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**Sent:** Tuesday, August 4, 2020 4:41 PM

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**Subject:** Fw: Santa Clara Valley Water District Recycled Water Committee August 6, 2020 meeting

Dear Chair Estremera, Directors Kremen and Keegan:

I have participated with this Recycled Water Committee (RWC), Valley Water Board, staff and consultants for over four years related to the Purified Water Program. I want to commend the RWC for conducting this virtual meeting when most other committee meetings have been suspended during the COVID 19 Pandemic. I plan on participating in your meeting Thursday the 6<sup>th</sup> of August as you review the status of various program elements.

At your January 2020 meeting the RWC put an update on the P3 program on your April 2020 agenda for discussion and directed staff to include the P3 approach as a scenario in the Board discussions on budget and water rates. That meeting could not take place, but the full Board did conduct a work session on June 16<sup>th</sup> with considerable discussion and direction to staff. Board Chair Hsueh wrapped up the work-session with a clear statement of Board direction moving forward:

1. Move forward working with the cities of San Jose and Santa Clara to get an agreement in place and then through the RWC.
2. The Board is still, consistent with past direction, P3 is still approach is still the way to forward with whatever the program is going to be. And Progressive P3 implementation (bringing the P3 Partner in the planning phase) is the way to go.
3. Board members are asking for more information to be reviewed by the RWC. That is the staffing plan for implementing a Progressive P3 program and also that Director Kremen's request to revisit the cost and projections for the overall program.

The future of the South County Recycled Water Program needs us to reschedule a meeting.

With this kind of explicit Board direction, I look forward to the RWC meeting. I do, however have a couple of comments on the meeting agenda items that I would like to share.

#### COMMENTS

Agenda Item 4.1 Review P3 Project Cost and Financing Sensitivity Analysis.

**Recommendation 1. The RWC should consider requesting analysis of a scenario of VW not contributing to the debt financing (which is industry standard practice) and obtaining a recommendation from David Moore who is the consultant financial advisor for the Purified Water Program.**

Valley Water staff has done a great job providing additional sensitivity analysis on a number of scenarios. I did not see any discussion or analysis of the staff concept of Valley Water contributing 30% of debt financing. Since this issue was brought up at the work session by Directors Kremen and Estremera (who are also on this committee), I expected it to be part of the staff analysis.

#### Agenda Item 4.2 Public/Private Partnership Implementation Approach

**Recommendation 2. The RWC should not accept or support the staff recommendations on this item, but should instead direct staff to:**

**Move forward with the RFP process that was suspended in 2018 with a Progressive P3 approach,**

**and since it has now been over two years since the District finalized the selection of Shortlisted Respondents, request that each respondent team affirm qualifications and interest in remaining in the P3 procurement process.**

The VW staff memo includes as part of the background this information:

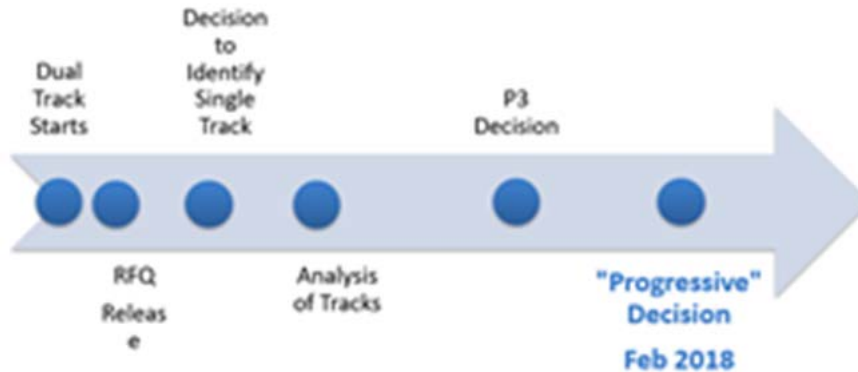
At the June 16, 2020 Board meeting, staff received from the Board its key objectives related to the Purified Program P3 approach. These are primarily:

- Implement a project of nominal capacity 9 million of gallons per day (MGD) as soon as possible.
- Advance a "progressive" P3 approach to deliver the Project
  - Leverage private sector innovation and expertise
  - Accelerate project implementation
  - Reduce project burden on staff by allocating risks and responsibilities to a private partner
- In deploying P3 procurement:
  - Ensure price certainty/budget predictability at time of contract award
  - Maximize competitive pressures on pricing and terms to lock-in best possible deal for Valley Water

The first five bullet points appear to be similar to the Board Direction summary provided by the Board Chair at the June 16<sup>th</sup> work session. I cannot find any reference to the last three bullet points from that work session or anywhere else in the program development over the past four years. It could be that they are appropriate objectives, but I question whether they can be labeled "Board Key Objectives".

More problematic is that these new objectives are then relied on to support a staff recommendation to abandon the Progressive P3 approach and go back to a more traditional approach. This change in direction gave me whiplash as it would erase all of the decisions and work effort made that resulted in having five shortlisted P3 entities that reviewed and commented on a draft term sheet with VW staff and consultants. Here is how VW staff and consultants presented the history of the program at an industry conference:

# An Unfolding Story



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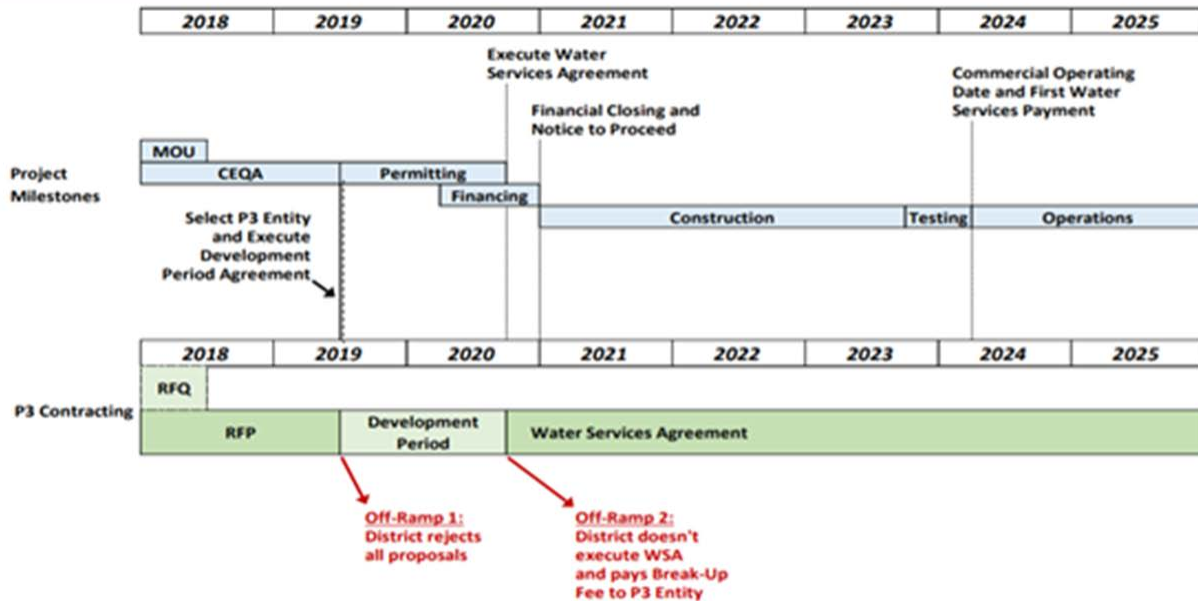
## February 2018 Board

- Which form of P3 is most appropriate for this Program?
- Considered several variations
- Opted not to go with a traditional DBFOM but rather a "progressive" P3 based on qualifications and innovation approach.
- A "Project Development Period" will occur after selection, leading to preparation of a Water Services Agreement.
- The process will have "off-ramps" that the District can exercise, as-needed.

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As you know the project was progressing in the development of the RFP when it was suspended due to a number of issues. Below is that schedule which clearly was well on the way to implement a Progressive P3 approach which included a Development Period in which a P3 partner would be selected to work with Valley Water staff and consultants to complete the planning and permitting of the project.

# Project Milestones and P3 Contracting



Now the staff recommendation is to go back to one of the options rejected on the basis of both staff and RWC recommendations to the Board in February 2018. The basis for this reversal could be that with the extensive staff changes at VW there may not be an understanding of the Board decision in 2018.

At that time, I commented that the early selection of the P3 partner, as recommended by the RWC and Staff in Option B -Progressive P3, was critically important to capture the benefits of this type of collaborative approach, including:

- The P3 partner can propose innovative development plans, and the District can select the most desirable before the scope and costs are completely defined;
- The Parties can work together and share costs by cooperating on feasibility studies, environmental studies, preliminary engineering, investigation of construction methodologies, regulatory compliance, permitting, financial planning, and developing an open-book costing model; and
- Early involvement allows the private partner to co-invest in project planning and design, technical studies, and environmental clearance.

Nothing has changed since then except that the project has been downsized. I suggest that the selection of a P3 Partner, with significant experience working in a progressive P3 approach (early involvement in the development process) and with an understanding of the complexities of the water issues in Silicon Valley is still critically important to continue to advance the partnership project