

From: CBPOA Wastewater Committee

To: CBPOA Members and CBSA Members

Subject: Information about North Kootenai Water & Sewer District (NKWSD)

Dear Member:

Your wastewater committee has collaborated with Mike Galante, District Manager of NKWSD to provide the following information about NKWSD and their policies, should CBPOA decide to join the district. *It is important to note that the project we are currently considering, and possible annexation into NKWSD, is for wastewater only. Our water system is not a part of this effort.*

We have also included a summary of the annexation process that would take place if CBPOA decides to join NKWSD.

It is our hope that this letter will help you to gain a better understanding of NKWSD and the annexation process. If you have questions that are unanswered in this letter, please forward them to the wastewater committee via email@cbpoa.org.

Background:

- NKWSD is a water and sewer district that owns and operates 15 community water systems and 1 community wastewater system (Gozzer Ranch) in Kootenai County. The district was established under Idaho State Code in 1991 to serve the needs of small community water and sewer systems in non contiguous areas of North Kootenai County.
- The district office is in Rathdrum, ID. Phone number: 208-687-6593, website: www.nkwsd.com
- The areas served by the district are widely scattered in Kootenai County, with Gozzer Ranch being the service area that is closest to Carlin Bay.
- NKWSD is operated by 5 elected board members; each member is elected to serve a 6 year term. Board meetings are held twice monthly at the district offices.

The annexation process (summary provided by Brian Werst, K&L Gates LLP)

The process for joining an existing district is called "annexation" and is largely found in Idaho Code Section 42-3218. There are two methods of annexation of large property areas: (1) Annexation by petition; and (2) annexation by election. Keep in mind the point that we have discussed in the past meetings regarding use of different terminology in the statutes (property owner v. registered voter v. taxpayer) and how it relates to certain rights or activities by an individual. I will underline below where those terms are used differently.

(1) Annexation by Petition

Per Idaho Code Section 42-3218(b)(1), those property owners of 60% or more of the area of land within the territory proposed to be annexed may sign a petition for annexation into an existing district. Upon receipt of

the petition and a "reasonable filing fee" determined by the district, the district must give and publish notice of the petition filing, with the notice identifying the names of the petitioners, description of land or property described in the petition to be annexed, and stating when the district will hold a public hearing and receive written objections to the annexation. Failure to "show cause in writing shall be deemed as an assent to the annexation" (i.e., if a property owner does not file a written objection with the district board, then he or she consents to annexation). After the close of the public hearing, the district board has "full discretion to determine if the petition shall be granted."

(2) Annexation by Election

Per Idaho Code Section 42-3218(b)(2), annexation may be initiated upon filing with the existing district "a petition signed by registered voters owning real property residing in the territory to be annexed" and "who constitute at least twenty percent (20%) of the taxpayers in such territory." Upon receipt of the petition and a "reasonable filing fee" determined by the district, the district must give and publish notice of the petition filing, with the notice identifying the names of the petitioners, description of land or property described in the petition to be annexed, and stating when the district will hold a public hearing and receive written objections to the annexation. After the close of the public hearing, the district board may grant the petition and direct that an election be held regarding annexation. The district then publishes notice of the time and places of the election, as well as describes the property to be annexed, the district to which the property would be annexed and any terms and conditions of the district under which the property may be annexed. If the majority of the votes cast are in favor of annexation, then the board of directors of the district will enter an order annexing the property and such property will be a part of the district.

B. Forming a Local Improvement District (LID)

Assuming the Carlin Bay properties annex into an existing water and sewer district, then the process and requirements for forming a local improvement district ("LID") will fall on the shoulders of the existing district. The LID will have a separate identity from the existing water and sewer district, but in reality is simply a financing mechanism that focuses the debt repayment obligations on those properties that are benefitted by the project. For loans made to a public water and sewer district, IDEQ requires the issuance of a tax-exempt bond as security for its loan and the LID statutes impose a lien on the properties to secure repayment of the loan.

Procedurally, before formation of the LID, there is a significant amount of engineering to design the project, determine the project costs, and calculation of assessments to be imposed on each parcel (which are used to repay the IDEQ loan). Once this is complete, the district board adopts a resolution to initiate the formation of the LID and gives notice of a public hearing to address its intention to form a LID. The notice of public hearing is published in the newspaper and mailed to every owner of property located within the proposed boundaries of the LID. The board will then hold the hearing to receive comment and objections to the LID. If the Board opts to form the LID, it then adopts an ordinance to form the LID and the project is thereafter constructed. At or around the time that construction is complete, the project engineer will present to the district board the engineer's report of costs for the project and estimated assessment roll (which identifies the estimated assessment for each parcel in the LID). The board will then adopt a resolution to accept the proposed

assessment roll and set a public hearing to hear and receive protests to the assessment roll. Notice of the public hearing is published in the newspaper and also mailed to each property owner (the mailed notice will identify the estimated assessment amount on the property). The board will then hold a public hearing to receive and either grant or dispose of protests to the assessment, which will also be memorialized in a resolution of the board. Thereafter the board will adopt an ordinance to approve and confirm the assessment roll, which triggers the 30-day period for a property owner to prepare the assessment or commence litigation to appeal the assessment. After the 30-day period is over, the assessment roll is recorded in the county recording office and notice of the final assessment is mailed to each property owner. IDEQ and the district will then arrange for the district to issue the tax-exempt bond and the district oversee the annual process of repaying the loan to IDEQ, receiving assessment payments from property owners, and certifying unpaid/delinquent assessment accounts to the county for collection through the tax roll.

Questions from CBPOA members, with answers provided by Mike Galante, NKWSD District Manager

***Q1.** We have a loan commitment from DEQ. If NKWSD takes over our wastewater system and the DEQ loan is transferred to NKWSD, what is the NKWSD policy regarding sale of a member's property within the district? Would the district require payment of that member's portion of the DEQ note, in full, when the property is transferred to a new owner? Or, could the new owner assume the note from the seller?*

A1. Regarding the loan commitment to DEQ. The Department (DEQ) does have the ability to transfer the SRF loan to North Kootenai Water and Sewer District (District). Once that happens, it is the District's responsibility to repay that loan. At the onset, the District will form a Local Improvement District (LID) over the properties served. This includes occupied and vacant properties. This is called the LID Boundary. The LID assessment is the cost of the wastewater project divided by the number of properties in the LID boundary. This LID assessment goes as a lien on each individual property and shows up on the title.

The District has no say whatsoever on anyone selling their property or buying property within the LID boundary. Since the lien will be on the title one of two things can happen. It can transfer to the next property owner and the repayment is now their obligation, or as it happens in most cases, the mortgage holder does not want to be in second position and requires that the LID assessment be paid in full upon closing.

The LID process is the means of securing the loan. Should someone default on the LID payment, the District can foreclose on the lien. Please note, on a property transfer, it is not the District that requires payment in full of the LID assessment, it is typically the mortgage company or the bank holding the mortgage.

***Q2.** If an owner of multiple properties, each with sewer connection, decided to combine two of the properties after annexation, could that property owner get a refund from the district for because he needs only a single connection after the combining?*

A2. Combining multiple properties after the LID assessment role has been completed will not result in a refund to the property owner from the District. Carlin Bay Property Owners can ask the District Board of Directors to put their name on a list of surplus LID assessments that could be sold within the LID boundary at a future date. This would occur if a large parcel owner decided to "split" his parcel in two, and would therefore need an additional wastewater LID for the newly created parcel. The new parcel could "buy" the surplus LID

assessment from the owner that "combined" his/her property. The party that is combining will have to continue to make the annual LID assessment payments until such time as the above circumstance happens. The simple act of combining two or more lots does not release the obligation to pay the assessment after the LID final role has been completed.

Q3. *Many years ago CBPOA, its Association members and Board members determined that some lots had been combined as "parcels" and were sold as such by the developer. These parcels were combined by the developer in 1998 through the Kootenai County Tax Assessors office and have one parcel number. CBPOA and these parcels by contractual agreement via the CC&Rs, would be treated as a single property, having single water and sewer connection and a single voting membership in CBPOA. How would these properties and connections be assessed by NKWSD?*

A3. Assessment roles are determined by the KC Assessor role of property ownership. If the Assessor shows it as one parcel, the LID assessment would be for one. It should be understood that one parcel = one equivalent residence (ER). Should someone decide to build a second residence on the property it's another ER and another assessment.

Q4. *What is a district wide assessment, and why do such assessments happen?*

A4. First of all, there have been two District revenue bonds. The first was to "buy" the individual ground water systems owned by Bud Ford, the Hayden Pines water systems. This bond also included the purchase of Hayden Pine's assets such as trucks, backhoe, repair parts, tools, shop, office, pipelines, service lines, meters and property that the facilities occupy. The revenue bond by law, has to be approved by a majority of voters in the District boundary. The first bond in 1999 was for \$2 million. It was a 20 year bond. The District paid on this bond for 10 years, and then paid it off as part of the second revenue bond in 2009. This was an \$8 million bond. The 1999 bond was retired with the funds from the sale of this bond. In addition, the remaining funds were used to replace aged infrastructure within the "original" ground water systems. The second bond repayment did not benefit Hayden Haven/Gem Shores or Gozzer Ranch/Arrow Point. These areas are NOT subject to paying for this second revenue bond. The Board of Directors decided that these areas would only repay for the original 1999 bond payment (3.82/month/connected water user). It is key that you understand that wastewater users do not repay this, only water users. Carlin wastewater users would not repay this bond.

The decision to take on this second revenue bond was approved by the voters. There are no future plans to have additional bonds or assessments.

In the case of "systems" that bring entire infrastructures to the District to annex or to have us renovate and finance, only that system pays for the renovation. Regular O&M costs are another story. Should a wastewater pump go bad at Carlin Bay's system after the installation is complete, and is out of warranty, the District will replace this pump with District funds, not a special assessment to the Carlin Bay users. The same applies to other systems within the District. Should a well pump fail, we fix it, pay for the repair. No assessment to anyone. It is part of ongoing O&M. For this discussion, Carlin Bay's wastewater would fall into this category. CBPOA would still own their water system and it would be CBPOA's responsibility.

Q5. *NKWSD had a DEQ violation of some sort in the past. What was that about, and what corrective action has been taken to prevent a recurrence?*

A5. DEQ violation. The District did have a DEQ violation. One of the District's smaller system was being manually chlorinated, directly into the water storage reservoir. A DEQ field regulator instructed me to install a chlorine injection pump immediately. The District complied. In fact I had two other chlorinators installed on two other systems. DEQ said that we violated the drinking water rules by not submitting engineered drawings of the installations. We were following a direct order of a field regulator, but he was retired and living overseas in a remote area and couldn't be contacted to verify his orders to NKWSD. DEQ went ahead and fined the District for the violation. The severity of the fine was reduced, and further mitigated by the District agreeing to a Supplemental Environment Plan (SEP). This plan was to install energy saving devices within the District over a 5 year period. The plan was submitted and approved by DEQ. We have been abiding by the SEP plan, and have since remedied the chlorine pumps by submitting engineering.

It should be noted that a year after the fact, DEQ found out that this particular field overseer had done this to other water systems in the northern panhandle area. They were not fined or cited for violations. DEQ decided not to rescind our violation.

I would encourage you to contact DEQ directly regarding the District's standing with DEQ, and with our compliance with the drinking water and wastewater rules. John Tindall is the principle engineer in charge of wastewater and water. Suzanne Scheidt is the drinking water program supervisor.

The District has nothing to hide. You are welcome to ask anything, and if I (Mike Galante) can answer it I will, and if I can't, I'll do my best find someone who can.

Q6. *NKWSD will assess the state of the existing CBPOA and CBSA infrastructures before annexing them into the district. What will this assessment entail, and what would that mean to individual members?*

A6. As a matter of normal course of business, the District looks at all of the components for the wastewater system. This includes the proposed improvements as well as the existing infrastructure. Typically, DEQ has asked NKWSD to service and maintain the sewer system from the individual septic tanks to the final treatment, and in this case irrigation of the treated effluent.

The lift stations, and individual septic tanks are part of this, along with the collection mains. When we took over Arrow Point, we inspected all of the existing septic tanks. This was to ensure that 1) a real septic tank actually existed, 2) whether it needed pumping, 3) if it has a sanitary tee installed, 4) it has an accessible hatch or cover brought to grade for servicing. Most all of the septic tanks have pumps, so serviceability is critical. While in a perfect world, NKWSD's responsibility would end at the property line and the septic tank, pump, etc. would be the property owners responsibility, it didn't work out that way, at least at Gozzer. We could make a different utility agreement with CBPOA, and we should discuss these particulars at some point in time.

History of leak repairs; this is to determine if there are problem area with the wastewater collection system. We won't be digging up the whole place looking at the collection mains.

Control panels and lift stations are a critical element of the system. NKWSD will install telemetry at each lift station to provide remote viewing of the lift stations to ensure correct operation.

Improvements to any of these listed items could and should be included in the DEQ loan proposal. The financial impact for these improvements should not be significant in the whole project.

Q7. - *The salaries of Idaho State employees are public knowledge. Are the salaries of the NKWSD employees also subject to this access?*

A7. Yes, Employee gross salaries are subject to disclosure. A formal public records request pursuant to Idaho Code 9-340C is needed to disclose this information. The Board's position on regarding salaries is to balance personnel costs and expenses with the need to recruit/retain qualified personnel.

Q8. - *What is the total annual compensation for the upper management of NKWSD? Any company can be "nonprofit" if the compensation packages are high enough.*

A8. I'm not quite sure what is meant by "upper management" but I presume this means the board members since all others "public officials" under the Public Records Act are employees. Compensation of the Board is subject to disclosure pursuant to Idaho Code 9-340C. Board compensation is limited per meeting pursuant to Idaho Code 42-3209.

Q9. - *What is the average hourly wage for Level 2 water and wastewater operators for NKWSD before benefits?*

A9. See previous answer, IC 9-304C

Q10. *Would the rate payers of Carlin Bay be paying for employee medical benefits? Retirement benefits?*

A10. All District rate payers pay for all District expenses via the rates set by the Board pursuant to Idaho Code 42-3212(l). These personnel expenses are not payable by any other means other than the rates and charges paid by the customers.

Q11. *What other benefits to employees of NKWSD would we be paying for? What safeguards are in place to assure that employees of NKWSD are not being paid excessive wages since those served are essentially a "captive audience"?*

A11. The key safeguard is very similar to the election of officers in a private association. The Board is elected by the "registered electors" in NKWSD. Elections have been won or lost over these very issues. Similarly the budget that is adopted pursuant to IC 42-3228 to pay District expenses, including personnel expenses is subject to advertised notice and a public hearing. In addition, Idaho has the open government requirement that requires NKWSD to advertise and hold a public hearing for prior to any "fee increase that is in excess of 5%" of the amount of the last fee collected, or a "new fee" pursuant to IC 63-1311A.

Q12. - *What is the estimated number of hours per week that NKWSD employees would be spending on the Carlin Bay wastewater system?*

A12. Not sure of the hours required at this point. System design will dictate some of this. Initially there will be a substantial number of hours on site. This will vary with the seasons. Once the design is complete, an estimate of labor will become clearer. This is part of determining rates.

Q13. - *Considering that this will be a new system, how much of our monthly wastewater bill would be set aside for reserves for future maintenance?*

A13. This amount will be determined based on the estimated life of the various components of the system. A detailed rate study will include this component. Remember that not all of the system will be new.

Q14. - *Are complete financial statements available for review by the current or proposed ratepayers? The financial statements on the web site are incomplete. Is NKWSD mandated to have their financial statements available for rate payer review?*

A14. Financial statements (public documents) are available under the Public Records Act, IC 9-340.

Q15. - *Exactly how many incidents has NKWSD been fined for in the past 10 years by DEQ?*

A15. One (Answer # 6, above, describes the violation.)

Q16. - *What will be the average response time if we have a problem with a lift station? We had a lightning strike this week that sent raw sewage flowing down Edgewater Drive. Our operators were immediately available to fix the problem and stop the flow. How fast will your operators respond? Will there be middle of the night response or will all problems have to wait until normal business hours?*

A16. I would expect that our response time would be about one hour. The need for telemetry at each of the lift stations, and the control building would provide alarms to the District. We have employees on call 24/7. Responses would typically be whenever necessary. That is the typical method of operation now, and would not change. Historically, bad situations (after hours call outs) usually warrant having the majority of the crew respond.

Q17. *Regarding ownership of wastewater assets, I recall that the district would need to own all of the wastewater system assets, including all of the pumps, controls, pipe, tanks, lagoons, land application systems, controls, etc. that comprise the system; and that CBPOA could retain ownership of the real property occupied by those assets, with CBPOA granting a non-revocable blanket easement to NKWSD for access to the assets. Is my recollection accurate?*

A17. You are correct. CBPOA will convey all wastewater facilities, including collection mains, pumps, lagoons, etc. to NKWSD. The property that these facilities occupy can still be owned by CBPOA. A

non-revocable easement for the purposes outlined in the conveyance document will be granted to NKWSD by CBPOA. You can if you choose, convey real property. If not, CBPOA will be responsible to pay property taxes to the Kootenai County.

***Q18.** Regarding a non revocable easement, I recall that you said that NKWSD could terminate an easement if at some point it was determined that the easement was not necessary for operation of the system. (The example that I presented related to the property that would be occupied by a land application system, and reduction in the land area needed if at some time in the future the wastewater system was converted from a class C system to a class A system.) Is that correct?*

A18. You are correct. The conveyance agreement and the utility service agreement between NKWSD and CBPOA would address this future possibility.

Thank you for your interest in learning about CBPOA's option to join North Kootenai Water and Sewer District. If you have questions that are unanswered in this letter, please forward them to the wastewater committee via email@cbpoa.org .

CBPOA Wastewater Committee

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