

BIG SKY WATER & SEWER DISTRICT NO. 363
Regular Meeting Minutes – January 13, 2009
WSD Community Room

The Big Sky County Water & Sewer District No. 363 held a regular board meeting on Tuesday, January 13, 2009, in the WSD Community Room. President Packy Cronin called the meeting to order, with the following Board members present: Vice-President Gary McRae, Secretary Dick Fast, and Directors Dick Allgood, Jeff Daniels, Bill Olson, and William Shropshire. WSD staff present were Ron Edwards, Marlene Kennedy, Terry Smith, Jim Muscat, Nic Wellenstein, Eric Daniels, Denny Black, and Grant Burroughs. Others present were Lone Peak Lookout reporter Amy May, Spanish Peaks representatives Burt Mills and Bryan Tate, Northwestern Energy representatives Ernie Hulit and Matt Micklewright, Big Sky Search & Rescue representatives Steve Johnson and Tom Reeves, HKM representative Ray Armstrong, Boyne representatives Brian Wheeler and Jamie Roberts, and adjacent property owners Ordean Anderson and Bill Erwin. District auditor, Rosie Barnes/Holmes & Turner CPAs, participated via telephone on the financial issues.

PUBLIC FORUM

President Cronin called for public comment at 8:10 am. Steve Johnson, Big Sky Search & Rescue, stated that they need a lease or effort to rezone the parcel for a conditional use permit and would like to get that done this winter. Johnson asked that that process move forward with haste. *The next zoning meeting is on February 2 and Edwards will follow up.* Edwards noted that the District had done a draft lease for the parcel and it was given to Search and Rescue and they were not thrilled with the terms of the draft lease. Edwards said the District is following the lead from District counsel, Susan Swimley. Johnson said the lease just avoids a subdivision review and a rezoning makes it cleaner. If a lease is the only option, they can live with it; but believes that rezoning is a better long-term action. Edwards noted that rezoning is the direction that the District is going. Edwards stated that a *rezoning application could be presented for the February zoning meeting and Edwards will file the application.*

With no further public comment, President Cronin called the meeting to order at 8:15 AM.

MEETING MINUTES

Director Olson moved to approve the minutes of December 9, 2008, as corrected. Director Fast seconded the motion. Motion passed, 7 yea votes to 0 no votes with President Cronin voting.

AMEND AGENDA

Director McRae moved to amend the agenda to address the audit and financial report and then the Northwestern Energy substation site issue. Director Shropshire seconded the motion. Motion unanimously passed.

FINANCIALS

FY 2007-08 Audit Report: Rosie Barnes noted from last month's board meeting regarding the discussion on the YC bankruptcy, they do not need to make an adjustment to the audit as YC has made their payment. They have made a note in the Audit Report regarding the bankruptcy and Barnes also reported that the audit report was filed at the end of December. It does not need to be refiled as long as the Board does not make any changes to the document.

Director Allgood moved to approve the FY 2007-08 Audit Report as presented. Director Shropshire seconded the motion. Motion passed, 7 yea votes to 0 no votes with President Cronin voting.

November Financial Report: Smith reported that the state revolving loan payment was made on January 2, 2009. According to Smith the financial reports only go through November as moving the board meeting date up prevented him from preparing the December report. Smith said that with the January report all categories should be on target, or favorable. Director Shropshire asked about the significance of the banks pledged collaterals. Smith noted that water usage number as of 12/31/08 came in marginally lower than last year.

Director Shropshire moved to approve the November financials as presented. Director McRae seconded the motion. Motion passed, 7 yea votes to 0 no votes with President Cronin voting.

NORTHWESTERN ENERGY SUBSTATION

Edwards reported on the recent meeting with Northwestern Energy representatives and the adjacent property owners where another site was to be looked at that would be west of the site originally proposed. Matt Micklewright distributed an aerial view and HKM rendition of the proposed site for the new site for a substation. Bill Irwin and Ordean Anderson said they feel that the new proposed site looks acceptable for now. Anderson said he represents the owner of the property, Betty Kass, and he will need to get Kass's approval. Irwin said the meeting was a good call and appreciated Edwards facilitating the meeting and feels this new site is a lot better than what was being looked at. Edwards said that the District will ask that NW put together a formal landscape plan. President Cronin noted that nothing will grow without water. Edwards said that there is water availability from the plant. Edwards noted that a trail extension would be part of this land use agreement. Edwards said the site needs to be staked and then viewed from the highway and other areas. Micklewright stated that they are committed to getting a landscape architect working on this after getting a committal from the District. President Cronin noted that with a different location be presented the District needs to review what it needs—the first site was certainly the best site and now we need to evaluate the District's future needs. Director Allgood noted the need to evaluate the District's needs if the geotech on the new site comes back at the same cost, then Northwestern should go back to the original site. President Cronin said the new alternative site creates somewhat of an unusable finger on the parcel, where are we leaving ourselves without options for the use of land. Director Olson commented that in working with BSCC on the road easement their new proposal is to lease some land for more park. *President Cronin said this whole District site needs to be master planned.* Edwards said this definitely is a middle ground consensus to move ahead with agreeing. Director Allgood stated that the District is the easiest victim for Northwestern to come ask for land from, but we need to consider working with them. Director Olson said the real issue is that there is really about 10 acres of useable acreage out of the 30 acres. Edwards noted that the site was originally planned for constructing another storage pond but it was not cost effective and he feels it should stay off the table for future consideration. Edwards reported that the other entities that have talked to us about land use were transportation for buses and he denied their request. Steve Johnson asked if the cost of the road and the geotech work would offset each other. Director Fast stated that if the new site is approved, the District is precluding any development in the area. Micklewright noted that Bozeman requires Northwestern to put in bike racks and benches at their new locations in the city. Edwards said the next step would be to get better drawings with scaled footprints. President Cronin polled the board asking if they want to move forward. Director

Olson said that he needed to think about it further—and asked if we will be back with the Irwin and Kass if we want to put something on that land in the future. Director Fast shares President Cronin's thought on the lack of master planning. Director Allgood does not feel approving the new site would prevent the use of the remaining land. Director Allgood also stated that he feels that all of the land was initially intended for future sewer needs. Director Olson feels that anything that would be done for sewer needs would be done next to the plant and feels that the question is what to do with the other land. According to Director Olson, it is a question of what we are doing by plunking something down in the middle of everything and if we are compromising what we can do with the land. Director Olson appreciates what has been done, but feels it is a little more visible from the highway but that probably won't be an issue. Director Olson would like to see more detail. Director Shropshire would like more detailed information with the next step being a topo map and he would not obligate the district until detailed plans and profiles are provided to the District and reviewed. Director Shropshire doesn't feel sound from the substation would be a major issue if the substation is no nosier than the substation in Sweetgrass Hills. Micklewright felt that he could have site work, landscape plans, elevations and paperwork plans put together for the February meeting. *President Cronin noted that he believes the site name is Potter's Gulch and, if it is, then it should so be named on the proposal.* Edwards said if the neighbors agreed to a site prior to the rezoning application it would make that issue a lot easier. *President Cronin asked that Anderson/Kass and Irwin be informed on the rezoning issue.* Amy May of the Lone Peak Lookout said that they have not received any comments on their recent article regarding the Northwestern Energy site.

SPANISH PEAKS RESORT LODGE PERMIT PAYMENTS

Edwards had asked Spanish Peaks to come to this meeting and fill us in on their request to temporarily suspend their permit payment and to delay the permit payments until they restart construction. Edwards reported that Spanish Peaks has made three payments thus far. Burt Mills of Spanish Peaks Resort sent a letter to the District to report that the Lodge construction project was temporarily suspended in November 2008 with plans to resume the project in 2009. They also intend to resume making their monthly payment in 2009. Burt Mills said the letter does tell the story, but the financial situation in the area has delayed their plans. They need an increase in sales to put the project back in full tilt. Their proposed 2009 start up is just that—they don't know what will happen, but they want to get to the finish line when they start up again. They have 7 payments still due and are asking a delay until they get restarted. President Cronin reviewed the history of the original Spanish Peaks request to delay the payments that included payment terms with a 6% interest. There is nothing in the clause about what the District would do for nonpayment. The request for connection with monthly payments was originally approved because of the depth of connection and backfilling. Bryan Tate said, in their defense, the District has been paid 3 payments. Burt Mills would like the board to consider relief on the other payments. Director Olson doesn't feel that the District is a bank and it was silly of the District to give a loan in the first place. Now we are in the cash flow boat like every other bank and now Spanish Peaks wants more accommodations. According to Director Olson, Spanish Peaks made a deal and that is the deal. Director Olson reported that he was reluctant to the deal in the first place and that he will never vote for a loan again unless we change our ordinance. It is not the District's job to act as a bank and we got into areas that we shouldn't have been. Burt Mills offered to disconnect, ask for a refund, and then they will apply in the future. Mills did say that it would be a big project to disconnect. Director Allgood suggested

leaving the project alone and to have Spanish Peaks continue accruing interest with a lean on the project until the fees are paid off. Bryan Tate said that there will be other projects of this magnitude in the future and the District should advance to the big picture to deal with this and other projects in the future. Edwards said that there is technically no connection to the main; they are connected to a main extension that is not connected to the main. Mills and Tate did not know the feet needed to connect. Terrence Smith reported that delaying the payments does not affect the District. Director Shropshire said a bank would try to work it out and in the event of default there would be a penalty. Director Fast stated that if it doesn't start up, ever, it wouldn't hurt us as we already have partial payment with interest. Burt Mills reported that their desire is to start up this summer, but the economy is the deciding factor. Mills said they do not have a problem with leaving the partial payment of \$167,000 in the District's hands. They haven't transferred that section of the main to the District and they are not connected to the District's sewer system. Mills stated that if they had been full steam ahead with construction that the transfer would have been done. Director Olson said that with Spanish Peaks' main extension not being conveyed that we probably shouldn't even be dealing with this. President Cronin suggested leaving the money already paid to the District where it is, and then to have Spanish Peaks start paying on the permit fees when they start construction. *Director Fast said that we should look at this issue 6 months from now.* Director Shropshire said that the District should retain the partial payment, continue to accrue interest, and file a lien on the project. Then the District can decide later on if the District wants to suspend the interest. Director Allgood agreed with Director Shropshire. Burt Mills commented that Spanish Peaks will need to come back to the District to complete the project—they owe the permit payments—however, he doesn't feel that a lien is appropriate and it is punitive. Mills appreciates the District's consideration to their request and will honor what the board decides and would appreciate the District's leniency. Director Olson wants to see the District readdress the ordinance on how to handle this type of large project so we do not go through this again—the ordinance would solve this type of situation. Edwards said there is no cost to us on this connection. Director Fast noted that the cost to the District is that we have committed service storage capacity. President Cronin said the question would be lien or no lien and asked Burt Mills if it causes a problem with them. Mills said it is not a deal breaker. The board discussed having Edwards talk to District legal counsel.

Director Allgood moved to approve Spanish Peaks' request by suspending payments until construction resumes, to continue to accrue interest on the unpaid balance, and to review the issue in 12 months if Spanish Peaks has not come back to the District. Director Shropshire seconded the motion. Motion passed, 6 yea votes to 0 no votes. Director Olson abstained.

Director Olson does not want this situation to be forgotten and asked that the District work on amending the ordinance to address this type of situation. President Cronin suggested changing the ordinance to possibly delaying all fees until the water is turned on.

Director Olson moved that the board and staff look at a modification to the ordinance to address the permitting section of the ordinance as to when fees are to be paid. Director McRae seconded the motion. Motion passed, 7 yea votes to 0 no votes. Edwards said this issue will be on the agenda for the next meeting.

218 SOCIAL SECURITY ADMINISTRATION AGREEMENT

As directed by the Board in December, Edwards provided an overview in the board packet of the Social Security 218 Agreement that would be needed for the District to continue to participate in the social security system. Edwards and Rosie Barnes discussed the options if the Board decided to opt out of the SS system. Barnes reported that the SS Administration started checking into whether the special districts have a 218 Agreement in place and she has verified that the WSD has not adopted a 218 Agreement. This agreement allows local government to participate in the social security program. Barnes said that the only thing outstanding is whether the District can fall under a blanket agreement from the state and counties. Smith said according to the IRS if the District does not have an agreement in place the District should not be paying social security. Edwards said if the board's decision is to not do an agreement, the deductions from staff payments could go to another retirement plan and then the board would need to decide what to do with the employer's contribution. It could be invested in a general fund for retirement plans chosen by the employees. Edwards recommended that if it is legal to opt out then the employee and employer shares should be given to the employees for a retirement plan at their choosing. Edwards feels that staff support the notion of getting out of the social security system if the employee and employer contribution remain the same for retirement of the employee's choice. Edwards said the SS credit sitting out there after backing out the 39 months stays there and feels there is no down side to getting out of the SS system. Edwards reported that the fire district just approved a motion to not participate in the social security system and they maintained the employer contribution to the employee's retirement plan. Smith said approximately \$100,000 combined will be owed employees and employer. Smith reported that most of the fire district employees are changing to another retirement plan. Smith said the board could do a 457 retirement plan, or a matching plan, or a plan of the employee's choice. Edwards said that he does not want the District to be copping an employee's retirement plan. Director Allgood asked if opting out of social security will cause a problem in hiring staff in the future. Smith noted that in the State of Colorado they do not pay social security and they do not have a problem in attracting employees. According to Smith, the District could set up a retirement plan. Director Olson said it would be better to have a matching system to encourage the employee to plan for retirement. Edwards likes the aspect of individual retirement plans as compared to social security. Edwards said staff also needs to decide on this issue once the board makes a decision. Edwards does not know how staff would feel if the board attached strings to their employer match. Director Shropshire does not see any risk to the District by opting out as long as it is legal to opt out and he would support opting out. Director Shropshire said there will be discipline involved in planning for retirement when it isn't mandatory. Director Olson said if there is a matching program then there is an incentive to invest in a retirement plan. Directors Shropshire and Olson do not want the District to administratively monitor a retirement plan. Smith reported that staff can already participate in a 457 plan and feels that it is a well managed plan. Director Fast feels that the social security system is not a bad pay back system in that it only takes 2-3 years of receiving social security payments to get your contributions back. Edwards does not know if a matching retirement resolution is required by the District if all the employees would agree to opt out. Smith said the District cannot require the employee to participate in a 457 plan. Smith said that the board would have to amend the resolution regarding the 457 plan to include the employers 6.2% contribution.

Director Shropshire moved to opt out of the Social Security system and to not execute a 218 Agreement and to match 6.2% as the long as the employee contributes. On the employer and employee 39 month refund, the employees get to decide on their contributions and the employer contributions go into a matching retirement account Smith reported that there is a \$16,000 annual contribution cap and doesn't think that the District can designate another retirement plan, so it might take two years to pay into the 457 retirement plan. Muscat feels that the issue is the employees possibly losing the 6.2% employer contribution and he wants assurance that the employee gets the employer's contribution as he does not want to lose any funds from the 39 month refund. Smith reported that the employer's share can be given to the employee but it would be taxed unless they invested in a retirement plan like a 457 plan or IRA plan. ***Director Shropshire withdrew his motion asking that staff come back to the board as to what they will accept. The Board agreed that the employer 6.2% contribution will stay the same.*** Barnes said the employees just needed to know the board's intent. ***Director Olson moved to allow the staff to vote on whether to participate in a 218 agreement. Director Allgood seconded the motion. Motion unanimously passed. Staff are to present a plan, or resolution, regarding what they would like the board to act on at the next meeting.***

MOUNTAIN LAKE CONDOMINIUMS ANNEXATION ELECTION

Edwards reported that 298 ballots were received, with 232 ballots voting for annexation (78%) and 66 (22%) ballots voting against annexation. Edwards noted that Richard Maus and a couple of other developers voted no all of their property and stated that the developers felt that the market value was at about \$25,000 per SFE when land deals were done and this deal for \$10,000 makes their SFEs worth less. Brian Wheeler said that at one point they were being offered lots of money for SFEs and now with the market slow down they are devalued. Wheeler said Boyne did not want Lake Levinski contaminated and voted for annexation. Wheeler stated that *Boyne would also like an evaluation of capacity for additional SFEs.* Director Shropshire said the lessons learned on the density calculations using the ordinance stuck with the developer for this project. With almost 80% favoring the annexation, Edwards said an ordinance needs to be adopted for annexation but, before that is done, he has told Liston that the well needs to be completed and the permit fees for the 6 existing units needs to be paid, plus the payment of the back tax obligation needs to be paid prior to approving an annexation ordinance.

Director Shropshire moved to approve the annexation agreement and for the general manager to negotiate the agreement with the developer. Director Daniels seconded the motion. Motion passed 7 yeas votes to 0 no votes.

SEWER OPERATIONS

Edwards reviewed Burroughs' flow reports. The numbers are up from 2007, but are on par with 2006. The jump in numbers is attributed to the growth in the District. Director Olson said the increase in the spring was reported in the past as I & I. Edwards said that Burroughs feels that there may be I & I by the Huntley and there was also cooling water at the Shoshone that was either discharged into the ground or the sewer system.

WATER OPERATIONS

Muscat reviewed the year end flows with the meadow down 31 million gallons which he attributes to fixing leaks. Overall, the District has gained a lot of ground on usage with the leak repair and it will improve more next year when the Silverbow project is complete. Later in January, Edwards and Muscat will meet with DEQ on the whole disinfection issue. Edwards would like to just do a small UV treatment on the two new wells in the meadow to get them on line and to not have to chlorinate the whole system. With UV there is no residual and he prefers that option from our customers' standpoint. TD&H Engineering is working on a plan and profile for the piping to use the new wells.

Director McRae asked if the Santec system at Lone Moose was still full on sewage. Edwards thought the system was still in the ground.

MEADOW VILLAGE WATER SYSTEM PROJECTS

The manager's report included a summary table of construction contracts and their status.

YELLOWSTONE CLUB

There was nothing reported regarding the Yellowstone Club.

BSOA ACCESS AGREEMENT

Director Olson distributed an email letter from Kevin Frederick where he asked for leasing the District's 30-acre parcel east of the treatment plant for 99 years at some minimal rate. President Cronin said the WSD road easement needs to be established and then BSOA/BSCC can come back to the District for a lease request. As requested by Director Fast, Edwards reviewed the history of the parcels and their ownership transfers and the leverage that the District may possibly have on the parcels. Director Olson said that BSCC does not want to grant the road easement unless they have control of the 30-acre parcel. They don't have a problem with Search & Rescue and Northwestern Energy plans. Edwards feels that there is still an easement for a bridge that was originally proposed when Simkins Taylor owned the 30-acre parcel. Directors Allgood and Shropshire feels that we have a prescriptive easement on the road. Edwards said the District has agreed to plow and maintain the road and we have also allowed the BSOA's snowplow (Wayne Heath) to store his equipment on District land. Edwards said that government entities can use eminent domain powers for a road easement. BSOA/BSCC does not have any SFEs to develop their park property, and they would also need water and sewer extensions that the District would have to approve, and they are asking for use of our water rights for their ponds. *Director Olson and President Cronin said the road easement has to come without restrictions for possible future needs of the District.* Director Shropshire says the District should not want to open the door to the 99-year lease offer. President Cronin said there is no reason to budge without the road easement that was promised a long time ago. Director Fast asked what the requirements are for a prescriptive easement. Director McRae reported that there is a 7-year time span of use without objection for there to be a prescriptive easement. *Director Olson will talk with Kevin Frederick and let him know that the District will not be considering a lease without a road easement.*

CANYON AREA STUDY

Edwards reported that the canyon area study group will meet later today. The preliminary engineering report has been submitted to DEQ. The analysis reports that piping could be done and the data estimates 1 million gallons of flow a day at build out. Armstrong said flows could go to 1.5 million gallons per day if the allowed accessory build out was allowed at Ramshorn. Ray Armstrong said that the collection system could be built in the canyon and then pumped up to the District at today's cost of about \$10 million. Bringing in the canyon flows to the treatment plant would increase the treatment flows to an amount that would exceed current capacity, causing the need for treatment plant expansion and then storage would also be an issue.

Armstrong noted that the engineering report includes having snowmaking as an option. They are asking DEQ if snowmaking is viable and would it be permitted. Overall, the costs to serve the canyon would be \$25-\$30 million. Edwards said the repayment is the issue--if it only benefits the canyon do the existing district customers share the cost or does just the canyon property owners pay the costs. Armstrong feels that there would have to be sizeable contributions to make it work. President Cronin suggested that Armstrong approach the canyon as its own District. *If the canyon wants to use the district's service, President Cronin said the canyon needs to pay their share of any costs associated with any expansions that the District may have to do to serve the canyon.* Edwards said the logical thing to do is phase in the canyon, starting at the Conoco and Big Horn development areas to be served by the district. With the economic times,

Edwards cannot see anyone shelling out \$10 million for a collection system. *President Cronin wanted it to be clear that the District needs to be in total control of any plans that would include the District participating.* Edwards said that some of the questions being directed to DEQ are of benefit to the District, such as a snowmaking option. Smith reported that the District contributed \$10,000 to the study and the rest of the funding came from other sources. Edwards said the technical end of the study is complete and now they plan on having a couple of public meetings to present the information to the community.

GENERAL CORRESPONDENCE

There was no general correspondence that required board action.

ANNUAL DINNER

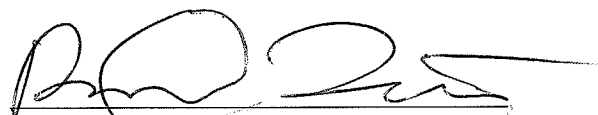
Edwards will check on January 30th for availability of the Corral and February 6th as the back-up date for the annual dinner

NEXT MEETING

The next Board meeting is tentatively scheduled for Tuesday, February 17, 2009, at 8:00 AM.

ADJOURNMENT

Director Olson moved to adjourn the meeting at 12:15 pm. Director Daniels seconded the motion. Motion unanimously passed.



Dick Fast, Secretary