



BEAR VALLEY COMMUNITY SERVICES DISTRICT

July 11, 2013

The Honorable Colette Humphrey
Presiding Judge, Kern County Superior Court
1415 Truxtun Avenue
Bakersfield, CA 93301

Re: Grand Jury Final Report Concerning Bear Valley Community Services District,
dated May 22, 2013

Dear Judge Humphrey:

This letter is being submitted on behalf of the Bear Valley Community Services District ("District") in response to the findings and recommendations made by the Grand Jury in the above-referenced report. The District's response to each finding and recommendation is as follows:

FINDINGS:

F1. The meeting agendas are posted on the website and include podcasts for both Regular Meetings and Committee Meetings.

Response: The District agrees with this finding, but with the clarification that webcasts are transmitted live, via the internet, for each of the District's committee and regular board meetings.

F2. Meetings are broadcast live on <http://www.ustream.tv/channel/bvcisd-meetings> or can be viewed when desired.

Response: The District agrees with this finding.

F3. Violations of the Brown Act may have occurred as a result of serial meetings with Board and Committee Members which are participating on both the District and the Bear Valley Springs Association (BVSA) Committees.

Response: The District disagrees with this finding in part. For clarification, meetings of the BVSA board or committees are not conducted pursuant to the Brown Act. While it may be *possible* for a Brown Act violation to occur when members of the District's Board or committees also convene relative

to serving on a BVSA committee, there are no facts included in the report to indicate that an actual violation has occurred.

F4. The BVSA has nine Committees: Equestrian, Food Service Advisory, Golf Advisory, Rules Advisory, Recreation Advisory, Lake Quality Advisory, Special 4th of July, Finance Advisory, Alternative Dispute Resolution/Internal Dispute Resolution, Audit and Liaison.

Response: The District agrees with this finding.

F5. Two of the District Board Members and three citizen volunteers on District Committees are also members of BVSA Committee(s) other than the Liaison Committee.

Response: The District disagrees with this finding. Currently, only one (1) member of the District's Board serves on a committee of the BVSA (other than those serving on the Liaison Committee). Four (4) individual citizen volunteers serving on District committees also serve on BVSA committees.

F6. The Grand Jury has received complaints of harassment and improper etiquette by a Board Member during Board meetings.

Response: The District disagrees with this finding on the basis that it does not have sufficient knowledge of the extent or nature of the complaints received by the Grand Jury.

F7. Personality issues between Committee Members of the District and involved members of the BVSA have interfered with accomplishing tasks.

Response: The District disagrees with this finding on the basis that it does not have sufficient information to be able to identify the "personality issues" being referenced.

F8. The District employs 37 full-time and 16 part-time employees.

Response: The District agrees with this finding.

F9. Each Board Member is compensated \$100 per meeting up to a maximum of \$600 per month.

Response: The District agrees with this finding.

F10. The District owns all the amenities in Bear Valley Springs (nine hole golf course, driving range, tennis courts, swimming pool, country club, restaurant, equestrian center, lakes and recreation building) for the purpose of providing amenities to the residents. The BVSA leases the buildings and facilities from the District to provide the amenities.

Response: The District agrees with this finding, but with the clarification that the BVSA is obligated to maintain, repair and operate the District owned facilities pursuant to a written lease agreement between the parties.

F11. The BVSA is a corporation and charges fees to homeowners and property owners to pay for amenities.

Response: The District agrees with this finding, but with the clarification that the BVSA is a non-profit, 501(c)(7) corporation.

F12. In 2008 the District gained the portion of tax revenue previously provided to the Tehachapi Valley Parks and Recreation Department and the Arvin Parks and Recreation District for the purpose of Parks and Recreation in the Bear Valley Springs area.

Response: The District disagrees with this finding, in part. The District currently receives the tax revenue previously apportioned to the Tehachapi Valley and Bear Mountain Parks and Recreation Districts.

F13. The District has six standing Committees: Administration, Communication, Finance, Infrastructure, Liaison and Public Safety.

Response: The District agrees with this finding.

F14. One of the BVSA Directors is a member of a District Committee (other than the Liaison Committee).

Response: The District agrees with this finding as of the date of the Final Report. Since the release of Final Report, however, the BVSA Director resigned from his position as a member of the District committee.

F15. One major operating expense of the District is the entrance gate to the community, primarily due to personnel costs stationed at the gate. The entrance gate is funded by tax revenue as the gate is considered necessary for public safety.

Response: The District disagrees with this finding, in part. The entrance gate is not a necessity to ensuring the residents' safety. The gate does, however, act as a deterrent that enhances community safety.

F16. The District provides Police Dispatch Services to the Tehachapi Police Department under contract. The service charges to Tehachapi are approximately 20% over the contracted amount. This excess charge is reportedly due to overhead for District accounting, overtime and utilities. The latest contract allows only a 5% increase in cost per year. The contract expired June 2012.

Response: The District disagrees with this finding, in part. The subject contract provided for an annual automatic 5% increase in the contract amount, which over the four (4) year term of the contract resulted in a 20% total increase.

F17. Lack of due diligence involving projects managed by the BVSA with associated environmental impacts could subject the District to future liability.

Response: The District disagrees with this finding on the basis that it does not have sufficient information to be able to specifically comment. The District agrees, however, with the general proposition that a failure to diligently carryout improvement projects could expose the District to liability.

F18. The District funds Parks and Recreational facilities managed and operated by the BVSA with little or no administrative control of the operation of the funded facilities.

Response: The District disagrees with this finding. The District does not entirely fund BVSA operations. Rather, the District simply distributes to the BVSA the tax revenue previously apportioned to the Tehachapi Valley and Bear Mountain Parks and Recreation Districts. That tax revenue amounts to approximately \$100,000 annually, whereas the BVSA's annual budget is in excess of five (5) million dollars. Furthermore, the District does maintain administrative control and oversight by requiring District approval of improvement projects.

F19. Salaried Staff spends 12 to 14 hour days at the District Office. Extra work is required to accomplish tasks requested by Board Members and Committees.

Response: The District disagrees with this finding, in part. The additional workload recently experienced by District staff has been due to a number of unforeseen circumstances that have occurred in the last 18 months, not the least of which was the untimely passing of two (2) of the District's top management personnel. The District has otherwise experienced a significant turnover of support staff, thereby adding to staff's workload.

RECOMMENDATIONS:

R1. The District should revise the Policies and Procedures Manual to disallow membership of Board and Committee Members on both BVCS and BVSA Committees (with the exception of the Liaison Committee). This would help insure separation of duties and mitigate potential violations of the Brown Act.

Response: This recommendation requires further analysis. (See Penal Code, §933.05(b)(3).) The Board is currently undertaking the process of editing and revising the District Code and will continue to explore the recommendation made by the Grand Jury. The District wishes to note, however, that

committee members only serve in an advisory role and that it is ultimately the responsibility of the Board to act on matters of District business.

R2. The District should take a lead role in administering, managing and staffing the BVSA parks and recreation programs which receive funds from the District.

Response: This recommendation will not be implemented by the District because it is not reasonable given the nature and circumstances of the relationship between the two entities. (See Penal Code, §933.05(b)(4).) Given the District only funds a fraction of the BVSA's overall budget, and the fact that the BVSA is contractually responsible for properly managing the District owned recreational facilities, it is not practical for the District to take on the additional administrative duties suggested.

R3. The District should consider the occasional use of a professional third party to review projects with environmental impacts to assure compliance with California Environmental Quality Act (CEQA) requirements. Such services may be mitigated in the long term by providing training and education to Board and Committee Members in CEQA and environmental compliance requirements.

Response: This recommendation has not yet been implemented, but will be implemented within the next six (6) months. (See Penal Code, §933.05(b)(2).)

R4. The District shall revise compensation policy to prevent Board and Committee Members from scheduling meetings to receive the maximum monthly compensation of \$600. Maximum compensation could be limited to a certain number of months per year.

Response: This recommendation will not be implemented by the District in light of the fact that its current compensation policy complies with Government Code, section 61047. (See Penal Code, §933.05(b)(4).)

R5. The District should review employee staffing needs to minimize overtime requirements of salaried personnel.

Response: This recommendation has not yet been implemented, but will be implemented within the next six (6) months. (See Penal Code, §933.05(b)(2).)

R6. The District should consider automating the entrance gate during off-peak hours (nights and evenings) and employ remote video monitoring by Dispatchers at the Police Department during the automated or unattended periods.

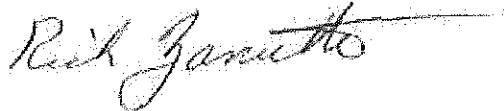
Response: This recommendation requires further analysis. (See Penal Code, §933.05 (b)(3).) The District is currently in the process of retaining an engineering consultant to advise the District concerning improvements to the entrance gate. The recommendation made by the Grand Jury will be one option explored by the District in consultation with the retained engineer.

R7. The contract for Police Dispatch Services for Tehachapi Police Department should be renegotiated. The Grand Jury suggests the District consider contracting with the Kern County Sheriff's Department to handle both dispatch and police services.

Response: With respect to the recommendation that the contract with Tehachapi Police Department be renegotiated, this recommendation has been implemented and the two agencies are currently in negotiation discussions. (See Penal Code, §933.05(b)(1).) As for the recommendation that the District reconsider contracting with the Kern County Sheriff's Department for police and dispatch services, the District will not be implementing this recommendation at this time. (See Penal Code, §933.05(b)(4).) The District recently explored this option and received overwhelming opposition from the public. Recent administrative changes have also resulted in significant improvements to the day-to-day police department operations. The District is amenable, however, to reviewing from time-to-time the viability of contracting with the Sheriff's Department from an economic perspective.

The District appreciates the Grand Jury's time and effort in providing the referenced findings and recommendations. In the event there are additional questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rick Zanutto", with a horizontal line extending from the end of the signature.

Rick Zanutto, President
BEAR VALLEY COMMUNITY SERVICES DISTRICT

cc: Lynn Runyan, Foreperson, Kern County Grand Jury
Bear Valley CSD Board of Directors



2013 – 2014

Terry Wolfe
Foreperson

Ella Abrams

Dennis Elliott

Fred Evenson

Elizabeth Fowler-Tavares

Patricia Golembefskie

Shirley Ann Hawk

Judith House

Mahlon Keel

Patrice Kline

Lois Miller

Donald Napier

Jerald Palmateer

Janet Radcliff

Horace Smith

Gerald Thompson

Beverly Traynor

Teresa Vasquez

Judith Waters

15 TRUXTUN AVENUE, STE. 600
BAKERSFIELD, CA 93301
(661) 868-4797
FAX: (661) 321-0761
www.co.kern.ca.us/grandjury

Kern County GRAND JURY

September 5, 2013

Gus Hodge, Manager
Bear Valley Community Service District
28999 South Lower Valley Road
Tehachapi, CA 93561

RE: BEAR VALLEY COMMUNITY SERVICE DISTRICT

Dear Mr. Hodge:

Enclosed please find a copy of the above report by the 2012-2013 Kern County Grand Jury.

You were requested to respond to this report pursuant to Penal Code Section 933.05 by **August 22, 2013**, as follows:

1. Hard copy to Honorable Colette M. Humphrey
1415 Truxtun Avenue
Bakersfield, CA 93301
2. Hard copy to Terry Wolfe, Foreperson
2013-2014 Kern County Grand Jury
Suite 600
1415 Truxtun Avenue
Bakersfield, CA 93301

According to our records we have not received your response. The Grand Jury requests you respond in writing to the **FINDINGS** and **RECOMMENDATIONS** contained in this report no later than **September 12, 2013**.

Sincerely,

A handwritten signature of Terry Wolfe in black ink.

Terry Wolfe, Foreperson
2013-2014 Kern County Grand Jury

BEAR VALLEY COMMUNITY SERVICE DISTRICT

PURPOSE OF INQUIRY:

The Special Districts Committee (Committee) of the 2012-2013 Kern County Grand Jury (Grand Jury) reviewed the Bear Valley Community Service District (District) operation and management pursuant to California Penal Code §933.5.

PROCESS:

Committee Members obtained background information about the District by:

- Review of responses provided on August 7, 2012, to the Committee's Survey.
- Interviewing individual members of the District Board of Trustees (Board), General Manager (GM) and Assistant General Manager.
- Review of financial reports, District website, meeting agendas, meeting minutes and audio/video recordings.
- Review of the District's Policies and Procedures Manual.

BACKGROUND/FACTS:

The District was established by resolution of Kern County Board of Supervisors on May 4, 1970, for the purpose of providing infrastructure services for the developing community of Bear Valley Springs. The District is similar to a City government supplying such services as police protection, fresh water, road maintenance, wastewater treatment and solid waste disposal.

The Mission Statement of the District is "committed to providing high quality municipal services to the residents of the Bear Valley Springs in a reliable, professional, safe, cost effective, and environmentally conscious manner."

The District is located in the Tehachapi Mountains approximately fifteen miles West of Tehachapi City Hall.

- A. The District is a gated community.
- B. The District has a five member Board of Directors. The Directors are elected to four-year terms by the residents of the District.

FINDINGS:

- F1. The meeting agendas are posted on the website and include podcasts for both Regular Meetings and Committee Meetings.
- F2. Meetings are broadcast live on <http://www.ustream.tv/channel/bvcscd-meetings> or can be viewed when desired.

- F3. Violations of the Brown Act may have occurred as a result of serial meetings with Board and Committee Members which are participating on both the District and the Bear Valley Springs Association (BVSA) Committees.

ORGANIZATION	MEMBER	BVCSD	BVSA
BVCSD	Board Member "A"	Finance Infrastructure Liaison	Finance Lake Quality Advisory Liaison
BVCSD	Board Member "B"	Administration Finance	Lake Quality Advisory
BVCSD	Board Member "C"	Administration Infrastructure Liaison	Liaison
BVCSD	Board Member "D"	Communication Public Safety	
BVCSD	Board Member "E"	Communication Public Safety	
BVSA	Board Member #1	Administration	Equestrian Advisory Rules Advisory Lake Quality Advisory
Citizens	Citizen "A"	Infrastructure Finance	Lake Quality Advisory
Citizens	Citizen "B"	Infrastructure Finance	Lake Quality Advisory
Citizens	Citizen "C"	Infrastructure	Finance

Potential Brown Act Violations

Whenever the Finance Committee of the BVCSD meets, a quorum of the Infrastructure Committee of the BVCSD and a quorum of the Lake Advisory Committee of the BVSA is possible.
Whenever the Infrastructure Committee of the BVCSD meets a quorum of the Finance Committee of the BVCSD is possible
Whenever the Lake Advisory Committee of the BVSA meets a quorum of the Finance Committee of the BVCSD is possible

- F4. The BVSA has nine Committees: Equestrian, Food Service Advisory, Golf Advisory, Rules Advisory, Recreation Advisory, Lake Quality Advisory, Special 4th of July, Finance Advisory, Alternative Dispute Resolution/Internal Dispute Resolution, Audit and Liaison.
- F5. Two of the District Board Members and three citizen volunteers on District Committees are also members of BVSA Committee(s) other than the Liaison Committee.
- F6. The Grand Jury has received complaints of harassment and improper etiquette by a Board Member during Board meetings.
- F7. Personality issues between Committee Members of the District and involved members of the BVSA have interfered with accomplishing tasks.
- F8. The District employs 37 full-time and 16 part-time employees.

- F9. Each Board Member is compensated \$100 per meeting up to a maximum of \$600 per month.
- F10. The District owns all the amenities in Bear Valley Springs (nine hole golf course, driving range, tennis courts, swimming pool, country club, restaurant, equestrian center, lakes and recreation building) for the purpose of providing amenities to the residents. The BVSA leases the buildings and facilities from the District to provide the amenities.
- F11. The BVSA is a corporation and charges fees to homeowners and property owners to pay for amenities.
- F12. In 2008 the District gained the portion of tax revenue previously provided to the Tehachapi Valley Parks and Recreation Department and the Arvin Parks and Recreation District for the purpose of Parks and Recreation in the Bear Valley Springs area.
- F13. The District has six standing Committees: Administration, Communication, Finance, Infrastructure, Liaison and Public Safety.
- F14. One of the BVSA Directors is a member of a District Committee (other than the Liaison Committee).
- F15. One major operating expense of the District is the entrance gate to the community, primarily due to personnel costs stationed at the gate. The entrance gate is funded by tax revenue as the gate is considered necessary for public safety.
- F16. The District provides Police Dispatch Services to the Tehachapi Police Department under contract. The service charges to Tehachapi are approximately 20% over the contracted amount. This excess charge is reportedly due to overhead for District accounting, overtime and utilities. The latest contract allows only a 5% increase in costs per year. The contract expired June 2012.
- F17. Lack of due diligence involving projects managed by the BVSA with associated environmental impacts could subject the District to future liability.
- F18. The District funds Parks and Recreational facilities managed and operated by the BVSA with little or no administrative control of the operation of the funded facilities.
- F19. Salaried Staff spends 12 to 14 hour days at the District Office. Extra work is required to accomplish tasks requested by Board Members and Committees.

COMMENTS:

The 2012-2013 Kern County Grand Jury appreciates the cooperation of the District Board Members, the GM and the Assistant GM in providing information for the report.

RECOMMENDATIONS:

- R1. The District should revise the Policies and Procedures Manual to disallow membership of Board and Committee Members on both BVCSD and BVSA Committees (with the exception of the Liaison Committee). This would help insure separation of duties and mitigate potential violations of the Brown Act.
- R2. The District should take a lead role in administering, managing and staffing the BVSA parks and recreation programs which receive funds from the District.
- R3. The District should consider the occasional use of a professional third party to review projects with environmental impacts to assure compliance with California Environmental Quality Act (CEQA) requirements. Such services may be mitigated in the long term by providing training and education to Board and Committee Members in CEQA and environmental compliance requirements.
- R4. The District shall revise compensation policy to prevent Board and Committee Members from scheduling meetings to receive the maximum monthly compensation of \$600. Maximum compensation could be limited to a certain number of months per year.
- R5. The District should review employee staffing needs to minimize overtime requirements of salaried personnel.
- R6. The District should consider automating the entrance gate during off-peak hours (nights and evenings) and employ remote video monitoring by Dispatchers at the Police Department during the automated or unattended periods.
- R7. The contract for Police Dispatch Services for the Tehachapi Police Department should be renegotiated. The Grand Jury suggests the District reconsider contracting with the Kern County Sheriff's Department to handle both dispatch and police services.

NOTES:

The Bear Valley Community Service District should post a copy of this report where it will be available for public review.

Persons wishing to receive an email notification of newly released reports may sign up at www.co.kern.ca.us/grandjury, and click on: Sign up for early releases.

Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: www.co.kern.ca.us/grandjury.

RESPONSE REQUIRED WITHIN 90 DAYS TO:

**PRESIDING JUDGE
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, 2ND FLOOR
BAKERSFIELD, CA 93301**

**cc: FOREMAN
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301**