



2008-2009 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

SANTA CLARA VALLEY WATER DISTRICT AWASH IN CASH AS COUNTY AND CITIES DROWN IN RED INK

PART 1 OF 4 REPORTS

Issues

Can the public trust the Santa Clara Valley Water District (District) to spend its money only when it is reasonable and necessary and to not extract unnecessary funding from taxpayers?

Is more oversight, and control of the District needed?

Summary

1. The District has been questioned on its spending for years and has made little to no effort to become cost effective.
2. Significant issues surround the District's 15-year special parcel tax of 2000:
 - The public was misled on the true purpose of the special tax.
 - Information regarding significant campaign contributions was withheld from the public until after the election that might have had a significant effect on the outcome of that election.
 - The special parcel tax added \$32M in new property taxes (FY08), a 50% increase over existing property taxes, excluding benefit assessments and bond measures.
 - The tax is due to expire in 2016 and a replacement tax proposal is likely. The public is entitled to know whether the replacement is necessary.
3. The only review of the District's budget and spending is the District's own Board of Directors (BOD). The District proposed in 2005, and the Santa Clara County Board of Supervisors (BOS) supported, legislation to sever any District accountability to the BOS as of January 1, 2007, leaving the District with no oversight.
4. The public requires assurance that what the District spends, and subsequently collects from the public is actually reasonable and necessary.
5. Although the proposed legislation from a local Assemblymember to strengthen law governing the District is greatly needed, it does not go far enough to adequately govern the District.

Four Reports

This report is **Part 1** of four reports on the District. Part 1 covers broad district-wide issues and Parts 2-4 are more specific as follows:

Part 2 - Santa Clara Valley Water District: New Water Quality Laboratory Building—Overbuilt and Underused?

Part 3 - Santa Clara Valley Water District: Alviso Slough Restoration Project – \$22M Restores Boating but Threatens the Environment

Part 4 - Santa Clara Valley Water District: Gold Street Education Center – \$1.38M for what?

Investigation Purpose and Methodology

The Santa Clara County Civil Grand Jury (Grand Jury) received multiple citizen complaints regarding the District. Most complaints involve questionable spending by the District:

Based on the size of the District's budget, the importance of its mission and current economic conditions, the Grand Jury initiated an investigation which included:

- Interviews with District management, staff, and its Board of Directors
- Review of newspaper articles, library archives, web blogs, District meeting agendas, minutes, webcasts, District reports and records dating back to 1995
- District site inspections
- Data requests to the District

Facts were gathered from two audits completed in 2000 and 2007 and supplemented with information gathered by the Grand Jury:

- The first audit (2000 Audit) was conducted from August 1999 through March 2000 by Malcolm Pirnie Inc., an environmental consulting firm. The audit was a performance audit of the Water Utility Enterprise (WUE), the unit/section of the District that sells wholesale water and charges well owners a “pump tax” for ground water replenishment. This audit came in response to a 1998 request from the District's water retailers, which includes private companies such as San Jose Water Company, California Water Service Company, and municipalities such as Mountain View, Milpitas, and Santa Clara that sell water to its residents.

- The second audit (2007 Audit) was performed between 2005 and 2007 by Red Oak Consulting, a subsidiary of Malcolm Pirnie Inc., and was a district-wide performance audit, thus including the flood control operations as well as the WUE. This audit was proposed by the District in 2004 in the midst of heightened scrutiny of the District by the County Board of Supervisors (BOS), who was responsible for review of the District's budget and water rates.

Board Tenure

The BOD is comprised of five elected directors, one from each of the Santa Clara County Supervisorial districts and two at-large directors appointed by the BOS. There are no term limits, and while a change in areas represented is currently a topic of proposed legislation, term limits are not. Legislation passed in 2006 (AB 2435) reduces the number of directors from seven to five in 2010. However, legislation is currently being proposed to return to seven directors (AB 466). The seven directors have served an average of 15 years. The concerns expressed in this report have all occurred during the tenure of the current directors.

Director	First year as Director
First At-Large	1980
District 2	1986
District 1	1993
District 4	1995
Second At-Large	1996
District 3	2000
District 5	2007

Table 1: Director years of service

Directors are not full time, but are paid a per meeting stipend which was \$236.39 in FY08. The majority attend the maximum number (10) of payable meetings per month. The total expense for the seven Board members' fees and expenses for FY08 was \$238,837.96. Additionally, directors and their dependents received \$66,620.29 in medical, dental, vision, CALPERS, and life insurance benefits.

Overview of Issues

In 2000 the California Little Hoover Commission called for:

- Improved visibility and accountability of special districts
- Simpler financial information reporting
- Policies and plans for accumulated reserves
- Specific plans for the future including anticipated expenditures, reserves, and user rates

- Per capita property tax contributions
- Performance and quality of service indicators
- Public notice of Board member benefits and compensation.

It also called for annual presentation of financial information to the county board of supervisors and local city councils. It emphasized how the Local Agency Formation Commissions have not aggressively scrutinized special districts for efficiency and effectiveness.

In 2004 the California State Auditor strengthened the recommendations of the Little Hoover Commission Report for Water Districts. It emphasized the need for accountability for very large cash reserves, which occur frequently in water districts due to imbalances from Proposition 13 allocations set in 1978, unjustified director fees and reimbursements, and violation of conflict-of-interest laws.

In June 2004, the BOS, which had responsibility for budget review of the District at the time, ordered its Management Audit Division to conduct a review of the proposed FY05-06 operating and capital budget with a focus on reserves, the degree to which the District has completed capital projects financed by voter-approved measures, and funding levels of workers compensation and liability insurance.

In the meantime, the District moved to become independent of the BOS. The BOS voted 3 to 2 to support the proposed state legislation. The eventual passage of AB2435 relieved Supervisors of the responsibility of reviewing the District budget and water rates.

The Santa Clara County Civil Grand Jury has issued three major reports on the District:

- 1988-1989 – “Santa Clara Valley Water District Inspection/Review;” A primary issue was the District’s inability to address a three-year drought due to a belated and underfunded media campaign. The goal was a 15% reduction in water use; the county actually achieved 3%, whereas a neighboring county was able to achieve over 25% reduction. It was a very different picture by 2000, as will be seen with the Clean Safe Creeks Special Tax (below).
- 1999-2000 – “Investigation of the Santa Clara Valley Water District’s Implementation of its Equal Opportunity/Non-Discrimination Program Plan.” This was a positive follow-up report on corrective measures by the District in response to issues of racial bias and harassment in the workplace in the late 80s. As of today, the Board and the District continue to place strong emphasis on diversity.
- 2005-2006 – “The Santa Clara Valley Water District—What’s Beneath the Surface?” addressed many issues that are still of concern and are reviewed once again in this report, particularly the need for increased oversight after looking into many issues cited by the above reports.

Pending legislation (AB466), sponsored by the Assemblymember from the 23rd District from San Jose, demonstrates many concerns about how the BOD operates. The Assemblymember proposed that the BOD submit to eleven conditions in the legislation in exchange for increasing the size of the Board from five to seven members. (See Appendix A).

The proposed changes are normally left to local board policy rather than legislated. They address many issues discussed in the reports above: reserve policies, public notice of Board actions, policies regarding lobbyists, board interference with procurement procedures and staff reports, and board travel. The legislation also addresses issues reported by the press in 2007 and 2008: (1) the improper hiring of a sitting board member by the CEO, (2) increasing the CEO's severance package after forcing his resignation; and (3) hiring a retired District employee to be the Interim CEO, thereby enabling her to be paid both retirement benefits and CEO salary.

The remainder of this report addresses:

- District revenue sources, including Clean Safe Creeks
- Cost and spending controls
- Employee and Salary Growth
- Other issues revealed through the investigation.

Sources of District Funds

The District has two core functions:

- Water Utility Enterprise (WUE), which operates as a business by importing water that it in turn sells wholesale to county retailers and that it uses to recharge ground water.
- Watershed and Stream Stewardship Program that provides flood control and manages rivers and streams in the county.

Table 2 summarizes budgeted District Revenue for FY08-09

Water Charges	\$145M	41%
Property Taxes	\$74M	21%
Special Parcel Tax – Clean Safe Creeks and Natural Flood Protection	\$32M	9%
Benefit Assessments	\$19M	5%
Interest	\$10M	3%
Other	\$37M	10%
Debt Proceeds	\$41M	11%

Table 2: FY08-09 Total Revenue and Financing, \$358M

A major part of the water charges comes from the sale of imported water to retailers. Also included in water charges is a ground water charge (pump tax) paid by most county well owners. Pump tax is paid by retailers who sell water from their own wells, such as Great Oaks Water Company and the cities of Morgan Hill and Gilroy. It is used to pay for importing water to recharge underground aquifers. Both charges are presented to the public for comment once a year, but are actually set and controlled by the District. They are not reviewed or regulated by any agency such as the Public Utilities Commission. There are some areas of the county that pay neither because they get their water from non-District sources – primarily Hetch Hetchy through the San Francisco Public Utilities.

Property tax revenues are comprised of an allocated share of countywide 1% ad valorem (Proposition 13) property tax receipts; and voter-approved ad valorem levies, including the State Water Project contract obligations. The District has no written policy regarding the use of property taxes, and has full discretion on its use, “as long as it benefits property owners.” The bulk of property taxes received by the District goes into Watershed funding (flood control and stream maintenance.)

Benefit assessment revenue consists of levies approved by voters for the county’s five watersheds in 1986 and 1990 to finance flood control capital improvements. As of July 1, 2000, the District benefit assessments are limited to paying qualified debt obligations and covenants only. After debt refinancing, the benefit assessments continue through FY30 (except for Uvas/Llagas which ends in 2013).

Special Tax: Clean, Safe Creeks and Natural Flood Protection

After Proposition 13 was passed, benefit assessments became an attractive vehicle for many agencies to raise funds for public services and improvements without a vote and with no maximum limits. With the passage of Proposition 218 in 1996 the District had to demonstrate benefit for each individual parcel being assessed before the assessment could be levied. It also required a majority vote of the electorate for new general taxes to be used for any governmental purpose. In addition, a two-thirds vote is required for special taxes to be used for specific purposes.

The campaign for the November 2000 Measure B, “Clean Safe Creeks and Natural Flood Protection,” (CSC) demonstrated a new sophistication in the District’s ability to influence the public. CSC brought in \$25M a year in special tax revenues (adjusted annually for inflation), totaling more than \$463M over its 15-year life. Marketing techniques enabled the District to create optimal messaging, set a successful price point, target voters, and time the market (election).

As a result of these sophisticated techniques, CSC gained the required two-thirds votes out of 481,714 votes cast by the slim margin of 1066 votes.

- The Sales Pitch:
 - The District learned from voter polling that “Our core issue – flooding – barely resonated with voters.” Whereas “Voters did connect with environment, clean water, healthy bay, trails.” Wording in the District informational material emphasized environmental causes rather than “flood control.”
- Positioning the measure:
 - The ballot wording told voters that the measure was to “replace an expired program assessment with a special parcel tax...” [to] “protect homes, schools, businesses and roads from flooding and erosion; protect, enhance and restore healthy creek and bay ecosystems; provide additional open space trails and parks along creeks; and provide clean, safe water in our creeks and bays.”
 - The “expired program assessment” did not mean that the District was about to lose funding; It meant that the process for obtaining funding for new flood control projects had become prohibitively challenging due to Proposition 218, and the District sought another way to obtain public funds for flood control. (See Chart 1 below).
- Pricing:
 - An acceptable “price point” was found – \$39 per parcel. They polled the public on price points and found \$39 would be what voters would accept. Program funding was NOT based on the cost of needed projects.
- Timing:
 - The campaign was timed to get the most favorable turnout and win votes from the north and west portions of the county who were most sympathetic to the messaging.

While the District’s marketing tactics may be legal, they do not engender trust and are not transparent.

Clouding the picture further is the fact that the pro-Measure B campaign committee, “Committee for Clean Safe Creeks,” headed by a District employee who is now the District’s Government Relations Manager, was fined in 2004 by the Fair Political Practices Committee (FPPC) for non-disclosure of \$190K in campaign contributions and other violations. “This was a significant matter for the voters of Santa Clara County,” said Steven Russo, chief of the FPPC’s Enforcement Division. “Due to the disclosure violations, the voters were deprived of important information regarding the conduct of the Measure B campaign and who supported it.” (Appendix B) The list of contributors not disclosed includes significant business leaders in the county. (See the FPPC website <http://www.fppc.ca.gov/legal/creeksstip.pdf> .)

CSC is planned as a “pay-as-you-go” program, with funds placed in reserves for construction planned in 2009-2015. Construction to date has only started on one of the seven flood control projects originally planned for construction. (Upper Guadalupe River). The CSC special tax has grown from \$39 to \$48.16 in 2008 for a single family residence.

The drop in property taxes for FY04-05 and FY05-06 was due to California mandated tax shift for education (ERAF) of \$25.5M each year.

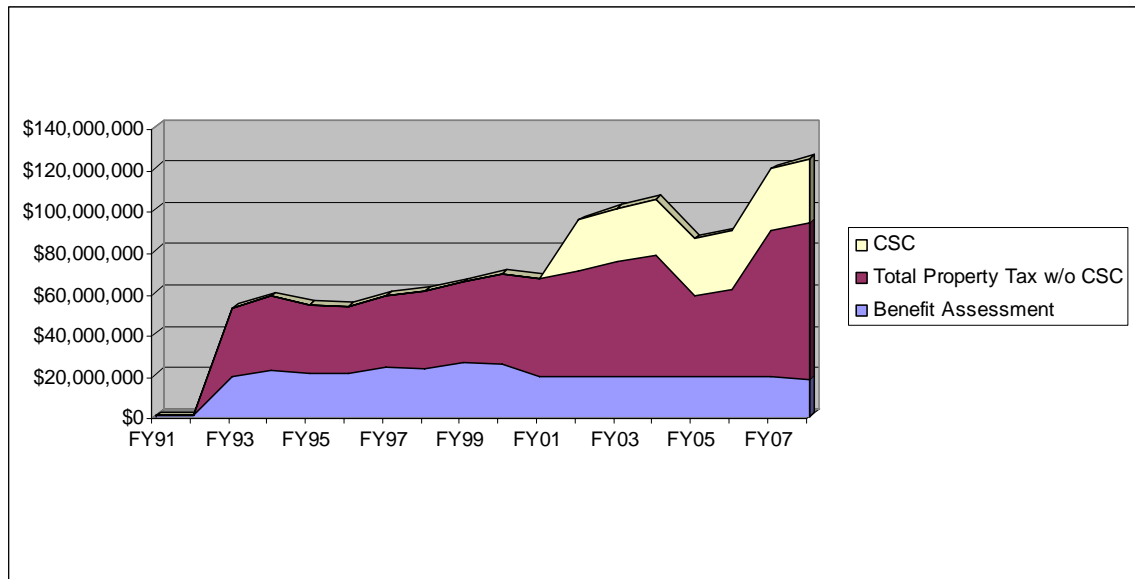


Chart 1: Property Tax, Assessments and CSC Special Tax

Today’s status:

- As of the CSC FY07-08 annual report, there is a widening gap between overall expenditures and projected revenues for the program, creating an increasing projected deficit of \$65M by 2015. Contributing to the deficit was \$29.3M in “capital support” costs due to increasing in-house program support while maintaining outsourced contracted services.
- As of June 30, 2008, \$213M has been collected via the CSC Special Tax.
 - Approximately \$74M has been set aside for the nine promised flood control projects and another \$23M reserved for other projects. \$3M is unallocated.
 - Over \$115M has been spent on scheduled program initiatives.
- Benefit assessments are only slightly diminished.

Capital Improvement Program

The District's Capital Improvement Program (CIP) publishes a five-year projection of the District's expenses to support planned capital projects. For FY08-09, the estimated total capital expenditure to implement the 106 projects defined in the CIP is \$1.964 billion. Of this amount, \$462 million is expected to be funded by the District's various partners, such as the U.S. Army Corps of Engineers, and \$1.502 billion funded by the District. Most of the 106 projects receive little public scrutiny.

Lack of Cost and Overhead Control Objective

Over-spending has been an ongoing issue since at least 2000 and reflects the District's lack of concern about effective use of taxpayers' money. The 2000 Audit made several comments regarding cost management at the District:

- "Cost of service is not generally the focus for Water Quality and Water Resource Planning ... General lack of performance measures and limited documented accountability."
- "Some (performance measures) are tracked. Limited understanding of associated cost of services."
- "Unable to measure most cost components." "Primary focus is on water quality. Minimal data available for time or cost." "Senior management has very few meaningful cost performance measurement tools."
- "Rather than plan and implement cost-effective solutions to comply with regulatory changes, the district often incorporate(s) additional 'unnecessary' project components to satisfy public/stakeholders."

The 2007 Audit was similar but with a broader perspective:

- "Based on Red Oak's Administration and Financial Services audit activities, there is a lack of an overarching, quantitative cost-control or overhead minimization goal at the District, at both the Board/policy level and the CEO/staff level."
- "No systematic process of evaluating processes and improving efficiency, including consideration of outsourcing routine transaction processing, has been developed...Top management has no basis for evaluating the efficiency of basic transaction processing and financial accountability/fiduciary responsibility functions...Without a strategic plan for the financial function, there is no framework within which to establish such a system of evaluation."
- "A key challenge appears to be that initiatives...are often rolled out despite not being included in the applicable year's budget."

The Interim CEO and Board members could not identify any prior or current cost control initiatives beyond the Interim CEO’s reduction of the FY08-09 budget by approximately \$11M (see below). Most board members seemed unconcerned with the spending practices of the District. They do not review proposals in detail and rarely cancel projects to control the budget.

Staffing and Salaries

Staffing

Authorized staffing grew from 643 in 2001 to 903 in 2005, 40% increase in 4 years.

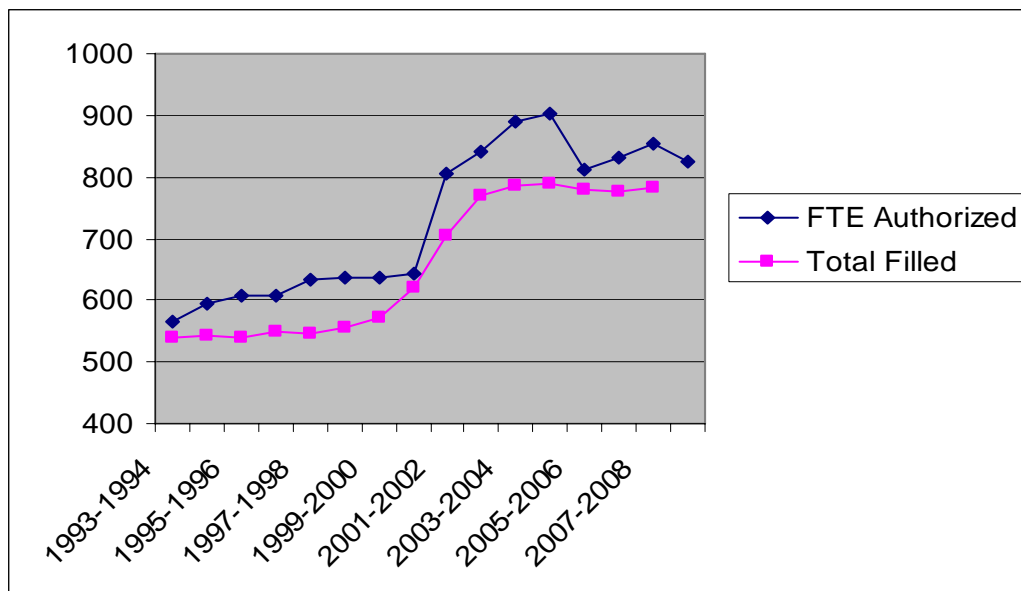


Chart 2: Full Time Equivalent Employees FY93-94—FY07-08

From the 2007 Audit:

“Such an increase would normally only be expected with a fundamental increase in the District’s service area, scope of services delivered, or acquisition of another agency.” “District staff indicated to Red Oak that the District’s need to implement the voter-approved Clean, Safe Creeks Initiative ... was the primary reason for the organizational growth noted above. This point was also made by a member of the Audit Committee...This was not evident to Red Oak from document reviews, audit interviews, or the validation processes for this audit, the Watershed Operations audit, or other audits.”

“If one [cost-control goal] were in place, it would likely be a driver for more rigorous examination of staffing levels.”

The District does not track the cost effectiveness of employees and cannot justify if hiring new employees is actually needed. There is no staffing strategy or plan and hiring was done ad hoc by individual units. The organization is heavy in middle and upper management, which raises salary levels. The 2000 Audit said “Six layers exist between Executive Management and staff” and added “no current staff optimization plan. High use of long-term temps.”

Note that for most years, the difference between authorized and actual staffing averaged 67 employees. The excess budgeted amount represented funding that was not available for other purposes.

Salaries

The 2007 Audit commented on the high level of District salaries:

“Red Oak’s analysis of the most recent salary studies conducted at various times in 2005 by District HR staff indicate that, for all classifications analyzed, the District’s compensation levels significantly exceed levels found at other peer agencies.District pay is not directly linked to performance or achievement of operational, customer, or financial goals, and there are no bonus incentives.Based on information provided to Red Oak, the District does not have an explicit policy or any precedent indicating it ever adjusts compensation downwards in response to classification/compensation studies.”

“... 1999 was the last time a comprehensive, organization-wide classification and compensation study was completed at the District. Following this study, the District adopted a guideline that employee compensation should be at 60% of the “labor market.”

The District FY08-09 budget included \$87,800,825 in salaries, \$29,009,570 in benefits, for a total of \$116,810,395.

The District was able to provide the Grand Jury with a comparative salary survey as of July 1, 2008, that covered a range of 27 classified employee positions. Comparisons were against Santa Clara County, San Jose, Los Angeles Metropolitan Water District, and several local water and utility agencies. Based on the District’s target compensation rate of 60% of market, base salary was 74.2% of market, and total compensation exceeded market by 5.9%.

There are additional concerns about staffing in the 2007 Audit:

“The District has not placed a high priority on conducting sufficiently frequent agency-wide classification and compensation studies, on conducting such studies in line with industry standards, or on conducting such studies in line with its own stated policy to include private sector employers as compensation benchmark partners.”

“Because the benefits package is not considered along with salaries during the benchmarking process for District employee compensation and an up-to-date comprehensive assessment across all job categories is lacking, the District has difficulty substantiating its claim that District employee salaries are comparable to industry peers. Available current information, based on unit-specific or bargaining-unit specific recent studies, suggest, in fact, that District compensation levels significantly exceed those of its peers.”

Impact on Water Rates and other Costs

Given the District’s lax approach to cost control, it is not surprising that water rates are impacted.

From the 2000 Audit:

“..the cost of service information the District uses to develop rates is likely outdated, especially in the case of the north and south County customers. According to one District staffer, the cost of service derivation is ‘logical, yet not supportable’... Simply, it appears the District’s cost of service calculations may no longer be valid especially with respect to servicing north vs. south County customers. Subsequently, the revenues recovered from one or more of the District’s customer classes may be subsidizing those from other classes.”

The 2007 Audit notes the existence of “single cost-related metric” (measures that enable costs to be tracked) regarding the cost of treating water, and points out the need for looking more broadly at its processes. It further states:

“The District has not placed a priority on developing cost-related metrics, ‘operationalizing’ its frequently stated objectives regarding providing ‘cost-effective’ services to the customers of its WUE, or tracking actual activities and initial scopes and expenditures against budgeted amounts...For most activities, the WUE and the District cannot readily demonstrate its cost-effectiveness to its internal or external stakeholders, or identify its most promising areas for cost management.”

As discussed in Part 2 of this report, the 2000 Audit questioned the need for a new laboratory.

“The District Board is considering a project to build a new stand-alone, 15,000 square foot laboratory. However, it does not appear that the Board has established a clear mission for the laboratory...It may be possible to, achieve significant efficiencies by ‘partnering’ or contracting with one or more [local] laboratories....Given the high capital cost of laboratory facilities, the District Board should establish a clear laboratory mission ...”

The 18,400 square feet building has been completed at a cost of over \$21M.

Ground Water Management

“Managing groundwater is the reason the District was formed and it remains the District’s most important mission.” (SCVWD, Protection and Augmentation of Water Supplies, page 3, March 25, 2008.)

Forty-five percent of the potable water used in Santa Clara County is from groundwater. The 2007 Audit said, “There is a perception by District customers that the South County (Llagas) Groundwater Basin is not thoroughly understood. Future development of the IWRP [Integrated Water Resources Plan] should consider the need for, and cost of, groundwater recharge operations.” No subsidence thresholds have been established for the Coyote or Llagas Sub-basins, as there has been no analysis of the occurrence of subsidence in South County. (“SCVWD Groundwater Conditions 2001”, Page 29).

“The District appears to have approached groundwater basin management as primarily an engineering task of placing water into the ground. We urge the groundwater basin management include a multi-disciplinary effort involving the coordinated analysis of the District’s hydrogeologists, engineering geologist, hydrologist, civil engineers, chemists, microbiologists, and others.” (2000 Audit).

Interim CEO – A Step in the Right Direction

The Interim CEO who served roughly through calendar year 2008 has made a significant effort to address some of the concerns regarding costs and performance, reported by the 2007 Audit. The result was a reduction of \$11M in the FY08-09 budget due in part to \$4.9M savings from reduction of 28 full-time equivalent positions, overtime, travel, and consultant services.

The CEO also surprised staff by requiring a line-by-line review with managers of their proposed budgets – something that had not occurred in the memory of those interviewed. They had expected overtime to be easily approved with “business as usual,” but proposed overtime budgets were cut by the CEO as much as 50%, based on FY07-08 overtime. While it is not yet clear what actual spending for FY08-09 will be since the interim CEO’s departure, it is a step in the right direction. Given the pervasive nature of the lax attitude towards any kind of fiscal control, it will take much more time and leadership from the BOD to make the needed impact on capital and operational spending.

While the Directors interviewed seem to approve the interim CEO’s actions, the majority failed to convince the Grand Jury that cost savings and financial reform is a priority. The BOD appears politically divided and entrenched in defending decisions made years ago. Interviewees, Board and staff, could not describe any significant District-wide cost reduction or control initiatives or major concerns about spending except for those actions by the interim CEO. The departing CFO in 2008 pointed out that improving speed of execution would improve cost efficiency. However, interviewees overall

seemed unconcerned with the speed with which the District moves. In fact, it took a year to hire the new Board-directed auditor, almost a year to replace the CFO, and over a year to replace the CEO. Further, the BOD delayed addressing the 2007 Audit recommendations for almost a year rather than accelerating needed reforms.

Conclusion

There have been reports since 2000, including two comprehensive audits, a budget review, state-wide reports on water districts, and proposed legislation, as well as two grand jury investigations, which all point out the spending and ethics abuses by the District over many years. All attribute these issues to a lack of oversight, transparency, and accountability. Given the critical mission of the District, the large sums of money involved, and the financial condition of the national, state, and local economies, it is imperative that these problems be solved.

Findings and Recommendations

Findings have been reviewed with the subject agency.

Finding 1a

While many operational activities, such as water quality and environmental impact reviews, are highly regulated by government agencies, the Board of Directors is solely responsible for District financial management, including capital programs, water rates and pump taxes.

Finding 1b

The County Board of Supervisors gave only a perfunctory review of the District budget until they ordered a budget review in 2005. They subsequently relinquished any oversight of the District.

Finding 1c

The Board of Directors has hired an auditor (Board Auditor) on a two-year trial basis. It has yet to be determined what the goals of the auditor will be.

Recommendation 1a

Create an independent Public Review Committee (PRC), appointed by an independent body to review and report annually to the public on any and all issues it feels necessary. Issues should be accepted from any citizen, public agency or District employee. The PRC needs to have access to District staff and documents, along with the District's administrative support. The Board should provide written responses to the committee as requested.

Recommendation 1b

No recommendation.

Recommendation 1c

The PRC should direct the Board Auditor as to the scope of audits.

Finding 2

The Board of Directors has complete discretion, unfettered by consistent policy, guidelines, or priorities, on spending 1% ad valorem property taxes and reimbursements for flood control projects from the California Department of Water Resources Flood Subvention Program (Subventions).

Recommendation 2a

The Board of Directors should articulate a policy on how property taxes and Subventions will be spent.

Recommendation 2b

The PRC should evaluate use of the District's 1% ad valorem taxes for the Clean Safe Creeks Program.

Finding 3

The District does not justify spending and staffing to the public and does not have a comprehensive long-term Master Plan that enables the public to understand use of funds, planned services, and service charges.

Recommendation 3

At least 90 days before the 2010 elections, the District should publish a comprehensive 15-year Master Plan including strategies, associated project plans, anticipated funding and costs, services, staffing, and revenue generation. It should be updated every five years.

Any future proposal for the follow-on to the Clean Safe Creeks Program, should be based on the flood control portions of the Master Plan.

Finding 4a

While the legislation establishing the District requires an annual report on “the protection and augmentation of water supplies,” none is required for watershed and flood control.

Finding 4b

The District provides the Water Utility Enterprise Report, now called the Report on the Protection and Augmentation of Water Supplies. It also publishes a detailed business plan and other reports from the Water Utility portion of the District.

Recommendation 4a

The District should publish similar annual reports for all District divisions, particularly for flood control and watersheds. The reports should include performance metrics and quality of service indicators.

Recommendation 4b

The Board of Directors should publish a detailed report annually on their strategies, plans, priorities, and issues as well as Board member compensation, benefits, travel, and other expenditures.

The District should present financing and flood control information annually to the Santa Clara County Board of Supervisors and city councils in the County.

Finding 5

The District uniformly states that protection of life and property is the number one priority. However, some projects have waited years. Example: The Upper Llagas Creek Flood Protection project, has waited 40 years and is still not completed.

Recommendation 5

The District needs to evaluate root causes of delays of essential projects and their impact on public safety. It should establish a “fast-track” process to complete critical projects, including specific performance goals and continuing assessments to improve speed of execution.

Finding 6

The District reduced the FY08-09 budget by \$11M by reducing staff, overtime, consulting and travel expenses.

Recommendation 6

The District should continue to look into other avenues where it can reduce excess spending. The costs of outsourcing rather than in house staffing should be reviewed.

Finding 7

Prior to FY07-08 the District has not reviewed budgets in detail with managers.

Recommendation 7

The Board of Directors should create a process and policy to ensure that the budget is reviewed and tracked regularly, at least quarterly, to monitor income and expense. The Board of Directors should re-evaluate all over-budget or delayed projects, against the original justification, to ensure that they remain cost effective.

Finding 8

The Board of Directors does not make cost savings and financial reform a priority.

Recommendation 8a

The Board of Directors should enlist the help of outside consultants to implement a plan for cost-effective operation of the district.

Recommendation 8b

Board of Directors should ensure that future CEOs continue top-down cost control and support greater efficiency at lower levels in the organization. It should ensure actual expenses do not exceed budgeted expenses The next CEO should bring a mindset of reform and restructuring for accountability to the public

Finding 9

The Assemblymember from District 23 has negotiated legislation (AB466) with the District to implement 11 policy recommendations. {See Appendix A}. AB 466 does not include term limits.

Recommendation 9

If AB466 is not passed, the Board should include its policies in Board policy.

Finding 10

The average tenure on the Board of Directors is 15 years, with the longest Director having served 29 years.

Recommendation 10

Term limits should be included in AB 466 or implemented by the Board of Directors.

APPENDIX A

Policies Proposed By Assembly member Coto (AB 466)

From Board of Directors Meeting February 10, 2009

1. Directors shall be exempt from seeking employment with the District for one year following the completion of their service.
2. Staff memos are to be made available to the public for a minimum of 10 days prior to being heard by the Board of Directors.
3. The District shall annually provide a public hearing on its reserves, which details the rationale for its reserves and provides an overview of its reserve management policy.
4. A written summary of closed session disclosures shall be made available when the minutes from the corresponding session are approved
5. Lobbyists shall be required to register with the District and the California Secretary of State and to report on their activities and communications.
6. Directors shall be required to disclose all contacts with lobbyists prior to voting.
7. Directors shall refrain from any involvement or interference with the bidding or RFP process.
8. Directors shall not revise draft staff reports without full disclosure.
9. All travel by individual directors shall be approved by the entire board of directors in an open session.
10. The renegotiation of an employment contract of any Board appointed executive or officer will be ineligible for consideration after a voluntary separation has been requested or announced.
11. In the case of voluntary separation of employment by any Board appointed executive or officer of the district, the executive or officer will be ineligible to receive a severance package.

APPENDIX B

News Release Fair Political Practices Commission August 17, 2004

NEWS RELEASE

For Immediate Release: Contact: Sigrid Bathen August 17 , 2004 (916) 322-7761

Commission, Creeks Committee agree to \$24,000 civil settlement *Failed to file reports disclosing \$190,000 in contributions*

The Fair Political Practices Commission has reached a \$24,000 civil settlement with the Committee for Clean Safe Creeks, and its treasurers, Susan A. Pino and Rick L. Callender, regarding campaign disclosure violations in connection with their successful effort to win passage of Measure B, the "Clean, Safe Creeks and Flood Protection Plan," in the Nov. 7, 2000, Santa Clara County general election.

The FPPC alleged in its suit that before the election, the Creeks committee failed to timely file a pre-election campaign report disclosing \$170,995 in contributions and \$65,668 in expenditures and failed to file five late contribution reports disclosing an additional \$20,000 in contributions. In addition, when the committee later filed the pre-election report, well after the election, it did not disclose required information about how \$49,795 in contributions was spent. The committee also was not properly described in its campaign filings as a committee that was primarily formed to win passage of Measure B.

The civil lawsuit was filed by the FPPC in Santa Clara County Superior Court on Aug. 4, 2004. The final judgment, based on a stipulation signed by the FPPC, Pino, and Callender, was approved Aug. 13 by Santa Clara County Superior Court Judge Socrates P. Manoukian. Copies of the complaint, stipulation and judgment are available on the FPPC Web site at www.fppc.ca.gov.

"This was a significant matter for the voters of Santa Clara County," said Steven Russo, chief of the FPPC's Enforcement Division. "Due to the disclosure violations, the voters were deprived of important information regarding the conduct of the Measure B campaign and who supported it." He noted that the measure passed by a very slim margin, receiving only 66.9% of the votes cast, with 66.6% needed for passage.

According to documents filed in the case, the Creeks committee received 29 contributions totaling \$170,995, approximately two-thirds of the total contributions received by the committee during the second pre-election reporting period before the November 2000 election. They also made \$65,668 in expenditures. They failed to report this activity on their pre-election campaign statement by Oct. 26, 2000, as required by law.

APPENDIX B - continued

During the next 16 days immediately preceding the election, the Creeks committee then received five additional contributions of \$1,000 or more totaling \$20,000. Any contributions received within the last 16 days prior to an election are required to be reported as “late contributions” within 24 hours. The Creeks committee failed to satisfy that reporting obligation.

After the November election, on Dec. 26, 2000, the committee belatedly filed the preelection campaign statement that had been due on Oct. 26. However, the committee failed to disclose required information about how \$49,795 had been spent by the committee.

Finally, in the committee’s first campaign filing -- a statement of organization filed on July 25, 2000 -- the committee failed to disclose its purpose as a committee primarily formed to support the passage of Measure B, as required by law. The committee was incorrectly described as a general purpose committee whose purpose was to support more than just the one ballot measure. This failure to correctly describe the true nature of the committee was then reflected in all of the committee’s subsequent campaign filings.

This case was handled as a civil lawsuit, rather than as an administrative action, and the terms of the settlement were brought before the members of the commission for approval during an earlier closed-session discussion of pending litigation. Because of the large amount of unreported contributions, particularly in the second pre-election statement, the case was handled as a civil action to allow for the possibility of a higher fine.

An administrative action is the FPPC’s more common method of prosecuting enforcement matters. For the 2000 election, the maximum possible administrative penalty was \$2,000 per violation (since raised to \$5,000 with the passage of Proposition 34).

Senior Commission Counsel Deanne Canar and Investigator III Daniel Schek handled the case for the FPPC.

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This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 9th day of April, 2009.

Don Kawashima
Foreperson

June Nishimoto
Foreperson pro tem