

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:

Board of Directors of the
Ukiah Valley Sanitation District
387 North State Street, Suite 101
Ukiah, CA 95482

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

We have reviewed the report and we submit our responses to the FINDINGS portion of the report as follows:

- We agree with the Findings numbered:
1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, and 49
- 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.
2, 4, 26, 27, 31, 32, and 47

We have reviewed the report and submit our 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:
2, 9, 14, 15, and 18
- 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:
1, 3, 5, 7, 10, 11, 12, 17, and 19

- 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)

4 and 13

- 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:

8 and 16

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

Number of Pages attached: **8**

We 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.

We understand that we 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: **Rick Kennedy**

Title: **District Manager of the Ukiah Valley Sanitation District**

Signed: Original signed by Rick Kennedy

Date: August 24, 2009

RESPONSES TO THE GRAND JURY REPORT ENTITLED

“TIME FOR A CHANGE: A REPORT ON THE RELATIONSHIP BETWEEN THE UKIAH VALLEY SANITATION DISTRICT AND THE CITY OF UKIAH SEWER SYSTEM”

FROM RICK KENNEDY, DISTRICT MANAGER OF THE UKIAH VALLEY SANITATION DISTRICT

STATEMENTS SPECIFYING WHAT PORTIONS OF THE FINDINGS ARE DISPUTED AND EXPLANATIONS OF THE REASON OF THE DISPUTE

Finding 2

The Finding states that the agreement between the City and District (June 24, 1955) allowed the District to use the City’s treatment plant. The agreement states that both bodies concluded based on the review of the costs, present and future needs and feasibility that joint facilities would best serve the inhabitants of both the City and District. The agreement required both parties to construct and pay for separate facilities up to designated monetary limits and the parties would participate in the costs exceeding these monetary limits. This is beyond the City “allowing” the District the use of the WWTP.

The Finding states that the District’s obligation pursuant to the Agreement between the City and District (June 24, 1955) only involved paying for the costs to install the necessary north south trunk sewer. The District was responsible for constructing the trunk sewer to Ford Road up to a financial limit of \$300,000 and any expense above that would be shared by the City and District (2/3 City and 1/3 District). The First Supplemental Agreement (July 7, 1958) confirms that the use of the facilities was joint and the facilities were independently constructed. This response is provided for clarification purposes.

Finding 4

The Finding states that the District negotiated with the City to provide various services one of which being the “Operation and maintenance of its (District) sewer collection system in accordance ...”. This service is to include maintenance of the District’s trunk sewer. The agreement clearly states that the title, management and control of the sewer plant remains with the City and that the “City agrees to service and maintain the trunk

lines”. The agreement does not specifically address title and control of the trunk sewer but because the District constructed and paid for the trunk sewer the District claims that the trunk sewer is under the title and control of the District. This response is provided for clarification purposes.

Finding 26

The Finding states that the “District has sought increasingly detailed information from the City.” The Finding does not state if the detailed information so requested is information the City should have in order to properly carry out its duties and obligations pursuant to the requirements of the 1995 Participation Agreement. The District Manager believes the information the Board has requested is information that that should be provided or available to it pursuant to the Agreement.

Finding 27

The Finding states in part that “Some argue that the City is not sufficiently staffed to provide all information that the District may desire and that more detailed accounting would not be cost effective in terms of ratepayer benefits”. The District Manager does not agree with this finding. The inability of City staff to track labor hours spent by crews and administration staff that are assigned to and shared by two distinct Enterprise Funds (Water and Sewer) is a function of inadequate accounting software. The detailed accounting is necessary to determine the expenses that should be assigned to the Sewer Fund and shared by the City and District.

Finding 31

The Finding states in part that “This practice has been publicly criticized”. It is not clear if the District’s separate audit process has been criticized or if not having a separate audit has been criticized. The District Manager does not agree or disagree with this part of the Finding.

Finding 32

The Finding states in part “the auditors reported that because the City did not allocate costs between the District and City, available data were inadequate to support an independent audit report for the District”. The Finding does not make reference to the unavailability of financial records that were the result of records destruction in accordance with the City’s Record Retention Policy.

Finding 47

The Finding states “the District and City have not engaged in adequate joint long range planning. They have been largely reactive in actions taken regarding major maintenance and capital improvements, new sewer services, project planning and annexation”. This Finding does not take into consideration the dependency the District had and still has on the City. Until the assignment of a County Deputy Executive Officer to assist the District Board and until the hiring of its District Manager, the District Board was totally dependent on City staff for long range planning. The District continues to be excluded from long range planning related to the WWTP.

SUMMARY DESCRIBING IMPLEMENTED ACTIONS

Recommendation No. 2

At the Joint Meeting of March 26, 2009, the District Board and the City Council agreed to have quarterly joint meetings on the second Thursday of the first month of each quarter. The first quarterly joint meeting was to take place on July 9th. This meeting was cancelled by the City Manager because of other City budget issues and work load.

Recommendation No. 9

Progress has been made in the budgeting of capital projects that have benefit to one party of the Agreement to a fund (Fund 614) that specifically set asides funds for each agency based on the percentage of revenue generated from the agency. It is anticipated that this policy will be continued.

Recommendation No. 14

The District Board has recognized the City’s sole authority for the selection and employment of administrative and operational personnel along with the right to establish appropriate pay schedules. However, it should be recognized that the District Board retains the right to exercise its budgetary authority provided under Amendment No 1 of the 1995 Participation Agreement and the District Board has the right to appoint its District Engineer in accordance with District Ordinance No 1.

Recommendation No. 15

The District Board has retained its identity and it will continue to exercise its power and discretion as an independent Sanitation District.

Recommendation No. 18

The District continues to conduct regularly scheduled Board meetings on the third Thursday of each month beginning at 5:30 pm and it holds special meetings when warranted.

RECOMMENDATIONS WHICH HAVE NOT YET BEEN IMPLEMENTED BUT WILL OR MAY BE IMPLEMENTED WITHIN A SPECIFIED TIME PERIOD

Recommendation No. 1

The implementation of this recommendation is dependent upon the approval of the City Council and appropriate direction to City Staff. The City Staff has in the past taken the position that decisions regarding the WWTP are theirs to make since the NPDES permit is issued to the City. The District Manager will bring this recommendation to the District Board prior to November 21, 2009 for their action. Action will be limited to requesting the City that the District be included in workshops pertaining to permit renewal and WWTP upgrading and expansion.

Recommendation No. 3

As called for in the City/District Sewer System Management Plan, the City and District will, as part of the budgeting process, consider completing an updated Sewer Collection System Master Plan to build upon the conclusions made in the 1978 Kennedy Engineer's Wastewater Study. The District desires the budgeting and implementation of a Flow Monitoring Program for the trunk system and other major collection lines for the 09/10 budget year; however, this remains to be worked out with the City. The master planning effort must include a flow monitoring program. It is anticipated that the Ukiah Valley Area Plan will be utilized in the development of the updated Sewer Master Plan. However, it must be recognized that land planning can be fluid and that County Planning staff should continually advise the City and District of zone changes, etc. Prior to November 1, the District Manager will reach out to City and County staff to seek a more structured means of information sharing as to land planning decisions.

Recommendation No. 5

The City Manager has indicated that the City staff will be formulating a five year Capital Improvement Program in the near future. It is anticipated that the District will have some

input in its development. The 09/10 Budget will include City and District sewer rehabilitation projects which will be funded under Fund 614 and it is anticipated that the proposed projects will not exceed funding and staffing resources. The time frame for the completion of the 5 year Capital Improvement Plan is under the control of City Staff.

Recommendation No. 7

City staff currently provides the Board on a monthly basis the number of equivalent sewer service units that have been allocated to projects and the balance of ESSUs remaining for each entity, project status of the CCTV program which has a required completion date of January 11, 2010, monthly expense and revenue reports, and the project status report for the WWTP. Generally speaking, information pertaining to inquiries for new connections, planning activities within the City and relevant information such as complaints and inspections by or notices from regulatory agencies is not shared with the District. The District Manager will reach out to the City Director of Public Works to seek a method of sharing information without causing additional work to the City Staff prior to November 1, 2009. It is to be noted that the City Public Works Director receives a complete District Agenda Package and he generally attends the regularly scheduled District meetings as the District Engineer and District/City liaison.

Recommendation No. 10

City staff has informed the District of their intentions of implementing sophisticated accounting software that can track work orders which will allow the expensing of accurate labor and equipment costs to the appropriate Fund as they are incurred. The City has advised the District that the time frame for implementation is a few years away.

Recommendation No. 11

As previously reported, the District Board and the City Council have agreed to conduct quarterly joint meetings to discuss issues affecting both agencies. It appears feasible and prudent to include a midyear budget review at the 3rd quarter joint meeting (Jan) as recommended. The District Manager will recommend to the Board that they request the City Council to include a midyear budget review in their 3rd quarter joint meeting.

Recommendation No. 12

The activities listed in the recommendation are the issues that would normally be discussed at the planned quarterly joint meetings as they arise. However, it is to be noted that City and District staff and the District Board and City Council must agree that the issues get agendized for discussion.

Recommendation No. 17

As previously reported, the District Board and the City Council have agreed to conduct quarterly joint meetings to discuss issues affecting both agencies. It appears reasonable and prudent to discuss planning and budget review issues during the quarterly joint meetings and the District Manager will request City Staff and the District Board to have these issues as they arise agendaized in the quarterly joint meeting.

Recommendation No. 19

At the March 26, 2009 joint meeting, the District Board requested the City Council to consider the recommendations from the Joint Sewer Ad Hoc Committee pertaining to governance issues and proposed amendments to the 1995 Participation Agreement. City Staff stated they took exception to some of the recommendations and they wanted the opportunity to discuss with the City Council their position concerning the recommendations. It is hoped that after City Staff has presented their positions, that further deliberation of the recommendations will be conducted at the committee level. Time frame for the implementation of the recommendation rests with the City.

RECOMMENDATIONS REQUIRING FURTHER ANALYSIS OR CONSIDERATION

Recommendation No. 4

The final decision to expand the WWTP lies with the City Council. The decision to participate in the expansion lies with the District Board. It is obviously prudent to consider economic impacts and variable economic conditions when considering plant expansion. The preliminary engineering and approximately 85% of the final engineering for the 2005 WWTP Expansion and Replacement Project was completed prior to procuring the services of the Financial Consultant for the performance of a Rate and Fee Study. A preliminary cost estimate at the preliminary engineering phase could have been performed to adjust expansion plans to fit a predetermined connection fee that was considered affordable and sustainable. The expansion component of the project was based on a 20 year projected growth for the City and District and the connection fee was based on the cost to provide sewer service to the projected growth. The severe downturn in the housing market was not foreseen.

It is to be noted that the Rate and Fee Study prepared by Bartle Wells contained a recommendation that the rates and fees be reviewed annually to insure that the rates and fees were generating sufficient revenue to cover the annual operating costs and the

debt service. The City has procured the services of a Financial Consultant to perform a rate and fee review. At the Request of the Board, the review includes a review of the connection fee because the financial assumptions that were used to establish the fee are no longer appropriate. The District Manager assumes that adjustments will be made to the fee with the purpose of eliminating a potential financial impact to existing rate payers as a result of not having sufficient revenue to make the debt service payment related to expansion.

Recommendation No. 13

The District Board will continually strive to have, when feasible, similar system maintenance policies, procedures, standards for construction, user rates, and miscellaneous fees and charges as does the City. However, it should be recognized that each body is a politically independent body and they may answer to their rate payer's demands or needs in different ways.

RECOMMENDATIONS THAT WILL NOT BE IMPLEMENTED

Recommendation No. 8

It is not clear what is meant by "any actions or services requested of the City by the District beyond the existing Agreement". The District Manager takes the position that the Board has not requested the City to provide services to it that the Participation Agreement does not call for; however, there may be differences of opinion as to what services are to be provided pursuant to the Agreement.

The revenue generated from the rate payers within the District belongs to the District and it is to be used for purposes permitted by State law and District ordinances; the City of Ukiah is the receiving agent of these revenues. Nothing in the Participation Agreement requires the revenue generated from monthly service charges be combined in a joint fund (Fund 612) and used exclusively for operational and maintenance expenses budgeted within Fund 612.

Recommendation No. 16

As stated by the City and as stated within Recommendation No. 14, "the City retains sole authority, discretion and responsibility for the selection and employment of administrative, operating and maintenance personnel for the unified City/District system

along with the right to establish appropriate pay schedules”. Requiring the City to employ only appropriately certified employees is beyond the control of the District.