

Ad Hoc Governance Work Group Update

Joint Board Meeting
June 16, 2023



Core Governance Roles & Assumptions

These assumptions are fundamental:

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

For the future:

- Efficient **project delivery** (planning, permitting, design, construction) will be necessary & 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 with the 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

(Reviewed and discussed at March Joint Meeting)

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

Developing operations plans

Delegation

Shared Decision-making

Significant changes to permit requirements

Local agreements, land acquisition, and land management

Changes in local participation percentage

Shared facility agreements

Assumption of new debt or changed payment provisions

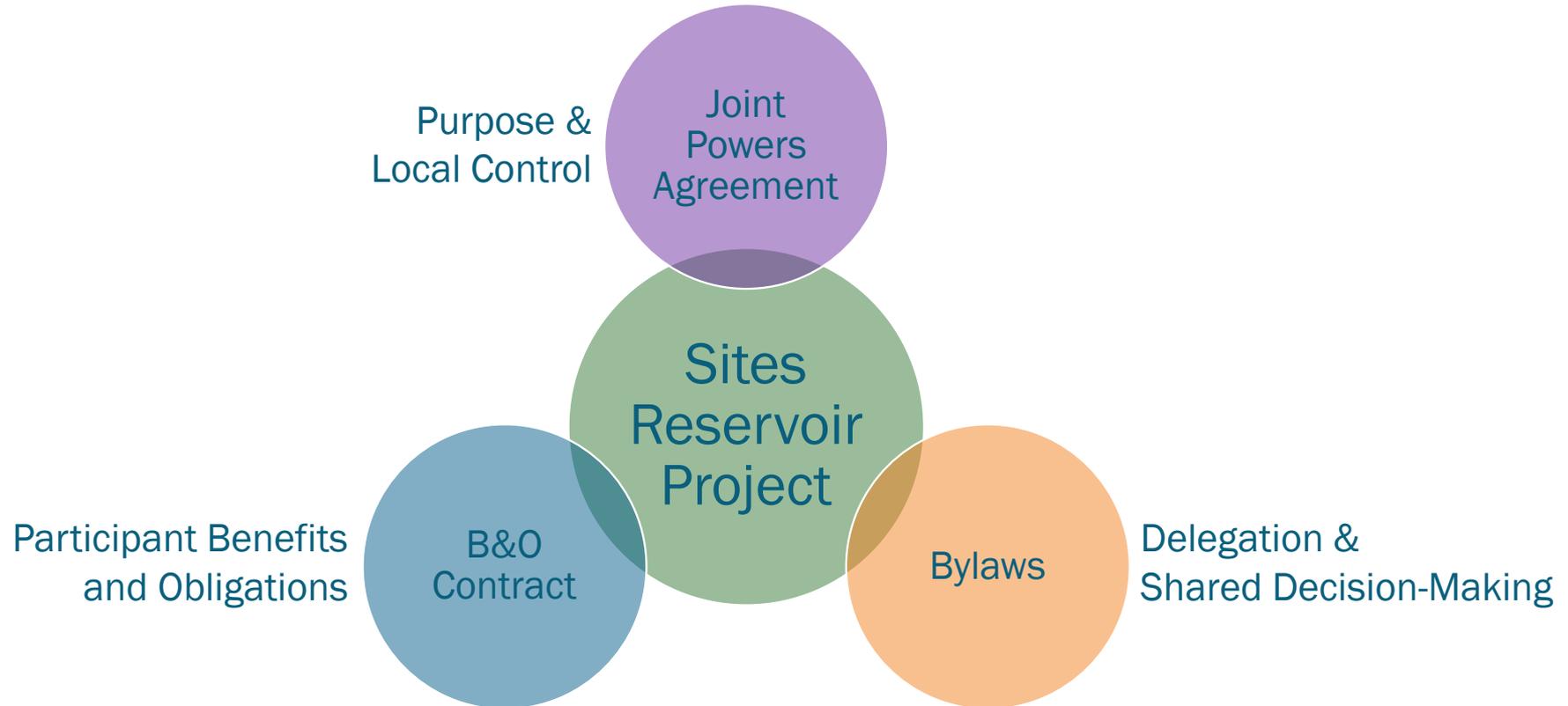
Recreation management

Statewide outreach, legislative affairs, and public relations

Risk management

Litigation

The Three-Legged Stool for Sites Governance



Proposed Agreements Structure

- Continue with the **“three-legged stool”** of the governing documents for future phases: JPA Agreement; Bylaws; B&O Contract.
- JPA Agreement will outline **the governance structure** and retain overall AB ownership and authority for the project.
- Bylaws will reflect the **delegation** of decision-making by the AB to the RC subject to revision only by a supermajority of both boards.
- The B&O Contract **will commit capacity rights** from AB to each Participant and **obligate Participants to pay debts.**
- AB will have the ability **to unilaterally overturn an RC decision** under limited conditions: e.g., if an RC decision violates a law, permit, or agreement condition.
- The B&O, JPA, and Bylaws **will be a “package” deal — to be reviewed concurrently.**

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 and 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 and 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

AB and RC Voting Procedures

Routine Matters:

Majority of the total number of Directors.

New Members: 75% of member home boards.



AB: At least 75% of the total number of Directors.

Weighted Voting: Each participant's vote is based 50% on occupying a seat and 50% on participation percentage.

Routine Matters: Majority of the total weighted vote.

RC: At least 75% of the total weighted votes.

Bylaws – Material Changes – New Members

Phase 5 Governance Recommendations

Proposed governance concepts for the Operations Phase

- a. The AB continues to own the facilities and delegates operational oversight to the RC.
- b. The RC would set policy and budgets for operations, maintenance, and refurbishment/replacement to be implemented by the GM.
- c. Operational disputes would be addressed within the RC.
- d. Potential conflicts during releases need to be an area of more detailed consideration and should be addressed in the Operations Plan.
- e. Changes to the ITP/BiOp permits, Water Right, and/or assuming new debt would be Material Changes requiring 75% vote of both AB and RC.
- f. AB would continue to have limited ability to overturn RC decisions, e.g., violation of law.
- g. For certain major unforeseen conditions, the bylaws could be updated through shared decision-making.
- h. Additional Material Changes could be identified in the future through modification of the Bylaws (requiring 75% vote of both bodies).
- i. Reconsider RC having a seat on the AB prior to the start of Phase 5.

Discussion

- **Additional Questions and Clarifications**

- What additional details can we provide about the Ad Hoc discussions and recommendations?

- **Additional Considerations and Input**

- Are there any issues/topics for either the AB or RC that warrant a super-majority vote for that body, even if it isn't identified as a Material Change for shared decision-making?
- Are there any other governance concerns precedent to your home boards approving the B&O Contract and reviewing the proposed revised JPA Agreement and Bylaws?

Next Steps and Activities for the Next 6 Months

- **Draft B&O Contract for review by all Participants**
- **Draft revisions to JPA Agreement and Bylaws for review by all Participants**
- **Future Ad Hoc Discussion Items:**
 - **The Future SPA Organization – what should be our core competencies, do we have employees?**
 - **Consider review comments that relate to governance policy**
- **Other?**

These items need to be considered as a package