

LITTLE ROCK SANITARY SEWER COMMITTEE
Minutes of the Meeting Held
September 16, 2009

The Little Rock Sanitary Sewer Committee met at 4:00 p.m., Wednesday, September 16, 2009, in the conference room of Little Rock Wastewater. Those attending included:

Little Rock Sanitary Sewer Committee

Cynthia C. Miller, Chair
Ken Griffey, Vice Chair
Marilyn K. Perryman, Secretary

Little Rock Wastewater

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

Others attending included Hugh Kelso and Jeff Plymale, of RJN Group, Nanci Brickey of Building & Utility Contractors, Craig Johnson of CDM, Vince Hotho of Garver Engineers, Carson Harris and Karon Gray of Carson & Associates, Jordan Johnson of Cranford Johnson Robinson Woods, and support staff from Administration and Community Relations, Engineering Services, Environmental Assessment Division, and Information Services. Ex Officio Member, Mark Stodola, did not attend.

The meeting was called to order by Ms. Miller, and on motion duly made and seconded, the Minutes of the August 12, 2009, meeting were approved as written. Ms. Miller then asked for public comments and there were none.

Howell Anderson explained the Investment Work Order for the System Evaluation & Capacity Assurance Plan (SECAP) to amend and/or update the original 2002 SECAP. He stated that the SECAP document served as a roadmap for the capital improvement program to eliminate capacity related overflows. The original document was prepared by Montgomery Watson Harza and presented to the Little Rock Sanitary Sewer Committee in March, 2002, at a total project cost of \$1,302,500. Little Rock Wastewater then began the planning, design, and funding efforts to complete the recommended

projects for elimination of the capacity related overflows described in the Sierra Club Settlement Agreement. He stated that LRW is approaching the end of year eight in the fifteen year compliance schedule, and staff felt that the system model should be updated and a new capital improvement plan developed. Mr. Anderson said that it is possible that the new study will reveal that projects completed to date accomplished more than expected but it is also true that the new study might reveal unexpected projects. He stated that the study should be completed in 2010 before budget preparation for 2011 and will provide a clearer picture of what is needed to accomplish the Sierra Club settlement goals. Mr. Anderson also stated that there are funds remaining in Revolving Loan Fund 8 to pay the estimated cost of the SECAP update. After discussion, and on motion by Ms. Perryman, seconded by Mr. Griffey, IWO No. 4092400 for amendment/update of the original 2002 SECAP plan was unanimously approved.

Mr. Anderson also presented an Investment Work Order for the Jimmerson West Outfall overflow mitigation project, stating that the project is located in the vicinity of the Robinwood Subdivision north of Cantrell Road and will eliminate 8 overflows and address structurally deficient pipes. This project will also insure that LRW crews can properly clean and maintain the collection system in this area. After discussion, and on motion by Ms. Perryman, seconded by Mr. Griffey, IWO No. 4082100 was unanimously approved.

Jim Barham presented two Investment Work Orders for the purchase of one combination cleaning truck at a net cost to the utility of \$243,750 and one 2-ton dump truck at a net cost of \$57,750. He stated that a proposal was submitted to the Arkansas Department of Environmental Quality on August 31, 2009, for partial funding of this equipment through the Go Red grant. The grant amount covers 25% of the purchase price, or up to \$100,278.50. If awarded, both the diesel truck and the combination cleaning machine replaced by the new vehicles must be retired and destroyed. He stated that the purchase of both the cleaning machine and dump truck is contingent upon the grant award. After discussion and on motion duly made and seconded, both IWO's were unanimously approved.

Mr. Anderson presented the proposed professional services agreement between RJN Group, Inc. and Little Rock Wastewater to provide professional engineering services to amend and/or update the original 2002 SECAP. He stated that in January, 2006, the Sewer Committee approved the selection of RJN Group, Inc. to provide professional services associated with sanitary sewer evaluation studies. The qualification based selection process yielded a 2006 contract with an option to renew for up to five years. He stated that RJN has proven their ability through the evaluation studies associated with the overflow mitigation projects conducted over the last four years and their reports and supporting documentation have provided the foundation for LRW in-house design and understanding of the collection system. He stated that RJN worked closely with staff to develop a "Scope of Work" which he feels confident will produce an updated plan specifically identifying system improvements and the related Capital Improvement Plan to meet the Sierra Club Settlement Agreement and Consent Administrative Order

from the Arkansas Department of Environmental Quality as they relate to capacity overflows.

Hugh Kelso of RJN gave a brief description of the RJN Group and a similar project they recently completed for the City of Fayetteville's new treatment facility. After discussion, and on motion duly made and seconded, the Sewer Committee unanimously approved the professional services agreement between RJN Group and Little Rock Wastewater to amend and/or update the original 2002 SECAP for the amount of \$1,356,712.00, subject to review and approval by general counsel.

Mr. Anderson also presented the results of the bid opening held July 30, 2009, for the Jimmerson West Outfall contract award. Mr. Anderson stated that the project is located near the Robinwood Subdivision north of Cantrell and replaces an existing outfall which is severely deteriorated and undersized, resulting in eight chronic wet weather overflows. He also stated that funding of this project is planned to be through Revolving Loan Fund #8 administered by the Arkansas Natural Resources Commission.

Mr. Anderson explained that a bid of \$787,000 was submitted by Carson & Associates, Inc. and during evaluation of the bidding documents, staff discovered that, in their opinion, Carson & Associates failed to complete the required RLF-96 form concerning solicitation of DBE/MBE/WBE Subcontractors. Since Carson & Associates is an MBE general contractor, Keith Sanders of Arkansas Natural Resources Commission was contacted to verify the requirements and Mr. Sanders was very clear in his position that the status of the general contractor did not alter the requirements for subcontractor solicitation and it was Mr. Sanders' opinion that ANRC would not consider a contract awarded to Carson & Associates as eligible for reimbursement under the Revolving Loan Funding Program. Mr. Sanders said that, in order to be considered as a "responsive bid", all bid documents pertaining to the RLF funding must be properly completed. Oren Noble, Engineering Supervisor for this project explained the bid process and requirements. Mr. Anderson said that, since it appears doubtful that ANRC will approve the bid from Carson & Associates, the alternatives are to: (1) Disallow the bid from Carson & Associates and accept the lowest responsive bid in the amount of \$828,828.00 submitted by Building and Utility Contractors, (2) Accept Carson & Associates' bid, conditioned on approval by ANRC, or (3) Reject all bids and re-advertise the project which had the risk of having bids come back for increased amounts.

Mr. Griffey asked to hear from Mr. Carson, who stated that it was his belief that he had followed the requirements of the Contractors Act of Assurance and interpreted the requirement for subcontractor solicitation as being non-applicable since his is a minority owned business. He said that he would like to have ANRC's decision in writing rather than on the phone, and felt that the act allowed for future advertisement for minority subcontractor bids should it be necessary to advertise for subcontractors, but normally the requirement was for 15% minority participation and if Carson & Associates did the job it would be submitted as 100% minority participation.

Mr. Noble stated that Ms. Brickey of Building and Utility Contractors also wished to address the Sewer Committee. Ms. Brickey stated that Building and Utility Contractors had completed and submitted their paperwork as required, and that their firm has a long standing and satisfactory history with the Utility. She said it is their position that, as the responsive bidder, the contract should be awarded to Building and Utility Contractors.

After discussion, and on motion duly made and seconded, the Sewer Committee voted unanimously to award the bid to Carson & Associates for the amount of \$787,000.00, conditioned on approval by the Arkansas Natural Resources Commission and, if ANRC, declines the bid, a call meeting of the Sewer Committee be held to consider the remaining bids.

Mr. Kelso, Mr. Plymate, Ms. Brickey, Mr. Harris, and Ms. Gray were then excused from the meeting.

Ms. Miller announced that the request from Mark and Cherie Hoffman of 5312 C Street would be tabled as Mr. and Mrs. Hoffman planned to present their request at the October meeting.

Jim Barham presented the draft Financing Plan and Cost of Service, Impact Fee Report, and Comparison of rates received from Bill Stannard of Raftelis Financial Consultants, Inc. He said he had talked with Mr. Stannard and the necessary documents will be amended to include the 5% rate projection and the approved rate increase in January, 2010. He explained that the 11% increase mentioned in the draft report includes the 5% rate increase previously approved, the impact fee, inspection fee, differential rate for commercial, and the increase in domestic rates. He stressed that all of those items make up the 11% increase mentioned in the report. He also reviewed the rates charged for residential and commercial customers based on cubic yards. He mentioned that Little Rock Wastewater's indebted cost in the year 2015 would be \$18.3 million per year in debt payments. Mr. Barham also called attention to the comparison of rates for cities of comparable size.

Mr. Barham then presented the financial report for the month of August, 2009. After review, 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 \$1,800,619. Net income for the month is \$234,691 and net income year to date is \$732,760.

Mack Vought reported there were no non-capacity overflows during the month of August leaving the year to date total at 24. He mentioned that the plant maintenance system information showed 8% of the hours spent as preventive maintenance, 89.7% as proactive maintenance, and 2.3 % as reactive maintenance. Mr. Vought stated that a pilot service line program is in development and should be ready for presentation in November.

Stan Miller reported all cleaning and inspection of clarifiers and basins were completed, and the final clarifier was turned over to maintenance in July, with repair work progressing well. This equipment should be back in service by the end of October. Mr. Miller also reported that there were no NPDES permit violations during the month of August.

Howell Anderson reported that the peak flow basin is in operation and, due to the heavy rainfall, the basin was actually full at the time of this meeting. The Little Maumelle facility is 53% complete and should be in operation by autumn of 2010. The conveyance trenching operations across Ranch Properties is complete and the pipe is in the ground. Mr. Anderson stated that, when the engineering services division report was written, the Fourche Creek upgrade, Contract I, memorandum of interim authority had not been received, but was received the previous Monday, the contract has been executed, and the contractor is on site. Mr. Anderson also mentioned that the Sewer Committee authorized LRW to perform a feasibility study and evaluate a jointly owned and operated combined heat and power cogeneration facility with the Little Rock National Airport. He said he and Mr. Corbitt attended a meeting with airport officials earlier in the month where the consultant presented the report and the conclusion was that the combined cogeneration plant would actually increase operating expense by \$1.8 million.

Mr. Griffey mentioned Diamond Construction's delay in Contract I for the Fourche Creek Redundant Force Main from the treatment plant to Sloan Drive, and asked if this delay would affect Contract II. Mr. Anderson said that this project was separated into two contracts in order to expedite the services needed for the anticipated Man Industry manufacturing site. He said that the two contracts are independent of each other, and the Diamond Construction delay would not affect S&J Construction's progress on Contract II for the force main from Sloan Drive to the Arch Street Pump Station. Mr. Anderson said; however, that the Arch Street Pump Station could not pump through a force main that is not yet in the ground, but the pump station has the capability to scale down the pumps. Mr. Anderson said the progress numbers for Diamond were somewhat deceiving since Diamond had taken time away from the work on the Fourche Creek force main in order to perform the emergency repairs on the 42 inch force main between the Arch Street and College Station Pump Stations and the emergency street repair.

Mrs. Miller called on Don Hamilton to give his report on pending legal matters, and Mr. Hamilton briefly summarized the pending litigation in the Angela Harrison/Petey King case against Little Rock Wastewater and others. He stated there was a conference call set for this afternoon on various matters in the litigation, including Plaintiffs' request for an extension of time to respond to Defendant Little Rock Wastewater's motion for summary judgment since the response was due on September 11, 2009. Plaintiff had requested another extension of time since Plaintiff was not able to meet that deadline. In view of the various cutoff dates for discovery and schedule of pre-trial conferences in November, Little Rock Wastewater had not been able to agree on an extension and there were also other issues as to Plaintiffs' experts and depositions to be set in that regard. Little Rock Wastewater has until September 18 to file a response to Third-Party

Defendant Travelers' motion for summary judgment, and that would be filed. Additionally, Defendant T. Raney has scheduled a deposition on October 1, 2009, which is the date of the discovery cut-off by Judge Fox, which also would be discussed. Mr. Hamilton also stated that it was important to appeal any adverse ruling on Little Rock Wastewater's motion for summary judgment on the defense of sovereign immunity in order to preserve that defense for trial.

As to the Mountain Pure Water Company Show Cause Hearing, the order has been appealed by Mountain Pure and Little Rock Wastewater's answer was filed on September 3, 2009, and was attached to his pending matters report. Currently, there is a hearing scheduled to be held before Judge Fox on September 23, at 8:30 a.m., to decide the pending motions to dismiss filed by both Central Arkansas and Little Rock Wastewater.

As to the property damage claim by Quinton Smith, arising out of the water damage due to the inadequate culvert on 2000 Beechwood, Mr. Hamilton stated that he understood that Tom Carpenter met with attorney Paul James on August 12, 2009, to discuss this matter for alleged damages in the amount of \$300,000.00, which has been made against both the City of Little Rock and Little Rock Wastewater. Both have denied the claim and the claim is pending. He further understood that the City had requested Little Rock Wastewater Engineering to review potential costs associated with moving the sewer line located in the culvert on the property. He and Mr. Corbitt had discussed the status of this matter with City Manager Bruce Moore on August 7, 2009, and the City Staff concluded that there is no valid claim against the City since the drainage culvert involved was privately owned.

Finally, Mr. Hamilton pointed out that an impact fee ordinance draft had been prepared and was still under review by Little Rock Wastewater Staff. Mr. Hamilton then called for questions and there were none, so he stated that his report was completed.

Mr. Corbitt distributed the schedule for the proposed bond issue and Ms. Miller asked if it would be helpful for the Sewer Committee members to attend the public meetings. Mr. Corbitt said that although this bond issue should not be controversial, their presence might be beneficial and he would keep them informed. He also stated that the resolution was scheduled to be read before the City Board on October 6, 2009, and he was having knee surgery on that date and would probably not be able to attend that meeting.

Mr. Corbitt also announced that Don Hamilton had expressed a desire to retire at the end of January, 2010. He said the funds would need to be included in the 2010 budget for either staff attorney's salary or fees for outside counsel, and since this position reports to the Sewer Committee, he would like to have the Committee's recommendation. Ms. Miller suggested that the Sewer Committee members give the matter some thought and report back to Mr. Corbitt. Mr. Hamilton thanked the Sewer Committee for the opportunity he was given to serve Little Rock Wastewater as counsel and said that the Utility is in an excellent position to have its legal affairs handled either

way. He mentioned the attorneys who have been providing outside counsel and their specialties.

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

Respectfully submitted,

Marilyn K. Perryman, Secretary