



**Lake Oswego Tigard Water Partnership
Summary of Oversight Committee Meeting #55
Meeting held
September 15, 2016**

Present:

City of Lake Oswego:	Oversight Committee: Mayor Studebaker, Councilor Manz Staff: Scott Lazenby, Joel Komarek, Erica Rooney, Kari Duncan, Katy Kerklaan, Susie Anderson
City of Tigard:	Oversight Committee: Mayor Cook, Councilor Snider Staff: Marty Wine, Liz Newton, Dennis Koellermeier, John Goodrich
Brown and Caldwell:	Jon Holland
Kennedy / Jenks:	Brad Moore
Guests:	Clark Balfour (Cable Huston), Angie Sanchez-Virnoche, Sergey Tarasov (FCS Group)

1. CALL TO ORDER/ROLL CALL

Oversight Committee Chair **Mayor Cook** called the meeting of the Lake Oswego Tigard Water Partnership Oversight Committee to order at 5:30 p.m. on September 15, 2016, at the Lake Oswego Main Fire Station, 300 B Avenue, Lake Oswego, OR 97034.

2. APPROVAL OF MINUTES

Mayor Cook requested a motion to approve the minutes from the May 9, 2016 meeting. **Mayor Studebaker** moved to approve the minutes, **Councilor Snider** seconded the motion. The motion passed unanimously.

3. PUBLIC COMMENT

There were no comments.

4. OLD BUSINESS

None.

5. NEW BUSINESS

5.1 –Metrics Report

Mr. Holland reported the program continues to steadily move along with construction winding down. He pointed out the schedule in the packet showing the only remaining activity, Water Treatment Plant construction, which would be complete spring 2017. He noted the current total

project estimate remains unchanged at \$254M. He stated contingency is up from the last report because a couple of changes accounted for in contingency were less expensive than anticipated. He continued that there is \$2.5M in contingency with \$19M total remaining to be spent. He opined that 13% contingency at this point in the program is a healthy amount.

Mr. Holland directed attention to the Risk Register and noted no change and that there were no high risk activities or issues to be concerned with. **Mayor Studebaker** asked about the risk factor for the Water Watch case. **Mr. Komarek** replied that the issue isn't on the risk register but the trial will continue in early October and the Partnership's attorneys are comfortable that they've put together a good defense. **Mayor Studebaker** asked if the ODFW and State agencies are finally on board. **Mr. Komarek** affirmed. **Mayor Cook** asked if the reason the case isn't on the risk register is because there's no financial risk? **Councilor Snider** recalled that the case had been on the risk register previously. **Mr. Komarek** responded that it is certain there will be another trial and if the ruling is not in the Partnership's favor the Partnership would be in a position to contest the case. **Councilor Snider** asked why "extended duration increases cost of construction management/inspection" remains on the risk register. He noted that is something that has been known for quite some time and questioned if the impact value still remained at three or could be lowered. He stated it had gone from a risk to a fact. **Mr. Komarek** responded that until construction is further along it should remain on the register but the impact value could be reassessed.

5.2 – Partnership IGA – Amendment #4 (inclusion of WR1 as partnership asset)

Mr. Komarek reviewed discussion from previous meetings regarding Waluga Reservoir 1 becoming a Partnership asset and Tigard sharing the expense of the roof replacement. He noted the Tigard Council voted to pay for 50% of the construction expense at their August 9 meeting and because of that, the current Intergovernmental Agreement (IGA) would need to be amended. **Mr. Komarek** directed attention to the draft amendment and adopting resolution in the meeting packet and noted the amendment would require a vote from both Councils.

5.3 – Water Cost of Service

Mr. Komarek introduced Angie Sanchez-Virnoche and Sergey Tarasov from FCS Group which had assisted both Lake Oswego and Tigard with rate making and other financial matters. He explained the IGA states once initial expansion of supply facilities has been achieved the parties will develop an operations and maintenance expense rate for water delivered through the new system. He continued that FCS would be presenting the rate methodology and results of their analysis of the estimated cost each party would pay for the first year of operation. Without any historical information, after the first year actual costs and payments by the parties would be trued up.

Ms. Virnoche stated she would be presenting the results of the cost study. She said a new cost based partnership rate was developed to move from construction to operations. The goals of the study were to develop a framework that would provide flexibility for cost change and assets change, provide equitable allocation of current and future costs to both partners, be simple to understand and administer, and facilitate a true up on an annual basis.

Ms. Virnoche explained the American Water Works Association uses a utility based methodology for situations where one entity owns the system and wholesales water to another entity. The Partnership's model is different in that it's a partnership so a modified wholesale methodology was implemented. She continued that the traditional wholesale components like share of operating and

maintenance costs and annual depreciation are applicable to the Partnership but a return on investment component is not.

Ms. Virnoche went in to detail regarding operations and maintenance and explained they started with the Lake Oswego 2016 budget, the most current information available, and went through each line item to identify which expenses were applicable to the Partnership and those that were Lake Oswego expenses. It was determined that the Water Treatment Plant and Intake Facility were 100% Partnership costs whereas water field services would be 20% allocable to the Partnership. **Mayor Cook** asked how the 20% was calculated. **Mr. Komarek** responded that it was an estimate of the part of the system that the water operations department would be expected to operate and maintain. **Ms. Virnoche** continued that they then examined fixed costs vs. variable costs. Fixed costs were based on the percent of capacity allocation and the variable costs were based on usage.

Ms. Virnoche addressed the methodology for annual depreciation. The City of Lake Oswego's asset schedule was used to determine the allocation for each asset based on each City's share of capacity, Water Treatment Plant, Waluga Reservoir 2, and Waluga Reservoir 1. **Councilor Manz** asked where all the pipeline fit in. **Mr. Komarek** responded pipelines fall in the capacity category. **Mayor Cook** noted Tigard's up front cost for the Water Treatment Plant was 63% for 18/38 share. He questioned paying a depreciation factor of 63% and suggested it should be 50-50 or 18/38 for the future. He continued Tigard shouldn't pay 63% of repairs, as well, since they bought up to that equity share already. **Councilor Snider** added that Tigard bought in to assets that were already owned by Lake Oswego. **Mr. Komarek** stated that the Water Treatment Plant posed a unique situation and referred back to 2007 when the plan was to use as much of the existing plant as possible. All of the incremental expansion was going to be allocated to Tigard. Absent Tigard water demands, plant expansion would be incremental and so it was appropriate that Tigard pay a larger share of construction. **Mr. Holland** summarized the question is whether depreciation would be based on the capital share or the capacity share. **Councilor Snider** affirmed. **Mr. Komarek** said future expansion would be based on capacity. **Mr. Tarasov** said they would go back and re-examine the percentages and make adjustments as necessary. **Mayor Studebaker** asked for clarification regarding the shares of depreciation. **Mr. Komarek** replied the main question is when to begin funding depreciation or, given the substantial burden put on rate payers, should funding depreciation be deferred to a future time.

Ms. Virnoche directed the group's attention to the next slide and referenced two tables showing the difference in rates between funding depreciation now or postponing. **Councilor Snider** asked why the volume charge is different for the two cities. **Mr. Tarasov** explained they used capacity to allocate the volume cost but in the future those charges would be adjusted once there is usage data. **Councilor Snider** asked what the term was for depreciation in the original IGA. **Mr. Tarasov** responded for new assets the term is 75 years and for existing shared assets the current definition of useful life was used. **Councilor Snider** expressed his surprise at the difference between the monthly amounts for funding depreciation or not, \$100,000 per month for 75 years. **Mr. Komarek** explained assumptions about inflation rates were made. **Councilor Manz** questioned the certainty of the useful life of the asset at 75 years and how that number was determined. **Mr. Komarek** responded that was one of the objectives when the Partnership was established and was the basis for design and inspection. **Mr. Komarek** added the structures are designed to last 75 years but there will be electronic components, pumps, and that type of thing that will need to be replaced during that 75 year period. **Councilor Manz** asked what the most expensive technical component of the system would be to replace. **Mr. Komarek** cited the example of the granular activated carbon in the filters requiring replacement at approximately every five years at a little over \$1M in 2021

dollars. **Ms. Duncan** added pumps and variable frequency drives and ozone generators may need to be replaced two to four times during the 75 year span. **Councilor Snider** opined the rate payers have had all they can bare at this time and voiced his support for deferring depreciation to a future date. **Mayor Cook** agreed but said there should be a set date to start funding depreciation. **Councilor Snider** said future Councils couldn't be bound to a decision made by others but a strong recommendation could be made. **Councilor Manz** asked what it would mean to rate payers if funding depreciation started as soon as construction is complete. **Mr. Komarek** stated the current contract with FCS doesn't include that in the scope but FCS could produce that information with a little more work. **Councilor Snider** suggested a rough number from staff would be sufficient and voiced his support for deferring depreciation to three to five years out. **Mayor Studebaker** agreed.

Mr. Komarek stated the next step would be to present the methodology to both Councils for approval and asked if any of the committee members had concerns with the methodology used other than Tigard's percentage on depreciation, which FCS would readdress. **Mr. Komarek** summarized the consensus of the group would be to defer depreciation funding to a future time to be decided by the Councils.

5.4 – Governance and operating agreement

Mr. Komarek introduced Clark Balfour from Cable Huston law firm. He explained that Mr. Balfour prepared an outline and draft intergovernmental agreement that would create a new entity, similar to South Fork Water Board (SFWB) and he would be explaining that to the committee. He added the Lake Oswego Council would be reviewing the draft agreement at an upcoming study session.

Mr. Balfour stated he developed the 2008 IGA between Lake Oswego and Tigard to share water infrastructure. The next iteration would be to move from the construction agreement to an operation and governance agreement. He referenced the previous discussion at a past meeting regarding governance using the SFWB model and then developed a draft agreement based on what he heard from committee members during that discussion.

Mr. Balfour reviewed the different sections of the draft agreement and stated it would establish an IGA entity, referred to as a commission, but that title could be changed. He said as he was developing the agreement he felt there were some definitions that should be carried over from the 2008 agreement. The purpose of the draft agreement is to address the operation, maintenance, repair, and replacement of supply facilities in the 2008 agreement and to deliver water to the distribution system of each City. He continued that the powers, which would only be related to the supply facilities, are exactly like those specified in the SFWB agreement, essentially power over property, to manage business affairs, issue bonds with the consent of each Council, and to adopt SDC's and rates for supply facilities. He continued the commission would be comprised of the Mayor and two Councilors from each city. He noted the model doesn't have a tie-break provision but that encourages the two cities to work as partners on decisions requiring a vote. Sometimes it may take longer to get to a consensus. **Mayor Cook** stated a quorum for Tigard is three and wondered if that would create an issue. **Mr. Lazenby** responded that West Linn has that situation on the SFWB. **Ms. Wine** noted it would be a perception issue but not necessarily a legal one. **Mr. Balfour** added the IGA lists matters that would require approval by both Councils: property matters, incurring debt, budget approval, non-budgeted/non-emergency expenditure, amendment of contracts, or admitting a new member.

Mr. Balfour addressed the issue of management. The options would be for the commission to hire staff or to use the managing agency model which is essentially the current agreement with Lake Oswego as the managing agency. In the first model the commission would hire a General Manager (GM) as their employee and the GM would then hire staff. **Mr. Komarek** stated the group would need more information about the GM model regarding staff, collective bargaining, retirement, benefits, and tenure and how that would work out before making that decision. **Mr. Balfour** noted the draft agreement would allow continuing on as is until the Commission is ready to make the change to a GM model, allowing the commission to fully explore every consideration of moving away from the managing agency model. **Mr. Balfour** continued the draft agreement would include an advisory committee which would be comprised of the GM and the City Manager from each City. **Councilor Manz** asked if other water agencies include a citizen at-large member for citizen input. **Mr. Balfour** responded that other commissions have limited positions to elected officials but it doesn't have to be that way. **Mayor Cook** opined the advantage of having elected officials is that they are accountable to their electorate whereas a citizen is only accountable to the person who appointed them.

Mr. Balfour recalled under the current agreement there are provisions about Tigard's buy in on existing assets and the construction of new assets. There were also provisions for the end of initial expansion obligations to execute deeds and make other transfers. The new agreement addresses the obligation to make those conveyances, that property will be held in undivided interest, except for water rights, which the original agreement stated would be held by Lake Oswego for the benefit of Tigard.

Mr. Balfour addressed financial management and stated with either model there would need to be a schedule for developing a budget, approval by the commission, and both Councils' review and approval by the June 30 deadline each year.

Mr. Balfour noted the section regarding personnel and said the responsibility would lie with either the GM or managing agency based on which model is agreed upon. **Councilor Snider** opined the personnel section couldn't be written until a decision had been made regarding which model would be used. **Mr. Balfour** concurred.

Mr. Balfour discussed cost of water and noted the FCS presentation earlier in the meeting addressed this topic. He said the draft agreement also includes an annual true up. Assuming there is agreement on the cost of water model and where depreciation fits in, then a rate could be determined. He pointed out there would be special provisions if another entity wanted to join the partnership. If the partnership decides to sell water to another entity the two partners would receive a preferential rate which would include operations and maintenance and depreciation. When selling water to an outside entity, the rate should include operations and maintenance, depreciation, and return on investment. He suggested including a surcharge in the event of extraordinary circumstances.

Mr. Balfour mentioned the section of the draft agreement regarding use of supply facilities in a manner consistent with prudent utility practices and noted provisions addressing overuse. He went on to discuss mutual forecast submittal as a planning tool and proposed forecasting on a ten year horizon with five year updates. He suggested it may not be as crucial because the system has been built out to the 38 mgd but would be very important if incremental expansion were to occur. **Councilor Snider** responded that it may be crucial in the future. **Mr. Balfour** opined that since the system has been built to full capacity, any future facility planning would likely be for an entirely new

system and new contract. He continued because of that, the expansion section of the agreement may not need to be as detailed as the original IGA. **Mr. Balfour** suggested staff have input with regard to the expansion section of the agreement. **Mr. Komarek** agreed and noted there would be a variety of regulatory drivers for other forecasts. The Water Management and Conservation Plan will be updated every 5 or 10 years, which would be the same process for forecasting demands, and a variety of other activities going on that would result in the creation of the forecasts. **Mr. Balfour** noted some statements in the 2008 IGA regarding supply facilities that carried forward to the new agreement. Regarding expansion, **Mr. Balfour** suggested it was unlikely there would be expansion of any of the new facilities but stated there should be some process to address new projects should they arise.

Mr. Balfour noted the language in the draft agreement regarding the sections on leasing, sales to others, withdrawal, and dispute resolution would be the same as the 2008 IGA. Regarding dispute resolution, **Mr. Balfour** opined the two cities should work together as partners to resolve issues at the staff level, manager level, and the elected official level. If issues aren't able to be resolved a mediation process would be needed. If mediation doesn't bring resolution the options would be arbitration or court. He opined if it reaches that point, the relationship between partners has been damaged and suggested the committee consider if there would be an advantage to having mandatory arbitration clause or allow a court case. **Councilor Manz** commented on the importance of that consideration because it can't be predicted who will be sitting on the commission in the future.

Councilor Snider commented that the 2008 IGA addressed details pertaining to sales to others and withdrawal, and the additional agreement for Tigard to purchase an additional 4 million mgd which describes in great detail what Tigard can and can't do with that water. He thought that would likely have an impact on those sections and suggested that language should be worked in to those sections. **Mr. Balfour** responded that the third Amendment had been incorporated into the recitals and in those sections.

Mr. Balfour asked if there were any changes the group would like made to the draft agreement before it goes to internal review by both cities. The consensus was to forward the document to the City Attorneys for their review, as is. **Councilor Snider** stated there should be a decision regarding dispute resolution and whether to use arbitration or court. He suggested there may be another way that involves both councils, perhaps. **Mr. Koellermeier** stated the City Attorneys may be able to provide guidance on the topic.

5.5 – Communications Update

Ms. Kerklaan reported on the following:

- Provided stories to each City's newsletters and blogs, *Hello LO*, *Water Conservation Quarterly*, *Know H2O*.
- Ozone messaging for Tigard's December *Know H2O* and the spring *Water Conservation Quarterly*.
- Throughout the summer shared infographics for each facility which contain interesting facts and key messages about each of the facilities constructed.

- The pre-construction meeting for Waluga Reservoir 1 roof replacement was held September 15. Construction notifications to send to neighbors and an email update are being prepared.
- There have been several tours at the treatment plant over the past few months including a City Manager's tour which included Managers from Lake Oswego, Tigard, West Linn, and Gladstone, and celebrated the new system being on line as of July 1. A tour for the Clackamas River Water Providers Watershed will be held October 1.
- An appreciation barbeque was held September 14 at the water treatment plant for water operations staff from Lake Oswego and Tigard. Staff from both cities helped to make the project a success.
- September 15 is "Imagine a day without water" which is a national advocacy and outreach campaign. Information has been shared on the website, in the *Council Digest*, and on social media. The Lake Oswego and Tigard "Got Water" videos are being shared, as well. The videos were produced a couple years ago but have great messages about valuing water.
- September is emergency preparedness month. Messages about the resiliency of the new water system are being shared and reminding people about the importance of having an emergency water supply on hand in case of an emergency.
- The project won a 2016 American Cultural Resources Association Industry Award for the mitigation plan for the pipeline through Old Town Lake Oswego. Mr. Komarek will be traveling to Palm Springs to receive the award.
- A press release was issued regarding the new system going online and received coverage in the *LO Review*, *Tigard Times*, and *West Linn Tidings*.

Councilor Snider asked if things had calmed down in the neighborhood surrounding the Water Treatment Plant. **Ms. Kerklaan** said things had quieted down a bit. Most inquiries relate to schedule, and landscaping/design as buildings are constructed. She anticipates questions in the future regarding lighting and placement of landscape features. She receives an occasional call about noise and vibration. The monthly meetings have had one or two attendees, the same people, and usually a West Linn Council member. **Councilor Snider** requested the plant be an exceptional neighbor when placing lighting and landscaping. He said it's reasonable to acknowledge the project has been disruptive to the neighbors and it won't cost that much more to be exceptionally helpful and understanding in that regard. **Mayor Cook** asked if it was already designed. **Mr. Komarek** affirmed and said there could be flexibility in placing trees but lighting changes would be difficult.

Mayor Cook asked if all of the paving West Linn took over from the project had been completed. **Mr. Komarek** responded that it had not as West Linn postponed paving until the next paving season, spring/summer 2017.

6. Future agenda items

6.1 – Water rights extension remand – **Mr. Komarek** stated he would communicate any information he has after the hearing set for October 4 and 5.

6.2 – Governance and operating agreement

7. Next meeting date – 4:30 pm, November 10, 2016 at Tigard Public Library 2nd floor conference room
13500 Hall Blvd, Tigard, Oregon 97223.

8. Adjourn

Mayor Cook adjourned the meeting at 6:56 p.m.

Respectfully Submitted,
Susie Anderson, Administrative Assistant

Approved by the Oversight Committee:

On _____