

DATE: May 8, 2019

FILE: 0530-01

TO: Chair and Directors/Members
Comox Valley Water Committee
Comox Valley Sewage Commission
Committee of the Whole

Supported by Russell Dyson
Chief Administrative Officer

FROM: Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Utilities Governance Update

Purpose

To provide an update on the Utilities Governance report and describe a process that may lead to updates and resolution on the topic.

Recommendation from the Chief Administrative Officer:

None

Executive Summary

In 2018, the Comox Valley Regional District (CVRD) developed a report on Utilities Governance for the Comox Valley Water Committee and the Sewage Commission (Appendix A). In September, the Committee of the Whole approved referring further consideration on the report to the water committee and sewage commission after the 2018 local government elections. The 2018 report includes options that could improve or address concerns identified during the research that was undertaken to develop the report. The Utilities Governance report was initiated in response to concerns regarding decision-making, representation and processes. Specifically, issues included political interference, who is at the table, voting/voice in decisions, technical expertise and oversight, accountability, trust and confidence, and a path forward. Further, representation on the Sewage Commission is an ongoing pressure with respect to:

- Electoral Area B participation; and
- Consideration of K'ómoks First Nation (KFN) partnership in water supply and treatment decision-making as expressed through the KFN and CVRD Mutual Benefit Agreement (MBA) approved in September 2018. Specifically, the MBA section relating to KFN's future decision making role in the management of regional water resources is described in Appendix C.

Staff have recognized the importance of utilities governance to the elected officials and municipal staff and are presenting this report to illustrate the complexity involved in addressing some of the issues raised. The following is a proposed resolution process. At each step, the process and timelines may be adjusted by the stakeholders and partners.

- May 2019: Present process to K'ómoks First Nation administration and Courtenay/Comox corporate officers and seek their help to describe the issues and process, identify opportunities for synergy. Also confirm with KFN their a) interest in participating in resolution process and b) how K'ómoks First Nation interests are

incorporated into resolution process. Part of this discussion is to include the potential for a technical and/or political review or analysis during the upcoming three or four months.

- May 2019: Present update through Water/Sewer Advisory to the Water Committee, Sewage Commission and Committee of the Whole on governance utilities, including some background, and process to be followed.
- June/July 2019: CVRD engages with Courtenay/Comox engineers to determine recommendations.
- August 2019: Present report to Water/Sewer Advisory meetings (present separately to Chief Administrative Officers).
- September or October 2019: Present to joint Electoral Areas Services Committee (EASC)/Water/Sewer meeting for information – inform that separate presentations with specific recommendations will be made to individual bodies.
- November 2019: Present to Water Committee and Sewage Commission (separately) to find resolution to Utilities Governance report (recommendations are to be determined).

This report was presented to the Water and Sewer Management Advisory Committees at their May 2, 2019 meetings and discussion related to the complexity of the process, including comments associated with the ongoing pressures related to the services. It was acknowledged that interests and knowledge associated with water and sewer utilities are distinct and separate – and one recommendation that may be forthcoming would be to address each utility on its own, rather than pursuing any kind of unified utility model.

Prepared by:

J. Warren

James Warren
 General Manager of Corporate
 Services

Stakeholder Distribution (Upon Agenda Publication)

City of Courtenay CAO	
Town of Comox CAO	

- Attachments: Appendix A – “Utilities Governance Report dated October 2018”
 Appendix B – “Utilities Governance – Issues Paper dated July 2018”
 Appendix C – “KFN and CVRD Mutual Benefit Agreement dated September 2018”

October 3, 2018

Comox Valley Regional District
600 Comox Road,
Courtenay, BC
V9N 3P6

ATTENTION: JAMES WARREN, GENERAL MANAGER OF CORPORATE SERVICES

Dear James:

REFERENCE: UTILITIES GOVERNANCE OPTIONS – FINAL REPORT

The following report represents the final step in our project to assist the Comox Valley Regional District (CVRD) in identifying and evaluating alternative governance models for the Comox Valley water and sewage services. It is intended to be read in conjunction with the *Issues Paper*, and builds upon the information provided in that report. Brief presentations based on this report were made to the CVRD, City of Courtenay, and Town of Comox, and revisions made based on feedback from those presentations.

1.0 ISSUES

The *Issues Paper* identified issues raised through interviews with staff and elected officials from K'ómoks First Nation, Comox Valley Regional District, City of Courtenay and Town of Comox, as well as with a representative from CFB Comox. The paper acknowledged that the issues were not necessarily shared by all, but were mentioned by at least one of the partners interviewed. While this report follows from, and is intended to be read in conjunction with, the *Issues Paper*, the following summarizes the concerns noted within that document.

- 1. Political interference** – concern that technical considerations and operational decisions are being overshadowed by political needs and views. Political perspectives were noted as impacting the long-term or big-picture view for the Comox Valley as a whole.
- 2. Who is at the table** – desire to include the K'ómoks First Nation in decisions, but also to examine whether seeking representatives or input from other jurisdictions or agencies might be appropriate.

3. **Voting/voice in decisions** – concerns regarding weighted voting and imbalance on the Water Committee in particular.
4. **Technical expertise and oversight** – desire for greater technical expertise or oversight as part of the process, due in part to the highly technical nature of many of the decisions, the challenges in fully informing elected officials on decisions and their implications, as well as the capacity and expertise of local government staff.
5. **Accountability** – concern about providing accountability to residents/taxpayers, both in individual jurisdictions, and for the region as a whole. Also a perceived lack of accountability between decision-makers and staff.
6. **Trust and confidence** – lack of trust among the partners involved, between elected officials and staff, and among staff at the local governments. Also lack of confidence on the part of the public.
7. **Path forward** – concern about the likelihood of success of any new governance model, given the difficulty in reaching consensus.

Given the issues identified above, the two main themes that emerged from the *Issues Paper* were to examine options to a) involve more expertise in the decision-making process, and b) to maintain some role for political decisions, but restructure the political decision-making body by changing who is involved, and reviewing the voice each party has in key decisions. The sections below examine the options to address those key themes.

2.0 TECHNICAL AND OPERATIONAL DECISIONS

The *Issues Paper* identified four models to enhance the level of technical expertise in the process. This section examines each of these options in greater detail.

1. Corporation
2. Commission
3. Review Board
4. Revamped Management Committee

To help illustrate the difference between the models, and the process by which decisions would be made under each, a past decision from each of the Water Committee and the Sewage Commission have been expressed in flow charts as examples. The purpose of modelling these two example decisions is to illustrate how they were made under the existing structure (shown below), and then depict how those same decisions would be made under each of the different options. The use of flow charts is intended to assist in conceptualizing decision-making, and the changes involved, in each model. It is useful to note that there was considerable public input and information throughout both decisions,

but the flow charts focus on the internal decision-making structure, as well as technical advice provided in the process.

The existing decision-making process is summarized and shown below, and then the same decisions are shown using the proposed decision-making process in each of the four models. The decisions are greatly simplified to allow for comparisons of the process. For instance, the “staff” bubbles on the flow chart represent not just one action or one staff member, but rather the review, discussion, analysis, report writing, internal meetings and vetting process by the team of staff at CVRD at all levels – from engineering technical staff, managers, directors, as well as review by corporate services and Chief Administrative Officer.

Sample Decisions:

1. Water Committee

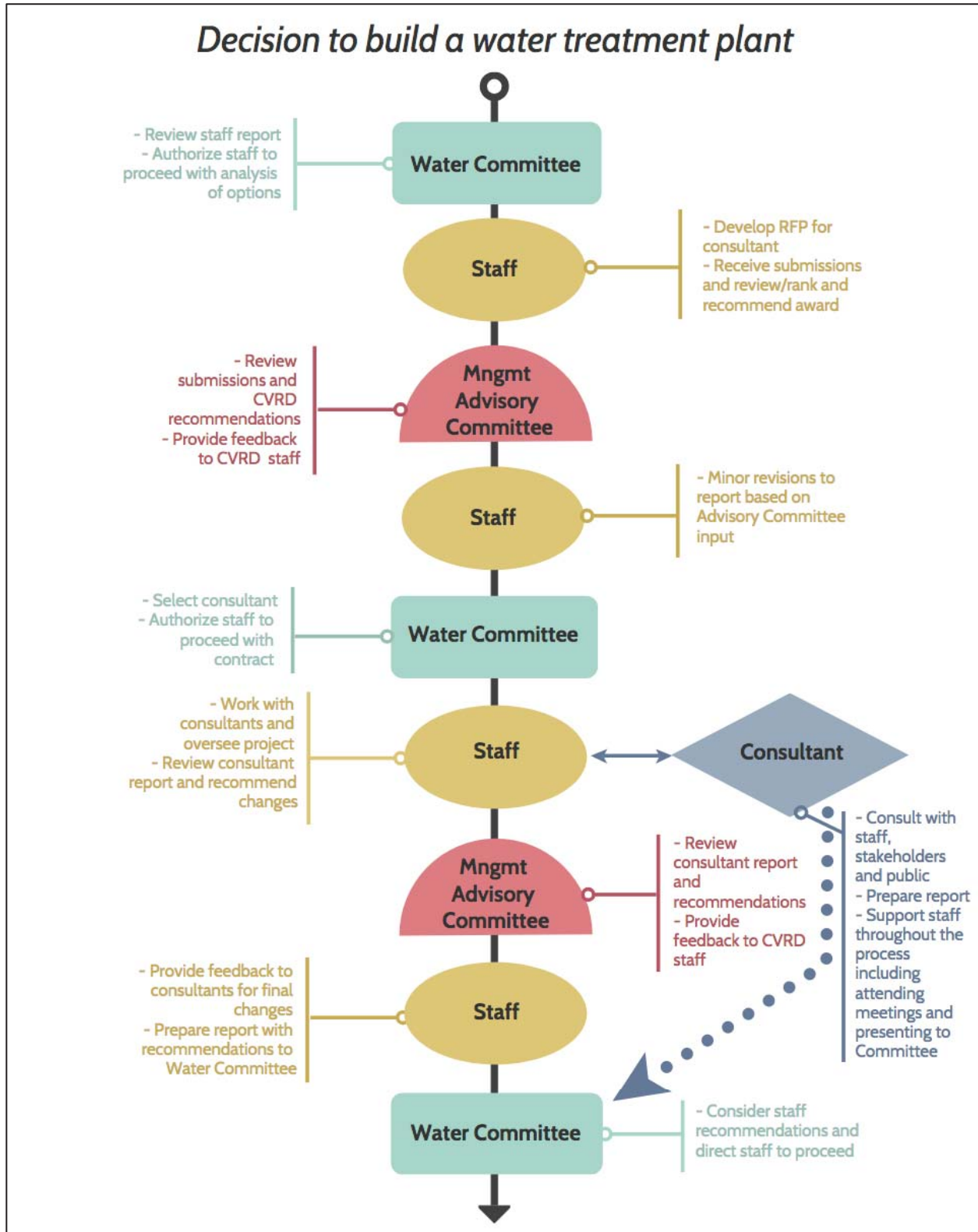
Decision: To proceed with a water treatment plant (2016 decision)

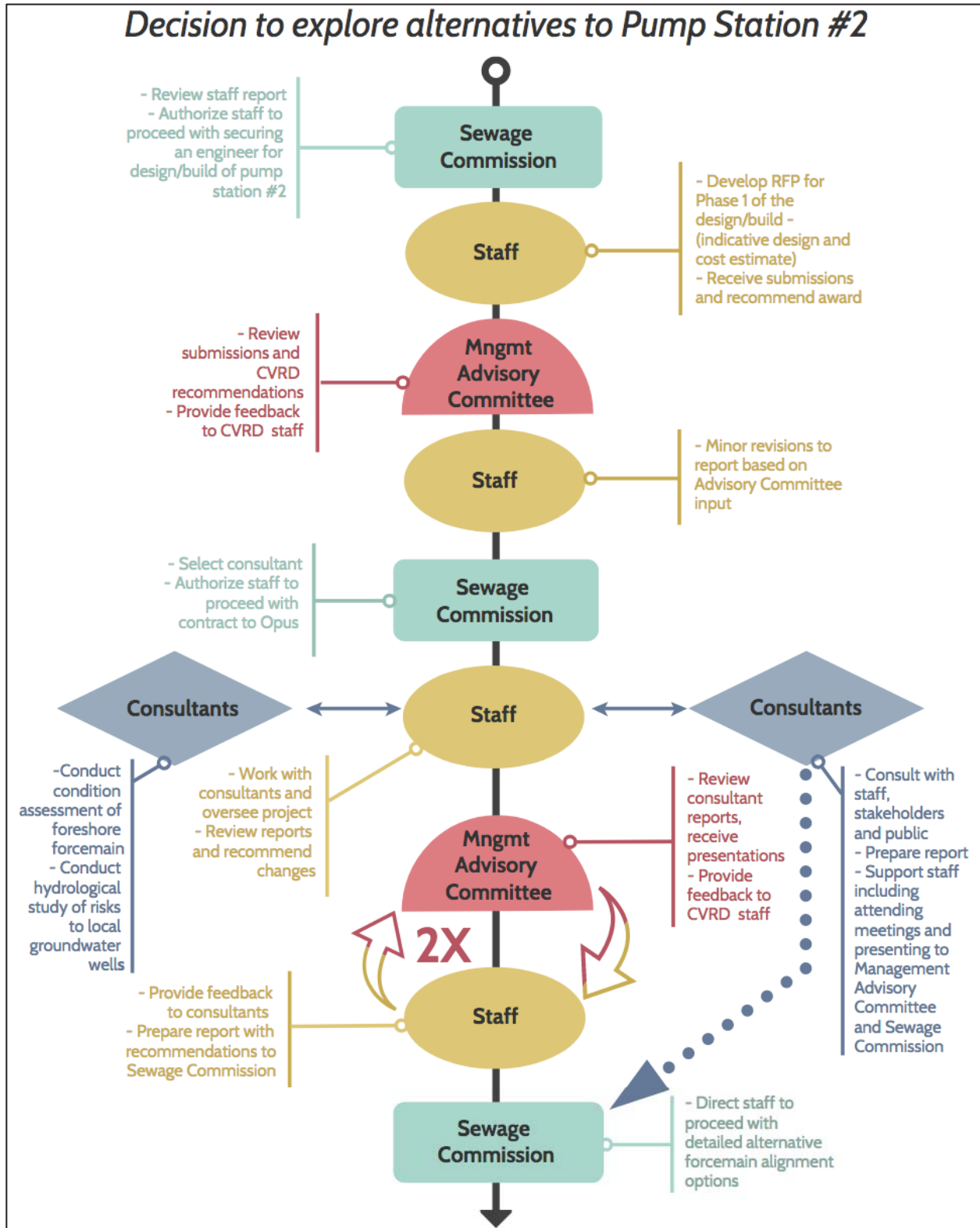
Notes: The flow chart on this decision shows the involvement by key bodies throughout the process. The consultants, once engaged, were involved throughout the process, and supported staff in their analysis, as well as in presentations to the Water Committee and the public.

2. Sewage Commission

Decision: To proceed with phase 1 of Pump Station #2, including engaging a consultant to begin indicative design and cost analysis, as well as undertaking other complementary analysis and reports (condition assessment and hydrological groundwater monitoring and well analysis).

Notes: While this decision reflects a similar process to the water treatment plant, this decision involved the management advisory committee more often, and issues were brought to the committee and back to staff twice to help address concerns and build consensus among municipal partners before proceeding to the Commission.





2.1 CORPORATION MODEL

2.1.1 OVERVIEW

- Separate corporation wholly owned by the CVRD or service participants that runs the utility (operational and policy decisions). Responsibility could include both sewer and water, but would be limited to the regional supply/treatment infrastructure (and not include the municipal distribution/collection network).
- High level of autonomy from politicians
- Governance through a corporate board made up primarily of experts, with potential to include some local government or KFN staff or council/directors
- Utilities corporation would hire their own CEO and staff
- Corporation still needs to seek approval from shareholders (local governments and potentially KFN) for some items, such as major expenditures, but not annual budgets

Advantages

- Autonomy from politicians can remove some of the politics involved and allow decisions that are more focused on the technical advice, combined with the financial impact (less focus on pleasing jurisdictions)
- Provides a range of expertise from board members (often includes business expertise, technical experience, and can include various representatives that may not otherwise be included in current CVRD political discussions, such as First Nations)
- Does not limit participation to the expertise available in the Valley (or to elected officials)
- Perceived to be fair and balanced and informed decision-making
- Meetings, with some exceptions, can be closed, which may allow for greater efficiency
- A separate corporation with its own board of directors could free up some time spent by elected officials to focus on other issues, as well as reduce time spent on regional utilities by all levels of regional district staff

Concerns

- Extra cost to pay for corporation board members (and member expertise) as well as separate corporation staff (partially offset by reduced CVRD staff responsibilities)
- Perception that focus is on the bottom line more than local concerns
- Lack of control or voice by those paying for the service (taxpayers) and elected officials, which can be seen as an issue (little accountability to taxpayers)
- Sometimes perceived as a step toward privatization of ‘public good’ services (even when owned by the local governments)
- Some local groups may not see their own perspectives represented on the corporation board

- May not be able to gain the trust and confidence of taxpayers (with limited ability to “vote them out”)
- Local governments must have considerable trust and confidence in the corporation board due to the autonomy over the local services
- Need to enhance coordination and communication with local governments who own and operate the distribution/collection networks
- Less transparency due to reduced requirements for public meetings

2.1.2 ISSUES

The following chart provides an overview of how the corporation model might respond to the issues noted in the *Issues Paper* and reiterated above, and then adds a few criteria – cost, staff workload impacts and the estimated challenge in obtaining approval for the change – based on feedback from the presentations to Courtenay, CVRD and Comox. The upward arrow is shown where the model could help to address the issue, the sideways arrows reflect little impact on that issue, and the downward arrow indicates that the model is likely to exacerbate or negatively impact the issue. More detailed explanation is provided below.

ISSUES/CRITERIA	OPTIONS			
	Corporation	Commission	Review Board	Revamped Management Committee
Political Interference	↑	↑	↑	↔
Right People	↑	↑	↔	↔
Voice	↔	↔	↔	↔
Technical Expertise	↑	↑	↑	↔
Accountability	↓	↓	↔	↔
Trust	↔	↑	↑	↔
Cost	\$\$\$	\$\$	\$\$	\$
Staff Workload	↓	↑	↑	↑
Path Forward (difficulty)	↑	↔	↔	↓

Political Interference – the corporation model provides considerable independence from elected officials, and provides the corporation board with autonomy in making many decisions regarding the operations and policies of the utilities.

Right People – The issues around having the “right” people at the table making decisions, and providing those decision-makers with the “right” voice is something that could be partially addressed through the creation of a corporation board and the composition of that board. However, what is seen as fair from the perspectives of the individual service participants and local government shareholders is expected to be different. Corporate boards operate on a one vote per board member, as opposed to weighted votes, and board members are typically not representatives of the local government. There are examples where local governments (shareholders) have representatives sitting as members of the corporation board, but this can lead to conflicting roles, as corporate directors and municipal councillors have different legal obligations. In some cases, the best interests of the corporation are not necessarily the same as the best interests of the municipality. Rather

than appointing local government representatives to the corporation board, often they are granted observer status at meetings. This can enable elected officials or local government representatives to have input on corporate decisions without taking on the fiduciary duties of a corporate board member. The only control the local governments would have over the composition and “voice” would be through the selection of the corporate board of directors.

Technical Expertise – the corporation option provides a solution to having more technical expertise. Not only would the corporation board be comprised of members with a range of expertise, but they would hire their own team to work on the utilities.

Accountability – through the corporation model, the corporation staff would be accountable to the corporation board. The corporation board would update the CVRD Board of Directors, and would need to seek approval for key expenditures, but the Directors would have limited influence over the corporation board. Some of the details would be determined through the shareholders agreement (i.e. which issues would require shareholder approval). There would be few opportunities to hold the corporation board accountable.

Trust and Confidence – It is hard to gauge how the public would perceive this model. Some view a corporation with dedicated staff and a corporate board as a more business-like and efficient model, with staff that are experts in water and wastewater. In other areas, residents are suspicious of when local government services are run by corporations (even when they are owned by the local government). Corporations have greater leeway in holding closed meetings, or making decisions without discussing them in a public forum. In a corporation model, the local governments (staff and elected officials) will need to have significant trust and confidence in the corporation board and its staff, due to the autonomy that would be provided.

Cost – Of the options, this option is expected to cost more, given the cost of setting up and operating as a separate corporation, with separate staff and Board. There would be reductions in regional district staff, but these reductions are not expected to completely offset the additional costs in creating the corporation. Over time, operational efficiencies may help to make this model a cost-effective way of delivering utilities services, but the changes involved at the outset make this a more expensive change from the status quo.

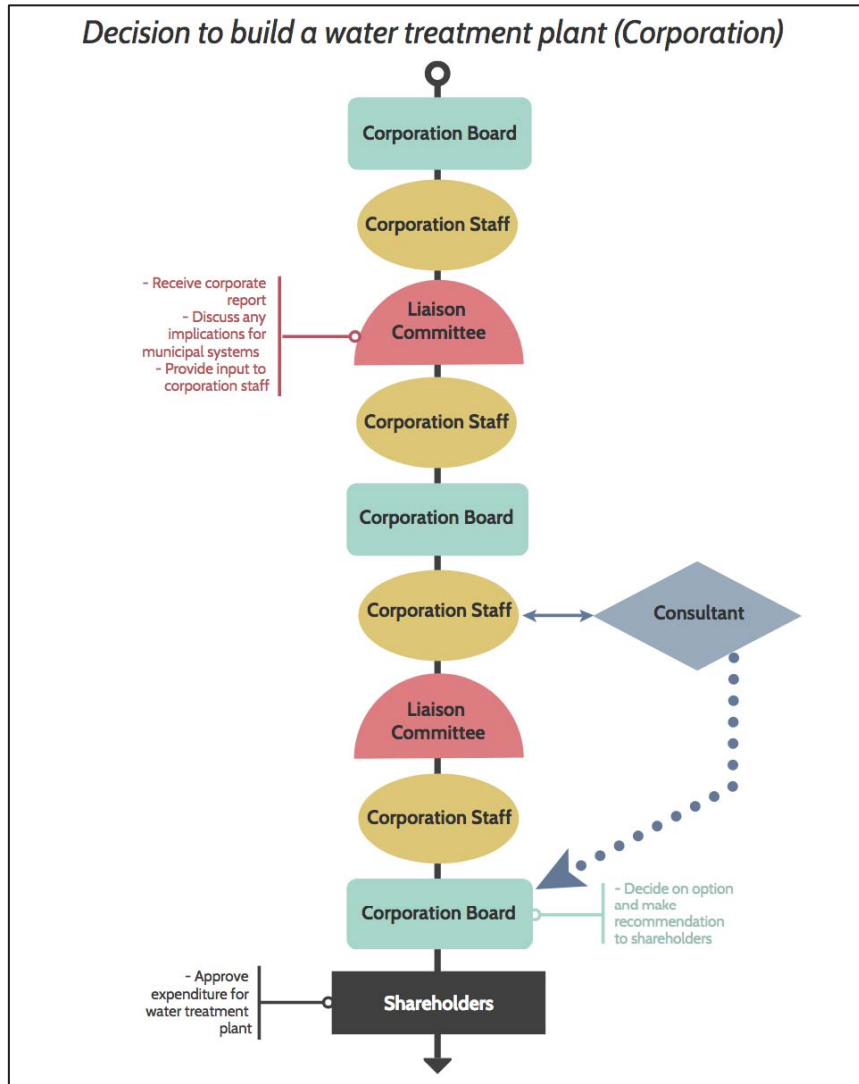
Staff Workload – as noted previously, because the corporation would have dedicated staff, the workload of regional district staff would be reduced under this option.

Path Forward – the path forward for the corporation is likely the most challenging of the options, due to the trust needed by residents and elected officials alike that a separate corporation, with authority over operations and policy, is the best approach. A separate corporation is a more significant and novel change than the other options, involves a greater delegation of authority, and may therefore be harder to generate consensus about that approach.

2.1.3 DECISION-MAKING

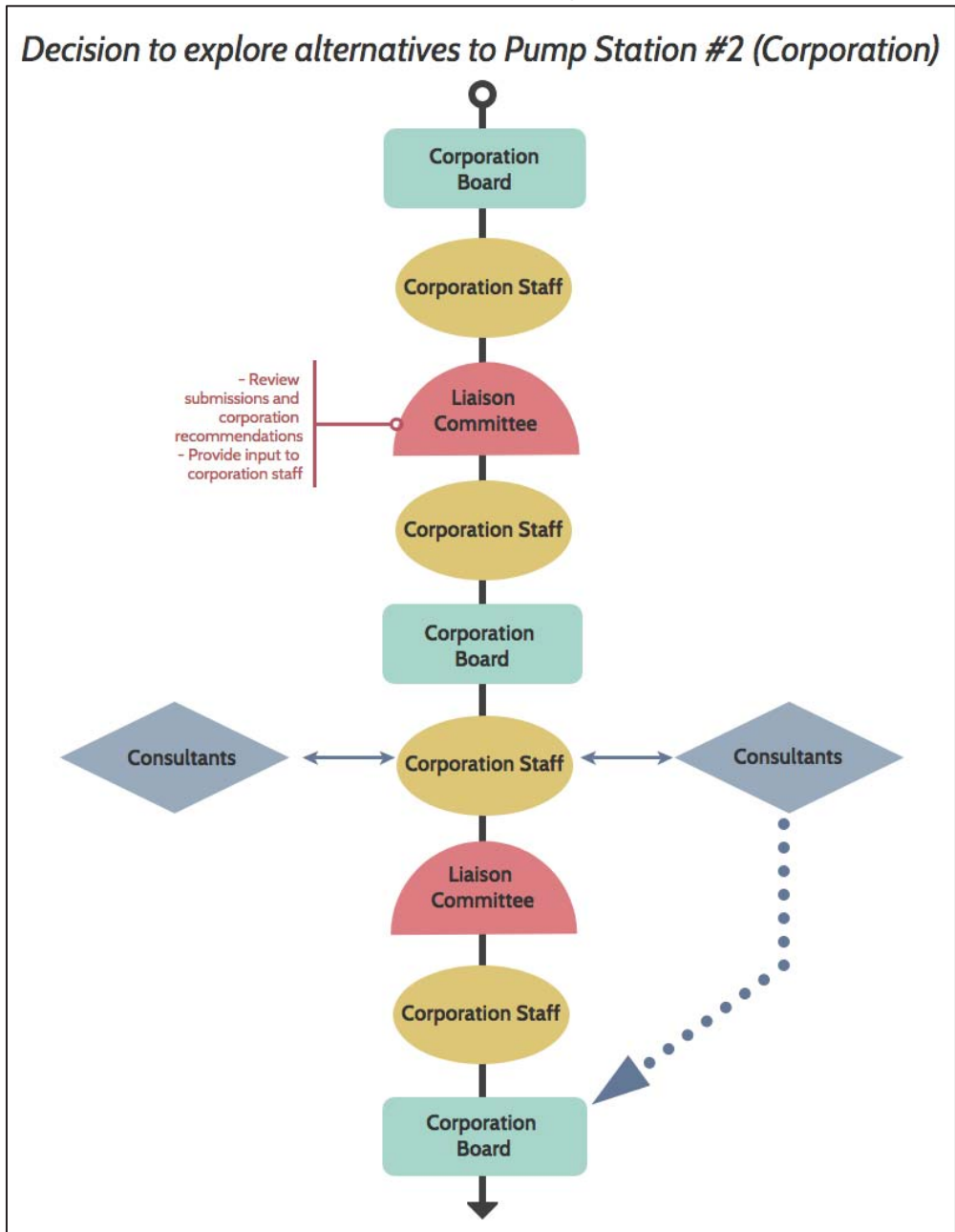
The flow charts for the decisions under this model do not look significantly different from the existing process. The key differences in how decisions would be made under this model

are that the operational and policy decisions would be made by the corporation board, and/or the Chief Executive Officer (head staff member of the corporation), and not the elected officials. As shareholders of the corporation, the municipalities, KFN and/or regional district would have control only over the decisions that are set out for shareholder approval in the corporation's articles of incorporation.¹ These decisions would likely include major expenditures (over a certain threshold) like the water treatment plant, but not annual budgets. The local governments, KFN and elected officials (shareholders) are therefore only presented with the preferred course of action for approval of major expenditures. It is possible that the corporation board could have an elected official or staff on the board as a member, however other local government corporations have moved away from this model (in part to eliminate political interference, as well as a potential conflict in roles).



¹ Shareholders could choose to require shareholder approval for key financial decisions, including those related to budgets and assets. Shareholders would need to be careful, however, to not require so much shareholder approval as to impede or needlessly fetter the ability of the corporation to operate with a high degree of independence.

Because the capital projects and/or operational decisions would have impacts for the municipal distribution/collection systems, there would need to be consultation with municipalities as part of the decision-making process for the corporation. It is likely that a



variation of the management advisory committee or a similar liaison committee would be used to identify concerns or issues. The committee would provide input, not direction. It is anticipated that the corporation would consult regularly with the liaison committee because ultimately the local governments and KFN, as the shareholders, would need to approve the recommended approach and release the funds for major projects.

This model involves not only a change in governance, but a change in staff. Typically the corporation would have its own staff, although they could contract operations to a local government (CVRD or a municipality). Staff would be responsible to the CEO of the corporation, who is then responsible to the corporation board. Assuming the former, the CVRD utilities staff would no longer be responsible for the water and sewage treatment functions, but would continue to operate and be responsible for the smaller electoral area

water services and utilities. This model may therefore involve a reduction in CVRD staff responsibilities at all levels.

It is worth noting that the move to a corporation model can represent a change in accountability in terms of transparency. Corporate board meetings are not required to be open to the public. There is a minimum of an annual general meeting for shareholders, and an annual public information meeting, but there is not the same relationship between the corporation and the public as there is between local governments and residents. Public consultation will still be a part of major decisions, but the process may be more contained, with less pressure or obligation to provide extra meetings or additional input opportunities for controversial issues, relative to a local government process.

2.1.4 EXAMPLES & LESSONS LEARNED

Some of the examples noted in the appendix to the *Issues Paper* (also included in this report as Appendix A) include Aquatera (Grand Prairie utility company), Vancouver Island Emergency Dispatch Corporation, Kingston Utilities, and CLCO for Canada Line (temporary).

Local governments have used this approach for services or projects that are considered to be highly technical in nature, such as utilities, or where separation from politics is warranted, such as economic development or forestry. There are concerns in some jurisdictions, particularly with the delivery of water, that a corporation model is akin to privatization of a 'public good'. There are sensitivities around making money from drinking water supply, which is seen as a corporate or business model, regardless of whether the owner of the corporation is a local government. Corporation models are often recommended when options are analyzed for efficiency, technical expertise and cost effectiveness. However, as was the case with Toronto's consideration of a corporate utility, there is often a reluctance to cede control over the service from a local government to a corporation.

When Aquatera was initially formed in Saskatchewan in 2004, 4 representatives from the 3 local governments were initially included as Board members (of which there were 7 in total), given that same concern over relinquishing local control. However, after less than 6 years of operation, the bylaws for the Corporation were changed to eliminate the municipal members on the Board, in favour of independent Board members with business, legal and technical experience.

Reluctance to relinquish control was also an issue with the CRD when the Province favoured a corporation model for the Core Area Wastewater Treatment Plant project. The CRD was more familiar with a commission model, having had experience with various commission formats, and was hesitant to move to a corporation. The corporation model was seen as giving up control over the project. Instead the CRD agreed to a Project Commission model that provides very limited control to the CRD. The CAO of the CRD is one of 7 members on the Project Board.

Discussions with the Province indicated that it is supportive of a corporate model in some instances, particularly for projects such as the CRD Wastewater Treatment Plant, where the scope and complexity exceed the local government's capacity and expertise. One example of a successful project corporation is the Canada Line. The complexity of obtaining approvals for the project, which spanned multiple municipalities, and the local politics involved to secure a route or alignment made the project challenging for municipalities to approve. It would have been difficult for councilors to support specific alignments for the project, given local opposition and impacts. Instead of involving individual municipal councils, a corporation was created, led by a project board with experienced project managers, and the corporation was given the mandate to get the project done. The project board members were experienced and politically connected, with the skills to enable them to negotiate approvals and focus on cost effective solutions, rather than politically motivated ones.

2.2 COMMISSION

2.2.1 OVERVIEW

- Commission with paid members with various technical expertise (engineering, project management) similar to a corporation board
- Members appointed by water/sewer committee or CVRD Board
- Commission delegated authority from the CVRD Board for operations and administration, and make recommendations to the water/sewer (political) committee on policy/budget
- Political committee (referenced here as the Utilities Committee) would retain authority for policy decisions (service extensions or expansion, long-term plans, rate structures)
- Commission would deal with operations of both sewer and water
- CVRD staff would be responsible for directing policy issues to political committee, and operational issues to the Commission. Clarity on the separation of these responsibilities and the division between issues would be provided through the delegation bylaw

Advantages

- Autonomy from politicians for operational decisions can remove some of the politics involved and allow operations to be more focused on the technical advice, combined with the financial impact (less focus on pleasing jurisdictions)
- Provides a range of expertise from Board members (often includes business expertise, possibly technical experience, and can include various representatives that may not otherwise be included in a political discussion, including First Nations)
- Does not limit participation to expertise available in the Valley (or to elected officials)
- Perceived to be fair, balanced and informed decision making at the operational level
- Still provides a link to politicians, and local representatives. Provides the added element of 'experts running the operations' while still providing some input from

local community and accountability to taxpayers by not relinquishing control over budget and policy

- Local political representatives retain some control (this can be a strength to provide local input and oversight and responsibility, but can also be a weakness)

Concerns

- While the commission has authority on operational issues, because politicians still have control over some aspects, the politics is not totally removed from this situation (so in some cases there would be both, or potentially the political overriding the expertise)
- Can have clash between commission advice and political policy decisions
- Cost of commission (paid members)
- Extra bureaucracy – decisions take longer, are reviewed by more bodies (i.e. the commission does not replace the sewer and water committees, but instead provides an added layer, which will create more work for CVRD staff)
- Staff responsible for reporting to both commission and political committee(s), and some overlap can be inefficient, and lead to uncertainty and grey areas regarding responsibilities and authority

2.2.2 ISSUES

Political Interference – the commission model provides some independence from the elected officials, and provides the commission with autonomy in making many decisions regarding the operation of the utilities.

Right People – The issues around having the “right” people at the table making decisions, and providing those decision-makers with the “right” voice is something that could be addressed through the creation of a commission and the composition of it, and how their decision-making process is

ISSUES/CRITERIA	OPTIONS			
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Cost	\$\$\$	\$\$	\$\$	\$
Staff Workload	↓	↑	↑	↑
Path Forward (difficulty)	↑	↔	↔	↓

structured. However, as noted in the corporation analysis, what is seen as fair from the perspectives of the various service participants, is expected to be different. In this instance there would still be a political body that made budget recommendations and policy decisions for the service. Political representation and voting issues would still remain and

should be resolved at that level. The creation of a commission would therefore not be sufficient to address these issues alone, but is expected to be combined with an approach to amend the terms and participants of the political body. The commission model alone, would therefore not impact this concern.

Technical Expertise – the commission option provides a solution to having more technical expertise. The commission would be comprised of members with a range of expertise, although they would continue to rely upon information provided by CVRD staff and consultants (i.e. they would not have their own staff).

Accountability – through the commission model, the CVRD staff would be responsible for informing and taking direction from the commission on operational issues. Policy issues and recommendations would be brought to the political committee(s) (referenced in the flow chart as a Utilities Committee) for approval and direction. The commission and CVRD staff would focus on the technical aspects of operating the service, and would not seek political advice or approval unless requesting an amendment to master plan (LWMP), budget or policy.

Trust and Confidence – this model is expected to increase trust/confidence that the public has in the operational decisions that are being made, due in part to the additional oversight and advice provided by the Commission, as well as the fact that those decisions are being made by experts, and not elected officials that may have their own biases or who may not be well-informed on operations. In turn, the general public, as well as the local governments (staff and elected officials) will need to have trust and confidence in the Commission to operate the utilities.

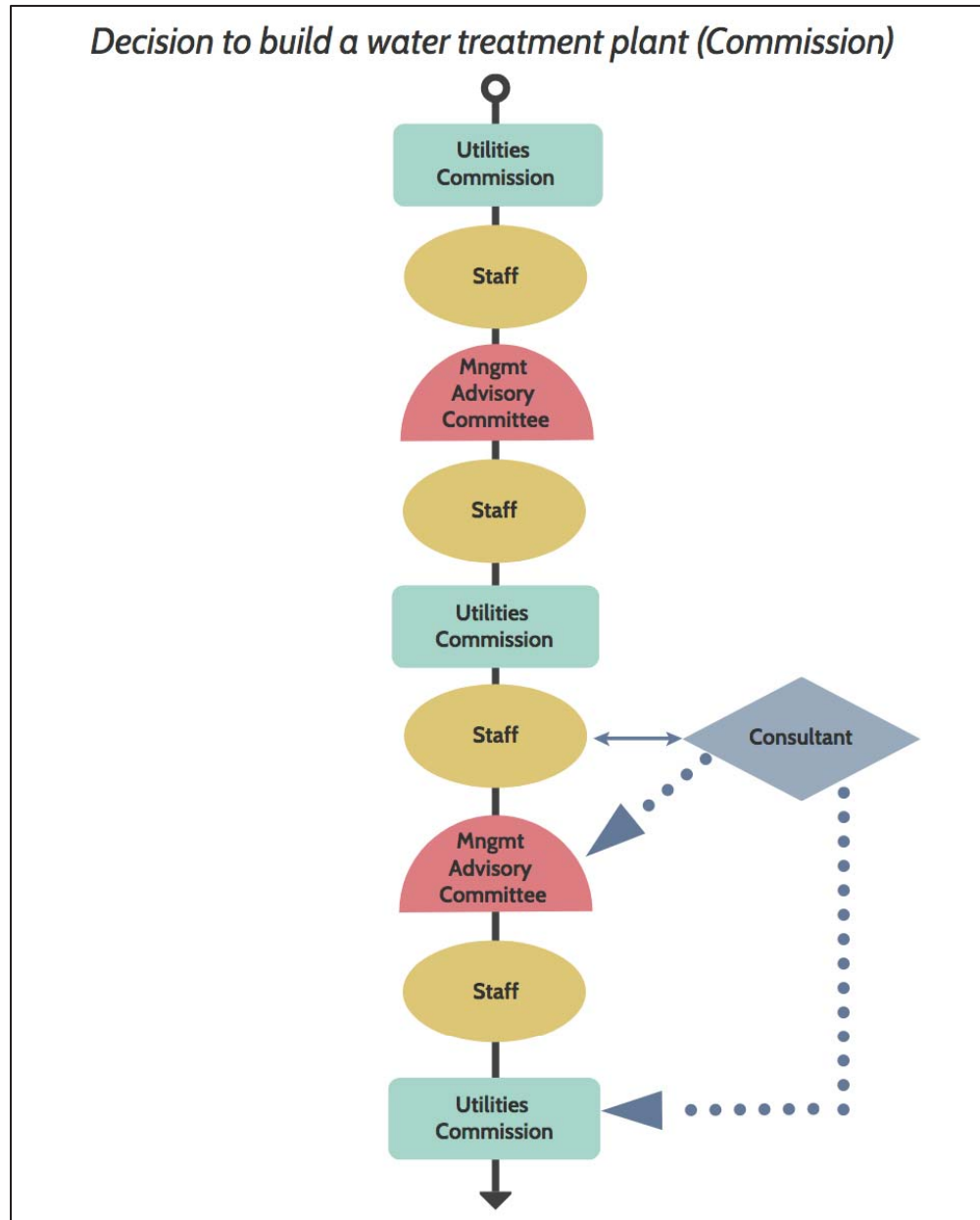
Cost – This option is expected to cost more than the status quo, given the cost of setting up and operating as a separate commission, with paid commissioners. At the same time, this option does not eliminate the need for the political committee to meet (although there may not be the need to meet as often, due to the fact the political committee would be limited to policy decisions).

Staff Workload – this option would increase the workload for CVRD staff, who would prepare information and reports for the Commission, and attend meetings and liaise with that body, as well as with the political committee.

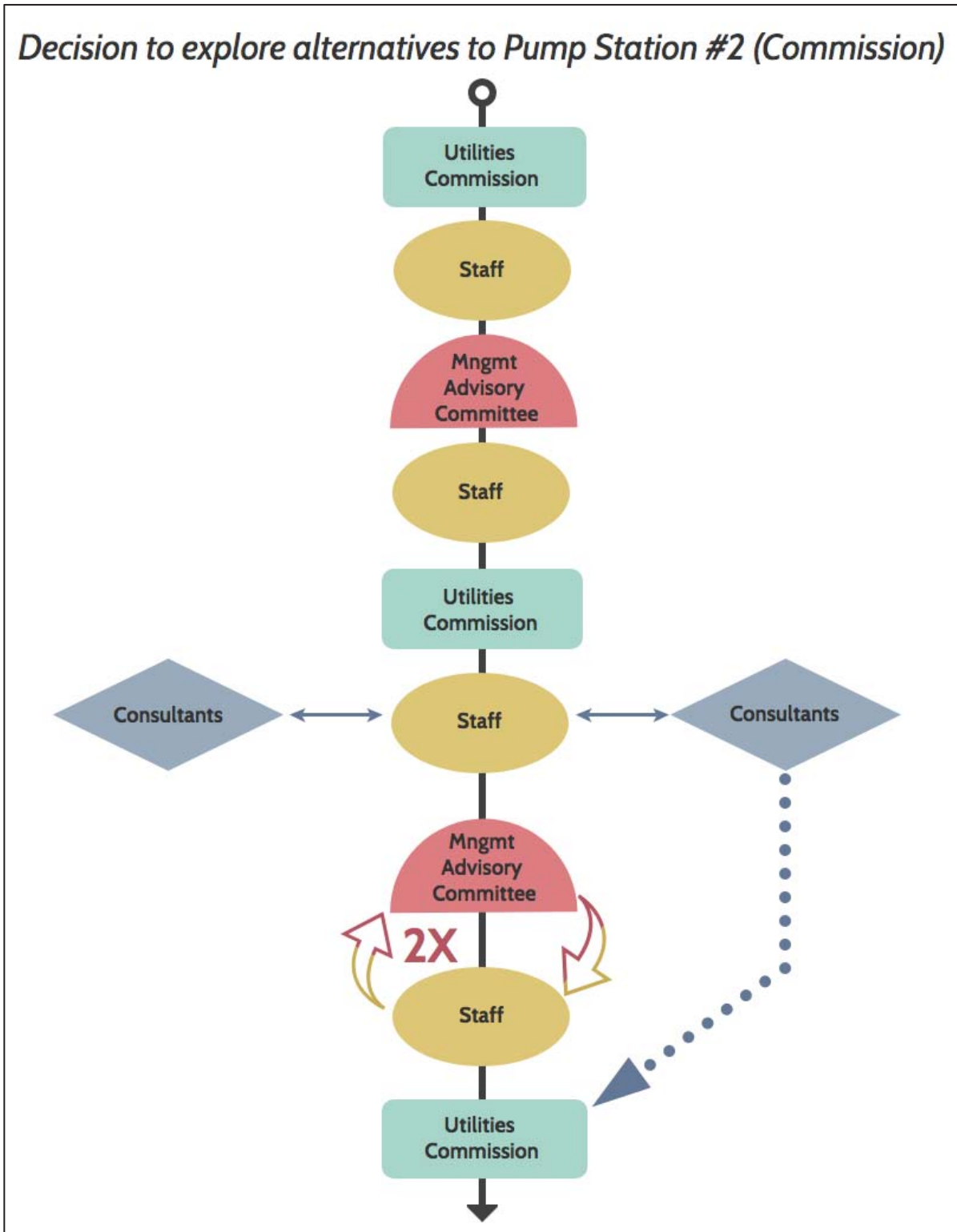
Path Forward – the path forward for the commission is expected to have its challenges, including agreeing to the composition of the commission, and the delegation of authority for operations. The fact that the CVRD has experience with various types of commissions helps to create a comfort level with this type of governance model.

2.2.3 DECISION-MAKING

The primary difference in this model is that the Commission would replace the Water Committee and Sewage Commission for all operational issues only, but would not eliminate the Water/Sewer political committee (although these two could be combined), as they would still be needed for policy related decisions. Staff would report to, and take direction from the Commission on operations, but also provide input and take direction on policy issues from the political committee. Having two bodies that look after the different decisions on the



same service can create some duplication or inefficiencies, and create uncertainty over authority, particularly on any grey areas. The specific policy issues where the political committee has authority could be spelled out clearly in bylaws.



2.2.4 EXAMPLES & LESSONS LEARNED

CRD Core Area Wastewater Treatment Board

The CRD Core Area Wastewater Treatment Project Board was referenced in the previous section as the CRD's preferred alternative to the corporation option recommended by the Province. The commission (or corporation) was identified as a necessary step for the CRD due in part to the complexities of obtaining consensus on the siting as well as the technical details of a sewage treatment plant to serve 7 municipalities within the Capital Region. The CRD, while it operates many services, including supplying water (and some distribution) to 13 municipalities and 4 First Nations, had never coordinated a project of this scope or complexity. Part of the difficulty advancing the project was gaining agreement on the technology to use (one plant or many, type of treatment, etc.) and the siting of the project, particularly given the variety of local preferences of the 7 municipal participants and 2 First Nations in the core area. The provincial and federal funding contributions in excess of \$400 million were in jeopardy if the project could not advance.

Lessons learned through this process included that the Commission (Project Board), due to its highly experienced board members, was able to move this project forward. The Board members were acknowledged to be top tier professionals, with experience in public private partnerships, project management, relationship building financing and in handling high-profile big-budget projects. The Board members were respected and well-connected (politically) professionals. The CRD acknowledges that it was key that they had the right people to move the project forward, while also noting that the experience and depth also came at a significant cost (i.e. high salaries).

Although much of the site selection and analysis work was already complete prior to the creation of the Project Board, the Board was able to synthesize the work and present a business case. The Project Board brought forward 13 recommendations as a package deal to the CRD Board of Directors, with no ability to pick and choose from the list of recommendations. The CRD Board of Directors was given a yes/no vote to proceed. The business case and packaging of the recommendations helped to eliminate some of the political wrangling in the initial advancement of the project. Once given the go-ahead, the Project Board hired their own "project team" of staff, including top end engineers, consultants, legal staff. CRD staff were eligible to apply for those jobs, but the project team employees report to the Project Board, and not CRD staff.

Although the Project Board is a commission and not a corporation, the Board's meetings often operate with little public involvement, creating some efficiencies. Some of the discussions are closed (as per the *Local Government Act*) and not even electoral area directors (service participants) sit in on closed meetings. The level of public interest in the project subsided once the business case was presented and approved, and the implementation of the project has been characterized by fewer politics. It is unclear whether the reduction in political involvement and public engagement is directly attributable to the

management by the Project Board or whether the time of intense scrutiny is often in the lead-up to the decision; once it is made, the implementation is generally a less adversarial process.

The CRD recognizes that for this project, the Project Board has made a significant difference, particularly given the large budget and time constraints. The process has provided some relief for politicians, and the professionals that were hired have the skills necessary to smooth the transition and implementation of the project (relationship building, negotiation, communication). Having the right people with excellent skills was key. The CRD did need to place significant trust in the professionals that were being hired, given the lack of control. Because the project staff and consultants are hired for a specific project only, in this particular relationship there is the concern that the Project Board and staff team may be preoccupied with achieving budget targets (they have performance targets and performance related bonuses) and short-term results at the expense of long-range operational considerations, for which the CRD will ultimately be responsible. If the CRD has any concerns that long-range interests are not being prioritized, there is little recourse (although the CRD's CAO does sit on the Project Board). This is one consequence of the separation between the work of the Project Board and its staff team, and the CRD.

Additional concerns with the process include the discrepancies between salaries for the Project team and CRD staff, although it is recognized that the work and employer relationships are quite different, and that CRD staff were eligible to apply for the Project team. Local government employee salaries are often established in relationship to other local governments, as well as qualifications and job descriptions; private companies such as engineering firms have different standards or demands. It was also noted that in this model, the control the CRD has is largely superficial (this particular commission is quite close to the corporation model).

2.3 REVIEW BOARD

2.3.1 OVERVIEW

- Paid Review Board with various technical expertise (engineering and project management)
- Members appointed by political water/sewer political committee
- Provides oversight for projects when needed
- Political committee could make policy regarding when projects are forwarded to the Review Board (triggers or threshold)
- Could be used to conduct value engineering review (Province uses this approach) or conduct and/or coordinate peer review of consultant reports to ensure value for money and best approach (similar to the Value Planning exercise undertaken for the water treatment plant)

Advantages

- Provides some extra oversight and expert advice when needed
- Provides assistance on the key decisions
- Increases public confidence in the key decisions
- Places greater emphasis on the technical aspects of key decisions (and more transparent if decisions are made for more political reasons)
- Greater transparency for public
- Support for political members of commission/committee
- Accountability and control still remains with local governments and CVRD

Concerns

- Still costly (paid members)
- Involves extra bureaucracy and time to review in detail the key decisions, and staff time to report to the review board
- Adds cost to most consultant contracts (to address the Review Board and defend recommendations)
- Effectiveness can depend on the personalities involved on the Board

2.3.2 ISSUES

Political Interference – the review board model does not remove any of the decisions from the elected officials, but rather arms them with an additional technical panel of experts to advise on technical issues, and to comment on staff recommendations. This should provide elected officials with more confidence in the technical solutions recommended by staff.

ISSUES/CRITERIA	OPTIONS			
	Corporation	Commission	Review Board	Revamped Management Committee
Political Interference	↑	↑	↑	↔
Right People	↑	↑	↔	↔
Voice	↔	↔	↔	↔
Technical Expertise	↑	↑	↑	↔
Accountability	↓	↓	↔	↔
Trust	↔	↑	↑	↔
Cost	\$\$\$	\$\$	\$\$	\$
Staff Workload	↓	↑	↑	↑
Path Forward (difficulty)	↑	↔	↔	↓

Right People – The issues around having the “right” people at the table making decisions, and providing those decision-makers with the “right” voice is something that will not be changed through the addition of a technical review board. In this option, there would still be a political body that makes decisions for the service. The political

representation and voice issues would still remain and should be resolved at that level. It is anticipated that the creation of a review board would therefore not be sufficient to address these issues in and of itself, but rather would be combined with an approach to amend the terms and participants of the political body as well.

Technical Expertise – the review board option provides a solution to having more technical expertise. The review board would be comprised of members with a range of expertise.

Accountability – through the review board model, the staff would continue to be accountable to the CVRD Sewage Commission/Water Committee and Board of Directors (and not the review board). The review board would have access to staff and consultants to ask questions and review work. The accountability would not change from the current circumstances.

Trust and Confidence – this model is expected to increase trust/confidence that the public has in the key operational decisions that are being made, due in part to the oversight provided by a technical committee. The process will be more transparent in how technical decisions are being made, given the extra review, and it will also be more apparent when political decisions do not align with the advice of staff and/or the review board, and the reasons for those decisions.

Cost – this option is expected to cost more than the status quo, given the cost of establishing and paying for a review board. At the same time, this option does not eliminate the need for the political committee to meet.

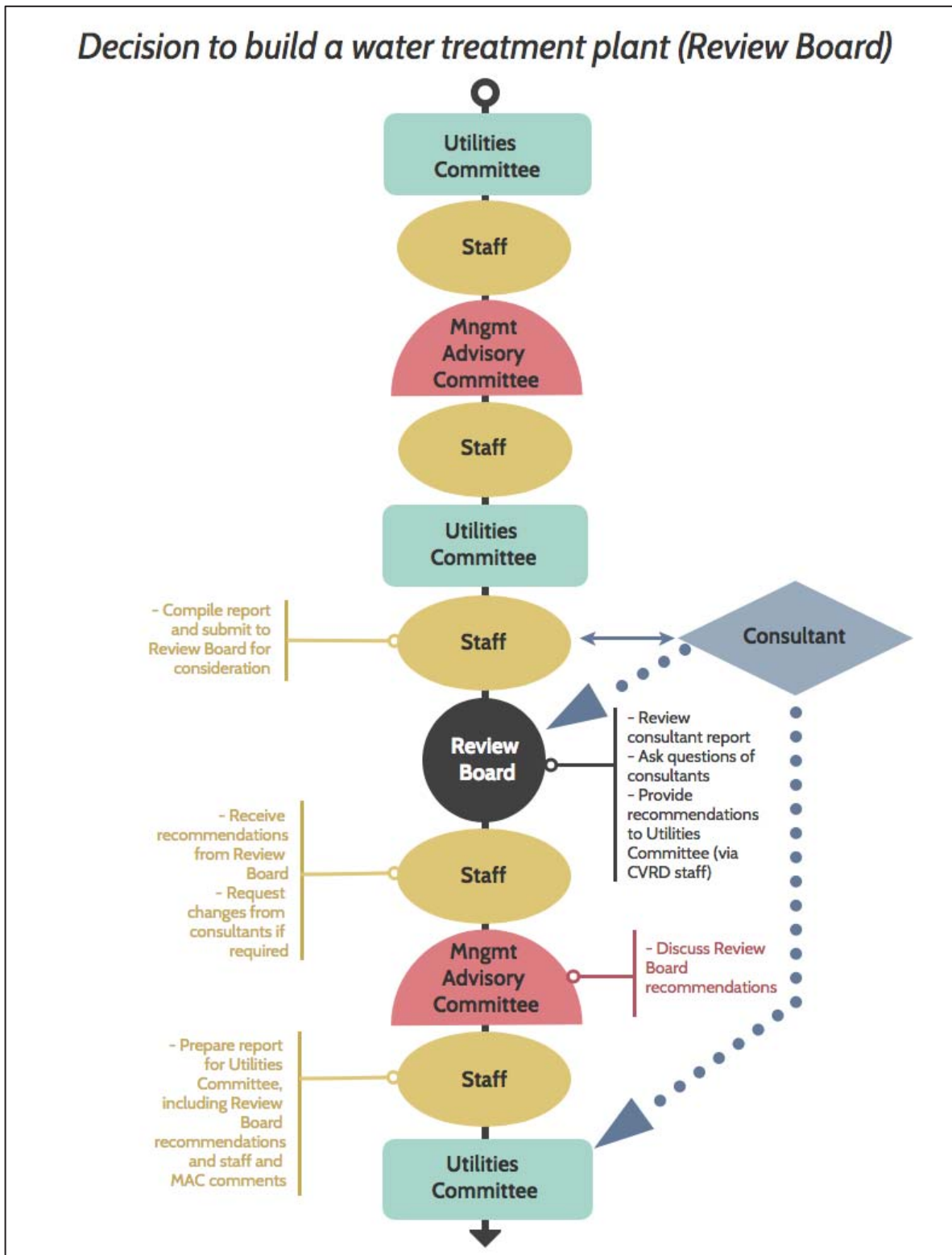
Staff Workload – this option would increase the workload for CVRD staff, who would liaise with, share information and answer questions for the Review Board, to facilitate the examination of various studies or projects by that body.

Path Forward – the path forward for the review board option is expected to involve some challenges (determining what thresholds or decisions should be reviewed by that body, as well as who should be on the review board), as well as justify the cost of the paid board members. However, the value of using an independent body of experts on specific complex or costly projects is something the CVRD already has experience with (Value Planning review of the water treatment plant project), and may therefore be easier for Board members to support.

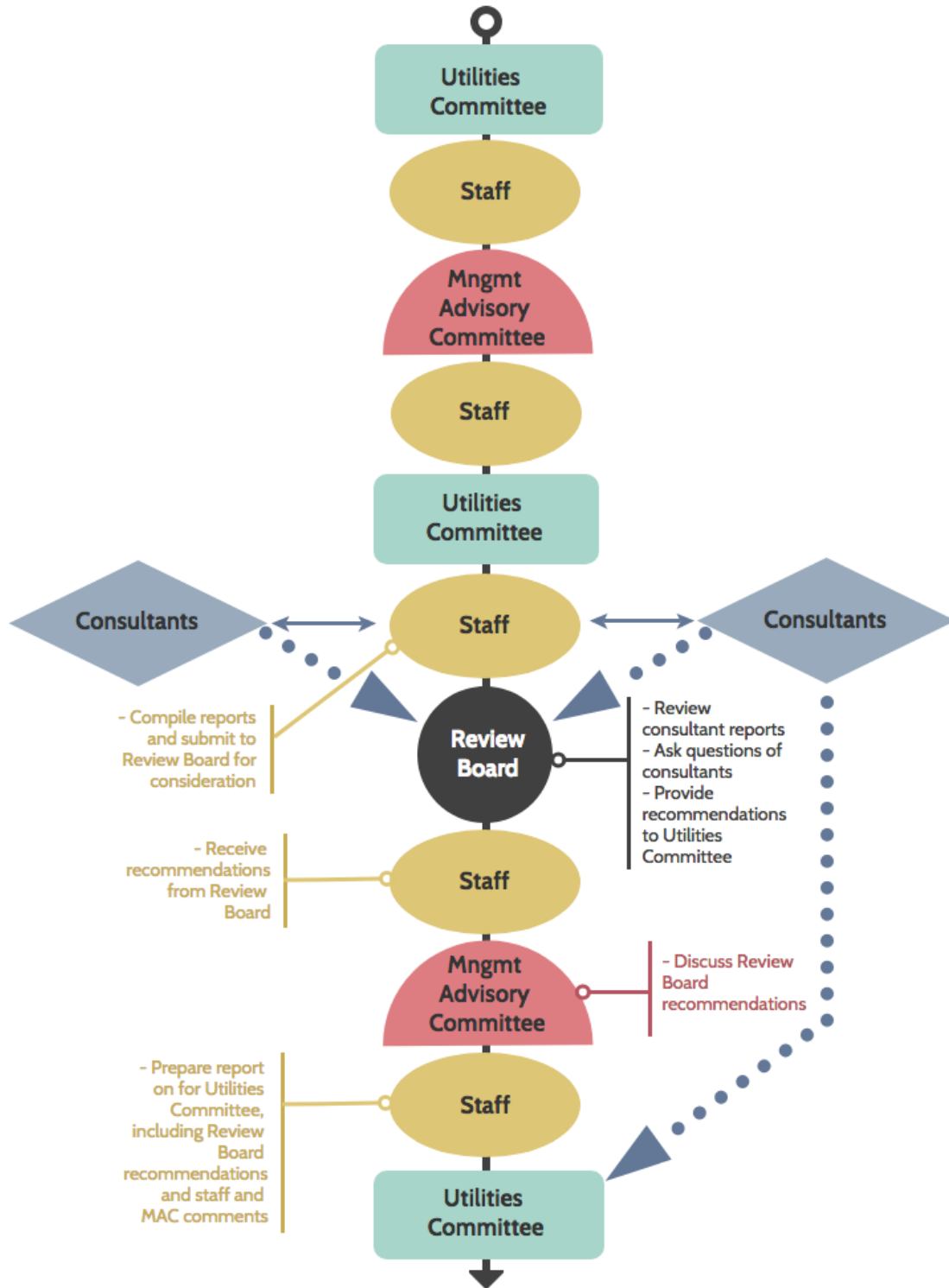
2.3.3 DECISION-MAKING

The flow chart for this model is not significantly different from the current process, but would not be the same in the case of every decision. The review board concept is that only decisions that require the extra layer of technical advice would be referred to the review board. The review board would be intended to provide the Sewage Commission or Water Committee (or combined committee – referred to as the Utilities Committee in the flow chart) with the added confidence of having additional technical review and advice, not unlike a peer review. This advice would only be sought in instances where decisions involve big-ticket cost items, areas beyond staff expertise, or that have major long-term implications for the region's utilities. Specific policies on when the review board would be used could be

made. The process does require additional work by staff to inform the review board and receive, process and refer the recommendations.



Decision to explore alternatives to Pump Station #2 (Review Board)



2.3.4 EXAMPLES & LESSONS LEARNED

As noted in the *Issues Paper*, the Province routinely requires a value planning or engineering review of significant projects undertaken or funded by the Province, to ensure that the path forward is the most cost effective (or if it is not, why that might be justified). The CVRD commissioned a Value Planning study earlier this year, as encouraged by the Province in order to be eligible for a grant. The value planning process reviewed the scope and implementation strategy of the water treatment plant with the aim of finding cost efficiencies. The process was attended by a provincial representative of the Ministry of Municipal Affairs and Housing, which administers the grant program. The purpose of the study was to identify viable alternatives to the proposed indicative design for consideration as value improvements. The alternatives and design suggestions were provided by a team of experts with no prior involvement in the project. After the review, the CVRD's engineering consultants (that had prepared the indicative design) considered the suggestions and alternatives, determined which suggestions to incorporate, and provided rationale for their decisions. The review confirmed the selection of direct filtration as the filtration technology, and resulted in a reduced the depth and length of the lake intake as part of the design.

The CRD also created a panel – the Technical Oversight Panel – with a similar intent, prior to the creation of the Core Area Wastewater Treatment Project Board. The CRD's Technical Oversight Panel was intended to provide confidence for the politicians and the public, in the technical advice on the sewage treatment project. The CRD was in the midst of reviewing technology options for sewage treatment (i.e. one single plant, multiple plants, alternative technologies), and elected officials were subject to lobbying from different sources with competing objectives. The panel was seen as a way to evaluate the technical information and provide some confidence that the path forward was indeed the best technical option. The panel was selected by the elected officials (a recruiter was hired to identify a shortlist of candidates) with little input from staff. While the panel was comprised of paid experts, it was noted by the CRD that the experts were not the same high-profile candidates of the Project Board, in terms of experience, cost and political connections. In addition, because elected officials had different preferences, some of the panelists were chosen specifically for their knowledge in one technology or another. The work from the CRD's engineering consultant was then reviewed by the Technical Panel. The process involved considerable additional work for the engineering consultant, who spent many extra hours defending numbers and recommendations. The CRD acknowledged that the oversight panel approach had merit, but that the particular panel members made the group challenging. Furthermore, the panel had no chair and no mandate to expedite or reach a decision. While the detailed review was undertaken, the group therefore had little to gain from reaching consensus, and had difficulty in reaching a compromise. The ability of panel members to work together was therefore seen as key, but also the need to expedite a resolution.

2.4 REVAMPED MANAGEMENT ADVISORY COMMITTEE

2.4.1 OVERVIEW

- While structure for decision-making is almost identical to the current process, the authority, oversight role and commitment of time and resources to the management advisory committee by local governments and their staff would be increased in this option
- Will require additional time to be spent by staff of all municipalities and potentially include the KFN (subject to KFN interest in becoming involved)
- Could provide a budget for extra review (i.e. if the advisory committee needs to commission a peer review)
- Could be combined with review board model (so that projects of a certain size or magnitude are referred to a technical review board for peer review)

Advantages

- Staff are already in place and already have expertise to offer
- May help provide confidence to the municipalities and their Councils that their own staff have thoroughly reviewed the decisions and advised on the project (so that any local concerns at the technical level have been heard), including obtaining independent peer review where specialized expertise is required
- Relies upon those with local knowledge and understanding of the combined collection/distribution system together with the regional components
- More efficient than creating an additional body, and provides for involvement of municipal participants
- Can create additional buy-in to the recommended approach

Concerns

- Requires additional resources (time) and commitment from municipalities and potentially KFN to play a greater role in reviewing and making recommendations on technical decisions
- Lacks the element of independent review, aside from when peer review consultants are used, given that the municipal partners may be influenced by different municipal objectives
- Limited by the existing expertise within the current organizations (although budget for peer review could be provided)
- Still involves extra costs (additional staff time, potential peer review)
- Involves extra bureaucracy and time to review in detail the key decisions
- Adds cost to most consultant contracts (to defend reports and address the management committee)

- Similarity to current model, and reliance upon same staff members, may hamper efforts to reinvigorate the existing committee and achieve an increased level of engagement and review
- Given that the model relies upon the same structure as the existing process, this option may not provide elected officials with any increased confidence in the level of review (i.e. does not adequately respond to the desire to do things differently)

2.4.2 ISSUES

Political Interference – the revamped management advisory committee model does not remove any of the decisions from the elected officials, but rather arms them with a more robust vetting and review from the technical staff in Comox and Courtenay (and potentially KFN) in addition to the CVRD staff than provided by the current committee. The extra review should provide additional confidence that the solutions have been thoroughly discussed and approved by the municipal and regional technical staff and CAOs.

Right people – The issues around having the “right” people at the table making decisions and providing those decision-makers with

the “right” voice is something that will not be changed through the revamped management advisory committee option. In this option, there would still be a political body that makes decisions for the service. The political representation and voice issues would still remain and should be resolved at that level. It is anticipated that adjustments to the role and level of review at the management advisory committee would therefore not be sufficient to address these issues in and of itself, but rather would be combined with an approach to amend the terms and participants of the political body as well.

Technical Expertise – the revamped management advisory committee option could provide a greater level of technical expertise and rigour to the review compared to the current process. Rather than the oversight being provided by external experts, as in other models, the members would be the technical staff of Comox, Courtenay, CVRD and potentially KFN. While these are the same members that currently comprise the MAC, the expectation would be that the level of review, engagement and involvement would be greater. To provide the management advisory committee with additional capacity and expertise, there could be a

ISSUES/CRITERIA	OPTIONS			
	Corporation	Commission	Review Board	Revamped Management Committee
Political Interference	↑	↑	↑	↔
Right People	↑	↑	↔	↔
Voice	↔	↔	↔	↔
Technical Expertise	↑	↑	↑	↔
Accountability	↓	↓	↔	↔
Trust	↔	↑	↑	↔
Cost	\$\$\$	\$\$	\$\$	\$
Staff Workload	↓	↑	↑	↑
Path Forward (difficulty)	↑	↔	↔	↓

budget provided to hire a peer review consultant to assist them in their review on larger projects or where the technical issues require specialized expertise to review.

Accountability – through the revamped management advisory committee model, CVRD staff would continue to be accountable to the Sewage Commission and Water Committee, as well as the CVRD Board of Directors, and each of the municipal employees would be responsible to his or her own Council. The management advisory committee would have access to consultants engaged by CVRD on any given project to ask questions and review work. The accountability would not change from the current situation, although the recommendations of both the CVRD staff, as well as the Management Advisory Committee would be spelled out in all reports to the Water Committee and Sewage Commission, and would be based on a full technical review.

Trust and Confidence – Under this model, the advisory committee’s advice and approval could provide elected officials with the comfort that the decisions were reviewed and endorsed by staff at the region and municipalities. At times the committee’s recommendations could also be supported by a peer review. However, given some of the feedback provided in the first phase of this study, it is not clear whether review by staff alone will increase the confidence of elected officials of both municipal Councils, Water Committee, Sewage Commission and Regional Board members.

Cost – although this option will cost slightly more than the status quo, due to the extra staff time as well as the potential for peer review in some instances, it is the lowest cost option of the four models.

Staff Workload – this option will increase the workload primarily for municipal staff at Courtenay and Comox, as well as potentially at KFN, due to the more detailed level of review expected.

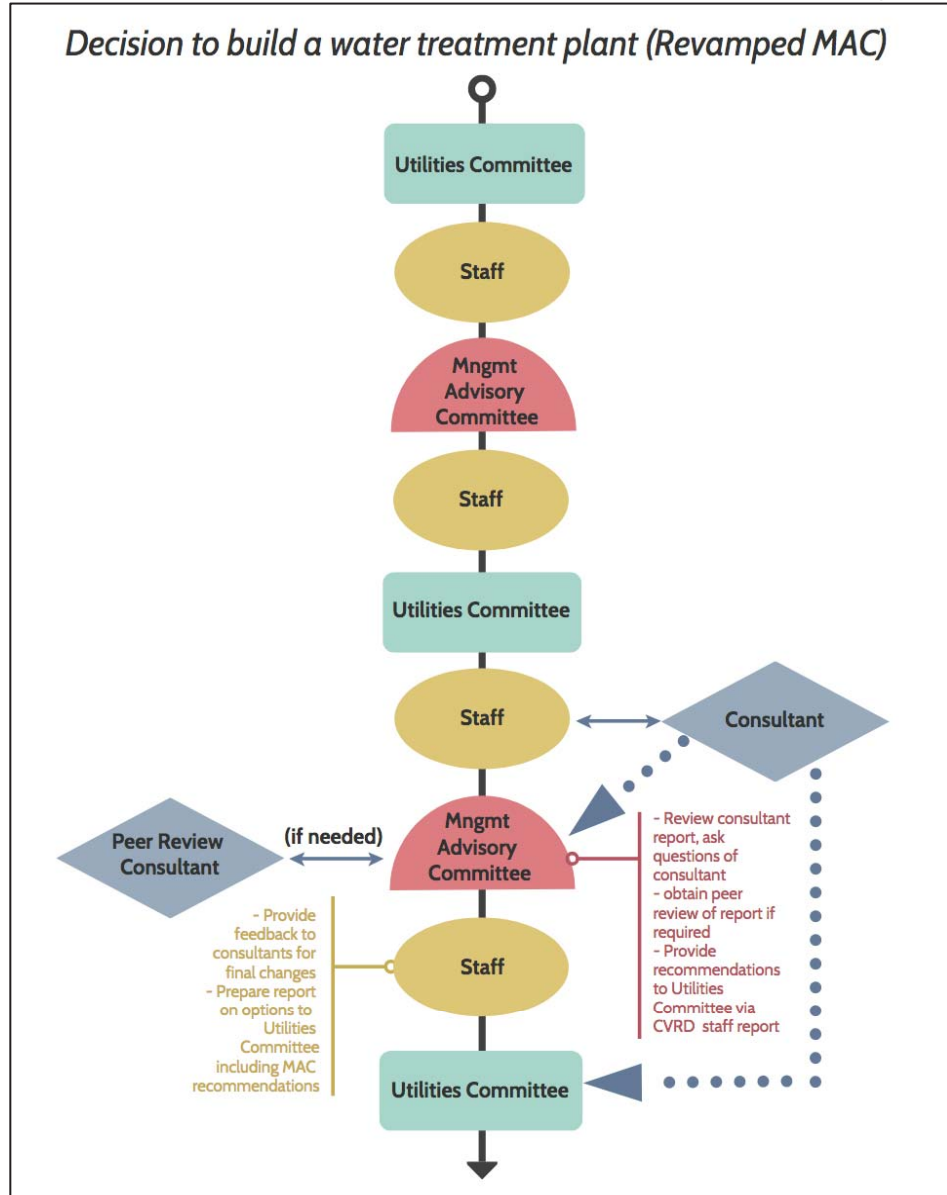
Path Forward – the path forward for the revamped management advisory committee option would be the easiest of the four options to implement, primarily because the framework is already in place. This committee already exists, although it could be supplemented with a staff member from KFN as well to assist in the review. However, the committee has not always functioned as intended, and staff on the committee often don’t have the time or resources available to review projects in depth and provide a unified recommendation to the Sewer Commission or Water Committee. The challenge in moving forward with this option is not the changes that would be needed, but rather the fact that there may not be enough change under this option to overcome some of the current issues.

2.4.3 DECISION-MAKING

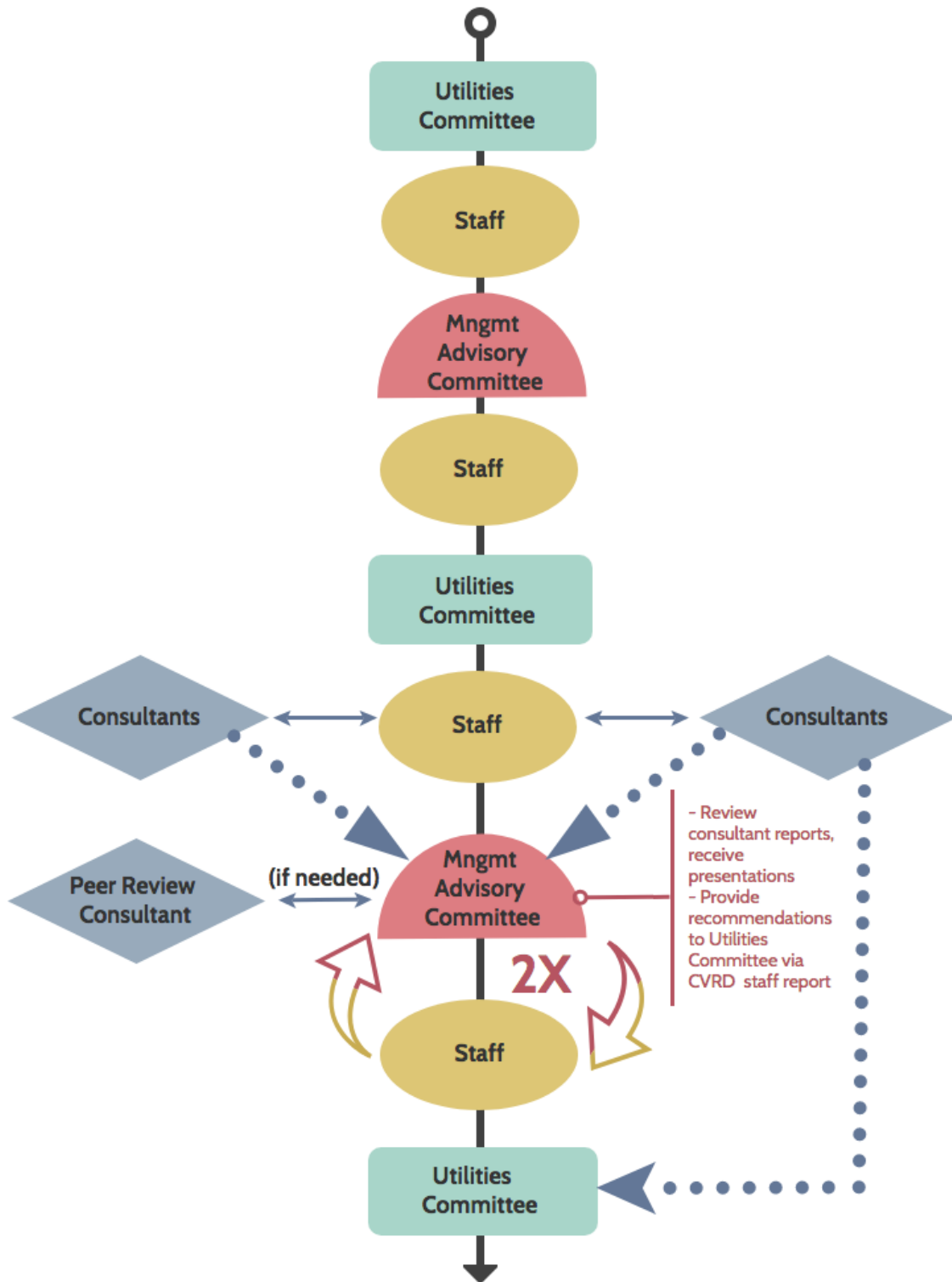
The flow charts for the decisions under this model are no different from those already provided. The Management Advisory Committee would, however, be responsible for a higher level of review. The Committee would provide input based on how the municipal collection/distribution systems would be impacted, as well as on the impacts to the region as

a whole, and review the consultant reports and decisions based on their own professional expertise. The Committee would be involved more often in questioning consultants, and where reports involve technologies or fields beyond the Committee’s own professional expertise, peer review firms could be hired to provide feedback to the Management Advisory Committee before recommendations to the Sewage Commission or Water Committee were provided (through CVRD

staff). CVRD staff would still be responsible for preparing the reports to the Commission and Water Committee, but they would always contain a section that detailed the Management Advisory Committee advice and recommendations.



Decision to explore alternatives to Pump Station #2 (Revamped MAC)



2.4.4 EXAMPLES & LESSONS LEARNED

Advisory committees rely upon the capacity of members to participate and engage in the tasks they are delegated. The effectiveness of an advisory committee therefore requires the members to have both the expertise and the time to spend reviewing materials and providing input. It follows that the input needs to be recognized in a way that values the time and effort spent by the members. As is common with public engagement exercises, advisory committees can similarly feel that their effort to generate thoughtful input is not heard or is ignored, which will only result in reluctance to spend any further time.

Municipalities must therefore commit to the role of the advisory committee, and to enabling their staff to participate fully in the committee. This model assumes that direction, advice or comments from the advisory committee would always be included and identified specifically in CVRD reports to the Sewage Commission or Water Committee.

In Metro Vancouver, the Greater Vancouver Water District has its own Board. The GVWD Board consists of directors from the Metro Vancouver municipalities that receive bulk treated water from the regional water system. The service is delivered by Metro Vancouver staff. An advisory committee comprised of the engineers of all the Metro Vancouver municipalities (REAC – Regional Engineers Advisory Committee) meets monthly to review, among other things, recommendations of the Metro Vancouver utilities staff, prior to issues proceeding to the GVWD Board. The REAC is used to review not only how the regional water decisions fit with their own individual water distribution networks, but also to provide advice on the regional water issues and decisions. Gaining approval and advice from REAC is seen as an essential step of the Metro Vancouver utilities staff before GVWD approves any initiative. If REAC is not comfortable approving or recommending a project, it does not proceed to the GVWD Board. Often issues will go back to REAC multiple times before gaining approval, prior to advancing to GVWD.

3.0 POLITICAL DECISION-MAKING

The models detailed in the section above were developed in response to the issues identified by participants, including both staff and elected officials. Other than the corporation model, they all still rely on a political committee – the Water Committee and Sewage Commission, or some revised political body – to make at least some of the decisions. Another aspect of this project is to contemplate what those political bodies could be, who they should include and how they will incorporate the K'ómoks First Nation.

The *Issues Paper* noted that the issues with the current process and objectives for future structures identified include the desire to involve KFN in decisions and to revisit the voting structure that is based on water usage. Three options were identified for the political decision making:

1. Continued separate Sewage Commission and Water Committee (different representation on each), with expanded membership and altered voting structures.
2. Combined sewage/water Utilities Committee with expanded membership and altered voting structures.
3. As a future option, a Region-wide Committee or service that examines sewer, water supply and watershed protection issues for the entire region, or perhaps on a broader scale. These types of broader services are being established or considered by other regions (Nanaimo, Cowichan Valley) on the Island.

The corporation model discussed above would involve a corporation board that would effectively replace the Sewage Commission and Water Committee's decision-making roles for policy and operational decisions. The composition of that board could be determined by the CVRD and could involve elected officials, or CAOs, but was primarily intended to reflect technical experts from a range of backgrounds.

The commission model also provides for a membership that includes technical experts, and the commission would be delegated the authority for operations, but it was still intended to leave policy decisions to either the existing Sewage Commission and Water Committee (with an expanded membership and revised voting structure), or a newly combined Utilities Committee. Similarly, the review board and revamped management advisory committee models both assume that the Water Committee and Sewage Commission (or a combined version) will continue to exist to continue to make the political decisions. In order to address many of the issues identified in the *Issues Paper*, changes would need to be made to the composition of these bodies to include, at a minimum, the KFN. The voting structure of the two separate bodies (Water Committee and Sewage Commission) or combined Utilities Committee will also need to be addressed.

The advantages of a combined Utilities Committee are that the Water Committee and Sewage Commission already overlap considerably in terms of membership, and the scope of these services are related. There are often issues that impact both services, such as discussions regarding infrastructure growth and asset management, and in general, where there is significant water usage, it often translates into sewage flows. Although the services themselves are distinct, and involve their own facilities, there may be value in having some of the members of the Water Committee (such as electoral area representatives) be privy to the sewage discussions, even if they are not voting members on sewer service decisions. Having a slightly expanded membership may also help to inform some of the discussions and perspectives, without necessarily changing the voting structure. In effect, the other members would have "observer status". As noted in the *Issues Paper*, the disadvantage of combining the Sewage Commission and Water Committee is the slightly increased cost of having more members attend meetings (i.e. the electoral area representatives that would not normally attend the Sewage Commission meetings), and the added complexity of having to keep track of who votes (and potentially weighted votes) on the different decisions (sewage vs. water).

The combined committee may also have some advantages in fostering some discussions on the value of broader services, such as watershed protection, and issues that impact multiple services. For instance, in 2013 the Regional District of Nanaimo established a region-wide service with a watershed protection role that is involved in water quality monitoring, data collection, conservation initiatives and spans across the region, including multiple watersheds and drinking water service boundaries. The Cowichan Valley Regional District has proposed a region-wide drinking water and watershed protection service, to undertake strategies, plans, partnerships with stewardship groups and to integrate water management and environmental planning and land use decisions (electors will vote on the establishment of this service during the upcoming 2018 local government election). These types of services recognize the value in understanding the impacts, and working toward protection and conservation initiatives, beyond each water or sewer service boundary. A combined utilities committee could begin to foster discussions and make connections on issues that relate to both drinking water and sewer treatment, including water conservation, water quality, and land use impacts of services.

3.1 VOTING

During this study, the use of water consumption as a basis for allocating weighted votes on the Water Committee was identified as problematic. The concept of weighted voting is primarily to recognize the proportion of residents that receive the services (and are therefore impacted by them) in each jurisdiction, as well as the proportion of costs paid by each jurisdiction. According to this logic, when decisions are made that increase costs, those who will both receive and be responsible for paying the higher proportion of costs, should have a greater say. Sometimes the greater voice is obtained through additional representatives on a committee. For instance, on the Sewage Commission, each commissioner has one vote on all topics, and there are 3 representatives from Courtenay, 3 from Comox and 1 from CFB Comox. In other cases, where the number of representatives is not sufficient to create an equitable balance, weighted voting structures can be used. There are a variety of other bases upon which weighted votes can be allocated, including population, service connections, or converted assessment (which typically mirrors the cost sharing), combinations of factors or even a fixed percentage. However, with the K'ómoks First Nation participation, assessed values will not be a useful tool, because currently KFN lands are not assessed. Quantity of a serviced used, such as water consumption or sewer flows, is not unusual as a basis for cost sharing; however, it is unusual as a basis for assigning votes, because in effect, it appears to encourage water use rather than rewarding conservation.

Using population or service connections, Courtenay would still command greater than 50% of the votes, which, together with the conservation aspect, is the other concern over the current water voting structure. In crafting voting relationships, particularly in small groups, providing more than 50% of the votes to any one jurisdiction is typically avoided. Often the

representation and/or weighted voting is designed to encourage partnerships and foster discussion, and to avoid the ability of any one jurisdiction to make decisions unilaterally. Another approach to reducing the concerns of any one jurisdiction having more than 50% of the votes is to require approval by two-thirds (2/3) of the committee for certain, or all, decisions.

Changes to representation and voting structures can be controversial. Where there is difficulty agreeing to any single method for allocating weighted votes, it may be possible to have different voting bases for different issues. For instance, some issues may warrant a weighted vote, and others may be resolved through equal inputs (1 vote) from all committee representatives. Having different voting on different types of issues is already a system that is used at the Regional Board of Directors. There are some issues that are voted on only by service participants, and other issues have the entire Board voting. Similarly, some issues have weighted votes, while others have one vote per representative. While the use of different types of voting on different issues can be more complicated to manage, it may be one way to obtain agreement between jurisdictions on both committee representation, and a voting structure. For example, issues that involve management or operations of current infrastructure, including capital costs of repairs or maintenance, may be voted on by only those who currently receive and pay for the service. Issues that involve future directions, expansion, master plans or capital projects that are intended to service new areas could be voted on by the broader membership. Projects that involve cost sharing should involve all partners that will be contributing toward the service. Financial decisions could be weighted votes, and policies could be votes where each member receives one vote.

One suggested approach for managing the fact that Courtenay would represent the majority in most weighted voting approaches, is that the City's votes could be adjusted so that Courtenay receives no more than 50%. This approach would enable them to retain the ability to veto projects (a tie vote defeats a motion), but not to unilaterally make a decision. As noted above, if Courtenay continues to have more than 50% of the weighted (or unweighted) votes, this same objective can be achieved by requiring approval by 2/3 of the Committee.

3.2 EXAMPLES & LESSONS LEARNED

While the Greater Vernon Services Commission was not an enduring successful model for that region, due to a number of factors, there are some aspects of the governance experiment that are worth noting — in particular, the composition of the Commission membership. The Commission was comprised of 3 members from Vernon, 2 from Coldstream, 1 each from 2 electoral areas, in addition to a representative from the agricultural sector (appointed by the Board). The agricultural sector representative only votes on water matters. The structure recognizes the value in having extra members that voted only on certain issues.

In the creation of the Commission (and, subsequently, the Advisory Committee) key guiding principles were adopted, including the “to produce a decision-making environment in which the largest participating jurisdiction cannot unilaterally impose a decision on the other participants, and the other participants cannot together impose a decision on the largest participant.”

4.0 PATH FORWARD

All of the options referenced in this report require change, to both the process that decisions are currently made in these two services, as well as to the body that will be making the decisions. This section references some of the changes that would be needed to implement the various options.

1. **Change to the membership and voting structure of the Water Committee and Sewage Commission.**

Perhaps the greatest imperative of this process moving forward is ensuring participation of the KFN in the servicing governance. Both sewage and water services are currently provided to the KFN, and as such they are beneficiaries of the services. KFN's Council has indicated an interest in being involved in the decisions, and they are currently in discussions with the CVRD regarding the potential to share water licence rights to help service the Comox Valley, and are essential partners for securing funding for the water treatment plant. A negotiated solution for utility governance that is acceptable to both the CVRD and its members, as well as KFN, is critical. The models discussed in this paper all provide the opportunity to involve KFN in governance, and are not dependent upon finalizing the treaty process, or KFN choosing to become a member of the regional district. Participation in any governance model can proceed regardless of what happens with the K'ómoks treaty process, and irrespective of whether KFN chooses to join the regional district once a treaty is approved.

As identified in this report, there are options for involving KFN in the current Sewage Commission and Water Committee, thereby changing the structure of these committees in a minor way, or potentially combining the two committees into a Utilities Committee, that could have different members voting on the distinct issues (water vs sewage). Weighted votes could also be a component of this combined committee.

To reach agreement on these changes, it is expected that additional discussions will need to be held together with KFN to determine their capacity to be involved (i.e. given that there are only 3 council members, whether they have the time to commit to having multiple representatives sit on the Committee), which may then result in

the need to consider weighted votes as a way of providing additional voice to the members. While one member may be sufficient for sewage discussions, KFN contributions to water discussions may require a greater voice.

Based on the Greater Vernon example, which reflects a similar relationship between the larger municipality (Vernon), smaller municipality (Coldstream) and electoral areas, introducing a membership/voting structure that enables Courtenay to have the majority, but no more than 50% of the vote, may be one option that has some appeal. This majority could be through representation on the committee, or through weighted votes. Another approach could be to allow Courtenay to have more than 50% of the weighted vote, but to require that certain issues be approved by a 2/3 majority. On issues that relate to policy, such as connections of additional local service areas or extensions to new areas and master plans, votes could be taken with 1 vote per committee member (either for the individual committee or for the combined). Other issues where different voting rules could apply could be identified by the participants.

2. Implementation

All of the options presented would result in amendments to the Water Local Service Establishment Bylaw, which establishes the standing committee, including the membership and the weighted voting structure, as well as the authority for operating the service, approving connections and policy. Amendments to establishing bylaws must be approved with consent from at least 2/3 of participants. The amendment would also need approval by the Inspector of Municipalities.

Depending on the option, the Sewage Commission Bylaw will also need amending (or possibly repealing, if a combined utilities committee or commission is created) to alter the membership, as well as change any authority or voting. This bylaw is not an establishing bylaw, and amendments will therefore will not require 2/3 majority, nor Inspector approval.

If a combined utilities committee is desired, it could be established as a standing committee by bylaw, with authority for policy-related decisions, membership details and weighted voting. The bylaw would involve delegation of CVRD Board authority, in which case the bylaw would need to be adopted by 2/3 of the votes cast. The Water Local Service Establishment Bylaw would also still need amending, in order to remove the separate Water Committee.

The creation of the corporation would require the amendment of the Water Local Service Establishment Bylaw, repeal of the Sewage Commission Bylaw, and the creation of a corporation (which requires approval by the Inspector of Municipalities).

Amending bylaws and obtaining the required approvals is only the beginning of the implementation process for any of these options. One of the lessons learned from the experiences in other communities is that bylaws that clearly delineate the roles and responsibilities of all bodies concerned will be key to ensuring effectiveness. Bylaws will also need to offer solutions for instances where disagreements arise. In all cases the effectiveness of the structure will also be impacted by the members of the boards and committees.

5.0 CONCLUSION

The scope of this work included interviews with many of the players involved in the Comox Valley, including the KFN, as well as municipal and regional staff and elected officials. However, it is worth emphasizing that these discussions represented only one opportunity to discuss governance with each of these players. Deciding on what changes are needed, and committing to new governance models is difficult, and obtaining agreement an even greater challenge. Accordingly, it was not anticipated that this report would recommend any one solution or preferred alternative, but rather provide options that will need to be discussed and explored more fully with the affected parties. The options were identified in response to issues noted during the interview process with staff and elected officials at the CVRD, City of Courtenay, Town of Comox and K'ómoks First Nation. All options provide the opportunity to achieve the following objectives:

1. Involve the KFN in decision-making on water and sewer.
2. Increase the level of technical advice on issues where desired.
3. Address perceived inequities in weighted voting.

Each option has advantages, but also complexities. With the introduction of new committees and commissions comes the need to clearly define the roles of each body – carefully articulating the responsibility of the committees/commissions over what type of decisions, and clarifying staff reporting relationships – and then to monitor the process to avoid the blurring of lines between operations and policy. What is intended as a body for extra advice can often increase both costs and workloads, and result in an overly complex decision-making structure. While the need for additional technical advice was noted as one of the primary objectives, each option does impact staff time, cost, efficiency, and timeliness. Having confidence in the technical advice is essential, but where the final decisions still rest with elected officials, effective decision-making may be more about finding ways to mediate the political decisions rather than simply supplying more technical support.

Determining the best approach for the CVRD services will depend on the Board's priorities, and determining a solution that fosters informed decision-making, inclusive and constructive debate, and balances the need to make decisions in a timely and cost-effective manner.

July 9, 2018

Comox Valley Regional District
600 Comox Road,
Courtenay, BC
V9N 3P6

ATTENTION: JAMES WARREN, GENERAL MANAGER OF CORPORATE SERVICES

Dear James:

REFERENCE: UTILITIES GOVERNANCE OPTIONS – ISSUES PAPER

The following issues paper represents the first step in our project to assist the Comox Valley Regional District (CVRD) in identifying and evaluating alternative governance models for the Comox Valley water and sewage services. The attached appendix provides some additional background on some examples of different models to illustrate the range of alternatives available.

1.0 PROJECT BACKGROUND

The CVRD is seeking to identify governance options for the Comox Valley sewage service and Comox Valley water supply system. The sewage service is delivered to the Town of Comox and City of Courtenay as well as the Department of National Defence and the bulk water supplied to Courtenay and Comox (who then distribute the water using their own infrastructure), plus portions of three electoral areas (A, B and C). While not a service participant through the CVRD establishing bylaws, K'ómoks First Nation receives both sewer and water services to their IR No.1 property, as well as to the IR No. 2 property on Condensory Road. The agreement on the Condensory Road property is based on a servicing agreement negotiated with the City of Courtenay in 2016.

Currently the Comox Valley Water Supply Service is governed by a Water Committee, with representatives from Courtenay (4), Comox (2), and one director from each of the electoral areas A, B and C. The Committee also has non-voting members including Chief Administrative Officers (CAOs) of the regional district, the City of Courtenay and the Town of Comox, senior managers of operations for Courtenay and Comox, as well as the General Manager of Engineering Services of the regional district. The Committee membership, authority and voting system are specified within the service

establishment bylaw (Bylaw 1783). Recently, the Water Committee also resolved to include a representative from the K'ómoks First Nation as a non-voting member.

The sewage system is governed by a Sewage Commission. The Commission was established through a separate bylaw (Bylaw No. 650) in 1982, and is comprised of three representatives from the Town of Comox, three representatives from the City of Courtenay, and one representative from Canadian Forces Base Comox. The Commission considers matters relating to the administration and operation of the sewage system.

Given the technical nature of many of the water and sewer decisions, the CVRD expressed an interest in exploring models that involve experts more directly in the process. Currently there are management advisory committees comprised of staff from the Regional District, Town and City for both water and sewer services. While these groups meet regularly to discuss projects and provide advice regarding capital and operational projects, including review of reports from engineering consultants, they do not have members from outside agencies or independent consultants participating on the committee. The Board has expressed interest in evaluating a “utilities commission” concept that includes independent professionals setting the services’ administrative and operational priorities.

2.0 METHODOLOGY

In order to propose alternate governance models for the CVRD, including variations of a commission model for the sewer and water services, staff (administration and utilities) as well as the elected representatives that have been serving on the Committee and Commission over the past few years were interviewed. K'ómoks First Nation staff and Band Council were also interviewed to discuss current service needs, growth plans, and interest in being involved in water and sewer service delivery and governance.

The following summarizes the general methodology agreed to for the project:

1. Review services and background materials – The consulting team reviewed the terms of reference for the Committee and Commission, past minutes, and discussed the services with staff at the CVRD to better appreciate the issues over the past few years. Master plans, regional strategies, and other reports, were reviewed to gain some background and context.
2. Interviews – the consulting team met and interviewed (in person and/or by phone):

- Staff – CAOs of City of Courtenay, Town of Comox, CVRD, as well as regional district engineering staff, Town and City operations staff, K'ómoks First Nations and a representative from the Canadian Forces Base Comox.
- Elected representatives from the participating areas, including those represented on the Sewer Commission, Water Committee, as well as representatives from the K'ómoks First Nation.

The consultants also attended a Committee of the Whole meeting to introduce the project and solicit initial feedback.

3. Research – the consultants have been researching Commission, Standing Committee and other alternatives that could potentially respond to the stated objectives and concerns identified by the participants. The consultants are continuing to review examples and delve into those structures and bodies to determine successes, challenges and lessons that can be learned that might be relevant for the CVRD.
4. Issues Paper – This paper represents the *Issues Paper* that identifies the concerns and issues raised through the interview process with Courtenay, Comox, CVRD, CFB Comox and K'ómoks First Nation. The paper summarizes the research conducted to date into alternate governance models, and identifies some potential options. The paper also examines how K'ómoks First Nation might participate in a governance / decision-making role.
5. The *Issues Paper* will be followed by a more thorough report that will be presented to the Water Committee and Sewage Commission, the CVRD Committee of the Whole as well as the councils for Courtenay and Comox that builds on the *Issues Paper*, provides some examples of commissions or other models and their advantages and challenges, and identifies some potential models for consideration. The report will contain a more thorough analysis of the options identified in the *Issues Paper*, and include:
 - For each model presented, including the status quo, a high-level strengths and weaknesses analysis of the models,
 - Examples of where the model is used,
 - How each model responds to the issues identified by the service participants and stakeholders during the interviews,

- Using a sample issue (one for sewer one for water, based on actual decisions previously made), the team will prepare an overview of how those decisions could be made under each model, and
 - The path forward to achieve each option (associated timeline and process).
6. After the full report is presented, the options will be refined based on feedback from the presentations to the Committee, Commission, Board and two councils. While feedback will be incorporated into the final report, and preferred approaches identified, models won't be eliminated at this stage given the fact that the ultimate decisions will be made by the newly elected Board.

Given the impending election in October 2018, the decision to proceed with any new governance approach for the utilities will not be made until there is a new Board. The work done at this stage is intended to capture the concerns of those who have the experience participating in the Water Committee and Sewage Commission. The resulting governance options will then be presented to the new Board for consideration in late 2018 or early 2019. Accordingly, the scope of this project will not result in a recommendation for any one approach. Any recommendations for a preferred alternative would be best left until after the new Board is familiar with the alternatives and makes a decision regarding the best option to proceed. The final report will, however, include comments and suggestions on what approach (or approaches) appear to best respond to the needs and concerns identified at the conclusion of this stage of the process.

3.0 WHAT WE HEARD

Through interviews with staff and elected officials from K'ómoks First Nation, Comox Valley Regional District, City of Courtenay and Town of Comox, as well as with a representative from CFB Comox, a number of issues with the current process were identified. The issues were not necessarily shared by all, but the following were raised by at least one of the partners interviewed.

1. Political interference

Politics is inherent in any decision-making process, particularly when there are multiple parties involved. Politics, in and of itself, is not necessarily a negative part of the process, but rather an indication that compromises are often made by parties through the decision-making process. In this instance, politics was raised as something that some saw as interfering with the "correct" technical

decisions. While some issues are determined according to values and political considerations, other operational issues are seen as more technical in nature and are best determined based on technical and engineering considerations. There is a concern that in some cases involving technical issues, technical considerations have been overshadowed by political needs and views. The concern was also raised that the political perspectives were impacting the long-term or big-picture view for the Comox Valley as a whole.

2. Who is at the table

The desire to have the “right” players at the table to make decisions, and even to be part of the discussions, was raised by many partners. In particular, the need to include K’ómoks First Nation in decisions was universally acknowledged during discussions, although opinions varied on what form that involvement should take. This governance review is an opportunity to build the relationship with KFN and acknowledge the First Nation as a partner moving forward. Beyond the KFN, there were other suggestions on who else should be participating in decision-making, including the potential for electoral areas to participate in sewer decisions (in particular, regarding future expansion, or when facilities are located in the regional district), even though they do not currently receive or pay into sewer treatment services. Other suggestions were to evaluate whether CFB Comox needs to be a voting member of the sewage commission (or potentially to only vote on certain issues), and whether to include representatives from agencies with influence over the decisions in the process, such as BC Hydro (water allocation), Island Health (water treatment) or potentially provincial representatives. While these agencies would not necessarily be welcome as voting members, it was noted that their input into the process may be helpful.

3. Voting/voice in decisions

Some of the concerns with the current water committee, in particular, have to do not only with having the right members, but with how much weight each member carries in decisions. Stakeholders did not suggest that Courtenay has imposed decisions on other members. The imbalance, however, was identified as a problem, as was the fact that voting is weighted based on water consumption.

4. Technical expertise and oversight

Related to the discussion regarding the “right” people at the decision-making table is the desire for greater technical expertise or oversight as part of the process. While the current structure for both services includes a Management Advisory Committee, which includes engineering and administrative staff from

all the municipalities and regional district, this committee does not appear to have been used (at least not recently) to rigorously vet technical documents, provide advice to the water committee or sewage commission on technical decisions, or provide oversight of consultant reports. Some of the reasons cited include the time/capacity that would be required to undertake the role, but also the expertise available within the municipalities. Staff are seen as experts in their own local distribution systems, and while their involvement in decisions that impact their respective systems is critical, they do not consider themselves experts in regional water supply or sewage treatment. The potential for independent experts to have a role in the decision-making process, particularly with respect to operations, was raised by a few interviewees, as was the desire to use independent expertise to provide advice and operational oversight. At least part of the motivation seemed to be the highly technical nature of many of the decisions, the challenges in fully informing elected officials on decisions and their potential implications, and the capacity for municipal staff to stay apprised of the details of the regional projects (above their own municipal workloads). Several interviewees noted that the role of educating decision-makers was not being done well, and it was unclear who was responsible for this role. Partners identified a need to not only educate decision-makers of the regional impacts of any particular project, but from the perspective of the local jurisdictions.

5. Accountability

The current decision-making process, by relying upon decisions made by elected officials, provides some accountability to the taxpayers/residents. The disconnect in terms of accountability is through the relationship between staff and the elected officials. Concerns were raised that elected officials were making decisions based on regional district staff recommendations, when ramifications for their own communities that had not been fully explained. There was a perceived lack of accountability between the decision makers and staff, particularly when mistakes or mis-steps are made.

6. Trust and confidence

A common concern during the interview process was not about the decision-making structure itself, but instead about the relationships among the partners involved. There was a lack of trust identified among several parties – between partners, between elected officials and staff, and between staff at the various local governments. Despite many successes, there is significant history, and it can be difficult to overcome certain perceptions. Regardless of who is responsible, and even if new staff or elected officials are in place, there was a prevailing sentiment that mistakes have been made, resulting in a push

for a new approach to help build new relationships and build confidence in the process.

7. How to move forward

The concern was also raised about the likelihood of success for any new governance models that required current players sharing control, and the difficulty in reaching consensus on any new approach. Others noted that any new process should have some clear dispute resolution mechanisms for when future concerns arise, to help the region deal with differences or disagreements when they do arise.

4.0 GOVERNANCE OPTIONS

Given the issues identified above, there are two main themes that appear to have emerged from the conversations. One is the need to involve more expertise in the decision-making process at some level, and the other is to maintain some role for political decisions, but restructured to change who is involved, and what voice each party has in key decisions.

The following elaborates on the two themes, based on conversations with the partners involved.

4.1 Expert Advice

The need for involvement of experts comes from:

- a desire for more informed decision making and decision makers (difficult for politicians to fully understand the issues, options and implications),
- capacity of staff resources (of all participants) to spend the time to provide needed oversight for projects and technical input,
- remove some of the politics from technical and operational decisions,
- minimize the reliance on any one consultant, particularly on larger issues (ability to peer review or provide oversight), and
- allow staff from all local governments in the Valley to build relationships (and not necessarily peer review each other's work, which can create adversarial relationships).

In contemplating options to integrate more expert advice into the water and sewer services, some of the considerations include:

- In a healthy regional water or sewer service municipal staff are often expected to assume the role of a sounding board, and a body that provides input, oversight and asks the critical questions,
- Regardless of the governance framework, politics cannot be fully removed from the process,
- The degree of authority delegated is key (what decisions the experts make), and how the expert body fits into the broader decision-making framework,
- Obtaining highly qualified technical expertise may (and will likely) require extending the search beyond the Valley. To truly get experts without conflict of interest (i.e. some of the Valley's experts will likely want to reserve the ability to work for and with the Valley's local governments on sewer and/or water projects, which may place them in a conflict of interest), will require paid Board members with relevant and updated skills. While there may be some local representatives, it should be assumed that to create a body with impartial experts will require drawing upon resources from further afield (e.g. Victoria, Vancouver or beyond),
- An expert body could be used solely to review specific decisions or projects (as needed, or based on pre-established dollar value or complexity thresholds),
- The Provincial and Federal Government look favourably upon an expert body or board leading a senior-government-funded project, and the cost of using the expert board to guide the project would be a cost that is eligible for payment through grants received, and
- Reviews of water governance in many jurisdictions often results in recommendations for models that involve decisions by independent Boards rather than local government elected officials. As noted in the Ontario report on water governance, "the people who govern water services must have a firm grasp of the technical and business aspects of an increasingly complex enterprise. The responsibilities for public health and environmental quality demand no less."¹

¹ Water Strategy Expert Panel on Water and Wastewater Strategy. *WATERTIGHT: The case for change in Ontario's water and wastewater sector*. May 2005.

4.1.1 Options

The following range of options could be used to address the desire to introduce a greater level of expertise and technical advice into the process. Examples of the different options are referenced, with more detail provided in the Appendix.

1. Corporate model

- Separate corporation wholly owned by the CVRD or service participants that runs the utility (operationally and potentially some policy decisions). Responsibility could include both sewer and water.
- High level of autonomy from politicians
- Governance through a corporate board made up primarily of experts, with potential to include some local government staff or council/directors

e.g. Aquatera (Grand Prairie utility company), Vancouver Island Emergency Dispatch Corporation, Kingston Utilities, CLCO for Canada Line (temporary)

2. Commission

- Commission with paid members with various technical expertise (engineering, project management) similar to a corporate board
- Members appointed by water/sewer committee or CVRD Board
- Delegated authority from the CVRD Board for operations and administration, and make policy/budget recommendations to the water/sewer committee
- Political committee retains authority for policy decisions (service extensions or expansion, long-term plans, bylaws)
- Could deal with both sewer and water, or just one service

e.g. CRD Core Area Wastewater Treatment Board

3. Review Board

- Paid Review Board with various technical expertise (engineering and project management)
- Members appointed by political water/sewer committee
- Provides oversight for projects when needed
- Political committee could make policy regarding when projects are forwarded to the Review Board (triggers or threshold)
- Could be used to conduct value engineering review (Province uses this approach) or conduct and/or coordinate peer review of consultant reports to ensure value for money and best approach

e.g. Provincial policy that requires value engineering review or peer review of projects, decisions or reports over certain dollar value and/or complexity, CRD Technical Oversight Panel for Wastewater Treatment Project

4. Revamped Management Advisory Committee
 - Have local government staff commit to a role that includes project review, oversight, and advice
 - Could provide a budget for extra review (i.e. if the advisory committee needs to commission a peer review)
 - Could be combined with option 3

e.g. Regional Engineering Advisory Committee (REAC) role for the Greater Vancouver Sewerage and Drainage District (GVSD), and the Greater Vancouver Water District (GVWD)

4.2 Political Decisions

While the assistance of independent experts was articulated by many, there is a desire to have continued political involvement in the service decisions. Decisions made by political representatives provide a direct link between elected officials and the people they represent. However, those interviewed indicated a preference to have political representatives focus on broader long-term policy decisions and overall budget, and less on the technical options or details of operating the service.

Some of the political decisions may include:

- Extending or expanding the service
- Funding the service (this needs to be approved at the Board table)
- Long-term policy (master plans) dealing with water supply, and water and sewer treatment
- Cost recovery tools (fees and charges – bylaws need to be approved by the Board)
- Potentially policy regarding what matters are referred to the technical body (commission, review board, etc.)

At the political level, the issues with the current process and objectives for future structures identified include:

1. The desire to involve KFN in decisions (and determine how best to do so)
2. Revisit the voting structure that is based on water usage

The options on the political composition and structure are considerable. The key will be to define:

- **Who** – Composition of the committee (membership -- number of representatives and from where)
- **What** – Decisions to be made by the political representatives (scope, purpose of the body) – and the associated delegated authority
- **How** – How the decisions are made, and votes are weighted

WHO

Traditional RD models for decision-making include representation only for those who participate in a service, emphasizing the relationship between paying for a service, and having influence over decisions regarding the service. Some decisions are always made by the Board as a whole – which typically includes representatives who are not participants of the service.

There was unanimous support for having KFN as part of the water decisions, but not consistent support for involvement in the sewer decisions. Sewer services are currently extended to KFN lands at IR#1 and through a sewer agreement with the City of Courtenay. There was greater support for KFN participation in the Sewage Commission as the sewer service expands to service broader KFN lands (including Treaty Lands).

Most of the discussion regarding KFN participation defaulted to suggestions for membership on the water committee and/or sewage commission. There was little recognition that KFN may not want to participate in the typical regional district framework, and that offering them a seat at the table (on the current RD and water committee/sewage commission terms) may not be of interest to the KFN.

In addition to adding representation for the KFN, there was discussion about whether electoral area directors should participate on the political body, particularly if the infrastructure extends through electoral areas, but residents are not connected to the services. There was also some question on whether a broader representation of the region (i.e. those who may be serviced in the future) should be included on issues regarding expansion of services.

WHAT

The majority of the interviewees indicated a desire for the political committees to focus on policy issues rather than technical or operational issues. Operation and administration are currently delegated to the Water Committee and Sewage Commission. Having an expert body to review, decide or at least advise on the operational issues could remove some of the detailed work and discussions currently

faced by the both the Sewage Commission and Water Committee. While the line between policy and operations is not always clear, the intent is that the political committee (or committees) would concentrate on long-term plans, policies regarding the expansion of the systems, financing (setting of rates), and water conservation policy, among others.

HOW

At the regional board, votes on some issues are made based on weighted voting (by population) while others are made based on the principle of one vote for each representative. Those issues decided on an unweighted corporate vote (1 vote per person) include establishing bylaws for a service and regulatory bylaws. Weighted votes are used on financial matters such as borrowing or the financial plan, as well as on the administration and operation of services. Weighted voting at the board table in regional districts (as well as the number of municipal directors at the table) is based upon population. While regional board votes are structured this way, the structure does not need to extend to committees or commissions created by the Board.

Much of the feedback about the existing committee structure was centered around the voting structure in the Water Committee, where the City of Courtenay has the majority of votes. Likewise, Courtenay is responsible for paying for the majority of the costs of that service. The dynamic created anytime one player has the majority of the votes can be unhealthy. In cases where there is a significant imbalance in who pays for the service, other formulas can be used to promote collaboration on key issues (e.g. require 2/3 majority or 50% plus at least 2/3 of the participants, etc.). Allocating the votes based on water consumption, aside from the fact that it provides Courtenay with majority of votes, is also counter-intuitive in terms of promoting water conservation. Ultimately, most of the participants were uncomfortable with the current method of allocating votes.

The desire to include KFN in the decision-making process provides an opportunity to revisit the voting relationship, and the basis for allocating votes. Given the discrepancy between how much of the system is paid for by Courtenay, compared to other factors, there may be a need for different voting structures on specific issues or topics. For instance, the expansion of the service to lands beyond the current service boundaries or issues regarding supply and allocation of water may involve a broader set of decision-makers, or potentially just have different voting rules. As long as there is a cost-recovery basis for the extension, who pays for the service may not be the relevant factor for that type of decision, thus warranting a different basis for voting.

Discussion over how the representation and weighted votes could be structured regarding water could help demonstrate to KFN the region's interest in having the KFN as an equal partner, and recognize Aboriginal title, as well as the volume of water KFN is contributing to the Valley's supply. Other possible bases for weighting votes could include:

- Water licence (amount of water each party brings to the table)
- Service connections
- Land area in the water service area (or in the long-term plan for servicing)
- Financial contributions to the service.

It is useful to note that a different basis of voting or different requirements for a vote to pass could be used on specific key topics. For instance, on some issues, maybe each government receives one vote – KFN, Comox, Courtenay, CVRD – or there could be requirement for 2/3 support, or agreement from more than one jurisdiction. It is useful to keep in mind that situations that promote stalemates can be used to force collaboration, but can also cause conflict. It is imperative to consider both the worst case scenarios, and determine ways to resolve potential conflicts that may arise. On the sewage commission, CFB Comox has one vote, compared to 3 from Comox and 3 from Courtenay, making CFB Comox's vote a tie-breaker in the event of disagreements between Courtenay and Comox regarding the service. While some scenarios can be anticipated, it should be acknowledged that some tension among participants is inevitable no matter how carefully designed the governance arrangements.

4.2.1 Options

1. Continued separate sewer and water committees (different representation on each), with expanded membership and altered voting structures
 - Expand list of current members to include KFN, and revisit weighted voting,
 - First Nations could be a commission/committee member regardless of whether they choose to participate in the regional district,
 - Different issues could have different voting structure if warranted, and
 - Decisions could be made based on the advice from technical body.
2. Combined sewer/water committee with expanded combined membership and altered voting structures
 - Could promote a more holistic approach to the connections between water supply, sewage treatment and healthy watersheds, and encourage broader understanding of the services. While this would make more sense if it was a regional service that took care of all water supply for the region

(i.e. different sources to different distribution systems), there may be some value to having the players in the room become more familiar with the crossover issues,

- Different representatives could vote on different issues (some the same),
- May result in more time spent by some directors (and therefore increase cost),
- First Nations could be a commission/committee member regardless of whether they choose to participate in the Regional District,
- Different issues could have different voting structure if warranted, and
- Decisions could be made based on the advice from technical body.

3. Future Region-wide Committee

Another option to consider is whether there is any appetite for a broader committee that looks at sewer and/or water issues for the entire region, or perhaps on a broader scale. There is considerable momentum around the options and opportunities for watershed governance, and the interconnectedness of land use, sewage practices, and other related activities on the health of a broader region or watershed. Focusing on the broader issues and implications – particularly when the service is intended to examine long-term planning for water supply and treatment, as well as sewage treatment, may be a future goal of the service. For instance, while the service delivery and distribution network is left primarily to the municipalities (or the CVRD in electoral areas), the broader plan for water supply in the Valley is a regional responsibility – not only for this particular defined service (Comox Valley Water Supply), but also for other systems in the regional district. Similarly, while the Cumberland sanitary and water system may be separate from Courtenay and Comox, the impacts of the individual practices may still be felt elsewhere in the region. Where this is and can be the case, an argument can be made to having all of those who may be impacted by future decisions upon water supply, treatment, sewage treatment, to be at the table discussing long term plans. The Regional District of Nanaimo has a region-wide drinking water and watershed protection service, and the Cowichan Valley Regional District is preparing a draft establishing bylaw to create one.

The self-contained service model of regional districts is not always conducive to collaborating between services. While broadening the scope of any commission or committee was perhaps beyond the scope of this particular project; it may be worth considering the applicability of any model changes to broader range of water and sewer services in the long-term.

5.0 K'ÓMOKS FIRST NATION INVOLVEMENT

Perhaps the most pressing issue in reviewing options for a regional district utilities governance model is how KFN is going to be involved in making decisions moving forward. The issue with water in particular provides the opportunity to foster a relationship with KFN that is built upon a recognition of the KFN's aboriginal rights and title. It can be difficult to reconcile these rights and title with the Provincial system of water licencing, as well as the history of governance and decision-making inherent in the regional district and municipal government framework. Fortunately, the regional district legislation does allow considerable authority to be flexible in its decision-making and governance models, which provides the opportunity to incorporate KFN in a way that is meaningful for them, and respects their own ability and interest in being part of the discussion and decisions about how the resources will be used in the future to sustain the Comox Valley.

5.1 Water Governance and First Nations in BC

Water governance, and First Nations involvement in that process, has been a topic of study at BC universities over the past few years, with academic papers and reports being produced by the UBC Program on Water Governance, as well as the University of Victoria's POLIS Project that is part of the UVic Centre for Global Studies. The POLIS Water Sustainability Project examines innovative water and watershed law, policy, and governance reform as well as exploring new governance approaches with respect for Indigenous rights and knowledge. While the following points were not articulated by KFN during discussions as part of this project, much of the broader research into the topic highlights the barriers to First Nations participation in water governance, which may provide useful context and create awareness of the challenges faced by KFN and other First Nations, including:

- Challenges in dealing with different levels of governments, including municipalities and regional districts (First Nations are not local governments and typically deal directly with the Crown),
- Concern with the provincial system of allocating water licences, given the inherent incompatibility of that system with the recognition of Aboriginal rights and title (i.e. First Nations have never ceded their governance powers for water, therefore the Province has no legitimate authority for water and cannot then delegate that authority),

- Desire to ensure that participating in locally-based water initiatives does not prejudice Aboriginal rights or title claims,
- Forcing First Nations to work within the existing local government framework may not respect indigenous knowledge systems, values, First Nations conceptualizations of governance, or provide equal opportunities for partnership and collaboration,
- Discussions regarding the capacity in collaborative governance needs to consider who is directing the process: who is being asked to speak whose language, and on whose terms and knowledge systems is collaborative governance proceeding?
- Concern that to participate in various governance models, the First Nations will have to adapt to the local government processes, versus placing the onus on local governments to adapt. As such, a power imbalance is embedded within the process from the outset,
- While First Nations are now invited to participate, to some extent, in the current water governance framework, their participation is still constrained by resource and capacity limitations. This is not simply a matter of First Nations lacking the knowledge and capacity but rather a symptom of a structural barrier that prevents equitable participation, and
- At the same time the “capacity building” approach assumes that the FN somehow do not have the “capacity” to participate in governing water. On the contrary, First Nations have always been able to govern water, they just don’t necessarily have the background or experience in participating in the regional district’s system of governance of the water. The assumed lack of capacity is therefore about educating First Nations to participate within the local government system.

The research emphasizes that often the existing framework not only ignores the rights and title of First Nations with respect to water and resources, but also does not recognize or consider the different cultural practices or forms of governance for water that First Nations may already practice or prefer.

5.2 KFN Opportunities for Governance

The political committee structures referenced in the options above included:

1. An expanded Water Committee and Sewage Commission (with more focused policy roles and less operational decisions)
2. A combined Water/Sewage Commission
3. A broader watershed or region-wide commission overseeing watershed health and drinking water supply

Although these three options are identified as options to consider, and despite the keen interest shown by KFN to work together with the CVRD, based on discussions with KFN Council and staff, it should not be assumed that the KFN will want to join any of these committee(s) based on the CVRD's current voting structure. This may come as a surprise to some of the parties involved – indeed, discussions with the various jurisdictions involved in this project revealed a preference or assumption that KFN would join the regional district framework or water committee/sewer commission structure that already exists, and with which the participants are already familiar. However, involvement on the existing committees, with only a single vote, was not a model favoured by KFN. It is imperative that the other parties appreciate any reluctance that may exist on the part of KFN based on typical regional district frameworks, whether for the reasons noted in the previous section, or due to the simple fact that most regional district service governance models rely on voting structures that relate to funds contributed or population. While small in population now, the KFN holds significant lands to be serviced in the future, and brings considerable water resources to the table. Although some First Nations have built relationships and chosen to participate in regional districts (Tsaawwassen and Huu-ay-aht), others have declined (Tla'amin) due in part to the concern with recognizing a regional district as an equal level of government, as well as the lack of authority or weight accorded to the First Nation as one participant. How the KFN representation on any committee translates into a voice will therefore be critical in creating a partnership moving forward. There appears to be a good working relationship between the KFN and the local governments in the region, interest in working together moving forward, and mutual respect. However, relationships and trust take time, but are key to meaningful participation in governance by all parties moving forward.

The involvement of KFN in the utilities governance could represent a significant first step toward shared decision-making, and set the stage for further cooperation. This will require further conversations together with KFN so that the resulting framework for shared authority is co-created by the parties involved. KFN will need to be involved in developing the terms, structures and decision-making processes. Finding common ground may be challenging, although certainly there is a shared responsibility and desire for the health of the Valley as a whole. KFN emphasized that it looks out 50 to 100 years (or longer), which is a time-range that far exceeds the long-term time frame typically used in local government infrastructure and regional planning exercises (20 to 30 years).

Some potential factors to consider when sharing in decision making:

- Water brought to the table
- Amount of land in the service area (long term)

- Number of service connections
- Financial contribution to the service

Some options for moving forward involving the KFN could include:

1. Seek KFN involvement in designing the water/sewer or joint utility committee – while this study has initiated discussions with Council, staff and advisors, details would have to be explored so that KFN has a greater role in designing the process, including:
 - Identifying how they would choose to be involved, how many members, and how they would want to participate in decision-making (i.e. vote on issues at the Committee table, or to take issues back to their Council for discussion prior to any votes),
 - Identifying voting structure preferences, and determining the impact of using different bases for determining weighted voting, and
 - Identifying specific types of decisions that may warrant a different structure (decisions impacting current users vs future users, decisions regarding extension or expansion of services, conservation, etc.).
2. In the creation of any technical commission (and/or on the Management Advisory Committee), ensure that First Nations traditional knowledge are recognized and included on the committee.
3. Ensure participation and collaboration is the primary goal, regardless of whether KFN chooses to become part of the RD Board framework.

e.g. Cowichan Valley Watershed Board

It is also useful to remember that governance is an issue separate from service delivery. Designing a governance system together with KFN will likely take time. Efforts to build relationships and agree upon a governance approach do not have to impact more immediate agreements on servicing. Service agreements to deliver water or sewer services could be completed in the interim, to address shorter term needs, while progress is made on governance options.

6.0 NEXT STEPS

As noted previously, this *Issues Paper* is intended to summarize the results of the interview process, and the issues identified, as well as outline some preliminary models that might help to address some of the issues. In addition, the *Issues Paper*

was intended to consider opportunities to involve KFN in service governance moving forward. As the next step in the process, the models will be examined in more detail including the strengths and weaknesses of the different approaches, how the different models may help to address issues identified during the interviews, and how the proposed models might impact decisions, using past Committee and Commission decisions as examples. The analysis will consider potential options for how KFN could be involved in those models. In addition, the examples will be explored further to identify lessons learned, and past decisions of both the Sewage Commission and Water Committee will be examined in the context of the different approaches. The final paper will also compare the path forward to achieve the various models.

Appendix C

K'ómoks First Nation and Comox Valley Regional District Mutual Benefit Agreement dated September 2018 (section 6.4)

- 6.4 Following the Water Committee's review and consideration of the governance study, the Parties will engage in further discussions concerning the future decision making role of the K'ómoks First Nation in the management of regional water resources, which may include K'ómoks First Nation membership on the Water Committee as a voting member. The Parties agree that their discussion of any long-term governance model for the management of regional water resources will be based on the following:
- a) the results of the governance study;
 - b) K'ómoks Aboriginal rights and title;
 - c) the volume of water that each Party contributes to the Comox Valley Water Service;
 - d) appropriate measures to avoid conflicts of interest, including recusal of K'ómoks First Nation representatives from meetings of the Water Committee where the K'ómoks First Nation representatives have a conflict of interest;
 - e) water consumption requirements of each participant in the Comox Valley Water Service;
 - f) investment of the Parties in the upgraded Comox Valley Water Service water system; and
 - g) consideration of any amendments to provincial legislation, the Water Local Service Establishment Bylaw, 1995, or any other enactment, that may be required to implement the proposed governance model.