

Amador Regional Sanitation Authority

*“Servicing Amador City,
Martell, & Sutter Creek”*

AGENDA

FEBRUARY 15, 2024

2:30 P.M. Regular Meeting

33 Church Street, Sutter Creek CA 95685

The Agenda can be found on the City of Sutter Creek’s Website:

www.cityofsuttercreek.org

1. CALL TO ORDER AND ESTABLISH A QUORUM

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. PUBLIC FORUM

Discussion items only, no action to be taken. Any person may address the Board at this time upon any subject within the jurisdiction of the Amador Regional Sanitation Authority; however, any matter that requires action may be referred to staff and/or Committee for a report and recommendation for possible action at a subsequent Board meeting. Please note – there is a five (5) minute limit per topic.

4. CONSENT AGENDA

- A. Minutes of December 5, 2023 – *for approval*
- B. Budget Update- *for information only*
- C. Reservoir report- *for information only*

5. ADMINISTRATIVE AGENDA

- A. Resolving Outstanding Debt and Initiation of ARSA Dissolution - Action
- B. Budget Update and Direction- Action

6. GENERAL MANAGER’S REPORT- *informational*

7. CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL- PENDING LITIGATION
Pursuant to Gov. Code § 54956.9(d)(1):
Amador Regional Sanitation Authority v. City of Ione, et al.
(Case No. 22-CV-12824)

8. REPORT FROM CLOSED SESSION

9. ADJOURN

Amador Regional Sanitation Authority

“Servicing Amador City, Martell, & Sutter Creek”

MINUTES MEETING OF THE BOARD OF DIRECTORS January 18, 2024

Present:

Richard Forster, Vice Chairman
Bruce Sherrill, Board Member
Claire Gunselman, Board Member

Absent:

Jim Swift, Chairman
Frank Axe, Board Member

Staff Present:

Tom DuBois, ARSA GM
Karen Darrow, ARSA Secretary
Dan Lafontaine, Public Works Director
Frank Splendorio, ARSA Attorney

1. REGULAR MEETING: CALL TO ORDER AND ESTABLISH A QUORUM

Meeting called to order by Vice-Chair Forster at 3:33 P.M.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

Vice-Chair Forster led the Pledge of Allegiance.

3. PUBLIC FORUM- None

4. CONSENT AGENDA

- A. Minutes of December 5, 2023 – *for approval*
- B. Approval of Warrants – *for approval*
- C. Budget Update- *for information only*
- D. Reservoir report- *for information only*

M/S Gunselman/Sherrill to Approve the Consent Agenda.

AYES: Gunselman, Sherrill and Forster

NOES: None

ABSTAIN: None

ABSENT: Axe and Swift

MOTION CARRIED

5. ADMINISTRATIVE AGENDA

A. Property available for Equalization Tank

General Manager Tom DuBois outlined an opportunity to acquire land near the wastewater treatment plant. Members of the public Robin Peters and Gary Tomas questioned the benefit for ARSA, noting that the benefit would be for Sutter Creek.

The Board directed staff to bring back more information that outlines the benefits for ARSA.

B. ARSA Dissolution Process and Open Issues- *information and discussion.*

General Manager Tom DuBois and ARSA Attorney Frank Splendorio outlined the process for dissolving the JPA, covering some of the legal, financial, and political considerations.

Vice-Chair Forster noted that he would need to talk to Supervisor Axe and take this back to the County.

Gary Thomas commented.

6. GENERAL MANAGER’S REPORT

General Manager Tom DuBois noted that he took a tour of ARSA and has offered to schedule a tour for those interested.

Adjourned into Closed Session at 4:24 p.m.

7. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION

Pursuant to Gov. Code § 54956.9(d)(1):

Amador Regional Sanitation Authority v. City of Ione, et al.

(Case No. 22-CV-12824)

8. REPORT FROM CLOSED SESSION - No reportable action.

ADJOURNMENT

Karen Darrow, Secretary

James Swift, Chairman

Date Approved:

Budget vs. Actual

July 2022 through June 2023

	Jul '22 - Jun 23	Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
Interest Income	64.02	150.00	-85.98	42.68%
Reimbursed Expenses	0.00	19,000.00	-19,000.00	0.0%
Use Fee Revenue				
Amador City	18,823.00	18,823.00	0.00	100.0%
Amador Water Agency	95,768.00	95,768.00	0.00	100.0%
City of Sutter Creek	521,321.00	521,321.00	0.00	100.0%
Total Use Fee Revenue	<u>635,912.00</u>	<u>635,912.00</u>	<u>0.00</u>	<u>100.0%</u>
Total Income	<u>635,976.02</u>	<u>655,062.00</u>	<u>-19,085.98</u>	<u>97.09%</u>
Expense				
Employee Services				
Contract with COSC	249,753.00	249,753.00	0.00	100.0%
Overtime	94,708.71	15,000.00	79,708.71	631.39%
Total Employee Services	<u>344,461.71</u>	<u>264,753.00</u>	<u>79,708.71</u>	<u>130.11%</u>
Operations				
Audit & Accounting	0.00	6,000.00	-6,000.00	0.0%
Contingency	0.00	50,860.00	-50,860.00	0.0%
Depreciation Expense	37,696.00	N/A	N/A	N/A
Engineering				
Inundation mapping	5,047.75	10,000.00	-4,952.25	50.48%
Engineering - Other	99,356.75	25,000.00	74,356.75	397.43%
Total Engineering	<u>104,404.50</u>	<u>35,000.00</u>	<u>69,404.50</u>	<u>298.3%</u>
Flood Control	0.00	2,100.00	-2,100.00	0.0%
Fuel	13,893.35	13,000.00	893.35	106.87%
General Supplies	382.96	500.00	-117.04	76.59%
Legal	144,306.37	50,000.00	94,306.37	288.61%
Membership Dues	1,559.44	1,700.00	-140.56	91.73%
O&M Building/Structures	1,400.00	1,500.00	-100.00	93.33%
O&M Equipment	58,693.02	0.00	58,693.02	100.0%
Professional Services	40,756.40	0.00	40,756.40	100.0%
Repairs & Maintenance	9,291.58	20,000.00	-10,708.42	46.46%
Risk Management - Liability	21,071.32	21,000.00	71.32	100.34%
Taxes/Fees/Licenses	66,380.21	68,000.00	-1,619.79	97.62%
Tertiary Treatment Fees	67,971.00	95,000.00	-27,029.00	71.55%
Vehicle Maintenance	2,162.18	5,000.00	-2,837.82	43.24%
Weed Control	0.00	1,500.00	-1,500.00	0.0%
Total Operations	<u>569,968.33</u>	<u>371,160.00</u>	<u>198,808.33</u>	<u>153.56%</u>
Total Expense	<u>914,430.04</u>	<u>635,913.00</u>	<u>278,517.04</u>	<u>143.8%</u>
Net Ordinary Income	<u>-278,454.02</u>	<u>19,149.00</u>	<u>-297,603.02</u>	<u>-1,454.14%</u>
Net Income	<u><u>-278,454.02</u></u>	<u><u>19,149.00</u></u>	<u><u>-297,603.02</u></u>	<u><u>-1,454.14%</u></u>

AMADOR REGIONAL SANITATION AUTHORITY FINANCIAL TRANSACTIONS REPORT SUMMARY FISCAL YEAR 2022-2023	
REVENUES	
Service Charges	635,976.00
Interest Revenue	64.00
Total Revenues	636,040.00
EXPENSES	
Treatment & Disposal	549,432.00
Contractual Services	4,500.00
General & Admin Expenses	254,895.00
Depreciation	37,696.00
Outstanding Accounts Payable	67,971.00
Total Expenses	914,494.00
Net Income/(Loss)	(278,454.00)

AMADOR REGIONAL SANITATION AUTHORITY

MEMORANDUM

TO Tom Dubois, ARSA Manager

FROM Gary S. Ghio for Matt Ospital, District Engineer

RE Reservoir Volume Comparison

DATE Feb. 5, 2024

Tom,

Below is the comparison of water in storage on Jan. 31, 2017 and water in storage on Jan. 31, 2024.

Water currently in storage is 175.6 ac-ft less than what was in storage in 2017 (great news). Based upon what was experienced in the 2016/2017 winter there is no potential of excess wastewater that may need to be disposed outside of normal methods this year.

Date	Henderson Reservoir Volume (ac-ft)	Preston Reservoir Volume (ac-ft)	Total in Storage (ac-ft)
Jan. 31, 2017	211.4	154.9	366.3
Jan. 31, 2024	118.9	71.8	190.7

#2386/gsg

ARSA RESERVOIRS and IRRIGATION												
Jan-24	Sutter Creek Effluent Flow (gals) ¹	Bowers Irrigation (gals)	Henderson Reservoir Freeboard (ft)	Henderson Reservoir Volume (ac/ft)	Hoskins Irrigation (gals)	Preston Forebay (FT)	Preston Forebay Volume (ac/ft)	Flow Into Preston Reservoir (GPM)	Temp Preston Irrigation (Est/gals)	Preston Reservoir (FT)	Preston Reservoir Volume (ac ft)	Flow from Preston To Ione WWTF (ON/OFF)
1/1/2024	273,164	0	16'11"	80.2	Off	13'0"	17.0	125	Off	15'1"	57.1	Off
1/2/2024	483,243	0	16'11"	80.2	Off	13'0"	17.0	125	Off	15'0"	57.8	Off
1/3/2024	536,383	0	16'9"	82.4	Off	12'10"	17.2	125	Off	14'10"	59.3	Off
1/4/2024	415,064	0	16'9"	82.4	Off	12'10"	17.2	125	Off	14'9"	60.0	Off
1/5/2024	418,583	0	16'8"	83.5	Off	13'0"	17.0	125	Off	14'8"	60.8	Off
1/6/2024	392,136	0	16'7"	84.6	Off	13'0"	17.0	125	Off	14'7"	61.5	Off
1/7/2024	353,686	0	16'6"	85.7	Off	13'6"	16.5	125	Off	14'7"	61.5	Off
1/8/2024	343,916	0	16'6"	85.7	Off	13'6"	16.5	125	Off	14'7"	61.5	Off
1/9/2024	340,165	0	16'5"	86.9	Off	13'6"	16.5	125	Off	14'7"	61.5	Off
1/10/2024	364,006	0	16'4"	88.0	Off	13'8"	16.3	125	Off	14'6"	62.3	Off
1/11/2024	374,913	0	16'3"	89.2	Off	13'8"	16.3	125	Off	14'6"	62.3	Off
1/12/2024	356,625	0	16'3"	89.2	Off	13'8"	16.3	125	Off	14'6"	62.3	Off
1/13/2024	582,800	0	16'1"	91.5	Off	13'8"	16.3	125	Off	14'6"	62.3	Off
1/14/2024	483,900	0	16'0"	92.7	Off	13'8"	16.3	125	Off	14'4"	63.8	Off
1/15/2024	444,819	0	15'11"	93.8	Off	13'8"	16.3	125	Off	14'4"	63.8	Off
1/16/2024	570,618	0	15'10"	95.0	Off	13'10"	16.2	125	Off	14'4"	63.8	Off
1/17/2024	538,875	0	15'9"	96.2	Off	13'10"	16.2	125	Off	14'3"	64.6	Off
1/18/2024	478,391	0	15'7"	98.6	Off	14'0"	16.0	125	Off	14'2"	65.4	Off
1/19/2024	384,847	0	15'6"	99.8	Off	14'0"	16.0	125	Off	14'2"	65.4	Off
1/20/2024	535,591	0	15'5"	101.1	Off	14'0"	16.0	125	Off	14'2"	65.4	Off
1/21/2024	758,193	0	15'4"	102.3	Off	14'0"	16.0	125	Off	14'0"	67.0	Off
1/22/2024	818,591	0	15'1"	106.0	Off	13'6"	16.5	125	Off	13'11"	67.8	Off
1/23/2024	543,072	0	14'10"	108.5	Off	13'1"	16.9	125	Off	13'9"	69.4	Off
1/24/2024	566,200	0	14'9"	111.1	Off	13'0"	17.0	125	Off	13'8"	70.2	Off
1/25/2024	500,615	0	14'8"	112.4	Off	12'10"	17.2	125	Off	13'8"	70.2	Off
1/26/2024	420,860	0	14'7"	113.7	Off	12'10"	17.2	125	Off	13'7"	71.0	Off
1/27/2024	383,553	0	14'6"	115.0	Off	12'10"	17.2	125	Off	13'7"	71.0	Off
1/28/2024	387,366	0	14'5"	116.3	Off	12'6"	17.5	125	Off	13'7"	71.0	Off
1/29/2024	330,590	0	14'4"	117.6	Off	12'6"	17.5	125	Off	13'6"	71.8	Off
1/30/2024	354,338	0	14'3"	118.9	Off	12'6"	17.5	125	Off	13'6"	71.8	Off
1/31/2024	449,575	0	14'3"	118.9	Off	12'6"	17.5	125	Off	13'5"	71.8	Off
	Sutter Creek Total Flow											
Total	14,184,678	0			0				0			
Maximum	818,591											
Minimum	273,164											
Average Daily	457,837											

¹ The Influent flow meter was used for these numbers due to a malfunction effluent flow meter.

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Amador Regional Sanitation Authority

*“Servicing Amador City,
Martell, & Sutter Creek”*

TO: MEMBERS OF THE ARSA BOARD
MEETING DATE: FEBRUARY 15, 2024
FROM: TOM DUBOIS, ARSA GENERAL MANAGER
SUBJECT: RESOLVING OUTSTANDING DEBT AND INITIATION OF ARSA DISSOLUTION
TYPE: ACTION ITEM

RECOMMENDATION: ARSA Staff recommends that the ARSA board approves a motion to remove the disputed debt between the City of Sutter Creek and ARSA, and initiate the process of dissolving ARSA, with Sutter Creek as the successor organization.

BACKGROUND:

Dissolution:

The Board has had extensive discussions over the last several years concerning the future of the Amador Regional Sanitation System. ARSA is currently operating under a JPA agreement from 1982. It has outlived its usefulness and become a hinderance to moving forward on long term solutions to a regional wastewater system. The current governance, composed of two Amador County Supervisors, one Council member from Amador City and two Council members from Sutter Creek, no longer reflects the agencies that participate in the JPA (which are Sutter Creek, Amador Water Agency, and Amador City). The City of Sutter Creek operates an extensive collection system, a secondary treatment plant and the ARSA disposal system. Rate payers are bearing the burden of funding an additional layer of administration, adding unnecessary expense and bureaucracy.

The wastewater disposal system has been the weakest component of the overall wastewater system since the Clean Water Act ended direct disposal into watercourses decades ago. The Amador Regional Sanitation System is a joint powers authority that is long past its usefulness. The City of Sutter Creek cannot have a major component of its wastewater system controlled by an entity whose governing board no longer reflects its ratepayers, and which adds an unnecessary layer of administration and expense to an already financially unsustainable system. Sutter Creek ratepayers bear most of the financial risk for the system but have minority representation when it comes to decision-making.

The physical ARSA system is decrepit and outdated and suffers from a severe lack of on-going maintenance. The partners in the system, City of Ione and California Department of Corrections and Rehabilitation, have been a continuous source of legal battles and contractual difficulties, and have never shown anything but a reluctant interest in collaborating with ARSA. ARSA doesn't own the physical system but has all the responsibility for its operation and maintenance.

At least twice since the execution of the most recent three-party agreement in 2007, Ione has attempted to assert what it considers its contractual right to kick ARSA out of the system

altogether. CDCR feels much the same; as recently as 2022 in its cross-complaint in *ARSA v. City of Ione*, it asserted that it wanted ARSA to leave the system within five years. These are not the kind of partners that the agencies in ARSA should be contractually tied to for the foreseeable future.

The current agreement between the three parties expires in thirteen years. After 2037 there is no guarantee that ARSA will have access to a disposal and tertiary treatment system that is owned by CDCR and Ione, and any capital contributions that ARSA has made to the ARSA system would be lost. 2037 will be here sooner than we think, and if the ARSA board does not make the hard decisions now, Sutter Creek, Amador City and Martell could face disastrous consequences.

To plan a tertiary plant and obtain needed infrastructure funding, Sutter Creek believes ARSA must dissolve. By taking over the legal authority for a system over which it already has operational and financial responsibility, Sutter Creek will take on all future liability for the system. If the ARSA Board will not cooperate in this endeavor, then the Sutter Creek City Council may consider withdrawing from the JPA on its own, though the preferred path by far is a cooperative winding up of the JPA working with the current partners.

Disputed Debt

As part of the dissolution process, Staff suggests that the Board direct the immediate completes separate definitive agreement with Sutter Creek that agrees that any debt repayment from Sutter Creek that may have been owed to ARSA under the 2002 Gold Rush Ranch agreement is discharged. The City of Sutter Creek's position is that all the parties were aware of the riskiness of the investment, that the statute of limitations on that agreement has long since run without a tolling agreement, and that the nature of the agreement itself is of questionable legality. See Attachment A: ARSA/City of Sutter Creek Agreement RE: Noble Ranch for more details.

Having this debt remain on the books only increases the barriers to a long-term solution for Sutter Creek, Amador City and Martell, making it harder to get grants and or loans to fund needed improvements. Rate Payers will likely need to foot some of the investment in a sustainable wastewater system. Requiring them to effectively repay themselves for money lost many years ago will only increase wastewater rates without moving towards a solution.

DISCUSSION:

The board discussed the dissolution process at the January meeting. Two of the member agencies must agree to a termination/successor plan and a successor agreement must be created to specify how assets and liabilities will be divided or the JPA agreement amended to allow a successor organization that is not a special district.

The proposal is that Sutter Creek would become the successor organization with customer agreements put in place with Amador Water Agency and Amador City to continue wastewater disposal through the state pipeline to Ione. Staff recommends that the board recommend that the most efficient, cost-effective legal method be pursued.

The member agencies will need to be briefed and then vote on the plan. The State department of General Services will need to agree to assign the lease to Sutter Creek. It is recognized by the State that termination of Lease is not practicable or feasible. Notice will be given to the Regional Water Board.

Sutter Creek must agree to accept any liability associated with the successor agreement as outlined in the January memo, such as CalPERS liability and agreement to operate the disposal system. Sutter Creek must also prepare new service agreements with customer agencies.

Ideally the current lawsuit will be completed in parallel and finalized prior to final dissolution/succession of ARSA. However, if the lawsuit continued, as the successor organization, Sutter Creek would become party to the lawsuit.

Separately the agreement to discharge any debt from Sutter Creek to ARSA under the 2002 Gold Rush Ranch agreement will be created between ARSA and Sutter Creek and return to the ARSA Board and Sutter Creek City Council for approval.

A project plan will be developed that outlines all the needed steps with a schedule.

BUDGET IMPACT: As this is meant to be a friendly dissolution among ongoing partners, the process should be managed to minimize legal and administrative expense. Costs will be included with the project plan to see if they will exceed the ongoing budgeted costs.

CONCLUSION AND NEXT STEPS:

It's time to start moving forward. Staff recommends the following:

Motion: Direct staff to:

- a. Prepare a definitive agreement discharging any debt from Sutter Creek to ARSA under the 2002 Gold Rush Ranch agreement and bring it back for approval at the next meeting.
- b. Initiate the dissolution of ARSA and return with a work plan and schedule at the next meeting. If possible, take initial steps such as briefing the Amador City Council and Amador County Board of Supervisors.

TO: ARSA Board Members
FROM: Sandra Spelliscy, Interim General Manager
RE: ARSA/City of Sutter Creek agreement re: Noble Ranch

October 25, 2023

BACKGROUND

In late August 2001 the City of Sutter Creek entered into an agreement with the Noble sisters to purchase approximately 833 acres south and west of the city limits known as Noble Ranch. The city's intended use for the property was to develop a long-term solution for its wastewater system effluent disposal. The closing date for the transaction was set for April 30, 2002.

Almost immediately the city entered into an assignment agreement with a golf course developer named Troy Claveran to obtain funds to pay the required deposits and earnest money due under the property purchase agreement. The agreement give Claveran options on unused portions of the property for a golf course development, and was modified twice by the parties over the next year. At the same time the city began investigating its ability to sell certificates of participation to obtain the funds for the property purchase.

Over the course of the next year Claveran created an LLC called Gold Rush Golf Development (Gold Rush) and assigned his option interests to the LLC. The city was also notified by its bond counsel that it would not be able to sell bonds in order to finance the purchase of the property. Recognizing that it could not uphold its promises under the original property purchase agreement, the city assigned its rights to Gold Rush on April 25, 2002. Under the assignment agreement, the city was to pay into escrow \$750,000 toward the purchase price. \$300,000 of those funds were to come from the city, and the remaining \$450,000 were to be paid by ARSA. The assignment agreement contained the following language:

1. At least one business day prior to the closing, Gold Rush shall deliver into escrow a fully executed and notarized Irrigation Easement with instructions to the Escrow Agent to record the Irrigation Easement immediately following the recordation of the grant deed conveying fee title to Gold Rush.
2. The City and Gold Rush agree that the City will have the ability to be reimbursed for the ARSA payment and the City Payment by either conditioning the Entitlements that Gold Rush needs to obtain for the development of the Property on the reimbursement of such payments, or requiring such reimbursement to a covenant in a development agreement by and between the City and Gold Rush. The reimbursement may take the form of a credit to the City for their share of costs attributable to Gold Rush's construction of a Treatment Plant or other water treatment system which benefits the City.

There is no evidence that either condition 1 or 2 ever occurred.

On the same date that the assignment agreement was entered into, April 25, 2002, the city and ARSA also entered into a *Contract for Funding of Wastewater Disposal Facilities and Grant of Easement*. The

stated purpose of the contract was to allow the city to “immediately deposit \$750,000 in cash to close escrow for the acquisition of the Noble Ranch.” In exchange, “ARSA is willing to use its own reserves to provide City \$450,000 to enable City to acquire fee title to the Noble Ranch in consideration for ARSA’s obtaining of the right to use the Noble Ranch for spray field disposal of ARSA wastewater thereon...”

The actual terms of the granting of the easement, how it would be perfected, when and how it would be relinquished, etc. are quite complicated, and are set forth in pp. 4-7 of the full document attached to this memo.

Although not designated as a loan, the contract did have a repayment provision that required the city to pay back the principal in full, with interest, beginning June 2005, if the city did not obtain the right-of-way for, and to actually construct, a pipeline from the city’s wastewater treatment plant to the planned spray fields on Noble Ranch.

So, on April 25, 2002, two separate agreements were signed between the city and two different entities. In one agreement the responsibility to record a spray easement on Noble Ranch is assigned to Gold Rush; in the second agreement the responsibility is assigned to the city.

Five days later, on May 2, the purchase transaction is recorded. For unknown reasons, there is a simultaneous double escrow in which the property is deeded to the city, and then immediately re-deeded to the Gold Rush partners. The city contributed \$750,000 to the purchase; the remainder of the purchase price was paid by Gold Rush. The contract between the city and ARSA regarding the spray easement is also recorded on that day, but there is nothing in the record that shows the spray easement in the grant deed from the city to Gold Rush.

Over the succeeding years, the developers worked towards obtaining the necessary approvals to begin constructing the project. The partners in Gold Rush changed and the scope of the project was enlarged considerably. By the time a development agreement was agreed to and a specific plan adopted in 2010, the project had gone from a golf course and condos on 230 acres to the following description on the state’s CEQAnet website:

Approvals associated with Specific Plan adoption for mixed-use development on a 945-acre site (18 hole golf course, 1,334 single family residences, 300 vacation units, 60 room hotel, 57,000 sf of commercial, 300 acres open space and parks. Golf course to be used for treated effluent disposal. Includes on-site and off-site infrastructure and roadway improvements.) Approval includes: Specific Plan adoption, large-lot tentative subdivision map approval, General Plan and Zoning amendments, and Development Agreement.

By 2010, any notion of using Noble Ranch as a site for spraying ARSA secondarily-treated effluent had long since been abandoned. The final plan envisioned a new tertiary plant constructed as part of the project that would treat effluent that could then be sprayed on the project’s golf course. The project did receive all of its necessary approvals, and survived both a referendum and a legal challenge, but the financial burdens imposed by the final development agreement and specific plan, along with the

financial crisis in the housing market following the 2008 crash, were the death knell for the project. The city formally terminated the development agreement for the project in 2019.

DISCUSSION

In the 20+ years since the city and ARSA identified the Gold Rush development as the solution for its ongoing wastewater treatment and disposal issues, not a lot has changed. The city continues to operate an aging and deteriorated sewer plant that is significantly undersized for the peak flows that it receives during wintertime storm events. ARSA operates a disposal system that it does not own, that is under capacity, that is riddled with maintenance issues, and that has been the subject of on-going legal challenges for decades.

In the seven years since both Sutter Creek and ARSA adopted a Master Plan that identified the construction of a new tertiary plant as the best alternative for addressing the above issue, little progress has occurred. Both agencies are now at a crossroads where tough decisions need to be made and a new direction forged. One of those tough decisions is how to deal with the long-delayed issue of the \$450,000 that ARSA contributed to the Noble Ranch purchase.

If Sutter Creek moves forward with building a tertiary plant, it is faced with raising funds in the high nine figures. This will involve applying for grants, significantly raising customer rates, and taking on large amounts of long-term debt. It cannot do this successfully with what looks like a \$600,000+ commitment to ARSA on its books.

In hindsight, of course, the decision to give developers \$750,000 in public funds toward the purchase of property with only a nebulous guarantee of a return was ill-advised. It was money that both the city and ARSA could ill-afford to lose. But it was city ratepayers who lost the most. Not only did they contribute the \$300,000 directly from the city, but they contributed about 80% of the ARSA \$450,000 as well. Having given away approximately \$660,000 on a deal that went sour, it is difficult to imagine that ARSA could expect the Sutter Creek ratepayers to come up with that same amount again, and for what end?

The \$750,000 amount was never rooted in reality. There was never any appraisal done to determine if that was a fair market price for the purchase of so-called spray fields. It was simply the amount that the city needed for its part of the deal, and the spray fields were a convenient mechanism for raising the funds. I don't question the good faith belief that the people involved thought at the time that the project was going to be a net benefit for both the city and ARSA, but it difficult now to agree that ARSA is somehow an aggrieved party that the city needs to make whole. Everyone involved in all of these convoluted transactions, and that includes both the city and ARSA, knew that they were taking risks. The risks were taken in the hopes of great rewards that, unfortunately, did not pan out. It is clear that the spray fields notion had been abandoned along the way in exchange for the promise for a new tertiary plant. It is also clear that ARSA was well aware of that and that it did nothing to assert its rights, if any, at the time. I think now is the appropriate time for the ARSA Board to recognize that and move on.

The truth is that Sutter Creek does not have to funds to repay the ARSA portion of the Noble Ranch downpayment. It has never set up a debt service fund in its annual budget to pay back the money, it did

not include the amount in its rate study back when sewer rates were raised by 35% several years ago, and there is no indication that the Council intends to do so in the next round of rate increases that are coming. There is now a serious legal question if the underlying agreement is even enforceable after so many years have passed.

EPILOGUE

The Noble Ranch property owned by Gold Rush Golf Development was foreclosed on by Farallon Capital Management a number of years ago. It was then sold to new owners including Tim Blixseth. I spoke recently with Blixseth and Troy Claveran, who has been hired by the new owners to pursue development on the property. They intend to come to the city with an application to revise the specific plan and develop the full property with a golf course, hotel and single-family homes. When I asked Troy about the spray easement issue, and queried him about the ARSA/City agreement and as to whether the Gold Rush partners ever granted an easement on the property, he replied “You know more about it than I do.”

Amador Regional Sanitation Authority

"Servicing Amador City, Martell, & Sutter Creek"

STAFF REPORT

TO: THE HONORABLE MEMBERS OF COUNCIL

MEETING DATE: FEBRUARY 15, 2024

FROM: MASON PETERS, FINANCE SUPERVISOR

SUBJECT: FISCAL YEAR 2022-2023 YEAR-END BUDGET UPDATE AND DIRECTION

TYPE: ACTION ITEM

RECOMMENDATION: ARSA staff recommend acceptance of this report and direction to send a letter to Ione clarifying the basis and amount of past bills, including during the period of the lawsuit and when no effluent was treated.

BACKGROUND

ARSA Budget vs. Actual figures for fiscal year 2022-2023 were not satisfactory due to certain expenditures going far beyond the budgeted levels. ARSA incurred a deficit of \$278,454. There are disputed charges from Ione for Tertiary treatment including \$33,985.50 that has been invoiced as of 12/31/2023 for FY 23-24.

DISCUSSION

Revenue generation met budget expectations except \$19,000 expected reimbursement from Ione and for interest income, which did not reach expected levels due to volatility in APYs as well as switching banks mid-year.

ARSA expenditures were a different story: some expenditure accounts were much below expected levels, while other accounts were more than originally budgeted.

Lower than budgeted:

- Repairs & Maintenance
- Vehicle Maintenance
- General Supplies

Expenses that Tracked Budget:

- Risk Management
- Taxes/Fees/Licenses

Over Budget:

- Professional Services
- O&M Equipment
- Legal Fees
- Engineering
- Overtime

Amador Regional Sanitation Authority

“Servicing Amador City, Martell, & Sutter Creek”

These costs far surpassed what was originally planned to be spent in those categories. Tertiary Treatment Fees have not been paid but accrued for the year. Payment was paused because of litigation with Ione. In total, there is \$101,956.50 in outstanding invoices for FY 22-23 and FY 23-24. \$67,971 of that total pertains to FY 22-23. See the Attached financial statements for the position at the end of FY 22-23.

At the end of fiscal year 2022-2023, to balance the budget for the beginning of fiscal year 2023-2024, reserves were used to offset the deficit. Due to cost overruns, primarily legal fees and engineering in FY 22-23, ARSA reserves are currently \$348,970.

Ione has sent 2 invoices so far in FY 23-24, totaling \$33,985.50. This is at a fixed \$17K per quarter and does not appear to follow the most recent billing agreement. They also owe ARSA \$19K reimbursement for fees paid to the State Water Board for the Castle Rock Golf Course.

Ione invited ARSA and CDCR to get an update on planned improvements to the Ione treatment system. They highlighted needed infrastructure improvements, interconnections between their tertiary and secondary plant, and possible renewed interest from the Rancheria for treated water without VOCs at Woodward Bottom. Ione has not clarified on what basis it would expect ARSA to contribute to these infrastructure costs and has not clarified what expenses are related to their own resident’s wastewater treatment, which steps are required/beneficial to the operation of their plant (backwash) and benefits the Golf Course (and the City as the Golf Course owner) are enjoying. Ione also has fixed costs required to operate its own secondary plant. Those costs should not be allocated to CDCR or ARSA. Costs should be allocated according to the amount and quality of effluent delivered to Ione.

Ione desires to identify additional recycled water customers and potentially sign new commitments for delivering wastewater to them, in order to meet recycled customer needs. Any revenue generated from recycled water should be distributed to the partners based on the volume of wastewater contributed.

Staff suggests the Board direct Staff to send a letter to Ione requiring clarification on several of these points before proposing any additional expenses. CDCR is also requesting clarification but is less price sensitive than ARSA. It is also highly likely that some of the additional treatments to remove VOCs are caused by CDCR and not ARSA. ARSA staff would like to have a management discussion with CDCR about joint concerns with the Ione process.

CONCLUSION:

Staff recommends the following:

MOTION: The board accepts the financial update from staff and directs the ARSA GM to send a letter to Ione requesting clarification on the billing process and payables owed to ARSA before paying outstanding invoices. The letter should also outline ARSA’s requirements for quantifying future billing if Ione proceeds with the proposed upgrade to its system.