



Meeting: **Reservoir Committee & Authority Board Agenda  
Item 3.1**

**July 18, 2025**

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

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**Requested Action:**

Receive an update on the progress being made in the development of the Benefits & Obligations Contract, updated Bylaws, and amended and restated Joint Powers Agreement.

**Detailed Description/Background:**

The Benefits & Obligations Contract (B&O), Amended and Restated Joint Powers Agreement (JPA) 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 April 2025.

This staff report provides an update on the B&O Contract progress, highlighting open issues based on comments received as of June 30, 2025, and various discussions with Participants. This report also provides an update on the schedule for resolution of these issues and, ultimately, execution of the contract.

No new major issues have been identified; however, the four previously identified key items still remain under consideration, consistent with April's report, with progress being made as follows:

1. **Project Governance:** There are still two active issues in this area. First, clarifications are needed to ensure that the provisions of the current JPA Agreement Section 2.5 remain through the next phases of the project and specifically around the order of precedence in case of conflicts between the documents. These changes have been coordinated with Glenn-Colusa Irrigation District and Tehama-Colusa Canal Authority. Second, there continues to be a concern about the durability of delegated powers with regard to potential future changes to delegated authorities under various scenarios. Additions to the B&O have been offered to address the issue and will be vetted through the Governance Ad Hoc to arrive at the final recommended changes to be incorporated into the next revision of the contract documents.
2. **The "Default Waterfall":** Some Participants have expressed concerns about their exposure to a disproportionate share of obligations if one or more of the Participants default. To date, there have been no clarifications or details regarding this concern, and no suggested language changes have been provided to address this in the contract documents. Resolution of this issue

will be handled through the Water Infrastructure Finance and Innovation Act Ad Hoc.

3. **Treatment of Downstream Capacity:** Concern remains that the B&O Contract does not include adequate specificity for future adjustments and allocation of Downstream Capacity as new Participants join the Project or temporary uses occur. Also, the proposal in the April 2025 B&O of mandatory reallocation is unacceptable to several Participants, so another alternative will need to be developed. The allocation of costs and capacity for Downstream Facilities, including the Dunnigan Pipeline and Lower Colusa Basin Drain System, therefore remains open, and Staff recommends referring this issue back to the Operations and Engineering Workgroup for further discussion to reach a consensus on a universally acceptable approach.
4. **Conditions Precedent to Construction and "Off-ramps":** Comments were received around the higher threshold vote requirement for the Reservoir Management Board to fund in excess of \$500 million of construction contract expenditures. The concern involves what happens if the Reservoir Committee fails to approve the subject construction contract and how does this affect the completed work plus the remaining work. Staff will be working with the Operations & Engineering Workgroup to develop a recommended approach to add clarity in the B&O regarding this type of scenario.

In addition to these four key issues, other items still to be resolved are presented here for informational purposes:

- Equity with state and federal partners remains a priority for Participants and will be addressed in the agreements with state and federal partners, which are now being negotiated.
- Conditions precedent to the B&O contract becoming effective continue to be questioned. Previously, certain Board members commented that for their approval of the B&O to take effect they would need to see the 404 Permit (expected December 2025) and/or the Operations Biological Opinion (expected March 2026). The current timing of these specific milestones is prior to the expected effective date of the B&O Contract (expected June 2026) and therefore listing them in the B&O contract as a criteria for contract effectiveness is not needed. Staff will continue to monitor for these types of issues and bring them to the Board's attention if they arise.
- Conformance of the B&O Contract with capacity precision approach approved in June RC/AB meeting.
- Conformance to the terms and conditions of the Water Right, as applicable.
- Revisions needed to reflect the final role of the Acquirer in relation to those Participants seeking to pay for their Sites costs under the Statement of Charges.

- Further edits for clarity and consistency.

Before the investor commitment period starts (to be initiated following water right order issuance and state and federal agreements being finalized) and prior to “escrow freeze”, the final draft of contract documents and the Program Baseline Report will be provided to Participants for a final review. Changes to participation levels or requirements of new/modified contract document terms anytime prior to the final draft become 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. It is expected that as the four remaining issues are vetted through their committee and/or workgroup and proposals are finalized, they will be brought before the whole board for consideration prior to the release of the next version of the contract documents.

**Prior Action:**

April 2025 - Received an update on the draft Benefits & Obligations Contract, Amended and Restated Joint Powers Agreement, and updated 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.