

April 4, 2007

Scott Lee
250 Central Ave.
Fillmore, CA 93015

Dear Scott,

Congratulations on your appointment to the Council. We think the council members made a good choice. We were impressed by your ability to bring your experience and knowledge to immediate use for the benefit of the community.

As you know, We're involved in the community and represent active citizens groups that are concerned about the City and want to work together to make Fillmore a better place to live.

We wanted to bring you up to date on the sewer plant issues that have been addressed by the community groups and still considered to be unresolved.

Costs:

1. We believe that the costs could have been substantially reduced by using the State Revolving Loan Funds (SRLF) at 2.5% interest, rather than bond funds at 4.7%. This represents a minimum of \$28 million in additional costs to the community over the life of a 30 year bond. This adds \$28.76 to the monthly sewer rate per ERU. The 40 year bond being contemplated would add another \$12-\$14 million in debt service. The SRLF approach might have resulted in more work due to the phasing and state requirements but it would be worth it. Using the Design Build Operate (DBO) approach to bid on the plant has inhibited our ability to use those funds since the SRLF requires competitive bidding and value engineering as part of their application process. The debt service is 50% of the sewer rate increases.

Potential savings if the City used State Loan Funds

\$60,000,000 Loan or Bond Interest for 30 years		
	Int. Rate	(Interest Only)
Bonds	4.70%	\$ 52,025,765
State Loans(I Bank/SRLF)	2.79%	\$ 28,638,411
Savings		\$ 23,387,354
Annual Interest Savings		\$ 1,948,946
# Households(ERU's)	5647	
Annual Sewer Bill Savings		\$ 345.13
Monthly Savings per HH		\$ 28.76

SRLF Loans are even lower at 2.5%
State Loan rate can change due to phasing
Rough estimate calculations

2. The operation and maintenance costs of the new “state of the art” plant will be double our existing costs when it comes online in 2009 plus substantial annual increases (minimum 4%) that will have the following unreasonable O & M cost increases;
 - a. 2006: \$1,639,622
 - b. 2009: \$3,354,482
 - c. 2014: \$5,009,055

3. The high operating and maintenance costs are attributed to the high electricity use due to the blowers and frequent backwash required for the membranes. Energy costs have increased substantially in the last few years and will continue to escalate. The sewer plant proforma used an 8% increase assumption. This is an excerpt from an article about a proposed MBR plant in [Banning](#), California.

“While similar to traditional treatment methods in how much it costs to build, MBR costs a third more to operate. “Most of the expense comes from electricity,” Toor said. Toor’s cost estimate didn’t include how much it would cost to staff an MBR system, which may require more highly skilled workers to operate it. City Council members liked the MBR system’s modularity and its efficient use of space, but voiced concerns about large increases in operating costs that would wind up on residents’ water bills.”

4. Santa Paula went through the Value Engineering process and identified \$30 million in potential savings.

5. The California Legislative Analyst and other entities have [studied](#) DBO and found that it does not produce the promised 15-30% savings. The costs that Fillmore has been faced with appear to substantiate those studies.

At the March 22nd workshop, when Mr. Stan Simmons of Lyles Co. – who has “bid and built more MBR plants in California than anyone” - was asked to tell us what the average cost for a plant our size was, could not or would not tell us that number. He could not even give us an average or a range of the lowest or highest cost that he had bid and constructed. Are we paying too much for this plant?

All of these plants are close to the same size as our plant or larger and being built or bid within the last few years. There are no 1-2 MGD plants more expensive than ours.

1. [Healdsburg](#), California = \$30 million
2. [Delphos](#), Ohio = \$36 million (includes land and engineering)
3. [Cle Elum](#), Washington = \$14 million (built by the developer – interesting contrast between private sector and government contract costs)
4. [Crescent City](#), California = \$33 million

American Water/Hawkins Delafield and Wood (HDW):

1. There have been many disturbing reports about [American Water](#) and their attempts to [privatize](#) municipal water systems. The 20 year contract for operating the plant is known as [privatization](#). They have been involved in numerous lawsuits throughout the country.
2. They are the largest contributor to lobbying efforts to change laws to enable more [privatization](#).

3. They are co-sponsors of the U.S. Mayors Conference and sit on the board of the Mayors Water Council so have undue [influence](#) on [local decision makers](#).
4. The Massachusetts Inspector General issued a [report](#) with findings that the DBO process involving special counsel HDW ended up costing Lynn, MA., more than a competitively bid project.

The Massachusetts Inspector General conducted an investigation after a similar wastewater treatment contract was instituted in Lynn, Massachusetts. In their report, one of the findings, Finding 17c states that *“The Commission’s open-ended agreement with Hawkins, Delafield & Wood cost ratepayers more than \$1.5 million over the first three years.”*

“The Commission paid more than \$3 million to privatization consultants to assist with these procurements; unfortunately, this expensive investment in expertise has not protected the ratepayers from a bad deal. The Commission’s experience demonstrates that generating competition for public contracts is essential to protecting the public interest. Other communities considering long-term DBO contracting for their wastewater facilities should be aware that the high cost to private firms of developing proposals for these risky and complex contracts may deter competition and result in higher costs than competitively bid construction contracts and straightforward operation and maintenance contracts.” (Inspector General)

Finding 18 stated that “Costs incurred for privatization consultants produced pressure on the Commission (city council) to enter into the DBO contracts regardless of whether they represented good deals for the ratepayers.”

5. The expenditure of \$500,000 by the City consultants was mentioned several times in the Boyle presentations to pressure the City Council into the signing of the DBO contract.
6. American Water is obligated to its shareholders to produce [adequate profits](#). Municipal sewer plants do not have to produce profits and are only able to charge the true cost of service. The 20 year contract will cost more than a municipally or VRSD operated plant.
7. We will lose opportunities to provide employment for local workers.
8. The City desires the contract so that the “risk” can be transferred to American Water. At the recent City Council meeting it appears that we are still bearing that risk via insurance premiums that the City would be paying to any contract operator. The biggest risk we face is the economic viability of our community by spending too much for this “state of the art” sewer plant.

Membrane BioReactor(MBR) vs. Conventional Activated Sludge

1. The public and Council have been told that we don’t want an experimental process or technology. However, MBR does not have the track record required to make a determination of its long term performance. The first California MBR was installed in 2001 and the second in 2002. There are very few MBR plants of our size in operation. American Canyon and other [installations](#) have reported [problems](#) with MBR.
2. The MBR has historically had the highest operating and expense costs due to higher electricity usage and membrane cassette replacements. There have been some reports that the electricity usage is being reduced and the membrane replacement is being refined to reduce costs. There is still no evidence though that the costs will ever be lower than other, more sustainable, lower electricity usage technologies such as Vertreat or Micromedia. If the Council desires a long term, cost effective treatment, a high energy use technology should be avoided. The [costs of energy](#) will continue to [increase](#).

3. The selection process used a 2004 Parsons Engineering study to screen out other technologies. However, that study says that MBR is “*relatively new technology*”, *power requirements are “significantly more” and O & M costs are “significantly more...due to greater power costs and membrane replacement”*.

Alternatives

There have been some very viable options that were brought to the table which have been rejected without any real analysis or due diligence as required by city officials. Primarily the [VerTreat](#) system from [Noram Engineering](#) has been seriously mischaracterized by staff, council members and consultants who were not fully qualified to discuss the technical merits of the system. The lack of objective and professional analysis has contributed to the public’s lack of confidence in the selection process. While we are not necessarily promoting the vertical deep shaft technology or [MicroMedia](#), the decision made to not fairly evaluate a lower cost alternative fairly raises concern. There have been too many misleading and incorrect statements to list them all here. However, they can be provided should you choose to review.

1. Since October of 2006, we have heard staff, the Mayor and consultants state that the process proposed by Vertreat is not [Title 22 certified](#). In fact, it produces an oxidized wastewater to be followed by a certified filtration system which is Title 22.
2. Bert Rapp, Glenn Hille and most recently Dave Refling have made misleading statements about Vertreat process and their professional staff. We have heard that “they refused to provide information”, “they are just salesmen” and other unprofessional remarks that may be violating the code of ethics for professional engineers and leave the City vulnerable to legal action. However, in the recent [correspondence](#) between Bert Rapp and Jeff Guild, there was as detailed information as could be provided without a proper request consideration of their technology. They responded with openness and offers to present their technology and to inspect working plants... “*A much closer facility to view would be the Vertreat system at the Chevron plant here in Burnaby, BC. While it is not treating domestic wastewater, the petrochemical wastewater that it treats is actually much tougher to degrade due to the presence of MtBE, BTEX, cyanide, phenols, sulfides, etc.), separate, and filter than any domestic wastewater. Despite the highly variable and difficult nature of the influent, the plant effluent is consistently < 5 mg/L BOD, < 5 mg/L TSS, and < 5 mg/L TN.*”
3. Incorrect statements have been made about their ability to meet the requirements. However, having observed the presentations made in Santa Paula, it became evident that their technology would not only meet the requirements, but that their Design Build and Finance team had enough confidence in their ability to guarantee price and performance that they also provide the upfront capital for construction, using the revenue stream as their pay back.
4. Their [program](#) to finance the capital costs would save our bonding capacity for the future.
5. The citizen’s groups have contacted them for cost [estimates](#) and we were given a \$34 million capital cost. To not seriously evaluate this cost saving, lower O & M technology causes grave concerns among the public.

Misleading and incorrect information from the City

We’ve heard from the Mayor and others that the public is distrustful and they want to rebuild that trust. However, the number of misleading comments has resulted in an even deeper level of distrust.

1. Since November, the public has been told repeatedly and emphatically that the vendors were encouraged to look at any and all potentially lower cost technologies and that they had the freedom

to bring them to the City for review. On March 13th, after reviewing the Request for Proposal(RFP), it was determined that the vendors never had that option and that, in fact, the RFP stated that that they could only bid on MBR, so the vendors did not have the capability of bringing any alternatives – contrary to what we were told. They were in actuality told to cut costs on their existing bids.

2. Since November, the public has been told that the MBR plant was “not gold-plated”, “not a Cadillac”. During the workshops, it became apparent that the MBR was indeed “a Cadillac, state of the art plant”.
3. We hear a lot about “moving forward” and “future requirements”. Yet, we see no efforts made in reducing the chlorides or softening our water when the regional board deferment is right around the corner (2008). How will we pay for chloride reductions? If we’re so concerned about the future, this issue should be on the table right now.
4. During early public hearings we were told that our plant had to be built to comply with our Waste Discharge Requirements (WDR) and Title 22 standards. Then, when cheaper and compliant Title 22 options were brought forth, the story changed. It became about “future requirements” at the expense of our current economy.
5. The size of the proposed plant has been questioned. Are we paying for a larger plant than necessary? City staff and council members have stated that we have to “plan for future growth”. Are the design calculations too high with packing houses shut down? The current flow rates and sizing calculations should be recalculated with public input and collaboration.
6. If a lower cost alternative is found, the public and City Council have been told that the entire process would have to be started from scratch. According to [Government Code 5956.5](#), which the City has used as the authority to procure this plant, it does allow a vendor to present and bid a project as long as they are able to demonstrate competence.

Some questions that our citizen groups seek answers to.

1. Why was the [Boyle](#) study commissioned in 2005 to analyze whether the existing plant could be rehabilitated when the decision to relocate the plant was made in 2002 per the Memorandum of Understanding (MOU) between Griffin (and previous owner) and City?
2. Why don’t we hear any more about package plants? Wouldn’t package plants be a cost effective solution to wastewater treatment AND recycling?
3. Do we have any documentation that we have indeed saved money through this process? For the size of our plant and our community, \$82 MM is excessive
4. Our average daily flows are still relatively low. Why aren’t we deferring the school/park recycling in favor of percolation at C Street, E Street, existing site and Riverwalk levee? If the new sites are added, our percolation capacity should be sufficient except for the case of a 100 year storm. The money should be utilized for the previously approved water softening project that will help to mitigate the 2008 chloride TMDL’s.
5. Why would Fillmore require 150 acres of percolation ponds when Santa Paula has stated they will require 15-34 acres for their 4.8 MGD of effluent?
6. We have been told that we are discharging to the river approximately 13% each month (4 days) and have been out of compliance on occasion. We were also told that our ability to percolate has been diminished by an MOU with Griffin Homes that relinquished part of our percolation capacity. Is this true, and if so, does Griffin have any liability for our fines?
7. Where is the comparison cost for similar plants being bid, constructed or operating in California?

Perhaps these questions have been answered in the past. However, the answers given have not been consistent with follow up research or questioning.

And, there has been concern expressed by the Mayor and others that there is an element of distrust in decisions that are being made on behalf of the citizens. When intelligent, dedicated people organize on behalf of their fellow citizens and attempts are made to discredit and dismiss their concerns by City staff and council members, it does create an aura of distrust. Decisions of this magnitude need to be made in an open forum. It is our understanding that the sewer subcommittee had no citizen involvement. The RFQ, RFP and bid opening and selection processes had no citizen involvement.

The [EPA PROCESS DESIGN MANUAL FOR SLUDGE TREATMENT AND DISPOSAL](#) requires mechanisms for public involvement. Members of the public have been vigorously involved in the public hearings, but every step of the decision making process prior to the December 7th workshop, did not involve the public. The American Water contract had already been signed in spite of previous public hearing requests for delays. That workshop did not consist of any public *input*, just a review of the previous presentation and some Q & A.

“2.3.6 Public Involvement: Public involvement in environmental decision making is not only wise, it is mandatory. The National Environmental Policy Act of 1969, the Clean Water Act of 1977 (PL 95-217), and the Resource Conservation and Recovery Act of 1976 (PL 94-580) all require public involvement mechanisms and activities. Acceptance of the project by residents of the community and a working relationship between the public and the design team is essential. Experience has shown that programs are more easily accepted if the public understands what they are.

The relationship between the design staff and the public is similar in many ways to that between the design staff and the advisory committee. The public also serves in a policy-making and review role; it should be made aware of all aspects of sludge management alternatives and should provide criticism and guidance to the design staff. A means of educating the public and creating a dialog between the public and the design staff must be established. Mechanisms for accomplishing this are the mass media, bulletins, public hearings, and presentations to interested groups.

Special efforts should be made to involve groups and individuals who, from past experience, have demonstrated an interest in environmental affairs or those who are likely to be directly affected by the proposed project. Developing a list of interested persons and organizations for formal and informal notifications and contacts is a good way to ensure public participation. “

Public participation is also encouraged in the recent *IRWMP (5.2) Final Report* which is the source of our recent \$3MM grant. *“Agencies should engage the public in an active dialogue and participation using a community value-based decision making model (determining what a community values, then making decisions based on that information) in planning water recycling projects.”*

In light of the NEPA and IRWMP conditions requiring public participation, we are suggesting that an ad-hoc committee be formed as soon as possible. This was recommended by your predecessor, Mr. Ray Dressler, at the February 16th City Council meeting but no follow up occurred. This committee should consist of one member each of the signed citizens groups, committees and business organizations, staff and City Council members and a representative of any other local organization or church that represents local stakeholders. We must work together for a solution that won't end up exposing the community to an uncertain future.

In conclusion, as you can see, there is just too much evidence that we are making a mistake on many counts by continuing in this direction.

1. Deciding to use the DBO process
2. Entering into a privatization contract with American Water
3. Limiting the RFP to MBR only and not independently analyzing other alternatives
4. Misleading the public with biased and misleading opinions with no factual basis(Vertreat)
5. Not making efforts to involve the public by forming ad hoc committee of citizens, staff and council members.
6. By refusing to consider lower cost alternatives or even innovative alternatives that could be funded by technology grants.

It is unfortunate that this project has gone so far and been so expensive to date. There have been rallies, public hearings, workshops and many meetings where the public has asked the City to reject or postpone the costly project in order to evaluate other options. This is not an unreasonable request considering the consequences. The public has a right to determine the fate of the City and their economic future. We believe that all citizens will be willing to pay a higher cost for sewer rates, as long as it remains somewhat reasonable and will not have the impact of closing local businesses. In fact, the citizens willingly approved an increase to provide water softening which was never implemented. Public involvement should have been invited when the process started or even in November during the Proposition 218 hearings. The disregard of the public's and business community's comments and the inability to come up with effective alternative solutions must be addressed as soon as possible.

Sincere Regards,

Gayle Washburn – Citizens for Responsible Growth

Bob Stroh – Citizens United for Fillmore

Clay Westling – Concerned Citizens Committee of Fillmore

Richard Schuck – El Dorado Citizens for Affordable Sewage

Eduardo Gonzalez – Orange Blossom Village and Fillmore Convalescent Center

Cc:

Mayor Steve Conaway

Councilmember Patti Walker

Councilmember Cecilia Cuevas

Councilmember Laurie Hernandez

City Manager Tom Ristau