



Meeting:

**Reservoir Committee & Authority Board Agenda
Item 2.1**

January 19, 2024

Subject:

Draft Benefits & Obligations Contract

Requested Action:

Reservoir Committee and Authority Board confirm that the development of the Benefits and Obligations (B&O) Contract remains consistent with the board adopted Guiding Principles and Preliminary Terms and delegate development of further operational details to the Operations and Engineering Committee.

Detailed Description/Background:

B&O Contract, JPA and Bylaw Amendments – Addressing Policy-Related Comments

In September 2023, staff provided an informational update on Participants' comments to the B&O Contract that would require changes to the policy described in the Final Adopted Guiding Principles. The policy areas were described as follows:

1. How unused conveyance capacity (in downstream Project facilities) will be allocated between Participants.
2. Liability of other participants in the event of default by another participant.
3. Obligations of self-funding participants with respect to the liquidity reserve.

Staff has been evaluating each of these issues since September 2023 and has discussed the comments with the Participants that commented and discussed them among workgroups and committees. Staff has come to the following conclusions and recommends that this course of action be taken to allow moving the B&O development forward:

- Consider the Participant comments seeking to change the adopted Guiding Principles to Participant liability and liquidity reserve obligations (#2 and #3 above) as CLOSED. The proposed resolution is consistent with the Guiding Principles and no policy change is needed;

There is consensus as to the resolution of this comment by the WIFIA Ad Hoc Subcommittee.

- Consider the Participant comment seeking to change the allocation of unused Conveyance Capacity as CLOSED (#1 above) as the current working approach (Attachment B) is aligned with the beneficiary pays concept and is consistent with the Guiding Principles so no policy change is needed; but

- Delegate the further development to the Operations and Engineering Committee of operating and financial details for implementation of the more precise capacity and cost allocation conditions to be considered in the Operations Plan procedures for allocating conveyance capacity.

There may still be some disagreement as to the specifics of resolving this comment among the Operation and Engineering Committee members, however there is no disagreement regarding the beneficiary pays principle so the Policy remains unchanged. However, fully resolving and coming to consensus on the comment requires further detailed review of operating procedures, yet undeveloped, which is the logic for the proposal that the O&E committee take a deeper dive into the specific scenarios as the operating procedures are developed.

There have been no comments on the JPA and Bylaw amendments that rise to a policy level discussion at this point.

The B&O Contract, JPA and Bylaw amendments as a whole form the governance structure for Phase 3, 4, and 5. Together these documents, when executed by Participants and the Sites Authority, inclusive of each individual JPA member, will be the contractual basis for decision making on the Project. The steps involved that are assumed to occur simultaneously for the “deal to be sealed” include:

Each Participant executes the B&O Contract, which commits the Agency to being a Reservoir Committee member and to be subject to the amended JPA and Bylaws.

The Sites Authority authorizes the JPA and Bylaw amendments, executes the B&O with each Participant, executes the final funding agreement with the State, and executes the Partnership Agreement with the Federal Government.

Each JPA member agency authorizes the amendments to the JPA and Bylaws.

The California Water Commission authorizes final award of Prop 1 funds and a final funding agreement with the Sites Authority

The Bureau of Reclamation executes the Partnership Agreement.

Obviously, this process needs to carefully be choreographed to be successful. It has similarities to an escrow process in a property transaction. Last minute changes by any party would be severely disruptive and cause delay. This is one of the reasons it is so important for all parties involved be engaged and constructive in the development of these agreements and identify any “deal stopper” immediately. Staff have heard of no deal stoppers to this point.

Establishing the Authority’s Owner Role in Phase 3/4/5 Implementation

In October 2023, the Board was briefed on the preparations being undertaken to move forward with the contracting necessary to conduct the next Phases of work, including identifying the role that the Authority will assume during implementation. The Board provided feedback on the fundamental objectives for the kind of organization Sites needs to create and the core competencies the organization should possess to be successful. The Board was also shown a draft future organization chart for construction and operations.

It should be noted that starting with building block concepts focuses the Authority on building a new organization. How the Authority addresses the question of whether the Sites Authority should have independent contractors or employees perform services is important but is not critical to be addressed at this juncture. Focusing on the building blocks allows the Authority to represent to prospective contractors during upcoming procurements what the owner's role is envisioned to look like. This aspect can affect the contractor's approach and staffing on the project.

Staff also presented mock-up organization charts for Phase 3/4 and Phase 5 at the October 2023 meeting. The Board directed Staff to have further discussions about creating the organization with the Governance Ad Hoc Committee. These discussions have occurred and final draft building blocks (fundamental objectives and core competencies) and final draft organization charts for construction and operations are presented in Attachment A. All of these final drafts will be used to describe the organization to prospective contractors with the caveat that future changes are possible.

Prior Action:

September 22, 2023 - Status update on Draft Benefits & Obligations Contract.

Fiscal Impact/Funding Source:

The Amendment 3 Work Plan includes sufficient budget to cover required resources and activities to develop the Sites Reservoir Benefits & Obligations Contract. The drafting of the Joint Powers Agreement and Bylaws was anticipated in General Counsel's (Young Wooldridge) Amendment 3 scope with \$100,000 of the contract authority being allocated which is sufficient to cover the costs.

Staff Contact:

JP Robinette (Contract)

Jerry Brown / Alan Doud (Joint Powers Agreement/Bylaws)

Jerry Brown (Authority's Owner Role)

Primary Service Provider:

Nossaman / Brown & Caldwell (Contract)

Young Wooldridge (Joint Powers Agreement / Bylaws)

Attachments:

Attachment A – Slide Deck Showing Fundamental Objectives and Core Competencies for Authority’s Owner Role, and Future Organization Charts for Construction and Operations (with redlines/strikeout showing changes since October 2023 review)

Attachment B - Conveyance Capacity Concepts and Principles

The 2020 Strategic Plan established ‘effective organization’ as an overarching goal

- Fundamental objectives in building a conceptual Phase 3/4/5 organization:
 - Create a lean, efficient organization, built on a culture of excellence.
 - Identify “owner employees” for key positions to sufficiently oversee construction.
 - Delegate decision-making authority to the levels needed to achieve flexibility and adaptability.
 - Establish areas of operating/financial core competency and configure staffing to nurture and develop these areas.
 - Create a structure that builds institutional knowledge through succession planning.
 - Bring experienced and developing talent to the region with the project as opposed to cannibalizing existing talent.

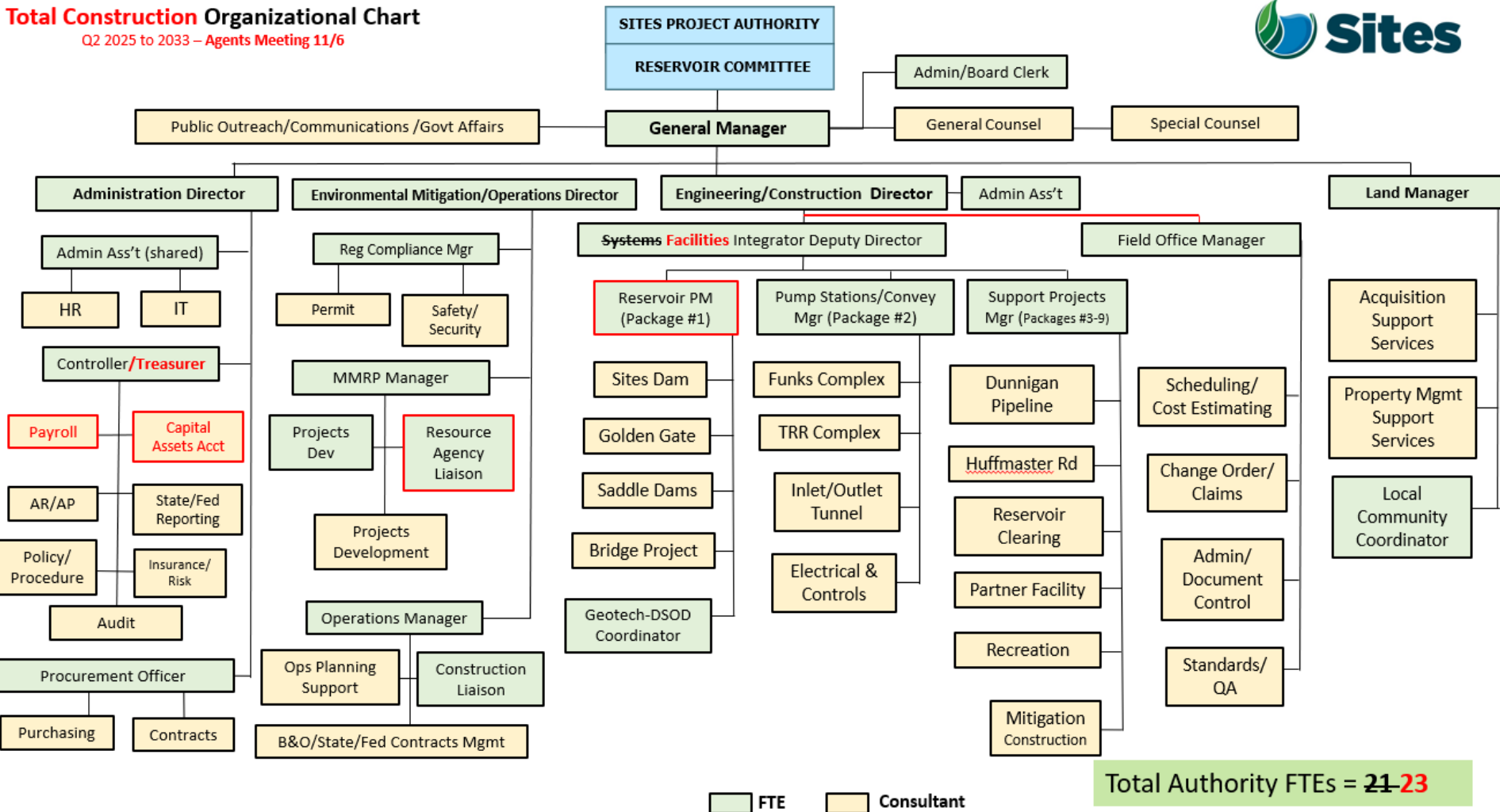
Core competencies are unique abilities possessed by the organization that provide strategic advantage

Core Operating Competencies		Needed for Phase		
		3	4	5
1.	Dam safety and dam monitoring	X	X	X
2.	In Depth Knowledge of California and Delta water operations			X
3.	Understanding water measurement, monitoring, and reporting		X	X
4.	Understanding permit requirements, compliance and regulatory reporting	X	X	X
5.	Understanding SCADA, controls, and cybersecurity		X	X
6.	Collaborating with Facility Partner/State/Federal Operations	X	X	X
7.	Managing large rotating and hydraulic equipment (mechanical)			X
8.	Maintaining site security			X
9.	Preparing for and responding to emergency			X
10.	Managing land holdings		X	X
11.	Understanding electrical power budgeting, purchasing, and marketing			X
12.	Administering agreements and contracts	X	X	X
13.	Committed to respectful, supportive local community and tribal relations	X	X	X
14.	Conflict Resolution – Internal and External	X	X	X
Business Competencies				
1.	Financial management and controls	X	X	X

Conceptual Construction Organization



Total Construction Organizational Chart
Q2 2025 to 2033 – Agents Meeting 11/6



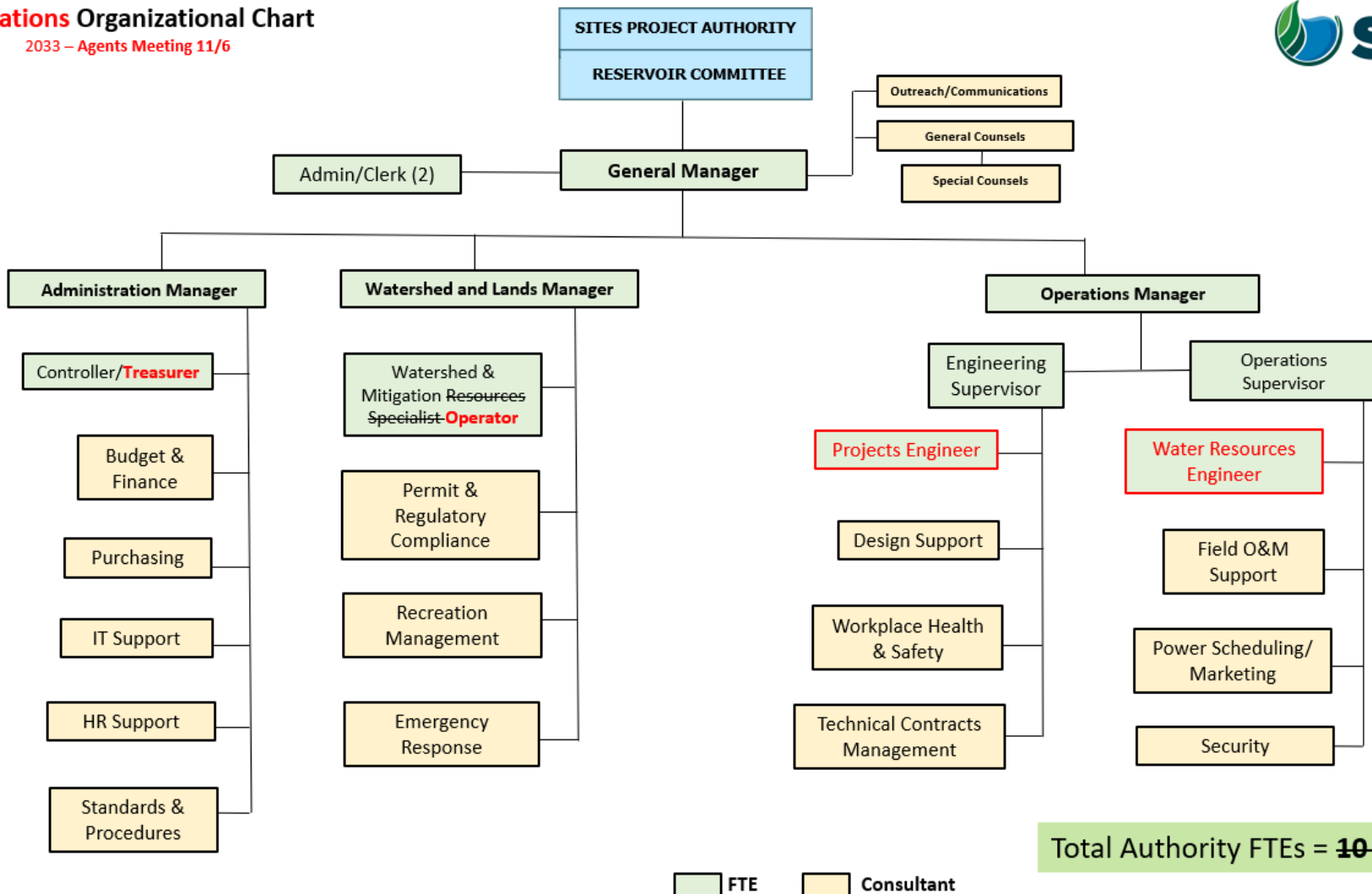
Total Authority FTEs = ~~21~~23

■ FTE ■ Consultant

Conceptual Operations Organization

Operations Organizational Chart

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Total Authority FTEs = ~~10~~ 12



Conveyance Capacity Concepts and Principles

Addressing comments on the Benefits and Obligations Contract regarding conveyance capacity relates to how the beneficiary pays principle is applied to the use of the Downstream Facilities (primarily the Dunnigan Pipeline). A characterization of these comments made by multiple commentors is as follows:

How will the Project approach situations where demand for delivery of water through Downstream Facilities exceeds the physical capacity of the infrastructure for Participants that own (and paid for) capacity in these facilities and for those Participants that do not? How will the Project prioritize deliveries in these cases? Will there be a cost for Participants that do not own Downstream Capacity to use the Downstream Facilities?

Staff presented a proposal for allocating Downstream Capacity across four scenarios to the Operations and Engineering Workgroup on Jan 10, 2024. Downstream capacity allocation scenarios evaluated included:

1. No capacity constraints for Storage Partners with Downstream Capacity Interest.
2. Limited capacity for delivery to Storage Partners with Downstream Capacity Interest.
3. No capacity constraints when a Storage Partner without Downstream Capacity Interest is transferring to an entity who needs downstream capacity.
4. Limited capacity when a Storage Partner without a Downstream Capacity Interest is transferring to an entity who needs downstream capacity.

The evaluation assumed a separation of key concepts to be defined in the Benefits and Obligations Contract and the Operations Plan.

The Benefits and Obligations Contract grants Base and Downstream Capacity Interests for Participants and defines rules related to both in the event of sale or leases, allocates costs to Participants according to the beneficiary pays principle, and commits the Authority to providing water service consistent with the Operations Plan. The proposal is consistent with the Guiding Principles.

The Operations Plan establishes principles to be used in the allocation including:

- Storage Partners with Downstream Capacity Interest have first priority and: are not limited to their Downstream Capacity Interest if no capacity constraint exists (e.g., not being fully utilized by others); are limited to their proportionate Downstream Capacity Interest when capacity is limited; and have first priority to move transfer water over Storage Partners without downstream capacity.
- Storage Partners without Downstream Capacity Interest have second priority and would need to use unused capacity and may need to adjust their release schedule to find that opportunity.

Under this proposal, Participants will need to submit release requests early in the year to allow the Authority sufficient time to work with Participants in the event it is necessary to reschedule releases to accommodate all Storage Partner requests to the greatest extent possible while adhering to the above principles. Additionally, the Authority would facilitate setting a standard wheeling rate to charge for use of downstream facilities by a Storage Partner without capacity interest to compensate those with Downstream Capacity Interest for their Capital, Fixed O&M, and Variable O&M Costs on a volumetric basis.

The Operations and Engineering Work Group provided feedback on the proposal and asked for time to consider the implications of the proposal as it pertains to the Operations Plan.