



The Superior Court
COUNTY OF SAN JOAQUIN
222 E. WEBER AVENUE, ROOM 303
STOCKTON, CALIFORNIA 95202

TELEPHONE
(209)468-2827
WEBSITE
www.stocktoncourt.org

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2013-2014 GRAND JURY RELEASES REPORT ON SAN JOAQUIN COUNTY RECLAMATION DISTRICTS

Today, the San Joaquin County 2013-2014 Civil Grand Jury released its report on San Joaquin County Reclamation Districts. There are 53 Reclamation Districts in San Joaquin County established under the California Water Resources Code with responsibility for protecting low-lying land from water intrusion from local rivers and sloughs of the San Joaquin Delta. For many years the San Joaquin County Grand Juries have conducted investigations of the various special districts existing within the County. Reclamation Districts have not been investigated by a grand jury in the past, yet they expend large amounts of public funds in the performance of their duties. The 2013-2014 Grand Jury decided to review the Reclamation Districts in San Joaquin County to determine if there were any issues related to the Reclamation Districts' operations, efficiency and compliance with applicable laws.

The Grand Jury surveyed the Reclamation Districts to obtain information regarding their organization, compliance with the Fair Political Practices Commission, budgets, legal services, audit services, and engineering services. Surveys were mailed to all 53 districts in San Joaquin County; five districts did not respond. The Grand Jury also reviewed materials including, but not limited to: California Water Code; districts' operating budgets, audit reports, contacts for legal services, contracts for engineering services; and responses from the County Treasurer-Tax Collector and County Auditor-Controller. Additionally, interviews with two attorneys representing Reclamation Districts, an audit firm preparing Reclamation District annual financial audits and Local Agency Formation Commission staff were conducted.

Through its investigation, the Grand Jury found that the Reclamation Districts generally operate well, but many do not have the operational transparency and accountability that should be provided to property owners. Two areas of particular concern are lack of adopted budgets and lack of contracts for certain professional services. Both could easily be addressed with little added cost or effort. The Local Agency Formation Commission is scheduled to perform a required Municipal Services Review of the Reclamation Districts in Fiscal Year 2014-2015. This forthcoming review of the districts' services provides an opportunity to take a closer look at the future viability of the districts as they are now constituted and operated, or if options can be identified that would improve the efficiency of the Districts' operations. The Grand Jury believes this is an opportunity that should not be ignored or diminished if a large segment of San Joaquin County is to remain viable for agriculture, habitation and recreation.

All Reclamation District Boards of Directors and the Local Agency Formation Commission are required to submit a response to the Presiding Judge of San Joaquin County Superior Court within 90 days as to each finding and recommendation contained in the Grand Jury's report.

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(Copy of report attached)

San Joaquin County Grand Jury



SAN JOAQUIN COUNTY RECLAMATION DISTRICTS: *Limited Resources for a Big Task*

2013 - 2014 Case No. 0113

Summary

There are 53 reclamation districts in San Joaquin County established under the California Water Resources Code with responsibility for protecting low-lying land from water intrusion from local rivers and sloughs of the San Joaquin Delta. Varying in size from single property owners to large, partially urbanized areas the Districts work with limited financial resources and few employees. The 2013-2014 Grand Jury found that the Districts generally operate well, but many do not have the operational transparency and accountability that should be provided to property owners. Two areas of particular concern are lack of adopted budgets and lack of contracts for certain professional services. Both could easily be addressed with little added cost or effort. Also, the Local Agency Formation Commission (LAFCo) has not yet performed the required Municipal Services Review (MSR) for reclamation districts. Scheduled to be undertaken in Fiscal Year 2014-2015, the Grand Jury recommends the study include a look at Districts that have either ceased to exist in reality, or that might be better able to provide services through consolidation or shared activities.

Glossary

AB 1234	Assembly Bill 1234, adopted in 2005, added Sections 53234 through 53235.2 of the Government Code requiring local agency officials to take an ethics training course upon election or appointment and every two years during their term if they receive any compensation from the government entity
County	San Joaquin County
District	Reclamation District in San Joaquin County formed under the California Water Code
<i>et seq.</i>	To include that which follows
FPPC	California Fair Political Practices Commission
LAFCo	San Joaquin County Local Agency Formation Commission
MSR	Municipal Services Review, a service review of independent special districts and other entities
Special Districts	A unit of local government, separate from cities and counties, which provide public services such as fire protection, water supply, and reclamation
Trustee	Member of the Board of Trustees of a Reclamation District either by election or appointment

Background

Reclamation districts are created and operate under the California Water Code, Sections 5000 *et seq.* They are independent agencies authorized to levy and collect assessments on property within the district, issue bonds and receive funds from state and federal agencies. The districts are governed by either a three or five member Board of Trustees who must be residents of the district. While trustees are generally elected, they may be appointed by the County Board of Supervisors if an election is not held.

The districts are charged with protecting land from water intrusion through the construction and maintenance of levees, water pumps and other devices. The areas included in reclamation districts are below the water levels in surrounding rivers and the delta.

They must follow various federal and state laws and regulations, and they are supervised by both federal and state agencies. A number of federal and state programs providing funds for the construction and maintenance of levees require a reclamation district to be in existence to receive the funds.

Reason for Investigation

For many years the San Joaquin County Grand Juries have conducted investigations of the various special districts existing within the County. Reclamation districts have not been investigated by a grand jury in the past, yet they expend large amounts of public funds in the performance of their duties. The 2013-2014 Grand Jury decided to review the Reclamation Districts in San Joaquin County to determine if there were any issues related to the Districts' operations, efficiency and compliance with applicable laws.

Method of Investigation

The Grand Jury prepared a survey to obtain information from Reclamation Districts related to their:

- Organization
- Compliance with Fair Political Practices Commission (FPPC) and AB 1234 requirements
- Budgets
- Legal services
- Audit services
- Engineering services

Surveys were mailed to all 53 Districts in San Joaquin County. Five Districts did not respond.

Materials Reviewed

- Surveys returned from 47 Reclamation Districts
- California Water Code
- Reclamation Districts' operating budgets
- Reclamation Districts' annual audit reports
- Reclamation Districts' contracts for legal services
- Reclamation Districts' contracts for engineering services
- Audit firm manual for audits of special districts
- Responses from County Treasurer-Tax Collector
- Responses from County Auditor-Controller

Interviews Conducted

- Two attorneys representing Reclamation Districts

- Audit firm preparing Reclamation District annual financial audits
- LAFCo staff

Discussions, Findings and Recommendations

1.0 Contracting for Services

Most of the Districts in San Joaquin County are small. Few have full time staff to administer the activities of the Districts and contract for services. The predominant contracts are for legal services and engineering services. An annual “Letter of Engagement” is used to contract for required annual financial audit services. The investigation found no laws requiring Districts to have contracts for professional services. This reason was given by some Districts as to why they do not have some contracts.

While over a dozen legal firms provide services to the Districts, two firms combined represent 24 of the 48 Districts responding to the Grand Jury’s survey. Both firms have represented Districts for decades. In addition to basic legal assistance, most of the legal firms also provide general administrative and finance administration support for the Districts. These include preparation and posting of the Board agendas; maintaining minutes of meetings; sending notices to property owners as needed; maintaining bookkeeping services for the Districts’ warrants; mailing and collecting assessments; and preparing budgets and other financial documents. Using the legal firm’s staff allows for a consolidation of services and also provides these services in a much more cost-effective manner than if the Districts attempted to contract for each service separately or employ the personnel that would be needed to cover all of the services.

Not all of the Districts have contracts with their legal firms. A common response was that contracts were not required for these types of services. While most Districts did have contracts, often they did not contain a listing or description of all of the services provided by the legal firm to the District. Testimony indicated that this lack of approved contracts may hinder a District when recovering funds from federal and state agencies after an emergency. An ounce of prevention may prevent a pound of problems later.

All Districts responded that they have contracts with engineering firms. Only three Districts did not list a private sector firm. Nine different firms were mentioned in the survey responses, with one firm serving 23 Districts and two other firms combined serving 11 Districts. The reasons for the limited number of firms were that Districts want engineers already familiar with the levee conditions in the County and that knowledge of how the various Districts’ infrastructure is interconnected becomes very valuable when dealing with emergencies.

Findings

F 1.1 A number of Reclamation Districts do not have signed contracts for some of their professional services which may affect reimbursement for costs incurred in an emergency.

F 1.2 Some Reclamation District contracts do not identify all of the services provided by the legal firm.

F 1.3 Having professional services contracts with legal and engineering firms in place and approved may assist Districts to recover funds from federal and state agencies following an emergency.

Recommendations

R 1.1 No later than November 1, 2014, the Board of Trustees of each Reclamation District is to review their current legal services contract to assure it contains all services provided by the law firm and that the contract contains all relevant information required under Federal and State laws and regulations to assure reimbursement of permitted costs in the event of an emergency.

R 1.2 No later than November 1, 2014, the Board of Trustees of each Reclamation District without a current written contract for legal services adopt a legal services contract that contains all services provided by the law firm and all relevant information required under Federal and State laws and regulations to assure reimbursement of permitted costs in the event of an emergency.

R 1.3 No later than November 1, 2014, the Board of Trustees of each Reclamation District is to review their current engineering services contract to assure it contains all relevant information required under Federal and State laws and regulations to assure reimbursement of permitted costs in the event of an emergency.

2.0 Financial Operations

Reclamation Districts operate with funding from assessments on property within the District, Federal and State grants, and bonds or loans approved by the District. All assessments are subject to Proposition 218 which requires a vote by the property owners benefiting from the activities paid by the assessment before it can be levied. For Fiscal Year 2012-2013 the assessments collected by Districts ranged from less than \$700 to over \$3.1 million. Most Districts use the services of the County Treasurer-Tax Collector to prepare and mail tax bills for collecting assessments, which is provided at no cost to the District. The County Auditor-Controller's Office provides assistance in calculating and processing the assessments for all except the largest Districts. The largest Districts

use private engineering firms to calculate the assessments on each parcel of land based on benefits received, as required by Proposition 218. The County Auditor-Controller also prepares warrants for all Districts with money in the County Treasury. A warrant request is submitted to the County with supporting documentation where the warrant is paid if sufficient funds are in the District's accounts. The Auditor-Controller Office charges Districts \$1.87 processing fee for preparation and issuance of each warrant, and a \$0.16 fee for redemption of each warrant.

District budgets vary from year to year impacted mostly by infrastructure work being performed. For Fiscal Year 2012-2013 District budgets ranged from \$3,500 to over \$65 million. Most budgets were hundreds of thousands of dollars. For the fiscal years reviewed, budgets were fairly stable except for the Districts with large capital expenditures in a single year. Due to the large variations in the Districts, the Grand Jury did not investigate nor opine on the appropriateness of the budgets.

The Grand Jury inquired about the total legal fees paid by Districts in Fiscal Year 2012-2013. Payments ranged from \$751 to \$136,482. Because of the size of the District, the activities being undertaken and the funding involved, no issues were found with the amount of legal fees paid.

All Districts are required to prepare annual independent audits of its financial operations. As is the case with other professional services, a small number of accounting firms prepare the audits. Of the responding Districts, one accounting firm services 27 Districts. This is not an unusual situation, nor was it of concern to the Grand Jury. Special districts must operate under generally accepted accounting standards and also have unique sets of accounting requirements which are nationally recognized. These standards provide guidelines for Districts to record their financial activities related to the variety of services provided, the sources of revenues and the special regulations related to many of the bonds issued by the districts. The annual audits are contracted under an annual "Letter of Engagement" which outlines what services are to be provided and the cost of providing those services. This is a standard and generally accepted approach for small governmental entities to hire an audit firm.

The Districts are generally compliant with the accounting standards. The areas where notices of deficiencies were issued by the external audit firms as part of the annual financial audit, involved a lack of division of responsibility in the financial operations. This was confirmed by testimony and document reviews. The standards call for separate individuals to be responsible for revenue billing and payment collection and separate individuals for receiving and paying bills. The posting to the general ledgers should also be reviewed by a different individual. However, this is generally impractical with the Districts' limited financial resources compared to the cost that the divisions of responsibilities would entail. No known incidents of any inappropriate activity as a result of the limited staffing for a District's financial operations were found.

Findings

F 2.1 Many small Districts are unable to maintain the separation of financial duties that are recommended by generally accepted accounting practices due to their size and lack of financial resources.

F 2.2 Some Districts do not prepare and adopt annual budgets which outline its proposed expenditures for the forthcoming fiscal year and which results in diminished transparency about the District's finances.

Recommendation

R 2 No later than December 31, 2014, all Districts that do not have an adopted annual operating budget are to prepare the framework for an annual budget and utilize it for all subsequent fiscal years.

3.0 Are there more efficient organizations?

The County's Reclamation Districts are small organizations. Only seven of the Districts responding to the survey indicated they have full time employees. Many have part-time employees and a few utilize outside contract employees to perform the work associated with the District. As previously discussed, most do not have administrative staff but instead use their legal firms to provide basic administrative, accounting and financial services. The lack of financial resources is the primary reason for the limited staffing.

Twenty-four of the Districts have at least one Trustee with over 20 years of service on the Board. Because of the small populations in most of the Districts, the Grand Jury finds no cause for concern with this length in office. All Districts responded that their Trustees have filed the required Fair Political Practices Commission's "Statement of Economic Interest" (Form 700). Those Trustees who receive no compensation for service on the Boards are not required to take the training required under AB 1234.

Because of the small size of the Districts, the Grand Jury investigated whether consolidation, dissolution or some other action could result in more cost savings and efficiencies. Districts are hesitant to undertake consolidation or other actions. Many have very limited resources and there are costs and other considerations associated with dissolution or other actions. These include: (1) The application/processing fees charged by LAFCo, legal fees to prepare, advertise and adopt the required legal actions; (2) Identifying who will provide the services the District provided, a finding LAFCo is required to make before approving any action; and (3) The potential personal liability of Trustees for either dissolving a District or assuming responsibility for another District where the flood control work has not been kept to standards.

There is one small District that had the land filled in creating an island thus eliminating the need for reclamation activities. However, the cost of dissolution (LAFCo charges \$10,350 for an application to dissolve a district) and potential residual liability does not make that action attractive to the District's property owners or Trustees. A District, responding to the survey, indicated that it is dormant and has had no activity for many years. Another District remains as a reclamation district but has no budget or activity. As a result, the District would be eligible for funding should the need arise without the time and expense of being re-established. A third District has been administratively taken over by a larger, independent agency when the reclamation land fell within the new agency's purview.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (California Government Code Section 56000 *et seq.*) requires each county LAFCo to conduct a review of the services provided by independent special districts within its jurisdiction. This is known as a Municipal Services Review (MSR). These are for the purpose of identifying and analyzing information about the governance structure and efficiency of these service providers and to identify opportunities to improve the quality, efficiency or cost effectiveness of local services. The law requires an MSR be conducted at least every five years. However, the State guidelines for preparing an MSR were not finalized until August 2003.

The San Joaquin LAFCo has not conducted its review of Reclamation Districts. The delay has been the result of staff shortages and limited funding. LAFCo indicated that the review is being scheduled for Fiscal Year 2014-2015. The Grand Jury reviewed the draft survey LAFCo proposes to use for its MSR for Districts. It found the breadth and range of information being requested should allow LAFCo to determine the effectiveness of current District services and to identify areas of potential increased effectiveness. If the MSR recommends consolidation, dissolution or other actions, LAFCo currently has the authority to waive or adjust the processing fees which may make it more feasible for the small Districts.

Findings

F 3.1 LAFCo has not conducted the Municipal Services Review for Reclamation Districts in the County due to personnel and financial constraints, limiting objective information on how well Reclamation Districts are performing their mandated services.

F 3.2 Trustees of Reclamation Districts have been hesitant to dissolve existing districts, consolidate activities or share operations and responsibilities with other districts because of the cost of the dissolution, concern with personal liability and the ability to continue providing flood control services.

Recommendations

R 3.1 No later than November 1, 2014, as the agency responsible for addressing Reclamation Districts' level of services provided, LAFCo is to hold a meeting for all

Reclamation Districts in the County to jointly discuss how the Districts can better provide services within current financial constraints.

R 3.2 Upon completion of its Municipal Services Report for Reclamation Districts in San Joaquin County, LAFCo is to prepare a summary report for all Districts proposing actions that could provide better services through dissolution, consolidation or shared operations.

Conclusion

Reclamation Districts have existed in San Joaquin County since the late nineteenth century. They have increased in number and importance as the population has increased and more land was recovered from river and delta areas. They continue to provide the service of keeping water out of areas actively used for agricultural, residential and industrial functions. The Grand Jury finds that with limited sources of revenue and few employees, the Districts, in general, operate effectively and within the guidelines of State law.

While not a part of the Grand Jury's investigation, comments were made by individuals familiar with District operations about the potential impact of the proposed State water diversion tunnels through the Delta. While specifics are not yet known, the consensus of comments received was that there would be negative repercussions on every District should the tunnel project be undertaken. The County and every District must keep close watch on what the State is proposing.

There are some weaknesses in contracting for and transparency of financial planning. Both can be readily resolved. LAFCo's forthcoming review of the District's services provides an opportunity to take a closer look at the future viability of the Districts as they are now constituted and operated, or if options can be identified that would improve the efficiency of the Districts' operations. It is an opportunity that should not be ignored or diminished if a large segment of San Joaquin County is to remain viable for agriculture, habitation and recreation.

Disclaimers

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 the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 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 Sections 924.2 and 929).

Response Requirements

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report.

All Reclamation District Boards of Directors shall respond to Findings F 1.1, F 1.2, F 1.3, F 2.1 and F 2.2 and Recommendations R 1.1, R 1.2, R 1.3 and R 2.

The Local Agency Formation Commission shall respond to Findings F 3.1 and F 3.2, and Recommendations R 3.1 and R 3.2.

Mail or hand deliver a hard copy of the response to:

Honorable Lesley D. Holland, Presiding Judge
San Joaquin County Superior Court
P.O. Box 201022
Stockton, CA 95201

Also, please email the response to Ms. Trisa Martinez, Staff Secretary to the Grand Jury at grandjury@sjcourts.org