

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: 6/9/15 **Approx Start Time:** 1:30 p.m. **Approx Length:** 60 Min

Presentation Title: CCSD#1 & TCSD Governance Conversation Request

Department: Water Environment Services

Presenters: Greg Geist, Chris Storey

Other Invitees: WES Senior Management Team

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Direction on whether the BCC is willing to support a stakeholder conversation regarding the potential change in governance of Clackamas County Service District No. 1 ("CCSD#1") and the Tri-City Service District ("TCSD").

EXECUTIVE SUMMARY:

Water Environment Services ("WES") manages two sewer-related county service districts, CCSD#1 and TCSD. Pursuant to Oregon Revised Statutes ("ORS") 451, the Board of County Commissioners of Clackamas County ("BCC") is the governing body of each district. The BCC has created an advisory body for each of the districts: the Riverhealth Advisory Board for CCSD#1, and the Tri-City Advisory Committee for TCSD. WES staff has worked with the two advisory bodies in making recommendations and proposed policy courses to the BCC, and the BCC by tradition has shown a great deal of deference to the wishes of the two advisory bodies during their 30+ years of operation.

The issue of governance and potential benefit of a change for both districts was the subject of a regional conversation in 2008-9, with a conclusion that ratepayers within both districts would save hundreds of millions of dollars by working together rather than separately and avoid several regulatory burdens that would otherwise drive up the cost of service (see attached recommendation letter). The recommendation was made to examine ways to change governance to allow that to happen, but the proposal was put on hold pending resolution of the dispute between CCSD#1 and Milwaukie regarding the Kellogg Plant and rates. Those issues have been resolved.

Recently, the City of Oregon City has launched a very public campaign seeking to change the governance of TCSD, including asking local Rep. Brent Barton to sponsor legislation to that effect. Although House Bill 2800 was withdrawn after both the City Councils of both Gladstone and West Linn voted to oppose the measure, the issue continues to be a major policy directive of the City of Oregon City (see attached article from Mayor Holladay).

The Oregon City article was distributed by the city to other stakeholders, and the Riverhealth Advisory Board on behalf of CCSD#1 expressed concern over the tone and direction demanded in the article given the potential impact on CCSD#1's \$91,000,000 investment at the Tri-City Plant, which culminated in a letter (see attached Riverhealth Letter) being distributed by Riverhealth representatives at the Regional Wastewater

Capacity Advisory Committee (“Regional Committee”) that is considering the possibility of mutual investment between TCSD and CCSD#1 regarding solids handling issues.

At the Regional Committee meeting on May 27, the representatives briefly discussed governance and some of the issues raised in both the Holladay article and the Riverhealth letter. A majority of the Regional Committee constituting the representative of the unincorporated areas of urban Clackamas County and the Cities of Happy Valley, Milwaukie and West Linn voted to hold additional discussions regarding governance at the Regional Committee. The Cities of Gladstone and Oregon City opposed the regional conversation, with their stated preference being that each district has its own governance conversation separately.

This policy session is to fully brief the BCC on the issues and receive direction to staff regarding the BCC’s willingness to entertain a conversation that could lead to a change in their control over one or both of CCSD#1 and TCSD. Given the expressed desires of the stakeholders to have a governance conversation at some level, staff believes that it is appropriate to move forward and participate and facilitate this discussion. The potential benefits to the region’s ratepayers by CCSD#1 and TCSD working together in a consistent, long-term fashion are substantial and this process is one way for that to happen.

If the BCC expresses willingness for the governance conversation to go forward, staff can provide technical support to the Regional Committee as they explore to what extent the two districts can benefit from working together and whether or not there is an agreeable governance structure that could allow that to happen. It would be up to the Regional Committee to determine a timeline and process for the conversation. Any recommendation that the Regional Committee makes would require the consent of the BCC as the governing body of the two respective districts before a change could move forward.

FINANCIAL IMPLICATIONS (current year and ongoing):

No immediate implications. Over the long term, studies have shown significant savings for ratepayers if CCSD#1 and TCSD work together.

LEGAL/POLICY REQUIREMENTS:

Governance changes would require significant legal work to implement. There are several options that the Regional Committee could consider, including (i) formation of an independently governed district under ORS 450 such as Oak Lodge Sanitary District, that would encompass both districts (ii) a merger of the two districts still under ORS 451, (iii) a variation of options (i) or (ii) at the individual district level if the parties do not agree to work together, or (iv) an ORS 190 partnership agreement that would join some or all of the parties into a new municipal entity as defined by an intergovernmental agreement. To the extent the Regional Committee explores these options, the BCC would be fully briefed on them.

PUBLIC/GOVERNMENTAL PARTICIPATION:

Representatives for each affected city and the BCC on behalf of the unincorporated area have participated in the conversation to date. The district advisory committees and the Regional Committee are all public bodies following public meeting law.

OPTIONS:

1. The BCC can reject the calls to consider governance change and continue with the status quo operations.
2. The BCC can accept the request put forward by the majority vote of the Regional Committee and support a governance conversation between representatives of both districts at the Regional Committee.
3. The BCC can reject the request put forward by the majority vote of the Regional Committee and support the minority position of having a governance conversation for each district separately.

RECOMMENDATION:

Staff believes that the issues put forward by stakeholders regarding the governance change deserve to be heard and vetted. Prior policy groups and studies have demonstrated that there are real and substantial savings and efficiencies to be gained by both districts working together in some form, and staff recommends that every effort be made to support the realization of those benefits for ratepayers of all districts. Therefore, staff recommends option #2 of supporting a governance conversation at the Regional Committee.

ATTACHMENTS:

2008 Regional Recommendation
2015 Article by OC Mayor Holliday
2015 Letter from Riverhealth Advisory Board

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval _____ Director
County Administrator Approval _____ Administrator

For information on this issue or copies of attachments, please contact Chris Storey @ 503-742-4623
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Dear Commissioners,

Members of the RiverHealth Advisory Board have read the recent article written by Oregon City Mayor Holiday regarding calls for a change in the governance of the Tri-City Service District (TCSD). Mayor Holiday's call raises several concerns in the minds of the stakeholders and ratepayers of CCSD#1.

As you may recall, part of the Board of County Commissioner's (BCC) plan to deal with capacity issues at the Kellogg treatment plant called for CCSD#1 to spend \$91 million in plant improvements at TCSD and nearly \$40 million in conveyance infrastructure designed to bring wastewater to the Tri-City plant for treatment. Those improvements included constructing a membrane bioreactor. The reactor treats wastewater from both districts and produces Class A (near potable) water. The Class A water is blended with the effluent from the Tri-City plant and helps it meet its regulated ammonia discharge limit to the Willamette River. The conveyance infrastructure can also be used to offload flows from the Tri-City plant to the Kellogg plant when certain maintenance efforts are undertaken at Tri-City. In return, Tri-City provides CCSD#1 with solids processing downstream from the bioreactor. In a nutshell, both districts benefit greatly from investments made by CCSD#1 and Tri-City's assets. These arrangements are controlled by intergovernmental agreements with requirements for periodic renewal.

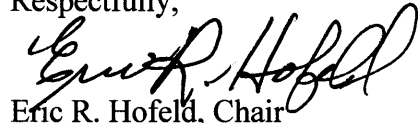
The RiverHealth Board is concerned that any change in governance, could add uncertainty about the stability and longevity of these agreements and adversely impact the ratepayers of CCSD#1 if they are subject to renegotiation and/or more restrictive or costly terms and conditions. It may also impact CCSD#1's ability to get its' anticipated return on its investments and cast doubt in the minds of its current and future bondholders.

The impact of any governance change could also impact potential future investment opportunities between the districts, which have previously been demonstrated at the regional level to save hundreds of millions of dollars for ratepayers. For example, both districts jointly purchased the Blue Heron outfall and related discharge permit. This asset was purchased to mitigate future permit restrictions on discharge temperatures – an issue for the Tri-City plant. Without that outfall, Tri-City would be faced with building very expensive cooling capacity.

Because of the current interconnectedness of both plants and to address future investments in treatment capacity at either plant, representatives from both districts came together and formed the Regional Wastewater Capacity Advisory Committee.

The RiverHealth Board unanimously recommends that to the extent that a governance discussion is brought forward, that such discussion be deferred by the BCC to the Regional Wastewater Capacity Advisory Committee. The impacts have regional implications and the current and potential future investments by CCSD#1 merit consideration in the conversation. We believe that the Regional Committee is the proper forum for discussing this topic since it brings all affected parties to the table and provides the opportunity for a regional discussion and agreement.

Respectfully,



Eric R. Hofeld, Chair

RiverHealth Advisory Board of CCSD#1

June 3, 2008

Board Clackamas County Commissioners
Public Service Building
2051 Kaen Road
Oregon City, Oregon 97045

Dear Commissioners:

I am pleased to submit the recommendations of the Community Partners Task Force on wastewater management for your consideration.

The committee was composed of representatives from Clackamas County Service District #1, Oak Lodge Sanitary District, Milwaukie, Happy Valley, Damascus, Lake Oswego, and the three cities that make up the Tri-City Service District, Gladstone, Oregon City, and West Linn. Lake Oswego voluntarily withdrew from the committee when it became clear that its participation was premature.

The work of the task force and its recommendations offers Clackamas County a fresh start on an issue that has eluded community consensus for over 20 years. While we have not resolved all the challenges around wastewater management, we agreed on many core assumptions that will form the foundation of a future community partnership. We are confident that this partnership will protect our environment, save ratepayers millions of dollars of avoided costs, and ensure that the economy will continue to grow.

Our report to the Board is not unanimous. The representative from CCSD#1's Citizen Advisory Council and from Oak Lodge Sanitary District voted not to support the recommendations. Neither challenged the environmental, management or community economic benefit of the proposed regional wastewater partnership. They supported the vast majority of recommendations but did not agree with the majority of the Task Force on issues of representation and governance. The representative from the Oak Lodge Sanitary District wanted it recognized that the Oak Lodge did not receive a specific rate benefit based on the financial modeling.

We have further offered the Board a road map forward. The members of the task committee believe this will help you and the community to define the nature and scope of the regional wastewater partnership.

Respectfully yours,

Greg DeGrazia
Chair, Community Partners Task Force

Community Partners Task Force – Summary Report and Recommendations

On January 2, 2008 the Clackamas County Board of Commissioners (the "Board") created a Community Partners Task Force to facilitate discussions between all wastewater service providers in urbanized Clackamas County. The purpose of the Task Force was to explore the formation a collaborative partnership to capture the financial benefits of the economies of scale inherent in large capital investments.

The Task Force was made up of one elected representative from Damascus, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Oak Lodge Sanitary District, Oregon City, West Linn, a County Commissioner, two business leaders, two citizens at large and a CAC member from CCSD#1. The Task Force was asked to assess the benefits of regional collaboration and to make recommendations to the Board regarding equity, fairness, and governance of a potential partnership by June 2008.

The Board asked the Task Force to answer three key questions:

Q1. Cost Benefits: Are there compelling financial benefits to ratepayers of each jurisdiction to make collective investment and management across current service district boundaries attractive? If so, what are the financial benefits for the region?

YES.

It makes good financial sense to work together. The analysis indicates that together the community can realize up to a \$300 million savings over the next twenty years by working and investing together. There is broad public support and understanding of the advantages (as demonstrated by survey data) of working together.

Q2. What is an equitable fiscal and operational model for future collective investments in wastewater treatment systems to recognize past and present investments made by participating jurisdictions and ratepayers? How do we ensure that those who benefit the most from development pay their fair share of new investments in public infrastructures? Can equity and fairness for each partner be achieved?

YES.

Regional equity and fairness can be gained if based on clearly defined assumptions. These assumptions are:

- a. The recommendation is to adopt a common regional treatment rate after capacity parity is reached by the participating service providers.

Treatment capacity parity is defined as the point at which all partners have addressed historical deficiencies and face similar capacity needs in the future.

- b. Service partners will make collective decisions regarding all future investments in treatment facilities after capacity parity is achieved.
- c. Decisions about common ownership of assets and district(s) consolidation will be delayed until treatment capacity parity is achieved and a permanent partnership agreement is in place.
- d. Conveyance and collection will remain the responsibility of individual entities. Each entity will be responsible for financing their own conveyance and local collection system to assure equity and fairness while securing the benefits of a regional treatment rate. Local entities may enter into contract relationship with Clackamas County to assist in design, construction, and management of local collection and conveyance systems.
- f. There will be no capacity expansion investments in Kellogg Treatment Plant with a goal of reducing the plant footprint over time and as economically feasible.
- g. Treatment capacity for future community growth will likely be constructed at Tri-City or utilizing another cost effective option after a regional strategy is adopted.
- h. Equity payments, subsidies and/or host fees may not be necessary to achieve equity and fairness.
- i. The partners will make collective decisions about desirable environmental improvements and livability amenities as future investment in regional wastewater treatment facilities are planned.
- j. The Board will facilitate regional equity by implementing a wastewater service policy after capacity parity has been reached. The foundation of this policy will be that no new service will be provided to customers in unincorporated areas outside existing districts. Service districts will only extend new service to areas already within a city boundary.
- k. Unincorporated areas being served before capacity parity is achieved will not be compelled to annex to a city to continue to receive service.
- l. Growth pays for growth through system development charge and related processes and other financial tools.

Q3. How can the financial and governance interests of all participants and their ratepayers be guaranteed into the future? What are the specific terms of these community covenants? Can the region agree to a governance model to guide a regional wastewater capacity management partnership?

YES.

- a. The Task Force recommends the creation of a wastewater partnership to serve as the foundation of regional wholesale wastewater treatment collaboration.
- b. The Task Force recommends adoption of the Washington County Clean Water Services "advise and consent" governance model as the operational model of the proposed wastewater partnership.
- c. The partnership recommends forming an advisory body composed of representatives appointed by each partner entity.
- d. The wastewater partnership will make recommendations about capital improvements, planning, policy, and financial decisions regarding rates, financing, and annual budgets.
- e. The Board is recognized as the legally accountable governing board of the regional partnership. The Board will act on the recommendations of the wastewater partnership, which will serve in an advisory capacity to the Board.
- f. Day-to-day system management, operations, programs, and permitting of partner assets will be or remain the responsibility of the County through its designated agency.
- g. Partners will be bound by all collective recommendations and resulting decisions by the Board.

Additional Task Force recommendations

The Task Force asks the Board of County Commissioners commit to the above recommendations as the foundational assumptions of a regional wastewater management partnership.

The Task Force asks that its recommendations be made explicit County policy through a formal Board action. Once this action is taken, the Task Force recommends the following:

- a. The Board should ask each partner entity to formally ratify the Board policy action.
- b. All those who ratify the Board's policy will be invited by the Board to form a provisional partnership. The purpose of the provisional partnership is to develop the by-laws, agreements and protocols for a permanent regional wastewater management partnership for consideration by the BCC and each of the partners.
- c. Each partner jurisdiction will nominate one representative to serve on the provisional partnership committee including Damascus, Gladstone, Happy Valley, Milwaukie, Oregon City, West Linn, and Oak Lodge Sanitary District. In addition, the Board will appoint one representative from the CCSD#1 unincorporated area and one representative from the Board.
- d. The provisional partnership will complete its work and submit its recommendations to the Board no later than 10/1/08.
- e. All partners will be asked to ratify and bind themselves to the agreements adopted by the Board.
- f. All parties choosing to ratify the agreements will enter into a permanent regional wholesale wastewater management partnership.

Additional items to be considered by the provisional committee:

- g. The Tri-City equity issues around Kellogg's final disposition need to be addressed by the interim committee.
- h. No regional rate setting will take place until the parties achieve capacity parity. Until then, partners will use their existing rate schedules.



Tri-City Service District Needs Local Control

APPROXIMATELY SEVEN YEARS AGO, former Mayor Alice Norris and former City Manager, Larry Patterson, sought an agreement with Clackamas County that the Tri-City sewer plant, a tax exempt facility occupying 30+ acres of prime waterfront in Oregon City, pay Oregon City a host fee and complete aesthetic improve-

ments to the plant. To date, the County has not made any such payment or completed all of the aesthetic improvements that are needed. Then, two years ago, the former Director of Tri-City (a County employee who answers to the Board of County Commissioners) was found by a Judge to have violated state law in the management of the District, forcing the County to pay more than \$1 million in damages, back wages to employees, attorney fees etc. The Board of County Commissioners used District funds to pay these damages, even though the Director was a County employee hired, trained and supervised exclusively by Clackamas County with no oversight from the Cities of Oregon City, Gladstone and West Linn, who make up the Tri-City Service District.

The next bombshell arose a few weeks ago when, after a citizen requested public records of Tri-City Advisory Committee meetings, County staff reported that no records existed prior to 2010, even though these were public meetings requiring public notice, recording and record keeping pursuant to Oregon law. At this same meeting, I also learned that the County had failed to implement an increase in system development charges to be paid by developers, costing District rate payers tens of thousands of dollars in lost revenues, costs that will likely be recovered on the backs of residents in Oregon City, West Linn and Gladstone. The County defended this negligence by stating that staff simply forgot to take the increase to the County Commissioners for approval. However, this explanation is not credible because County Commissioner, Paul Savas, participated actively in the meeting where the increase was adopted and was well aware that it needed to go to the Board for approval. All this, while, throughout a severe recession, the Board of County Commissioners imposed five consecutive years of rate increases at three, six or even eight times the rate of inflation without any compelling justification.

So, how is it that the management and oversight of the Tri-City Service District has gone so utterly and consistently wrong? The answer is simple. The current governance structure is irreparably broken, rife with conflicts of interest because the Board of County Commissioners, none of whom live in the District, also serve as the governing board for the County Department (Water Environment Services) that runs the District. Thus, anytime the County and the Tri-City District have disparate interests (and that is regularly), the County Commissioners look out for the County first and Tri-City ratepayers endure the consequences. Indeed, nearly every decision the County Commissioners make benefit the County at the expense of the District.

The County Commissioners have an obligation to cure these conflicts of interest now, by changing the governance structure of the Tri-City Service District so that it has "independent" representation from citizens who reside within the district, are accountable for results and who are required to pay the rates they impose on others. It is a bedrock principle of our system of government that people must live where they serve and the reason why we do not elect our City Commissioners from a neighboring city, our Governors from another state or our Presidents from a foreign country. The County is ill suited to be in the urban services business and the evidence of that is overwhelming. County Commissioners are busy people trying to do a good job but District residents deserve better. It's time to insist that our County Commissioners step up, do the right thing, and return the Tri-City District immediately to its rightful owners, the people of Oregon City, West Linn and Gladstone.