



Topic: **Authority Board Agenda Item 6-2**

2018 Feb 25

Subject: **2019 Participation Agreement**

Requested Action:

Consider approving the participants whose respective governing body has approved their continued participation through executing the 2019 Reservoir Project Agreement, amendments to the 2019 Reservoir Project Agreement, and authorize the General Manager to countersign the agreements, and authorize the preparation and distribution of invoices to these participants.

Detailed Description/Background:

The Phase 1 Reservoir Project Agreement expires on March 31, 2019. It will be replaced by the 2019 Reservoir Project Agreement. Those electing to execute the 2019 Reservoir Project Agreement will oversee and manage the implementation of the approved 2019 Work Plan and Budget.

The current status of phase 1 participants who are considering participation in 2019 is attached.

The Reservoir Committee will consider staff’s recommendation at their February 21, 2019 meeting.

Prior Authority Board Action:

- November 19, 2018: The Authority Board approved the form and substance of the 2019 Reservoir Project Agreement as presented; along with including a not-to-exceed limit of \$60/acre-foot participation rate, removing several requirements that were associated with using interim financing, and simplifying a number of other requirements. This agreement along with supporting documents was distributed on December 13, 2018 to current participants who have expressed an interest in continuing to participate in 2019.
- October 22, 2018: The Authority Board agreed to revise Exhibit B of the 2019 Reservoir Project Agreement to reflect a revised work plan that has a not to exceed water agency spending of \$15 million (refer to Plan C) and to pursue a cash call. Both require revisions to the proposed participation agreement and a one-month extension to the start of the participation agreement to occur on April 1, 2019.
- September 17, 2018: Staff and Bond Counsel provided a status of comments received from various meetings with potential participants with the plan to have an agreement ready for the Reservoir Committee’s consideration at October 18 meeting for release on November 1, 2018.

- August 20, 2018: The Authority Board approved the proposed Phase 2 Reservoir Agreement in form and substance with (a) two changes (deletion of Exhibit E, which is duplicative to Exhibit A and specify all participants would step-up in the event of another participants' default), (b) revising the start of the agreement to be March 1, 2018, and (c) modifications to Exhibit A to clearly list participation percentages in a manner that is consistent with the process used for the phase 1 agreement.

Fiscal Impact/Funding Source:

None.

Staff Contact:

Jim Watson

Attachments:

Attachment A: Status of Executed 2019 Reservoir Project Agreements.

Attachment B: Amendments to the 2019 Reservoir Project Agreement

2019 Reservoir Project Agreement (Working Draft)**EXHIBIT A****PROJECT AGREEMENT MEMBERS**

Participant	Participation (Annualized Acre-Foot)		
	Estimated Deliveries	Water Supply Pct	Weighted Voting Pct
American Canyon, City of	4,000	2.0 %	3.4 %
<i>Antelope Valley-East Kern Water Agency</i> (TBD)	~ 500	0.2 %	2.5 %
<i>Carter Mutual Water Company</i> (By Feb 21)	~ 500	0.2 %	2.5 %
Coachella Valley Water District	10,000	5.0 %	4.9 %
Colusa County	10,000	5.0 %	4.9 %
Colusa County Water District	11,775	5.9 %	5.3 %
Desert Water Agency	6,500	3.2 %	4.0 %
Glenn-Colusa Irrigation District	5,000	2.5 %	3.6 %
Metropolitan Water District of S. CA	50,000	24.1 %	14.8 %
Reclamation District 108	4,000	2.0 %	3.4 %
San Bernardino Valley Municipal Water District	21,400	10.7 %	7.7 %
San Geronio Pass Water Agency	14,000	7.0 %	5.9 %
<i>Santa Clara Valley Water District</i> (By Feb 26)	~ 24,000	12.0 %	8.4 %
Santa Clarita Valley Water Agency	5,000	2.5 %	3.6 %
TC-4: Cortina Water District	300	0.1 %	2.5 %
TC-4: Davis Water District	2,000	1.0 %	2.9 %
TC-4: Dunnigan Water District	2,717	1.4 %	3.1 %
TC-4: LaGrande Water District	1,000	0.5 %	2.6 %
Westside Water District	15,000	7.5 %	6.1 %
Wheeler Ridge-Maricopa Water Storage District	3,050	1.5 %	3.1 %
Zone 7 Water Agency	10,000	5.0 %	4.9 %
Total:	200,742	100.0 %	100.0 %

Participation Percentages exclude State of California's and United States Bureau of Reclamation's participation in the Sites Reservoir Project.

NOTE: text in italics represents participants who have not formally approved the 2019 Agreement or their participation amounts by Feb 19, 2019.

Stradling Yocca Carlson & Rauth

Draft of 12/6/18

Legend:

Highlighted = Flag

Green font = to remove

Red font = to insert (remain)

SITES PROJECT AUTHORITY

2019 RESERVOIR PROJECT AGREEMENT

DATED AS OF APRIL 1, 2019

BY AND AMONG

SITES PROJECT AUTHORITY

AND

THE PROJECT AGREEMENT MEMBERS LISTED HEREIN

Agreement Members from accepting voluntary contributions and/or Authority Board's pre-approval of in-kind services from other Authority Members, or Project Agreement Members, and applying such contributions to the purposes hereof. The Project Agreement Members further agree to pay that share of any Authority costs reasonably determined by the Authority's Board to have been incurred by the Authority to administer this Project Agreement. Before the Authority's costs of administering this Project Agreement become payable, the Authority will provide its calculation of such costs to the Committee, which will have the right to audit those costs and provide comments on the calculation to the Authority Board. The Authority Board shall consider the Committee's comments, if any, including the results of any such audit, in a public meeting before the Authority Board approves a final invoice for such costs.

Section 5 Participation Percentages

Subject to Section 4(a), each Project Agreement Member shall pay that share of costs for activities undertaken pursuant to this Project Agreement, whether undertaken in the name of the Authority or otherwise, equal to such Project Agreement Member Participation Percentage as established in this Section 5. The initial Participation Percentages of the Project Agreement Member are set forth in the attached **Exhibit A**. These initial Participation Percentages are for the purpose of establishing the Reservoir Project Agreement Members respective responsibilities for costs under this Project Agreement and other amounts contained in the approved Fiscal Year budget and Phase 2 budget target, which is defined as the "Reservoir Total Approved Budget" on **Exhibit B**. The Participation Percentages of each Project Agreement Member will be modified by the Committee from time to time as the result of the admission of a new Project Agreement Member to this Project Agreement or the withdrawal of a Project Agreement Member, and **Exhibit A** shall be amended to reflect all such changes. Such amended **Exhibit A** shall, upon approval by the Committee, be attached hereto and upon attachment, shall supersede all prior versions of **Exhibit A** without the requirement of further amendment of this Project Agreement.

Section 6 Future Development of the Sites Reservoir Project

(a) The Project Agreement Members acknowledge that the Sites Reservoir Project is still in the conceptual stage and there are no assurances that the Sites Reservoir Project will be constructed or that any water supplies will be developed as a result of this Project Agreement. **Exhibit B** includes a partial list of some of the risks and uncertainties that underlie the lack of assurances. The Project Agreement Members therefore recognize that they are not acquiring any interest in the Sites Reservoir Project other than their interest in the specific permitting, design, engineering and other materials that will be in the Work Plan Project as described in **Exhibit B**, and that the Project Agreement Members are not acquiring under this Project Agreement any interest in any future water supply or access to any other services from the Sites Reservoir Project except as provided hereunder.

(b) Without limiting the foregoing, any Project Agreement Member that elects to continue participating in the development, financing, and construction of the Sites Reservoir Project to the time when the Authority offers contracts for a water supply or other services, will be afforded a first right, equal to that Project Agreement Member's Participation Percentage, to contract for a share of any water supply that is developed, and for storage capacity that may be available from, the Sites Reservoir Project. In any successor phase agreements, Project Agreement Members who are parties to this Project Agreement that submitted a proposal to participate before February 15 28, 2019, shall be granted rights to contract for a share of any water supply that is developed, and for storage capacity

that may be available from the Sites Reservoir Project prior to the rights of those becoming parties to this Project Agreement after that date. The Authority and the Project Agreement Members will cooperate on the drafting of provisions in the water supply contract that will allow a Project Agreement Member or other eligible entity that commits to purchase a Sites Reservoir Project water supply to transfer water that the entity may not need from time to time on terms and conditions acceptable to the such Project Agreement Member.

Section 7 Indemnity and Contribution

(a) Each Project Agreement Member, including Authority Members acting in their capacity as Project Agreement Members, shall indemnify, defend and hold the Authority, Authority Members and other Project Agreement Members and their directors, trustees, officers, employees, and agents harmless from and against any liability, cause of action or damage (including, without limitation, reasonable attorneys' fees) arising out of the performance of this Project Agreement multiplied by each Project Agreement Member's Participation Percentage. Notwithstanding the foregoing, to the extent any such liability is caused by the negligent or intentional act or omission of an Authority Member or a Project Agreement Member, such Authority Member or Project Agreement Member shall bear such liability.

(b) Each Project Agreement Member, including Authority Members acting in their capacity as Project Agreement Members, shall indemnify, defend and hold the Authority and the members of the Authority that do not execute this Project Agreement and their directors, trustees, officers, employees and agents harmless from and against any liabilities, costs or expenses of any kind (including, without limitation, reasonable attorney's fees) arising as a result of the activities described in or undertaken pursuant to this Project Agreement multiplied by each Project Agreement Member's Participation Percentage. All assets, rights, benefits, debts, liabilities and obligations attributable to activities undertaken under this Project Agreement shall be assets, rights, benefits, debts, liabilities and obligations solely of the Project Agreement Members in accordance with the terms hereof, and shall not be the assets, rights, benefits, debts, liabilities and obligations of the Authority or of those members of the Authority that have not executed this Project Agreement. Members of the Authority not electing to participate in the Project Agreement shall have no rights, benefits, debts, liabilities or obligations attributable to the Project Agreement.

Section 8 Term

(a) No provision of this Project Agreement shall take effect until this Project Agreement has been duly executed and delivered by the Authority and by one Project Agreement Member.

(b) The term of this Project Agreement shall continue until December 31, 2019, unless extended in writing by the parties hereto.

Section 9 Withdrawal From Further Participation

To withdraw from this Project Agreement, a Project Agreement Member shall give the Authority and other Project Agreement Members written notice of such withdrawal not less than 30 days prior to the withdrawal date. As of the withdrawal date, all rights of participation in this Project Agreement shall cease for the withdrawing Project Agreement Member. The financial obligation as prescribed in the Bylaws' Section 5.11 in effect on the withdrawal date, shall consist of the

EXHIBIT B
2019 WORK PLAN

2018 November 16 Reservoir Committee Meeting - Attachment A - Agenda Item 3-3

Category	(Multiple Items)
Action	(Multiple Items)
Funding Source	(Multiple Items)
Work Manager	(All)
Priority	(All)

Report: Reservoir Committee 2019 Work Plan & Budget
Report Date: 2018 Nov 12

Approved

Reprioritize
Currently Approved Budget
Proposed Budget
Authority= 12 mon
Res. Comm= 9 mon

Expense (-) or Revenue (+)	Cost Center	Task	Resource	Sum of Total End of Phase 1	Sum of Total 2019
Expense	C.R. Policy			\$ -	\$ (2,067,094)
	Engagement			\$ -	\$ (135,000)
	Operations	Contingency		\$ -	\$ -
		Env Interests		\$ (44,936)	\$ (120,552)
		Exchange		\$ -	\$ (75,550)
		Modeling		\$ (325,000)	\$ (998,480)
		Op POA		\$ (59,488)	\$ (61,040)
		Staff+		\$ (69,705)	\$ (417,555)
		Storage		\$ (17,824)	\$ (136,300)
		Water Rights		\$ (29,712)	\$ (204,264)
		Water Rights+		\$ (29,712)	\$ (119,892)
	Operations Total			\$ (576,377)	\$ (2,133,633)
	Power	Grid Interconn+		\$ -	\$ (1,097,880)
		H2oPower+		\$ -	\$ (668,453)
		Staff Aug+		\$ -	\$ (632,880)
		Staff+		\$ -	\$ -
	Power Total			\$ -	\$ (2,399,213)
	Res. Comm. O	Advisory		\$ (43,200)	\$ (82,565)
		Office		\$ -	\$ (133,100)
		Participation		\$ (109,800)	\$ (210,600)
		PROCURE		\$ -	\$ (80,240)
		PROCURE-2		\$ -	\$ -
		Rebalance		\$ (8,400)	\$ (134,070)
		Staff		\$ (6,000)	\$ (1,739,573)
		Staff Aug		\$ -	\$ (4,237,495)
		Staff Aug+		\$ -	\$ (225,990)
		Staff+		\$ -	\$ -
		Support		\$ (26,925)	\$ (107,678)
		Technology		\$ (3,330)	\$ (13,280)
		USDA-1		\$ (10,000)	\$ (10,800)
		WSIP-1		\$ (51,440)	\$ (81,960)
	Res. Comm. OH Total			\$ (259,095)	\$ (7,057,351)
	Water	Dam Design		\$ -	\$ (8,776,500)
		Economics+		\$ -	\$ (329,880)
		EIR-EIS		\$ (165,000)	\$ (2,371,767)
		Field Studies		\$ (200,000)	\$ (887,876)
		Field Surveys		\$ -	\$ (91,980)
		Permit Coord		\$ (590,000)	\$ (8,095,900)
		Rights of Entry		\$ (306,000)	\$ (600,119)
	Water Total			\$ (1,261,000)	\$ (21,154,022)
Expense Total				\$ (2,096,472)	\$ (34,946,312)

Summary - Page 1 of 2

NOTE: 2019 proposed budget, which is applicable to this Agreement, was approved by the Reservoir Committee at their November 16, 2018 meeting with the Reservoir Committee's share of expenses listed on page B-2.