Union Water Supply System Restructuring Business Case

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UNION WATER SUPPLY SYSTEM

UWSS Draft Mission/Vision Statement

The UWSS strives to provide safe, reliable and sustainable water supply that always exceeds applicable water quality standards to all current and future customers in a manner that is cost effective, environmentally friendly and fair among the municipal partners

What Works Well At UWSS?

- People think service is good
- Current Board members are forward thinking and collaborative
- Operational part works well (OCWA)
- Projects that can be revenue funded internally go forward well
- Good relationship with local municipalities
- Water supply is great

What Are the Main Issues?

- **Legal Status** – UWSS has no legal status; it is not a corporate body, municipal board or department.
- **Debt/Financing** – UWSS debt is carried by owner municipalities; UWSS cannot obtain financing on its own
- **Government Grants** – UWSS cannot apply or receive government grants directly; must be done through owner municipalities
- **Common Assets** – Who owns what? Specifically, in regards to common asset watermains.
- **Priorities** – Each municipality has its own priorities in regards to water and has no obligation to put UWSS interests before its own
- **Authority** – UWSS has very little authority/decision making power over its own operations.

Ownership and Corporate Structure Options

- Two things to consider if UWSS to be re-structured in any way:
  - Ownership of UWSS (who owns it) and
  - Corporate Structure (how is it governed)
- Ownership preferences should be addressed first
- Then can look at corporate structure and governance options

What is UWSS?

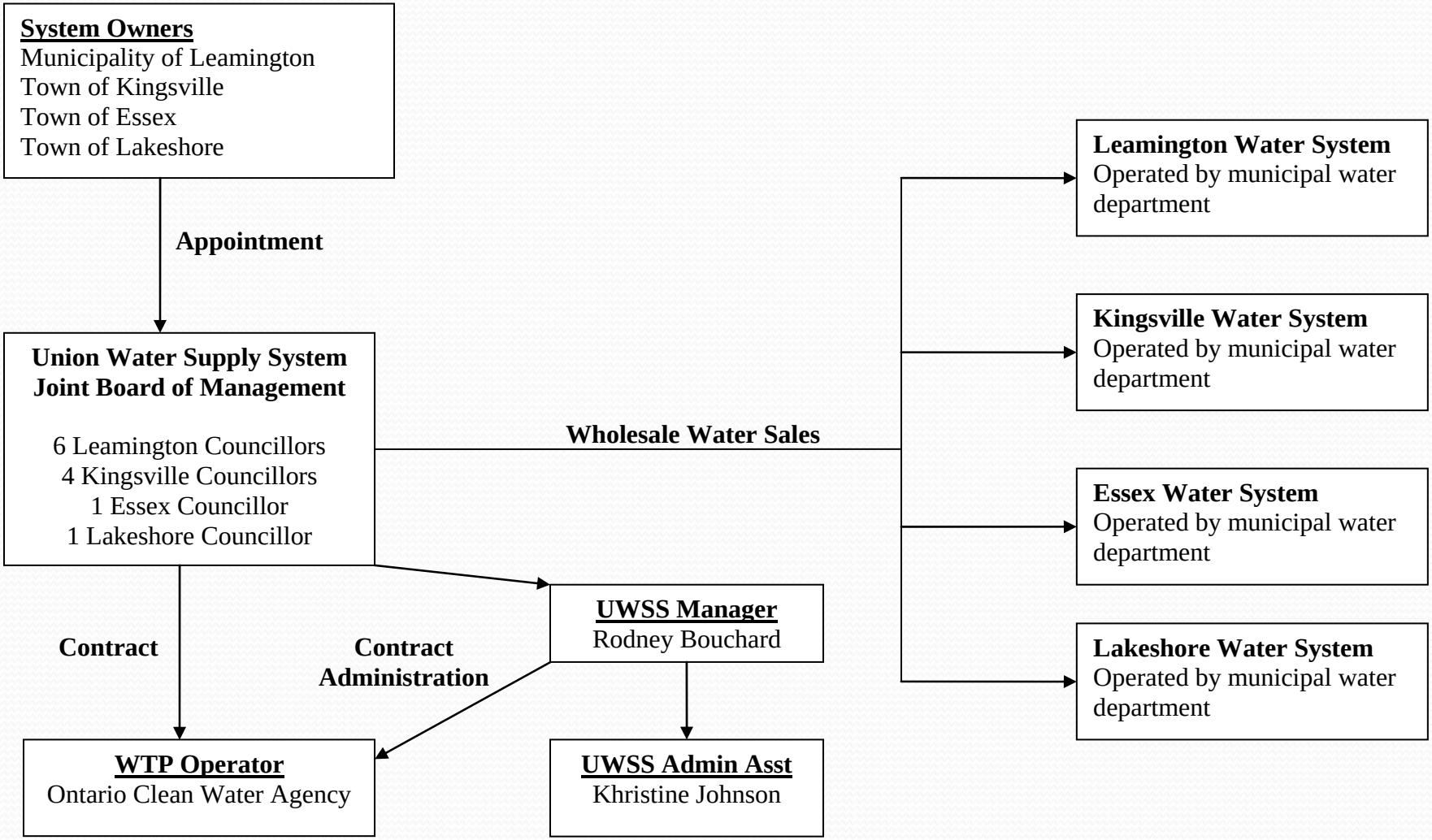
History

- The Union Water System (UWS) was commissioned in 1960 by the Ontario Water Resources Commission (OWRC)
- Original participants served by the UWS included the Town of Leamington, Town of Essex, Township of Maidstone, Township of Gosfield North, Township of Gosfield South, Township of Mersea and H.J Heinz in Leamington
- The Town of Kingsville and Township of Rochester joined the UWS around 1970
- In 1972 OWRC operations, including the UWS were absorbed into the newly created Ministry of Environment

History

- In 1993, ownership and operation of the UWS was transferred to the newly created Ontario Clean Water Agency (OCWA).
- The *Municipal Water and Sewer Transfer Act, 1997* required transfer of ownership of water and sewer systems from OCWA to municipalities;
- In 2001 the *Transfer Order for the Union Water Supply System* was completed and the Municipalities of Leamington, Kingsville, Lakeshore and Essex became the owners of the system.
- The 2001 Transfer Order stipulated the creation of a Joint Board of Management that would oversee the management of the UWSS on behalf of the 4 owner municipalities.
- OCWA was retained by the UWSS Joint Board of Management to operate the system on its behalf.

UWSS – Governance/Structure



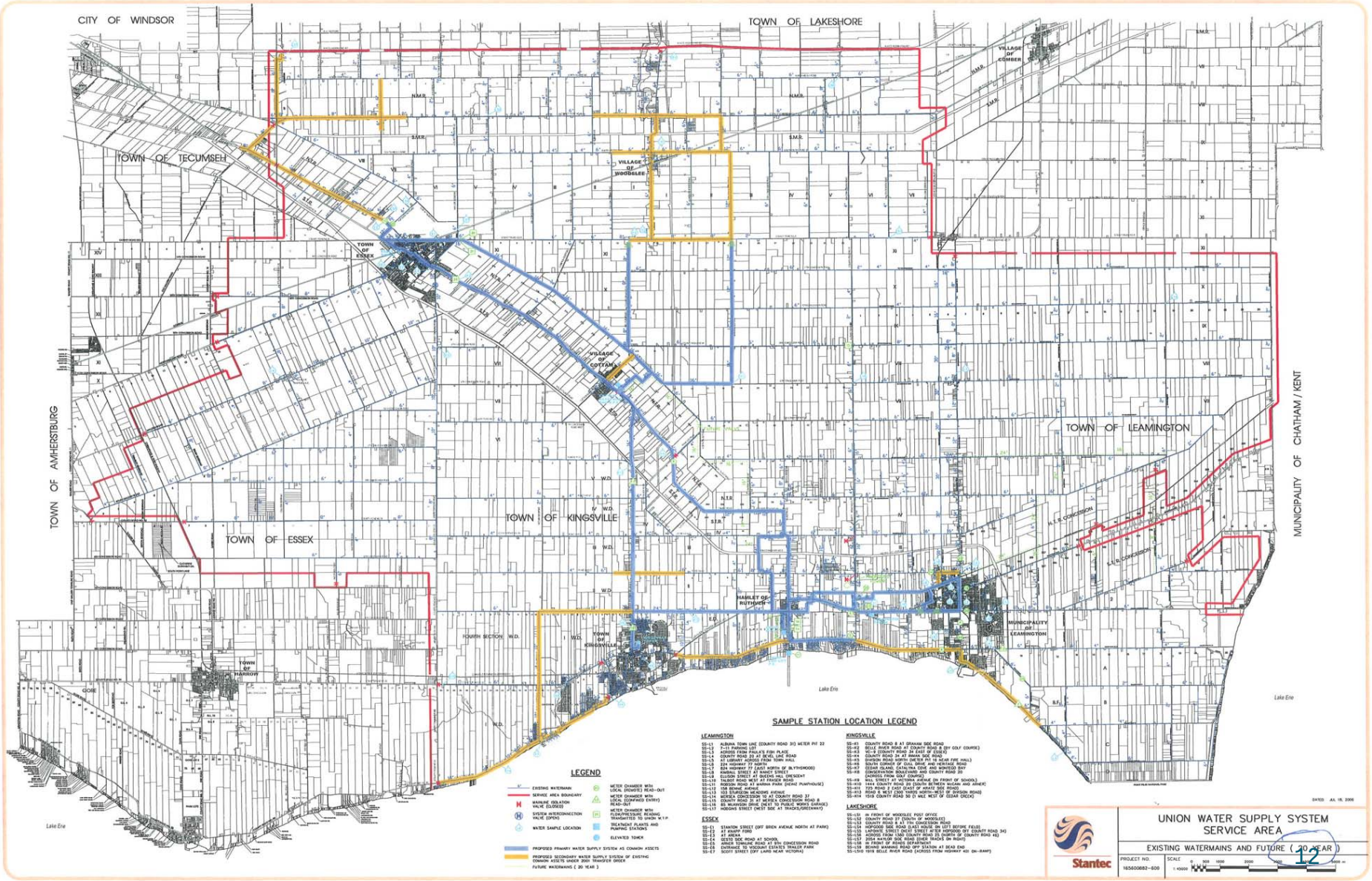
UWSS - Ownership

- As per Transfer Order, the interests of the Municipalities in UWSS shall be as tenants-in-common
- Ownership of the common system is based on each municipality's proportional consumption of the total flows of the system;
- The ownership interests were last set January 1, 2017 as:
  - Leamington – 50.55%
  - Kingsville – 40.33%
  - Essex – 6.97%
  - Lakeshore – 3.15%.
- The ownership interest is to be updated every four years.

UWSS – Common Assets

- Low Lift Pumping Plant
- Ruthven Water Treatment Plant
- Cottam Reservoir and Booster Station
- 4 Elevated Water Towers
  - Albuna WT
  - Leamington WT
  - Kingsville WT
  - Essex WT
- Approximately 140km of "common" transmission watermains as per 2008 Agreement

UWSS Service Area



UWSS Governance - Review History

- **2008-2009 Governance Review**
  - Governance Experts (M. Kelleher, Dr. K. Furlong, Dr. K. Bakker) were retained to facilitate review of UWSS Governance
  - Questionnaires were sent and interviews and workshops conducted with UWSS, Board members, and municipal administrative staff
  - Results of governance review identified governance and structure issues (i.e. lack of authority, inability to directly obtain financing and grants, etc)
  - Consensus on modifications to governance and structure not achieved. No changes were made

- **2012 Governance Review**
  - Internal governance review undertaken by UWSS Manager
  - Consultations conducted with water utilities, municipalities in various provinces and in US in regards to governance/structure models for drinking water serving
  - Governance model/ structure alternatives evaluation conducted and presented to UWSS Board. Municipal Services Corporation (MSC) identified as best alternative.
  - UWSS Board direction to undertake further review of MSC options, including financial viability

Evaluation of Ownership and Corporate Structure Options

Ownership Options

- **As Is** – 4 Municipalities as Tenants in Common
- **Municipal Owners + Preferred Customers –** 3 or less Municipalities as tenants in common with others as Preferred Customers
- **Single Municipality Ownership**– Pumping plant, treatment plant and Cottam PS owned by one Municipality (County owernship also considered)
- **Lake to Tap Option**– all one system; one entity responsible for water including treatment and distribution

Corporate Structure Options

- Local Joint Board of Management – *Current Structure*
- Municipal Service Board (MSB)
- Municipal Service Corporation (MSC)
- New "Wish List" Option – Special Legislation by Province

Municipal Services Board (MSB)

- Similar to local services board but in-line with Municipal Act, 2001 as amended
- Can own land
- Can issue debt – but reflected on municipal books
- Maintains financial clarity and reporting under Municipal Act
- Meetings must be public
- Can have mix of elected and non-elected Board members
- MSB is basically an "agency" of a municipality

Municipal Services Corporation (MSC)

- Section 203 of Municipal Act allows creation of Joint MSCs
- Must do a business case to justify creation of MSC
- Can be incorporated as share capital or non-share capital corporation
- For drinking water, MSC must be publicly owned
- MSCs have same investment authority as municipalities
- MSCs may borrow and secure it with corporate assets (revenue bonds)

MSC's (*continued*)

- Meetings not required to be public but can be
- Can have non-elected officials
- Shareholder Declaration(s) can be used to limit MSC's authority,
- Asset transfer policy is required from the Municipality(ies) prior to transfer of any assets to MSC
- MSC directors and officers deemed "members" for purposes of Municipal Conflict of Interest Act, EA Act, and MFIPPA

“Wish List” Option

Special Act of Provincial Legislation to create new entity that addresses existing issues;

- May not be much interest for this at provincial level since existing legislation (e.g. Section 203 of Municipal Act; O. Reg 599 – Municipal Services Corporations) can address most existing UWSS issues

How were Alternatives Considered?

Ownership Options

- As-Is
- Owner Municipalities + Preferred Customers
- Single Municipality Ownership
- Lake to Tap Option

Corporate Structure Options

- Joint Board (local board)
- Municipal Services Board (MSB)
- Municipal Services Corp. (MSC)
- "Wish List" – Special Legislation

Resulted in numerous Ownership/Corporate Structure Alternatives

Results of Alternatives Evaluation – Preferred Solution(s)

- A Joint Municipal Services Corporation (eg. UWSS, Inc.) of the 4 existing municipal owners with Lake to Tap option was identified as the preferred option through the alternatives evaluation.
- However, the Lake to Tap option would require that the UWSS take over local distribution services and possibly customer billing. This was not considered feasible at this time.
- Thus, the alternate preferred solution was identified as a Joint Municipal Services Corporation of the 4 existing municipal owners with only the existing "common assets" that are considered part of UWSS.

Legal and Financial Review

- **2014-2015 – Legal Review of Existing UWSS Governance**
  - Legal team with expertise in corporate/business law and drinking water/ wastewater laws retained to undertake a review of existing UWSS Governance.
  - UWSS Governance legal review report prepared and presented to UWSS Board in May 2015
  - Report highlights indicate restructuring to MSC is possible and would benefit UWSS;
  - UWSS Board resolution to investigate necessary processes required in regards to restructuring UWSS into a Municipal Services Corporation under Section 203 and O.Reg. 599/06 of the Municipal Act

- **2017-2018 – Financial and Legal Business Case for Restructuring**
  - PricewaterhouseCoopers ("PwC") retained to undertake a Financial review and Business Case for UWSS Restructuring into an MSC
  - Willis Business Law retained to revise 2015 UWSS Legal Review Report and prepare Legal Business Case for UWSS Restructuring into an MSC
  - Consultations undertaken with UWSS Board members, municipal administration and senior staff, OCWA, and other government entities
  - Draft Financial and Legal Business Case presented to UWSS Board and shared with senior administrators at owner municipalities
  - UWSS Board directs UWSS Manager to present restructuring business case with Councils of municipal owners.

UWSS Restructuring Business Case

Recommendations

- The Legal Review by Willis Business Law indicates that UWSS can readily be restructured into an MSC and recommends that an incorporated UWSS would provide substantial governance and legal benefit over the existing tenant in common ownership structure.
- The Financial Review and Business Case by PWC stipulates that a restructuring of UWSS into an incorporated entity would allow for substantial financial related benefits (i.e. self-financing, credit-worthiness, future capital planning and funding, etc.) that are currently not readily available to the current UWSS structure.
- The Legal and Financial reviews also indicate that the owner municipalities would also benefit from the restructure of UWSS into an incorporated entity (i.e. MSC), Example – new UWSS Inc. debt would not be registered on municipal ledgers thus no effect of <u>new</u> UWSS debt on municipal debt capacity

UWSS Ownership

- UWSS would be incorporated into a Municipal Services Corporation under O. Reg. 599/06 of the Municipal Act
- Shareholders would consist of existing municipalities; Municipality of Leamington, Town of Lakeshore, Town of Kingsville and Town of Essex
- Ownership shares/ percentage would be based on UWSS water consumption.
- Ownership shares would be reviewed every 4 years;
- UWSS existing assets would be transferred to UWSS, Inc. under an Asset Transfer Policy

Governance

- UWSS, Inc. would be governed by a Board of Directors
- Board of Directors will consist of municipal elected councillors from the 4 municipal shareholders
- Each shareholder will appoint 1 Board director as a shareholder member
- Each shareholder municipality will also appoint an additional director for each 10% of total UWSS water demand.
- Stipend could be provided to Board directors;

Governance

- Day to day operations of UWSS would be undertaken by UWSS executives/ officers appointed by the Board;
- Board meetings would be open to public
- UWSS, its Board directors and UWSS officers/ staff would be subject to MFIPPA and transparency requirements under the Municipal Act
- UWSS Board would retain the ability to set water rates subject to Board policies and Board approved agreement(s) with UWSS lenders.

Operations

- Water Treatment operations at Ruthven Plant would continue under a contract operations agreement. Currently this contract is with OCWA;
- Local distribution of treated water would be the responsibility of each municipality
- An agreement would be set out between UWSS Inc. and each municipality for repair of UWSS Inc. "transmission" watermains
- An agreement would be set out between UWSS Inc, OCWA and each municipality for distribution regulatory monitoring requirements

Admin/Finance Matter

- Financial administration for UWSS, Inc. would initially be under a formal agreement with Municipality of Leamington
- A direct relationship between UWSS Inc and end user customer would need to be established. However, customer billing would remain the responsibility of each municipality under formal agreements with the municipalities.
- Water Bills to customers would show portion of fees attributed to UWSS Inc.
- Under formal agreement, Municipalities would act as agents on behalf of UWSS. Liability for UWSS related services would remain with UWSS (i.e. uncollectible accounts).

Benefits of Restructuring

- An incorporated UWSS would be a legal entity and have the legal powers to procure, contract, buy property, etc.
- UWSS Inc. would constitute a municipally owned corporation; there is <u>no privatization of the UWSS</u> involved
- An incorporated UWSS would be able to apply for grant funding separately from the Municipalities – no "competition" between UWSS and Municipal priorities
- An incorporated UWSS would borrow on its own to finance Board-approved capital expenditures
- New UWSS Inc. debt would not attributed to the Municipalities, and would not affect Municipal debt capacity

Benefits (cont'd)

- An incorporated UWSS that can borrow and incur debt would avoid "rate shock" that could occur with financing a large capital plan on rate revenue alone
- An incorporated UWSS would grant the UWSS Board with the authority needed to adequately plan and finance future capital upgrades, asset replacement, and growth.
- An incorporated UWSS would own its own assets, including transmission water main, and thus address current "common asset" watermain ownership issues.
- An incorporated UWSS would be liable for itself and thus provide better liability protection to municipal shareholders.

QUESTIONS?