

## Portland Utility Board

January 9, 2018, 4:00 – 6:30pm  
Chinook Room, 400 SW 6<sup>th</sup> Avenue  
Meeting # 38 Minutes

*PUB Members:* Alice Brawley-Chesworth, ex officio  
Ana Brophy, ex officio  
Allan Warman  
Colleen Johnson  
Dan Peterson  
Hilda Stevens  
Lee Moore  
Micah Meskel  
Mike Weedall  
Scott Robinson  
Ted Labbe  
Van Le, ex officio

*Absent:*

\* Meredith Connolly  
\* Robert Martineau

\*Notice of absence provided prior to meeting

*Staff:* Mike Jordan (Director, Bureau of Environmental Services)  
Mike Stuhr (Director, Portland Water Bureau)  
Karen Moynahan (Senior Deputy City Attorney)  
Gabe Solmer (Deputy Director, Portland Water Bureau)  
Dawn Uchiyama (Deputy Director, Bureau of Environmental Services)  
Cecelia Huynh (Director of Finance and Support Services, Water)  
Jonas Biery (Business Services Manager, Bureau of Environmental Services)  
Todd Lofgren (Senior Policy Advisor, Commissioner Fish)  
Jeff Winner (Capital Improvement Program Planning Supervisor, Portland Water Bureau)  
Ken Bartocci (Principal Financial Analyst, Bureau of Environmental Services)  
Sonia Schmanski (Chief of Staff, Commissioner Fish)  
Megan Callahan (Communications Director, Bureau of Environmental Services)  
Edward Campbell (Acting Communications Director, Portland Water Bureau)  
Liam Frost (Policy Director, Commissioner Fish's Office)

Shannon Fairchild (Financial Analyst, City Budget Office)  
Melissa Merrell (Principal Analyst, City Budget Office)

*Public:* Carol Cushman (League of Women Voters)

**I. Call to Order, Introduction of Any Audience Members**

Allan called the meeting to order. He reminded everyone the meeting was of citizen volunteers tasked to advise City Council on items related to the Water Bureau and the Bureau of Environmental Services. He gave an overview of the agenda.

**II. Settlement of Anderson Lawsuit, Karen Moynahan, Senior Deputy City Attorney**

Karen provided PUB members a [summary](#) of the recent settlement of the Anderson lawsuit. She told members that the initial estimate of potential liability had been \$120 million; half attributed to the Portland Harbor Superfund Site. The central question was whether the City charter authorized the City to use rate payer funds on certain activities. The judge set a standard that expenditures have to be reasonably related to the provision of water and sewer services. The City Attorney's concern was whether the City Council or the judiciary gets to determine which are reasonably related.

All but 7 of the disputed expenditures were decided in the City's favor. The remaining issues were Public Campaign Financing, the Portland Loos, Hurricane Katrina Aid, Dodge Park amenities, Hydro Parks, BES Parks Pass-through Costs, and certain expenditures at Powell Butte, estimated total expenditures were \$17 million.

On December 20, 2018, Council authorized a settlement agreement requiring the City to pay legal fees of \$3 million, from General Fund sources, and reimburse the Water Fund \$5.5 million and the Sewer Fund \$1.5 million, also from General Fund sources. The reimbursements must be completed by September 30, 2019.

Karen told the members that the attorneys office recommended the settlement for 4 reasons. First, the case was dismissed with prejudice meaning the plaintiffs can't bring the suit again. Second, it reduced the total reward to \$10 million from \$17 million. Third, the judge's standard that the court can decide what is reasonable won't be entered and binding in future cases. Fourth, the settlement brings finality. If the city were to pursue appeal and lose, the full \$17 million would be subject to additional interest fees of 9% per annum.

Karen noted that the \$3 million in attorney fees was standard for a \$10 million settlement; consistent if not slightly less.

Micah asked of the seven cases that were shown to not be connected to water or sewer services, are there any that the City will continue to fund. Karen said she thought one would be mutual aid agreements for Katrina. The City still feels it should be able to provide aid and it provides valuable training for staff. She thought there would perhaps be an ordinance on a standardizing such activities to remove any question. She said others such Powell Butte caretaker house are activities that are already finished so it's no longer a question.

Micah said he wanted to know more about internal precedence that might be set as a result of the settlement and how the Council and bureaus were thinking about that. Karen said she thought that while the city may disagree with some of the items, Council made a good business and policy decision by settling. She said the City learned some lessons along the way, including where the goal posts are. She noted also that many of the prior decision makers are gone. She

said she fields questions every week or two weeks from Water and BES staff about using rate payer funds.

Allan asked if she had advised the bureaus on using the reimbursed funds and Karen said only they would be returned to the Water and Sewer funds.

Ted thanked Karen for her hard work. He said she had done a good job from a difficult perspective. Ted said he was initially distressed about the settlement. While Micah questioned internal precedence, he was interested in the external precedent that may be set. His interest is in equity in the city. Given the Mt. Tabor agreement and this settlement, he wonders if there are patterns of privileged white people suing and the City settling. He asked if Karen considered the precedence of risking more lawsuits by settling. Karen said the City is very sensitive to equity issues. The City is using an equity tool and looking at issues with an equity lens.

Ted asked how much time and money the City spent on the Anderson lawsuit and what priorities fell to the side because of the suit. Karen said that (the previous lead attorney) Terry Thatcher was working exclusively on this case and kept track of his time. Karen said she hadn't tracked it as closely. She said work on the Portland Harbor Superfund slipped - that's where the crunch occurred. However, spending on the superfund site was an aspect of the lawsuit so she gained a lot of understanding on that issue and which will likely result in litigation. They have a head start on some of that work.

Allan asked Karen to share her notes with Melissa for the record and Karen said she'd send them.

III. **Public Comment**

Allan asked if there was any public comment. There was none.

IV. **Prior Meeting Minutes**

Colleen asked if there were any changes for the minutes of the December 5 meeting. There were none. The meeting minutes were accepted.

V. **Disclosure of Communications**

Ted said he had conversations with members of the Water Bureau and would be testifying as an individual, not PUB member, for a council agenda item related to revisions of the stormwater rate structure. Allan said that Ted had sent a note to the chairs about the hearing and Colleen clarified this was related to his professional role.

Mike W. said he had talked with Cecelia and Gabe at the Water Bureau following the subcommittee meeting on January 3.

VI. **Budget Updates from Bureaus**

Directors Mike Stuhr and Michael Jordan gave an overview.

Mike S. began by saying the Water Bureau is a tightly run ship. He reviewed a [chart](#) of City FTE growth versus the Water Bureau. The bureau currently has 589 FTE which is a significant reduction from 2008. They are 12% lower 10 years later while overall the City has grown 6%. He also talked about an operating budget versus inflationary comparisons chart. He said inflation

may be an appropriate measure of growth if the bureau were appropriately funded in the first place. He said people don't question increases in cell phone costs but water and sewer costs aren't as exciting but are vital for public health.

H explained to the board the Water Bureau melded rate; what it costs the bureau to do business. He said the difference between the gray and green line on the chart is a budget cut. If that gap persists long enough, eventually there is no longer a bureau.

Mike S. said 60% of the budget is personnel. The bureau always looks for ways to do things better. Asset management is one example. In Portland, pipe life cycle is 175 years; but at current level of investment they are at 350 years approximately. He's not currently concerned about that level of investment. The bureau is doing 6 to 7 miles of pipe now. For small meters, the life cycle is 30 years and the bureau is close to that and doing ok with fire hydrants.

Mike S. said he doesn't like hiring staff, because he's had to lay them off and it's not fun. If you think of staffing needs as having peaks and valleys, he wants to hire FTE at the bottom of the curve and when appropriate fill in the gap with contractors.

He said the board had asked for budget scenarios at 4% and 3% combined increase. Cecelia and Jonas will explain the details but they did the best they could in a few days. He cautioned the board about the term discretionary. He thinks the budget as provided initially meets the commissioner's priorities and the mayor's priorities.

Michael Jordan said many of the points Mike S. covered were applicable to BES as well. They are in month 6 of the budget development process. In the last few months they have worked to finalize the strategic plan. They received guidance from the Commissioners and the Mayor. They've gotten a lot of questions from the board. They are very aware of the cost of utilities. They are working to understand the condition of bureau assets and are balancing all of those things and interests.

Mike J. said this was his 34<sup>th</sup> budget and he'd never met a budget he couldn't cut, but there are ramifications of those decisions. If you cut the budget below the amount you need to run the system at a sustainable level, you are mortgaging your kid's future. The bureau has flexibility, but the costs go up in the out years. He told the board he doesn't envy their position. He said that if you look at almost any objective benchmarking of other metropolitan areas and are concerned about affordability, he would promote a more aggressive approach as a city (broader conversation than just the bureau) to provide overall relief. He cautioned the board that lowering rates for all customers would provide a subsidy to those that don't need it.

Colleen said the board had asked the staff or both bureaus to do a lot of work in a short amount of time and appreciate both the responses and the time it took to produce.

#### BES

Jonas then gave an update on the budget for BES. He said

- the reduction to the Multnomah County Drainage district has changed to about \$100,000 less of a reduction than initially thought.
- The bureau has adjusted the base package so that it nets to zero.

- The positions requests that had been included at placeholder numbers are being refined thought he doesn't expect final numbers to result in material changes to the request totals.
- The bureau is continuing to refine the request narratives.
- The rate forecast continues to be at 3% annual rate of increase and they will do one more rate update in May.
- The board asked BES to create a decision package [summary](#) similar to the one submitted by [Water](#).
- H referenced a submitted [answer](#) (page 3) related to the CIP. He said the chart shows how work at the treatment plant is more expensive sooner and maintenance and reliability work will happen later.

Jonas said the Mike J. had mentioned the strategic plan. He told the board that the plan is final and Dawn added that it's available on the website and she would provide the board with hardcopies when they are ready.

Jonas then talked about the alternative budget [exercise](#) the board had requested an acknowledged the amount of staff work that went into it.

He directed them to the BES page (green in submitted hardcopy documents) and said that from a financial analyst perspective, this isn't an analysis. This is a math exercise. It doesn't show the real-life impact. They didn't try to reflect costs on retention or workforce development related to eliminated training. They did a very unsophisticated approach to reducing capital costs not required for regulatory compliance. They did not include vehicles because asset management strategy informs the forecast. Reducing that would not be efficient as they are replaced based on efficient life cycle replacement cycle.

#### Water Bureau

Next Cecelia provided updates to the Water Bureau request. They are still looking at personnel services costs, labor contract, and interagency costs. They are in the process of putting everything together. She said that the alternative budget exercise was difficult. They had management meeting to identify reductions and the impacts of those reductions. They chose not to look at anything that is a core service or things directed by council or commissioners (low-income given as an example). There are some where they could pursue other resources like from the General Fund. They also discussed positions which is the only way to make substantive reduction. To identify the impact of staff reductions would take more time and analysis as they work on many projects.

The bureau is currently estimating an annual rate of increase of 8.8% for FY 2018-19 and 7.4% for the outyears of the 5-year forecast.

They asked group leaders which add packages can they live without. For the treatment package, they identified a need for at least five personnel. The treatment operators, they felt they could ask for position authority but not funding. This would allow them to start the hiring process but not incur costs. For the Unidirectional Flushing program, they need three out of the five this year. The board had suggested the bureaus look at fleet expenditures. She said Water believes that item is optimally balanced. They've look at it several times trying to find a better way. The bureau also thinks they are at an optimally balanced place for PC replacement.

Cecelia said there are also non-budgetary items that effect rates and they will be looking at service levels. The bureau wants to know PUBs thoughts on those as it will impact the budget.

Cecelia then directed the board to the last page of the handout that talks about the combined rate of increase ranges from the alternative scenarios.

Colleen clarified that the 3.67% combined rate increase would be made up of 2.3% from BES and 6.4% from Water and Cecelia confirmed.

Jonas said that the budgets the bureaus propose (not the alternatives) would require a 4.94% combine annual rate of increase.

Mike W thanked all of the staff for their good work. He found it really helpful to talk with Cecelia and Gabe. He acknowledged this isn't easy stuff. He had several thoughts:

- He thought the chart was very telling (operating budget chart) and thinks it shows that the Water Bureau is very efficient. The water always comes on.
- He addressed Mike J.'s comment that considering constraining rates for all rate payers would be a subsidy to people that don't need it. He thinks everyone deserves the optimal rate. The bureaus should help lower income people, but PUB's job is to make sure that all rate payers get the very best buy.
- He said that he thinks the alternative budget exercise shows there are places where the bureaus can give. Even small items can turn into real dollars when considered together.
- He wanted to keep challenging everyone to keep working to figure this out.
- He said he thought Cecelia's example of the getting authorization for operators but not budget was the type of creative thinking that he applauds them for.

Van asked at the 3.67% rate, would there be lay-offs and would there be union contract implications. Jonas said he assumes there would be some reductions in staffing but they haven't fully explored it.

Cecelia said for the Water Bureau one of the components is a reduction in communications which would have staff impacts but they also haven't yet worked out the details.

Allan asked for clarification if it would be FTE or contract implications. Jonas said staff. Cecelia wasn't sure yet.

Van asked if any of the reductions could be taken care by retirements. Jonas replied that regardless of the way they would get there, there would be service level reductions.

Mike asked when was the right time to ask for clarification for the bureau responses to board questions. He said he'd like more information on the answer to Q10. It starts with an assumption an assumption that there will be some additional work, but also said it couldn't be quantified.

Scott asked for an overall rate of health care, PERS, personnel cost increases. Jonas tentatively said \$4 million. Cecelia said she'd have to look.

Allan thank the bureaus and moved the board to the discussion guide.

**VII. Board Discussion**

Allan reminded members they needed to provide a letter by January 24 so the bureaus can include it in their budget requests due on January 29. The board would spend the remaining time in the meeting discussing input to the Council and will meet again to finalize it next Thursday at noon. Melissa prepared a discussion [guide](#) and they would go through it topic by topic.

Values

Colleen said that at the previous meeting Todd had asked the board to identify what values they would use to evaluate budget requests. The board has talked about values in several communications but doesn't have a standing value statement. She pulled together common threads and asked members what else they would add.

Alice said she thought the efficient use of resources and efficient operations should be added.

Micah thought watershed/ecosystem health was missing. He thought it could be coupled with regulatory compliance or service delivery.

Van said she thought the concept of affordability for all separate from low-income assistance is new to her and she'd like more conversation. She thoughts equity and low -income assistance should be separated. She thought affordability may encompass both subsidy for low-income and the idea of best value for all.

Colleen agreed that equity should stand on its own.

They talked about the different measures of affordability – inflation, and relation to changes in income. They also talked about the EPA standard of costs being unaffordable at 4.5% combined of median family income.

Scott said the degree to which the cost of the service far exceeds median household increases would be a concern. He said that's what he hears members saying is a general concept of affordability.

Mike W. added that he thought the board was saying that the bureaus should be run as efficient businesses versus what the community can bare.

Lee said he was struggling with the idea that they are dealing with infrastructure that is in a deficit. A value should be that sustaining and continuing to improve maintenance of existing infrastructure. He thinks that if the bureaus fail to do that, the other stuff doesn't matter. They could be in Flint or Detroit, Michigan situation. Those cities are in a deeper hole now than they ever were because they looked for the cheapest solution. The board and the bureaus have a responsibility to first maintain the infrastructure. He doesn't see that reflected. He said the goal ultimately is about equity – that people have safe drinking water. As a previous operating manager, that was always his number one concern.

Colleen said she didn't think anyone would disagree with that and thinks the list of values encapsulates that and it's embedded in the values. She acknowledged the inherent tensions; there are constrained resources.

Ted thought it was worthy of being elevated but wouldn't call it asset management. He supports that addition and thinks it's important for PUB to raise infrastructure issues.

Colleen added this is an initial input and the board can refine its inputs after the CBO analysis.

Mike W. said he didn't think anyone is saying the operations should be put at risk. They are trying to figure out where to draw the line. As Mike J. noted, there isn't some budget line item that can't some cut.

Alice also suggested that the tension should be more developed.

### Topic #1: Annual Rates of Increase

Micah suggested adding comparisons of our rate increases to national trends.

Van added that the emphasis should be the multi-year impact of rates of increases, particularly noted in Item E. it's not just the annual rate concern.

Alice said she agreed. She is still struggling with always using the 10-year comparison and wonders what's happening over a longer time frame. She had raised the concerns before about using inflation as a benchmark and thinks that's why item C is included.

Colleen said she wasn't sure if there would be much difference.

Hilda commented that in relation to rates, affordability, and setting up a benchmark, the average person in the community is lucky to see a 3% pay increase. She wonders at what point can we say to the customers; an increase is too much. As a board, they aren't identifying where that line is.

Allan said he thought they should talk about the rate as a combined rate and Alice concurred. Customers receive one bill.

Colleen remarked in response to Hilda's comment that she wouldn't be comfortable picking a number. She thought the board should look at all the information being presented and should decide as a board what they are comfortable recommending. She doesn't think they are at that point yet and would want to see the CBO analysis.

Hilda added the requests still don't include all the labor costs yet and Alice clarified that even so, the bureaus are committed to less than 5%.

Scott said he sees Lee's point. He said the board is feeling those tensions. The bureaus have new requirements to meet. There are structural issues on the capital side and labor side. He thinks it would be helpful for Council if the board included those tradeoffs; the recognition that



investments need to be made that from a rate perspective may be painful. He has concerns about the board may be setting itself up with topic that will need to be discussed every year.

Colleen said she thought that was the point and that it needed to be a multi-year conversation.

Scott didn't want the board to lock itself in. The board and the bureaus will have to make choices. Some things can be dialed back to Mike J.'s point, but the question is what are the tradeoffs.

Ted commented that the language in Item E language is too strong and members agreed to soften it.

## TOPIC 2: Budget Prioritization and Rate Options

Scott asked for member thoughts on the suggested description in Item J. Alice thought it should be something in between and Dan thought it could be combined with K and Scott suggested helpful and valuable.

Van talked about Item F. and asked if there is a place for having affordability/efficiencies on our agenda regularly. She wasn't sure where it fit best but thinks engaging in an efficiency exercise only once a year may not help. She thinks asking for regular consideration could be powerful. Mike agreed and said it fit with his earlier comments.

Colleen commented that she thinks the board has consistently asked those questions. Van gave an example of the CIP PREP project. At the time, she asked would it result in faster, better work. She didn't want the bureau to think that the board would automatically sign-off on adding staff. She did an analysis of the strategic plan and affordability didn't come up. Equity was mentioned 40 times.

Ted said he understood her point but thinks efficiency had been it has been embedded in many of the times the board had discussed and specifically mentioned that equity and affordability had been central to the board comments on filtration.

Colleen commented that she thought it was incumbent on each member to move that conversation forward.

Mike suggested striking L and clarified keeping the first sentence.

Ted noted that if the board were to keep M (encouraging more communication of benefits) but were also to recommend cutting communications - that seems like a one-two punch.

Allan said that he thinks communication is important. In the past, communication faltered and we had an issue. He suggested beefing up M and Ana suggested 'encourage the bureaus to work together'.

Lee thought the board need to be more specific. For example, it's not very helpful to tell people to drive safer, better to say drive slower.

### TOPIC 3: Affordability

There were questions about Item N and a conversation about the EPA measure.

Colleen asked if it made sense to combine rate affordability and annual rates of increase. Allan said he thought affordability was more emotional and they should be kept separate.

Alice suggested adding cumulative costs over time.

In thinking about the EPA measure, Van asked why the board wouldn't support a rate increase below that? Lee questioned it as well. Colleen said they weren't asking the bureaus to make cuts but were scrutinizing increases. For measures that include the median, there should be conversation about those below.

Mike said it's often difficult to bring national numbers to local level.

Alice added that the EPA is one point of information; so is inflation. Multiple measures highlight the complexity of the situation.

Lee asked if there was one that was better. Alice said in water, lots of people have issues with the EPA number, particularly because of the low-income impact.

Allan asked if members wanted the EPA measure removed. Van said she thought it was better to include for context. Melissa added that the EPA measure was the point at which rates were so unaffordable, that EPA would provide utilities will waivers for some regulatorily required activities. Below the measure isn't 'affordable.'

There was additional discussion about the measure. Melissa said she'd try to find language to clarify it and the board could look at it next week.

Melissa asked members to weigh in on the qualifiers for P & Q and they responded it should be members with no qualifier.

Ted turned to Item U and said the filtration plant is going to be a significant driver of rates for several years. He thought the second sentence was problematic. Colleen asked if it should be taken out and Ted recommended striking it but acknowledge filtration is going to affect rates.

Van asked members about their thoughts in the general efficiencies statement in U.

Colleen suggested for U making it general to both bureaus.

Lee added that he thought that the letter should remind the Council to keep in mind all the significant investments that have occurred and the impact on rates.

Scott suggested moving the words around in Item R to put the PUB recommendation closer to Council approval.

Colleen suggested the board skip **Topic #4 Equity and Assistance Programs** and come back to it.

#### Topic #5: Centralized Services and Citywide Priorities

Alice suggested making this section more general. Many things are centralized across the City. These are two examples.

#### Topic #6: Settlement of Anderson Lawsuit

Micah said his concern was making sure these doesn't set negative precedents internally for the bureaus. He suggested a possible letter or future agenda item about it.

Lee said this was a topic that was talked about it at Clackamas County wondering why the City was using rates for some projects. Micah responded he thought the bureaus should be doing some of the activities.

Colleen recommended taking out this item and members generally agreed.

#### Topic #7: Strategic Planning

Van asked in reference to Item OO if the board had asked for the summary. She didn't think it added much. Colleen said she thought it was good to have decision packages tied to strategic plan items and Van suggested next year it would be helpful if the information was provided at a more granular level.

There was more conversation and clarification about the items provided and how one of the documents being looked at was referencing the groupings PUB requested not the strategic plans.

Members agreed they looked forward to more refinement.

#### Topic #8: Regulatory Compliance and Community Expectations

Van noted a typo to be corrected and compliment will be changed.

#### Topic #9: Communications and Transparency

Members agreed to this section.

#### Topic #10: Comments on specific budget proposals

Alice suggested adding they would consider CUB input as well. There was discussion about when additional input might be available and agreed they'd consider it but not added it specifically to the letter.

#### Topic #4 Equity and Assistance Programs

The board returned to Topic #4.

Mike W. said the board was waiting on more information.

Van noted that Item FF is the only place the board calls out performance and would suggest that be generalized. She suggested adding it to Strategic Planning. Melissa said she's pull some words from the BES strategic plan statement to see if they worked.

Alice asked if it is true that a decreasing number of customers are participating in the assistance programs and Cecelia said yes.

Colleen suggested taking out Topic 4. She thinks it's really about assistance programs. She doesn't think they have much to say until hearing more from Liam.

Micah talked about including this as a topic on tension.

Ted expressed interest in the board making a general statement of support with regards to the assistance programs.

Alice noted the board should be careful of its comments here giving future input on the equity manager position.

Colleen disagreed. She thinks the board can present a statement of support for equity and still be thoughtful in consideration of what can be afforded.

Lee thinks as written, the guide misses the point that equity and low-income assistance are two different things. He doesn't see anything about hiring people in an equitable way.

Colleen suggested separating the issues and adding general support for assistance programs.

Ana also suggested a general statement of support about equity initiatives. She'd like to hear the mayor's vision for equity.

Melissa noted that Items W, X, Y are general statements of low-income and EE was a statement about the board asking questions about the proposed changes and reserving further statement.

Lee said there needed to be something drafted about equity and Melissa would work on something.

Van said she has a gut feeling the input so far isn't moving the dial very far. Mike W. agreed and said he wanted to drill down for more granularity and use the rest of the budget time to work closely with staff.

--DRAFT--

Colleen said the board would continue the conversation on the 18<sup>th</sup> and the board needs a quorum then she requested members let Melissa know if they would be unavailable.

Melissa said she would incorporate all the changes and recirculate a draft.

The meeting adjourned at 6:41 PM.