



Legislation Text

File #: 14-1342, **Version:** 1

Supervisor Briggs recommending Board:

- 1) Receive presentation provided by David Eggerton, Executive Director of the El Dorado Water and Power Authority on the purpose and function of the El Dorado Water and Power Authority;
- 2) Discuss and evaluate the County's continuing participation as a member agency of the El Dorado Water and Power Authority; and
- 3) Provide direction to staff. (Est. Time: 1 Hr.)

Background

The term of Sacramento Municipal Utility District's (SMUD) original Federal Energy Regulatory Commission (FERC) License for the operation of the Upper American River Project (UARP), FERC Project 2101, was scheduled to expire in 2007. In 2001, utilizing FERC's alternative licensing procedures, SMUD initiated the re-licensing process to obtain its first new license for the UARP from FERC. SMUD filed its Application for a New License with FERC on July 15, 2005. In July of 2014, SMUD received a new 50-year license from the FERC for the continued operation of the UARP.

As a result of the re-licensing process, agencies within El Dorado County entered into a series of inter-related agreements to deal with FERC's anticipated re-licensing of SMUD's UARP. Below is a brief history and description of the various agreements.

Agreements dealing with the UARP:

A. El Dorado Water and Power Authority Joint Powers Agreement

On January 27, 2004, (Item #70) the El Dorado County Board of Supervisors approved a recommendation to form a Joint Powers Agreement (JPA) to include the County of El Dorado (County), the El Dorado Irrigation District (EID), the Georgetown Divide Public Utility District (GDPUD), and the El Dorado County Water Agency (Water Agency), for the purpose of coordinating their negotiations with SMUD regarding the re-licensing of the UARP.

On February 24, 2004, (Item #33) the Board of Supervisors approved a Joint Powers Agreement for the formation of the El Dorado Water and Power Authority (EDWPA). The Joint Powers Agreement established EDWPA to provide the County, EID, GDPUD and Water Agency (collectively the El Dorado Parties) with a platform to identify and discuss concerns related to the SMUD UARP re-licensing, water supply and power issues. The JPA Agreement became effective on March 2, 2004. The parties subsequently amended the JPA Agreement effective November 1, 2005, to expand the purposes and powers of EDWPA. The Board of Supervisors approved this First Amendment to the JPA Agreement, per the adoption of Resolution 313-2005 on October 18, 2005, (Item #51).

On November 27, 2007, (#07-1870) the Board approved the Second Amendment to the EDWPA JPA Agreement to modify Article VI clarifying the voting provisions when EDWPA adopts its annual budget and the functions of the treasurer and auditor. On February 12, 2008, (#07-1870) the Board approved the Revised Second Amendment to the JPA Agreement to provide further clarification on the Second

Amendment.

B. El Dorado-SMUD Cooperation Agreement

SMUD and the El Dorado Parties negotiated a cooperation agreement that set forth the agreed rights and obligations regarding the use of UARP Facilities by the El Dorado Parties for the storage and diversion of up to 40,000 acre-feet of water annually, to make available Carryover Storage of up to 15,000 acre-feet for drought protection, and to provide compensation to the County for the mitigation of adverse impacts associated with the operation of the UARP pursuant to the issuance of the New FERC License. Additionally, the cooperation agreement delineates the mechanism through which the El Dorado Parties might utilize the UARP Facilities for delivery and storage of water, should the El Dorado Parties acquire a suitable water supply in the future. The cooperation agreement set forth a preferred mechanism for the securing of a suitable water supply but does not require that the El Dorado Parties acquire a water supply in that manner.

On October 4, 2005, (Item #71) the Board declared its intent to approve the Cooperation Agreement between SMUD and the El Dorado Parties, an Intra-County Coordination Agreement between the El Dorado Parties, and the First Amendment to the EDWPA JPA Agreement.

On October 18, 2005, (Item #51) the Board: 1) adopted Resolution 312-2005, approving the execution of the El Dorado - SMUD Cooperation Agreement (SMUD Cooperation Agreement) and the El Dorado Intra-County Coordination Agreement (Intra-County Coordination Agreement); and 2) adopted Resolution 313-2005, approving the First Amendment to the EDWPA JPA Agreement.

C. El Dorado Intra-County Coordination Agreement

Concurrently with the execution of the SMUD Cooperation Agreement, the El Dorado Parties entered into the Intra-County Coordination Agreement, which allocates and delegates the benefits and burdens, between and among the El Dorado Parties, and provides that the El Dorado Parties will exercise good faith and their best efforts to coordinate their actions to acquire water supplies for storage, diversion and use of the UARP Facilities in accordance with the SMUD Cooperation Agreement. The Intra-County Coordination Agreement and the First Amendment to the EDWPA JPA Agreement designated EDWPA, as the representative of the El Dorado Parties with the primary responsibility of pursuing and acquiring the water rights and water supplies to be stored in and diverted through and from the UARP.

The Intra-County Coordination Agreement provides that the El Dorado Parties will share the costs and expenses of the water supply acquisition efforts pursuant to the funding mechanisms then employed by EDWPA, or as the El Dorado Parties may otherwise determine. The Intra-County Coordination Agreement also allocated the benefits of the storage entitlements for SMUD's UARP facilities: 10,000 acre-feet of the annual storage was reserved for GDPUD, and the remainder for EID. EID was also allocated the full 15,000 acre-feet of Carryover Storage capacity.

D. Cost Share Agreement

On March 20, 2007, (#07-480) the Board of Supervisors appointed two members of the Board

(Supervisors Sweeney and Briggs) to represent the County of El Dorado in discussions to develop a funding mechanism to determine the share costs for the member agencies of EDWPA.

On April 17, 2007, (#07-547) the Board approved the allocation for fiscal year 2007/2008, in the not to exceed sum of \$400,000 and for fiscal year 2008/2009, and each year thereafter, the not to exceed sum of \$200,000, to be appropriated as the County's share of the EDWPA cost sharing agreement with no expenditures to be made of such funds until an agreement is reached between all of the parties of EDWPA as the source and use of such funds.

On October 2, 2007, (#07-1613) the Board directed County Counsel to immediately begin discussions with the attorneys of the other parties within EDWPA to determine the effects of the County's withdrawal from EDWPA, and to return to the Board with options pertaining to the same. On October 23, 2007, (#07-1613) per unanimous vote, the Board determined that "it is the intent of the El Dorado County Board of Supervisors to withdraw from the El Dorado Water and Power Authority unless there is an agreement that would satisfy the 'pay to play' position of the Board of Supervisors at the next El Dorado Water and Power Authority meeting scheduled for November 7, 2007."

On November 7, 2007, EDWPA approved a cost share agreement for the UARP Water Supply Acquisition.

On February 12, 2008, (#07-1065) the Board approved the Supplemental Water Acquisition Project Cost Share Agreement (Cost Share Agreement) between the County and the Water Agency, EID, and GDPUD, in an amount not to exceed \$400,000 for 2007/2008 fiscal year and each year thereafter in an amount not to exceed \$200,000 as previously approved by the Board of Supervisors at its meeting on April 17, 2007, and as conditioned upon contributions made by other entities. The Cost Share Agreement is a funding mechanism for the sharing and funding of the costs and expenses of acquiring the water supply to be diverted through and stored in the UARP facilities under the SMUD Cooperation Agreement. It specifies each agency's agreed-upon dollar contributions to EDWPA's water-rights effort. The Cost Share Agreement reflected the discussions and approvals by the Board on October 2, 2007, and EDWPA on November 7, 2007.

On November 10, 2009, (#09-1355) the Board approved an Amendment to the existing Cost Share Agreement clarifying that EID will be responsible for a large portion of the cost associated with the acquisition of water to utilize the 15,000 acre-feet Carryover Storage capacity.

Withdrawal of GDPUD:

On March 10, 2009, (#09-0298) the Board approved a Transition Agreement between the County and the Water Agency, EID, and EDWPA for the withdrawal of GDPUD from EDWPA, the Intra-County Coordination Agreement, and the Cost Share Agreement. GDPUD received a remittance for costs it has advanced. GDPUD also relinquished its 10,000 acre-feet water reservation. GDPUD remains a party to the SMUD Cooperation Agreement.

EDWPA Water Rights Applications:

Also in 2008 and 2009, EDWPA filed its area-of-origin water rights applications with the State Water Resources Control Board to obtain the additional 40,000 acre-feet of water rights. The water rights

submittals and the draft environmental impact report drew strong criticisms and protests from both environmental and downstream water interests in the Sacramento region.

EDWPA has since redesigned the project to incorporate potential groundwater storage and use of a portion of the water rights in the Sacramento region until such time that the water is fully needed in El Dorado County. On March 3, 2014, EDWPA re-issued a new Notice of Preparation (NOP) for the redesigned project.

Withdrawal from EDWPA:

Article VII of the EDWPA JPA Agreement makes provisions for the withdrawal of any party to the Agreement. Under the original JPA Agreement, in the event that a party withdraws or otherwise ceases to be a member, EDWPA shall wind up and dissolve its affairs.

Section 8 of the First Amendment to the JPA Agreement modified the provisions for such withdrawal. The amended Article VII now provides that a party may withdraw from EDWPA subject to a written notice submitted to each member of EDWPA at least one month prior to the effective date of the withdrawal. The withdrawing party's interest shall be treated in the same way as a termination, by return of unexpended contributions, or payment of additional contributions, as necessary. In the event a party withdraws from or otherwise ceases to be a member, the remaining members shall, by majority vote at the next meeting of EDWPA, decide either to (i) continue the operation and conduct of the affairs and purpose of EDWPA, in which event it shall continue, or (ii) wind up and dissolve its affairs.

Section 6 of the First Amendment to the JPA Agreement also added a new Section 3A to Article V. Under Article V, Section 3A(ii), any action of the JPA Board of Directors requires the affirmative vote of six (6) directors. If the County were to withdraw, there will only be five (5) voting directors remaining for EDWPA. While there is a non-voting director for EDWPA, the JPA Agreement makes it clear that the non-voting director only has the power to cast a tie-breaking vote. There is an issue of whether EDWPA may continue to exist since it would not have the necessary 6 votes required to take any action.

Under Article 19.1 of the SMUD Cooperation Agreement, the El Dorado Parties agreed that EDWPA was the designated representative unless and until it ceases to exist, in which case the Water Agency will succeed to the rights and responsibilities of EDWPA and will be the successor agency as the designated representative for all purposes for implementation of the SMUD Cooperation Agreement.