IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

TOWN OF COULEE DAM, a Washington noncharter code city, Plaintiff, v. TOWN OF ELMER CITY, a Washington town, Defendant.	NO. COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff Town of Coulee Dam ("Coulee Dam"), by and through its attorneys of record, Ronald A. Van Wert and Megan C. Clark of Etter, McMahon, Lamberson, Van Wert & Oreskovich, P.C., alleges as follows against Defendant Town of Elmer City ("Elmer City").

I. PARTIES

1. Coulee Dam is a Washington noncharter code city located in Okanogan County as well as in Grant County and Douglas County.

2. Elmer City is a Washington town located in Okanogan County.

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II. JURISDICTION AND VENUE

3. Jurisdiction is proper in Okanogan County Superior Court because Coulee Dam and Elmer City are located in Okanogan County, and the operative acts, omissions, and damages alleged in this Complaint occurred in Okanogan County, Washington.

4. Venue is proper in Okanogan County Superior Court because Coulee Dam and Elmer City are located in Okanogan County.

III. OPERATIVE FACTS

5. In September 1974, two alternatives for the treatment of Elmer City's sewage were evaluated: (1) a treatment plant constructed in Elmer City and (2) a regional treatment plant at Coulee Dam. Alternative 2 was chosen, resulting in modifications to the existing Coulee Dam treatment plant to accommodate the treatment and disposal of the additional sewage received from Elmer City per environmental and water quality standards.

6. Effective January 1, 1975, Coulee Dam and Elmer City entered into a fifty (50) year Agreement for Joint Operation and Utilization of Sewage Disposal Facilities ("Agreement"). Exhibit 1 hereto.

7. Pursuant to the Agreement, Coulee Dam provided treatment to and disposal of Elmer City's sewage.

8. No separate entity was created to implement the Agreement. Where joint action was required by the Agreement, each municipality would be represented by their respective mayor.

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9. Coulee Dam was and continues to operate and maintain the treatment plant, which is owned solely by Coulee Dam.

10. Elmer City remained responsible for its system and the sewage through it until the sewage was delivered to Coulee Dam's treatment plant.

11. Elmer City remained responsible for the volume of sewage and charges assessed to its users. By the Agreement, Coulee Dam only had to transact with Elmer City for the disposal of Elmer City's sewage and the cost thereof.

12. Per the Agreement, Coulee Dam established and maintained a separate accounting for the cost and operation of the treatment plan.

13. Under the Agreement, the following constituted operation and maintenance costs for the treatment plant

    a. All labor incidental to operating the plant, including, but not limited to, supervision, laboratory testing, sludge removal, maintenance, and fringe benefits.

    b. Repair and replacement of parts, machinery, and equipment for the plant.

    c. Chlorine and all other chemicals and products needed for operation and testing.

    d. Utilities, including heat, electricity, water and communications.

    e. Operator and Supervisor Training and manuals.

    f. Depreciation and replacement according to approved municipal accounting standards.

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g. Amortization of debts, including interest.

h. Overhead, including, but not limited to, transportation, insurance, office expenses, and taxes.

14. Per the Agreement, Coulee Dam and Elmer City were each required to maintain a flow measuring device to record sewage flows generated by each municipality.

15. The Agreement required that all costs of operation and maintenance were paid for by each municipality based on its proportion of the flow generated by each.

16. Coulee Dam was responsible for administering the treatment plant and keeping all records pertaining to the flow rates and proportional share of the costs of operation and maintenance. Coulee Dam was further responsible for invoicing Elmer City every 3 months in accordance with Elmer City's proportional share.

17. Each municipality was responsible for setting its own rates for gathering and disposing of sewage in amounts adequate to pay its share of the costs for operation and maintenance.

18. Regarding improvements and modification necessary for the continued operation of the treatment plant in accordance with environmental and water standards, the Agreement expressly states the following:

> In event it becomes necessary to make subsequent enlargements, improvements, replacements and modifications to Coulee Dam sewage disposal facilities during the period of this agreement, the respective towns shall pay the costs thereof in proportion to the flow generated by each town for the year prior to the determination to incur such costs; provided, however, if such construction is required by anticipated changed requirements by either or both of

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the towns, then consideration shall be given to the proportion of use anticipated by such new requirements.

19. Since January 1975, Coulee Dam has treated and disposed of Elmer City's sewage. Elmer City collects sewage from Elmer City, Lone Pine, Riverview, and Grandview areas, which include communities within the Colville Tribes Reservation. Collected sewage is pumped from Elmer City's lift station to the Coulee Dam treatment plant.

20. Elmer City's initial lift station was constructed in 1976 and consisted of a duplex pump system that discharged to an 8" diameter force main approximately 2 miles long that discharged to the Coulee Dam treatment plant.

21. In 2004, Coulee Dam began evaluating options for upgrading the treatment plant. A Wastewater Treatment Facility Report by the engineering firm of Gray & Osbourne was prepared in December 2004. In April 2009, Coulee Dam requested that Gray & Osbourne update the 2004 report. In June 2010, Gray & Osbourne presented the results of the updated study in a joint meeting with the Coulee Dam Council and the Elmer City Council. A Wastewater Treatment Facility Capital Improvement Plan was then prepared by Gray & Osbourne in February 2011.

22. On June 28, 2012, the Department of Ecology committed a Washington State Clean Water Pollution Control Revolving Fund loan (# L1200030) of $4,992,000 at 2.6% interest to Coulee Dam for wastewater treatment facility improvements.

23. In February 2013, David Dunn, PE (professional engineer) with the Department of Ecology provided a presentation on Value Engineering to the Coulee Dam Council to

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assist in moving the wastewater treatment project forward. Regarding the most effective way to improve the wastewater treatment plant, Mr. Dunn assumed a rebuild project at the current location. Mr. Dunn advised the Council to use the Department of Ecology funds for the most cost-effective project; thereby providing the best option for the environment and the communities served.

24. On February 27, 2013, representatives of Gray & Osbourne appeared before the Coulee Dam Council to present on the wastewater treatment project. Gray & Osbourne noted that a separate facility for Elmer City as well as replacing the existing Coulee Dam treatment plant were alternatives recently raised for the first time in the planning of the wastewater facility improvement project. Gray & Osbourne listed improvements needed to the existing Coulee Dam treatment plant. Gray & Osbourne further discussed considerations for a new facility, including a new engineering report, environmental review, and permitting. A number of potential funding sources were also referenced in the presentation. Gray & Osbourne pledged its cooperation in a value engineering study.

25. According to the February 27, 2013 Coulee Dam Council meeting minutes, Elmer City expressed concerns with the costs of and affording new improvements to the treatment plant. Elmer City acknowledged it would have to seek grants for such purposes.

26. In or around April 2013, a phone conference took place with representatives from the Department of Ecology, Gray & Osbourne, Coulee Dam Council members, the Coulee Dam Mayor, the Coulee Dam Clerk, and a Coulee Dam staff member to present to the

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Department of Ecology a scaled down wastewater treatment project to repair the treatment plant's most significant deficiencies with proceeds from the approved State Revolving Fund loan.

27. In or around August 2013, the Department of Ecology sent a letter to Coulee Dam rejecting a reduced project under the previously approved loan. The reasons for rejection included, but were not limited to, conflict with the State Revolving Fund guidelines, whether a reduced project would adequately address the safety concerns with the current treatment plant, and the Department of Ecology's belief that the treatment plant's deficiencies should be resolved with one construction project.

28. In or around 2013, Elmer City and the Colville Tribes expressed an interest in identifying alternatives for the collection and treatment of Elmer City sewage. In 2014, Elmer City, the Colville Tribes, and Indian Health Service ("IHS") funded a feasibility study to identify such alternatives and recommend a long-term solution.

29. In or around March 2014, in order to renew its National Pollutant Discharge Elimination System ("NPDES") permit managed by the federal Environmental Protection Agency ("EPA"), Coulee Dam commissioned Varela & Associates Engineering ("Varela") to analyze whether it could comply with stricter standards through operation changes and permit modifications.

30. On April 10, 2014, a meeting was held between Coulee Dam, Elmer City, and the Colville Tribes to evaluate statements of qualification submitted by entities to provide engineering analyses and services for the treatment plant. Nine submissions were

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received, of which six were qualified. The six qualifying submissions were reduced to the top three: Varela, Wilson Engineering, and Thomas, Dea & Hoskins. These three entities were invited to submit proposals.

31. In or around May 2014, representatives of Coulee Dam, Elmer City, and the Colville Tribes interviewed engineers from the top three entities and ultimately chose Varela to provide the engineering analyses and services for the treatment plant.

32. In October 2014, Varela started holding technical advisory meetings to which Coulee Dam, Elmer City and the Colville Tribes were invited to participate. A Technical Advisory Committee ("TAC") was formed consisting of the following:

Tim Lynch, Wastewater Operator, Coulee Dam
Barry Peacock, Public Works Superintendent, Coulee Dam
Jimmer Tillman, Maintenance Superintendent, Elmer City
Jeff Dewinkler, Councilmember, Elmer City
Ron Toulu, Public Works, Colville Tribes
Greg Wilder, Mayor, Coulee Dam
Kurt Holland, Varela

The purpose of the TAC was to give representatives of the various stakeholders an opportunity to "provide comment on service area needs, including the boundary and future planning expectations, treatment level and costs as they are developed and to participate as an active member of the planning group and participate at public meetings as a citizen."

33. The first technical advisory meeting was held on October 7, 2014, which was attended by two of the three TAC representatives from Coulee Dam and the two TAC representatives from Elmer City. The purpose of the meeting was to "provide input and

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feedback on facility plan findings and progress and other technical issues during the facility planning." The goal of the process was to "identify and evaluate wastewater treatment alternatives to find the lowest annual cost/value 40 year facility for the residents of Coulee Dam and document the process in such a manner as to result in a facility plan acceptable to the multiple funding agencies."

34. At the October 7, 2014 meeting, three compliance standards issues were identified via an initial evaluation of the existing Coulee Dam treatment plant. One such deficiency was septic flow from Elmer City. Varela noted the following:

> The Elmer City flows include an ongoing odor issue at the Coulee Dam wastewater treatment facility. It is recommended Elmer City consider testing some odor controlling at their lift station. An ancillary effect might be improved treatment at the Coulee Dam [wastewater treatment facility]. This should be completed prior to Coulee Dam purchasing the magnesium hydroxide equipment.
>
> . . .
>
> Goal: Is working with Elmer City on testing some odor control / corrosion control equipment worth pursuing? The G&O proposed odor control system in the draft Predesign report was estimated to have capital costs of +/- $75,000 (with contingency / tax).
>
> It was also recommended that before Coulee Dam purchas[es] the pH adjustment equipment, Elmer City considers treating their effluent to the treatment plant to prevent it from going septic. TL indicated the City was purchasing the equipment regardless. JT agreed to have addressing [sic] the septic flow from Elmer City included in the Elmer City facility plan document.

"TL" refers to Coulee Dam's Wastewater Operator, Tim Lynch. "JT" refers to Elmer City's Maintenance Superintendent, Jim Tillman, who was present at the meeting.

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35. A second technical advisory meeting was held by Varela on October 22, 2014, with a TAC representative present for Coulee Dam, two TAC representatives for Elmer City, and the addition of a TAC representative from the Colville Tribes.

36. A third technical advisory meeting was held by Varela on November 12, 2014. Although Elmer City and Colville Tribes representatives were invited, they were not present for the meeting.

37. At the November 12, 2014 meeting, two scenarios were identified for upgrading the Coulee Dam treatment plant: (1) modification of the existing treatment plant or (2) constructing a new treatment plant.

38. A fourth technical advisory meeting was held by Varela on November 25, 2014. The TAC representatives were present other than Ron Toulu for the Colville Tribes and Jeff Dewinkler for Elmer City. Jim Tillman was present on behalf of Elmer City.

39. At the fourth technical advisory meeting:

    a. Varela reported sending a letter to the Department of Ecology on behalf of Coulee Dam requesting an amendment to the existing funding agreement. In a response email dated November 17, 2014, the Department of Ecology gave Coulee Dam until December 3, 2014, to revise the scope and budget of the project.

    b. The rest of the fourth technical advisory meeting focused on building a new treatment plant in the vicinity of the existing treatment plant.

    c. A new regional treatment facility to provide treatment beyond the current

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service area was noted as being highly unlikely.

d. Jim Tillman of Elmer City noted that Elmer City's Facility Plan would not be completed until May or June 2015.

e. Tim Lynch of Coulee Dam raised the issue of odor control on Elmer City's end, noting a recommendation from Esvelt Environmental Engineering to implement steps at the primary lift station to provide odor control and improve pH.

40. A fifth technical advisory meeting was held by Varela on January 14, 2015. The TAC representatives were present other than Ron Toulu for the Colville Tribes and Jeff Dewinkler for Elmer City. Jim Tillman was present on behalf of Elmer City. At this meeting the TAC discussed:

a. Funding sources;

b. Funding application schedule;

c. An asset management plan to achieve lower annual costs and more efficient operations and maintenance;

d. Sewer rate, currently at $56/ERU for Coulee Dam residents; and

e. A project schedule.

41. A sixth technical advisory meeting was held by Varela on February 4, 2015. The TAC representatives were present other than Ron Toulu for the Colville Tribes and Jeff Dewinkler for Elmer City. However, in addition to Jim Tillman, Elmer City Mayor Gail Morin was present on behalf of Elmer City. At this meeting the TAC discussed:

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a. A recommendation to Coulee Dam for an alternative to the current treatment plant from which a Facility Plan Amendment would be drafted for submission to the Department of Ecology.

b. Estimated O&M rates, which were a concern for the Elmer City representatives.

c. Coulee Dam representatives requested odor control to be included in the facility designs. The costs of odor control upgrades would be forwarded to Jim Tillman for Elmer City's consideration.

d. Jim Tillman of Elmer City acknowledged that Elmer City's planning process needed to include lift station and odor control improvements.

42. In 2015, the Varela prepared a wastewater analysis report commissioned by Coulee Dam to assess upgrade alternatives for Coulee Dam's treatment plant.

43. On April 9, 2015, Varela presented a Facility Planning Update to Coulee Dam establishing the following:

a. Varela developed a comprehensive list of wastewater treatment alternatives to the current wastewater treatment facility based on service area, discharge alternatives, and treatment alternatives.

b. The alternatives were narrowed based on costs and feasibility.

c. The process included public meetings, presentations to Coulee Dam Council, technical memoranda, and TAC meetings (in which various stakeholders participated, including Elmer City).

d. The most cost-effective treatment location was at or near the current site.

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e. There was no monetary advantage to Coulee Dam reducing its wastewater service area.

f. The present worth cost of modifying the existing treatment plant versus building a new facility was nearly identical.

g. Varela presented the following comparison between a new system and modifying the existing plant:

Consideration	New AeroMod System	Modify Existing Plant
Capital Project Cost	Higher (+12%)	Lower
O&M costs	Lower	Higher (+13%)
Unknown Conditions	Unknowns include acquiring additional property and cultural resource findings	Unknowns include condition of oxidation ditch, underground piping, disruption to existing treatment
Constructability	New plant, new piping, electrical and controls on a new site	Modification of an existing plant is generally more difficult than new construction & treatment must be maintained during construction
Sewer Relocation	Some of the sewers main will need to be relocated	None
Additional Capacity	Treatment is designed for projected flows. To increase capacity additional treatment units will be needed	There some additional capacity in the existing facility
Expandable	Yes	No

h. Varela further calculated the following costs per equivalent residential unit ("ERU") for Coulee Dam residents based on assumptions of a funding package made up of loans and grants with a 2.7% interest rate and 923 ERUs.:

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Costs Per ERU

- Capital Cost Debt Service ($/month/ERU)*: $17 - $22
- O & M Costs ($/month/ERU)*: $38 - $42
- **Projected Monthly Rate per ERU**** **$55 - $61**

44. On October 14, 2016, Varela submitted a Technical Memo (TM-03) to Coulee Dam with recommendations for the Elmer City lift station. The planned new facility required the following with the Elmer City lift station:

a. Upgraded pumps to compensate for a hydraulic grade line approximately 17 feet higher than the existing line. Elmer City needed to provide appropriate upgrades to their lift station consistent with the changes to the treatment facility.

b. Odor control by Elmer City, per the Technical Memo:

> Wastewater discharged from Elmer City's lift station creates odor problems at Coulee Dam's WWTP [Waste Water Treatment Plant]. Elmer City's wastewater flows are low compared to volume of the 2 mile long 8" diameter force main. Hydraulic residence time is estimated at 22 hours resulting in anaerobic sewage and formation of hydrogen sulfide (H2S) causing odor problems. In addition, the septic sewage is corrosive to concrete and mechanical equipment at the point of discharge.
>
> Previously Coulee Dam rerouted Elmer City influent to discharge directly into the oxidation ditch below the water level to reduce odor impacts. Since influent flow must be screened to remove manufactured inerts (required by WAC 173-308-205 as of July 1, 2012) the aeration basin discharge was no longer allowed and the force main was routed back to the headworks causing the odor problem to reappear.
>
> Coulee Dam's new WWTP has an enclosed headworks facility with mechanical fine screen to meet WAC 173-308-205. Odor control issues and resulting H2S issues need to be addressed to prevent odor and corrosion due to H2S. Odor mitigation can be provided at either the Elmer

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City lift station or new WWTP facility. However, odor control at the new WWTP does not prevent generation of H2S (the chemical that causes damage), rather it attempts to capture and remove H2S. Odor mitigation at Elmer City would prevent/reduce formation of H2S and would therefore be more favorable and effective in preservation of Coulee Dam infrastructure. The City therefore should require odor control be installed at the Elmer City lift station location.

Odor control options were evaluated and recommended in Coulee Dam's 2011 Facility Plan and included biofiltration (at Coulee Dam), carbon adsorption (at Coulee Dam), chemical addition (at Elmer City), and oxygenation (at Elmer City). It is recommended Elmer City select the alternative determined by Elmer City to be suitable for installation at the Elmer City lift station (i.e. chemical addition or oxygenation), and implement the odor control solution.

c. Installation of a variable frequency drive in the Elmer City lift station to lower the discharge rate to minimize short duration high influent flow periods while meeting Elmer City's peak flow requirements.

d. Evaluation of the lift station for needed upgrades considering its age, including, but not limited to, electrical, telemetry/controls, and the addition of a backup generator.

45. On December 2, 2016, Coulee Dam's Mayor sent a letter to the Mayor of Elmer City referencing the previous submittal of two Technical Memos (TM-02 & TM-03) to Elmer City. The letter, copied below, emphasized that time was of the essence and that it was critical for Elmer City to upgrade its lift station in accordance with the plans for the new treatment plant.

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Town of Coulee Dam

Office of the Mayor · 300 Lincoln · Coulee Dam, WA 99116 · 509-633-0320 · 509-633-3252 (fax)

December 2nd, 2016

Honorable Gail Morin
PO Box 179
Elmer City, WA 99124

Re: Elmer City Lift Station (TM-03)

Dear Mayor Morin;

The Town of Coulee Dam previously provided you with a copy of the referenced Technical Memorandums (TM-02 & TM-03). I am attaching another copy-set for your needs. We are reminding you that Elmer City will require some infrastructure changes to your applicable lift station. We encourage that you contact your Town Engineer and your Public Works Superintendent so as to fully understand the changes to this lift station and impact(s).

Our new Wastewater Treatment Plant project will bid in early February, 2017. Time is of the essence and the project WILL result in a change the from the existing hydraulic grade line (HGL)... your engineer should verify the requirements soon and make applicable plans. The new treatment plant will require a paced and consistent flow and some provisions of pre-treatment for septic and odors. We look forwards to working with you to meet these standards.

If you have any concerns or suggestions, let me know. We previously offered to meet with us as recently last Tuesday, November 29th, 2016. Regardless of your decision to build your own new plant, the timing will have an impact. Additional, we encourage that your engineer/superintendent arrange to meet with me and/or our engineer, Varela Engineers (509-328-6066) as soon as reasonable.

Feel free to contact me as you wish...

F. Gregory Wilder, Mayor

C: Varela Engineers, Coulee Dam Clerk

46. On September 13, 2017, Belsby Engineering submitted a report to Elmer City titled Elmer City Wastewater - Preliminary Engineering Report ("2017 PER"). According to that report:

    a. Elmer City and the Colville Tribes were interested in "identifying a range of alternatives for the Town of Elmer City's wastewater collection and treatment needs in addition to the improvements being considered for upgrading the

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existing Town of Coulee Dam WWTF."

b. The Colville Tribes requested assistance from IHS to develop a feasibility study to "identify these alternatives and recommend a long-term solution." The feasibility study was funded in 2014 through IHS, the EPA, and Elmer City.

c. Community engagement was described as follows:

> The citizens of Elmer City and residents of the unincorporated communities receiving utility services have been informed of the proposed Coulee Dam Wastewater Treatment Facility upgrades and subsequent Elmer City Wastewater Feasibility Study through monthly council meetings and notices by mail of impending utility rate increases due to the proposed upgrades. Two additional stakeholder meetings have been conducted in Elmer City that included Town officials, Tribal agencies, the USBR, BIA, IHS and EPA.

d. The need for the feasibility study was described as follows:

> Considering the proposed Coulee Dam WWTP upgrade, funding options, and the resulting rate increase to customers, the Town of Elmer City determined that it would be in the best interest [of] its citizens to evaluate options for a separate WWTF for the service area that includes Elmer City, Riverview, Lone Pine, and Grandview. Since the study was funded in 2013, additional deficiencies in the Elmer City wastewater collection system have been identified . . ..

e. The Coulee Dam treatment plant upgrades were anticipated to result in a per ERU rate of $67 per month dependent on certain funding assumptions.

f. Options for Elmer City included:

    i. Continuing to utilize Coulee Dam's treatment plant, which will result in Elmer City being "subject to cost shares that are expected to continue increasing when the proposed upgrades to the Coulee Dam

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WWTF are fully funded and constructed." Capital costs to upgrade the Elmer City system while continuing to utilize Coulee Dam's treatment plant were estimated at $558,880 with annual operation and maintenance costs of $146,400, including $85,000 paid to Coulee Dam.

ii. Installing an AdvanTex filter system, which requires wastewater to be treated in individual or community septic tanks prior to reaching the filter system. Capital costs for this option were estimated at $2,535,956 and annual operation and maintenance costs at $79,676.

iii. Installing a microBLOX membrane bioreactor system. Capital costs for this option were estimated at $1,957,914 and annual operation and maintenance costs at $112,611.

iv. Installing an evaporative lagoon. Capital costs for this option were estimated at $4,730,363 and annual operation and maintenance costs at $65,500.

v. Connection to the Nespelem treatment area, which was determined to be non-feasible.

g. Based on the analysis, it was recommended that the AdvanTex treatment system be installed, subject to a further study of funding options.

h. The 2017 PER expressly warned Elmer City of the following:

Coulee Dam is preparing to begin construction on the plant upgrade.

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> When the outfall from the Elmer City Force Main is relocated to the higher location it will cause an immediate failure and overflow at the Lone Pine lift station. Provisions for funding the replacement pump must be put into place rapidly to prevent this failure, regardless of which alternative from this report is selected.

47. On September 13, 2017, Varela presented a Town of Coulee Dam Wastewater Treatment Plant Project update to the Elmer City Council. Varela provided Elmer City's Council with a Contractors Schedule beginning July 10, 2017, through July 2, 2018. The redirection of flows from Elmer City's lift station to the new wastewater treatment plant was slated for March 26, 2018.

48. During the September 13, 2017 presentation to the Elmer City Council, Varela also referenced the 2011 Gray & Osborne Preliminary Engineering Report and the TM-03 previously submitted detailing necessary modifications to the Elmer City lift station including new higher head pumps, odor control to "mitigate odors and corrosivity of sewage," and other improvements.

49. On October 4, 2017, Coulee Dam's Mayor sent a letter to Elmer City's Mayor again emphasizing the need for Elmer City to upgrade its lift system to be compatible with the new wastewater treatment facility. Coulee Dam's Mayor declared and warned therein:

> As you already know, Elmer City owns, operates, and maintains the Elmer City collection and lift stations. Elmer City delivers the waste flow to Coulee Dam under conditions — see Article II B.(1) of the 1975 agreement. Of course, the Coulee Dam Facility owns and operates the treatment plant — see Article II B. (2) & (3). Elmer City must insure the delivery facilities (including: "sewage in a closed pipe system to the sewage disposal plant.)" IF you wish make connections to the Coulee Dam

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> Plant, you must coordinate the actual connection methodology and location of the point of delivery. We have previously provided ample time to make the connection timing. Both towns want to be certain that you recognize the environmental impacts from a failed lift-station. It is important to you that the delivery of the waste flows in a safe, environmentally compliant, and sound operating methodology. Poor design and operational oversights could cause overflow events at the Elmer City lift station. Needed lift-station modifications were identified in the Preliminary Engineering Report and in TM-03: Elmer City Lift Station Recommendations on October 14, 2016, both of which were previously provided and discussed with Elmer City. Based on the Contractor's schedule, the (your) lift-station and piping modifications need to be completed by end of March, 2018.
>
> These improvements are the responsibility of Elmer City. We understand from our September 14, 2017 meeting with you that you have not taken steps towards completion of your improvements. Please be advised it is Elmer City's responsibility to complete the needed improvements by March 30, 2018. Failure to do so will likely result in sewage backup and overflow at the Elmer City lift station.

50. Elmer City failed to make the modifications to its lift system despite its contractual obligations and notice of the critical nature of such modifications from Varela, Elmer City's own feasibility study, and Coulee Dam. Consequently, Coulee Dam had to act to prevent an environmental catastrophe from Elmer City's purposeful and inexcusable failures to act.

51. On October 17, 2018, Varela presented Coulee Dam with options and costs for improvement to the new treatment plant to pump Elmer City's sewage to the new plant headworks. The options included:

    a. Construction of a new Elmer City lift station with a cost estimate of $410,000.

    b. Upgrade the plant lift station to receive Elmer City's sewage with a cost

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estimated at $260,000. However, this option would result in longer delays, prevent the new plant from being used for all its intended purposes, and require new pumps leaving the already purchased pumps to be sold at salvage value. It would also require additional purchases for necessary odor control.

52. Not only did Elmer City fail to modify its lift station, it further refused to provide for odor control of its sewage despite notice of its corrosive effects in the 2011 PER by Gray & Osborne and the TM-03 in October 2016.

53. Varela described the necessity for odor control:

> Elmer City sewage is anaerobic when it reaches the treatment plant causing formation of hydrogen sulfide which is corrosive to concrete and mechanical equipment at the point of discharge. Also, the anaerobic sewage has significant adverse odor potential. Adding a lift station at the treatment plant could further exacerbate odor problems (i.e. additional hydrogen sulfide release) due to additional pumping and agitation. This furthers the need for odor control/mitigation measures.

54. Varela presented the following odor control options and costs estimates to Coulee Dam:

- Carbon adsorption:
  - Est. capital cost = $103,000
  - Annual O&M = $12,200 / yr
- Biofiltration:
  - Est. capital cost = $157,000
  - Annual O&M = $13,500 / yr
- Chemical Injection:
  - Est. capital cost = $95,000
  - Annual O&M = $29,000 / yr
- Oxygenation:
  - Est. capital cost = $143,000
  - Annual O&M = $12,300 / yr.

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55. Not only did Elmer City fail to modify its lift station and fail to negate the corrosive effects of its sewage through pretreatment, Elmer City failed to pay for the treatment of its sewage in full from, at least, the last quarter of 2014 through the first quarter of 2018 resulting in an unpaid balance of $16,422.69, before interest, that currently remains due.

56. Although the new treatment plant was slated to commence operation in November 2018, it could not be started until the lift station upgrade was complete.

57. To build a new lift station serving the sole purpose of treating Elmer City's sewage, Varela estimated an increased overall cost of $760,000 to Coulee Dam.

58. Coulee Dam was ultimately forced to build a new Elmer City lift station in order to bring the new treatment plant online.

59. The new treatment plant went into operation on May 2, 2019.

60. Coulee Dam has had to acquire funding for the treatment plant project as follows:

    a. $301,832.00 DOE loan;

    b. $5,940,000 USDA loan; and

    c. $1,935,337.27 USDA grant.

61. Coulee Dam has expended no less than $485,869.28 in local funds to complete the treatment plant project.

62. Coulee Dam began paying back on the funding for the treatment plant project on November 27, 2020.

63. On August 15, 2022, Elmer City accepted a $30,000.00 grant funded by the U.S.

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Department of Housing and Urban Development to update Elmer City's Sewer Capital Improvement Plan to include a force main assessment. The assessment and update would be performed by Gray & Osborne.

64. On October 7, 2022, Gray & Osborne submitted a Technical Memorandum to Elmer City detailing the Wastewater Facility Plant Amendment summarizing the force main assessment. As part of its assessment, Gray & Osborne noted how the sewage in Elmer City's pipes becomes septic and, thereby, creates hydrogen sulfide that corrodes and deteriorates Elmer City' sewage system even before being pumped to Coulee Dam's treatment plant.

65. Gray & Osborne's 2022 Technical Memorandum further references Elmer City's treatment alternatives consistent with those originally detailed in the 2017 Belsby Preliminary Engineering Report. The Technical Memorandum notes that Elmer City decided to continue with regional treatment of its sewage, *i.e.*, treatment by Coulee Dam. Notably, Gray & Osborne estimated the cost to Elmer City for continuing treatment with Coulee Dam to be $1,687,000 to "buy treatment at the Coulee Dam WWTF, contingency, contract negotiation fees, and attorney fees."

66. To date, despite Coulee Dam's demands and Elmer City's contractual obligations, Elmer City has refused to contribute any monies to the $8,600,206.65 cost of the wastewater treatment plant.

67. On April 14, 2023, Coulee Dam's City Attorney, Michael D. Howe, sent a letter to Elmer City's Mayor and Counsel advising them that because of overdue invoices for

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sewage treatment, the nonpayment of which must be covered by Coulee Dam residents, Coulee Dam would not be renewing the Agreement expiring on December 31, 2024, and Elmer City would have to make alternative arrangements for the treatment of its sewage. Elmer City ignored Coulee Dam's notice.

68. The Agreement contractually requires Elmer City to pay for improvements to the waste facility in proportion to the flow generated by Elmer City for the year prior to the determination to incur such costs. Based on the loan amounts, applicable interest rates (2.25% to 2.375%), and Elmer City's 19.92% share of improvements per the Agreement, upon the expiration of the Agreement on December 31, 2024, Elmer City owed Coulee Dam no less than $ 189,090.50, plus statutory interest (currently, approximately 7%).

69. Elmer City's refusal to implement any odor control measures to prevent the corrosive effect of its sewage has caused premature deterioration of Coulee Dam's new treatment plant. Elmer City owes Coulee Dam damages for such premature deterioration.

70. Elmer City has failed to pay Coulee Dam a fair price for the continued treatment of its sewage.

71. Coulee Dam has continued to treat Elmer City's sewage at a disproportionate expense to Coulee Dam's citizens in order to prevent an environmental catastrophe that could occur if Coulee Dam were to stop treating Elmer City's sewage. Elmer City has taken advantage of this environmental stranglehold on Coulee Dam by continuing to deliver thousands of gallons of sewage monthly to Coulee Dam while failing for years to take

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the necessary steps to develop an alternative treatment for its sewage, to pretreat its sewage, and to pay is fair share of the treatment.

72. Elmer City, without advising Coulee Dam, planned for years to continue to have its sewage treated by Coulee Dam after the Agreement expired.

73. Elmer City used a 2021 Gray & Osborne Facility Plan ("G&O Facility Plan) and 2022 Amendment thereto to apply for funding from the Department of Ecology to achieve the G&O Facility Plan's objectives.

74. On August 19, 2024, Elmer City entered into a Water Quality Combined Financial Assistance Agreement with the Department of Ecology ["DOE Agreement"] for repairs to Elmer City's wastewater collection system and to fund

> a service fee, which pays [Elmer City's] portion of recent treatment facility upgrades within the City of Coulee Dam. [Elmer City] and the City of Coulee Dam will also develop and negotiate a new service contract, to allow Coulee Dam to continue to accept [Elmer City's] Wastewater.

75. The DOE Agreement further reflects Elmer City's decision to continue using Coulee Dam indefinitely to treat its sewage while acknowledging that it had contributed nothing to Coulee Dam's treatment plant upgrades despite an obligation to do so:

> Elmer City evaluated alternatives for wastewater treatment and determined that a new contract for wastewater treatment with Coulee Dam provided the best value for both communities. The Town's current contract with Coulee Dam for wastewater treatment will expire in December 2024. To continue to receive treatment from Coulee Dam, [Elmer City] must negotiate a new contract for those services. Coulee Dam recently completed reconstruction of a new WWTF with grant and loan financing primarily from USDA-RD. The Town of Elmer City anticipates that a new contract will include a "service fee" or "connection fee" for a portion of

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> the loans that Coulee Dam obtained to build the WWTF. To date, Elmer City has not paid anything related to the capital cost of the Coulee Dam WWTF Upgrades. This application is for the Town of Elmer City to obtain financing for the service fee (connection fee) agreed to within the new negotiated contract for wastewater service.

76. The DOE Agreement recognized the grants and loans received by Coulee Dam and "anticipated that The Town of Elmer City will be responsible for their proportionate share of the RD loans and fees." The DOE Agreement estimated that Elmer City would be responsible for a one-time service fee of $1,622,000 for such financing. The DOE Agreement executed by Elmer City states, that Elmer City "will pay a one-time service fee to the City of Coulee Dam for wastewater treatment."

77. The DOE Agreement further provides under the task title "Interlocal Agreement Development" that Elmer City, through an attorney specializing in interlocal/municipal contracts for utility services, "will meet and negotiate a contract with the City of Coulee Dam for wastewater treatment services." The DOE Agreement provides $65,000 to achieve this task.

78. The DOE Agreement provides Elmer City with a "Centennial Grant" of $1,500,316.00 towards the one-time service fee to Coulee Dam and $65,000.00 towards the Interlocal Agreement Development.

79. Elmer City has not attempted to negotiate a new agreement for the treatment of its sewage in good faith with Coulee Dam. Despite receiving notice of non-renewal of the Agreement based on Elmer City's non-payment of invoices for its sewage treatment and acknowledgement of its failure to pay Coulee Dam for any improvements to the

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treatment plant, Elmer City did not disclose the DOE grant or other financing to Coulee Dam, nor has it ever offered a one-time service fee to Coulee Dam for the continued treatment of Elmer City's sewage as the DOE Agreement requires. Instead, Elmer City's negotiation tactics have been marked by delay, contradictory proposals, and denial of owing Coulee Dam for the upgrade to the treatment plant.

80. The Agreement between Coulee Dam and Elmer City expired on December 31, 2024.

81. On April 7, 2025, Coulee Dam sent an invoice to Elmer City for treatment of its sewage for January, February, and March 2025. Coulee Dam calculated the amount due per month based on 219 ERUs at $159.96. The total due from Elmer City for the first quarter of 2025, based thereon, is $105,093.72.

82. Coulee Dam charges its residents $79.98 per ERU per month. The double differential between the amount charged to Coulee Dam residents and that charged to Elmer City reflects the following, without limitation:

    a. Operation and maintenance costs;

    b. Costs of upgrades to Elmer City's lift station to bring its sewage to Coulee Dam's treatment plant;

    c. Costs of upgrades to the Coulee Dam treatment plant;

    d. Administration costs;

    e. Liability risks, *e.g.*, no indemnification;

    f. Debt service;

    g. Depreciation;

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h. Connection fee;

i. Premature deterioration of Coulee Dam's treatment plant from Elmer City's failure to pretreat its sewage;

j. History of failure to pay;

k. Indefinite time that treatment will be required without a written agreement;

l. Service area beyond Elmer City's town limits; and

m. Similar rate differential percentages used by Elmer City for potable water it treats for customers outside of its town limits.

i. Elmer City applies a differential of approximately 181% for water rates charged to residential customers outside of town limits compared to its residents.

ii. Elmer City applies a differential of approximately 182% for water rates charged to commercial customers outside of town limits compared to its commercial customers inside town limits.

iii. Elmer City applies a differential of approximately 202% for water rates charged to industrial customers outside of town limits compared to its industrial customers inside town limits.

83. Elmer City refused to pay the 2025 first quarter invoice in full. Instead, Elmer City unilaterally determined that it would pay no more than $42.36 per ERU per month for 168 ERUs for treatment of its sewage. Elmer City's determination of this amount further evidences its bad faith actions towards Coulee Dam.

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84. Coulee Dam's residents have subsidized the treatment of Elmer City sewage upon the upgrades to Coulee Dam's treatment plant because of Elmer City's refusal to pay any monies towards the upgrades or pretreat its sewage to prevent premature deterioration of the treatment plant.

85. Elmer City, nevertheless, proposed a per ERU rate 47% less than that charged to Coulee Dam residents; thus, almost half of what Coulee Dam charges its own residents for sewage treatment.

86. Elmer City's action is not only facially indefensible, but it also does not comply with RCW 35.92.020, as no factors justify an ERU rate charged to non-residents less than that charged to residents for sewage treatment. Coulee Dam cannot reasonably charge its residents more than it charges those outside of its town limits, especially considering the factors detailed above used to determine the ERU price to charge Elmer City.

87. On or about August 4, 2025, Coulee Dam will hand deliver an invoice to Elmer City for treatment of its sewage for April, May, and June 2025. Coulee Dam calculated the amount due per month based on 173 ERUs at $159.96. The total due from Elmer City for the second quarter of 2025, based thereon, is $83,019.24.

IV. INJUNCTIVE RELIEF.

88. Paragraphs 1-87 are re-alleged and incorporated herein as paragraph 88.

89. This Court has the authority to grant injunctions per RCW 7.40.010.

90. Elmer City's failure to pretreat its sewage has caused and continues to cause irreparable harm to Coulee Dam's treatment plant.

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91. Elmer City was given sufficient notice of the nonrenewal of the Agreement with Coulee Dam. As of January 1, 2025, there is no agreement binding Coulee Dam to treat Elmer City's sewage. Elmer City ignored Coulee Dam's notice, continues to send its sewage to Coulee Dam, but Elmer City does not pay the price of treatment in full.

92. Elmer City's failure to pay in full for the treatment of its sewage continues to cause harm to the citizens of Coulee Dam, who are forced to subsidize the treatment of Elmer City's sewage through increased wastewater treatment rates.

93. Based on the facts stated herein, the Court is respectfully requested to enter an Order granting the following relief at the onset of the case:

    a. Requiring Elmer City to implement effective measures to pretreat its sewage prior to reaching Coulee Dam's treatment plant.

    b. Requiring Elmer City to develop wastewater treatment alternatives to allow for a substantial reduction of sewage flowing to Coulee Dam and the ultimate cessation of Elmer City's sewage to Coulee Dam as the Agreement to treat Elmer City's sewage has expired.

V. BREACH OF CONTRACT

94. Paragraphs 1-93 are re-alleged and incorporated herein as paragraph 94.

95. As detailed herein, Elmer City has breached the Agreement by failing to pay its proportionate share of the costs incurred by Coulee Dam to treat Elmer City's sewage, including but not limited to, improvement & modifications, debt service, and operation & maintenance costs

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96. Elmer City has further breached its duty of good faith and fair dealing to accomplish the objectives of the Agreement. Elmer City's breach includes, but is not limited to, its failure to pretreat its sewage, refusal to improve its lift station used solely to deliver its sewage to the Coulee Dam treatment plant, and failure to act in good faith to remedy its breaches.

97. Coulee Dam has been and continues to be harmed by Elmer City's breach in an amount to be proven at trial.

VI. UNJUST ENRICHMENT

98. Paragraphs 1-97 are re-alleged and incorporated herein as paragraph 98.

99. Elmer City continues to receive the benefit of having its sewage treated despite the absence of written agreement with Coulee Dam for such treatment.

100. At its expense, Coulee Dam continues to treat Elmer City's sewage because of the environmental consequences of ceasing such treatment.

101. As more fully detailed above, Elmer City has not paid its sewage treatment invoices in full to Coulee Dam, has refused to pretreat its sewage despite the deteriorative effects the sewage has on the Coulee Dam treatment plant, and has failed to pay for the improvements to either its lift station or Coulee Dam's treatment plant. This despite a grant of more than $1.5 million approved by the Department of Ecology for Elmer City to pay Coulee Dam, in part, to address the inequities caused by Elmer City's malfeasance to date toward Coulee Dam.

102. It is unjust for Elmer City to continue to have its sewage treated without paying:

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a. its overdue balances;

b. its relative proportion of the cost to continue to treat its sewage;

c. its share of the improvements to the Coulee Dam treatment plant; and

d. the cost to rebuild the Elmer City lift station to deliver Elmer City's sewage to the Coulee Dam treatment plant.

103. As a direct and proximate result of Elmer City's unjust enrichment, Coulee Dam has been damaged in an amount to be proven at trial.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Coulee Dam prays for judgment as follows:

1. For injunctive relief;

2. For a judgment of damages in the amount be proven at trial;

3. For reasonable attorneys' fees and costs as allowed for by law;

4. For pre-judgment and post-judgment interest on the judgment amount, which is readily ascertainable; and

5. For such other and further relief as the Court may deem just and equitable.

DATED this 31st day of July 2025.

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