

ICR SANITARY DISTRICT NEWSLETTER



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This Newsletter is a copy of text from an email to Talking Rock members from Peter Burger of Symmetry Companies along with District responses to those comments.

Dear Members,

With 2019 underway and quickly moving forward, a brief update and clarification regarding the status of our utility services, particularly sewage, may be in order as we look to build upon a record-setting 2018 at Talking Rock.

In no uncertain terms, Talking Rock has complete capacity assurance from the Inscription Canyon Sanitary District for all approved platted home sites, including all current Talking Rock completed home sites and for all of the existing homeowners. Whether your home is currently built, under construction, or in your long-term plans to develop later on, rest assured that you will have quality water, sewer infrastructure and full capacity in these services.

ICRSD Response:

This does not account for the fact that previous capacity assurance forms were signed with a qualifying statement that funds needed for future expansions would be provided by funds from Developer Lot Fees. In fact, those Lot Fees have proven to be woefully inadequate to provide for future expansion. The District has approximately \$700,000 in funds from Developer Lot Fees, most of which were collected prior to 2012 (when the present agreement with developers was signed) with which to fund plant expansions.

The District has signed off on these assurance forms that cover approximately 1600 lots within the District. The District currently has about 625 properties connected to the system. Plans are underway to expand the plant to 90,000 gallons per day with the funds available. That expansion (if it comes quickly enough) will provide capacity for another few years. Once that point is reached, The District will need to expand again, or replace the present plant with more capacity.

Since the present agreement was signed, the District has collected approximately \$134,000 in Developer Lot Fees. At this rate, there won't be enough funds in the next 3-5 years to pay for an expansion that will likely cost at least \$1,000,000.

The District has the alternative to obtain a loan to finance construction. A loan must first be approved through an election of registered voters in the District. Assuming voters would approve of obtaining a loan and undertaking a repayment obligation, the loan repayment would have to come from either property taxes and/or user fees- either of which would hit properties already connected to the system. .

So, service to those not already connected to the system is not absolutely assured. It will be a complex process that will likely involve voter approval to guarantee future expansions.

Talking Rock admits that it has all the completed capacity assurance forms it needs from the District. It claims it has experienced a record-setting year in 2018. Then why does it have a \$5 million claim pending against the District? Talking Rock is talking out of both sides of its mouth!

A Little Sanitary District History:

The Inscription Canyon Sanitary District (ICRSD) was formed in 1995 for the purpose of providing sewer service using the authorities granted by statute to special taxing districts. The District provides service to four master planned communities: Talking Rock, Inscription Canyon Ranch, Whispering Canyon, and The Preserve. The number of home sites and homes planned in each of these communities were taken into consideration during approval proceedings many years ago. These governmental approvals addressed everything from roads and - utilities, to impacts on local schools, as well as local government and healthcare services. **More importantly, the need for expansion of water and wastewater facilities in conjunction with growth of the communities in the District was always contemplated.**

ICRSD Response:

The bottom line is that the prior Board contracted away in 2012 the tools, other than ad valorem taxes, by which the District could have been accumulating funds for expansion. These same restrictions dim the chances of borrowing money for what has to be eventually, a new, more modern plant because the District couldn't meet debt service requirements. The Development Agreement has to be amended to avoid this future crisis.

The Developers of all four communities have invested millions of dollars in water and sewer infrastructure, including sewer mains, pipelines, pump stations and construction of the existing self-contained sewer plant. Upon completion, the Developers gifted these facilities to the Inscription Canyon Sanitary District to operate and maintain through District member's payment of tax dollars and service fees.

ICRSD Response:

This is a half-truth. In fact, the developers forgave repayment of 50% of the cost of the present treatment plant. The District must pay developers of Talking Rock and Whispering

Canyon 15% of gross revenue until 2034 as repayment for present infrastructure. So far, the District has paid approximately \$200,000.

2019 Time for Reflection and Change:

This District is governed by a Board of Directors, comprised of three elected members of the community who have an obligation to responsibly represent all members of the District.

Unfortunately, there have been situations where we believe District Board members have failed in their duty of responsible management of your tax dollars.

In those instances, District Board members took actions contrary to law (by imposing illegal sewer moratoriums), which in turn cost the District substantial money and resources. As a result, your District lost money and was forced to raise taxes and fees. Despite the increase in taxes and fees, the District has failed to design or build the plant expansion. In fact, during a recent court hearing involving Talking Rock and the District, the Judge was very surprised to learn through testimony that the District Board did not know the actual physical capacity of the existing plant, and did not have the ability to measure the volume of effluent coming into the plant.

ICRSD Response:

The District has not "lost money". The increase in taxes & fees was totally due to the need to raise funds to pay for attorneys to respond to the legal action by Talking Rock. The District currently has an engineering firm working to expand the plant to the extent possible with the limited funds it has available.

In our view, this is not responsible management. The District Board should be held to the basic standard of responsibly and ethically managing tax revenues and compliance with the law. The Board should be singularly focused on expanding the plant in the most economic and efficient way possible. Instead, the Chairman of the District Board orchestrated an illegal sewer moratorium and the legally questionable removal of the one Board members who voted against the resulting tax increase and challenged his authority - (Dr. Al Poskanser).

ICRSD Response:

The Board Chairman did not orchestrate an illegal sewer moratorium. There was never a vote on such a matter. To state that the Board Chair can orchestrate the votes of other members of the Board is an insult to the intelligence, character and integrity of the independently elected members of the Board. Each member of the Board has voted their own opinion on every matter that has come before the Board and all actions are on a majority basis. The truth is that the District has been working to expand treatment plant capacity for well over a year. The District sought proposals from several firms to plan and

design expansion of the treatment facility to 250,000 gallons per day in two phases. The District was forced to abandon those plans when it was determined that since the District did not have funds on hand, it would have to wait until November of 2019, to get a measure on a ballot for voter approval. The District is now focused on expanding the existing plant with what funds are available.

The Facts:

- ICRSD has money set aside for expansion, some of which has been funded by Talking Rock. Unfortunately, the ICRSD Board has wasted hundreds of thousands of dollars on legal fees that could have been used in conjunction with the developer funds, for a plant expansion.

ICRSD Response:

Wrong: The District has used NO funds earmarked for expansion to pay legal fees. Fees raised for expenses to operate the District are not to be used for capital expenditures. Clearly, Mr. Burger does not understand how a Special Tax District works.

- The existing sewer plant was permitted in a manner that contemplated multiple expansions. The District has collected funds for years in conjunction with planning for necessary expansion.
- It will soon be time to expand the existing sewer plant. However, instead of using the funds the District has to complete that task, the District is wasting its financial reserves on both lawyers to defend their illegal actions and consultants to evaluate the construction of a brand-new plant using different treatment technology, as opposed to executing the original expansion plan.
- There is no emergency regarding plant function or capacity. There is no risk that untreated sewage will soon be discharged into the lake, or on the Talking Rock Golf Course or anywhere else.

ICRSD Response:

The District will do everything in its power to see to it that the plant continues to treat effluent to ADEQ Water Quality standards. However, there is a risk that the “record setting” growth Talking Rock extols will add so much inflow, even with modest expansion, that there is a risk however that at some point, the plant may not satisfy the water quality standards required by ADEQ, which could lead to intervention by ADEQ and subsequent ramifications.

- Talking Rock has the right to continue our plan to build homes and home sites with suitable utilities while providing first-class infrastructure to existing owners and

members, and we will continue to do so.

The Court Order issued by Judge Napper on November 8, 2018, with regards to Talking Rock Land's litigation with the District is particularly telling in this regard, with Judge Napper stating:

"...there was no evidence produced at the hearing that Sterling Ranch created a capacity issue for the plant. Further, the witness called by the Defendants proved the District did not know the capacity of the plant and that they were refusing to sign any and all CAAs produced by anyone. The Defendants produced absolutely no evidence in support of their defense and instead proved what the Plaintiff had been claiming all along. Again, this was done at a hearing requested by the Defendants and over the objections of the Plaintiff."

ICRSD Response: Talking Rock's selective interpretation of the current status of the lawsuit will be tested now that the court issued its final judgment and the District must decide its next steps, subject to our insurance carrier's instructions. At all times, the District will act to protect its mission and the costs that its taxpayers may have to incur.

For those who wish to learn more, please take a moment to view the link to the [court order](#) issued by Judge Napper in the litigation against the District Board in its entirety. Judge Napper's refute of the District Board's position is comprehensive. Furthermore, Chairman Barreira's testimony will illustrate the need for change.

We have also included a link to the [ICRSD December Newsletter](#) with responses to certain content embedded in the text, to provide the opportunity to consider all the facts rather than selective information published by the District Board. This is your community, we encourage you to support efforts to end this wasteful and pointless dynamic as we work to move forward with responsibly, appropriately managed expansion of the existing sewer plant that coincides with the growth in this District.

ICRSD Response:
Mr. Burger sounds like he sincerely wants to move on and settle this matter. If you think so, read Mr. Burger's demand "offer" to the District to settle the dispute. He clearly wants to embarrass and smear Mr. Barreira while financially punishing the District for perceived damages. Go to the District's website: www.icrsd.net to read the text of Mr. Burger's "proposal".