

RESOLUTION NO. 142

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WENDELL, STATE OF IDAHO, TO CONDEMN REAL PROPERTY LOCATED IN THE CITY OF WENDELL, GOODING COUNTY, STATE OF IDAHO, TO EXPAND ITS WASTEWATER TREATMENT FACILITIES AND TO PROVIDE FOR THE PUBLIC GOOD: TO PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, the City has power, pursuant to the Idaho Constitution, Article XI, Section 8, and Article I, Section 14, specifically allowing the right of eminent domain for the necessary user of lands for any use necessary for the preservation of the health of its inhabitants; and

WHEREAS, specific use is authorized for eminent domain include the sewerage of any of any incorporated city pursuant to Idaho Code Title 7-701; and

WHEREAS, private property may be taken pursuant to eminent domain inclusive of all real property belonging to any person pursuant to Idaho Code Title 7-703; and

WHEREAS, the City proposes to condemn real property described as TOWNSHIP 8 SOUTH, RANGE 15 EAST OF THE BOISE MERIDIAN, SECTION 5: W1/2SE1/4; E1/2SE1/4; E1/2SW1/4, an entire parcel or tract of land, comprised of approximately two hundred thirty-five (235) acres, in order to expand its wastewater treatment facilities and to provide for the public good; and

WHEREAS, City of Wendell's current wastewater treatment system requires improvements, requiring additional acreage to be acquired for wastewater effluent to be land applied; and

WHEREAS, acquiring the subject real property constitutes the only economically viable option for the City of Wendell to satisfy the Idaho Department of Environmental Quality (DEQ) standards within the time allowed and within allowable budget constraints; and

WHEREAS, the City has contacted the joint owners of the real property, Robert J. Meyers and Kathi L. Meyers, husband and wife, and Joseph Hults, Jr. and Kay A. Hults, husband and wife, to purchase the real property to no avail requiring the City proceed forward in condemning the real property to obtain the real property for its wastewater treatment system upgrade project; and

WHEREAS, City of Wendell has obtained an Appraisal of the subject real property dated February 10, 2009; and

WHEREAS, the real property is in close proximity to the existing wastewater treatment facility. The real property is located directly south of the wastewater

treatment facility (lagoons), which would allow for a much shorter distance to pipe and pump the effluent to the land application site. This result in lower capital and O & M costs. In addition, the real property is one contiguous piece of property. The property is large enough to handle the entire hydraulic and nutrient loadings at the full twenty (20) year design condition even taking into account setback and buffer zone requirements pursuant to applicable regulations and law; and

WHEREAS, despite repeated efforts to negotiate and obtain a purchase of the real property through negotiations, the City is required to proceed forward in a condemnation action, pursuant to its powers of eminent domain, to condemn the property and pay just compensation to the titled owners of the real property; and

WHEREAS, the City of Wendell has offered to compensation all joint owners, Robert J. Meyers and Kathi L. Meyers, husband and wife, and Joseph Hults, Jr. and Kay A. Hults, husband and wife, in amount not less than the approved appraisal of the fair market value of the real property; and

WHEREAS, the joint owners, Robert J. Meyers and Kathi L. Meyers, husband and wife, and Joseph Hults, Jr. and Kay A. Hults, husband and wife, have refused to sell the real property to the city for the appraised value; and

WHEREAS, the proposed use of the real property by the City of Wendell is authorized by law and constitutes a necessary, beneficial and/or useful purpose as required by Idaho Code Title 7-701, 7-704; and

WHEREAS,