

ESPARTO COMMUNITY SERVICES DISTRICT BROWN ACT AND ETHICS POLICY VIOLATIONS

SUMMARY

The Grand Jury investigated allegations of violations by the Esparto Community Services District (ECSD) Board of Directors of the State's open meeting act and its own ethics policies. The allegations proved to be true. The Grand Jury is concerned about this pattern of violations. The Grand Jury found that Board members are well-intentioned but at times lacking in essential knowledge to oversee the District effectively. The District's effectiveness is further reduced by the distrust that has developed between the Board and staff. The Grand Jury recommends that the Board attend a variety of training classes to more effectively oversee ECSD. The Grand Jury recommends that the Board take additional steps to improve its communications and relationships with staff and ratepayers.

REASON FOR INVESTIGATION

The Grand Jury received a complaint alleging violations of California's Ralph M. Brown Act and violations of the ECSD ethics policy and procedure manual by some Board members. The purpose of the Brown Act is to allow the public to attend, observe, monitor, and participate in the decision-making process at the local level of government. Any deliberations leading to the actions taken by the legislative body must be conducted in the open, including the exchange of facts preliminary to the ultimate decision. Alleged Brown Act violations by the ECSD Board involved exchange of facts and recommendations for action regarding upcoming meeting agenda items and votes via private e-mail. Alleged ECSD ethics policy and procedure violations involved not following channels of communication, teamwork, and treating others with respect. The complaint also alleged that the Board was over-involved with day-to-day management of District business.

California Penal Code Section 925 provides: "The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant of state law for which the officers of the county are serving in their ex officio capacity as officers of the districts."

ACTIONS TAKEN

The Grand Jury interviewed ECSD Board members and staff, reviewed District policies and procedures, Board meeting documents, and ECSD internal communications. The Grand Jury obtained and reviewed digital recordings of Board meetings from late 2010 through March 2011, and observed March 2011, Board meetings. The Grand Jury also reviewed the California State

Senate publication, “What’s So Special About Special Districts? A Citizen’s Guide to Special Districts in California”, published October 2010, that describes the purpose and governance of community service Districts.

WHAT THE GRAND JURY DETERMINED

The Community Services District

The State of California defines a special or community services district as a separate local government that delivers a limited number of public services to a geographically limited area. Special districts have four distinguishing characteristics: 1) a form of government, 2) governing boards, 3) provide services and facilities, and 4) defined boundaries. ECSD provides water, wastewater treatment, and street lighting to the town of Esparto, and similar services to defined areas surrounding Esparto. ECSD currently has 900 water meter connections and an annual combined operating and capital budget of approximately \$1.5M.

The Esparto Community Services District Board

ECSD was formed in 1960 and is governed by a five-person volunteer Board, elected by the community to serve four-year terms. If a vacancy occurs in the middle of a term, state law provides that either the remaining Board members or the County Board of Supervisors may appoint a replacement, depending on circumstances. Any resident of Esparto may run for office. The Board’s primary function is formulating and evaluating policy. The Board contracts for legal counsel on an hourly basis and has an annual financial audit; otherwise, it does not have outside professional advisors. Regular Board meetings occur monthly although special meetings may be called at any time. Standing committees may include Planning, Ordinance, Personnel, Finance, and Public Relations. None of these committees is currently active at ECSD.

ECSD policy requires Board members receive training on financial disclosure (AB1234, Fair Political Practices Act), sexual harassment, and ethics. The Board is not required to receive an orientation to public utilities operations, how ECSD itself operates, how the Board operates, finances or public governance rules such as the Brown Act. Training is available on operations related subjects through the Special District Institute and California Rural Water Association.

New Board members receive a copy of the ECSD Policy and Procedure manual but do not receive training on the subject matter related to Board operations. Board members differed in their understanding of the status of revisions to the manual, i.e., some believed revisions proposed over the past few years were in fact adopted while others believed revisions were pending. Approved revisions to the manual have not consistently been dated. There is confusion whether there are multiple versions of the manual.

ECSD has a website that is “under construction” and contains only a contact phone number and an e-mail address for the District. Simple information that citizens request is not easily accessible, such as office hours, billing schedules, rate schedules, meeting notices, governance documents, etc.

The Grand Jury listened to several digital recordings of recent Board meetings and attended some meetings. The Grand Jury observed that Robert's Rules of Order or other meeting management techniques were not always used. Many citizens brought legitimate questions and concerns to the Board. However, comments by community members reflected misinformation and innuendo apparently circulated prior to meetings. Since no structured orientation for learning about the business of public utilities exists, some Board members do not understand the District's business operations, its relationship with the county, and District policies and procedures. When a Board member raises a question, the consternation that some public utility ratepayers may naturally feel is given unwarranted credence. Fueling the community's fears is the oft-repeated public statement by the Board to the effect that "everything is going to get straightened out now" which erroneously conveys the message that the District had been mismanaged in the past.

The Grand Jury took testimony from witnesses and listened to recordings from recent meetings concerning the District's budget. Although there have been some examples of problems arising due to the turnover in the General Manager position, not all concerns stem from this. The Grand Jury noted that the Board at times did not receive complete or timely responses to its questions about District fiscal operations matters from staff. Through its investigation, the Grand Jury determined that staff may have "cut corners" to expedite getting work completed. The Grand Jury did not investigate if fraud, waste or abuse occurred, nor did it receive any evidence to raise concerns. The Grand Jury determined that the Board requires additional support from staff in accounting and fiscal matters. The Board needs to be fully informed about fiscal matters on a regular basis but there is no financial subcommittee to facilitate this effort.

The Esparto Community Services District Staff

The District employs five full time staff, including the General Manager, two System Operators, an Administrative Assistant, and a Fiscal Services Assistant. The General Manager operates, under policy direction provided by the Board, as the executive director of all functions, services, and activities of ECSD. The General Manager directs the development of overall goals, objectives and policies, oversees the operating and capital improvement budgets, and serves as the primary liaison for ECSD with a variety of city, county, state and federal agencies.

In February 2006, ECSD contracted to hire a General Manager for a five-year term. The Grand Jury learned that, upon arrival, the new General Manager successfully secured a US Department of Agriculture loan for \$5.1M. Funds were used to upgrade the town's water and sewer infrastructure and construct a modern administration building that centralized operations and equipment management. The General Manager also negotiated real estate trades, consolidating disparate parcels to develop one adequate for the administration building at no cost to the District. That manager retired in December 2010. ECSD is conducting a search for a permanent replacement and has meanwhile contracted with a consulting engineer to serve as Interim General Manager.

The Administrative Assistant reports to the General Manager, operates under general supervision, serves as Secretary to the Board of Directors, and supervises the Fiscal Services Assistant. The Administrative Assistant coordinates or performs a variety of difficult or

specialized administrative support functions for the District, including finance, planning, research, public relations, and office support. The position requires three years of increasingly responsible office and administrative work experience. The Fiscal Services Assistant performs account and statistical record keeping related to customer and District records, provides customer services, and performs general office work. The position requires one year of previous work experience in fiscal support and customer service.

In January 2011, ECSD Board appointed a committee of four to screen applications for the position of General Manager. The committee consists of the two newest Board members and two community members. The Grand Jury learned that no one on the screening committee has experience in public utilities management, subject matter expertise in any of the requisite areas such as wastewater treatment and water distribution in municipalities, or human resources recruitment. The Grand Jury noted several discrepancies in the published recruitment materials, the position description and the job advertisement. For example, the two documents are inconsistent as to certifications and the number of years required of administrative experience in a public utility.

The Grand Jury also determined that there is no in-house expertise and no cooperative arrangements with other entities on the subject areas of human resources management or personnel practices. Although the District has only five staff, the Grand Jury determined its human resources matters surface often enough that it should have some expertise available. Often, the District turns to District Counsel for advice, which is costly. The Grand Jury determined that the Board needs additional training regarding its role in dealing with staff; the staff needs to provide additional support in responding to the Board's human resource questions.

Investigation into Alleged Brown Act and Ethics Code Violations

The Grand Jury reviewed more than 50 examples of internal written communications among Board members that occurred between late 2009 and March 2011. Internal communications were frequently shared with the Yolo County Board of Supervisors and distributed broadly among Esparto residents.

The Grand Jury also took testimony regarding the written communications. The Grand Jury learned that the Board had informally admonished each other in 2010 about alleged Brown Act violations but violators chose to ignore fellow Board members' warnings. In January 2011, a list of communications was presented to the Board and a request was made to have a hearing by the Board on the allegations. The Board voted not to hold a formal hearing on the communications and the matter was dropped.

The Grand Jury learned that Brown Act and ethics policy violations allegations have been raised in recent years with the same individuals with the same lack of resolution. Despite this cycle, the Board has never taken steps to establish an internal procedure to follow when one Board member has concerns that another Board member is violating laws or policies.

The Grand Jury determined that the internal written communications among Board members in late 2009, 2010, and early 2011 violated the Brown Act and ECSD operations and

ethics policies and procedures on multiple occasions. The relevant ECSD policies and procedures are summarized below.

- ECSD policies 4010.19, 4050.10, 4050.11 and 4050.60 – require all communications between Board and staff to be conducted through the General Manager.
- ECSD policies 4010.14, 4010.15, 4010.182, 4010.185, 4010.21 and 4010.22 – require Board members to refer District-related questions and complaints brought to their attention to the General Manager and to develop positive working relationship with the General Manager.
- ECSD policy 4010.17 – requires Board members to voice any differing opinions during deliberations and then support Board decisions once they have been made. This section precludes the Board’s disparaging other Board members, the District, and its staff to the general public.
- ECSD policies 4010.20 and 4010.23 – remind Board members that the District works as a team and they are part of a whole, not individuals who function independently of each other.
- ECSD policies 4010.19 and 4050.20 – require Board members to be courteous to each other, the staff, and the public who are present at Board meetings, and focus on issues rather than personalities.
- ECSD policy 4050.11 – requires information exchanged among Board members before Board meetings to be distributed through the General Manager.
- ECSD policy 4050.50 – requires Board members to abstain from participating in any matter under discussion in which the member has a personal or financial conflict of interest.
- ECSD policies 4070.10 and 4070.20 – remind Board members they act as a unit and have no individual authority.

Investigation into Board and Staff Relations

The Grand Jury questioned witnesses regarding teamwork and cohesiveness within the District and, overwhelmingly, the response was negative. The lack of a permanent General Manager is not a factor.

The Grand Jury determined that some of the divisions on the Board coincide with time served on the Board. All Board members appear to be motivated by a desire to serve the community. Serving on such a Board is “a labor of love”. Those with greater longevity have greater knowledge of how the District operations work, institutional memory, and institutional perspective about how the District usually does business. These directors do not necessarily

agree on matters, but they do share a common knowledge. Newer directors need to learn the various aspects of ECSD operations.

Relationships between the Board and staff have been damaged when neither the Board nor the staff have effectively communicated with each other. The Grand Jury also determined that there is not effective internal communication among Board members. This lack of communication has created a mutual distrust among all parties.

The Grand Jury determined that the Board does not abide by the ethics policies governing chain of command, micro-management and mutual respect. Staff are now required to send copies of their day-to-day work to the Board and respond to a steady stream of questions. Often the tone of the communications from the Board is demeaning. Responding to Board questions that should be referred directly to the General Manager reduces the time available to address normal job responsibilities and meet customer demands.

Some witnesses expressed concerns that the Board's weaknesses will or have created a poor reputation for the District and may limit the District's ability to attract a top candidate for General Manager. Others noted the Board's inappropriate focus on the day-to-day operations has distracted it from completing its priority projects such as strategic planning, policy manual updates, and evaluating new grant opportunities.

According to the California Senate's "What's So Special" document, citizens who are unhappy with their special service district Boards have the opportunity to challenge them during meetings and vote them out.

FINDINGS

- F1.** Multiple instances of Brown Act violations and ECSD ethics policy violations were committed in the period studied, principally via e-mail. Ethics violations revolve around communications, chain of command, mutual respect, and teamwork. Even after these matters were brought to the attention of the Board, violations continued.
- F2.** The District does not have a process by which the Board can deal with alleged violations of the Brown Act or ECSD policies and procedures.
- F3.** The Board has not received training in its roles and responsibilities vis-à-vis the staff so it can honor the chain of command as defined in the District's policies and procedures manual.
- F4.** The Board does not follow consistently Robert's Rules of Order or any other meeting management techniques and therefore the meetings are at times unprofessional and chaotic.
- F5.** The Board has had several sections of proposed revisions to the policy manual pending for several months, and some approved sections are not date-stamped, leaving some Board members confused about which version is in effect.

- F6.** The Board is micro-managing the staff by making special requests for business e-mail, questioning well-established business practices, and performing management tasks reserved for the General Manager.
- F7.** Because the Board does not receive orientation in managing public utilities, members are ill-equipped to opine on technical and financial management issues unless they bring expertise with them.
- F8.** The Board does not have adequate accounting and human resources support. As a result, the Board is hampered in its decision-making ability.
- F9.** The District's web page is inadequate and inefficient. A comprehensive web page would inform the public of office hours, service areas, billing and rates, mailing addresses and drop box information, late fee and shut-off policies, service outages, meeting schedules, rate information, and other commonly-asked questions. This would also serve to reduce staff time answering phone calls. Frequently asked questions (FAQ) from community members and customers should be well-known by the District. The lack of a website with a FAQ spot hinders communicating with ratepayers about common questions.

RECOMMENDATIONS

- R1.** Consult with outside agencies to assist the Board in developing best practices to assure its compliance with the Brown Act, the District's code of ethics, and other ECSD policies and procedures.
- R2.** Reverse the Board practice of not discussing Brown Act and ethics policy violation concerns in public. Encourage free discussion as concerns arise.
- R3.** Require Brown Act and public governance training for Board and staff on a regular basis, preferably annually. ECSD should engage County Counsel or Special District Institute for this.
- R4.** Identify opportunities for Board members who require training on how public utilities / community service Districts are operated. Training should include how to read and interpret financial statements and how fund accounting enterprises work. Utilize County Auditor or outside training with other organizations such as Special District Institute for this purpose. Staff should offer a workshop to Board on how ECSD is run. Training should be repeated once every two years.
- R5.** The Board should conduct an annual workshop for itself to review ECSD organization, functions, and the policy and procedure manual. This workshop should include training on how to run effective meetings.
- R6.** Complete revisions to series 4000 and 5000 of policy manual that deal with Board operations by September 1, 2011. Provide formal training for the Board and administrative staff no later than November 1, 2011.

- R7.** Consider using a professional facilitator to develop effective communications between and among Board and staff and to assist in completing the District's strategic plan.
- R8.** Consider revising position descriptions or sharing resources with other municipalities to provide adequate accounting and human resources functionality for the District.
- R9.** Complete the ECSD webpage, as described in F9 above, no later than January, 2012.

REQUEST FOR RESPONSES

Pursuant to Penal Code Sections 933(c) and 933.05, the Grand Jury requests responses as follows:

From the following governing body:

- Esparto Community Services District Board of Directors, Findings F1 through F9; Recommendations R1 through R9
- Yolo County Counsel, Recommendation R3
- Yolo County Auditor – Controller, Recommendation R4