

# **FOWLER BOARD OF TRUSTEES SPECIAL MEETING**

**317 S. Main Street  
December 18, 2017 6:00 p.m.**

Mayor Pro Tem Nathan Shultz called the meeting to order and led those present in the Pledge of Allegiance.

**Present:** Mayor Pro Tem Nathan Shultz; Trustees Andy Lotrich, Diana Saxon and Lowell White.

**Absent:** Mayor Chuck Hitchcock; Trustees Randy McKown and Emil Rogge

**Staff present:** Interim Administrator Dan Hyatt, Public Works Brent Bitter and Town Clerk Kelly Lotrich.

## **Public Hearing**

Mayor Pro Tem Nathan Shultz called the Public Hearing on the water pollution control revolving fund disadvantaged communities loan to order.

Town Clerk, Kelly Lotrich stated that the notice of the public hearing had been published in the Fowler Tribune on November 16, 2017, 32 days prior to the hearing.

Mayor Pro Tem Shultz opened the floor for public comment.

No members of the public were in attendance.

No members of the public testified.

No written comments from members of the public were received.

Interim Administrator Dan Hyatt presented the board with a memo describing the sewer plant upgrade history and reason the second loan is required.

## **SEWER PLANT UPGRADE HISTORY REASON SECOND LOAN IS REQUIRED**

Any entity discharging wastewater in the Arkansas River must treat its wastewater to keep all contaminants in the water below Colorado Department of Health and Environment ("CDPHE") discharge limits. Many discharge limits are set by the federal Environmental Protection Agency and are enforced by CDPHE. CDPHE has authority to make requirements more strict but cannot make the requirements less strict.

Prior Efforts. Fowler has been working to resolve wastewater treatment issues for many years. Previous efforts focused on enlarging the lagoons to avoid discharging wastewater into the Arkansas River and thereby avoid the need to comply with Colorado Department of Health and Environment ("CDPHE") discharge limitations. This effort failed. Although the town dramatically increased its lagoon storage, the storage

continued to be less than needed to prevent discharge. Fowler has continued to discharge one or two months every year to avoid spilling wastewater at the lagoons.

The Impact of Infiltration. The increase in storage failed to resolve the issue because sewer mains and sewer service lines in the town are old. The types of material used in the construction of the mains and service lines crack. The cracks allow storm water to infiltrate into the sewer lines and flow to the sewer treatment lagoons filling the lagoons and forcing the town to discharge. The infiltration increases as the sewer lines age requiring increasing storage.

The Impact of Augmentation Rules. Importantly, wastewater evaporated from the lagoons cannot be used as a credit against depleted water while water that is discharged may be used as a credit against depleted water. Under Colorado water law, Fowler must put approximately one gallon of water back in the Arkansas River for every gallon the town consumes. This is called augmentation. Each gallon of wastewater put back into the Arkansas River from lagoons reduces the amount of water that must be purchased by Fowler for augmentation. The new system will increase the wastewater discharged into the Arkansas River and reduce the amount of augmentation water that must be purchased each year.

State Compliance Orders. In February 2011, CDPHE issued a new discharge permit to Fowler allowing the town to discharge wastewater into the Arkansas River. The permit contained a compliance order. Among other things, the compliance order required the town to hire an engineer, design a wastewater plant that will meet all the CDPHE discharge requirements, and complete construction of the new plant or modifications to the existing plant by March 31, 2017.

Fowler's Response. Fowler hired an engineering firm now known as: "IMEG". After the firm was hired, the EPA inspected a local business and determined the business was discharging too much BOD into the Fowler wastewater plant causing the plant to violate the maximum BOD contaminant allowed. IMEG studied this problem and determined that the problem could be resolved with the proposed new wastewater treatment system. Constructing a new system will protect this business from EPA enforcement action that could result in closure of the business.

First Design and Initial Funding. IMEG completed a proposed wastewater treatment system design to modify the existing lagoon system. The design addressed all the CDPHE discharge limits in place at the time. **Funding was obtained in the form of a \$1.4 million loan from the state wastewater revolving loan fund and a \$600,000 grant from the Colorado Department of Local Affairs for total funding of \$2,000,000.**

State Imposes New Discharge Limit. The design to modify the lagoon system was submitted to CDPHE. CDPHE did not respond to the design by approving or rejecting the design for six months. It did request additional information during that period. Finally, CDPHE issued two letters to Fowler. One letter imposed a completely new discharge limit for Total Inorganic Nitrogen ("TIN"). Previously, Fowler had no discharge

limit for TIN. The new requirement was a total surprise. The second letter rejected the wastewater plant design on the basis that **the lagoon modification design was not able to meet the newly imposed TIN discharge limit.**

IMEG Redesigns the Sewer Project. The imposition of the new TIN limit forced IMEG to redesign the wastewater system. The new design uses an Intermittently Decanted Extended Aeration Lagoon, or IDEAL. The IDEAL system consists of an EDI floating lateral aeration system with Magnum fine bubble diffusers, two chains of BioReef BioCurtain, a static decanter with flow control valves, an overflow pipe with Storm Mode™, process controls, and a blower package. The new design was submitted to CDPHE and approved by CDPHE.

Redesigned Project Increased Costs. The engineer's estimated cost for the new design is \$3,600,000 or \$1,600,000 more than original estimated. The town proposes to fund the additional cost through a second Colorado Wastewater Revolving Loan. If the loan application is approved, the interest rate will be zero.

Loan Repayment and Mandatory Reserve. The new loan must be repaid. In addition, under the loan terms, Fowler must set aside ten percent (10%) of the loan payment each year for the first ten years to be used as a reserve. This reserve may only be used to make a loan payment in case of an emergency. It may also be used to make the payment during the last year of the loan. To meet this reserve requirement, an additional 10% must be added to the first 10 years of principal payments.

Mandatory Loan Rate Covenant. The loan terms also require Fowler to set sewer rates and charge high enough to produce Gross Revenue that is at least sufficient for each calendar year to pay the sum of: (a) all amounts required to pay operation and maintenance expense, (b) a sum equal to 110% of the debt service due on the loan and debt service on any other loan secured by the sewer enterprise revenues at a parity with the new loan, (c) the amount of the annual reserve accounts for loans secured by the sewer enterprise revenues, (d) a sum equal to the debt service on any other loans secured by the sewer but subordinate to the new loan; ( e) amounts necessary to pay and discharge all charges and liens or other indebtedness not described above and payable out of the Gross Revenue during the year.

Rate Increase. The estimated monthly increase per sewer customer to cover these costs is \$12.40 where the second loan amount is \$1,600,000.

Alternative. No viable alternative exists. Fowler is constructing the sewer project to comply with mandatory Colorado Department of Health and Environment regulations. Failure to fund and construct the project timely could result in Fowler being fined and then having to complete the project increasing tax payer costs.

**MOTION (102-17)** Trustee Lotrich moved to have the Sewer Plant Upgrade History: Reason The Second Loan Is Required added to the minutes. Trustee White seconded the motion and the motion passed unanimously.

Mayor Pro Tem Shultz declared the public hearing closed.

## **Adjournment**

**MOTION (103-17)** Trustee Lotrich moved that the meeting adjourn. Trustee Saxon seconded the motion and the motion passed unanimously.