


**AD-HOC  
ENVIRONMENTAL PLANNING AND  
PERMITTING WORKGROUP**

**JANUARY 2020**

 **Sites**

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**Purpose of Meeting**

1. Provide status update
2. Discuss and provide recommendation to Reservoir Committee on:
  - a. Restarting planning and permitting efforts
  - b. CEQA/NEPA approach moving forward

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## Agenda

- Current status of work (informational)
- Considering restarting efforts (action)
  - Project approach
  - Permitting
  - CEQA/NEPA
- Upcoming work and priorities (discussion / direction to staff)
- Next meeting
- Action item review

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## Current Status



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## Current Status of Work: Permitting 2019

- **ESA Section 7**
  - Multiple meetings with USFWS and NMFS
  - Admin Draft BA largely drafted for Alt D
- **State Incidental Take Permit**
  - 30+ meetings/workshops with CDFW staff
  - Monthly executive meetings
- **NHPA Section 106**
  - Internal Draft Programmatic Agreement annotated outline
- **Water Right Application**
  - MBK prepared data needs and approach document
- **Approvals and permits for 2019/2020 geotech efforts**

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## Current Status of Work: Planning

- Draft EIR/EIS was released August 2017
- Comments were received during 2 public meetings
  - 141 comment letters (over 800 individual comments) were also received during the public review period

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## Current Status of Work: Planning

Work on the Final EIR/EIS started in March 2019

- Schedule driven approach to meet WIIN and WISP Deadlines
- Alternative D assumed to be Preferred Project
- Strategy meetings were initiated with ICF, Authority, Reclamation and Integration staff
- Initiated ongoing coordination with legal counsel on approach to Final EIR/EIS

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## Current Status of Work: Planning

Final EIR/EIS Work Completed to date:

- March 29, 2019 – Approach memo prepared by ICF team
- June 5, 2019 – ICF provided annotated outlines for master responses
- June 28, 2019 – ICF submitted 1<sup>st</sup> batch of responses to comments (RTCs), including nearly 300 individual RTCs
- July 31, 2019 – ICF 2<sup>nd</sup> batch of RTCs addressing remaining responses to individual comments and the first master responses
- September 6, 2019 – ICF provided additional master responses, many of which are partial pending input from modeling and identification of the preferred project

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## Current Status of Work: Planning

### Work Suspended in October 2019 Pending Identification of the Preferred Project

- RTC – All Batch 1 and Batch 2 responses to comments have been reviewed by the Authority and Reclamation and comments sent back to ICF; review of Batch 3 partial Master Responses was suspended
- Readers Guides – ICF team had initiated work on reader's guides for each chapter to clarify the effects of the preferred alternative, originally assumed to be Alternative D; this work was also suspended

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## Current Status of Work: Geotech

- Geotech planning and permitting
  - CEQA categorical exemption/NEPA exclusion
  - Biological Assessment / Biological Opinion
  - NHPA Section 106 Compliance
  - Refuge Special Use permit
  - Field monitoring of Reclamation's drilling activities (biological, cultural and tribal)



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## Current Status of Work: CDFW “90-Day” Effort

- Executive Team meeting today, January 29
- Outcomes / next steps

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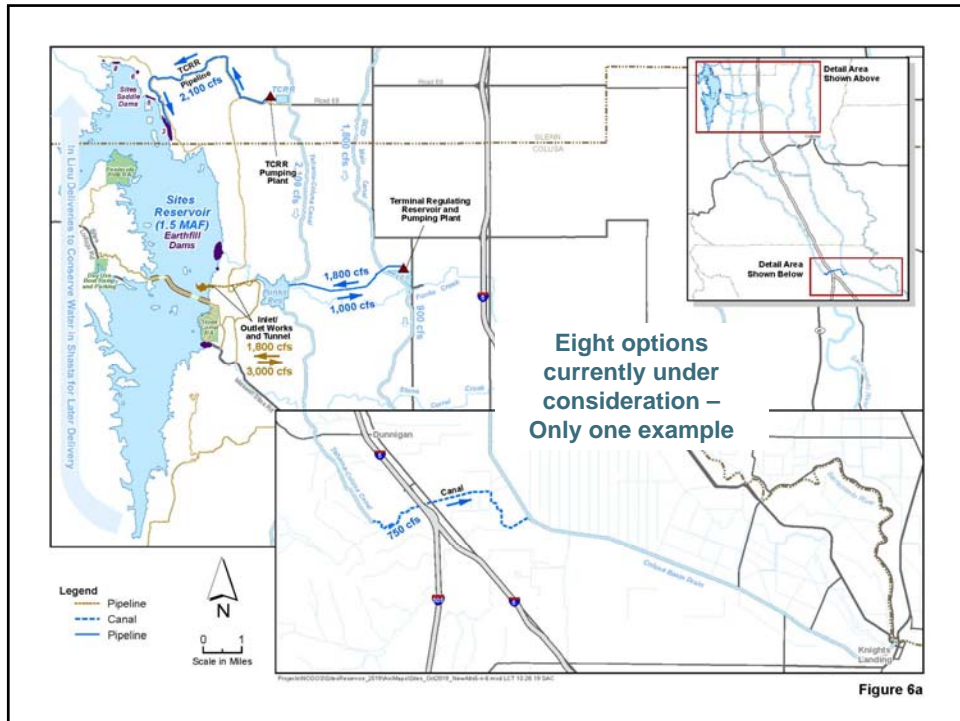
## Current Status of Work: Value Planning

- Value Planning (VP) started October 2019
  - Goal to reduce cost of project
  - Nine VP alternatives of various configurations
  - Size from 1.8 to 0.8 MAF
  - Delavan and No Delavan Intake/Outlet options
  - No federal storage account / no federal cost share
- Cost estimates range from \$5.2B to \$3.2B (more recently as low as \$2.7B)
- Ongoing engineering, cost, and environmental screening analysis
- Revised Draft VP Report to Reservoir Committee in March
- Final VP Report to Board in April

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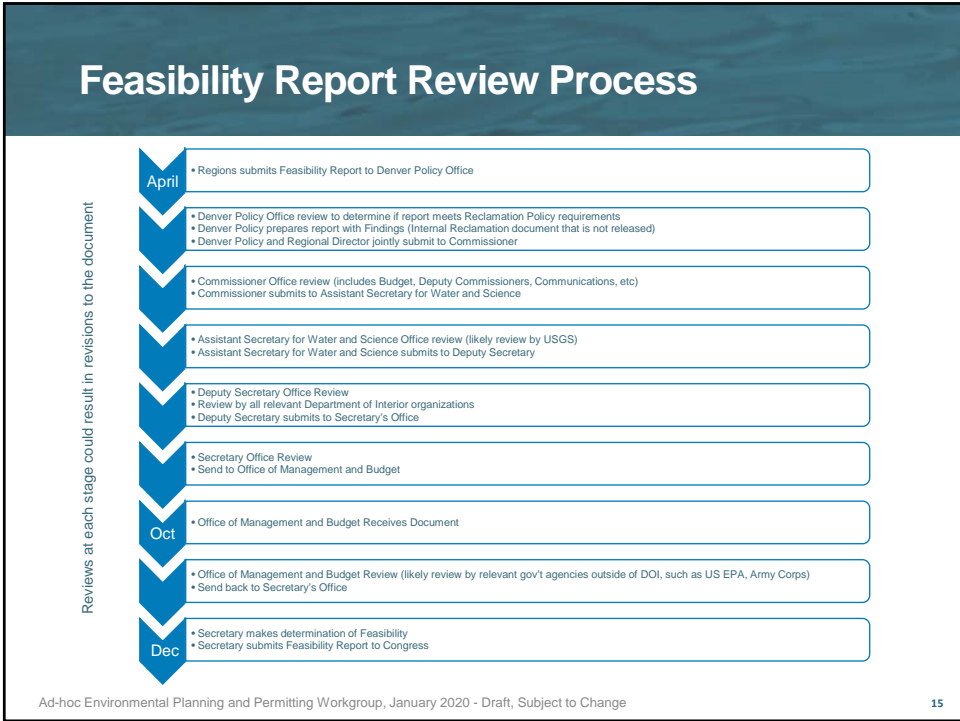
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## Current Status of Work: Reclamation Efforts

- Feasibility Study
  - Developing for Alternative A
  - Plan to submit Feasibility to Commissioners Office in April for determination by end of year
  - Allows Sites to receive pre-construction funds (generally greater dollar amounts than planning funds)
- Exchanges with Shasta
  - Working with CVO to develop principles of agreement

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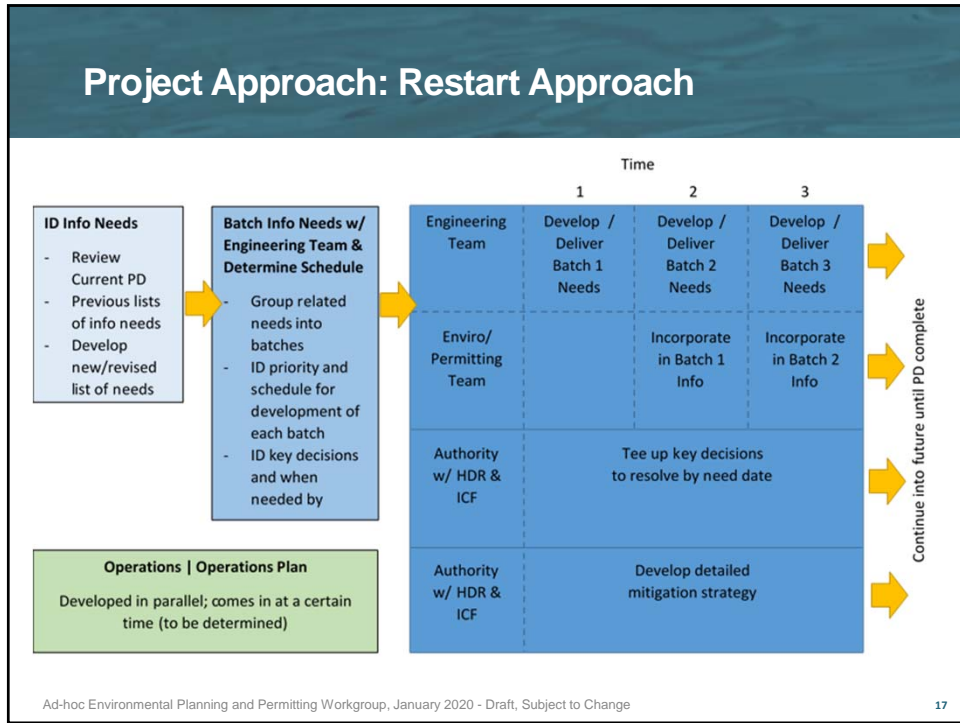


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- ### Project Approach: Project Description Development
- Finalize Preferred Alternative (Value Planning)
  - Identify information needs with Eng and Env
    - Use existing admin draft BA Project Description with comment bubbles
      - Prioritize and bracket information needs
      - Identify data needed in GIS format
      - Determine Project Level Analysis
      - Determine Program Level Analysis
    - Outline Operations needs for BA analysis
      - Aquatic effects
      - Terrestrial effects
      - Confirm assumptions in admin draft BA
    - Project description developed for BA will be used for EIR/EIS as appropriate
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## Project Approach: Operations Criteria

- Developed in parallel to “facility” project description
- Need to ID specific steps, but generally as follows




Value Planning Effort

- Post-processing and limited screening level analysis
- Draft Shasta Exchange Principles of Agreement
- Ops Plan annotated outline



Ops Plan Development

- Code development
- Expanded screening level analyses to develop prelim ops criteria
- Draft Shasta Exchange Agreement
- Draft Ops Plan (with revised operational criteria)



Ops Analysis and Finalization

- Analyze and refine ops criteria using all tools (CALSIM, DSM2, Temp, OBAN, IOS, etc)
- Conduct detailed effects analysis
- Ops Plan, Version 1.0 (with revised operational criteria)

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## Restarting Environmental Work: Permitting 2020-21

- Section 7 ESA (Biological Assessment)
  - Why Important Now – Potential to affect reservoir yield and necessary for Reclamation to sign Record of Decision (ROD)
  - Approach:
    - Develop analysis and effects for new alternative
    - Reclamation submits BA to initiate consultation
- 2081 ITP Application (CESA)
  - Why Important Now – Potential to affect reservoir yield
  - Approach:
    - Develop analysis and effects for ITP application packet
    - Develop proposed mitigation
    - Submit application packet
- Section 106 (NHPA)
  - Why Important Now – Necessary for Reclamation to sign ROD
  - Approach:
    - Collaborate with Reclamation and Army Corps on Programmatic Agreement (PA)
    - Coordination with Tribes (Federal to Federal)
    - Draft and Final PA
    - Final PA signed by signatory parties

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## Restarting Environmental Work: Permitting 2020-21 (cont)

- Water Right Application
  - Why Important Now – Potential to affect reservoir yield
  - Approach:
    - Prepare required technical analyses
    - Prepare and submit application
- USACE Authorizations 404/408 Coordination
  - Why Important Now – Ensure Corps can use EIS under preparation for 404/408 actions
  - Approach:
    - Cooperating Agency Agreement between Corps and Reclamation for EIS, PA, BA and respective agency responsibilities
    - Confirm approach for alternatives analysis (Least Environmentally Damaging Practicable Alternative [LEDPA])
    - Incorporate LEDPA into EIS (note, assumes recirculation)
- Geotechnical Analysis
  - Identify and permit next phase of Geotech
  - Complete commitments and requirements in any permits / approvals

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## Restarting Environmental Work: Planning

- Options to move the CEQA/NEPA process forward include:
  - Preparation of the Final EIR/EIS
  - Partial Recirculation of the Draft EIR/EIS
  - Full Recirculation of the Draft EIR/EIS

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## Restarting Environmental Work: Planning (cont)

### CEQA Standards for Recirculation – Pub. Res. Code § 21092.1 & CEQA Guidelines § 15088.5

- A lead agency is required to recirculate if “significant new information” is added after publication of the Draft EIR.
- “Significant new information” is defined as information showing any of the following:
  - A new significant impact resulting from the project or from a mitigation measure
  - A substantial increase in the severity of a previously identified significant impact resulting from the project or from a mitigation measure
  - A feasible project alternative or mitigation measure considerably different from others previously analyzed would lessen the project’s impacts, but the project proponents decline to adopt it
  - The Draft EIR “is so fundamentally flawed and basically inadequate and conclusory in nature that meaningful public review and comment were precluded”
- Recirculation is “not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR”

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## Restarting Environmental Work: Planning (cont)

### CEQA Recirculation – Examples from Case Law

- Change in project footprint that has the potential to create new impacts  
*E.g., Residents Against Specific Plan 380 v. County of Riverside*, 9 Cal. App. 5<sup>th</sup> 941 (2017): Recirculation not required where project revisions would not change project footprint or increase any of the project’s impacts
- Significant project design changes, even where impacts are found to be less than significant  
*Spring Valley Lake Ass’n v. City of Victorville*, 248 Cal. App. 4<sup>th</sup> 91 (2016): Complete redesign of project stormwater management plan triggered recirculation, even though resulting impacts were found to be insignificant and even beneficial, since the public did not have an opportunity to review the redesign and provide comments.

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## Restarting Environmental Work: Planning (cont)

**CEQA Recirculation – Examples from Case Law (cont.)**

- Failure to evaluate a potentially significant impact in the Draft EIR  
*Spring Valley Lake Ass'n v. City of Victorville*, 248 Cal. App. 4th 91 (2016): Recirculation required where Draft EIR omitted discussion of applicable air quality policies and implementation measures.  
  
*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40 Cal. 4th 412 (2007): Recirculation required where Draft EIR did not discuss impact of groundwater extraction on salmon; Final EIR found the impact would be insignificant, but there was information suggesting this finding might not apply during periods of low water flows.
- Changes in mitigation measures that may create new impacts or that are not shown to be feasible  
*Gray v. County of Madera*, 167 Cal. App. 4th 1099 (2008): Recirculation required where revised mitigation measure to address water supply impacts could create new impacts that were not previously evaluated, and where the revised mitigation was not shown to be a feasible way to reduce the water supply impacts.

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## Restarting Environmental Work: Planning (cont)

**Partial vs. Complete Recirculation**

- Recirculation may be partial – limited to revised portions of Draft EIR
  - Lead agency need not respond to comments submitted on unrevised portions of original draft
  - Lead agency may limit future comments to the revised portions  
*But as a practical matter, all comments submitted prior to project approval are part of the administrative record in litigation*
- Complete recirculation
  - Lead agency need not respond to comments on original draft
  - Provides an opportunity to buttress and improve vulnerable portions of EIR that may not require recirculation

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## Restarting Environmental Work: Planning (cont)

Table - Options to Complete CEQA Process

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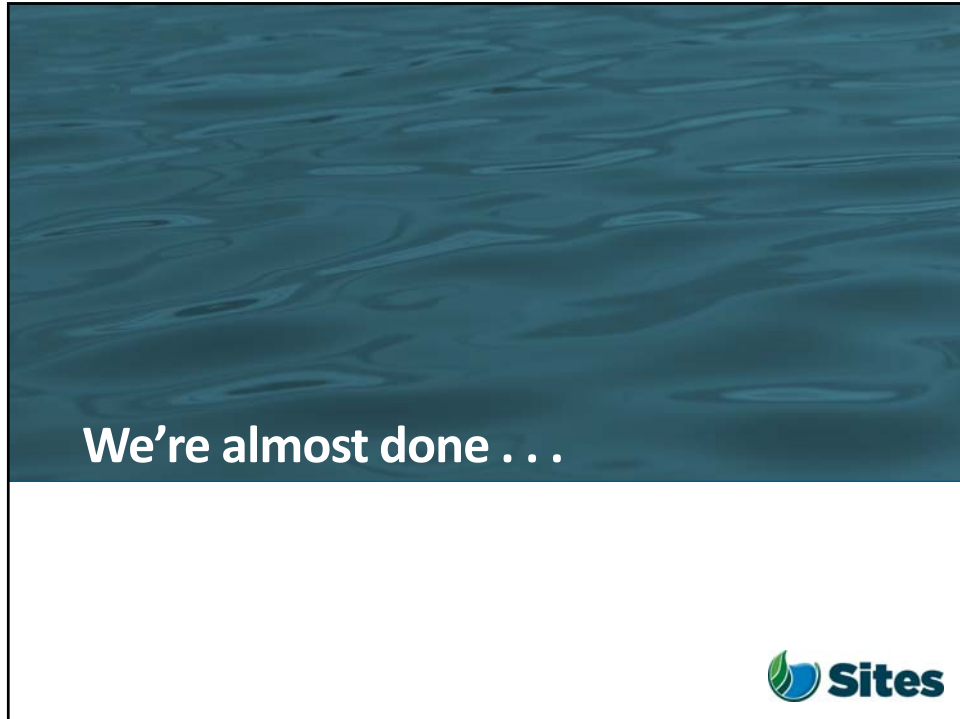
## Restarting Environmental Work: Planning (cont)

### Coordination with Reclamation Necessary to Complete NEPA


NEPA "Recirculation" (Supplementation of Draft EIS) – 40 C.F.R. § 1502.9(c)

- Supplementation of Draft EIS required for:
  - Substantial changes in the proposed action that are relevant to environmental concerns
  - Significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts
  
- NEPA guidance recommends supplementation if there is a new alternative that is not within the spectrum of alternatives studied in the Draft EIS
  - *This could be an important consideration for any alternatives that involve more than a "minor variation" of an alternative studied in the Draft EIR/EIS*
  
- Joint vs. Separate CEQA / NEPA?

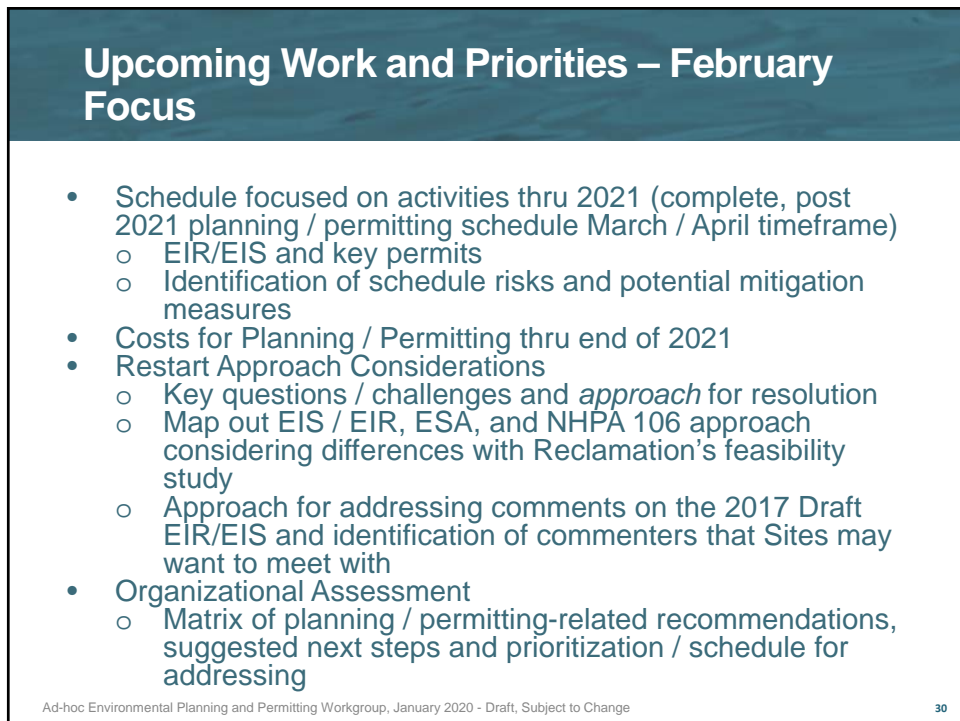
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We're almost done . . .



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## Upcoming Work and Priorities – February Focus

- Schedule focused on activities thru 2021 (complete, post 2021 planning / permitting schedule March / April timeframe)
  - EIR/EIS and key permits
  - Identification of schedule risks and potential mitigation measures
- Costs for Planning / Permitting thru end of 2021
- Restart Approach Considerations
  - Key questions / challenges and *approach* for resolution
  - Map out EIS / EIR, ESA, and NHPA 106 approach considering differences with Reclamation's feasibility study
  - Approach for addressing comments on the 2017 Draft EIR/EIS and identification of commenters that Sites may want to meet with
- Organizational Assessment
  - Matrix of planning / permitting-related recommendations, suggested next steps and prioritization / schedule for addressing

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## Schedule Next Meeting

- Before or after February Reservoir Committee meeting?

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## Action Item Review

- Identify and Assign Action Items

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