

**CLACKAMAS RIVER WATER BOARD OF COMMISSIONERS  
REGULAR BOARD MEETING  
BOARD INDEX OF AUDIOTAPE  
January 12, 2012**

**COMMISSIONERS PRESENT:**

President Kami Kehoe  
Secretary Barbara Kemper  
Treasurer Mike Cardwell  
Commissioner Patricia Holloway  
Commissioner Grafton Sterling

**STAFF PRESENT:**

Lee Moore, General Manager  
Adam Bjornstedt, Engineering Manager  
Carol Bryck, Chief Financial Officer  
Donn Bunyard, Operations Manager  
Adora Campbell, Executive Assistant to the Board  
Suzanne DeLorenzo, Water Quality Manager  
Karin Holzgang, Executive Assistant to the GM  
Bob George, District Engineer  
Kham Keobounnam, Information Systems Manager  
Tracy Triplett, Water Quality/Lab Analyst

**CRW LEGAL COUNSEL:**

Dan Olsen, Attorney (*filling in for Dean Phillips*)

**VISITORS PRESENT:**

Bob Garbarino (SWA); Al Jones; Joe Karas; (Moss Adams); Gary Kerr; Cyndi Lewis-Wolfram; Warren Mitchell; George Payne (OLWD); Bill Schulenberg

**Agenda Item 1.0: Call to Order**

The meeting was called to order at **6:02 pm**. The pledge of allegiance was recited.

**Agenda Item 2.0: Management Report**

- (a) Monthly Activity Charts for Water Distribution, Meter Installations and Cross Connections
- (b) Contracts Log
- (c) Board Calendar
- (d) Miscellaneous Items
- (e) Procedures when GM is out of office: Moore carries his cell phone at all times and has remote access via computer. His residence is 20 minutes from the office. The Executive Assistant to the GM can also reach the GM. There had not been any issues so far.
- (f) Draft IGA & Urban Services Agreement – SWA & CRW: The first draft had been completed. The proposed agreement does not address issues related to annexations – but focuses on water provision only. The intent is to forward it to the City of Happy Valley.

**MOTION:** Patricia Holloway moved that the Board approve forwarding the draft IGA to the City of Happy Valley for further discussion. Grafton Sterling seconded the motion.

Commissioner Sterling opinion was it should also be forwarded to the City of Oregon City and South Fork Water Board.

On Page 1, under section, "*Services Provided*", the suggestion was to insert 'respectively' in the second sentence to read "...either Sunrise or CRW, *respectively*". On the last page, in comparing the sections, "Dispute Resolution and "Attorney Fees" there seem to be a conflict how legal, court and other fees would be charged in the event of a dispute.

**MOTION PASSED UNANIMOUSLY**

- (g) Clackamas River Basic Council (CRBC) Lease: At the last Board meeting, the CRW Board had made it clear the final, proposed lease was a "take it or leave it" agreement. The CRBC has elected to look elsewhere.

Commissioner Sterling asked if the \$10-12K improvements made in anticipation of the CRBC moving in were still required or if this money would be returned to ratepayers. Moore said the improvements made were necessary anyway, i.e., security, carpeting and electrical. The amount had already been included in the capital improvement budget. This plan was just moved up due to the CRBC.

Commissioner Kehoe said the Board had approved the General Manager to move ahead with negotiations and work together in order to occupy the space by the CRBC deadline. Her understanding was the CRBC wanted changes made to the proposed agreement that included approval for renovations for the existing office space up to \$10K without CRW's permission, 24-hour notice from CRW prior to accessing their portion of the building – which wasn't possible due to CRW staff accessing the space on a daily basis - and changes to the dispute resolution process. Unbeknownst to CRW, CRBC had, at the same time, also discussed a lease agreement with the Campfire Girls facility on Glen Echo Drive. It was found to be more cost effective due to IT savings. They were also worried about working with certain CRW board members.

Commissioner Kemper, who served on the CRBC Board, recognized the negotiations were performed with good intentions and that expenditures were made in anticipation of the CRBC moving into the space. As far as she knew they were still located at the Damascus site.

Moore said the Board directed him to do everything possible to meet the CRBC deadline.

- (h) Clackamas River Water Providers: The meeting agenda and brief summary of the SFWB Intake Response were provided.
- (i) FY 2011 Audit: A copy will be mailed to the Board. Moss Adams was in attendance to present the report.
- (j) Hazardous Inventory List: The agreement was not yet ready or executed due to the contract language. An inventory list was provided of chemicals that would be disposed.

In response to Commissioner Holloway, Moore said CRW had 'cradle to grave' responsibilities for the disposal of chemicals. The language issues were the enforceability provision being in the State of Massachusetts instead of Clackamas County or the State of Oregon and hold harmless provisions. It is CRW's responsibility to know where the inventory is disposed. If these issues aren't resolved another vendor will be chosen.

- (k) Safety & Security Grant: CRW received the full amount of the Safety and Security Grant from SDAO for the elevator/lift project at the Water Treatment Plant.
- (l) Beaver Creek Telephone Cooperative (BTC): At the direction of the Board, Moore had discussions with BTC President, Paul Hauer. Exhibits 4h and 4i showed the property area being discussed - CRW's two tanks, the existing waterlines and the proposed, irrevocable easements to service the tanks. The vacant area behind the tanks and the BTC building was basically a drainage field. The dotted line shows the irrevocable easements required to service the two tanks and utilities. Moore was asking the Board for further direction and whether this proposal was acceptable.

Commissioner Holloway understood the last issue on the table regarding BCT was whether they were in violation of their lease option agreement due to building structural improvements to the site and if the Board wanted to exercise its option to decline property ownership to BCT at the end of the 20-year lease period in 2017. She had documents related to the BCT property and would be reluctant to continue discussion unless this underlying issue of the potential breach of contract had been addressed. The present agreement allowed CRW to build additional tanks on this property. If legal counsel did not have all the documents regarding BCT, she would be happy to pass on the documents in her possession that made the issue clear.

Moore, in effort to be cautious since much of this topic was part of executive session, said his recollection was the Board was asked whether legal counsel should continue with litigation. The Board suggested he meet with Mr. Hauer to work together and try and resolve the situation in lieu of continued litigation and additional expense. Moore confirmed the intent was to retain ownership of the tanks and have permanent easements.

Commissioner Kemper responded if Commissioner Holloway had documents that would add clarity or significance to the BCT discussion; she had an obligation to get it to legal counsel.

From prior discussion, Commissioner Kehoe understood breach of contract litigation was costly and due to the interpretation of the existing contract CRW's litigation success may not be certain. She wanted to see a draft agreement for legal counsel and the Board to review.

Commissioner Cardwell suggested general manager discussions may have gone as far as they can, and since the Board may have forgotten the specifics of prior discussion, any further clarification could be addressed in Executive Session.

**MOTION:** Kami Kehoe moved that the General Manager continue negotiations with Paul Hauer with BCT and attempt to provide a draft agreement to present to the respective Boards. Grafton Sterling seconded the motion.

**MOTION:** Patricia Holloway moved to table the motion until the documents in her possession related to BCT are provided to legal counsel for review and determination of relevance. Barbara Kemper seconded the motion.

**MOTION to TABLE CARRIED 3-2-0**

**Ayes:** Holloway, Kemper, Sterling  
**Nays:** Cardwell, Kehoe  
**Abstentions:** None

**MOTION CARRIED 3-2-0**

**Ayes:** Holloway, Kemper, Sterling  
**Nays:** Cardwell, Kehoe  
**Abstentions:** None

**MOTION:** Barbara Kemper moved to reconsider the motion to table. Kami Kehoe seconded the motion.

**MOTION TO RECONSIDER CARRIES 4-1-0:**

**Ayes:** Cardwell, Kehoe, Kemper, Sterling  
**Nays:** Holloway  
**Abstentions:** None

**MOTION to TABLE FAILS 4-1-0**

**Ayes:** Holloway  
**Nays:** Cardwell, Kehoe, Kemper, Sterling  
**Abstentions:** None

**ORIGINAL MOTION CARRIES 4-1-0**

**Ayes:** Cardwell, Kehoe, Kemper, Sterling  
**Nays:** Holloway  
**Abstentions:** None

(m) Employee Grievance: CRW had received a grievance from an employee against two of its Board members. Upon the review and advice of legal counsel, the grievance was denied on the basis that the employer consisted of the full Board and not individual Commissioners. The employee and the Union had been formally advised of this position and there had been no response to date.

In response to Board discussion, legal counsel Olsen said two separate things were being discussed: 1) a specific complaint was made that counsel determined did not have legal standing; and 2) whether the nature of the allegation or any thing else could give further rise to potential liability or risk to the Board and whether there

are policies in place to minimize this risk. He advised the Board not to present specific information on this grievance.

Commissioner Kemper believed the Board had taken some action to limit contact between staff and Board members.

Legal Counsel Olsen said there were many examples from other agencies that used a "15-minute rule" to limit staff contact with Board members. Employee rights were clearly defined and these policies are addressed by the General Manager. As for the Board, it was up to the Board to set policies that govern its actions.

A suggestion was to have the insurance carrier provide specific guidance and clarification on minimizing the Board's risk exposure at a future Board meeting.

### **Agenda Item 3.0: Financial Report**

- (a) Audit Update: Presentation by Moss Adams and Distribution of the Comprehensive Annual Financial Report (CAFR) - This was the second year Moss Adams' audited CRW financials.

CRW had again received a clean audit opinion. According to the Oregon Minimum Standards, there were no findings or issues of non-compliance; the District received a clean report. CRW had addressed the audit findings from last year and all documents requested had been quickly provided by staff.

Examples of non-compliance could be: expenditures over appropriations (the most common); contracts that did not follow fair, competitive bidding; the lack of having insurance in place; or an appropriate accounting system with reasonable internal controls.

Auditor's responsibilities were to conduct the audit according to General Accepted Accounting Standards (GAAS) and report the audit to the Board. This included expressing an opinion about whether the financial statements prepared by management and with Board oversight are fairly presented in all material respects and in conformance with GAAP. The auditors had expanded their testing in certain areas as discussed with the Board. There were no significant, new accounting policies or changes to existing policies.

- *Accounting estimates:* Estimates included in the audit were items like unbilled revenue, allowance for doubtful accounts and recovery periods for the cost of the plant.
- *Unanticipated Audit Adjustments:* There were no posted or passed adjustments.
- *Disagreements with Management:* There were no disagreements with management
- *Consultation with Other Accountants:* There was no consultation with other accountants (opinion shopping) or difficulties encountered in performing the audit.
- *Material Weaknesses:* There was no material weaknesses - meaning there were no material adjustments consequential to the financial statements.
- *Significant Control Deficiency:* There were no significant control deficiencies.

There were no significant audit findings this year: there were opportunities to strengthen internal controls and operating efficiency:

- Overhead rates have not been evaluated since 1990's. The recommendation was to perform an evaluation to determine their reasonableness at least annually.
- The Operations department does not sign off on the time and equipment reports as evidence of their review. The recommendation was to have operations initial or sign off on these forms after review.
- A bank reconciliation was received in June but not reviewed until September due to items that required evaluation. The recommendation was to improve the timing for shortly after month end to review these reconciliations. Subsequent reconciliations were approved in a timely manner.

The following items were updated and addressed on the Prior Year Audit comments:

- *Construction-In-Progress*: Last year projects were not closed out timely resulting in construction-in-progress being overstated. For FY 2011, there were no projects noted that were inappropriately held open.
- *Indirect Cost Allocation Plan*: OMB Circular A-87 requires a cost allocation plan to be implemented for all Federal Awards. In FY 2010, the District had received over \$500,000 in federal award funds and did not have this plan in place. For FY 2011, since less than \$500,000 was received so no A-133 audit was performed and it was not applicable.
- *Data Collection Form and Reporting*: As part of receiving federal funds, filing of a data collection form with the federal government was required for federal funds received and expended. The FY 2009 had not been submitted. FY 2009 and FY 2010 data collection forms were filed upon the completion of the FY 2010 audit. This had been resolved and was not applicable to FY 2011.
- *Reconciliation Documentation*: In FY 2010, reconciliation documentation was reviewed but initialed or signed-off and dated to indicate this review. This had been corrected for FY 2011.
- *Review over Manual Bills*: in FY 2010, the recommendation was to have an independent person from the Customer Service Specialist(s) review manual bills to ensure accuracy. A process had been put in place and was now resolved.
- *Policies and Procedures over Federal Funding*: In FY 2010, there was a lack of policy and procedures around federal funding. This has now been completed in FY 2011.
- *Expense Approval*: In FY 2010, there was one instance where a Commissioner had approved their expense request in open forum. In FY 2011, a manager reviewed the expense report and Commissioners abstain from voting on their own expenses. There were no further instances.
- *Temporary Employment*: In FY 2010, an instance of temporary employment was not well documented. The recommendation was to better document the purpose of temporary assignments to include pay rates, assignment duration and deliverables. In FY 2011, there were no issues found.

All deficiencies from the prior fiscal year had been resolved. The management letter was received today and would be forwarded to the Board.

- (b) *Discuss Budget Committee Membership*: There were three openings on the budget committee. The staff had advertised for these vacancies on the CRW website and included a notice on the December bills. The Board was encouraged to share this opportunity with their neighbors. A tentative first budget meeting was proposed for the first week of April with subsequent meetings as needed. The draft budget would be available before April 1<sup>st</sup>.
- (c) *Rate Analyst/Committee*: Two companies had responded and The FCS Group was selected to be CRW's rate analyst. The Rate Committee was filled with six members. Staff had begin to provide data to FCS in preparation for the first rate committee meeting in February and would incorporate any subsequent information. The proposal was to send a notice of the rate hearing in the February billing cycle with a rate hearing scheduled for a special meeting in March. Any approved rate changes would be effective with the June billing cycle. The contract would not exceed \$29,000.
- (d) *Accounts Receivable Aging*: The ending balance as of 12/31/2011 is \$26,203 less than the balance in December 2010. Billings for this same time last year were \$12,630 less compared to this year.
- (e) *Cash and Investment Position*: Interest earnings have not been posted for December. Collections on December billings were estimated at \$300,000.
- (f) *Budget to Actual*: As of November 30, 2011, CRW was 41.67% through the budget year. General Fund revenue was at 41.06% of budget or \$3,056,223; water revenue is 42.59% of budget or \$2,939,021. Based on history, this revenue amount should be at 45.21% or \$3,119,490. Revenue shortfall to projection was \$180,469. This shortfall was during low consumption. General Fund expenditures were at 36.99% of budget or \$361,898 under projection. CIP expenditures are 22.88% of budget at \$676,882.
- (g) *Gross Payroll and Accounts Paid Amounts*: Three payrolls in December; 26 payrolls per year. Customer refunds for overpayments = \$1,135 is an expense.

In past meetings, vote qualifications were being used to bring up topics not under discussion. There was a process in place for discussion of agenda items. Board policies supported Robert's Rules as a guideline only; they were not adopted.

**MOTION:** Kami Kehoe moved to suspend vote qualifications for the Board. Barbara Kemper seconded the motion.

**MOTION CARRIED 4-1-0**

**Ayes:** Cardwell, Kehoe, Kemper, Sterling  
**Nays:** Holloway  
**Abstentions:** None

**MOTION:** Mike Cardwell moved to acknowledge payroll in the gross amount of \$298,456.85 and acknowledge net accounts paid in the amount of \$385,545.90 for the month of December 2011. Barbara Kemper seconded the motion.

Jodi Cochran, the consultant working on District policies, would be asked to attend the Board meeting in March. Staff was using the outline provided by Ms. Cochran for policy completion. A copy could be provided to the Board. Two policies, the internal controls and investment policy were provided to the Board.

Commissioner Holloway would vote no because the Board does not receive adequate information to track the financials. She would like to see gross employee salary information; so far she had been refused. This was information that should be available to the public.

Moore said she had not been refused but had been offered this information for the applicable public record fees. She had asked for payroll information from 256 pay periods going back to 2007.

**MOTION CARRIED 3-2-0**

**Ayes:** Cardwell, Kehoe, Kemper  
**Nays:** Holloway, Sterling  
**Abstentions:** None

**Agenda Item 4.0: Consider Resolution 08-2012: Appoint the Budget Officer for the FY 2013 Budget**

**MOTION:** Mike Cardwell moved that the CRW Board adopt Resolution 08-2012 appointing Carol Bryck, Chief Financial Officer as the CRW Budget Officer for fiscal year 2012-2013. Kami Kehoe seconded the motion.

**MOTION CARRIED 4-1-0**

**Ayes:** Cardwell, Holloway, Kehoe, Kemper  
**Nays:** Sterling  
**Abstentions:** None

**Agenda Item 5.0: Acceptance of Emergency Contract for the Disposal of Hazardous Chemicals**

This item was removed from the agenda since the contract was not ready for presentation.

**Agenda Item 6.0 CRW Rules and Regulations: Exemption Request, Chapter 8 – New Water Service and Meters**

The property owner was requesting an exception to CRW rules and regulations indicating water service will be provided from pipes and mains...with frontage to such mains. Staff determined based on the property it will not have frontage to the main – a requirement for service. The property will be served by an access and utility easement. Prior to CRW issuing new service the property owner will be required to provide documentation of a recorded utility easement. Any fire protection requirements will be the responsibility of the property owner.

**MOTION:** Mike Cardwell moved that the Board approve an exception to the CRW Rules and Regulations, Section 8, New Water Services and Meters exempting the requirement for water service being provided to the property with frontage to such mains until such time the properties at T3S, R2E, Section 13, Tax Lots 500, 501, 502 and 01200, W.M. (Parcel 2), is rezoned for future division for development of the property. Kami Kehoe seconded the motion.

**MOTION PASSED UNANIMOUSLY**

**Agenda Item 7.0: Project Acceptance: Henrici-Glen Oak Transmission Main Replacement**

This project, located between Glen Oak and Henrici Road, was identified in the FY 2010-2011 budget. The project was awarded to Kodiak Construction for the bid amount of \$613,396.00 and was completed on schedule. The project was to install approximately 3400 feet of 16-inch and 12-inch ductile iron water main between the Glen Oak pump station and the Henrici tank. The change order amount was \$9,187.47 – a 1.5% increase - due to additional quantities required to avoid existing utilities and boulders. Final contract amount was \$622,594.47.

**MOTION:** Mike Cardwell moved that the Board approve the Notice of Acceptance for the Henrici-Glen Oak Transmission Main Replacement Project, CIP 04-0125, and establish the completion date as January 12, 2012 and authorize the Board President to sign the Notice of Acceptance. Barbara Kemper seconded the motion.

**MOTION PASSED UNANIMOUSLY**

**Agenda Item 8.0: Water Treatment Plant (WTP) Emergency Power Project: Approval of the PGE-DSG Agreement**

A draft of the PGE Dispatchable Standby Generation (DSG) agreement was provided in Exhibit A. The DSG program allowed owners of emergency power generator systems to partner with PGE for ongoing maintenance and operation of the generator system. Several surrounding entities participate in this program. CRW would install the 2.0 MW generator and provide electrical equipment/upgrades at the WTP to support the system.

Referencing the draft agreement, Page 10 summarized the components of the program. This was a renewable 10-year agreement with PGE. If CRW chose to pull out sooner there were associated costs because of PGE's upfront contribution amount indicated on Page 13, Exhibit 3. The maximum proposed funding from PGE was \$580,000 with an estimated benefit to CRW of \$200,000 (maximum funding less the estimated project cost). PGE contributed to the operations and maintenance outlined on Page 11.

CRW will maintain the ownership of the generator; other equipment to accommodate the operation of the generator is maintained by PGE. In an emergency, a defined procedure is followed and CRW receives power provided by the generator for as long as needed. Excess power is fed to the PGE grid. Non-emergency operation meant CRW is powered for 15 hours per year, but in reality operation is expensive and not cost-effective. PGE does perform monthly testing on the generator system for an estimated use of \$400.00 per year. This agreement was based on standard terms and conditions provided to other entities.

Public Comment – Scott Forrester, Citizen in Gresham

*Sent in by email - "I request that tonight's Agenda Item #8 be taken off the agenda. Please see Page 15 of the PGE-DSG agreement, Section 26 entitled "publicity." It is my opinion that this section would violate ORS Chapter 192-Oregon Public Records Law. I request that CRW's legal counsel be consulted for a written opinion on the matter and that this section be dropped in its entirety from the agreement."*

Moore had spoken to Mr. Forrester on the phone about his concern. There was two parts in Section 26 addressing his concern. The first part dealt with information released to the public – like press releases - CRW should inform the other party what was going to be published. *"Any written materials produced by either Party for release to third parties concerning this Agreement must be provided to the non-releasing Party in*

*advance of the release.*” Moore in addressing Mr. Forrester’s concern regarding the public records law suggested he take a look at Section 22, which read, *“This Agreement shall be construed in accordance with the laws of the State of Oregon and jurisdiction and venue for any action brought hereunder shall be the courts of the State or Oregon or the United States District Court for the District of Oregon.”* CRW could not contract away state law. This provision indicates if there is a conflict, state law would prevail. He did not believe Section 26 was in conflict. This was reviewed with legal counsel and he concurred with the interpretation.

Bjornstedt continued by saying CRW pays for any electricity used, whether in emergency or non-emergency situations at the applicable rate stated in the agreement on Page 3. The agreement had been reviewed by legal counsel and the insurance agent. Mr. Griffin suggested making some changes in several clauses in Exhibit 4 (subrogation, dispute resolution, liability insurance clauses) that represented CRW more accurately as a public, non-profit agency.

Due to these recommendations, Staff recommended the Board approve the agreement in concept subject to these revisions, with a final review by legal counsel.

In response to the timeframe for the project, the generator would not be up and running by year end. With the design phase, the lead time for materials and the electrical upgrades the project would require a number of months.

Referencing Page 14, Section 2.3(a), Commissioner Holloway since CRW’s insurance coverage was claim-based instead of occurrence-based, didn’t see how CRW could promise that *“claims-based insurance shall be carried for a period of three (3) years after the Agreement is terminated”* as indicated in the section.

By approving the agreement in concept tonight, the project would be placed in PGE’s queue which will help the project schedule.

Board consensus was to bring back the revised agreement for Board approval at the next meeting.

#### **Agenda Item 9.0: Commissioner Report and Reimbursements**

**MOTION:** Kami Kehoe moved to approve commissioner reimbursements in the amount of \$165.53 for Commissioner Kemper. Mike Cardwell seconded the motion.

#### **MOTION CARRIED 3-1-1**

**Ayes:** Cardwell, Holloway, Kehoe  
**Nays:** Sterling  
**Abstentions:** Kemper

**MOTION:** Kami Kehoe moved to move the February regular Board meeting to February 8, 2012. Barbara Kemper seconded the motion.

#### **MOTION PASSED UNANIMOUSLY**

**MOTION:** Kami Kehoe moved to approve commissioner reimbursements for attending the SDAO conference. Barbara Kemper seconded the motion.

In response to the question of pecuniary interest in approving this motion, legal counsel advised this reimbursement was part of the Board’s official duties and the law allows for a vote by quorum so there was no financial interest.

#### **MOTION PASSED UNANIMOUSLY**



Public Comment, Warren Mitchell

Mr. Mitchell questioned whether Commissioner Cardwell could tell an employee – Bob George – what to do (with regards to shortening his motions), inquired where legal counsel was tonight, and why he hadn't been selected for the rate committee.

The response was that legal counsel was on vacation and the Board had already approved the rate committee.

**MEETING ADJOURNED at 9:35 pm**