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November 8, 2016

Council Members
City of Ukiah
300 Seminary Avenue,
Ukiah CA 95482

Re: *Ukiah Valley Sanitation District v. City of Ukiah*

Dear City Council Members,

In response to your letter dated November 4, 2016, the Ukiah Valley Sanitation District Board of Directors is glad to know that the City of Ukiah is willing to make informal efforts to resolve the pending lawsuit. Some time ago, the District requested the City enter into settlement negotiations in an effort to resolve the lawsuit. We did not, however, place conditions on the settlement negotiations.

By their very nature, and by definition, settlement negotiations are privileged and confidential. There is good reason for that. Offers are made and concessions are explored during these processes. That cannot be done in a non-privileged environment since if settlement fails the offers and concessions could be used as evidence during trial against the offering or conceding party. The reasoning and purpose is similar to that behind a public agency's need for closed sessions to discuss litigation, at least two of which the City recently had concerning this very lawsuit.

Settlement negotiations of pending lawsuits are normal and customary, even when the lawsuit is between two public agencies. As noted, the District's offer to undertake settlement negotiations have been mischaracterized as "conditioned" on privilege and confidentiality, when, in fact, that is what they are in the first place. The District has never sought to impose any condition on customary settlement negotiations, let alone use that process to hide matters from the public, as claimed by the City.

We cannot recall the last time, if ever, the City had "non-confidential" settlement negotiations with an adversary in a pending lawsuit. After all, to do so would undermine the process in the first instance and would be exceptionally abnormal.

Yet, instead of openly accepting the District's offer to engage standard settlement negotiations, the City has placed conditions on its willingness to partake in the effort. The City states it will only participate if the District stays or dismisses its lawsuit. Such a condition is unnecessary. The City should be willing to sit down with the District as part of the conventional settlement negotiation process without attempting to impose conditions.

The District repeatedly tried to informally resolve many of the issues that are part of the lawsuit without litigation. But, the District's requests for information were largely ignored by the City, which forced the District to file the lawsuit. It is only because of the lawsuit that the City states it is willing to consider resolving the disputes. Dismissing it at this point would make no sense. Similarly, putting the lawsuit on hold, or "staying" it, also makes no sense. The sooner the dispute is settled or decided by the court the better. A stay does not further that end and only serves to permit even more delay. If the lawsuit cannot settle, it needs to proceed to conclusion.

In this regard, the City's proposed condition of a stay appears to contradict its statements concerning conditions necessary to obtain the City's recycled water loan. According to the City, the proposed lender requires: (1) a dismissal or resolution of the lawsuit by the years' end; and, (2) a City-District agreement regarding operation of the proposed recycled water program. Since a stay does not resolve the lawsuit, we fail to see how it would be of any value to the loan process as the first condition imposed by the lender would not be satisfied. Nevertheless, the District is focused on resolving, not delaying, the lawsuit.

It is apparent that the recent recycled water issues have acted as catalyst, prompting the City to now make efforts to resolve the lawsuit. We want to be clear that the District is willing to work with the City to solve all issues. This obviously requires cooperation. The City's lender informed us that there are other concerns they have about funding the loan. And, despite our requests, we have not been given access to the process by the City so the lender may provide us with particulars nor have we received the actual proposed loan materials as promised.

We want to take this opportunity to remind the City that we openly sought to work with you and the lender to arrive at terms that are satisfactory to all. Our attorneys spoke with the lender's representative, expressing the District's willingness to work toward a resolution of the issues. Our attorney was told that the City, as the loan applicant, would need to permit the District to be part of those discussions. Therefore, at our request, District representatives wrote to you, again asking that the City allow us to be part of the process. Additional letters and several conversations followed in which we made the same request. (For example, see our attorney's 9/20/2016 letter and our manager's 10/21/2016 letter to the City Council.)

Those overtures have been met with inaction on the part of the City. Loan materials have not been provided and the City has not permitted the District access to the process. The District can't be expected to write a blank check, so to speak, and allow its rate payers to assume additional, but unspecified, assessments and costs.

Here, again, we ask the City to allow us to be part of that process and, so we may understand what is and what is not acceptable to the lender:

1. Allow open communication with the lender; and,
2. Provide us with all related documentation, including the application, proposed terms and conditions, and communications and other materials.

Only then may the District assess how the process will affect it and its ratepayers and make decisions accordingly.

It must also be remembered that the lawsuit includes the City's pending appeal from one of multiple motions filed by the City and denied by the trial court and a cross-complaint against the District. The City has not dismissed its appeal or cross-complaint, even though it has the power to do so. While all briefs have been filed in the appeal, the oral proceedings have not been scheduled and the matter has not been submitted for final decision.

Finally, it is uncertain whether the trial court, or court of appeal, would even permit a stay. Either way, finding out would unnecessarily waste more time. The point again is that if the lawsuit cannot settle, it needs to stay and track and proceed to conclusion as quickly as possible.

Therefore, as a good faith gesture, the District will reluctantly agree to both parties staying any future discovery requests for a period of four (4) weeks if the City agrees to undertake mediation with a mutually-agreeable full-time professional mediator with Judicial Arbitration and Mediation Service (J.A.M.S.), which is a well-regarded alternative dispute resolution service that maintains high success rates. The four (4) week time period will begin on the first mediation date. This type of stay may be done without court intervention or approval. The lawsuit needs to otherwise remain in motion to ensure prompt conclusion if a settlement is not reached.

We believe this process is likely to produce the quickest and best result at this stage. It is the District's position that this is the only way this lawsuit will be resolved. Public posturing is not conducive to resolution and serves only to alienate our respective agencies. We wish to move past that and seek to work through differences in a civilized manner.

Please let us know as soon as possible if this is acceptable to the City. We have been willing to undertake settlement negotiations for a couple months now without making any real headway. Since your letter desires a timely commencement of this process and the draft confidentiality agreement you recently submitted speaks to mediation before a neutral third party, we don't anticipate this being a problem. If the City is truly willing to resolve these disputes and create a path for the future, the time to act is now.

James Ronco
Chair

Robert Page
Vice Chair

Theresa Mcnerlin
Director

Kenneth Marshall
Director

Travis Forrester
Director