

**Minutes of Meeting**  
**Hayden Area Regional Sewer Board (HARSB)**  
**September 29, 2023**  
**8:30 a.m.**

The Kootenai County Board of Commissioners: Chair Leslie Duncan and Commissioner Bruce Mattare met to discuss the following agenda items. Also present were Airport Director Gaston Patterson, Interim Assistant Airport Director Phil Cummings, Civil Deputy Prosecuting Attorney R. David Ferguson, BOCC Executive Assistant Sara Masters, BOCC Communications Coordinator Jonathan Gillham and Deputy Clerk Tina Ginorio. Also present were Hayden Area Regional Sewer Board (HARSB) System Administrator Ken Windram, HARSB Office Manager Stephanie Oliver, HARSB Legal Representative Benjamin Allen, Hayden Lake Sewer District Clerk Tina West and Representatives Barb Neal, Mike Schmidt, Gill Rossner, Jr., and Jim Coleman, Hayden Lake Watershed Association Representatives Will Neal and Geoff Harvey, Hayden City Council Members Sandra White, Ed DePriest, Roger Saterfiel and Matt Roetter, City of Hayden Mayor Scott Forssell, Hayden City Administrator Brett Boyer, Treasurer Natasha Lang, Hayden City Clerk Abbi Sanchez, City of Hayden Public Works Director Alan Soderling, City of Hayden Legal Counsel Fonda Jovick, Hawley Troxell Representative Danielle Quade, FCS Group Solutions – Oriented Consulting Gordon Wilson, Angie Sanchez and Dulci Knu. Ms. Jovick, Ms. Angie Sanchez, Mr. Wilson and Ms. Knu were present via ZOOM. Commissioner Bill Brooks was excused.

- A. Call to Order:** Chair Leslie Duncan called the meeting to order at 8:32 a.m.

**Call to Order of the Entities Meetings**

**Hayden Area Regional Sewer Board:** Hayden Area Regional Sewer Board (HARSB) Office Manager Stephanie Oliver called the HARSB meeting to order and took attendance.

**Kootenai County:** Chair Leslie Duncan and Commissioner Bruce Mattare were present.

**City of Hayden:** Hayden City Clerk Abbi Sanchez called their meeting to order and took attendance.

**Hayden Lake Sewer District:** Hayden Lake Sewer District Administrator Tina West called their meeting to order and took attendance.

- B. Changes to the Agenda (Action):**

There were no changes to the agenda.

**C. Introductions**

**Introduction of Entity Attendees**

**Kootenai County**

Interim Assistant Airport Director Phil Cummings  
Airport Director Gaston Patterson  
County Commissioner Bruce Mattare  
BOCC Chair & HARSB Member Leslie Duncan  
Civil Deputy Prosecuting Attorney R. David Ferguson

**Hayden Lake Sewer District**

Tina West, District Administrator  
Michael Schmidt, Attorney  
Jim Coleman, Board Chair  
Barb Neal, Board Member  
Geoff Harvey, Board Member

**City of Hayden**

Scott Forssell, Mayor  
Natasha Lang, Treasurer  
Alan Soderling, Public Works Director  
Brett Boyer, City Administrator  
Roger Saterfiel, City Council  
Matt Roetter, City Council  
Sandra White, City Council  
Ed DePriest, Hayden City Council  
Fonda Jovick, Legal Counsel to the City of Hayden  
Danielle Quade, Bond Counsel to the City of Hayden and Hayden Lake Sewer District

**Hayden Area Regional Sewer Board (HARSB)**

Leslie Duncan, Chair of HARSB Board  
Ken Windram, System Administrator  
Benjamin Allen, Attorney and acting moderator of the meeting  
Danielle Quaid, Attorney at Hawley Troxell  
Jim Coleman, Board Member  
Barb Neal, Backup Board Member  
Stephanie Oliver, HARSB Office Manager

**D. Business (Discussion) Leslie Duncan, Chairman  
Benjamin Allen, Moderator**

**Update of Information since March 17, 2023 Meeting**

### City of Hayden

Mr. Boyer announced that the City had engaged FCS Group Solutions-Oriented Consulting after the last meeting, to do a study on the impact of dissolution of HARSB on their rates. He said that the question of the disposition of HARSB property needed to be settled.

### Hayden Lake Sewer District

Mr. Coleman stated that they were waiting for the results of the rate study. He said that they had reviewed the FCS report and had some questions. He commented that they had also independently reviewed several different examples of districts and cities discharging into municipal wastewater systems in relation to how rates and expansion were handled. He said that they had discussed how the portion of the capital expense which had been carried by the District since 1985 would impact future dealings. He noted that the District had contributed 32% to 36% of the capital cost of the treatment plant over the years but were only using about 22% of the flow right now and that it would probably reduce in the future. He stated that they wanted to consider how to recover some of the value of that capital investment.

### Kootenai County

Chair Duncan said that Kootenai County was present in order to support the entities and facilitate the process.

### **Discussion Points for Today's Meeting – Benjamin Allen, Moderator**

Mr. Allen announced that the purpose of this meeting was to discuss points of concern for each of the entities represented as pertinent to the possible dissolution, including disposition of assets. He recommended addressing the FCS study first.

Mr. Boyer agreed and said Gordon Wilson and Angie Sanchez from FCS were available on the ZOOM connection. He stated that Mr. Wilson was the author of the report.

Mr. Wilson reviewed the basic points of his document. He remarked that, since they were not selling to an outside party, the nature of the agreement between the entities would be different. He said that the current operations of HARBS as a wastewater plant would continue; it was the ownership structure that would undergo dissolution. He described the parameters of the agreement, as he envisioned them, in addition to "insider privileges" such as favorable rates, which could be included. He said that, as original investors, Hayden Lake Sewer District and Kootenai County had a legitimate claim to parity status alongside the City of Hayden and could insist that their customers not be charged more than those within the City limits. He pointed out that insider status was a valuable right and more beneficial than any temporary settlement that could come from liquidating the initial investment for cash.

Mr. Wilson stated that HARSB owned land that was used for application of bio-solids and the question had been raised whether the land should be appraised and the City pay the

other entities a proportion share of its value. He said he had researched changes to such partnerships and found about 25 similar cases, but in none of them was land treated differently than any other assets. He commented that the land could be viewed differently if it were determined to be surplus, in which case it could be sold and the proceeds distributed in proportion to each party's original investment. He noted that those original percentages may have been different from the current flow usage.

Mr. Wilson acknowledged that there was some concern that the land, or part of it, could be declared surplus and sold at some future date. He suggested that the final agreement include a stipulation that, if it were sold within a "sunset period" such as ten years, the funds realized would have to be deposited for use only for the improvement of the operations of the plant, not for expansion. He said, in this way, the proceeds would offset the rates paid by the wholesalers and retail customers. He pointed out that doing a land appraisal at this time would not make sense because what mattered was what the land would be worth at some point in the future.

Mr. Coleman said he agreed with most of what Mr. Wilson had suggested. He stated that Mr. Wilson had not addressed one issue: that the District and the City would continue to sell capacity to new users. He noted that the money from those activities would be put back into the treatment plant to reduce user rates but the District had put more money into capital investment than they would ever recoup through capitalization fees. He added that the District would not increase its draw on the system because it did not have the potential to grow like the City did. He said the result was that the City would be collecting capitalization fees on the treatment plant that might need to go back to the District in some form of compensation in cash or reduced rates.

Mr. Wilson proposed that insider rates providing parity with City customers could be appropriate recompense. He said that parity would ensure that the treatment plant could only raise rates for them if they also raised them for the City. He suggested that cap fees would have to be reinvested in the treatment plant. He added that this would benefit Kootenai County also.

Mr. Coleman remarked that one of his major issues was that the expansion of capacity would disproportionately benefit the City.

There followed extensive discussion about the details of Mr. Wilson's suggestions, the capacity of the treatment plant, now and projected, the current state of the plant's permit and plans for the expansion or improvement of the plant. This also included discussion of the financial arrangements, such as the LID, and Phase I and Phase 2 of the ongoing project.

Mr. Coleman asked Ms. Oliver for copies of the records referenced.

Mr. Harvey expressed his reservations regarding the land owned by HARSB. He said that only half of it was being used at this time and he was concerned about recovering the cost from their initial investment if the land were sold and the money used for any other purpose. He remarked that land in the Rathdrum Prairie Aquifer sold from anywhere from \$50,000 per acre to \$1 million per acre right now.

Ms. Neal said she also was concerned about the property being sold and the proceeds going back into the plant. She indicated that she felt that if, at any time, any part of the property were sold, a percentage of the money should be returned to the District. Chair Duncan asked Mr. Windram whether he thought a time might come when the plant would not want to use the property for land application of bio-solids.

Mr. Windram responded that it was a board decision. He said that he had discussed the topic with the representatives of Coeur d'Alene and Post Falls and that they all agreed that they needed to disengage from use of the Spokane River. He explained that the land application site would be the key to that. He stated that regulatory demands about use of the River were becoming more and more of an issue and the property offered a solution.

Mr. Harvey said he had no problem with that; he specified his concern was purely related to the potential sale. He added that the proposed "sunset" term proposed by Mr. Wilson of ten years was also not acceptable.

Chair Duncan pointed out that these points could all be negotiated when the agreement was drafted.

Ms. Quade reported that the attorneys for the different entities had talked about making a determination of whether the currently unused portion of the land was actually surplus. She said some of them indicated they felt it was, however Mr. Windram did not agree. She asked if any analysis had been done on that issue.

Mr. Schmitt asked if there was an agreed upon definition of "surplus capacity" and reviewed the likelihood that the City would be responsible for most of the expansion in the future, which would not be equitable to the District.

There followed a discussion of what constituted surplus land and the potential benefit that either retaining or selling it presented to the interested entities.

BOCC Executive Assistant Sara Masters entered the meeting at 9:25 a.m.

Mr. Boyer stated that these items could be addressed in the agreement. He suggested the establishment of a capital replacement fund which could receive the proceeds if the land were ever sold.

Mr. Wilson endorsed this as a valid possibility.

Mr. Neal suggested that the agreement instead include a clause stating that the land would be held in perpetuity by the plant. He said that having open space preserved on the prairie and having land that the plant could use would be beneficial to everyone.

There followed more generalized discussion of the suggestions and concerns.

Mr. Wilson exited the meeting at 9:56 a.m.

- E. **Public Comment** – There was no public comment.

The combined meeting went into recess at 9:56 a.m.

- F. **Individual Entity Breakout on Items Listed in Agenda Item D (Discussion)**

**City of Hayden – Room 1A/1B**

**Hayden Lake Sewer Board – Room 1A/1B**

The City of Hayden and Hayden Lake Sewer Board representatives departed to their designated private sessions. Their individual clerks will provide minutes on their meetings as appropriate.

**Kootenai County – Room 1A/1B**

Kootenai County Representatives Chair Duncan and Commissioner Mattare, Mr. Ferguson, Ms. Masters, Mr. Allen and Deputy Clerk Ginorio moved to Meeting Room 2 for the Breakout Session.

Commissioner Mattare reflected on the concerns expressed by the different entities. He remarked that the only true asset HARSB had was the ability to increase Hayden's tax base by providing service to new customers. He pointed out that HARSB was essentially a utility and a monopoly, so they would need a rate board to approve changes in the rates.

Mr. Allen discussed the difference between the sewer collection systems and the treatment plant, plus the issues regarding cap fees and other revenue sources. He commented that the plant's infrastructure would need maintenance and improvement in the future. He said the issue was that the Hayden Lake Sewer District was landlocked and could not expand more than marginally.

Commissioner Mattare speculated that the question was how much the City was willing to offer in order for the District to give up its position as a voting member of the HARSB Board.

Mr. Allen suggested that the District would make some sort of settlement regarding the land as part of the cost of giving up that position. He noted that administrative costs for the treatment plant would be drastically reduced if the Joint Powers Agreement were dissolved.

Mr. Ferguson indicated that he felt FCS had overstated the value of parity in their presentation. He inquired why it was being presented as if rate increases in the future would be seen as going only to fund the City's expansion.

Commissioner Mattare expressed doubt that favored rate status could be maintained in perpetuity.

Chair Duncan, in response to Mr. Ferguson's question, said that plant upgrades caused by new regulations would also need to be funded. She said she would recommend that the Airport collection system be maintained as in the past, but reminded those present that there was a question regarding the Lift Station. She confirmed that the FAA (Federal

Aviation Administration) analysis of the Lift Station situation had been completed and said that Airport Director Gaston Patterson was working on a grant which would enable its removal from Airport property.

The following items received general agreement from those present:

- The Lift Station on Airport property needed to be removed or the space it occupied covered properly with a lease.
- A dissolution agreement would need to include an assurance of future capacity.
- The County would agree with the suggestion that all the attorneys meet to begin drafting the dissolution agreement.

The County's Breakout Session was concluded at 10:23 a.m.

Chair Duncan called the combined meeting to order at 10:41 a.m.

Mr. Allen asked the groups to summarize the results of their discussions and share any questions they had.

**G. Group Discussion – Comments from Entities on Items Listed in Agenda Item D**

**Hayden Lake Sewer District**

Mr. Schmitt provided a list of the conclusions reached during the District's session:

- The District intended to take time to review the FCS report and would be seeking a consultant of their own to analyze the information.
- The District felt that there was some percentage of the land owned by HARSB that was not needed at this time and would like to do something to capture and protect the equity it had in that asset.
- They did not find the suggestion of placing a "sunset" limitation on the land's sale acceptable since it was worth millions of dollars and was an appreciating asset.
- The District would only approve the cost of service analysis based on flow/load as the basis for calculating payment obligations.
- If the land was sold and the funds were then intended to be used for expansion, the District wanted a percentage to be paid out to them for use on its collection system or related costs.
- The District intended to weigh in on the analysis to determine what percentage of the land could be considered surplus.
- The District was concerned that a future engineering analysis might adjust the gallons per day in the ER wastewater unit and wished to be given an adjustment percentage based on whatever the current capacity or ownership percentage was now.
- The District would like a capital replacement fund established to ensure that its money was not used for expansions to help protect its equity and ensure that it would be treated fairly if it gave up its membership/"ownership rights" in the treatment plant.

## City of Hayden

Mr. Boyer commented that the County would like to see the Joint Powers Agreement ended and that reducing the governmental footprint down to one entity made sense. He said that they now had a better idea of the District's concerns about the disposition of property and the plant's remaining capacity. He stated that the City's perspective was that it would be short sighted to plan on selling any property at this time, since they could not know what the future might hold. He indicated that they would be willing to include reasonable provisions in an agreement regarding the property and restrictions on funds to be used for expansion. He touched on some of the issues from the City's point of view: liabilities and future replacement needs. He agreed to wait for the District's proposed analysis of the information submitted. He asked whether an analysis of the remaining capacity of the plant would be needed.

Mr. Coleman repeated his request that, if the City ever declared any of the land surplus and sold it, a provision would be included in the agreement outlining exactly the things it could or could not be used to fund.

Mr. Boyer said that was an acceptable request.

Ms. Quade pointed out that the City would be statutorily prevented from moving the funds away from the plant; they would have to stay within the wastewater utility.

Mr. Coleman said they would also like certain rules to apply to future improvements and described the parameters he would like to see in place.

There followed substantial technical discussion related to the capacity of the plant.

Mr. Boyer suggested that the City begin work on a draft version of an agreement which the other entities could review.

Mr. Coleman confirmed that the District Board had given authorization to look for consultants that could do an analysis on the cost of service and other issues related to the dissolution. He commented that the Board was reluctant to accept the FCS report without further examination, since they had been hired by the City of Hayden. He said he would like HARSB to get a realistic engineering capacity analysis for the plant.

Mr. Boyer said that was acceptable, once the current loan was closed out.

Ms. Quade confirmed that, under their construction agreement, a reallocation could not be done until the bond was closed out, which they hoped to accomplish by the end of this year.

Mr. Forssell asked why, when the District had previously indicated that they thought FCS was an acceptable consultant, they now were not inclined to accept the report and wanted an independent study.



Mr. Coleman replied that they had said FCS was fine, but they wanted the ability to review and approve their report, so they would have to hire their own professional to do that. He added that FCS's suggestion of a sunset limit of ten years had damaged the trust that they were willing to extend.

Mr. Boyer assured those present that the sunset limit could be modified.

Mr. Roetter asked whether the District was concerned about the whole parcel of land owned by HARSB or just the part not in use at this time.

Mr. Coleman confirmed that they were interested in any part which might, now or in the future, be declared surplus.

### **Kootenai County**

Commissioner Mattare asked whether they should consider the plant an asset or a liability in relation to these discussions. He commented that, ultimately, since it could not generate a profit, its true value was found in the ability to allow expansion of an entity's tax base. He reviewed the different aspects of the issue as laid out by the other entities:

- No one wants to pay for Hayden's growth.
- At some point the plant will reach capacity and it will need to be expanded, at a cost of millions of dollars.
- Application of equitable rates, depending on the users.
- Protection of the funds potentially realized should any of the land be declared surplus and sold.

Chair Duncan said that future development of the Airport also needed to be protected. She commented that the Airport was out of room and had a waiting list for development. She also said the County would be interested in proposals on parity rates, focusing on the need for the County to pay for its own growth and that the City of Hayden needed to do the same.

Mr. Coleman asked that the H3 Lift Station be included in the dissolution agreement.

Chair Duncan explained that the involvement of the FAA (Federal Aviation Association) made that topic more complicated. Commissioner Mattare agreed but said the County was working with them and would find a good solution.

Commissioner Mattare exited the meeting at 11:21 a.m.

Mr. Allen suggested that they wrap up the meeting with any remaining comments.

Mr. Coleman stated that he agreed with the Commissioners that this was an achievable goal.

**H. Discussion on Entities Approving Their Attorneys to Meet and Start Drafting Dissolution Agreements (Action Item)**

Mr. Allen remarked that the group had been discussing the dissolution for most of a year and all parties understood the stated positions. He asked whether further progress needed to wait for the District to hire its own consultant or whether they could ask the City to begin writing up a draft proposal. He said having a working document at this point would help everyone make more meaningful decisions.

Chair Duncan voiced agreement for the County and offered the assistance of the County's Attorney, if needed.

Mr. Coleman said the District would agree with the City providing the initial draft for dissolution. He stated that their study could be pursued concurrently.

Ms. Neal stated that the District's attorney had not yet been authorized by the District to work on the dissolution, except to receive documents as input.

Mr. Boyer said the City could begin on the draft agreement; it would take at least 30 days to write.

It was generally agreed that the group would reconvene January 19, 2024 at 8:30 a.m. to discuss the draft document and any adjustments requested. It was also agreed that, after the draft was circulated and before the planned meeting, the attorneys would discuss preliminary details.

**I. Adjournment (Action):** Chair Duncan adjourned the meeting for HARSB and Kootenai County at 11:32 a.m. Mr. Forssell adjourned the meeting for the City of Hayden and Mr. Coleman adjourned for Hayden Lake Sewer District.

Respectfully submitted,

JENNIFER LOCKE, CLERK

BOCC SIGNATURE

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

Tina Ginorio, Deputy Clerk