



Meeting: **Reservoir Committee & Authority Board Agenda December 20, 2024**
Item 3.1

Subject: **Update on Draft Benefits & Obligations (B&O) Contract and Financing Document Development**

Requested Action:

Receive an update on progress developing the Benefits & Obligations Contract and financing 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. The latest drafts of all three documents, including an updated Frequently Asked Questions (FAQ) document, were released in August 2024. Staff continues to work to resolve four open items that may require changes to the adopted Guiding Principles and Preliminary Terms (GPPT). These items include:

1. **Project Governance:** Discussions are progressing to resolve concerns about the durability of the delegated authorities. Staff expects that the issues and proposed solutions will be discussed at the January meeting of the Governance Ad Hoc followed by briefings to the Reservoir Committee and Authority Board in January. (GPPT 1.3)
2. **The “Default Waterfall”:** Participants have expressed concerns about their exposure to a disproportionate share of obligations if one or more of the Participants default. These Participants would like to explore ways to limit their exposure. This topic will be discussed with the WIFIA Ad Hoc Committee and brought back to the RC/AB for consideration in early 2025. (B&O section 10, GPPT 4.4.4)
3. **Treatment of Downstream Capacity:** Certain participants are concerned the B&O Contract does not include adequate specificity of the initial allocation of Downstream Capacity and process for future adjustments as new participants join the Project or temporary uses occur. In addition, they would like to see the Sites Operations Plan (refer to Agenda Item 3.2) establish planned operating parameters for use of Downstream Conveyance Capacity. This topic will be discussed with the Operations and Engineering Workgroup in January 2025 and then be brought to the RC/AB for consideration in February (B&O section 3.5 & 4.6.3, GPPT 2.2.4)
4. **Conditions Precedent to Construction and “off-ramps”:** Certain participants anticipate that as the Project continues to proceed through requisite agreements and permits, post B&O sign-off, their Board’s may

need to see additional items required to be “in-hand” prior to initiating construction. This item is being considered in conjunction with the governance elements(B&O 3.2)

Staff anticipates releasing an updated final draft of the B&O Contract, along with the revised draft JPA and Bylaws, and the Sites Operations Plan Version 2.1 concurrent with 1) resolving the above items, and 2) reaching a substantially final WIFIA Loan Master Agreement with the Environmental Protection Agency; where both of these items are expected to occur to allow final draft release in April 2025. This timing aligns with the Project's broader schedule for getting to investor commitment following the water right being issued, which is expected in July 2025.

After that, just prior to “escrow freeze” the final draft of contract documents will be provided to Participants for a final check in September 2025. Changes to participation levels or requirements of new/modified contract document terms anytime following the April 2025 final draft becomes increasingly difficult to navigate without delay and extra cost as the contents of these documents are heavily dependent on the mix of Participants and require agreement by all Participants.

The Participants are strongly encouraged to ensure their “within agency” reviews and Sites business case analyses are completed in a timely manner relative to the start of investor commitment. Working backwards from this point, a target of around April 2025 would be appropriate for each Participant management staff to be confident in 1) its Sites participation and 2) its board acceptance of the contract documents terms and 3) the agency management staff are prepared to make its staff recommendation of 1) and 2) to its Board during the investor commitment escrow period. There may be new project information that comes to light after the April 2025 date and this could result in a change to a staff recommendation, but by April 2025, Participants are going to know about 90% of the status of critical items affecting their decisions and should have a high degree of confidence in their Sites participation by that time. The multi-Participant decision-making process is cumbersome and must proceed in a coordinated, orderly fashion for a successful and efficient outcome. The six-month investor commitment period does not leave a lot of leeway for disruptions and the current Authority budget is projected to be fully expended around June 2026.

Prior Action:

August 2024 – Received an update on the development of the 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 finalize 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 still believed to be sufficient to cover finalizing these documents.

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.