



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

**August 23, 2023**

Subject: **Maxwell Irrigation District Memorandum of Understanding (MOU)**  
**Regarding Sites Water Right Application**

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**Requested Action:**

Reservoir Committee and Authority Board consider authorizing the Executive Director to enter into a Memorandum of Understanding with the Maxwell Irrigation District, subject to legal counsel review, regarding issues and concerns on the Sites water right application.

**Detailed Description/Background:**

Staff have been working diligently with Maxwell Irrigation District (Maxwell ID) to address and resolve concerns with the Authority's water right application. Maxwell ID has nine appropriative water rights for diversion of water at four points of diversion. One of Maxwell ID's points of diversion is on Stone Corral Creek. This point of diversion is included in five water rights held by Maxwell ID. These five water rights held by Maxwell are or will all be senior to the Project's water right. (One of these five water rights held by Maxwell ID is junior to the Project's water right but was included in the "Winter Water Right" special term and the Authority has thus, already agreed to allow this right to have priority over the Project's right to divert.)

Maxwell ID has expressed concerns that the Project may affect its ability to exercise its senior water rights due to impounding water from Funks and Stone Corral creeks as part of the Project. Funks Creek is a tributary to Stone Corral Creek upstream of Maxwell ID's point of diversion. As Maxwell ID's water rights are or have been acknowledged to be senior to the Project's water right, staff are proposing that the Authority enter into a MOU with Maxwell ID to address its concerns and establish a process to ensure that Project operations do not affect the ability of Maxwell ID to exercise its rights. The proposed MOU is attached and includes the following key terms:

- Recognize Maxwell ID's water rights as senior to those of the Project, including the one right that was included in the "Winter Water Right" special term in the Authority's application.
- Commit the Authority and Maxwell ID to working cooperatively on a technically feasible operations plan to avoid impacts to Maxwell ID's operations and water rights.

- Acknowledge the commitments in Section 2.6 of the Authority’s Fourth Amended and Restated Joint Powers Agreement<sup>1</sup> which recognizes the commitment to seek written consent from Maxwell ID consistent with Section 2.6 prior to the State Water Board issuing the Authority’s final water right permit.
- Commit the Authority and Maxwell ID to working cooperatively and in good faith to finalize an agreement that memorializes the above terms by February 29, 2024 (the anticipated end of the protest-resolution period).

In reliance upon these commitments by the Authority in an MOU, Maxwell ID would refrain from filing a formal protest to the Authority’s water right application.

Staff is proposing that the Reservoir Committee and Authority Board authorize the Executive Director to enter into a Memorandum of Understanding with Maxwell ID consistent with the general form and content of the attached Memorandum of Understanding, subject to legal counsel review.

**Prior Action:**

None.

**Fiscal Impact/Funding Source:**

None. Activities under the MOU can be accomplished within the Amendment 3 Work Plan amounts.

**Staff Contact:**

Ali Forsythe

**Primary Service Provider:**

Somach/MBK

**Attachments:**

Attachment A – Memorandum of Understanding Regarding Maxwell Irrigation District Water Rights and Sites Reservoir

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<sup>1</sup> Section 2.6 of the Authority’s Fourth Amended and Restated Joint Powers Agreement states the following: *MID Operations: The Authority Members anticipate that the pipeline connecting the reservoir to the Sacramento River will utilize an existing MID easement. The Authority shall not have the power, except with the express written consent of MID to enter into any agreements or otherwise take any action that will, directly or indirectly, decrease, restrict, or in any manner alter, modify or limit water rights, water supplies or contractual entitlements to water of MID or the operation of its facilities or any facilities that MID operates under contract.*

**MEMORANDUM OF UNDERSTANDING  
REGARDING MAXWELL IRRIGATION DISTRICT WATER RIGHTS AND SITES  
RESERVOIR**

This Memorandum of Understanding (“MOU”) is entered into and effective this \_\_\_ day of \_\_\_\_, 2023 by and between the SITES PROJECT AUTHORITY (the “Authority”) and MAXWELL IRRIGATION DISTRICT (“MID”) (each a “Party” and collectively, the “Parties”).

**Recitals**

**WHEREAS**, the Authority was created for the purposes of building and operating the Sites Reservoir Project (“Project”), a proposed 1.5 million acre-foot off-stream reservoir located approximately 10 miles west of the town of Maxwell, California; and

**WHEREAS**, to carry out the Project, the Authority has applied for an appropriate water right through the State Water Resources Control Board (“SWRCB”). That application includes the partial assignment of a previously filed State application with a 1977 water right priority date; and

**WHEREAS**, the Project proposes to impound water on Funks and Stone Corral Creeks by means of construction of two dams; Funks Creek is tributary to Stone Corral Creek upstream of Maxwell’s point of diversion on Stone Corral Creek; and

**WHEREAS**, MID holds water rights on Stone Corral Creek downstream of the proposed dams as outlined in Table 1 and shown in Figure 1, all but one of which are senior to the Project’s proposed 1977 priority date, and MID has raised concerns that the Project may impact its ability to divert water pursuant to its existing rights; and

**WHEREAS**, Section 2.6 of the Authority’s Fourth Amended and Restated Joint Exercise of Powers Agreement contemplated express protection for MID operations and water rights when the Project involved a new pipeline utilizing MID’s property and MID was a signatory to the JPA, both of which no longer exist; and

**WHEREAS**, the Authority is committed to respecting MID’s existing water rights on Stone Corral Creek, and has agreed to collaborate with MID to avoid impacts to those rights; and

**WHEREAS**, the Parties have negotiated a term sheet, attached hereto as Exhibit A, detailing their respective commitments regarding this issue as planning for the Project proceeds; and

**WHEREAS**, MID, in reliance on those commitments, has refrained from filing a formal protest with the SWRCB regarding the Project’s proposed diversions.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Term.** This MOU shall be effective on the date of the last signature to this agreement, and shall remain in effect until the Agreement identified in Paragraph 2 is executed.
2. **Coordinating Agreement.** The Parties will work cooperatively and in good faith to finalize and execute an agreement consistent with the terms outlined in Exhibit A on or before February 29, 2024. The Parties anticipate that such an agreement will include binding conditions intended to protect MID’s existing water rights and operations, consistent with the principles identified in Section 2.6 of the Fourth Amended and Restated Joint Exercise of Powers Agreement.
3. **Authority.** Each signatory of this MOU represents that s/he is authorized to execute this MOU on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this MOU and to perform all obligations under this MOU.
4. **Amendment.** This MOU may be amended or modified only by a written instrument executed by each of the Parties.
5. **Counterparts.** This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
6. **Entire Agreement.** This instrument constitutes the entire agreement and understanding between the Parties with respect to the subject matters hereof, and supersedes and replaces any prior agreements and understandings, whether oral or written, by and between them with respect to such matters.

IN WITNESS WHEREOF, the parties hereto have entered into this instrument as of the Effective Date set forth above.

## Exhibit A

### Terms & Form of Agreement

The Authority and MID will enter into a binding agreement on or before February 29, 2024 to ensure that the Project will not impact MID’s ability to exercise its water rights.

Specifically, such agreement will contain at least the following terms and principles:

1. Technical Work & Operational Planning: The Parties will work cooperatively to determine a technically feasible operations plan to avoid impacts to MID operations and water rights in Stone Corral Creek. The Authority will lead and fund the required technical work, including data gathering and analysis, in coordination with MID and other regional water right holders.
  - A. Consistent with these principles, the Parties will identify a plan and governance mechanism for coordination among interested parties related to Project operations impacts in Stone Corral and Funks Creeks.
2. Section 2.6 Protections: The Authority acknowledges that Section 2.6 of its Fourth Amended and Restated Joint Powers Agreement (JPA) remains operative with the signing of this MOU and includes a provision that prohibits the Authority from modifying or impacting MID water rights or water supplies. Specifically, that section provides:

*MID Operations: The Authority Members anticipate that the pipeline connecting the reservoir to the Sacramento River will utilize an existing MID easement. The Authority shall not have the power, except with the express written consent of MID to enter into any agreements or otherwise take any action that will, directly or indirectly, decrease, restrict, or in any manner alter, modify or limit water rights, water supplies or contractual entitlements to water of MID or the operation of its facilities or any facilities that MID operates under contract.*

While the Project configuration and participants have evolved since execution of the JPA, the Authority’s commitment is the same. Accordingly, the Authority agrees to extend to MID the benefits of Section 2.6 of the JPA as follows:

- A. Consistent with Section 2.6, the Authority will seek written consent from MID prior to the SWRCB issuing the Authority’s final water right permit.
  - B. The Authority considers this JPA provision a contractual commitment, which provides immediate and supplemental assurance to MID as the Authority continues to implement the Project.
3. Water Right Priorities: In regard to the MID water right with a priority date that is junior to the Project’s anticipated assigned priority date, recognizing the investment that many water users have made in the Sacramento Valley to winter water rights and the

environmental benefits these winter water rights have for the Pacific Flyway, the Authority has included a special term in its water right application in which the Authority proposes to subordinate its priority to divert water to MID’s priority to divert water. That language is as follows:

***Priority Term for Specific Existing In-Basin Water Rights***

*Diversions of water under the following listed water rights shall have priority over the right to divert water under this permit:*

[...]

- *Maxwell Irrigation District appropriative water right issued pursuant to Permit 21004 (Application A030445);*

[...]

DRAFT

**Summary of Maxwell Irrigation District's Water Right Permits and Licenses**

Ordered by priority date

Those shaded in blue include source(s) that may receive water from Stone Corral Creek

<b>Application Number</b>	<b>Permit or License Number</b>	<b>Priority Date</b>	<b>Source(s)</b>	<b>Season</b>	<b>Amount (cfs)</b>
8631	7210 (License)	April 8, 1936	Sacramento River	From about March 15 to about November 1	63
11956	4586 (License)	June 24, 1947	RD 2047 Main Drain	From about April 1 to about October 1	8.5
11955	4643 (License)	June 24, 1947	RD 2047 Main Drain Canal	From about April 15 to about October 1	14
11957	4644 (License)	June 24, 1947	Logan and Hunter Creek (POD #1) and RD 2047 Main Drain Canal (POD #2)	From about April 15 to about October 1	POD #1-15 POD #2-50.5
11958	4694 (License)	June 24, 1947	Stone Corral Creek Drain	From about April 15 to about October 1	13.5
13919	5692 (License)	August 25, 1950	Lurline Creek	From about May 1 to about December 1	11.6
13735	4734 (License)	May 15, 1950	Lateral drain of RD 2047	From about April 15 to about October 1	7
14378	4523 (License)	June 28, 1951	Lateral Drain F of RD 2047	From about April 15 to about September 30 for irrigation; From about March 1 to about November 30 for recreation	3
30445	21004 (Permit)	May 30, 1995	Sacramento River (POD A) Colusa Basin Drain (POD #1) Stone Corral Creek (POD #2) Lurline Creek (POD #3)	October 1 to March 31	POD #A-80 POD #1-75 POD #2-75 POD #3-31

### Map of Maxwell Irrigation District's Water Right Permits and Licenses

