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Meeting: **Reservoir Committee & Authority Board Agenda Item 3.4** **August 21, 2026**

Subject: **Guiding Principles and Priority Areas for California Water Commission Final Funding Agreement**

## Requested Action:

Review and provide input on guiding principles and priority areas for negotiations with the California Water Commission (CWC) on the Water Storage Investment Program (WSIP) Final Funding Agreement.

## Detailed Description/Background:

In addition to executing the Contracts for Public Administration with CDFW and DWR to secure the State Prop 1 funding, the Authority will need to execute a Final Funding Agreement (FFA) with the California Water Commission. The FFA will establish the administrative terms and conditions for disbursing the state funding to the Project, whereas the CAPBs cover the operational and technical terms associated with the delivery of the public benefits.

In 2023, the Prop 1 Storage Project sponsors including Authority Staff, worked with CWC to develop a "template" Final Funding Agreement. With the B&O nearing completion and investor commitment taking place prior to the securing of the final terms of the FFA, conceptually understanding the Authority's expected obligations to the State provides for full knowledge of risks.

Attachment A reflects:

1. A set of overarching principles to guide the Authority's future negotiation of the FFA. The FFA will not be finalized until all the B&Os are signed and the CWC has authorized the final award. Participants need to understand and weigh the risks of the State's participation in the project ahead of signing the B&Os given that any shortfalls in funding from the State are backstopped by the Participants and Reclamation. The proposed principles are consistent with the approach that was taken in negotiating the Partnership Agreement with Reclamation and were achieved in that agreement.

2. A comparison of the "template" FFA with current draft B&O/Bylaws/JPA to determined potential areas of concern. The Authority intends to prioritize these items and will attempt to resolve the highest priority items with CWC staff in line with the Authority's overarching principles ahead of the Commission's final award, if possible. Getting Board feedback ahead of these discussions would be beneficial to pre-emptively address questions you might expect from your Board's about the State contracts when getting your signing authorization for the B&O.

The CWC staff will not be in a position to final negotiate changes to the FFA until after the Commission funding award decision occurs which is the last step in investor commitment. It is suggested that Participants will need to assess the risks allocated in the FFA individually as part of making their investor commitment.

The FFA is entered into after the Commission makes the decision to make the final award of funds to the Project which is anticipated to occur as early as December 2026. This means the FFA will not be executed until after the initiation of the Authority's bank financing, however, the Commission's action of final award secures the State's commitment to fund the Project.

**Prior Action:**

None

**Fiscal Impact/Funding Source:**

Negotiation of the WSIP Final Funding Agreement is to be conducted within the budgeted funds currently authorized by the Board.

**Staff Contact:**

Jerry Brown/Nossaman

**Attachments:**

Attachment A – Guiding Principles and Priority Areas for the CWC Final Funding Agreement and Areas of Concern with the "Template" FFA

**SITES AUTHORITY KEY TERMS**
**in the Negotiations of the CWC Final Funding Agreement**
**August 21, 2026**

The overarching negotiating principles for the Authority in developing the CWC Final Funding Agreement and Exhibits are proposed to be:

a) *ensure the Authority's obligations to the State to receive the Prop 1 funds do not create a parallel governance structure or provide for State approval or veto of matters that the Participants and the Authority have expressly reserved powers under the Benefits and Obligations Contract, the Amended Joint Powers Agreement and the Updated Bylaws;*

b) *provide for the State's ability to receive public benefits from the Project meeting the terms of the CAPBs and upon receiving commensurate funding the Authority is committed to fulfill its delivery of public benefits obligations;*

c) *ensure the State's commitment to pay its obligations is secured and that either the timing or amounts paid reflect the State's share of escalated construction cost to the extent acceptable to the Authority, and;*

In comparing the July24 drafts B&O/Bylaws/JPA with the 2023 "template" Final Funding Agreement and Exhibits, Authority Staff have identified the following areas of potential concern relative to meeting the Authority's overarching objective. The priorities are from Staff perspective.

Highest Priority Items of Concern

1) Final Funding Agreement *Paragraph 2, Term of Agreement*, the length of the Agreement needs to clearly recognize that upon the term of the CAPBs expiring, the Authority is under no further obligation to make public benefits available for the Project.

2) Final Funding Agreement *Paragraph 14, Withholding of Disbursements By State,* withholding of funds by the State cannot indirectly pressure operational or governance decisions except to the extent that these decisions affect the delivery of public benefits.

3) Final Funding Agreement *Paragraph 15, Default Provisions,* the State should not have an independent ability to determine the Project in default. This is for the Authority to solely determine. Also, the State remedies, should the Authority declare default, should only be applied to the protection of the State's portion of the investment.

4) Final Funding Agreement *Paragraph 19, Operation and Maintenance of Project*, State's rights to ensure O&M should be commensurate with funds made available for these purposes. The standards accepted by the Authority for O&M of Partner Facilities should be sufficient for the State.

5) Final Funding Agreement *Paragraph 20 – Notification of State,* The operational and governance decisions of the Authority should be sufficient notifications to the State and the State should not have separate approval rights over Authority decisions.

6) Exhibit D, Standard Conditions *Paragraph D.21 Indemnification,* A statement similar to the Harvest Water Project Agreement should be added to exempt the Authority indemnifying for negligent acts by the State.

7) Exhibit D, Standard Conditions *Paragraph D.26 Modification of Overall Work Plan,* State approval of extending the schedule should not be required since they are paying for delivered public benefits. Also, if there are State approvals mutually agreed upon, they must be provided by the State within a reasonable amount of time and cannot impact the project delivery. Failure by the State to respond would deem consent.

8) Exhibit D, Standard Conditions *Paragraph D.31 Prohibition of Disposal of Project Without State Permission,* The State should be able to provide input on "wind-up" decisions by the Authority, however the State does not have voting rights and the decision made under the B&O is final and cannot be overridden by the State. The State should not have rights to override the Authority's Project related financial decisions through this Agreement.

9) Exhibit D, Standard Conditions *Paragraph D.38 Successors and Assigns*, The State should not have the ability to approve assignment except to the extent of its proportional share or interest. This otherwise has the potential to override the Project governance structure.

10) Exhibit D, Standard Conditions *Paragraph D.41 Termination Without Cause*, The State's ability to terminate the Agreement needs to align with the B&O and failure of the State to make timely payment should be cause for State default and immediate loss of all public benefits.

11) Exhibit K, Land Access and Acquisition Requirements, *Exhibit Throughout,* There needs to be confirmation that as long as the Authority purchases all lands without the use of State funds, that none of these conditions would apply. The Authority's purchase of lands should be acceptable as local match when seeking reimbursement.

<u>Remaining Items of Concern</u>

12) Final Funding Agreement *Paragraph 23 – Standard Provisions and Integration,* The order of precedence of the exhibits and the funding agreement to the CAPBs and other state standards in case of conflicts requires clarification regarding the relationship of these documents to the B&O/Bylaws/JPA.

13) Exhibit D Standard Conditions *Paragraph D.15 Disposition of Equipment,* The State cannot be allowed to commandeer inventory of the Authority except to the extent that such equipment was specifically purchased for the sole provision of delivering public benefits.

14) Exhibit D Standard Conditions *Paragraph D.17 Easements,* Any encumbrances on fee title properties for conservation purposes needs to be recognized to be governed under the Authority's permits and approvals requiring such encumbrances and not the State.

15) Exhibit D, Standard Conditions *Paragraph D.30 Priority Hiring Considerations,* The Authority has its own established hiring considerations which should not be overridden or added to by the State.

16) Exhibit D, Standard Conditions *Paragraph D.34 Retention,* All amounts retained by the State need to be payable upon completion of interim project milestones and cannot be held until final completion since the State is not paying based on actual project costs. Additionally, there needs to be concurrence upfront on the timing of reimbursements by the State.