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## Introduction

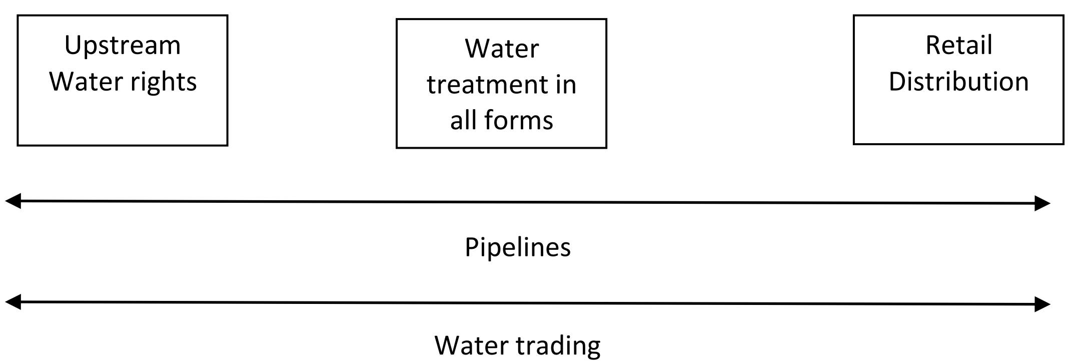
**Yavapai Regional Capital, Inc., specializes in public private partnerships (PPPs) for basic infrastructure. Our primary focus is designing and implementing structures adapted to the specifics of a project, i.e., no cookie cutters. We integrate activities at the public-private interface to combine the best of the public and private sectors in achieving the overriding goal–the most competitive user charges for services provided, be they tolls, water or sewage fees, or user charges generally. Existing traditional water financing mechanisms have limitations on how much growth can be financed. Private capital has no arbitrary constraints. In high-growth states, therefore, we believe the most efficient structures will be ones with a marriage and co-existence between traditional sources and new private financing. Our comments should be seen in that light.**

**We also believe that user charges should be structured wherever possible so as to be voluntary and, therefore, not seen as any form of taxation.**

## Observations

1. **We have never seen new enabling legislation that does not require tweaking in the context of the first deal. Getting a broad framework is essential, however, in order to avoid flagging political red lights to private investors**
2. **Private investors, by taking project-specific risk, look to much broader issues than do traditional sources who often merely securitize existing revenues**
3. **The structure amenable to private investors is different depending on the type of project and security they will have. Main differentiators, similar to structural parallels in the energy industry are:**
    - **Water rights in the ground or rivers (upstream)**
    - **Pipelines (transmission)**
    - **Treatment facilities (refining/processing)**
    - **Retail water distribution (marketing)**

    **A simple diagram illustrates the industry components**



4. **Sewage should also be considered an integral part of the process, as the recirculation of wastewater and tie-ins with alternative energy uses is appealing to private investors.**
5. **Therefore, we always encourage and think around either real or hypothetical projects. The project list developed is an excellent base to do this. This helps bridge the gap between two cultures– public policy on the one hand and nuts and bolts risk-based financing on the other.**
6. **The project list provides a wide variety of project types and sizes. It should be noted that public private partnerships, which bring in large amounts of private financing, are generally not suitable for projects under $50 million, with some exceptions. Therefore, the most sensible strategy for project financing is to consider PPPs for large projects, leaving more money from traditional sources to finance smaller projects, thus maximizing water infrastructure development.**
7. **It also should be noted that the U.S. Council of Mayors, among others, understands that private sector financing of projects leads to construction costs that are up to 40% below public sector-financed and built projects. In addition, private sector financing often leads to projects being built much more rapidly, which increases job creation.**
8. **Financiers will be concerned with many issues, but in general terms their foci will be:**
    - **How do I get my money in?**
    - **How do I attach a revenue line so I can get it out?**
    - **What security can I get and what limitations will there be on my ability to realize cash for that security?**
    - **What management control do I get?**

**We would be happy to participate in a working session illustrating how various types of project structures would be used.**

**Robert Wagner** **John Sellers**

Robert L. Wagner

**Note: YRC comments on the Appendix A are in bold with reference to the original text**

**General Concepts for a Regional Water Augmentation Authority**

Powers and Duties

1. Plan, design, construct, own, and operate water projects
    - **In general, a Water Augmentation Authority should oversee and manage the process (based on specified outputs and limitations), and not itself do the planning, designing, constructing, owning, and operating of projects, for which specialist groups already exist. To have the Authority do this would be to require them to hire a number of otherwise unnecessary people.**
    - **Procurement procedures and authorities should provide for**
        - **Competitive bidding process but with flexibility such that cost is not the sole deciding factor**
        - **Solicited and unsolicited proposals. In the event an unsolicited proposal is awarded to a competitor, some provision should be made for reimbursement of costs of the original bidder**
2. Acquire and sell water, except may not engage in the retail sale of water **(Upstream)**
    - **Should a private party wish to enter into direct arrangements with retail buyers, this would require them to be subject to the ACC. They are unlikely to want to do this.**
3. Acquire, hold and sell water rights **(Upstream)**
    - **Any water rights would be subject to negotiations with private parties on the granting of security over those water rights. Consequently, the powers should include the power to pledge such rights with step-in-shoes rights by financiers.**
4. Exercise the power of limited eminent domain authority
5. Use existing public rights-of-way and public easements consistent with the underlying purpose and authority of the right-of-way or easement
6. Lease and exchange water
7. Acquire, hold and assign long term storage credits
8. Sue and be sued
9. Employ necessary staff
10. Charge fees for services and water sales
11. Negotiate agreements to use existing facilities
12. Provide for payment of debts
    - **In addition to traditional debt instruments, flexibility should be included for a variety of instruments ranging from debt to profit sharing arrangements**
13. Borrow money
14. Issue revenue bonds and pledge revenues of the authority for the repayment of the bonds
    - **Need to consider all the possible ways that a private entity could provide capital to a project via an authority. There are many, ranging from debt instruments to equity-type instruments, with many variants in between**
15. Enter into contracts
16. Cooperate with other public and private entities
17. Acquire and lease real and personal property

- **Must provide flexibility for various methods of ownership of physical assets. This is important because investors will want to be able to tax plan and to use taxable deductions such as depreciation in the most efficient manner**

18. **Make investments**
    - **Felixibility should be provided to allow an authority to particpate in a venture established on private lines. This would include the authority to take title to shares and other instruments.**
19. Transport and deliver water **(Transmission)**
20. Acquire electrical power for authority purposes
    - **This is an important consideration because the integration of closed-loop and alternative energy into the mountain states is a major investment opportunity**
21. Treatment of water if such treatment does not conflict with another entity's jurisdiction and the entity consents to such treatment
22. Partner with Native American tribes and Federal agencies
    - **A critical consideration where we see three dimensions of tribal involvement**
        - **Their role as sovereign nation public providers of services to their own constituents**
        - **Their role as potential private investors and/or water suppliers**
        - **Regional leadership initiatives given that many projects, directly or indirectly, have a tribal component of some sort**

Note that we have separated revenues and financing, as they are different

<u>Revenues</u>

1. User fees
    - **The primary revenue source for a PPP. The risks related to this revenue stream are one of the central areas of the risk allocation for a PPP.**
2. Membership fees
3. Other sources of revenue as determined by the governing body, except for ad valorem taxes

<u>Financing</u>

1. Revenue bonds
2. Loans or advances
3. Capital contributions from private parties
    - **Many forms to be considering running the debt – equity spectrum**
4. Eligibility to apply for WIFAA technical assistance and loans, including the Clean Water Revolving Fund, the Safe Drinking Water Revolving Fund, and the Water Supply Development Fund
5. Grants

<u>Authority Membership</u>

<u>Voluntary</u>

1. Must share in the costs of financing a project and services of the authority

2. Any municipality regardless of whether it owns and operates a water treatment or distribution system
3. Any Title 48 entity that has the authority to treat and distribute water for domestic, commercial and industrial purposes
4. Any Title 45 county water augmentation authority
5. Any Title 45 county water authority
6. Counties
7. Private water companies
8. Other water-centered Title 48 entities
9. Private entities
10. Members do not have to be adjoining/coterminous

<u>Authority Governance</u>

1. Board of Directors
    a. Each member would be entitled to appoint one member of its governing body to the Board of Directors.
    b. Each Director shall serve at the pleasure of the member who appointed the Director.

2. The authority has the rights and immunities of a municipal corporation that are granted by the constitution and the statutes of this state, including immunity of its property and bonds from taxation.

<u>Authority Formation</u>

1. Two or more eligible entities, at least one of which is a public agency, may form an authority. The authority must have a clear public purpose. Each eligible entity must adopt a resolution approving its membership in and establishment of the authority.
2. The authority shall notify the board of supervisors of each county in which a proposed use of water from the authority will be located of the authority's formation, and file with each board of supervisors organizational documents that describe the authority, its membership, the water supply issues to be addressed by the authority, and the proposed locations of uses of water supplied by the authority.
3. The authority shall publish a notice of the authority's formation once each week for two consecutive weeks in a newspaper of general circulation in each county in which a proposed use of water from the authority will be located.
4. Any aggrieved person may contest the formation of the authority by filing an action in the superior court of any county in which a proposed use of water from the authority will be located. Any contest must be filed within 30 days of the second publication of the notice.
5. The superior court shall determine whether the authority is lawful and whether its formation occurred in substantial compliance with the authorizing statutes.
6. The formation of the authority is lawful and conclusive against all persons if an action is not filed as provided above, or if the action is unsuccessful.

Other

1. Protection of adequate water supplies from adjacent pumpers who do not have a determination of an adequate water supply.

    - **This would be important to investors if they were taking underground water reserves depletion risk. They would not want competitors to siphon off water on which they relied for the return on their investment**

2. Protection of adequate water supplies and water supplies of other members of the Authority from impacts of non-subdivision wells.

    Limits on the construction of new wells outside of AMAs could be considered. One possibility is to require anyone desiring to drill a new non-exempt well outside of an AMA to notify adjacent landowners prior to drilling the well. No consensus was reached on whether any new requirements should be placed on the construction of new wells.

3. Maximum repayment period on loans (30 years) is too short.

    - **Yes. Private capital will also be seeking to lower its own risk by using financial engineering to assist in reducing user charges to those most acceptable to the public.**