



August 22, 2019

Honorable David De Alba, Presiding Judge
Sacramento Superior Court
720 Ninth Street, Department 47
Sacramento, CA 95814

**RESPONSE TO THE 2019 GRAND JURY REPORT – THE FLORIN RESOURCE
CONSERVATION DISTRICT – A CASE OF MISTAKEN IDENTITY?**

Dear Honorable Judge De Alba:

The Florin Resource Conservation District (FRCD) has reviewed the 2019 Grand Jury report entitled *The Florin Resource Conservation District – A Case of Mistaken Identity?* We appreciate the review of our District undertaken by the Grand Jury and applaud its efforts to ensure that the activities of local government agencies are valid, and that their services are efficiently and legally provided.

Pursuant to Penal Code Sections 933(c) and 933.05, the attached responses are submitted by the Florin Resource Conservation District Board of Directors.

Respectfully submitted,

TOM NELSON,
CHAIRPERSON, FLORIN RESOURCE CONSERVATION DISTRICT

Attachment

Cc: Sacramento County Grand Jury, Attention: Becky Castaneda
Sacramento County Clerk/Recorder

Responses to:

The Florin Resource Conservation District: A Case of Mistaken Identity?

Finding F1

The FRCD Board decided to alter its basic mission, without benefit of an outside review or other investigation, relying solely on a staff report. The three options did not consider the legal differences between Resource Conservation Districts and Water Districts.

The FRCD disagrees wholly with this Finding.

The statement that the Board's decision to alter the mission of the FRCD was based solely on the April 2018 staff report is factually incorrect. The District retained outside consultants and conducted numerous meetings on this matter long before the vote was taken on April 18, 2018. These prior communications and considerations were also reflected in the April 18, 2018 staff report entitled "Florin Resource Conservation District Financial Challenges and Potential Remedies" (the "Staff Report").

Prior to the April 18, 2018 Board decision, the District retained Kampa Community Solutions, LLC to conduct a Needs Assessment in 2016 and commissioned the law firms of Best Best & Krieger and Meyers Nave to research needs and issues relating to the long-term viability of the FRCD and other associated matters. The monies paid to Kampa and Meyers Nave to conduct this work exceeded \$70,000.

The statement that the three options did not consider the legal differences between Resource Conservation Districts and Water Districts is also not correct. Significant legal work was conducted to analyze the FRCD's legal authority to operate and maintain a water system. This analysis included a review of Division 9 of the Public Resources Code and the validation action taken by the FRCD after it acquired the Elk Grove Water Works in 1999. Significant legal work was also conducted to analyze how a water district could be created (under Option 3 in the Staff Report) and the legal and financial risks associated with Option 3.

Recommendation R1

The FRCD Board should review its decision, by December 31, 2019, to alter its basic mission. This action should be taken with an expanded view, educating both the Board and the general public about the differences between Resource Conservation Districts and Water Districts. This review should include the use of outside consultants and expanded public participation and engagement.

This Recommendation will not be implemented because it is not warranted and is unreasonable.

As indicated in the FRCD's response to Finding F1, the District thoroughly reviewed the options available to deal with the financial crisis that affected the FRCD. Despite the Grand Jury's finding, there was considerable engagement of outside consultants to assist the Board in rendering its decision on April 18, 2018.

No additional information has developed since the matter was considered in April 2018. As such, it is unwarranted and unreasonable to reconvene the Board on this matter at this time.

Recommendation R2

The FRCD Board of Directors should complete its updated Strategic Plan by June 30, 2020. The new Strategic Plan should include a discussion of its long-term vision and its long-range mission. This discussion should include a comprehensive review of the mission of the FRCD, whether it should continue as an independent district (either as an RCD or a water district) or consolidate with another area water provider (such as SCWA Zone 40).

This Recommendation has not yet been implemented but will be by the June 30, 2020 deadline as specified by the Grand Jury.

The FRCD is presently conducting an update to its Strategic Plan. The new Strategic Plan is intended to look forward over a 20-year span and will include discussions on its long-term vision and mission. The District will also ensure that it includes a comprehensive review of its mission and a discussion of whether it should continue as an independent district, or consolidate with another area water provider.

Finding F2

Because Board Members are elected at large from the entire area of the FRCD and not from within the smaller boundary of the EGWD, equitable representation of rate-payers may be denied.

The FRCD agrees with this Finding.

Recommendation R3

FRCD should consider, by June 30, 2020, a plan to ensure that only those people living within the EGWD boundary are eligible to become Board members. Board members should be elected from within EGWD boundaries to ensure equitable representation of the population served.

This Recommendation will not be implemented because it is not warranted and is unreasonable.

Despite the opinion expressed by the Grand Jury that, because the District, "...is now, for all intents and purposes, acting as a water district and should be acting under the provisions of the California Water Code", this recommended action is not permitted under the District's enabling legislation.

The District is, and remains, a Resource Conservation District regulated under Division 9 of the Public Resources Code. Section 9352 (b) of that code specifically states: "...directors shall (1) reside within the district and either own real property in the district or alternatively have served, pursuant to the district's rules, for two years or more as an associate director providing advisory or other assistance to the board of directors, or (2) be a designated agent of a resident landowner within the district."

It is the position of the FRCD that altering the eligibility requirements for the Board of Directors would be a violation of Section 9352 (b) of the Public Resources Code and subject to legal challenge.

Finding F3

The FRCD complied with all legal requirements with its decision to adopt a rate increase at the July 18, 2018 Board meeting.

The FRCD agrees with this Finding.

Finding F4

The FRCD erred in setting the protest deadline at July 2, 2018, as Prop 218 mandates that written protests be accepted until and at the public rate hearing (scheduled to be July 18, 2018).

The FRCD disagrees wholly with this Finding.

The FRCD complied with Article XIII D, Section 6 of Prop 218, which requires the agency to provide notice at least 45 days before holding a hearing at which the proposed fee or charge will be considered.

No protests were actually rejected in this case. In fact, one person actually read one protest into the record during public comment at the hearing. Out of an abundance of caution, however, the FRCD will make it explicit in the future that protests will be accepted up to and including the date of the rate hearing.

Recommendation R4

FRCD should review its actions during the most recent water rate study and rate increase approval, by June 30, 2020, to ensure that such future actions follow the protest period mandated under Proposition 218. Action should be taken to review and amend Board

policies to ensure that future rate studies and proposals for rate increases conform to the procedures outlined in Proposition 218.

This Recommendation requires further analysis.

The District will commit to develop a plan, to be adopted as a Board policy, to ensure that all future rate studies conform to the requirements and procedures outlined in Proposition 218. This plan shall be developed and adopted on or before December 26, 2019.

Finding F5

FRCD is actively working to reduce its debt, debt service, and bond retirement payments, while maintaining an adequate debt service coverage ratio.

The FRCD agrees with this Finding.

Finding F6

The FRCD did not follow its own policy when extending the current Legal Counsel's contract, which led to the creation of an unfair hiring practice.

The FRCD disagrees partially with this Finding.

At issue is the assertion that there was a conflict between the updated policy on Professional and Consulting Services Agreements, adopted under Resolution 11.14.18.03, and the action taken by the Board to amend the agreement between the FRCD and the Nosky Legal Group on December 19, 2018.

The conflict is partially attributable to the updated policy's inclusion of Section 37103 of the California Government Code. This code section, by its terms, is permissive and applies to general law cities rather than Resource Conservation Districts. Accordingly, the incorporation of that section was not intended to mandate a certain procedure, but was instead included only as a point of reference.

No unfair hiring practice existed because, in fact, the District conducted a thorough Request for Proposals (RFP) process earlier in 2018 that resulted in the retention of another law firm. When that firm's agreement with FRCD was unexpectedly terminated, FRCD needed replacement counsel immediately. Accordingly, the present counsel was retained and served in an interim capacity for six months. At that point, issuing an RFP for legal counsel was unwarranted because the General Manager and Board Members were already well familiar with its legal counsel and his interim service.

Recommendation R5

FRCD should review and amend, by December 31, 2019, contracting policies for

professional and consultant services to address time limits, types of professional services and other requirements.

This Recommendation has not yet been implemented but will be by the December 31, 2019 deadline as specified by the Grand Jury.

Finding F7

Because the FRCD policy manual is silent on interim contracts, the potential exists for extending interim contracts in lieu of soliciting proposals for professional services.

The FRCD agrees with this Finding.

Recommendation R6

FRCD should develop, by December 31, 2019, new policies relative to interim contracting for professional services for board approval. Minimize the use of interim contracts and maximize the use of standard contracts using a competitive process for professional services.

This Recommendation has not yet been implemented but will be by the December 31, 2019 deadline as specified by the Grand Jury.

Finding F8

FRCD is unable to monitor leaks and pressure losses in a timely manner. This is a public safety issue and a potential liability for FRCD.

The FRCD disagrees partially with this Finding.

This Finding stems from an unusual and rare event that occurred on December 25 (Christmas Day), 2018 involving a water main break that discharged into a creek for approximately 12 hours without being noticed. The District agrees that leaks and pressure losses could be construed to be a public safety issue. The Finding, however, implies that we have no ability to monitor leaks and pressure losses in a timely manner, which is not entirely correct.

The FRCD presently operates a Supervisory Control and Data Acquisition System (SCADA), which, during normal business hours, would likely alert the operators to a pressure drop that would indicate a water main break. The SCADA system is also set up to alert operators during non-business hours when certain alarms are triggered. The event that occurred on December 25, 2018 did not trigger any alarm and thus the District's on-call operator was not dispatched. Because the leak went directly into a creek, it was also not visible to the public as would occur in a typical water line leak.

Recommendation R7

FRCD should begin, by December 31, 2019, the process of planning and installing flowmeters in its main water transmission lines to monitor for breaks, pressure losses, etc. These monitoring devices should also be connected to an automatic alert system for on-call emergency employees.

This Recommendation requires further analysis.

Although installing flow meters in various locations within a water distribution system can be an effective method for leak detection monitoring, it is also quite expensive. This method divides the water distribution system into a number of zones called District Metering Areas (DMAs) and continuously records information from each DMA meter. Infrastructure costs are high for this system as it requires digging up water mains, installing large water meters in underground vaults in easements, and installing radio systems in the field that can communicate with the District's SCADA system.

The FRCD is currently exploring a pressure monitoring system that retrofits an existing hydrant with a pressure monitoring device. The device can be installed on a 2-1/2" nozzle of the hydrant and is battery operated with a 5-year life, eliminating the need for electrical infrastructure. The device samples pressure every few seconds and if the pressure falls outside a settable range, an alert is transmitted immediately via email message or text message.

This system is currently in use at the San Francisco Public Utilities Commission, the Los Angeles Department of Water, City of Redmond, City of Houston and the City of Long Island. The City of Redmond is successfully using the system to identify water main breaks, water theft, and transient system pressures and is planning to expand the number of pressure-sensing devices it has deployed in its water system.

The FRCD will perform further research of available technology and will install a pilot program by December 31, 2019.

Finding F9

After voting to award health benefits to Board members, no further action was taken, no policies were created, and no health insurance benefits were awarded to Board members. The Board could institute health benefits for themselves with no further public discussion.

The FRCD agrees with this Finding.

Recommendation R8

FRCD should rescind its vote approving health benefits for Board members, by September 30, 2019, since no action has ever been taken to implement them.

This Recommendation requires further analysis.

The District will review its Board policy, which allows for health benefits to be provided to Board members, before September 30, 2019 as specified by the Grand Jury.

Finding F10

The practice of conducting closed sessions after open sessions at the Board meeting may lead to an uninformed public and forestalls knowledge or comments. This practice does not encourage public engagement.

The FRCD disagrees wholly with this Finding.

The FRCD disagrees that the current order of sessions inhibits the public's access to information about reportable actions.

The public has the opportunity to remain at the meeting to hear any reportable action from a closed session. If a customer desires to find out what was reported out of closed session, and that customer does not wish to remain outside of the closed session until any report out is made, he or she may call the District to obtain that information.

As a practical matter, the FRCD has rarely taken reportable actions in closed session. Since 2015, the FRCD has conducted 39 closed sessions, only four of which had a reportable action. In the past four years, not one request has been received for information about reportable actions in closed session.

It should be noted that the present session order is consistent with how most water agencies in the Sacramento region conduct their business. Of the 14 water agencies surveyed, all but two hold closed sessions after the open sessions during regular Board meetings.

Recommendation R9

FRCD should conduct its closed sessions before general Board meetings to ensure the public is notified timely of any actions resulting from those closed sessions. Board bylaws should be updated, by December 31, 2019, to address timing of closed sessions.

This Recommendation will not be implemented because it is not warranted and is unreasonable.

Altering FRCD's meeting format presents logistical challenges for Board members, meeting participants and the general public. Doing so also would impose additional financial burdens on the District.

First, closed sessions would have to be held at an earlier time to avoid open sessions from having a late start in the evenings. If board meetings began later, such as 7:00 pm,

it would increase cost to the District as additional compensation to staff, consultants and outside legal counsel would be made. Starting closed sessions at an earlier time, such as 5:30 pm, is not presently viable, as there are members on the Board who cannot make the earlier start time because of work commitments.

Second, closed sessions may involve issues that require extended discussion for an indeterminate amount of time. In such a situation, the closed session would need to be interrupted by the fixed start of the open session and reconvened at the conclusion of the open session, creating the same situation that is of concern to the Grand Jury. Alternatively, the start of the open session may be delayed indefinitely, requiring ratepayers and members of the public to wait for an unknown period of time.

Finally, as noted in the FRCD's response to F10, the District has rarely taken actions in closed session that are reportable. Since 2015, the FRCD has conducted 39 closed sessions, yet only four of those closed sessions had a reportable action. Such a low frequency of reportable actions does not warrant a major change to how the FRCD Board conducts its business.

Finding F11

Candidate pools for Board Member seats are so low that elections are sometimes not required. As a consequence, Board members are appointed by the County Board of Supervisors, denying a voice to the public in selection of those who represent them.

The FRCD disagrees partially with this Finding.

The District agrees with the first sentence, but disagrees with the second sentence in this Finding.

The Board of Supervisors, in a representative form of government, has a duty to faithfully act in a manner to represent their constituents within the FRCD boundary. This includes the appointment of FRCD Board Members if required. When that is required, the public has an opportunity to express their opinions about a potential candidate when the item is considered by the Board of Supervisors.

It is noteworthy that this Finding fails to acknowledge the uniqueness of the FRCD as it is one of the very few RCD's that has elections. According to the California Association of Resource Conservation Districts, out of the 98 RCD's in California, only three (of which the FRCD is one) actually conduct elections. Thus, the vast majority of all RCD's always have their Board Members appointed by their respective County Board of Supervisors.

Finding F12

The lack of adequate Board member awareness of regulations, operations, and institutional history can lead to poor decisions on the part of the Board and leads to an over-reliance on the General Manager and staff.

The FRCD disagrees wholly with this Finding.

Each new Board Member receives an orientation binder as part of the onboarding process. This binder is very thorough. Moreover, for about a decade, the Board has required Monthly Operations Reports, which have been provided. These reports are reviewed as a standing item (not on the Consent Agenda) and almost every operational aspect of these reports is discussed at Board meetings.

Each Board Member also brings forth a unique skill set from which they provide broad and excellent oversight of what is occurring in the District. As a body, FRCD Board members conscientiously fulfill their duties in reviewing Board packets, materials and items taken to the Board for consideration. To imply that the Board is simply deferring operational control to the General Manager is inaccurate.

Recommendation R10

FRCD should establish policy, by December 31, 2019, to ensure a programmatic onboarding process for new Board Members that includes both policy and operations. In addition, FRCD should establish, by December 31, 2019, a web-page with Board policies for public review.

This Recommendation has not yet been implemented but will be by the December 31, 2019 deadline as specified by the Grand Jury.

Finding F13

There is a pronounced lack of public oversight of the FRCD, as shown by poorly attended meetings and few Board candidates.

The FRCD agrees with this Finding.

Recommendation R11

FRCD should, on an ongoing basis, expand its outreach to its ratepayers, in order to increase their engagement with the business and activities of the district. This could include, but is not limited to, increased inserts with ratepayer's monthly bills, enhanced web interaction, media outreach, such as a periodic column in the Elk Grove Citizen or other avenues, and practical workshops for ratepayers. FRCD should also engage with both the California Special Districts Association and the Institute for Local Government to learn about any other outreach efforts that are possible.

This Recommendation has not yet been implemented but will be as suggested by the Grand Jury.