
MEMORANDUM OF UNDERSTANDING
BETWEEN THE SITES RESERVOIR JOINT POWERS AUTHORITY AND COLUSA
COUNTY AIR POLLUTION CONTROL DISTRICT, GLENN COUNTY AIR POLLUTION
CONTROL DISTRICT, TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT,
AND YOLO SOLANO AIR QUALITY MANAGEMENT DISTRICT RELATED TO THE
SITES RESERVOIR PROJECT

This Memorandum of Understanding (MOU) is entered into by the Sites Reservoir Joint Powers Authority (Sites Authority) and the Colusa County Air Pollution Control District, Glenn County Air Pollution Control District, Tehama County Air Pollution Control District, and Yolo Solano Air Quality Management District (Air Districts) for the purposes of mitigating air quality impacts generated by the Sites Reservoir Project (Sites Project). The Sites Authority and Air Districts are collectively referred to herein as the “Parties” with each being a “Party”.

RECITALS

- A. WHEREAS, the Air Districts are air pollution control districts formed by their respective counties, which include Colusa, Glenn, the northeastern portion of Solano, Tehama, and Yolo; and
- B. WHEREAS, the Air Districts are responsible for developing and implementing air quality control measures within district boundaries as depicted in Exhibit 1 attached hereto and incorporated herein, including air quality control measures for stationary sources, transportation sources, and indirect sources; and
- C. WHEREAS, despite the best efforts of the Air Districts, some of their respective districts remain impaired and are not in attainment of National and California ambient air quality standards for criteria pollutants, including ozone and particulate matter; and
- D. WHEREAS, emission of certain criteria pollutants from construction of the Sites Authority’s planned Sites Project within Air District boundaries would exacerbate the non-attainment status and could threaten their attainment/maintenance status of other criteria pollutants; and
- E. WHEREAS, the Sacramento Valley Air Basin (SVAB) includes all or parts of Butte, Colusa, Glenn, Placer, Sacramento, Shasta, Solano, Sutter, Tehama, Yolo, and Yuba counties in California. The SVAB is often subject to temperature inversions that, coupled with topographic barriers and hot summer temperatures,

create potential for air pollution problems; and

- F. WHEREAS, the Sites Authority, is planning to construct and operate the Sites Project, a new off-stream water storage reservoir in the western Sacramento Valley near the community of Maxwell, California, associated facilities such as dams, dikes, smaller regulating reservoirs, and ancillary facilities such as recreation areas, new paved roads, and administration buildings as depicted in Exhibits 2 and 3; and
- G. WHEREAS, The Sites Project includes components/facilities that will be constructed and operated within the Air District boundaries; and
- H. WHEREAS, to comply with the California Environmental Quality Act (CEQA) and its implementing Guidelines, the Sites Authority released a Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) for the Sites Project on November 2, 2023. The Sites Authority certified the Final EIR/EIS and adopted CEQA Findings, a Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program, and adopted the Sites Project with Board Resolution 2023-02 at its November 17, 2023 meeting; and
- I. WHEREAS, the Sites Authority found in the Final EIR/EIS and Resolution 2023-02 that construction of the Sites Project, even with best management practices (BMP) and mitigation measures (MM) to reduce emissions, would exceed the applicable air quality thresholds and cause significant air quality impacts within certain Air District boundaries from emissions of nitrogen oxides (NOX) and particulate matter of 10 microns or less in diameter (PM10); and
- J. WHEREAS, the Final EIR/EIS and Resolution 2023-02 committed the Sites Authority to entering into an MOU with the Air Districts via MM AQ-1.2 (Exhibit 4) to reduce impacts of NOX and PM10 emissions through offsite mitigation programs administrated by the Air Districts, and the Parties intend for this MOU to fully satisfy the Sites Authority's obligation to implement MM AQ-1.2; and
- K. WHEREAS, the Air Districts have developed offsite emissions mitigation programs around several core principles, including cost-effectiveness, integrity, effective program administration, customer service, the efficient use of Air Districts' resources, fiscal transparency and public accountability; and
- L. WHEREAS, the Air Districts' offsite mitigation programs will be regularly audited through Air District standard review processes; and
- M. WHEREAS, the Air Districts have determined that with funding from the Sites Authority under this MOU, the Air Districts can source and secure offsite programs to mitigate the NOX and PM10 emissions that are expected to result from construction of the Sites Project.

- N. WHEREAS, the Air Districts shall execute a separate written agreement among themselves regarding the collection, administration, and distribution of funds provided by the Sites Authority under this MOU.

AGREEMENT

The Sites Authority and the Air Districts agree to the following:

1. Offset of Construction Emissions of Criteria Pollutants

- a. The Sites Authority shall offset Sites Project related construction emissions of NOX and PM10 that are in exceedance of the applicable thresholds, to the extent feasible, by paying an offset fee to the Air Districts for the construction actions within Air District boundaries as follows:
 - i. The Sites Authority will pay a non-refundable deposit of no less than 10% of the estimated fee amount for each year¹ of Sites Project construction, by November of the preceding year for the forthcoming year's construction activities. The estimated fee amount for the purposes of determining the deposit will be informed by the construction emissions modeling presented in the Final EIR/EIS and included in Exhibit 5. The Sites Authority may choose to conduct modeling prior to the beginning of the forthcoming year's construction activities to refine the Final EIR/EIS estimates and inform the non-refundable deposit amount. If such additional modeling is conducted by the Sites Authority, the Sites Authority shall submit a report summarizing the modeling and model results with the non-refundable deposit.
 - ii. Offset fee rates for all payments by the Sites Authority are as follows:
 - 1. The offset fee rate per ton of NOX will be \$34,000
 - 2. The offset fee rate per ton of PM10 will be \$34,000
 - iii. In addition to the offset fee identified in Paragraph 1.a.i. above, the Sites Authority shall also pay an Administrative Fee of 7.25% of the total offset fees paid by the Sites Authority. The Administrative Fee shall be paid annually by November beginning in the year preceding the start of construction. The annual payment of the Administrative Fee shall be determined by: (1) calculating the total offset fee expected to be paid over the term of this MOU based on the construction emissions modeling presented in the Final EIR/EIS and included in Exhibit 5; (2) applying the 7.25% total Administrative Fee

¹ For purposes of this MOU, the reference to the timeframe "year" is defined as a calendar year and shall mean the period commencing on January 1 and ending on December 31 of the same year.

to this amount for an estimated total Administrative Fee over the term of this MOU; and (3) averaging this estimated total Administrative Fee for an annual payment with the first payment made in the year preceding the start of construction. An example of the annual estimated Administrative Fee payment calculation is provided below.

Total Estimated Offset Fees Expected to be Paid Over the Term of the MOU Based on the Construction Emissions Modeling in the Final EIR/EIS (Item 1)	\$63,800,000
Estimated Total Administrative Fee (7.25% of Item 1)	\$4,600,000
Administrative Fee Timeframe (Estimated 6 years of construction with first payment the year prior to construction and last payment 2 years after construction completion)	9 years
Annual Administrative Fee Payment	\$511,111

Administrative Fees are non-refundable. If actual emissions exceed 20% of the construction emissions modeling presented in the Final EIR/EIS and included in Exhibit 5, the Parties agree to meet and confer in good faith to consider adjustments to the Administrative Fee.

- iv. The Parties to this MOU will collaboratively develop and agree upon a protocol to quantify the Sites Project's actual construction emissions. The protocol may be amended from time to time in collaboration with and by agreement of the Parties to this MOU.
- v. The Sites Project's actual construction emissions will be quantified on an annual basis using the agreed-upon quantification protocols in Paragraph 1.a.iv. By March 15 of the year following each construction year, the Sites Authority will submit a report to the Air Districts identifying the construction emissions for the preceding year of construction. The reports will identify at least the following: the methodology for determining actual construction emissions; actual construction emissions by Air District; and, if applicable, actual emissions that exceeded the thresholds of significance along with the offset payment amount for these exceedances based on the offset fee amount in 1.a.ii, above.
- vi. If the Sites Project's actual construction emissions of NOX and PM10 that are in exceedance of the applicable thresholds during a year of construction exceed the construction emissions estimate that formed the initial deposit provided by the Sites Authority in Paragraph 1.a.i,

the Sites Authority will pay an additional fee in an amount equal to the difference in emissions multiplied by the offset fees in Paragraph 1.a.ii by April 30 of the year following each construction year.

- vii. If the Sites Project's actual construction emissions during a year of construction do not exceed the thresholds of significance identified in the Final EIR/EIS or do not exceed the construction emissions estimate that formed the initial deposit provided by the Sites Authority in Paragraph 1.a.i, any deposit(s) paid, or remaining deposit paid, will be carried forward to the next year.
- viii. If the Air Districts disagree with the Sites Authority's actual construction emissions provided in the Sites Authority's annual report, the Air Districts or respective Air District shall notify the Sites Authority within 90 days of receipt of the annual report. The Parties shall meet and confer in good faith to discuss the disagreement and how to improve the Sites Project's actual construction emissions. The Parties shall work together to identify and agree upon a resolution. If agreement is reached, then the Parties shall implement the agreement. If agreement is not reached, then the Parties shall proceed through the Dispute Resolution process as specified in Paragraph 7 of this MOU.
- ix. As described in Paragraphs I and J, the Sites Authority has committed in its Board Resolution 2023-02 to implementing best management practices and mitigation measures to reduce the Sites Project's air quality impacts, including entering into this MOU. Although not anticipated at this time, in the event that offsetting emissions as a mitigation strategy becomes cumulatively cost-prohibitive (i.e., actual construction emissions are substantially greater than estimate in the Final EIR/EIS), the Sites Authority will notify the Air Districts as soon as practical. The Sites Authority and the Air Districts will collaboratively explore innovative solutions for cost-effective mitigation strategies. The Parties shall meet and confer in good faith to discuss and either Party may elect to terminate the Agreement pursuant to the procedures in Paragraph 5.c. Upon termination for the purposes in this paragraph, the Authority is not entitled to a refund of any previously paid offset payment.
- x. The Parties recognize that the Sites Reservoir Project is currently in the design phase. Changes to the Project may occur as the Project design and construction means and methods are finalized. The Authority will notify the Air Districts as soon as reasonably practical in the event of a substantial design change or substantial change in construction means and methods, as compared to the Project as analyzed in the Final EIR/EIS, that may result in a substantial

increase in the Project's construction NOX or PM10 emissions or in emissions of new criteria pollutants that may exceed thresholds. In the event of notification by the Sites Authority under this Paragraph, the Parties agree to meet and confer in good faith to consider adjustments to this MOU.

- xi. The Air Districts shall provide the Authority the executed separate written agreement among themselves regarding the collection, administration, and distribution of funds provided by the Sites Authority under this MOU (see Whereas Clause N). The Authority is not obligated to make any payments until such separate written agreement with the Air District has been fully executed and received by the Authority.
- b. Using the funding provided by the Sites Authority, the Air Districts shall use diligent efforts to identify emission reduction projects through their then-existing offsite emissions mitigation programs to fund projects that reduce NOX and PM10 emissions.
 - i. For those funds provided under this MOU, the Air Districts shall implement emissions reduction projects in geographies closest to the Sites Project first and go to larger geographies (i.e., other Air Districts in the Sacramento Valley Air Basin) if adequate emission reduction projects cannot be found in closer geographies. All emission reduction projects must occur within the Sacramento Valley Air Basin.
 - ii. By March 15 of each year, the Air Districts will provide the Sites Authority with a list of emission reduction projects implemented in the prior calendar year by funds provided by the Sites Authority.
 - iii. For the purposes of this MOU, emission reductions projects are reductions that are not otherwise required by existing laws and regulations and would not have otherwise been achieved without direct financial support of the Sites Authority.
 - iv. Emissions reductions projects will be selected by the Air Districts following their then-existing offsite emissions mitigation programs. The Sites Authority will not have a role in selection of emissions reductions projects. Considering that there may be a number of factors that the Air Districts consider in selecting emissions reductions projects, full and complete payment of the offset payment amount represents the Sites Authority complete financial obligation under this MOU, regardless of the amount of emissions reductions generated by the emissions reductions projects funded in whole or in part by the funds provided by the Sites Authority.

- v. Although not anticipated at this time, offsetting emissions as a mitigation strategy may be deemed infeasible by the Air Districts if insufficient emissions reductions projects existing in the Air Districts and in other Air Districts in the Sacramento Valley Air Basin or for other reasons identified by the Air Districts. Under these circumstances, the Air Districts will provide substantial evidence to the Sites Authority documenting the lack of emissions reductions projects. The Parties shall meet and confer in good faith to discuss and either Party may elect to terminate the Agreement pursuant to the procedures in Paragraph 5.c. Upon termination for the purposes in this paragraph, the Sites Authority is entitled to a refund of any previously paid offset payment that has not yet been expended by the Air Districts.

2. Air District Rules and Scope of this MOU

- a. The Sites Authority acknowledges that it is required to comply with all applicable Air District rules and regulations that are in effect at the time of Sites Project construction, such as the Air Districts' rules summarized in Appendix 4A, Regulatory Requirements, of the Final EIR/EIS.
- b. This MOU addresses the Sites Project's construction NOX and PM10 emissions. A future agreement will be developed to address the Sites Project's operations emissions.

3. COLLABORATIVE APPROACH

- a. The Parties shall maintain a collaborative approach and act in good faith with respect to implementation of the provisions in this MOU.
- b. The Parties agree to share records, accounting and reporting as reasonably necessary to implement the provisions of this MOU.

4. AMENDMENTS

- a. The Parties agree to work cooperatively over the MOU duration to evaluate any amendments necessary to this MOU. Amendments may be necessary to reflect any relevant circumstances that may change, including but not limited to changing state and federal law requirements related to air quality, changes in federal or state attainment status of the Sacramento Valley Air Basin, changing and evolving Sites Project funding, or changing state and/or federal law requirements.
- b. The MOU duration can be amended if warranted by delays in the Sites Project's schedule or in identifying suitable emission reduction projects.

- c. Amendments to this MOU must be made by written agreement by all Parties.

5. MOU DURATION

- a. Effective Date – This MOU shall commence on the date the last Party executes this MOU and shall continue thereafter, subject to potential amendments pursuant to Paragraph 5, unless terminated pursuant to this Paragraph 6.
- b. Termination – The MOU will terminate two (2) calendar years after the calendar year when construction of the Sites Project is completed. The Parties acknowledge that construction of the Sites Project could span a decade. The MOU will remain in effect during the two (2) calendar years post-construction period to allow emission reduction projects (e.g., funding and reporting) to be completed.
- c. To terminate prior to the timeframe in Paragraph 5.b., any Party must give written notice (Termination Notice) to the other Parties that it wishes to terminate this MOU, with reasonable particularity as to the need for termination. The Parties shall then negotiate in good faith to address the issues raised in the Termination Notice for a period of at least ninety (90) days after the date of the Termination Notice. If the Parties fail to reach an agreement on the resolution of the issues raised in the Termination Notice within such 90-day period, any Party may terminate this MOU upon thirty (30) days prior written notice to the other Parties. Termination by any one Air District shall not have the effect of terminating the MOU with respect to any other Air District party to this MOU.

6. FORCE MAJEURE EVENT

- a. For purposes of this MOU, a Force Majeure Event means any act occasioned by a cause beyond the reasonable control of the Parties including, but not limited to, floods, earthquakes, hurricanes or other natural catastrophes, actions by other government agencies, governmental legislation, judicial or administrative orders by other government agencies, casualties, war, insurrection, strikes, civil unrest, terrorism and any other causes that threaten public health or safety generally. Upon the occurrence of a Force Majeure Event, the affected Party shall give prompt written notice thereof to the other Parties, describing the anticipated effect of the Force Majeure Event. The Parties shall meet and confer in good faith to discuss potential responses to the Force Majeure Event. Upon the occurrence of a Force Majeure Event, any Party may elect to terminate the MOU pursuant to the procedures in Paragraph 5.c.

7. DISPUTE RESOLUTION

- a. Informal Dispute Resolution – In the event of dispute regarding interpretation or implementation of this MOU, the respective Air Pollution Control Officers, the Executive Director of the Sites Authority, or their authorized representatives, shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute remains unresolved, the Parties will endeavor to resolve the dispute through mediation, as specified in Paragraph 7.b.

No other means of dispute resolution, including mediation or litigation, shall be available to the Parties unless they have exhausted the process provided for in this Paragraph 7.a.

- b. Mediation – If a dispute cannot be resolved through informal dispute resolution as described in Paragraph 7.a, the Parties shall endeavor to settle the dispute using non-binding mediation under the rules of the Judicial Arbitration and Mediation Service (JAMS), the American Arbitration Association (AAA), or any other neutral organization agreed upon by the Parties before having recourse in a court of law. Mediation shall be commenced by sending a notice of demand for mediation to the other Parties.

A single mediator that is acceptable to the Parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this MOU, if possible.

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All mediation costs, including required travel and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be equally shared by the Parties to the dispute.

Notwithstanding any JAMS or AAA rules to the contrary, mediation will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions and any offers to compromise during the proceedings will be confidential to the proceedings (Evidence Code §§ 1115 – 1128; 1152) and will not be used for any other purpose unless otherwise agreed by the Parties in writing.

Any resultant agreements from mediation shall be documented in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the Parties.

- c. If the Parties fail to resolve their dispute through mediation, including execution of a final written agreement, either Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

- d. Nothing in this Paragraph 7 shall relieve the Parties from performing their obligations under this MOU. The Parties shall be required to comply with this MOU, including the performance of all disputed activity and disputed payments, pending the resolution of any dispute under this MOU.

8. SECTION HEADINGS

The section headings of this MOU are for the convenience of the Parties and shall not be considered to limit, expand, or define the contents of the respective sections.

9. OPINION AND DETERMINATION

Where the terms of this MOU provide for actions to be based upon the opinion, judgment, approval, review, or determination of any Party, such terms will be reasonably construed.

10. FURTHER DOCUMENTATION

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

11. ENTIRE AGREEMENT

This MOU and the attachment to it contain the entire understanding of the Parties relating to this subject matter and shall supersede any prior written or oral agreements or communications between the Parties pertaining to that subject matter.

12. MODIFICATION OF AGREEMENT

No amendment to the terms and conditions of this MOU shall be valid unless made in writing and signed by all the Parties to this MOU.

13. SIGNATURE CLAUSE

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

14. EXECUTION

The Parties agree that this MOU can be executed in counter parts and by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

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

Sites Reservoir Joint Powers Authority

Jerry Brown
Executive Director

Date

Colusa County Air Pollution Control District

M. Anastacia Allen
Air Pollution Control Officer

Date

Glenn County Air Pollution Control District

Marcie Skelton
Air Pollution Control Officer

Date

Tehama County Air Pollution Control District

Joseph Tona
Air Pollution Control Officer

Date

Yolo Solano Air Quality Management District

Gretchen Bennitt
Air Pollution Control Officer

Date