

Yosemite West Legal Committee

Status report: 10/15/2015

(Update to previous report of 8/31/2014)

History and Background

The issue of insufficient capacity for sewer wastewater treatment has been lingering since the building of our community over 50 years ago. Several decades ago, there was a lawsuit and settlement against the original developers (“the Doctors Group”) for insufficient planning and inadequate design at the beginning. The court judgment resulted in transfer in 1988 of sewer responsibility from the private development to Mariposa county.

The original Wastewater Discharge Requirements (WDRs) issued by the State Regional Water Quality Control Board (“the Water Board”) set the needed capacity of the Yosemite West Waste Water Treatment Facility (WWTF) at 100,000 gallons per day (gpd). Water Board inspections between 1993 and 1997 found failures in the leach field that resulted in effluent flowing over the surface. In 1998, the WWTF leach fields experienced complete failure, which resulted in new WDRs that set a 60,000 gpd limit on the WWTF. The county spent approximately \$1M for sewer rehabilitation from 1995 to 2004.

In 2004, property owners voted to approve a parcel assessment tax and system of EDU (Equivalent Dwelling Unit) assessments to pay the \$3M cost for rehabilitating the WWTF. The WWTF overhaul was targeted to enable the originally envisioned 100,000 gpd capacity, sufficient for both existing homes and “build-out” of undeveloped lots. During construction, the contractor went bankrupt and Mariposa County Public Works took over the completion of construction. The final constructed WWTF was never certified by an engineer as to functional capacity. Since the completion of the project, it has been found that additional improvements and corrections are needed to attain the permitted 60,000 gpd capacity and ultimately the original design target.

Current status

The County is well aware of the need to correct the physical sewer deficiencies. The 1998 leech-field failure was the reason for the County’s building-permit moratorium from 1998 to 2006. In 2003, the County was issued a “Cease and Desist” order from the Water Board for failure to comply with the 1998 WDRs and leech field failure. Even after the 2005-2006 WWTF re-construction, there have been further reported wastewater discharge violations. In 2013, the Water Board issued a Notice of Violation (NOV) to Mariposa County for failure to comply with the 1998 WDRs. A 2014 study by professional engineering company Provost & Pritchard placed the actual operating capacity at about 35,000 gpd, well under the Water Board permit level of 60,000 gpd.

In light of these violations, Mariposa County took action to stop sale of additional EDUs in June 2014. However, the County cannot stop construction of new houses that use the EDUs paid for in the 2004

Ballot Assessment. So, lots with the standard 1 EDU will be limited to a 3 bedroom, 2 bath, 1 kitchen house, since no more EDUs can be sold until the WWTF is rehabilitated and the actual capacity certified as adequate.

The total number of EDUs is limited to the capacity of the WWTF. The county also notified all Yosemite West property owners in Feb 2015 that water usage restrictions might be imposed if necessary, but the intent is to increase the WWTF capacity to avoid further discharge violations and to avoid invoking water consumption restrictions. Some WWTF improvements are already in progress, but additional improvements may require more capital expenditure, estimated at about \$1.4M at County Supervisors' meetings in 2014.

Legal processes

Mariposa County is under a state order to make corrections to come into compliance and correct wastewater discharge violations. In 2013, the county considered increasing water rates and building-permit fees. This led to property owners forming the Yosemite West Legal Committee (YWLC) which retained the law firm of Cota Cole as attorneys in Sept 2013. The goal was to investigate the legal options with regard to securing a functioning WWTF. It is important to note that it was never the goal of the YWLC to file any lawsuits, and no suits needed to be filed.

A key action of Cota Cole was to get the proposed water-rate increase withdrawn, because Mariposa County did not follow the legal process dictated by Prop. 218 in California, which was voted into law in 1996. Prop. 218 regulates special taxes (used for specific purposes), property-related fees, and assessments (including for sewer) that provide "property related special benefits". Instituting new assessments requires a vote of the affected property owners, which is weighted by the proportional benefits of the proposed assessment. Future proposals Mariposa county may make for rates and assessments will need to follow the Prop. 218 process for majority approval.

It is possible there may be a County proposal to change Yosemite West from a "special assessment district" into a general county service area "Zone of Benefit." The difference between these two legal entities is very important because it would change the requirement for approving water rate changes and fee assessments from a majority approval vote for assessments into allowing assessments unless challenged by "majority protest".

Working with the county

There are many avenues to work with Mariposa County to correct the WWTF issues. The situation was included in the scope of the 2012-2013 Mariposa County Grand Jury proceedings. The 2012-2013 Grand Jury recommended the WWTF issues be included in the scope of the 2013-2014 Grand Jury, but it was not placed on the agenda in the 2013-2014, 2014-2015, nor 2015-2016 Grand Juries. While there is the possibility to get the WWTF issues back on the agenda for the 2016-2017 Grand Jury when it forms in May 2016, a citizen's request is required to achieve this action.

The Yosemite West Maintenance District Advisory Committee (YW DAC) was formed by County Board of Supervisors in 1981 and re-authorized in 1995, and has been the primary entity working with Mariposa County on behalf of the Yosemite West property owners. The YW DAC consists of both county officials and Yosemite West community members, and community members must be nominated onto the committee by our county supervisor and voted in by the committee's board.

Funding status

Mariposa County has multiple accounts related to the WWTF. Fund 545 served as the WWTF primary fund, and contained the USDA loan and the expenditure of the loan, but confusion has reigned over the County's accounting and handling of this fund. Fund 322 is the YW Maintenance District fund for current road, sewer, and water projects. Fund 535 is the YW Utility Capital fund for accumulating capital reserves for the WWTF.

One of the actions of the YWLC and Cota Cole was to meet with Mariposa County officials and request a financial analysis of the WWTF finances by an external independent CPA firm. This was conducted in 2014-2015 by Joe Aguilar of Vavrinek Trine & Day (VTD). The findings and recommendations of the analysis were presented to the county Board of Supervisors at the 9/15/2015 meeting. Together with previous actions, there have been key results:

- a) Agreement (based on the 2004 assessment documents) that of the \$1,080,000 spent by the County prior to 2004, only \$193,003 can be repaid from YW to the County.
- b) All "loans" and "transfers" from the County to YW prior to 2004 are County contributions and need to be restated on County financial records.
- c) Reimbursement to YW accounts of an excessive \$42K taken out of the WWTF account by the County in 2006.
- d) Recommendation for earmarking all revenue from sale of reserve capacity EDUs for the sole use of the WWTF needs. Previously, the County had been depositing EDU money into the County General Fund, but the County has now agreed to transfer all EDU money into Fund 535 (Capital) or Fund 322 (Maintenance). The approximately \$160,000 already collected will be transferred once the exact amount is confirmed by the County Auditor in November 2015, and approved by the Supervisors.
- e) The Board of Supervisors has accepted the VTD report, including findings and recommendations and directed County Staff (the County Administrative Officer's office) to prepare a resolution for action to implement the recommendations. This will appear on a Supervisors' Agenda at a later date, likely in December 2015.

It is important to note that the analysis by Joe Aguilar identified an additional \$65,000 that the County repaid itself as partial payment of what it termed a loan, made prior to the 2004 Ballot Assessment. This is also in excess of the \$193,003 limit to County reimbursements. Both District 1 Supervisor and County CAO agree that this \$65,000 will be returned to the YW District. It will require a separate action by the Board of Supervisors.

While the above are all positive steps, they may not alone be enough to fund the remaining WWTF improvements needed to attain full build out capacity of Yosemite West. The County continues to investigate how to source enough WWTF funding, and is conducting a broader county "Rate Study" encompassing not only sewer, but also the needs of roads, incoming water sources, and water distribution piping. The County is conducting rate studies for several Special Districts within the County at the same time, for economy of scale and total cost savings. The Rate Study is expected to complete by Sept 2016, but draft versions may be available sooner.

Status of YWLC

On behalf of YWLC, Cota Cole has already:

- a) Identified errors in the County's process for the proposed 2013 rate increase, which resulted in the County not moving ahead with the rate increase.
- b) Recommended the financial analyst for the WWTF account, resulting in the presentation of the VTD report to the County Board of Supervisors.
- c) Provided advice on how to apply the previous agreements (including 2004 bond agreement and 2008 letter from Jones-Hall legal firm), resulting in the reimbursements.

YWLC still has an existing open retainer with Cota Cole, which may be needed to:

- a) Provide advice on tradeoffs with regards to remaining a "Special Assessment District" with applicable Prop. 218 majority voter-approval requirements for assessments and rate increases versus becoming a "Zone of Benefit" (ZOB) within a County-wide Service Area (CSA).
- b) Review the County's "Rate Study" and ensure assessment/fee proposals comply with California law and are of benefit to Yosemite West.