



Meeting: **Joint Reservoir Committee & Authority Board**
Agenda Item 3.5

June 16, 2023

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

Requested Action:

Receive an update on the current thinking of the Governance Ad Hoc Committee with regard to governance adjustments to be implemented following investor commitment.

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 primary goal of this effort is to arrive at governance conditions that will be described in the Benefits and Obligations (B&O) Contract and other documents acceptable to each participant's home board for moving to the next phase of work and making their investment commitment.

Board members will recall that during the March 2023 update on ad hoc, there was concurrence on a skeleton structure identifying where decision-making responsibilities for Phases 3 and 4 should reside between the AB alone, the RC as delegated by the AB, and shared between both boards.

Over the last quarter and building on this prior report, the ad hoc has evaluated additional aspects of governance and seeks feedback on these recommendations:

- **Coverage of Phase 5 (Operations)** – the ad hoc recommends that the same skeleton structure be applied to Phase 5 as that represented in Phases 3 and 4, to the extent feasible. With some aspects of Phase 5 continuing to be developed through Phases 3 and 4, it is important that we identify a process by which future changes can occur which is part of the proposal.
- **General Shared Decision-Making Descriptions** – the general consensus of the ad hoc is to not get too specific in describing material changes for shared decisions and instead allow the Executive Director/General Manager (ED/GM) flexibility to work collaboratively with the Boards and allow actual issues and operating experience to dictate proper application and procedure. Also, other delegations of authority will need to be formulated between the ED/GM and each of the boards covering their independent decisions and reporting. It makes sense for the shared decisions to be formulated collaboratively as well to arrive at an all-inclusive delegation of authority matrix for the Project.

- **Unilateral Powers Reserved to the AB** – As the owner/operator of the Sites facilities, the ad hoc feels there are certain, limited circumstances where the AB needs the ability to overturn an RC decision: if an RC decision violates the law or any permit or breaches an agreement. There will be a dispute resolution process specified that would allow the RC and AB to resolve their differences, assuming they are unable to avoid an RC decision being overturned.
- **GM/ED Reports to AB and RC** – with delegation of added responsibilities from the AB to the RC there will be greater need to allow both bodies to oversee top leader job performance. The ad hoc recognizes that the current practice is largely consistent with the proposed approach, so this change represents the formality of adding this reporting structure to the contracts rather than making a substantive change in process.
- **Membership of RC and AB** – membership on the RC becomes a right to the Participant upon executing the B&O contract and membership on the AB (continued or new) is determined by the provisions in the JPA. Adding RC members from outside the Sac Valley to the AB was contemplated by the ad hoc but was found unnecessary at this time. Provisions will be made to re-evaluate this prior to the start of Phase 5. Also, the recommendation of the ad hoc is to allow each RC member to determine its primary and alternate representative on the RC (e.g. elected or staff) and such assignment would continue to be determined by a decision of the Participant's Board of Directors.
- **Codifying the Governance Structure** – following the prior direction from the Board's, the ad hoc proposes that the Phase 3, 4 and 5 governance structure continue to be reflected within the Joint Powers Agreement, the Bylaws, and the B&O Contract (formerly the Project Agreement). Careful consideration was put into placing the governance elements such that future changes, if required, would primarily occur within the Bylaws. Attachment A illustrates the recommendation of the ad hoc regarding placement of governance issues among the three documents.
- **Voting and Approving Future Changes** - Voting scenarios and weighting of votes were discussed extensively. In the end, the ad hoc determined that the voting procedures and weightings within the RC and AB structure should remain unchanged for now, but this should be re-evaluated following the soft-call in case any changes in the participation mix would significantly affect voting outcomes. Also, voting considerations could play into the final decisions on the contract language in the B&O related to sell/lease and making future changes to the B&O. Generally, whether an RC or AB decision requires simple or super majority (i.e. 75%) is not recommended for change at this time, with the exception that any changes to the Bylaws would require 75% majority voting of the AB and RC.

With these additions, the ad hoc feels that the next step in the governance development process is to have staff proceed to draft contract language in the

appropriate documents that reflects the approach that has been determined through this process and allow each Participant and AB member to offer written feedback in the form of comments which will be evaluated by staff and may require further guidance by the ad hoc to properly address the issue.

The proposed timing is to release the 1st draft B&O before the draft JPA and Bylaws amendments are issued. This will allow Participants to put their focus on this aspect for contracting. It is expected that the draft JPA and Bylaws amendments would be issued concurrently with the 2nd draft B&O at which the focus of review could be placed more heavily on the governance elements.

Prior Action:

March 2023 – Receive an update on the progress being made by the ad hoc Governance Joint Committee and provide input on the skeleton structure for governance issues in Phases 3 and 4.

December 2022 – Receive an update on the progress being made by the ad hoc Governance Joint Committee and provide input on the governance issues for refinement in 2023.

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

Fiscal Impact/Funding Source:

None.

Staff Contact:

Jerry Brown (Ad Hoc Lead Staff)

Attachments:

Attachment A: Diagram Showing Phase 3, 4, 5 Agreement Content

Phases 3, 4 & 5 Agreements Content

Joint Powers Agreement

(Revisions drafting by Young Wooldridge)

- JPA Purpose and Powers
- JPA Membership
- JPA Governance and Organization
- Voting Procedures
 - Non-Material Changes
 - Material Changes
 - Changes to JPA Agreement
- Project Agreements
 - B&O Contract
- Debts, Payments, Accounting

B&O Contract

Between JPA and Participant
(Drafting by Nossaman)

- Participant secures rights and obligations for:
 - Reservoir capacity rights, sales, leasing
 - Project debt obligations and payments
- Delegation to RC for all decision-making pertaining to project design and construction
 - Legal/permit compliance
 - Operations/Project Plans
- RC membership assigned and voting procedures established
- Dispute resolution process for contract issues

Bylaws

For joint approval
(Revisions drafting by Young Wooldridge)

- Mission, vision, values
- Definitions
- JPA and RC officers and governance procedures
- Other membership types & new members
- Powers reserved for the AB
- Authorities and Powers delegated to RC
- Material Changes (requiring joint-decision-making)
- Voting procedures for material changes
- Dispute resolution process for project and governance issues