

SOUTH FORK WATER BOARD
MINUTES OF BOARD MEETING
June 14, 2007

Board Members Present: Norm King, West Linn Mayor, Chair
Alice Norris, Oregon City Mayor, Vice Chair
Scott Burgess, West Linn Councilor
Daphne Wuest, Oregon City Commissioner
Damon Mabee, Oregon City Commissioner

Board Members Absent: Mike Gates, West Linn Councilor

Staff Present: John Collins, SFWB General Manager
Laura Schroeder, SFWB Attorney
Kim Brown, SFWB Staff

Others Present: Brad Phelps, CH2MHill
Bob Fuller, CH2MHill
Alice Richmond, West Linn Resident

Executive Session

(1) Executive Session Convened Prior to General Board Meeting

- (A) To review and evaluate, pursuant to standards, criteria and policy directive adopted by the South Fork Water Board, the employment related performance of the General Manager pursuant to ORS 192.660 (2)(i).**

General Board Meeting

(1) Call to Order

Chair King called the meeting of the South Fork Water Board to order at 8:04 p.m.

(2) Public Comments

No public comments.

(3) Consent Agenda - Approval of minutes of the May 10, 2007 Board Meeting.

Chair King asked that the minutes be corrected as follows: page 2, line 7, should read ‘plant’, not “plants”; page 2, line 18, should read ‘...working with us regarding’, not “...working with us in regarding”; page 3, line 16, should read ‘expected’, not “expect”.

Vice Chair Norris moved to approve the minutes of the May 10, 2007 Board meeting with corrections. **Board Member Mabee** seconded the motion. **MOTION CARRIED 5-0. Ayes: Wuest, Mabee, Burgess, Norris, King; Nays: None.**

(4) **Public Hearing – Resolution 07-02, SFWB Two-Million Gallon Clearwell Project Dedication of Right of Way.**

John Collins introduced the subject by saying Board members are well versed on the issue of South Fork’s two-million gallon reservoir project and the proposed land dedication of approximately 0.3 acres. He and Brad Phelps had a meeting with Oregon City planning staff and went through possible land dedication scenarios along Thurman, Hunter, and Swan Avenues. The best option appears to be 7.5 feet along Thurman Street and 11 feet along Swan Avenue. The property has been surveyed and Laura Schroeder’s office has put together a resolution to convey approximately 0.30 acres of land to the City of Oregon City.

Brad Phelps presented a map outlining the tracts of land to be deeded and explained the City’s future concept plans for the streets surrounding the treatment plant.

Board Member Burgess asked if we (South Fork) do some other construction that would increase traffic, would we have to dedicate more land in the future. Of particular concern is Swan Avenue where the City’s goal is to have a cross section of 86 feet. What is the viability of the current treatment plant site for the long term, and is the City going to look at future South Fork projects to gain additional footage to meet their needs?

Brad Phelps responded (*not picked up by recording equipment*).

Board Member Burgess said he understood future technologies will have a smaller footprint, but he wanted assurance that the current treatment plant site will provide the needed space to expand the system to meet future needs.

Vice Chair Norris questioned if these decisions are based on a master plan and not on cities need for roadway footage.

Board Member Burgess explained his concern is to know that the treatment plant property is adequate if South Fork needs another reservoir or other plant expansion. It should be on record that data from the experts shows that by deeding the property, South fork is not inhibiting its ability to expand to full capacity on this site.

John Collins added that future treatment technologies will result in smaller footprints.

Laura Schroeder apologized for the late date in handing out the memo (Re: Dedication of land to Oregon City) and added that it is not necessary to read it now but that it would be a good future reference. The master plan requirement on the first page of the memo provides

that no permit shall be issued for the modification of existing institutional developments if the modification results in a “cumulative square footage increase of over ten thousand total building square feet in an existing Institutional Development over ten acres”. Laura Schroeder said she and Bill Kabeiseman discussed whether a clearwell that only sticks up three feet above ground is considered a building. Kabeiseman argued that it is a structure and is legally defensible as such.

If South Fork was to argue (through the Land Use Court of Appeals) this point and the City wins, we would have to do a master plan. If we do a master plan because we have the ten plus acres then this (the dedication) goes off the table. We are discussing the dedication now because this an avenue to put us under the ten acre size that mandates a master plan. If we were doing this dedication just as a dedication to get the permit, it is true there is a relationship with one of the requirements, but there is no proportionality because the traffic impacts of a clearwell are zero. Then the question is whether the City will just take it anyway and Kabeiseman answered no, if the City moves forward to take those areas anyway, it would first either have to condemn them or do a local improvement measure. In either case, South Fork would be paid for the land. So, what we are really doing is sort of a compromise, we are giving up the land in order to meet the master plan requirement. If the Board wants to proceed with a master plan at his time, the land dedication will go off the table. It is a question of value and timing.

Vice Chair Norris said that since she was not at last month’s Board meeting she wasn’t in on the discussion, but was wondering why we are not just doing the master plan and deferring the reservoir for a couple of years.

John Collins replied that while he is not philosophically opposed to a master plan, increasing construction costs need to be considered. The proposed cost of this reservoir has increased from 2.2 million dollars two years ago, to 3.2 million at this time. Going ahead with the reservoir allows South Fork to avoid ever increasing construction costs for the project. When he and Brad Phelps first spoke with the Oregon City Planning department, it was their impression the land dedication would be required regardless of whether South Fork produced a master plan. It now appears that may not be the case, however, the choice tonight is to stop the project, which we have mechanism in place to do and come back with a master plan. The expense of doing so will be to face increased construction costs. Mr. Collins said he would defer to the consultants regarding future increases in construction costs, but added that South Fork definitely needs the additional operational storage in the near future.

Board Member Mabee responded that previously his understanding was even if we fight, we would have to give up land. Tonight, Laura Schroeder learned from Kabeiseman that this may not be so. However now the issue is a two year delay and increased construction costs as opposed to building it now and saving on future construction costs. If we opt for the master plan now, we will not only be paying for the master plan, we will be delaying the needed reservoir and paying increased construction costs. Why not go ahead and set aside the land and get the reservoir built and then proceed with a master plan?

Board Member Burgess explained the reason he asked about the footage (of land dedication) is to see if South Fork will get some credit toward future projects since this dedication has absolutely nothing to do with potential impact of a reservoir on traffic. Is there some way through this process that we get credit in future projects for dedicating this land now?

Laura Schroeder said Bill Kabeiseman suggested he thought he (the City) would lose on the proportionality argument, but would win on the issue of whether a reservoir is considered a building. Our (South Fork's) case is stronger on the proportionality issue.

Board Member Mabee said he supports the suggestion of asking for future credits, so twenty-five years from now when we have moved on there is some credit available toward future development.

Board Member Burgess asked about SDC requirements. In West Linn would get SDC credits for dedicating land.

John Collins said that SDC's have not been mentioned by the City (of Oregon City).

Board Member Mabee commented that Oregon City rules and laws apply since the work is happening within the City of Oregon City.

Chair King closed the public hearing.

Board Member Burgess moved to adopt Resolution 07-02 of the South Fork Water Board conveying approximately 0.30 acres of land to the City of Oregon City. Board Member Mabee seconded the motion. MOTION CARRIED 4-1. Ayes: Wuest, Mabee, Burgess, Norris; Nays: King.

Board Member Burgess added that this project is important for South Fork Water Board and therefore the public in both cities. Time is money in the construction business and this is why we are moving forward as evidence points toward costs continuing to escalate. As a public entity owned by two cities, he respects each city. There is a real issue in terms of proportionality here, but also want the record to state that it does not appear to inhibit future development of this site to serve the cities. In the long run, land will likely be required for dedication as South Fork moves toward expansion or changes in the treatment facility. By the same token, there may be a subsequent motion to do a facilities plan after the next master plan. Also, want to pursue this issue in terms of SDC's and to somehow get credit for what we are doing here because it is beyond what we are proposing, but we are doing it because we respect who we serve, and we have an interest in moving our project forward in terms of time and future costs. All of this might be a second motion that does not impact the standing of the first motion (Resolution 07-02).

Board Member Mabee made a subsequent motion that resolution 07-02 not be enacted until appropriate credits for the land deeded have been pursued. Vice Chair Norris seconded the motion. MOTION CARRIED 5-0. Ayes: Wuest, Mabee, Burgess, Norris, King; Nays: None.

(5) **Clackamas Water Providers (CWMG) Joint Water Resource Management and Conservation Program**

John Collins said this program was introduced at the previous South Fork Water Board meeting under business of the manager. Mr. Collins said there were a few things that could be

very confusing and he wanted to clarify the difference between the Clackamas River Water Providers and Clackamas Watershed Management Group.

Vice Chair Norris asked Mr. Collins to also include an explanation of who is involved in the Regional Water Providers Consortium.

John Collins explained that the Clackamas River Water Providers (CRWP) is made up of the South Fork Water Board, Clackamas River Water, Sunrise Water Authority, North Clackamas County Water Commission, and the City of Lake Oswego. The Clackamas Watershed Management Group is made up of these same entities plus Water Environmental Services (WES), the City of Milwaukie, and the City of Estacada. The Regional water Providers are made up of twenty-six individual water agencies (cities, districts, boards etc...).

This 'Joint Water Resource Management and Conservation' position is one that Mr. Collins championed to the Clackamas River Water Providers group. South Fork's environmental coordinator Kim Swan has developed and runs an excellent conservation program. As our group in the Clackamas basin was functioning it became necessary to have a person to oversee environmental issues and the basic running of the group. Niki Iverson previously fulfilled this role for the group in the position of Resource Manager. Niki has since left the group for a position with the City of Hillsboro so we have a need for a both water conservation administer and resource manager. Since South Fork has such a well developed conservation program, the group was interested in the idea of sharing conservation on a basin wide level and incorporating resource management in the program. The group (Clackamas River Water Providers) has put together the package presented to the Board tonight. If this comes to fruition, Kim Swan will be the resource manager for the group and we have a person that will become a conservation assistant. This builds a thread in working with the group and building relationships within the Clackamas basin. Monetarily, one of the advantages is that by sharing personnel and economy of scale for calendars and other promotional items, South fork will save \$69,543 per year while maintaining an outstanding conservation program for the cities of Oregon City and West Linn.

Chair King asked who will supervise these two positions.

John Collins explained the resource manager and conservation assistant will be under the supervision of the general managers of the voting members of the five organizations that are paying for the program. The two employees will be housed at the North Clackamas County Water Commission treatment plant; they have adequate office space.

Board Member Burgess commented this seems like more than an IGA between entities is being created; it is more like creating another 190 entity in perpetuity. Specifically, this IGA creates a new entity and their initial staff will be these two positions, and these positions report to the group of entities that are paying into the program.

John Collins confirmed and added there will be one voting member per entity and that member would be the general manager from each entity.

Board Member Burgess asked what this new entities relationship is to the management group and will this person serve Estacada and WES?

John Collins replied that not at this time, but that other entities in the basin would have future opportunity to join in.

Board Member Wuest asked why Lake Oswego is not paying into conservation portion.

John Collins explained that Lake Oswego conservation needs justify a full time position because their treatment plant is near full capacity. Lake Oswego is excited to participate in the resource management portion of the program.

Vice Chair Norris asked if the South Fork Water Board will approve the expenditure for this program on an annual basis.

John Collins responded the Board will approve the expenditure through the annual budgetary process.

Board Member Mabee questioned the wording of by laws and commented that they are poorly worded in several areas, for example, the definitions of a quorum and designated representative. Board Member Mabee stated that he was not at all comfortable jumping on this bandwagon as it stands, the draft by-laws are not acceptable and he does not want to sign on to an IGA that moves the draft by-laws forward.

John Collins said that a worksession has been scheduled for the group to address these and other issues and refine the by-laws. Mr. Collins said that the other agencies involved have approved the IGA at Board level under the condition that once finalized, the by-laws could be approved separately.

Councilor Burgess moved to approve Exhibit A (Clackamas River Water Providers IGA for Joint Water Resource Management and Conservation Program) subject to review and approval by South Fork's Attorney. The Board also reserves the right to review and approve the final by-laws. Vice Chair Norris seconded the motion. MOTION CARRIED 5-0. Ayes: Wuest, Mabee, Burgess, Norris, King; Nays: None.

(6) Water Rights Extension Update and Discussion

Laura Schroeder handed out a memo for Board members to read at their convenience. A one page summary of South Fork Water Board water rights was also handed out as per previous Board request. Under the new law, the goal is to get a good deal for South Fork relative to persistence of flows in the Clackamas. The advice from Oregon Department of Fish & Wildlife (ODFW) was that the flows of 1964 need to be maintained in September and October even if it means reducing withdrawals on undeveloped portions of permits. The Clackamas River group has suggested a rotation agreement in the basin specifying that each entity will take a portion of the hit (reduction in use). Under this proposed agreement, South Fork is being asked to take 10% of the total hit, which does not take into consideration the fact that South Fork has the highest priority rights on the river and should not need to take any portion of the hit. South Fork will be going back to the table with the Clackamas Group with another proposal, which Bob Long (Golder & Associates) is working with to either change the percentages or do something along the lines of priority.

Another South Fork water right issue is that one permit was always considered to be non-extendable because it was attached to two of South Fork's other water rights. As such, water resources never required an extension to be filed. There may be some room to play with this water as well. Oregon Water Resources Department (OWRD) will issue a proposed final order (PFO) which will trigger a protest period. It is known that WaterWatch is planning to protest whatever the PFO says. At that point, South Fork will either have to settle with WaterWatch or go to contest a case hearing. The question will become at some point when we have the best deal we can get with other Clackamas water users, whether we will move forward with that deal before the PFO is issued or hold back and wait for the protest and then offer that as part of a deal with WaterWatch.

Board Member Mabee asked why developed proportions (of permits) don't work their way up the permit seniority. Why not completely certify oldest first?

Laura Schroeder said from a legal standpoint need to show due diligence on each permit or could lose future rights on a permit.

Vice Chair Norris said this is a good opportunity for a policy discussion and to talk about playing fair with the other entities in the basin.

Laura Schroeder said the proposal so far from the Clackamas basin group is not the best deal for South Fork.

(7) Business from the Manager

John Collins announced that Chair King was nominated and unanimously voted in as Vice Chair of the Regional Water Providers.

Mr. Collins added there has been work on a mutual aid agreement with other water providers in the Clackamas basin and that he would like to discuss this in detail at a later meeting.

(8) Business from the Board

Board Member Mabee moved following a positive performance review, to give the General Manager a three percent (3%) COLA increase commensurate with his term of contract and to review his salary again within six months for possible additional compensation (based upon salary data received by the Board and performance goals). Board Member Burgess seconded the motion. MOTION CARRIED 5-0. Ayes: Wuest, Mabee, Burgess, Norris, King; Nays: None.

(9) Adjourn meeting

The June 14, 2007 meeting of the South Fork Water Board adjourned at 9:31 p.m.