

CITY OF UKIAH vs. UKIAH VALLEY SANITATION DISTRICT
ROUND THREE

April 3, 2013

SUMMARY

The Grand Jury (GJ) has been documenting the adversarial relationship between the City of Ukiah and the Ukiah Valley Sanitation District (UVSD) since 2005. Considering new costly environmental regulations, downgrading of the sewer plant loan, disgruntled ratepayers, and the lack of a new customer base, this continued animosity between the two agencies is only making a serious situation worse.

Both entities have little reason to trust each other. They are bound together by a Participation Agreement (PA) that is flawed and unworkable, and favors the City. The City has shown disrespect for the UVSD by ignoring their requests for basic information. The City's antiquated computer system added to the problem by making it difficult to provide information to the UVSD. City management staff states they want annexation of the UVSD's assets. The UVSD is considering withdrawing from the PA and joining with Ukiah Valley Water Districts.

City upper management continues to be unresponsive to official communication from the UVSD. The UVSD is reactive to the City, the City is reactive to the authorities, and no one is doing the long-range planning which is necessary for a successful operation. The end result will depend on what Local Area Formation Commission (LAFCo) recommends and permits. Both parties may take legal action to amend or break the PA.

Adding to the problem are the Moody's downgrade of the sewer bonds, and new water board regulations which have already cost \$372K just to assess the situation. In addition, the aging infrastructure is in need of repairs. These issues will result in additional sewer rate hikes in the near future.

The GJ is recommending that the City and the UVSD learn how to work together beginning with improving their communication with each other. The City needs to provide documents to the UVSD and expedite implementation of their financial system. The UVSD should move forward towards implementing its own financial system and be attentive to the activities of the city council concerning water and sewer issues. LAFCo should conduct a feasibility study on the consolidation of sewer and water agencies. As final consideration, the UVSD should seek legal counsel regarding capture of lost revenues and options to disassociate from the PA.

GLOSSARY

Equivalent Sewer Service Unit (ESSU): a unit of measurement of sewage capacity.

Freedom of Information Act (FOIA): requires disclosure of governmental records to the public upon request.

Moody's: A leading independent bond rating agency and provider of global economic analysis, data, forecasting and credit risk management that recently downgraded the City of Ukiah's Bonds.

Participation Agreement (PA): a contract between the City and the UVSD on joint usage of the sewer system.

Sphere of Influence (SOI): an area of actual or possible service provided by a government agency.

BACKGROUND

In 1954, the Ukiah Valley Sanitation District joined with the City to provide sewer services for the Ukiah Valley. On July 19, 1995, the City of Ukiah and the UVSD entered into a Participation Agreement (PA) for the operation of sewer facilities. The UVSD was a dependent district governed by city and county officials until 2006, at which time they became an independent district with an elected board. There were never any modifications to the PA to address this change.

Since 2006, the GJ has conducted three investigations regarding the relationship between the City of Ukiah and the UVSD. The investigation resulted in a report (Time for Change dated May 21, 2009), which included 19 recommendations by the GJ. Although the City responded positively to most of the recommendations, none of them were implemented and all of the problems still exist.

A joint Ad Hoc Committee was formed in 2009, and in a report, made recommendations to revise the PA. These recommendations were described as “good governance improvements”. None of these revisions were made.

In 2012-2013, the GJ received a complaint accusing the City of unfair treatment towards the UVSD. This GJ decided to re-examine the relationship between the UVSD and the City and investigate the reasons for the City's financial downgrade by Moody's.

APPROACH

The GJ interviewed managers and employees from the City of Ukiah, board members from UVSD and LAFCo, Ukiah City Council members, an Independent financial consultant, and a Ukiah contractor. The GJ toured the Ukiah Waste Water Treatment Plant. The GJ reviewed the following documents:

- Participation Agreement
- Ad Hoc Committee Recommendations
- Sewer Bond documents
- Sewer bills from UVSD and City of Ukiah customers
- City of Ukiah Budgets
- City of Ukiah Municipal Service Review – Parts 1 & 2
- UVSD Municipal Service Review
- LAFCo Meeting Minutes
- John Dickerson’s Consolidation Report
- California Proposition 218

DISCUSSION

The relationship between the City of Ukiah and the UVSD is not working. The disparities are numerous and serious and indicate a lack of good governance to the detriment of the UVSD, and therefore the community it serves. This dysfunctional relationship is characterized by an unfair Participation Agreement (PA), fiscal mismanagement, a lack of cooperation by City upper management, and unclear policies and procedures that are a disservice to the UVSD. The GJ’s investigation of the current relationship uncovered the following.

Participation Agreement

The PA that binds the two entities has been biased towards the City from the start, and is not a fair or workable document. The PA essentially transfers the primary functions of the UVSD, to the City of Ukiah, leaving the UVSD with no oversight or control. The City has no motivation or reason to change the PA. Both the GJ and Joint Ad Hoc Committee made suggestions to improve the PA; however the recommendations were not implemented.

The City is responsible for collecting all revenue and paying all costs. The sharing of the cost is based on receipts of the ratepayers rather than the allocation of ESSU’s, as specified in the PA. There continue to be discrepancies in the assignment of revenue of some UVSD ratepayers residing within the city limits.

The PA does not address the problem of the rate variance between the UVSD ratepayers and the City ratepayers that reside within the city limits.

The City is responsible for operation and maintenance of the plant and the sewer collection system. However, the City does not maintain records of the specific costs involved; it is impossible to determine the accuracy of the City’s allocation of costs to the UVSD. The UVSD has found reason to question the City’s records and charges.

The agreement requires the City and the UVSD to meet jointly once a year to carry out the purpose of the PA, and this has not been complied with.

Other than budget matters, the agreement does not include a method for dispute resolution.

Serious Financial Issues

In 2012, two serious financial issues developed requiring cooperation and joint future planning. The Moody's downgrade of the sewer bond makes borrowing money more costly, and the newly mandated requirements for removing additional chemicals from the sewer plant discharge requires expenditures of large sums of money.

Ratepayer costs for both the City and the UVSD have doubled and are expected to increase again. Both sides are to blame for the current situation. The Moody's downgrade of the City of Ukiah's outstanding bond debt of \$71.9M went from A2 to Baa1. The downgrade reflects the City's reliance on unexpended bond proceeds and capitalized interest to meet the rate covenant in fiscal 2011 and 2012, and the use of the Rate Stabilization Fund in 2013. This deterioration of finances points to a large rate increase in 2013 and beyond. The unused bond money and interest earned is being used to pay the indebtedness of the bonds.

New North Coast Regional Water Quality Control Board regulations are asking for additional technological requirements and modifications to the sewer plant. The facts reflect that the City has neglected to notify the UVSD in a timely manner of these new regulations, or of the City's decision to hire an engineering firm to study the matter and propose solutions to treat the nitrate/ammonia problem. Initial contract cost is \$372K, of which 65% is the responsibility of the UVSD. The UVSD has accused the City of insufficient notification of study and negotiations of the contract.

The sewer system infrastructure is aging and parts of it are in need of repair. Problems of infiltration (the entrance of ground waters into the sewer pipe) exist in the sewage collection system, which overwhelms the capacity of the sewer treatment plant in the winter months. With the financial assistance of grants some repairs have been accomplished but much more remains to be done. The repair and/or replacement of lateral lines and trunk lines will result in future costs to ratepayers.

The proximity of the percolation ponds that hold effluent from the wastewater treatment plant will eventually have to be closed due to their proximity to the Russian River. This effluent may be used for irrigation at parks, golf courses, orchards, etc. However, the additional treatment of the water and the infrastructure to carry the water to where it may be used will be costly.

The UVSD maintains that the City continues to ignore their request for financial documentation and information. The UVSD states the information received from the city

is confusing and un-useable. City management states that the questions asked by the UVSD are not specific.

The UVSD has requested a list of district customers; however the city's current billing system cannot deliver this basic information. The City has promised a new computer system since 2007, and informed us that the new system is finally being implemented. The UVSD's continuing request for a basic customer list and the City's inability to provide this information has now resulted in a FOIA request. UVSD claimed originally there were 172 accounts in the overlap area that were being incorrectly credited to the City. Recent clerical efforts on behalf of the City have resulted in reducing the number of discrepancies. The UVSD has recently decided to develop their own duplicate financial system to track costs since the City continues to deny their requests for information.

Instead of sending delinquent UVSD bills to the county tax collector, the City mistakenly sent them to a private collection agency resulting in delayed payments and loss of revenues. The UVSD has taken this function over from the city to avoid further problems.

In order to take advantage of planned road construction on North State Street, the UVSD laid sewer lines for future development. The development has not materialized resulting in a \$250K cost to the UVSD with no incoming revenue.

Possible Solutions

Two conflicting solutions to the impasse have been suggested; each benefits a specific entity.

A recent study by an independent consultant contracted by UVSD, titled, "Consolidation of Wastewater and Water Services in the Ukiah Valley", outlines a possible solution for dissolving the PA and strengthening the district. This would mean the consolidation of the UVSD and water districts for the Ukiah Valley. This solution requires the assistance of LAFCo, other cooperative water agencies, legal counsel, and possibly the state legislature. The authority of LAFCo is principally one of planning and regulating the extent of individual government services in a particular area of influence, to encourage orderly government and discourage urban sprawl.

The City is proposing detachment of the overlap areas of city and district and annexation of contiguous areas to the City. This solution reduces the extent of responsibility and service area of UVSD but does not resolve the issues inherent in the PA and does not address the financial responsibilities and obligations.

Positives

There are some positive things to note. The City has been promising a new financial system since 2007, and city staff stated that they are working on making the system operational later this year. Communication has improved as mid-level City staff and

UVSD have begun working together. To correct the infiltration problems, the City has lined a small portion of the clay pipes in older neighborhoods. There is also a small pilot project known as the Water Reuse Program to be used in the pear orchards south of town. After taking a tour of the Waste Water Treatment Plant, the GJ was impressed by the small, dedicated staff and its efficient operation.

FINDINGS

- F1. The City of Ukiah has not provided UVSD with sufficient information forcing UVSD to make a Freedom of Information Act (FOIA) request.
- F2. The City of Ukiah’s antiquated financial systems have added to the tension between the two organizations.
- F3. The unilateral management by the City of Ukiah has resulted in fees/fines that the UVSD has been required to pay. City upper management has shown a lack of respect to UVSD by being unresponsive to requests, and expecting UVSD to immediately concur with the city’s decisions.
- F4. The Participation Agreement (PA) is not a workable document and has a clear bias towards the City of Ukiah.
- F5. LAFCo is in a position to facilitate resolution of conflicts between agencies by means of the municipal service review and sphere of influence.

RECOMMENDATIONS

- R1. The City of Ukiah should provide UVSD with a copy of their customer list per the FOIA request. (F1, F2, F3)
- R2. The UVSD complete the creation of its own accounting system. (F2)
- R3. The UVSD use legal counsel to recapture lost revenues from the City of Ukiah. (F3)
- R4. The UVSD seek legal counsel regarding options to disassociate from the Participation Agreement. (F4)
- R5. LAFCo conduct a feasibility study on consolidation of sewer and water agencies and provide conflict resolution between UVSD and the City of Ukiah. (F5)

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the following responses are *required*:

- Ukiah Valley Sanitation District Board: respond to F2-F4 and R2- R4 within 90 days
- Ukiah City Council: respond to F1 and R1 within 90 days

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

The Grand Jury *requests* the following individuals respond:

- Jane Chambers, Ukiah City Manager: respond to F1 and R1 within 60 days
- Bruce Baracco, Local Area Formation Commission Organization (LAFCo): respond to F5 and R5 within 60 days

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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