

Grand Jury Report RESPONSE FORM

Grand Jury Report Title: TIME FOR CHANGE: A Report on the Relationship
Between the Ukiah Valley Sanitation District and the City of Ukiah Sewer System

Report Dated : May 21, 2009

Response Form Submitted By:

Ukiah City Council
Ukiah City Manager
300 Seminary Avenue
Ukiah, CA 95482

E-Mailed to: citycouncil@cityofukiah.com

Response MUST be submitted, per Penal Code §933.05, no later than: August 25, 2009

I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows: Neither agree or Disagree: 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 28

- I (we) agree with the Findings numbered:
6, 26, 30, 31, 35, 36, 37, 38, 39, 41, 42, 43, 44, 49.
- I (we) disagree wholly or partially with the Findings numbered below, and have **attached, as required**, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.
5c, 5l, 7, 19, 25, 27, 29, 32, 33, 34, 40, 45, 46, 47, 48

I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:

- The following Recommendation(s) have have been implemented and **attached, as required**, is a summary describing the implemented actions:
1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 14, 15, 16, 17, 19
- The following Recommendation(s) have not yet been implemented, but will be implemented in the future, **attached, as required** is a time frame for implementation:
-

The following Recommendation(s) require further analysis, and **attached as required**, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)

The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, **attached, as required** is an explanation therefore:
Please see comments 8, 9, & 10.

I have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: 8

I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov
- The County's Executive Office: ceo@co.mendocino.ca.us

Second Step: Mail all originals to:

- Mendocino County Grand Jury
P.O. Box 629
Ukiah, CA 95482

Printed Name: Philip E. Baldwin

Title: Mayor, City of Ukiah

Signed:  Date: 8/20/09



ITEM NO.: 11c

MEETING DATE: 8/19/2009

AGENDA SUMMARY REPORT

SUBJECT: RESPONSE TO THE GRAND JURY: TIME FOR CHANGE: A REPORT ON THE RELATIONSHIP BETWEEN THE UKIAH VALLEY SANITATION DISTRICT AND THE CITY OF UKIAH SEWER SYSTEM

Background:

The City of Ukiah has received a report from the Grand Jury, dated May 21, 2009, entitled Time for Change: A Report on the Relationship Between the Ukiah Valley Sanitation District and the City of Ukiah Sewer System.

This report requires a response from the City of Ukiah, specifically, from the City Manager as appointed official and the City Council as elected officials. The report is required by August 25, 2009.

A copy of the Grand Jury's report is attached as Attachment #1. It includes both Findings and Recommendations. The response form requires response to the Findings, and then to the Recommendations.

The City's response, which is drafted as a joint response from the City Manager and the City Council, is attached as Attachment #2 for Findings, and Attachment #3 for Recommendations. For Attachment #2, only the items marked disagree have been included in the response. There is a spreadsheet outlining the items to which the City neither agrees nor disagrees, and a list to which the City agrees. The Grand Jury recited a number of historical items as part of their findings. Staff has not taken time to verify all of these historical items, so that is the reason for the designation of neither agree nor disagree. There were 49 findings total.

The Grand Jury response form will be completed and signed before being submitted to the Grand Jury after the City Council has acted upon these draft materials.

Recommended Action: City Council receive the Findings and Recommendations responses and approve the submission of these materials to the Grand Jury, with authorization of the Mayor to sign the response form on behalf of the City Council for submission by the August 25, 2009 deadline.

Alternative Council Option(s): N/A

Citizens advised: N/A
Requested by: Jane Chambers, City Manager
Prepared by: Jane Chambers, David Rapport, Gordon Elton, and Tim Eriksen
Coordinated with: Ann Burck, Deputy Director of Public Works, Water and Sewer Division
Attachments: Attachment 1 – Grand Jury Report, dated May 21, 2009
Attachment 2 – Findings Response
Attachment 3 – Recommendations Response

Approved: 
Jane Chambers, City Manager

August 10, 2009

ATTACHMENT 2

Attached Findings Statements

Disagree:

- 5c: Practice has not limited connections to those mutually agreed upon
- 5l: Debt service is for 2009/2010 is \$4,520,900 plus \$425,994 to the State of California.
- 7: To the extent possible, the City attempts to anticipate and plan to comply with state and federal regulations and the 5 year renewal of its NPDES permit. For example, the City has been proactive and timely in developing policies and reports to comply with state regulations requiring a Sanitary Sewer Maintenance Plan (SSMP). Requirements placed on the sewer system by the Regional Water Quality Board are known only when declared by that agency; experience has shown they cannot necessarily be planned for, as the board may place unanticipated requirements on NPDES permits.
- 19: Approval of the five year rate increases in accordance with Proposition 218 did not avoid a required vote on the rate increase. Sewer rates are considered "property-related fees" under Proposition 218, which are expressly exempt from a voter approval requirement. If the courts had determined that water and sewer fees were commodity charges rather than property-related fees, the City Council and District Board could have adopted them without voter approval as they adopt other user fees, such as fees charged for participation in recreation programs or green fees at the municipal golf course. The City and the District anticipated that the courts might declare sewer fees as property-related fees and adopted them using the direct mail notice and public hearing process established by Proposition 218 to provide the maximum public input authorized by law.
- 25: City of Ukiah staff are not in a position to comment on what former District Board members may or may not have told the Grand Jury or thought regarding implementation of the 1995 Participation Agreement, other than what appears in meeting minutes. The City has made good faith efforts to keep the District Board informed and to provide information upon request. Until recently, the Board consisted of one City Council member and two County Supervisors, who had free access to City staff and multiple sources of information about the sewer system.
- 27: The City of Ukiah is in the process of reviewing and possibly purchasing new financial software. This software should provide for expanded report and analysis writing that cannot be done electronically under the current system. However, whatever software is purchased, regardless of its capabilities, the City of Ukiah will be required to provide financial information to the UVSD based upon the

participation agreement, which calls for accounting of a joint system, not a system based on individualized entity cost accounting.

- 29: City of Ukiah staff are not in a position to know whether or not the UVSD board became more vigilant. Staff can attest to fact that the UVSD board was kept informed and given both verbal and written reports on the status of the plant project. The City agrees that the District Board concurred with all plant project decisions and participated in public hearings for establishing the new user rates and new connection fees.
- 33: The City of Ukiah is in the process of establishing a five to ten year capital improvements budget for all city projects, including those included in the sewer utility. This budget practice is common in public agencies and will provide an opportunity for policy makers and public to review the current year projects as well as projects proposed for future years.
- 34: City of Ukiah Council members and staff endeavor to work on a professional and cooperative basis with the UVSD board and staff.
- 40: The overlap area refers to those portions of the City which were never detached from the District, when they were annexed into the City. As a result, those areas receive sewer service from the District, just as other portions of District outside the City limits do, even though the City staff, under the Participation Agreement, actually services and maintains the distribution system and treats the effluent. All connections within the District boundaries, whether inside or outside the City limits, use ESSUs charged to the District. The City does not believe this extra-layer of government, and the associated expense, makes sense, and would certainly support detaching these areas from the District and charging the ESSUs consumed by this area to the City.
- 45: The City tracks its costs for the operation of both the collection system and the water reclamation facility. All expenditures are accounted and reconciled under the City's accounting system. There is not individualized accounting for maintenance in and outside of the district area, as this is not required in the participation agreement and a system to supply this information has not been developed. The City can account for any portion of sewer utility funding that is used to pay the system's administrative and operational overhead costs. These are determined on a cost allocation basis.
- 46: The City operates the sewer utility with equipment purchased to do sewer work. However, the City also uses a best practice methodology of cross training personnel and multi-tasking with equipment. This practice allows the UVSD to reap the benefits of sharing costs with other city functions rather than paying 100% of the cost of this equipment and personnel through the sewer system rate base.

- 47: This statement is rooted in past perceptions and/or realities, and does not reflect current practice. The City's efforts to establish a capital improvements project budget and five year plan, as well as conducting a number of engineering studies, completion of re-lining of mains and manhole repairs, completion of the project to video the entire system, and completion of the improvements to the reclamation facility are current evidence of the City's efforts to plan for the future of the system.
- 48: The SSMP has been completed in accordance with state regulatory requirements. Its focus is on detecting and preventing sewer system overflows. Under a cooperative agreement among the District, the City and LAFCO an outside consultant was hired in 2007 by LAFCO to prepare the MSR for the sewer system. So far, this effort has not produced an MSR. The MSR will address: (1) Growth and population projections for the affected area; (2) Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies; (3) Financial ability of agencies to provide services; (4) Status of, and opportunities for, shared facilities; (5) Accountability for community service needs, including governmental structure and operational efficiencies; (6) Any other matter related to effective or efficient service delivery, as required by commission policy. Neither the SSMP nor the MSR supercede the participation agreement, which governs the relationship between the City of Ukiah and UVSD.

August 10, 2009

Response to Grand Jury Report: Recommendations

The Grand Jury Report: Report on the Relationship Between the Ukiah Valley Sanitation District and the City of Ukiah Sewer System

Recommendations:

- 1) The City of Ukiah has, and will, make information available as requested, to the UVSD regarding plant upgrading and/or expansion. Throughout the current expansion project at the Water Reclamation Facility, monthly construction reports have been made available to the Board and to the Executive Director. The City of Ukiah is the sole legally responsible party for the holding of its NPDES permit, and therefore, is the agency wholly responsible for activity under the permit. Because of this legal responsibility, the City must be the final decision-maker regarding its NPDES permit. However, to the extent that modifications to the permit proposed by the RWQCB impact the cost of operating the system and to the extent the City has sufficient notice of those changes from the RWQCB to consult in a timely manner with the District Board concerning those requirements, it will endeavor to solicit input from the District Board.
- 2) Orientation of all the new board members has been conducted by the City, tours of the water reclamation facility have been offered, and taken, by board members.
- 3) The City agrees with this recommendation. The City has already entered an agreement to share the cost of the municipal service review for the sewer system. In 2007, a consultant was hired by LAFCO to prepare the MSR. Delivery of this report by LAFCO has not been received. The City of Ukiah continues to participate in actions to address land use planning at the regional level for the valley area.
- 4) The City agrees with this recommendation and would certainly undertake all of these steps before making decisions about future plant expansions. As a practical matter, it is unlikely that further plant expansion will be proposed in the near future, because of the current burden on the rate payers for the recent expansion. However, if development for the area demands further expansion at some future point, financial study will be employed to identify possible funding sources. Discussion of the feasibility of expansion will include UVSD.
- 5) The City of Ukiah is in the process of establishing a capital improvement budget (CIP) document which will contain a list of projects for the sewer

system. There will be current fiscal year projects, as well as a projection of projects to take place within five-ten years. This document will contain a full description of projects complete with anticipated design and construction cost estimates. All projects that are included in the rate study for the next rate period will be included in the CIP. With the use of this document, there should be no confusion with regard to when projects are scheduled for completion. The adoption of the CIP will be through the City Council's budget deliberation process, and will be included as part of the budget discussions with the UVSD. Because the operation of the sewer system is based on the participation agreement which calls for the City to operate the District and City collection systems as one system, the document will reflect projects that must be completed for proper operations of the system.

- 6) The City of Ukiah began submitting monthly revenue and expenditure reports to the District Board more than two years ago, and requests that the Grand Jury report be amended to recognize that this financial reporting has been performed by the City. Where the City is limited in its ability to produce electronic analysis, through the limits of the current financial software, it cannot supply that analysis to UVSD. The City anticipates that new financial software will have broader capacity to produce a number of reports not now available. All expenditures and revenues for the system are tracked under the City's current financial software, based on operations as a single entity. Reports are made and are public record on overflows and/or treatment plant process malfunctions, and can be obtained by the District at the State Water Resources Board web site.
- 7) City of Ukiah staff provides information to the District on a regular basis, as noted above.
- 8) Recommendations 8, 9, and 10 are governed by the participation agreement. The City currently services, operates and maintains the District sewer collection system, the City collection system and the water reclamation plant as one unified system. Costs have not been separated by the District and City in the joint operations account. As the Grand Jury recognizes, under the Participation Agreement, the costs are allocated based on ESSUs, not based on the actual separate costs expended on the District's and City's collection systems. (See Finding No. 5.d.) The District benefits from the City's ability to operate the sewer system as part of other City operations, thereby gaining the advantage of economy for multi-purpose use of equipment, and shared costs for administration, risk management, purchasing, finance, billing, repair, maintenance, and other operations of the sewer system. The City is using cross training and shared use of resources as a best practice for sewer operations, and follows a model being promoted for cost effective and efficient operations in use

throughout the State and USA as a whole. Use of single purpose crews and equipment is a model less and less in use throughout local governments seeking to maximize crew and equipment cost effectiveness overall.

- 9) The only costs that are paid by the City and the District under the Participation Agreement are the annual costs for treatment of effluent from the combined City and District collection system, the costs to maintain, operate, expand, upgrade, and administer those systems, and the insurance and financial services of those systems. All of those expenses benefit both the City and the District. No other expense is treated as a shared expense.
- 10) The City has commissioned a cost allocation study that is nearing completion, and will provide a plan for allocating costs among the various city component units. The recommendation of allocation of the full cost of equipment is only one method of allocating costs. It is standard practice for an entity that possesses a piece of equipment to develop a billing rate for charging other interests who may have a need to use the equipment from time to time. It is more common to utilize billing rates established by the California Department of Transportation or by FEMA for reimbursement of equipment. The City is moving in the direction of routinely billing equipment usage to other departments.
- 11) The City Council and the UVSD Board have agreed to hold regular joint meetings and can review expenditures and revenues as desired at those joint meetings.
- 12) The City agrees with this recommendation. City of Ukiah staff currently provides information to the UVSD on a regular basis. This information is on a systems wide basis and not at a daily operational level which would require continuous preparation of activity reports to the District.
- 13) City staff is in favor of adopting this practice and, until recently, both the City and the District have endeavored to adopt the same rates and policies. For example, the City recently revised its ordinance governing the use of grease traps in restaurants to make those policies the same as policies adopted by the District. Recent actions by the UVSD have tended towards promoting UVSD policies and procedures over those in keeping with City practices, such as the UVSD's actions to make policy regarding sewer fees for a commercial property, separate undertaking of a project to re-line sewer mains within the district instead of participation in the City's project, and independent conduct of expanding mainline sewer service to private property.
- 14) The City agrees that this recommendation, which has been implemented throughout the history of the participation agreement, be maintained.

- 15) The City agrees that the UVSD should act within the provisions of the participation agreement.
- 16) The City of Ukiah staff working in both the collection and treatment plant are certified by the State, and hold the required training and certifications necessary. In fact, the water/sewer maintenance supervisor holds a Grade #3 certification for collections, one of the highest ratings that can be held, and is one of few within the State of California overseeing collection systems with that high ranking. The City of Ukiah provides for training and oversight of all personnel and assures competency by regular performance reporting systems and certification updates.
- 17) The City Council and UVSD Board are holding joint meetings on a quarterly basis.
- 18) No comment
- 19) The City of Ukiah is currently dealing with major financial issues due to the economic conditions, and is currently in the process of producing a rate study for the sewer system, conducting a cost allocation study, procuring a financial software package, conducting the re-lining of sewer main projects, and finalization of the water reclamation facility project, in addition to working with the UVSD to have the proposed 2009-2010 budget adopted. All of these projects impact the UVSD, and demand the attention of administrative and operations staff. The City has gathered bench-marking data on sewer system operations costs for comparative purposes to discuss with the UVSD as part of the budget process, and will continue to discuss UVSD issues as needed. The City recommends that discussions related to the participation agreement proceed from the point of providing the most cost effective sewer service to the customers in the service area. Any recommendations for change must be reviewed at the operational level as well as the policy level to determine if they are possible to implement, cost effective, as well as good public policy.