



A Tradition of Stewardship
A Commitment to Service

Board of Supervisors

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Mark Luce
Chair

FILED

AUG 26 2009

Clerk of the Napa Superior Court
By: C. Brennan
Deputy

August 11, 2009

The Honorable Raymond A. Guadagni
Presiding Judge
Superior Court of California, County of Napa
825 Brown Street
Napa, CA 94559

Dear Judge Guadagni:

As required by Penal Code Section 933(c), enclosed is the response to the 2008-2009 Grand Jury Final Report on the Napa Valley Transient Occupancy Tax *How Much is Being Lost?*, Napa County Flood Control and Water Conservation District Napa County Flood Protection Sales Tax Measure A and Napa Valley Gangs.

Grand Jury activity takes place over the course of a number of months. As such, their findings and recommendations often address issues which county departments have already identified as problems and to which solutions are in the process of being developed.

The Board acknowledges the members of the 2008-2009 Grand Jury for the time they have devoted in preparing their report.

Sincerely,

Handwritten signature of Mark Luce.

Mark Luce, Chair
Napa County Board of Supervisors

Enclosure

cc: Foreman, 2008-09 Grand Jury

Received
Napa Superior Court

AUG 24 2009

Court Executive Office

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**NAPA COUNTY
RESPONSES TO GRAND JURY REPORT
FISCAL YEAR 2008-2009**

**NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION
DISTRICT: NAPA COUNTY FLOOD PROTECTION SALES TAX MEASURE A**

FINDING 1: The BOS has never appointed a CPA to the FOC.

Response, Flood Oversight Committee. The Flood Oversight Committee (FOC) agrees with this finding. Based on minutes of the FOC meetings in 1998 and 1999 recruitment efforts for the Certified Public Accountant (CPA) member failed and since that time at least one member of the Committee has been a CPA and the CPA slot has remained vacant. For example, the member representing the City of Napa for many years was a CPA by trade. In addition, the current Chair of the FOC is a CPA and has been a member of the FOC since its inception, serving as the representative of the Agricultural Industry.

It is important to note the involvement of the County Auditor-Controller in the oversight of receipts and disbursements of Measure A funds as well as preparing and reporting financial summaries to the FOC. The current Auditor-Controller is a CPA. Finally, the FOC hires a CPA for an annual independent audit of the Flood Authority's financial records.

Response, Board of Supervisors. The Board of Supervisors (Board) agrees with this finding and concurs with the response given by the FOC. The Board of Supervisors appoints members to the Financial Oversight Committee (FOC) based on recommendations of various public agencies or organizations as described in Section 9(A)(3) of the Measure A Ordinance. A certified public accountant is listed as a member to be recommended to the Board by the other FOC members. The Clerk will advertise for all vacancies, including the CPA position, the first week of August 2009.

FINDING 2: The City of St. Helena has expended no funds for design, engineering or construction on two of the three components authorized by Measure A.

Response, Board of Supervisors. The City Council for St. Helena will be preparing a response to this Finding and submitting it under separate cover to the Presiding Judge.

FINDING 3: Flood Control District expended \$1,413,799 in payment to the lobbyist Carmen Group Inc. through June 30, 2008. The actual amount charged to Measure A revenues was not determined by the Grand Jury.

Response, Flood Oversight Committee. The Flood Oversight Committee (FOC) disagrees with this Finding because the figures presented in the Grand Jury Report cannot be verified. The Flood District records show a total of \$1,566,573.90 was paid to Carmen Group since fiscal year 1997-1998 (Carmen Group was formally known as Linton,

Meilds, Reisler & Cottone, Inc. (LMRC) during fiscal years 1997-1998 through 1999-2000) specifically for the Flood Project. These disbursements were funded 100% by Measure A funds. During that same period, the Napa Flood project received over \$81 million in Measure A funds. The amount spent on lobbying expenses equate to less than 2% of the funds received in Measure A funds. As the Grand Jury identified in the chart on page 5 of their report, the efforts produced 54% more funds being allocated to the project by Congress.

Response, Board of Supervisors. The Board of Supervisors (Board) disagrees with this finding and concurs with the response given by the FOC.

FINDING 4: The City of St. Helena has paid the Carmen Group Inc. a total of \$785,308 (unaudited actual) from Measure A revenues through September 30, 2008.

Response, Board of Supervisors. The City Council for St. Helena will be preparing a response to this Finding and submitting it under separate cover to the Presiding Judge.

FINDING 5: The wording of the Measure A project components relative to the Unincorporated Areas is apparently sufficiently broad to cover a variety of ongoing studies and projects resulting from events occurring significantly after Measure A was enacted.

Response, Board of Supervisors. The Board of Supervisors agrees with this finding. The wording in Measure A was intentionally designed to be broad for the unincorporated area.

In March, 1998, voters approved a half cent sales tax increase for flood control purposes known as Measure A. The County and each city are entitled to the proceeds from Measure A generated within their geographical boundaries for projects that were specified in the ballot measure. For the County, the measure reads:

Unincorporated Areas of Napa County:

1. County unincorporated area flood damage reduction projects including elevating/relocating structures, including bridges, in the floodway and floodplain; and
2. Agricultural watershed and stormwater runoff management improvements planned jointly by the agricultural industry, the County, the Napa County Resource Conservation District and the Department of Fish and Game, including projects which will:
 - a. Reduce the amount of storm runoff and sediment in the Napa River System from agricultural lands; and
 - b. Increase flood storage of the River system by the setback of active land uses from river and tributary banks.

Community of Angwin/Deer Park

1. Stabilization and enhancement of existing water reservoirs which shall be for the purpose of flood protection and water reliability; and
2. Stabilize water quality.

To use Measure A funds, a project must fit into one of these categories. There are provisions in the measure for project substitution and unforeseen circumstances.

In November, 1998, a Joint Powers Agreement (JPA) was entered into by the County, Flood Authority, Flood District and each city. The purpose of this JPA was to set forth a whole host of operating policies and criteria regarding the equitable distribution of the sales tax revenues to each agency, debt financing for projects in the plan, and how to handle additional revenue such as growth in the sales tax and the possibility of State flood control subventions for the Napa Flood Project. The JPA established a specific formula for allocating the unincorporated County portion of the revenue to three different geographical areas based generally on the amount of revenue generated in those areas. They are:

- Angwin/Deer Park - 17%
- Berryessa Watershed - 7%
- Balance of County - 76%

Since 1998, a number of projects have been initiated in the unincorporated area and include as an example:

- Napa River Rutherford Reach Restoration Project;
- Oak Knoll Reach Sediment Reduction and Habitat Enhancement Plan; and
- A number of flood reduction and watershed improvement studies.

FINDING 6: The expenditure categories in the FOC annual overview of financial activities and related web site documents do not make it possible to identify lobbying expenditures (direct payment to lobbying firms and related County/municipality travel.)

Response, Flood Oversight Committee. The Flood Oversight Committee (FOC) agrees with this finding. Each jurisdiction is responsible for the detailed accounting and records of their project expenditures. The Flood Authority reimburses acceptable and authorized project expenditures and tracks these reimbursements in total by each jurisdiction. The FOC annual report is a report of the Flood Authority and the accounting of Measure A receipts and disbursements. Each entity draws on their balance of funds through a request for reimbursement. The reimbursement is handled as one single transaction, whereas the details of what makes up that reimbursement are kept in the records of the individual entity. Therefore, the FOC annual report is reporting on the project expenditures as a whole for each entity, not for each separate line item account.

Response, Board of Supervisors. The Board of Supervisors agrees with this finding and concurs with the response given by the FOC.

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RECOMMENDATION 1: The BOS appoint a CPA to the FOC.

Response, Flood Oversight Committee. This recommendation will be implemented if a recruitment is successful. The Committee requests that the Clerk of the Board recruits a volunteer for the CPA position. If a qualified volunteer (unpaid) CPA is found, the Committee will make a recommendation to the BOS for appointment.

Response, Board of Supervisors. This recommendation may be implemented if a recruitment is successful. The Clerk of the Board periodically advertises openings on the FOC. Most recently, the Clerk advertised a request for applications to fill FOC vacancies in April 2009. The Clerk will advertise current vacancies including the CPA position the first week of August 2009.

RECOMMENDATION 2: The City of St. Helena initiate design, engineering and construction of the remaining components authorized by Measure A.

Response, City of St Helena. The City Council for St. Helena will be preparing a response to this Recommendation and submitting it under separate cover to the Presiding Judge.

RECOMMENDATION 3: The Measure A Financial Oversight Committee identify lobbying expenses (direct payment to lobbying firms and related County/municipality travel) in the annual report.

Response, Flood Oversight Committee. This recommendation will be implemented. The Measure A Financial Oversight Committee will add this to the Question/Answer section in the annual report to provide the information requested.