



Topic: **Reservoir Committee Agenda Item 3-4** **2018 Aug 16**

Subject: **Credit Reimbursement Policy**

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**Requested Action:**

Consider approval of the Credit Reimbursement Policy (Policy) and approving a recommendation to the Sites Project Authority Board of Directors to also approve the Credit Reimbursement Policy.

**Detailed Description/Background:**

The adoption of this Policy is an input to the rebalancing process. The efforts to prepare it resumed in earnest in January 2018 with internal reviews and then versions being reviewed by the Ad Hoc Finance and Economics Work Group beginning on June 7, 2018. This Policy has been through a couple of iterations and includes input from the Reservoir Committee.

At the August 6, 2018 Work Group conference call, the participants recommended the Reservoir Committee consider approving this Policy and recommend the Authority also consider approving this Policy.

**Prior Reservoir Committee Action:**

At the June 25, 2018 Reservoir Committee meeting, the status was discussed with direction provided to the Ad Hoc Finance and Economics Work Group.

When the Reservoir Committee was formed, one of the requirements included the development of this Policy to ensure equity among participants. Prior actions include the approval of a budget to perform this work and executing a contract to provide the resources needed to prepare this document.

**Fiscal Impact/Funding Source:**

None

**Staff Contact:**

Jim Watson

**Attachments:**

Attachment A: Draft Credit Reimbursement Policy

**Sites Reservoir Project, Phase 1**  
**Proposed Working Draft Funding Credit and Reimbursement Policy**

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APPENDIX A – ~~Participating Members and Respective Priority~~ Not included. Work in Progress

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Status: Issued for consideration to adopt  
Purpose: Proposed Policy &/or Standard  
Caveat: Subject to Change  
Notes: PRA Exempt - Deliberative Process

Preparer: S. Brown  
Checker: J. Watson  
QA/QC:

Phase: 1 Version: E  
Date: 2018 August 6  
Ref/File #: 12.210-110.790  
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## 1. PURPOSE OF POLICY

The Sites Project Authority (Authority) has adopted bylaws<sup>1</sup> that establish use of a Cost Development Model to track each participating agency's funding contributions and anticipated funding requirements as the Sites Reservoir Project (Project) is developed.

The purpose of this Funding Credit and Reimbursement Policy (Policy) is to establish the rules and procedures for contributing funds for the Project that will be used to inform the Cost Development Model that will be used as part of the Phase 1 rebalancing process<sup>2</sup>. The specific objectives of the Policy are to define the provisions and terms for:

- Defining contribution credit to participating agencies (Project Agreement Members, see **Section 3.9**) for having contributed funds to advance the Project;
- Defining allowable conditions for the use and/or reimbursement of credit;
- Providing an equitable exchange in participation levels between Project Agreement Members; and
- Defining the process for recalculating the equivalent cost basis among Project Agreement Members for Class 1 and Class 2 water<sup>3</sup>.

It is the intent of this Policy to ensure that all Project Agreement Members proceeding into Phase 2 will each have paid the same amount on an equivalent cost basis.

## 2. ADMINISTRATIVE

### 2.1 Role of the Authority and Reservoir Committee

Through its Bylaws, the Authority considers this process to be a foundational part of advancing the Project. Development of the requirements has been delegated to the participants in the Phase 1 Reservoir Project Agreement (Reservoir Committee). Acceptance of this document by the Authority is required before it's requirements can be implemented.

### 2.2 Amendments to this Policy

It is the Authority's intent this policy be updated as needed (i.e. is a "living" document) to ensure the Project is implemented equitably, efficiently and cost-effectively. The Authority may amend this Policy to reflect changes to the funding structure for the Project (e.g. separate participation in water storage versus water supply). Any amendment to this Policy will not reduce or increase

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<sup>1</sup> November 21, 2016 Amended and Restated Bylaws of the Sites Project Authority for Phase 1 of the Sites Reservoir Project, Section 3.9.

<sup>2</sup> For use in subsequent phases, this document will be amended to incorporate additional information gained during Phase 2.

<sup>3</sup> Participation in voting and funding is based on a Members' participation as measured in acre-feet that is used to apportion the project's development costs. Until the completion of Phase 2, the annualized volumes of water that could be released from storage can't be finalized until the Project has acquired the prerequisite permits needed for construction and operations and both state and federal agencies have committed to fund their equitable share in the Project.

any participant's contribution credit (as defined below) for having contributed funds to advance the Project.

### 2.3 Precedence of Documents

This document is subordinate to both the Authority's and Reservoir Committee's governance documents. Should a conflict exist, the Authority's Joint Exercise of Powers Agreement - including the Bylaws - shall take precedence, followed by the Reservoir Committee's Phase 1 Reservoir Project Agreement - including Exhibit B (Requirements).

Further and in keeping with the *Mission and Project's Primary Goals*<sup>4</sup>, should a conflict exist between this document and the Phase 2 Reservoir Project Agreement, which will include the terms and conditions for the interim finance plan, the Phase 2 Reservoir Project Agreement shall control, and this document shall be amended to remove the conflict.

### 2.4 Document Revision History

A record of approved changes to this document shall be recorded in this section, starting with its original approval for use, which is revision 0.

<u>Rev.</u>	<u>Effective Date</u>	<u>Status of Authorizing Action</u>
0	TBD	Approved by Reservoir Committee and Authority's acceptance

## 3. DEFINITIONS

The following definitions are used in this Policy:

- |                                    |   |
|------------------------------------|---|
| 3.1. "Class 1 Water"               | Water supply reserved for Project Agreement Members based on 50% of the total average annualized volume of water released from storage (250 TAF).   |
| 3.2. "Class 2 Water"               | Additional 170 TAF of water supply that may be available to Project Agreement Members, of which the State of California and/or the United States Government will be given the first right to acquire for ecosystem and water quality "public" benefit(s). |
| 3.3. "Contribution Credit"         | The accumulated funding provided by a Project Agreement Member for both Class 1 and Class 2.  |
| 3.4. "Equivalent Cost Basis"       | The equivalent cost per acre-foot for Class 1 water established by the Reservoir Committee.   |
| 3.5. "Equivalent Required Funding" | The amount of funding required by each Project Agreement Member at the Phase 1 True-up event ( <b>Section 12</b> ) equal to   |

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<sup>4</sup> Refer to Exhibit B of the Phase 1 Reservoir Project Agreement, General Requirements.

the Equivalent Cost Basis times the Project Agreement Member's participation in Class 1 water.

- 3.6. "Fully Subscribed Project" Full participation in the total amount of Class 1 water available. The associated amount may change between the end of Phase 1 and end of Phase 2. Further, it is contemplated that in Phase 2, consideration will be given to shift from the current delivery-based method (FOB Holthouse Reservoir) to a storage-based method.
- 3.7. "Funding Obligation" A Project Agreement Member's semi-annual pro-rata share of funding required. The Authority may elect to waive any Project Agreement Member from a semi-annual obligation by excluding that particular Project Agreement Member's participation in the Project when determining the basis for the pro-rata share of the remaining Project Agreement Members.
- 3.8. "Project Agreement Member" Any agency or entity that has executed the Phase 1 Project Agreement.<sup>5</sup>
- 3.9. "Good Standing" Meeting the requirements to actively participate in the Project according to Section 8.1 of Authority's Bylaws.
- 3.10. "Participation" A Project Agreement Member's elected participation rate expressed in terms of acre-feet of average annual water supply, or other metric utilized to determine the pro-rata share of funding required from each Member.
- 3.11. "Priority" The ranking of participation in the Project, Class 1 and/or Class 2, used to determine the order in which participation changes take effect. Highest priority is associated with earliest date the Phase 1 Reservoir Project Agreement was executed (i.e. Round 1). Lowest priority is the latest date this agreement was executed (Round 4).

#### 4. UNDERLYING ASSUMPTIONS

The following underlying assumptions predicate the establishment of credits and reimbursements:

- 4.1 As of August 1, 2015, funding provided by Members of the Authority has been divided into two separate categories: 1) Authority administration, and 2) Implementation of the Project.
- 4.2 Funding provided for Authority administration is not eligible for Credit, whereas funding for implementation of the Project is eligible.

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<sup>5</sup> Ibid, Section 7.3 for membership types. A list of current Project Agreement Members is provided in Exhibit A1 of the Phase 1 Reservoir Project Agreement.

- 4.3 Funding provided between January 1 and July 31, 2015 was applied first to Administration requirements in 2015 and the balance was applied to Project funding as of August 1, 2015.
- 4.4 All other funding received before December 31, 2014 was provided for advocacy of the Project and is not eligible for credit.
- 4.5 Prior to starting Phase 2 and after the California Water Commission has made its “Maximum Conditional Eligibility Determination (MCED)”<sup>6</sup>, a formal process will be conducted to enable Project Agreement Members to change their participation. These changes will become the basis for the Phase 1 True-Up and the Phase 2 Reservoir Project Agreement.

**5. PARTICIPATION PRIORITY**

As more or less Class 1 water becomes available, each Project Agreement Member’s allocation of Class 1 and/or Class 2 water may be impacted based on the priority assigned to their participation. Each Project Agreement Member will be assigned a priority based on the following criteria:

- Round 1 Priority: Founding members of the Authority who also elected to execute the Phase 1 Reservoir Project Agreement. Project Agreement Members in this round received Class 1 water.
- Round 2 Priority: New members of the Authority seated prior to the 2016 on-boarding process who elected to execute the Phase 1 Reservoir Project Agreement. Project Agreement Members in this round received Class 1 water.
- Priority 2.1: Existing members of the Authority seated prior to the 2016 on-boarding process, who had executed the Phase 1 Reservoir Project Agreement, and who elected to change their participation quantities in advance of the August 1, 2016 deadline that closed the On-boarding process. These changes were approved by the Authority on June 13, 2016.
- Round 3 Priority: Additional participation beginning with the 2016 On-Boarding process and extending through execution of a funding agreement with the State (anticipated by December 2018). Project Agreement Members in this round receive either:
  - 1) For Public Water Agencies: A combination of Class 1 and/or Class 2 water dependent upon the availability of Class 1 water; or
  - 2) For Non-Member Participating Parties: Mutual Water Companies who submitted a request to participate as part of the 2016 On-Boarding process received Class 2 water.

*Note that a rounding error in the original allocation of Class 1 and Class 2 water was found November 2017. The correction to the rounding error was applied retroactively to Priority 3 participants.*

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<sup>6</sup> Refer to California Code of Regulations, Title 23, Division 7, Chapter 1. Section 6011.

The following sub-priority within Round 3 will be based on the date that additional participation is established, which is the date the Phase 1 Reservoir Project Agreement was authorized to be executed by the Project Agreement Member.

- Priority 3.1            Prior to executing the Phase 1 Reservoir Project Agreement, 10,000 acre-feet of Class 1 water became available and was allocated to those Project Agreement Members who had initially agreed to accept fractional shares of Class 1 and Class 2 totaling the amount requested in their On-boarding letter of intent. For each of these Project Agreement Members, the result was a reduction in Class 2 water and a corresponding increase in Class 1 water.
  
- Priority 3.2            Prior to executing the Phase 1 Reservoir Project Agreement, Project Agreement Members who requested to increase their participation received Class 2 water.
  
- Priority 3.3            California Water Service request during the 2016 On-Boarding process requiring CPUC approval before executing the Reservoir Project Agreement.
  
- Priority 3.4            Metropolitan Water District of Southern California elected to not specify an acre-ft as the basis of their participation in the 2016 On-Boarding process, but subsequently requested to participate in Class 2 water through execution of the Reservoir Project Agreement
  
- Priority 3.5            After Project Agreement Members had executed the Phase 1 Reservoir Project Agreement, 6,285 acre-feet of Class 1 water became available after April 28, 2017 that was allocated to those Project Agreement Members who had initially agreed to accept fractional shares of Class 1 and Class 2 totaling their participation amount (Priority 3). Project Agreement Member's in this priority received a pro-rata share of the Class 1 water and a corresponding decrease in their Class 2 water.
  
- Priority 3.6            After Project Agreement Members had executed the Phase 1 Reservoir Project Agreement, an additional 6,285 acre-feet of Class 1 water became available after May 31, 2017 that was allocated to those Project Agreement Members who had initially agreed to accept fractional shares of Class 1 and Class 2 totaling their participation amount (Priority 3.0). Project Agreement Member's in this priority received a pro-rata share of the Class 1 water and a corresponding decrease in their Class 2 water.
  
- Round 4 Priority:      Additional participation following the funding agreement with the State (anticipated by December 2018). Project Agreement Members in this round would only receive Class 2 water unless participation changes result in the availability of Class 1 water.  
  
                                 This round of will also include additional Class 1 required to maintain the minimum participation threshold from water agencies located in the Sacramento River Hydrologic Region (see **Section 6**).

Additional rounds may be established by the Authority Board as the Project develops. The current list of priority participation is included in Appendix A.

## **6. PROVISION FOR ENCOURAGING NORTHERN CALIFORNIA PARTICIPATION**

The Authority desires to maintain a minimum threshold for participation by agencies within the Sacramento River Hydrologic Region equal to approximately 25% of the Class 1 water supply. Should the participation from Project Agreement Members in this region drop below the threshold, the Authority may solicit additional interest from Project Agreement Members or agencies that are not currently participating in the Project, both of which are located in the Sacramento River Hydrologic Region. The additional Class 1 participation will be established within Priority 4.

## **7. CREDITING POLICY FOR ADVANCE FUNDING**

The Crediting Policy describes the process of how Contribution Credit is earned by each Project Agreement Member by fulfilling its funding obligations. Funding obligations will be established through the Authority's annual budgeting process and will be apportioned to Project Agreement Members based on their respective participation. Each Project Agreement Member will accumulate Contribution Credit equal to its cumulative funding for both Class 1 and Class 2 participation.

## **8. USE OF CONTRIBUTION CREDIT**

Contribution Credit will be utilized to determine any payment or reimbursement due as result of the following events:

- Withdrawal from participation in the Project, as further described in **Section 10**; or
- True-up of Class 1 Cost Basis and Retirement of Class 2 participation, as further described in **Section 12**.

## **9. REIMBURSEMENT POLICY FOR CONTRIBUTION CREDIT**

The Authority will provide reimbursements<sup>7</sup> under the following conditions.

### **9.1. Reimbursements from Rebalancing Process**

Based on the Rebalancing Process (**Section 12**) results, The Authority will reimburse certain Project Agreement Members for excess Contribution Credit. The Authority will only reimburse such members once all payments have been received from Project Agreement Members that owe additional funds as the result of the Rebalancing Process.

### **9.2. Reimbursements from Withdrawal from Participation**

A Project Agreement Member partially or completely withdrawing their participation in the Project will be reimbursed for its accumulated Contribution Credit based on the Provision for Withdrawal (**Section 10**). The Authority will provide such reimbursement once all payments have been received from Project Agreement Members electing to increase its participation to offset the withdrawn participation.

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<sup>7</sup> Under no circumstances will the Authority finance any portion of any amounts that may be reimbursed.



### 9.3. Reimbursements from Project Termination

In the event that the Project cannot be completed or in the event the Authority has terminated the Phase 1 Reservoir Project Agreement, the Authority will disperse any available Project funds according to the participation percentages as defined in the current version of Exhibit A1 of the Reservoir Project Agreement. Note that this exhibit is a “living document” that has been updated as participation changes have occurred throughout Phase 1.

### 9.4. Limitation on Reimbursements

The Authority is not required to provide any reimbursements of any kind until the Authority determines that such reimbursements will not have an adverse impact on the financial viability or overall implementation of the Project.

## 10. PROVISIONS FOR WITHDRAWAL FROM PROJECT BEFORE THE START OF PHASE 2 OBLIGATIONS

A Project Agreement Member may reduce or completely withdraw their participation in Class 1 and/or Class 2 within the window associated with Assumption 4.5 and the Phase 2 Reservoir Project Agreement. In order to maintain equity among all Members, all changes in project participation will be accommodated through the provisions of the True-Up Process (**Section 12**).

### 11. PROVISION FOR CLASS 2 CONVERSION TO CLASS 1 PRIOR TO THE TRUE-UP PROCESS

Prior to the Phase 1 True-up Process (**Section 12**), the conversion of Class 2 water will occur only when additional Class 1 water becomes available. Project Agreement Members with Class 2 participation will be allowed to convert their Class 2 water in order of highest to lowest priority.

The cost for each Project Agreement Member to convert its Class 2 to Class 1 will be equal to the difference between the Class 1 and Class 2 funding obligations on a per acre-foot basis, multiplied by the quantity (acre-feet) of Class 2 being converted to Class 1.

### 12. PROVISION FOR REBALANCING PHASE 1 PARTICIPATION AND TRUE-UP OF THE CLASS 1 COST BASIS

At the conclusion of the Phase 1 Rebalancing Process, the Authority will establish the final amount of Class 1 available for participation and establish an equivalent cost basis per acre-foot (the True-Up Process). The final Phase 1 participation will be established as follows:

- The minimum threshold for participation from agencies in the Sacramento River Hydrologic Region (**Section 6**) will be considered prior to the conversion of Class 2.
- Class 2 will be converted to Class 1 in order of highest to lowest priority until the final amount of Class 1 participation is fulfilled.
- Any remaining Class 2 participation will be retired. Project Agreement Members with retired Class 2 water will be placed on a stand-by list for future participation based on their original priority.
- Should the total amount of Class 1 participation be less than the amount available, the Authority will solicit interest from current Project Agreement Members for additional participation. If the additional Class 1 participation is still available, the Authority will solicit interest from other non-participating agencies.

An equivalent cost basis per acre-foot will be established for all Project Agreement Members at the conclusion of Phase 1 as follows:

- The Equivalent Cost Basis for Class 1 participation has been established by the Project Reservoir Committee as \$48.50 per acre-foot.
- The Equivalent Required Funding for each Project Agreement Member will be the Equivalent Cost Basis multiplied by the Project Agreement Member's Class 1 participation at the end of Phase 1.
- If the Equivalent Required Funding is greater than the Project Agreement Member's cumulative Contribution Credit, a true-up payment will be due from Project Agreement Member to the Authority equal to the Equivalent Required Funding minus the Member's cumulative Contribution Credit.
- If the Equivalent Required Funding is less than the Project Agreement Member's cumulative Funding Obligation, a reimbursement will be due from the Authority to the Project Agreement Member equal to the Project Agreement Member's cumulative Contribution Credit minus its Equivalent Required Funding.

### **13. FAIR SHARE FUNDING STUDY**

The Authority will prepare a funding study upon completion of Phase 1 to document each Project Agreement Member's funding contributions, equivalent cost basis and Contribution Credit. The "Phase 1 Fair Share Funding Study" will summarize the conversion and/or retirement of Class 2 water and the true-up of the Class 1 cost basis at the end of Phase 1.

Appendix A – Participating Members and Respective Priority

Work In Progress