

**RESOLUTION #11/12-4
CITY OF DAYTON, OREGON**

Title: A Resolution Approving Option for Willamette River Water Rights Application

WHEREAS, the McMinnville Water and Light Commission and the City of Dayton are engaged in the distribution and sale of domestic water supply; and

WHEREAS, McMinnville Water and Light and the City of Dayton would benefit from additional water sources to meet the long term requirements; and

WHEREAS, McMinnville Water and Light and the City of Dayton entered into an Intergovernmental Agreement for services associated with the acquisition of a Willamette River Water Use Permit; and

WHEREAS, McMinnville Water and Light contracted with GSI Water Solutions, Inc. for services associated with the acquisition of a Willamette River Water Use Permit; and

WHEREAS, GSI Water Solutions, Inc. has outlined four options for moving forward with a water rights application in their letter dated June 8, 2011, hereby attached hereto as Exhibit A;

The City of Dayton resolves as follows:

- 1) **THAT** the City Council hereby approves Option D identified in the June 8, 2011 correspondence from GSI Water Solutions, Inc., attached hereto as Exhibit A, and authorizes the City Manager to move forward as outlined in said option; and
- 2) **THAT** this resolution shall become effective immediately upon adoption.

ADOPTED this 1st day of August 2011

In Favor: Evers, Frank, Utt, White, Witt, Wytoski

Opposed: None

Absent: Blackburn

Abstained: None



Jolie White, Mayor

ATTEST:



Peggy Selberg
City Recorder

8/16/11

Date of Signing

8/1/11

Date of Enactment

Attachment: Exhibit A



Water Solutions, Inc.

June 8, 2011

TO: Paul Elias, McMinnville Water and Light
Christy Ellis, City of Dayton
Steven Weaver, City of Carlton

FROM: Adam Sussman, GSI Water Solutions, Inc.
Kimberly Grigsby, GSI Water Solutions, Inc.

SUBJECT: Applicant Options for Willamette River Water Right Application

I. Introduction

McMinnville Water and Light (MW&L) and the Cities of Dayton and Carlton (the Cities) (jointly "the Partners") intend to apply to the Oregon Water Resources Department (OWRD) for authorization to appropriate water from the Willamette River for municipal purposes. The Partners requested that GSI Water Solutions, Inc. (GSI) provide assistance with this process, including developing a summary of the options for identifying the applicant(s) on the water right application(s), which were discussed during our "kick-off" meeting. The Partners seek to understand the benefits and drawbacks for each of the identified options. The following discussion provides a summary of the identified options and their relative merits.

II. Alternatives for Identifying the Water Right Applicant(s)

GSI has summarized the following four options for identifying the applicant(s) on one or more applications for MW&L and the Cities to appropriate water from the Willamette River:

- A. Submit separate applications (one application for each of the Partners);
- B. Submit a single application with each of the Partners identified as an applicant;
- C. Create a Chapter 190 organization and submit an application in the name of that organization;
- D. Enter into an agreement that the Partners will develop a Chapter 190 organization and assign the application or permit to that organization once it is formed. While the Chapter 190 organization is being formed, submit an application to OWRD that identifies the Partners as the applicants and specify a combined maximum authorized rate of diversion.

Each of these alternatives is described in more detail below, along with a brief discussion of the merits of each option.

A. Three Applications

Under this alternative, each Partner would file a water right application in its own name. Although the applications would identify the same point of diversion and treatment facility locations, the applications would only describe the water use for the applicant and would not include the other Partners' water use.

Benefits:

- This option could likely be implemented immediately.
- The division of the water rights would be clear. The amount of water to which each Partner was entitled would be determined by their water rights. Future water right transactions (extensions, transfers, certificates, etc.) would not require coordination with the other Partners.

Drawback:

- The applications would likely not receive the benefits of being for a regional water supply system.

B. One Application in the Partners' Names

Under this alternative, the Partners would file one water right application with OWRD. The application would include the name of each Partner as an applicant. The application could request just a total combined maximum authorized rate of diversion, or could identify the maximum rate to which each Partner was entitled.

Benefit:

- The application would have the benefits of being for a regional water supply system.

Drawback:

- Future water right transactions (extensions, transfers, certificates, etc.), and potentially the division of water, would require coordination with the other Partners and there would be no coordination framework in place.

C. Chapter 190 Organization as the Applicant

Under this alternative, the Partners would form an organization, as allowed by ORS Chapter 190, to deliver water. This is a fairly common approach to “sharing” a water right, with a nearby example being the Willamette River Water Coalition (WRWC), which currently includes the cities of Sherwood, Tigard, and Tualatin and the Tualatin Valley Water District. Once the Partners completed the formation of the Chapter 190 organization, they would submit to OWRD a water right application in the name of the organization.

Benefits:

- The application would have the benefits of being for a regional water supply system.
- The division of water and future water right transactions (extensions, transfers, certificates, etc.) would, presumably, be guided by the agreement associated with the Chapter 190 organization.

Drawback:

- The Partners would need to delay filing a water right application until the Chapter 190 organization had been formed and filed with the Secretary of State.

D. One Application with Agreement to Form a Chapter 190 Organization

Under this alternative, the Partners would enter into an agreement to develop a Chapter 190 organization and to assign their water right to that organization once it was formed. After the Partners had entered into the agreement, but without waiting for the Chapter 190 organization to be formed, the Partners would file a water right application with OWRD. The application would include the name of each Partner as an applicant. Once the Chapter 190 organization was formed, the Partners would execute an assignment to make the organization the holder of the water right application or permit.

Benefits:

- The application would have the benefits of being for a regional water supply system.
- The division of water and future water right transactions (extensions, transfers, certificates, etc.) would, presumably, be guided by the agreement associated with the Chapter 190 organization.
- The water right application could be filed without needing to wait for the Chapter 190 organization to be formed. Since the water right review process takes 8 to 12 months, the formation of the Chapter 190 organization can run parallel to the water right review process.

Drawbacks: We have not identified any significant drawbacks to this alternative.

1600 Western Blvd., Suite 240 Corvallis, OR 97333 P: 541.753.0745 F: 541.754.4211 info@gsiwatersolutions.com www.gsiwatersolutions.com

III. Recommendation and Conclusion

From a water rights transactions perspective, GSI recommends alternative D: enter into an agreement to form a Chapter 190 organization to hold the water right and file one application. This alternative allows the Partners to move forward with a water right application in the near term while providing all of the benefits of a regional water supply system with a central organization to facilitate water right management.

GSI recommends that the Partners consult with their attorney to determine if this option would meet the MW&L and the Cities other needs and requirements.

We look forward to receiving the Partners' decision on this issue and to continuing to assist the Partners with the project definition and water rights application processes.