



MEMORANDUM

Date: April 25, 2011

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Marana 208 Plan Amendment Before the Pima Association of Governments and Senate Bill 1171**

In order for Marana to assume operation as a wastewater utility, they are required, pursuant to the federal law, to receive a 208 Plan Amendment. Such a plan amendment is required pursuant to the Clean Water Act and is part of a basin-wide water quality planning process. The 208 Plan Amendment will be before the Pima Association of Governments (PAG) on Thursday, April 28, 2011.

During the legislative process to enact Senate Bill (SB) 1171, the County made a number of requests of Marana to verify their statements and claims related to the legislation as well as to determine the economic viability of their proposed 208 Plan Amendment. During this process, we heard several claims by Marana that among the reasons they were seeking to operate their own wastewater utility was that the County was denying Marana economic development opportunities by failing to provide requested sewer service. We asked Marana to provide the specifics of these claims. One statement made by the Town Manager before a Senate committee hearing was proven incorrect.

In guest opinions published in *Inside Tucson Business* (March 11, 2011) and the *Marana Weekly News* (March 16, 2011), Marana's Mayor claimed they lost 19 economic development opportunities due to the County's refusal to provide wastewater service. We requested information regarding these lost economic development opportunities as well as the economic fundamentals of their wastewater utility proposal. We were unable to receive any information from Marana and were forced to file a Freedom of Information Act (FOIA) request on March 28, 2011. Unfortunately, Marana provided only part of the information requested on April 22, 2011, nearly one month later.

Of the lost economic development opportunities, Marana provided documentation of the same five denials the County has been aware of for some time that resulted from the oversubscription capacity of the Marana Wastewater Reclamation Facility (MWRf) in north Marana. Sewer service agreements have been entered into for approximate flows of 1.1

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million gallons per day. The actual built capacity of the facility is 700,000 gallons per day; however, the average day inflows into the facility are less than 250,000 gallons per day. The Arizona Department of Environmental Quality (ADEQ) has a rule that if the approved number of connections exceeds actual capacity, expansion must be undertaken. Given the three years of litigation that resulted from Marana's attempt to take the facility, the County did not continue with expansion plans since we had already spent nearly \$30 million on the existing facility and to expand it by an additional 1.5 million gallons per day would have required another \$22.5 million dollars. Given the legislation, the risk to regional wastewater ratepayers was too great to proceed with expansion. We have, however, petitioned ADEQ to grant an exception and allow these five developments to connect, if necessary. Given the lack of complete building activity throughout Pima County and, in particular in Marana, it is likely none of these five projects are ready to proceed or will proceed in reality; hence, Marana's claims of service denial were exaggerated and false.

Regarding the economic viability of the Marana wastewater proposal, it appears to be based on unrealistic expectations. The first Marana 208 Plan Amendment proposal predicted growth of 11 percent per year in the customer base. We now know this growth rate (or new connections in the Marana area) is slightly over one percent— a gross miscalculation on the part of Marana.

In addition, our FOIA request for information regarding the economic model used by Marana to determine the viability of their wastewater utility remains largely unanswered. The results of our request indicate Marana claims not to know or have any record of the underlying assumptions or information used in the economic forecast as well as their determination of rates, or other cost factors associated with developing and operating a viable wastewater utility.

One of the more concerning aspects of SB 1171 is its fundamental unfairness to existing Pima County regional wastewater ratepayers. A portion of the law indicates the County should be compensated for the loss of the MWRf, our flow-through and other pumping facilities only at their outstanding indebtedness. This ignores the value of these assets that have been paid by regional wastewater utility ratepayers and not repaid in any amount by Marana wastewater utility ratepayers. It is estimated the cost deficit alone in the MWRf is approximately \$25 million as opposed to the remaining outstanding indebtedness of between \$15 and \$16 million. The County has spent \$23 million on land acquisition and hard construction cost in constructing the facility; \$2 million or more on soft costs associated with planning, design, construction management, administration and other costs; and nearly \$6 million in interest payments to finance the initial capital investment of this facility. This totals approximately \$31 million. Marana ratepayers have paid back approximately \$6 million in connection fees to the MWRf; hence, the net cost of

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approximately \$25 million: an amount significantly larger than the current outstanding indebtedness of \$15 million. What is difficult to understand is the standard being applied to the acquisition of our wastewater utility versus the acquisition standard applied to water utilities. Arizona law clearly indicates that for the acquisition of water utilities, the cost in compensation to be paid to the owner of the facilities being acquired is fair market or utility value, quite a different standard than is being applied in newly enacted SB 1171 – an unfair and likely illegal standard. This standard also ignores the excess capital costs invested by the County in the Continental Ranch pumping facilities as well as the flow-through conveyance facilities. The documented excess regional ratepayer cost incurred at the Continental Ranch pumping facilities is \$3 to \$4 million. In addition, we have not finished calculating the pay-as-you-go cost paid by regional ratepayers for the flow-through conveyance system. It is likely this cost will total in the millions of dollars.

To simply give Marana the MWRF, the excess value contained in the Continental Ranch pumping facilities and the yet-to-be-determined excess value invested by regional ratepayers in the conveyance facilities is unfair and enriches future Marana wastewater utility customers at the expense of regional customers who live in Oro Valley, Tucson, South Tucson and the unincorporated area of Pima County.

I have asked our attorneys to evaluate all options available to the County to protect the financial interests of the County regional wastewater ratepayers.

CHH/mjk

c: Martin Willett, Chief Deputy County Administrator
John Bernal, Deputy County Administrator for Public Works
Jackson Jenkins, Director, Regional Wastewater Reclamation
Charles Wesselhoft, Deputy County Attorney