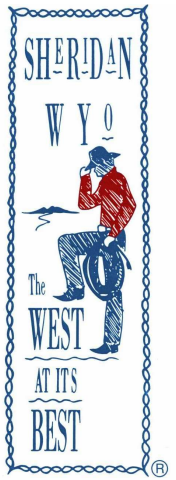




# Sheridan Area Water Supply Joint Powers Board

## MEETING MINUTES

August 9, 2006



A meeting of the Sheridan Area Water Supply-Joint Powers Board (SAWS-JPB) was called to order at the County Commissioner's Board Room at 4:55 pm. Chairman Ky Dixon presided. A quorum of Board Members was present including: Secretary Kathy Kennedy, Terry Cram, and Larry Durante. Others present included: Administrator Jay Stender, Dayton Alsaker (HKM), Virgil Kinnaird (SAWS counsel), Mike Cole (City of Sheridan Public Works), members of the public, and the media.

### I. CALL TO ORDER

- A. Chairman Ky Dixon called the meeting to order at 4:55 pm.
- B. The meeting was recorded for transcription purposes.

### II. REVIEW AND APPROVE MEETING MINUTES

**Motion made to approve the July 26, 2006 meeting minutes as written.**

**Motion made by: K. Kennedy**

**Motion seconded by: L. Durante**

**Vote 4-0 for approval**

Discussion: N/A

### III. APPROVAL OF AGENDA

**Motion made to approve the agenda as amended**

**Motion made by: T. Cram**

**Motion seconded by: K. Kennedy**

**Vote 4-0 for approval**

Discussion: K. Kennedy requested an addition to the agenda about the County Road and Bridge water use. The request was seconded by T. Cram. This topic was added to New Business by K. Kennedy as item C.

### IV. TREASURER'S REPORT

**Motion made to accept the Treasurer's Report for banking transactions made in the month of July as presented including vouchers and WYO-STAR year end statements.**

**Motion made by: T. Cram**

**Motion seconded by: K. Kennedy**

**Vote 4-0 for approval**

Discussion: J. Stender ran through key items of the report. He highlighted two main notes. These are: 1). WYO\_STAR year end statements were provided to Board. 2). \$1.12 million capital construction check to the City of Sheridan for 20" water line expenses is part of the expenditures.

T. Cram noted that the Sheridan State Bank Operations Account references payments totaling \$9,272.09. J. Stender stated that that amount is the total of Sheridan State Bank checks written for the period. The details are listed on page 3 of the Treasurer's report. J. Stender apologized for the ambiguity related to the totals.

K. Dixon requested that J. Stender prepare a list of standard pre-approved checks for next meeting. J. Stender said he would do so.

#### Audit schedule

J. Stender informed the Board that Dooley & Jelly will start the audit next week. It should be prepared on time (within 150 days of the year end). K. Dixon asked how much SAWS pays Dooley & Jelly for their services. J. Stender answered that the audit will cost either \$16,000 or \$15,000.

### V. PUBLIC COMMENTS

Chairman K. Dixon opened the floor to public comments. Mayor Kinskey joined the meeting during this section.

Comments from: Doug Harbel of 117 Metz Road in Sheridan.

Harbel claimed to have received nothing but negative answers regarding his issue about a tap application and payment for water use. He stated that never signed a SAWS JPB contract, and neither did his neighbor or the previous owner. Harbel stated that J. Stender claims that Don Carroll did sign a water service agreement. Harbel referenced a contract for 100 Metz Road which is not Harbel's address. He requested to know what will happen. He continues to receive a bill. He claimed that this situation is extortion by the Board.

K. Dixon requested that D. Harbel remain civil with comments toward the board. D. Harbel stated that he is being punished for SAWS problems. K. Dixon reminded the board that action related to Harbel's account was brought before board at early meetings and the board decided to shut off Mr. Harbel's water and that the City should send no new bills. The debt remains on the property. Before future water service will be granted old debt and a new tap fee must be paid. D. Harbel claimed that the past due fees grew because he could not get the paperwork from SAWS administration. K. Dixon added that customers are expected to pay their bills and that all pay a minimum fee. If Mr. Harbel does not feel that it is fair, he will have to take it to court or some other entity. D. Harbel requested an administrative hearing.

K. Kennedy said that a hearing had been set up, and D. Harbel decided not to go along with it. If D. Harbel wants it, the Board will secure legal representation first. D. Harbel reminded that the Board cancelled hearing, not him.

J. Stender stated that the request will be on the Board notes. K. Dixon requested that Virgil Kinnaird take note of the request and set up the hearing. V. Kinnaird suggested that D. Harbel should go to the County Clerk and put forth the required leg work to request and comply with the rules. D. Harbel countered that he need only request the hearing. T. Cram stated that Mr. Harbel is correct that he did request a hearing and the Board attempted to negotiate in order to avoid the legal proceeding. V. Kinnaird

stated that D. Harbel can file a grievance and the Board can decide whether to hire an officer and go through discovery. It would be inappropriate to set a date at this time. K. Dixon asked whether the Board should wait to be presented with a formal petition. V. Kinnaird said yes. If one is filed then the Board must act.

K. Dixon briefly outlined the history of Harbel dispute. The Board understood that D. Harbel would pay the amount due; however, it was not settled as expected. D. Harbel stated that he never agreed to pay the bill. K. Dixon stated that the Board will not argue this issue here. D. Harbel requested a hearing again. L. Durante asked whether D. Harbel had a receipt of payment of his bill to either SAWS or to the contractor. D. Harbel answered “no” as he does not keep files that are 17 years old. K. Dixon repeated that there is not time at this juncture to argue this dispute. It will be considered in a more formal setting. K. Dixon moved the meeting on to new comments.

Ron Lytton ,78 Metz Road, approached the podium. Lytton claimed that SAWS water on Metz Road has no easement paid to the property owners. There was an original water contract is for charges of \$52 per resident for two months. Metz is a private road. K. Dixon said that if Mr. Lytton feels that monies are due to owners then a bill should be presented to SAWS. R. Lytton said that the contract does not allow SAWS to raise rates to these owners. When the line was put in, owners contested. He said that he had all the evidence regarding the easement and contract. K. Dixon stated that the issue must be presented in writing so that board can contest it.

T. Cram asked V. Kinnaird whether D. Harbel’s request constituted a formal request. V. Kinnaird stated that he was not aware of a written request to the Board. K. Dixon stated that she thought that it (the request) was not passed on to Mr. Kinnaird because the Board thought the issue was resolved. The process, for administrative hearing will be initiated. T. Cram stated that the Board cannot set date at this time. V. Kinnaird added that someone must preside over the hearing, and it likely should not be a Board member or himself. Someone else must be contacted. K. Dixon addressed D. Harbel and told him that the Board will be in touch with him. D. Harbel stated that he doesn’t understand why lawyers are needed.

Claudia Azhari approached the podium. She expressed concern that insufficient public notice is given of these meetings. Many people are concerned about Indian Paintbrush Estates and would like to know its status with more certainty. A comment from the gallery suggested that notice was printed in the Saturday August 5, 2006 issue of the Sheridan Press.

## VI. OLD BUSINESS

### Administrator’s Report

#1 Wetlands monitoring with Oliver Grah has been completed. No report has been provided by O. Grah as of yet. Also, no response from the Corps of Engineers has been received related to our permit review and status. Grah will be preparing the permit response.

#2 SAWS is looking into the value of high mountain reservoirs for long term purchase options. J. Stender would like to go forward on contracting Mike Purcell PE as the appraiser of value for Sawmill. Ky Dixon, suggested that the board make an action to move forward on this project.

#3 J. Stender invited Dayton Alsaker of HKM Engineering to go over the 20" line project status. D. Alsaker stated that we are still waiting for the contractor to start. He should start on Monday August 14, 2006. The contractor expects to complete the project this year, which D. Alsaker said seems to be way optimistic. A proposed schedule was handed to the Board. K. Dixon asked whether the prices for materials have been locked in. D. Alsaker said there should be no concern over additional costs.

#4 A pre-bid meeting on the Airport Business Park Water Line Extension will be held August 24th. The award will be made preferably at the September Board meeting, or perhaps the October meeting.

Board Discussion and Questions about administrator report:

Durante: Do we need to enter into a contract to move forward with Purcell? Stender: No contract is needed. Kinskey: Past practice to defer to administrator to retain professional services. Dixon: We have not, however, I agree and its good to bring up. I would like to have an appraisal in hand. These are fairly small parcels of water, but if could have it stored for us, then that would be good. Stender: There are two parties interested. Both parties expressed approval of Purcell's authority. The charges are shown in Purcell's letter. Kinskey: Purcell letter brings up market sales. Will it be agricultural as well as municipal sales? Will they consider statewide sales? Stender: Yes, they will be looking at both agricultural and municipal sales with an emphasis on municipal sales. There is discussion on possible sellers. Park and Dome reservoirs are potential sellers. Kinskey: what other municipalities purchasing from those two reservoirs? It is important that everything be considered. Dixon: asked for a motion.

Ron Lyton: Do SAWS customers get to vote on expenditures by the Board? Ky: No.

**Motion to authorize contract for services on Purcell letter.**

**Motion made by: L. Durante**

**Seconded by: K. Kennedy**

**Vote 5-0 for approval**

## VII. NEW BUSINESS

A Indian Paintbrush Estates – Water Service Agreement.

Kennedy: will the public comment first?

Dixon: we will receive the report from Jay first, then the developers, then the public, then the board will take action.

Stender provided and outline of details.

1. IPE is within our service area.
2. SAWS water should be used for the best purposes only.
3. Demand from the construction engineering specifications as proposed by the developers has been reviewed and also changes have been made to meet the proposed concerns. Changes have been submitted to WY DEQ. The changes were received and approved. Construction is moving forward.
4. SAWS needs the drawings of water pipes put in the ground.
5. Must have construction performance documentation; pipes must be tested for pressure and bacteria before individual parties can use it.
6. Lastly, the water service agreement between SAWS and the developer must be approved by the board.

Dixon: we recognizes the importance to the community, therefore I am asking the developers to present their information.

Dan Riggs: Attorney representing IPE. Indian Paintbrush is appropriate for a SAWS service agreement and this deserves the board's approval. As pointed out by J. Stender IPE is well within the service area. (Map brought out) IPE has complied fully with regulations. IPE has the approval of SCC. Subdivision has received 6 permits and approval from Wyoming DEQ. IPE has applied for and was granted a permit to construct from the Department of Environmental Quality (WDEQ). Covenants for this subdivision, imposed by the developer, are in favor of SAWS water restricted to indoor domestic use. City limits may potentially reach IPE. The developer has cooperated with the city for possible annexation and upgraded infrastructure. Developer has tried his best to do right thing and follow the rules and regulations of the city, county and state. Use of this land as 2 acre home sites is well within the accepted use of this land. Riggs raised two (2) issues:

1. Is there enough water pressure? Studied in detail by engineers Megan Crow and Mike Cole and both conclude that pressure is available. I have no personal knowledge, but I would like to ask Mr. Stender to relate to the SAWS board the essence of the studies conducted by the engineers. Stender: Nov. 11 report for Megan Crow by City of Sheridan. The SAWS system can maintain 57 psi along Swaim Road with the highest elevation reaching 408 feet. Will be able to maintain this pressure without the use of a booster pump. Pressure is adequate. Riggs: Question of water pressure has been answered.

2. Is there enough water available? There are 22 new lots to be served in addition to serving existing customers. I have no personal knowledge of the area, and, again, would like to ask Stender to comment on available water. Considering the direct flow rights and storage rights that SAWS has, does SAWS have an adequate water supply to serve the Indian Paintbrush Subdivision, the current users, and those customers who have been approved for a SAWS tap but are not currently using SAWS water? Stender responded the same as this question asked at last month's SAWS meeting. Based on the HKM report from December 2003, we have adequate water that accounts for existing subdivisions not built out and those subdivisions within.

Kinskey: Mr. Riggs should say what he wants to say. This is not an adversarial proceeding with the calling of witnesses. I will wish to call my own witnesses.

Dixon: we agreed to listen to the presentations before the board stepped in.

Kinskey: this is not a presentation if we are calling witnesses and taking testimony.

Dixon: the board may or may not like the format of the presentation, but we agreed to let them addresses us as they wished to address us as long as they were courteous.

Riggs: I have no further questions of this kind. Those were issues in which I did not have much knowledge but I know that others do, so I asked for a knowledgeable comment. SAWS is the largest single economic development vehicle for the region. It is the envy of other Wyoming communities. IPE has complied with rules, it has been reviewed and approved, and SAWS has adequate water and pressure, therefore, IPE asks for service pending certification of appropriate installation.

No further comments from IPE.

Irene Hause: 74 Swaim Road. Property line adjoins the wet corner of Mr. Bliss's property. I am speaking on behalf of myself, my brother, Max McLean, and Sandi Sare. This has been going on for about a year. We couldn't believe it in the beginning because couldn't see why anyone would develop on that soil. It didn't get through zoning committee; it failed twice, and then finally made it through by 1 vote on March 7th. Permits have been gathered, but also know what has been said behind closed doors. We have not spoken with one engineer that thinks it wise to go through with this project. We know the history of the land is very wet. It IS a swamp under normal weather conditions. (people who lived there 50-60 years). The septic systems are not as safe as people would like to believe. We have water that crosses paintbrush and comes onto our property. We don't want the wildlife destroyed. Info used in drought years does not adequately convey what this land is really like. Consider history, health safety, weather back to normal, and septic leaching. Jack Adsit comment: One of the houses will float down the draw.

Claudia Azhari: I wonder what is the rationale for allotting water to new subdivisions when current Sheridan residents are asked to voluntarily restrict their water use?

Vickie Taylor: the SAWS board is being asked to approve the water service agreement for IPE. If denied, where would developer turn? Would suit be brought against the SAWS Board? Given that all permits have been granted, would the SAWS board be the party to be addressed if the tap is denied. Ky: I would not want to speculate, but we have pondered, and none of us want to put the Board in a position of litigation.

Ky: asked for board pleasure. If have questions. Kennedy: we should probably have a motion and then discussion.

**Motion to approve IPE water use agreement as proposed.**

**Motion Made by: T. Cram**

**Seconded by: K. Dixon**

Discussion: Clarification, the bylaws require 4 positive votes to have positive action take place given the quorum issue.

Kennedy: why was water bought to get us through this year if we have the water? My job is to take care of customers. How can I add more taps when I have no idea how many are out there? How many water agreements that have not brought their taps forward? How many taps at Powder Horn that have been approved and have not been brought forward? I need to know how many taps are out there and have been allocated. Buying more water is on the horizon, but we have asked people to restrict in the city because we are in drought season. How many out there are promised? If we have so much water in storage then why are we buying \$34,000.00 of water this year?

Stender: the board directed the current purchase. The April and May reports showed an absence of snow pack, stream flow right (collectively). The purchase was a buffer in the event of customers out there.

Kennedy: we did ask and we did need it. If we do not get an adequate snow pack and no new purchase, what will we do if it's another dry year? We don't want to say that we messed up.

Stender: this year would have required more aggressive use of Twin Lakes. There are consequences for aggressively using Twin Lakes. Twin Lakes was built to provide adequate water for continued development. We cannot predict the weather patterns. There will be consequences either way, whether dry or wet.

Kennedy: I have approved 2 or 3 water service agreements for Powder Horn that have not been used. Can we revert unused taps? If the 900 come on, I have problem here.

Stender: It was staggered as such so they cannot build out all at once.

Kennedy: I have an obligation to customers we serve first and foremost.

Dixon: How many acre feet would 20 SAWS customers require? Or in gallons.

Bliss: 12 acre feet for annual use. 4 acre feet for 100 day irrigation season.

Dixon to Cole: At one time someone, maybe Mr. Bliss, said they would be willing to make an agreement in a drought year to create a format where the developer will provide us with the 4 acre feet on an annual basis.

Bliss: I am willing in the event of drought to lease 4 acre feet until the 20" pipeline is installed and SAWS feels it has an adequate supply. I offered this as an option, but it was never followed through by the board. There are supplies out there for such a purpose.

Kinsky: your stored water couldn't be used.

Bliss: correct, but I would lease from other owners that would flow into the city's drainages. I would not be able to convey my personal water rights because mine do not flow into the city system. Furthermore, the board doesn't allow the transfer of that stock to other uses in agriculture, and that's specifically for our water rights, which is Colorado Colony. But there are other shares available to augment in years of drought.

Dixon: how could we secure that commitment?

Bliss: you could incorporate it into the agreement. Make it a part of the agreement for as long as it would take board to secure other means.

Stender: if that is a condition of the water use agreement, I would petition that the board offer that specifically as a part of the water use agreement. Or we could have this as a conditional.

Dixon: how could we call upon it in 10 years?

Bliss: when SAWS develops further water and the 20" line then the 4 acre feet will be made up by SAWS themselves. The most that SAWS is looking at is around 200 acre feet. At such time the obligation would be released.

Cram: Did it go through P&Z and CC? I would contend that this is not a planning issue but a water issue. In planning documents, assume that if the work is done then the water

will come. Letters state that the capacity is there. We have the HKM study from December 2003 on availability. **It states 20 years of availability.** These are even listed as conservative estimates. In my opinion, we haven't even gotten to the tap numbers considered in the reports. I don't think we should decide land use issues with water. Maybe should decide these things before people put in \$100K. As far as water goes, we should not expose the board to potential litigation. My opinion is obvious.

Durante: We had no idea of the drought condition at time of the HKM report. We have had half of the rain we usually get in the last few months. I am very concerned about the water availability. There is no warranty period on the agreement. We are extending this longer than any other extension before. I will not abstain from voting on this issue.

**Dixon role call vote**

**Cram: yea**

**Kennedy: no**

**Durante: no**

**Kinskey: no**

**Dixon: yes**

**The motion FAILS**

B. Grace period

Dixon: there was a question about the grace period for SAWS billing and the grace period that the city provides. Jay has a recommendation for us.

Stender: the current grace period is 0 days. For consistency, I ask board to implement a 5 business day grace period.

**Motion made to allow a 5 day grace period.**

**Motion made by: K. Kennedy**

**Seconded by: D. Kinskey**

Discussion:

Durante: I heard that our fees are much higher in the county than in the city.

Stender: yes.

Durante: How much is it if you are a day late?

Stender: 10% per day.

**Move to amend the motion to change the rate to the same as the city if the bill is overdue.**

**Motion made by: D. Kinskey**

**Seconded by: failed**

Stender: the board action for grace period. The intention of the 10% penalty (Aug 2004) was made by the board to encourage prompt payment. The Board can change, but it was there for a reason.

Kinnaird: if you are going to change the penalty or give grace, it will require an amendment to Rules, and it would require a procedural hearing.

**Move to proceed to amending Rules and Regulations.**

**Motion made by: D. Kinskey**

Kinskey: (to Mr. Kinnaird) will the grace period require the rules to change. Kinnaird and Cole suggest resolution to do whatever they want. A resolution has higher standing than a rules amendment.

**Amendment: Administrator will prepare resolution to allow administrator to effect changes in grace and penalty.**

**Motion made to authorize the administrator to draft a resolution amending grace and penalty.**

**Motion made by: L. Durante**

**Seconded by: D. Kinskey**

**Vote 5-0 for approval**

C. Road and Bridge (as requested by K. Kennedy)

Stender: met with Mr. Yates. The activity of water use at the County Shop has stopped. The county will pay for the water they used from June 1 through Aug. 7 and Christie will bill it. A meter will be acquired to track the water used and establish an account for the water use. The account will be at the cost of the county. This account will be initiated by August 11, if not Stender will start the project and submit the bill. The new business park extension will have a meter and flushing hydrant. The plumbing code requires a back flow devices for the hydrant.

Dixon: this is not a time to be cavalier or defensive. The water source is intended for fire water use only. No doubt that the water was sometimes used for other uses than fire prevention.

Kennedy: is there a way to get a handle on others?

Kinskey: as an ordinary citizen, what would happen to them?

Dixon: I do not mean to be defensive, but the city and the county require appropriate water sources for fire prevention.

Kinskey: What is the potential penalty for an ordinary citizen if they engage in this kind of conduct?

Stender: for example if the city sees some suspicious activity, Mr. Peacock will me ask about an illegal tap. Then we will go out and do some recon, if we find a meter that is not working we will shut it off. If they do not have a proper tap application they cannot resume without an appropriate application. If they do not want an application then we will take action to prevent them from having water.

Cole: the city's policy is the same, but a criminal prosecution is also an option.

Durante: I was not aware of it. We do not know how much.

Cram: We have a pretty good idea how much was used.

Kinskey: but it was only for county use?

Cram: yes.

Vickie Taylor: in agreement with Mayor Kinskey. I would like to ask our county commissioner's to consider issuing a release to public so they can understand the situation a little more clearly.

Stender: I will author a press release to address the remedies for this situation.

**Motion to direct administrator to use channels to ask users to conserve water.**  
**Motion made by: T. Cram**  
**Seconded by: K. Kennedy**  
**Vote 5-0 for Approval**

Next meeting: September 13, City Hall  
K. Kennedy will not be present.  
L. Durante will not be present.  
Look for new date. Email will be sent out by admin.

**VIII. EXECUTIVE SESSION**

A. N/A

**IX. ADJOURNMENT**

A. The meeting was adjourned at 7:00 pm by K. Dixon.

APPROVED BY: \_\_\_\_\_

ATTESTED BY: \_\_\_\_\_