



Santa Clara Valley Water District

File No.: 17-0105

Agenda Date: 3/14/2017

Item No.: 5.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Sites Project Authority's Amended and Restated Phase 1 Reservoir Project Agreement.

RECOMMENDATION:

Authorize the CEO to execute the Sites Project Authority's Amended and Restated Phase 1 Reservoir Project Agreement and to pay the Sites Joint Power Authority \$913,146 towards the current phase of the Sites Reservoir Project expenditures.

SUMMARY:

At the District's July 26, 2016 Board meeting, the Board approved staff's request to submit a Proposal to participate in the Sites Reservoir Project (Project). Staff submitted a Proposal to the Sites Joint Power Authority (Sites JPA) on July 28, 2016. The Proposal obligated the District to negotiate in good faith towards an Amended and Restated Phase 1 Reservoir Project Agreement (Project Agreement) with the Sites JPA. In accordance with the Project Agreement the District is required to make a specified financial contribution to the current phase (Phase 1) of the Project. Phase 1 consists of preparing the Project Proposition 1 Water System Investment Program (WSIP) application and EIR/EIS development. The Project Agreement and the accompanying financial contribution is the subject of the recommendation for Board approval.

The Project Agreement allows the District to join the Project Agreement Committee and become part of the team implementing the Project. It also commits the District to financial participation in the amount of \$913,146 through the Phase 1 of Project development. Should the District desire to participate in further phases of the Project future agreements with the Sites JPA would need to be negotiated and executed.

The Project Agreement: 1) specifies how costs will be allocated and votes weighed during Phase 1, 2) clarifies purpose and responsibilities, and 3) identifies tasks needed to complete studies for submittal of a Proposition 1 WSIP application. At the request of District staff, revisions were made to provide early participants a first right to the benefits of the Project, which will be determined in later phases of analysis. Rights to contract for the Project's water supply and storage capacity will be commensurate with the members' participation and financial contributions. In addition, those members that submitted a proposal to participate before August 1, 2016, which includes the District,

shall be granted such rights prior to those becoming members after that date.

The Project Agreement also incorporates the counteroffers provided by the Sites JPA in response to proposals for participation submitted by other potential partners. The counteroffer essentially provides the District with a 7% participation level and a 6.6% weighted voting percentage in Phase 1, which advances work to secure funding from the Proposition 1 WSIP. The participation level and voting percentage may change if members withdraw or new members join.

Currently there are a total of 28 agencies who have executed or are planning to execute the Project Agreement with the Sites JPA. In addition to the District, eight are State Water Contractors located south of the Delta. Westlands Water District is the only CVP contractor south of the Delta, besides the District, that is participating. The Metropolitan Water District of Southern California did not initially submit a proposal to participate in the Project, but has now expressed a desire to sign the Project Agreement and join the Project Agreement Committee. The Committee is discussing how to provide for participation of new members.

A participant may withdraw from the Project Agreement with 30 days' notice. Doing so would obligate the withdrawing member to pay for its share of all costs incurred or approved for expenditure prior to the date of the written notice of withdrawal.

The Amended and Restated Phase 1 Reservoir Project Agreement and associated exhibits are contained in Attachments 1 through 5.

Background

The Sites JPA was formed in August 2010. Its mission is to be a proponent and facilitator to design, potentially acquire, construct, manage, govern and operate Sites Reservoir and associated facilities. In November 2014, California voters passed Proposition 1, which dedicated \$2.7 billion in investments for water storage projects. In response, Sites JPA began mobilizing its efforts to prepare an application for funding. In November of 2015, consultants were retained by the Sites JPA to support the application process. A solicitation to participate in the development of the Project was extended to non-local water agencies, including the District, in May 2016. District staff reviewed the solicitation and provided an informational memorandum to the Board at its July 12, 2016 meeting. After further evaluation, staff submitted a recommendation to the Board at its July 26, 2016 meeting to request a 24,000 AF share of estimated 250,000 AF yield being offered, with the understanding that the actual yield and water share to be offered may be different pending further analysis and refinement. Based on the Board's direction staff submitted a Proposal to the Sites JPA on July 28, 2016. (Attachment 6)

Update since the July 26, 2016 Board meeting

The Sites JPA received proposals from applicants requesting, in aggregate, 377,411 AF of water, far exceeding the 250,000 AF of Class 1 water that was estimated to be available for water supply benefits. Because the actual project yield is uncertain, requested and offered water amounts were used as a surrogate to determine project participation levels. Water amounts are categorized as

Class 1 water (anticipated supply set aside for water supply yield) and Class 2 water, which is additional yield that could become available if water that is set aside for public benefits, such as fishery protection, is later redirected to support water supply yield. The Sites JPA provided potential partners counteroffers that granted 100% of requests for Class 1 water to north-of-Delta participants and 56.9% of requests for Class 1 by south-of-Delta participants, as shown in Attachment 7.

The District was offered 13,656 AF of Class 1 water and 10,344 AF of Class 2 water, which together translates to a 7% participation level in the Project. This further translates into a weighted voting percentage of 6.61% for the District's participation in the Project Agreement Committee. A summary of participation percentages of members is shown in Attachment 2.

Several private water companies, including California Water Service, requested Class 1 water; however, because private entities are not eligible to participate in the Project if it receives State funding, these companies were provided a tentative offer of Class 2 water.

The prospective Project Agreement Committee members have met several times to review and discuss environmental work, operations, budget, schedule and work plan. The District's Deputy Operating Officer of the Water Supply Division, Imported Water Manager, and Imported Water Senior Engineer have participated in these discussions.

The Project is envisioned to progress in five phases: :

- Phase 1 - Proposition 1 application and EIR/EIS development.
- Phase 2 - EIR/EIS completion and predesign.
- Phase 3 - Permits, land and right of way acquisition, and final design.
- Phase 4 - Construction
- Phase 5 - Transfer to operations.

Since July 2016, staff has reviewed the available Sites modeling studies in more detail. These studies indicate that the project could provide additional water supply to the District, especially during critical and dry years; however, the Sites modeling studies are outdated and are in the process of being updated by consultants to the Sites JPA. Other potential benefits that have yet to be fully evaluated could include additional storage opportunities for transfer supplies or unused SWP and CVP supplies. Additional work is needed to confirm and quantify these possible benefits.

Project Agreement

The Project Agreement provides for the following:

- Specification of participation percentages and voting percentages of Project Agreement

Committee Members;

- Assurance that those participants, including the District, who submitted a proposal to participate by August 1, 2016, will have a first right, commensurate with participation level and financial contribution to the project, to contract for a share of any water supply that is developed by the project;
- Implementation of tasks to (1) advance the studies needed to submit an application to the California Water Commission for funding under the Proposition 1 Water Storage Investment Program, and (2) negotiate the funding agreement and contracts to establish public benefits;
- Definition of the budget approval and management process;
- Delineation of responsibilities and authorities of the Sites JPA and Project Agreement Committee during Phase 1 of the project.

The Project Agreement incorporates comments and exceptions submitted by potential project participants and reviewed by their legal counsel during the onboarding process. A summary of changes is contained in Attachment 8.

Costs and Funding

Phase 1 Costs

The estimated cost to conduct the studies needed to complete the application process for Phase 1 has increased from \$7.2 million to \$15.1 million. This is due to the shifting of environmental work from Phase 2 into Phase 1, more stringent modeling requirements, and a six month extension of Phase 1. However, because the number of prospective participants requesting a share in the Project is significantly greater than previously anticipated, the anticipated revenue stream has increased, and the District's anticipated cost of participation in Phase 1 has decreased from \$1.44 million, as presented to the Board on July 26, 2016, to the updated amount of \$913,146.

An initial payment of \$618,304 will be invoiced to the District upon execution of the Project Agreement. A cash call for the remaining \$294,842 is expected in the third quarter of 2017. A revenue table showing initial and final payment of Phase 1 work for all Project participants is contained in Attachment 7.

Total Project Cost

The latest cost estimate for constructing Sites Reservoir is \$4.7 billion, expressed in 2015 dollars. This value includes environmental mitigation costs. If the District maintains a 7% participation level in the project, the District's share of total costs for constructing the reservoir could be roughly \$230 million (in 2015 dollars).

Governance Structure

The Sites JPA created a dual governance structure for Phase 1 consisting of the Sites JPA and a Project Agreement Committee. The Sites JPA is the local sponsor comprised of local water purveyors and county governments in Glenn and Colusa counties; the Project Agreement Committee is comprised of both local and non-local entities that provide financing and management of the Phase 1 work products.

As described in the Sites JPA agreement (Attachment 9) and bylaws (Attachment 5), the Sites JPA will be the applicant for Proposition 1 funding and will manage compliance with the terms and conditions of the award. It will also have the authority to enter into contracts for consultant services, perform studies, acquire property and rights of way, apply for permits and funding, and issue revenue bonds. The Sites JPA can also delegate authority to project agreement committees and other advisory groups. Since July 2016, membership in the Sites JPA has increased from 10 to 13 members.

The Project Agreement Committee will make decisions regarding scope of work, budget, and schedule for Phase 1, as well as review and comment on the work of consultants. The Project Agreement Committee will also ensure that there are sufficient reserves to maintain positive cash flow.

The current on-boarding process is expected to increase the number of Project Agreement Committee members, including the District, from 13 to 28. If the District executes the Project Agreement, the District will become a member of the Project Agreement Committee. The District's Imported water manager as proposed to serve as the District's representative on the committee. Each Project Agreement Committee member will have voting privileges prorated to its level of participation. The participation and voting percentages for each Project Agreement Committee member are shown in Attachment 2.

The dual governance structure developed for Phase 1 may change in subsequent phases.

Ad hoc working groups, consisting of Project Agreement Committee members have been formed in the following areas:

- Finance
- Permitting Strategy
- Operations

- Power
- Engineering
- Land Acquisition

CEQA Analysis for Sites Project

DWR conducted a Preliminary Administrative Draft Environmental Impact Report in 2014. It was provided as an informational update to decision makers and stakeholders on the status of the proposed reservoir and was not reviewed or approved for adequacy in meeting CEQA or NEPA standards. The current CEQA effort will utilize much of this work and will incorporate an additional alternative and the more stringent climate change scenarios that are required to be analyzed as part of the Proposition 1 application process.

FINANCIAL IMPACT:

An initial payment of \$618,304 is required upon execution of the Project Agreement. An additional payment of \$294,842 is expected in the third quarter of 2017. The total payment expected is \$913,146. There is a strong likelihood that an opportunity will become available for the District to convert 1,428 acre feet of Class 2 water to Class 1 water. If that occurs, an additional payment of \$34,629 would be required. Funds are available in the Imported Water Unit budget for FY 2017.

If the District participates and then later withdraws from the Project Agreement, its financial obligation would only extend to the portion of payment covering its share of all costs incurred or approved for expenditure prior to the date of the written notice of withdrawal.

CEQA:

The recommended action is to conduct studies and prepare a grant application; the action therefore does not constitute a project under CEQA since it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

- Attachment 1: Sites Phase 1 Agreement
- Attachment 2: Exhibit A1
- Attachment 3: Exhibit B
- Attachment 4: Exhibit C
- Attachment 5: Bylaws of the Sites JPA
- Attachment 6: Proposal to Participate
- Attachment 7: Estimated Revenue Table
- Attachment 8: Revisions to Sites Phase 1 Agreement

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Attachment 9: Amended Sites JPA Agreement
Attachment 10: PowerPoint

UNCLASSIFIED MANAGER:
Garth Hall, 408-630-2750