



**City of Lake Oswego/City of Tigard Water Supply Partnership
Summary of Oversight Committee Meeting #38
Meeting held
November 18, 2013**

Lake Oswego Technical Committee Member Joel Komarek called the meeting of the Lake Oswego/Tigard Water Partnership Oversight Committee to order at 5:35 p.m. on November 18, 2013, at the Tigard Public Library Second Floor Conference Room, 13500 SW Hall Blvd Tigard Oregon 97223.

Present:

City of Lake Oswego Oversight Committee: Mayor Kent Studebaker, Councilor Karen Bowerman
LOTWP Staff: Joel Komarek, Jane Heisler, Laurel McAfee
Other: Scott Lazenby, City Manager; Kari Duncan, Water Treatment Plant Manager and Ursula Euler, Finance Director.

City of Tigard Oversight Committee: Councilor Gretchen Buehner, Councilor Jason Snider
Other: Dennis Koellermeier, Public Works Director; Rob Murchison

Brown and Caldwell Jon Holland

Kennedy Jenks Brad Moore

Guests

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1. CALL TO ORDER/ROLL CALL
 2. APPROVAL OF MINUTES FROM MEETING #38

Mr. Komarek asked for approval of minutes from the last meeting held on November 18, 2013.
Councilor Buehner motioned to approve, **Councilor Snider** seconded the motion. A voice vote was taken, and the motion passed with Lake Oswego **Mayor Studebaker**, Lake Oswego **Councilor Bowerman**, Tigard **Councilor Snider** and Tigard **Councilor Buehner** voting 'aye' (4-0).

3. PUBLIC COMMENT

There was no public comment.

4. OLD BUSINESS

Two memoranda were prepared in response to requests for information regarding sponsor contingency and in response to **Councilor Bowerman's** inquiry about anticipated mitigation costs associated with the River Intake Pump Station (not included in this meeting's packet). *RIPS Monitoring Requirements for NMFS* prepared by Jon Holland and *Sponsor Contingency* prepared by Mike Prett, both dated October 14, 2013, will be sent to the committee November 19, 2013 and placed on the agenda for the next meeting.

Councilor Bowerman asked for clarification if monitoring requirement is simply about counting dead fish and about monitoring water flow. **Mr. Komarek** replied that recording of total actual daily diversions at the intake pump station already occurs and we will continue that practice. **Councilor Buehner** asked if monitoring takes place year round or just during the summer. **Mr. Komarek** clarified that monitoring for dead fish will occur August 21 to September 30 each year, but flow diversions will be measured year round.

Councilor Snider asked what National Marine Fisheries Service intended to do with data on fish mortality. **Mr. Komarek** noted that staff is seeking clarification about how this information will be used. Variables such as where the fish may have died and the cause may have no relation to our diversions. To monitor for the presence of dead fish will require observations be conducted along the river bank from our intake to the mouth of Clackamas. Access across private property may stymie that effort. **Councilor Snider** suggested that this not be pointed out to the agency until there is further clarification about the purpose for this condition of approval.

Councilor Bowerman asked for clarification if Gladstone's \$52,000 restoration costs for Cross Park were already in the budget and was the total cost from the 92-page report. **Mr. Komarek** confirmed yes to both questions. These costs were previously budgeted as mitigation expense for land use approval and tree removal around the intake site.

5. PROGRAM METRICS REPORT

Mr. Holland was filling in for Mike Prett and noted key points within the metrics report. Cumulative expenditures versus baseline graph is a bit behind due to late receipt of the October invoice for Water Treatment Plant construction and anticipated cash flow estimate of Schedule 5 pipeline is still in the preparation stage.

The schedule shows no change from the last report. **Councilor Bowerman** noted the receipt of an email about a back log of 18-24 months on cases with WaterWatch regarding water rights. Will this impact the project schedule? **Mr. Komarek** stated no. The project will continue to move forward with work already started. The only impact would be if the Council chose to wait for a decision from the appellate court to authorize other program elements. As directed, construction has started on project facilities in advance of the water rights decision. Outside legal counsel advises the Partnership has a strong record before the court and that a decision from the court will be in the program's favor. **Mr. Komarek** clarified that WaterWatch is the environmental organization that is appealing a final order from the State of Oregon approving a request for more time to develop already permitted rights on the Clackamas River. Lake Oswego, four other municipalities and the State are defending against those appeals.

Section 4.3 Current Total Project Cost Estimate still shows the bottom line at \$249.8M. Sponsor contingency was at \$1.9M, now at \$0 due to several factors. Design plan and consultant costs contained costs for program management, construction management, and a permitting budget. It was thought that the best estimate of cost at completion of the program would be factored rather than carrying a contract ceiling figure. Due to recent contract proposals on HDD, using the contract ceiling figures would more accurately show sponsor contingency at \$1.6M below that estimate, two and a half years from now. **Mayor Studebaker** asked for clarification on being \$1.6M below original costs. **Mr. Holland** explained that the projected estimates for design and program management team are different from their actual contract ceilings. Based on past staffing level projections for various activities, it was optimistically projected that actual costs at

completion of services would be \$1.5M lower than those contract ceilings. **Mayor Stuebaker** asked if the contract ceilings are going to be higher. **Mr. Holland** explained that the contract ceilings are a better estimate of final costs. **Councilor Snider** noted that figuring these costs is because things are changing. **Mr. Holland** confirmed that project scope is changing a bit.

Councilor Bowerman asked if past reference to the approximate \$250M is the contract ceiling. **Mr. Holland** stated no, that past reference was estimating the Brown and Caldwell team contract budget, originally \$33.2M, now \$34.7M the actual contract ceiling. The difference between the two is the new bottom line.

Mr. Holland continued stating Capital Construction costs have fluctuated and have increased \$350,000 due to updated design estimates on Waluga Reservoir, Bonita Pump Station and the new program item of the pipeline crossing Interstate 5, a Tigard cost. A \$250,000 credit was taken on a Schedule 5 mitigation contingency not needed. All of these factors bring the Sponsor Contingency down to \$0.

Mayor Stuebaker asked if new contingencies will be built into the budget **Mr. Holland** stated that the Sponsor Contingency is a new factor from last meeting and the subject of a recent memo. **Councilor Snider** stated that the sponsor contingency allows tracking costs without having to refigure the program costs each month.

Mr. Holland introduced updated items on the Risk Register. Previously closed risk #2 “public opposition in face of higher costs” has been reopened in light of new top risk of contractor concerns and a lack of competition driving costs for HDD higher than budgeted.

Councilor Snider asked how communication with Water Treatment Plant neighbors is going. **Ms. Heisler** responded that the outreach program is in place. The hotline is up, twice-monthly meetings are occurring and the website constantly updated.

Councilor Snider asked if the residents were using the hotline. **Ms. Heisler** answered that many do. Residents also go directly to West Linn city councilors and staff with issues. She added that the communication team is considering adding a monthly tour of the site. Recent neighbor concerns have been construction vibrations and road conditions, such as a large pothole and mud and a perceived need for more street sweeping. **Councilor Snider** asked if the vibrations were occurring from construction or trucks. **Ms. Heisler** replied that the vehicles are the common concern. Vibration monitors placed on two properties of those concerned showed very low levels of vibration. The city has purchased vibration monitors to continuously monitor vibration as construction continues.

Councilor Bowerman asked where WaterWatch currently ranks on the Risk Register? What is the criterion in ranking the risk of WaterWatch over a time period? **Mr. Holland** noted that Water Watch is sitting as Risk #4 with a value of 3.0. Risk impact is determined by an informed opinion based on permit schedules, what is at stake, and flow restrictions during specified time periods. **Councilor Bowerman** asked if once judgment is received in 18 to 24 months, will it add risk to something else that needs to be monitored. **Mr. Komarek** noted that based on listening to Friday’s Court of Appeals oral arguments, WaterWatch petitioners are seeking to fix technical procedural errors made in the decision process during hearings. They are not disputing any error in the science or permit data behind the amount of water to be withdrawn. The outcome of dealing with the procedural issues did not change the court’s original decision to grant the permits.

Councilor Snider confirmed that even if the court found in favor of WaterWatch's assertion of procedural error, it would likely not have an impact on the project.

Mr. Holland commented that the River Intake Pump Station construction is going well and making good progress. Even with noisy pile driving, the project is receiving minimal complaints from local residents.

Mr. Holland commented that the Water Treatment Plant just recently received Slayden's invoice for \$3.1M. **Mayor Studebaker** asked if they are on schedule with construction and invoicing. **Mr. Holland** replied that there is concern about their slow start, but cost schedule is on target. **Councilor Bowerman** asked why Slayden is 21 days late on RIPS substantial completions. **Mr. Komarek** answered that this lateness is due to a delayed biological opinion from NMFS. **Councilor Snider** asked if project managers will be speaking to Slayden about their punctuality. **Mr. Holland** replied they have already met with the company's top level managers and received immediate and satisfactory intervention.

Mr. Prock began review of agenda item #5 Land Use Permits and Easements noting LUBA's decision is delayed again and will come the week of November 25, 2013. Waluga Reservoir 2 and the Finished Water Pipeline have been approved and permits issued. Bonita Pump Station permit appeal process is ending this week. **Councilor Snider** asked what is causing the delay on LUBA's decision. **Mr. Komarek** replied it is probably due to the complexity of the case and over 12,000 pages of record.

Mr. Komarek continued that on November 5 Lake Oswego City Council approved the Defense and Indemnity agreement requested by Department of Justice on Mary S. Young Park. That agreement was received by the City of West Linn for their final review. Tonight, West Linn Council is considering four agreements regarding a franchise agreement, a park enhancement agreement, intercity emergency water agreement, and joint cooperative of Mapleton Drive pipeline improvement agreement with its payments. If West Linn Council approves these agreements, conditions of our land use permits for plant and pipelines will have been satisfied.

6. HDD CONTRACTOR PROCUREMENT

Mr. Komarek began with a background review of the project. Going back a couple years, it was determined a new pipeline from the RIPS in Gladstone to our Water Treatment Plant in West Linn was necessary. As part of the joint permit application to USACE and other agencies, a comprehensive report of the entire program was included. To prepare for this application, pre-design work was done on pipelines, river intake, and the reservoir to adequately define the scope of work. Sixteen river crossing alternatives were mapped out and scrutinized under an engineering process using HDD consultants. The resulting final alignment was dictated by the City of West Linn's land use codes, identifying Mary S. Young Park as the only shoreline property not under the city code. The length of the drill crossing was also dictated by West Linn land use regulations and Oregon State Parks and Recreation. The river crossing project then became a 3900 ft long HDD crossing, using a 42" diameter pipe installed in a 54" diameter hole.

Geotechnical research proved sites were of hard rock and favorable to HDD. With the exception of entry and exit surface portals at Gladstone and West Linn, the geology was very good. The design team included HDD consultants who were retained to provide design input, constructability

reviews, cost estimate review, advice on alignments and geometry, and confirmation the drilling could be technically done.

Once design was complete, a contractor procurement process comparable to that used for the treatment plant, river intake, and pipelines began. The prequalification process invited contactors known to be qualified to perform the work to submit statements of qualifications. After evaluation of those qualifications, a short list was created of prequalified contractors allowed to bid on the work. The process was initiated for both the Willamette River and Lake Oswego HDD drills, but only three applications were submitted, two of which were non-responsive; leaving one respondent to the request.

The Oversight Committee was notified of this situation and follow-up interviews took place with each contractor asking for their input about the requalification process. Their response was concern about risk and hard bidding with that risk. They preferred an approach to contractor procurement that better allocated the risk in amongst the owner and the contractor.

Project management reviewed the question of how can the risk be fairly shared and still promote competition within the available pool of contactors. A competitive proposal process was created with a contract structure based on recent large tunneling projects by the City of Portland, a cost plus fixed fee contract. This type of contract allows all legitimate costs to be reimbursed and provides a fixed fee to cover profit, office overhead, subcontractor management, etc. This would adequately protect the contractor from unknowns encountered in the work.

A Request For Proposals (RFP) was developed and issued in September 2013. During this phase, there were pre-proposal briefings with interested contractors, and a site tour. Some potential proposers stated that they were only interested in the river crossing, not the lake crossing which they viewed as too risky. The RFP was modified to allow contractors to propose on one or both drilling projects.

Councilor Snider asked if the geology of the lake is similar to that of the river. **Mr. Komarek** replied yes, maybe better. The distance to rock at lake entry portals is less than river portals at Meldrum Bar and Mary S. Young Park.

After two months of the proposal process, two proposals were received. One proposal for only the Willamette River crossing and another proposed for both crossings. The Source Selection Committee reviewed the proposals and determined that technically, both proposing firms were qualified to perform the work. However, the fee proposals offered by each firm were substantially higher than the program budget by tens of millions of dollars.

Mr. Komarek related that in response to this situation, staff developed a proposed recovery plan that would be predicated on abandonment of any further efforts to cross under Oswego Lake using HDD and instead would resurrect work completed during the project definition phase for an around the lake alternative. A new scope of work would need to be developed, new surveys and geotechnical work are anticipated, and the Communication Team's preparation to reach a new audience will need to be complete before committing to this alternative.

Mayor Studebaker asked if this cost overage is only for the river crossing portion. **Mr. Komarek** replied a total of \$21M was budgeted for both drills. If that budget is re-allocated now to an

around the lake option and the Willamette HDD crossing, then program costs could potentially increase another \$20M or so.

Mayor Studebaker noted that would mean resident utility costs would increase into double digits. **Ms. Euler** confirmed that. **Mr. Komarek** noted that any additional cost increases for the HDD would be shared based on each cities share of capacity in the pipeline.

Mr. Komarek related that through post proposal interviews with each firm, staff learned the HDD market is very tight right now because the oil shale market is booming and large pipeline projects for transport of oil and gas to refineries/ports are competing for a limited pool of large HDD contractors - the same contractors needed for the Partnerships work.

Councilor Snider spoke about alternatives such as going to another country of respected reputation and expertise, the need for more financial research with concern to rate increases, and finding a fresh perspective with other HDD consultants. **Mr. Holland** noted that during the original value engineering analysis two different teams of consultants participated. One of the VE recommendations was to go around the lake to eliminate some HDD risks.

Mr. Holland continued reviewing the past evaluation of the river crossing. There are only three options for crossing the river, aerial, HDD, or open cut which is precluded by West Linn land use codes. An aerial option would mean a new bridge. **Councilor Bowerman** suggested a new study might be done to get another set of eyes considering these new factors. **Mayor Studebaker** asked if West Linn would be open to changing their land use regulations. **Ms. Heisler** replied that it would require a change to their charter that would require a vote.

Mr. Koellermeier stated a recovery plan was prepared. **Mr. Komarek** noted the possibility to downsize the pipe from a 42" to a 36" might drive the cost down by 25%. **Councilor Bowerman** asked if the smaller pipe would hinder capacity. **Mr. Komarek** replied no at 36" but it may require upsizing pipelines on the Gladstone side.

Ms. Heisler questioned what the Oversight Committee should expect to see next? **Mr. Komarek** said design and material options are being evaluated and asking original contractors for revised proposals based on new material dimensions. **Mayor Studebaker** asked why not open up proposals to other contractors? **Mr. Komarek** answered that it was an option but the top HDD contractors have assessed the work and its options. Currently, the approach is to confirm pipe diameters and materials and ask for revised proposals with different pricing structures. They will be asked to break down total construction in a day rate structure and separate out the pilot bore process. By using a 36" pipe, there are other drillers experienced in that size which may provide more options.

Councilor Bowerman noted that she liked the idea of opening up the bid as early as possible since it could be considered another project. **Mr. Komarek** said the whole restructuring could expand the pool and drive down the cost. Just due to a change to a smaller diameter pipe, more companies may re-enter the process.

Mr. Koellermeier raised the question of how to manage this information for the next couple months? With the ramifications to both cities the construction industry watching, and the need for transparency while keeping the competitive process going, this is a delicate situation. **Mr. Holland** agreed and added that crossing the river is also a calendar sensitive issue with preference

to contracting in January, mobilizing in February, and drilling in March. A one year time delay will have cost escalation. Also, it is uncertain if the two respondents will re-propose.

Councilor Bowerman asked if we open up the options wouldn't we have to open up for new bids. **Mr. Holland** noted that because this was a qualifications based proposal with one piece of cost information, it is fair to modify the scope of materials and ask for a new proposal. **Mr. Komarek** included that a new proposal option was reviewed by the city's attorney to keep the competitive bid process moving forward. There were two contractors that responded in the process, and others can not be allowed into the process unless the current proposals are rejected and a new procurement process begun.

Mr. Komarek added that a new around the lake alignment may offer some savings if it is determined a new pipeline on Ladd Street into George Rogers Park and a connection at the existing line at Middlecrest is not needed.

Mr. Holland asked about launching outreach around the lake. **Ms. Heisler** said some communication was initially done but stakeholder meetings will begin. Downtown leaders will be contacted. Lake Corporation will also be notified. **Mr. Komarek** noted work on McVey and State Street will most likely take place at night, as in West Linn. Construction will affect residents more than businesses in those locations.

Mr. Komarek concluded that a report by memorandum to the committee will be issued once more is known. **Mayor Stuebaker** asked Mr. Komarek to keep everyone advised.

Ms. Heisler spoke quickly about the Water Treatment Plant contractor getting up to speed with mitigating neighborhood issues. The bi-monthly meetings draw four to five people. The third monthly log of citizen concerns was given to West Linn. West Linn Council has requested that a Partnership representative attend their meetings for a while.

7. FUTURE AGENDA ITEMS

- Sponsor Contingency Memo
- RIPS Monitoring Requirements for NMFS

8. NEXT MEETING DATE

January 13, 2014, 5:30 p.m. at the Lake Oswego West End Building.

9. ADJOURN

Mr. Komarek adjourned the meeting at 7:17 p.m.

Respectfully Submitted,
Laurel McAfee /s/
Laurel McAfee, Administrative Support

Attachments:

Approved by the Oversight Committee:

On _____