



## STAFF REPORT

**TO:** Board of Directors  
**FROM:** Michael Pagni, General Counsel  
Andy Gebhardt, TMWA Director of Customer Relations  
**DATE:** April 4, 2016  
**SUBJECT:** **Discussion and action on request by Old Washoe Estates Homeowners Association for exemption from water service charges for irrigation of common areas in connection with 1986 sale of system to Washoe County**

---

### **RECOMMENDATION**

Staff seeks direction from the TMWA Board with respect to a request by Old Washoe Estates Homeowners Association to be exempt from water service charges for irrigation of common areas within the Association. The request was based on a repealed rate ordinance first adopted by Washoe County in 1986, and the Association's belief that TMWA agreed to assume such exemption when it acquired the system from Washoe County in the 2014 merger.

Possible direction could include: i) bill the Association in the ordinary course under existing TMWA Rules; ii) pursue a special rate tariff for Old Washoe Estates under which Old Washoe Estates residents subsidize the Association's water costs, as contemplated under the 1986 County ordinance; or iii) such other direction the Board may desire.

### **BACKGROUND**

In January, 1986, Washoe County acquired a small satellite water system from Old Washoe Estates Homeowners Association which served 52 residents in the Old Washoe Estates in Washoe Valley. As consideration for the acquisition, Washoe County secured a \$100,000 loan and formed Special Assessment District No. 6 for the purpose of financing the improvements necessary to upgrade and rehabilitate the water system to acceptable state and local standards. No other payment was made by the County for assuming ownership and operation of the system. Nothing in the January 10, 1986 Purchase Agreement references any exemption or discounted billing arrangement for the Association in connection with the sale.

In connection with the acquisition, Washoe County adopted Ordinance 670 which established a schedule of rates and charges for water service within the Old Washoe Estates. *See Ordinance 670, Section 4.1, Schedule B.* Schedule B of that ordinance provided that "A portion of the monthly base rate paid by residents of Old Washoe Estates shall be used to defray the costs associated with irrigating the common area." Ordinance 670 was attached as an exhibit to

the Purchase Agreement. Ordinance 670 is the only document the Association provided which indicates a special billing arrangement existed at one time for the Association.

Ordinance 670 was repealed by the County on June 8, 1987. County ordinances for water service schedules were amended numerous times over the years and by 1997, any reference to a special billing arrangement for the Old Washoe Estates association had been repealed by the County. *See Ordinance 999* (adopted November 25, 1997).

On December 31, 2014, TMWA acquired the Old Washoe Estates system from Washoe County pursuant to the Interlocal Agreement Governing The Merger Of The Washoe County Department Of Water Resources Water Utility Into The Truckee Meadows Water Authority. At that time, TMWA was completely unaware of any claimed special billing arrangement by the Association and no special rate or offset for irrigating common areas in Old Washoe Estates existed in County ordinance in 2014. *See Ordinance 1470*.

Following completion of the merger, a homeowner in Old Washoe Estates complained to TMWA about water usage by the Association. After investigating, TMWA discovered the Association's irrigation service was not being billed and TMWA began billing the Association for the water service provided to its three metered services in accordance with TMWA Rules. Based on prior meter readings, the Association's usage ranged between approximately \$62/month (offseason) and \$702 per month (irrigation season) in 2015. TMWA began billing the Association in February 2016, and as of April 1, 2016, the Association owes TMWA a total of \$127.38, which bills the Association disputes. The Association objects to being billed for water service on the grounds that it was never billed by the County in thirty years and that TMWA should continue the billing arrangement referenced in Ordinance 670. The Association's position is based both on its understanding of the arrangement made in 1986 and comments by TMWA during merger public workshops.

## **DISCUSSION**

We are not aware of any documentation that would indicate TMWA has a legal obligation to provide water service to the Association at no charge. Under the Interlocal Agreement, TMWA is only obligated to assume those specific contractual obligations of the County which were identified in Schedule 5.5 and 5.6(f). Nothing in the Interlocal Agreement or schedules identifies any special billing arrangement for Old Washoe, or obligates TMWA to assume any special billing arrangement for Old Washoe, assuming one exists.

The only document provided which indicates a special billing arrangement existed was the 1986 Ordinance, which has since been repealed. Nothing in the Interlocal Agreement required TMWA to assume or maintain the County rates in effect at the merger. Even if such an obligation existed, however, nothing in County Ordinance 1470 (in effect at the time of merger) creates a special billing arrangement for the Association or prohibits charging the Association for water service provided. Even if TMWA were required to maintain County rates in effect at the merger, nothing in County ordinance appears to support the Association's position.

On March 28, 2016, TMWA sent a letter to the Association advising that TMWA was not aware of anything that would prohibit TMWA from metering and charging for the delivery of water to the Association. The Association responded on March 31, 2016, advising that their belief went “beyond Ordinance 670”, and was also based on comments by Jeff Tissier during public workshops on the merger that “TMWA will continue to operate Old Washoe as it has been operated.” Mr. Tissier recalled making the comment, but was wholly unaware of any special billing arrangement with the Association at the time and was simply referring to operational issues.

Staff does not believe water service should be provided free of charge, and seeks direction from the Board as to whether the Association or Old Washoe Estates residents should pay for this irrigation service. Legally, there does not appear to be any support for the Association’s position; however, staff is sensitive to reliance on comments made at public workshops during the merger and is willing to explore other options if the Board feels such is appropriate.