

Agenda Item 3.3

Overview of Phase 3/4/5 JPA Amendments & Updated Bylaws

Reservoir Committee and Authority Board

August 18, 2023



Phases 3, 4 & 5 Agreements Content

Joint Powers Agreement (revisions drafting by Young Wooldridge)

- JPA Purpose and Powers 1
- 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

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“Existing” Dispute Resolution Process for JPA issues

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

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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

Shared Decision-Making

Include as **Material Changes** in the Bylaws – actions on these topics would require a 75% vote of both boards

- Local agreements, land acquisition, and land management
- Significant changes to permit requirements
- Changes in local participation percentage
- Assumption of new debt or changed payment provisions
- Shared facility agreements 4
- Recreation management
- Statewide outreach, legislative affairs, and public relations
- Risk management
- Litigation

Proposed to be added to this list:

- Decision to terminate the Project
- Formation of a new JPA
- Creation of a new B&O contract

- Note: descriptions left more general to allow staff and boards flexibility to adapt to operating experience during implementation

All other actions are Non-Material and subject to majority voting by the respective board

Safeguards for Sacramento Valley Interests

- **Authority Board is the “owner” of the assets and assigns capacity rights to Storage Partners (Purpose and Powers in JPA Agreement) and has limited Reserved Powers specified in Bylaws**
 - Holds fee title to lands and is the designated agency steward of the water right
 - Is the permittee and has compliance responsibility
 - Enters contracts and agreements on behalf of the Project
 - Is the borrower for project financing and repayment
- **Authority Board secures project debt - all Project revenues and costs flow through audited Authority books**
 - Participants’ commitment to repay debt and OM&R cost share in the B&O
 - State and Feds reimburse for cost share under separate agreements
 - Any shortfall in State or Fed cost share is made up by the Participants
- **Shared decision making in specified categories limits Sac Valley risk of RC unilaterally negatively affecting Local Project Support (Material Changes in the Bylaws)**
- **Authority Board can override delegated decisions by the Reservoir Committee only for “negligent” faults**
 - Negligence is acts that violate law or permit requirements
 - Dispute Resolution Process includes adjudication by the court according to contract law
- **Changes to the JPA Agreement** determined solely by Authority Board (except for formation of a new JPA or a decision to terminate the project)
- **Shared decisions and changes to Bylaws** require 75% of the Authority Board and 75% of the Reservoir Committee

Safeguards for Participant Interests

- **Reservoir Committee oversees all matters that affect cost, schedule, quality through design, construction, and operations (within Delegated Powers specified in the Bylaws)**
 - Cost management within financial plan
 - Schedule and implementation management within permit requirements
 - Operating Plans
- **Shared decision making in specified categories limits Participant risk of Authority Board unilaterally increasing cost or eroding Project benefits to Participants (Material Changes in the Bylaws)**
- **To change Delegated Powers** requires 75% of the Authority Board and 75% of the Reservoir Committee
- **Except for “negligent” faults and specified categories for shared decision making, Reservoir Committee makes all decisions.**
 - Negligence is acts that violate law or permit requirements
 - Dispute Resolution Process includes adjudication by the court according to contract law
- **Benefits and Obligations Contracts establish Participant rights to capacity share**
 - Individual Participant controls their share of storage and diverted water
 - Commits to payment of project debt and cost share
 - Securities and default mechanisms are specified
 - RC sets and manages operating decisions independent of Authority Board to the extent specified categories are unaffected
- **Shared Decisions and Changes to Bylaws** require 75% of the Authority Board and 75% of the Reservoir Committee

Next Steps and Schedule

- Next Steps
 - Complete drafting of the JPA amendments and Updated Bylaws
 - Coordinate/reviews with B&O Contract development
- Schedule

Milestone	Planned Completion
Draft 2 B&O Contract Ready for Participant Review (includes amended JPA and updated bylaws)	September 2023
Reconvene Governance Ad Hoc to consider Participant comments	November 2023
Final B&O Contract, Amended JPA, and Updated Bylaws Complete	June 2024