

Rift between Lake Stevens, sewer district widens in court

A pending lawsuit asks whether the city can take control of the district earlier than planned.

- By [Rachel Riley](#)
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Lake Stevens Sewer District wastewater treatment plant. (Lake Stevens Sewer District)

LAKE STEVENS — The city of Lake Stevens has for more than a decade been set to eventually assume control of a local sewer district.

Now, questions about the timing of the takeover are at the heart of a legal battle playing out between the city and the sewer district in Snohomish County Superior Court.

Sewer district officials contend the Lake Stevens City Council overstepped its authority on Dec. 8, when it quietly passed a resolution that would change the trajectory the district has been on for 16 years.

That night, following a closed-door session, the council voted to assume control of the district, despite a 2005 agreement that the transfer should occur no sooner than 2033.

The district sued the city on Jan. 29, alleging the city breached the 2005 contract by “unilaterally” accelerating the consolidation. The lawsuit also alleges the city violated state open meetings law by reaching consensus in the private session and then adopting the ordinance publicly “without discussion or debate.”

Lake Stevens officials assert that the early merger is justified by a state law that allows a city to assume control of a district if at least 60 percent of the district’s area is within the city’s boundaries.

Court records show a growing schism between the two entities amid months of debate about what’s best for the ratepayers and how much influence municipal leaders should have in district decisions.

The district and the city have entered mediation in the past to try and address a range of issues, including disagreements over asset transfers and system extensions into industrial-zoned parts of the city.

Tensions escalated again last fall, when the city objected to a decision by two of the three sewer district commissioners to make the third commissioner at the time, Mariah Low, the interim general manager of the district.

The commission is now negotiating changes to Low’s contract that could make her permanent and require she be paid a year’s salary if she’s terminated as a result of the city takeover.

For now, the consolidation is on hold. Judge Janice Ellis in late February granted a motion by the district for a preliminary injunction that would prevent the transition until the case is resolved.

Municipal leaders have said taking the reins early will save taxpayer money and allow the city to make decisions that foster economic development as Lake Stevens continues to grow.

“Any time that you can combine two government organizations, I think it creates efficiencies,” Mayor Brett Gailey said.

The district’s governing commission would be eliminated. The three commissioners’ salaries are based on meeting attendance and capped at about \$12,000 annually for each position, according to the district.

Ratepayers would instead be represented by the City Council, which would set sewer rates during an annual public hearing.

Sewer district leaders argue that there are no clear benefits to speeding the timeline. Initiating the transition this early would lead to uncertainty and discord, creating the potential for rate increases and service failures, Low said.

“The District has a strong track record of managing the system well,” she said, citing steady customer rates over the past five years. “Why jeopardize the system that everyone relies on?”

The city’s response

Lake Stevens officials maintain that the council’s decision to accelerate the consolidation broke no laws.

In response to the district’s lawsuit, City Attorney Greg Rubstello shot back with a Feb. 11 counterclaim, alleging that the district has breached the 2005 agreement by not allowing a joint committee of city and district leaders to exercise its oversight roles.

Commissioners have made decisions related to debt repayment without proper approval from the committee, called the Utility Committee, the city alleged. They’ve also ignored protests from the city about Low’s appointment, the counterclaim says.

Last fall, after the past general manager announced his intentions to retire, commissioners began discussing hiring Low to fill the role in the interim.

The Utility Committee’s city representatives — Gailey and Council Members Marcus Tageant and Gary Petershagen — instead requested a formal hiring process to find the most qualified person for the job.

Low applied for the job and was interviewed by a panel of general managers from other similarly sized sewer districts in Washington state, before Commissioners Kevin Kosche and Dan Lorentzen decided to hire her.

Under her contract, commissioners agreed to re-evaluate her job title after six months to determine whether she will become the permanent general manager.

Those discussions are taking place now, Kosche said.

At an April 27 committee meeting, Kosche suggested that the contracts of Low and Assistant General Manager John Dix be amended to double their required severance payments, from six months’ pay to a year’s salary, in the event that either of them are terminated without cause.

“I wouldn’t think this would be necessary if it wasn’t for the overt actions of the city to try to accelerate the merger unilaterally. That’s the trigger here,” Kosche said during the meeting. “I want to keep our leadership in place. It’s critical.”

Gailey, Tageant and Petershagen questioned his proposal, saying the additional severance requirements seemed excessive.

Those changes are still under negotiation, Kosche told The Daily Herald.

Low’s yearly salary is \$142,800. Dix is paid \$129,513 annually.

The city doesn’t intend to make staffing changes, Gailey said, should the merger occur early.

“There’s some great, talented people over there, and it would be great to have them in the city,” he told The Herald.

An analysis commissioned by the city found the consolidation could reduce costs by as much as \$595,000 in the first three years. Those savings could result from merging departments and getting better prices on contracts for goods and services due to the city’s larger size, according to the assessment, prepared last year by accounting firm Moss Adams.

Lake Stevens officials have also said the two entities have different priorities. The district makes more money serving housing developments, but the city wants to see service extended to industrial and commercial areas to attract more business development, according to a past city news release.

While speeding the merger has been a subject of public debate for months, the city was not required to hold a public hearing to pass the ordinance, Rubstello said.

The private session that the council convened beforehand was to discuss “litigation or potential litigation,” which is considered a legitimate reason for such executive sessions under state law, Rubstello said.

Before the council decision, the district had threatened to take the city to court if it chose to assume control early.

“The likelihood of a lawsuit was extreme,” Rubstello said. “As you can see, once the city passed the ordinance, we got sued.”

The district has also alleged that the city cannot legally take over because the district serves customers on about 7 acres of land within Marysville’s city boundaries.

Lake Stevens officials say, however, that they have obtained a letter from Marysville giving the city permission to assume sewer operations for those few customers.

‘System failures’

District officials say the unexpected move by the city goes against the decades-long plan that local leaders spent months negotiating in the mid-2000s.

The district, established in 1957, operated a public sewer system in unincorporated Snohomish County before 2005. Then, a separate city-owned sewer collection and conveyance system needed major repairs at that time, but the city lacked the means to finance and complete the upgrades. So the two entities forged a pact to provide public service and invest in an expanded system.

That agreement specifies that the unified sewer system is to be transferred from the district to the city “no sooner than 20 years” after the district accepted a new treatment plant — or 2033 at the earliest, the lawsuit says.

Most of the debt associated with the some \$120 million in upgrades is on schedule to be paid by then, Low said.

The city began “pressing discussions” about accelerating the transition in 2017, but the city and the district never reached a consensus on an earlier date, according to the sewer district.

“The District employs a number of highly trained specialized technicians required to run and maintain the system,” Low said. “It owns a host of unique assets and systems that cannot simply be transferred without a well thought-out plan as agreed to that is to take place approximately 10 years from now. Without planning and lead time, system failures are likely to occur.”

The merger

Budgeting changes as a result of the consolidation could also affect ratepayers, Low said.

The district funds system improvements with fees paid by developers who need new facilities to serve new homes and businesses. Whether the city would use ratepayer dollars to offset the costs of such projects is still a question, she said.

“District philosophy,” Low said, “is that those who profit from the new facilities should pay to add them to the system. Right now, there is no clear policy from the city on how capital improvements will be paid for and how it will benefit the ratepayers.”

But Gailey said the city has no reason to change the current practice of requiring developers to pay for those upgrades.

Revenue from sewer service customers would continue to go into a fund that is spent solely on sewer-related expenses — and cannot be used for other general government costs, he said.

The city also plans to hire a consultant to oversee the transition and ensure the combination occurs in an organized and efficient manner, Gailey said. He was unsure how much that contract would cost.

While legal proceedings have put the merger on hold, the Boundary Review Board for Snohomish County might also need to consider the consolidation before it happens.

Under state law, the board must review the proposed merger if requested by the sewer district, residents or another government entity during a 45-day period.

“I would just really like to get the lawsuit over with without further prolonging the issue,” Gailey said. “It just ultimately costs taxpayer dollars. And it’s just not healthy for either of the organizations.”

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