



Meeting: **Joint Reservoir Committee & Authority Board
Agenda Item 2.1**

June 16, 2023

Subject: **Draft Benefits & Obligations Contract**

Requested Action:

Reservoir Committee and Authority Board consider approval for staff to proceed with negotiation of the Benefits and Obligations Contract (Draft 1) with Participants.

Detailed Description/Background:

Funding the Sites Reservoir Project (Project) beyond the planning phase and into detailed design, construction and operation (Phase 3/4/5) will require developing a “Sites Reservoir Benefits & Obligations Contract” (Contract) which will be the successor project agreement to the “2019 Phase 2 Reservoir Project Agreement” (currently on Amendment 3). The Contract will also serve as the long-term commitment of the Sites Authority to provide the Participant with its capacity interest in the Sites Reservoir water storage system. It will represent what each Participant will need to take to its Board of Directors to secure the necessary authority committing to its capacity interest in the project. Executing this Contract will be expected following the receipt of a water right decision and securing critical permits.

Staff received feedback from the Reservoir Committee (RC) and the Authority Board (AB) in February on the approach for drafting the Contract. With this approach, staff has leveraged the adopted Guiding Principles and Preliminary Terms, Master Resolution, and WIFIA Reserve Policy to guide the basic mechanics for allocating benefits and costs, collecting payments, and remedying defaults. There are two areas of the contract that refer to documents that will need to be concurrently developed: The Project Operations Plan and the Governance Documents (see below).

Draft 1 of the Contract has been drafted as a complete document with annotations of change and areas for further development. In summary, the Contract communicates the following:

- The Sites Authority is proposing to construct and own certain facilities.
- The Participants will own capacity in such facilities (Capacity Interest).
- The Sites Authority will operate such facilities for the benefit of the Participants in accordance with the Contract and pursuant to direction from the Participants as delegated by the AB.

- The Sites Authority will contract to use certain facilities for the benefit of the Participants in accordance with the Contract and pursuant to direction of the Participants as delegated by the AB.
- The Sites Authority expects to receive a water right and to provide water service to the Participants in accordance with the Contract and pursuant to the direction of the Participants as delegated by the AB.

Staff requests authorization to kick off the process (Attachment B) of preparing a substantially final Contract, supporting documents and policies, and substantially final WIFIA loan documents by mid-2024. This is an early completion relative to other items preceding investor commitment but provides flexibility in case of expedited approvals by state and federal agencies without expecting Participants commit to immediately executing the Contract when substantial final is achieved.

Staff is taking a “building blocks” approach to Contract development to avoid last-minute surprises or unaddressed needs in completing the Contract. This approach requires that each Participant is provided ample opportunity to provide input and requires active and constructive input from all Participants as progress is made. Staff requests that participants focus review of Draft 1 on substantive issues and missing components so staff can prepare Draft 2 for detailed review of language.

A comprehensive comment log will be maintained throughout the review process and will be made available at all times to all Participants.

Operations Plan:

The draft Contract includes general provisions related to Project operations that will be further described in the Operations Plan. Version 1 of the Operations Plan, developed in early 2022, is outdated due to changes in the Project following its release. To facilitate review of the draft Contract, staff has included a list of items (Attachment A) to be further developed in Version 2 of the Operations Plan which is expected to be finalized in late 2023.

Governance Documents:

The Contract refers to important Governance Documents including the “JPA Agreement” and the “Sites Authority Bylaws”. Changes will be drafted to these documents based on the input and direction of the Governance Ad Hoc Committee (Item 3.5) and included in distribution to Participants at the time B&O Draft 2 is released.

Prior Action:

February 2023: Received informational update on Contract development.

Fiscal Impact/Funding Source:

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

Staff Contact:

JP Robinette (Contract) / Ali Forsythe (Operations)

Primary Service Provider:

Nossaman/Brown & Caldwell

Attachments:

Attachment A – Operations Plan V2 Updates

Attachment B - Benefits and Obligations Contract Near-term Process

**Operations Plan Elements to be Updated/Incorporated into Version 2.0
in support of the Benefits & Obligations Contract**

The list below is a brief summary of the proposed updates and additions to prepare Version 2.0 of the Operations Plan.

- Update all descriptions of all operations (including diversions, exchanges, storage, and releases) to be consistent with current criteria as presented in Final EIR/EIS and/or water right application.
- Update all Project facilities and modeling references to refer to Alternative 3 as described in the Final EIR/EIS.
- Incorporate information regarding diversions to storage from Funks and Stone Corral creeks.
- Incorporate table of Preliminary Final Allocation of Sites Reservoir Available Storage (as approved May 19, 2023) including capacity interest for each Participant and describe how this is applied to diversions, storage, and releases.
 - Add standard approach for release limitations due to Water Quality concerns.
- Incorporate information regarding system losses along Sites Water flow path, including current model assumptions and concepts for actual measurement/assessment.
 - Include example(s) tracking a quantity of water from point of diversion to point of delivery showing estimated losses.
- Identify primary point of delivery, incorporate information regarding process for identifying and changing a secondary point of delivery, identify obligations for Sites Authority and Participants on secondary point of delivery.

DRAFT Benefits and Obligations Contract Near-term Process

As of June 9, 2023

Developing a Benefits and Obligations Contract (Contract) is a predecessor to entering Phase 3 and 4 (detailed design and construction) and provides a successor to the current 2019 Reservoir Project Agreement. The Contract includes provisions for the Sites Authority to fund, including borrowing as-needed, Project design, construction, and operations. Staff is targeting mid-2024 for providing a package to Participants with the final form of the Contract, loan documents, and supporting documents.

The process for developing the Contract will require close coordination with the:

- Development of the Operations Plan Version 2
- Updates related to Project governance in the Joint Exercise of Powers Agreement and the Phase 3, 4, 5 Bylaws
- Drafting of finance policies and loan documents, particularly the EPA WIFIA Master Agreement and WIFIA Loan 1.

Over the course of the Contract development, staff will work with the WIFIA Ad Hoc Subcommittee to discuss specific Contract provisions (staff will revise the charter as needed at the appropriate time). The Operations Plan will be discussed with the Operations & Engineering Workgroup as necessary.

A near-term schedule of Contract development activities is shown below for the purpose of assisting Participants in dedicating appropriate resources to review of materials.

1. Jun 16, 2023: Approval to initiate negotiations.
2. Jun 26 to Jul 14, 2023: Interactive walk-through and discussion of components of Contract conducted by staff, General Counsel, Bond Counsel, and Agency Agreements Counsel for Participants.
3. Jul 28, 2023: Participants substantive issues or missing components list due to Staff.
4. Aug 2023 (if needed): WIFIA Ad-Hoc Subcommittee discussion on issue and comment resolution.
5. Aug-Nov 2023: Subsequent Contract draft(s) including draft updates to JPA Agreement and Bylaws. Ongoing development of Operations Plan Version 2. Drafting of WIFIA Master Agreement, WIFIA Loan 1, and supporting documents
6. Dec 2023: WIFIA Ad-Hoc Subcommittee Meeting to discuss status of Contract and supporting document development and path forward.