

Responses to the 2013-2014 Grand Jury Report

Every year, when the annual Santa Cruz County Grand Jury Report is published, designated agencies are requested to respond to the findings and recommendations of the report. These responses may agree, partially disagree, or disagree with the findings, and may indicate that recommendations have already been implemented, will be in the future, or will not be implemented, or that further analysis is required.

Comments may also be added to the responses. When a response agrees with a recommendation, further comments are optional. In case of complete or partial disagreement, or in response to recommendations for action, comments should be provided as part of the response.

For each report, the collected responses are published in a separate file on the [grand jury's section of the county's public website](#). Note: The responses are provided as received, and have not been edited, except for minimal formatting to make them appear correctly on this web page.

Report: [San Lorenzo Valley Water District: Time to Restore Trust between Voters and District](#)

This report requested responses from the following:

1. Board of Directors, San Lorenzo Valley Water District: Findings 1-9; Recommendations 1-7
2. District Manager, San Lorenzo Valley Water District: Findings 3, 4, 8, 9; Recommendations 2, 3, 6

Findings

- **Finding 1: By assigning responsibility for district investments to the District Manager, the SLVWD Board of Directors improperly relinquished one of its major responsibilities.**
 - Response from San Lorenzo Valley Water District, Board of Directors: **Disagree**

Special districts are public corporations formed to perform particular governmental functions within a specific territory. They are generally created pursuant to general law, Santa Clara Valley Water Conservation District v. Santa Clara Valley Water District, 76 Cal. 3d 852 (1978.)

Statutory authority for a special district is set out in either a Principal Act or a Special Act. The SLVWD is a Principal Act District authorized by sections 30000

and following of the California Water Code pertaining to County Water Districts.

Section 30576 provides that the powers of districts which are enumerated in the Principal Act shall, except as therein otherwise provided, be exercised by the Board of Directors. Sections 30580 and 30581 pertaining to the duties of the general manager of the district Section 30580 provide as follows:

30580. Duties of general manager

The general manager shall:

- (a) Have full charge and control of the maintenance, operation, and construction of the waterworks or water-works system of the district.
- (b) Have full power and authority to employ and discharge all employees and assistants at pleasure.
- (c) Prescribe the duties of employees and assistants.
- (d) Fix and alter the compensation of employees and assistants subject to approval by the Board of Directors.

30581. Additional duties of general manager

The general manager shall also:

- (a) Perform other duties imposed by the Board of Directors.
- (b) Report to the Board of Directors in accordance with the rules and regulations as it adopts.

The Board of Directors acted properly when it delegated responsibility for district investments to the District Manager. This practice is in accordance with the vast majority of Special Districts. The Finance Manager for the California Special Districts Association has stated that “this practice is consistent with the overwhelming majority of Special Districts relative to management of investments.”

- **Finding 2: SLVWD took no action to correct its imbalance of investment assets despite multiple years of external audit reports.**
 - Response from San Lorenzo Valley Water District, Board of Directors: **Disagree**

The District took the following actions:

As indicated in the Grand Jury Report, page 6, paragraph 1, the Board of Directors had modified its own ordinances to comply with state regulations and brought its portfolio into compliance.

It was brought to the Board of Directors' attention that they were out of compliance with state law on investment assets; the Board of Directors decided to allow the Certificate of Deposits (CD's) to expire, avoiding a loss of assets and changed the investment ordinance to comply with the state regulations. The District has always been a prudent investor and has not suffered a loss of investment assets in decades. The 12/13 fiscal audit has been completed and is posted on the District website. The 13/14 fiscal audit is in process and will be completed by the end of 2014.

- **Finding 3: Contrary to accepted practice, SLVWD was operating on a prior year's budget eight months into its fiscal year.**

- Response from San Lorenzo Valley Water District, Board of Directors: **Agree**

The Board of Directors operated the District without adopting a current fiscal year's budget for fiscal year 13/14 until March 06, 2014. This was due to the prolonged absence of the Finance Manager who took an extended medical leave beginning in May 2013. The District was unable to fill the position until the Finance Manager resigned in early December 2013. Once the Finance Manager resigned, the public process required to hire personnel commenced and position was filled by April 2014.

In the absence of a current budget, the District was operating on the prior fiscal year (12/13) budget with few exceptions and continued authorization from the Board of Directors.

The current fiscal year budget 14/15 was adopted by the Board of Directors in July 2014. The prior three years the District adopted the budget in June/July of the budget operating fiscal year, demonstrating that this was a one-time occurrence.

- Response from District Manager, San Lorenzo Valley Water District (Richard M. Rogers, Acting District Manager): **Agree**

On June 19, 2014 The Board of Directors of the San Lorenzo Valley Water District, discharged without cause District Manager James A. Mueller effective June 30, 2014. On June 25, 2014 the Board of Directors appointed Richard M Rogers as Acting District Manager effective June 30, 2014. Due to the discharge of the District Manager Mueller I am respectfully referring the Grand Jury response to the Board of Directors response F3.

- **Finding 4: Despite numerous complaints from ratepayers, SLVWD has failed to prioritize the replacement of leaking redwood tanks.**

- Response from San Lorenzo Valley Water District, Board of Directors: **Disagree**

The San Lorenzo Valley Water District has put the replacement of redwood tanks in the context of its overall Capital Improvement Program. Tanks are just one component of the Capital Improvement Program for the District's extensive distribution infrastructure. The District has an ongoing Capital Improvement Program. The process of capital project planning and development of a Capital Improvement Program was established to provide an orderly procedure for the identification, evaluation and prioritization of current and future capital needs of the San Lorenzo Valley Water District. In October 1997 the district established and adopted a written capital improvement program. Since that date, the 1997 Capital Improvement Program has been utilized to guide the District's long and short-range planning process by matching identified needs, desired priorities and major capital expenditures. During this period of time, the District completed many but not all, of the identified projects in the 1997 capital improvement program.

In 2013, the District completed the replacement of two leaking redwood tanks (Nina Tanks) and increased storage capacity. In August 2014, the District completed the repair of two more leaking redwood tanks (Swim Tank and the Pine Tank) and full replacement is in process for both. The Pine Tank replacement is nearing completion.

The Probation Tank, as mentioned in the Grand Jury Report, is located within protected Ben Lomond Sand Parklands and is considered critical habitat for several federally endangered, endemic and special status wildlife species. In order for tank replacement construction to occur on the District's federally protected land, state and federal agencies will be required to issue permits. The design process is underway and replacement is scheduled to be completed by 2016.

The 2010 Capital Improvement Program lists \$27,455,000 dollars of improvements needed. The 2010 Capital Improvement Project which includes additional redwood tanks will be updated by December 2014.

Current Capital Improvement Program Update:

New Probation Groundwater Well - Completed

2 Nina Water Storage Tanks- Repair Completed

North System-South System Intertie – Under contract/construction to begin late 2014

Probation Water Storage Tank – Design and EIR in process

Felton System Intertie – Under Construction/Completion scheduled for February 2015

Pine Storage Tank- Nearing completion
Swim Storage Tank – Repair complete-replacement design & engineering is underway

- Response from District Manager, San Lorenzo Valley Water District (Richard M. Rogers, Acting District Manager): **Disagree**

On June 19, 2014 The Board of Directors of the San Lorenzo Valley Water District, discharged without cause District Manager James A. Mueller effective June 30, 2014. On June 25, 2014 the Board of Directors appointed Richard M Rogers as Acting District Manager effective June 30, 2014. Due to the discharge of the District Manager Mueller I am respectfully referring the Grand Jury response to the Board of Directors response F4.

- **Finding 5: For many years Board committees consisted of a quorum of Board members without being publicly announced as Board meetings.**

- Response from San Lorenzo Valley Water District, Board of Directors: **Partially Disagree**

Although prior to 2012, three standing committees of the Board of Directors; the Environmental Committee, Facilities and Planning Committee, and Finance Committee had three Board members appointed to them, these committees, as well as the Board of Directors were all properly treated as “legislative bodies” in conformance with the Ralph M. Brown Act, California Government Code section 54950 and following (Hereafter “Brown Act”).

In 2011, a lawsuit was filed in the Superior Court Santa Cruz County against the District in case number CISCV 170999 alleging a violation of the Brown Act because meetings of the above standing committees while noticed and public, were “not noticed as Board of Directors meetings, which the plaintiff alleged violated California government code section 54952.2 (b) The Plaintiff conceded that the District’s standing committee meetings were noticed and public but claimed that because the meetings were “not noticed as Board of Directors Meetings” this violated Section 54952.2 (b).

The District showed the court that it had, at all times, fully complied with all applicable requirements of the Brown Act. The following analysis is pertinent:

California Government Code section 54952 defines legislative bodies as follows:

54952. Legislative body

As used in this chapter, “legislative body” means:

- (a) The governing body of a local agency or any other local body created by state or federal statute.
- (b) A commission, committee, Board of Directors, or other body of local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.... Standing committees of a legislative body, irrespective of their composition, are legislative bodies for purposes of this chapter.”

California Government Code section 54953 states:

“54953. Requirement that meetings be open and public

- (a) All meetings of the legislative body of local agency shall be open and public...”

California Government Code section 54952.2 (b) states that:

54952. Specified communications of legislative body of local agency prohibited outside meeting thereof

- “(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business within the subject matter of jurisdiction of the legislative body.
- (2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of local agency, if that person does not communicate to members of the legislative body the comments or position of any member or members of the legislative body.”

The above section, 54952.2 (b) refers to a legislative body. Legislative bodies must satisfy open meeting requirements. The San Lorenzo Valley Water District’s Board of Directors and standing committees including, specifically, the Finance Committee, Environmental Committee, and Facilities and Planning Committee are legislative bodies which adhered to all open meeting requirements. The Plaintiff specifically conceded this point before the Superior Court.

The Court found that there was no violation of the Brown Act by District committees as composed. The Plaintiff attempted to obtain a temporary restraining order restraining Board of Directors members from attending any committee meeting with the majority of the Board of Directors of the District in attendance. The Court denied the Temporary Restraining Order.

Thereafter, following briefing on the matter and a hearing by the court, the court denied the preliminary injunction requested by the plaintiff, the court observing that there was no basis to enjoin the Board members from meetings which the plaintiff agreed complied with the requirements of government code section 54953 as meetings of a legislative body open to the public. The Superior Court subsequently granted a motion filed by the District finding that the complaint did not state facts sufficient to constitute a cause of action. The Court dismissed the matter with prejudice and provided that the defendants recover statutory costs. The Judgment of Dismissal was filed October 6, 2011.

All meetings of committees of the Board of Directors and the Board of Directors itself being defined as a legislative body as defined in the Brown Act were open to the public, except when convened in closed session as authorized under provisions of the Brown Act. Posting of written agendas for all meetings of the Board of Directors' committees, when defined as a legislative body within the meaning of the Brown Act was made in compliance with that Act. All appropriate notice requirements in accordance with applicable provisions of the Brown Act were observed in connection with every meeting of committees defined as legislative bodies, as well as the Board of Directors itself. The foregoing practice comported with Resolutions adopted from time to time appointing members to the various District Committees.

In 2012, the District revised its resolution regarding committee appointments so that no more than two Board members sit on any District committee.

- **Finding 6: The Board has violated its policy to conduct annual reviews of the District Manager.**
 - Response from San Lorenzo Valley Water District, Board of Directors: **Partially Disagree**

Historical records show that the Board of Directors routinely conducted written performance evaluations of the District Manager, as follows;

November 20, 2003 December 02, 2004 August 04, 2005
December 07, 2006 November 01, 2007 November 06, 2008
December 02, 2009 November 18, 2010 January 19, 2012
November 15, 2012

Although the District Manager's formal annual review was not completed by the end of 2013, the District manager was terminated without cause on June 30, 2014. In order to improve the evaluation process the District is developing a

standardized performance evaluation to be conducted annually and filed in the personnel file for the District Manager. This will be completed upon the hiring of the future District Manager and implemented in 2015.

- **Finding 7: The Board lacks consistent standards to evaluate the performance of the District Manager.**

- Response from San Lorenzo Valley Water District, Board of Directors: **Agree**

Although the Board of Directors did routinely conduct performance evaluation for the District Manager, and it was documented but it was not in a standardized format. The Board President selected and presented a performance standard which changed annually with the election of a new Board President.

Consistent performance evaluation standards are in process and will apply on an annual basis which will be written and retained in the District Manager's Personnel File.

- **Finding 8: SLVWD consistently fails to provide timely meeting minutes or post important information on the District's website.**

- Response from San Lorenzo Valley Water District, Board of Directors: **Partially Disagree**

For a short period of time in 2013 the District failed to post meeting minutes to the District's website. All meeting minutes for public meetings are posted on the District website within two weeks of the meeting. Prior to that short period where minutes had not been posted, all minutes have been posted as required.

- Response from District Manager, San Lorenzo Valley Water District (Richard M. Rogers, Acting District Manager): **Disagree**

On June 19, 2014 The Board of Directors of the San Lorenzo Valley Water District, discharged without cause District Manager James A. Mueller effective June 30, 2014. On June 25, 2014 the Board of Directors appointed Richard M Rogers as Acting District Manager effective June 30, 2014. Due to the discharge of the District Manager Mueller I am respectfully referring the Grand Jury response to the Board of Directors response F8.

- **Finding 9: SLVWD makes it difficult for ratepayers to obtain public records from the District Office by requiring prior approval from the District Manager.**

- Response from San Lorenzo Valley Water District, Board of Directors: **Disagree**

The Board of Directors disagrees with finding F9 which states “SLVWD makes it difficult for ratepayers to obtain public records from the District Office by requiring prior approval from the District Manager.”

The right to inspect public records is generally regulated by the California Public Records Act (Government Code sections 6250 and following). This is a comprehensive system of regulations pertaining to the public’s right to inspect and copy records which are open to the public.

The District is subject to the Public Records Act and has always scrupulously observed its requirements. Section 6253c provides that an agency, within 10 days of receipt of a request for a copy of records, must determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and must notify the person making the request of both the determination and the reasons therefore. If the records being sought and are disclosable, the notification must state the estimated date and time when the records will be made available. The 10 day time limit may be extended if “unusual circumstances” are found to exist. These include requests for voluminous records, or for records which because of age and storage location require additional time to produce. Section 6253c specifically provides that the head of the agency or designee must give written notice to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched.

In view of the District Manager’s authority as set out in section 30581 of the Water Code referenced above, the District Manager is the appropriate individual as identified in Section 6253c to whom requests for public records should be made as it is the District Manager who must make the requisite determinations provided by statute.

The District is in the process of writing a Records Request Policy in conformance with the Public Records Act of 2004. This Policy will be implemented by December 2014 and training will be provided to staff, to ensure a timely and efficient response to public records requests.

- Response from District Manager, San Lorenzo Valley Water District (Richard M. Rogers, Acting District Manager): **Disagree**

On June 19, 2014 The Board of Directors of the San Lorenzo Valley Water District, discharged without cause District Manager James A. Mueller effective June 30, 2014. On June 25, 2014 the Board of Directors appointed Richard M

Rogers as Acting District Manager effective June 30, 2014. Due to the discharge of the District Manager Mueller I am respectfully referring the Grand Jury response to the Board of Directors response F9.

Recommendations

- **Recommendation 1: The SLVWD Board should reclaim its financial oversight responsibility by rescinding Resolution 79 (1987-88). (F1, F2)**

- Response from San Lorenzo Valley Water District, Board of Directors: **Will not be implemented**

According to the Principal Act District, as cited in F1:

30581. Additional duties of general manager

The general manager shall also:

(a) Perform other duties imposed by the Board of Directors.

(b) Report to the Board of Directors in accordance with the rules and regulations as it adopts.

The Board of Directors acted properly when it delegated responsibility for district investments to the District Manager. This practice is in accord with the vast majority of Special Districts. The Finance Manager for the California Special Districts Association has stated that “this practice is consistent with the overwhelming majority of Special Districts relative to management of investments.”

Resolution 79 is in compliance with standard practice and the Board of Directors will continue to monitor financial investments monthly at the regularly noticed Board of Directors meetings.

- **Recommendation 2: The Board should require that the District Manager provide a budget prior to the start of each fiscal year.**

- Response from San Lorenzo Valley Water District, Board of Directors: **Has been implemented**

Consistent with long-standing District practice, the District Manager will provide a budget to the District Board of Directors prior to the start of the fiscal year and will be adopted by the Board of Directors prior to the start of the fiscal year. The

Current budget 2014-2015 was adopted by the Board of Directors in July 2014. Future budgets will be adopted by the Board of Directors before the start of the fiscal year.

- Response from District Manager, San Lorenzo Valley Water District (Richard M. Rogers, Acting District Manager): **Has been implemented**

On June 19, 2014 The Board of Directors of the San Lorenzo Valley Water District, discharged without cause District Manager James A. Mueller effective June 30, 2014. On June 25, 2014 the Board of Directors appointed Richard M Rogers as Acting District Manager effective June 30, 2014. Due to the discharge of the District Manager Mueller I am respectfully referring the Grand Jury response to the Board of Directors response R2.

- **Recommendation 3: SLVWD should provide ratepayers with a specific plan and schedule for replacing its remaining redwood tanks. (F4)**

- Response from San Lorenzo Valley Water District, Board of Directors: **Has been implemented**

At the August 1, 2014 Facilities and Planning Committee meeting the District issued and implemented a schedule for the repair/replacement of remaining redwood tanks, one of many components that make up the extensive distribution system. The District has an ongoing Capital Improvement Program. The capital project planning and development process of the Capital Improvement Program was established to provide an orderly procedure for the identification, evaluation and prioritization of current and future capital needs of the San Lorenzo Valley Water District. In October 1997 the District established and adopted a written capital improvement program. Since that date, the 1997 Capital Improvement Program has been utilized to guide the Districts long and short-range planning process by matching identified needs, desired priorities and major capital expenditures. During this period of time, the District completed many but not all, of the identified projects in the 1997 Capital Improvement Program. In 2013 the District completed replacement of two leaking redwood tanks. In 2014, the District repaired or replaced two additional leaking tanks. The Probation Tank is in the design process and is under Environmental Review. Replacement is scheduled to be completed by 2016. The 2010 Capital Improvement Program lists \$27,455,000 dollars of improvements needed. The 2010 Capital Improvement will be updated by December 2014.

- Response from District Manager, San Lorenzo Valley Water District (Richard M. Rogers, Acting District Manager): **Has been implemented**

On June 19, 2014 The Board of Directors of the San Lorenzo Valley Water District, Discharged without cause District Manager James A. Mueller effective June 30, 2014. On June 25, 2014 the Board of Directors appointed Richard M Rogers as Acting District Manager effective June 30, 2014. Due to the discharge of the District Manager Mueller I am respectfully referring the Grand Jury response to the Board of Directors response R3.

- **Recommendation 4: The Board should create standard criteria and follow its own requirement for annual evaluation of the District Manager. (F6, F7)**

- Response from San Lorenzo Valley Water District, Board of Directors: **Has not been implemented but will be implemented in the future**

The Board of Directors will implement a written, standardized performance evaluation process for the District Manager and will evaluate the District Manager at least annually. The Personnel Committee will submit a draft written performance evaluation process to the Board of Directors for adoption and the completed performance evaluation will be placed in the District Manager's personnel file. This will be completed upon the hiring of the future District Manager and implemented in 2015.

- **Recommendation 5: The Board should publicly notice committee meetings as Board meetings when a quorum is present. (F5)**

- Response from San Lorenzo Valley Water District, Board of Directors: **Will not be implemented**

The District is in compliance with the Brown Act as recognized by the Superior Court Decision referenced in the response to F5. The District will continue to publically notice Board of Directors meetings as Board of Directors meetings and committee meetings as such. Therefore this recommendation will not be implemented.

- **Recommendation 6: SLVWD should post online all ordinances, resolutions, and minutes within a month of approval. It also should post online all current ordinances, resolutions referenced in current ordinances, and minutes for the last five years. (F8, F9)**

- Response from San Lorenzo Valley Water District, Board of Directors: **Requires further analysis**

All agendas and minutes are posted on the District website for the past five years. The district is in the process of reviewing ordinances and resolutions and has budgeted for the re-codification of ordinance 8 which will be made available approximately January 2016.

In the meantime the District is working on a website update that will make the site searchable and easier to locate historical records and other District documents. The District intends to have the website updated by December 31, 2014.

- Response from District Manager, San Lorenzo Valley Water District (Richard M. Rogers, Acting District Manager): **Requires further analysis**

On June 19, 2014 The Board of Directors of the San Lorenzo Valley Water District, Discharged without cause District Manager James A. Mueller effective June 30, 2014. On June 25, 2014 the Board of Directors appointed Richard M Rogers as Acting District Manager effective June 30, 2014. Due to the discharge of the District Manager Mueller I am respectfully referring the Grand Jury response to the Board of Directors response R6.