

***Willamette River Water Coalition
Board Meeting Minutes
Wednesday, June 26, 2013***

WRWC Board Members or Alternates present:

Dave Grant – WRWC Board Chair, Councilor – City of Sherwood
Marland Henderson, WRWC Vice-Chair, Councilor – Tigard City Council
Marilyn McWilliams – WRWC Board Member, Commissioner - Tualatin Valley Water District
Ed Truax – WRWC Board Member, Councilor - Tualatin City Council

WRWC Member Staff present:

Rich Sattler – City of Sherwood
Todd Heidgerken – TVWD
Mark Knudson – TVWD
Kaaren Hofmann – City of Tualatin
John Goodrich – City of Tigard

WRWC Staff present:

Kelly Ross – Western Advocates, Inc.
Clark Balfour – Cable Huston
Maggie Kean – Maggiekean.com

Guests & Members of the Public present:

Kevin Hanway, City of Hillsboro

I. Call to Order

Chair Grant called the meeting to order at 5:30 pm at the Tigard Public Works Building, 8777 SW Burnham St., Tigard, Oregon, and asked that all in attendance introduce themselves.

II. Review and Approval of Minutes

The board reviewed the minutes from the May 1, 2013 board meeting.

Motion by Henderson, seconded by McWilliams, to approve the minutes as distributed. The motion was approved unanimously via a voice vote of the board.

III. WRWC Financial Update

Kelly Ross reviewed year-to-date financial reports; there were no comments or questions from the Board.

IV. Presentation/Discussion of existing WRWC and Willamette River Water Treatment Plant Intergovernmental Agreements and Discussion of Next Steps

Balfour summarized his memo to the Board dated 6/19/13, which was developed after two meetings with WRWC staff, and said that there are four major points that need to be clarified:

1. Clear agreement on the WTP assets WRWC will control
2. Class voting that accounts for the different participation levels and vests those with a WTP interest with the ability to vote on those matters
3. That the allocation of costs is also divided on the class voting lines so that payment is tied to benefit received and level of participation.
4. The Board needs to provide direction as to what further information is needed (or the format for that information) to enable individual member Board/Council discussions to occur.

Water Treatment Plant Assets

Balfour and WRWC staff recommend:

- A. The WRWC Assets are limited to the WTP supply assets as defined in the existing Agreements – (“within the fence”). A map is attached.
 1. Intake
 2. Intake Pipeline
 3. Water Treatment Plant
 4. Land & Roadways
 5. Transmission Line to Kinsman Road
- B. All other assets “outside the fence” (e.g. Pipelines) are the sole assets of those who build them and are NOT WRWC Assets. The WRWC Agreement will provide notice of a Project and an opportunity for an individual entity to participate in those outside projects at the time a project is proposed. But the terms and conditions are outside of WRWC and as the parties negotiate. The participating parties in those outside assets are solely responsible for them.
- C. WTP Supply Assets are transferred or contributed to the WRWC. Based on agreed values, the Assets are allocated to the individual member’s Capital Account which calculates to a % interest of ownership.

As other members buy into existing WRWC assets or new additions to WRWC Assets are created and contributed, then Capital Account/ownership percentages will be adjusted.
- D. Any WTP Asset or outside the fence asset shall be designed, constructed and operated to not adversely impact WRWC WTP Assets.

Grant asked if the “inside the fence” approach to assets was unique, or similar to the approach taken by other water agencies. Hanway responded that it was very similar to the approach taken by the Joint Water Commission, and Balfour said it was also similar to that of the North Clackamas Water Commission.

The Board expressed consensus support for the recommendations, no additional comments or questions.

Power of WRWC

Balfour and WRWC staff recommend:

- A. Fully vested with Powers related to WTP Assets
- B. Own, operate, maintain repair & replace assets
- C. Manage all Business Affairs
- D. Develop Curtailment Plans consistent with Water Rights
- E. Hold and Manage Water Rights
- F. Project Coordination for new WTP assets (inside the fence)
- G. Pay bills and allocate to Members
- H. Prepare Budget
- I. Fix Costs to be charged to Members
- J. Enter into Contracts
- K. Hold & Acquire Land
- L. Manage the Leasing of Capacity
- M. Sue and be sued
- N. Approval of CIP and work plans
- O. All others Powers necessary and proper

Knudson asked whether WRWC would have the power to issue debt. Balfour responded that authority to issue debt must be specifically authorized in the IGA, and he thinks it is a good idea to put it in.

Knudson asked about including the power to hire and manage staff. Balfour responded that he assumed the model would be a managing agency rather than the WRWC having its own employees; he said this is the model used by the Joint Water Commission and the North Clackamas Water Commission.

Powers of Managing Agency

Balfour and WRWC staff recommend:

- A. Appointment on three-year basis
- B. Selected by members but must be a WTP participant
- C. Staff of managing agency performs day to day functions

- D. Allocation of time (direct and indirect labor costs and materials) to general administration or to WTP assets.
- E. Provides all, budget, billing, collections and administration
- F. Planning, forecasting, development of work plans, CIP
- G. Purchasing on behalf of WRWC using Managing Agency Purchasing Rules
- H. Some discretionary powers
 - Expenditures within parameters delegated by IGA
 - Items delegated by Board

No questions or comments from the Board on Powers of Managing Agency

WTP Capital Improvements (Inside the Fence)

Balfour and WRWC staff recommend:

- A. Must lease provisions to defer capital expansion when possible
- B. Proposal and offer process to members
- C. Right to Proceed alone after offer declined
- D. Financing is up to individual entity(ies)
- E. Adjusts capital % when WTP asset finished and placed in service.
- F. No negative impact on WTP Assets
- G. Managing Agency manages project unless otherwise agreed

Balfour said that the IGA needs to include specific provisions about the leasing process, obligations, etc., and should include a provision requiring approval of all partners prior to the managing agency making a discretionary change to the treatment process (will need to have a section on operating protocols).

Termination and Withdrawal

Balfour and WRWC staff recommend:

- A. No assignment or sale to a member or third party without consent by members or going through offer process
- B. Process to offer to existing members first
- C. Right of existing members to maintain proportionate share

D. If declined, by one member other members can agree as to who acquires what

E. If all decline, or remnant left – transfer/sale to municipal third party only

F. Extend time to withdraw and close deal to 12-24 months

G. Time for payment

Installment vs. Cash

H. Water Rights (current IGA)

- Only TVWD compensated for value of water if it withdraws. No other member gets paid for water from TVWD permit on withdrawal
- If TVWD leaves it may:
 - Leave all and remainder Members purchase except Tigard / Sherwood water actually used not valued in purchase price TVWD receives.
 - Leave Tigard/Sherwood allocated amount actually used and take the rest out without receiving payment.

I. Formula for buyout:

Negotiated and mutually agreed at time

J. Involuntary Withdrawal

Sanctions short of termination

- Non voting
- Enhanced rate at clearwell
- Other penalties

It was the consensus of the Board that for involuntary withdrawal situations, there should be authorization of different approaches with consideration given to the circumstances rather than just one specified approach. It was also suggested that there be a dispute resolution process.

Voting

Balfour and WRWC staff recommend:

A. Potential Choices

There are various methods to handle voting but no one choice is without negatives. This situation is complicated by the fact that we have existing and future WTP users. Staff agrees that the key point is that voting rights and allocation of costs must be consistent. Staff further agrees that because of the current disparity in WTP participation (which will change over time),

WRWC needs to recognize distinctions to reflect Member participation in “general administration” matters and costs as well as a “WTP participation” with attendant cost allocations. The choices for this discussion follow. We recognize that there can be variations on these basic models and there may be other models.

A. 1 Entity / 1 Vote

- No difference in voting rights based upon General Administration and WTP Participation; it applies to all matters
- Majority Vote
- Super Majority requirement or Unanimous requirement on other issues
- Current WRWC model

B. Voting by Class

1. CLASS 1 Decisions

- All Parties would vote on a 1 Entity / 1 Vote basis for overall “General Administration”. Those would involve:
 - All matters to preserve, protect and keep water rights available
 - Regulatory issues affecting water rights
 - Broader regulatory/legislative issues that impact WRWC
 - Conservation
 - WMCP Coordination
 - Public Outreach / Education
 - Others?

2. CLASS 2 Decisions

- Only those entities who are participants in WRWC WTP Assets vote on issues related to those assets. Those who invest in WRWC Assets make all decisions on budget, operation, maintenance, repair and replacement as to the WTP.
- Vote method of WTP Participants would need to be developed.
 - Percentage of Capacity?
 - 1 Entity / 1 Vote?
 - Other?
 - Super Majority on all or certain issues

- Unanimous on certain issues

3. Melded Vote

- No distinction on Class decisions. Members vote on everything.
- Keep a 1 Entity / 1 Vote concept for each WRWC member regardless of issue by assigning a small vote percentage merely for being a member. As the member class grows, vote percentage decreases
- Members that have contributed to WRWC Assets (essentially WTP Participants) get an additional voting percentage depending on amount of capital contribution

As membership increases or assets are contributed by new or existing members, the member percentages change. But because of demand forecasts and other matters outside control of members, when increased WTP plant usage occurs is unknown. The result is that under this model, for an undetermined period of time, there would be a concentration of voting power in one or two entities. It does avoid trying to decide if a decision relates to general administration or WTP Participation. It also could be structured so that cost allocation follows the voting percentage. But it creates a disparity for some period of time that may not be acceptable. The real adverse impact is that the future users' votes will be diluted for the issues that mean the most to them for the time being ("general administration"). It seems that the better path is to vest them with a meaningful voice in the administration arena and vest the WTP users with a meaningful voice in their areas.

There was consensus support from the Board for:

1. A voting approach that is differentiated by the class of decision, with a default approach if the class of a particular decision can't be agreed upon;
2. For addition of new members, maintain the current requirement for a two-thirds majority vote;
3. For IGA amendments, create criteria for minor and major amendments (major amendments would need unanimous approval, minor amendments something less than unanimous approval).

Next steps

It was the consensus of the Board that a two-step process should be pursued—a revised memo to go out as soon as possible reflecting changes suggested by the Board, followed by a new IGA reflecting actual language.

V. TVWD Proposed Projects

Knudson and Heidgerken summarized the two projects being proposed by TVWD and asked for a response from other members by August 14th.

VI. Member Updates/Announcements

Heidgerken reported on a Westside Economic Alliance breakfast program that will occur on June 27th that will be devoted to water in Washington County—panel speakers will be Greg DiLoreto, Kevin Hanway, and Bill Gaffi.

Truax reported that Tualatin has a new Water Director, Jerry Potsema.

Goodrich reported that the Tigard Public Works Building is now equipped for the hearing limited that is in compliance with ADA requirements.

Kean asked for input from the Board on what news material should be added to the website. Consensus of the Board was that minutes from Board meetings should be adequate to convey information about WRWC activities.

VII. Next Meeting Date

Ross asked whether the Board wanted to keep the next scheduled meeting date of August 7th, or allow more time for work on the IGA and perhaps meet in September. Consensus of the Board was to schedule the next meeting for September 4th.

VII. Adjournment

Meeting adjourned at 7:43 p.m.