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TULARE COUNTY GRAND JURY REPORT 2015-2016

4. A consultant was hired by RCSD to perform grant administrative functions allocated to the District by statute, including meeting legal and regulatory obligations.
5. There was an independent architect hired by the consultant to produce plans and specifications for the park.
6. A principal with the consulting firm was hired to serve as general contractor and construction manager to construct the park.
7. The RCSD Board of Directors failed to provide the Grand Jury with subpoenaed documents relating to Request for Proposals (RFP) and Request for Bids (RFB) for park construction.
8. The RCSD Board of Directors was unable to provide viable evidence of publicly advertised requests for bidding.
9. The RCSD has not maintained separate accounts for State grant funds and regular business funds.

FINDINGS:

ADMINISTRATIVE FINDINGS:

- F1. As a result of the volunteer organizational expert's guidance, attention was focused on preparing an audit for RCSD's 2014-2015 Fiscal Year. Records for previous years were found to be inadequate and incomplete in terms of completion of an audit.
- F2. As of the date of this report, comprehensive practices and procedures encompassing all aspects of RCSD operations have been implemented, with formal adoption pending.
- F3. The services of a Public Accountant were secured and a new accounting system has been implemented by RCSD to assist in reporting the district's financial condition.

PARK FINDINGS:

- F4. The RCSD Board has the ultimate responsibility for financial and construction administration of the \$2.81 Million grant.
- F5. Documents provided by the RCSD Board were inadequate and failed to fully comply with the subpoena. Many of the documents received by the Grand Jury appear incomplete, unclear and contradictory in explanation of financial and contractual administration for the Park.
- F6. The RCSD Board failed to exercise due diligence with respect to executing its oversight responsibilities.
- F7. The RCSD Board failed to exercise due diligence with respect to executing fiduciary responsibilities.
- F8. The RCSD failed to adhere to appropriate public codes in requiring the necessary bids for construction (PCC Section 20680-20683). (see Attachment "B")

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RECOMMENDATIONS:

- R1. That the RCSD Board educate themselves to all public codes applicable to the operation, administration and oversight responsibility of a special district.
- R2. That the RCSD Board give serious consideration to hiring a professional administrator.
- R3. That the RCSD maintain its recent commitment to adhere to generally accepted accounting principles and transparency.

REQUIRED RESPONSES:

1. Richgrove Community Service District Board of Directors.

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Section 924.2 and 929).

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Attachment "A"

PUBLIC CONTRACT CODE

Division 2, Part 1, Chapter 1, "Definitions," portions of Section 1100-1104

1100. "Public entity," as used in this part, means the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state.
1101. "Public works contract," as used in this part, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.
1103. "Responsible bidder," as used in this part, means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract. The Legislature finds and declares that this section is declaratory of existing law.
1104. No local public entity, charter city, or charter county shall require a bidder to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except on clearly designated design build projects. Nothing in this section shall be construed to prohibit a local public entity, charter city, or charter county from requiring a bidder to review architectural or engineering plans and specifications prior to submission of a bid, and report any errors and omissions noted by the contractor to the architect or owner. The review by the contractor shall be confined to the contractor's capacity as a contractor, and not as a licensed design professional.

Attachment "B"

PUBLIC CONTRACT CODE

Division 2, Part 3, Chapter 1, Article 43, "Community Service Districts", portions of Section 20680-20683

20680. The provisions of this article shall apply to contracts by community services districts as provided for in the Community Services District Law pursuant to Division 3 (commencing with Section 61000) of the Government Code.
- 20682.5. (a) A district may construct or complete any building, structure, or improvement with its own forces or by contract without bidding when the cost does not exceed twenty-five thousand dollars (\$25,000).
- (b) All contracts for the construction or completion of any building, structure, or improvement, when the cost exceeds twenty-five thousand dollars (\$25,000), shall be contracted for and let to the lowest responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.
- (c) The district shall publish a notice inviting bids for any contract for which competitive bidding is

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required at least one time in a newspaper of general circulation in the district at least 10 days before the time specified for receiving bids. The notice inviting bids shall set a date for opening the bids and distinctly state the work to be done.

- (d) If the general manager recommends and the board of directors determines that the publication of advertisements of the notice in trade journals and papers in lieu of publication pursuant to subdivision (c) will increase the number of business enterprises receiving that notice, the board of directors may by resolution declare that those notices shall be published in trade journals and papers at least 10 days prior to the time specified for receiving bids.
- (e) If plans and specifications are prepared describing the work, all bidders shall be afforded an opportunity to examine the plans and specifications, and the plans and specifications shall be attached to and become part of the contract, if one is awarded.
- (f) At its discretion, the board of directors may reject any bids presented and readvertise.
- (g) In the case of an emergency, the board of directors may act pursuant to Chapter 2.5 (commencing with Section 22050).
- (h) The board of directors may, subject to Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code, require the posting of those bonds it deems desirable as a condition to the filing of a bid or the letting of a contract.
- (i) The district shall keep cost records of the work in the manner provided in Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.
- (j) As an alternate to the procedures required by this section, a district may rely on the Uniform Public Construction Cost Accounting Act, Chapter 2 (commencing with Section 22000) of Part 3 of Division 2.

20683. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

- (a) Cash.
- (b) A cashier's check made payable to the district.
- (c) A certified check made payable to the district.
- (d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

TULARE COUNTY, ARE WE READY FOR EL NINO?

BACKGROUND:

Located within the State of California, Tulare County is situated in a geographically diverse region. The County includes an area of 4,863 square miles. Mountain peaks of the Sierra Nevada range rise to more than 14,000 feet in its Eastern half. Meanwhile, the extensively cultivated and very fertile valley floor in the Western half, has allowed Tulare County to become the second-leading producer of agricultural commodities in the United States.

The Topography of Tulare County can be generally divided into three regions. The Eastern region consists of High Sierra Mountains, substantially covered in forest with minimal development and improved structures. Drainage basins are typically natural and uncontrolled. Flooding is not typically an issue here, as precipitation generally falls in the form of snow during the winter months. Flows from drainage areas with origins in the Eastern region are generally controlled through either of the two major dams in Tulare County operated by the U.S. Army Corps of Engineers.

The Central region runs along the foothill area of the County at elevations from approximately 500 feet to 2,000 feet. This region includes a few smaller communities and dispersed residential and ranching operations. The majority of precipitation with potential to cause flooding falls within the Central region during storm events. Drainage basins with origins in the foothills are typically uncontrolled and subject to high intensity rain events.

The Western region of Tulare County is generally flat with substantial urban and rural development. The terrain is predominantly covered in agricultural and industrial uses. Natural water flows have been dramatically altered through the development of irrigation channels, grading operations, privately owned flood control ditches and berms, and roadway networks. Many of these facilities have been developed on a private, individual or ad-hoc basis, or without consideration for potential flood control ramifications.

The southern portion of the Western region of Tulare County forms a part of the Tulare Lake Basin. The Tulare Lake Basin does not outflow to other bodies of water. During normal rain events, storm water is typically dispersed within the drainage areas through percolation to groundwater, discharge to natural riverine systems, collection and conveyance through irrigation ditches, retention in flood control basins and evaporation. During abnormal, high intensity rain events, these storm water dispersal methods are overcome and there is a potential for flooding events.

Average annual rainfall in the lower elevations of Tulare County ranges from around 7-inches in the extreme southwest to around 15-inches in the northern Central region. Rain events typically occur between mid-October and April, with limited rainfall during the remaining portion of the year. Storm events are frequently moderate in intensity with over 1-inch of rain per hour. Less frequent storm events – 100 year storms – can be as high as 3-inches of rainfall per hour. Storm cells are generally localized and focused over unique drainage areas, and flooding has historically occurred in limited regions of the County during a particular storm event.

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The highest potential for flooding issues in the Western region of Tulare County occur when a storm cycle has produced multiple storm events aimed at the same drainage basin. These multiple storm events will saturate topsoil and reduce the effects of percolation. As small drainage basins merge, and waters move westerly, the flows increase. Due to the vast size of the county, high water levels may not be seen in particular western streams, rivers, and channels until 12 to 36 hours after a rain event in the foothills.

Storm water runoff from high intensity rain events in the foothills flows down gradient and collects in streams, rivers, and ditches that cannot fully accommodate the quantity of water when the terrain flattens out as the waters move west. The reduction in slope of the terrain was historically accommodated by the rivers and streams carrying the storm waters naturally fanning out and creating multiple channels in which the floodwaters could flow. The development of agricultural activities, irrigation facilities, and urban growth has disturbed these natural, multi-branched flows of waters. Due to the high cost, both in terms of dollars and in reductions to useable land, development has historically occurred in a manner that accommodates normal precipitation, but does not allow for unusually high intensity rain events.

The Tulare Lake Basin hasn't experienced any 50-year or 100-year flood events in more than 40 years. The Kaweah and Tule Rivers haven't even seen a 20-year flood or larger since 1969. In the event of 1861 or 1867, most of Visalia and northwest Tulare County experienced flooding. During the 1867-1868 Flood there was 5-6 feet of flood water on Main Street in Visalia.

REASON FOR INVESTIGATION:

The Tulare County Grand Jury was interested in ascertaining the preparedness of the responsible jurisdictions within the county in anticipation of the 2015 – 2016 El Nino rainfall event.

METHOD OF INVESTIGATION:

The Tulare County Grand Jury conducted a Jury Initiated Investigation on preparedness in Tulare County for flooding in 2015-2016 fiscal year. Presentations were made to the Board of Supervisors and the Grand Jury by the Tulare County Resource Management Agency (RMA) regarding the status of their flood control action plan. The Grand Jury inquired of the cities within Tulare County on their ongoing Flood Control activities. Public documents were reviewed by the Grand Jury. Site visits were conducted by Grand Jury members to review flood control projects. One site visit was in the vicinity of the County's correctional facilities to see the Cottonwood Creek Berm project. Other site visits were in the Visalia area reviewing various projects including a retention basin expansion north of the downtown area.

FACTS:

Tulare County RMA Flood Control preparedness measures:

1. The RMA performed a "Hot Spot" Risk Assessment:
 - a) identified known and potential new areas of flooding concerns
 - b) created computer-based mapping (GIS) database and maps of these locations