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June 11, 2024

LV JPA Member Agency General Managers

Dear General Managers and Member Agency Representatives:

At the June 5, 2024, Contra Costa Water District (CCWD) Board Meeting, the CCWD's Board of Directors took action to authorize the execution of Amendment No. 6 to Multi-Party Cost Share Agreement for the Phase 2 Los Vaqueros Reservoir Expansion Project (Project). The revised motion approved by the CCWD Board included a directive for me to work with the Los Vaqueros (LV) Joint Powers Authority (JPA) Member Agency General Managers to gain clarity about each agency's level of commitment to the Project based on the updated Project costs, estimated benefits, and agreement terms as currently defined, and to bring back a report to the CCWD Board in September on the member agency commitments.

CCWD, the LV JPA, and all member agencies have been working on several agreements needed to move forward with the Project. While progress has been made, there are significant unresolved issues. The significant disagreement on key agreement terms does not appear to be resolved, which understandably impacts the ability of each member agency to make firm commitments to the Project.

At the same time, the LV JPA is continuing negotiations of Project benefits with state and federal agencies; however, the lack of alignment among member agencies on these agreements could translate into a potentially disjointed strategy for negotiating these Project benefits. We are at a pivotal stage in the Project, and it is imperative that we engage on those policy decisions that are needed to determine each agency's willingness to enter into these long-term Project agreements.

To that end, attached is a summary of issues and policy questions I have discussed with this group. I appreciate your willingness to consider these specific policy questions, which will allow each member agency to assess whether alignment on key issues exists ahead of additional negotiations. I look forward to working with each of the General Managers on these critical discussions and stand ready to provide additional needed information or assistance to facilitate these discussions.

Sincerely,

A handwritten signature in blue ink that reads "Rachel Murphy".

Rachel Murphy
General Manager

Attachment

cc: LVR-JPA Executive Director Taryn Ravazzini
CCWD Vice President Antonio Martinez

CONTRA COSTA WATER DISTRICT

Los Vaqueros Reservoir Phase 2 Expansion Agreements - Outstanding Issues

BACKGROUND:

Contra Costa Water District (CCWD) constructed the Los Vaqueros Reservoir (Reservoir) in the 1990s to provide emergency water supply and water quality benefits for its customers. After initial construction was completed, CCWD began working with regional, state and federal agencies on plans to expand Reservoir capacity to provide regional benefits. After the Draft EIR/S was published in 2009, a two-phased approach was adopted for implementation:

- Phase 1 expanded the Reservoir from 100 thousand acre-feet (TAF) to 160 TAF to provide water supply reliability for CCWD during droughts, while enhancing the water quality and emergency storage benefits of the original Los Vaqueros Reservoir. Phase 1 construction costs were borne wholly by CCWD, as no willing partners were identified at that time.
- Phase 2 was developed to make use of excess capacity in CCWD's facilities that could be utilized together with modified/new facilities, including further expansion of the Reservoir to 275 TAF and additional conveyance facilities, during periods when water supply conditions are favorable to provide water supply, drought resiliency and ecosystem benefits at a regional scale for other water agencies. In 2021, a Joint Powers Authority (JPA) of eight local agencies was formed to provide governance, financing, and administration of the project.

STATUS OF AGREEMENTS / OUTSTANDING ISSUES:

CCWD, the Los Vaqueros Reservoir JPA and its member agencies have been working on several agreements needed to move forward with the Phase 2 Expansion Project (Project).

The JPA is continuing negotiations on Project benefits with state and federal agencies. It is noteworthy that the Project benefits are not yet defined. It is also noteworthy that there is a lack of alignment among member agencies on these agreements. It is imperative for leadership at each member agency to engage on the policy decisions that are needed to determine each agency's willingness to enter into these long-term agreements.

The following is a summary of significant unresolved issues with these various agreements and policy decisions that need to be addressed.

1. Design and Construction Agreement

ISSUE: Parties have not yet agreed on a methodology for allocating risk and responsibility for the total cost of construction, including potential cost overruns.

SUMMARY: CCWD is unwilling to bear construction risks because CCWD does not receive benefits from the resulting facilities, specifically the dam enlargement and Transfer Bethany Pipeline. Assuming construction risk for Project elements – from which an agency does not derive benefits – is inconsistent with the “Beneficiaries Pay” principle embedded into all of the project planning to date. Understandably, other JPA members have expressed their own concerns about assuming risk for facilities that do not benefit their customers and concerns

about assuming risk for unknown potential costs. These concerns are especially pronounced given that the total project benefits are not yet known and are less than originally assumed. A final unresolved issue is the fact that CCWD will be taking on substantial risk associated with the decommissioning of its primary Reservoir during the construction period. (See Backstop Agreement below)

POLICY QUESTIONS: Are member agencies committed to the Beneficiaries Pay principle? Do member agencies concur that CCWD is not a beneficiary of the dam enlargement and Transfer Bethany Pipeline and shall not be financially responsible for related construction costs and risk?

2. Facilities Usage Agreement

ISSUE: Parties have not agreed on how the various facilities would be utilized, including CCWD's Reservoir and conveyance facilities, and East Bay Municipal Utility District's conveyance facilities. Additionally, the parties have not agreed on the usage fees associated with use of CCWD's existing facilities as part of the Project.

SUMMARY: Several proposals made during negotiations would put CCWD customer water quality and water supply at risk, which conflicts with the fundamental principles of using only excess capacity and not creating negative impacts to CCWD customers. Similarly, CCWD must protect its customers significant past investments in the Reservoir and conveyance facilities. Examples of terms proposed by the JPA include:

- Narrowly defining the Reservoir capacity needed to meet CCWD demands and not recognizing capacity needed for refilling or other operational needs
- Requiring a guaranteed amount for water deliveries, which counters the "excess capacity" principle and could impact the ability for CCWD to meet its needs
- Requiring a role for the JPA in determining what CCWD's demands and needs are through an annual meet and confer process.
- Proposing a discount in usage fees in future years if JPA needs are not met in a particular year
- Establishing a permanent dedicated capacity right for the JPA in CCWD's Pumping Plant #1

Guaranteeing deliveries to member agencies would either result in a negative impact to CCWD customers or a violation of permit conditions.

CCWD initially released preliminary usage fees in 2018, which have undergone a series of reviews and updates since that time. A non-binding Letter of Intent concerning development of the usage fees for CCWD facilities was executed in March 2021, ahead of JPA formation. Negotiations continued following JPA formation and were paused in early 2023 to allow for development of the Facilities Usage Agreement term sheet and draft agreement.

POLICY QUESTIONS: Delivery of Project benefits is reliant on the availability of excess capacity in CCWD infrastructure and favorable water supply conditions. Are member agencies willing to sign agreements that do not include a guaranteed delivery of water? There has been a significant reduction in usage fees in comparison to the preliminary usage fees released in October 2018. Are member agencies willing to consider their commitments to the Project with the usage fees as currently calculated? Commitments to guaranteed deliveries and future discount of usage fees will put CCWD customers at risk and will not be negotiated.

3. Backstop Agreement

ISSUE: A backstop plan and agreement for CCWD are needed to ensure adequate assurance that water supply and water quality for CCWD customers will be maintained at acceptable levels during dam demolition, reconstruction, and refilling.

SUMMARY: An analysis by East Bay Municipal Utility District found that it could supply CCWD with backstop water at certain times, but not others due to its own needs and planned facilities projects. To fill gaps in meeting water supply and quality needs during this period, CCWD is analyzing a suite of temporary measures, including modified and additional processes at CCWD water treatment plants and emergency backup generators at its intake pumps. These measures would deal with a portion, but not all, of the anticipated impacts. In addition, these modifications do not address CCWD's emergency supply concerns. New supply agreements and assurances regarding CCWD's existing CVP supplies are still needed to replace water supplies that would otherwise have been available from Los Vaqueros Reservoir storage for CCWD use during emergencies, both drought and non-drought.

POLICY QUESTION: While a policy question remains for CCWD to determine what level of risk, if any, to its customers' water supply is acceptable during dam construction, do member agencies agree that any costs related to a backstop plan and agreement should be paid for by member agencies, not CCWD, as these are necessary costs to facilitate constructing the larger dam?

4. LV JPA Agreement

ISSUE: CCWD has worked 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.

SUMMARY: CCWD has proposed modifications to several terms of the LV JPA Agreement to ensure that the JPA operates, and is governed, consistent with foundational Project criteria to protect the interests and significant prior investments of CCWD ratepayers. CCWD's proposed modifications have been reviewed by legal counsel for the JPA and members. Further action was deferred to focus on the Design and Construction and Facilities Usage Agreements.

POLICY QUESTION: Are member agencies willing to revisit terms of the JPA Agreement to clarify and amend the JPA Agreement to reflect foundational Project criteria?

5. Status of Member Agency Business Case

ISSUE: Member Agencies have stated that additional work is needed to develop their business case for Project participation.

SUMMARY: CCWD has provided extensive information about costs, benefits, agreement terms and operations of the Project to the JPA and member agencies. Discussions at the GM meetings and LV JPA Board meetings have touched on the topic of where member agencies are at with their business case development, but there has been little defined progress. With the JPA meeting with state and federal agencies to negotiate Project benefits, commitments from members agencies in the near term is necessary to establish agreed upon terms of negotiation.

POLICY QUESTION: Is your agency on track to complete the remaining analysis needed to finalize your business case and determine Project participation by September 2024?