



Topic: **Reservoir Committee Agenda Item 3.1** **2020 October 16**

Subject: **Upcoming Regulatory Decisions and Environmental Legal Requirements**

Requested Action:

Review and comment on flow-related regulatory decisions affecting the Sites Project permitting efforts and environmental legal requirements.

Detailed Description/Background:

As staff and the consultant team move forward with the environmental planning and permitting activities in the Amendment 2 Work Plan, the team has developed the following items:

1. Major flow-related regulatory decisions affecting the Sites Project permitting efforts. This item serves as a basis for determining a flow-related permitting strategy. This item is also responsive to Item 1.1 in the November 2019 Organization Assessment.
2. A summary of the legal requirements of the environmental laws that the Sites Project will be required to comply with. This analysis was originally completed for the 2017 Draft Environmental Impact Report/Environmental Impact Statement and has been updated recently to confirm requirements and reflect any changes as a result of the Value Planning efforts. This item is also responsive to Item 1.3 in the November 2019 Organization Assessment.

Prior Action:

None.

Fiscal Impact/Funding Source:

No impact.

Staff Contact:

Ali Forsythe

Attachments:

Attachment A – Flow-related Regulatory Decisions Affecting the Sites Project
Attachment B – Environmental Legal Requirements

Sites Reservoir Project
Flow-related Regulatory Decisions Affecting the Sites Project
Organizational Assessment Item #1.1
October 9, 2020

On November 14, 2019, the Sites Project Authority completed an organizational assessment. Recommended action #1.1 from the organizational assessment states the following:

1.1: Prepare an analysis of the major regulatory decisions being made regarding flow in the Sacramento River and Delta and determine flow-related permitting strategy with identification of risks.

This analysis was prepared in response to action #1.1 in the organizational assessment.

Major Regulatory Flow Decisions

The Authority completed a thorough analysis of the flow-related regulatory decisions as part of its 2017 Draft Environmental Impact Report/Environmental Impact Statement (2017 Draft EIR/EIS). Below are the recent changes and new regulations since the 2017 Draft EIR/EIS.

The two primary regulatory changes that have occurred since the issuance of the 2017 Draft EIR/EIS that are related to flow in the Sacramento River and Sacramento-San Joaquin Delta are as follows:

1. State Water Project Incidental Take Permit (SWP ITP) – In March 2020, the California Department of Fish and Wildlife (CDFW) issued an Incidental Take Permit (ITP) to the California Department of Water Resources (DWR) for long-term operations of the State Water Project (SWP). The permit covers four species protected under the California Endangered Species Act: Delta smelt, longfin smelt, winter-run Chinook salmon and spring-run Chinook salmon. DWR also completed and released environmental review documentation under the California Environmental Quality Act (CEQA) that finalized the state's environmental review of the new SWP operational guidelines.
2. Reconsultation on Long-term Operations – In October 2019, U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) each released a Biological Opinion (collectively, the 2019 BiOps) on the effects of the coordinated long-term operations of the Central Valley Project (CVP) and SWP. The 2019 BiOps cover six fish species protected under the federal Endangered Species Act: Delta smelt, winter-run Chinook salmon, spring-run Chinook salmon, Central Valley steelhead, green sturgeon, killer whale. A Record of Decision for the coordinated long-term operations was signed by the Bureau of Reclamation in February 2020 that finalized the federal government's environmental review of the new CVP operational guidelines.

All of the above efforts are subject of litigation by various parties.

Although not regulation, additional changes in flow-related activities in or that could affect the Sacramento River and Delta have also occurred or are planned since the issuance of the 2017 Draft EIR/EIS. These additional changes include, but may not be limited to the following:

- Addendum to the Coordinated Operations Agreement;
- Framework for Voluntary Agreements;

- Notice of Preparation of an EIR for the Delta Conveyance Project;
- Shasta Lake Water Resources Investigation Supplemental Environmental Impact Statement;
- B.F. Sisk Dam Raise and Reservoir Expansion Project Supplemental Environmental Impact Statement;
- Los Vaqueros Reservoir Expansion Project; and
- Approval of Water Storage Investment Program funding for projects that could result in benefits to the Delta ecosystem.

Flow-Related Modeling Analysis

Several components of the Sites Project Calsim model have been refined over the past year to make the model current with regulatory changes and Authority decisions. Changes include the following:

1. Updates to use the 2019 BiOps as the baseline, with further adjustments forthcoming based on an updated SWP Delivery Capability Report (DCR) 2019 with SWP ITP actions.
2. Updates to reflect the Addendum to the Coordinated Operations Agreement.
3. Updates to participation levels to reflect Amendment 2.
4. Updates to facilities to reflect Value Planning changes.
5. Operational changes related to Reclamation's participation from the Federal Feasibility Report.

These model changes allow for the analysis of the Sites Project operations in the context of these new regulations. The additional changes in flow-related activities in or that could affect the Sacramento River and Delta identified above will be assessed for inclusion in the modeling cumulative impact analysis, which is scheduled to be completed in early 2021.

In addition to these changes to the modeling baseline and addition of certain projects to the cumulative impact analysis, the Authority also developed a permit negotiations structure and adopted this structure in its June 2020 meeting. The permit negotiations structure is intended to facilitate the negotiations with state and federal agencies and streamline the permit application processes for the key permits identified in Amendment 2. As described in this structure, the Authority's negotiation position is developed by the Lead Negotiator with assistance from the Negotiations Team. Staff is working to establish the aquatics negotiation team and establish negotiation principles and parameters. It is anticipated that these aquatics negotiation principals and parameters will be reviewed at the November 2020 Reservoir Committee and Authority Board meetings.

**Sites Reservoir Project
Environmental Legal Requirements
Organizational Assessment Item #1.3
October 9, 2020**

On November 14, 2019, the Sites Project Authority completed an organizational assessment. Recommended action #1.3 from the organizational assessment states the following:

1.3: Identify legal requirements of the environmental laws that Sites will be required to comply with.

The legal requirements of the environmental laws that the Sites Project will be required to comply with are provided in Table 1. This table was originally included in the 2017 Draft Environmental Impact Report/Environmental Impact Statement and has been updated recently to confirm requirements and reflect any changes as a result of the Value Planning efforts. In addition to the permits listed in Table 1, the Project must also comply with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

Table 1. Expected Environmental Permits and Approvals for the Sites Reservoir Project

| Agency | Type of Permit or Approval | Project Regulated Activity | Review Period | Authority |
|---|---|---|---|--|
| Federal Permits and Approvals | | | | |
| Advisory Council on Historic Preservation/ State Office of Historic Preservation | Section 106 review and compliance | Federal agencies must consult with interested parties to identify and evaluate the effects of its actions on properties listed or eligible for the National Register of Historic Places. | 6 to 18 months after Section 106 study result submittal | National Historic Preservation Act (36 CFR 800) |
| U.S. Army Corps of Engineers | Department of the Army permit (Section 404) | Discharge of dredged or fill material into waters of the United States (including wetlands). | 10 to 18 months after application submittal | Section 404 Clean Water Act (33 U.S.C. 1344) |
| U.S. Army Corps of Engineers | Department of the Army permit (Section 10) | Construction of any structure in or over navigable waters of the United States, the excavation/dredging or deposition of material in these waters, or any obstruction or alteration in navigable waters. | 10 to 18 months after application submittal | Section 10 of the Rivers and Harbor Act (33 U.S.C. 403) |
| U.S. Army Corps of Engineers | Department of the Army permission (Section 408) | Any effects to an existing federally-authorized levee or flood control project. | 10 to 18 months after application submittal | Section 408 of the Rivers and Harbor Act (33 U.S.C. 408) |
| U.S. Coast Guard | Navigability determination | Determination if proposed activities potentially affect river navigation. | 6 months | 33 CFR 2.40 |
| U.S. Environmental Protection Agency/U.S. Army Corps of Engineers | Least Environmentally Damaging Practicable Alternative (LEDPA) review | Review of LEDPA for issuance of an Individual Permit (Section 404) if required. | Up to 1 year (approximately) depending on NEPA status | Section 404(b)(1) |
| U.S. Fish and Wildlife Service/National Marine Fisheries Service | Endangered Species Act Section 7 Consultation | Requires federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the existence of any species listed under the Endangered Species Act, or destroy or adversely modify designated critical habitat of any listed species. | 6 to 18 months after biological assessment (BA) permit application and BA submittal | 16 U.S.C. 1531 et seq; 50 CFR 17, Sections 17.94-17.96 ESA |

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| U.S. Fish and Wildlife Service | Bald and Golden Eagle Protection Act | Prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald or golden eagles, including their parts, nests, or eggs. | Typically included as part of Section 7 consultation | 16 U.S.C. 668-668d, 54 Stat. 250 |
| State Permits and Approvals | | | | |
| California Department of Fish and Wildlife | Lake and Streambed Alteration Agreement | Crossing of streams, rivers, or lakes (also for reservoirs, which interrupt streams). | 6 to 18 months after application submittal based on 50 percent design | Sections 1601-1603 of the California Fish and Game Code |
| California Department of Fish and Wildlife | Incidental Take Permit | Potential adverse effects on State-listed endangered or threatened species or species proposed for State listing. Incidental take of State-protected species by a non-state entity. | 6 to 18 months after application submittal based on 50 percent design | Section 2081 California Fish and Game Code |
| California Department of Transportation | Encroachment permit | Use of California rights-of-way for installation of pipelines along State freeways and roads. | 2 months after application submittal | 21 CCR 14.11.1-14.11.6 |
| California Department of Transportation | Transportation permit | Transport of heavy or oversized loads on State roads during construction. | Same day as applied for | California Vehicle Code Section 35780; California Streets and Highway Code 117, 660-711 |
| California State Lands Commission | Land use lease | Placement of fill or structures in State lands. | 6 to 12 months after application submittal | California Public Resources Code Section 6000 et. Seq. |
| Central Valley Flood Protection Board | Encroachment permit | Encroachment onto/through any levee for which there is an Adopted Plan of Flood Control or within 300 feet of a Designated Floodway. | 6 to 18 months after application submittal | CCR, Title 23, Section 112 |
| Native American Tribes/Native American Heritage Commission | AB 52 Consultation | Effects on tribal cultural resources. | 1 to 3 years | California Public Resources Code 21080.3.1 |
| State Water Resources Control Board | Water rights permit | Diversion, storage and use of water. | 3-5 years | California Water Code §5101 |

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| State Water Resources Control Board and Regional Water Quality Control Boards | General Construction Stormwater National Pollution Discharge Elimination System permit | All stormwater discharges when clearing, grading, and excavation result in a land disturbance of 5 or more acres. | Prior to construction | Clean Water Act (33 U.S.C. 1251) |
| State Water Resources Control Board and Regional Water Quality Control Boards | Waste discharge requirements | Discharge of reclaimed water on land and to groundwater. | 6 to 18 months after application submittal | Porter-Cologne Water Quality Act |
| State Water Resources Control Board and Regional Water Quality Control Boards | Section 401 Water Quality Certification | Discharge of dredged or fill material into waters of the United States (including wetlands). | 6 to 18 months after application submittal | Section 401 Clean Water Act (33 U.S.C. 1341) |
| Local Permits and Approvals | | | | |
| Colusa, Glenn and Yolo County Air Pollution Control Districts | Authority to construct and permit to operate | Construction or operation of any non-exempt source of air contaminants; typically limited to stationary sources. | 6 months after application submittal | New Source Review regulations; Clean Air Act; New Source Review regulations; Clean Air Act; Glenn County Air Pollution Control District Article III, Sections 50 to 57; Colusa County Air Pollution Control District Regulation III, Rules 3.1 to 3.18. |
| Colusa, Glenn and Yolo County Public Works Departments | Encroachment permit | Use of local jurisdictions right-of-way to install pipeline across roadways. | 2 months | County ordinances |
| Colusa, Glenn and Yolo County Public Works Departments | Transportation permit | Transport of heavy or oversized loads on county roads. | 2 months | County ordinances |
| Colusa, Glenn and Yolo County Public Works Departments | Building permit, street improvement permit, grading permit | Construction activities within the county. | Approximately 1 month after final design | Uniform Building Codes, as adopted |

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|---|-----------------------------------|--|----------------------|---|
| Colusa and Glenn County Planning Department | Zoning/General Plan amendment | Changes to zoning or General Plan designations. | 6 months | County Zoning Code and General Plan |