



A Tradition of Stewardship
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Board of Supervisors

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Alfredo Pedroza
Chairman

August 30, 2016

The Honorable Mark S. Boessenecker
Presiding Judge
Superior Court of California, County of Napa
825 Brown Street
Napa, CA 94559

FILED

SEP - 6 2016

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

Dear Judge Boessenecker:

As required by Penal Code Section 933(c), enclosed are responses to the Grand Jury's 2015-2016 Final Reports on "Maintaining Food Quality in Napa County," "Napa River Reclamation District" and "Napa County Criminal Justice Facilities: County Jail."

Grand Jury activity takes place over the course of a number of months. The Board acknowledges the members of the 2015-2016 Grand Jury for the time they have devoted in preparing the reports.

Sincerely,

A handwritten signature in black ink, appearing to read "AP", written over a white background.

Alfredo Pedroza, Chairman
Napa County Board of Supervisors

Enclosures

Cc: Foreman, 2015-2016 Grand Jury

Brad Wagenknecht
District 1

Mark Luce
District 2

Diane Dillon
District 3

Alfredo Pedroza
District 4

Keith Caldwell
District 5

NAPA COUNTY
RESPONSE TO THE GRAND JURY FINAL REPORT
ON THE NAPA RIVER RECLAMATION DISTRICT

August 30, 2016

The Grand Jury requested responses from the Napa County Board of Supervisors and from Napa County Counsel, which are included below.

Finding 4. Despite NRRD clearly not performing its essential levee maintenance function, County dollars have been spent to partner with NRRD on various stop gap projects such as sand bag facilities and dewatering pumps.

Board of Supervisors' Response: The Board of Supervisors disagrees with this finding. County of Napa funds were not used to pay for sandbags or dewatering pumps on Edgerly Island. The Board believes that funding, if any, for those purposes would have come from the Napa County Flood Control and Water Conservation District, an entity separate from the County. As to the statement that NRRD is not performing its essential levee maintenance functions, the County is informed that NRRD has not been able to perform levee maintenance functions because its members, the property owners within NRRD, have not given NRRD that authority and have not approved assessments that would give NRRD the resources to do so.

Finding 5A. If NRRD floods, County facilities (Milton Road) could be damaged, first responders (fire, EMS, etc.) could be at risk serving NRRD residents, and the district's underground sewer system could fail, possibly causing a serious health and safety issue to residents and responders, as well as significant public or private property damage.

Board of Supervisors' Response: The Board of Supervisors agrees with this finding with certain necessary caveats. The County agrees that flooding can cause significant property damage including damage to private and public property, including County roadways. The County also agrees that in the context of responding to almost any emergency or calamity, including flooding, the role of first responders involves exposure to injury. Thus, efforts can and should be made to minimize the risk of flooding by those who are in the position to do so. The privately owned levees are not within the control or jurisdictional authority of Napa County. In fact, the owners of lots within NRRD have, according to the Grand Jury report itself, apparently declined to approve measures or assessments that would give their own reclamation district the power to effect improvements to the levees that protect them and their neighbors from potential flooding.

Finding 5B. In the event of a flood in NRRD, it is unclear what the responsibility and liability would be for Napa County and its taxpayers. During its investigation, the Grand Jury became concerned that the county would have to pay for the flood damages because state and federal agencies likely would not pay for the errors of local authorities in failing to make sure that NRRD was empowered and funded to take necessary precautionary steps.

Board of Supervisors' and County Counsel's Response: The Board of Supervisors and County Counsel disagree with this finding in part and agree in part. The County has no legal authority to "empower" NRRD to exercise authority over levee maintenance or to compel NRRD to take "necessary precautionary steps" as the finding suggests. While the County agrees that there is no certainty about whether someone might make a claim that the County has liability in the event of a flood on Edgerly Island, applicable law indicates that the County cannot be held liable in connection with any failure of the privately-owned levees in providing adequate flood protection. As to the question of which federal, state or local public entities or agencies would bear responsibility for funding repairs or remediation in the event of flooding, that is a very complex subject which would depend on many factors, including the scope of the flooding, the cost of necessary repairs or remediation, and many other factors that cannot be known at the present time.

Finding 7. NRRD contracts with the County for its legal services. Counsel assigned by the County to NRRD refused to participate in a Grand Jury interview without a subpoena, and, upon appearing, refused to answer some basic questions. Therefore, the Grand Jury has been unable to ascertain important information as to NRRD's legal responsibilities and liabilities

County Counsel's Response: County Counsel agrees with the factual statements in this finding with the following explanation. The attorney-client privilege, which is sacrosanct in American jurisprudence, required the office's deputy to refrain from answering certain questions posed by the Grand Jury. The privilege, which requires attorneys to refrain from describing the advice they have provided to clients, is a privilege that is held by the client, not by the attorney. Consequently, the attorney is not in a position to waive the privilege – only the client (in this case, NRRD) can do so. It would be a violation of professional ethics for the attorney to respond to questions that sought disclosure of legal analysis that had been provided to a client.

Recommendation No. 1: The County BOS should direct County Counsel to render a written opinion, that will be made public, on the respective liabilities and responsibilities of NRRD and the County arising from NRRD's failure to perform its essential function(s).

Board of Supervisors and County Counsel's Response: The Board of Supervisors disagrees with and respectfully declines to follow the recommendation. County Counsel is legally responsible for representing the County and the Board of Supervisors. An attorney-client relationship exists between the Board/County and County Counsel. It is not County Counsel's role to provide legal advice to the public at large. County Counsel's analysis and advice provided to the County regarding issues of potential County liability, if any, are protected and privileged from disclosure by the attorney-client privilege and the attorney work product doctrine. To require the office of County Counsel to disclose its analysis publicly would risk prejudice to the County's position in any litigation that might occur. Thus, the County cannot be required to waive the privilege or required to direct County Counsel to disclose its analysis.

As to advice and analysis provided by County Counsel attorneys to NRRD (which is a client of the office of County Counsel independent of the County), only NRRD can waive the privilege or direct County Counsel to divulge its analysis as to NRRD's potential liability.