

Public Comments from August 18, 2020 Meeting for San Leon Municipal Utility District

Paul Marcaccio

- The fire department receives expenditures from the utility district, approximately, from each tap, \$10 a month, \$120 a year. With the 3,000 taps, that's about \$346,000 annually that goes over there. I've asked several times for expenditures and audits of the last years and this year, nobody's given me any information, so I'd like to see where the money goes that we spend, each of us homeowners.
 - The only records request we have on file for you is from April 8, 2019. At that time, we provided you the documents you requested, none of which pertained to the fire department. We have been in the process of coordinating the audit outlined in the fire protection services contract, which is now underway. We will communicate the results of the audit with the public once they are available.
- Your bond election voted overwhelmingly for the \$40 million dollars. You have indicated that presently you found secured contractual agreements less than \$13 million and so that leaves quite a bit of money, \$28 million, still in the coffers. You want to make a token refund of about 7 cents of that increase of 23... I'd like to see it reduced to 48 cents instead of the 57 cents that you've allotted. I think the money should be refunded since we were wanting to build a secondary plant, the money is allocated... I don't think we need to keep it anywhere except back. Of course, September is coming, the appraisal district is gonna be sending out a bill and my water district doubled, almost 92%. I know that there's no calculation because with the rest of the entities that charge us taxes they don't go up more than 10%, but in the water district it doesn't take place, so we had almost a 100% increase, so by bringing it back down to the 48 it's livable.
 - We understand the burden of the additional taxes that were incurred as a result of the publicly approved bond election in May 2019, which was based on the necessary wastewater treatment plant expansion that is currently underway. While the authorization from that bond election totaled \$39,840,000, the District only sold what was necessary to complete the treatment plant expansion, an estimated \$22,750,000 based on the information available at the time. Due to growth in the District, the increase in appraised values by Galveston County Appraisal District, and a fiscally responsible refunding of older bonds for an interest cost savings, the initial rate of \$0.63 has been lowered and, based on the professional opinion of our financial advisor and District Manager, the currently proposed \$0.56 is going to be adequate to address our Debt Service and Operations & Maintenance needs at the current total 2020 Assessed Value provided by the GCAD.

Phillip Haskett

- When will the letter that was referenced in last month's meeting to TCEQ requesting reallocation of the excess bond proceeds that was just mentioned be ready to be sent to TCEQ? I've requested it some weeks ago and you'd indicated it wasn't ready yet.
 - The letter has not been finalized as of yet; we will advise the public once it has been finalized and sent to TCEQ.
- Why was the August 10th special meeting necessary? What circumstances required that meeting to be held instead of that single agenda item of publishing notice of the special - of the tax rate hearing in next month's meeting, why was it necessary to have a special meeting for that?
 - We were advised by Galveston County Tax Assessor on July 29th that recent legislation had changed some of the reporting requirements for taxable entities. As a result, we needed to call a special meeting to comply with the updated deadlines as requested by the County. The District would have preferred to conduct those items during our regular August meeting. However, the Galveston County Tax Assessor's office requested the information be provided no later than August 10th.
- Is there a full recording of that meeting? Why wasn't a full recording made, because it's not available on the website.
 - A recording was made and the recording was uploaded to our website the same week of the meeting.
- Why wasn't the board meeting package for this meeting posted online? You've been posting that online for a year and a half now after I started yipping at you about what you guys were doing. Now suddenly you stop posting the board meeting packet, I want to know why you're doing that now, or not doing it.
 - We have historically uploaded the board packet to our website the Monday preceding our meeting. However, this month we experienced a significant disruption due to a software update that didn't properly patch into our system. In addition, both of our office staff had personal emergencies that delayed their arrival to the office, so all operations, including addressing the software emergency, were relegated to our Office Manager and District Manager. In the midst of that chaos, the board packet was inadvertently not uploaded to the website.
- When will the first pay estimate to the contractor who was awarded the contract to build the wastewater treatment plant be paid, or when is it even expected to be received?
 - The contractor is doing preliminary assessment and mobilization prior to the demolition phase of the expansion. At this time, we do not have a firm concept of when the first pay estimate can be expected as this initial phase does not comprise significant costs.

- Isn't it true that the interest on the \$22.75 million that was borrowed last fall for the wastewater treatment plant costing the district approximately \$56,000 per month in interest alone?
 - Interest payments are not calculated on a monthly basis, but rather twice a year. A schedule of all debt obligations is available on our website under the "Truth in Taxation" section. For the 2019 bond issue, our March 1st interest payment was \$215,146 (\$43,029.20 monthly) and our September 1st interest payment is \$322,719 (\$53,786.50 monthly).
- Do you have any evidence, or can you provide any evidence, that the person who is about to be awarded the RFP for the small projects was not afforded an opportunity to review the other party's bids in the month and a half that has elapsed since you opened the bids in a private bid opening with only you and one individual and the security officer present and then purportedly locked in the cabinet for six weeks?
 - The small projects were not advertised as an RFP, but rather a competitive sealed bid. In order to procure competitive bids on behalf of the District, the bids were designated due by July 1st at 4:30 PM, to be received at our office. We had a GCSO deputy on site to affirm receipt of the bids in good order, which were signed and dated by the District Manager. Once all bids were received, they were locked in the District Manager's office until the public opening on July 15th at 6:30 PM. While the general District meeting was conducted telephonically, the District office was kept open to maintain the public bid opening. All bidding agencies were invited to attend; one representative did, along with a GCSO deputy.
- When can we expect answers from you or from the District to all the questions that are being asked here today that you are now taking the position that you will not answer during the meeting but instead respond in writing? When can we expect those answers?
 - All questions will be responded to in writing within 10 business days.

David Jetelina

- Mr. Bishop, over the past year you've been paid thousands of dollars by the water district for your fiduciary service. As district treasurer, what specific actions have you taken to ensure fiduciary accountability to the public?
 - The district treasurer is responsible for investing district funds in the manner and type prescribed by the Public Funds Investment Act. As part of this responsibility, Mr. Bishop renews his PFIA certification every 2 years in order to refresh his understanding of the investment controls, security risks, strategy risks, market risks, and ensure compliance with the act. In addition, Mr. Bishop reviews the annual budget with the District Manager, Office Manager, and Field Supervisor on a regular basis to ensure adherence to the proposed line item expenditures and recommend corrective action when necessary. In light of past budget shortfalls, Mr. Bishop participated in the candidate search for District Manager in the fall of

2017 to improve existing policies and practices as well as establish additional cost controls for the financial stability of the District.

- Mr. Walker, in the last meeting you admitted that you were misinformed as to the status of the San Leon MUD water control and improvement district. In the spring 2019, at a regular public meeting, you concurred with President Manchaca that approximately \$50,000 would be required to enable a belt press to be used at our wastewater treatment plant, a belief which has proven to be unfounded. Failure to adopt the belt press solution in a timely manner at the wastewater treatment plant resulted in significant losses to us water users. Subsequent to that lapse in judgement, the San Leon water board produced a one-page color photograph, alleged to be an engineering report, which served as the basis for long-term public debt in the form of the recent \$39,840,000 bond issues. Subsequent to that estimate for the wastewater treatment plant expansion, it was found to be grossly in error, costing the water users of the District hundreds of thousands of dollars. Your state license, provided by the Texas Board of Professional Engineers, carries with it an expectation by the public that you will act on their behalf in a highly ethical manner. How do you explain your aforementioned failures?
 - The \$50,000 upgrade pertained to additional valving on the aeration and digesters in order to more easily facilitate the belt press and stated minimums from the numerous quotes we received. Thanks to the dedicated work of the treatment facility staff and coordinated efforts with the contractor, we were able to adapt our process control to accommodate the minimums with our existing setup. The proposed improvements have been adopted into the treatment plant expansion in order to simplify the process in the future.
 - The single page photo was part of a more comprehensive engineering report, which has already been discussed several times. A line item cost analysis and the photo mock-up were released while the remainder of the report was initially considered confidential to preserve the integrity of the bidding process.
 - An explanation for the cost estimate difference has already been relayed to you by both the District's engineer and the president of Costello. Both individuals affirmed that the COVID crisis has resulted in significantly decreased costs across multiple projects being handled by Costello. All information relayed to the District by the engineer is given while taking into consideration the facts available at the time. Based on the analyses of multiple Costello employees and corroboration by a third-party contractor firm who was not bidding on the project, the \$22,750,000 bond issue was necessary to cover the cost of the wastewater plant expansion as well as the numerous fees associated with bond issuance (contingency fees, state fees, etc.)
- To the Board: in a recent San Leon water district press release published in one of the local tabloids, signed off by the Board, you said that the fire services contractor has

implemented “strong financial controls to prevent future embezzlement.” Please tell us what specific financial controls were put in place and when they were put in place.

- The previous Fire Chief, Jeff Pitman, has instituted multiple changes to prevent future embezzlement, including cancellation of the debit card previously tied to the expense account and requiring additional signatures on all checks. Any additional questions regarding fire department operations should be directed to the VFD.
- President Manchaca: at the last meeting you stated there were approximately 2,500 missing brass water meters; have you made any progress in locating that asset, paid for by the public and entrusted to the District?
 - As stated during several meetings, to the best of our knowledge the meters were disposed of appropriately. We have established a formal policy to ensure future surplus asset disposal is documented thoroughly.
- Mr. Miller: the people of the District pay you generously to act in good faith on their behalf. It could be argued that the recent public sealed bid for infrastructure repair lacked sufficient public advertisement notification, clarification, and transparency in its wording and how the sealed bids were handled. Your failure has manifested itself in the very poor sealed bid response which we’ve received. Andrew, you are paid to act on behalf of the fiduciary interest of the water rate payers. While you may argue that you’ve met the bare minimum standards for the state statutes, I do not believe a reasonable person would find that you acted in good faith in obtaining competitive bids on behalf of the District. I urge the board to not approve the sealed bids until such time as an earnest and diligent solicitation is made... to do so would be maybe negligent at best, and possibly criminal at worst.
 - The statutory requirements are stated in the Texas Water Code, Section 49.273 (d): “For contracts over \$75,000, the board shall advertise the letting of the contract, including the general conditions, time, and place of opening of sealed bids. The notice must be published in one or more newspapers circulated in each county in which the district is located. If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. The notice must be published once a week for two consecutive weeks before the date that the bids are opened, and the first publication must be not later than the 14th day before the date of the opening of the sealed bids.” The District went above and beyond the statutory requirement, advertising in 3 newspapers across 3 counties with 35 days between initial advertisement (May 27th) and due date (July 1st). Three firms who requested clarification did not bid; two were nonresponsive to follow-up and the third responded with a statement that they were “unable to provide blanket pricing [as] each job is bid pertaining to the scope of the work.”

Marion Medlock

- Who decided that we needed \$38 million to update the San Leon wastewater plant and do whatever repairs that were needed? Who decided that figure?
 - The decision to sell bonds in order to finance the expansion of the wastewater treatment plant was based on the recommendation of the District's engineer, Hal Walker. While reviewing historic performance of the facility, it was clear that the plant had exceeded its permitted flow and expansion was necessary pursuant to Texas Administrative Code §305.126. After analyzing the existing structures and drafting designs based on current regulatory requirements such as a two-track system, an estimated \$19 million was calculated by the District's engineer for the mandatory expansion. The bond election for \$39,840,000 was submitted to public vote when taking into consideration the other capital improvement needs of the District, such as replacement of 2" water lines to allow for growth in the District and continued rehabilitation of the aging sewer system.
- Did the MUD borrow \$22.7 million approximately 10 months or more before they had completed plans and specs to put out for bid?
 - There are several moving parts when it comes to bond sales and capital improvement projects. Based on the professional recommendation of our engineer and our financial advisor, the District sold \$22,750,000 at the most advantageous time based on interest rates and projected completion dates for the wastewater plant plans and the required advertisement period. There are also costs associated with the project, chiefly the design aspects, that are very expensive and require the bond funds to finance unless a district is able to finance the initial costs through their budget and then reimburse those costs at a later date once the bond is funded. The goal of the bond sale is to facilitate payment on some of the costs and coordinate the final closing of the bond with the near completion of the plans and bid reception for the capital improvements. All District bond projects must be submitted to the TCEQ for approval prior to the Board advertising and selling the bonds. In addition, the District cannot legally enter into a construction contract without having the funds on hand to pay all amounts due under the agreement.
- Was or is the interest rate on this \$22.7 million 2.75%?
 - The \$22,750,000 bonds were sold to Bank of America Merrill Lynch at an interest rate of 2.95413% and were rated A2/AA, insured by Assured Guaranty Municipal. For comparison, the District's \$3 million bond sold in 2017 was also AA rated and insured by Municipal Assurance Corp. at a rate of 3.195996%. Other bond issues priced around the same time also included Upper Trinity Regional Water District (AA rating – Build America Mutual Insured, sold \$19,710,000 at 2.885%) and North Texas Municipal Water District (Aa2 rating, sold \$137,470,000 at 2.6383%).

- Does this amount come to \$55,980 per month, minus a small amount of interest we made, I'll guess \$6,000 a month, while the money was not used?
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- So, if we paid out \$50,000 a month, being lenient there and allowing for the other amount being given back to us, for 10 months that's \$500,000, I think that's a half a million dollars, the San Leon taxpayers are obligated to pay and we got nothing for that. I think that, if that is true, that is a transgression, that's horrible... we could've used \$50,000 I'm sure in many better ways. It just seems to me that we need somebody on the MUD that's a penny pincher that'll watch, that'll do checks when we have a big amount of money to spend like this. If you're gonna go out and buy a big truck or something, you're gonna shop around, not just take the first amount and say "We need this much money to do it." I think we need somebody maybe like James over there in Bacliff that's a penny pincher.
 - The District's Financial Advisor, Bond Counsel, & Tax Counsel handle all the legal requirements for the advertisement, bidding process, and documentation for the bond sale; as previously stated, there are strict timelines that must be followed when a bond sale is conducted for public projects. The Consultants recommended to the District that they accept the low bidder, Bank of America Merrill Lynch, at a rate of 2.954130%. There were three additional bidders on the bonds, namely Robert W. Baird & Co Inc, Raymond James & Associates Inc, and Hutchinson, Shockey, Erley & Co, with rates ranging from 2.995883% to 3.054580%.