



**AD HOC  
COMMITTEES**



# **AD HOC COMMITTEES MEMBERS**

Dianne D. Tolbert

Edward H. Burgnon

Kent Fogleman

Marilyn Trombetta

Nino Valmassoi

Roger D. Trussell

Robert O. Turley

Robert P. Deao

Sandra Shahan

Thomas Wilkin

William B. Lundstrom



## **AD HOC COMMITTEES**

### **INTRODUCTION**

The Grand Jury presently has four standing committees.

1. Cities/Special Districts
2. County
3. Human Services
4. Law & Justice

Each of these committees is responsible for handling assignments within the Cities and County, including Special Districts. For whatever reason, when it is felt that a standing committee is unable to absorb an issue into its scope, an Ad Hoc Committee is formed to examine that specific complaint, problem or issue.

The 2012-2013 Grand Jury formed three Ad Hoc Committees. The following is a summary of the issues.

1. Solicitation of Inmates by Bondsmen - The Grand Jury reviewed issues regarding the process, and solicitation activities of inmates at local detention centers, and visitation procedures by Bail Bond companies. A report was written regarding aspects of their processes that appear to be circumventing the California Laws and Penal Codes. Recommendations have been made to correct and enhance the policies and procedures of bondsmen regarding their interaction with inmates.
2. Newberry Community Services District – the Grand Jury reviewed issues regarding practices, Policy and Procedures and Board actions of the agency. A report follows in this section with recommendations.
3. San Bernardino County Sheriff Department Taser Policy – The main focus of investigation was to address taser use and was extended to Taser Training, what types of individuals should not be tasered, and what precautions were in place to minimize injury and/or death from the use of the Taser. The Grand Jury reviewed local and National cases and statistics regarding taser-related deaths.

The results of these investigations, including the Findings and Recommendations are included in the following Final reports.

## BAIL SOLICITATION OF INMATES AT COUNTY DETENTION CENTERS

### BACKGROUND

The Grand Jury received a complaint regarding the activities of bondsmen at the San Bernardino County Sheriff Department (SBCSD) Detention Centers, including the use of government websites by bondsmen for inappropriate purposes.

In order to identify and investigate issues and concerns, it was essential the Grand Jury understand the processes and legal procedures of bail bond transactions. Interviews of bail bond agents, representatives of the California Department of Insurance, and various government agencies were conducted. Policies and procedures for bail bondsmen visits to detention centers, including their need for face-to-face visitations with inmates, were collected and researched.

A bail is defined as a bond which is posted by a bail bond company to the court as a guarantee for the arrestee's appearance to all mandated court appearances and for the release of the person from detention. The bail bond fee is the sum of money or collateral which is exchanged between the arrestee and the bail bond company to secure the bond. The arrestee promises to attend all court appearances, as necessary. Bail bonds may be posted at any County detention center or holding facility, and at the rehabilitation facility for women only. However, the majority of bails bonds are posted at the West Valley Detention Center, Central Detention Center and Adelanto Detention Center/Victor Valley Jail. The scope of bail bond activities and magnitude of the potential revenues during a one-month period is illustrated in the Table below.

### TOTAL ARRESTS FOR JULY 2012

San Bernardino Detention Centers	Arrests July 2013	Number of Arrestees Posted Bail Bonds	Average Bail \$25,000 Bail fee is \$2,500
			Bail fee @ 10% of bail amount
West Valley Detention Center	7,731	397	\$992,500
Central Detention Center	1505	56	\$140,000
Adelanto Detention Center/ Victor Valley Jail	1,116	65	\$162,500
<b>Total</b>	<b>10,352</b>	<b>518</b>	<b>\$1,295,000</b>

*Source:* San Bernardino County Sheriff Department –Detention Centers

If the total arrests for the month of July (10,352) were annualized, that number would be approximately 120,000 arrests each year in this County.

### **Bail Bond Process**

When a person is arrested on suspicion of a crime and the Court has an established monetary value (bail) they have the right to seek and post a bail bond for their release. At the time of arrest and during the booking process the arrestee has an opportunity to make a call to a bail bond company to initiate the process of obtaining a bail bond. A posted directory is in each holding cell. The law states that a bail bondsman (bondsman) must be solicited for bail directly by the arrestee, the arrestee's attorney of record, or an adult friend or family member.

A bondsman has the authority to negotiate and complete the process of acquiring a bond from a surety insurer for any person who has been arrested and detained on a bondable offense. The California Department of Insurance has the administrative and enforcement authority for licensing and regulating of the activities of bondsmen. The bondsman is licensed upon conformance with the following qualifications:

- a minimum age of 18 years;
- residency in the State of California;
- completion of a minimum of 20 hours of approved classroom study;
- passage of a California licensing examination;
- provides a bond in the sum of \$1,000; and
- notice of appointment by a surety insurer.

A bondsman may have more than one appointment by a surety insurer and the surety companies do not have to be located within the State of California. Penal Codes §1300 through §1301, and California Code of Regulation (CCR), Title 10, §2054 through §2104 provide the legal basis for bail bond licenses, bondsmen and bail transactions.

When the bondsman working with a bail bond company posts the guarantee of the total bail amount for the release of a suspect, the company assumes the responsibility for making sure the suspect will be present in court at all court required appearances.

Because the bail bond company is taking a risk on the suspect, now identified as a bailee, it is necessary for the collateral to be as significant to the risk being taken, and significant for the bailee to be willing to comply with the court appearance requirements.

Bail bonds are negotiated in several ways. In a perfect world where all bondsmen follow the letter and spirit of the law, bondsmen charge ten percent of the bail amount as the fee. For example, on a \$25,000 bail the ten percent fee is \$2,500. However, to become more competitive,

a bondsman can negotiate a lower fee by using the 'rebate' law as approved by Proposition 103 legislation. This is accomplished by calculating a lower fee percentage as a 'rebate' back to the bailee. Recently, the economic climate has affected the ability of many to make financial arrangements for bail fees. Thus, the amount of the fee can be lowered anywhere from an eight percent fee to a two percent fee (i.e., 8% of \$25,000 is \$2,000 and 2% is \$500.) The rebate or discount process has brought the bail fee to a level which can be more affordable. There is also the process by some bail bond companies to offer a 'credit bail' where a down payment is made and partial payments are accepted until fully paid. It is illegal to charge interest on bail fees.

The bondsman may require the bond to be secured by a lien on an arrestee's or his family/friend's real estate property. This procedure is used in cases of high bail amounts when the bail fee is also substantial (i.e., ten percent of \$100,000.) In this situation, the bondsman usually requires ten percent of the fee in cash, with the remaining amount secured by asset(s).

The business costs of the bail bond company are 20% of the bail fee to be paid to the surety company, of which ten percent is placed into a buffer account. The buffer account is a holding account which provides a bail bond company the ability to absorb losses due to bond forfeitures. Once the buffer account has reached its maximum threshold, the ten percent payment is not necessary. The remainder of the bail fee is gross profit to the bail bond company.

A bond company and/or bondsman may surrender the bailee to the court or custody if it is determined the bailee is a potential flight risk. Per CCR §2090, if the bailee is surrendered, the bail fee is refundable minus administrative costs. It is not legal for the bondsman to surrender a bailee to custody for non-payment of bail fees.

If the bailee does not appear in court as required, the court orders the 'bail is forfeited' and notifies the bail bond company there are 185 days to locate the defendant and surrender him to detention or present him to the court. The bondsman has the authority to hire a bounty hunter to locate and retrieve the bailee. Bounty hunters are not licensed by the State of California. Bounty hunters have no more enforcement powers than an average citizen, as in a 'citizen's arrest' or 'citizen's hold for arrest.'

At the end of the initial 185 days, the bail bond company may file a request for an extension, if a good cause can be shown, for an additional 180 days to locate and retrieve the bailee. A good cause would be the bailee has been located in another state and additional time is necessary to return him to the local jurisdiction. If the client appears voluntarily or has been placed in custody for an additional crime, the bond forfeiture is vacated and the bond is exonerated.

A bail bond company may file a motion to exonerate the forfeited bond prior to the 365 days allowed for returning the client once the bail has been forfeited. The motion may be based upon evidence the client cannot be produced due to death, permanent inability to appear because

of disability, long-term hospitalization, mental illness, military detention, or incarceration. All motions for bail exoneration must be reviewed and approved by the San Bernardino County Counsel which will analyze the merits of the motion and determine if in agreement or opposition to the motion. Opposition may be raised by evidentiary objections based upon investigating and authenticating the foundations set forth in the bond company motion. In the cases when the bond is forfeited by Summary Judgment, the bond company has 30 days to pay the amount of the bail to the court. Failure to make the payment results in the bond company being disqualified from posting any bails within the jurisdiction of the court. If a bond company appeals the Summary Judgment for bond forfeiture, they must post an appeal bond, with an outside surety company.

## **FACTS**

### **Inmate Locator System**

The website for the San Bernardino County Sheriff Department includes an Inmate Locator page. The purpose of the page is to provide a means of identifying an arrestee, the detention facility in which an arrestee is detained, if the detainee has been released, and other case related data. Most arrestees at a County detention center are pretrial inmates and under suspicion of committing a crime.

Queries of the Inmate Locator System are subject to certain access restrictions. To make a query, the user must enter either the arrestee's name and age, or the booking number. The Inmate Locator System monitors the number of queries based upon the user's internet address. After five unsuccessful booking number queries in a 24-hour period from the same internet address ('information not found'), the system prevents any additional access or response for two hours. The intent of restricting access to this data, as opposed to merely listing all the names of the arrestees, is to protect the privacy of the individual. The bondsman, following appropriate protocols, would have sufficient information from the inmate or family/friend, to query the system for necessary details to post the bail.

For the bondsman and bail bond companies, being able to view and monitor new bookings by detention center and bail amount, is more than just informational; it is a list of potential new bail clients. The Inmate Locator System access rule for limiting queries to five attempts per internet address can be defeated simply by either using multiple computers or devices (each device has its own internet address), or by using the services of an internet address switching and/or masking company. These companies may route customer activity through servers throughout the world in order to hide the actual internet address of the user. Once the tactic for making unlimited number of queries is established, the inmate booking number field is accessible by the bond company employees.

The San Bernardino County Sheriff Department booking number contains embedded information which identifies the detention center, the month, the year, and a sequential (booking)

number assigned to each arrestee. The sequential booking number starts over at the beginning of each month. With unlimited access to the booking numbers, it is a simple matter to zero in on the most current booking number for each facility and monitor the system for the next number. With the booking number, an arrestee's personal data can be retrieved. This scheme is not by itself illegal, it is what can be accomplished with the information that facilitates illegal solicitation activities.

The information which is acquired via the Inmate Locator System can be used as root data to locate additional personal facts about the arrestee. Internet websites offering to locate individuals through free subscriptions or paid websites, list employment information, various financial details, asset ownership, and identity of family/friends of the individual. The objective of the bond company, when using these sites is to '*data mine*' for information that will identify family members/friends of the arrestee that can be targeted family/friend by a solicitation phone call. The bondsman calls the target and implies they are calling on behalf of the arrestee to inform the target the person has been arrested. If the targeted person would like to get the arrestee released, a bail bond can be arranged over the phone with follow-up later at the bond company office.

The bondsman can additionally use the information obtained from the Inmate Locator System to seek a visitation with a potential client at the detention center and directly solicit bond services from the inmate, purporting to be acting "on request" of a family member or friend.

Website '*spoofing*' is the act of creating a website for the purposes of misleading users into believing the spoofed website actually belongs to a different organization. Web pages displaying government logos, entity trademarks or copyright, without permission and for malicious purposes, are clearly illegal. Web pages with large print headers such as "***West Valley Detention Inmate Information***" or "***West Valley Detention Center Inmate Information***" are misleading to all but the most observant user. Per the California Business and Professional Code §17.500, even though the spoofed website statement(s) may be true, if couched in such a manner that it is likely to mislead or deceive the consumer, are illegal. On September 16, 2011, at the request of the SBCSD, County Counsel issued a '*Cease and Desist*' order to an offending bond company. However, these types of websites continue to persist.

The objective of spoofing the San Bernardino County Sheriff official website is to trick the user into believing they are utilizing the official website. This is where the bond company initiates the process of 'phishing.' Users who have logged onto this type of spoofed website are invited to enter their contact information in addition to the information regarding the arrestee they are trying to locate (i.e., name and birth date). These users voluntarily enter the requested information believing they are communicating with the SBCSD. However, in reality they are communicating with a bail bond company. Once their personal information is transmitted to the bond company, the bond company is 'free' to contact that person and offer bail services.

Therefore, it is not considered to be initiating contact or solicitation because the bond company is responding to a customer.

### **Official Visitor's Process**

Bondsmen use the Official Visitor's process to visit inmates in the San Bernardino Sheriff Detention Centers. The Official Visitors policy in the Police Officers Standards and Training (POST) Orders specific to the West Valley Detention Center identifies bondmen licensed by the State of California as being able to use Official Visitors process. When a bondsman requests to visit a detainee at the West Valley Detention Center, presents their license identification, completes a 'Bail Agent Request' with the information of who has contacted him to arrange the bail, and signs it, certifying the accuracy of the information. If the completed request is in order, the lobby Custody Assistant will call the unit where the inmate is located, notifying him of an Official Visitor. A visitor's pass is provided along with a key to an attorney visiting room for the unsupervised visit. If multiple visit requests are made, the bondsman must return to the lobby and complete an additional form requesting the next inmate to be contacted. A deputy in the lobby will examine the bondsman's briefcase and/or paperwork for contraband. The bondsman passes through a metal detector and is allowed entry into the secured area. Each detention facility commander has responsibility for establishing written procedures for inmate visiting, specific to the facility.

The Grand Jury conducted a survey of Riverside, San Diego, Orange and Los Angeles Counties to review their local policies and procedures for how visits of inmates by bondsmen are handled at their detention centers. The Table on the following page compares these policies with those of the County of San Bernardino.

<b>POLICY</b>	<b>Bondsmen designated as an official visitor</b>	<b>Request by bondsmen for visitation verified?</b>	<b>Supervised visitation of bondsmen</b>
<b>County of San Bernardino</b>	Yes, and access is provided in official visitor's room	Only in case staff has questions	No, the visitation is within the official visitor's room
<b>County of Riverside</b>	Yes, but has access in the normal supervised visiting areas.	Only if staff is suspicious of reason to see inmate.	Yes, if documents require signature, use of pass through slot for deputy or inmate is used.
<b>County of San Diego</b>	Yes, if it can reasonably be accommodated without hindrance to jail operations.	No, request to visit form includes the name of the detainee and person who requested the agent's services.	Yes, bondsman may visit detainees in the same capacity as a social visitor, via phone behind secured glass window.
<b>County of Orange</b>	Yes, but access is provided in the normal visiting areas, unless documents require signature.	Yes, randomly, staff may call the number provided on the request form for the person who requested their services.	Yes, bondsman may visit in the same capacity as a social visitor, behind secured glass window.
<b>County of Los Angeles</b>	Yes, communication with inmates is considered privileged.	The Watch Commander approves the interview request or notifies a follow-up investigator if there are questions.	No, but visitations are conducted without compromise to Officer or inmate security

Based upon the survey results, it appears that other jurisdictions have initiated official visitation policies that limit direct access of bondsmen to inmates.

Official Visitors are defined in the SBCSD POST orders as bondsmen, attorney, peace officers, clergy, any government official with proper identification, interpreters, and a Notary Public. Official Visitors can visit inmates at any time between 0830 and 2200 hours. This differs from regular visitors who must schedule visitations at the discretion of the detention facility. Additionally, Official Visitors are able to conduct unsupervised face-to-face visits in an enclosed room with inmates.

The Official Visitors' Log at the West Valley Detention Center and Victor Valley Jail reveal that bondsmen, representing one or two of the local bond companies, visit two through seven inmates as official visitors on a daily basis. The Central Detention Center does not have a log for bondsmen. However, most bondsmen maintain it is not routinely necessary to have a face-to-face visit with an inmate before posting the bail bond. The negotiation of a bail bond can be conducted by telephone or with a representative of the inmate, (i.e., family or friend). The only time it is necessary for a bondsman to meet with an inmate is to get signatures from the inmate when securing real estate property for posting the bond. That action, in itself, is not needed in all of those limited circumstances, as it is more common for the inmate's family or friend to use their real estate property to secure the bond. In those cases, the inmate signature is not needed.

In consideration of an issue raised in the original complaint, the Grand Jury evaluated the process of bail bond forfeitures and exonerations which are adjudicated in the San Bernardino County Courts. The County receives approximately three to four motions for exoneration per week. County Counsel's Office tracks and litigates all the motions for bond exoneration to ensure compliance with jurisdictional prescriptions and statutory requirements. It is their responsibility to enforce and collect summary judgments of forfeited bail bonds. During the year 2011, nine summary judgments were satisfied on forfeited bonds totaling \$444,750, and in 2012, 10 summary judgments were satisfied on forfeited bonds totaling \$487,296. The monies from the paid judgments on forfeited bail bonds are received by the Court Clerk and then transferred by the Court Financial Services Department to the County Auditor who distributes the monies to the appropriate entity and into the San Bernardino County Treasury. The distribution of funds is governed by a statutory formula prescribed in Penal Code §1463. The distribution, by percentages of forfeited amount, go to the County where the arrest was made, to the municipality, if applicable, in which the arrest was made, and to the State depending on the charged crime, after any court and administrative fees have been deducted. The consequence of nonpayment on a forfeited bail bond, after the entry of summary judgment by a bail bond company or surety, results in the disqualification of the affected company from posting bail bonds and acting as surety.

## **FINDINGS**

1. Websites and web pages are currently in existence which are spoofing the San Bernardino County Sheriff Department (SBCSD) Inmate locator, detention centers, and official Websites.
2. The SBCSD Inmate locator website access/restriction controls are deficient and facilitate opportunities for inappropriate solicitation options by bondsmen.
3. SBCSD has the authority to define who has privacy privileges and use of official visitor's room.
4. The "Request for Visit" form used by bondsmen to visit inmates does not include a certification of accuracy and truthfulness by signature of the bondsman.
5. Bondsmen have conducted up to seven unsupervised official visits to different inmates in a day facilitating abuses by bondsmen in contacting inmates for bail services.
6. The SBCSD Detention Centers do not have consistent policies for maintaining logs for bondsmen visits.
7. The County of San Bernardino Office of County Counsel is effectively responding to motions for bond forfeitures and exonerations.
8. Inmates are not generally aware that it is illegal for bondsmen to solicit bail services.

## **RECOMMENDATIONS**

- 13-17. SBCSD to establish procedures for conducting periodic website inspections which imitate government titles, logos or booking information, attempting to mirror the SBCSD Inmate Locator web page, in order to issue "Cease and Desist Orders." (Finding 1)
- 13-18. SBCSD to withhold inmate booking number from the public for 72 hours. A legitimate bondsman would have sufficient information to post a bail bond. (Finding 2)
- 13-19. SBCSD to revise "Request for Visit" form to include identity of requesting contacts for services with phone numbers for verification. (Findings 4, 5)
- 13-20. SBCSD to revise "Request for Visit" form to include certification of accuracy and truthfulness of information provided by signature of the bondsmen. (Findings 4, 5)

- 13-21. SBCSD to establish a policy which randomly verifies contact information from “Request for Visit” forms from bondsmen. (Finding 5)
- 13-22. SBCSD to modify POST orders to require bondsmen use the supervised social visitor process via phone behind secured glass window. If inmate signatures are required, deputies can assist with the transfer of documents. (Finding 5)
- 13-23. SBCSD to establish policy for all detention centers to maintain daily logs for bondsmen visitation. This will allow for monitoring of frequency of visits and trigger the random verification of the ‘Request to Visit’ form. (Finding 5)
- 13-24. SBCSD to consider adding information indicating solicitation by bondsmen for bail services is illegal to the pre-recorded messages which are provided inmates when using detention phone systems to make out-going calls. (Finding 9)
- 13-25. SBCSD to consider adding a statement, “It is illegal for bondsmen to solicit you,” to the signs listing bail bond companies. These signs are currently posted in all holding cells at County detention centers. (Finding 9)

<b>Responding Agency</b>	<b>Recommendations</b>	<b>Due Date</b>
Sheriff-Coroner	13-17 through 13-25	09/28/13

## NEWBERRY COMMUNITY SERVICES DISTRICT

### BACKGROUND

The Grand Jury received multiple citizen complaints regarding Newberry Community Services District. Issues reviewed were regarding practices, Policy and Procedures and Board actions of the agency.

Due to the numerous issues involved and the detailed information to review, the Grand Jury requested the assistance of an outside consultant. The report that follows is a combination of the Grand Jury and the outside consultant's efforts.

### RECOMMENDATIONS

- 13-26. The recommendations within the following report in the Governance Section, numbered 1-3 be responded to appropriately.
- 13-27. The recommendations within the following report in the Accounting and Financial Management Section, numbered 4-7 be responded to appropriately.
- 13-28. The recommendations within the following report in the Internal Controls Section, numbered 8-15 be responded to appropriately.

<b>Responding Agency</b>	<b>Recommendations</b>	<b>Due Date</b>
Newberry Community Services District	1 through 3 4 through 5 8 through 14	09/28/13
LAFCO	15	09/28/13
San Bernardino County Auditor/Controller	6 and 7	09/28/13

# NEWBERRY COMMUNITY SERVICES DISTRICT

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# Introduction

## Purpose

The Grand Jury received multiple citizen complaints regarding Newberry Community Services District's (NCSD or District) activities.

## Background

Community Services Districts are special districts provided for in the State Government Code by the California Legislature to enable residents and property owners in California's diverse communities to achieve local governance, provide needed public facilities, and supply public services. Community Services Districts may be any of the following:

1. A permanent form of governance that can provide locally adequate levels of public facilities and services;
2. An effective form of governance for combining two or more special districts that serve overlapping or adjacent territory into a multifunction special district;
3. A form of governance that can serve as an alternative to the incorporation of a new city; or,
4. A transitional form of governance as the community approaches cityhood.

Community Services Districts are legal entities, defined within State Government Code, with powers:

1. To adopt and enforce rules for administration, operation, and services;
2. To sue and be sued;
3. To acquire real and personal property;
4. To appoint employees, define their qualifications and duties;
5. To engage counsel and other professional services; and,
6. To enter into contracts and joint powers agreements

Community Services Districts are required to have an elected Board of Directors. The Board of Directors are responsible for making policies that ensure District's staff are providing chartered services in a responsible, regulatory compliant, and cost effective manner. State Code prescribes rules governing the manner in which a Board must post public notices of meetings, conduct their meetings, and record actions taken at meetings. Community Services District Board of Directors and their meetings are subject to the Ralph M. Brown Act which requires all Board business, but for specific exemptions such as personnel matters and legal advice, to be conducted in public along with certain other conduct related provisions.

NCSD consists of a five member elected Board of Directors. Current Board makeup consists of three men and two women each living within the Districts boundaries. The Board meets monthly to review Districts Operations and Financials in an open public format. Responsibilities of the

Board include oversight of the NCS D Fire Department, public street lighting, and parks and recreation upkeep and maintenance.

In order to execute their responsibilities, a Community Services District's Board of Directors has the ability to:

1. Obtain legal counsel on matters such as:
  - a. Brown Act compliance.
  - b. Employment related laws.
  - c. Bidding and procurement laws.
  - d. Advice on contracts and memorandums of understanding.
2. Obtain financial advice on planning, investments, accounting, and taxes issues.
3. Hire auditors to:
  - a. Ensure an accurate accounting of all District monies.
  - b. Review the District's system of internal controls.
4. Hire subject matter experts for advice on areas of specific concern.
5. Attend training specifically designed for Special District Board members.
6. Raise revenues via special taxes, benefit assessments, and by charging certain fees.
7. Direct the hiring of qualified staff in sufficient quantities, such that: State and county code requirements are met; a system of internal controls and checks-and-balances are in place; minutes of meetings are taken; bills are paid on time and accurately recorded; and to ensure the services, with which the District has been empowered to provide, are adequately provided. Positions may include a Treasurer, a Board Secretary, and administrative and functional department staff as required.

The Newberry Community Services District was formed on December 15, 1958. The District has been specifically empowered by the County of San Bernardino and the County's Local Agency Formation Commission (LAFCO) to provide the following services:

1. Water, including for management, domestic use, irrigation, sanitation, fire protection, and recreational purposes.
2. Fire Protection, including structural, watershed, suppression, and prevention.
3. Street lighting.
4. Parks and Recreation, including local park development, operation, and maintenance.
5. Sewers, including planning and engineering.

## Scope

Utilizing the regulatory framework established for Community Services Districts, as outlined above, the Grand Jury took the following actions to evaluate the issues raised in the citizens' complaints:

1. Subpoenaed financial documents, Board of Director's Meeting Minutes, District Bylaws, District Policy and Procedure manuals, banking records, and certain other district records.
2. Observed District Board of Directors' meetings.
3. Inspected certain facilities.

4. Conducted interviews.
5. Reviewed documentation provided by the District for compliance with State and County code, with its own policies and procedures, and for the adequacy of a system of internal controls.
6. Retained a management consulting firm with expertise in public agency matters and public agency accounting requirements.

## **Financial Period Reviewed**

Financial information reviewed was based primarily upon the District's 2011-2012 fiscal year, which ended on June 30, 2012 and utilized information from the District's General Ledger as of that date.

## **Acknowledgements**

The Grand Jury would like to thank the personnel from the Newberry Community Services District and others for their insight into the finances and operations of the District. In particular, we would like to thank the immediate past General Manager and staff for their efforts in compiling and indexing the many documents required for this review.

# Executive Summary

The Grand Jury received multiple citizen complaints of activities conducted by the Newberry Community Services District.

To accomplish these objectives, the Grand Jury reviewed various District documents and records; observed Board of Directors' meetings; inspected certain facilities; conducted interviews; and, retained a management consulting firm with expertise in public agency matters.

A summary of the findings and recommendations contained in this report are presented on the pages that follow, by report section number.

## Section 1. Governance

Newberry Springs Community Services District (NCSO) Board meetings are not conducted in accordance with rules of order or professional conduct recognized as best practices in public sector organizations. In addition, the NCSO does not consistently record or post official minutes in a timely manner, in violation of the District's own policies, and compromising the ability of Board members to recall official actions when reviewing the minutes for accuracy. A clear violation of California's Open Meeting Law, also known as the Brown Act, was observed by the Grand Jury and has been the topic of concern by members of the Newberry Springs community.

Further, members of the Board have attended mandatory ethics training. However, expanded trainings on leadership and effectively chairing public meetings are available through the California Special District Association, the Special District Leadership Foundation, the California State Association of Counties, and other bodies.

The Board should attend such trainings, and adopt and adhere to expanded, formal policies and rules regarding conduct at public meetings. In addition, NCSO management should take steps to ensure that records of official Board action are routinely recorded, approved for accuracy, and indexed for timely access by the public.

Based on these findings, the NCSO Board of Directors should:

1. The NCSO Board should direct the General Manager to develop proposed policies and rules for conducting public meetings, based on *Roberts Rules of Order* and other accepted standards for parliamentary procedure.
2. Seek to attend courses offered by the CSDA and CSAC on the roles and functions of elected officials, including those offered on leadership and conducting public meetings.
3. Direct the General Manager to begin and maintain a process to record, transcribe, post and safeguard official Board minutes within two weeks of any Board meeting, in accordance with the District's current policy.

## Section 2. Accounting and Financial Management

The NCSO has not completed annual financial audits for the previous three fiscal years (2009-2010, 2010-2011, and 2011-2012). State Government Code requires public agencies, including special districts, to conduct annual financial audits within 12 months of the end of each fiscal year. The Board of Directors failure to execute this responsibility is in noncompliance with California Government Code at Section 26909 and 61118 for 2009-2010 and 2010-2011. Further, while State Code requires the County Auditor-Controller to ensure such audits are completed, efforts to monitor and enforce this provision have had limited effectiveness.

Financial reports required by State Government Code to be filed with the State Controller's Office have been submitted by NCSO, but were based upon unaudited and unverified data. Contrary to State code requirements, the District's FY 2011-12 annual report of financial transactions to the State Controller has not been reviewed by an independent public accountant to ensure that it agrees with the official records of the District. The financial information that has been provided, while unaudited, indicates some financial instability, which further underlies the need for regular financial audits.

NCSO lacks basic accounting procedures and controls. Specifically, District does not have: (1) a hierarchical account numbering system; (2) a financial or accounting manual; or, (3) a consistent system to classify expenditures carried out by the District. Further, the District lacks a consistent method for authorizing, classifying, and documenting expenditures from purchase cards.

Based on these findings, the NCSO Board of Directors should direct the General Manager to:

4. Re-adopt a numerical and hierarchical account numbering structure for use in the District's general ledger and income statement.
5. Work with the Board, County Auditor, and utilize resources such as the California Special Districts Association to develop a basic accounting manual.
6. Create purchase card procedures that require District staff to include documentation showing the purpose and justification for all expenditures.

The Auditor Controller should:

7. Revise *Outside Audit Report* procedures to include corrective actions for special districts that do not comply with State audit requirements for an extended period of time. Such corrective actions could include conducting audits and billing the districts for Auditor-Controller staff time or hiring an outside certified public accountant to conduct the audit and billing the district for the accountant's work.
8. Work with the Newberry Community Services District General Manager to determine a feasible approach to comply with audit requirements established in State Government Code Section 26909. Such approaches could, with the *unanimous* request of the Board of Directors and the *unanimous* approval of the Board of Supervisors, include:
  - (a) A biennial audit covering a two-year period;

- (a) A biennial audit covering a two-year period;

- (b) An audit covering a five-year period, if the District's annual revenues do not exceed an amount specified by the Board of Supervisors; or,
- (c) An audit conducted at specific intervals, as recommended by the County Auditor-Controller, which shall be completed at least once every five years.

### **Section 3. Internal Controls**

The District has By-laws and a Policy Handbook that contain some internal controls to help protect the District's financial and capital assets against the potential risk of loss or misuse. However, these policies remain insufficient for minimizing risk exposure to potential fraud and abuse. For example, the District's policies on purchase cards do not include spending and transaction limits to ensure that there are sufficient funds to pay for expenditures, segregate duties of purchase approvals and reconciliation to prevent potential fraud, or provide mechanisms for handling disputes and unauthorized charges.

In addition, the policies adopted to establish internal controls are not consistently implemented by Board members and District personnel, further exposing the District to unnecessary costs and potential misuse of District tax dollars for personal benefits. Violations of policies that indicate weak internal controls include:

- The lack of documentation for purchase card expenditures;
- Significant expenditures made with purchase cards without required Board approval;
- Lack of timely payments for purchase card billing statements to avoid potential penalties and fees;
- Reimbursement of expenses without sufficient documentation to ensure they were for District business; and,
- The lack of several key documents and tools such a log of all communication with District Counsel, a policy handbook for the Fire Department, and a catalog of retained District records.

Multiple resignations and terminations by the Board of key personnel within the organization during the audit period coincided with breakdowns in internal controls and the ability of the organization to respond by reassigning functions or implementing compensating controls is limited.

Finally, the District does not have an adequate Capital Management Asset System to control inventory and record key information central to making maintenance and replacement decisions.

Based on these findings, the NCSB Board of Directors should:

9. Revise its purchase card policies to:

- (a) Exclude Board members from the use of purchase cards in order to be in compliance with the State Master Services Agreement for purchase cards,

subsequently relinquish any purchase cards currently issued to Board members, and

- (b) Include additional policies to ensure that there are sufficient funds for paying authorized purchase card transactions, prevent potential fraud and abuse through unauthorized and/or inappropriate purchases, and avoid unnecessary penalties and fees from late payments, such as:
  - (i) Spending and transaction limits for each cardholder;
  - (ii) Clearly segregated duties for approving, executing, and reconciling purchases among the General Manager, Treasurer, and other purchase cardholders;
  - (iii) A process for handling disputes and unauthorized purchases; and,
  - (iv) A requirement that purchase cardholders use personal funds to pay for transactions that lack the timely submission of sufficient documentation of the transaction and purpose, as well as any subsequent penalties and fees that result from the delay in submitting such documentation.

10. Diligently review the list of disbursements to be approved on the consent agenda prior to scheduled Board meetings and (a) discuss questionable disbursements with the General Manager and/or (b) request to pull questionable disbursements from the consent agenda for public discussion and review.

The General Manager should:

- 11. Train all participants in the purchase card program on the new and revised policies and procedures for purchase cards.
- 12. Review consultants or vendors with a single invoice over \$5,000, or multiple invoices that, together, exceed \$5,000 to ensure that they have a contract or total expenditure approved by the Board of Directors at a meeting. If the contract was not approved by at least two Board members, or no contract exists, steps should be taken to bring the purchase(s) into compliance with the Policy Handbook.
- 13. Carefully review all requests for reimbursements, including supporting documentation, against the policies and procedures in the District Policy Handbook prior to approval.
- 14. Establish the following to ensure that the District is in compliance with the Policy Handbook and maintains adequate internal controls:
  - (a) District Legal Counsel Log;
  - (b) Policy handbook for the Fire Department; and,
  - (c) Catalog of all retained District records.

15. Establish a Capital Asset Management System that records capital asset information such as the purchase date, condition it was in at the time of purchase, warranties, maintenance history, usage statistics, original useful life, remaining useful life, and replacement costs.

The Local Agency Formation Commission (LAFCO) should:

16. Review suggestions made in its 2009 report and include more robust analysis of governance and reorganization options for the next Service Review of the District, scheduled for 2014.

# 1. NCSO Governance

As a public entity, the NCSO is bound by various laws embedded in the California State Government Code, which establish rules for open meetings and the retention of official records. In addition, best practices are employed by government entities around the world to ensure that the deliberations of public bodies are clearly communicated, and actions are well articulated and accurately recorded. Further, best practices establish various protocol for members of the public to be provided with the opportunity to comment on matters before elected bodies or on matters of general concern, in an orderly, respectful and efficient manner.

## NCSO Public Meetings

Because the NCSO is a public entity that derives its authority from the voters, it is incumbent upon members of the elected Board of Directors to establish policies, procedures and rules that govern the manner in which it conducts the public's business. Based on a review of records, testimony from individual Board members and observations at public meetings, the Grand Jury found that: (1) the Board has not formalized a robust policy framework, rules or protocol for conducting public meetings; (2) individual members of the Board and other persons often exhibit inappropriate behavior during public meetings; and, (3) records of official action are not consistently prepared or otherwise completed in a timely manner.

## Open Government Policy Framework and Rules Are Weak

NCSO Policy 5070 establishes the "Rules of Order for Board and Committee Meetings." Although loosely based on well-regarded rules defining parliamentary procedures, Section 5070.1.1 states that "These rules of order are intended to be informal and applied flexibly. The Board prefers a flexible form of meeting and, therefore, does not conduct its meetings under formalized rules – Roberts Rules of Order." Subsection 5070.1.1.1 further states that "If a Director believes order is not being maintained, then he/she should raise a point of order – not requiring a second – to the President. If the ruling of the President is not satisfactory to the Director, then it may be appealed to the Board. A majority of the Board will govern and determine the point of order."

The intended flexibility of these Rules of Order is emphasized in other sections of the policy. Subsection 5070.5.1 states that "The President shall take whatever actions are necessary and appropriate to preserve order and decorum during Board meetings, including public hearings. The President may eject any person or persons making personal, impertinent or slanderous remarks, refusing to abide by a request from the President, or otherwise disrupting the meeting or hearing." Further, Subsection 5060.6.1 states that "By motion made, seconded and approved by a majority vote, the Board may, at its discretion and at any meeting: a) temporarily suspend these rules in whole or in part; b) amend these rules in whole or in part; or, c) both." The remainder of the Policy addresses procedures for individual Directors to obtain the floor; and, offering, commenting and moving motions to a vote.

Although different parliamentary procedures have been developed over the years, *Roberts Rules of Order* are generally considered to be the standard for local government entities in the United

States. The *Institute for Local Government*<sup>1</sup> states that formalized rules of order are necessary to “guide the discussion and decision-making process.” Although following parliamentary procedure is not required in California, it is considered to be a best practice, makes public meetings more efficient, and reduces the chances of official actions being declared illegal or challenged for procedural deficiencies.

Further, the League of California Cities, in the organization’s publication *Open and Public IV*, has made the observation that there are certain key principles and goals that should be considered when government bodies develop their policies regarding public meetings:

- A legislative body's need to get its business done smoothly;
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation; and,
- The right of the press to fully understand and communicate public agency decision-making.

Although prepared in the context of the State’s Open Meeting Law (i.e., the “Brown Act”), these principles support the concept that in order to operate effectively, meetings require rules and procedures to ensure orderly, efficient, and productive sessions in a calm, professional setting. The limitations of the District’s current policy, including the desire for “flexibility” embedded in the policy foundation, do not support the accomplishment of these goals. The League of California Cities continues by stating, “An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law . . . A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust.”

As will be discussed below, the public trust appears to have been damaged in the NCSD, in part by the manner in which public meetings are conducted, the behavior of Directors during public meetings and inconsistencies with the preparation and maintenance of official records of action. As a first step toward improving public access and communication, the NCSD should adopt more robust policies regarding parliamentary procedure, adhering to the basic principles of *Roberts Rules of Order*, which have been in existence and used by local government agencies in the United States for well over 100 years. When developing these policies, the District should consult with the California Special District Association (CSDA), which can provide resources and make suggestions regarding best practices for special district organizations.

## **Members of the Board Exhibit Inappropriate Behavior at Public Meetings and May Have Acted in Violation of California Law**

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<sup>1</sup>An affiliate of the California State Association of Counties (CSAC) and the League of California Cities.

As part of the Grand Jury's investigation, members attended NCSB Board meetings and listened to numerous tape recordings of other meetings to assess the effect of the weak policy foundation on proceedings. The following observations were made:

- Before the start of Board meetings, members of the public who wish to address the Board fill out a "Request to Be Heard" card and are provided with three minutes to voice their concerns. Although this is a typical practice in government organizations, members of the public were also permitted to engage in discussions at any time during the meeting, without filing the required Request to Be Heard Card. Often, members of the public spoke to individual directors without going through the President and, although some persons would raise their hand to be recognized, in many instances other persons would simply begin to speak without being recognized. Sometimes, multiple conversations occurred simultaneously and discussions between persons in the audience were conducted separately while the Board merely watched and listened.
- In several instances, members of the Board engaged in arguments with one another and members of the public. During these exchanges, the meetings were disrupted as people talked over one another and made sarcastic and snide remarks. In some instances, the arguments between Board members became overly heated, causing some members to walk out while the meeting proceeded. In another instance, a Board member challenged a member of the public who had just finished addressing the Board. This resulted in a brief shouting match between the two. In another instance, a member of the public was talking loudly during the meeting and, when asked by a Board member to be silent, the person responded with an obscene gesture.
- Some Board members were seen slouching in their chairs, keeping their heads down and speaking in voices that could barely be heard by the audience. Such behavior gives the impression that these members are indifferent and/or disinterested in the proceedings, is disrespectful and unprofessional.
- The unprofessional behavior of the Board has been observed for some time by previous employees and members of the public. In March 2012, the resignation letter submitted by a former Fire Chief, stated that his departure was due, in part, to ". . . the public fights and bickering so prevalent on the NCSB Board."
- At the February 26, 2013 meeting of the Board, an argument started regarding whether the Board member could remove an agenda item without a vote of the Board. The item in question concerned an accusation that a sitting member of the Board had committed fraud and conspiracy. During recess, three members of the Board (a quorum) were observed talking together in private, which is a clear violation of the Brown Act. The Newberry Springs Community Alliance, which describes itself as a ". . . grassroots organization of residents and property owners fostering an improvement of Newberry Springs through the engagement of educating the community" regularly blogs critical comments about the Board. In March 2013, this organization blogged "The CSD Board has had a hard time holding a single meeting that doesn't contain a Brown Act violation."

These examples of poor behavior by Board members, and the inability of the President to control both Board member and audience interaction, suggest that the individual members of the Board

have not yet developed the necessary skills to lead or participate in public meetings in a professional manner. Combined with more robust policies, procedures and rules defining parliamentary procedures, Board members should be provided with training on duties, responsibilities and behavior as elected officials.

Further, it is clear that members of the Board may not be familiar with the requirements of the California Open Meeting Law or Records Retention Act, as discussed in the section, below. Accordingly, the City Attorney should be requested to develop and lead workshops on these topics to ensure that current and future Board members have the background and knowledge to adhere to these laws.

## **Board Members Have Not Been Provided With Appropriate Training**

Assembly Bill 1234 requires that all board members of special districts complete a two-hour, on-line Ethics Compliance Training Course after joining the Board. Based on records maintained by the District, all Board members have received this training. The California Special District Association (CSDA) provides training for elected officials and managers of special districts, including various orientation trainings, leadership summits, and related topics such as human relations and resource management. Other courses are provided through the Special District Leadership Foundation, and guides are available through the State Board of Equalization and other bodies. In addition, other trainings are offered by Statewide organizations, such as the California State Association of Counties (CSAC) that may be helpful to the District's leadership. For example, CSAC has an agreement with California State University Northridge to provide special courses for elected officials and managers that can be attended to obtain credit towards a Master Degree in Public Administration. In addition, CSAC offers courses through the *Institute for Excellence in County Government*, which may be beneficial to the District directors, including:

- The Art and Practice of Elected Leadership;
- Getting Things Done: Working Effectively to Achieve Objectives;
- Chairing and Managing Effective Public Meetings;
- Making Impressions: Media Interviewing;
- Negotiation and Collaboration in Complex Environments; and,
- Advanced Practice in Negotiation.<sup>2</sup>

Although these courses are designed for County elected officials, the topics and content can also be applied to the operations of the NCSO. The members of the Board should explore the opportunity for attending selected courses, with the goal of improving the conduct of public meetings and interactions with each other and members of the public.

## **Records of Board Actions Are Not Complete or Prepared in a Timely Manner**

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<sup>2</sup> Go to [http://www.csac.counties.org/sites/main/files/file-attachments/2013-winter-spring-publish\\_3.pdf](http://www.csac.counties.org/sites/main/files/file-attachments/2013-winter-spring-publish_3.pdf) to view a complete description of available courses for the Spring 2013 schedule.

NCSD Policy 5060.1.1 states that:

Copies of a meeting's minutes shall be posted for a minimum of 10 days on the NCSD website within 14 (days) of NCSD meeting for public review. Copies of meeting minutes shall be distributed to Directors as part of the information packet for the next regular meeting of the Board, at which time the Board will consider approving the minutes as presented or with modifications. Once approved by the Board, the official minutes shall be kept in a fireproof vault or in a fire-resistant cabinet.

The NCSD does not adhere to this policy.

During the period of this review, the Grand Jury found that Board minutes were not being consistently recorded, posted and secured in the manner prescribed by Policy 5060.1.1. Minutes were generally not transcribed promptly and were not ready for approval at the next regularly scheduled Board meeting. When copies of minutes were requested, the current General Manager reported that she had to look in several locations before they were located. A number of Board minutes were audio recorded but not transcribed for weeks or months later, resulting in some Board members not recalling what actions were taken on agenda items when presented with the written notes for approval.

Members of the Grand Jury reviewed the written notes and listened to numerous audio recordings of Board meetings. The background noise on some recordings made it difficult to hear or understand who was speaking and, in some cases, what was being said. Some audio recordings were started after the meetings were called to order and no references to the dates of the meetings were heard. This creates difficulties with providing an accurate written record of Board proceedings, even when the audio recordings are transcribed. For example, the Board minutes from the August 28, 2012 meeting included a typed side-note that stated the notes “. . . are not transcripts of the meetings; only the hi-lights and hopefully accurate.”

To ensure that there are accurate records of official actions, the Board should direct the General Manager to begin and maintain a process to record, transcribe, post, and safeguard official Board minutes within two weeks of any Board meeting, in accordance with the District's current policy.

## Conclusions

NCSD Board meetings are not conducted in accordance with rules of order or professional conduct recognized as best practices in public sector organizations. In addition, the NCSD does not consistently record or post official minutes in a timely manner, in violation of the District's own policies, and compromising the ability of Board members to recall official actions when reviewing the minutes for accuracy. A clear violation of California's Open Meeting Law, also known as the Brown Act, was observed by the Grand Jury and has been the topic of concern by members of the Newberry Springs community.

Further, members of the Board have attended mandatory ethics training. However, expanded trainings on leadership and effectively chairing public meetings are available through the California Special District Association, the Special District Leadership Foundation, the California State Association of Counties, and other bodies.

The Board should attend such trainings, and adopt and adhere to expanded, formal policies and rules regarding conduct at public meetings. In addition, NCSD management should take steps to

ensure that records of official Board action are routinely recorded, approved for accuracy, and indexed for timely access by the public.

## **Recommendations**

The NCSD Board of Directors should:

- 1 The NCSD Board should direct the General Manager to develop proposed policies and rules for conducting public meetings, based on *Roberts Rules of Order* and other accepted standards for parliamentary procedure.
- 2 Seek to attend courses offered by the CSDA and CSAC on the roles and functions of elected officials, including those offered on leadership and conducting public meetings.
- 3 Direct the General Manager to begin and maintain a process to record, transcribe, post and safeguard official Board minutes within two weeks of any Board meeting, in accordance with the District's current policy.

## **Costs and Benefits**

There would be minimal cost for the members of the Board to attend leadership and other training offered by CSDA and CSAC.

Parliamentary procedures recognized throughout the world would be followed by the NCSD Board, and the Board members would receive the training necessary to provide leadership and ensure a more professional atmosphere at public meetings. The risk of Directors violating California Open Meeting Laws and the California Records Act would be reduced.

## 2. Accounting and Financial Management

### NCSD Lacks State-Mandated Financial Audits

NCSD has not completed annual financial audits for fiscal years 2009-2010, 2010-2011, and 2011-2012. NCSD is therefore not in compliance with State Government Code Section 26909 for 2009-2010 and 2010-2011, which requires annual audits of financial condition for all special districts within 12 months of the end of a fiscal year.

The State Controller's Office prescribed minimum auditing requirements for special districts, set out in Title 2, Section 1131.2 of the California Code of Regulations, consist of 17 general statements that county auditors or independent accounting firms should consider in preparing an audit program. These 17 statements include the following important steps, among others:

- A proper study and evaluation of the existing internal control and the financial organizational structure;
- A review of the district's report of financial transactions to the State Controller to see that it agrees with official records of the district for the period. The State Controller should be informed of any material difference;
- A determination that expenditures were properly documented, authorized and incurred and are proper charges to the fund and appropriation against which they have been charged; and,
- A verification of all assets and liabilities in accordance with generally accepted auditing standards.

The failure to follow these and the other requirements set out by the State Controller has led to negative consequences for NCSD including: (1) putting NCSD out of compliance with State Code; (2) leaving residents and taxpayers without a reasonable assurance that financial statements are presented fairly and accurately; and, (3) putting the District at greater risk of waste, fraud and abuse due to the absence of any review of internal controls.

The lack of audited financial statements is also not consistent with industry best practices, such as those promulgated by the *Institute for Local Government*, which notes that "audited financial reports alert governing body members if there are irregularities in financial practices and financial reporting."<sup>3</sup>

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<sup>3</sup> The Institute for Local Government is an affiliate of the California State Association of Counties and the League of California Cities. The best practices information can be found online at this address: [http://www.ca-ilg.org/sites/main/files/file-attachments/resources\\_3r\\_Financial\\_Reporting\\_and\\_Accounting.pdf](http://www.ca-ilg.org/sites/main/files/file-attachments/resources_3r_Financial_Reporting_and_Accounting.pdf)

## **Auditor-Controller Monitoring of Audit Requirements Has Had Limited Effectiveness with NCSD**

State code places responsibility on the County Auditor-Controller for making sure special districts are audited annually or on a different frequency under certain restrictions. Specifically, Section 26909 of the State Government Code requires county auditors to:

Either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of every special district within the county for which an audit by a certified public accountant or public accountant is not otherwise provided.

The Internal Audits Section of the County Auditor-Controller, which is responsible for performing operational and financial audits of special districts, has taken steps to monitor special districts' compliance with State auditing requirements. However, these efforts have not been successful with NCSD.

The Auditor-Controller has procedures that call for repeated, increasingly assertive correspondence with general managers and district boards that have not completed a financial audit on time. In the case of NCSD's FY 2011-12 audit, the Auditor-Controller relied on the District's general manager's and its certified public accountant's assertions that a contract was in place to conduct audit services. However, as noted later in this section, the work performed by the certified public accountant does not comply with State audit requirements.

The enforcement of Section 26909 is somewhat complicated by the Code's requirement that any costs incurred by the county auditor, including any contracts with accountants, be borne by the special district. County Auditor-Controller management staff has asserted to our audit team that there has been some hesitancy to enforce the annual audit requirement on NCSD due to the District's budgetary constraints. However, there has been no formal steps taken or analysis conducted by the Auditor-Controller to determine the most cost effective method of complying with State audit requirements.

### NCSD and Auditor-Controller Have Not Pursued Potential Alternatives to Annual Audits

Neither NCSD nor the Auditor-Controller have studied or pursued potential alternatives to annual audits allowed for in the State Government Code under certain restrictions. Specifically, Government Code Section 26909 allows for the following three alternatives if requested unanimously by the special district's governing board and unanimously approved by the Board of Supervisors:

1. A biennial audit covering a two-year period;
2. An audit covering a five-year period, if the special district's annual revenues do not exceed an amount specified by the Board of Supervisors; or,
3. An audit conducted at specific intervals, as recommended by the County Auditor, which shall be completed at least once every five years.

Given the District's relatively small budget of approximately \$250,000 per year, the Auditor-Controller and District Board members should consider these alternatives, which would require fewer resources to be devoted to financial audits, but would still be in compliance with State requirements.

## **2011-12 Financial Review Did Not Meet Minimum Audit Requirements**

Financial reports required by State Government Code to be filed with the State Controller's Office have been submitted by NCSO, but were based upon unaudited and unverified data. Contrary to State code requirements, the District's FY 2011-12 annual report of financial transactions to the State Controller has not been reviewed by an independent public accountant to ensure that they agree with the official records of the District.

In September 2012, NCSO contracted with a certified public accountant for audit services covering financial transactions in FY 2011-12. The Auditor stated the District did not provide adequate or sufficient documentation to complete an audit and express an audit opinion. However, these services did not meet the minimum requirements prescribed by the State Controller's Office for audits of special districts. Rather, in his transmittal letter to the District's Board of Directors the certified public accountant stated that his work was limited to putting together the financial report that must be filed annually with the State Controller. Further, the letter states that "I have not audited or reviewed the financial statements referred to above and accordingly do not express an opinion or any other form of assurance on them."

The State Controller's prescribed minimum audit requirements are contained in the California Code of Regulations (Title 2, Section 1131.2). As previously mentioned, these minimum requirements include the statement that:

the district's report of financial transactions to the State Controller should be reviewed to see that it agrees with the official records of the district for the period. The State Controller should be informed of any material difference.

The General Manager should prepare the District's financial statements on an annual basis before they are reviewed by the Auditor-Controller or a certified public accountant to ensure they are an accurate reflection of the District's financial condition.

## **Financial Data Reported to State Controller Indicate Financial Instability and Structural Deficits**

Although the data provided to the State Controller's Office is unaudited, a review of such data indicates financial instability, which further underlies the need for regular financial audits. As seen in Table 2.1 below, the District appears to have run a deficit in FY 2009-10 of approximately \$18,000 or about 8 percent of total revenues. Further, the lighting and lighting maintenance function has run deficits ranging from \$41,142 to \$5,011 from FY 2008-09 to FY 2010-11 and the Recreation and Park Function has run deficits of approximately \$25,000 in FY 2009-10 and about \$2,300 FY 2010-11. NCSO management has been unable to identify the cause(s) of these deficits. Additionally, the District's methodology for assigning district-wide costs such as Director's fee, office costs, and accounting and legal fees between the three functional departments is not documented, and therefore cannot be verified.

**Table 2.1****NCSD Expenditure Data Reported to State Controller**

<b>Activity</b>	<b>FY 2008-09 Revenues</b>	<b>FY 2008-09 Expenditures</b>	<b>FY 2009-10 Revenues</b>	<b>FY 2009-10 Expenditures</b>	<b>FY 2010-11 Revenues</b>	<b>FY 2010-11 Expenditures</b>
Fire Protection	\$152,701	\$119,179	\$124,762	\$112,437	\$136,411	\$109,611
Lighting and Lighting Maintenance	3,434	44,576	2,141	7,152	2,210	8,698
Recreation and Park	155,645	142,136	98,935	124,115	100,563	102,910
<b>Total</b>	<b>\$311,780</b>	<b>\$287,891</b>	<b>\$225,838</b>	<b>\$243,704</b>	<b>\$239,184</b>	<b>\$221,219</b>

Source: State Controller's Office

**NCSD Lacks Sufficient Accounting Procedures and Controls**

NCSD lacks sufficient accounting procedures and controls. According to State Government Code 61053, NCSD must:

adopt a system of accounting and auditing that shall completely and at all times show the district's financial condition. The system of accounting and auditing shall adhere to generally accepted accounting principles.

However, the District does not have: (1) a hierarchical account numbering system; (2) a financial or accounting manual; or, (3) a consistent system to classify expenditures carried out by the District. Further, although the State Controller requires special districts to use the modified accrual basis of accounting, it is not employed at NCSD.

**NCSD Lacks Account Numbering System and Financial Manual**

Beginning in FY 2012-13, the District abandoned utilizing its numerical and hierarchical account structure in favor of an accounting scheme based on account titles. A fundamental objective of accounting is to accurately classify transactions such as expenditures and receipts into proper "buckets" or accounts. Accounts are generally identified utilizing a numeric or alpha-numeric scheme. Accounting identifiers are usually broken down into some type of hierarchical components to accommodate data correlation and reporting activities. The numerical assignment of an accounting identifier also facilitates system to system and intra-system exchanges of data, such as from a Purchase Order system to the General Ledger. The abandonment of account numbers inhibits accurate and efficient hand-offs of accounting data for establishment and performance measurement of budgets and future growth into new and more sophisticated computer system interfaces.

NCSD lacks a financial or accounting manual, which would provide guidance to the General Manager and other staff on how to create and maintain District accounts and prepare the District's income statement, general ledger, and annual financial statement. In addition, a

financial or accounting manual would assist the staff in using modified accrual based accounting, which is required by the State Controller for non-enterprise funds.

The lack of a financial or accounting manual may have led to the following odd general ledger and income statement entries observed by the Grand Jury from FY 2011-12:

- On the District’s Income Statement, a revenue line title “Deposits Not Recorded” shows a value of \$121,248.76, which is 47 percent of the District’s fiscal year revenue. No explanation was found for the purpose or intended usage of this account.
- Account 5100 titled “Directors Stipend” reflects amounts that are not in increments of \$50 even though Directors are paid \$50 per authorized meeting.
- Account 5101 titled “Secretary Salary” reflects payments made to five individuals ranging from \$39.67 to \$12,640.02. However, the District did not have five secretaries during FY 2011-12.

### **Expenditures Not Consistently Classified to Support Proper Accounting**

NCSO does not consistently classify or document expenditures to allow for proper accounting of the various functions carried out by the District. For example, approximately \$20,000 of purchase card expenditures was placed in a general ledger clearing account because the former General Manager, lacking documentation, could not determine the appropriate cost account. Additionally, a 4,000 gallon Water Tender Truck was acquired via a capital lease, but is being accounted for as an operating lease. This misstates both the District’s assets and liabilities. The failure to properly classify expenditures leaves the District non-compliant with the State Code requirement to adopt a system of accounting and auditing that shall completely and at all times show the District’s financial condition. It also affects the accuracy of the District’s State-mandated financial reporting.

### **District Has Weak Check Reconciliation Process**

NCSO’s check reconciliation process has been deficient. The District’s FY 2011-2012 account for workers’ compensation insurance was overstated by the value of one extra quarterly payment in the amount of \$2,172, which resulted from a voided check not being reversed off the books. This is an indicator of a weak check reconciliation process.

Reconciling bank statements to check registers and to General Ledger account balances is a fundamental management practice and a basic internal control process. This process ensures the bank’s records are in-line with the District’s records, and that any voided or un-cashed checks are identified for follow-up and corrective action if needed. A check that has been voided must also have its charged reversed on the accounting ledgers. Failure to reverse an entry in the accounting ledger will overstate expenditures and under-state the District’s actual cash position. The General Manager has indicated that improvements to the check reconciliation process have been implemented. Identifying any additional prior year problems requires the completion of outstanding audit work.

## Conclusions

The Newberry Community Services District (NCS D) has not completed annual financial audits for the previous three fiscal years (2009-2010, 2010-2011, and 2011-2012). State Government Code requires public agencies, including special districts, to conduct annual financial audits within 12 months of the end of each fiscal year. The Board of Directors failure to execute this responsibility is in noncompliance with California Government Code at Section 26909 and 61118 for 2009-2010 and 2010-2011. Further, while State Code requires the County Auditor-Controller to ensure such audits are completed, efforts to monitor and enforce this provision have had limited effectiveness.

Financial reports required by State Government Code to be filed with the State Controller's Office have been submitted by NCS D, but were based upon unaudited and unverified data. Contrary to State code requirements, the District's FY 2011-12 annual report of financial transactions to the State Controller has not been reviewed by an independent public accountant to ensure that it agrees with the official records of the District. The financial information that has been provided, while unaudited, indicates some financial instability, which further underlies the need for regular financial audits.

NCS D lacks basic accounting procedures and controls. Specifically, District does not have: (1) a hierarchical account numbering system; (2) a financial or accounting manual; or, (3) a consistent system to classify expenditures carried out by the District. Further, the District lacks a consistent method for authorizing, classifying, and documenting expenditures from purchase cards.

## Recommendations

The Newberry Community Services District Board of Directors should direct the General Manager to:

- 4 Re-adopt a numerical and hierarchical account numbering structure for use in the District's general ledger and income statement.
- 5 Work with the Board, County Auditor, and utilize resources such as the California Special Districts Association to develop a basic accounting manual.

The Auditor Controller should:

- 6 Revise *Outside Audit Report* procedures to include corrective actions for special districts that do not comply with State audit requirements for an extended period of time. Such corrective actions could include conducting audits and billing the districts for Auditor-Controller staff time or hiring an outside certified public accountant to conduct the audit and billing the district for the accountant's work.
- 7 Work with the Newberry Community Services District General Manager to determine a feasible approach to complying with audit requirements established in State Government Code Section 26909. Such approaches could, with the *unanimous* request of the Board of Directors and the *unanimous* approval of the Board of Supervisors, include:

- (a) A biennial audit covering a two-year period;
- (b) An audit covering a five-year period, if the District's annual revenues do not exceed an amount specified by the Board of Supervisors; or,
- (c) An audit conducted at specific intervals, as recommended by the County Auditor-Controller, which shall be completed at least once every five years.

## **Costs and Benefits**

The costs of implementing with these recommendations would include District staff time to draft and adopt policies and procedures.

The benefits of implementing these recommendations would include stronger controls over accounting and management of the District's finances and greater transparency in the reporting of the District's financial condition. The benefits would also include compliance with State Government Code audit requirements for special districts.

### 3. Internal Controls

According to the Government Finance Officers Association (GFOA), the purpose of internal controls is to protect government's financial and capital assets against the potential risk of loss or misuse. Further, internal controls are needed to ensure that all financial transactions are properly authorized and data in financial reports are reliable. Although there are references to internal controls in the NCSD By-laws and Policy Handbook, they are (1) insufficient for ensuring that the District's assets are protected against potential loss or misuse and (2) are not consistently implemented by District Board members and personnel.

#### Deficient Internal Controls for District Expenditures

NCSD revenues are used to procure materials, supplies and services for District business through purchase cards, contracts with outside contractors and consultants, and reimbursement of expenses made by District Board members and personnel. The Policy Handbook requires various protocols for approval of such expenditures, along with sufficient documentation to ensure that expenditures were appropriately tied to District business. However, sufficient documentation of required approval and/or explanations for the appropriateness of the expenditures were not always provided to the Grand Jury.

#### CAL-Card Purchase Cards

The California Department of General Services has a Master Services Agreement (MSA) with U.S. Bank for purchase card services. Local tax funded agencies such as the District are able to participate in the MSA and obtain CAL-Cards (purchase cards) by submitting required documentation, including a signed Local Agency Addendum to the MSA. Advantages of participating in the CAL-Card program include: (1) no cost for participation; (2) rebates for average transactions, volume sales and prompt payment; and, (3) streamlined purchases by eliminating the need for extensive advertising, bidding and contracting procedures.<sup>4</sup>

#### Insufficient Internal Control Policies and Procedures

In accordance with the U.S. Bank CAL-Card Program Administrator Guide, the District adopted purchase card policies on July 26, 2011.<sup>5</sup> However, based on a comparison with GFOA recommended internal control best practices for purchase cards, these policies are not adequate to ensure that the District can minimize the risk of costly, unnecessary, and/or inappropriate purchases. Table 3.1 below illustrates that the District lacks a few key internal control policies such as spending and transaction limits, reconciliation procedures, and a process for handling disputes and unauthorized purchases.

<sup>4</sup> California Department of General Services, CAL-Card (Purchase Card), <http://www.dgs.ca.gov/pd/Programs/CALCard.aspx>

<sup>5</sup> District Policy Handbook: Policy Number 3075.

**Table 3.1**

**Government Finance Officer Association (GFOA) Best Practices vs. District Purchase Card Policies**

GFOA Best Practices	District Policy Number 3075	Grand Jury Comments
Clear guidelines on the appropriate use of purchasing cards	<b>3075.3.2</b> All purchasing card expenses shall be reasonable and necessary to the furtherance of District business. No personal expenses shall be charged on a District purchasing card.	
Spending and transaction limits for each cardholder, both per transaction and on a monthly basis		Spending and transaction limits ensure that the District has sufficient funds to pay for expenditures.  The Policy Handbook fails to mention spending limits. The District did not provide the Grand Jury with additional internal usage guidelines for purchase cards.
Review and approval process	<b>3075.3.3<sup>1</sup></b> The Treasurer shall review and approve purchasing card transactions by the cardholders.	
Timely reconciliation by cardholders and supervisors		Reconciliation includes verifying that purchased goods and services were received, acceptable, and charged appropriately in the purchase card statement.  The Policy Handbook fails to mention reconciliation policies and procedures.
Retention of sales receipts and documentation of purchases	<b>3075.3.3<sup>1</sup></b> All purchase card expenses shall have third-party documents (receipts) attached and the District purpose annotated by the cardholder.	
Segregation of duties for payment approvals, accounting, and reconciliation	<b>3075.3</b> A purchasing card shall be issued to the General Manager and the Treasurer. Purchasing cards shall not be issued to members of the Board of Directors without a majority vote of approval by the Board.  <b>3075.3.3<sup>1</sup></b> (Above)	Although both the General Manager and Treasurer are issued a purchase card, only the Treasurer shall review purchases. This is a failure to segregate approval of use from actual use.  The Policy Handbook fails to mention reconciliation policies and procedures.
Procedures for handling disputes and unauthorized purchases		If reconciliation occurs on a consistent basis and errors are identified, there should be a process for preventing payment for unauthorized or incorrect charges.  The Policy Handbook fails to mention procedures for handling disputes and unauthorized purchases.

Source: "GFOA Best Practice: Purchasing Card Programs," Approved February 2011 and District Policy Handbook, 2012.

<sup>1</sup>3075.3.3 is listed twice in the District Policy Handbook.

### *Segregation of Duties*

The District is in violation of the State MSA by allowing District Board members to be purchase cardholders, with a majority vote of approval by the Board.<sup>6</sup> The MSA explicitly states that the CAL-Card Program is available for use by individual government employees. Pursuant to California Government Code 6140, Board members are responsible for determining policies such as budgets and programs, while the General Manager, a government employee, is responsible for implementing them.

Despite the segregation of duties between policy making and implementation of those policies, such as making purchases, two District Board members<sup>7</sup> were issued purchase cards and incurred \$10,059 and \$7,985, or a total of \$18,044 in expenditures in FY 2011-12. This represents approximately 25 percent of the total FY 2011-12 expenditures of \$70,767 incurred through purchase cards. When District Board members make purchases of this magnitude, the General Manager and/or Treasurer, as government employees, are placed in an awkward position of approving expenditures for those with the power to terminate their employment. Such conditions diminish the District's ability to effectively implement internal controls.

The State Master Services Agreement and U.S. Bank CAL-Card Program guides identify at least four distinct roles and their respective duties within any agency participating in the purchase card program. The segregation of duties prevents any single person from taking advantage of the purchase card program to make unauthorized and/or personal purchases. In contrast, the District Policy Handbook identifies the General Manager, Treasurer, and any other potential cardholder, but the duties of each are not as clearly defined or segregated.

According to the MSA participating agencies should have the following:

- **Program Coordinator/Administrator:** An individual responsible for management and oversight of the purchase card program, including following contract terms, ensuring timely payment of invoices, developing and enforcing agency policy, procedures and training. A Purchasing Officer or equivalent typically maintains this position.
- **Approving Official:** An individual responsible for monitoring, reviewing, and approving the purchases of assigned cardholders. A Budget Manager for which the funds are to be expended by the assigned cardholders typically maintains this position.
- **Billing Officer:** An individual responsible for the timely management and oversight of the invoice reconciliation and payment process. An Accounting Officer or equivalent typically maintains this position.
- **Cardholder:** An individual designated by the Program Coordinator/Administrator and Approving Official to receive a purchase card and make purchases.

<sup>6</sup> Approval by the Board of Directors assumes a "yes" vote by at least two Board members, the minimum number of members to achieve a majority when there are three Board members present to establish quorum and take action.

<sup>7</sup> As of the writing of this report, the Grand Jury could not verify if the two Board members received the necessary approval from other Board members to receive purchase cards.

The District is violating the best practice of segregating duties because the Treasurer appears to serve in at least three of the above roles and perform the following duties simultaneously: (1) recommending internal usage guidelines for the purchasing cards to the Board for approval (Program Coordinator/Administrator duty), (2) approving purchases of assigned cardholders (Approving Official duty), and (3) making purchases on behalf of the District with an issued purchase card (Cardholder duty). Additionally, no personnel are explicitly assigned invoice reconciliation and payment responsibilities (Billing Officer duty) in the District Policy Handbook. It is more appropriate for the General Manager to serve in the function of Program Coordinator/Administrator and Approving Official while the Treasurer serves as the Billing Officer.

Because of the small size of the District, it may be acceptable to issue purchase cards to both the General Manager and Treasurer. However, approving and reconciling purchases should be conducted by someone other than the person making purchases, as recommended by GFOA best practices. Therefore, if both the General Manager and Treasurer continue to make purchases with issued purchase cards, the Treasurer should approve and reconcile the General Manager's purchases and vice versa.

The District should revise its Policy Handbook to (a) exclude Board members as purchase cardholders and (b) include internal controls such as (i) spending and transaction limits; (ii) clearly segregated duties for approving, executing, and reconciling purchases among the General Manager, Treasurer, and other purchase cardholders; and, (iii) a process for handling disputes and unauthorized purchases. Purchase cards issued to Board members should be subsequently relinquished. Additionally, the General Manager should train all staff involved in the purchase card program of the new and revised purchase card policies.

#### Inconsistent Implementation of Policies and Procedures

In addition to lacking key internal controls for purchase card expenditures, the District has failed to provide consistent documentation to ensure that the internal controls that do exist are executed and serving its purpose(s).

#### *Lack of Receipts make it Difficult to Conclude Appropriate Expenditures*

The District spent \$70,767 in FY 2011-12, but the District did not provide receipts explaining what individual charges on the U.S. Bank statements were for. Without such documentation, it is impossible to verify if the charges met the Policy Handbook's criteria of "reasonable and necessary" expenses for District businesses or if personal expenses were charged to the purchase cards and paid for with District tax dollars. For example, typical purchase card expenditures in FY 2011-12 included fuel at a gas station. However, there was an instance when one cardholder made three separate fuel purchases on the same day. Without documentation and further explanation, it is difficult to determine if significant travel for district business occurred on the same day, requiring multiple fueling, or if multiple cars, including personal cars, were fueled with the same District purchase card. Going forward, the Treasurer or General Manager should not approve payment of purchase card transactions without the submission of sufficient documentation demonstrating the appropriateness of the purchase(s). If a cardholder fails to timely submit receipts and other documentation, the cardholder should be held responsible for paying the purchase with their own funds and any subsequent late fees or penalties caused by delays in submitting receipts and/or payment.

*Significant Expenditures Occurred without Board Approval*

In September of 2011, a single transaction totaling \$11,277 was charged for a purchase from NUVAIR. Three additional purchases from NUVAIR occurred on the same date, resulting in a total of \$12,587 charged to the same purchase card. The initial transaction and aggregate transactions for the same vendor exceed \$5,000. District Policy 3040.2 states that any purchase or expense greater than \$5,000 must be submitted to the Board of Directors for approval. However, approval for the NUVAIR purchase was not recorded in Board meeting minutes. Therefore, internal controls are insufficient to ensure that purchase card transactions comply with other District expenditure policies.

*Lack of Timely Payments of Billing Statements*

Although the Policy Handbook requires that all purchase card bills shall be paid in a timely manner to avoid late fees and finance charges, half of the billing statements in FY 2011-12 showed that a payment was not previously submitted. The District was not charged any late penalties or fees because their subsequent payments still met the terms of the purchase card agreement. According to the State MSA, the full amount of each participating agency's monthly balance or billing cycle, with the exception of reported fraud or disputed items, is due within 45 days<sup>8</sup> from the billing cycle date of the invoice. According to District personnel and Board members, payments for a billing statement were made after receiving the subsequent billing statement(s) due to the lack of verification of expenditures.

The General Manager should be designated the role of Program Coordinator/Administrator and ensure that purchase cards are paid in a timely manner. By (a) imposing spending and transaction limits and (b) requiring either the General Manager or the Treasurer approve all purchases prior to incurring actual costs based on the (i) appropriateness of the purchase and (ii) availability of funds, the District can ensure that there are sufficient funds available to pay for all expenditures. By requiring cardholders to pay for any charges that do not have sufficient documentation to justify and verify purchases on the bank statement, the District should have sufficient documentation to reconcile and pay the bank statements in a timely manner and/or have an additional source of revenue, other than District tax dollars, to pay for disputed or unauthorized purchases.

**Outside Contracts and Consultants**

Requiring Board approval for consultant contracts and expenditures over \$5,000 is an essential internal control to ensure that significant funds are not committed to consultants or vendors that are unqualified, unnecessarily costly, and/or participants in fraud or abuse. Open, public discussions among Board members regarding contracts and expenditures could provide a control to help prevent Board members from personally benefiting from the selection of particular contractors or consultants. The General Manager should diligently review consultants or vendors with a single invoice over \$5,000, or multiple invoices that, together, exceed \$5,000 to ensure that they have a contract or total expenditure approved by the Board of Directors at a meeting. If the contract was not approved by at least two Board members, or no contract exists, steps should be taken to bring the procurement into compliance with the Policy Handbook.

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<sup>8</sup> The total number of days could be adjusted depending on the postmark date of the invoice and/or payment.

## Reimbursements

While the Policy Handbook may allow reimbursements of expenses directly related to District business, the Board appears to have violated its policies by allowing a Board member to be reimbursed for a personal cell phone and internet bill on May 26, 2012. Policy 2270.3.18 states that the District is not responsible for maintaining or payment of personal internet accounts or related software. Additionally, the District By-laws state that Board members may authorize reimbursement for expenditures made for “operating supplies, or new and replacement items for office use and also for travel expenses.”<sup>9</sup> The Board members approved the disbursement and the General Manager issued a check equivalent to the entire amount of a personal cell phone and home internet bill. Even if some of the personal cell phone and home internet services were used for District business, there was no additional documentation to justify what portion of the cell phone and home internet bill justified reimbursement.

To improve enforcement of District policies and enhance internal controls against inappropriate use of District funds, the General Manager should review all requests for reimbursements, including supporting documentation, against the policies and procedures in the District Policy Handbook. Further, all Board members should carefully review the list of disbursements to be approved on the consent agenda prior to the scheduled Board meeting and (a) discuss questionable disbursements with the General Manager and/or (b) request to pull questionable disbursements from the consent agenda for public discussion and review.

## Violations of other Policies Indicate Weak Internal Controls

The Board of Directors has approved District policies to ensure efficient, effective and economical District operations and use of tax funds. However, violations of these policies expose the District to the risk of misuse of tax funds through poor and weak operations.

### Lack of a District Legal Counsel Log

In 2009, the Board of Directors adopted a policy to maintain a log of all communication with District Legal Counsel, including the date of the communication, method of communication, and approximate length of time for communication for telephone and in-person communications. However, District personnel reported that no such log was available. The log is supposed to serve as a tool for District personnel to verify District Legal Counsel invoices and expenditures. The Policy Handbook restricts communication with District Legal Counsel to the President of the Board or his/her designee. Therefore, the log also serves as a tool for other District personnel and Board members to be aware of the frequency of District Legal Counsel communication and question any possible misuse of District Legal Counsel for personal benefit, *before* receiving a bill. The District should immediately establish a District Legal Counsel Log to be in compliance with the Policy Handbook and maintain an important control over legal expenditures.

### Lack of a Policy Handbook for the Fire Department

A policy handbook, specifically for the operation of the Newberry Springs Fire Department, has not been adopted by the Board, even though a Board policy adopted in 2009 requires one. A

<sup>9</sup> District By-laws, Article III, Internal Organization, #15.

draft policy handbook for the Fire Department was initiated in 2012, three years after the adoption of the policy. However, approval of the policy is not recorded in Board meeting minutes in 2012 or 2013, as of the writing of this report. The GFOA recognizes that establishing policies and procedures is a critical element of creating and maintaining internal controls. Without policies and procedures, the District cannot ensure that the Fire Department is operating efficiently, nor can it adequately evaluate the performance of Fire Department personnel, including the Fire Chief. The District should immediately adopt a policy handbook for the Fire Department.

### **Poor Implementation of Record Retention Policies**

Despite having guidelines in the Policy Handbook for record retention, the manner in which District records are stored and maintained make it difficult to ascertain whether the District is: (i) providing for the identification, maintenance, safeguarding and disposal of records in the normal course of business; (ii) ensuring prompt and accurate retrieval of records; and, (iii) ensuring compliance with legal and regulatory requirements.

During the course of the investigation, the Grand Jury experienced significant delays in retrieving critical documents. For example, a subpoena was issued in September, 2012 for the latest version of Board approved By-laws and Policies and Procedures. Board approval was initiated on January 24, 2012, although items were not fully remitted to the Grand Jury until March 5, 2013, after a subsequent request in February 2013. However, according to the District's retention record policy, adopted pursuant to California Government Code 60201,<sup>10</sup> these records should be with District personnel and maintained to ensure "prompt and accurate retrieval." Grand Jury members observed several unmarked cardboard boxes in various locations throughout the District office that contained District records, and there was no central log describing the contents of each box and their location, potentially contributing to the delay in record retrieval.

The lack of a proper records management system impedes any third party's ability to determine if the District has been complying with laws and regulations. In contrast, the Secretary of State's guidelines on record management state that proper record management is beneficial because it improves customer service, increases staff efficiency, and allocates scarce resources. The District should catalog all remaining records by category and the catalog should remain in a central location that is easily accessible by District personnel. Any records that exceed the retention periods adopted in the District's policies should also be disposed of.

### **Staff Vacancies Contribute to Weak Internal Controls**

The management staff of the NSCD has been unstable in recent years, with multiple resignations and terminations by the Board of key personnel within the organization. This pattern has been particularly apparent in 2012, as follows:

- The previous General Manager, who also performed the functions of Board Secretary and Treasurer due to vacancies, resigned and was rehired twice during 2012. A third resignation,

<sup>10</sup>California Government Code 60201 states that the legislative body of districts may adopt a record retention schedule that complies with guidelines provided by the Secretary of State. It also prohibits districts from destroying certain records, including minutes of any Board meetings.

in July 2012, resulted in the hiring of the current General Manager in October 2012, who resigned on May 22, 2013. The position was vacant at the time this report was finalized.

- The Treasurer position has been vacant since April 2012 and the duties have been assumed temporarily by a member of the Board.
- The Fire Chief, who had been employed by the District since at least 2007, was dismissed by the Board in March 2012. An Interim Fire Chief, hired shortly after the previous incumbent, was dismissed six months later in September 2012. His replacement, a second Interim Fire Chief hired in September, was dismissed by the Board five months later in February 2013. The position of Fire Chief remains vacant, as of the writing of this report, with day-to-day management duties being assumed by a Fire Captain.

With only eight authorized positions, this amount of turnover at the highest levels of the organization is disruptive to operations and result in short-term weaknesses in internal control.

According to testimony received during the Grand Jury’s investigation, the Board generally terminated employees due to performance concerns expressed by some members. Conversely, some resignations have reportedly occurred because of the dysfunction of the Board and an environment where individuals feel as though they have been treated unfairly. This was alleged by the Fire Chief in his March 2012 resignation letter, who stated that his resignation was, in part, due to “. . . the public fights and bickering so prevalent on the Board.”

According to other testimony, it is sometimes difficult to recruit employees because of the remote location of the NCSD, the small size of the organization, the limited number of hours and pay offered to employees, and other factors. In addition, given recent turnover history and the culture of the organization, some prospective employees may be reluctant to apply. For example, statements were made that hiring a new Fire Chief has been difficult because of the limited number of potential applicants and the recent history of terminations.

Although a close examination of these factors could not be conducted, given the limited resources available to the Grand Jury, the impacts on the organization have been substantial. As stated separately in this section, the breakdown in internal controls has been significant in some instances and the ability of the organization to respond by reassigning functions or implementing compensating controls is limited.

In July 2009, the Local Agency Formation Commission (LAFCO) of San Bernardino County issued a *Service Review and Sphere of Influence Update for the Newberry Community Service District*. Among the various observations made in that report, it was suggested that possible improvements should be examined, including: (1) removing the NCSD fire protection powers from the District and reassigning them to the County; or – more substantially – (2) consolidating the NCSD with two adjacent community services districts, to allow for “economies of scale and provide the opportunity for streamlined governance and compliance with CSD law.” These two suggestions merit further review, and more robust analysis of governance and reorganization options should be included in LAFCO’s next Service Review of the District, scheduled for 2014.

## **NCSD Needs an Adequate Capital Asset Management System**

The District's management of capital assets is weak compared to GFOA best practices to ensure that entities assess assets, appropriately plan, and budget for any capital maintenance and replacement needs. According to District personnel, an inventory of capital assets only occurs at the time, and with the assistance, of the annual audit. There is no Capital Asset Management System to record the date an asset was purchased, the condition it was in at the time of purchase, warranties, maintenance history, usage statistics, original useful life, remaining useful life, and replacement costs. Such information is important for District personnel and the Board to review when making key decisions, such as whether to approve an agreement for the consignment and sale of a water tender that was obtained in 2009, or to pursue the various repairs for equipment charged to purchase cards in FY 2011-12. In addition, an adequate Capital Asset Management System should prevent loss or misuse of capital assets through central recording and inventory control. The District should establish a Capital Asset Management System.

## **Conclusions**

The District has By-laws and a Policy Handbook that contain some internal controls to help protect the District's financial and capital assets against the potential risk of loss or misuse. However, these policies remain insufficient for minimizing risk exposure to potential fraud and abuse. For example, the District's policies on purchase cards do not include spending and transaction limits to ensure that there are sufficient funds to pay for expenditures, segregate duties of purchase approvals and reconciliation to prevent potential fraud, or provide mechanisms for handling disputes and unauthorized charges.

In addition, the policies adopted to establish internal controls are not consistently implemented by Board members and District personnel, further exposing the District to unnecessary costs and potential misuse of District tax dollars for personal benefits. Violations of policies that indicate weak internal controls include:

- The lack of documentation for purchase card expenditures;
- Significant expenditures made with purchase cards without required Board approval;
- Lack of timely payments for purchase card billing statements to avoid potential penalties and fees;
- Reimbursement of expenses without sufficient documentation to ensure they were for District business; and,
- The lack of several key documents and tools such a log of all communication with District Counsel, a policy handbook for the Fire Department, and a catalog of retained District records.

Multiple resignations and terminations by the Board of key personnel within the organization during the audit period coincided with breakdowns in internal controls and the ability of the

organization to respond by reassigning functions or implementing compensating controls is limited.

Finally, the District does not have an adequate Capital Management Asset System to control inventory and record key information central to making maintenance and replacement decisions.

## Recommendations

The Board of Directors should:

- 8 Revise its purchase card policies to:
  - (a) Exclude Board members from the use of purchase cards in order to be in compliance with the State Master Services Agreement for purchase cards, subsequently relinquish any purchase cards currently issued to Board members, and
  - (b) Include additional policies to ensure that there are sufficient funds for paying authorized purchase card transactions, prevent potential fraud and abuse through unauthorized and/or inappropriate purchases, and avoid unnecessary penalties and fees from late payments, such as:
    - (i) Spending and transaction limits for each cardholder;
    - (v) Clearly segregated duties for approving, executing, and reconciling purchases among the General Manager, Treasurer, and other purchase cardholders;
    - (vi) A process for handling disputes and unauthorized purchases; and,
    - (vii) A requirement that purchase cardholders use personal funds to pay for transactions that lack the timely submission of sufficient documentation of the transaction and purpose, as well as any subsequent penalties and fees that result from the delay in submitting such documentation.
- 9 Diligently review the list of disbursements to be approved on the consent agenda prior to scheduled Board meetings and (a) discuss questionable disbursements with the General Manager and/or (b) request to pull questionable disbursements from the consent agenda for public discussion and review.

The General Manager should:

- 10 Train all participants in the purchase card program on the new and revised policies and procedures for purchase cards.
- 11 Review consultants or vendors with a single invoice over \$5,000, or multiple invoices that, together, exceed \$5,000 to ensure that they have a contract or total expenditure

approved by the Board of Directors at a meeting. If the contract was not approved by at least two Board members, or no contract exists, steps should be taken to bring the purchase(s) into compliance with the Policy Handbook.

- 12 Carefully review all requests for reimbursements, including supporting documentation, against the policies and procedures in the District Policy Handbook prior to approval.
- 13 Establish the following to ensure that the District is in compliance with the Policy Handbook and maintains adequate internal controls:
  - (a) District Legal Counsel Log;
  - (b) Policy handbook for the Fire Department; and,
  - (c) Catalog of all retained District records.
- 14 Establish a Capital Asset Management System that records capital asset information such as the purchase date, condition it was in at the time of purchase, warranties, maintenance history, usage statistics, original useful life, remaining useful life, and replacement costs.

The Local Agency Formation Commission (LAFCO) should:

- 15 Review suggestions made in its 2009 report and include more robust analysis of governance and reorganization options for the next Service Review of the District, scheduled for 2014.

## **Costs and Benefits**

Implementing these recommendations will require additional staff time, but should be done with existing resources.

Proper internal controls over District expenditures through purchase cards, contracts, and reimbursements should prevent subsequent unauthorized, inappropriate or unnecessary costs. Additionally, a good records management system would help the District (i) increase staff efficiency when key documents are easily accessible and (ii) ensure compliance with legal and regulatory requirements.

## **SAN BERNARDINO COUNTY SHERIFF DEPARTMENT TASER POLICIES AND USAGE**

### **BACKGROUND**

In the past year there have been a number of nationwide and local newspaper articles regarding deaths which resulted after a person had been subjected to taser. Amnesty International, a global movement which champions human rights, issued a press release on February 20, 2012, which stated since the advent of tasers, there have been over 500 individuals in the United States who have died after being shocked with a taser during arrest or while in custody. The vast majority of these deaths occurred when the person received multiple taser exposures.

Taser related deaths are not uncommon in San Bernardino County. In July 2008, an Apple Valley man died after being tasered three times. In 2009, a man died after being tasered twice while in custody at West Valley Detention Center. In May 2011, in the Lake Arrowhead area, a man was subjected to 16 taser exposures. In the latter case, some deputies believed their tasers were not working.

Based on these newspapers accounts, the Grand Jury formed a committee to examine the San Bernardino County Sheriff Department (SBCSD) taser policy. The focus of the investigation was in the areas of:

1. The information supplied by the taser manufacturer,
2. The nature and extent of training which deputies receive,
3. Individuals who are at high risk from taser,
4. What constitutes excessive use of a taser by a deputy.

### **FACTS**

An Electronic Control Device (ECD), commonly known as a taser, is a product marketed by TASER International, Inc. and, according to the manufacturer, is a non-lethal weapon. Tasers are used by many law enforcement agencies in the United States. Tasers use an electrical current to disrupt voluntary muscle control and causes neuromuscular incapacitation (NMI).

There are two ways to deploy a taser:

1. The first is the Drive-Stun mode which is generally temporary as well as localized, and reportedly does not cause NMI. In this mode, the taser is held

against the suspect without firing the projectiles. Compliance is achieved through the infliction of pain in the Drive Stun mode without incapacitating the target.

2. The second method of deployment is by the use of barbs shot from a short distance. A compressed nitrogen cartridge propels a pair of barbs or darts which are attached to insulated wires. The maximum range is about 20 feet; this being the length of the wires which are attached to the weapon. These wires carry the electric current. In this mode, the deputy is not directly in contact with the person.



Taser Model X2: Used by San Bernardino County Sheriff Department.

The Grand Jury was provided a copy of the Taser Training Academy manual (TTA), Instructor's Certification Lesson Plan, a copy of their Taser Policy manual (TP), and data on taser usage within the scope of Use of Force instances.

The TTA is a training manual for deputies to become a certified instructor in the use of tasers which is valid for two years. Deputy instructor training totals approximately 18 hours (two days). Slides and videos are used extensively in this training. This manual relies heavily on information supplied by the manufacturer. All deputies must successfully complete the department's taser training before being able to carry one.

There is no information in the TTA which specifically mentions how many times a person can be safely tasered. This would depend on individual circumstances and is left to the discretion of the deputy. There were, however, at least seven warning references to minimize repeated, continuous, or simultaneous ECD exposures, primarily because being tased is "... a physically stressful event."

In the TP manual, there were 13 cautionary references to avoid repeated, multiple, prolonged, continuous, or simultaneous ECD exposures. In fact, in the case of the SBCSD TTA manual, there was no information in this policy dealing with how many times a person can safely be tasered. This is discretionary, and each officer makes the decision.

The TP manual states, "... pregnant women, the infirm, the elderly, small children and people with low body-mass index" are considered high risk individuals and the ECD's have "...not been scientifically tested on..." people in this category, and "...ECD use on these individuals could increase the risk of death or serious injury." In these high risk cases, the manual states, "The taser should not be used."

Under Section 3.630.45 in the TP manual, styled "Taser: Limitations of Use," it states tasers should not be used:

- Over a prolonged period of time. Minimize repeated, continuous, or simultaneous exposures,
- Near flammable liquids or fumes; or when the deputy knows that a subject has recently come in contact with flammable liquids likely to be on his person,
- In conjunction with the application of pepper spray,
- When the subject is likely to fall from a precarious position, such as at the top of a staircase, on a balcony or ledge, in a tree, or in or next to a body of water,
- When the subject is obviously pregnant, or known to be pregnant,
- When the subject is visibly enfeebled due to advanced age or illness,
- When the subject is handcuffed or otherwise restrained, absent overly assaultive behavior, cannot be reasonably overcome by other less intrusive manners.

The TTA and TP manuals list areas of the body where tasers should not be directed unless the deputy has "legal justification." These sensitive areas are:

- Lower Head
- Throat
- Chest/breast
- Groin area and
- Known, pre-existing injury areas.

The preferred target areas are: center mass (below the chest) for front shots and below the neck area for back shots.

In both the TTA and TP manuals, there are several references to "Silence is Golden," which refers to the fact the taser's electrical current is relatively quiet when it makes contact with

a person's body, because the taser is directly discharging the energy into the body. If the taser is loud, the electric current is arcing in the air. Thus, when the deputy deploys the taser and there is very little noise, it is working properly.

Under "Sudden Unexpected Deaths," section it mentions in several autopsies the taser has been listed as a contributing factor in a death, but "...these cases are disputed by independent medical experts." Factors associated with sudden death include chronic/toxic drug use, pre-existing heart conditions, obesity and poor cardiovascular condition, diabetes and other pre-existing diseases, protracted physical struggle, exhaustive mania/metabolic acidosis, agitated/excited delirium, and positional/restraint/compressive asphyxia."

In the 2009-2010 TP manual Taser Update, under "What TASER'S Don't Do," it lists the following items:

- Does not damage nervous tissue,
- Does not cause serious burns,
- Does not cause "electrocution" in a wet environment,
- No reports of a TASER causing death,
- Electrical output not harmful to fetuses (but the fall or stress could harm mother),
- Generally does not cause urination or defecation.

Any use of a taser is a reportable "use of force" and requires the completion of a "Use of Force" report which includes a "force application areas – points of contact" section. The supervisor is responsible for completing the form specifying areas of contact with the taser. The reporting supervisor indicates whether the use of force was reasonable. The commander reviews the report for completeness and makes a preliminary finding as to policy compliance. The completed forms with all relevant documentation are routed to the Civil Liabilities Division.

The information on taser usage by other law enforcement agencies is extensive. For example, the International Association of Chiefs of Police, during a January 18, 2007, Police Executive Research Forum (PERF), concluded the use of tasers is controversial due to highly publicized incidents involving what appears to be misuse of the weapons, e.g., use on passive or at-risk individuals, and deaths linked to the tasers. It urged law enforcement departments to consider under what circumstances multiple discharges and direct stun would be permissible. The PERF report concluded law enforcement agencies should have concerns about regulations, safety, and liability risks.

The May 2011, briefing by the U.S. Department of Justice, in their "Police Use of Force, Tasers and Other Lethal Weapons" program, stated tasers are being used by more than 15,000 law enforcement and military agencies across the United States. The briefing noted preliminary

reviews of deaths following taser exposures found many were associated with continuous or repeated shocks, and cautioned officers about the risks of multiple activations. It urged agencies to adopt department policies and training, to insure officers evaluate the age, size, gender, apparent physical capacities and health of the suspect. The Department of Justice characterized the taser as being "...a less lethal use of force," even though taser-related deaths are continuing.

Two Ninth Circuit Court of Appeals cases illustrate law enforcement officers are not immune from liability when they subject a suspect to multiple taser exposures. In *Bryan v. MacPherson*, the Court ruled a taser had been used in a way which constituted excessive force and was, therefore, a violation of the Fourth Amendment. In the case of *Mattos v. Agarano*, the Court held in two situations involving taser use, one in Drive Stun mode and the other in dart mode, officers had used excessive force causing the death of the individual. There are more cases throughout the United States wherein the courts have decided against law enforcement agencies when multiple and repeated tasing has occurred.

## FINDINGS

1. After the Taser Model X2 is deployed against a target, the unit does not provide any active indicators such as a warning light or sound indicating the unit is active and passing an electrical charge into the target. In order to determine whether or not the taser unit is working, the officer must rely on his training and observations. This training consists of compliance with the "Silence is Golden" rule, i.e., no sound means taser is discharging electrical current into the target; a sound means current is arcing in the air. The officer must also rely on his observations of the target, i.e., target is exhibiting symptoms of NMI or is responding to the tasing by becoming compliant. However, in detention scenarios where the target is not exhibiting NMI symptoms or showing signs of compliance, officers have incorrectly assumed the taser unit was not working properly, thereby leading to potentially unnecessary discharges.
2. The SBCSD training manual does not require on-scene tracking of taser usage by deputies during multiple officer detention scenarios. This on-scene tracking is critical when officers arrive at the scene of a detention at different times and deploy tasers against the target without information regarding previous discharges by other officers. This lack of situational awareness may lead to multiple, repeated and continuous exposures in violation of the SBCSD taser policy manual.

## RECOMMENDATIONS

- 13-29. Implement enhanced officer training regarding the "Silence is Golden" rule to include situations where the target does not exhibit NMI symptoms or compliance. (Finding 1)

- 13-30. Amend SBCSD TTA manual to require greater communication among on-scene officers regarding the number of discharges of the taser against the target to avoid multiple, repeated or continuous exposures. (Findings 1, 2)
- 13-31. Increase hands-on training with tasers, focusing on the issue of identifying when a taser discharge is effective. (Finding 1)
- 13-32. Formulate training to address the problem of knowing whether the taser is operating properly to avoid continuous, repeated and prolonged use of the taser. (Finding 1)
- 13-33. When multiple deputies are using tasers, the highest ranking deputy at the scene be required to keep track of the cumulative number of taser exposures. (Findings 1, 2)

<b><u>Responding Agency</u></b>	<b><u>Recommendations</u></b>	<b><u>Due Date</u></b>
Sheriff-Coroner	13-29 through 13-33	09/28/13