

Topic: **Sites Reservoir Project**

2016 Nov. 13

Subject: **Amendments to the Phase 1 Reservoir Project Agreement,
Authority's Agreement and Authority's Bylaws**

Staff Report

Amendment Process: The following summarize the steps taken to update the Phase 1 Reservoir Project Agreement, the Authority's Agreement and Authority's Bylaws.

1. Aug 1: Comments received as part of the on-boarding process.
2. Aug 8: 1st meeting of the Reservoir Committee, which included a discussion of the items identified through the on-boarding process. No quorum, so meeting was deferred.
3. Oct 17: Items affecting the Project Agreement were discussed at Authority Board meeting. Consensus to move forward.
4. Oct 28: Ad-hoc Governance Committee meeting to address proposed amendments
 - Authority's Agreement and Bylaws: Address three requests to become an Authority Member & provide input to staff regarding comments received to date.
 - Phase 1 Reservoir Project Agreement: provide input to staff regarding comments received to date.
5. Nov 2: Conference call with prospective participants to discuss comments received to date.
6. Nov 9: Ad-hoc Governance Committee review of proposed amendments.
 - Authority's Agreement and Bylaws: Address three requests to become an Authority Member & provide input to staff-recommended changes to the documents.
 - Phase 1 Reservoir Project Agreement: provide input to staff-recommended changes to the documents.
7. Nov 11: Conference call with legal representatives from current signatories to the Phase 1 Reservoir Project Agreement, which represent the participants from the Sacramento Valley. The need for additional amendments to address specific topic areas was identified.
8. Nov 14: Revisions incorporated and distributed with meeting agenda package.

Status: **Issued for 2016 October Board Meeting**
Purpose: **Informational**
Caveat 1: **Subject to change**
Caveat 2:

Version: **A**
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Discussion Topics: The following items are recommended for further discussion before consideration is given to finalizing and approving the applicable documents for approval and execution.

Authority Agreement:

- Section 2.4, Manner of Exercise Powers: Compliance with Government Code 6509. Recommended change includes (a) changing from laws applicable to Irrigation Districts to Water Districts and (b) confirm Westside Water District will be used as the model member for how the Authority's powers will be exercised.
- Section 5.5.3, Interest rate for late payments: To avoid having to amend the Agreement should interest rates exceed 12%, change to a floating interest rate that is generally accepted. Need to identify which industry-based rate to use as the basis.

Authority Bylaws:

- Section 2.2: Vision Statement: The proposed text incorporates input received from the Nov 3rd Managers' meeting.
- Section 2.3, Values: The proposed text comes from the Reservoir Project Agreement with modifications to reflect current direction and business needs.
- Section 3.9, Financial model: Change the name to better align with how it will be used in Phase 1.
- Section 4.9, Meetings: Clarifies the Authority's & Reservoir Committee's respective jurisdiction to conduct meetings, such as the one contemplated at ACWA and potential need to meet in Sacramento or other locations to conduct business in an open and effective manner.
- Section 5.7, Quorum and Voting: The Reservoir Committee will have 28 participants, ranging from 300 to over 30,000 acre-ft. To conduct business and make timely decisions, necessitates the proposed changes to the generic Project Agreement, so that specific requirements can be adopted for use by the Reservoir Committee.
- Section 7.7, Reclamation: Create a mechanism to allow USBR to participate in developing the Project in a manner that is consistent with their current authorizations.
- Section 9.4, Consultation Committee: Incorporates the Oct 28 Ad-hoc Governance Committee's recommendation to have focused advisory committees in lieu of one.
- Section 12.3, Material Change: Modifications to allow a participant to withdraw without triggering the dispute resolution process and ensure that a significant change approved by the Bylaws affecting the Reservoir Committee

triggers the Material Change provision, which requires both governing bodies to reach consensus in order to continue to advance the Project.

Phase 1 Reservoir Project Agreement:

- Section 1, Reservoir Committee: Rename so that when an appreciation is used, it is not confused with the more-pervasive term “PAC”.
- Section 2(a), Voting: The Reservoir Committee will have 28 participants, ranging from 300 to over 30,000 acre-ft. To conduct business and make timely decisions, necessitates the need to allow alternative voting systems, such as those used by other joint powers.
- Section 2(b), Officers: With expanded participation that includes significant south of Delta interest, consider an approach that fosters greater partnership between north and south of Delta interests.
- Section 2(d), General Manager: The function of the current Managers’ meeting will be taken over by the Reservoir Committee, so keeping it would result in redundant meetings.
- Section 2(g), Voting (and Exhibit A1): Incorporates recommendations from the Ad-hoc Governance Committee regarding participation by those only receiving Class 2 benefits.
- Section 5(b), early participation: Ensures that those participating in Phase 1 will have a priority status when the amount of water is re-balanced based, primarily, on the amount of water to be provided for Proposition 1, Chapter 8-eligible benefits.
- Section 6, Indemnification: Proposed change is intended to improve clarity.
- Section 7, Term: Clarifies that any reimbursement to participants will be based on a proportionate share of how the revenue has been provided to the Authority.
- Section 8, Withdrawal: Flow-down to be consistent with recommended change to Bylaw Section 12.3 (Material Change).
- Section 10, Amendments: Proposed change is intended to improve clarity.
- Section 11, Assignment: Proposed change is intended to be consistent with the Bylaws.
- Exhibit B, General: Move values into Bylaws as originally intended and update project’s goals.
- Exhibit B, 5.1 – Phase Work Plan: Assuming the Reservoir Committee and Authority agree to amend the Phase 1 Work Plan, the updated costs will be inserted into Attachment 1.
- Exhibit B, 9 – Risk Management: Updated to reflect current information.

- Exhibit B, Attachment 1 – Phase 1 Work Plan: Supersedes the original.
- Exhibit B, Attachment 2- Schedule: Updated to reflect the amended scope of work in the Phase 1 Work Plan, which focuses on accelerating the EIR/S to have a public draft coincident with submitting our WSIP proposal to the Water Commission for their evaluation and scoring.

Alternative Participation Requests: Two respondents to the formal on-boarding process proposed to participate in advancing various aspects of the work delegated to the Reservoir Committee. The scope of participation ranges from performing technical studies, assisting in the review of consultant's work products, and assisting in the development of project-specific procedures (e.g. project management). Staff recommends that such participation should be performed under a separate agreement. This agreement should specify the types of work and how such participation will be evaluated during the re-balancing process that needs to be completed before Phase 2 can begin.