This Newsletter contains responses by Talking Rock/Symmetry to an earlier ICR Sanitary District Newsletter along with the District's rebuttal comments.

Construction Boom Creates Challenge for Sanitary District

The thriving housing market is a boon to the local economy. The present treatment plant, located on Grey Bears Trail in Inscription Canyon Ranch, has a stated capacity to process 62,500 gallons per day.

- TRL Response: This is not the actual physical capacity of the plant. 62,500 gallons per day is merely the stated capacity at which it was previously determined that an expansion of the plant should be constructed. It is time to construct addition plant capacity. It does not, however, make financial sense to construct a brand-new plant nor does the District have the resources to do so.
- *District Rebuttal: Symmetry admits that the current plant needs expanding.*

It is currently averaging over 50,000 gallons per day, with a peak month of 57,999 gallons per day. According to the report recently completed for the District by Civiltec Engineering, the treatment plant has capacity for an increased average daily flow of only 375 gallons per day before it reaches the Discharge Limit (Alert Level) of 95% of stated capacity (based on peak monthly average).

- TRL Response: This is not correct. Civiltec has not actually determined the physical capacity since they did not correlate the daily flows with the quality of effluent. The actual capacity of the treatment plant remains undetermined to this time. This misinterpretation is just one of many examples of improper District management.
- *District Rebuttal: There is a raging debate over how much effluent the existing plant can treat. It has treated more that its design capacity of 62,500 gallons per day on a short-term basis. However, actual capacity has been determined to be less than 62,500 gallons per day (Civiltec report dated March 11, 2019). According to Civiltec Engineering, the plant has 3 limiting components: Clarifier, Denitrification and process air. These components are inadequate for an acceptable engineering design of a plant with a capacity of 62,500 gallons per day. The plant has processed 62,500 gallons per day and more through extraordinary manipulation of the system by the system operator. These three components have operated outside normal and accepted processing criteria.*

The District must plan ahead to assure that the plant will be capable of handling all the homes under construction and planned in the near future**.** (See District Contracts for Engineering Services below.)

District Sets Tax Levy for Fiscal 2018-2019.

At its annual Budget and Rate Hearing, held on August 1, 2018, the Governing Board set the tax levy, (the amount required to fund the operation of the District), at $466,720. This is considerably more than the $266,820 from a year ago. The increase is primarily due to legal and consulting fees anticipated in the 2018-19 fiscal year because of the court action filed by Talking Rock Land, LLC. This year's levy is reflected in each property owner's tax bill sent out by Yavapai County in September. You can find the 2018-19 budget on the District website: https://www.icrsd.net

- TRL Response: Talking Rock had no choice but to file suit when the District violated state law and the Talking Rock Development Agreement by adopting an illegal moratorium. The District wants to build a new plant using alternative treatment technology that will cost over $2M instead of expanding the existing plant for far less cost.

- *District Rebuttal: The District did NOT declare a moratorium. There is Not a current plan to build a new plant, current plans are for and expansion. (See "District Contracts for Engineering Services" below).*

Rumors Dispelled & Debunked

Talking Rock has offered (and the District rejected the offer) to fund a portion of the cost to expand the treatment plant.

No such offer has been received by the District. If so, it would have required a public meeting of the Board of Directors to discuss and decide the issue. Such action by the Governing Board requires a public meeting, properly agenized.

- TRL Response: TRL made this offer to the Chairman of the Board of ICRSD. Unfortunately, the Chairman unilaterally refused to consider the offer without involving the Board.
- *District Rebuttal: There was NEVER an offer made to Mr. Barreira that could have been taken to the Board for consideration. Below is what REALLY happened as quoted from Mr. Barreira. "After a Board meeting, Mr. Poteet stopped me in the parking lot after a Board meeting, and he got into a discussion regarding settling with the District. During the course of discussion, he suggested having a meeting without the attorneys, just management for both sides. I told him we would have a meeting with just management. We had a discussion about going to 90,000 gallons. I told him I didn't believe their estimate of $300,000.00 to do so. He then said that if you would agree to use Granite Basin Engineering, Dwight Zemp, as their consultant, they would guarantee $300,000. Anything over that Talking Rock will pay for. I then told him I thought that was a good idea, but when you have a negotiation, both parties should come away with something, and the District would have to have changes to the amended agreement. Language would have to be negotiated that would allow the District to charge connection fees in Talking Rock and in Whispering Canyon so that we had a means and method to develop capital. He agreed that would be something they would be willing to look at. When we left, and he was going to set a meeting and I never heard from him. I had to meet with him on another issue separate from anything to do with the District, and I asked him why he hadn't set the meeting that we discussed. He stated that immediately after our discussion he called Peter Burger (with) Symmetry, and Peter did not want to have a meeting right away. Mr. Poteet said he disagreed with Mr. Burger but he is the boss. Mr. Poteet said that Mr. Burger said didn't want to meet until after July 10th because his attorneys have convinced him that the Judge will award them attorney fees and he doesn't want to have a discussion with the District to settle our difference until after that."*

The District has held meetings in violation of the Open Meeting Law.

The District has announced and posted agendas for all meetings of the Board of Directors as required by law. There have been meetings of NON-BOARD MEMBER personnel associated with the District, i.e. Manager, System Operator and Engineers to discuss matters concerning construction and operations. None of these meetings are Board or Committee meetings and do not require notice to the public

- *District Rebuttal: The District categorically rejects the allegation that any of its Board meetings have been held in violation of Arizona's Open Meeting Law. Because of unfounded and unsupported allegations to the contrary, the Board has ratified prior action at subsequent meetings, rendering such allegations moot by operation of law.*

The Governing Board removed former member Al Poskanzer from the Board.
The Board merely recognized the opening created by operation of law. Mr. Poskanzer moved out of the District and registered to vote outside the District and was no longer considered a qualified elector in the District. See opinion letter from legal counsel on the website: www.icrsd.net. The District has announced it is seeking candidates for the position to be filled by appointment of the Board

- TRL Response: Dr. Poskanzer is building a new home within the District and is temporarily renting a home outside of the District. That circumstance does not disqualify him from Board service. His removal appears contrary to existing law. Notably, Dr. Poskanzer objected to and voted against the increase in ad valorem taxes and user fees that were approved by the Board.
- *District Rebuttal: Dr. Poskanzer sold his house within the District and moved to a rental home outside the District. He apparently has purchased a lot in Talking Rock on which he states he intends to build a house. That alone, taken at face value, would not cost him his status as a qualified elector within the District nor disqualify him as a District Board member. However, by his own admission, on the record of District minutes, he registered to vote and did vote in the November 2018 General Election, from his address outside the District. That action cost him his status as a qualified elector in the District and with it, his qualification to sit on the District Board by operation of law, i.e., without anyone needing to take further action. The District Board was obligated by law to recognize the vacancy Dr. Poskanzer's actions created and, again by operation of law, fill the vacancy using District Bylaws mandates, which it did. Dr. Poskanzer has yet to make a legal case to the contrary.*

District Approves User Fees for 2018-2019
In August, the Governing Board approved charging user fees for properties connected to the sanitary system. Residential user fees were set at $35.00 per month and commercial fees were set at $100.00 per month for small commercial and $150.00 per month for large commercial users. Although the fees are effective as of the beginning of the 2018-19 fiscal year (July 1, 2018), no date has been set to begin billing the fees. The District Governing Board approved the fees to enable the District to raise capital for future expansions to the treatment plant. The District does have enough in its capital fund to pay for a small expansion to the treatment plant that would handle the next 2-5 years of expansion, but it will not have funds for future expansions, and has limited sources from which to obtain capital funding.

- TRL Response: TRL contends that the District has enough money in its capital fund to construct an expansion that would provide 5-10 years of additional capacity.
- *District Rebuttal: The District does have funds for a modest expansion of the plant (see below). How long that expansion will be adequate is open to debate.*

District Contracts for Engineering Services
In August, the Governing Board approved issuing a Request for Proposal for engineering services to design an expansion to the treatment plant. The plant is regularly operating at above 80% capacity.

- TRL Response: since the District has not completed the necessary capacity analysis, this is simply speculation

[District Rebuttal: See District comments above regarding plant capacity].
If the plant capacity were exceeded, the plant would not comply with the regulations for effluent quality produced by the plant, resulting in severe consequences for the District.

- TRL Response: without a full capacity analysis this conclusion is unsupported and akin to fear mongering. The actual physical capacity of the plant has been estimated to be much higher than

the stated capacity but needs to be properly determined before asserting that "severe consequences" are looming.

- *District Rebuttal: Estimated by whom?? Certainly, no engineers have offered a contrary opinion. (See the District's comments above regarding plant capacity.*

The District hopes to construct a modest expansion of plant to handle growth expected in the next 3-5 years. The District has only enough funds in its Capital Fund to pay for a modest expansion. Eight firms were solicited for proposals which were due to the District at the end of September. Only two firms responded. The Board selected Civiltec Engineering, Inc. to perform the work. It is expected that the project will take 12 -18 months to complete. The project will require the District to amend its Aquifer Protection Permit (APP) issued by the Arizona Department of Environmental Quality. The engineering firm will file the application and obtain an amendment to the APP permitting the District to implement the expansion. Once the design work is completed, the construction work will be awarded through a separate contract.

RECORD REQUESTS PUT EXTRA BURDEN ON THE DISTRICT

Arizona statues require that, as a public body, the District must provide public documents to parties requesting them. The documents must be provided, essentially at no charge, (except for the cost of printing). Recently, in connection with the litigation initiated by Talking Rock, the District has received several requests for public records that are costing the District thousands of dollars to provide. As an example, Talking Rock's attorneys have requested copies of attorney invoices received since January 1, 2018, checks issued to attorneys and tapes of public meetings held during the last four months. Providing these tapes and documents has required that an attorney familiar with the case, redact invoices for confidential information, listen to tapes of meetings to verify that it does not contain an Executive Session (which is confidential). At several hundred dollars per hour for legal services, the cost adds to the already high bill for legal services the District is incurring.

- TRL Response: The fees incurred by District Counsel to respond to public records requests are nominal when compared to the legal fees incurred by the District that are directly related to the District's violation of state law and the terms of the Talking Rock Development Agreement.
- *District Rebuttal: The legal fees incurred by the District were solely incurred in response to Talking Rock's lawsuit. Talking Rock admits that it didn't provide the District the required documents until after two hearings. Talking Rock was obligated by law and contract to provide those documents. The District had no obligation to act until it did. When it did, the District acted by approving forms with correct information in them taken from Talking Rock's documents, not the erroneous forms Talking Rock originally submitted. The delay incurred was solely because Talking Rock didn't comply with the contract or the law.*

Lawsuit – Questions and Answers

Many property owners in the District are likely aware that the District is involved in litigation with Talking Rock Land, LLC. Little has been publicized about the lawsuit and rumors are surfacing. Although not much can be said about the current status of litigation for obvious reasons, there are some facts that can be included here. The following questions and answers should help to understand what has happened.

Question: What is the litigation all about?

Answer: Talking Rock Land, LLC., (plaintiff) filed an Order to Show Cause with the Yavapai County Superior Court in April 2018 to compel the ICR Sanitary District to approve Capacity Assurance Forms

required by Yavapai County, for Talking Rock's planned development called Sterling Ranch at Talking Rock. The District refused to sign the forms because, it contended, they were incomplete and inaccurate. [TRL Response: the District Chairman initially claimed he could not sign the necessary forms (referred to hereafter as the "CA Forms") because the plant did not have sufficient capacity. Once it was determined there was no evidence to support that assertion, District ad opted a new justification for not signing the CA Forms, alleging that the CA Forms were incomplete and inaccurate]. After two court hearings, the plaintiff submitted information satisfying the District and the forms were subsequently approved. Consequently, as a direct result. [TRL Response: the District has the obligation to complete and sign the CA Forms. It is a developer's obligation to provide certain information for the District to review. The District argued the CA Forms contained incorrect information but could not provide the necessary information on plant capacity to correct the CA Forms for months. The bottom line is that under the Chairman Barreira's leadership, the District has incurred exorbitant legal fees for nothing. In the end, the District signed the forms they were previously obligated to sign by virtue of the terms of the Talking Rock Development Agreement.]

In addition, the plaintiff alleged that the District's refusal to approve the forms constituted an illegal moratorium and asked the court for relief. Both parties filed documents with the court to claim attorney fees incurred in the litigation so far. The court's ruling awarded partial attorney fees to Talking Rock, LLC. The District is appealing that ruling.

- [TRL Response: The judge ruled that that the District's refusal to sign the CA forms was an illegal moratorium and awarded legal fees to Talking Rock. The District brought a motion for reconsideration which was denied by the Court on December 31, 2018. The District will be responsible for reimbursing Talking Rock's legal fees related to the evidentiary hearing held related to the illegal moratorium.]
- *District Rebuttal: It is true that the court has now awarded Talking Rock attorneys' fees but only for one hearing, as Talking Rock admits. Why would the court limit such an award if Talking Rock had done no wrong? Whether the District will appeal the final judgment depends on what our insurance carrier advises, given the pending, separate $5 million damage claim.*

Finally, Talking Rock Land, LLC. has filed a 5-million-dollar damage claim against the District in connection with the matter. The District has a short time to respond to the claim and then the matter may be filed with the courts.

Question: Why didn't the District approve the forms?

Answer: The District claimed that the forms were not complete and contained errors. The District also contended that it would not be proper for the court to force the District to sign incorrect documents [TRL Response: The District's answer wrongly characterizes the reasons the District did not sign the CA Forms. As stated above, the District's Chairman asserted the plant capacity was not sufficient and that signing the forms would cause the Chairman to "go to jail." When that assertion was proven to be unfounded, the Chairmen changed his story to contend that information was missing from the CA Forms that prevented him from signing. In fact, the Chairman later testified in Court that he had made up his mind at the outset that he would not sign the CA Forms regardless of any content or submitter. This exact language is present in the Court's order awarding TRL fees and determining TRL to be the prevailing party. That Court order is conspicuously absent from publication on the District's website. Even if the District's answer were true, it is the District's obligation to complete the necessary CA forms, not Talking Rock's obligation. Finally, the Talking Rock Development Agreement prohibits the District from withholding approval of the CA Forms for any reason. In spite of that, the District withheld approval and violated state law.]

Question: What is all this litigation costing?

Answer: Plenty! From January 1, 2018, thru the end of November, the District spent nearly $273,000 on legal fees. That is more than the entire operating expense budget for last year. It is the main reason why the property tax bills for this coming fiscal year will be much higher than the current year. The District has no choice but to use attorneys to defend itself against these claims, and unfortunately, the only source of funds are fees levied against District property owners.

- [TRL Response: Hence the high probability of an even larger tax increase this year. Instead of responsibly managing the limited funds the District for plant maintenance and expansion for the benefit of all members, the District has squandered its financial resources on legal fees at the expense of its taxpayers.]
- *District Rebuttal: The District did not initiate the need for the legal expenditures. Without any attempt to resolve the dispute directly, without court action, Talking Rock chose to file a court action. All this could have been avoided by a willingness to discuss the matter, rather than bullying the District into court.*

Question: Wasn't the District sued a few years ago for the same thing?

Answer: The District was sued nearly ten years ago for an illegal moratorium and for violations of the Open Meeting Law. The case was settled in 2012.

[TRL Response: The District was sued previously by coalition of three developers in the District. Two cases were brought. The developers prevailed in the first case for open meeting law violations in 2011. A second and separate case related to damages for an illegal moratorium was then settled in 2012. The District's insurance company paid the developers of TRL, Whispering Canyon and the Preserve $1,000,000 (which was the limit of the District's insurance coverage) to reimbursement the developers for their attorneys' fees in the first case and related claims for damages in the second suit. The District later sued its own insurance company for failure to cover District fees in the first lawsuit and also brought a claim for malpractice against their own lawyer. It is a travesty that the District has allowed this history to repeat itself. Once again, the Court has ruled that the District is going to be responsible to pay attorneys' fees to Talking Rock for adopting an illegal sewer moratorium.]

Question: Isn't there a contract between the District and Talking Rock that calls for meditation before litigation and why wasn't it followed?

Answer: There is an agreement between the District and Talking Rock Land, LLC and Old Capitol Investments (developers of Whispering Canyon Ranch). Paragraph 12 of that agreement calls for alternative dispute resolution, first by mediation, then by arbitration. The reason(s) that provision has not been followed are not forthcoming.

- [TRL Response: This answer is a selective interpretation of one sentence from the Development Agreement. Notably, the District has never argued in court that Talking Rock's suit was barred by this contract provision because it doesn't apply here. The Talking Rock Development Agreement clearly states that no moratorium on service shall be adopted unless it is done pursuant to state law (i.e., A.R.S. 48-2033). The District failed to comply with state law and state law provides Talking Rock the right to bring a claim for violation of the law without requiring alternative dispute resolution.]
- *District Rebuttal: "The legal issues surrounding the "de facto moratorium" claim....." The legal issues surrounding this claim may be appealed by the District or may be moot as the trial court*

has earlier suggested but did not include in its judgment. Much will depend on what our insurance carrier says. The contract (Development Agreement) does require mediation, then arbitration of disputes, which Talking Rock and its counsel admit apply here. They have been trying to avoid these processes because they don't think they have a strong case. They have sought to avoid their responsibilities under the contract by suing solely under the moratorium statute and then only for declaratory judgment, not damages. Instead, they have been trying to "jawbone" the insurance company to the table because they are tired of the Board and its counsel defending the District and its taxpayers' wallets against this spurious $5 million claim.