

Metropolitan Wastewater Management Commission



partners in wastewater management

MWMC MEETING

Friday, August 12, 2011 @ 7:30 a.m.
City of Springfield
Library Meeting Room

MINUTES

I. ROLL CALL

President Bill Inge opened the meeting at 7:30 a.m. Roll call was taken by Kevin Kraaz and introductions were given around the room.

COMMISSIONERS:

PRESENT

Jay Bozievich
George Brown
Bill Inge
Doug Keeler
Hilary Loud
Walt Meyer
Marilee Woodrow

ABSENT

STAFF IN ATTENDANCE:

Meg Allocco
Ron Bittler
Dave Breitenstein
Michelle Cahill

Judy Castleman
Rachael Chilton
Kevin Kraaz
John Huberd
K.C. Huffman, Attorney

Troy McAllister
Todd Miller
Josh Newman
Greg Watkins

GUESTS:

Tom Nevins – Murray, Smith & Associates

II. CONSENT CALENDAR

- a. MWMC 6-3-11 Special Meeting Minutes
- b. MWMC 6-10-11 Meeting Minutes
- c. MWMC 6-17-11 Special Meeting Minutes

MOTION: IT WAS MOVED BY COMMISSIONER LOUD TO APPROVE THE CONSENT CALENDAR. THE MOTION WAS SECONDED BY COMMISSIONER MEYER. THE MOTION PASSED UNANIMOUSLY 7/0

III. PUBLIC COMMENT

There was no public comment.

IV. AWARD OF CONTRACT FOR ECOSYSTEM RESTORATION AND REGULATORY CREDIT SERVICES, RIPARIAN SPONSORSHIP PROJECTS (P80080)

Todd Miller, Assistant Project Manager, stated that two memos were produced for this agenda item: one included with the agenda packet and an updated version supplied at the meeting which presents information on the selection of the consultant for this contract, which occurred in the interim. Staff recommendation came after evaluation of the proposals, submitted in response to the Request for Proposals (RFP) issued on June 20. Upon the closing period, July 22, the MWMC had received two proposals: 1) The Freshwater Trust and, 2) Vigil-Agrimis Inc. Resolution 11-08 was presented to the Commission for approval to award The Freshwater Trust, a nonprofit organization, with the contract in the amount of \$450,000 (funding dedicated through the State Revolving Fund Loan [SRF] for the Cedar Creek and Mill Race projects) to provide ecosystem restoration and regulatory credit services to implement the MWMC's Shade Sponsorship projects, as well as additional riparian shade projects that the MWMC may want to pursue in the future.

The RFP solicited respondents to propose two alternatives to implement the shade project: 1) using easements to permanently protect the MWMC's investment in riparian shade, and 2) an additional alternative which would be less costly than easements yet still provide an adequate level of long term security of the shading projects.

In scoring the two proposals, the Evaluation Committee – consisting of MWMC management, project managers, and City of Springfield staff construction manager for the Springfield Mill Race project—recognized The Freshwater Trust submitted a very impressive, thorough, and well considered proposal meeting the MWMC's shade credit needs. Mr. Miller said staff intends to follow through during the contract negotiation with The Freshwater Trust on several of their recommendations which include:

- Structuring the contract for payment on credits generated rather than acres planted, which provides a known regulatory outcome from the contract
- Pursuing long term lease agreements with landowners, only employing an easement where the benefits of doing so warrant the extra cost

With regards to easements, both proposers, The Freshwater Trust and Vigil-Agrimis, cautioned against requiring easements as they add considerable expense to the project, drive down landowner participation rates, and do not add significant benefits to the security and the implementation of the sites. Staff will coordinate any agreement with The Freshwater Trust and the approach with the MWMC legal council and The Freshwater Trust to ensure that the

long term security and the cost benefits of the riparian projects are appropriate and fulfill the Commission's direction to secure restoration credits past the initial 20-year grow-out period. Given The Freshwater Trust's delivery of credits approach to the project, the risk of maintaining those projects is in the hands of The Freshwater Trust and the MWMC is buying the credits from The Freshwater Trust under this approach.

Mr. Miller concluded by stating staff requests that the MWMC approve, by motion, Resolution 11-08 to award a contract for Ecosystem Restoration and Regulatory Credits services for a not-to-exceed value of \$450,000 to The Freshwater Trust.

Discussion:

Commissioner Brown referred to the scorecard (Table 1 on page 2 of updated memo). He pointed out that Vigil-Agrimis was not far off on their scores except on Item 7- Permit Accreditation. He stated that he understood we would want an experienced consultant who knows how the credits work. Todd said that they do have expertise in that they have some former members of the Clean Water Services who had previously done riparian shade for regulatory credit on their team. However, The Freshwater Trust clearly demonstrated the mechanism under the current frame work and the current Internal Management Directive (IMD) for shade credits and the protocols having completed three pilot projects under those set of rules.

President Inge referred to the two resolutions stating the one in the original agenda packet had a not-to-exceed 10% contingency and the current resolution does not. Mr. Miller explained that the 10% was deleted because there is \$450,000 allocated for the project and the project will be complete up to that amount. Therefore there was no need for a contingency to exceed. President Inge commented he liked that.

President Inge asked if the MWMC is unable to get an agreement with The Freshwater Trust, would Mr. Miller feel confident in pursuing an agreement with Vigil-Agrimis. Mr. Miller answered yes and that the evaluation committee recognized that Vigil-Agrimis had capability and could deliver for the MWMC the services in all categories. Vigil-Agrimis' approach was much more based on restoration and the risk of restoration over the delivery of credits. Their proposal showed they can do the work and their approach was more in line with the initial thinking staff had when the project was started two years ago – restoration first, then determine how to get credits from that restoration. Mr. Miller went on to say that the Evaluation Committee agreed The Freshwater Trust approach was much better in regards to the MWMC's need for regulatory credits first and foremost.

Commissioner Meyer asked if staff knows from the two projects, approximately how many credits the MWMC can get assuming a 2 to 1 trading ratio during the month of October. Mr. Miller said The Freshwater Trust did some calculations on Cedar Creek as this is where the bulk of the credits come from. He stated the answer is two-fold:

- The total credits possible, if The Freshwater Trust plants all the available area on Cedar Creek in October, would equal 3.2 mKcal per day.
- For the funding that we have dedicated to the projects it would be 1.3 mKcal of credits which also includes the 20-year operations and maintenance follow-up.

Commissioner Keeler clarified that the scope includes the regulatory, planning and partnerships; as well as the on-the-ground work such as planting and the vegetation health. Mr. Miller agreed, stating that The Freshwater Trust calls this a turn-key proposal meaning that under this scope of services for that cost, The Freshwater Trust provides everything that is needed which includes the initial landowner outreach partnership, planting, monitoring and maintenance, as well as follow-up reporting for 20 years.

Commissioner Brown asked if there would be someone from the MWMC monitoring the project as he was concerned if someone would be checking on the project ten years from now. Mr. Miller stated that The Freshwater Trust does the monitoring, and there is also a third party through the Willamette Partnership that verifies the credits saying they provide a very rigorous, defensible reporting structure. Mr. Miller said there was no reason that staff couldn't do its own checking and with the invoicing structure of the contract, staff will be seeing exactly what was done and will be receiving the annual reports back from The Freshwater Trust. Commissioner Brown stated he would like the MWMC to verify the reports as well.

President Inge asked how the invoicing works on the \$450,000 obligation and what the time frame is for this project. Mr. Miller responded there was basically 24 years outlined in The Freshwater Trust's proposal. The first four years is the landowner outreach and the implementation of the project. The Freshwater Trust proposes that they do not invoice the MWMC until they actually have the plantings in the ground meaning that the MWMC is not under obligation to pay anything until they get to the point where the Department of Environmental Quality (DEQ) acknowledges the MWMC can receive credits. It appears that the MWMC can pay the invoice by project site but once those individual project sites are completed upon planting, the MWMC would get the credits from the DEQ for that site and would be buying that 20-year maintenance package. Within four years of the contract the MWMC will be invoiced for the full amount.

Commissioner Woodrow asked to clarify that when the MWMC pays the invoice, the 20-year contract begins, and if we pay project by project, would the 20-year maintenance be staggered. Mr. Miller replied that he suspects that most of the projects would be completed around the same year or maybe just two years apart. He added that the Mill Race project is ready to go starting next year and the premiere landowner in Cedar Creek is also ready to proceed.

Commissioner Meyer asked if the reporting will meet the DEQ's IMD for temperature trading. Mr. Miller answered that was a stipulation in the RFP and will be part of the contract. Mr. Miller explained that the Willamette Partnership is also another nonprofit organization that worked with the DEQ in establishing a series of protocols for crediting ecosystem services for water quality trade credits as recognized by the Environmental Protection Agency (EPA) and the DEQ. The Freshwater Trust has, as a part of their contract, the Willamette Partnership as the impartial third party to come in and verify what The Freshwater Trust has done.

President Inge asked where the money was coming from to do this project. Mr. Miller responded that it is derived from a State Revolving Fund loan that we have for construction of the Tertiary Filtration project. The MWMC applied for what is known as the Sponsorship Option to do non-point source watershed restoration and that money is derived by lowering the

interest rate on that loan. Basically the funding for this \$450,000 would ordinarily be paid back in interest to the DEQ on the loan for construction of the Tertiary Filtration but instead we are retaining a portion of that money and being able to do the watershed projects with it.

MOTION: IT WAS MOVED BY COMMISSIONER MEYER TO APPROVE RESOLUTION 11-08. THE MOTION WAS SECONDED BY COMMISSIONER LOUD. THE MOTION PASSED UNANIMOUSLY 7/0.

V. EXECUTIVE SESSION

President Inge adjourned the regular session and convened the Executive Session to consult with legal 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). Visitors were asked to leave the room and media was asked to announce themselves; the guest left the room and there were no media in attendance.

President Inge adjourned the Executive session at 8:25 a.m. and reconvened the regular session.

VI. BUSINESS FROM COMMISSION, GENERAL MANAGER, AND WASTEWATER DIRECTOR

Michelle Cahill, Wastewater Director, announced that the National Association of Clean Water Agencies has presented the wastewater treatment facility the 2010 Gold Certificate for operating the plant without any permit violations. She noted that after five consecutive Gold Certificates, a Platinum Award is presented; and over the years the plant has received a number of Platinum Awards.

Ms. Cahill said that the Wastewater Division operates an Environmental Management System (EMS) that follows the ISO 14001 International Standards for Environmental Management. She stated the Wastewater Division was audited in July and has been continuing their certification at that standard.

Commissioner Keeler reminded everyone that the Eugene wastewater plant was the second municipal wastewater facility in the country to have an EMS.

Ms. Cahill then referred to the news items about the controversy from the City of Cottage Grove biosolids application. She stated the MWMC has a different process for applying biosolids, and beginning Monday (August 15) will be applying them to a field southwest of Junction City. Thirty-five property owners were notified around the area about this and no comments had been received.

President Inge asked if this process was any different than normal. Ms. Cahill responded that the field they will be applying to is the same one used in 2007 and the same process.

Commissioner Brown asked if the field by Junction City was a grass seed field and Ms. Cahill answered that it was. Commissioner Brown asked to clarify that biosolids are not applied to

food crops. Ms. Cahill confirmed this was correct, and stated that there is a limited amount of agriculture where biosolids can be applied. Commissioner Brown wanted to know if we didn't have the Poplar Farm, what we would do with the biosolids. Ms. Cahill answered that before the Poplar Farm existed, there were a lot more farmers' involved that applied the biosolids to their fields. She stated that lessened our control over how we can get rid of the product and having the Poplar Farm allows us to apply much of it on property that we own, giving us more security and confidence. Commissioner Brown asked what would happen if we didn't have any farmers interested in the product and we didn't have the Poplar Farm. Ms. Cahill replied that many communities along the Willamette Valley haul to Eastern Oregon to apply on fields. Also, incineration is an option but 95% of treatment plants apply to fields. Mr. Bittler commented taking it to a landfill is very expensive. He said that without the beneficial reuse land application here locally in the Willamette Valley, we would be trucking to Eastern Oregon or we would be sending it to a landfill.

Dave Breitenstein, Plant Manager, added that at one time prior to the Poplar Farm, we had about 10,000 acres of approved agricultural land through the DEQ that we had options for use. There are still a lot of growers with a large number of acreage who are interested in our product but we have focused our efforts more on the north side where transportation costs are not as high. He said if something happens on the national scene that starts changing people's minds, having our own property certainly reduces that risk.

Mr. Huffman, MWMC Legal Counsel, added that the Metro TV's video of the Poplar Farm was online a couple of months ago and he asked if it was still available. Ms. Cahill responded that it was. President Inge asked Kevin Kraaz to send out the link <http://www.vimeo.com/25738981>.

Mr. Bittler said he was not concerned if we do get media attention because he thinks that our biosolids program is one of the best in the state and we get an opportunity to talk to the media about how it is done correctly.

Mr. Breitenstein added that the biosolids that we will be land applying are the same ones that we have been harvesting from the lagoons since February and have applied on the air drying beds; the product is turned daily to keep it aerated. It is the same product that is out in the environment in north Eugene all spring and summer. It is different from Cottage Grove's situation where biosolids are stocked piled for a long period of time where biological decomposition under anaerobic conditions creates odor.

President Inge asked if Cottage Grove did it differently than in years past. Commissioner Woodrow stated that they said it was due to rain; Commissioner Loud added it was because it didn't dry properly. Mr. Breitenstein said that is why we made an investment into heavy equipment to make sure it gets turned daily because aeration is key to the process.

On another topic, Mr. Bittler reported that last month at the ACWA Conference in Bend, he had an opportunity to talk to Dick Pedersen, the DEQ Director. They talked about the water quality challenges around the state and through that conversation, Mr. Bittler invited Mr. Pedersen to attend a Commission meeting and present some of the water quality issues that are happening at the state level, in particular talk about water quality trading opportunities. Mr. Bittler noted that Mr. Pedersen is an advocate for water quality trading and he thought it would be an opportunity to have the DEQ Director to talk about the way he views water quality challenges

and trading within the state of Oregon. The hope is to have him speak at the September meeting where he would be scheduled to be first on the agenda, as he has a speaking engagement in Portland later that day.

Mr. Bittler next reported the Facilities Plan Update (RFP) is out and we are accepting proposals until August 28, although we did receive a late request yesterday to extend the proposal date which will be considered later on in the day. He added that one of the challenges of extending the date is that our biogas study is in the front part of the RFP and there are some tight timelines.

President Inge asked the reason for the extension request. Mr. Bittler replied the request was made in order for the consultant to put a better proposal together. Although staff would love to have as many proposals as possible, Mr. Bittler believes that they need to keep on schedule with the biogas project as this project was on the United Front list for a number of years but wasn't on the list last year. Staff is hoping to refresh that project and maybe take another run at getting some federal funding assistance. He said that effort is what is really driving the timeline.

Mr. Bittler then updated the Commission on Tim Schuck's position which has been vacant since February. He reported we are now in the process of collecting resumes and hopefully there will be an interview schedule for shortly after Labor Day to get that position filled. He added we are currently getting some help from Galardi Consulting; but noted he does have some contingency plans in the event we are not able to hire someone for that position prior to the budget starting.

Commissioner Bozievich asked Mr. Bittler to give a brief update on the status of the fish consumption rules and asked if there was any possibility of influencing those rules at this time or if the MWMC could take action legally. Mr. Bittler stated the Environmental Quality Commission (EQC) adopted the new water quality standards which are being driven by fish consumption and those standards have been forwarded to the EPA for their approval. Mr. Bittler believes the expected turnaround time from the EPA is somewhere near October.

Mr. Bittler stated there is not much we can do in terms of the standards themselves. The MWMC went through a lengthy process within the state of Oregon; there was a lot of public information, public sessions held, and the DEQ collected many comments. Where we are today is more in the implementation and how we move forward with the process. The DEQ is currently developing an Internal Management Directive (IMD) for dealing with variances and they are working through how that will play out in National Pollutant Discharge Elimination System permit processes. He said that is where we really need to stay engaged in order to put the MWMC in the best possible position we can for our permit renewal scheduled for 2012. Mr. Bittler said his understanding from the DEQ is that our first initial permit renewal will give us approximately three years to collect data and to determine the status of our "reasonable potential analysis" (RPA) to determine our potential to violate the new water quality standards. The second permit cycle is where we would have the ability to apply for variances. Staff plans on meeting the standards with pollution prevention or pollution reduction strategies. He stated he thinks that the MWMC's focus should be on implementation at this point unless Commissioner Meyer has some other thoughts about the current standard and what we can do to address it.

Commissioner Meyer said he agrees with Mr. Bittler. The standards have been adopted by the EQC under a lot of pressure from the EPA. Commissioner Meyer said he thinks that there will be future opportunities to use the legal process to force the DEQ and the EPA to take some of those constituents and deal with them in a more holistically statewide approach enforcing each individual entity to come up with a pollution control ban for polychlorinated biphenyl (PCB) or something that is well beyond our control. Commissioner Meyer said we will have to wait until the implementation rolls out; it is kind of early to tell.

Mr. Bittler agreed that some of the opportunities we have with variances are looking at a potentially multi- sector variance approach, rather than having it be specific to one permittee. There are some opportunities during this implementation phase but he is afraid that the rule-making process is a done deal. Mr. Bittler believes that the EPA will approve the standard and that both the states of Washington and Idaho are looking at similar moves.

Commissioner Bozievich asked if there is no legal way of challenging the Commission's adoption of those standards. He commented that it seems every decision made today has the ability to be challenged in court, and noted this has such huge ramifications, not just for the MWMC. He believes we could get many other entities involved in a legal challenge. He would like to know if the EQC's assessment is one that can be taken to court and challenged as a flawed decision and sent back rather than having it moved forward through the EPA's ruling process.

Commissioner Meyer responded there is a statewide organization in which both he and Mr. Bittler are active which represents all of the dischargers including Portland and Clean Water Services. The consensus in that group is that a legal challenge would be appropriate at sometime in the future and he thinks probably that would be the way to approach it, saying the more people you can get onboard a lawsuit the better it would be. The general consensus, at least at the (ACWA) Water Quality Committee level, has been that the native tribes and the EPA pressed long and hard because the amount of fish consumed has been the basis for the standard in the past and is an extraordinarily small amount of fish. There is the sense on the Water Quality Committee that the amount of fish that they came up with is probably not unreasonable for a large group of people; but not everybody. Then the question becomes do you subject everyone to a standard that is protective of a group of people that eat more fish vs. not. That's not engineering or a water quality decision, that's a social decision and the sense is that if there is a large group of people that eat 180 grams of fish/day on average then they ought to be able to do that safely. That's the basis for the new standards which are to protect the human health criteria.

Commissioner Bozievich asked Commissioner Meyer if he believed following of the contaminants through the food chain to the fish and then ultimately uptake by humans has been accurately described through that process; not just the number of grams of fish but some of the assumptions about how the contaminants follow the food chain.

Commissioner Meyer responded there are numerous assumptions but one thing we've learned is that a lot of these chemicals were banned years ago and yet they are very much persistent in the food chain. For many of these chemicals the answer is yes, it is there and it continues to be there. The fact that if you're going to deal with a specific chemical, and our position has

been very strong there, let's deal with it holistically and look at all the sources. If plant dischargers are 3% of the source of that chemical and it's simply a pass through – coming into the system and going out – then let's not just hammer this because you happen to have a permit for it and completely ignore agriculture and forestry where it's coming from. That's where we're going to be pushing extraordinarily hard so that we don't take on the lion's share of responsibility for chemicals that are coming from other sources. It makes a lot more sense to deal with it holistically and that's what we're going to be looking at.

Commission Keeler commented this discussion has value and he thinks these standards are going to be very onerous but we also know that the DEQ's budget has been considerably reduced going forward as a result of the legislature, and that for water program, staffing is going to go way down so he thinks it would behoove us to be out in front of the variance strategy though he is not sure what that means at this point. He said he knows there is an IMD for the DEQ on how to issue those but his understanding is they haven't issued any and so we just need to be cognizant.

Mr. Bittler responded we are going to continue to be active at ACWA and at its Water Quality Committee. It is of high interest to the ACWA board and so we will stay engaged in that conversation.

Commissioner Woodward commented that the Canines for Clean Water program will be held on Thursday, August 18, 2011, from 9 am to 3 pm at Lively Park. People can come, get some information and have their picture taken. It is a public awareness program to get information out that if people clean up after their dogs and cats it doesn't go into our stormwater and waterways.

Commissioner Keeler asked if the sludge lagoon relining project is going smoothly. Ms. Cahill said yes and Mr. Bittler added everything he has read in staff reports says it is moving along, is on schedule, and the work has started. City of Springfield Supervising Civil Engineer Troy McAllister commented the sludge removal is being done and they are gearing up for a pre-installation meeting with the liner people and the contractor this month.

VII. ADJOURNMENT

President Inge adjourned the meeting at 8:50 a.m.

Minutes were recorded by Kevin Kraaz.