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Wastewater Coalition Files Claim and Seeks Public Documents to Ensure Proper Use of Ratepayer Funds by San Jose-Santa Clara Regional Wastewater Facility

Government Agencies Demand Greater Transparency From City of San Jose

January 25, 2016 -- A coalition of cities and small wastewater agencies representing communities throughout the South Bay has banded together to demand greater accountability and transparency regarding the use of ratepayer funds tied to the San Jose-Santa Clara Regional Wastewater Treatment Facility.

Coalition members, considered tributary agencies to the treatment plant, say they were left with no choice but to take action by filing a claim and a public records request after the City of San Jose refused to consider common-sense changes to their 30-year-old legal agreements, such as regular independent audits.

Coalition members say they need to make certain ratepayers are being fairly charged for treatment plant upgrades, and that ratepayer funds are not being used for projects outside of their agreement for wastewater treatment services.

The coalition includes the City of Milpitas, Cupertino Sanitary District, Burbank Sanitary District, the Santa Clara County Sanitation District 2-3 and the West Valley Sanitation District, which collectively serve the communities of Cupertino, Los Gatos, Campbell, Monte Sereno, Saratoga, and unincorporated areas of Santa Clara County.

The coalition, representing a population of about 270,000, took the unprecedented step of filing an administrative claim with the Treatment Plant Advisory Committee (TPAC) and San Jose, the principal owner and administrator of the treatment facility. Specifically, the claim alleges that San Jose's failure to update its decades-old agreements with the tributary agencies results in the City overcharging the coalition for plant improvements.

The claim accuses San Jose of breach of contract with the tributary agencies, and alleges the City has unfairly allocated the costs of the planned treatment plant improvements based on an improper formula. As a result, the tributary agencies are being asked to pay more than their fair share of the improvements, and are effectively subsidizing San Jose in the process.

The tributary agencies also opted to file a public records request prior to expending millions of dollars on the proposed improvement projects after San Jose disregarded their requests for agreement changes. The City of Santa Clara, which is co-owner of the treatment plant, was also served with a public records request.

"We're asking San Jose to incorporate changes in the master agreements that provide for an equitable allocation of cost and greater transparency in how our ratepayer funds are being used," said Steve Leonardis, a member of the Board of Directors for West Valley Sanitation District. "So far they have refused to consider our amendments, so we filed a public records request to ensure transparency and accountability."

Among the changes suggested by the coalition to the decades-old legal documents:

- Greater transparency on the use of ratepayer funds

- Fairness in the allocation of improvement costs
- Regular independent audits of the Wastewater Treatment Plant
- Fairness in the distribution of income or revenue generated from plant lands
- Clarification of the use of so-called “overhead funds” charged to the tributary agencies.
- Improved billing procedures for the tributary agencies and their ratepayers.
- Terms and conditions for financing the necessary capital upgrades identified in San Jose’s 2013 Plant Master Plan.

However, San Jose has been unwilling to consider the tributary agencies’ suggestions. San Jose has gone so far as to threaten the coalition by withdrawing support for a state low-interest loan program if the tributary agencies don’t agree to the status quo.

If the tributary agencies can’t participate in the loan program, they would be forced to pay cash for their share of the upcoming plant improvements, which would require large rate increases for their ratepayers and likely bankrupt some of the smaller tributary agencies. This is one of the complaints set forth in the administrative claim.

The Burbank Sanitary District, the smallest of the tributary agencies, is particularly threatened by San Jose’s position. The district board of directors is holding a special public hearing on the waste treatment plant upgrade proposal and its impact on ratepayers on Wednesday, Jan. 27, from 7-9 p.m. at the Rose Garden Branch Library.

“We support the City of San Jose’s effort to make substantial improvements to the Wastewater Treatment Plant and want to pay our fair share of those improvements,” said Michelle Kaelker-Boor of the Burbank Sanitary District. “However, without the City’s help in qualifying for low-interest funding from the state and other financial assistance, our district will be in an untenable financial situation.”

San Jose's action would essentially force the agencies to choose between the right of their ratepayers to pay a fair share of the costs -- knowing where their payments are being spent -- and participation in a low-interest loan program to save ratepayer money.

TPAC is expected to hold a hearing on the allegations laid out in the administrative claim. The coalition will also review the results of the public records request when received and report back to their respective boards with the findings.