



**REPORT TO MAYOR AND CITY COUNCIL**

AGENDA ITEM

TO: THE HONORABLE MAYOR  
AND CITY COUNCIL

DATE: June 23, 2009

SUBJECT: Davis-Woodland Water Supply Project  
(DWWSP) Study Session

**Report in Brief**

This Study Session is preparatory to the joint Woodland-Davis Council Workshop scheduled for July 28, 2009 and has two primary goals. These include: 1. Present information regarding Joint Powers Agreements/Authorities (JPAs) and receive Council feedback and direction regarding further preparation for the July 28 meeting and the establishment of a Woodland-Davis JPA; and 2. Update the Council on the status and direction of current critical path areas of the project.

All levels of government use JPAs to tackle common problems and provide regional services. JPAs are created to increase efficiency and reduce cost through sharing and combining resources and reducing overlap of efforts. A Davis-Woodland Water Supply Project (DWWSP) JPA will focus on the formation, organizational structure and implementation strategies for project execution and future management oversight and governance of the regionally shared systems. This JPA would also execute and manage decisions to plan, schedule, design, construct and operate the project under oversight and funding approved by the Davis and Woodland City Councils. It establishes the focus to resolve a regional problem and improves the project's chances to receive supplemental grant funds.

Current critical path areas of the project in addition to JPA formation include: continued diligence to secure the water right permit; coordination and support for joint intake project development with Reclamation District (RD) 2035; refining project cost estimates and studying rate impacts and rate impact reduction strategies associated with various funding and financing scenarios; developing portions of the project to compete for available state and federal grants and economic stimulus funds/financing programs; and focusing outreach to ensure it offers full information and transparency of project status, goals, options, decisions, impacts, direction and schedule.

This joint project is exceptionally large with significant concurrent project initiatives. In an effort to maximize project transparency, all attachments and additional identified references in this Council Report are available for viewing on the project website. The direct links to each attachment and reference are listed at the end of this report.

Staff recommends that the City Council receive information and provide feedback regarding further preparation, presentation and discussion for the joint Woodland-Davis Council Workshop on the Davis-Woodland Water Supply Project.

## **Background**

### **Formation of a Joint Powers Authority**

Project partner staff members recommend the formation of a regional Joint Powers Authority (JPA), to serve as the central body to execute and manage the project and to present a regional approach to addressing common water concerns. In addition to the efficiency and cost benefits from combining our focus and resources, regional entities tend to be most successful in securing federal and state support for establishing water rights and receiving supplemental project funding. Holding the water rights under one joint permit supports the full rights available to the region through that joint entity should any individual partner discontinue in the partnership. The formation of a joint entity or interagency agreement is also a critical element for future ownership and operation of the project. Attachment 1 is a draft background memo developed by Dick Shanahan of Bartkiewicz, Kronick and Shanahan (BKS). This memo addresses the advantages and disadvantages of a joint powers authority approach, summarizes the process to form a joint powers authority, provides sample water project joint powers and similar agreements, outlines principal organization and structure options and offers joint powers authority governance options. Attachment 2 is a sample draft Joint Powers Agreement also developed by Dick Shanahan of BKS and primarily configured from a similar joint project in Freeport. Attachment 3 is the Citizen's Guide to JPAs published by the California Legislature.

### **Project Validation**

Attachment 4, the Executive Summary of the April 2007 Integrated Regional Water Management Plan completed by the Water Resources Association of Yolo County, and Attachment 5, a project Community Report completed in December 2007, are included as project background references to explain the basic origin and foundation for the project. The DWWSP Environmental Impact Report (EIR) was adopted and certified in the fall of 2007 by both the Davis City Council (as the lead agency) and Woodland City Council (as a responsible agency). Subsequent to that, and as a result of significant and untimely additional wastewater program impacts for the City of Davis, the Davis City Council commissioned two independent reviews to confirm the preferred project identified under the DWWSP EIR. Reference A is the independent study completed by the National Water Research Institute in July 2008 and Reference B is the study completed by UC Davis University Professors Emeritus Schroeder and Tchobanoglous, completed in February 2009. In summary, both independent reviews recommend the partners continue to develop and pursue the DWWSP as the most beneficial option for addressing each agency's needs and concerns. They also emphasize a continued focus on developing strategies to organize effectively, reduce ratepayer impacts, increase water conservation, and enhance community outreach.

### **Consultant Program Management Support**

On May 5, 2009, the City of Woodland assumed consultant contract administrative lead on behalf of the project by approving and executing the Phase 1 consultant support agreement with West Yost Associates (WYA) through June 2011. That action also authorized Phase 1A expenditures through October 2009 on behalf of the partners for up to \$630,802; and approved Woodland's share of Phase 1A expenditures up to \$256,552. On May 19, 2009, the City of Davis approved their participation under the contract and authorized their expenditures under Phase 1A up to \$314,250. The budget estimates are 'not-to-exceed' amounts and will be regularly tracked and monitored for cost control and balancing within the project budget. The project is subject to many outside agency influences that can affect actions for proceeding and the team will focus on staying ahead of budgetary impacts. Phase 1A activities under this contract include the following:

- Task 1: Program Management - Effectively collaborate, coordinate and implement project scope
- Task 2: JPA Agreement - Compile and present considerations for decision regarding a DWWSP JPA
- Task 3: Water Supply - Actions to secure water right permit and initiate a summer water action plan
- Task 4: Outreach - Among municipal and regional agencies, communities and stakeholders
- Task 5: Project Funding – Develop/pursue fund strategies and opportunities to reduce rate impacts
- Task 6: Facilities – Optimize execution of project elements including alternate delivery methods

### **Project Schedule Overview**

The Phase 1 project schedule with annotated milestones and deliverables is resubmitted for reference as [Attachment 6](#) and the overall project schedule is resubmitted for reference as [Attachment 7](#). The team is executing Phase 1A and anticipates bringing the action for Phase 1B execution to Council for approval and funding in September 2009, in conjunction with any directed actions related to JPA formation. The objective is for future DWWSP work (Phases 1B and 1C) to be contracted and implemented through the JPA to oversee and complete the project.

Phase 2, anticipated to begin in July 2011, will advance the project through final design and construction to start-up and operation, currently envisioned in 2016. Phase 2 will begin with the review of the proposals issued at the end of Phase 1, and selection of the contracting entity or entities that will construct the project facilities. The remainder of Phase 2 will then be devoted to finalizing all permits, rights-of-way acquisition, constructing the project facilities, and start-up.

### **Water Right Permit**

The project must continue to exercise due diligence toward completing the water right application in order to secure State Water Resources Control Board (State Board) approval of the application and issuance of the water right permit. This due diligence is a requirement under the permit process and is also necessary because increasingly difficult conditions are being proposed which could potentially impact diverters upstream of the Delta. The status of the DWWSP water rights application is considered to be in a good position in terms of priority for river diversion as long as the project continues to proceed with due diligence.

Nine of the eleven protests to the water right application have been resolved through signed protest-dismissal agreements. The remaining protests are by the California Department of Fish and Game (DFG) and the California Sport-fishing Protection Alliance (CSPA). Over the past several months, the project attorney, Alan Lilly of Bartkiewicz, Kronick and Shanahan (BKS) and the project attorney, members of the Davis and Woodland staffs and project consultants have been meeting with representatives of DFG to discuss resolution of DFG's protest. Mr. Lilly recently submitted a comprehensive draft protest resolution agreement, which responds to DFG's expressed concerns, to DFG's attorney. The Partners will be scheduling a meeting with DFG for early July to discuss and, hopefully, complete this agreement.

Following the anticipated resolution of DFG's protest, the only remaining protest will be CSPA's. Although CSPA representatives participated in some of the early meetings between representatives of DFG and the Project Partners, CSPA has not participated in any of the recent meetings and has not responded to the proposed outline for resolution of its protest. If CSPA continues this approach, then its protest will have to be resolved through the State Board's administrative process.

It's the consensus of the partner team that a lapsing and loss of this current water right application would significantly increase the difficulty of obtaining a water-right permit for the project. If the current application were canceled, then the partners would have to file a new application. Processing a new application would significantly delay the schedule in order to obtain a water-right permit and substantially increase the number of protests and total costs for CEQA compliance and project implementation. Expeditiously securing the water right permit therefore is an action of great significance. Project attorney Alan Lilly who is handling legal concerns regarding water rights and supplies could not be present for this Council meeting. Attachment 8 is his memorandum to Council on current project water right and water supply issues. Mr. Lilly also recently presented an update to California Water Law in May 2009 (see Reference C).

The partners are continuing to monitor regional and state-wide activities related to Bay-Delta interests. In this regard, the Water Resources Association of Yolo County, on behalf of the region and the project, sent a letter to Senator Simitian, the sponsor of SB-12, (see Reference D) conveying concerns regarding provisions in the Bill which could negatively impact current area-of-origin water right protection statutes. Many other upstream interests from the Bay-Delta are concerned about such provisions receiving attention in the state legislature. Yolo County and the WRA will also continue to monitor these activities in order to protect local interests and conduct outreach/education efforts like the Delta update meeting held in April 2009.

### **Securing Long-Term Summer Water Purchase Agreements**

The project team is evaluating strategies for initiating discussions and negotiating with holders of 'senior' upstream summer water rights for long-term water purchase options and contracts to provide future water during the summer months when diversions under the project's own water-right permit will not be allowed. As the potential grows for surface water to become more expensive, the difficulty in negotiating secure long-term contracts for this supplemental supply may increase. It is imperative for the partners to map out the process for moving forward and to begin discussions with holders of senior water rights. In order to secure and insure the long-term availability of those

supplies when they are needed and to secure a priority for their use, annual budget insertions will be required for acquiring options to purchase summer water rights.

### **Project Outreach**

Providing timely information regarding the DWWSP is critical to generating and maintaining support. An outreach program will focus on transparency and ensuring that all stakeholders, and the general public are all kept well informed of the project status, schedule and required decision points; and that the goals, benefits, impacts, risks and costs for this project and its alternatives are clear. A draft Woodland Outreach Plan, currently under review, was produced through Lisa Beutler and the Center for Collaborative Policy at CSU, Sacramento. In addition to public outreach, this sub-consultant is also on board and available as necessary to support team collaborative efforts toward an interagency JPA agreement for project completion, ownership and operation. This area of the project budget received significant scrutiny at the May 19<sup>th</sup> Davis Council meeting and will be closely reviewed by the project team for clarification of need, focus and cost-effectiveness.

### **Project Costs, Rate Studies and Funding**

West Yost Associates (WYA) produced a draft Technical Memorandum (TM) addressing project costs including a comprehensive update to the project estimate (see Reference E for full TM). The updated estimate reflects a capital and construction cost of approximately \$325.3M in 2009 dollars (see Attachment 9 - TM excerpt, pg.24, Table 16). As reflected in this excerpt, Woodland's cost share is estimated at approximately \$156.8M. This estimate is partly Class 4 (Concept Screening) and partly Class 5 (Study or Feasibility) as defined by the Association for the Advancement of Cost Engineering (AACE) (see Attachment 9 - TM excerpt, page 3). This estimate remains subject to change based on the natural evolution and development of the project design and market and industry impacts to costs. WYA is coordinating this information with the rate consultants (Tom Pavletic for Davis and HDR for Woodland) who will integrate this information into their studies for development fee nexus and rate calculations. The project team is targeting to have nexus and rate analysis information available for discussion and consideration at the joint July Council Workshop.

The project team plans to next evaluate and select the bond counsel for the project and a financial consultant. These consultants will investigate, define and suggest options for structuring and timing project funding instrument(s) and debt repayment in order to develop rate calculations and identify alternatives to mitigate impacts to ratepayers. Project Partner staff and the consultant team will devote considerable attention to strategizing and positioning the project (or portions as warranted) to compete for available existing and proposed federal and state funding and financing programs in an effort to further reduce project cost and future rate impacts. This includes investigation of existing programs (State Revolving Fund, State Infrastructure Bank, State Bond measures, and the Bond market), as well as other options including Tax Credit Bonds, and the National Infrastructure Bank currently being proposed in Washington D.C. by the American Water Works Association (see Reference F). The sooner this project can be viewed by state and federal agencies as a viable, executable project, the better the chance to compete and obtain funding toward project implementation while minimizing impacts to user rates. As stated previously herein, formation of a JPA will enhance the potential for receiving grants.

### **Facilities – Pre-Design, Design, Construction, Operation and Alternative Delivery**

Under Phase 1A, the team will define and initiate applications for project facility permits, land acquisition and/or easements and rights-of-way. In response to Council concern regarding project cost and direction to investigate opportunities to minimize future water rate impacts, the Project Partners are continuing to evaluate the costs, savings, benefits and risks associated with alternative forms of project delivery including Design-Build (DB), Design-Build-Operate (DBO) and Design-Build-Finance-Operate (DBFO) vs. the traditional Design-Bid-Build (DBB) methodology. Accordingly, the project partners are scheduling and attending presentations on alternative project delivery methods by firms recognized as industry leaders. These presentations are no cost to the project and result in mutual benefit. In addition to educating team members, these presentations broaden the firm's exposure and networking while also giving them a chance to receive an advance introduction to the future project requirements. The firms presenting on alternative delivery include CDM (Camp Dresser McKee), CH2M-Hill and MWH (Montgomery Watson Harza). Reference G is a basic guide to the differences between the traditional method of DBB and the current alternative DB delivery methods. The DBO methodology appears to the project team to offer promise for providing a higher level of competitive, life-cycle cost-effectiveness. Staff will also investigate to what extent a DB or DBO method of execution could serve to define the project sooner as 'shovel-ready' in order to compete for available supplemental funding. At the conclusion of Phase 1 project activities, work will have advanced to a state that could allow requests for proposals to be issued to contractors for construction of the project, depending on the methodology selected for design and construction.

### **Joint River Intake Structure with RD 2035**

Project analyses confirmed the most cost-effective, environmentally sensitive and expedient approach for moving forward also includes teaming with Reclamation District 2035 (RD 2035) to jointly reconstruct and share their existing river water intake structure vs. building a new intake structure at a separate location on the river. With strong County and WRA support, RD 2035 recently received 50-50 Bureau of Reclamation grant funding in the amount of \$500K toward final design (design estimate \$1M) to replace/upgrade their intake structure to incorporate new fish-screening requirements. However, the conditions of the grant do not allow it to be applied to municipal aspects of the project. They also received WRA grant funding in the amount of \$30K. When ready for execution, this project will require proportional cost-sharing for both design and construction with the DWWSP project for the project's share of the intake structure – currently estimated at 20% to 25%. The project partner team and RD 2035 are meeting on a recurring basis for project teaming and to also investigate the potential for alternative design-build delivery options to further optimize project quality, cost and schedule for this project. The Draft Environmental Assessment for this intake structure is underway. Reference H summarizes the new intake structure project and provides conceptual renderings and an updated project cost estimate and schedule.

**Fiscal Impact**

The project incurs no cost to the General Fund and there are no financial decisions or additional project costs associated with the recommendation to the City Council. Cost sharing for joint-funded work continues as outlined under the latest amendment to the Project Partner MOU, based on projected project benefit, with Woodland's share at 52.1%, Davis at 44.4% and UC Davis at 3.5%. Funding is two-thirds through the Water Enterprise, Fund 210, and one-third through the Water Development, Fund 584. Sufficient funding for Phase 1A of this project is budgeted and available in the current year budget and in the authorized and projected Capital Budgets for FY 09/10 and 10/11. The team will return to Council for authorization to expend funds on future sub-phases 1B and 1C. Each Project Partner will separately approve the authorization and funding for all shared joint-funded project initiatives.

**Public Contact**

Posting of the City Council agenda, public presentations to the Woodland Chamber of Commerce Water Advisory Committee and bilingual utility billing insert newsletter updates.

**Council Committee Recommendation**

The Infrastructure Committee met on April 21, 2009 to receive a project update and briefing on this initiative. The Committee recommends Council support for moving this project forward.

**Recommendation for Action**

Staff recommends that the City Council receive information and provide feedback regarding further preparation, presentation and discussion for the joint Woodland-Davis Council Workshop on the Davis-Woodland Water Supply Project.

Prepared by: Dick Donnelly, P.E.  
Deputy Public Works Director

Reviewed by: Gregor Meyer  
Public Works Director

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Mark G. Deven  
City Manager

Attachments and References Listed As Follows:

**Attachments to Council Report**

[Atch 1 Draft JPA Background Memo](#)

[Atch 2 Draft JPA](#)

[Atch 3 Citizen's Guide to JPAs](#)

[Atch 4 IRWMP Executive Summary](#)

[Atch 5 DWWSP Community Report Dec 07](#)

[Atch 6 DWWSP Phase 1 Schedule](#)

[Atch 7 DWWSP Overall Schedule](#)

[Atch 8 Water Rights Memorandum](#)

[Atch 9 Project Estimate TM Excerpts](#)

These documents are available on the project website at [www.daviswoodlandwatersupply.org/links](http://www.daviswoodlandwatersupply.org/links)

Clicking the links to the left will take you directly to the document.

**References not attached to Council Report and available at Project Website**

[Ref A NWRI Final DWWSP Report](#)

[Ref B Schroeder-Tchobanoglous Study](#)

[Ref C May 09 Cal Water Law Update](#)

[Ref D WRA Simitian letter](#)

[Ref E Project Estimate TM Update Jun 09](#)

[Ref F AWWA Water Infrastructure Financing](#)

[Ref G Water and Waste D-B Handbook](#)

[Ref H Intake Structure Design Update](#)