MINUTES

Eugene Water & Electric Board and Eugene City Council
McNutt Room—Eugene City Hall
777 Pearl Street—Eugene, Oregon

June 7, 2010
6 p.m.

COUNCILORS PRESENT:	Mike Clark, Betty Taylor, Jennifer Solomon, George Poling (via speakerphone), Alan Zelenka, Chris Pryor, George Brown.
COUNCILORS ABSENT:	Andrea Ortiz.
COMMISSIONERS PRESENT:	John Brown, President; Rich Cunningham, Vice President; Joann Ernst, Bob Cassidy, Ron Farmer, commissioners.

Council President Mike Clark convened the meeting of the Eugene City Council. He noted that Mayor Kitty Piercy was in Vancouver attending a rail summit. He welcomed Veneta Mayor Rick Ingram and Eugene Water & Electric Board (EWEB) General Manager Roger Gray.

President John Brown convened the meeting of the Eugene Water & Electric Board.

Everyone present introduced themselves.

A. WORK SESSION:
Eugene Water & Electric Board Water Rights

Mr. Farmer provided historical perspective. He stressed that water of the McKenzie River could conceivably be Eugene's most valuable asset; it created a solid base of renewable green energy and its water was among the highest quality in the world. He declared that the abundant high quality water was a part of the quality of life in Eugene and gave it an advantage. He felt that the value of the asset was often taken for granted by the City, but EWEB did not take it for granted.

Mr. Farmer stated that water rights were held by the board as a "sacred trust." He said water rights, when acquired, had to be used. He underscored that this had come to the forefront when the Oregon Legislature, in the past few years, had passed a body of law that directed that water rights should be used or they could be lost. He averred that preserving EWEB's last largest water right would keep this asset in the hands of Eugene citizens. He believed it would be shameful to allow it to be lost. He stressed that working toward the retention of this most valuable asset was the key motivating reason for pursuing a water contract with the City of Veneta.

Continuing, Mr. Farmer related that the Region 2050 process had called out the potential water issues the region would be facing in the future and it had underlined the real value of the water rights that EWEB had. He said most of the smaller outlying communities would face water shortages in the future; the only entities in the area with water access beyond their capacity need were Eugene and EWEB. He stated that this capacity would be priceless in the future. He declared that if some of that capacity could be harnessed for the benefit of the citizens of Eugene and its neighbors in Eugene, it would be an ethical win for everyone. He said selling surplus water on a wholesale

basis was not unusual or new in EWEB's history; EWEB had been doing it on an ongoing basis for nearly 70 years. He stated that EWEB currently sold water to water districts with customers outside the City of Eugene, including the Willamette Water Company, Santa Clara Water District, Glenwood, and the River Road Water District. EWEB had also sold to other water districts or utilities but had concluded the contracts for one reason or another. He noted that the concept of regional water supply was well-documented as a best practice in Portland, Salem, Hillsboro, and Medford.

Mr. Farmer said planning, as a regional strategy to protect EWEB's water rights, had been going on for a long time. He stated that the effort had been included as part of the Water Master Plan of 2004. The concept had been first introduced to the Mayor and key City staff in August, 2005. He underscored that it had been part of all of EWEB's interagency and regional planning discussions.

Mr. Farmer observed that planning was the "slave of funding." He related that in late 2009, the United States Department of Agriculture (USDA) under its Rural Development Department had contacted Veneta to indicate that significant funding was available and the department was interested in Veneta's desire to purchase water from EWEB. He said the USDA had encouraged the City of Veneta to submit an application by February 1, 2010, to help fund the project. Prior to the USDA funding opportunity, supplying regional water to Veneta was a hypothetical proposition. He stated that with funding, the theoretical had moved to a possible real timeline and EWEB had moved to expedite this opportunity. He stressed that EWEB understood well its responsibility to perfect and protect its water rights. He conveyed EWEB's spirit of excitement regarding this project and the hope that it would extend to its partnership at the City Council.

Brad Taylor, EWEB Senior Water Engineer, provided a Powerpoint presentation on the project and EWEB's current water rights. He underscored that it was in their mutual best interest to put permitted water to beneficial use in order to help to assure water availability for the citizens of Eugene in future years; there was surplus capacity available and it would spread the high fixed-cost over a wider base, reducing future rate increases. He explained that EWEB had three water rights on the McKenzie River, two of them in use and one not perfected. He said if water was needed the entities with the oldest unused water rights would be faced with the possible loss of the right. He stated that EWEB needed to show that it was using 25 percent of the water right to be certificated. He described the best management water use practices to which they were required to adhere.

Mr. Taylor stated that if the water right was not secured, the water would go back to the state and be available for others to request. He pointed out that water was still available from the McKenzie River for appropriation and within the last month there had been more applications for permits for those rights. He stressed that if EWEB gave up its right to access the river, EWEB would not get it back without having to move to the end of the line of requests. Losing the priority established in 1961, would have a huge impact on the way EWEB used its water into the future. He noted that with the loss of Hynix and the shifting of Glenwood water service from EWEB to the Springfield Utility Board (SUB), EWEB's water use had been recently reduced. He stated that there had been a great deal of interest from outside communities in EWEB as a water source and all of the satellite communities had identified EWEB as a potential water source within their water master plans, which were required by the state.

Mr. Taylor discussed the City of Veneta's water situation. They had determined that it did not make sense to pursue further groundwater sources. He said the findings for the project to extend water from EWEB had included that no significant impact would be created by the building of the pipeline.

Debra Smith, EWEB Director of Customer, Employee, and Community Relations, stated that the contract had been signed in April. She stated that the initial contract term was 40 years, which was consistent with the financing that Veneta was pursuing, with subsequent 10-year renewal options, and required that Veneta maintain its own emergency water supply, which it planned to do with its current well system. She related that as part of the legal requirements Veneta would either maintain its existing water management and conservation plan or formally adopt

EWEB's plan. She explained that the initial estimate was for 150 million gallons per year, with a minimum purchase quantity by month of eight million gallons. She said the maximum amount of water Veneta could take from EWEB, as outlined in the contract, was four million gallons per day (MGD). She stressed the importance of noting that EWEB would not be providing all of the water Veneta needed; it would continue to use its water sources. Ultimately, the amount of water Veneta would use represented less than one percent of EWEB's current water sales to retail customers. She said the point of sale would be at the Eugene city limits. She underscored that this was a surplus water contract; the supply to Veneta would be discontinued should there be a water shortage in Eugene.

Mr. Clark thanked Mr. Taylor and Ms. Smith. He appreciated the chance to learn more about the water rights.

Ms. Taylor asked who would get the water rights if EWEB lost them. Mr. Taylor reiterated that the rights would be lost and the next applicant in line would get them and EWEB, if it made a new request, would be placed at the back of the line.

In response to a follow-up question from Ms. Taylor, Mr. Taylor explained that EWEB had just expanded its Hayden Bridge Filtration Plant and increased its water capacity. He pointed out that the drop in water usage caused by the departure of Hynix and the service change to Glenwood represented a larger amount of water than Veneta would use.

Ms. Taylor asked if it would cost the City of Eugene to put the pipeline in to Veneta. Mr. Taylor reiterated that the responsibility for the pipeline fell solely to Veneta.

Ms. Taylor asked how this would minimize rate increases. Mr. Taylor responded that the water utility had high fixed costs and the increase in the amount of water sold would not increase those fixed costs, but it would spread those costs out over a greater number of customers.

Ms. Taylor asked what was meant by "junior users." Mr. Taylor explained that they were the users who had come after the point in time at which the 1961 water right had been granted. He said if for some reason the flows from the McKenzie were not sufficient to meet that in-stream water right, the junior users would be regulated off to ensure that the river had the flow in it for EWEB's water right.

Ms. Taylor asked where the "salmon [came] in." Mr. Taylor responded that the in-stream flow was the protected quantity of flow needed to protect aquatic species within the river.

Ms. Taylor asked if that would come ahead of junior users and Veneta. Mr. Taylor replied that, ultimately, it came ahead of EWEB.

Ms. Taylor observed that the contract had already been signed and asked what they were talking about. Intergovernmental Relations Manager Brenda Wilson replied that this was not just about the sale of water to Veneta, it was about certifying and protecting this particular water right and the Veneta contract would help to certify the first quarter of that.

Mr. G. Brown asked what was meant by a "reasonable timeframe" within which to perfect the water right. Mr. Taylor responded that the 2005 legislation had put sideboards on all future water rights, directing that they be perfected within 20 years. He said there were entities in Oregon that had received extensions out to 50 years.

In response to a follow-up question from Mr. G. Brown, Mr. Taylor explained that the state had told EWEB that if the water right was not perfected within 20 years, EWEB would be at a higher risk of losing it or of receiving additional conditions that would make development of that water right difficult.

Ms. Smith stated that for many years municipalities had unlimited water rights but now this had fallen under more scrutiny. She said part of Mr. Taylor's work was trying to figure out what the best path forward was given an uncertain set of rules.

Mr. G. Brown asked the total water use at this time. Mr. Taylor replied that average use on an annualized basis was approximately 27 to 30 MGD. He said EWEB had used up to 78 MGD in a day, which was the requirement for showing beneficial use, in other words demonstrating that EWEB needed to have access to that quantity of water.

Mr. Pryor appreciated the chance for the two government bodies to get together. He was impressed with the safeguards included in the agreement. He likened the contract to "killing two birds with one stone." He said they could provide the wholesale water contract and use it to perfect the water right. He observed that there was plenty of capacity for everyone.

Mr. Pryor said they had not had the conversation about the relationship between the Eugene City Council and the Eugene Water & Electric Board around wholesale water contracts. He did not want to micro-manage but he did want to be clear on the relationship between the two jurisdictions. He was encouraged by the conversation thus far.

Ms. Ortiz thanked EWEB for responding to the request to meet. She was a little concerned that they had not had a conversation about wholesale water contracts prior to the information about the Veneta contract being published in the newspaper. She remarked that this was about more than the City's relationship with EWEB, it was about its relationship with its intergovernmental partners. She suggested that the council also discuss this issue with the City of Veneta. She considered the McKenzie River to be a pearl and wanted to continue being good stewards of it.

Mr. Zelenka thanked the EWEB Board for joining the council in this discussion. He had been one of the councilors that had been disappointed that EWEB had not contacted the council earlier. He wished the board had come to the council before filing the petition. He asked how EWEB would perfect its water right without the City of Veneta's contract. Mr. Taylor replied that there was no other way to put water to beneficial use other than to use it. Even before he had been hired by EWEB he was aware that it was in EWEB's best interest to be a regional water provider. He underscored that EWEB did not have a lot of pathways to perfecting the water right and had to pursue this kind of use to do so.

Mr. Zelenka asked if the water rights could be perfected without the City of Veneta wholesale contract. Mr. Taylor responded that it was a matter of time. He said the regionalization was a plan that EWEB could show to the state that demonstrated EWEB's diligence in how the issue was being approached. He pointed out that Coos Bay/North Bend had been sued for keeping water rights undeveloped and unused.

Mr. Zelenka understood that there was no time limit to perfect water; it was simply defined as a reasonable amount of time. Mr. Taylor responded that the argument made in the Coos Bay/North Bend case was that the water right should be developed within five years. He said this was why the legislation had come back with the 20-year window for all new water rights. He related that the legislation also had incorporated a conservation management plan in which municipalities were given green light water and red light water. He explained that green light water was only given for water that was demonstrated in a plan to be used within 20 years. He stated that water outside of the 20-year window was put into a red light status and provisions in the law would put at question whether or not additional conditions would be placed on this water into the future.

Mr. Zelenka asserted that EWEB could probably perfect the water right without the contract with Veneta.

Mr. Taylor asked Mr. Zelenka to clarify how the water right could be perfected without demonstrating additional use. Mr. Zelenka responded that EWEB "would probably figure out some other way to do it."

Mr. Taylor said he had no other way to perfect the water right to offer them and asked if Mr. Zelenka was aware of another way to do so. Mr. Zelenka replied that it appeared that there were two ways to perfect the right -- they could also show that the consumption would be used within the City of Eugene and its existing customers. Mr. Taylor replied that it would take over 120 years to show beneficial use of water assuming current population projections were correct.

Mr. Zelenka asked how EWEB would perfect the water right. Mr. Taylor replied that the reality of it was that the question became how much of the water right EWEB could perfect in order to secure the future.

Mr. Zelenka observed that the contract was for 40 years and seemed "like pretty much a permanent deal." He acknowledged that the contract did have a pull-back provision. He asked how much of the McKenzie River water rights were allocated at this point in time. Ms. Wilson replied that it depended on the time of year at which it was measured; there were times at which it was not able to serve existing permit holders and other times when there was more water available for permitting. She said the state would continue to offer permits so long as it was available until the water availability changed. Mr. Taylor noted that there was still an additional 200 cubic feet per second (CFS) available during the lowest flow month of the year, after the assumption by the department that EWEB had taken the full 194 MGD out for its purposes.

Mr. Poling ascertained from Mr. Taylor that the environmental study for the proposed pipeline had already been conducted. Mr. Taylor noted that the study was available on the Veneta web site.

In response to a follow-up question from Mr. Poling, Mr. Taylor stated that it was his understanding that there were no significant findings at the conclusion of the report. He said this did not mean there would not need to be mitigative actions that would have to be done.

Mr. Poling thought the built-in safeguards in the contract had been "very well done." He had read the op-ed piece written by EWEB Board President John Brown that had been printed in the *Register Guard.* He felt that the piece very clearly explained the entire issue and had put to rest any questions he had in regard to the benefits of the contract. He thanked staff for the answers provided to the council. He understood that the City of Veneta needed the water for current and future growth and that the water rights needed to be perfected. He agreed that if they did not act now to perfect the right, they would lose it.

Mr. J. Brown thanked Mr. Poling. He stressed his passion for the McKenzie River and assured the council that if he thought for a minute that anything EWEB was doing would jeopardize the river's integrity, he would oppose it. He reiterated that this was a "use it or lose it concept." He stated that the minute the water went by the Hayden Bridge intake it was mixed with millions of gallons of effluent from Weyerhauser's pulp mill and then a few miles later it was mixed with Eugene/Springfield's metropolitan wastewater. He averred that for them not to be able to satisfy the demand for where a majority of their workers lived, and not to provide this quality commodity, and then to allow someone else downstream to take it and put chemicals in it to remove all of the things mixed into it after it passed the intake would not be good stewardship of this resource. He considered the addition of chemicals for the purposes of cleaning water to be an oxymoron. He believed the community would consider the contract with Veneta forward thinking.

Mr. G. Brown thought it was fitting to be discussing the wholesale water contract at the same time they were undertaking the Envision Eugene process. He said fundamentally the subtext of the discussion was how they were going to grow. He asked if EWEB would offer water to the Cities of Coburg and Junction City. Mr. Taylor responded that the two communities used groundwater.

Mr. G. Brown asserted that the agenda item summary (AIS) had incorrectly called this a regional solution to a

regional problem; he considered this to be a local problem. He also disputed the assertion in the AIS that the water contract would not encourage growth, saying that without water Veneta could not grow. According to his calculations, if all three of the water rights were perfected, the community would get 193 MGD and, given that 30 MGD were used currently, this would mean that the population (in order to use all of that water) would be about a million people.

Mr. Taylor clarified that water rights were not based on average use, a water right was based on what the utility might need on a day-to-day basis. He said in order to determine accurately the size of the water needs, one would have to divide the total usage by the maximum use, 78 MGD, and not average use, which was 30 MGD.

Mr. G. Brown understood that EWEB had filed a lawsuit asking the court to declare that EWEB had independent authority to enter into the contract without council approval. He asked if this was normal; was this how the contracts had been made with the other water districts. Mr. Taylor responded that he would defer the legal questions to legal counsel. He added that EWEB had engaged in multiple existing wholesale contracts, all of which predated the charter amendment that occurred in 1976. He said there was no reason for EWEB to bring up this issue in regard to the charter amendment. He stated that prior to 1976, it was EWEB's understanding, as it continued to be in the present, that wholesale water provision was in its purview because that was given to all municipal entities within the State of Oregon according to Oregon water law. He pointed out that there were numerous examples of communities having wholesale water arrangements.

Mr. Farmer said, regarding the Envision Eugene process and doing this on a regional basis, this pointed to the heart of the matter which was whether they could cooperate as a region or would there be ten different communities with ten different treatment plants sitting on the edge of the river. He believed that for the benefit of the citizens of Eugene there should be one plant and they should work together in partnership with other communities. He disagreed with the position that without the water contract Veneta could not grow. He understood that one could extrapolate this, but another outcome could be that Veneta would build its own water treatment plant and ship their own water there. He felt they should view the contract as being good neighbors and good stewards and that they were working together for a regional benefit. He related that every time EWEB took on a water or electric project he asked for a comparative cost analysis. He had learned through the analyses that water costs in Medford were well below those of Eugene and that this was because of the excellent job they had done of spreading their water costs on a regional basis. He supported planning on a regional basis, as it would provide the greatest benefit to everyone.

Ms. Smith stated that the City had two primary issues of concern regarding water: the water rights that EWEB was working hard to perfect and that it had a single source of water. She shared EWEB's belief that having collaborative relationships with outlying communities would provide a benefit when EWEB engaged in the discussion regarding a second source.

Mr. Cunningham noted that EWEB was coming up on its 100th anniversary and commented that the boards and councils of 100 years earlier would not have imagined that Eugene would have a population of 137,000 one day. He felt that everyone had been a good steward of the water supply.

Mr. Taylor noted that the first water right on the McKenzie River had been from 1927, but EWEB also had a water right on the Willamette River that dated to 1887.

Mr. Cunningham averred that it was in the City's best interest to sell wholesale water to Veneta.

Mr. Zelenka said there were two issues before them: the perfecting of the water rights and the legal issue of City Council approval. It seemed pretty clear to him that extension of water service outside the city limits would require council approval. He asked City Attorney Glenn Klein to comment.

Mr. Klein stated that if the council decided as a policy matter that sale of water to the City of Veneta was a good idea, then his answer to addressing the legal issue was to "punt it." He said he would recommend that the City Council pass a resolution that indicated that sale of water to Veneta was a good idea and this would remove the authority question. He explained that either EWEB had the authority to enter into the contract and it had done so, or the council had the authority to grant permission and, through the resolution, it would have done so. He added that if the council thought the legal issue was more important than the policy issue, then the council should direct legal staff to go to court and fight about that issue. He also pointed out that the voters could be asked to clarify the charter with a charter amendment. He advised the council, given the scarcity of resources, not to focus on the legalities and to decide that the sale was a good idea. He said staff would draft a resolution reflecting that regardless of who had the authority, the City approved of it.

Mr. Zelenka asked if the Environmental Impact Statement (EIS) on the pipeline would come before the council. Mr. Klein replied that it would not. He was uncertain what land use actions would be involved, but a Metro Plan amendment would certainly come before the council.

Mr. Zelenka ascertained from Ms. Smith that Veneta could renew the contract into perpetuity after the initial 40-year period. Mr. Taylor clarified that one party could terminate the contract with ten years notice.

Mr. Zelenka thought this meant that it would not add anything to Eugene's water right, it just meant that it would make it bigger. Mr. Taylor responded that partial certification was the goal relative to helping secure the water right. He stressed that Veneta was one example of how EWEB could achieve 25 percent certification by the year 2050.

Mr. Zelenka asked if the certification was "all or nothing;" could EWEB get by with 23 percent? Mr. Taylor replied that they would walk away with only 23 percent of the water right if that was the case.

Ms. Smith reiterated that EWEB needed to show a plan and then make progress on the plan. She said the plan was to work with communities and the contract with Veneta represented progress toward the plan.

In response to a question from Mr. Zelenka, Veneta Mayor Rick Ingram stated that they were waiting until the end of the month to have a determination from the Rural Development Department and at that point Veneta would receive a letter of conditions that would lay out what the grant would be, what the loan would be, and what conditions Veneta would have to overcome to secure the funds.

Mr. Zelenka ascertained from Mr. Ingram that the pipeline would cost $17 million. Mr. Ingram said one deliverable they needed in submitting the application had been the completion of a preliminary engineering report and this was their cost estimate.

Ms. Wilson said a public forum was scheduled for the following night at 5:30 p.m. in the Council Chamber. She stated that there would also be a public forum on June 14.

Mr. Clark looked forward to hearing public comment on this. He was favorably disposed to the idea that this was intelligent long-term planning to perfect the water right. He was troubled by the authority question, however.

Mr. Klein said before the meeting on June 28, he would discuss the item further with Ms. Wilson, the City Manager, and staff in order to determine whether there were more options than the three he had presented at the meeting.

Mr. Taylor noted that three citizens had already submitted a challenge to the contract and this had been filed as part

of the validation of it.

In response to a question from Ms. Taylor, Mr. Klein stated that passing a resolution of approval would not create a legal precedent for future legal disputes. He thought passage of the resolution would make the lawsuit moot.

Mr. Pryor did not want to delay Veneta's work. He said there was no good reason to do so. For him the issue was to understand how this worked with the situation between EWEB and the City. He was concerned that going to court would hold up the City of Veneta. He was amenable to passing a resolution because he felt it would address the legal issue.

Ms. Smith stated that EWEB counsel and Mr. Klein had been in conversation. She said there were different interpretations of what Mr. Klein had indicated but EWEB staff had agreed not to speak about legal issues in this meeting.

Mr. J. Brown asked Mr. Taylor to explain about where the water could be used. Mr. Taylor stated that the contract stipulated that the water could only be used within the Urban Growth Boundary (UGB) of the City of Veneta and that no one outside the UGB could tie into it. He clarified that Veneta was required to ask for approval and consent from EWEB to extend service outside of the UGB.

Mr. Clark adjourned the City Council work session at 7:38 p.m.

Mr. Brown adjourned the Eugene Water & Electric Board meeting at 7:38 p.m.

Respectfully submitted,

Sandra J. Stubbs Deputy

Beth Forrest,
City Recorder

(Recorded by Ruth Atcherson)