

M E M O R A N D U M

TO : Steven Ausmus, Administration  
Bennett Boeschstein, Planning  
Bob Carman, Engineering  
Ken Glover, Planning  
Roger Head, Surveyor  
Dick Hollinger, Building Inspection  
Steve Johnson, City Engineering  
Kenneth Lampert, Health  
Karl Metzner, Planning  
Bob Myers, Parks  
Jim Patterson, City Engineering  
Terry Sommerfeld, Road

FROM: Mark Eckert,<sup>ME</sup> Administration

DATE: October 18, 1983

SUBJ: Scheduling of Upcoming Public Works Group Meetings  
Initial Draft of Sewer Issues Paper

The Public Works Group is scheduled to meet this Thursday, October 20th at 9:00 a.m. in the Patriotic Room. Bennett Boeschstein has made available a preliminary draft of the County Sewer Issues and Policies paper. (see attachment). I would suggest reading this prior to the meeting so that any informed critique may be gained by the sub-committee.

As you are aware, we will be taking a tour of the Persigo Treatment Plant on October 27th. Please meet in the Patriotic Room at 8:45 a.m. so we may carpool to the site. Planning, Health and Building Departments will supply transportation. (Snorkels are optional).

— Audit of funds that City keeps  
to determine present use Re: operation,  
maintenance, future growth.

## I. INTRODUCTION

Mesa County has grown from a primarily rural county to a primarily urban county. With this growth the pressures for urban services has grown and while the County for the most part does not have the ability or the desire to operate urban services the needs are being expressed by County residents on a daily basis.

The County has recognized the important relationship of sewer service and land use in the Mesa County Land Use and Development Policies (1982-1983). This policy has the following major elements:

1. New subdivisions must connect to a public sewage disposal system or an approved private system or a septic system conforming to state and local laws.
2. New development within the Grand Junction<sup>201</sup> sewer service area must connect within 2 years of construction or within 90 days of the time an interceptor or major service line exists or is built within 400 feet of any part of the development.
3. The County subscribes to the Colorado Department of Health policy of "non-proliferation" to discourage multiple, small and scattered sewage treatment systems because of the difficulty of operation and managing small systems and because of the difficulty in regulating multiple systems.
4. Septic systems are recognized as appropriate for low density residential development and for small-scale isolated commercial development. The Mesa County Land Development Code sets a guideline of 1 dwelling per 2 acres as a minimum lot size for septic.

The County's involvement in sewers includes not only development and land use issues, however. The County owns through its issuance of the sewer bonds, the Persigo Sewage Treatment Plant and its major interceptor sewer lines. The City of Grand Junction operates the plant, interceptors, and collects fees for sewer fees for this system. The County must play a role in reviewing the sewer plant and line capacity, in setting policy for sewer extension, in setting fees and in financing future plant expansion.

The County's role is being expanded with the completion of the Persigo Plant. Numerous decisions must be made in the next year to deal with sewer extension, sewer district

boundaries, line sizing/financing, and ultimately land development. The following report outlines the major issues and offers recommendations. It is based on prior studies of sewer service in Mesa County including:

1. Carrying Capacity Study for the Grand Junction Area, Nov. 1979
2. Grand Junction 201 Sewer Study
3. Fruita 201 Sewer Study
4. Palisade Sewer Study
5. Mack Sanitation District Study
6. DeBeque Sewer Study
7. Collbran Sewer Study

## II. BACKGROUND MATERIALS (

- A. County Attorney's legal brief for mechanisms to manage sewer lines. (Attachment 1)
- B. Memo from Steve Johnson synthesizing City/County Sewer Agreement. (Attachment 2)
- C. County Planning Consultant, Eric Kelly's memo's concerning mechanisms for management of sewer lines. (Attachment 3)

### PROBLEM OR NEED ISSUES

## III. GRAND JUNCTION URBANIZED AREA

*known?* Persigo Plant is designed to serve 12.5 mgd of sewage as built. Within the service area small package plants tying into the plant will, in combination with the numerous districts, bring flows to capacity. In its agreement with the City of Grand Junction, Mesa County is responsible for plant expansions as well as operational costs of their own lines. Due to these responsibilities, several issues emerge.

The Grand Junction 201 update and infiltration of ground water are also projects which effect the County. Subsequently the following issues pertain in part to these studies as well.

### A. Land Use and Engineering

- Lack of coordination of zoning and subdivision review with sewer line sizing.
- Lack of criteria for expanding Persigo service area.
- Lack of a review process in planning structure for all line extensions.
- Lack of County review mechanism for line extension proposals.
- Lack of technical expertise for sewer engineering.
- Development put off due to delays in line placement.

B. Septic Systems

- Lack of control for requiring septic hookup when lines are extended.
- Lack of control for septic service hookup along existing lines.

C. Fiscal Concerns

- Lack of financial <sup>(planning?)</sup> rates and structure for sewer plant expansion.
- Lack of financing mechanism under County control for line extensions.
- Need for reviewing with other service agencies in County for added expenses as result of sewer line expansion.
- Lack of financing mechanism for line replacement.
- Need for improved payback system for oversizing.
- Lack of a consistent City/County financial participation process (i.e. should County take more control over sewer service).

IV. FRUITA 201 AREA

Based on the resolution approving Quail Ridge, a 201 boundary extension is currently being sought - while the Quail Ridge development will be served by the Fruita plant, the line between will be in the County's jurisdiction. Kings View Estates may also be in the future included in the Fruita 201 area, creating a similar situation as Quail Ridge.

Another point of involvement between the County and the City are areas in County jurisdiction being potentially served by the Fruita plant. Both areas lead to numerous questions of policy on the part of the County.

- The County's role needs to be defined in 201 expansion.
- Coordination for development requests based on adequate ability to serve on part of City is needed.
- "Other service costs" criteria which places constraints on providing sewer service has not been determined.
- Plant capacity for development is considerable - County does not review how to coordinate zoning with this capacity.
- Kingsview will be seeking to locate within 201 should it expand. Line sizing needs to be reviewed in terms of other costs and constraints.
- Criteria for expansion of service area boundaries should be determined as future requests will arise.

III. SANITATION, WATER & SANITATION DISTRICTS AND MUNICIPAL FACILITIES & LINES

A. DeBeque

- Unused capacity of DeBeque is an estimated 115,000 GPD, or almost 80% of total. As yet there are no policies or agreements for annexing areas which would be served by sewer in the future.
- If development with sewer service occurs outside of town limits, financing mechanisms would have to be adopted for consistent practices.
- Should sewer development occur outside of City limits, there would also need to be a determination of line sizing based on present and anticipated zoning (or zoning changed with ability to service).
- Other capital improvements necessary to support population served by sewer would also need to be considered.
- Lack of technical engineering staff at present to deal with sewer servicing issues.

B. Palisade

A prior 201 Step I study was conducted for Palisade, considering a special district west of the town; there is a possibility of this district eventually forming. The County has not taken a position officially for this possible formation or reviewed associated costs should it happen.

- Lack of technical expertise to make recommendations on sewer line extensions outside of Palisade if a special district is not considered and if Palisade does not annex.
- Basic lack of agreement for annexation or power of attorney for annexation coupled with providing sewer service.

C. Mack Sanitation District

Size of the Mack facility will accommodate approximately 90 more sewer taps. Should this be insufficient capacity in the future the district could propose an expansion of boundaries and a larger facility. With this in mind, the following issues emerge.

- Need for reviewing zoning patterns against the ability to serve.
- Need for contracts which develop County standards for engineering and rules pertaining to tie ins, responsible financing plans, and standards for industrial treatment.

- Need for technical staff to assist in this process on an ongoing basis.
- Need for coordination of sewer service with other service needs.

D. Mesa Water & Sanitation District

Mesa's Water & Sanitation District encompasses approximately 230 acres and is capable of handling an estimated 140 more taps. The looming growth of Powderhorn area into recreational community is creating a situation which calls for either a new served district or annexation into the Mesa Water & Sanitation District. Issues arising from this include:

- Need for a County position on encouraging either annexation or new district creation, due to intervening areas.
- Need for contract on tie ins, engineering standards, and financial planning.
- Determination of other costs associated with establishment of sewer service in this area.

E. Collbran (To be discussed)

VI. PRIVATE PLANTS

A. Powderhorn (See Mesa)

B. Valley Vista

- Lack of written contract denying further expansions.
- Need for decision whether or not to encourage formation of special district.

C. Kingsview

1. Lack of direction from County for tying into Fruita 201.
  - a. line sizing policy
  - b. financial mechanism
  - c. land uses and zoning in intervening and surrounding areas.

VII. POSSIBLE NEW DISTRICTS

A. Overall policy to be established, tied to geographical areas which may propose districts for plant facilities (see County Land Use Policies #6).

1. Should County be arbitrater for boundaries?
2. Other options for establishment of facilities.

3. Need for financial mechanisms for lines.
4. Need to I.D. all areas which may need facilities including Gateway, Kannah Creek, Whitewater, and Loma.
5. Need of review of areas zoned to densities which would require sewer service.

VIII. ALTERNATIVES CONSIDERED FOR SEWER POLICIES

A. No Action Alternative

1. Inconsistent decisions for sewer district establishment.
2. Inadequate line sizing for future development.
3. Extra costs to County tax payers for ancillary services where sewer service exists.
4. Planning decisions made by sewer entities.
5. No funding for Persigo plant expansion.
6. Further 201 boundaries extension, jeopardizing EPA funding.
7. Possible inadequate service to tie ins.

## ALTERNATIVES

### METRO-DISTRICT

The metro-district alternative is contained in CRS 32-3-103. Districts are established by the District Court of the County. They may be within or outside of one or more municipalities or both.

To establish a Metro-District the following steps must be followed:

1. Petition to form a district filed in the office of the clerk of the court. The petitioner must be signed by 10% of 100 taxpayers of the district.
2. Bond filed with security approved by the court sufficient to pay all expenses connected with the proceedings in case the organization of the district is not effective.
3. A public hearing is held after proper public notice and an election is held.
4. Formation of a Board of Directors after declaration of a corporation by the court (5 directors).

Metro-Districts have broad powers including: power to borrow money, acquire and dispose of land, manage and control the affairs of the district, hire and retain staff, power of eminent domain, construct and maintain facilities, to fix rates and pass regulations.

Metro-districts have all the powers of a water, sanitation and fire protection district.

The metro-district option provides all of the necessary tools for a County-wide metro-district could take on the functions of water, fire, and recreation if a County recreation district were formed under CRS 32-2-101 to 32-3-133. Police protection districts and safety protection districts are apparently also possible under the Metro-District structure.

Creating a metropolitan sewer district for Mesa County would have the following disadvantages:

1. It would require a vote of the electorate, and public hearing.
2. It would create a separate board of directors elected by the voters, but not responsible to the County Commissioners.



3. It would require creating a new organization at the County level with taxing and bonding ability, separate administration and engineering staff.
4. Its powers are limited to those specifically granted by State law.

It would have the following advantages:

1. It could be used to provide a wide variety of urban services in addition to sewer such as recreation, fire and police.
2. It has all the powers necessary to finance, manage, and extend sewer service in Mesa County.
3. It would deal exclusively with sewer service delivery and could adopt its own sewer extension, line sizing, service area policies independently of other agencies.

The existing sewer districts, sanitation districts and private sewer companies in Mesa County could be absorbed into the Mesa County Metropolitan Sewer District.

#### TWO TIERED APPROACH Local Improvement Districts and Sewer Board

This alternative for the County involves the adoption of LID's as a preferred financing mechanism for sewer lines in developments outside of other governmental jurisdictions. While there are advantages associated with this form of district, a procedure must accompany this mechanism to avoid eventual costs and inconsistencies. Such a procedural structure would include the following points:

1. A denial/approval set of criteria for LID proposals.
2. Criteria for determining line oversizes when future development may tie in farther out.
3. Method for determining boundaries of an LID. Should it be frontage properties, or any property within 400' of the line?
4. Definition of maintenance and operation responsibilities. How should the district be assessed to pay for maintenance costs?
5. Line replacement responsibilities.
6. How to deal with crossing properties for serving an area, or requiring hookups where crossed.

7. Monitoring of line capacity when oversized.
8. Technical staff capable of reviewing and making recommendations on LID placement and sizing.

While local improvement districts may adequately address the basic need for a sewer line, the reinforcement of a comprehensive perspective is a necessary counterpart. Indeed, it may be that a plan and review body to administer the plan is legally required for determining costs, sizing and denials. Secondly, other issues associated with special districts, 201 areas, and the City/County agreement cannot be dealt with through a financing mechanism alone.

A sewer board alternative would ideally be responsible for the following:

1. Administering and reviewing LID proposals.
2. Working contracts between the County and other governmental/quasi-governmental agencies with regard to engineering standards and coordination of capital investments.
3. Developing a Persigo plant budget according to agreement.
4. Creating a major line plan for areas outside of Grand Junction service area.
5. Make recommendations for a capital improvements program.

Problems associated with such a board would include:

1. Board member selections.
2. Clarification of exact role toward County Commissioners.
3. How Board would act in the context of land use.
4. Support staff needs.

#### LOCAL IMPROVEMENT DISTRICT

A variation of this alternative would entail the establishment of a process for LID's with a review body to administer them. An expedient solution would be the Planning Commission as a review body, thereby including such issues as line sizing into the land use review process. Again support staff would continue to be needed, perhaps with more authority in the review process than with a Sewer Board.

Advantages to this alternative are greater expediency for enactment, and less County involvement in issues which are difficult, thus creating less controversy. Disadvantages are an alternative which pursues expediency at the expense of comprehensiveness and less consistency.

## SPECIAL LEGISLATION

Another option available to the County is to prepare special legislation for adoption by the State Legislature. The legislation would grant to Mesa County and other urbanizing counties in Colorado additional powers to finance, and manage sewer systems as well as other urban services. It would be unlike any other special County legislation in Colorado, but it could serve as a "pioneer" legislation that other urbanizing counties in Colorado could use.

The disadvantages of the special legislation alternative are:

1. It would require a great deal of time and some expense to draft the legislation and get it past the legislature.
2. It would put the County clearly in the role of urban service provider, something the County may not be ready to do.

The advantages are:

1. It would give all the powers of a municipality to the County for financing and operating services. This includes taxing ability, revenue and general obligation bonds.
2. It would enable the County to plan and manage complex urban services such as sewer, fire, police, and recreation, where they are needed and not to provide them where they are not needed.
3. It could provide a ready mechanism for rural areas which wish to phase in urban services by having county-wide ability to provide urban services, thereby eliminating the need to form special districts.
4. It would place urban service delivery in the same hands as land use decision making - the County Commissioners. Now the delivery of services is generally handled by other jurisdictions, but the County approves land use decisions.

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.

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o 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.

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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

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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:

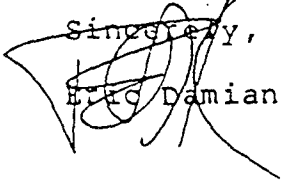
- A) Plant the seeds of this idea where they may grow in City turf;
- B) Meet with City and special district representatives to go over issues, directed toward us drafting a proposed agreement;
- C) Prepare draft agreement doing three basic things: 1) establishing Sewer Board; 2) establishing service 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





City of Grand Junction, Colorado 81501  
250 North Fifth St.,

M E M O R A N D U M

TO: Mesa County Public Works Group  
Local Improvement District Committee

FROM: Steve Johnson, Grand Junction Dept. of Public Works & Utilities

RE: Existing Framework for Sewage Collection System Expansion for the Persigo  
201 Service Area

I. Introduction

In order to analyze the viability of a County local improvement district program for sewage collection system expansion in and around the Persigo 201 Service Area, it is necessary to understand how such expansion now occurs.

As an operational matter, a joint City/County review process regulates sewer line extensions/expansions that are often privately financed on the front-end, but are ultimately subsidized by the Sewer Fund administered by the City. In other instances, where the expansion occurs within a special district (a district governmental entity) the review process still applies but financing of the capital improvements is handled by those districts. This memo will focus on City/County involvement outside of those districts where a local improvement district (an appendage of the County) could facilitate new financial, planning, and even design review arrangements.

II. City/County Agreement

The basic document controlling the City County sewer relationship is the joint Sewerage Service Agreement of May 1, 1980 (superseding an Agreement of 1979, and as subsequently amended for bonding purposes). The following is a brief summary of that agreement:

- A. 1. City Sewerage System - collection and treatment system existing prior to 5/1/81 and serving areas in and outside the City.
2. County Sewerage System - system to be constructed after 5/1/81.
3. Joint System - City/County systems operated and managed as a single system.
4. Separate Systems - autonomous operation for traditional purposes of zoning, subdivision and building permit criteria for sewage connection, and most importantly, for purposes of collection line extensions within drainage areas.

- distinct*
- B. 1. Operations - Ratemaking - City Utility Department sets joint charges reviewed and adopted by City and County. Charges include service charges, tap fees, plant investment fees (PIF).

Special districts can add to these charges, and are exempted from a portion of service charges if they maintain their system. (The "tap fee" includes the CIC, or Capital Improvement Charge, and is often described as including the PIF, which is allocated solely to the treatment plant. The CIC is currently \$1050, and theoretically is the cost for collection system extension to the property edge of a particular structure. Since the City and County can rarely afford to do the job for \$1050, and since actual costs vary significantly depending on areas, historical practice has been to waive the CIC and require the person requesting the service to do it as his/her cost).

2. Management The City Utility Department is the Manager of the City system and the Joint System. The City Manages and operates the system, does the billing, and whatever is "necessary and proper to administer the system". However, the City cannot condemn land on the County's behalf, set County rates unilaterally, nor construct new or expanded joint facilities in the absence of some further agreement or agency.

3. Construction Specifications

All expansions of the joint system must be made, at minimum according to City Sewer Specifications. Also, all construction shall be in the public ROW, or upon easements or property owned by the City or County. Plans for construction outside of the City must be reviewed and approved by the City, and by the County if so requested. (In practice, both the City Public Works Director and the County Engineering Supervisor review and approve all plans.)

- 4: Connection The City approves all connection construction. Road cut restoration, insurance, and indemnification could be required by the City, but that is actually left to the County. Also, collection system capacities for specific drainage basins are designated solely by the City, which may refuse connections if capacity is exceeded.

5. Sewage Materials

- No waste oil, acid, or detrimental matter may be introduced in the system. City may physically stop such discharges. The City is preparing to enact a new ordinance creating an industrial waste pretreatment program, which the County and special districts will be requested to adopt.

6. Connection Line Maintenance

The City shall "properly" maintain the connecting lines from the areas described below, which collectively include all of the 201 Service Area and no other areas.

C. Jurisdiction Subject first to bonding resolutions. Otherwise:

<u>Area</u>	<u>Description</u>	<u>Controlling Entity</u>
I	City	City
II	2 miles out from latest City boundary	County, subject to City Annexation perogatives.
III	Territory of 4 special districts: Central Grand Valley Fruitvale Orchard Mesa Ridges (Note: no mention made of other new districts)	City and District per "Connector Agreement"
IV.	Unincorporated areas outside of all other areas but within 201 S.A.	County (by Resolution and Operational Procedure)

D. Facility Ownership

1. Treatment Plant - "County will own, subject to rights and interest of other parties." City is joint tenant on Persigo site. County floated bonds, and has succeeded by City's status as EPA grantee. City maintains partial equitable ownership as original grantee and owner of existing plant which is being replaced by Persigo rather than expanded.
  2. Redlands Interceptor - County
  3. River Road Interceptor - County
  4. Paradise Hills Interceptor - City
  5. City Trunk Lines - City
  6. Other Lines, non-City and non-District - County
  7. Annexations - City assumes ownership
- E. Financial - City administers Sewer Operations Fund on its own behalf, as well as for County and connector districts.

Please Review and  
make any comments  
file

Wastewater control City of Phoenix  
Metro Sewerage District #1  
District #1  
**DRAFT**

M E M O R A N D U M

TO: MESA COUNTY BOARD OF COUNTY COMMISSIONERS  
FROM: MAURICE LYLE DECHANT, MESA COUNTY ATTORNEY  
RE: ESTABLISHMENT OF A "COUNTY-WIDE SEWER DISTRICT"  
DATE: SEPTEMBER 9, 1983

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Following a meeting regarding a proposed utilization of recent legislation regarding local improvement districts to enable installation of sewer facilities, you requested that I review and comment upon the possibility of formation by Mesa County of a "Sewer District" which might ultimately be County-wide and the various methods by which the same might be accomplished.

In discussing the matter with staff and with the Board, I have ascertained that certain parameters should be maintained if at all possible:

1. Formation and expansion without a vote of the electorate.
2. Front-end financing capability.
3. Control over policy and facility extension to remain in the County Commissioners, if possible.

Prior to 1971, the authority of a County to create and operate sewer or water systems did not exist. Essentially, such authority was reserved to municipalities or special districts. Beginning in 1971, counties were authorized to acquire and operate sewerage facilities, water facilities, or both. This authority is today codified at 1973 C.R.S. 30-2-401 et seq.

The grant of authority in 30-2-401 et seq. is very broad and does not require the formation of any additional governmental entities such as a special district. The County is simply empowered to acquire, construct, and operate sewerage facilities, both within and without the County, without any limitation on the procedure to be followed or the administrative structure to be established. A copy of 1973 C.R.S. 30-20-402 and 416 is attached for your review.

The statute is specific that all powers granted the County may be exercised without a vote of the qualified electors. This fact allows considerable latitude in the actions of the Board of County Commissioners in exercising the grant of powers.

Conversely, although the broad powers of the County may be exercised without a vote of the qualified electors, the financing

- Revenue Bonds -

mechanism is thus limited to revenue bonds which do not constitute a debt of Mesa County, but which are secured by revenues of the sewerage system. Although revenue bonds provide a method of front-end financing, it is my understanding that they are considerably less attractive to investors than bonds of a general obligation or hybrid nature, and, therefore, saleable only at higher interest rates. The County may, however, have an established "track record" as a result of the Persigo Wash Treatment Plant revenue bonds.

It is unclear exactly what procedure is to be followed in developing a sewerage system under 30-20-401, et seq. No "district" is authorized and no separate governmental entity is created, except, in the event the County contracts with another county or municipality concerning sewerage facilities, a governing board or entity may be formed by contract. Such a situation is attractive because it retains control over policy and facility extension in the Board of County Commissioners, which is the planning and zoning entity.

The second method of developing sewerage facilities involves formation and utilization of a local improvement district (LID). House Bill 1033, passed and approved in March, 1983, expanded County statutory powers concerning LIDs to include the construction of sewerage facilities. Specifically, HB1033 added 30-20-603(1)(b) which states as follows:

"Additionally, the improvements authorized by this part six may consist of constructing, installing, or otherwise improving the whole or any part of any system for the transmission or distribution of water or for the collection or transmission of sewage, or both such systems."

The procedure to be followed in this instance is that which is followed in the creation of any LID pursuant to 30-20-601, et seq. The district may be initiated by resolution of the Board of County Commissioners or by petition of a majority of the owners of property fronting the improvement. Although public notice and hearing are required, no election of the qualified electorate or owners is required for formation of an LID.

Utilization of the LID concept requires formation of a "district", but not the creation of a separate governmental entity. It enables a method of front-end financing which is secured by direct property assessments rather than by revenues and, therefore, probably viewed more favorably by the financial community.

Since the "district" exists merely for provision of front-end financing for improvements, and since no additional governmental entity is created, control of the LID remains in the Board of County Commissioners. However, the concept does not lend itself well to the ongoing operation of a sewerage system.

No provision is made for ongoing administration and operation of the system or for expansion of the LID. The statute does not appear to contemplate enlargement of an LID, but, rather, the initial designation of a smaller, well-defined area in which a specific improvement is to be constructed. This concept works well with regard to paving of roads or the installation of curbs and gutters,

since the administration of roadways and appurtenant facilities is a well established County responsibility and the County is staffed and funded to undertake such responsibility.

The same is not true for the administration of a sewage collection and treatment system. Utilization of the LID concept for creation and operation of a sewerage system, without the assistance of additional statutory authority, would place the County in a position of accepting ownership and maintenance responsibility for sewerage facilities without any administrative provisions for fees, rates, maintenance and repairs, engineering specifications, etc.

The Colorado Statutes regarding the formation of special districts do not, in my opinion, provide any assistance in the formation of a "County-wide sewer district". Although the specialized districts, whether water and sanitation district, sanitation district, or metropolitan district, have extensive powers and latitude of decision, I do not believe that the statutory scheme for establishing such districts is compatible with the first and third parameters listed above. An election is normally required for formation of a special district and, once formed, the district boards tend to be extremely independent of any control by County government. It has been my experience in the Denver metropolitan area that the districts and their boards are very often in conflict with the planning and zoning goals of County planners and commissioners.

One of the most important questions facing the County regarding formation of a County-wide sewer district is that of whether or not the Board of County Commissioners can prevent the independent formation of LIDs or other special districts during the period of formation of a County-wide district. This is particularly important in light of the fact that the County has already received a petition for formation of an LID for sewer purposes.

Regarding the formation of a special district, it appears that the Commissioners have significant power to disprove such district. 1973 C.R.S. 32-1-203(2) sets forth eight (8) bases upon which the Commissioners may disprove a service plan of a proposed district and, thereby, veto formation of the district. Such veto may only be overruled by the District Court upon a finding that the action was arbitrary, capricious, or unreasonable.

Regarding formation of an LID, the board does not appear to have the same statutorily mandated powers. Although House Bill 1033 expanded the County's statutory powers concerning LIDs to include the construction of sewerage facilities, the Bill did not set out a procedure by which the facilities created by an LID could be accepted by and administered by the County. Although such procedure is not particularly important with regard to roads and curbs or gutters, it is extremely important with regard to sewerage facilities.

It would normally be my opinion that the County Commissioners

cannot refuse to establish an LID when the same has been duly petitioned in accordance with the statute. However, since the County will accrue to ownership of sewerage facilities which it is not prepared to administer, it is my opinion that the County could refuse to authorize such LID for a period of time during which preparations for administering the facilities can be made.

I am available to provide any additional assistance which you may require and to answer any questions which you may have.

Maurice Lyle Dechant  
Mesa County Attorney

MLD/cs

Attachments

F. Summary

With regard to collection system extensions, the City applies City specifications to construction and actual connection. The City must approve all construction, in an inspector capacity. The City must first approve the construction plans. The City may refuse a construction or connection request if line capacity will be exceeded, if the sewage originates outside of Areas I-IV (i.e., outside of the 201 Service Area), if detrimental matter will be contributed, or if City annexation requirements are not met.

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III Conclusion

It is important that any LID program allow for exercise of City responsibilities and utility policy described above in order to be effective. An important issue to be addressed concerns the coordination of the Sewer Fund with LID financing, unless an independent financial mechanism is chosen.

IV. Recovery-Back Agreements (to be continued ...)