

Ad-Hoc Environmental Planning and Permitting Work Group

March 14, 2022



Agenda

- Action Items from the Previous Meeting
- Selection of the Preferred Alternative and Revisions to Diversion Criteria
- Permitting
 - Water Right Application Review
 - Biological Assessment Review
- Final EIR/EIS
 - Update on RDEIR/SDEIS Public Review and Comments
 - Approach to Responses to Comments
- Ecosystem Water Manager Pilot Project
- Work Group Charter
- Schedule and Dashboard Update
- Upcoming Priorities and Timing of Next Meeting

Action Items

Ali Forsythe

Action Items from Previous Meeting

1. Unimpaired Flows Analysis – Apply cost/AF analysis and reflect in tech memo when developed

Selection of the Preferred Alternative and Revisions to Diversion Criteria

Ali Forsythe

Why are We Doing These Things and Why Now?

- Biological Assessment, Operations ITP, Water Right Application
 - All targeted for April/May submittal (depending on modeling)
 - Important to include our Preferred Project and “final” diversion criteria to reduce rework and renegotiations later
 - Changing alternative later would be substantial rework
 - Substantial changes to diversion criteria later would likely require revised modeling
 - If we want to consider these items, we should consider them now to reduce rework, schedule delays and costs of changing in the future

Selection of the Preferred Alternative

Alternatives Considered in the Revised Draft EIR/Supplemental Draft EIS

Facilities / Operations	Alternative 1 – Authority’s Preferred Project	Alternative 2	Alternative 3
Reservoir Size	1.5 MAF	1.3 MAF	1.5 MAF
Hydropower	Incidental upon release	Same as Alt 1	Same as Alt 1
Diversion Locations	Red Bluff Pumping Plant and Hamilton City	Same as Alt 1	Same as Alt 1
Conveyance Release / Dunnigan Release	1,000 cubic feet per second (cfs) into new Dunnigan Pipeline to Colusa Basin Drain	1,000 cfs into new Dunnigan Pipeline to Sacramento River. Partial release into the Colusa Basin Drain	Same as Alt 1
Reclamation Involvement	<ol style="list-style-type: none"> 1. Funding Partner, up to 7% 2. Operational Exchanges <ol style="list-style-type: none"> a. Within Year Exchanges b. Real-time Exchanges 	Operational Exchanges <ol style="list-style-type: none"> a. Within Year Exchanges b. Real-time Exchanges 	Same as Alt 1, but up to 25% investment
DWR Involvement	Operational Exchanges with Oroville and storage in SWP facilities South-of-Delta	Same as Alt 1	Same as Alt 1
Route to West Side of Reservoir	Bridge across reservoir	Paved road around southern end of reservoir	Same as Alt 1

Consideration of Changes to the Federal Investment

- Reclamation sees benefits and has an interest in greater than 7% investment
- Federal government in different financial situation today than in 2019
- Reclamation's demand characteristics require more frequent fill/releases → improve project performance
- Reclamation investment likely to be combination of storage allocation and compensation for anadromous fish benefits of exchanges
- Adjusting deadpool possible, would free up some capacity to allocate to Reclamation or other new participants
- May need voluntary reduction by other members in the future if can't accommodate otherwise

Determining Federal Investment

- Alternative 3 would allow for between 7% and 25% investment
- Determining exact Reclamation investment is subject to negotiations
 - Further evaluation and negotiations, goal of completing main deal points within next 6 months
 - Goal would be to receive final commitment of federal funds on similar schedule as received from Participants

Revisions to Diversion Criteria

Proposed Revisions

Parameter	Revised Draft EIR/ Supplemental Draft EIS with Mitigation	Proposed Revised Criteria
Wilkins Slough Bypass Flow	10,700 cfs Mar-May; 5,000 cfs Sept to Feb and June	10,700 cfs Oct-June; 5,000 cfs Sept
Pulse Flow Protection	Yes	Yes
Fremont Weir Notch Protections	Yes	No, higher bypass flows and pulse protection provide protection for the Notch

- All other conditions of the diversion criteria would remain the same

Why Make These Revisions?

- Responsive to fishery agency and NGO comments on the Revised Draft EIR/Supplemental Draft EIS
- Higher degree of permitting certainty
- Modeling sensitivity analysis indicate that with these changes, Project continues to generate sufficient benefits to meet affordability criteria

Requested Action

- Direct staff to proceed with using the following approach as the basis of environmental review, permitting and water right application:
 - (1) Alternative 3 as the Preferred Project Alternative instead of Alternative 1
 - (2) Adjust to more restrictive diversion criteria to a level expected to achieve a higher degree of permitting certainty while maintaining Project affordability

Permitting

John Spranza

Water Right Application Process

Angela Bezzone

Five Key Components to Application

- Five key areas of consideration for application
 - Project-specific Terms and Conditions – Completed
 - Addressed in January and February
 - Water Availability Analysis – Completed
 - Addressed in February
 - POU and PORDs – Completed
 - Addressed through meetings with Members
 - Diversion Criteria – Completed
 - Addressed, Proposed Project Term in February
 - Basic Project information – Completed
 - Included in Revised Draft EIR/Supplemental Draft EIS
- Seeking approval for Executive Director to submit the application at the April meeting (this month)

Proactively Addressing Concerns – Project-Specific Terms

- Project-specific Terms and Conditions
 - Winter water rights – Subordinates diversions to the specific water rights dated post 9/30/1977
 - Funks and Stone Corral Creek Flows – Provides a process for addressing CA Fish and Game Code 5937
 - Diversion Criteria – Requires diversions be made in compliance with Project's Incidental Take Permit
- Will be included in our application to proactively address issues and avoid protests

Proactively Addressing Concerns – Standard Terms

- Will include these in our application
 - Term 90, Reduction of Diversion Season
 - Subject to prior rights; during some years, water will not be available for diversion during portions or all of the season authorized
 - Term 91, Inbasin Entitlements
 - No diversion authorized when satisfaction of inbasin entitlements requires supplemental releases by CVP and SWP
 - Term 96, Reserved Jurisdiction for Bay-Delta Plan Amendments
 - SWRCB reserves jurisdiction to amend water right to establish new and modified Bay-Delta Plan
 - Term 70, Compliance Plan (mandatory)
 - Compliance Plan required identifying how water right holder will comply with the terms and conditions of water right
- List is not exhaustive of what we expect in the permit!
More will come in during the protest resolution process
and at final permit issuance

Reasonable Likelihood of Water Available for Appropriation

Approach	Result Take-away	Annual Average Available (acre-feet per water year)
Historical Analysis	Water available in all year types* and 20 out of 22 years in analysis	860,800 AF
CalSim II Model	Water available in all year types and all but three out of 82 years in analysis	1,500,000 AF
Face Value Analysis	Water available mainly in wet and above normal years, and about half of years in analysis	1,279,000 AF

*Based on the Sacramento Valley Water Year Index (40-30-30 Index)

Water Availability Analysis – Overall Conclusions

- Thorough analysis used three separate approaches with varying degree of conservatism
- All analyses indicate:
 - Reasonable likelihood of water available for Sites Project diversions
 - Additional water available beyond the Sites Project diversions
 - Sites is not taking ALL of the available water in the system

Balanced Approach

- Water available while:
 - Avoiding injury to other water right holders
 - Avoiding unreasonable harm to the environment
 - Establishing that the Project protects public trust resources and otherwise is in the public interest

Next Steps

- Finalize the application
- Continue to meet with water districts, NGOs and others to discuss the application and address concerns

Requested Action

- Consider authorizing the Executive Director to submit the Project's water right application for a Sites water right to the State Water Resources Control Board including associated application fee

Biological Assessment Terrestrial Analysis Review

John Spranza

ESA Quick Reminder and Status

Biological Assessment

- Authority & Reclamation prepare
- Covers both construction and operations (terrestrial and aquatics)

Today

Reclamation Submits BA to USFWS and NMFS

- Reclamation has final review and approval
- Submitted under Reclamation Letterhead

May Mtg:
Delegate Authority
For Ex Director to
Submit to
Reclamation

Late May/
Early June

Biological Opinions

- One from USFWS
 - Terrestrial and Delta Smelt
- One from NMFS
 - Anadromous Fish

End of 2022/
Early 2023

ESA and Incidental Take Permits

- The Endangered Species Act (ESA) prohibits the import, export, or taking, possessing, selling or transporting of fish, wildlife, and plants federally listed or destruction or adverse modification of critical habitat.
- USFWS responsible for terrestrial and freshwater species
- NMFS responsible for anadromous (ocean-going) and marine species
- May authorize “incidental take” of a listed species in a Biological Opinion (BO)
- In the BO the USFWS and/or NMFS will make a determination whether an action (i.e., project) would jeopardize the continued existence of, or result in the destruction or adverse modification of critical habitat of any listed species

Non-Jeopardy Determination

- When either agency finds that a project may adversely affect a species, but not jeopardize it, an Incidental Take Statement is included as part of the BO that:
 - Specifies the amount or extent of anticipated take that is “incidental” to the project’s purpose
 - Identifies Reasonable and Prudent Measures (RPMs) to minimize take, which are discretionary unless required by terms and conditions of the BiOp



Valley elderberry longhorn beetle

Jeopardy Determination

- When either agency finds that a project would jeopardize a species or result in the destruction or adverse modification of critical habitat it :
 - Identifies Reasonable and Prudent Alternatives (RPAs) that if implemented would avoid the likelihood of jeopardy or adverse modification of critical habitat.
 - Issues Incidental Take Statement as part of the BO for the take that would occur post RPA implementation
 - The RPAs can be significant in nature and cause changes in design, cost, scope, or schedule of a Project

Terrestrial Species Covered

- Take likely necessary for:
 - Conservancy fairy shrimp
 - Vernal pool fairy shrimp
 - Vernal pool tadpole shrimp
 - Valley elderberry longhorn beetle
 - California red-legged frog
 - Giant garter snake
- Not requesting take for:
 - Palmate-bracted bird's beak
 - Keck's checkermallow,
 - Western yellow-billed cuckoo
 - Must avoid if found
OR reconsult



Vernal Pool Tadpole Shrimp



Palmate
Calscape –
2008 Chris
Winchell

Giant Garter Snake



Biological Assessment

USFWS-Managed Species	Estimated Modeled Habitat / Take Request
Conservancy fairy shrimp	Up to 240 acres ¹
Vernal pool fairy shrimp	Up to 240 acres ¹
Vernal pool tadpole shrimp	Up to 240 acres ¹
Valley elderberry longhorn beetle	Up to 250 shrubs
California red-legged frog	Up to 287 acres of modeled aquatic habitat and 6,765 acres of modeled upland habitat
Giant garter snake	Up to 2 acres of aquatic habitat and 27 acres of upland habitat

Note: Estimated effects based on aerial imagery and CNDDDB occurrences and expected to be a conservative estimate. Actual amounts of permanent and temporary impacts will be determined during surveys prior to Project construction.

1. This is the same 240 acres as it could be potential habitat for any or all of these three vernal pool species

Take Minimization Measures

- Measures to reduce amount of take include:
 - Construction windows and buffer areas
 - Construction best management practices
 - Restoration on temporarily affected habitat
 - Preconstruction surveys
 - Habitat mapping and flagging
 - Avoidance of habitat
 - Biological monitoring



Proposed Mitigation Approach

- Compensatory mitigation for take is required
- Diverse approach
 - Sites-lead off-site habitat acquisition or restoration
 - Conservation easements
 - Conservation banks / mitigation banks
 - On-site opportunistic habitat preservation / restoration
- Each has different risks
- Prepare detailed mitigation strategy in 2022/2023

Next Steps

- April meeting
 - Financial assurances discussion
 - Mitigation ratios and costs
- May meeting
 - Approval for Executive Director to submit the Biological Assessment and Operations ITP Application
- June
 - Submit to Reclamation Biological Assessment to USFWS and NMFS

Final EIR/EIS

Laurie Warner Herson

Response to Comments Status

- Public review period closed January 28, 2022
- Completed numbering, sorting and categorizing individual comments within letters, emails and transcripts
 - 101 comment letters
 - Approximately 1,000 comments
- Drafted Volume 3, Chapter 1, Introduction
- Generated Working Comment Response Tables for Technical Team to Draft Responses
- Generated Preliminary List of Master Responses

General Approach To Responding to Comments

- Designate comments in each letter a topics so similar topics are responded to consistently and similarly
- Prepare indices of commenters and comment letters
- Identify common themes and comments in order to draft Master Responses
- Draft responses to comments by topics in comment response tables
- Revise chapters/appendices based on comment/responses and/or based on project modifications (e.g., facility changes, operation modifications)

Final EIR/EIS Format

- Volume 1 – Chapters
 - Include all chapters from RDEIR/SDEIS with changes
- Volume 2 – Appendices
 - Include all appendices from RDEIR/SDEIS with changes
- Volume 3 – Response to Comments
 - Chapter 1 – Introduction and Approach
 - Chapter 2 – Commenter Indices and Form Letter Introduction
 - Chapter 3 – Master Responses Introduction and Master Responses
 - Chapter 4 – Responses to Comments Tables
 - Appendix – Response to 2017 Comments required by NEPA

Ecosystem Water Manager Pilot Project

Ali Forsythe

Environmental Water Manager Concept

- State would actively manage its Proposition 1 water similar to all other members
 - Make annual, monthly, weekly decisions on how to use ecosystem water for the environment
 - Work with Authority as conditions change or challenges arise
- Proposing “pilot project” with Environmental Defense Fund and The Nature Conservancy to develop concept into “pilot” form for Sites for proposal to CDFW
 - Frame up and demonstrate how the concept might be used as Sites/CDFW develop benefits agreement
 - Adapt theory into practical implementable actions

Key Considerations in Formulating Pilot Project Proposal

- Must be within Project's Storage Principles
- Advisory Committee used to guide proposal effort
- Will consider possible coordination of Sites environmental water with other state assets
- Each organization provides its own funding
 - Sites providing technical (modeling) and staff time

Outcomes of Efforts

- Primary end product = “mini operations plan” for environmental water
 - Complete around mid-summer 2022
- Staff would return to Reservoir Committee and Authority Board to seek authority to incorporate specific terms and conditions into benefits agreement with CDFW
- Would not impact schedule for receiving final Proposition 1 funding award

Requested Action

- Consider authorizing the Executive Director to execute a proposal letter with partners to cooperatively develop terms and conditions for consideration in the Prop 1 Benefit Agreement with the California Department of Fish and Wildlife to incorporate an Environmental Water Manager “pilot” as part of the Sites Project implementation

Work Group Charter

Ali Forsythe

Schedule and Dashboard Update

Dashboard Update

Deliverable	Start	Finish	Status	Notes, New or Potential Issues
Negotiate and Execute Benefits Contracts with DWR & CDFW	Jun-22	Jun-23	N/S	
Water Right Application				
• Submit to State Board	Sep-20	Apr-22	●	
• Complete Protest Resolution Period	May-22	Dec-22	N/S	
• Receive Water Right Permit	Dec-23	Oct-23	N/S	
Federal ESA				
• Submit BAs to Reclamation	Oct-20	Jun-22	●	
• Receive BiOps	Jun-22	Dec-22	N/S	
State ITPs				
• Receive Construction ITP	Sep-20	Dec-22	●	Application submitted Jan-22
• Submit Operations ITP to CDFW	Sep-20	Jun-22	●	
• Receive Operations ITP	Jun-22	Dec-22	N/S	

N/S = Not Started; = On track; = Area of Potential Concern; = Delayed; = Completed

Dashboard Update

Deliverable	Start	Finish	Status	Notes, New or Potential Issues
Section 106 – Cultural Resources				
• Final Programmatic Agreement	Sep-20	Oct-22	●	
• Programmatic Historic Properties Management Plan	Dec-21	Dec-22	●	Ongoing meetings and coordination
Clean Water Act 404/401				
• Submit Final Permit Applications	Sep-20	Oct-22	●	Timed with release of the Final EIR/EIS
• Receive 404 and 401 Permits	Oct-22	Jun-23	●	Will come after Final EIR/EIS
Streambed Alteration Agreement				
• Prepare and Submit Application	Jan-22	Dec-22	●	
• Receive Master Agreement	Jan-23	Jun-23		Will come shortly after Final EIR/EIS
Eagle Permit				
• Short-Term and Nest Take Permits Issued	Oct-20	Mar-23	●	April 2022 surveys scheduled
• Long-Term Permit Issues	Oct-20	Dec-24	●	

N/S = Not Started; Green = On track; Yellow = Area of Potential Concern; Red = Delayed; Blue = Completed

Dashboard Update

Deliverable	Start	Finish	Status	Notes, New or Potential Issues
Final EIR/EIS				
• Complete Final EIR/EIS	Dec-21	Oct-22	●	
• Certify Final EIR/EIS and approve preferred project and MMRP	Oct-22	Dec-22	●	

N/S = Not Started; **Green** = On track; **Yellow** = Area of Potential Concern; **Red** = Delayed; **Blue** = Completed

Next Meeting

- Next Meeting – Establishing standing meetings
- Topics –
 - Permitting
 - BA Review
 - ITP Operations Application Review

Thank you!

