

**COUNTY OF TUOLUMNE
GRAND JURY**

12855 Justice Center Drive
Sonora CA, 95370



**TUOLUMNE UTILITIES DISTRICT
REPORT: Water is Life
May 12, 2022**



Tuolumne Main Canal, Paul Gugg

SUMMARY

In drought-susceptible Tuolumne County, water is a critical ingredient for our lives and livelihoods. The county's largest supplier of water, Tuolumne Utilities District (TUD), was formed in 1992 and has consolidated other water systems and inherited infrastructure, some of which dates back to the Gold Rush. This process of consolidation and acquisition continues as TUD is negotiating the acquisition of historic water rights and infrastructure from Pacific Gas & Electric Company (PG&E) that would include reservoirs, power generating equipment, and the Tuolumne Main Canal.

The 2020–2022 Tuolumne County Grand Jury investigated TUD to better understand its plans and operations. TUD has previously been investigated by several grand juries over the past decade. Some of the findings and recommendations from the 2019–2020 Grand Jury were disputed by TUD which, when added to the recognized importance of the agency's operations and the significance of its proposed projects and acquisition, prompted the current investigation. Also drawing the Grand Jury's attention, TUD has often been in the news and has had frequent changes in general managers and members of the board of directors.

The Grand Jury is thankful for the district's cooperation and impressed by the staff and leaders with whom it had the opportunity to discuss TUD's critical functions.

With regard to finances, the Grand Jury found that TUD maintains its course to keep rates low in accordance with the 2015 rate study; however, revenue has not kept pace with the need to improve its aging infrastructure, offset inflation, and ensure the district is positioned to capitalize on highly-anticipated and much-needed grants. Likewise, the Grand Jury found that TUD's budget is not providing adequate contingency reserve funding, as illustrated by the discrepancy between damage from one 2022 storm event compared to the contingency funding set aside in the Fiscal Year 2022 budget. This report, therefore, includes recommendations for improvements in this regard.

The Grand Jury also investigated TUD's new connections policy, finding that the agency has a clear and appropriate new connections process and has not impeded county development through denial of new connections. On this basis, this report includes a commendation to TUD for facilitating new connections, despite the challenges of geography and infrastructure in its service area.

Leadership changes are a natural part of organizational maturity and community politics. This report includes findings on the potential costs of leadership changes and

offers recommendations on how TUD can minimize unnecessary personnel change, establish time-proven selection criteria, and retain the district's best workers.

Involved in a critical water rights and facilities acquisition project, TUD must be transparent and garner community support to a degree it has not needed in its thirty-year existence. The agency must also prepare for its new roles in wildlife enhancement and recreation that are natural adjuncts to the PG&E acquisition and unfinished Phoenix Lake Preservation and Restoration Plan. To accomplish these activities, which are currently outside of its primary mission, and to update its aging infrastructure, the Grand Jury calls on TUD to be laser-focused on developing a plan for acquiring funding and amending its strategic plan to include stronger environmental and recreational goals and objectives.

When the well's dry, we know the worth of water.

- Benjamin Franklin

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code, Section 929, requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

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GLOSSARY

Atmospheric River	A weather pattern that forms a narrow corridor of concentrated moisture in the atmosphere that drops significant rain and snow as it passes over land.
Bond Covenant	A legally binding agreement between a bond issuer and bondholder set to protect the interests of both parties.
CIP	A Capital Improvement Plan, or CIP, is a short-range plan that identifies capital projects and equipment purchases, provides a planning schedule, and identifies options for financing the plan. TUD's CIP is focused on the next year's fiscal plan. TUD's Board of Directors approves and adopts the CIP annually with its budget.
Central Valley Regional Water Quality Control Board	A state agency that is one of nine regional Water Quality Control Boards responsible for overseeing and enforcing California's water quality, planning, and regulatory programs. The Central Valley region represents forty percent of the square miles in California and provides more than fifty percent of the state's water supply.
Conveyance System	A conveyance system includes all portions of the surface water system, either natural or man-made, that transport surface and stormwater runoff.
Debt Service Coverage Ratio (DSCR)	A measure of the cash flow available to pay current debt obligations. DSCR is used to analyze firms, projects, or individual borrowers.
Enterprise Fund	A fund used to report any activity for which a fee is charged to external users for goods or services. TUD has two enterprise funds: water and sewer. This ensures that the funds and expenses are not commingled; i.e., the fees collected from water-only users are not used to pay for sewer services.
Infrastructure Investment and Jobs Act	The Infrastructure Investment and Jobs Act (H.R. 3684) was signed into law on November 15, 2021. It provides funds for a variety of infrastructure projects and programs, including those for the provision of water and wastewater services.

Phoenix Lake Preservation and Restoration Plan (PLPRP)	A planning document that sets forth management actions designed to restore and preserve the critical functions and values of Phoenix Lake.
Raw water	Natural water like rainwater, groundwater, and water from bodies like lakes and rivers. Water is considered to be raw until it is treated by a potable water treatment process.
Reclaimed Water	Water reuse (also commonly known as water recycling or water reclamation) reclaims water from a variety of sources then treats and reuses it for beneficial purposes such as agriculture and irrigation, potable water supplies, groundwater replenishment, industrial processes, and environmental restoration.
Senior Water Rights	One who holds a water right does not own the water itself but possesses the right to use it. In California, several types of water rights are recognized under the law, including pre-1914 appropriative rights, which are senior rights not subject to the California State Water Resources Control Board's permitting jurisdiction.
Sierra Nevada Conservancy	The state agency that leads California's efforts to restore and enhance the extraordinary natural resources and communities of the Sierra Nevada while protecting them from wildfire and a changing climate.
State Water Resources Control Board	Created by the California State Legislature in 1967, the five-member board allocates water rights and protects water quality by setting statewide policy, coordinating and supporting the regional board efforts, and reviewing petitions that contest regional board actions. Together with the regional boards, the State Board is authorized to implement the federal Clean Water Act in California. The water boards are housed within the state government and are part of the California Environmental Protection Agency (CalEPA).
Subscriber Agency	The agency that buys water or sewer services from TUD and then sells the water or sewer service to its customers such as Twain Harte Community Services District.

Treated Water	Any type of water that undergoes processing to serve a specific end use. The water treatment process involves either the subtraction of components, the addition of components, or both. There is more than one way to produce treated water. There are also multiple types of treated water. Among other applications, water treatment is used for drinking water.
TUD	Tuolumne Utilities District (TUD) is a water and wastewater utility serving Tuolumne County. Also referred to as the “district” and the “agency” in this report.
Urban Water Management Plan	Urban Water Management Plans (UWMPs) are prepared by urban water suppliers every five years. These plans support the suppliers’ long-term resource planning to ensure that adequate water supplies are available to meet existing and future water needs.
Water Shortage Contingency Plan	The 2020 Water Shortage Contingency Plan for Tuolumne Utilities District, published June 2021. The purpose of TUD’s Water Shortage Contingency Plan is to provide a plan of action to be followed during the various stages of a water shortage.

BACKGROUND

TUD is a public water and wastewater utility providing service to the majority of Tuolumne County’s residents. TUD’s mission is to “provide responsible water and wastewater services for our customers with great customer service in a socially, financially, and environmentally responsive manner at a fair value.”¹

TUD was formed under California’s County Water District Law in 1992 by the action of Tuolumne County voters, which consolidated two local public water systems: the Tuolumne Water System and the Tuolumne Regional Water District (formerly known as Tuolumne County Water District No. 2).² Between 1992 and 2008, TUD acquired over seventeen water and sewer systems throughout Tuolumne County and within the City of Sonora.³ The conditions of the acquired systems varied widely; most were in a state of disrepair, regulatory non-compliance, or otherwise financially challenged.⁴

TUD now owns and operates eleven water systems and five sewer systems.⁵ It provides raw water, treated water, sewer, septage, and reclaimed water services to customers throughout Tuolumne County and the City of Sonora, including residential, commercial, industrial, fire, institutional, and irrigation customers. As of 2021, TUD served approximately 13,706 treated water accounts, 593 untreated or raw water accounts, and 6,123 sewer accounts.⁶ In addition, TUD provides regional sewer services to subscriber agencies such as the Jamestown Sanitary District and the Twain Harte Community Services District.⁷

Nearly every resident in Tuolumne County benefits from TUD’s services. TUD has an estimated treated water service population of 30,910, with an additional 2,000 served through wholesale service via the Muller Water Company, Sleepy Hollow Water Users Association, Sonora Meadows Mutual Water Company, and the Sonora Water Company.⁸ Approximately 24,000 people are served by TUD’s wastewater collection,

¹ TUD, “About Us,” <https://tudwater.com/about-us/>.

² Ibid.

³ TUD, 2015 Rate Study, p. 1-1, *available at* https://www.tudwater.com/wp-content/uploads/2015/10/Cover-Page-Rate-RateStudy_Section1_10022015.pdf.

⁴ Ibid.

⁵ TUD, FY 2019 and FY 2020 Operating Budget and FY 2019-2023 Capital Improvement Budget, p. 1, *available at* <https://tudwater.com/wp-content/uploads/2018/05/Budget-Report-FY19-and-20.pdf>; TUD, 2020 Capital Improvement Plan FY21-FY25, p. 2-1, *available at* https://tudwater.com/wp-content/uploads/2020/08/Capital-Improvement-Plan-2021_25.pdf.

⁶ TUD, 2021 Capital Improvement Plan FY 2022, p. 2-1, *available at* https://tudwater.com/wp-content/uploads/2021/08/2022-CIP-Final_08252022.pdf.

⁷ Ibid.

⁸ Ibid.

treatment, and reclamation service and virtually all residences in the County that are not connected to a public sewer rely on TUD to process septage originating from septic tanks and portable toilets.⁹

TUD receives its water from two primary sources: groundwater from TUD-operated wells and surface water from the South Fork of the Stanislaus River pursuant to a 1983 contract with PG&E.¹⁰ PG&E owned and operated the Tuolumne Water System (one of TUD's predecessors) prior to 1983 when the system—exclusive of the water rights to take water from the South Fork of the Stanislaus River—was conveyed to Tuolumne County and the PG&E water supply contract was established.¹¹

The vast majority (over approximately ninety-five percent) of the water TUD distributes for potable use is surface water originating from the South Fork of the Stanislaus River and stored in PG&E's Lyons and Strawberry (Pinecrest) Reservoirs.¹² PG&E owns and operates a canal and flume system to deliver water from Lyons Reservoir to the Phoenix Powerhouse.¹³ TUD, in turn, owns and operates a total of 70.4 miles of ditch, flume, pipe, and tunnel infrastructure that diverts raw water from the PG&E system and serves raw water to various classes of customers, including other water agencies.¹⁴ TUD's water system includes a vast network of infrastructure, including four water reservoirs, fourteen treatment plants, seventy-two treated water storage tanks, forty-nine transfer and booster pump stations, and 330 miles of potable water distribution pipelines.¹⁵

TUD is governed by a five-member board of directors. Members of the board of directors are presently elected at-large, but TUD will switch to a district-based election system in November 2022.¹⁶ The board of directors establishes rules, regulations, and policies for the operation of TUD. The board of directors also makes personnel decisions concerning TUD's general manager and hears appeals by TUD customers and applicants concerning the enforcement of any applicable rule, regulation, finding, or requirement.¹⁷

⁹ TUD, 2021 Capital Improvement Plan FY2022, p. 2-1.

¹⁰ TUD, 2020 Urban Water Management Plan, p. 3-2, *available at* https://tudwater.com/wp-content/uploads/2021/07/TUD-2020-UWMP_Adopted-June-2021.pdf.

¹¹ TUD, 2020 Urban Water Management Plan, p. 1-16.

¹² TUD, 2020 Urban Water Management Plan, p. 3-2 to 3-3; TUD, 2020 Capital Improvement Plan FY21-FY25, p. 2-1.

¹³ TUD, 2020 Capital Improvement Plan FY21-FY25, p. 2-1.

¹⁴ TUD, 2020 Capital Improvement Plan FY21-FY25, p. 2-1.

¹⁵ TUD, 2021 Capital Improvement Plan FY2022, p. 2-2.

¹⁶ TUD, Regular Meeting Minutes, October 12, 2021, *available at* http://tuolumne.granicus.com/MinutesViewer.php?view_id=3&clip_id=664.

¹⁷ TUD, Water Rules and Regulations, Rule 15.01; TUD, board of directors Policy Manual (Aug. 27, 2019), *available at* <https://tudwater.com/wp-content/uploads/2019/10/Board-of-Directors-Policy-Manual-Adopted-Aug.-27-2019>

TUD has been the subject of past Tuolumne County Grand Jury reports, most recently in 2020; however, several topics examined in this report—including TUD’s aging and historic infrastructure, personnel issues, the proposed PG&E acquisition, and the question of securing water rights to serve users in Tuolumne County—have not been comprehensively addressed by grand juries in recent years.

METHODOLOGY

The Grand Jury formally interviewed numerous individuals affiliated with TUD representing the board of directors, management, office staff, and field functions. Most interviews were conducted via video conference due to COVID-19 concerns and restrictions. As part of its investigation, the Grand Jury also visited TUD headquarters and Phoenix Lake. Follow-up questions were posed to certain interviewees by e-mail and were responded to promptly by the respective interviewees. Throughout its investigation, the Grand Jury obtained and evaluated meeting records, external communications, agency plans and studies, budgets, policies, regulations, grant protocols, and application forms. TUD's public-facing websites¹⁸ were also useful sources of information. Finally, the Grand Jury reviewed previous Tuolumne County Grand Jury reports and responses from TUD.

Confidentiality

Grand Jury members are sworn to secrecy regarding any matter brought before them. This assures all individuals that their testimony will be strictly confidential. Each grand juror must keep all evidence confidential. It is a misdemeanor to violate the confidentiality of any individual or evidence brought before the Grand Jury.

Recusal

The Grand Jury recognizes that a conflict of interest may arise during its investigations. In such instances, the juror may ask to be recused from all aspects of an investigation. Those members do not investigate, attend interviews and deliberations, or assist in the making and acceptance of a final report that may result from an investigation.

Therefore, whenever the *perception* of a conflict of interest existed on the part of a member of the 2020–2022 Tuolumne County Grand Jury, that member abstained from any investigation involving such a conflict and from voting on the acceptance or rejection of any related subject.

¹⁸ See <https://tudwater.com> and <https://tuocoourwater.com>.

DISCUSSION

The Grand Jury's investigation covered a diverse cross-section of issues. This discussion is grouped into three sections that share common threads. These sections are and will be identified as:

1. Finance, Management, and Operations
2. Personnel and Leadership Changes
3. Water Rights and Future Development

Each section discusses the background and facts leading to the Grand Jury's findings and recommendations.

Part 1. Finance, Management, and Operations

Revenue and Reserves—Aging Infrastructure

A repeated theme emerged in the Grand Jury's investigation—that the aging infrastructure inherited and consolidated by TUD presents a major strategic and financial challenge to the agency. This challenge is compounded by the rural nature of TUD's service area. Compared to many similar agencies in California, TUD serves a more geographically dispersed community across varied terrain. In the same number of acres that may involve hundreds of ratepayers in suburban areas, TUD may have only a few connections. This results in very different, and significantly higher, capital improvement costs and maintenance costs per customer. In addition, the hilly geography of Tuolumne County requires complicated and costly conveyance systems to provide water and sewer services.

Revenue

Historically, TUD's budget has been extremely tight and not provided much, if any, funding for capital improvement of the aging infrastructure or contingency reserves for unexpected or unbudgeted repairs and maintenance. Funding for capital improvements has been largely reliant on successful grant pursuits.¹⁹

In the summer of 2015, TUD undertook a rate study to determine the cost of delivering water and sewer services. The primary objectives of the study, set by the board of directors, were:

¹⁹ See TUD, Rate Study FY16-FY21, p. 1-5, *available at* <https://www.tudwater.com/wp-content/uploads/2016/05/2015-Rate-Study-Approved-11-17-15.pdf>.

- *Identify & prioritize needed Capital Improvement Projects by developing a Capital Improvement Plan (CIP);*
- *Determine the extent of the Structural Deficit in the Water and Sewer Enterprise Funds;*
- *Establish sufficient revenue to address anticipated Operations & Maintenance, Capital Outlay, and Capital Improvement Plan costs over the next five years;*
- *Provide sufficient revenue to incorporate a reasonable Contingency Fund and Reserve for each of the enterprise funds;*
- *Maintain adequate revenues to ensure compliance with our existing debt service coverage ratios (bond covenants) and consent decree, retain and improve our financial credit ratings, and preserve eligibility for grants and loans from state and federal agencies;*
- *Maintain adequate revenues to ensure regulatory compliance with the Central Valley Regional Water Quality Control Board (CVRWQCB), the State Water Resources Control Board (SWRCB), and other state and federal regulatory agencies;*
- *Develop rates and charges that constitute a fair and equitable distribution of costs to each customer class that is proportional to the service provided and does not exceed the cost to deliver the service;*
- *Promote the financial stability of the District through adequate funding and emphasis on implementing measures to improve operational efficiencies and consolidating service areas where possible; and*
- *Balance the need for increased revenues with the cost impacts on District customers by spreading any rate increase over a 5-year period. (Quoted text in italics.)*²⁰

The rate study concluded that the new rates, increasing over five years (fiscal years 2016–2021), would provide adequate revenue to meet TUD’s service demands over that period. The study, however, assumed “normal operations of district facilities” and “no catastrophic event occurs that adversely impacts district facilities or our customer base.” Further, it concluded that “a successful CIP will require significant grant funding to insure [sic] success.”²¹

Even with the proposed rate increases, the rate study noted that TUD’s rates would remain below the median in the region.²² The Grand Jury agrees that keeping rates low is an admirable goal of this critical public service provider, but believes that prudent fiscal management must provide revenue for improvements and contingencies. Grants such as those provided by the State of California and federal agencies are clearly an

²⁰ TUD, Rate Study FY16-FY21, p. 1-2.

²¹ TUD, Rate Study FY16-FY21, p. 1-11.

²² TUD, Rate Study FY16-FY21, p. 1-12.

important part of funding the maintenance and improvement of critical infrastructure over which TUD provides stewardship; however, the availability and timing of such funds is not within the complete control of TUD.

Regarding TUD's revenue and its ability to cover critical budget elements, the 2019-2020 Grand Jury made a finding that, "*F1. Despite five years of rate increases, TUD is still falling short of establishing a system where revenue is equal to expenses, including capital improvements and replacements.*"

In its response to the 2019–2020 Grand Jury report, TUD disagreed with this finding and stated that net revenues had increased over the previous four years and the district had invested nearly \$21 million into capital improvements and infrastructure replacements over the past five years. In its response, however, TUD explained that "... revenues have largely not kept pace with the cost of replacement due to a combination of years of deferred capital improvements, much of which was inherited from predecessor agencies, along with increasing unfunded state and federal regulations."

Reserves

The expanse of TUD's exposed and underground infrastructure, combined with its age and maintenance history, makes components of TUD's system susceptible to damage and failure. This vulnerability may be exacerbated by the impacts of climate change, including extreme weather and wildfire threats. The topography of TUD's service area and the "drought and deluge" cycles experienced in the watershed also pose threats to water security in the county, which is reliant on the uninterrupted operation of TUD's equipment and conveyance structures. TUD has the dual challenge of not only ensuring the proper construction, inspection, and maintenance of its systems, but also dealing with unforeseen damage and failures caused by any one of a growing number of threats.

For example, in just one month of this Grand Jury's term (December 2021 to January 2022), TUD experienced extensive damage from an atmospheric river rain and snowstorm, and the collapse of a forty-year-old water storage tank. Typical of much of TUD's fixed infrastructure, the construction and early maintenance and inspection history of the tank pre-dates the establishment of TUD. TUD's efforts in working with the community and PG&E during these emergencies are commendable. The effects of these emergencies, however, highlight the importance of maintaining TUD's contingency reserve funding at a level sufficient to address unforeseen emergencies.

As illustrated by the events mentioned above, emergencies can easily exceed the target called for in TUD's Reserves Policy, which sets the "target reserve" for the Contingency/Emergency Fund Reserve at two percent of TUD's annual planned operations and maintenance expenditures.²³ TUD's General Manager estimated, in an interview with MyMotherLode.com, that the cost of clean up and restoration of the damage from the December 2021 storm event might reach \$100,000.²⁴ In contrast, TUD's Fiscal Year 2022 budget set aside only \$19,486 in reserves for the water contingency fund.²⁵ TUD's Fiscal Year 2021 budget allocated just \$13,427 in reserves for the water contingency fund.²⁶ The estimated cost of damage from this storm event therefore significantly exceeded the funding set aside in the water contingency fund for the same year. While financial recovery might be available from the state or federal government after an emergency event, sufficient in-hand funding is necessary to allow an immediate response to emergencies.

New Connections

In interviews with TUD employees, the Grand Jury learned that water supply, storage, treatment, and delivery throughout our expansive rural county are complex issues. The South Fork of Stanislaus River catchment is limited in size. The volume and timing of the water it provides are largely beyond TUD's control making water a variable and finite resource. TUD periodically conducts surveys and water supply estimations per its Urban Water Management Plan and Water Shortage Contingency Plan. The prevailing opinion at TUD is that there is sufficient water supply as long as the agency maintains rights to access the supply.

Some in the community have expressed a concern that TUD has denied, or will in the future deny, new water connections; therefore, the Grand Jury inquired into TUD's rules regarding new connections and its recent response to applications for new service connections. The Grand Jury concluded, on review of Regulation No. 6 of TUD's Water Rules and Regulations, that TUD has established a clear process for submitting and evaluating applications for new service connections.

²³ TUD, Reserves Policy (June 9, 2020), *available at* https://tuolumne.granicus.com/DocumentViewer.php?file=tuolumne_c9099a752e10f0397d978b9d347a4bc5.pdf&view=1 Regular Board Meeting Agenda. Tuesday, June 9, 2020 - 2:00 p.m. TUD Board Room. 18885 Nugget Blvd., Sonora, California.

²⁴ <https://www.mymotherlode.com/multimedia/audio/mlviews/tud-leaders-talk-about-water-issues>.

²⁵ TUD, FY 2022 Operating Budget, at p. 21, *available at* https://tudwater.com/wp-content/uploads/2021/06/FY-2022-Budget-Adopted_06222021.pdf.

²⁶ TUD, FY 2021 Operating Budget, at p. 21, *available at* <https://tudwater.com/wp-content/uploads/2020/08/2020-FY21-Operating-Budget.pdf>.

In response to the Grand Jury’s inquiry, TUD staff explained that over the past five years, TUD has not denied water service to any applicant who submitted a complete application and paid the applicable fees. Between 2017–2021, TUD received a total of 175 applications for new water service connections, and a total of 175 new service connections were established over this same time period. This number of new water service connections (approximately 25–45 per year) represents a fraction of one percent of TUD’s overall water demand. Interviewees did not articulate any need for or intent to limit new connections or impose a moratorium of any kind on new connections.

Findings, Recommendations, and Commendation

Findings

F1.1: Considering its inherited and aging infrastructure, TUD’s existing rate structure is not adequate to fund its capital improvement needs should significant grant funding not materialize. While the agency is doing a good job in maintaining affordable rates, living within its means, and seeking external funding, it relies heavily on sources beyond its control to fund its CIP. This creates a risk of further deferring important capital improvements.

F1.2: TUD’s budget is not providing adequate contingency reserve funding, as illustrated by the discrepancy between the estimated \$100,000 in damage from the December 2021 storm event compared to the \$19,486 set aside in the Fiscal Year 2022 budget for the water contingency fund. The ability of TUD customers to survive and thrive requires the agency to have a robust capacity to budget and to plan for the unforeseen without relying on emergency declarations, grants, or assistance from other agencies in the short response term.

F1.3: TUD has a clear and appropriate new connections process and has not impeded county development through denial of new connections.

Recommendations

R1.1: TUD should continue to seek grant funding for its capital improvement needs. Recognizing the recent passage of the Infrastructure Investment and Jobs Act, the next several years could be a watershed opportunity for funding upgrades to aging infrastructure in the utilities sector. TUD should ensure it is prepared to meet oncoming changes by:

- staying abreast of grant qualification thresholds (i.e., proportional rate percent of MHI);
- dedicating the best people and pool resources to prepare successful grant applications; and
- ensuring it has adequate resources for matching/contributing grant and loan funding requirements.

R1.2: Because the timing and availability of grant funding are beyond TUD's control, the TUD Board of Directors should also consider undertaking a new rate study by January 2023 that addresses CIP funding, specifically:

- the funding of infrastructure consolidation projects already in the CIP;
- ensuring revenue supports not just the marginal cost of supplying water but CIP and inflation; and
- identifying additional savings opportunities that could be applied to infrastructure modernization and improvement.

R1.3: The TUD Board of Directors should consider undertaking a new rate study by January 2023 that re-evaluates the adequacy of TUD's contingency reserve funding. This should include an analysis of the sufficiency of the two percent contingency target reserve and how reserve fund levels are tracked and reported.

Commendations

Commendation: TUD staff should be commended for their efforts to facilitate new connections, despite the challenges of geography and infrastructure in its service area.

Part 2. Personnel and Leadership Changes

The year 2021 brought a change in TUD's executive leadership. On April 1, 2021, the TUD board voted 3-1-1 to terminate the then-general manager's employment contract, effective immediately, and "without cause."²⁷ Subsequently, on June 4, 2021, the TUD Board voted 3-2 to appoint a new interim general manager until the permanent general manager position was filled.²⁸ The TUD board then voted 4-1 on October 26, 2021 to permanently appoint the interim general manager to the general manager position and approve the employment contract.²⁹

The year 2021, however, was not an outlier with respect to turnover in the general manager position. In the decade preceding the publication of this report, TUD employed eight general managers and/or interim general managers.³⁰ Further, the general manager terminated in April 2021 was not the only general manager whose employment contract was terminated by the TUD board during this period. On October 22, 2013, the board voted 3-2 to terminate the then-general manager's employment contract.³¹

The 2020-2022 Grand Jury perceived that the turnover in the TUD general manager position—including the termination of two employment contracts in one decade—seemed unusually high; therefore, the Grand Jury commenced an investigation of the actual and perceived impacts of the general manager turnover, with an eye towards developing recommendations to assist the TUD board in future personnel decision-making. The Grand Jury expanded its investigation, based on interviews with TUD board members and employees, to other personnel-related issues, including employee recruitment and retention.

To that end, the 2020–2022 Grand Jury requested from TUD, and received, copies of the employment contracts for all general managers and interim general managers that served from 2011–2022. The Grand Jury also conducted multiple interviews with TUD board members and staff to assess the potential impacts of the general manager turnover and develop personnel-related recommendations. Finally, the Grand Jury

²⁷ TUD, Special Meeting Minutes, April 1, 2021, available at: https://tuolumne.granicus.com/MinutesViewer.php?view_id=3&clip_id=637.

²⁸ TUD, Special Meeting Minutes, June 4, 2021, available at: https://tuolumne.granicus.com/MinutesViewer.php?view_id=3&clip_id=647.

²⁹ TUD, Regular Meeting Minutes, October 26, 2021, available at: https://tuolumne.granicus.com/MinutesViewer.php?view_id=3&clip_id=668.

³⁰ One individual served as both interim general manager and permanent general manager. One individual served two separate terms as interim general manager.

³¹ TUD, Regular Meeting Minutes, October 22, 2013, available at: http://tuolumne.granicus.com/MinutesViewer.php?view_id=14&clip_id=303.

reviewed personnel-related resources and recommendations, including those made available through the California Special Districts Association.

Selecting the right candidate is important because it promotes a healthy and productive workplace and lays the foundation for an efficient operation. The Grand Jury's review of the general manager employment contracts and interviews revealed that frequent termination and turnover of general managers carries both tangible and intangible costs that may negatively impact employees and ratepayers. Tangible costs identified by the Grand Jury included the payment of severance pay and other benefits required to be paid under the applicable general manager employment contract. Intangible costs identified by the Grand Jury include potential damage to employee morale and the reduction in employee productivity due to the trickle-down effects of changes in leadership priorities.

The TUD board does not have a board-approved policy that establishes the process for hiring and firing, evaluating the performance of, and adjusting the compensation of the general manager. This recommendation is also identified as a "best practice" by the Special District Leadership Foundation.³² Further, TUD does not have a Board-approved policy promoting the involvement of department managers or other agency employees in the general manager hiring or evaluation process. Many organizations involve subordinate employees, for example, in a "360-degree" review process of executive leadership. This process "bring[s] together insights from a range of coworkers, often illuminat[ing] an executive's blind spots, and giv[ing] colleagues a way to weigh in on and support the individual's development."³³ Potential benefits of this process include increased leadership effectiveness, employee retention, customer satisfaction, productivity, and employee engagement.³⁴

TUD employs dedicated and high-performing employees and managerial personnel, several of whom the Grand Jury had the pleasure to meet. The competitiveness of TUD employee compensation was one factor raised by certain interviewees as an important consideration in recruitment and retention. TUD last conducted a comparative evaluation of employee salary and benefit packages (i.e., comparing TUD's manager and employee compensation to other comparable agencies) in 2020. The Institute for

³² See Special District Leadership Foundation, "High Performing District Checklist - Finance and Human Resources," (January 2018), available at: <https://www.sdlf.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=65533859-617a-b93d-a13a-ab8f8c0cce6f&forceDialog=0>.

³³ Behr, "Getting the Most Out of 360-Degree Reviews," Harvard Business Review. Nov. 22, 2019, available at: <https://hbr.org/2019/11/getting-the-most-out-of-360-degree-reviews>.

³⁴ Zenger & Folkman, "What Makes a 360-Degree Review Successful?," Harvard Business Review 2020. <https://hbr.org/2020/12/what-makes-a-360-degree-review-successful>

Local Government recommends that a salary survey should be conducted, at a minimum, every five years and should be made available on the agency's website.³⁵

After a review of these resources, the 2020–2022 Grand Jury finds and recommends as follows:

Findings and Recommendations

Findings

F2.1a: The frequent termination and turnover of TUD general managers over the last decade has carried both tangible and intangible costs, including costs associated with the payment of severance pay and benefits, impacts to employee morale, and a reduction in productivity associated with changes in leadership priorities.

F2.1b: Adoption of a board-approved policy that establishes the process for the selection, termination, evaluation, and compensation of the general manager would assist the TUD Board of Directors in pre-empting the higher than ideal turnover in this key position and the tangible and intangible costs described in F2.1a.

F2.2: TUD department managers and other agency employees may be uniquely suited to assist the TUD board in assessing qualifications of general manager applicants and evaluating the performance of the general manager or other senior TUD employees, but there is no TUD board- approved policy encouraging the involvement of subordinate employees in hiring and performance review appraisals of the general manager or other senior TUD staff.

F2.3: The competitiveness of TUD employee compensation is an important consideration in the district's ability to recruit and retain the quality personnel upon which it is so dependent.

Recommendations

R2.1: Prior to the next performance review/compensation cycle, the TUD board should adopt a policy that establishes the process for hiring and firing, evaluating the performance of, and adjusting the compensation of the general manager.

³⁵ Institute for Local Government, "Good Governance Checklist: Good and Better Practices," (undated), available at: http://www.ca-ilg.org/sites/main/files/file-attachments/checklist_v4.pdf.

R2.2: The TUD board should consider including a role for TUD department managers and other agency employees (e.g., via a “360-degree” review process) in any policy adopted pursuant to R2.1. Similarly, TUD should consider involving subordinate employees in the hiring process and performance review appraisals for other members of the TUD staff such as department managers.

R2.3: Particularly in light of recent trends in the labor market, TUD should, within the next year, consider:

- commissioning an updated evaluation of employee salary structures and benefits packages; and
- adopting a policy for the regular evaluation of manager and other employee salary structures that:
 - uses a salary survey allowing for comparison with other comparable agencies in the region that provide water and wastewater services and are comparable in size to TUD; and
 - requires a new salary survey, at a minimum, every five years and posts the survey on TUD’s website, along with compensation information for TUD board members and employees.

3. Water Rights and Future Development

TUD/PG&E Acquisition

In March of 2020, TUD and PG&E announced they had entered exclusive negotiations to transfer the Phoenix Hydroelectric Project from PG&E to TUD. The deal would include the possible acquisition by TUD of PG&E's senior water rights and infrastructure including two lakes, two dams, an electric power generating station, and canals and ditches that convey that water.

Understanding the importance of the project to the community and its future access to water, the Grand Jury believed transparency and active communication with the public was advisable and therefore commenced an investigation of the proposed acquisition. Due to the status of the negotiations, most details of the proceedings were not yet publicly available.

In its investigation related to the proposed acquisition, the 2020–2022 Tuolumne County Grand Jury inquired about the following:

- the current status of discussions with PG&E;
- the possible terms and conditions and the possible conclusion of the deal; and
- the potential effects on TUD and TUD ratepayers if TUD succeeded in obtaining the senior water rights and infrastructure held by PG&E.

On March 9, 2020, the president of the TUD Board of Directors stated the following regarding the PG&E acquisition: "We invite the community to engage and play an active role throughout the process."³⁶ To that end, TUD launched a website (Tuocoourwater.com) as part of a public awareness campaign about the proposed acquisition. TUD also hosted a public information session in February 2021 and certain members of the board of directors published editorials in the newspaper on the proposed acquisition. In December 2021, TUD retained the firm Raftelis Financial Consultants, Inc. for public relations services to assist in a public outreach campaign related to the proposed acquisition.³⁷ The contract was for an amount not to exceed \$119,704.³⁸ In connection with the decision to hire the consultant, one of the members of the TUD Board of Directors was quoted as saying, "You know how sensitive I am

³⁶ TUD, "PG&E and TUD Announce Potential Water System Transfer," (Mar. 9, 2020) *available at* <https://tudwater.com/pge-and-tud-water-system-transfer/>.

³⁷ TUD, Regular Meeting Minutes, December 14, 2021, *available at* https://tuolumne.granicus.com/MinutesViewer.php?view_id=3&clip_id=671.

³⁸ *Ibid.*

when it comes to spending ratepayer money ... but to me, this is the one time I don't care what the budget is."³⁹

Except for these efforts, however, there had been little or no information of any substance until the general manager and a board member gave a January 29, 2022, radio interview concerning the proposed acquisition. In that interview, the general manager stated that the purchase of the water rights and infrastructure should be finalized by the end of the year 2022. In addition, the interview indicated that the public relations firm hired by TUD should be disseminating further information about the purchase in the coming month or six weeks.

The 2020–2022 Grand Jury sent written requests to TUD related to the PG&E acquisition and interviewed members of the TUD Board of Directors, agency managers, and other employees related to the proposal. Although these sources provided a general explanation of the status of the negotiations with PG&E, the Grand Jury was not provided any specific information related to the terms and conditions of the deal and the potential effects on TUD and its ratepayers on the basis that the negotiations were ongoing. The Grand Jury attempted to interview TUD's lead negotiator but was denied that opportunity because the negotiator was a consultant that had been hired by TUD's attorney to assist the attorney and, therefore, nearly all information that could be provided by the negotiator would be confidential. Ultimately, the Grand Jury was unable to glean any information regarding the proposed acquisition and its potential impacts beyond the very limited information available from a review of TUD's February 2021 public meeting, newspaper editorials, and the 2022 radio interview.

Environmental and Recreational Activities of TUD

The primary role of TUD is to provide water and wastewater services to a wide range of customers. Many community services special districts, however, offer other services, including parks and recreation, cemetery, fire protection, and other services. Although TUD owns, maintains, or manages a historic system of ditches, waterways, and reservoirs, environmental protections and recreational activities are currently second- or third-tier priorities for TUD. In some cases, master plans and grants have recreation and wildlife components but the agency's primary goals are focused on reliable and safe water and sewer for ratepayers. The Grand Jury examined how the agency is prioritizing these goals and what are its plans to re-prioritize and accomplish recreation and environment goals when the PG&E acquisition is complete making Pinecrest, Lyons and the Main Canal part of TUD's portfolio.

³⁹ Union Democrat, "TUD Hires PR Firm for Potential Water Rights Deal," (Dec. 16, 2021).

The primary water storage for the city of Sonora and much of the county supply is in Phoenix Lake Reservoir (see photo below). If the acquisition of PG&E water rights and other assets goes through, this will include Pinecrest Reservoir, Lyons Reservoir, and the Tuolumne Main Canal, formerly known as “the Ditch”. All these properties have an environmental and recreational value that goes far beyond their worth for water conveyance and storage.

The last of seven strategic goals in the *2020 Update of the 2019 TUD Strategic Plan* states: “Pursue environmental stewardship opportunities and community programs”.⁴⁰ The three strategies for this goal focus on identifying community benefits, community outreach, and reducing negative environmental impact. There is no mention of utilizing TUD’s large, and potentially growing resources for environmental protection and enhancement or for community benefits such as exercise and recreation. There is a disconnect with the pictures of recreational activities that beautify this plan and the lack of mention of this community role for TUD. Nor is there a mention of preserving the historic resources of this unique water collection system, established during the California Gold Rush over 170 years ago.

Phoenix Lake Preservation and Restoration Plan

Phoenix Lake is an eighty-eight acre reservoir that serves as the primary drinking water source for Sonora, Jamestown, Scenic View, and Mono Village. It was initially constructed in 1854 to support hydraulic mining but was destroyed by a storm in 1862. In 1880, a dam was built that created the current Phoenix Lake. Phoenix Lake lies three miles northeast of Sonora in a wooded meadow surrounded by alpine hills. The water also serves as the principal fill source for CAL FIRE helicopter operations in the Highway 108 corridor. As a scenic aquatic habitat and wetland, Phoenix Lake is also used for non-motorized, non-contact recreation by adjacent homeowners and on a limited basis by the public.

The Phoenix Lake Basin includes watersheds from Sullivan Creek, Chicken Creek, and Power Creek, and from Ridgewood and Phoenix Lake Park. Allowable storage for the reservoir is approximately 900 acre-feet, but over the years siltation reduced the capacity to about 600 acre-feet. An estimated 4600 cubic yards of sedimentation enters the lake annually, and water quality is reduced due to nutrient inputs, sedimentation, and exotic invasive aquatic vegetation⁴¹.

⁴⁰ TUD, “Strategic Plan Update 2020,” p. 6 (April 14, 2020), *available at* https://tudwater.com/wp-content/uploads/2020/04/Strategic-Plan-Update-2020_04142020-updated.pdf.

⁴¹ Phoenix Lake Preservation and Restoration Plan Final report 2010, https://www.tudwater.com/pdf/phoenix-lake-docs/Chap_1_Intro.pdf.

In 2010, with funding from the Sierra Nevada Conservancy and broad community input, TUD developed the Phoenix Lake Preservation and Restoration Plan (PLPRP).⁴² The goals of this document are to develop conceptual plans to:

- improve water quality;
- increase water storage;
- reduce future silt buildup;
- increase wetlands habitat value and functionality;
- evaluate public access;
- improve fire protection and educate property owners surrounding the lake about appropriate land maintenance practices; and
- determine and describe the necessary level of environmental analysis and permitting requirements for potential construction and maintenance projects developed in the conceptual plan.

Phoenix Lake can be accessed from both Phoenix Lake Road through Phoenix Lake Estates and from Lyons Bald Mountain Road through Apple Valley Estates, but there is no public parking, water access, or walking trails. Several suggestions were included in the PLRRP that have not been implemented. The recently completed dredging projects included the development of several berms so the intake from Sullivan Creek meanders to reach the dam.



⁴² Ibid.

This will reduce further siltation and simplify dredging near the intake. Some removal of invasive species of plants was accomplished, but additional work would protect the littoral environment. The lake is rich in birdlife and beauty, but is difficult to access.

With two grants funded from Proposition 84 funding and district matching funds, projects focusing on dredging to increase capacity and reduce future siltation have been completed (Table 1). Approximately \$1.2 million from TUD has also been used on these projects. These have not addressed other aspects of the 2010 plan, which included other recommendations for public access, recreation, and environmental improvements.⁴³ The Grand Jury was informed that the Army Corps of Engineers, one of four approving bodies for the dredging projects, required riparian and littoral environmental protections that limited the amount of dredging. This preserved areas of marsh around the lake and left much of the bulrush. None of the grants provided funding for the construction of recreational improvements and TUD has not yet sought additional grants to complete the plan.

As Tuolumne County prides itself in being rich in environmental and recreational opportunities, this is an undeveloped resource with potential for canoeing or kayaking, birdwatching, hiking, and preservation of wildlife.

Table 1. Grants received to support the *Phoenix Lake Preservation and Restoration Plan*

Grantor	Amount	Purpose
Sierra Nevada Conservancy	\$100,000	Partially fund the development of the Phoenix Lake Preservation and Restoration Plan document.
Tuolumne County Resource Conservation District through Proposition 84 Round 2 Funding from the Department of Water Resources	\$1,598,000	Partially fund the design, environmental, permitting, and some dredging for the project.
Tuolumne Stanislaus Integrated Regional Water Management Authority through Proposition 84 Drought Funding from the Department of Water Resources	\$3,532,375	Partially fund the easement acquisition and the dredging for the project.

⁴³ Phoenix Lake Preservation and Restoration Plan Final report 2010.
https://www.tudwater.com/pdf/phoenix-lake-docs/Chapt_3_Watershed.pdf

Findings and Recommendations

Findings

F3.1: There has been a lack of transparency about the status, progress, potential conclusion, and possible effects of the proposed acquisition of PG&E property and water rights on TUD and the ratepayers. Potential effects of this lack of transparency include public confusion and ultimately a risk to public support for the proposal.

F3.2: The PLPRP has been only partially implemented and has not addressed important opportunities for recreation or environmental benefits.

F3.3: TUD has an important opportunity to protect, preserve, and enhance the environment, and to enrich recreational opportunities in the county that are not adequately addressed in their strategic plan, its staffing, and funding.

Recommendations

R3.1: TUD should designate a “point person” to answer public inquiries regarding the PG&E acquisition. Without further delay, TUD should disclose to the public all non-confidential information regarding the current state of discussions regarding the PG&E acquisition.

R3.2: TUD should provide a clear explanation of the benefits to the TUD ratepayer associated with the direct costs of the proposed acquisition, as well as ancillary costs such as the hiring of a professional negotiator and a public relations firm.

R3.3: By June 2023, TUD should actively develop a plan and pursue funding for full implementation of the PLPRP.

R3.4: The TUD board should amend its strategic plan to include stronger environmental and recreational goals and objectives by June 2023.

REQUESTED RESPONSES

Required Responses

Pursuant to Penal Code section 933(c), responses are required from the following governing body within 90 days:

- TUD Board of Directors: All Findings and Recommendations

Invited Responses

Although not required under Penal Code section 933(c), the following responses are invited within 90 days:

- TUD general manager: Findings 1.1-1.3, 2.3, 3.1-3.3 and Recommendations 1.1, 2.3, 3.1-3.3

APPENDIX

Institute for Local Government, “Good Governance Checklist: Good and Better Practices,” (undated), available at:

http://www.ca-ilg.org/sites/main/files/file-attachments/checklist_v4.pdf.

Employment Agreements between Tuolumne Utilities District and the General Manager/Interim General Manager dated:

- October 10, 2006
- March 27, 2012
- October 28, 2013
- June 9, 2015
- September 8, 2015
- May 22, 2018
- October 10, 2018 (and amendments thereto dated June 11, 2019 and January 14, 2020)
- June 14, 2021
- October 26, 2021

Special District Leadership Foundation, “High Performing District Checklist - Finance and Human Resources,” (January 2018), available at:

<https://www.sdlf.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=65533859-617a-b93d-a13a-ab8f8c0cce6f&forceDialog=0>.

John Behr, “Getting the Most Out of 360-Degree Reviews,” Harvard Business Review (Nov. 22, 2019), available at:

<https://hbr.org/2019/11/getting-the-most-out-of-360-degree-reviews>.

Jack Zenger and Joseph Folkman, “What Makes a 360-Degree Review Successful?,” Harvard Business Review (December 23, 2020), available at:

<https://hbr.org/2020/12/what-makes-a-360-degree-review-successful/>

Memorandum from Karen Blakely, MRG Consultants, to Abby Parcon, Human Resources Director and Edwin Pattison, general manager, re: “COMPENSATION SURVEY RESULTS – Unrepresented Classifications,” (April 9, 2020).

Memorandum from Karen Blakely, MRG Consultants, to Abby Parcon, Human Resources Director and Edwin Pattison, general manager, re: “COMPENSATION SURVEY RESULTS – Represented Classifications,” (April 16, 2020).

Harvard Business Review 2020.

<https://hbr.org/2020/12/what-makes-a-360-degree-review-successful>

2020 Tuolumne County Grand Jury. Tuolumne Utilities District Report: Water Under the Bridge. June 30, 2020

<https://www.tuolumnecounty.ca.gov/DocumentCenter/View/14796/Tuolumne-Utilities-District-Report>

Phoenix Lake Preservation and Restoration Plan Final report 2010.

https://www.tudwater.com/pdf/phoenix-lake-docs/Chap_1_Intro.pdf

https://www.tudwater.com/pdf/phoenix-lake-docs/Chapt_3_Watershed.pdf

Phoenix Lake Preservation and Restoration Project update 2018.

<https://ceqanet.opr.ca.gov/2017072046/3>

2020-2022 TUOLUMNE COUNTY GRAND JURY

TUOLUMNE UTILITIES DISTRICT REPORT

I authorize the 2020-2022 Tuolumne County Grand Jury TUD Report to be released on or after the date of my signature.

DATED this 16th day of May, [~~year~~ 2020]



LAURA LESLIE KRIEG
Assistant Presiding Judge