



City of Woodland

REPORT TO MAYORS AND CITY COUNCILS

AGENDA ITEM

TO: THE HONORABLE MAYORS
AND CITY COUNCILS

DATE: July 28, 2009

**SUBJECT: Davis-Woodland Water Supply Project
JPA Joint Council Workshop**

Recommendation for Action for Davis City Council and Woodland City Council

Staffs recommend that the City Councils receive information and provide direction regarding further preparation, discussion, or action for establishing a Joint Exercise of Powers Agreement between the Cities of Davis and Woodland for the joint construction, ownership, and operation of the Davis-Woodland Water Supply Project. Further, the City Councils agree in principle with the formation of a JPA and direct staff and legal counsel for each City to present a JPA for approval to both Councils by the end of September, 2009.

Report in Brief

This Joint Workshop has two primary goals. These include:

1. Present information regarding Joint Powers Agreements/Authorities (JPAs) and receive feedback from the respective Councils and direction regarding the establishment of a Woodland-Davis JPA; and
2. Update the Councils on the status and direction of current critical path areas of the project as desired.

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 approval 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.

Background

This joint project is complex with significant concurrent project initiatives. Work and actions by each agency to evaluate this project extend back to 1989. In an effort to maximize project background and understanding of the project, all attachments and additional identified references in this Council Report are available for viewing on the project website. References in this Report include supporting documents that are large and numerous, yet are deemed necessary or helpful for a full understanding of the project. Much of this information has been made available in the past and discussed at meetings of the Councils, although some new and updated information is provided. The direct links to electronic copies of each attachment and reference are underlined and embedded in the city website version of this Council Report and also listed and linked at the end of this report along with a link to the project website.

Formation of a Joint Powers Authority

Project partner staff members recommend the formation of a Joint Powers Authority 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. This also provides the flexibility for sharing of water under the right to match potentially variable needs for a given Project Partner. 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 JPA 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](#) includes a draft Joint Powers Agreement with an executive summary also developed by Dick Shanahan of BKS. The JPA was primarily configured from a similar joint project in Freepoint. [Attachment 3](#) is the Citizen's Guide to JPAs published by the California Legislature.

Recent Project Evaluation

[Reference A](#), the Executive Summary of the April 2007 Integrated Regional Water Management Plan completed by the Water Resources Association of Yolo County, and [Reference B](#), 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). As project evaluation continues, the Davis City Council commissioned two independent reviews to further evaluate project purpose and scope. [Reference C](#) is the independent study completed by the National Water Research Institute in July 2008 and [Reference D](#) 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, most specifically a reliable, diversified water supply and improved water quality. They also emphasize a continued focus on developing strategies to organize effectively, reduce ratepayer impacts, increase water conservation, and improve communication with the community on these issues.

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 are 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 collaborates, coordinates, and implements project scope
- Task 2: JPA Agreement - Compiles and presents considerations for a decision regarding a DWWSP JPA
- Task 3: Water Supply - Actions to secure water right permit and initiate a summer water purchase action plan
- Task 4: Outreach – Develop educational and informational strategies among municipal and regional agencies, communities, and stakeholders
- Task 5: Project Funding – Develop/pursue alternative funding 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 at [Reference E](#) and the full project schedule is at [Reference F](#). The team is executing Phase 1A and anticipates bringing the action for Phase 1B execution (project funding, water rights, and supplemental water supplies) to Councils 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 including

facility design, permitting, and securing project right-of-way and Phase 2, including final design, construction, and operations) to be contracted and implemented through the JPA, which would 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 state water policy is changeable and uncertain and 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 productive advancement of the permit application requirements.

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), 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 are scheduled to meet with DFG on July 21st to discuss and work toward completion of 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 likely result in additional protests and total costs for CEQA compliance and project implementation. Expediently securing the water right permit therefore is an action of great significance. [Reference G](#) is Project Attorney Alan Lilly's memorandum to Council on current project water right and water supply issues. Also included at [Reference H](#) is Mr. Lilly's recent presentation at a May 2009 Continuing Legal Education Conference titled "An Update to California Water Law."

The partners are continuing to monitor regional and statewide 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 I](#)) 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 providing good information for decision-making by the Councils and the general public. An outreach program will focus on 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. Individualized Outreach Plans for each City will be produced through Lisa Beutler and the Center for Collaborative Policy at CSU, Sacramento. In addition to public outreach, this sub-consultant is also available, as necessary, to support team collaborative efforts toward an interagency JPA agreement for project completion, ownership and operation.

Project Costs, Rate Studies and Funding

West Yost Associates (WYA) produced a Technical Memorandum (TM) addressing project costs including a comprehensive update to the project estimate (see [Reference J](#)). The updated estimate reflects a capital and construction cost of approximately \$325.3M in 2009 dollars (see Reference J, pg.24, Table 16). As reflected in this table, Woodland's cost share is estimated at approximately \$156.8M, the City of Davis cost share is estimated at approximately \$151.3M, and the University of Davis cost share is estimated at approximately \$17.2M. This assessment is partly a Class 4 estimate (Study or Feasibility) and partly a Class 5 estimate (Concept Screening) as defined by the Association for the Advancement of Cost Engineering (AACE) (see Reference J, pg.3, Table 1). These valuations remain subject to change based on the natural evolution and development of the project design, market, and industry impacts to costs. WYA is coordinating this information with the

rate consultants, who will integrate this information into their studies for development fee nexus and rate calculations.

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 staffs 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 K](#)). 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 and/or low interest financing.

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 concerns 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 attended presentations on alternative project delivery methods by firms recognized as industry leaders. These presentations were at no cost to the project and resulted in mutual benefit for everyone involved in the process. 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 included CDM (Camp Dresser McKee), CH2M-Hill, and MWH (Montgomery Watson Harza). [Reference L](#) 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 for at least the treatment plant.

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 project facilities, depending on the methodology selected for design and construction.

Attachments to Council Report

[Atch 1 Draft JPA Background Memo](#)

[Atch 2 JPA Executive Summary w/Draft JPA](#)

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

These documents are available on the project website at 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 IRWMP Executive Summary](#)

[Ref B DWWSP Community Report Dec 07](#)

[Ref C NWRI Final DWWSP Report](#)

[Ref D Schroeder-Tchobanoglous Study](#)

[Ref E DWWSP Phase 1 Schedule](#)

[Ref F DWWSP Overall Schedule](#)

[Ref G Water Rights Memorandum](#)

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

[Ref I WRA Simitian letter](#)

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

[Ref K AWWA Water Infrastructure Financing](#)

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

[Ref M Intake Structure Design Update](#)