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TUOLUMNE UTILITIES DISTRICT

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AUG 27 2020

Superior Court of California
County of Tuolumne

By: Dana DeLong Clerk

August 11, 2020

Honorable Donald Segerstrom
Presiding Judge of the Superior Court
County of Tuolumne
Historic Courthouse – Department 1 – Third Floor
41 W. Yaney Avenue
Sonora, CA 95370

Subject: Tuolumne Utilities District Response to the 2020 Grand Jury Report

Dear Judge Segerstrom:

The Tuolumne Utilities District Board of Directors (“Board”) of the Tuolumne Utilities District (“TUD” or “District”) submits the following response to you regarding the findings and recommendations of the 2020 Civil Grand Jury Report as it pertains to TUD. The Board thanks you for the opportunity to file this response.

The Board is appreciative of the time and effort put forth by the Grand Jury to conduct its review of TUD’s operations and the challenges the District faces across many fronts and believes a detailed response to the findings (F) and recommendations (R), as well as corrections to various mis-statements contained within the Grand Jury report, is necessary and can be found in the attached document entitled **“TUOLUMNE UTILITIES DISTRICT RESPONSE TO THE TUOLUMNE UTILITIES DISTRICT REPORT WATER UNDER THE BRIDGE, JUNE 30, 2020 2019-2020 TUOLUMNE COUNTY GRAND JURY FINAL REPORT.”**

We thank the Grand Jury for their service, the report they prepared on the Tuolumne Utilities District, and the opportunity to respond with valuable information to help educate the Grand Jury and the public at large regarding the Tuolumne Utilities District.

Very truly yours,

Bob Rucker
Board President

Edwin R. Pattison
General Manager



**TUOLUMNE UTILITIES DISTRICT RESPONSE TO THE
TUOLUMNE UTILITIES DISTRICT REPORT
WATER UNDER THE BRIDGE, JUNE 30, 2020
2019-2020 TUOLUMNE COUNTY GRAND JURY FINAL REPORT**

TUD Summary Grand Jury Response

The Tuolumne Utilities District (TUD or District) greatly respects the Citizens' Committee of the Tuolumne County Grand Jury (Grand Jury) and appreciates the time the Grand Jury invested to address concerns related to TUD. According to the 2019-2020 Tuolumne County Grand Jury Final Report entitled "Water Under the Bridge" (June 30, 2020), the Grand Jury received citizen complaints regarding the following:

1. Potential conflicts of interests with individual members of the Board of Directors;
2. Whether it is appropriate for the TUD to participate through membership in a private organization that is not subject to open public meeting laws or public transparency protocols;
3. The overall financial health of the TUD; and
4. The terms and condition of a recycled water use agreement that is difficult to interpret.

As a result of these complaints, the Grand Jury interviewed TUD employees, and those employees also produced documents responsive to the complaints to the Grand Jury. Significant efforts were made by TUD staff and elected officials to share information orally and in writing with the Grand Jury to address and/or respond to these citizen complaints in a forthright and transparent manner. Unfortunately, much of the information TUD provided was left out of the Grand Jury Final Report, which has led to unfortunate and unfounded findings and recommendations. Since this information was left out of the Grand Jury report, we will briefly summarize the information below.

Conflicts of Interest – The Grand Jury report asserts that certain TUD Board members may have conflicts of interest and should not have voted on certain issues or should not be involved with certain organizations. TUD directors are regularly trained on a range of areas related to serving as an elected official to ensure compliance with state law and to avoid and/or eliminate any potential for conflicts of interest or governmental sunshine laws (Brown Act). Based on this regular training and knowledge of the ethics and conduct of the directors in question, TUD has examined the possibility of conflicts of interest and has concluded that the only times when a conflict of interest existed, the director involved recused himself of herself from that agenda item, and the remaining Board members voted on the matter free from influence; otherwise no conflicts of interest currently exist. In fact, over the course of this last year, two TUD directors recused themselves from any decision-making authority regarding TUD service to the Valley Vista development. With regard to memberships, TUD belongs to many organizations with membership dues contained within the budget, annually adopted by the Board of

Directors. Organizations range from statewide to regional to local associations, with the complete list identified below:

- Association of California Water Agencies
- California Special Districts Association
- Mountain Counties Water Resources Association
- Tuolumne County Chamber of Commerce
- Tuolumne County Farm Bureau
- Yosemite Stanislaus Solutions
- Tuolumne Stanislaus Integrated Regional Water Management Authority
- Tuolumne County Business Council
- American Water Works Association
- California Rural Water Association
- Tuolumne County Alliance for Resources and Environment
- Water Environment Federation
- Water Education Foundation
- Central Valley Clean Water Association

TUD membership in these organizations represents opportunities for the following:

- Information Sharing and Networking
- Education
- Legislative action
- Public Relations

In accordance with the District's Strategic Plan Goal 3 to "develop partnerships for the benefit of the community" and the goal's achievement strategies, these memberships reflect TUD's desire to be part of and involved with not only the Tuolumne County community, but also the State community of organizations that share similar interests and concerns. Of these memberships, certain organizations are subject to open public meeting laws and/or public transparency protocols, while others are not. Despite perhaps not being subject to open meeting laws, this does not diminish the importance of involvement with certain organizations. In fact, if an organization is not subject to open meeting laws, then we suggest that is an important reason why the District should be involved with that organization to ensure ratepayers are represented at that organization. Each of these organizations provide direct and indirect benefits to TUD and its customers. As such, both TUD directors and staff attend conferences, workshops, and meetings held by these organizations to improve their understanding of state and local issues and to provide a voice for the ratepayers. It is this understanding that provides the framework and background that provides the TUD Board with the knowledge to make well-informed decisions. The fact that one or more of these organizations may advocate for a certain position does not diminish the importance of being involved and understanding the issues, does not suggest that the Board as a whole may agree with the position, and does not create conflicts for the Board. Therefore, as a general matter, we do not see how memberships in community organizations and being informed on a wide variety of issues creates conflict of interest issues for any individual director; instead we suggest it makes them a better director.

Financial Health of TUD – Since 2015, and the adoption of the first ever five-year rate plan supporting a five-year capital improvement plan, the overall financial health of the District, combined with construction of nearly \$21 million in infrastructure improvements have significantly improved the District’s financial standing paving the way for greater water security, wastewater collections, treatment, and recycling. Now, for the first time, TUD is in compliance with industry best practices for reserves, addressing deferred capital improvements, and has developed plans for how to prioritize and achieve its goals and objectives in a reasonable and prudent fashion.

Recycled Water Use Agreement – After careful consideration, the TUD Board of Directors unanimously approved the recycled water agreement between TUD and the Tuolumne Economic Development Authority, Inc. (TEDA), a federally chartered corporation wholly owned by the Tuolumne Band of Me Wuk Indians, a federally recognized Indian Tribe. Contained within the agreement are the terms and conditions of the agreement that require the Tribe to first use TUD’s recycled water to meet its primary water supply for irrigation of its golf course, with TUD’s raw water supply via a supplemental water user as a backup should recycled water not be available. The agreement was drafted by professionals who are experienced in such matters, and for that reason the agreement does reflect the use of certain nomenclature that may not be immediately understandable to those not familiar with recycled water agreements. This, however, does not mean the agreement is “confusing” or poorly written. The agreement is readily understandable by the parties, TUD staff, and the Board that approved it.

As we move past this summary of issues, we appreciate the opportunity to now more specifically address the Grand Jury’s five findings and four recommendations. Unfortunately, the failure to include all of the information the District provided to the Grand Jury resulted in a report that contains misunderstandings and inaccuracies, which have led to flawed findings and recommendations. The following response will clarify and correct the substantive issues that we believe will demonstrate the findings and recommendations as written are not valid. This response will begin with the Grand Jury Final Report Findings and Recommendations followed by general corrections and additional information to clarify problems with the substance of the report.

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.

TUD Response:

TUD disagrees with the Grand Jury’s finding. As evidenced by the annual audits, which were provided to the Grand Jury, the net position (revenues minus expenses) has increased over \$16 million over the last four years, with another positive change expected for the current fiscal year that just completed June 30, 2020. This net increase was accomplished at the same time that TUD invested nearly \$21 million into capital improvements and infrastructure replacements over the past five years, which has improved overall system reliability on both the water system and the sewer system. All of these factors are consistent with expectations and promises contained within the 2015 five-year rate study and

represents real and significant progress toward improving TUD's overall financial health and reliability of its infrastructure, most of which was inherited in poor and failing conditions.

Across the nation, news reports decry the need to reverse crumbling infrastructure, which is failing quicker than replacement. Tuolumne County and TUD is no different. Revenues have largely not kept pace with the cost of replacement due to a combination of years of deferred capital improvements, much of which was inherited from predecessor agencies, along with increasing unfunded state and federal regulations. To make forward progress toward reliability and infrastructure replacement, TUD has carefully developed a series of plans, including a strategic plan, capital improvement plan, and system optimization plans and regularly updates these plans through public workshops to set its priorities through identified goals and objectives. These comprehensive plans represent a portfolio of industry best practices for prudent continual learning and a prioritization process to efficiently expend limited revenues to areas of greatest benefit to the customer and the community.

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.**

TUD Response:

TUD disagrees with the Grand Jury's finding. It is unfortunate that the Grand Jury finds the agreement confusing. This was not the intent of the agreement. TUD does agree the agreement is complex, but not confusing. Agreements frequently cover complex issues and are often crafted by lawyers because their content and subject matter can cover a wide variety of issues that require a firm understanding of regulatory law and specialized knowledge that can sometimes result in an agreement that is not readily understandable to everyone. This is true with any complex subject. The water supply agreement in question was thoroughly reviewed by District legal counsel, District staff, and the other party's attorney prior to Board consideration, and unanimously approved by the TUD Board. Furthermore, the agreement was modeled after similar agreements used for recycled water to other golf courses in our area. Nevertheless, TUD hopes the following written responses previously provided to the Grand Jury, which did not make it into the final report, will clarify and resolve any outstanding confusion related to the agreement.

Since at least 2002, TUD had been providing supplemental water service to the Mountain Springs Golf Course. This service was provided in accordance with the District's Water Rules and Regulations as

amended from time to time. The Supplemental Water User class of customer was formally abolished effective January 1, 2016.

The Grand Jury contends that the Teleli Golf Course property is ineligible to be “grandfathered” in as a Supplemental Water User. This is incorrect. The District’s Water Rules and Regulations explicitly grandfathered Supplemental Water Users by assessor parcel number (APN), not by account number or account holder name. In this case, the APN associated with Mountain Springs Golf Course is the same APN associated with the Teleli Golf Course.

The contention that the provision of supplemental water service to the Teleli Golf Course property is inconsistent with the District’s Water Rules and Regulations is incorrect. First, TUD grandfathered Supplemental Water Users by APN, not by account number, or account holder name, as noted above. In this case, the raw water will continue to be used on the same APN. Second, TUD’s Water Rules and Regulations are clear that no “new” Supplemental Water Users will be permitted. Since the water is being used on an existing and authorized APN, this is not a “new” user.

Lastly, it is not necessary to establish “an applicable classification for recreational use, or simultaneous use of either reclaimed or raw water use.” A separate classification would only be warranted where differing costs of service need to be captured through separate and distinct rates particular to that classification. In the case of water used for recreation or simultaneous use of reclaimed and raw water, the “true” cost of service is the cost of service regardless of how the customer chooses to use the water. There is no additional cost or justification for a special classification. In simple terms, the costs are the same regardless of its end use. Therefore, no reason exists for the District to track recreational use separately. In fact, increasing the number of customer classifications increases the burden on the District’s Finance and Customer Service staff and unnecessarily creates overhead.

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.

TUD Response:

TUD disagrees with the Grand Jury’s finding. While the Grand Jury does not name the director in question, it is clear the Grand Jury has focused its attention on one director with business ties, and whose name has been inappropriately doxed in the local newspaper. Regardless of who the director may be, each TUD director with a conflict has publicly recused himself or herself where appropriate and acts in a manner that serves the best interests of all constituents. The simple fact that certain directors may have business ties or may be involved with the Tuolumne County Business Council, or any other organization for that matter, does not mean that director is violating state and federal laws or the TUD Board’s Policies and Procedures. Further, prior to serving on the TUD Board, a director with ties to the Tuolumne County Business Council sought advice from the Fair Political Practices Commission (FPPC) on his involvement with that Council and the FPPC found no conflicts in that specific relationship, a fact which was made to the Grand Jury, but which failed to find its way into the Grand Jury report. Further, TUD became a member of the Tuolumne County Business Council in 2011, years prior to the director in question being elected to the TUD Board.

Finally, the Grand Jury falsely states that Director B violated the "500 foot rule" creating a conflict of interest which should have caused the director to recuse himself from participating in a government decision on the Water Supply Agreement with Mountain Springs (now Teleli owned by TEDA) Golf Course. This accusation is unfounded and inaccurate. The director in question's property is over a half mile from the golf course and the parcel of land between the director's home and the golf course is not owned by the TEDA. This information was shared with the Grand Jury, but unfortunately this information did not make it into the Final Grand Jury Report.

TUD suggests that any real and/or perceived conflict of interest only exists with individuals attempting to politicize this issue.

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.

TUD Response:

TUD disagrees with the Grand Jury's assertion. TUD wholeheartedly agrees with the Grand Jury in its statement that reads "In the absence of community involvement, the mechanisms for public accountability are dulled and the value of public scrutiny is lost." TUD consistently urges members of the community to get educated on the various issues and participate in TUD meetings. As identified in the opening summary statement, TUD belongs to a wide range of public and private organizations throughout the state, region, and local area to advance this goal.

These organizations represent a value to TUD in that both the directors and staff that attend them gain or impart knowledge of TUD's planning activities and operations and/or learns from participating in these local and statewide organizations to bring value back to TUD and its customers through improving operations and activities. The TUD Board's Strategic Plan prioritizes coordinating work with local agencies and community organizations. While some of the member organizations publicly notices its meetings, some do not. Regardless of whether the meetings are publicly noticed or not does not preclude TUD elected officials from attending, and it does not mean that the information provided at these meetings is not valuable. At one point or another, individual TUD Board members have each attended publicly noticed and non-publicly noticed meetings, so it is unclear to TUD why the Grand Jury is only interested in the behavior of one particular director and one particular organization. TUD disagrees with the Grand Jury's finding that attending a non-publicly noticed meeting dulls "public accountability." To the contrary, attending these meetings provides a mechanism to sharpen public accountability as attendance can transfer important information that broadens a director's perspective.

- 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.**

TUD Response:

TUD disagrees with the Grand Jury's finding. The meeting in question, which was a Local Area Formation Commission (LAFCO) public meeting, involved several agenda topics. One of the topics was a development project, one topic was regarding the inclusion of special districts on the LAFCO Board and one topic was the LAFCO budget that would need to be modified should special districts be included on the LAFCO board. A TUD director participated in this meeting, because that director *was appointed by the TUD Board to be the TUD Board representative at LAFCO*, hence the claim for reimbursement for representing TUD at the LAFCO hearing for the related agenda items involving special districts, which is an appropriate and valid claim. In other words, the director was at the meeting because the TUD Board asked him to be there, and because of the agenda items dealing with special districts having a seat on the LAFCO Board. This information was shared with the Grand Jury, but unfortunately this information did not make it into the Final Grand Jury Report.

All TUD Board of Director claims for reimbursements are verified by staff via the Board Policies and Procedures. Thus, it is unclear why or how the Grand Jury came to the conclusion that the claims are not verified. Further, all board claims for reimbursements are published in the monthly claim summary for reimbursements report provided to the TUD Board and public each month for review and approval. The goal is transparency and accountability to the public.

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.**

TUD Response:

TUD invites opportunities to highlight the appropriateness and success of the five-year rate plan, as well as the investments made to secure the overall financial health and wellbeing of the district to better serve its customers and ensure water reliability and wastewater service. As identified in its five-year rate plan and multiple public workshops to the TUD Board of Directors, nearly \$21 million in capital (infrastructure) improvements have been made throughout Tuolumne County to improve reliability and service to TUD customers, both water and sewer. This information was submitted to the Grand Jury, but unfortunately this information was left out of the final report.

Connection fees are legally a separate and distinct function from operations supported through bi-monthly water and wastewater ratepayer revenue. The five-year financial plan covered costs associated with day-to-day operations, i.e., operational and maintenance (O&M), materials and supplies, capital

improvements, and labor. Based on the financial plan, rates were established over a five-year planning horizon to minimize rate impacts and increment costs associated with water and wastewater customers to single-family residential, commercial, landscaping, institutional (Schools, hospitals, etc.), and raw water users. The five-year rate plan did not include an update of connection fees, which were updated in 2014 as cited in the Grand Jury report. As stated, connection fees and bi-monthly water and sewer rates to support operations are separate and distinct and are governed by state law. TUD collects one-time connection fees for any new connection, which is to “buy” into the TUD water and/or sewer system. These restricted, one-time connection fee revenues are held in a restricted fund and are used solely to upgrade or enhance the water and/or sewer system infrastructure, and to increase capacity. Water and/or wastewater ratepayer bi-monthly revenue from the TUD customer is used to fund operations and maintenance, purchase materials and supplies, and fund capital improvements. Unfortunately, it appears the Grand Jury blurred these two separate revenue streams, which as stated above are legally separate and distinct and which TUD cannot combine in a single analysis.

- R2. The Grand Jury recommends that the TUD Board reevaluate the decision made on the 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.**

TUD Response:

TUD disagrees with this recommendation. The Mountain Springs Golf Course Water Supply Agreement (now Teleli) is a comprehensive water recycling agreement that is clearly drafted, fully transparent, and consistent with TUD’s rules and regulations. For the reasons outline above, no changes to the agreement or TUD’s rules and regulations are warranted at this time.

- 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.**

TUD Response:

TUD agrees that all elected officials should recuse themselves while making public decisions on behalf of the organizations they represent when a conflict of interest exists. TUD’s Board of Directors are regularly educated on these matters with multiple TUD directors recusing themselves when presented with a conflict. TUD directors do and have consulted with the FPPC regarding these matters to ensure they are in compliance with state law.

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.**

TUD Response:

First, the TUD Board through the staff thoroughly reviewed and updated its Board Policies and Procedures consistent with industry best practices, which was then publicly adopted by a majority of the TUD Board of Directors (see TUD Board of Directors Policy Manual adopted August 27, 2019 by Resolution No. 17-19). Second, the TUD Board of Directors, through the lens of its strategic plan, thoroughly evaluates all aspects of the fiscal year budget through a series of public workshops that leads to Board adoption of the upcoming fiscal year budget. One category of this budget includes public relations, public education, associations, and outreach where each organization membership is identified. The public and each TUD director has access to this information and is provided ample opportunity to discuss the merit of each membership prior to budget adoption. Once the budget is adopted, one or more board members, along with one or more staff, may attend these organizations. According to certain members of the TUD Board, they attend Tuolumne County Business Council meetings as citizens, not as TUD representatives. As such, they are not bound to disclosure requirements at TUD Board meetings, nor do they submit claims for reimbursements for attending the Tuolumne County Business Council meetings. This information was provided to the Grand Jury, but unfortunately, this information did not make it into the final report. Board members that submit meeting reimbursement claims consistently report outside meetings attended at TUD Board meetings consistent with state law.

General Clarifications and Corrections on Statements Contained in The Final Grand Jury Report

Page 65

GJ: Annual Inflation: A formula to determine how much prices have increased over the last 12 months.

TUD Clarification: An annual inflation is not a formula; it is the actual calculated percentage increase that is applied to TUD's capacity fees effective July 1st each year. The annual inflation is set by the District's Water Rules and Regulations utilizing a 3-year running average of the 20-cities construction cost index published by the Engineering News and Record.

GJ: Dry Year Land Bank: An area of land that is set aside for future use.

TUD Clarification: A Dry Year Land Bank is an inventory of parcels that can be irrigated with reclaimed water but can also be fallowed during times with reclaimed water supply is insufficient to meet all recycled water demands.

Page 67

GJ: Treated Water Service Population: TUD has an estimated treated water service population of 29,000,

TUD Clarification: According to state mandated monthly treated water service reports submitted to the state the current TUD treated water service population is currently estimated at 31,162.

Page 69

GJ: User Charges: 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.

TUD Clarification: The District's 2015 rates are fully compliant with federal and state grant policies. During the TUD five-year rate planning process, TUD examined customer classes carefully for compliance with state law and established to the best of its ability the various customer classification for fairness and equity among rate classes. Systems and laws are always evolving and TUD will at the appropriate time conduct another analysis to ensure its rates and customer classes are fair and equitable.

Discussion

Page 70

GJ: "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 demand."

TUD Clarification: These statements are incorrect for two reasons. First, please review our response to F1 with regard to the Grand Jury claims about a revenue "shortfall." Second, these statements demonstrate a misunderstanding of the derivation and the purpose of capacity fees. Capacity fees (capacity and connection fees are terms used interchangeably) should not be lumped together with other forms of District revenue, such as rate revenue, and are not a commodity that is traded or whose value is set by customer demand. Capacity fees are a

function of the cost to the District to replace the infrastructure capacity consumed by the applicant. Capacity fees are driven by labor and material cost to construct pipelines, canals, treatment facilities, storage facilities, and pumping facilities. Capacity fee revenue is not fixed annually and there is no arbitrary target. The District receives widely variable amounts of capacity fee revenue from year to year simply based on the pace and type of local development. Furthermore, the Grand Jury's statement suggests that the District could merely increase both connection and capacity fees to create additional revenue, which is unlawful. The California Government Code mandates that both types of fees "not exceed the reasonable cost of providing the service for which the fee is imposed." Therefore, the District cannot merely decide to increase either fee without a justifiable basis.

Page 71

GJ: ".....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."

TUD Response: TUD was formed in 1992. It is unclear how the Grand Jury concluded that capacity fees and revenue were inappropriately low nearly 30 years ago without access to any information by which to draw that conclusion. As stated above, the amount the District charges for capacity fees is a function of the cost of materials, supplies, equipment, and labor to construct the specific components that make up the capacity of the District to provide water and/or wastewater service. Major infrastructure components include water supply (source water supply for water service), conveyance facilities, treatment, and storage. Capacity fees are mostly driven by inflation.

The Grand Jury also identifies a discrepancy between the number of connections and the amount of revenue collected. Unfortunately, the alleged discrepancy is the result of a repeated misunderstanding on the methodology for calculating capacity fees. Capacity is determined, not by how many connections the developer is proposing, but (1) by how much water the developer will need for the development's particular end use for water, and (2) by the volume and strength (loading) for wastewater. For example, the new county jail facility is one connection, but the county is required to pay capacity fees of several hundred thousand dollars due to the capacity necessary to operate a facility with over 100 beds. The base unit for a capacity charge is one Equivalent Single-Family Residence (ESFR), which is what a single-family residential unit would be defined as for its water and wastewater connections. However, an ESFR multiplier is used for apartments, commercial facilities (retail stores, dentist offices, etc.), and institutions, such as schools, hospitals, jails, etc., which means that depending on the number and end use, an ESFR multiplier could be much greater than one ESFR, hence the reason for a non-linear relationship between the actual number of connections and the amount of the capacity fee.

GJ: "... Prior to hiring 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."

TUD Clarification: This is a false statement and no evidence is provided to support this allegation. As noted above, the California Government Code dictates that a legal nexus exist between capacity fee charges and the cost for infrastructure improvement to serve that new connection. Thus, the development of current TUD connection fee charges established in 2014 through an advisory committee consisting of TUD Board members, TUD staff, and members of the community were rigorously calculated based on TUD specific infrastructure and costs at that time, and vetted by experts and TUD's legal counsel to be a fair representation of the cost of service to new connections. Overall, connection fees are expected to be reviewed periodically to keep pace with changing conditions. For now, TUD's connection fee charges are reasonably representative of industry norms and are reasonably current given minimal changes in conditions. TUD expects to conduct a connection fee review within a reasonable time frame, which may result in a modification to the connection fee schedule.

Implementation Costs

GJ: "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 the 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."

TUD Response: Upon request of the Grand Jury, TUD provided calculations to support its conclusion that the costs to develop an equivalent amount of irrigable land elsewhere would be more expensive than the \$500,000 estimated to deliver water to the Teleli Golf Course. These calculations were sent to the Grand Jury via email prior to the release of the final report and clearly demonstrate that the District's conclusions were based on actual numbers not merely "staff knowledge, experience, and expertise." Information regarding the cost benefit analysis is available on request.

GJ: "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."

TUD Response: A cost analysis was completed by staff prior to taking this item to the TUD Board for consideration of approval. TUD's Board approved the agreement based on information contained in the staff report and discussion at the time of consideration. It is important to note that the contract does not obligate TUD to spend any District funds or set forth any time schedule for implementing proposed improvements. Each year, the TUD Board adopts a capital improvement plan and budget, which identifies that year's capital projects to receive funding.

Need for Reclamation Storage

Page 72

GJ: "It is unclear how urgent TUD's need for acquiring additional irrigation areas was, prior to the agreement, as there was no established date for completion, and no money budgeted for the project."

TUD Response: The need for additional reclamation storage is a complex function of regulatory requirements, climate, irrigation practices, agreements for recycling agreements/easements, and the District's policy on risk tolerance for violating permit terms and conditions, and regulatory requirements. In order to abandon the previous wastewater discharge permit, TUD had to demonstrate to the State Water Resources Control Board (SWRCB), Central Valley Regional Water Quality Control Board (Regional Board), that it could contain and properly dispose of the treated wastewater flows resulting from a one in a hundred year rainfall event (1:100 rainfall year) – a regulatory requirement. The Regional Board's analysis evaluates a single 1:100 rainfall year event, as well as back-to-back 1:100 rainfall year events. When the District receives above average rainfall for three (3) consecutive years, Quartz Reservoir is at risk of filling and spilling in violation of state regulations and TUD's permit requirements without having a place to apply the treated wastewater. To mitigate against this risk and violation of state requirements that could result in a fine for spilling, the District must expand its irrigated acreage to meet high flow events during above average rainfall years. The Teleli Golf Course Recycled Water agreement helps in two ways: (1) a legal easement that demonstrates to the Regional Board that TUD possesses the legal ability to require the golf course to take a minimum of 160-acre-feet per year with an incentive to irrigate using a larger volume if available; (2) flexibility to meet District reclamation operations during wet or dry years.

The schedule for implementation of the recycled water agreement to the golf course is a function of the District's important Sonora Regional Wastewater Treatment Plant Upgrade Project, which is nearing final design. When the opportunity to enlarge its irrigated acreage presented itself to the District, the District took advantage of the opportunity knowing full well

that it may take time to fully exercise that advantage. It would have been short-sighted to ignore the opportunity when it was available.

GJ: "... 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."

TUD Response: This comment is in reference to three key conditions of the Teleli agreement that are absent in pre-existing agreements TUD has with other reclaimed water users:

1. The agreement allows for Dry Year Land Banking, which means that the District is not obligated to deliver reclaimed water in years where the reclaimed water supply cannot meet the total reclamation system's demands with treated wastewater from Quartz Reservoir. Per the discussion above regarding highly variable wet year/dry year sequences, this flexibility is critical to the on-going operation of the system.
2. The agreement requires TEDA to grant a perpetual reclaimed water easement to the District so that it can assure that even if business operations were to cease, TUD would have an established mechanism by which to guarantee its ability to irrigate from year to year. This type of security is of great interest to the state regulatory agency, the Regional Board, who will be reviewing and approving the District's Title 22 Engineering Report and issuing a permit for operation of the new wastewater treatment facility and for the continued irrigation operations within the reclamation system. Currently, the District is vulnerable to private property owners who could, at any time, decide to cease irrigating with reclaimed water. This level of vulnerability is unacceptable in managing a highly regulated wastewater operation susceptible to highly variable wet year sequences. As a result of increasing state regulatory requirements, the District is forced to secure the granting of easements to TUD for long term irrigation with reclaimed water to ensure future, safe, reliable operation of the reclamation system.
3. The Teleli Agreement phases in a cost for receiving reclaimed water. Currently the District does not charge for the use of reclaimed water because the alternative to irrigating with reclaimed water would be to discharge to Woods Creek under an NPDES Permit—an extremely costly and legally risky endeavor. All of these factors, combined with a history and culture unique to Tuolumne County, translate to a reclamation program that incentivizes private landowners to use reclaimed water. Over time the cost for recycled water will be examined as its value and options to dispose of it increase.

Capacity/Connection Fees

Page 73

GJ: “..... 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. 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”.

TUD Response: TUD understands how this verbal statement could illicit confusion. Further discussion in the Board meeting clarified the misunderstanding that in order to receive a firm commitment from TUD to supply water at the same level of priority as its other traditional customers, a capacity fee would need to be paid as laid out in the executed recycled water agreement. *Absent payment of a capacity fee, the District reserves the right, in its judgement to curtail, or even cease delivery of supplemental water to the golf course if water supplies cannot satisfy the demands of other customers who have first priority.* This information was shared with the Grand Jury, but unfortunately it did not make it into the final report.

Page 74

GJ: “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.”

TUD Response: Please refer to the multiple responses above. TUD currently does not charge any of its reclaimed water users for reclaimed water considering the regulatory and economic realities of the existing system, the need to dispose of it, and the limited options for doing so. However, considering all of the above, TUD is moving in the direction of requiring a minimum threshold of easements to provide future certainty for reclamation lands. As this effort unfolds, the current value of the reclaimed water is the value of the cost avoidance to TUD of having to comply with an NPDES permit to discharge water into Woods Creek.

Changing culture and the economics of reclaimed water within the confines of our local agricultural community must be done slowly and gradually to not upset what has been deemed an entitlement for many years. TUD strategically set a 10-year sunset on “free” water to in the first instance to entice new users to take the water, but to also send a signal that the day is coming when the value of reliable recycled water will require an equitable rate.

Water Rules and Regulations

Page 74

GJ: "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."

TUD Response: The passage from the Grand Jury report above is mostly correct. However, it should be noted that Supplemental Water Users pay the same raw water rate, not a lower rate, as all other raw water customers. As previously stated, TUD rates and rate classifications are a function of the cost of service for total cost to provide the service, which is comprised of operations and maintenance and labor expenses. For raw water, the cost of service to higher priority firm water users and supplemental water service is the same, and thus, does not warrant a separate and distinct rate.

GJ: 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.

TUD Response: The recycled water agreement identifies the connection fee charge that would be necessary for TEDA to pay if TEDA desired firm yield (guaranteed) water. Due to the cost and other considerations, TEDA chose to remain as a supplemental water class (not guaranteed - only receiving water if supply is available), along with volunteering its land through signing an easement for future recycled water use with TUD.

GJ: "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."

TUD Response: As stated previously and shared with the Grand Jury, no justification exists to develop a new customer class for recreation as the cost of service is the same. Creating a separate customer class would simply create more work and overhead tracking and billing.