Small Ports - Operating as a Utilities

WPPA Small Ports Seminar
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A Panel Discussion

- The legal basis to act as a utility
  - Water
  - Sewage
  - Electricity
- Case studies from Port of Allyn and from the Port of Mattawa
  - What they did
  - How did they do it
  - Why they did it
  - Lessons learned
- O&A
  - Moderated by Carly Michiels

Meet the Moderator and the Panel

- Carly Michiels
- Gil Alvarado
- Travis Merrill
- Frank Chmelik

A Brief Legal Overview

RCW 53.08.040 sewer utilities and water utilities and pollution control facilities

(1)“A district may also acquire, construct, install, improve, and operate ***sewer and water utilities*** to serve its own property and other property owners under terms, conditions, and rates to be fixed and approved by the port commission . . . and maintain and operate ***other facilities for or the control or elimination of air, water, or other pollution,*** including, but not limited to, facilities for the treatment and/or disposal of industrial wastes, and may make such facilities available to others under terms, conditions and rates to be fixed and approved by the port commission.

(4) No port shall enter into an agreement or contract to provide sewer and/or water utilities or pollution control facilities if substantially similar utilities or facilities are available from another source (or sources) which is able and willing to provide such utilities or facilities on a reasonable and nondiscriminatory basis unless such other source (or sources) consents thereto.

RCW 53.25.100 powers in industrial development districts

. . . to develop and improve the lands within such industrial development district to make the same suitable and available for industrial uses and purposes; to dredge, bulkhead, fill, grade, and protect such property; ***to provide, maintain, and operate water, light, power*** and fire protection facilities and services, streets, roads, . . .

Practical Considerations

Each type of utility has different funding and customer charging requirements which should be reviewed carefully.

Be able to demonstrate to the public “***why”*** the port is undertaking the project, “***what***” exactly is the port going to achieve and “***how***” the port will operate this facility.

All The Substance Starts With The Commission

RCW 53.08.160 – studies, investigations and surveys

All port districts organized under the provisions of this act shall be, and they are hereby, authorized and empowered to initiate and carry on the necessary studies, investigations and surveys required for the proper development, improvement and utilization of all port properties, utilities and facilities, and for industrial development within the district. . .

Case Study #1
Port of Allyn Water System

History of the Port's Water System

- In 1986: there was no public water provider in the Allyn service area
  - The Port sought to become a water provider with the goal of providing stability and predictability in support of economic development and investment in the area
  - Provide adequate fire flow to support future development in the area
- In 1986: the Port first received a water right from DOE for a well
  - The Port has been providing water to Port properties and other residential and commercial properties using this right
- In response to a community survey in 2001, the Port began expanding the Port Water System to address growing residential and commercial concerns
  - Open and transparent process which involved consultation and coordination with private water systems in what is now the Allyn UGA
    - Lakeland Village Water Co., Inc. and the Washington Water Services, Co.

- 2003: the Port adopts a Water System Plan through open and transparent process
- 2005: the Port filed an application for a water right (G2-30268) with DOE
- 2010, DOE granted the Port a Permit (G2-30268) with a priority date of July 14, 2005
- 2020, DOE issued to the Port a Superseding Water Right Permit for Permit G2-30268. The development schedule under this permit is to complete the project by March 1, 2025, and put water to full use by March 1, 2030

Port of Allyn Utility History

- Port of Allyn effectively been serving water since taking ownership of the main waterfront property in 1984
- Water Right increased from 14 acre ft to 300 acre ft in 2005
- Fire Flow established in 2008
- Second Well System purchase in service area in 2024
- 95 Billable connections currently
- Active planning for more development in the community

Allegations Raised by Community Member

- There are allegations that the Port is in the water business illegally based on an interpretation of RCW 53.08.040(4)
- Community member has a well on their property within the Port's service area
  - Community member has applied to DOE for water rights with a service area which would overlap with the Port's service area under its current Water Permit
  - Significant time and expense addressing this complaint

Reasons for your Port to run a water utility

1. Economic Development
    - Growing the tax base is a surefire way to increasing the Ports financial ability to do more for the community.
    - Water equals opportunity, everything begins with water, growth can't occur without it
    - Commerical & Industrial possibilities
    - Residential growth where private providers fail to provide

Federal, State and Local Requirements

Water systems are subject to several regulatory requirements. Be sure to consult the following agencies prior to pulling the trigger on starting a utility

1. Environmental Protection Agency EPA
2. Washington State Department of Health DOH
3. Washington State Department of Ecology
4. Department of Archaeology & Historic Preservation WA DAHP
5. Local county agencies (could encompass more than one)

Administrative & Accounting Challanges

Running a water system is a demanding endeavor.

Your greatest criticism comes in the form of how long a shutdown persists, not in the countless hours of issue free operation.

Specialized accounting software recommended

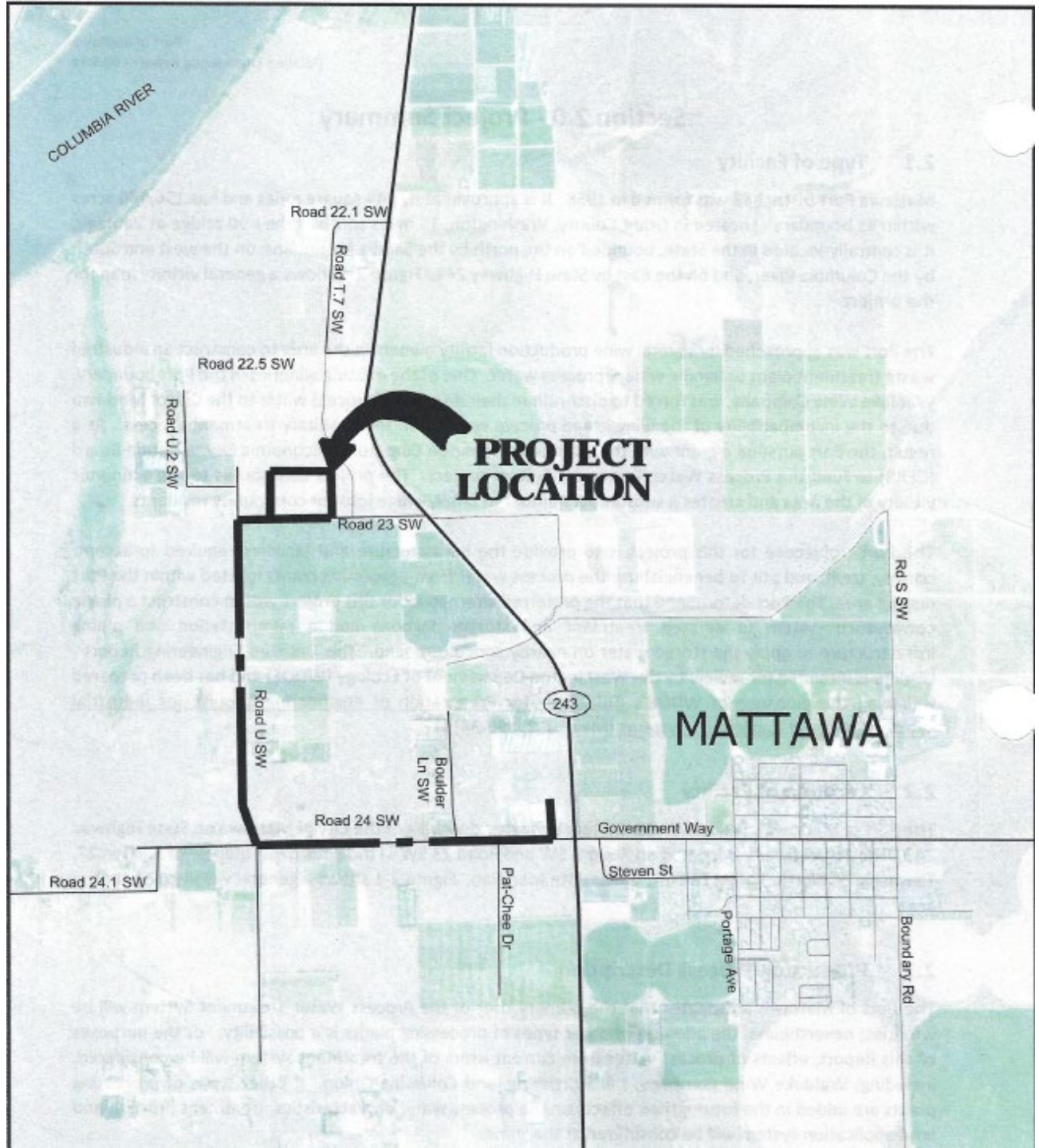
Know your service area and the service area of all other private operators

Delinquency Challenges

Grant Funding Opportunities

- If you know where to look Grants and low interested and/or partially forgivable loans can fully fund your utility project
  - WA Department of Health (DWSRF)
    - Save Drinking Water Action Grants
    - Source Water Protection Local Assistance Grants
    - Drinking Water State Revolving Fund Loans
  - WA Department of Ecology
  - WA Department of Commerce Direct appropriations (ask your state Rep)
  - US Enviromental Protection Agency
  - US Department of Agriculture
  - Too many to list!

Case Study #2
Port of Mattawa Industrial Wastewater Facility


COLUMBIA RIVER
Road 22.1 SW
Road T.7 SW
Road 22.5 SW
Road U 2 SW
PROJECT LOCATION
Road 23 SW
Rd S SW
243
MATTAWA
Road U SW
Boulder Ln SW
Road 24 SW
Government Way
Steven St
Road 24.1 SW
Pat-Chee Dr
Portage Ave
Boundary Rd

Project Summary

In 2007 the local wine producing facilities were given notice by the City of Mattawa that they would no longer be allowed to discharge their wastewater to the municipal wastewater facility. The wine grape process water was incompatible with the municipal sanitary sewer system. They were forced to discontinue discharging and look for alternatives to processing their wastewater.

After attempts by the local wine producers to find solutions to process their wastewater, the Port of Mattawa was approached in 2007 by these producers to construct an industrial water treatment facility to handle their discharge. The Port Commissioners looked at the local economic conditions in 2007 and the need to keep the wine producers in operation and their employment of 300 local residents in place. A decision was made to move forward with the construction of a Port owned and operated water treatment facility.

Financial Viability – Show Time

- Finance Plan: Industrial wasterwater treatment facility rate concept. Grants and CERB Loan are secured.
- Capital Facility Schedule: Capital costs, connection fee.
- Detailed Cost Model: Repayment schedule based on customers.
- Annual Ongoing Costs: Operation and maintenance.
- Revenue from Process Water: Amended process water for application in agricultural uses.
- Monthly Rates: Rate schedule to pay for O/M, debt repayment, billing and administration.
- Repair Reserve: $30,000/Year with a 5-year fund balance of $150,000.
- Projected Revenue Outlook: Revenue and expense.

2023 – The Year That Was

The Port WWTF was now in its 15th year of operation and was starting to experience operating and mechanical issues and failures. Due to increased operational costs, staff proposed rate increases to cover costs and debt service. The Board approved the rate increases.

On June 2, 2023 the Port was given notice that one of the two WWTF customers was terminating their contract. This in essence cut the anticipated revenues in half. This brought forward legal issues with the contract and was finally settled out of court by both parties.

November 2023 the Executive Director after 10 years with the Port, was offered another job and left the Port. A change in management began December 2023.

December 2023 the Port received multiple violation notices from the DOE regarding our WWTF Discharge Permit.

2024 – Moving Forward

- Revenue losses are significant. We began operating Jan 1, 2024 with a negative fund balance of -$425,000 dollars.
- Port Property sales and assets became more urgent to cover our budget shortfall. Grant County Treasurer begins to apply pressure.
- Staff and Board begin discussions regarding the viability of the Port continuing to operate a WWTF utility. Is the Port best suited to operate a WWTF?
- Staff brings forwards alternatives, including the sale of the WWTF.
- Discussions are initiated with stakeholders to go over the issues the Port is experiencing with owning and operating the WWTF.
- April 2024 a windstorm causes damage to the aerators which triggered a chain event of failures that cost the Port over $100,000 in damage and revenues. The WWTF was inoperable for 5 months.

Continued

- The Robb Report – Is Washington Wine in Crisis? “Last summer, in a meeting in Eastern Washington, Ste. Michelle Wine Estates (SMWE), delivered some devastating news to the grape growers in attendance. The state’s largest winery told the vineyards it would purchase 40 percent less fruit from them over the next five years”
- The sole wine producing facility was one of the mentioned grape growers. In March the facility laid off all of the production staff and moved them to another production facility.
- Limited production staff returned in September. It is anticipated that wine processing for 2024 will be half of normal production.
- We are now asking ourselves are we sustainable managed utility?

Questions?