



Tuolumne Utilities District Report

Water Under the Bridge

June 30, 2020



TUD Headquarters, Sonora

Photo: Luann Hopkins



Tuolumne Utilities District Report

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Summary

The 2019-2020 Grand Jury received citizen complaints regarding potential conflicts of interests with individual members of the Board of Directors (Directors), and whether it is appropriate for Tuolumne Utilities District (TUD) to participate through membership in a private organization that is not subject to open public meeting laws or public transparency protocols. Additionally, complainants were concerned about the overall financial health of the TUD, and a water supply agreement for which terms were seemingly difficult to interpret, thus requiring further review.

This report covers elements of the Rate Study FY16-21, the Mountain Springs Golf Course (Teleli Golf Club) Water Supply Agreement, District Water Rules and Regulations, and actions taken by a Director with potential conflicts of interest issues. This report includes findings regarding these matters, with recommendations for improvement.

Glossary

1:100 Rainfall Year	The estimated probability of a storm event happening in any given year. A 100-year event has a 1 percent chance of occurring in any given year
Acre Feet	An acre foot of water equals about 326,000 gallons, or enough water to cover an acre of land 1-foot deep
Annual Inflator	A formula to determine how much prices have increased over the last 12 months
Capacity Charges	Fees that are charged when a residential or commercial facility is connected to District water or sewer system to directly pay for growth-related capital improvements or debt service
CIP	Capital Improvement Plan. A short-range plan which identifies capital projects, schedule, and financing to complete the projects
Connection Fees	The actual cost to install a new service connection
Dry Year Land Bank	An area of land that is set aside for future use

FPPC	Fair Political Practices Commission. A five-member independent nonpartisan commission responsible for administration of the Political Reform Act, ensuring public officials act in a fair and unbiased manner in governmental decision-making
FY	Fiscal Year (July 1 - June 30)
NPDES	National Pollution Discharge Elimination System. A provision of the Clean Water Act that prohibits discharge of pollutants into waters of the U.S. unless a special permit is issued by the EPA, a state, or a tribal government
MID	Miner's Inch Day. A term used in water measurement. One miner's inch flowing for one day is equivalent to 1.5 cubic feet per minute or 11.22 gallons per minute
Raw Water	Untreated water to be utilized for purposes other than human consumption. This water is generally provided through the District's ditch system
Recitals	Statement of fact as they pertain to an agreement
Reclaimed Water	Also called recycled or wastewater reuse, is wastewater that is treated and used for purposes such as irrigation
Septage	Excrement and other waste material contained in or removed from a septic tank
Supplemental Water User	A user of raw water prior to January 1, 2016, that contracted annually with the District for water determined to be in surplus of then needed supply
TEDA	Tuolumne Economic Development Authority. Owned and operated as a component unit of the Tuolumne Band of Me-Wuk Indians for economic development purposes
TCBC	Tuolumne County Business Council
TUD	Tuolumne Utilities District

Methodology

The 2019-2020 Grand Jury interviewed several individuals, and reviewed hours of TUD Board meeting archived videos. The Grand Jury studied, in depth, the documents listed in the bibliography.

Background

The mission of the Tuolumne Utilities District is to “provide responsible water and wastewater services for our customers with great customer service in a socially, financially, and environmentally responsive manner at a fair value.”

The TUD was formed in 1992 by the action of Tuolumne County voters. TUD receives its water under a 1983 contract with Pacific Gas & Electric (PG&E), which sold the water system, excluding water rights, to Tuolumne County, the system purveyor prior to TUD.

Between 1992 and 2008, TUD acquired over 17 systems, including water and sewer systems throughout Tuolumne County and within the City of Sonora. The conditions of the acquired systems varied widely; most were in a state of disrepair and/or regulatory non-compliance, and/or financially challenged.

TUD provides raw water, treated water, sewer, septage, and reclaimed water services to approximately 14,000 customers throughout Tuolumne County and the City of Sonora. Sewer service is provided to approximately 6,000 residential and commercial accounts, and 587 untreated, or raw water accounts. In addition, TUD provides regional sewer services to subscriber agencies such as the Jamestown Sanitary District and the Twain Harte Community Services District. TUD owns and operates 11 water systems and 5 sewer systems.

TUD has an estimated treated water service population of 29,000, with an additional 2,000 served through wholesale service via the Muller Water Company, Sleepy Hollow Water Users Association, Sonora Meadows Mutual Water Company, and the Sonora Water Company. An estimated 24,000 people are served by TUD's sewer collection, treatment, and/or reclamation services.

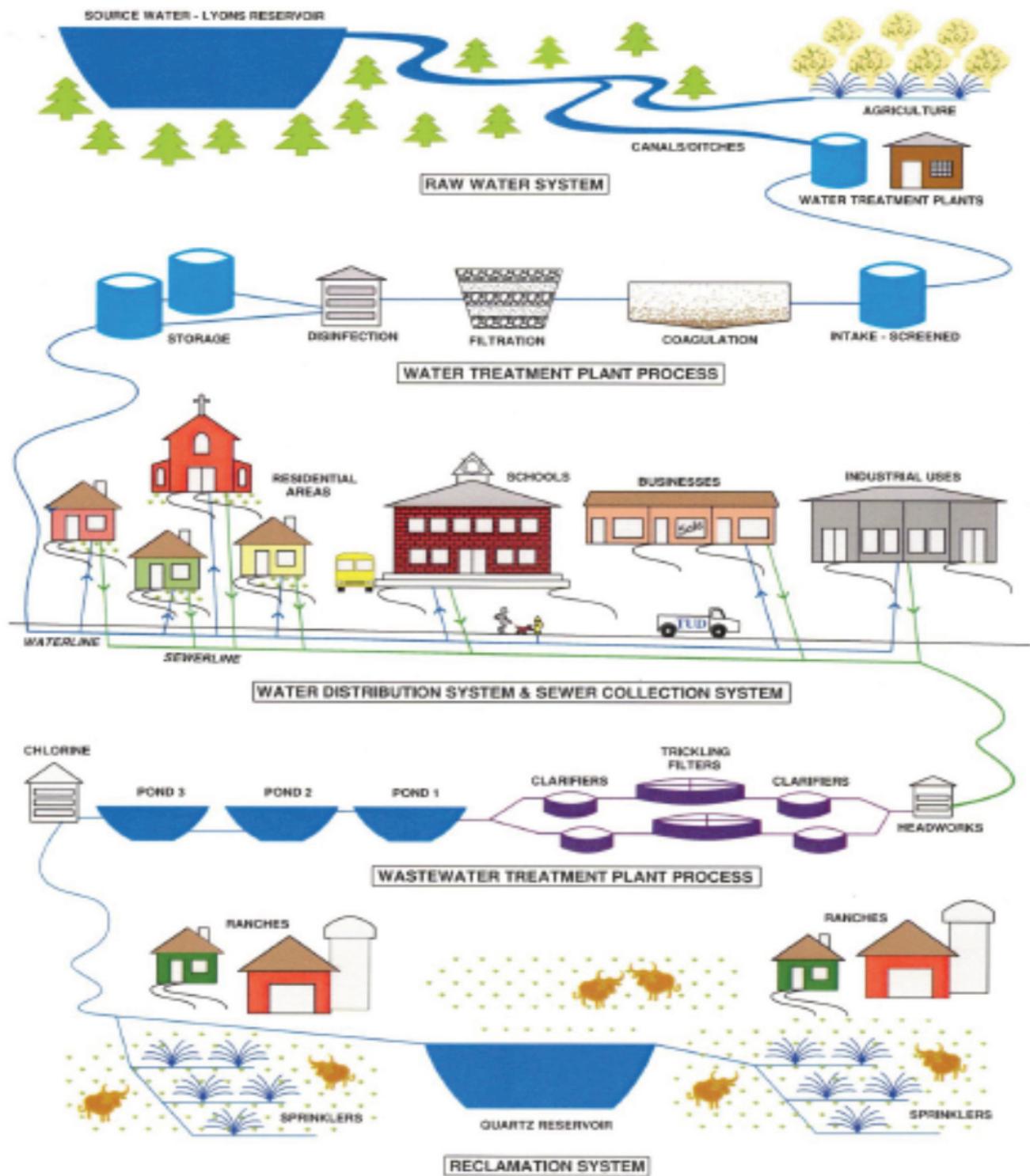
Almost 95% of the water TUD distributes originates from the South Fork Stanislaus River through PG&E Lyons and Strawberry (Pinecrest) Reservoirs. PG&E owns and operates a canal and flume system to deliver water from Lyons Reservoir to the Phoenix Powerhouse. TUD owns and operates a total of 70.4 miles of ditch, flume, pipe, and tunnel infrastructure that diverts raw water from the PG&E system. TUD's raw water system serves various classes of customers including agricultural and supplemental; ditch domestic use (residential); commercial and industrial; resale to other water agencies; and flat monthly rate users.

TUD's treated water system includes various water storage and delivery facilities, transmission pipelines, treatment facilities, pump stations, and distribution pipelines. TUD operates and maintains 4 water reservoirs, 14 treatment plants, 78 treated water storage tanks, 51 transfer and booster pump stations and 330 miles of potable water distribution pipelines. TUD's treated water serves classes of customers including residential, commercial, industrial, fire, institutional, and irrigation.

TUD's sewer system provides sewer collection and treatment services, and reclaimed water for agriculture and irrigation. The collection system is composed of approximately 140 miles of pipeline ranging in size from 2-inch diameter up to 18-inch diameter and 29 sewer pumping stations. TUD operates and maintains one primary level treatment facility and one secondary level regional treatment facility. Treated sewer effluent is stored in Quartz Reservoir and is distributed for agricultural uses on 672 acres of lands around the Jamestown area.

The following graphic represents a simplified view of the water and sewer distribution system.

Tuolumne Utilities District Water & Sewer Systems



Source: Tuolumne Utilities District

Discussion

The 2019-2020 Grand Jury received citizen complaints regarding potential conflicts of interest with a Director (who shall be identified as “Director B” throughout this report), and whether it is appropriate for TUD to participate through membership in a private organization that is not subject to open public meeting laws or public transparency protocols. Additionally, complainants are concerned with unnecessary expenditures considering the imposed ratepayer increases (2016 - 2020), overall financial health of the TUD, and a water supply agreement for which terms were seemingly difficult to interpret, thus requiring further review.

FY 16-21 Rate Study

The purpose of the Rate Study FY16-FY21 was to establish objectives for improving TUD’s financial performance over the five-year period from Fiscal Year 2016 - 2021. Correcting revenue shortfalls in the areas of operations, maintenance and capital improvement projects was the main objective of the Study. The Water Enterprise Fund, which is designed to provide funding for all water-related expenses, was severely underfunded at the time of the study and identified as a ‘shortfall that must be rectified’. Supporting data from the 2020 Operational Budget show that a Water Fund of \$1.3 million and a Sewer Fund of \$930,000 have been established, from a start of zero dollars in 2015. The shortfall has been addressed through a combination of many factors, including, but not limited to, the following:

- ▶ Adopted annual rate increases
- ▶ Increasing number of customers
- ▶ Organizational savings through efficiency measures
- ▶ Vacant positions
- ▶ Deferred maintenance
- ▶ Timing and prioritization of capital and emergency projects
- ▶ Receipt of grant funding

The Grand Jury recognizes significant progress with the establishment of the Water Enterprise Fund.

However, some areas of concern were identified and evaluated by the Grand Jury to determine if progress was made toward objectives identified in the 2015 study, noting that ratepayers are in the final year of the five-year increase.

One concern is that TUD is a recipient of Federal and State grants and loans. Under these programs, “the District is required to establish a system of user charges that recovers operations, maintenance and replacement costs from users on a basis proportionate to use. Guidelines and state laws also require a fair and equitable apportionment of costs based on customer type.”

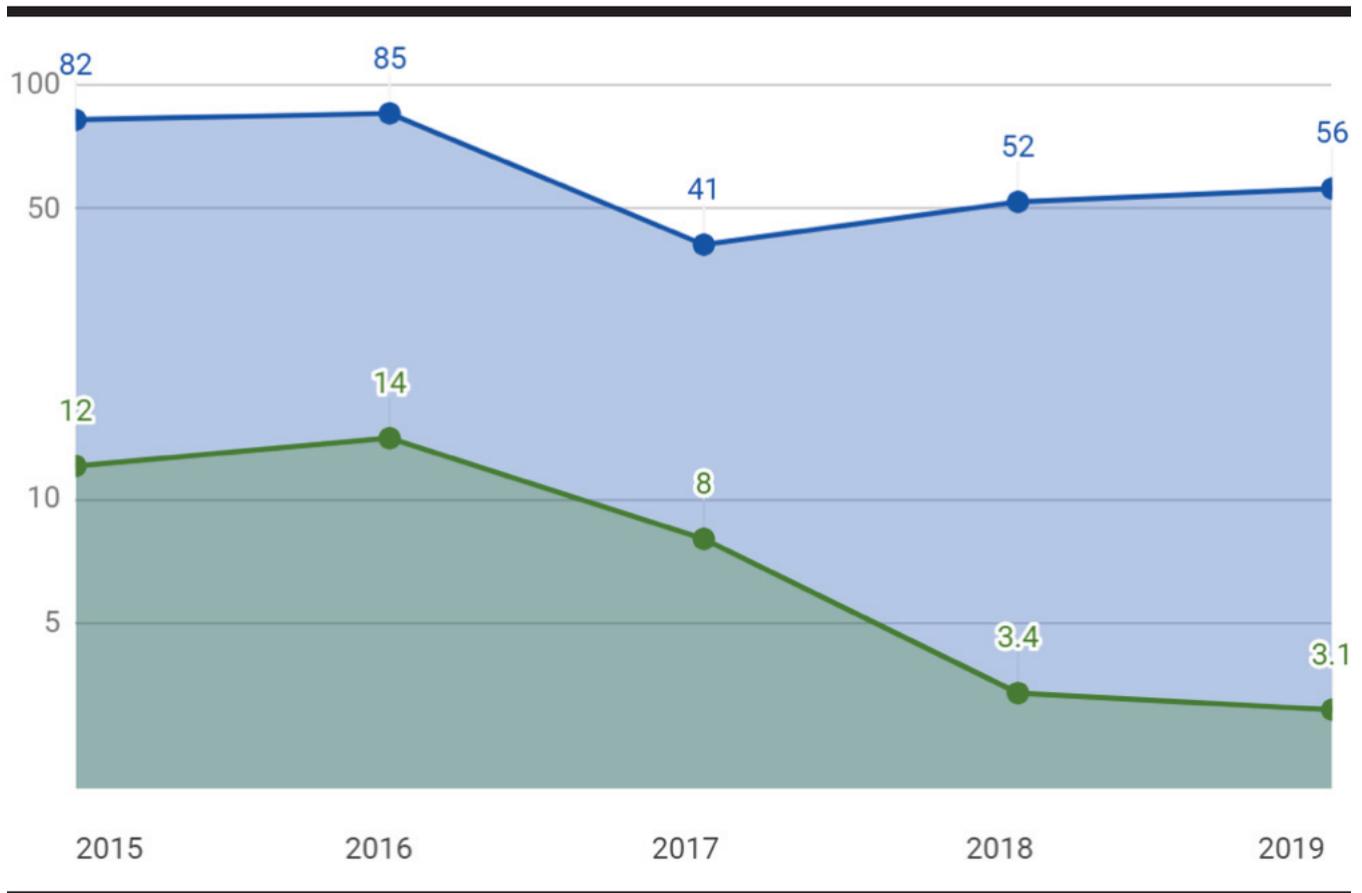
When asked if TUD was any closer to establishing a system in which user charges equal all utility costs, including capital improvements and replacements, TUD decision-makers state that they are closer than they were five years ago, but the magnitude of infrastructure replacement could be in the hundreds of millions of dollars. While nowhere near the needed level, they have created a Capital Improvement Plan FY20-24 (CIP) fund of approximately \$2 million since 2015, when their CIP fund was zero dollars.

Secondly, raw (untreated) water customers have a separate rate structure, different from treated water customers. Some raw water users are metered while others are unmetered, contributing to a \$305,000 revenue shortfall.

A grant for the purchase of meters has been secured by TUD for unmetered users, and that work is partially completed. Planned raw water maintenance projects have been deferred because of the shortfall. Over the five-year period, a shortfall still exists because unmetered raw water users have yet to be charged for their proportionate share to offset raw water use expenses.

Lastly, the Rate Study projected that revenue from capacity charges/connection fees would drop and flatline over the five-year period. Regarding actual new water and sewer connections, TUD states that the number increased initially, then fluctuated from 2016 -2019, respectively: 82, 85, 41, 52, and 56. However, TUD’s actual annual connection fee revenues for water and sewer from 2015 through 2019 only declined steadily, from \$1.6 million, \$1.2 million, \$847,000, \$304,000, and back up to \$313,000.

New Users and Revenue Collected - Figure 1.0



Source: Ashley Beighley

Other than slow rates of growth and development in the county, no other explanations were given for the revenue shortfall. According to Figure 1.0, even the increase in new customers did not result in an increase in revenue, suggesting that capacity/connection fees are still too low and not keeping pace with the demand.

The last comprehensive update to connection fees was done in 2014, with the involvement of a public advisory committee consisting of two TUD Directors, TUD staff, the City of Sonora, Tuolumne County Board of Supervisors, Board of Realtors, Twain Harte CSD, and Tuolumne County residents. The committee recommendation for updating connection fees, including an annual inflator, was ultimately adopted by the TUD Board of Directors. Connection fees are charged for all new water and sewer connections, with collected funds deposited into a restricted water or sewer capital fund that can only be used for enhancing system capacity. Staff could not recall any other increases in capacity/connection fees prior to the five-year increase in conjunction with the Study. It is noted that there is an annual inflator over the five-year study, yet the revenue decreased significantly over the five years, from \$1.6 million to \$313,000, as shown in Figure 1.0.

The Grand Jury learned that, prior to the hiring of the new General Manager, there was an emphasis on keeping capacity/connection fees down, with the goal of enticing new business and development to Tuolumne County. With the new policy of screening requests through the General Manager, staff is not approached on a one-on-one basis with such requests. With only the recent increases in capacity/connection fees and previous practice of low developer fees, it is likely that capacity/connection fees had not kept pace with development, contributing to low revenues from this source since the formation of TUD. This does not, however, explain the discrepancy between the number of new connections and overall amount of revenue collection in the past few years.

Mountain Springs Golf Course Water Supply Agreement

The Tuolumne Utilities District and the Tuolumne Economic Development Authority, Inc. (TEDA), the economic development component of the Tuolumne Band of Me-Wuk Indians, negotiated a mutually beneficial agreement to add 68 acres of irrigated area to their Regional Reclamation System. The acreage includes golf course greens and fairways associated with the newly purchased Teleli Golf Club, previously called Mountain Springs Golf Course, and previously owned by the Mountain Springs Development LLC. The source of the reclamation water is treatment plant effluent from TUD and the Jamestown Sanitation District which is stored in Quartz Reservoir. The details of the agreement were prepared by TUD staff and presented at the regular board meeting of February 26, 2019, stating that the District was confronting three issues related to the sustainability of its Reclamation System:

- ▶ Insufficient acreage of available lands to empty Quartz Reservoir following a high rainfall year.
- ▶ Insufficient volume of reclaimed water on low rainfall years to satisfy irrigation demands of existing users.
- ▶ Long-term assurance that existing reclaimed water users will continue to irrigate.

The staff presentation also raised the following points:

- ▶ The State Water Board requires that the District be able to accommodate a 1:100 rainfall year without the need to discharge treated wastewater into Woods Creek. The District does not currently have a permit to allow for such a discharge.

- ▶ Although the District’s storage facilities are adequate to contain the estimated inflow during a singular 1:100 rainfall year, there is insufficient land to fully empty Quartz Reservoir prior to the start of the next rainfall season.
- ▶ To fully empty Quartz Reservoir each year, the District needs to secure the use of an additional 60 acres of irrigable land.
- ▶ The District currently has a deficiency of approximately 75 acres of “dry year land bank” in the form of lands that can be left fallow on most years and only irrigated in years following above average rainfall.

The agreement to serve Mountain Springs Golf Course (Teleli Golf Club) proposes the use of two different water sources, raw water and reclaimed water, to be used in various combinations to mitigate the risk posed by dry years with reduced reclaimed water supply. Staff concluded that the proposed agreement provides the District the needed flexibility to manage its reclaimed water supply and will serve as the template for future agreements with reclaimed water users.

Implementation Costs

The addition of Teleli Golf Club as a reclamation water user requires the construction of pipelines and pump stations to transport reclaimed water from Quartz Reservoir to the Golf Course. The fiscal impact to TUD is estimated to be up to \$500,000 for the cost of reclaimed water conveyance to the point of delivery, with the District having sole discretion on timing and availability. Both parties will collaborate to acquire State Water Board and/or Regional Water Quality Control permits.

Staff did not present an official cost analysis to the board showing how spending district funds of up to \$500,000 on water conveyance to the Golf Course outweighs the cost of developing TUD’s own or other property for recycled irrigation use, but stated that this expense is less than the alternative of purchasing new land or using TUD’s land. TUD confirmed to the Grand Jury that a formal cost analysis of the alternatives was not done; however, the conclusions are based on staff knowledge, experience, and expertise.

Given the five-year rate increases imposed upon the ratepayers (2016-2020) and the District’s commitment to “scrutinize budgets closely to keep expenses down to avoid excess spending,” as stated in the Rate Study, a cost benefit analysis would have been helpful in supporting TUD’s assertion that spending \$500,000 of TUD/CIP money represents a cost savings.

Need for Reclamation Storage

It is unclear how urgent TUD’s need for acquiring additional irrigation areas was, prior to this agreement, as there was no established date for completion, and no money budgeted for the project. Additionally, the sections pertaining to Reclamation/Recycled Water Use in various documents indicated that the District was well positioned to dispose of 100% of reclaimed water, further substantiating their 2014 decision to relinquish the National Pollution Discharge Elimination System (NPDES) permit. The Water Rate Study explicitly states that the District

had remedied their reclamation storage deficit by constructing a 150-horsepower floating pump and 24,000 square feet of dam armoring to utilize approximately an additional 150 acre-feet of storage at Quartz Reservoir.

The Grand Jury recognizes that any opportunity allowing for use of reclaimed water is beneficial for the District and the community at large, as intended with the agreement with TEDA. However, this agreement warrants scrutiny because, according to TUD decision-makers, it is to be the template upon which future agreements of this nature shall be modeled.

The Agreement details how the Teleli Golf Club would use reclaimed water when it becomes available as a main source of irrigation, but the Agreement also includes their continued use of raw water, in the same manner as did Mountain Springs, the previous owners. With no concrete timeline or allocated funds, it is unclear to the Grand Jury how long the Teleli Golf Club will depend upon raw water for its irrigation. Some of the conditions set forth in the Agreement regarding raw water and reclaimed water uses were also questioned by a TUD Director (who shall be identified as “Director A” throughout this report).

Capacity/Connection Fees

One point of confusion comes from the second recital of the Agreement, which states “WHEREAS, THE DISTRICT AND OWNER acknowledge that the sale of the Golf Course property to OWNER does not include the transfer of any rights to DISTRICT’s raw water supplies because capacity/connection fees were never paid for the sixty (60) miner's inch contract for the Mountain Springs Golf Course, such fees totaling of up to over [sic] one million six-hundred thousand dollars (\$1,600,000).”

The Grand Jury understands this to mean:

- ▶ The agreement does not include the transfer of water rights to the District’s raw water supplies. Mountain Springs Golf Course, LLC were not required to pay capacity/connection fees totaling over \$1,600,000, because water rights were not transferred, and water rights will not be transferred to Teleli Golf Club as well.
- ▶ The collection of capacity/connection fees from new users is normally required as per TUD policy; Mountain Springs Golf Course was not subject to capacity/connection fees because they are treated as a Supplemental Water User. When questioned by Director A if Teleli Golf Club would pay capacity fees, the General Manager responded that Teleli would be charged when they receive raw water. (February 26, 2019, TUD Board of Directors Meeting). This statement is confusing because Teleli is currently receiving raw water under the same terms, costs, and conditions as Mountain Springs Golf Course, and is being “treated as a Supplemental Water User.”

During the February 26, 2019, meeting, Director A expressed difficulty understanding the provisions of the agreement and sought clarification on whether capacity/connection fees for raw water would or would not be paid by TEDA, and TUD staff assured the Director that if there is a raw water demand, there would be a capacity fee charged to be able to access raw water. However, the Grand Jury notes that the agreement is confusing to the Grand Jury, TUD Director A, and the public, because Teleli Golf Club already receives raw water supply.

Another question arose regarding Recital 8 in the Agreement, which provides that only after 10 years will a discussion of any volumetric cost of recycled water to TEDA be addressed. There is no definition of volumetric costs in the TUD's Water Rules and Regulations. The Grand Jury is left to interpret it to mean that TEDA will not be charged for any reclaimed water up until that point. The reasoning presented by TUD staff was that they were not prepared to put a value on that water right now, because there was not enough information to do so, "as it's something that's still 10 years in the future." It is unclear to the Grand Jury what this statement means, and exactly why TUD is unable to place a present value on this commodity.

Water Rules and Regulations

TUD Water Rules and Regulations state capacity charges are instituted to ensure that all applicants pay a fair share of the cost burden to provide for essential components of water service infrastructure. They are generally established as a one-time charge levied against developments or new water accounts "In those areas where adequate supply, treatment, storage and transmission facilities are provided by the District, Capacity Fees shall be charged to reimburse the District for its previous investment in the infrastructure with capacity necessary to serve the new connection(s)" (section 3.05.7- Capacity Charges).

Another area of concern is the TUD treatment of TEDA as a Supplemental Water User. TUD has its own system to classify water users and presently does not appear to have a formal classification for the Golf Course which presently uses raw water and in the future will irrigate with reclaimed water for recreational purposes (with a backup of raw water). The lowest priority of access to raw water is supplemental water use, in which surplus water is made available to supplemental water users, primarily for agricultural use and only after other higher priority water needs are met. Delivery of water in this class of customers is not guaranteed by the District and customers pay lower rates than higher priority customers.

The Grand Jury recognizes that this class of customer, Supplemental Water User, does not pay capacity/connection charges. This is because all current Supplemental Water users are existing users and are considered 'grandfathered in'; according to TUD Water Rules and Regulations Section 14.06, Teleli Golf Club would not qualify to continue as such, since the property changed hands. It is unclear why the subject of capacity/connection charges were noted in the Agreement, if TUD was not planning to classify Teleli as a new raw water user, other than to illustrate what could have been (but will not be), charged, because instead, Teleli is to be treated as a Supplemental Water User.

Recital Number 2 Water Rights states: "This Agreement for Water Supply to the Mountain Springs Golf Course confers no right to a water supply, but does confer the ability to receive both recycled water and raw water under the same terms and conditions as the applicable class of customer in the District's most current water Rules and Regulations."

As previously stated, the Grand Jury could not find in TUD's rules and regulations, an applicable class of customer that receives both raw water and recycled water for irrigation purposes to a recreational facility.

Paragraph 6a, Raw Water Delivery, states, "DISTRICT will provide up to 60 miner's inches of

Raw Water to the Golf Course under the same terms, conditions and costs as that class of customers identified as “Supplemental Water Users” in the District’s most current Water Rules and Regulations. Raw Water delivery and use shall be subject to OWNER’S obligation to first take recycled water. If OWNER’s need for water exceeds the amount of Recycled Water DISTRICT can be made available at that time, then OWNER may use Raw Water.”

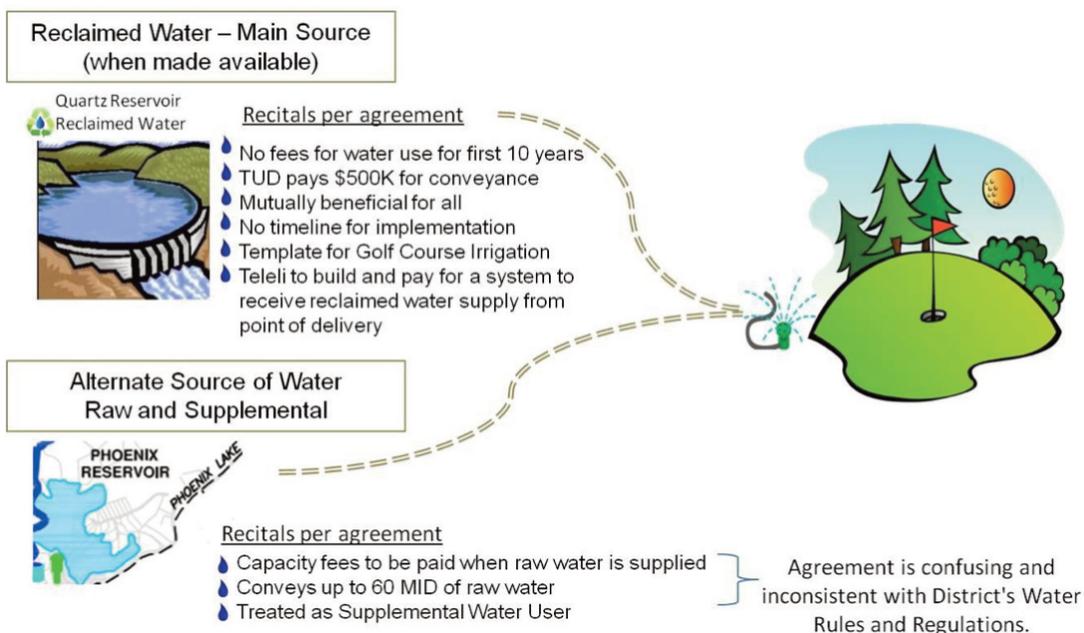
The Grand Jury interprets this to mean that Teleli Golf Club is treated as though it is a Supplemental Water User, although this class of customer is not formally designated. TUD goes one step further and states that raw water may be used if recycled water is not available. Currently, most Supplemental Water Users are ranchers and farmers who are at the end of the water conveyance system and use raw ditch water that is “in surplus of needed supply.” By definition, Supplemental Water Users are not guaranteed by TUD that water will always be available and pay low rates for a water source that is not reliable.

The Mountain Springs Golf Course Water Supply Agreement is inconsistent with TUD Water Rules and Regulations in the following manner:

- ▶ As per TUD Rules and Regulations, no supplemental water users were to be created after January 1, 2016, and the Grand Jury recognizes that the Golf Course property was among those accounts grandfathered in. However, that property changed ownership, subjecting it to the new rules. TUD has allowed TEDA and the Teleli Golf Club to be treated as an existing Supplemental Water User, with no formal classification of their new status for using raw and reclaimed water to irrigate a recreational facility.
- ▶ TEDA purchased the Golf Course on April 23, 2019, excluding the possibility of meeting the 2016 deadline for Supplemental Water Users.

The following graphic illustrates an overview of TUD water supply to Teleli Golf Club.

Teleli Golf Course TUD/TEDA Agreement - Graphic 1.0



Conflicts of Interest

The Fair Political Practices Commission (FPPC), enacted by California voters in the 1974 Political Reform Act, recognizes that conflicts of interest in governmental decision-making by public officials pose a significant danger. Public officials whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.

Under the Act, a public official has a statutory conflict of interest regarding a government decision if it is foreseeable that the outcome will have a financial impact on the official's personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. In fact, preventing conflicts of interest is of such vital importance to the people of California that the Act not only prohibits actual bias in decision-making but also "seeks to forestall...the appearance of possible improprieties."

Some of the most common conflicts of interest arise when:

- ▶ An official has a financial interest in a business entity in which the official has invested \$2,000, or more; and the official is a director, officer, partner, trustee, employee, or holds any managerial position.
- ▶ An official has a financial interest in real property in which the official has invested \$2,000 or more.
- ▶ An official has a source-of-income financial interest in an individual or organization if \$500 or more was received by the official within 12 months prior to the governmental decision being made.
- ▶ An official has a financial interest in any individual or an organization, who has given gifts to the official that total \$460 or more within 12 months prior to the decision.
- ▶ An official has a financial interest in decisions that affect the official's personal expenses, income, assets, or liabilities, also known as "personal financial effects"

Existing FPPC Regulation 18702.2 provides the materiality standards for interests in real property. When property is not explicitly involved in the decision, the materiality standards are provided in Regulation 18702.2(a)(7)-(12), which provides that a foreseeable effect is material if the decision changes the property's development or income producing potential, changes the property's highest or best use, changes the property's character, affects real property located within 500 feet of the official's real property, or is of such a nature that the decision would influence the market value of the official's property. Existing Regulation 18702.2(a)(11), the "500 foot rule," provides that a foreseeable effect is material if the governmental decision: Would consider any decision affecting real property value located within 500 feet of the property line of the official's real property (January 19, 2019).

Determining a conflict of interest in a specific decision requires looking at whether an effect on the financial interest is reasonably foreseeable and financially important.

If a conflict of interest exists, the official must disqualify from making a governmental decision including: authorizing or directing any action, vote, or appointment of a person, or obligating the agency to any course of action, or entering into any contractual agreement on behalf of the agency.

A public official makes a governmental decision if the official votes on, provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

Members of the TUD Board are public officials, as they are elected at-large, by the registered voters within their district. Certain public officials (city council members, planning commissioners, and board of supervisors) have a mandated way they must disqualify themselves from a decision. They must publicly identify the interest that creates the conflict, step down from the dais, and leave the room before either the discussion or vote commences.

The TUD Board of Directors Policy Manual states that each member of the Board may receive compensation in the amount of one hundred dollars (\$100) for each day's attendance at meetings of the Board, or for each day's service rendered as a Member of the Board by request of the Board. No member shall receive compensation for more than a total of six (6) days in any calendar month. Statements of meetings attended must be turned in within fifteen (15) days after the end of the month to be included in the following monthly claim summary. The policy further provides that Directors will have the "opportunity" to report to the Board on information and ideas learned at such meetings or events.

The TUD policy however, does not follow the reporting requirements in AB 1234, which states in part, Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

The TUD Travel and Expense Limitation Policy (March 2017) does include reporting requirements pursuant to Government Code §53232.3 to provide a brief oral or written report to the Board at the first meeting following the incurrence of a reimbursed expense. However, Grand Jury review of Board of Directors meetings indicates that not all the directors consistently deliver reports to the Board and the public following incurrence of the expense.

The process for Directors to receive reimbursement for meetings attended, includes filing a form with the Board clerk, or in the case of business-related travel, a travel reimbursement form with itemized receipts attached. If a request from a Director is questioned as unusual, it is referred to the General Manager and Board President. The Finance Director reviews and approves all disbursements prior to issuance. The Grand Jury reviewed several months of Director travel and meetings reimbursements and found that some Directors claim reimbursement for attending the full six meetings (\$600) per month, while others claim only Board of Director meetings. The Grand Jury could not identify a mechanism in the process outlined above to ensure that all Director reimbursement requests are valid.

The Grand Jury identified potential conflicts of interest and/or the appearance of conflicts of interest by a TUD Director (Director B):

1. TUD Director B is employed by the Tuolumne County Business Council (TCBC), a private organization, in which TUD pays annual membership dues, and certain TUD staff and other Directors attend meetings without a publicly posted agenda, and is not open for public participation. Further, Director B has not properly recused him/herself from voting on TUD budget appropriations for annual membership fees to the TCBC which in part, pay for the Director B's TCBC annual salary.

Tuolumne County Business Council

The Tuolumne County Business Council, is a private non-profit organization, founded in 2009, that promotes economic development, and advocates for development and business activities with local government land use and regulatory decision-making. The membership consists mostly of Tuolumne County businesses, and other associations such as Chamber of Commerce, Realtors, and the Tuolumne Economic Development Authority (TEDA). The TCBC does not disclose its meeting content and is not open to the public.

However, if a TUD Director serves as a voting TCBC board member, the TCBC could be subject to the Ralph M. Brown Act (Government Code §54952 (c) (2)). The TCBC Form 990 for 2018 lists the current board members, and as of the filing of the 2018 Form 990EZ (Return of Organization Exempt From Income Tax) there were no current TUD Directors serving as a voting member of the TCBC. The 2019 Form 990 is not currently available at a publicly accessible venue; therefore, the Grand Jury and the public cannot verify the TCBC board composition.

TUD as a member of the TCBC, pays annual membership dues of \$1,000 and pays for at least two staff members to attend TCBC meetings. In the TUD annual budget, membership dues are grouped together in one expense category. Therefore, TUD did not make a finding of public benefit for its membership in the TCBC, a private nonprofit corporation.

Because TCBC is a private nonprofit corporation, and as such, their meetings are closed, and an unknown number of TUD Directors also attend TCBC meetings, it is not possible for the public to determine if a quorum of Directors attend the meetings or not. Further, a review of recent TUD Board meeting minutes revealed that there was no follow-up written staff reports or oral reports, as required by AB 1234, and TUD Board policy. Further, any TUD representation at meetings of other organizations is supposed to be directed and approved by the Board as per TUD policy; however, there is no evidence of Board approval for any Director to attend.

TUD is the only public entity member of the TCBC according to the membership roster on its website. TUD Director B is employed as Executive Director of the TCBC. According to the 2018 IRS Form 990, the TCBC's annual income of \$45,650 is derived from membership dues. The Executive Director's \$34,000 salary consumes 75% of the organization's budget.

2. Director B claimed reimbursement from TUD for attending the June 10, 2019, meeting of the Local Agency Formation Commission (LAFCO), during which Director B advocated for development in which a personal financial interest exists. Further, there were no items on the LAFCO agenda related to TUD business.

3. Director B violated the “500 foot rule” which states the official has a conflict of interest when participating in a governmental decision that affects property within 500 feet of the official’s real property, when they failed to recuse themselves from the voting on the Water Supply Agreement with Mountain Springs Golf Course, because Director B owns real property in the subdivision adjacent to the golf course.

Findings

- F1.** Despite five years of rate increases, TUD is still falling short of establishing a system where revenue is equal to expenses, including capital improvements and replacements.
- F2.** TUD Directors voted on February 26, 2019, to approve the agreement for water supply with Mountain Springs Golf Course (Teleli Golf Club) which the Grand Jury and members of the public find confusing because:
 - ▶ TUD is allowing TEDA to receive raw water for the Teleli Golf Course under the same supplemental water conveyance as did Mountain Springs LLC, even though the property is under new ownership and is not eligible to be grandfathered in as a Supplemental Water User.
 - ▶ The Agreement states that TEDA is to be treated as a Supplemental Water User, which is inconsistent with TUD Rules and Regulations in which no new Supplemental Water Users can be designated after January 1, 2016.
 - ▶ TUD Water Rules and Regulations does not currently have an applicable classification for recreational use, or simultaneous use of either reclaimed or raw water.
- F3.** Director B has significant real and/or perceived conflicts of interest between personal business and financial interests, and various actions taken as a TUD Director.
- F4.** TUD’s membership in the TCBC is of questionable value to ratepayers. TUD is the only public entity member of the TCBC which places TUD Directors in the position of attending meetings closed to the public with the potential to violate open public meeting rules and regulations. In the absence of community involvement, the mechanisms for public accountability are dulled and the value of public scrutiny is lost.
- F5.** Director reimbursements for attending meetings on behalf of the TUD are not consistently verified prior to being paid out. TUD Director B claimed and received reimbursement for attending a meeting in which personal business was discussed, rather than TUD business.

Recommendations

- R1.** The Grand Jury recommends an independent review of the success of the 2015 Rate Study and five-year rate plan by the end of the 2021 fiscal year. Any proposed increases to ratepayers should include analysis of capacity/connection fees to ensure that rates are equitably spread across various categories of users, to the extent permitted by law. (F1)

- R2.** The Grand Jury recommends that the TUD Board reevaluate the decision made on February 26, 2019, to approve the Mountain Springs Golf Course Water Supply Agreement, and direct staff to present an agreement to the Board that is fully transparent about all fees, classifications of users, and is consistent with adopted rules and regulations, and to amend TUD Water Rules and Regulations with an applicable classification for recreational use, or simultaneous use of either reclaimed or raw water. (F2)

- R3.** The Grand Jury recommends TUD Directors with real and/or perceived conflicts of interest recuse themselves in the same manner as city councils and boards of supervisors by identifying the interest that creates the conflict, recusing themselves, and leaving the room before either the discussion or vote commences. The Grand Jury further recommends TUD obtain updated and formal assistance from the Fair Political Practices Commission to conclusively establish when Director B must disqualify themselves from matters before the TUD Board. (F3)

- R4.** The Grand Jury recommends the TUD Board thoroughly evaluate and update its policy regarding:
 - ▶ TUD representation at meetings of outside organizations to ensure it is essential to the benefit of TUD ratepayers and approved by the Board prior to attendance when reimbursements are paid.

 - ▶ Consistently apply to all Directors the requirement to give written or oral reports after attendance at outside meetings and report to the public at the next board meeting following the business-related travel as required by AB 1234.

 - ▶ Membership in and attendance at meetings of organizations which are not subject to California open meetings and open public records rules and regulations. (F4, F5)

Request for Responses

The following responses are required, pursuant to California Penal Code §933 and §933.05, no later than 90 days after the Grand Jury submits a final report on the operations of any public agency subject to the reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elected or appointed county official or agency head for which the Grand Jury has jurisdiction shall comment within 60 days to the presiding judge of the superior court.

From the following elected or appointed county officials within 90 days:

- ▶ The Tuolumne Utilities District Board of Directors R1 through R4.

Bibliography

California Assembly Bill 1234, signed into law October 7, 2005

California Government Code Section 54950-54963

California Government Code Section 58000-62262

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Tuolumne Utilities District Guidelines for Conduct, adopted February 22, 2005, amended November 8, 2005, TUD Resolutions 9-05, and 80-05

Tuolumne Utilities District Board of Directors Policy Manual, adopted August 27, 2019, TUD Resolution No. 17-19

Tuolumne Utilities District Purchasing/Procurement Policy, adopted January 28, 2020 TUD Resolution No. 5-20

Tuolumne Utilities District Travel Expense Limitation Policy: Board Compensation, Revised March 28, 2017

Tuolumne Utilities District Water Rules and Regulations, adopted 1993, amended 2019 <https://tudwater.com/wp-content/uploads/2019/05/2019.05.02-Adopted-Water-Rules-and-Regs-Reso-3-19.pdf>

Tuolumne Utilities District Budget, FY 2020

Tuolumne Utilities District Rate Study FY16-FY21 <https://www.tudwater.com/wp-content/uploads/2015/11/2015-Rate-Study-Approved-11-17-15.pdf>

Tuolumne Utilities District 2019 Strategic Plan, adopted June 11, 2019

Tuolumne Utilities District Capital Improvement Plan FY20-FY24

Tuolumne Utilities District FY 2020 Operating Budget

Tuolumne Utilities District Directors Statement of Meetings Attended, June 2019-January 2020

Tuolumne Utilities District Directors Form 700 Statement of Economic Interests, 2018 and 2019

Tuolumne County Board of Supervisors Agenda and Minutes, December 17, 2019 Meeting

Tuolumne County Local Agency Formation Commission Meeting Agenda and Minutes, June 10, 2019

Tuolumne County Business Council website

Tuolumne County Business Council IRS Form 990, 2016 and 2018

Water Supply Agreement with Mountain Springs Golf Course

Fair Political Practices Commission website

Fair Political Practices Commission February 25, 2015 Letter of Informal Assistance

Ralph M. Brown Act

Appendix A - Agreement for Water Supply to the Mountain Springs Golf Course (Teleli Golf Club)
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Disclaimer

This report was issued by the 2019-2020 Tuolumne County Grand Jury except for three jurors who are related to an employee(s) or elected official of Tuolumne Utilities District, or who has a real or perceived bias. These grand jurors were excluded from all parts of the investigation, including interviews, deliberations, and the writing and approval of this report.

Reports issued by the grand jury do not identify the individuals who have been interviewed. Penal Code §929 requires that reports of the grand jury not contain the name of any person or facts leading to the identity of any person who provides information to the grand jury.