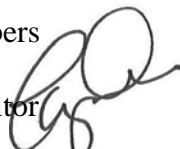




MEMORANDUM

DATE: September 29, 2014

TO: Metropolitan King County Councilmembers

FROM: Kymber Waltnunson, King County Auditor 

SUBJECT: Oversight Monitoring Consultant Report - Review of *Brightwater Close Out Report, May 2014*

There is little change in the independent forecast total cost for Brightwater since last year

The purpose of this report is to provide the County Council with an independent review and forecast of the Brightwater Program total cost. Please find the attached Oversight Monitoring Consultant (OMC) review of the cost update from the Wastewater Treatment Division's (WTD) Brightwater Close Out Report, May 2014 (Close Out Report). The OMC's updated forecast is \$1,850.8 million, slightly lower than last year's forecast. WTD's Close Out Report cost estimate is \$1,859.9 million, unchanged from the 2013 Trend Report.

Cost uncertainty may continue beyond the end of 2015, the project's scheduled completion

WTD intends for all construction work and closeout activities to be completed by the end of 2015. There remain a few areas of cost uncertainty, most significantly the outcome of litigation related to the Central Tunnel delay, final resolution of which could take longer. Recognizing that the final cost of this important project will not be known for some time, we note that our previous recommendation made on July 3, 2013, to keep the County Council informed of major cost developments is still relevant.

Recommendation I We recommend that the County Executive provide timely notice to the County Council when final resolution of the Central Tunnel Litigation occurs and that WTD quantify the resultant changes, if any, to their estimated lifetime project cost-to-complete from the 2013 Trend Report.

No further appropriation is needed

To date, the County Council has appropriated a total of \$1,996.6 million for this program, which should be adequate to cover the anticipated remaining costs to finish Brightwater. If the County Executive requests additional budget appropriation for the program, the Auditor's Office is available to review and provide an independent assessment of any additional funds requested. Actual expenditures through July 2014 are \$1,970.8 million; including disputed costs from the Central Tunnel delay that the County is seeking to recover that are excluded from WTD's and

the OMC's cost estimates.¹ Attachment A shows the historical budget appropriation and expenditures on the Brightwater Program.

OMC report covers remaining project activities

In addition to updating its cost estimate, the OMC report:

- highlights areas of cost uncertainty, the most significant being the appeal of the court award of \$144.3 million to King County from the litigation associated with the Central Tunnel delay
- describes the areas of remaining work, estimated at approximately \$10 million in expenditure
- summarizes the status of spending on mitigation obligations
- estimates a lower amount of contingency funds needed to cover remaining cost risk.

WTD plans to finish the field station in the open space north of the treatment plant

WTD recently moved forward with an agreement with 4Culture for completion of the planned field station near the Environmental Education and Community Center, a mitigation project that was put on hold in 2007.² In 2014, the WTD director approved expenditure of \$300,000, previously held in reserve, to be provided to 4Culture to finish design and construction of the field station. The field station project funding is further supplemented with a \$150,000 grant obtained by a community non-profit organization.

WTD plans to satisfy all mitigation obligations with some cost savings potential

Based on WTD's detailed reports on the mitigation program, the County will have satisfied all mitigation obligations by the end of 2015, potentially spending approximately \$690,000 less than the \$148.6 million estimated cost of mitigation projects developed in 2007. With satisfaction of all mitigation obligations nearing completion, WTD should have a high level of confidence in the remaining costs of mitigation activities and thus may be able to avoid spending forecast savings.

Recommendation 2	We recommend that WTD proceed with close out of all mitigation obligations before the end of 2015, working to keep expenditures at or below current forecasts and realize potential savings.
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The county's general fund received \$3 million payback from WTD

In 2014, the County prevailed in the final resolution of the *Cedar River Water and Sewer District and Soos Creek Water and Sewer District v. King County* lawsuit that, among other things, had challenged some Brightwater Program costs. A lower court ruling had previously found a mitigation expenditure to be an ineligible wastewater expense, resulting in the county's general fund paying approximately \$3 million to the water quality fund in 2011. If that decision had been

¹ When outstanding claims and litigation are finally resolved, awards to the County will be subtracted from project expenditures.

² The proposed 2014 agreement with 4Culture is for the design, permitting, and construction of the field station. The field station would be located in the center of the 40-acre open space north of the treatment plant to provide a gathering place in the woods for educational activities. The field station is planned as a 1,245 square foot covered pavilion with a 425 square foot area under an open trellis structure.

upheld, it would have reduced Brightwater costs. State Supreme Court action overturned the trial court ruling on this issue and resulted in the water quality fund returning the \$3 million to the general fund in April. No adjustments are needed to the Brightwater estimates to address this ruling.

The Auditor's Office awaits the County Council input on continuing oversight

The Close Out Report is WTD's final cost estimate update in a series of annual reports spanning more than a decade of Brightwater design and construction. This is also the final Oversight Monitoring Consultant review, prepared by Leidos Engineering, LLC who is under contract with the Auditor's Office through this month. As the project winds down, we remain available, upon request by the County Council, to monitor the areas of cost uncertainty identified in the OMC report and provide the County Council with updates. We encourage WTD to monitor costs against the Close Out Report estimate and document the use of contingency as they continue to effectively manage the remaining Brightwater expenditures.

We are available to brief council committees on this attached report upon request. We want to acknowledge the Prosecuting Attorney's Office, Brightwater Program staff, and WTD for their cooperation and assistance during the development of the report. Should you have questions or comments on the report, please contact Tina Rogers, Capital Projects Oversight Manager, at 477-1036.

Attachment A: Brightwater Budget/Expenditure Summary Through July 2014

Attachment B: Oversight Monitoring Consultant Report - *Review of Brightwater Close Out Report, May 2014*

cc: Dow Constantine, King County Executive
Fred Jarrett, Deputy County Executive
Dan Satterberg, Prosecuting Attorney, Prosecuting Attorney Office (PAO)
Rhonda Berry, Assistant Deputy County Executive
Christie True, Director, Department of Natural Resources and Parks (DNRP)
Pam Elardo, Division Director, Wastewater Treatment Division (WTD), DNRP
Dwight Dively, Director, Office of Performance, Strategy and Budget
Carol Basile, Deputy Director, Department of Executive Services, Finance & Business Operations Division
Tom Kuffel, Senior Deputy Prosecuting Attorney, PAO
Mary DeVuono Englund, Senior Deputy Prosecuting Attorney, PAO
Verna Bromley, Senior Deputy Prosecuting Attorney, PAO
Gunars Sreibers, Brightwater Project Manager, WTD, DNRP
Beth Mountsier, Council Policy Staff, King County Council (KCC)
Pat Hamacher, Council Policy Staff, KCC
Clifton Curry, Council Policy Staff, KCC
Anne Noris, Clerk of the Council, KCC
Art Griffith, Senior Project Manager, Leidos Engineering, LLC

Attachment A

Brightwater Budget/Expenditure Summary Through July 2014

Includes expenditures per IBIS Accounting System (through 2011) for project numbers 423457, 423484, and 423575 and per EBS system(2012-2014) for project numbers 1037546, 1037813, and 1047989

Year	Appropriation	Expenditures			Cumulative Balance
		Conveyance System	Treatment Plant	Total	
1998	\$195,842	\$122,611	\$73,231	\$195,842	\$-
1999	1,521,938	996,094	525,844	1,521,938	-
2000	3,672,816	1,657,382	2,015,434	3,672,816	-
2001	8,422,017	2,739,756	5,440,754	8,180,510	241,507
2002	38,266,455	1,762,691	9,674,916	11,437,608	27,070,354
2003	80,834,249	15,928,950	46,818,655	62,747,605	45,156,998
2004	178,569,564	40,922,914	33,118,446	74,041,360	149,685,202
2005	432,633,315	36,971,596	63,257,313	100,228,909	482,089,608
2006	298,704,845	74,651,114	94,683,302	169,334,416	611,460,037
2007	528,410,201	153,321,358	62,339,610	215,660,969	924,209,269
2008	117,988,737	204,232,705	165,534,653	369,767,358	672,430,648
2009	70,669,725	158,880,957	201,690,664	360,571,621	382,528,752
2010	28,044,005	181,520,062	139,085,374	320,605,437	89,967,321
2011	143,216,836	120,479,792	54,171,989	174,651,781	58,532,375
2012	40,408,226	59,526,743	13,455,929	72,982,673	25,957,929
2013	25,044,633	19,815,642	3,108,831	22,924,473	28,078,089
2014*	-	2,373,929	(92,363)	2,281,566	25,796,524
Life-To-Date	\$1,996,603,404	\$1,075,904,297	\$894,902,584	\$1,970,806,880	\$25,796,524

*2014 amounts are through July. Negative treatment plant expenditure reflects revenues from settlements and grants exceeding expenditures.

Oversight Monitoring Consultant Report - Review of Brightwater Close Out Report, May 2014

King County
Brightwater Project Oversight Services
Contract No. P43024P

September 2014



In association with:

FG Solutions, LLC

Oversight Monitoring Consultant Report - Review of Brightwater Close Out Report, May 2014

King County
Brightwater Project Oversight Services
Contract No. P43024P

September 2014



FG Solutions, LLC

This report has been prepared for the use of the client for the specific purposes identified in the report. The conclusions, observations and recommendations contained herein attributed to Leidos Engineering, LLC constitute the opinions of Leidos Engineering, LLC. To the extent that statements, information and opinions provided by the client or others have been used in the preparation of this report, Leidos Engineering, LLC has relied upon the same to be accurate, and for which no assurances are intended and no representations or warranties are made. SAIC makes no certification and gives no assurances except as explicitly set forth in this report.

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Oversight Monitoring Consultant Report Review of Brightwater Close Out Report, May 2014

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Executive Summary

This report is the Brightwater Oversight Monitoring Consultant (“OMC”) review of the Wastewater Treatment Division (“WTD”) May 2014 Brightwater Close Out Report (“Close Out Report”), including an updated OMC cost estimate.

WTD’s total lifetime Brightwater Program cost estimate is \$1,859.9 million, \$70.0 to \$199.7 million higher than the 2004 baseline estimates using five percent and three percent inflation rates, respectively. This current lifetime cost estimate is unchanged from the amount reported by WTD in the 2012 and 2013 Trend Reports.

WTD’s total lifetime cost estimate excludes consideration of a legal dispute referred to in this OMC Report as the “Central Tunnel Contract Litigation”¹. The judgment for King County was a net of \$144.3 million, and the defendants in the litigation have deposited the total judgment which King County is holding. The litigation is currently under appeal.

OMC’s revised lifetime Brightwater Program cost estimate is \$1,850.8 million, which is less than the \$1,851.5 million in the 2013 OMC Trend Report Review.

Table 1
Revised OMC Cost Estimate and Comparison with WTD Estimate, \$M

Project Component	WTD Baseline Budget 3% Infl - 5% Infl	WTD 2013 Trend Report	WTD 2014 Close Out Report	OMC 2013 Estimate	OMC 2014 Estimate
Conveyance	\$1,020.6 - \$1,105.5	\$967.6	\$967.6	\$957.0	\$958.0
Treatment Plant	\$639.6 - \$684.4	\$892.3	\$892.3	\$894.5	\$892.8
Total	\$1,660.2 - \$1,789.9	\$1,859.9	\$1,859.9	\$1,851.5	\$1,850.8

The differences between the WTD lifetime cost estimate and the OMC estimate is that OMC carries less contingency and OMC has made an adjustment to WTD’s cost estimate based on OMC’s understanding of remaining mitigation obligations.

WTD anticipates that 2014 and 2015 expenditures, excluding use of any contingency, are approximately \$10 million, or approximately 0.5 percent of the lifetime cost estimate.

According to WTD, \$1,859.9 million is the “estimate of the final project lifetime cost-to-complete” of the Brightwater Project. This value is not, however, the final cost of the project which will only be known until after all project construction is complete, all construction and insurance claims are settled, all contracts are closed out, and the final outcome of the Central Tunnel Contract Litigation is certain. If the judgment is affirmed during appeal, the lifetime cost estimate won’t substantively change because the cost estimates exclude costs related to the litigation that would be recovered.

¹ King County Superior Court lawsuit *King County v. Vinci Construction Grand Projets/Parsons RCI/Frontier-Kemper Joint Venture (VPFK) and Travelers Casualty and Surety Company, et al.*

Oversight Monitoring Consultant Report, Review of Brightwater Close Out Report, May 2014

Introduction

This report is the Brightwater Oversight Monitoring Consultant (“OMC”) review of the Wastewater Treatment Division’s (“WTD”) May 2014 Brightwater Close Out Report (“Close Out Report”). The OMC review is based on WTD’s report, with additional assistance from WTD in responding to questions and requests for backup data.

This report describes key assumptions of the Close Out Report, presents a revised OMC estimate of Brightwater project costs, and contains an assessment of remaining contingencies and cost uncertainty. This will be the final oversight monitoring report prepared by the OMC. There are a number of terms in this report that have been defined in previous OMC reports². This background information is not repeated here, and previous reports should be referred to for any clarification that may be needed.

Key Assumptions of the Close Out Report

- The Close Out Report is based on project progress through December 31, 2013.
- The Close Out Report excludes costs related to the Central Tunnel Contract Litigation that would be recovered if the judgment is affirmed. As a result, if affirmed, it would not be correct to subtract the amount of the net jury verdict from the lifetime cost estimate. Moreover, because the judicial process has not concluded, the final impact on project costs is not known.
- The Close Out Report does not make any statement regarding the final resolution of the Central Tunnel Contract Litigation or any other remaining dispute that is associated with the Brightwater project.
- All Brightwater project construction claims and litigation will be completed by the end of 2015. There are no projected expenditures after 2015 in the Close Out Report.

² Previous reports prepared by the Oversight Monitoring Consultant contain background information and definitions of terms.

Revised OMC Estimate

As noted in the following Table 2, the OMC revised lifetime cost estimate differs from WTD's in three areas:

1. OMC maintains a Treatment Plant contingency of \$1.0 million. WTD carries a minimal contingency of \$36,000 which due to rounding is not reflected in the tables in this report.
2. OMC maintains a Conveyance contingency of \$4.0 million, as described in further detail below. This is smaller than WTD's Conveyance contingency of \$12.4 million.
3. OMC has made additional minor adjustments based on a review of WTD's cost data. These adjustments are related to either the Contingency or costs associated with meeting mitigation obligations.

OMC's adjustments to the WTD lifetime cost estimate in the Close Out report are described below. The first two are related to Treatment Plant mitigation, and show up as "Other" costs in the Treatment Plant Non-Construction portion of Table 2. The last two are related to contingency, and show up in the respective Contingency and All Other Construction Costs lines.

1. It is OMC's understanding that the Close Out Report overestimated remaining mitigation payments to local agencies by \$100,000. As a result, OMC has reduced these projected payments to local agencies by \$100,000.
2. With the completion of the North Kenmore Portal Wetlands Restoration, the Field Station, and two remaining payments to local agencies, it is OMC's understanding that WTD's mitigation obligations are complete. The Close Out Report contains currently unallocated funding of approximately \$440,000 that may no longer be needed. OMC has eliminated these funds from its estimate.
3. As described in further detail below, OMC maintains a \$1.0 million Treatment Plant contingency and a \$4.0 million Conveyance contingency (compared with WTD's \$12.4 million Conveyance contingency).
4. Consistent with its past practice, WTD's projection of sales tax includes sales tax on the amount included in its contingency. Since OMC's estimate includes less contingency than WTD, OMC has also made corresponding reductions to projected sales tax expenses. In Table 2, sales tax is reported under All Other Construction Costs.

Table 2
Lifetime Cost Estimate Comparison, \$M (1)

	WTD May 2014		
	Close Out	OMC 2014	
	Report	Estimate	Difference
CONVEYANCE			
Construction Costs			
East, Central, BT3C, West, Ancillary Contracts	\$489.4	\$489.4	\$0.0
Influent Pump Station ("IPS") Contract	105.5	105.5	0.0
Mitigation	6.0	6.0	0.0
OCIP/Builders Risk Insurance	18.3	18.3	0.0
Contingency	12.4	4.0	(8.4)
All Other Construction Costs	93.9	92.7	(1.2)
Non-Construction Costs			
Engineering Services	83.6	83.6	0.0
Construction Management	46.1	46.1	0.0
Other Technical Services	17.6	17.6	0.0
Outside Legal Services	13.5	13.5	0.0
Land Purchases/Easements	14.5	14.5	0.0
Miscellaneous Services	5.2	5.2	0.0
Staffing	37.9	37.9	0.0
Other	23.5	23.5	0.0
Subtotal - Conveyance	\$967.6	\$958.0	(\$9.6)
TREATMENT PLANT			
Construction			
Liquids Contract	\$258.4	\$258.4	\$0.0
Solids Contract	172.2	172.2	0.0
Mitigation	25.2	25.2	0.0
Owner-Furnished Equipment	29.8	29.8	0.0
Contingency	0.0	1.0	1.0
All Other Construction Costs	68.6	68.6	0.0
Non-Construction Costs			
Engineering Services	77.6	77.6	0.0
Miscellaneous Services	8.8	8.8	0.0
Staffing	32.9	32.9	0.0
Credits and Revenues	(5.4)	(5.4)	0.0
Other	224.1	223.6	(0.5)
Subtotal - Treatment Plant	\$892.3	\$892.8	\$0.5
Total	\$1,859.9	\$1,850.8	(\$9.1)

Notes:

(1) Totals may not add up due to rounding.

OMC's revised estimate of \$1,850.8 million is \$9.1 million less than WTD's lifetime cost estimate of \$1,859.9 million.

Contingency Assessment

Remaining Project Work

As of January 1, 2014, the work remaining on the Brightwater project is described below, along with how the respective costs affect the overall Project Cost Estimate.

- **Treatment Plant: 66-Inch Pipe Replacement Claim**

Remedial work to replace sections of damaged pipe is complete. Jointly, the County and the Treatment Plant contractor have submitted a claim of \$4.8 million to the Brightwater Owner-Controlled Insurance Program Builders Risk insurance companies. The County and contractor have received partial payment. The County continues to pursue recovery of costs it has incurred for replacement of the damaged pipe.

Payments to WTD received through 12/31/13 are included in the Close Out Report under Credits and Revenues that reduce the total project cost. Future payments from the insurance companies for WTD remediation-related expenditures, if received, will also be recorded as Credits and Revenues.

Remaining 2014 and 2015 WTD work related to this claim is primarily staff labor, consultant services, and legal services.

- **Conveyance: Influent Pump Station (“IPS”) Surge Remediation**

Installation of motors and flywheels at the IPS is proceeding to resolve deficiencies related to surge protection at high flows. The County expects the installation of remedial equipment will be substantially complete and that the remedial equipment will be ready for testing and commissioning in November 2014. Installation of the motors and flywheels is being done at no cost to the County. The County has incurred costs for engineering, installation oversight, operations, and legal services and is seeking to recover \$1.8 million of its costs via an insurance claim.

No payments to reimburse the County for its cost have yet been received. Future payments, if received, will be included under Credits and Revenues.

Remaining WTD 2014 and 2015 work is primarily staff labor, consultant services, and legal services.

- **Conveyance: Central Tunnel Contract Litigation**

Central Tunnel Contract Litigation is ongoing. The judgment for King County was a net of \$144.3 million, and the defendants in the litigation have deposited the total judgment, which King County is holding. The litigation is currently under appeal.

The project lifetime cost estimate in the Close Out Report excludes consideration of the Central Tunnel Contract Litigation. Therefore, if the judgment for King County is upheld during the appeal process, the project lifetime cost estimate would not change substantively.

Remaining 2014 and 2015 work is primarily staff labor and legal services.

- **Conveyance and Treatment Plant: Contract Closeouts**

King County staff will work during 2014 and 2015 to close out the remaining construction contracts.

- **Mitigation, Conveyance System: North Kenmore Portal Wetlands Restoration**

A permit requirement, wetlands restoration at the North Kenmore Portal construction site is ongoing, with most of the construction activity occurring in 2014. This \$1.94 million construction contract was awarded at the end of 2013.

- **Mitigation, Treatment Plant: Field Station Construction**

The Field Station is associated with the Environmental Education and Community Center, and is to be located in the open space north of the Treatment Plant. Field Station costs are partially offset by grant funded construction that is scheduled to be completed in October 2015.

Table 3 shows WTD's projected amount of remaining Brightwater expenses after January 1, 2014, excluding contingencies, rounded by OMC to the nearest \$10,000.

Table 3
WTD Estimate of Remaining Brightwater Expenses for 2014 and 2015

	Treatment Plant	Conveyance	Total
Construction			
Treatment Plant	\$60,000		\$60,000
North Kenmore Portal Wetlands Reconstruction		\$2,140,000	\$2,140,000
EECC Field Station	\$430,000		\$430,000
Reserved for Judgments/Claims, if Needed	\$360,000	\$240,000	\$600,000
Other Capital Costs	\$0	\$930,000	\$930,000
Subtotal Construction	\$860,000	\$3,310,000	\$4,170,000
Non-Construction Costs			
Engineering Services	\$310,000	\$120,000	\$430,000
Planning and Management Services	\$20,000	\$620,000	\$640,000
Mitigation Payments to Local Agencies	\$100,000	\$470,000	\$570,000
Miscellaneous Services and Materials	\$660,000	\$1,020,000	\$1,680,000
Staff Labor	\$310,000	\$2,180,000	\$2,490,000
Total Non-Construction Costs	\$1,390,000	\$4,410,000	\$5,800,000
Total Projected Remaining Expenditure as Percent of WTD's Lifetime Cost Estimate	\$2,250,000	\$7,730,000	\$9,980,000 0.54%

Note: Totals may not add up due to rounding to nearest \$10,000.

The total remaining expenditure shown in Table 3 is approximately \$10.0 million, or approximately 0.54 percent of WTD's lifetime cost estimate. In addition to the

remaining project work described above, additional expenditures in 2014 and 2015 are projected for:

- **Judgments and Claims.** The Close Out Report includes an allowance estimated by the County's Risk Management Division that will be used to pay for judgments or insurance "deductibles" related to third-party claims. OMC is currently not aware of any judgments related to this \$600,000.
- **Other Capital Costs.** This is primarily an allowance for the purchase of diesel, if needed, at the IPS related to the IPS Surge Remediation described above.
- **Engineering Services.** This is related to contract close-out, completing as-built drawings, and technical support to assist operations wrap up remaining start up issues.
- **Planning and Management Services.** This is primarily contracted legal services related to the various items described above.
- **Mitigation Payments.** These are the final two local agency payments related to project mitigation.
- **Miscellaneous Services and Materials.** Approximately 97 percent of these expenses are revisions in premiums for the County's Owner-Controlled Insurance Program. The premium adjustment is based on actual end of project costs.
- **Staff Labor.** This labor supports the various work items described above and includes in-house construction management for the North Kenmore Portal Wetlands Restoration. Although projected by WTD to be nearly \$2.5 million for 2014 and 2015, actual expenditures for the first six months of 2014 are significantly less than projected by WTD.

Approximately 75 percent of the expenditures shown in Table 3 are projected to occur in 2014, with the remaining 25 percent projected to occur in 2015.

Remaining Cost Uncertainty and Potential Timing of Resolution

Cost uncertainty continues to decrease as the Brightwater project nears completion. In the past year, most of the construction contracts have been closed out with only the North Kenmore Portal Wetlands Restoration that remains in active construction. Final resolution of the Cedar River Water and Sewer District and Soos Creek Water and Sewer District litigation has occurred and is reflected in the Close Out Report.

As was the case in last year's OMC report, the largest cost uncertainty remains the outcome of the Central Tunnel Contract Litigation. The defendant contractor and the bond sureties appealed the judgment in favor of King County to the Washington State Court of Appeals, and King County cross-appealed. Division I of the Court of Appeals will likely issue its decision in 2015. Other areas of cost uncertainty are:

- **Successful recovery of WTD costs related to the IPS surge remediation and the Treatment Plant 66-inch pipe replacement** which when recovered will be recorded as revenues to reduce overall project costs.

-
- One construction claim related to the IPS of approximately \$2.7 million remains. A mediation session between WTD and the contractor is scheduled for October 1, 2014.
 - WTD's actual costs in addressing the Central Tunnel Contract litigation, the two insurance claims, and the IPS change order will continue to accumulate until the issues are resolved. One aspect of cost uncertainty is how long it will take to resolve these issues, regardless of their outcome.

The revised OMC Cost Estimate shown above includes a \$1.0 million Treatment Plant Contingency and a \$4.0 million Conveyance Contingency to address this cost risk. In general, the amount of OMC's contingency includes consideration of claims and change orders still outstanding, the schedule for completing the remaining work on the project, and the actual project spending from January through June 2014. Future recovery of WTD's costs related to IPS surge remediation and the Treatment Plant 66-inch pipe replacement is not considered in OMC's contingency assessment because any future recovery will be recorded as revenues that do not draw on or add to a contingency.

OMC is unable to comment on the timing of when the majority of the cost risk will be resolved.