



Sites Reservoir Benefits and Obligations Contract

Guiding Principles and Preliminary Terms

DRAFT UPDATE to 2021 Draft (updated July 7, 2022)

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 the 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 and new conveyance facilities to divert water from the Sacramento River for storage in the reservoir and for releases. The Project will provide public benefits including environmental water supply, recreation, and regional flood control benefits. The Project also will provide water storage and water supply benefits to participating water agencies.

The Project is being developed by the Sites Project Authority (the JPA), a public agency formed in 2010 through the 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 has created a Reservoir Committee consisting of certain JPA members and other municipal entities and special districts that will pay to participate in and receive benefits from the Project (“Participants”). 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 Phase 1 (*complete*) — formation of the JPA and state funding award, Phase 2 (*in progress*) — certification of environmental impact report and statement and acquisition of key permits, Phase 3 — final design and right-of-way acquisition, Phase 4 — construction and commissioning, and Phase 5 — construction close-out and operations.

The JPA has entered into Project funding agreements for the development of the Project through Phase 2 with Participants, and with State agencies and the federal government. The JPA has also received acknowledgment from the United States Environmental Protection Agency (“EPA”) that the Project is eligible to apply for a \$2.2B WIFIA loan. The JPA is taking the steps needed to secure an indicative credit rating and develop other documents required to apply for the WIFIA loan in the spring of 2023.

It is anticipated that beginning in Phase 3 and/or upon the initiation of long-term or short-term Project financing, the JPA will enter into a Sites Reservoir Benefits and Obligations Contract (the

Contract) with Participants. 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”).

Several details still need to be finalized for a full and complete Contract 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 take this document to their agency management and governing bodies to receive their feedback and input and then will work cooperatively and in good faith to consider the feedback and input and work to resolve issues identified and to establish the Contract by approximately Summer 2023, prior to initiating Project financing.

Addressed principles include:

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

Related Agreements

The Participants acknowledge that the JPA intends 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 a portion of the Project in exchange for agreed upon Project benefits. The JPA is currently in discussions with the State of California and the Bureau of Reclamation regarding these Agreements. While these state and federal agencies are not Participants and will not be party to the Contract, they have crucial roles in providing some Project funding, in administering public benefits and in coordinating Project operations with the State Water Project (SWP) and federal Central Valley Project (CVP) operations. Through future agreements between the JPA and the State of California agencies and between the JPA and the federal government, the JPA intends to share Project risks, obligations, and costs in a manner that is proportional to the public benefits that these entities will receive from the Project. As a result, Project obligations, costs and risks will be borne by the Participants, various State agencies, and the federal government although the allocation of costs, risks, obligations and benefits will require a number of separate agreements.

The Participants also acknowledge that the Project relies on existing conveyance facilities to receive and transmit water in and out of the Reservoir and the JPA is working cooperatively to negotiate Facilities Use Agreements and Facility Partner Design and Construction Agreements for use of and, where applicable improvements to the Glenn-Colusa Irrigation District (GCID) Main Canal, fish screen and pump station; the Tehama Colusa Canal, and associated fish screen and pump station, operated by the Tehama Colusa Canal Authority (TCCA); and the Colusa Basin Drain and associated facilities (altogether referred to as “Partner Facilities”). The JPA is currently

negotiating planning agreements with GCID and TCAA to help guide activities by these parties and the JPA prior to execution of the Facility Use Agreements and Facility Partner Design and Construction Agreements. The JPA bylaws Section 2.5 requires that written consent be secured from the GCID and TCCA prior to certain actions being taken by the JPA which carries an added limitation on the JPA's independent activities.

In addition to the agreements described above, the JPA entered into a MOU with Colusa County regarding the storage and use of water from Funks Creek and Stone Corral Creek and the relationship of these waters to the JPA's water rights application and Colusa County's Area of Origin water rights claims.

Definitions

Throughout this document, a number of defined terms are used. These terms are defined below and their relationship to other definitions used in various Project Agreements and other Project documents are explained.

Cost Allocation Framework: approach to be developed by the JPA to account for which Participants use which Project facilities and Partner Facilities based on input provided by the Participants. The Cost Allocation Framework distinguishes between Base Facilities and Downstream Facilities and also accounts for the use of Project and Partner Facilities by State of California agencies and the federal government.

Base Facilities: Project facilities and Partner Facilities that are used and paid for by all Participants, the State of California, and the federal government. Examples include Sites Reservoir, Funks Reservoir, the Terminal Regulating Reservoir, portion of the Tehama Colusa Canal upstream of the Sites Reservoir Project, and the portion of the Glenn Colusa Irrigation District Main Canal upstream of the Sites Reservoir Project.

Downstream Facilities: Project facilities and Partner Facilities that are used and paid for by certain Participants, the State of California, and the federal government. Examples include the Dunnigan Pipeline and Colusa Basin Drain.

Participants: Also referred to as Reservoir Committee members, Participants are the entities that pay to participate and receive benefits in the Sites Reservoir Project including certain JPA members and other municipal entities and special districts. Participants are not the same as Storage Partners.

Partner Facilities: existing conveyance facilities owned and operated by other entities that have excess capacity that can be used by Project Participants to access benefits from the Project.

Plan of Finance: the plan identifying and evaluating feasible funding options, including financing and pay-go options, and describing the requirements for funding the non-public cost share of all project costs.

Principles for the Storage, Delivery and Sale of Sites Reservoir Project Water (Storage Principles): reviewed by the Reservoir Committee and adopted by the JPA in April 2021, the Storage Principles serve as the basic framework for development, adoption, and/or execution of additional or more formal agreements, policies, and procedures related to the storage, delivery, and sale of Sites Project water, as needed.

Project Water Right (Water Right): The water right obtained and owned by the JPA for the Sites Reservoir Project.

Reservoir Committee: A JPA authorized committee consisting of certain JPA members and other municipal entities and special districts to fulfill certain obligations under the Joint Exercise of Powers Agreement.

Reservoir Project Agreement: the agreement in which Participants indicate their individual participation levels (percentage of non-public benefits to be invested in) and commitment to project funding based on authorization by the respective home agency. The Reservoir Project Agreement is also referred to as the Participation Agreement.

Sites Reservoir Project (Project): Sites dams, reservoirs, certain associated diversion and conveyance facilities, and other associated facilities, mitigation lands, and Water Right.

Sites Project Authority (JPA): an independent joint powers authority established to exercise powers common to the Authority Members to, among other things, effectively study, promote, develop, design, finance, acquire, construct, manage, and operate Sites Reservoir and related facilities such as recreation and power generation.

Sites Storage Principles: The document entitled “*Principles for the Storage, Delivery, and Sale of Sites Reservoir Project Water*” adopted by the JPA in 2021 and hereunder referred to as the Sites Storage Principles. The Sites Storage Principles are adopted by reference into these *Guiding Principles and Preliminary Terms*.

Storage Allocation: the amount of storage space (storage volume) in Sites Reservoir allocated to a Storage Partner, as agreed upon in that Storage Partner’s Contract. Dead storage is not allocated to any Storage Partner.

Storage Partners: as defined in the Storage Principles, the governmental agencies, water organizations, and others who have funded and received a Storage Allocation in Sites Reservoir and the resulting water supply or water supply related environmental benefits from the Project. Storage Partners include the Participants, the State of California, and the federal government.

Principles and Preliminary Terms

1. Roles and Responsibilities

- 1.1 The JPA, as currently defined by its governing documents and agreements, 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, securing the Project site and any required property rights, acting as the lead agency with regard to complying with CEQA requirements, obtaining Project permits, evaluating funding options, obtaining financing for a portion of Project capital costs, collecting funds for administration and payment of financing costs, 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 other agreements, and with the Project Water Right; operating, maintaining, and replacing Project Facilities; permit and agreement compliance; collecting funds for administering financing and 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. The JPA and Participant roles in Project financing are further described in Section 4, Financing.*
- 1.2 The Participants (Reservoir Committee members), as currently defined by the JPA's Bylaws and Reservoir Project Agreement, as amended, are responsible for: implementing responsibilities under the authorities delegated to the Reservoir Committee by the JPA; 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 materially affect Project costs and/or Participant's risk exposure should be made by the JPA consistent with duly authorized recommendations of the Reservoir Committee. 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 future changes in the roles and responsibilities (governance and decision making) between the JPA and Participants will need to be considered as the Project progresses. Such changes will be considered prior to initiation of each subsequent Project phase 3, 4, and 5. The parties acknowledge that Sacramento Valley leadership and Project participants from outside of the Sacramento Valley are both equally essential for Project success and have governance needs that must be met. The parties have agreed that the attached diagram (see page 12) represents an accurate representation of these interests. Any changes to the existing governance and decision making would require approval of the JPA via a change to the JPA governing documents and bylaws. Loan agreements and borrowing agreements executed by the JPA may also limit the type of governance changes that may be made.

2. Project Assets and Ownership

2.1 Project Infrastructure. Project infrastructure, including the land on which Project facilities are sited, including buffer and mitigation lands and physical features of the Project (excluding Partner Facilities) will be owned by the JPA.

2.2 Other Assets. Other assets as described below, will be owned by the JPA and/or by Participants.

2.2.1 *Water Right. The Project Water Right will be owned by the JPA.*

2.2.2 *Storage. A Participant's Storage Allocation will be an asset owned and controlled by the Participant consistent with certain operating limits established by the JPA and the Contract. Storage Allocations and the associated rights to Sites water will be considered saleable and leasable assets, subject to certain terms to be determined in the Contract. (See Section 5 below). A preliminary schedule of Storage Allocations among the Participants is included in Amendment 3 to the Reservoir Project Agreement.*

2.2.3 *Stored Water. Water stored in Sites Reservoir and allocated to individual Participants in accordance with the Contract will be owned by said Participants.*

2.2.4 *Conveyance. Capacity ownership, priority, use, and ability to sell or lease capacity rights in Project conveyance will be established by the Contract.*

2.2.5 *Power Generation. Power sales will be managed by the JPA. Revenues from power generated upon releases of stored water will be established by the Contract.*

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 fixed and variable Project costs (minus those costs covered by State agencies and the federal government under separate agreements) and, if applicable, wheeling charges assessed by the JPA to cover the cost of use of Partner Facilities. The parties also agree that the levels of reserves held by the JPA will reflect those payment and funding risks that are applicable to all Participants as provided for in the Reserve Policy. The JPA will develop a Cost Allocation Framework to account for which Participants use which Sites Facilities and Partner Facilities, with input from the Participants. The Cost Allocation Framework will also account for use of the Sites Reservoir and Partner Facilities by State of California Agencies and the federal government.
- 3.2 Project Costs include actual costs of Project development (i.e., land, Water Right, permits, mitigation), design, construction, debt service, operation and maintenance, major renewals and replacements, and administrative costs. Project development costs to date have been funded on a pay-as-you-go basis.
- 3.2.1 *Project fixed costs (excluding fixed costs associated with Partner Facilities) will include debt service (finance participants only), administrative and general costs of the JPA, operations and maintenance costs (including any ongoing mitigation and monitoring costs), costs of replacements and renewals, and costs to develop and maintain financial sufficiency reserves. Project fixed costs (excluding fixed costs associated with Partner Facilities) will be allocated between all Participants based on their Storage Allocation (excluding any storage allocated to federal and California state agencies whose fixed costs will be allocated based on their percent shares, under separate agreements).*
- 3.2.2 *Project variable costs generally include power consumption (pumping) net any revenues from power generation and wheeling costs to account for use of Partner Facilities. Variable costs 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 by all Participants. At the end of the year a true-up process will be used to align estimated and actual quantities of water moved. State agency and federal government allocation of Project variable costs will be defined in separate agreements with those entities.*
- 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 and wheeling rates established in the respective Facilities Use Agreements.
- 3.4 Preliminary allocation of Project costs among Participants are attached to the Plan of Finance; these allocations are subject to change.

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 obtained the water right and has otherwise made sufficient progress such that the JPA, as advised by the Reservoir Committee, has determined that debt issuance is warranted.
- 4.2 The parties further recognize that benefits to the Project as a whole would result from group financing (i.e., lower interest rates, ability of all Participants to fund their obligations) and that financing entities that lend to the Project 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 Group financing will depend on the shared risk of default among all Participants, not only on those Participants participating in the group financing. Participants' ability to lease or sell their Storage Allocation and/ or to sell Sites water will help serve as a backstop to default for those Participants included in the group financing. In addition, the Participants agree to explore and develop other risk management approaches to support the group financing.
- 4.2.1.2 Not all of the Participants that may wish to participate in group financing are rated by recognized credit rating agencies and are therefore unable to lend their credit rating to a group financing. Therefore, for group financing to be viable, the financing will need to be based on the credit ratings 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 inquire into the process for obtaining an individual credit rating.
- 4.2.1.3 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, including those measures described in 4.2.1.1.
- 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 their own 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 committed to a long-term investment in the Project which assures viability of the Project.
- 4.2.2.3 "Pay-go" will be allowed as long as it does not materially adversely affect the ability to obtain group financing for the Project.
- 4.2.2.4 "Pay-go" Participants also recognize the JPA's need for reliable cash-flow to fund Project design and construction. Therefore each "pay-go" Participant will commit to fund reserves through early payment to reliably meet the JPA's 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" or other means for all Participants to share the risk of default. All Participants will need to agree to these obligations, even if they select a "pay-go" option.*

- 4.3 JPA Credit Rating. The parties support the JPA's efforts to obtain an investment grade credit rating as part of its efforts to obtain the WIFIA loan and other project financing and agree in principle to the following terms:
- 4.4 Payment of Project Costs. In order to better allow the Sites Project Authority and Participants to minimize Participant paid reserves levels at the Sites Project Authority and to minimize borrowed (debt service) reserves, amounts payable under the benefits and obligation contracts are proposed be paid by each Participant as set forth below:
- 4.4.1.1 Fixed Project Costs- Each Participant will agree to pay the Sites Project Authority annually in advance 100% of the fixed project costs (debt service and repair and replacement costs) and Fixed Operation and Maintenance Costs allocated to such Participant for the fiscal year.
- 4.4.1.2 Variable Operation and Maintenance Costs – Each Participant will agree to pay the Sites Project Authority the variable operation and maintenance costs allocated to such Participant quarterly in advance.
- 4.4.2 *Supplemental Billing. Amounts invoiced to the Participants are expected to be based on budget estimates. In the event that amounts billed by the Sites Project Authority are insufficient to pay the actual fixed project costs and fixed operation and maintenance costs or variable operation and maintenance costs for a Fiscal Year, the Sites Project Authority will have authority to send out supplemented bills due and payable during such fiscal year for any short fall.*
- 4.4.3 *Nature of Payments Obligation . Each Participant will agree to pay all costs due and payable under its benefits and obligation contract for both water supply and water storage as an operation and maintenance expenses of such Participant and will be irrevocable, whether or not water is delivered or storage provided and whether or not the Project is completed or operable.*
- 4.4.4 *Cure for Payment Defaults. For failure to make payments by the date due, a default "waterfall" process will be utilized, as defined in the Plan of Finance.*

5. Leasing or Sale of Storage and Sales of Water

- 5.1 **Storage.** Participants may share, lease, or sell their Storage Allocation with other Participants and with other entities. The terms of storage sharing, leasing, or sale are at the discretion of the Participant who is a party to the storage or lease agreement must not negatively impact other Participants' proportional share of first priority allocated benefits. Any sharing, leasing, or sale of a Storage Allocation must be consistent with the Project Water Right and Project permits. Any sharing, leasing or sale 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 to the JPA as part of any sharing or leasing agreement; the Participant will be ultimately responsible for meeting any such obligations to the JPA.

Any lease of a Storage Allocation must specify rights to stored water at the beginning and end of the lease period, which would likely cover a multi-year term. Leasing of a Storage Allocation may provide a Participant with a means to generate revenue to help cover Project costs.

Any sale or lease agreement for a Storage Allocation must specify how conveyance constraints will limit withdrawals from storage and how reservoir losses will be accounted for; these provisions shall be consistent with any procedures and policies established by the JPA including provisions in the Storage Principles that indicated losses will be allocated proportionately to each Storage Partner based on the amount of water in storage. The JPA will develop a methodology for determining and allocating losses that take into account losses associated with diversions, losses due to reservoir evaporation and seepage, deliveries to Participants located north of the Sacramento River delta, deliveries to Participants located south of the Sacramento River delta and deliveries to the Yolo bypass. The methodology will also account for monthly and/or seasonal variations and may be updated by the JPA from time to time to reflect changes in climate or other factors affecting the amount of losses.

Any sale of a Participant's Storage Allocation cannot result in a change to the Project's bond rating, violate any agreed-to financing covenants, 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 Storage Allocation will require approval by the JPA regardless of whether or not the sale is to another Participant or to a non-Participant because, in addition to affecting financing, sales could affect the allocation of water north and south of the Sacramento Delta which in turn could affect access to conveyance because of capacity constraints of the conveyance infrastructure. Such approval shall not be unreasonably withheld by the JPA.

Any Participant selling or leasing its Storage Allocation must first pay any money due to the JPA and thus receive payment "net" of any payments owed to the JPA.

Participants will be given "right of first refusal" with respect to the sale or lease of a Storage Allocation by another Participant. While the JPA may act in an administrative role with respect to such sales or leases, the JPA will not act to set the price for water at the Sites reservoir. The JPA will, however, set charges for wheeling water from the reservoir to the point where conveyed water exits the Sites system.

5.2 Water Sales. Participants may sell water held in their Storage Allocation to other Participants or other entities. The terms of sales of water held in Sites Reservoir under a Participant's Storage Allocation are at the discretion of the Participant. Sales terms must not negatively impact other Participants' proportional share of first priority allocated benefits. In addition, the terms of wheeling and cost of wheeling the water, if not made within the Participant's first priority allocated capacity, will be determined and assessed by the JPA. 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, release the water upon purchase, or utilize that Participant's Storage Allocation until the sold water is released.

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 agree that it is the intent of the JPA to enter into a Contract with a given Participant that is substantially the same as the Contracts entered into with the other Participants. Nonetheless, because Participants will employ various means of funding their participation in the Project, specific appendices to the Contract will be developed to address terms that are uniquely applicable to a group of Participants based on their selected method of funding. At this time, it is anticipated that such appendices will be developed for groups of Participants that elect to fund their participation as follows: 1) via amounts collected through Department of Water Resources State Water Project Annual Statement of Charges; 2) via Water Rates and Charges (Proposition 218 compliance required); 3) via Water Rates and Charges (Proposition 218 compliance not required); 4) via Districtwide Special Benefits Assessments; 5) via Special Benefits Assessments levied on certain Lands; 6) via Land-Based Charges within an Improvement District; or 7) via “Pay Go”.
- 6.3 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.
- 6.4 The parties agree that Participants will be provided the ability to opt out of the Project, with an associated rebalancing of storage, before Amendment 3 and before financing.
- 6.5 The parties acknowledge that future regulatory changes and permit conditions may affect Project obligations (i.e., costs, storage, financing, operations etc.) although such changes are currently unknown. The parties agree to cooperate with one another and the JPA to allocate the impact of such changes. Agreements with State agencies and the federal government must also address allocation of the impacts of any such future changes.

Governance Interests

