

# Update on Governance Discussion

Ad Hoc Governance Workgroup  
March 17, 2023



# Ad Hoc Committee – 6-month Objective

**Objective:** Develop **term sheet** to guide legal team update of governance documents to conduct business through **Design and Construction** (Phases 3 and 4).

- Elements:**
- Establish **Benefits & Obligations Contract** terms related to governance
    - What Board-delegated authorities are specified?
    - What is the process for changing the provisions in the future?
    - How are disputes resolved?
  - Refine **Bylaws**
    - What are the revised roles and responsibilities?
    - What are the new **material changes and thresholds** that trigger independent and/or joint AB/RC decisions?
  - Refine **JPA agreement**
    - Are there any changes needed?

The Benefits & Obligations Contract is functionally equivalent to the current Project Agreement

# Overarching Existing Governance Roles

## Authority Board – Project Proponent

- Lead Agency
- Creates Project Agreements and delegates authority
- Sets thresholds for Material Change and other decisions
- Oversees and contracts with all contractors
- Negotiates/holds permits, mitigation, ROWs, land acquisition
- Approves Finance Plan
- Holds water rights; facility owner

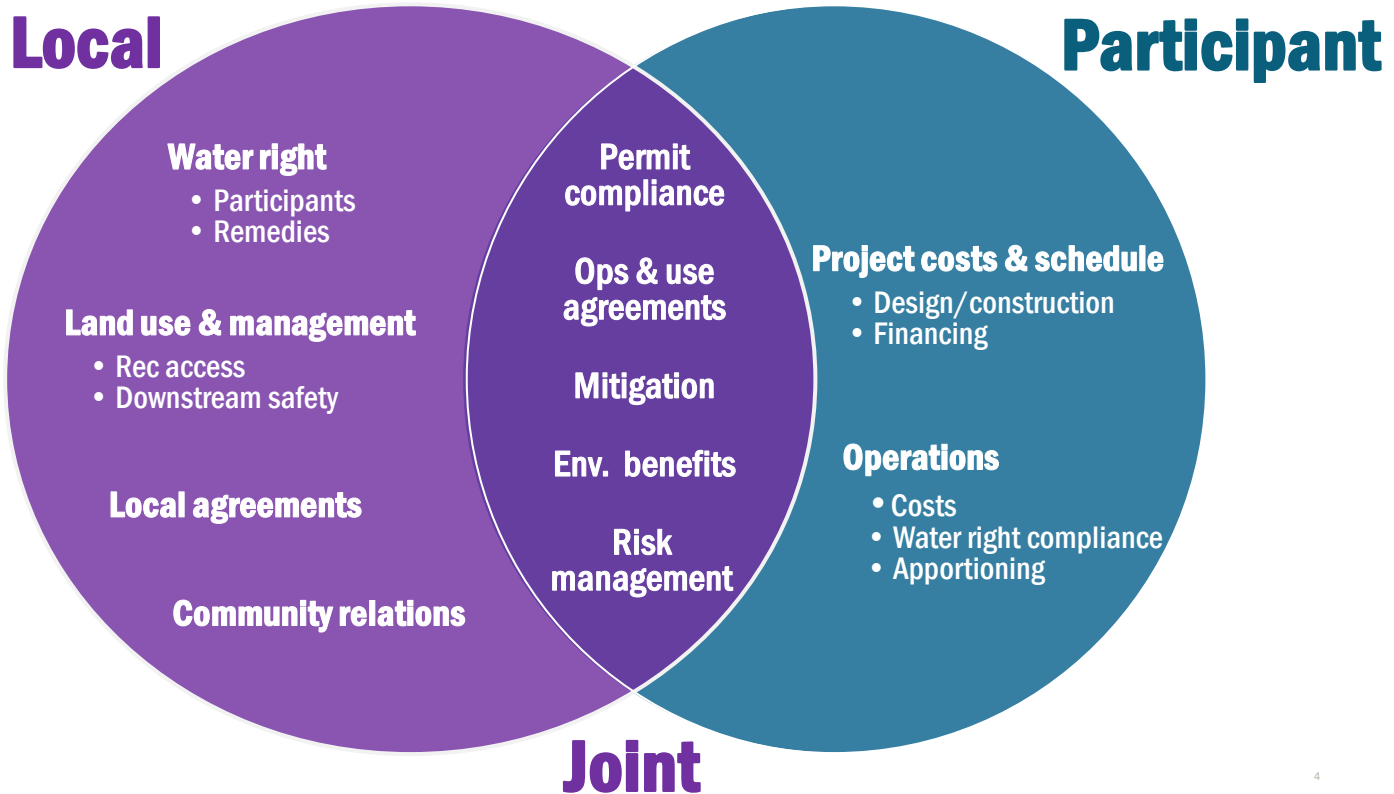
## Reservoir Committee – Represents Participant Interests

- Sets policy for Project Agreement members
- Sets calculation for Participation Percentages and payment timing
- Recommends expenditure of funds collected under Project Agreement
- Recommends “on actions necessary to carry out the purposes of the Project Agreement”

## Joint AB and RC – Represents Joint Viability

- Decisions where Material Change is triggered, such as:
  - Phase budget change >5%
  - Annual cost overruns by \$50k+
  - Eligibility to receive Prop 1
  - Project Performance changes >5%
  - Conveyance asset changes
  - Shift of risk from/to AB and RC
- Decisions on proposed amendments to Bylaws affecting Participants
- Decisions on changes to JPA powers

# Governance Interests



# Core Governance Roles & Assumptions

These assumptions are fundamental:

- **Authority Board** is **contracting entity** and owner/operator of the project.
- **Reservoir Committee** represents **participants' means of governance involvement** and responsibility for overall viability of project costs, benefits, and long-term operations.
- Sites operations will not conflict with **local agencies' operation of shared facilities**.

For the future:

- Efficient **project delivery** (planning, permitting, design, construction) will be necessary and require:
  - Nimble, consensus-based decision-making.
  - Recognition that where decision-making authority lies depends on topic, magnitude of cost or risk, and a balancing of the local perspectives/needs of all participants.
  - Clear guidance and consistent follow-through – establish and apply rules for how and why things can change in the future.
- Maintaining Authority Board and Reservoir Committee collaboration will be essential.

# Phases 3 & 4 Governance Concept

(for discussion purposes only, based on prior discussions of the ad hoc group, not a staff recommendation)

## Authority Board

### Project Obligations

#### Legal Compliance

- Mitigation, water right, and permits

#### Project Finance

- Debt obligations and payments
- Participant payments
- Auditing and accounting

#### Local Community Relations

## Reservoir Committee

### Design & Construction

#### Managing design and construction

- Budget and activities
- Contractor selection
- Change orders and disputes

#### Managing commitments in Federal and State Agreements

#### Statewide outreach, legislative affairs, and public relations

#### Developing operations plans

Delegation

## Shared Decision-making

Local agreements, land acquisition and land management

Significant changes to permit requirements

Changes in local participation percentage

Shared facility agreements

Recreation management

Risk management

Litigation

# Phases 3 & 4 Governance Concept

(for discussion purposes only, based on prior discussions of the ad hoc group, not a staff recommendation)

## ■ Delegation to the Reservoir Committee:

- Approving design and construction budgets
- Expenditures for design and construction within project funding limits (loans and state and federal funds)
- Selecting, overseeing, and managing design consultants and construction contractors
- Approving project revisions and change orders; resolving disputes
- Complying with permits (subject to AB oversight)
- Managing commitments in Federal and State Agreements
- Statewide outreach, legislative affairs, and public relations
- Developing detailed operations plans

## ■ Reserved for the Authority Board

- Overseeing EIR/EIS compliance, water right, and permits
- Paying project debt obligations and managing payments received from participants
- Auditing, finance, and accounting compliance for the project
- Local community relations

## ■ Shared Decision-making

- Establishing shared facility agreements
- Significant changes to EIR/EIS conditions, water rights, construction and operating permits
- Local agreements, land acquisition and land management
- Changes in local participation percentages
- Recreation planning and implementation
- Risk management
- Litigation

# Discussion Questions

1. Are there Authority Board concerns/issues with delegating full authority for design and construction to the Reservoir Committee?
  - a. How can these issues be addressed by reserving functions for the AB or defining joint decision-making?
2. Are there any circumstances when it might be reasonable for the Authority Board to overrule an action by the Reservoir Committee?
  - a. Violation of law
  - b. Violation of bond covenants
3. Are there any special communications or reporting needs between the Reservoir Committee and the Authority Board?
4. Are there any other considerations for the design and construction phases to be addressed to meet the expectations of your boards and constituents?