

**Empire Sanitary District
Grand Jury Case No. 02-04-C
June 28, 2002**

REASON FOR INVESTIGATION

The Civil Grand Jury received a complaint from a resident of the town of Empire. The complaint was against the Empire Sanitary District Board of Directors (ESDBOD). The complaints were as follows:

1. The ESDBOD raised the rates for sewer service unnecessarily.
2. The ESDBOD raised the rates for sewer service and did not notify residents of the proposed increase.
3. Employees of the Empire Sanitation District (ESD) were improperly given gift certificates for Christmas.
4. Several boxes of files belonging to the ESD were destroyed creating the inability to research information from prior years.
5. Residents were told that, if they paid their sewer bill by the year, the sewer rate would never increase.
6. The ESDBOD is unresponsive to its citizens and has violated numerous provisions of the Ralph M. Brown Act.

BACKGROUND

The ESD was established on June 18, 1948 under the legal authority of the Sanitary District Act of 1923, Health and Safety Code section 6400 et. seq. The Sanitary District is governed by five (5) directors. The ESDBOD is elected to four (4) year terms. The Sanitary District employs two (2) maintenance workers and one (1) secretary. The Sanitary District is responsible for sewage disposal for residents in the town of Empire.

PROCEDURES FOLLOWED

1. The Civil Grand Jury interviewed:
 - a. Complainant.
 - b. Associate Civil Engineer, City of Modesto.
 - c. Two (2) residents, town of Empire.
 - d. Resident and board member, Empire Municipal Advisory Committee.
 - e. Property owner, town of Empire (non resident).
 - f. Two (2) maintenance workers, ESD.
 - g. Attorney, ESD.
 - h. Director of Engineering and Transportation, City of Modesto
 - I. Accountant, ESD.
 - j. Former secretary and board member, ESD.
 - k. President, ESDBOD.

2. The Civil Grand Jury reviewed the following documents and records:
 - a. Original complaint.
 - b. Letter regarding rate increase (no date).
 - c. Income/Expense summary February 1-February 28, 1999.
 - d. Income/Expense summary October 1-October 31, 1999.
 - e. Customer bill-October 1, 2001.
 - f. Draft Budget, ESD-1998, 1999, 2000, 2001.
 - g. Explanations to budget from accountant of ESD.
 - h. Letter from Associate Civil Engineer of City of Modesto to ESDBOD-February 11, 1999.
 - I. Agreement to Terminate Contract, General Release and Mutual Settlement of All Claims-August 14, 2001.
 - j. Modesto City Council Resolution #97-94.
 - k. Letter from President of ESDBOD to City of Modesto, June 15, 1999.
 - l. Sign-in sheets, ESDBOD meeting-February 14, 2001, May 9, 2001, and June 13, 2001.
 - m. ESDBOD meeting notices and agendas from January 2000 to January 2002.
 - n. ESDBOD meeting minutes-May 1998 to December 2001.
 - o. ESDBOD meeting minutes-Special Meeting, home of a board member - November 3, 2000. (No notice or agenda were included).
 - p. Special board meeting notice and agenda for July 5, 2001. (Discuss two ESDBOD vacancies and sewer service contract with City of Modesto).
 - q. Special board meeting notice and agenda for October 22, 2001. (Discuss purchase of new vehicle).
 - r. Special board meeting notice and agenda for November 28, 2001. (Discuss discipline/dismissal/release of public employee and filling office manager vacancy).
 - s. Minutes of special board meeting July 5, 2001.

- t. ESD notice of intention to adjust sewer rates–March 2001.
 - u. Modesto City Council Resolution #2001-5 approving and authorizing execution of agreement with City of Modesto, discussed on August 8, 2001.
 - v. Minutes of special board meeting October 19, 2001. (Notice was for October 22, 2001).
 - w. Petition signed by residents of Empire opposing rate increase of May 9, 2001.
 - x. Thirty-five (35) letters from Empire residents to members of ESDBOD opposing rate increase of May 9, 2001.
 - y. Letter (undated) from a resident to the Grand Jury.
 - z. Legal opinion, Stanislaus County counsel–November 7, 2001. Proposition 218, Article 4.3, Section 6: Property Related Fees and Charges. Government Code Section 53739, Local Levies.
 - aa. Government Code Section 26909, Audits of Special Purpose Districts.
 - bb. Letter from CPA to ESD–November 5, 2001.
 - cc. Letter from Auditor Controller’s office, City of Modesto to ESD–November 20, 2001.
 - dd. Memo from Auditor Controller’s office to Grand Jury–November 1, 2001.
 - ee. Populations of cities and communities in Stanislaus County, 2000 census.
 - ff. Letter from Grand Jury to ESD–November 15, 2001 requesting documents.
 - gg. Letter from the insurance agent to insurance company regarding retirement transfers, July 2, 2001.
 - hh. Letter from City of Modesto to President of ESDBOD.
 - ii. Daily maintenance logs for ESD, November 2000 to January 2002.
 - jj. Health and Safety Code Sections 6400-6825 (Sanitary District Act of 1923).
 - kk. Government Code Section 1780-1781 (Board Vacancies in Special Districts).
 - ll. Public Utility Code Section 11865 (Board Vacancies-Special Districts).
3. The Civil Grand Jury attended an ESDBOD meeting–October 10, 2001.

COMPLAINT #1:

The ESDBOD raised the rates for sewer service unnecessarily.

FINDINGS

1. In May 1969, the City of Modesto and the ESD entered into an agreement for the treatment of sewage from the ESD. This agreement had an expiration period of thirty (30) years, expiring in May 1999. In that agreement, the City of Modesto agreed to accept sewage from the ESD.
2. In February 1999, the City of Modesto prepared an amendment to the agreement. This amendment stated the City of Modesto would agree to accept sewage from the ESD for another thirty (30) years. The agreement set the sewer charges in accordance with Modesto City Council Resolution #97-94.
3. In August 2001, the City of Modesto and the ESD renegotiated the agreement and entered into a new agreement. The new agreement terminated the original contract dated 1969 and also terminated all subsequent amendments to the original contract.
4. In the new agreement, the ESD agreed to pay rates corresponding to the amounts listed in Modesto City Council Resolution # 2000-581. Those amounts may be increased or decreased by the City of Modesto in accordance with future revisions made by Council resolution. The rate would be reduced by \$0.92 per unit due to the fact that the ESD maintains its own system, and the City of Modesto does not perform maintenance on the system. In addition, the City of Modesto agreed to reduce the rate charged to ESD by \$2.50 per unit for a period of twenty-four (24) months. The City of Modesto currently charges a billing fee of \$0.30 per unit.
5. Prior to 1999, the City of Modesto charged the ESD \$6.99 plus an additional billing fee of \$0.39 for a single family residence. In February 1999, the amount was raised to \$11.29. Commencing with the new agreement, in August 2001, the City of Modesto charged the ESD \$12.19 per single family dwelling (minus \$0.92 per dwelling).
6. On February 11, 1999, the ESDBOD increased the sewer rate for a single family dwelling from \$6.67 per month to \$11.29 per month.
7. On June 1, 1999, the ESDBOD increased the sewer rate for a single family dwelling from \$11.29 per month to \$17.16 per month.

8. On May 9, 2001, there was a proposal by the ESDBOD to increase the sewer rate for a single family dwelling from \$17.16 per month to \$23.17 per month.
9. A review of the budget and prior year's actual income/expense statements indicated that the ESD budget shortfalls consisted of \$11,224 in 1998, \$9,317 in 1999, and \$38,395 in 2000. Due to the \$2.50 per unit refund from the City of Modesto, the budget does not expect shortfalls in the year 2001 and 2002.
10. The budget indicated the ESD had increased maintenance fees in 1999.
11. Prior to 1999, the ESD had approximately \$22,000-\$25,000 in 90-day delinquent accounts that had not been collected. Due to collection efforts by the office manager, that figure was reduced to approximately \$13,000-\$14,000. These figures were reported in a letter from the City of Modesto to the office manager.
12. Testimony received indicated that, prior to 1999, delinquent accounts were not being tracked or collected.
13. Board meeting minutes, dated July 11, 2001, indicate the ESDBOD unanimously approved the contract with the City of Modesto dated August 2001. Because of this contract, and the \$5,000 anticipated monthly refund from the City of Modesto, the ESDBOD decided unanimously to cancel its proposed sewer rate increase of May 2001.
14. The City of Modesto indicated the ESD's system was substandard based upon Modesto's benchmarks.

CONCLUSIONS

The Civil Grand Jury concluded that:

1. For many years the sewer rates for the ESD were kept to a bare minimum, which did not allow for long-term maintenance.
2. The City of Modesto has charged the ESD for maintenance costs, while the maintenance function and responsibility rested with the ESD. This situation was rectified with the signing of a new contract dated August 2001.
3. The ESD's system is in poor condition. As the pipelines continue to age:
 - a. There will be increased expenses to maintain them.
 - b. The maintenance problems will be more frequent and more serious in

nature.

- c. An increasingly large amount of revenue will be needed for maintaining and upgrading the sewer lines.
4. The rate increases in February 1999 and June 1999 were necessary because reserves were depleted and expenses exceeded income. There were insufficient funds to cover the operating costs of the district.
5. Budget shortfalls are expected in 2003 when the ESD is no longer able to receive the \$2.50 per unit rate reduction.

RECOMMENDATIONS

The Civil Grand Jury recommends that:

1. The ESDBOD should have the City of Modesto perform a thorough examination of the sewer lines. This examination would determine what upgrades would be necessary to bring the system in compliance with the City of Modesto standards for comparable lines.
2. The ESDBOD should consult with an expert regarding the possibility of obtaining a grant for funds to upgrade the infrastructure as indicated by the City of Modesto report. The City of Modesto has indicated a willingness to assist in this endeavor.
3. If a grant is obtained, and the lines are upgraded, the ESD should consider contracting with the City of Modesto to take over all operations. This should result in a decrease of sewer rates to the residents of Empire.
4. A procedure for collecting delinquent accounts should be formulated, adopted, and implemented as soon as possible. All customers should receive a written copy of this policy.
5. The ESDBOD should employ a CPA or accounting firm that will inform the ESDBOD of budget restrictions, implications, and long-term impact of any proposed actions.
6. The ESDBOD should engage in a public awareness program to educate the residents of Empire of anticipated sewer rate increases and the reasons why such increases are necessary.

COMPLAINT #2:

The ESDBOD raised the rates for sewer service and did not notify residents of the proposed increase.

FINDINGS

1. On February 11, 1999, the ESDBOD increased the sewer rate for a single family dwelling from \$6.67 per month to \$11.29 per month.
2. On June 1, 1999, the ESDBOD increased the sewer rate for a single family dwelling from \$11.29 per month to \$17.16 per month.
3. On May 9, 2001, there was a proposal by the ESDBOD to increase the sewer rate for a single family dwelling from \$17.16 per month to \$23.17 per month.
4. Prior to the May 9, 2001 ESDBOD meeting, a “Notice of Intent to Adjust Sewer Rate” was distributed to property owners in the town of Empire.
5. Six (6) residents, two (2) members of the ESDBOD, and one (1) non-resident property owner stated they did not receive prior notice of the intent to increase sewer rates for the increases dated February 11, 1999 and June 1, 1999.
6. Two (2) members of the ESDBOD, as well as the attorney for the ESDBOD, stated that prior to 2000, the ESDBOD was not aware they had to notify citizens of the proposed rate increases.
7. Notice of proposed sewer rate increases are required per Proposition 218, Article 4.3, Section 6 (Property Related Fees and Charges), Government Code Section 53739 (Local Levies), and Government Code Section 54954.6.

CONCLUSIONS

The Civil Grand Jury concluded that:

1. The ESDBOD did not notify property owners of the intent to increase sewer rates prior to increasing rates on February 11, 1999 and June 1, 1999.
2. The ESDBOD failed to comply with certain requirements of Proposition 218, Article 4.3, Section 6 (Property Related Fees and Charges), Government Code Section 53739 (Local Levies), or Government Code Section 54954.6.

RECOMMENDATIONS

The Civil Grand Jury recommends that:

The ESDBOD should comply with the requirements of Proposition 218, Article 4.3, Section 6 (Property Related Fees and Charges), Government Code Section 53739 (Local Levies), and Government Code Section 54954.6.

COMPLAINT #3:

Employees of the ESD were improperly given gift certificates for Christmas.

FINDINGS

1. The three (3) employees of the ESD each received gift certificates in the amount of \$25.00 to a local market in January 2001.
2. The gift certificates were in recognition of dedicated service and meant to be a non-taxable, one-time bonus.
3. The issuance of the gift certificates was discussed in a public meeting dated December 13, 2000.

CONCLUSIONS

The Civil Grand Jury concluded that:

1. The ESD desired to recognize its employees for dedicated service.
2. The gift certificates should have been made a part of employee compensation.

RECOMMENDATIONS

The Civil Grand Jury recommends that:

The ESDBOD should establish a policy regarding the giving of employee gift certificates as part of compensation.

COMPLAINT #4:

Several boxes of files belonging to the ESD were destroyed, creating the inability to research information from prior years.

FINDINGS

1. There was conflicting testimony regarding the destruction of files.
2. Files were stored in several boxes and garbage bags and were not marked.
3. Files were transferred from office to office at least three (3) times.

CONCLUSIONS

The Civil Grand Jury concluded that:

1. Due to conflicting testimony and lack of corroborating evidence, this allegation could not be substantiated.
2. The system for storing files is poor and creates difficulty in locating information from previous years.

RECOMMENDATIONS

The Civil Grand Jury recommends that:

The ESDBOD, with input from the office manager, should adopt and implement a formal records storage system for past and current office documents.

COMPLAINT #5:

Residents were told that, if they paid their sewer bill by the year, the sewer rate would never increase.

FINDINGS

1. A 5% discount has been approved by the ESDBOD for any resident's bill on flat rate service when paid one year in advance.
2. With the exception of the complainant, all residents interviewed testified they were not told by anyone that their sewer rates would never increase if they paid annually.

CONCLUSIONS

The Civil Grand Jury concluded that:

The ESD and ESDBOD did not tell residents, or state in writing, that sewer rates would never increase if they paid their bills annually.

RECOMMENDATIONS

None. The allegation was found to be untrue.

COMPLAINT #6:

The ESDBOD is unresponsive to its citizens and has violated numerous provisions of the Ralph M. Brown Act.

FINDINGS

1. The ESDBOD received no formal training on Roberts Rules of Order.
2. The ESDBOD received no formal training on the Ralph M. Brown Act.
3. The ESD hired an attorney who specializes in special districts.
4. Testimony revealed there were instances of heated verbal discussions between ESDBOD members and citizens during ESDBOD meetings. During a meeting on May 9, 2001, a sheriff's deputy had to intervene due to a total breakdown in communications.
5. The ESDBOD has gone through a transition over the last two (2) years. Prior to 1999, there was a perception that the ESDBOD was very unresponsive to the citizens. Testimony revealed the current board is making strides to become more responsive.

6. Code Findings:

54953.3 Government Code [Sign-in sheets]

- a. Sign-in sheets were passed out during three (3) separate ESDBOD meetings held May 9, 2001, June 13, 2001, and February, 14, 2002.
- b. There is no indication on any of the three (3) sign-in sheets that persons were not required to sign-in or that signing the sheet was optional.

54954.6 Government Code [Increased fees without notice]

- a. The ESDBOD increased the rates for sewer service February 11, 1999 and June 1, 1999.
- b. There was no notice given to residents prior to these increases.

54954.2 Government Code [Regular Board Meetings/Agendas]

- a. Conflicting testimony was received regarding the posting of agendas. Some people testified that agendas have been posted for many years, while others testified they have never seen an agenda posted until 1999.
- b. Since the ESD employed an attorney in September 2000, all the agendas have been posted and have been in compliance with Government Code Section 54954.2.
- c. The ESDBOD furnished copies of agendas from January 1999 to the present.

54954.3(c) Government Code [Public Criticism]

- a. Testimony revealed there were instances of heated verbal discussions during ESDBOD meetings. There were often exchanges between board members and members of the public.
- b. During a meeting on May 9, 2001, members of the public began shouting at the ESDBOD. Some members of the ESDBOD began yelling back, creating a very tense environment. A sheriff's deputy had to intervene.

54956 Government Code [Special Meetings/meeting requirements]

- a. The ESDBOD conducted a Special Meeting at a board member's home November 3, 2000.
- b. The ESDBOD provided the meeting minutes, but was unable to provide an agenda for this meeting.
- c. The ESDBOD was unable to provide evidence that this meeting was open to the public and that an agenda was posted prior to the meeting.

CONCLUSIONS

The Civil Grand Jury concluded that:

1. Part of this allegation is subjective, depending on one's definition of "unresponsive."
2. The ESD is composed of a dedicated volunteer board of directors and three (3) paid employees.
3. The ESDBOD' lack of training in parliamentary procedure and meeting structure contributed to an unprofessional atmosphere at some public meetings.
4. The hiring and routine consultation of legal counsel has had a positive impact on the processes used by the ESDBOD.
5. The ESDBOD did not comply with certain provisions of Government Code Section 54953.3 related to sign-in sheets.
6. The ESDBOD failed to comply with certain requirements of Government Code Section 54954.6 related to notification of residents.
7. The ESDBOD has been posting meeting agendas since September 2000. Prior to this date, it is unclear if the agendas were posted. The ESDBOD was easily able to provide agenda copies from January 1999, but it is unknown whether these were posted.
8. The ESDBOD conducted at least one special board meeting in violation of certain provisions of section 54956 of the Government Code.

RECOMMENDATIONS

The Civil Grand Jury recommends that:

1. All members of the ESDBOD should attend the first available Stanislaus County workshop on the provisions of the Ralph M. Brown Act. New members of the ESDBOD should attend a workshop directed by the ESD legal counsel if no other workshop is available. This should be done within the first three (3) months upon taking office.
2. All members of the ESDBOD should familiarize themselves with Roberts Rules of Order and parliamentary procedure. All subsequent ESDBOD meetings should be structured according to these rules.

3. The ESDBOD should continue to employ an attorney with knowledge of the needs of special districts.

RESPONSE REQUIRED

per Section 933 [c] and 933.05 of the California Penal Code:

Empire Sanitary District Board of Directors.

This Final Report will be available for public review on the Civil Grand Jury website located at: <http://www.co.stanislaus.ca.us/COURTS/courts/grandjury/index.html> and at the Stanislaus County Main Library 1500 I Street, Modesto, California 95354.

§933. Comments and Reports on Grand Jury Recommendations

- [c] No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elective county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All such comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

§933.05 Response to Grand Jury Recommendations--Content Requirements

- A. Section 933.05 of the California Penal Code requires that a responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding(s); or
 - (2) The respondent disagrees wholly or in part with the finding(s). If this response is chosen, the respondent will specify that portion of the

finding(s) which is disputed and shall include an explanation of the reasons for the disagreement.

- B. As to each Grand Jury recommendation, the responding public officer or agency shall indicate one of the following:
- (1) The recommendation has been implemented and set forth a summary of the implemented action;
 - (2) The recommendation has not been implemented but will be implemented in the future with a time frame for implementation;
 - (3) The recommendation requires further analysis with an explanation as to the scope of the analysis and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department or governing body being investigated. The time frame shall not exceed six (6) months from the date of publication of the Grand Jury report; and
 - (4) The recommendation will not be implemented because it is either not warranted or not reasonable with an explanation as to why the recommendation will not be implemented.
- C. If a finding or recommendation addresses budgetary or personnel matters of a department headed by an elected official, both the Department Head and the Board of Supervisors will respond. The Board of Supervisors response shall be limited to those budgetary or personnel matters over which it possesses decision making authority.

RESOLUTION

WHEREAS, the 2001-2002 Stanislaus County Civil Grand Jury has conducted an investigation and has reached certain conclusions and made recommendations; and

WHEREAS, the Stanislaus County Civil Grand Jury desires to make its *FINAL REPORT* thereof;

THEREFORE BE IT RESOLVED, by the Stanislaus County Civil Grand Jury that the report is hereby adopted as *FINAL REPORT, PART TWO*.

Robert E. Johnson
Civil Grand Jury Foreperson
Fiscal Year 2001-2002
Released on June 28, 2002