

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: 12/01/2015 **Approx Start Time:** 3:00 p.m. **Approx Length:** 60 Min

Presentation Title: Blue Heron West Project Update

Department: Water Environment Services

Presenters: Leah Johanson, Project Manager; Lynne Chicoine, Capital Program Manager; Chris Storey, Assistant County Counsel

Other Invitees: WES Leadership Team

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Direction on Blue Heron West site issues.

EXECUTIVE SUMMARY:

Clackamas County Service District No. 1 and the Tri-City Service District (together, the "Districts") jointly acquired an approximately 39 acre real property site located in West Linn, Oregon (the "Property") formerly owned by the Blue Heron bankruptcy estate for \$1.75 million in July 2012. The Districts partnered in this venture pursuant to an agreement entered into between them after deliberation and recommendation to proceed from the Regional Wastewater Treatment Capacity Advisory Committee, the Riverhealth Advisory Committee, and the Tri-City Service District Advisory Committee. A copy of that agreement is attached.

The Property contains treatment lagoons and associated Clean Water Act permit, and a substantial outfall at a deep point of the Willamette River that provides better mixing than either the Kellogg or Tri-City outfall. The permit is rated for discharges up to 12 million gallons per day, approximately the same size as either the Kellogg or Tri-City plants operated by the Districts, and sizeable authorized heat load discharge and other Total Maximum Daily Load ("TMDL") allocations. There are several key variables to this ongoing project that the BCC should be aware of, specifically regulatory issues, capital issues, remediation issues, and property disposition issues. Each of those factors will include information relevant to the BCC giving direction on the desired outcome for the Property. Attached is a presentation that will provide maps and graphics in support and to clarify the below information.

Regulatory Issues. The TMDL allocations, especially temperature limits, already assigned by the Oregon Department of Environmental Quality ("DEQ") are currently substantial drivers in regulatory planning for the Districts. The Districts

will be required to make significant new capital and operational expenditures to respond to regulatory requirements because they do not have the ability to increase heat discharges into the Willamette River commensurate with expected flow increases due to growth and intensification of use (via low-flow contributions). After acquisition of the Property and associated Clean Water Act permit and outfall, the Districts have filed a request with DEQ to transfer the TMDL waste load allocations to the Tri-City Plant permit for the benefit of both Districts as part of the permit renewal process that will be undertaken in 2016. This also includes the possibility of dedication of the water rights related to the Property as subsequently acquired as part of a settlement with the Blue Heron Bankruptcy Estate.

Capital. Recognizing the need to address the issues, WES in 2011 began initial planning to address the issue, focusing around either cooling technology or alternative discharge points (constructed wetlands). The lower cost option of those available, the constructed wetlands, was estimated to cost ~\$143 million in 2011 dollars and need to come online in the early 2020s, depending on growth profiles. Obtaining the Property and utilizing the outfall and associated permit appeared to be a much cheaper alternative, costing a total of \$58 million in 2011 dollars at full utilization, resulting in a savings of ~\$80 million. Rate modeling suggests this equals a savings of approximately \$10 per each district customer per month for at least the next 20 years. The plan include constructing a pipeline between the Tri-City Plant and the Blue Heron outfall to utilize the superior discharge point in a deeper part of the river, especially during the low-flow summer months, and reserve space for the possibility of a satellite treatment plant to handle increased flows from that service area if needed.

Remediation. As part of the overall acquisition, the Districts negotiated a prospective purchaser agreement (“PPA”) with DEQ to avoid potential exposure to unknown environmental liability. In the PPA, the Districts agreed to remediate the site to an appropriate level and in return receive immunity from any environmental liability from the state or third parties.

To determine the appropriate level of remediation, the Districts undertook an environmental risk analysis and submitted a report to DEQ. As part of the department’s feedback, they have indicated that if the Property was dedicated to park use a lower level of remediation would be required and no feasibility study on cleanup efforts would be necessary before remediation could go forward. Simultaneously with the risk analysis, the City of West Linn undertook a public visioning process regarding the future uses of the site from a comprehensive plan perspective. That process recently arrived at a conclusion that park space is the best use for the site, excepting therefrom the acreage reserved by the Districts for industrial use in the future.

The Board in February 2014 directed staff to undertake a study on the costs of remediating the site to a higher use. Staff engaged CDM Smith to develop a

report on the range of remediation costs depending on the intensity of use. They delivered a report in spring 2015 and staff had it peer reviewed by another entity to validate the information. Both agreed that a reasonable planning estimate to remediate to an open-space park utilization level would be ~\$6-8 million. To remediate to a higher level where people would be on site continuously, such as a commercial or industrial use, the estimated remediation cost was ~\$20-22 million. Staff has concluded that the increased cost of remediation would far outweigh the gains in property value from allowing a higher use. Remediating to the park utilization level would require granting a deed restriction against more intense use without further remediation.

Property Disposition. We are now at the point of considering the final configuration and disposition of the Property. The full 39 acres of the original site are not needed to meet the anticipated needs of the Districts. There exists the possibility of the land being partitioned to create potentially buildable areas for development that are separate from the remediated site. Further, WES staff has identified potential areas of the property that it would recommend be reserved for construction of a satellite plant if needed. The site's potential areas include the lagoon, the WES future use reserve, the existing mobile home rental that is in a potential future reserve area, existing permanent home parcel, zoned-residential area in/near a wetlands, and a wetlands area adjacent to the lagoon.

1. *Lagoon:* This is 16 acres partially filled with solids residue from mill operations and is the subject of the remediation requirement in the PPA.
2. *Future Reserve:* WES recommends reserving 5-7 acres to ensure access to the outfall and reserve the possibility of constructing a satellite membrane treatment facility that could discharge from the Blue Heron outfall. Staff believes the better configuration is the larger one.
3. *Mobile Home:* This home is on the edge of the smaller version of the Future Reserve and within the broader version of the Future Reserve. It is also in a possible path for construction traffic related to remediation work.
4. *Permanent (Stick) Home:* The site includes a 1920s bungalow-style home with approximately 1000 square feet of living space plus basement on a 2 acre parcel.
5. *Residential-Zoned Undeveloped Area:* Some areas of the site have residential zoning and it may be possible to subdivide a portion to create buildable lots.
6. *Wetlands Area:* A wetland area and small creek with beavers and other wildlife runs between the lagoon and the upland residential area.

Overall the site consists of 9 separate parcels conglomerated by Blue Heron's predecessors. The water rights acquired from the estate are associated with the primary parcel where the lagoon is located. Any revenues received from the sale of any of the parcels and/or the water rights would be shared equally between the Districts and staff would recommend they be used to offset the estimated costs of remediation.

FINANCIAL IMPLICATIONS (current year and ongoing):

Remediation obligations will be an expense shared 50%-50% between the two Districts. Revenues and/or benefits received from disposition of remainder parcels and/or the sale of water rights would also be shared.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?

The Blue Heron site and related outfall is an asset that can allow WES to effectively accommodate increasing federal and state regulations governing wastewater services while also optimizing an economy of scale that will save TCSD and CCSD#1 ratepayer dollars.

- How does this item align with the County's Performance Clackamas goals?

This item aligns with Performance Clackamas goals by honoring the County's treasured resources for the future, ensuring we have the infrastructure in place to allow for future growth within Clackamas County while building public trust to keep rates low.

LEGAL/POLICY REQUIREMENTS:

The BCC, as the governing body of both Districts, is the decision maker regarding the disposition of any assets.

PUBLIC/GOVERNMENTAL PARTICIPATION:

City of West Linn has been involved extensively and engaged in a neighborhood and community process supported by WES staff. The issue has been presented and discussed by all three relevant advisory committees to the Districts, and the overall plan of action endorsed. Future action likely will require additional public involvement in West Linn and with the advisory bodies.

OPTIONS:

Remediation: Some form of remediation is required under the PPA agreement with DEQ.

1. Spend \$6-8 million to remediate to the lower cost level of open-space parkland.
2. Spend \$20-22 million to remediate to the higher cost level and create commercial/industrial 16 acre site.
3. Terminate the project and the PPA, accept the risk of third party lawsuits such as the Portland Harbor litigation, and direct staff to consider the constructed wetlands option to address regulatory restrictions.

Property Disposition:

1. Keep the property in its current configuration and have the Districts hold the entire site in reserve.
2. Direct staff to seek to dispose of unneeded portions of the site and reserve 7 acres for future Districts use.
3. Direct staff to seek to dispose of unneeded portions of the site and reserve 5 acres for future Districts use and allow the mobile home renter to continue being a tenant of the Districts.

RECOMMENDATION:

Remediation: Option #1. Staff recommends that the BCC authorize remediation only to the lower cost level of open space park use, consistent with the PPA. Next steps would include finalizing the remediation plan with DEQ, including getting their consent on any proposed timeline for the work, and integrating the timing of this project within the larger capital plan of each of the two Districts.

Property Disposition: Option #2. Staff recommends that the BCC direct staff to dispose of unneeded portions of the site and reserve 7 acres for future Districts' use. This would entail conversations with public agencies about their interest in the open space park area after remediation, dialogue with West Linn regarding the possible subdivision of the property for optimal disposition, and marketing of parcels for sale so the Districts would cease to be landlords. Staff would then bring back real property negotiation terms and conditions to the BCC for their consideration, direction and ultimate action.

ATTACHMENTS:

CCSD#1/TCSD Blue Heron Partnership IGA
PowerPoint Presentation

SUBMITTED BY:

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

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