



Kern County GRAND JURY

January 8, 2020

2019-2020

Jerry D. Troxel
Foreperson

Bradley Aguilu

Dwayne Ardis

Georgina L. Atchison

Richard J. Benson

Donalda Biscar

Robert S. Carlson

Gary Chaffin

Terry A. Christensen

Kenneth M. Cooper

Mike Elliott

Ellen J. French

Earlene T. Hightower

Kathy J. Jackson

Peter A. Krebsbach

Rose M. T. Mankoff

Latricia B. McConnell

Donna M. Newman

Enrique R. Vicuna

William J. Malinen, General Manager
Bear Valley Community Services District
28999 South Lower Valley Road
Tehachapi, CA 93561

Dear Mr. Malinen:

The 2019-2020 Kern County Grand Jury is forwarding to you a Final Report for **Bear Valley Community Services Department** that is ready to be released.

Attached is a copy in accordance with the provisions of Penal Code Section §933.05(f), which states:

"A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency, shall disclose any contents of the report prior to the public release of the final report."

Please note that this report is confidential until public release. The Grand Jury will be releasing this report to the public on **January 15, 2020**. Accordingly, **you are instructed not to disclose the contents of the report until that time.**

Thank you for your consideration and cooperation.

Respectfully,

A handwritten signature in blue ink that reads "Jerry D. Troxel".

Jerry D. Troxel, Foreperson
2019-2020 Kern County Grand Jury

Attachment: Response Instructions

§933. Findings and Recommendations (Excerpt)

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

As used in this section "agency" includes a department

§933.05. Responses to Findings (Excerpt)

- (a) For purposes of subdivision (b) of Section 933, as to **each** grand jury **finding**, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to **each** grand jury **recommendation**, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.
- (f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

BEAR VALLEY COMMUNITY SERVICES DISTRICT

SUMMARY:

Bear Valley Springs is a privately owned gated community, west of the City of Tehachapi, California. The Bear Valley Community Services District (District) is a special services district that provide services usually provided by a local city government. A homeowner's association lease facilities from the District, maintaining and operating a golf course, hiking trails, parks, equestrian trails and stables, food services, and other activities.

In addition to the county property tax, residents are assessed fees for police, solid waste, security gate, and roads. The District has installed an automated Radio Frequency Identification (RFID) security gate system at the main entrance. The 2019-2020 Kern County Grand Jury (Grand Jury) found that the RFID tag is a voluntary purchase. Residents wanting to use the new system are required to pay \$12 per year to use the RFID gate.

The Grand Jury observed that public access is denied at the security entrance gate and the public is unable to attend the District Board meetings. The public is also denied access to other public facilities including the Kern County Fire Department (KCFD) Station #16.

The defensible space (Hazard Reduction Ordinance) around buildings and the lack of enforcement is a fire concern.

PURPOSE OF INQUIRY:

Pursuant to Penal Code section 933.5, it is the responsibility of the Grand Jury to investigate and report on the performance and duties of special districts within a county. The Special Districts Committee of the 2019-2020 Kern County Grand Jury investigated the operations and management of the District.

METHODOLOGY:

The Grand Jury toured the District on several unannounced visits. The visits included: driving around the District, a visit to the Water Reclamation Plant, observing the entrance gate operations, the solid waste transfer station, Kern County Fire Department Station #16, as well as the District Office, golf course, restaurant, market, and the equestrian stables. The Grand Jury interviewed the District personnel, residents, KCFD personnel, obtained documents, attended a Board of Directors meeting, visited the

District website, and performed internet research. Follow up interviews and emails supplied additional information.

DISCUSSION OF FACTS:

Nestled in the mountains of Tehachapi, California, is a sprawling gated community called Bear Valley Springs. The Fickert family purchased from squatters the rights to 160-acres of land in 1869, and settled in the quiet, isolated, remote, and virtually hidden valley. In the early 1900s, the Fickert family had expanded their holdings to 25,000 acres. By 1959, the last of the immediate Fickert family had passed away, ending the quiet rural dynasty. A resort company purchased the 25,000-acre ranch, in its entirety, from the Fickert heirs, and it became Bear Valley Springs. On May 4, 1970, the Bear Valley Community Services District was formed to act as a nonprofit organization and local government to manage and maintain water, roads, wastewater treatment, solid waste disposal, mailboxes, and provide police protection. In 1971, a community development was started to sell properties, and by 1977, that project was sold out.

The Bear Valley Springs community currently has 3,700 homesites and a population of 5,172 (2010 Census).

Two different organizations control and provide services to the residents of Bear Valley Springs: Bear Valley Community Services District, and the Bear Valley Springs Homeowner's Association (HOA).

A. General:

The District is governed by a five-member Board of Directors who are residents of Bear Valley Springs and elected to staggered four-year terms.

The Board meetings are held monthly and open to the public. California Government Code, section 54950, et seq., *The Brown Act* states: "*The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and writings of public officials and agencies shall be open to public scrutiny.*" Also, in Government Code section 54953(a) "*All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency...*"

The Rosenberg's Rules of Order is used to conduct business on monthly agendas.

The District is funded by property taxes, special assessments, and standby charges that are collected by the Kern County Tax Collector on the regular property tax bill. Similar to a city government, the District provides: police protection, potable water, road maintenance, wastewater treatment, solid-waste removal, and security entrance gate. The District owns all amenities such as a golf course, hiking trails, parks, equestrian stables and trails, food

services and restaurants, clubhouse, and other facilities within Bear Valley Springs. These amenities are then leased to the HOA that oversees the operation, management and maintenance.

District Codes were adopted, according to Government Code section 53069.4, to make any violation of their codes subject to administrative fines. District Code section 3-5-2: Prohibited Accumulation of Weeds and Debris: mandates that property owners must destroy and remove weeds and debris on their property.

The Kern County Fire Department Station #16 operates within the District boundaries and outside areas. The KCFD enforces the Kern County Ordinance Codes, Chapter 8.46 Hazard Reduction (KCOC 8.46). All Kern County property owners, whose properties are located within State Responsibility Areas, are required to perform fire hazard reduction clearance on all properties:

- The KCOC 8.46 states the following
 - Defensible space of 100 feet
 - Compliance by June 1st
 - Citations of \$500 for noncompliance
 - Removal of all non-ornamental combustibles and vegetation around all structures
 - Grass height kept no higher than 4" to 6"
 - Large tree limbs minimum 6' from the ground
 - Notification Process
 - All property owners in the area to be notified of the requirements
 - A letter is sent out prior to May 1st

Failure to meet these requirements may result in an Administrative Citation. Inspection of these properties begins on June 2nd of each year and can continue throughout the year as necessary. If a citation is issued, the owner of the property will be given 15 days from the citation mailing date to either dispute the citation or show proof the violation was corrected. After 15 days, a \$500 fine will be assessed. The property owner will be subject to an additional fine of \$1,000 for continued noncompliance.

B. Police:

The Bear Valley Police Department consists of both sworn officers and civilian personnel. The Chief of Police is hired by the Board of Directors to oversee public safety and the security gate. The department has full authority to enforce laws, including traffic laws. Current funding provides for four sworn officers, one sworn Sergeant, one part-time sworn officer, and a Police Chief. The department has 11 Citizen Volunteers. A contract with the Kern County Sheriff's Office (KCSO) provides dispatch services to the Bear Valley Police Department. The department, the KCSO Eastern Division, and the Stallion Springs Police Department use the same radio channel, so calls are shared.

C. Roads:

The District owns 110 miles of roads. The District cleans and maintains all roads and drainage easements, including snow removal, with their equipment. Major road and drainage repairs are sent out for bid to outside contractors.

D. Solid Waste:

The solid waste facility incorporates a transfer station system. Homeowners deposit their household waste in bins stationed around the site and when full, bins are taken to a landfill.

The transfer station will be undergoing remodeling. This project and budget were approved at the October 10, 2019, District board meeting. The project includes grading, fencing, drainage improvements, cameras, lighting, signage, and traffic delineation, not to exceed a \$200,000 budget.

E. Wastewater Treatment:

The Water Reclamation Plant services 478 connections. All other properties are on their own septic system. The effluent (non-potable) water is used to water the golf course and allows any excess to flow into the Sycamore Creek (toward Arvin). The facility has three employees. The facility performs effluent testing at their in-house lab and uses a lab in Bakersfield to perform state compliance testing.

F. Water:

Potable (drinkable) water is provided to the District by 43 wells, which encompasses about 25% of the consumed water, with additional purchases from the Tehachapi-Cummings County Water District, which supplies the other 75%. This current ratio is due to rehabilitating some wells. The District would like to achieve a ratio of 60% District and 40% Tehachapi-Cummings County Water District after the rehabilitation is completed.

G. Gate:

Officially, there is only one way in and one way out of Bear Valley Springs, through the main security gate on Bear Valley Road. The Chief of Police oversees the operation of the manned gatehouse 24-hours a day, 7-days a week. Residents may use a mix of windshield stickers (assigned as two-wheel, not allowed during snow, or four-wheel drive vehicles) or purchase an RFID tag. The new RFID system took effect in July 2019, has an RFID reader to open and close the gate on the right 'RFID' lane of traffic to allow for a fast lane entrance. The total cost of software and equipment was \$38,400. The total cost for 15,000 RFID tags was \$64,800 (\$4.32 each).

The RFID tags may be purchased by residents for each vehicle, for nonstop entry. Tags are available for sale at a \$12 renewable subscription fee each and every year. Vehicles, without RFID tags, displaying a resident windshield sticker or a pass issued by a resident, will be allowed entrance. All others will be denied access until a pass can be authorized by a resident, property owner, HOA, the District, or may be granted access (such as government vehicles) due to an exemption from the pass requirement pursuant to the District Code.

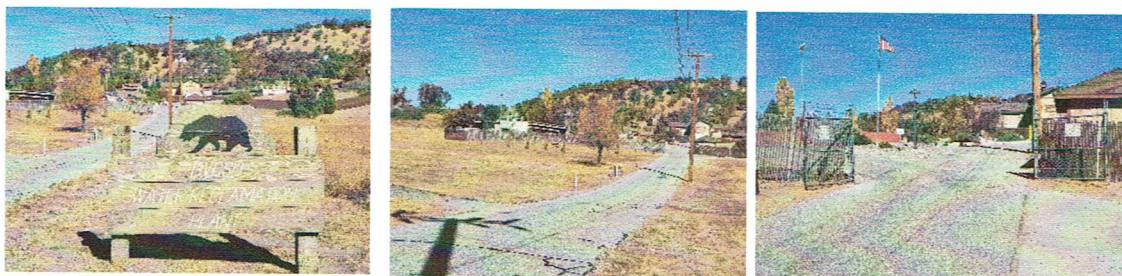
The RFID system provides a web-based portal for residents to pre-authorize their visitors. The resident will be alerted when their guest is logged in at the gate by text message or email.



(Photo by Grand Jury of the Front Entrance Gate, October 1, 2019)
(Arrow indicates the RFID lane)

FINDINGS:

- F1. The Water Reclamation Plant is a small, well-maintained facility. However, the lack of security allowed the Grand Jury to drive into the operating facility, walk around the equipment, and photograph the operation for several minutes before being questioned by employees. (See Appendices A and B)
- F2. The Water Reclamation Plant had an open gate making it accessible to the public. When the gates are open, the "No Trespassing" signs are not visible, and create a lack of security.



(Photos by Grand Jury showing the entrance to the Water Reclamation Plant, October 21, 2019)

- F3. The lack of visible signage makes the Water Reclamation Plant appear inviting and creates an attractive nuisance.



(Photo from the District's Website showing the effluent water pond)

- F4. Upon arrival, the personnel at the main entrance gate were unaware of procedures to allow visitors to attend the public District Board Meeting, and/or visit public facilities. According to Board Agendas, "Members of the public may address the Board on matters not listed on the Agenda...." The Grand Jury was allowed to proceed through the gate, while other vehicles were questioned then turned around, due to the lack of a pass, potentially violating Government Code section 54953(a).
- F5. On the October 1, 2019 visit, the Grand Jury noted many properties with vegetation that were non-compliant with Hazard Reduction KCOC 8.46. By the October 22, 2019 visit, many of the properties had been recently cleared. The Grand Jury noticed only two properties were still in non-compliance. (See Appendix A) The threat of fire is a major concern. As of June 1, 2019, the Kern County Fire Department issued approximately 25 warnings to property owners within the District for non-compliance for the fire season. Neighbor complaints were also reported.



(Photo by the Grand Jury showing lack of defensible space, October 21, 2019)

- F6. In case of fire, earthquake, or other natural disasters, the 5,000 residents have only one way in and one way out, which is through the main security gate on Bear Valley Road. All other trails and exits, including the Deer Trail, are unacceptable due to the narrow unmaintained road conditions. Many trails have locked gates onto private properties. It would be impossible to evacuate all residents, pets, and livestock in a safe and timely manner.
- F7. On the October 10, 2019 visit, the Grand Jury witnessed the Emergency Action Plan, when the power was turned off to the District by the power company. While the Board of Directors meeting had generator power, there was a lack of coordination as to where residents, needing power, were to report for assistance. The obvious location (Whiting Community Center) as a refuge center was not equipped with a generator and appropriate emergency supplies (cots, blankets, water, etc.). It is unknown as to the availability of any other refuge locations.
- F8. A District CodeRED emergency alert system and various social media platforms were sent out hours after the power was turned off on October 10, 2019. (A CodeRED is a system that will notify residents in case of an emergency. Currently, 3,000 residents have signed up for this notification. The District pays \$15,000 for a 3-year contract for the CodeRED service.)
- F9. The District's website is progressive, in that, all board meeting agendas, minutes, and videos are posted in a timely manner. All subcommittee meeting agendas, and minutes are available for public access. The board meetings are linked to live telecasts.
- F10. The following special taxes, assessments, and standby charges are collected and reviewed annually, beyond the Kern County Property Tax:
- Gate Operations \$75 per parcel
 - Roads Assessment \$340 per parcel
 - Police Protection Service \$80 per parcel
 - Improvement District #2 Bonds 0.009768% per \$1,000 assessed property value
 - Water Standby Charge \$40.28
 - Sewer Standby Charge \$59.96
- Additional service fees are billed monthly:
- Solid Waste \$16 per month per parcel
 - Potable Water Varies as to metered usage
 - Sewer 478 connections \$76.16 per parcel
- Other than water rates, the District has not completed any new rate study, or met the Prop 218 requirements, for a proposed new rate change on the above fees.

- F11. Under the direction of the current General Manager, the District has taken a proactive approach in updating and modifying many policies and ordinances.

COMMENTS:

The Grand Jury thanks all the individuals that participated in interviews and provided information for the preparation of this report.

RECOMMENDATIONS:

- R1. The Bear Valley Community Services District should develop a procedure, and inform all security gatehouse personnel, to allow the general public access to all public meetings and public facilities. The District should comply with Government Codes sections 54950 and 54953(a) immediately. (Finding 4)
- R2. The Bear Valley Community Services District should restrict public access to the Water Reclamation Plant with proper signage near the gate and other useful security measures by June 1, 2020. (Findings 1, 2, and 3) (See Appendix B for examples)
- R3. The Bear Valley Community Services District should work closely with the Kern County Fire Department to ensure that the Hazard Reduction Ordinances are strictly enforced to be consistent with these ordinances. (Finding 5) (See Appendix A)
- R4. The Bear Valley Community Services District should consider the development of an alternate exit route for emergency evacuations. (Finding 6)
- R5. The District's Emergency Action Plan should be in place and operating within minutes of an emergency. (Findings 7 and 8)
- R6. The District should immediately call a CodeRED when power is shut off due to high winds, storms, or other emergencies to provide the residents an opportunity to seek appropriate refuge in a timely manner. (Findings 7 and 8)
- R7. The District should designate refuge locations and have appropriate supplies and backup power before an emergency, then notify the residents by June 1, 2020. (Finding 7)
- R8. The District should follow the process of Prop 218 to reevaluate the rate assessments for the purpose of increasing the fees, in an effort to offset the increase in costs associated with the District's operations. (Finding 10)

NOTES:

- The Bear Valley Community Services District and Kern County Fire Department should post a copy of this report where it will be available for public review
- Members of the public wishing to receive email notification of newly released reports may sign up at: kerncounty.com/grandjury
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: kerncounty.com/grandjury

REQUIRED RESPONSES WITHIN 90 DAYS TO:

- **PRESIDING JUDGE**
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301
- **FOREPERSON**
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

GLOSSARY:

Community Services District: Community Services Districts are formed under Government Code section 61000, as an independent local government used to provide services in unincorporated areas of a county.

Homeowner's Association: A homeowner's association (HOA) is an organization in a subdivision, planned community or condominium that make and enforce rules for the properties and their residents. Those who purchase property within an HOA's jurisdiction automatically become members and are required to pay dues, known as HOA fees.

Public: Public is the whole body, or any person of a state, nation, or municipality... belonging to the people at large; relating to or affecting the whole people of a state, nation, or community; not limited or restricted to any particular class of the community.

Public Access: A public place, generally an indoor or outdoor area, whether privately or publicly owned, to which the public have access by right or by invitation.

Effluent: Effluent is an outflowing of water to a natural body of water, from a structure such as a wastewater treatment plant, sewer pipe, or industrial outflow.

Defensible Space: A defensible space is an area around a building in which vegetation, debris, and other types of combustible fuels have been treated, cleared, or reduced to slow the spread of fire to and from the building.

Potable Water: Drinking water, that is safe to drink or to use for food preparation.

State Responsibility Area: The State Responsibility Areas (SRA) are recognized by the Board of Forestry and Fire Protection as areas where Cal Fire is the primary emergency response agency responsible for fire suppression and prevention.

Standby Charges: A standby charge is essentially an assessment that is charged to unimproved properties to ensure that adequate water or sewer service will be available for that parcel when needed. Standby charges normally appear on property tax bills, although they may be billed directly by the local agency.

Prop 218: Proposition 218 restricts local governments' ability to impose assessments and property-related fees, and requires elections to approve many local government revenue-raising methods.

APPENDIX A:

Photos of Bear Valley Springs



(Photos by the Grand Jury showing parcels within District needing hazard reduction, October 21, 2019)



(Photos by the Grand Jury showing Cub Lake, Water Well, and Rules for Solid Waste Facility)



(Photos by the Grand Jury showing Water Reclamation Plant, October 10, 2019)

APPENDIX B:

Examples of safety signs

