



City Council Agenda Item

City Council Meeting Date: August 17, 2021

TO: Jim Throop, City Manager

FROM: Charles J. Berry, Utility Director
c_berry@ci.lompoc.ca.us

SUBJECT: Decision and Direction Regarding the Appeal by the Lompoc Artificial Kidney Center, LLC, of Waste Discharge Permit I-0013 and Utility Director's Ruling on Request for Reconsideration in Accordance with Lompoc Municipal Code, sections 1.32.010 and 13.16.130; Adoption of Resolution No. 6399(21)

Recommendation:

Staff recommends the City Council:

- 1) Hear the Lompoc Artificial Kidney Center, LLC (LAKC) owner's appeals of Waste Discharge Permit I-0013 and of the Utility Director's Rulings on Requests for Reconsideration; and
- 2) Adopt Resolution No. 6399(21) (Attachment 25) denying the appeal and upholding the Utility Director's decisions; or
- 3) Provide alternate direction.

Background:

At the September 3, 2019, and November 5, 2019, City Council meetings, the City Council heard an appeal (First Appeal) from LAKC of a ruling by the Utility Director determining LAKC must discontinue use of water softeners, take samples of its wastewater constituents and comply with a wastewater permit. LAKC filed the First Appeal contending its activities were more akin to domestic wastewater than commercial or industrial activities. With the consent of LAKC, the City Council suspended the processing of the First Appeal and directed staff to submit the following amendments to the Lompoc Municipal Code (LMC) chapter 13.16 to the US Environmental Protection Agency (EPA) for approval:

1. Amend the definition of domestic wastewater to include dialysate;
2. Amend the definition of industrial and infectious waste to exclude dialysate;

3. Allow the use of regenerative water softeners with an efficiency rating of at least 4,000 grains of hardness removed per pound of salt used in regeneration if used only (i) by any commercial or industrial uses and (ii) the user generates less than 5% of the total volume treated by the City's wastewater treatment plant;
4. When the Utility Director has discretion to require a wastewater permit, limit that discretion to only users discharging over 25,000 gallons of wastewater per day on average;
5. Exempt all medical facilities from any requirement to have a permit.¹

Those changes were submitted to the EPA. The City has received a response from the EPA, which is discussed below.

On March 2, 2021, the City issued another notice of violation (NOV-2) (Attachment 14). On March 16, 2021, LAKC filed a request for reconsideration of NOV-2 (Attachment 15). On March 30, 2021, the Utility Director denied that request (Attachment 16). That letter of denial included a request to consolidate the First Appeal with the anticipated appeal (Second Appeal) from LAKC of the denial of the request for reconsideration of NOV-2.

Because this is a continuation of the hearing on the First Appeal, and even though it also is being held to review the Second Appeal, much of the following background repeats information from previous staff reports regarding the First Appeal.

Information from 9/3/19 staff report regarding the First Appeal:

LMC section 13.16.160 states: "In accordance with this Article, permits for the use of the City's sewerage system shall be required of Class I users, Class II users, temporary users, and any other user discharging into or proposing to discharge into a City sewer shall obtain permits as required by [Utility] Director based upon the need to achieve the objectives set forth in Section 13.16.020 and to protect the public health and safety. Applications for permits under this Section shall be submitted as required by the [Utility] Director."

Select definitions identified in LMC subdivision 13.16.030 B. are as follows:

User means any person [or] entity contributing, causing, or permitting the contribution of wastewater to the wastewater system.

Class I user means any Industrial User who discharges 10,000 gallons per day (average annual daily flow) of process wastewater or is otherwise determined to be a Significant industrial user (SIU) as defined herein. Waste haulers, as defined herein, shall also be Class I users.

¹ The complete exemption for medical facilities was not submitted to EPA because the other changes that were submitted would define LAKC as a domestic use and only require a permit for industrial uses. Therefore, LAKC's prior attorney, Ian Guthrie, agreed a complete exemption for all medical facilities was not necessary.

Class II user means any user who discharges industrial wastes of less than 10,000 gallons per day (average annual daily flow) and whose discharge may:

- a. Contain unusual amounts of compatible pollutants, or
- b. Exceed applicable regulations, standards or limitations, or
- c. Contain incompatible pollutants, or
- d. Be judged to have any other special characteristics requiring site specific discharge limits.

Temporary user means any person or entity granted temporary permission by the [Utility] Director to discharge unpolluted water to the sewerage system, when no alternate method of disposal is reasonably available.

Industrial user (IU) means, generally, any discharger of industrial waste, or a source of indirect discharge.

Industrial waste means any solid, liquid or gaseous substance discharged or permitted to flow into a City sewer from any industrial, manufacturing, agricultural, commercial, or business establishment or process, or from the development, recovery, or processing of any natural resource.

Infectious waste includes human dialysis waste materials, including arterial lines and dialyzable membranes;

Significant industrial user (SIU) means any IU that:

- a. Is subject to Federal categorical pretreatment standards; or
- b. Discharges 25,000 gallons per day or more of process wastewater (average annual daily flow); or
- c. Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic loading capacity of the wastewater treatment plant; or
- d. Has a reasonable potential, in the opinion of the [Utility] Director, to adversely affect the wastewater treatment plant (e.g., cause interference, pass-through, or endangerment to employees of the wastewater system).

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into the wastewater system.

Pretreatment requirement means any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard, imposed on an IU.

National Pretreatment Standard (NPS) or pretreatment standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 USC 14347), which applies to IUs. NPS includes prohibitive discharge limits established pursuant to 40 CFR Part 403.5, and categorical standards specified in 40 CFR Parts 401-471.

Publicly owned treatment works (POTW) means a treatment works as defined by Section 212 of the Act, (33 USC Section 1292), including any sewers that convey wastewater to the POTW treatment plant, and any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature (see also wastewater system).

POTW treatment plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation of municipal sewage and industrial waste). (See also wastewater treatment plant.)

Public sewer means City sewer.

Domestic wastewater means wastewater from residences and other premises derived from personal use of water for washing or sanitary purposes.

The City has a POTW treatment plant with a design capacity of 5.5 million gallons per day (dry weather flow). The City is required to establish and implement a pretreatment program because the POTW treatment plant's design capacity exceeds 5.0 million gallons per day. In order to meet the requirements of the City's National Pollutant Discharge Elimination System (NPDES) Permit issued by the Central Coast Regional Water Quality Control Board (Water Board), the City is required to establish and implement a pretreatment program. The City's NPDES permit is expired. An application for a new permit was completed and accepted by the Water Board prior to the expiration of the current NPDES permit and an updated NPDES permit is expected to be issued in the near future. Per direction of the Water Board, salts have become an increasing concern for the POTW treatment plant, effluent limits for salts are expected to be lowered in the upcoming permit, and salts control in upstream users remain a priority for the POTW treatment plant.

As a POTW, the City's industrial waste pretreatment program was established to allow the POTW treatment plant to comply with effluent discharge requirements; to protect the public, the environment, POTW personnel, and POTW facilities from potentially harmful industrial wastes; and to ensure that industrial users (IUs) pay their fair share of treatment operations and maintenance costs. To achieve these objectives, in 1963 the City adopted the Wastewater Ordinance, which provides the legal authority to enforce the City's local requirements as well as all appropriate state and federal regulations. The POTW presently regulate an extensive and varied industrial base. The success of the City's industrial waste pretreatment program can be attributed to rigorous up-front permitting and pretreatment requirements, intensive and extensive field presence by the POTW's inspection staff and monitoring crews and aggressive enforcement actions for all violations.

The City's NPDES permit regulates the City's wastewater discharge of pollutants to waters of the United States; in the City's case; Miguelito Creek. As part of the City's NPDES permit, the City's pretreatment program goal is to protect the POTW's wastewater collection system, wastewater treatment plant and improve water quality by removing detrimental pollutants before entering the sewer system or treatment plant. Through the

City's pretreatment program, 8 Industrial users of varied industries are permitted and required to monitor sewage discharges and about 100 food service establishments are inspected on a regular schedule.

The City has recently received comments from the Water Board regarding its POTW and compliance with the NPDES permit. Some of those comments relate to the issues concerning salts and a salt mitigation program as a result of waste stream and naturally occurring salt loading being received and discharged by the POTW to the San Miguelito Creek and the requirement to reduce salts within the City's effluent.

As stated and shown in Attachment 24, LAKC has disconnected and said it will discontinue use of its water softener. At present, that system could be easily put back into use. This matter constitutes a substantial change in the waste stream, thereby representing an additional deficiency with respect to compliance of discharge permit I-0013. If indeed LAKC will no longer use that system, and it is verified by City as removed from operation, then that would resolve one of the issues regarding LAKC's non-compliant wastewater effluent. However, the appeal process does not preclude LAKC from complying with all provisions of discharge permit I-0013 during the course of the appeal and throughout the term of the permit. Additional outstanding deficiencies include the lack of a representative sampling point; installation of a flow and conductivity meter; and, ongoing self-monitoring, reporting record keeping and compliance with discharge permit I-0013.

If the Water Board finds the City in violation of the City's NPDES permit, then fines of up to \$6,000 per occurrence per day can be imposed against the City or against individual users. There could also be fines from EPA, as well as litigation from private parties alleging the City's non-compliance.

Following is a chronological summary of milestones, notices, correspondence and other events related to discussions between the City and LAKC:

- September 13, 2018: The City received an anonymous complaint about LAKC using large amounts of salt for their self-regenerating water softener. POTW staff visited LAKC and observed a large self-regenerating system in use.
- September 24, 2018: The City issued a "Notice of Violation – Enforcement Order" (NOV-1) to LAKC (Attachment 1). The Notice was sent via certified mail on September 25, 2018.
- October 3, 2018: A meeting was scheduled between staff of the City and LAKC for October 11, 2018, regarding NOV-1.
- October 5, 2018: LAKC delivered a letter to the City dated October 1, 2018, requesting an exemption from local water softening regulations (Attachment 2). The letter was forwarded to the City Attorney's Office. Due to the receipt of the letter, the October 11, 2018, meeting was cancelled.

August 17, 2021

LAKC Appeals

Page 6 of 15

- October 11, 2018: A response to LAKC's October 5 letter was finalized and sent to LAKC dated October 16, 2018 (Attachment 3).
- November 1, 2018: Mayor Lingl received a letter from LAKC requesting a medical exemption in LAKC's favor (Attachment 4).
- November 15, 2018: Mayor Lingl responded to LAKC's November 1, 2018, letter (Attachment 5).
- November 28, 2018: Staff from the City and LAKC met to discuss the Survey for Wastewater Discharge Permit needed to establish parameters for an IU permit.
- January 30, 2019: City and LAKC staff met at 1:30 at City Hall to discuss LAKC's NOV-1 and self-regenerating water softener. In addition to City staff, Councilmember Vega and Utility Commissioner Linn also were in attendance.
- March 13, 2019: City staff obtained additional information from LAKC staff needed to issue the IU permit.
- April 8, 2019: City staff contacted LAKC staff regarding the determination that there is no exemption for water softeners installed before the year 2000.
- May 7, 2019: City staff contacted LAKC staff and advised that the IU permit was ready to be issued.
- May 8, 2019: City staff delivered a corrected IU permit to LAKC staff (Attachment 6).
- May 13, 2019: The City received a message from LAKC (Attachment 7).
- May 20, 2019: Ian Guthrie, attorney for LAKC, contacted City staff to request information on the City's appeal process and other items related to the permit.
- May 29, 2019: LAKC delivered a Request for Consideration to the City (Attachment 8).
- June 18, 2019: The City issued a Ruling on Request for Reconsideration to LAKC (Attachment 9).
- June 25, 2019: City and LAKC staff met regarding the Ruling on Request for Reconsideration.
- June 27, 2019: The City issued a Revised and Reissued Ruling on Request for Reconsideration to LAKC (Attachment 10).

August 17, 2021

LAKC Appeals

Page 7 of 15

- July 12, 2019: Ian Guthrie, attorney for LAKC, issued a letter to the City, on behalf of LAKC, requesting an appeal of Wastewater Permit I-0013 and the Revised and Reissued Ruling on Request for Reconsideration to the City Clerk (Attachment 11).
- July 19, 2019: The City Clerk issued a letter to LAKC setting September 3, 2019, as the appeal date to the City Council of the Wastewater Permit I-0013 and the Revised and Reissued Ruling on Request for Reconsideration to the City Clerk (Attachment 12).

Discussion:

Following is a continuation of the chronology of events following the 9/3/19 staff report quoted above:

- November 24, 2020: The proposed changes to LMC Chapter 13.16 regarding human dialysis waste materials were submitted to EPA/Water Board.
- March 2, 2021: EPA disapproved the proposed changes to LMC chapter 13.16 (Attachment 13).
- March 2, 2021: The City issued another notice of violation (NOV-2) (Attachment 14).
- March 16, 2021: LAKC filed a request for reconsideration of NOV-2 (Attachment 15).
- March 30, 2021: The City Clerk issued a letter to LAKC setting April 20, 2021, as the date the City Council would hear the stayed appeal of NOV-1 (Attachment 16).
- March 30, 2021: The Utility Director denied LAKC's request for reconsideration of NOV-2 (Attachment 17). That letter of denial included a request to consolidate the First Appeal with the Second Appeal from LAKC for the denial of the request for reconsideration of NOV-2.
- April 6, 2021: LAKC's letter agreeing to consolidation (Attachment 18).
- April 14, 2021: Email from LAKC's attorney requesting postponement of the appeal hearing (Attachment 19).
- April 15, 2021: Email from the Utility Director to LAKC's attorney agreeing to postponement and setting criteria for rescheduling of appeal hearing (see Attachment 19).
- May 6, 2021: The City Clerk issued a letter to LAKC setting May 18, 2021, as the date the City Council would hear the stayed appeal of NOV-1 (Attachment 20).

August 17, 2021

LAKC Appeals

Page 8 of 15

- May 14, 2021: Email from the Utility Director to LAKC's attorney agreeing to another postponement and setting criteria for rescheduling of the appeal hearing and related clarifying emails between LAKC and the City's attorneys as to the date for that rescheduled hearing (see Attachment 21).
- June 7, 2021: Email from LAKC's attorney responding to the Utility Director's May 14, 2021, email and follow up emails from LAKC's attorney and the Utility Director (see Attachment 22).
- July 8, 2021, Email from the Utility Director to LAKC's attorney further responding to LAKC's attorney's email of June 7, 2021 (see Attachment 23).
- July 26, 2021: Email from LAKC's attorney responding to the Utility Director's July 8, 2021, email (see Attachment 24).

The First Appeal includes several points LAKC desires the City Council to consider and take action on. Many of those points are also applicable to the Second Appeal. Some of them are no longer pertinent, as a result of the EPA's disapproval of the changes to LMC Chapter 13.16 relating to dialysis operations. They are still included to be sure the administrative records for both appeals are complete.

First Appeal Requests and Responses:

A. Amend the Ordinance to Clarify Dialysate is Not Infectious Waste

Response to LAKC's Requested Action:

The Revised and Reissued Ruling on Request for Reconsideration includes the following:

“Discharge of Infectious Wastes to the Sanitary Sewer: The Kidney Center discharges human dialysis waste materials to the City sanitary sewer system. Such wastes, defined as *infectious waste* per LMC, subdivision 13.16.030. B, are prohibited from discharge from a medical facility to the public sewer by any means (LMC, subdivision 13.16.280 A). Further, LMC, subdivision 13.16.280. B requires infectious waste generated by medical facilities shall be handled in accordance with applicable provisions of California Code of Regulations, Title 22, as amended, and Article V of Chapter 18 of the Santa Barbara County Code, and the applicable provisions of that Chapter.”

“If the Kidney Center requests the City Council to amend LMC, subdivision 13.16.030 B. to exclude human dialysis waste materials from the definition of Infectious waste, then the City Manager and Utility Director will support that request. The Utility Director shall also seek the necessary and required approval from the Water Board for approval of that change.”

- B. Find the LAKC Generates Domestic Wastewater and is not a Discharger of Industrial Waste or an Industrial User

Response to LAKC's Requested Action:

The City Council should not make a finding that is inconsistent with the current language in the LMC. The City Council cannot reasonably approve LAKC's request to be designated a domestic user, and not a discharger of industrial waste or designated an industrial user, for the following reasons:

LAKC's wastewater is not domestic wastewater because its dialysis wastes are generated from commercial, rather than personal uses (i.e., dialysis performed at a residence for a private individual) and it does not meet the definition at LMC 13.16.030. That dialysis waste also meets the express definition of industrial waste found in LMC subdivision 13.16.030 B. Therefore, LAKC's wastewater qualifies as industrial waste and must be regulated accordingly. LAKC's status as a Class I or Class II user will be determined pending results of representative sampling of the facility's waste stream. In the meantime, given the results of initial testing and the considerable salts load contributed by this single user, the City has elected a conservative approach to protect the POTW, both the collection system and POTW treatment plant, by regulating the facility as a Class I user, particularly in light of the fact that the facility has already derived considerable economic benefit from not being properly evaluated or regulated since it began operation in 1997.

- C. Find LAKC is not a Class I or II Industrial User

Response to LAKC's Requested Action:

The City Council should not make a finding that is inconsistent with the LMC. The City Council cannot reasonably approve LAKC's request to be designated a domestic user, and not a discharger of industrial waste or designated an Industrial User, for the reasons stated in the response to B., above:

- D. Revoke Wastewater Permit I-0013

Response to LAKC's Requested Action:

Because the facility has not yet provided all the information required for a complete Survey for Wastewater Discharge Permit form, the wastewater permit application, which is used to characterize the waste discharged into the City sewer, neither the Director nor the City Council can, at this time, reasonably countermand the decision requiring the issued permit. In addition, the responses in B. and C. above identify findings of fact for LAKC to be classified as a Class I Industrial User, necessitating LAKC be permitted.

Once LAKC's discharge point samples and testing data are available and a representative period of results indicate LAKC's discharge amounts are below the City's NPDES permitted limits for receiving water quality standards, then the City can use that data to determine whether the Wastewater Discharge Permit is required based on empirical facts.

The Utility Director outlined a path to rescind LAKC's Wastewater Permit I-0013 requirements in the Revised and Reissued Ruling on Request for Reconsideration that bring together pretreatment inspections and requests by LAKC. The Revised Ruling offers two alternatives for removing LAKC's permit requirements, Alternative 1 and Alternative 2 (see Attachment 10).

In addition to City inspections, the EPA inspected LAKC on April 25, 2019. The EPA Region 9 Enforcement Division conducted its Industrial User Inspection at LAKC, and reported (in Section IV of report at Attachment 13) three areas of concern:

- Wastewater samples for self-monitoring and compliance monitoring must be collected at a location that is representative of all the facility's wastewater streams described in Section II.2 above [in the report]. The sampling should be representative of normal work cycles and expected discharges to the Lompoc Regional WRP.
- The facility has been designated and permitted as a significant industrial user and must comply with all the requirements of its wastewater discharge permit.
- The initial sampling of the facility wastewater had a chloride concentration more than three times the allowable limit and a sodium concentration almost twice the allowable limit.

There is an expectation from the EPA Enforcement Division LAKC will comply with its permit. Even with the current inspection report, LAKC must only comply with the Revised and Reissued Ruling on Request for Reconsideration and show data below permit limits over a period of time for the Utility Director to be able to remove LAKC from permit requirements.

POTW or IU noncompliance can result in the Water Board (the Approval Authority) enforcing directly against the IU, the POTW, or both. The Water Board routinely reviews the overall performance of a POTW in monitoring IUs, identifying violations, and enforcing regulations. Performance will be evaluated on the basis of POTW self-monitoring data, written Enforcement Response Plans, audits, inspections, and pretreatment program reports (including IU self-monitoring reports and other data). Therefore, it is essential for POTWs to effectively manage program information to demonstrate proper implementation.

E. Find LAKC's Current Softener Does Not Violate LMC 13.16.320

Response to LAKC's Requested Action:

LAKC's water softener is not legal in the City. The City's water softener ban incorporates by reference from the California Health and Safety Code (HSC) the numeric criteria and performance standards for residential water softeners. Even if those performance standards do apply to LAKC's non-residential water softener, then LAKC's water softener does not meet those standards specified in HSC 116790. The upgrades proposed by LAKC to the water softener would enable LAKC to come into compliance with the current requirements for water softeners in the City's service area; however, installation of such equipment has no bearing on the need for a wastewater permit and the obligation to meet discharge requirements.

The City's NPDES permit is expired. An application for a new permit was completed and accepted by the Water Board prior to the expiration of the current NPDES permit. An updated NPDES permit is expected to be issued in the near future. Per direction of the Water Board, salts have become an increasing concern for the POTW treatment plant. Effluent limits for salts are expected to be lowered in the upcoming permit, and salts control in upstream users remain a priority for the POTW treatment plant. Given that representative data is not yet available from LAKC of its waste stream, the facility remains a high priority for source control to ensure that its salts contribution does not exceed effluent limits for these parameters.

F. Find an Upgraded Softener is a Salt Remediation Measure Allowed Under the LMC and Complies with LMC 13.16.230

Response to LAKC's Requested Action:

LAKC's existing water softener is not legal in the City. See the response to E., above.

G. Find No Installation of Monitoring Equipment or Reporting is Required

Response to LAKC's Requested Action:

The City has the authority to require monitoring facilities per LMC subsection 13.16.390 A, which states:

The Director may require any user to provide, operate, and maintain at user's expense flow monitoring, process monitoring, and/or sampling facilities. Upon notification from the [Utility] Director, the user shall provide, operate and maintain such facilities in accordance with Section 13.16.350 of this Chapter.

As mentioned above, under LMC Section 13.16.030 Definitions and Abbreviations, a “User” is “any person [or] entity contributing, causing, or permitting the contribution of wastewater to the wastewater system.” As such, the Utility Director has the authority to require installation of monitoring facilities.

To even be considered for authorization to discharge into the sanitary sewer per LMC Section 13.16.160, “any other user discharging into or proposing to discharge into a City sewer shall obtain permits as required by [Utility] Director” and must submit a permit application and any additional information requested by the Utility Director (LMC 13.16.170). Therefore the Utility Director has the authority to request any manner of reporting or other information to determine whether a user’s waste can be accepted for discharge into the collection system and treatment plan, and whether and how that discharge must be permitted. LAKC has not yet submitted all the permit application information required.

Furthermore, once the Director determines that treatment is needed, the Director has the authority to condition discharge authorizations according to the proper installation and operations of said treatment under LMC Section 13.16.350. When the Director determines it is necessary to modify or eliminate wastes or portions of wastes in order to comply with the LMC, the user shall provide, operate, and maintain continuously in satisfactory and effective operation at user’s expense such pretreatment or processing facilities as may be necessary to ensure compliance with the LMC.

The First Appeal includes subsequent informational sections, in addition to the above requested and responded-to points. Following are additional responses (using the First Appeal letter’s numbering system for reference) to the information sections of the July 12, 2019, response from LAKC:

IV, The City’s NPDES Wastewater Permit

Response to LAKC’s Request for Appeal:

The City’s NPDES permit is expired and a timely application for an updated permit was submitted to the Water Board. An updated permit is expected to be issued in the near future. Per direction of the Water Board, salts have become an increasing concern for the POTW treatment plant, effluent limits for salts are expected to be lowered in the upcoming permit, and salts control in upstream users remain a priority for the POTW treatment plant. Given representative data are not yet available from LAKC of its waste stream, the facility remains a high priority for source control to ensure that its salts contribution does not exceed effluent limits for those parameters.

- V. LAKC Generates Domestic Wastewater Rather than Industrial Waste and is Therefore Exempt from Permitting

Response to LAKC's Request for Appeal:

For the City's response, please refer to the City's response to LAKC's requested action item B, above.

- VI. The LAKC's Current Water Softener is Legal but it will Voluntar[ily] Upgrade it if the City Agrees that no Wastewater Permit is Necessary

Response to LAKC's Request for Appeal:

For the City's response, please refer to the City's response to LAKC's requested action item E, above.

- VII. Dialysate is not Infectious Waste and the Ordinance Should be Amended to Clarify This

Response to LAKC's Request for Appeal:

For the City's response, please refer to the City's response to LAKC's requested action item A, above.

- VIII. The City Cannot Require the Kidney LAKC to install Monitoring Meters and Provide Reports

Response to LAKC's Request for Appeal:

For the City's response, please refer to the City's response to LAKC's requested action item G, above.

Second Appeal Request and Response:

Request: LAKC claims NOV-2 is premature due to enforcement of Wastewater Discharge Permit I-0013 being suspended and requests NOV-2 be vacated.

Response: On November 5, 2019, the City Council stayed (suspended) the First Appeal until staff (i) submitted to the EPA/Water Board changes to the regulations for dialysis operations set forth in LMC chapter 13.16 and (ii) received a response to those changes. Those changes were submitted to EPA/Water Board on November 24, 2020; and, on March 2, 2021, the City received disapproval of them by EPA (Attachment 13).

Fiscal Impact:

If the City Council directs staff to rescind the Wastewater Discharge Permit I-0013 without empirical factual evidence, then the City increases the risk the Water Board could fine the City, the City and LAKC, or LAKC. Administrative fines can be \$6,000 per day. If the City

Council upholds the decision, then LAKC will likely experience additional capital costs and operational costs in compliance with the language of Waste Discharge Permit I-0013.

Conclusion:

Because LAKC did not meet the criteria set out in Attachment 23 for not conducting the continued hearing on LAKC's appeals and, as clearly stated in Attachment 23, that hearing has been scheduled for this meeting. If the City Council does not uphold the Utility Director's decision, then that could expose the City to unnecessary costs, and unknown, but potentially significant, long-term liabilities and findings the City is not in compliance with its NPDES permit.

Respectfully submitted,

Charles J. Berry, Utility Director

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Jim Throop, City Manager

- Attachments:
- 1) NOV-1 dated September 24, 2018
 - 2) LAKC letter dated October 1, 2018
 - 3) City's Response Letter dated October 16, 2018
 - 4) LAKC Letter to Mayor Lingl dated November 1, 2018
 - 5) Mayor Lingl's Response dated November 15, 2018
 - 6) Corrected IU Permit dated May 8, 2019
 - 7) Message from LAKC dated May 13, 2019
 - 8) LAKC's Request for Consideration dated May 29, 2019
 - 9) Ruling on Request for Reconsideration dated June 18, 2019
 - 10) Revised and Reissued Ruling dated June 27, 2019
 - 11) LAKC's Appeal dated July 12, 2019
 - 12) Notice of Hearing dated July 19, 2019
 - 13) EPA Letter disapproving LAKC-related Amendments to LMC Chapter 13.16 dated March 2, 2021
 - 14) NOV-2 dated March 2, 2021
 - 15) LAKC's Request for Reconsideration dated March 16, 2021
 - 16) Ruling on Request for Reconsideration and Consolidation of Appeals dated March 30, 2021
 - 17) Notice of Hearing on Appeal dated March 30, 2021
 - 18) LAKC's Agreement for Consolidation dated April 6, 2021
 - 19) LAKC email requesting postponement of appeal hearing dated April 14, 2021, AND Email from Utility Director agreeing to postponement and setting criteria for rescheduling the hearing date April 15, 2021

August 17, 2021

LAKC Appeals

Page 15 of 15

- 20) Notice of Hearing on Appeal dated May 6, 2021
- 21) Email from the Utility Director agreeing to another postponement and setting criteria for rescheduling of the appeal hearing and related clarifying emails between LAKC and the City's attorneys as to the date for that rescheduled hearing
- 22) LAKC email responding to Attachment 21 and follow up emails from LAKC's attorney and the Utility Director
- 23) Utility Director email further responding to Attachment 21
- 24) LAKC email responding to Attachment 23
- 25) Resolution No. 6399(21) Denying LAKC's Appeals