



Meeting: **Reservoir Committee & Authority Board Agenda
Item 3.4**

April 19, 2024

Subject: **Update on Draft Benefits & Obligations (B&O) Contract, Joint Powers Agreement (JPA), and Bylaws**

Requested Action:

Receive an update on the a) development of the Benefits & Obligations Contract, Amended and Restated Joint Powers Agreement, and Phase 3, 4, 5 Bylaws and b) next steps to achieving Participants securing authority to execute these documents.

Detailed Description/Background:

The Benefits & Obligations Contract (B&O Contract), Amended and Restated Joint Powers Agreement (JPA Agreement) and Phase 3, 4, and 5 Bylaws as a whole form the contract documents including 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. Staff has advanced the B&O Contract, JPA Agreement, and Bylaws alongside each other based on the Final Adopted Guiding Principles and Preliminary Terms agreed to and provided by the Authority Board and Reservoir Committee, and direction from the Governance Ad Hoc Subcommittee. Public drafts of all three documents and a Frequently Asked Questions (FAQ) document were released in February 2024.

Staff requested comments on the documents from all AB and RC Board members by March 22. There was not a high volume of written comments. Staff are reaching out to individual commenters on items requiring additional discussion and clarification.

Staff expects to determine within the next couple of months if there are any proposed revisions or concerns that cause a deviation from the current Board direction of following the policy described in the Final Adopted Guiding Principles and Preliminary Terms or that would warrant other policy level consideration. Some of the topics of discussion include:

- Considerations for the allocation of revenues generated as a result of releases from the Reservoir
- Considerations related to water rights and how they are recognized and secured in the B&O contract relative to
- Several questions were raised by DWR related to their involvement as acquirer for some of the Sites Participants that are State Water Contractors. This mostly involves coordinating the invoicing processes, but also have to do with assuring SWC's that are not receiving the acquired Sites are not responsible for any Sites costs. Also,

during this period, Staff are taking a closer look at project operations provisions to determine that which would be better suited to be specified in the B&O contract versus what is included in the Operations Plan. These issues will be reviewed with the O&E workgroup before they come to the Board.

- On the governance piece, the Governance Ad Hoc continues to meet and examine the proposed structure and consider various scenarios that tests durability of the structure. It is important that both the Authority Board and the Reservoir Committee be assured of their reserved and delegated powers under the contract documents.
- Questions/comments related to financing, liability limitations, and the association of the State and Federal contracts to the applicable provisions of the B&O.
- Authority Board member agencies that are not Participants have questioned the assurances that project debt does not become their responsibility.

It is important for all JPA members and Participants to be engaged and constructive in the development of these agreements and identify any “deal stoppers” immediately. Even though the latest comment period has expired, Staff would continue to welcome input from any board members that have not yet provided comments.

Prior Action:

February 2024 – Received update on development of Benefits & Obligations Contract, Amended and Restated Joint Powers Agreement, and Phase 3, 4, 5 Bylaws.

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 (B&O Contract)

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

Primary Service Provider:

Nossaman / Brown & Caldwell (B&O Contract)

Young Wooldridge (Joint Powers Agreement / Bylaws)

Attachments:

None.