

ICR SANITARY DISTRICT NEWSLETTER



PO Box 215 Chino Valley, AZ 86323 237-9347
www.icrsd.com

Dear ICRSD property owners:

We are posting this newsletter for three (3) reasons:

First, we have posted on this website the draft Memorandum of Understanding (MOU) sent to the District by Symmetry/Talking Rock. It stems from a meeting with them on January 4th. It purportedly is an offer of settlement concerning the existing litigation. It contains a number of demands on the District. Our attorneys tell us that some of them are beyond the powers of the District. Others are clearly bad public policy. Many of you have asked to see the District's response. We have drafted a response and sent it to our insurance adjuster/carrier which asked to see it before we sent it. We are awaiting their response. When we receive it, we will finalize the response, send it to Symmetry/Talking Rock and post it for you to see.

Second, a number of you have seen the February 20th email from Peter Burger and Symmetry Companies. It contains a number of inaccurate, incomplete and/or misleading statements which the District believes need to be brought to your attention. We will provide this short summary of the District's responses. Separate detailed responses are also being posted.

- a. The email implies that the District has all the financial tools at its disposal to fund sewage treatment expansion. In point of fact, a prior Board in 2012 agreed to severely limit the fees the District was authorized by law to charge, thus hampering capital formation for expansion and making replacement of the existing plant with new, more modern technology financially extremely difficult if not impossible. It has also hampered the District's collection of revenue for expanding the existing plant and developing and maintaining an Arizona Department of Environmental Quality (ADEQ)-required decommissioning fund.
- b. The Board had been relying on the same engineering firm as Talking Rock uses, which turns out helped create the problem with Talking Rock. For example, beginning in December 2017, the plant operator reported to the Board days of treated effluent outflow that significantly exceeded the plant's design capacity. The Board consulted a different engineering firm and discovered that the cost of replacing the plant was financially out of reach with existing financial tools. The Board began discussions with Talking Rock about expanding the existing plant. Talking Rock initially offered financial assistance only to then withdraw the offer. The District then had to engage yet another firm, again through another public process, to test the plant regarding actual plant capacity, to recommend actions to expand the existing technology and estimate the costs for doing so. We are awaiting that report.
- c. While the above effort was starting, Talking Rock sent the District capacity assurance forms on March 22, 2018 for a new development, Sterling Ranch, and demanded that the District approve them even though they must be signed under penalty of perjury. As it turns out, the numbers in the forms were wrong and not supported by the very documents Talking Rock submitted to Yavapai County for approval. Additionally, contrary to Talking Rock's

contractual obligation, it did not submit these documents to the District for review. While the District thought it was still in a dialogue with Talking Rock, Talking Rock sued the District. Thus, the legal fees incurred by the District in 2018 and so far this year have almost entirely been driven by the need for the District to defend the lawsuit.

- d. At the end of a June 19th hearing, the judge ordered Talking Rock to give the District the documents to which it is entitled by law and contract. Some twenty (20) days later, after new engineering company review, the District approved, signed and sent significantly different capacity assurance forms to Yavapai County, which the county accepted.
- e. The June 19th hearing Talking Rock references in its email was initially requested by the District. When we found out through public records requests to the county that Talking Rock's documents had been rejected by the county and refiled, but not shared with the District, the District asked the court to call off the hearing but Talking Rock changed its tune and wanted the hearing. It should surprise no one that the District at that time didn't know the actual (versus design) capacity of the plant because the very engineer previously used by both sides didn't and no study of plant capacity had been done by that engineer.
- f. We just received a final judgment in the litigation. The judge awarded Talking Rock attorneys' fees, but only for the June 19th hearing, in the amount of \$50,000. In other words, virtually all the District's legal fees could have been avoided if Talking Rock had provided the District the corrected documents in a timely fashion. We have thirty (30) days to decide whether to appeal.
- g. The reason that we cannot respond to Talking Rock's draft MOU without insurance company approval is that Talking Rock has filed a separate \$5 million claim against the District, which Talking Rock conveniently forgets to mention. We must have insurance company approval of any response or other action to maintain insurance coverage. Without that coverage, any possibly successful claim would fall on the District and on you, its taxpayers. We cannot take that risk. That also affects our decision whether to appeal the judgment.
- h. In the meantime, Symmetry and Troon, the club operator, have attempted to coerce the District into surrendering its authority to them by suspending the Board chair's membership indefinitely until the litigation is settled with only a promise to "consider" reinstating the Barreira's membership when that happens. Moreover, since David refused to abandon his elective office as demanded by Talking Rock/Symmetry management, they are aggressively attempting to have David recalled from his Board position.

Third, rest assured that the District is working diligently to get the proper engineering advice so that proper steps can be taken, using required public processes, to move forward with expanding the existing plant as the only, albeit ultimately temporary, strategy for continuing to provide the District's communities with safe, reliable sewage collection and treatment services. The District cannot turn over its governmental responsibilities to these two private companies. It can work with them to achieve common sense solutions but there is no evidence to date that either Symmetry or Troon are interested in anything but total domination. We will continue to do our very best to keep you apprised of developments as they occur by posting them on the District website, the only avenue of communication we have since Talking Rock masks its emails that go at least to some of you.