

Management Turmoil at Eastsound Water

A White Paper by the Concerned Eastsound Water Users

In early 2023, things began to come apart at the Eastsound Water Users Association. Having just stepped up as Secretary/Treasurer that January, EWUA Board member Tenar Hall began reviewing the previous year's financial records. She uncovered several questionable items — among them, evidence of two large checks that General Manager Dan Burke had issued himself in October and December 2022, ostensibly to pay for his unused time off that year. Other items included payments to suppliers that lacked sufficient backup documentation.

Following presentation of these problems to the Board, Vice President Jim Nelson took the initiative to question Burke about them. Together with Board President Clyde Duke, he then presented a "combined report" at the February Board meeting that included copies of the two checks, totaling \$10,333.11, explaining that they were "for accrued vacation pay disbursements." But the EWUA employee handbook then in effect did not allow any such payments. Its extant policy on equivalent days off (EDO) stated: "EDO not used in a particular year may be banked for later use up to a maximum of 30 days," but also that "*no other compensation alternative is available.*"¹ Cash payouts for unused time off, that is, were clearly not allowed.

However, the EWUA Board seemed unable to understand plain English. Other than her fellow Board member Steve Smith, who had recently served as EWUA President, nobody seems to have objected to Burke's unauthorized self-payments. Instead, the other officers and Board members impeded her attempts to obtain more detailed backup information on the questionable expenses — without which she could not accomplish her mandated job of overseeing EWUA's finances. According to its bylaws, the Secretary/Treasurer has the primary responsibility to "supervise the General Manager's maintenance and safe custody of all funds, records, properties and membership records of the Association." That is an impossible task without sufficient access to deeper information than what Burke was allowing her to view. Receipts for expenditures, for example, are required to verify that they were indeed justifiable expenses.

After over a month of increasingly strident attempts to obtain such backup information, and in the face of threats of possible legal action, Hall resigned her office as Secretary/Treasurer

¹ EWUA Employee Handbook, p. 5 (emphasis added). It stated furthermore that "Overtime is not paid to salaried employees. . . . Compensation will be awarded as time off, *with no additional moneys being paid to the employee.*" (emphasis added), on p. 3. This is a very unambiguous statement.

on March 20, 2023. Burke and at least one other Board member, previous Secretary/Treasurer Joe Cohen were by then "lawyering up."² In a letter from his attorney dated March 16, 2023, Burke accused Hall and Smith of trying to smear and discredit him and force his termination or his resignation. Whatever the merits of this claim, it appears that Cohen and Burke were the first to invoke legal representation in the EWUA dispute then erupting.

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At the time, few beyond EWUA inner circles recognized the management conflicts that had been simmering during previous months and were about to break out into the open. In a special Board meeting on November 8, 2022, Hall and Board member Scott Lancaster reported on the reasons why three female EWUA employees had resigned that year, mostly having to do with their difficult interactions with General Manager Burke.³ And increasing conflicts had been erupting between Smith and Burke. Burke suddenly stormed out of the October Board meeting "in outrage" (according to Smith) over directions given him regarding the EWUA website. Despite the rancor, the Board somehow managed to pass a two-year budget for 2023–2024 that included increases of about 10 percent in EWUA Members' water rates.⁴

These management problems continued into early 2023. On February 13, Hall showed a Treasurer's report to fellow Board members saying that cash on hand in EWUA bank accounts at the end of 2022 had worrisomely come in more than \$114,000 below the amount used in the 2023–2024 budgeting process.⁵ But this observation apparently did not trouble some other Board members, as there is no mention of such a problem at the regular monthly Board meeting on February 19. She also began to ratchet up her demands for access to any financial records that might support the Burke vacation-pay disbursements that had been revealed in the Duke/Nelson combined report. That process was however short-circuited by the letter from his attorney and Hall's subsequent resignation from the EWUA Board.

In response to the concerns expressed about improper payments and withholding of financial information, the EWUA Board in April retained the services of Tiffany R. Couch, CPA,

² Cohen had retained the services of an Orcas Island attorney in late February.

³ Tenar Hall and Scott Lancaster, "EWUA Employee Retention Issues," report to EWUA Board, November 8, 2022. One reported incident involved an employee confrontation with a Board officer.

⁴ Minutes of special EWUA Board meeting, December 6, 2022. Hall later characterized this budget as a "hot mess" but nevertheless had voted in favor of it and the rate increases.

⁵ Tenar Hall, "Eastsound Water Users Association Treasurer's Report," February 2023. The discrepancy may be in part due to her not including electronic payments that had not been entered in EWUA bank accounts by year's end.

of Acuity Forensics, to do a limited forensic analysis of the Association's finances, focusing on Burke's 2021–2022 activities.⁶ After over two months of analyses of financial records, she reported her findings to the Board in a June 19, 2023, letter addressed to President Duke that bore out most of Hall's concerns. Burke had indeed made improper payments to himself for supposedly unused EDO, in violation of the Association's published employee policies. And Couch highlighted "thousands of dollars of charges to home goods stores like Costco, Pottery Barn, Etsy, Target, Home Depot, Amazon, and Bed, Bath and Beyond."⁷ In closing, she stated:⁸

It is my professional opinion that the General Manager position at EWUA has too much financial control without proper oversight by the Board. This lack of oversight led to the likely overpayment of payroll to the current general manager and the potential overspending of EWUA funds.

At the outset of the regular June Board meeting the very next day, the Board went into executive session to review the Acuity Forensics report. After nearly two hours of discussion behind closed doors, EWUA Board members returned to open session and decided to accept and immediately implement the twelve recommendations made by Couch in her report.⁹ Among these was the following recommendation (#10):

An audit of the General Manager's time off in 2021 and 2022 should be conducted and deductions from his personal time bank should be considered. If the General Manager was overpaid on the payroll payout, those amounts should be reimbursed.

The Board voted unanimously (7 to 0) in favor of the motion, which was offered by Ron Claus and seconded by Cohen.

But they still had to contend with the legal action threatened by Burke via his attorney's communications. Which must be the main reason why the EWUA attorney, Rochelle Doyea, was present at the meeting and involved in the executive session that occupied almost its entire duration. Burke's attorney had painted a portrait of collusion between Hall and Smith, stating that they were trying to remove him from his position. This is a possible interpretation of the events that had been occurring behind the scenes at EWUA the previous months, but it is colored by the fact that Burke's attorney was retained to vigorously advocate his point of view. Another,

⁶ According to Smith, this action was approved by the Board at a special meeting on April 6, 2023, but there are no minutes of that meeting on the EWUA website (as of May 2, 2024).

⁷ Letter from Tiffany R. Couch to Clyde Duke, June 19, 2023, p. 4; available online at: <https://recallwater.com/wp-content/uploads/2023/08/ForensicReport.pdf>

⁸ *Ibid.*, p. 11.

⁹ Minutes of Eastsound Water Users Association Board meeting, June 20, 2023, pp. 1-3; available online at: <https://www.eastsoundwater.org/june-20-2023-board-meeting/>

more likely interpretation is that Hall and Smith were attempting to obtain information from Burke that they required to perform their bylaws-mandated oversight responsibilities. The Acuity Forensics analysis favors the second interpretation, confirming the troubling irregularities that Hall had noted in early 2023 and stating that much better responsiveness was needed from Burke.

But on the morning following its June meeting, the Board caved in to a Burke demand and removed Smith from membership on it. According to reliable sources, Burke had required that he be removed, else he would resign as general manager (which, in retrospect, would have been the preferable option). After a motion to remove Smith failed due to lack of the unanimity required by the EWUA bylaws, a majority of Board members voted to rescind his designation as a "member representative" — effectively removing him from the Board.¹⁰

As of late June 2023, then, Hall and Smith were out but not down. In July, they began to organize an effort that they dubbed RecallWater to attempt to oust the majority Board members — Cleveland, Cohen, Duke, Nelson, and Lancaster — who had backed Burke and ignored his financial transgressions. As Hall wrote in an August 2023 open letter sent to EWUA members, "The Board has chosen to excuse the GM's actions, hidden those actions from the forensic investigator, and has acceded to the GM's demands to silence those wanting accountability."¹¹

After publication of this letter on the RecallWater.com website and brief articles in the *Island Sounder* and *Orcasonian*,¹² the financial problems and festering animosities at EWUA were now out in the open. Smith chimed in on the same website with his own observations that "the final report by Acuity Forensics found that the GM had written checks to himself in excess of what was authorized by the Board, that the Board had failed in its duty of financial oversight, and that some of the Board had attempted to hide information from the forensic accountant."¹³

The EWUA Board of Directors soon responded with a long, detailed *Orcasonian* article stating (in bold type) that: "**Full adoption and implementation of the Acuity Forensics report**

¹⁰ Minutes of June 21, 2023, Special Board meeting, available online at <https://www.eastsoundwater.org/june-21-2023-board-meeting/>. Cleveland offered the first motion and Cohen offered the second. Claus voted against both motions and Smith abstained.

¹¹ Tenar Hall, "Open Letter to EWUA Members," August 2023; available online at <https://bit.ly/R-Tenar>. This is the principal document that first brought the EWUA management irregularities to outsider attention.

¹² Steve Smith, "Financial cover-up at Eastsound Water Users Association?" *Orcasonian*, August 22, 2023, available online at <https://theorcasonian.com/financial-cover-up-at-eastsound-water-users-association/>.

¹³ Steve Smith, "Q&A with Steve Smith," available online at <https://bit.ly/R-QASteve>

recommendations will be completed by early September."¹⁴ In response to a recommendation (cited above on p. 1) that an audit of Burke's paid time off (PTO) be conducted, it stated:

The Association reviewed the 2021 and 2022 PTO issue as identified by the Acuity Report and determined that its employee policies did not provide adequately clear guidance on PTO accrual, use, or cash-out options, resulting in confusion about how the PTO banks would be used or cashed out. As such, it did not find any conclusive basis to find a violation or a valid basis to seek reimbursement.

This disingenuous statement strains credulity. As stated on the first page of this white paper and in footnote 1, the EWUA Employee Handbook is crystal clear on the question of cash payments for unused time off — which are **not allowed** in the case of salaried employees (such as Burke) except when they leave EWUA employment. And there were curiously no pertinent records of Burke's use of his allowed time off, which turned out to be considerable, although such records were indeed kept for all other employees.¹⁵ As one commenter on the *Orcsonian* article put it, "This whole thing stinks; it reeks of mismanagement and CYA maneuvering."¹⁶

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Three long-term EWUA members — and others — did not support the recall effort in the fall of 2023, although they recognized the serious problems Smith and Hall had cited.¹⁷ They instead attempted to recruit strong female candidates to run for the open Board positions in the November election, trying to achieve gender balance. Carol Ann Anderson and Teri Nigretto ran and won Board seats by overwhelming margins. But that election was flawed by the fact that *three* seats should have been on the ballot, not two, as Clyde Duke had been appointed to his Board seat and was therefore required by the bylaws to run for reelection. And the three-year term that Duke had filled was ending in 2023, too, so he necessarily *had* to run for re-election if he was to remain on the Board.

In an executive session at its December 5 meeting, the Board opted to appoint third-place finisher Jim Cook as a member. But he was not permitted to take his seat until mid-January, *after*

¹⁴ EWUA Board of Directors, "Eastsound Water's implementation report in response to the Acuity Forensics investigation recommendations," *Orcsonian*, September 6, 2023 (emphasis in the original); available online at <https://theorcsonian.com/eastsound-waters-implementation-report-in-response-to-the-acuity-forensics-investigation-recommendations/>.

¹⁵ Michael Riordan, "General Manager Dan Burke's Excess Payments," December 2023, confidential report submitted to the new EWUA Board President Teri Nigretto. See especially Exhibit F. Dan Burke Absences from EWUA. Copy available on request.

¹⁶ Henry Stamper, comment in *Orcsonian*, September 5, 2023. See note 14 for Web link.

¹⁷ Robert Austin, Fred Klein and Michael Riordan, "An open letter on EWUA management," *Orcsonian*, October 9, 2023; available online at: <https://theorcsonian.com/guest-column-an-open-letter-on-ewua-management/>.

a vote had occurred in a closed board meeting to appoint Leith Templin to the remaining open seat, which had been vacated by Cohen's November resignation.¹⁸ No credible reason has been offered for this arbitrary delay, which could well have influenced the outcome of that vote.

Immediately after the December 5 meeting, Michael Riordan presented President-elect Nigretto (who was to assume office officially on January 1, 2024) with seven copies of a confidential report on the excess payments to the general manager, as Couch, Hall, and Smith had mentioned in earlier reports and communications (see above, notes 7, 11 and 13).¹⁹ It delved more deeply than these accounts, providing a detailed analysis of Burke's vacations and other absences from EWUA during 2021 and 2022.²⁰ Such an audit had been strongly recommended by Couch in her report (see her recommendation 10, quoted above). This report concluded that "Burke in fact took hours and hours of *unrecorded* vacation and sick leave in 2021 and 2022 — possibly more than he was allowed according to EWUA employment policies."²¹

But in an undated letter in early January, Nigretto dismissed this report, stating that "The Board has reviewed and found nothing new than was previously provided for the EWUA Board's review."²² This is not true. There has been no thorough EWUA attempt to do the recommended audit of Burke's time off. The report in fact contained important new information that the Board had unanimously agreed should be sought when it accepted all of Couch's recommendations. And Riordan's report concluded that significant reimbursements for Burke's excess payments were due EWUA.

Nigretto's letter also stated that "the new 2024 EWUA Board will do everything in its power to review the business systems being used at EWUA." But that has not happened. As had occurred with Tenar Hall, General Manager Burke continued refusing to allow the newly elected Secretary/Treasurer Anderson unfettered access to the supporting financial information required to perform her mandated oversight role. And, in a special April 2024 meeting, ostensibly devoted to reviewing bylaws amendments, a majority of the Board voted to remove Anderson from office, naming Templin to serve in her stead.²³ In little over a year, that is, two highly qualified

¹⁸ Michael Riordan, "The Culture of Secrecy at Eastsound Water," *Orcas Currents*, March 17, 2024; available online at <https://orcascurrents.com/the-culture-of-secrecy-at-eastsound-water/>.

¹⁹ Riordan, "General Manager Dan Burke's Excess Payments," note 15.

²⁰ Exhibit F. Dan Burke Absences from EWUA, in Riordan, note 15.

²¹ Riordan, note 15, p. 4; emphasis in the original.

²² Teri Nigretto, letter to Michael Riordan, undated. Copy available on request.

²³ Michael Riordan, "More management turmoil at Eastsound Water," *Orcasonian*, April 17, 2024; available online at <https://theorcasonian.com/guest-opinion-more-management-turmoil-at-eastsound-water/>.

women with strong mathematical and management credentials have resigned or been removed from the Secretary/Treasurer position primarily responsible for oversight of EWUA financial operations.

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There is an obvious, disturbing pattern here, and fingers point to the person responsible: General Manager Dan Burke. He seems incapable of accepting supervision by Board members elected to oversee EWUA's financial activities — especially women — as is mandated by the bylaws and normally required in regular business practices. In so doing, he subverts the needs of EWUA members to have a representative on the Board who is answerable to them for ensuring that its operations are financially sound and comply with state and federal laws. This is an unacceptable situation. As Couch strongly emphasized, the Secretary/Treasurer of a non-profit organization such as EWUA should have full and complete access to all systems including the mail server, the accounting system, and the records systems where receipts are kept. The existing relationship between the EWUA Board and General Manager Burke, that is, has it completely backwards. To put it colloquially, the EWUA tail is wagging the dog.

That strained relationship has probably cost EWUA tens of thousands of dollars — and not only in the excess payments to Burke cited above. The costs of dealing with his threatened legal actions in 2023 added tens of thousands more to the total. According to Burke, a total of \$71,389.54 was spent that year for "general employment matters." As he stated in an email:²⁴

This total is significant, in large part, due to considerable [attorney] time that was spent during the second half of the year resolving an employment dispute, paying out severance/settlement to resolve the dispute, and considerable costs incurred in assisting with the forensics investigation into allegations made by two former Board Members related to financial concerns.

All told, when added to the alleged excess Burke payments and questionable purchases on the EWUA credit and debit cards, the total cost to the Association could exceed six figures.

Viewed in this light, Burke's reluctance to share deeper, supporting financial information makes perfect sense. Those kinds of records — for example, receipts for credit-card purchases — can establish the propriety or impropriety of his questionable EWUA expenditures. That is why a Treasurer *must* have unfettered access to deeper, supporting information if she is to exert proper

²⁴ Dan Burke email to Robert Austin, April 23, 2024. The "employment dispute" Burke mentions is obviously the one he instigated himself by calling upon an outside attorney to send a threatening letter to the EWUA Board.

financial oversight of an organization, as Couch insisted. Burke's refusal to provide access to this information to not one but now two Secretary/Treasurers raises a bright red flag, leading critical observers to ask the question, "What is he hiding?"

And General Manger Burke has not been operating in a vacuum. For at least the past two years, he has been supported in his actions by a majority of EWUA Board members, who have been looking away and ignoring his apparent transgressions. Meanwhile, a critical, discerning minority has effectively been silenced by Burke's legal threats or by removal from office or the Board itself. This is a sorry state of affairs. Eastsound Water Users Association has become a dysfunctional organization, with a Board wracked by infighting and turmoil at its meetings. This is deeply troubling for a critical component of Orcas Island's utility infrastructure.

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These management problems have led to excessive costs for EWUA and its Members. At least \$100,000 and likely much more has been spent in trying to contend with and resolve them — both with and without Board approval. In 2023 alone, for example, \$101,240 was spent for legal services and another \$89,158 for accounting and bookkeeping. These two numbers are far above the average \$2,754 and \$13,075 that were spent for similar purposes during the last six years of former General Manager Paul Kamin's tenure.²⁵

In addition to the \$71,389.54 for "general employment matters," another \$18,131.25 was spent in 2023 for the investigation by Tiffany Couch, of Acuity Forensics, Inc., into the concerns about potential financial malfeasance that were voiced by the (now former) Board members Hall and Smith.²⁶ Despite this large, unusual expense and the fact that Couch found their claims to be largely valid, however, the EWUA Board has not followed up on her recommendations, despite public statements to the contrary.²⁷ We have seen little evidence that her audit of Burke's time off in 2021 and 2022 has ever been done as she recommended and are unaware of any EWUA reimbursement for the excess payments.

One of the areas Couch highlighted in her report was the extensive use of EWUA credit and debit cards without proper Board review or oversight. In the 2021–2022 time frame that she

²⁵ These averages are calculated from figures found in the IRS Form 990s for EWUA for the years 2015 to 2020, when Kamin retired. The largest annual expenditure for legal services during this period was \$12,770 in 2020, when EWUA was in the process of amending its bylaws and required legal advice on compliance with state laws.

²⁶ Burke to Austin, April 23, 2024. This investigation lasted over two months, from early April to late June 2023.

²⁷ For the Board claims, see note 14 and the *Orcsonian* article linked therein.

examined in detail, a total of \$283,059 was spent or committed on the credit card, for example, but receipts for these expenditures were not retained, making it difficult to determine exactly what the charges had been for.²⁸ She noted that there were "thousands of dollars of charges to home goods stores like Costco, Pottery Barn, Etsy, Target, Home Depot, Amazon, and Bed Bath and Beyond."²⁹ And, when receipts *could* be obtained, she called out the questionable purchase "of a \$2,923 Apple Mac Computer for [the] General Manager, followed by the purchase of a \$974 Apple iPad for [the] General Manager (sent to his personal home)."³⁰

When combined with the difficulty that has been experienced by Hall and Anderson in obtaining backup documentation and other supporting financial records, such undocumented expenditures create an inevitable cloud of suspicion that at least some of them did not occur for any legitimate EWUA business purpose. The only way to lift such a dark cloud is for the Board to insist on a thorough, independent audit of Association finances for the previous three years. But, the costs of such an audit would be considerable, estimated in the several tens of thousands of dollars. Another possibility would be the formation of an EWUA finance or audit committee charged with the responsibility to look deeply into these and other financial matters. But, to do its work and produce a credible result, such a committee must be allowed unfettered access to the Association's financial records. And, to help assure its independence, it should include regular EWUA members with strong financial experience who are not Board members.

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As an IRS 501(c)(12) non-profit organization, Eastsound Water Users Association is mandated to provide water services to users at "least possible cost." Like it or not, that's the law. EWUA indeed seems to have followed such guidance during Paul Kamin's stewardship. But, that does not appear to have been the case since Burke took over the General Manager's position. Expenses have almost doubled since 2020, to \$1,931,426, from \$1,095,730 in 2022.³¹ And there have been two increases of roughly 10 percent each in our water rates. Some of that cost growth can be laid to the inflation that occurred in 2021 to 2022. But without the oversight of EWUA finances by the Secretary/Treasurer mandated by the bylaws, we just do not know whether these increases are in fact justified.

²⁸ Couch to Duke, June 19, 2023 (see note 7), p. 3.

²⁹ *Ibid.*, p. 4.

³⁰ *Ibid.*

³¹ Figures taken from draft 2023 EWUA financial statement presented at the March 2024 Board meeting and from the 2020 IRS Form 990.

A related IRS concern has to do with the unauthorized self-payments to the General Manager for purportedly unused time off — a question that has never to our knowledge been satisfactorily resolved. There are serious penalties for such payments, should the IRS ever do an audit and discover that they indeed occurred. EWUA could even lose its non-profit status. This is yet another reason why the Board and Secretary/Treasurer must be able to exercise due oversight of Association finances and be able to fulfill their fiduciary responsibilities to EWUA members. And to do so, they must have unfettered access to all the supporting financial records.

Based on our experiences in trying to obtain such access and provide such oversight during the previous year, we have lost all confidence in the current Board majority and its Secretary/Treasurer to fulfill their fiduciary obligations to the EWUA membership. That is the principal (but not the only) reason why we have no other recourse but to call for their removal.

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