

SOUTH FORK WATER BOARD
MINUTES OF BOARD MEETING
March 12, 2009

Board Members Present: Patti Galle, West Linn Mayor, Chair
Alice Norris, Oregon City Mayor, Vice-Chair
Jody Carson, West Linn Councilor
Daphne Wuest, Oregon City Commissioner
Scott Burgess, West Linn Councilor
Rocky Smith, Oregon City Commissioner

Board Members Absent: None

Staff Present: John Collins, SFWB General Manager

Others Present: Colm Moore, Attorney, Schroeder Law Offices
Alice Richmond, West Linn Resident
Janelle Sisson, Gladstone Resident

General Board Meeting

(1) Call to Order

Vice-Chair Galle called the meeting of the South Fork Water Board to order at 6:07 p.m.

(2) Public Comments—There were none.

(3) Consent Agenda - Approval of minutes of the February 12, 2009 Board Meeting.

Board Member Smith noted that he was again mistakenly listed as being from West Linn rather than Oregon City.

Board Member Burgess moved to approve the February 12, 2009 meeting minutes as corrected. **Board Member Wuest** seconded the motion, which passed unanimously.

(4) Resolution 09-01 Public Records Policy for South Fork Water Board

John Collins, SFWB General Manager, explained that the SFWB had always deferred to the City of Oregon City's public records policy but noted that during the last 12 years, there had been very few public record requests.

- Oregon City had advised that, while it was legal for South Fork to use the City's public records policy, it would be better for the Board to adopt its own policy.
- Oregon City's policy was modified for South Fork because the City had handled most information requests for SFWB previously. The modified policy was streamlined specific to South Fork and provided for similar fees.

Colm Moore, Attorney, Schroeder Law Offices added that the Attorney General's manual recommended certain items be included to preclude questions as far as a non-standard requests and that generally public record requests were based on actual costs. The proposed public records policy clarified those items.

Mr. Collins clarified that when another agency was required to fill an information request for SFWB, that agency, namely the City of Oregon City, typically informed him what would be

charged. The proposed SFWB charges were on a par with the City's, so that would be part of his estimate to the requesting party.

- Other fees needed to compensate for personnel time, such as his or Ms. Brown's for example, would be included within the estimated fees. Oregon City had been required to provide an estimate of fees so if other charges applied, he expected to receive an invoice for such.

Board Member Wuest noted that Mr. Moore had added 7 (a), (b), and (c) as additional charges, and commented that the City of Oregon City's public records needed to be updated regarding attorney's fees being charged for records requests.

Mr. Moore replied that probably could be done anyway even though it was included on South Fork's policy, just to keep the question from being asked.

Mr. Collins noted that if someone wanted copies of public contract drawings post-construction, an additional fee would have to be charged to those manually copies.

Board Member Wuest wanted to ensure the costs were covered because it could be quite an extensive process with an upset party.

Chair Galle called for public comment.

Janelle Sisson stated she had made several public records requests of several entities in the County and was not new to the process. This policy was comparatively simpler than others and workable for the public, but she requested clarification on three items.

- She confirmed the required public request form would be available online.
- She noted "#7. Fees for records requests" showed the Research Fee as "Staff hourly wage plus benefits, first half hour no charge (varies)," which had come directly from Oregon City's policy. She preferred a minimum charge because 'varies' told her nothing.
- She requested a definition of 'non-standard records' that was stated in Item 7(a).

Mr. Collins explained that 'varies' meant the fee depended on the pay grade of the researcher and would be clearly defined in an estimate of services. If research required longer than ½ hour, that time would clearly be included in the estimate.

Board Member Burgess suggested moving the parentheses to enclose 'varies' rather 'Staff hourly wage + benefits, first ½ hour no charge' for clarification.

Board Member Carson suggested changing the language to 'varies as defined by the estimate' since an estimate would be provided for every request.

Board Member Burgess understood the estimate would be according to the cost, but the public comment concerned 'varies' for the research fee under records requests as if the charge might be discretionary. He clarified the variance regarded who was actually doing the work; therefore which per hour fee would be used for the estimate, the General Manager's salary versus another worker's pay rate.

- Moving the parentheses so that ‘Staff hourly wage + benefits, first 1/2 no charge’ would refer to ‘varies’ as opposed to ‘research fee’ because the research fee would vary according to the pay rate of the staff member doing the research, in addition to the cost of copies, audio duplication, etc.
- He also suggested that records request ‘must be made in writing using the South Fork public records request form’ for clarification, not just sending in the form (Item 1).

Board Member Carson suggested providing an example of ‘non-standard records’ to clarify the definition.

Mr. Collins explained that non-standard records were blue prints or other items that would not fit in a copy machine. He agreed such examples could be added to the policy language.

Board Member Burgess moved to approve Resolution 09-01 Public Records Policy for South Fork Water Board with the suggested amendments. Board Member Carson seconded the motion, which passed unanimously, 5 to 0.

The order of the agenda was changed. The South Fork Water Board meeting closed to convene its Executive Session.

(9) EXECUTIVE SESSION

- (A) To consider information or records that are exempt by law from public inspection pursuant to ORS 192.660(2)(f).
- (B) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed pursuant to ORS 192.660(2)(h).

Chair Galle reopened the regular meeting of the South Fork Water Board.

(5) Resolution 09-02 Adopting the Memorandum of Agreement between the SFWB and SFWB Employees Effective July 1, 2009 and ending June 30, 2012

John Collins stated the Board had discussed the contract last month in Executive Session and most of the Board’s suggestions had been incorporated at his discretion. He requested the Board move forward with the resolution adopting the three-year SFWB employment agreement.

Board Member Burgess moved to approve Resolution 09-02 Adopting the Memorandum of Agreement between the SFWB and SFWB Employees Effective July 1, 2009 and ending June 30, 2012, and Board Member Carson seconded the motion.

Board Member Carson quoted SECTION 1, APPOINTMENT on Page 3 of 22, “All appointments to vacancies shall be made on the basis of merit, qualification, fitness as determined by the South Fork Water Board” and questioned whether the Board made the hiring decisions.

Mr. Collins corrected the text to read, “...as determined by the ~~South Fork Water Board~~ **General Manager**.”

Chair Galle understood the sentence to mean that those standards were developed by the Board.

Board Member Burgess explained he had taken ‘SFWB’ on Page 1 of 22 of the agreement as the organization, and not the Board for the organization, which was always a problem with the organization’s name. The Board was actually the Board for the South Fork Water Board and Mr. Collins was the manager of the South Fork Water Board organization. He agreed that Board Member Carson’s clarification was a good one.

Board Member Carson amended the last sentence in SECTION 1.A(3) on page 3 of 22 to state, “No question in any test or in any application form of by the appointing power shall be purposely framed to illegally attempt to elicit information concerning ~~sex~~ **gender identity**, marital status, **sexual orientation**, disability, age, race, color, ancestry, national origin, or political or religious affiliation for the purpose of illegal discrimination.”

The motion passed as amended, 5 to 0.

(6) Business from the Manager

John Collins distributed packets including items for discussion and action.

1) Settlement Agreement/Authorization for Joint Legal Defense/Protest Removal

John Collins stated a minor modification necessitated that the previously approved agreement return to the Board for approval.

Mr. Moore explained that a two-word change was proposed by the attorney for the North Clackamas County Water Commission, Sunrise, Lake Oswego, and Tigard to clarify that the agreement would not give SFWB the opportunity to raise an issue in the future if the Oregon Water Resources Department (OWRD) was enforcing against those other entities, but not SFWB.

- Essentially, if the OWRD was enforcing extension conditions against, for example, Lake Oswego, the SFWB would not be able to raise an issue on that because OWRD was not enforcing against SFWB. It was a minor clarification, and there was no problem with the change in language because that had been the intent.
- He quoted the proposed change on page 3 of 4 of the settlement agreement under Item 1(b) as follows: “OWRD agrees that by with this withdrawing the issue stated in Paragraph A.3 above, SFWB does not waive and specifically reserves its right to challenge enforcement of the extension conditions **against SFWB**...”; “**against SFWB**” was also added to Item 1(c) and those were the only two changes.
- He confirmed that if enforcement occurred against the other entities, they could find no detrimental effects or adverse impacts to SFWB. The change was not big, but the clarification made OWRD feel good.

Board Member Burgess wanted to verify how the change related to rest of the agreement because not all the pages of the agreement were available.

The Board confirmed that two pages were missing from the agreement. Mr. Collins distributed the missing copies of pages 2 and 4.

Board Member Burgess noted that the agenda showed two items separated with a slash and verified a motion would only regard the four pages of the settlement agreement under discussion.

Board Member Carson moved to approve the amended settlement agreement with the WRD as presented. Board Member Wuest seconded the motion, which passed unanimously.

John Collins reported he had met with fellow managers of the Clackamas River Water Group and they had interviewed an attorney, Cliff Balford, to jointly represent them in defense for their water rights. A copy of the draft Joint Defense Agreement was provided to the Board.

- He asked the Board to consider directing the General Manager to have the agreement reviewed by South Fork's attorney for their approval and authorizing the General Manager to enter into a professional services contract to proceed with the Joint Defense Agreement and jointly work with the other parties for their water rights.
- He confirmed this was the first time the Board had seen the defense agreement. He assured questions could be addressed after South Fork's attorney reviewed the agreement. Board Members could email any concerns to him by Monday, March 16, 2009 and if he could not address the concerns, the defense agreement could always be brought back to the Board.
- The urgency was due to the attorney needing to have records in hand to prepare for the April 16, 2009 hearing. He understood he was springing this on the Board, but hoped they would provide the needed direction since South Fork's attorney would have to review and approve it in their best interest as well.
- He hoped Ms. Schroeder's office would have comments to him by Tuesday afternoon.

Board Member Burgess clarified that the agreement would return to the Board only if legal counsel had a problem or if a major issue was raised by a Board Member

Board Member Burgess moved to approve the Joint Defense Agreement for Water Rights subject to review by SFWB legal counsel and if any major issue was raised by a Board Member, was required the agreement to return before the Board. Board Member Carson seconded, which passed unanimously.

Board Member Burgess moved to authorize the General Manager to negotiate a professional services contract with an attorney to represent SFWB and other parties under the Joint Defense Agreement for Water Rights. Board Member Carson seconded the motion.

Board Member Wuest asked if the Board would weigh each other's comments regarding the defense agreement, which would constitute another meeting.

Board Member Burgess understood that if the Board raised an issue that was a serious flaw or needed Board action, Mr. Collins would bring the agreement back to the Board.

Mr. Collins added that a special meeting might be needed to accommodate the April hearing date, but presumed they would be in good shape because they were emulating a previous joint defense agreement and the proposed agreement had been approved by four different attorneys.

Board Member Burgess believed the ability to poll the Board or hold a conference call on the matter might be easier than holding a special meeting.

The motion passed unanimously.

2) Resolution 09-03 Drinking Water Infrastructure Improvement Funding Opportunity

This item was addressed following new Item 5) ACE Conference.

3) SFWB Fiscal Year 2007/08 Financial Audit

John Collins reported that SFWB was financially solvent, adding if the Board had any questions he could not answer, he would pass them on to David Wimmer, who would be present at next month's Budget Committee meeting.

- He reminded that the SFWB runs frugally and maintained contingencies, so balance sheets did not show copious amounts of cash, but they were doing very well financially.
- Being part of the Budget Committee, the Board would receive the budget by mail in the next couple weeks and a public budget meeting would be held at 6:00 p.m. on April 9, 2009, at which time he would give a budget address and discussion would follow.
- Hopefully, the Committee would approve the budget for the Board's final adoption on May 8, 2009.

4) General Manager participation in AWWA Fly-in

John Collins reminded the Board that he would be in Washington D.C. for four days, beginning March 23, 2009, representing the American Water Works Association and lobbying for economic stimulus (funding).

- Discussions with elected officials would involve the Chemical Security Act regarding chemicals that could be used at treatment plants in residential neighborhoods; (inaudible) water in the Willamette River and a variety of other issues about which he would provide a complete report upon his return.
- He noted he was taking some personal vacation time afterward and would return around April 5, 2009. The Board would be provided with contact information for his staff in case of any needs arose.

The following agenda item was added to Business from the Manager.

5) ACE Conference

John Collins noted the American Water Works Conference provided a three-day, 12-hour class for elected officials on water/wastewater for the utility structure side of (inaudible). The Board had previously discussed having another Board Member attend and since SFWB had the funds available, he recommended an additional Board Member attend.

Board Member Burgess moved to approve funds for another Board Member to attend the 2009 American Water Works Conference. Board Member Wuest seconded the motion, which passed unanimously.

2) Resolution 09-03 Drinking Water Infrastructure Improvement Funding Opportunity

Board Member Burgess moved to approve Resolution 09-03 South Fork Water Board, and Board Member Carson seconded the motion.

Board Member Burgess read Resolution 09-03 into the record as follows: “RESOLUTION 09-03 OF THE SOUTH FORK WATER BOARD. A RESOLUTION OF THE DIRECTORS OF THE SOUTH FORK WATER BOARD THAT UPON ACCEPTANCE OF THE LOAN FROM THE AMERICAN RECOVERY AND REINVESTMENT (ARRP) ACT OF 2009 (ECONOMIC STIMULUS) AS APPROPRIATED AND ADMINISTERED BY THE OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT (OECD) AND THE OREGON SAFE DRINKING WATER REVOLVING LOAN FUND (SRF), TO REVIEW AND POTENTIALLY INCREASE WATER RATES AS NECESSARY TO REPAY A POTENTIAL 20-YEAR LOAN THAT MAY BE OFFERED FROM THE AARP FUND FOR A RAW WATER REPLACEMENT PROJECT AND/OR IMPROVEMENTS OF A PORTION OF THE FINISH WATER PIPELINE OF THE SOUTH FORK WATER BOARD SUPPLY SYSTEM.”

John Collins explained this was positive, but certainly not a guarantee of a loan. South Fork’s filed letters of interest had been received and accepted for economic stimulus money and subsequently, South Fork was asked to apply for an official application for economic stimulus money.

- He understood that the funds would be 50% grant and 50% guaranteed loan, although that could change, which would allow SFWB to do a project at fifty cents on the dollar with a 3% interest rate.
 - * A 50% minimum grant was required, so it could be more grant and less loan, but he believed the federal government wanted to affect as many people and projects as possible.
 - * Under the design/build principle, SFWB engineering firm, CH2M Hill had reviewed the application and were very confident they could make the dates because they believed the pipe suppliers could deliver for either new piping from the river or to replace existing piping.

Mr. Collins added that to go forward with the application, which was a competitive process, the Board must state SFWB had enough monetary reserves to repay the loan if they decided to accept the funding.

- Another resolution and commitment, and possibly a visit of SFWB’s books by bond counsel, etc. would be needed, but the process was well worth the money in his opinion.
- The good thing was that South Fork had projects to put people to work within the required timeframes that had more green aspects, which was a criterion being considered. SFWB had lines that would save resources by replacing because (inaudible).

Board Member Carson: asked about the projects’ timeframes barring the stimulus money.

Mr. Collins responded that the next major capital improvement project would be the replacement of the line from the intake.

- He confirmed the Board would not know about the stimulus funding before the budget was finalized. South Fork had until April 15th to put it in—and talk about it in May.
- He would provide the full details and report back, but the Board had until the end of the year to have the engineering and public rights-of-way for the pipelines and another full year to move forward

with the project. The Board would be able to revisit and adjust the budget according to the specific terms of the grant and loan.

* The SFWB had plenty of reserves to make it through six months or (inaudible) bond payment, and even a bond payment would be at least six months to a year, so there was plenty of time for decisions, including financial ones.

The motion passed 5 to 0.

(7) Business from the Board

There was none.

(8) Adjourn Meeting

The March 12, 2009 meeting of the South Fork Water Board adjourned at 7:35 p.m.

(9) Executive Session –Adjourn regular meeting and convene Executive Session.

The Board held its Executive Session following Agenda Item 4 Resolution 09-01.

- (A) To consider information or records that are exempt by law from public inspection pursuant to ORS 192.660(2)(f).
- (B) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed pursuant to ORS 192.660(2)(h).

Respectfully Submitted,

By Paula Pinyerd, ABC Transcription Services, Inc.
for John Collins, SFWB General Manager