

RESOLUTION NO. 20-2005

A RESOLUTION OF THE CITY OF MILWAUKIE APPROVING THE CLACKAMAS COUNTY BOARD ORDER INITIATING FORMATION OF THE CLACKAMAS RIVER WATER AUTHORITY

WHEREAS, the Clackamas Board of County Commissioners issued an Order on February 17, 2005 initiating formation of a water authority to be known as the "Clackamas River Water Authority"; and

WHEREAS, a true and correct copy of Order No. 2005-33 initiating formation of said water authority, which includes two maps showing the boundaries of the proposed water authority, is attached hereto as Exhibit "A"; and

WHEREAS, a portion of the proposed territory is within the City of Milwaukie, as shown in the map attached as Exhibit "B" hereto; and

WHEREAS, pursuant to ORS 198.835(3) if any area of the proposed water authority territory is within a city, the order shall be accompanied by a certified copy of a resolution of the city approving the order;

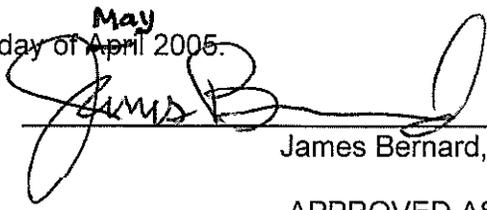
WHEREAS, the City of Milwaukie's agreement to the formation of the Clackamas River Water Authority is contingent on the continued enforceability of agreements between the City of Milwaukie and the existing water district known as Clackamas River water,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILWAUKIE RESOLVES AS FOLLOWS:

SECTION 1: The City Council of the City of Milwaukie consents to the formation of the Clackamas River water authority and approves the order initiating formation of the Authority on condition that that the Authority be bound by all existing agreements between the City of Milwaukie and Clackamas River Water, including the Memorandum of Understanding approved this date, a copy of which is attached hereto as Exhibit B and incorporated by this reference.

SECTION 2: This resolution is effective on passage. This resolution has and will have no effect and shall be void if the action of the Clackamas County Board of Commissioners creating the Authority does not provide that the Authority is bound by its agreements with the City.

Introduced and adopted by Council on this 17th day of ~~April~~^{May} 2005.

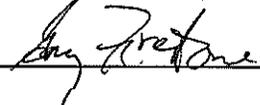

James Bernard, Mayor

ATTEST:
FORM:

APPROVED AS TO

Ramis Crew, Corrigan & Bachrach, LLP


Pat DuVal, City Recorder


City Attorney



MEMORANDUM OF UNDERSTANDING/AMENDMENT OF AGREEMENT

This memorandum of understanding is between Clackamas River Water (CRW) and the City of Milwaukie (Milwaukie). This MOU is effective when signed by both parties. The majority of this agreement is intended to simply document the existing understanding between the parties, but Section 2 and 3 are intended to modify an existing agreement and to impose binding obligations on the parties.

Recitals

- A. CRW and Milwaukie entered into an Agreement for Water Supply (Agreement) dated September 15, 1997. In addition to containing provisions for water supply, the Agreement also contained provisions regarding water service in areas within CRW that may be annexed by Milwaukie.
- D. The basic premise of the Agreement is that each party shall continue to provide service to existing customers, and that new customers will be physically served by the party in the best position to provide service, given existing infrastructure and geographical constraints. The Agreement further provided that in areas annexed by Milwaukie, CRW would continue to provide physical service, but Milwaukie could elect to perform meter reading, billing, and customer service activities,
- C. CRW is currently a domestic water supply district, but Clackamas County has initiated proceedings that would transform CRW into a water authority.
- D. CRW and Milwaukie believe that the Agreement provides a sound approach to the provision of water service within the urban growth boundary in areas that may be annexed into Milwaukie and that the agreement should remain in place if CRW becomes a water authority.
- E. The transformation of CRW into a water authority is acceptable to Milwaukie, provided that the water authority that succeeds CRW is bound by the Agreement.

Understanding and Amendment of Agreement

- 1. Except as modified in Sections 2 and 3 of this MOU, the Agreement remains in full effect and shall be binding on the water authority that succeeds to CRW, if one is formed.
- 2. The last sentence of Section 2 of the Agreement is modified to read: "If Milwaukie annexes territory within CRW's territory but not served by CRW, Milwaukie and CRW agree to cooperate and coordinate to provide water service to any portion of such territory requiring water service and to agree to terms for doing so."
- 3. Notwithstanding anything to the contrary in the Agreement, Sections 2 and 4 of the Agreement shall remain in effect unless and until both parties (Milwaukie and CRW or any successor in interest) agree to amendment or termination of those sections.

CITY OF MILWAUKIE

By: 
Its: Mayor

CLACKAMAS RIVER WATER

By: 
Gary R. Kerr, Secretary
Board of Commissioners

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

FILED

FEB 24 2005

Clackamas County Clerk

In the Matter of the Initiation of
Formation of a Water Authority



Order No. 2005-33

This matter coming before the Board of County Commissioners at this time for the purpose of initiating formation of a water authority within Clackamas County to provide water service as authorized by Chapter 450, the Principal Act; and

It appearing that ORS 450.660 authorizes formation of a water authority by any of the methods provided for in ORS 450.665 to 450.680 or 450.785; and

It further appearing that under ORS 450.785 the governing body of a county may on its own motion initiate the formation of a water authority in the manner provided in ORS 198.835 when it considers such formation necessary for the protection of the public health, safety and welfare; and

It further appearing that under ORS 450.722 the order proposing formation of a water authority may include a declaration that some or all water districts located within the boundaries of the proposed authority be dissolved upon formation.

NOW, THEREFORE, IT IS HEREBY ORDERED that formation of the water authority is necessary for the public health, safety and welfare, as supported by the findings contained in the attached Exhibit A, and this Board therefore initiates formation of a water authority to be known as the "Clackamas River Water Authority" to provide water services within the boundaries shown on maps 1 and 2 attached as Exhibit E; and

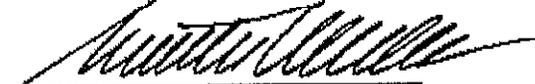
IT IS FURTHER ORDERED that upon the effective date of formation of the proposed water authority the Clackamas River Water District shall be dissolved and the water authority shall succeed to all the assets and become charged with all the liabilities, obligations, and functions of said District; and

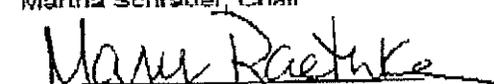
IT IS FURTHER ORDERED that should the water authority be formed without an election, the Clackamas River Water District Board serving at the time of formation of the water authority herein shall act as the Interim Water Authority Board until the election of a 7 member water authority Board; and

IT IS FURTHER ORDERED that a public hearing on the formation of the proposed water authority will be held by this Board at 10:00 a.m. on April 7, 2005, in the Commissioner's hearing room, Fourth Floor, 2051 Kaen Road, Oregon City, Oregon.

DATED this 17th day of February, 2005.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

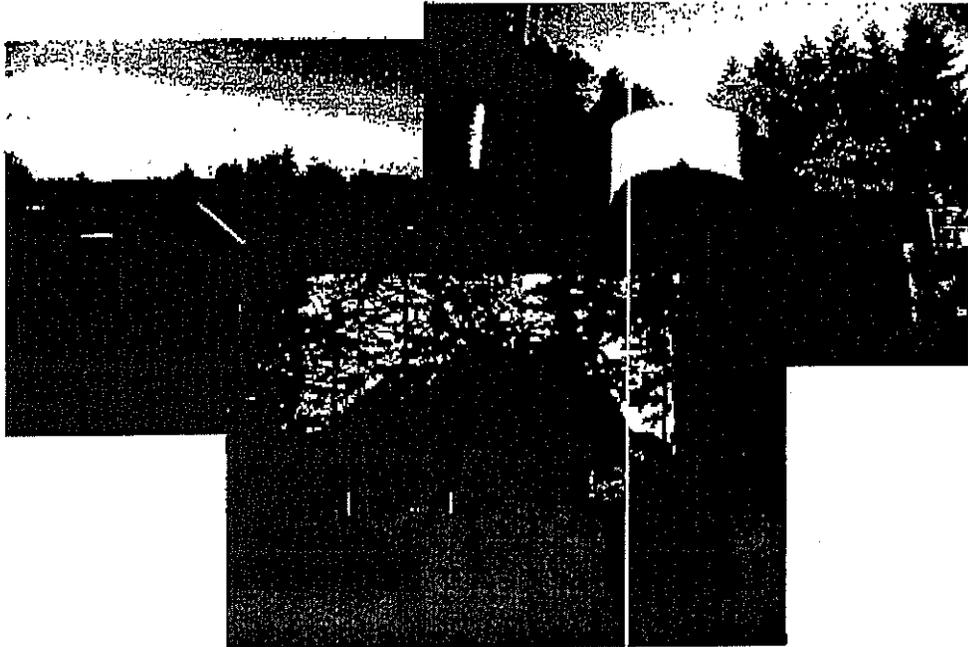

Martha Schrader, Chair


Recording Secretary

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Exhibit A

Findings



Initiation of Formation of Water Authority

By

Clackamas County

February 17, 2005

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Findings of Fact

The regulations set forth in Oregon Revised Statute (ORS) 450, ORS 450.660, 450.785, ORS 199, and Metro Code Chapter 3.09, contain requirements which must be followed in order to initiate the formation of a new Water Authority. It is the intent of the Clackamas Board of County Commissioners to initiate the formation of a new Water Authority within the boundaries of the Clackamas River Water District (CRW), and Oregon City Urban Growth Boundary, through the documentation of findings which respond to the regulatory requirements and provide the governing body of the principal county within which the authority would be formed with justification for why the formation of the authority is warranted. This document contains the responses to these regulations and presents the boundary of the new Water Authority for consideration.

Through the requirements outlined in ORS 450.785 the governing body of a county governing body may initiate the formation of a new water authority when it is determined that its formation is necessary for the "health, safety, and welfare" of customers within a defined service area. Through a technical and financial feasibility analysis, Clackamas County has considered the costs and benefits of the creation of a water authority to replace the current service area and presents those findings herein.

Impacts to Health, Safety, and Welfare

CRW has served the customers in its service area well since its formation in 1995. In keeping with the goals of the Metro Regional Water Supply Plan, CRW was formed to begin consolidation of water districts in Oregon and reduce the fragmentation that had existed for many years. Additionally in keeping with the goals of the Clackamas County Comprehensive Plan, CRW is developing water use of the Clackamas River. Given these facts, CRW sees the formation of a new Water Authority as a necessary means of preserving the health, safety, and welfare of its customers. Once the district is dissolved and replaced with an authority, it will be able to preserve its boundaries from annexation withdrawal and will therefore increase its ability to maintain its current high standards of water quality and adequate capacity.

Creation of the water authority will impact community health by preserving control of treatment operations, maintaining stewardship of water quality in the watershed, and allowing for the ability to expand source water options. At present CRW operates its own water treatment plant and controls the quality of its water supply to directly supplied customers. By preserving the current boundary in a new Water Authority, the Authority would continue positive control of the operation of the facility and would then continue to be independent of wholesale supply from other agencies. This is important to service areas that are not directly served by CRW at present as well; because creation of the Water Authority will allow for the continuation of long range planning that includes connection of service areas for increased direct service from the water treatment plant. As a good steward of the environment, CRW maintains a focus on water quality in its community. Establishing the Authority will preserve its ability to function as a water

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provider which directly relates to its ability to continue its stewardship. By maintaining its provider capabilities, a water authority would be involved in a broader consideration of impacts to water quality in decisions related to sourcing of water, water treatment, and water conservation. Lastly, having an adequate water supply with the ability to expand as demand requires is an important element in maintaining a healthy community. Maintaining the existing boundary and its associated infrastructure would allow the Authority to adequately expand source water options to preserve supply capacity.

In terms of safety, the creation of a water authority will improve the ability to maintain adequate water capacity for firefighting needs and improves the ability of the authority to plan for improvements and proactively maintain assets in order preserve the safety of its services. This is especially important for the service area of CRW due to the fact that many areas are higher in pressure than would be preferred. This higher pressure is necessary due to the topography of the service area, and results in increased stresses on infrastructure and an associated closer maintenance attention.

The impact to welfare is identified in the financial impact to customers upon a change in the service area. By keeping the CRW service area intact, there is prevention of the possibility that assets constructed to serve its customers would be stranded by an annexation withdrawal. Remaining customers would then be required to pay higher rates in order to replace stranded assets to maintain the quality of service that is presently enjoyed. Alternatively, a permanent boundary will allow for long range planning that can ultimately result in reduce rates. Additionally, with a reduced customer base, the ability to expand services in the area is diminished due to the smaller revenue base of remaining customers.

ORS 450.680 Considerations

ORS 450.680 contains four factors the county governing body can consider in determining whether to approve the formation of a Water Authority. Those four factors and responses to each are presented below.

The ability of the proposed authority to provide water service to the area within the proposed authority.

The proposed Water Authority would comprise the original CRW service area boundary with certain exceptions and inclusions. The primary exception of the new Authority would be of the area within the current CRW boundary that is part of the Oregon City Urban Growth Boundary (UGB). This area would have been ultimately annexed by Oregon City as it develops so removal of this territory from the new Authority will resolve future boundary issues. Existing Service Agreements between CRW and related cities and districts would be assumed by the new Water Authority; therefore continued service to these areas would be preserved. The service areas within the Oregon City UGB receive service from CRW now and would continue to receive service in the future through these Service Agreements. Certain areas, identified on the map of the new

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Authority boundary will be included which had previously been excluded from the CRW service area. These areas, identified on the maps as exception tracts 5, 6, 7, 8, 9, and 10, are completely within the service territory, and have been individually petitioning to be annexed, so inclusion upon formation would facilitate the annexation process which has been steadily occurring. Portions of these tracts that are within the Oregon City Urban Growth boundary would be excepted from the Water Authority boundary. These areas can be serviced from existing infrastructure. Refer to the maps of the proposed boundary found in Exhibit B, maps 1 and 2.

The effect on both long and short-term rates for patrons within the proposed authority.

Findings on Short-Term Effects. Short-term rates for the patrons within the proposed water authority are not anticipated to be affected by the proposed change in governance from a special district to a water authority. The revenues required from water rates are not likely to change in the short term, and correspondingly, no additional impact is expected on the patrons.

Findings on Long-Term Effects. The water authority form of governance will likely result in lower long-term costs, and hence rates, for CRW's existing customers. Our conclusions are based on three facts. First, a water authority form of governance reduces the likelihood of encountering stranded investments in the future. Withdrawals of patrons from CRW's service area that result from annexation could reduce the overall efficiency of the water infrastructure by requiring potentially duplicative investments and other modifications to the physical connections that provide water to the patrons. This duplication of and/or stranding of investment results in real-resource losses to the patrons within the current service area and would result in increases in the overall costs of water.

Secondly, a stable service area allows more effective long-term planning for facilities. Many investments in water infrastructure are anticipated to have useful lives in excess of 30 to 50 years. For the greatest efficiency, planning horizons should match or exceed the useful lives of the facilities. In some cases, a water utility that cannot predict its long-term service area and subsequent infrastructure needs might invest in facilities that require lower capital investment but higher operating expenses. Removing the uncertainty of the future service area allows the water provider to plan for the least-cost solutions by making long-term infrastructure investments that are prudent considering the long-term costs.

Finally, when the service area is stable and predictable, a water authority may receive favorable financing for its long term borrowing since its revenue base and operational mission are more certain over time.

The impact, if any, of the proposed water authority on adjacent special districts and cities?

There will be no impact on existing agreements between affected cities and districts and CRW, as they will be transferred to the proposed Authority. Service area within the current CRW boundary that will be excluded from the Water Authority service area will continue to be served through existing service agreements.

Consistency of the proposed water authority with the adopted comprehensive plan of the county within the boundaries of the proposed water authority?

The proposed Water Authority is consistent with all existing land use plans, public facility plans, regional framework and functional plans, urban planning agreements, and similar agreements within and for Clackamas County. In addition, the plan for the proposed Water Authority is consistent with similar agreements required under ORS 195 regarding local government planning coordination and further provides content required under ORS 195.070, 195.065, as well as Metro Code 3.09

Metro Code 3.09.050 (d) Requirements

Metro Code 3.09.050 (d) stipulates that not later than 30 days prior to the date set for a boundary change decision the approving entity shall make available to the public a report that includes at a minimum responses to six criteria. Those criteria and appropriate responses are provided below.

The extent to which urban services presently are available to serve the affected territory;

The proposed Water Authority is comprised of the existing territory of CRW, less the area of Oregon City's UGB. Creation of the Water Authority will therefore have no impact on serviceability of affected territory.

The extent to which urban services serving the affected territory result from extraterritorial extensions of service outside the service provider's legal boundary;

The District in formation of the Water Authority is not proposing any extensions of CRW's current service territory boundaries, with the exception of territories previously excluded from the District's current service area which are not part of any current service area, and which will be annexed to the service area of the Water Authority. These areas are already being gradually annexed into the current District service area, therefore annexation at this time will facilitate the ability to provide service to these areas when

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they so desire.

A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;

Existing Urban Service Agreements between CRW and all necessary parties will be assumed by the Water Authority. The formation of the Water Authority will not affect any existing contracts between these parties.

A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth goals and objectives, urban planning agreements and similar agreements of the affected entity and of all necessary parties;

Due to the fact that the formation of a new Water Authority will function under essentially the same policies as the current District in this service area, there is no reason to assume that these policies will be inconsistent with the plans, goals and objectives of the Water Authority and of any necessary parties.

Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party;

The formation of the Water Authority will not result in the withdrawal of affected territory from the legal boundary of any necessary party.

The proposed effective date of the decision;

The Water Authority has proposed an effective date for formation of the Water Authority, absent the need for an election, as mid-May 2005.

Metro Code 3.09.050 (f) requirements

Metro Code 3.09.050 (f) stipulates that the county must address various questions of potential impact to a "Necessary Party" as defined by the Code. The following ten criteria are required to be addressed by this regulation and responses to those criteria are set forth below.

Financial, operational, and managerial capacity to provide the service.

The proposed water authority would maintain the financial resources of CRW. These resources, and past practices, indicate CRW's financial capabilities to provide service within its current service area and that identified as part of the proposed water authority.

The effect on the cost of the urban services.

Due to the fact that the creation of this Water Authority will serve to replace an existing water district, that all existing assets, service agreements, labor contracts, and debt obligations will be assumed by the new Authority there is no reason to assume that there will be an impact to the cost of urban services. Without the creation of the Water Authority, annexation withdrawal will affect remaining service area by stranding costs and causing the need to increase rates to preserve the current quality standards enjoyed by current customers of CRW.

Physical factors related to the provision of the urban service

The service area will continue to be essentially the same, when factoring in agreements. All physical factors are currently being accommodated by CRW so there will be no change in serviceability after the proposed Water Authority is formed. On the contrary if the Authority is not formed, annexation withdrawal of service area could have significant adverse impacts related to the physical factors needed to service customers.

The feasibility of creating a new entity for the provision of the urban service

The Water Authority will assume the responsibilities of the CRW. Due to the fact that CRW has been providing excellent service to its customers, there is no reason to assume that service feasibility will change with the creation of the Authority. If the Authority is not created and annexation withdrawal occurs, the feasibility of servicing remaining portions of the territory will be compromised.

The elimination or avoidance of unnecessary duplication of facilities.

The formation of the Water Authority will preserve the current CRW service area, thereby eliminating the risk of annexation withdrawal leaving a partial system that will then require new facilities to service remaining customers. Because an existing service area is essentially being dissolved and replaced as is, there will be no need to build any duplicate facilities.

Economic, demographic, and sociological trends and projections relevant to the provision of the urban service.

The new Water Authority will adopt the current water master plan for CRW. Economic, demographic, and sociological trends and projections are included in this document.

The allocation of charges among urban service users in a manner that reflects differences in the costs of providing services to the users.

CRW historically has used cost-based rates to determine user charges for its customers. The proposed water authority would be governed by the same rate setting requirements and no change in requirements would be necessitated by the conversion to a water authority. Therefore, the formation of the water authority would have no impact on the allocation of charges among urban service users as described by this criterion.

Matching recipients of tax supported urban services with the payers of the tax.

The issue does not apply to the proposed Water Authority. Taxes are not collected from customers of this service. Revenue will be collected from rates and system development charges.

The equitable allocation of costs between new and prior development.

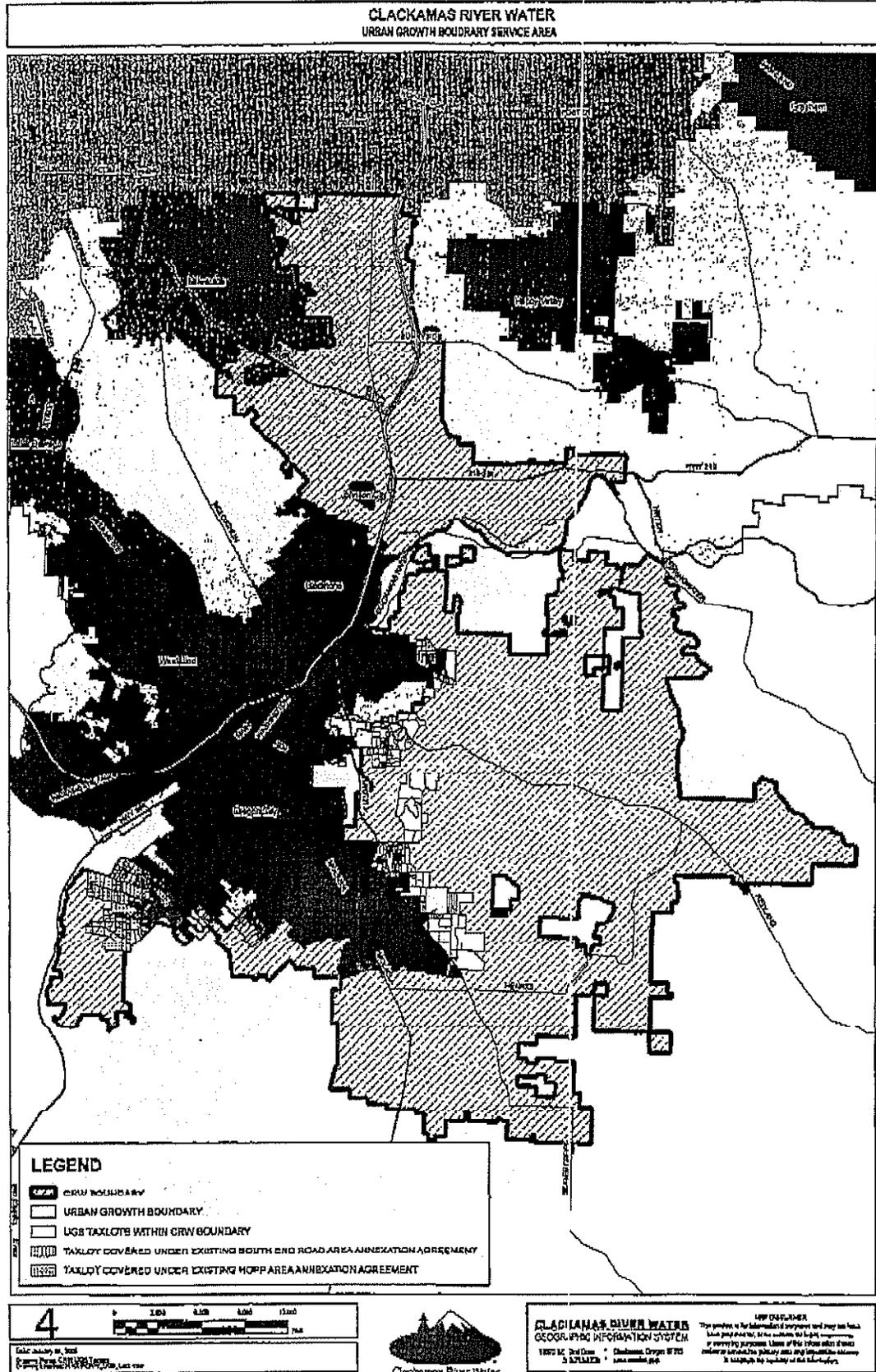
Existing CRW policies with regards to the allocation of costs between new and prior development will be assumed with a new Water Authority. On going financial analysis to determine the appropriate rate charges for services and system development charges will continue under the new Water Authority.

Economies of Scale.

Economies of scale can better be realized by water utilities when their long-term investments are not subject to being stranded by service areas that are reduced by annexation. Achieving these long-term investments, which provides for economies of scale, therefore, requires certainty for planning. As discussed elsewhere in these findings, infrastructure investments for water utilities typically have lives exceeding 30 to 50 years. Making prudent use of ratepayers' money, therefore, requires water utilities to examine the likely service needs for at least the useful lives of the investments. When future service areas are uncertain, prudent planning may dictate making smaller investments that ultimately prove less efficient and result in a real-resource loss. Therefore, the greater certainty of service area allows a water authority to increase economic efficiency and the likely benefits of economies of scale.

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