

# GRIFFITH & MASUDA

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Founded 1920

W. Coburn Cook, 1892-1953  
Lin H. Griffith, retired

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*Celebrating Our  
92<sup>nd</sup> Anniversary*

July 31, 2012

VIA U.S. MAIL & EMAIL to Trisa Martinez, Staff Secretary

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

Re: North San Joaquin Water Conservation District Response to Grand Jury  
2011/12 Case No. 0511

Dear Judge Warner:

Pursuant to California Penal Code Section 933(c), enclosed herein is the North San Joaquin Water Conservation District's response to the finding and recommendations of the 2011-2012 San Joaquin County Civil Grand Jury. The District's Board of Director took this action at its regular meeting held on July 30, 2012.

Very truly yours,



Roger K. Masuda  
General Counsel  
North San Joaquin WCD

Enclosure

RESPONSE OF THE NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT  
TO THE SAN JOAQUIN COUNTY CIVIL GRAND JURY, 2011/12 CASE NO. 0511  
July 30, 2012

Overview of Response of the North San Joaquin WCD Board of Directors:

Board President Bryan Pilkington resigned his position as Director effective October 16, 2011. As a result of Mr. Pilkington's resignation, the Board appointed Joe Valente to fill the vacancy and the Board elected Director Petersen as President, Director Beck as Vice President, Director Valente as Secretary, and retained Director Scanlon as Treasurer. The Board has been moving forward since Mr. Pilkington's resignation to address and rectify all of the issues identified in the Grand Jury Report. As the Grand Jury Report's Conclusion states:

The Board President [Bryan Pilkington] 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.

Part 1.0, Lack of Leadership

Finding F1. The Board is acting in direct conflict with specified District Policies.  
Recommendation R1. All Board Members review, discuss, and act in accordance with its own Policy Manual.

Response to F1/R1: Without going into a detailed response to the non-conformance with specific District Policies, the Board agrees with the Report's Recommendation R1 and has already implemented the recommendation. The Board with the new General Counsel's assistance has been reviewing existing Policies and amending Policies that are not practical or that do not conform with existing practices so long as the amendments are within the law. For example, the District has not had a District Manager since Edward Steffani resigned in December 2010. Therefore, the Board President has had the duty to prepare the written agenda and to assemble agenda documents for each regular and special Board meeting. As noted in the Report's discussion of Part 2.0, Board Policy Section 8.I required the agenda for each regular meeting be forwarded together with supporting documents, etc., to each Board member at least five days in advance. That was not practical so the Policy has been amended to require that all agendas and supporting documentation be provided in accordance with the Brown Act.

Part 2.0, Violations of Ralph M. Brown Act, etc.

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

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Response to F2.1/R2.1: The District has no paid staff to take notes during meetings and to prepare minutes after meetings. Director/Board Secretary Valente has instituted a new system for his taking notes and preparing Board meeting minutes for approval at the next regular Board meeting.

Directors Petersen, Scanlon, and Valente all attended required AB 1234 Ethics/Brown Act Training in February 2012. Directors Beck and Wilber are planning to attend the required training later this year.

Finding F2.2. The District violated Policy §8A & J. Meetings have not been given proper notice. Agenda items have not been properly added.  
Recommendation R2.2. Board President is to ensure meeting notices and agenda items are distributed properly as stated in District Policy §8A & J.

Response to F2.2/R2.2: We believe that the reference should be to Board Policy §8.I and not J. As indicated above, §8.I has been amended to require the same pre-distribution of agendas and agenda materials as required by the Brown Act and not a longer period as previously required by the Policy. Former Board President Bryan Pilkington was responsible for the posting of Board agendas, including posting to the District's website. Current Board President Joe Petersen has already been complying with Recommendation R2.2 and has in good faith endeavored to have the agendas posted at the District office and on the District's website in spite of the District's limited resources.

Finding F2.3. The Grand Jury found the District was in violation of California Water Code §74754.  
Recommendation R2.3. District is to provide and review financials in accordance with California Water Code §74754 and the Ralph M. Brown Act §54957.5.

Response to F2.3/R2.3: Director/Treasurer Scanlon provides financial reports in writing and presents a list of District checks for approval at each regular monthly Board meetings. The District has retained the Lodi accounting firm of Tolson, Pooré & Zamora and that firm also provides the Board with monthly financial reports.

### Part 3.0, Code of Ethics Violations

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.

Response to F3/R3: Whatever happened with the prior Board is past history. The new Board is moving forward in a very positive manner. As the Grand Jury Report's

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Conclusion states: "The Board President [Bryan Pilkington] has since resigned. Due to a change of leadership, the overall conduct of the District has shown improvement." The current Board has in fact shown vast improvement.

Directors Petersen, Scanlon, and Valente all attended required AB 1234 Ethics/Brown Act Training in February 2012. Directors Beck and Wilber are planning to attend the required training later this year.

Part 4.0, Fiscal Responsibility

Finding F4.1. There is a lack of financial planning and responsibility on behalf of the District's managing board.

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

Response to F4.1/R4.1:

The Board is already implementing Recommendation R4.1. After Board President Pilkington resigned, the Board formed a Budget Review Committee with Directors Scanlon and Beck and with public members Steve Raddigan and Robert Hoag. The Committee reviewed the District's historic and projected financial information and gave valuable recommendations to the Board. At the Board's May 25, 2012 meeting, the Board adopted a balanced budget for Fiscal Year 2012-2013.

Board has retained Tolson, Pooré & Zamora as the District's Accountant and Bloomberg & Griffin as the District's Auditor. The Board has recently retained Walter Sadler, P.E., an experienced civil engineer, as a consultant to advise the Board on district water operations and infrastructure, to act as the Tracy Lake Project Manager, and on other matters so that the District can operate more effectively and efficiently.

Finding F4.2. The District lacks a plan for new revenues.

Recommendation R4.2. Explore new sources of revenue.

Response to F4.2/R4.2: The Board is already implementing Recommendation R4.2. Moving forward the Board is working on the following:

- Taking a hard look at existing expenses, including but not limited to the PG&E electric bills for pumping District water and District Watermaster costs.
- Look at the existing revenues and expenses from the District's water operations and projected costs to upgrade the infrastructure.
- Board President Petersen is recommending that the Board host town hall meetings to explain the District's current revenue sources, potential additional

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revenue sources, and the District's operations and infrastructure and costs and to receive input from the constituents.

The District is focused on improving the existing diversion and conveyance facilities so that more lands within the District can be served with surface water and use less groundwater. The District is investigating possible sources of funding to finance such improvements. The District is in the process of identifying needed improvements and additional lands within the District that could be irrigated from existing, extended or new conveyance facilities.

The District has already implemented one new revenue source to fund infrastructure improvement in order to more fully utilize the District's water right. The District's Tracy Lake Groundwater Recharge Project will divert water from the Mokelumne River into South Tracy Lake and is projected to divert up to 4,000 acre-feet per year when river water is available. The surface water will be used by the landowners to irrigate vineyards thereby conserving groundwater. The project will also result in surface water recharge to the over-drafted basin. The District has secured 100% of the funding for the project. The 2011 estimated total cost of the project of \$936,000 has been increased due to updated construction costs but the landowners have agreed to fund the increase. The U.S. Bureau of Reclamation has awarded a \$300,000 for the project and the balance is being financed through the formation of Improvement District No. 1 (Tracy Lake Improvement District) and the issuance and sale of two series of Improvement District No. 1 warrants. Payment of the principal and interest on both series of warrants are secured by an annual capital assessment to be levied on all 1,310 acres of land within the Improvement District. The \$400,000 first series of ten \$40,000 warrants with a 4.0% interest rate has been issued and sold. One warrant will be retired each year over a ten-year period with the first warrant to be retired on July 1, 2013. This is the first use of an improvement district by the District to finance a new surface water irrigation and groundwater recharge project and to organize the agricultural lands benefited by a project. This project can act as a model for additional projects within the District.

After the Tracy Lake Project is operational, an annual operation and maintenance assessment will also be assessed every year until the project is retired with the landowners paying 65% of those annual costs subject to an annual cost true-up. Annual costs will vary depending primarily upon how much water is pumped from the Mokelumne River (i.e., electric costs). For the first year of operation the landowners will pay a water charge of \$2 per acre-foot in addition to paying the annual capital and annual operation and maintenance assessments. After the first year, North San Joaquin's Board of Directors will review District's total water system operating costs and determine whether to adjust the water charge. There is the potential to divert up to an additional 4,000 acre-feet per year from the project should additional lands request surface water and be willing to pay their share of the capital and annual operation and maintenance costs.

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Part 5.0, Conflict of Interest

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.

Response to F5/R5: As the Grand Jury Report's Conclusion notes, the State of California Fair Political Practice Commission is currently conducting an investigation into these same alleged conflicts of interest. Because of the FPPC's on-going investigation, the Board does not believe it is appropriate to provide a direct response to Finding F5. The District's General Counsel has previously informed the Board that the District's existing Conflict of Interest Code is out of date and needs to be amended. Consequently, the Board will plan to review recommended amendments to the District's Code at the Board's September 24 regular meeting. Form 700s for 2011 were timely filed by all of the Directors.

If the Grand Jury is in need of any additional information, please contact the District's General Counsel Roger Masuda.

[End of NSJWCD's Response]