CLACKAMAS RIVER WATER
BOARD OF COMMISSIONERS
WORK SESSION & EXECECUTIVE SESSION
February 28, 2022 at 6:00pm
THIS MEETING WILL HAVE REMOTE ACCESS VIA ZOOM*
AGENDA
16770 SE 82nd Drive, Clackamas, OR 97015

Clackamas River Water

To protect the health of our customers, staff, and commissioners, CRW's Board of Commissioners and staff will attend this meeting through an online Zoom meeting. Anyone who wishes to attend the meeting may do so by internet at https://us02web.zoom.us/j/86526639161 or by calling the following number 12532158782 and join meeting 86526639161 #. Passcode: 643399

Work Session @ 6:00pm

Call to Order, Roll Call

1. **North Clackamas County Water Commission (NCCWC) Water Supply Agreement Discussion-** *Todd Heidgerken, General Manager*
2. **Emergency Management Update-** *Beth McGinnis, Emergency Manager*
3. **Commissioner Communications-** *CRW Board of Commissioners*
4. **General Manager Update-** *Todd Heidgerken, General Manager*

Public Comment

Adjourn Work Session and Convene Executive Session

EXECUTIVE SESSION

1. Discuss information or records that are exempt by law from public inspection pursuant to ORS 192.660 (2) (f) and 192.355 (9)

Work Session Reminders:

a. Work Session – audio only
b. No decisions will be made by the CRW Board
c. Staff may get direction or a sense of the board on key issues
d. Members of the public are allowed to attend but not participate *(public comment provided at the end of the session)*

Public Comment: If there is a member of the public that wishes to address the Board are encouraged to submit a request through email to kholzgang@crwater.com no later than 4pm the day of the meeting.

Members of the public are welcome to speak for a maximum of three minutes, citizens must state their name, address, if they are a customer or not for the record.

The meeting location is accessible to persons with disabilities. A request for accommodations for persons with disabilities should be made at least 48 hours before the meeting to Adora Campbell (503) 722-9226.

Agenda Item – 1

CLACKAMAS RIVER WATER

BOARD WORK SESSION

February 28, 2022

SUBJECT	North Clackamas County Water Commission (NCCWC) Water Supply Agreement Discussion
PRINCIPAL STAFF PERSON	Todd Heidgerken, General Manager
DOCUMENTS ATTACHED	Exhibit A – Expired NCCWC Water Supply Agreement Exhibit B - Water Supply Agreement Extension Exhibit C- DRAFT Water Supply Agreement 2022

Agenda Summary

BACKGROUND

Clackamas River Water ("CRW") and the North Clackamas County Water Commission ("NCCWC") are parties to a Water Supply Agreement dated March 8, 2001 (the "Water Supply Agreement"), which is attached as Exhibit A. The original Water Supply Agreement was set to expire on December 31, 2021 but was extended until no later than June 30, 2022 to allow additional time to develop an updated agreement. The extension of the agreement is attached as Exhibit B.

Staff from CRW, CRW's legal counsel, and NCCWC staff have been working on a draft of a new long-term water supply agreement for consideration by the governing board of each entity. This Draft water supply agreement is attached as Exhibit C.

The purpose of this work session item is to provide an opportunity for staff to review with the Board, the draft agreement, respond to questions, and receive feedback.

Exhibit A

WATER SUPPLY AGREEMENT

This agreement is entered into this 8TH day of MARCH, 2001 between the Clackamas River Water District (hereinafter "CRW"), which is an ORS Chapter 264 Domestic Water Supply District, and the North Clackamas County Water Commission, (hereinafter "the Commission"), which is an ORS 190 intergovernmental entity.

Recital:

Pursuant to ORS Chapter 190, CRW and the Commission are authorized to enter into intergovernmental agreements to perform functions and activities, which either unit of government is authorized to perform.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Supply of Water.** CRW agrees to provide the Commission 122 million cubic feet of water each calendar year during the life of this Agreement, and the Commission agrees to purchase this amount, unless modified by other provisions of this Agreement, for an initial twenty-year period beginning March 1, 2001, through December 31, 2021, subject to renewal, extension or termination on the terms and conditions as set forth in this Agreement. Every five years the parties will jointly review the quantity of water purchased and, if a change in purchase is anticipated, the parties will negotiate the terms of a change. The Commission will notify CRW six months before the end of each fifth year that it desires to change the amount of water purchased.

2. **Status of Prior Supply Agreements.** At the time of creation of the Commission, Water Supply Agreements existed between the Oak Lodge Water District (Oak Lodge) and CRW dated February 1, 1996, and between the Mt. Scott Water District (Mt. Scott) and CRW dated May 1, 1995. All water purchase responsibility for Oak Lodge and Mt. Scott has been assumed by the Commission. The Parties acknowledge that there are no outstanding claims or disputes of any kind remaining between them, including the Commission's predecessors in interests, Oak Lodge and Mt. Scott, concerning the aforedescribed Water Purchase Agreements and that this Water Supply Agreement supercedes and replaces all previous Water Supply Agreements between the parties.

3. **Connections and Meters.** The Commission will provide and maintain meters, valves and controls, including backflow prevention assemblies as necessary, as approved by CRW, in proper order for water transmission line connections at the following locations:

Mather Road Level:	Near the Mather reservoir at SE 92nd and Mather Road Near SE Mangan Way and Water Avenue

Otty Road: (Emergency Only)	Near SE 92nd Avenue and Otty Road, near the reservoir owned by CRW On SE Mt. Scott Blvd. near SE 92nd Avenue
152nd:	At SE Pinegrove Loop near SE 152nd Avenue and the CRW reservoir site north of Highway 212

The Commission will arrange to have its meters tested and calibrated biennially by an independent tester qualified to do such work. A copy of the test report shall be forwarded to CRW. CRW shall maintain such valves and devices to control flows from its plant and reservoirs to the above listed connections.

4. **Flow Rates.** The ratio of peak daily flow to average annual flow measured in million gallons per day, will not exceed 1.2. The peak hourly flow rates at the delivery locations will be:

Mather Road Level:	4,500 gallons per minute
152nd:	2,000 gallons per minute

5. **Rates.** The Commission shall be billed monthly for the water sold under this Agreement, and payment shall be made within 30 days of billing. A late fee of 1.5 percent per month shall be assessed for any unpaid balance.

The Commission will pay monthly to CRW for all water passing through connection points described in Section 2 above, at rates determined using cost of service principles described in Section 6 and adopted annually by Resolution of the CRW board. Effective on each successive January 1 during the term of this Agreement, or any renewal thereof, the rate shall be retained or modified in accordance with the criteria set forth in Section 6.

6. **Rate Setting Criteria.** In setting rates, CRW shall take into account the following, for the quantity of water proposed to be purchased:

A. Rates shall be determined in accordance with generally accepted ratemaking practices, as described in the AWWA M-1 Manual, 2000 Edition and subsequent amendments;

B. Rates shall include, but not be limited to, payments for reasonable operation and maintenance expense, depreciation, return on investment, administrative and general expenses, in-lieu taxes and other costs associated with CRW's financing and operation of its system. The rate of return on investment shall be 9%.

C. Rates shall be based on the approved budget for the future fiscal year and shall be effective on the first day of January for such fiscal year;

D. Costs and expenses shall be classified in the "base-extra capacity method" as described by the AWWA M-1 Manual, 2000 Edition and subsequent amendments;

E. For improvements to be installed during the fiscal year and for construction work in progress, the plant in service date shall be deemed the mid-year of the rate period; and,

F. The Commission will be given the opportunity to participate and provide input into CRW's rate-setting process.

G. In the event the Commission uses water at a rate in excess of the peak day ratio of 1.2 or peak hour rates in Section 4, except under emergency conditions, an excess use charge will be calculated and imposed for the additional amount, based on the location of delivery. If an excess use charge is imposed, the Commission will be entitled to use water up to the greater rate for the remainder of the year in which the charge was applied without incurring additional excess use charges.

7. **Billing.** Meters installed to measure the volume of water sold by CRW to the Commission shall be read periodically by representatives of CRW at times fixed by mutual agreement of CRW and the Commission. Representatives of the Commission may be present at meter readings. CRW shall compute and render bills and statements to the Commission by the 5th day of each month. If the meters at any time fail to accurately measure the water passage through said meters, the charge for water used during the time said meters are out of order shall be based upon the average daily consumption as shown by said meters when in proper operating condition during a comparable period of service. CRW shall invoice the Commission each month for water usage in the preceding month. The Commission will make payment on or before the 25th day of the month.

Inasmuch as the Commission has contracted to purchase a minimum amount of water each year and that is considered in the rate calculations, the Commission agrees to pay CRW the greater of: the amount calculated based on the actual volume of water passing through the meter(s) described above; or the amount calculated based on the minimum purchase amount. This calculation will be done annually after the end of the year.

8. **Exchange Water.** When water is delivered by the Commission to other locations on behalf of CRW, the volume of water delivered will be deducted from the volume delivered to the Commission in calculating charges for the amount purchased by the Commission. If the exchange amount is delivered entirely to the Commission at the Mather level, there will be no additional charges imposed for "delivering" water to the the Commission. If the additional water is delivered at either 152nd or Otty, a "wheeling" charge, equal to the added cost of serving those locations above the cost of serving the Mather level, will be due and payable. However, no party shall be required to exchange water if it would not be technically feasible, or if exchanging would create a hardship for the party being requested to do so.

9. **Commission Service to CRW Customers.**

A. The Commission agrees to provide, or cause its members to provide, water for domestic service to the high level area of CRW as may be best served by the Commission or its members and as authorized by CRW. The formula for computing the credit to the Commission for water provided to CRW customers will be determined by joint resolution of the CRW and the Commission Boards.

B. Water main extensions connected to the Commission system within CRW shall be installed and paid for by CRW, but materials and construction thereof shall be subject to approval by the Commission or its members.

C. Service connections to customers in the CRW high-level area served by the Commission or its members shall be made by CRW using materials and construction methods approved by the Commission. All such service connections shall pay applicable System Development Charges for this type and size of connection in the jurisdiction providing service.

D. Should pressure regulators be required either on CRW mains or CRW services, the installation and maintenance thereof shall be the responsibility of CRW and not the Commission or its members.

E. Meters on services from the Commission for customers residing in CRW shall be installed, maintained and read by CRW. The Commission may check services for leakage or any other purpose.

F. Similarly, CRW agrees to provide water for domestic service to areas of the Commission, or its members, as may be best served by CRW and as authorized by the Commission or its members. Charges for water provided to the Commission customers will be determined by the joint resolution described in 5.A above. Provisions of 5.B through 5.E above, with the names the Commission and CRW reversed, will apply where CRW serves the Commission or its members customers.

10. **Term.** This Agreement shall be for twenty-years, commencing with execution of this Agreement and ending twenty years thereafter.

The Commission agrees to notify CRW in writing as soon as practicable if the Commission wishes to extend the term of this Agreement, but not later than two years prior to the termination of this Agreement.

11. **Notices.** Notices shall be deemed sufficient if deposited in the United States mail, postage prepaid, to the following addresses:

Clackamas River Water
Attn: General Manager
PO Box 2439
Clackamas, OR 97015-2439

North Clackamas County Water Commission
Attn: General Manager
10602 S.E. 129th Avenue
Portland, Oregon 97236

12. **Severability.** In the event any provisions of this Agreement shall be held to be impossible, invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties hereto. One or more waivers by either party of any provision, term, condition or covenant, shall not be construed by the other party as a waiver of subsequent breach of the same by the other party. Both parties have fully participated in negotiating and writing this Agreement; therefore, it shall not be construed against the party preparing it, but shall be construed as if both parties have prepared it.

13. **Acts of God, Emergency, Etc.** Performance or delay in performance of the obligations stated in this Agreement shall be reasonably excused when performance or timely performance is impossible or impracticable because of the occurrence of unforeseeable events such as emergency, catastrophe, disaster, labor disputes, or acts of God.

14. **Disputes: Attorney's Fees.** If a dispute arises between the parties regarding breach of this Agreement or interpretation of any term of this Agreement, the parties shall first attempt to resolve the dispute by negotiation, followed by mediation (if negotiation fails to resolve the dispute), and pursuant to the following steps:

Step One:

The general manager or other person designated by the governing bodies will negotiate on behalf of the entities they represent. The nature of the dispute shall be reduced to writing and shall be presented to each manager who shall then meet and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each party's manager and ratified by each governing body, which shall be binding upon the parties.

Step Two:

If the dispute cannot be resolved within ten days under Step One, the parties shall submit the matter to non-binding mediation. The parties shall attempt to agree on a mediator. If they cannot agree, the parties shall request the presiding judge of Clackamas County Circuit Court to appoint a mediator. The dispute shall then be heard by the mediator. The mediator's fees shall be shared equally by the parties. If the issue is resolved at this step, there shall be a written determination of such resolution, signed by each party's manager and ratified by each governing body, which shall be binding upon the parties.

Step Three:

Disputes that are not resolved after exhausting Steps One and Two shall be submitted to mutually agreeable arbitration or be resolved by proceedings in Clackamas County Circuit Court. If arbitration, suit or action is commenced, each party shall pay its own legal fees.

15. **Full Agreement.** This document is the entire, final and complete agreement of the parties pertaining to CRW's provision of surplus water to the Commission, and supersedes and replaces all prior or existing written and oral agreements between the parties or their representatives.

16. **Service Reduction in Case of Emergency.** If a general emergency or water shortage requires restrictions on the delivery of water, then general restrictions placed upon deliveries to the Commission shall be determined by a similar method to that used for restricting deliveries to Clackamas' own inhabitants and other direct service customers, employing a pro rata reduction.

CLACKAMAS RIVER WATER:

By: Paul E. Rogers
Paul Rogers, its President

NORTH CLACKAMAS COUNTY WATER COMMISSION:

By: Fred Whitfield
Fred Whitfield, its Chairman

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EXHIBIT B

EXTENSION OF WATER SUPPLY AGREEMENT

This Extension of Water Supply Agreement ("Extension Agreement") is between Clackamas River Water District ("CRW") and the North Clackamas County Water Commission (the "Commission"), and is dated effective as of the date of the last signature below.

RECITALS

a. CRW is a domestic water supply district organized under ORS chapter 264, and the Commission is an intergovernmental entity organized under ORS chapter 190.

b. Pursuant to ORS chapter 190, CRW and the Commission are authorized to enter into intergovernmental agreements to perform functions and activities that either unit of government is authorized to perform.

c. CRW and the Commission are parties to a Water Supply Agreement dated March 8, 2001 (the "Water Supply Agreement").

d. The Water Supply Agreement is set to expire by its terms on December 31, 2021. CRW and the Commission wish to extend the term of the Water Supply Agreement according to the terms set forth below.

NOW THEREFORE, in consideration for the covenants and promises herein, CRW and the Commission agree as follows.

TERMS OF AGREEMENT

1. Term. CRW and the Commission agree to extend the term of the Water Supply Agreement on a month-to-month basis until June 30, 2022, or until the effective date of a new water supply agreement between CRW and the Commission, whichever occurs first. Either party may terminate the Water Supply Agreement prior to June 30, 2022, with 30 days' written notice to the other party.

2. Except as provided in this Extension Agreement, all terms of the Water Supply Agreement remain in effect until it is terminated.

3. Entire Agreement. This Extension Agreement and the Water Supply Agreement constitute the entire agreement between the parties on the subject matter of the Water Supply Agreement. If any party has made statements or promises apart from the terms in those documents, the parties represent that they have not relied on those statements or promises, and understand that only the terms in this written Extension Agreement and the Water Supply Agreement are binding on the parties to this Agreement.

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4. Severability. Should any part of this Extension Agreement be determined invalid or unenforceable for any reason, the validity of the remaining parts shall not be affected thereby and they shall retain their full force and effect, and the invalid or unenforceable part shall be considered not to be a part of this Extension Agreement.

CLACKAMAS RIVER WATER

By: Sherry French
Its: Board President
Dated: _____

NORTH CLACKAMAS COUNTY WATER COMMISSION

DocuSigned by:
Chris Hawes
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By: Chris Hawes
Its: Board President
Dated: 10/5/2021

Exhibit C

WATER SUPPLY AGREEMENT

This agreement is entered into this _____ day of _____, 2022, between the Clackamas River Water District (hereinafter "CRW"), an ORS Chapter 264 Domestic Water Supply District, and the North Clackamas County Water Commission, (hereinafter "NCCWC"), a municipal organization formed under ORS 190 Intergovernmental Agreement, or collectively hereinafter referred to as the "Parties."

WHEREAS, the NCCWC currently purchases wholesale drinking water from CRW under an existing agreement dated March 8, 2001; and

WHEREAS, the existing water supply agreement is set to terminate June 30, 2022; and

WHEREAS, the NCCWC desires to renew a long-term supply agreement with CRW wherein allowing for greater flexibility and adaptability in meeting present and future demands, as well as emergency supply; and

WHEREAS, the NCCWC intends to expand its future purchases of wholesale water from CRW based on availability and the strategic interests of both Parties.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Contract Period
   A. This Agreement shall remain in effect until December 1, 2042, commencing with the execution of this Agreement, unless so approved otherwise by mutual written consent of the Parties.

   B. The NCCWC agrees to notify CRW in writing of its desire to extend the term of this Agreement, but not later than two (2) years prior to the termination of this Agreement.

2. Available Capacity
   A. CRW intends to provide up to 10 million gallons per day (mgd) of available treated water capacity to the NCCWC. In no event shall CRW be required to deliver water beyond that which is technically feasible through existing infrastructure, or which otherwise would create hardship to CRW.

   B. The Parties shall mutually determine desired points of delivery and related transmission (flow rate) capacities for both regular and emergency service. The Parties may amend these points of delivery and capacities through mutual agreement among the Parties' General Managers or through the approved Planning Document, set forth under Section 3.B below.

   C. In no event shall either Party be required to construct added pumping or transmission capacity to meet (or create) said desired points of delivery or flow rate capacities, unless so mutually approved in writing by both Parties. Any future construction of jointly owned assets shall be arranged under separate agreement among the Parties.

3. Use of Available Capacity
   A. The NCCWC will purchase a minimum of 125 million cubic feet of water each year. The annual period for such purchase shall begin every year on July 1 and extend to the following date of June 30.

   B. The Parties agree to make use of the available capacity defined under Section 2 above under a cooperative Planning Document. This Planning Document shall be based on a five (5) year forecast of demand and ten (10) year forecast of capital improvements. The Planning Document shall, among other items, identify:

      i. Approved points of deliveries and peak flow capacities
      ii. Peak and annual day demands and points of delivery
      iii. Peak seasonal period (30 day) demand and points of delivery
      iv. Updated schedule of mutually approved capital improvements

      The demands created under this forecast, however, are not a strict obligation to purchase or deliver said amounts by either Party, other than the minimum amount stated in Section 3.A. The actual available capacity at any given time may be subject to existing limits on labor resources, infrastructure limits, or other factors outside the direct control of either Party.

      Until the Parties mutually agree on a Planning Document as described in this Section 3.B, CRW will continue to supply water to NCCWC at existing points of delivery in amounts and at times, including peaking, consistently with the Parties' course of dealing in the twelve months preceding commencement of this Agreement.

      The Planning Document and any amendments thereto must be approved in writing by the Parties' respective general managers; provided, however, that in the event the approval of any part of the Planning Document by a Party's governing body is required by law or by a Party's governance documents, a resolution of the Party's governing body will be required to provide that Party's approval.

   C. All use of available capacity shall be properly metered at each approved point of delivery through equipment supplied by the NCCWC, including (but not limited to): meter, valve(s), required backflow assembly and any other equipment so mutually approved by the Parties. The NCCWC shall, in turn, have each meter periodically tested and calibrated by a qualified, independent party for flow accuracy. The NCCWC shall also have each backflow assembly tested annually by an approved tester. The NCCWC shall provide copies of those test results to CRW upon completion.

   D. CRW shall in turn maintain all pipes, pumps, valves and other devices to allow for deliveries from its plant and reservoirs to meet the agreed flow capacities at each of the approved points of delivery.

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4. Rates and Charges
   A. The methodology used to establish the Wholesale Water Rate under this agreement shall generally follow and be consistent with the standards of practice prescribed under the M1 Manual of the American Water Works Association (AWWA), except as otherwise mutually agreed by the Parties.

   B. Rates shall include, but not be limited to, payments for reasonable operation and maintenance expense, depreciation, administrative and general expenses, in-lieu taxes and other costs associated with CRW's financing and operation of its system. The Parties agree that, at a minimum, the rates paid by the NCCWC and all other consideration paid by the NCCWC pursuant to other agreements related to this Agreement will fully cover CRW's cost of providing water to the NCCWC.

   C. Rates may be adjusted each year on July 1 based on the change in the All Urban Consumers Consumer Price Index (CPI-U) West Class B/C or based on an update of the cost of service model prescribed in 4.A above, except as otherwise mutually agreed by the Parties.

5. Billing and Payment
   A. Meters shall be read periodically by representatives of NCCWC at times fixed by mutual agreement of the Parties. CRW may elect to confirm such readings at any time.

   B. CRW shall compute and render bills and statements to the NCCWC by the 5th day of each month. CRW shall invoice the NCCWC each month for water usage in the preceding month. NCCWC will in turn make payment on or before the 25th day of the month. A late fee of 1.5 percent per month may be assessed for any unpaid balance.

   C. If the meters at any time fail to accurately measure the water passage through said meters and it is impracticable to determine actual average daily consumption with reasonable certainty, the charge for water used during the time said meters are out of order shall be based upon the average daily consumption as shown by said meters when in proper operating condition during a comparable period of service.

6. Water Exchange
   A. CRW may on occasion request water be delivered by the NCCWC to various locations to meet operational or emergency supply needs. Such deliveries may be deducted, by equivalent volume, from the metered deliveries to the NCCWC. Such "water exchange," however, shall not affect the amount of water credited towards the annual minimum purchase required by the NCCWC.

   B. However, no party shall be required to exchange water if it would not be technically feasible, require additional infrastructure not approved by separate agreement, or create hardship to the party being requested to do so.

7. [INTENTIONALLY LEFT BLANK]

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8. Emergency Operations and Curtailment
   A. In the event of an emergency (e.g. power outage, loss of infrastructure, etc.), the Parties agree to work in cooperation to best meet the demands of each Party and may temporarily suspend the terms of this Agreement to meet the operational needs of each Party and those of any third-party requesting assistance, provided the combined needs of each Party is not compromised through such third-party assistance. The Parties further agree that during the emergency each Party shall attempt to record any exchange of water or related service and work to resolve mutual consideration or compensation as prescribed in 6 above, absent the actual exchange of money, unless so agreed by the Parties.

   B. In the event of a curtailment or other shortage of water supply, CRW and NCCWC shall share the shortage proportionately so long as NCCWC concurrently adopts and enforces the same customer water use restrictions adopted by CRW in response to the shortage.

9. Notices
   All notices related to this Agreement shall be sent to the respective General Manager of each agency and shall be delivered in the form of e-mail or pre-paid mail sent to the appropriate address(es) below:

Clackamas River Water	North Clackamas County Water Commission
Attn: General Manager	Attn: General Manager
PO Box 2439	14496 SE River Road
Clackamas, OR 97015-2439	Milwaukie, OR 97267

10. Severability
    In the event any provisions of this Agreement shall be held to be impossible, invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties hereto. One or more waivers by either party of any provision, term, condition or covenant, shall not be construed by the other party as a waiver of subsequent breach of the same by the other party. Both parties have fully participated in negotiating and writing this Agreement; therefore, it shall not be construed against the party preparing it, but shall be construed as if both parties have prepared it.

11. Acts of God, Emergencies, etc.
    Performance or delay in performance of the obligations stated in this Agreement shall be reasonably excused when performance or timely performance is impossible or impracticable because of the occurrence of unforeseeable events such as emergency, catastrophe, disaster, labor disputes, or acts of God.

12. Disputes and Attorney's Fees
    A. If a dispute arises between the parties regarding breach of this Agreement or interpretation of any term of this Agreement, the parties shall first attempt to resolve the dispute by negotiation, followed by mediation (if negotiation fails to resolve the dispute), and pursuant to the following steps:

DRAFT

(i) Step One: The general manager or other person designated by the governing bodies will negotiate on behalf of the entities they represent. The nature of the dispute shall be reduced to writing and shall be presented to each manager who shall then meet and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each party's manager and ratified by each governing body, which shall be binding upon the parties.

(ii) Step Two: If the dispute cannot be resolved within ten days under Step One, the parties shall submit the matter to non-binding mediation. The parties shall attempt to agree on a mediator. If they cannot agree, the parties shall request the presiding judge of Clackamas County Circuit Court to appoint a mediator. The dispute shall then be heard by the mediator. The mediator's fees shall be shared equally by the parties. If the issue is resolved at this step, there shall be a written determination of such resolution, signed by each party's manager and ratified by each governing body, which shall be binding upon the parties.

(iii) Step Three: Disputes that are not resolved after exhausting Steps One and Two or within ninety (90) days, whichever comes earlier, shall be submitted to mutually agreeable arbitration or be resolved by proceedings in Clackamas County Circuit Court. If arbitration, suit or action is commenced, each party shall pay its own legal fees.

13. Full Agreement

This document is the entire, final and complete agreement of the parties pertaining to CRW's provision of surplus water to the NCCWC and supersedes and replaces all prior or existing written and oral agreements between the Parties or their representatives.

DRAFT

By signing this Agreement, the Parties agree to be bound by its terms and conditions for the entire period of its stated term.

CLACKAMAS RIVER WATER:	NORTH CLACKAMAS COUNTY WATER COMMISSION:
By: _____	By: _____
Sherry French, President	Kevin Williams, Chairman

DRAFT

Agenda Item – 2

CLACKAMAS RIVER WATER

BOARD WORK SESSION

DATE: February 28, 2022

SUBJECT: Emergency Management Update

PRINCIPAL STAFF PERSON: Beth McGinnis, MPH, ORCEMS, CRW Emergency Manager

DOCUMENTS ATTACHED:
1. Guidelines for Special Districts in Declaring a State of Emergency
2. Emergency Management Update Slides

Agenda Summary

BACKGROUND: In August 2022, CRW hired a new Emergency Manager, Beth McGinnis. She replaces Donn Bunyard, who retired. Beth has been in her new role for six months and has prioritized building awareness and understanding by the CRW Board in support of the Emergency Management program.

On the heels of 2021's incidents (wildfire & ice storm) and the lessons learned; the focus is on how to continually improve the resiliency of the organization. The focus of this work session item is to provide the Board with a greater:

- Understand the spaces, staff, and resources that support CRW's Emergency Management Program.
- Understand the role of the CRW Board in declaring emergencies.
- Understand what communications to expect from the General Manager during emergency operations.

In addition, Beth will provide an overview of emergency management activities and highlight work on helping CRW and the greater Clackamas County water community understand and integrate into the mandated structures of county/state/federal emergency management.

Beth will also review efforts in developing understanding and partnerships with Clackamas County Disaster Management (CCDM) to help CCDM staff to better understand the nuances of the water utility community and what disaster response needs are.

Clackamas River Water

Emergency Management Update

CRW Board Worksession

February 28, 2022

Presented by Beth McGinnis

Clackamas River Water

Desired Outcomes

- Understand the staffing, spaces, and resources that support CRW's Emergency Management Program.
- Understand the role of the CRW Board in declaring emergencies.
- Understand what communications to expect from the General Manager during emergency operations.

Presented by Beth McGinnis

Clackamas River Water

What are the foundations of an emergency response?

Staff

Space

Stuff
(resources)

Presented by Beth McGinnis

Clackamas River Water

Staffing/People

- Who does what?
  - Blue Sky Days vs. Emergency Activations
- Plans help people understand systems
  - Required by the AWIA 2018 Federal Legislation
    - Soon to be state required
  - Describe the way in which we organize for an activation
- Training & Practice helps even more
  - National Incident Management System (NIMS)
  - Incident Command System
  - Hazard specific (Earthquake)

Clackamas River Water

Spaces

- Incident Location(s)
- Emergency Operations Center
  - Primary – Administration Building
  - Secondary – System Operations
- Continuity of Operations
  - Reconstitute alternate facility

Clackamas River Water

Stuff/Resources

- Understanding what we have on hand
  - Supplies
  - Equipment
  - Spaces
- Mutual Aid Agreements
- What do we need in order to fulfill our objectives?
- Where do we get it?
- Understanding national guidance for resource ordering (FEMA)

Clackamas River Water

Where does the CRW board fit in?

- We need your help to get us up and running!
- What does an Emergency Declaration Do?
  - SDAO handout
- Scope of declarations of emergency
  - Authority limited to existing scope
  - Continuing Operations, not expanded authority.
  - Aligned with state statutory requirements for special districts.
  - Does not change collective bargaining agreements.

Catastrophic event = everything changes

Presented by Beth McGinnis

Clackamas River Water

What can you expect in terms of communications during emergencies?

- **General Manager is your key contact for updates/questions/concerns during activations.**
- Assessing your ability to stay in contact with CRW post-disaster/event
  - What method will you use to communicate?
  - What is in your emergency plan?
- Situational updates will be provided at regular intervals for longer duration events
- Keep yourself and family safe first.

Presented by Beth McGinnis

Clackamas River Water

Recent Work Highlights

- Established the CRW Emergency Operations Center (EOC) on the 2nd floor
- September Preparedness Month Drawing
- Conducted Great Shakeout Earthquake Drill in October
- Conducted staff orientations to new Emergency Response Plan (ongoing)
- Determining staff roles that should be prepared to serve in the EOC & providing training.
- Relationship building & industry awareness
- Continuity of Operations Plan revisions and training.
- Plannning grant opportunity – regional coordination CRWP & Clackamas County
- Emergency Communications Planning (radios, phones, etc.)
- Supporting Public Information programming

Presented by Beth McGinnis

Clackamas River Water

Thank You!

Presented by Beth McGinnis

Guidelines for Special Districts in Declaring a State of Emergency

By: Tommy A. Brooks and Laura Westmeyer, Cable Huston, LLP

Introduction

Since the Governor declared a state of emergency in Oregon on March 8, 2020, many local governing bodies have been acting to declare their own state of emergency within their jurisdictions. The process for cities and counties to make an emergency declaration is laid out in statute, but special districts have little guidance for doing the same, and some may be wondering whether they should consider making a local declaration, and what the import and effect of a declaration would be for their district.

Purpose of Emergency Declarations

The primary purpose of an emergency declaration is to maintain continuity of service in situations where the normal decision-making process may be unavailable. Emergency declarations allow governments to quickly mobilize to minimize, respond to, or recover from the emergency presented. While each emergency will present its own unique set of facts and needs, the common purpose for a declaration is when the risks of delay or inability to take certain actions outweighs the public benefits from following the ordinary procedure. An emergency declaration functions as the triggering action for a government to activate a menu of powers and authority that may not be ordinarily available, or to use processes that may not be ordinarily used, in order to respond to the emergency circumstance. Special districts should consider the type of powers, processes, and authority that it would want to authorize in the event of an emergency.

Authorized Actions in a State of Emergency

Declaring a state of emergency allows special districts to make adjustments to a variety of functions. Below are some of the more common actions and functions that may be authorized or adjusted through an emergency declaration:

1. ***Provide additional sources of funding.*** Divert funds appropriated for certain purposes to meet the needs of the emergency.
2. ***Designate a line of succession for the governing body and district staff / Authorize individuals to take action that they would not otherwise be authorized to take.*** In an emergency, a quorum of the governing body may be unable or unavailable to take an action that is needed to protect the district. Or the administrative or executive head of a district may be unavailable to make day-to-day decisions. An emergency declaration may designate a line of succession for individuals authorized to perform the needed functions in their place.
3. ***Authorize the suspension or waiver of local policies or ordinances.***
4. ***Suspend local procurement rules and spending authority limits.***
5. ***Allow for greater cooperation among local governments.*** Authorize the district's entrance into contracts and agreements with other governments. Provide and receive resources with or without a formal contract.
6. ***Prioritize certain district activities and functions.***
7. ***Demonstrate eligibility for certain funding.*** Some emergency funding sources require documentation of the existence of an emergency and spending during that time.

8. ***Raise public awareness.***
9. ***Provide legal protection for actions taken during a state of emergency.***

Process for Declaring an Emergency

Unlike for the state, cities, and counties, there is no statutory process in place for special districts to declare an emergency. Special districts do, however, generally have broad authority to adopt local rules and regulations and to take all action that is necessary or proper to perform the functions and purposes for which the district was formed. For special districts, a two-step process is recommended.

First, the governing body should act to generally authorize declarations of local states of emergency. This may be in the form of an ordinance or resolution. This first action should identify, at a minimum: (i) what would constitute a local emergency; (ii) who is authorized to make a declaration of a state of emergency; (iii) delegations to individuals for actions that the governing body as a board may be unable to make; (iv) a line of succession of board officers and district staff; (v) the additional powers and authorities; and, (vi) any processes that are authorized to be revised or suspended during the emergency.

The next step would be to declare a state of emergency that is specific to the circumstances presented at the time of the declaration – for example, to respond to the threats imposed by the COVID-19 outbreak. This would be in the form of a resolution or declaration. This second action should contain, at a minimum, the following elements: (i) findings of the criteria meeting the definition of a local emergency; (ii) the actions that are authorized as appropriate for the current emergency; (iii) the individuals who are ordered or authorized to take the authorized actions; (iv) the method for keeping the governing body apprised of all actions taken pursuant to the emergency powers that are taken other than by the governing body; (v) the duration of the emergency during which time the actions would be authorized.

Limitations on Emergency Declarations / Conclusion

While declaring a state of emergency has multiple purposes and value for a special district, and can assist it to respond to the emergency at hand, districts should also keep in mind that a declaration is about continuing operations and does not provide a district with authority beyond the reasonable protection of district assets and resources. Such a declaration does not serve to override federal law. Further, state statutory requirements for special districts will continue to remain in place, such as the requirement to hold public meetings and hearings, and to adopt a budget before the start of the fiscal year. A special district may additionally be restricted by its unionized collective bargaining. This make it imperative for each special district to take into account the authorities it has pursuant to its organizing statute, along with any other limits it may have placed on itself through policies, rules, or contracts.

Agenda Item – 3

CLACKAMAS RIVER WATER

BOARD WORK SESSION

February 28, 2022

SUBJECT	Commissioner Communications
PRINCIPAL STAFF PERSON	CRW Board of Commissioners
DOCUMENTS ATTACHED	

Agenda Summary

BACKGROUND

Time is being set aside during the work session to provide an opportunity for Commissioners to:

- Identify topics for consideration at future works sessions or board meetings;
- Discuss future agenda items.

Agenda Item – 4

CLACKAMAS RIVER WATER

BOARD WORK SESSION

February 28, 2022

SUBJECT	General Manager Update
PRINCIPAL STAFF PERSON	Todd Heidgerken, General Manager
DOCUMENTS ATTACHED	None

Agenda Summary

BACKGROUND	Time has been set aside to briefly update and inform the Board on topics since the February Board Meeting.