

Eron Berg

From: Will W. Honea
Sent: Tuesday, February 19, 2008 12:47 PM
To: Mike Anderson
Cc: Eron Berg
Subject: RE: Don't use my name

Mike,

Fair enough. I appreciate you letting me know where you're coming from on this.

Mike, obviously you aren't neutral on the Deluxe proposal. We wouldn't be having this conversation otherwise.

At the end of the day, I am convinced that Sedro-Woolley is facilitating a strategy by Deluxe that, running the movie forward, ends in a litigation mess that is bad for everyone, Sedro-Woolley included. I say this because that's what I believe, based on a mountain of evidence to that effect. Until something changes, I intend to keep communicating that to the Board of Commissioners, and anyone else who asks.

That being said, I believe you're entitled to my explanation of why I feel this way. I think a quick historical discussion is in order to understand where we're coming from.

Obviously, this story starts with the Cimarron contract. All the cities in Skagit County were outraged at the Cimarron contract, including Sedro-Woolley. In many ways, Sedro-Woolley is taking the place of two commissioners in this story, and is pushing something very similar to the Cimarron proposal.

In Spring 2007, the Commissioners initiated a change to the CSWMP to focus on a single transfer station, but wanted to keep an open door and open mind to private proposals as an alternative to the expensive transfer station upgrade we're faced with. In addition, increasing recycling is one of the Board of Commissioners' main objectives. The idea here is that there are no preconceived conclusions about what we should do going forward, but rather that we should as a community come up with a plan. All of this was going on in a very public manner well before Deluxe submitted anything to either Sedro-Woolley or the County.

The County's consistent message to Deluxe has been that we have a cooperative interlocal agreement with the cities as part of our solid waste management plan, and, accordingly, they should work with us and the cities to try and advance a proposal that will work for the entire community. Deluxe seems concerned that advancing a proposal out in the open, without litigation and threat of litigation as leverage, is not the path they wish to pursue.

Rather than doing what we suggested they should do (i.e., work with us to come up with something that works for the entire community), Deluxe found one municipal jurisdiction in need of revenue. That jurisdiction has done everything to facilitate Deluxe's litigation strategy that I would want them to do if I were advising Deluxe.

Mike, Sedro-Woolley has been front and center of that effort, whether you want to admit it or not. I understand that Sedro-Woolley has revenue needs, to help fund things like bonds, the new city hall, etc. But the much more important issue at stake here is that our Solid Waste System is at a cross-roads; we are either going to have to spend a great deal of money on a new transfer station; or privatize in whole or in part. Carving off part of the WUTC waste stream a la Cimarron will have huge implications for everyone in Skagit County, in terms of our ability to finance things going forward.

Whatever the impression out there, my job is to look past people's words, and look at action and incentives. Putting it simply, if I were developing a strategy on behalf of Deluxe to assist in setting up litigation, everything Sedro-Woolley has done so far would be exactly what I would want Sedro-Woolley to do. And since Mr. Berg has echoed virtually every argument made by Deluxe in conversations with me, it is really hard not to conclude that's what is going on here. This is the policy and actions your City is pursuing. Whether you want to stake claim to that as Mayor is a different question.

2/25/2008

So what is this litigation strategy of which I speak?

Deluxe bought the rights to the Cimarron deal, the County is being sued under the Cimarron deal, and Deluxe has made clear that the basis for any potential settlement is to afford Deluxe access to the WUTC waste stream at the Sedro-Woolley site. Other cities have indicated they would consider such a settlement deal to constitute a breach by the County of our existing interlocal, which is part of the CSWMP. This is so because fractionalizing the waste stream could well end up eviscerating the ability to run a functioning garbage system, given the capital needs going forward.

Obviously, the Cimarron litigation isn't the end of the strategy. Deluxe improperly submitted an interim site designation application last fall, which was rejected because they completely failed to follow the process required by Skagit County Code (they submitted it to Gary Rowe rather than the Public Works Director; and they hadn't yet completed land use review as the code requires). The Public Works Director sent Deluxe a letter rejecting the application, telling them to complete their land use review. Deluxe is now making the argument that because Sedro-Woolley has closed its SEPA comment period they are vested into Comprehensive Solid Waste Management Plan (CSWMP) in place before the Board's resolution last spring ordering Public Works to amend the solid waste management plan. (At this point we don't have a properly submitted application from Deluxe, so it's a little hard to know what exactly they are planning.) Without getting too deep into the weeds here, at its essence Deluxe is arguing that the County is obligated to give them a System/Operator Agreement on more or less the same terms and conditions extended to Cimarron. They are claiming (falsely) that they now have an economic expectation, i.e., they've spent money proceeding forward with Sedro-Woolley and now we have an obligation to give them a contract on terms and conditions that they dictate, disregarding all of the community-wide planning that's been going on since the first of last year and the County's obligation to run a functioning solid waste system as a proprietary matter. We disagree, but that's a discussion for another day.

There's another component to all this that needs to be brought up here. When we (the city attorneys) drafted the Governance Board interlocal agreement, I made clear to Eron and the other city attorneys that the County was willing to discuss giving the cities direct control because that's what the cities were demanding. (Sedro-Woolley, i.e., Eron, was one of the loudest voices in the newspaper demanding we give the cities direct control.) I made clear that the whole basis for the agreement was "all for one, one for all" on both major decision-making and liability issues, and if that wasn't something they could support then we didn't want to go forward.

I made clear that the Board didn't want to be embarrassed by rolling out an agreement that the cities supposedly wanted only to have the thing backfire into a mess. I also made abundantly clear that if the city attorneys weren't willing to go forward and advocate for this agreement to their city councils, then we didn't want to roll it out into the public. That was the understanding we had in advancing the Governance Board proposal in the first place. If Eron couldn't operate on that understanding, then he shouldn't have agreed to it – before we rolled this out into the public eye.

While other city staff did what they said they would do and advocated for the proposal to their city councils, that clearly didn't happen in Sedro-Woolley. (In fact, quite the opposite, judging from the council packets.) Suffice to say, it is my view that your City Administrator did not deal with me in a forthright, above-board manner on this.

We all have our own interests to pursue. But this kind of gamesmanship is unacceptable. Whatever the case and whatever the explanation, it colors how I'm looking at this going forward. The expression comes to mind: Burn me once shame on you, burn me twice...

It is also troubling to me that much of the negative narrative is coming from Mr. Requa, who, in addition to apparently being the main spokesman for the Sedro-Woolley City Council on this matter, is Deluxe's permit and engineering consultant. I realize this is uncomfortable to talk about – Louie was clearly quite upset with me. But it is also obviously true. Mr. Requa's lengthy discussion about the CSWMP and a System/Operator Agreement for some "hypothetical" private entity at last week's city council meeting was, obviously, not so much a hypothetical. If I were Deluxe's permit consultant, I would be doing everything I could to hold up the County from making decisions. And, as it turns out, that is exactly what seems to be going on.

Mike, all I'm trying to communicate to you is that if we keep going on the present course, it is going to devolve into a tremendous litigation mess. It will be expensive for everyone (the System will pay the costs); and there is little good that will come of it. Obviously, while we are fighting over it for the next several years, nothing good will happen, and we'll get no game plan in place. The County simply cannot do what Deluxe is demanding, because, among other things, we would undoubtedly get sued by the other cities; you should also contemplate the effect of this (which will inevitably be couched as Cimarron Version 2) on the upcoming election season.

I think it is really important to "play the movie forward" to predict what is likely to happen. (In my experience, much controversy arises from the simple fact that two parties can't see a common path forward, nevermind the details.) In my estimation, playing this movie forward, one of two things is going to happen. Either:

1. We are all going to come together around the Governance Board proposal; look at our collective solid waste future and the cost of rebuilding the County-owned facility; invite private proposals in a way that obtains buy-in from the entire community; and then decide whether to either (a) finance new public infrastructure or (b) privatize;

OR

2. We will end up in lengthy and expensive litigation mess, pitting the County and the other cities against Deluxe and Sedro-Woolley (in one way or another, if not on the face of the pleadings). My office will likely withdraw from representing the County on this matter; the County will likely retain outside counsel (which the System will cover as a System cost); and Deluxe can make its various arguments to a judge why it believes we are obligated to hand over the Solid Waste System on terms and conditions Deluxe finds convenient. This will take years, and, obviously, the objectives you are trying to accomplish on behalf of Sedro-Woolley won't happen until this all sorted out. Litigation is one way to sort out these issues, but it is by far the least preferable or most efficient. By the way, this is exactly what happened in Whatcom County with RDS. McCarter ultimately prevailed up there because they simply didn't treat him in good faith. Here, we are bending over backwards to listen to them and consider them fairly in accordance with our code and the law, which is why Deluxe won't ultimately prevail down here on either the Cimarron litigation or any other theory.

Thinking it through, I really don't see any other general outcome to this, but if you do I would like to hear about it.

Finally, I just want to add that I fully believe that all of us (including Eron and you included) are acting in a manner that we believe to be best for the entities we represent. And please rest assured that I don't have any personal agenda other than to help structure a process that the entire community can get behind. Happy to discuss any of these issues in person, or by email.

Best Regards,

Will Honea
Chief Civil Deputy
Skagit County Prosecuting Attorney

From: Mike Anderson
Sent: Tuesday, February 19, 2008 10:26 AM
To: Will W. Honea
Subject: Don't use my name

Will,

I've been trying to keep civil here and positive with negotiations between the County and Sedro-Woolley. I don't make accusations about County leaders that are not true and I hope you would act fairly towards the City of Sedro-Woolley. Why do you keep putting my name and Eron's in e-mail transmissions making false statements? I know you presume we and Deluxe are working together (which we are not) but unless you know we are, I'd appreciate not being linked. This is not a court room where the attorneys are the only one's allowed to lie. The City is working on Deluxe's building permit just like we are doing on many others right now and I don't see you linking me or Eron with a John Pizza project or other projects that are in the permit process. Have you heard me promoting Deluxe or talking their line anywhere? I've been letting the process go thru our Planning and Building Department, at council meetings I have been not very vocal. I did mention I am concerned about City liability under the new Solid Waste Proposal and the voting structure but these issues I believe can be ironed out. Will,

2/25/2008

just because we bring up issues doesn't mean we are "getting whispered in our ears" by Mr. McCarter.

I think we are going to be working together on other projects in the future years and I'd appreciate the courtesy of not being put in such a negative light by presumption. Also, when I run into you in town or upriver I'd rather say "Hi" and feel like I mean it instead of pissed.

Sincerely, Mike Anderson

Eron Berg

From: Will W. Honea
Sent: Wednesday, February 13, 2008 4:08 PM
To: Eron Berg; Mike Anderson
Subject: FW: Solid Waste Settlement / Interlocal Modification
Attachments: settlement[1].doc

Eron / Mike

Folks around town keep telling they're hearing I've been unfair and aggressive with Deluxe, that I'm hostile to privatization, that I'm trying to kill your deal with Deluxe, etc., etc. I'm not entirely sure where that's coming from. But I'd really like to dispel that notion.

To that end, I am forwarding you my email discussions with Larry McCarter, so you can see for yourself what our conversations have been about, and the tone of those conversations. You won't find anything that aims to harm the Deluxe proposal, or any hostility to privatization whatsoever.

This email chain (start from the bottom) occurred after I met with Larry McCarter to talk about the Governance Board Interlocal. He then emailed me what would like to see inserted in the Governance Board Interlocal (attached) as the basis for a settlement of the Cimarron litigation. In a telephone call to Larry, I suggested that amending a region-wide interlocal to accommodate a particular business proposal was probably not a great idea, for reasons that likely need no explanation here.

In the last sentence of the attached MS Word document, Larry suggests that if the County were to adopt his proposed amendment to the Governance Board Interlocal, "with these changes you will get 100% approval for the interlocal changes."

I'm not entirely sure what would allow Larry to say this, but please understand this statement caused concerns, and, in no small measure, precipitated my rather terse email to you some two weeks ago.

I understand why Larry is downplaying the litigation in the public, but at the end of the day, though, please understand that Deluxe is, in fact, using litigation to force the County into giving them what they want. That necessarily puts me in an adversarial position as the County's attorney, and, when we get sued by someone, I aim to win.

On the other hand, I much prefer common sense outcomes to contentious litigation, particularly when we're talking about taxpayer dollars. And I really would like to see you guys raise revenue to fund your city, upgrade infrastructure, provide jobs, etc. Frustrating your good efforts most certainly isn't the idea here, and I'd be happy to help out in any way I can.

I look forward to seeing you tonight.

Best Regards,

Will Honea
Chief Civil Deputy
Skagit County Prosecuting Attorney

From: Will W. Honea
Sent: Tuesday, January 29, 2008 2:17 PM
To: 'Larry McCarter'

2/25/2008

Cc: Steve Snell; Michael B. Galletch; DonMunks
Subject: RE: Solid Waste Settlement / Interlocal Modification

Larry,

Thanks for the information about RDS' performance.

I don't intend to trade threats with you.

As to your description of the situation, I see you trying to make this fit your Whatcom County experience. But this is a different situation altogether. Here, Cimarron filed suit against the County under a contract, Deluxe acquired the rights to that contract, and you guys are making any settlement contingent on giving Deluxe a contract for the Sedro-Woolley site.

Cimarron (and thus Deluxe having acquired Cimarron's rights) is suing Skagit County, so I'm not sure where you're coming from saying "we prefer litigation" and so forth. In Whatcom County, they simply refused to privatize despite saying they would. Here, we are fully willing to consider privatizing as a path forward, just not on terms and conditions you dictate to us. I have no doubt that you successfully litigated your way into the business in Whatcom County, but under a quite different set of facts and circumstances. I'm simply suggesting that may not be the best approach here.

At the end of the day, you are saying "contract with me on terms and conditions that I want, and we can settle the Cimarron lawsuit." You can characterize this however you want, but the long and short of this is that the County is not under an obligation to give out a contract on terms that Deluxe finds financially advantageous. I find it a little difficult to believe that any court would disagree with me on this point.

There's no question that the Solid Waste System has had past financial problems (all of which was caused and took place many years ago), which is why it is so important to get it right whatever we do going forward.

Obviously, I've never said anything that would lead you to believe Deluxe will get the floor at all meetings about solid waste. If we're going to have a productive discussion, you need to quit putting words in my mouth. And you're mistaken if you think that beating you guys in court has anything to do with my ego. If this proceeds down the path of litigation, I will probably recommend turning this over to K&L Gates or some other Seattle firm, and the System will pick up the costs. If we can't work this out amicably, you probably won't be dealing with me at all.

My only interest is seeing our community develop a governance structure that allows long term certainty and predictability, with low rates and higher recycling the desired endstate. Doing this more or less rules out coming up with a solution through a litigation settlement on terms you dictate and then cramming it down the throats of the three largest cities in Skagit County, which is in essence what you want to happen.

All I'm saying is that if you focus on showing how you can help the community (1) avoid spending millions on a new transfer station, (2) increase recycling, and (3) decrease tipping rates, it is likely to go a lot farther than coming at this through litigation, however you are characterizing the litigation.

I would propose that Mike Galletch and you come meet with Don Munks (Chairman of the Board of Commissioners) and me in the next week or so to discuss how that might happen. Please give me a call to set something up (or have Mike Galletch call me).

Best Regards,

Will Honea

From: Larry Mccarter [mailto:rdslarry@mac.com]
Sent: Tuesday, January 29, 2008 6:57 AM
To: Will W. Honea

2/25/2008

Cc: Steve Snell

Subject: Re: Solid Waste Settlement / Interlocal Modification

Okay. Here are some simple statistics of where Whatcom was headed before RDS and where we are now.

Rates dropped \$25/ton the day RDS opened (mid/low \$70's) and have not moved since which equates to a \$2,500,000 tipping fee savings for the community every year and recycle rate at the transfer station went from 0% to 35% which equates to about 30,000 tons diverted every year!

Summary of ten years RDS operation: Savings = \$25,000,000 and 350,000 tons NOT landfilled!

I think it is useful to point out to you that using litigation as a stick or a tool to force advantage is not our plan. That's the County's plan. Our plan is to use the rights afforded us in the Skagit Code. County's attempts to change the code or the rules at this late date are transparent, unenforceable and with the back drop of the County's solid waste management performance, absurd. Whatcom County tried some hocus pocus to block me from my right to be in this unregulated business also. Whatcom County elected to use litigation. That strategy cost the County's lawyer's ego plus close to \$500,000 awarded to to me and my legal team.

Skagit County has a set of rules in place today, if Skagit elects to change the rules, then Skagit is choosing litigation not Deluxe (and Cimarron's case has nothing to do with this legal theory). Deluxe was invited by Skagit County staffers to come and do business in Skagit County after the RFP failed. We opted Cimarron for competitive reasons, not for a right to do business in Skagit. Nothing will change the chain of events that got us to where we are today. We are simply exercising our rights (our wits) and working towards something that is demonstrably good for the community. No one can deny the current system is in shambles. (I know what it costs to run a transfer station and so I know almost to the dollar how much cash the county is stripping - and I mean stripping). Whatcom County runs its entire solid waste system, including debt for \$8.50 ton and that is FAT! Skagit is at \$25/ton and that is cancerous.. (Whatcom County has just as many old landfills).

Regarding your thoughts about utilizing litigation as a strategy, you must know it was Whatcom County's idea to sue just as it seems to be Skagit's. I had a right under the then codified rules to open up in Whatcom County and the right to be included in Skagit's system is more plain and simple. All we want is to negotiate a System Operator's agreement that spells out how much per ton we need to pay into the system so that the basic governance matters are appropriately funded. We will maintain all of our permits and contribute to the health and vitality of a growing community/County. If Deluxe handles 90% of the waste stream, the County will still have the funds to man and operate Ovenall. The money the county needs, is not going anywhere. The money the County is wasting, (diverting to other departments) will be going back to the Community where it should have been going these last few months!

I appreciate and encourage the idea that Deluxe gets the floor at any and every meeting regarding Solid Waste. Knowledge is power for the decision makers. Please put us on your agendas! Also, the SWAC membership roster as spelled out in the Interlocal (still) does not match the intent of the State law. The committee is for the people not the governments.

If the County had negotiated with us from when we first asked, we would be open now. Time is, as always, of the essence. Our theme and belief is when we are finally open, Skagit County's *recycle rates will go up and the disposal rates will go down!*

2/25/2008

(Can you see me a copy of what ever "ER 408 Protected" means.)

On Jan 28, 2008 1:51 PM, Will W. Honea <willh@co.skagit.wa.us> wrote:

ER 408 PROTECTED

SETTLEMENT DISCUSSION

Steve / Larry,

Although we started off talking about the governance board and the interlocal, our communications started becoming settlement matters, i.e., I feel like we're swinging away from a discussion about a matter of general applicability in the County (the interlocal) toward the litigation issues (i.e., the proposed language you sent me Larry is couched as a potential settlement of the Cimarron litigation). As you probably know, I have an obligation to handle the litigation through your attorney per rules of professional conduct, and that isn't dependent on you guys' consent to talk to me without your attorney – the obligation is to Mike. Thus I'm going to be including Mike in the email loop here going forward.

Obviously my point is that the open process the governance board will provide is far preferable to litigation as a means of figuring out how to structure a solid waste system. I understand you guys have an outcome in mind. But we're not just talking about resolving a lawsuit; we're talking about, potentially, fundamentally re-making our County's solid waste system. Litigation will produce a sub-optimal result for everyone, you included.

You guys have some good ideas, and reportedly a good business track record up in Whatcom County, i.e., higher recycling and lower rates. While it doesn't directly tie to the litigation or the merits of the case, I think you need to keep in mind that the litigation outcome you're seeking (a system-operator agreement via settlement of Cimarron contract) immediately pits most of the cities and most of the populace against your proposal, as well as creating allegations that we've violated the existing interlocal. Thus, a likely outcome of a settlement on the terms you propose would be people running for office on the platform that the settlement never should've happened, pressure to sue to rescind any agreement after that happens, etc. etc. If I'm an investor or a bank, I wouldn't like financing that kind of uncertainty. So it seems to me that it would be in everyone's interest to focus on the good things you guys can potentially provide rather than the legal hammer you may or may not wield.

To wit, when I had lunch with Larry the other day to talk about the governance board and associated interlocal, Larry mentioned that RDS increased recycling and decreased rates in Whatcom County. Can you send me some form of summary document or graphic that demonstrates this? This is what people (cities, opinion leaders, etc.) want to know about Deluxe, not whether you have a good cause of action under the Cimarron lawsuit. Larry I know that you ultimately got your foot in the door up in Whatcom County through litigation and it ultimately worked out to being a profitable undertaking, but that doesn't mean it is the best strategy here.

The point here is that it would seem to make sense to me to stay the litigation again until the end of the year, and allow you guys the opportunity to make your pitch to this governance board, i.e., the entire community. This governance board is going to have to take a cold hard look at the realities going forward, and you guys may well start to look pretty attractive when compared to a \$8m+ new transfer station. If it doesn't work out, fine, you will still have your lawsuit, nothing lost. Perhaps it would be useful to get together with Mike Galletch and you in the near future to discuss this.

Will

-----Original Message-----

2/25/2008

From: Larry McCarter [mailto:rdsllarry@mac.com]
Sent: Wednesday, January 16, 2008 11:40 AM
To: Will W. Honea
Cc: Steve Snell
Subject: Solid Waste Settlement / Interlocal Modification

Will,

If you call any politician in Whatcom County, they will tell you Garbage was a painful, huge, big bad deal but today, the whatcom system is seamless and efficient. The attached interlocal amendment can be your tool to get all the city's on the same page with the controlled introduction of privatization. I hope you can see what I do in my proposal.

Larry McCarter
360-739-4843

Eron Berg

From: Will W. Honea
Sent: Monday, February 04, 2008 11:19 AM
To: Eron Berg
Subject: FW: Trash interlocal
Attachments: SVH Article Cities want power 08282007.pdf

Eron,

Welcome back from Hawaii. I hope we can put this solid waste discussion back on a good footing. As we've discussed, the Commissioners are more than willing to consider Deluxe's proposal or any other private proposal. There is absolutely no animus toward privatization or Deluxe, despite what I keep hearing and seeing in the newspaper from Sedro-Woolley folks. But it is going to have to be done out in the open, and with buy in from the other cities (read: >50% under the governance structure).

I've heard that Deluxe could be an anchor for other stuff, I know some of the guys who are looking around & are tired of the Port up north. Look, we want to help Sedro-Woolley's economic development plans. My friends and family are the blue collar guys that would benefit from these jobs. I can tell you that there is support from a majority of the Board for furthering Sedro-Woolley economic development plans, based on my conversations with them. But it isn't going to happen via the Cimarron litigation, or via the County cutting a deal on trash without buy-in from the cities. The whole point of this governance board exercise is to create a predictable buy-in mechanism, and finality to the decision-making. I presume you see the wisdom of this, since you were one of the first ones advocating for it.

Bottom line, if you want to make something happen you need to look not only at what your client needs, but also the needs of the other parties (e.g., the County), and try to accommodate them through a win-win solution. That's what we're prepared to talk about.

In furtherance of our discussion, I wanted to quickly revisit how we got here, from my perspective.

- Last summer you were one of the most strident voices advocating for a shared governance structure over solid waste. See attached SVH article dated August 28, 2007.
- Immediately after the attached article was published, I telephoned you to discuss how to move forward. I said that we could have a shared power structure so long as we could all share contingent liability. You said that wouldn't be a problem.
- Accordingly, I began drafting the Solid Waste System Governance Board (SWSGB) interlocal, in large measure in response to my telephone conversation with you and your assurances that shared governance and liability wouldn't be a problem.
- Before I presented the draft of the SWSGB agreement to the City Attorneys, I wanted to make sure that there would be broad support for the concept. I had lunch with Kevin Rogerson, Scott Thomas and you, and we discussed the SWSGB proposal. I made clear to all present that we (the County) were doing this for the cities' benefit and at the cities' insistence, but didn't want to proceed forward unless there was unanimous agreement that we needed to take an "all for one, one for all" approach to both governance and liability. I also recall making clear to you that if the cities weren't in broad agreement with this basic conceptual proposal then I wanted to know as we would not be advancing the proposal in the first place.
- When I presented the SWSGB agreement for comment, I again made clear that shared governance and liability were a precondition for going forward. See my email dated December 11, in which I wrote to you as follows:

The general concepts around which I would like to be able to represent we have agreement are these:

2/25/2008

1. *representation based on population*
2. *"all for one, one for all" approach to liability*

- There was never any disagreement to this. At no time during the drafting of the SWSGB agreement did you raise any concerns on behalf of Sedro-Woolley about shared liability as incorporated in the SWSGB agreement. See the below email chain.
- After the agreement was presented to the public at the January Municipalities Committee meeting, no one had any objections, so we collectively decided to begin the process of approval by individual entities.
- After the first Sedro-Woolley City Council meeting, I met with you to explain that there are two basic approaches to advancing the Deluxe proposal: either (a) the Cimarron litigation; or (b) the governance board, which would involve broad community consensus. I explained that the Cimarron litigation track was not an option, and that if the City of Sedro-Woolley continued facilitating same it would get ugly and inevitably involve the City. At the end of our meeting, I went away with the impression that you fully understood this and would effectively communicate same to your Mayor.
- The press reportage of the 2nd S-W City Council meeting made fairly clear that the objections with the SWSGB (as voiced by among others Louie Requa) are all about paving the way for the Deluxe proposal. We both know that to be the case in any event.

So here's where I'm coming from: You asked for this governance deal, and you assured me that shared liability wasn't a problem. On that basis, I advanced exactly what you asked for. I made clear in doing so that we didn't want to roll this out unless the cities were in basic agreement on the notion of an "all for one, one for all" approach to both governance and liability. You agreed with that. Now, after we've rolled out the proposal, you are asking for that which you've publically railed against, i.e., the County making solid waste decisions without city buy-in. I also see your Mayor and you trying to embarrass me in the press.

Please understand that anyone in their right mind would feel a little taken in here. Bottom line, I think I'm a pretty forthright guy. I will tell you the deal up-front, and I expect likewise.

With all this in mind, I'm looking forward to our meeting on Friday. I'm hoping for a clear explanation of your position and what you want to see happen such that both you and your Mayor can begin advocating for the SWSGB proposal (as opposed to undercutting it; yes, I read your council packets), and moving forward on that basis. As I've tried to explain, the other option will be unpleasant for all concerned.

Best Regards,

Will Honea
Chief Civil Deputy
Skagit County Prosecuting Attorney

From: Eron Berg
Sent: Wednesday, December 12, 2007 11:16 AM
To: Will W. Honea
Subject: RE: Trash interlocal

S-W's comments only at this point, though I have shared them with the others.

E

From: Will W. Honea

2/25/2008

Eron Berg

From: Will W. Honea
Sent: Friday, January 25, 2008 3:49 PM
To: Eron Berg
Cc: Mike Anderson; Sharon D. Dillon; KenDahlstedt; Gary Rowe; DonMunks; Richard A. Weyrich; James E. Voetberg
Subject: FW:

Attachments: 0125160536.pdf; panorama.pdf



0125160536.pdf
(282 KB)



panorama.pdf (536
KB)

Eron,

As an initial matter, allow me to apologize for the tone of my email yesterday to Mayor Anderson and you. Whatever the various parties' motivations, the frustration expressed in my email was inappropriate.

This email is an effort to further discuss the common MTCA liability issue.

As we've discussed, there are numerous sites around the County and in the cities where there was disposal of solid waste in the past. The cities and the County (and private businesses and citizens) variously disposed in and operated many of them.

We are not entirely certain which sites will require clean-up, because MTCA clean up is something initiated by Ecology. That being said, I don't think it makes sense for anyone to opine publicly about which sites we believe we are liable to clean up, whether Sedro-Woolley or the County. Suffice to say the Governor has made clean up of disposal sites a high priority.

These sites invoke joint and several liability, which you can explain to your council and mayor without my recounting it in this email. The bottom line is that joint and several liability as well as associated insurance coverage all but requires naming everyone as a contribution defendant who might possibly have disposed at the site in question.

In other words, it puts whatever municipality is named as a principally liable party in the position of suing everyone else to try to force them to come to the table with resources, and sorting out apportionment later. So, for example, the normal course of action for the County is to sue for contribution from anyone who might've disposed waste. But everyone is at the end of the day paying a whole army of lawyers and consultants.

In the recent article, Mr. Splane was quoted as asking why Sedro-Woolley should have to pay for sites where Sedro-Woolley didn't dispose, apparently referring to the Whitmarsh landfill. But Sedro-Woolley may in fact have liability at the Whitmarsh landfill, and very clearly has liability elsewhere.

As you can see from the relevant pages of the attached report on the Whitmarsh landfill attached, Sedro-Woolley appears to have disposed at the Whitmarsh site. Thus, there may be little option but to sue Sedro-Woolley for contribution, a decision that will in no small measure be impacted by the City Council's decision on the governance board proposal. (Clearly we would be suing Anacortes had they not signed on to the Solid Waste System Governance Board proposal, and linked themselves to the County in common cause against these potentially large clean-up costs.)

You should keep in mind that there are huge legal and consulting costs to in effect disprove liability even where one ends up having no actual liability in the end. That's the basic practical impact of joint and several liability, and that's why there has been so much criticism of the CERCLA (i.e., Superfund) and MTAC (the State Superfund Law) over the past years, i.e., it drags even parties with liability that isn't readily apparent into the net of litigation and forces them to spend large amounts of money dealing with

the issue.

On the other hand, these laws do certainly accomplish their objective: the mess actually gets cleaned up, one way or another.

Sedro-Woolley has other liability considerably beyond the Whitmarsh site. There are two sites within the city of Sedro Woolley, Bassett Road and Riverfront Park, for which Sedro-Woolley is probably a principal PLP. The County has been named for the Panorama dump site on Day Creek Road, and there is little question that Sedro-Woolley will be named as a contribution defendant (that is, unless we can arrive at a common agreement). See attached PDF.

As I said in previous emails and in our discussions, the point here is that no one really knows what is underground at these sites, what the extent of the liability is, what it will cost to clean up, who will ultimately be responsible, what we will be named to clean up by Ecology, etc. The point of setting things up where we work together through a single enterprise fund is to address and contain that risk and uncertainty.

But the long and short of it is that all the cities and the County are going to be embroiled in a litigation mess for many years over these issues unless we join together and present a united front against Ecology and the insurance companies involved. The only ones who will win are the attorneys, and the insurers who can divide and conquer.

If you have any further questions, please advise. I am planning to attend your Feb. 13 council meeting to further discuss.

Best Regards,

Will Honea
Chief Civil Deputy
Skagit County Prosecuting Attorney

Eron Berg

From: Will W. Honea
Sent: Thursday, January 24, 2008 5:49 PM
To: Eron Berg
Cc: 'fwhite@skagitvalleyherald.com'
Subject: RE: Solid Waste System Governance Board

Eron

My apologies I misread the article – I see that it was Tony Splane quoted on the cost issue. But I would've expected you to explain the issue.

WH

From: Will W. Honea
Sent: Thursday, January 24, 2008 5:45 PM
To: Eron Berg
Cc: 'fwhite@skagitvalleyherald.com'
Subject: RE: Solid Waste System Governance Board

Eron

Thanks for the questions. Here are my responses in text below. Since you have brought Ms. White into the discussion, I suggest we simply carbon copy her on our emails going forward.

Because we both know that the source of the objections lies with the Deluxe proposal, please understand that I'm having a really hard time not getting frustrated with the various new objections you keep raising, particularly since the proposal we've put out there is exactly what the cities have been agitating to obtain for many years.

Best Regards,

Will Honea

From: Eron Berg
Sent: Thursday, January 24, 2008 3:41 PM
To: Will W. Honea
Subject: RE: Solid Waste System Governance Board

Sure, the Council was interested in the following:

1. How many landfills are in Skagit County; how many need to be cleaned-up? We don't know, and the appropriate question is how many sites on which we (collectively) will be named as a potentially liable party. No one can know that. The Governor's Puget Sound initiative focuses on cleaning these things up. The point, as you and I have discussed extensively when we put this agreement together, is that all the municipalities disposed in many different locations, and when we have to clean them up it is far better if we are approaching them cooperatively. There is some reason to believe that Sedro-Woolley disposed of waste at the Whitmarsh landfill, and please understand that we are considering whether to name Sedro-Woolley as a contributing party. Obviously, you will be forced to hire outside counsel when that happens to defend the City. Multiply that times all the

different municipalities, and you have a pretty clear explanation as to why joining our fate together in a common approach makes sense. It seems clear that Sedro-Woolley disposed at the Panorama dump, another site on Ecology's upcoming hit list. I don't have a comprehensive list of all the dump sites, and the point of this proposal, as you are well aware, does not include a comprehensive study of all the potential sites in Skagit County where Sedro-Woolley might be conceivable liable, nor is anyone able to provide one. Honestly, I'm not really interested in performing a study for you as to all the sites where there is potential liability for your city. You need to make that assessment, based on something besides my say-so.

We are talking about contingent liabilities, and the question is whether our community will be better off if we address these questions together, or whether we devolve into a series of litigious messes every time Ecology points the finger at a dump site. I will try to provide a little bit more information at the meeting, but please understand that it is not my intention to try and provide a comprehensive discussion of all contingent liabilities, the word contingent being operative. No one is asking Sedro-Woolley to pay anything (contrary to what you were quoted as saying in today's article), but rather to join collectively to address contingent liabilities going forward. The fact of the matter is that you know all this, and it is really frustrating for me to see you simply throwing up successive new roadblocks. You and the city are going to have to decide whether you want to pursue a go-it-alone approach, or whether you intend to become part of a collective effort to keep down rates and minimize liability. I would submit that the former approach is not in anyone's interest.

2. Where are they located? See above.
3. What is the impact of the proposed SWSGB structure on potential future requests for privatization (compared to the current structure)? Currently, the cities simply have an advisory role, and under the current structure the decision whether to privatize rests with the County, although the current interlocal does seem to require actions be taken with the cities having an opportunity to weigh in. We are proposing to give the cities a direct voice, which is something that the cities have long agitated for. There is absolutely nothing in the SWSGB structure that precludes private proposals and privatization. We've discussed this at great length, so please understand my irritation at it continuing to come up.

Thanks for your help with this information.

Eron

From: Will W. Honea
Sent: Thursday, January 24, 2008 3:29 PM
To: Eron Berg
Cc: Mike Anderson; James E. Voetberg; Sharon D. Dillon
Subject: RE: Solid Waste System Governance Board

Also, if you have any specific issues related to liability or other issues, I'd like to get them a week or so in advance of the February 13 council meeting so I can coherently address them. I will be really, really unhappy if I show to the Council meeting for an ambush of issues I'm hearing for the first time.

WH

From: Will W. Honea

2/25/2008

Sent: Thursday, January 24, 2008 3:25 PM
To: Eron Berg
Cc: Mike Anderson; James E. Voetberg; Sharon D. Dillon
Subject: RE: Solid Waste System Governance Board

Eron

I'll be happy to show up and answer questions, but you are fully capable of answering them yourself were you actually motivated to do so.

I apologize for the tone of my email, but the games have to stop.

The course of action you are pursuing is going to end in a litigation mess, and you will get dragged into it. I like Larry McCarter personally, and I (and others) think his business model might well make sense. But it is also true he was involved in years of litigation up in Whatcom County before RDS started up, litigating his way into the garbage business. Your actions are pushing our community in that direction as well, something I think you are failing to appreciate. Taking an open and democratic approach to structuring the solid waste system makes a great deal of sense, and it is all we are trying to do by putting the governance board in place. It is more than a little surprising that you, of all people, are standing in the way of that.

As you are well aware, Cimarron is merely a front for Deluxe's interests in the litigation against the County, and they have subpoenaed both Commissioners Munks and Dahlstedt, to dig up personal information having nothing to do with the litigation, i.e., to try to pressure the Commissioners into giving Deluxe something the law won't allow and common sense dictates against.

It's hardly any secret that Larry McCarter is feeding you guys information and suggestions about how to structure the County garbage system to accommodate his plans, and there's hardly any secret that Mr. Requa's firm is going the permitting and engineering for Deluxe. I want you to understand that all of this will become highly relevant and highly public if the litigation goes forward, so there are no surprises, wounded feeling, etc. when that comes to pass as a result of your present course of action.

The County has 100% authority over the solid waste system as things sit. If the goal was to block the Deluxe proposal, why would the County be giving away power? Does that basic concept not register here?

WH

From: Eron Berg
Sent: Thursday, January 24, 2008 3:08 PM
To: Will W. Honea
Cc: Mike Anderson
Subject: RE: Solid Waste System Governance Board

Will,

Yes, please do come to our meeting on the 13th of February. I think the Council would like to hear directly from you on some of these issues.

I have not read the paper today so I do not know what they reported. I don't believe I have said anything that you would have any legal quarrels with and if that appears so in the paper please ask rather than assume.

Mayor Anderson and I will be happy to honor any lawful subpoenas or requests for information. I do not believe we are acting illegally or improperly. I don't appreciate your comments in that regard – they are not helpful to anyone.

Eron

2/25/2008

From: Will W. Honea
Sent: Thursday, January 24, 2008 3:00 PM
To: Eron Berg
Cc: Mike Anderson; James E. Voetberg; Sharon D. Dillon
Subject: Solid Waste System Governance Board

Eron,

I was unable to make the council meeting last night as I was dealing with FEMA flood mapping issues, i.e., attempting to protect, among other things, the community you live in and the community you work in from laboring under inappropriately high flood elevations.

Rather than thanks, we were greeted today with a newspaper article full of more bogus objections to the Solid Waste System Governance Board proposal. Each of the issues you are raising we discussed extensively before the agreement was presented at the January Municipalities Committee meeting. Mr. Requa insists in yesterday's Herald that we "get it right", but doesn't bother to explain what he sees as the problem. (I find this particularly troubling given Mr. Requa's financial entanglements with Deluxe and their proposal.) This is the first time you've raised the issue of liability as posing a problem, and, moreover, I've yet to hear any ideas about what should be done other than what we've proposed, now or back in December when we put this agreement together. Now, half the municipalities in the County have executed the agreement, and, as you are fully aware, it would be virtually impossible to go back and start making changes.

As I explained to you in great detail in December, we are seeking to wrap all MTCA liability into the System to avoid spending endless time, money and legal resources attempting to partition liability. It is totally false to represent to anyone that we're asking Sedro-Woolley to pay anything. If there are liabilities, we pay for them through the System, through appropriate rate-setting. It's extremely simple. There are numerous landfills around the County at which everyone disposed waste, and the inevitable MTCA fights those involve use up resources that would be far better spent attacking the problem directly and jointly, which also allows the community to present a united front with respect to Ecology, insurers, as well as other potentially liable parties. There is no good faith objection to the legal approach or substantive merits of the idea, and you've never raised any. It is of course conceivable you have concluded that Sedro-Woolley is likely to come out somehow marginally worse off by joining forces with the rest of the community on this issue, and I'd be happy to review the economic study that allows you make such a contention. Since it appears is no such analysis, I'm making the logical conclusion that this latest objection is simply another red herring designed to footdrag in an effort to do what you believe is necessary to protect the Deluxe proposal, into which you have sunk extensive City resources into accommodating Deluxe before they so much as submitted for a permit.

State law puts management of the solid waste system in the hands of the County, and your statements to the contrary are flat wrong. (You keep saying this in the newspaper, but have yet to offer a single word of legal authority for your assertions.)

As we both fully understand and have discussed on several occasions, the Cimarron / Ray Sizemore litigation against Skagit County is almost entirely driven by Deluxe / Larry McCarter, which explains why Deluxe was at the mediation with Cimarron last fall, running the show and dictating the terms of any potential settlement. (After the last several years of history around this issue, it is surprising indeed to see you getting into bed with Ray Sizemore.)

Bottom line, Deluxe is not going to get a contract, permit or anything else by using suing the County over the Cimarron agreement by proxy – which, as you and I have discussed at length, is the course of action you are promoting by trying to block the governance board proposal. And please rest assured that you and your Mayor's questionably extensive involvement in paving the way for Deluxe's proposal will become the subject of extensive subpoena and discovery should the Cimarron lawsuit proceed forward. It will become highly relevant the extent to which Mr. McCarter is whispering in your, Mayor Anderson's and Mr. Requa's ears about the manner and form in which the community's solid waste system should be structured and operated, and there is little question that is going on.

I'll say this again, because the message doesn't seem to be getting through: As someone who has considerably more experience in business than you, I can assure you that no one here at the County has anything

against private business or privatizing the System in whole or in part, and there is a great deal of willingness to discuss that as the path forward. Deluxe says it can reduce rates and increase recycling. If Deluxe advances a proposal demonstrating they can accomplish that, there is a high likelihood the community will buy off on it.

There is a great deal of willingness on the part of the County to consider and listen to the Deluxe proposal on its merits, in cooperation and conjunction with the County's municipal partners. But Sedro-Woolley isn't simply looking to dispose of its own waste at the Deluxe System: you are insisting that we agree to allow the entire undifferentiated waste stream from the unincorporated county to go to the Deluxe facility.

Sedro-Woolley is demanding the exact same thing that Ray Sizemore and Cimarron were demanding, a course of action that this community soundly rejected last year, something that Sedro-Woolley and you personally, if I recall, publicly opposed. The bottom line of what you are seeking is a pre-arranged decision that the County will agree to the Deluxe / Sedro-Woolley plan for the community's solid waste system. That simply isn't going to happen, and it is deeply troubling from the standpoint of good governance that Sedro-Woolley and you are demanding such a thing.

We are not interested in further "negotiating" anything, in part a recognition of the fact that you are simply throwing up roadblocks in a misguided attempt to kill the governance board proposal. There was a question raised about what will happen if Sedro-Woolley doesn't sign the agreement. If Sedro-Woolley doesn't plan on signing the governance board agreement, it simply means Sedro-Woolley won't have a vote in the upcoming decisions going forward, one of which will inevitably involve questions of privatization. Sedro-Woolley will, in any event, be expected to conform with its existing solid waste interlocal agreement until 2013 (which we will actively enforce), and Sedro-Woolley can then develop its own solid waste plan thereafter as it sees fit.

Let me know if you have any questions. If you would like me to come to the next council meeting to discuss and answer questions, I'll be happy to do so.

Best Regards,

Will Honea
Chief Civil Deputy
Skagit County Prosecuting Attorney

Sent: Wednesday, December 12, 2007 10:56 AM
To: Eron Berg
Cc: Mike Anderson; Sharon D. Dillon; James E. Voetberg
Subject: RE: Trash interlocal

Eron

Thanks for the comments, we're really excited about moving this issue forward as well. I'll get back to you on these ASAP. I doubt we'll be able to incorporate all your suggestions, but we can at least identify the non-issues vis a vis the issues for further discussion going forward after Sharon rolls this out next week. FYI – I got an email from Ian, he is just going to defer to Fred Buckenmeyer on the details so it seems like from a political standpoint Anacortes doesn't have a problem with the concept in general either.

So just to be clear: do the below comments reflect only Sedro-Woolley's views, or are you taking into account / incorporating others' comments as well? Wasn't quite sure, based on conversation Monday.

Will Honea
 Chief Civil Deputy
 Skagit County Prosecuting Attorney

From: Eron Berg
Sent: Wednesday, December 12, 2007 10:11 AM
To: Will W. Honea
Cc: Mike Anderson
Subject: Trash interlocal

Will,

Here are my preliminary thoughts on the proposed interlocal:

1. I believe the concept is good and want to communicate appreciation for following up on Sharon's idea;
2. 3.3 not sure what "matter" means at the end of the sentence;
3. 3.5 I would like to see the SWSGB identified and more involved in the system operations;
4. 3.5 not sure why we need to have any preplanned tipping fee increases – tipping fees should be set by the SWSGB and be based upon their long-range plan;
5. 3.6 would like to see the SWSGB more engaged in the big-picture management;
6. 4.0 solid waste comp plan should be reviewed/approved by the SWSGB;
7. 5.0 we don't like the delegation of authority to select our disposal site to the County. Sedro-Woolley wants to have a disposal site that we have access to in our city limits. This should be under the authority of the SWSGB at a minimum;
8. 8.0 term. Maybe OK to stick with this term during a trial period, but the ultimate solution to this situation would seem to require both a shift in management and an extension of time to allow for system improvements;
9. 10.2 is this now a technical committee - -should we structure it to do more or less;
10. 11.1 needs to include the annual operating budget at a minimum;
11. 11.2 not sure I am comfortable with this provision without being more confident in 11.1.1-11.1.5;
12. 11.5 want the SWSGB to have the right to extend its decision making without the Commissioners;
13. 11.6 would propose a mix of the House and Senate with 50% of votes distributed by entity and 50% by capita as the decision-making is very concentrated with straight per capita voting. Mount Vernon and Skagit County could do anything they like without buy-in from

everyone else;

14. 11.6 (#2) at a minimum would want a unanimous vote of the Commissioners and selection of an arbitrator by someone other than the County; interested in more detail about what the arbitrator would arbitrate;
15. Again, generally very positive about this development.

I think we should work diligently to take this proposal and adjust it to better fit the interests of the vast majority of trash customers and get it moving toward signature...

Thanks,

Eron

Eron M. Berg
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