



## Legislation Text

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**File #:** 19-0031, **Version:** 1

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Supervisor Frentzen and Supervisor Veerkamp recommending the Board;

- 1) Authorize the withdrawal of the County from the El Dorado Water and Power Agency (“EDWPA”), a joint powers authority;
- 2) Authorize the Chair to sign a letter providing notice of withdrawal to the EDWPA; and
- 3) Authorize Supervisor Frentzen and Supervisor Veerkamp, as members of the Board’s ad-hoc committee, to discuss a potential successor agreement with the members of the El Dorado Irrigation District’s (EID) ad-hoc committee once confirmed by EID.

### **BACKGROUND**

On November 13, 2018, the Board of Supervisors appointed Supervisor Frentzen and Supervisor Veerkamp to an ad-hoc committee to advise on options regarding governance of the El Dorado Water and Power Authority and the validity of the Inter-County Coordination Agreement. The Board also directed the Chief Administrative Officer to send a response to a letter from the El Dorado Irrigation District (EID) requesting they form their own ad-hoc committee.

This staff report provides a general discussion of the history of EDWPA and a general discussion of the multiple agreements entered into between the parties related to the benefits and responsibilities of the parties. The primary focus of this discussion is on the Joint Powers Agreement and the amendments thereto to provide context to the requested action.

On March 2, 2004, the County of El Dorado (“County”), El Dorado Irrigation District (“EID”), The El Dorado County Water Agency (“EDCWA”) and the Georgetown Divide Public Utilities District (“GDPUD”) entered into a Joint Powers Authority Agreement (“JPA Agreement”) pursuant to Government Code section 6500. The purpose of the agency was described as “to provide for the joint exercise of powers common to the Parties as conferred by the State of California, regarding water supply, socioeconomic, and power issues that arise in or contemporaneously with the SMUD UARP proceedings.” [Article III, Section 1] In the RECITALS portion of the Agreement, the parties state that “County, EID, Water Agency, and GDPUD have determined it is in the best interests of the participants, their constituents, and the citizens of the County of El Dorado to form and participate in a joint powers agency in relation to water supply, socioeconomic, and power issues that arise within or contemporaneously with the SMUD UARP proceedings in order to identify all of the benefits and burdens of having the SMUD Upper American River Project located within the El Dorado County watershed...” The EDWPA Board of Directors was comprised of 5 members from the County Board of Supervisors, 5 members of the EID Board of Directors and 5 members from the GDPUD Board of Directors. [Article V, Section 3] Additionally, any member of the EDCWA Board of Directors who was not also a member of any other participating entity’s Board was a non-voting member of the EDWPA Board of Directors. [Article V, Section 3] A quorum of the EDWPA Board consisted of a majority of all

directors. [Article V, Section 4] However, unless a higher standard was required by law, any action of the EDWPA Board took the affirmative vote of eight directors. [Article V, Section 4(i)]. The term of the agreement was three years. [Article VII, Section 1] Any party could withdraw from the Agreement with 30 days written notice to each member of the Board. If any party withdrew from the Agreement, the Authority was to wind up and dissolve its affairs. [Article VII, section 2]

On October 18, 2005, The Board passed Resolution 312-2005, approving the El Dorado SMUD Cooperation Agreement (“SMUD Agreement”) and the El Dorado Intra-County Coordination Agreement (“ICCA”). The SMUD Agreement is lengthy and addresses many issues. However, the SMUD Agreement was designed to resolve disputes over the interpretations of agreements previously entered into in 1957 and 1961; to set forth the parties’ agreed rights and obligations regarding the use of UARP facilities for the storage and diversion of water; and to address mitigation of adverse impacts associated with the operation of the UARP through payment of compensation by SMUD to the El Dorado Parties.

The ICCA allocates and delegates the benefits and burdens among the El Dorado Parties; designates EDWPA as the designated representative for pursuing and acquiring water rights for storage, diversion, and use of the UARP facilities in accordance with the SMUD Agreement; designates the EDCWA as the successor agency to EDWPA; and provides that the El Dorado Parties will exercise good faith and their best efforts to coordinate the actions to acquire water supplies. It also contained a condition subsequent that if approval for the diversion of water through the UARP, pursuant to the Cooperation agreement, had not been secured within ten years of the Effective Date of the ICCA, the ICCA would terminate.

On November 1, 2005, the JPA Agreement was amended to in pertinent part as follows:

- (1) The term was amended from 3 years to “be indefinite unless and until terminated as provided in this Agreement.”
- (2) The purposes of the JPA Agreement were expanded to include “water supply, socioeconomic, and power issues that (i) arise during or as part of the SMUD UARP proceedings, (ii) arise thereafter during the operation by SMUD of the UARP pursuant to any subsequently issued FERC license, and (iii) promote the general welfare of the participants, their constituents, and the citizens of El Dorado County including identifying, providing for, negotiating, allocating and enforcing PM&Es and performing other , future action and projects associated with the benefits and burdens of the SMUD UARP...”
- (3) The powers of EDWPA were amended to include “To file and prosecute applications or petitions with state and federal regulatory agencies, including FERC and the state Water Resources Control Board, necessary to implement the Parties’ rights in the UARP.”
- (4) The section regarding the withdrawal of a party was amended to provide that if the County, EID, or GDPUD withdrew from EDWPA, the remaining members could vote to continue EDWPA. Furthermore, the amendment also included a provision that so long as

“the only members of the Authority are the Water Agency and any two of County, EID, or GDPUD” Directors of the Water Agency Board who were also members of the withdrawing party would no longer sit on the EDWPA Board of Directors; any action of the EDWPA Board of Directors would require 6 affirmative votes; and the nonvoting member director could only vote in the event of a tie.

- (5) Article V, Section 4 of the JPA Agreement regarding voting was also amended retaining the requirement that any action of the Board of Directors would require eight affirmative votes. When read in conjunction with the Amendment describe in (4) above, if the membership of EDWPA no longer included the Water Agency and any two of the County, EID or GDPUD, then it would require eight affirmative votes to take action.
- (6) Article VII regarding the withdrawal of a member of EDWPA was amended retaining the one month written notice requirement, but providing that the remaining members could by majority vote decide to either continue the operation of EDWPA or dissolve EDWPA and wind up its affairs.

In 2007, the Board of Supervisors appointed two members of the Board to represent the County in discussions to develop a funding mechanism to determine the share of costs for the member agencies of EDWPA. On October 23, 2007 the Board determined that it was their intent to have the County withdraw from EDWPA unless there is an agreement that would satisfy the “pay to play” position of the Board. On November 7, 2007 EDWPA approved a cost share agreement for the UARP Water Supply Acquisition.

On February 12, 2008, the Board approved the Supplemental Water Acquisition Project Cost Share Agreement among the County, EDCWA, EID and GDPUD which sets forth the funding mechanism of the costs and expenses of acquiring the water supply to be diverted through and stored in the UARP facilities.

On March 6, 2008, the JPA Agreement was amended for a second time to in pertinent part to amend the voting requirements for the adoption of a budget in order to conform it to the general voting requirements of Article V of the JPA Agreement and deleted the requirement of budget approval by each member entity to conform the Agreement to law.

On March 11, 2009, a Transition Agreement was entered into by the County, EDCWA, EID, EDWPA and GDPUD to facilitate the withdrawal of GDPUD from EDWPA.

### **WITHDRAWAL FROM EDWPA**

Article VII, Section 2 of the JPA Agreement as amended provides for the withdrawal of any party to the JPA Agreement subject to written notice to the other members of the Board of Directors of EDWPA providing at least one month notice. The withdrawing party’s interest shall be treated in the same ways as termination of the agreement, by return of unexpended contributions, or payment of additional contributions, as necessary. If a member withdraws, the remaining members shall by a

majority vote decide to either continue operations and conduct the affairs of EDWPA or dissolve the JPA and wind up its affairs.

If the County withdraws from EDWPA, it is unclear if EDWPA would remain viable. Under the terms of the JPA Agreement as amended, given that upon the withdrawal of the County from EDWPA, the only remaining members of EDWPA would be the Water agency and EID, it would require eight (8) affirmative votes of the Board of Directors to take any action and there would remain only five (5) voting members of the EDWPA Board of Directors.

Finally, if EDWPA ceases to exist, the EDCWA would become the designated representative for purposes of the SMUD Agreement.