



Meeting: **Joint Reservoir Committee & Authority Board**
Agenda Item 3.3

August 18, 2023

Subject: **Overview of Phase 3/4/5 Joint Powers Agreement (JPA) Amendments
and Updated Bylaws**

Requested Action:

Review and comment on a status update of amendments to JPA and updated Bylaws being prepared, which with the Benefits & Obligations (B&O) Contract will codify the governance structure for Phase 3/4/5.

Detailed Description/Background:

The Governance Ad Hoc Committee was established in July 2022 and was charged with providing advice, input and specific proposals to the RC and AB in their evaluation of governance changes for future phases of the project. In June 2023, the Board received an update on the current thinking of the Committee which included relying on the Joint Powers Agreement, the Bylaws, and the B&O Contract (formerly the Project Agreement) as the means of codifying the governance structure for Phase 3/4/5. Staff are drafting JPA amendments and updated Bylaws for inclusion in the Draft 2 circulation of the B&O contract. Staff requests Board feedback on areas where we've seen the need for additional clarification as we've gone through the documents and begun the drafting process as follows:

- Powers Reserved for the Authority - The direction of the Ad Hoc Committee is for the new governance structure to provide the Reservoir Committee significant oversight responsibility for Project construction and operations, recognizing that the Water Code and the Government Code require that the Sites Project Authority as owner, financier, permittee, etc. retain a sufficient control over select aspects of the Project. The governing documents are being written to specify the reserved powers that the Authority Board retains to comply with the Water Code and Government Code but still designate oversight of the Project scope, schedule, budget, quality aspects to the Reservoir Committee. The retaining of reserved powers by the Authority Board also helps to ensure the delegations to the Reservoir Committee would be upheld if challenged.
- Authority Delegated to the Reservoir Committee - Section 6508 of the Government Code permits a Joint Powers Authority to delegate certain functions to "an advisory body or administrative entity". Those functions include "program implementation", which is akin to the operational duties that would be delegated to the Reservoir Committee. The Courts have

construed this authority broadly and recognized the intent of the legislature to give Joint Powers Authorities broad discretion on how to best achieve their goals. The Courts have also recognized that delegations are acceptable and enduring so long as appropriate safeguards are in place. The Authority Board's reserved powers would act as those safeguards. Having the delegated authority memorialized in the contracts establishes the baseline the parties have agreed upon for any future, mutually decided changes. In other words, neither the Authority Board nor the Reservoir Committee will have the ability to change the structure unilaterally once established with these agreements.

- Additional areas of Shared Decision Making – The Board will recall that a list of areas requiring shared decision making were reviewed and no exceptions were taken. In drafting the documents, the following items have been identified as additional items that should be included as requiring shared decision making:
 - A decision to terminate the Project
 - Formation of a new JPA
 - Creation of a new B&O contract
- Dispute Resolution Processes – Generally, the JPA outlines the dispute resolution process between Authority Board members, the B&O outlines the dispute resolution process between the Authority and individual or groups of Participants. The Bylaws will include a dispute resolution process where the Authority Board and the Reservoir Committee have disputes.

After receiving the Board's feedback on these items, Staff will be able to proceed to complete drafts of the JPA and Bylaws which can then be incorporated into the ongoing discussions around negotiating the B&O contracts.

Prior Authority Board Action:

Fiscal Impact/Funding Source:

The drafting of the JPA and Bylaws is being performed by the Authority's General Counsel (Young Wooldridge) since they have the institutional knowledge and history with drafting the current and prior versions of these documents. This work was anticipated in their Amendment 3 scope with \$100,000 of the contract authority being allocated which is sufficient to cover the costs. These costs will be tracked separate from the routine General Counsel duties.

Staff Contact: Jerry Brown/Alan Doud

Primary Service Provider: Young Wooldridge

Attachments: None