

Apple Springs Water Work and Sanitary District

Agenda

May 10, 2024 9:00 Mountain Time

1. **Review agreement with Clear Water Legacy** (Special Guest Faith and Anthony from Benesch)

2. **Non-Compliant Septic Update – Chris**

3. **Data Gathering on Existing WWTP Information –**

Benesch is working with Black Hills Technology to better the operation of current operating system to further optimize if grant is not approved or if grant is approved and provide data for future sale of equipment.

H2O Clear is asking for \$17,000 Loan from the District.

Would the district consider lending Clear Solutions the funds to pay for this efficiency assessment under the following conditions, if we get the grant and/or I am successful selling the Dropbox to Hermosa I will pay the district back in full. There are many moving parts here, but I think you understand the dominos. The efficiency plan makes perfect sense and frankly should have been recommended many years ago, Let me know if the board would like a quick call to discuss. Thank you for your consideration.

4. **Review Comments on LOU with H2O Clear Solutions LLC**

5. **Sewer Agreement – One-Time sign-up fee to establish operating reserve**

Legal counsel suggested that all users of sewer sign an agreement with the District. It is standard procedure to a signed agreement between users and WWTP provider. At this time suggested to have one time fee to establish operating reserve when the District takes ownership. At this time have the current users and owners that have paid hook up fees pay the one time fee with agreement (Budget has \$200 right for Now with 70 Users)

6. **Budget Structure**

Use the Tax Levy Income to cover admin costs + unexpected expenses

Use the monthly fee to cover actual costs (Utilities, Chemical, Maintenance, Operations, etc)

Dan has restructured the budget format to follow this guideline.

Review budget at next meeting. Needs to be submitted by Sept 1 to Lawrence County

7. Can a district receiver interest Income from Money Market/Savings Account.

Yes: Per SD Statute

51A-17-2.8. Investment limits.

Unless permitted by the director by rule or by order to exceed the limit as set forth in this section, the following investments are permissible under § [51A-17-10](#) to the extent specified:

- (1) Receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to fifty percent of the aggregate value of the licensee's total permissible investments. Receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed ten percent of the aggregate value of the licensee's total permissible investments;
- (2) The following investments are permissible up to twenty percent per category and combined up to fifty percent of the aggregate value of the licensee's total permissible investments:
 - (a) A short-term investment bearing an eligible rating. For purposes of this subsection, the term, short-term investment, means an investment made in the previous six months;
 - (b) Commercial paper bearing an eligible rating;
 - (c) A bill, note, bond, or debenture bearing an eligible rating;
 - (d) U.S. tri-party repurchase agreements collateralized at one hundred percent or more with U.S. government or agency securities, municipal bonds, or other securities bearing an eligible rating;
 - (e) Money market mutual funds rated less than "AAA" and equal to or higher than "A-" by Standard & Poor or the equivalent from any other eligible rating service; and
 - (f) A mutual fund or other investment fund composed solely and exclusively of one or more permissible investments named in this section.
- (3) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions are permissible up to ten percent of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in its most recent examination, and the foreign depository institution has an eligible rating, is registered under the Foreign Account Tax Compliance Act, is not located in any country subject to sanctions from the Office of Foreign Asset Control, and is not located in a high-risk or non-cooperative jurisdiction as designated by the Financial Action Task Force.

8. Real Estate Tax Exempt Resolution Update – per Erika Olson. Submitted to Lawrence County equalization department but have not heard back.

On property tax exemption (esp. real property) for the district:

Apple Springs Water Works Sanitary District is a sanitary district created under the authority of SDCL 34A-5. As a result, it is a governmental subdivision and a public entity of the state of South Dakota:

34A-5-14. District as governmental subdivision and public body.

Any sanitary district established under this chapter is a governmental subdivision of this state and a public body, corporate and politic.

Source: SL 1947, ch 226, § 17; SDC Supp 1960, § 45.3817; SDCL § 34-17-14; SL 2011, ch 165, § 88.

Pursuant to Article XI, Section 5 of the SD Constitution, property owned by governmental entities is exempt from taxation:

The property of the United States and of the state, county and municipal corporations, both real and personal, shall be exempt from taxation, provided, however, that all state owned lands acquired under the provisions of the rural credit act may be taxed by the local taxing districts for county, township and school purposes, and all state owned lands, known as public shooting areas, acquired under the provisions of § 25.0106 SDC 1939 and acts amendatory thereto, may be taxed by the local taxing districts for county, township and school purposes in such manner as the Legislature may provide.

S.D. Const. art. XI, § 5

South Dakota caselaw states that “[w]hen public property is involved, exemption is the rule and taxation the exception. National Surety Co. v. Starkey, 41 S.D. 356, 170 N.W. 582.” Egan Indep. Consol. Sch. Dist. No. 1 of Moody Cnty. v. Minnehaha Cnty., 65 S.D. 32, 270 N.W. 527, 529 (1936)

It is Erika’s opinion, that the District is a public, governmental entity, and any real property owned by Apple Springs Water Works Sanitary District would not be subject to property tax.

9. Does the Sanitary District need to be federal income tax: NO

Federal and state governments are established and recognized by the U.S. Constitution and state constitutions. Federally recognized Indian tribal governments are recognized by the U.S. Constitution, treaties, statutes and court decisions. Other entities may be recognized as governments by state law, court decision, or an examination of facts and circumstances that indicate it has the characteristics of a government, such as powers of taxation, law enforcement and civil authority.

Many tax laws apply differently to government entities than to other organizations and individuals. The primary tax difference from other taxpayers is the general exemption from income tax. IRC Section 115 excludes from gross income any income derived from the exercise of or administration of any public function.

Federal tax obligations

Employment taxes

Also known as **payroll taxes**, government entities must withhold federal income tax from employees' wages.

Social Security & Medicare

Government entities may be required to withhold social security and Medicare taxes from employees' wages and pay a matching amount.

Section 218 Agreements

State and local government entities may be covered by Section 218 agreements that affect their social security & Medicare withholding requirements.

Retirement plan reporting

Retirement plans must file certain forms and reports with the IRS and the Department of Labor and send out notices to plan participants and certain others.

10. Bank / Budget Update - John

- a. Beginning Balance 4/1
- b. Spent QTD
- c. Current Balance
- d. Projected Expenses
 - Legal Support - \$300/hr
 - Others

11. Scheduled Board Meetings

- a. Agenda
- b. Location
- c. Notice