

**Minutes of the April 8, 2019 Water Authority Meeting  
Southeastern Connecticut Water Authority  
1649 Route 12, Gales Ferry, CT**

**Present**

**Authority:** Chairman Edward Monahan, Treasurer Paul Eccard, Barbara Lee Franciosi, Nicholas Mullane, Claudia Koerting, and Peter Balestracci.

**Authority Staff:** General Manager Josh Cansler

**Authority Legal Counsel:** Nick Kepple (Avena and Kepple, LLC)

**Call to Order**

Chairman Monahan called the meeting to order at approximately 5:16 p.m.

**Public Comment on any Item on the Agenda** – None

**Approval of Prior Minutes**

On a motion of Mr. Eccard, seconded by Ms. Koerting, the Authority approved the minutes of the March 11, 2019 Water Authority Meeting, by a unanimous vote of all members present.

**Correspondence** - None

**General Manager's Report**

**1. Ledyard Center Easement**

In February, SCWA was informed the Town of Ledyard is selling the Ledyard Center School property, which includes land the SCWA Ledyard Center pumphouse and wells are located on. The Town does not have a record of an easement for the property SCWA occupies. After going through our records, SCWA does not have a record of an easement either. The pumphouse was originally built by HLM Development (Harry Morgan) and was transferred to SCWA. Apparently no lease or easement was ever executed by HLM at the time, or later, when the land was sold or transferred to the Town of Ledyard.

Attorney Nick Kepple discussed the highlights of a meeting at the Ledyard Town Hall on April 1, 2019 to discuss the easement issue. Attendees included SCWA General Manager Josh Cansler, SCWA Attorney Nick Kepple, Town of Ledyard Mayor Fred Allyn III, and Town Attorney Meredith Diette. Attorney Kepple mentioned the Town has a potential buyer and is interested in completing the easement as soon as possible. He stated that all parties appeared to be in agreement regarding the proposed easement boundaries, and easement language.

Attorney Kepple said a legal easement survey will have to be completed to finalize the easement. Although the easement is mostly for the benefit of the Authority, the Town agreed to pay 25% of the costs, and recommended the Town's surveyor, Dieter & Gardner, of Gales Ferry. Ms. Franciosi asked if SCWA would have the opportunity to provide water to the new development the potential buyer has planned. General Manager Cansler stated that the land slated for the new development falls outside the SCWA Exclusive Service Area (ESA) in Ledyard.

Because of the urgency to complete the easement, Mr. Eccard made a motion for the Authority to authorize the Chairman to sign the easement, once it has been reviewed and approved by SCWA legal counsel. His motion, seconded by Mr. Mullane, was approved by a unanimous vote of all members present. Mr. Eccard made a second motion for the Authority to authorize the General Manager to expend no more than \$2,000 for survey costs related to the easement. His motion, seconded by Ms. Koerting, was approved by a unanimous vote of all members present.

## **2. Tower Division - Well #3**

This past summer it was discovered that Tower Division Well #3, which is located inside the pumphouse, was failing. SCWA tried to obtain approval from the State Department of Public Health (DPH) for approval to replace the well a few feet away, just outside the pumphouse. Unfortunately after several submissions and resubmissions, DPH would only approve a well location about 100 feet from the pumphouse, due to wetlands constraints established after Well #3 was originally installed.

In late January, Laframboise Well Drilling Service drilled three test wells around the approved alternate location, however they hit a significant amount of rock/ledge at depths of only 20-23 feet. Their analysis of the three test locations revealed a minimal yield. After consulting with Laframboise, and our engineering consultant (Lenard Engineering), it was agreed that installing a permanent well at this location would be a waste of money. In February, SCWA sent an appeal back to DPH requesting reconsideration of our initial application to replace Well #3, next to the pumphouse.

General Manager Cansler said that SCWA had a teleconference with Lori Mathieu and Eric McPhee of DPH, via teleconference, in early March. Ms. Mathieu stated that DPH could not approve the proposed replacement well site next to the pumphouse, due to current regulations pertaining to wetlands constraints. She suggested a change to the statute that would allow installation of replacement wells within wetlands constrained boundaries, as long as the replacement well was not closer to wetlands. Mr. Cansler reached out to Betsy Gara of CWWA who was able to insert language into an existing bill (SB 920) that was pending a hearing. On March 13<sup>th</sup> General Manager met with State Senator Heather Sommers in Hartford, prior to the public hearing on SB 920 to discuss SCWA's concerns. Mr. Cansler stated that there were still ongoing discussions with DPH regarding the exact language.

Mr. Cansler said SCWA is still re-evaluating the feasibility of rehabilitating the existing Well #3. Laframboise initially said that it was not economically feasible. On February 26<sup>th</sup> Mr. Cansler met with Jim Duncan, of SB Church Well & Pump Services, to get a second opinion on rehabilitating the existing well. Mr. Duncan stated that depending on how the screen failed it is possible, though could be expensive. He met with the SCWA General Manager and Foreman onsite on March 5<sup>th</sup>.

## **3. Replace Montville Manor Distribution System**

General Manager Cansler said that he and SCWA Foreman Brandon Belair met with the Montville Director of Public Works, Don Bourdeau, along with their consulting engineer (CLA Engineers) on March 26, 2019, to discuss paving of several roads in SCWA areas of Montville. This was a follow-on to an initial meeting last year which included a discussion of the feasibility of replacing the Montville Manor distribution system, which has numerous leaks each year. The Town of Montville is concerned that frequent leaks will result in numerous patches in their new pavement. At that time SCWA explained that the costs would be well beyond SCWA's fiscal ability to fund. During the meeting in March, the Montville consulting engineer provided a list of streets to be paved over the next 5 years. This list included six streets in four SCWA divisions.

#### **4. New Water Service Fees**

At the March 2019 meeting, the Authority approved new water service fees for residential (5/8" meter) homes. The purpose of adopting a new fee structure is to encourage potential new customers to connect to SCWA. Mr. Cansler stated that they have already had one customer who had previously inquired about new water service fees, commit to connecting to the SCWA water system.

#### **5. Easement at 20 Connecticut Boulevard, Montville Manor**

During the Public Comment period of the March Authority meeting, Mr. Dan Stanavage addressed an 11-acre property at 20 Connecticut Boulevard that he intends to develop. He is considering several business incubator storage units, and several 4-plex and 6-plex residential dwellings, for a total of approximately 20-40 residential units. He had several questions regarding this development, to include new water service fees for the new buildings. The Authority Chairman requested that he put his concerns/questions in writing. The General Manager stated SCWA would also need plans and an engineering report to determine the feasibility of connecting to the Montville Division, based on the existing capacity. Mr. Stanavage was also informed that it is the responsibility of the developer to install the new water distribution system, within the newly developed areas, constructed to AWWA specifications.

Mr. Stanavage also expressed a concern about an easement SCWA has on the property at 20 Connecticut Blvd. He says the easement was granted due to an old water main that crosses the property. The SCWA General Manager and Foreman researched old drawings and conducted a site survey, but were unable to determine if the water line exists, and if it does, the exact location. General Manager Cansler said that he had also discussed this issue with former General Manager Greg Leonard.

#### **6. Vulnerability Assessments for Per- and Polyfluoroalkyl Substances (PFAS)**

DPH required all water systems that prepare water supply plans, which includes SCWA, to conduct an evaluation of potential contamination resulting from possible nearby sources of per- and polyfluoroalkyl substances (PFAS). All utilities were required to complete a vulnerability assessment study for each system.

At the February 2019 meeting the Authority approved a request by the General Manager to expend no more than \$10,000 to have Lenard Engineering prepare all the vulnerability assessments, for all 14 SCWA divisions, to include mapping and land use research. General Manger Cansler said that Lenard Engineering completed all 14 vulnerability assessments by March 11, and they were submitted to DPH on March 15, 2019. He said the total cost for the assessments was only about \$4400.

#### **7. Four-log Applications**

Applications were submitted to DPH on January 17, 2019 requesting 4-log certifications for all SCWA systems which treat water with chlorine, and meet minimum storage requirements. Currently 9 of our 14 systems meet both requirements. In addition SCWA has submitted a request to start chlorine treatment at the North Stonington system. A 4-log certification request was submitted for North Stonington as well.

If the applications are approved, SCWA will be able to reduce our sampling/testing requirements, and SCWA will not have to conduct a public notification for positive e-coli results, from samples taken before treatment. Mr. Cansler said that these applications are currently under review at DPH.

### **8. Emergency Interconnections with Ledyard/Groton Utilities**

In 2017 SCWA signed an agreement with Groton Utilities and Ledyard to install emergency water main interconnections between all five SCWA Ledyard divisions, and the Ledyard WPCA system. These projects are to be fully funded by Groton Utilities in conjunction with a \$15 million DPH DWSRF (Drinking Water State Revolving Fund) funding package they received to assist with financing the upgrade of the Groton Water Purification Plant.

Groton Utilities began construction of the interconnections in October 2018. The Tower/Ferry View and Ledyard Center interconnections were completed in November, and the Barrett Division interconnection was completed in early December. In March, Groton Utilities informed SCWA that installation of the remaining interconnections was still scheduled to start in early May.

### **9. Thames Aquatic Center –Ledyard**

SCWA continues to work with the Town of Ledyard regarding support of the proposed Thames Aquatic Center project, as well as the proposed extension of Fairway Drive in Ledyard; both of which are in the SCWA Exclusive Service Area. Although SCWA proposed alternatives to provide water from our Ledyard Center system, DPH granted approval of a well for the Aquatic Center, with the stipulation that they connect to the water main on Fairway Drive extension once it is installed, and that the Aquatic Center use SCWA for all required testing and monitoring of the well.

Sitework and excavation began last summer (2018), and in August 2018 the well was drilled. Although the initial yield from the well did not provide sufficient capacity for the Aquatic Center's expected system demands, DPH agreed to afford the Center the opportunity to work with their well professionals regarding a solution to satisfy all requirements for the water system, per State and EPA standards. Recently there has been significant progress on the construction site, but SCWA has not heard anything new regarding the status of the well.

### **10. DPH Safe Drinking Water Primacy Assessment Fee**

A bill amending the Safe Drinking Water Primacy Assessment statute was submitted to the State Legislature in February. This assessment was originally approved during the 2017 legislative session. The purpose of the Safe Drinking Water Primacy Assessment is to fund a percentage of the DPH staff through fees charged to each water utility, or company, based on the number of customers served.

The original statute states that the assessment may be collected from each customer, and may be included as a separate item on every bill. The statute also states that the assessment can be adopted in rates without requiring approval through the usual rate revision process. The new amended statute includes a proposal to raise the fee cap from \$4 to \$5 per service connection. The new language also eliminates the cap on the total dollars raised under this fee, currently \$2.5 million. This bill (HB 7193) is currently awaiting action by the Public Health Committee.

### **11. Claim by Raspberry Junction Holding, LLC vs SCWA**

In 2016, Raspberry Junction LLC, owners of the Bellissimo Grande Hotel in North Stonington, filed a legal claim against SCWA for losses incurred during the water outage that resulted from the rupture of a pressure tank in 2015. This claim was forwarded to our insurance company at the time, Gladfelter Insurance. They hired Attorney Stephanie Berry, of the law firm of Tang & Maravelis, in New London, to handle the case. Although Gladfelter, working with SCWA, has proposed settlements on two occasions, Raspberry Junction did not agree to either proposal.

After a series of hearings at the lower courts the case was forwarded to the Connecticut Supreme Court in September 2017. In January 2018 the Authority approved a motion to hire Attorney Lloyd Langhammer, a specialist in appellate law, to provide legal representation for SCWA, and assist Attorney Berry with preparation of the case vs Raspberry Junction. The Connecticut Supreme Court heard the case on November 13, 2018. On April 3, 2019 the State Supreme Court issued a ruling that reversed the trial court's granting of the summary judgment motion, holding that the SCWA lacks authority to promulgate a rule that immunizes it from liability for disruption in water service.

In reaching its decision, the Court strictly construed the SCWA's enabling legislation, and found no express or implied grant of power to issue a rule limiting liability. Specifically, the Court found that the provision of the enabling act that permitted the SCWA to make rules governing the sale of water is too attenuated from a rule limiting liability for the failure to supply water. Additionally, the Court took a broad view on plenary powers, and considered arguments by Plaintiff's counsel that were only raised on appeal, and, in some instances, only in the reply brief.

As a result, the case was remanded back to the trial court for consideration of the summary judgment argument, based on the alternative grounds of the economic loss doctrine, which the trial judge declined to rule on. Since the original trial judge has now retired, the court has discretion to either review matters based on the record, or ask for new argument regarding economic loss only. In the meantime attorneys for Gladfelter Insurance and Raspberry Junction have reached out to each other to discuss other settlement options.

## **12. Regional Considerations**

**a) State Water Plan:** On November 28, 2018 The Water Planning Council (WPC) formally re-submitted the Draft Connecticut State Water Plan (Plan) to the Energy and Technology, Environment, Planning and Development and Public Health Committees for consideration and approval. The plan, which was ordered by the General Assembly through Public Act 14-163, was developed by the WPC to balance the needs of public water supply, economic development, recreation, and ecological health.

The State Water Plan was heard during the 2018 legislature cycle, but no action was taken. On June 14, 2018, then-Governor Malloy signed Executive Order #66 directing the state's Water Planning Council (WPC) to immediately implement the State Water Plan, as submitted to the Connecticut General Assembly in January 2018. This version includes language regarding water as a "Public Trust". Many public utilities in the state have argued about the addition of this language to the State Water Plan.

At this point, there does not appear to be any interest by the legislature in formally adopting the State Water Plan. Environmental advocates are comfortable with allowing the governor to exercise his authority to approve or reject the plan in January 2020. For now, Executive Order #66, signed by Governor Malloy, remains in effect.

**b) Water Utility Coordinating Committee (WUCC):** The Eastern Water Utility Coordinating Committee (WUCC) last met on November 14, 2018 at the Southeastern Connecticut Council of Governments (SCCOG) office. The date of the next meeting is to be determined. These meetings are open to the public.

**c) SCWA Interaction with SCCOG:** SCWA and the SCCOG continue to interact cooperatively. To this end, Chairman Monahan attends the monthly SCCOG meetings if there are items relating to water on the agenda. He also attends meetings of the SCCOG Regional Water Committee, which meets only as needed. The General Manager participates on the SCCOG Regional Water Committee's Technical Advisory Subcommittee (TAS).

**d) SCWA Interaction with AWWA and CWWA:** The General Manager represents SCWA as a member of the Connecticut Water Planning Council Advisory Group (WPCAG), which meets monthly. Mr. Cansler is currently Chair of the WPCAG Nominating Committee, which prepares the annual membership slate for appointment/reappointment of members to the WPCAG. Mr. Cansler is also a member of the Connecticut Water Works Association (CWWA) Legislative Affairs Committee, which meets monthly between November and June.

**Other Business** – None

**Report from Chairman** – None

**Report from Authority Members** – None

**Public Comment** – None

**Adjourn**

On motion of Mr. Eccard, seconded by Ms. Franciosi, the Authority voted to adjourn the meeting at approximately 6:24 p.m.

It was noted the next Authority meeting is scheduled to occur on May 13, 2019, 5:15 pm at 1649 Rt. 12, Gales Ferry, CT.

Josh Cansler  
Secretary