



## DRAFT AGENDA

Bi-State Bridge Replacement Working Group Regular Meeting  
February 14, 2022 / 2:00-4:00p (2 hour)  
Via Zoom

Members: Chair, Mike Fox (Commissioner), Port of Hood River; Vice Chair, Jake Anderson (Commissioner), Klickitat County; Catherine Kiewit (Mayor), City of Bingen (absent); Marla Keethler (Mayor), City of White Salmon; Kate McBride (Mayor), City of Hood River; Bob Benton (Commissioner), Hood River County;

Alternates: Kristi Chapman (Commissioner), Port of Hood River; Arthur Babitz (Commissioner), Hood River County; Joe Sullivan, City of Bingen; Jason Hartmann (Councilor), City of White Salmon; David Sauter (Commissioner), Klickitat County; Jessica Metta (Councilor), City of Hood River.

Staff/Consultants: Kevin Greenwood (Project Director), Port of Hood River; Michael McElwee (Executive Director), Port of Hood River; Brad Boswell, Boswell Consulting; Miles Pengilly, Thorn Run Partners; Steve Siegel, Siegel Consulting.

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|-----|---|------|
| 1.  | Welcome   | 2:00 |
| 2.  | January 17 Regular Meeting Minutes                  | 2:01 |
| 3.  | Legislative Update                                  | 2:03 |
|     | A. Wash. Funding Package – Sen. Curtis King         |      |
|     | B. Wash. Bridge Authority (SSB 5558) – King/Boswell |      |
|     | C. Ore. Transportation Committee – Miles Pengilly   |      |
|     | D. Ore. Bridge Authority (HB 4089-1) - Pengilly     |      |
| 4.  | Jen Mayer, Concept Jeneration LLC                   | 2:22 |
|     | A. Revisiting Values of P3s                         |      |
| 5.  | Commission Formation Agreement Process – S. Siegel  | 3:25 |
| 6.  | Memo on BSWG Authority                              | 3:35 |
| 7.  | RBMC RFP Update                                     | 3:40 |
|     | A. Industry Forum Draft Agenda                      |      |
| 8.  | Project Updates                                     | 3:55 |
| 9.  | Next Meeting, March 14, 2022                        | 3:59 |
| 10. | Adjourn   | 4:00 |

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**Hood River – White Salmon**

## **BRIDGE REPLACEMENT PROJECT**

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Project Director Report / BI STATE WORKING GROUP MEETING

February 14, 2022

The following summarizes Bridge Replacement Project activities from Jan. 13-Feb. 11:

### **APPROVE JANUARY 17 REGULAR BSWG MEETING MINUTES**

*Draft minutes included in packet.*

### **WASHINGTON STATE FUNDING – SEN. CURTIS KING**

*Senator King is planning to attend the meeting to give updates on the developing transportation package that has \$74-million identified for the project. It's unclear whether the proposal will gain bi-partisan support. Though funding for the package does not include a new gas tax, significant fees are added to pay for projects.*

### **BRIDGE AUTHORITY LEGISLATION WASHINGTON – BOSWELL**

*In Washington, SSB 5558 passed the Senate Transportation Committee unanimously with Oregon Rep. Williams providing testimony. The bill co-sponsored by Sen. King, Sen. Liias, and Sen. Mullet passed the Senate unanimously as well on Feb. 8 and awaits introduction to the House.*

### **OREGON TRANSPORTATION COMMISSION – M. PENGILLY**

*The OTC is holding a hearing this Thursday at noon to receive testimony on the Infrastructure Investment and Jobs Act (IIJA) funding. The project currently has a \$20M request to complete engineering. A number of letters are being generated to submit to the OTC on Wednesday.*

### **BRIDGE AUTHORITY LEGISLATION OREGON – M. PENGILLY**

*In Oregon, House Bill 4089-1 passed the Joint Transportation Committee last week. Rep. Anna Williams, Sen. Chuck Thomsen, Sen. Curtis King-Wash., and Commissioner Fox all testified. The vote was unanimous. Last Friday, the bill passed the House 48-3 and will now move to the full Senate this week. Rep. Williams carried the bill, and Rep. Bonham, Rep. McLain, and Rep. Smith also spoke in support of it in a great display of bipartisanship that highlighted the need to replace the bridge for all the members of the House. Pending passage in the Senate, the bill will go to Governor's desk for signature.*

*Staff would recommend that members of the BSWG agree to sign letters as needed for hearings. Standardized signature block can be used for this effort. A letter for the OTC and Washington efforts for the bridge authority bill and a spending package would be useful. A draft letter of support for the House hearing this week on SSB 5558 is included in the packet.*

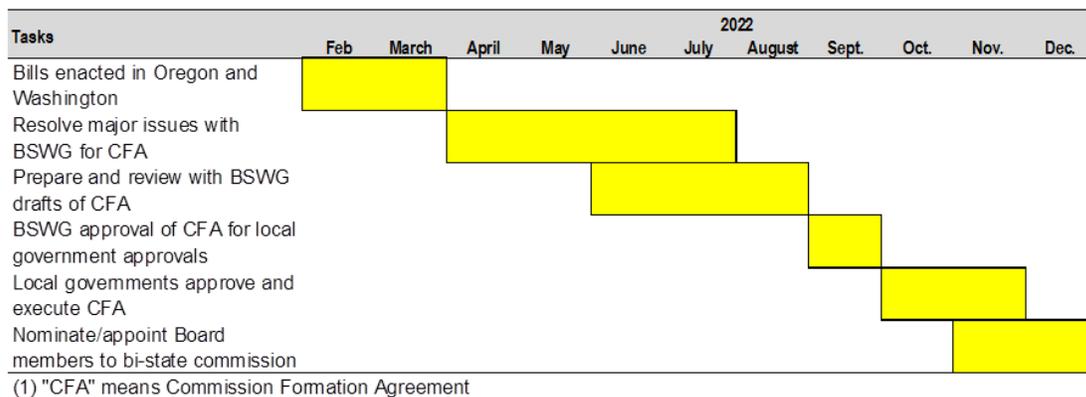
**P3 PRESENTATION – JEN MAYER**

Last February, the Bi State Working Group hosted a P3 Forum (<https://www.youtube.com/watch?v=Xvy6OFWMabY>) to learn more about how public transportation projects are financed. Jen Mayer, Principal with Concept Jeneration, LLC, was especially effective in sharing how P3s should be considered when developing a finance plan. The BSWG asked for Mayer to return and she will be presenting some thoughts on how and when public private partnerships should be considered. Her presentation is included in the packet.

**COMMISSION FORMATION AGREEMENTS – STEVE SIEGEL**

With bi state bridge authority legislation on a strong trajectory for passage, it made sense to review the steps after the bill becomes law. Steve Siegel developed and reviewed with the BSWG in March 2020 a four-phase plan for installing a new bi state authority. (See attached) Phase I and II have been completed and Phase III is in progress.

2022 GOVERNANCE SCHEDULE



Though the original plan has been adjusted along the way, the next step after legislation will be for the BSWG to develop Commission Formation Agreements (CFA) for local government adoption. Siegel will preview the nature of the work later this year and answer questions.

**BSWG AUTHORITY**

Late last year, the BSWG asked about the nature of its authority as an advising committee to the Port of Hood River. The BSWG has been an effective political committee for this process, but it is unique in its bi-state membership as well as in that an approved Memo of Understanding (MOU) was approved by governing boards of the six participants. Input from the BSWG to both Port staff and the Commission has been critical in developing support and confidence as the Commission approves contracts and policies necessary as the current project manager.

Staff asked the Port’s general counsel, Jerry Jaques, to prepare a memo which was reviewed by the Port Commission before being distributed as part of this meeting packet. Since the creation of the BSWG, Port staff has followed Oregon public meeting and record laws. The memo is provided to respond to member questions.

## **OTHER UPDATES**

- *First Treaty Agreement planning meeting with Yakama Nation took place last week. Agenda developed for larger meeting with FHWA and Yakama Directors.*
- *WSP and Port staff met with FHWA last week to review BUILD grant agreement materials. Agreement must be completed by September 2022.*
- *NOFO for Federal RAISE grant application. Deadline for application is April 15<sup>th</sup>. Limits are \$1-\$25M for rural planning grants. Will evaluate status of Port's BUILD award to analyze RAISE opportunity.*
- *Monthly NEPA Update included; Please share with your boards. Sec. 106 Consulting Parties meeting No. 5 scheduled for March 1<sup>st</sup>. The Meeting is an opportunity for those agencies and non-profits charged with monitoring historic and archaeological impacts to share their ideas for mitigation. The process will result in an agreement between FHWA and those parties. Agenda included in packet.*
- *HB2017 funds have been fully expended; Washington state funds start covering expenses as of first week of February. Efforts have started back up to complete grant agreements for BUILD and Oregon ARPA funds.*
- *New NOAA Branch Chief submitted significant edits back to the opinion writers. ODOT has confirmed that emergency permits have wrapped up from the last big storm event allowing the author to prioritize the edits.*

## **NEXT MEETING – MARCH 14, 2022**

## **ADJOURN**

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Hood River – White Salmon

## BRIDGE REPLACEMENT PROJECT

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Rep. Jake Fey  
House Transportation Committee  
260A John L. O'Brien  
P.O. Box 40600  
Olympia, WA 98504-0600

February 17, 2022

**RE: BI-STATE SUPPORT FOR BRIDGE COMMISSION LEGISLATION (SSB 5558)**

Chair Fey and Members of the Committee:

The Oregon and Washington local governments that we represent have been working together for the last twenty years to replace the century-old Hood River-White Salmon Bridge. In 2018, we came together to form the Bi-State Working Group (BSWG) as a unified political voice to support the ongoing effort to replace the bridge. Both sides of the Columbia River Gorge are united in our support for **SSB 5558**, which would create a new bi-state governance entity to own, operate and maintain the new Hood River-White Salmon Interstate bridge.

The current bridge is functionally obsolete, weight-restricted, seismically deficient, and a hazard for maritime freight on the Columbia River. Repair costs continue to grow year over year, and unless construction on a new bridge is underway by 2026, \$50 million will need to be spent on the current bridge over the next fifteen years to provide for its continued safe operation. Replacing the Hood River-White Salmon Bridge is vital to the local economy, and to the safety of our communities on both sides of the river.

While our informal local government partnership has worked well so far, a clear, comprehensive, and permanent bi-state governance structure is needed to finance, construct, and operate the replacement bridge. After a year-long study, the BSWG found that the replacement of a local government-owned interstate toll bridge can best be accomplished by an independent bi-state commission, chartered by the affected local governments, with sufficient powers to oversee the bridge replacement project and own and operate the new bridge. Since current statutes in Oregon and Washington do not provide a means to establish such an authority, the BSWG has prepared legislation to create this bridge commission and seeks to pass it concurrently in the Oregon and Washington Legislatures during their respective 2022 legislative sessions.

The financing, construction, operation, and maintenance of the replacement bridge will require cooperative decision-making by local governments from both states, and this bi-state commission would facilitate that bi-state collaboration. The proposed legislation would also establish the clear legal framework required to finance the replacement bridge, achieve investment-grade ratings for toll bonds, and ensure transparency and accountability for bridge operations. Additionally, the commission would create a legal separation between the bridge and local and state governments, avoiding unwanted legal and financial entanglements. The governance structure outlined in SSB 5558 is expressly designed to address the replacement of interstate toll bridges owned by a local government, so it is not applicable to state-owned interstate bridges.

**We respectfully request your support for SSB 5558** so that we can create this new bi-state governance structure and this vital infrastructure project can move forward without delay. Thank you for your consideration of our testimony.

Sincerely,

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Jacob Anderson, Commissioner  
Klickitat County (Wash.)

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Bob Benton, Commissioner  
Hood River County (Ore.)

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Marla Keethler, Mayor  
City of White Salmon (Wash.)

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Kate McBride, Mayor  
City of Hood River (Ore.)

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Catherine Kiewit, Mayor  
City of Bingen (Wash.)

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Mike Fox, Commission  
Port of Hood River (Ore.)

Revisiting value of P3s:  
An Updated Look  
Jen Mayer  
*Concept Jeneration, LLC*



CONCEPT JENERATION  
IDEAS . INNOVATION . INSPIRATION

Bridge Replacement Bi-State Working Group  
14 February 2022

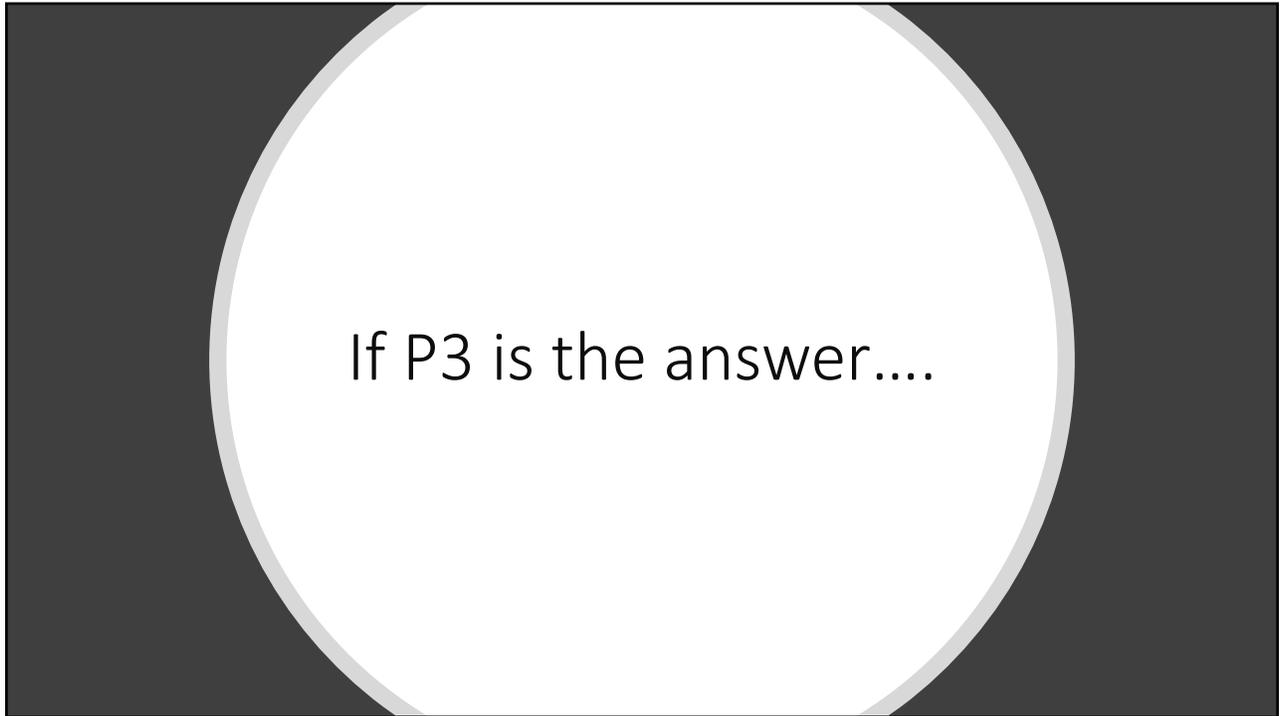
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# Outline

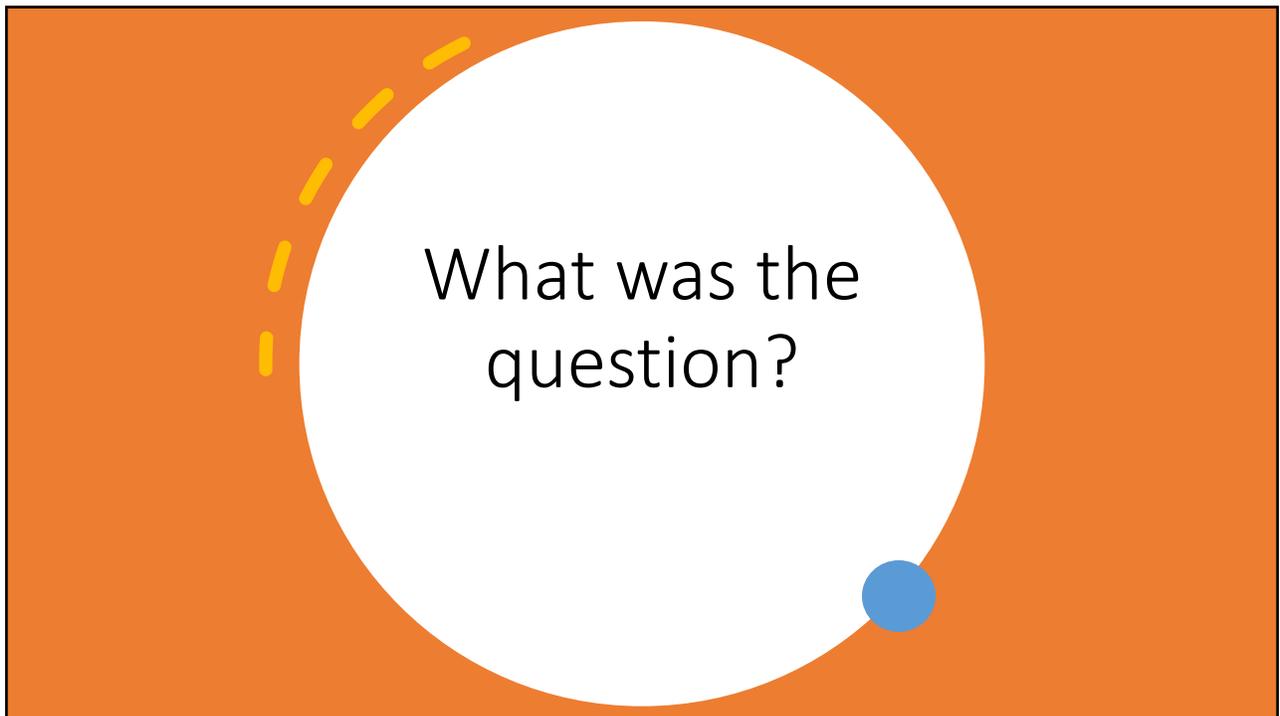
Review

- Why undertake a P3?
- Why do P3s fail?
- When should you undertake a P3?

2



3



4

## Why Undertake A P3 – Wrong Answers Only

- **To generate revenue? No:** P3s don't make money, they require it
- **To cut labor costs? No:** P3s don't have to (and shouldn't) involve losing public sector jobs or lowering employee pay
- **To replace "inefficient government?" – No:** P3s require exceptional performance from both public and private sectors.
- **To solve a political dispute? - No:** If a project is unpopular or the public doesn't agree with a part of it, bringing in a P3 will make it worse, not better.

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## Why Undertake a P3?

How can we get the best value for our investment?

How can we manage risk most cost-effectively?

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## Why Undertake a P3?

- How can we get long-term performance for a long-term project?
- How can we make sure the private sector doesn't get fully paid until we get the performance?



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## Updated Look at P3 Considerations

Risk Identified	Potential P3 Applicability	Questions to Resolve
<b>Greater project cost</b>	Could a P3 lower the cost of project?	Can P3 identify a cost-saving solution/innovation? Or are there economies of scale a P3 could attain? (Typically costs same or more)
<b>Greater project complexity/technical difficulty</b>	Could a P3 manage risk better?	Is the solution required something innovative/difficult to implement compared to typical project?
<b>Creditworthiness Concerns</b>	Could a P3 generate any advantage in creditworthiness?	Underlying pledge would be the same (tolls, any public funds). Could/would a P3 add anything to this?
<b>Warranty/Long Term Performance</b>	Could a P3 ensure better guarantee of performance/long-term warranty?	Warranty is only as good as financial guarantee private partner could offer.
<b>Tribal MOU requirement</b>	Could a P3 accelerate MOU? Or would this	Unlikely to accelerate environmental but may not
<b>National Scenic Area</b>	Would a P3 be able to	NSA might not be able to assess area.

8

## Why Do P3s Fail?

- Unclear or uncommunicated goals
- Short-term thinking for long-term projects
- Lack of advisors on the public side



9

## Why Do P3s Fail?



- Having a private partner manage risks that they are not best equipped to manage
- Conflating the decision to toll, or at what rates, with the decision to do a P3

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## When to Undertake a P3?



- When you have the information you need to evaluate best value

OR

- When you're gathering that information collaboratively – and have lots of exit ramps if the answer is "No."

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## Can/Should the Federal Government Be Involved?

- Federal involvement in P3s is common
- Low-cost financing via TIFIA and/or Private Activity Bonds helps make P3s more feasible
- Federal requirements do apply: but often with flexibility
- Federal support for P3s has been bipartisan



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**PHASE 1** **March 2020 thru December 2020**

Identify Criteria for FINAL Governance/Organizational Structure  
Identify and Evaluate FINAL Governance Structure Options  
Identify INTERIM Decision-making Structure  
Select Recommended FINAL Governance/Organization  
Finalize INTERIM Decision-making Structure  
Identify Steps to Implement INTERIM Decision-making Structure in Phase II  
Identify FINAL Governance/Organization Items to be detailed in Phase II  
Identify Funding Plan for Phase II Work

**COMPLETED**

**PHASE II** **January 2021 thru December 2021**

Take Steps to Implmenet INTERIM Decision-making Structure  
Start INTERIM Decision-making Structure  
"Test" Recommended FINAL Governance/Organization with Stakeholders  
Refine FINAL Governance/Organization, as needed  
Detail Selected Items for FINAL Governance/Organization  
Prepare Bi-State Legislation (if needed)  
Identify FINAL Governance/Organization Items to be detailed in Phase III  
Identify Funding Plan for Phase III Work  
Nominate/select interim board members

**COMPLETED**

**PHASE III** **January 2022 thru June 2023**

Operate INTERIM Decision-making Structure  
Seek Bi-State Legislation for FINAL Governance/Organization (2022 Session)  
Prepare Plan to Transfer Oversight/Management Responsibility to new Governance/ Organization  
Prepare by-laws, rules, administrtive procedures, etc. for FINAL Structure  
Nominate and Appoint Board Members  
Soft-Open FINAL Governance/Organization -- FINAL Board replaces INTERIM Board under INTERIM Structure  
Prepare Organization Budget,  
Seek \$30M engineering grant(s) (2023 Session)  
Identify FINAL Governance/Organization Items to be detailed in Phase IV

January 2022 thru May 2022  
July 2022 thru December 2022  
January 2023  
January 2023 thru May 2023  
January 2023 thru June 2023

**Phase IV** **July 2023 thru December 2024**

Start Full Operations of FINAL Governance/Organization  
Adopt by-laws, rules, administrtive procedures, etc.  
Complete build-out of organization  
Seek Bi-State Construction Grant

July 2023  
Janauary 2025 thru June 2025

# JAQUES SHARP

— ATTORNEYS AT LAW —

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## LEGAL MEMORANDUM

### **BY EMAIL**

FROM: JERRY J. JAQUES AND ANNA C. CAVALERI

TO: KEVIN GREENWOOD, REPLACEMENT BRIDGE PROJECT DIRECTOR

CC: MICHAEL McELWEE, PORT EXECUTIVE DIRECTOR

DATE: January 12, 2022

RE: APPLICABILITY OF OREGON PUBLIC MEETINGS AND PUBLIC RECORDS LAWS TO  
THE BI-STATE WORKING GROUP (“BSWG”); BSWG ORGANIZATIONAL STATUS

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**ISSUES ADDRESSED:** This Memorandum to the Port of Hood River (“Port”) discusses applicability of the Oregon Public Meetings Law and Oregon Public Records Law to the six persons appointed by six local governments to the Bi-State Working Group (“BSWG”). The BSWG operates under the terms of a non-binding Memorandum of Understanding (BSWG MOU) to discuss and help facilitate development and construction of a new interstate replacement bridge (“Replacement Bridge”). This Memorandum also discusses BSWG’s relationship to the Port and BSWG legal limitations. Washington laws are not considered. Non-Port BSWG members should consult with their local government attorneys about possible application of public meetings laws, public records laws, or other laws applicable to them or the public bodies they represent.

**ISSUES DETERMINATIONS:** Under the BSWG MOU BSWG members do not vote or take formal actions, they operate by consensus. The BSWG is not a legal entity. It has no funds and may not sign contracts. The Oregon Public Meetings Law does not apply to BSWG members because the BSWG is not a “governing body”. The Oregon Public Records Law probably does not apply to the BSWG either, as a “public body”. Under the BSWG MOU the Port is designated as the “Lead Agency” which takes all Replacement Bridge monetary and other actions. Under the BSWG MOU the Replacement Bridge Project Director is designated to provide Replacement Bridge information to the BSWG and to receive Replacement Bridge information from BSWG members to present to the Port.

**1. OREGON'S PUBLIC RECORDS AND MEETINGS LAWS.** Oregon's public meetings and documents laws are set forth in the Oregon Revised Statutes ("ORS"). Those laws are interpreted and discussed in the Oregon Department of Justice's 2019 Attorney General's Public Records and Meetings Manual ("Oregon AG Manual") which has been reviewed, and is sometimes recited below.

**1.1. Oregon's Public Meetings Law.** Pursuant to ORS 192.620: "The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of [the Public Meetings Law] that decisions of governing bodies be arrived at openly." The Oregon Public Meetings Law gives effect to a policy of open decision-making by the state's public bodies; in furtherance of that policy, the law requires that meetings at which decisions about the public's business is made are open to the public; that the public has reasonable notice of the time, place, and agenda for the meetings; and that the meetings be accessible to persons wishing to attend.

**The Oregon Public Meetings Law applies to any GOVERNING BODY of a public body.** A "public body" is the state, any regional council, county, city or *district, or any municipal or public corporation; or any agency of those entities, such as* a board, department, commission, council, bureau, committee, subcommittee, or *advisory group.*<sup>1</sup> (emphasis added) **A key indicator of whether an entity is a public body is whether it was created by** or pursuant to the state constitution, a statute, administrative rule, order, intergovernmental agreement, bylaw, or other **official act.**<sup>2</sup> (emphasis added)

**If two or more members of any public body have "the authority to make decisions for or recommendations to a public body on policy or administration," they are a "governing body", which is subject to Oregon Public Meetings Law provisions.**<sup>3</sup> (emphasis added) For example, a three-member committee of a seven-member board is itself a "governing body" if it is authorized to make decisions for or to advise the parent public body or another public body. Conversely, a department headed by an individual public officer is not a "governing body". A subcommittee that has *authority only to gather information* for the full committee is not a governing body.<sup>4</sup>

Regarding multi state public bodies with Oregon members the Oregon AG Manual states: *Multi-jurisdictional commissions, whose members are appointed by several different governments (such as federal agencies, the governors of Oregon and Washington, and county governing bodies) and whose Oregon members do not constitute a majority, are not subject to the Public Meetings Law.*<sup>5</sup> However, *if such a multi-jurisdictional commission has committees consisting of solely, or a majority of, Oregon appointees that are authorized to make decisions for the commission, or that are authorized to deliberate and make recommendations to the state or any other public body within the state, the meetings of those committees may be subject to the Public Meetings Law.*<sup>6</sup>

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<sup>1</sup> ORS 192.610(4).

<sup>2</sup> Letter of Advice to Rep. Larry Hill and William L. Miles, at 11, 1986 WL 228236 (OP-5885, OP-5986) (May 28, 1986) (private, nonprofit corporation whose board included public officials serving in their individual capacities was not a public body).

<sup>3</sup> ORS 192.610(3).

<sup>4</sup> 42 Op Atty Gen at 188 (multi-state panel formed to assess the economic consequences of the construction of nuclear power plants was not a governing body where it did not have the power to decide policy or make recommendations).

<sup>5</sup> State of OR, Dept. of Justice, Attorney General's Public Records and Meeting Manual (2019, p.140).

<sup>6</sup> *Id.*

**1.2. Oregon’s Public Records Law.** Under Oregon’s Public Records Law, “every person” has a right to inspect any nonexempt public record of a public body in Oregon.<sup>7</sup> Oregon Public Records Law applies to any public body in this state.<sup>8</sup> ***Under Oregon’s Public Records Law, the term “public body” includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.***<sup>9</sup> Oregon Public Records Law provisions govern the duties to make public records, to maintain public records and to provide non-exempt public records to the public. BSWG records are likely not a “public record” independently. However, when BSWG records are in the Port’s possession they become Port public records, and if the records are possessed by the City of Hood River or Hood River County, they are public records of those bodies.

**1.3. Oregon Public Meetings and Records Laws and the BSWG.** Section 3.3 of the BSWG MOU says: “Meetings of BSWG will follow the ***applicable*** public meeting and records laws of Oregon and Washington.” As stated previously, Washington public meetings and records laws are not considered in this memorandum. Oregon public meetings laws are not applicable to the BSWG because the BSWG is not a governing body. Public records laws are likely not applicable to the BSWG because the BSWG is likely not a “public body” as defined by Public Records statute, ORS 192.311(4).

Even if the BSWG were to become a “governing body” it would likely not be subject to Public Meetings Law provisions because three members are from Washington and three members are from Oregon. According to the Oregon AG Manual: “Multi-jurisdictional commissions whose members are appointed by several different governments...and whose Oregon members do not constitute a majority, are not subject to the Public Meetings Law.”<sup>10</sup>

Although the BSWG as constituted likely does not need to comply with the Oregon Public Meetings Law and Oregon Public Records Law, the BSWG has been complying with several Public Meetings Law requirements anyway. On behalf of the BSWG Port staff provides advance public notice of the time, place, and agendas of BSWG group meetings. BSWG group meetings are accessible to the public. Meeting minutes are taken and retained.

**2. BSWG MOU.** To understand the functions of the BSWG it is necessary to consider the purpose and authority of the BSWG, as set forth in the BSWG MOU.

The BSWG MOU says the BSWG is a bi-state, multi-jurisdictional body formed to “cooperatively oversee, manage, and conduct project development for the Hood River White Salmon Interstate Replacement Bridge.”

Following are relevant provisions in the BSWG MOU:

- Section 2/Purpose and Authority of BSWG
  - 2.1. BSWG will be responsible for:
    - ***Guiding*** project development activities ***and resolving issues by consensus***
    - ***Overseeing*** Phase 2 and, until the Bi-State Authority is operational, Phase 3 work
    - ***Providing for interagency coordination*** on all project issues
    - ***Facilitating*** the implementation of the Bi-State Authority
    - ***Seeking the funding*** necessary to design, develop and construct the Replacement Bridge

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<sup>7</sup> ORS 192.314(1).

<sup>8</sup> *Id.*

<sup>9</sup> ORS 192.311(4).

<sup>10</sup> State of OR, Dept. of Justice, Attorney General’s Public Records and Meeting Manual (2019, p.140).

2.2. **The governing bodies of the jurisdictions will be responsible for approving or rejecting the budgets, work plans, or other *actions required of their organization by the consensus direction set by BSWG.***

- Section 3/Public Engagement
  - 3.3 Meetings of ***BSWG will follow the applicable public meeting and records laws*** of Oregon and Washington.
- Section 4/Project Development Work Plan
  - 4.2 Subject to funding availability, the ***Phase 2 work (between January 2021 and June 2023)*** is anticipated to ***include the following:***
    - a. Completing up to 15% engineering design (including geotechnical analyses)
    - b. Level 2 traffic and toll revenue study
    - c. Preliminary financial analyses
    - d. Preparing and securing Bi-State Authority legislation
    - e. Preliminary assessment of Public-Private Partnerships (P3) opportunities (If P3 is selected as the preferred project delivery method, some work activities in Phase 2 and 3 will change)
    - f. Securing grant funding for Phase 3 of project design and development
- Section 5/Management of Project Development
  - 5.1. ***All project development work will be undertaken by a Lead Agency. POHR [Port] will be the lead agency for Phase 2 work...***
  - 5.2. ***The Lead Agency will, within the available budget:***
    - a. ***Retain a Project Director to oversee required day-to-day technical and administrative work***
    - b. Procure and manage the consulting teams required by the work plan
    - c. Staff BSWG meetings
    - d. Ensure that BSWG is provided technical reports and presentations required by BSWG.
    - e. Coordinate the legislative program described in Section 9
    - f. In the name of BSWG, undertake the necessary public engagement and stakeholder coordination, as directed by BSWG
  - 5.3. ***The member jurisdictions shall coordinate with the Project Director with respect to any work activities regarding the Replacement Bridge they undertake.*** (emphasis added)

**3. THREE PHASES OF BSWG ACTIVITIES.** Section 4 of the BSWG MOU identifies three phases of Replacement Bridge activities.

Phase 1 (10/2020–1/2021) involves Replacement Bridge preliminary planning activities, prior to Phase 2 activities.

Phase 2 (1/2021–6/2023) involves preliminary Replacement Bridge work by the Port. Phase 2 work, subject to available funding, includes preliminary engineering design work, traffic and toll revenue analysis, financial analysis and help to secure Bi-State Replacement Bridge legislation. During Phase 2, new Oregon and Washington legislation may authorize the formation of a Bi-State Authority charged with taking Replacement Bridge actions previously done by the Port. Or a private company may take over construction and operation of a Replacement Bridge if a Bi-State Authority is not formed, under a public, private partnership (“PPP”).

Phase 3 (7/2023-6/2025) work, subject to available funding, involves advanced Replacement Bridge activities, including completing at least 60% engineering design work, completing an investment grade traffic and toll study, preparation of a Replacement Bridge finance plan, implementation of the Bi-State Authority, and securing funds for Replacement Bridge final design and construction.

**4. BSWG LEGAL STATUS; LIMITED AUTHORITY.** The BSWG is an important bi-state group comprised of six individuals that represent six local governments in two states. BSWG members, and the local governments they represent, support Port Replacement Bridge activities. BSWG members provide input to the Port about Replacement Bridge activities, encourage Replacement Bridge legislation and funding, and engender community support for the Replacement Bridge.

But the **BSWG is not a legal entity itself and is not an independent public governing body. The BSWG operates under the terms of the BSWG MOU.** The BSWG will provide assistance and input to the Port, as Replacement Bridge Lead Agency responsible for all Replacement Bridge activities, until a Bi-State Authority or PPP organization assumes Replacement Bridge functions in the future.

The BSWG has no legal authority to sign contracts, to sue, to be sued, to have or spend money or have authority to hire employees or contractors. Under BSWG MOU Section 2.1, **BSWG's Replacement Bridge role is "guiding project development" and "resolving issues by consensus"**.

Although the primary BSWG Replacement Bridge role is to **support** the Port as the Lead Agency some persons might believe BSWG's role is broader because of BSWG MOU language that may imply the BSWG will take Replacement Bridge actions itself.

For example, BSWG MOU Section 2.1 says **BSWG "will be responsible for overseeing Phase 2 and ... Phase 3 work"; "providing for interagency coordination on all project issues"; "facilitating the implementation of the Bi-State Authority"; "seeking the funding necessary" for the Replacement Bridge.** Section 4.1 says: **"BSWG will cooperatively take actions needed to develop a Replacement Bridge"**. Section 6.1 says: **"BSWG is responsible for securing grant funding** required to complete project development and to construct the Replacement Bridge." Section 6.2 says: **"BSWG will seek funding contributions from Oregon and Washington...during project design, development and construction."** Section 7.1 says: **"BSWG will seek to establish an independent Bi-State Authority** for the...Replacement Bridge." Section 7.2 says: **BSWG will prepare and propose bi-state legislation...during the 2022 or 2023 legislative sessions"**. Section 8.1 says: **"BSWG will continue to examine the P3 option, including soliciting industry opinion** regarding the potential P3 market". Section 9.4 says the **BSWG will undertake several legislative efforts** in Oregon and Washington.

The BSWG activities in the BSWG MOU, recited above, are not being taken by BSWG because BSWG has not authority to take those actions. BSWG 's function is to provide input and support to the Port, which is undertakes all these activities.

**5. CONCLUSIONS.** The BSWG is an important group of public officials appointed by six local governments in Oregon and Washington interested in helping facilitate a Replacement Bridge across the Columbia River.

Oregon Public Meetings Law provisions do not apply to the BSWG because it is not a "governing body" as defined by Oregon statute. Nonetheless Port staff utilizes Oregon public meetings protocols for BSWG group meetings, including providing public notice about the meetings and taking meeting minutes.

Under the Oregon Public Records Law BSWG documents held by BSWG are likely not public documents. However, when BSWG documents are held by the Port, City of Hood River or Hood River County, they are public documents of those local governments.

The BSWG is not a legal entity. The BSWG has no rights to sign contracts, hire persons, to hold or spend money, and may not take actions a legal entity might take.

The BSWG not a “governing body”. It operates by consensus under the provisions of the BSWG MOU.

Because of language used in parts of the BSWG MOU, someone might believe BSWG has rights to take Replacement Bridge actions itself. However, until a Bi-State Authority or PPP is operational, the BSWG’s role is limited to creating community and legislative support for the Replacement Bridge and to providing input and suggestions to the Port as “Lead Agency”, through the Replacement Bridge Project Director appointed by the Port as stated in the BSWG MOU.

The Port is solely responsible for providing staff, consultants and money necessary for all Replacement Bridge efforts until a Bridge Commission or PPP organization assumes those responsibilities in the future.

# BSWG Memo



Prepared by: Kevin Greenwood  
Date: February 14, 2022  
Re: Management Contract Pre-Proposal Conference (PPC)

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As part of the Replacement Bridge Management Contract procurement process, a Pre-proposal Conference (PPC) was included. Typically, a pre-proposal meeting allows staff to give an update on the project and provide a forum for interested bidders to ask questions about the procurement document and process. Minutes are taken and if clarifying questions are answered in such a way that may be helpful to bidders, an addendum to the Request for Proposals (RFP) will be issued.

The PPC is tentatively scheduled for 7 days after the release of the RFP; or Feb. 23<sup>rd</sup>. Currently the identified project manager for each bidder is required to participate. Members of the BSWG are encouraged to attend. The PPC will be archived on the Port's YouTube Channel. The agenda for the PPC could look like the following:

1. Welcome and Introductions – Mike Fox, BSWG Chair
2. Purpose of the Forum - Mayor McBride, Comm. Anderson, others
  - a. Importance of bridge connecting communities – Mayors McBride, Keethler, Kiewit
  - b. Opportunity for members of the BSWG to meet potential bidders
  - c. Opportunity for bidders to received update on the project
  - d. Opportunity for bidders to ask questions of the project team
3. Presentation on the Project – Kevin Greenwood, Project Director
  - a. Past Efforts: late 90s, SWRTC, TS&L
  - b. Current Effort: funding from HB2017, completion of NEPA
  - c. Summary of NEPA Status
  - d. Preliminary Cost Estimate
  - e. Preliminary Schedule
  - f. Review First Year Tasks
  - g. Review RBMC Schedule/Process
4. Questions and Answers from Bidders
5. Adjournment

Feedback would be appreciated on the PPC.

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# EIS UPDATE

## BRIDGE REPLACEMENT PROJECT

### MARCH 2022 UPDATE



In December 2003, a draft environmental impact statement (EIS) was published as part of a bi-state collaborative effort. This draft EIS was the first step in complying with the National Environmental Policy Act (NEPA). Currently, the Port of Hood River (Port) is advancing the project to complete the EIS effort and position the project for future funding and construction. A Bi-State Working Group (BSWG) consisting of Mayors and County Commissioners from both Hood River and Klickitat Counties monitors the project and advises the Port on bridge replacement activities.

### NEPA Activities:

Work continues on tasks necessary to finalize the EIS and prepare a Record of Decision. This includes:

- Tribal compensatory agreements for to impacts to treaty fishing activities during construction.
- Completion of the Endangered Species Act consultation.
- Finalizing Section 106 process including meeting with consulting parties and completion of the mitigation agreement for impacts to the historic bridge.

### Other Activities:

- Bridge Authority Legislation Update: Oregon House Bill 4089 passes full House and Washington Senate Bill 5558 passes full Senate.
- Project Management procurement for next phase of project continues to be reviewed by the state.
- Opportunity to advocate on behalf of project with Oregon Transportation Commission on Feb. 17th.
- Grant agreement with Washington state complete; allows project to continue.
- Bridge Weight Limit analysis to be reviewed by Port this month; options considered for possible plan to remove weight limits.
- Wire rope replacement and approach ramp repairs also being scheduled for contract this summer.

### How would bridge replacement benefit the Columbia River Gorge communities?

The Hood River Bridge provides a critical connection for residents and visitors to the Columbia River Gorge National Scenic Area. One of only three bridges spanning the Columbia in this region, the bridge is a critical rural freight network facility for agriculture, forestry, heavy industry and high-tech companies with freight originating throughout the northwest. The existing bridge is nearing the end of its serviceable life and is obsolete for modern vehicles with height, width, and weight restrictions and is also a navigational hazard for marine freight vessels. The bridge has no sidewalks or bicycle lanes for non-motorized travel and would likely not withstand a large earthquake.

If project funding is secured, the new bridge would provide a safe and reliable way for everyone to cross or navigate the Columbia River—by car, truck, bus, bicycle, on foot, or on the water. A new bridge would support a thriving economy and livable communities.

WE ARE HERE ▼

Agency/ Stakeholder Outreach	Environmental Compliance																	
Technical Study Updates	Supplemental Draft EIS								Final EIS/ROD									
● Community Meeting									● Community Meeting									
Q3   Q4	Q1   Q2	Q3   Q4	Q1   Q2	Q3   Q4	Q1   Q2	Q3   Q4	Q1   Q2	Q3   Q4	Q1   Q2	Q3   Q4	Q1   Q2	Q3   Q4	Q1   Q2	Q3				
2018	2019		2020				2021				2022							

To learn more about the project, please visit us at:  
[www.portofhoodriver.com/bridge](http://www.portofhoodriver.com/bridge)

### PROJECT CONTACT

Kevin Greenwood, Project Director  
 ☎ 541-436-0797  
 @ kgreenwood@portofhoodriver.com



## **DRAFT AGENDA**

### **Hood River – White Salmon Interstate Bridge Replacement Project Section 106 Consulting Parties Meeting**

**March 1, 2022**

**Zoom Link: <https://wspusa.zoom.us/j/89456970019?pwd=bS9EeEgrNDEwVFQzU0YydzBhYzhNzZ09>**

**Password: 641516**

**Teleconference information if needed:**

**USA 404 469 0482**

**USA 8778298910 (US Toll Free)**

**Conference code: 4524176**

*Objective: The purpose of this meeting is to convene tribes and federal, state, and local agencies, as well as other consulting parties, to discuss the development of a Project Agreement to resolve the adverse effects from the Hood River-White Salmon Interstate Bridge Replacement Project consistent with Section 106 of the National Historic Preservation Act. The intent of this meeting will be to provide an update on the overall environmental (NEPA) process, review the status of Section 106 consultation performed for this project thus far, review draft agreement text, and refine ideas on which mitigation options to move forward with.*

1. Introductions
  - a. Tribes (Cowlitz, Grand Ronde, Nez Perce, Siletz, Umatilla, Warm Springs, Yakama)
  - b. Federal Agencies (Federal Highway Administration; U.S. Coast Guard; U.S. Army Corps of Engineers; U.S. Bureau of Indian Affairs; USDA-CRG National Scenic Area)
  - c. State and Local Agencies (Oregon DOT; Washington State DOT; Oregon SHPO; Washington State DAHP; Port of Hood River; City of Hood River; City of White Salmon; Klickitat County; Hood River County)
  - d. Consulting Parties
2. Project Updates
  - a. NEPA process (Current Milestones & Schedule)
    - i. Combined Final EIS & ROD – 2022
  - b. Section 106 Consultation Updates – Oregon and Washington SHPOs -
    - i. Archaeological Resources Survey Report & Archaeological Testing Report
      1. Comments received from consulting parties/Report Revisions
    - ii. Inadvertent Discovery and Monitoring Plan (Attachment to MOA)
      1. Temporary Construction Easements
      2. No Work Zones
3. Review new additions and changes to the Project MOA since last meeting
4. Questions and Discussion concerning the latest changes to the MOA.
5. MOA Schedule for future reviews, agency/tribal counsel review, final signatures
6. Next Steps and next meeting date