

Decision

Case Number: 398541

BACKGROUND

The Issues as Raised in the Complaint:

The complainant claims that innovative treatment alternatives are being overlooked, and that this is undermining the fairness of the process to identify a wastewater treatment solution. Specifically, the complainant takes issue with the CRD's position at this time to not consider alternatives to the seven option sets currently under consideration.

FINDINGS

The complainant takes issue with the process established by the CALWMC to focus on the seven options which are currently on the table, despite evidence that there are other viable, cost effective options which are not being considered.

What would a fair process require?

In this instance, a fair process would include the following:

- That the process to be followed was **clear** and **made known** to the public in advance of the process being actioned;
- That the process afforded the public opportunities for review and comment;
- That the timelines were made known and key milestones and deadlines made clear.

I turn now to each issue.

That the process to be followed was clear and made known to the public in advance of the process being actioned;

Clear Process

The general process developed by the CALWMC to identify and later decide on a wastewater treatment option consisted of two primary phases:

PHASE 1 – Public Consultation and Identification of Potential Siting Solution Sets

Phase 1 involved the Westside and Eastside Select Committees identifying potential siting options and system solution sets for wastewater treatment systems for further analysis in Phase 2. This work began in June 2014.

PHASE 2 - Feasibility and Costing Analysis

In this phase each solution set is to be subjected to a comprehensive feasibility and costing analysis. The goal of this analysis is to identify and present for consideration the solution sets that best satisfy each of the following basic objectives:

- most cost effective;
- maximum resource recovery and environmental benefit; and
- balanced cost effectiveness and resource recovery/environmental benefit.

During Phase 2, option sets were recommended to the Core Committee to proceed to feasibility and costing by the Technical Oversight Panel (TOP) and the Consultants. This process began in August 2015. The intention of this process was to narrow the potential option sets. The CRD is now in the process of presenting refined options back to the public.¹

Process made known to public

At several stages early in each of two Project phases, information about the options selection process was communicated to the public.

Following the defeat of the proposal for a treatment plant at McLoughlin Point, an August 2014 Notice of Motion titled, "Options For Wastewater Treatment" was issued by the Core Committee. This motion marks one of the earliest points in the public record stipulating the new options selection process. The motion provides that the CRD work with the public to explore new viable options for wastewater treatment. The motion states that:

"(CRD) staff be directed to support municipalities and First Nations who want to explore options for waste water treatment...AND THAT any decisions taken to amend the Liquid Waste Management Plan be done in an open and transparent public process."

Following this motion, September 2014 Terms of Reference (TOR) for the Option Study were released. The TOR state that:

"[t]he CRD is now exploring options for implementing a sewage treatment program... *The process seeks to build consensus amongst the participants on options that best reflect the needs of the participants and their desired outcomes (Phase 1) and to evaluate the financial implications of the preferred option(s) (Phase 2).*"

These TOR demonstrate the intention of the CRD in moving upon the August 2014 motion to begin the new options selection process through a two-phased approach involving a) the selection of viable and publically acceptable options and b) the evaluation of preferred option(s) to determine a wastewater treatment solution for the Core Area.

Subsequent to this motion and these TOR, the CRD reiterated the options process in both the May 2015 RFP² and the fall 2015 Project Charter for Phase 2 of the Project. Both documents outline the procedures in the options selection process.

² RFP 15-1834 issued in May 2015 was for Phase 2 of the Options Study, and appropriately titled, "Core Area Liquid Waste Management Plan Wastewater Treatment System Feasibility & Costing Analysis".

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That the process afforded the public opportunities for review and comment

The process of arriving at the current seven options was one supported by extensive public consultation. The FTA has reviewed the various methods and tools used in the consultation process and determined that the methods used were both diverse and appropriate to the level of engagement required for the Project. The option sets were presented to the public through a variety of methods including open houses, surveys, targeted group meetings, reports, and workshops. At these meetings, the public had opportunity to engage with the consultants / technical experts on the specifics of the option sets, including treatment technologies.

The public also had the opportunity throughout the process of narrowing the option sets to participate in open meetings of the TOP during which discussions took place on the feasibility of treatment technologies.

That the timelines were made known and key milestones and deadlines made clear

The overall timelines for the Project have been communicated to the public since at least the fall of 2015 when the Phase 2 Project Charter was drafted and finalized by the CRD.

These timelines are demonstrated in the Proposed Work Plan Overlay attached to the Project Charter – which is frequently included in CALWMC meeting agenda packages. The Work Plan reveals the fall 2015 and winter 2016 timelines for technical analysis, costing and financial analysis, and approval of the option sets for further public consultation. The FTA’s understanding is that while these timelines have shifted over the course of the Project, such adjustments have been captured in revisions to this Work Plan.

Amending the process moving forward

The FTA understands that the CRD is contemplating varying the process moving forward. In particular, the Motion on McLoughlin introduced by the Core Committee after its December 9th meeting to discuss Project options costing indicates that the CRD may still be considering additional alternatives to the 7 current options. The Motion was first included in the agenda for the CALWMC meeting of January 13th. Based on review of the public record, it is unclear whether or not the motion has since been decided or acted upon by the Committee.

Further to this, a CALWMC February 10th Notice of Motion suggests expanding the search for options to allow for consideration of new options which are currently not on the table. The Motion specifically asks the CALWMC Chair to put in place a mechanism allowing “substantially different options to come forward in the future” and that these may “include differences in siting, technology, overall system design and waste streams involved”.

As such, it remains unknown whether the CRD currently is or will be actively pursuing other options, including alternative treatment technologies. How the Committee lands upon this issue will be crucial for the process moving forward, and the future outcomes of this complaint.

Conclusion

As I have outlined above, in order to ensure fairness of the process, the CRD would have had to ensure:

- a. that the process to be followed was clear and made known to the public in advance of the process being actioned;
- b. that the process afforded the public opportunities for review and comment; and lastly
- c. that the timelines were made known and key milestones and deadlines made clear.

Deviating from the above process at this juncture would result in a diminishment of fairness unless there was a deliberate decision to change the process. If the CRD is now entertaining additional options outside of the narrowed options currently being considered, it certainly has the discretion to do so; however, in order to ensure fairness, they would need to alert the public to the change in process; would need to ensure that the new process was clear and that timelines and milestones were clearly communicated; and the new process included opportunities for public views to be heard.