



Meeting: **Reservoir Committee & Authority Board's  
Benefits & Obligations Contract Workshop**

**May 08, 2026**

Subject: **Issue Paper #2 - Downstream Capacity**

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**Staff Recommendation:**

Staff recommends revising the draft Benefits and Obligations Contract (B&O Contract) to include Downstream Capacity Interest that may be used, sold, transferred and leased independently of a Participant's Base Capacity Interest. Further, it is recommended that the B&O Contract retain general provisions regarding use of the Downstream Facilities, while leaving some flexibility to change details of operation in the Operations Plan.

**Background:**

Base Facilities Capacity Interest and Downstream Facilities Capacity Interest were separate interests in the initial drafts of the B&O Contract. In order to make it easier for Participants who did not require Downstream Capacity at the beginning of the Project to sell, transfer or lease some or all of their Base Capacity Interest to entities who required the use of Downstream Facilities, the B&O Contract was subsequently revised to include the concept of a Downstream Facilities Capacity "Share". Under the revised approach, the Downstream Facilities Capacity Share would be tied to the Participant's Base Capacity Interest and could not be sold, transferred or leased independently of the associated Base Facilities Capacity Interest. Further, if a Participant without a Downstream Facilities Capacity Share were to sell some or all of its Base Facilities Capacity Interest to another Storage Partner that needed to utilize Downstream Facilities, the Downstream Facilities Capacity Share of all Participants would be reallocated to allow such use. While the Participants with a Downstream Facilities Capacity Share would need to approve such a transaction, and the Sites Authority could assess a "buy-in" fee on the buyer to distribute to the Participants who would have Downstream Facilities Capacity Share reallocated, many Participants do not believe the Share concept is consistent with their rights to control and depend on their Downstream Capacity.

**Summary of Related Participant Comments:**

A number of Participants have requested that the Downstream Facilities Capacity Share revert to being a separate "interest", in which the Participant has "ownership" just like Base Capacity Interest. The Downstream Capacity Interest would be established when the Participant signs up for its initial share of the

Project and is fixed unless a Participant agrees to sell, transfer or lease some or all of its Downstream Capacity Interest. It is proposed that the initial allocation of Downstream Capacity Interest be allocated to all Participants in proportion to their share of Base Capacity Interest. In other words, at the time a Participant requests a Base Capacity Interest, they will also indicate whether they desire Downstream Capacity. The percent of Downstream Capacity allocated to each Participant will be equal to the ratio of the Participant's Base Capacity Interest to the total Base Capacity Interest requesting Downstream Capacity. The Participant would be able to sell, transfer or lease its Downstream Capacity Interest independently of its Base Capacity Interest. In effect, Participants would have two distinct assets – Base Capacity and Downstream Capacity. This provides more certainty for Participants and is consistent with the Beneficiary Pays Principle whereby a Participant controls its capacity. This may make it more difficult for Participants without an initial interest in the Downstream Facilities to sell, transfer or lease their Base Capacity Interest to entities who would need to use Downstream Facilities to convey their water and make full use of the acquired Base Facilities Capacity Interest.

These same conditions related to controlling Downstream Capacity would apply to the Federal share of the Downstream Facilities. The State's share of Downstream Facilities are slightly different in that a) the ecosystem CAPB stipulates that up to, but no more than, 17.3% of the Downstream Facilities is to be made available to meet the public benefit delivery requirements, and b) use of any available State Downstream Facilities capacity could be considered discretionary, and such use would need to be weighed against the risks of being non-compliant with the CAPB, i.e. any non-State user should solely bear that risk. Both Federal and State allocation of Downstream Facilities is contractually fixed at the same percentage share of the Base Facilities allocation.

### **Rationale for Staff Recommendation:**

A number of Participants have requested the right to independently sell, transfer, and lease their interest in the Downstream Facilities. This would allow the Participant to use their share of Downstream Facilities in a similar manner as their Base Facilities, including a sale of Downstream Facilities Interest without a similar sale of Base Facilities Capacity Interest. This concept provides certainty regarding the Participants' share of Downstream Facilities and eliminates the potential for a reduction in the Participant's share of Downstream Facilities as a result of a transaction to which they are not at Party. Participants also request that provisions regarding allocation of Downstream Facilities Capacity Interest

be included in the Contract itself rather than deferring to the Operations Plan and recognize that the Operations Plan would have the details regarding daily, monthly and annual use of the Base and Downstream Facilities.

This recommendation is consistent with the Dec 5, 2025 Downstream Ad Hoc recommended approach that was not incorporated fully into the December B&O Draft due to time constraints.

**Contract and Section Affected:**

*Throughout the Contract, references to “**Downstream Capacity Share**” will be revised to “**Downstream Capacity Interest**” and conforming changes will be made globally as needed.*

*The definition of “**Downstream Capacity Interest**” will be revised as follows:*

**Downstream Facilities Capacity Interest:** ~~Means a share expressed in percentage based on the ratio of each Storage Partner’s Base Facilities Capacity Interest to the sum of the total Base Facilities Capacity Interest of all Storage Partners with Downstream Facilities Capacity Share, specified in the Project Specific Information, as modified from time to time in accordance with this Contract. [Note: All Participants will be able to acquire Downstream Capacity at the time they make their commitment to purchase Base Capacity. This is a “toggle” - that is, the agency either wants Downstream Capacity or not. If the agency opts into Downstream Capacity, it will be allocated as a portion of all the entities (including the State and Bureau) that sign up for Downstream Capacity in proportion to Base Capacity Interest.]~~ Means the undivided capacity right of those Storage Partners indicated in the Project Specific Information to convey and divert Sites Water in each of the Downstream Facilities granted by the Sites Authority and owned by the Storage Partners in accordance with Section 3.6, and in the pro-rata share set out for each Storage Partner in the Project Specific Information and subject to the Sites Water Right, Applicable Law and Governmental Approvals.

*Revise Section 3.6 as follows:*

The Sites Authority ~~shall allocate hereby grants~~ to each Participant who requests to participate in the funding and use of Downstream Facilities those Participants indicated in the Project Specific Information as holding a Downstream Facilities Capacity Interest, and such Participants shall own, a Downstream Facilities Capacity ~~Share~~ Interest in the

amounts described in the Project Specific Information and otherwise in accordance with this Contract.

*Remove Section 8.2.1(g) and (h) which currently read:*

~~(g) should a Participant without a Downstream Facilities Capacity Interest wish to sell some or all of its Base Facilities Capacity Interest to another Storage Partner that will need to utilize Downstream Facilities to receive their Sites Water, the amount of first priority use for all Downstream Facility users will be adjusted by recalculating the Downstream Facilities Capacity Share in accordance with the formula set out in the Operations Plan. Prior to such sale, (i) the holders of all Downstream Facilities Capacity Shares must approve the transaction (such approval not to be unreasonably withheld); and (ii) Sites Authority may assess a “buy-in” fee on the buyer that would be distributed to the Storage Partners with Downstream Facilities Capacity Share before the sale and subsequent reallocation. The “buy-in” fee would be based on the capital costs of the Downstream Facilities prior to the sale and, if assessed, is intended to compensate those Participants that funded the construction of the Downstream Facilities; and~~

~~(h) Downstream Facilities Capacity Share cannot be sold independently of the associated Base Facilities Capacity Interest.~~

**Attachments:**

None