

# Southwest Erie County Regional Water Project Case Study

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**1. Municipal Characteristics**

<b>Indicators</b>	<b>Town of Eden</b>	<b>Town of Brandt</b>	<b>Town of Collins</b>	<b>Town of North Collins</b>	<b>Village of Angola</b>	<b>Village of North Collins</b>
2000 Population	8,076	1,906	8,307	3,376	2,266	1,039
Land Area (sq. mi.)	39.8	24.3	48.1	42.9	1.4	0.8
Assessed Value Fully Taxable	311,231,202	\$87,194,648	\$125,353,618	\$128,109,724	\$50,640,893	\$30,207,566
Full Valuation Taxable Real Property	\$362,486,841	\$87,194,648	\$152,870,265	\$128,109,724	\$68,093,173	\$30,207,566
Total Tax Levy	\$3,157,711	\$938,088	\$1,114,131	\$964,543	\$809,576	\$329,350
Total Debt Outstanding	\$2,091,000	\$658,000	\$1,794,500	\$600,000	\$1,651,923	\$449,197
Total State Aid Revenue	\$304,770	\$98,958	\$119,781	\$123,315	\$72,568	\$41,340
Total Revenue w/ State Aid	\$4,059,854	\$1,286,049	\$1,905,966	\$1,449,224	2,243,754	\$759,407
Debt Service	\$142,501	\$90,173	\$131,767	\$88,895	\$187,987	\$108,398
Total Expenditures w/ Debt Service	\$4,017,955	\$1,271,886	\$1,745,224	\$1,657,146	\$2,310,941	\$802,041

## **2. Project Description & Impetus**

The Southwest Erie County Regional Water Project is a collaborative initiative among the Towns of Eden, Brant, North Collins and Collins, and the Villages of Angola and North Collins, to address their immediate and long-term water supply needs [*Please see Map in Appendix D*]. The project is an outgrowth of the broader Southtowns Water Consortium, which was initiated by Erie County and the Erie County Water Authority (ECWA) in 2001 with the participation of 22 Southtowns communities. The broader consortium also spawned similar efforts for municipalities in the Southeast and Southcentral portions of Erie County. This case study focuses on the Southwest Erie County effort.

The Southtowns Water Consortium convened to address a number of concerns regarding the diminished quality and yield of groundwater in the Southtowns area. Erie County Department of Health evaluations at the time showed 4,200 contaminated wells in the 22 municipalities. Small, local-source public water systems continue to face health risks related to organic byproducts such as coliform, E. coli, nitrates and various metals. Existing municipal systems are plagued by aging waterlines nearing 100 years and in need of major, costly upgrades. Increasingly stringent government water quality standards require expensive testing and treatment requirements, placing a tremendous fiscal burden on the communities. Additionally, growth in some communities has been restricted due to the limited availability of safe and adequate water supplies. Generally, the Southtowns area had been approaching its water needs in a fractured manner, with communities building waterlines for immediate needs with little consideration for potential downstream capacity. At the start of this effort, 19 of the 22 participating communities had their own public water distribution systems operating within their own boundaries, often involving redundant levels of government for facility operation and maintenance.

For the municipalities in the Southwestern corner of Erie County, the water challenges can be paralyzing. Since 2003, the Town of Eden has been under a waterline extension moratorium until additional transmission capacity is installed, in effect serving as a residential development moratorium. Several new subdivisions have been unable to progress in the town. A residential home development request was denied by the Village of North Collins' board over concerns that state mandates for dishwashers and washing machines would strain the village's water supply. Hundreds of residents in Eden, Brant and North Collins have filed petitions for public water, some citing concerns that their wells have run dry or are contaminated. In 2003, the Erie County Health Department considered requiring residents with private wells to install expensive backflow valves to prevent their contaminated water from backing up into the village water system. The Town of Brant estimates it has 20 to 25 homes that are at significant health risks due to water quality. The Town of Eden cites quality-of-life concerns, with some residents unable to flush toilets or take daily showers due to limited water supply. In North Collins, iron levels are so high in the water that some residents cannot wash their clothes without a special filtration system.

The operating and maintenance cost of water systems in the Southwestern portion of the county is also challenging. Increasingly stringent water quality standards set by the state health department place significant cost burdens upon small municipalities operating their own systems. Many simply cannot afford the expensive testing and treatment procedures. Instead, they may have to face regular fines from the health departments until they are in compliance.

Fractured governance is especially problematic for these municipalities. Separate water departments exist in four of the six participating municipalities – the Village of Angola, the Village of North Collins, the Town of North Collins (private, volunteer water company), and the Town of Collins. This has led to complicated supply arrangements, often at higher costs to some customers. Moreover, the fragmented governing structure has hampered opportunities to seek water improvement funding collaboratively, thus failing to maximize the potential of state and federal grant funds available for these purposes.

In 2001, the Southtowns communities looked to the Erie County Water Authority, the only lake source supplier in the Southtowns, to help address these issues by extending its network of waterlines throughout the region. The potential benefits are many. In addition to providing a potable, reliable, and sustainable water source, an ECWA water supply would provide low-cost bulk water rates and rate stability. Additionally, the arrangement would allow for the transferal of water system operation and maintenance to the ECWA, thereby enabling the individual municipalities to “get out of the water business.” Moreover, regional collaboration would enable joint financing arrangements and a coordinated approach to long-term water planning in the Southtowns.

In 2003, Erie County and the ECWA commissioned R&D Engineering Inc. (now CRA Infrastructure & Engineering) to assess the immediate, 5-year and 20-year water needs of these communities, determine the feasibility of providing them with lake source water, identify a cost-effective, regional approach to addressing the area’s growing water needs, and investigate alternative regional governance arrangements. The Southwest Erie County Regional Water Project formed based on the recommendation of this report and continues today to work towards its goal of securing ECWA service to the southwestern portion of Erie County.

### **3. Proposal(s) and Proposed Funding**

Recommendations included in the “Southtowns Regional Water Planning Consortium Study” report addressed the capacity to open up ECWA water supply to the southwestern portion of Erie County by constructing a new water line along Cain Road between the Town of Evans and the Town of Brant. This costly project would, however, require the participation and cooperation of all municipalities affected by the transmission line. Two alternatives to the Cain Road transmission line were proposed, although each was inferior to the Cain Road line in terms of their ability to deliver water to areas south of Eden, including North Collins, Collins and the Collins and Gowanda Correctional Facilities.

The other artery of the southwestern Erie County water project was a waterline running south down Route 62 through the Towns of Eden, North Collins, the Collins and Gowanda Correctional Facilities and the Town of Collins. Other lateral, east-west lines would connect the system to the Town of Brant and easterly portions of Eden. The Village of Angola, already connected to the ECWA system, would have its older system updated with new lines.

The report advised the immediate convening of those municipalities affected by these proposed water projects to determine their level interest in and commitment to the initiative. The initial group thus involved the Towns of Eden, Evans, Brant and Collins, the Villages of Angola and North Collins. Throughout the process, the consortium presented several proposals to the state Department of Correctional Services for the connection of the Collins and Gowanda Correctional Facilities to the shared system. (The state, on behalf of the correctional facilities, was never an official participant of the joint water project.)

A regional approach to the water projects was deemed imperative, especially in southwestern Erie County, according to the report. Many of the priority waterline extension projects were not affordable without inter-municipal cooperation. The supply of public water to the Brant, North Collins and Collins, the most distant and least populated municipalities was deemed to be “highly unlikely” without such partnerships.

Four years after the release of the initial study, the southwest group continues to work toward the goal of linking to the ECWA system. The Cain Road waterline project was abandoned after the Town of Evans opted out of the consortium, making it economically infeasible to pursue that project.

Subsequent to this setback in the project, several engineering scenarios were proposed to provide an alternative network of waterlines that would serve the best interests of the six participating municipalities and the Collins and Gowanda Correctional Facilities. The correctional facilities, which consume by far the most water out of all partners in the project, were deemed critical to the success and affordability of the project. Based on its use, the state's cost-sharing role would be significant – approximately 40 percent of the total project, leaving 60 percent to be shared among the six municipalities. More than a year and a half was dedicated to negotiations with the Department of Correctional Services to come to a mutually acceptable cost sharing agreement for service delivery to the correctional facilities. Initial cost estimates of \$15 million were reduced to about \$10 million. Within the past year, this effort was halted after the state located a significant groundwater source adjacent to the correctional facilities.

The project continues to move forward, largely because of a 2006 Shared Municipal Services Incentive program grant (\$571,000). Many involved in the project have stated clearly that the initiative would have been abandoned without such support. Upon finalization of the grant contract (in process), the funds will support the consortium's continued work with the consultant team (CRA Infrastructure & Engineering, Hodgson Russ LLP and Munistat Services Inc.) to carry out the remaining planning and legal steps before construction of the actual water system can begin. Specifically, these are to:

- develop cooperative agreements necessary to proceed with legal, financial and administrative tasks of the project, including intermunicipal agreements, legal notices, formal resolutions and agreements with Erie County Water Authority;
- prepare final Map, Plan and Report for water district formation and project financing;
- produce preliminary engineering design for the water districts; and
- coordinate and submit application to the Environmental Facilities Corp. for financing the project.

In addition to letters of support and municipal resolutions, a key element of the 2006 grant to SMSI was the Memorandum of Understanding signed in March 2005 by the six municipalities. It acknowledges that they are "considering" a water project that would provide service to each municipality and submitting a joint funding application to the New York State Department of Health and Environmental Facilities Corp. under its Drinking Water State Revolving Fund. The MOU in no way obligates the municipalities to participate in the project.

The revolving loan fund is critical to the success of this project. Serving as a financial incentive for municipally and privately owned drinking water systems to finance infrastructure improvements, the program provides subsidized low-interest, long-term loans. Also, for communities with demonstrated financial hardship, interest rates can be reduced. The Southwest Erie County Regional Water Project will seek funds approximating \$38 million.

The most important proposals will emerge upon the completion of the SMSI grant – the approval of the water districts by each of the affected publics in the six municipalities, and the signing of the intermunicipal agreement, the final step to establishing a regional water system. This agreement will outline how the project is to be financed (e.g., through the EFC loan) and administered by the communities. Implementation of the project will be carried out by the inter-municipal water board, the Erie County Water Authority and related civil engineering firms.

#### **4. Legal Foundation and Legal Checklist**

##### **Adopted Legal Actions for the Southwest Erie County Regional Water Project**

**May 2001 - Resolution on Water Consortium:** The 22 participating municipalities were required to pass a resolution to join the Southtowns Water Consortium for the purpose of addressing shared water infrastructure

issues. Resolutions stated there were no expenses incurred by the towns in joining the consortium or applying for the subsequent grant to Erie County for support of the planning study.

**January 2002 – Resolution to Fund Southtowns Regional Water Planning Consortium Study:** The Erie County Legislature passed a resolution enabling the County Executive to enter into contracts not exceeding \$200,000 on behalf of the Southtowns Water Consortium to conduct a feasibility study and cost analysis of a regional approach to improving water infrastructure in the Southtowns communities.

**October 2003 – Resolution in Support and Funding of Regional Map, Plan and Report:** Based on the conclusion of the Southtowns Regional Water Planning Consortium Study that a cooperative regional approach for the extension of public water supply was cost effective and technically feasible, a multi-community Map, Plan and Report document had to be prepared in order to establish capital costs, possible funding sources and equitable cost-sharing approaches for affected communities to consider. The resolution acknowledged the contribution of \$12,000 from Erie County, \$15,000 from the Department of Correctional Services and a request of \$7,000 from participating municipalities, toward which the Town of Eden contributed \$1,000.

**March 2005 - Memorandum of Understanding:** Acknowledgement among the Towns of Eden, Brant, North Collins and Collins and the Villages of North Collins and Angola that 1) the municipalities are considering a water project that would provide service to each municipality and 2) are considering submitting a joint funding application to the New York State Environmental Facilities Corp. (EFC) under its Drinking Water State Revolving Fund. The MOU also acknowledged the municipalities' intent to engage professional services to prepare the application to EFC as well as a proposal to the Department of Correctional Services for the potential engagement of the Collins and Gowanda Correctional Facilities in the joint water project. Explicitly stated in the MOU is that the municipalities are not "committing themselves in any manner to any other portion of the Joint Water Project." Each municipality, by signing the MOU, agreed to pay \$4,500 total to the professional consultant team of CRA Infrastructure & Engineering (formerly R&D Engineering), Munistat Services and Hodgson Russ. The Town of Collins did not incur any expense but participated to demonstrate its support for the project to the extent that the Department of Correctional Services participates, making water service to Collins economically feasible. The MOU also designated the Town of Eden as the lead agency for purposes of joint applications and proposal submissions.

##### **Pending Legal Actions for the Southwest Erie County Regional Water Project**

**Preparation, Adoption and Filing of a Map, Plan and Report** which provides a detailed description of new water district boundaries, proposed infrastructure and facilities, cost estimates, financing plan and estimated annual cost to residents. According to New York State Consolidated Laws, Section 209, municipalities are required to develop a map, plan and report before the establishment or extension of an improvement district, such as a water district.

**Preparation and Adoption of Lease Management Agreement with Erie County Water Authority – A formal legal agreement for the lease management operation and maintenance of the regional water system by the Erie County Water Authority must be prepared and then adopted by each of the participating municipalities. Local water systems operating within the project area are required to meet ECWA standards prior to consolidation with ECWA management.**

**Water District Formation** – All project areas not yet serviced by public water are required to form new water districts for purposes of construction and financing of the regional system. Components of this process will be a series of town and village board meetings, informational public meetings, public hearings, resolutions, orders and referenda for each community. Legal notices must also be prepared in accordance with town and village statutes.

**Land Easements** – In some cases, land easements will need to be obtained from property owners to progress with construction of the water districts.

**Federal and State Approvals** – Various approvals must be obtained from state and federal agencies such as the state Department of Environmental Conservation and Office of Historic Preservation and Recreational Service. Also, the project must address the requirements of the State Environmental Quality Review Act, including a full Environmental Impact Statement.

**Coordinated Submittal to New York State Comptroller** – Given the scope of the project and anticipated user fees associated with the regional water system, it is expected that the application will need to be made to the NYS Department of Audit and Control for final approval by the Comptroller. The state's town law requires separate, detailed applications for each new district or waterline extension where costs exceed a certain level.

**Inter-municipal Agreement and Water Board Formation** – A formal inter-municipal agreement among the participating towns and villages is the final step to establishing a regional water system to be financed and administered by the communities. The agreement will be necessary to state the financing terms, debt obligations and administrative duties. The agreement will also form a new water board for the regional oversight of construction and financing, and subsequent management, of the water system.

**Referenda** – Upon the determination of the town or village board that the residents within the proposed water district boundaries are benefited and that the district is in the public interest, a public referendum must be held, and must be approved by the affirmative vote of a majority of the property owners situated in the proposed district.

Legal Checklist:

- Determine whether the proposed shared municipal service is permissible according to Article 5G of the New York State General Municipal Law
- Examine existing municipal labor contracts to determine whether proposed municipal shared service would be in compliance
- Ensure that the proposed shared service contract is in compliance with other related service contracts, especially for services which originate in another community (e.g., water or sewer)
- Develop a legal mechanism that enables municipal partners to withdraw from the project.
- Craft an objective, detailed enforcement mechanism through the Inter-municipal Agreement to protect each municipality in the event that other municipal partners do not, or are unable to pay, their share of costs.

More specifically, the following legal steps would need to be taken:

- Prepare, Adopt and File Map, Plan and Report
- Prepare and Adopt Lease Management Agreement with Erie County Water Authority
- Form respective Water Districts
- Acquire necessary Land Easements
- Obtain required Federal and State Approvals
- Coordinate Submittal of Water District proposals to New York State Comptroller

- Develop and Pass Inter-municipal Agreement and Form Inter-municipal Water Board
- Present Public Referenda for Water Districts

## **5. Views on the Issue**

### Arguments pro:

#### **Policy/Governance**

- The proposed governance structure of the joint water system would be streamlined by placing the system under a lease management agreement with the ECWA, thereby alleviating the individual municipalities from the financial and administrative obligations of operation and maintenance.
- The large geographic scale of the joint water project has not been a major negative in terms of policy/governance issues primarily due to the nature of the proposed shared service – water – an indirect service as compared to more “personally delivered” services such as police or fire.
- A water board with representatives from each community would maintain an element of local involvement in the water system. Specifically, the board that would be created to oversee construction and financing of the project would also continue to exist thereafter to contract with the ECWA for its lease and management of the system as well as to fund and oversee future capital improvements.
- Regardless of whether a municipality opts not to participate in the final water project, or if the referendum to water district residents fails, participation in the study process will have provided numerous benefits, including examination of immediate and long-term water needs for each community, assessment of existing water infrastructure, and detailed fiscal, technical feasibility and legal analyses of joining a collaborative water service system. All of these benefits will have been received at minimal cost to the municipality (as low as \$5,000 over the course of several years).
- Many of the municipalities that operate their own public water systems recognize the merits of consolidation. As one municipal official said, “the days of the little municipal water supply system are numbered....it’s just economy of scale. As we see more requirements for treatment of well water, it makes sense to consolidate, whether it’s with the county or with the municipalities themselves.” Regardless of the success of this project, many see smaller-scale consolidations as an inevitability – “we have no choice,” said one municipal leader.

#### **Fiscal**

- Supplying southwestern Erie County with public water from the Erie County Water Authority systems would simply not be feasible without municipal collaboration. Estimates have ranged from \$50 million to \$38 million, which would be borne entirely by the benefited property owners. The cost-sharing approach could save municipalities up to 30-40 percent of the cost to complete the upgrades individually.
- The cost to municipalities for conducting the feasibility studies, plans and hydraulic analyses has been minimal – as low as \$5,000. Such a small investment has enabled communities to participate and benefit from the feasibility work without having a major impact on their final decision to participate. The cost has been kept down due to the initial support of Erie County and small contributions from the Erie County Water Authority and Department of Correctional Services (which was not a direct participant in the project but had an interest because of the needs of the Collins and Gowanda Correctional Facilities). The consultant team (CRA Infrastructure & Engineering, Hodgson Russ LLP and Munistat Services Inc.) has completed work beyond its compensation due to the team’s investment in the project and interest in seeing it completed.

- Revenue savings from the transfer of operations and management of water infrastructure to the ECWA are likely to be significant; this is despite the fact that existing local water systems are a source of revenue for the municipalities. Indeed, many of these systems are aging and would soon require costly investments in infrastructure and operating procedures to meet health regulations.
- In most cases, residents transferring from a municipal system to that of the ECWA will better water at a lower cost.
- The improved water system will enable the Town of Eden to move forward with residential development projects that have been on hold due to a moratorium on waterline extensions.
- For those communities that might not be able to afford full participation in the project at the present time, the upcoming engineering study will assess costs for those communities to preserve the capacity to join at a future date. For instance, the upcoming study will evaluate how much the Town of Collins would have to pay now to ensure that the water infrastructure is built with the capacity to supply the town in the future.

### **Legal**

- New York State's town law has facilitated the development of a fractured municipal water governance structure by its requirement that water districts form at the municipal level. The joint water project navigates within that system to apply a streamlined, regional governance structure.
- The project attempts to solve serious legal issues with regard to meeting local and state health regulations for water quality; it is unlikely that the municipalities would independently be able to carry out the necessary upgrades to meet these regulations, leading to significant legal and economic consequences.
- Participating in the joint water project has not required any binding financial commitment to the actual infrastructure costs. This legal protection from financial commitment, both in the Memorandum of Understanding (March 2005) and again in the MOU for participation in the next, SMSI-funded study, has enabled a greater degree of participation on the part of municipalities that are unsure of their ability to pay.

### **Political**

- Final determination of the project rests with the residents who will ultimately pay for it – the property owners within the proposed water districts. This process shields elected leaders from political backlash and minimizes the risk to them in taking the project to referendum. The water system would not be built unless supported by a majority of the users.
- Completion of this project would cap an effort that began in 2001, exemplifying extraordinary political resolve and commitment.

### **Emotional**

- Fundamentally, this project is about providing for the safety and health of municipal residents. The fear and anxiety experienced by residents who have had contaminated (or a lack of) water are elemental and likely to contribute to the success of the proposed improvements.

### Arguments Con:

#### **Policy/Governance**

- The need for public water varies from community to community, adding a degree of speculation as to whether it is in the best interest for the municipality to participate in the project. For instance, some aquifers are more secure than others, while some local water systems are more up-to-date than others. Many communities will have a harder time weighing the cost of the

project and the benefits it leverages against the state of their current water system and its sustainability over the long-run.

- The history and experience with water management in some of the communities has presented the opportunity to consider smaller-scale regional water systems. The Village of Gowanda, which opted out of the project in its beginning stages, has operated its own surface water supply, reservoir and treatment system since the mid 19th century. At the outset of the process, after receiving preliminary cost estimates from the engineer, the village determined it had more to gain by pursuing a regional water project with its neighbors, including the Collins and Gowanda Correctional Facilities, the Town of Collins.

### **Fiscal**

- Although a majority of the proposed water customers favor the proposal, the New York State Office of the State Comptroller has the authority to prevent it from ever coming to a referendum, according to an evaluation of income levels, it determines the project cost exceeds residents' ability to pay.
- Many municipal leaders anticipate the cost of the project will factor more in the outcome of the referendum than the project's long-term benefits for water quality and supply. The cost of the project, estimated at this time to be \$38 million, would be dispersed across the customer base for the next 30 years, on top of regular water bills. The ultimate cost to residents would vary by community and will be based on the type of improvements required for the individual systems and the density of the customer base. For example, costs would be lower in the Town of Eden, where some infrastructure already exists and population is more dense, relative to the Town of North Collins, where extensive new infrastructure would need to be built and fewer customers are spread over a larger land base. Also, existing water system debt, prior to the ECWA improvements, would be factored into the final yearly cost to water customers.
- Given the differential in costs for each community, many community leaders cite concerns over equity. One municipal leader said that an outside source, such as New York State, needs to be able to "level the playing field" with more opportunities for low-cost or interest-free loans to help municipalities with existing debt.
- This is despite the recognition that water quality issues are becoming serious enough that costly improvements implemented by the individual municipalities will not be an option. "We're between a rock and a hard place," said one municipal leader, referring to the difficult fiscal decision faced by some of the smaller communities that operate their own municipal water systems. They must ask residents either to pay for the ECWA project for the next 30 years or to accept higher taxes and fees to pay for the costly water system treatment and testing upgrades as required by increasingly stringent state and local health laws.
- Meanwhile, many of these municipal leaders must make these decisions in the context of a low-to moderate-income citizen base resistant to increases in taxes and public service costs. The economic picture varies from town to town and village to village, resulting in variable tolerance for the cost of the project. For instance, homeowners in some Eden districts may be more supportive of a \$600 a year price tag for the water system than residents in Brant or North Collins, or even other parts of Eden. This complicates the dynamics of the municipal collaboration and cost-sharing arrangements and jeopardizes passage of the referendum.
- The Erie County Water Authority will require those municipalities with existing public water systems to complete costly upgrades. Although this would not necessarily delay the municipality's connection to the ECWA system (these upgrades can be planned over the long-term), such improvements would still need to be financially supported by the respective town or village. Although some communities feel the ECWA should assist with these costs, officials at the water authority contend that this is not an equitable approach with respect to its existing

customer base, which would have to bear those costs. “We have to look at the whole system,” said one official there. He added that the ECWA must deal with conflicting values in that it provides an essential human need for quality water while at the same time operating as a business with a bottom line.

### **Legal**

- Due to the complexity of the project in terms of the number of municipalities involved and its engineering and fiscal scope, many legal hurdles are involved, including local resolutions, complicated environmental reviews, inter-municipal agreements and individual water district formation by public referenda in each of the participating municipalities.

### **Political**

- Yet some elected leaders still express concern about the ramifications of cost. As one elected leader said, referring to the idea of bringing to referendum a \$1,200-per-year charge to homeowners for the new water system. “They’d string me up.”
- Streamlining the municipal water systems in the municipalities could result in taking the local water systems wholly offline, thereby eliminating existing staff. With many of these communities struggling economically, this will likely be a politically difficult issue for elected leaders, despite the fact that the consolidation introduces many other important economies of scale and cost reductions.
- The complexity and drawn-out nature of the project (now going on six years) has required strong political will on the part of the elected leaders.
- The variable economic picture among the six municipalities complicates the political dynamics of the project, as some water districts will be easier to form than others due to the residents’ ability to pay.

### **Emotional**

- There is an element of pride in the communities that operate their own municipal water systems or that function without depending on external infrastructure. One municipal leader said residents were “not exactly thrilled” about receiving ECWA water given the pollution in Lake Erie; they are more comfortable with the existing municipal water, which comes from a local, groundwater source. Although this is likely to be a minor factor, the sense of independence and autonomy is deep-seated in most New York State municipalities and could impede efforts toward a regional approach.
- Some communities did not start off this project on a basis of trust with one another – this foundation is critical to the success of a project of this scale and complexity. This is also true with respect to the relationship between the municipalities and the Erie County Water Authority, which has historically been strained. Some cite that the nature of the ECWA as an “authority” allows for some abuse of power. Municipal officials claim too frequently the ECWA does not hold to its mission to “benefit ...the people of the county of Erie...for the improvement of their health, welfare and prosperity,” as many decisions related to municipal systems are made without justification, and “roadblocks” are put up to prevent the expansion of service in the Southtowns. The ECWA asserts that its operations are being unfairly brought into question since they are required to operate as a business, which in some cases dictates that expansion of the system or connection of the system to certain municipalities is not in the best interests of its ratepayers. With respect to its requirement for municipalities to implement upgrades to meet minimum standards for integration with the ECWA system, officials with the ECWA state that these standards are system-wide and enforced to maintain the engineering and financial integrity of the entire system for its 156,000 ratepayers.

- Leaders of some of the smaller communities involved in this project are intimidated by the complexity and high cost of the project. Some even cited the intimidation factor for municipal officials when several suit-clad engineers and lawyers presenting the project's technical and legal details at village and town board meetings.

#### Local News Media Positions

No editorial positions were taken on this project and only moderate news coverage was provided throughout (usually only as part of newspapers' coverage of town or village board meetings). Possible explanations for this include the slow, years-long, process, incremental progress and, as of yet, the lack of a concrete proposal. Also, the lack of vocal public opposition (or vocal support) for the project may contribute to the project's relative absence from the news. Complaints regarding water service have been directed to the towns, largely based on the lack of water or poor private well performance. Finally, the construction of water infrastructure is a hidden improvement and not, for instance, a landmark building for which a ribbon can be cut. This may lend to a non-newsworthiness factor for the development.

#### Those In Favor of the Project as it Stands:

Beyond the municipalities participating in the project, the following entities have expressed their support for the project:

**Erie County/Erie County Department of Environment and Planning** – As the initiating entity of the project in 2001, Erie County and its Department of Environment and Planning has been a key supporter of the project. As mentioned, the county provided \$200,000 for the initial study in 2003 and then \$12,000 for the subsequent Map, Plan and Report documents. The county estimates its support for the overall effort, including the southwest Erie County project, totals more than \$300,000. The county's interest in the project resulted from the need to coordinate numerous requests for waterline extensions from municipalities in southern Erie County. This parallels with the county's effort to consolidate municipal sewer operations with its Division of Sewerage.

**Erie County Department of Health** – The existing water systems of the Southtowns pose serious public health concerns. The connection of these municipalities to the potable, reliable lake source Erie County Water Authority is thus in the best interest of the Department of Health. As the effort began in 2001, the department reported that 4,200 wells in the area were contaminated. In a letter from the county Commissioner of Health to the New York State Department of Health, which was included in the consortium's SMSI grant application, it is stated: "The Erie County Health Department considers this [the Southwest Erie County Regional Water Project] a very high priority project, and it has our total support." The letter also stated that the department "continuously deal[s] with [the] problems and deficiencies" in this area's small public water systems. The regional water project would mitigate these health concerns and provide the potential to solve others if, in the future, other nearby public water systems choose to connect to the ECWA network.

**Erie County Water Authority** – The Erie County Water Authority has been a partner on this initiative since its start in 2001. In response to numerous proposals from Southtowns communities to extend their lake source waterlines, the Erie County Water Authority raised concerns about the upstream impacts of such extensions upon its transmission systems in adjacent towns. The ECWA provided \$40,000 to finance the initial feasibility study. It continues to work with the various municipalities toward the end of completing the regional water project, although it has not committed financial support for the actual cost of constructing the system. In the early stages of this project, the water authority offered communities participating in the project the opportunity to sign a contract with the ECWA that committed the municipality to paying for their own system upgrades but provided them the

immediate opportunity to turn over their system to the ECWA. No municipality accepted the offer. The ECWA holds to its system-wide standards, which are designed to protect the engineering and financial integrity of the ECWA system on behalf of its current 156,000 ratepayers.

### **Those Opposed to the Project as it Stands**

A number of community leaders and citizens have expressed concern that extending water service will increase development pressures. However, this opposition has not become vocal given the seriousness and imminence of the health and safety concerns for those residents already living in the communities. Also, development pressures are not strong in most of the communities in southwestern Erie County.

### **6. Results (adopted, amended, rejected etc)**

Unable to assess at this time

### **7. Implementation**

Unable to assess at this time

### **8. Expectations vs. Implementation**

Expectations:

#### **Technical**

- 2,800 residents in the six towns and villages would receive public water service for the first time
- 13,820 residents would receive an alternative supply or supply backup
- Water treatment and testing would be carried out by the ECWA, which is equipped with sophisticated laboratories and testing equipment.

#### **Policy/Governance**

- The streamlined governance structure of the joint water system would alleviate the individual municipalities of the financial and administrative obligations of operating and maintaining public water systems.
- Likewise, the task (and cost) of monitoring water for adherence to local and state health regulations would be transferred to the ECWA.
- A water board with representatives from each community would maintain an element of local involvement in the water system. The board that would be created to oversee construction and financing of the project would also continue to exist thereafter to contract with the ECWA for its lease and management of the system as well as to fund and oversee future capital improvements.
- Growth and development and sprawl pressure could occur in certain areas as a result of the waterline extensions.
- More inter-municipal cooperative agreements. Many elected leaders and other participants in this project have noted that since the project began in 2001, the communities involved have become significantly more comfortable with forging partnerships across town and village boundaries. For instance, seven communities in the Southtowns – Eden, Evans, Brant, the village and town of North Collins, and the villages of Angola and Farnham – are partnering in an economic development and tourism consortium (the Southtowns Community Enhancement Coalition). This formed in 2004 and just recently received an SMSI grant to support its establishment as a 501c3 not-for-profit corporation.

### **Fiscal**

- The cost-sharing approach is expected to leverage considerable savings to the participating municipalities compared to any individual effort to complete the upgrades; it proposes a regional water system that is both strategically sized and located to facilitate the sharing of services.
- Revenue savings from the transfer of operations and management of water infrastructure to the ECWA would be significant.
- Individual municipalities may still need to make large investments in their existing water infrastructures to bring them up to the minimum technical and physical condition standards (connection to the ECWA system need not be delayed by this requirement, however. The ECWA has stated it will accept plans from the municipalities which detail how these improvements will be made and paid for over the long-term).
- Revenues and employment from the operation of existing local water systems would be curtailed or wholly eliminated.
- The improved water system would enable the Town of Eden to move forward with residential development projects that have been on hold due to a moratorium on waterline extensions.

### **Legal**

- Major legal challenges related to the municipalities' failure to meet local and state health regulations would be avoided with the completion of the regional water project.
- An enforcement mechanism would be in place via the final Intermunicipal Agreement to protect each community from liability if other communities do not pay their share of the debt.

### **Political**

- Completion of this project would cap a long-term effort on the part of the municipal leaders to improve the health and reliability of the water systems for their residents and businesses. Success of this project is likely to be viewed quite favorably by the municipalities' residents.
- Residents within approved water districts who voted in opposition to the referendum may still be required to pay for the service.
- Streamlining the municipal water systems may eliminate key government staffing positions.

### **Emotional**

- It is anticipated that the health risks posed to community residents would decrease and quality of life would increase as access to safe, reliable, adequate water becomes available to thousands, many of whom have never had access to public water.

#### Expectations vs. Implementation:

Unable to assess at this time.

### **9. Factors contributing to success/failure/Lessons Learned**

Although the project has not yet been completed, the following assesses the lessons learned to this point:

**Degree of need** – Success more likely when the municipalities' needs align, both in terms of the severity and timing of these needs. The degree of need for public water differs among the participating municipalities, thereby affecting the level of priority assigned to the project. For instance, the Town of Eden, which has experienced some residential growth, is unable to support existing water demands. It has a moratorium on waterline extensions, which has impeded development of several residential projects in the town. The town has taken a lead on this project given its level of priority. In fact, the

town has the capacity to independently pursue a waterline project that would solve most of its problems but has held off because a pipe with larger capacity would be necessary if the joint water project succeeds. The health concerns and aging infrastructure in the Towns of North Collins, Brant and the Villages of North Collins and Angola are such that participating in this project is in their best interests. The Town of Collins has participated in the process without financial commitment. This is because Collins' public well water system is currently adequate and potable, but may require an alternative source in the future. The town is taking part in the planning stage of the project to evaluate what, if any, immediate financial commitments it would need to make to preserve the capacity for extension of the water system in the future.

In the case of the Town of Evans, which was initially part of the consortium, the degree of need did not warrant its participation. The proposed Cain Road waterline would have passed through a sparsely populated portion of the town where there is no public water service – the benefits failed to outweigh the cost. Recently the town secured an \$11 million loan from the state Environmental Facilities Corp. to carry out the infrastructure improvements that would allow it to transfer its existing local water system to the ECWA for operation and maintenance. For this municipality, it made more financial sense to pursue improvements individually. However, because the town is not participating in the consortium, there will be several gaps in public water service in the eastern portion of the town, although in some of its least populous parts.

Degree of need was also a factor for the Village of Gowanda and the Collins and Gowanda Correctional Facilities. Although Gowanda anticipates a long-range need for shared water service, its system is currently adequate and reliable enough to serve as the basis for the pursuit of other, smaller scale regional water partnerships that would enable future expansion and improvements. New York State, on behalf of the correctional facilities, has recently been able to locate a significant quantity of groundwater near the correctional facilities. This alternative solves their need issues in a more cost effective manner as compared to the joint water project.

**Funding availability** – The availability of affordable financing for this costly project has been significant. For instance, the U.S. Department of Agriculture's Rural Development grant program was a viable option for supporting the planning and implementation phase of the project. However, funds from this program became scarce after the start of the Iraq War in 2003. Funding from other sources was considered and in some cases pursued, but never secured. The receipt of the SMSI grant in 2006, according to several project participants, saved the Southwest Erie County Regional Water project. Many claimed the project had run out of steam, especially with the decision of the state Department of Correctional Services not to participate. The SMSI grant will provide the financial boost to complete the planning, research and legal steps before construction can begin. At this point, the Environmental Facilities Corp.'s low-interest loan program, which is expected to finance the \$38 million infrastructure improvements, will be critical to the affordability of the project and ability to bring it to a close.

**Political** – Short-term political issues have not overshadowed or derailed this project, for which most of the benefits are longer-term in nature. Attributable to this fact is that the cost to participate in the feasibility study has been minimal – a few thousand dollars. The political cost of participating in the study has been minimal – municipalities are not bound to participate in the project and have the prerogative to opt out at any time. Yet participation in the study provides the municipalities with a greater technical understanding of their current and future water needs and the range of alternatives available to them for improving their systems. Moreover, the final and most difficult decision – whether to make the several-million-dollar investment to build the water infrastructure – rests with the residents who will bear the financial burden. This likely has been one of the key reasons the project continues to this day. Political opposition to the project has also been minimal as a result of the nature of the project.

Water service is an indirect service, delivered via underground systems and “invisible” processes. This is in contrast to public services such as police and fire, which are more personal in nature in terms of their delivery to residents. Political and emotional issues are often more of a factor for consolidation of these types of services.

**Trust and other emotional issues** – The history of differences between Erie County municipalities and the Erie County Water Authority has contributed to a climate of distrust for this project. Some municipal participants expressed frustration that the ECWA is not contributing financially to the project. Beyond its initial \$40,000 of support for the 2003 feasibility study, the ECWA has not provided or committed to any financial support of the project. At the same time, the ECWA contends that it must consider its entire customer base when making such financial decisions – the cost to pay for the improvements required for this project would exceed the revenues gained from adding the new customers. However, these issues have not significantly affected the project at this point. It is probable that the history of difficult municipal-ECWA relationships will become a factor as the project advances to the phase where agreements with the ECWA are hammered out and the specific upgrade requirements and related costs are presented to the communities. For instance, those municipalities with existing water systems are anticipating high upgrade costs before they will be able to move ahead with integrating with the ECWA system.

It has also been noted that village and town identity may also play a part in the ultimate success of this project for certain communities. Those towns and villages with their own local water system may be reluctant to cede this control to an external player. Adding to this is that these local water systems, as well as the systems at the correctional facilities, employ local residents.

**Cost** – The SMSI grant – which became available at a fortuitous time for a project that had run out of options and run out of steam – essentially saved this project and will enable several years of negotiations among the municipalities and the ECWA to progress to the next phase of completing the planning phase and securing funds for implementation. The lack of access to funds was not only financially crippling to the project, but emotionally draining. Project participants had grown frustrated from more than a year of back-and-forth with New York State Department of Correctional Services and the drying up of critical federal funds. The quick turnaround of the SMSI grant and provision of full gap funding gave the project the needed boost to take it to the final stages.

Also with respect to cost, access to alternative financial support for assistance with “extra” costs, such as existing debt for those municipalities with public water systems, will also continue to be a critical factor in determining a municipality’s ability to participate.

For the Collins and Gowanda Correctional Facilities, the degree of need was significant, but it was cost that led to its decision not to participate in the joint water project. The correctional facilities have experienced water quality problems for more than a decade. These have included coliform and E. coli in the facility’s storage tanks, incidents of elevated levels of THMs and instances of turbidity violations from the facility’s clarifier. Since 1998, the state had been exploring for an alternative, long-range supply of potable water for the correctional facilities. Through exploration of well and groundwater sources of water on the grounds of the correctional facilities and within the Town of Collins, the department has been able to find an adequate supply. Although determinations are still being made as to the source’s quality with respect to state health codes, development of this source would cost the state \$6 million. The final proposal from the joint water project – after more than a year of negotiations between the state and its engineers and the joint water project consultant team – totaled about \$9.9 million.

Cost also may ultimately halt the project for those municipalities whose residents cannot afford – or vote not to pay – for the water system improvements. For some, there will not be much of a choice, as many low-income residents may not be able to afford the additional \$500 or more annual charge (levied on top of the water bill). In some cases, it will be difficult for residents to justify the expense when their current service is so affordable. For instance, the Lawton’s Water Company in the Town of North Collins is run by a volunteer and provides no water treatment services, all at an extremely low cost to its customers. This presents a possible hurdle to educating the voters and residents to “do the right thing” for the long-term health of the community.

## **10. The 10 Step Program**

### **1. Define problem and affected parties**

### **2. Identify solutions and potential partners**

For both of these critical first steps, the broader Southtowns Water Consortium effort is exemplary. Pressing health concerns for well-dependent Southtowns municipalities and similar requests for waterline extensions to these municipalities precipitated this major cooperative initiative in 2001, with Erie County taking the role as leader and convener. The costs and risks to the affected parties by participating in the consortium were minimal, leading to the engagement of 22 towns and villages Southtowns. Upon the convening of the affected parties, the county engaged a technical resource – then R&D Engineering – to provide an objective assessment of the communities’ water needs and the feasibility of addressing them with water infrastructure improvements. The county continued its stewardship role for this project by taking on the bulk of the cost for the feasibility study (\$200,000) with some support from the water authority (\$40,000). The study found that for some municipalities, pursuing connections with the ECWA system were simply not affordable. These eight municipalities then opted out of the consortium, leaving only those with a practical, attainable stake in the project involved. The report made concrete recommendations, identifying synergies among certain municipalities in the southwestern, southeastern and south-central portions of the county. This divided a major initiative into smaller, manageable projects which could be pursued separately but in concert with the key principles and objectives identified in the report. Many involved in the project have lauded its process of identifying and engaging potential partners as effective and efficient.

### **3. List and allocate financial impacts**

The initial feasibility study and subsequent Maps, Plans and Reports provided ample analysis of the potential fiscal impacts of the project for each municipality. With Munistat Services Inc., a financial advisor for local government, participating in the consultant team, the fiscal implications of each technical aspect of the project have been clearly identified and translated into practical figures for the participating municipalities. Additionally, the consultant team has participated in a series of presentations and meetings with the town and village governments and other project partners to ensure a clear understanding of such implications. Residents have had access to this information as well through town and village board meetings.

### **4. Confirm legal authority**

The team managing this project included two levels of legal representation – Hodgson Russ LLP, representing the overall legal interests and issues for the project, and the town and village attorneys, representing the specific needs and concerns of the individual municipalities. This double-layered system of checks and balances has facilitated a relatively smooth legal process for the project. This has ensured that the necessary resolutions and legal actions are taken at the appropriate times and with clear appreciation of their practical ramifications for the participants.

**5. Plan the project**

**6. Collaborate with affected parties**

In addition to providing the technical expertise necessary to outlining the scope and process for this project, the consultant team of CRA Infrastructure & Engineering, Hodgson Russ and Munistat Services has functioned well as a facilitator among the many parties involved. Beyond the six municipal leaders, the team has consulted with town and village board members, municipal legal and public works officials, Erie County leadership, the Erie County Water Authority, and several offices within state government, often negotiating among competing interests to find mutually acceptable solutions. The consultant team helped the consortium seek strategic partnerships with elected state leaders to facilitate the difficult negotiations with the state Department of Correctional Services.

**7. Negotiate the agreement - NA**

**8. Prepare agreement - NA**

**9. Implement the agreement – NA**

**10. Evaluate the project – NA**

**11. Technical Assistance**

The level of technical assistance provided to or secured by the consortium has been adequate and one of the key reasons the project continues to progress. All of the process hurdles thus far, as identified by project participants, were either related to cost or political and emotional factors, not technical assistance.

Primarily, technical assistance was provided by the consultant team of CRA Infrastructure & Engineering, Hodgson Russ LLP and Munistat Services Inc. Assistance was also provided by town or village attorneys and, in some cases, the superintendents of the local water system or department. Due to the project's level of complexity, the consultant team was required to spend a lot of time at the outset to educate the participating municipalities, including the town or village boards, on the project's technical, fiscal and legal elements. Regardless of the municipalities' decisions to participate in the project, they received technical resources in that the feasibility study and subsequent reports were completed at a minimal cost to the municipal governments.

These resources included detailed engineering, fiscal and legal analysis of each municipality's water systems, and comprehensive assessments of their short- and long-term water needs. Also, to address concerns about sprawl as a result of new waterline development, communities were made aware of sprawl management tools. These included agricultural district waterline tap restrictions; the capacity of town boards to prohibit the future connection of non-farm water services within the agricultural districts; and lot size restrictions and tap size restrictions (such as setting a maximum size of future taps into existing water mains to prohibit subdivision-type development). Also, for those communities unable to join the consortium or pursue ECWA connections, resources on well maintenance and remedies for low-producing wells were provided.

CRA Infrastructure & Engineering, the lead consultant on the project, has been critical both as a technical resource and as a facilitator. With multiple municipalities involved, each with different goals and needs, it has been essential to have an external party that appreciates these political and emotional nuances as well as the technical work. The firm, however, also has shown exceptional commitment to the project, taking on the role of steward and often completing work in excess of reimbursement in the interest of continuing the project and taking it to its final steps.

Legal assistance has also been critical. The consultant team attorneys from Hodgson Russ have been the central legal resource for the participating municipalities, drafting all legal documents required as part of the process and providing other legal advice. These attorneys have also worked with the individual town

and village attorneys to ensure that they review the relevant documents and are briefed on the relevant legal issues. Hodgson Russ has also been a resource in terms of presenting the legal documents and issues to the town and village boards, translating their ramifications for board members. Municipal attorneys have been more indirectly engaged in the project, assisting Hodgson Russ in implementing legal actions and representing the respective towns' and villages' legal and financial interests. Also, some municipal attorneys have been more actively engaged in the project than others.

## **12. List of documents**

1. May 2001 - Resolution on Water Consortium: (passed by all 22 municipalities participating in the initial, broad Southtowns Water Consortium; the Town of Eden resolution included as example and attached here)
2. January 2002 – Resolution to Fund Southtowns Regional Water Planning Consortium Study: (passed by the Erie County Legislature)
3. October 2003 – Resolution in Support and Funding of Regional Map, Plan and Report: (passed by all entities funding the Map, Plan and Report – the Town of Eden resolution, the only funding municipality from the southwest Erie County region – is included in the attached)
4. March 2005 - Memorandum of Understanding: (signed by six municipalities participating in the Southwest Erie County Regional Water Project)

## **13. Additional comments/suggestions/helpful hints**

- It is beneficial to have a track record of trust for the municipalities involved. A few smaller “wins” with respect to inter-municipal cooperation would facilitate this foundation of trust.
- Attempt at the outset to mitigate existing political and emotional issues among the project partners – these conflicts can override the more tangible, controllable elements of a project, such as cost, technical and legal issues.
- Provide incentives to participate in the planning phase of the project but mechanisms to opt out for those municipalities that determine the project is not in their best interest. This will provide municipalities with the educational benefits of the planning stage while ensuring the greatest opportunity for large-scale success with the greatest number of municipalities.
- It is critical to set a realistic timetable for this project – completion of the project may span or surpass election terms and will require commitment at a more institutional level. Patience and satisfaction with incremental results is essential.
- Beneficial to sustaining this energy and commitment over the long-term is a formal organizational structure such as a consortium.
- Assigning as a leader a municipality or group of municipalities with the greatest stake in the project can be tremendously valuable to keeping up momentum to push through some of the more difficult parts of the project.
- Also valuable are alliances with external parties, such as other local government units and state government, including their elected leaders and technical officials; these partnerships should be fostered throughout the process.
- As this project transitions from planning to implementation, and to the details of negotiations, it will be even more critical to maintain open lines of communication among participants. This is especially true for the municipalities and the Erie County Water Authority. This may help to avoid gaps in understanding surrounding ECWA policies and requirements.

- Technical and legal assistance, which has been critical thus far, will become fundamental as the project advances to implementation.
- Education of the public with respect to the cost of the upgraded system and the pros and cons of transitioning to the ECWA will be essential to ensuring votes are cast thoughtfully rather than reactively (based on cost) once the water districts come up for referenda.
- Interviews with the engineering and legal components of the consultant team were fundamental to understanding the technical aspects of this very complex project.

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