



May 19, 2009

TO: Mayor and Members of Council
FROM: Milton Dohoney, Jr., City Manager
SUBJECT: Water District Proposal

Introduction

You have been reviewing, as have I, the study done at my request to evaluate the possibility of evolving the Greater Cincinnati Water Works (GCWW) into the Greater Cincinnati Regional Water District. The idea does suggest a significant change in the legal structure of the organization, enabling the operation to stretch beyond its current service area. It must be stated early on that, if this change is ultimately approved, the high quality drinking water that customers enjoy today **will not change**. These standards must be complied with whether GCWW is a City run agency or a public water district created by the City.

Given all of the issues that have been debated, there has been no disagreement at all regarding this government's need for more revenue. We continue to struggle with expenses outpacing revenues and a desire to maintain all the services we currently provide. That situation made it clear that we need to explore different ways of doing things, accepting that there will be no tax hikes. This reasoning is at the heart of my interest to pursue this idea. New revenue for the City is part of the equation; the other part being that this type of change is in the best interest of the GCWW as well.

Because the current business model for the GCWW has been in place for as long as it has, any significant change is bound to raise a lot of questions. I was directed to answer several of those questions in this document, which I will attempt to do later in this document.

The water district concept has understandably provoked a reaction from the public -- some along philosophical lines, some along emotional lines, and some along business lines.

As you might expect, there has been an ongoing flow of questions from employees. As mentioned in the report and in subsequent questions, the employees would still fall under State Civil Service provisions after the change, as all City employees do now. If they are represented by a labor group, the water district would agree to recognize those representative groups. The level of compensation and benefits currently received by each employee will continue as it is today.

One feature employees would lose is the right to transfer to another position in the City. However, it is widely known that Water Works does not have the issues suffered by departments that rely on the General Fund. They have funds for training and professional development, they have the resources employees need to do their jobs -- in short, Water Works has stability. As a result, few employees transfer from Water Works to the General Fund departments.

There have been questions raised about the potential for new customers. The GCWW's service area has grown substantially within Hamilton County since the early 1920s, and now serves 85% of Hamilton County. It adopted an aggressive growth strategy in the 1990s to compensate for the decline in city customers' water consumption, and since 1994 has expanded its customer base by eight communities including parts of Butler and Warren Counties, the cities of Reading and Mason in Ohio, and Boone County and the City of Florence in Kentucky. The costs of system expansion are borne by the developers or communities benefiting from the expansion. While the GCWW has a solid track record of expanding its customer base over the last 15 years, the ability to continue this in the future faces challenging limitations under the current GCWW business structure. A financial analysis prepared for the proposed water district conservatively assumed that it would expand its customer base during the first 15 years of service by adding at least 3 new communities. This would be possible because the proposed water district provides a more flexible business platform and enables the district to seek expansion opportunities not only within its current service area, but also beyond the borders of its current service area.

A key point to keep in mind is that the pursuit of a project like this is a process. No single act by itself can make this happen. The petition that would go to the Court of Common Pleas would have to be very carefully worded and, if there are issues remaining for the City Council, there would be another opportunity to pull back should the negotiation for the transfer of the assets hit a snag. This information is per the Law Department.

Because of the potential to benefit the City on two primary fronts, 1) long term revenue support and 2) being able to spread operating costs for water service over a wider geographic area, I am supporting the recommendations from the study group to move forward **BUT** my support contains several qualifiers. In my view the following must be met for this to truly be a project in the best interests of the City:

Conditions of Support

1. There must be a clause in the transfer agreement perpetually prohibiting the regional water district (public utility) from selling the assets to a private entity (privatization).
2. The City of Cincinnati serves as the initial boundary of the District.
3. There will always be a majority of members of the Board that are appointed by the Cincinnati Mayor with City Council approval.
4. The required action at the state legislature ensuring that the Cincinnati Retirement System (CRS) be recognized and that the current and future employees can remain in the CRS must be undertaken.
5. Appropriate approvals from the City Council and the CRS must also be secured relative to current and future employees. The Retirement System would be hurt if it had to lose several hundred contributing members.
6. Ohio public employee labor laws provide a procedure where the employer can recognize a union as the collective bargaining agent rather than require the employees to participate in a voting process. The water district should be required to utilize this available procedure and automatically recognize the four unions as representing their respective employee groups.
7. Consultative assistance needs to be acquired to ensure the City's interests are supported in choosing a methodology for the valuation of the GCWW assets.
8. Asset negotiations must include a mitigated agreement regarding the phasing out of certain administrative and internal service operations that are currently provided to GCWW along with associated revenue received for those operations.

9. The provision for free water for municipal purposes to City of Cincinnati owned properties and institutions, as well as the Cincinnati Zoo and Botanical Gardens in accordance with the Municipal Code.
10. I granted contract extensions to a small number of employees who had retired for the purpose of working through the feasibility study. To ensure a fair process, those positions need to be subject to an open hiring process as the water district is being formed.
11. A communications strategy needs to be developed so that the community will periodically be informed about the status as this proposal works its way through the court process.

Council Member Questions

As referenced earlier in this document, the following are questions posed by City Council:

1. **Q.** Would rate increases under the new system be approved by Council or the new Board of the water district?

A. The Board of Trustees for the water district would be responsible for setting the water rates within the confines of its agreements with the communities served. For City of Cincinnati residents, the Citizens Committee recommended the 25% rate reduction be continued. The Citizens Committee also recommended that a majority of the Board of Trustees for the Water District would be appointed by the City through the City's appointment process.

2. **Q.** What issues with the City Charter would apply under the proposed water district system?

A. Article IV, Section 9 of the City's Charter deals with revenues of the water utility. It is anticipated that any questions regarding the revenues derived from the sale of assets of GCWW will be resolved through the court petition process in conjunction with the formation of the water district.

3. **Q.** Where in the ORC is the GCWW limited?

A. The GCWW is limited from expanding regionally and selling water pursuant to Ohio Constitution Article XVIII, Sections 4 and 6, as well as Ohio Revised Code Section 743.18. The Ohio Revised Code specifically contemplated the ability of a water district to be able to expand and sell water to a greater population pursuant to Section 6119.06

4. **Q.** What would be the effect on the City's overall bond rating of pulling Water Works assets out of the City?

A. By state law the revenues of the water utility and the general fund revenues of the City must be accounted for and kept separate. The revenues of the utility must be used to pay only for utility expenses and cannot subsidize general fund operations.

Since the revenues of the City and the general fund must be kept separate, the rating agencies, Moody's and Standard and Poors, would not consider utility revenues as a source to support general fund debt payments. Thus, removing the Water Works assets from the City would have no impact on the City's bond rating.

However, if the City transferred the assets to the water district and in return received a stable long term revenue stream, that revenue stream could be used to pay for the construction or acquisition of permanent improvements and/or associated debt. The rating agencies would likely look upon that as a reliable and stable source of revenue for debt payments and would consider it as a positive factor in the City's bond rating.

5. **Q.** What are the issues with CRS and GCWW employees moving to a water district?

A. From the beginning, the City has stated that current employees would be expected to stay in their current retirement systems if GCWW becomes a water district. It has also been expected that new employees of the district would be able to enter the CRS plan. To accomplish this, it has been known since the start of the study process that approvals by the City Council and the Cincinnati Retirement Board, and possibly the state legislature, would be necessary for employees to stay in the City's retirement system.

Through the course of the study we learned that the state legislature will also have to take an action to correct an apparent technical oversight or mistake that was made by state staff in 1991. In 1991, the state legislature passed laws regarding the Ohio Public Employee Retirement System (OPERS), which had nothing to do with the CRS. However, in passing the legislation the legislature accidentally deleted language referencing Cincinnati's retirement system that had been in state law since 1938. This omission has caused no problems and generally went unnoticed. Prior to discovering what happened in 1991, the City Solicitor's office had determined that the language that had been in state law referencing CRS would have allowed existing and new employees of the water district to be in CRS. Once the Solicitor's office realized that the language in state law had been omitted in 1991, they determined that a correction would be needed. The Ohio General Assembly can make this technical correction, which will facilitate current and future employees staying in CRS if we move to a water district. The correction needs to be done whether or not the City decides to transition the Water Works to a district. The Cincinnati Retirement Board has been informed of the omission.

6. **Q.** Are we risking the quality of our water or water system by turning it over to a water district board?

A. The importance of high quality drinking water and excellent services will not change. Whether a water district or a City department, the water utility must comply with the same federal and state regulations and regulators (USEPA and OEPA). Compliance with the extensive drinking water regulations requires expensive research and installation of ever increasing and expensive treatment technology. Because a water district will improve the utility's ability to increase the customer base and enhance revenues, transitioning to a water district will provide the resources needed to support expensive research and state-of-the-art treatment technologies and services. Spreading these costs over more customers helps keep costs reasonable for all, and could possibly enhance our current high quality drinking water and services.

7. **Q.** What are the labor issues involved in creating the water district?

A. Ohio Revised Code, Chapter 6119, outlines the rules and regulations to create regional water and sewer districts. Chapter 6119.37 (A) of the Ohio Revised Code explains that "any employee of a political subdivision who is in the classified service

under Chapter 124 of the Revised Code, and who because of a transfer of a facility of such political subdivision to a regional water and sewer district becomes an employee of such district, shall, while in the continuous employment of such district, not be reduced in pay or position, suspended, or removed...” In other words, if the GCWW becomes a public water district, those employees of the GCWW will be transferred to become employees of the water district and will not have any reduction in pay, or their position, or be suspended or removed due to the creation of the water district. The intent is to keep employees whole in terms of compensation. The level of benefits currently received by each employee or employee group will continue as it is today.

The intent is to keep employees whole in terms of compensation as specified in Ohio Revised Code 6119. In the financial analysis of the district, it was assumed that the current employee benefits would be provided by the water district. As covered in the state’s collective bargaining laws, all benefits would be subject to future negotiations where union representation is present.

With the necessary approvals from the State, City, and CRS Board of Trustees, employees would also stay in their current pension system and new employees would become members of the Cincinnati Retirement System unless they previously were members of Ohio Public Employee Retirement System. These are the same retirement eligibility procedures and rules that are followed today for City employees.

In considering promotions, currently the City Civil Service Commission serves employees of the City of Cincinnati, including GCWW employees, and the Board of Education. The water district employees would fall under State Civil Service rules just as City employees do today.

Finally, the Citizens Committee which studied the feasibility of transferring GCWW to a water district has recommended that the district be required to recognize the four unions as the collective bargaining agents for their respective groups of employees. Ohio public employee labor laws provide a procedure where the employer can recognize a union as the collective bargaining agent rather than require the employees to participate in a voting process. The Citizens Committee has recommended that the water district, as the employer, be required to utilize the available procedure and automatically recognize the four unions as representing their respective employee groups.

Conclusion

With the above conditions included, the Administration recommends that City Council move forward with the creation of a regional water district. If City Council approves of the creation of a regional water district, an ordinance will be submitted authorizing the next step in the process.