



Memorandum

September 26, 2015

TO: Longview City Council
David M. Campbell, City Manager

FROM: Jeff D. Cameron, Public Works Director

SUBJECT: Three Rivers Regional Wastewater Authority Formation as Joint Municipal
Utility Services Authority

Background

The Three Rivers Regional Wastewater Authority (TRRWA) was originally formed by interlocal agreement in 1972 as the Cowlitz Sewer Operating Board, to provide regional wastewater treatment services to the urbanized Longview/Kelso area. The TRRWA board consists of representatives from the cities of Longview and Kelso, Cowlitz County, and the Beacon Hill Water and Sewer District. The TRRWA was formed under RCW 39.34, Interlocal Cooperation Act.

Since 1972, the TRRWA has operated as an independent agency under the interlocal agreement, which has been amended several times. The TRRWA board also adopted and operates under by-laws that have been amended several times. The TRRWA uses Cowlitz County for administrative services to generate payroll, pay bills, perform auditing and treasurer functions, and provide misc. employee benefits (medical insurance, deferred comp plans, and PERS retirement system).

Recently, audits and legal opinions have identified that the TRRWA is not an agency truly independent from Cowlitz County; that the TRRWA is instead a County department. The Interlocal Cooperation Act does not provide authorization to create an entity legally separate from the parties to the interlocal agreement. The clearest path towards resolving this issue would be to re-form the TRRWA as a Joint Municipal Utility Services Authority under RCW 39.106.040. Under this structure, the TRRWA could continue to operate in a manner similar to that in which it has for the past 40-plus years. The major change would be that the TRRWA would be overseen by a governing board of elected officials appointed by each of the entities.

At its meeting on July 8, 2015, the TRRWA retained the legal firm Foster Pepper to prepare formation documents and assist the TRRWA and its members to form a Joint Municipal Utility Services Authority. Doing so requires creating a formation agreement and obtaining its approval from the legislative bodies of each of the members.

Formation Agreement

Foster Pepper used the current TRRWA interlocal agreement as the base for the new agreement, and then added provisions required by the state statute or requested by TRRWA members to

Three Rivers Regional Wastewater Authority Formation as Joint Municipal Utility Services Authority

clarify or modify how the TRRWA will function after the new authority is formed. The draft formation agreement is attached for your review, along with draft by-laws for the Board of Directors and the Operating Board. Notable provisions of the formation agreement differing from the current interlocal agreement for the TRRWA include the following:

Section 4

The new joint municipal utility services authority will be formed upon filing of the approved formation agreement with secretary of state, and the new authority will become effective on the Operations Date of January 1, 2016. Members of the new authority will be the current members. All prior actions of the TRRWA are approved and ratified and remain in effect, and all existing rights and obligations of the TRRWA remain in effect.

Section 5

The Board of Directors will consist of one Director and alternates as appointed by the member entity. The Director and all alternates must be elected officials of the appointing entity. The Board of Directors will meet twice per year unless the Board chooses to meet more frequently, and is responsible for governing policies and oversight of the TRRWA.

Each Director will have one vote. Board actions for the following items must include both (i) a majority vote of the Board and (ii) approval by Directors representing Members paying more than 50% of the M&O Component of the budget:

- Amend the agreement
- Ratify budgets adopted by the Operating Board
- Ratify Member rates, charges, fees, or other required payments adopted by the Operating Board
- Admit new Members to TRRWA
- Revise the Service Area
- Terminate the Agreement
- Determine the Regional Assets' purchase price upon TRRWA's dissolution
- Authorize the borrowing of money or issuance of Bonds by TRRWA or by another entity on behalf of TRRWA
- Authorize the exercise of eminent domain by TRRWA.

All other Board actions are made by majority vote of the Directors present and voting.

Section 5.6

An Operating Board is established consisting of one representative and alternates appointed by the member entity. This board is established to manage the operations and maintenance of the TRRWA, and is anticipated to function essentially the same as the current board, except the voting criteria is changed similar to the Board of Directors. Due to the technical matters addressed by the Operating Board, the representatives and alternates appointed by the member entities must be professional technical staff.

Three Rivers Regional Wastewater Authority Formation as Joint Municipal Utility Services Authority

Each Operating Board representative will have one vote. The following Operating Board actions require both (i) a majority vote of the Operating Board and (ii) approval by Operating Board Representatives of Members paying more than 50% of the M&O Component of the budget:

- Adopt budgets
- Adopt rates, charges, fees, or other required payments
- Approve wages and benefits for non-represented TRRWA employees
- Approve employee collective bargaining agreements
- Adopt and amend TRRWA rules or regulations

All other Operating Board actions are made by majority vote of the representatives present and voting.

Section 7

This section identifies the state regulations governing TRRWA actions; in general, the TRRWA will operate under the regulations governing code cities.

All other provisions in the formation agreement are similar to the current interlocal agreement, with slight revisions to comply with RCW 39.106.

Next Steps

The TRRWA board has reviewed and commented on a number of iterations of the formation agreement. This draft agreement is now ready for review by the governing bodies and legal counsel of each member entity. Upon concurrence with the final language of the formation agreement, each entity's governing body must approve the agreement in order to form the joint authority.

After approval of the formation agreement, each entity will need to appoint a director and alternate(s) to the governing Board of Directors, and a representative and alternate(s) to the Operating Board. The Board of Directors and/or the Operating Board will need to review all current policies for consistency with the authority statute and formation agreement, and will need to adopt new policies such as procurement and bidding, and state environmental policy act (SEPA) rules and procedures.

The newly formed TRRWA will also need to secure administrative and financial services. At this time, the TRRWA has requested that Cowlitz County continue to provide those services. However, the County has not yet confirmed they will provide the services. Additional costs may be necessary depending upon how administrative and financial services are obtained.

Staff, the TRRWA, and Cowlitz County recommend the new joint municipal utility services authority be formed before the end of 2015 and become effective on January 1, 2016, to coincide with a new fiscal year.