



Meeting: **Reservoir Committee & Authority Board**  
**Agenda Item 2.1**

**April 17, 2026**

Subject: **Review of Draft Exchange Agreement with the Department of Water Resources (DWR)**

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**Requested Action:**

Reservoir Committee and Authority Board consider approval of Exchange Agreement between the Sites Project Authority (SPA) and the California Department of Water Resources governing voluntary exchanges of water between the Sites Project and the State Water Project (SWP), subject to final legal review and approval, with direction to the Executive Director to finalize the agreement accordingly.

**Detailed Description/Background:**

The Exchange Agreement establishes the framework under which the SPA and DWR may voluntarily exchange Sites water for State Water Project water in a manner intended to increase operational flexibility for the Sites Project while maintaining a neutral or net beneficial effect on SWP operations and deliveries to SWP contractors. The Agreement is intentionally structured as an enabling framework, rather than a mandatory operating requirement and preserves DWR's sole discretion to approve, deny, modify, suspend or terminate individual exchange actions based on forecasted or real-time conditions. Staff is seeking authorization to sign the Agreement.

The Exchange Agreement addresses a narrow set of voluntary operational actions that may occur after Sites water has already been stored and released. Sites releases designated for exchange would allow DWR to reduce SWP releases from Lake Oroville that would otherwise be required to meet regulatory or contractual obligations. In exchange for this temporary increase in SWP storage, DWR would subsequently make a like quantity of SWP water available to the Authority for delivery to certain SWP Sites Participants and for Prop 1 ecosystem public benefit purposes, subject to all legal, regulatory, and operational constraints.

The Agreement has been developed to ensure that any exchange:

- Is fully consistent with existing SWP water rights, regulatory requirements, biological opinions, incidental take permits, court orders, and contractual obligations;

- Does not adversely affect SWP allocations, deliveries, or facilities;
- Is completed within the same calendar year, unless otherwise authorized by DWR, and
- Is implemented only when capacity and conditions allow.

The Exchange Agreement anticipates that regulatory and operational conditions will continue to evolve prior to commencement of Sites operations. Accordingly, the Agreement emphasizes coordination, annual planning, and clear accounting principles rather than fixed operational prescriptions.

Finally, the comments received at the February 2026 Board meeting on the draft exchange agreement are addressed in the final agreement (attached) as noted in the March 2026 Action Item Status Report, Agenda Item 04-04B.

**Fiscal Impact/Funding Source:**

The Exchange Agreement does not create new capital obligations. The Authority will be responsible for:

- Annual SWP facility use charges consistent with rates applied to other non-SWP water use;
- The proposed Exhibit to the Agreement (not included in the attached) is being developed around these principles:
  - Reimbursement of allowable DWR costs incurred in support of the Sites Project must meet certain conditions defined in the Exhibit to qualify for reimbursement and are subject to documentation, invoicing, and auditing requirements. Specifically DWR allowable costs must be specific to supporting implementation of the Sites Project and not for SWP protection activities (e.g. KLOG operation for Sites (if any), staff time to coordinate non-project exports).
  - The terms and conditions of the Exhibit are expected to be consistent with the allowable cost provisions proposed in the Partnership Agreement with Reclamation.
  - The Agreement recognizes that DWR costs outside of supporting exchanges are allowed but are being covered under this Agreement. This is meant to consolidate all of these potential charges under this single agreement.   pertain to
- Staff will proceed to finalize and incorporate the Exhibit and would come back to the Board for further authorization of the Exhibit if the contents exceed these principles.

Any exchanges that occur are expected to be operationally neutral to SWP operations. As with all Sites operations, there remains potential exposure associated with operational adjustments and accounting outcomes, which are addressed through the Agreement's coordination and approval provisions.

**Prior Actions:**

**February 2026:** Reviewed and commented on the draft Exchange Agreement between the Sites Project Authority and the California Department of Water Resources governing voluntary exchanges of water between the Sites Project and the State Water Project.

**Staff Contact:**

Ali Forsythe/Jerry Brown

**Primary Service Provider:**

None.

**Attachments:**

Attachment A DWR-SPA Exchange Agreement

**STATE OF CALIFORNIA**  
**THE RESOURCES AGENCY**  
**DEPARTMENT OF WATER RESOURCES**  
**AND**  
**SITES PROJECT AUTHORITY**  
**AGREEMENT FOR EXCHANGES OF WATER BETWEEN THE SITES RESERVOIR PROJECT AND**  
**STATE WATER PROJECT**  
**SWP #XXXXX**

This Agreement for Exchanges of Water Between the Sites Reservoir Project and State Water Project (Agreement), is entered into as of \_\_\_\_\_, 202\_\_, between the Department of Water Resources of the State of California (“DWR”), pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act and other applicable laws of the State of California, and the Sites Project Authority (“Sites Authority”). DWR and the Sites Authority may be referred to individually as "Party" or collectively as "Parties." Capitalized terms shall have the meaning set forth in Section 1 of this Agreement.

**RECITALS**

A. DWR owns, operates and maintains the State Water Project (“SWP”) pursuant to the laws of the State of California, involving the development and conveyance of water supplies to water supply agencies throughout the State of California.

B. The Sites Authority is a California Joint Powers Authority operating under and by virtue of Section 6500 et seq., of the California Government Code and formed in accordance with the Sites Project Authority Joint Exercise of Powers Agreement, as such agreement may be modified from time to time. The Sites Authority was formed on August 26, 2010, when seven regional entities executed the Joint Exercise of Powers Agreement.

C. The Sites Authority was established for the purpose of designing, constructing, owning, operating and maintaining the Sites Reservoir Project, which has long been evaluated as a location for additional off-stream storage to provide direct and real benefits to instream flows, the Delta ecosystem, and water supply throughout the State.

D. DWR operates the SWP and the Bureau of Reclamation (“Reclamation”) operates the Central Valley Project (“CVP”) consistent with the November 23, 1986 Agreement between the United States of America and the State of California for Coordinated Operation of the Central Valley Project and the State Water Project (“COA”), as was amended in 2018, which defines how the SWP and CVP share water quality and environmental flow obligations within the Delta imposed by regulatory agencies, including the State Water Resources Control Board.

E. The Sites Authority has been issued the Sites Water Right for the Sites Reservoir Project through the partial assignment of State Filed Application No. A025517, which has a priority date of September 30, 1977. The final SWRCB order is contained in D-XXXX.

F. The Sites Authority, DWR and the Bureau of Reclamation entered into the Operations Agreement, dated XXXX, to establish their respective rights and obligations related to the Sites Reservoir Project's operations in a shared watershed and to prevent or compensate for any adverse effects resulting from the operation of the Sites Reservoir Project to the SWP and CVP.

G. The Sites Authority has requested that DWR allow Exchanges (as defined in Section 1) of water between the Sites Reservoir Project and SWP to increase flexibility of the Sites Reservoir Project, while having a neutral or net beneficial impact on the SWP operations and deliveries to the SWP contractors. In particular, Sites Releases designated for Exchange can allow for less releases of SWP water from Lake Oroville to meet DWR's regulatory requirements or contractual obligations and thus resulting in temporary increased storage in Lake Oroville. In exchange for such increase in SWP storage due to Sites Releases designated for Exchange, DWR would subsequently provide a like quantity of SWP water to the Sites Authority for delivery to certain Participants and Proposition 1 Ecosystem Public Benefit purposes, to the extent consistent with the Sites Authority's and DWR's respective water rights.

H. DWR and the Sites Authority desire to enter into this Agreement to establish how such Exchanges shall be coordinated, implemented, and accounted for.

Now, therefore, in accordance with these recitals and in consideration of the terms and conditions herein, the Parties agree to the following:

## **AGREEMENT**

### **1. Definitions**

The following terms are defined below under this Agreement:

**Exhibit will be posted ASAP**

- a. "Allowable Costs" – means those costs eligible for reimbursement or credit under this Agreement, as defined and governed by Exhibit **XX** Allowable Costs; Approval, Documentation, and Cost Allocation.
- b. "Benefits and Obligations Contract" means the Sites Reservoir Benefits & Obligations Contract between the Sites Authority and Participants setting forth the rights and obligations of the parties with respect to the Sites Reservoir Project.
- c. "Carriage Water" means the additional water needed for Delta outflow to compensate for the additional export of Sites Water to assure compliance with the water quality requirements of the CVP and SWP.
- d. "COA" means the "Agreement between the United States of America and the State of California for Coordinated Operations of the Central Valley Project and the State

Water Project," dated November 24, 1986, amended December 12, 2018, and as it may be further amended.

- e. "CVP" means the federal Central Valley Project owned and operated by Reclamation.
- f. "Delta" means the Sacramento-San Joaquin Delta as described in California Water Code Section 12220.
- g. "Delta Export Facilities" means the Harvey O. Banks Delta Pumping Plant, including Clifton Court Forebay, owned and operated by DWR..
- h. "DWR" has the meaning given in the preamble above.
- i. "Exchange" means a voluntary action between the Sites Authority and DWR to exchange a quantity of Sites Water for a like quantity of SWP water, to the extent consistent with the Sites Authority's and DWR's respective water rights, to increase flexibility of the Sites Reservoir, while having a neutral or net beneficial impact on SWP operations and deliveries to the SWP contractors and not otherwise affecting the ability of the SWP to meet applicable laws, regulations, biological opinions and incidental take permits, court orders, contractual obligations, or any other applicable legal obligations in place at the time of the Exchange.
- j. "North of the Delta Refuges" means wetland habitat areas located north of the Sacramento-San Joaquin Delta that receive water from the Feather River system and that the Sites Authority is or intends to provide water to under the Sites Authority's Public Ecosystem Benefits Contract with the California Department of Fish and Wildlife.
- k. "Operations Agreement" means the Agreement to Coordinate in the Operations of the Sites Reservoir Project among DWR, the Sites Authority and the United States Bureau of Reclamation.
- l. "Participants" means the parties to the Benefits and Obligations Contract, other than the Sites Authority and DWR, that pay to participate and receive benefits in the Sites Reservoir Project including certain Sites Authority members and other municipal entities and special districts.
- m. "Party(ies)" has the meaning given in the preamble above.
- n. "Proposition 1 Ecosystem Public Benefit" means the Sites Water releases designated to serve ecosystem public benefit purposes that are defined in the Contract for Administration of Public Benefits which is to be executed between the Sites Authority and the California Department of Fish and Wildlife.
- o. "Reclamation" shall mean the United States Department of the Interior, Bureau of Reclamation.

- p. "Sites Authority" has the meaning given in the preamble above.
- q. "Sites Reservoir Project" means the entire existing and new physical infrastructure and capital improvements to be designed, constructed, commissioned and completed or contracted for use by the Sites Authority for the purpose of providing storage and conveyance of water for use by storage partners, as such project may be modified from time to time.
- r. "Sites Exchange Water" means the volume of SWP water, in acre-feet, representing the difference, as determined by DWR and assuming that all regulated entities fully comply with their respective regulatory requirements, between (i) the volume of SWP releases from Lake Oroville that would have been required to meet the SWP regulatory requirements and contractual obligations absent Sites Releases designated for Exchange, and (ii) the volume of SWP releases from Lake Oroville required to meet the SWP regulatory requirements and contractual obligations with Sites Releases designated for Exchange.
- s. "Sites Operations Plan" means the Sites Reservoir Operations Plan, which will be continually updated and approved in accordance with the Sites Authority's governing documents.
- t. "Sites Releases designated for Exchange" means discretionary releases of Sites Water designated for Exchanges that are previously stored in Sites Reservoir.
- u. "Sites Water" means water that is appropriated under the Sites Water Right.
- v. "Sites Water Right" means the water right obtained and owned by the Sites Authority for the Sites Reservoir Project.
- w. "State Water Board" means the California State Water Resources Control Board.
- x. "State Water Project" or "SWP" means the multi-purpose water storage and delivery system constructed and operated by DWR, as authorized by Water Code sections 12930 et seq.
- y. "SWP" has the meaning given in the Recitals above.
- z. "SWP Sites Participants" means those Participants that are SWP contractors holding water supply contracts with DWR.

## **2. Term of Agreement**

- a. Subject to Section 2(b), this Agreement shall take effect upon due execution of this Agreement by all Parties. This Agreement shall be dated and commence as of the signature date of the last executing Party.

- b. The effectiveness of this Agreement shall be contingent on the effectiveness of the Benefits and Obligations Contract. If the Benefits and Obligations Contract terminates, this Agreement shall terminate at the same time; provided that the provisions in Sections [Costs, Dispute Resolution, Liability] shall survive the termination of the Agreement.

### 3. Coordination Process for Exchanges

- a. DWR and the Sites Authority will coordinate and make reasonable efforts to schedule Sites Releases designated for Exchange at the time and in the quantities contemplated in the operations planning for Sites Reservoir, pursuant to the Sites Operations Plan. It is anticipated that, for the purposes of Exchanges under this Agreement, Sites Releases designated for Exchange will happen primarily in late Spring – early Summer, and releases of Sites Exchange Water from SWP storage will happen at approximate times as follows: (i) for Sites Exchange Water exported at the Delta during the “transfer window” when the SWP is authorized to move non-SWP water through the Delta Export Facilities pursuant to the applicable regulatory requirements, and (ii) for Sites Exchange Water delivered to North of the Delta Refuges for Proposition 1 Ecosystem Public Benefits throughout the year.
- b. The Sites Authority shall notify DWR of the intended request for an Exchange and initiate operations planning in January of each calendar year, with a final operations plan completed (i) no later than March of each calendar year for Exchange operations related to Proposition 1 Ecosystem Public Benefit, and (ii) no later than June of each calendar year for Exchange operations related to water exported at the Delta Export Facilities. If agreed to by DWR, dates for operations planning can be modified to conform to then current conditions.
- c. DWR may approve, deny, or approve with modification the Sites Authority’s request for an Exchange and shall notify the Sites Authority of its decision as soon as practically possible. DWR’s determination regarding an Exchange shall be within DWR’s sole discretion. The Sites Authority acknowledges and agrees that changes in forecasts and/or real-time conditions may limit DWR’s ability to facilitate an Exchange, and that DWR reserves the right to withdraw or modify its approval of an Exchange based on changed forecasts or real-time conditions. The Sites Authority shall coordinate with DWR prior to proceeding with any Sites Releases for Exchange.
- d. Implementation of Exchanges under this Agreement is subject to capacity available in the SWP facilities, in excess of capacity determined by DWR to be needed for SWP operations or services to the SWP contractors. Nothing herein shall be interpreted as a guarantee or assurance that such excess capacity will be available at any time.
- e. DWR and the Sites Authority agree to incorporate review of Exchange activities as part of the annual assessment under the Operations Agreement.

#### **4. Sites Releases Designated for Exchange**

Sites Releases designated for Exchange shall be subject to the terms and conditions applicable to the release of previously stored water from the Sites Reservoir Project pursuant to the Operations Agreement, unless specifically provided otherwise in this Agreement.

#### **5. Releases of Sites Exchange Water for SWP Sites Participants**

- a. Releases of Sites Exchange Water to be conveyed through the Delta Export Facilities can only occur (i) when the Delta is in Balanced Water Conditions and only during times when the CVP and SWP are authorized to move non-CVP or non-SWP water through the Delta Export Facilities under the applicable regulatory requirements, and (ii) at times when DWR determines that such releases can be accommodated without impacting other SWP operations or legal obligations.
- b. Conveyance of Sites Exchange Water through the Delta Export Facilities shall be subject to the provisions of Carriage Water requirement, as determined by DWR in the same manner as DWR and Reclamation calculate Carriage Water for water transfers originating from the Sacramento River.
- c. The Sites Authority shall be responsible for performing all internal Sites accounting among SWP Sites Participants receiving Sites Exchange Water and shall determine the volume of Sites Exchange Water allotted to each such Participant. The Sites Authority shall timely provide this information to DWR to use in scheduling delivery of Sites Exchange Water to applicable Participants.
- d. Deliveries of Sites Exchange Water to SWP Sites Participants will be scheduled between such Participants and DWR pursuant to the terms of the SWP Sites Participants' respective agreements with DWR.

#### **6. Releases of Sites Exchange Water for Proposition 1 Ecosystem Public Benefit**

- a. Releases of Sites Exchange Water to be delivered to North of the Delta Refuges for Proposition 1 Ecosystem Public Benefit will be made at times when DWR determines that such releases can be accommodated without impacting other SWP operations or legal obligations.
- b. The Sites Authority shall be responsible for entering into any necessary conveyance agreements with local water agencies for the delivery of Sites Exchange Water from Thermalito Afterbay to North of the Delta Refuges. The Sites Authority shall furnish to DWR copies of any such agreements upon DWR's request. DWR is not responsible for the conveyance, use, effects or disposal of Sites Exchange Water once DWR makes such water available in Thermalito Afterbay.
- c. Releases of the Sites Exchange Water for Sites Authority's delivery to North of the Delta Refuges shall be in accordance with a schedule approved by DWR. The Sites

Authority, in coordination with the water agencies providing conveyance from Thermalito Afterbay to North of the Delta Refuges, shall submit to DWR the following schedules for the delivery of Sites Exchange Water:

- (i) The Sites Authority shall submit monthly water delivery schedules and revised monthly delivery schedules, if any, for approval to the Division of Operation and Maintenance, Office of the Division Manager, Water Deliveries Reporting Unit, indicating timing and quantity of delivery requested under this Agreement with reference to SWP #XXXXX. Monthly schedules shall be sent by electronic mail to [SWP-SWDS@water.ca.gov](mailto:SWP-SWDS@water.ca.gov).
- (ii) The Sites Authority shall submit weekly water delivery schedules, indicating timing and quantity of delivery requested with reference to SWP #XXXXX, by electronic mail by 10:00 am, Wednesday, for the following week, Monday through Sunday to the following:

Office of the Division Manager  
Water Operations Scheduling Section  
[Water\\_deliv\\_sched@water.ca.gov](mailto:Water_deliv_sched@water.ca.gov)

Office of the Division Manager  
Power Management and Optimization Section  
[POCOptimization@water.ca.gov](mailto:POCOptimization@water.ca.gov)

Office of the Division Manager  
Day-Ahead Scheduling Unit  
[Presched@water.ca.gov](mailto:Presched@water.ca.gov)

Oroville Field Division  
Water Operations Section  
[OFDWaterSchedule@water.ca.gov](mailto:OFDWaterSchedule@water.ca.gov)

- d. DWR shall maintain accurate and complete records of Sites Exchange Water released from Thermalito Afterbay for Sites Authority's delivery to North of the Delta Refuges.
- e. Nothing in this Agreement authorizes or obligates DWR or the Sites Authority to wheel, convey, or deliver Sites Exchange Water through the Delta Export Facilities for South of Delta refuge deliveries, and any such wheeling, conveyance or delivery through the SWP facilities will require a separate conveyance agreement(s) between DWR and the Sites Authority.
- f. This Section 6 shall remain in effect only for so long as the Contract for Administration of Public Benefits for Proposition 1 Ecosystem Public Benefit remains in effect.

## 7. Accounting for Exchanges

- a. If DWR approves an Exchange, DWR will account for the resulting quantity of Sites Exchange Water in Lake Oroville. Sites Exchange Water shall be subject to evaporation losses, as reasonably determined by DWR.
- b. Each Exchange will be completed within the same calendar year, with Sites Exchange Water being released from Lake Oroville in the same calendar year as Sites Releases designated for Exchange. If the full volume of Sites Exchange Water has not been released from Lake Oroville by December 31 of any year, the account balance of Sites Exchange Water will be reduced to zero, and DWR shall be excused from any obligation to release the remaining volume of Sites Exchange Water, unless DWR, in its sole discretion, allows a later release of Sites Exchange Water in accordance with the terms and conditions of this Agreement.
- c. DWR will develop, with input from the Sites Authority, accounting principles and procedures for the storage, release and delivery of Sites Exchange Water, including accounting for reservoir losses, within Lake Oroville. The Parties acknowledge the necessity of Reclamation's concurrence with the accounting principles under this Agreement. DWR, in coordination with the Sites Authority, will work diligently and in good faith to obtain, in writing, Reclamation's agreement with the accounting principles under this Agreement with a goal of ensuring such concurrence is provided once by Reclamation and shall apply across all Exchanges (i.e. vs multiple concurrences). When there is an accounting disagreement between DWR and Reclamation, DWR will promptly notify the Sites Authority in writing. DWR shall have no obligation to make Sites Exchange Water available under this Agreement, unless and until Reclamation concur with the accounting principles under this Agreement.
- d. When DWR releases Sites Exchange Water from Lake Oroville, the releases will be accounted for by DWR within the existing COA accounting practices, subject to Reclamation's concurrence.
- e. Releases of Sites Exchange Water shall not be eligible for any power credits. The Parties agree that there is no power cost to be charged by DWR to the Sites Authority associated with Exchanges.
- f. The Sites Authority recognizes that risks of spill exist for water in Lake Oroville, including for Sites Exchange Water, for reasons that include but are not limited to flood control operations, exceedance of allowed flood control capacity, or storage capacity limitations, as determined by DWR. The Sites Authority acknowledges and agrees that, if a spill occurs, DWR will account for the Sites Exchange Water as being displaced before any other SWP water. In case of a spill, the amount of Sites Exchange Water will be reduced by the amount of the spill. DWR will promptly notify the Sites Authority of the amount of the spill and the resulting account balance of Sites Exchange Water.

- g. Each Party shall maintain accurate records documenting release and delivery of water pursuant to this Agreement and shall provide such records to the other Party upon request.

## **8. Compliance with Legal Requirements**

- a. Implementation of Exchanges under this Agreement shall be contingent upon and subject to any necessary approvals and shall be governed by the terms and conditions of such approvals and any other applicable legal requirements. The Sites Authority shall be responsible for complying with all applicable laws and legal requirements and for securing any required consent, approval, permit, or order required for implementation of Exchanges under this Agreement. The Parties acknowledge and agree that, to the best of their knowledge, implementation of Exchanges as described in this Agreement is consistent with the existing environmental coverage for the Sites Reservoir Project under the California Environmental Quality Act and the Parties' respective water rights.
- b. Releases of Sites Exchange Water made under this Agreement shall be limited to quantities, place of use, purposes of use, and all other terms of the SWP water right, so that this activity can be made in a manner that does not result in the need for a temporary change petition to be filed with the State Water Board. DWR and the Sites Authority shall jointly be responsible to ensure that the releases of Sites Exchange Water are delivered to SWP Sites Participants and Proposition 1 Ecosystem Public Benefits in a manner that meets any and all applicable water right permit or license requirements.

## **9. No Impact**

- a. This Agreement shall not be administered or interpreted in any way that would affect DWR's ability to comply with applicable laws, regulations, biological opinions and incidental take permits, court orders or contractual obligations in place at the time of the release and delivery of water. DWR may terminate or suspend implementation of an Exchange if DWR reasonably determines that an Exchange has resulted or may result in such non-compliance.
- b. This Agreement shall not be administered or interpreted in any way that would cause negative impact, as reasonably determined by DWR, to any SWP water allocations, water deliveries, or SWP operations or facilities. DWR may terminate or suspend implementation of an Exchange if DWR reasonably determines that any such negative impact has occurred or may occur.
- c. Nothing in this Agreement, including as it may be amended, shall be interpreted as altering or amending the COA or any water right priority.

## **10. Costs and Charges**

- a. Sites Authority shall be responsible to annually pay DWR “use of facility” charges related to use of SWP infrastructure involved in implementation of the Exchanges. The charges to be applied will be consistent with what DWR charges other parties for use of SWP infrastructure. DWR will provide an annual notice to the Sites Authority with the then current “use of facility’ charges. Exhibit will be posted ASAP
- b. The Sites Authority shall also be responsible for actual costs incurred by DWR to assist in the implementation of the Sites Project. Such Allowable Costs shall be subject to the requirements of Exhibit XX, which is hereby incorporated by reference. The Sites Authority acknowledges and agrees that Allowable Costs are not limited to the costs associated with implementation of Exchanges pursuant to this Agreement, but also include costs associated with other DWR actions or activities for the purpose of assisting in the implementation of the Sites Project.
- c. DWR will invoice the Sites Authority for the costs incurred by DWR in any given year and provide relevant documentation, if needed, by March 31 of the following year. All payments under this Agreement are due and payable within 30 days after the date of the invoice. Unpaid amounts of such invoices will become delinquent after the due date and interest shall accrue thereon at a rate of 1 percent per month from the date the payment was due. However, no interest shall be charged unless delinquency continues for more than 30 days.

## 11. Liability

- a. The Sites Authority shall indemnify and hold and save DWR, its officers, agents, and employees free and harmless from any and all liabilities for any claims and damages that may arise out of the Sites Reservoir Project and this Agreement, including, but not limited to any claims or damages arising from planning, design, construction, maintenance, monitoring, verification, and/or operation of the Sites Reservoir Project or implementation of this Agreement, except to the extent resulting from the negligence or willful misconduct of DWR, its officers, employees, and agents.
- b. If uncontrollable forces preclude either Party from performing their non-monetary obligations under this Agreement, either partially or completely, then such party is relieved from the obligation to release and/or deliver the water under this Agreement to the extent that such party is reasonably unable to complete the obligation due to the uncontrollable forces. Uncontrollable forces shall include, but are not limited to, earthquakes, fires, tornadoes, floods, and other natural or human-caused disasters.
- c. Except as expressly provided in this Agreement, DWR shall bear the risk of all loss, liability, lawsuit, cause of action, judgment or claim (monetary or otherwise), the risk of loss and any other shortfall or reduction in Sites Water from the point of the applicable Sites Release.

## 12. Notices

Unless otherwise provided in specific sections of this Agreement, the Parties shall use the following contract information for their coordination activities and notices pursuant to this Agreement. Any such notice shall be in writing and either sent by first class mail, postage prepaid, or by electronic mail followed by written notice sent by U.S. mail. A Party can update its contact information by providing a written notice to the other Party, without the need to amend this Agreement.

DWR

*[include contact info]*

Sites Authority

*[Include contact info]*

## 13. Uniqueness of Agreement

DWR's approval to facilitate Exchanges pursuant to this Agreement is unique and shall not be considered a precedent for future agreements or DWR activities.

## 14. Amendments

DWR and the Sites Authority acknowledge and agree that laws and regulations that govern water operations may change over time, and there may be a need to revise this Agreement. DWR and the Sites Authority will review and, if needed, modify this Agreement. When there is a need to modify this Agreement, the Parties will meet and confer and mutually agree to execute an amendment to this Agreement in writing.

## 15. Assignment

This Agreement is not assignable by the Sites Authority, in whole or in part, without the prior written consent of DWR, unless such assignment results from legislative action.

## 16. Dispute Resolution

In the event of a dispute regarding the interpretation or implementation of this Agreement, the Director of DWR and the general manager of the Sites Authority, or their authorized representatives, shall endeavor to meet within 30 days after the request of a Party and attempt to resolve the dispute. If the dispute remains unresolved, the matter will be resolved by a decision made by the Director of DWR.

## 17. Section Headings

The section headings in this Agreement are for the convenience of the Parties only and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

## **18. Opinion and Determination**

Where the terms of this Agreement provide for actions to be based upon the opinion, judgment, approval, review, or determination of any Party, such terms are to be construed as providing that such opinion, judgment, approval, review, or determination be reasonable.

## **19. Further Documentation**

The Parties agree to endeavor to execute any further documents reasonably necessary to affect the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.

## **20. Interpretation**

In this Agreement, unless the context otherwise requires:

- a. The singular includes the plural and vice versa;
- b. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to;
- c. The words "including," "includes" and "include" are deemed to be followed by the words "without limitation";
- d. A reference to a Section is a reference to a Section of this Agreement;
- e. A reference to any entity includes such entity's successors and permitted substitutes and assigns; and
- f. Words of any gender used in this Agreement shall include each other's gender where appropriate.

## **21. Signature Clause**

The signatories represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

## **22. Counterparts; Electronic Execution**

The Parties agree that this Agreement may be executed in several counterparts, each of which together shall constitute one and the same instrument. Signatures may be delivered by facsimile transmission or by e-mail in a portable document format (e.g. "pdf," "tif," "jpg")

or “DocuSign”) or other electronic format and the signatures on such copies shall be deemed to be effective and valid as original signatures.

### **23. Severability**

- a. If any provision or part of this Agreement is ruled invalid (including invalidity due to any change in law) by a court having proper jurisdiction, then the Parties shall:
  - i. promptly meet and make good faith efforts to negotiate a substitute for such provision or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including (as applicable) an appropriate adjustment to obligations to be performed or payments to be made in accordance with this Agreement to account for any change in the implementation of this Agreement resulting from such invalidated portion; and
  - ii. if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the Parties’ negotiation.
- b. The invalidity or unenforceability of any such provision or part shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable provision or part, unless severability of such invalid or unenforceable provision or part causes a material detriment to any Party.

### **24. Governing Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, any applicable federal law and the ordinances, regulations, codes, and executive orders enacted and/or promulgated pursuant thereto. The venue for any litigation between the Parties from any dispute arising in connection with this Agreement shall be in the County of Sacramento.

### **25. Construction of Language**

It is the intention of the Parties to this Agreement that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

### **26. Successors**

This Agreement shall be binding upon and inure to the benefit of each of the Parties and each of their permitted successors, assigns, and legal representatives.

[Signatures on the following page.]

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

Approved as to Legal Form  
and Sufficiency

State of California  
Department of Water Resources

\_\_\_\_\_  
Office of General Counsel  
California Department of Water Resources

\_\_\_\_\_  
Karla A. Nemeth  
Director

Date \_\_\_\_\_

Date \_\_\_\_\_

Sites Project Authority

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date