



King County

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MEMORANDUM

DATE: July 3, 2013

TO: Metropolitan King County Councilmembers

FROM: *Bob Thomas*
Bob Thomas, Interim King County Auditor

SUBJECT: Oversight Monitoring Consultant Report - Review of *Brightwater Cost Update, Current Conditions and Trends, January 2013* (2013 Trend Report)

Please find the attached Oversight Monitoring Consultant (OMC) review of the Wastewater Treatment Division's (WTD) annual Brightwater Program cost update – the 2013 Trend Report. The OMC's review independently forecasts the Brightwater Program total project cost to be \$1,851.5 million, \$11.4 million lower than last year's estimate, for the portions of the project without disputed costs associated with the Central Tunnel delay.

Recognizing that the final cost of this important project will not be known for some time, we offer the following recommendation:

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.

To date, the Council has appropriated a total of \$1,996.6 million on this project, which should be adequate to cover the anticipated remaining costs to finish the project. If the Executive requests additional budget appropriation for the project in 2014, the Council may want our office and the OMC to review and provide an independent assessment of any additional funds requested. Actual expenditures through March 2013 are \$1,954.8 million; these include disputed costs that the County is seeking to recover that are not included in the Trend Report estimate. Attachment A shows the historical budget appropriation and expenditures on the Brightwater Program.

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

- highlights areas of remaining cost uncertainty, the most significant being the appeal of the court award of approximately \$144 million to King County from the litigation associated with the Central Tunnel delay;
- estimates a lower amount of contingency funds needed to cover remaining cost risk; and
- describes the areas of remaining expenditure.

The 2013 Trend Report is the final one WTD intends to prepare in this series of annual reports spanning a decade of Brightwater design and construction. As the project winds down, we intend to

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monitor the areas of cost uncertainty identified on page 8 of the OMC report and provide Council with independent, updated forecasts of remaining expenditures and final cost estimates to provide useful information for future budget and rate decisions. We encourage WTD to monitor costs against the 2013 Trend 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. The report was prepared by SAIC who, as the OMC, is under contract with the Auditor's Office to provide oversight consulting services on the Brightwater Program. 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, the Capital Projects Oversight Manager at 206-477-1036.

Attachment A: Brightwater Budget Summary through March 2013

Attachment B: Oversight Monitoring Consultant Report - *Review of Brightwater Cost Update, Current Conditions and Trends, January 2013*

cc: Dow Constantine, King County Executive, King County Executive Office (KCEO)
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ATTACHMENT A
BRIGHTWATER BUDGET SUMMARY THROUGH MARCH 2013

Includes Expenditures per IBIS Accounting System (through 2011) for project numbers 423457, 423484, and 423575 and per EBS (2012 and 2013) for project numbers 1037546, 1037813, and 1047989

BRIGHTWATER APPROPRIATION / EXPENDITURE HISTORY

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	120,480,332	54,172,243	174,652,575	58,531,581
2012	40,408,226	59,526,743	13,453,721	72,980,464	25,959,344
2013 (thru March)	25,044,633	7,884,540	1,342,637	9,227,177	41,776,800
Life-To-Date	\$1,996,603,404	\$1,061,599,806	\$893,226,799	\$1,954,826,604	\$41,776,800

Oversight Monitoring Consultant Report - Review of Brightwater Cost Update, Current Conditions and Trends, January 2013

King County
Brightwater Project Oversight Services
Contract No. P43024P

July 2013

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Oversight Monitoring Consultant Report - Review of Brightwater Cost Update, Current Conditions and Trends, January 2013

King County
Brightwater Project Oversight Services
Contract No. P43024P

July 2013

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MacDonald**

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 SAIC constitute the opinions of SAIC. To the extent that statements, information and opinions provided by the client or others have been used in the preparation of this report, SAIC 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 Cost Update, Current Conditions and Trends, January 2013

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Executive Summary

This report is the Brightwater Oversight Monitoring Consultant (OMC) review of the Wastewater Treatment Division (WTD) 2013 Trend Report¹, including an updated OMC cost estimate.

WTD's revised 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 revised lifetime cost estimate is unchanged from the amount reported by WTD in the 2012 Trend Report.

WTD's total lifetime cost estimate excludes consideration of a legal dispute referred to in this OMC Trend Report Review as the "Central Tunnel Litigation"². On December 21, 2012, a jury verdict in the Central Tunnel Litigation was rendered, resulting in a net jury award in King County's favor of \$129.6 million. In post-trial motions, an additional \$14.7 million was awarded to King County for its attorneys' fees and costs. Judgment was entered May 7, 2013. The verdict has been appealed.

WTD correctly notes that "if the verdict stands, it will have a positive budget impact on the project"³. However, the lifetime cost estimate won't substantively change because the amount of the jury verdict is not included in the lifetime cost estimate. For this reason, it would not be correct to subtract the net jury award from the values in Table 1.

Separately, WTD has indicated that total project expenditures (as of December 31, 2012) are approximately \$1,945.9 million, including costs associated with the Central Tunnel Litigation, which WTD has already paid. It would be correct to subtract from this amount the portion of the final net jury award that has been expended.

OMC's revised lifetime Brightwater Program cost estimate is \$1,851.5 million, which is less than the \$1,862.9 million in the 2012 OMC Trend Report Review.

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

Project Component	WTD Baseline Budget	WTD 2012	WTD 2013	OMC 2012	OMC 2013
	3% Infl. - 5% Infl	Trend Report	Trend Report	Estimate	Estimate
Conveyance	\$1,020.6 - \$1,105.5	\$963.6	\$967.6	\$964.8	\$957.0
Treatment Plant	\$639.6 - \$684.4	\$896.3	\$892.3	\$898.1	\$894.5
Subtotal	\$1,660.2 - \$1,789.9	\$1,859.9	\$1,859.9	\$1,862.9	\$1,851.5

This report also includes an assessment of WTD's 2013 Trend Report contingencies. WTD's cost estimate includes approximately \$13.6 million in Conveyance contingency and does not include a Treatment Plant contingency.

¹ Full name of report is Brightwater Cost Update, Current Conditions and Trends, January 2013.

² King County Superior Court lawsuit *King County v. Vinci Construction Grand Projects/Parsons RCI/Frontier-Kemper Joint Venture (VPFK) and Travelers Casualty and Surety Company, et al.*

³ 2013 Trend Report, page 1.

The primary difference between the WTD lifetime cost estimate and the OMC estimate is that OMC carries less contingency. OMC's contingency and its revised lifetime cost also assume:

- That the County will not pay for the installation of new motors and flywheels at the Influent Pump Station (IPS) to resolve performance deficiencies related to surge protection at high flows, and
- That the Central Tunnel Litigation jury award and post-trial motion regarding attorneys' fees are affirmed, if appealed. OMC has no opinion on the outcome of the Central Tunnel Litigation.

WTD estimates that the total remaining project expenditures (as of December 31, 2012) for the Brightwater Project are approximately \$47.8 million, including its \$13.6 million contingency.

According to WTD, \$1,859.9 million is the "final lifetime cost estimate" for the Brightwater Project. This value is not, however, the final cost of the project which will only be known after all project construction is complete, all contracts are closed out, and the final outcome of the Central Tunnel Litigation is certain.

Oversight Monitoring Consultant Report, Review of Brightwater Cost Update, Current Conditions and Trends, January 2013

Introduction

This report is the Brightwater Oversight Monitoring Consultant (OMC) review of the Wastewater Treatment Division's (WTD) 2013 Trend 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 WTD's 2013 Trend Report and changes from WTD's 2012 Trend Report, and presents a revised OMC estimate of Brightwater project costs. There are a number of terms in this report that have been defined in previous OMC reports⁴. This background information is not repeated here, and previous reports should be referred to for any clarification that may be needed.

Key 2013 Trend Report Assumptions

- The 2013 Trend Report is based on project progress through December 31, 2012.
- The 2013 Trend Report excludes costs related to the Central Tunnel Litigation that would be recovered if the jury verdict 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 2013 Trend Report does not make any statement regarding the final resolution of the Central Tunnel Litigation.
- Installation of motors and flywheels at the Influent Pump Station (IPS) is required to resolve performance deficiencies related to surge protection at high flows. The 2013 Trend Report assumes this installation is done at no cost to the County.

⁴ Previous reports containing background information and definitions of terms include Oversight Monitoring Consultant, Review of Brightwater Cost Update – Current Conditions and Trends, January 2010, prepared by SAIC predecessor company R.W. Beck.

Changes from WTD's 2012 Trend Report

Costs.

The 2013 Trend Report lifetime cost estimate has no change in total cost from the 2012 Trend Report.

Table 2
Changes from 2012 Trend Report Lifetime Project Cost Estimate

Description	Total Amount,	
	\$M	Notes
Released Portion of Conveyance Contingency	(\$4.9)	
Increased Engineering, Planning & Mgmt	\$4.6	1
Reduced Treatment Plant Construction Cost	(\$2.2)	1
Increased Staff Labor	\$3.0	1
Other Construction Costs	(\$5.0)	2
Increase in Other Non-Construction Costs	\$5.6	2
Project Credits and Revenues	(\$1.0)	
Total Change from 2012 Trend Report	\$0.0	

Notes:

(1) Based on WTD's revised estimate at completion

(2) Transfer of owner-controlled insurance program costs from construction to non-construction costs, and other miscellaneous changes

The most significant changes from the 2012 Trend Report that affect the overall lifetime cost estimate include:

- \$4.9 million of Conveyance contingency was released, offsetting increases in other components of the total lifetime cost.
- Approximately \$4.6 million in increased expense for Engineering, Planning and Management, resulting from WTD's revised estimate at completion. This increase is predominately associated with the Conveyance system.
- A reduction of \$2.2 million in the Treatment Plant Liquids contract cost, based on WTD's revised estimate at completion.
- An increase of \$1.0 million in WTD Staff Labor associated with a revised level of effort estimate by WTD.
- An additional increase of \$2.0 million in forecast WTD staff labor costs reflecting a new methodology for allocating indirect costs within WTD to correspond with the functionality of the County's new accounting system.
- An increase of \$0.7 million of additional payments for use of the Paramount property associated with the Marine Outfall and West Tunnel completion.
- Transfer of \$2.1 million from Treatment Plant to Conveyance, which reflected designation of previously uncommitted mitigation funds for use in the North Kenmore Portal Wetlands Mitigation project.

As a result of the County's new accounting system, there were additional adjustments that did not change the overall lifetime cost estimate, but resulted in a different accounting of certain costs. The most significant of these is the reclassification of certain insurance costs, which resulted in a transfer of \$4.7 million from construction costs to non-construction costs.

Table 2 also indicates a \$1.0 million change in the amount of Project Credits and Revenues. The amount of Project Credits and Revenues is higher than previously reported, resulting in a lower project cost. Approximately half of this change is the 2012 receipt of settlement proceeds from the East Tunnel contractor and the remainder is the receipt of additional grant funding.

In its Trend Reports, WTD compares the lifetime cost estimates with the Baseline Budget prepared in 2004. These comparisons include the Baseline Budget with annual inflation escalation of three percent and five percent. WTD's revised total lifetime cost estimate is \$1,859.9 million, which is \$199.7 million higher than the three percent inflation escalation assumption and \$70.0 million higher than the five percent inflation escalation assumption.

OMC has not provided comment on the appropriate inflation rate to use for comparisons with the Baseline Budget. It is likely that a single inflation adjustment would not be comprehensive enough to assess the true impact of inflation, because the various construction contracts were procured over a multi-year period, and the construction duration and contracting methods varied.

The final cost of the project will only be known after all project construction is complete, all contracts closed out, and the final outcome of the Central Tunnel Litigation is certain.

Schedule. Construction is nearly complete. In 2012, the plant began discharging through the Marine Outfall into Puget Sound. Several construction contracts have been closed out, and as of May 2013, all of the major contracts have reached substantial completion. The only contract left to bid is the North Kenmore Portal Wetlands Restoration, which is comparatively small.

The 2013 Trend Report shows construction continuing into 2014 rather than completion in 2013. This is due to the North Kenmore Portal Wetlands Restoration construction schedule, which has seasonal restrictions on certain construction activities.

The schedule for installation of motors and flywheels at the IPS is not yet certain but could extend into late 2014. Installation of motors and flywheels at the Influent Pump Station (IPS) is required to resolve performance deficiencies related to surge protection at high flows, but will not impact the performance of the IPS, conveyance, or Brightwater Treatment System as a whole.

Revised OMC Estimate

Revised Lifetime Cost Estimate

As noted in the following Table 3, the OMC revised lifetime cost estimate differs from WTD's in three areas:

1. Similar to last year, OMC has included a Treatment Plant contingency, while WTD does not. The amount of the OMC Treatment Plant contingency is \$2.0 million.
2. OMC has reduced the amount of Conveyance contingency to \$4.0 million, as described in further detail below. Since the sales tax line item includes tax on the contingency, this reduction in contingency also reduces the sales tax.
3. OMC has made additional minor adjustments based on a detailed review of WTD's cost data. In some cases, multiple adjustments offset each other to result in no net change to the lifetime cost estimate.

Table 3
Lifetime Cost Estimate Comparison, \$M

	WTD 2013 Trend Report	OMC 2013 Estimate	Difference
CONVEYANCE			
Construction Costs			
East, Central, BT-3C, West, Ancillary Contracts	\$491.7	\$491.7	\$0.0
Influent Pump Station Contract	103.2	103.2	0.0
Marine Outfall Contract	26.0	26.0	0.0
Mitigation	6.4	6.4	0.0
OCIP/Insurance	17.2	17.2	0.0
Construction Contingency	13.6	4.0	(9.6)
Sales Tax	58.9	57.9	(1.0)
All other construction costs	8.7	8.7	0.0
Non-Construction Costs			
Engineering / Planning & Mgmt Services	\$84.8	\$84.8	\$0.0
Construction Management	47.7	47.7	0.0
Other Technical Services	17.0	17.0	0.0
Outside Legal Services	13.3	13.3	0.0
Land Purchases/Easements	14.4	14.4	0.0
Miscellaneous Services (Insurance)	4.9	4.9	0.0
Staffing	35.0	35.0	0.0
Other	24.8	24.8	0.0
Subtotal - Conveyance	\$967.6	\$957.0	(\$10.6)
TREATMENT PLANT			
Construction Costs			
Site Prep/Liquids Contract	\$277.4	\$277.4	\$0.0
Solids Contract	172.0	172.0	0.0
Mitigation	25.4	25.4	0.0
OCIP/Insurance	9.0	9.0	0.0
Owner-Furnished Equipment	30.3	30.3	0.0
Construction Contingency	0.0	2.0	2.0
All other construction costs	39.4	39.6	0.2
Non-Construction Costs			
Engineering Services	\$77.7	\$77.7	\$0.0
Construction Management	19.5	19.5	0.0
Miscellaneous Services (Insurance)	8.2	8.2	0.0
Staffing	32.1	32.1	0.0
Other	201.3	201.3	0.0
Subtotal - Treatment Plant	\$892.3	\$894.5	\$2.2
Total	\$1,859.9	\$1,851.5	(\$8.4)

Remaining Cost Uncertainty

The uncertainty in the lifetime cost estimate has continued to decrease in the past year, because of the following developments:

- Completion of all major construction at the Treatment Plant, Influent Pump Station, and Central Tunnel.
- Completion of full commissioning.
- Closeout of the West Tunnel Contract.
- Final Acceptance of the Solids Contract.

By far the most significant cost uncertainty continues to be the Central Tunnel Litigation. On December 21, 2012, a jury verdict in the Central Tunnel Litigation was rendered, awarding the County \$155.8 million, and awarding VPFK \$26.2 million in counterclaims. The lawsuit resulted in a net jury award in King County's favor of \$129.6 million. In post-trial motions, \$14.7 million was awarded to the County for its attorneys' fees and costs. Judgment was entered May 7, 2013. The verdict has since been appealed.

Additional factors that could influence the final project cost include:

1. The manner in which IPS high-flow performance deficiencies discovered during system testing are resolved. The 2013 Trend Report assumes that installation of new motors and flywheels at the IPS to resolve these deficiencies would be done at no cost to the County. The design firm has submitted an insurance claim seeking recovery of all costs (including WTD's) that have been or will be incurred through final installation and commissioning of the new motors and flywheels.
2. Completing the remaining work without using the full amount of remaining contingency.
3. The extent to which the cost of repairs to the deformed influent force main yard piping are reimbursed by the builders risk insurance. To date, the County has paid for some of these costs via use of the MACC⁵ contingency, subcontractor buyout savings, and paying for staff and engineering expenses. The Treatment Plant contractor has also paid for some of costs and has submitted change order requests totaling approximately \$1.5 million.
4. Managing non-construction costs.

Contingency Assessment

In WTD's baseline budget, there were two types of contingencies for the Brightwater Project: Construction Contingency and Project Contingency. The Construction Contingency was intended to cover additional costs paid to construction contractors for items such as change orders and claims. The Project Contingency was primarily

⁵ Maximum Allowable Construction Cost

intended to cover changes in non-construction cost risks, for items such as engineering, construction management, administration, and land purchases. In its 2010 Trend Report, WTD reduced the Project Contingency to \$0 and since 2010 has reported only Construction Contingencies. Correspondingly, OMC is also reporting only a Construction Contingency to cover both construction and non-construction cost risks.

As of the December 31, 2012, WTD's Conveyance contingency is approximately \$13.6 million, and there is no Treatment Plant contingency remaining. Table 4 summarizes the potential items in the portions of the project that may require use of the Conveyance contingency.

Table 4
Potential Demands on WTD's Remaining Contingency
(Excluding Consideration of Central Tunnel Litigation)

Treatment Plant – Trend Report: No contingency remaining

- Future change orders, if any, on the approximately \$2.7 million of construction remaining after 4/1/13.
- Resolution of the construction contractor's and King County's builders risk insurance claims on the Liquids contract for deformed influent force main repairs.
- Resolution of \$165,000 of potential Liquids contract change orders.
- Non-construction costs exceeding WTD's estimates, if any.

Conveyance – Trend Report: Approximately \$13.6 M contingency remaining

- Future change orders, if any, on the approximately \$6 million of construction remaining after 4/1/13.
 - Influent Pump Station (IPS): Resolution of approximately \$1.4M of potential change orders. Resolution of approximately \$1.3M in requests for change order that are at the claim or appeal phase.
 - Bid risk on the North Kenmore Portal wetlands restoration project.
 - Additional change activity occurring since 12/31/12, not included in the 2013 Trend Report, that totals approximately \$0.5 million.
 - Non-construction costs exceeding WTD's estimates, if any.
-

To cover the above Treatment Plant cost risks, OMC has included \$2.0 million of Treatment Plant contingency.

To cover the above Conveyance cost risks, OMC has reduced the Conveyance contingency to \$4.0 million. This revised OMC Conveyance contingency also assumes:

- That the County will not pay for the installation of new motors and flywheels at the Influent Pump Station (IPS) to resolve performance deficiencies related to surge protection at high flows, and
- That the Central Tunnel Litigation jury award and post-trial motion related to attorneys' fees are affirmed, if appealed. OMC has no opinion on the outcome of the Central Tunnel Litigation. Affirming the post-trial motion would mean that legal costs charged to the Brightwater project would be reimbursed.

Remaining Project Expenditures

Table 5 shows the remaining Brightwater Project expenditures as of December 31, 2012. This information is provided because it can help focus attention to the remaining portions of the project.

The total remaining expenditures for the Brightwater Project are approximately \$34.2 million, excluding \$13.6 million of contingency. Costs in Table 5 are those remaining as of December 31, 2012.

Table 5
Project Costs Remaining (excluding any insurance claim reimbursements) to be Incurred
/ Paid as of 12/31/12 (Excluding Contingency)

	Trend Report Estimated Cost, \$M
Conveyance	
Construction	
Central Tunnel (VPFK)	\$1.3
BT3C (JDC)	\$4.6
IPS	\$1.3
IPS Completion Contract	\$2.0
Marine Outfall (Diffuser Cap)	\$0.1
Ballinger Wy/N. Kenmore Odor Control	\$1.7
All Other	\$0.7
Construction Mitigation	\$2.3
Non-Construction	<u>\$13.3</u>
Subtotal, Conveyance	\$27.2
 Treatment Plant	
Construction	\$2.9
Construction Mitigation	\$0.5
Non-Construction	<u>\$3.6</u>
Subtotal, Treatment Plant	\$7.0
 Total, Project	 \$34.2

As of December 31, 2012, approximately 51 percent of the remaining project expenses are for construction, excluding contingency. The remainder is for non-construction costs, particularly construction management, engineering services, and remaining mitigation payments to local agencies. WTD reports that the non-construction cost estimate was based on an evaluation of the resources needed to complete the project.

Approximately \$4.9 million of the remaining project cost is for mitigation activities. Of this, approximately \$2.8 million is for construction mitigation, as shown in Table 2-5 separately for Conveyance and the Treatment Plant. The remaining approximately \$2.1 of mitigation spending is payments to local agencies that are also included in Table 5 as non-construction costs.