



Memo

To: Tualatin Valley Water District Board of Commissioners

From: Todd Heidgerken, Manager, Community and Intergovernmental Relations

Date: August 30, 2013

Re: Willamette Water Supply Governance

The August 6, 2013 TVWD Board of Commissioners work session focused on concepts for a future intergovernmental agreement (IGA) regarding the governance of the Willamette water supply system. The discussion centered on concepts presented previously to the Willamette River Water Coalition (WRWC) Board. This memorandum describes several of TVWD's existing relationships and obligations to partners of the WRWC and outlines possible principles that would guide development of a governance agreement for ownership, operation and maintenance of the Willamette water supply.

Background and Recent Review of WRWC Agreement

TVWD is a founding member of the Willamette River Water Coalition (WRWC), which was originally formed as the Willamette Water Supply Agency (WWSA) in 1997. The current members of the WRWC include the cities of Sherwood, Tigard and Tualatin, and TVWD. The City of Wilsonville is not a member of the WRWC. The WRWC has been focused on activities to maintain the WRWC water right permit and basic administrative functions outlined in the current cooperative IGA. Given the interest in developing the Willamette River as a source of supply, the activities and focus of the WRWC are anticipated to change.

To help provide this focus, the WRWC Board identified the need to revisit the current WRWC IGA as partners prepare to make significant improvements to the Willamette River Water Treatment Plant (WRWTP) assets, further exercise the use of the Willamette water right permit and welcome the addition of new WRWC members. Recognizing the current structure is inadequate, the WRWC Board and respective member agency staff have spent the last few months discussing proposed changes. The WRWC asked attorney Clark Balfour to outline areas where the existing agreement could be modified to better reflect the needs of the WRWC in anticipation of significant

WRWTP investment. These concepts were provided to the TVWD Board in a memorandum dated July 30, 2013 from Mr. Balfour.

During the August work session, the TVWD Board expressed a desire to broaden the discussion regarding the governance of the Willamette water supply. This memorandum is intended to provide additional background on how the WRWC is made a part of current agreements and documents; provide a draft list of "TVWD Principles" that would be address as part of an intergovernmental agreement; and provide a plan for next steps in moving forward.

The Role of the WRWC and Existing Obligations

The WRWC has been focused on activities to maintain the WRWC water right permit and basic administrative functions outlined in the current IGA. The existing agreement provides a framework to conduct these functions.

The WRWC holds a water right permit on the Willamette River (Permit #49240) for 130 million gallons per day (MGD). The water right permit is to be allocated based on WRWC member needs considering capital contributions for facilities, 20-year demand forecasts or other factors as agreed to by addenda or written agreements. The cities of Tigard and Sherwood have both been allocated a portion of the water right permit. Tigard's allocation is 25.85 MGD and Sherwood's is 20 MGD. The WRWC agreement provides for these allocations and confirms that the amounts will remain with them even if the WRWC is dissolved.

The WRWC and its predecessor, the WWSA, are also referenced in other agreements, including the TVWD/City of Wilsonville master agreement regarding the WTP design and construction and the TVWD/City of Wilsonville accord agreement. Specifically, the master agreement allows for the ownership of the property to be conveyed from TVWD to WRWC without approval by the City of Wilsonville. The accord agreement contemplates the possible ownership of water supply assets by the WRWC by specifically allowing for either TVWD or the City of Wilsonville to transfer their ownership interests to the WWSA (WRWC).

TVWD also sold five MGD of capacity in the WRWTP. The TVWD/City of Sherwood agreement refers back to both the TVWD/City of Wilsonville master agreement and accord agreement. The TVWD/City of Sherwood agreement notes how these two agreements contemplate and permit a transfer of TVWD's interests to the WRWC. The agreement goes on to mention how both TVWD and Sherwood intend to transfer interests to the WRWC. Absent this transfer, TVWD would represent and share responsibilities with Sherwood as it relates to the TVWD/City of Wilsonville agreements.

TVWD Agreement Principles

At its August 6, 2013 work session, the TVWD Board identified a desire to step back and look at what should be included in a Willamette governance agreement either as part of the WRWC or outside of the WRWC. It is proposed that as part of the September 3, 2013 work session, the Board and staff engage in a discussion of agreement principles that would provide guidance to TVWD staff in negotiating a future governance agreement.

As part of the water supply options evaluation, the Board identified a set of non-financial evaluation criteria (Attachment A). Presumably, any resulting governance agreement would be consistent with and build upon these evaluation criteria. It's also notable that this list included a "governance" criterion. This criterion specifically mentions the "ability of the District to establish and preserve policies for initial construction and on-going maintenance of capital assets."

In addition, staff has considered this question and offers the following "principles" for the Board's consideration and discussion (not in any particular order):

1. Allow for predictable and non-volatile rates: Encourage planning so partners are aware of costs in advance in order to avoid and minimize situations that result in an unexpected burden on partners.
2. Alignment of investment obligations and authority: A partner's authority in the organization would reflect its investment and utilization of the water supply facilities.
3. Flexibility to accommodate partner's operational needs: Recognize that partners will rely on the operations of the water supply facilities and cooperation and flexibility will be critical in making sure all partner needs are met. These needs may need to accommodate different circumstances ranging from routine operations, emergency situations and expansion of facilities.
4. Simplicity of the Institution: Seek to provide clear direction and avoid extraneous provisions. Allow all partners to clearly understand the commitments they are making and reduce the number of areas where future conflicts may emerge.
5. Durability of the Institution: Recognize that change will occur and include direction on how change will be accommodated as future and unanticipated circumstances arise.

6. Cost effectiveness and provides value to TVWD: Provide value to TVWD and all partners and recognize the investments TVWD ratepayers have made in the past. These investments should be fully recovered.
7. Establish commitment to long-term investment needs to maintain assets: Create a process acknowledging the importance of partners providing the funds needed to maintain the assets. Avoid creating situations where lack of funding negatively impacts other partners.
8. Provide flexibility to accommodate future requirements: Recognize that changes to the supply system will be needed to accommodate regulatory needs, operational needs and facility expansion needs.
9. Commitment of partners to participate and honor their obligations: Clearly establish expectations of partners both financially and in their actions.
10. Partners won't harm each other: Partners will work together in assisting each other in the development of the supply system. Actions that impede or harm a partner's use or development of the supply system will be avoided.
11. Honor prior commitments: Recognize investments and agreements already exist and will need to be upheld.

Once principles are identified, they will be used to provide guidance on the development of any draft governance agreement that would be brought to the Board for consideration. The Board is encouraged to provide feedback on these or suggest additional governance principles.

Next Steps

There are a number of existing and potential partners that will be interested in the development of a governance agreement. Some of these partners are at different stages in their planning process or have different levels of interest in the governance of the Willamette water supply system. An initial step would be to work with existing and potential partners on identifying principles they would like to see in a governance agreement. Simultaneously, the TVWD Board will establish principles to incorporate into a governance agreement.

Once principles are created, the partners will focus on the development of draft agreement language. A draft agreement will then be shared with the partner governing bodies with the ultimate goal of developing final language to be considered for approval.

Attachment A

2012 Non-Financial Evaluation Criteria
 October 2, 2012

| Criteria | | Description |
|-----------------|------------------------|--|
| 1 | Demand Uncertainty | Ability of the supply to provide additional capacity if demands are greater than projected and accommodate demands less than forecast thru phasing and/or scaling improvements. |
| 2 | Source Reliability | Ability of the source to deliver required capacity at all times, including consideration of available water resources, existing water rights, natural variation, seismic vulnerability and possible effects of climate change. |
| 3 | Source Redundancy | Ability to meet the goal of all areas served by at least two sources of supply. |
| 4 | Implementation Risk | Risks of project implementation delays and/or cost increases due to unplanned factors such as permitting risk, schedule delays, complexity of required partnering agreements and/or project complexity. |
| 5 | Public Acceptance | Public perception of each of the sources of supply including requirements of industrial and commercial customers as well as general public. |
| 6 | Community Impacts | Impacts on the community due to large infrastructure construction projects. |
| 7 | Metzger Fluoridation | Ability to continue non-fluoridated supply to Metzger. |
| 8 | Finished Water Quality | Ability of the source to meet or exceed existing and anticipated regulatory requirements and aesthetic standards. |
| 9 | Sustainability | Anticipated sustainability of source based on energy requirements, infrastructure requirements and environmental impacts. |
| 10 | Ownership | Ability of the District to establish and preserve policies for initial construction and on-going maintenance of capital assets. |

2012 Non-Financial Evaluation Scoring
October 2, 2012

| Score | Definition |
|--------------|--|
| + | The option is beneficial, relative to the other options, for the evaluated criterion |
| 0 | The option is neutral (neither beneficial nor detrimental), relative to the other options, for the evaluated criterion |
| - | The option is detrimental, relative to the other options, for the evaluated criterion |