

**NAPA RIVER RECLAMATION DISTRICT #2109**

1501 MILTON ROAD  
NAPA, CA 94559

Phone (707) 255-2996  
Web [www.nrrd2109.org](http://www.nrrd2109.org)

August 25, 2016

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

**FILED**

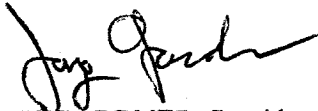
**SEP - 6 2016**

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

Dear Judge Boessenecker:

As required by Penal Code Section 933(c), please find enclosed the Board of Trustees' responses to the 2015-2016 Final Report on Napa River Reclamation District issued on June 6, 2016. The Board acknowledges the members of the 2015-2016 Grand Jury for the time they devoted in preparing the report.

Respectfully,



JAY GARDNER, President  
Napa River Reclamation District Board of Trustees

Cc: Foreperson, 2015-2016 Grand Jury  
Napa County Counsel's Office  
Napa County Flood Control District  
Napa County LAFCO

NAPA RIVER RECLAMATION DISTRICT  
RESPONSE TO THE GRAND JURY FINAL REPORT  
ISSUED ON JUNE 6, 2016

The Grand Jury requested responses from the Board of Trustees are set forth below:

**Finding 1:** NRRD is not now performing, and never has performed, the essential levee control and maintenance responsibilities for which it was created.

**Board of Trustee's Response:** The Board of Trustees ("Board") disagrees in part with Finding #1 as the Grand Jury's use of the word "responsibilities" could be read to suggest that NRRD is required to control and maintain all the levees within NRRD's boundaries. Except for approximately fifty (50) linear feet of levee owned in fee by NRRD that is maintained by NRRD's staff, the levees within NRRD that abut the Napa River are privately owned and have been and remain the responsibility of the private property owners to maintain. Without and until securing additional property rights, NRRD has no authority, let alone responsibility to maintain those levees.

As noted by the Grand Jury and LAFCO's prior reports, NRRD was established in 1974 well after the levees and most of the abutting homes were constructed. While NRRD has corporate powers that would permit it to secure property rights and construct reclamation works, NRRD only currently receives between \$20,000 to \$25,000 dollars per year in funding that could be used towards those purposes. Accordingly, our current Board, like those that have predated us in donating our time to help serve our community, is confronted with a significant challenge and limited resources.

Given the limitations of its financial resources, prior Boards have attempted to secure financial assistance from other entities and have taken on those efforts that were achievable – installing survey stakes so community members could gauge the height of respective portions of the levee, purchasing flood pumps, educating members of the community on levee maintenance and responsibilities, and ensuring sand bags are available – among other efforts. As noted by the Grand Jury's report, prior Board's also brought lawsuits in an attempt, which ultimately failed, to force certain property owners to bring their portion of the levee up to community standards.

Thanks in part to NRRD's efforts and the work of many responsible members of our community that have improved their portion of the levee, the existing levees have kept the community dry for over three decades. Recent reports on anticipated impacts of climate change, however, suggest significant increases to the height of the south Napa tides by 2050. If these forecasts prove accurate, these tidal increases would add to the impacts of subsidence and collectively challenge the existing levees both along the Napa River and Mud Slough. Like the Grand Jury, our Board has taken note of the increased speed with which sea level rise is forecasted to occur and that such significant increases, if accurate, are likely to overwhelm the existing privately owned levee system.

Though NRRD does not have a significant revenue stream to direct towards taking on this challenge, our Board's prudent budgeting has enabled us to set aside a small reserve. Although we must do so prudently, our Board is prepared to spend a significant portion of that reserve towards determining whether a viable option exists to address the threats of sea level rise and subsidence.

On July 7, 2016, as a follow-up to discussions that pre-date the Grand Jury report, our Board sent a letter to the Napa County Flood Control & Water Conservation District Board (“Flood Board”) requesting assistance and stating our Board’s desire to enter into a cost sharing agreement to secure an engineer’s report that would (1) assess the long-term flood protection needs along Edgerley Island and Ingersol Tract, and (2) provide recommended options and estimated costs for constructing requisite improvements. (The July 7, 2016 letter is attached hereto as Exhibit A.) In that letter, our Board stated that we would be prepared to spend \$100,000, which is roughly 30% of our reserves, towards such a study.

On August 2, 2016, the Flood Board discussed our request and received public comments from our Board President and members of our community. As a result, the Flood Board, without committing to funding our request, asked their staff to prepare a scope for the requested study and a cost sharing agreement that their Board could consider at a subsequent meeting.

Securing an engineering report will not solve the challenges facing our community, but our Board sees it as the important next step. Once we have the recommendations of that report, our current Board anticipates working to secure whatever outside grants or funding assistance might be available. A portion of any project; however, whether taken on by NRRD or another entity, would likely have to be born by property owners on Milton Road. In accordance with Proposition 218, any assessment that could subsequently be bonded to construct an identified improvement would also require their support.

The buy-in and support of our community on Milton Road over the years to come is a vital to addressing the challenges tidal inundation and subsidence present. Through the referenced engineer’s report, our Board hopes to secure the most accurate picture we can of what the future holds and what options we as an entity, and the community we represent, have to confront the challenges that future presents.

**Finding 2:** All parties with oversight of NRRD either know or should have known of NRRD’s continued failure to perform. These parties include the NRRD Board of Directors, NCLAFCO Executive Director(s) and Commissioners, and Napa County Counsel’s office.

**Board of Trustee’s Response:** The Board agrees that all parties and the community are aware or should have been aware of the challenges facing the community on Milton Road, but disagrees with this finding to the extent that it suggests that there has been a “failure to perform” for the same reasons set forth in our response to Finding #1. The Board refers the Grand Jury to that response.

**Finding 3:** Despite being aware of NRRD’s failures, all stakeholders—including NRRD residents and directors—have failed or refused to remedy the situation.

**Board of Trustee’s Response:** The Board disagrees with this finding in part for the same reasons set forth in our response to Finding #1 and refers the Grand Jury to that response. In addition, the Board disagrees with this finding to the extent that it suggests all the property owners along Milton Road have failed to or refused to attempt to address their portion of the levee. Many members of our community have taken active and costly steps to improve the portion of the levee that they own and control.

**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 Trustee's Response:** The Board agrees with this finding.

**Finding 6:** Geologic information the Grand Jury reviewed and witness testimony indicate that, due to subsidence and rising levels of the Napa River and surrounding wetlands in coming years, existing levees within NRRD will be inadequate to protect properties in the district.

**Board of Trustee's Response:** The Board agrees that subsidence and the rising tidal forces predicted by recent studies, if accurate, would cause the existing levees to be inadequate to protect the properties along Milton Road. Our Board's goal in securing the engineer's report referenced in our response to Finding #1 is to, among other things; define for our community the timeframe it has to address this challenge and the cost of constructible solutions.

**Recommendation 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 Trustee's Response:** While the recommendation is asking a separate legal entity to take an action, the Board's position is that this recommendation should not be implemented because it is neither warranted nor reasonable. As stated in our Board's response to Finding #1, NRRD only owns fifty (50) linear feet of levee and has no responsibility to maintain the privately owned portions of the levees along Milton Road.

**Recommendation 3:** NCLAFCO should, within the next six months, complete comprehensive Sphere of Influence, Municipal Services and Governance reviews of NRRD.

**Board of Trustee's Response:** While the recommendation is asking a separate legal entity to take an action, the Board of Trustee's understands LAFCO intends to implement a portion of this recommendation. Accordingly, the Board of Trustee's intends to work with LAFCO towards finalizing their "Sphere of Influence" and "Municipal Services" reviews within the next six months. The Board of Trustee's further understands that LAFCO is not required to complete a "Governance" study and does not intend to perform such a study at this time. Should LAFCO choose to complete a "Governance Study", the Board of Trustee's would intend to work with LAFCO towards the preparation of such a report.

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July 7, 2016

Board of Directors  
Napa County Flood Control & Water Conservation District  
804 First Street  
Napa, CA 94559

Dear Board of Directors:

Napa River Reclamation District No. 2109 (NRRD) is located approximately eight miles southwest of the City of Napa on Milton Road along the western shoreline of the Napa River. Our community includes 135 occupied homes on Edgerley Island and Ingersol Tract, all of which abut the Napa River. The levees on the lots along the NRRD's eastern boundary are owned and maintained by the individual property owners.

In addition to providing flood protection to the homes on Milton Road, the aforementioned levees also hold back the Napa River from properties that are located to the west of Milton Road on Edgerley Island and owned by Napa County Flood Control & Water Conservation District (Flood District) and the State of California. Those properties also include levees, which provide vital flood control protection for Edgerley Island from Mud Slough.

Recent reports on anticipated impacts of climate change suggest significant increases to the height of the south Napa tides by 2050. If these forecasts prove accurate, these tidal increases would add to the impacts of subsidence on Edgerley Island and collectively challenge the existing levees both along the Napa River and Mud Sough. The NRRD Board of Trustees wants to study those potential impacts and what improvements could be economically constructed to protect the community against this threat. As a first step, we hope to secure an engineer's report that would assess the longterm flood protection needs along Edgerley Island and Ingersol Tract as well as recommended options and estimated costs for constructing requisite improvements.

Given NRRD's limited financial and staff resources as well as our two districts' shared concern and interests on Edgerley Island, I write you today on behalf of the NRRD Board of Trustee's to formally request the Flood District's assistance in procuring and paying for the aforementioned engineers report. Specifically, we request assistance (1) from your in preparing appropriate procurement documents and subsequently selecting an appropriate engineering firm, and (2) in paying for the costs of the engineering

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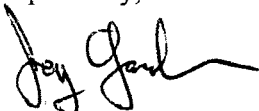
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report through a cost sharing agreement.

Based on our conversations with your staff, we anticipate the study and report may cost up to \$200,000. The NRRD Board of Trustees proposes that the two districts share the final cost equally.

The Board of Trustees hopes you will consider this request at your earliest convenience as we hope to move forward as quickly as possible. If you have any additional questions, please contact our District Office at (707) 255-2996.

Respectfully,

A handwritten signature in black ink, appearing to read "Jay Gardner", with a stylized flourish at the end.

JAY GARDNER, President  
Napa River Reclamation District Board of Trustees