



**Board of Commissioners Work Session  
1850 SW 170<sup>th</sup> Avenue  
Beaverton, OR 97003**

**April 5, 2016**

Assisted listening devices are available upon request 48 hours prior to the day of the meeting by calling 503-848-3000.

**WORK SESSION – 6:00 PM**

**1. CALL TO ORDER**

**2. ANNOUNCEMENTS**

**3. DISCUSSION ITEMS**

- A. Update on Budget for Willamette Water Supply Program and the Willamette River Water Coalition
- B. Review of Options to Recognize Gross Revenue for the Right-of-Way Fee
- C. Willamette Governance Group Agreements in Principle

**4. ADJOURNMENT**

**EXECUTIVE SESSION**

An executive session of the Board is scheduled following the Board work session, called under ORS 192.660(2)(f) to consider information or records that are exempt by law from public inspection and ORS 192.660(2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.



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**WORK SESSION AGENDA ITEM**

**MEETING DATE: APRIL 5, 2016**

**TITLE: UPDATE ON BUDGET FOR WILLAMETTE WATER SUPPLY PROGRAM AND THE WILLAMETTE RIVER WATER COALITION**

**ITEM:** As the District moves toward the conclusion of the first fiscal year in its biennial budget, its budget team is reviewing the needs for a supplemental budget. During this work session, staff will review upcoming needs of the Willamette Water Supply Program (WWSP) and the Willamette River Water Coalition (WRWC).

The WWSP has refined its spending plan for the remainder of the biennium. This refinement is part of the District’s normal biennial budgeting process and supports the annual budgeting needs of the City of Hillsboro. The refinement also reflects the latest update to the WWSP schedule and budget.

During the work session, the WWSP Program Director will present the planned activities and resource requirements for the balance of the biennium. This presentation will include details on proposed staff additions to the WWSP to meet the biennium work plan goals.

Separately, the District provides management of the financial affairs for the WRWC on behalf of the WRWC and its members. The financial affairs of the WRWC that are managed by the District includes both the accounting and budgeting activities. The District segregates these WRWC financial activities into Fund 41.

The needs of the WRWC’s budget has been revised to include payment of certain costs associated with negotiating a broader governance agreement for the use of the Willamette River as a source of municipal water by the WRWC members. The effort to negotiate this broader governance agreement is sometimes referred to as the “Willamette Governance Group”, or WGG, and includes the WRWC members (i.e., the District, City of Sherwood, City of Tigard, and City of Tualatin), City of Beaverton, City of Hillsboro, and the City of Wilsonville. The WGG has retained various professional service providers to assist with the negotiation of a long-term governance agreement. These professional services are expected to exceed the WRWC’s adopted budget.

Staff will present an update of the WRWC budget needs to the Board. Although specific action of the District’s Board may not be required during the current fiscal year, action by the WRWC’s governing board may need to be taken before June 30, 2016. This work session item will explain the relationships among the various efforts involving the WRWC and the near-term actions that may be required by the District’s Board.

**BUDGET IMPACT:** No specific budget adjustment is requested at this time for the Water Supply Program budget for the current biennium. The WRWC budget requirements are being developed with the WRWC partners. Staff will update the Board at a future Work Session or Board meeting pertaining to any specific budgetary actions, including the need for a supplemental budget, that are

needed by the District to align the WRWC Fund 41 budget with budgetary actions approved by the WRWC Board.

**ADDITIONAL INFORMATION:** David Kraska, PE, [david.kraska@tvwd.org](mailto:david.kraska@tvwd.org), 503-941-4561; Justin Carlton, [Justin.carlton@tvwd.org](mailto:Justin.carlton@tvwd.org), 503-941-4568; Paul Matthews, [paul.matthews@tvwd.org](mailto:paul.matthews@tvwd.org), 503-848-3017; Tod Burton, [tod.burton@tvwd.org](mailto:tod.burton@tvwd.org), 503-848-3040.

**ATTACHMENTS:** None.

**APPROVING MANAGERS INITIAL:**

Chief Executive Officer		Customer Services	N/A
Engineering Services	N/A	Field Operations	N/A
Financial Services		Human Resources	N/A
Legal	N/A	Water Supply Program	



**WORK SESSION AGENDA ITEM**

**MEETING DATE: APRIL 5, 2016**

**TITLE: REVIEW OF OPTIONS TO RECOGNIZE GROSS REVENUE FOR THE RIGHT-OF-WAY FEE**

**ITEM:** As a result of recent court rulings, various cities within the District’s service area have announced intentions to assess what they roughly describe as a right-of-way (ROW) fee. As currently being discussed by the cities, this proposed fee is expected to be based on the gross revenue of water sales within each city’s corporate limits. As such, these fees operate as a gross receipts tax.

The District has undertaken a project to prepare for the compliance requirements of the expected ROW ordinances. This project has many aspects including modifications to the District’s utility billing system, customer communications strategy, etc.

One key element of the project is to determine how to implement the recovery of the ROW fee from customers within each city imposing the ROW fee. The project includes providing a specific line item on each affected customer’s bill that explicitly states the amount of the fee being collected on behalf of the imposing city. This approach to recovering the ROW fee requires the District to set an implementation date for the change to customer bills. This implementation date will affect customer service, utility billing, and the total revenue generated by the fee. Depending on the implementation strategy, there may be a difference between the revenue recovered from the fee and the amount imposed by the cities.

On March 11, staff presented a strategy for revenue recognition and bill implementation to the Board’s Finance Committee. This presentation resulted in a recommended approach from the Finance Committee that is the subject of this work session.

**BUDGET IMPACT:** The 2015-17 biennial budget did not include appropriations for cities to impose right-of-way fees. The budget impact will depend on the amount and timing of the fees. No firm estimate is available at this time.

**ADDITIONAL INFORMATION:** Paul Matthews, paul.matthews@tvwd.org, 503-848-3017

**ATTACHMENTS:** None

**APPROVING MANAGERS INITIAL:**

Chief Executive Officer	<i>me</i>	Customer Services	<i>me</i>
Engineering Services	N/A	Field Operations	N/A
Financial Services	<i>Por</i>	Human Resources	N/A
Legal	<i>CS</i>	Water Supply Program	N/A



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**WORK SESSION AGENDA ITEM**

**MEETING DATE: APRIL 5, 2016**

**TITLE: WILLAMETTE GOVERNANCE GROUP AGREEMENTS IN PRINCIPLE**

**ITEM:** Over the last two years, TVWD’s Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Legal Counsel have met with representatives of six potential partners to develop an intergovernmental agreement (IGA) for the construction, operation and maintenance of the Willamette Water Supply System (WWSS). This group of potential partners, known as the Willamette Governance Group (WGG), has drafted a set of Agreements in Principle (AIPs) on certain provisions that would form the foundation of a future IGA.

TVWD’s representatives suggest it is timely for the policy bodies of the seven participating jurisdictions to review the AIPs. The goal of these reviews is to reach a common understanding of the AIPs before drafting an IGA. To that end, this agenda item will include a brief overview of the attached AIPs.

The Board should consider the following limitations during its review of the attached AIPs:

1. The AIPs are tentative concepts. The AIPs are intentionally broad concepts that are subject to further discussion and refinement. This is also why it is an ideal time for the TVWD Board and other policy bodies to provide input and comment on the AIPs and the general direction they represent.
2. The AIPs are not an agreement in themselves. Once consensus is reached on the full set of AIPs, the parties will still need to draft an IGA. That future IGA will include additional details and specific contract language and will be subject to further review and formal adoption by the TVWD Board. Again, the AIPs only serve as a starting point for development of the IGA.
3. The AIPs are presented as a package. Modifications to individual AIPs may cause the need or opportunity for further changes to other AIPs.
4. There are other important topics yet to be addressed. For example the WGG has yet to identify AIPs for topics related to voting and designation of a managing agency. These important topics will be the subject of future discussions by the WGG and will be presented to the TVWD Board at a later date.
5. This work session briefing is intended to serve as an overview of the AIPs. At this point, the Board should be cautious to limit the Board’s public discussions of the AIPs until the legal risks, liabilities and obligations can be fully discussed with Counsel.
6. Other policy bodies are also reviewing the AIPs at this time. Commissioners should avoid discussing the substance of the AIPs with elected officials from other agencies participating in the WGG.

**BUDGET IMPACT:** Funds for continuation of the Willamette Governance Group process are included in the District’s adopted 2015-2017 budget.

**ADDITIONAL INFORMATION:** Mark Knudson, [mark.knudson@tvwd.org](mailto:mark.knudson@tvwd.org), 503-848-3027

**ATTACHMENTS:** Willamette Governance Group Tentative Agreements in Principle (AIP) List dated March 10, 2016

**APPROVING MANAGERS INITIAL:**

Chief Executive Officer	<i>mk</i>	Customer Services	N/A
Engineering Services	N/A	Field Operations	N/A
Financial Services	<i>pon</i>	Human Resources	N/A
Legal	<i>CS</i>	Water Supply Program	<i>(Signature)</i>

**Willamette Governance Group**  
**Tentative Agreements in Principle (AIP) List**  
*[as of March 10, 2016]*

The following is a list of tentative Agreements in Principle (AIP) made by the Willamette Governance Group (WGG). The AIPs only illustrate conceptual level agreements amongst the members and may need to be revisited and revised as the Intergovernmental Agreement (IGA) negotiations progress. The AIPs do not reflect final IGA language, which will need to be drafted by the members' legal counsels and agreed upon by the associated governing bodies prior to adoption.

**1. Intergovernmental Agreement**

- a. The Intergovernmental Agreement (IGA) would be an ORS 190 agreement.
- b. Exhibits of the IGA can be amended by the Board. Amendments to the IGA would require approval from each member agency's governing board or council.
- c. The new IGA would be an amended Willamette River Water Coalition IGA.
- d. The name of the new entity would continue to be the Willamette River Water Coalition.

**2. Governing Body**

- a. The Governing Board (the Board) would not be a newly elected Board, but would consist of member(s) appointed by each participating governing body. (The number of representatives for each participating agency has not been discussed.)

**3. Managing Agency**

- a. There will be at least one designated Managing Agency for the administration of the Board and associated management of system operations and programs.

**4. Management and Operations Committees**

- a. Management and Operations Committees will be formed and will provide guidance to the Managing Agency as needed.
- b. The Management Committee will consist of the Chief Executive Officer or the City Manager of each member agency or their appointed designee.
- c. The Operations Committee will consist of technical staff appointed by each member agency.

**5. Capacity Asset Ownership**

- a. Each member of the entity owns a percentage of a "group" of assets that is equal to the member's capacity in million gallons per day (mgd) or million gallons (MG) as a share of the total capacity of the group of assets. The "group"ings of assets are described below.

**6. Group of Assets**

- a. Common Assets: Intake and Raw Water Pump Station
- b. Water Treatment Plant: Treatment Assets beyond the Raw Water Pump Station through the Finished Water Pump Station (Lower/Upper Site - To Be Determined by the WGG with information provided from the Willamette River Water Treatment Plan Master Plan)
- c. Hillsboro/TVWD Pipeline
- d. Hillsboro/TVWD terminal storage reservoirs
- e. Wilsonville/Sherwood Pipeline

**7. Ownership Interests**

- a. Each member of the entity must be a city, county, special district or other public municipal water provider. A private company or organization may not be a member of the entity.

**8. Water Right Ownership and Joint Use**

- a. Water rights refer to both water right permits and certificates. Stored water contracts are called out separately.
- b. Water rights stay in the name the agency that holds the water right permit or certificate.
- c. IGA will include a joint use provision where water rights associated with the WRWTP point of diversion are available for use by all members of the entity until regulation occurs.
- d. When regulation occurs, water rights are available to the agency that holds the water right permit or certificate.
- e. The entity may apply for a joint water-right permit or stored-water contract if it determines the permit or contract is necessary.
- f. Members of the entity will work collaboratively through the Water Management and Conservation Plan process on WRWTP demand and water right planning.
- g. Each member is responsible for obtaining water rights that meet their current and future demands.
- h. Each member cannot build more WTP capacity than it holds in water rights or has access to by contract or agreement unless the Board approves otherwise.
- i. Member(s) certification or perfection of their individual water rights cannot exceed their developed treatment plant capacity unless the Board approves otherwise.

**9. Emergency Situations**

- a. The entity may set or amend policies and practices that govern the operation of the assets in emergency situations, based on the type and expected duration of the emergency.
- b. The entity shall adopt a curtailment plan developed by the Managing Agency and reductions in demands shall be in accordance with the Curtailment Plan.

**10. Planning Requirement**

- a. The Managing Agency, in consultation with the members, will develop plans related to capital improvements and the timing of expansions. Members will participate in planning projects, such as a water master plan or facilities plan, and will provide good-faith estimates for future demand.

**11. System Expansion**

- a. Proposed Definition: (1) Expansion of the system assets or group of assets refers to any capital improvement project that results in increased system capacity, and (2) A system modification refers to any process or treatment change that does not result in a capacity increase.
- b. Expansion or modification of the system assets or group of assets to the extent possible shall be planned for through water system master planning efforts to the extent possible (reference Item 10 and 14).
- c. The Managing Agency will provide notice of planned expansions based on the Master Plan to determine participation.
- d. A member will be required to notify the Managing Agency of each proposed expansion outside of the planned expansions including the capacity and schedule. The Managing Agency shall promptly provide notice of expansion to all Members to determine participation.
- e. The Managing Agency will conduct the planning and implementation of the system expansion including any system operational impacts and cost impacts to the other Members.
- f. Members shall have 90 days from the date they receive notice with option for more time if requested in which to respond to the Managing Agency if they wish to participate in the proposed expansion including any proposed conditions for participation.
- g. Once participation in the proposed expansion is fixed, after the scope, budget, and schedule are established then the non-participating Members shall have no further opportunity to participate unless all participating members approve.
- h. Managing Agency will strive to resolve objections to proposed expansions and will identify and mitigate adverse system operational and financial impacts.

## 12. Operations Plan Requirement

- a. An Operations Plan will be prepared by the Managing Agency in coordination with the member agencies. The Operations Plan will be approved by a designated committee prior to adoption.

## 13. Leasing Options

- a. Leasing options are important and essential to maintain the cost effective and efficient use of infrastructure.
- b. Members will not be forced to lease water or assets to other members, but will be provided a choice on how much water or capacity of the associated assets to make available.
- c. Members that are not owners may lease prior to capital investment in infrastructure.
- d. If made available, members will be able to lease water rights, stored water, water treatment plant capacity, transmission capacity, and finished water storage capacity.
- e. Leasing options will include firm, interruptible, and short term (pool) leasing options.
- f. The capacity acquired from a firm lease will be considered transferred capacity from the Lessor to the Lessee for the quantity and the duration of the lease agreement.
- g. The capacity acquired from an interruptible lease will be considered the Lessee's capacity unless the Lessor requests the water back from the Lessee, therefore the cost would be lower due to the higher risk associated with this type of lease agreement.
- h. The Managing Agency will develop protocols and the terms where a Lessor may call back the "interruptible" leased capacity such as when curtailment or loss of capacity occurs.
- i. The Managing Agency will develop terms and protocols for the management and use of the short term pool, taking into account the best interests of the members and maintaining the integrity of the system.
- j. When there is excess water made available that is not dedicated to a firm or interruptible lease, the water would be included in the short term "pool" for use by the member agencies in coordination with the Managing Agency.
- k. The length of time for firm and interruptible leases will be a minimum of one year and a maximum of five years unless otherwise approved by the Board.
- l. The Managing Agency will coordinate and manage the leasing process including the associated agreements and approval requirements on a schedule that accommodates the agency's budget process and may be subsequently revised.

- m. The Managing Agency will develop forms and protocols for managing the leasing process including the leasing requests and annual surplus capacity designated by each member agency.
- n. A rate methodology for each of the leasing options will be developed and examples will be included in the Exhibits of the IGA, which may be updated by the Board.
- o. In consultation with the Management Committee, leases that are within the terms of the IGA will be administered and approved by the Managing Agency. Status reports regarding the lease agreements will be provided to the Board.
- p. A lease that is not consistent with the terms of the IGA must be approved by the Board.
- q. Each member agency annually will identify an estimated amount of water the agency anticipates leasing from other member agencies.
- r. Lease requests and associated lease revenue with the same unit cost will be divided amongst the Lessors based on the percent of water made available unless otherwise approved by the Board.
- s. When lease requests are in excess of the amount of water made available, lease water or assets will be divided amongst the lessees based on the percent of water requested unless otherwise approved by the Board.
- t. Each member agency annually will identify an estimated amount of water the agency expects it can make available under the different leasing options.

#### 14. Overuse Terms

- a. Overuse terms will be included in the IGA, with specific terms associated with the duration, frequency and severity to be included in an Exhibit to the IGA.
- b. Overuse would only be applied when the short term “pool” of water is not available.
- c. Overuse terms are included in the IGA in order to discourage use that may result in adverse impacts to the operational integrity of the system and to promote prudent planning of needed system expansions.
- d. The Managing Agency shall be required to notify a Member when they have exceeded their Member’s capacity of an asset or group of assets.
- e. A Member shall be subject to the remedies of overuse provision and associated penalties if the Member’s demand on an asset or group of assets exceeds the Member’s capacity by an average of 5% for three (3) consecutive days for two (2) consecutive years or for three (3) consecutive days for any three (3) out of a five (5) year period.
- f. A Member shall be subject to the remedies of overuse provision and associated penalties if any of the Member’s use exceeds their water right ownership during times of regulation or curtailment (reference Item 8c) unless otherwise approved by the Board.

- g. The overuse provisions may be waived by the Managing Agency to reflect the System operational conditions in consultation with the Operations Committee and approval by the Management Committee.
- h. In this overuse section, asset or group of assets refers to the intake/raw water pump station, water treatment plant, transmission lines, finished water stored, and the definition may be further modified by the legal review committee. (Reference item 6).

#### **15. Remedies for Overuse**

- a. The terms for remedies of overuse shall be included as an Exhibit to the IGA.
- b. The financial terms for the remedies of overuse shall be developed that result in a penalty payment that will encourage appropriate planning and use. The penalty will only be applied to the amount of the system asset or group of assets that was overused not the use authorized under the Member's capacity. The distribution of any payments would be addressed in the exhibit to the IGA.
- c. The Member that overused the system will be required to deliver a plan to avoid and overuse in the future to the Management Committee and the Board. The plan may include a proposal for an expansion of the system, a lease agreement, a capacity purchase agreement, and/or other measures taken to eliminate system overuse.

#### **16. Sale of Water to Outside Parties**

- a. Sale of water to outside parties would need to go through the new entity and would need to be approved by the Board if the connection was made directly to the system.
- b. Sale of water to outside parties can only occur to another publicly owned agency.
- c. Sale of water to outside parties that are connected directly to a Member's system and not directly to the system would not have go through the new entity and would not require approval by the Board. The Member would be directly responsible for the capacity requirements associated with the sale.
- d. Sale of water to outside parties that are connected directly to a Member's system that intends to become a customer of the new entity will require approval by the Board and an approved wheeling agreement by the Member with the direct connection.
- e. Sale of water to outside parties that are already in existence, connected directly to a Member's systems, and do not connect directly to the system are grandfathered in and do not require approval by the new entity.