

Risk, liability and the business case for the Vista Ridge Water Supply Project

In early February of 2014, SAWS CEO (Mr. Robert Puente) informed the world that SAWS would not be pursuing the Abengoa Vista Ridge water supply project. The reason was that the project was too risky; the water needed to pay for the project might not be available. Mr. Puente was quoted as saying: “*Groundwater law in Texas leaves too much uncertainty and risk for the private and public sectors.*”. Instead, SAWS recommended the phased in expansion of their brackish groundwater desalination to provide additional water supply.

Within days of this announcement, SAWS backtracked. They announced they would continue to work with Abengoa to arrive at a “solution” to the risk that the water needed to pay for the project would not be available. Ultimately, a solution was arrived at: Abengoa Vista Ridge would accept 100% of the risk and liability for the construction, financing and operation of the pipeline. In exchange, SAWS would pay them a 21% return on equity and buy up to 50,000 acre feet of water per year. The contract securing this deal has been likened by Mr. Puente to a “big hammer” the utility can use to ensure the project works in its favor. That point appears to be correct. The contract was well-written and protects SAWS ratepayers against all risk and liability associated with construction, financing and operation of the project.

It is not the case, however, that SAWS ratepayers are protected against all risk and liability. Under the original contract, certain risks and liabilities exist. And, more recently, as Abengoa Vista Ridge attempts to sell 80% of its share in the project, SAWS appears to be compromising its position of being 100% protected from risk and liability on the construction, financing and operation side.

As part of the original contract SAWS ratepayers have incurred the following liabilities and risks:

- To pay on the order of \$750 to \$850 million over thirty years to have a third party assume the Vista Ridge construction, financing and operation risks and liabilities. This is the cost of providing a 21% return on equity plus additional interest costs that come with a private entity obtaining the construction financing.
- To purchase on the order of 700,000 acre feet of water (47% of the total Vista Ridge supply) more than San Antonio actually needs over the life of the project. This, according to SAWS demand projections, which include the information that SAWS needs no additional supply until 2027.
- To forego the expanded brackish water desalination in favor of Vista Ridge, pay between \$410 and \$750 million more, depending on how much of the surplus water can be sold. This, according to an analysis carried by a specialized, reputable national firm.
- In wet years, when Vista Ridge water is unneeded, for ratepayers to pay \$2,200 or more an acre foot for Vista Ridge water, instead of around \$350 acre foot for available Edwards Aquifer water.
- The risk that the over pumping predicted by Texas Water Development Board’s will materialize and the groundwater district will be forced to restrict water to SAWS at a time when San Antonio actually needs it, but does not have alternative supply. In the new Regional Plan, 50,000 acre feet are not identified as available for Vista Ridge; instead available water is set at less than 20,000 acre feet in 2020, increasing to about 35,000 acre feet in 2070.
- The risk that financial pressures created by purchasing large quantities of unneeded water at a high cost will inevitably erode SAWS commitment to conservation. Note, Vista Ridge water is “*today’s water at tomorrow’s prices*”, not the reverse as maintained by SAWS and its Board.
- The risk that a large oversupply of water entering San Antonio through the Edwards Aquifer Recharge Zone will both induce and allow for high density development in this sensitive area.

More recently, SAWS has begun a dangerous flirtation with risk and liability:

- It holds out its taking over the Vista Ridge project as a potential alternative, this despite the fact that risks that justified contracting with Abengoa Vista Ridge (or their successor) in the first place have not changed one bit.
- It is putting forward Garney Construction – by all appearances a very solid construction firm – to take control of the project. Yet, Garney’s expertise lies in design and construction and not in delivering a project of this magnitude and complexity. In 2015, Garney’s total construction portfolio in 2015 was less than \$1 billion...about the size of the Vista Ridge project.
- SAWS appears willing to move forward with Garney despite the fact that it has stated that it will sell out control to an unidentified entity and not participate in the operation and maintenance of the project. SAWS, astoundingly, professes to have no problem with this and implies it would approve Garney’s taking control despite having no idea who will run the project following construction. What happens if no other entity wishes to accept the risk and Garney is stuck with an asset it is has not expertise in managing? What happens if no acceptable buyer is found? SAWS may be setting itself up to be forced to take over the project and carry all of the risk and liability associated.
- SAWS is now involving itself on the financing side of the project. It co-signed an application to the Texas Water Development Board for \$800 million in state financing and publicly stated that it was a contingency should they take over the project. Now, SAWS tells us that it is getting involved with negotiation of Abengoa’s debts. Mr. Puente told Texas Public Radio that “*private companies working on the pipeline and SAWS are asking the banks to reduce fees, the loan amount and interest rate so Garney can afford to take over...*”. Trying to involve itself in a transaction to which it is not a party can open it up to civil legal liability.
- Finally, by involving itself in both sides of the contract – such as it has by taking a public role in trying to ensure that Garney and the remaining Vista Ridge partners take control and assume the associated risk and liabilities – it becomes exposed to the risk that if the project fails and Garney is damaged, they can seek compensation from SAWS for having been involved in the structuring of the deal and the decision-making.

SAWS set out to buy water, under contract, from a private water supply scheme. It did so because the risk was too high for SAWS to do it themselves. Now that the deal is at risk of falling apart, SAWS cannot now blind itself to the fact of that risk and try to salvage it by ignoring inconvenient truths and inappropriately involving itself in the business of the private companies involved. San Antonio needs to expand and diversify its water supply, but Vista Ridge is not the only game in town. SAWS never made a compelling business case that Vista Ridge was right for San Antonio, given the alternatives. Now that we have the chance to let this flawed project fall under its own weight and move on with no risk or liability, we should. Vista Ridge never made sense in the first place, given that a lower cost alternative – the expanded brackish water desalination – was and still is available.