

FINAL REPORT
CASE #0402 RECLAMATION DISTRICT NO. 348

REASON FOR INVESTIGATION:

A request for investigation was received which cited concerns expressed by about ten people regarding the management of Reclamation District 348. In addition to six specific areas of concern listed in the request, a letter from one concerned citizen was attached to the request.

METHOD OF INVESTIGATION:

Reviewed the complainant's allegations.

Interviewed and made written information requests of the District's Secretary and Attorney, Mr. John B. Rudquist.

Reviewed the following documents:

- A letter dated March 26, 2003 from Joseph Shilts, of Shilts Consultants, Inc., to Mr. John B. Rudquist.
- A question and answer sheet dated Rec'd March 24, 2003 by Henry S. Matsunaga, of James C. Hanson, Consulting Civil Engineer, Inc.
- A letter dated March 21, 2003 from Gary F. Giannini, of Schwartz, Giannini, Lantsberger & Adamson, to Reclamation District #348, Mr. John B. Rudquist, and Geiger, Rudquist, et al.

FINDINGS:

Each allegation and the San Joaquin County Civil Grand Jury (SJCCGJ) findings relative thereto are presented below.

Individuals expressed serious concerns in regard to policies being adopted by the management of Reclamation District 348. The specific concerns included:

1. *Taxation without representation. The individuals indicate that the board is elected by acreage and not value or one man, one vote; therefore, since a few members control large amounts of acreage they are literally automatically elected to the board and control the board.*

Background:

Election of members of the Board of Trustees that governs the District is subject to the provisions of Division 15 of the California Water code (commencing with section 10500).

As is typical with most reclamation districts in the Delta, the District is governed by a three person Board of Trustees (Wat. Code, '50600).

The District is a landowner-voter district, not a resident voter district. The term "voter" is defined as a landowner or the legal representative of a landowner (Wat. Code '50016). Public officers represent acres, not people, per United States Supreme Court Decision upholding constitutionality of special-purpose district voting scheme; special districts in California (7 Loyola U. of L.A.L. Re: 1974).

Pursuant to the Water code, the board members are elected by the landowners with voting power based on their assessments or acreage depending upon whether certain kinds of assessments have occurred (Wat. Code '50704). Members of the board are elected for four year terms on a staggered basis so that two will run in one odd numbered year and one will run two years later in the next odd numbered year. (Wat. Code, "50602, 50602.5). Since the mid-1990's, there has not been an election for this District because the incumbents have not been opposed. In such cases, the election law specifies that the incumbents may be appointed for another four year term. (Wat. Code '50740 and '50471).

Finding #1: The District's board is indeed elected by acreage and not by value or by one-man-one-vote, and this is not inappropriate because it is in accordance with the legal framework under which the District is established and regulated.

1. *As a result of the elections process there is a concern that the assessment process is unfair. Apparently, assessments have gone up over 100% for commercial and residential property, but not for agricultural property.*

Background:

Prior to the passage of Proposition 218 (November 5, 1996), now articles XIII C and XIII D of the California Constitution, every acre of property within a reclamation district was assessed the same amount regardless of the land use and improvements on the property.

The District could not take into consideration the value of improvements on parcels when determining the total assessment valuations of each parcel.

With the passage of Proposition 218, the rules changed. For any assessment not "grandfathered" under Proposition 218, assessments must consider improvements to properties, and assessments must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California. (Cal. Const., art. XIII D, ' 4(b))

Finding #2: The method proscribed by the California Constitution for determining reclamation district assessments requires the inclusion of improvements to properties in the assessments. Since the values of improvements on residential and commercial properties are typically significant, it is not surprising that the post Prop 218 assessments on these properties would be higher than the assessment prior to Prop 218. Also, since agricultural properties typically have few, if any, improvements, it is not surprising that assessments on these properties have not increased as much as the non-agricultural properties in the District.

1. *The individuals believe that the district expenses are significantly less than the amount of money collected. Moreover, it is their understanding that there is about \$1,000,000 in the bank.*

Background:

The expenses of all reclamation districts are matters of public record. Please note the attached financial report for Reclamation District No. 348.

District 348 is responsible for maintaining 17.4 miles of levee protecting approximately 9,300 acres. The District operates 4 pumping stations to remove irrigation return flow and rainfall which is collected in approximately 22.8 miles of District maintained drainage canals.

As the result of the levee break and flood of 1986, the District struggled for many years with a huge debt it incurred in repairing the levee and draining the lands that were flooded. This experience demonstrates the prudence of maintaining a reserve of funds with which to face the potential costs of flood fighting and levee repairs.

The annual expenditures of the District have fluctuated over the years due to major levee rehabilitation projects and high water episodes involving sandbagging and flood fighting efforts such as in the winter of 1997. Unexpected levee repairs during heavy rain years have historically cost approximately \$180 to \$200 per lineal foot of levee or about \$1 million per mile.

In consultation with Mr. Gary F. Giannini of Schwartz, Giannini, Lantsberger & Adamson, the District's auditor, the Trustees have decided to maintain a reserve of about \$1 million. Mr. Giannini has told the Trustees that he believes a \$2 million

reserve could be justified, and that the District=s current one million dollar reserve should be considered, at best, a minimum reserve against any unexpected or sudden catastrophe.

Finding #3a: Since its revenue and expenses are matters of public record and are reported regularly in financial reports, the SJCCGJ finds that the relationship between the District=s assessment collections and its expenses is not a matter requiring further investigation.

Finding #3b: Given the District=s need to be able to respond to routine and unusual maintenance and repair contingencies, it does not seem inappropriate that the District would maintain an operating balance in the range of \$1 million.

1. There is a concern that the assessments are improperly levied. There is concern that even though the County General plan shows property zoned as agriculture the Board is arbitrarily assigning a commercial or residential designation and then charging a higher fee.

Background:

In keeping with the provisions of Proposition 218, the District considers not only the general plan land use designation but also the improvements to properties. Since various uses are allowed by agricultural zoning with a use permit, it is possible to have improvements of substantial value on agriculturally designated and zoned lands. Under Proposition 218, the special benefit conferred upon assessed parcels is determined by considering the improvements to property as well as the general plan designation and zoning. If a property owner does not agree with the determination of the District's trustees regarding a property's assessment, an appeal can be filed with the District.

Finding #4: The District=s current assessment procedures appear to comply with the requirements of Proposition 218. Furthermore, an appeal procedure exists by which property owners may seek clarification and/or correction of inaccurate assessments.

1. The board is violating recent law in regard to higher taxes and Proposition 218.

Background:

In 2001 the District had a landowner voter election that changed the way the District assessed its property to make its assessment procedures comply with the requirements of Proposition 218.

After the passage of Proposition 218 (November 5, 1996), no new assessment can be levied by a local special district without voter approval and compliance with the provisions of Proposition 218. Under Proposition 218, the assessment must be based on the special benefit conferred upon the assessed parcel. The proportionate special benefit for each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment may be imposed on any parcel that exceeds the proportional special benefit conferred on that parcel. (Cal. Const. art. XIIId & 4(a))

Finding #5: The District's current assessment procedures appear to comply with the requirements of Proposition 218.

1. Finally, there is a concern that the board has a conflict of interest with regard to the expenditure of dollars. Specifically, with respect to board members vending to the district and reimbursements to board members for expenses incurred by them on behalf of the district.

Background:

Regardless of District policies or applicable regulations, such conflicts of interests are governed by the common law, various statutes in the Government Code, e.g., Government Code section 1690 et seq., the Political Reform Act of 1974 and the District's Conflict of Interest Code (Gov. Code, '81000 et seq.), and the Water Code, e.g., Water Code section 50605 et seq. Apparently, such matters are not covered specifically by the District's policies.

The Water Code contemplates that the trustees of a reclamation district will perform services and incur expenses on behalf of the District. Water Code section 50605 states: "Each member of the board shall receive such compensation for services actually and necessarily performed as the board determines to be just and reasonable, and shall be reimbursed for expenses necessarily incurred in the performance of his duties as trustee."

Water Code section 50606 states: "All claims by or in behalf of the a trustee for services rendered or expenses incurred shall be presented to the board and, if allowed, shall be paid in the same manner as other indebtedness of the district. @ A Payment of proper claims may be made to a trustee, in the absence of fraud, in the same manner as other indebtedness. @

As is often the case, the trustee who is reimbursed is not a vendor to the District, but merely a facilitator between the vendor of the product or services and the District.

Since small reclamation districts do not have the staff of their larger public agency counterparts, vendors are often reluctant to deal with the personnel who may be doing the levee maintenance and pump repair work for the District and insist upon dealing with someone with ostensible authority. This often means one of the trustees. The trustee may have to sign for the product to be delivered or the service to be performed in order for the necessary maintenance work to be accomplished in a timely manner. When the trustee presents the statement or invoice from the vendor, it is simply a pass through of the costs the trustee incurred by signing for the product or services for the District.

Finding #6: The legal framework under which the District is established and regulated appears to anticipate that trustees will from time to time perform services and incur expenses on behalf of the District and will subsequently receive reimbursement for expenses necessarily incurred in the performance of their duties. Furthermore, a trustee who is reimbursed for such expenses is not a vendor to the District, but merely a facilitator between the vendor of the product or services and the District. Therefore, it does not appear to be inappropriate that reimbursements would be made to board members for expenses incurred by them on behalf of the District, and this in and of itself is not evidence of conflict of interest.

RECOMMENDATIONS:

No recommendations.

RESPONSE REQUIRED:

Pursuant to §933.05 of the Penal Code:

The Trustees of Reclamation District #348 shall report to the Presiding Judge of the San Joaquin Superior Court, in writing and within 90 days of publication of this report, with a response as follows:

As to each finding in the report a response indicating one of the following:

- a. The respondent agrees with the finding.
- b. The respondent disagrees with the finding, with an explanation of the reasons therefore.

As to each recommendation, a response indicating one of the following:

- a. The recommendation has been implemented, with a summary of the action taken.

- b. The recommendation has not yet been implemented, but will be with a time frame for implementation.
- c. The recommendation requires further analysis, with an explanation of the scope of the analysis and a time frame not to exceed (6) six months.
- d. The recommendation will not be implemented, with an explanation therefore.