

**Requested Action:**

Review and comment on process and timing for the assignment of capacity among existing Participants.

**Detailed Description/Background:**

In March 2025, the Board generally concurred with the prioritization and timeline for activating the waitlist to coincide with the start of and in conjunction with the investor commitment escrow period. An initial step in this process is for existing participants to have the opportunity to assign/delegate capacity interest to other existing participants under Section 12 of the Project Agreement. There have been some active discussions on this front, but none have yet matured to the point of being ready for action by the Board at this time. However, to be prepared to expeditiously move through this impending activity, Staff is seeking Board input on our interpretations of the process laid out in the Joint Powers Agreement, Bylaws and Project Agreement. There is some discretion in terms of final approval timing, which may come up in the discussion.

According to Section 12 of the 3<sup>rd</sup> Amended Project Agreement, assignment and delegation of capacity interest is allowable between existing Project Agreement (PA) Members under these conditions:

- All assignments or delegated capacity require the written consent of the other PA Members and, in some cases, the Authority (not to be unreasonably withheld).
- The required voting threshold for PA Members and the Authority is subject to interpretation but is recommended, in an abundance of caution, to be 75%.

The requirement of written consent of each existing PA Member means that a Reservoir Committee action alone is not sufficient. Some form of Project Agreement amendment is necessary, requiring that each representative would need to secure authority to sign for their agency, if that authority has not already been delegated.

Given the proximity in time to activation of Phase 3/4/5 with the transition from the Project Agreement to the Benefits and Obligation Contract (B&O) and the likely event that more than one assignment approval will be conducted in the coming months, Staff recommends the final approvals for all assignments be deferred a few months to be coincident with investor commitment. In doing so, the “technical” final approval of the assignment would occur within the signing of the B&O. As another layer of certainty to the assigning parties, the RC could vote on the assignments as they arise and set its voting threshold at 100%. This would serve to be a showing of staff support, at least. Be reminded that approvals cannot be unreasonably withheld, which adds another layer of certainty that the final home board approval of a staff recommendation is highly likely.

The other alternative is that each PA Member be required, upon each assignment request, to perform its approval. This could be by letter or agreement amendment. While this approach does give the assigning party greater certainty of finality earlier than the recommended approach (~ 6 to 9 months), this is not recommended because it creates an administrative burden on all of the other PA Members not making the assignment. If all PA Members could demonstrate to Staff that their board’s delegation of this authority is to their representative, this would ease the process, but to date, every amendment has required all or most PA Members to go back to their home boards.

**Fiscal Impact/Funding Source:**

Multiple approvals can distract Staff work from other higher priority activities; however, there would be no fiscal impact because the Staff doing the work are on a monthly retainer.

**Staff Contact:**

Jerry Brown

**Primary Service Provider:**

None.

**Attachments:**

None.