

**LITTLE ROCK SANITARY SEWER COMMITTEE**  
**Minutes of the Meeting Held**  
**September 17, 2008**

The Little Rock Sanitary Sewer Committee met at 4:00 p.m., September 17, 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  
Ken Griffey, Member

Others attending included S. Vincent Hotho of Garver Engineers, Craig Johnson and Joe Dollerschell of CDM, Sara Stephens of Richard Stephens & Associates, Jim Newell and Chris Newell of The Newell Agency, Lela Taskey, of Management Claim Solutions, Daniel DeVun of Ecological Conservation Organization, Russ Melton, Sue Melton, John Czarnecki, and Andy Applegate of Diamond Bear Brewery and support staff from Administration and Community Relations, Engineering Services, Environmental Assessment Division, Finance, and Information Services. Ex Officio Member Brad Cazort did not attend.

The meeting was called to order by Mr. Pender, who welcomed Ken Griffey to the Sewer Committee replacing Charles Goss. On motion duly made and seconded, the Minutes of the August 20, 2008, meeting were approved as written. Mr. Pender then asked for public comments and noted that comment cards were submitted, both dealing with Agenda Item No. 4, and those individuals would be heard at the appropriate time.

The Sewer Committee discussed the slate of officers nominated during the August meeting of the Sewer Committee, and on motion duly made and seconded, voted unanimously to elect the officers, as follows:

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

Mr. Corbitt introduced Russ Melton of Diamond Bear Brewery who expressed his appreciation for allowing him to address the Sewer Committee. He stated that Diamond Bear is a small brewery started in 2000 and located in a multi-tenant building at 323 Cross Street. He said by Arkansas Law a small brewery is categorized as 60,000 barrels per year or less, and Diamond Bear produced 2,000 barrels in 2007. He stated that the brewery shares the building with three other tenants and when Diamond Bear's lease was renewed in 2005, it was the largest water consumer. Since it was impractical to split out the consumption, they agreed to figure the allowance of what the other tenants were using and the brewery would pay the remainder. Until then, there were no issues with water or sewer. He stated that, to his knowledge, Diamond Bear is the only multi-tenant brewery in the United States who pays sewer surcharges and his legal counsel had requested that they follow protocol, go through the process of first addressing the Sewer Committee, and that some City council members, such as Brad Cazort, had also recommended that they go through this process. He said that his consultant had advised him at start up to use the industry average for sewer charges of \$1 per barrel for budgeting purposes which he felt was high. He stated that Little Rock Wastewater visited the brewery and advised them of the need to begin monitoring, at which time the surcharging began. He called attention to a statement he had prepared showing Utility Billing Services charges for water and sewer. He said the first surcharge of approximately \$55 occurred in 2005 which he felt was high, but in January, 2007, the sewer bill was \$1,019 when he thought it should be around \$50 to \$100, so he met with Little Rock Wastewater staff. He then began talking to others in his industry and was told that they should not be paying surcharges at this level. He said when he called this to LRW's attention, he was told that there might be a need for a better sampling port, for which they paid \$4,800, the cost for LRW to install the port. However, the surcharge amounts still did not go down as he thought they would.

Mr. Melton stated that the brewery used much more water than they did sewer because most of the water went into their product so they use a lot more water than waste disposal. He said that he was told that they should be charged no more than \$500 per year because that is what Coca Cola is charged and their production is nowhere near that of Coca Cola. He said that he felt Diamond Bear should be categorized as a commercial customer because his landlord was billed commercial previously and CAW bills them for water as a commercial customer. He said that when he protested the surcharge he was told that he would have to install a flow meter in order to prove how much water is going into the sewer.

Mr. Melton said that the brewery had a lot of backing such as the Governor, members of the legislature, city council etc. who are trying to help them resolve this issue. He introduced Dan Devun of the Ecological Conservation Organization, and Mr. Devun stated that the Ecological Conservation Organization is a non-profit organization who primarily conducts water analysis for the State of Arkansas and performs water quality analysis and discharge readings across the state. He said he became acquainted with Mr. Melton while looking for a place to move his business and Mr. Melton mentioned the surcharge problem to him. He said he volunteered to see if he could actually quantify

the amount of water coming out of the sewer drain, using Esco samplers, which he thought were used by LRW technicians as they are the leading technology in the country. He said when he set up his equipment and couldn't get any significant discharge readings he thought the equipment might be faulty, so it was taken back to their office where it was put through standard procedures to calibrate it and identify any problems. The equipment was reading at their facility so they took it back and were again unable to capture any discharge readings although there was discharge coming through the system. He said that he had not read the sampling plan or the methodology behind Wastewater's sampling but was surprised that his equipment did not collect flow and he wanted to be sure that Wastewater was aware of his attempts to obtain discharge readings.

Mr. Melton stated that the main point he wanted to make was the ambiguity of Diamond Bear being classified as an industrial customer by Wastewater when the City and Central Arkansas Water both considered them to be a commercial customer. He said he was also told by LRW staff that there would still be a surcharge if he were classified as commercial. He again mentioned that he had not found a single brewery under 15,000 barrels that was surcharged and he had included names and numbers in the information distributed to the Sewer Committee. He mentioned a comparable operation in Kiln, Mississippi, near Biloxi that he had contacted and was told by a chemical engineer there that their rates were some of the lowest in the country and they were not surcharged. He said he had been hesitant to contact wastewater facilities around the country to learn how their brewery customers are categorized and/or surcharged for fear of bringing undue attention to his colleagues.

Mr. Harper asked how Little Rock Wastewater determined the category for industry, and Mr. Corbitt responded that the surcharge is not based on a classification but is defined by the United States Environmental Protection Agency's Standard Industrial Classifications, which the Utility is mandated to test. Also tested, are industries which have the potential of having extra-strength waste, defined in our rates and ordinances as over 250 milligrams per liter of biological oxygen demand or 250 milligrams per liter total suspended solids, plus oils, oils and grease, whatever the business might be, that have strength in excess of that and the Utility samples and charges based on the rate ordinance.

Mr. Pender stated that he had discussed this with Mr. Corbitt on prior occasions and it is his understanding that there is no difference in charges between the commercial or industrial classification and Mr. Corbitt responded that is correct. Mr. Pender asked Mr. Melton what he thought the difference would be if Diamond Bear was considered commercial rather than industrial and Mr. Melton gave as examples Vino's and Bosco's commercial classification, stating that he did not think either of those businesses were paying a surcharge, nor did he think they should as he felt it was counterproductive for the Utility to go after small businesses. He cited the difficulty in obtaining accurate readings. He said he felt Little Rock Wastewater was the poster child for how a wastewater utility should not act.

Mr. Corbitt stated that the staff at LRW had worked with Mr. Melton and his staff on recommendations, pollution prevention, and ways to reduce the waste strength such as not disposing of the hops in the sewer. He asked whether Mr. Melton was familiar enough with the brewery operation to know that those recommendations had been put into place. Mr. Melton said that he had had a lot of folks including Mr. Devun come in and give them recommendations. He again reiterated that there was not a significant amount of effluent going down the drain and that when the Utility obtained readings he felt they were skewed. He compared the business to his personal water bill at his home and said that the sewer charges at his home were so much less because of the sprinkler system. He went on to say that most of the water they use goes into production and he's not found anyone else in the country who is surcharging or monitoring small breweries under 15,000 barrels.

Mr. Pender asked whether the other tenants are being metered separately and Mr. Melton responded that it is an old building and it was too cost prohibitive to break the utility billing out. Mr. Pender then asked if the surcharge variance could be explained by the fact that samples are taken at varying times during the brewing process during which different effluents could be coming into the system. Mr. Melton said that his outside experts had told him that the surcharges are refutable and arguable because they are "all over the place."

Mr. Wintroath asked what other wastewater utilities are doing and how the variances in flows could be explained. He also questioned the zero flow readings, saying that something was surely going down the drains. Mr. Corbitt stated that he could not address the no flow story but that it was possible that, at certain times of the day, there was no flow. However, LRW uses the same Esco sampler used by ECO and it basically picks up a sample once an hour over a 24 hour period. When the sampler is picked up, there is obviously something in it for the lab to test. In regard to other cities not surcharging, the ones that he has contacted may use different terminology and may have a different rate so that it might not actually be termed a surcharge. Mr. Pender stated that it was his understanding that in order for the Utility to receive funding from EPA or the federal government, which it does, the Utility is required by law to enforce the rate schedule uniformly and equitably throughout the system. With regards to the brewery having no measurable flow, Mr. Pender stated that if the sampler is picking up certain concentrations, by law LRW is required to charge that concentration times the flow. Mr. Corbitt verified that is correct.

Mr. Melton responded that he was given that argument when he first met with LRW in 2005 and took it at face value, but the more he talked with other breweries who said they had these government rules he has not found a single brewery under 15,000 barrels in the country who is being surcharged and monitored and he thought it was because it was considered to be cost prohibitive. He asked that the Sewer Committee contact some of the people he had listed for that purpose and stressed that the figures he had noted were factual. Mr. Melton stated that he wanted the surcharges and all of the extra costs they had paid refunded as well as their legal fees.

Mr. Wintroath asked whether staff could verify the information Mr. Melton had provided as to whether any form of surcharge is being billed to other breweries throughout the country. Mr. Corbitt stated that they would do so and have a report for presentation at the November meeting. Mr. Melton asked that they do so with caution because his colleagues provided him with information and in a couple of instances when attempts were made to identify surcharges the wastewater facilities had started surcharging the brewery. Mr. Wintroath commented that the cities who were not charging the surcharge were not following the law. Mr. Pender stated that alerting other wastewater systems to the surcharge will not be the Sewer Committee's purpose in making the contacts but information is needed in order to consider Mr. Melton's request, and in order to do so we would have to do the research.

Mr. Melton was then advised that the Sewer Committee would take the matter under advisement awaiting staff's report. Mr. and Mrs. Melton, Mr. Devun, Mr. Applegate, and Mr. Czarnecki were then excused from the meeting.

Jim Barham presented the results of a Request for Proposals (RFP) received August 11, 2008, for Employee Benefits Brokerage & Consulting Services. He stated that the RFP was mailed to eight local firms who provide this type of service, the RFP was advertised in the *Arkansas Democrat-Gazette*, and was also posted on Little Rock Wastewater's website. A total of five RFP's were received and evaluated by a five member evaluation committee consisting of three LRW employees, one member of the Sewer Committee, and one individual independent of LRW. The evaluation committee recommended that the top three proposers visit LRW for an hour long presentation. The evaluation committee recommended that LRW award the contract to The Newell Agency as LRW's Broker Consultant, CoreSource for Medical Third Party Administrator, and Management Claims Solutions for Workers Compensation Third Party Administrator. After discussion, and on motion duly made and seconded, the Sewer Committee voted unanimously to approve the evaluation committee's recommendation. Jim Newell, Chris Newell, and Ms. Taskey were then excused from the meeting.

Howell Anderson presented a request for the award of contract for the 2008 Large Diameter Cured in Place Pipe Project and requested authorization for Mr. Corbitt to enter into a contract with the lowest responsive bidder. He explained that this project is for rehabilitation of 18 inch, 24 inch, and 48 inch sanitary sewer lines identified through information gathered by LRW Cleaning and Inspection personnel. Bids were received September 15, 2008, and the low bid of \$320,204 was submitted by SAK Construction of O'Fallon, Missouri. After discussion, and on motion by Mr. Wintroath, seconded by Mr. Harper, the Sewer Committee voted unanimously to award the contract to SAK Construction for the amount of \$320,204 and authorized Mr. Corbitt to execute the necessary documentation.

Mr. Corbitt stated that two resolutions were listed on the agenda but, prior to the meeting, the representative for McRae Mortgage accepted LRW's offer for that easement, and action on the resolution is unnecessary. After discussion, and on motion

duly made and seconded, the Sewer Committee unanimously adopted the following resolution:

A Resolution Authorizing Staff to File an Eminent Domain Proceeding to Condemn Certain Land Owned by Jack Tyler Family, LLC, for a Sanitary Sewer Easement to Install a Sewer Line Necessary for the Operation of the Sanitary Sewer Collection System Because the Little Rock Sanitary Sewer Committee Is Unable to Purchase the Easement by Voluntary Sale, and Acquisition of the Easement is Essential for the Construction and Effective Operation of the Sanitary Sewer Collection System.

Mack Vought reported five non-capacity, or dry weather, overflows during the month of August, with nineteen year to date. He also reported 85% of maintenance time was spent on scheduled maintenance. The maps showing location of both capacity and non-capacity overflows were reviewed.

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 \$2,086,800. The Consolidated Statement of Cash Receipts and Disbursements reflect receipts of \$5,058,020 and disbursements of \$8,226,120, decreasing funds available for the month by \$3,168,100. Net income for the month is \$651,876 and net income for the year to date is \$2,401,228.

Stan Miller reported there were no NPDES violations during the month of August despite the heavy rainfall events associated with Hurricanes Gustav and Ike. He stated that some blending occurred, but it was not necessary to bypass because Operations had made the necessary adjustments to the collection system in anticipation of the weather events. Mr. Miller also mentioned that James Johnson, an Operator I at the Fourche Creek Treatment Plant, recently obtained his Class IV Wastewater and Industrial Operator License, and several others are currently studying to take the Class IV exam.

Howell Anderson reported that, despite the recent adverse weather conditions, construction of the peak flow project continues to progress very well. Paving of the access road to the Little Maumelle treatment facility is basically completed, and the contractor, Max Foote Construction, is ready to begin moving equipment onto the site. Contract III for the pump station has been advertised for bids and the bid results will be presented at the October meeting. Design continues for Contract IV, the conveyance system, and he anticipates advertising in early October and presenting the bid results at the November Sewer Committee meeting. Mr. Anderson mentioned that construction of the Jimmerson and Cammack Village projects is causing problems due to the narrow streets in that area and staff is receiving complaints from area residents. The contractor is making every effort to minimize inconvenience during these projects.

Mr. Hamilton then reported on the status of the Little Maumelle Treatment Plant sewer easements and Entergy land purchase. He stated that the purchase of the Entergy land consisting of the 85' strip adjacent to the plant site was completed on September 9, 2008, and Mayor Stodola signed the necessary electrical easement on this property on that date. He understood that clearing of that strip had been completed. He then stated that the condemnation suit on the Ranch Properties had been filed yesterday. Additionally, he stated that Gene Ludwig had sent him an e-mail that afternoon stating that he was agreeable to the easement, but that suit had been filed yesterday also, and he would contact Mr. Ludwig to get the easement or continue with the litigation. He also stated that the documentation with the Little Rock & Western Railway for the underground crossing was completed and filed on September 5, 2008.

Mr. Hamilton then summarized the status of the Angela Harrison and Petey King litigation against Little Rock Wastewater, Building & Utility Contractors, Inc., and T. Raney Construction, Inc. regarding the damages claimed to have occurred at 1 Ridgeview Court as a consequence of the sewer backup in February 2008. Mr. Hamilton stated that he had filed a Motion to Dismiss with a brief on September 3, and that Mr. Steve Bingham of the Cross Law Firm was assisting him in this matter. He stated that Plaintiffs' attorney had requested an extension of time until September 25 in which to file Plaintiffs' response, and that Mr. Hamilton requested an extension until October 10 to file a reply to Plaintiffs' response, and he and the Plaintiffs' attorney had agreed to these extensions. He also mentioned that he had made written demand on Building & Utility Contractors, Inc. in connection with the indemnity agreement contained in the prime contract between Little Rock Wastewater and Building & Utility Contractors, and that the attorney for Building & Utility Contractors had called him acknowledging receipt and advising that he would discuss this matter later.

As to the Mountain Pure Water Company unpaid account in the amount of \$47,254.22, Mr. Hamilton stated that he and Little Rock Wastewater staff had met with Skip Davidson, attorney, John Stacks, President, and Tracy Bush of Mountain Pure on August 27, 2008, but there had been no resolution and he had not heard from Mr. Davidson since the conference. He further said that since the Sewer Committee had authorized legal action to be taken against Mountain Pure Water Company at the last meeting that he would prepare the necessary complaint for that litigation and contact Mr. Davidson to see if there was any need for further discussion before filing.

Finally, Mr. Hamilton stated in connection with the Joseph Dille automobile accident of April 3, 2008, causing damages to a Little Rock Wastewater vehicle in the amount of \$3,572.75, that suit had been filed in the Pulaski County Small Claims court on September 12, but that it might be difficult to get personal service on the Defendant, since his prior demand letter had been returned unclaimed. However, he intended to pursue that matter to final judgment even if service by the long-arm statute or constructive service became necessary.

As to the Notice of Capital Recovery Fee filed on August 12, 2008, Mr. Hamilton stated that in accordance with Jim Pender's request at the August meeting that copies of that notice had been sent to the title companies in Little Rock and North Little Rock. Mr.

Pender expressed concern that whether the title companies had properly indexed the notice so that it would be apparent in a title search, and Mr. Hamilton stated that he would be glad to take whatever further action is necessary so that the notice could be found in case of a title search, as well as filing anything necessary which might further assist the title companies. Mr. Hamilton then stated that this concluded his report, unless there were further questions, and there were none.

Reggie Corbitt mentioned that the public hearing for the bond issue is set for the next regular meeting of the Little Rock Board of Directors. He also distributed a short video presentation on the history of Little Rock Wastewater, what the utility is doing to protect the environment, etc. that will be available to various civic organizations as well as distributed to the media.

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

Respectfully submitted,

Andrew L. Harper, Jr., Secretary