted for a 60-day public review period. After review, any comments are addressed and the Agreement is finalized.

Fiscal Impact/Funding Source:

There is sufficient funding in the Amendment 3 Work Plan to develop and complete the Ecosystem CAPB. From a long-term perspective, the CAPB creates multi-decade operational, reporting, and adaptive management obligations for the Authority. The Authority's cost risk and exposure is largely tied to implementation performance, not guaranteed ecological outcomes. However, the Authority will be responsible for the delivery of water to the ecosystem (both development of that water through Base Capacity Interest and delivery of water through Authority and Facility Partner facilities, with the Authority bearing most conveyance costs), monitoring and reporting requirements, potential corrective actions triggered under adaptive management, and indemnification obligations. The most significant regulatory risk is a potential finding of insufficient public benefit by CDFW and subsequent action by the CWC *in the event that the Authority is not performing the contractual actions under the Authority's control*. The remedy outlined in the draft CAPB in this situation is specific performance – meaning, ensuring the Authority performs those actions under its control (unless performance is prohibited by some outside factor beyond the Authority's control), not for return of the Proposition 1 funding. Overall, the draft CVPB creates a structured, performance-based, and procedurally bounded contract that seeks to balance risk to both the Authority and CDFW/CWC.

Staff Contact: Ali Forsythe

Attachments:

Attachment A – Preliminary Target Deliveries

Attachment B – Adaptive Management Plan Anticipated Structure

Attachment A – Preliminary Target Deliveries

Sites-CDFW CAPB Public Ecosystem Benefits Agreement¹

Scenario	ALT 3B 010226 2040MED UBBWA-Bal														
Sites WSIP Refuge L4 Deliveries (TAF)															
North of Delta															
40-30-30	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	TOT		
Long-Term	0.4	0.7	0.5	1.9	1.4	2.0	3.5	1.8	1.4	0.4	0.1	0.1	14.1		
W	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
AN	0.2	0.3	0.7	3.0	2.6	3.7	6.9	3.8	3.3	1.3	0.0	0.0	25.8		
BN	0.2	0.6	0.6	2.1	2.4	3.3	5.8	3.3	2.3	0.5	0.0	0.1	21.2		
D	0.5	1.6	1.2	3.7	2.2	3.1	5.5	2.6	1.9	0.2	0.1	0.2	22.8		
CD	1.0	1.1	0.5	1.8	0.9	1.5	2.6	1.0	0.8	0.4	0.3	0.3	12.1		
Sites WSIP Refuge L4 Deliveries (TAF)															
South of Delta															
40-30-30	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	TOT		
Long-Term	0.0	0.0	0.0	0.0	5.5	4.2	6.3	5.9	3.9	0.8	0.0	0.0	26.4		
W	0.0	0.0	0.0	0.0	5.5	0.0	3.8	6.0	3.5	1.3	0.0	0.0	20.0		
AN	0.0	0.0	0.0	0.0	8.1	0.0	7.0	6.5	5.6	1.8	0.0	0.0	29.0		
BN	0.0	0.0	0.0	0.0	6.4	8.4	7.9	7.2	4.8	0.4	0.0	0.0	35.1		
D	0.0	0.0	0.0	0.0	5.7	8.7	9.5	7.0	4.4	0.1	0.0	0.0	35.4		
CD	0.0	0.0	0.0	0.0	3.0	4.4	4.8	3.0	2.0	0.3	0.0	0.0	17.4		
Sites WSIP Refuge L4 Deliveries (TAF)															
Total															
40-30-30	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	TOT		
Long-Term	0.4	0.7	0.5	1.9	6.8	6.1	9.8	7.7	5.3	1.1	0.1	0.1	40.5		
W	0.0	0.0	0.0	0.0	5.5	0.0	3.8	6.0	3.5	1.3	0.0	0.0	20.0		
AN	0.2	0.3	0.7	3.0	10.7	3.7	13.9	10.3	8.9	3.1	0.0	0.0	54.7		
BN	0.2	0.6	0.6	2.1	8.8	11.7	13.6	10.5	7.1	0.9	0.0	0.1	56.2		
D	0.5	1.6	1.2	3.7	7.9	11.8	15.0	9.6	6.3	0.3	0.1	0.2	58.2		
CD	1.0	1.1	0.5	1.8	3.9	5.8	7.4	4.0	2.8	0.7	0.3	0.3	29.5		

¹ These values are the working values and are subject to further discussion and review. Final numbers will be reflected in the negotiated agreement.

Attachment B: Summary — Adaptive Management Anticipated Structure

Sites-CDFW CAPB Public Ecosystem Benefits Agreement¹

Overall Adaptive Management Framework

- The agreement requires the Authority to manage public ecosystem benefits through a structured adaptive management process that includes:
 - Monitoring of Project Implementation Actions, Benefit Implementation Actions, and Benefit Environmental Responses.
 - Use of Performance Thresholds (expected outcomes) and Adaptive Management Triggers (warning thresholds).
 - A formal Decision-Making Body (CDFW + Authority) to evaluate performance and recommend actions.
 - A recurring five-year adaptive management cycle with annual monitoring.
- Key principle: Adaptive management focuses primarily on adjusting actions within the Authority's control, not guaranteeing ecological outcomes that may be influenced by external factors (hydrology, regulations, climate, etc.).

What Counts as an Adaptive Management Trigger

- Triggers occur when monitoring shows performance falling below agreed thresholds. They apply across three categories:
 - A. Project Implementation Actions (Operational Delivery)
Examples: 10-year rolling water deliveries fall ~20% below target. Less than 17.3% ecosystem capacity share maintained.
 - B. Benefit Implementation Actions (Agreements & Infrastructure)
Triggers include: Exchange, partnership, or conveyance agreements terminated or modified so deliveries cannot occur. Needed conveyance infrastructure not progressing or unavailable.
 - C. Benefit Environmental Responses (Ecological Results) Trigger occurs when ecosystem performance metrics (e.g., reduction in unmet IL4 demand or wetland habitat response) fall below thresholds during review cycles.
- Important nuance: Failure to achieve ecological response does NOT automatically imply non-compliance — only that adaptive management evaluation must begin.

What Happens When a Trigger Occurs

- When monitoring detects a trigger:

¹ These provisions are written from the perspective of the Sites Authority's current position and are subject to negotiation which may result in the final Agreement being different than shown.

Step 1 — Meet and Confer. Decision-Making Body convenes. Identify limiting factors. Evaluate feasible adaptive actions.

Step 2 — Implement Adaptive Management Actions. Examples include: Change timing or location of deliveries. Use Oroville exchanges more aggressively. Deliver to alternative wetlands. Adjust operational strategies or agreements. Utilize the Environmental Water Manager pilot. Authority only required to implement reasonable and feasible actions within its control.

Step 3 — Continued Monitoring. Metrics reviewed annually. Five-year review assesses whether performance thresholds are restored.

Dispute Resolution

- If parties cannot agree on actions or performance continues below triggers: Department may initiate Public Benefit Dispute Process. Written notice and proposed remedies issued. Authority has 60 days to respond. If unresolved, CDFW may submit a finding of insufficient public benefit to the CWC.
- Potential outcomes: Contract amendments. Modified ecosystem benefits. Corrective actions limited to actions within Authority control.

Long-Term Adaptive Pathways

- The agreement builds in structured flexibility: Five-Year Review Cycle, evaluate monitoring results, update strategies or technologies, adjust thresholds if warranted, Ten-Year Checkpoints for ecological outcomes, if environmental response triggers persist across two review cycles:
 - Parties may revise performance thresholds or benefits.
 - Specific adaptive actions may be discontinued if ineffective.
 - Ecosystem benefit may be amended or terminated by agreement.

Force Majeure / Catastrophic Conditions

- Separate pathway exists for events outside normal adaptive management: Infrastructure loss, catastrophic habitat change, etc. Decision-Making Body evaluates whether benefits remain feasible. May amend or terminate specific benefit obligations.

Reporting Requirements Supporting Triggers

- Triggers are evaluated through structured reporting: Annual Summary Report — status, monitoring data, changes. Adaptive Management Review Report — every 5 years or when triggers occur. Department reviews and responds within defined timelines.