

# Environmental Planning and Permitting Work Group

June 7, 2023



# Agenda

- 1.1 Final EIR/EIS, Part 3 (continued) status briefing in preparation for approval of the Project
- ~~1.2 Status of National Historic Preservation Act, Section 106 Programmatic Agreement~~
- 1.3 Contracts with Cachil Dehe Band of Wintun Indians and Paskenta Band of Nomlaki Indians
- 1.4 Status of Biological Assessment/Biological Opinion and State Operations Incidental Take Permit Application
- 2.0 EPP Manager's Report

# Status Briefing on the Final EIR/EIS, Part 3 of 3 (continued)

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# Final EIR/EIS Briefings in Preparation for Approval of Project

- February 2023, Part 1
  - Review Final EIR/EIS requirements and format
  - Provide overview of changes to the project based on design refinements and operations
  - Discuss revisions to modeling
- March 2023, Part 2
  - Overview of key comments and master responses; ongoing public and local community, tribal and NGO outreach
- April 2023, Part 3
  - Overview of refinements to impacts and mitigation measures; Mitigation Monitoring and Reporting Program
- May 2023, Part 3, Continued
  - Statement of Overriding Considerations
- June 2023, Part 3, continued
  - Overview of Findings; Water Quality and Tribal Cultural Resources
- July 2023
  - Any last items
- August 2023, Board Hearing → Considering September in light of Governor's legislative package
  - Next steps post EIR, EIR Certification
  - Decision to Approve Project

# Project Findings

- The Board will need to adopt findings in compliance with CEQA and the CEQA Guidelines, including:
  - Findings regarding the environmental review process and the contents of the Final EIR
  - Findings regarding the environmental impacts of the Project and the mitigation measures for those impacts identified in the Final EIR and adopted as conditions of approval
  - Findings regarding alternatives and the reasons that such alternatives are rejected or accepted

# Project Findings (continued)

- Findings to be accompanied by a summary of impacts and mitigation measures for the Project
- Findings must be supported by substantial evidence in the record
- When making the findings, the Authority will also adopt a Mitigation Monitoring and Reporting Program
  - Required to report on or monitor the measures that have been required to avoid or substantially lessen significant environmental effects
  - Measures must be fully enforceable through permit conditions, agreements, or other measures

# Water Quality

- Recent efforts have been undertaken to bolster the water quality analysis in the Final EIR/EIS, to:
  - Be responsive to comments from the public
  - Clarify information
  - Further support analysis and resolve confusion or misunderstandings
- Efforts focused on:
  - Harmful Algae Blooms (HABs)
  - Mercury
  - Monitoring and Adaptive Management

# Harmful Algae Blooms (HABs)

- Concerns expressed regarding downstream effects to water users due to HABs
- Revisions to Final EIR/EIS analysis and/or text:
  - Revisited Inlet/Outlet Tower operations and releases from Sites Reservoir
  - Expanded on temperature modeling and effects
  - Bolstered discussion of benthic HABs
  - Strengthened existing mitigation and monitoring requirements



# Mercury

- Concerns raised regarding:
  - Mercury in native soils and atmospheric deposition
  - Relationship of mercury to Sacramento River Flow
  - Analysis approach
- Revisions to Final EIR/EIS analysis and/or text:
  - Additional analysis and expanded, None of the geologic units in the study area/watershed of the Sites Reservoir are known to contain mercury
  - Additional analysis and expanded, No or minimal relationship between Sac River flows and increased/elevated mercury levels
  - Expanded on why approach to mercury different than approach used for other metals

# Monitoring and Adaptive Management

- Addition of more detail to the Reservoir Management Plan (RMP):
  - Added new section - Adaptive Management of Water Quality in Reservoir Release
  - Modified to expand monitoring constituents and increase frequency of HABs monitoring if HABs are present
  - Added quagga and zebra eDNA monitoring

# Tribal Cultural Resources

- Recent efforts have been undertaken on the following:
  - Detailed review to scrub carefully for biases, characterizations, unnecessary grouping, etc
  - Describe the conclusion of the AB 52 process and next steps

# Context

- The Project is on lands that have traditional and cultural affiliation with Patwin and Nomlaki California Native Americans
- Governor's apology (Executive Order N-15-19) acknowledged the violent relationship of the State with California Native Americans
  - This relationship has shaped and biased the views of Non-Native Americans
- Written history is biased
  - Towards physical expression of archeologic sites on the surface
  - Towards what is put in writing
  - Much of the current information and understanding of California's Native Americans comes from non-Native Americans in the 20<sup>th</sup> century, some of whom identified with, practiced, and perpetuated a legacy of genocide, removal policies, and assimilation

# Detailed Review to Scrub Carefully

- Detailed review to scrub carefully for biases, characterizations, unnecessary groupings, and similar that marginalize Native American people
- Concerted effort to represent data objectively
  - Acknowledgement of the biases and data limitations in much of the current information and understanding
  - Acknowledgement of the bias toward the written record and the surface expression of archeological sites
- Commitment to work throughout the life of the Project to better understand and respectfully incorporate and honor the Tribes from their perspective

# AB 52 Consultation

- In 2014, California Assembly Bill (AB) 52 established:
  - That a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment
  - A detailed, stepwise process for lead agency consultation with California Native American Tribes that are traditionally and culturally affiliated with the geographic area of a proposed project
- AB 52 specifically instructs a Tribe to notify California public agencies of their interest in being informed of projects proposed for the geographic area traditionally and culturally affiliated with the Tribe

# Consulting Tribes

- Two Tribes—Cachil Dehe Band of Wintun Indians and Yocha Dehe Wintun Nation – responded to the 2017 notification of the Project
  - Ongoing consultation efforts and meetings since 2017
  - Existing studies and data on known cultural resources have been provided to the Tribes
  - Outreach has been focused on receiving Tribal input on the RDEIR/SDEIS and proposed mitigation
  - No specific comments from consulting Tribes on the RDEIR/SDEIS
  - Tribes have provided field monitoring for geotechnical investigations
- Paskenta Band of Nomlaki Indians recently verbally expressed interest

# Conclusion of AB 52 Consultation

- AB 52 consultation needs to be concluded prior to EIR certification, when either of the following occurs:
  - The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists to a tribal cultural resource; or
  - A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code § 21080.3.2, subd. (b)).
- Tribal cultural resources will be significantly impacted by the Project
  - To date, unable to reach a clear agreement on specific measures to mitigate or avoid significant impacts to tribal cultural resources
  - Mitigation measures for addressing significant impacts to tribal cultural resources have been identified and will be refined and further developed through continued coordination



# Ongoing Collaboration and Coordination

- Authority committed to working with Tribes beyond the AB 52 process:
  - Tribal Government Working Group would provide opportunity for ongoing meaningful communication and collaboration
  - Preparation of a Memorandum of Agreement (MOA) would formalize a collaborative partnership
    - Continue to identify tribal cultural resources, and methods to avoid, minimize, and mitigate impacts to and manage tribal cultural resources
    - Provide a framework for continued collaboration during Project planning, implementation, and operations
    - Commitment to working with the Tribes throughout the life of the Project to better understand and respectfully incorporate the Tribes from their perspective
  - AB 52 may be “concluded” but the commitment to working with Tribes through these mechanisms, or other similar ones (as works best for the Tribes), continues forward

# Next Steps in Briefing Process

- July 2023, Update on Final EIR/EIS
  - Last items prior to approval in August
- August 2023, Board Hearing → Considering September in light of Governor's legislative package
  - Any last items
  - EIR Certification
  - Adoption of Findings, Statement of Overriding Considerations and Mitigation, Monitoring and Reporting Program
  - Decision to Approve Project
  - Next Steps
    - Local considerations with MOUs and Local Community Working Group
    - Tribal considerations with MOA and Tribal Working Group

# Contracts with Cachil Dehe Band of Wintun Indians and Paskenta Band of Nomlaki Indians

Ali Forsythe

# Five Tribes with Traditional or Cultural Affiliation with the Project Area

- Nomlaki descendants:
  - Grindstone Indian Rancheria of Wintun-Wailaki Indians
  - Paskenta Band of Nomlaki Indians (Nomlāqa Bōda)
- Patwin descendants:
  - Cachil Dehe Band of Wintun (Colusa Indian Community)
  - Kletsel Dehe Wintun Nation (Cortina Indian Rancheria)
  - Yocha Dehe Wintun Nation (Rumsey Indian Rancheria)



# Existing and Proposed Contracted Efforts

- Existing Contracted Efforts
  - Yocha Dehe Wintun Nation
    - Currently conducting geotechnical monitoring
- Proposed Contracts
  - Cachil Dehe Band of Wintun → \$120,000
    - Geotechnical monitoring
      - Previously conducted geotechnical monitoring
      - Existing contract, slight modification to reinitiate efforts
    - FY 23 and FY 24 efforts
  - Paskenta Band of Nomlaki Indians → \$250,000
    - Geotechnical monitoring, primarily for areas in Glenn County
    - Ethnographic study for Paskenta and Grindstone
    - FY 23 and FY 24 efforts
- Future Efforts (working on when to begin these efforts)
  - Ethnographic studies for Cachil Dehe, Kletsel Dehe, and Yocha Dehe

# Existing Funds in Amendment 3

- Funding within the existing Amendment 3 Work Plan

	FY 23	FY 24	Total
Cachil Dehe	\$60,000	\$60,000	\$120,000
Paskenta	\$150,000	\$100,000	\$250,000
Yocha Dehe	\$70,800 (\$11,260 spent as of 4/2023)	\$60,000	\$130,800
Total	\$280,800	\$220,000	\$500,800

# Status of Biological Assessment/Biological Opinion and State Operations Incidental Take Permit Application

Ali Forsythe

# Revised Federal ESA Approach

- Original BA approach was project-level analysis
  - Both construction and operations
- Reconsultation on the CVP/SWP LTO BiOp requires a pivot
- Revised approach
  - Step 1 – Mixed programmatic consultation for Sites
    - Programmatic operations in the Reconsultation on the CVP/SWP BA/BiOp AND
    - Sites Project-level construction BA/BiOp
  - Step 2 – Project-level operations
    - Reinitiate consultation after Reconsultation on the CVP completed to cover Sites operations at a project-level
  - Continued work with agencies on this approach









# State ITP Operations Consultation Status

- Operations ITP Application largely complete
  - Ready to submit shortly
- Will start consultation with CalSim II modeling and current CVP/SWP operations baseline
  - May amend application in late 2023 with CalSim 3 with new CVP/SWP operations baseline
- Process will be more fluid than normal considering all the changes going on in CA water
- Likely result in additional time for CDFW to issue permit, but still think this is the most expeditious process possible

# Environmental Planning and Permitting Manager Report

Ali Forsythe

# Dashboard Update

Deliverable	Finish	Status	Notes, New or Potential Issues
<b>Water Right Application</b>			
• Submit to State Board	May-22		Application Submitted May
• Complete Protest Resolution Period	Jan-24		Notice issued June 2, 2023
• Receive Water Right Permit	Dec-24	N/S	
<b>Federal ESA</b>			
• Construction – Biological Opinion	Feb-24		
• Operations – Programmatic Biological Opinion	Feb-24		Working with agencies on approach; tied to CVP/SWP Reconsultation efforts
• Operations – Project-level Biological Opinion	Mar-25	N/S	
<b>State ITPs</b>			
• Receive Construction ITP	Dec-23		
• Submit Operations ITP to CDFW	July-23		
• Receive Operations ITP	May-24	N/S	Date adjusted

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

# Dashboard Update

Deliverable	Finish	Status	Notes, New or Potential Issues
<b>Section 106 – Cultural Resources</b>			
• Final Programmatic Agreement	Aug-23	●	
• Programmatic Historic Properties Management Plan	Jun-23	●	
<b>Clean Water Act 404/401</b>			
• Submit Final Permit Applications	Aug-23	●	
• Receive 404 and 401 Permits	Aug-24	●	
<b>Streambed Alteration Agreement</b>			
• Prepare and Submit Application	July-23	●	Schedule adjusted
• Receive Master Agreement	Jan-24	●	
<b>Eagle Permit</b>			
• Short-Term and Nest Take Permits Issued	April-23	●	Received and completed compensatory mitigation for this calendar year
• Long-Term Permit Issued	Mar-24	●	

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

# Dashboard Update

Deliverable	Finish	Status	Notes, New or Potential Issues
<b>Final EIR/EIS</b>			
• Complete Final EIR/EIS	Aug-23	●	May move to September
• Certify Final EIR/EIS and approve preferred project and MMRP	Aug-23	●	May move to September

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

# Upcoming Meetings

- Next Work Group Meeting –  
August 9, 2023, 10 to 11 AM
  - Topics –
    - Continued Final EIR/EIS briefings
    - Cultural and Tribal Resources commitments under the National Historic Preservation Act (Section 106)
- Other upcoming meetings
  - Joint Reservoir Committee and Authority Board
    - Friday, June 16, 2023 – 9 AM to 12 PM

**Thank you!**

