

# SAN JOAQUIN COUNTY GRAND JURY



## FINAL REPORT 2011-2012

<http://stocktoncourt.org/grandjury/>

# **SAN JOAQUIN COUNTY GRAND JURY**



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CITY OF  
STOCKTON



*San Joaquin County*

2011/2012 Final Report



## **What is a Grand Juror?**

- ❖ Someone who wants to make a difference
- ❖ Someone who believes in honesty
- ❖ Someone who asks “Why?”
- ❖ Someone who knows the meaning of confidentiality
- ❖ Someone whose reports will live longer than they do
- ❖ Someone who can work with people they don’t agree with
- ❖ Someone who can intellectually defend his or her position
- ❖ Someone who learns there really are two sides to every story
- ❖ Someone who realizes they will never do all they want to do in a year
- ❖ Someone who knows they can accomplish more in a group than they can alone
- ❖ Someone who feels good about the work they produce
- ❖ Someone who is fed up with people who only complain about how things are
- ❖ Someone who asks questions no one wants to answer
- ❖ Someone who realizes that no grand juror is more important than the grand jury
- ❖ Someone who realizes that no grand jury is more important than the grand jury system
- ❖ Someone who will make meaningful friends with a common unique bond for life

***“Serving the people of San Joaquin County by preserving government integrity”***

## Grand Jury Oath

*I do solemnly swear (affirm) that I will support the Constitution of the United States and of the State of California, and all laws made pursuant to and in conformity therewith, will diligently inquire into and true presentment make of all public offenses against the people of this State, committed or triable within this County, of which the grand jury shall have or can obtain legal evidence. Further, I will not disclose any evidence brought before the grand jury or anything which I or any other grand juror may say, or the manner in which I or any other grand juror may have voted on any matter before the grand jury. I will keep the charge that will be given to me by the Court.*

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# *Introduction*



## The Superior Court

222 E. WEBER AVENUE, ROOM 303  
STOCKTON, CALIFORNIA 95202

*Hon. George J. Abdallah*  
*Judge of the Superior Court*

TELEPHONE  
(209) 468-2827

June 12, 2012

The Superior Court of California, County of San Joaquin thanks and commends the 2011-2012 Civil Grand Jurors for their conscientious efforts on behalf of all San Joaquin County citizens. Guided by the experienced and able leadership of Foreperson, Carla Cole the Grand Jurors undertook and completed their duties with great industry, intelligence and care.

The Civil Grand Jury is composed of qualified individuals who applied for membership, those drawn from the community and individuals nominated by community leaders. The chosen citizens serve as an independent body under the court's authority. The 2011-2012 San Joaquin County Civil Grand Jury now takes its place in a long history of citizen involvement in civic life which was born in the English Common Law of 1166, adopted during the American Colonial period and codified in California in the 1880's. The 2011-2012 Civil Grand Jurors' thoughtful and constructive recommendations will help ensure the highest quality civic life to which all citizens are entitled.

As the Judge Advisor and Supervisor, it has been my privilege to review the work of the 2011-2012 Civil Grand Jury. This committed group of individuals delved into a broad range of issues which touch the lives of residents throughout our communities. The Grand Jurors made remarkable efforts to follow through on the work of their predecessors thereby giving assurance that the San Joaquin County Civil Grand Jury as an institution maintains a sustained role in our communities. The Grand Jury Final Report educates the public through exceptionally well written accounts of the work and recommendations of these devoted citizens. The Grand Jurors' recommendations are deserving of careful consideration by government officials and the citizenry.

The efforts, commitment and collective wisdom of these devoted individuals has and will continue to better the civic life of all San Joaquin County residents. To each member of the 2011-2012 San Joaquin County Civil Grand Jury, for your many accomplishments the Superior Court extends its gratitude and congratulations.

A handwritten signature in black ink, reading "George Abdallah", is written over a horizontal line.

Hon. George J. Abdallah, Jr.  
Judge of the Superior Court  
Advisor to the San Joaquin County Civil Grand Jury





**Grand Jury**  
**County of San Joaquin**  
Courthouse  
222 East Weber Avenue-Room 303  
Stockton, California 95202  
(209)468-3855

June 10, 2012

Honorable David P. Warner  
Presiding Judge of the Superior Court  
222 E. Weber Avenue, Room 303  
Stockton, CA 95202

Honorable George J. Abdallah, Jr.  
Judge of the Superior Court and Advisor  
Judge to the Grand Juries  
222 E. Weber Avenue, Room 303  
Stockton, CA 95202

Dear Judge Warner and Judge Abdallah:

The San Joaquin County Civil Grand Jury members are proud to present to you and the citizens of San Joaquin County the Final Report for 2011/2012.

The Grand Jury investigated citizen complaints and fulfilled mandated inspections of the detention facilities in the County. The reports published are based on facts, research, and evidence, not bias or opinion. I am very proud of the integrity, professionalism, and respectful manner shown during the investigative process by the Grand Jury members. This Grand Jury served San Joaquin County well.

I would like to especially commend the following Jury members for their dedicated participation this year: Paul Pedersen, Law and Justice Committee Chair, Patricia Stump, Editorial Committee Chair, Barbara Butterworth-Reagan, and Joequita Nadal members of several investigative committees.

The expertise, organization, procedural knowledge, and patience of Trisa Martinez, Staff Secretary to the Grand Jury was exceptional. Ms. Martinez scheduled tours, mandated facility inspections, presentations, and scheduled all interviews. We appreciated her so much! The jury would also like to extend their appreciation to the Grand Jury Advisors: Dave Wooten, County Counsel; Honorable George Abdallah Jr., Superior Court Judge; and most importantly Chief Deputy District Attorney Scott Fichtner.

It has been my honor to serve as Foreperson for 2011/2012.

Respectfully,

Carla M. Cole  
2011/2012 San Joaquin County  
Grand Jury Foreperson

## Roster of Grand Jurors

### Executive Committee

Carla Cole Foreperson	Lodi	Retired - Law enforcement
Gregg Moser Vice-Foreperson	Stockton	Retired - Pastor/Teacher
Mary Finley Secretary	Acampo	Retired - Consultant, Title Company
<hr/>		
Glenn Page Sgt. at Arms	Manteca	Retired - Manager
John Bayley	Stockton	Retired - System Analyst - US Govt.
Joann Bear	Escalon	Realtor
Darla Buckley	Manteca	Retired - Marketing and Sales
Barbara Butterworth-Reagan	Stockton	Retired - Dental Hygienist
Jerrell Croskrey	Stockton	Retired - High School Teacher
Corliss Eastwood	Stockton	Retired - Golf Course Superintendent
Marcos Glaros	Stockton	Retired - Correctional Counselor
Charles Grafius	Stockton	Retired - Corporate Management
Brian Killoran	Stockton	Retired - Human Resources Manager
George Lester	Stockton	Retired - Port Administrator
Joequita Nadal	Stockton	Retired - Assistant Escrow Officer
Paul Pedersen	Tracy	Retired Police Officer - Instructor
Donald Romero	Stockton	Retired - Civil Engineer
Patricia Stump	Lodi	Retired - Elementary School Teacher
Charles Walker, Sr.	Lodi	Retired - Naval Officer

# 2011/2012 SAN JOAQUIN COUNTY GRAND JURY



Front Row (L to R): Barbara Butterworth-Reagan – Joann Bear – Mary Finley (Secretary) – Joequita Nadal  
 Second Row (L to R): George Lester – Donald Romero – Jerry Croskrey – Gregg Moser (Vice-Foreperson) – Carla Cole (Foreperson) – Marcos Glaros – Charles Grafius – Charles Walker  
 Back Row (L to R): – John Bayley – Patricia Stump – Glenn Page – Paul Pedersen – Corliss Eastwood – Darla Buckley

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# *Grand Jury Process and Organization*

## **Qualifications**

A grand juror must meet all of the following qualifications:

- ❖ Be a citizen of the United States
- ❖ Be at least 18 years old and a resident of California and San Joaquin County for at least one year immediately prior to selection
- ❖ Possess ordinary intelligence, sound judgment, and good character
- ❖ Possess sufficient knowledge of the English language to communicate both orally and in writing

A grand juror cannot:

- ❖ Be serving as a trial juror in any California court
- ❖ Have been discharged as a grand juror in any California court within one year of the beginning date of service, July 1
- ❖ Have been convicted of malfeasance in office, any felony or other high crime
- ❖ Be serving as an elected public officer

Other desirable qualities:

- ❖ Good health
- ❖ Open-mindedness
- ❖ Sensitivity to and concern for the views of others
- ❖ Skill in working with others in a group setting
- ❖ Interest in and knowledge of community affairs
- ❖ Skill and experience in fact finding
- ❖ Skill and experience in report writing
- ❖ Working knowledge of computers
- ❖ General knowledge of the responsibilities, functions, and authority of county and city government.

## **Commitment**

Nominees selected for grand jury service must commit to serving at least one day each week for the period July 1 through June 30. Also, considerable time each week will be spent for investigative and report-writing assignments.



## **Selection**

Applications will be reviewed and forwarded to the Presiding Judge for consideration and an interview will be scheduled with the judge if you are considered.

Grand Jury members are selected from the judicial district of the county in proportion to the number of inhabitants in each district. In June, drawings are conducted under the supervision of the Presiding Judge of the Superior Court in the presence of the nominees. The names of 19 people who will compose the grand jury are drawn at random from a pool of prospective grand jurors. Another ten names are drawn and ranked to form the alternate list. If a juror is unable to serve, a replacement is selected from the alternate list according to rank.

## **Application**

Application forms may be received by writing to:

Trisa Martinez  
Superior Court  
222 E. Weber Avenue, Room 303  
Stockton, California 95202

Application forms can be downloaded from: [www.stocktoncourt.org](http://www.stocktoncourt.org)

Please submit a written application to Ms. Martinez. The deadline for submitting applications is April 1 for the following July 1 through June 30 term.

## **Structure and Function of the Grand Jury**

California Constitution, Article I, Section 23, provides that “One or more grand juries shall be drawn and summoned at least once a year in each county.” The law governing Grand Jury formation, authority, powers and proceedings, is found in Part 2, Title 4, of the California Penal Code §§888-939.91.

The presiding judge of the Superior Court of San Joaquin County impanels nineteen citizens every year to conduct civil investigations of county and city government, a body of people who are independent of any political or special interest group.

The judge appoints a foreperson to preside over the Grand Jury. The foreperson selects the vice-foreperson and secretary with approval of the Grand Jury and standing committees and/or ad hoc committees are formed. Each juror may serve on several committees and this is where the investigative work is done throughout the year. A general meeting is held weekly to coordinate activity and conduct business.

The Grand Jury serves in an independent oversight and investigative role for the County of San Joaquin. It serves to investigate allegations of misconduct of public officials and to determine whether to present formal accusations for nonfeasance, misfeasance or malfeasance. It will objectively investigate, audit, or examine all aspects of County government, and its cities, to insure that these bodies are being effectively governed and that public monies are being judiciously handled.

The Grand Jury may subpoena persons and documents to obtain information on subjects under investigation. The Grand Jury acts in the public's interest by investigating and reporting on the operation, management and fiscal affairs of local government in the county. It may review and evaluate procedures, methods and systems used by county and city governments to determine whether more efficient and economical programs may be used. The Grand Jury is also mandated to inspect prisons, jails and other detention facilities in the county. The Grand Jury reviews complaints submitted by citizens alleging misconduct by officials or other concerns of government inefficiencies. Complaints are acknowledged and investigated for their validity. Jurors are sworn to strict confidentiality pertaining to complaints, witnesses or content of investigative matters. They may not disclose any information they receive within the confines of the jury or the identity of anyone appearing before them. The Grand Jury is an independent entity and it serves a democracy in which individuals can be involved for civil service on behalf of their community.

## **Complaint Procedure**

Any citizen may submit a written complaint to the Grand Jury and all communications are confidential. A citizen may ask the Grand Jury to conduct an investigation into misconduct or inefficiencies by county governmental agencies.

The Grand Jury may consider complaints of willful or corrupt misconduct against public officials and policies, county and city employees, including the abolition or creation of offices and the equipment for performing duties of county government.

The complaint form should be submitted by citizens after all attempts to correct an issue have been explored, and without success.

Instructions for preparing the Complaint Form:

- ❖ Include your name, address and phone number
- ❖ Name the agency and/or person(s) you are complaining against
- ❖ Explain the nature of your complaint and provide detailed information
- ❖ List any other action requested or taken in an attempt to resolve the issue
- ❖ Provide contact information of witnesses who can substantiate your complaint

To obtain a complaint form visit the Grand Jury website at: [www.stocktoncourt.org](http://www.stocktoncourt.org)

## **Responding to Findings and Recommendations**

Provided here are extracts of California Penal Code §933 that establish the requirements for responding to the Grand Jury reports.

The timetable for responses is found in §933(c):

No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to §914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the finding and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

Section 933.05 gives explicit instructions for how public agencies (including county departments and agencies, and all public agencies geographically situated within county borders, e.g., cities and their police departments) must respond to a grand jury report:

(a)...as to each grand jury finding, the responding person or entity shall indicate one of the following:

1. The respondent agrees with the finding;
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b)...as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action;
2. The recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation.

3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report;
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the finding or recommendations affecting his or her agency or department.

Written responses shall be delivered to:

Hon. David P. Warner  
Presiding Judge of the Superior Court  
County of San Joaquin  
222 East Weber Avenue, Room 303  
Stockton, California 95202

### **Contact Information**

The San Joaquin County Grand Jury can be reached:

Via the Internet at:

[www.stocktoncourt.org](http://www.stocktoncourt.org)

Via Email at:

[grandjury@courts.san-joaquin.ca.us](mailto:grandjury@courts.san-joaquin.ca.us)

By visiting or writing:

San Joaquin County Civil Grand Jury  
222 E. Weber Avenue, Room 303  
Stockton, California 95202

### **Section III**

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# *Investigations*



# **San Joaquin County Grand Jury**



## **Stockton Unified School District Police Department**

### **2011/2012 Case No. 0111**

#### **Summary**

The Grand Jury received complaints regarding the management of Stockton Unified School District Police Department (SUSD PD). One complaint (#1) alleged favoritism in assignment of overtime, violations of department policy, and adverse personnel actions, causing frustration and a lack of trust in management.

A second complaint (#2) by a parent criticized the method used by a police officer to bring a student with an impulsive-hyperactive personality under control.

Through the Grand Jury's investigation, we found Stockton Unified School District (SUSD) police officers deal with some District students who have behavioral issues which require additional specialized training and prudent judgment. Many instances of violence in the schools have been noted in the media this year, emphasizing the need for professionalism and highly competent officers in the school system.

## **Background**

Established in 1985, the SUSD PD provides services to over 37,000 students, and over 4,500 staff at fifty-eight locations spread over sixty-five square miles. Their primary focus is safety and developing positive relationships with the students, teachers, staff, and parents. SUSD PD has an operational agreement with the San Joaquin County Sheriff's Department, and is currently working on one with the Stockton Police Department, to define the working relationships between these agencies. SUSD PD is supplementary to the Stockton Police Department and is not vested with general police powers. All officers within the Department are sworn police officers per California Penal Code §830.32, however, their authority as "peace officers" is limited by California Education Code §38000.

SUSD PD's chief administrator answers directly to the Superintendent of Schools.

The Stockton Unified School District Police Department currently employs:

- Police Chief
- One (1) Lieutenant
- Two (2) Sergeants
- Fifteen (15) Officers
- Four (4) Dispatchers
- One (1) Executive Assistant
- One (1) Fingerprint Technician

## **Issues**

The Grand Jury received two (2) separate complaints alleging issues within SUSD PD. The first complainant alleged the prejudicial assignment of overtime resulting in one officer receiving an inordinate amount of overtime pay during a single year (\$51,217.00). In review of Department Policy #1038, there did not appear to be a violation of this section. Complaint #1 also referenced another formal complaint filed with SUSD by five (5) employees against management, which alleged racial discrimination and a hostile work environment. The Grand Jury could not substantiate any discrimination but the information provided led to other issues listed below.

Through testimony it became clear there were two (2) factions of employees within the SUSPD PD. Employees that did not side with management believed they were being discriminated against in regards to special assignments and discipline. The Grand Jury could not substantiate the claims of bias regarding promotions or special assignments.

The internal affairs process at this Department was examined for impartiality and thoroughness. The Grand Jury read several investigative reports which appeared extensive and complete. The Grand Jury learned that employees had conflicts with a supervisor and that same supervisor is the in-house internal affairs officer. The Department is moving toward using outside examiners to look into complaints against officers, and to avoid the “appearance” of prejudice or bias.

The Grand Jury learned that a helicopter was offered for SUSPD PD’s use but became concerned about proof of insurance for the aircraft and the lack of Department of Justice (DOJ) clearance for the pilot, who was not an SUSPD PD employee, but volunteered his services. SUSPD PD was unable to produce documentation that District Policy §3.35 (volunteer requirements) was followed.

Peace Officer Standards and Training (POST) mandates and SUSPD PD Department Policies (1002.3) require employee evaluations be kept current. The Grand Jury verified through testimony and review of documents that evaluations were not done on a consistent basis. Evaluations allow employees to examine their own work product as well as providing the opportunity for dialogue with their supervisors. Without that exchange of information, employee communication suffered further.

A second complaint (#2) alleged a child was mistreated by an SUSPD PD officer and by the School District. A five (5) year old special needs student was improperly restrained for a long period of time and transported without parental notification.

Training school police officers in a small district presents unique challenges not found in larger law enforcement agencies. In addition to the state mandates for all officers, employees working in schools having direct contact with students must also remain current on matters relating to youth, including those who have special needs.

Report writing was a concern for most of the officers that were interviewed. The volume of reports that each officer writes creates a hardship adding to their already heavy workload. Another issue relating to reports is the approval method. After police officers write their reports, a sergeant or lieutenant normally will review the report and approve it. In the case of the police report that involved the combative behavior by a young juvenile, the same officer who wrote the report also approved it.

## **Method of Investigation**

### **Materials Reviewed**

- SUSD PD Policy Manual
- Police officer personnel files
- SUSD Administration Manual
- SUSD PD organizational chart
- SUSD Complaint form (cf. 1312.3 Complaints concerning District employees)
- SUSD PD complaints from 2009 to present
- SUSD PD Training records from 2009 to present
- SUSD website: [www.susdpoa.com](http://www.susdpoa.com)
- OCR website: [www.hhs.gov/ocr](http://www.hhs.gov/ocr)
- POST website: [www.post.ca.gov](http://www.post.ca.gov)
- EEOC website: [www.eeoc.gov](http://www.eeoc.gov)

### **Interviews Conducted**

- Complainants
- SUSD PD Personnel

- SUSD Superintendent
- SUSD Chief of Police

## **Discussion, Findings and Recommendations**

### **1.0 Training**

The SUSD Police Department is mandated by POST to remain current on several issues and perishable skills. POST requires that officers receive twelve (12) hours of training in various disciplines over two (2) years. Through testimony and a review of training records, few officers have remained current on their police training which causes safety and liability concerns. District policies and procedures also require employees to stay current on several issues relating to minors, including special needs children. Management of Assaultive Behavior (MAB) is a program used by school districts to manage challenging behavior in a safe and professional manner. That training is currently offered by the San Joaquin County Office of Education. The size of the Department makes it difficult to keep current on training while still providing enough officers to handle calls at the schools.

### **Findings**

**F1.1** The frequency and consistency of training is not current with the Peace Officer Standards and Training and District mandates.

**F1.2** SUSD PD is lacking specific training in dealing with special needs children.

### **Recommendations**



**R1.1** Officers participate and complete POST and department training as required by law and District policy.

**R1.2.1** Develop and implement a training policy to include Management of Assaultive Behavior for all officers.

**R1.2.2** Officers complete Management of Assaultive Behavior training immediately.

## **2.0 Violation of Board Policy §1312.3-Filing of Complaints**

The SUSD Board Policy §1312.3 states that the “complaint review will be conducted within sixty (60) calendar days from the date of receipt of the complaint unless the complainant agrees in writing to extend the deadline.” The employee complainants did not receive any notification about the outcome of their complaint. The Grand Jury reviewed copies of letters from the District to the complainants dated May 6, 2011 but no proof of service was attached. This corroborates the complainants’ testimony. However, proof of service was located for letters that went to the persons complained *against*. The District’s Policy states, “The Board...shall mail its decision to *all* [emphasis added] concerned parties.” Since the first complaint was filed in 2009, the 2011 date would have been well past the District’s timeline. The second complaint was filed in March 2011, and the response from the District wasn’t given to them until eight months later. None of the complainants agreed to extend the sixty (60) day timeline.

The District’s investigation concluded no wrongdoing on the part of the SUSD Police Management in a notification to management dated May 3, 2011.

### **Finding**

**F2.** The complainants were not notified of the results of their complaint according to the sixty (60) day timeline set forth in the SUSD Board policies.

### **Recommendation**

**R2.** Follow District policy pertaining to the filing of complaints and adhere to the sixty (60) day timeline.

### **3.0 Violation of Board Policy §3.35- Background Clearance for all Volunteers**

A private citizen used his own helicopter to assist the Department occasionally for special functions and general patrol of the schools. During the investigation it was not clear whether the pilot was fingerprinted as a volunteer as stated in Board Policy §3.35. Proof of DOJ clearance through a background check was requested but could not be provided. There is also no record of a tuberculosis (TB) test as is required by District policy. The Grand Jury requested SUSD PD provide the additional insurance documentation that would be required for a helicopter to be used by the Department. No documentation for an insurance rider could be located by SUSD PD. All employees and volunteers who have access to students within the District must be cleared properly to maintain a high level of safety in the schools.

### **Finding**

**F3.** Neither proof of insurance nor a fingerprint clearance through DOJ could be provided. There is also no proof of a TB test for the pilot as required by Board Policy and state law.

### **Recommendation**

**R3.** Follow Board Policy §3.35 and California Health & Safety Code §121545 (mandatory TB test).

#### **4.0 Violation of SUSD Policy 1002.3**

The SUSD PD Policy 1002.3 states that all non-probationary employees are to have a yearly evaluation and other probationary employees will be evaluated monthly. The Grand Jury reviewed personnel evaluations to determine whether they were done in a timely manner in accordance with Department policy. Some files had yearly evaluations completed for the employees but they were not done in consecutive years throughout their employment history. Many of the evaluations indicated employees were doing an outstanding job several years ago, but were subject to severe discipline or termination recently. Evaluations provide a record of employee development, work performance, what is expected of them, and how they are to meet those expectations.

#### **Finding**

**F4.** Evaluations have not been done on an annual basis for each employee.

#### **Recommendation**

**R4.** Prepare timely evaluations in accordance with the Department Policy Manual.

#### **5.0 Report Processing**

Employees had been reprimanded because they could not keep up with the volume of paperwork that the Department requires for calls for service. Testimony revealed that the employees believed the report volume put them in a “no win” situation because overtime was not always authorized for completion of their paperwork. The SUSD PD generates several thousand written reports each year concerning incidents at the schools. In 2009, there were 3,836 reports written, in 2010, 4,630 and in 2011 there were 5,754. Other police departments

in the County were surveyed and many of them are writing and transmitting their reports electronically from their vehicles, which saves time for the officer.

### **Finding**

**F5.** The small number of officers handling calls for service makes it very difficult to efficiently keep up with the report demand.

### **Recommendation**

**R5.** Re-assess the report taking procedure to find an alternate method for documentation of incidents, including the feasibility of electronic transmissions.

## **6.0 Internal Affairs**

The SUSD PD internal affairs process has been criticized because of the factions within the organization. The Lieutenant has been assigned to do the internal affairs investigations within the department. Many employees who were the subject of investigations had prior negative ongoing issues with the Lieutenant and felt the investigations were biased. More of the internal affairs investigations are now being outsourced to one of several individuals.

### **Finding**

**F6.** There is a perception of bias for the Lieutenant to investigate internal affairs complaints.

### **Recommendation**

**R6.** Establish Department Policy to use outside investigators to avoid any perception of bias.

## **Conclusion**

An unhealthy atmosphere exists in the Stockton Unified School District Police Department. The Grand Jury is concerned with the application of SUSD Police Policies, and the lack of communication between the management and the police officers. This, in effect, has resulted in a lack of trust, factions within the Department, and differences of opinion about various police policies.

With a large population of students enrolled in Stockton Unified School District schools, the responsibilities of their police officers are magnified greatly in order to keep its students safe and secure at school sites. With the current existence of student discipline problems and violence on campus, the Grand Jury strongly urges that SUSD police officers receive specialized training as is recommended in this report. Training police officers will not only help promote an environment of uninterrupted education but also gain the support of parents, educational personnel, and the community.

## **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 the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge [Penal Code §991, §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 §924.2 and §929).



## Response Requirements

California Penal Code §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 by (within 90 days).

## Reference Material

[www.susdpoa.com](http://www.susdpoa.com) **SUSD Police Department** It is a fully accredited police agency operating 24/7, employing full-time officers, dispatchers and other support personnel. The Stockton Unified School District Police Department is a group of professionals dedicated to excellence in safety on and near schools in the city of Stockton. Their main goal is to provide a safe environment for students so they can concentrate on learning and achieving academic success. The mission of the Stockton Unified School District is to protect and serve the community on or near the schools. They strive to provide high quality, professional law enforcement services.

[www.eeoc.gov](http://www.eeoc.gov) **EEOC** It is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex, national origin, age, disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

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### **Section III**

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# *Investigations*

# **San Joaquin County Grand Jury**



## **Stockton Unified School District Police Department**

### **2011/2012 Case No. 0111**

#### **Summary**

The Grand Jury received complaints regarding the management of Stockton Unified School District Police Department (SUSD PD). One complaint (#1) alleged favoritism in assignment of overtime, violations of department policy, and adverse personnel actions, causing frustration and a lack of trust in management.

A second complaint (#2) by a parent criticized the method used by a police officer to bring a student with an impulsive-hyperactive personality under control.

Through the Grand Jury's investigation, we found Stockton Unified School District (SUSD) police officers deal with some District students who have behavioral issues which require additional specialized training and prudent judgment. Many instances of violence in the schools have been noted in the media this year, emphasizing the need for professionalism and highly competent officers in the school system.

## **Background**

Established in 1985, the SUSD PD provides services to over 37,000 students, and over 4,500 staff at fifty-eight locations spread over sixty-five square miles. Their primary focus is safety and developing positive relationships with the students, teachers, staff, and parents. SUSD PD has an operational agreement with the San Joaquin County Sheriff's Department, and is currently working on one with the Stockton Police Department, to define the working relationships between these agencies. SUSD PD is supplementary to the Stockton Police Department and is not vested with general police powers. All officers within the Department are sworn police officers per California Penal Code §830.32, however, their authority as "peace officers" is limited by California Education Code §38000.

SUSD PD's chief administrator answers directly to the Superintendent of Schools.

The Stockton Unified School District Police Department currently employs:

- Police Chief
- One (1) Lieutenant
- Two (2) Sergeants
- Fifteen (15) Officers
- Four (4) Dispatchers
- One (1) Executive Assistant
- One (1) Fingerprint Technician

## **Issues**

The Grand Jury received two (2) separate complaints alleging issues within SUSD PD. The first complainant alleged the prejudicial assignment of overtime resulting in one officer receiving an inordinate amount of overtime pay during a single year (\$51,217.00). In review of Department Policy #1038, there did not appear to be a violation of this section. Complaint #1 also referenced another formal complaint filed with SUSD by five (5) employees against management, which alleged racial discrimination and a hostile work environment. The Grand Jury could not substantiate any discrimination but the information provided led to other issues listed below.

Through testimony it became clear there were two (2) factions of employees within the SUSPD PD. Employees that did not side with management believed they were being discriminated against in regards to special assignments and discipline. The Grand Jury could not substantiate the claims of bias regarding promotions or special assignments.

The internal affairs process at this Department was examined for impartiality and thoroughness. The Grand Jury read several investigative reports which appeared extensive and complete. The Grand Jury learned that employees had conflicts with a supervisor and that same supervisor is the in-house internal affairs officer. The Department is moving toward using outside examiners to look into complaints against officers, and to avoid the “appearance” of prejudice or bias.

The Grand Jury learned that a helicopter was offered for SUSPD PD’s use but became concerned about proof of insurance for the aircraft and the lack of Department of Justice (DOJ) clearance for the pilot, who was not an SUSPD PD employee, but volunteered his services. SUSPD PD was unable to produce documentation that District Policy §3.35 (volunteer requirements) was followed.

Peace Officer Standards and Training (POST) mandates and SUSPD PD Department Policies (1002.3) require employee evaluations be kept current. The Grand Jury verified through testimony and review of documents that evaluations were not done on a consistent basis. Evaluations allow employees to examine their own work product as well as providing the opportunity for dialogue with their supervisors. Without that exchange of information, employee communication suffered further.

A second complaint (#2) alleged a child was mistreated by an SUSPD PD officer and by the School District. A five (5) year old special needs student was improperly restrained for a long period of time and transported without parental notification.

Training school police officers in a small district presents unique challenges not found in larger law enforcement agencies. In addition to the state mandates for all officers, employees working in schools having direct contact with students must also remain current on matters relating to youth, including those who have special needs.

Report writing was a concern for most of the officers that were interviewed. The volume of reports that each officer writes creates a hardship adding to their already heavy workload. Another issue relating to reports is the approval method. After police officers write their reports, a sergeant or lieutenant normally will review the report and approve it. In the case of the police report that involved the combative behavior by a young juvenile, the same officer who wrote the report also approved it.

## **Method of Investigation**

### **Materials Reviewed**

- SUSD PD Policy Manual
- Police officer personnel files
- SUSD Administration Manual
- SUSD PD organizational chart
- SUSD Complaint form (cf. 1312.3 Complaints concerning District employees)
- SUSD PD complaints from 2009 to present
- SUSD PD Training records from 2009 to present
- SUSD website: [www.susdpoa.com](http://www.susdpoa.com)
- OCR website: [www.hhs.gov/ocr](http://www.hhs.gov/ocr)
- POST website: [www.post.ca.gov](http://www.post.ca.gov)
- EEOC website: [www.eeoc.gov](http://www.eeoc.gov)

### **Interviews Conducted**

- Complainants
- SUSD PD Personnel

- SUSD Superintendent
- SUSD Chief of Police

## **Discussion, Findings and Recommendations**

### **2.0 Training**

The SUSD Police Department is mandated by POST to remain current on several issues and perishable skills. POST requires that officers receive twelve (12) hours of training in various disciplines over two (2) years. Through testimony and a review of training records, few officers have remained current on their police training which causes safety and liability concerns. District policies and procedures also require employees to stay current on several issues relating to minors, including special needs children. Management of Assaultive Behavior (MAB) is a program used by school districts to manage challenging behavior in a safe and professional manner. That training is currently offered by the San Joaquin County Office of Education. The size of the Department makes it difficult to keep current on training while still providing enough officers to handle calls at the schools.

### **Findings**

**F1.1** The frequency and consistency of training is not current with the Peace Officer Standards and Training and District mandates.

**F1.2** SUSD PD is lacking specific training in dealing with special needs children.

### **Recommendations**



**R1.1** Officers participate and complete POST and department training as required by law and District policy.

**R1.2.1** Develop and implement a training policy to include Management of Assaultive Behavior for all officers.

**R1.2.2** Officers complete Management of Assaultive Behavior training immediately.

## **2.0 Violation of Board Policy §1312.3-Filing of Complaints**

The SUSD Board Policy §1312.3 states that the “complaint review will be conducted within sixty (60) calendar days from the date of receipt of the complaint unless the complainant agrees in writing to extend the deadline.” The employee complainants did not receive any notification about the outcome of their complaint. The Grand Jury reviewed copies of letters from the District to the complainants dated May 6, 2011 but no proof of service was attached. This corroborates the complainants’ testimony. However, proof of service was located for letters that went to the persons complained *against*. The District’s Policy states, “The Board...shall mail its decision to *all* [emphasis added] concerned parties.” Since the first complaint was filed in 2009, the 2011 date would have been well past the District’s timeline. The second complaint was filed in March 2011, and the response from the District wasn’t given to them until eight months later. None of the complainants agreed to extend the sixty (60) day timeline.

The District’s investigation concluded no wrongdoing on the part of the SUSD Police Management in a notification to management dated May 3, 2011.

### **Finding**

**F2.** The complainants were not notified of the results of their complaint according to the sixty (60) day timeline set forth in the SUSD Board policies.

### **Recommendation**

**R2.** Follow District policy pertaining to the filing of complaints and adhere to the sixty (60) day timeline.

## **7.0 Violation of Board Policy §3.35- Background Clearance for all Volunteers**

A private citizen used his own helicopter to assist the Department occasionally for special functions and general patrol of the schools. During the investigation it was not clear whether the pilot was fingerprinted as a volunteer as stated in Board Policy §3.35. Proof of DOJ clearance through a background check was requested but could not be provided. There is also no record of a tuberculosis (TB) test as is required by District policy. The Grand Jury requested SUSD PD provide the additional insurance documentation that would be required for a helicopter to be used by the Department. No documentation for an insurance rider could be located by SUSD PD. All employees and volunteers who have access to students within the District must be cleared properly to maintain a high level of safety in the schools.

## **Finding**

**F3.** Neither proof of insurance nor a fingerprint clearance through DOJ could be provided. There is also no proof of a TB test for the pilot as required by Board Policy and state law.

## **Recommendation**

**R3.** Follow Board Policy §3.35 and California Health & Safety Code §121545 (mandatory TB test).

## **8.0 Violation of SUSD Policy 1002.3**

The SUSD PD Policy 1002.3 states that all non-probationary employees are to have a yearly evaluation and other probationary employees will be evaluated monthly. The Grand Jury reviewed personnel evaluations to determine whether they were done in a timely manner in accordance with Department policy. Some files had yearly evaluations completed for the employees but they were not done in consecutive years throughout their employment history. Many of the evaluations indicated employees were doing an outstanding job several years ago, but were subject to severe discipline or termination recently. Evaluations provide a record of employee development, work performance, what is expected of them, and how they are to meet those expectations.

### **Finding**

**F4.** Evaluations have not been done on an annual basis for each employee.

### **Recommendation**

**R4.** Prepare timely evaluations in accordance with the Department Policy Manual.

## **9.0 Report Processing**

Employees had been reprimanded because they could not keep up with the volume of paperwork that the Department requires for calls for service. Testimony revealed that the employees believed the report volume put them in a “no win” situation because overtime was not always authorized for completion of their paperwork. The SUSD PD generates several thousand written reports each year concerning incidents at the schools. In 2009, there were 3,836 reports written, in 2010, 4,630 and in 2011 there were 5,754. Other police departments

in the County were surveyed and many of them are writing and transmitting their reports electronically from their vehicles, which saves time for the officer.

### **Finding**

**F5.** The small number of officers handling calls for service makes it very difficult to efficiently keep up with the report demand.

### **Recommendation**

**R5.** Re-assess the report taking procedure to find an alternate method for documentation of incidents, including the feasibility of electronic transmissions.

## **10.0 Internal Affairs**

The SUSD PD internal affairs process has been criticized because of the factions within the organization. The Lieutenant has been assigned to do the internal affairs investigations within the department. Many employees who were the subject of investigations had prior negative ongoing issues with the Lieutenant and felt the investigations were biased. More of the internal affairs investigations are now being outsourced to one of several individuals.

### **Finding**

**F6.** There is a perception of bias for the Lieutenant to investigate internal affairs complaints.

### **Recommendation**

**R6.** Establish Department Policy to use outside investigators to avoid any perception of bias.

## **Conclusion**

An unhealthy atmosphere exists in the Stockton Unified School District Police Department. The Grand Jury is concerned with the application of SUSD Police Policies, and the lack of communication between the management and the police officers. This, in effect, has resulted in a lack of trust, factions within the Department, and differences of opinion about various police policies.

With a large population of students enrolled in Stockton Unified School District schools, the responsibilities of their police officers are magnified greatly in order to keep its students safe and secure at school sites. With the current existence of student discipline problems and violence on campus, the Grand Jury strongly urges that SUSD police officers receive specialized training as is recommended in this report. Training police officers will not only help promote an environment of uninterrupted education but also gain the support of parents, educational personnel, and the community.

## **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 the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge [Penal Code §991, §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 §924.2 and §929).

## Response Requirements

California Penal Code §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 by (within 90 days).

## Reference Material

[www.susdpoa.com](http://www.susdpoa.com) **SUSD Police Department** It is a fully accredited police agency operating 24/7, employing full-time officers, dispatchers and other support personnel. The Stockton Unified School District Police Department is a group of professionals dedicated to excellence in safety on and near schools in the city of Stockton. Their main goal is to provide a safe environment for students so they can concentrate on learning and achieving academic success. The mission of the Stockton Unified School District is to protect and serve the community on or near the schools. They strive to provide high quality, professional law enforcement services.

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# San Joaquin County Grand Jury



## Housing Authority of the County of San Joaquin

**2011/2012 Case No. 0211**

### Summary

The Grand Jury investigated a citizen complaint alleging certain irregularities in the administration of the Housing Choice Voucher Program including preferential treatment of an employee's family member now housed under the voucher program. The complaint alleges insufficient clarification in correspondence, discrimination, and staff being nonresponsive to inquiries. During the investigation the Grand Jury had concerns with the security of confidential files and intimidation of witnesses who testified.

### Key Terms

<b>Housing Authority</b>	Housing Authority of the County of San Joaquin
<b>HCVP</b>	Housing Choice Voucher Program
<b>HUD</b>	U.S. Department of Housing and Urban Development



## **Background**

The Housing Authority of the County of San Joaquin was created by the California Legislature in 1938. The Housing Authority was established in 1942 by resolution of the Board of Supervisors as a public corporation organized pursuant to the California Health and Safety Code. It is governed by a seven-member Board of Commissioners, typically one member from each supervisorial district plus two (2) Housing Authority tenant members.

The Housing Choice Voucher Program (HCVP) is funded by the U.S. Department of Housing and Urban Development (HUD). The Housing Authority currently assists approximately 19,000 people through the distribution of nearly 5,000 housing vouchers by managing and maintaining 1,075 units in the public housing communities. The Grand Jury is focusing on the Housing Choice Voucher Program.

The HCVP, funded by HUD, provides housing assistance to extremely low and very low income families, senior citizens, and persons with disabilities. Since 1974 the Housing Authority has managed the HCVP, providing rent subsidies in the form of Housing Assistance Payments to property owners on behalf of eligible families.

According to the latest annual report, the Housing Authority administers 4,931 vouchers for families residing in San Joaquin County, with over 10,000 families currently on the HCVP waiting list. The Housing Authority published a HUD approved Administrative Plan to administer the HCVP under its jurisdiction, and is required to adhere to the plan assuring the public of transparency and fairness.

A single waiting list for admission to the HCVP is maintained by the Housing Authority. The waiting list is opened periodically as the need arises to accept new applications. The most recent open enrollment was held in October 2009. During open enrollment, an applicant completes a “pre-application” form, which establishes the family’s date and time of application for placement order on the waiting list. The application also establishes any preferences the applicant has selected. The application process involves two phases. The first is the “initial” application for assistance (referred to as pre-application). The first phase results in the family’s placement on the waiting list. The second phase is the “final determination of eligibility” (referred to as the full application.) At this time, the Housing Authority ensures that verification of all HUD and Housing Authority eligibility factors are current in order to determine the family’s eligibility for the issuance of a voucher.

The Housing Authority uses a local preference system to rate all applicants on the waiting list. Each preference is given a point value. These point values are as follows: Families displaced by Government Action receive five (5) preference points; Veterans receive four (4) preference points; Families who live, work or have been hired to work for San Joaquin County receive two (2) preference points; and families with a disabled member as defined in the Administrative Plan receive one (1) preference point. Applicants are placed on the waiting list according to preferences selected, application date/time, and income. Placement on the waiting list does not indicate the applicant is, in fact, eligible for admission. A final determination of the eligibility and qualification for preferences will be made when the applicant is selected from the waiting list. Proof of disability is required at time of selection and before the voucher can be awarded.

Each fiscal year, the Housing Authority reserves a minimum of seventy-five percent (75%) of its Housing Choice Vouchers for new admissions for families whose income does not exceed thirty 30 percent (30%) of the area median income. HUD refers to these families as “extremely low-income families.” The Housing Authority will admit families who qualify under the extremely low income limit to meet the income-targeting requirements regardless of preference.

When funding is available, families will be selected from the waiting list in their determined sequence, regardless of family size, subject to income targeting requirements. This selection process is commonly referred to as a “pull”. During the past two fiscal years (2010/2011) 2,724 applicants were pulled resulting in issuance of 906 vouchers. Statistics on the last five HCVP waiting list pulls resulted in the issuance of 515 vouchers from a pull of 1,750 applicants. (Appendix A) On November 13, 2010, interviews were scheduled for a pull of 300 applicants from the waiting list. Of the 300 pulled, 130 applicants responded and were interviewed. Sixty-four (64) of these applicants were eligible for vouchers, sixty-two (62) were denied for not meeting the preference, being over income, or failing the criminal background check and two (2) were rescheduled. A pull conducted in August/September 2010, resulted in 119 responses, but no vouchers were issued. Applicants were returned to the waiting list after it was determined that the Housing Authority had exceeded the allocated voucher amount.

When there is insufficient funding available for the family at “the top of the list”, the Housing Authority will not admit any other applicant until funding is available for the first applicant.

## **Issues**

The Grand Jury investigated a complaint alleging that preferential treatment was given to a participant in the voucher program who is directly related to a Housing Authority employee.

Complainant filled out a pre-application form and was placed on the waiting list. Shortly thereafter, the complainant received a letter stating, ***"You reached the top of the list."*** Complainant was given the date and time to appear for an interview. Also included with the letter was a full application packet with instructions to complete it prior to the interview. During the interview, the complainant was advised that upon verification of information submitted in the application packet, a voucher would be issued within three (3) weeks. Five (5) weeks after the interview, the complainant received a letter from the Housing Authority stating that the applicant was returned to the waiting list with no other explanation. The letter received was vague and gave no reason as to why a voucher had not been issued. (Appendix C)

During the investigation, issues arose with the security and fire protection of the confidential files held at the Housing Authority main office.

## **Method of Investigation**

### **Materials Reviewed**

- ❖ Housing Authority Administrative Plan for the Housing Choice Voucher Program
- ❖ Housing Authority Personnel Policy Manual
- ❖ Documentation relevant to the investigation

### **Interviews Conducted**

- ❖ Management Staff
- ❖ Employees
- ❖ Complainant
- ❖ Relative Applicant

### **Housing Authority Sites Visited**

- ❖ Housing Authority Administrative Offices
- ❖ Conway Homes, Stockton
- ❖ Tracy Homes, Tracy

## **Discussion, Findings and Recommendations**

### **3.0 Voucher Notifications**

Once a voucher application is submitted, specific criteria must be met to advance in the selection process. All applicants are rated according to veteran status, disability, governmental displacement, local residency, and income. Upon being selected, the Housing Authority sends a letter to all applicants advising they have reached the top of the list and encloses a full application packet to be completed prior to the interview. The notification letter (Appendix B) is misleading because it gives the applicant an elevated sense of where they stand in the selection process. The complainant's letter was received on August 17, 2010 with an appointment scheduled for September 2, 2010. During the interview the applicant was given an approximate time frame of three (3) weeks for receipt of a voucher provided income was verified and the background check passed successfully.

The complainant was then notified five (5) weeks later that the application was being returned to the waiting list. No reason was given for this action.

The Housing Authority has several template letters in their computer program to use when communicating with applicants. If an applicant is denied a voucher, the letter sent to applicants identifies the reason for the denial.

Complainant was not denied a voucher. Complainant was “placed back on the list”. Complainant was led to believe that a voucher would be issued as soon as all verifications were completed. Five (5) weeks after the verification interview, complainant received the letter stating the application was placed back on the waiting list. The voucher notification letter was unclear and misleading. (Appendix B) No explanation was provided for being placed back on the list. If an explanation had been given, complainant would not have been confused and probably not have felt it necessary to file a complaint with the Grand Jury.

When there is insufficient funding available for the family at “the top of the list”, the Housing Authority will not admit any other applicant until funding is available for the first applicant. Complainant was selected from the waiting list, completed the verification process, and then, was returned to the waiting list. Less than a month later, Applicant was selected from the list along with 299 other applicants and was subsequently approved and granted a voucher. Complainant did not receive a voucher and an explanation was never provided to explain this discrepancy.

### **Finding**

**F1.** Voucher notification letters are unclear and misleading.

### **Recommendation**

**R1.** Review correspondence for clarity and provide a more specific explanation of decision/process/status.

## **4.0 Preferential Treatment of Applicant**

The complainant alleges preferential treatment of an applicant related to an employee of the Housing Authority, specifically, the fast-tracking of the voucher approval process without the necessary documentation to determine eligibility. The rating criteria are: Five (5) points for being displaced by government action, four (4) points for veteran status, two (2) points for local residency, and one (1) point for disability. Applicants are placed on the waiting list according to the

preferences selected. The greater the preference points, the higher the placement on the waiting list. HUD also requires seventy-five percent (75%) of all applicants in a pull to be extremely low income. Provided all paperwork is verified, it was established through testimony that voucher issuance requires thirty-sixty (30-60) days and that a voucher could not be issued unless ALL documents critical to this process were completed, appropriately signed, and correctly dated.

The Grand Jury reviewed the file of the related applicant ten (10) months after the issuance of the voucher. The Housing Authority established a check list to help employees during the verification process, to see what has been received, what is out on verification, or what documentation is still needed. The Grand Jury noted the Verification of Disability form to be missing. Additionally, the tenant file checklist did not indicate the form had ever been received.

According to the record, the verification of disability form dated Saturday, November 13, 2010 was sent to the doctor's office with a request to complete and return within ten (10) days. The related applicant was approved for a voucher on November 19, 2010 and received the voucher on November 24, 2010. According to the Housing Authority's Administrative Plan and testimony, this person should not have been given a voucher because a critical document used to establish preference was missing.

Through testimony, Housing Authority management became aware of the specifics of the investigation and allegations of file tampering were being made regarding this specific file. Numerous requests were made by the Grand Jury to send or fax a copy of the original signed form from the doctor's office. When received and upon review by the Grand Jury, it was found to be of very poor quality (faded and unreadable in places) and displayed a handwritten date of "11/10." Whether the date was partial or whole was indeterminable. The Grand Jury again requested a copy with more clarity and was advised the applicant had refused further access to his medical file by the Housing Authority. (Appendix D)

The Housing Authority's Personnel Policy §900, approved November 15, 2007, subsection 908 Miscellaneous Provisions, number 19 states; *"Employees shall immediately notify their supervisor of any relative working for, applying for, or receiving any services from the Housing Authority. Employees are required to adhere to the Housing Authority's "Code of Ethics and Standards of Conduct Policy" at all times."* Testimony revealed the employee in question did not notify the supervisor of a family member applying for services.

Verification of relative applicant's income, which included income from another adult living in the same household, consisted of two (2) check stubs and two (2) pages of a six-page (6) bank statement. The first page of the bank statement was just a cover page and the second page contained the beginning and ending balances of both a checking and a savings account for a single month. The four pages containing the details of daily debits and credits were missing. Banking Statements are often used to verify income because they show the total amount of income available within the reporting period. The Housing Authority's Administrative Plan for the Housing Choice Voucher Program §17C, *"Steps the Housing Authority will take to detect program abuse and fraud by assisted families..."* require the Housing Authority to look at the *"Ratio between reported income and expenditures."* The pages of the bank statement that would have provided that information were missing. The fact that these pages were omitted makes the verification questionable.

Applicant was interviewed for a voucher on a Saturday and was approved for a voucher on the following Friday. Only one (1) other applicant, out of a group of 130 responding applicants, was approved for a voucher quicker than this Applicant. Four (4) other applicants were approved for vouchers on the same day as this Applicant and the remaining sixty (60) applicants were subsequently approved for vouchers over the next sixty (60) days.

An applicant who is related to an employee of the Housing Authority was given a voucher under the Housing Choice Voucher Program. The employee did not inform the supervisor that a relative was applying for services, and that failure to notify is in violation of the Housing Authority's Personnel Policies.

The Grand Jury is unable to determine whether all the required paperwork, specifically the Verification of Disability Form, was submitted as required by the Housing Authority's Administrative Plan due to both the absence of the form in the file upon initial review and the condition of the copy of the form provided to the Grand Jury at a later date.

Applicant was one of six (6) applicants approved for a voucher within six (6) days of the verification interview. Of the vast majority of applicants approved for a voucher, sixty (60) took much longer.

## **Finding**

**F2** Inappropriate preference was given to the applicant who was related to the employee at the expense of the complainant and other applicants.

## **Recommendation**

**R2.1** Follow Housing Authority policy and procedures when disbursing public funds and determining eligibility.

**R2.2** All employees attend annual training for “Code of Ethics and Standards of Conduct Policy”.

## **5.0 File Room Security and Sprinklers**

During the course of the investigation the Grand Jury toured the file room containing confidential applicant files. Access was gained by a touch keypad using a standard employee code. A sign-out sheet was available for employees retrieving files, however, nothing was in place to prevent unauthorized access and file viewing/tampering.

The Grand Jury voiced security concerns during witness interviews prompting management to make or plan several improvements including a biometric thumbprint scanner door lock that was recently installed, the installation of a window, and the hiring of a full-time file clerk which should prevent files being removed anonymously. Additionally, management is exploring the possibility of full time video surveillance.

There are no sprinklers in the file room and the file cabinets are not fireproof. The Housing Authority indicated it is in the process of scanning documents into the database which is backed up nightly and stored off-site.



### **Finding**

**F3.** The Housing Authority has been lax in file room security and fire precaution/prevention.

### **Recommendation**

**R3.** Continue with anticipated security improvements and fire prevention improvements.

## **4.0 Disclosure of Relatives**

The Housing Authority's published policy relies solely upon employee disclosure of family members applying for a voucher. In this instance the employee failed to notify her supervisor.

### **Finding**

**F4.** The Housing Authority's published policy covering family members of employees who apply for vouchers under the HCVP is in need of augmentation to establish a cross reference to employee disclosure.

### **Recommendation**

**R.4** Amend the pre-application to provide for voluntary self-disclosure of relationship by applicants of relatives employed by the Housing Authority.

## **5.0 Complaint Procedures**

During the application process, the complainant had several questions regarding the status of the application and several attempts were made to contact the leasing specialist by email and phone calls. The complainant stated to date there has been no contact from the Housing Authority and still does not know the status of the application. There is no visible information on the correct procedure for a citizen to make/file a complaint.

### **Finding**

**F5.** Complaint procedures are not clearly defined and are not posted.

### **Recommendation**

**R5.** Complaint procedures should be clearly defined and posted in a prominent location if requested by applicants.

## **Conclusion**

The Housing Authority plays a vital role in contributing to the well being of low income county residents, therefore, it should be standard policy/practice to treat all applicants fairly and without bias. The Housing Authority needs to be considerate in the way they communicate with the population they serve. The Grand Jury has legitimate concerns that best practices were not followed in this case.

## **Disclaimer**

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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 §§ 924.2 and 929).

## **Appendices**

- Appendix A - Statistics on Pulls
- Appendix B - Voucher Notification Letter (top of the list)
- Appendix C - Voucher Notification Letter (return to waiting list)
- Appendix D - Redacted Verification of Disability (related applicant)

## **Response Requirements**

California Penal Code §§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 by (within 90 days).

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

Hon. David P. Warner, Presiding Judge  
San Joaquin County Superior Court  
222 E. Weber Avenue, Room 303  
Stockton, CA 95202

**Also, please email the response to Trisa Martinez, Staff Secretary to the Grand Jury, at**

[grandjury@courts.san-joaquin.ca.us](mailto:grandjury@courts.san-joaquin.ca.us)

# **San Joaquin County Grand Jury**



## **San Joaquin County Mosquito and Vector Control District**

**2011/12 Case No. 0311**

### **Summary**

The Grand Jury investigated a complaint alleging several issues at the San Joaquin County Mosquito and Vector Control District (District). The complaint alleges verbal sexual harassment, hostile work environment, management retaliation and nepotism. During the investigation other issues were alleged relating to the secret and illegal spraying of a toxic chemical in the mosquito fish ponds, and failure to report the spraying to the proper reporting agencies.

### **Glossary**

**EEO** - Equal Employment Opportunity is the right of all persons to work and advance on the basis of merit, ability and potential. Managers and supervisors must lead by example and monitor the workplace to ensure that the environment is free from discrimination, hostility, intimidation, reprisal,

and harassment. The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

**ERMA** - Employment Risk Management Authority is a joint powers agency that provides for employment liability coverage for various California public entities and provides custom solutions for affirmative action EEO plans the agency needs. Training is provided by ERMA to assist the members in dealing with today's current economic issues and for the prevention of sexual harassment, discrimination and retaliation.

**MVCAC** - Mosquito Vector Control Association of California provides quality public information, comprehensive mosquito and vector-borne disease surveillance, training to high professional standards, and effective legislative advocacy on behalf of California mosquito and vector control districts.

## **Background**

The San Joaquin County Mosquito and Vector Control District is an independent special district that provides many vital programs in the county. The District manages the mosquito population levels that help reduce the spread of viruses to humans and animals. According to the California Health and Safety Code, §2002(K), "Vector" means any animal capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitos, flies, mites, ticks, other arthropods, rodents, and other vertebrates.

The governing body of the District is composed of eleven (11) Board of Trustee members; seven (7) members represent each incorporated city and four (4) members representing the county at large. The Board employs a manager who oversees program functions, hires and supervises staff. The major funding source to the district comes from property taxes. The District continues to experience a downward trend in revenues from taxes due to declining property values and the ongoing real estate foreclosure crisis. This has resulted in an increased workload of neglected properties for the District to maintain.

## **Issues**

A complaint was made against the District by an employee alleging several issues; sexual harassment, a hostile work environment, nepotism, and being subjected to rude, abusive language by a supervisor. The complaint was reported by the complainant to supervisors, management, ERMA and the Board of Trustees as stated in district policy.

During the investigation, an allegation was made the District was performing illegal spraying of a carcinogenic chemical on the mosquito fish in the ponds at the District Fish Hatchery located at White Slough. The complaint further alleged the District was not reporting the spraying of the pesticide to the proper authorities as was required. Because the allegation was of an illegal nature, the Grand Jury referred this to the San Joaquin County District Attorney's office for review.

## **Method of Investigation**

The Grand Jury reviewed numerous documents, made site visits, attended Board Meetings and conducted interviews as stated below.

### **Materials Reviewed**

- District Policy and Procedures Manuals
- Board Minutes/Agendas
- Pesticide Regulations

- Pesticide Spraying Records
- Department of Agriculture Reporting Requirements
- Employee Manuals
- Documentation relevant to this investigation

## **Interviews Conducted**

- All Managers and Supervisors
- Employees
- Board of Trustees Members

## **Sites Visited**

- District Headquarters, Stockton
- Mosquito Fish Hatchery at White Slough, Lodi

# **Discussion, Findings and Recommendations**

## **1.0 Sexual Harassment**

The claims of sexual harassment were based on more than one employee describing rude, vulgar and otherwise lewd remarks being made by a singular offender in the employee break room. The conduct was not isolated but rather well known and consistent. The comments were clearly sexual in nature and some employees avoided the break room altogether.

The District has a Sexual Harassment Policy # 2210, which in part states: *"It is the policy of the San Joaquin County Mosquito Abatement District that sexual harassment is unacceptable conduct in the work place and will not be tolerated. The management of the district shall implement a program to educate employees and supervisors on what conduct can be considered sexual harassment and that such behavior will not be tolerated by the district. It is the policy of the district that any employee who feels that they are the victim of sexual harassment or that*



*they are bothered by an offensive or hostile work place, may report their complaint to either their immediate supervisor, the assistant manager or President of the Board of Trustees....*" See Appendix A

Testimony revealed management and supervisors were informed of the offending behavior on at least two occasions by more than one employee. Management recalled one of the sexual harassment complaints and also quoted the relevant District policies on how this should be handled, what action should be taken, and how it should be documented. However, management could not produce documentation on action taken on the sexual harassment complaint.

Review of the training documentation from 2000 through 2011 indicates that Prevention of Sexual Harassment training was included as one of many line items on the agenda at annual all employee meetings. Makeup sessions were scheduled for employees who did not attend the original training. Most employees interviewed could not remember any of the details of the training and did not have a clear idea of what constituted sexual harassment, especially in the area of sexual banter.

## **Finding**

**F1.** Sexual harassment had been committed in the form of rude, vulgar, and lewd remarks. These remarks were made on several occasions in the presence of several employees and met the criteria as specified in the District Policy #2210.

## **Recommendations**

**R1.** Review the effectiveness of the District's current Sexual Harassment Policy and take appropriate steps to improve the training.

**R1.2** The District's annual prevention of Sexual Harassment training be given as a separate program.

## **2.0 Hostile Work Environment and Management Retaliation**

From the time the sexual harassment complaint was made, the complainant stated the work environment had become hostile. The complainant alleged management retaliated by making numerous changes in the work zone, withholding certain chemicals that were given to other employees, as well as keys to locked gates, equipment needed to complete assigned work, and being ostracized by fellow employees.

Testimony revealed job zones had been changed a few times over the course of the complaining period. Job zone relocations were either a result of the complainants request to be relocated, or the District's attempt to improve the working conditions of the complainant. Each time the complainant was relocated other complaints were made. Complainant believed a chemical which was commonly used in the past and was highly effective for controlling mosquitoes, was being distributed to other employees, but denied to complainant. An inquiry into this accusation revealed that certain chemicals were not being used due to District budget constraints. The District made a financial decision that affected all employees to use a less expensive chemical early in the season and reserve the more expensive chemical until later in the season when it would be more effective. There was no evidence that keys or other equipment were purposely withheld. On the contrary, they were made available upon request. Employees cover many properties throughout the county. Properties are serviced according to need, so a newly assigned employee would have to determine equipment and/or keys needed on a daily basis.

The complainant notified the Board of Trustees and ERMA directly, informing them of the harassing behavior in the workplace. ERMA responded to the District to help mediate the concerns. The Board of Trustees referred the complaint to legal counsel of the District. District Counsel notified the complainant an immediate investigation would be conducted into the complaint. Complainant was later notified in writing, the investigation on the working conditions was complete and unfounded.

## Finding

**F2.** The Grand Jury found no evidence to support a claim of retaliation against the complaining employee.

### **3.0 Violation of District Nepotism Policy #2230**

An allegation was made that two employees who had been dating eventually married and violated the nepotism policy. The District's Nepotism Policy #2230 states, "*In order to avoid improprieties and conflicts of interest, no applicant of a position will be employed by the district if a member of the immediate family is already employed.* [emphasis added] *Immediate family means: spouse, brother, sister, mother, father, children, grandparents and corresponding in-law and step relations. The person interviewing will be responsible for informing the applicant of the policy. Individuals working for a temporary employment agency, assigned for a short period of time are exempt. The policy applies to all classes of employees; full time, part-time, temporary and seasonal.*"

The dating employees informed management of their personal relationships. Management conferred with District Counsel and confirmed the employees were not being supervised by their spouse and work in different areas.

## Finding

**F3.** The Nepotism Policy #2230 applies to new applicants only.

### **4.0 Illegal Spraying at Mosquito Fish Hatchery at White Slough**

During the course of the investigation a complaint alleged employees at the District's Mosquito Fish Hatchery were secretly spraying a carcinogenic chemical called Paricide-F on the mosquito fish in the ponds. The complaint alleged the spraying of the chemical was not being recorded and was not reported to the proper authorities as required by law. Because the allegation was

of an illegal nature, the Grand Jury referred this to the San Joaquin County District Attorney's office for review.

Paracide-F is used as a medical treatment for parasites on mosquito fish. The spraying was documented on Inspection Treatment Records and is sprayed once each year usually in March. This annual spraying helps prevent parasitic disease and was not necessary to report to any outside agency because the spraying was used for medical treatment. Our investigation found that the spraying was done openly and with all the necessary precautions taken to ensure the safety of all employees.

### **Finding**

**F4.** There was no evidence of criminal violations occurring based on the review by the District Attorney's Office.

## **Conclusion**

The Grand Jury found several instances of sexual harassment in the form of rude, vulgar and lewd remarks that occurred in the workplace. Other allegations of hostile work environment, management retaliation, illegal spraying, and nepotism were unfounded.

The Grand Jury found the San Joaquin County Mosquito and Vector Control District, like other public agencies, continues to struggle financially with the decrease in property tax revenue, the added workload and additional state regulations. The Board was prudent over the years by maintaining a general fund balance and adequate reserves. These reserves sustain the district at the present time. The District performs a vital public health function in San Joaquin County by working to control the breeding and habitat of mosquitos and other vectors.

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## **Response Requirements**

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## APPENDIX

### SAN JOAQUIN COUNTY MOSQUITO AND VECTOR CONTROL DISTRICT Policy Handbook

POLICY TITLE: SEXUAL HARASSMENT  
POLICY NUMBER: 2210

#### RESOLUTION NO. 92-8 RESOLUTION OF THE BOARD OF TRUSTEES OF THE SAN JOAQUIN COUNTY MOSQUITO ABATEMENT DISTRICT'S POLICY CONCERNING SEXUAL HARASSMENT

It is the policy of the San Joaquin County Mosquito Abatement District that sexual harassment is unacceptable conduct in the work place and will not be tolerated.

The management of the district shall implement a program to educate employees and supervisors on what conduct can be considered sexual harassment and that such behavior will not be tolerated by the district.

It is the policy of the district that any employee who feels that they are the victim of sexual harassment or that they are bothered by an offensive or hostile work place may report their complaint to either their immediate supervisor, the assistant manager, manager, or President of the Board of Trustees. Upon receiving such a report the district management shall immediately investigate the complaint to see if it does consist of sexual harassment. If sexual harassment is found to have occurred the district shall take all appropriate action to end the harassment.

For purposes of this policy Sexual Harassment is defined as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal, physical or visual conduct of a sexual nature constitute unlawful harassment in the work place if:

- (A) Submission to such conduct is made an explicit or implicit term or condition of employment;
- (B) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual; or
- (C) Such conduct has the purpose or effect of either;
  - (1) unreasonable interfering with an individuals work performance or
  - (2) creating an intimidating, hostile, or offensive working environment.



The District considers the following conduct to illustrate some of the conduct that violates the District's Sexual Harassment Policy:

A. Physical assaults of sexual nature, such as:

1. Rape, sexual battery, molestation, or attempts to commit these assaults; and
2. Intentional physical conduct that is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body.

B. Unwanted sexual advances, propositions or other sexual comments, such as:

1. Sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience directed at or made in the presence of any employee who indicates or has indicated in any way that such conduct is unwelcome in his or her presence;
2. Preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; and
3. Subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of the employee's sex.
4. Retaliation for sexual harassment complaints, such as:
  - a. Disciplining, changing work assignments of, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted harassment, discrimination, or retaliation; and
  - b. Intentionally lying about, falsely denying, exerting pressure, or otherwise attempting to cover up conduct such as that described in any item above.

The illustrations stated above are not to be construed as an all-inclusive list of prohibited acts under this policy.

The District will provide its employees with convenient, confidential, and reliable mechanisms for reporting incidents of sexual harassment and retaliation. The District has provided that the assistant manager, the manager and President of the Board of Trustees shall serve as investigative officers for sexual harassment issues. If an issue of sexual harassment involves the manager, anyone with information regarding such harassment should direct that information to the President of the Board of Trustees. The names, responsibilities and phone number of each investigative officer shall be continuously posted so that an employee making a complaint or giving information regarding a complaint can do so inconspicuously.

Complaints of acts of sexual harassment or retaliation that are in violation of the sexual harassment policy will be accepted in writing or orally, and anonymous complaints will be taken seriously and investigated. Anyone who has observed sexual harassment or retaliation should report it to a designated Investigative Office. A complaint need not be limited to someone who was the target of harassment or retaliation.

Only those who have an immediate need to know, including the Investigative Officers and/or his or her designee, the alleged target of harassment or retaliation, the alleged harassers or retaliators, any witnesses will or may find out the identity of the complainant. All parties contacted in the course of an investigation will be advised that all parties involved in a charge are entitled to respect, and that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint, or who has provided evidence in connection with a complaint is a separate actionable offense as provided in the schedule of penalties. This complaint process will be administered in a manner consistent with federal labor law when bargaining unit members are affected.

Each Investigative Officer will receive thorough training about sexual harassment and the procedures under this policy, and will have the responsibility for investigating complaints or having an appropriately trained and designated District Investigator do so.

All complaints will be investigated expeditiously by a trained District Investigative Officer or his or her designee. The Investigative Officer will produce a written report, which, together with the investigation file, will be shown to the complainant on request within a reasonable time. The Investigative Officer is empowered to recommend remedial measures based on the results of the investigation, and District management will promptly consider and act on that recommendations.

An effective sexual harassment policy requires the support and example of District personnel in positions of authority. District agents or employees who engage in sexual harassment or retaliation or who fail to cooperate with District sponsored investigations of sexual harassment or retaliation may be severely sanctioned by suspension or dismissal. By the same token, officials who refuse to implement remedial measures, obstruct the remedial efforts of other District employees, and/or retaliate against sexual harassment complainants or witnesses may be immediately sanctioned by suspensions or dismissal.

Education and training for employees at each level of the work force are critical to the success of the District policy against sexual harassment. To meet its goals in this area the District shall conspicuously post throughout the work place a statement of the District Policy on Sexual Harassment. This statement will be given to all new employees and seasonal employees. All employees with supervising authority will participate in annual workshops devoted to the problem of sexual harassment and its prevention.

ATTEST:

\_\_\_\_\_

AYES

\_\_\_\_\_

NOES

\_\_\_\_\_

ABSENT

\_\_\_\_\_

ABSTAIN

\_\_\_\_\_

SIGNED:

\_\_\_\_\_  
PRESIDENT

ADOPTED: September 15, 1992

## NOTICE TO ALL EMPLOYEES

It is the policy of the San Joaquin County Mosquito Abatement District that sexual harassment is unacceptable conduct in the work place and will not be tolerated. Acts of sexual harassment can be grounds for discipline or even termination.

Sexual harassment is unwelcome verbal or physical conduct of a sexual nature. It can be unwelcome sexual advances, requests for sexual favors or offensive conduct of a sexual nature which creates a hostile work environment or which interferes with job performance. The following examples illustrate some conduct which would be sexual harassment:

1. Physical assaults of a sexual nature such as rape, sexual battery, molestation or attempts to commit these acts.
2. Intentional physical touching that is sexual in nature such as touching, pinching, patting, grabbing or brushing against another persons body.
3. Stories, jokes, gestures or comments of a sexual nature or directed to a persons sexuality and directed at or made in the presence of any employee who indicates or indicated that such conduct is unwelcome in his or her presence.
4. Cartoons, pictures or drawings of a sexual nature which are publicly displayed in a work place.

Sexual harassment can come from either men or women. It is important to remember that what you may consider harmless, may be offensive to another employee.

If you as an employee are offended by what you consider sexual harassment, you may either 1) tell the individual involved that his or her actions are offensive and that you want it stopped or 2) report the activity to your immediate supervisor, assistant manager, manager or President of the Board of Trustees.

If you as an employee are told by another employee that your conduct is offensive to that employee, respect the rights of that other employee and do not repeat such conduct in the presence of that employee. You should follow this guideline even if you do not consider the activity to be offensive.

A complaint of sexual harassment can be made in writing or orally. Anonymous complaints will be taken and investigated. A complaint need not be limited to someone who was the target of harassment or retaliation.

Only those who have a need to know may find out the identity of the complainant. These include the investigation officer, the alleged harassers and any witnesses. All complaints will be investigated by management. a written report will be provided to the complainant on request within a reasonable time.

If you have any further questions regarding the District's policy against Sexual Harassment you may contact your supervisor, Assistant Manager or the Manager.

ADOPTED MAY 15, 1992

# San Joaquin County Grand Jury



## Department of Human Services Child Welfare Service

### 2011/2012 Case 0411

#### Summary

The 2011/2012 Grand Jury investigated complaints alleging excessive workload experienced by the social workers in the Intake and Assessment Unit of Child Welfare Service (CWS).

During this investigation an allegation was made that the 2010 San Joaquin County Peer Quality Case Report (PQCR) was altered by administration to cover up the issues of high stress, heavy caseload, low morale, and job performance.

#### Glossary

**Assembly Bill 636:** Child Welfare System Improvement and Accountability Act of 2001. This legislation was designed to improve the outcomes for children in the child welfare system while holding the county and state agencies accountable for the outcomes achieved. AB 636 dramatically changed how Child Welfare Service collected data and measured the performance of meeting the child's and family's needs. The implementation of this bill resulted in the development of the Peer Quality Case Report, Self-Assessment Report, and the System Improvement Report.

**Best Practices:** A well-defined procedure that is known to produce near optimum results.

**Referral:** A complaint received by Child Welfare Service of alleged child abuse or neglect that has been determined to merit an investigation.

**SDM:** Structured Decision Making Program, also known as the “hotline tool” is used to guide the Cover Unit Social Workers to an appropriate response to an allegation of child abuse or neglect.

**Senate Bill 2030:** Child Welfare Services Workload Study 2000 (SB 2030) requires the State of California Department of Social Services (CDSS) to undertake an evaluation of workload of social workers and budgeting methodologies and set the requirements for such a study.

## **Background**

President Teddy Roosevelt held the first White House Conference on the care of dependent Children in 1909. The conference was significant for its call for an end to systematic institutionalization of dependent and neglected children. Now, in the twenty-first (21) century, child welfare and community based agencies, along with policy makers and citizens, continue to debate and refine laws, programs, and practices, which will best serve children who are at risk of abuse and neglect. The pendulum has swung several times in child protection in the last century, from rapid removal of children in a risky environment, to today, which is focused on preserving the family unit and helping families to reduce the risk of harm to children.

The Child Welfare Service is part of San Joaquin County Human Services Agency. Its functions are to protect and care for children from abuse and neglect and to strengthen and preserve family unity.

State and federal mandates have changed dramatically and the time needed to comply with these changes has increased. The field social worker today is expected to do more. The implementation of AB 636 required developing ways to measure outcomes and to focus on a preventive, community-based approach instead of the traditional way of serving families.

SB 2030 required a social worker workload study to be conducted. This study resulted in several recommendations, one of which was to lower the social worker caseload from a current 15.80 to a maximum 13.03, or a best practice of 9.88 caseloads monthly per social worker. The study also recommended doubling the current social worker staff in order to bring caseloads down to maximum amounts to 13.03 cases a month.

## **Issues**

Referrals received by Intake and Assessment Social Workers have increased from four (4) to six (6) referrals a week within the last decade. More can be and often are assigned.

Social workers interviewed alleged that the required State and federal mandates and the time needed to complete a referral has increased along with the severity and complexity of the referral received. The increased workload can become a safety risk for the children, and their social workers, that have the responsibility to protect them. A citizen complaint alleged low morale and high stress levels due to high workload, diminished overtime granted, and inadequate time to close a referral.

The social workers alleged a lack of understanding and support from management that contributes to their low morale and stress levels within the agency.

There was an allegation the 2010 San Joaquin Peer Quality Report was altered, at the last minute, to remove data. This redacted data documented the low morale and social workers being overwhelmed.

## **Method of Investigation**

### **Materials Reviewed**

- San Joaquin County Human Services Agency Intake and Assessment Handbook
- California Structured and Decision Making Policy and Procedure Manual
- All pertinent documentation relevant to this investigation

### **Interviews Conducted**

- Social Workers
- Supervisors
- Management

### **Sites Visited**

- Office of Department of Human Services Agency, Child Welfare Service Division

## **Discussion, Findings and Recommendations**

### **1.0 Workload of Social Workers**

Within the Intake and Assessment Unit of Child Welfare Service is the Cover Unit. This unit receives the initial report of alleged abuse or neglect. Using the Structured Decision Making Program, the social worker determines the appropriate response. The allegation is referred to a field intake and assessment unit for further investigation, referred to an outside community based agency for needed services, or determined not to be substantiated for abuse or neglect. CWS referrals can either be an Immediate Response



(IR), which requires initial contact within twenty-four (24) hours, or a ten (10) day response. San Joaquin Child Welfare Services makes it a priority to respond within two (2) hours to an IR. Referrals received by Intake and Assessment Social Workers have increased from four (4) to six (6) referrals a week within the last decade. More can be and often are assigned.

There are four (4) Intake and Assessment Units that are assigned to geographical areas of the county. The Intake and Assessment field social workers are responsible for the risk assessment and formation of a plan of action for the child suspected of being abused or neglected. Once a social worker receives a referral they have thirty (30) days to investigate and open a case, passing it to a social caseworker who will develop a long-range plan, or close the referral, after any appropriate referrals to community agencies have been made. According to management, Intake and Assessment referrals are only closed forty to fifty percent (40-50%) within the thirty (30) day period.

CWS receives funding for referrals based upon the numbers of referrals closed. Federal guidelines include an option to extend the closure deadline from thirty (30) to sixty (60) days. San Joaquin County has chosen to stay with the thirty (30) day closure. The largest stress factor for social workers in CWS is the high number of open referrals, sometimes numbering into the thirties. If the social worker is unable to complete the required assignment, the investigation remains open and adds to the backlog of open referrals.

As stated in Senate Bill 2030 Report on Workload, "Even when they are meeting the written program/policy standards, they are meeting only the letter of the standard, not the heart of the standard." For instance, the social worker may meet the required home visits, but may not spend enough time there to gather all information needed to do a complete investigation, which could result in putting the child at risk for future harm.

A single referral can include interviews of all the children within the family, school officials, classmates, neighbors, as well as extended family. The inability to close cases within the time limit can result in the social worker being reprimanded, which can be damaging to their career. Waiting for reports to be returned from clerical and outside agencies, finishing the reports, and interviewing all parties involved in the referral can also contribute to delays. Families who have had a previous referral and have a new allegation of abuse or neglect are designated as a repeat referral or prior substantiation. Some of these repeat referrals have had many previous allegations resulting in new investigations. The average for California's repeat referrals is 31.4%. In San Joaquin County the average is 39.7%.

Due to budget constraints, overtime has become less attainable in the last few years. Where overtime once was approved by a supervisor, it now has to be pre-approved by the deputy director, except in emergency after-hours responses. Social workers are not allowed to come in on their flex day, as it would be deemed overtime. Social workers often go to work early and stay late to finish their referrals without added compensation. This is done because the employee fears being written up if referrals are not closed on time. Social workers schedule their vacation around their referrals, so they may use the

week prior to catch up on open referrals. The week prior to vacation no new referrals are given.

## **Findings**

**F.1.1** San Joaquin County Child Welfare Service workloads are high. The County did not implement SB 2030 recommendation for social worker caseloads to be a maximum of 13.03, or a best practice of 9.88 monthly.

**F.1.2** Repeat referrals are above state average.

**F.2.1** Referrals are closed only forty to fifty percent (40-50%) of time within the thirty (30) day requirement.

## **Recommendations**

**R.1.1** Limit new referrals for social workers to three (3) a week, as recommended by SB 2030 guidelines.

**R.1.2** Implement the sixty (60) day federal guidelines for referral closure.

## **2.0 Low Morale and High Stress Levels of Social Workers**

Social workers and their supervisors are experiencing an overall low morale attributable to several factors including: high job stress, high workload, severity and complexity of referrals received, increased state and federal mandates, and limited time given to close a referral.

The lack of productive two-way communication between management and social workers also adds to their stress. There is frustration and a lack of empowerment to improve the system by the social workers. An example of this lack of empowerment felt by the workers can be seen in how the Peer Quality Case Report survey chooses only to interview a select few social workers. In the 2010 PQCR, the comments made by these social workers were even deleted from the final report. The Grand Jury heard testimony alleging the low morale, which management disagreed with. Some social workers and their supervisors reported that unit meetings can turn into “blame sessions” and that they are given an impossible job and are written up when it can’t be done on time. This alleged disconnect from management, lack of regard for the social workers input, and finding fault instead of constructive problem-solving all add to the low morale.

Given the nature of this profession, the Grand Jury understands a certain level of stress is unavoidable. When personal stress becomes overwhelming, it can affect and erode group morale. This can cause a decrease in efficiency, effectiveness, and an increase in illness. Illness can lead to medical leave, long-term absence, and fewer social workers to complete the workload. The increased workload can result in inefficiency and a decrease in effectiveness.

A critical stressor for the social worker and their supervisors is the fact that harm could come to a child under their care. A social worker chooses this profession to make a difference and their testimony confirmed this. However, the sense of helplessness of not being able to do enough was also evident.

Options, an employee assistance self-referral program, is available to the social workers. The program includes short-term emotional and psychological counseling. Several social workers and supervisors vaguely knew of the program. Few social workers admitted to taking advantage of this program. Several stated they could benefit from Options, but also stated they either didn't take or have the time to participate. Due to the confidential nature of the job, there was a reluctance to talk to outsiders about their issues, leaving the social workers to counsel each other.

CWS does not have a formal debriefing for its social workers after an especially traumatic incident. Some supervisors stated they would have informal meetings to discuss the event, while others were of the mindset that the social workers were trained to handle the secondary trauma they experience on their own. According to California Center for Research on Women and Families 2009, every year fifteen to twenty five percent (15-25%) of child welfare workers leave the public sector. One of the key reasons cited for welfare workers leaving the public sector was the high number of caseloads, according to the U.S. Accounting Office in 2005. Social workers have also been diagnosed with Post Traumatic Stress Disorder as a result of their work.

Critical Incident Stress Debriefing Program is designed to help those involved in critical incidents to return to normal levels of functioning as soon as possible. It is peer-driven and training is provided through the County Office of Emergency Services. It is designed to help people deal with their trauma one incident at a time, by allowing them to talk about the incident when it happens, without judgment or criticism. A critical incident can raise stress levels dramatically in a short period of time. After treatment a new normal stress level is established, however, it is always higher than the old normal. According to Jeffery T. Mitchell Ph.D., American Academy of Traumatic Stress and Clinical Professor of Emergency Health Services University of Maryland, there are ten (10) worst case scenarios that can be categorized as critical incidents, one of which is significant events involving children.

## **Findings**

**F2.1** There is a lack of productive two-way communication between employees and management.

**F2.2** Social workers efforts to improve the agency are ignored and joint problem-solving opportunities have turned into accusations. This adds to the workers' morale.

**F2.3** Most employees are not familiar with, or are hesitant to use, the services offered for emotional and psychological counseling through Options, an employee assistance program.

**F2.4** There is no formal in-house critical incident debriefing for the staff.

### **Recommendations**

**R2.1** Management to receive training in techniques to improve communication and team building.

**R2.2** Develop a plan for cooperative problem-solving between management and staff.

**R2.3** Schedule an in-house presentation to the staff from the Employee Assistance Program on Options, to promote services available.

**R2.4** Develop and implement a Critical Incident Stress Debriefing Program.

### **3.0 2010 San Joaquin County Peer Quality Case Report**

The implementation of Assembly Bill 636 (2001) resulted in the development of three (3) reports published every three years. The Peer Quality Case Report (PQCR), Self Assessment Report (SAR), and the System Improvement Report (SIP). The sequence of this process is:

- Conduct  
Survey the agency including interviews of social workers and supervisors. Include both the agencies strengths and areas needing improvement. These are published as the Peer Quality Case Report.
- Compile  
Using information from PQCR along with additional data gathered from community based groups, identify barriers to services, and publish these findings as the SAR.
- Publish  
The final report is the SIP. This is a written agreement between the county and the state establishing programs to achieve improvement. Information is edited by the agency supervisor of Special Projects and Project Liaisons. These reports are reviewed and approved by the San Joaquin County Board of Supervisors and then filed with the State of California.

When the last Peer Quality Case survey was completed, interviews with social workers and supervisors revealed significant concerns of high stress, low morale, and being overwhelmed. The data was removed and did not appear in the final PQCR. It was revealed that reports had not been made readily available to staff.

The report originally contained a section on Staff Challenges and Needs and read as follows:

*“Changes in all areas of CWS administrative leadership in the last three years, along with social workers decisions to retire, quit, or be out on leave has led to a feeling of disconnect between the social workers and supervisory staff. Social Workers and supervisor reported feeling overwhelmed and not always valued by supervisory staff. There appeared to be a general awareness of the financial crisis CWS faces on a daily basis and expressed confidence in how administration planned for this in recent years; resulting in not having to resort to lay-offs at this time. Reprimands and having disciplinary letters written has affected morale when staff already are carrying large case loads, are not able to utilize over-time to get work done, often resulting in putting in hours and not being compensated, to make sure work is completed. An additional issue was changes to the organizational structure and staffing. While Social Workers accepted these as necessary to avoid staff being laid-off, and were often supportive of these decisions, they did express feeling disconnected without an opportunity to offer input and not being aware of changes until they were instituted.”*

Recommendations to address PQCR issues also deleted were:

- *“Recognize when social workers perform well*
- *Evaluate methods of positive reinforcement*
- *‘Walk the floor’ to engage staff and connect with their day-today working situation, particularly given recent changes*
- *Give social workers as much lead time as possible to changes*
- *Social workers can be supportive of peers and supervisor staff, not engage in speculation that only increases concerns*
- *Recognizing that everyone is in the together.”*

*“Next Step and Future direction for CWS”* recommendations also deleted were:

*“Allow opportunity for administrative staff to assist supervisors and social workers in developing a participatory management style focusing on establishing and communicating the purpose and direction of the organization.*

*This will require developing a shared vision of goals, drawing on the valuable expertise, talents, insights, and experience of all, providing a feeling of ownership by the staff....”*

The failure of the Agency to include the deleted data gives an inaccurate reflection of CWS.

## **Findings**

**F3.1** Information regarding low morale and disconnect with the social workers was removed from the 2010 San Joaquin County Peer Quality Report just one week prior to its submission to the required state agency.

**F3.2** Reports were not made available to staff. This gives validity to the concept of the lack of communication.

## **Recommendations**

**R3.1** All information from the PQCR survey, either positive or negative, to be included in published report as discovered.

**R3.2** Future PQCR, SAR, SIP Reports to be provided to CWS staff members prior to publication for review and comment.

## **Conclusion**

The stress of heavy workloads and lack of empowerment to effect change within the Child Welfare Service has impacted the ability of social workers to fulfill the goal to advocate for the safety of our county's children. The welfare of the children and those who have the responsibility to protect them could be at risk.

The comments made by social workers during the Peer Quality Survey and suggestions for improvements were redacted from the final version of the Peer Quality Case Report. This eliminated an opportunity for discussion of issues in the Self Assessment Report. The removal of this information prevented the necessary steps to implement corrections in the System Improvement Report. This action was a disservice to the agency and its staff.

## **Acknowledgements**

The Child Welfare Service and its employees provide an invaluable service to our community. They are charged with the difficult task of preventing harm and improving the quality of life for our children. It takes a resilient, dedicated, and committed staff to provide an optimal level of service.

## **Bibliography**

California Child and Family Service Review CSA 2010  
Health and Human Services Organizational Charts  
National Center Youth Law: “Improve the child welfare workforce” 2007  
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Safe Measures Data for 2010  
San Joaquin County Class Specification and job descriptions of all employees interviewed  
San Joaquin County Human Services Agency Intake and Assessment Handbook  
San Joaquin County Civil Service Rules and Regulations revised and amended version 2007  
San Joaquin County Grand Jury Report “Best Interest of the Child” 2010  
“San Joaquin Human Services Agency: Vision, Mission, Philosophy, and Values” 2007  
SB 2030 “California Child Welfare Service Workload Study”, 2000  
AB 636 “California’s Child Welfare System and Improvement and Accountability of 2001”  
Structured Decision Making Policy and Procedure Manual 2008  
California Center for Research on Women and Families “Understanding the Child Welfare System Report” 2009  
San Joaquin County Self Assessment and System Improvement Reports, 2007 and 2010  
San Joaquin Peer Quality Case Review 2010 along with redacted material.

## **Disclaimer**

Grand Jury reports are based on documentary evidence and the testimony of sworn and 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 §§911, 924.1 or 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 §§924.2 and 929).

## **Response Requirements**

California Penal Code §§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 by (within 90 days).

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

Hon. David P. Warner, Presiding Judge  
San Joaquin County Superior Court  
222 E. Weber Avenue, Room 303  
Stockton, CA 95202

**Also, please email the response to Trisa Martinez, Staff Secretary to the Grand Jury, at**

[grandjury@courts.san-joaquin.ca.us](mailto:grandjury@courts.san-joaquin.ca.us)



# **San Joaquin County Grand Jury**



## **North San Joaquin Water Conservation District**

**2011/12 Case No. 0511**

### **Summary**

The Grand Jury investigated complaints alleging the non-recusal of voting Board members, violations of the Ralph M. Brown Act, financial mismanagement, lack of leadership, an adversarial attitude, an unwillingness to follow the advice of legal counsel, and violations of District policies, California Water Resource Control Board codes, and California Government codes. The Grand Jury's investigation found the District incurred considerable indebtedness. Lack of additional revenue sources and inadequate leadership, could lead to insolvency and possible absorption by another water district.

### **Key Terms**

**FPFC** Fair Political Practice Commission

### **Background**

The North San Joaquin Water Conservation District (District) was created in 1948 under the Water Conservation District Law of 1931 (Water Code, §74000 et seq.). The District is charged with the task of acquiring, appropriating, and conserving water rights for any useful purpose. The District may also impose groundwater charges for pumped water for the benefit of all who rely directly or indirectly on ground water supplies.

The District's purpose is to utilize up to 20,000 acre-feet of water from the Mokelumne River. Management of this water promotes less dependence on ground water pumping, which helps slow the depletion of the already critical ground water overdraft. The District presently oversees agricultural land in and around Lodi. Current economic changes and reductions in property tax revenue have the District struggling to maintain its aging infrastructure and upgrade its services. The District's limited revenue and increased expenses make it difficult to stay solvent. In 2010, the District's expenses were almost double the revenue of approximately \$240,000.

The District's Board of Directors is comprised of five (5) regional districts, represented by an elected citizen serving for a period of four (4) years. At the time of this investigation the Board of Directors was Bryan Pilkington (President), Mark Beck, Joe Peterson, Hugh Scanlon and Marden Wilber. Bryan Pilkington has since resigned. The current Board of Directors now consists of Joe Petersen, Mark Beck, Hugh Scanlon, Joe Valente, and Marden Wilber.

In May of 2007, the District adopted a resolution imposing an annual groundwater pumping charge. The charge was to make capital improvements and repair the aging infrastructure increasing the District's ability to use all of its allotted water and maintain its water rights.

Under advice of counsel, the District followed the requirements of both the Water Code and Proposition 218 (Appendix A) that applied to water charges. In July of 2007, under threat of an ensuing lawsuit, the District filed an action seeking a declaration that the charge was valid. A "Respondents Challenge" was filed by Howard Jarvis Taxpayers Association, Bryan Pilkington, Cassandra Baines and others. A trial ensued. The court found that the District had complied with the law and declared the groundwater pumping charge valid. An appeal was filed by Howard Jarvis Taxpayers and others.

On June 26, 2008, the District billed groundwater users for charges during the 2007 fiscal year.

On November 4, 2008, pending the appeal, voters adopted Measure V (Appendix B). Measure V repealed the groundwater pumping charges imposed in 2007/2008. It also stated that no further charges may be collected or imposed after June 30, 2009. The court contended the appeal was "rendered moot" by the adoption of Measure V.

On June 26, 2009, the District billed groundwater users for charges during fiscal year 2008/ 2009. Howard Jarvis Association asked the court to take "judicial notice" of the District's attempt to collect charges in 2009. The court agreed with the District's right to collect charges prior to June 30, 2009.

On June 8, 2010, Measure C (Appendix C) was voted on and failed. Measure C which read in part "... Section 2 of the initiative adopted by Measure V shall be repealed to allow North San Joaquin Water Conservation District to impose and collect a groundwater charge...."

The District, at this time, has taken no action to collect the delinquent charges.

## **Issues**

The complaints alleged a perceived conflict of interest, violations of the District's Policy Manual, Ralph M. Brown Act, and California Government Code infractions. On two occasions, during the District meetings of January 31, 2011 and March 10, 2011, it was alleged that Board members who had a financial interest within their District, ignored the

advice of legal counsel and its constituents. These Board members declined to recuse themselves while putting forth a motion to forgive all debt owed the District for groundwater charges due for the fiscal years of 2007 and 2008.

Complainants alleged District board meetings were tumultuous. Leadership and Board members were constantly in disagreement about water issues, finances, and District business. During Board meetings verbal outbursts ensued among the Board members and between Board members and their constituents, including the use of abusive language. Robert's Rules of Order and District Policy were ignored.

It was further alleged the District lacked proper meeting preparation and communication. It was reported the Board President was absent for extended periods and the remaining Board showed an inability to conduct District business in an effective manner. The Board President, the most outspoken critic, cost the District thousands of dollars in legal and process fees. The District's inability to create effective solutions to raise much needed revenue and maintain its water rights remains unresolved.

## **Method of Investigation**

The Grand Jury attended several Board Meetings

### **Materials Reviewed**

- FPPC Case No. 11- 649
- California Government Code §87100 - 87105 (Political Reform Act of 1974)
- [www.nsjgroundwater.org](http://www.nsjgroundwater.org)
- Maps of the District
- Various District Financial Reports 2005 - 2011
- Groundwater charge delinquency report
- Appellate Court appeal #C059758 Superior Court # SV266837
- Ralph M. Brown Act
- Measure V
- Measure C
- Proposition 218

### **Interviews Conducted**

- All 2011 Board Members
- Past Board President
- Former legal counsel
- Complainants

## **Discussion, Findings and Recommendations**

### **1.0 Lack of Leadership**

The Grand Jury witnessed the adversarial atmosphere of Board meetings. Members have at times refused to follow advice of Legal Counsel. District Policy §6 A, B (a - c, f, g) §8 G, I, J, N, §9 A (1- 8), B (1 - 8) states in part, “. . . the Board of Directors is responsible for the establishment of policy and general control of the District. The primary duties of the Board are as follows: take action at legal meetings, establish written policies, be responsible for all District finances, establish meeting conduct, and develop a master plan. The powers and duties of the Board of Directors include governance, executive and judicial functions.” Some members acting in direct conflict with the best interest of the District, and non-existent financial accountability have thrust the District to the brink of failure.

#### **Finding**

**F1.** The Board is acting in direct conflict with District Policy §6 A, B (a – c, f, g) §8 G, I, J, N, §9 A (1-8), B (1-8). (Appendix D)

#### **Recommendation**

**R1.** All Board Members review, discuss, and act in accordance with its own Policy Manual.

### **2.0 Violations of Ralph M. Brown Act §§54954 (a), 54954.1, 54954.2, California Water Code §74754, District Policy §§8A & J, 10.**

The Grand Jury requested minutes and financials for 2011, from the Board and the same financials from the District’s CPA. The information received was incomplete. Minutes and financials were not being completed, reviewed, or presented at meetings. Requests for new agenda items were ignored and meeting packets were not always distributed. Meeting information was often incomplete or inaccurate on the District website. Ralph M. Brown Act §54954(a) states in part, “. . . legislative body shall provide the time and place for holding regular meetings.” §54954.2 states in part “. . . legislative body shall post agendas at least 72 hours before a regular meeting.” §54954.1 states in part “. . . any person may request a copy of agenda packets.” California Water Code §74754 states in part “. . . the treasurer shall report in writing at each regular meeting the amount of money on hand, the amount of receipts since last report and amounts paid out.” District Policy §8A states in part “. . . meetings are to be held the last Monday of each month at 6:00 p.m. A copy of the agenda for each regular meeting shall be forwarded to each Board member at least five (5) days in advance.” District Policy §8 J states in part “. . . minutes are to be constructed from notes taken during the meeting.”

#### **Findings**

**F2.1** Minutes were not completed or distributed in compliance with the Ralph M. Brown Act.

**F2.2** The District violated Policy §8A & J. Meetings have not been given proper notice. Agenda items have not been properly added.

**F2.3** The Grand Jury found the District was in violation of California Water Code §74754 which states in part “. . . the treasurer shall report in writing at each regular meeting the amount of money on hand, the amount of receipts since last report and amounts paid out.”

### **Recommendations**

**R2.1** Board members complete annual Ralph M. Brown Act training. Minutes of meetings are to be taken at each and every meeting, and presented for approval at the following scheduled Board meeting.

**R2.2** Board President is to ensure meeting notices and agenda items are distributed properly as stated in District Policy §8A & J.

**R2.3** District is to provide and review financials in accordance with California Water Code §74754 and the Ralph M. Brown Act §54957.5.

### **3.0 Code of Ethics Violations**

The Grand Jury attended Board meetings where they witnessed adversarial behavior between Board members and the public, and among Board members. District Policy §2 part A, B, E, F, G, J, K, §7 Part B states in part “. . . that the dignity, style, values and opinions of the Directors shall be respected. Responsiveness and attentive listening is encouraged. Directors should commit themselves to emphasizing the positive. Directors should focus on issues and not personalities. Differing views are healthy to the process. The work of the District is a team effort. Directors are to observe the rules of decorum as set forth in the manual.” Profanity must never be tolerated.

### **Finding**

**F3.** Board members violated District Policy §2 part A, B, E, F, G, J, K, §7 part B.

### **Recommendation**

**R3.** All Board members complete annual Ethics training. All Board members must follow their own procedures.

### **4.0 Fiscal Responsibility**

District Policy §6B part C states in part that “. . . one of the Boards primary duties is to be responsible for all District finances.” The Board cannot fulfill its mission without additional sources of income and a fiscally responsible financial plan. The repealing of Measure V on November 8, 2008, prevented the collection of approximately \$383,956 in groundwater pumping charges from property owners. The \$31,812 cost of election for Measure C, along with increased legal fees, has burdened the District’s budget. The approved budget of March 10, 2011, included using the entire \$100,000 savings account in addition to spending more than \$28,000 over and above anticipated income. The statement of Revenue and Expenses from July 1, 2011 - January 24, 2012, shows a deficit \$8,738. Testimony revealed that without a balanced budget and any future source of income, the North San Joaquin Water Conservation District may have to be absorbed by or partnered with another district. Historically, districts that don’t act in a responsible manner put themselves at risk of being absorbed by another agency.

## **Findings**

**F4.1** There is lack of financial planning and responsibility on behalf of the District’s managing board.

**F4.2** The District lacks a plan for new revenue.

## **Recommendations**

**R4.1** The District implement a solid fiscally responsible plan with balanced budgets.

**R4.2** Explore new sources of revenue.

## **5.0 Conflict of Interest**

An allegation of conflict of interest was levied as a result of a January 31, 2011 Board meeting. Testimony revealed a Board member initiated discussion on the matter of collection of unpaid groundwater charges. The District’s former legal counsel advised the Board that members with a financial conflict of interest needed to identify their conflict and recuse themselves from the discussion and any voting on the matter. Two (2) members stated they had not paid the groundwater pumping charges. A discussion ensued and the matter was tabled until a later date. Minutes from a Board meeting dated March 10, 2011 revealed a discussion by the Board and the public as to whether or not to proceed with the collection of delinquent charges. There was a motion and a second but the motion failed in a 2 - 2 vote. A member owing delinquent charges made a motion to forgive the delinquent owners; it was seconded by another member also owing delinquent charges. Former legal counsel cautioned such a motion was not appropriate and again advised recusal. The motion was withdrawn. During a meeting on July 6, 2011 a motion was again brought before the Board to prepare a letter asking for payment of the delinquent charges. One of the members with delinquent charges proceeded again to vote

on the matter. In the absence of legal counsel, the member was reminded by the public that he should abstain from the vote, which he did not. The motion was again defeated. Conflict of interest is a violation of California Govt. Code §87100 et seq. (Also known as the Political Reform Act of 1974) and states: “No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” District Policy §14 states in part “. . . Directors who have a financial interest in a decision within the meaning of California Govt. Code §87100 et. seq. shall publicly identify in detail their economic interest. Directors are required to be in compliance with all District, State and Federal requirements of the ‘Conflict of Interest Codes.’” A complaint was also filed with the State of California Fair Political Practice Commission.

### **Finding**

**F5.** Two (2) Board members failed to recuse themselves from the discussion of and voting on issues they had a financial interest in, resulting in a conflict of interest.

### **Recommendation**

**R5.** Board members are to abide by Policy Manual §14 related to conflict of interest.

## **Conclusion**

This Board has been dysfunctional and has not conducted the public's business according to the District's Policy and the Ralph M. Brown Act. Minutes of each meeting as well as a current, balanced financial report should be available at the subsequent Board meeting for review and approval. The Board's behavior has placed the financial future and even the ability to survive as a District in jeopardy. The turmoil has cost the District thousands of dollars in legal and process fees. The District's inability to create effective solutions, to raise much needed revenue, and maintain its water rights remains unresolved.

The Board President has since resigned. Due to a change of leadership, the overall conduct of the District has shown improvement. The current Board is attempting to follow District policies and regulations.

The State of California Fair Political Practice Commission is currently conducting an investigation of the alleged conflict of interest.

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## **Appendices**

### **Appendix A                      Proposition 218**

**Appendix B                      Measure V** - A North San Joaquin groundwater repeal proposition, Measure V was on the November 4, 2008 ballot in San Joaquin County, California, for voters who live in the North San Joaquin Water District.

- Yes: 10,132 (54.9%)
- No: 8,239 (45.1%)

Measure V repealed a groundwater charge that was imposed by the District in 2007-2008. This invalidated the NSJWCD plan to charge property owners to finance infrastructure to acquire more water from the Mokelumne River and replenish the groundwater basin. Taken from [www.ballotpedia.org](http://www.ballotpedia.org)

**Appendix C                      Measure C** - Adoption of groundwater charge NSJWCD, Measure C was on the June 8, 2010 ballot. Measure C would repeal Measure V.

- Yes: 3356 (32.78%)
- No: 6881 (67.22%)

Shall §2 of the initiative adopted by Measure V be repealed to allow NSJWCD to impose and collect a groundwater charge as described in Water Code §75500 et seq. beginning in the fiscal year following the adoption of this measure, and in future years? In adopting a groundwater charge, North San Joaquin Water Conservation District will comply with applicable California state laws.

Taken from [www.smartvoter.org](http://www.smartvoter.org)



**Appendix D**      **Excerpts of North San Joaquin Water Conservation District Policy**  
**Manual**

# California

## PROPERTY TAX INFORMATION

Proposition 218 gave taxpayers the right to vote on all local taxes, and requires taxpayer approval of property related assessments and fees.

[www.californiataxdata.com](http://www.californiataxdata.com)

100 Pacifica, Suite 470

Irvine, California 92618

Tel 949-789-0660

Fax 949-788-0280

# What is Proposition 218?

## Background

In November 1996, California voters passed Proposition 218, the "Right to Vote on Taxes Act". This constitutional amendment protects taxpayers by limiting the methods by which local governments can create or increase taxes, fees and charges without taxpayer consent. Proposition 218 requires voter approval prior to imposition or increase of general taxes, assessments, and certain user fees.

## The Environment Prior to Proposition 218

Proposition 13 dramatically changed the California property tax landscape after its passage in 1978. The result was a severe limitation on ad valorem property taxes (property taxes based on assessed value of property). Consequently, local governments had to look elsewhere to find money to fund public services and improvements. These agencies turned to benefit-based assessments, special taxes and user fees, which were not subject to Prop. 13 limitations. However, this resulted in increasing property tax bills, the main concern that Prop. 13 attempted to control.

## Proposition 218 Tax Reform

Prop. 218 radically changes the way in which local governments raise revenues by ensuring taxpayer approval of charges and increases to existing charges. Voters are also given the ability to repeal or reduce charges by voter initiative.

## Specific Features of Proposition 218

The primary changes put in place by Proposition 218 are explained below.

1. **Voter Approval on Taxes.** Prop. 218 requires all local governments, including charter cities, to get majority voter approval for new or increased general taxes.
2. **Limits on Use of "General Taxes".** Proposition 218 restricts the use of general taxes, which require majority voter approval, to general purpose governments (i.e. cities and counties). School districts are specifically precluded from levying a general tax.
3. **Stricter Rules on Benefit Assessments.** Benefit assessments by definition must be calculated based on the benefit received by the parcel as a result of the project financed. Prop. 218 created stricter rules for initiating or increasing benefit assessments. Now, an agency must determine the specific benefit the project will have on individual parcels. A general enhancement to property values can no longer serve as the benefit.
4. **Increased Notification and Protest Requirements.** Proposition 218 will require that agencies put all assessments, charges and user fees out to a vote prior to creation or increase. In most cases, the vote will require individual notices be mailed to affected property owners. A formal protest hearing is also required to move forward with the charge or increase.
5. **Restrictions on Use of Fees.** Proposition 218 prohibits local governments from imposing fees on property owners for services that are available to the public at large (like garbage collection and sewer service). In any case, fees charged to property owners may not exceed the cost of providing the service.
6. **Government Owned Property No Longer Exempt.** Proposition 218 requires government agencies to pay their fair share of a benefit assessment, if the property receives benefit from the project or service financed.
7. **Initiative Power To Repeal.** Prop. 218 gives voters the power to reduce or repeal any existing local tax, assessment, or charge through the initiative process.



California Tax Data

The Leaders in Property Tax  
Disclosure Since 1986

## APPENDIX B

# North San Joaquin groundwater charge repeal, Measure V, 2008

## From Ballotpedia

A North San Joaquin groundwater charge repeal proposition, Measure V was on the November 4, 2008 ballot in San Joaquin County, California, for voters who live in the North San Joaquin Water District.

- Yes: 10,132 (54.9%) ✓
- No: 8,239 (45.1%)

Measure V repealed a groundwater charge that was imposed by the district in 2007-2008. This invalidated the North San Joaquin's plan to charge property owners to finance infrastructure to acquire more water from the Mokelumne River and replenish the groundwater basin.<sup>[1]</sup>

North San Joaquin Water Conservation District, Measure C (June 2010) is on the June 8, 2010 ballot. Measure C would repeal Measure V.

## Text of measure

### The question on the ballot:

**MEASURE V:** To repeal North San Joaquin Water Conservation District's 2007-2008 groundwater charge, imposed to finance facilities for protection and replenishment of groundwater supplies, shall this initiative be adopted?"

## Path to the ballot

The measure was placed on the ballot through a citizen initiative circulated by Bryan Pilkington of Lockeford. The North San Joaquin Water Conservation District filed a legal challenge to the petition effort attempting to get Measure V tossed off the ballot. They claimed that Registrar of Voters Austin Erdman had incorrectly counted the signatures turned in by those leading the initiative campaign.

The California Elections Code requires 10 percent of a special district's registered voters to sign a petition like this, whereas the California Constitution says five percent is needed. Pilkington qualified under the five percent threshold, but not the 10 percent threshold.

## See also

- [Measure V: Groundwater](#)
- California 2008 local ballot measures

- Other utility user taxes in California.

Retrieved from

"[http://ballotpedia.org/wiki/index.php/North\\_San\\_Joaquin\\_groundwater\\_charge\\_repeal,\\_Measure\\_V,\\_2008](http://ballotpedia.org/wiki/index.php/North_San_Joaquin_groundwater_charge_repeal,_Measure_V,_2008)  
Categories: Utility user taxes, California, 2008 | California 2008 local ballot measures | Signature challenges

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League of Women Voters of California Education Fund



SUPPORT  
SMART VOTER!

SHARE

San Joaquin County, CA

June 8, 2010 Election

## Measure C

### Adoption of Groundwater Charge

#### North San Joaquin Water Conservation District

Majority Approval Required



Fail: 3356 / 32.78% Yes votes ..... 6881 / 67.22% No votes

See Also: [Index of all Measures](#)

Results as of Aug 20 9:43pm, 100.0% of Precincts Reporting (38/38)

Information shown below: [Impartial Analysis](#) | [Arguments](#) |

*Shall Section 2 of the initiative adopted by Measure V be repealed to allow North San Joaquin Water Conservation District to impose and collect a groundwater charge as described in Water Code sections 75500 et seq. beginning in the fiscal year following the adoption of this measure, and in future years? In adopting a groundwater charge, North San Joaquin Water Conservation District will comply with all applicable California state laws.*

This election is archived.  
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#### Impartial Analysis from San Joaquin County Registrar of Voters

If adopted by a majority of voters in the June 2010 election Measure C would repeal Section 2 of the initiative adopted by Measure V. Section 2 provides as follows:

"2. No ground water charges may be imposed or collected in the fiscal year commencing after the election at which this initiative is adopted by the voters, or in any future fiscal year; provided however, that the District may in any future year submit to the voters a measure to repeal or amend this initiative."

Section 2 currently prohibits North San Joaquin Water Conservation District from imposing or collecting a groundwater charge in fiscal year 2009-2010 and future years until the District submits the matter to the voters. If adopted, Measure C will repeal this prohibition and will give North San Joaquin the ability to impose and collect a groundwater charge in conformance with all applicable California laws.

Revenue from the groundwater charge is needed to fund the construction and maintenance of new and existing District facilities. Some of these facilities will be used to recharge the critically overdrafted San Joaquin Groundwater Basin. In addition, the revenue generated by a groundwater charge will be used to finance improvement projects the District must undertake in order to retain its current Mokelumne River water right and avoid adjudication of the groundwater basin by the State.

"s/"Karna E. Harigfeld, Esq.  
Counsel for North San Joaquin Water Conservation District

### Arguments For Measure C

Measure C would restore North San Joaquin Water Conservation District's authority to impose groundwater charges and provide the District with revenue essential for expanding its present operations. Under Measure C, only those properties actually pumping groundwater will pay the charge. Other taxpayers who do not own wells or pump groundwater, will not incur any charges as a result of this measure.

If passed, Measure C will provide funds to extend existing pipelines, develop recharge sites, and insure district landowners continue to enjoy a reliable supply of groundwater. Unless the District quickly engages in measures to improve groundwater conditions, the State has threatened to take over the regulation and use of water within our basin and strip the District of its surface water rights. We cannot afford to lose this important right to water. Approval of Measure C will keep the State's hands off of our water!

Currently, pumps pull more water from the groundwater basin than naturally occurs through recharge. This condition, known as a groundwater overdraft, can cause significant environmental problems. The charge allowed by Measure C will be used to reverse this adverse environmental situation by constructing facilities to recharge the basin with fresh and healthy water.

Measure C will allow the District to charge a fee on those who pump water from the groundwater basin. This fee will be used to recharge the basin. Those who pay the charge, and everyone else living within the District, will benefit from this investment.

Don't let the state tell us how and when we can use our water. Improve the environment and make sure we have enough safe water for our farmers and future generations.

"s/" Tom Hoffman, Pres., Board of Directors North San Joaquin Water Conservation District

### Rebuttal to Arguments For

Measure C is a tax on water. Vote NO!

Measure C would authorize the North San Joaquin Water Conservation District to put meters on wells and collect a tax on every unit of water pumped from the ground.

City residents, our water comes from wells too! The District hopes to deceive us by saying "only



those. . .pumping groundwater will pay the charge." Our suppliers pump groundwater. They'll pay the charge, and pass it on to us!

The District hopes to scare us by saying "the State has threatened to take over." This District is already regulated by the State. It's not "us against the State." It's us against this greedy District.

We don't benefit by giving this District power to tax us. According to its Budget, the District will use the tax first to deliver water free to its own customers (not us), then build a pipeline to ship water outside the district to the City of Stockton.

How high will the tax be? The District won't say. Measure C is a blank check!

Water is essential for living. Don't vote to raise water rates on seniors and unemployed families, especially when you don't know how high the increase could be!

Water is essential for farming. Don't vote to tax farmers out of business. You'll damage the economy further, turn California farmland into bank-owned weed fields, and increase our dependence on others.

Protect farmers. Protect farmland. Protect seniors and the unemployed. Protect yourselves. Don't give this District unchecked power to tax water. VOTE NO!

"s/" Bryan Pilkington, Director, North San Joaquin Water Conservation District "s/" Hugh J. Scanlon, Member, Howard Jarvis Taxpayer Assn. "s/" Todd C Burnett, B & B Farms, LLC "s/" E.L. Tavarez, Apple Grower "s/" Oscar Goehring, Member, San Joaquin County Farm Bureau

(No arguments against Measure C were submitted)

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## APPENDIX D

### 1. AUTHORITY OF BOARD

- A) The Board of Directors shall act only at regular, regularly adjourned, or special meetings, as provided by State Law.
- B) Individual Directors shall have no power to act for the North San Joaquin Water Conservation District, or the Board of Directors, or to direct staff, except as authorized by the Board of Directors.
- C) Until a quorum is present there can be no meeting of the Board of Directors. The presence of a minimum of three (3) Board members is required to constitute a quorum of the Board of Directors.

### 2. CODE OF ETHICS

The Board of Directors of the North San Joaquin Water Conservation District is committed to providing excellence in legislative leadership that result in the provision of the highest quality services to its constituents. The Board of Directors are expected to maintain the highest ethical standards, to follow District policies and regulation, and to abide by all applicable local, state and federal laws. Board of Directors conduct should enhance the integrity and goals of the District. In order to assist in the government of the behavior between and among members of the Board of Directors, the following rules shall be observed:

- A) The dignity, style, values and opinions of each Director shall be respected.
- B) Responsiveness and attentive listening in communications is encouraged.
- C) The needs of the District's constituents should be the priority of the Board of Directors.
- D) The primary responsibility of the Board of Directors is the formulation and evaluation of policy. Routine matters concerning the operational aspects of the District are to be delegated to staff members of the District.
- E) Directors should commit themselves to emphasizing the positive.
- F) Directors should commit themselves to focusing on issues and not personalities. The presentation of the opinions of others should be encouraged.
- G) Differing viewpoints are healthy in the decision-making process. Individual Directors have the right to disagree with ideas and opinions, but without being disagreeable. Once the Board of Directors takes action, Directors should commit to supporting said action and not to creating barriers to the implementation of said action.



H) Directors should practice the following procedures:

1. In seeking clarification on informational items, Directors may directly approach the District Manager to obtain information needed to supplement, upgrade, or enhance their knowledge to improve legislative decision-making.
2. In handling complaints from residents and property owners of the District, said complaints should be referred to the District Manager and may be followed up by the entire Board of Directors.
3. In handling items related to safety, concerns for safety of hazards should be reported to the District Manager. Emergency situations should be dealt with immediately by seeking appropriate assistance.
4. In seeking clarification for policy-related concerns, especially those involving personnel, legal action, land acquisition and development, finance, and programming, said concerns should be referred directly to the District Manager.

I) When approached by District personnel concerning specific District policy, Directors should direct inquiries to the District Manager.

J) The work of the District is a team effort. All individuals should work together in the collaborative process, assisting each other in conducting the affairs of the District.

K) When responding to constituent requests and concerns, Directors should be courteous, responding to individuals in a positive manner and routing their questions through appropriate channels and to responsible management personnel.

L) Directors should develop a working relationship with the District Manager wherein current issues, concerns and District projects can be discussed comfortably and openly.

M) Directors should function as a part of the whole. Issues should be brought to the attention of the Board of Directors as a whole, rather than to individual members selectively. This includes pertinent mail sent to the District. Any mail or other form of correspondence pertinent to the District must be forwarded to all Directors or distributed at the next board meeting.

N) Directors are responsible for monitoring the District's progress in attaining its goals and objectives, while pursuing its mission.

### 3. ETHICS TRAINING

Pursuant to California Government Code section 53234 et seq. all Directors shall receive two (2) hours of training in general ethics principles and ethics laws relevant to public service within one (1) year of election or appointment to the Board of Directors, and at least once every two (2)

years thereafter. All ethics training shall be provided by entities whose curriculum has been approved by the California Attorney General and the Fair Political Practices Commission. The District Manager and any other employee(s) of the District designated by the Board of Directors shall also receive the ethics training specified herein. The District shall maintain records indicating the name of the entity that provided the training and the dates ethics training was completed. Records shall be maintained for a period of at least five (5) years after the date on which the training was received. These records are public records subject to disclosure under the California Public Records Act.

#### 4. GOVERNING LAWS

The Board of Directors shall comply with and shall be guided by applicable provisions of this Policy Manual, and the rules and regulations of the District as established by the motions, resolutions and ordinances enacted by the Board of Directors. Motions, resolutions and ordinances may be enacted by the Board in accordance with California Water Code section 30523.

#### 5. ELECTION OF OFFICERS

There shall be four (4) officers: a president, a vice-president, a secretary, and a treasurer, who shall be members of the District Board of Directors. Elections of officers shall be held at the first (1<sup>st</sup>) Board of Directors meeting in December of each calendar year. Elections will conform with the applicable provisions of this Policy Manual.

#### 6. ROLE OF THE BOARD POWERS, DUTIES AND FUNCTIONS

##### A) POWERS

The Board of Directors is responsible for the establishment of policy and general control of the District. This broad authority shall be exercised in accordance with all applicable federal, state and local laws and regulations. The Board of Directors may execute any powers delegated by law to the District, and shall discharge any duty imposed by law upon the District.

The enabling codes established by the California State Legislature empowers the Board of Directors to have broad authority and flexibility in carrying out financial programs and activities which meet its individual needs, provided these programs or activities are not in conflict with, inconsistent with, or preempted by law.

##### B) DUTIES

The primary duties of the Board of Directors are as follows:

- A. Take action at legal meetings.
- B. Establish written policies for District operation.
- C. Be responsible for all District finances.
  - a. Approve fiscal budget.
  - b. Monitor the budget spending.

D. Set rates and use fees for District services.

E. Personnel

- a. Hires and discharges General Manager and Legal Counsel.
- b. Annually evaluate the General Manager and Legal Counsel.

F. Establish written policy on how Board of Director's Meetings are conducted.

G. Develop a master plan for the District.

H. Ratify committee appointments made by the President.

C) FUNCTIONS

The powers and duties of the Board of Directors include governance, executive and judicial functions. These relate to the Board's own operations as a governing body and to all functions of the District.

1. GOVERNANCE FUNCTIONS

To fulfill its responsibility, the Board is committed to establishing policies to govern District activities. The Board of Directors shall consider and approve or disapprove matters submitted to it by a Director, Staff or the public. The Board of Directors shall prescribe rules for its own governance which are consistent with its "enabling code" or by Federal or State Laws and regulations.

2. EXECUTIVE FUNCTIONS

The Board of Directors is authorized to delegate any of its powers and duties to an officer or employee of the District. The Board of Directors; however, retains ultimate responsibility over the performance of those powers or duties so delegated.

3. JUDICIAL FUNCTIONS

The Board of Directors desires that public complaints be resolved at the lowest possible administrative level. The method of resolving public complaints shall be as follows:

- a. The individual with a complaint shall first discuss the matter with the District Manager. If this individual registering the complaint is not satisfied with the disposition of the complaint by the District Manager, said complaint may be filed with the Board of Directors
- b. The Board of Directors may consider the matter at a subsequent regular meeting or call a special meeting. The Board of Directors will expeditiously resolve the matter.
- c. This policy in no way prohibits or intends to deter a member of the public from appearing before the Board of Directors to present a verbal complaint or

statement in regards to actions of the Board of Directors, District programs or services, or impending considerations of the Board of Directors.

## 7. ROLE OF INDIVIDUAL DIRECTORS

The Board of Directors is the unit of authority for the District. Apart from their normal function as a part of this unit, individual Directors may not commit the District to any policy, act or expenditure unless duly authorized by the Board of Directors. Nor may an individual Director direct staff to perform specific duties unless duly authorized by the Board of Directors. Directors do not represent any factional segment of the constituency, but are, rather, a part of the body which represents and acts for the constituency as a whole.

- A) Each Director has the right to place an item on a subsequent Board of Directors Meeting agenda by submitting a request to the President of the Board or the District Manager. The deadline for submittal of an agenda item and related documents by a Director shall be 5:00 p.m. 7 days before the scheduled Board of Directors meeting date at the office of the District Secretary. Agenda item requests received after the submittal deadline for a specific agenda will be added to the next following regularly scheduled agenda.
- B) Directors will make every effort to attend assigned Board of Directors and Committee meetings; to prepare adequately for each such meeting; and, to observe the rules of decorum as set forth herein. Whenever individual Directors will be absent or late for a Board of Directors or Committee meeting said Director shall notify the District Secretary at the earliest opportunity.
- C) When requesting information from staff, Directors shall contact the District Manager. When responding to constituent requests and concerns. Directors should reroute such inquiries to the District Manager.
- D) Each Director shall decide individually on what contact information will be released by District staff to the general public. In order to accomplish this in an orderly and consistent manner, each Director shall provide the District Secretary with a completed and signed Director Contact Authorization Form. Directors shall be responsible for any and all updates and amendments to said Director Contact Authorization Form.

## 8. BOARD OF DIRECTORS MEETINGS

### A) REGULAR TIME AND PLACE OF MEETINGS

Regularly scheduled meetings of the Board of Directors shall be held, on the last Monday of each month at 6:00 p.m. at a location to be determined, unless otherwise specified by action of the Board of Directors. Special meetings of the Board of Directors, as that term or its successor terms are defined within the meaning of the Ralph M. Brown Act (California Government Code section 54950 et seq.), may be duly authorized and held as deemed necessary by the President or a majority of the Board of Directors. Notice and location of special meetings shall be as prescribed by law. Emergency meetings of the Board of Directors, as that term or its successor terms are defined within the meaning of the Ralph M.

Brown Act, maybe duly authorized and held as deemed necessary only by a majority of the Board of Directors. Notice and location of emergency meetings shall be as prescribed by law.

**B) PUBLIC NATURE OF MEETINGS**

All meetings of the Board of Directors shall be open to the public, except when the Board is convened in Closed Session as authorized under provisions of the Ralph M. Brown Act (California Government Code section 54950 et seq.).

**C) QUORUM AND VOTING REQUIREMENTS**

The presence of three (3) or more Directors shall constitute a quorum for the transaction of District business. Nor ordinance, resolution or motion shall be passed by the Board of Directors without a majority vote of the quorum unless otherwise required or prescribed by state law.

**D) BOARD ACTION**

The Board of Directors shall act only by ordinance, resolution, or motion. Except where action is taken by the unanimous vote of all Directors present and voting, the ayes and noes shall be taken upon the passage of all ordinances, resolutions or motions and shall be entered in the minutes. An ordinance does not require two readings at separate meetings unless otherwise prescribed by law. Unless otherwise provided by its own terms, all ordinances, resolutions and motions shall become effective upon adoption. Any member of the Board of Directors, including the President, can make a motion. The President may vote on all motions unless disqualified or abstaining. The President shall not call for a vote on any motion until sufficient time has been allowed to permit any and all members of the Board of Directors to speak. Complex motions should generally be prepared in writing and read aloud to the members of the Board of Directors at the time the motion is made. If a motion is not in writing, and if it is necessary for full understanding of the matter before the Board of Directors, the President shall restate the question prior to the vote. Common motions may be stated in abbreviated form, and will be put into complete form in the minutes. Until the President states the question, the maker may modify their motion or withdraw it completely. However, after the President has stated the question, the motion may be changed only by a motion to amend which is passed by a majority vote of the Board of Directors.

**E) ROUTINE BUSINESS**

Matters of routine business such as approval of the minutes and approval of minor matters may be expedited by assuming unanimous consent of the members of the Board of Directors and having the President state that without objection the matter will stand approved. Should any Director object to such unanimous consent, the President shall then call for a vote.

**F) ORDERLY DISCUSSION**

In order to promote discussion of the issues before the Board of Directors, each Director shall be recognized by the chair before speaking. Notwithstanding any provision of this Policy,

however, each Director shall have a right to be heard within reason on any issue before the Board of Directors. Each Director may seek information or comment by the staff on any question.

G) CLOSED SESSION

Except as required by law, all proceedings in Closed Session shall remain confidential.

H) ROBERTS RULES OF ORDER

Board of Directors meetings shall follow the current edition of the Roberts Rules of Order and the current edition of the Ralph M. Brown Act.

I) MEETING AGENDAS

The District Manager, in consultation with the Board President, shall be responsible for the preparation of a written agenda for each regular meeting and/or special meeting of the Board of Directors as those terms or its successor terms are defined within the meaning of the Ralph M. Brown Act (California Government Code section 54950 et seq.) The District Manager, in consultation with Board President, shall be responsible for the preparation of written agenda for each regular meeting and/or special meeting of other "legislative bodies", of the North San Joaquin Water Conservation District as those terms or its successor terms are defined within the meaning of the Ralph M. Brown Act (California Government Code section 54950 et seq.). Any Director may request that an item be placed on the agenda for a regular or special meeting of the Board of Directors as stated herein. The District Secretary shall be responsible for the posting of the agenda for all meetings of the Board of Directors and/or other "legislative bodies", as defined within the meaning of the Ralph M. Brown Act, in compliance with, and as authorized under the applicable provisions of the Ralph M. Brown Act. The Ralph M. Brown Act provides for three (3) different types of meetings. Accordingly, the District Secretary shall satisfy the appropriate notice requirement for each type of meeting and indicate the type of meeting on the notice.

Posting of the agenda for all regular meetings of the Board of Directors and/or other "legislative bodies", as defined within the meaning of the Ralph M. Brown Act, shall be in compliance with California Government Code section 54954.2. Posting of the agenda for all special meetings of the Board of Director and/or other "legislative bodies", as defined within the meaning of the Ralph M. Brown Act, shall be in compliance with California Government Code section 54956. Posting of the agendas for all "emergency meetings" of the Board of Directors, as defined within the meaning of the Ralph M. Brown Act shall be in compliance with California Government Code section 54656.5(b).

A copy of the agenda for each regular meeting of the Board of Directors shall be forwarded to each Board member at least five (5) days in advance of each regular meeting, together with copies of all applicable supporting documentation; minutes to be approved; staff reports; and other documents pertinent to the agenda. Directors shall review agenda materials before each meeting. Individual Directors may confer directly with the District Manager to request additional information on the agenda items.

J) CONSENT AGENDA

The purpose of a consent agenda is to minimize the time required for the handling of any non-controversial matters. Consent agenda items are considered to be routine and non-controversial, with documentation provided to the Board of Directors that is adequate and sufficient for approval without inquiry or discussion. Any item on the consent agenda will be moved to the regular agenda upon request from individual Directors or a member of the public. Unless moved to the regular agenda, the consent agenda shall be voted upon as one single item without discussion or debate.

#### K) STUDY SESSIONS

Study sessions or workshop meetings are for the purpose of discussing an item(s) that may come before the Board at a later time for official action to facilitate planning, or discussion of special topics of interest. Study sessions provide a more informal forum for the Board of Directors, staff and the public to engage in open-ended discussion and share information on a particular subject(s). No formal action(s) can be taken at a study session; direction can be given to staff regarding preparation of an agenda item for discussion and possible action at a subsequent meeting. From time to time, study sessions may be duly authorized as deemed necessary by the President or a majority of the Board.

#### L) RECESS

The President of the Board may at any time, during debate or otherwise, declare a recess for not more than ten (10) minutes. Declaration of a recess shall not be subject to any motions.

#### M) CITIZEN COMMUNICATION

The Board of Directors encourages public participation. The public comment portion of the agenda is reserved for citizen communications on matters not otherwise on the agenda. Any person may address the Board of Directors on any subject that lies within the jurisdiction of the District during this portion of the agenda. Unless otherwise altered by the President or presiding officer, individual citizen communication during the public comment portion of the agenda shall not exceed three (3) minutes in length and individuals may only speak once. Each person addressing the Board of Directors shall give his or her name and address for the record and designate a subject matter. Citizens may also address the Board of Directors on specific agenda items, including those on the consent agenda, only after first obtaining recognition by the President or presiding officer, participation by interested citizens on specific agenda items is subject to orderly procedure, including time limits and decorum established under the authority of the President or presiding officer and applicable law.

All communications by interested citizens whether during Public Comment or other items on the agenda shall be addressed to the Board of Directors as a single body and not to individual Board members, staff or members of the audience. No person, other than the Board of Directors and the person having the floor shall be permitted to enter into discussion, either directly or through a Director, without the permission of the President or presiding officer. No member of the public shall approach the Board of Directors table while the Board is in session unless granted permission by the President or presiding officer. Proper decorum must be observed by Directors, staff, speakers and the audience. The President or presiding officer shall preserve order and decorum, discourage personal attacks, and confine debate to the question under discussion. The President or presiding officer, or a majority of the Board, may eject from a meeting any person who becomes disorderly, abusive, or disruptive, or who



fails or refuses to obey a ruling of the President regarding a matter of order or procedure. No cell phone operation or audible pager use is allowed in the Board of Directors chambers.

#### N) WRITTEN CORRESPONDENCE

The Written Correspondence portion of the agenda is established to act as a report of written materials received by the Board as a whole, but may also include items requested for inclusion by individual Directors or members of the public. Written Communications which require no official actions by the Board of Directors may be listed only by title and date received, and not presented in its entirety. Written Correspondence not presented in its entirety will be maintained by the District Secretary for a period of two (2) years.

### 9. PRESIDENT

#### A) DUTIES

The President shall sit as presiding officer and conduct all meetings of the Board of Directors, shall carry out the resolution and orders of the Board of Directors and shall exercise such other powers and perform such other duties as the Board of Directors shall prescribe; including the following:

1. Call the meeting to order at the appointed time.
2. Announce the business to come before the Board of Directors in its proper order.
3. Enforce the Board of Directors policies and rules with respect to the order of business and the conduct of meetings.
4. Recognize persons who desire to speak, and protect the speaker who has the floor from disturbance or interference.
5. Explain what the effect of a motion would be if it is not clear to every member of the Board of Directors.
6. Restrict discussion to the question when a motion is before the Board of Directors.
7. Rule on parliamentary procedure.
8. Put motions to a vote, and state clearly the results of the vote.

#### B) RESPONSIBILITIES

The President shall have all the rights to discuss and vote on any issues before the Board of Directors. The President shall have the following responsibilities.

1. Sign all instruments, acts, and carry out stated requirements and the will of the Board of Directors.



2. Consult with the District Manager on the preparation of the Board of Directors agendas. In addition, any Director shall have the right to place any matter on the agenda for any meeting in accordance with the provisions of this policy.
3. Appoint and disband all committees, subject to Board of Directors approval.
4. Call such meetings of the Board of Directors as they may deem necessary, giving notice as prescribed by law.
5. Confer with the District Manager, Vice President, District Counsel, and at least one Board Member on crucial matters which may occur between Board of Directors meetings.
6. Be responsible for the orderly conduct of all Board of Directors meetings.
7. Coordinate and prepare the Board of Directors annual evaluation of the General Manager and Legal Counsel.
8. Other duties as authorized by the Board of Directors.

When the President resigns or is absent or disabled, the Vice President shall perform the President's duties. When the President disqualifies himself/herself from participating in an agenda item, the Vice-President shall perform the duties of the presiding officer.

#### 10. MINUTES

Minutes of all Board of Directors meetings will be in summary form and be constructed from notes taken by the District Manager during the meeting. Said minutes shall be subject to inspection pursuant to the California Public Records Act and in accordance with State Laws.

#### 11. COMMITTEES

The Board of Directors may create standing committees and ad hoc committees at its discretion. Subsidiary bodies and/or committees of the Board of Directors may qualify as a "legislative body" as that term or its successor terms are defined within the meaning of the Ralph M. Brown Act (California Government Code section 54950 et seq.). All meetings of subsidiary bodies and/or committees of the Board of Directors, which are defined as a "legislative body" as that term or its successor terms are defined in the Ralph M. Brown Act shall be open to the public, except when convened in Closed Session as authorized under provisions of the Ralph M. Brown Act.

Unless authority to perform a duty is expressly delegated by the Board of Directors to a committee, committee motions and recommendations shall be advisory to the Board of Directors

and shall not commit the District to any policy, act or expenditure. Nor may any committee direct staff to perform specific duties unless duly authorized by the Board of Directors. The Board of Directors by resolution shall establish written policies for Committee assignments and procedures. All standing committees shall be designated by resolution of the Board of Directors. Committee appointments shall be reviewed at the first (1<sup>st</sup>) Board of Directors meeting in December of each calendar year.

The Board of Directors may provide for time and place for holding regular meetings of subsidiary legislative bodies and/or committees by resolution. The time and place for holding regular meetings of subsidiary legislative bodies, and/or committees, if applicable, shall be established at the first (1<sup>st</sup>) Board of Directors meeting in December of each calendar year.

12. MEETING STIPENDS

Each Director may receive compensation as established by resolution of the Board of Directors. Pursuant to California Water Code section 30507, each Director may receive compensation in an amount not to exceed one hundred dollars (\$100.00) per day for each day's attendance at the regular quarterly meetings of the Board, not to exceed four hundred dollars (\$400.00) in any calendar year.

13. PERSONNEL POLICIES

A. PERSONNEL SYSTEM RULES AND REGULATIONS

North San Joaquin Water Conservation District is committed to the provision of an orderly, equitable and uniform personnel system. The Board of Directors by resolution shall establish written rules and regulations for the administration of the personnel system. Personnel system rules and regulations shall be reviewed at the first (1<sup>st</sup>) Board of Directors meeting in December of each calendar year.

B. SEXUAL HARASSMENT

The North San Joaquin Water Conservation District is committed to creating and maintaining a work environment free of objectionable and disrespectful conduct and/or communication of a sexual nature and prohibits sexual harassment by all employees and the Board of Directors. The Board of Directors by resolution shall establish a written policy and procedure manual relative to sexual harassment. The District's sexual harassment policy shall be reviewed at the first (1<sup>st</sup>) Board of Directors meeting in December of each calendar year.

Conduct which creates an intimidating, hostile or offensive work environment will not be tolerated. Verbal behavior, physical behavior, gestures and other non-verbal behavior which create said environment will not be tolerated. Any employee or member of the public who feel that they have been or are being harassed by a Director is strongly encouraged to immediately report such incident to the District Manager without fear of

reprisal regardless of the outcome of the complaint. The District Manager shall assign the investigation of the alleged misconduct to an outside party such as an attorney or law firm experienced in such matters. The District Manager shall notify the President of the Board of Directors of said alleged misconduct. Thereafter, the President, at the next meeting of the Board of Directors, shall report the facts and nature of the allegations to the entire Board of Directors.

If the Director charged with sexual harassment is the President of the Board of Directors, the District Manager shall report the fact and nature of the allegation(s) to the entire Board of Directors at its next meeting.

If an allegation of sexual harassment against a Director is investigated and found to be supported, The Board of Directors reserves the right to take such remedial action as is appropriate under all the circumstances. Including, if warranted, initiating an action for recall of such Director. The Directors agree that an accusation of sexual harassment against any one of them must be investigated. It is further agreed that such an investigation is not an invasion of their right of privacy.

#### C. NONDISCRIMINATION

The District shall not unlawfully discriminate against qualified employees or job applicants on the basis of sex, race, color, religion, national origin, ancestry, marital status, sexual orientation, physical or mental disability, or Vietnam era veteran status.

Equal opportunity shall be provided to all qualified employees and applicants in every aspect of personnel policy and practice. The District shall not discriminate against physically or mentally disabled person who, with reasonable accommodation, can perform the essential function of the job in question.

All employees are expected to carry out their responsibilities in a manner that is free from discriminatory statements or conduct.

#### D. REASONABLE ACCOMMODATION-AMERICANS WITH DISABILITIES ACT

Pursuant to the Americans with Disabilities Act, employers have a duty to reasonably accommodate employees and job applicants with known disabilities. This accommodation is not required for individuals who are not otherwise qualified for the job nor is accommodation generally required until the person with the disability requests it. The following optional regulation includes procedures recommended by the Equal Employment Opportunity Commission for use when determining what accommodation to make:

Requests for reasonable accommodation may first be considered informally by the site administrator. If an accommodation cannot be made at the site because it would impose undue hardship or because of lack of funds, the site administrator shall ask that the request be submitted in writing to the General Manager. The site administrator shall

provide the employee or applicant with any assistance he/she may need in order to submit this request.

The duty to reasonably accommodate an individual with a disability is limited to those accommodations which do not impose an undue hardship upon the district. Undue hardship is determined on a case by case basis and includes any action that is unduly costly, extensive, substantial, disruptive, or that fundamentally alters the nature or operation of the agency. The burden of proving undue hardship rests with the agency, and what may be an undue hardship for one agency may not be an undue hardship for another, depending on factors such as cost and agency size. Even if cost does pose an undue hardship, the disabled person should have the opportunity to pay for the portion of the cost that constitutes an undue hardship, or to personally provide the accommodation.

14. CONFLICT OF INTEREST CODE

Pursuant to provision of California Government Code section 81,000 et seq. commonly known as the Political Reform Act, the District shall adopt and maintain a Conflict of Interest Code. The Conflict and Interest Code and, any amendments thereto shall be adopted by resolution of the Board of Directors. The Board of Directors shall review the adopted Conflict of Interest Code on a bi-annual basis. At the first (1<sup>st</sup>) Board of Directors meeting in September of each even numbered year, the Board of Directors shall review its Conflict of Interest Code and, if amendments are needed, shall submit said amendments to the San Joaquin County Board of Supervisors in accordance with applicable deadlines. If no amendments are needed, the Board of Directors shall submit a written statement saying that its Conflict of Interest Code is still accurate.

California Government Code section 87100 states as follows:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

California Government Code section 87101, 87103 and 87103.5 provide explicit language explaining the nature of a "conflict of interest" and disclosure relating to Board responsibilities.

Directors are required to be in compliance with all District, State and Federal requirements of the "Conflict of Interest Codes".

A. DISCLOSURE OF ECONOMIC INTERESTS

Directors who have a financial interest in a decision within the meaning of California Government Code section 87100 et seq. shall publicly identify in detail the economic interest that creates the conflict, recuse themselves from discussing and voting on the matter and leave the room until after the discussion, vote, and any other disposition of the matter is concluded. Said identification shall occur following the announcement of the agenda item to be discussed or voted upon, but prior to commencement of either the discussion or vote. If the agenda item is to take place during a closed session, identification of the economic interest shall be made during the public meeting prior to the closed session but is limited to a declaration that the Director has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed.

Directors are not required to leave the room for an agenda item on the consent calendar provided that the Director recuses themselves and publicly discloses the economic interest as described above. Notwithstanding this section, when the conflict is a personal interest as defined by applicable Fair Political Practices Commission regulations, directors may speak as a member of the general public during the time that the general public speaks on the issue, provided the Director has complied with the provision of this section regarding identification of the conflict, recuses themselves from voting on the matter, and leaves the dais to speak from the same area as the members of the general public. Directors disqualified pursuant to this section shall not be counted toward achieving a quorum while the item is being discussed.

#### B. LEGALLY REQUIRED PARTICIPATION

The Political Reform Act (California Government Code section 81,000 et seq.) does not prevent the Board of Directors from acting when it is legally required to do so. If so many Directors are disqualified pursuant to said Political Reform Act, that the Board of Directors cannot act, the Board of Directors may bring back sufficient disqualified Directors under the following conditions:

- 1) Disqualified Directors must disclose with "particularity" the economic interest that is the basis for the Conflict of Interest.
- 2) The action of the Board of Directors must be a decision where no alternative method exists for it to be made.
- 3) Only the minimum number of Directors required to make a quorum of the Board of Directors shall be brought back.
- 4) Directors to be brought back shall be selected by a random method.
- 5) This legally required participation rule may not be invoked:
  - a. To break a tie;
  - b. When a quorum of the Board of Directors can be convened who are not disqualified due to a Political Reform Act Conflict; or
  - c. When a qualified Director is absent.

#### 15. RESIGNATIONS

Resignations by Directors shall be in writing, state the effective date and be submitted to the President of the Board of Directors and District Secretary. In the event the President of the Board of Directors resigns, the resignation shall be submitted to the Vice-President of the Board of Directors and the District Secretary.

#### 16. VACANCIES

Directors are expected to carry out their responsibilities to the best of their abilities. In order to accomplish this goal, Directors should be present for scheduled meeting or events whenever possible. In accordance with California Government Code section 1770 a Director position vacancy will occur whenever "he or she ceases to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness", or when absent from the Board of Directors without the permission of the majority of the Board of Directors.

If such vacancy occurs, the Board of Directors will take action in accordance with California Government Code section 1770.

In order to accomplish this in an orderly and consistent manner, when a vacancy of an elected Director occurs, the District Board of Directors, after discussion and consideration, shall when deemed appropriate, instruct staff to:

- A. Place a public notice advising that a vacancy has occurred in accordance with applicable provisions of law; and
- B. Said notice shall advise prospective candidates of the steps to take to apply for appointment; and
- C. The District Board of Directors shall establish the closing date for the receipt of applications; and
- D. Applicants shall submit the following by the date specified in the notice:
  - a) a letter of interest, and
  - b) a resume, with particular emphasis on the applicant's knowledge of special districts, and
- E. Applicant(s) shall be interviewed at the next regularly scheduled meeting of the District Board of Directors following the date of closure for applications; and
- F. The District Board of Directors shall make the appointment without undue delay, but need not act at the same meeting.

17. INCONSISTENT, INCOMPATIBLE AND CONFLICTING EMPLOYMENT OR ACTIVITIES

Pursuant to the provision of the California Government Code section 1126, the Board of Directors of the North San Joaquin Water Conservation District has determined that it would be inconsistent and incompatible for a Board member to be a paid employee of the District. Therefore, based on this decision, a member of the Board of Directors shall not be a paid District employee.

18. DIRECTORS' LEGAL LIABILITIES

The District shall defend and indemnify Directors from any claim, liability or demand that arises out of a Director's performance of his or her duties or responsibilities as a Director or Officer of the District.

19. INVESTMENT POLICY

North San Joaquin Water Conservation District is committed to the establishment of formal policies relative to the prudent investment of the District's unexpended cash. The Board of Directors by resolution shall establish written guidelines for the investment of North San Joaquin Water Conservation District fund or funds in the custody of the District, in a manner which conforms to all state and local statutes governing the investment of public funds. Said guidelines shall provide for an optimal combination of safety, liquidity and yield. The District's Investment Policy and any amendments thereto, shall be adopted by resolution of the Board of Directors. The Investment Policy shall be reviewed at the first (1<sup>st</sup>) Board of Directors meeting in December of each calendar year.

20. ANNUAL DISCLOSURE OF REIMBURSEMENTS

The District shall annually disclose any reimbursements paid by the North San Joaquin Water Conservation District of at least one hundred dollars (\$100) for each individual charge for services or products received. The Board of Directors shall review said reimbursement information for the preceding fiscal year (July 1- June 30) at the first (1<sup>st</sup>) Board of Directors meeting in September of each calendar year.

21. GENERAL PROVISIONS

Any of the within policies not required by law may be altered, amended, or repealed by a majority of the Board quorum at a duly authorized meeting.

22. ANNUAL REVIEW

This Board of Directors Policy Manual shall be reviewed annually by District Counsel and ratified by Resolution of the Board of Directors at the first (1<sup>st</sup>) Board of Directors meeting in December of each calendar year.

23. BID REQUIREMENTS

Any District Project exceeding \$10,000 will require written bids.

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## **2011/2012 Grand Jury Tours and Presentations**

August 09, 2011	Presentation - San Joaquin County Parks & Recreation
August 23, 2011	Presentation - County Operated Schools & Programs
September 13, 2011	Deuel Vocational Institute
September 28, 2011	Tracy Police Department
October 11, 2011	San Joaquin County Jail and Honor Farm
October 18, 2011	Presentation - San Joaquin County Sheriff's Office
October 25, 2011	O. H. Close Youth Correctional Facility N. A. Chaderjian Youth Correctional Facility
October 26, 2011	Sheriff's Boating Safety Patrol
November 08, 2011	Juvenile Probation
November 15, 2011	Presentation - Registrar of Voters, Austin Erdman
December 6, 2011	Stockton Police Department - Property Room and Communications
December 13, 2011	Lodi Police Department and Jail
February 15, 2012	Port of Stockton
February 22, 2012	Sheriff's Court Services - Stockton & Manteca Courts Holding Facilities
February 29, 2012	San Joaquin General Hospital
March 21, 2012	Presentation - San Joaquin County Public Health
April 18, 2012	Presentation - Office of Revenue & Recovery
June 20, 2012	South San Joaquin Irrigation District



