



CALIFORNIA
High-Speed Rail Authority

Project Commitment Process

August 2022

Prepared by the Audit Office

Report Number: 22-05

EXECUTIVE SUMMARY

The Audit Office of the California High-Speed Rail Authority (Authority) performed an audit of selected project commitments being implemented for the Merced to Fresno and Fresno to Bakersfield project sections that are tracked within the Environmental Mitigation Management Application (EMMA) database. The purpose of the audit was to determine if processes and procedures were in place to ensure the Authority was complying with the environmental project commitments that were stated in the approved California Environmental Quality Act and National Environmental Policy Act Environmental Impact Report/Environmental Impact Statements and associated Mitigation Monitoring and Enforcement Plans.

The scope of the engagement was limited to project commitment activities during the period of July 1, 2018, through December 31, 2021. Our audit included examining policies, procedures, and other relevant criteria, interviewing personnel, and conducting tests necessary to complete the objective of ensuring the Authority is complying with the project commitments stated in the environmental documents.

Upon interviewing Environmental Services staff, it was brought to our attention that although documentation of project commitment progress and completion is required by the Authority, not all individuals working on the suite of project commitments know they must enter the documentation into EMMA. While the Audit team recommends that Environmental Services Branch let Authority staff and all contractors know they must enter their documentation into EMMA after the environmental documents are approved, the decision as to the mandatory use of EMMA is pending within the Authority.

We found that the project commitments stated in the Merced to Fresno and Fresno to Bakersfield Environmental Impact Reports/Statements and Monitoring and Enforcement Plans were supported in the EMMA database. In addition, we found that the audited commitments were either in progress and documented with evidence of compliance, or that those commitments without proof of compliance were not scheduled to be initiated at this time. We concluded that the Authority maintains a process to track each project commitment as it is being worked on.

Paula Rivera

Paula Rivera, Audit Chief

August 8, 2022

Date

Audit Report

BACKGROUND

The California Legislature created the California High-Speed Rail Authority (Authority) as part of the California High-Speed Development Act of 1994. The Authority is responsible for planning, designing, building and operation of the first high-speed rail system in the nation. California High-Speed Rail will connect the mega-regions of the state, contribute to economic development and a cleaner environment, create jobs, and preserve agricultural and protected lands. The Authority is responsible for overall management, oversight, and monitoring of project development. This function requires accountability, transparency, and must provide a means of tracking and monitoring program goals, accomplishments, and compliance with federal and state requirements.

In February 2012 and April 2014 for the Merced to Fresno and Fresno to Bakersfield project sections, respectively, the Federal Railroad Administration (FRA) and the Authority prepared a joint Final Environmental Impact Reports/Statements for these project sections of the California High-Speed Rail system. The Final Environmental Impact Reports/Statements satisfy the requirements of the California Environmental Quality Act and the National Environmental Policy Act and are the basis for the FRA's Record of Decision.

Mitigation Monitoring and Enforcement Plans (MMEP) were prepared for the Merced to Fresno and Fresno to Bakersfield project sections and adhere to the Council on Environmental Quality's regulations and guidance (Guidance)¹ and FRA Procedures for Considering Environmental Impacts². The Guidance is intended to assist federal agencies in developing mitigation programs that provide effective documentation, implementation, and monitoring of mitigation commitments. FRA and the Authority considered the Guidance in the preparation of the MMEPs. The MMEPs describe mitigation measures to mitigate the potential adverse environmental impacts resulting from construction and operation of the Merced to Fresno and Fresno to Bakersfield project sections, as well as describes measures that would avoid or minimize potential impacts to constructing and operating the project. These measures were developed by the Authority in consultation with appropriate agencies, as well as with input from the public, to meet the requirements of both the National Environmental Policy Act and the California Environmental Quality Act.

The Authority is required to comply with all project commitments adopted for the project as it was approved by the Authority Board of Directors, including any that were identified specifically to comply with State and federal laws and requirements. The project also incorporates design features and best management practices identified in the Final

¹ (40 Code of Federal Regulations [CFR] Section 1505)

² (64 Federal Register 28545, May 26, 1999)

Environmental Impact Reports/Statements and in a series of technical reports that accompanied preparation of the environmental documents.

Federal agencies that coordinate with the Authority in its implementation of project commitments include the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and Environmental Protection Agency among others. State agencies the Authority coordinates with include the California Department of Fish and Wildlife, State Water Resources Control Board, and the State Historic Preservation Office among others, as well as with many local agencies and other entities. Compliance with regulatory requirements is a condition of project approval and must be implemented by the Authority during design, construction, and operation of the Project.

During the background research of the Authority project commitment process, we learned that for the Merced to Fresno and Fresno to Bakersfield projects, once the MMEPs were finalized, these documents were distributed to the construction contractors with the instruction to document progress in the Environmental Mitigation Management Application (EMMA) database for those project commitments assigned to them via contractual requirements. The EMMA database includes all Authority project commitments made as part of project approval, which in addition to MMEP mitigation measures, can include regulatory permit conditions, legal settlement actions, stakeholder negotiated activities and others. While the EMMA database is managed by Environmental Services, these commitments are primarily implemented by various departments within the Authority, including Infrastructure Delivery, Real Property, Rail Operations, Engineering, and others. While the Environmental Services team initially populates the project commitments into the EMMA database, contractors or others with assigned implementation responsibility must enter their documentation as evidence of compliance. As the proof of compliance is provided into EMMA, it is reviewed by the Project and Construction Management services team for first level approval, then reviewed by Program level for the final approval of project commitment documentation.

OBJECTIVES, SCOPE, and METHODOLOGY

The objective of the audit was to determine if processes and procedures are in place to ensure the Authority was complying with the project commitments that are stated in the approved environmental documents. The purpose of the audit was to provide the Board and general public assurance that the Authority has processes and procedures in place and is complying with the project commitments that are stated in the approved environmental documents.

The scope of the engagement was limited to project commitments established in the Merced to Fresno and Fresno to Bakersfield EIR/EISs and MMEPs, and proof of compliance activity during the period of July 1, 2018, through December 31, 2021. Our audit included examining policies, procedures, and other relevant criteria, interviewing personnel, and conducting tests necessary to complete the objective. We tested 28 project commitments, one for each resource topic area discussed in the EIR/EIS (See

Appendix A, Table 1 and 2 for the 14 topics) for the two project sections (Merced to Fresno and Fresno to Bakersfield).

The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

The results of this audit were discussed with the Director of Environmental Services on May 3, 2022. The Environmental Services Branch is requested to provide a response to this audit, which will be included as an attachment to the final report. The final report is intended as information for Authority management's use; however, this report is a public document, and its distribution is not limited. We appreciate the Authority's time and cooperation throughout the audit and look forward to assisting the Environmental Services Branch as needed.

CONCLUSION

Our audit found that from the 28 project commitments tested (4%), 17 project commitments contained proof of compliance in EMMA; see Table 1 and 2 in Appendix A for a list of the project commitments audited. We were able to conclude that there is a process in place for each project commitment, and the reason for the 11 commitments that contained 0 records of evidence is due to the fact that the construction element or other action directly tied to those project commitments has not yet begun, or the project commitment does not need to be acted on yet.

We identified an Issue related to completeness of documentation and an Observation related to improving reporting. The audit findings are detailed below.

Issue: EMMA (Environmental Mitigation Management Application) Reporting

While doing our initial research on the project commitment process, we learned that contractors and other responsible parties must document proof that they are complying with the project commitments stated in the EIR/EISs and MMEPs and found in EMMA. However, during our interviews with the Environmental Services staff, it was brought to our attention that although progress and completion documentation is required, not all individuals working on implementing the project commitments know they must enter the documentation into EMMA.

Our testing found that 28 of 28 project commitments audited either contained evidence of compliance or the commitment had not been initiated. While our testing found documentation of compliance with the project commitments, we did not analyze the documentation to assess the adequacy or completeness of the documentation.

Untimely input of data/proof of compliance makes reporting inaccurate and we may not know the true progress of a project commitment or that a commitment is in the process of being worked on. Management should use quality information to achieve its objectives.

Specifically, management obtains relevant data from reliable internal and external sources in a timely manner, as identified in Section 13.04 of the Standards for Internal Control in Federal Government and adopted by the State of California.

Recommendations

The Environmental Services Branch should let Authority staff and contractors know they must enter their documentation into EMMA as the environmental documents are approved. In addition, contract documents should set a schedule that indicates the contractors must update their documentation into EMMA by a certain date or number of days after completion of the mitigation activity.

The Authority/Environmental Services Branch should also consider making EMMA the official application that captures or references the source of proof that documents compliance with our project commitments.

Response

The Environmental Services Branch agrees with and supports these recommendations. A Mitigation Implementation Plan under development by the Environmental Services Branch also addresses these recommendations. Further refinement of the project commitment implementation process between the Authority and contractors is part of the framework discussed in the Mitigation Implementation Plan.

Analysis

We agree with the corrective action identified.

Observation: Improvements to Consider Enabling Periodic EMMA (Environmental Mitigation Management Application) Reporting

During the testing portion of our audit, we found that EMMA does not identify whether a commitment has started, is ongoing, or completed. Due to the status of a commitment being unknown, the Authority is not able to identify the full progress of the commitment and is not able to see which ones have not been initiated in EMMA.

In addition, EMMA identifies if the contractor is responsible for implementing a project commitment but does not identify the responsible functional area for the commitment when responsibility lies with the Authority. Identifying who is responsible for a commitment makes the coordination process more efficient if questions about the commitment arise or further status information is needed.

As indicated above in the Environmental Services Branch's response, while a Mitigation Implementation Plan is in development by the Environmental Services Branch, the Audit team has provided a recommendation for the Observation identified in this report.

Recommendations

Improvements to EMMA would allow for periodic reporting to management of progress in meeting project commitments. Environmental Services Branch should include a field in EMMA which clearly states whether a commitment has started, is ongoing, completed, or not yet initiated.

All commitments should be assigned to an Authority functional unit for monitoring and reporting. Even if there is a contractor responsibility for a commitment, the Authority functional unit should be included to indicate who is responsible.

Response

The Environmental Services Branch agrees with these recommendations. As part of our internal evaluation of EMMA performance and preparation of the Mitigation Implementation Plan under development, we identified a series of coding changes to the database's user features. These changes are currently under implementation and will address the ability to more readily determine the progress and status of a project commitment.

The Mitigation Implementation Plan will also identify a framework for modifying the assignment process for each individual project commitment, and its subcomponents, to an Authority lead/owner. This lead/owner may then choose to assign the commitment, or part of the commitment, to a contractor for performance, but identifies the need for a task monitoring and confirmation process to be developed. Further development of this responsibility tracking process will be guided by the Director of Environmental Services and staff.

Analysis

We agree with the corrective actions identified.

Appendix A

| Table 1: Merced to Fresno Section | |
|--|-----------------------------------|
| Aesthetic and Visual Resources | Agricultural Lands |
| Air Quality | Archaeological Resources/Cultural |
| Biological Resources | Hazardous Materials and Wastes |
| Historic Architectural Resources | Noise and Vibration |
| Paleontological Resources | Parks, Recreation, and Open Space |
| Public Utilities and Energy | Safety and Security |
| Socioeconomics, Communities, and Environmental Justice | Transportation |

| Table 2: Fresno to Bakersfield | |
|---------------------------------------|--|
| Aesthetic and Visual Resources | Agricultural Lands |
| Air Quality | Archaeological Resources/Cultural |
| Biological Resources | Electromagnetic (EMI/EMF Standards) |
| Hazardous Materials and Wastes | Historic Architectural Resources |
| Noise and Vibration | Paleontological Resources |
| Parks, Recreation, and Open Space | Public Utilities and Energy |
| Safety and Security | Socioeconomics, Communities, and Environmental Justice |



DATE: July 26, 2022
TO: Paula Rivera, Chief Auditor
FROM: Serge Stanich, Director of Environmental Services
CC: Bryan Porter, Deputy Director of Environmental Services
SUBJECT: Response to June 2022 Project Commitment Process Audit

The California High-Speed Rail Authority (Authority) Environmental Services Branch appreciates the opportunity to provide a response to the Authority's Audit Office Project Commitment Process Audit (22-05).

We appreciate that the audit found that the Authority has many of the necessary internal controls in place and operating, as well as written processes and procedures in place to successfully administer the Project Commitment Process. The audit noted some areas for improvement: suggested required use of the Environmental Mitigation Management Application (EMMA) and reporting on progress of project commitments using EMMA by all parties of the Authority beyond the use by the Environmental Services Branch, as well as Planning and Sustainability.

The Environmental Services Branch appreciates the Auditor's recommendations (shown in italics), and provides the following responses:

Recommendation:

The Environmental Services Branch should let Authority staff and contractors know they must enter their documentation into EMMA as the environmental documents are approved. In addition, contract documents should set a schedule that indicates the contractors must update their documentation into EMMA by a certain date or number of days after completion of the mitigation activity. The Authority/Environmental Services Branch should also consider making EMMA the official application that captures or references the source of proof that documents compliance with our project commitments.

Response: The Environmental Services Branch agrees with and supports these recommendations. A Mitigation Implementation Plan under development by the Environmental Services Branch also addresses these recommendations. Further refinement of the project commitment implementation process between the Authority and contractors is part of the framework discussed in the Mitigation Implementation Plan.

Recommendation:

Improvements to EMMA would allow for periodic reporting to management of progress in meeting project commitments. Environmental Services Branch should include a field in EMMA

which clearly states whether a commitment has started, is ongoing, completed, or not yet initiated.

All commitments should be assigned to an Authority functional unit for monitoring and reporting. Even if there is a contractor responsibility for a commitment, the Authority functional unit should be included to indicate who is responsible.

Response: The Environmental Services Branch agrees with these recommendations. As part of our internal evaluation of EMMA performance and preparation of the Mitigation Implementation Plan under development, we identified a series of coding changes to the database's user features. These changes are currently under implementation and will address the ability to more readily determine the progress and status of a project commitment.

The Mitigation Implementation Plan will also identify a framework for modifying the assignment process for each individual project commitment, and its subcomponents, to an Authority lead/owner. This lead/owner may then choose to assign the commitment, or part of the commitment, to a contractor for performance, but identifies the need for a task monitoring and confirmation process to be developed. Further development of this responsibility tracking process will be guided by the Director of Environmental Services and staff.

If you have any questions, please contact Serge Stanich at (916) 718-6981 or serge.stanich@hsr.ca.gov.