



Legislation Text

File #: 18-1781, **Version:** 1

Chief Administrative Office recommending the Board receive a presentation by the Executive Director of the El Dorado Water & Power Authority, A Joint Powers Authority between El Dorado County, El Dorado County Water Agency and El Dorado Irrigation District regarding the El Dorado Water Reliability Project under the terms of the 2005 SMUD Cooperation Agreement, and provide direction to County staff regarding the El Dorado Water Reliability Project under the terms of the 2005 SMUD Cooperation Agreement. (Est. Time: 20 Min.)

FUNDING: N/A

DISCUSSION / BACKGROUND

EDWPA is a joint power authority created in 2004 that includes, as its members, El Dorado County (EDC), El Dorado County Water Agency (EDCWA), and El Dorado Irrigation District (EID). EDWPA's primary responsibility is to serve as the El Dorado Designated Representative (EDDR) to administer and represent the County as outlined in the 2005 agreement between EDC, EDCWA, EID and the Sacramento Municipal Utility District (SMUD). This Agreement is commonly referred to as the "SMUD Agreement" (Attachment A). When the SMUD Agreement was adopted, the same agencies adopted a guiding agreement between EDC, EDCWA and EID, known as the "Inter-County Coordination Agreement" (ICCA) (Attachment B). The ICCA, which allocates the benefits of the SMUD Agreement, expired in 2015.

Because of the expiration of the ICCA, the EDWPA Board directed the EDWPA Executive Director, at its July 11, 2018 meeting, to present conceptual options for the Board to consider that would also allow the El Dorado Water Reliability Project (EDWRP) to move forward in an efficient and uninterrupted process as provided in the 2005 SMUD Agreement. At its September 12, 2018 Board meeting, the EDWPA Board received a presentation regarding the SMUD Agreement, the ICCA, and related agreement (Attachment C). Staff requested direction for moving forward with the application for a long-term water supply project, known as the EDWRP. The EDWPA Board decided to delay providing any direction until after the November elections when EDWPA would have a clear indication of the policy direction. The EDWPA Board also directed the Executive Director to meet with EID and EDC staff and counsel for input and discussions to allow the EDWRP to move forward in an efficient and uninterrupted process, as provided in the 2005 SMUD Agreement.

Despite this direction to EDWPA staff, EID decided at its October 22, 2018 Board of Directors meeting, to receive a presentation by EID staff. The EID Board supported staff's recommendation to reaffirm the terms and conditions of the 2005 ICCA (Attachment D) and adopted staff's recommendation to reaffirm an offer based on the terms and provisions of the ICCA. On October 25, 2018, EID sent a letter (Attachment E) to three members of the EDC Board that serve on the EDWPA and EDCWA boards requesting that EDC and EDCWA consider a similar action to adopt the terms and conditions of the 2005 ICCA.

The El Dorado Water & Power Authority has offered the following recommendations to the Board of Supervisors:

1. The Board could provide direction to County staff to develop new terms and conditions related to the allocation of costs and the responsibilities and benefits for the proposed water supply;
2. The Board could accept the letter from EID, dated October 25, 2018, (Attachment E), and consider a similar action to EID's Board to approve a renewal of the ICCA and adopt the terms and conditions of the 2005 ICCA.

The Board could also choose to give other direction to staff.

The El Dorado Water & Power Authority (EDWPA) has provided the following information as part of a presentation to the Board of Supervisors.

History and Purpose of EDWPA

EDWPA is a joint powers agency that was first formed in 2004. It was created to coordinate its member agencies' participation in the proceedings to relicense Sacramento Municipal Utility District's (SMUD's) Upper American River Project (UARP), so that El Dorado County interests could speak with one voice to minimize the burdens and maximize the benefits of the UARP on El Dorado County and its citizens. Prior to EDWPA's formation, various County agencies were independently participating in the UARP relicensing. SMUD had requested one point of contact that would speak for all County interests. EDC proposed forming EDWPA under California's joint exercise of powers laws, and the member agencies all approved a Joint Powers Agreement (JPA) to form and govern EDWPA. At that time, EDWPA member agencies included EDC, EDCWA, EID and Georgetown Divide Public Utility District (GDPUD). GDPUD withdrew in 2009. Through the JPA and its subsequent amendments (Attachment F), EDWPA appointed the EDCWA General Manager to serve as EDWPA's Executive Director.

Approximately 18 months after EDWPA's formation, EDWPA and its member agencies approved the SMUD Agreement, which provides for the use of SMUD facilities for the storage and delivery of water supplies to be obtained by the El Dorado parties. Once the SMUD Agreement was approved, EDWPA's member agencies amended the JPA to, among other things, broaden its purposes and indefinitely extend its existence, including pursuing up to 40,000 acre-feet of water rights along the Upper American River.

The SMUD Agreement, under Section 19, designates EDWPA as the El Dorado Designated Representative (EDDR) and as the "sole and exclusive Party" responsible for acquiring all water rights and supplies contemplated by the SMUD Agreement, and for performing numerous activities necessary to schedule and deliver the water supplies thus obtained. If EDWPA ceases to exist, EDCWA assumes its role.

Section 19 of the SMUD Agreement specifically defines the responsibilities of the EDDR as follows:

19.1 El Dorado Designated Representative (EDDR). The El Dorado Parties agreed that the EDDR will be the "sole and exclusive Party" - Representative in both SMUD Agreement & ICCA - EDDR

19.1.1 Water Supply Acquisition. Process of acquiring the water rights and water supplies to

be stored, and diverted through and from the UARP - Representative in both SMUD Agreement & ICCA - EDDR

19.1.2 Notices. Representative to provide and receive all notices - Representative in both SMUD Agreement & ICCA - EDDR

19.1.3 Scheduling of Deliveries. Comply with all forecasting, scheduling and notice requirements for each El Dorado Party the quantity of water delivery being forecasted - Representative in both SMUD Agreement & ICCA - EDDR

19.1.4 Notification of Interconnection Construction Agreement. Negotiations of the Interconnection Construction Agreement - Representative in SMUD Agreement - EDDR, Representative in ICCA - EID as Agent

19.1.5 Construction, Maintenance and Operation of Interconnection Facilities. All matters related to the construction, maintenance and operations of the interconnection facilities - Representative in SMUD Agreement - EDDR, Representative in ICCA - EID as Agent

19.1.6 Negotiation of and Communications under the Data Interchange Agreement. Negotiation of and communications under the DI Agreement - Representative in SMUD Agreement - EDDR, Representative in ICCA - EID as Agent

19.1.7 Installation, Maintenance and Calibration of White Rock Meter. Installation, maintenance and calibration of the White Rock Meter - Representative in SMUD Agreement - EDDR, Representative in ICCA - EID as Agent

19.1.8 Reporting of Deliveries - Reporting requirements - Representative in both SMUD Agreement & ICCA - EDDR

19.1.9 Re-opening of this Agreement. Negotiations pursuant to a re-opener - Representative in both SMUD Agreement & ICCA - EDDR

19.19.10 Resolution of Disputes under this Agreement. Any proceedings in order to resolve disputes - Representative in both SMUD Agreement & ICCA - EDDR

When the SMUD Agreement was approved in 2005, EDWPA's member agencies also entered into the ICCA to allocate the benefits and assign responsibility for the duties arising out of the SMUD Agreement. The ICCA allocates all benefits to member agencies. The ICCA duplicated the SMUD Agreement to designate EDWPA as the EDDR that would be responsible for acquiring all water rights and supplies contemplated by the SMUD Agreement, and for performing numerous activities necessary to schedule and deliver the water supplies thus obtained.

Specifically, the ICCA provides the following:

1. Allocates the rights to the use of the UARP Facilities
2. Allocates the obligations to acquire the consumptive water supply rights

3. Reaffirms EDWPA as El Dorado Designated Representative (EDDR), and reaffirms EDCWA as EDDR if EDWPA ceases to exist
4. Delegates coordination (as agents to EDWPA) of related actions through EDWPA
5. Terminates if the diversion of water through the UARP is not secured within 10 years of the Effective Date (11/05/2005)

The benefits assigned in the ICCA provide the following:

1. Allocations benefits for use of SMUD's UARP facilities - Beneficiary: Assigned to EID
 - a. Allocated GDPUD up to 10,000 AFA or to EID if GDPUD does not use - Beneficiary: Assigned to EID (upon withdrawal of GDPUD)
2. Receive and make deliveries of Carryover storage up to 20,000 afa to 2025 - Beneficiary: Assigned to EID
 - a. Receive and make deliveries of Carryover storage up to 30,000 afa after 2025 - Beneficiary: Assigned to EID
3. 100% of Carryover Storage as defined in Cooperation Agreement - Beneficiary: Exclusively to EID

It should be noted that in 2009, GDPUD withdrew from EDWPA, and from the ICCA and Cost Share agreements, although it remained a party to the SMUD Agreement. GDPUD was refunded its portion of the cost-sharing to date; and in return GDPUD relinquished back to EDWPA all benefits allocated to it under the ICCA. GDPUD retained an annual payment as earmarked to the County under the SMUD Agreement.

Costs for the EDWRP have been shared by the EDWPA members. Each member of the original JPA contributed funds and agreed to future payments allocations as outlined in the December 2007 Cost Share Agreement, which is no longer in effect upon the expiration of the ICCA. Subsequent to GDPUD's withdrawal from the JPA, cost allocations for the JPA Member Agencies were adjusted as follows:

EL DORADO COUNTY:

Initial Contribution: \$400,000 - Total Contribution to Date: \$1,600,000 - Contribution Allocation (Original): 28.57% - Contribution Allocation after GDPUD withdrawal: 32%

EDC WATER AGENCY:

Initial Contribution: \$500,000 - Total Contribution to Date: \$1,865,441 - Contribution Allocation (Original): 28.57% - Contribution Allocation after GDPUD withdrawal: 32%

EL DORADO IRRIGATION DISTRICT:

Initial Contribution: \$1,200,000 - Total Contribution to Date: \$2,550,000 - Contribution Allocation (Original): 32.14% - Contribution Allocation after GDPUD withdrawal: 36%

GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT:

Initial Contribution: \$400,000 - Total Contribution to Date: N/A - Contribution Allocation (Original): 10.71%

TOTALS: Initial Contributions: \$2,500,000 - Total Contribution To Date: \$6,015,441

Section 1.5.3, Reconciliation of Contribution, Between the County and EID and GDPUD, specifies that the areas within the County and not within the “presently existing EID and GDPUD service territories” (based on the 2005 timeline) shall not incur contribution, fee, assessment, annexation or connection charges since the County and EDCWA is considered to have satisfied future charges for acquisition of the new water supply.

Timeline:

The Board discussed or approved any actions relating to, correcting, or leading up to the item include the following:

- 7/11/57 Sacramento Municipal Utility District (SMUD) and County enter into facilities use agreement of SMUD’s Upper American River Project (UARP), known as the ‘57 Agreement;
- 12/7/61 County and Agency enter into agreement with SMUD supplementing the ‘57 Agreement, known as the ‘61 Agreement;
- 5/10/93 County assigns both the ‘57 and ‘61 Agreements to Agency;
- 10/1/93 Agency assigns both the ‘57 and ‘61 Agreements to EID subject to reassignment to Agency if EID no longer desired to utilize the uses allowed by the Agreements;
- 2001 SMUD begins preliminary work to relicense its UARP power facilities;
- 3/2/04 County, Agency, EID and Georgetown Public Utility District (GDPUD) form the El Dorado Water & Power Authority (EDWPA), a Joint Powers Entity to negotiate with SMUD in its Federal Energy Regulatory Commission (FERC) proceedings;
- 11/22/05 SMUD, County, Agency, EID, GDPUD and EDWPA enter into the “El Dorado-SMUD Cooperation Agreement” (SMUD Agreement) to, among other things, provide Protect, Mitigate & Enhancement Measures (PM&E) benefits to County and identify the UARP facilities use first described and agreed by the ‘57 and ‘61 Agreements;
- 11/22/05 County, Agency, EID, GDPUD and Authority enter into Intra-County Coordination Agreement (ICCA) allocating uses of the UARP provided in the SMUD Agreement and providing for the funding obligation to pursue water to store and use from the UARP;
- 12/1/05 First Amendment to the EDWPA’s JPA agreement expanding its purposes to including filing of applications with the State Board and authorizing unilateral withdrawal by a member entity of the Authority;

- 12/12/07 County, EDCWA, EID and GDPUD enter into Cost Share Agreement (“Cost Share Agreement”) to fund water rights acquisition effort of the Authority as the Designated Representative of the El Dorado Parties to the SMUD Agreement;
- 2/26/08 EDWPA files application and petition with the State Board for assignment of State Filed Applications Nos. 5644 and 5645 for permits for water to use and store in the UARP;
- 10/27/08 EDWPA amends the 2/26/08 application and petition;
- 3/11/09 GDPUD withdraws from the EDWPA and the Cost Share Agreement, remains a party of the SMUD Agreement and partially withdraws from the ICCA (retaining executory share of SMUD’s annual payments to County).

ALTERNATIVES

The Board could receive the presentation, file the report, and proceed with direction to Staff.

PRIOR BOARD ACTION

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel, EDWPA (JPA)

CAO RECOMMENDATION / COMMENTS

It is recommended that the Board receive and file the report.

FINANCIAL IMPACT

N/A - Related future funding will be taken to the Board of Supervisors for consideration as necessary.

CLERK OF THE BOARD FOLLOW UP ACTIONS

N/A

STRATEGIC PLAN COMPONENT

Good Governance, Infrastructure

CONTACT

Don Ashton, Chief Administrative Officer