



City of Nampa

Wastewater Treatment and Disposal Upgrade

**Wastewater Advisory Group Meeting #10 and
Industry Working Group**

Meeting Summary

October 9, 2012 ♦ 12 – 1 p.m.
Nampa Civic Center
311 3rd St. South Nampa
Nampa, Idaho



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Overview

The City of Nampa must implement an extensive program to upgrade how it treats and disposes its wastewater in order to meet anticipated stricter regulations.

The purpose of the Nampa Wastewater Advisory Group (NWAG) and Industry Working Group (IWG) is to provide guidance to the City of Nampa on how best to upgrade its wastewater treatment and disposal system.

Agenda and Format

The City of Nampa hosted the tenth Nampa Wastewater Advisory Group (NWAG) meeting on Tuesday, October 9, 2012 at the Nampa Civic Center. The Industry Working Group was also invited to participate in this meeting

The meeting objectives were to:

- Present the outcomes of the September 11 City Council workshop
- Present DEQ SRF loan opportunity
- Provide an overview of the Judicial Confirmation process

Agenda:

- Welcome and workshop objectives – Michael Fuss, P.E., MBA, Public Works Director, City of Nampa
- Outcomes of September 11 City Council Workshop – Steve Burgos, Senior Associate, Brown and Caldwell
- Present DEQ SRF loan opportunity – Michael Fuss, P.E., MBA, Public Works Director, City of Nampa
- Overview of Judicial Confirmation process – Matthew Johnson, Nampa City Attorney, White Peterson
- Next steps – Rosemary Curtin, Public Involvement Consultant, RBCI

Each attendee was provided the following handouts:

- Agenda for NWAG Meeting #10
- PowerPoint presentation for NWAG Meeting #10
- Comment form

Presentation Summary

Welcome and meeting objectives – Michael Fuss, P.E., Public Works Director, City of Nampa

Michael Fuss thanked all meeting attendees for participating in the Nampa Wastewater Advisory Group (NWAG) and Industry Working Group (IWG). He also thanked everyone for being able to come together on short notice. He explained that the Program Management Team wanted to inform the NWAG and IWG about some recent important developments:

- The Program Management Team will provide an update of the outcomes of their recent meeting with Nampa's City Council.
- The City has been presented an opportunity to apply for and potentially receive a state revolving fund (SRF) loan from Idaho Department of Environmental Quality (DEQ), which could help fund the wastewater upgrade.
- The City is pursuing Judicial Confirmation to apply for this SRF loan. The Program Management Team convened this NWAG/IWG meeting to present information about the Judicial Confirmation process and gather input before the City Council holds a public hearing on October 15.
- It is important that comments from the NWAG and IWG about Judicial Confirmation are documented so the groups' input can be presented to Nampa City Council.

Outcomes of September 11 City Council Workshop – Steve Burgos, Senior Associate, Brown and Caldwell

Steve explained to the group the results of the Program Management Team's recent meeting with Nampa's City Council:

- Nampa's City Council approved the Wastewater Fund Industrial Incentive Policies. The details of the policies need to still be refined, but the policies have been adopted by the City.
- The Council agreed with the proposed revenue requirements for the sewer fund through 2017 and directed the Program Management Team to proceed with distributing the rate increase equally across all classes of rate payers.
- The Program Management Team has been directed to prepare for a bond election that could be held this spring. No decision have been made about whether the upgrades will be funded through bonding or cash; the Council just wants to ensure they are prepared for the scenario of an election if bonding is selected as the chosen funding mechanism.
- Between now and this coming spring, the Program Management Team will develop standard operating procedures for the industrial policies, finalize the Cost of Service Study and begin preparations for a bond election.

- During the workshop, the Council and Program Management Team discussed recent developments regarding the opportunity of receiving an SRF loan from the DEQ.

▪ **I've heard rumors there is a facility plan update?**

The Facility Plan has been updated to account for the Phase 1 decision. The updated Facility Plan has been submitted to the City and DEQ. The updated Facility Plan, formally known as the Supplemental Planning Document, will be available for public review and comment following DEQ's review. Preliminary design for Phase 1 will begin once the updated Facility Plan is finalized.

SRF Loan Opportunity – Michael Fuss, P.E., MBA, Public Works Director, City of Nampa

- The DEQ maintains a State Revolving Fund (SRF). This fund is used to provide cities in Idaho low interest loans for infrastructure improvements. Nampa applies for an SRF loan every year. SRF loans usually go to smaller cities that have a great need of funding assistance.
- The DEQ recently refinanced many of the previous SRF loans, which resulted in approximately \$50 million in extra available funds. Nampa received a letter from the DEQ on August 28 informing the City of this SRF loan opportunity. The letter explained that if the City would like to apply for a portion of the SRF funds, it must submit an application on or before January 1, 2013.
- To apply for an SRF loan, the City must demonstrate that Nampa is legally able to take on debt. The City can only take on debt by voter approval or Judicial Confirmation.
- By the time Nampa received notice from the DEQ, it was too late to submit a request to Canyon County to include the SRF loan opportunity on the upcoming November 2012 bond election ballot.
- The only way that the City can now qualify for an SRF loan is to receive Judicial Confirmation to take on debt. On September 11, Nampa's City Council voted to hold a public hearing to receive public input on whether or not to pursue Judicial Confirmation.
- After receiving the letter from DEQ, the Program Management Team decided it was necessary to meet with the NWAG and IWG in order to present the SRF loan opportunity and gather input about Judicial Confirmation.
- If Nampa does receive an SRF loan, it would help fund up to \$17 million of the Phase I improvements for the wastewater treatment plant. SRF loans have an interest rate of 2% as compared to 4.8% for regular loans. The lower interest rate of the SRF loan would save the City approximately \$7.5 million when upgrading its wastewater system.
- If Nampa does not receive Judicial Confirmation, or does not meet the application deadline, it can reapply for an SRF loan for FY 2014. However, Nampa may not have the

same odds of receiving a loan for FY 2014 as it does now because the scoring and ranking for SRF funds changes each year. The amount available may not be sufficient either.

- **It seems there are a lot of “ifs” in this. Do I gather correctly that getting in an application for an SRF loan before 2013 is Nampa's best opportunity at this point?**

Yes.

- **Would it be possible to have a special election in December to get a vote from the people?**

No, the state election laws were recently changed so Nampa is limited to only November or May as the election dates.

- **Would the additional \$10 million be financed through rates?**

Yes, to reach \$28 million, the extra needed funds would be met through a rate increase.

- **What is the amount that wastewater bills would be increased with a 2% loan?**

The City would need to raise rates for each customer class approximately 27% if the SRF loan funds are used to fund the Phase 1 upgrades as opposed to approximately 31% with a revenue bond.

Judicial Confirmation Process Overview – Matthew Johnson, Nampa City Attorney, White Peterson

To provide NWAG and IWG members a better understanding of the process, Matt Johnson presented the following legal background information about Judicial Confirmation:

- When the Idaho Constitution was drafted, the framers were concerned about state and local governments taking on debt without votes of the people. Article 8, Section 3 of Idaho's constitution specifically restricts cities from taking on debt for more than a year without an election by the voters.
- However, there is a condition in this article that allows debt to be taken on if it is for an “ordinary and necessary expense.” Traditionally, ordinary and necessary expenses have been the typical, functional services of government, such as providing wastewater services. Upgrading the City's wastewater treatment plant to meet new NPDES permit requirements would typically fall under the category of a necessary and ordinary expense.
- Within the last 20 years, the Idaho Supreme Court has begun to take a much more restricted view of what “ordinary and necessary” means, which is one of the reasons why the DEQ requires some sort of voter or Judicial Confirmation within their loan application. Judicial Confirmation would be a statement from a judge recognizing that the debt is being taken on to fund an ordinary and necessary expense.
- The City must meet the application deadline of January 1, 2013. It was not possible for the City to get this issue on the ballot for the November election between the time they

were notified and the ballot deadline. This took the election option off the table, making Judicial Confirmation the only way for Nampa to get this SRF loan.

- The statute that describes Judicial Confirmation is Idaho Code 7-1301 et seq. The first step of the process is for the City Council to conduct an evaluation of whether the City is interested in pursuing Judicial Confirmation. On September 11, Nampa's Council set the public hearing for October 15. Public input can be taken by either submitting written comments to the City Council before the October 15 public hearing or attending and making comments at the hearing.
 - The Council cannot take action on whether to pursue Judicial Confirmation until 14 days after the October 15 hearing. Nampa will have a special Council meeting on October 29 to decide whether or not to authorize the petition for Judicial Confirmation.
 - If the Council does decide to pursue Judicial Confirmation, the next step would be to file a petition with the Idaho Third District Court. After the petition is filed there is a 30 day period before the District Court hearing. After the 30 day waiting period, it is up to the District Court and Judge to decide when the hearing will be held. The Court should be cognizant of the need of the City to get quick answers, so Nampa would expect some accommodation in scheduling the hearing in time to meet the January 1 deadline.
 - Once the hearing is held, the City must wait for the Judge's decision. The decision could be immediate, but if there is controversy it could take a little longer. Once the Judge's decision is made there is an appeal period, which extends 42 days from the day of judgment.
 - The City needs an order from the Court on or before January 1, 2013 to meet DEQ's deadline for the SRF loan application.
 - When making a decision, the Judge will take into consideration that this money would be used for a traditional and longstanding function. The Judge will also take into account the fact the urgency of the matter and that these wastewater improvements are required to meet future NPDES regulatory permit requirements.
 - The City will not have its new permit to show to the Judge, which could be a factor against the City. The Judge could rule that the City does not know for certain what will be in its permit. The Program Management Team will work to educate the Court about the permitting process and show the City has a very strong understanding of what will be in the permit.
- **Will the rate increase still be 31 percent, even with the SRF funding?**
If we take on an SFR loan the rate increase would be approximately 27 percent.

▪ **Would it be possible for the City Council to authorize future SRF loan opportunities so we don't have to go through the process of Judicial Confirmation again?**

It is not economical or efficient for the City to hold a debt-authorizing election every year it submits a Letter of Interest for SRF loans, on the speculation that it may receive such a loan that year. Based on an evaluation of Nampa's ranking on the FY 2013 priority list and the original funding level for FY 2013, there was no reasonable expectation that the City would be able to get a loan in FY 2013 so there was no reason to incur the expense of a debt-authorizing election. Additionally the City was not yet in a position in 2012 to seek a debt-authorizing election for traditional bonding as a financing method. The notice of additional funding for FY 2013 (significantly increasing Nampa's opportunity to receive an SRF loan) was so late that there was insufficient time for the City to place a debt-authorizing question on the November 2012 ballot.

If the City has recently had an election authorizing it to take on debt financing, and during that debt period the City were to be granted an SRF loan, the City could potentially use the authority from the election to enter into the SRF loan. For example, if the City holds a traditional revenue bond election in May 2013 (as is tentatively planned) and it is successful, then during the term of what debt was approved (say twenty years) any later SRF loan opportunities could already be validated from the May 2013 election (caveat with some logistical restrictions such as term)."

- A committee member made a comment that pursuing Judicial Confirmation without the public's input or vote may not be worth "a couple bucks" in savings; there is a risk the public could feel they were left out of this decision. The committee discussed this concern at length, and other committee members mentioned that the public would likely be happy that the City took necessary action to save \$7.5 million.

- Another committee member suggested that a poll should be taken of the NWAG members for how many support Judicial Confirmation. Rosemary Curtin asked all of the NWAG members to write on their comment sheets whether or not they support Judicial Confirmation. Below is a summary of the group's comments:
 - The NWAG members overwhelmingly expressed support for the City's pursuit of Judicial Confirmation for the SRF loan opportunity.
 - The public needs to be provided education, information about the Judicial Confirmation process and how it will benefit the City.
 - An opportunity to save the City \$7.5 million should not be passed up.
 - Thank you for bringing the NWAG and IWG together to present this information.

Next Steps – Rosemary Curtin, RBCI

Rosemary emphasized that the schedule of next steps is a very tight timeframe and there is no leeway to delay activities or decisions. She presented the schedule of next steps:

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- The NWAG and IWG were brought together for this meeting so they could learn and provide input about Judicial Confirmation before the City Council makes a decision on October 15.
- After the public hearing, the Judicial Confirmation process does not have a component of public input, which is why the NWAG and IWG members were encouraged to give input and submit comments at this meeting. Input from the NWAG and IWG will be presented to City Council at the hearing on October 15.
- The NWAG and IWG members are highly encouraged to attend the October 15 City Council hearing. The hearing will be held at 7:30 p.m. at Nampa City Hall in Council Chambers.
- Moving forward, key dates will be as follows:
 - Oct. 15 – Hold public hearing to receive public input on whether to file a petition for Judicial Confirmation.
 - Oct. 29 – Special City Council meeting to authorize filing of Judicial Confirmation petition.
 - Nov. 12 through Nov. 26 – Hold Special City Council meetings to adopt Facility Plan.
 - Dec. 17 – City Council must authorize Public Works to file the 2013 SRF application.
 - Dec. 31 – SRF application will be submitted.
 - End of January – Phase 1 Environmental Information Document will be available for public comment.
- If Judicial Confirmation is not successful, the City may choose to hold a bond election. If this is the path taken the schedule will be:
 - February – City Council will meet to authorize the bond election and set a date for a wastewater rate increase public hearing. At this time, a public process will be initiated to help educate Nampa's community about the rate increase.
 - March 1 – Deadline to file ballot request with Canyon County for bond election.
 - May 21 – Bond election will be held.
- The Program Management Team is extremely grateful to the NWAG and IWG for coming together to discuss these issues.
- The next NWAG meeting will likely be held in November to discuss rate increases.
- Please fill out and return your comment forms to Kate Nice at RBCI. You can email comments to kate@rbci.net or mail your comment form to 1945 Wildwood, Boise, ID 83713.