



**Requested Action:**

Consider adoption of the Final Guiding Principles and Preliminary Terms as supporting materials for the WIFIA loan application and to serve as the basis for the drafting of the Sites Reservoir Benefits and Obligations Contract.

**Detailed Description/Background:**

Funding the Sites Reservoir Project beyond the planning phase and into detailed design and construction (Phase 3/4) will require developing a “Sites Reservoir Benefits and Obligations Contract” (Contract) which will be the successor project agreement to the “2019 Phase 2 Reservoir Project Agreement” (currently on Amendment 3).

Staff is seeking approval of the “Final Guiding Principles and Preliminary Terms” (Guiding Principles) (Attachment A) for the following reasons:

- This document will serve as the foundation and guiding document for drafting the Contract between the Sites Authority and Participants which needs to get underway in January 2023. This guiding document is being used to inform the development of similar contracts for the State and Federal participation, although these contracts will be slightly different because of the unique nature of the enabling legislation associated with the State and Federal funding.
- This document will guide the basic mechanics for allocating benefits and costs, collecting payments, and remedying defaults through the Contract which needs to be established before getting further into the WIFIA loan application process.
- As a point of clarification, this is not a commitment of any or all participants to any particular requirement in the final Contract. Each participant will have further opportunity to bring up concerns about the translation of this Final document into Contract language. However, it is expected that by approving this Final document all Participants are 1) representing their mutual understanding of the allocation of Project benefits, costs, risks, financing obligations, and ownership obligations 2) agreeing to take this document to their agency management and governing bodies to receive their further feedback and input and 3) 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 Fall 2023, prior to initiating Project financing.

In developing the Guiding Principles, Staff has tracked comments and details that were deferred to the development of the Contract. Issues Deferred to the Sites Reservoir Benefits and Obligations Contract (Attachment B) includes the complete list of items to be further developed as part of Contract development.

Adopting the Guiding Principles and initiating the Indicative Credit Rating is the first financing related step in moving from Phase 2 to Phase 3. Staff has developed a draft flowchart of anticipated activities to reach Phase 3 (Attachment C) which will be refined based on the outcomes of the Indicative Credit Rating (refer to Agenda Item 2.3) and Contract development.

### **Development of the Guiding Principles:**

In October 2020, the Reservoir Committee and Authority Board approved the Financing Action Plan to define the approach, schedule, resources, and budget to satisfy the 75% local cost-share requirement for the Prop 1 Water Storage Investment Program (WSIP) by January 1, 2022. The Final WSIP 75% local cost share commitment materials, including the 2021 Draft Guiding Principles and Preliminary Terms, were endorsed by the Reservoir Committee and Authority Board in October 2021 and were submitted to the Director of the Department of Water Resources in November 2021. At their December 2021 meeting, the California Water Commission made its determination of feasibility deeming the project eligible for the full WSIP final award.

As part of “endorsing” the document in October 2021, the Authority requested that Participants review this document with your home board and provide any feedback. Also, the Guiding Principles have been updated based on feedback received following the July 2022 workshop, Participant Two-Way financing check-ins, and WIFIA Ad Hoc Subcommittee meetings including revisions to address financing comments that may impact the Indicative Credit Rating. At the October 28, 2022 Credit and Reserves workshop, staff presented an overview of the Final Guiding Principles. There was concurrence at the workshop with proceeding to adopt the Final Guiding Principles. Staff did receive the following proposed change after the workshop which is recommended to be incorporated into this Final document as follows:

- 4.2.3 – add the following verbiage: “The Project Sufficiency Pledge may be established through the Liquidity Reserve, as defined in the Master Resolution. The allocation of each Participant’s share of the Liquidity Reserve or the Project Sufficiency Pledge will be defined in the Contract.”

### **Prior Action:**

October 27, 2021: Endorsed the 2021 Draft Guiding Principles and Preliminary Terms

### **Fiscal Impact/Funding Source:**

The Amendment 3 Work Plan includes sufficient budget to cover required resources and activities to develop the Sites Reservoir Benefits and Obligations Contract.

**Staff Contact:**

Pat Tangora/Cheyenne Harris/JP Robinette

**Primary Service Provider:**

Brown and Caldwell

**Attachments:**

Attachment A: Final Guiding Principles and Preliminary Terms

Attachment B: Issues Deferred to the Sites Reservoir Benefits and Obligations Contract

Attachment C: Draft To Phase 3 Flowchart



# Sites Reservoir Benefits and Obligations Contract Final Guiding Principles and Preliminary Terms (updated to support Indicative Credit Rating)

## 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 Sites Authority), 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 Sites Authority and allow for Project Agreements to govern funding and participation in any project the Sites Authority undertakes. The Sites Authority has created a Reservoir Committee consisting of certain Sites Authority members and other municipal entities and special districts that will pay to participate in and receive benefits from the Project (“Participants”). The Sites Authority 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 Sites Authority 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 Sites Authority 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 Sites Authority 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 Sites Authority 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 Sites Authority 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 Sites Authority and the Participants (where the Sites Authority 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 Fall 2023, prior to initiating Project financing.

Addressed principles include:

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

## **Related Agreements**

The Participants acknowledge that the Sites Authority 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 Sites Authority 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 Sites Authority and the State of California agencies and between the Sites Authority and the federal government, the Sites Authority 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 Sites Authority 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 Sites Authority is currently negotiating a memorandum of understanding (MOU) with GCID and TCCA and will subsequently be negotiating planning agreements to help guide activities by these parties and the Sites Authority prior to execution of the Facilities Use Agreements and Facility Partner Design and Construction Agreements. The Sites Authority JPA Agreement Section 2.5 requires that written consent be secured from GCID and TCCA prior to certain actions being taken by the Sites Authority which carries an added limitation on the Sites Authority’s independent activities.

In addition to the agreements described above, the Sites Authority 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 Sites Authority’s Water Right application and Colusa County’s Area of Origin Water Right 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 Sites Authority 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.

**Fiscal Year:** the period beginning on January 1 of each year and ending on the last day of December of such year, or any other accounting period hereafter selected and designated by the Sites Authority as the Fiscal Year of the Sites Authority.

**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 Sites Authority 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.

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

**Reservoir Committee:** A Sites Authority authorized committee consisting of certain Sites Authority 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 Benefits and Obligations Contract (Contract):** water supply and water storage contracts entered into by the Sites Authority with Participants that provide for the allocation of Project benefits, costs, risks, financing obligations, and ownership obligations.

**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 (Sites Authority):** 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 Sites Authority 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.

**WIFIA Reserve Policy:** Establishes and defines certain financial reserves which are intended to ensure that the Sites Authority always has sufficient funds on hand to pay its operating, capital, and debt service cost obligations on time.



## Principles and Preliminary Terms

### 1. Roles and Responsibilities

- 1.1 The Sites Authority, 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 Sites Authority 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 Sites Authority 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 Sites Authority 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 Sites Authority's Bylaws and Reservoir Project Agreement, as amended, are responsible for: implementing responsibilities under the authorities delegated to the Reservoir Committee by the Sites Authority; 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 Sites Authority 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 Sites Authority 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 shall be made by the Sites Authority 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 Sites Authority more broadly, the Participants are all individual members of the Sites Reservoir Committee (and its workgroups) established by the Sites Authority 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 Sites Authority 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 Exhibit 1) represents an accurate representation of these interests. Any changes to the existing governance and decision making would require approval of the Sites Authority via a change to the Sites Authority governing documents and Bylaws. Loan agreements and borrowing agreements executed by the Sites Authority 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 Sites Authority.
- 2.2 Other Assets. Other assets as described below, will be owned by the Sites Authority and/or by Participants.
- 2.2.1 Water Right. The Project Water Right will be owned by the Sites Authority .
- 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 Sites Authority 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 Sites Authority. Allocation of revenues from power generated upon releases of stored water will be established by the Contract.
- 2.2.6 Demand exceeds availability. Allocation of water and capacity when demand exceeds availability 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 Sites Authority to cover the cost of use of Partner Facilities. The parties also agree that the levels of reserves held by the Sites Authority will reflect those payment and funding risks that are applicable to all Participants as provided for in the WIFIA Reserve Policy. The Sites Authority 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 Sites Authority, 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 Fiscal 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 Sites Authority will issue debt to fund all or a portion of the Project capital costs at such time that the Sites Authority has obtained the water right and has otherwise made sufficient progress such that the Sites Authority as advised by the Reservoir Committee, has determined that debt issuance is warranted. The Sites Authority will use its best efforts to obtain cost-effective financing with due consideration of terms and conditions. The Sites Authority, in consultation with its Municipal Advisor and Bond Counsel, will comply with all applicable federal and state law.
- 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 wishes to be rated and is likely 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 Sites Authority’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 Sites Authority’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. The Project Sufficiency Pledge may be established through the Liquidity Reserve, as defined in the Master Resolution. The allocation of each Participant’s share of the Liquidity Reserve or the Project Sufficiency Pledge will be defined in the Contract. All Participants will need to agree to these obligations, even if they select a “pay-go” option.
- 4.3 Sites Authority Credit Rating. The parties support the Sites Authority’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 Authority and Participants to minimize Participant paid reserves levels at the Sites Authority and to minimize borrowed (debt service) reserves, amounts payable under the Contract are proposed be paid by each Participant as set forth in the WIFIA Reserve Policy:

- 4.4.1.1 Fixed Project Costs- Each Participant will agree to pay the Sites Authority semi-annually one year in advance 100% of the projected fixed project costs (debt service and repair and replacement costs) and Fixed Operation and Maintenance Costs allocated to such Participant for the Fiscal Year. At the end of the Fiscal Year, a true-up process will be used to compare estimated and actual fixed project costs with any overpayment by a given Participant credited to that Participant.
- 4.4.1.2 Variable Operation and Maintenance Costs – Each Participant will agree to pay the Sites Authority the variable operation and maintenance costs allocated to such Participant semi-annually six months in advance. At the end of the Fiscal Year a true-up process will be used to compare estimated and actual variable project costs with any overpayment by a given Participant credited to that Participant.
- 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 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 Authority will have authority to send out supplemental 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 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 but 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 Sites Authority 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 Sites Authority as part of any sharing or leasing agreement; the Participant will be ultimately responsible for meeting any such obligations to the Sites Authority.

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 Sites Authority including provisions in the Storage Principles that indicate losses will be allocated proportionately to each Storage Partner based on the amount of water in storage. The Sites Authority 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 (i.e., Participants not required to use the Dunnigan Pipeline), deliveries to Participants located south of the Sacramento River Delta (i.e., Participants making use of the Dunnigan Pipeline), and deliveries to the Yolo Bypass. The methodology will also account for monthly and/or seasonal variations and may be updated by the Sites Authority 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 Sites Authority 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 River 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 Sites Authority.

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

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

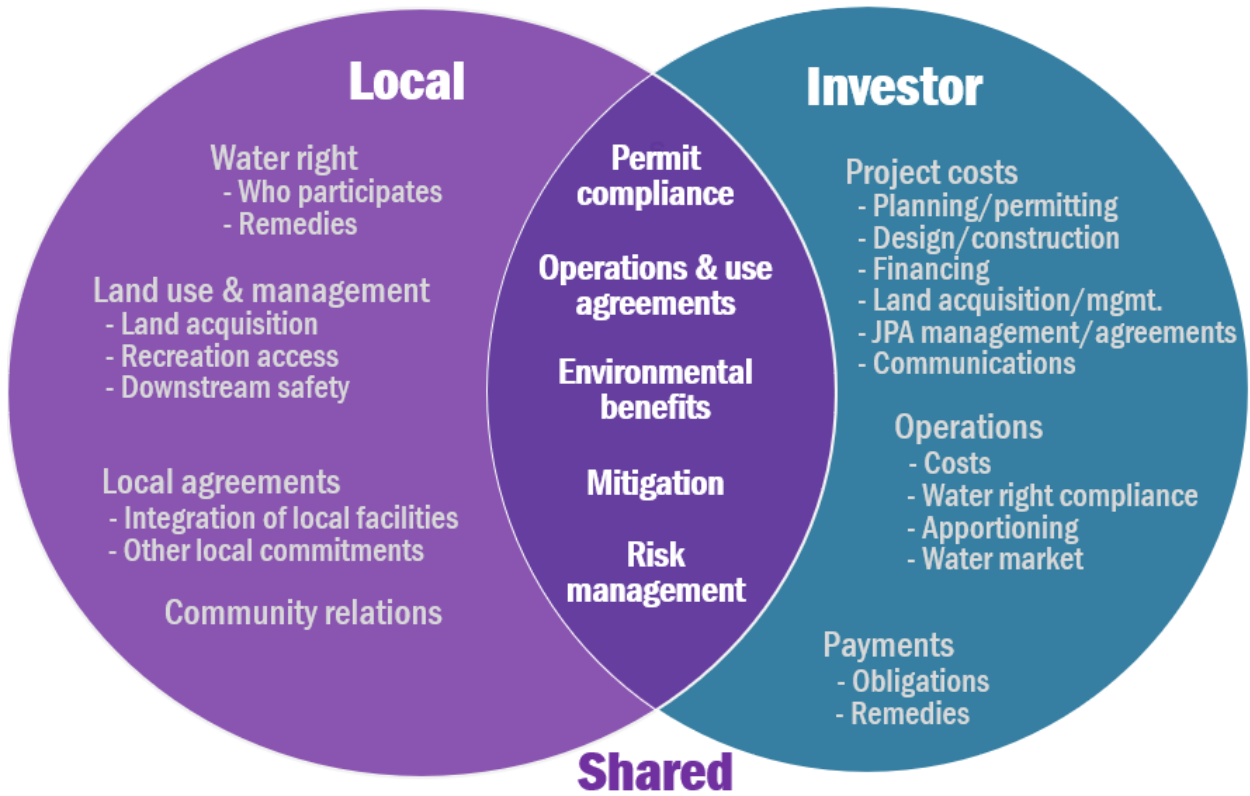
5.2 Water Sales. Participants may sell water held in their Storage Allocation to other Participants or other entities. The terms of sales of water held in Sites Reservoir under a Participant's Storage Allocation are at the discretion of the Participant. Sales terms must not negatively impact other Participants' 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 Sites Authority. Any sale of water held in a Storage Allocation will be coordinated with the Sites Authority 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 initial term for the Contract will, at a minimum, coincide with the length of the financing agreement, and that the Contract will contain provisions for extensions of the Contract term to reflect the long term nature of the Sites Project.
- 6.2 The parties agree that it is the intent of the Sites Authority 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.
- 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 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 Sites Authority 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.



**Exhibit 1: Governance Interests**



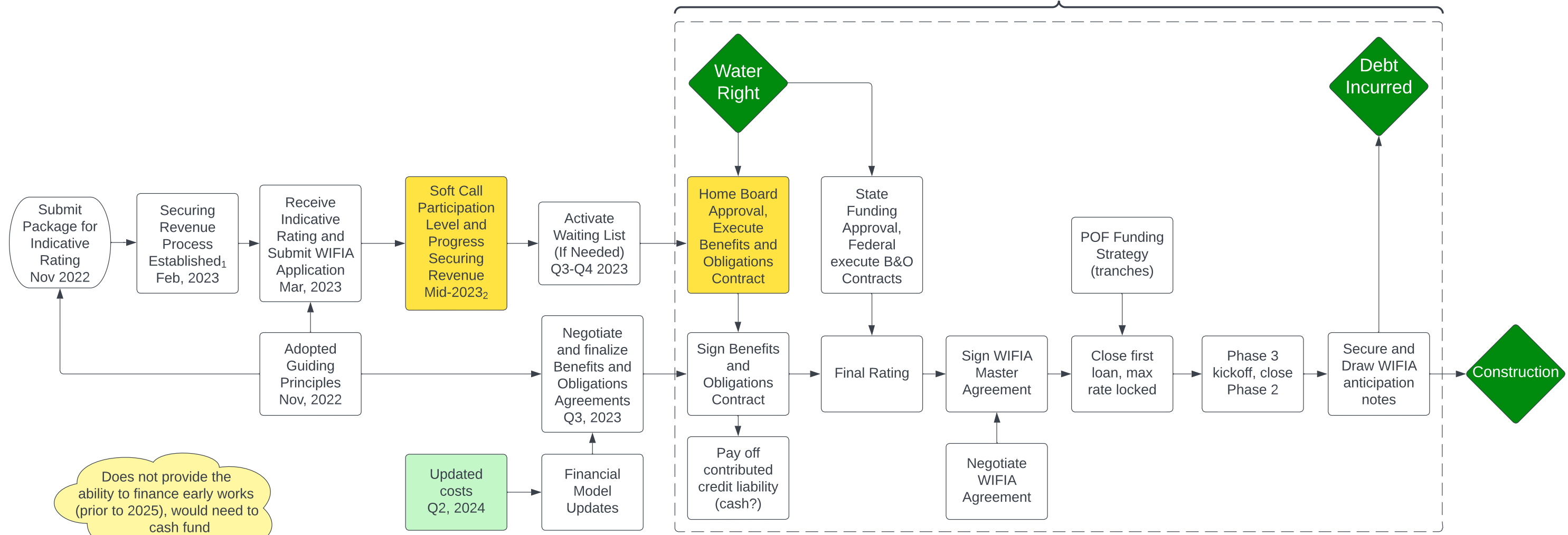
SITES PROJECT AUTHORITY

ISSUES DEFERRED TO THE DRAFTING OF THE SITES RESERVOIR BENEFITS AND OBLIGATIONS CONTRACT

1. Whether there should be a cap on the aggregate amount that a non-defaulting participant would be required to contribute to the liquidity reserve in the event that there is a payment default by another project participant.
2. Timing of billing of Fixed Project Costs, Fixed Operation and Maintenance Costs and Variable Operation and Maintenance Costs.
3. The remedies for a default in the payment of Variable Operation and Maintenance Costs.
4. Detailed provisions regarding supplemental billing.
5. Details concerning annual true-up of Fixed Project Costs, Fixed Operation and Maintenance Costs and Variable Operation and Maintenance Costs.

To Phase 3  
Working Draft  
(as of 11/11/2022)

Final 6 months, 2024



**Diagram Key**

- Sites Authority Process
- Home Board Process
- ◆ Major Milestone

**Notes:**

1) amendments drafted and approved in form by DWR and State Water Contractors as needed, CCFCWCD Zone of Benefit Formed and any required annexation started, Land-Based Assessment voting processes started, Sites accounted for in rate planning.

2) the soft call will be initiated once a) Reclamation/New Participant Investments are determined, b) conversion to storage accounts is formalized, and c) an updated pro-forma analysis is provided to Participants.