



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

June 26, 2026

Subject: **Draft Clean Water Act 401 Permit**

Requested Action: Comment on the Clean Water Act (CWA) 401 Draft Permit ahead of the public comment period closing June 26 and provide Board direction on the key points of the Authority's comments.

Detailed Description/Background:

In January 2024, the Board authorized submittal of the Project's Section 404 and Section 401 permit applications to the U.S. Army Corps of Engineers (USACE) and State Water Board (Water Board), respectively. However, both agencies ultimately found the applications to be insufficient and advised that the Authority resubmit when completion was achieved on, among other items, the Project's Construction Biological Opinion, National Historic Preservation Act Section 106 Programmatic Agreement, and a detailed explanation of how impacts would be mitigated in accordance with the USACE's regulations.

Following the Board's prior authorization to pursue the Project's Clean Water Act Section 404 and Section 401 permitting, the Authority submitted a revised water quality certification application to the Water Board on September 15, 2025. On April 21, 2026, the USACE approved a Record of Decision for the Project, which informs future Section 404 permit evaluations and is subject to the pending Section 401 permit.

On May 29, 2026, the Water Board released the draft Section 401 water quality certification for the Project, opening a public comment period that closes at 12:00 noon on Friday, June 26, 2026. Staff are reviewing the draft 401 certification and preparing comments for submittal before the close of the comment period (noon on June 26).

The draft certification is focused on Project construction and is separate from the ongoing water rights proceeding. If finalized, the Section 401 certification conditions would become conditions of the federal Clean Water Act Section 404 permits issued by the USACE. The certification is intended to address the construction-related activities necessary to build the Project, including geotechnical investigations, dams and dikes, recreation areas, road improvements, borrow areas, conveyance facilities, Funks Reservoir upgrades, the Dunnigan Pipeline, transmission lines, and related work.

Staff proposed the Water Board provide certification for all Project activities; however, the Water Board's current draft proposes a phased permitting approach that mirrors the Individual Work Package Plan approach included in other permits. Staff are evaluating whether this provides a workable framework that protects water quality and beneficial uses while allowing construction to proceed consistent with the Project schedule and the permitting approach previously discussed with the Board. Specifically, the Water Board added broad additional agency review and Deputy Director approval requirements. Should these provisions remain, staff are providing language to incorporate into the certification that details specific/bounded review criteria, streamlined review steps, and agreed upon review and approval timelines for the Deputy Director. Staff's comments on the draft certification seek to make the certification consistent with the Authority's Section 401 application.

Staff will continue coordinating with the Water Board, USACE, and other resource agencies to address any necessary clarifications or revisions through the comment process and will provide updates as the certification process advances.

Prior Action:

June 2025: Authorized the Executive Director to resubmit the Project's Clean Water Act 404 and 401 Permit applications.

Fiscal Impact/Funding Source:

None. The efforts to resubmit 404 and 401 permit applications and ongoing resource agency coordination after resubmittal are covered under the Amendment 3 Work Plan.

Staff Contact:

Ali Forsythe

Primary Service Provider:

HDR and ICF

Attachments:

None. The draft water quality certification can be found at:

https://www.waterboards.ca.gov/waterrights//water_issues/programs/water_quality_cert/docs/2026/sites-draft-wqc.pdf

Authority Comment Letter to be provided at the meeting.