

EUGENE WATER & ELECTRIC BOARD  
REGULAR BOARD MEETING  
EWEB BOARD ROOM  
500 E. 4<sup>TH</sup> AVENUE  
AUGUST 16, 2005  
7:30 P.M.

Board Members present: Ron Farmer, Sandra Bishop, Mel Menegat, and John Simpson. Commissioner Lanning was excused.

Others present: Randy Berggren, Tom Buckhouse, Debra Smith, Dick Helgeson, Dick Varner, Jim Wiley, Tom Buckhouse, Marty Douglass, Jim Origliosso, Mark Freeman, Deborah Brewer and Krista Hince of the EWEB staff; Joe Sams, City of Eugene Minutes Recorder.

### **AGENDA CHECK**

President Farmer convened the meeting at 7:35 pm.

There were no changes to the agenda.

### **PUBLIC INPUT**

**Greg Gesey**, 42 West 19<sup>th</sup>, said his neighborhood had offered to install a handicapped access path to College Hill Reservoir at no cost to EWEB. He remarked that the situation had now gone into a quandary about fencing the reservoir. He remarked that a fence would stop no one from entering the reservoir if they wanted in. He said children would be climbing the fence before it was even completed. He said the reservoir had been in place for 70 years and said EWEB was going overboard to solve a problem that was not there.

**Pauli Nelson**, 2470 Lawrence, requested a series of public meetings to solicit public input on the College Hill Reservoir fencing issue. She said the Commissioners would do better to deal with the issue directly instead of through the budget process.

**Brad Meyers**, Lincoln Street, thanked Commissioner Simpson and Tom Buckhouse for discussing the matter of College Hill Reservoir with himself and his wife and for walking the neighborhood to talk to citizens. He said he had taken photos of the surface of the reservoir of a groove ground into the concrete and suggested a plate across the groove would solve the problem. Regarding the change in chlorine use that had become necessary, Mr. Meyers suggested that the change was a result of instrumentation calibration, subterranean leakage, supply line contamination or changes in monitoring methods.

Mr. Meyers reiterated what the other speakers before him said. He indicated that the community, until recently, had very little input on the issue, and that he had concluded that very little to no time had been spent by staff on the issue. He urged EWEB to work with the community on the issue.

**Larry Deckman** identified himself as a lawyer who lived on Lawrence Street, and said he had reviewed the Oregon Administrative Rules (OAR) concerning reservoirs. He indicated there was no OAR requiring a fence around the reservoir, which specifically excluded reservoirs built before 1981. He said the issue was to stop advertent or inadvertent pollution of drinking water in the reservoir. He said he had spoken to neighbors who were engineers and determined that a wrought iron fence would cost between \$150,000 – \$200,000 and a steel plate (which could solve the problem) over the seams would cost between \$60,000 – \$90,000. He noted that the plate option was a substantial savings to EWEB and it also addressed the concerns of the community. He went on to say that making the area accessible to wheelchairs was not a difficult task. Regarding liability issues, Mr. Deckman said a sign that said “Use at your own risk” would address liability problems.

Commissioner Simpson thanked those who testified and noted that the Board of Commissioners would be taking up the matter of College Hill Reservoir at its October 18 meeting.

Vice President Bishop also thanked those who testified and noted that Mr. Deckman could expect a return phone call from her, and she apologized for not returning his calls sooner.

President Farmer stressed that the Commissioners did not intend to do anything to the Reservoir in 2005 and added that the Board had never discussed an iron fence going around the reservoir.

## **APPROVAL OF CONSENT CALENDAR**

### **Minutes**

1. Minutes of July 20, 2005 Regular Board Meeting

### **Business Service Agreements**

2. Associated Heating & Air Conditioning Inc. – Heat Pump Installation – Energy Management Services – Power Resources Division \$1,500,000
3. Swanson Hydrology & Geomorphology - Coal Gas Site Investigation – Environmental Management – Corporate Services - \$183,000
4. Pacific States Cast Iron Pipe – Ductile Iron Pipe – Water and Steam Divisions - \$1,726,125
5. MnB Electric, Inc. – Home Voltage Regulator Installation – Energy Management Services – Power Resources Division - \$21,950
6. Unknown at this time – Site improvements for Buck Mountain and Mt. Hagen radio sites – Electric Division - not to exceed \$120,000
7. Performance Management Group – Work Management Process Evaluation – Electric Division - \$30,000

### **Land Management**

8. ODOT Beltline and I-5 Interchange – ODOT requests the purchase of EWEB utility corridor property located north of Beltline Road and west of Interstate Five

**Revised Trojan 2005 Operating Budget**

9. Revised Trojan Operating Budget – Provides for Board approval of the revised Trojan Operating Budget. All EWEB costs related to the decommissioning as well as all EWEB internal costs related to Trojan are paid by Bonneville Power Administration in accordance with the EWEB – BPA Net Billing Agreement for Trojan.

Vice President Bishop pulled Consent Calendar Item No. 6 (Unknown at this time).

Commissioner Menegat, seconded by Commissioner Simpson, moved to approve the remaining items 1-5 and 7-9 on the Consent Calendar. The motion passed unanimously.

**ITEMS FROM BOARD MEMBERS**

Vice President Bishop noted that there had been discussion at the City of Eugene to set up an independent auditor position. She asked staff to check into the matter and suggested that there be a legal statement in place that an independent auditor would not have authority to audit EWEB.

Vice President Bishop said she would like to explore the possibility of EWEB supplying power to the Klamath Falls area, specifically the irrigation districts.

Vice President Bishop called for a discussion on the College Hill Reservoir before the month of October. She stressed the importance of having a discussion sooner rather than later.

Vice President Bishop reported that herself, Intergovernmental Affairs Coordinator Deborrah Brewer, and Energy Resource Projects Manager Jim Maloney had met with the Mayor and the Assistant City Manager to discuss matters of sustainability. She said the Mayor and the City were moving forward with a plan for economic sustainability. She said EWEB and City staff were going to meet and look at the national Mayor's climate change agreement since EWEB would be involved with the majority of the items listed in the document.

**CORRESPONDENCE**

General Manager Randy Berggren said there had been an update sent on August 10 regarding planned work on the College Hill Reservoir. He said that information would be part of a future discussion.

Mr. Berggren reported that Assistant Treasurer Cathy Bloom sent out a PERS memorandum on August 9.

## **BOARD AGENDAS**

Mr. Berggren said the next Regular Board Meeting would be on September 6. He said the agenda would cover the following items:

- 2005 second quarter budget and financial performance and General Manager's Goals
- Presentation and First public hearing on fall rate proposals
- Long Term Contingency Plan
- Steam Presentation by Tom Snider
- Customer Service Satisfaction Survey

Mr. Berggren said he was open to discussion of a date for reviewing the College Hill Reservoir issue before the October 18 scheduled time.

Vice President Bishop remarked that a discussion of the College Hill issue would not take a lot of time and commented that a decision on whether public hearings should be held on the matter was needed. She commented that all of the other reservoirs had been fenced as a matter of ongoing business and none of that took any Board action. She suggested that since the matter of fencing College Hill Reservoir could be addressed administratively by staff rather than going through a Board process, the Board needs to discuss whether or not this needs Board action. She commented that the proposed date of October 18 for discussion was too late a date.

Debra Smith, Assistant to the General Manager, said staff had determined that there should be some Board discussion before any public forums were held. She added that all of the information collected would go into the budget document that would act as a placeholder for funding. She said October 18 had appeared as the best date for a discussion. She said staff had not felt that there was enough urgency that agendas needed to be shuffled to accommodate it at an earlier meeting.

Commissioner Simpson reminded the Board that he had requested public hearings on the topic. He said he had been informed that October 18 was the best date for the discussion and remarked that the proposed date would not be early enough for a discussion on whether to hold public forums. He suggested putting the entire fencing project off until the 2007 budget process.

President Farmer said the reservoir had been there for 70 years and there was no rush to bring the matter to judgment. He said there was argument to be made to keep the matter a staff only issue but acknowledged that there was enough public interest to warrant a Board discussion. He said he did not want to delay other agenda items to bring forward the discussion.

Commissioner Simpson reiterated his desire to postpone any alternatives that removed public access to the reservoir until the 2007 budget process.

Commissioner Menegat commented that cost data had been presented at the current meeting and added that there was public input at every regular meeting. He said the Commissioners did not

have to wait for a public forum to get data that could be submitted at any time.

## **WATER RIGHTS ISSUES AND BACKGROUND**

Water & Steam Division Director Tom Buckhouse, Water Resources & Planning Manager Brad Taylor and Intergovernmental Affairs Coordinator Deborrah Brewer provided a power point presentation on water rights issues.

Mr. Buckhouse noted that there was legislative discussion on changing water rights for public utilities. He noted that there was a bill in the current legislature to modify Oregon Water laws as they related to municipal water rights and permits and the ability to attain extensions. He noted that there were areas in the region that had fewer water rights than were necessary to meet water demand. He said the evening's presentation was to supply data and get concurrence from the Board to protect EWEB's water rights.

Mr. Taylor said the City of Eugene had taken ownership of the water system in 1911 to insure public health and safety. He said in 1927 the McKenzie River had become the primary source of water for the City. In 1961, he said the utility had gone through its water rights application process. He noted that there had been a much larger vision of the region to be provided water by the utility. He said the vision included water service to Veneta, Junction City, Coburg, Marcola, Pleasant Hill, Springfield and Creswell. He said the water rights on the McKenzie were a single part of that overall regional coverage.

In response to a question from President Farmer regarding when the permit application was approved, Mr. Taylor said he did not have the actual date but said it had been approved in 1961.

Mr. Taylor said a need for water rights had to be shown when applying for those rights in the future. He said there had been a Board action in 2000 authorizing staff to begin the McKenzie River Water Source Protection Plan that was a long-term commitment for EWEB that solidified EWEB's position as stewards of the McKenzie Watershed. He said preliminary research done in 2004 showed that the McKenzie River was very resistant to climate changes, which was significant to the long-term strategy as a water provider. He said there was some uncertainty regarding the security of the large water right that was on permit extension.

Mr. Taylor said EWEB was facing critical decisions that would determine future access to existing water rights and its future role as a water provider.

Ms. Brewer said the staff's purpose was to secure the long-term provision of reliable water to benefit the citizens of Eugene.

Mr. Taylor showed a graph of demand projections displaying water that was needed to serve customers, and water on permit application extensions. He showed projections of water demand in 2025, 2050 and 2125. He said the 2005 legislative session bill required that all new water rights

permits would show full development within a 20-year period of time.

In response to a question from President Farmer regarding whether Eugene would eventually use all the water that it held the rights to on extension, Mr. Taylor said the projection assumed the growth for the City of Eugene based on planning numbers from the Region 2050 process.

Ms. Brewer added that the compact growth scenario had been used to make the projections. She said the numbers were not as important as the fact that it would take a really long time for the City of Eugene to use the full capacity of water rights held by the utility.

Mr. Taylor said the 2005 legislative action hinted that there was a possibility that water providers holding water rights that would not be used in a 20-year time frame would have less security in the future. He said the utility should be concerned about holding rights on any water the utility could not show a need for in a 20-year time frame. He said there was a significant amount of water that EWEB had on extension that could not be used within that 20-year time frame.

Ms. Brewer said staff was asking for authority to explore legal options. She said the authority to provide water came from state legislation dealing with municipalities. She said EWEB had to abide by the extraterritorial extension provisions in the Eugene Code. She said this was important because the Charter simply referred to water extensions that were defined in the City of Eugene Code. Therefore, only a code and plan change would be needed rather than a charter amendment. She acknowledged that staff still did not know legally what the requirements would be.

Ms. Brewer said the Eugene Code referred to extraterritorial extensions defined in the Metro Plan. She said the Metro Plan had policies about growth, urban growth boundaries, and efficient delivery of services. She said the process was that someone would apply to the City Manager regarding an extension of services and if the City Manager approved he would forward a favorable recommendation to the Lane County Local Government Boundary Commission. She said the Boundary Commission was the only existing agency left in the State of Oregon that regulated boundaries. She said the charge of the Boundary Commission was to ensure efficient delivery of services, financial responsibility, and health and safety. She surmised that moving to the State level and showing benefits of a regional provision of health and safety and financially reasonable water would demonstrate to the State that it made sense for EWEB to supply water to more than the City of Eugene.

Ms. Brewer said all of this work could be done within the framework of the Region 2050 process. She explained that if all regional jurisdictions could come to an agreement on how the region would grow then state agencies would have to help them do that. She said a regional policy in place would add leverage with the Water Resources Department, the Lane Conservation and Development Commission, and the Boundary Commission. She said this was not the only staff strategy in place but was one that could be taken advantage of by the utility.

Mr. Taylor said water availability was a key issue in that the McKenzie River was the only stream in the Southern Willamette Valley classified for new municipal use on a year-round basis. He said future ground water development was largely connected to surface water. He said this meant that an applicant for ground water would be treated the same as a surface water applicant.

Mr. Taylor said there was more demand in the region than the demand by the City of Eugene. He showed a graph of water demand in the region and said the demand gave credibility to the discussion of maintaining water rights that could serve regional demand.

Mr. Taylor said the 2005 legislative ruling had drawn significant attention by public interest groups. He said those groups had the ability and the previous record of challenging decisions in court and winning their case. He said there was a need to tie planning and maintained water rights into reasonable timeframes for future development. He said doing otherwise would affect the future security of water rights.

In response to a question from President Farmer regarding whether surrounding cities had water rights on extension, Mr. Taylor said very few had water rights on extension or the ability to meet growing needs.

In response to a question from President Farmer regarding the projected time when the area would run out of water, Ms. Brewer said EWEB and Cottage Grove water systems combined could serve the projected demand.

Mr. Taylor said there were other trends affecting water rights strategy. He said those holding extensive water rights could expect to have their rights challenged in court if there was no demonstrated need for maintaining those rights. He said it was also important for the water utility to show how sustainability fit into the plans of the utility. He stressed the importance of keeping the investment in the McKenzie Watershed and maintaining stewardship of the water resource.

Moving on to recommendations, Mr. Taylor said the purpose was to develop a water supply strategy to ensure the long-term provision of a reliable water supply that would benefit the citizens of Eugene. He said the strategy needed to secure current water rights and improve system reliabilities through source diversity. He said staff was asking for direction to explore ways to obtain authority to provide water to neighboring municipalities and water districts.

In response to a question from Commissioner Simpson regarding whether the permits are extensions included in a water right on the Willamette River, Mr. Taylor said it did not. He said there was a 30 CFS water claim on the Willamette River. He said this would play into development of a secondary water supply.

In response to a question from Commissioner Simpson regarding what the sustained water treatment capacity was, Mr. Buckhouse said there was only ability to pump approximately 120 CFS. He acknowledged that the purification process was the choke point for supplying water.

Commissioner Simpson encouraged staff to pursue all options for distributing water in a regional perspective. He said he would want to hear about some of the problems that might be generated by provision of water regionally.

Ms. Brewer said the process might become political and be seen as promoting growth in the region.

In response to a question from Commissioner Simpson regarding whether the utility was already providing service outside the urban growth boundary, Ms. Brewer said only under land use laws from pre-1970.

Commissioner Menegat said he was in favor of providing water regionally and questioned whether providing water regionally would set up a separate political body to administer water supply and provision.

Mr. Buckhouse said either could happen but said it would depend on how things progressed. He said the significant thing for the Board to stay grounded in was that if there were a separate political body then EWEB would have to transfer ownership authority to that body.

In response to a question from Commissioner Menegat regarding whether a system could be set up so that EWEB's water needs were protected, Ms. Brewer said current agreements spoke to surplus water. Mr. Berggren added that a strategic theme would be retaining water right ownership and being very clear about obligations to provide extra territorial water supply. He added the importance of keeping revenue production ability. He said it was critical to the strategy to look into regional supply with revenue benefits for the citizens of Eugene.

In response to a question from Vice President Bishop regarding whether the changes had actually been made in the 2005 legislature, Mr. Taylor said it was specifically House Bill 3038.

In response to a question from Vice President Bishop regarding when administrative rules would be available, Mr. Buckhouse predicted that draft administrative rules would be available by the end of September.

In response to a question from Vice President Bishop regarding the prohibition of new municipal use of surface water in the Willamette basin north of the City of Albany and what it meant to EWEB, Mr. Taylor said the people in the region that did not have water rights would not have year round access to provide future customers with water.

In response to a question from Vice President Bishop regarding which groups would be opposed to EWEB's large water right, Mr. Taylor said historically it was public interest groups that represented the need to preserve in-stream flows.

In response to a question from Vice President Bishop whether a regional water authority could be set up through an intergovernmental agreement, Ms. Brewer said it could not.

In response to a question from Vice President Bishop regarding whether a regional water authority could be set up with individual members retaining water rights, Mr. Taylor said state statute would not allow that to happen.

Ms. Brewer said she would be happy to meet with individual Commissioners to answer further questions.

In response to a question from President Farmer regarding whether certified water rights could be sold, Mr. Taylor said they could but it was very difficult.

President Farmer said he wanted to see a graph showing the water capacity of all the communities surrounding Eugene with population growth projections for those areas.

In response to a question from President Farmer regarding the meaning of red light status, Mr. Taylor said it was the status that would be given to water through the approval of a water management and conservation plan. He said such a plan would be a condition of new water right applications or permit extensions. He said any water that was outside of a 20-year development plan would have red light status and the applicant would have to justify why it needed rights to that water.

In response to a question from President Farmer regarding pumping capacity and how much would have to be added to fulfill a regional service, Mr. Taylor said there was plenty of room to fully develop the McKenzie River rights.

In response to a question from Vice President Bishop regarding whether it was possible to sell untreated water to other municipalities, Mr. Buckhouse said there would be no added value to selling raw water. He said a treatment plant would be necessary for the water in any case.

President Farmer said state law clearly stated that a profit could be made by selling water on a regional basis. He said if it was perceived by outlying communities that EWEB was providing water only to leverage a profit then there would be opposition to setting up a regional water system.

President Farmer urged moving forward with a strategy sooner rather than later. He said this was a critical project for the utility. He stressed the importance of developing a plan that did not need approval of the Region 2050 Plan.

## **WATER SYSTEMS DEVELOPMENT CHARGES**

Senior Rates/Financial Analyst John Yanov provided a presentation on Water Systems Development Charges (WSDC). He said every three to five years the WSDC was reassessed. He said the last assessment had taken place in 2000 that resulted in a five percent increase. He said the purpose of WSDCs was to cover the cost of new system facilities and assign the cost of demand to those who caused the demand.

Mr. Yanov said a new Water System Master Plan (Plan) had been implemented in 2004. He said the consulting engineers who had worked on the Plan had noted that the Plan was overrated because it did not figure for losses to the Plan. He added that there had been slight changes in the methodology in that, rather than just looking at production capacity, other system components such as transportation and distribution had been looked at as well. He said this would provide more accuracy in the Plan.

Mr. Yanov said the process had been started in May. He said the study had been made available to the public on June 17. He said the first public hearing would be held that evening and noted that there would be a second public hearing on October 4. He said the effective date would be on December 5, if approved by the Board.

Mr. Yanov said the study had resulted in a proposed 13 ½ percent increase in the fee. He stressed that there had not been an increase in 5 ½ years so this amounted to a 2.7 percent increase over that time. He showed a graph of various Cities' WSDC rates and showed that Eugene was in the middle of the graph.

In response to a question from President Farmer regarding what the main drivers in the formula were that made Eugene's WSDC higher than Portland or the City of Springfield, Mr. Yanov said some cities were not using the same methodology. He said there was quite a variance across the state as to what fees were being charged.

President Farmer raised concern that Eugene's WSDC was double that of the City of Springfield and stressed the importance of being competitive with nearby cities regarding development issues.

Mr. Yanov noted that Eugene had a full production facility and Springfield did not.

## **PUBLIC HEARING ON WATER SYSTEMS DEVELOPMENT CHARGES**

President Farmer opened the public hearing. Seeing no one wishing to speak he closed the public hearing and moved on to the next agenda item.

**BUDGET AMENDMENT NO. 9**

Treasurer Jim Origliosso provided a brief presentation on the Budget Amendment No. 9. He said the item started out as a minor project based on a cost estimate of \$80 per linear foot. He said the project had got into several construction issues and right-of-way location issues that drove the cost up.

President Farmer expressed a hope that more due diligence would be done around planning processes in the future.

Vice President Bishop, seconded by Commissioner Simpson, moved to approve Budget Amendment No. 9. The motion passed unanimously.

**ITEMS REMOVED FROM THE CONSENT CALENDAR**

Vice President Bishop raised concern over the process used by staff. She said she was uncomfortable voting on something that she was unsure where the contract was going. She said the process needed to be improved in such a way that the Commissioners did not have to vote on an unknown contract.

President Farmer said his concern was also around process. He said he had suggested that in the future there would be a process to avoid a similar situation and approval could have a 'not to exceed clause' for the associated costs.

Vice President Bishop, seconded by Commissioner Simpson, moved to approve Consent Calendar Item No. 6 (Unknown at this time) with the caveat that the upper dollar amount be restricted to \$120,000 or less. The motion passed unanimously.

The meeting adjourned at 9:45 pm.

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Assistant Secretary

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President