

Southeastern Colorado Water Activity Enterprise ARKANSAS VALLEY CONDUIT COMMITTEE MEETING

AVC Governance IGA Proposal Presentation Report

Date: May 13, 2022

Agenda Item: VI.B.

STAFF RECOMMENDATIONS:

Information

BUDGET IMPLICATIONS:

Information

PREVIOUS BOARD ACTION AND/OR ACTIVITY:

At a special Board meeting in April 2022, the Board approved an intergovernmental agreement (IGA) with Otero County to act as a fiscal agent for grant money from the Colorado Water Conservation Board.

ISSUE SUMMARY DESCRIPTION:

The District contracted with the Fountain Valley Authority to address several operational aspects of the Fountain Valley Pipeline, while retaining the ultimate obligation for repayment of the Fountain Valley Pipeline. It seems that a similar arrangement for the Arkansas Valley Conduit (AVC) would be beneficial to the Enterprise and the AVC participants. We will begin this month to initiate discussions for the formation of an Authority to represent the participants, as well as an IGA between such an Authority and the Enterprise to clearly detail the responsibilities of the Authority and Enterprise to the AVC Project.

A. IGA to Form a Water Authority

Water authorities are formed by “any combination of municipalities, special districts, or other political subdivisions of this state that are authorized to own and operate water systems or drainage facilities.” C.R.S. § 29-1-204.2. As political subdivisions of the state, the six counties in the AVC service area (Bent, Crowley, Kiowa, Otero, Prowers, and Pueblo), as well as municipalities or special districts participating in the AVC, may contract with each other to establish a water authority. C.R.S. § 29-1-202(2). The water authority would be a separate governmental entity, which its members may use for “development of water resources, systems, or facilities or of drainage facilities in whole or in part for the benefit of the inhabitants of such contracting parties or others.” *Id.* Note that this statute is broad enough to allow an authority to provide benefits outside of its territorial boundaries.

The IGA would provide for each county to coordinate AVC service to, and financial contributions from, the local participants within its boundaries, particularly the smaller participants, who would not be members of the water authority. A few of the AVC participants are home rule cities, over which counties have limited regulatory authority, so they may need to be directly involved. See Colo. Const. art. XX, § 6. Moreover, a statute requires a county to obtain

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approval from any municipality (home rule or otherwise) before rendering water service within the municipality's territory. C.R.S. § 30-20-402(1)(b). A few other major participants may also warrant consideration as authority members; the Counties may wish to include all the "Top Eight" participants, who have been actively involved in AVC planning, as authority members. The contract establishing the water authority must meet several statutory requirements. While SECWAE would not be a member of the water authority contemplated in this proposed framework, an understanding of these criteria will help guide discussions with counties and municipalities who may ultimately form the water authority. The relevant statute requires the contract establishing a water authority to specify:

- (a) The name and purpose of such entity and the functions or services to be provided by such entity;
- (b) The establishment and organization of a governing body of the entity, which shall be a board of directors in which all legislative power of the entity is vested; . . .
- (c) Provisions for the disposition, division, or distribution of any property or assets of the entity;
- (d) The term of the contract, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated . . .;
- (e) The conditions or requirements to be fulfilled for adding or deleting parties to the contract in the future or for providing water services and drainage facilities to others outside the boundaries of the contracting parties.

C.R.S. § 29-1-204.2. With respect to the governing body of the water authority, much discussion will center around who will serve as directors, how they are appointed, how long will they serve, what actions will require board approval, and if board members will receive any compensation. § 29-1-204.2(2)(b)(I), (III). Additionally, the IGA establishing the water authority would also describe any officers (such as CEO or COO) and their duties. § 29-1-204.2(2)(b)(II). While the Enterprise might initiate these conversations and has an interest in a well-functioning water authority, ultimately it will be the participants' agreement that establishes the governance. As an example, one governance structure might include a board member designated by each county, and perhaps each home rule city.

B. IGA between the Enterprise and Water Authority

"Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt." C.R.S. § 29-1-203(1). With a water authority in place among the AVC participants, that newly-formed governmental entity and the Enterprise may enter a separate IGA. The statutory requirements for an IGA along these lines are that "Any such contract shall set forth fully the *purposes, powers, rights, obligations, and the responsibilities*, financial and otherwise, of the contracting parties." C.R.S. § 29-1-203(2) (emphasis added). This would follow the contractual structure for the Fountain Valley Authority, which was formed by local participants and then entered a separate agreement with

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SECWCD to provide for operation and maintenance, and reimbursement of construction costs, for the Fountain Valley Conduit.

The Enterprise and the water authority would expand upon each of those topics in a formal IGA to be executed. The main topics that must be discussed in advance involve:

1. Purpose: The purpose of IGA would be to establish a framework for the joint efforts of the Enterprise and the water authority to implement a long-term plan for the design, construction, operation, maintenance, repair, and funding of the AVC and to provide water services to the authority members and their inhabitants.
2. Powers/rights of the Contracting Parties: the Enterprise would reserve certain power and rights with respect to AVC, such as the right to enter repayment contracts with the federal government. This part of the IGA would also contain a list of the powers and rights that the water authority would retain, such as the ability to take joint action on behalf of the multiple member counties and participants.
3. Obligations/duties of the contracting parties: in this section the Enterprise would take on certain duties, such as the primary responsibility for design, construction, and financing of the spur and lines, and coordination with the U.S. on the trunk line. The water authority would also agree to various responsibilities such as coordinating the efforts of the participants to pay for ongoing operation, maintenance, and repair ("OM&R") and to pay for debt service of the trunk line. Additionally, the water authority members would be responsible for entering agreements with local participants for AVC water supply and financial contributions.
4. Financial: Although a project of this size does not have fixed costs at this stage, a framework of the financial model as well as the repayment commitments from the water authority would need to be discussed. For example, the water authority would need to pledge revenues, establish a reserve fund, and potentially make provisions for general obligations to be incurred.

These issues will involve many discussions over the coming weeks, but this list will serve as a starting point.

SUGGESTED MOTION:

None

ATTACHMENTS:

None