

MEMORANDUM TO: Board of County Commissioners
FROM: Eric Damian Kelly
RE: Arrangements for Sewer System Management

PROBLEM ANALYSIS: From several meetings with you, with the County Administrator, with interested developers, with the planning staff and with the diverse group at the last joint City-County meeting on the subject, it is clear that the County faces several issues related to the sewer system: 1) who ought to manage the sewer system; 2) who ought to operate the sewer system; 3) who sets major policies, such as line extension and connection policies; 4) how the special districts connected to the sewer system can be included in decisions affecting them; 5) who will maintain and operate lines which are not within the City limits of the City of Grand Junction and not within the corporate limits of any special district; 6) who will be responsible for long-range planning for optimal plant utilization and future expansion.

There appears to be general agreement on one issue, which is that the City of Grand Junction ought to operate the system. It has the equipment, professional staff and expertise to operate such a system. Any other entity would have to make large capital expenditures in order to acquire

However, even certain issues related to the maintenance of the system remain subject to question, such as maintenance of lines outside the City and outside the special districts. Although the City says in theory that it will do it, at least one major developer is totally convinced that the City will not do so when the issue really arises.

Further, there is no decision-making mechanism for such policy decisions as establishment of "service area" boundaries and line extension policies.

As a practical matter, the service area and line extension issue are symptomatic of the larger issue, which is that there is no structure of any kind for on-going management of the system. The City clearly has the right to manage the system within the City limits, but there is no clear authority for anyone to make major management decisions for areas outside the City limits. Within the special districts, the district boards can make certain decisions, but those boards are reluctant to make decisions on such issues as service-area expansion in the absence of a system-wide policy. One special district board is sufficiently concerned about the current management status of the County-wide system that it is reportedly purchasing its own computer system to do billing.

Another major management issue that is not being addressed is.

planning for plant expansion and for service of additional areas. In addition, everyone involved with the system has apparently always contemplated that there would be tap fees collected and set aside for future system expansion. At the present time there is no mechanism for handling those fees other than to have them paid to the City as operator.

ALTERNATIVES: People close to the system have discussed a number of alternatives. Those include:

--"Super District," which would encompass the entire Valley-wide service area and pick up the loose ends. For example, in areas not included in the City or in a special district, it would be the full service sewer agency. For the City and special districts, it would simply be a master-system and plant operator, although it might also contract to run those districts.

--"Maintenance District" in unincorporated areas. Such a district would simply be responsible for line maintenance in those areas not within a special district and not within the City.

--County Home Rule. With a Home Rule Charter, the County would have a good deal more flexibility to establish an operating and management system for the Valley-wide Sewer System.

--County Sewer Department. Although a Home Rule Charter would give the County more flexibility in some ways, the County actually has the current authority to operate a sewer system or any part thereof on its own. Thus, if it is so inclined, the County could simply take on a greater operational role in dealing with the sewer system by setting up a department and hiring the appropriate people.

--Sewer Authority. Under the Authority concept, the sewer system could be run like the Airport, with a new, inter-governmental entity set up to manage and operate the sewer system.

Each of the approaches outlined above has problems. The major ones are:

"Super District." This approach would require special legislation from the Colorado General Assembly. While in concept the General Assembly might be willing to consider such legislation, working out the details of the legislation (particularly the powers of the super district as they relate to the powers of the existing special districts and the City) would be likely to turn into a major political melee which would kill the proposal.

Maintenance District. Although there may be a way to

accomplish the maintenance district under existing law, it would solve only the line maintenance problems. The County would still need some sort of management entity for the system.

County Home Rule. The County Home Rule approach to the sewer problem is really the sledgehammer approach to eliminating a pesky fly. A sledgehammer is a useful tool, as is County Home Rule, but it is not a necessary or even the best tool for solving the problem and it is so big and so complex that adopting it simply to solve this one problem would be a big mistake.

County Sewer Department. Establishment of a County Sewer Department would be a way of solving operational problems, such as line maintenance, but it would not solve the management problems because it is clear that the City and the special districts will fight any attempt by the County to manage the system unilaterally, especially at a staff level.

Sewer Authority. Colorado law provides for the establishment of a Sewer Authority, but it must include two counties. Thus, it cannot be used effectively to solve the problems related to the Valley-wide Sewer System. See C.R.S. 1973 §32-7-104.

However, there is a fairly simple alternative which would incorporate many of the strengths of the alternatives suggested by others.

RECOMMENDATION: Sewer Board.

Under C.R.S. 1973, §30-20-402, The County expressly authorized to contract with other counties or municipalities:

For or concerning the planning, construction, lease, or other acquisition and the financing of water facilities or sewer facilities, or both, and the maintenance and operation thereof.

That you are already doing. However, the section further provides that:

Any such counties or municipalities contracting with each other may also provide in any contract or agreement for a board, commission or such other body as their boards or governing bodies may deem proper for the supervision and general management of the ***sewer facilities ***and for the operation thereof, and may prescribe its powers and duties and fix the compensation of the members thereof. -

The primary difference between this approach and some of the other approaches is that you do not create a new governmental

entity. The Sewer Board would have no direct taxing power and would have only those powers which you and the City would give it by contract; in contrast, a special district, once established, has all the powers granted it by law and has an independent legal existence. However, I think that distinction is of legal consequence in this situation, because there is really a very specific and relatively limited set of functions to be delegated to the proposed entity.

The important thing is that the Sewer Board could be structured to manage the sewer system. It could set service area policies (independently or subject to some broad parameters established by the contract creating it), it could set user fees, it could set line extension policies, it could do long-range sewer planning, it could hold (and manage) tap fees and other funds escrowed for expansion and it could take care of all of the sewer lines that no one else wants.

The Board can clearly be composed of whatever kind of membership you might designate. I would recommend that you find a way to have the special districts as well as the City and County represented on it. In addition, in order to prevent major political problems for the first Sewer Board, I would recommend that the basic operating agreement with the City be worked out before the Board is established (probably in the same contract), so that the Board takes that and some basic policy guidelines on service area as the parameters within which it is to manage the system.

I have been told that the City is open to such a proposal. Given the history of these negotiations, it might be a good idea if someone besides a County representative had the idea first. If you can feed the idea out and get it started from some other direction, I certainly will not tell a soul where it came from.

STRATEGY FROM HERE: I recommend that we proceed as follows:

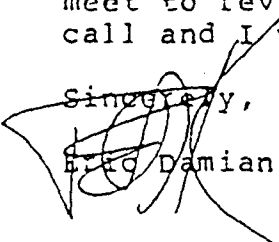
- A) Plant the seeds of this idea where they may grow in City turf;
- B) Meet with City and special district representatives to go over issues, directed toward us drafting a proposed agreement;
- C) Prepare draft agreement doing three basic things: 1) establishing Sewer Board; 2) establishing service area or criteria for determining service area; 3) agreeing to have City operate the system;
- D) Meet with City only, prepared to negotiate agreement to closure;
- E) Finish and sign agreement.

It is my sense that the time is right to make this work;

further, with the system coming on line and constant issues arising related to the service area, I think the issue is fairly urgent. I would thus recommend that we try to meet with the City and special districts within 30 days, with the intent of finishing the entire process this year if possible but no later than January.

Please give me a call if you have any questions. If you want to meet to review these recommendations, please have Curt give me a call and I will plan to get over there next week.

Sincerely,


Eric Damian Kelly