**John Day Sewer & Oregon Pine Improvements**

**November 2023 Progress Report for City Council**

John Day’s Sewer Improvements Project and the Oregon Pine Companion Projects have six primary tracks that are the focus of our efforts:

1. Section 7/Environmental Compliance
2. USDA and Other Funding Applications
3. DEQ Permitting Compliance
4. Preliminary Site Preparation for Companion Projects
5. Engineering Design and Package Plant Procurement
6. Community Engagement and Outreach

This memo provides a progress summary for all six tracks over October 2023. Our top priorities currently are Task 1) environmental compliance and Task 2) completing the funding application(s) and Task 4b) Purple Pipe.

**High Notes:**

* Task 1: Biological Assessment met NOAA-NMFS threshold for expedited review.
* Task 2: Business Oregon and USDA have cleared a PDB strategy, DEQ-CWSRF won’t allow. All three are ok with starting Final Design now.
* Task 4b: Purple Pipe Final Design work is on-going and ~70% completed, preparing for 90% submittal. Analysis of cost per segment included.
* Task 4c: Instream Water Right transfer memo from CwM-H20 attached explaining the obligation of the City and the process to come. CwM will have a chance to revise the submission based on new information obtained.
* Task 4d: Tetra Tech (solar engineer) final contract executed; Tetra Tech is now working.
* Task 5: Need to make a final determination on the course for procuring the WWTP design services.
* Task 6: No update on Canyon City rate negotiations.

**Council Discussion:**

1. Procurement Plan for WWTF Design/Construction: Progressive Design-Build or Design-Bid-Build?
   1. See attached email from Ducote Consulting for full background and context.
   2. BLJ legal review of the 2019 engineering procurement concluded it was sufficient to proceed with Flagline Engineering as the Design and Construction engineer for the project.
   3. Bottom line: DEQ-CWSRF will not fund a Progressive Design-Build, Business Oregon will have a lot of restrictions, USDA will require a complex approval and legal review process.
   4. We may save time during construction with Progressive Design-Build, but we will lose out on potentially $2m of grant from DEQ along with their lower-interest loan (lower than USDA).
   5. We will definitely save time during design if we proceed with a Design-Bid-Build process, which means Flagline can start design as soon as a scope of work is developed.
   6. Flagline had previously started drafting the Scope of Work and has picked it back up.
2. Cost estimate to extend Purple Pipe service to Malheur Lumber will exceed available funding.
   1. **Gap of $400-550k**
   2. Tank cost: $1.1m (could build all pipe without tank and pump station)
   3. Could give more flexibility to Final Design team to tweak project on the tank and pump station, if it’s not built already.

**Additional Documents Attached:**

1. Ducote Consulting Engineering Procurement Strategy Email Memo (11/21)
2. HECO Segment Analysis (12/6)
3. CwM-H20 Memos on Instream Water Rights Transfers (12/11)
   1. Response to Affidavits of Non-Use
   2. Response to Municipal Transfer Due Diligence
4. CWSRF-DEQ Loan application for $4m (submitted 12/6)

# Section 7/Environmental Compliance (Task 1)

USDA initiated Formal Consultation on the Biological Assessment for the new WWTF on October 26, 2023 with National Marine Fisheries Service and the US Fish and Wildlife Service. The services have 120 days to produce their Biological Opinion, although they told us this would be an “expedited review.”

**Additional Task Updates:**

* Reply expected by January or February 2024.
* USDA will then have to take 1-2 months to adopt the findings and publish them for public comment.
* Ducote Consulting will also have to update the Environmental Review Report when the Biological Opinion is finally issued to reflect the document.

**Status:**

* Formal Consultation on Biological Assessment initiated with NOAA-NMFS and USFWS in October.

# 2. USDA and Other Funding Applications (Task 2)

Ducote, Flagline, USDA, and Business Oregon held a meeting on 11/8 to discuss next steps after the finalizing of the environmental report, how to coordinate the two funding agencies, and move the project forward. There are still many steps remaining to finalize the funding, which will include input and work from Flagline and Ducote.

A preliminary application for the DEQ-Clean Water State Revolving Loan Fund was submitted on 12/6 for a total of $4,000,000. Ideally, the package that DEQ will offer to the City would be a $2m grant/$2m loan combination. The terms would be 1.5-1.75% interest over 30 year – better terms than USDA will offer for their debt. This application is non-binding and this funding is mutually exclusive with a Progressive Design-Building procurement strategy. However, the CWSRF funding will be limited to construction and will take 6-9 months to finalize.

**Additional Task Updates:**

* Waiting to determine what the procurement method forward is.
  1. CWSRF funding is **NOT** compatible with a Progressive Design-Build approach.
* DEQ-CWSRF application submitted on 12/6 for $4m in funding.
  1. Non-binding, the Council can reject the offer or chose not to move forward with the loan. There is a lengthy administrative process to finalize the funding.

**Status**:

* USDA funding application for $7-10m pending, waiting for Biological Assessment.
* DEQ-CWSRF application pending for $4m in construction funds.

# DEQ Permitting (Task 3)

The Department of Environmental Quality (DEQ) issued a new wastewater pollution control facility (WPCF) permit effective on May 1, 2022 (Permit Number: 103281; File Number: 127619). The permit is good for ten years and expires December 31, 2032.

**Status**:

* Purple Pipe Draft Preliminary Engineering Report and Draft Recycled Water Plan submitted to DEQ 8/25, Received RWP comments 10/27, PER comments pending.

# Preliminary Area Preparation for Companion Projects (Task 4)

The City has three ongoing companion projects that accompany the Wastewater Treatment Plant. They are (1) Site improvements to NW 7th Street and the former Oregon Pine/DR Johnson mill site to make the new facility accessible; (2) Design and construction of the reclaimed water (purple pipe) distribution system; and (3) Design and potential construction of a solar array to power the new facility. The City also completed updates to its [DiscoverJohnDay.com website](https://www.discoverjohnday.com/grow) to promote the Project and the City’s use of reclaimed water to create a sustainable high-desert community.

## Area Improvements

Trail improvements contracted through Knife River are nearing completion with an inspection conducted. There is currently discussion on-going between Sisul and Knife River about the quantity of base rock that was installed. Once that matter is finalized, the invoice will be sent to the City. These improvements will be paid by the HB5006 DAS-8154 and Oregon Parks and Recreation Department’s Recreational Trail Program grants.

## Purple Pipe System

The Oregon Water Resources Department (OWRD) awarded the City $2.9 million in August 2022 to design and build the purple pipe distribution system. The matching funds for this companion project are the City’s planned expenditures for the treatment plant.

Based on the HECO preliminary designs and cost estimates, there is not enough grant funding to construction the entire planned Purple Pipe system. HECO has paused Final Design on the eastern segments given the high cost estimates. They have also a cost estimate exhibit to demonstrate the cost of various segments of the overall planned Purple Pipe system – Exhibit B.

|  |  |
| --- | --- |
| **WRD Project Budget** | |
| Total Available for Construction | $ 2,554,380 |
|  |  |
| Total Construction Cost Estimate | $ 3,702,354 |
| **GAP** | **$ 1,147,974** |

Tank: ~$1.1m

**Task Updates:**

* No comments yet from DEQ on the Preliminary Engineering Report (PER).
* Instream Water Rights Transfer submitted, citizen comments received (see below).

**Additional Updates:**

* Environmental team will be assembled for wetland delineation and cultural survey after the alignment is finalized.

## Instream Water Rights Transfers

CwM-H20 Response to Concerns, Excerpt: “The final land ownership information, i.e., a current title (less than 90 days old) is required by Oregon Water Resources Department (OWRD), but not until the transfer application is conditionally approved and a Draft Preliminary Decision is issued by OWRD. The processing time between the submittal of the transfer application and the Draft Preliminary Determination can be a year or years apart, which is why the agency waits for the final land ownership confirmation. After the Draft Preliminary Determination is issued the ownership must be confirmed and any changes amended in the transfer application. This ensures that the final due diligence on land ownership occurs just before any change in the water right is made…

Please note that CwM H2O (CwM) has relied on the City to provide the property descriptions for the transfers and on the Grant County website for tax lot descriptions as the best available information. It is possible that there have been changes in ownership information from the time that the City provided the information, and the transfer applications were submitted. CwM will amend any documented changes in ownership if the Draft Preliminary Determination finds that the transfer is likely to be approved. All changes must be documented in the final title report.

CwM reviewed the Grant County website in the past week and noted that tax lots on Oregon Pine site are different than depicted in the transfer map prepared. A revision of tax lot boundaries might be required for the transfer application maps if it is found that some private lands overlap the boundaries claimed by the City in the water right transfer maps. CwM will amend the transfer map based on the final title report if a favorable Draft Preliminary Determination is issued by OWRD.”

**Status**:

* Some public controversy regarding one of the Water Rights proposed to be transferred and the status of the ownership as a private landowner.
* CwM will have a chance to revise the submission based on new information obtained.

## Solar Array

The City was awarded a design contract for $100,000 by the Oregon Department of Energy (ODE) under its Community Renewable Energy Program (CREP). The city council approved the grant agreement at its May 9, 2023 meeting. Expiration deadline – May 2024.

**Status**:

* 12/6: Tetra Tech contract on Heather’s desk to sign

1. **Engineering Design and Package Plant Procurement** (Task 5)

When the environmental review (Task 1) is published and the public comment period is completed, our Business Oregon grants and loans will “unlock” so we can begin the bidding process on an engineer and vendor. That bid process will be covered under a Progressive Design/Build solicitation unless that method fails to receive USDA approval at the National Office. Having the solicitation process begin requires both Task 1 and Task 2 outlined to be completed and finalized.

**Pros and Cons to Progressive Design-Build and Design-Bid-Build**

**Progressive Design-Build**

**Pros:**

* General Contractor on-board can order some long lead time materials far in advance of the actual construction, allowing faster construction times.
* Will theoretically keep costs down by introducing synergy early in the project.
* Will speed up the project - once the teams are all in place.

**Cons:**

* Need an Owner's Rep to be procured prior to procuring the PDB team. Flagline could fit the role of an Owner's Rep without procurement.
* Long lead time to get this time in place and approved by all funders. USDA said they will take 3-5 months to review the RFP document *once we submit it* because we would be writing the procurement rules from scratch.
* DEQ-CWSRF funding will not allow this method.
* Higher administrative burden and cost to get the model up and running. There will be a lot of legal and consultant work on the front-end before anyone is even designing the plant.

**Design-Bid-Build:**

**Pros:**

* Could start Final Design immediately after BLJ reviews the 2019 procurement and we negotiate a Scope of Work, which is supposedly drafted by Flagline already.
* It's a universally accepted method of designing and constructing a public works utility. All funders accept it and we can still procure the package plant separately at 30% design.
* More predictable process to hand over to the new City Manager.
* USDA doesn't have to take 4-5 months reviewing this document and creating a brand new process.
* Final Design can happen concurrently with the remaining environmental approvals, we could potentially start Design work prior to the Q1 2024 pending negotiations.

**Cons:**

* Will not have a General Contractor on-board from early on in the project. This means materials cannot be ordered, although there may be some flexibility as a part of the package plant procurement.
* The back-end of the project in construction will take longer than a Progressive Design-Build, but the front-end of the Design-Bid-Build will be faster.

**Status**:

* Alternative approach to Progressive Design-Build would have these milestones:
  + 30% design: solicit the package treatment plant
* Ducote Consulting and Flagline will work on developing a procurement method overview document. This will cover BOTH:
  + Owner’s Rep initial engineering procurement, combined with construction administration and management duties.
  + A Progressive Design-Build procurement that will include a General Contractor and Design Engineer (separate from the Owner’s Rep). Review of the PDB document, once the City and its team has transmitted it to USDA, will take another 3-4 months for review and approval by USDA.
    - As a sub-set of this procurement, the City would separate out the Package Plant as a stand-alone contract to be funded by Business Oregon. Business Oregon will not fund a contract that includes a General Contractor/construction activities.

# Community Engagement and Outreach (Task 6)

**Status**:

* Canyon City rate negotiation is on-going, a contract draft was sent to Canyon City and returned with revisions to John Day Staff.
* Monthly John Day Council updates are being given in written and verbal format by Ducote Consulting.
* Citizen Advisory Committee has not been formed.

**Task Overview Schedule and Timeline:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **COMPLETED** | | | **ALMOST COMPLETE** | |
| **TASK** | Preliminary Engineering Reports (1 & 3 updates) | Grants Secured ($10.7m) | Environmental Compliance\* | Finalize Funding Commitments (USDA & CWSRF) |
| **Status** | 2019 - 2022 | 2018 -2022 | *2019 - 2024* | *2018 - current* |
| **Est Timeframe** |  |  | *3-5 months* | *4-8 months\** |
|  |  |  |  |  |
| **NEXT TASKS** | | **TASKS NOT BEGUN** | | |
| Bid/procure an Owners Rep (City-side Engineer for QA/QC, construction) | Bid/procure the Progressive Design/Build, PDB (Engineer + Vendor Team) | Final Design & Off-Site Construction (PDB Team), City Engineer QA/QC | Bid Construction on the WWTF | Complete Construction on the new WWTF |
|  |  |  |  |  |
| 1.5-3 months | 5-7 months | 12-18 months | 1-2 months | 12 months |