



Meeting: **Joint Reservoir Committee & Authority Board December 16, 2022**
Agenda Item 3.2

Subject: **Joint Ad Hoc Governance Committee Update**

Requested Action:

Receive an update on the Joint Ad Hoc Governance Committee and comment on the focus areas that the Committee has determined need to be addressed in 2023.

Detailed Description/Background:

The Governance workgroup was formed in July 2022 and is charged with providing advice, input and specific proposals to the Reservoir Committee (RC) and Authority Board (AB) in their evaluation of project governance changes that may be necessary as the Project progresses through future phases of work. The group has applied the “guiding principles” and the charter to arrive at a list of focus areas for 2023 Committee work. Board input on these focus areas will help ensure the Committee’s work in 2023 is inclusive and comprehensive for all project participants.

The primary goal of this effort is to arrive at governance conditions that will be described in the Benefits and Obligations Contract and other documents acceptable to each participant’s home board for moving to the next phase of work and to make their investment commitment. The feedback of each participant as the conditions are developed is important so that the project avoids delays due to major needs being identified late.

Generally, the direction being taken in developing governance changes is to evaluate the appropriateness of the current delegated authority for future project implementation needs while also providing beneficiaries the representation in decision-making they need to control their investment and move forward with the project. The group is focused on building off of the current governance system. Attachment A provides further details of the focus areas, process and timing for the 2023 work planned for the Committee.

Prior Action:

July 2022 – Approve the forming of the ad hoc Governance Joint Committee charter.

Fiscal Impact/Funding Source: None.

Staff Contact: Jerry Brown (Governance)

Attachments: Attachment A: Sites 2023 Governance Discussions Approach
(memo reviewed with Ad Hoc on December 5)

Sites 2023 Governance Approach

In June 2022, the Authority Board and Reservoir Committee established a joint Ad Hoc Governance Workgroup to discuss potential revisions to the existing governance documents for future phases of the Sites Reservoir Project. The 2023 governance approach described below summarizes the Ad Hoc Governance Workgroup discussions in two sections: (1) Key outcomes of Workgroup meetings and (2) Recommended Workgroup discussion topics for 2023. This approach is presented for consideration by a joint meeting of the Authority Board and Reservoir Committee on December 16.

1. Key Outcomes from Workgroup Meetings, August to December 2022

A. Review of Existing Governance Agreements and Bylaws

The Workgroup began its work reviewing the history of the existing governance structure, which is defined in three primary agreements:

JPA Agreement. The Joint Exercise of Powers Agreement (effective March 23, 2017) establishes the purposes and powers of the Sites Project Authority as an independent government entity.

Bylaws. Second Amended and Restated Bylaws of the Sites Project Authority for Phase 2 of the Sites Reservoir Project (September 17, 2018) guide the work of the Authority, staff, and any project committees established by the Authority Board.

Project Agreement. The JPA Agreement notes that project agreements are the means to accomplish the Authority purposes. The Sites Project Agreement (April 1, 2019, as amended) established a project committee (now called the Reservoir Committee) to further the development of the Sites Reservoir.

Together, these documents specify delegation and decision-making protocols for the Authority Board and Reservoir Committee, which fall into four categories (see Attachment 2):

Reserved Powers. The Bylaws delineate 14 powers that are specifically reserved to the Authority Board for Phase 2.

Delegated Powers. The Project Agreement specifies the powers delegated from the Authority Board to the Reservoir Committee.

Material Changes. The Bylaws specify 14 material changes that warrant joint decision-making among the Authority Board and the Reservoir Committee. Many of these material changes identify a threshold or trigger for a material change.

Non-Material Changes. Approval of actions that are deemed by Reservoir Committee and the General Manager not to result in a Material Change do not require the approval of the Authority Board before the action can be implemented.

In reviewing these materials, the Workgroup noted several themes that should guide future governance structure discussions:

1. All governance documents anticipate the need to change and adapt governance procedures as the project proceeds through major phases of development.¹
2. This is a statewide project that needs statewide participation to realize the benefits. This shared commitment supports near-unanimous decision-making.
3. Substantial trust has been built among all participants through the joint work to refine and develop the project.
4. The future Benefits and Obligations contract provisions are an important part of governance and assurances for participants.
5. The Authority Board and Reservoir Committee are not fully utilizing the delegation provisions and material change thresholds in the existing documents.

B. Key Issues and Interests

The Workgroup also identified the important interests and issues influencing potential governance changes in future phases. While a shared commitment to building the project supports collaborative decision-making, the Workgroup acknowledged that some issues have higher interest for the Authority Board or the Reservoir Committee. For example, area of origin water rights and Tribal and stakeholder relations are very important for the Authority Board, while cost and schedule issues are of very high importance to the Reservoir Committee. The existing governance documents anticipate these types of issues and establish a framework for reserving or delegating decision-making.

The Ad Hoc Governance Workgroup identified three primary issues that warrant further discussion of governance for future project phases:

Cost and Schedule Management. During design and construction, the Sites JPA will be expending funds at a substantially higher rate and schedule disruptions will be substantially more costly. The project participants, represented on the Reservoir Committee, have a high interest in effective, efficient governance and oversight of project design and construction expenditures and activities that could disrupt the project schedule. Accordingly, the Workgroup intends to recommend modifications to the governance documents for Phase 3 to ensure efficient, nimble decision-making on project issues affecting costs and schedule.

Risk Management. Safety and risk management affect all future project phases and many elements of the project. For example, some risks relate to cost and schedule while others relate to the project viability and the potential for litigation. These and other risks can vary through future phases. Existing governance documents acknowledge the shared interest in risk issues between the Authority Board and the Reservoir Committee, but do not specifically address reserved or delegated risk management responsibilities. This issue warrants further investigation and discussion in 2023.

¹ The Bylaws anticipate implementation of the Project in at least five Phases that coincide with major milestone processes relative to the Project's schedule: (1) Through award of a Proposition 1 grant, which is now complete as for Authority activities; (2) Certification of Environmental Impact Report and Statement, securing certain permits for the Project, and critical-path equipment and pre-construction activities; (3) completion of final design, easements and rights-of-way acquisition and completion of pre-construction activities; (4) construction and commissioning, and (5) Project close-out, which includes repayment of debt and transfer of responsibilities to an operating entity.

Beneficiary Representation. Project participants have a shared interest in ensuring the long-term durability of project benefits. Review of governance terms in 2023 will review and consider procedures, protocols, and thresholds that will ensure sufficient beneficiary representation in decisions affecting project benefits in future phases.

The Workgroup discussed other governance topics and concluded that recommending potential modifications was not necessary at this time. These topics included ownership of the project facilities and water right (Authority Board), voting roles for the federal Bureau of Reclamation and Department of Water Resources (ex officio participation in Authority Board and Reservoir Committee), and lead responsibility for outreach and community relations (Authority Board).

2. Recommended Workgroup Discussion Topics for 2023

A. Develop Governance Recommendations for Phase 3

In 2023, the Workgroup will continue its discussions and may likely recommend governance revisions for consideration by the Authority Board and Reservoir Committee in the following areas:

- The Authority Board’s delegated powers to the Reservoir Committee.
- Definition, description, and thresholds of “material changes.”
- Reserved powers of the Authority Board.
- Identification of further delegation approaches, such as an Executive Committee or project implementation board.

To support these discussions, the Authority agents and consultants will research and evaluate governance models from similar projects and programs in California and the U.S. The general timeline and topics for Workgroup discussions is as follows:

First Quarter: Review and refine cost, schedule, and risk management issues by project phase; investigate other governance models for design and construction projects; develop revised governance language regarding cost, schedule, and risk management for design and construction phases; identify any additional governance issues for the design and construction phases.

Second Quarter. Refine current governance language and identify modifications to reserved and delegated powers, material change definitions and thresholds, and committee structures and voting procedures. Develop draft governance language for inclusion in draft Benefits and Obligation contract.

Third Quarter. Engage legal counsel to draft revised agreements; review and refine.

Fourth Quarter. Review changes with member agencies and participating agencies; prepare for approvals.

At the end of each quarter, the Ad Hoc Governance Workgroup will report on progress, review findings, and seek direction at a joint meeting of the Authority Board and Reservoir Committee. As necessary, Workgroup members and the General Manager will brief member agencies and participating agencies to identify any additional questions or concerns. The project team will also capture and record any issues related to future phases, including facility transfer and operations.

B. Develop Governance Refinements for Phase 2

As noted above, the Ad Hoc Governance Workgroup affirms that joint discussions and shared decision-making over the last three years has been critical in building trust among members and participants and in developing a shared commitment to successful project implementation. Accordingly, the Authority Board and Reservoir Committee have decided to conduct joint meetings in 2023 to continue shared decision-making and increase efficiency.

At the same time, several Workgroup members noted areas where the Authority Board and Reservoir Committee could review and apply the delegation authorities and material changes definitions more explicitly to decision-making. Revisiting and applying the core procedures of the existing agreements in 2023 could serve two functions. First, it would increase familiarity with the unique and flexible governance structure that established the Sites Project Authority and the Reservoir Committee. Second, it would provide practical experience with the delegation procedures being considered for revision in Phase 3.

The Workgroup further recommends additional work in early 2023 to review and apply existing governance procedures, specifically the delegation provisions to the Reservoir Committee and the thresholds for joint decision-making as defined in the Material Changes.