

Requested Action:

Review and comment on the Draft Sites Reservoir Benefits and Obligations Contract Guiding Principles and Preliminary Terms.

Detailed Description/Background:

The financing action plan is focused on answering the three big questions for participants: (1) what do we get? (2) how much does it cost? and (3) how do we pay for it?

Broadly, the three big questions are answered for participants through the development of the Sites Reservoir Benefits and Obligations Contract Guiding Principles and Preliminary Terms (GPPT) and the Plan of Finance as shown in Figure 1.

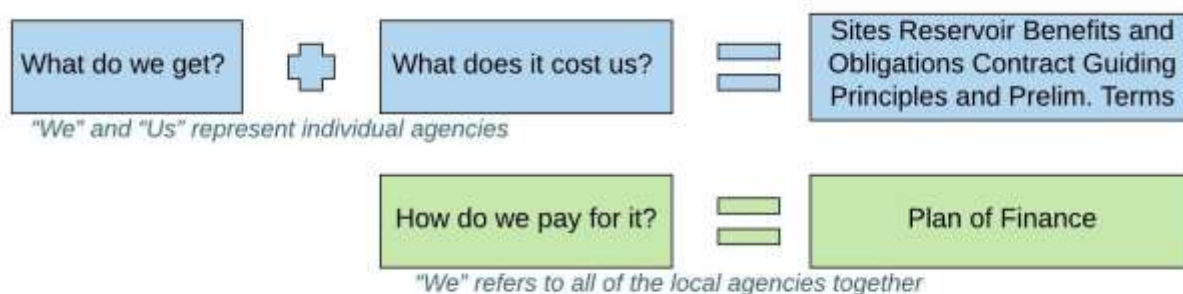


Figure 1 - GPPT and Plan of Finance answer the "three big questions"

A joint Authority Board and Reservoir Committee workshop was held on April 23, 2021 to discuss the development of the GPPT. A draft copy of the GPPT was attached to the workshop agenda. Staff has received detailed input from two participants and a request for more time from others as they evaluate the workshop materials. Early feedback was primarily related to:

- Other agreements, including state and federal agreements
- Roles and responsibilities (governance)
- Definition of the sufficiency pledge, waterfall, and pre-default processes
- Process and approvals on water sales/transfer, storage leasing
- Process and approvals for disposition of the asset
- Group financing provisions

Staff would like to extend the deadline for feedback to allow more participants to comment on the draft document as presented at the April workshop (Attachment A) prior to making changes to the document. The near-term schedule for development of the GPPT is as follows:

- **June:** re-share draft GPPT as part of Joint Meeting.
- **July:** staff to refine draft GPPT based on all feedback received.
- **August:** preliminary draft GPPT incorporating all feedback presented to the RC/AB. Staff is also working with CWC staff to ensure the materials to be presented later in the year demonstrating 75% non-public cost share will be sufficient. This draft of the GPPT would also be provided as part of that package, not for content review and comment, but instead to comment on sufficiency of the 75% demonstration.
- **September:** joint workshop to discuss proposed Final 2021 Draft GPPT and receive any final feedback and proposed changes.
- **October:** Final 2021 Draft GPPT considered for acceptance by the RC/AB. This document will remain a “work in progress” and will be subject to further changes as the project continues through development. By accepting the Final 2021 Draft GPPT the RC/AB would be representing their willingness to bring this document to their home Board’s as part of their consideration of continued participation in Amendment 3. This process could lead to additional feedback and further changes to the document. Also, it is expected that an acceptance by the RC/AB will be needed to fulfill CWC requirements. This document will be included in final 75% non-public cost share package to CWC which is anticipated for approval at the same meeting.

Prior Action:

October 21, 2020: Project Financing Action Plan approved by the Authority Board.

Fiscal Impact/Funding Source:

None.

Staff Contact:

JP Robinette

Attachments:

Attachment A – Draft Guiding Principles and Preliminary Terms

Draft Sites Reservoir Benefits and Obligations Contract Guiding Principles and Preliminary Terms

Preamble

The Sites Reservoir Project (the Project) is a proposed 1.3-1.5 million acre-foot off-stream reservoir located approximately 10 miles West of the town of Maxwell, California. The Project includes development and operation of infrastructure including necessary dams, pipelines, pump stations, power transmission lines, and other facilities needed to provide new water supply and storage. The Project will utilize existing conveyance facilities to divert water from the Sacramento River for storage in the reservoir and for deliveries. The Project will provide public benefits including environmental water supply, recreation, and regional flood control benefits. The Project will provide non-public benefits to participating water agencies including water storage and water supply benefits.

The Project is being developed by the Sites Project Authority (the JPA), a public agency formed in 2010 through execution of a Joint Exercise of Powers Agreement (the JPA Agreement) whose members are public agencies in the Sacramento River Watershed. The JPA Agreement and associated Bylaws identify requirements and obligations for membership in the JPA and allow for Project Agreements to govern funding and participation in any project the JPA undertakes. The JPA may also enter into agreements with other agencies for the purposes of developing the Project (see Related Agreements).

The Project is being developed in phases including (1, *complete*) formation and state funding award, (2, *in progress*) certification of environmental impact report and statement and acquisition of key permits, (3) final design and right-of-way acquisition, (4) construction and commissioning, and (5) project close-out and operations.

The JPA has entered into Project Agreements for the development of the Project through Phase 2 with JPA members and non-members who meet the requirements set forth in the JPA's Bylaws, referred to as Participants. The Project Agreements establish a Project Agreement Committee, the Reservoir Committee, made up of all Participants.

It is anticipated that beginning in Phase 3 and/or upon the initiation of project financing, the Project Agreements may take the form of a Sites Reservoir Benefits and Obligations Contract (the Contract). The purpose of this document is to establish guiding principles and preliminary terms to help guide development of the Contract between the JPA and the Participants (where the JPA and Participants are collectively referred to as "the parties").

There are several details that still need to be finalized for a full and complete agreement to be reached; however, the parties believe this document represents their mutual understanding of the allocation of project benefits, costs, risks, financing obligations, and ownership obligations. The parties agree to work cooperatively and in good faith to follow the guiding principles outlined herein and resolve any new issues identified later to establish the Contract by approximately Summer 2023, prior to initiating Project financing. This document is a work in progress and will need to be aligned with the final adopted Plan of Finance. Addressed principles include:

- Roles and Responsibilities
- Project Assets and Ownership
- Beneficiary Pays
- Financing
- Leasing of Storage and Sales of Water
- Minimum Contract Term, Successor Agreements, and Changes

Related Agreements

The Participants acknowledge that the JPA plans to enter into Agreements for the Administration of Public Benefits with various agencies of the State of California and to enter into an agreement with the Bureau of Reclamation for federal government funding of a portion of the Project in exchange for certain, defined benefits. While these state and federal agencies will not be party to the Contract, they are playing crucial roles in providing some Project funding and in administering public benefits. The JPA will strive to proportionately share Project risks, obligations and benefits within these agreements consistent with the JPA's overall "beneficiary pays" principle.

The Participants also acknowledge that the JPA is negotiating Facilities Use Agreements for use of the Glenn-Colusa Irrigation District (GCID) Main Canal, fish screen and pump station; the Tehama Colusa Canal Authority (TCCA) canal, fish screen and pump station; and the Colusa Basin Drain and associated facilities ("Partner Facilities").

Principles and Preliminary Terms

1. Roles and Responsibilities

- 1.1 The JPA will act as the developer and operator of the Project and is responsible for obtaining input from the Participants to help guide its decisions.
 - 1.1.1 As the developer, the JPA is responsible for obtaining the required Project Water Right(s), securing the Project Site and any deeds claims or associated property rights, acting as the lead agency with regard to complying with CEQA / NEPA requirements, obtaining Project permits, evaluating funding options, collecting funds for payment of Project capital costs during construction (including debt service and reserves), entering into agreements needed to support development of the Project, and overseeing Project design and construction.

- 1.1.2 As the operator, the JPA will be responsible for: allocating water to and from storage in accordance with the Storage Principles (or its successor) and requests from individual Participants, the terms of the Contract, and with the Project Water Right(s); operating, maintaining, and replacing Project Facilities; permit compliance; collecting funds for payment of Project capital costs (including debt service and reserves), operations, maintenance, replacement and administrative / management costs; and all other functions related to administration of the Project and the Project Agreements.
- 1.2 The Participants are responsible for: covering Project costs (except for those obligations covered by grants, by Agreements for the Administration of Public Benefits with various agencies of the State of California, or by federal agreements); assuming certain Project risks and obligations as will be described in the Contract; and providing input to the JPA regarding Project funding, governance, and risk management.
- 1.2.1 As it relates to covering Project costs, the Participants are responsible for using their individual authorities (authority to establish and collect rates, taxing authority etc.) to ensure reliable cashflow to the JPA to provide for the timely payment of Project costs (including debt service and reserves).
- 1.2.2 As it relates to assuming certain Project risks and obligations, the parties agree that the Participants must have the opportunity for meaningful input into the definition and management of those risks and obligations. For clarity, risk management decisions that will significantly affect Project costs and / or Participant's risk exposure will require **[input from the Participants / concurrence from Participants as indicated by a majority of shares]**. For example, any decision to expand the Project scope to include significant purchase of property downstream of the dam as a means of mitigating flooding or dam failure risk would fall into this category.
- 1.2.3 As it relates to providing input to the JPA more broadly, the Participants are all individual members of the Sites Reservoir Committee (and its workgroups) established by the JPA to undertake specific work activities for the development of the Sites Reservoir Project.
- 1.3 Future Changes to Roles and Responsibilities. The parties acknowledge that the parties may agree to future changes in the roles and responsibilities between the JPA and Participants. Such changes may be considered at major Project milestones such as the time the water right is secured, at the time of financing; and completion of Project construction, as examples.

2. Project Assets and Ownership

- 2.1 The land on which Project facilities are sited, physical features of the Project (excluding Partner Facilities), and the water right(s) will be owned by the JPA.

- 2.2 Each Participant’s interest in the Project is represented by its allocation of storage capacity and its right to a proportionate share of Sites water available that is diverted to storage (“capacity share”).
 - 2.2.1 Within certain constraints, storage capacity allocations and the associated rights to Sites water shares will be considered saleable assets.
 - 2.2.1.1 The Participants agree that any sale of a Participant’s storage allocation cannot result in a change to the Project’s bond rating or otherwise pose any risk to Project financing, and may be subject to the approval of the financing entity(ies) depending on the terms of any financing agreement. The sale of a Participant’s share will be approved by the JPA.
 - 2.2.1.2 **Possibly Add / Discuss:** Any constraints on pricing sales, priority of who is offered shares for sale, and that any Participant selling its storage allocation will receive payment “net” of any payments owed the JPA.
- 2.3 **Possibly Add:** Quantify rights to water supply and storage allocations for individual Participants.

3. Beneficiary Pays

- 3.1 The parties agree that, in principle, Project costs should be allocated consistent with the flow of Project benefits and obligations. For clarity, this means that a Participant receiving benefits from the Project or from a Partner Facility agrees to pay a pro-rated share of all costs of the Project and, if applicable, of the Partner Facility consistent with the Cost Allocation Framework (to account for which Participants use which facilities) developed by the JPA with input from the Participants.
- 3.2 Project Costs include all costs of Project development (i.e. land, water rights, permits), design, construction, debt service, operation and maintenance, major renewals and replacements, and administrative costs.
 - 3.2.1 Project fixed costs (excluding fixed costs associated with Partner Facilities) will be allocated between all Participants based on their percent share of Project storage (excluding any storage allocated to federal and California state agencies).
 - 3.2.2 Project variable costs (excluding variable costs associated with Partner Facilities) will be allocated based on the estimated annual amount of water moved into and out of storage by each Participant as a percent share of the total annual amount of water moved into and out of storage. At the end of the year a true-up process will be used to align estimated and actual quantities of water moved.

- 3.3 Partner Facility Costs. The parties recognize that certain Partner Facilities are needed to realize Project benefits but that not all Participants need to use all the Partner Facilities. Partner Facility costs will be allocated to Participants based on actual use based on wheeling rates established in the Facilities Use Agreements.
- 3.4 **Possibly Add:** Quantify cost allocations for individual Participants based on the beneficiary pays principle.

4. Financing

4.1 The parties agree that the JPA will issue debt to fund all or a portion of the Project capital costs at such time that the JPA has secured the water right and has otherwise made sufficient progress such that the JPA, as advised by the Reservoir Committee, has determined that long-term debt issuance is warranted.

4.2 The parties further recognize that significant benefits to the Project as a whole would result from group financing (i.e., lower interest rates, **[other]**) and that financing entities may impose conditions on the financing that will likely impact each of the Participants. The parties agree to continue to evaluate group financing along with other financing methods beneficial to the project.

4.2.1 Group Financing and Ratings of Individual Participants

4.2.1.1 Not all of the Participants are rated by recognized credit rating agencies and are therefore unable to lend their rating to group financing. Therefore, for group financing to be viable, the financing will need to be based on the rating of a significant subset of those Participants that are rated. To the extent that an unrated Participant may be able to obtain a rating of “A” or better, the parties agree that such Participants are encouraged to do so.

4.2.1.2 The parties acknowledge that those Participants lending their rating to a group financing are taking additional risk and the parties agree to explore means to offset this risk.

4.2.2 Obligations of “Pay Go” Participants to Support Project Financing.

4.2.2.1 The parties recognize that some Participants may wish to obtain their own financing or to pay Project costs as they are incurred out of available revenues (“pay-go”).

4.2.2.2 “Pay-Go” Participants recognize that they will receive an indirect benefit from Project group financing in that it provides a greater assurance there will be a sufficient number of Participants to assure viability of the Project.

4.2.2.2.1 “Pay-go” may be allowed as long as it does not materially adversely affect the ability to finance the Project.

- 4.2.2.3 “Pay-go” Participants also recognize the JPA’s need for reliable cash-flow to fund Project design and construction. Therefore the “Pay-go” Participants will commit to fund reserves through early payment to reliably meet their funding obligations.
- 4.2.3 For group financing to be viable, financing entities have indicated they will require any financing agreement to include a “Project Sufficiency Pledge”. All Participants will need to agree to these obligations, even if they select a “pay-go” option.
- 4.3 **Possibly Add:** Quantify debt-service and other financial obligations for individual Participants.

5. Leasing of Storage and Sales of Water

- 5.1 Participants may share or lease their Storage Allocation with other Participants and with other entities. The terms of sharing or leasing are at the discretion of the Participant who is a party to the storage or lease agreement but must not negatively impact other Participants, Project operations or financing. Any sharing or leasing will be coordinated with the JPA so that proper Project operations and water accounting can be maintained. A Participant may not transfer or assign any of its rights or obligations as part of any sharing or leasing agreement.
- 5.2 Participants may sell water held in their Storage Allocation to other Participants or other entities. The terms of sales of water held in a Participant’s Storage Allocation are at the discretion of the Participant but must not negatively impact other Participants, Project operations or financing. Any sale of water held in a Storage Allocation will be coordinated with the JPA so that proper Project operations and water accounting can be maintained. A Participant may not transfer or assign any of its rights or obligations as part of any sale of water. The receiving entity must either have sufficient available Storage Allocation to store the water or release the water upon purchase.
- 5.3 **Possibly Add / Discuss:** Any priority, pricing constraints, or obligations related to the sales of water supply or leasing of storage to Participants or non-Participants.

6. Minimum Contract Term, Successor Agreements, and Changes

- 6.1 The parties agree that the term for the Contract will, at a minimum, coincide with the length of the financing agreement and will contain provisions for extensions.
- 6.2 The parties further acknowledge that it will be necessary to develop successor agreements and that the Contract will detail the process and timeline for developing, negotiating and agreeing to such successor agreements.
- 6.3 **Possibly Add / Discuss:** Project offramps at different milestones during the Project’s development.
- 6.4 **Possibly Add / Discuss:** Changes in the regulatory environment and permit conditions.