

Greater Augusta Utility District Board Agenda

Monday, June 24, 2024, 6:00 PM

Council Chambers, Augusta City Center, Augusta, Maine

1. Welcome - Knight
2. Introduce Board members
3. Introduce GAUD employees, consultants and guests
4. Agenda additions
5. Old Business
 - a. Approve meeting minutes - **Motion** - pages 9 - 11
 - b. Rate committee update - page 3
 - c. Project updates – pages 6 - 7
 - d. General Manager’s report – page 8
 - e. PFAS “forever chemicals” - guest speaker from Waste Management - **Motion** - page 16 / page 3 - 4 / WM handout pages 22 - 23
6. New business
 - a. Review financial statements - pages 12 - 14
 - b. Review liens
 - c. Policy review - **Motion**
 - d. Communications update
 - e. HR update
 - f. Executive session to discuss foreclosure policy with legal counsel - **Motion** pages 19 - 20 and 24 - 34 (MMA article)
 - g. Public comment
7. Adjourn - **Motion**

Attendees:

<input type="checkbox"/>	Knight – Chair	<input type="checkbox"/>	Colwell	<input type="checkbox"/>	Sawyer	<input type="checkbox"/>	Begin
<input type="checkbox"/>	Paradis – Clerk	<input type="checkbox"/>	Hebert	<input type="checkbox"/>	Warren	<input type="checkbox"/>	Payne
<input type="checkbox"/>	Corey – Treasurer	<input type="checkbox"/>	Munson	<input type="checkbox"/>	Luke	<input type="checkbox"/>	Tarbuck

A quorum consists of 4 voting Trustees.

Guests:

☐ _____

☐ _____

☐ _____

Executive sessions are described in [MRS Title 1 Section 405](#). Executive sessions may only be called by a public recorded vote of 3/5 of the members, present and voting.

Remaining meetings. Planning meeting is on October 23, 2024.

Thursday, July 4, 2024	Independence Day	Holiday
Monday, July 15, 2024	Regular meeting	City Center
Monday, August 19, 2024	Regular meeting	City Center
Monday, September 2, 2024	Labor Day	Holiday
Monday, September 16, 2024	Regular meeting	City Center
Monday, October 14, 2024	Indigenous Peoples Day	Holiday
Monday, October 21, 2024	Regular meeting	City Center
Wednesday, October 23, 2024	Planning meeting	Senator Inn
Monday, November 11, 2024	Veterans Day	Holiday
Monday, November 18, 2024	Regular meeting	City Center
Thursday, November 28, 2024	Thanksgiving Day	Holiday
Friday, November 29, 2024	Thanksgiving Friday	Holiday
Monday, December 16, 2024	Regular meeting	City Center
Wednesday, December 25, 2024	Christmas Day	Holiday

1. Welcome
2. Introduce Board members
3. Introduce GAUD employees, consultants and guests
4. Agenda additions
5. Old business

a. Approve meeting minutes - **Motion 1**

Motion: I move to accept the Board meeting minutes for May 20, 2024.			
M	2nd	For	Against

b. Rate committee updates

Rate increases of 30% for the sewer and drinking water divisions were approved by the Board at the May 20, 2024 meeting.

Maine PUC approved our proposed rates on May 30, 2024.

The table below shows when customers will see changes in their bills:

Rate adjustment	June 1, 2024
Start of new rates	June 20, 2024
Customers receive bill for new rates	August 9, 2024
Payment due on new rates	September 4, 2024

The website has been updated to show the new rates. gaud.ws/rates

I plan to hire a firm to update our drinking water, fire protection, sewer and stormwater rate models for 2025. It has been more than 10 years since the sewer and stormwater rate models were created and it has been about 10 years for the drinking water and fire protection rates. We have significant financial headwinds to lean into, particularly in the drinking water division, so a strong basis for rates is important.

2025 budget schedule

- October 21 regular board meeting - present draft budget (discussions, questions & comments)
- November 18 regular meeting - present updated budget - (final discussions, questions & comments)
- December 16 - vote on the 2025 proposed budget

The 2025 budget will be presented to show how the decision to adjust rates is impacted by the O&M versus capital improvement budgets. For example, a 10% rate increase might be weighted 30% to O&M and 70% to CIP.

c. Project updates - Begin

Andy will provide updates regarding the District's capital improvement projects.

d. General Manager's report - Tarbuck

Brian will provide updates not otherwise covered in this report.

e. PFAS "forever chemicals" discussion - **Motion**

T. Lindsay D'Anna, Director of Biosolids Business Development from Waste Management, will attend the meeting to describe the Biosolids Processing Facility WM will use to manage sludge from wastewater treatment plants before it goes to the landfill in Norridgewock. A handout is included for your review. You'll recall that we recently switched from Casella to WM due in large part to the idea that WM has a good plan to accept sludge and minimize PFAS export from the site.

This motion allows me to act on the Board's behalf to continue with the process of seeking remuneration from 3M and DuPont for damages incurred due to PFAS contamination. Please refer to the attachments for more information.

Motion: I move to adopt a resolution authorizing Brian Tarbuck to sign and submit the Claims Forms for the 3M and DuPont settlement actions on behalf of the Greater Augusta Utility District.

M	2nd	For	Against
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On June 7 there was an editorial in the Kennebec Journal written by a concerned citizen in Hallowell related to the concentrations of PFAS in Hallowell Water District's drinking water. We will review the current status of piloting efforts to determine how best to comply with the proposed EPA limits on certain [PFAS compounds by 2029](#):

Public water systems have five years (by 2029) to implement solutions that reduce these PFAS if monitoring shows that drinking water levels exceed these MCLs.

6. New business

a. Review financial statements - Payne

Mike will review the May 2024 financial statements.

b. Review liens - Payne

There are no liens to consider this month.

c. Policy review - **Motion** - Tarbuck

There are two policies for Board review this month.

1. Policy 6, Sewer and Stormwater Main Extensions
2. Policy 7, Water Main Extensions

Policy 6 was last revised by the Board on September 22, 2022. There are no revisions recommended but it would be good to show the Board reviewed the policy..

Policy 7 was last revised by the Board on September 13, 1994. There are no revisions recommended but it would be good to show the Board reviewed the policy.

Motion: I move to approve policies 6, and 7 as presented to this meeting.

M	2nd	For	Against
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d. Communications update - Meredith Strang-Burgess

Strang-Burgess will provide the communications update.

e. HR update - Alan Burton

Alan Burton will provide an in-person HR update.

f. Executive session - Motion - Mike Hodgins

Policy 22 has to do with acquiring property due to unpaid water, sewer or stormwater bills. Mike Hodgins from Eaton Peabody has suggested that he present options for the Board to consider in executive session. I don't recall us acquiring a parcel since I've been GM using the foreclosure process and have a hard time imagining a set of circumstances where the Board would execute this option. That said, it's wise to consider alternatives no matter how unlikely they may be and have a policy to address those alternatives beforehand.

Motion: I move to enter executive session to discuss certain policies with legal counsel pursuant to MRS Title 1 Chapter 13 subchapter 1 §405 6 E.

M	2nd	For	Against
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g. Public comment

7. Adjourn – **Motion** - Sawyer

Motion: I move that this body stand adjourned.

M Sawyer	2nd	For	Against
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Summary of Capital Improvement Projects

17001 - Eastside Sewer Siphon - \$4,727,561 & 19047 Redundant River Crossing - \$4,085,380 spent to date

Status: In construction.

Contracts 1 through 3 - 100% complete, pending release of retainage.

Contract 4 Water Mains West Side - Paving and restoration should be complete during the week of June 24th.

Contract 5 - Hospital Street Booster Station Piping - All designed, out to bid. Bids are due on July 9th. This is a small contract to connect our new infrastructure to the existing station.

Working to move a new fiber network forward with the City and the State, and private interest.

Scope: Replace the failed 8" cast iron siphon new 16" HDPE pipe & 16-inch water main.

Purpose: Replace failed infrastructure, then rehabilitate the existing 20" cast iron pipe.

Budget: \$5.1 Million (Update to **\$8.4 Million** additional \$3 Million in Grant Funding)

Schedule: Construction completion anticipated Q2 2024.

22015 - Front Street Pump Station 3 Replacement - \$106,872 spent to date

Status: The project is out to bid, bids are due on July 9th.

Scope: Replace an aging 1962 sewer pump station with a new flood proof submersible station.

Purpose: Station subject to flooding and failure and beyond its useful life.

Budget: \$2.1M (\$2M grant)

Schedule: Finish by Q4, 2024. (Revised date of June 2025)

19012 - Highland Avenue Water, Sewer, Storm Upgrades and Road Reconstruction - \$1,389,274 spent to date

Status: Construction, 100% complete with utility work. This project is being held up due to power poles. The old poles need to be removed from the street prior to final paving. New poles have been set, power has been moved. We are waiting on Consolidated Communications to move their infrastructure.

22024 - Turtle Run Water Main Replacement - \$19,400 spent to date

Status: CH Stevenson is expected to start construction in September. This schedule got pushed back slightly to accommodate seasonal population increase.

Scope: Replace 900 feet of 2" & 2.25" seasonal lines with new 8" water main.

Purpose: Replace aging infrastructure and increase reliability.

Budget: \$344,000, water

Schedule: Planned for Q2 & Q3 2024

23015 - Riverside Drive PFAS/PFOA pilot study - \$103,172 spent to date

Status: Our crew set up a surface line to run the Mainex well to waste and extended a service line to run the hardness and PFAS pilot unit at our Riverside Treatment Building. Blue leaf is expected to install the additional hardness removal treatment the week of July 8th.

Scope: Run a pilot unit to reduce hardness and forever chemicals at our Riverside Drive well field.

Purpose: Apply the piloting results to develop a design for a full scale treatment system and cost projections.

Budget: \$200,000 (DWP forgiveness planning study). Construction phase is projected to be > \$5M.

Schedule: Planned for Q3 2023 to Q2 2024

CIP# 24001 - Fairview Avenue Stormwater Upgrade - \$36,086 spent to date

Status: The project is complete and paved. Minor finishing touches with restoration.

Scope: 1,200 feet of storm main and 4 structures.

Purpose: Resolve backyard flooding and surface water runoff to Stone Street and separate combined catch basins currently discharging to the sewer.

Budget: \$484,000 Storm, (Estimating Construction at \$495K)

CIP# 24003 - Hummingbird Lane - \$0 spent to date

Status: No update, in preliminary design.

Scope: Pipe burst 1,700 feet of aging 6" cast iron water main with new 4-inch HDPE.

Purpose: Replacement of leak prone water mains.

Budget: \$467,500

WWTF CIP Updates:

CIP Item	Budgeted	Encumbered	Remaining	Comments
Driox System Repairs	\$10,000	\$7,236	\$2,764	Scheduled for June/July Install, waiting on parts
Replace PSA Sieve	\$75,000	\$48,231	\$26,769	PSA material purchased, need to rent auger for install, firm up disposal, plan install
Aeration tank shaft	\$14,950	\$12,655	\$2,295	Complete , Will close out PO
Install new pump/coupling	\$24,000		\$24,000	Need to resurface, can likely wait till 2025 if needed.
Penn Valley Pumps parts	\$7,500	\$6,526	\$974	Ordered
Tank Drain Pump	\$25,000	\$23,300	\$1,700	Complete , Will close out PO
Chemical bay piping	\$10,000		\$10,000	Repair parts need to be ordered, RPZ repairs to be carried under water system budget
Secondary Clarifier 3	\$449,900	\$160,134	\$289,766	RFP out to bid by mid July, equipment ordered on 5/20
Secondary Clarifier 1 Skimmer	\$3,200		\$3,200	Need to order
Total	\$619,550	\$258,082	\$361,468	

General Manager's Report

We have five interns this summer. Allie LaBelle , Theo Colvin , Charlotte Harper Cunningham , Silas Bartol and Kasey Mushlit . [Photo of all interns](#) They are working on a variety of projects including cleaning up old records, improving operation and maintenance manuals, and inspecting infrastructure. We have a good mix of skills and personality types.

Our 2023 drinking water [Consumer Confidence Report](#) is online. This has been certified to the state's Drinking Water Program.

Dick Bachelder recently passed away. He was a member of the GAUD board in the early days when we were still sanding off the rough edges. He was known for being a stalwart Hallowellian, sports enthusiast and family man. It's an honorable legacy and we were fortunate to spend time with him ourselves.

Maia Ferris recently passed the exam to qualify her to become a licensed professional engineer in Maine. This is a challenging examination that she studied hard for over several months. We're very proud of Maia's achievement!

Plan to meet at 12 Williams in July depending on availability of furniture to kit out space next door.

We will start archiving meeting documents this summer. To see the documents from May, go to this location on your browser: <https://www.gaud.ws/MONTHLY-archive-2024>

The operations and non-operations portions of the computer network that supports GAUD has been separated per best practices. This will help prevent the system that operates our plant and remote stations from being caught up in an attack on our non-operations network (e.g. billing / file storage / email).

I attended the Drinking Water Commission meeting on June 12; the State and Local Cybersecurity Grant Program Planning Committee meeting on June 20 (remote); and the Board of Licensure of Water System Operators meeting on June 21.

Monday, May 20, 2024

Greater Augusta Utility District Board Minutes

Meeting start time on CTV7 is 5:03 minutes into recording

Location: Augusta City Center

Trustees present: Kirsten Hebert, Bradley Sawyer, Pat Paradis, Cecil Munson, Bob Corey, Keith Luke

Absent: Ken Knight, Charlotte Warren, Carrie Colwell

Attendees: Brian Tarbuck, Andy Begin, Mike Payne

Guests: Alan Burton

At 18:00 Paradis called the meeting to order.

There were no agenda additions.

At 18:01 the Board voted on the prior month's meeting minutes.

Motion: I move to accept the Board meeting minutes for April 22, 2024.

M Corey	2nd Munson	For Unanimous	Against None
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At 18:02 Corey updated the Board regarding rates. The public hearing was last month. Those who attended asked good questions which were answered by the Board. Water used after June 20 will be subject to the revised rates.

At 18:03 Corey made the following motion:

Motion 2: I move that we certify and approve the revised schedule of rates for drinking water service, fire protection service, sewer service and stormwater service, which has been presented to this meeting and recorded with the minutes, to go into effect on or about June 1, 2024, and continuing until such time as the schedule of rates is modified by vote of the Trustees. I further move that the Assistant Treasurer, in addition to the Treasurer, be authorized and directed to apply the schedule of rates, along with all fees and charges otherwise authorized by the District or by State statute, to all persons, entities and property receiving services from the District, and to thereafter collect the sums due from said persons and entities and to take all appropriate action related to the collection of said sums, including the preparation and filing of notices and liens and allowed by the District's Charter and State law.

M Corey	2nd Sawyer	For Unanimous	Against
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Paradis thanked the rate committee (Hebert, Munson, Corey, Payne, Tarbuck) for its efforts to assess financial conditions and make recommendations to full board regarding rates.

At 18:05 Begin provided capital improvement project updates. The pipes underneath the river and Jackson Avenue have been installed. Paving for Jackson Avenue will be done in June. The Front Street sewer pump station will be out to bid in early June. Highland Avenue won't be complete until the abandoned aerial utility poles have been removed so the sidewalk can be installed. Turtle Run will be starting in July. The PFAS pilot testing unit will be moved from the Bonenfant well to the Mainex well in June. This testing will also consider the need to remove hardness from the Mainex well. Trees are being removed along the Stone Street and Fairview Avenue project which aims to prevent stormwater from flowing onto Stone Street in the winter and creating an icing hazard. Summer Street is nearly ready for bidding apart from securing an easement from a property owner. The secondary clarifier upgrade at the wastewater plant is a \$450k system that will be installed this summer. The other significant expense at the plant includes upgrades needed to the pressure swing adsorption system which removes nitrogen and other gases from ambient air leaving only oxygen which is needed for the aeration system.

The road crew has been very busy adjusting structures for planned paving projects (MDOT and local communities). Hydrants will be flushed this week. A lot of money has been invested to improve reliability of the emergency standby generators.

At 18:12 Tarbuck provided the General Manager's report. Tarbuck provided an update from a recent conference in Rhode Island. The meeting included discussions with large New England utilities and efforts to improve interoperability between states using the existing mutual aid WARN system. The electric Hyundai Kona leases expire this month and will be returned. Three interns started this week: Charlotte Harper-Cunningham, Theo Colvin and Allie LaBelle. The interns will help with easements and updating our grease interceptor database. Pat Gilbert will be working with restaurants to improve grease removal.

At 18:17 Tarbuck noted that sludge used to go to Casella for disposal for about 30 years. Casella notified GAUD in early April that they were unilaterally changing the terms of their contract. Facility manager John Cummons investigated alternatives and recommended disposing of sludge at Waste Management in Norridgewock. The Norridgewock facility prices competitively and has a proposal to manage sludge disposal that meets the needs of the landfill and contains PFAS on site. The pivot to Waste Management was seamless.

At 18:23 Tarbuck provided the financial updates as Mike Payne was on vacation. Each division has revenue that slightly exceeds expenses. Cash is strong as it builds until the autumn debt payments are made. Revenue is tracking as planned for 33%

Budget Summary 2024		Revenue			Expenses			
Month	Division	Budget	Actual	Act / budg	Budget	Actual	Act / budg	Ending cash
4	Sewer	5.8	1.84	32%	5.5	1.6	29%	1.24
4	Stormwater	4.1	1.37	33%	3.1	0.9	28%	2.34
4	Water	5.2	1.63	31%	4.4	1.3	29%	2.45

At 18:26 Tarbuck reviewed the policies (19, 20 and 24) for consideration by the Board.

1. Policy 19 - undesignated bill payments last reviewed 2016 - changes suggested
2. Policy 20 - short term inter-fund borrowing last reviewed 2017 - no changes suggested
3. Policy 24 - Post Issuance Compliance Policy - no changes suggested

Motion: I move to approve policies 19, 20 and 24.

M Corey	2nd Munson	For Unanimous	Against
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At 18:27 Tarbuck explained the need from the Board to allow Tarbuck to apply for a Northern Border Regional Commission grant using the following motion.

Motion: I move that Brian Tarbuck, who is the General Manager, is empowered to act on behalf of Greater Augusta Utility District as the Authorized Official per the resolution presented at this meeting.

M Sawyer	2nd Hebert	For	Against
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At 18:30 Corey noted that it would be helpful to mirror the Planning Board's website by archiving the information provided to the Board for each meeting on the GAUD website.

At 18:33 Tarbuck noted that reports from an intensive employee hiring campaign and the quarterly digital social media status are included.

At 18:35 Alan Burton provided an update regarding human resources activities. The union contract expires on December 31, 2024 so it is being reviewed now to determine the proposals that management would like to bring to the table when negotiations begin in the fall. In addition to the general manager's review, three 360 performance reviews will be done through October. The personnel policy manual is being updated to reflect changes in practices and rule changes. Work continues to hire people. No people have been lost to other positions or retirements recently. Paradis noted that his

interactions with the crews out in the field are very polite and cordial. He stressed that they work in difficult conditions, do great work and felt that they deserved recognition for those efforts.

18:37 Sawyer moved to adjourn. The motion was seconded by Corey. The motion was approved unanimously.

GREATER AUGUSTA UTILITY DISTRICT

Financial Highlights for May 2024

Water Division

Income Statement: Water revenue for the month ending May 31, 2024 totaled \$2.1M which is **1% under budget** and approximately **\$121K above** the same period last year. Expenses for the same period totaled \$1.7M which is **4% under budget** and approximately **\$130K above** the same period last year.

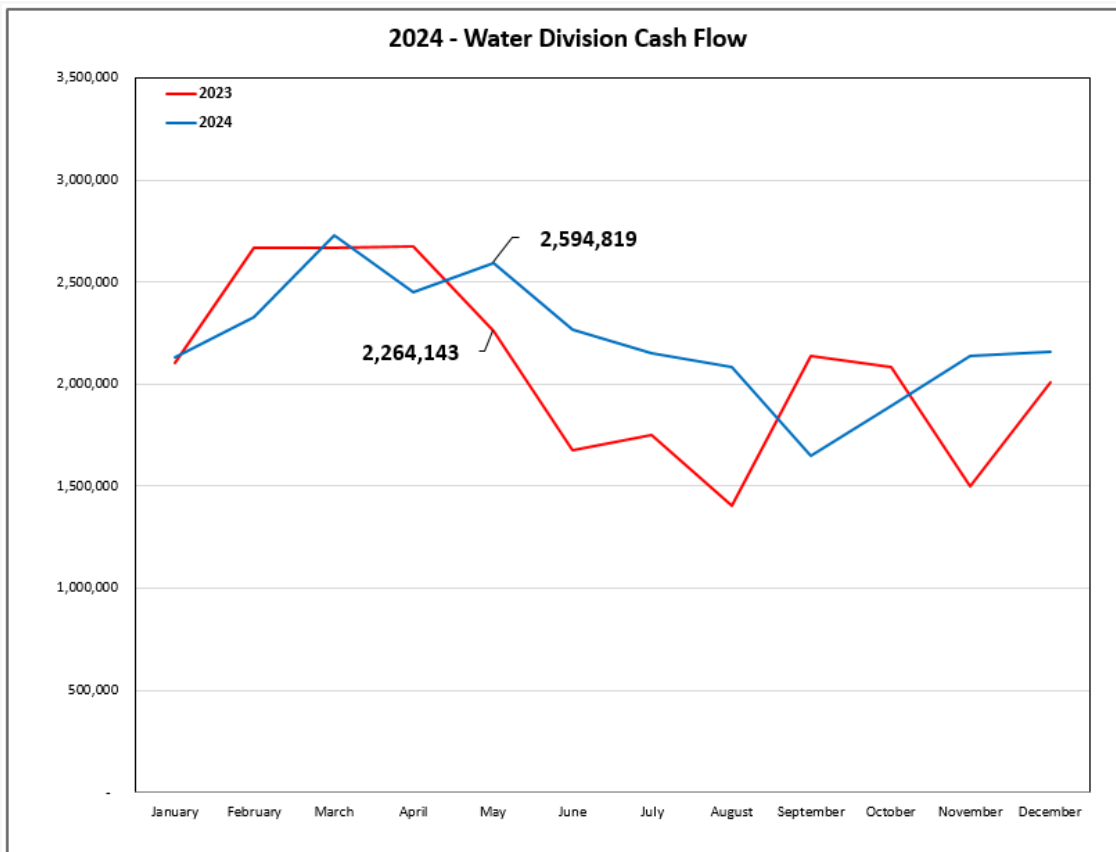
Water Revenue

	Budget	Actual YTD	% used
Metered	3,120,917	1,284,250	41%
Fire Protection	1,832,919	761,310	42%
Investment income	5,000	17,685	354%
Other Income/Grants	250,000	71,276	29%
Sum:	5,208,836	2,134,521	41%

Water Expenses

	Budget	Actual YTD	% used
Labor and fringe	2,098,687	726,899	35%
Power	254,100	114,322	45%
Supplies	311,440	170,698	55%
Debt interest	85,470	35,797	42%
Depreciation	1,065,208	399,035	37%
Other	547,882	214,882	39%
	4,362,787	1,661,633	38%
Revenue - expense	846,049	472,888	

Cash Flow: Cash at the beginning of May was \$2.2M. Revenue of \$554K was collected. O&M expenses were \$272K and CIP expenses were \$140K. Cash at the end of May was \$2.6M.



GREATER AUGUSTA UTILITY DISTRICT

Financial Highlights for May 2024

Sewer Division

Income Statement: Sewer revenue for the month ending May 31, 2024 totaled \$2.4M which is **1% under budget** and approximately **\$169K below** the same period last year. Expenses for the same period totaled \$2.1M which is **4% under budget** and approximately **\$9K below** the same period last year.

Sewer Revenue

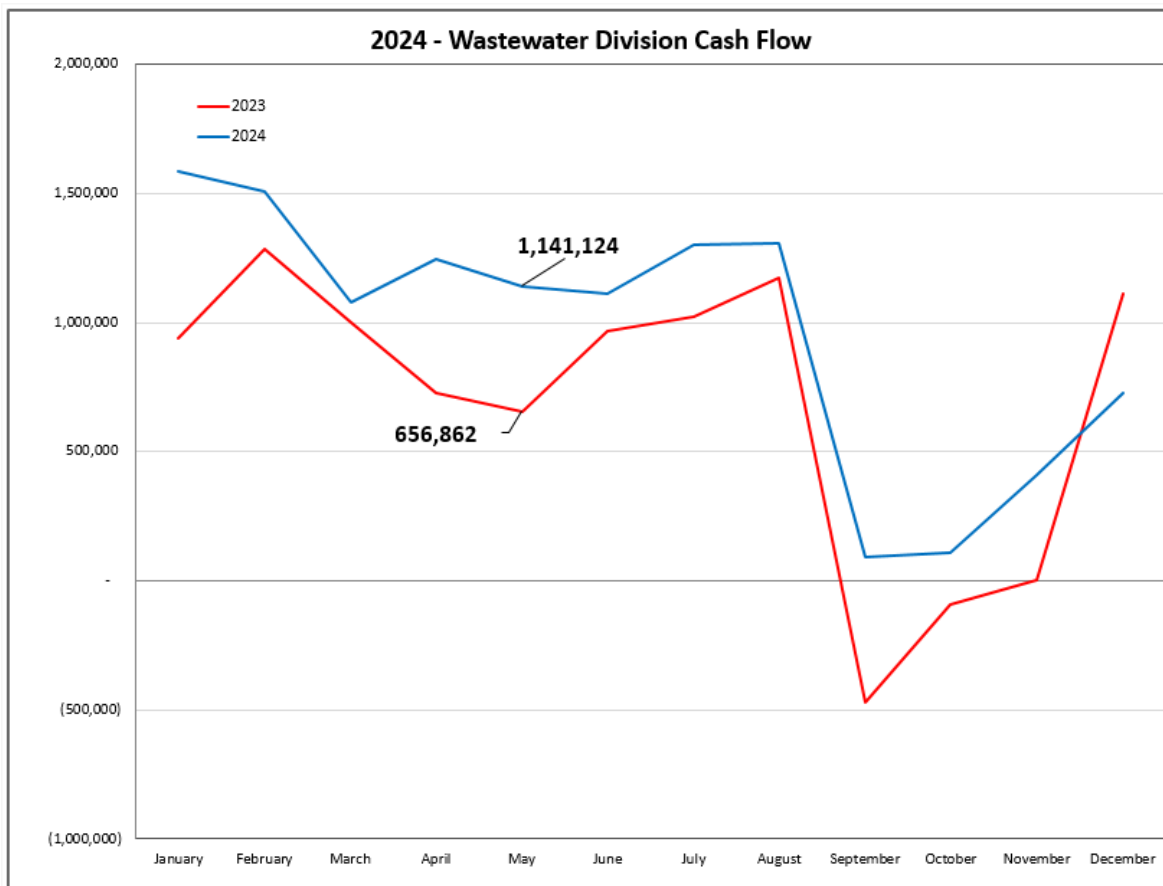
	Budget	Actual YTD	% used
Flat rate	15,464	9,471	61%
Metered	4,402,811	1,785,700	41%
Trunkline	976,000	382,741	39%
Investment income	5,000	17,685	354%
Other Income/Grants	405,692	186,453	46%
Sum:	5,804,967	2,382,050	41%

Sewer Expenses

	Budget	Actual YTD	% used
Labor and fringe	1,964,142	633,410	32%
Power	318,995	198,548	62%
Supplies	316,735	105,552	33%
Debt interest	274,068	106,165	39%
Depreciation	1,519,224	619,074	41%
Other	1,096,131	434,147	40%
	5,489,295	2,096,897	38%

Revenue - expense	315,673	285,153
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Cash Flow: Cash at the beginning of May was \$1.2M. Revenue of \$489K was collected. O&M expenses totaled \$524K and CIP expenses were \$68K. Cash at the end of May was \$1.2M.



GREATER AUGUSTA UTILITY DISTRICT

Financial Highlights for May 2024

Storm Division

Income Statement: Storm revenue for the month ending May 31, 2024 totaled \$1.8M which is **in line with budget** and approximately **\$168K below** the same period last year. Expenses for the same period totaled \$1.1M which is **6% under budget** and approximately **\$61K below** the same period last year.

Storm Revenue

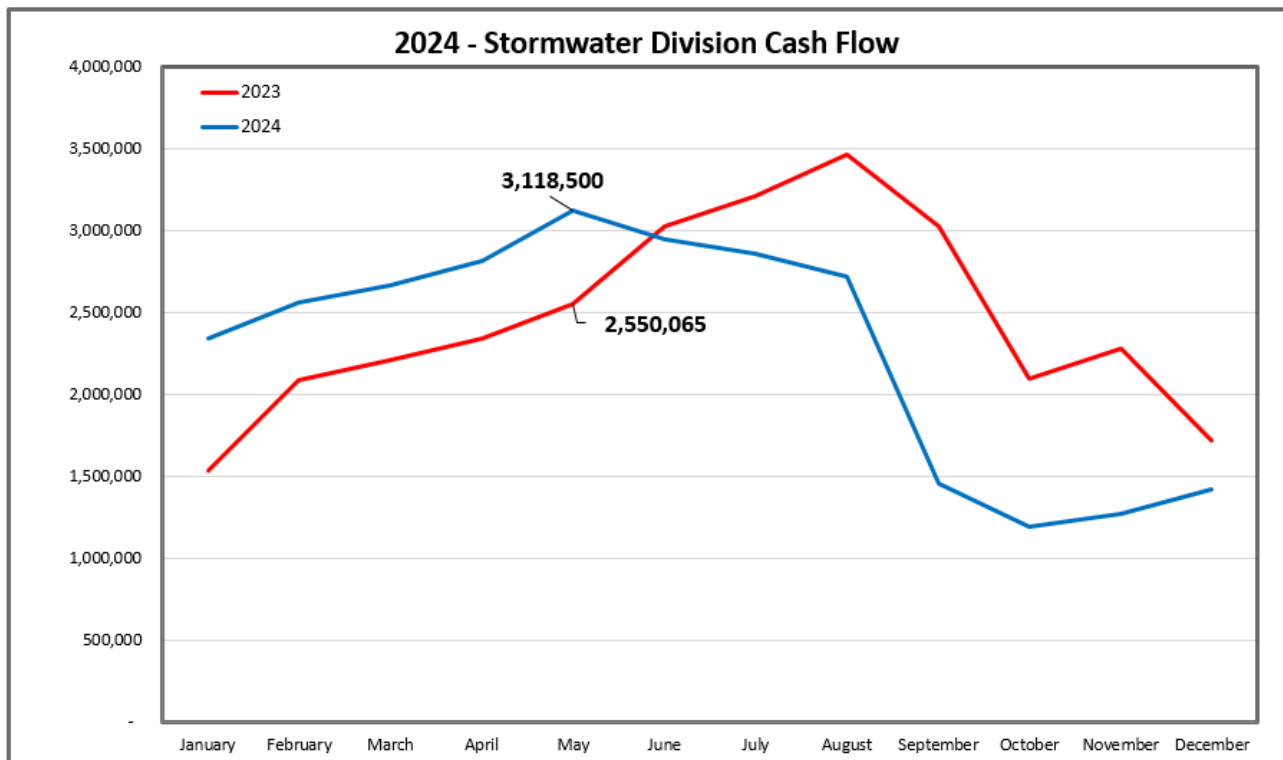
	Budget	Actual YTD	% used
Stormwater	4,123,015	1,732,039	42%
Investment income	5,000	17,685	354%
Other Income/Grants	-	3,590	0%
Sum:	4,128,015	1,753,314	42%

Storm Expenses

	Budget	Actual YTD	% used
Labor and fringe	1,284,263	440,499	34%
Power	133,998	76,995	57%
Supplies	202,390	71,350	35%
Debt interest	89,161	26,880	30%
Depreciation	953,995	378,286	40%
Other	412,210	120,381	29%
	3,076,017	1,114,391	36%

Revenue - expense 1,051,998 638,923

Cash Flow: Cash at the beginning of May was \$2.3M. Revenue of \$481K was collected. O&M expenses were \$167K. Cash at the end of May was \$3.0M.



Motion for Agenda Item: Authorization for Brian Tarbuck to Sign 3M and DuPont Settlement Claims Forms

Motion:

I move that the Board of the Greater Augusta Water Utility adopt a resolution authorizing Brian Tarbuck to sign and submit the Claims Forms for the 3M and DuPont settlement actions on behalf of the Greater Augusta Water Utility.

Summary of Settlements:

3M Settlement:

- **Details:** Angeion Group announced a settlement with 3M Company in a product liability class action lawsuit. Eligible claimants include all Active Public Water Systems in the U.S. that have tested for PFAS contamination as of June 22, 2023.
- **Settlement Amount:** 3M has agreed to pay between \$10.5 billion and \$12.5 billion, subject to court approval.
- **Eligibility:** Active Public Water Systems that have either detected PFAS in their water sources or are required to test for certain PFAS under UCMR-5.
- **Claims Process:** Claims must be submitted via www.PFASWaterSettlement.com or by mailing the Claims Form to the Claims Administrator on or before July 17, 2024.

DuPont Settlement:

- **Details:** Angeion Group announced a settlement with DuPont and other defendants in a product liability class action lawsuit involving Public Water Systems that have tested for PFAS contamination as of June 30, 2023.
- **Settlement Amount:** The defendants have agreed to pay \$1.185 billion, subject to court approval.
- **Eligibility:** Public Water Systems subject to UCMR-5 monitoring rules or required by law to test for PFAS.
- **Claims Process:** Claims must be submitted via www.PFASWaterSettlement.com or by mailing the Claims Form to the Claims Administrator on or before July 17, 2024.

Resolution: The Board of the Greater Augusta Water Utility hereby authorizes Brian Tarbuck to complete, sign, and submit the necessary Claims Forms for both the 3M and DuPont settlements on behalf of the Greater Augusta Water Utility, ensuring that all required data and documentation are accurately provided.

Proposed by:

Seconded by:

Discussion:

Resolution Authorizing Brian Tarbuck to Sign the 3M and DuPont Settlement Claims Forms

WHEREAS, the Greater Augusta Water Utility ("GAWU") is a claimant eligible to submit claims for the 3M and the DuPont Settlements; and

WHEREAS, the Board of the Greater Augusta Water Utility has discussed the terms and conditions of the settlements provided by 3M and DuPont; and

WHEREAS, it is necessary for an Authorized Public Water System (PWS) Representative to sign and submit the Claims Forms on behalf of GAWU in order to participate in the settlement actions;

NOW, THEREFORE, BE IT RESOLVED by the Board of the Greater Augusta Water Utility that:

1. Brian Tarbuck, in his capacity as (Title) of the Greater Augusta Water Utility, is hereby authorized and directed to complete, sign, and submit the Claims Forms for both the 3M and the DuPont Settlements on behalf of GAWU.
2. Brian Tarbuck is authorized to take any and all actions necessary to execute and submit these Claims Forms.
3. This resolution shall be effective immediately upon its adoption.

Adopted this _____ day of _____, by the Board of the Greater Augusta Water Utility.

Board Chairperson: _____

Board Secretary: _____

Attested by: _____

Brian Tarbuck: _____

GAUD Policy #: 6

Date: 9/22/2022

Policy 6: Sewer and Stormwater Main Extensions

Original date: 1/1/1989; Rev.12/18/2006; 4/28/2008; 3/7/2016; 9/22/2022

There are many reasons why extensions to utilities are needed. Here are examples of main extensions performed in the past:

- Serve areas to eliminate malfunctioning septic systems and/or public health problems;
- Serve areas owned only by one property applicant - where no other property will or can be immediately benefited; and
- Serve areas that have frontage on properties not owned by the applicant but which could be served by the extension.

Each proposed main extension will be considered on its own merits and circumstances. A written main extension agreement will be signed by both the developer and GAUD prior to the commencement of main construction. The GAUD board has final approval of each main extension agreement.

The overarching principle of main extensions is that **the customer or customers served by the main extension pay for the main extension in its entirety** including the pipes and pump stations, permitting, engineering, construction inspection, start up costs, design, design submittals and other project costs required to convey the flow to the existing infrastructure.

GAUD has sole control over the approval of any proposed connections to its existing infrastructure.

GAUD engineering works closely with developers to ensure that main extensions can be done at the least possible cost with maximum reliability while complying with best engineering practices.

GAUD generally applies Maine PUC water main extension requirements to sewer and stormwater extensions so potential customers have a consistent set of standards to work with. GAUD does not invest in drinking water main extensions but GAUD is not prohibited from investing in sewer or stormwater extensions. However, **in practice, GAUD does not invest in sewer or stormwater extensions.**

Proposed extensions to the sewer or stormwater utilities will be reviewed by GAUD engineering to ensure that there is sufficient capacity in the system to accept the additional flow without negatively impacting downstream infrastructure or impairing the environment. Proposals that require the downstream infrastructure to be enlarged to meet the demands of proposed development must also fund system expansions necessary to safely maintain flow without impairing the environment. **Developers may not install infrastructure without an approved main extension agreement from GAUD.**

From time to time, potential customers along a newly installed main extension wish to connect to the new main. **A ten year connection moratorium goes into effect once a customer completes installation of a new main.** During the moratorium, customers who wish to connect to the new main must reimburse the original developer for a portion of the total main extension. GAUD uses a formula to compute the cost for the proposed customer to make the connection. This moratorium process provides a mechanism for a developer to recoup some of the investment made in the original extension in a manner that is clearly stipulated and understood by all parties as documented in a main extension agreement. Requests for new connections are made to GAUD and, if approved, GAUD collects money from the new customer and remits it to the original customer. After ten years, customers may connect to the 'new' main without paying the original developer.

GAUD Policy #: 7

Date: 2/22/2016

Policy 7: Water Main Extensions

Original date: 9/13/1994; Number revised: 2/22/2016

Documentation that the water division voted to not invest in water main extensions in 1994:

Minutes from 9/13/1994 trustees meeting:

Donald Ware explained the water main extension investment of the District and recommended to the Trustees that the Augusta Water District no longer invest in water main extensions. After reviewing the costs the District already is obligated for, and future potential costs, as well as the steps that must be followed to accomplish this Wayne Moss made a motion, seconded by Bruce Berger that the Augusta Water District no longer invest in water main extensions and that the District approach the various municipalities involved and present their case. It was a unanimous vote.

Minutes from 11/8/1994 trustees meeting:

Donald Ware informed the Trustees that the Town of Winthrop had voted to allow the Augusta Water District to discontinue paying for water main extensions.

Minutes from 12/13/1994 trustees meeting:

Don Ware informed the Trustees that the City of Augusta voted in favor of the District no longer investing in water mains. The vote was 5 yeas, 2 nays.

Title 35-A, Chapter 61, GENERAL PROVISIONS AND RATES

§6106. Apportionment of costs for water main extensions or service lines

1. Investment. The governing body of a consumer-owned water utility may choose to make no investment in a water main extension or service line and may require persons requesting a water main extension or service line to advance to the utility the full cost of construction, including associated appurtenances required solely as a result of the construction of the water main extension or service line and used solely for the operation of the main extension or service line. Apportionment of the costs among Customers shall be determined by the commission by rule. [1987, c. 490, Pt. B, § 15 (amd).]

2. Assessments. The governing body may assess the full cost of water main extensions on all property that abuts the water main in accordance with rules promulgated by the governing body. The owner of any property which is not hooked up to the water system may defer payment of the assessment until it is hooked up. The governing body by rule may exempt appropriate classes of property from the assessment and may provide for payment of an assessment over a period of time. [1987, c. 141, Pt. A, § 6 (new).]

3. Review by elected local officials. If the governing body is not an elected body, any decision to make no investment under subsection 1 or to assess under subsection 2 must first be endorsed by the municipal officers of the municipality or municipalities involved, prior to filing with the commission. [1987, c. 141, Pt. A, § 6 (new).]

4. Notice to commission. A consumer-owned water utility that chooses to make no investment in water main extensions or service lines under subsection 1 shall notify the commission in writing of the effective date of the decision and shall include the minutes or other record of the decision, including any endorsement required by subsection 3. [1989, c. 159, §9 (new).]

GAUD Policy #: 22

Effective Date: December 19, 2011

Policy 22: Property foreclosure

Original Date: 12/19/2011 – approved by Board this date

The District uses the statutory lien process to secure payment for utility services when payments are not made voluntarily.

The lien process culminates in automatic foreclosure 18 months after the lien certificate is recorded in the Registry.

The District will follow the procedure below regarding liens that are approaching the automatic foreclosure date.

If the District does not wish to acquire the property via foreclosure there are two options:

Option 1: The District will send the Notice of Impending Automatic Foreclosure to the mortgagee (bank) between 30 and 45 days prior to the automatic foreclosure date, but will not send the Notice of Impending Automatic Foreclosure to the property owner. This approach would encourage the mortgagee to make payment rather than have its redemption rights terminated, although the automatic foreclosure would not occur until the District chose to complete the process by sending the 30-day notice to the property owner. This option will be the default position of the District.

Or

Option 2: The District will waive the automatic foreclosure by recording a waiver in the Registry prior to the automatic foreclosure date pursuant to Title 38 MRSA Section 1208-A, in which case the lien will continue in effect but will require an order from the court to reinstitute the foreclosure. This option will be considered when there is no apparent advantage to having the District acquire the property due to such factors as dilapidated condition or environmental contamination.

If the District does wish to acquire the property via foreclosure, the District will pursue a third option, which will be to complete all of the required steps in the foreclosure process, as follows:

Option 3: The District will send the Notice of Impending Automatic Foreclosure to the mortgagee (bank) between 30 and 45 days prior to the automatic foreclosure date, as with Option 1, above. In addition, the District will send the Notice of Impending Automatic Foreclosure to the property owner. This option will be considered when the District determines that acquiring ownership of the property will be beneficial to the District, either by encouraging the owner to make payment or by putting the District in a better position to collect the debt by a subsequent sale of the property.

District management will present these options to the Board of Trustees no later than 15 months after the lien certificate has been recorded at the Registry of Deeds. The Board of Trustees will then direct management to pursue one of the three options described above.

For account receivables of \$500.00 or less, District management shall have the discretion to write off the amount owed and terminate the foreclosure process when management determines that the cost or effort associated with further attempts to collect the debt are unlikely to succeed.

GAUD Policy #: 25

Effective Date: September 21, 2021

Policy 24: Remote Meeting Policy

Original Date: September 21, 2021

REMOTE PARTICIPATION POLICY

Pursuant to 1 M.R.S. § 403-B, and after public notice and hearing, Greater Augusta Utility District (the body) adopts the following policy to govern the participation, via remote methods, of members of the body and the public in the public proceedings or meetings of the body.

Members of the body are expected to be physically present for meetings except when not practicable, such as in the case of an emergency or urgent issue that requires the body to meet via remote methods, or an illness or temporary absence of a member that causes significant difficulty traveling to the meeting location. The chair or presiding officer of the body, in consultation with other members if appropriate and possible, will make a determination that remote methods of participation are necessary in as timely a manner as possible under the circumstances. A member who is unable to attend a meeting in person will notify the chair or presiding officer of the body as far in advance as possible.

Remote methods of participation may include telephonic or video technology allowing simultaneous reception of information and may include other means necessary to accommodate disabled persons. Remote participation will not be by text-only means such as e-mail, text messages, or chat functions.

The public will be provided a meaningful opportunity to attend via remote methods when any member of the body participates via remote methods. If public input is allowed or required at the meeting, an effective means of communication between the body and the public will also be provided. The public will also be provided an opportunity to attend the meeting in person unless there is an emergency or urgent issue that requires the entire body to meet using remote methods.

Notice of all meetings will be provided in accordance with [1 M.R.S. § 406](#) and any applicable charter, ordinance, policy, or bylaw. When the public may attend via remote methods, notice will include the means by which the public may access the meeting remotely and will provide a method for disabled persons to request necessary accommodation to access the meeting. Notice will also identify a location where the public may attend the meeting in person. The body will not restrict public attendance to remote methods except in the case of an emergency or urgent issue that requires the body to meet using remote methods of attendance.

The body will make all documents and materials to be considered by the body available, electronically or otherwise, to the public who attend remotely to the same extent customarily available to the public who attend in person, provided no additional costs are incurred by the body.

All votes taken during a meeting using remote methods will be by roll call vote that can be seen and heard if using video technology, or heard if using audio technology only, by other members of the body and the public. A member of the body who participates remotely will be considered present for purposes of a quorum and voting.

This policy will remain in force indefinitely unless amended or rescinded.

Approved by Board on September 16, 2021

WM is North America's leading provider of comprehensive environmental solutions. WM is driven by commitments to put people first and achieve success with integrity. The company, through its subsidiaries, provides collection, recycling, and disposal services to millions of residential, commercial, industrial, and municipal customers throughout the U.S. and Canada.

In Maine, WM operates two hauling companies in Portland and Norridgewock, and the Crossroads Landfill in Norridgewock.

The Project

- WM plans to invest over \$35M to construct a state-of-the-art biosolids processing facility (BPF) at Crossroads Landfill using an innovative energy efficient drying system.
- The project has received all necessary local and Maine Department of Environmental Protection (DEP) state permits.
- Construction is expected to begin this summer.
- The BPF is expected to start operating in late 2025.

Project Need

- Given the lack of long-term disposal options for municipal sludge (also known as "biosolids") in the State of Maine, there is an urgent need for new, innovative disposal alternatives.
- WM's BPF can accept municipal biosolids that were historically destined for land application, reduce the volume of material through an innovative drying technique, and then direct the material to a licensed and permitted landfill for final disposal.

Project Details

- The BPF is designed to process approximately 200 tons per day of inbound municipal biosolids.
- Of that 200 tons per day, approximately 50 tons of dried biosolids would be sent to landfill for secure disposal.
- The remaining volume is water that is separated from the biosolids, processed at Crossroad Landfills' planned foam fractionation facility and sent to a local permitted wastewater treatment plant.
- The BPF will be located on the site of the former tire processing facility at the WM Crossroads Landfill.
- The BPF is designed to be enclosed with engineered odor control.

A Unique 'Closed Loop' Solution

- Wastewater treatment plants generate biosolids, which are the solids removed from the treatment of wastewater to remove nutrients and organic material from the wastewater.
- These biosolids are then transported to the BPF where the material is dried.
- The dried biosolids are then disposed at the landfill and generate biogas as the biosolids degrade.
- Biogas collected at the landfill is then piped to the 3.2 MW landfill-gas-to-energy plant. Approximately two-thirds of the renewable energy generated by the landfill-gas-to-energy plant is expected to be used to power the heat pump driers at the BPF.
- The BPF:
 - Operates at a low temperature;
 - Uses a third of the energy of conventional biosolids driers; and importantly,
 - Because the air is recirculated within the drier, air emissions are virtually eliminated.

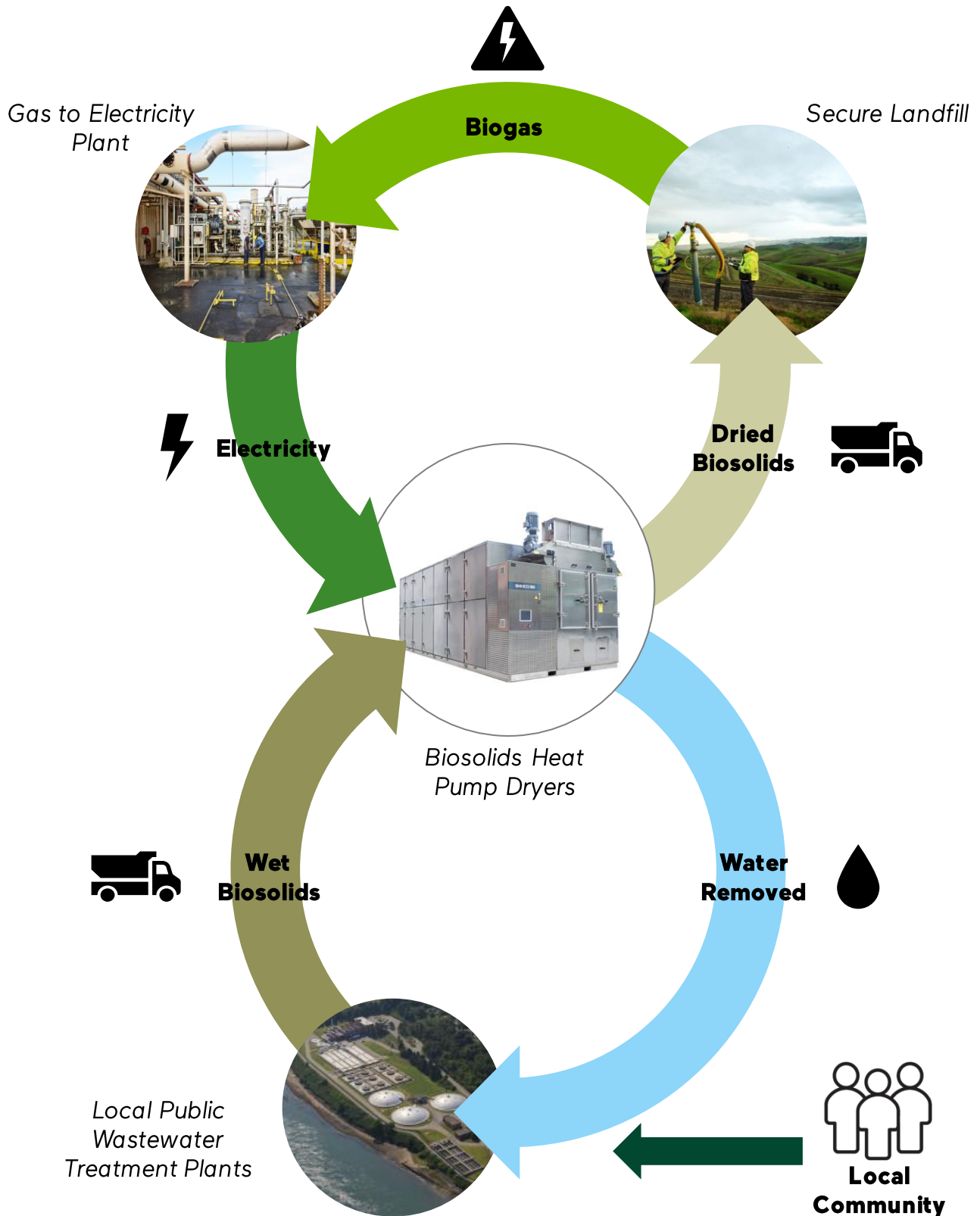
A Solution For Maine Communities

- WM's Biosolids Processing Facility will provide long-term, secure disposal of biosolids for Maine's wastewater treatment plants. WM is excited to offer this solution for Maine communities.

Forward Looking Statements- This fact sheet contains forward-looking statements, including all statements regarding future events, future investments and all outcomes or benefits of such investments. Such statements are based on the facts and circumstances as of the date the statements are made and are subject to risks and uncertainties that could cause actual results to be materially different. Please see Part I, Item 1A of the Annual Report on Form 10-K, and subsequent Forms 10-Q, available at investors.wm.com for information regarding such risks and uncertainties. WM assumes no obligation to update any forward-looking statement.

WM Crossroads Biosolids Processing Facility

Circular Management of Maine's Biosolids



2024 CHANGES TO SALE PROCEDURES FOR TAX-ACQUIRED PROPERTY

MMA Legal Services Guidance

Updated May 15, 2024

In 2024 the Maine Legislature enacted a third version of 36 M.R.S. 943-C, creating significant changes to a law that had also been revised in 2023. See PL 2023, c. 640. The new 2024 sale procedures are discussed below.

Summary of 2024 changes:

- The Notice of Impending Foreclosure (36 M.R.S. § 943) is revised.
- The municipal officers must still send a pre-sale notice to the former owner of tax-acquired property 90 days before the board lists the property for sale. However, the former owner no longer must respond requesting the “special sale process;” the special sale process is now required for sales to third parties.
- Licensed real estate agents (in addition to brokers) may list tax-acquired property.
- The law clarifies when municipal officers have been “unable to list or sell property” through a real estate broker/agent (and therefore may use another sale process).
- The definition of “excess sale proceeds” is revised.
- A new post-sale notice of intent to distribute proceeds must be sent to the former owner(s) and any party that had a recorded interest in the property.
- An itemized accounting of sale proceeds may be requested by the former owner.
- A process is provided for situations where tax-acquired property will be retained for municipal use.
- Municipalities may provide the required post-sale notice of intent to distribute proceeds by publication if the former owner(s) cannot be located; unclaimed excess sales proceeds for unlocated former owners will be forwarded to State Treasurer.
- A notice must be recorded in the registry of deeds confirming distribution of excess proceeds.
- The law revises and limits the deemed waiver resulting from the former owner’s acceptance of excess proceeds.
- The 2024 amendments take effect August 9, 2024.

Property subject to the law:

Like previous versions of § 943-C, the 2024 amended law applies to real estate that is tax-acquired pursuant to the tax lien mortgage foreclosure process in 36 M.R.S. § 942 – 943. The new requirements take effect August 9, 2024, and apply to decisions to sell or retain tax-acquired property for municipal use after that date regardless of the date the underlying tax lien foreclosed.

Revisions to lien forms are also required effective August 9, 2024.

Changes to tax lien forms:

Effective August 9, 2024, wording within the notice of impending foreclosure required by 36 M.R.S. § 943 must be revised to say:

“IF THE TAX LIEN FORECLOSES, THE MUNICIPALITY WILL OWN YOUR PROPERTY AND MAY SELL IT **AND RETURN EXCESS SALE PROCEEDS TO YOU, IF ANY, PURSUANT TO THE MAINE REVISED STATUTES, TITLE 36, SECTION 943-C.**”

Sample lien forms in the appendix to our *Guide to Municipal Liens* will be revised soon.

Summary of required sale procedures:

Effective August 9, 2024, if tax-acquired real estate will be sold to someone other than the former owner:

1. **Pre-sale notice.** At least 90 days prior to listing property for sale the municipal officers or their designee must send a written notice to the last known address of the “former owner” by U.S. Postal Service certified mail, return receipt requested and by first-class mail, notifying the former owner(s) of the sale process required by 36 M.R.S. § 943-C. (A Maine Revenue Services form should be used to provide the notice).
2. **Manner of sale.** The municipal officers or their designee must list the property for sale with a real estate broker or agent licensed in Maine, at the highest reasonable price at which the property is anticipated to sell. The broker/agent may not hold an elected or appointed office in the municipality nor be employed by the municipality. The municipality must allow at least 12 months after listing for the property to sell.
3. **Inability to list or sell.** If, after three attempts, the municipal officers are unable to contract with a real estate broker or agent; or if the broker or agent is unable to sell the property within 12 months after listing, the municipal officers may sell the property in any manner authorized by the municipality’s legislative body, **provided that the former owner must still receive any excess sale proceeds.**

4. **Conveyance.** If the property is sold, it must be conveyed via **quitclaim deed** to the successful buyer.
5. **Return of funds.** Regardless of the sale method, if any “excess sale proceeds” exist after sale, they must be paid to the former owner (see below for information on proceeds).
6. **Post-sale notice of intent to pay excess proceeds.** If excess proceeds exist, at least 30 days before they distribute the proceeds to the former owner(s), the municipal officers must provide notice of the proceeds to (1) the former owner(s) and (2) any record holder of an interest in the property. Notice must be sent by first class mail and certified mail, return receipt requested. The former owner(s) may request a written accounting of the amount of excess sale proceeds, and an itemization of any deductions allowed in § 943-C(3)(C) (discussed below).
7. **Failure to locate former owner.** If the former owner(s) cannot, after reasonable diligence, be located in order for the municipal officers to send the written notice of intent to distribute proceeds, the board may publish notice once a week for three consecutive weeks in a newspaper of general circulation in the county. The published notice must contain the name of the former owner, a description of the property, the amount of excess proceeds, and the date by which the proceeds must be claimed. If the former owner fails to claim the excess proceeds within 30 days after the final notice is published, the proceeds must be transferred to the Unclaimed Property Fund in the State Treasurer’s office.
8. **Recorded notice.** Within 10 days after excess sale proceeds are paid to the former owner(s), the municipality must record a notice in the registry of deeds confirming the distribution of proceeds. A form will be provided by Maine Revenue Services; it must be signed by the municipal officers and include information required in the statute (see discussion below).

Who is the “former owner”?

“Former owner” is defined in the law as the “owner or owners of record at the time of foreclosure and if deceased, the former owner’s heirs, devisees, or personal representative.”

If tax-acquired property was owned by more than one person when the lien foreclosed:

If tax-acquired property was co-owned by more than one person at the time the lien foreclosed (e.g., by one or more tenants in common or joint tenants), the required notice of special sale process should be sent to each co-owner at least 90 days before the tax-acquired property is listed for sale.

Calculating the amount of “excess” sale proceeds:

The excess proceeds to be returned to the former owner is equal to the amount of sale proceeds remaining after the municipality deducts the following amounts (see § 943-C(3)(C)):

- a. All taxes owed on the property.
- b. Total property taxes that would have been assessed on the property after foreclosure while the property was owned by the municipality.
- c. All accrued interest.
- d. Fees, including advertising, mailing, recording, property listing and real estate broker's or agent's fees, to the extent that those fees are not included in the broker or agent fee agreement.
- e. Any other expenses incurred by the municipality in selling, maintaining or improving the property, including, but not limited to, documented administrative costs and reasonable attorney's fees.
- f. The municipality's lien and foreclosure process costs, including but not limited to, reasonable attorneys' fees.
- g. Unpaid sewer, water or other utility charges and reasonable fees imposed by the municipality.

Required notice forms:

Municipalities must provide notice to the former owner(s) on a form provided by the State Tax Assessor, Maine Revenue Services (MRS). The MRS has not yet issued an updated form consistent with the 2024 amendments.

Contact MRS at (207) 624-5600 with questions about the forms and contact MMA Legal Services or the municipality's attorney for advice on providing notice before the law becomes effective on August 9, 2024.

May property be sold back to the former owner?

Yes, assuming the municipal legislative body has provided that authority. If property is sold to the former owner, the sale procedures and notices required in 36 M.R.S. § 943-C do not apply.

Note that neither the statute nor the U.S. Supreme Court's *Tyler* decision (discussed below) addresses the price the municipality may require a former owner to pay to repurchase tax-acquired property. Based on the principles stated in the *Tyler* decision, we advise municipalities to base the repurchase price for the former owner on the total taxes, interest, fees and administrative costs associated with the property. The list of costs contained in 36 M.R.S. § 943-C(3)(C) may be helpful guidance.

Retaining tax-acquired property:

If the municipality will retain tax-acquired property for municipal use (e.g., as a park, fire station), the municipal officers must procure an appraisal of the property. The appraiser must be licensed to provide appraisals in Maine and may not hold an elected or appointed office in, or otherwise be employed by, the municipality. See 36 M.R.S. § 943-C(7).

The municipal officers must calculate whether any excess sale proceeds exist using the appraised value (instead of the sale price) and then must provide the notices otherwise required for post-sale distribution of proceeds (§ 943-C(8)). The appraisal must be prepared within 120 days before the distribution of excess proceeds (if any).

The appraisal fee may be included in the calculation of excess proceeds. See § 943-C(C)(4).

Note: these procedures apply only to tax-acquired property the municipal legislative body affirmatively decides to retain for municipal use. These requirements do not apply when the municipal officers choose to take no action after foreclosure and allow former owner to continue to reside at property.

Inability to list or sell the property with a real estate broker/agent:

If the municipal officers are unable to list the property with a broker/agent (after three tries) or to sell the property within 12 months after listing it with a broker/agent, the municipal officers may proceed to sell the property as otherwise allowed by the municipal legislative body. (We recommend that the municipal officers document their attempts to list property and ask for any broker/agent's refusal to list in writing). **After the sale, the municipality must still calculate and return excess sale proceeds (if any) to the former owner.**

In this limited instance, municipalities are not required to use a real estate broker/agent and instead may determine their sale process (which may be addressed in a warrant article/ordinance/charter). However, a few legal issues should be considered when deciding on a sale method. Unfortunately, no additional guidance on acceptable sale procedures is provided by the *Tyler* decision or in the statute. Because the sale price impacts the amount of excess proceeds to be returned to the former owner, the best method of reducing potential challenges to the sale is to use a sale process intended to obtain a reasonable market value* for the property (rather than merely seeking a sale price equal to back taxes and costs).

In addition, “fraudulent transfer” concerns arise if the former owner does not receive “reasonably equivalent value” for the combined tax debt and any excess equity in the property. These concerns can arise and can result in a challenge to the sale if the former owner is insolvent and files for bankruptcy within certain time periods following the sale. (See chapter 6 of our current *Guide to Municipal Liens* for a more detailed discussion.)

These concerns also can be reduced when the municipal officers use sale procedures reasonably likely to result in a sale for market* value. These may include ample notices of sale, wide-spread advertising, and/or a competitive process. Specific options might include a well-advertised sealed bid process or a professionally managed public auction process.

(*Note: despite the limited waiver incorporated in the statute, title issues inherent to tax-acquired property usually mean that the property's market value will be lower than if the property was not tax-acquired.)

Must an itemized accounting of sale proceeds be provided to the former owner?

Only upon the former owner's request. See 36 M.R.S. § 943-C(3)(D).

We do strongly recommend, however, that the municipal officers document the calculation of excess proceeds and applicable deductions within their own records.

Recorded post-distribution notice. What data must be included?

Within 10 days after distributing excess proceeds to a former owner, the municipality must record a notice in the county registry of deeds documenting its compliance with the law. See § 943-C(11).

The recorded post-sale notice is intended to address and reduce some of the title issues that arise in connection with tax-acquired property and may improve the potential sale prospects for such property.

Maine Revenue Services is required to prepare a template for the recorded notice. The notice will contain name of former owner(s) to whom excess proceeds paid; the amount of excess proceeds; the date proceeds were paid to the former owner/State Treasurer; a description of property, and a statement that the former owner's receipt of excess proceeds is deemed to be a waiver of the former owner's right to commence a challenge to the foreclosure pursuant to 36 M.R.S. § 946-B. The municipality may voluntarily wish to include the names of those with a recorded interest in the property and the date that the notice of intent to distribute proceeds was sent to those parties.

Although not specifically required by the statute, MMA Legal Services recommends that the municipal officers consider recording a similar notice in the county registry of deeds even if no excess proceeds resulted from the property sale. Taking this step can document that the municipality followed the required sale process and that no excess proceeds existed; it may eliminate title concerns as to the municipality's compliance/omission.

Note that the law specifically states that the failure of the municipality to comply with the recording requirement does not nullify or otherwise affect the validity of the deemed waiver provided in the statute. See § 943-C(6).

Release of claims relating to the lien or excess proceeds:

The 2024 amendments revised the waiver provisions in the 2023 version of the law.

The law no longer expressly allows municipalities to require the former owner to execute a quitclaim deed releasing all the former owner's interest in the property. Instead, the law expressly deems the receipt of excess proceeds by the former owner to be a waiver of the former owner's right to challenge the lien foreclosure process pursuant to 36 M.R.S. § 946-B. (Section 946-B normally allows up to 5-years to challenge foreclosures of liens recorded after 10/13/14).

As the deemed waiver removes some potential legal challenges to the foreclosure, it may reduce title concerns for prospective buyers and possibly increase the expected sale price (and former owner's proceeds).

However, the 2024 amendments did limit the deemed waiver of claims by also confirming the former owner's right to challenge the amount or conveyance of excess proceeds. See § 943-C(6).

Applicability to municipal sewer and stormwater liens?

The sale procedures in 36 M.R.S. § 943-C do not apply to sales of property acquired through a lien foreclosure based on unpaid sewer or stormwater user charges.

However, the constitutional principles stated in the *Tyler* decision likely apply to many types of government forfeitures, as do fraudulent transfer concerns associated with insolvent debtors in bankruptcy proceedings (see *Guide to Municipal Liens*, chapter 6). These concerns likely impact the recommended sale process and disposition of sale proceeds relating to property acquired through sewer or stormwater lien foreclosures in similar ways. As a result, municipal sale procedures and warrant articles or ordinances governing sale of real estate acquired through other types of lien forfeitures should be reviewed and revised with advice of counsel.

Is updated local authority needed to implement the 2024 amendments to the law?

Possibly. Although the statute requires specific sale procedures, it does not actually *authorize* any sale of tax-acquired property – only the municipal legislative body possesses that authority. Before proceeding to sell tax-acquired property, we recommend that the municipal officers review local charters, ordinances and warrant articles for consistency with the 2024 law, especially if this review was not conducted in 2023.

The 2024 amendments are based on the same basic sale procedures enacted in 2023; however, it is possible that local warrant articles adopted pursuant to the 2023 (or earlier versions) of the law would not be sufficient. Existing warrant articles, ordinances or charters may not authorize (or may conflict with) the sale procedures now required. For instance, a warrant article or ordinance adopted several years ago might require all sales to be conducted by sealed bid, which does not comply with or authorize procedures under the current law. Some existing municipal articles or

ordinances may be consistent with the new law; for example, an article broadly allowing sales within the municipal officers' discretion would remain valid, assuming the municipal officers do comply with the current law. Even so, it may be better for an article to address the required process and expressly authorize the municipal officers to return excess proceeds.

In some cases, a special town meeting or council action to revise articles or ordinances may be necessary. Charter municipalities should seek legal advice if the charter addresses tax-acquired property sales.

Sample warrant articles:

Below are examples of articles that would be consistent with current statutory requirements. We also recommend review by the municipality's attorney before an article is presented to the town meeting for approval.

Art. _____. To see if the Town will vote to authorize the municipal officers to dispose of tax-acquired property as they deem in the best interests of the Town, except that the municipal officers shall first use the sale process in 36 M.R.S. § 943-C if they choose to sell property to anyone other than the former owner, as defined in § 943-C. For sales to someone other than the former owner, excess sale proceeds, as defined in 36 M.R.S. § 943-C, shall be returned to the former owner.

Art. _____. To see if the Town will require the municipal officers to provide the former owner(s) of tax-acquired property, or if deceased his/her/their heirs, personal representative or devisees _____ months to repurchase the property on terms the board deems in the best interests of the Town; if no repurchase occurs, the municipal officers may sell the property through the sale process required by 36 M.R.S. § 943-C. If the board is unable to list or sell the property as required by § 943-C(3), the board may sell the property in any manner it deems in the best interests of the Town. For sales to someone other than the former owner, excess sale proceeds, as defined in 36 M.R.S. § 943-C, shall be returned to the former owner.

Art. _____. To see if the Town will authorize the municipal officers to dispose of tax-acquired property via quitclaim deed by either (A) offering the property to the former owner(s) or if deceased, to his/her/their heirs/devisees/personal representative for a price equal to all outstanding taxes, interest, fees and costs; or (B) using the process required by 36 M.R.S. § 943-C, provided that if the board is unable to list or sell the property as required by § 943-C(3), the board may sell the property through a competitive sealed bid process in which a notice advertising sale of the property shall be published at least twice in a newspaper of general circulation in the county. For sales other than to the former owner, excess sale proceeds, as defined in 36 M.R.S. § 943-C, shall be returned to the former owner.

What about municipalities that already adopted ordinances allowing return of excess sale proceeds?

Since 2015, Maine law (36 M.R.S. § 949) has allowed municipalities to adopt ordinances voluntarily returning excess proceeds to the former owner of tax-acquired property.

Unfortunately, neither the 2023 or 2024 legislation addresses how the new sale requirements in § 943-C coordinate with section 949. Because the sale procedures enacted in 2023 and 2024 are more recent enactments, they likely supersede section 949 in any places where there is a conflict with section 949. Municipalities that adopted ordinances under section 949 should review those ordinances with legal counsel and revise them for consistency with the current version of § 943-C.

Quick Links to Resources:

2024 legislation - “An Act to Amend the Process for the Sale of Foreclosed Properties Due to Nonpayment of Taxes,” [PL 2023, c. 640](#).

Real Estate Tax Lien Mortgage Foreclosure statute, [Title 36 M.R.S. § § 942 – 949](#).

[Report of Working Group to Study Equity in The Property Tax Foreclosure Process](#)

[Tyler v Hennepin County, Minnesota](#), 598 U.S. 631 (May 25, 2023)

2023 legislation - “An Act to Return to the Former Owner Any Excess Funds Remaining After the Sale of Foreclosed Property,” [PL 2023, c. 358](#).

“[Major U.S. Supreme Court Decision Impacting Municipalities](#),” MMA Legal Services Update, May 25, 2023

Historical Background to statutory changes:

Recent amendments to 36 M.R.S. § 943-C stem from a 2023 U.S. Supreme Court decision that created concerns about Maine's tax-acquired property sale procedures, resulting in the 2023 and 2024 amendments to Maine law.

U.S. Supreme Court 2023 decision:

In [*Tyler v. Hennepin County, Minnesota*](#), 598 U.S. 631, decided May 25, 2023, the U.S. Supreme Court unanimously held that a government violates the Takings Clause of the U.S. Constitution's Fifth Amendment when it sells tax-acquired property and keeps more sales proceeds than are owed in delinquent taxes, interest, costs.

In *Tyler*, a Minnesota County foreclosed on Geraldine Tyler's condo for unpaid property taxes, later selling the property for more than she owed in back taxes. Minnesota law allows the government to keep all proceeds from sales of tax-acquired property -- which it did in Tyler's case. Tyler sued, claiming the County's action violated the takings clause of the U.S. Constitution's Fifth Amendment, which prohibits the government from taking property for public use without just compensation. Lower courts dismissed her suit for lack of standing on the grounds that she did not have a property interest in the sale proceeds because she did not own the property at the time of sale; full title had previously passed to the government.

The U.S. Supreme Court reversed, holding that Tyler did state a valid claim. The Court held that property owners like Tyler have a property interest in "excess" equity from the sale of tax-acquired property. Although Hennepin County had the right to foreclose on, seize and sell the property, it violated the Constitution when it retained more in sale proceeds than the amount Tyler owed.

Why did the *Tyler* decision matter to Maine municipalities?

The decision was significant because the Minnesota law challenged in *Tyler* was similar to Maine's tax lien mortgage foreclosure law ([36 M.R.S. § 942 – 943](#)), which vests full title in the municipality upon lien foreclosure. Like former Maine law, Minnesota law allowed the municipality to keep all sale proceeds received from the sale of most tax-acquired property.

As a result of the *Tyler* decision, it is likely unconstitutional for Maine municipalities to retain all proceeds of tax-acquired property sales beyond the tax debt and costs.

The same principles likely also apply to sale proceeds connected to sale of property acquired through other municipal lien forfeitures, for example, lien foreclosures based on unpaid sewer or stormwater charges.

Did the *Tyler* decision invalidate Maine’s tax lien mortgage foreclosure process?

No. The *Tyler* decision did not invalidate Maine’s tax lien mortgage foreclosure statute or any past or present municipal tax lien mortgage foreclosure proceeding. The Court’s decision only impacts post-foreclosure sale procedures.

2023 changes to Maine law:

Immediately after the *Tyler* decision was issued, the Maine Legislature enacted emergency legislation ([PL 2023, c. 358](#)), effective June 30, 2023, that independently required municipalities to return “excess” sale proceeds. The 2023 legislation:

- Repealed the special sale process for tax-acquired homestead property formerly owned by senior low-income persons (36 M.R.S. § 943-C);
- Reformulated 36 M.R.S. § 943-C to instead establish sale procedures applicable to virtually all sales of real estate acquired via the tax lien mortgage foreclosure process in 36 M.R.S. §§ 942 - 943; and
- Defined excess sale proceeds and required their return to the former owner.

Working group proposals:

A “Working Group to Study Equity in The Property Tax Foreclosure Process” was formed in 2023 as required by the 2023 legislation revising tax-acquired property sale procedures. (PL 2023, c. 358). The working group met during the fall of 2023, developed recommendations and issued a report containing proposed legislation. See: Maine Revenue Services website under the “Property Tax” section, “Assessor’s Page” link, and scroll down to “Reports to the Legislature” to access the working group’s report. Or go to the following link:

<https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/Final%20Report%20of%20the%20Foreclosure%20Working%20Group%2020240115.pdf>

The working group’s report was presented to the Legislature’s Taxation Committee in March 2024. Legislation proposed by the working group was published by order of the Taxation Committee as LD 2262. That proposed legislation was then modified significantly by the Committee as a result of input received from several interested parties. Modifications to LD 2262 were approved by the Committee and enacted as PL 2023, c. 640, which was signed by the Governor on April 16, 2024. The legislation becomes effective August 9, 2024.

For more information or questions, please contact:

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