

LITTLE ROCK SANITARY SEWER COMMITTEE
Minutes of the Meeting Held
August 20, 2008

The Little Rock Sanitary Sewer Committee met at 4:00 p.m., Wednesday, August 20, 2008, in the conference room of Little Rock Wastewater. Those attending included:

Little Rock Sanitary Sewer Committee

James R. Pender, Vice Chair
Dale J. Wintroath, Secretary
Andrew L. Harper, Jr., Member
Cynthia C. Miller, Member

Little Rock Wastewater

Reggie A. Corbitt, P.E., CEO
James A. Barham, Manager of Finance
Stanley Miller, Manager of Operations
Mack M. Vought, Manager of Maintenance & Construction
Don F. Hamilton, General Counsel
Howell Anderson, P.E., Director of Engineering Services

Others attending included Craig Johnson of Camp Dresser McKee, S. Vincent Hotho of Garver Engineers, Hal Joseph Kemp, Attorney, James Alexander of Morgan Keegan & Co., Erin Cullum and Shep Russell of the Friday Law Firm, and support staff from Administration and Community Relations, Engineering Services, Environmental Assessment Division, and Information Services. Ex Officio Member Brad Cazort did not attend.

The meeting was called to order by Mr. Pender and, on motion duly made and seconded, the Minutes of the July 16, 2008, meeting were approved as written. Mr. Pender then called for public comments and there were none. Mr. Pender then stated that the term of Chair, Charles Goss, expired the previous month and he had assumed the position of acting chair until an election of officers is held. He said that the same situation had occurred with former Chair, Stewart Mackey and the Sewer Committee had continued to meet with the remaining officers until year end when the election is generally held. He asked whether the bylaws were specific about the election of officers and Mr. Hamilton replied that the bylaws stated that should an officer of the Committee

terminate service the Committee should elect an officer at the next meeting, so he thought it would be appropriate to schedule an election of officers for the September meeting. On motion by Ms. Miller, seconded by Mr. Wintroath, the Sewer Committee voted unanimously to place the election of officers to serve for the remainder of the year on the September meeting agenda. There was then discussion as to whether officers should be nominated prior to the September meeting and on motion by Ms. Miller, seconded by Mr. Harper, the following slate of officers was nominated:

James R. Pender, Chair
Dale J. Wintroath, Vice Chair
Andrew L. Harper, Jr., Secretary

Mr. Corbitt then presented a letter from Skip Davidson of the Davidson Law Firm, Ltd., on behalf of Mountain Pure Water Company stating that Mountain Pure believed that the past charges for sewer service are unjust and inequitable and requesting credit for past charges and the adjustment of future charges. Mr. Corbitt stated that Mountain Pure is in arrears \$47,254.23. He then introduced Stanley Suel, Director of the Environmental Assessment Division, who explained the requirements of the Rate, Sewer Use, and Pretreatment Ordinances pertaining to this type operation. He said that Mountain Pure is operating from a portion of the former Gold Star Dairy location. When the Turner group purchased Gold Star, the dairy and bottled water operations were separated into two different business entities. Mountain Pure makes bottled water as well as various fruit drinks. Mr. Suel stated that, under the present sewer use ordinance, Turner-Coleman Dairy and Mountain Pure were required to separate their sewer lines for each facility in order to enforce compliance with the pretreatment program.

Mr. Suel said that a compliance order from LRW dated August 23, 2001, required Mountain Pure to install a wastewater sampling point from which samples could be collected to determine the measurements for wastewater extra-strength surcharge and volumetric sewer charges. A meter was installed, but failed to comply with the order and the permit requirements despite numerous conversations with LRW staff over the past five years. Mountain Pure maintains that over 75% of the water it uses is purchased from Central Arkansas Water, for which a sewer charge is billed, and since that water is used as an ingredient it does not enter the sewer system but they are being billed as though it were. Following this request from Ronald Gillert, Chief Financial Officer of Mountain Pure LLC, they were advised that the Utility is obligated to follow Little Rock Ordinance No. 19,647, which requires that when a customer whose water use is such that an appreciable quantity does not reach the sewer system, the customer may be permitted by the Utility, to have a meter installed, at the customer's expense, for the purpose of determining the amount of such quantity not reaching the sewer system, and the meter shall be inspected and approved by the Utility. The two methods acceptable to LRW for making the flow measurements are (1) an LRW approved sewer meter that is installed to accurately measure flow prior to entering the LRW sewer main or (2) diversion meter(s) appropriately placed in the facility to segregate water that goes into the product versus water that is used to clean and

sanitize process equipment, floors, etc. Mountain Pure chose to install a sewer meter; however, the meter has never met LRW's approval because of issues relating to installation and calibration of the flow measuring system.

Mr. Suel said that when comparing the gallons/year of bottled product sold (annualized data from 2003-2005 was provided by Mountain Pure) to the annual water consumption data obtained from Central Arkansas Water, the comparison revealed varied between 55%-98%. This equates to an annualized range of 45 – 2% being discharged into the public sewer system. He stated that one reason for the extreme variance might be the fact that outdated or spoiled products are disposed of through the sewer system, or the fact that Mountain Pure trucks spring water to Little Rock for bottling at their facility in Little Rock.

Mr. Corbitt explained that Central Arkansas Water would not discontinue service in this instance since there are separate meters, so staff is requesting the Sewer Committee's approval to take legal action to obtain the unpaid charges. Mr. Hamilton noted that Skip Davidson, who represents Mountain Pure, had expected to attend the Sewer Committee meeting but had a conflict due to a scheduled jury trial. A meeting is set for the 27th to discuss the matter further. After discussion, and on motion by Ms. Miller, seconded by Mr. Harper, the Sewer Committee adopted the motion to authorize LRW to file suit to recover the amount owed and institute such legal proceedings as necessary, including the appropriate administrative action to obtain compliance.

Howell Anderson presented the results of the bid opening held July 1, 2008, for the 2008 Large Diameter Sanitary Sewer Pipe Cleaning Project. Mr. Anderson stated that the amount of the lowest bid received exceeded the budgeted amount; therefore, the project was reduced in an effort to reduce the overall costs. The adjusted low bid in the amount of \$200,063.20 was submitted by Ace Pipe Cleaning, Inc., of Kansas City, Missouri. After discussion, and on motion duly made and seconded, the Sewer Committee voted unanimously to award the bid to Ace Pipe Cleaning, Inc.

After discussion and on motion duly made and seconded, the Sewer Committee unanimously approved the following resolutions:

A Resolution Approving the Final Engineering Report for the Arkansas Natural Resources Commission Revolving Loan Fund (RLF) Program Authorizing and Directing the Little Rock Wastewater Chief Executive Officer (CEO) to Submit the Final Engineering Report on the Arch Street Pump Station Improvements to all Appropriate Agencies and Authorizing and Directing Said CEO to Certify that the Public Meeting Was Held in Conformance with the Published Public Meeting Notice.

A Resolution Recommending the Offering of up to \$16,000,000 of City of Little Rock, Arkansas Sewer Revenue Bonds, Series 2008 for the Purpose of Providing Additional Funds for the Construction of the Little Maumelle Treatment Plant and Construction of Extensions and Other Betterments

and Improvements to the City's Sewer System, Including Particularly, without Limitation, the Redundant Force Main from the Arch Street Pump Station to the Fourche Creek Treatment Plant; and Prescribing Other Matters Relating Thereto.

A Resolution Approving and Recommending the Transfer of Ownership of Certain Property Owned by the City of Little Rock for the Use and Benefit of the Little Rock Sanitary Sewer Committee Currently a Part of the Adams Field Treatment Plant Property, to the Use and Benefit of the Little Rock Airport Commission.

A Resolution of Appreciation to Charles G. Goss for his Service on the Little Rock Sanitary Sewer Committee

After discussion and on motion duly made and seconded, the Sewer Committee unanimously approved the following Investment Work Order:

<u>Item</u>	<u>Amount</u>
2008 Large Diameter CIPP Rehabilitation	\$490,695

After discussion and on motion duly made and seconded, the Sewer Committee unanimously approved the following Purchase Approval Request:

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Madewell Products Corporation	Trailer Mounted Rehab Machine	\$54,401

Mack Vought reported one dry weather overflow during the month of July, bringing the annual total to 14. He noted that the overflow was caused by equipment failure. Mr. Vought called attention to the maps showing the locations of both non-capacity, or dry weather overflows, and capacity overflows and commented that the maps will be included in all future Maintenance Division monthly reports.

Jim Barham, Manager of Finance, presented the financial report for the month of July, 2008. After discussion and upon motion duly made and seconded, the financial reports were approved by the Sewer Committee, including the payment of Operations & Maintenance expenditures in the amount of \$1,839,634. The Consolidated Statement of Cash Receipts and Disbursements reflect receipts of \$5,266,977 and disbursements of \$8,349,245, decreasing funds available for the month by \$3,082,268. Net income for the month is \$405,081 and net income for the year to date is \$1,749,356.

Stan Miller reported there were no NPDES violations at the treatment plants for the month of July. Mr. Miller also reported that the hydraulic upgrade at the Fourche Creek Treatment Plant is being delayed and Maintenance and Operations are working to

improve local operations. He called attention to new reports pertaining to plant efficiency.

Howell Anderson reported that construction of the peak flow attenuation basin continues to progress well, noting that the side slopes are being poured. The pump station and force main projects are progressing well. The CDM Contract I for the access road at the Little Maumelle Treatment Plant should be completed by August 25th. Mr. Anderson said the road is in the gravel and asphalt stages and the wet weather so far in August has not been normal for this time of year but the contractor felt that he will come close to meeting that time frame. He said that Max Foote Construction, the contractor for the treatment plant, etc. is ready to move equipment in and begin construction as soon as the access road is completed. He said that CDM is finalizing the documents for Contract III, the Little Maumelle Pump Station, and the project should be advertised for bids on August 24th, and the bid results presented to the Sewer Committee at the October meeting. He also mentioned that Contract IV for the conveyance lines should be advertised within a month to six weeks and he hoped to have the results of those bids for the November meeting. He said that the final cost is needed for the current bond issue. Mr. Anderson stated that there are three overflow mitigation collection system projects under constructions and three in design stage, two of which are basically complete and these projects are the final Revolving Loan Fund projects for which funding remains. Other planned projects were to be funded by RLF 10 which has been delayed.

Mr. Pender then called on Mr. Hamilton for his report and Mr. Hamilton stated that he wanted to summarize the status of the Little Maumelle Treatment Plant sewer easements as mentioned on his monthly report in the agenda materials distributed to the Sewer Committee. He stated that as to the Entergy land purchase, all of the documentation had been completed, but not executed. He hoped that the closing would be within ten working days, based on his conversations with Entergy's attorney, Web Darling. As to the Ranch Properties, the matter was still "on hold" due to the possible land swap, but that staff planned to file condemnation if the matter was not resolved on or before September 2, 2008. Mr. Pender then stated that he noticed that Mr. Hal Kemp, attorney for Ranch Properties, was present; and, Mr. Hamilton stated that perhaps it would be appropriate for Mr. Kemp to address this matter. Mr. Kemp then stated that the trade was not going to happen and that the problem in obtaining the easement appeared to be the indemnity agreement, which Mr. Hamilton had objected to, and the issue did not appear to be over the appraisal amount offered. Mr. Hamilton then stated that the indemnity provision previously discussed with Mr. Kemp was too broad and that he would be willing to resume discussions on that point. Mr. Kemp then stated that without any direction from the Sewer Committee that would serve no purpose. Mr. Corbitt then stated that he objected to the indemnity provision contained in the proposed easement by Mr. Kemp, and Mr. Wintroath noted that the Sewer Committee had already authorized the necessary legal action for condemnation to be filed. Mr. Kemp stated that such action had not been authorized by the City of Little Rock and Mr. Hamilton stated

that the action had been authorized and that he would be glad to share the documentation on that with Mr. Kemp.

Mr. Hamilton then proceeded with his discussion of the status of the sewer easements and related that he and Mr. Holloway had discussed with Gene Ludwig his objections and concerns to the revised easement proposed by staff. Mr. Ludwig had expressed a number of concerns which he felt could be resolved and that further discussion would be held for that purpose, but in the event the issue could not be resolved on or before September 2, that condemnation would be pursued. Mr. Hamilton then added that his discussions with the Little Rock & Western Railway underground crossings had resulted in the Railroad agreeing to accept payment for the two crossings in the amount of \$10,000 for both, and that the documentation had almost been finalized and hopefully would be in the next few days.

Mr. Hamilton mentioned the complaint filed in the Pulaski Circuit Court by Angela Harrison and Petey King regarding the sewer backup claim pertaining to #1 Ridgeview Court and Mr. Hamilton stated that he had sent copies of the complaint filed on 08/12/08 to the Sewer Committee members. He had contacted Steve Bingham of the Cross Gunter Witherspoon & Galchus law firm for assistance in defending this matter. He felt that the Sewer Committee and Little Rock Wastewater did not have liability for this claim because of the state tort immunity statute and the fact that the elements for an inverse condemnation claim did not exist in this case. He felt that a motion to dismiss for these legal reasons should be granted, and he mentioned that he had defended two other cases in the past few years similar to this claim and these two cases had been dismissed by the respective attorneys prior to a hearing being scheduled on the motions.

Mr. Hamilton referred to the unpaid account in the amount of \$47,254.20 owed by Mountain Pure Water Company which had previously been discussed by the Sewer Committee earlier in connection with the Agenda materials, as well as the letter of Attorney Skip Davidson requesting that his client, Mountain Pure, be given a credit against the indebtedness. Mr. Hamilton added that a conference was scheduled for 08/27/08 at 1:30 p.m., which Stan Suel, his staff, and he would attend in an effort to discuss this matter further before taking legal action authorized earlier by the Sewer Committee in the Agenda discussion.

Mr. Hamilton then discussed the property damages sustained by Little Rock Wastewater in the amount of \$3,572.75 as a result of an uninsured motorist without a drivers' license, Joseph Dille, causing an automobile accident with one of Little Rock Wastewater's vehicles. The accident did not involve any personal injuries. Since Mr. Dille had failed to respond to a request for reimbursement of the damages sustained, Mr. Hamilton requested authority to file suit to recover the damages. After discussion by the Sewer Committee, a motion was made authorizing Little Rock Wastewater staff to file suit and take the necessary legal action to recover the damages and the motion was seconded and unanimously passed extending this authority to file this litigation.

Finally, Mr. Hamilton referred the members of the Sewer Committee to the Notice of Capital Recovery Fees filed on 08/12/08 to let them know the type of information that had been filed of record in connection with the work done by Little Rock Wastewater on the unsewered area project numbers 2, 4, 5, 6, 15, 17, 19, and 29. He stated this notice, included in his report, was purely informational to let members of the Sewer Committee know the extent of information given to the landowners in these areas to advise the property owners that sewer facilities were available for connection to the sewer system at the standard fees and charges within two years, but after which a prorated charge would be due based on the actual cost of the sewer improvements in the area, which will be substantial in these particular areas just completed. Mr. Pender inquired about the filing and whether or not this would serve as notice to the landowners in these areas, and Mr. Hamilton stated that a copy of the notice had been filed in the Real Estate Records for Pulaski County with the Pulaski County Circuit Clerk, and that he felt that this filing should be sufficient to put landowners within those areas on notice of the work done and charges due. Mr. Wintroath asked if the landowners had been individually contacted by Little Rock Wastewater staff before, during, and after the work on these projects, and Mr. Hamilton stated that he understood from Oren Noble, LRW Engineer, that such contacts had been made and that he had copies of the series of letters which were sent to the various landowners before, during, and after the work had been done to fully inform them of the project work as well as the completion and costs due for the opportunity to connect to the public sewer system. Mr. Hamilton then stated that he would be glad to answer any questions on other legal matters, including those in his report, if the members of the Sewer Committee had such questions and there were none.

Mr. Corbitt reported that Little Rock Wastewater had once again received the National Association of Clean Water Agencies Gold Awards for 100% compliance at both the Adams Field and the Fourche Creek Treatment Plants. He mentioned that there are numerous reasons that a treatment facility can fail to meet these stringent requirements, and commended staff for their diligence in maintaining an excellent performance record. The Sewer Committee also commended Utility Staff.

There being no other business, and on motion duly made and seconded, the meeting was adjourned.

Respectfully Submitted,

Dale J. Wintroath, Secretary