



Agenda Item No. 8
Meeting Date: November 6, 2024
Resolution: Yes

AGENDA DOCKET FORM

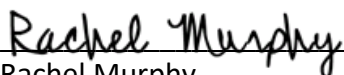
SUBJECT: PHASE 2 LOS VAQUEROS RESERVOIR EXPANSION PROJECT – PLAN TO END CCWD PARTICIPATION IN THE PROJECT

SUMMARY: Following a lengthy discussion at their September 18 Board of Directors (Board) meeting, the Contra Costa Water District (CCWD) Board directed staff to bring forward for the Board’s consideration a plan to end CCWD participation in the Phase 2 Los Vaqueros Reservoir Expansion Project (Phase 2 LVE Project). Since that time, staff have met with federal and state agency representatives and Los Vaqueros (LV) Reservoir Joint Powers Authority (JPA) Member Agencies (Member Agencies) and JPA staff to discuss CCWD’s intent to end its participation in the Phase 2 LVE Project. The attached staff report details the findings and recommendations from CCWD staff (Attachment 1).

FISCAL IMPACT: The Phase 2 LVE Project places CCWD in a unique position as CCWD would incur new costs associated with construction of new facilities for which CCWD obtains new benefits as well as being able to recoup some costs of existing facilities through usage fees charged to the JPA when CCWD’s existing facilities are used to deliver benefits to the JPA and its Member Agencies.

By ending CCWD’s participation in the Phase 2 LVE Project, CCWD would not incur its share of the estimated \$1.6 billion Phase 2 LVE Project costs and CCWD would also not receive the anticipated long-term revenues from the facilities usage fees. Funding for CCWD’s Fiscal Year 2025 (FY25) activities has been collected as part of the Multi-Party Cost Share Agreement for the scope of work developed to support the JPA’s Capital Preservation Strategy.

RECOMMENDED ACTION: Adopt Resolution No. 24-014 that will: a) authorize the General Manager to execute the required documentation, in coordination with California Water Commission staff, to withdraw CCWD’s Phase 2 LVE Project Proposition 1 Water Storage Improvement Program application; and, b) authorize the General Manager to coordinate and work with the CCWD JPA representative, JPA Member Agencies, and JPA staff to begin JPA dissolution and JPA Agreement termination efforts.

	 _____ Kyle Ochenduszk Assistant General Manager	 _____ Rachel Murphy General Manager
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RM/KO:sf

Attachments: 1) Staff Report; 2) Resolution No. 24-014

CONTRA COSTA WATER DISTRICT
Staff Report

DATE: November 6, 2024

TO: Board of Directors

FROM: Rachel Murphy *Rachel Murphy*

SUBJECT: **Phase 2 Los Vaqueros Reservoir Expansion Project – Plan to End CCWD Participation in The Project**

INTRODUCTION

Following a lengthy discussion at their September 18 Board of Directors (Board) meeting, the Contra Costa Water District (CCWD) Board directed staff to bring forward for the Board's consideration a plan to end CCWD participation in the Phase 2 Los Vaqueros Reservoir Expansion Project (Phase 2 LVE Project). Since that time, staff have met with federal and state agency representatives and Los Vaqueros (LV) Reservoir Joint Powers Authority (JPA) Member Agencies (Member Agencies) and JPA staff to discuss CCWD's intent to end its participation in the Phase 2 LVE Project.

RECOMMENDATION

Adopt the proposed Resolution No. 24-014 that will: a) authorize the General Manager to execute the required documentation, in coordination with California Water Commission staff, to withdraw CCWD's Phase 2 LVE Project Proposition 1 Water Storage Improvement Program application; and, b) authorize the General Manager to coordinate and work with the CCWD JPA representative, JPA Member Agencies, and JPA staff to begin JPA dissolution and JPA Agreement termination efforts.

DISCUSSION

CCWD completed the original Los Vaqueros (LV) Project in 1997 to provide water quality and emergency water storage benefits for CCWD customers. Following completion of the original project, CCWD actively explored the feasibility of a regional effort to increase the capacity of the LV Reservoir from 100 thousand acre-feet (TAF) to 275 TAF to facilitate regional water supply benefits. Regional partners were not interested in partnering in the expansion project at that time. CCWD moved forward with increasing the LV Reservoir capacity to 160 TAF without project partners, completing construction in 2012.

In 2014, California voters passed Proposition 1, authorizing the state to fund the public benefits associated with qualifying water storage projects. Availability of Proposition 1 funds, through the Water Storage Investment Program (WSIP), and federal funding through the 2016 Water Infrastructure Improvements for the Nation Act, created renewed interest from regional partners to explore an expansion of the LV Reservoir to 275 TAF.

CCWD, with the support of regional partners, submitted a WSIP application to the California Water Commission for the Phase 2 LVE Project in 2017 and has been working diligently with these regional partners, along with JPA Member Agencies and the JPA staff (following JPA formation in 2021), to develop the Phase 2 LVE Project since that time. A more thorough project history can be found in Exhibit A.

During the CCWD Board Meeting on September 18, 2024, CCWD staff provided an update on the Phase 2 LVE Project and the significant outstanding unresolved issues critical for project implementation (Exhibit A). These outstanding issues, combined with the changed conditions resulting from tightening Delta operations, regulatory conditions, permit restrictions, as well as significant construction cost increases, have significantly impacted the viability of the Phase 2 LVE Project. As a result, the CCWD Board came to the difficult decision to seek an end to CCWD's participation in the Phase 2 LVE Project.

Key outstanding and unresolved issues are summarized below.

- Design and Construction Agreement (DCA): Negotiations began on the terms of the DCA in early 2023 but were paused in January 2024 when Member Agencies were unable to agree on a methodology for allocating risk and responsibility for the total cost of construction, including potential cost overruns.
- Facilities Usage Agreement (FUA): While negotiations began in 2018 on the methodology for facility usage fee setting and the fees themselves, negotiations began on the terms of the FUA in August 2023. Member Agencies have not been able to agree on how the various facilities would be used, including CCWD's LV Reservoir and conveyance facilities. Additionally, Member Agencies have not agreed on the amount of the facility usage fees associated with use of CCWD's existing facilities as part of the LVE Phase 2 Project or on the methodology to employ to calculate these fees.
- Backstop Agreement: A backstop plan and agreement for CCWD are needed to provide adequate assurances that water quality and emergency water supplies for CCWD customers are secured during dam demolition, reconstruction, and refilling. These assurances are particularly important as the source of CCWD's water supply, the Bay-Delta, is subject to significant fluctuation in water quality, especially during periods of extended drought or in the event of a significant event, such as a levee failure. CCWD met with numerous agencies, including some Member Agencies, and were not able to secure a reliable replacement for all the water quality and emergency water supply benefits derived from the LV Reservoir.
- LV JPA Agreement: CCWD believes more work is needed to incorporate sufficient protections for its customers and their significant past investments in the terms for various Project agreements and permits, consistent with foundational Project documents, agreements, and environmental approvals and in accordance with the Board Principles and the 2004 vote in Contra Costa County authorizing CCWD to work with public water agencies to explore an expansion of the Los Vaqueros Reservoir.

- Status of Member Agency Business Case: Member Agencies have stated that additional work is needed to develop their business case for Project participation. However, a reduction in project benefits (project yield) by as much as 30% combined with schedule delays and construction cost increases of over 50%, have resulted in some Member Agencies developing sufficient information to significantly reduce their agency's Phase 2 LVE Project storage allocation requests. These reduced requests have resulted in the storage component of the Phase 2 LVE Project moving from being oversubscribed to undersubscribed, which could further increase costs for remaining Member Agencies.

Since the September 18 CCWD Board meeting, these outstanding issues have not been resolved, meanwhile several themes (summarized below) have emerged during subsequent discussions with JPA Member Agencies and other interested parties. This summary is not every concept, proposal, idea, or recommendation shared with CCWD staff, but it is a representative list.

- Explore additional backstop water solutions: CCWD requires a reliable plan for water quality blending and drought and emergency water supplies for the 3-to-6-year period while the Los Vaqueros Reservoir is drawn down (emptied) during dam demolition, construction and refilling. Backstop solutions have been actively explored throughout development of the Phase 2 LVE Project. The concept proposed by the JPA at their October 9 JPA Board meeting has been further explored and is also not viable as it fails to meet CCWD's water quality needs.
- Pursue a conveyance-focused or conveyance-first alternative: Constructing a conveyance-focused or conveyance-first alternative would allow delivery of water, presumably utilizing CCWD's intakes and related facilities, to Member Agencies or other parties that are south of the Delta. While there may be interest among some of the Member Agencies, and potentially private third party entities, to explore this concept, a conveyance-focused or conveyance-first project, where water storage improvements are built years or decades in the future, if built at all, does not provide the benefits originally anticipated by CCWD, as authorized by Contra Costa County voters in 2004, or as described in the approved project and WSIP application.
- Explore options to provide additional water supplies to the south-of-Delta wildlife refuges: The primary ecosystem benefit of the Phase 2 LVE Project is a more reliable supply of water to south of Delta wildlife refuges. It may be possible to facilitate delivery of some water supplies to the wildlife refuges using existing CCWD facilities and exchange mechanisms. This concept could be further explored between CCWD and interested parties.
- Provide additional time: Several Member Agencies have perceived the direction provided at the September 18 CCWD Board meeting as abrupt. The Chair of the JPA Board sent a letter to CCWD's Board President on October 30, 2024, requesting that the CCWD Board reconsider its September 18th direction to staff and provide more time to develop the Phase 2 LVE Project. The issues outlined in Exhibit A and this staff report have been under negotiation for several years, studied for longer, and yet these fundamental issues remain unresolved. Additional time and negotiations will not increase Phase 2 LVE Project benefits, improve

schedule, or lower increasing construction costs, which greatly diminishes the utility and value of continuing discussions.

- Acknowledge the progress made in negotiations: As noted in the September 18th staff report, there has been considerable effort by all Member Agencies, including CCWD, to resolve the outstanding policy issues and to progress the Member Agency business case decisions. While these efforts were productive, feedback received directly from Member Agencies confirms that there remains significant disagreement related to the outstanding policy issues and resolution of key terms integral to the implementation agreements.

CCWD has several options which would accomplish the Board's direction to end participation in the Phase 2 LVE Project, including withdrawal from the JPA, withdrawal of CCWD's WSIP funding application, and/or working with Member Agencies to dissolve the JPA.

The storage and conveyance objectives of the Phase 2 LVE Project rely on the utilization of existing and expanded CCWD infrastructure, and this combination of benefits and associated infrastructure was the basis for JPA formation. Staff recommends remaining a JPA Member Agency as long as the JPA exists and activities affecting or utilizing CCWD infrastructure remain under consideration. While there may be interest among some of the Member Agencies to continue exploring conveyance-related benefits, as noted earlier, this would be a different project from the currently envisioned Phase 2 LVE Project and could be explored by interested agencies with or without a JPA. As a result, staff recommends continuing as part of the JPA and working with other Member Agencies on the steps needed to dissolve the JPA and terminate the associated JPA Agreement.

The Maximum Conditional Eligibility Determination funding award that the Phase 2 LVE Project received from the California Water Commission (CWC) was based on the public benefits that the Phase 2 LVE Project, as proposed, could provide, including ecosystem, emergency, and recreational benefits. A majority of the public benefits associated with the Phase 2 LVE Project are provided by expanding the storage capacity of the LV Reservoir; therefore, a conveyance-focused alternative provides different benefits and a different cost-to-benefit ratio from what was envisioned in the WSIP application. Without CCWD's participation and utilization of existing and expanded CCWD infrastructure, the public benefits described in the WSIP application will no longer be achievable. Therefore, it appears that CCWD's withdrawal of its WSIP funding application will ultimately be necessary. Withdrawal of the application would unencumber nearly \$500 million of state funding from the Phase 2 LVE Project, which would then be available for allocation to other WSIP funded projects. Per discussion with CWC staff, a resolution approved by an applicant's board is required to withdraw a WSIP application.

The October 9, 2024 meeting of the JPA Board of Directors (JPA Board) included a discussion of the steps required to dissolve the JPA, or for a Member Agency to withdraw from the JPA. In summary, Article 8 of the JPA Agreement provides that termination of the agreement, and thus the JPA itself, requires an affirmative vote of 75% of the JPA Board followed by a ratification vote of 75% of the Member Agency legislative bodies. CCWD may, unilaterally or with the participation of other Member Agencies, consider introducing a resolution at a future JPA Board meeting proposing

termination of the JPA Agreement and dissolution of the JPA. Should such a resolution be approved and ratified as described above, the JPA would continue to exist for the purposes necessary to conclude its affairs, including payment of any outstanding JPA financial commitments, making appropriate filings with the Secretary of State, and distribution of its remaining assets to Member Agencies per Section 8.5 of the JPA Agreement. After completing these “wind down” activities, the JPA would then cease to exist.

Ending participation in the Phase 2 LVE Project does not preclude CCWD from participating in other regional collaboration projects. CCWD has participated in numerous regional pilot efforts involving short-term water transfers since the construction and expansion of the LV Reservoir. Projects such as short and long-term water transfers, exchanges, and other projects benefiting the region and utilizing excess capacity in CCWD’s infrastructure can continue in the future without the Phase 2 LVE Project.

FISCAL IMPACT

The Phase 2 LVE Project places CCWD in a unique position as CCWD would incur new costs associated with construction of new facilities for which CCWD obtains new benefits as well as be able to recoup some costs of existing facilities through usage fees charged to the JPA when CCWD’s existing facilities are used to deliver benefits to the JPA and its Member Agencies

By ending CCWD’s participation in the Phase 2 LVE Project, CCWD would not incur its share of the estimated \$1.6 billion project costs and CCWD would also not receive the anticipated long-term revenues from the facilities usage fees. Funding for CCWD’s Fiscal Year 2025 (FY25) activities has been collected as part of the Multi-Party Cost Share Agreement for the scope of work developed to support the JPA’s Capital Preservation Strategy.

RM/KO:sf

Exhibit A: September 18, 2024 CCWD LVE Project Update Docket



Agenda Item No. 5
 Meeting Date: September 18, 2024
 Resolution: Yes

AGENDA DOCKET FORM

SUBJECT: LOS VAQUEROS RESERVOIR EXPANSION PROJECT UPDATE



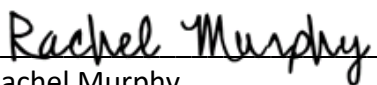
SUMMARY: On June 5, 2024, the Contra Costa Water District (CCWD) Board of Directors (Board) authorized execution of Amendment No. 6 to the Multi-Party Cost Share Agreement (MPA Amendment No. 6) for the Phase 2 Los Vaqueros Reservoir Expansion Project (LVE Phase 2 Project). Concurrent with this authorization, the Board directed the General Manager to engage the general managers of the Los Vaqueros (LV) Reservoir Joint Powers Authority (JPA) Member Agencies (Member Agencies) to determine their commitments to the LVE Phase 2 Project based on the updated cost, estimated benefits, and defined agreement terms. The Board also directed the General Manager to provide a report to the CCWD Board in September on the Member Agencies' commitments and responses.

(Continued on Page 2)

FISCAL IMPACT: The LVE Phase 2 Project places CCWD in a unique position as CCWD would incur new costs associated with new facilities for which CCWD obtains new benefits as well as recoup some costs of existing facilities through usage fees charged to other JPA Member Agencies when CCWD's existing facilities are used to deliver benefits to the JPA.

Funding for CCWD's Fiscal Year 2025 (FY25) activities has been collected as part of the Multi-Party Cost Share Agreement for the scope of work developed to support the JPA's Capital Preservation Strategy. The FY25 JPA budget anticipates a monthly cash flow of approximately \$1.1 million per month for JPA and CCWD expenditures on LVE Phase 2 Project activities.

RECOMMENDED ACTION: Receive and provide direction, as needed, on the Los Vaqueros Reservoir Expansion Project update.

 Lucinda Shih General Manager	 Kyle Schenduszko Assistant General Manager	 Rachel Murphy General Manager
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Attachment: Staff Report

AGENDA DOCKET FORM

SUMMARY (Continued from Page 1):

On June 11, 2024, the CCWD General Manager issued a letter to the general managers of the JPA Member Agencies summarizing the key outstanding, unresolved issues in the LVE Phase 2 Project and seeking an update on each member's commitment to the LVE Phase 2 Project.

The key outstanding, unresolved issues are summarized below.

1. Design and Construction Agreement: Member Agencies have not yet agreed on a methodology for allocating risk and responsibility for the total cost of construction, including potential cost overruns.
2. Facilities Usage Agreement: Member Agencies have not agreed on how the various facilities would be utilized, including CCWD's LV Reservoir and conveyance facilities, and East Bay Municipal Utility District's conveyance facilities. Additionally, Member Agencies have not agreed on the usage fees associated with use of CCWD's existing facilities as part of the LVE Phase 2 Project.
3. Backstop Agreement: A backstop plan and agreement for CCWD are needed to ensure adequate assurances that water supply and water quality for CCWD customers will be maintained at acceptable levels during dam demolition, reconstruction, and refilling.
4. LV JPA Agreement: CCWD believes more work is needed to incorporate protection of its customers and their significant past investments into the terms for various Project agreements and permits, consistent with foundational Project documents, agreements, and environmental approvals.
5. Status of Member Agency Business Case: Member Agencies have stated that additional work is needed to develop their business case for Project participation.

Following CCWD's General Manager's letter in June 2024, several JPA Member Agencies have conducted public meetings where their respective Boards received reports on the outstanding, unresolved issues and updates to their individual business case. The reports underscored that rising project costs and increased environmental regulations have greatly decreased anticipated LVE Phase 2 Project benefits. Additionally, the discussions during these meetings have highlighted Member Agency concerns regarding the updated business case analysis and, for several, have resulted in recommendations to decrease their level of participation in the LVE Phase 2 Project.

CCWD has received several responses to the June 11 correspondence. Most Member Agencies have indicated ongoing support to continue evaluating the LVE Phase 2 Project and noted that additional time is needed to be able to definitively respond to CCWD's June 11 inquiry. Responses from the Member Agencies indicate that alignment is still lacking on several outstanding policy questions.

AGENDA DOCKET FORM

SUMMARY (Continued from Page 2):

The attached Staff Report provides an overview of the LV Project history, a review of the factors impacting the LVE Phase 2 Project business case development, an update on the implementation agreements, and a review of Member Agency activities and feedback. Given the information provided within this update and responses from JPA member agencies, now is an appropriate time for CCWD to consider its future participation in the LVE Phase 2 Project and, in particular, whether additional time is likely to result in the successful resolution of the various outstanding issues or improved conditions leading to more favorable business case evaluations among LVE Phase 2 Project participants.

CONTRA COSTA WATER DISTRICT
Staff Report

DATE: September 18, 2024

TO: Board of Directors

FROM: Rachel Murphy *Rachel Murphy*

SUBJECT: **Los Vaqueros Reservoir Expansion Project Update**

INTRODUCTION

During the update provided in conjunction with consideration of Multi-Party Cost Share Agreement Amendment No. 6 for the Phase 2 Los Vaqueros Reservoir Expansion Project (LVE Phase 2 Project) at its June 5, 2024 meeting, the CCWD Board of Directors (Board) expressed concerns regarding the lack of alignment between Los Vaqueros Reservoir Joint Powers Authority (JPA) Member Agencies (Member Agencies) on foundational project conditions and the limited progress related to agreement negotiations and project investment decisions by the Member Agencies. The Board directed CCWD staff to engage with Member Agencies to further assess these areas of misalignment and the status of project decisions, and to bring the Board an update on the results of these discussions within 90 days. This Board Item summarizes the results of these discussions and provides the requested status update on the LVE Project.

RECOMMENDATION

Receive report and provide direction as needed.

DISCUSSION

Los Vaqueros Project History

A regional water storage project has been contemplated on Kellogg Creek since the 1950s by both state and federal entities. Following the severe drought in 1976-77, CCWD undertook the original Los Vaqueros (LV) Project to provide water quality and emergency storage benefits for CCWD customers. CCWD's customers voted to approve financing the Los Vaqueros Project in 1988, and CCWD completed construction of the LV Reservoir, with a capacity of 100 thousand acre-feet (TAF), in 1997.

CCWD, with voter authorization in 2004 and with support from the California Department of Water Resources (DWR) and the U.S. Department of Interior Bureau of Reclamation (Reclamation), began studies and adopted Board principles for the LV Expansion Project (LVE Project). Beginning in 2004, CCWD and regional agencies who expressed interest in the LVE Project signed a related Memorandum of Understanding (LVE MOU).

CCWD and Reclamation finalized the environmental analysis for the LVE Project in 2010, which described options to provide regional benefits by expanding the Los Vaqueros Reservoir to either 160 TAF or 275 TAF, constructing new or upgraded pumping facilities, and constructing a new interconnection to the California Aqueduct. The proposed project described regional water supply and environmental benefits, but potential partners were not interested in proceeding with construction of the LVE Project as they were not certain of their need for LVE Project benefits. CCWD was already seeing the effects of climate change and increasing Delta regulatory restrictions, and so, in 2012, CCWD alone funded and constructed the Phase 1 Los Vaqueros Reservoir Expansion Project (Phase 1 Expansion) to increase reservoir storage to 160 TAF to satisfy the current and future water quality and emergency and drought supply needs of CCWD customers. CCWD has also undertaken additional water quality protection projects, including the Alternative Intake Project, which constructed the Middle River Intake at Victoria Canal, and the Canal Replacement Project, which replaced the unlined section of the Contra Costa Canal with a buried pipeline.

Following completion of the Phase 1 Expansion, CCWD successfully completed two water transfers to Alameda County Water District (ACWD) and Byron-Bethany Irrigation District (BBID) in 2014, an extreme drought period. These transfers helped to illustrate the potential benefits of a partnership with CCWD and regional partners. By 2016, potential partners who were signatories to the LVE MOU included ACWD, Bay Area Water Supply and Conservation Agency, BBID, Reclamation, City of Brentwood, California Department of Fish and Wildlife, County of Contra Costa, Delta Stewardship Council, DWR, East Bay Municipal Utility District (EBMUD), East Contra Costa Irrigation District, Grassland Water District, National Marine Fisheries Service, Santa Clara Valley Water District (Valley Water), San Francisco Public Utilities Commission (SFPUC), San Luis & Delta-Mendota Water Authority, U.S. Fish and Wildlife Service, and Zone 7 Water Agency (Zone 7).

Meanwhile, also in 2014, California voters passed Proposition 1, authorizing the state to fund the public benefits of water storage projects to improve water resources management for the future. The availability of state funding through Proposition 1 and federal funding under the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act allowed for improved water supply reliability for south-of-Delta wildlife refuges to be added as a project benefit. CCWD and Reclamation updated the environmental analysis for the LVE Project, finalizing the Supplement to Final Environmental Impact Statement/Environmental Impact Report in 2020, which described options for Phase 2 of the Los Vaqueros Expansion Project (LVE Phase 2 Project) to provide a balance of urban, agriculture, and environmental benefits.

CCWD submitted an application to the California Water Commission for funding of the LVE Phase 2 Project under the Water Storage Investment Program created by Proposition 1, securing a conditional funding award of \$478 million. Following extensive discussions and negotiations, CCWD and interested partners formed the Los Vaqueros Reservoir Joint Powers Authority (JPA) in 2021 to finance the local cost share of the LVE Phase 2 Project construction, execute the necessary agreements with CCWD for design, construction and operation of the LVE Phase 2 Project facilities, manage the state contracts for administration of the LVE Phase 2 Project public benefits, and coordinate service requests among member agencies.

Factors Impacting LVE Phase 2 Project Business Case

In the decade since the details of the LVE Phase 2 Project were originally formulated, regulations controlling Delta operations, which impact both CCWD-specific operations and state-wide system operations, have significantly changed and indications are that regulations will continue to tighten as discussed below.

LVE Phase 2 Project benefits for the JPA Member Agencies are largely derived from using excess capacity at CCWD's Delta intakes to capture excess water, when it is available, under existing water rights, contracts, and permit conditions. Changing Delta regulations will require more flows to be dedicated to the needs of the environment, which will reduce opportunities for the proposed LVE Phase 2 Project operations to deliver benefits to the JPA Member Agencies. Near-term potential Delta regulatory changes include, but are not limited to, the State Water Resources Control Board's Bay-Delta Water Quality Control Plan Update and the associated Healthy Rivers and Landscapes Program proposal, as well as the re-consultation on the biological opinions governing the Long-Term Operations of the Central Valley Project and State Water Project. It is unknown how additional future Delta regulatory changes will impact LVE Phase 2 Project operations.

In March 2024, California Department of Fish and Wildlife (CDFW) issued a new Incidental Take Permit for CCWD-specific operations that modified the diversion limits at CCWD's intakes. These modified requirements are intended to protect larval smelt and are anticipated to reduce LVE Phase 2 Project yield by up to 30%. The Contract for Administration of Public Benefits (CAPB) for the wildlife refuge water supply benefits is currently being negotiated with CDFW, which is seeking assurances in the CAPB language that this reduction in yield is not borne predominantly by the wildlife refuges and is instead spread across all JPA Member Agencies.

The business case analysis and investment decisions currently underway by the JPA Member Agencies rely upon the realization of sufficient benefits from the LVE Phase 2 Project, which have reduced over time. At the same time, the construction and implementation costs have continued to increase due to schedule delays, related inflationary increases, and LVE Phase 2 Project changes. As of May 2024, the total costs at completion are estimated to be near \$1.6 billion, a 54% increase from the \$900 million estimated originally in the 2017 application for Water Storage Investment Program funding.

Update on Implementation Agreements

As described during previous LVE Project updates, significant challenges have emerged during negotiation of the LVE Phase 2 Project implementation agreements, particularly as it relates to terms foundational to CCWD's original decision to pursue a regional project. Principally, areas of disagreement relate to risk allocation during construction, control of construction and operations decisions, and guaranteed delivery of benefits. Limited progress has been made in resolving the misalignment on these core issues since June, as discussed below.

Facilities Usage Agreement (FUA) – The FUA will be entered between CCWD and the JPA. The FUA will grant the JPA the ability to utilize unused capacity in CCWD-provided and/or operated facilities in exchange for making payments to CCWD for the use of its facilities. The usage fees are intended to reimburse CCWD customers for the value derived from the existing CCWD facilities utilized for the Project and to fund a proportionate share of future renewal and replacement costs. CCWD and the JPA are in active negotiations on the terms of the FUA and while progress has been made on several key issues, final agreement terms have not yet been reached and there is no agreement on the FUA usage fees.

Design and Construction Agreement (DCA) – The DCA defines the services CCWD will provide for design and construction of the new and modified facilities associated with the LVE Phase 2 Project. The principles adopted by CCWD's Board assert that CCWD will remain operator of the LV Reservoir system. As such, CCWD must retain control over design, construction and operational decisions related to this system of facilities. Initial negotiations occurred in summer and fall 2023, and a draft DCA was sent to the JPA in January 2024. As reported to the Board in February 2024, a key area of concern expressed by the JPA Member Agencies is the level of control and oversight CCWD would retain over design and construction decisions related to modifications to CCWD's facilities, principally the demolition and reconstruction of the LV dam, given the financial investment being made by the Member Agencies. Additionally, several Member Agencies have asserted their perception that CCWD would receive benefits from completion of the LVE Phase 2 Project facilities and should share in the financial risks associated with all elements of the LVE Phase 2 Project, which is contrary to the beneficiary pays principle. No other JPA Member Agency has been asked to share in the cost of project facilities which provide no additional benefits to their customers. This issue is unresolved and JPA staff have indicated that comments on the draft DCA will be provided once negotiations are completed on the FUA.

Backstop Agreement – Implementation of the LVE Phase 2 Project will require CCWD to completely draw down its storage in the existing LV Reservoir in order to demolish and construct the expanded reservoir and dam facilities. During the anticipated 3-to-6-year period required for demolition, construction, and reservoir refilling, the water quality and emergency water supply benefits of LV Reservoir will be unavailable to CCWD and its customers. As a result, CCWD requires assurances that the water quality and emergency water supply functions that are usually provided by the LV Reservoir will be available through other means.

In accordance with the Memorandum of Understanding with the EBMUD approved by the CCWD Board in February 2021, EBMUD confirmed their willingness to develop a new agreement to allow for expanded use of an existing untreated water intertie that interconnects CCWD’s LV Pipeline to EBMUD’s Mokelumne Aqueduct No. 2. This new agreement was envisioned to supplement existing agreements between CCWD and EBMUD to address water quality and emergency water supply needs during LVE Phase 2 Project construction. EBMUD has continued to express willingness to assist CCWD with addressing its water quality and emergency water supply needs provided that such backstop operations do not create water quality or water supply impacts for EBMUD customers, do not impact implementation of planned EBMUD capital investments, and are permissible under EBMUD’s existing permits and agreements. EBMUD is unable to guarantee their ability to provide backstop services at all of the times when CCWD may need these backstop services. An example of when backstop operations from EBMUD may not be available is during a drought, which is when CCWD’s water quality blending needs would be the greatest. While CCWD is exploring alternative ways to mitigate delivered water quality impacts to CCWD customers as well as potential water supply shortages through water treatment plant improvements and securing transfer water agreements, it is not expected that these alternatives will fully eliminate the risks to CCWD customers. Additionally, JPA Member Agencies would be obligated to fund these mitigation measures through an agreement which remains to be negotiated.

Recent Member Agency Activities and Feedback

Member Agencies have been actively engaged throughout the summer to resolve areas of uncertainty related to LVE Phase 2 Project benefits, progress their business case analysis and reach their final project investment decisions. Given the significant reduction in LVE Phase 2 Project benefits and increase in LVE Phase 2 Project costs, several Member Agencies have noted a compression of their business case analysis and have highlighted that the cost to participate in the LVE Phase 2 Project is on par with or more costly than other alternative water supply options under consideration. Additionally, while interest in the conveyance aspects of the LVE Phase 2 Project remains strong, three Member Agencies have reduced their storage participation as described in Table 1 below, which has resulted in the expanded reservoir capacity transitioning from being significantly oversubscribed to now being undersubscribed by over 25%. Overall, requests from Member Agencies to ‘buy in’ to the LVE Phase 2 Project storage have declined by approximately 50%.

Table 1 – Recent Reductions in Reservoir Capacity Allocations

Date	Agency	Previous Storage Allocation	Current Storage Allocation
May 28, 2024	SFPUC	40 TAF	20 TAF
August 27, 2024	EBMUD	30 TAF	0 TAF
September 10, 2024	Valley Water	50 TAF	20 TAF

CCWD has received several responses to the June 11 correspondence from CCWD's General Manager to the Member Agency general managers regarding the outstanding policy questions and status of LVE Phase 2 Project investment decisions. Most Member Agencies have not directly addressed the outstanding policy questions but have indicated continued support to further evaluate the project and complete their business case analysis. The responses do indicate that alignment is still lacking on several outstanding policy questions. Additionally, as the development and analysis of their business cases continues and results tighten, Member Agencies are dialing back or, in some cases, eliminating altogether pursuit of benefits from the LVE Phase 2 Project.

FISCAL IMPACT

The LVE Phase 2 Project places CCWD in a unique position as CCWD would incur new costs associated with new facilities for which CCWD obtains new benefits as well as recoup some costs of existing facilities through usage fees charged to other JPA Member Agencies when CCWD's existing facilities are used to deliver benefits to the JPA.

Funding for CCWD's Fiscal Year 2025 (FY25) activities has been collected as part of the Multi-Party Cost Share Agreement for the scope of work developed to support the JPA's Capital Preservation Strategy. The FY25 JPA budget anticipates a monthly cash flow of approximately \$1.1 million per month for JPA and CCWD expenditures on LVE Phase 2 Project activities.

NEXT STEPS

Given the information provided within this update and responses from JPA member agencies, now is an appropriate time for CCWD to consider its future participation in the LVE Phase 2 Project and, in particular, whether additional time is likely to result in the successful resolution of the various outstanding issues or improved conditions leading to more favorable business case evaluations among project participants.

RM/KO/LS:wec

RESOLUTION NO. 24-014

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CONTRA COSTA WATER DISTRICT
AUTHORIZING THE GENERAL MANAGER TO EXECUTE REQUIRED DOCUMENTATION TO
WITHDRAW THE PHASE 2 LVE PROJECT PROPOSITION 1 WATER STORAGE IMPROVEMENT
PROGRAM (WSIP) APPLICATION AND TO COORDINATE WITH JPA MEMBER AGENCIES TO
DISSOLVE THE JPA AND TERMINATE THE JPA AGREEMENT.**

WHEREAS, on May 2, 1998, the Contra Costa Water District (CCWD) dedicated and put into service the original Los Vaqueros Reservoir (LV Reservoir), with a capacity of 100 thousand acre-feet, to provide improved water quality and emergency storage for CCWD customers; and

WHEREAS, on April 19, 2000, CCWD adopted principles required to be met for CCWD to support any proposals involving the LV Reservoir under the CALFED Bay-Delta program; and

WHEREAS, beginning in 2001, CCWD and several regional partners signed a Memorandum of Understanding (LVE MOU) pertaining to cooperation over preliminary studies for a potential Los Vaqueros Reservoir Expansion Project (LVE Project) to provide regional water supply and environmental benefits; and

WHEREAS, on June 25, 2003, CCWD adopted Resolution 03-24 which stated the conditions that must be met for CCWD participation in the LVE Project (Board Principles) and supported the LVE Project; and

WHEREAS, on March 2, 2004, CCWD customers voted to approve CCWD's participation in the LVE Project under the conditions described in CCWD Resolution 03-25 and the Board Principles; and

WHEREAS, regional partners and MOU signatories declined to participate in the first phase of the LVE Project and in 2011, CCWD elected to proceed without partners and in 2012 completed its construction, expanding LV Reservoir from 100 thousand acre-feet to 160 thousand acre-feet to provide needed water quality, drought and emergency storage benefits for CCWD customers; and

WHEREAS, following completion of the first phase of the LVE Project in 2012, CCWD continued to work with MOU signatories and potential project partners to evaluate and identify potential regional water supply benefits using LV Reservoir in accordance with Resolution 03-24, particularly through short-term pilot projects transfers and exchanges during severe droughts; and

WHEREAS, in 2017, CCWD, with support from MOU signatories and other regional partner agencies, submitted an application to the California Water Commission (CWC) for the second phase of the LVE Project (Phase 2 LVE Project) under the Water Storage Investment Program (WSIP) created by Proposition 1 in 2014 and in 2018 the Phase 2 LVE Project received a Maximum Conditional Eligibility Determination award of \$459,000,000 (later escalated to \$477,558,343) pursuant to Title 23, Division 7, Chapter 1 of the California Code of Regulations; and

WHEREAS, CCWD subsequently entered into an early funding agreement with the CWC for the Phase 2 LVE Project (CWC Early Funding Agreement Number 4600012892) in the amount of \$13,650,309 (later escalated to \$23,877,917) pursuant to California Water Code section 79750 and California Code of Regulations, title 23, sections 6000 - 6105; and

WHEREAS, on October 6, 2021, Alameda County Water District, Contra Costa Water District, East Bay Municipal Utility District, Grassland Water District, San Francisco Public Utilities Commission, San Luis & Delta-Mendota Water Authority, Santa Clara Valley Water District, and Zone 7 Water Agency formed the Los Vaqueros Reservoir Joint Power Authority (LVR JPA) to provide governance and administration and to assist in the design, construction, operation, and administration of the Phase 2 LVE Project; and

WHEREAS, since formation of the LVR JPA, CCWD has worked diligently with JPA Member Agencies and JPA staff to further develop the Phase 2 LVE Project, including environmental permitting, planning, engineering design, and project management; and

WHEREAS, after nearly a decade of planning and development, the Phase 2 LVE Project currently faces several outstanding and unresolved issues, which have threatened its viability including (1) tightening Delta operations, regulatory conditions, and permit restrictions that impact both CCWD-specific operations and state-wide system operations; (2) increasing construction cost;; (3) misalignment among JPA Member Agencies on risk allocation during construction, control of construction and operations decisions, and whether guaranteed delivery of benefits is achievable; and (4) inability to secure a backstop water agreement that fully mitigates the significant water supply and water quality risks to CCWD customers during the 3-to-6 year reservoir outage period during dam demolition, construction and refilling; and

WHEREAS, on September 18, 2024, due to the outstanding and unresolved issues described herein, the CCWD Board of Directors directed staff to work on a plan to end CCWD's participation in the Phase 2 LVE Project; and

WHEREAS, withdrawing the funding application and working to dissolve the JPA and to terminate the JPA Agreement will effectively end CCWD participation in Phase 2 of the LVE Project.

NOW, THEREFORE, BE IT RESOLVED, that effective November 6, 2024 CCWD intends to decline the Maximum Conditional Eligibility Determination (MCED) funding from the California Water Commission of \$477,558,343, excepting the early funding award of \$23,877,917 which has been fully expended on planning and permitting activities in support of the Phase 2 LVE Project as provided for in CWC Early Funding Agreement Number 4600012892.

BE IT FURTHER RESOLVED, that CCWD intends to withdraw its pending application to the CWC to obtain further 2017 WSIP funding, and the General Manager, in coordination with California Water Commission staff, is hereby authorized to withdraw the Phase 2 LVE Project Proposition 1 Water Storage Improvement Program application and to execute required documentation within the General Manager's signing authority.

BE IT FURTHER RESOLVED, that the General Manager is authorized to coordinate and work with the CCWD JPA Board representatives, JPA Member Agencies, and JPA staff to begin JPA dissolution and JPA Agreement termination efforts.

The foregoing Resolution was duly and regularly adopted at a meeting held on the 6th day of November 2024, by the Board of Directors of the Contra Costa Water District, by the following vote of the Board:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ernesto A. Avila, President

ATTEST:

Veronica Sepulveda, District Secretary