



Pinedale County Water District

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480 W. BIRCH ST. PINEDALE, CALIFORNIA 93650

November 3, 2022

Via U.S. Mail & email
through City website
The Honorable Jerry Dyer
Mayor of the City of Fresno
2600 Fresno Street, Room 2075
Fresno, CA 93721

Re: City of Fresno v. Pinedale County Water District

Dear Mayor Dyer:

As you may be aware, Pinedale County Water District serves a defined service area with water and sewer services. The vast majority of Pinedale's territory is already annexed to the City of Fresno. Each and all of Pinedale's 3,508 sewer customers are City of Fresno residents. Sewage collected at Pinedale is transported by an interceptor line to the City of Fresno's Waste Water Treatment Facility (WWTF). In return, Pinedale remits to the City of Fresno 70% of the rates it collects for sewer service. In the early 1970's, Pinedale was required to cease operation of its WWTF and the City and Pinedale County Water District worked jointly to connect the District's sewage system to the interceptor line and to have that waste water treated and disposed of at the City WWTF.

There was an agreement entered into in 1976 that contained a provision that allowed Fresno to conduct an audit of records pertaining to the agreement, which related solely to the operation, rates, and fees collected for operation of the sewage collection service. During the thirty-five (35) year term of that agreement, the City has never requested an audit. However, when the agreement was renewed in 2007, the City demanded an audit. The audit demanded was an expanded audit allowing it to download essentially all of the contents of District's computer system, a process to which the District, we think rightly, objected. In response to that objection, the City of Fresno filed suit against Pinedale and obtained, ultimately, an order which is on the

verge of expiring by operation of law and was final as of September 12, 2013, allowing for as an expansive audit as the City wished to conduct.

Prior City officials, including (but not limited to) City Manager Bruce Rudd, prior City Council Member and current County Supervisor Steve Brandau, in addition to your former City Manager Tommy Esqueda assured the District that there would be no attempts to enforce the judgment allowing for the expansive audit. Indeed, no such effort has ever been made. Those same officials agreed to present to the City Council the prospect of filing a satisfaction of judgment on the monetary portion of the award without requiring payment. That apparently never occurred. Your prior City Attorney, Douglas Sloan, on his own accord, caused a lawsuit to be filed again against the District, this time to collect the amount awarded in attorney's fees for filing, unnecessarily, a lawsuit to compel an audit that the City of Fresno apparently never wanted and has, to this day, never conducted. Rather than bankrupt itself paying for the unnecessarily incurred attorney's fees, the Pinedale County Water District will assess against each and every sewer connection a surcharge on fees for sewer services in the amount necessary to fully pay the judgment.

We are very disappointed in the City of Fresno. The District is a part of the City of Fresno. But, it is not being treated as if it were a part of the City of Fresno. Instead, we are being treated as a rogue agency that is somehow cheating the City out of what it is rightfully owed under our agreement for transportation and treatment of sewage, although the City receives detailed accountings of the basis for all remittances paid to it under the agreement.

Attached is a copy of a resolution that has been adopted by the Board of Directors and a draft-- not yet issued--of a notice to Pinedale County Water District sewer customers of the proposed rate increase necessary to cover the amount we have been ordered to pay to the City of Fresno, unnecessarily. The customers located within Pinedale's boundaries already pay the sewer rates as set by the City. With this rate increase, you will have a subpopulation of the City that is paying surcharges on top of the fees already charged by the City of Fresno in order to pay for the unnecessarily incurred attorney's fees that lead to the judgment that Pinedale is now required pay.

We would implore you and Council members representing our District who are copied with this letter, to do the right thing. If "One Fresno" is to be more than a campaign slogan you as Mayor, or the City Council need to direct the filing of a full and complete satisfaction of this judgment immediately. Otherwise, your residents will be paying inflated fees for sewer charges for the next ten years, all because your former City Attorney took it upon himself to seek to enforce a judgment we were told repeatedly, by two former City Managers, should never have been sought to begin with. Accordingly, we would request that you or the Council conduct a review of this case, to determine if the City's desire is to enforce the monetary judgment, or whether the circumstances warrant forgiveness of the debt.

Thank you for your attention to this matter. I am issuing this letter based on a unanimous vote of the Board of Directors of the Pinedale County Water District, all of whom agree to its contents. We would ask that you acknowledge receipt of this and let us know how you intend to address this issue. If we do not receive, ultimately, your written agreement or other official directive in writing to file a satisfaction of judgment in the next thirty days, we will issue the Notice of Public Hearing on the proposed rate increase which accompanies the resolution that is enclosed with this letter and provide copies to the various media in addition to a copy of this letter. We have documentation of everything that is said in the Notice of Public Hearing and in this letter, if you wish to have it. But, the bottom line is the City of Fresno filed suit against the Pinedale County Water District for no reason at all and unnecessarily incurred attorney's fees in excess of \$240,000. None of it was authorized by an elected official or officials. The citizens of Fresno that receive sewer service from the District should not have to pay for the machinations of an attorney or other staff who, for whatever reason, sought an order compelling an audit that your prior City Managers agreed was something that never should have occurred.

Very truly yours,

PINEDALE COUNTY WATER DISTRICT


David Rodriguez
President/Board of Directors

CC:

Mike Karbassi,
City Council Member, District 2
2600 Fresno Street, Rm 2097
Fresno, CA 93721

Garry Bredefeld
City Council Member, District 6
2600 Fresno Street, Rm 2097
Fresno, CA 93721

CONFIDENTIAL RESOLUTION NO. 2023-01

**A RESOLUTION OF THE PINEDALE COUNTY WATER DISTRICT
BOARD OF DIRECTORS FINDING AND DETERMINING THAT AN
UNREASONABLE HARDSHIP WOULD RESULT UNLESS JUDGMENT IN
CITY OF FRESNO V. PINEDALE COUNTY WATER DISTRICT IS PAID
IN TEN EQUAL ANNUAL INSTALLMENTS, WITH INTEREST**

WHEREAS, Pinedale County Water District ("Pinedale" or "District"), is a county water district and a public entity pursuant to the provisions of Government Code §970(c); and

WHEREAS, District was a party to that certain contract for the transportation and treatment of Pinedale County Water District's sewage dated January 1, 2007 (the 2007 Agreement); and

WHEREAS, the contract between the City of Fresno that the 2007 Agreement replaced provided for the connection of the District's sewage collection system to an interceptor line that transports the sewage collected throughout the District to the Waste Water Treatment Facility (WWTF) in the City of Fresno; and

WHEREAS, the 2007 Agreement included a provision requiring "maintenance of records pertaining to the sewage collection system and obligations under this agreement . . . all charges and receipts for sewer and . . . to allow City to conduct audits of the financial records of the District pertaining to this agreement". In December 2007 Fresno demanded an audit and, thereafter, filed suit to specifically enforce the audit provision; and

WHEREAS, on September 17, 2013, an order of the Madera County Superior Court became final specifically enforcing the audit provision allowing an audit that included but was not limited to those pertaining to the sewage collection system as limited by the agreement but allowing an audit of the District's "internal financial controls and operations"; and

WHEREAS, on or about April 10, 2015, the City Manager of the City Fresno, among others, renounced the judgment and assured Pinedale that no attempt would ever be made to seek the audit that was allowed under the judgment and, in fact, to this day, no audit has ever been sought again by the City of Fresno; and

WHEREAS, by December 18, 2013, the Madera County Superior Court had entered an order awarding attorney's fees to the City totaling \$127,515.84; and

WHEREAS, on December 9, 2019, the Kings County Superior Court, in a mandate proceeding under Government Code §970 et seq, initiated and authorized unilaterally by the now former Fresno City Attorney Douglas Sloan, entered a mandate ordering Pinedale to pay \$127,515.84 together with interest accrued of \$18,080 and, further, on January 29, 2020, the King's County Superior Court awarded attorney's fees on an unknown basis in the mandate proceeding filed on Fresno's behalf by its City Attorney in the amount of \$92,201; and

WHEREAS, Government Code §970.6 provides that the court that enters judgment, as the Kings County Court has entered, shall order the public entity, in this case, Pinedale, to pay the judgment with interest thereon, in installments not exceeding ten equal annual installments, if the governing board has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments; and

WHEREAS, as disclosed by its most current audit report filed with the Controller of the State of California and published by the District, as of June 30, 2021, the District had \$1,535,116 in cash and cash equivalents, with the rest of its assets consisting of physical assets dedicated to public use and necessary for the operation of Pinedale County Water District; and

WHEREAS, currently the District has five wells, one of which is on "standby" status as a result of the location of a plume of detectable TCE in relation to that well, that is slated for complete discontinuation given the mandates of the State of California regulating that the quantity of TCE that may found in drinking water; and

WHEREAS, the District cannot perform its essential function of providing potable water to residences and business and acceptable levels of water pressure for fire prevention within its boundaries and service area, matters that are subject to different agreements between the City of Fresno and Pinedale that have been incorporated into actions of the Local Agency Formation Commission of Fresno County, and the four remaining reliable wells operated by the District are insufficient for ensuring a reliable source of water for District residences and businesses in the very near future; and

WHEREAS, because of the immediate need for an additional well, and creating a "looped" system which allows the District to deliver water, reliably, to businesses and residences located within its boundaries and service area in the manner mandated by law and to maintain pressure necessary to ensure adequate fire protection flows as specifically required by the City of Fresno to which Pinedale County Water District is annexed, District has already spent hundreds of thousands of dollars creating the looped water line system, purchasing property, and planning and being in a position financially to drill a new well, to be located near the intersection of Harrison and Nees in the City of Fresno and the construction of that well is estimated to cost more than 1.1 million dollars, and to allow for continuing operation of the District and money necessary to address required maintenance, labor and other expenses routinely incurred in providing water service, the District requires a minimum of \$500,000 in reserves; and

WHEREAS, because the District must spend all available cash, immediately, drilling a new well on property it has purchased for that purpose if it is to provide the residents and businesses within the District with potable water, the District cannot pay the aforementioned judgment in other than ten equal annual installments, with interest as doing otherwise would severely jeopardize District's ability to provide potable water to its residents and businesses.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

1. The foregoing recitals are true and correct.
2. Because it relates to pending litigation, this Resolution has been adopted in a closed session meeting of the Board pursuant to Government Code §54956.9 and is a confidential resolution, to be disclosed only in connection with applicable legal proceedings and, otherwise, all as required by law.
3. District's sewer system consists only of the sewage collection system which transports sewage collected throughout the District, the City of Fresno Waste Water Treatment Plant. The sewage collection system exists only in areas annexed to the City of Fresno, which includes the entirety of the District with the exception of County islands where septic tanks are used.
4. With this Resolution, the District Board approves and directs issuance of a notice to ratepayers under California Constitution Articles XIII C and XIII D of the California Constitution, commonly known as Proposition 218, giving customers of the District that pay sewage fees to the District notice of the intent to raise sewage collection services provided by the District, all as necessary to pay the full amount of the judgment, and any other amounts ordered by this court to be paid by Pinedale to the City of Fresno, with interest, over a period of ten years, with such annual payments to commence, on the date that is six (6) months after the date the increase in sewage rates becomes effective.
5. District Board will pay the amount of the aforementioned judgment, in full, with interest in equal annual installments, and will assess its customers who receive sewage services in the amounts necessary to make those payments beginning six months after the date on which the increase in rates becomes effective, and annually on the same calendar date of each year thereafter, until paid in full over the course of ten years. All of said customers are residents of the City of Fresno which has almost entirely annexed the District.
6. A copy of this Resolution shall be provided to the City of Fresno, directly to its Mayor and City Council.
7. The District Board of Directors finds and determines that paying the judgment in any manner other than in ten equal annual installments with interest, would

create an undue hardship on the District in that it would likely prevent the District from operating and continuing to provide potable water to its residents and businesses, for reasons stated in this Resolution, all of which are true and correct.

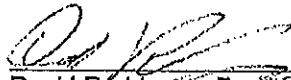
8. The City of Fresno through its Mayor and City Council have been aware of the District's intent to adopt this resolution and to raise sewer rates in an amount necessary to pay the judgment aforementioned in installments with the revenue generated by an increase in sewer rates since November 2022 and since that time has assured the District that it would negotiate a resolution of the debt represented by the judgment aforementioned and has delayed in making any attempt to so negotiate the debt from that date until the date of enactment of this resolution so that it appears the city has no intent to resolve the matter leaving the District with adoption of this resolution and issuance of the notice of rate increases as its only option for addressing the judgment.

This Resolution passed and adopted this 11th day of July 2023, by the following vote:

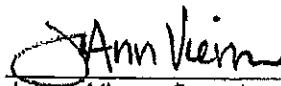
AYES: DIRECTORS RODRIGUEZ, PERANICK, BARONI, VALDEZ and GONZALES

NOES: NONE

ABSENT: NONE



David Rodríguez, President of the
Board of Directors of the
Pinedale County Water District



JoAnn Viera, Secretary to the Board of
the Pinedale County Water District