

RICHGROVE COMMUNITY SERVICE DISTRICT:

“WHO’S ON FIRST?”

BACKGROUND:

Richgrove is an unincorporated farming community in the southern part of Tulare County, California. Classified by the U.S. Census Bureau as a Census Designated Place, the community had a population of 2,882 in 2010. Census Designated Places are defined to provide data for settled concentrations of population that are identifiable by name but are not legally incorporated under the laws of the state in which they are located.

Special Districts in the State of California first began as a means to meet the water needs of farmers in the San Joaquin Valley. Hampered by an inconsistent water supply, plus largely varying prices, farmers in Stanislaus County organized the Turlock Irrigation District under the Wright Act of 1887. The Wright Act allowed a majority of residents in an area to form a public entity for water delivery and to finance its operation through the sale of bonds. The Turlock Irrigation District originated California’s Special District Concept and made it possible for San Joaquin Valley farmers and others, such as Tulare County’s Richgrove Community Services District (RCSD), to intensify and diversify their domestic and agricultural activities.

The RCSD, founded in 1977, supplies the domestic water, sanitary sewage and other services to the homes and businesses within the community. In 2011 the RCSD was awarded a grant from the California Department of Parks and Recreation to construct a community park. The park is designed to provide recreational activities for youth, families and senior citizens. The plan includes walking trails, community gardens, a skate park, picnic arbors, a tot-lot and fields for sports such as soccer, baseball, volleyball and exercise features¹.

REASONS FOR INVESTIGATION:

The 2015-2016 Tulare County Grand Jury received a response to the 2014-2015 Grand Jury “Confusion and Chaos in Richgrove” report from the RCSD Board of Directors. The 2015-2016 Grand Jury determined that the responses were woefully inadequate and unacceptable. A Grand Jury investigation was undertaken to further research the RCSD’s financial situation, Board of Directors’ procedures, and RCSD policies.

Additionally, the 2015-2016 Tulare County Grand Jury decided to investigate the administration of the Richgrove Community Park’s \$2.81 Million State Grant, received by the RCSD. The Grand Jury investigation reflected possible impropriety with respect to the administration of the grant.

¹ Under the California Statewide Park Development and Community Revitalization Act of 2008 (AB 31) with funds authorized under the State Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84), the State can award grants to eligible entities for the purposes of Division 43 of the Public Resources Code.

METHOD OF INVESTIGATION:

The Tulare County Grand Jury attended both RCSD Board of Directors and RCSD Park Board meetings. The Grand Jury also conducted numerous interviews of witnesses from various agencies. Other independent witnesses were also interviewed. Documents related to the administrative policies, procedures and practices of the RCSD, as well as development of the park, were reviewed. The Grand Jury visited the future park site at various intervals.

FACTS:

RCSD Administration Facts:

1. Penal Code §933.5 allows the Grand Jury to investigate a “special purpose assessing or taxing district”, commonly referred to as a “Special District.”
2. The RCSD has not filed their audits with the county for multiple years (2007-2015), as required by California Government Code (CGC) §26909.
3. The Grand Jury attended a meeting of the RCSD Board of Directors, as a result of which it was discovered that the Board was unable to produce an operating budget, by-laws, monthly financial statements or other documents requested.
4. Subsequent to the Grand Jury’s attendance at the RCSD Board of Directors meeting, the RCSD engaged the services of a volunteer with expertise in organizational management.
5. The CGC §61053 (3) stipulates that a Special District’s Board of Directors adopt a system of accounting and auditing that shall completely and at all times show the district’s financial condition and that the system of accounting and auditing shall adhere to generally accepted accounting principles.

RCSD Park Overview Facts:

1. In 2011, the RCSD was awarded a grant from the California Department of Parks and Recreation to construct a community park. The total amount of the grant was \$2.81 Million for planning, design, purchase of park site, construction, initial maintenance, and administration².
2. The RCSD is defined as a “Public Entity” as per Public Contract Code (PCC) Section 1100, and therefore must follow applicable contract statutes. (*see Attachment “A”*)
3. The community park project funded to be built in Richgrove is defined as a “Public Works Contract” project as per PCC Section 1101. (*see also Attachment “A”*)

² An agreement was entered into between the California Department of Parks and Recreation (hereinafter referred to as “GRANTOR,” or “STATE”) and Richgrove Community Services District (hereinafter referred to as “GRANTEE”) for a granted amount of \$2.81 Million.

4. A consultant was hired by RCSD to perform grant administrative functions allocated to the District by statute, including meeting legal and regulatory obligations.
5. There was an independent architect hired by the consultant to produce plans and specifications for the park.
6. A principal with the consulting firm was hired to serve as general contractor and construction manager to construct the park.
7. The RCSD Board of Directors failed to provide the Grand Jury with subpoenaed documents relating to Request for Proposals (RFP) and Request for Bids (RFB) for park construction.
8. The RCSD Board of Directors was unable to provide viable evidence of publicly advertised requests for bidding.
9. The RCSD has not maintained separate accounts for State grant funds and regular business funds.

FINDINGS:

ADMINISTRATIVE FINDINGS

- F1. As a result of the volunteer organizational expert's guidance, attention was focused on preparing an audit for RCSD's 2014-2015 Fiscal Year. Records for previous years were found to be inadequate and incomplete in terms of completion of an audit.
- F2. As of the date of this report, comprehensive practices and procedures encompassing all aspects of RCSD operations have been implemented, with formal adoption pending.
- F3. The services of a Public Accountant were secured and a new accounting system has been implemented by RCSD to assist in reporting the district's financial condition.

PARK FINDINGS

- F4. The RCSD Board has the ultimate responsibility for financial and construction administration of the \$2.81 Million grant.
- F5. Documents provided by the RCSD Board were inadequate and failed to fully comply with the subpoena. Many of the documents received by the Grand Jury appear incomplete, unclear and contradictory in explanation of financial and contractual administration for the Park.
- F6. The RCSD Board failed to exercise due diligence with respect to executing its oversight responsibilities.
- F7. The RCSD Board failed to exercise due diligence with respect to executing fiduciary responsibilities.

F8. The RCSD failed to adhere to appropriate public codes in requiring the necessary bids for construction (PCC Section 20680-20683). (*see Attachment "B"*)

RECOMMENDATIONS:

- R1. That the RCSD Board educate themselves to all public codes applicable to the operation, administration and oversight responsibility of a special district.
- R2. That the RCSD Board give serious consideration to hiring a professional administrator.
- R3. That the RCSD maintain its recent commitment to adhere to generally accepted accounting principles and transparency.

REQUIRED RESPONSES:

- 1. Richgrove Community Service District Board of Directors

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Section 924.2 and 929).

Attachment "A"

PUBLIC CONTRACT CODE

Division 2, Part 1, Chapter 1, "Definitions," portions of Section 1100-1104

1100. "Public entity," as used in this part, means the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state.

1101. "Public works contract," as used in this part, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

1103. "Responsible bidder," as used in this part, means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract. The Legislature finds and declares that this section is declaratory of existing law.

1104. No local public entity, charter city, or charter county shall require a bidder to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except on clearly designated design build projects. Nothing in this section shall be construed to prohibit a local public entity, charter city, or charter county from requiring a bidder to review architectural or engineering plans and specifications prior to submission of a bid, and report any errors and omissions noted by the contractor to the architect or owner. The review by the contractor shall be confined to the contractor's capacity as a contractor, and not as a licensed design professional.

Attachment "B"

PUBLIC CONTRACT CODE

Division 2, Part 3, Chapter 1, Article 43, "Community Service Districts", portions of Section 20680-20683

20680. The provisions of this article shall apply to contracts by community services districts as provided for in the Community Services District Law pursuant to Division 3 (commencing with Section 61000) of the Government Code.

20682.5. (a) A district may construct or complete any building, structure, or improvement with its own forces or by contract without bidding when the cost does not exceed twenty-five thousand dollars (\$25,000).

(b) All contracts for the construction or completion of any building, structure, or improvement, when the cost exceeds twenty-five thousand dollars (\$25,000), shall be contracted for and let to the lowest responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(c) The district shall publish a notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least 10 days before the time specified for receiving bids. The notice inviting bids shall set a date for opening the bids and distinctly state the work to be done.

(d) If the general manager recommends and the board of directors determines that the publication of advertisements of the notice in trade journals and papers in lieu of publication pursuant to subdivision (c) will increase the number of business enterprises receiving that notice, the board of directors may by resolution declare that those notices shall be published in trade journals and papers at least 10 days prior to the time specified for receiving bids.

(e) If plans and specifications are prepared describing the work, all bidders shall be afforded an opportunity to examine the plans and specifications, and the plans and specifications shall be attached to and become part of the contract, if one is awarded.

(f) At its discretion, the board of directors may reject any bids presented and readvertise.

(g) In the case of an emergency, the board of directors may act pursuant to Chapter 2.5 (commencing with Section 22050).

(h) The board of directors may, subject to Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code, require the posting of those bonds it deems desirable as a condition to the filing of a bid or the letting of a contract.

(i) The district shall keep cost records of the work in the manner provided in Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

(j) As an alternate to the procedures required by this section, a district may rely on the Uniform Public Construction Cost Accounting Act, Chapter 2 (commencing with Section 22000) of Part 3 of Division 2.

20683. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

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RICHGROVE COMMUNITY SERVICES DISTRICT

August 1, 2016

Tulare County Grand Jury
5963 S. Mooney Blvd
Visalia, CA 93277

RE: Response to the Tulare County Grand Jury

Dear Members of the Grand Jury,

We, the members of the Richgrove Community Service District (RCSD) Board of Directors, wholly agree with the findings of the Grand Jury regarding the general administration practices of the RCSD, and the failure of the RCSD to exercise its fiduciary responsibilities with respect to the park project.

Over the last several months, with the help of an outside advisor, very positive progress has been made in moving the RCSD towards compliance with applicable regulations governing Special Districts.

Without a doubt, the park project has been the most challenging issue to address due in large part to the failure of the project consultant to provide RCSD critical financial information.

Although much work remains to be done, I am pleased to report the following progress made to date in response to the Grand Jury investigation:

Financial Practices

1. RCSD hired an outside bookkeeper who was able to produce Profit and Loss Statements of revenues and expenses for fiscal years 2012 through 2015. These reports are part of the groundwork to produce accurate financial statements beginning with fiscal year 2016-2017. RCSD has contracted with this bookkeeper to continue providing accounting and payroll services. The bookkeeper has also installed a new accounting program and is providing the RCSD Office Manager on-going support and training.
2. RCSD has engaged an independent CPA to audit its books for fiscal years 2014-2015 and 2015-2016. The CPA and RCSD will evaluate the feasibility of auditing prior years after the two audits are completed.
3. The RCSD has adopted a budget for the 2016-2017 fiscal year. This budget is formatted to report revenues and expenses for water, sewer and property taxes separately in order to more accurately account for revenues and expenses related to each of these categories.

Water & Sewer District

RECEIVED
8-10-2016

4. The RCSD has adopted written financial policies and procedures that include internal controls and separation of duties. The Office Manager and part-time clerk have received training in separation of duties procedures.
5. The RCSD created a Finance Committee that is responsible for the annual budget, monitoring monthly revenues and expenses, and for reviewing and approving payables.
6. Under the new accounting system the Board of Directors will receive financial statements which report the current month and year-to-date totals as compared with budget.

The board and staff will continue to receive training in financial practices and budget monitoring. We are confident that the budget and accounting systems now in place meet generally accepted accounting practices.

Bylaws

The RCSD Board of Directors has adopted bylaws, which will be reviewed annually.

RCSD Park Project

As previously stated, the park project has been the most challenging issue to address. It is very clear to this board that it, and in fact, past boards, failed to exercise due diligence over all aspects of the park project.

Over the past several months, the Board of Directors has been working diligently to take full control of the park project. Our number one priority has been to reconcile the grant funds to determine what has been spent on what and what the remaining grant balance might be. Unfortunately, this effort has been hampered by the grant management consultant, who has failed to provide copies of bank statements and other essential information.

To date, the following steps have been taken by the RCSD Board of Directors:

1. Requested the assistance of the State Compliance Officer to direct the project management consultant to comply with RCSD's request for documents.
2. RCSD has demanded that the project management consultant turn over all original park project documents.
3. RCSD has engaged an attorney to advise the District about legal options that could be taken if the project management consultant continues to be uncooperative in providing bank statements and other documents.
4. The RCSD Board of Directors has informed the project management consultant that only this board will approve contracts, agreements, bids and any other park related expenditures.

Grand Jury Recommendations

R1. That the RCSD Board educate themselves to all public codes applicable to the operation, administration and oversight of a special district. RCSD board members have attended three work sessions facilitated by Ernie Hernandez and who has covered the following topics:

- a. Purpose of Community Service Districts and laws governing CSD's
- b. The Brown Act Basics
- c. Public Records Act Basics
- d. Proposition 218 Water Rate Increases
- e. Monitoring Requirements for Public Drinking Water Systems

- f. Special Districts Financial Transactions Report
- g. Practice conducting a board meeting
- h. Board member responsibilities and job descriptions
- i. Employee responsibilities and job descriptions
- j. Bylaws
- k. Financial Policies and Procedures
- l. Conflict of Interest Policy
- m. Glossary of Financial Terms
- n. Finance Committee job description
- o. Sample budget development format; sample financial statements

Training will continue in specific areas of administration, fiscal management, and applicable local and state regulations. Policies/guidelines adopted by the RCSD Board of Directors to date:

- a. Diversity Statement
- b. Conflict of Interest Policy
- c. Best Practices in Fiscal Management
- d. Financial Policies and Procedures
- e. Employee Handbook and Safety Plan
- f. Job descriptions for all RCSD employees
- g. Bylaws
- h. 2016-2017 Budget
- i. Created a Finance Committee
- j. Statement of Ethics

R2. That the RCSD Board give serious consideration to hiring a Professional Administrator.

The RCSD will give serious consideration to hiring a General Manager in the future. At this time our focus will remain on continuing to improve the overall administrative and financial health of the RCSD. Currently, the Office Manager is receiving on-going support, training and coaching in areas of administration, finance, and board relations.

R3. That the RCSD maintain its recent commitment to adhere to generally accepted accounting principals and transparency.

This is the area of most growth for the RCSD. The RCSD has adopted a budget with written explanations of what's behind each number; the staff are practicing sound internal controls; the accounting system now in place will enable the board to accurately understand financial reports; a Finance Committee is meeting monthly to monitor revenues and expenses; the outside bookkeeper is providing oversight to the budget and accounting system, and she's providing the Office Manager on-going support and training.

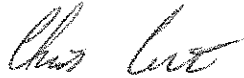
It is my hope that this response adequately covers the findings and recommendations of the Grand Jury. If not, please do not hesitate to contact me for any additional information that you may require.

Sincerely,

August 1, 2016

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Chris Cervantes, President
RCSD Board of Directors

A handwritten signature in cursive script, appearing to read "Chris Cervantes".