

COUNCIL WORKSHOP ITEM

ITEM: Resolution Affirming the Principals of the Water Commission Act of 1985 and the Water Purchase and Sales Contract of June 11, 1986
DATE: March 19, 2003
PREPARED BY: Riccardo F. Ginex, Village Manager
PURPOSE: Approval of Resolution to be submitted to the DuPage Water Commission

DISCUSSION:

Thirty representatives from twenty Charter Customer communities met in Oak Brook on March 12, 2003, to discuss concerns regarding various matters before the DuPage Water Commission. Three matters of particular concern to the Charter Customers were, (1) service to new customers that may exceed the capacity of the system, and (2) the reallocation of water sales tax to DuPage County to pay for priorities of Chairman Schillerstrom, and 3) maintaining the \$1.65 rate through 2006-07.

In January 2003, Michael Vondra, Chairman of the DuPage Water Commission, made a proposal to provide water service to Batavia, Bartlett, Geneva, North Aurora, and St. Charles. These municipalities are excluded from the existing DWC service territory. Chairman Vondra has suggested that these communities pay partial costs and not fixed costs as the other Charter Members have done. This agreement would violate the Charter Customer contract.

In order to supply water to these areas, a 48-54 inch water main would need to be constructed along Roosevelt Road at a cost of \$25 million. Chairman Vondra has pursued service to these "excluded towns" without, 1) evidence of serious interest by the communities involved, 2) based upon inferences that the water can be supplied on more favorable terms than to the Charter Customers, and 3) despite considerable evidence that the DWC may not have capacity sufficient to supply the future needs of the Charter Customers.

The attorney for the Charter Customers, James Knippen, noted that the goal of the Charter Customers is to obtain a sufficient, sustainable quantity of high quality water at the lowest cost. He reviewed the source documents (Water Commission Act of 1985 and the Charter Customer agreement) establishing the Water Commission. Mr. Knippen noted that the current State Statute excludes municipalities that are primarily outside of DuPage from being served by DWC. The Charter Customer agreement prohibits service to any new customers that would limit meeting the current or future needs of the Charter Customer. Mr. Knippen stated that the Charter Customer agreement may only be amended by a vote of 3/4ths of the Charter Customers. The proposal by Chairman Vondra to serve Batavia, Bartlett, Geneva, North Aurora, and St. Charles is prohibited by current law and contract. It would also require a significant expenditure for new mains to transmit the water.

Charter Customer members wanted to reach a consensus discussing these concerns with the Chair of the Water Commission. They set forth a list of objectives detailed in the resolution that will be presented at the April 10 Budget hearing of the DWC. They include:

- Maintain the \$1.65 rate through 2006-07,
- Confirm the ability to supply Charter Customers through 2024 without significant improvements to the distribution network,
- Continue to provide for the full water requirements of each existing or new customer,

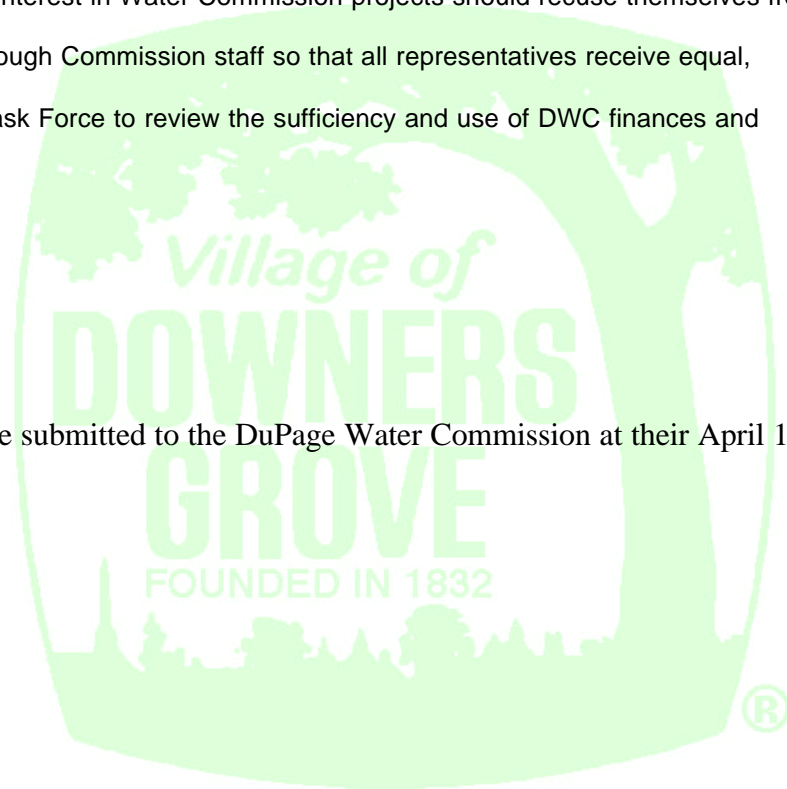
- Do not seek out or market to subsequent customers without a clear written statement of interest from the elected authority of the prospective agency,
- Eliminate consideration of "impact" or "tap-on" fees,
- Insure that sales tax continues to be used to maintain lower water rates, as determined by the vote of DuPage residents,
- Seek Charter Customer approval before seeking any amendments to the County Water Commission Act,
- Continue the commitment to equitable participation by new water customers by insuring full payment of mixed fixed costs,
- Commissioners with a personal interest in Water Commission projects should recuse themselves from the decision,
- Communications should flow through Commission staff so that all representatives receive equal, unbiased information,
- Establish a Charter Customer Task Force to review the sufficiency and use of DWC finances and reserves;

ATTACHMENT:

Resolution

RECOMMENDATION:

Approval of the resolution to be submitted to the DuPage Water Commission at their April 10th finance meeting.



RESOLUTION NO. _____

**A RESOLUTION AFFIRMING THE PRINCIPLES OF THE WATER
COMMISSION ACT OF 1985 AND THE
WATER PURCHASE AND SALES CONTRACT OF JUNE 11, 1986**

WHEREAS, the Village of Downers Grove is a Charter Member of the DuPage County Water Commission (hereinafter “Commission”); and

WHEREAS, the Commission was established by the Water Commission Act of 1985 (70 ILCS 3720/1) hereinafter “the Act;” and

WHEREAS, the Act provides in part:

“the County Water Commission shall continue to be a body politic and corporate, and shall bear the name of the home county, but shall be independent from and not part of the county government and shall itself be a political subdivision and unit of government. . .;” and

WHEREAS, in addition to the Act, the Water Commission and Charter Customers are bound by the covenants, terms and conditions of the DuPage Water Commission Water Purchase and Sale Contract (hereinafter “Charter Contract”); and

WHEREAS, the purpose of the DuPage County Water Commission is to provide water to those eligible to receive water under, and in conformance with, the Act and the Charter Contract; and

WHEREAS, the Water Commission is not a home rule unit; and

WHEREAS, as a non-home rule unit, the Water Commission is bound to conform to the terms of the Act and the Charter Contract; and

WHEREAS, a portion of the DuPage County Water Commission’s revenues are provided by a sales tax which was approved by the voters of DuPage County solely to provide financial resources for the Water Commission; and

WHEREAS, recent agenda items before the Water Commission suggest activities inconsistent with the Act and Charter Contract; and

WHEREAS, the Charter Contract provides that the Commission has been organized “to supply water within its territorial limits;” and

WHEREAS, the Act provides that the territory of the Water Commission includes its home county except that territory located within the corporate limits of “excluded units;” and

WHEREAS, under the Act, an “excluded unit” means a unit of local government having a waterworks system and having within its corporate limits territory within the home county and which, at the

time any commission becomes a county Water Commission, receives, or has contracted at such time for the receipt of, more than 25% of the water distributed by such units water system from a source outside the home county; and

WHEREAS, one of the proposals before the Water Commission suggests that “excluded units” be provided commission water; and

WHEREAS, the provision of water to “excluded units,” by the Commission, would be an ultra vires act and is not authorized by the Act or the Charter Contract; and

WHEREAS, the Charter Contract provides that a “subsequent customer” under the contract must have a “water allocation;” and

WHEREAS, some of the “excluded units” proposed as “subsequent customers” of the commission do not have “water allocations;” and

WHEREAS, providing water to a “subsequent customer” without a “water allocation” would be ultra vires under the terms of the Charter Contract; and

WHEREAS, the Charter Contract further provides in part:

“that the Commission shall not enter into contracts with Customers that would cause the Commission to be obligated to lake water in excess of (iii): an amount which would decrease the amount of lake water then being supplied or to be supplied in the future to the Charter Customer;” and

WHEREAS, a report prepared by the Water Commission’s engineer indicates that providing water to the proposed “excluded units” has the impact of decreasing the amount of the lake water then being supplied to the Charter Customers, and incurring \$52,000,000 in additional costs for transmission mains; and

WHEREAS, the Charter Contract provides in part:

“The Commission shall not supply lake water except pursuant to a written contract. No subsequent contract shall provide rates, charges or terms lower or more favorable to the subsequent customer than those provided in this contract for the charter customers,”

WHEREAS, proposals before the Water Commission suggest that subsequent contracts not require “subsequent customers” to pay the missed fixed costs required to be paid under the Charter Contract; and

WHEREAS, proposals before the Water Commission provide no payment for the “excluded units” to pay for water to be transmitted from Chicago to DuPage which is now funded by DuPage sales tax (missed transmission costs); and

WHEREAS, any contract absolving a “subsequent customer” from paying the missed fixed costs and missed transmission costs would be in contravention of the Charter Contract; and

WHEREAS, the Village of Downers Grove, wishes to affirm the principles of the Water Commission Act of 1985 and the Charter Contract so as to protect the water supply provided pursuant to the Commission's charter and to maintain a source of affordable and clean water for the Charter Customers, the Subsequent Customers, and those lawfully eligible to become subsequent customers pursuant to the Act and the Charter Contract; and

WHEREAS, Water Commission staff has established that the Commission is capable, based upon the current financial status of the Water Commission, of maintaining the \$1.65 rate through the 2006-2007 years; and

WHEREAS, rates of the DuPage Water Commission would increase by fifty percent without the support of the sales tax approved by the voters of DuPage County; and

WHEREAS, the Water Commission has the highest financial rating of any agency of its kind in the country as a result of sound fiscal management; and

WHEREAS, based upon the multitude of variables effecting the provision of Lake Michigan water, it is essential that the Water Commission maintain financial soundness in order to be able to fulfill its Charter of providing clean water in sufficient quantity to charter customers, subsequent customers, and those lawfully eligible to be subsequent customers.

NOW, THEREFORE, BE IT RESOLVED that the Village of Downers Grove hereby affirms the principles of the Act and the Charter Contract and encourages the Water Commission to undertake and support those actions which also affirm the Act and the Charter Contract as follows:

- A. Refrain from expending Commission resources to investigate providing water to "excluded units" which are not lawfully qualified to receive water through the Commission; and
- B. Undertake those acts necessary to confirm its ability to supply through 2024 charter customers, subsequent customers, and those eligible to be subsequent customers, adequate water by continued implementation of past proven Water Commission water supply policies and practices; and
- C. Continue to provide full water requirements of each existing charter customer, subsequent customer or lawfully qualified subsequent customer in conformance with the Charter Contract; and
- D. Require a clear written statement of interest from the elected authority of such lawfully qualified subsequent customer before seeking to market water to such lawfully qualified subsequent customer; and
- E. Eliminate consideration of impact or tap-on fees; and

- F. Insure that sales tax continues to be used to maintain low and reasonable water rates in conformance with the vote of DuPage County residents; and
- G. Notify the Charter Customers of any activity directed at seeking any legislative amendments to the Act and seek prior Charter Customer approval for such Amendments; and
- H. Continue the commitment of equitable participation in the water system by requiring subsequent customers, in conformance with the Charter Contract, to make full payment of missed fixed costs as has been required of other subsequent customers; and
- I. Require appointed members of the Water Commission with a personal interest in proposed Water Commission projects to identify that interest and recuse themselves from the decision making process; and
- J. Provide full and open communication to all Charter Customers through commission staff so that all representatives receive equal and unbiased information; and
- K. Provide reports or other information commissioned by the Commission to its representatives and members; and
- L. Act in conformance with the Open Meetings Act including, but not limited to, approval of contracts or amendments to contracts in open session; and
- L. Comply with all terms, conditions and covenants of the Charter Contract.

BE IT FURTHER RESOLVED that the Downers Grove Village Clerk is hereby directed to forward a certified copy of this Resolution to the Water Commission, its Chairman, and all of its Board Members.

1. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

2. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____

Village Clerk