

SOUTH FORK WATER BOARD
MINUTES OF BOARD MEETING
April 24, 2024

Board Members Present: Rory Bialostosky, Chair, West Linn Mayor
Denyse McGriff, Vice Chair, Oregon City Mayor
Frank O'Donnell, Oregon City Commissioner
Mary Baumgardner, West Linn Councilor
Carol Bryck, West Linn Councilor
Rocky Smith, Oregon City Commissioner

Staff Present: Wyatt Parno, Chief Executive Officer
Christopher Crean, Legal Counsel
Ashleigh Dougill, Legal Counsel (via Zoom)
Mark Cage, Operations Manager

Others Present: Tim Henkle, GSI Water Solutions, Inc.
Adam Sussman, GSI Water Solutions, Inc.
Lee Odell, Consor Engineers (via Zoom)

General Board Meeting

(1) **Call to Order**

Chair Bialostosky called the meeting of the South Fork Water Board to order at 7:08 pm.

(2) **Roll Call**

(3) **Public Comments**

(4) **Consent Agenda**

- (A) Approval of the Minutes of the March 27, 2024 Board Meeting.
- (B) Amendment to Employee Agreement

Board Member Baumgardner moved to approve the Consent Agenda. Board Member Smith seconded the motion, which passed unanimously.

(5) **Water Rights Presentation**

Wyatt Parno, CEO, noted tonight's topic was related to Goal #3, Water Supply, including this cycle's priorities of updating both the Water Rights Strategic Plan and the Water Management and Conservation Plan (WMCP). Adam Sussman with GSI Solutions had worked with South Fork years ago, and tonight he and Tim Henkle would give an introduction on water rights.

Tim Henkle and Adam Sussman, GSI Water Solutions, Inc., briefly highlighted their professional backgrounds and the work done by GSI Water Solutions. They presented the Overview of SFWB Water Rights via PowerPoint, summarizing the background, approval and documentation process related to water rights; reviewing SFWB's water rights and its permit extension litigation outcomes; describing a WMCP and its purpose, and presenting potential next steps for South Fork in establishing a water rights strategy and updating its WMCP.

Questions from the Board were addressed as follows with additional comments as noted:

- The standard for documenting beneficial use was not in the statutes but found in clarifying memos issued by the Department over the years. The Department's rules for documenting beneficial use had a lot of discretion, stating things like, "to the satisfaction of the director." The first memo clarifying the Department's expectations was written in 2002, and multiple updates had been made since then. The memos provided guidance for municipal water use, and it was clear the bar to meet was four hours of beneficial use within an eight-hour period.
- Partial perfecting of a permit required a minimum of 25 percent of the permit amount. No other water user, other than the holder of a municipal water right, had the ability to partially perfect a water right, granting a certificate for 25 percent. In theory, the other 75 percent would continue in that permit status and would be subject to development dates and extensions.
 - A lot of the time spent working with water providers was spent thinking about all the steps needed to obtain a water rights certificate because State law provided high levels of protection specifically for certificated municipal water rights. Their purpose was to keep working towards getting a certificate, as permit holders would be subject to changes in the law, new case law, and re-interpretations of how the Oregon Water Resource Department (OWRD) did its business, having a strong potential to affect their future. The opposite was true with a certificate, as those had been, for the most part, hands-off. Those factors were integrated into their daily thinking and certification was a place they wanted to help SFWB and others get to, if it was feasible.
 - Both standards, the four hours of beneficial use within an eight-hour period and the 25 percent minimum, had to be met before a certificate could be issued.
- **Chris Crean, Legal Counsel**, noted being able to document system capacity could be an issue when looking to perfect South Fork's water rights because the pipes and reservoirs had to be big enough. SFWB had over 100 cfs in permits but not nearly enough capacity for all that water right now. Getting the capacity for all that water would be expensive, even if there were customers for it. (Slide 9)
 - The water permits were not vulnerable due to lack of capacity because the rights were safe through the end of the permit period. However, in about 15 years, the Board would need to start looking closely at increasing capacity or extending the permits even further.
 - **Mr. Henkle** noted discussions about capacity and infrastructure would be involved when establishing a water right strategy. South Fork had a lot of water available through its water rights, as noted in the fifth column of the chart.
- "Developed" meant water was being used beneficially, but the process to obtain the certificate had not been completed yet. Earlier today, GSI learned from OWRD that SFWB had submitted a claim of beneficial use for 22.4 cfs in 1999 for Permit 22481, but it had never been entered into OWRD's database and was never processed. The application was supposed to be reviewed by OWRD tomorrow. A lot more discussions of what should be done with that and how to proceed would be held. "Developed" was an important term for the water conservation planning process. (Slide 9)
- Water provided to areas that were not part of the normal service district could be included in the beneficial use calculation because it was put to municipal use.
- Regarding Permit 3778, 5.0 cfs had been developed, but no claim of beneficial use had been submitted for certification.

- Developed and certificated were different in that developed was a term used to describe beneficial use of water resources, but the process to obtain the certificate had not been completed.
- Not all water rights were from the same location, with the first permit, Permit 3778, coming from the South Fork of the Clackamas River. They were not certain of the history behind the numbers of developed versus undeveloped cfs for Permit 3778.
- The word “developed” could be changed to “certificated” in the last column for the oldest permit as the terms were somewhat synonymous in that case.
- Focusing on the oldest permitted rights first for certification could be a valid strategy. Another strategy could be to focus on the earliest development date deadline; for example, the earliest completion date was 2038 for Permit 9982. To avoid going through the permit extension process again and risk having additional restrictions applied by OWRD, another way to think about strategy was to focus on that permit first.
- The source for Permit 22581 was the Clackamas River, which was where the intake was located, and the other permits had different diversion points. If intake infrastructure was not available at those points would that impact the strategy, perhaps shifting development to Permit 22581 because South Fork would be able to physically show that they were diverting from the Clackamas River for beneficial use?
- Did the different development date deadlines vary because they were related to the age of original permits?
 - **Mr. Henkle** explained they did not have the history of the permits to be able to answer that question, but he guessed the extensions did not come up simultaneously until this very last round of extensions.
 - **Mr. Sussman** added they could look into the history a little deeper and agreed it would be good to understand the differences. He reminded that three permits had been frozen in time because of the 16 years in litigation, and the completion date was a long time ago. They had not received final word that the extensions had been approved until 2023. Now that the extensions were approved, they could do some things they could not do before, such as submitting a transaction to the State to add a point of diversion downstream on the main stem of the Clackamas River from the diversion point on the South Fork for Permit 3778. If approved, those water molecules from the original point of diversion could actually be picked up on the Clackamas River through that transaction. A multi-dimensional list of criteria was being built to think about what should be done first or second and what the strategy should be. So if the 1918 permit was the number one priority, they would stop to do a permit amendment to add this point of diversion, and then go through the process of seeking a water right certificate. But by doing so, they could cut into their ability to get a water right certificate for 25% of the 60 cfs. These were all things that GSI worked on all the time that would help the Board understand the pros and cons of these different approaches. The good news was that because of all good work the Board and legal team had done, they were now in a position to decide what should be done to certificate up to 34 cfs of water rights total, matching their current capacity, and the strategy to adopt while waiting for demanding and capacity to increase. That was what the water right strategy was all about.
- The certificated water right had two points of diversion located on both the South Fork and on the main stem of the Clackamas River. Theoretically, SFWB could take all the water

from either point, but Mr. Sussman did not believe the South Fork diversion was functioning.

- A non-functioning diversion point was only an issue if it was not certificated, and the permits would need to be transferred to a different point of diversion. In this case, the certificate already gave South Fork access to divert water at the Clackamas River, so they did not need to focus on that permit/diversion point.
 - Diversion points would fit into the discussion of the water rights strategy with the goal of having the senior water rights certificated. South Fork now had until 2039 to 2050 to potentially move those points of diversions, so no immediate action was necessary.
 - **Board Member O'Donnell** stated it was important to diversify and meet the beneficial use criteria at each site before the renewal dates to defend SFWB's water rights.
 - **Mr. Henkle** agreed, noting GSI recommended never relying on one water supply source and the WMCP would address the justification necessary to defend water rights.
- Was it beneficial to have the oldest right at a point higher up on the river, even though it was not being used yet?
 - Even though South Fork was moving water from the South Fork Clackamas River downstream, that water right was still subject to the loads occurring in the South Fork Clackamas River. So, if there was not enough flow higher up on the river to use the entire water right, even though there was enough in Clackamas River, they could only use what would be available otherwise at the original diversion point.
 - **Mr. Sussman** stated his philosophy on water rights was to always maintain as much flexibility as possible because although they always thought they knew what would happen in the future, the last few years had shown they really did not know. He did not know a lot of details about access to and function of the diversion, but keeping a point of diversion up there could have some unanticipated water quality benefit in the future.
 - **CEO Parno** noted they could get quick-sighted into moving the point of diversion on the certificate, but there could other reasons to do things differently.
 - **Mr. Henkle** believed the point of diversion had to be moved off Memaloose Creek for Permit 9982, but the diversion on the South Fork Clackamas River could remain.
- The "fish persistence" limit was not affected by water temperature and other factors, referencing the volume of water flow only.
 - **Mr. Crean** added that as the flow dropped below certain thresholds, certain requirements would be triggered. The first level, when the volume dropped below 640 cfs, the WMCP had to be invoked which was why the WMCP had to be updated within the next three years. A reduction in water usage was not automatic, but mitigation activities from the Plan did have to be invoked. He confirmed restrictions could be placed on end-user devices, such as when lawns could be watered and applied to just certain times of the year, especially between September 15 and October 15 when the flows were traditionally at their lowest. A request to PGE could potentially be made to release water from Timothy Lake to augment the flow existed, so a number of mitigation strategies were available could be invoked when the flow dropped below certain levels. He noted fish presence was not high at that time of year because of the low water flow.
- **CEO Parno** reported South Fork and other Clackamas River Water Providers received an email from OWRD requesting the WMCP be updated within 30 days, or perhaps 90 days, despite the three-year rule. He had mentioned South Fork was trying to coordinate working

with other water providers within the basin, and that deadline would restrict that from happening.

- **Mr. Henkle** responded GSI had heard about the letter, which was sent to many people, not just those on the Clackamas River. Some people had questions about the precedent and OWRD's authority to make this requirement.
- **Mr. Sussman** explained the confusion was from several water providers that submitted plans with the aspirational hope that the permit extension litigation would be over soon, allowing their plan to be processed and approved so they could move on. However, the litigation took 16 years, so some of the plans had been sitting at OWRD for a long time. The letter was requesting water providers to update plans already submitted or withdraw them and submit a new one. There was a lot to discuss in terms of what that letter meant for South Fork, and GSI, along with Mr. Crean, would help them navigate that.
- The WMCP would have obligations for the cities to implement, such as conservation measures, but there was no rule mandating code enforcement by the cities. If water use was curtailed, it might behoove a city to enforce the code, but it is not generally required by OWRD.
- The OWRD allowed organizations some flexibility in terms of the conservation steps they were taking; the rules were not prescriptive and detailed. GSI had worked with several Clackamas River providers to develop their WMCP, so they were familiar with the basin and understood what was going on.
- **Board Member Bryck** believed providers on the Clackamas River should have coordinated plans rather than everyone having different requirements and varying levels of strictness because many people do not know where their water came from or who their water provider was, so the more consistency in the WMCP the better.
 - **CEO Parno** agreed, the media often reported agencies were asking customers to cut down usage to a certain level. Water providers in the basin often talked about how they were communicating with just their customers.
- **Mr. Henkle** confirmed the water rights strategy discussions could be sensitive and the question of whether those should be held in an Executive Session was a good one.
 - **Mr. Crean** explained a number of criteria or standards had to be met to allow for an Executive Session. Depending on the discussion, they would have to determine if it fit within that scope.
- **Board Member Bryck** believed the CRW's certificated rights were granted a long time ago. When she worked at CRW, they had other permitted rights that they let go because the rural water district did not believe it would have significant development, requiring them to use those rights, so they did not try to prove beneficial use.
- The Clackamas River was fully subscribed, and the surface water supply had been overallocated.

CEO Parno explained that to execute the next steps outlined by GSI (Slide 12), he would discuss the notice from the State with Mr. Henkle, Mr. Sussman, and Mr. Crean, as well as updating the WMCP, which was a major step in making sure SFWB could move through the process. SFWB was working through the process of building out capacity and a strategic plan would serve as the Board's guiding principles. He would return to the Board with an updated WMCP and a strategy going into the future because the capital plan they were currently working on would allow them to have the needed capacity.

Chair Bialostosky noted it was easy to forget about this component of the work to protect the water rights. He fully supported developing a water rights strategy as soon as possible.

Board Member Bryck added when prioritizing some of the capital improvements, the Board could consider where the pinch points are. Right now, if the plant ran full bore, would the finished water line, clear well, or intake be big enough to move it on its way? They could figure out what was causing capacity to be limited by looking at the various components.

Board Member O'Donnell noted the components could be upsized to accommodate future growth. They should also think about the sequence of those other locations that had to be developed, and he hoped they were nearest to farthest. But if they had to develop farther away, then maybe that pipe could be sized to where it could be tapped into instead of a closer one at a future date instead of building another delivery line. He appreciated what Mr. Crean had done over the years because the Board had been educated.

Mr. Sussman noted there was a lot of synergy between developing the WMCP, which was already a regulatory requirement, and the water rights strategy because they would be digging into how the customer was using water, how demands were changing, and the projected demand, all of which fed the water right strategy to some extent.

Chair Bialostosky called for a brief recess and reconvened the meeting at 8:29 pm.

Vice Chair McGriff was not present at roll call but joined the meeting via Zoom sometime during the discussion.

(6) **South Fork Water Board Goals Update**

Wyatt Parno, CEO, highlighted the South Fork Water Board Strategic Goals & Priorities 2023-2025 handout, explaining the black print was the approved goals and additions the Board requested, for example, adding the words “Advisory Committee” to Stakeholder Support and including Short- and Long-Term Prioritization on maintenance costs. Having goals laid out a game plan to provide quality drinking water and knowing the focus areas of the Board.

CEO Parno and SFWB Operation Manager Mark Cage reviewed the updates, noted in blue text. Additional key comments and responses to Board questions were as follows:

- **Water Quality**
 - SFWB was beginning rounds of cyanotoxin, or lead and copper, monitoring. Oregon City would provide the testing, and the results would be in the Board’s CC&R reports. Cyanotoxin monitoring was a state requirement and would continue through October to cover the hot parts of the year when water flow was slower, and alga could form. The tests are conducted twice a month.
 - South Fork would actually be monitoring the cold-water quality as an indicator for algal blooms. PGE did provide notice about alga blooms at Timothy Lake. Whether PGE had a monitoring requirement was unknown, but each agency had one.

- No polyfluoroalkyl (PFAS) was detected. SFWB was not required to test for PFAS because the Clackamas River area did not have industry for that, but some agencies did test.
- Infrastructure Investment
 - **CEO Parno** noted that collaboration with stakeholders (Oregon City and West Linn Staff and Consor), to review the Master Plan and Capital Improvement Plan (CIP) and receive input into the prioritization had been done before. The goal was to have both Public Works Directors agree with the CIP. Having South Fork, as the water purifier, and the two distribution systems have regular communication about coordination was important.
 - **CEO Parno** confirmed he was speaking with two consultants about working to approve the costs or justify an increase in the system development charges (SDCs). He needed to use proper procurement policies, but wanted to find a consultant that could start soon. He could solicit three quotes and just raise that as of January to \$100,000.
 - **Board Member O'Donnell** stated he wanted to give him the ability to make a timely response because increasing SDCs was the first step.
 - Consor was being consulted about the prioritization and cost updates. While the engineers might not know exactly how the projects would cost out, the estimates and contingency would provide a range for the years they expect to do the building.
 - **Board Member Bryck** noted different contingencies could be made for different kinds of work. The water line would be one thing because although the cost of pipes was unknown, the quantity was known. When talking about more complex projects, greater contingency should be added.
- Proactive Maintenance
 - The condition assessment of projects needed further refinement. The flooring of Clear Well 1 was evaluated and found to be acceptable, but further analysis is recommended. Next steps included locating the raw water line, which was necessary whether a new line was built next to the old one or an emergency occurred.
- Water Supply
 - The water rights strategy and WMCP had been discussed.
- Stakeholder Support
 - Regular discussions with Public Works Directors, operation crews, and city managers.
- Enterprise Management
 - Christa Britton was hired as office manager, a budgeted position, and would start May 9. Three strong candidates emerged from six applicants during the interviews. Ms. Britton had strong project management skills, including submitting RFPs and running project files, which SFWB would be doing a lot of in the future. She also had strong customer outreach skills, and a business degree rather than an engineering background.
 - With the Board approving special assignments at the last meeting, Mr. Cage could more easily transfer his knowledge to younger staff as part of South Fork's secession plan.
 - **CEO Parno** was looking into the free cyber audits provided by CISA. Jesse and Jake would walk Staff through their SCADA components tomorrow.
 - Two seasonal workers would be hired for the summer, and good candidates were often found through the Water and Environmental Technology (WET) program at Clackamas Community College.

- **CEO Parno** was still contemplating hiring a Level 3 for the vacant operator position to ease the transition of Mr. Cage's retirement. Getting the newer, current Level 1 employees to a Level 3 to run the plant would take about four years.

(7) **Business from the CEO**

1) Operations & Maintenance Update

CEO Parno reported that summer preparations were underway and the crew was doing an amazing job.

2) Water Sales to Clackamas River Water for Filter Valves Replacement Project

CEO Parno reported CRW would finish up its valve project soon, providing CRW with 5 mgd of water per day for the last month had netted about \$350,000 revenue. The operations team staffed extra shifts to cover that, including a lot of graveyard shifts.

3) Staffing Update

Wyatt Parno, CEO, noted he had already provided staffing updates for the new office manager and operations crew.

4) AWWA Annual Conference & Expo 2024 (ACE24)

Wyatt Parno, CEO, was excited that five board members would attend the AWWA Annual Conference & Expo (ACE24). He and Board Member Baumgardner would take the pre-conference course on capital delivery, and Vice Chair McGriff was taking the elected official's course. Rooms had been booked. He reminded the Board members to book their own flights and email him the receipts for reimbursements. He would put together an itinerary for their time in Anaheim.

(8) **Business from the Board**

Chair Bialostosky confirmed he had received the memorandum CEO Parno was working on related to West Linn's water line and the impact of its shutoff. He still had not heard anything about the timeline for when the shutoff would happen or how long it would last. The memo was being sent to press for an answer and highlight the need, but receiving any answers was at the whim of ODOT's schedule. Once he received the final copy of the memo, he would share it with Public Works Director Eric Lais and West Linn City Manager John Williams before sending it to the Oregon Department of Transportation (ODOT).

CEO Parno added Oregon City Public Works Director John Lewis had relayed several things he had heard because the work involved the Abernathy Bridge. He believed the challenge had been for the West Linn Staff not receiving information as directly from ODOT or the contractor as they would like, so this was a push to see what was happening. He did receive some feedback to include the operational impacts of the water line shutoff, as well as the financial impacts. He invited any suggestions from the Board.

Board Member O'Donnell suggested including a request for compensation. If ODOT said no, they could go to Stated elected officials to say ODOT was being unreasonable.

Board Member Baumgardner volunteered to talk to State level officials, noting she did not believe they should wait.

CEO Parno replied that he did not want to take away from the momentum West Linn was pushing forward. One thing that struck him as balanced was the idea of using the Water Environment Services (WES) line, but he did not know where ODOT was with that.

Chair Bialostosky favored sending the memo first and if the answer was unsatisfactory, then they could their leverage relationships.

(9) **Executive Session –Adjourn regular meeting and convene Executive Session if needed.**
No Executive Session was held.

A. To consider information or records that are exempt by law from public inspection pursuant to ORS 192.660 (2)(f).

B. To consult with 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).

(10) **Reconvene Regular Meeting if needed to take any action necessary as determined in Executive Session.**

Chair Bialostosky adjourned the regular meeting at 8:50 pm.

Respectfully Submitted,

By Paula Pinyerd, ABC Transcription Services, LLC.
for Wyatt Parno, SFWB CEO