

MWSD

AGENDA COVER MEMO

AGENDA DATE: May 28, 2008
Memorandum Date: May 14, 2008

TO: BOARD OF DIRECTORS OF THE METROPOLITAN
WASTEWATER SERVICE DISTRICT

DEPARTMENT: OFFICE OF LEGAL COUNSEL AND COUNTY
ADMINISTRATION

PRESENTED BY: Dave Garnick, Budget & Planning Manager
H. Andrew Clark, Assistant County Counsel



AGENDA ITEM TITLE: DISCUSSION/ REGARDING THE FUTURE OF THE
METROPOLITAN WASTEWATER SERVICE DISTRICT.

I. MOTION
N/A

II. AGENDA ITEM SUMMARY

This agenda item is intended to foster discussion and eventual District Board direction regarding the future of the Metropolitan Wastewater Service District ("MWSD"). Broadly stated, the identified options are to continue with MWSD in its current form, to change the purpose of MWSD to suit a county need, or to dissolve MWSD. Underlying this discussion is the understanding that MWSD was formed as a vehicle for funding the development of regional wastewater facilities now being operated by the Metropolitan Wastewater Management Commission (MWMC). That purpose has been accomplished and bonds have been retired.

III. BACKGROUND/IMPLICATIONS OF ACTION

HISTORICAL BACKGROUND

The Lane County Metropolitan Wastewater Service District (MWSD) was formed by the Lane County Board of Commissioners on December 28, 1977, under Oregon Revised Statutes Chapter 451. The MWSD is a separate legal entity from Lane County and is funded through a separate budget. The Board of County Commissioners serves as the policy board (District Board) of the MWSD, and the Lane County Administrator serves as the budget officer. The MWSD contracted with the MWMC, an intergovernmental organization formed under ORS 190 by Lane County, the City of Eugene, and the City of Springfield, for design, construction, grants administration, operation and maintenance of the regional wastewater facility. The completed facility cost approximately \$105 million.

The MWSD received voter authorization on May 23, 1978, to sell \$29.5 million in general obligation bonds to finance the local share of the regional wastewater treatment construction program. Federal Environmental Protection Agency (EPA) grants provided

the balance of the funding. The grants have been administered directly by the MWMC and have not been a part of the county service district budget.

A seven-member policy board of the MWMC has, and continues, to establish design and construction priorities. Construction of the regional sewerage facility was phased-in over a 20-year period to accommodate the availability of federal grant funds appropriated under the Sewerage Works Construction Grants Program and distributed in Oregon in accordance with the Department of Environmental Quality Grant Priority List. Start-up of the regional facility took place on April 2, 1984.

Various projects have been completed over the years. These include the East Springfield Interceptor, treatment plant projects including the Pretreatment Process Building Upgrade, sludge thickening equipment, enclosing the Fillmore Pump Station, and increasing the space in the Operation Building. Biosolids Plastic Removal was incorporated into the Pretreatment Improvements project and an Air Drying Beds Rehabilitation Project were also completed. The design and construction of a laboratory expansion and remodel at the regional Water Pollution Control Facility was the first of a three to five year project to increase processing capacity at the Biosolids Management Facility (BMF) and the first of a two-year study to develop a Wet Weather Flow Management Plan, and improvements to the Dredge Movement System at the BMF. Work was also completed on a mechanical dewatering facility at the Eugene-Springfield Biosolids Management Facility to increase the amount of liquid biosolids that could be dried and land applied on an annual basis. Two other aspects of the Biosolids management strategy also were completed:

- 1) A feasibility and cost study of transitioning from "Class B" to "Class A" biosolids; and
- 2) A land acquisition analysis to determine whether there are suitable lands in the vicinity of the BMF to acquire for a dedicated biosolids land application site, using poplar plantations.

The Biosolids project essentially used the remaining county service district bond proceeds in 2000. An additional payment of \$130,000 was made to the MWMC in FY 04-05 from cash carryover and \$24,000 was made from all prior years property taxes received through FY 06-07.

When the final debt service payment was made in September 2002, the service district fulfilled its original purpose. The future needs of the wastewater system will continue to be discussed at MWMC, which now has the ability to seek its own financing.

CURRENT STATUS

The Wastewater Bond Retirement fund was closed out in 2003 and the remaining funds were transferred into the district's Wastewater Administration and Construction fund. The latter fund can be maintained indefinitely to receive all prior year taxes and minimal interest earnings. When the balance is sufficient in subsequent years, a final payment

can be made to the MWMC if the Service District Budget Committee and District Board so direct.

The current service district has no permanent tax base and its boundary is co-terminus with the Eugene and Springfield city limits. Since the district was originally formed for a specific purpose, it will take a vote of the affected citizens in order to change its purpose.

Under the Lane County Boundary Commission, the MWSD boundary was kept coterminous with the city limits of Eugene and Springfield through joint annexation orders; annexation of property into one of the cities also meant annexation of the property into MWSD. With the abolition of the Boundary Commission, the question of whether annexation into MWSD remains necessary has arisen given that MWSD has fulfilled its purpose as a funding mechanism and the provision of sewer services is solely the responsibility of MWMC.

FUTURE POSSIBILITIES

As to MWSD's future, the District Board has several options to consider. These include:

- Maintaining the district as is, indefinitely under the assumption that there will be a future need for the district in line with its specific purpose.
- Modifying the district purpose (probably requires serial dissolution and formation proceedings) to meet (a) a city service need, (b) a metro service need, or (c) a county service need.
- Dissolving the district.

Maintain the Current District

The district is considered active if the requirements of local budget law are followed on an annual basis and the required reports are filed on a timely basis with either the Secretary of State or the Department of Revenue as required by ORS.294.555. This process is currently being followed based on prior District Board direction. This process can continue indefinitely until the District Board takes action to either inactivate and dissolve the district or pursue other options.

Maintain the Current District Boundary but Modify the Purpose to Meet a City, a Metropolitan, or County Service Need

Chapter 198 of Oregon Revised Statutes addresses Special Districts. ORS 198.010, 198.180, 198.210, 198.310, 198.520, and 198.710 define "district" to include any one of the following:

- Metropolitan service district
- County Service district
- Library or park and recreation district
- Transportation, mass transit, special road, road assessment, or highway lighting district
- Health, sanitary, sanitary authority, water authority, joint water and sanitary authority, or vector control district

- Rural fire protection
- 9-1-1 communications
- Domestic water supply district
- Irrigation, drainage, water improvement, water control, or soil and water conservation district
- Utility, geothermal heating, or weather modification district
- A port
- Weed control district
- Cemetery maintenance district

The current district is co-terminus with the cities of Eugene and Springfield. This geographical area is therefore more conducive to meeting city or metropolitan purposes since it includes only limited areas within the Urban Growth Boundary (UGB). If the district is to maintain its current boundary, but change its purpose, the following would likely be necessary:

- Reaching a determination that the current district does not meet the needs for a county service district
- Discussing potential interests with each of the two cities
- Reaching consensus that either one or both cities would like to continue to have a service district, albeit with a different purpose, or perhaps even two separate districts co-terminus with existing city boundaries
- The cities would need to take a vote of the citizens within the proposed district boundaries.

In light of the Legislature passing HB 3337 - An Act relating to land use for urban growth boundary – and the current intergovernmental dynamics around planning, it may be some time before a productive discussion can take place under this option.

Modify the District Boundary and Purpose to Meet a County Service Need

In order for the current district to meet a county service need, the boundaries would likely have to be modified and the district's purpose would have to be changed. Prior to taking any action, the Board would need to hold a policy level discussion about the County's long-term needs and interests.

Chapter 451 – County Service Facilities – describes the facilities and services counties may provide by service district. These include:

- Sewage works
- Drainage works
- Street lighting works
- Public parks and recreation facilities
- Diking and flood control works
- Water supply works and services
- Solid waste disposal
- Public transportation
- Agricultural educational extension services
- Library services

- Roads
- Emergency communications, including 9-1-1 emergency reporting system
- Law enforcement services
- Human services
- Cemetery maintenance
- Animal control

The following should be taken into consideration during the discussion surrounding the formation of a county service district:

- If any part of the territory subject to a petition for formation or annexation is within a city, the petition would need to be accompanied by a certified copy of a resolution of the governing body of the city approving the petition
- The City of Eugene has so far turned down the County's request for a law enforcement district and did not support the Lane County Extension Service seeking their own service district
- Since the current service district has no permanent tax base, a new permanent rate will lock the tax rate in forever, so any decision must be carefully thought out
- The Oregon Legislature approved overlapping service districts as long as they each have different purposes
- Is it politically wise to solve smaller issues if we haven't already solved the Lane County structural deficit?

Dissolve the Current District

It appears that MWSD may be dissolved without any adverse consequences to regional sewer services as those services are provided by MWMC. Dissolution of county service districts is governed by ORS 198.920 - 198.955. Unlike most special districts, there does not appear to be a quick and easy way to dissolve, such as for inactive districts under ORS 198.335 -198.365. Rather, a district wide election will be necessary under ORS 198.935. Other details that will need to be attended to include:

- Preparation of findings regarding financial situation of the district including indebtedness, uncollected charges, taxes and assessments, property held by the district, and the estimated cost of dissolution.
- Preparation of a proposed plan of dissolution and liquidation that is filed with the county clerk along with the above findings.
- Enter an order by the district board calling for an election w/in 10 days after filing plan on the question of dissolving the district.
- In order to reduce election costs, a November election is most practical, which would require the findings and plan of dissolution to be filed after mid-July and before September 4.

Costs and Benefits

There are cost and benefits to each option outlined above.

Maintaining MWSD as currently comprised will not likely be expensive to the county. The county provides minimal administrative and legal support to MWSD. The primary financial cost would appear to be budget administration. However, as noted above, there does not appear to be an important purpose to MWSD's existence in its current form. Since MWSD is not providing sewer services, little if anything is gained by requiring continued annexations into the district. Rather, such annexations will increase the costs to property owners/petitioners and to the public entity (city or county) required to administer the annexation request. Conceivably, MWSD could issue an order that it will no longer require the district boundary to be kept coterminous with the city boundaries of Eugene and Springfield. Such an approach might be a convenient temporary measure to avoid unnecessary time and expense.

The other options discussed above all propose organic changes to the district; either through modifying the purpose of MWSD (with or without a change to its boundary) or by dissolving the district. Each proposal has the appeal of directly addressing the concerns regarding maintaining a county service district that serves no purpose. Unfortunately, these options would all require an election to be held and would entail fairly significant costs. Election costs have been conservatively, but roughly, estimated to cost \$30,000 - \$60,000. Additionally, the county application fee may be as high as \$24,600 for a district dissolution. Current district funding totals \$25,000. Any cost incurred beyond the districts ability to pay would fall to the county's General Fund. The general uncertainty of election outcomes also should be considered.

If the District Board favors dissolution of MWSD, but is currently disinclined to incur the expense of an election, the District Board could maintain MWSD in the short term while it requests a legislative change to the district dissolution statutes that would allow an expedited dissolution upon a finding that the district serves no useful purpose and/or dissolution is in the public benefit. Of course, legislative change is not guaranteed, but it may be worth investigating with AOC.

Attachments

Order forming MWSD, March 15, 1978

Letter from Angel Jones to Jeff Spartz, January 14, 2008.

MAR 16 1978

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

O R D E R N O. 78-3-15-1)	IN THE MATTER OF FORMATION OF THE LANE COUNTY METROPOLITAN WASTEWATER SERVICE DISTRICT
)	
)	
)	

D.A. PENFOLD, Director of
General Services of Lane County
Blaise Berckel
DEPUTY

IT APPEARING that the Lane County Board of Commissioners initiated, by Order No. 77-12-28-1, formation of the Lane County Metropolitan Wastewater Service District for the purpose of providing sewage works facilities necessary for the wastewater disposal and treatment needs of the Eugene-Springfield metropolitan area in conformance with ORS 198.835, ORS 199,465 and ORS Ch 451, and

IT FURTHER APPEARING that the Lane County Local Government Boundary Commission, by Final Order 495, approved the formation of the Lane County Metropolitan Wastewater Service District with initial boundaries coterminous with the corporate limits of the cities of Eugene and Springfield, and

IT FURTHER APPEARING that the Lane County Board of Commissioners accepted the Lane County Local Government Boundary Commission's Final Order 495 by Order No. 78-2-7-6 as amended by Order No. 78-2-28-1, and

IT FURTHER APPEARING that no written requests for an election have been filed pursuant to ORS 198.810(2), now, therefore, it is hereby

ORDERED that the county service district is hereby created to be known as the Lane County Metropolitan Wastewater Service District to provide sewage works, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage within boundaries coterminous with the corporate boundaries of the cities of Eugene and Springfield, as shown by Exhibit "A" attached hereto and incorporated herein.

Dated this 15th day of March, 1978.

Gerald H. Rust, Jr.

Chairman, Lane County Board of
Commissioners

In the Matter of Formation of the Lane County Metropolitan Wastewater Service District

APPROVED AS TO FORM
DATE <u>3/14/78</u> Lane County
<i>Larry Shaw</i>
OFFICE OF LEGAL COUNSEL



City Manager's Office

January 14, 2008

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Dear Jeff:

This memo responds to a December 4, 2007 e-mail from Bill Van Vactor addressed to Springfield City Manager Gino Grimaldi and me. That e-mail proposed an intergovernmental agreement (IGA) under which Lane County would transfer to the City of Eugene its authority to approve annexations to the Lane County Wastewater Service District (the "District"). For your reference, a copy of the e-mail and a copy of the County's draft agreement are attached.

The problem Mr. Van Vactor identified is that, with the abolition of the Lane County Boundary Commission, a property owner who applies to the City of Eugene to annex into the City limits must also apply to the County to annex to the District. If that is the case, we agree that some form of streamlining would be beneficial, and question the requirement of District annexations. We are motivated, in part, by a desire to preserve a recent City Council policy decision adopting code provisions that allow some City annexation applications to be considered without a public hearing. As Mr. Van Vactor points out, the state laws require that all district annexations be considered at a public hearing; therefore, if the City were to process District annexations concurrent with City annexations, the new code provisions would have to be ignored.

In an effort to avoid this outcome, we request that you provide more information about the nature of the District. We understand that the District was specifically formed as a financing tool, and that all outstanding bonds have been completely repaid. We agree that, pursuant to the Metro Plan, a property that is annexed to the City must be served by the Metropolitan Wastewater Management Commission (MWMC); however, we are not aware of any requirement that property be annexed to the District in order to obtain MWMC's services.

We would like to follow-up on Mr. Van Vactor's suggestion that we "evaluate where we are on dissolution of the [District]." Considering the District's lack of indebtedness, we question its present purpose, and would be interested in knowing more about the implications of, and process for, its dissolution.

I believe we all share a common goal of finding a solution that meets each jurisdiction's needs, and that results in a reasonable solution for future applicants. We are optimistic that the questions we have raised can bring about this result, and look forward to your response and continued collaboration on this matter.

Sincerely,

Angel Jones
City Manager Pro Tem