

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
DECEMBER 19, 2013

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown  
S. Kelly  
J. Bacci  
T. DeGeeter  
W. O'Malley  
G. Starr

ABSENT: R. Sulik

The Secretary informed the President that a quorum was in attendance.

II. Approval of Minutes

**MOTION** – Mayor Bacci moved and Mr. O'Malley seconded to approve the minutes of the December 5, 2013, Board Meeting. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that no one signed up to speak about a specific agenda topic.

IV. Executive Director's Report

Executive Director Ciaccia began his report with an update regarding the Stormwater Management Program (hereinafter "SMP") litigation. The District has appealed to the Ohio Supreme Court to take jurisdiction of the case and rule on the merits that the 8th District Appellate Court of Ohio erred in their determination.

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The District's briefs were filed on November 12 and the opposition filed theirs on December 12. Executive Director Ciaccia advised that the opposition's briefs included basically the same communities that were involved at the appellate level and the property owners that were represented by the law firm of Sheldon Burns. Staff was hopeful that the Ohio Supreme Court would take jurisdiction of the case.

Executive Director Ciaccia moved to the second litigation matter, which was a class-action suit brought against the District related to the \$20 million that was collected for the SMP before the Appellate Court ruling. Only \$2 million of those funds had been expended, which were replenished to the SMP account using the general account.

That money was moved to an interest-bearing escrow account pending the outcome of the District's appeal to the Ohio Supreme Court. Executive Director Ciaccia stated that if the Ohio Supreme Court does not take jurisdiction of the case or rules against the District, staff's intention is to pay back every cent to the customers. Should the court rule in the District's favor the money will be utilized for its intended purpose of stormwater management.

Executive Director Ciaccia wanted to make clear staff's intentions to pay back 100% of the funds collected with interest in the event the District does not prevail either in total or in part. The Board also approved a resolution to set up the interest-bearing escrow account. The District will bear the administrative costs within the current rate structure in order to accomplish that.

However, the attorneys that brought the action are seeking to certify a class of customers by the court so they could administer the redistribution of the money under that scenario.

A hearing was held yesterday in Judge Richard McMonagle's courtroom on the issue. The only witness they supplied was the class representative, who happens to be the sister of one of the partners of the law firm bringing the action. Executive Director Ciaccia advised that it is the District's position that this person is not a proper representative of the class because the relative stands to monetarily gain from the matter.

Executive Director Ciaccia advised that the District argued that it has a superior method for returning the money because 100% will be returned – a claim the other side cannot make. If the court takes the money and hires them as attorneys, they will be paid as attorneys and they will hire a class administrator. This particular law firm happens to have a firm that provides that service and would pay them as well.

An expert witness for the District testified that by his estimation the expenses could be in the range of \$5 million. Should the class be certified by the court there will be \$15 million to divvy up between customers rather than \$20 million the District would return.

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Mayor Starr questioned if the customers would receive reimbursement with interest. Executive Director Ciaccia affirmed that there would be payment of what the customer paid plus interest. Although current interest rates are low the customer would be apportioned whatever interest had accrued based on what they paid.

Mayor Starr inquired if the law firm is public record. Marlene Sundheimer, Director of Law, stated that the plaintiff is Imelda Murphy and the law firm representing the class is Dworken & Bernstein. The particular attorney bringing the action is Patrick Perotti of Dworken & Bernstein.

Mayor Starr requested copies of the complaint for the Board.

Mayor Starr questioned the time frame regarding the Supreme Court. Executive Director Ciaccia stated that they would likely make a decision on their jurisdiction sometime after the first of the year. Should they accept the case there would likely be a hearing next summer and possibly a determination before the end of 2014.

Executive Director Ciaccia moved to the next item in his report. He advised that the State of Ohio through the Ohio Public Works Commission has been issuing bonds for infrastructure funding throughout the state, which is broken into 19 districts. Cuyahoga County is District One. They are asking the Ohio General Assembly to renew the program for 10 years with additional money with Governor John Kasich's support.

Executive Director Ciaccia stated that it is good for the region. He advised that he previously served as a Cleveland representative on the District One Public Works Integrating Committee when he worked for the City of Cleveland. That Committee helped set the criteria for how projects that communities applied for were rated. There were two representatives from Cleveland at that time -- two from suburban communities, one from Cuyahoga County and one private-sector representative on the committee.

Policy decisions were made that any infrastructure supported by user fees -- such as the Cleveland Division of Water and the Northeast Ohio Regional Sewer District -- would not apply for that funding. They had a general policy, although it did not have criteria that discouraged it.

A sewer system such as Rocky River, for which their city council could raise sewer rates to fund the infrastructure, were discouraged to apply for such funding, or Issue 2 funding, because they were trying to get as much money as possible for tax-supported infrastructure. He explained that it is often difficult to raise taxes to fund such programs. The State money was a tax-supported fund and the debt is paid back through taxes.

The Cleveland Division of Water and the Northeast Ohio Regional Sewer District under former Executive Director Erwin Odeal chose to not seek such funding and Executive Director Ciaccia advised that he continued that practice when he became Executive Director.

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Executive Director Ciaccia advised that typically there is about \$20 million of this type of funding available to the region and an additional \$10 million of local transportation infrastructure money through the gas tax, which was earmarked for roads and bridges.

Issue 2 money could go to anything, but in District One it was aimed towards tax-supported infrastructure. That stance has gradually changed. Euclid signed a consent order and Rocky River has sewer plant upgrade needs and is actively applying for projects.

A District One Public Works Integrating Committee (hereinafter "DOPWIC") meeting will be held today during which they will list their preliminary rankings dominated by local sewer projects -- particularly with \$5 million for Euclid's plant and almost \$3 million for Rocky River's plant and significant sewer projects.

Previously some sewer projects were funded in conjunction with road projects. Now there are infrastructure projects that are wastewater and water because communities are applying for water lines as well.

Executive Director Ciaccia explained that the District is in an awkward position in terms of whether to apply for such funding. The District must raise rates to meet its mandates; Euclid made a presentation to its residents and city council favorably comparing their rates to the District's; however, they are accessing grants and no-interest loans through this program and the District is not.

Executive Director Ciaccia stated that this will become an issue because it puts the District in the position of potentially competing with other communities for that money. The District has large projects that with very competitive applications could take the full \$20 million. He advised that a policy decision will have to be made. He was not in a position to make that recommendation to the Board today. The next round of applications is not due until August 2014, but he raised the prospect with the chair of the DOPWIC.

Mr. Brown stated that recently a number of communities have completed water- and sewer-related improvements using those funds as the local match for a road improvement. Those actions are fairly consistent with the program. However, if a policy shift has occurred the engagement would be with the DOPWIC or staff to get insights regarding raising concerns on the issue. He did not think it was helpful for large revenue-supported entities competing for money where traditionally the only things to support them are tax and bond revenue.

The program has done well using that as its model. Mr. Brown agreed that any changes that make projects already difficult to fund more difficult would be reflected easily in the region's major roadways. He stated that it was a positive step to raise the issue at the policy level because they should know this is a concern staff has as an organization.

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Mayor Starr explained that he and Mayor DeGeeter are working on a \$23 million project on a major artery in Cuyahoga County. The funding will not go far if there are more entities competing for it. The original intent of Public Works was for roads. Nothing deteriorates in a city more than roads. Under Ohio law there are no user fees unless you assess on a front foot basis for roads. Much funding went to the city of Cleveland and inner-ring suburbs. He stated that the District should lobby a change; the funds should be used for streets and road improvements. Ancillary to that are sewers.

Executive Director Ciaccia stated that he would like to see investment in utilities. How much rate relief any potential funding would provide in terms of rates is questionable. The current law does not specify they are available just roads and bridges; it is for "infrastructure." This would be the time to lobby for different criteria if mayors wish to do so.

Mayor Starr inquired if the Ohio Water Development Authority (hereinafter "OWDA") is an option for Rocky River and other suburbs. Executive Director Ciaccia stated that it is, although Issue 2 funds are more attractive than OWDA because they are grants or no-interest loans. He advised that a decision does not need to be made now; it is a policy discussion with DOPWIC representatives.

Mayor Starr stated agreed that the District is it put in an awkward situation if rates are raised when there is potential funding available.

Executive Director Ciaccia moved to the next issue of his report. The District has been approached recently by the Lake Erie Energy Development Corporation (hereinafter "LEEDCO"). They are attempting to develop offshore wind power and are seeking a federal grant of \$43 million from the Department of Energy to continue their project. They are on a list of 8 to 10 entities applying for the grant and 3 or 4 will be selected.

Executive Director Ciaccia explained that this is billed as a big economic development opportunity for the region. LEEDCO is looking for public and private entities to provide letters of intent to negotiate in good faith to purchase power by the end of 2014 -- not to enter into a purchase power agreement at this time. They need such letters to bolster their chances of receiving the grant.

Executive Director Ciaccia was not yet prepared to make a recommendation; there are provisions they have given he was not sure the District could satisfy. For instance, there is an equity ownership in the infrastructure. The District may not be able to do that by the governing authority in Ohio. The power itself that will come in will be above market, which is consideration. Some entities will have to bear some risk to accomplish something like this. The question is what level of risk the organization is willing to take. Staff will research this subject over the next couple weeks and bring back a recommendation at the next meeting.

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Mr. Brown stated that he supports the concept but it is not an open-ended commitment. They are looking for entities to commit to certain percentages of what will be available and that is a leap of faith without knowing what that rate will be. He suggested having discussion about a goal or percentage with a monetary ceiling that will encourage them to get as many people sharing in the process as possible, so it would not be as much of a sacrifice taking above-market energy.

Executive Director Ciaccia advised that he would have no problem recommending a letter of intent, but not at this time the ability to participate in good faith negotiations toward a purchase power agreement until various hurdles are researched. The document they provided includes the District taking 7.5% of the output and a 16-year term with an equity ownership. He would want to determine if those power costs could be capitalized. The big issue is whether the District has the authority to enter into an equity relationship.

Executive Director Ciaccia concluded his report by moving to the final issue of finances through November. Revenues are running slightly behind -- with 92% of the year complete revenues are at 91%. Expenses are at 88% from a budget standpoint, which assumes picking up SMP costs; all SMP employees have been redirected into other opportunities at the District. He stated that employees have done a great job transitioning to other important work within the District such as Title IV.

V. Action Items

Authorization to Advertise

- |                       |   |
|-----------------------|---|
| Resolution No. 300-13 | Advertise for Green Ambassador Slavic Village Demonstration Project. Engineer's Opinion of Probable Construction Cost: \$255,000.00.  |
| Resolution No. 301-13 | Advertise for Maintenance Services at the District's Ten Combined Sewer Overflow Floatable Control Sites and the Cleveland Lakefront State Park. Anticipated Expenditure: \$473,000.00. |
| Resolution No. 302-13 | Advertise for Sodium Bisulfite Solution at All Wastewater Treatment Plants. Anticipated Expenditure: \$258,000.00.  |

**MOTION** – Mayor Bacci moved and Mayor Starr seconded to adopt Resolution Nos. 300-13 through 302-13. After discussion and without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 303-13 RFPs for MC-47A and CSO 236 SWO Relocations Project.

**MOTION** – Mayor DeGeeter moved and Mr. O’Malley seconded to adopt Resolution No. 303-13. After discussion and without objection, the motion carried unanimously.

Authorization to Enter Into Agreement

Resolution No. 304-13 Agreements for 2013 Watershed Operating Support Grants Program. Cost: Not-to-Exceed \$250,000.00.

**MOTION** – Mr. O’Malley moved and Mayor DeGeeter seconded to adopt Resolution No. 304-13. After discussion and without objection, the motion carried with Mr. Brown abstaining.

Authorization of Agreement/Contract Modification

Resolution No. 305-13 Modify Agreement with the City of Solon for the Removal of a Portion of the City from the Northeast Ohio Regional Sewer District.

Resolution No. 306-13 Extend Contract No. 11000422 for Two-Years with Andrew J. Futey and Associates for Federal Advocacy Services. Cost: An Increase in the Amount of \$170,000.00.

Resolution No. 307-13 Extend Contract No. 11001993 for Two-Years with Vorys, Sater, Seymour & Pease, LLP for State Advocacy Services. Cost: An Increase in the Amount of \$144,000.00.

Resolution No. 308-13 Final Adjustment of Contract No. 12003017 with Industrial Energy Systems for the Plant Wide Roof Repairs Project. Cost: A Decrease in the Amount of \$39,172.49 Bringing the Total Contract Price to \$1,017,322.51.

Resolution No. 309-13 Final Adjustment of Contract No. 13000458 with Bay Mechanical & Electrical Corp. for the Improvements and Heating System Modification Project. Cost: A Decrease in the Amount of \$86,250.37 Bringing the Total Contract Price to

\$633,249.63.

Resolution No. 310-13

Final Adjustment of Contract No. 12002175 with Cold Harbor Building Company for the Environmental and Maintenance Services Center Laboratory Improvements Project. Cost: A Decrease in the Amount of \$80,658.39 Bringing the Total Contract Price to \$6,609,341.81.

Resolution No. 311-13

Modify Contract No. 1200054 for the Easterly Tunnel Dewatering Pump Station Project. Cost: An Increase in the Amount of \$3,500,000.00 Bringing the Total Contract Price to \$73,240,474.20 and a Time Extension of 329 Days.

**MOTION** – Mr. O’Malley moved and Mayor DeGeeter seconded to adopt Resolution Nos. 305-13 through 311-13. After discussion and without objection, the motion carried unanimously.

Mr. Brown asked for an explanation regarding Resolution No. 305-13. Executive Director Ciaccia advised that Solon approached the District. A smaller new housing development is being developed with its own sewer system and treatment plant that they can service. Economically it is sensible for Solon to service that development because a pump station would be required for District service. Staff agreed to cede that out of the planning area because it makes economic sense. The other portions of Solon will remain in the District system and they will remain a member community.

Mr. Brown requested an elaboration regarding Resolution No. 311-13. Kellie Rotunno, Director of Engineering & Construction, advised that it is a requested increase on the Easterly Tunnel Dewatering Pump Station recognized as a settlement to the additional work claim by the joint venture concerning bolting the cavern roof.

The joint venture submitted an initial request for an additional compensation of \$8.8 million and 230 days on August 6, 2013. Staff reviewed the claims and concluded that the joint venture could be entitled to compensation for services in addition to what was anticipated at the time of bid in an amount of \$3.5 million.

Ms. Rotunno advised that is 5% of the contract value, which was \$69,740,475 at the time of bid. This bidder was also the low bidder; the second-lowest bidder was nearly \$10 million higher.

There is \$2.2 million remaining on the contract in unused general allowance funds to complete it which may or may not be expended. That will be maintained in the event additional



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contingencies are encountered. This represents a 5% increase in contract value due to the additional movement in the cavern roof that was not expected or anticipated at the time of bid.

Mr. Brown inquired if this should have been anticipated as part of the means and methods and how they were performing the work. Is there something that was a differing site condition that made the original plan more risky and they had to do additional supporting of the roof?

Ms. Rotunno advised that the tunnel dewatering pump station was originally conceived as part of the District's CSO program, estimated at \$115 million using traditional construction methods. During the design, the traditional single-shaft construction methodology was compared with the cavern alternative which appeared to be a much more cost-effective design and method of construction. The District was part of the discussions with the designer to opt for this higher-risk cavern because of the potential cost savings. At the time of bid, \$69 million was significantly less than the \$115 million estimate.

Executive Director Ciaccia stated that the level of movement in the cavern was less than what would be considered unsafe; it was due to an abundance of caution.

Mr. Brown questioned if the time extension affects other elements in the project besides operation. Ms. Rotunno advised that the project is not specifically linked to penalty milestones in the consent decree. This tunnel dewatering pump station is linked with the Euclid Creek tunnel system and the Dugway storage tunnel and the consent decree obligation for that system.

Changing subjects, Mayor Starr inquired regarding the District's advocacy vendors. Specifically, whether the State advocacy firm could assist should the District decide to compete for Issue 2 funds. Executive Director Ciaccia advised that he works for the Board, his position notwithstanding. The advocacy extensions are proposed rather than going out for new RFPs because the firms are doing great jobs. Time is of the essence as it relates to stormwater.

Futey & Associates has done good work on the federal side and help NACWA, the trade association, work with the Ohio delegation that has been instrumental pushing affordability bills and integrated planning on the national level. Vorys have been a tremendous help as relates to the SMP. Aside from litigation, there are other options to consider.

Mayor DeGeeter inquired if Fred Mills is the head of government affairs for Vorys which Executive Director Ciaccia affirmed. Mayor DeGeeter stated that Mr. Mills is well respected in Columbus.

### Authorization to Enter Into Contract

Resolution No. 312-13

Five-Year Contract with PNC Institutional Investments for Investment Custodian Services.

Contract Amount: Not-to-Exceed \$200,000.00.

Resolution No. 313-13

Contract with Nerone and Sons, Inc. for the CSO-SSMO Bundles Package #2 Project. Contract Amount: \$1,126,100.00.

Resolution No. 314-13

Contract with North Bay Construction, Inc. for the Easterly Primary Settling Tanks Rehabilitation Project. Contract Amount: \$3,470,790.68.

Resolution No. 315-13

Fourteen Month Requirement Contract with Aggregate Construction, Inc. for Ash Lagoon Cleaning at the Southerly Wastewater Treatment Plant. Contract Amount: \$1,953,924.00.

Resolution No. 316-13

Contract with Triad Engineering and Contracting Co. for the CSO 049 and 050 Relocation Project. Contract Amount: \$6,843,400.00.

Resolution No. 317-13

One-Year Requirement Contract with Quasar Energy Group, LLC for Sludge Cake Removal at the Southerly and Westerly Wastewater Treatment Plant. Contract Amount: Not-to-Exceed \$8,160,492.00.

**MOTION** – Ms. Kelly moved and Mayor DeGeeter seconded to adopt Resolution Nos. 312-13 through 317-13. After discussion and without objection, the motion carried unanimously.

Regarding Resolution No. 317-13, Mr. Brown inquired what has historically been spent on such efforts. Ray Weeden, Director of Operations & Maintenance, advised that the District typically burns 97-98% of its sludge. This contract will serve as a sort of “insurance policy” during the transition through the year. The previous contract was less than \$1 million.

Mr. Brown questioned if the contract was a requirement in case it is needed, which Mr. Weeden confirmed. Staff is hopeful it will not be needed. The centrifuge process still must prove out, which will consume a portion of the contract. Staff must be prepared in case it is not successful.

Authorization of Property-Related Transactions

Resolution No. 318-13

Authorize Fee Simple Acquisition from the City of Cleveland Land Bank Necessary for Construction of the Fleet Avenue Green Infrastructure Project.

Consideration: \$9,750.00.

Resolution No. 319-13

Authorize Fee Simple Acquisitions from the City of Cleveland Land Bank Necessary for Construction of the Slavic Village Demonstration Green Infrastructure Project. Consideration: \$8,350.00.

Resolution No. 320-13

Authorize Fee Simple Acquisitions from the City of Cleveland Land Bank Necessary for Construction of the Urban Agriculture Green Infrastructure Project. Consideration: \$30,960.00.

**MOTION** – Mr. O’Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 318-13 through 320-13. After discussion and without objection, the motion carried unanimously.

Authorization to Adopt and Submit Schedules

Resolution No. 321-13

Adopt Revised Record Retention Schedules and Authorize Submission to the Ohio Historical Society and Auditor of State.

**MOTION** – Mayor Bacci moved and Mayor Ms. Kelly seconded to adopt Resolution No. 321-13. After discussion and without objection, the motion carried unanimously.

VI. Information Items

1. Director of Law Claims Report, June through November 2013

Marlene Sundheimer, Director of Law, advised that the bi-annual report on claims and settlements has been provided to the Board.

2. Program Management Status Report and Update – November 2013.

Ms. Rotunno moved to the first report item regarding the Renewable Energy Facility (hereinafter “REF”). A situation arose at Southerly in which crude oil migrated downhill through the natural gas main to the lowest point, which happens to be the REF.

A tremendous amount of crude oil got inside the incinerator gas supply line. Staff has been cleaning oil from the natural gas lines at Southerly for nearly two weeks, just as the waste heat boiler number 1 was ready to be powered to determine whether repairs had been successful. Staff has been unable to test the waste heat boilers or startup activities because of the crude oil situation with the natural gas line.

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Staff is working with the Law Department and East Ohio Gas regarding what ownership they plan to take with costs incurring on contracts, by both contractors and staff at the plant. Other facilities that use natural gas have the potential to be affected.

Ms. Rotunno advised that staff plans to pressure test waste heat boiler number 3 on train number 3 and start to heat the incinerator in the hopes of burning sludge after the first of the year. Until the situation is rectified efforts will continue to centrifuge the sludge and get as much water out as possible to be hauled.

More than 300 wet tons of sludge have gone through the centrifuges and hauled offsite. That amount is needed to shut down the thermo conditioning sludge process. The centrifuges seem to be working, but hauling and getting trucks and containers on site continues to be a challenge.

Ms. Rotunno advised that shaft 2 excavation was completed on the Euclid Creek Tunnel and work on the final shaft lining has commenced. The tunnel itself is being cleaned and prepared for final lining and repairs.

The District was awarded high commendation recognition for the Euclid Creek Tunnel by the International Tunneling Association at the International Tunneling awards held in England at the end of November.

Ms. Rotunno explained that staff reached an agreement with the joint venture's claim for extra work regarding the Easterly Tunnel Dewatering Pump Station. The joint venture has done a great job with excavation and the below-ground rock work is completed. They are beginning to pour concrete.

Moving to Key Performance Indicators (hereinafter "KPI"), Ms. Rotunno advised that cash flow is currently at 81% compared against the target of 85% of planned cash flow. That figure may be slightly under 85% by the year end.

Business opportunity cash flow continues to beat overall program cash flow, which is attributable to large contracts to sub-consultants business opportunity program subcontractors on the Euclid Creek Tunnel.

In terms of meeting goals at closure, the East 55<sup>th</sup> Street Floatables project closed last month and exceeded goal. There is an average of 28% cumulative participation.

Engineers' estimates continue to be within 0.1% of the average of bidders. There is an average of six days between the completions of designs, which is under the 90-day goal.

Ms. Rotunno advised that nearly \$1.5 million in cost savings was identified on the CSO 63 Relief Sewer Project. That was a result of good work by CSO design manager Doug Lopata and

Steve Janosko, who determined in the intermediate stage that the designs were oversized and larger than they needed to be. They reengineered it with the \$1.5 million in savings. The savings on that project brings the total year to date to \$26,250,000.

Ms. Rotunno stated that the KPI for cumulative contract value with construction stands at 91% -- within the 95% goal.

Projects are generally being awarded within 35 days of the planned date, which is below the 90-day goal. Projects are averaging closing 210 days from the average. Ms. Rotunno stated that next year a new KPI will be introduced regarding scheduling.

VII. Public Session (any subject matter)

No members of the public registered to speak during Public Session.

VIII. Open Session


There were no matters for Open Session.

IX. Executive Session

Mr. Brown stated that there were no matters for discussion during Executive Session.

X. Adjournment

**MOTION** – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Bacci moved and Mr. O'Malley seconded the motion to adjourn at 1:40 p.m. Without objection, the motion carried unanimously.



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Sheila J. Kelly, Secretary  
Board of Trustees  
Northeast Ohio Regional Sewer District



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Darnell Brown, President  
Board of Trustees  
Northeast Ohio Regional Sewer District