

Memorandum

Date: April 25, 2024

To: Levy County Board of County Commissioners (“BoCC”)

From: Nicolle Shalley, County Attorney; Andrew Carswell, County Engineer; Stacey Hectus, County Planning and Zoning Director; Jared Blanton, County Budget Officer; and Wilbur Dean, County Coordinator (“County Staff”)

Re: Request for the County to join the Board of the Waccasassa Water and Wastewater Cooperative (the “Cooperative”)

Background

At the November 22, 2022 Regular Meeting, the BoCC heard an informational item regarding potential County involvement in the Cooperative. As part of that item, the BoCC received a Feasibility Report titled “Phase 1: Regional Alternative Water Supply Feasibility – Cedar Key, Bronson, Otter Creek, and Unincorporated Areas in Levy County” and dated September 26, 2022, prepared for the Suwannee River Water Management District by Wetland Solutions, Inc. (the “Report”); a draft Interlocal Agreement to form the Cooperative; and a County Staff Memorandum dated November 16, 2022 that summarized the Report (and the Project objectives and two Project alternatives described therein), along with some preliminary questions/issues for the BoCC to consider. After discussion and public comment, the BoCC directed County Staff to gather additional information and report back at the December 6, 2022 regular meeting.

At the December 6, 2022 Regular Meeting, County Staff presented a second County Staff Memorandum dated December 5, 2022 that provided answers to several key questions and a decision tree (with issues and alternatives noted) for BoCC consideration. After discussion and public comment, the BoCC approved sending a letter of support for the Project and the Cooperative to the Suwannee River Water Management District.

On June 13, 2023, the Cooperative was created by Interlocal Agreement between the Town of Bronson, the Town of Otter Creek and the Cedar Key Water and Sewer District, an independent special district governmental entity (“CKWSD.”) **A copy of the Interlocal Agreement is attached as it is referred to by Section throughout this Memo.** Pursuant to Section 163.01(7), Florida Statutes, the Cooperative functions as a legal entity separate from its Members. To date, the Cooperative has retained legal counsel (Fugate & Fugate Law) and financial and administrative assistance (Beauchamp & Edwards CPAs). The Cooperative is considering a grant writing consultant to assist with locating funding for the Cooperative and Project and an engineering consultant to provide design, inspection and related services for the Project.

At their January 17, 2024 Meeting, the Cooperative Board discussed expanding the Board to include the Levy County BOCC and Levy County School Board and the Meeting Minutes reflect that: “Levy County is ready to jump back into the cooperative. As such, Mayor Partin will be reaching out to Commissioner John Meeks of Bronson to represent Levy County and Tammy Boyle of Cedar Key to represent the School Board. Each of these individuals has more clout in Tallahassee. Zim Padgett makes a motion allowing Chair Partin to speak with Levy County and the School Board about joining the board and expanding the board to reflect five voting members. Joe Hand seconds the motion. The motion passes. It is important to note that each of the municipalities must approve of the change in leadership. In addition, both members must be added to the board at the same time to allow for an odd number of voting members.”

At the March 5, 2024 Regular Meeting, the County Coordinator presented an item for the BoCC to discuss adding a County Commissioner to the Cooperative Board. The BoCC requested that County Staff return with further information. This Memo is intended to provide information and analysis to assist the BoCC in developing a basic understanding of the Cooperative in order to make a reasonably informed decision.

Information and Analysis

A County Commissioner cannot be a Director of the Cooperative unless the County becomes a Member of the Cooperative. (Section 2.04 of the Interlocal Agreement)

- **Who are the Members of the Cooperative and how is a new Member added?** The initial members are the CKWSD, the Town of Bronson and the Town of Otter Creek. The Cooperative Board may admit additional Public Agencies (as defined in Section 163.01, F.S. – which includes counties) to membership upon application of the Public Agency and the affirmative vote of the majority plus one of all Directors at a duly called meeting of the Cooperative. Approval of the governing bodies of the Cooperative Members are not required to admit a new Cooperative Member. (Section 2.03 of the Interlocal Agreement)
- **Who governs the Cooperative and how are they chosen?** A Board of Directors comprised of one Director appointed by each Member is given broad powers and duties “for the governance and management of the affairs of the Cooperative, for the execution of the powers, obligations, and responsibilities vested in the Cooperative, and for carrying into effect the provisions of this Interlocal Agreement.” (Sections 2.04 and 2.08 of the Interlocal Agreement)

In deciding whether to become a Member of the Cooperative (and therefore eligible to appoint a Director to the Cooperative Board), the BoCC should carefully consider the purpose of the Cooperative, the requirements of each Member, the objective(s) of the County, and the County resources that will be required.

- **What is the purpose of the Cooperative?**

“[T]o plan for, develop, finance, construct, improve, own, operate, maintain, manage, acquire, and dispose of Cooperative Facilities for the purpose of providing Wholesale Water Service

and/or Wholesale Wastewater Service. The Cooperative may also provide local/retail water and wastewater service subject to the express consent of the entity that provides or is otherwise authorized to provide retail/local water and/or wastewater services to such areas.” (Section 2.02 of the Interlocal Agreement)

“Wholesale Wastewater Service” is defined as “the Cooperative’s transmission, treatment, and disposal of wastewater collected by a wholesale customer of the Cooperative, via such wholesale customer’s local wastewater collection system, and transmitted to the Connection Point(s).” “Wholesale Water Service” is defined as “the Cooperative’s production, withdrawal/pumping, treatment, and transmission of water to the Connection Point(s) to be used by a wholesale customer of the Cooperative for distribution to its retail customers via a local distribution system.” (Section 1.01 of the Interlocal Agreement)

The Cooperative is granted broad powers to achieve its purpose, including hiring staff, adopting a budget, capital improvement planning, constructing infrastructure, setting rates and connection fees (Article III of the Interlocal Agreement). The Cooperative must generate its revenue from Utility fees, rates and charges; grants; contributions from its Members; and bonds and other indebtedness. The Cooperative is not authorized to levy ad valorem taxes. (Section 3.07 of the Interlocal Agreement)

- **What are the requirements of the Members?**

- a. Are Members required to purchase Water and Wastewater Service from the Cooperative? The Interlocal Agreement does not generally address whether its Members are required to purchase Wholesale Water Service or Wholesale Wastewater Service; however, there are specific provisions for the CKWSD that make clear that CKWSD is not required to receive any service from the Cooperative and that CKWSD does not consent to the Cooperative providing local/retail service to customers within the CKWSD service area. (Section 3.11 of the Interlocal Agreement)

This is interesting because (1) the purpose of the Cooperative is to provide Wholesale Water and Wastewater Service; and (2) the Project identifies Cedar Key (including its tourist population) as the largest water and wastewater service user and a primary driver for the Project need. Presumably, the Cooperative would not undertake a Project to serve Cedar Key until such time as binding wholesale agreements were signed with CKWSD. And likely, if CKWSD was not a wholesale customer, the Project would not be financially viable.

- b. Are Members required to consent to the location of Cooperative Facilities? Yes, each Member does so when it signs the Interlocal Agreement. “Cooperative Members hereby consent and agree to the Cooperative acquiring, owning, improving, operating and maintaining Cooperative Facilities within their respective jurisdictions in accordance with the terms of this Interlocal Agreement, sound engineering practices and applicable law.” (Section 2.02 of the Interlocal Agreement). “In carrying out their statutorily

conferred zoning, land use and comprehensive planning powers and responsibilities, the Cooperative Members shall not prohibit or unreasonably restrict the use of land for the location of Cooperative Facilities or for other Cooperative purposes.” (Section 3.05.B. of the Interlocal Agreement).

The BoCC should consider whether it is prudent to give such consent and acquiescence in advance, or whether same should be given on a project by project basis when there is a clear and complete understanding of what the Cooperative is proposing.

- c. Are Members allowed to withdraw from the Cooperative? Yes, at any time, provided there are at least two Cooperative Members remaining. (Section 5.01.A. of the Interlocal Agreement). If the County becomes a Member and other Members withdraw – such as Bronson and CKWSD - the County could be left with significantly greater responsibilities.
 - d. Are Members responsible for the obligations of the Cooperative while active or upon termination? The Cooperative is a separate legal entity and responsible for its own obligations (Section 4.01.F. of the Interlocal Agreement); however, upon termination of the Cooperative “prior to any such termination becoming effective, provision must be made for payment of all outstanding expenses and liabilities of the Cooperative” and “[i]f the Cooperative has insufficient funds to satisfy its outstanding Obligations, expenses, and liabilities (including any grants awarded to the Cooperative that could trigger repayment requirements if they are not satisfied), the responsibility for funding any deficiencies shall be shared equally by the Cooperative Members unless all Cooperative Members agree in writing to a different method of allocating responsibility for such deficiencies.” (Section 5.02. of the Interlocal Agreement)
 - e. Is the County required to take over the Cooperative utilities if terminated or abandoned? No, not if it does not become a Member. Section 367.165, Florida Statutes, states that in the event of abandonment of a water or wastewater utility regulated by the Public Service Commission (which is defined in Section 367.022, F.S. to exempt systems owned by governmental authorities – such as the Cooperative and local governments- and certain other systems), the County is required to petition the Court for appointment of a receiver to operate the utility until a permanent owner/operator can be found and the County may be the receiver.
- **What is the County’s objective in becoming a Member?**
 - a. To purchase water for the County’s existing Manatee Water Utility? Manatee Water is not within the Study Area, so it will not be served by the Project or the Cooperative.
 - b. To purchase water for the County’s existing University Oaks Water? University Oaks is within the Study Area, but is located approximately 3 miles from the planned Project. The Cooperative could make alternative plans to extend wholesale lines to serve

University Oaks and other areas North of Bronson. The County could install infrastructure to connect the University Oaks distribution system to the Cooperative wholesale transmission lines, but County staff recommends exploring the cost and feasibility— both capital and O&M for such a project. The Report (page 25) stated that Bronson has considered annexing University Oaks and including it in their water service area, this should be explored if the County would prefer to exit the utility business and leave that to the municipalities.

- c. To purchase water/wastewater service for new County utilities in the unincorporated area (e.g. Rosewood and Sumner)? The BoCC could consent to the Cooperative serving as the local utility in this area, rather than becoming a Member of the Cooperative. Alternatively, the BoCC could establish a County utility and install local distribution/collection infrastructure to serve such areas. The Report (Pages 110-111) estimated the cost for distribution/collection infrastructure to serve the Rosewood and Sumner areas to be \$4.3 million for water and \$15.8 million - \$19.5 million for wastewater depending how far service extends from State Road 24.

Regardless, the BoCC should consider – from a Planning and Zoning perspective - that providing utilities encourages and supports development. This area is primarily zoned F/RR (low density, 20 acres per dwelling unit) and is affected by Flood Zones, Hurricane Surge areas and Environmental Sensitive Land overlays – it is generally not conducive to the high density development that is necessary to pay for utility infrastructure and operations.

- d. To support the regional effort? The BoCC can support the regional effort without becoming a Member and incurring the responsibilities that come with that membership.
- e. Other?

- **Does the County have adequate resources (staff and money) to devote to local utility operations and to being a Member of the Cooperative?**

Existing County Water Utilities are managed by the County Construction and Maintenance Department and operated by a Contractor. County Planning & Zoning, Engineering, Legal and Budget staff are currently functioning at workload capacity. If the County becomes a Member of the Cooperative, additional County staff and assistance from outside consultants will be needed to support and inform the BoCC and the BoCC's appointed Director. Funds will need to be budgeted for these purposes.

- **Has the BoCC gauged resident interest and acceptance of mandatory connection and paying for water and wastewater utilities?** The Study focuses on the need for the Project in terms of environmental benefits and existing poor water quality and septic tank issues. Often government must take on projects that serve necessary public purposes but do not “pay for

themselves” (meaning they are subsidized by the General Fund.) However, as a general principal, utilities should be paid for by the users – those who take the service. Is this Project requested by residents in the unincorporated Study Area? Is the BoCC prepared to mandate connection (as required by Section 381.00655, F.S.) once a system is available to serve? Are residents along the Project route amenable to this mandatory connection, to abandoning their existing wells and septic systems, and are they willing and able to pay the rates that must be established to make the water and wastewater utility service sustainable?

Recommendation

County Staff recommends the BoCC carefully consider and discuss its objective(s) and the responsibilities that it will take on if the County becomes a Member of the Cooperative, including necessary staffing and budgeting. The BoCC can also consider timing – is it necessary to become a Member now or can that decision be made at some point in the future.

If the BoCC decides the County should become a Member at this time, it must make application to the Cooperative. Upon unanimous approval by the Cooperative Board, the BoCC must execute, deliver and record a counterpart to the Interlocal Agreement to effectuate the County’s Membership. The BoCC could request and negotiate amendments to the Interlocal Agreement, if any provisions are concerning to the BoCC. After executing the Interlocal Agreement, the BoCC will be eligible to appoint a Director to the Cooperative Board. The Director (and assigned County staff) will have an on-going obligation to monitor and keep the BoCC informed of the Cooperative’s activities and projects and to develop and represent the BoCC position on those activities and projects. Keeping in mind, the County will have but one vote on the Cooperative Board.