Opinion: STPUD clarifies franchise issues

By Richard Solbrig

I would like to provide information to clarify portions of ***Lake Tahoe News'*** **Sept. 2** article on franchise agreements and provide some additional information that was not available when we spoke prior to my meeting with the city on Aug. 31.

The article commences with a reference to "since early summer." This is in reference to a memorandum of understanding (MOU) between the city and district concerning water issues, which in various versions has been in place for most of the city's 50-year history. A basic tenet of the agreement has been a defined quantity of water provided to the city at no charge. Sewer charges have never been involved. Over the years, other services and fee waivers have been exchanged between the two agencies. The most recent MOU, which expired July 15, 2015, stipulated that the district would not pay encroachment permit fees in exchange for a quantity of water (2,500,000 cubic feet per year). At current rates for water ($1.28/100 cubic feet), this equates to $32,000, not the $100,000 stated in the article. This was the maximum amount saved, if the city utilized the whole allotment, which occurred three out of the last five years.

In exchange for the water, the district did not pay for encroachment fees on projects located within the city right-of-way, but continued to be subject to repaving and traffic control requirements of the city. The city's current encroachment fee is equal to 1 1/2 percent of the construction cost of water main replacement type projects. This results in a $15,000 encroachment fee for each $1 million spent on projects within the city's right-of-way. Thus, the total saved by the district was based upon the actual projects done.

Projections based upon the district's 10-year capital improvement programs resulted in a fairly even trade of waived costs over the life of the MOU. The city and district mutually agreed to not renew the MOU, based upon transparency, accounting and administration considerations. The city now pays for all water used, and the district pays for encroachment permit fees.

The district was informed several months ago, at the end of a discussion concerning the water MOU referred to above, that the city was considering a Franchise Ordinance for utilities. The district's only comment at that time was that we questioned its applicability to a "public utility district." The conversation lasted approximately five minutes. The city indicated that they would provide us with further information on the subject and we indicated that the city's attorney could contact the district's attorney if he had any questions.

No further dialogue concerning franchise agreements occurred between the city and the district until a meeting on Aug. 31. On Aug. 31 the district received a verbal proposal for a 20-year franchise agreement between the city and the district for a 2 percent fee. The 2 percent fee would be applied to the water and sewer service charges for the district's customers located within the city limits. At that rate, that would equate to approximately $300,000 per year, not the $500,000 stated in the article. These types of discrepancies are the basis of why I refrain from speculating on important topics.

At the meeting the city also provided a draft general Franchise Ordinance for all utilities and a copy of a franchise agreement between the city and a private water company from 50 years ago, but nothing specific to the district.

The district's preliminary research, performed in the past few days, indicates that a city cannot impose a franchise fee on a special district for facilities in the public right-of-way.

Under the Public Utility Code of California, the publicly owned utility districts are granted the specific right to have their facilities in the public right-of-way. This principle is so universally accepted in California that the district cannot identify a single “publicly owned” utility district that has a franchise agreement with a city, county, or the state of California. This includes the supposed examples offered by the city at our meeting. Even the franchise agreement the city had with a small water company, which was purchased by the district in the 1970s, included language stating that if the water company were purchased by a public entity (state of California, or some municipal or public corporation), that the franchise agreement would expire.

We agree that the city has the right to have a Franchise Ordinance, as you indicated in your article. They have had, and will continue to have, franchise agreements per the ordinance, with all the non-publicly owned utilities – electric, gas, water, etc., as do most other cities and counties in California.

Richard Solbrig is general manager of South Tahoe Public Utility District.