

# EUGENE CITY COUNCIL

## AGENDA ITEM SUMMARY



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### Joint Meeting: Eugene Water & Electric Board Water Rights

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Meeting Date: June 7, 2010  
Department: Intergovernmental Relations  
*www.eugene-or.gov*

Agenda Item Number: 1  
Staff Contact: Brenda Wilson  
Contact Telephone Number: 541-682-8441

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#### **ISSUE STATEMENT**

This joint meeting is to provide the Eugene City Council and the Eugene Water & Electric Board (EWEB) an opportunity to discuss EWEB's water rights issues and the proposed sale of water to the City of Veneta.

#### **BACKGROUND**

Late last year, EWEB informed the City Manager about EWEB's interest to sell water to Veneta in order to certify part of EWEB's third water right and to help ensure that the water in this water right would be available to Eugene residents in the future when needed. In mid-April, EWEB and the City of Veneta signed a water-sale contract. EWEB then submitted the contract to the Lane County Circuit Court for validation.

On May 12, 2010, the council was presented with background information on the water sale and the court process. While the council appeared to support the certification of EWEB's third water right, many questions were raised about the sale and the certification/perfection of water rights in general. The council was asked to submit any additional questions they had on the issues to staff for response. The questions and responses are attached as Attachment A. A project overview prepared by the City of Veneta is also attached as Attachment B.

At the May 12 meeting, the council directed staff to schedule (1) a joint meeting with the EWEB Board of Directors before the council takes up this issue for decision; (2) a public forum, with EWEB's involvement, in order to provide information to the public about the proposed sale of water; and (3) following that forum, a public hearing on EWEB's proposed sale of water to Veneta. In order to provide more time for the process directed by the council, EWEB filed for a 30-day extension of time in which to file an appearance in the validation case. The deadline to do so is now June 30, 2010.

The public information forum has been scheduled for June 8, 2010, at 5:30 p.m. in the Council Chamber. The public hearing will be scheduled in the near future.

## **RELATED CITY POLICIES**

Section 44 of the Eugene Charter sets out the Eugene Water & Electric Board functions. It states, in part:

“(1) The power of the city to generate, collect, and distribute electricity, steam, and other kinds of physical energy is hereby vested in the Eugene Water & Electric Board (the Board).

\* \* \*

“(3) The board shall maintain and operate the water utility and the electric utility of the city, subject to control by the council of extension of water service.”

## **COUNCIL OPTIONS**

None. This meeting is informational only.

## **CITY MANAGER’S RECOMMENDATION**

None. This meeting is informational only.

## **ATTACHMENTS**

- A. Response to Eugene City Council Questions on EWEB’s Water Rights Issues
- B. Veneta/EWEB Pipeline Project Overview

## **FOR MORE INFORMATION**

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## RESPONSE TO EUGENE CITY COUNCIL QUESTIONS ON EWEB'S WATER RIGHTS ISSUES

### 1. How much water does Veneta use per day now?

The projections for Veneta's 2010 usage outlined in their Water Master Plan are as follows:

- Average Daily Demand is .90 million gallons a day
- Peak season demand is 1.1 million gallons a day
- Maximum Day Demand is 2.3 million gallons a day
- Peak Hour Demand is 2.9 million gallons a day
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Maximum daily use for Veneta during the hot summer months is 2.2 million gallons a day (mgd), while the city's wells can produce just 1.69 mgd. Right now, Veneta can't meet demand on its maximum use days without drawing down its storage reservoirs. Because those reservoirs are meant to respond to emergencies such as fire, Veneta needs to add capacity. Veneta estimates that by 2030, it will need 4.3 mgd.

### 2. If this deal didn't go through, what is Veneta's "Plan B"?

Veneta's adopted 2009 Water Master Plan projected that they would continue to rely upon groundwater sources (wells) to meet Veneta's immediate needs through 2020, so they would go back to that plan if the pipeline project does not proceed. However, the plan noted that groundwater development alone was not likely sufficient to meet Veneta's long term needs. Please see the attached Project Overview for more information.

### 3. Could Veneta draw water from Fern Ridge Reservoir or the Long Tom?

Fern Ridge Reservoir is operated by the United States Army Corps of Engineers (CORP) as a flood control basin. Municipal waster supply is not an approved use for this body of water. Even if it was, the quality of this water is poor due to high summer water temperatures combined with nutrient rich influents from local feeder streams. This quality of water is very difficult to treat and the product water often contains undesirable taste or odor.

Aside from having no available water for appropriation, the Long Tom River is a poor quality source of water. The Long Tom experiences low flows during the period of highest water demand for the City of Veneta. It was estimated in the Veneta Master Water Plan that during periods of low flows, the City of Veneta would need to appropriate approximately 65% of the water in the Long Tom to meet peak demand.

That amount of water is not available in this water source even if Veneta could purchase a water right from another water right holder.

**4. If the deal does go through, Veneta will maintain a secondary source of water. What is it?**

As outlined in the water purchase agreement with EWEB, Veneta will continue to operate and maintain their existing system as the secondary water source.

**5. In EWEB's certification, what does "25% certification" mean referring to the third water right?**

EWEB's third water right is not certificated. In other words, while the amount of water under that water right permit has been "set aside" for EWEB, the utility must move toward perfection (putting the water to beneficial use) of that water right or it will lose the right to use that water in the future. Failure to certify a water right permit or make reasonable progress toward certification can result in the loss of the permit – and the right to use any of the water under that permit in the future.

In order to move toward certification, municipal water rights applicants are required to prepare a plan that identifies when they expect to be using the full quantity of water allowed under each permit, and must describe the methods and assumptions used in determining those date(s). This schedule must also include the expected schedule for certification of each water rights permit.

The process of certification involves "proving up or perfecting" the water use allocated under a given permit, as defined by the rules governing beneficial use. Under Oregon law, a municipal water right permit may be partially perfected for not less than 25 percent of the permitted total allowed under the right, and a certificate can then be issued. This allows for a municipal water supplier to plan for increased capacity over time. Certification is the only way to obtain conclusive evidence of the priority and extent of the appropriation of a water right.

**6. If EWEB does sell water to Veneta, do the water rights to that water also transfer to Veneta?**

No, EWEB is the permit holder and the water right would still belong to EWEB.

**7. In EWEB's memo and in the "Key Messages" it says that selling surplus water can "reduce costs for EWEB customers". Does this mean a reduction in the monthly water bill if water is sold to Veneta?**

Not in itself. Treating and delivering water comes with high fixed overhead costs. Spreading those costs over a wider retail and wholesale base helps lower per capita costs and will help minimize the magnitude of future rate increases.

**8. Eugene Code 9.8115 and 9.8121 seem to prohibit extensions of service out side of the Urban Growth Boundary. What would make the proposed sale to Veneta an exception?**

EWEB's sale of water to Veneta is not an exception to Sections 9.8115 to 9.8121 as those Sections do not apply to EWEB's sale of water to Veneta. Rather, those Sections apply to extensions of water (or sewer) service to individual properties. One of the approval criteria, for example, is that the "applicant has entered into an annexation agreement on forms provided by the city pertaining the property proposed to be served or will enter into such an annexation agreement as a condition of approval." Wholesale delivery of water to another municipality couldn't qualify under this provision because those properties could not annex to Eugene. Other requirements in those sections also assume that the extension of water (or sewer) service is for individual properties – for example, by requiring notice of the application to be provided to owners of properties located within 750 feet of property to be served.

Section 2.212 also specifically notes that "extension of water service or sewer service" shall be processed as provided in section 9.8115 to 9.8121 of the code, but does not state that those provisions govern the extension of "water" outside city limits. Instead, the city attorney believes that section 2.212 requires that such an extension of "water" outside city limits (for example, to a special district or municipality) be approved by Council resolution.

**Veneta/EWEB Pipeline  
Project Overview  
April 5, 2010**

The City and EWEB have been in talks over the last two years regarding the potential for EWEB to supply water to Veneta in an arrangement similar to EWEB's existing wholesale contracts with various water districts. In February 2008, EWEB produced a report entitled A Concept of Regionalization: Water Sales to the City of Veneta, which explored, in some detail, the logistics of building a 24" diameter pipeline from the current western terminus of EWEB's system at Terry Street, to the Veneta water treatment facility on East Broadway.

This work was conducted concurrent with the City's update of its Water Master Plan which was adopted in May 2009. This plan examined several potential water sources for the City, including continued groundwater exploration. This study concluded that groundwater development alone was not likely sufficient to meet the City's long term needs for a population of almost 10,000 residents in 2030.

Unlike communities along the Willamette River, Veneta is located at the foot of the coast range, an area composed largely of fractured silt and sandstones, rather than layers of alluvial material which readily and reliably transmit large volumes of high quality groundwater. These siltstones, known as the Tye formation, are extremely difficult to extract water from. Mineral deposits vary greatly from place to place and drastically affect water quality, and it's very difficult to predict the location of productive well sites due to the fractured nature of the rock. This all adds up to a water exploration program that is both extremely expensive in terms of exploration and development and unpredictable as to quality and quantity. Even though the City has developed three new wells and a satellite treatment facility since 2005, there have been instances in recent years where peak demand has outstripped production. Fire capacity and redundancy for emergency purposes has been less than desirable, a situation that greatly concerns City staff and elected officials if our community is to return to the level of self-sufficiency we experienced in the early 80s and 90s.

All indications are that the highest potential for productive wells lies east of the Veneta UGB. Expansion of well fields into this area may present additional problems related to potential impacts on both surface waters such as Coyote Creek, and on existing residential and agricultural wells. Water right restrictions on local surface waters, including the federal storage at Fern Ridge Reservoir, make use of that water unlikely at best, and other options such as new impoundments have political and environmental costs that are simply too high to consider.

The City essentially has two options; continue developing groundwater sources within and adjacent to the UGB as our sole supply, or connect to EWEB to supply the majority of our demand. Both the City and EWEB feel that it is important to retain our existing system to provide redundancy in case of emergency, and depending on the structure of relationship, to supply peak demand as well. Veneta's projected peak month demand in 2030 is around 2.7 million gallons per day (mgd). This 2030 peak demand represents less than 4% of EWEB's current 80.5 mgd. capacity. The pipeline is being designed to pump up to four mgd. Initial service levels would have the pipeline supplying 150 million gallons per year to Veneta.

Late in 2009, USDA-Rural Development (RD) representatives contacted the City, relaying the fact that significant funding, both in the form of grants and loans, have become available through the American Recovery and Reinvestment Act (ARRA), and that RD was looking for large infrastructure projects to disperse the funds as quickly as possible. They were very interested in the pipeline project in particular, and encouraged the City to submit a Preliminary Engineering Report (PER) by early February 2010. The City has contracted with Murray, Smith and Associates to complete the PER which includes very detailed engineering, environmental, and cost analysis of the proposed pipeline and potential alternatives. The PER and related reports were completed and submitted by the February 1, 2010 deadline. If awarded, the City will be working through various aspects of the project including purchase contracts, rate studies, and full construction design through the fall of 2010.

We believe that partnership with EWEB represents the best route to achieving water security at the lowest cost for the City over the long term. DLCD and Lane County have voiced no opposition to the project and this partnership provides a regional solution to a regional problem that will benefit both EWEB and the City of Veneta for years to come. It should be noted that this proposed partnership is not expected to alter the City's UGB or growth rate as described in the recently adopted 2030 Coordinated Population Projection, nor is it expected to result in significant changes to the City's adopted Comprehensive Plan beyond those necessary to incorporate the pipeline into the Utilities Element and Public Facilities Plan. Our long range vision remains the same, to provide a secure supply of water to our residents and businesses at the lowest possible cost.

### **Summary Points**

- ◆ **10 mile pipeline from EWEB facility at Terry Street to Veneta Water Treatment Plant on E. Broadway**
- ◆ **Project is the culmination of two years of discussions with EWEB**
- ◆ **Hydrological and geological conditions limit groundwater availability for Veneta. Access to Federal storage reservoirs requires years of Federal action**
- ◆ **ARRA funds present a unique opportunity to obtain grants, drastically lowering the cost of the project**

- ◆ **Project will not increase growth, but will provide water security for years to come**