
FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)
EXECUTIVE OFFICER'S REPORT

AGENDA ITEM No. 14

DATE: July 17, 2013

TO: Fresno Local Agency Formation Commission

FROM: David E. Fey, AICP, Executive Officer

SUBJECT: Fresno County Grand Jury 2012-2013 Report No. 5 Regarding the Del Rey Community Services District

RECOMMENDATION: Receive Staff's Report and Authorize Chairman Silva to Execute the Attached Response to the Grand Jury

BACKGROUND

On July 11, 2007, the Commission adopted a Municipal Service Review (MSR) for the Del Rey Community Services District (CSD). In July, 2008, the Fresno County Grand Jury issued a report which identified a number of deficiencies in the Del Rey CSD's financial practices and oversight. The Grand Jury report also found the LAFCo adopted MSR prepared for the District met the minimum requirements of the Act, but stated that it "*was inadequate as a complete description of the financial condition and management of (the) district.*"

Consequently, the Grand Jury made findings and recommendations specifically pertaining to the Del Rey CSD MSR. On August 20, 2008, the Commission issued its response to the Grand Jury and on August 12, 2009, the Commission adopted the updated MSR that reflected the Grand Jury's report. A copy of the revised 2009 MSR is attached. The Commission will note that it is a very comprehensive look at the District.

Since that time, while preparing the regular update of the Del Rey CSD MSR, staff received a letter from the Fresno County Administrative Office requesting LAFCo submit copies of its responses to Findings F509 and F510 and to Recommendations R507 and R508 related to the District. It is noted that staff received no separate communication from the Grand Jury. It is also noted that the finding and recommendations contained in the 2012-2013 report are exactly the same as the 2007-2008 Grand Jury report.

At its June 5, 2013, meeting, the Commission noted a *Fresno Bee* article that described the Grand Jury report and repeated earlier recommendations about merger of the district as a solution to some of the identified complications.

GRAND JURY 2012-2013 REPORT NO. 5:

Staff has reviewed Grand Jury 2012-2013 Report No. 5 (Report) and offers the following observations (a copy of the Report is attached). The Report investigates complaints from three Del Rey residents alleging that the governance of the District lacks transparency; the District is not responsive to Del Rey residents; and the District lacks accountability.

There are several elements of the Report that make it difficult to adequately respond to the complaints and recommendations. First, staff cannot confirm what version of the MSR the Grand Jury reviewed. The Report notes that the Grand Jury reviewed “copies of the MSR and SOI ...furnished to the Grand Jury by LAFCo.” Staff’s records indicate that the revised (2009) MSR was provided to the Grand Jury that year though the Report’s “Sources and References” does not include any reference to the 2007 or 2009 MSR version. This is problematic as reliance on the earlier MSR rather than the revision could have a substantial influence on the Grand Jury’s findings and recommendations as the 2009 version was substantially revised to account for findings and recommendations in the 2008 Grand Jury Report. Staff notes that the revised 2009 MSR was forwarded to the Grand Jury and was available on the LAFCo website.

The Report “*found while (the MSR) meets the minimum requirements of the Cortese-Knox-Hertzberg Act, it did not address the financial condition and management of the District. ... The report ignores, or briefly mentions without comment, several serious concerns, such as the District auditor’s warnings about the improper expenditure of restricted funds, the violation of the Sewer Revenue Bond Covenant requirement, and the District’s failure to produce an operating budget.*”

This raises a second point of concern that the Report’s conclusions may be premature. The 2009 MSR reflected the Grand Jury’s 2008 Report and observed that “the Commission stated that greater efforts would be made in the next round of MSRs, which are required to be completed by January 1, 2013, to more thoroughly assess the financial conditions of the various special districts.” Thus, the 2013 Report is almost certainly premature in reporting deficiencies with the Del Rey CSD MSR because it reflects information and conditions present in 2009.

A third point is that the Report itself is unclear. As the Report found grounds to support allegations based on California government code, in reciting the charges, it included two references that staff cannot verify, namely,

- (d) *LAFCo by-laws stipulate district board meetings to be conducted as specified, in the Brown Act rules of procedures and decorum;*
- (e) *LAFCo code #605 provides direction for the replacement of board members and district employees.”*

In regard to (d), staff believes that the Grand Jury mistakenly interpreted the Commission’s own by-laws to mean that these are imposed on the meeting behavior of local agencies, which is not the case. In regard to (e), there is no “code #605” in the Commission’s policies and procedures, or in the Act. In any event, the Commission does not have the authority to replace independently-elected board members.

ANALYSIS OF FINDINGS AND RECOMMENDATIONS:

The Grand Jury 2012-2013 Finding F510 and Recommendations R507 and R508 related to LAFCo's MSR for the District are:

Finding:

- *F510: The LAFCo MSR pertaining to the Del Rey CSD is inadequate in that it does not show the real financial condition of the District when compared to the reports of the District's own auditor.*

Recommendations:

- *R507: LAFCo requires that all MSRs of special districts accurately reflect the financial status and management of the public's funds.*
- *R508: LAFCo take a more aggressive stance in recommending merger of small special districts to achieve economies of scale.*

Notwithstanding staff's concerns about the Report, the issues associated with the District's accountability and transparency can be addressed in the MSR update.

The CAO's office included a request for a response to Finding F509 (*Written and sufficiently comprehensive bylaws, policies, and procedures to properly guide the District in all phases of its operations are missing.*). Staff believes that this finding is directed to Del Rey CSD, not to LAFCo and no response has been prepared.

Analysis of Finding F510: The Report finds that the MSR is inadequate in showing the financial condition of the District and Recommendation R507 states that the MSR should accurately address the financial status of the District.

Response to Finding F510: The 2009 MSR revision addressed many of the financial problems the District was facing. When the MSR is updated in 2013, staff will examine the current financial situation, seek to depict an accurate financial condition of the District and update recommendations as needed.

Analysis of Recommendation R507: LAFCo requires that all MSRs of special districts accurately reflect the financial status and management of the public's funds.

Response to Recommendation R507: Because the MSR is based on information requested by staff and provided by the District, its analysis is only as good as the information provided. Nonetheless, evaluation in the updated MSR of data related to the District's financial status and management of the public's funds will be performed in light of the Grand Jury's recommendation.

Analysis of Recommendation R508: The Report recommends LAFCo take a more aggressive stance in recommending the merger of small special districts.

Response to Recommendation R508: This was addressed at length in the 2009 report and is summarized as follows. From a procedural point of view, the Commission has the authority to initiate certain proposals including district consolidation or dissolution, merger with a city, establishment of a subsidiary district, the formation of a new district or districts, or a reorganization that includes any of these changes. Although the Commission may initiate such options, it cannot guarantee success due to the protest proceedings required in conjunction with any such action.

The updated MSR will examine at a greater level the range of alternative reorganization proposals including consolidation, dissolution, merger and creation of a subsidiary district. Based upon the information available, staff believes the most viable option is to maintain the current governmental structure and encourage them to work towards compliance with the findings and recommendations of the Grand Jury.

The draft response letter to the Honorable Gary Hoff, Presiding Judge of the Fresno County Superior Court is attached for the Commission's consideration.

DEL REY COMMUNITY SERVICE DISTRICT

MUNICIPAL SERVICE REVIEW

Report to the
Fresno Local Agency Formation Commission

Prepared by:
PMC
1590 Drew Ave., Suite 120
Davis, CA 95616

July 2007

Revised by:
PMC and
Fresno LAFCo

July 2009

DEL REY COMMUNITY SERVICES DISTRICT

Street lights, water, sewer, solid waste, storm drainage, park maintenance

Contact Information

Address: P.O. Box 186
Del Rey, CA 93616

Phone: (559) 888-2272

Website: None

Management Information

Manager: Myriam Mota (as of 2008)

Governing Body: Board of Directors

Board Members: Martina C. Ledesma Elected 2008, Expires 2012
Kimberly Ozuna Elected 2008, Expires 2012
Paul Hernandez Elected 2006, Expires 2010
Walter Villarreal Elected 2006, Expires 2010
Eduardo Rodriguez Elected 2006, Expires 2010

Board Meetings: Board meetings are held at 7 pm the first Thursday of each month

Staffing: Manager, Plant Supervisor, Office Manager/ Board Secretary, two maintenance personnel and two Administrative Assistants

Service Information

Empowered Services: Street lights, water, sewer, solid waste, storm drainage, and park maintenance

Services Provided: Street lights, water, sewer, solid waste, storm drainage, and park maintenance

Latent Powers: None

Area Served: Community of Del Rey

Population Served: 1,200

Infrastructure: Community/Senior Center, a wastewater treatment plant (WWTP), an equipment building, and three pump houses which also store equipment as well as the water and sewer lines

Fiscal Information

Budget: \$536,351

Sources of Funding: User fees and property assessments

Rate Structure: Updated January 2007

Administrative Policies

Master Plan:	None	Policies/Procedures:	Yes	By-laws:	None
Boundary Updated:		SOI Updated:	2007	Other:	None

2.4 DEL REY COMMUNITY SERVICES DISTRICT

Note: The original Municipal Service Review (MSR) for the Del Rey Community Services District, completed in June, 2007, has been revised to include additional information provided in late 2008 and early 2009 following a 2007-2008 Grand Jury investigation, which culminated in the Grand Jury's "Final Report No. 9". The Grand Jury found the original June 2007 MSR and SOI Update analysis to be inaccurate, as the District furnished incomplete records and provided an inaccurate account of the District's finances, operations, and administration during data collection efforts, questionnaire response, and phone interviews. The Grand Jury's specific Findings F910 and F911, and Recommendations R908 and R909, which refer to the LAFCO approved MSR and SOI Update, state:

- F910: The LAFCO MSR pertaining to Del Rey is inadequate in that it does not show the real financial condition of the District when compared to the reports of the District's own auditor.
- F911: The LAFCO SOI could evaluate evidence for the merger of special districts where appropriate.
- R908: LAFCO take a more aggressive stance in recommending merger of small special districts to achieve economies of scale. (F911)
- R909: LAFCO require all MSRs of special districts accurately reflect the financial status and management of the public's funds. (F910)

Pursuant to the Grand Jury's Findings and Recommendations, major revisions have been made to the Financing and Rate Restructuring, and Government Structure and Management Efficiencies sections of the MSR and SOI Update, with additional, minor revisions being made in other sections to reflect these changes.

Discussed in further detail below, Finding F910 and Recommendation R909 are addressed in the Financing and Rate Restructuring Section, which identifies a number of deficiencies in the District's financial operations, including the incurring of losses during 13 of the past 14 years, failure to accumulate funds to account for depreciation of infrastructure and other facilities, and improper comingling of special funds.

Finding F911 and Recommendation R908, are addressed in the Government Structure and Efficiencies Section, which analyzes the feasibility of modifying the District's government structure through consolidation with other community services districts and other types of special districts, merger with the City of Sanger, and other changes of organization.

For reasons discussed in detail, this Section concludes that the existing structure of the District as an independent special district may be the most feasible and appropriate structure for continued provision of necessary services at this time and that the District should undertake other steps recommended by the Grand Jury to resolve the deficiencies identified in the Grand Jury's Final Report No. 9.

The revisions to this MSR are intended only to address the deficiencies identified by the Grand Jury, and are not intended to fully update the MSR or provide a comprehensive, current picture of the District, as information beyond 2007 was not reviewed. It must be noted, as well, that the analysis may still not fully represent the District's situation in 2007, due to inadequate recordkeeping and staffing issues on the part of the District.

The Board of Directors and Manager listings have been updated, as identified above.

I. SETTING

The Del Rey Community Services District (DRCSD) was established in 1963 under the Municipal Water District Act of 1911 (California Water Code 7100). The District was formed to provide sewer, solid waste, street lighting, storm drainage, recreation services, and water to the members of the District. These services are provided on a continuing basis.

Area Served

The DRCSD, in addition to providing services to the District's residents, also provides water service to two properties outside the District boundaries.

The boundaries of the District are shown on the map attached as **Figure 2.4-1**.

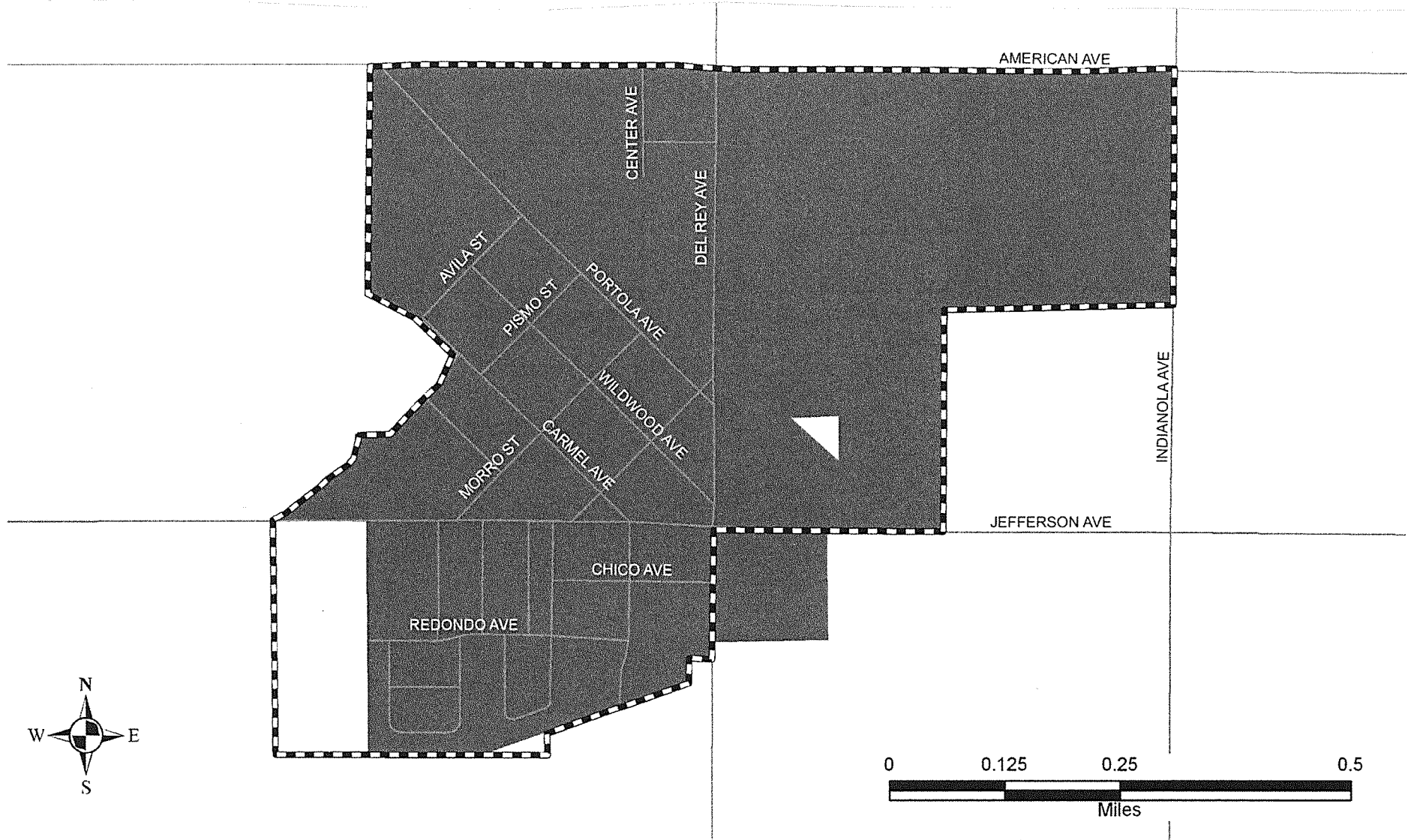
Services Provided

DRCSD provides street lighting, water, sewer, storm drainage, solid waste, and park maintenance.

II. GROWTH AND POPULATION



According to District staff, there are about 1,200 residents within the District's boundary.

Currently "Union Community," a proposed development consisting of 470 homes, is being planned adjacent to the District's boundary/Sphere of Influence. District staff has stated an interest in annexing the development and expanding its current SOI should the development come to fruition. The Del Rey Community Plan (a portion of the Fresno County General Plan) must be amended before this can happen. The District anticipates that the Community Plan will be amended in 2007. Approval of the development would require installation of a water well and a lift station for the wastewater to ensure that the District will be able to continue to provide adequate service to the residents. District staff believes that the quality of services provided to the residents would not be affected by the inclusion of Union Community into the District.



Fresno Local Agency Formation Commission Del Rey Community Service District

Legend

-  District SOI
-  District Area

District Formed: 1964
SOI Adopted: 6/25/1975
SOI Updated: 7/11/2007

Map Date: October 2007
District Area: 298 Acres
Sphere Area: 302 Acres

2.4 DEL REY COMMUNITY SERVICE DISTRICT

III. INFRASTRUCTURE

Existing Infrastructure Facilities and Conditions

District infrastructure includes a Community/Senior Center, a wastewater treatment plant (WWTP), an equipment building, and three pump houses which also store equipment as well as the water and sewer lines. The District staff did not provide information related to the existence of infrastructure for parks, street lighting or storm drains.

The District repairs are performed in-house on a day to day basis; however, there is no formal maintenance schedule.

The District operates under permit #96-284, from the Central Valley Regional Water Quality Control Board. District staff were not able to provide figures related to average wet and dry flow, the capacity of the WWTP, or the permitted flows of the District. However staff did state that the District has been in compliance with all regulations for the last 10 years.

The WWTP is between 10 and 15 years old, and the water and sewer lines are in excellent condition, according to District staff.

Planned Facilities

The District is currently building an industrial wastewater treatment plant next to the existing domestic wastewater treatment plant. The plant is located at 11495 E. American Avenue. The total project cost is \$379,000. The project will be funded by grants and developer contributions.

IV. Financing and Rate Restructuring

This section has been substantially revised from the original 2007 MSR. See note at the beginning of this MSR on page 2.4-2. The following is based on updated and previously unknown information provided by the District in late 2008 and early 2009 and seeks to address the Grand Jury's Finding F910 and Recommendation R909.

The Grand Jury's Final Report No. 9, Finding F910 stated, "The LAFCo MSR pertaining to Del Rey is inadequate in that it does not show the real financial condition of the District when compared to the District's own auditor. Recommendation R909 recommended that "LAFCo require that all MSRs of special districts accurately reflect the financial status and management of the public's funds."

In its August 20, 2008 response to the Grand Jury's Finding F910, the Commission agreed that the MSR "did not show the current financial condition of the Del Rey CSD when compared to the District's own audit", though it was also noted that the District did not supply LAFCo with its most recent audits.

With respect to Recommendation R909, the Commission stated that greater efforts would be made in the next round of MSRs, which are required to be completed by January 1, 2013, to more thoroughly assess the financial conditions of the various special districts. The information/discussion below is intended to fulfill the Commission's commitment to accurately reflect Del Rey CSD's financial condition at the time of the MSR's completion in 2007.

The District has been operating at a loss and the District's auditor has indicated "deficiencies in the design or operation of internal control" of the District's operations (Management Letters, Paul A. Dictos Accountancy Corporation to Del Rey Community Services District Board of Directors, dated 10/31/06, 8/31/07, & 1/31/08). The District has been operating at a loss for 13 out of the last 14 years with losses ranging from a low of \$39,000 to a high greater than \$391,000. For the year ending June 30, 2007, the District incurred an operating loss of \$154,269 after depreciation. For the year ending June 30, 2006, the District incurred an operating loss of \$391,451.

In May 2006, the District had a balance of \$319,000 invested with the Local Agency Investment Fund (LAIF), which serves as the bulk of the District's reserve cash. Five years prior, in May 2001, the District had a balance of \$536,000 invested in the LAIF, and a similar amount of \$537,000 in May 1996, ten years prior. In a five-year time period, the District had used up more than \$200,000 of its cash reserves.

The District's Financial Auditor has repeatedly informed the District's Board of Directors of significant deficiencies in the internal control and operation that could adversely affect the District's ability to initiate, process, and report financial data consistent with the assertions of management in the financial statements. The Auditor provided numerous notices and warnings via information contained in the District's annual Financial Statements with the Accountant's Report, along with the above identified Management Letters to the Board (dated October 31, 2006, August 31, 2007, and January 31, 2008), and communication with staff. Each of the referenced Management letters included the statement "losses of this magnitude are unsustainable". The Auditor noted improper commingling of special funding, lack of adequate documentation and recordkeeping, inadequate financial reserves, and a failure to create a budget. The Auditor also recommended the Board seek legal counsel regarding the use of restricted funds for financing operations.

Besides operating at a loss, the District has not been accumulating funds to account for depreciation of the District's facilities. Depreciation accounts for the loss in value of the facility of equipment over its expected lifespan. In 2007, the District's total deficit was \$492,301 (which includes the annual operating loss and depreciation). In the prior year, 2006, the District's total deficit was \$363,212. If the District does not accumulate enough funds to offset depreciation, it will not have sufficient funding for needed infrastructure replacement. The Auditor has pointed out to the District that operating in a deficit in net assets is in violation of state statutes.

The following information included within this section was included in the original 2007 MSR.

The District charges water and wastewater fees to generate revenue for the operation of these services. Historically, the fees for water were adequate to recover costs. Water fees were last updated in January of 1999. Wastewater fees have not been generating adequate revenue to cover expenses. On January 1, 2007 the Board of Directors for DRCSD approved a 60% increase in fees over a three-year period. Other fees include a special assessment for each parcel in the District to recover costs for street lighting, and a fee for solid waste services.

The District has long term debt in the form of a sewer bond debt that is being paid down through the sewer rate fees.

See **Table 2.4-1** below for the District's WWTP rate schedule (as of 2007).

TABLE 2.4-1: DEL REY CSD WASTEWATER TREATMENT PLAN RATE SCHEDULE

Discharger	\$/EDU/Month			EDU's ¹
	2006	2007-08	2008-09	
Single Family Residents	\$31.06	\$37.05	\$42.47	1
Multi-family Residents	\$31.06	\$37.05	\$42.47	1 Per Unit
Small Business	\$60.67	\$72.37	\$82.95	1
Post Office	\$60.67	\$72.37	\$82.95	1
Restaurant/ Bar	\$60.67	\$72.37	\$82.95	1 EDU = Monthly Water Usage 10,500
School	\$60.67	\$72.37	\$82.95	1 EDU = Number of students 15
Churches with Parsonage	\$60.67	\$72.37	\$82.95	3
Churches without Parsonage	\$60.67	\$72.37	\$82.95	1

1 - Industrial Domestic rates for facilities that discharge wastewater are based upon the formula of six employees being equivalent to one dwelling unit (EDU).

For each Equivalent Dwelling Unit (EDU) or fraction thereof in excess of the base, there is an additional charge of \$60.67 per month effective February 1, 2007, \$72.37 per month effective July 1, 2007, and \$82.95 per month effective July 1, 2008. As of April 2007, residents pay a total of \$63.19/ EDU. Of this, \$16.73 is for water, \$31.06 for sewer, and \$15.40 for solid waste.

The water charges for a resident's or government housing center is a flat rate of \$16.73 per dwelling unit. Additionally the District's commercial rates are established for a variety of uses ranging from a service station to a video store. Finally the base rates for metered charges are based on the size of the meter in inches with a consumption rate of \$0.66/100ft³. These rates were established in January 1999.

V. COST AVOIDANCE OPPORTUNITIES

This section of the MSR considers the potential cost avoidance opportunities available to each service provider. Cost avoidance opportunities include any potential sources of reduction in costs associated with service provision, and any other capital or operational actions or programs which may result in a more efficient and streamlined provision of services to the properties within the service area. This analysis includes both potential and previously implemented cost avoidance measures.

The District currently expends significantly more in costs than it takes in from revenues. Expenditures for the provision of services at current levels is not sustainable without significant cost reductions. The District has not conducted a comprehensive review of costs associated with service provision, and operational costs are the most likely source of available cost reduction to the District.

The District does not overlap with other agencies that provide similar services. The District is able to reduce the cost of maintaining the senior center through a mutual service agreement with the City of Sanger. The City of Sanger employs a senior coordinator,

provides maintenance supplies and funding for senior events. Additionally Fresno-Madera Area Agency on Aging provides transportation and hot meals to seniors.

The District released a competitive bid for solid waste service and as a result is contracted with Industrial Waste and Salvage (IWS).

The District also applies for grants including: one to refurbish the Senior Center's electrical system, the Community Development Block Grant (CDBG), one to upgrade the WWTP sludge beds, and one for water and sewer safety.

VI. OPPORTUNITIES FOR SHARED FACILITIES

The District does not share any facilities.

VII. GOVERNMENT STRUCTURE AND MANAGEMENT EFFICIENCIES

This section has been substantially revised from the original 2007 MSR. See note at the beginning of this MSR on page 2.4-2. The following more thoroughly evaluates the feasibility of consolidation, merger, or other change of organization/reorganization options and seeks to address the Grand Jury's Finding F911 and Recommendation R908.

Pursuant to Government Code Section 56430, prior to January 1, 2008, one of the nine factors for which the Commission was required to make Municipal Service Review determinations was: "Government structure options, including advantages and disadvantages of consolidation or reorganization of service providers." As discussed in the executive summary, above, the purpose of this factor is to evaluate the ability of the service provider to meet its demands under its existing government structure and to identify whether consolidation or reorganization with another service provider(s) may result in more efficient provision of service to local residents.

California Government Code section 61000 - 61934 enables the formation of Community Services Districts to provide various services to the community. The District currently provides street lights, water, sewer, solid waste, storm drainage and park maintenance.

Del Rey Community Services District is an independent special district governed by a five-member board of directors elected from within the District, and which is not governed by other legislative bodies (either a city council or a county board of supervisors). Each member has a four-year term. Three members' terms will expire in 2010 and two members' terms expire in 2012.

The District employs a Manager, Plant Supervisor, Office Manager/ Board Secretary, maintenance personnel, of which there are two, and two Administrative Assistants. See **Figure 2.4-2** for the District's organizational chart.

The MSR completed in June, 2007, contained the following statement:

The District, under its current legal form, is able to function under its current government structure. Transitioning the CSD to an alternative service provider, such as another district or other form of local

government, would be unlikely to result in significant efficiencies. Additionally, such a transition to an alternative government structure would be extremely difficult due to the cost, time, and administrative complexity. The existing structure of the District as a community service district is sufficient to allow the District to continue service provision in the foreseeable future. There are no legal or administrative limitations on the District that would affect the provision of service in the future. Therefore, a reorganization of the current government structure is not likely to significantly improve services. The current government structure is able to provide adequate service within district boundaries.

With respect to these determinations, the Grand Jury's Finding F911 states: "The LAFCO SOI could evaluate for the merger of special districts where appropriate." Further, Recommendation R908 recommends that "LAFCO take a more aggressive stance in recommending the merger of small special districts to achieve economies of scale."

In its August 20, 2008 response to the Grand Jury's Finding F911 and Recommendation R908, respectively, the Commission stated that "the MSR for Del Rey CSD should have more fully evaluated the possibility of merging all or some of its functions with another agency", and that "Fresno LAFCo is amending the MSR and will determine whether or not merging that District is feasible and beneficial to the residents served by the District." The information/discussion below is intended to fulfill the Commission's commitment to more fully evaluate the possibility of consolidation, merger, or other government structure options for the District.

The purpose of any recommendation for consolidation, merger, or other alternative government structure options should be betterment of the District's financial condition and operational efficiencies, and improving management competencies. Analysis leading to such a recommendation should also acknowledge limitations of the Commission's power to effect such changes of organization, address the statutory restrictions placed on various types of special districts to provide the services currently provided by Del Rey CSD, and recognize geographical and other constraints associated with a consolidation or other change of organization, as discussed below.

Government Code Section 56375 states that the Commission may initiate proposals for any of the following: consolidation of a district, dissolution of a district, a merger, the establishment of a subsidiary district, the formation of a new district or districts, and a reorganization that includes any of these changes. In order to initiate any of these changes of organization, the change of organization must be consistent with a recommendation or conclusion of either a Municipal Service Review, Sphere of Influence update, or pursuant to Government Code Section 56378, which grants the Commission the power to initiate and make studies of existing governmental agencies.

The Commission is limited in its ability to unilaterally effect these changes of organization, however, even when they are initiated by the Commission. Where an action is initiated by the Commission, pursuant to Government Code Sections 56854, 57081, 57102, or 57107, if sufficient protest is received, an election is required for a proposed change of organization to take place. Therefore, while the Commission

can initiate a change of organization, final approval of such a change may require an election. Where merger or establishment of a subsidiary district with a city are proposed, consent of the affected city is required (Government Code Section 56854(b)).

Additionally, a successor district(s) must also be able to carry out the functions of the existing district. If a change of organization resulted in consolidation of Del Rey CSD and another district, the successor district must be able to carry out Del Rey CSD's existing street light, water, sewer, solid waste, storm drainage and park maintenance service functions as well as all functions of the other consolidating district. Any recommendations for a new government structure option are therefore necessarily limited because few, if any, other types of special districts are authorized under State law to provide the range of services provided by community services districts.

Any recommendations for new government structure options are also limited due to such constraints as Del Rey CSD's proximity to other special districts that have the expertise and experience to provide services currently provided by Del Rey CSD and the desire of another district to consolidate with Del Rey CSD. Further, any merger with a city or establishment of Del Rey CSD as a subsidiary district to a city has limitations proscribed by law, as a significant portion of a district must be within a city's corporate boundaries to merge with that city or for its establishment as a subsidiary district. In this case, Del Rey CSD is 3 ½ miles from the City of Sanger, the nearest city to the District.

With these limitations in mind, LAFCo staff have evaluated for the potential "consolidation", "merger", or other potential change of organization of the Del Rey Community Services District with other special districts and nearby cities. Staff has reviewed the boundaries and active powers possessed for the nearest community services districts, districts which overlie the Del Rey CSD service area, the possibility of merger with a city, or Del Rey CSD becoming a subsidiary district to a city.

There are no Community Services Districts adjacent to the Del Rey CSD. The three nearest CSDs are the Easton, Laton, and Caruthers CSDs, which are located approximately 11, 20, and 23 miles from Del Rey CSD, respectively.

Easton CSD is empowered to provide street lighting, drainage, recreation and park, and landscape maintenance services. Easton CSD has a part-time manager and does not have any other staff. It is believed that, due to the limited staffing and nature of services provided by Easton CSD, that Easton CSD does not have the capacity or expertise to take on Del Rey CSD's service responsibilities.

Further, given that the communities of Easton and Del Rey are quite distinct due to their separation distance, 11 miles, LAFCo staff questions whether a board of directors elected from within the boundaries of both districts would have the same level of interest in ensuring efficient delivery of services in the community where they do not reside. For these reasons, staff is concerned that consolidation between Del Rey CSD and Easton CSD would not resolve the problems addressed by the Grand Jury and that such a consolidation may not be feasible.

Laton CSD is empowered to provide street lighting, water, sewer, solid waste, and fire protection services. The District has two full-time maintenance staff, one full-time clerical staff, and one part-time clerical staff. Considering that Laton CSD provides a number of the same services as Del Rey CSD, including the more technically

complicated water and sewer services, it is possible that Laton CSD has the expertise to undertake management of Del Rey CSD's service activities if the two districts were to be consolidated. Given the distance separating the two communities (20 miles), however, physical infrastructure could not be connected, lessening the economies of scale that might be present if adjacent districts were to link operations. Additionally, given existing operational requirements and the distance separating the communities, it may not be possible to utilize the same staff for both facilities, further reducing possible economies of scale.

LAFCo staff also share the same concern expressed above in the Easton CSD discussion, in that the two communities are separated by a significant distance and the respective districts' boards may have no interest in being involved with managing/providing services to a community where they do not reside. Additionally, given the concerns documented in the Grand Jury's Final Report No. 9, it is unknown what incentive exists for Laton CSD, as part of a successor district, to take on the deficiencies and potential liabilities associated with Del Rey CSD. For these reasons, staff is concerned that consolidation between Del Rey CSD and Laton CSD may not be a feasible alternative to Del Rey CSD's current structure as an independent special district.

Caruthers CSD is empowered to provide street lighting, water, and sewer services. The District employs a full-time manager, one additional full-time employee, and a part-time employee. As with the Laton CSD, given that Caruthers CSD operates water and sewer facilities, its staff may already have the expertise and experience to improve efficiencies of Del Rey CSD's current operations.

LAFCo staff has the same concerns with consolidation between Caruthers CSD and Del Rey CSD, as those expressed above, however. The distance separating Caruthers CSD and Del Rey CSD makes linking of the physical infrastructure of the two districts impossible, reducing potential economies of scale that would exist if the two districts were adjacent to each other. Due to this separation distance, and the operational requirements of each district, a successor district may also require the same staffing levels currently used for operating the two districts. If this is the case, the possibility of utilizing economies of scale to reduce costs and improve efficiencies through consolidation may be further limited.

Additionally, given that the districts operate in widely separated, distinct communities, the district's respective boards may not have an interest in being involved with managing/providing services to a community where they do not reside. As with Laton CSD, it is questionable whether there would be any incentive for Caruthers CSD, as part of the successor district, to take on the liabilities associated with Del Rey CSD. For these reasons, staff is concerned that consolidation between Del Rey CSD and Caruthers CSD may not be a feasible alternative to Del Rey CSD's current structure as an independent special district.

The possibility of consolidating with a special district which is not a Community Services District is also limited. This is because: 1) There are a limited number of other special districts encompassing or adjacent to Del Rey CSD's service area; and 2) other special districts in the vicinity have been formed under different principal acts and are not statutorily authorized to provide the wide range of service types provided by Del Rey CSD.

Special districts that have service areas overlapping or adjacent to Del Rey CSD include Sanger/Del Rey Cemetery District, Fresno County Library District, Kings River Conservation District, Fresno County Fire Protection District, and Consolidated Mosquito Abatement District. Since these districts are single function districts and none are authorized under their principal acts to provide any of the services provided by Del Rey CSD, consolidation with any of these districts does not appear to be feasible or advantageous to these districts or Del Rey CSD.

Consolidated Irrigation District, which also overlaps Del Rey CSD's service area, is an agricultural irrigation district that provides water for irrigation use and the use of its canals to facilitate flood control for cities within its boundaries. CID's principal act (Water Code Section 20500), allows irrigation districts to provide water for irrigation and domestic purposes, sewage disposal, electric power, flood control, and recreational facilities. (Recreational facilities appear to be limited to those that are in connection with "any dams, reservoirs, or other works owned or controlled by the district" (Water Code Section 22185)).

While CID could provide water and sewer services under its principal act, it does not currently provide these services and likely lacks the expertise to do so. Additionally, CID could not provide the street light, park maintenance, drainage, and solid waste services currently provided by Del Rey CSD because it is not authorized to do so. Further, in order to consolidate districts formed under different enabling acts, among other things, the Commission must be "Able to designate a successor or successors or form a new district or districts authorized by their principal acts to deliver all of the services provided by the consolidating districts at the time of consolidation" (Government Code Section 56826.5(1)). An irrigation district, therefore, could not be the successor district.

Given the wide range of services provided by Del Rey CSD, the logical successor district would be a community services district rather than another type of district. Additionally, there is no certainly that consolidating CID into what is the existing structure of Del Rey CSD would achieve the objective of improving Del Rey CSD's operational efficiencies and accountability, nor is there any indication that this would be advantageous to CID. Consolidation of Del Rey CSD and CID therefore does not appear to be a feasible alternative to Del Rey CSD's current structure.

The City of Sanger is located approximately 3 ½ miles from Del Rey CSD and is the nearest city to the District. While Sanger does provide a full range of services to its citizens and may have the expertise among its staff to conduct operations performed by Del Rey CSD, it is not possible to merge Del Rey CSD with the City or to make Del Rey CSD a subsidiary district of the City due to the distance separating the two.

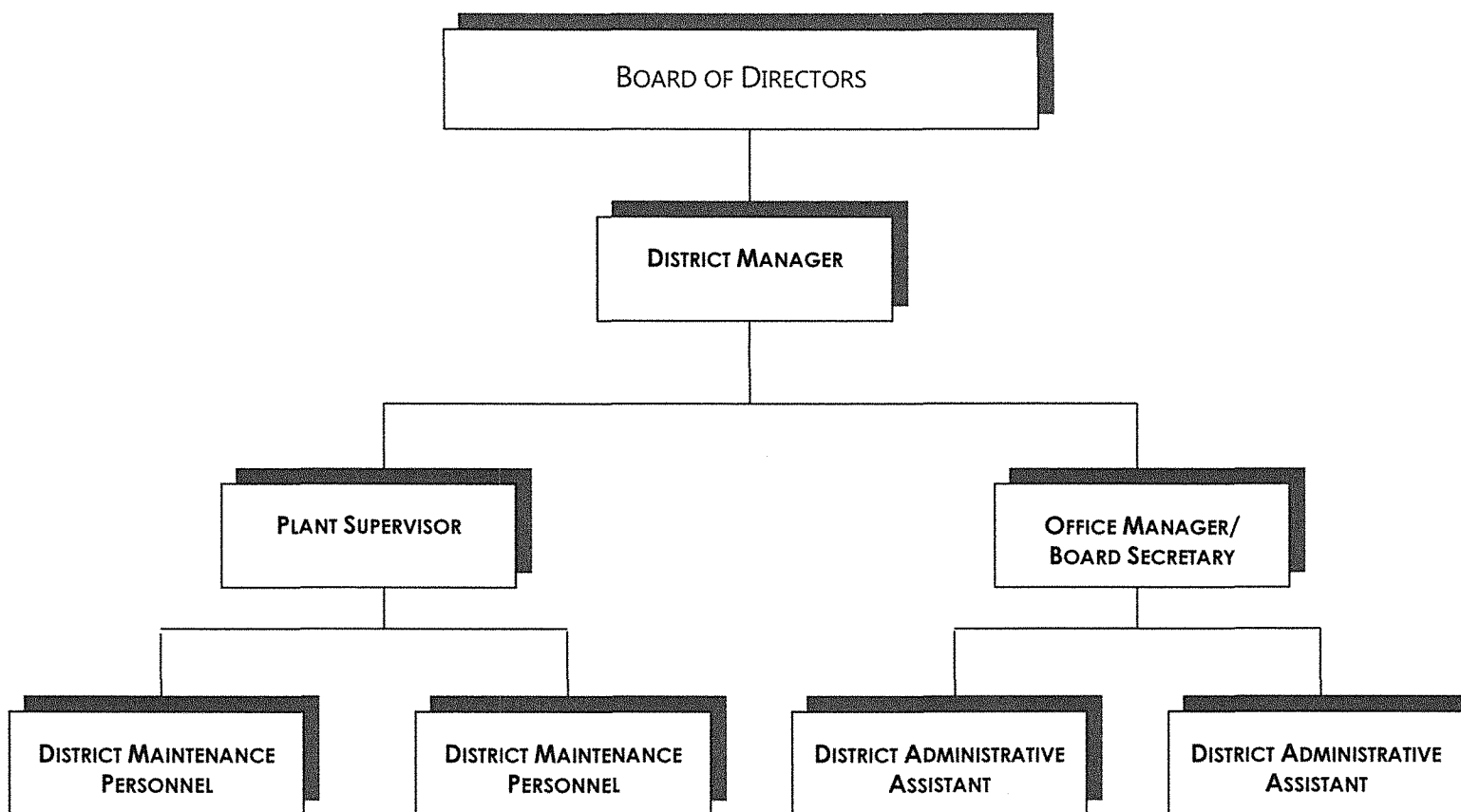
This is because at least 70% of a district's area must be within the boundaries of the city in order to establish it as a subsidiary district. Merging a district with a city would also require the district to be within a city's boundaries. Annexing Del Rey CSD to the City of Sanger in order to facilitate either creation of a subsidiary district or merger is not feasible because, pursuant to Government Code Section 56741, "territory may not be annexed to a city unless it is contiguous to the city". Due to the distance separating Del Rey CSD and the City of Sanger, annexing intervening lands in order to create contiguity is also not considered feasible.

Another alternative to retaining Del Rey CSD as an independent district would be to dissolve the district and form a County Service Area (CSA) which would assume the responsibilities of Del Rey CSD. This would allow continued provision of existing services by a single agency, but under a different structure and a new governing body – the County Board of Supervisors. In order for a CSA to be a successor to Del Rey CSD, however, the County of Fresno would have to be willing to assume the District's responsibilities as well as its liabilities. The County of Fresno may not consider this to be a feasible alternative to the District's current structure. Additionally, such a proposal may require an affirmative vote of registered voters, or may be abandoned if sufficient protest is received by registered voters or property owners.

A final alternative could be to divide services currently provided by Del Rey CSD among multiple successor districts, including existing districts and/or districts newly formed for this purpose. This would appear to be antithetical to the Grand Jury's desire for LAFCo to "take a more aggressive stance in recommending the merger of small special districts to achieve economies of scale", however, and many of the same arguments concerning the infeasibility of consolidation expressed above would still apply.

Based on the above information, LAFCo staff believes that the existing structure of Del Rey CSD as an independent Community Services District may be the most feasible and appropriate governmental structure for continued provision of necessary services. Staff recommends that the District take steps to implement the Grand Jury's Recommendations R901 through R907. Staff believes it may also be appropriate for the District to consider contracting for management services from a company/agency that has the experience and capacity necessary to resolve the District's identified deficiencies.

FIGURE 2.4-2: DEL REY COMMUNITY SERVICES DISTRICT ORGANIZATIONAL CHART



VIII. LOCAL ACCOUNTABILITY

Board meetings are held at 10649 E. Morro, the Legion Hall, in Del Rey. The meetings are at 7:00 pm the first Thursday of each month. The meeting notices are posted at the meeting site and the post office in Del Rey.

The District also holds annual community meetings to give residents the opportunity to voice concerns and make any other comments that they have. All customers in the District are provided with the same acceptable level of service.

When requested, copies of the District's prior years' budgets and other financial information were not available.

IX. SPHERE OF INFLUENCE RECOMMENDATIONS

The Sphere of Influence (SOI) recommendations analyzes the appropriateness of the District's SOI boundaries, relative to the capabilities of the service provider and future growth.

- 1) The present and planned land uses in the area, including agricultural and open space lands.

Current and planned uses in the District include residential and some commercial.

- 2) The present and probable need for public facilities and services in the area.

The WWTP will need to be upgraded and an additional well will be needed to allow service to be provided if Union Community is developed. Future development will be required to finance any additional infrastructure necessary to provide it with required services.

- 3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

The capacity of public facilities and adequacy of the physical resources associated with public services are adequate to accommodate projected growth. Financial uncertainties with the operations and long-term viability of the District remain unresolved and may affect the ability of the District to continue adequate service provision.

- 4) The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.

There are no communities of interest in the District.

X. MUNICIPAL SERVICE REVIEW DETERMINATIONS

Pursuant to the Cortese-Knox-Hertzberg Act, determinations must be made for each factor analyzed above. Determinations are based on analysis of information provided by surveys completed by agency staff, agency documents, meetings with agency staff,

and Internet research. Accordingly, staff recommends that the Commission adopt the determinations that follow.

This section has been revised from the original 2007 MSR. Revised determinations are denoted with an asterisk (). See note at the beginning of this MSR on page 2.4-2.*

Growth and Population

The Del Rey Community Services District's infrastructure is sufficient to provide the existing residents with required services. There is the potential for growth in the District if Union Community is built and annexed into the District. Future and planned development will incur the total costs for the establishment of necessary infrastructure.

Infrastructure

The Del Rey Community Services District currently maintains adequate infrastructure and facilities to serve its residents. Additional infrastructure will be needed to serve any new development and will be paid for by the developer as a condition of development.

Financing Constraints and Opportunities*

The Del Rey Community Services District does not have adequate financial management practices to ensure sufficient funding for continued long-term operations.

Rate Restructuring*

The utility rates of the Del Rey Community Services District were updated in January 2007, and included an overall 60% rate increase, to be implemented in three 20% increases over three years. The first 20% increase in 2007 was not sufficient to adequately fund District operations. It is not known whether the latest two increases, to have been implemented in 2008 and 2009, have met the District's revenue expectations and are now generating revenue sufficient to adequately fund District operations.

Cost Avoidance Opportunities

The Del Rey Community Services District applies for grants and has mutual service agreements to avoid costs. Cost avoidance measures sufficient to address budgetary concerns have not been identified by the District.

Opportunities for Shared Facilities

The Del Rey Community Services District does not currently share any facilities.

Government Structure Options*

The Del Rey Community Services District is an independent District and is operating with documented budgetary concerns. The overall management structure of the District is sufficient to account for necessary services and maintain operations in an effective manner, provided steps are taken to correct operational and financial practices which have resulted in the identified deficiencies. There do not appear to be feasible alternatives to the existing government structure, including consolidation or merger, at this time.

Evaluation of Management Efficiencies*

The Del Rey Community Services District appears to be experiencing management and staffing deficiencies. Board actions have resulted in questionable financial recordkeeping and budgeting, and the District is facing significant revenue shortages which threaten the ability of the District to continue high quality service provision. It may be appropriate for the District to consider contracting for management services with a company/agency that has the experience and capacity necessary to address and resolve the District's financial and operational deficiencies. It is recommended that the District take steps to follow Recommendation's R901 through R907 identified in the 2007-2008 Grand Jury's Final Report No. 9.

Local Accountability*

The Del Rey Community Services District appears to maintain a sufficient level of accountability in its governance and public meetings appear to be held in compliance with the Brown Act. The Board is elected and holds regular meetings at which time the public has the opportunity to comment. District records should be readily available upon request to members of the public and other agencies.

XI. BIBLIOGRAPHY

Original References in 2007

Pacific Municipal Consultants, *Survey Response from Liza Ruiz*, February 2007.

Personal Interview, *Liza Ruiz*, April 2007.

Personal Interview, *Mark Reitz*, April 2007.

Del Rey Community Services District Financial Statements with Accountant's Report for the Years Ended June 30, 2005 and 2004, Paula A, Dictos Accountancy Corporation.

New References in 2009

2007-2008 Fresno County Grand Jury Final Report #9.

Local Agency Investment Fund Statements, April 1995 through May 2006 (some records missing).

Financial Statements with Accountant's Report, for the Years Ended June 30, 2001 through 2007.

Management Letters from the Paul A. Dictos Accountancy Corporation to the Board of Directors, 2006, 2007, and 2009.

Board of Directors Meeting Agendas and Minutes, December 7, 2006 through November 26, 2007 (some records missing).

**Fresno County
Grand Jury 2012 – 2013
Report # 5**

FILED

MAY 28 2013

FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

Del Rey Community Services District

INTRODUCTION

The grand jury conducted an inquiry into the Del Rey Community Services District (the District) after receiving formal complaint letters from three Del Rey residents. Interviews with the complainants can be summarized in three general areas.

The governance of the District lacks transparency:

- Residency of elected officials unsubstantiated.
- Board meeting tape recordings are edited with deliberate deletions.
- Board meeting minutes are cursory, delayed, and fail to report closed sessions.
- Despite the fact that large numbers of the District's clients are not fluent in English, the posting of agendas and minutes of meetings are not provided in Spanish; similarly, no Spanish translation services are provided at public Board Meetings.

The District is not responsive to Del Rey residents:

- There is no provision for Spanish-English translation at the District Offices.
- District board members and staff are dismissive or slow to respond to inquiries, petitions, and billing matters from clients/taxpayers.

The District lacks accountability:

- The District has been operating at a loss for year after year.
- Accounting paper trails are non-existent.
- There have been unexplained expenditures of the Local Agency Investment Fund (LAIF) account.
- There have been unauthorized withdrawals from District accounts.

Subsequent to the initial interviews the grand jury thought it important to attend a Board Meeting to gain insight into the District dynamics. A four member delegation attended a meeting on September 6, 2012.

Based on the meeting and allegations, particularly those regarding financial accountability, the grand jury decided to move forward with a full investigation of the District.

BACKGROUND

Special Districts

Special districts are set up in accordance with the Community Service District Law (CA Gov. Code §61000 et seq.) to deliver public services, in particular, water, sewage collection and treatment, street lighting, hospitals, and public parks and recreation. Territorial boundaries are set by the county Local Area Formation Commission (LAFCo). All special districts are under the direction of their own locally elected boards of directors who are responsible to their local electorates.

All special districts are required to hire a public accountant to prepare an annual audit and a self-evaluation by management, called a Management Discussion and Analysis (MDA). These two reports must be submitted to the county auditor annually. The accountant also presents the audit to the members of the Board along with a letter analyzing the financial and management status of the district and offering possible corrective action(s).

Del Rey

The District was established in 1963 to provide water, sewer, solid waste, street lighting, storm drainage, and recreation services to residents of the district. These services are provided on an ongoing basis to an area containing approximately 1,600 residences located south of Sanger. The District employs three full-time employees – a plant manager, a general manager, and an office assistant/secretary. The current general manager has been on the job for two years. The Board of Directors (BOD) has five members who serve four year terms; two and three members are elected in a staggered fashion every two years.

DISCUSSION

In order to evaluate the complaints made about the District, the grand jury interviewed the three complainants, the management of the district, Board members, and the District's public accountant. Additionally, the grand jury reviewed the District's auditor's letters to the Board, audit reports, the LAFCo

report, the Board LAIF account for fiscal years 1995-2012, and the minutes/agendas of the District's board meetings for 2008-2012.

Complaints

To substantiate the allegation that improper draws against the LAIF account were made, the grand jury reviewed the LAIF account for historical content from 1995 to 2007 to gain a better understanding of prior fiscal practices. Then fiscal years 2008 through 2012 were used for the current report. The LAIF account balance in December 1995 was \$687,942. At the June 30, 2007 audit, the account balance was \$284,844. As of July 13, 2012, the LAIF account balance was \$94,967. The current grand jury also reviewed the Grand Jury Final Report 2007-2008 regarding the same complaint of improper expenditures from the LAIF account (identified then as the 1995 Shell Oil Company settlement). The LAIF settlement account was restricted for potential future well cleanup and not to be used for ongoing operating expenses. The findings of the current grand jury are in total agreement with those of the previous grand jury. Records needed to identify how the funds were spent are non-existent, the audit reports indicate these funds were commingled, and the District's auditor has repeatedly and consistently warned the Board against using the LAIF funds to finance operating costs. The auditor's June 30, 2011, Board Letter, as in previous Board Letters, states the deficiencies are serious enough to recommend the Board seek the advice of legal counsel.

The allegation that the District has continued to operate at a loss is fully substantiated by this grand jury's inquiry. The District's records show that the District has been operated at a loss for 17 of the last 18 years. The annual losses have ranged from a low of \$29,448 to a high of \$391,000. In the Board Letter dated September 30, 2011, the auditor reported an operating loss of \$29,448 and noted, "Although this is an improvement from previous years, losses of this magnitude are unsustainable".

The District has violated the law by not maintaining levels of net income as required by the Sewer Bond Covenant. District documents show, "Under the provision of 1996-1 Sewer Revenue Bond Ordinance, the Board of Directors agrees to set aside sewer revenue equal to 1.2 times the combined aggregate amount of principal and interest requirement that shall become due and payable within the next succeeding twelve months". The 2006 through 2008 increase in the sewer service fee schedule was not sufficient to offset the operating expenses and the reserves required to comply with the Sewer Bond Covenant. The District was not in compliance for the years 2008 up to 2011. The District's auditor has warned the Board on multiple occasions that it is in violation of the covenant by not maintaining the required reserves. In the Board Letter dated September 30, 2011, the auditor states the District was not in compliance and "It

becomes imperative that the board addresses the matter and undertakes immediate corrective action".

Reviews of past Board Minutes have shown an absence of documenting resolutions authorizing fiscal actions. Such actions would include account withdrawals, debt forgiveness, and write-offs of amounts owed to the District. Similarly, records of cash handling are absent over scattered periods of time.

The Board Members have not conducted themselves in a professional manner in accordance with CA Gov. Codes and LAFCo By-laws.

- A Board member simultaneously served in the capacity of Board President as well as the District Manager.
- Non-residents of the District have been allowed to become Board members.
- Board vacancies, which frequently occur from mid-term resignations, are not filled promptly and according to established bylaws, policies, and procedures. This results in many meetings being conducted with fewer than a full Board, and at any point in time, as many as 3 of 5 board members are appointees. On occasions, nepotism seems to prevail in appointing Board members.
- Board meetings are loosely conducted, and disruptive behavior sometimes occurs with little constraint. On at least one occasion a police report was made because of threats of violence due to a Board member became argumentative and combative with a community member during a Board Meeting.

Oversight

In 2001, the California Legislature passed a law that requires LAFCo to study all special districts at least every five years. The Cortese-Knox-Hertzberg Local Government Reorganization Act requires all county LAFCos to conduct Municipal Service Reviews (MSR) prior to updating Spheres of Influence Reviews (SOI). The stated purpose of the MSR is "a comprehensive assessment of the ability of government agencies to effectively and efficiently provide services to residences and users." The SOI update is designed to determine whether present boundaries serve the public most efficiently. These required reviews were completed in Fresno County in July of 2007. Copies of the MSR and SOI were furnished to the grand jury by LAFCo. A current review by LAFCo was pending at the time of this grand jury investigation.

This grand jury reviewed the MSR describing the District and found while it meets the minimum requirements of the Cortese-Knox-Hertzberg Act, it did not address

the financial condition and management of the District. In preparing his report, the independent contractor hired by LAFCo interviewed only two people. The report ignores, or briefly mentions without comment, several serious concerns, such as the District auditor's warnings about the improper expenditure of restricted funds, the violation of the Sewer Revenue Bond Covenant requirements, and the District's failure to produce an operating budget.

Training

Many small Fresno County special districts, such as this one, suffer from a lack of adequate training of board members and staff. The California Special District Association provides pertinent training to special districts, but the District has never availed itself of that opportunity.

CONCLUSION

The grand jury found grounds to support allegations based on the following CA Gov. Code §61040: (a) A legislative body of five members known as the board of directors shall govern each district; (b) No person shall be a candidate for the board of directors unless he or she is a voter of the district. (c) A member of the board of directors shall not be the general manager, the district treasurer, or any other compensated employee of the district; (d) LAFCo by-laws stipulate district board meetings to be conducted, as specified, in the Brown Act rules of procedures and decorum; (e) LAFCo code #605 provides direction for the replacement of board members and district employees.

It is difficult to verify Del Rey residents' claims that non-residents of the District have served on the Board. The distant location of one member's employment and the home ownership of another gave credence to this complaint. Credence is given to the combative board member since a police report documents witnesses to the event.

In regard to the lack of Spanish translation of public notices and the conduct of public meetings, it has been the District's position that to do so would require a "certified translator" at an unaffordable cost. Such services are, in fact, quite expensive. At the meeting attended by the grand jury, there appeared to be a significant number of bilingual people among the board members and staff to make the deliberations understood in substance despite any lack of certification.

Oversight

Complete oversight of a problem district could well prompt LAFCo to recommend that such a district be merged with an adjoining district. By such a merger, the resulting larger district might achieve economies of scale allowing the new district

to hire more competent management and technical services. In addition, there could be savings in required legal and accounting services spread over a larger income base. Such consolidation would broaden the population base, providing a larger reservoir of eligible residents suitable and knowledgeable to serve as directors and staff.

This investigation represents the second occasion in five years that the District has been subjected to close scrutiny. Both investigations have revealed serious governance deficiencies that demand urgent attention by LAFCo and Fresno County.

FINDINGS

- F501 The District's auditor has repeatedly informed the Board of Directors of deficiencies, and they have failed to adequately address them.
- F502 In a letter to the BOD dated September 30, 2011, the District's auditor reported an operating loss of \$29,448 noting, "Losses of this magnitude are unsustainable."
- F503 The District has operated at a loss for 17 of the past 18 years.
- F504 The District is in serious financial trouble due to poor management by the Board of Directors.
- F505 The District has failed to maintain reserves required by the Sewer Revenue Bond Covenant.
- F506 Not all members of the BOD have conducted themselves properly or performed their duties in accordance with the codes that govern special districts.
- F507 The District has inappropriately commingled general funds with those reserved for specific restricted purposes.
- F508 Members of the Board have failed to take advantage of training available from the California Special District Association.
- F509 Written and sufficiently comprehensive bylaws, policies, and procedures to properly guide the District in all phases of its operations are missing.
- F510 The LAFCo MSR pertaining to the District is inadequate in that it does not show the real financial condition of the District when compared to the reports of the District's own auditor.

F511 There is a failure of the District to address the needs of its non-English speaking clients from whom a significant part of its revenue is derived.

F512 The grand jury investigation of the District demonstrates longstanding, deep, and fundamental deficiencies in the management of district operations which have been repeatedly raised over many years without remedy. This is documented by prior grand jury and auditors reports.

RECOMMENDATIONS

R501 The Del Rey Community Services District ceases operating at a loss. (F501-504)

R502 The Del Rey Community Services District maintain reserves required by the Sewer Revenue Bond Covenant (F505)

R503 The Del Rey Community Services District prepares and submits timely budgets and financial reports. (F501, F502, F503, F504)

R504 The Del Rey Community Services District ceases commingling funds and properly segregates their funds. (F507)

R505 The Del Rey Community Services District undertakes ongoing training available for staff and board members from the California Special District Association. (F506)

R506 The Del Rey Community Services District develops plans and programs to resolve the problems outlined by its own auditor in his numerous Board Letters. (F501, F502, F503, F504, F505)

R507 LAFCo require that all MSRs of special districts accurately reflect the financial status and management of the public's funds. (F509)

R508 LAFCo take a more aggressive stance in recommending the merger of this District with another to achieve economies of scale. (F510)

REQUEST FOR RESPONSES

Pursuant to Penal Code §933.05, the Fresno County Grand Jury requests responses to the specified recommendations and findings. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

RESPONDENTS

Executive Director, LAFCo: F509, F510, R507, R508

President of the Del Rey Community Service District Board of Directors with the concurrence of the other Board members: F501, F502, F503, F504, F505, F506, F507, F508, F509, F511, F512, R501, R502, R503, R504, R505, R506.

cc: Fresno County Auditor-Controller/Treasurer-Tax Collector
Fresno County Board of Supervisors

SOURCES AND REFERENCES

1. Complaint letters (3)
2. Interviews with complainants, members of the District Board of Directors and General Manager, District auditor.
3. District auditor's "Board Letter", September 30, 2011.
4. District statements from 2006-2012.
5. LAIF Account statements from 1995-2012.
6. CA Gov. Codes §61040-61048; 61000 et seq.
7. 2007-2008 Grand Jury Final Report # 9
8. Attendance by grand jury committee members at district board meeting.

July 17, 2013

The Honorable Gary Hoff
Presiding Judge
Fresno County Superior Court
1100 Van Ness Avenue
Fresno, California 93724-0002

Re: LAFCo's Response Fresno County Grand Jury 2012-2013
Report No. 5 – Del Rey Community Services District

Dear Judge Hoff:

The Fresno Local Agency Formation Commission ("LAFCo") is in receipt of the Fresno County Grand Jury's Final Report 2012-2013 No. 5 (the "Grand Jury Report") concerning the Del Rey Community Services District ("Del Rey CSD"). This letter constitutes LAFCo's response to the Grand Jury Report pursuant to Penal Code section 933.

LAFCo has reviewed in detail the Grand Jury Report and appreciates the Grand Jury's interest in investigating and recommending improvements to special district operations. This has been an issue of deep concern to LAFCo for some time. The Grand Jury Report appears to be the latest review into the activities of the Del Rey CSD and we view it as a follow up to the Grand Jury's 2007-2008 Report No. 9, which highlighted similar concerns and made identical recommendations. LAFCo does wonder why at least one of the findings and both recommendations are identical to a report that the Grand Jury released during years 2007-2008. As explained below, it appears to us that the Grand Jury did not review LAFCo's revised Municipal Service Review ("MSR") for the Del Rey CSD, which goes into great detail about the very items discussed in the Grand Jury Report.

Although LAFCo has been asked to respond to two findings and two recommendations contained in the Grand Jury Report, the following is background that we believe is important when evaluating the latest report.

2007-2008 Grand Jury Report and Aftermath

On July 11, 2007, LAFCo adopted the MSR for the Del Rey CSD. Shortly thereafter, in July 2008, the Grand Jury issued its first report alleging, among other things, that the MSR, while legally sufficient, was inadequate and failed to show

the real financial condition of the CSD when compared to reports that were conducted by Del Rey's own auditor and analyzed by the Grand Jury. The report also urged LAFCo to (i) require that all MSRs of special districts accurately reflect the financial status and management of public funds; (ii) evaluate evidence for the merger of special districts where appropriate; and (iii) to take a more aggressive stance in recommending merger of small special districts to achieve economies of scale.

LAFCo responded to the Grand Jury by agreeing with many aspects of the report and promising to make several changes to the MSR process generally and to the Del Rey CSD MSR specifically. In fact, on August 12, 2009, LAFCo adopted an updated MSR, which went into substantial detail about the Del Rey CSD's operations and discussed opportunities for its merger or dissolution. After the updated MSR was adopted, LAFCo's then Executive Officer, Rick Ballantyne, forwarded the revised report to the Grand Jury, and made it available on the LAFCo website.

As a partial result of the 2007-2008 Grand Jury Report, LAFCo has made additional efforts to review the financial status of special districts and analyze whether or not special districts should be merged with other governmental entities.

2012-2013 Grand Jury Report

As mentioned, LAFCo has reviewed the most recent Grand Jury Report. From the outset, it appears to us that the Grand Jury Report does not consider the revised Del Rey CSD MSR. The Grand Jury Report notes that the Grand Jury reviewed "copies of the MSR and SOI . . . furnished to the Grand Jury by LAFCo." We are unclear which MSR and SOI the Grand Jury reviewed. LAFCo expended substantial time and resources completely revising the MSR and, if the Grand Jury has not reviewed the revised report, we believe that the latest Grand Jury Report observations with respect to the MSR would be inaccurate. As a result, we are attaching the 2009 revised MSR with this reply and specifically call to your attention Sections IV (Financing and Rate Restructuring) and VII (Government Structure and Management Efficiencies).

LAFCo is in the process of preparing a new MSR for the Del Rey CSD and anticipates bringing this document to the LAFCo Commissioners before the end of 2013. We believe that, at least with respect to the MSR, this latest Grand Jury Report might be premature because we see no evidence that it ever evaluated the revised MSR and it certainly has not reviewed the 2013 MSR because that document is being prepared and has not been publicly released.

Moreover, there are two references to the LAFCo "by-laws" and "code" that are unknown to us. The "Conclusions" section states that "(d) LAFCo by-laws stipulate district board meetings to be conducted, as specified, in the Brown Act rules of procedure and decorum; (e) LAFCo Code #605 provides direction for the replacement of board members and district employees." LAFCo has not adopted bylaws but rather has various adopted Policies and Procedures. The Policies and Procedures, however, do not address how *other* agency board meetings are to be conducted. They are limited to how

the *LAFCo* meetings are to be conducted. Similarly, there is neither a *LAFCo* Policy #605 nor a *LAFCo* adopted policy on how special district board members or employees are replaced. *LAFCo* would not have authority to enforce such policies. Rather, various provisions in the Government Code address such matters for other special districts.

MSRs & LAFCo Authority

Government Code Section 56430 requires *LAFCo* to review municipal services provided in geographic areas appropriate to the service or services to be reviewed, and prepare a written statement of determinations with respect to each of the following:

1. Growth and population projections for the affected area;
2. The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence;
3. Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence;
4. Financial ability of agencies to provide services;
5. Status of, and opportunities for, shared facilities;
6. Accountability for community service needs, including governmental structure and operational efficiencies; and
7. Any other matter related to effective or efficient service delivery, as required by commission policy.

In conducting an MSR, the Commission reviews agencies that provide the identified service or services within the designated geographic area. *LAFCo* may assess various alternatives for improving efficiency and affordability of infrastructure and service delivery within and contiguous to spheres of influence, including, but not limited to, the consolidation of governmental agencies.

MSRs do not require *LAFCo* to initiate changes based on service review findings, only to make determinations regarding the provision of public services. *LAFCo* may use these determinations to help establish or amend spheres of influence or to analyze prospective changes of organization or reorganization. A MSR may lead to a change of organization or reorganization.

It is important to note that *LAFCo* is limited in its ability to unilaterally effect such changes of organizations or reorganizations. Generally, where an action is initiated by *LAFCo*, if sufficient protest is received, an election is required for a proposed change of organization to take place. Therefore, while *LAFCo* may initiate such an

action, final approval may require an election. Where a merger of a special district is proposed, consent by an affected city is required.

LAFCo Responses

The following are LAFCo's responses with respect to the specific findings and recommendations contained in the Grand Jury Report:

F501-F508, F511 and R501-R506: LAFCo has no formal response to these findings and recommendations because they are directed to the Del Rey CSD, and otherwise involve the internal administration of the Del Rey CSD. Other than the preparation of the MSR, LAFCo has not independently evaluated the validity of the findings and the appropriateness of the recommendations. As mentioned, LAFCo is in the process of preparing its latest MSR of the Del Rey CSD and will be reviewing the factors addressed above.

F509: *Written and sufficiently comprehensive bylaws, policies, and procedures to properly guide the District in all phases of its operations are missing.*

LAFCo's Response: The Fresno County CAO's office requested that LAFCo respond to this particular finding. Quite frankly, we are uncertain as to why because other than the MSR determination No. 6, "accountability for community service needs, including governmental structure and operational efficiencies," we believe that this finding is directed to the Del Rey CSD. As mentioned, the 2009 MSR went into great detail about the District's organizational deficiencies and LAFCo intends to prepare an additional MSR, which cover the items described in No. 6 above. Moreover, the reference to LAFCo "by-laws" and Code #605, which refers to such policies, is incorrect.

F510: *The LAFCo MSR pertaining to Del Rey is inadequate in that it does not show the real financial condition of the District when compared to the reports of the District's own auditor.*

LAFCo's Response: This finding is identical to finding F510 in the 2007-2008 Grand Jury Report. The revised MSR from 2009 goes into great detail about the Del Rey CSD's financial condition. We encourage the Grand Jury to review this report. Additionally, Fresno LAFCo is preparing a new MSR for the Del Rey CSD, which will further address this matter.

R507: *LAFCo require that all MSRs of special districts accurately reflect the financial status and management of the public's funds.*

LAFCo's Response: Again, this finding is identical to recommendation R909 in the 2007-2008 Grand Jury Report. LAFCo has been implementing this recommendation over the past several years. As we pointed out in 2008, given the large number of cities and special districts in Fresno County, LAFCo has been preparing MSRs in a staggered format over the past several years. This has given LAFCo the time to

conduct a more thorough analysis as necessary for each governmental agency. Additionally, LAFCo has contacted the Fresno County Auditor, as well as reviewed each local agency's audits, to determine the accurate financial status and management of the city or special district being reviewed. Moreover, LAFCo has been in contact with other interested stakeholders in the local agency's affairs, including board members and service recipients to verify the information provided by the agency's staff.

R508: *LAFCo take a more aggressive stance in recommending merger of small special districts to achieve economies of scale.*

LAFCo's Response: This finding is also identical to recommendation R908 in the 2007-2008 Grand Jury Report. LAFCo has considered recommendations to merge, dissolve, or modify the boundaries of several districts. As explained above, the law does not give LAFCo the unilateral authority to take such actions. Residents have due process rights to "protest" certain LAFCo decisions and cities, as an example, must consent to take responsibility from underperforming special districts. With respect to the Del Rey CSD, LAFCo has amended the MSR, thoroughly analyzed merger opportunities, and concluded that "the existing structure of the Del Rey CSD as an independent Community Services District may be the most feasible and appropriate governmental structure for continued provision of necessary services."

LAFCo hopes that the Grand Jury will find the response helpful. Our agency is committed to ensuring that our reviews of cities and special districts are comprehensive and useful. If you have any questions, please do not hesitate to contact LAFCo Executive Officer David Fey at (559) 600-0604.

Sincerely,

ROBERT SILVA
LAFCo Chairman