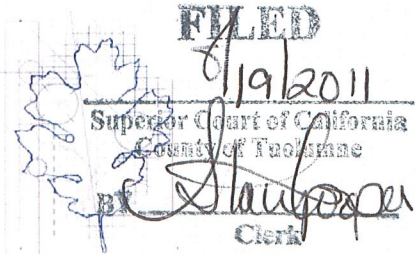


8/22/11

TEDA, Inc.

TUOLUMNE ECONOMIC DEVELOPMENT AUTHORITY, Inc.

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August 19, 2011

Honorable Eric L. DuTemple
Presiding Judge
Tuolumne County Superior Court
60 North Washington Street
Sonora, California 95370

Re: 2010-2011 Grand Jury Civil Report

Dear Judge DuTemple:

This responds to the June 23, 2011, letter signed by your Court Support Division Manager by which we were directed to respond to the 2010-2011 Grand Jury Civil Report regarding mismanagement at the Tuolumne City Sanitary District (TCSD). We do not agree that we are required to respond, as explained below, and our response should not be considered a submission to the court's jurisdiction in this civil matter. However, due to the numerous errors contained in the report and our interest in helping the public hear our side of this matter, we have chosen to voluntarily respond to help expose the truth.

The Tuolumne Band of Me-Wuk Indians is a federally recognized Indian tribe. As such, the Tribe and the Tuolumne Economic Development Authority, Inc. (TEDA, Inc.), its federally chartered tribal corporation, are not subject to the jurisdiction of the county or its courts in civil matters. In fact, a detail missing from the grand jury report is that the Tribe enacted a resolution authorizing some TEDA, Inc. representatives to assist the grand jury in its civil investigation, a copy of which was provided to the secretary for the grand jury, Carol Sheppard, when she conducted the interviews. TEDA, Inc. simply is not a department, agency or corporation subject to the state's civil laws.

We are in agreement with two general conclusions of the report. First, we agree that TCSD is horribly mismanaged, and that this is the primary source of the district's problems. We also agree that the appropriate remedy is for the Tuolumne Utility District (TUD) to take over operations and management of TCSD. However, we do not agree that we should renegotiate anything with TCSD, and we believe the suggestion that we renegotiate with TCSD is self-contradictory. If TCSD is mismanaged beyond salvation to the point where the grand jury believes it needs to be dissolved and subsumed by TUD, why would anyone want to negotiate anything with TCSD? This makes no sense.

Current and continued mismanagement is exemplified by the district's continued regulatory violations. For example, the district was cited by the Water Resources Control Board 76 times between 2005 and 2009 for operational violations. That demonstrates a management problem.

We also disagree with the suggestion of the report that the TCSD facilities were satisfactory before the Tribe's casino hooked up for service, that the new sewer plant primarily benefits TEDA, Inc. (F2), and that the Tuolumne community is paying for the improvements. The sewer system was out of compliance with clean water mandates before the casino was connected. The town's infrastructure is so antiquated TCSD still has problems with infiltration and inflow. The grand jury report characterized TCSD's facilities as encumbered by the casino, when in fact it was the Tribe that installed new infrastructure in town and paid for the new plant, all without fee increases to the town's residents. The new fee increases are to pay for TCSD's mismanagement.

As the Tribe installed and turned over new infrastructure to the district, the district engineer revalued TCSD facilities and raised connection fees accordingly, which the Tribe then paid. In other words, each time the Tribe contributed to the TCSD value, connection fees were raised based on the new value. The Tribe did not object and was willing to make these significant and increasing contributions to the district for the benefit of the Tuolumne community.

That is what happened just before the Tribe entered into a contract with TCSD to pay a "one time connection fee" of \$4,265,000 for sewer service at its new casino, included as Appendix B to the grand jury report. The \$4.265 million was the estimated total cost of the new sewer plant, as detailed in the district's master plan. The grand jury glossed over this agreed-upon contract between the parties, and instead focused on the terms of an unsigned draft memorandum of understanding written by TCSD's former engineer as part of his efforts to justify the district's request for more money to pay cost-overruns at the new sewer plant.

The engineer's MOU sought to impose an additional connection fee, contrary to the express contract. That MOU was attached to the grand jury report as Appendix C. There were good reasons why the MOU was rejected by both parties and the former engineer was later excluded by the parties during negotiations leading to a binding settlement agreement.

The grand jury was provided but apparently chose to ignore a spreadsheet of the "data" the former engineer used to "re-calculate" the connection fee to justify his attempt to charge TEDA, Inc. an additional \$2.2 million on top of the "one-time" connection fee of \$4.265 million it had already paid. A copy of the spreadsheet is attached. That spreadsheet contains a compilation of the former district engineer's "data" that suggested the casino was contributing more sewage discharge to the TCSD system than was coming into the district's plant from all sources, a physical impossibility. The areas in yellow highlight show those months that the district engineer claimed Black Oak Casino, designated as "BOC," was generating more sewage discharge than was coming into the waste water treatment plant (designated as "WWTP Influent") from all sources. Those figures generated by the district engineer were used to justify the terms of the draft MOU and a later bill for \$2.916 million.

The memorandum was rejected by the parties and replaced with an invoice from TCSD for \$2.196 million, which amount was paid and accepted by the district for TEDA, Inc.'s future capacity at the new plant. The paid invoice is included in the grand jury report as Appendix F. Again, no new charges were imposed on Tuolumne customers, and TEDA, Inc. paid the higher rate for future connection fees based on the improved value of TCSD's infrastructure, values that increased based solely on contributions made by the Tribe.

As sewer plant construction costs increased, the engineer's inaccurate figures were resurrected in the form of a \$2.916 million bill, included as Appendix G to the grand jury report. Again, this bill contradicted the terms of the signed contract and was fabricated to justify extracting more from the Tribe for additional cost overruns and to pay exorbitant monthly fees of the district's engineer, which at that time had reached \$18,000 per month.

Both parties recognized the district's former engineer lacked credibility and could not be relied upon for meaningful discussions, so he was excluded from the negotiations by consensus, contrary to finding F7. Recent test results on sewer "strength" from tests independently conducted by TUD supports that conclusion. TEDA, Inc. had reason to believe the test results from TCSD's "strength" tests were inaccurate because samples were collected in violation of industry standards, called the "Standard Methods." That is why we installed a sampling machine and conducted a parallel testing program, as referred to in the report under "Flow and Strength Again." The results suggested TCSD's test results produced under the district engineer's supervision were unacceptably high. TUD's recent testing has confirmed those results.

Coincidentally, we then learned independently from reliable sources who gave sworn statements under oath that TCSD was manipulating samples to create the appearance that the casino's sewer strength was higher so TCSD could charge the casino more for sewer service. For some reason, that is not explained in the grand jury's report.

We deny any suggestion that TCSD board members with whom we negotiated the binding settlement agreement were somehow aligned with TEDA, Inc.'s positions due to some business relationship with TEDA, Inc., as stated in F6. Our negotiations were drawn-out and often contentious, and the resulting settlement was completely fair to both sides.

During negotiations that led to the binding settlement agreement, test results produced by a lab selected by the district's former engineer suggested the casino's sewer strength was higher than that produced by a tomato sauce factory. This was the testing referred to as a "third party laboratory" in the grand jury report under the title "Sampling Differences." Despite results that appeared unrealistically high, the parties had agreed previously to rely upon those results to fashion a formula for sewer service.

As we explained to the grand jury, once TUD began evaluating whether it should take over management and operation of TCSD, it began to conduct its own "strength" tests of sewer discharge from the casino. Not surprisingly to us, TUD's test results are very similar, if not lower than, those conducted by the casino under its parallel testing program. TUD's results consistently show a much lower "strength" than the "third party laboratory" referred to in the

grand jury report, but the grand jury chose to disregard that information. The single common factor in testing that produced higher results was involvement of the district engineer, the same engineer who produced data that showed the casino was discharging more sewage than all TCSD customers combined.

The grand jury report suggested that by implementing water conservation measures as requested by the district engineer, a measure that decreased its flows into the TCSD sewer system, the Black Oak Casino somehow increased problems for the sewage plant. In fact, that was the former district engineer's theory to justify his attempts to re-calculate our connection fees. However, even the district's current engineer agrees that a lower water discharge resulting in higher "strength" does not increase cost to the district to process the sewage. That suggestion of the grand jury report is simply mistaken.

Sincerely,



Rhonda Standage, President

TABLE 1-2
BOD AND SOLIDS LOADING
COMPARISON OF BOC WASTEWATER AND WWTP INFLUENT

Period	Average Flow, gpd		BOD ₅ , mg/L		BOD ₅ Loading, lbs/day		TSS, mg/L		TSS Loading, lbs/day	
	BOC	WWTP Influent	BOC	WWTP Influent ^a	BOC	WWTP Influent	BOC	WWTP Influent ^a	BOC	WWTP Influent
Jan-2007	65,426	199,145	550	168	300	279	384	123	210	204
Feb-2007	66,543	336,489	581	361	323	1,014	680	174	378	489
Mar-2007	63,573	267,881	399	548	212	1,225	149	199	79	445
Apr-2007	68,117	182,133	347	225	197	342	176	133	100	202
May-2007	65,987	177,700	394	243	217	360	138	116	76	172
Jun-2007	50,317	175,730	918	245	385	359	501	161	210	236
Jul-2007	48,229	171,468	751	202	302	289	697	105	281	150
Aug-2007	48,574	176,674	609	112	247	165	337	116	137	171
Sep-2007	50,506	190,970	765	263	322	419	515	99	217	158
Oct-2007	38,550	173,884	898	389	289	564	804	276	259	401
Nov-2007	41,086	177,090	604	394	207	582	353	455	121	672
Dec-2007	42,131	245,742	1,338	195	470	400	715	56	251	115
Jan-2008	47,667	415,732	638	492	254	1,707	216	487	86	1690
Feb-2008	50,398	377,893	1,105	473	465	1,492	709	135	298	426
Mar-2008	50,944	236,094	442	276	188	544	486	221	207	435
Apr-2008	48,240	217,547	954	380	384	690	1133	255	456	463
May-2008	45,659	223,577	520	252	198	470	1155	405	440	756
Jun-2008	44,239	221,090	590	311	218	574	1538	200	568	369
Jul-2008	42,022	245,095	581	242	204	495	474	413	166	845
Aug-2008	42,686		468	206	167		493	199	176	
Sep-2008	39,736	270,016	730	373	242	841	611	397	203	895
Oct-2008	37,331	202,433	1,700	384	530	649	857	506	267	855
Nov-2008	42,485	249,613	1,031	612	366	1,275	1011	443	358	923
Dec-2008	37,580	273,419	1,283	347	402	792	828	390	260	890

^a For WWTP influent, two results are reported per month with sample dates approximately two weeks apart. The WWTP influent values shown here are associated with the second sample collected each month because the sample dates for these values are closest to BOC sample dates.