

Frequently Asked Questions:

Ukiah Valley Sanitation District vs. City of Ukiah

Why are there two government agencies for one wastewater treatment plant and collection system?

Since 1897, the City of Ukiah has operated the municipal wastewater system. The system has expanded as demand and regulation necessitated collection and treatment upgrades. In 1950's, the Ukiah Valley Sanitation District was formed by the County to work in conjunction with the City of Ukiah to leverage the City's existing system to serve the area outside the city limits and eliminate the need for duplicated facilities.

In 1955, the City and the District entered the first agreement under which the City agreed to build a new sewer plant to serve the City and the District. The District agreed to construct a trunk sewer line from the treatment plant to serve both City and District territory. The City agreed to operate and maintain the sewer plant, the trunk sewer and the pipelines and pump stations which collect sewage in the City and the District and transport it to the sewer plant for treatment. The agreement had a term of 40 years.



The original 1955 agreement was amended four times between 1955 and 1985. In 1995 the City and the District entered a new 30 year agreement, which has been amended twice. In 2006, the City and the District entered a Financing Agreement which set out the terms under which the City and the District would share the cost of repaying \$75 Million the City borrowed to rebuild the sewage treatment plant. That money came from bonds issued for the City by the Association of Bay Area Governments.

For roughly 60 years, the City has provided reliable sewer service to both City and District customers. Through a series of participation agreements, the Ukiah Valley Sanitation District utilizes City of Ukiah staff and resources for engineering, compliance, maintenance, administration and operation of the collection system and Wastewater Treatment Plant (WWTP). Throughout this period, the system was operated as a single operation with ratepayers within the City and District paying the same price for all services.

The City is able to leverage administrative, labor, and equipment cost savings to the wastewater system fund by sharing costs with other city operations. For example, the City has a single billing and collections department that serves water, sewer, garbage collection and electric. In addition, the City has a consolidated field maintenance crew and fleet that serves both the water distribution system and wastewater collection system.

What is the governance structure for the agencies?

The City of Ukiah is governed by the City Council. The Ukiah Valley Sanitation District was originally governed by a three-member Board of Directors consisting of two members of the County's Board of Supervisors and one

member of the Ukiah City Council. In 2008, the District modified its governance structure to a directly elected five member Board of Directors. Since the change in governance and the original election for Directors, incumbents have run unopposed and new members have been appointed by the existing board to fill vacated seats without an election.

After 2008, the District began to adopt rates and connection fees that are different than the City's and has made a number of other decisions that will ultimately result in increased sewer rates for everyone with no compensating benefits to ratepayers in the City or the District.

How have operations changed at the District since the change in governance structure?

Since 2008, the District has increased its administrative costs from just under \$6,000 in 2008 to more than \$290,000 per year.

Additionally, the District has elected to impose different rates and connection fees than are charged by the City, to the detriment of business development and new housing.

For example, Branches Restaurant, located in the UVSD, paid \$75,537 to the District in sewer connection fees. Under the revised fee schedule, adopted in 2011, those fees would be \$196,700.

A dialysis clinic in the District paid \$67,983 in connection fees in 2010; under the new schedule, their fees would be \$105,170.

An expansion of Star's Restaurant was abandoned because of the increased fees. Their proposed banquet room, which did not include any new plumbing, would have triggered sewer connection fees of \$1,224 per seat.

Other new developments have also been abandoned because of the prohibitive fee structure. A new laundromat in the District, which would likely serve the lowest income population, would be required to pay \$24,540 per washing machine, versus \$2,500 in the City.

Without new connections, the existing ratepayers pay the burden of under-utilized capacity upgrades. Also, the application of different rates increases the costs of administration.

Why is the Ukiah Valley Sanitation District suing the City of Ukiah?

In September 2013, the District filed a claim for damages with the City and one month later filed its lawsuit in October 2013. In its lawsuit, the District seeks damages for alleged breaches of the various versions of the agreements between the City and the District, starting with the original 1955 agreement. The District alleges that the City overcharged the District under the 1966 amendment to the 1955 agreement. It claims that the City overcharged the District under the 1985 amendment to the 1955 agreement. It makes similar claims under the 1995 agreement and its two amendments. The District also seeks to get out of the Financing Agreement which obligates the District to pay its share of the cost to rebuild the sewer plant. Bonds were issued by ABAG in 2006 in reliance on that agreement. The bonds were insured and the insurance company likewise relied on the District's commitments in the Financing Agreement, when it insured the bonds in 2006. The bondholders relied on the District's commitment, when they purchased the bonds. The sewer plant reconstruction was completed in 2009, and, of course, serves both the City and the District.

The District's decision to allege contract breaches covering more than 50 years and multiple agreements, some of which expired 21 years ago, make the lawsuit a nightmare to litigate. The current City officials and staff believe



that the facts alleged by the District establish a course of dealing over many years between the City and the District's Board of Directors during which the District Board knew how the City was performing under the agreements, because the City provided that information through staff reports and appearances before the Board, the submission to and approval by the Board of annual budgets for the sewer system, annual audits of the City's financial statements and joint meetings of the Board and the City Council. However, reconstructing those interactions over this extended time period, challenges the memories of the participants who are still alive and who can be located and involves hundreds of thousands and perhaps millions of pages of documents and many others

that have been destroyed in the regular course of business or can't be located.

The City anticipates that if this case goes to trial, expensive accounting and engineering expert witnesses will express conflicting opinions as Monday night quarterbacks rehashing and characterizing the long and complicated history of City/District relations.

In addition, in its complaint, the District asks the court to turn over operation of the entire wastewater system, including the City's wastewater treatment plant, to the District to run, in spite of the fact that the City has been operating and maintaining the entire sewer system for nearly 120 years. The District has never operated a sewer system; nor does it have any of the equipment, field attendants, licensed plant operators, engineers or customer service staff necessary to do so. The District has not described to the City how it would take over these functions and perform them in compliance with the stringent and ever-changing regulations enforced by the North Coast Regional Water Quality Control Board. Furthermore, no allegations in the District's lawsuit address the City's actual operation of the sewer plant or the collection system or suggest that the City is not doing an effective job of operating the sewer system.

How much is the lawsuit costing the ratepayers?

The District's lawsuit will cost the District and the City millions of dollars in combined legal fees and related expenses. In the last three and a half years, the District has spent \$2,183,634 on litigation-related expenses with \$2,112,500 paid to the Law Offices of Duncan James through June 9, 2016. Recent monthly invoices from the law firm have exceeded \$80,000 per billing.

In the same period of time, the City has expended \$318,093 in defense of the lawsuit.

Unless the District drops the lawsuit, it will most likely drag on for a year or more with long-standing implications for the Ukiah Valley. Unfortunately, the cost of the lawsuit will be borne by the ratepayers, who will undoubtedly see significant increases on their monthly bills and/or a negative impact on services.

What else is at stake because of the lawsuit?

Interest rates are low and financial experts predict that they will be rising soon. It would be most prudent to take advantage of the current low interest rates and refinance the \$75 million in bonds that were issued to construct the new wastewater treatment plant in 2006. Refinancing would save up to an estimated \$7.48 million dollars (present day value). However, by filing this lawsuit, the District has effectively blocked any possibility of a refinance.

Additionally, in its lawsuit, the District is seeking to rescind the Financing Agreement by which the District agreed to pay its share of the debt service on the 2006 wastewater treatment plant bonds. In addition to the lost opportunity to refinance, the impact from seeking this remedy, even if it is ultimately denied, could be seriously damaging to both the District and the City's credit rating, thereby jeopardizing future projects for both agencies.

For example, the City was recently awarded \$25,564,000 from the Clean Water State Revolving Loan Fund (CWSRF) and \$9,996,000 in grants from the Water Recycling Funding Program (WRF) to construct Phases I – III of the Recycled Water Project. In addition, the City is in the process of applying for up to an additional \$13,000,000 from the CWSRF and \$7,000,000 from the WRF for the final phase.

This project is not a frivolous “feel-good” environmental program, it is the most cost-effective alternative to the State's stricter regulations on discharging to the Russian River. However, the State of California has informed City staff that the recycled water project funding is in jeopardy because the state cannot enter a loan agreement with the City, while the District's lawsuit is pending.



If we lose the loans and grants for the recycled water system, the City and District will need to upgrade the plant to comply with the new standards. Staff estimates compliance with current regulatory requirements will cost up to \$30,000,000 in the short term, and will likely increase over time with escalating regulatory requirements if discharge continues. It is important to note the treatment plant was modified only a decade ago at a cost of \$75,000,000 and is already “out of compliance.” In addition, it is highly likely that no discharge whatsoever into the river will be allowed in the foreseeable future. These inevitable mandates will result in additional future costs that could be avoided by developing a recycling system now. This is why our neighbors to the south including Santa Rosa, Windsor, and Healdsburg have already developed recycling programs.

From a practical standpoint we have two choices: 1) spend millions to throw away a valuable resource, or 2) spend millions to put it to use in our own community.

Finally, the City has expensed a tremendous amount of staff resources responding to the District's Public Record Act (PRA) requests for information dating back to 1955. To date, the City has received 26 PRAs, some of which

include multiple demands on a single request. Some examples of these requests include every building permit issued by the City since 1955, payroll records and time cards for each employee whose time was charged to the sewer system from 1984-2016, and all correspondence that at any time refers or relates in any way to the sewer system. In a typical lawsuit, the discovery process is used to obtain documents and is overseen and controlled by the court to prevent burdensome or oppressive requests. However, because the City of Ukiah is a public agency, the District's attorneys have used the Public Records Act to obtain information, which does not require the District to justify its requests by showing how they are relevant to the issues in the case.

How does the City propose to resolve this matter?

The City proposes that the District dismiss its lawsuit and that the City and District devote their time, money and resources to solving the costly issues confronting the sewer system and improving their working relationship. The City Council and City staff have been frustrated by the unresolved conflict between the City and the District, but also recognize that the current District Board feels strongly about its grievances. The City is prepared to engage in serious negotiations to address the District's concerns as long as the District Board is prepared to likewise negotiate in good faith and seriously consider the City's concerns. If necessary, the parties could agree on terms that would allow the District to refile its lawsuit in the future, if the parties fail to reach agreement. As the last year has made clear, however, the parties cannot simultaneously conduct this litigation and work to resolve their disagreements, and the pending lawsuit has and threatens to further cost the ratepayers in the District and the City millions of dollars which will ultimately impact their rates for sewer service.

Summary

- The Ukiah Valley Sanitation District has no facility operators, maintenance staff, or billing and collection staff. All of these functions are handled by the City of Ukiah on behalf of the two agencies.
- The District and the City charged the same connection fees and rates to their customers until 2011, when the District adopted a new fee schedule. Connection fees in the District are often many times higher in the District than in the City, which has been a barrier to development.
- The District's administration costs have gone from \$6,000 to over \$290,000 per year.
- In the last three and a half years, the District has spent \$2,183,634 on litigation-related expenses with \$2,112,500 paid to the Law Offices of Duncan James through June 9, 2016. Recent monthly invoices from the law firm have exceeded \$80,000 per billing. In the same period of time, the City has expended \$318,093 in defense of the lawsuit.
- With today's low interest rates, the City and the District could save up to an estimated \$7.48 million dollars (present day value) by refinancing the \$75 million in bonds that were issued to construct the new wastewater treatment plant in 2006. However, by filing this lawsuit, the District has effectively blocked any possibility of a refinance.
- With the pending lawsuit from the District, the City stands to lose over \$35 million in funds for the recycled water project for Phases I-III and will not be eligible to apply for an additional \$20 million for Phase IV. If we lose the loans and grants for the recycled water system, the City and District will need to upgrade the plant to comply with the new standards. Staff estimates compliance with current regulatory requirements will cost up \$30 million in the short term, and will likely increase over time with escalating regulatory requirements if discharge continues.

Additional background and support documents are available at: <https://cityofukiah.box.com/v/uvsdpointsofinterest>