



**SITES PROJECT AUTHORITY
SITES RESERVOIR PROJECT
CREDIT FACILITY REQUEST FOR PROPOSALS**

**RESPONSES TO RFP
QUESTIONS AND INFORMATION REQUESTS**

1. **Q:** What % of the requested line is anticipated to be taxable vs tax-exempt?

A: The percentage of the line that will be taxable will be a function of the final composition of the Phase 2 participant pool. The Authority currently estimates that the maximum percentage of the line that could be taxable is 15% and it could be less.

2. **Q:** Can you please provide financial and credit disclosure for the non-rated Phase 2 entities within Exhibit 3.

A: The following is a link to the procurement section of the Authority's website. Under "Bank Credit Facility" can be found the most recent financial statements for those participants for whom the information is readily available.

<https://www.sitesproject.org/sites-project-authority/procurement/>

3. **Q:** Have the State Prop 1 funds been fully approved? Are there any risks of those funds not being approved by the Cal Water Commission?

A: This risk is that the Authority does not execute a funding agreement with the State.

On July 24, the Water Commission approved making \$40.1 million available to support completion of environmental review (EIR/EIS) and to acquire permits (both biological and technical). These funds become available once we have executed the early funding agreement (see link). The State will utilize a process they refer to as "concurrent drawdown", which requires an approved work plan with milestone dates. The Authority is in the process of preparing the work plan and is working with Water Commission staff to be able to execute this agreement by year's end. It is important to note that the State's funding commitment to the Authority is "continuously appropriated" and therefore, not subject to further budgetary approval by the State Legislature.

A draft proposed agreement is available from the Water Commission's website:

https://cwc.ca.gov/Documents/2018/WSIP/EarlyFundingAgreementTemplate_083118.pdf

4. **Q:** What are the requirements to receive the Fed WIIN Act grants? Are there risks of those funds not being approved/allocated to the Authority?

A: The primary risk is that Congress does not appropriate the funds being requested by the Secretary of Interior. That being said, there is also the possibility for additional appropriations in the future.

In last year's appropriations, Reclamation received \$4.35 million to specifically advance the Sites project. Sites was the only project in the State's Proposition 1 process to be awarded any funding by the Feds. For the current appropriations, we were told in July that Reclamation planned to request \$30 million. This amount was based on draft updates to the August 2017 feasibility report. Since then, letters to the Secretary of Interior requesting \$37.4 million have been sent by both the House Democrats and Senator Feinstein. We understand a House republican letter is pending. In addition, before the end of August, Reclamation notified us of their intent to increase participation in the Sites Project from ~ 15% to 25%, which is the maximum amount authorized under WIIN Act for a locally-led water storage project (refer to Section 4007). With this increase, the amount of WIIN Act funding that Congress could appropriate can increase above the \$30 million we have assumed to become available over the next three years as part of our Phase 2 projections.

5. **Q:** Has the Authority been provided a credit rating or credit assessment relative to Phase 1/ 2 obligations?

A: The Authority did not utilize any borrowing in connection with Phase 1 and has not requested a credit rating or credit assessment in connection with the planned Phase 2 borrowing.

6. **Q:** What remedy is available to lenders in the event that a bond deal is not executed in 2022? Can accelerated payments owed be imposed on member participants?

A: The project members will be obligated to repay their shares of principal upon termination of the credit facility (subject to any term out proposed by the lender). Pursuant to Section 5.03 of the draft Phase 2 Project Agreement, each project member must notify the Authority 180 days before the termination date if it proposes to pay off its share of principal. If a project member does not do so, it has agreed (by executing the Phase 2 Project Agreement) to approve the Authority refinancing such principal on a long-term basis and paying its share of the debt service on such long-term debt.

7. **Q:** If there are any shortfalls in a given year that are not recuperated from the 25% step-up, can they be collected in subsequent years?

A: Rolling such shortfalls in any year forward to future years is not currently contemplated in the draft Phase 2 Project Agreement. The Authority is obligated to continue collection actions against any defaulting project member.

8. **Q:** Please break out "Wholesale Water Providers", "Retail Water Providers", and "Other Water Providers" from the Phase 2 entities in Exhibit 3.

A: Please find in Appendix A a table showing the breakdown of participants by provider type.

- 9. Q:** Please clarify the potential for additional land-based charges and how such additional would enhance the credit characteristics of the participant pool?

A: Participants will have the option of forming improvement districts under which their Phase 2 obligations will be secured by land-based charges collected through property taxes rather than the security being water user charges. The land-based charges will be collected on the county tax bill and any default will be secured by a lien on the subject properties like other general taxes. Improvement districts will be formed on a case-by-case basis and only in those instances in which the participants believe it is to their advantage to do so.

- 10. Q:** Phase 2 is broken into Phase 2A and Phase 2B. Upon a “rebalancing” between Phase 2A and Phase 2B, as a credit matter the Lenders will need to diligence/approve the applicable Participants and their relative levels of participation before funding any additional amounts for Phase 2B. How will that be addressed in the Phase 2 agreements?

A: The Authority would expect that the details of lender approval of any change in the relative level of project member participation at end of Phase 2(a) would be included in the credit facility agreement, not the Phase 2 Project Agreement.

- 11. Q:** What is the statutory authority under California law and/or case law that authorizes the unconditional “take or pay” obligations of the Project Agreement Member to make payments sufficient to satisfy principal and interest on the Loans?

A: Statutory authority for project members to enter into the proposed Phase 2 Project Agreements is dependent of the statute creating each project member. Upon execution of the Phase 2 Project Agreement, each project member’s general counsel will deliver an opinion as to the validity of the Phase 2 Project Agreement. The form of such opinion is included as Exhibit G to the draft Phase 2 Project Agreement included in the lender request for proposals.

- 12. Q:** It is contemplated that Project Agreement Members will be billed in advance by November 15th of each year, with payments due by the following January 15th, based on an estimate. How will any shortfall be made up if the actual debt service requirements are greater than anticipated when invoicing?

A: The Authority plans to build into the amounts billed to the participants each November a cushion that is conservative enough to cover a significant increase in the average variable interest charges on the line in the upcoming calendar year. If the cushion ends up not being sufficient, the Authority will have the ability to draw on reserves to cover the unanticipated cost and will replenish its reserves through the following year’s invoices to participants.

- 13. Q:** The term sheet contemplates the delivery of financial statements of the Authority as a condition to closing, but given that the Authority is relatively new, will financial statements of each Project Agreement Member also be delivered?

A: Please see the Authority's response to Question 2.

14. Q: Please confirm that the Participants will agree to pay, as Phase 2 Costs, all principal and interest on loans/advances as and when due, including upon any amortization or acceleration, as well as all fees and expenses of the Lender payable by the Authority under the Credit Agreement. Sections 4 and 6.2 of the draft Phase 2 Agreement are not clear on this point.

A: Yes, that is the intent of the Authority and the Phase 2 Agreement.

15. Q: In the event the 25% step-up of each non-defaulting Participant is insufficient to cover the defaulting Project Agreement Member's payment obligations, will that deficiency be picked up (or rolled) in subsequent Fiscal Years? (Section 6.3).

A: Please see the Authority's response to Question 7.

16. Q: The default rate in Section 6.5 of the draft Phase 2 Agreement (LAIF + 2%) is significantly less than typical default rates under bank loan facilities and is less than the default rate in Section 5.5.3 of the JPA Agreement. How will this differential be covered? Via the step-up or other means? Please explain.

A: LAIF + 2% is what is being proposed by the Authority but bidders are free to propose another formulation for the default rate as part of their proposal.

17. Q: While Section 9(a) is unclear on this point, it appears that an Event of Default will only occur upon a failure of a Project Agreement Member to make payment 30 days after demand. Can the EOD simply be a failure to pay when due rather than with this delay/lag?

A: No, the Authority believes that the participants are entitled to a grace/cure period.

18. Q: Can you clarify how the indemnification of the Authority by Project Agreement Members in Section 10 will cover any indemnification of the Lender(s) by the Authority? Or will this be addressed elsewhere in the Phase 2 Agreement?

A: The Authority would expect that the details of indemnification of the lender would be included in the credit facility agreement, not the Phase 2 Project Agreement.

19. Q: Please explain how Section 12(a) is intended to work with Section 12(b). We believe there may be gaps with respect to Phase 2A Project Agreement Members that opt out, including any step-up obligations such Project Agreement Members have with regard to Phase 2A obligations. Once they withdraw, there are ambiguities with respect to required payments, step-ups, timing mismatches, etc. Please explain.

A: No project member can withdraw from Phase 2 after the incurrence of any Authority debt without executing an acknowledgement that it remains obligated to pay its share of such Phase 2 debt. See Sections 12(a) and 12(b) of the draft Phase 2 Project Agreement.

20. Q: Section 2.4 of the Joint Exercise of Powers Agreement references “laws applicable to the Westside Water District.” Can you provide guidance on the regulations governing Westside?

A: By way of background, this provision is included because Govt. Code Section 6509 of the JPA Law provides that the powers of a JPA are “. . .subject to the restrictions upon the manner of exercising the power of one of the contracting parties, which party shall be designated by the agreement.” That is, this provision insures you know which procedures to follow of the various members. In the JPA we designate a California water district since, of the various JPA members, their principal act seems to have the least restrictions and requirements on how they exercise their powers.

The principal “regulation” of how a California water district exercises its powers would be contained in Division 13 or the California Water Code, namely the California Water District Law (Water Code Section 34000 et seq.). There are various other laws and in some cases regulations that a California water district would be required to follow, like any other local public agency, most of which would be contained in the Government Code (examples being the Brown Act, Public Records Act, Political Reform Act).

21. Q: There are multiple references to the Authority’s Bylaws in the JPA – can you provide a copy of them to us?

A: The Authority’s Bylaws can be found in Appendix B.

22. Q: Please provide the RFP (including the JPA, the term sheet and the Phase 2 Reservoir Project Agreement) in Word format. We’d like to be able to comment on some of the docs in “track changes” mode – we hope that will make our response easier to evaluate.

A: The Authority asks that all requested changes to the term sheet and documents be submitted as a mark-up of the original PDFs that were provided to bidders or in list form.

23. Q: If available, please provide the most recent audits for the following Participants: Colusa County Water District, Glenn-Colusa Irrigation District, Pacific Resources Mutual Water Company, Reclamation District 108, Westside Water District and Wheeler Ridge-Maricopa Water Storage District.

A: Please see the Authority’s response to Question 2.

24. Q: Why is the 1st interest payment on Feb 1, 2020?

A: A number of the participants in the Sites Project are also participants in the California Department of Water Resources State Water Project. These participants are investigating the

possibility of using DWR's annual billing and collection process to bill and collect their share of costs for the Sites Project. Using DWR as a billing and collection agent may have certain advantages including the ability to assess customers for Sites costs through their property tax systems. Since DWR bills State Water Project participants each July 1 for the following calendar year, the earliest that Sites revenues could be collected through DWR's system would be January 2020.

25. Q: Do you have a sense of the split between tax-exempt and taxable proceeds? What is the driver of this split? Will the ratios be applied consistently to each draw?

A: Please see the Authority's response to Question 1. Yes, the ratios will be consistently applied to each draw.

26. Q: At the end of Phase 2A, can a participant withdraw completely from the project?

A: Yes, a participant will have the ability to withdraw completely from the project at the end of Phase 2A but will still be responsible for the repayment of its pro rata share of the amount drawn on the bank line in Phase 2A. Also see the Authority's response to Question 19.

27. Q: Will the Take or Pay contracts be court validated prior to closing?

A: Under the current project schedule, the closing on the credit facility will not occur until after the 60-day statutory validation period has run on the authorization of the Phase 2 Project Agreement by all project members and the Authority as well as the authorization of the credit facility agreement by the Authority.

28. Q: What is the timing for seeking ratings for this project? Just prior to bond take out?

A: The Authority plans to secure ratings for the project at the end of Phase 2 or early in Phase 3, in time to allow for the scheduled takeout of the bank line and the advance funding of Phase 3 final design and construction costs.

29. Q: Please provide historical financial statements for the following if available:

- Pacific Resources Mutual Water Company
- Westside Water District
- Wheeler Ridge-Maricopa Water Storage District
- Colusa County Water District
- Coachella Valley Water District

A: Please see the Authority's response to Question 2.

30. Q: Can you please confirm whether the Authority would be interested in receiving a letter of credit or liquidity proposal for this RFP? The LC or liquidity facility will not provide funding but

rather support commercial paper (CP) that is issued by the Authority. Only in the event that CP Notes can't be rolled would the LC or liquidity facility provide necessary funding to purchase any outstanding CP Notes.

A: The Authority is requesting proposals for a bank credit facility that will provide direct lending from a financial institution but bidders are able to propose alternative bank products that provide similar access to funding. That being said, the Authority is not currently entertaining proposals for a publicly-placed commercial paper program.

31. Q: Please provide a copy of the official statement for the San Luis & Delta-Mendota Water Authority, which provided long-term takeout financing for sunk development costs related to Cal WaterFix.

A: A copy of the official statement for the San Luis & Delta-Mendota Water Authority, which financed sunk costs related to Cal Water Fix, is included as a separate document along with these responses. The underlying project agreements with respect to the SLDMWA project mirror the provisions of Section 5.3, and Section 6.1 of the draft Phase 2 Project Agreement regarding the long-term financing of Phase 2 costs in the event the Sites project does not move forward at the end of Phase 2a or Phase 2b.

APPENDIX A

Preliminary Phase 2 Reservoir Committee Members

(Updated RFP Exhibit 3 - Includes Water Provider Type)

PRELIMINARY PHASE 2 RESERVOIR COMMITTEE MEMBERS

Participant	Type (per Reservoir Project Agreement Section 6.7)	Participation (Acre-Foot/year)	
		Preliminary	Percent
American Canyon, City of	(b) Retail, Water Svc	~ 4,000	1.7 %
Antelope Valley-East Kern Water Agency	(a) Wholesale	~ 500	0.2 %
Carter Mutual Water Company ‡	(d) Other	~ 500	0.2 %
Coachella Valley Water District	(b) Retail, Water Svc	~ 10,000	4.2 %
Colusa County	(d) Other	~ 10,000	4.2 %
Colusa County Water District	(c) Retail, Imp. Dist.	~ 13,100	5.6 %
Desert Water Agency	(b) Retail, Water Svc	~ 6,500	2.8 %
Glenn-Colusa Irrigation District	(c) Retail, Imp. Dist.	~ 5,000	2.1 %
Metropolitan Water District of S. CA	(a) Wholesale	~ 50,000	21.2 %
Pacific Resources Mutual Water Company ‡	(d) Other	~ 20,000	8.5 %
Reclamation District 108	(c) Retail, Imp. Dist.	~ 5,000	2.1 %
San Bernardino Valley Municipal Water District	(a) Wholesale	~ 21,400	9.1 %
San Geronio Pass Water Agency	(a) Wholesale	~ 14,000	5.9 %
Santa Clara Valley Water District	(a) Wholesale	24,000	10.2 %
Santa Clarita Valley Water Agency	(a) Wholesale	~ 5,000	2.1 %
TC-4: Cortina Water District	(c) Retail, Imp. Dist.	~ 300	0.1 %
TC-4: Davis Water District	(c) Retail, Imp. Dist.	~ 2,000	0.8 %
TC-4: Dunnigan Water District	(c) Retail, Imp. Dist.	~ 4,500	1.9 %
TC-4: LaGrande Water District	(c) Retail, Imp. Dist.	~ 1,000	0.4 %
Westside Water District	(b) Retail, Water Svc	~ 15,000	6.4 %
Wheeler Ridge-Maricopa Water Storage District	(c) Retail, Imp. Dist.	14,000	5.9 %
Zone 7 Water Agency	(a) Wholesale	~ 10,000	4.2 %
Potential new participants	TBD	TBD	%
Total:		235,800	100.0 %

NOTE: Any annualized amounts listed for Phase 2 are preliminary and are based on best estimates received after participants' respective review of the draft financing plan and draft Phase 2 Reservoir Project Agreement. These amounts do not represent the results of any action having been taken by the participants' respective governing body to formally execute the Phase 2 Reservoir Project Agreements. Final participation amounts will be established after interim financing terms and conditions have been provided and incorporated into the final Phase 2 Reservoir Project Agreement.

‡ Denotes a non-public agency. Refer to California Corporations Code Section 14300 et seq with additional requirements provided in both the Public Utilities Code and Water Code.

APPENDIX B

Sites Project Authority Bylaws

**SECOND AMENDED AND RESTATED
BYLAWS OF THE
SITES PROJECT AUTHORITY
FOR PHASE 2 OF THE SITES RESERVOIR PROJECT**

Table of Contents:

1	Relationship: Agreement and Bylaws	2
2	Sites Project Authority’s Mission, Vision & Values.....	4
3	Definitions	5
4	Board of Directors and Officers	7
5	Project Agreement Committee Leadership and Administrative Process	10
6	Common to Board of Directors and Project Agreement Committee Leadership Positions.....	13
7	Membership Types.....	14
8	Members & Non-Member Participating Parties - Common Requirements.....	17
9	Committees	18
10	The Authority’s Powers and/or Authorities	19
11	Delegations of Authority.....	21
12	Material Change - Applicable for Phase 2	23
13	Integration of Decisions - Authority Board & Project Agreement Committees.....	25

<u>Revision</u>	<u>Effective Date</u>	<u>Status or Authorizing Action</u>
2	Mar 01, 2018	Date Phase 2 Project Agreement becomes effective (approved by Authority Board on September 17, 2018)
1	Nov 21, 2016	Approved by Sites Project Authority Board for use in Phase 1.
0	Dec 21, 2015	Approved by Sites Project Authority Board for use in Phase 1.

1 Relationship: Agreement and Bylaws

1.1. Agreement: The Sites Project Authority Agreement (Agreement) is the chartering document that defines, among other things:

- The Authority' s members and general limitations on membership in the Authority;
- The Authority' s powers, with additional powers afforded the Authority specifically associated with both the Joint Exercise of Powers Act and laws applicable to Irrigation Districts;
- The mission, which is specific to the Sites Reservoir Project;
- The Board' s officers and other key positions;
- Minimum meeting and voting requirements;
- The adoption or amendment of bylaws.

It is intended to be a living document that will evolve as the project progresses from the current level of planning through construction and commissioning.

1.2 Bylaws: These Bylaws are adopted and amended pursuant to Section 8.2 of the Agreement to implement and provide further clarity for certain provisions of the Agreement and to provide procedures for administration of the Authority.

These Bylaws are intended to guide the work of the Board and staff of both the Authority and project agreement committees and to serve as a living document, to be revised as the organizational needs evolve. Furthermore, from these Bylaws, procedures will be developed for Board approval and then use as an aid to managing the Authority and Sites Reservoir Project.

- 1.3 Conflicts between Agreement and Bylaws: Should one or more provisions of these Bylaws be in conflict with any portion of the Agreement or with a Project Agreement, the Agreement or the Project Agreement, as the case may be, shall take precedence.
- 1.4. Severability: If one or more clauses, sentences, paragraphs or provisions of these Bylaws is held to be unlawful, invalid or unenforceable, the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provisions shall be deemed reformed so as to be lawful, valid, and enforced to the maximum extent possible.
- 1.5 Amendments of Bylaws: As provided at Section 8.2 of the Agreement, these Bylaws may be amended only by an affirmative vote of at least seventy-five percent (75%) of the total number of Directors.

2 Sites Project Authority's Mission, Vision & Values

- 2.1. Mission: (Restatement). "[T]o be a proponent and facilitator to design and potentially acquire, construct, manage, govern, and operate Sites Reservoir and related facilities; to increase and develop water supplies; to improve the operation of the state's water system; and to provide a net improvement in ecosystem and water quality conditions in the Sacramento River system and the Delta."
- 2.2. Vision Statement: Fulfill state and federal mandates to provide a new supply of safe, reliable, affordable water. Sites Reservoir will augment water delivery reliability to agricultural and urban water users, while adding environmental flows that benefit the Delta and Sacramento Valley watershed ecosystems. Sites will enhance the state water system, providing flexible and resilient storage under future climate change conditions.
- 2.3. Values: Those involved with all activities of the Authority should:
 - a. Transact all business in an open and honest manner, except that communications shall not be disclosed when occurring in closed sessions of the Board of Directors or a committee, or are otherwise privileged and confidential, and certain documents may be exempt from disclosure under the Public Records Act;
 - b. Communicate effectively;
 - c. Build trust and confidence, both internally and externally to the Authority;
 - d. Make decisions that are fiscally prudent;
 - e. Strive to use best practices and procedures, particularly in development of project controls for both management of risk and ensuring appropriate levels of quality.

3 Definitions

- 3.1 Board: The governing body of the Authority, composed of each Authority Member's delegate (or its respective alternate if the delegate is not present).
- 3.2 Credit Reimbursement Policies. Each Project Agreement Committee will develop a Credit Reimbursement Policy to help ensure equitable participation of its Members.
- 3.3 Event of Default: Is described in Project Agreements, including at Section 9 of the Phase 2 Reservoir Project Agreement.
- 3.4 Material Change: Where the variance between a parameter of the Project Baseline and the forecast exceeds the Board-approved threshold, as described in Section 12 below.
- 3.5 Member is either an Authority Member, or other type of Member provided for at Section 7 below, and is either:
- 3.5.1 A public agency that has either land use authorities or is a water agency that (a) is signatory to the Sites Project Authority Agreement (as amended) and (b) meets the requirements of the California Water Code § 79759 (a) and (b), *or*
- 3.5.2. A public agency that (a) is contributing to the financing of the Sites Reservoir Project and (b) meets the requirements of the California Water Code §79759 (b).
- 3.5.3. Public agencies whose primary service area or boundaries are located *within* the Sacramento River watershed as defined in California Water Code §79759 (a) are designated as **Type A** while Members whose primary service area or boundaries are located *outside* of the Sacramento River watershed as defined in California Water Code § 79759 (a) and meet the requirements of California Water Code §79759 (b) (i.e. not for- profit) are designated as **Type B** .
- 3.6 Non- Member Participating Party: A party, company, or entity that does not meet the requirements of a Member and is not a Member, yet is deemed by the Board able to participate by contract in advancing or supporting at least one element of the Sites Reservoir Project; such as, but not limited to, certain mutual water companies, investor owned utilities and the development of hydropower – both traditional and/or renewable pumped-storage.
- 3.7. Phase: Implementation of the Project has been divided into at least five (5) phases that coincide with major milestone processes relative to the Project's schedule: (1) Through award of a Proposition 1 grant, which is now complete as

for Authority activities; (2) Certification of Environmental Impact Report and Statement, securing certain permits for the Project, and critical-path equipment and pre-construction activities; (3) completion of final design, easements and rights-of-way acquisition and completion of pre- construction activities; (4) construction and commissioning, and (5) Project close- out, which includes repayment of debt and transfer of responsibilities to an operating entity.

For the Authority to accomplish its mission in an efficient and cost-effective manner, the start of a successor phase may overlap with the completion of the predecessor phase. Such overlap shall require Board (or project agreement committee if this authority has been delegated by the Board to the project agreement committee) approval, since it affects annual operating budgets and the respective Member's funding commitments.

- 3.8. Project Agreement: The requirements of the Agreement, as more fully described at Section 5 below.
- 3.9. Project Agreement Committee: The decision- making body responsible for implementing a Project Agreement and compliance with the Project Agreement's terms and conditions.

4 Board of Directors and Officers

In addition to the primary requirements, which are defined in the Agreement, the following additional requirements shall also apply:

- 4.1. Role of Board: To provide the overall policy direction and consider approval of activities and actions of the Authority, including approval of the following matters:
- For the Proposition 1, Chapter 8 grant, manage compliance with the terms and conditions of its award.
 - Be the CEQA lead agency and work with USBR as the NEPA lead agency to effectively manage the environmental review process.
 - Hold title to the water rights issued by State Water Resources Control Board (SWRCB).
 - Be the owner of record as it related to dam safety requirements and regulatory obligations.
 - Be the applicant for all applicable permits and manage compliance with the respective terms and conditions.
 - Review decisions at Project Agreement level to ensure they are in the best interest of the Sites Reservoir Project.
 - Acquire property, easements and rights-of- way.
- 4.2. Minimum Qualifications: Directors shall be a designated representative from their respective Authority Member who is in good standing as defined at Section 8.1. Absentee votes shall not be considered. An Authority Member's designated alternate is not eligible to be candidate for an Officer position. If an Officer is the designated representative of an Authority Member that is not in good standing and that Authority Member's voting rights have been suspended as provided at Section 7.3 of the Agreement, then that Officer shall no longer be eligible to serve as an Officer of the Authority and the Board shall make an appointment for the remaining duration of that office.
- 4.3. Officer Term Limits: Board officers shall serve a term that does not exceed one year in duration. A Board officer is not precluded from holding consecutive terms.
- 4.4. Election of Officers: The Board shall annually elect the Chair and one or more Vice Chairs from its members and appoint a Secretary and Treasurer and may appoint any other officers or assistant officers as the Board may determine. The Board may combine the offices of Secretary and Treasurer. Elections shall occur

annually, at the regularly scheduled Board meeting in February, or if for any reason the election does not occur, then at the next meeting of the Authority. For each position, the candidate receiving the majority vote from the Authority Members present shall be the successful candidate. Officers shall assume office upon their election and shall serve until their successor is elected.

4.5 Officer Vacancy: Should an officer position become vacant, the Board shall make an appointment for the remaining duration of the vacated position's term.

4.6. Treasurer's Roles and Responsibilities:

- Shall meet or exceed the requirements of Government Code Section 6505.5; the Authority to secure a bond for the position;
- Either has or provides oversight to Authority staff who have a background in accounting, budgeting, or finance; Make recommendations to the Board on selection of the auditor and oversee the preparation of an annual audit;
- Ensure auditor's reports are filed as required by law;
- Oversight of the annual budget preparation in accordance with Board direction and the Board's approval of the budget;
- Oversee compliance with reporting and other requirements for Phase 2 financing; and
- Provide a copy of the audit to each Member and Non-Member Participating Party.

4.7. Secretary's Roles and Responsibilities:

- Oversight of board agendas, minutes, and board meeting's protocol, and preparation of agendas and minutes may be delegated by the Board to a Board Clerk; and
- Oversee Member (and their representatives) compliance with requirements of the Agreement and Bylaws.

4.8. Location: The Sites Project Authority's principle place of business and office and mailing addresses are:

Physical Address:

122 Old Highway 99 West
Maxwell, CA 95955

Mailing Address:

P.O. Box 517
Maxwell, CA 95955

4.9 Meeting Locations/Teleconference meetings:

- a. Most meetings of the Board and project agreement committees will be held

at the principal office in Maxwell, however, since the Authority has members throughout the State, that is, in accordance with CA Water Code Section 79759 (b) includes the Department of Water Resources (DWR) as an ex officio member of the Authority, and the Authority has Project Agreement Members throughout the State, to promote maximum participation of the Board, Project Agreement Members and the public, some meetings of the Board or project agreement committee may be held elsewhere in the State.

- b. For purposes of providing video or teleconferencing access for meetings of the Board or a project agreement committee, at least a quorum of the Board or the project agreement committee members shall participate from the Authority's

principal office and within the combined territory of the Authority Members or the project agreement committee members, as the case may be.

5 Project Agreement Committee Leadership and Administrative Process

- 5.01 Establishment of Project Agreement Committee: A “Phase 1 Reservoir Project Agreement” was entered into on or about December 13, 2016, between the Authority and various Project Agreement Members signatory thereto, and a “Phase 2 Reservoir Project Agreement” will be entered into between the Authority and some of the same Project Agreement Members to the Phase 1 Project Agreement, and possibly others. There could be additional Project Agreements during Phase 2. Each Project Agreement will include the establishment of a project agreement committee. The Project Agreement shall state the scope of work to be accomplished by the project agreement committee. The Project Agreement may also include delegations of authority necessary to accomplish the scope of work. The Project Agreement may also define thresholds for material change that if exceeded require approval of both the Board and the respective project agreement committee.
- 5.02 Conditions of Formation: The formation, termination, or amendment of a Project Agreement is contingent upon the Board’s approval. Each Project Agreement shall specify the authorities delegated by the Authority to the applicable Project Agreement’s Committee.
- 5.03 Appointment of Committee: Members and Non-Member Participating Parties of a Project Agreement in good standing shall appoint their respective representative to the Committee who is either an active member of the Member’s board of directors or is a duly appointed senior-level staff have been delegated the authority from the Member to make decisions on the Member Agency’s behalf.
- 5.04 Committee Leadership: At least two Authority Members are required to execute the Project Agreement and provide a representative to serve on each project agreement committee along with the Authority’s General Manager. In preparing each Project Agreement, the decision-making structure will be defined by the Board; taking into account factors such as, but not limited to, the project’s complexity, risk, cost, and entities requesting to become signatory to each Project Agreement. The Project Agreement shall, at a minimum, provide for appointment of a Committee Chair, whose responsibilities are similar to those of the Board Chair. The Board shall determine whether the project agreement committee shall also appoint a Committee Treasurer whose responsibilities are similar to those of the Board Treasurer. The Committee Treasurer may be the Authority Treasurer, or if not, shall serve under the general supervision of the Authority Treasurer.

- 5.05 Leaders Term Limits: Project agreement committee leaders shall serve a term that does not exceed one year in duration. They are not precluded from holding consecutive terms.
- 5.06 Election of Committee Leaders: Elections shall occur annually, no later than the end of the third quarter of the year in which the term for the position expires. The election shall occur at a regularly scheduled project agreement committee meeting. For each position, the candidate receiving the majority vote from the Committee members present shall be the successful candidate.
- 5.07 Committee Leader Vacancy: Should a Leader position become vacant, the project agreement committee shall make an appointment for the remaining duration of the vacated position's term.
- 5.08 Quorum and Voting of the Project Agreement Committee: A majority of the Committee members representing Members and Nonmember Participating Parties that have executed the Project Agreement shall constitute a quorum for a project agreement committee, unless otherwise provided in the Project Agreement. Absentee votes shall not be considered. Voting thresholds to approve actions, including routine matters or Non-Material Change Items versus Material Change Items, shall be as provided in the respective Project Agreement.
- 5.09 New Parties: In preparing each Project Agreement, the process to appoint new parties to the Project Agreement, including appointing a new member taking the place of a withdrawing or terminated Member, will be defined, taking into account factors such as, but not limited to, compliance with California Water Code § 79759.
- 5.10 Project Agreements: The purpose and scope of any Project Agreement shall be as therein provided.
- 5.11 Member's Election to withdraw: Should a Member or Non-Member Participating Party of a Project Agreement elect to withdraw their participation in any executed Project Agreement, the conditions on any such withdrawal shall be as set for in the Project Agreement.
- 5.12 Termination of a non-Authority Member in a Project Agreement: A Project Agreement may be terminated with respect to any non-Authority Member or Non-Member Participating Party under conditions set forth in the Project Agreement.
- 5.13 Each Project Agreement involving agreements with third parties providing for the acquisition, construction, or management of the Project shall include provisions

to provide for allocation of available sales and use tax revenues to the County of Colusa or County of Glenn to the greatest extent provided by law, depending on the situs of the work or activity.

6 Common to Board of Directors and Project Agreement Committee Leadership Positions

- 6.1 Conflict of Interest Code: Each Director of the Board and their delegated alternate and each Member's representative serving on a project agreement committee shall timely file Statements of Economic Interest as required by the Authority's Conflict of Interest Code.
- 6.2 Compensation: For at least Phase 2, no compensation shall be granted by the Authority to (a) any Director of the Board or a Member's delegated alternate or (b) any representative to a project agreement committee's. When travel has been pre-approved by either the Authority or project agreement committee's Leadership, respectively, the representative is eligible to recover reasonable travel and related expenses.
- 6.3 Closed Sessions: The Board or a Project Agreement Committee, as the case may be, may enter into a closed session during a regular, adjourned regular or special meeting to consider matters that may lawfully be considered in such sessions in the manner provided by law. Due to the fact that national and state water, environmental and political issues are very complex, the Board may find that participation of the Authority's directors and their alternates, or Committee members and their alternates, as the case may be, is essential in order to allow alternate directors or committee members to be able to keep abreast of these matters so that they may vote meaningfully on upon issues present at meetings when they are called on to do so. After a closed session, the Board, or Committee will report publicly any action taken in closed session, as well as the vote or abstention of any member present as provided by law.

The representatives of the Authority Members or Project Agreement Committee, as the case may be, that attend a closed session of the Board of Project Agreement Committee, may disclose information obtained in a closed session that has direct financial or liability implications for that Authority Member or Project Agreement Member to the following individuals: (a) legal counsel of the Authority Member or Project Agreement Member for purposes of obtaining advice on whether the matter has direct financial or liability implications to it; and (b) other members of the legislative body of the Authority Member or Project Agreement Committee present in a closed session of that Authority Member or Project Agreement Member.

7 Membership Types

7.1 General:

7.1.1 The Board retains its sole discretion to (a) offer membership to an agency, entity, party, or company ("requestor") who requests to participate in the Project, as further provided at Section 3.3 of the Agreement, and (b) to determine what if any membership type is applicable for the requestor. Should the Board elect to offer a membership type, the requestor shall then be required to (1) execute both an election to participate form and applicable agreements and (2) comply with the Agreement, Bylaws, and if applicable, Project Agreements.

7.1.2 A participating party's interests through the Authority and/ or a Project Agreement cannot be assigned without written pre- approval by the Board, unless otherwise provided in a Project Agreement with respect to participation in a Project Agreement.

7.2 Authority Member: A public agency that is signatory to the Agreement. They are required to be located within Sacramento River watershed that has either (1) land use authority or (2) is a duly recognized water agency, and complies with the joint powers authority ("JPA") membership requirements of California Water Code § 79759 (a) & (b). Agencies that elected to participate and provide financial support to the Authority prior to October 30, 2015, may also be referred to as Founding Members.

Eligibility to join as an Authority Member, at the Board' s sole discretion, as further provided at Section 3.3 of the Agreement, may be extended to a non-profit mutual water company that complies with the joint powers authority ("JPA") membership requirements of California Water Code § 79759 (a) as it relates to being located within the Sacramento River watershed and California Water Code § 79759 (b) as it relates to being a non-profit company.

Financial Contribution: Pro- rata cost share of either the Authority' s cost and/or the pro- rata share of cost for each executed Project Agreement.

Attributes of an Authority Member:

- Eligible to be represented on the Board.
- Eligible to also be represented on a project agreement committee. An Authority Member's representative may be an officer on a project agreement committee.
- Eligible to provide in-kind (and/or other) services if pre-approved by the Board.

- 7.3 Project Agreement Members: Such members shall be either (1) a public agency that meets the requirements of California Water Code Section 79759(a) or (b), that has as its sole or a principal power the supplying of water (and/or power) to other entities or to retail water (and/or power) users which is a Type A Member or a Type B Member, or (2) a non- profit mutual water company that complies with the non- profit JPA membership requirements of California Water Code § 79759 (b). It must be willing to execute at least one Project Agreement.

Attributes of a Project Agreement Member:

- Can be an officer on the Committee.
- Eligible to provide in-kind (and/or other) services if pre-approved by the Board.
- Conditions and attributes for participating as a Project Agreement Member may be further described in the applicable Project Agreement.

- 7.4 Associate Member: Either (1) a public agency that has as its sole or a principal power the supplying of water (and/or power) to other entities or to retail water (and/or power) users that also meets the joint powers authority membership requirements of California Water Code § 79759 (a) & (b), but elects to accept an advisory role from the Authority or (2) a non-profit mutual water company that complies with the non- profit JPA membership requirements of California Water Code §79759 (b), but elects to accept an advisory role from the Authority.

Financial Contribution: An annual contribution of \$5,000, or as otherwise established from the time to time by the Board.

Attributes of an Associate Member:

- In a non-voting capacity, may serve on standing committees formed by the Board.
- May serve on ad hoc committees appointed by the Chair.
- Upon approval by the Chair, could chair a Coordination Committee.

- 7.5 Non- Member Participating Party: "An agency, entity or company, that does not meet the JPA membership requirements of California Water Code § 79759(b) regarding for- profit corporations, including certain types of mutual water companies, and is not a Member of the Authority, but is deemed eligible by the Authority to participate by contract in certain elements of the Project." (Restatement from Agreement section 1.7).

Attributes of Participating Party: Conditioned upon meeting certain eligibility requirements.

- An agency or company may be eligible to participate on a Project Agreement.
- A Mutual Water Company or private company may be eligible to participate on a Project Agreement.
- A qualified energy developer may participate in a Project Agreement specifically executed to provide hydroelectric power including traditional and pumped-storage.
- Conditions and attributes for participating as a Non-Member Participating Party may be further described in the applicable Project Agreement.

7.6 Ex Officio:

The California Department of Water Resources (DWR), which is required by law to be an ex officio member of a joint powers authority for the purposes of California Water Code § 79759 (b) shall be a non-voting member of the Authority and/or project agreement committee.

7.7 Cost Share Partner:

The United States Bureau of Reclamation may participate as a non-voting partner of the Authority and/or project agreement committee.

8 Members & Non-Member Participating Parties - Common Requirements

- 8.1 Good Standing: To actively participate in the respective decision- making authorities, each Member and Non- Member Participating Party is required to comply with the following conditions:
- 8.1.1 Compliance with the terms of the Agreement and these Bylaws as well as the policies and/or procedures the Board may adopt;
 - 8.1.2 Compliance with any Project Agreements it has executed, and not be subject to an Event of Default;
 - 8.1.3 Providing timely payment of the Member's or Non- Member Participating Party's financial obligations, namely, (i) for Authority Members, General and Administrative Costs assessed by the Board, and (ii) for Members and Non-Member Participating Parties of a Project Agreement, payments required under the Project Agreement. For Authority Members obligations Section 5.5.3 of the Agreement provides obligations are delinquent if not received within sixth (60) days of the invoice date.

Failure to remain in good standing may subject the Member or Non- Member Participating Party to disciplinary action that, at the discretion of the Board and/or applicable project agreement committee, may include suspension of voting rights as provided at Section 7.3 of the Agreement and/or removal from either the Authority and/or Project Agreement(s) as therein provided, respectively.

- 8.2 Change in Representation: Should a Member or Non-Member Participating Party elect to name a different person to represent them either on the Board and/or on any project agreement committee, the change shall be provided in writing to the Secretary. The written notification shall also include an effective date.
- 8.3 Conflict of Interest: The Authority has adopted and may from time to time amended its Conflict of Interest Code adopted pursuant to the Political Reform Act of 1974, California Government Code Section 87000, et seq., and regulations adopted by the Fair Political Practices Commission set forth in Title 2, California Code of Regulations. "Designated Positions" under said Conflict of Interest Code shall comply with such Code and Political Reform Act and other applicable laws.

9 Committees

- 9.1 Common: Each committee of the Authority shall have a chartering document approved by Board, which will include, among other things, quorum and voting requirements for conduct of the committee.
- 9.2 Board Committees:
 - 9.2.1 Each committee of the Board shall be comprised of at least three (3) and no more than five (5) Authority Members.
 - 9.2.2 Standing Board Committees: The Chair may elect to create standing committees as necessary to ensure successful completion of the Authority's mission.
 - 9.2.3 Ad- Hoc Board Committees: The Chair may elect to create Ad- Hoc committees to address specific issues or area of concern to the Board.
- 9.3 Project Agreement Committees: The purpose is to manage each Project Agreement as provided for in Section VI of the Agreement and Section 5 of these Bylaws. The Project Agreement shall be the chartering document the project agreement committee shall use to perform the work consistent with the requirements of the Agreement and Bylaws.
- 9.4 Coordination Committees: The purpose of the Coordination Committees are to serve as an advisory committee in order to maximize transparency regarding the decision-making process and facilitate the exchange of information; provide opportunity for comment, input, and recommendations; and ensure meaningful discussions regarding the rationale for decisions and the outcomes that result. The Board may from time to time reconstitute and/or provided for Coordination Committees.
 - 9.4.1 The Board shall approve charter documents for the Coordination Committees which shall include, among other things, the scope of its activities and quorum and voting requirements for conduct of the Committees. The Board shall approve and may modify from time to time the composition of the Coordination Committees, based upon interest expressed by various interested entities.
 - 9.4.2 The Coordination Committees will meet as necessary to exchange information and provide input concerning upcoming decisions expected to be made by the Authority. Coordination Committee members will not have a seat on the Board and will not vote on matters before the Authority, but will have an opportunity to inquire about relevant matters, be apprised by the Authority of issues of interest, and make recommendations concerning pending decisions.
 - 9.4.3 A member of the Board or alternate shall participate in an ex officio capacity for each Coordination Committee and to provide access to information relevant to the committee's agenda items.
 - 9.4.4 The Coordination Committees shall periodically provide reports to the Board on its activities.

10 The Authority's Powers and/or Authorities

- 10.1 Non-Delegated Authorities: While (a) Section VI of the Agreement includes the intent to use Project Agreements to accomplish the Authority's mission and (b) each Project Agreement shall specify the power delegated from the Authority, for Phase 2, the following powers shall remain with the Board:
- 10.1.01 Enter into and maintain contracts for loans and grants, including Proposition 1, Chapter 8 grants.
 - 10.1.02 Lead agency with the SWRCB for the water rights application and/or assignment of an existing water right application or permit/license. Furthermore, the Authority will hold title to the water rights granted by the SWRCB.
 - 10.1.03 Serving as Lead CEQA Agency for the Project.
 - 10.1.04 Negotiation and acceptance of permit conditions, commitment to mitigation obligations associated with NEPA/CEQA compliance to achieve less than significant classification, ESA/CESA compliance, Section 10 of the Rivers and Harbors Act, NHPA § 106/SHPO and compliance with the Clean Water Act.
 - 10.1.05 Compliance with applicable dam safety requirements such as California Division of Safety of Dams and Federal Energy Regulatory Commission.
 - 10.1.06 Engagement and outreach with tribal representatives, elected officials, the general public, and advocacy organizations (e.g. NGOs).
 - 10.1.07 Lead any efforts to (a) acquire land and rights- of- way and (b) obtain additional financial contributors.
 - 10.1.08 Determination of Material Changes affecting the annualized water supply and costs expected from development of the Sites Reservoir Project.
 - 10.1.09 Determination of Material Changes to the facilities associated with the reservoir that could result in either an increased schedule greater than one year and/or increase construction costs greater than 10 %.
 - 10.1.10 Development of renewable power or pumped-storage beyond the pre-feasibility- level planned.
 - 10.1.11 Oversight of (a) employees and (b) consultant contracts. Overall cost management to ensure obligations or commitments remain within each annually approved operating budget and (b) the Phase 2 cost target.

- 10.1.12 Establishing a decision- making threshold for specific topic areas likely to be addressed by the Project Agreement’s Committee.
- 10.1.13 Approve the initial issuance of each Project Agreement and subsequent amendments that are more than administrative changes as determined by the Authority’s legal counsel.
- 10.1.14 Approving a Financial Plan.

11 Delegations of Authority

11.1 To A Project Agreement Committee:

11.1.1 Limited Liability: Each Project Agreement shall include the requirements of Agreement Sections 5.9 and 6.3.

11.2 To the General Manager.

11.2.1 Outreach and Engagement:

- a. Serve as the primary advocate and voice of the Authority in all activities related to advancing surface water storage and enhanced water supply reliability in the Sacramento River watershed, and primarily Sites Reservoir.
- b. Advocate with local, state, and federal agencies as well as the regulatory and environmental sectors.
- c. Represent the Sites Project Authority to enhance the organization's profile as a leader in the storage debate.
- d. Conduct official correspondence on behalf of, and jointly with, the Board when appropriate.

11.2.2 Cost Management:

- a. Manage the Board-approved annual operating budget to ensure positive cash flow and track variances against both the phase-level budget target and total project cost, which includes an estimate of the finance cost.
- b. Seek additional funding partners in the Sites Reservoir Project, including loans and grants from the Federal and State governments.

11.2.3 Unless otherwise directed by the applicable Project Agreement Committee regarding expenditures under the Project Agreement, execute professional services contracts in accordance with the following:

- a. Board approved Master Services Agreements (MSAs) where the commercial terms but no scope or cost have been assigned.
- b. Task Orders for MSAs where the scope of work and cost has a value that does not exceed the line-item amount in the approved operating budget and is less than \$500,000.
- c. Other professional services agreements (i.e. commercial terms plus scopes of work and not- to-exceed cost) having a value that does not exceed the line item amount in the approved operating budget and is less than

\$100,000, unless a different threshold has been established by an applicable Project Agreement Committee.

- 11.2.4 For expenditures that are not specific line items in the Board- approved annual operating budget, the General Manager is authorized to spend up to \$5,000, so long as a positive cost variance to the Board-approved annual operating budget is forecast.
- 11.2.5 Administration: Annually, review and evaluate the performance of and report same to the Board:
- a. key staff positions;
 - b. consultant contracts and their key personnel;

12 Material Change - Applicable for Phase 2

- 12.1 These provisions shall apply both to decisions by the Board and project agreement committee(s).
- 12.2 As the Sites Reservoir Project progresses through each of the planned project phases, what constitutes a Material Change along with the associated thresholds for Material Change may require amendment to these Bylaws. For Phase 2 , should a question arise regarding a change being deemed material, the Board shall make the final determination.
- 12.3 Decisions affecting the following topic areas constitute a Material Change applicable for Phase 2 as measured either qualitatively or quantitatively as a change:
 - 12.3.01 An increase in the projected Phase 1 budget target greater than 5 % of the approved Phase 2 budget target.
 - 12.3.02 Any projected overrun to the approved total annual operating budget or transferring funds between line-items in the approved operating budget that is greater than \$ 50, 000.
 - 12.3.03 The eligibility of the Authority to receive grant funding from Proposition 1, chapter 8.
 - 12.3.04 Water rights and/or annualized yield of the Sites Reservoir Project changing by more than 5 % of the total annualized yield or changes the proposed split between water supply benefits and Proposition 1 defined public benefits by more than 5 %.
 - 12.3.05 Changes affecting the ability to obtain dam safety related permits in a timely and cost-effective manner.
 - 12.3.06 Changes to the Project's scope that significantly changes the operations of existing conveyance assets owned and/or operated by Members and/or other entities relative to the Project Baseline.
 - 12.3.07 Changes to the Project' s scope that significantly changes the amount of power needed to operate and/ or the amount of pumped- storage capability.
 - 12.3.08 Changes causing the direct construction cost to increase or decrease more than 10% excluding inflation and escalation in material costs.
 - 12.3.09 Changes causing the construction schedule to increase more than 6 months

or require construction means and methods that may not comply or require extreme measures to comply with OSHA requirements.

- 12.3.10 Changes having the potential to shift significant risk from either a Project Agreement to the Authority (or vice versa), (2) from one Project Agreement to another, and/or (3) from one participant to another. Absent defined thresholds, the Board has the discretion to determine, on a case by case basis, if a Material Change has occurred.
- 12.3.11 Causing the mitigation for construction and/ or operations that changes the baseline estimated cost by more than 10 %.
- 12.3.12 Affecting the acquisition cost or schedule of land, easements, or rights- of-way by more than 10% from the baseline estimate cost and/ or increases the line-item schedule duration by more than 6 months.
- 12.3.13 Changes materially affecting the powers of the Authority, a Member, the State of California, the Federal Government, or a federally recognized Tribal organization.
- 12.3.14 Proposed amendments to the Agreement or these Bylaws that would materially affect the rights and/ or duties of Member or Non-Member Participating Party under a Project Agreement.

13 Integration of Decisions - Authority Board & Project Agreement Committees

- 13.1 Material Change: Each Project Agreement will identify topic areas that constitute a Material Change and associated thresholds that are consistent with the Agreement and Bylaws and incorporate the Board's delegation of powers, if any, to the project agreement committee. Approval of actions to respond to a Material Change requires the approval of both the Board and the project agreement committee before the action can be implemented.
- 13.2 Non-Material Changes: Approval of actions that are deemed by project agreement committee and the General Manager to not result in a Material Change do not require the approval of the Board before the action can be implemented.
- 13.3 Dispute Resolution Process: Early identification of any dispute involving actions of the Authority or a Project Agreement Committee, including the administration and/or implementation of the Agreement, these Bylaws or a Project Agreement (collectively a "Dispute") is essential. Unless otherwise provided in a Project Agreement, a party that has identified a Dispute shall, within fifteen (15) days of the event, provide the General Manager in writing with the basis for the Dispute. The General Manager shall investigate the merits of the Dispute and notify the Project Agreement Committee and Board with the his findings as to the merits of the Dispute and any recommended action. Should the party that has identified the Dispute disagree with the General Manager's assessment its remedy shall be as follows:
- 13.3.1 If the Dispute involves the administration or implementation of a Project Agreement, it shall be resolved as provided in the Project Agreement.
- 13.3.2 Any other dispute shall be resolved through the following procedures:
- If said Dispute is not resolved within 30 (thirty) calendar days through informal discussions between the General Manager and the parties involved in the Dispute, a party may submit the Dispute to formal mediation. The Parties shall voluntarily agree to the choice of mediator, or, if the Parties cannot agree upon a mediator, one shall be appointed by the Superior Court of Colusa County upon motion for appointment of a neutral mediator. The cost of mediation shall be paid in equal proportion among the Parties involved in the Dispute.
- If the mediation process does not provide a final resolution to the Dispute raised, any Party may submit the matter to binding arbitration under Section

1280 et seq. of the Code of Civil Procedure. Notwithstanding the foregoing, a Party may seek a preliminary injunction or other interlocutory judicial relief prior to completion of the mediation or arbitration process if necessary to avoid damage or to preserve the status quo.