

**CITY OF UKIAH
CITY COUNCIL AGENDA
Special Meeting
CIVIC CENTER COUNCIL CHAMBERS
300 Seminary Avenue
Ukiah, CA 95482**

**November 4, 2016
9:00 a.m.**

- 1. ROLL CALL & PLEDGE OF ALLEGIANCE**
- 2. PUBLIC COMMENT**
- 3. UNFINISHED BUSINESS**
 - a. Status Report, Discussion and Possible Action Regarding the Ukiah Valley Sanitation District's Litigation Against the City of Ukiah Related to the Operation of the Sanitary Sewer System.
- 4. CLOSED SESSION**
 - a. Conference with Legal Counsel – Existing Litigation
(Government Code Section 54956.9(d)(1))
Name of case: *Ukiah Valley Sanitation District v. City of Ukiah*, Sonoma County Superior Court, Case No. SCV 256737
- 5. ADJOURNMENT**

Please be advised that the City needs to be notified 24 hours in advance of a meeting if any specific accommodations or interpreter services are needed in order for you to attend. The City complies with ADA requirements and will attempt to reasonably accommodate individuals with disabilities upon request. Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection at the front counter at the Ukiah Civic Center, 300 Seminary Avenue, Ukiah, CA 95482, during normal business hours, Monday through Friday, 8:00 am to 5:00 pm.

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the bulletin board at the main entrance of the City of Ukiah City Hall, located at 300 Seminary Avenue, Ukiah, California, not less than 24 hours prior to the meeting set forth on this agenda.

Dated this 3rd day of November, 2016.
Kristine Lawler, City Clerk



ITEM NO.: 3a

MEETING DATE: November 4, 2016

AGENDA SUMMARY REPORT

SUBJECT: STATUS REPORT, DISCUSSION AND POSSIBLE ACTION REGARDING THE UKIAH VALLEY SANITATION DISTRICT'S LITIGATION AGAINST THE CITY OF UKIAH RELATED TO THE OPERATION OF THE SANITARY SEWER SYSTEM

Summary: Staff will provide the latest status report on the Ukiah Valley Sanitation District's Litigation against the City of Ukiah related to the operation of the sanitary sewer system.

The City of Ukiah continues to request that the District consider a change in process outside of litigation to resolve the dispute and restore a working relationship, recognizing there is simply too much at stake for the ratepayers, system operations, and the community.

At the November 2nd City Council meeting, the City ad hoc related to this matter provided an update regarding their meeting with the District's ad hoc that took place on October 28, 2016. The District is currently not willing to discuss possible options to resolving the dispute without a signed confidentiality agreement. Given the significant impact of the District's lawsuit on the community, the City Council continues to express the need for open and transparent discussions so that the ratepayers in the District and the City have an opportunity to be informed about decisions that will have a major impact on them and their sewer rates. At the November 4th special meeting, the Council will continue to discuss and consider a response to the District's confidentiality condition.

Background: In September 2013, the Ukiah Valley Sanitation District (UVSD) filed a claim for damages with the City, and one month later filed its lawsuit. In its lawsuit, the District seeks damages for alleged breaches of the various agreements between the City and the District related to the operation of the sanitary sewer system, starting with the original 1955 agreement.

Continued on Page 2

RECOMMENDED ACTION(S): Receive status report. If desired, discuss and provide direction to Staff and/or consider any action(s) related to the matter.

ALTERNATIVES: N/A

Citizens advised: N/A
Requested by: City Council (Councilmembers Crane and Doble)
Prepared by: Sage Sangiacomo, City Manager and Sean White, Director of Water and Sewer
Coordinated with: David Rapport, City Attorney and Tim Eriksen, Director of Public Works
Presenters: Sage Sangiacomo, City Manager
Attachments: UVSD Litigation Update Box Files located at:
<https://cityofukiah.box.com/v/UVSDLitigationUpdates>

Attachments:

7. October 21, 2016 Letter from Duncan James' Office re: a confidentiality agreement
8. October 25, 2016 Letter from City Attorney re: confidentiality agreement
9. October 21, 2016 Letter from District Manager re: recycled water project
10. October 27, 2016 Letter from the City Manager re: recycled water project

COUNCIL ACTION DATE: _____: ☐ Approved ☐ Continued to _____ ☐ Other _____

RECORDS APPROVED: ☐ Agreement: _____ ☐ Resolution: _____ ☐ Ordinance: _____

Note: Please write Agreement No. in upper right corner of agreement when drafted.

Approved: 
Sage Sangiacomo, City Manager

This lawsuit will have significant adverse financial impacts to both agencies, as well as the ratepayers and the community, and the City is seeking an alternative to litigation to resolve this dispute. Attached is the letter that was sent on September 14, 2016, by the City Council to the District Board, formally requesting that the District drop the lawsuit with terms that would allow the District to refile if agreement cannot be reached (*UVSD Litigation Update Box File #1*), as well as an informational piece that details the background/impacts (*UVSD Litigation Update Box File #2*).

On September 21, 2016, the City Council received a presentation (*UVSD Litigation Update Box File #3*) from staff that explained the relationship between the two agencies and provided responses to some of the most frequently asked questions about this matter to better inform the public about the consequences of the litigation. This information along with a video link to the September 21st presentation/discussion are accessible at <http://www.cityofukiah.com/projects/uvsd-vs-cou/>.

The UVSD submitted a letter dated September 20, 2016 (*UVSD Litigation Update Box File #4*) which inaccurately asserts that the City's request is for the District to drop the lawsuit until after the recycled water project funding is received. In fact, the City's request is for the District to 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's goal is to eliminate the lawsuit altogether. The City has offered to include terms that would allow the District to refile the lawsuit, if the parties fail to reach agreement, but the City never suggested that the District would simply refile the lawsuit once state funding was obtained. Also, the City never suggested that dismissing the lawsuit is all that would be necessary to obtain state funding. In addition to dismissal of the lawsuit, there would have to be an agreement between the City and the District regarding the recycled water project that would satisfy the State Water Resources Control Board.

At the conclusion of the September 21st discussion, the Council directed the City Manager to contact the UVSD District Manager to explore possible alternatives. The City Manager attempted to contact the District Manager by email, but due to a reported medical leave, Mr. McMichael was not available to provide a timely/detailed response. On October 5, the City Attorney received an email correspondence from Duncan James (Attorney representing the District) responding to the City Manager's email to Mr. McMichael. Mr. James indicated in the email that the District had accepted the City's request to meet and formed a committee consisting of Frank McMichael, District Manager; Jim Ronco, Board Chair; Bob Page, Board Member; and, legal counsel. The City Manager issued a supplemental memo to the City Council for the October 5th City Council meeting regarding this email exchange and included a recommendation to Council for the formation of a City Council ad hoc committee to meet with the District (*UVSD Litigation Update Box File #5*). At the City Council meeting, Mr. Doug Losak with the Law Offices of Duncan James delivered and read aloud a letter containing some additional allegations, but in the end, agreed to meet with the City. The City Council formed an ad hoc committee consisting of Councilmembers Crane and Doble. The City immediately made efforts to schedule the first meeting between the District's committee and the City's ad hoc.

At the October 19, 2016, meeting, the City Council discussed the latest correspondence from the District including the District's request to hold the ad hoc meetings in private and require the City to consent to a confidentiality agreement. The City Manager provided the Council with the correspondence to date from the District regarding the confidentiality condition (*UVSD Litigation Update Box File #6*) for consideration. At the time of the meeting, the District had not provided a draft of the proposed confidentiality agreement. By consensus, the City Council continued to object to private meetings that do not provide the public with the opportunity to be informed. However, the City Council did direct the ad hoc to meet with the District's ad hoc to discuss process for such meetings and report back to the City Council at its regular meeting on November 2, 2016.

Discussion: Since the last City Council meeting, the City Attorney received a letter from Duncan James' Office regarding the District's request for a confidentiality agreement for the ad hoc meetings along with a draft of the agreement (*Attachment #7*). The City Attorney's response is included as Attachment #8 and indicates that such agreement would need to be discussed at the first ad hoc meeting and ultimately

considered by the City Council. Subsequently, the first meeting of the ad hoc was confirmed for October 28, 2016.

In addition, the City Council received correspondence from the District Manager related to the recycled water project dated October 21st (*Attachment #9*). Most of the questions referenced in the letter have already been either answered or provided to the District. Nonetheless, City staff invites dialogue and discussion in a sincere effort to move this critical project forward. Staff provided a response to the District Manager on October 27, 2017 (*Attachment #10*).

At the November 4th special meeting, Staff will provide the latest status report on the Ukiah Valley Sanitation District's Litigation against the City of Ukiah related to the operation of the sanitary sewer system.

The Council may elect to discuss the matter further and, if desired, provide direction to Staff and/or consider any related action(s). As part of this agenda item, the Council does not intend to consult with legal counsel regarding the litigation itself and does not intend to waive evidentiary privileges for attorney-client communication or attorney work product.

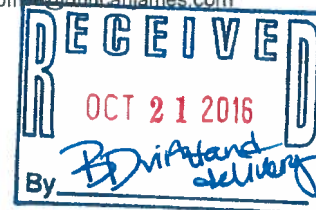
DUNCAN M. JAMES
 DONALD J. McMULLEN
 CHRISTOPHER L. BROOKE
 K. J. FLAVETTA
 DOUGLAS L. LOSAK
 GINEVRA K. CHANDLER

LAW OFFICE OF DUNCAN M. JAMES

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 UKIAH, CALIFORNIA 95482
 (707) 468-9271

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 lawoffice@duncanjames.com

October 21, 2016



Hand Delivered

David J. Rapport
 City of Ukiah Attorney
 405 W. Perkins Street
 Ukiah, CA 95482

Re: *Ukiah Valley Sanitation District v. City of Ukiah*
 Sonoma County Superior Court, case number SCV 256737

Dear Dave:

There is apparently some belief that the District is newly suggesting that the proposed settlement negotiations involving the parties' respective committees and counsel be privileged and confidential. On the contrary, as you know, such a process is a fundamental aspect of any such negotiation. We have never suggested that such negotiations occur in any other form. We have discussed these very points with you directly in communicating about the anticipated settlement discussions. In my view, it makes little, if any, sense to negotiate a resolution in any other environment. It just wouldn't be productive.

As you well know, privileged or confidential negotiations (whether termed mediation or otherwise) are designed to assist effective communication between the parties in working to resolve their disputes with one another. It is particularly appropriate in situations where parties desire or need to continue their relationship after resolving their conflict. It is apparent here that the parties have been unable to effectively communicate and that they will be required to work together after this conflict is resolved, one way or the other. Further, the informality of a privileged negotiation or mediation process allows for a relatively open, unstructured meeting or series of meetings.

It is clear that resolving the parties' disputes will take numerous days, even weeks or more. The issues are not simple. As you know, privileged and confidential settlement communications creates and preserves security for the parties during their settlement negotiations. Indeed, the confidential nature of the process encourages mutual disclosure of private information (e.g. work product) and opinion in order to generate the possibility of settlement. It reassures parties that there will be no damage done to their position in litigation by what they do or say during the process. The idea is to openly and creatively explore alternatives

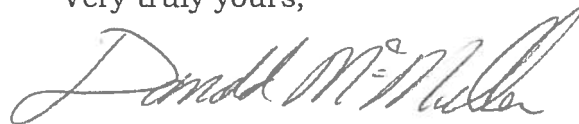
David J. Rapport
Page 2
October 21, 2016

and positions--and in fact to be concessionary-- without fear of reprisal. Privileged and confidential negotiations fosters those objectives.

In short, to proceed with the settlement negotiations we hope will be undertaken next week, it is necessary to have an executed agreement in place to ensure the process proceeds in the appropriate manner. A draft agreement is enclosed. Let me know if you desire any modification.

Alternatively, if the City refuses to make an effort to resolve the litigation with these customary procedures in place, the possibility of mediation before a neutral third party mediator, now that the matter has progressed, should be revisited. We would gladly discuss that option as an alternative if the City chooses to not move forward with the proposed settlement negotiations.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Donald J. McMullen".

DONALD J. McMULLEN

DJM/kab

cc: client by email

CONFIDENTIALITY AGREEMENT

(Settlement Discussions and Conferences of *Ukiah Valley Sanitation District v. City of Ukiah*, Mendocino County Superior Court case no. SCUk-CVC-13-63024 and related matters)

In order to promote and foster open communication, dialogue, and information/materials exchange among the parties, Ukiah Valley Sanitation District and City of Ukiah, and to facilitate resolution of their dispute, including the referenced action and matters, the parties agree to confidential settlement discussions and conferences ("mediation") as provided by law and this Confidentiality Agreement ("Agreement").

1. This mediation process is and shall be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such process from later discovery and/or use in evidence. The parties and mediation participants agree that all disclosures (including, without limitation, communications, facts, arguments, offers, evidence, statements, documents, information, materials, and any other event occurring) made, disclosed, or exchanged during or as part of mediation shall be privileged, confidential, and protected from later disclosure, discovery, or use in evidence by the receiving party (collectively "Confidential Information"). Disclosure of Confidential Information is strictly prohibited.

2. The parties' sole purpose in conducting or participating in mediation is to compromise, settle, or resolve their dispute, in whole or in part.

3. Among other law, the provisions of *Evidence Code* §§ 1115 *et al.* and 1150 *et al.* apply to this mediation. THIS AGREEMENT EXTENDS TO ALL PRESENT AND FUTURE CIVIL, JUDICIAL, QUASI-JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER PROCEEDINGS concerning the mediated matters. The parties have agreed to conduct mediation by way of participation from a committee comprised of two board/council members for the parties, respectively, along with assistance from managers and legal counsel. The parties acknowledge that each is a governmental entity overseen by a Board or Council and that, in order to enter a settlement agreement(s) during mediation, it will require decision by each party's governing body as a whole. Therefore, to the extent it may be necessary for the parties or mediation participants to disclose Confidential Information subject to this Agreement to the whole of their governing body, the parties and participants agree, represent, and warrant that it shall only be done in a closed executive session, held pursuant to *Government Code* § 54956.9 or otherwise, to other members of the parties' Board or Council, as the case may be, and shall thereupon retain its privileged and confidential nature as provided by law and this Agreement.

4. The privileged and confidential character of Confidential Information is not altered by disclosure during the mediation. The mediation process may continue after the date appearing below. Therefore, any subsequent disclosures of Confidential Information between the parties in a continuing effort to resolve the dispute are subject to this Agreement. Accordingly, the parties waive the automatic termination provisions of *Evidence Code* §1125(a)(5).

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5. This Agreement must be signed by all parties and mediation participants, including members, staff, and attorneys, prior to participating in mediation. In the event a participant fails to sign this Agreement, it shall not in any manner whatsoever operate to waive or alter the privileged, confidential, and protected nature of the Confidential Information made or exchanged during mediation; each party warrants and represents that all participants are representatives of their respective entities and, as such, shall be and are hereby bound by the provisions of this Agreement notwithstanding the lack of any individual participant's execution of this Agreement.

6. ANY WRITTEN SETTLEMENT AGREEMENT PREPARED DURING OR AT THE CONCLUSION OF THE MEDIATION IS SUBJECT TO DISCLOSURE, and is BINDING, ENFORCEABLE, AND ADMISSIBLE to prove the existence of and/or to enforce the agreement under *Code of Civil Procedure* § 664.6, if applicable, or otherwise.

7. Because the parties are disclosing Confidential Information in reliance on this Agreement, any breach of this Agreement would cause irreparable injury for which monetary damages would be inadequate. Consequently, any party to this Agreement may obtain an injunction or sanction to prevent disclosure of any Confidential Information in violation of this Agreement.

8. Each party is represented by legal counsel, and is not relying on the representations, statements, or legal opinion of opposing counsel. If any settlement agreement is prepared, each party is advised to have the agreement independently reviewed by their own counsel before executing the agreement.

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UKIAH VALLEY SANITATION DISTRICT

Dated: October ____, 2016

James Ronco, Chair
Ukiah Valley Sanitation District Board

Dated: October ____, 2016

Robert Page
Ukiah Valley Sanitation District Board Member

LAW OFFICE OF DUNCAN

Dated: October ____, 2016

By: DUNCAN M. JAMES, Attorney for Plaintiff
UKIAH VALLEY SANITATION DISTRICT

CITY OF UKIAH

Dated: October __, 2016

Stephen G. Scalmanini
City of Ukiah Council Member/Mayor

Dated: October __, 2016

Kevin Doble
City of Ukiah Council Member

RAPPORT AND MARSTON

Dated: October __, 2016

By: DAVID RAPPORT, City Attorney
City of Ukiah

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OTHER PARTICIPANTS

Other participants should date, print their name and affiliation, and sign where indicated

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Dated: _____

Print Name: _____

Affiliation: _____

Dated: _____

Print Name: _____

Affiliation: _____

Dated: _____

Print Name: _____

Affiliation: _____

Dated: _____

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Affiliation: _____

Dated: _____

Print Name: _____

Affiliation: _____

Dated: _____

Print Name: _____

Affiliation: _____

Law Offices Of

RAPPORT AND MARSTON

An Association of Sole Practitioners

405 W. Perkins Street
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e-mail: drapport@pacbell.net

David J. Rapport
Lester J. Marston
Scott Johnson
Darcy C. Vaughn
Mary Jane Sheppard

Phone: (707) 462-6846
Facsimile: (707) 462-4235

October 24, 2016

VIA EMAIL (Donald@duncanjames.com)

Donald J. McMullen
Law Office of Duncan James
Lambs Inn
445 North State Street
Ukiah, CA 95482

RE: *Ukiah Valley Sanitation District v. City of Ukiah*, Sonoma County Superior Court,
Case No. SCV 256737
Our File No.: 23-94

Dear Don:

I received your letter, dated October 21, 2016. I am not the decision-maker, regarding the terms under which the City attempts to resolve its differences with the District. The City Council discussed confidentiality at its meeting on October 19, and gave direction to the ad hoc committee to meet with the District's ad hoc committee on October 28 in a private session not open to the public to discuss as a first order of business the issue of confidentiality and other terms or procedures for future meetings.

The City's ad hoc committee has been instructed to bring back recommendations for conducting negotiations with the District at the City Council's next meeting which is scheduled for November 2, 2016.

Letter to Donald McMullen
Subject: Confidentiality agreement
Date: October 24, 2016

Page 2

Let me know if you have any questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "David J. Rapport", with a stylized flourish at the end.

David J. Rapport,
City Attorney

cc: Sage Sangiacomo
Doug Crane
Kevin Doble

FRANK MCMICHAEL
District Manager/Clerk

UKIAH VALLEY SANITATION DISTRICT

151 Laws Avenue
Ukiah, California 95482
TELEPHONE AND FAX: (707) 462-4429
EMAIL ADDRESS: DM@UVSD.ORG

WEB SITE
www.uvsd.org

October 21, 2016

Mayor Steve Scalmanini
Ukiah City Council
City of Ukiah
300 Seminary Avenue
Ukiah, CA 95482

Dear Mayor Scalmanini and City Council Members,

On September 16, 2016 I took a hiatus from my duties as District Manager to attend to my medical needs. While I was on medical leave the subject of recycle water from the WWTP came forward as an issue between the City and District as well as the public. While the District has gleaned some information from secondary sources (as described below), the Board has never been approached in any official manner as to the District's interest in participating with the City in some way regarding this important issue. Upon my return from medical leave, I thought that it would be appropriate that I seek further information and understanding so that I could better advise my Board about the proposed recycle water project. And, perhaps that understanding would allow the two agencies to find a cooperative way to address this issue. My below comments and questions are for that purpose.

It is my understanding that on several occasions while I was gone that the District expressed a willingness to meet with the City and the State Water Resources Control Board representatives regarding the City of Ukiah's application for purple water loans and to work in good faith with the City and State to reasonably resolve any concerns within our control that might inhibit funding. This was done through oral communications and in written form (I refer the Council, for example, to UVSD's attorney's September 20, 2016 and October 4, 2016 letters). However, to date, the District has not been contacted by the City or State to undertake those discussions. Perhaps the City intends to use our planned negotiations as a platform to start that process with the state, but we remain unclear on the City's intent on that point.

Interaction with the State on this matter is not something the District can initiate. The City, alone, applied to the State for the loans and grants. The District was never asked to be a party to those applications so it has no standing to initiate discussions relating to the terms of the loans. That said, the District remains willing to engage in the discussion process, if the City desires. It has been several weeks or more since the District conveyed its willingness to work with the State and City on this issue. We would appreciate an update or at least some communication on the matter.

BOARD OF DIRECTORS

ROBERT PAGE
VICE-CHAIR

JAMES RONCO
CHAIR

KENNETH MARSHALL
DIRECTOR

TRAVIS FORRESTER
DIRECTOR

THERESA MCNERLIN
DIRECTOR

Based on communications that the District's attorneys have had with the State Water Resources Control Board's attorney, the District was advised that:

1. The City's attempt to obtain purple water loan funding is still in the negotiation stage with the State (in other words, the District's lawsuit is just but one of multiple issues being addressed before the loan is even approved);
2. The City chose to offer the overall wastewater system revenue stream as security for the loans, which includes District funds, without first discussing the matter with the District or seeking its approval to pledge its revenue as security for the loan; and
3. There is no year end deadline.

Has there been any changes to that advisory from the State? Did the City offer to pledge the District's revenue as security for the loan? Also, please explain how the City could pledge the District's revenue without the District's permission?

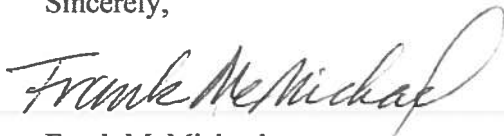
The District also previously mentioned several issues and posed several questions about the purple water program. Those issues have not been addressed nor the questions answered. As these matters impact the District and the entire wastewater system and all rate payers, we would appreciate responses. Those questions include:

1. Does the City intend to seek contribution or charge the District in some manner for an allocated share of the purple water infrastructure or operating costs, including any increased treatment costs due to the recycled water process?
2. If so, does the City intend to share revenue from the purple water program with the District or does the City claim all rights to the recycled water, including its revenue, as previously claimed? (I refer the Council to former Mayor Rodin's letter of October 13, 2011, that was attached to our attorney's letter of September 20, 2016)
3. Mr. White's April 2016 presentation to the District Board indicated that the City already had obtained funding through loans (\$25,564,000) and grants (\$2,090,191 and \$9,996,000) for the purple water program and intended to seek additional funding from both sources (I refer the Council to Mr. White's power point presentation that was attached to our attorney's letter of September 20, 2016). Apparently, contrary to Mr. White's representations to the District Board, the City did not in fact receive the loans. However, no representative from the City has attempted to make the record straight on the grant status or additional funding, so the District remains unclear. Therefore, the District asks:
 - a. Has the City received the grant money or commitment for funding?
 - b. Is receipt of the grant money conditioned on anything?
 - c. Have the additional loans and grants been applied for and, if so, what are the amounts and what is the status of those funding efforts?
4. Further, it is the District's understanding from Mr. White's presentation that the proposed purple water project would only allow for use of a portion of the treatment plant's treated discharge. So that the District Board can be better informed:
 - a. How does the City propose to deal with discharge of the remaining water?
 - b. As you know, the State Water Resources Control Board placed a cease and desist order on further discharge from the plant because of nitrate and ammonia issues. If the intent is to discharge the remaining water into the Russian River, how does the City propose to handle the state's restrictions relating to the nitrate and

- ammonia issues? If the intent is to otherwise discharge the remaining water, how and where does the City plan on doing that?
- c. Also, we understand the recycled water will be used on farms, parks, the golf course, etc. Since the need for water is greater in the warmer months than wetter months, what does the City intend to do with the plant's treated discharge in the wet months when the warm weather customers presumably can't use all or a portion of their contracted amount?
5. It is apparent from the Council's October 19, 2016, agenda (Agenda Summary Report for item 3.b.) that the District's lawsuit (and the City's counter lawsuit) is NOT the only thing holding up funding of the loan by the state. Therefore:
 - a. What other matters are holding it up?
 - b. What contingencies or conditions has the state placed on funding the loan or indicated will be conditions of funding the loan?
 6. Finally, your agenda states that the loan funding will also be conditioned on an agreement between the City and District concerning the purple water program (last sentence of the first paragraph of page two of the summary report indicated above). The City applied for the loan in November 2015. In April of this year, the City made a presentation the District Board regarding purple water and counter sued the District in June. The City's counter lawsuit was the first time the District was informed that the lawsuit impacted the purple water loan. Equally confounding, the noted October 19, 2016 agenda item for the City Council is the first time the District became aware that an agreement between the District and the City on the purple water project is a condition of funding. Only by reading the Council's agenda packet did we become aware of this. There had been no communication from the City about this need. Therefore,
 - a. Why did the City not indicate to the Board during the April presentation that the lawsuit impacted the loans from the State and why was the Board not informed that an agreement between the City and the District was a condition of funding?
 - b. Why did the City wait until nearly one year after it applied for the loan to indicate to the Council and the public that the District's involvement or agreement on the project was required when the agreement was a condition of the loan?
 - c. Exactly what type of agreement does the state need or find acceptable?

Again, the District would appreciate responses to these questions so we may understand the impact on the District and plan accordingly. Certainly, we all need to be fully informed about these matters in order to work cooperatively and move forward with the best interests of our rate payers in mind.

Sincerely,



Frank McMichael
District Manager



October 27, 2016

Frank McMichael, District Manager
Ukiah Valley Sanitation District
151 Laws Avenue
Ukiah, CA 95482

SENT BY EMAIL (dm@uvsd.org) AND REGULAR MAIL

Re: Questions regarding recycled water project funding

Dear Frank:

I am responding to your letter because the City Council will not meet until November 2, 2016, and I want to respond to your questions as quickly as possible. I welcome your questions and hope to continue this discussion in an open and transparent manner so that the ratepayers in the District and the City have an opportunity to be informed about these decisions that will have a major impact on them and their sewer rates.

I have seen the letters written by the District's lawyers offering to meet and discuss possible solutions to the barrier the District's lawsuit has created, jeopardizing the receipt of the low interest loan and grant which has been reserved for the City's four phased recycled water project ("Project"). The City appreciates the District's apparent willingness to discuss the problem. The City does anticipate that this would be a first order of business for the City and District ad hoc committees, once they agree on the terms for conducting negotiations. However, the City's request that the District dismiss its lawsuit and focus, instead, on attempting to resolve its disagreements with the City through negotiations, was not proposed primarily because of the lawsuit's impact on the Project. That is certainly an important and unfortunate consequence of the litigation, but the City never proposed that the District dismiss its lawsuit until the loan was finalized and, then, refile it. Instead, the City proposed dismissing the lawsuit to focus the time and expense consumed by the litigation on resolving the District's disputes with the City. Since neither City nor District ratepayers were consulted before the District filed the lawsuit or about the District's long-term plans for providing sewer service in the Ukiah Valley, the City Council believes those negotiations should be open to the public and should produce frequent reports to City and District ratepayers on their progress.

Your letter suggests that the District Board has been ignored and not kept informed as the Project was developed. However, the City has included the District since the project's inception. The District participated in the preparation of the original RFP for the master plan of the system, helped select the

current engineering consultant, and has received staff presentations at major milestones, including the recent acknowledgement of the City's eligibility for Proposition 1A funding.

To clarify the status of the City's application for Project funding, the City has expended over \$1 million of City funds to obtain the engineered plans for the Project, certified a mitigated negative declaration under CEQA and submitted its application for \$25,564,000 from the Clean Water State Revolving Loan Fund (CWSRF) and \$9,996,000 in grants from the Water Recycling Funding Program (WRFP) to construct Phases 1-3 of the Recycled Water Project.

According to the Program Manager for the CWSRF loan and WRFP grant programs, the WRCB has received a complete funding package from Ukiah as shown on the Table.¹ Ukiah's Project qualifies for 1% financing and is also eligible for Prop 1 grant funding. Both funds, however, are obligated at time of contract. The District's lawsuit currently prohibits WRCB from completing its Legal and Financial Reviews. Both of these reviews are at a point that they need this issue to be resolved to complete their assessment. Once the sewer fund is secure without the burden of the lawsuit, WRCB has the numbers it needs to finalize its financial review. Its legal staff will also need to complete its review. With financial and legal approval, management will likely authorize preparation of the contract. In summary, the lawsuit has WRCB on hold.

As currently submitted to WRCB, the Project is proposed as a wastewater treatment rather than a water project to be funded by the wastewater system. Based on several communications on behalf of the District Board, the City assumed that the District would not approve participating in the funding. As a result, it adopted a Pledge Resolution as part of its application to the WRCB which only pledged to repay the loan funds in Account No. 830, which is a City-only wastewater system capital project fund. However, since the District's lawsuit will prevent finalizing the loan unless the City and the District can reach an agreement satisfactory to the WRCB, the City would like to include in those negotiations a discussion of District participation in the repayment of the loan. The Project clearly benefits both City and District ratepayers.

As a matter of law, the City owns the recycled water produced by the WWTP, but if recycled water is produced by the WWTP and financed jointly by the City and the District, any revenue produced from the sale of recycled water would be credited to the sewer system and shared by the City and the District. When Rick Kennedy was the District Manager, the District Board understood that the recycled water system is unlikely to produce significant revenue in comparison to Project costs and that the primary benefit of the system is to the wastewater system by providing an alternative to direct discharge to the Russian River. (See below answering your questions concerning how the Project will avoid these discharges.)

¹WRCB posts on its website all of the recycled water applications it has received and the requested funding amount and sources. One application allows WRCB to provide available funding from multiple loan and grant sources. The Table is posted at http://www.waterboards.ca.gov/water_issues/programs/grants_loans/docs/appstatusweb.pdf.

At your April 16th meeting Mr. White explained how the City is proposing to deal with all of the issues raised in Question 4 (UVSD video @ minutes 26-35). At that time, he explained that the proportionality of discharge, percolation, and reclamation as well as storage requirements were yet to be determined. He stated that these calculations were the subject of a forthcoming "water balance study" that was to be conducted by Carollo Engineers. Since that time, the water balance has been completed and Mr. White has offered to present its results to the Board at a subsequent meeting, but the UVSD Board declined his offer. Staff remains available to present and discuss at the request of the District.

The completed water balance shows that Phases 1-3 of the recycled water system will reduce the need for river discharge by 60%, and the addition of Phase 4 will reduce the need to discharge approximately an additional 20% for a total reduction of nearly 80%. The City plans to seek funding for Phase 4 as Phases 1-3 are being constructed. Mr. White also explained that the City's approach for handling the remaining 20% will be to reduce the amount of inflow to the plant by addressing Infiltration and Inflow (I&I) (see UVSD video @ 27:11). In regards to disparity in the timing between inflow and irrigation demand, Mr. White explained that a major component of the project is the creation of storage (see UVSD video @ 25:40 and 31:58). Implementation of Phases 1-3 will require the construction of 66 MG of additional storage.

Item 6 in your letter asks three questions: (1) why Mr. White didn't tell the District Board about the impact of the litigation on the Project loan as part of his presentation to the Board in April 2016, (2) why the City waited a year to indicate that an agreement with the District was a loan requirement, and (3) what type of agreement is acceptable.

The short answers are (1) the City was not told definitively by WRCB staff until June 28, 2016, that the WRCB could not enter a loan agreement as long as the District's lawsuit was pending and specifically its cause of action to rescind the Participation Agreement and the Financing Agreement, (2) the City didn't know it would need an agreement with the District until after June 28, 2016, and (3) a City/District agreement must provide assurances to the WRCB that the District lawsuit will not jeopardize the City's financial ability to repay the loan.

Given your questions concerning how promptly the City has alerted the District to the impact of the lawsuit on the Project funding, I would also note parenthetically that according to your letter, the District learned of this problem from the City's cross-complaint, filed on June 30, 2016, but the District did not offer to seek a resolution of this problem until Don McMullen wrote his letter to the City Council on September 20, 2016. I would urge the District to begin focusing on solving problems in the future rather than devoting so much effort to assigning blame for decisions that were made in the past.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Sage Sangiacomo".

Sage Sangiacomo, City Manager