

What You Need to Know about the Willits Wastewater Treatment Plant Dispute

Updated November 2014

Preface

The Brooktrails Township is a California public agency committed to honoring its contracts with others and complying with the Constitutions and laws of the United States and the State of California. The Brooktrails Township expects others, particularly other public agencies, to share that commitment. By doing so, we all avoid the costs and stress associated with court proceedings.

Since 1997 the Brooktrails Township has been asking - and then insisting - that the City of Willits honor a contract providing for the allocation of operating costs for the Wastewater Treatment Plant. Since 2005 the Brooktrails Township has been asking - and then insisting - that the City of Willits honor a contract providing for the allocation of construction costs for the new Wastewater Treatment Plant. Since 2013 the Brooktrails Township has been asking that the City of Willits new Wastewater Treatment Plant be brought into compliance with federal and state laws in order to avoid polluting the groundwater and surface waters of the Little Lake Valley.

Thirteen years after the dispute started in 1997, Brooktrails filed a lawsuit seeking declaratory relief from the failure of the City of Willits to honor the contract.

The contract compliance issues involve millions of dollars. Those millions of dollars represent per customer sewer service charges totaling *at least* \$24.50 per month as follows:

- The City is demanding that Brooktrails ratepayers pay *at least* \$7.25 a month to subsidize wastewater treatment plant operating costs that should be borne by City ratepayers pursuant to the contract.
- The City is demanding that Brooktrails ratepayers pay *at least* \$9.50 a month to subsidize wastewater treatment plant construction loan costs that should be borne by City ratepayers pursuant to the contract.
- The City has taken wastewater treatment plant capacity previously purchased by Brooktrails as capacity "exclusive" to Brooktrails; this has created the possibility of a shifting of costs from vacant lot owners to current Brooktrails ratepayers amounting to a rate of *at least* \$7.75 a month.

Acceptance of the policies establishing these long-term costs also would determine how future wastewater treatment plant repair and capital improvement costs would be distributed to Brooktrails ratepayers.

The dispute is complex but others have tried to succinctly summarize it. The Local Agency Formation Commission of Mendocino County in its *November 2014 Public Review Draft of the City of Willits Municipal Service Review* states:

"On September 11, 1967 the City of Willits (City) and the Brooktrails Resort Improvement District – now the Brooktrails Township Community Services District (District) entered into an agreement allowing the District to dispose of up to 0.49 mgd ADWF of sewage into the City WWTF.

"The Agreement has been amended over the years: Amendment No. 2 in 1975 (which also repealed Amendment No. 1); Amendment No. 3 in 1982; and Amendment No. 3 in 2007. In 1997, a dispute arose between the District and the City regarding the allocation of operating costs for the WWTF. This dispute, along with several other issues has been ongoing for the past 17-years. In 2010, the District filed a lawsuit in Mendocino County Superior Court seeking declaratory relief regarding a number of issues, including metering to measure the flow of sewage, accounting methods and allocation of operating costs, annual audits, WWTF construction costs and plant capacity, and disposal of treated effluent.

"The degree of time and energy devoted to this situation is best reflected in the respective meeting agendas of the City and the District, as at practically every regular and special meeting there is a closed session on this litigation.

There does not appear to be any resolution of these issues in the foreseeable future. As the District said in a report to its ratepayers in June 2014: 'Township officials in 1997 did not believe litigation was the best option for the region. As it turns out, it has been made clear after 17 years that the only way all four components of the dispute can be resolved is through an 'independent adjudicator, be it judge, jury or arbitrator,' as the [then] City Attorney threatened in 1997.'

In October, this was written in the *Anderson Valley Advertiser*.

"THE DISPUTE BEGAN WITH accounting questions back in 1997 and culminated in a lawsuit in 2010 after Brooktrails was unable to get the City of Willits to comply with the with the terms of their agreements. The main focus of the dispute now is that Willits expects Brooktrails to pay for treatment capacity at the new plant that is needed to treat sewage from Willits. Brooktrails is willing to give up treatment capacity that it is entitled to, but only if Willits will agree to pro-rate the treatment plant construction costs based on the flow that each party contributes to the plant. Willits is supposed to meter the flow but the meter quit working in 2002 and Willits never replaced it with a meter capable of accurately measuring the amount of flow that each party contribute."

Summary of Recent Dispute-Related Occurrences

Three recent occurrences seem to be related.

At its August 5, 2014 meeting the Brooktrails Township Board of Directors adopted a resolution expressing a concern that a large volume of partially treated sewage from the Willits sewage treatment plant is percolating directly into the groundwater in the Little Lake Valley. About 20% of this sewage is from Brooktrails homes and businesses. The concern is the potential impact on our neighbors in the Little Lake Valley who depend upon wells for their water.

Brooktrails had raised the issue in April 2013 based upon anecdotal reports and subsequent data gathered by a local state-licensed engineering/hydrogeology business showing that in excess of 100,000,000 million gallons per year of sewage entered the sewage treatment plant but seemed to disappear in the ponds associated with the plant, probably percolating into the groundwater.

You can read more about this problem and the Brooktrails effort to get it corrected [here](#) ►

The second related recent occurrence was the receipt of a September 17, 2014, letter from the Willits Mayor to the Brooktrails Board President insinuating that the local engineering/hydrogeology business mentioned above at the behest of Brooktrails officials engaged in "a planned mission, attempting to lay a trap with the hope that City staff would violate its permit and accept diesel fuel mischaracterized as septage." It was, of course, not true.

The letter was written less than eight weeks before the upcoming election. The Willits-area engineering/hydrogeology business which has an unsullied reputation is providing professional engineering services to many local private clients. The City had not made the letter public. Brooktrails did not respond.

Unfortunately, the City Manager at the October 28, 2014, Brooktrails Board of Director's meeting insisted the letter be made public and that the Brooktrails Board President respond.

You can [download the letter exchange](#) as well as a review of the incident by another engineer (it is a large PDF file with functional links to state websites). As noted in Board President William's letter to Mayor Madrigal: "The Brooktrails Board is choosing to not take offense at the accusations in your final paragraph in the spirit of needed regional unity."

The third seemingly related occurrence was the presentation of an Agenda Summary Report, Item No. 9e (1) for the November 12, 2014 Willits City Council meeting. In it November 14, 2014, edition *The Willits News* offered this report:

"Adding fuel to the already hot conflict between Willits and Brooktrails, was Willits confirmation at the Nov. 12 council meeting that its flow meter measuring the total flow of sewage into the new plant was built wrong.

"Brooktrails advised the city in July 2013 it considered the new meter to be inaccurate. The city took no action. In October 2013 Brooktrails had its contractor inspect the meter.

"In April 2014, Brooktrails provided the city with copies of the inspection showing the meter had a number of installation flaws, according to [City Attorney James] Lance.

"The city took no action.

"In July 2014, after the city sent Brooktrails a bill for payment (based on the faulty meter) Brooktrails requested a copy of the calibration records for the meter in question. Willits contacted a meter calibration firm which advised the city there were problems it had found in October 2013. The firm, MCC Control Systems, confirmed the problem areas in August 2014. One problem, a programming error, was corrected in September 2014. The other involving the improper installation of the meter, was not discovered during the original installation by Speiss Construction Company in 2009.

"Lance suggested the city contact Speiss to have the problem corrected.

"Until the installation error is corrected the city expects to use the meter leaving the plant to determine flow rates through the plant."

The Agenda Report and City staff have asked for a response from Brooktrails. Brooktrails General Manager sent a letter to the City Manager pointing out that both the sewer plant's permit from the Regional Water Quality Control Board and the Agreement between the City and Brooktrails require a correctly functioning meter measuring the sewage influent as it enters plant, as well as any meter measuring the effluent as it leaves the plant. That meter combination allows federal and state regulators to determine wastewater losses from the various storage ponds. In the General Manager's letter it was noted Brooktrails will be providing engineering recommendations regarding the metering of influent.

A fourth recent occurrence which should be noted here was the filing on November 10, 2014, of a new cause of action by Brooktrails related to the above mentioned taking of Brooktrails purchased exclusive wastewater treatment plant capacity. Simply, contrary to the projects Environmental Impact Report the new sewage treatment plant was designed with less capacity than the old plant leaving insufficient capacity for City customers after deducting the Brooktrails-owned exclusive capacity.

Brooktrails pointed this problem out to the City in the Spring of 2013 but was reluctant to file the action in court because if successful it would impose a moratorium on new sewer connections in the City. However, because of the new water connection moratorium ordered by the State (see below), the effect on the City would be minimal particularly since Brooktrails has suggested the new matter be combined with the existing lawsuit so that legal expenses would be reduced. And the City could address both the water supply and sewage treatment capacity issues within the same time period.

Introduction

The Brooktrails Township and the City of Willits are in a dispute over the allocation of costs of operations and construction of the new regional Wastewater Treatment Plant. The court set a new trial date for March 6, 2015 but the City's attorney apparently is going to request another delay as noted in a November 10 ,2014 Case Management Statement:

"Furhter [sic], the City requests that the Court and the parties discuss the currently set trial date."

How did this situation arise?

Background

In 1967 the Township and the City entered into an Agreement for Brooktrails use of the Willits Wastewater Treatment Plant (WWTP). The Agreement was amended in 1970 following completion of the Brooktrails sewage collections system including its connection to the City's system. The Agreement was extensively amended in 1975 upon completion of a design for, but prior to seeking bids for the construction of an expanded new WWTP. The Agreement was amended again in 1982 upon completion of a design for, but prior to seeking bids for expanding the capacity of the WWTP.

That Third Amendment in 1982 granted Brooktrails Township ownership of an exclusive right to dispose of up to 0.490 million gallons per day (MGD) average dry weather flow (ADWF) into the WWTP. The terms of the Agreement as amended through 1982 can be viewed here.

After nearly 30 years of a cordial relationship under the terms of the Agreement, in 1997 a dispute arose regarding allocation of operating costs. In a letter exchange which can be viewed here, on January 3, 1997, Brooktrails General Manager Paul Williams explained to Willits City Manager Gordon Logan:

"We have reviewed the Annual Sewer Audit. After reviewing our Agreement, we do wish to dispute a number of the items and where possible, offer our reasoning.... Once you have developed the requested documentation or wish to discuss our concerns, please feel free to contact me. ...Although there are a number of differences with this year's audit, there are many areas of agreement as well. We look forward to quickly resolving the areas of disagreement and continuing our excellent working relationship."

On March 3, 1997, City Attorney (and future City Manager) Ross Walker set the tone for the future of discussions:

"It is disconcerting to say the least that Brooktrails, as an entity that purports to be committed to sharing the responsibility for maintaining a first class sewage disposal system, should suddenly be contesting the purchase of the very items necessary to maintain and improve the system for the benefit of all concerned. Suffice it to say that the City is confident that any independent adjudicator, be it judge, jury or arbitrator, will find the items listed in this category to be necessary and subject to the apportionment provisions of the contract.

"...The City's method of spreading administration and operation costs, including its in lieu franchise fee, is anything but arbitrary. Standard and accepted fiscal and accounting procedures underlie the allocation of these costs."

This annual billing dispute, which has now existed for 17 years, continues because the City's accounting and auditing system used for recording costs and related income and for allocating a share to Brooktrails Township does not conform to the Agreement.

But the annual billing dispute also continues because in 2003 the issue of metered flow to be used to allocate costs to Brooktrails Township arose. Sometime in between 2002-2003 the meter measuring sewage flow into the WWTP ceased to work properly. And in 2014 the City finally acknowledged that the meter installed with the new WWTP fails to measure flows accurately. In fact, in 2007 a decision was made by the City to use a metering system that would not be accurate.

In 2010, after 13 years of attempting to get the City to conform to the Agreement only to see the City's failures expand, Brooktrails Township filed an action in Mendocino County Superior Court. Subsequently, the City even began failing to meet annual billing deadlines.

In addition, during that same 17 years the City spent over \$25 million building a new WWTP and is now attempting to have Brooktrails ratepayers pay for capacity used by City ratepayers. In February 2013, City officials certified to Brooktrails Township that the new WWTP was built with less capacity than the old plant. Using actual flow data for 2012 provided by the City, Brooktrails officials discovered in 2013 that the new WWTP lacks adequate ADWF capacity for the City's needs as the City's flows encroached upon Brooktrails' exclusive capacity.

Finally, in further reviewing the new WWTP, Brooktrails experts have determined that the plant likely was not properly designed and constructed. It appears that each year as much as 100 million gallons of sewer water is percolating into the Little Lake Valley water table. It also appears that the discharge into Broaddus Creek regularly does not meet the discharge pollutant standards prompting one expert to comment that if you were a fish in the creek you would have much preferred the old treatment plant.

In 2010, *before construction contracts were awarded*, Brooktrails officials warned City officials about the design problems that are the apparent causes for both failures to protect the Little Lake Valley environment.

Status Summary as of November 2014

As of November 2014 the dispute has the following four components which will be discussed in detail in the web pages that follow (with supporting documentation provided):

- How can the 17-year dispute over the allocation of annual operating costs be resolved? Does the City owe the Township monies paid for prior fiscal years beginning in 2004-05? How are costs going to be determined in future fiscal years? Must the City revise its accounting and auditing systems? Must the City provide meters that accurately measure flows all as required by the Agreement? Or can the City bill the Township any amount City officials desire?
- If Brooktrails Township, as the City insists, is to retain its prior exclusive ADWF capacity of 0.490 MGD in the new WWTP (capacity worth about \$10.4 million), how will the City meet its wastewater treatment current and future growth needs since the new WWTP has less capacity than the old plant? What wet weather flow capacities did the City anticipate would be Brooktrails Township's share in the new WWTP to justify charging Brooktrails any share of the costs of building the new WWTP?
- How much, if any, of the potential many millions of dollars in costs to correct the possible pollution impacts from the new WWTP design errors can the City assign to the Township in the future? Did the fact that Brooktrails warned the City about the design errors prior to construction beginning release Brooktrails from any liability for correcting those errors?
- How much of the costs for, and \$18 million debt on, the construction of new WWTP designed to deal with high winter flows resulting from excessive City storm water inflow and infiltration is Brooktrails Township obligated to assume and make annual payments on? What benefit did Brooktrails derive from the construction of a new WWTP and therefore might reasonably make payments on without violating the Constitutional prohibition against making a gift of public funds? Should any portion of the payments made to date be refunded or should the Township make additional payments?

Pending the outcome of the litigation, the Brooktrails Township has and will continue, to make payments to the City towards the WWTP operating costs and make payments towards a portion of the new WWTP construction debt. But Brooktrails officials are obligated to meet their fiduciary responsibility to protect the Township ratepayers' monies by paying only amounts believed to be in conformance with the Agreement.

Township officials in 1997 did not believe litigation was the option best for the region. As it turns out, it has been made clear after 17 years that the only way all four components of the dispute can be resolved is through an "independent adjudicator, be it judge, jury or arbitrator," as the then City Attorney threatened in 1997. What is being sought by the Township is clarity with regard to the proper interpretation of the Agreement as it impacts on the four components of the dispute and on Brooktrails ratepayers and property owners. The Township does not expect to gain more than fair treatment from the litigation.

[Link to detailed discussion of the annual operating costs component of the dispute](#) ►

The Operating Costs Issues

The 1967 Agreement as amended (the Agreement) specifies flow metering, accounting, auditing, and procedural requirements which must be met by the City of Willits in order to allocate annual operating costs of the regional Wastewater Treatment Plant (WWTP) to the Brooktrails Township.

Metering

Section 15 of the Agreement requires the City to provide and maintain equipment that measures the flow of sewage coming from the Brooktrails Township and the flow of all sewage entering the WWTP. Section 16 provides that operating costs "shall be apportioned annually by the City according to the ratio of flow of the District to the total flow entering the treatment plant."

Given the importance of metering to the allocation of costs, one might think that making certain that the metering equipment is working and is accurate would be given some importance by the City of Willits. But the fact is that in late 2002 the meter at the WWTP ceased to operate properly and there has not been an accurate way to determine the flow entering the plant since then. (A written exchange regarding the flow numbers arose at that time which seemingly went quiet when a consulting engineer on November 7, 2003, wrote to the City's Utilities Director and the Brooktrails General Manager: "The big difference between a daily reading and the weekly reading leads me to think that the system calibration does need to be checked.")

In 2004 when the City proposed a Fourth Amendment to the Agreement to finance the treatment plant replacement, as can be seen in a series of letters exchanged between the Brooktrails General Manager and the Willits City Manager, Brooktrails proposed having the new amendment resolve the metering problem in addition to the audit problem. As noted Brooktrails had requested that the dispute over those matter be arbitrated and the City refused. And in the last letter it is noted that the City withdrew from the discussions, even on the matter of financing the plant replacement.

Discussions between the Township and the City regarding the WWTP meter failure continued with the allocation of annual cost for the fiscal year (FY) 2003-04. On August 26, 2005, Township General Manager Mike Chapman sent a letter to City Manager (and former City Attorney) Ross Walker explaining the following:

"The Board of Directors asked District Counsel, Chris Neary, to prepare the enclosed draft Fourth Amendment establishing the sewer operation percentage of 23.62% (enclosed).

"As you know, after an engineer's assessment was completed last year by George Rau and Jeff Anderson, our FY 2003-04 operational percentage was agreed to be 23.62%. This spring we had further discussions regarding using this figure until the new plant is built.

"As I understand it, the current timeline for the plant development is possibly 2007. However, with an environmental project this large, some Directors expressed concern over time delays beyond 2007. Therefore, this agreement includes a sunset provision or July 1, 2007.... "

The matter was *never taken up by the City Council* but the City continued to bill the Township based upon the 23.62%. While the Township continued to pay based upon the 23.62%, the matter was troubling. However Township officials assumed that when a new metering system was installed in the new WWTP, there could be retroactive adjustments.

What Township officials did not know prior to obtaining documents in discovery after filing the 2010 lawsuit was that on January 3, 2007, the City's WWTP design team (which had no representative from the Township) discussed what metering system to use for the new plant. A meeting transcript obtained in discovery records discussion of different metering systems including state-of-the-art systems that could accurately measure flows from extremely low flows to flows when the pipe coming into the plant is full and surcharged. Here is excerpts from th discussion at that meeting (spelling corrected):

"Tom Herman: Knowing the situation with Brooktrails do you feel it would be prudent to put in Flo-Dar?

"Terry Lewis: Should be as accurate as possible.

"Tom Herman: Industry standard accuracy is a Flo-Dar. We could defuse the whole thing and put a device upstream.

"**Tom Herman:** In terms of your preference, if Flo-Dar was to have a good rep in the area would that be your first choice?"
"**JC England:** Yes".

And yet 20 days later a report was submitted to the City recommending installing an old-fashion yet more costly metering system. After the Township received troubling flow reports from that meter, it hired experts to test the new metering system in October 2013. It was determined that not only was the metering system not capable of measuring flows accurately, at times it was not measuring flows at all. But it was not until the City Council meeting of November 12, 2014, that in a report from staff the City acknowledged the meter did not work.

Here is how the *Willits News* reported the matter:

"Adding fuel to the already hot conflict between Willits and Brooktrails, was Willits confirmation at the Nov. 12 council meeting that its flow meter measuring the total flow of sewage into the new plant was built wrong.

"Brooktrails advised the city in July 2013 it considered the new meter to be inaccurate. The city took no action. In October 2013 Brooktrails had its contractor inspect the meter.

"In April 2014, Brooktrails provided the city with copies of the inspection showing the meter had a number of installation flaws, according to [City Attorney James] Lance.

"The city took no action.

"In July 2014, after the city sent Brooktrails a bill for payment (based on the faulty meter) Brooktrails requested a copy of the calibration records for the meter in question. Willits contacted a meter calibration firm which advised the city there were problems it had found in October 2013. The firm, MCC Control Systems, confirmed the problem areas in August 2014. One problem, a programming error, was corrected in September 2014. The other involving the improper installation of the meter, was not discovered during the original installation by Speiss Construction Company in 2009.

"Lance suggested the city contact Speiss to have the problem corrected.

"Until the installation error is corrected the city expects to use the meter leaving the plant to determine flow rates through the plant."

The City staff agenda report concluded:

"It has been recommended by both MCC and GHD that the effluent flow meter EFF-002 be used for totalizing flow, given the issue identified ... immediately downstream of the influent meter. This would have a direct effect on the annual cost allocation for BTCSD, especially given the large disparity for the 10 months in fiscal year 2012-2013 of 47,932,000 gallons.

"At this time, we do not have a chosen alternative for the repair and/or alterations to the influent metering system because BTCSD will likely have their Engineering Representative perform their own evaluation. Once we have their opinion, we will move towards a plan for resolving the issue."

In response to a subsequent email from the Willits City Manager, the Brooktrails General Manager sent a preliminary letter noting the following:

"I have forwarded the documents to the Township's engineering consultants for review and analysis. I anticipate that the Township will provide formal comments to the City in advance of your December 10, 2014 meeting regarding this matter.

"However, I thought it important that the Township provide you with some preliminary comments regarding the report to the Council and its subsequent discussion at the meeting.

1. The North Coast Regional Water Quality Control Board Order No. R1-2010-0017 -Waste discharge

requirements and master reclamation permit for the city of Willits wastewater treatment facility, requires metering “at the headworks of wastewater treatment facility (WWTF) prior to treatment and consisting of wastewater from both the collection system and septage receiving station” to measure the “mean daily dry weather flow” and “mean daily flow of waste through the new treatment plant” (see attached pages E-4 and F-23).

2. Since 1975, Section 16 of the Agreement between the City and the Township states that operating costs “shall be apportioned annually by the City according to the ratio of flow of the District to the *total flow entering* the treatment plant.” (emphasis added)

"Therefore, the recommendation that the totalizing meter be moved to EEF-2 would require a permit amendment and an amendment to the contract. "

Unfortunately the City staff didn't work with Brooktrails staff prior to sending a report to the City Council and the press.

For 12 years the City has not been able to accurately determine how much sewage entered the WWTP and cannot do so today. The method prescribed by the Agreement to apportion costs cannot be accomplished, a fact that has been true since 2002 despite concerns expressed by Township officials. In its 2010 lawsuit, the Township specifically asked the Court to issue a declaratory judgment stating that the City is "required to maintain functional properly calibrated meters in accord with the Agreement to measure the respective flows of the parties for the purpose of apportioning costs pursuant to the Agreement."

(The subject of the WWTP influent meter will be discussed further as it is a critical element in regulators determining how much wastewater is percolating into the Little Lake Valley groundwater.)

Accounting

Part of the concern expressed by the Township in the previously discussed 1997 letter exchange is an issue at the core of the dispute over operating costs:

"We dispute our participation in the apportionment of some arbitrary formula to attempt to spread the general city administrative costs. The Agreement is very clear on this item - that the plant is separate and distinct from the rest of the City."

This objection derives from very clear provisions in the Agreement which read as follows:

- "The City shall establish and maintain books of account of all costs of administration, maintenance, operation and repair of the City sewage treatment plant, separate and distinct from all other accounts of the City, and distinct from capital improvements thereto, in conformity with good municipal accounting practices." - *Section 13 of the Second Amendment*
- "The City shall establish and maintain accurate accounts of all capital costs as to its sewage treatment plant, separate and distinct from all other accounts of the City, in conformance with good municipal accounting practices." - *Section 12 of the Second Amendment*
- "City shall budget and keep and maintain books of record and accounts which shall reflect, separately from its sewerage collection system, records and accounts of its costs of administration, maintenance, operation and repair of its sewerage treatment and disposal work and system, and of new construction, in sufficient detail and categories that the different categories and proofs of costs may be reasonably ascertained." - *Section 13 of the 1967 Agreement*

The Township has repeatedly requested that the City maintain the accounting records for the WWTP in a separate fund, separate from the financial records for its sewage collection system and separate from all other City financial records. Instead all costs related to wastewater, including the City's sewage collection system, are accounted for in the same fund. And within the accounting records for the WWTP the City uses formulas to allocate general fund costs, blends in other employee costs, and bills Brooktrails for additional administrative costs.

For 17 years the Township has objected to these accounting practices. In its 2010 lawsuit, the Township specifically asked the Court to determine that the City "breached the Agreement by failing to maintain both its sewage capital expense accounts and its sewage plant operations account in compliance with the Agreement, specifically by failing to maintain such accounts separately and distinct from other accounts of the City" among the many accounting issues

raised, most of which would not be issues if the WWTP costs were accounted for in a separate fund.

Audit

All local governments in California are required to have an annual audit prepared by a Certified Public Accountant. The City and the Township are no exceptions. The Agreement includes the following provision:

"The City shall annually cause to be made an audit of its accounts for the previous fiscal year which shall separately treat therein the accounts relating to the City sewage treatment plant. On or before October 1 of each year, the City shall deliver to the District's Manager a copy of the parts thereof relating to its sewage treatment plant."

Beginning in 1997, Township officials were concerned about the City's audits, On June 2, 2008, the situation had so worsened that Township Board President George Skezas sent a letter to the City Council that, beginning on page 3 under the heading "Lack of Audits" and ending on page 5, addressed Township officials' frustration. It reads in part:

"The agreement between the City and Brooktrails provides that the City will provide an audited financial report by October of each year. This requirement was motivated by good business practice requiring the District to have certainty that the City accounts had been audited and were presented accurately and that the claimed costs were in conformity with the agreement.

"A major problem surfaced in 1997 when the City's auditors started providing a disclaimer to a purported "audit." The effect of the disclaimer was to state that the auditor was not verifying the accuracy of any of the figures and was relying solely upon information provided to it by the City none of which the auditor was prepared to verify....

"The failure to provide Brooktrails unqualified audits has been compounded by the fact that in 2006 the City stopped providing any audited statements of any kind. Apparently the City of Willits has not completed its single year audits for the past two fiscal years in violation of both the contract and law....

"In October our Manager met with the City Manager and urged that the City meet its legal obligation under the contract to provide audited statements. Unilaterally Brooktrails offered to amend the agreement to provide that the audited statements could be tendered by the City to Brooktrails in February following the close of fiscal year rather than in October as contemplated by the agreement. Although Brooktrails and almost every other public entity in the vicinity completes its audit and presents to its policy makers within six months following the close of the fiscal year, it was hoped that the unilateral offer would be met with some evidence of activity.

"February 1 has come and gone and Brooktrails has no idea when, if ever, the City of Willits will present audited financial statements for the fiscal year ended 2006 and the fiscal year ended 2007. Brooktrails has received no meaningful explanation as to why the audits have not been provided, but the inability of the City to obtain a certification that its financial records are in order raises the prospect that there are very serious problems."

On July 14, 2008, a letter was sent rejecting a proposal by the City that Brooktrails increase its share of the operating costs from \$18,827 per month to \$39,195 per month. The City's proposal was rejected because of a lack of audits and other issues, like no metering.

When the City began again to have an annual audit, it did not submit it by October 1 each year and, more importantly, the audit shows the WWTP costs as one lump sum which made it virtually useless. The audit for the 2012-13 fiscal year due October 1, 2013 was not provided to the District until August 5, 2014, even though the document itself was given to the City around February 25, 2014.

In its 2010 lawsuit, the Township asked the Court to address the audit requirement.

Annual Cost Allocation Procedures

The steps required to determine annual costs allocations are specified in the Agreement. Section 16 provides for **Step 1**:

"Annually, the City shall file with the District's Manager a copy of the part of its budget which concerns the plant, and a statement of the amount of the District's share of the estimated costs of administration, maintenance, operation

and repair for the forthcoming fiscal year, in sufficient time for District to budget and provide for payment of same. For the purpose of estimating such costs, the flow ratio established for the preceeding fiscal year shall be used."

In order to meet notice deadlines prescribed by state law, the Township must complete a three month budget and rate-setting process ending in June. In years past, the WWTP budget projections were provided in March. Last year the information for the 2013-14 billing was dropped through the Township's mail slot Thursday night June 13, 2013, still in the 2012-13 fiscal year but too late to make any budget or rate changes.

But "lateness" was not the only violation of the Agreement involved. The cover letter states:

"The actual flow data for the first 11 months of Fiscal Year 2012/13 were used to determine the District's percentage of flow."

On June 26, 2013, the City Council adopted a resolution declaring that 11 months of flow in 2012-13 as the Township's percentage of estimated costs for 2014-15. Had the billing been created in February 2013, during the 2012-13 fiscal year, it would have been obvious that "the flow ratio established for the preceding fiscal year" to be used was the actual flow during the 12 months of fiscal year 2011-12, not for first 11 months of 2012-13 (not that it matters since as the City now admits the WWTP influent meter installed in July 2011 was and is incorrectly measuring flows).

It is as if City officials believe (1) that City Council unilateral action could eliminate the Agreement requirements that information must be provided in a timely manner and (2) that City Council unilateral action could eliminate the Agreement requirements on the flow ratio to be used.

Keep in mind that this occurred three years after Brooktrails sued the City over improper billing. This year the billing for the fiscal year 2014-15 was provided on July 11, 2014, instead of March. The fiscal year began on July 1, 2014. There is no lawful way for Brooktrails to budget and set rates. Again the Agreement requires the billing to be in the District Manager's hands "in sufficient time for District to budget and provide for payment of same" which prior to 2013 meant March, not July.

Step 2 is also prescribed in Section 16:

"All costs of administration, maintenance, operation and repair of the City sewage treatment plant shall be apportioned annually by the City according to the ratio of flow of the District to the total flow entering the treatment plant. ...In each subsequent fiscal year, the City shall recompute the charge from the actual flow records established by the flow records for said year and debit or credit the District for any underage or overage of the estimate cost."

As an example, during the 2013-14 fiscal year Step 2 should have been completed soon after October 1, 2013 when the Township Manager should have received from the City a detailed audit statement of WWTP costs that occurred in 2012-13 along with actual flow data for 2012-13. This information should have been compared with the estimated payments Brooktrails paid in 2012-13 and an adjustment made. Instead that audit was not provided to the District until August 5, 2014 even though the document itself was given to the City around February 25, 2014.. (Although, as explained previously, the Township experts have determined that the WWTP flow data is inaccurate.).

Simply the City is in breach of the Agreement for the billing process during the 2012-13 and the 2013-14 fiscal years. The Township was confronted with the fact that the City Council acted to confirm the breaches in 2012-13. Apparently the Township will be forced to file new breach notices and possibly new litigation because of the City's failures to conform to the Agreement.

Summary of the Operating Cost Dispute

The operating cost dispute can be summarized as follows:

1. Under the terms of the Agreement, the annual billing is apportioned on the basis of metered flows; the metering system has not worked since 2002; the City considered installing a metering system at the new WWTP that would accurately measure flows, *but chose not to*.
2. Under the terms of the Agreement, the WWTP costs and revenues are to be recorded in an accounting system that is distinctly separate from costs for other City activities including separate from other sewer activities; instead, the costs and revenues are in the same fund with other sewer activities and General Fund expenses are

blended into WWTP costs and the City has refused to change the system since 1997.

3. Under the terms of the Agreement, the City must provide the Township with a detailed annual audit of WWTP accounts; since 1997 the City has failed to comply with that requirement or to attempt to meet the October 1 deadline for the annual audit.
4. Under the terms of the Agreement, around March 1 of each year the City must provide the Township with a WWTP budget for the upcoming fiscal year and an estimate of the Township's share; for the past two years, the City has failed to comply with that requirement and the City Council by resolutions endorsed those failures.

It seems reasonable to say that Brooktrails Township officials have been patient with City officials despite the breaches of the Agreement regarding operating costs for the past 17 years. It also seems reasonable for Brooktrails Township officials to stop being patient and seek resolution of the dispute in court.

[Link to detailed discussion of the new Wastewater Treatment Plant capacity component of the dispute](#) ►

The New Treatment Plant Capacity Issues

As indicated previously, beginning with the 1982 third amendment to the Agreement Brooktrails Township has owned an exclusive right to dispose of 0.49 million gallons per day (MGD) of average daily dry weather flow (ADWF) in the regional Wastewater Treatment Plant's (WWTP). The WWTP at that time had an ADWF capacity of 1.30 MGD.

The term "average daily dry weather flow" is the flow measured beginning May 1 and ending September 30 of each year. A wastewater treatment plant's average daily dry weather flow capacity determines how much the community it serves can grow (along with other factors like water supply). Of the 1.30 MGD capacity of the regional WWTP as built in 1982, the City sold Brooktrails the exclusive right to use 0.49 MGD and retained for City use 0.81 MGD.

Capacity of WWTP Reduced

At its February 27, 2013, meeting the Willits City Council approved a draft of a letter to be sent to Brooktrails officials which states:

"Pursuant to the attached analysis of SHN, this will certify...that there is no additional incremental capacity available upon completion of the above referenced Wastewater Facilities Improvement project. Furthermore, there is no portion of incremental capacity to which the District shall be entitled."

A copy of the letter along with the City Council agenda report with the SHN analysis can be [viewed here](#). It is unclear why the certification letter was not delivered to Brooktrails until April 25. What is clear from the SHN analysis is that the construction completed in 2013 reduced the ADWF capacity of the plant from 1.30 MGD to 1.18 MGD. Since the Brooktrails owned capacity is 0.49 MGD, that left the City with only 0.69 MGD ADWF capacity. That is a problem.

New WWTP Capacity Insufficient for City

On June 5, 2003, while the design work for the new WWTP was underway, the City sent Brooktrails a letter with flow data for the period of 1990 - 2003 attached.

In comparing that flow data plus flow data for 2012 with the new WWTP certified capacity, Brooktrails officials' analysis determined that the City's actual ADWF for 1990, 1993, 1994, 1995, 2001, and 2012 exceeded its new 0.69 MGD ADWF capacity. (The analysis along with the original letter providing the flow data can be [viewed here](#).)

Simply, in order to...

1. avoid encroaching upon Brooktrails exclusive ADWF capacity and
2. have enough capacity for at least some growth within the City

...the new WWTP capacity needed to be greater, not *less* than, the old WWTP.

This 2013 discovery created a significant, new issue. Using the data available, it is reasonable to assume that the City will need 25% of the Brooktrails capacity to meet its current needs and will need more capacity to grow. The new WWTP cost the City in excess of \$25 million to build. In terms of the future, the capacity of the new WWTP is 1.18 MGD. Simple math indicates the Brooktrails Township 0.49 MGD capacity is worth approximately \$10.4 million. That means that the City has taken at least \$2.6 million of Brooktrails plant capacity.

Why Did the City Build a New WWTP of Insufficient Size for Its Needs?

Why did the City build a new \$25 million WWTP with inadequate capacity for itself? One would begin by asking why a new WWTP was built.

In 1986, three years after the 1982 plant expansion, a report was prepared for the City by Harris Consultants, Inc., which noted on [page 2-2](#):

"Infiltration/inflow to the Willits collection system is substantial and for FY 84-85 exceeded the contributed volume of sewage. The contributed volume was 174.01 MG versus 184.25 MG of infiltration/inflow. For comparison the infiltration/inflow for Brooktrails was only 5.51 MG versus 52.20 MG of contributed waste."

That 1986 report ordered by the North Coast Regional Water Quality Control Board recommended that the City fund a 15-year rehabilitation of its sewer collection system. Unfortunately, that recommended work was not done.

In the late 1990's and early 2000's the North Coast Regional Water Quality Control Board (**RWQCB**) determined that during a few months of the wet weather flow period the discharge volume from the WWTP exceeded permitted flows which was explained in a RWQCB staff report which clearly explains the situation:

"Treated wastewater consistently meets effluent limitations set forth in waste discharge requirements; however, the volume of effluent frequently exceeds one percent of the flow in Broaddus Creek during winter months. Discharge Prohibition A.S of Order No. 95-49 prohibits effluent discharges in excess of one percent of the receiving water flow (100: 1 dilution). The City recognized that this was a potential violation of Waste Discharge Requirements and asked Regional Water Board staff to assist them in exploring alternatives to comply with the discharge rate limitation. After numerous meetings and inspections of the receiving water system, the City conducted a hydrologic study of the complex receiving water system. The study concluded that the City would have to pump its wastewater effluent approximately thirteen miles downstream to the Eel River in order to consistently comply with the one- percent discharge rate limitation.

"The City has attempted to comply with the one- percent discharge rate by discharging treated effluent into Broaddus Creek at only one percent of the creek's flow. The remainder of the effluent is irrigated on pastureland. Irrigated effluent runs off the pastureland and enters the Outlet Creek system throughout most of the winter discharge period (October 1 to May 14).

"The City submitted a document entitled *Long Term Wastewater Treatment and Effluent Management Plan for the City of Willits*, dated July 2000. The major recommendations of the report were: 1) increase the one percent discharge rate limitation to four percent (25: 1 dilution), and 2) abandon a majority of the existing WWTF and construct a facultative oxidation pond, treatment wetlands, and an enhancement wetland. The currently used chlorine disinfection system would be replaced with an ultraviolet disinfection system. The new wastewater treatment system is being proposed because it would:

- Provide a higher degree of treatment through nutrient removal,
- Be more environmentally friendly with lower energy requirements and discontinued use of chlorine,
- Have lower operation and maintenance costs in the long-term, and
- Provide City-owned open space for walking and wildlife observation.

"Regional Water Board staff acknowledges the City's findings but takes no position at this time on the City's apparent decision to abandon most of the existing WWTF. Staff's concerns are: 1) impacts on beneficial uses of Outlet Creek from an increased discharge rate, and, 2) the proposed treatment system lies within a wetland and floodplain of the Outlet Creek system. In March 2001, the City commenced preparation of an environmental impact report (EIR) to evaluate various project alternatives and their effects. The EIR is scheduled to be completed in less than two years."

This staff report is important because it makes clear that:

1. the existing WWTP did provide adequate treatment to meet effluent quality regulations;
2. the volume of effluent discharged in winter months exceeded the 1% of the flow in Broaddus Creek limitation in violation of *quantity* regulations;
3. the excess volume problem could be solved by pumping the wastewater to the Eel River;
4. instead, the City proposed to seek a variance to the standard and construct a new facility, abandoning the existing plant; and
5. the Regional Board staff acknowledged but did not take a position on the City's proposal.

It should be noted that the referenced 2000 Long Term Wastewater Treatment and Effluent Management Plan for the City of Willits states

1. that the new WWTP when built would meet discharge quality standards (which as will be explained later experts tell Brooktrails officials it does not),
2. that moving the discharge to the Eel River was rejected because of costs (p. 3-10), and
3. that the estimated cost of the new WWTP would be \$5.2 million (p. 7-22), not the actual \$25+ million actual cost.

The lack of support by the Regional Board staff on the choice to build a new WWTP notwithstanding, it is clear that the

new WWTP was constructed to provide for winter flows which are much higher than the average daily dry weather flows (**ADWF**). The previously referenced SHN flow certification indicates that the new WWTP Average Wet Weather Flow (**AWWF**) capacity is 2.44 MGD. The City has assumed and insisted that Brooktrails Township will pay 37.69% of the cost of the new WWTP. Presumably Brooktrails would be entitled to 37.69% of the AWWF capacity which would be 0.92 MGD, leaving the City with an AWWF capacity of 1.52 MGD. According to flow numbers provided by the City, the City's AWWF in the winter of 2011-12 was 1.72 MGD exceeding its capacity by 13%.

It helps to understand that average daily wet weather flow is measured in October - April and exceed dry weather flows because of inflow and infiltration (**I&I**). Inflow is stormwater from storm drainage systems illegally connected to a sanitary sewer line. Infiltration is the result of stormwater or groundwater entering the sanitary sewer lines through cracks, displacement, and other leaks. In Brooktrails this most frequently occurs when the ground moves causing lines to be displaced at joints or to crack. In the City it is likely the greatest volume of infiltration occurs because the lines are below the groundwater table in many locations and they leak. Infiltration is prohibited by federal regulations.

In a letter in 2001, the Willits City Manager told the Brooktrails Township Manager:

"...The purpose of this letter is to strongly encourage the Brooktrails Township to join the City in supporting the goals of the Clean Water Act and the Eel River Basin Plan as well as regulatory oversight by minimizing flows through control of inflow and infiltration."

Brooktrails Township spent \$1+ million to establish an ongoing I&I correction and prevention program that substantially reduced its I&I. The City deferred establishing an ongoing I&I program instead choosing to build a new WWTP designed to store and treat high flows resulting from stormwater infiltration.

With all this said, why was the new WWTP built with inadequate capacity?

What we know is that in that in a September 9, 2002 letter from the RWQCB commenting on the project's Environmental Impact Report two facts about the new WWTP proposal were noted:

"The No Project and Alternatives 1 and 2 would provide treatment for up to 1.3 million gallons per day (mgd) average dry weather flow ADWF. Alternative 3 and the Proposed Project would provide treatment for up to 1.7 mgd ADWF.

"Page 1-3 states that the existing treatment facility was constructed in 1976 and the major components have exceeded their useful lifespan. It should be noted that the treatment facility had a major overhaul in 1991. The existing facility does not have to be completely rebuilt."

So as proposed for public review in the Environmental Impact Report the new WWTP was to have at least the same 1.3 mgd ADWF capacity as the old plant. Also the RWCQB did not believe the old WWTP needed to be replaced.

Also in the EIR Scoping document are responses to specific Brooktrails concerns about capacity:

"The City and Brooktrails have an agreement that leases 37% of plant capacity to Brooktrails.

"The proposed project would primarily change the treatment methods, and would increase capacity only slightly."

First, the Agreement sells to the District "the exclusive right to dispose of sanitary sewage" flow in the amount of 0.49 mgd ADWF capacity. Brooktrails never viewed that as a "lease" of 37% of plant capacity, but rather an exclusive ownership of a stated ADWF capacity.

Second, what that information should have meant to the design engineers is that in addition to the Brooktrails 0.49 mgd ADWF capacity, the new WWTP should have provided for the City's projected ADWF capacity. Historical data indicated that the City's highest ADWF was 0.81 mgd. To allow adequately for growth, the City needed 0.90 mgd ADWF which when added together with Brooktrails 0.49 mgd ADWF meant the plant should have had an ADWF minimum capacity of 1.39 mgd, a design that, as stated in that Scoping document "would increase capacity only slightly."

Brooktrails officials were never advised that the new WWTP would be undersized and do not know why that choice

was made by the City.

Summary of the Capacity Dispute

This unfortunately left Brooktrails Township with a dilemma regarding the capacity of the new WWTP. As indicated above there is not enough ADWF for the City without the City using Brooktrails ADWF capacity to serve existing City customers. The City has no capacity to provide for growth.

After the capacity was certified in February 2013, Brooktrails Township believed that on behalf of its property owners it should protect the District's investment in ADWF capacity. Brooktrails pointed the capacity problem out to the City in a March 2013 letter but was reluctant to file the action in court because if successful it would impose a moratorium on new sewer connections in the City potentially damaging the region's opportunities for economic growth.

However, because of the October 17, 2014, water connection moratorium ordered by the State, the effect on the City would be minimal. The City could address both the water supply and sewage treatment capacity issues within the same time period. And when it filed the new cause of action Brooktrails suggested the new matter be combined with the existing lawsuit so that legal expenses would be reduced.

[Link to detailed discussion of the pollution impacts from design errors in new WWTP component of the dispute](#) ►

Potential Costs to Correct WWTP Design Errors

Just as the details of the capacity issues did not become clear until 2013, expert information regarding possible pollution impacts of the new regional Wastewater Treatment Plant (WWTP) did not surface until 2013 and 2014. If the pollution impacts are confirmed through further testing, at least in part they would be the result of design errors Brooktrails officials notified City officials of prior to the completion of the bidding process.

Agreement Partnership Provisions Rejected by City Council

In terms of requirements related to the design of the new WWTP, the Agreement reads as follows:

9. City Control as to Improvements. The City shall have the right to employ engineers of their selection to design and provide improvements to the City sewage treatment plant, both as to capacity and quality, provided, however, that such engineers shall be experienced and recognized engineers as to such work. All such work shall be designed so as to produce an efficient and economical cost, both as to construction and as to maintenance and operation, and not constitute overdesign.

10. Plan Review by District. The Board of Directors of District, with the advice of its engineers, shall have the right to review, make suggestions and approve for their adequacy, plans, specifications and cost estimates prior to their approval by the City Council of the City, provided, however, that its approval shall not be unreasonably withheld.

11. District Inspection. The Board of Directors of the District, through its engineering representatives, shall have the right at all reasonable business hours, to inspect the City sewage treatment plant, and also any improvements during their construction.

Those provisions were included in the 1975 Second Amendment to the Agreement and worked well for the expansion of the WWTP in 1982. From the perspective of Brooktrails Township officials those three sections anticipate a partnership in the design and implementation of any capital improvement activity affecting the treatment plant. The provisions seemingly supported an expectation that at any time after 1975 when a project was going to be undertaken, Brooktrails Township as a partner would be *invited* to have its engineers participate in, or at least monitor, the entire design and construction process.

Recently, it was explained at a City Council meeting that Brooktrails Township is "just a customer" of the WWTP and jokes were made about sending a police officer to disconnect such an obstreperous customer. And, indeed, during much of the design and construction of the new WWTP Brooktrails Township officials were treated as if they were some complaining customer attempting unsuccessfully to derail an otherwise brilliantly planned project.

Design Errors and Groundwater Pollution in the Little Lake Valley

In addition to the previously discussed meter and capacity design errors, Brooktrails officials are concerned about the possibility that the new WWTP is significantly polluting the groundwater used by Little Lake Valley residents for their domestic water supply. There is evidence that indicates that in excess of 81 million gallons per year of WWTP discharge water is percolating from storage treatment ponds into the groundwater. In a July 2010 draft engineering review given to City officials by Brooktrails officials, it was noted:

"Compaction requirements are a critical aspect of earthwork design. We found no compaction requirements in the Specifications."

The 2000 Long Term Wastewater Treatment and Effluent Management Plan for the City of Willits describes (p. 7-16) how the lining process for the ponds was to be accomplished:

"Based on recent studies by SHN (2000), subgrade soils should be adequate for clay lining materials. It is currently proposed that existing subgrade soils be overexcavated and reinstalled and compacted to provide a 1ft thick clay liner. Based on future design studies, it may be necessary to modify the clay liner based on geotechnical investigations."

Prior to the actual bid documents (which had been approved by the City Council without having obtained Brooktrails

advanced approval as required by Section 10 of the Agreement), all design documents discussed the clay lining as described in the 2000 document.

Subsequent to the filing of the previously discussed litigation, Brooktrails discovered that in June and July 2007 City staff discussed concerns over the cost of meeting the RWQCB standard for the lining [2 feet thick, 10^{-6} permeability], speculating that the cost could be \$1 million per acre (for 30+ acres of ponds). At this point, it is unclear whether a deliberate decision was made not to compact clay to create a lining based on the expressed cost concerns of City staff or whether the lack of specifications was an oversight.

When it was discovered that a key participant in those 2007 discussions had, in 1999, hired an engineering firm to prepare a report entitled PERMEABILITY INVESTIGATION FOR THE PROPOSED WASTEWATER PERCOLATION POND it fueled speculation that a decision was made to not line some or all of the ponds.

At its August 5, 2014 meeting the Brooktrails Township Board of Directors adopted a resolution expressing a concern that a large volume of partially treated sewage from the City of Willits Wastewater Treatment Plant may be percolating directly into the groundwater in the Little Lake Valley. This act followed efforts to have the City deal with the problem.

Beginning in the Fall of 2012 Brooktrails officials had anecdotal information indicating that treated effluent usually available for irrigation of farmlands near the plant appeared to just be disappearing. After some additional evaluation resulting from reviews of flow data related to operational billings from the City, on April 12, 2013, on behalf of the Board then Board President Tony Orth sent a letter to Willits Mayor Holly Madrigal in which it was noted:

"We have learned that over a 12 month period, including all four seasons, as much as 100 million of gallons of treatment plant effluent are unaccounted for and may have directly percolated into the Little Lake Valley groundwater table in violation of your permit. Brooktrails officials did inform City officials in writing about this risk related to a design issue before any construction contracts were awarded. In contrast to a number of engineering reports, the construction documents did not provide for compaction of the enhanced wetlands ponds."

On October 29, 2013, an opinion letter to the City Attorney (Exhibit A of the resolution) was prepared by the consulting engineering firm GHD Inc. on behalf of the City indicating that the volume of water loss was so low it could be accounted for through evapotranspiration and some minor percolation into the groundwater. The letter concluded:

"In our opinion based on our review of the data and operations the City of Willits WWTP is operating within the requirements of Order No. R1-2010-0017 and is not in violation of the requirements of the Waste Discharge and Master Reclamation Permit."

Unfortunately, that opinion letter was not submitted to the Brooktrails Township Board in response to its April 12, 2013 letter. Had it been submitted on a timely basis, Brooktrails officials could have pointed out that the table supporting the letter appears to have a 70+ million gallon error (see Exhibit B of the resolution). Instead that flawed data was incorporated into a report submitted in March 2014 to the North Coast Regional Water Quality Control Board.

In April 2014 a professional hydrologist hired by Brooktrails advised attorneys for the City that the GHD opinion was wrong. In the June 2014 Report to Ratepayers posted on this website we pointed out our concerns. On August 1, 2014, the resolution was posted on this website as part of the August 5, 2014, Board agenda packet. On the afternoon of the August 5, 2014, meeting, a two-page letter from the Willits City Manager addressing a number of other subjects (with 67 pages of attachments related to those other subjects) ended with this paragraph (**emphasis** added):

"In March 2014, a Wastewater Reclamation Plan and Reclamation Study Report was prepared on behalf of the City by GHD and filed with the North Coast Regional Water Quality Control Board. Among other things, the report addressed the potential for seepage of treated wastewater from the enhanced wetland ponds. **City staff has subsequently learned that inaccurate data was submitted to GHD for purposes of conducting a water balance analysis of the wetland ponds, and that a revision of reclamation report is recommended.** That revision is in the process of being prepared and will be provided to the District once it is filed with the Regional Board."

The concern about what the City Manager refers to as "the enhanced wetlands pond" was not part of the lawsuit against the City on financial issues as originally filed by the Township in 2010. It became a related concern only after reviewing flow data for billings in 2012 because of the fact that no sewage, even fully treated sewage, is permitted to be discharged into the groundwater according the North Coast Regional Water Quality Control Board Order No. R1-2010-0017 which on pages F-50 in non-confusing language states:

"The permitted discharge is consistent with the antidegradation provisions of State Water Board Resolution No. 68-16. This Order provides for an increase in the volume and mass of pollutants discharged. The increase will not have significant impacts on the beneficial uses of groundwater because the Order does not authorize the discharge of treated wastewater to groundwater. The Discharger is limited to application of recycled water at agronomic rates."

The real concern is the potential public health impact on Little Lake Valley residents dependent on wells (and that could include future municipal wells used by the City and the Township). District officials are puzzled by the fact that some City Council members seem very upset by the potential impacts of the CalTrans bypass project on the Little Lake Valley but have shown publicly no concern about possible pollution from the City's sewer plant.

It becomes even more of a concern because that Regional Water Quality Control Board Order No. R1-2010-0017 on page 22 includes this specific requirement:

"Ponds used for the storage of recycled water shall be constructed in a manner that protects groundwater. The Discharger shall submit design proposals for new wastewater storage ponds to the Regional Water Board Executive Officer for review prior to construction and demonstrate that the pond complies with the Water Code and title 27 of the California Code of Regulations. Pond design and operation plan must include features and BMPs to protect groundwater and prevent exceedances of groundwater quality objectives."

It is unclear whether any submittal was made regarding the enhanced wetland ponds. Brooktrails officials understood that the ponds were for storage as part of the need to deal with excess winter flows, but with some treatment benefits, as was noted in a March 12, 2010 Willits News article which states:

"The treatment system also includes creation of 30 acres of wetlands to store and polish the effluent from the mechanical plant."

This raises additional concerns because that article was written in March 2010 while that order was issued on July 15, 2010, In fact,

But whatever the circumstances are Brooktrails sewage represents about 20% of the total raw sewage going into the Wastewater Treatment Plant. Notwithstanding the contractual obligation of the City to properly treat and dispose of Brooktrails sewage, Brooktrails officials have a serious concern about the potential long term health impacts on our neighbors in the Little Lake Valley who depend upon wells for their drinking water.

Design Errors and Stream Pollution in the Little Lake Valley

Also noted in the Township engineer's review of the plans and specifications given to City officials in July 2010 were comments regarding the ultraviolet disinfection system:

"While it appears that the UV system will deliver the design dose, there is a discrepancy between the coliform removal rate required by the permit and that in the specifications. The permit requires a maximum average monthly Total Coliform Organism count of 23 MPN/100 ml. The specifications call for the UV system to produce an effluent with Fecal Coliform of 23 MPN/100ml. ...Since Fecal Coliform is a subgroup of Total Coliform, a UV system that reduces Fecal Coliform to 23 MPN/100ml will not reduce Total Coliform to the same level.

"...The inconsistent references and requirements for the UV system are troubling."

A consulting professional hydrologist hired by Brooktrails told City attorneys that in 2013 in five of the seven wet months the City in its self-monitoring reports indicated excess nitrogen in discharge water from the plant. It has not been verified that this practice is continuing, but it is also of concern. Experts are telling Brooktrails officials that the discharge into the creek does not meet standards with regard to bacteria and nitrogen, and possibly may be the result of the undersized UV system and oxygenation systems.

It was very disturbing that the only reaction from the City was a September 17, 2014, letter from the Willits Mayor to the Brooktrails Board President insinuating that the local engineering/hydrogeology business mentioned above at the behest of Brooktrails officials engaged in "a planned mission, attempting to lay a trap with the hope that City staff

would violate its permit and accept diesel fuel mischaracterized as septage." It was, of course, not true.

The letter was written less than eight weeks before the upcoming election. The Willits-area engineering/hydrogeology business which has an unsullied reputation is providing professional engineering services to many local private clients. The City had not made the letter public. Brooktrails did not respond.

Unfortunately, the City Manager at the October 28, 2014, Brooktrails Board of Director's meeting insisted the letter be made public and that the Brooktrails Board President respond.

You can [download the letter exchange](#) as well as a review of the incident by another engineer (it is a large PDF file with functional links to state websites). As noted in Board President William's letter to Mayor Madrigal: "The Brooktrails Board is choosing to not take offense at the accusations in your final paragraph in the spirit of needed regional unity."

Summary of the Design Error Dispute

Two issues arise for Brooktrails officials with regard to the possible pollution in the Little Lake Valley because of design errors:

1. Public health concerns regarding the pollution of the groundwater table and creek water in the Little Lake Valley require, at a minimum, to bring the matters to the attention of the Little Lake Valley community.
2. If pollution is occurring because of design failures, particularly failures brought to the attention of City officials prior to the awarding of bids for the new WWTP as well as the choice to undersize the plant, potential costs for correcting those problems should not be borne by Brooktrails ratepayers and Brooktrails officials must act accordingly.

[Link to detailed discussion of the new Wastewater Treatment Plant cost and debt components of the dispute](#) ►

Costs and Debt for the New WWTP Construction

As noted previously, the 2000 Long Term Wastewater Treatment and Effluent Management Plan for the City of Willits indicated that constructing a new regional Wastewater Treatment Plant (WWTP) would cost \$5.7 million (p. 7-22). In fact project studies and engineering for the new WWTP exceeded that number. Construction of the new WWTP cost well in excess of \$25 million.

The discussion that follows in light of the various design issues of the plant addresses the following:

1. What benefit, if any, has Brooktrails derived from the construction of the new WWTP and therefore might reasonably make payments on without violating the Constitutional prohibition against making a gift of public funds, particularly since the capacity of the plant was reduced.
2. Based upon the answers to "1.", how much of the costs for, and the \$18 million debt on the new WWTP is Brooktrails Township obligated to assume and make annual payments on.
3. Based upon the answers to "2.", should any portion of the payments on construction costs and debt made to date be refunded to the Township or should the Township make additional payments?

The dispute regarding the new WWTP project costs for Brooktrails exist because the Township is confronted with the following information discussed previously:

- The partnership concept anticipated in the Agreement was dismissed by City officials during the design and construction of the new WWTP as explained previously.
- The new WWTP project was undertaken because high winter flows from prohibited inflow and infiltration were resulting in excess sewage effluent being discharged into the creek during parts of the wet weather flow period as explained previously.
- The wet weather design flow statistics in the 2000 *Long Term Wastewater Treatment and Effluent Management Plan for the City of Willits* indicated (Table 4.7, p. 4-17) that the average daily wet weather flow (AWWF) needed for Brooktrails would be 0.49 million gallons per day (MGD) which coincidentally was the Townships dry weather flow capacity in the existing plant (meaning Brooktrails did not need a greater capacity for wet weather flows) and that 0.49 MGD AWWF represents **22%** (keep this number in mind) of the total WWTP design AWWF shown in that table.
- The dry weather design flow statistics in the 2000 *Long Term Wastewater Treatment and Effluent Management Plan for the City of Willits* indicated (Table 4.6, p. 4-17) that the ADWF flow capacity needs for the City of Willits would be 0.85 MGD, which when added to the 0.49 MGD exclusive ADWF capacity owned by Brooktrails equals a total ADWF of 1.34, slightly higher than the capacity of the old WWTP.
- The new WWTP has an inadequate average daily dry weather flow (ADWF) capacity to meet the City's current needs, much less to provide for any new connections to its sewer system.
- The new WWTP may have design flaws causing significant pollution in the Little Lake Valley groundwater and creek.

Agreement Provisions Regarding New Construction

In truth, it is hard to find a reason for Brooktrails Township to pay anything towards this new WWTP project. Arguments about what Brooktrails should pay have revolved around various provisions in the Agreement providing for allocation of costs for new construction which read as follows:

"6. Capacity Improvements. The cost of improvements to the City sewage treatment plant which will result in increasing its capacity beyond 750,000 gallons per day average dry weather flow shall be charged to and paid for by the party who will become entitled thereto. Costs of increases in capacity for both parties shall be prorated according to capacity needed and assigned to each. Capacity assigned shall be in gallons average daily dry weather flow, as peak and winter conditions will be anticipated in design. No additional capacity shall be assigned by the City to the District without the approval of the District, expressed by supplement or amendment to this agreement.

"8A. Future Quality Improvements. The parties acknowledge that the City may be required to make improvements to the City sewage treatment plant in the future to meet more stringent effluent quality requirements by State and/or Federal agencies than are currently in effect. The costs of such improvements shall be apportioned between the

parties in the ratio of their then respective dry weather flow treatment capacities in the plant.

"17. Replacement Costs. All costs of replacing plant equipment, machinery or facilities resulting from breakage or obsolescence shall be apportioned in the ratio of average dry weather flow capacity allocated to City and District. All replacement costs thereof for ordinary use and wear shall also be apportioned in the ratio of average dry weather flow capacity. Replacement costs may be paid from the Wastewater Capital Recovery funds. Said apportionment of costs between City and District shall be district's proportionate share of average dry weather flow capacity, less any governmental subventions.

"21. Replacement by City. The City may relocate its sewage treatment plant and abandon the use of its present plant by reason of orders of State or Federal agencies, commissions and departments having jurisdiction thereover, or by reason of predominating factors of economy or ecology. In such event the former plant and property shall be sold to the highest and best use and price and the moneys realized shall be apportioned between the parties and applied on account of the costs of the new plant according to their capacity interests. The District may elect to have a capacity in the new plant determined by it. In such event the moneys so realized shall be prorated as a credit per its former proportion of capacity, and the balance of costs shall be prorated in proportion to the ratio of capacity in the new plant."

Section 6 doesn't apply because it did not result in increasing average dry weather flow. Section 8A does not apply because effluent *quality* requirements did not instigate the project - it was a winter flow *quantity* regulatory violation. Section 17 was written to cover routine equipment replacement and the Section is even located in the Agreement along with other provisions relating to annual operating costs. Section 21 seems to most closely resemble what happened as the city did intend to voluntarily abandon the use of the existing WWTP in the face of an order from the RWQCB but the City argues that the details of the situation do not exactly match all the details described in Section 21.

The Fourth Amendment

In 2007 a Fourth Amendment was approved by the City and the Township. The reason it was required was the U.S. Department of Agriculture (USDA) was ready to approve a loan along with some grant funding to cover some of the cost of the new WWTP. This was true despite the fact that the total cost of the new WWTP was yet to be projected and only a first phase was to be started.

But at the time Brooktrails entered into that Fourth Amendment, it was not understood that the ADWF capacity of the new WWTP would be inadequate for the City's needs and the City would be encroaching upon Brooktrails exclusive capacity. Brooktrails officials would not have not approved that Agreement if this information had been provided. Brooktrails is challenging that Fourth Amendment based upon the fact that Brooktrails owned in the old WWTP enough exclusive capacity for both wet weather and dry weather needs and that the City built a new WWTP that requires it to use a portion of that Brooktrails capacity. Brooktrails is seeking an order restraining the City from taking any action to further encroach upon Brooktrails capacity.

Nonetheless, Brooktrails agreed to assume \$3,876,416.50 in debt in that Fourth Amendment. As it turns out, that sum is 21% of the total amount of all USDA loans of \$18,585,000.00. Brooktrails has continued to make payments on that share of the loans. This is because, that number is very close to the Brooktrails need for 22% of the total WWTP projected AWWF shown in Table 4.7 of the 2000 *Long Term Wastewater Treatment and Effluent Management Plan for the City of Willits*. At this time Brooktrails officials are not uncomfortable making those payments in good faith until the litigation is completed.

There is at least one other dispute relating to the cost of the new WWTP resulting from a land purchase. Though the land purchase was initiated years before, in 2007 immediately after Brooktrails entered signed the Fourth Amendment to secure USDA loans and grants, the City sent Brooktrails a bill for that land purchase. Once it has been determined what is the fair share of the cost of the new WWTP to be apportioned to the Township, resolution of that matter is likely to follow, although because less than 20% of that parcel is used by the WWTP other issues arise. And there are serious questions about the propriety of that land purchase as well as a decision by the City to remove the costs from the USDA loan funding.

Summary of the Dispute Over the New WWTP Costs and Related Debt

The dispute over how to allocate costs for the construction of the new WWTP can be summarized as a disagreement over whether any of the provisions of the Agreement apply to the circumstances leading to the new WWTP project and

over whether the Fourth Amendment is valid given the ADWF and AWWF capacity information known to City officials but not disclosed to Brooktrails officials in 2007.

[Link to the conclusion of this Report](#) ►

Conclusion

All efforts to protect Brooktrails ratepayers and property owners from significant cost through negotiations have failed to resolve *any* component of the dispute. The status of the dispute as of November 20, 2014, as viewed by Brooktrails officials can be described as follows:

- On behalf of Brooktrails current and future sewer ratepayers, in order to assure that in the future the Brooktrails Township can limit its payments for wastewater treatment plant (WWTP) annual operating costs to that which is specifically required by the Agreement, based upon information from the City of Willits provided as specifically required by the Agreement, no option appears to exist other than to obtain a judgment in court.
- On behalf of Brooktrails property owners, in order to assure that Brooktrails Township has available the sewage treatment capacity in the WWTP that it paid for, no option appears to exist other than to obtain a judgment in court.
- On behalf of current and future sewer ratepayers, in order to limit future costs apportioned to Brooktrails Township for repair or replacement of the new WWTP resulting from design errors that threaten water quality in the Little Lake Valley, no option appears to exist other than to obtain a judgment in court.
- On behalf of current and future sewer ratepayers, in order to limit debt amounts apportioned to Brooktrails Township for loans to build the new WWTP, no option appears to exist other than to obtain a judgment in court.

Township officials seek from the litigation clarity with regard to the proper implementation of the Agreement and do not expect to gain more than fair treatment. As can be seen from this report, the dispute is complicated and it will be so for a jury.

There is no enthusiasm for incurring the costs associated with the litigation. But there is even less enthusiasm for ignoring the Agreement and thereby over the next two or more decades paying to the City of Willits whatever costs City officials determine might be a good amount to extract from Brooktrails ratepayers rather than City ratepayers.