



**COUNTY ADMINISTRATIVE OFFICE
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

PETE VANDER POEL
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: September 18, 2012

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
CONTACT PERSON: Kristin Bennett PHONE: 636-5005		

SUBJECT: Grand Jury Response

REQUEST(S):

That the Board of Supervisors:

1. Consider, modify as needed, and approve the response to the Tulare County Grand Jury 2011/12 Final Report regarding the report entitled, "Lack of Oversight of Tulare County Special Districts," and
2. Authorize the Chairman to sign the response letter.

SUMMARY:

The 2011/2012 Grand Jury Final Report requests a response from your Board regarding the report entitled, "Lack of Oversight of Tulare County Special Districts." Your Board is required to provide your comments to the Presiding Judge of the Superior Court within 90 days of receipt of the report.

A draft response to the report is attached for your consideration. It is requested that your Board modify any draft as needed, approve the response to the Grand Jury and authorize the Chairman to sign.

FISCAL IMPACT/FINANCING:

No fiscal impact.

SUBJECT: Grand Jury Response

DATE: September 18, 2012

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's Strategic Plan includes the Organizational Performance Initiative which provides for the objective evaluation and measurement of County program performance. The Board's approval of the Grand Jury response helps fulfill this initiative by ensuring accurate information is available to all residents.

ADMINISTRATIVE SIGN-OFF:

Kristin Bennett
Assistant County Administrative Officer

Cc: Auditor Controller
County Counsel
County Administrative Office (2)

Attachment(s)
Draft Response Letter

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF
GRAND JURY RESPONSE

) Resolution No. _____
) Agreement No. _____

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN M. ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Considered, modified as needed, and approved the response to the Tulare County Grand Jury 2011/12 Final Report regarding the report entitled, "Lack of Oversight of Tulare County Special Districts," and
2. Authorized the Chairman to sign the response letter.

September 20, 2012

DRAFT

The Honorable Lloyd L. Hicks
Tulare County Superior Court, Room 303
221 South Mooney Boulevard
Visalia, CA 93291

Dear Judge Hicks:

On behalf of the Board of Supervisors, the following is the Board's response to the 2011/2012 Tulare County Grand Jury Report titled *Lack of Oversight of Tulare County Special Districts*.

Finding 1

The directors of some special districts are elected by voters within the district (e.g. memorial districts).

Response: The Board of Supervisors agrees with this finding.

Finding 2

The directors of other special districts are elected by land owners within the district (e.g. irrigation districts).

Response: The Board of Supervisors agrees with this finding.

Finding 3

The Board of Supervisors appoints the directors of certain special districts (e.g. water works districts and cemetery districts). Also, the Board of Supervisors appoints directors to special districts when the number of elected directors remaining on the board constitutes less than a quorum, but it cannot appoint more than the number necessary to make a quorum.

Response: The Board of Supervisors partially agrees with this finding. First, the Board of Supervisors does appoint the directors of certain special districts (e.g., county waterworks districts (Wat. Code, § 55000 et seq.) and cemetery districts (Health & Saf. Code, § 9000 et seq.)).

Second, Government Code section 1780 does authorize the Board of Supervisors to appoint directors to (elected) special districts when the number of elected directors remaining on the board constitutes less than a quorum.

However, the finding is incomplete. Government Code section 1780 requires the district secretary or a remaining member of the (elected) district board to request that the Board of Supervisors take action to fill the vacancy or vacancies needed to reach a quorum. The Board of Supervisors can do nothing without this request. In addition, the Board of Supervisors also has the option under this statute of calling an election to fill the vacancy or vacancies needed to provide the district board with a quorum.

The finding is also incomplete because it omits the far more common situation where the remaining members of a special district's elected board still constitute a quorum. Government Code section 1780 also provides that in this situation, the board of the district has 60 days to make an appointment or call an election. If the board fails to do so, and if the district informs the Board of Supervisors, then the Board of Supervisors has 30 days to make an appointment or call an election. If the district board does not inform the Board of Supervisors in a timely manner, the Board of Supervisors has no power to appoint or order an election to fill the vacancy.

Finding 4

The Maddy Act (§§54970 – 54974) provides for the creation of a Local Appointments List by the Board of Supervisors. It does not provide a procedure for the recruitment of individuals to be considered for appointment as directors of special districts.

Response: The Board of Supervisors partially agrees with this finding. First, Finding 4 is relevant only to Finding 3. The Board includes in both the yearly list and in the posting of unexpected vacancies required by the Maddy Act those positions which the Board always appoints (such as cemetery district boards). The Maddy Act does not apply to vacancies in elected positions such as those described in Findings 1 and 2. Filling vacancies on elected special district boards is governed by Government Code section 1780.

Second, the Maddy Act does require some publicity regarding the availability of the appointive positions. Government Code section 54973 provides that the yearly list must be made available to the public both at the Clerk's office and at the public library with the largest service population. The Board complies with this requirement. Government Code section 53974 provides that a special vacancy notice regarding unscheduled vacancies must be posted at the Clerk's office, in the same library as the yearly list, and in other places as directed by the Board. The Board also complies with this requirement.

Finding 5

Government Code §56375 gives Local Agency Formation Commission (LAFCO) the authority to initiate proposals for the consolidation, dissolution, merger, or reorganization that includes any of these changes of organization.

Response: The Board of Supervisors agrees with this finding.

Finding 6

Staffed with one half time executive officer, LAFCO also has one full time staff analyst, and other part time employees including a clerk who performs LAFCO duties 10% of the time.

Response: This finding is not in the purview of the Tulare County Board of Supervisors.

Finding 7

There are 115 special districts in Tulare County. Of these, 92 are considered principal districts for which LAFCO is responsible. The remaining 23 are primarily located in adjoining counties and those counties are responsible for these districts.

Response: This finding is not in the purview of the Tulare County Board of Supervisors.

Finding 8

Government Code §26909 requires each special district in the county to undergo an annual or biannual audit of its accounts and records for the County Auditor.

Response: The Board of Supervisors agrees with this finding, but notes that the finding is incomplete. Government Code section 26909 also authorizes a special district to request, and the Board of Supervisors to approve, that the annual audit be replaced by a five-year audit, by an audit at such intervals as recommended by the County Auditor, at least once every five years, or by a financial review. Government Code section 26909 also provides that a special district is exempt from the requirement of an annual audit if the financial statements are audited by the State to satisfy Federal audit requirements.

Finding 9

In 2011, 29 special districts experienced an operation loss or decrease in assets. In addition 11 special districts failed to perform any audits for one or more years. This shows a disturbing shortcoming in the operation of a significant number of the special districts in Tulare County.

Response: This finding is not in the purview of the Tulare County Board of Supervisors.

Finding 10

Since July 8, 2011, the Grand Jury has received seven complaints from citizens regarding special districts, each of which raised significant issues regarding their governance and operation.

Response: This finding is not in the purview of the Tulare County Board of Supervisors.

Finding 11

Special districts in the community of Alpaugh include the Tulare County Waterworks No.1, the Alpaugh Irrigation District, the Alpaugh Joint Powers Authority, and the South Tulare County Memorial District. Significant problems with their operation and governance exist.

Response: The Board of Supervisors partially agrees in part with this finding. The Board appoints individuals to serve as the Board of Directors of Tulare County Waterworks District No. 1, which in turn, appoints individuals to serve on the Alpaugh Joint Powers Authority. The Board passed a resolution in May 2012 to form the Alpaugh Community Services District (CSD) and submitted an application to LAFCO which was subsequently approved. The CSD is on the November 2012 ballot and, if it passes, would dissolve Tulare County Waterworks District No. 1 and the Alpaugh Joint Powers Authority, return irrigation water only to the purview of the Alpaugh Irrigation District, and provide domestic water through the newly formed CSD.

The finding regarding the South Tulare County Memorial District is not in the purview of the Tulare County Board of Supervisors.

Finding 12

Government Code §8546.10 became effective January 1, 2012 giving the State Auditor the authority to establish a high-risk local government agency audit program. It is too early to know if this program will be used to evaluate whether criminal charges should be filed against any special district.

Response: The Board of Supervisors partially agrees with this finding.

New Government Code section 8546.10 was enacted effective January 1, 2012, and it does give the State Auditor the authority to establish a high-risk local government agency audit program. However, the statute does not provide for criminal consequences, so it is too speculative to state anything in regard to use of a future audit for any purpose.

Finding 13

The California Special Districts Association provides its members with extensive education materials including workshops, course modules and webinars on various aspects of the governance and operation of special districts.

Response: This finding is not in the purview of the Tulare County Board of Supervisors.

Recommendations

1. *The Board of Supervisors should:*

- a) *place the matter of the shortcomings in the audits of special districts on its agenda for discussion upon being advised of these issues by the Auditor-Controller/Treasurer-Tax Collector.*

Response: This recommendation will be implemented, in that it will be referred to the Tulare County Auditor-Controller for action. Per Government Code section 26909, these audits are in the purview of the Auditor.

- b) *increase the budget of the grand jury enabling it to hire investigative and forensic auditing services. This would provide the grand jury with resources to more thoroughly investigate the shortcomings in the operation and governance of special districts in Tulare County.*

Response: This recommendation will not be implemented, as it is not warranted. Government Code section 26909 establishes the audit responsibilities with the County Auditor. Increasing the Grand Jury resources to allow for auditing services would likely lead to the duplication of expenditures. The recommendation is also not currently fiscally feasible.

- c) *recommend LAFCO adopt an annual budget permitting it to hire additional full time personnel. This would enable LAFCO to monitor the operation and governance of special districts. Then LAFCO could act to encourage the boards to make changes that would permit the special districts to operate more effectively. Where boards fail or are unable to operate the districts effectively, LAFCO could act to dissolve or reorganize the district.*

Response: This recommendation cannot be implemented by the Board of Supervisors. It is not in the purview of the Board of Supervisors to direct LAFCO budgeting and staffing management decisions.

d) *develop a procedure for recruiting individuals for appointment to the boards of special districts in addition to the requirements of the Maddy Act (§§54970 – 54974).*

Response: The recommendation will not be implemented for the appointment of members to the board of an elected special district. First, the Maddy Act does not apply to these appointments. Second, the Board of Supervisors can only make such an appointment at the request of the district, and usually this authority exists for too short a time (30 days) to allow for a general recruitment procedure.

As stated in the response to Finding 4, the Board of Supervisors provides publicity as required by law regarding the availability of positions on the boards of appointed special districts.

Sincerely,

Allen Ishida, Chairman
Tulare County Board of Supervisors

CC: Tulare County Grand Jury