



Meeting: **Joint Reservoir Committee & Authority Board**
Agenda Item 2.1

March 18, 2022

Subject: **Environmental Review/Permit & Water Right Application**

Requested Action:

Consider directing 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; and, (2) adjusting to more restrictive diversion criteria to a level expected to achieve a higher degree of permitting certainty while maintaining Project affordability.

Detailed Description/Background:

With public comments on the environmental documents now received, staff is beginning efforts on the preparation of the Final EIR/EIS and nearing completion of preparation of many of the key Project permit applications, including the water right application. Critical to these efforts is the determination of the Authority's Preferred Project for the purposes of the environmental review and Project permit applications. Also critical to these efforts is the diversion criteria for Project operations.

Preferred Project Alternative Adjustment to Alternative 3

Reclamation sees the potential for benefits to anadromous fish and CVP operational flexibility from an investment of greater than 7% investment in the Sites Project. In addition, the funding outlook for the Federal Government has changed substantially in the past year with a substantial amount of money appropriated to the Project through the WIIN Act and an additional possible funding source in the Infrastructure Bill (i.e., IIJA). Staff generally believes we can increase Reclamation investment due to:

1. Reclamation's demand characteristics require more frequent fill/release which has the effect of improving project performance. The Water Availability Analysis demonstrates that divertable water is available to support this increased activity.
2. A portion of the benefits to Reclamation are generated through exchanges with Shasta Lake which maintain the cold water pool for longer into the year, especially in dry and critically dry year conditions, for the benefit of salmon which does not require any additional dedication of water or

storage space in the reservoir to Reclamation, although, this would require willing Sites Project exchange partners.

3. It has been determined that adjusting the deadpool from 120,000 acre-feet to 60,000 acre-feet is feasible thus freeing some capacity for allocation to Reclamation and/or new participants.

Based on these factors, staff is recommending that Authority Board change its Preferred Project to Alternative 3, which is already analyzed in the Revised Draft EIR/Supplemental Draft EIS, for the purposes of completing the environmental review and for the Project permit applications. Alternative 3 would allow for a federal investment in the Project of between 7 and 25%.

The exact amount of federal investment would be subject to further evaluation and negotiations with Reclamation with the goal of completing negotiations of the main deal points within the next six months. After that, we would need to receive final commitments of federal funds on a similar schedule as received from our Project Participants. The Board will need to consider the Reclamation investment in conjunction with the evaluation of new participation of local agencies given that there is a waiting list.

Diversion Criteria Adjustments

Staff is recommending that the Project's diversion criteria be adjusted to create greater protection for aquatic resources in the Sacramento River and Delta as follows:

- Wilkins Slough bypass flow criteria would be increased to 10,700 cubic feet per second (cfs) for the months of October through June and remain at 5,000 cfs in September;
- Continue to include pulse flow protections as described in the Revised Draft EIR/Supplemental Draft EIS;
- Remove the Fremont Weir Notch protection criteria as the higher Wilkins Slough bypass flow criteria in combination with the pulse flow protection would protect flows through the notch; and
- All other conditions of the diversion criteria would remain the same as described in the Revised Draft EIR/Supplemental Draft EIS.

These changes to the criteria would be responsive and address comments from the fisheries regulatory agencies and many of the comments from fisheries non-governmental organizations on the Revised Draft EIR/Supplemental Draft EIS. In particular, CDFW's comment letter states "CDFW recommends the FEIR/FEIS include an Alternative with operational criteria that both meets Proposed Project objectives and includes bypass flow criteria at Wilkins Slough of at least 10,712 cfs across the entire salmonid migration period of October to June . . . to

minimize impacts to aquatic resources”. These changes to the criteria would also be anticipated to provide a higher degree of permitting certainty. Modeling sensitivity analysis indicate that the Project can make this change and continue to generate sufficient benefits to meet affordability criteria for the Project. Permitability and affordability are two of the four Strategic Plan goal areas the Reservoir Committee and Authority Board established for the Project in 2020 and this recommendation would achieve both goals. These revised criteria and associated revised modeling would be used as the basis for the Project’s Final EIR/EIS and all permit applications.

If approved by the Reservoir Committee and Authority Board, staff will proceed to finalize the analysis supporting the Biological Assessment and State Incidental Take Permit application for operations using the proposed diversion criteria and will be seeking authorization to submit those permit applications in May 2022. These are two of the critical permits the Reservoir Committee and Authority Board has said need to be secured in order to proceed with the next phase of the Project.

Prior Authority Board Action:

September 2020: Designated Alternative 1, based on VP-7 of the Sites Project Value Planning Alternatives Appraisal Report (Value Planning Report), as the Authority’s preferred project for the purposes of the Revised Draft EIR analysis and for the purposes of the Biological Assessment and State Incidental Take Permit applications.

Fiscal Impact/Funding Source:

The costs to develop the environmental planning, permitting and water rights are included in the Amendment 3 work plan. No additional costs are expected as a result of these changes.

Staff Contact:

Ali Forsythe

Primary Service Provider:

ICF, Jacobs, MBK, HDR

Attachments:

Attachment A-Additional Background Information

**Attachment A. Additional Background Information
For Item 02-01, Environmental Review/Permit & Water Right Application**

Preferred Project Alternative Adjustment to Alternative 3 – Additional Background

In September 2020, the Authority Board designated Alternative 1 as the Authority's Preferred Project for the purposes of the environmental review and the Project permit applications. At that time, the amount of federal participation in the Project was thought to be more limited as there appeared to be limited funding available for water infrastructure projects at the federal level. In addition, Reclamation had not yet completed its Feasibility Report for the Sites Project. In response to these and other considerations, Alternative 1 includes a range of no federal investment to up to 7% federal investment in the Project. Federal investment above 7% was not contemplated as part of the Preferred Project at that time.

In December 2020, Reclamation completed its Final Feasibility Report for the Project. The Final Feasibility Report identified the potential for Federal benefits and associated Federal cost share in the Project of up to 25%. In response to the Final Feasibility Report, Alternative 3 was developed in early 2021 and it was included and analyzed in the Revised Draft EIR/Supplemental Draft EIS. Alternative 3 includes up to 25% federal investment in the Project. As staff has continued to work with Reclamation since the transmission of the Final Feasibility Report, Reclamation has continued to express an interest in a greater than 7% federal investment in the Project.

The federal government is in a substantially improved financial situation today as compared to late 2020. Federal appropriations under the WIIN Act to the Project are now over \$100 million. In addition, the recent Infrastructure Bill provides an additional \$1.15 billion for water storage and conveyance projects. Reclamation has shown an ability to generate the funds necessary for a more substantial investment in the Project on a reasonable schedule.

Considering Reclamation's interest in an increased investment in the Project, the improved federal financial situation, and increased mechanisms for federal investment in the Infrastructure Bill, staff is recommending that Authority Board change its Preferred Project to Alternative 3 for the purposes of the environmental review and permit applications. As identified above, Alternative 3 would allow for a federal investment in the Project of between 7 and 25%. Staff generally believes we can increase Reclamation investment with minimal or no impact to other existing members through possible adjustments to the deadpool and in how we structure the federal investment.

The exact amount of federal investment would be subject to negotiations with Reclamation. Subject to further analysis and negotiation with Reclamation, staff believes that a mix of Storage Allocation and compensation for the anadromous fish benefits that result from exchanges would be appropriate. Staff will work to better assess this balance from the Authority's perspective. Reclamation would also be assessing this balance from the federal benefits perspective and plans to prepare an Addendum to the Final Feasibility Report. Staff's goal is to complete these negotiations of the mail deal points within the next six months and receiving commitments of federal funds on a similar schedule as received from our Project Participants.

Diversion Criteria Adjustments – Additional Background

The Project's diversion criteria have been revised over the last 2 years to be more protective of fish in the Sacramento River and Delta, including the inclusion of a mitigation measure in the Revised Draft EIR/Supplemental Draft EIS to increase the Wilkins Slough bypass flow criteria to 10,700 cfs in April through June. A number of comments were received on the Revised Draft EIR/Supplemental Draft EIS from the fisheries regulatory agencies and many of the comments from fisheries non-governmental organizations continue to express concerns with the Project's diversion criteria. Many of these comments indicated that an increase in the Wilkins Slough bypass flow criteria to 10,700 cfs for more months of the year would be more protective of salmonids in the Sacramento River and smelt species in the Delta.

In response to the concerns raised in these comments and to help provide a higher degree of permitting certainty, staff is recommending revisions to the Project's diversion criteria. Table 1 provides a comparison of the diversion criteria used in the Revised Draft EIR/Supplemental Draft EIS and the proposed revisions. The revised criteria and associated revised modeling would be used as the basis for completing the environmental review and for the Project's permit applications.

Initial modeling sensitivity analysis indicates that the Project can make this change and continue to be affordable for Participants. A complete set of revised modeling is underway and the results are expected in the coming weeks. Staff will continue to assess the fisheries and affordability considerations for the Project once this modeling is completed and report back to the Reservoir Committee and Authority Board if results are not improving fisheries effects or the Project appears to be compromised in its affordability.

Table 1. Diversion Criteria used in the Revised Draft EIR/Supplemental Draft EIS and the 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 Protection	Yes	No, higher bypass flows and pulse protection provide protection for the Notch