



Topic: **Authority Board Agenda Item 6-1**

2018 Aug 20

Subject: **Revised Sites Project Authority Bylaws**

Requested Action:

Consider approval of the revised Sites Project Authority Bylaws.

Note: Requires a 75% majority of members present and voting.

Detailed Description/Background:

With the development of new Phase 2 Project Agreements and the close out of Phase 1, revisions to the Sites Project Authority Bylaws are appropriate to address the changing needs of the project as we transition to Phase 2. The Authority’s Management and Governance Committee met on August 10, 2018 to review proposed changes, which are summarized as follows:

The Reservoir Project Agreement Committee needs to have appropriate delegations of authority to manage the work, while establishing some minimum expectations (e.g. Each Project Agreement Committee needs to develop their own Credit Reimbursement Policy to ensure equity without specifying how).

Requirements, such as cost management are already being implemented as best practices and no longer need to be in the Bylaws. This is a reflection that we’ve moved beyond stating how we’re going to do business to demonstrating how we’re doing business.

Role of Treasurer: Implementation of Government code 6505.5 for Authorities isn’t spelled out and how it should function with the Authority and Reservoir Committee is a bit gray. Bylaws will clarify compliance by requiring the Treasurer be a CPA yet certain requirements can be delegated to others, such as senior staff, board members, or members of a Committee.

Associate Member: Bylaws already included this classification, but the benefits were not defined. Moving to Phase 2, we expect some Authority Members to want to continue to support the project, but not at the same level as in Phase 1. The proposed changes to the Bylaws allow for participation in standing, ad hoc, and Consultation committees, with lower annual dues, but with no voting rights.

Prior Authority Board Action:

None.

Fiscal Impact/Funding Source:

None

Staff Contact:

Jim Watson

Attachments:

Attachment A – Draft Revised Sites Project Authority Bylaws

**SECOND AMENDED AND RESTATED
BYLAWS OF THE
SITES PROJECT AUTHORITY
FOR PHASE 2 OF THE SITES RESERVOIR PROJECT**

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<u>Revision</u>	<u>Effective Date</u>	<u>Status or Authorizing Action</u>
2	TBD	Date Phase 2 Project Agreement becomes effective
1	Nov 21, 2016	Approved by Sites Project Authority Board for use in Phase 1.
0	Dec 21, 2015	Approved by Sites Project Authority Board for use in Phase 1.

1 Relationship: Agreement and Bylaws

1.1. Agreement: The Sites Project Authority Agreement (Agreement) is the chartering document that defines, among other things:

- The Authority's members and general limitations on membership in the Authority;
- The Authority's powers, with additional powers afforded the Authority specifically associated with both the Joint Exercise of Powers Act and laws applicable to Irrigation Districts;
- The mission, which is specific to the Sites Reservoir Project;
- The Board's officers and other key positions;
- Minimum meeting and voting requirements;
- The adoption or amendment of bylaws.

It is intended to be a living document that will evolve as the project progresses from the current level of planning through construction and commissioning.

1.2. Bylaws: These Bylaws are adopted and amended pursuant to Section 8.2 of the Agreement to implement and provide further clarity for certain provisions of the Agreement and to provide procedures for administration of the Authority.

These Bylaws are intended to guide the work of the Board and staff of both the Authority and project agreement committees and to serve as a living document, to be revised as the organizational needs evolve. Furthermore, from these Bylaws, procedures will be developed for Board approval and then use as an aid to managing the Authority and Sites Reservoir Project.

1.3. Conflicts between Agreement and Bylaws: Should one or more provisions of these Bylaws be in conflict with any portion of the Agreement or with a Project Agreement, the Agreement or the Project Agreement, as the case may be, shall take precedence.

1.4. Severability: If one or more clauses, sentences, paragraphs or provisions of these Bylaws is held to be unlawful, invalid or unenforceable, the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provisions shall be deemed reformed so as to be lawful, valid, and enforced to the maximum extent possible.

- 1.5. Amendments of Bylaws: As provided at Section 8.2 of the Agreement, these Bylaws may be amended only by an affirmative vote of at least seventy-five percent (75%) of the total number of Directors.

2 Sites Project Authority's Mission, Vision & Values

- 2.1. Mission: (Restatement). "[T]o be a proponent and facilitator to design and potentially acquire, construct, manage, govern, and operate Sites Reservoir and related facilities; to increase and develop water supplies; to improve the operation of the state's water system; and to provide a net improvement in ecosystem and after quality conditions in the Sacramento River system and the Delta."
- 2.2. Vision Statement: Fulfill state and federal mandates to provide a new supply of safe, reliable, affordable water. Sites Reservoir will augment water delivery reliability to agricultural and urban water users, while adding environmental flows that benefit the Delta and Sacramento Valley watershed ecosystems. Sites will enhance the state water system, providing flexible and resilient storage under future climate change conditions.
- 2.3. Values: Those involved with all activities of the Authority should:
 - a. Transact all business in an open and honest manner, except that communications shall not be disclosed when occurring in closed sessions of the Board of Directors or a committee, or are otherwise privileged and confidential, and certain documents may be exempt from disclosure under the Public Records Act;
 - b. Communicate effectively;
 - c. Build trust and confidence, both internally and externally to the Authority;
 - d. Make decisions that are fiscally prudent;
 - e. Strive to use best practices and procedures, particularly in development of project controls for both management of risk and ensuring appropriate levels of quality.

3 Definitions

- 3.1. Board: The governing body of the Authority, composed of each Authority Member's delegate (or its respective alternate if the delegate is not present).
- 3.2. Event of Default: Is described in Project Agreements, including at Section 9 of the Phase 2 Reservoir Project Agreement.
- 3.3. Material Change: Where the variance between a parameter of the Project Baseline and the forecast exceeds the Board-approved threshold, as described in Section 12 below.
- 3.4. Member is either an Authority Member, or other type of Member provided for at Section 7 below, and is either:

- 3.4.1. A public agency that has either land use authorities or is a water agency that (a) is signatory to the Sites Project Authority Agreement (as amended) and (b) meets the requirements of the California Water Code §79759 (a) and (b), *or*
- 3.4.2. A public agency that (a) is contributing to the financing of the Sites Reservoir Project and (b) meets the requirements of the California Water Code §79759 (b).
- 3.4.3. Public agencies whose primary service area or boundaries are located *within* the Sacramento River watershed as defined in California Water Code §79759 (a) are designated as **Type A** while Members whose primary service area or boundaries are located *outside* of the Sacramento River watershed as defined in California Water Code §79759 (a) and meet the requirements of California Water Code §79759 (b) (i.e. not for-profit) are designated as **Type B**.
- 3.5. Non-Member Participating Party: A party, company, or entity that does not meet the requirements of a Member and is not a Member, yet is deemed by the Board able to participate by contract in advancing or supporting at least one element of the Sites Reservoir Project; such as, but not limited to, certain mutual water companies, investor owned utilities and the development of hydropower – both traditional and/or renewable pumped-storage.
- 3.6. Phase: Implementation of the Project has been divided into at least five (5) phases that coincide with major milestone processes relative to the Project's schedule: (1) Through award of a Proposition 1 grant, which is now complete as for Authority activities; (2) Certification of Environmental Impact Report and Statement, securing certain permits for the Project, and critical-path equipment and pre-construction activities; (3) completion of final design, easements and rights-of-way acquisition and completion of pre-construction activities; (4) construction and commissioning, and (5) Project close-out, which includes repayment of debt and transfer of responsibilities to an operating entity.

For the Authority to accomplish its mission in an efficient and cost-effective manner, the start of a successor phase may overlap with the completion of the predecessor phase. Such overlap shall require Board (or project agreement committee if this authority has been delegated by the Board to the project agreement committee) approval, since it affects annual operating budgets and the respective Member's funding commitments.
- 3.7. Project Agreement: The requirements of the Agreement, as more fully described at Section 5 below.
- 3.8. Project Agreement Committee: The decision-making body responsible for implementing a Project Agreement and compliance with the Project Agreement's terms and conditions.
- 3.9. Credit Reimbursement Policies. Each Project Agreement Committee will develop a Credit Reimbursement Policy to help ensure equitable participation of its Members.

4 Board of Directors and Officers

In addition to the primary requirements, which are defined in the Agreement, the following additional requirements shall also apply:

- 4.1. Role of Board: To provide the overall policy direction and consider approval of activities and actions of the Authority, including approval of the following matters:
- For the Proposition 1, Chapter 8 grant, manage compliance with the terms and conditions of its award.
 - Be the CEQA lead agency and work with USBR as the NEPA lead agency to effectively manage the environmental review process.
 - Hold title to the water rights issued by State Water Resources Control Board (SWRCB).
 - Be the owner of record as it related to dam safety requirements and regulatory obligations.
 - Be the applicant for all applicable permits and manage compliance with the respective terms and conditions.
 - Review decisions at Project Agreement level to ensure they are in the best interest of the Sites Reservoir Project.
 - Acquire property, easements and rights-of-way.
- 4.2. Minimum Qualifications: Directors shall be a designated representative from their respective Authority Member who is in good standing as defined at Section 8.1. Absentee votes shall not be considered. An Authority Member's designated alternate is not eligible to be candidate for an Officer position. If an Officer is the designated representative of an Authority Member that is not in good standing and that Authority Member's voting rights have been suspended as provided at Section 7.3 of the Agreement, then that Officer shall no longer be eligible to serve as an Officer of the Authority and the Board shall make an appointment for the remaining duration of that office.
- 4.3. Officer Term Limits: Board officers shall serve a term that does not exceed one year in duration. A Board officer is not precluded from holding consecutive terms.
- 4.4. Election of Officers: The Board shall annually elect the Chair and one or more Vice Chairs from its members and appoint a Secretary and Treasurer and may appoint any other officers or assistant officers as the Board may determine. The Board may combine the offices of Secretary and Treasurer. Elections shall occur annually, at the regularly scheduled Board meeting in February, or if for any reason the election does not occur, then at the next meeting of the Authority. For each position, the candidate receiving the majority vote from the Authority Members present shall be the successful candidate. Officers shall assume office upon their election and shall serve until their successor is elected.
- 4.5. Officer Vacancy: Should an officer position become vacant, the Board shall make an appointment for the remaining duration of the vacated position's term.
- 4.6. Treasurer's Roles and Responsibilities:
- Shall meet or exceed the requirements of Government Code Section 6505.5; the Authority to secure a bond for the position;

- Either has or provides oversight to Authority staff who have a background in accounting, budgeting, or finance; Make recommendations to the Board on selection of the auditor and oversee the preparation of an annual audit;
- Ensure auditor's reports are filed as required by law;
- Oversight of the annual budget preparation in accordance with Board direction and the Board's approval of the budget;
- Oversee compliance with reporting and other requirements for Phase 2 financing; and
- Provide a copy of the audit to each Member and Non Member Participating Party.

4.7. Secretary's Roles and Responsibilities:

- Oversight of board agendas, minutes, and board meeting's protocol, and preparation of agendas and minutes may be delegated by the Board to a Board Clerk; and
- Oversee Member (and their representatives) compliance with requirements of the Agreement and Bylaws.

4.8. Location: The Sites Project Authority's principle place of business and office and mailing addresses are:

Physical Address:

122 Old Highway 99 West
Maxwell, CA 95955

Mailing Address:

P.O. Box 517
Maxwell, CA 95955

4.9 Meeting Locations/Teleconference meetings:

- a. Most meetings of the Board and project agreement committees will be held at the principal office in Maxwell, however, since the Authority has members throughout the State, that is, in accordance with CA Water Code Section 79759 (b) includes the Department of Water Resources (DWR) as an ex officio member of the Authority, and the Authority has Project Agreement Members throughout the State, to promote maximum participation of the Board, Project Agreement Members and the public, some meetings of the Board or project agreement committee may be held elsewhere in the State.
- b. For purposes of providing video or teleconferencing access for meetings of the Board or a project agreement committee, at least a quorum of the Board or the project agreement committee members shall participate from the Authority's principal office and within the combined territory of the Authority Members or the project agreement committee members, as the case may be.

5 Project Agreement Committee Leadership and Administrative Process

- 5.1 Establishment of Project Agreement Committee: A "Phase 1 Reservoir Project Agreement" was entered into on or about December 13, 2016, between the Authority and various Project Agreement Members signatory thereto, and a "Phase 2 Reservoir Project Agreement" will be entered into between the Authority and some of the same Project Agreement Members to the Phase 1 Project Agreement, and possibly others. There could be additional Project Agreements during Phase 2. Each Project Agreement will include the establishment of a project agreement committee. The Project Agreement shall state the scope of work to be accomplished by the project agreement committee. The Project Agreement may also include delegations of authority necessary to accomplish the scope of work. The Project Agreement may also define thresholds for material change that if exceeded require approval of both the Board and the respective project agreement committee.
- 5.2 Conditions of Formation. The formation, termination, or amendment of a Project Agreement is contingent upon the Board's approval. Each Project Agreement shall specify the authorities delegated by the Authority to the applicable Project Agreement's Committee..
- 5.3 Appointment of Committee: Members and Non-Member Participating Parties of a Project Agreement in good standing shall appoint their respective representative to the Committee who is either an active member of the Member's board of directors or is a duly appointed senior-level staff have been delegated the authority from the Member to make decisions on the Member Agency's behalf.
- 5.4 Committee Leadership: At least two Authority Members are required to execute the Project Agreement and provide a representative to serve on each project agreement committee along with the Authority's General Manager. In preparing each Project Agreement, the decision-making structure will be defined by the Board; taking into account factors such as, but not limited to, the project's complexity, risk, cost, and entities requesting to become signatory to each Project Agreement. The Project Agreement shall, at a minimum, provide for appointment of a Committee Chair, whose responsibilities are similar to those of the Board Chair. The Board shall determine whether the project agreement committee shall also appoint a Committee Treasurer whose responsibilities are similar to those of the Board Treasurer. The Committee Treasurer may be the Authority Treasurer, or if not, shall serve under the general supervision of the Authority Treasurer.
- 5.5 Leaders Term Limits: Project agreement committee leaders shall serve a term that does not exceed one year in duration. They are not precluded from holding consecutive terms.
- 5.6 Election of Committee Leaders: Elections shall occur annually, no later than the end of the third quarter of the year in which the term for the position expires. The election shall occur at a regularly scheduled project agreement committee meeting. For each position, the candidate receiving the majority vote from the Committee members present shall be the successful candidate.

- 5.7 Committee Leader Vacancy: Should a Leader position become vacant, the project agreement committee shall make an appointment for the remaining duration of the vacated position's term.
- 5.8 Quorum and Voting of the Project Agreement Committee: A majority of the Committee members representing Members and Nonmember Participating Parties that have executed the Project Agreement shall constitute a quorum for a project agreement committee, unless otherwise provided in the Project Agreement. Absentee votes shall not be considered. Voting thresholds to approve actions, including routine matters or Non-Material Change Items verses Material Change Items, shall be as provided in the respective Project Agreement.
- 5.9 New Parties: In preparing each Project Agreement, the process to appoint new parties to the Project Agreement, including appointing a new member taking the place of a withdrawing or terminated Member, will be defined, taking into account factors such as, but not limited to, compliance with California Water Code § 79759 .
- 5.10 Project Agreements: The purpose and scope of any Project Agreement shall be as therein provided.
- 5.11. Member's Election to withdraw: Should a Member or Non-Member Participating Party of a Project Agreement elect to withdraw their participation in any executed Project Agreement, the conditions on any such withdrawal shall be as set for in the Project Agreement.
- 5.12 Termination of a non-Authority Member in a Project Agreement. A Project Agreement may be terminated with respect to any non-Authority Member or Non Member Participating Party under conditions set forth in the Project Agreement.
- 5.13 Each Project Agreement involving agreements with third parties providing for the acquisition, construction, or management of the Project shall include provisions to provide for allocation of available sales and use tax revenues to the County of Colusa or County of Glenn to the greatest extent provided by law, depending on the situs of the work or activity.

6 Common to Board of Directors and Project Agreement Committee Leadership Positions

- 6.1. Conflict of Interest Code: Each Director of the Board and their delegated alternate and each Member's representative serving on a project agreement committee shall timely file Statements of Economic Interest as required by the Authority's Conflict of Interest Code.
- 6.2. Compensation: For at least Phase 2 , no compensation shall be granted by the Authority to (a) any Director of the Board or a Member's delegated alternate or (b) any representative to a project agreement committee' s. When travel has been pre- approved by either the Authority or project agreement committee's Leadership, respectively the representative is eligible to recover reasonable travel and related expenses.
- 6.3. Closed Sessions: The Board or a Project Agreement Committee, as the case may be, may enter into a closed session during a regular, adjourned regular or special meeting to consider matters that may lawfully be considered in such sessions in the manner provided by law. Due to the fact that national and state water, environmental and political issues are very complex, the Board may find that participation of the Authority's directors and their alternates, or Committee members and their

alternates, as the case may be, is essential in order to allow alternate directors or committee members to be able to keep abreast of these matters so that they may vote meaningfully on upon issues present at meetings when they are called on to do so. After a closed session, the Board will report publically any action taken in closed session, as well as the vote or abstention of any member present as provided by law.

The representatives of the Authority Members or Project Agreement Committee, as the case may be, that attend a closed session of the Board of Project Agreement Committee, may disclose information obtained in a closed session that has direct financial or liability implications for that Authority Member or Project Agreement Member to the following individuals: (a) legal counsel of the Authority Member or Project Agreement Member for purposes of obtaining advice on whether the matter has direct financial or liability implications to it; and (b) other members of the legislative body of the Authority Member or Project Agreement Committee present in a closed session of that Authority Member or Project Agreement Member.

7 Membership Types

7.1. General:

7.1.1. The Board retains its sole discretion to (a) offer membership to an agency, entity, party, or company ("requestor") who requests to participate in the Project, as further provided at Section 3 . 3 of the Agreement, and (b) to determine what if any membership type is applicable for the requestor. Should the Board elect to offer a membership type, the requestor shall then be required to (1) execute both an election to participate form and applicable agreements and (2) comply with the Agreement, Bylaws, and if applicable, Project Agreements.

7.1.2. A participating party's interests through the Authority and/or a Project Agreement cannot be assigned without written pre- approval by the Board, unless otherwise provided in a Project Agreement with respect to participation in a Project Agreement .

7.2. Authority Member: A public agency that is signatory to the Agreement. They are required to be located within Sacramento River watershed that has either (1) land use authority or (2) is a duly recognized water agency, and complies with the joint powers authority ("JPA") membership requirements of California Water Code § 79759 (a) & (b). Agencies that elected to participate and provide financial support to the Authority prior to October 30, 2015, may also be referred to as Founding Members.

Eligibility to join as an Authority Member, at the Board' s sole discretion, as further provided at Section 3 . 3 of the Agreement, may be extended to a non- profit mutual water company that complies with the joint powers authority ("JPA") membership requirements of California Water Code § 79759 (a) as i t relates to being located within the Sacramento River watershed and California Water Code § 79759 (b) as i t relates to being a non-profit company.

Financial Contribution: Pro- rata cost share of either the Authority' s cost and/or the pro- rata share of cost for each executed Project Agreement.

Attributes of an Authority Member:

- Eligible to be represented on the Board.

- Eligible to also be represented on a project agreement committee. An Authority Member's representative may be an officer on a project agreement committee.
- Eligible to provide in-kind (and/or other) services if pre-approved by the Board.

7.3. Project Agreement Members: Such members shall be either (1) a public agency that meets the requirements of California Water Code Section 79759(a) or (b), that has as its sole or a principal power the supplying of water (and/or power) to other entities or to retail water (and/or power) users which is a Type A Member or a Type B Member, or (2) a non- profit mutual water company that complies with the non- profit JPA membership requirements of California Water Code § 79759 (b). It must be willing to execute at least one Project Agreement.

Attributes of a Project Agreement Member:

- Can be an officer on the Committee.
- Eligible to provide in-kind (and/or other) services if pre-approved by the Board.
- Conditions and attributes for participating as a Project Agreement Member may be further described in the applicable Project Agreement.

7.4. Associate Member: Either (1) a public agency that has as its sole or a principal power the supplying of water (and/or power) to other entities or to retail water (and/ or power) users that also meets the joint powers authority membership requirements of California Water Code § 79759 (a) & (b), but elects to accept an advisory role from the Authority or (2) a non-profit mutual water company that complies with the non- profit JPA membership requirements of California Water Code § 79759 (b), but elects to accept an advisory role from the Authority.

Financial Contribution: An annual contribution of \$5,000, or as otherwise established from time to time by the Board.

Attributes of an Associate Member:

- In a non-voting capacity, may serve on standing committees formed by the Board.
- May serve on ad hoc committees appointed by the Chair.
- Upon approval by the Chair, could chair a Consultation Committee.

7.5. Non- Member Participating Party: "An agency, entity or company, that does not meet the JPA membership requirements of California Water Code § 79759 (b) regarding for- profit corporations, including certain types of mutual water companies, and is not a Member of the Authority, but is deemed eligible by the Authority to participate by contract in certain elements of the Project." (Restatement from Agreement section 1.7).

Attributes of Participating Party: Conditioned upon meeting certain eligibility requirements.

- An agency or company may be eligible to participate on a Project Agreement.
- A Mutual Water Company or private company may be eligible to participate on a Project Agreement.
- A qualified energy developer may participate in a Project Agreement specifically executed to provide hydroelectric power including traditional and pumped-storage.

- Conditions and attributes for participating as a Non-Member Participating Party may be further described in the applicable Project Agreement.

7.6. Ex Officio:

The California Department of Water Resources (DWR), which is required by law to be an ex officio member of a joint powers authority for the purposes of California Water Code § 79759 (b) shall be a non-voting member of the Authority and/or project agreement committee.

7.7. Cost Share Partner:

The United States Bureau of Reclamation may participate as a non-voting partner of the Authority and/or project agreement committee.

8 Members and Non-Member Participating Parties Common Requirements

8.1. Good Standing: To actively participate in the respective decision- making authorities, each Member and Non- Member Participating Party is required to comply with the following conditions:

- 8.1.1. Compliance with the terms of the Agreement and these Bylaws as well as the policies and/or procedures the Board may adopt;
- 8.1.2. Compliance with any Project Agreements it has executed, and not be subject to an Event of Default;
- 8.1.3. Providing timely payment of the Member's or Non- Member Participating Party's financial obligations, namely, (i) for Authority Members, General and Administrative Costs assessed by the Board, and (ii) for Members and Non-Member Participating Parties of a Project Agreement, payments required under the Project Agreement. For Authority Members obligations Section 5.5.3 of the Agreement provides obligations are delinquent if not received within sixth (60) days of the invoice date.

Failure to remain in good standing may subject the Member or Non- Member Participating Party to disciplinary action that, at the discretion of the Board and/ or applicable project agreement committee, may include suspension of voting rights as provided at Section 7 .3 of the Agreement and/ or removal from either the Authority and/or Project Agreement(s) as therein provided, respectively.

8.2. Change in Representation: Should a Member or Non-Member Participating Party elect to name a different person to represent them either on the Board and/ or on any project agreement committee, the change shall be provided in writing to the Secretary. The written notification shall also include an effective date.

8.3. Conflict of Interest: The Authority has adopted and may from time to time amended its Conflict of Interest Code adopted pursuant to the Political Reform Act of 1974 , California Government Code Section 87000 , et seq., and regulations adopted by the Fair Political Practices Commission set forth in Title 2 , California Code of Regulations. "Designated Positions" under said Conflict of Interest Code shall comply with such Code and Political Reform Act and other applicable laws.

9 Committees

- 9.1. Common: Each committee of the Authority shall have a chartering document approved by Board, which will include, among other things, quorum and voting requirements for conduct of the committee.
- 9.2. Board Committees:
 - 9.2.1. Each committee of the Board shall be comprised of at least three (3) and no more than five (5) Authority Members.
 - 9.2.2. Standing Board Committees: The Chair may elect to create standing committees as necessary to ensure successful completion of the Authority's mission.
 - 9.2.3. Ad- Hoc Board Committees: The Chair may elect to create Ad- Hoc committees to address specific issues or area of concern to the Board.
- 9.3. Project Agreement Committees: The purpose is to manage each Project Agreement as provided for in Section VI of the Agreement and Section 5 of these Bylaws. The Project Agreement shall be the chartering document the project agreement committee shall use to perform the work consistent with the requirements of the Agreement and Bylaws.
- 9.4. Consultation Committees: The purpose of the Consultation Committees are to serve as an advisory committee in order to maximize transparency regarding the decision-making process and facilitate the exchange of information; provide opportunity for comment, input, and recommendations; and ensure meaningful discussions regarding the rationale for decisions and the outcomes that result. The Board may from time to time reconstitute and/or provided for Consultation Committees.
 - 9.4.1 The Board shall approve charter documents for the Consultation Committees which shall include, among other things, the scope of its activities and quorum and voting requirements for conduct of the Committees. The Board shall approve and may modify from time to time the composition of the Consultation Committees, based upon interest expressed by various interested entities.
 - 9.4.2 The Consultation Committees will meet as necessary to exchange information and provide input concerning upcoming decisions expected to be made by the Authority. Consultation Committee members will not have a seat on the Board and will not vote on matters before the Authority, but will have an opportunity to inquire about relevant matters, be apprised by the Authority of issues of interest, and make recommendations concerning pending decisions.
 - 9.4.3 A member of the Board or alternate shall participate in an ex officio capacity for each Consultation Committee and to provide access to information relevant to the committee's agenda items.
- 9.4. The Consultation Committees shall periodically provide reports to the Board on its activities.

10 The Authority's Powers and/or Authorities

- 10.1. Non-Delegated Authorities: While (a) Section VI of the Agreement includes the intent to use Project Agreements to accomplish the Authority's mission and (b) each Project Agreement shall specify the power delegated from the Authority, for Phase 2, the following powers shall remain with the Board:

- 10.1.1. Enter into and maintain contracts for loans and grants, including Proposition 1, Chapter 8 grants.
- 10.1.2. Lead agency with the SWRCB for the water rights application and/or assignment of an existing water right application or permit/license. Furthermore, the Authority will hold title to the water rights granted by the SWRCB.
- 10.1.3. Serving as Lead CEQA Agency for the Project.
- 10.1.4. Negotiation and acceptance of permit conditions, commitment to mitigation obligations associated with NEPA/CEQA compliance to achieve less than significant classification, ESA/CESA compliance, Section 10 of the Rivers and Harbors Act, NHPA § 106/SHPO and compliance with the Clean Water Act.
- 10.1.5. Compliance with applicable dam safety requirements such as California Division of Safety of Dams and Federal Energy Regulatory Commission.
- 10.1.6. Engagement and outreach with tribal representatives, elected officials, the general public, and advocacy organizations (e.g. NGOs).
- 10.1.7. Lead any efforts to (a) acquire land and rights- of- way and (b) obtain additional financial contributors.
- 10.1.8. Determination of Material Changes affecting the annualized water supply and costs expected from development of the Sites Reservoir Project.
- 10.1.9. Determination of Material Changes to the facilities associated with the reservoir that could result in either an increased schedule greater than one year and/or increase construction costs greater than 10 %.
- 10.1.10. Development of renewable power or pumped-storage beyond the pre-feasibility- level planned.
- 10.1.11. Oversight of (a) employees and (b) consultant contracts. Overall cost management to ensure obligations or commitments remain within each annually approved operating budget and (b) the Phase 2 cost target.
- 10.1.12..Establishing a decision making threshold for specific topic areas likely to be addressed by the Project Agreement's Committee.
- 10.1.13.Approve the initial issuance of each Project Agreement and subsequent amendments that are more than administrative changes as determined by the Authority's legal counsel.
- 10.1.14.Approving a Financial Plan.

11. Delegations of Authority

11.1. To A Project Agreement Committee:

- 11.1.1. Limited Liability: Each Project Agreement shall include the requirements of Agreement Sections 5 .9 and 6 .3.

11.2. To the General Manager.

11.2.1. Outreach and Engagement:

- a. Serve as the primary advocate and voice of the Authority in all activities related to advancing surface water storage and enhanced water supply reliability in the Sacramento River watershed, and primarily Sites Reservoir.
- b. Advocate with local, state, and federal agencies as well as the regulatory and environmental sectors.
- c. Represent the Sites Project Authority to enhance the organization's profile as a leader in the storage debate.
- d. Conduct official correspondence on behalf of, and jointly with, the Board when appropriate.

11.2.2. Cost Management:

- a. Manage the Board-approved annual operating budget to ensure positive cash flow and track variances against both the phase-level budget target and total project cost, which includes an estimate of the finance cost.
- b. Seek additional funding partners in the Sites Reservoir Project, including loans and grants from the Federal and State governments.

11.2.3. Unless otherwise directed by the applicable Project Agreement Committee regarding expenditures under the Project Agreement, execute professional services contracts in accordance with the following:

- a. Board approved Master Services Agreements (MSAs) where the commercial terms but no scope or cost have been assigned.
- b. Task Orders for MSAs where the scope of work and cost has a value that does not exceed the line-item amount in the approved operating budget and is less than \$500,000.
- c. Other professional services agreements (i.e. commercial terms plus scopes of work and not- to-exceed cost) having a value that does not exceed the line item amount in the approved operating budget and is less than \$100,000, unless a different threshold has been established by an applicable Project Agreement Committee.

11.2.4. For expenditures that are not specific line items in the Board- approved annual operating budget, the General Manager is authorized to spend up to \$5,000, so long as a positive cost variance to the Board-approved annual operating budget is forecast.

11.2.5. Administration: Annually, review and evaluate the performance of and report same to the Board:

- a. key staff positions;
- b. consultant contracts and their key personnel;

12 Material Change - Applicable for Phase 2

- 12.1. These provisions shall apply both to decisions by the Board and project agreement committee(s).
- 12.2. As the Sites Reservoir Project progresses through each of the planned project phases, what constitutes a Material Change along with the associated thresholds for Material Change may require amendment to these Bylaws. For Phase 2 , should a question arise regarding a change being deemed material, the Board shall make the final determination.
- 12.3. Decisions affecting the following topic areas constitute a Material Change applicable for Phase 2 as measured either qualitatively or quantitatively as a change:
 - 12.3.1. An increase in the projected Phase 1 budget target greater than 5 % of the approved Phase 2 budget target.
 - 12.3.2. Any projected overrun to the approved total annual operating budget or transferring funds between line- items in the approved operating budget that is greater than \$ 50, 000.
 - 12.3.3. The eligibility of the Authority to receive grant funding from Proposition 1, chapter 8.
 - 12.3.4. Water rights and/or annualized yield of the Sites Reservoir Project changing by more than 5 % of the total annualized yield or changes the proposed split between water supply benefits and Proposition 1 defined public benefits by more than 5 %.
 - 12.3.5. Changes affecting the ability to obtain dam safety related permits in a timely and cost-effective manner.
 - 12.3.6. Changes to the Project's scope that significantly changes the operations of existing conveyance assets owned and/or operated by Members and/or other entities relative to the Project Baseline.
 - 12.3.7. Changes to the Project' s scope that significantly changes the amount of power needed to operate and/ or the amount of pumped- storage capability.
 - 12.3.8. Changes causing the direct construction cost to increase or decrease more than 10% excluding inflation and escalation in material costs.
 - 12.3.9. Changes causing the construction schedule to increase more than 6 months or require construction means and methods that may not comply or require extreme measures to comply with OSHA requirements.
 - 12.3.10. Changes having the potential to shift significant risk from either (a) a Project Agreement to the Authority (or vice versa), (2) from one Project Agreement to another, and/ or (3) from one participant to another. Absent defined thresholds, the Board has the discretion to determine, on a case by case basis, if a Material Change has occurred.
 - 12.3.11. Causing the mitigation for construction and/ or operations that changes the baseline estimated cost by more than 10 %.
 - 12.3.12. Affecting the acquisition cost or schedule of land, easements, or rights- of- way by more than 10% from the baseline estimate cost and/ or increases the line-item schedule duration by more than 6 months.
 - 12.3.13. Changes materially affecting the powers of the Authority, a Member, the State of California, the Federal Government, or a federally recognized Tribal organization.

- 12.3.14. Proposed amendments to the Agreement or these Bylaws that would materially affect the rights and/ or duties of Member or Non-Member Participating Party under a Project Agreement.

13 Integration of Decisions - Authority Board and Project Agreement Committees

- 13.1. Material Change: Each Project Agreement will identify topic areas that constitute a Material Change and associated thresholds that are consistent with the Agreement and Bylaws and incorporate the Board's delegation of powers, if any, to the project agreement committee. Approval of actions to respond to a Material Change requires the approval of both the Board and the project agreement committee before the action can be implemented.
- 13.2. Non-Material Changes: Approval of actions that are deemed by project agreement committee and the General Manager to not result in a Material Change do not require the approval of the Board before the action can be implemented.
- 13.3. Dispute Resolution Process: Early identification of any dispute involving actions of the Authority or a Project Agreement Committee, including the administration and/or implementation of the Agreement, these Bylaws or a Project Agreement (collectively a "Dispute") is essential. Unless otherwise provided in a Project Agreement, a party that has identified a Dispute shall, within fifteen (15) days of the event, provide the General Manager in writing with the basis for the Dispute. The General Manager shall investigate the merits of the Dispute and notify the Project Agreement Committee and Board with his findings as to the merits of the Dispute and any recommended action. Should the party that has identified the Dispute disagree with the General Manager's assessment it's remedy shall be as follows:
- 13.3.1. If the Dispute involves the administration or implementation of a Project Agreement, it shall be resolved as provided in the Project Agreement.
- 13.3.2. Any other dispute shall be resolved through the following procedures:
- (a) If said Dispute is not resolved within 30 (thirty) calendar days through informal discussions between the General Manager and the parties involved in the Dispute, a party may submit the Dispute to formal mediation. The Parties shall voluntarily agree to the choice of mediator, or, if the Parties cannot agree upon a mediator, one shall be appointed by the Superior Court of Colusa County upon motion for appointment of a neutral mediator. The cost of mediation shall be paid in equal proportion among the Parties involved in the Dispute.
 - (b) If the mediation process does not provide a final resolution to the Dispute raised, any Party may submit the matter to binding arbitration under Section 1280 et seq. of the Code of Civil Procedure. Notwithstanding the foregoing, a Party may seek a preliminary injunction or other interlocutory judicial relief prior to completion of the mediation or arbitration process if necessary to avoid damage or to preserve the status quo.