



Requested Action:

Approve the Authority's negotiation approach for permits and operating agreements.

Detailed Description/Background:

The work plan being executed over the next 18 months includes negotiation of permit and operating agreement terms with state and federal agencies. The organizational assessment identified the need for the Authority to establish an understanding of its process for managing these important discussions to ensure continued policy level oversight and outcomes the Reservoir Committee and Authority Board support. The attached negotiation approach, if approved, would be followed in the negotiation of all permits and operating agreements for the Authority.

The Reservoir Committee and Authority Board would maintain policy level oversight of the negotiations under the proposed approach. However, a single lead negotiator would be empowered to manage the negotiating and would provide progress updates. The policy direction of the Reservoir Committee and Authority Board defines the parameters or principles that set "what" the lead negotiator must accomplish in the negotiations. The lead negotiator is empowered to determine "how" the policy direction is achieved in permits and agreements. When the lead negotiator is satisfied the outcomes of negotiation have achieved the policy direction, a proposed agreement would be brought for Reservoir Committee and Authority Board approval.

Should Reservoir Committee and Authority Board members wish to be involved in the negotiations, they can be under the proposed approach. The proposed approach allows for a negotiating team supporting the lead negotiator that can be made up of Reservoir Committee and/or Authority Board members as advisors on policy concerns. But the involvement of Reservoir Committee and/or Authority Board members does not override the authority of the lead negotiator who remains accountable to the entire Reservoir Committee and Authority Board.

The proposed approach can be adjusted for special circumstances. For example, operating agreements involving the State or Federal projects may require coordination with Reservoir Committee and/or Authority Board members that contract with these entities while also serving the interests of all participating members. Any coordination activities would be discussed with all Reservoir Committee and Authority Board members and they could direct a slightly different arrangement in these cases should they feel it is necessary.

Prior Action:

The proposed approach has been reviewed by the Coordinating Committees of the Reservoir Committee and Authority Board, the Engineering and Operations Workgroup and the Environmental Planning and Permitting Workgroup. Input received has been incorporated into the proposed approach.

Fiscal Impact/Funding Source:

None.

Staff Contact:

Jerry Brown/Ali Forsythe

Attachments:

Attachment A: Draft, Proposed Approach to Permit and Agreement Negotiations
Environmental Planning, Permitting and Operations

Approach to Permit and Agreement Negotiations Environmental Planning, Permitting and Operations

This document provides the approach to be used by the Executive Director for permit and agreement negotiations for those permits and agreements that are needed for the Sites Project and that fall within the environmental planning, permitting, and operations services areas.

- Lead Negotiator – The Executive Director will serve as the lead negotiator on permits and agreements for the environmental planning, permitting, and operations services areas, unless another person is identified as the lead by the Executive Director. The Lead Negotiator is responsible to achieve negotiated terms in accordance with the principles/parameters of the Reservoir Committee and Authority Board.
- Work Group – The Lead Negotiator will consult with the appropriate Reservoir Committee Work Group on technical analysis, alternatives evaluation, and advising Work Group members on constraints, conflicts, and limitations. Communications with the Lead Negotiator are to be kept strictly confidential and disclosed only to the appropriate Work Group members that are part of the negotiation team, the Lead Negotiator, counsel, the Reservoir Committee, and the Authority Board.
- Negotiation Team – The appropriate Reservoir Committee Work Group chair may assign a small subset of Reservoir Committee or Authority Board members (2-4) to participate in negotiations with the Lead Negotiator.
 - Guidelines on participation:
 - The Work Group chair selects the Negotiation Team to achieve balanced representation of interests (e.g. NOD/SOD, Urban, Ag, CVP/SWC) and considers other attributes of members.
 - The Lead Negotiator is the Authority's decision maker in the negotiations and must be present at all discussions with the agency.
 - The Negotiation Team is to strictly provide policy counsel to the Lead Negotiator and has no authority to negotiate on behalf of Sites.
 - The Negotiation Team is there to represent the best interest of the Sites Project and all of the Sites members (Reservoir Committee and Authority Board); not for personal or specific agency or regional interest, recognizing that their personal or specific agency interest helps and informs key components of the discussions.

- An executive level relationship should be fostered between Reservoir Committee and Authority Board members and agency political appointees as this can assist in but is not a substitute for the negotiations approach.
 - Communications among the Negotiation Team and with the Lead Negotiator are to be kept strictly confidential and disclosed only to the Negotiation Team, the Lead Negotiator, counsel, the Reservoir Committee, and the Authority Board.
- Reservoir Committee – The Lead Negotiator, working with the Negotiation Team, coordination with counsel, will recommend key negotiation principles/parameters for the Reservoir Committee. The Reservoir Committee will review, modify and recommend approval of the key negotiation principles/parameters to the Authority Board.
 - Authority Board – The Authority Board will review, modify and approve the key negotiation principles/parameters that the Lead Negotiator will use to negotiate agreements in principle with the respective agency. If conflicts exist between the Reservoir Committee and Authority Board, the Lead Negotiator will be responsible to resolve those conflicts and, in coordination with counsel, resubmit the key principles/parameters to the Reservoir Committee and Authority Board for review, modification, and approval.
 - Final Agreement – When the Lead Negotiator has determined that the key negotiation principles/parameters have been met, the Lead Negotiator, in coordination with counsel, will prepare the final agreement and present to the Reservoir Committee how the Final Agreement complies with the key negotiation principles/parameters. The Reservoir Committee will consider and deliberate accepting that the Final Agreement complies with the key negotiation principles/parameters. The Reservoir Committee will consider recommending approval / signature of the Final Agreement to the Authority Board. The Authority Board will consider approval / signature of the Final Agreement after recommendation by the Reservoir Committee.
 - There will be no disclosure of confidential information by any Reservoir Committee or Authority Board participant outside of closed session. All Authority staff, consultants, and members of the Negotiating Team shall maintain the confidentiality of this information within the Authority.

For clarification:

- Parameter is a dollar amount.

- Principles of negotiation are terms and conditions of agreement.

This negotiation approach would apply to:

- All permits and approvals listed in Table C1-2 in the April 2020 Value Planning Report
- Coordinated Operations Plans with the Department of Water Resources and Bureau of Reclamation
- Use of Facilities Agreements with Tehama-Colusa Canal Authority, Glenn-Colusa Irrigation District and operating entities in the Colusa Basin Drain
- Contract with the California Department of Fish and Wildlife for Prop 1 WSIP Environmental Benefits
- Final Funding Agreement for Prop 1 WSIP with the California Water Commission