

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: October 20, 2015 Time: 10:00am Length: 30 minutes

Presentation Title: CCSD#1 & TCSD Governance Conversation Process

Department: Water Environment Services

Presenters: Greg Geist, Chris Storey

ACTIONS REQUESTED

Provide direction to staff on BCC policy objectives and process preferences relating to the ongoing conversation regarding governance of both Clackamas County Service District No. 1 ("CCSD#1") and Tri-City Service District ("TCSD", and together with CCSD#1, the "Districts").

EXECUTIVE SUMMARY

Two distinct issues have recently become intertwined in ongoing conversations around WES issues: solids handling and governance

First, WES leadership has indicated that the Districts are operating their solids handling assets at a higher level than any comparable utility in the region, currently estimated at 160% of design capacity, and that the Districts stand at significant risk of violating their Clean Water Act permits, which could potentially result in negative impacts on public health, the environment, and economic development. It also risks significant fines from Oregon Department of Environmental Quality and/or the Environmental Protection Agency, which could be levied in an amount of over \$35,000 per day per violation. WES presented this issue to the BCC and its advisory committees in the fall of 2014. Beginning in March 2015 WES staff posed the question of whether or not the Districts should mutually invest to address this problem to the Regional Wastewater Treatment Capacity Advisory Committee ("Regional Committee").

The second issue, initially unrelated, is that since the fall of 2014, the City of Oregon City has publicly demanded a change in the governance structure of TCSD, including special legislation being introduced during the 2015 session (HB2800) that failed and making a multiplicity of arguments, many of them premised on incorrect facts despite repeated clarifications, in support of that position. The City of Gladstone has more recently resolved to support governance change along similar lines as Oregon City. Since that time, the issue of governance has been discussed by the RiverHealth Advisory Committee ("RiverHealth") on behalf of CCSD#1 and the Regional Committee. There have been public statements regarding the advisability of different courses of action and discussion of the potentially negative financial, environmental and public health impacts if TCSD were to cease its current level of cooperation with CCSD#1. RiverHealth has expressed concern that the discussion around TCSD governance could significantly impact the ~\$130 million in infrastructure currently invested to convey and treat wastewater liquid streams at the Tri-City Plant pursuant to a 2008 agreement.

During a policy session on June 9th, 2015, the BCC, as the governing body of CCSD#1 and as the governing body of TCSD, assented to a request from the Regional Committee to allow that body to have a discussion around some elements of governance, and directed staff to support that discussion. The Regional Committee discussed the topic and considered a white paper outlining policy considerations around

governance from a management perspective in July 2015. To date no recommendation or action has been proposed from that committee. The Mayor of Oregon City has publicly stated his intention on behalf of his city to oppose, by various means, any solution to the current solids handling challenges facing both Districts until resolution of the governance question to Oregon City's satisfaction.

The lack of clarity regarding the nature of the relationship between CCSD#1 and TCSD creates uncertainty and challenges from a management standpoint on multiple fronts. In looking for a path to find that clarity, staff has discussed various options.

For policy discussion purposes, staff recommends discreet direction on specific subject matters. Separate policy sessions can and will be scheduled to discuss (i) the recommendation, if any, that comes from the Regional Committee, (ii) the path forward with respect to solids handling, and (iii) the form and level of engagement of wastewater-related advisory committees. This policy session is focused on receiving direction relating to governance issues.

The first question to the board as the governing bodies of the Districts is: *"Is staff authorized to support stakeholder discussions around governance and potential governance change, even if a recommendation from such group may be that the BCC no longer act as the governing body of the Districts?"*

As indicated by the white paper, WES staff has long recognized that certain inefficiencies are unavoidable so long as the two districts operate apart in some areas and together in others. To validate those observations and test the total value proposition, staff recommends that the BCC authorize and support a regional conversation regarding wastewater services governance structure, with the following outcome questions as principles to guide the discussion:

1. What structure is best for ratepayers?
2. What structure would best provide financial fairness?
3. What structure best promotes long term certainty for return on investments?
4. What structure best promotes operational and regulatory efficiency?

If the BCC's answer to the first question is yes, then the second question is: *"What process should staff support to allow an inclusive, transparent, objective and thorough discussion regarding regional governance structure?"*

There are several venues to allow such a conversation to take place. The Regional Committee is one, as would be separate deliberations by each of RiverHealth and Tri-City Advisory Committees. One option that staff believes could best meet the goals of an inclusive, transparent, objective and thorough discussion is a process managed and facilitated by Oregon Consensus, a state agency that works to address issues of significant concern. Staff has made preliminary inquiries about the availability of the Oregon Consensus, and received an indication of an openness to help. A precondition for the process to move forward is that a formal request be made to the Oregon Consensus to provide their services to help find a solution that is fair and reasonable for all affected parties. Should a request be made, Oregon Consensus would likely begin interviewing stakeholders to assess project scope and interest from stakeholders.

Staff recommends that the BCC make such a request of Oregon Consensus.

FINANCIAL IMPLICATIONS

It is likely that the Districts will be asked to support the cost of some or all of the process that is ultimately used, including staff time, consultants and/or payments to facilitators.

LEGAL/POLICY REQUIREMENTS

The Board is under no legal obligation to entertain the requests for a conversation around governance change. However, it has been an issue of concern for multiple stakeholders with differing perspectives on the subject, and there likely would be value in supporting a forum for the conversation.

PUBLIC/GOVERNMENT PARTICIPATION

This has been a topic of three advisory committee deliberations, as noted is the executive summary.

OPTIONS

The first question to the board as the governing bodies of the Districts is: *“Is staff authorized to support stakeholder discussions around governance and potential governance change, even if a recommendation from such group may be that the BCC no longer act as the governing body of the Districts?”*

1. Option 1: No, the BCC is not interested in considering governance change models at this time. Staff will convey that position to stakeholders.
2. Option 2: Yes, the BCC is willing to consider governance change models and authorizes staff to support an inclusive, transparent, objective and thorough process involving all affected stakeholders.

If the BCC’s answer to the first question is yes, then the second question is: *“What process should staff support to allow an inclusive, transparent, objective and thorough discussion regarding regional governance structure?”*

1. Option W: Discussion takes place at RiverHealth and Tri-City Advisory Committees.
2. Option X: Discussion takes place at the Regional Committee.
3. Option Y: Discussion takes place with the support and under the auspices of the Oregon Consensus. Staff is authorized to make the formal request and invitation on behalf of the BCC for the Oregon Consensus to consider the effort.
4. Option Z: Discussion takes place under the auspices of a hired facilitator and is modeled on the 2008 regional discussion, without the need to reinvoke Lake Oswego or Oak Lodge Sanitary District.

For each of these options, staff proposes that the topic be guided by the following principles:

1. What structure is best for ratepayers?
2. What structure would best provide financial fairness?
3. What structure best promotes long term certainty for return on investments?
4. What structure best promotes operational and regulatory efficiency?

RECOMMENDATION

For Question 1, staff recommends **Option 2** as an acknowledgement of the issues and concerns articulated by various stakeholders, and a commitment to a fair and serious discussion that could ultimately result in a change in the form of governance from the current structure.

For Question 2, staff recommends **Option Y**. The benefits of a third party facilitator to create trust and confidence in the process would be valuable. The credibility and desired thoroughness of the Oregon Consensus approach should allow for a fair and objective hearing and discussion of the relevant issues. If the Oregon Consensus is unwilling or unable to take on the project, staff recommends proceeding with a third party facilitator that is modeled on the Oregon Consensus process.

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Greg Geist @ 503-742-4560.
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