

Duncan James

From: Don Crawford [donjcrawford@sbcglobal.net]
Sent: Friday, September 09, 2016 4:57 PM
To: Duncan James
Cc: Frank; 'Jim Ronco'; Doug Losak; Donald McMullen; KJ Flavetta; zach@schats.com; rselzer@selzerrealty.com
Subject: Re: Reclaimed Water

Duncan ... Thank you for taking the time to respond to me, especially so quickly. I am not in contact with any state agency, so I personally don't have any proof that they would turn down financing requests for the development of a reclaimed water delivery system due to a pending lawsuit; but logic would tell me that if the financing is not available, this major water conservation project would remain an environmental pipe dream. You are the legal professional in this conversation, so if you say the state would provide the funding, despite the lawsuit, I'll defer to your statement. I do know that treating usable reclaimed water as a nuisance is moronic.

I am not prepared to get into the weeds of detail with you, I'll concede to what you represent as being factual. However, I will make a few assumptions. One is that any use of reclaimed water to take the strain from fresh water use benefits us all. Drinkable fresh water, as breathable air, is an undeniable precious resource. It certainly benefits every single citizen in our community. The second assumption I'll make is that that same citizenry is becoming increasingly impatient with mistakes made by government entities in the past negatively impacting the present and the future. Let's not fixate on the past to the detriment of the present and the future.

My third assumption is that this kind of litigation between two government entities supposedly serving our best interests, that may or may not benefit one set of citizenry while possible having a punitive effect on the very same interests, is distasteful to all of us. You know very well the defining phrase that will be used - the only entity profiting from this is (I'll leave you to fill in the blank).

In the interest of full disclosure, I will share two things with you gentleman to gentleman. I believe that this reclaimed water use in our community is a benefit too simple and obvious to ignore; but my overriding concern personally is that there are outdoor sports venues at risk in the future and the near future if we don't find a way to stop using fresh water. You know that our 80 year old golf course is possibly under it's last management. I don't have to tell you what the course has done for the community and for thousands of us, you and your family included. Too many people are wandering around with the assumption that, because it's the largest revenue producing green space and sports venue in our community, it will always be there contributing to fund raisers, our sports history, and citizens in general. I get the ominous feeling that we may well be at a final crisis point. The course cannot continue to remain viable paying full retail for water (not your issue); reclaimed water could very well be our last magic bullet.

You maintain you and your client's innocence in this mess, I give you your position. The City may well have another view. All I'm asking is that all of you act in good faith for the Ukiah Valley. I'm satisfied that you will.

Thank you for your time.

Don

On Friday, September 9, 2016 3:28 PM, Duncan James <mendolaw@duncanjames.com> wrote:

Frank forwarded your email to me for response. First of all, what is the factual basis for your statements: "ongoing litigation could be the one major roadblock preventing moving forward with developing a delivery system for this project"; and, "state funds are available to facilitate the project; but they are contingent on no active pending litigation". Litigation is frequently pending against governmental entities and it does not affect issuance of grants.

Your statements are not new to us and with the frequency of substantially similar inquiries I wonder what the real reason of your email is? Because of prior emails and statements over the past several months we have asked the City to provide us with any written communications which support the statement "state funds are available to facilitate the project; but they are contingent on no active pending litigation". They are either refusing to provide written proof or they don't have any and it may be sheer speculation of their part. If true, the DISTRICT has no incentive not to cooperate with the CITY in their application for the funding for purple water but that level of cooperation does not include giving up any portion of their multi-million dollar claim for damages against the CITY except to the extent it may be part of an overall settlement of the entire litigation. It is the rate payers money we are seeking to recover.

You need to understand that the Waste Water Sewer Plant (WWTP) is owned by the CITY, not the District, and the CITY claims they own the purple water and that we have no right to make any claim thereto. If that is the case, the real question is what is the CITY willing to give (settle with the District) to get the funds. The ball is in their court. The District is not the evil person in this situation. The administration of the waste water system has been exclusively in the hands of the CITY since 1955. They have been the operator of the District and the bookkeeper. According to the CITY'S own documents the DISTRICT has been overcharged more than \$19 million over the years on which more than \$15 million in prejudgment interest has accumulated.. That means HERE ARE potential damages of more than \$34 million plus attorney fees and costs. Since the law suit began, the CITY has already paid the DISTRICT more than \$4 million dollars in partial payment of some of our damage claims. HEREFOR, without regard to prejudgment interest, after paying more than \$4 million in damages there is still \$15 million in potential damages that remains unresolved.

Had the plant been constructed correctly in the first place, purple water would not even be an issue but because too many nitrates are being released into the river it is a problem. You should know that at about the same time our plant was built a similar one was built in Windsor. They don't have nitrate issues which means they also probably don't have purple water issues or a need to remodel a relatively new plant at a cost of an additional \$70 million (\$25 million for nitrates; \$55 million for purple water). If history is any lesson and the CITY had its way, approximately 47% of the cost (\$32.9 million) of the new projects would be borne by the District.

In addition, the present plant is almost at capacity (12,200 ESSU's). According to the most recent report prepared by the CITY for the time period ending March 31, 2016, there are 12,006.71 ESSU'S which is almost identical to a report presented to the UVSD Board on July 28, 2004 which states:

"As of March 2004, the ESSU apportionment by jurisdiction is as follows:

City:	6603 (54.8% of total)
District inside City:	2543 (21.1% of total)
District outside City	<u>2898</u> (24.1% of total)

Total ESSUs 12044"

You can't lose an ESSU. It attaches to the property but you can see by their numbers approximately 37 disappeared yet when you go through their worksheets from April 1, 2005 through March 31, 2016, here were actually 388.57 new ESSU's that were added for a total of 12,432.57 ESSU's, which puts the WWTP SIGNIFICANTLY OVER CAPACITY (capacity is 12,200). Even if you use the March 31, 2016 ESSU numbers (12,006.71 + 388.57 = 12,315.38) it is also significantly over capacity.

There is no legitimate financial reason that the District rate payers should drop its claim for damages and assume that cost because of the CITY'S design and construction failures which are in part the purple water issue. The District can build a brand new package plant which serves approximately 4,000 ESSU's (enough capacity for approximately 4,000 homes, 10,000 people) for approximately \$10 million, which includes moving pure drinkable purple water back to the source of the septage. That would be enough capacity to serve the entire east side of the river, Talmage and everything north of Brush Street both developed and in

the planning stage. At the same time it would remove from the current WWTP all of Vichy, El Dorado and all properties north of Brush Street which goes all the way out to Lake Mendocino Drive. By removing them from the current capacity it would free up approximately 700 ESSU's from the current plant. That is a win-win situation

So what is really happening is the CITY wants to spend \$55 million for purple water from a plant that is operating in excess of capacity when in fact right now they should be addressing the capacity problem created by the current WWTP. Particularly in light of the fact they are under two cease and desist orders issued by North Coast Water Quality Control District. Sounds like a really bad business deal to me.

From: Don Crawford [mailto:donjcrawford@sbcglobal.net]
Sent: Friday, September 09, 2016 7:46 AM
To: dm@uvsd.org
Subject: Reclaimed Water

Good morning. My name is Don Crawford and I am a concerned citizen regarding the productive use of reclaimed water in our community. The obvious multitude of benefits of reclaimed water use in protecting our supply of fresh water goes without saying.

The reason I'm contacting you is to attempt to understand your position on making efforts to facilitate this once in a lifetime conservation possibility. I understand that ongoing litigation could be the one major roadblock preventing moving forward with developing a delivery system for this project.

With the view that this project offers the opportunity for you and the City of Ukiah to play major parts in a historical conservation event benefitting all current and future residents of our valley, have you made any overtures to the City to resolve your longstanding suit or they with you?

As I understand the bottom line of this scenario, state funds are available to facilitate the project; but they are contingent on no active pending litigation. This places both you and the City at a critical decision point: you (meaning both of you) do something quickly and effectively to suspend or resolve this suit; or you remain recalcitrant and the project fails.

In either case there will be great community and public interest.

Thanks for the opportunity to communicate with you.

Regards,

Don Crawford
donjcrawford@sbcglobal.net
Ukiah