



## WEST DES MOINES WATER WORK BOARD OF TRUSTEES MEETING COMMUNICATION

**DATE:** January 16, 2018

**ITEM:**

**2. Discussion**

- b. Discussion – Discussion on Draft Memorandum of Understanding for Regionalization of Water Production and Related Media Communications

**FINANCIAL IMPACT:**

N/A

**SUMMARY:** The draft Memorandum of Understanding (MOU) for the potential establishment of a regional water production utility is attached for Board of Trustee review and discussion. Any changes or recommendations developed during today's discussion will be incorporated into a revised draft which will be considered by the Board at the regular meeting scheduled for January 22, 2018.

At this time the Board of Trustees may also discuss media communications related to the draft MOU.

**BACKGROUND:** The attached draft MOU was developed by Jason Mumm of the FCS Group using information and input from metro area utility and city leaders. Regionalization meetings and workshops were held during the fall/winter of 2017.

**RECOMMENDED ACTION BY THE BOARD OF TRUSTEES:**

To Discuss the Draft Memorandum of Understanding for Regionalization of Water Production and Related Media Communications.

Prepared by: \_\_\_\_\_

Approved for Content by: \_\_\_\_\_



## I. Purpose of the Regional Water Authority

This document summarizes the major terms of a proposed agreement to provide for the creation of a new, separate, regional governmental entity to provide for the expansion, upgrades, operations and maintenance of water production in the Greater Des Moines region.

### A. Objectives

The objectives for forming the proposed regional water production entity ("Water Authority" or "Authority") include the following:

- Improve the governance of regional water production to include wider representation within the Greater Des Moines region;
- Consolidate the authority for the planning and expansion of existing water production facilities, including construction of new facilities;
- Consolidate ownership of existing water production assets and facilities;
- Establish rates for water production;
- Provide for the operations and maintenance of all regional water production facilities; and
- Retain structure and governance of local utility boards and/or city councils in all matters related to distribution of water to their customers.

### B. Separate legal entity

The proposed Water Authority will be constituted as a separate legal entity pursuant to Sections 28E.5 and 28F.1 of the Code of Iowa (2017). The Authority will be both a corporation and political subdivision with all rights and responsibilities provided in the Code.

### C. Membership

Membership in the Authority extends to any Board of a Water Utility, any Council of a City, any Board of a County, and any Board of a Rural Water Service Provider who are also signatories to the Authority's formation as described in Section 1B ("Members").

The Authority may add new Members subject to Board approval of applicable terms and conditions.

Members may request to forfeit membership in the Authority with a minimum of eighteen (18) months written notice. Members requesting forfeiture will receive no financial consideration and any assets contributed by the Member to the Authority shall remain the property of the Authority.

### D. Regional Water Production vs. Distribution Activities

The scope of the Authority's rights and responsibilities extends only to the provision of drinking water production, which includes the following activities with specific assets as outlined in Appendix A:

- Withdrawal of surface or groundwater supplies including those resources resulting from agreements with the Corps of Engineers,
- Storage of source water,
- Treatment of source water,
- Storage of treated drinking water for production purposes, and

- Transmission and pumping of treated drinking water to individual, metered delivery points of the Members.

Activities and related assets required to convey drinking water from the above water production facilities to local distribution networks and the local storage of said drinking water to serve local customers, is specifically not within the scope of the Authority's rights and responsibilities. Such activities, referred to herein as "Distribution Activities," are reserved to the local governance of the Members.

## II. Boundaries of the Regional Water Authority

The geographic boundary of the Authority will include the current and future legal boundaries of the Members. In cases where the Authority may not serve the entire water demands of a given Member, said Member may provide the Authority with a separate boundary description. The intent of the Members is that the Authority's geographic boundaries will expand as the Member's boundaries expand or as new Members are admitted. Accordingly, the Authority may update the geographic boundaries as regional conditions change.

## III. Composition of the Water Authority's Board of Directors

### A. Board Membership

The Water Authority's Board will be made up of one (1) representative appointed by the proper legal authority of each Member. Members shall appoint a representative for the Board whose term will commence immediately until the representative resigns, or until a new representative is appointed. In the event a representative resigns from the Board, a new representative shall be appointed within forty five (45) days from said resignation.

Once approved by the Board, new Members to the Authority shall also be allowed to appoint a Board representative.

### B. Board Voting

#### 1. Normal Voting Procedures.

Each representative on the Board shall have one (1) vote. Unless specifically set forth below, assuming a quorum is present, the majority of votes will decide all matters for the Board. Having more than half the representatives present and voting shall constitute a quorum. No vote will be taken without a quorum present.

#### 2. Weighted Voting

Certain issues, defined below, require a seventy five percent (75%) voting majority and each representative's vote will be weighted based on the weighted-average of the maximum daily demand over the most recent five (5) calendar years where the sum of all Members' maximum daily demands constitutes 100% of the voting weight, and each individual Member's demand for the five (5) year period constitutes that Member's proportion of the total vote.

#### Board Actions Requiring Weighted Voting

- To acquire or dispose of a water production asset,



- To establish or alter water production rate(s) and/or rate structure(s),
- To hire or retain an executive director,
- To approve or amend a budget,
- To adopt Bylaws or Rules of Order, and
- To admit a new Member.

### 3. Board Officers and Governance

The Board shall, at a minimum, elect a Chair, Vice-Chair, and Secretary. The Board may establish and elect additional Board officers it determines necessary for the proper and efficient execution of its duties.

The Board shall establish, and define the specific responsibilities, for the following committees:

- Executive Committee
- Planning Committee
- Operating Committee
- Finance Committee

The Board may establish any additional committees or subcommittees it determines as necessary.

## IV. Obligation of Service

The Authority shall provide for all drinking water production requirements of the Members, whenever requested except in the event of mechanical failures, unforeseen events, or Force Majeure, with the following additional provisions:

- The Authority shall plan for and deliver no more than the Member's maximum-daily demands,
- The Authority shall provide for sufficient water pressures and delivery points, both of which shall be determined in coordination with the Members,
- The Authority cannot deny service to any Member who requests it so long as the requests are made reasonably in advance,
- Curtailments in service, if any, shall be made proportionately without preference to any Member.
- All drinking water delivered by the Authority shall meet all applicable state and federal water quality regulations.
- The Authority will provide services to Members at a price that is reasonably related to its actual costs, at levels determined by its Board to be sufficient to pay the expenses of the Authority and to provide for the current and future financing of the Authority's capital projects.

## V. Right to Provide Water Production Services in the Region

### A. Exclusivity of the Authority

Within its boundaries, the Authority shall have the exclusive right to provide all drinking water production needs as defined in section I (D).

### B. Prohibited Member Activities

During the term of the agreement, the Members will not:

- Contract for drinking water supplies from any party other than the Authority
- Acquire or expand water production assets without consent of the Authority,
- Apply for new or expanded water production-related permits from the State of Iowa without written consent of the Authority,
- Apply for new or expanded water supply permits from any federal agency without written consent of the Authority, or
- Alter the flow or water quality of the Authority's water supplies.

## VI. Ownership of Existing Regional Water Production Assets

The Authority will own and manage all current and future water production assets within its boundaries as defined in Section II. The current water production assets are those identified at Appendix A.

### A. Sale of Reserve Capacity to Authority

Members with assets identified at Appendix A will contribute those assets to the Authority at no cost except that the Authority will purchase any reserve capacity that may be available from the assets at a rate per MGD as described below.

#### 1. Determining reserve capacity

Reserve capacity will be determined as the difference between the Member's verifiable maximum-day demand (in MGD) and the actual capacity belonging to that Member.

Actual capacity, for the purposes of this agreement, is the maximum capacity that the Member is able to produce with the sum of its water production assets in Appendix A considering the present condition of the assets and other operational constraints along with any purchased capacity. The actual capacity of a water production asset may be less than that which the assets were designed to produce.

The verifiable maximum-day demand shall be the weighted average of the maximum-day demand from the past five (5) years with the highest demand receiving the highest weight. See example in the below table:

*Table 1: Weighted Average Max-Day Demand (Illustration Purposes Only)*

Year	Weight	Max-Day Demand (MGD)	Weighted Demand (MGD)
2017	4/15	4 MGD	1.067
2016	3/15	3.5 MGD	0.700
2015	5/15	5 MGD	1.667
2014	2/15	3 MGD	0.400
2013	1/15	2.7 MGD	0.180
<b>Weighted Avg. Max-Day (MGD)</b>			<b>4.014</b>

Subtracting the verified maximum-day demand from the actual capacity of a Member yields the reserve capacity for that particular Member. A value of zero or a negative value indicates there is no reserve capacity.



## 2. Value of reserve capacity

The Authority will pay a single rate for each MGD of reserve capacity contributed by the Members. For the purposes of this agreement, the value per MGD is set at \$\_\_\_\_\_. This value may be adjusted in the future as determined by the Authority's Board.

### B. Timing of Contributions and Payments

As noted on Appendix A identified water production assets are to be contributed/transferred to the Authority as of the effective date of the Agreement or contributed/transferred to the Authority on a delayed timeline as specified in Appendix B.

The Authority will pay for the reserve capacity owed to the Members upon the Authority's first debt issuance, but not later than five (5) years after the effective date of the agreement unless mutually agreed to otherwise.

## VII. Operational Responsibilities

Upon the effective date of the agreement, the Authority will be responsible for the operations, maintenance, and performance of the water production facilities and payment for all related costs. It is explicitly the intent of the Members that the Authority negotiate and enter into operating agreements that will allow the current owners of the assets identified in Appendix A to remain as the operators of those assets for an initial term with optional subsequent terms.

### A. Operating Contracts

The Authority will negotiate substantially similar operating agreements with the owners of the assets identified in Appendix A for a minimum period of five (5) years from the effective date of the agreement. At the expiration of the initial term, the Authority may renegotiate terms for new operating agreements.

### B. Water Authority Staffing

The Authority may hire or retain an Executive Director and hire or retain other individual(s)/firm(s) the Board deems necessary.

### C. Regulatory Compliance

The Authority shall be responsible for all state and federal regulatory requirements related to the water production functions described in Section I (D). Upon signing of the agreement, the Authority will coordinate with the current permit holders and the Iowa Department of Natural Resources, and other applicable State and Federal agencies, for the transfer of existing operating permits and water allocation permits from the current holders to the Authority.

The expressed intent of the Members is that the Authority will be the primary organization responsible for all regulatory matters related to water production within its boundaries as defined in Section II. Once the permits have been transferred satisfactorily, the Authority will assume all responsibility for meeting final, published state and federal regulations concerning the delivery of treated drinking water to the individual Members' connections. In no case will the Authority be responsible for regulatory compliance for Distribution Activities.

## VIII. Financial Responsibilities and Authorities

It is the expressed intent of the Members to establish the Authority as a separate governmental entity under the definitions provided by Iowa Code and for all financial reporting purposes as defined by the Government Accounting Standards Board.

### A. Financing of Capital Projects

The Authority, having been established under the provisions of Section 28F.1 of the Iowa Code, shall have the authority to issue revenue bonds or enter into other forms of indebtedness for the financing of improvements or expansions to the Authority's water production assets.

The Authority may retain cash reserves at amounts determined by the Board as prudent and reasonable as a current and future funding source for improvements and/or expansions to the Authority's water production assets, and an additional reserve amount that the Board determines necessary for working capital.

### B. Payment of all Water Production Expenses

The Authority is responsible for payment of all operating contracts in addition to all expenditures necessary for the acquisition, maintenance, renewal, replacement, and/or disposal of water production assets. The Authority is responsible for all costs of financing the Authority incurs, including principal and interest payments, and any additional costs required to maintain compliance with any covenants agreed to in the issuance of bonds or other debt instruments.

In the event the Authority is unable to make timely payment for all water production expenses as described above, Members will advance sufficient funds in order to meet the Authority's financial obligations. The Authority will reimburse Members for any such advance of funds.

### C. Establishment of Regional Water Production Rates

The Authority shall, at least annually, establish appropriate rates and charges for the delivery of treated drinking water to individual Members. Any rate established by the Authority shall be: a) reasonably related to the actual costs incurred for providing service; b) sufficient to pay the expenses of the Authority and provide for its current and future financing needs; c) compliant with generally accepted water utility rate setting practices; d) considerate of individual Members' financial contributions to the invested capital of the Authority; and e) validated on a regular basis by independent experts with substantial experience and qualifications in water utility rate setting processes.

### D. Maintaining Accurate Books and Records

The Authority shall retain necessary resources and capabilities so as to keep accurate books and records at all times. Not less than quarterly, the Authority shall provide the Board with financial statements in compliance with generally accepted accounting practices and, to the extent required by Iowa law, publish the same.

Recognizing that accurate financial records are foundational to the Authority's ability to make efficient management decisions, and set and maintain fair and equitable rates, the following minimum requirements apply:

- **Detailed asset records required.** The Authority will maintain detailed records of assets it acquires whether purchased by the Authority or contributed to the Authority by Members or



other parties. Assets will be identified into categories consistent with the services provided by the Authority (see Section 1D). Those categories will include, at a minimum: (i) raw water sources; (ii) raw water storage reservoirs; (iii) raw water conveyance pipelines; (iv) raw water conveyance pumps; (v) water treatment facilities; (vi) finished water storage tanks/reservoirs; (vii) finished water transmission pipelines; (viii) finished water pumping; (ix) wholesale meters; (x) administrative & general and other plant. In addition to the categorization of assets, the Authority will identify each asset as having been purchased by the Authority, contributed by individual Members (identifying the amount of contribution by individual Member(s)), or contributed by another party (Non-Member).

- ***Detailed operating expense records required.*** The authority will account for operating expenses in the same categories as defined above.

The Authority shall annually engage a qualified public accounting firm to perform a comprehensive financial audit in accordance with generally accepted accounting practices. The comprehensive annual audit shall be presented to the Authority's Board no more than six months from the end of the Authority's fiscal year.

#### E. Sharing of Authority Startup Costs

Startup costs incurred in the formation of the Authority, including legal expenses, shall be shared proportionately by the Members.

#### F. Availability of Public Records

The Authority shall make its comprehensive annual audit and other financial records available for public inspection.



**APPENDIX A**  
**LISTING OF WATER PRODUCTION ASSETS**

Function*	Facility Name / Asset Description	Owner	Immediate or Delayed Transfer?
MTR	Wholesale Meters	DMWW	Immediate
SOS	Altoona Wells & TMT	Altoona	Delayed
SOS	Chain of Lakes	DMWW	Immediate
SOS	Des Moines River Intake	DMWW	Immediate
SOS	Fleur Infiltration Gallery	DMWW	Immediate
SOS	Maffit Raw Water - Collector Wells	DMWW	Immediate
SOS	Maffit Reservoir	DMWW	Immediate
SOS	Saylorville Lake Storage / Saylorville Project	DMWW	Immediate
SOS	Saylorville Raw Water - Collector Wells	DMWW	Immediate
SOS	Urbandale Raw Water Quarries	Urbandale	Delayed
SOS	Wells and Equipment	WDMWW	Immediate
STO	98th Street Tower	WDMWW	Immediate
STO	Army Post Road ASR	DMWW	Immediate
STO	ASR Wells	DMWW	Immediate
STO	East Side Tower	DMWW	Immediate
STO	Hazen Storage	DMWW	Immediate
STO	LP Moon Booster & Storage	DMWW	Immediate
STO	Polk Co. Booster	DMWW	Immediate
STO	Polk Co. Storage	DMWW	Immediate
STO	Tenny & Wilchinski Standpipes	DMWW	Immediate
STO	Wilchinski Standpipe	DMWW	Immediate
TMT	AC Ward Structures	WDMWW	Delayed
TMT	AC Ward Treatment Equipment	WDMWW	Delayed
TMT	Fleur Laboratory	DMWW	Immediate
TMT	Fleur Nitrate Facility	DMWW	Immediate
TMT	Fleur WTP	DMWW	Immediate
TMT	McMullen WTP	DMWW	Immediate
TMT	Saylorville WTP	DMWW	Immediate
TRN	Mains (706,450 LF)	DMWW	Immediate
TRN	Raw and Finished Water Mains	WDMWW	Delayed
TRN	SWTP Feeder Main (Prch. Cap)	DMWW	Immediate

\*MTR = Meters; SOS = Sources of Supply; TMT = Treatment Facilities; TRN= Transmission Lines

## APPENDIX B

### PROPOSED TIMELINE FOR TRANSFERRING ASSETS TO THE AUTHORITY

Certain assets in Appendix A will be transferred to the Authority immediately. Certain, other assets may be delayed for a period as defined

#### 1. Assets to be Transferred Immediately

All water production assets listed in Appendix A will be transferred immediately upon completion and execution of the proposed agreement unless specified explicitly on Appendix A as “Delayed”.

#### 2. Process for Delayed Asset Transfer

Those assets defined in Appendix A as “Delayed” will be transferred to the Authority contingent on the occurrence of the below events, or not later than ten (10) years from the effective date of the proposed agreement, whichever is earliest. The phases for delayed asset transfer fall into three periods as defined below:

##### **Phase 1 Period – Voluntary Transfer**

Following the effective date of the proposed agreement, owners of assets identified in Appendix A as “delayed” may offer the asset for inclusion in the Authority. There is no obligation on the parts of the owner or Authority to transfer the asset during this period.

If the asset is transferred, it will be transferred at no cost to the Authority except that the Authority will pay the owner for any reserve capacity determined to be available from the collection of assets proposed for transfer consistent Section VI of the agreement. Any measurements of actual capacity, reserve capacity, and maximum-day demand as required by Section VI will be made at the time the transfer is proposed. The value per MGD of reserve capacity shall be the same as defined in Section VI as of the effective date of the agreement.

##### **Phase 2 Period – Authority Call Option**

Once it has developed and approved a long-range plan for water production investments in the region, the Authority shall have the option to complete the transfer any asset(s) identified in Appendix A that have not already been transferred to the Authority.

Should the Authority exercise its option, the owning Members shall be obligated to transfer said assets in a manner consistent with Section VI of the agreement. Any measurements of actual capacity, reserve capacity, and maximum-day demand as required by Section VI will be made at the time the Authority exercises its option under this provision. The value per MGD of reserve capacity shall be the same as defined in Section VI as of the effective date of the agreement.

##### **Phase 3 Period – Mandatory Transfer**

Should the first two Phases defined above pass without all water production assets identified in Appendix A having been transferred to the Authority within 10 years from the effective date of the agreement, then those remaining, untransferred assets, shall be transferred to the Authority at no cost and with no consideration of reserve capacity.