

FLOOD CONTROL ZONE 7 ADVISORY BOARD MEETING

MAY 10, 2016

STAFF REPORT

Item 1. Welcome New Advisory Board Members

Alex Kahl & Roger Kirk.

Item 2. Refresher on Brown Act Requirements

Authored by Ralph M. Brown, state assembly member from Turlock, and enacted in 1953 by the California State Legislature in an effort to safeguard the public's right to access and participate in government meetings within the State.

- Specifies advance notice for open public meetings.
- Dictates to County staff specific administrative requirements for meetings.
- Sets provisions on how board members can communicate information with one another.
- Board members are asked to view attached chapter on Brown Act from advisory board and committee member handbook.

Item 3. Approval of Meeting Minutes: November 16, 2016

Recommended Action: Approve minutes.

Item 4. Ad-hoc Committee on Outreach

An ad-hoc subcommittee (Jacqueline Garcia and Russ Greenfield) will report to the AB on outreach activities as part of the Zone outreach plan. The purpose of this plan is to increase awareness among Santa Venetia residents regarding the importance of stormwater management facilities and how these facilities work together keeping the neighborhood from major flooding.

Item 5. Open Time for Items Not on the Agenda

Comments will be heard for items not on the agenda (limited to three minutes per speaker).

Item 6. Zone Engineer's Report

a. Winter Weather Update

The 2016-17 rainy season was significant. As of April 25, the National Weather Service's San Rafael rain gage at the Civic Center recorded 66.72 inches since October 1, 2016 (<https://rainfall.weatherdb.com/l/23086/San-Rafael-California>).

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By comparison, the annual average is 35.2 inches. As a result of significant storms there were several activations of the Department of Public Works' Operations Center (DOC) this winter. In conjunction with these DOC activations, the District has ensured that staff has been available in Zone 7 ensuring that flood control facilities and pump stations maintained full operational status.

b. Unexpected Facility Repairs

The unusually heavy and repeated rain storms this year had an impact on Zone 7's stormwater management equipment. Although most equipment worked very well, there were a couple of facilities that required unexpected and repeated repair costs, as described below.

i. Estancia Portable Automatic Pump Control Panel:

This portable pump was provided to Flood Control Zone 7 by the County using County funds. Although the contracting cost to purchase and install the asset did not come from the Zone, the Zone is responsible for ongoing maintenance. This year the electrical control panel was damaged and replaced twice in December 2016 for total of \$2,780.64. During repair, a trash pump was temporarily placed at this location. Similar damage reoccurred in April so staff are now working on developing alternative solutions aside from replacement of the control panel. Staff will report to the AB once options have been explored.

ii. Pump Station No. 2 Pump #2 Motor:

The motor for pump number 2 in Pump Station No. 2 had been tested in the spring of 2013 and a new pump installed in September 2014. The motor then failed in December 2014 and was replaced in April 2015. The motor failed again in December 2016 and was replaced by a new motor of the same size and capacity for \$7,467.

c. Pump Station No. 2 Generator Update

Santa Venetia Pump Station No. 2 is located on a District Property between 401 and 405 Vendola Drive. A new receptacle and automatic transfer switch for the County's portable generator as a back up to the back-up generator, and an expanded operator working platform were installed on 10/24/2016 (see 11/16/2016 staff report for details).

The District is currently working with the Las Gallinas Valley Sanitary District (LGVSD) to share the cost to relocate the fence around the property to make room for recent site and equipment improvements and to protect the site. LGVSD hired a surveyor to determine the property line alignment where the future fence will be located. The District is awaiting the results of this survey and then will work with LGVSD on next steps.

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d. FEMA Hazard Mitigation Funding Opportunities

In 2015, the California Valley and Butte Fires led to the declaration of a major disaster. As a result, the Federal Emergency Management Agency (FEMA) made hazard mitigation assistance available to the State of California Office of Emergency Services (Cal OES). Last year the District submitted to Cal OES grant applications for two projects in June 2016 related to Santa Venetia. These projects are the Santa Venetia Timber-Reinforced Berm Improvement Project and the Marin County Structure Elevation Program.

i. Santa Venetia Timber-Reinforced Berm (TRB) Improvement Project

Due to limitations in local match funding in 2016, the Santa Venetia Timber-Reinforced Berm Improvement Project was submitted only targeting the top 10% most vulnerable areas of the TRB to make improvements where feasible. While Cal OES was supportive of the overall project concept, when they forwarded the application to FEMA funding was denied because it is not an effective *long-term* solution given the patchwork approach and expected sea level rise.

The Original Project Budget:

\$300,000 Federal Share (FEMA)

\$100,000 Required Local Share (Flood Control Zone 7)

\$400,000 Total (75% FEMA, 25% Zone 7)

This past winter multiple disasters were declared again in California so a new round of FEMA hazard mitigation funding is being advertised. Staff recommend resubmitting the application, this time for a Timber-Reinforced Berm Improvement Project which would cover the entire length of the facility. The overall project cost is estimated to be \$4 million with a \$1 million local match requirement. The local match cost share can be accounted for as shown in attached 5-year budget.

The Proposed New Project Budget:

\$3,000,000 Federal Share (FEMA)

\$1,000,000 Required Local Share (Flood Control Zone 7)

\$4,000,000 Total (75% FEMA, 25% Zone 7)

Recommended Action: Recommend the District resubmit the application with the required Match Commitment letter addressed to Cal OES indicating that if the District is awarded and the Board of Supervisors accepts the grant funding that \$1 million will be budgeted from Flood Zone 7 funds.

ii. Marin County Structure Elevation Program

The Marin County Structure Elevation Program is a grant program whereby individual homeowners can raise their homes above the FEMA base flood elevation with 75% of their eligible costs reimbursed by the federal government. An application for this project was submitted in June 2016, and is currently under FEMA's environmental and historic review which is expected to be completed

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within the next 18 months. Although this project is very likely to be funded by FEMA for the 2015 disaster, staff recommend also resubmitting this application for 2017 disaster funding so that additional homeowners may benefit from the grant. A total of 89 homeowners expressed interest and it is anticipated that only 10-15 will be able to be funded in each grant round. Homeowners, who are interested in participating in future opportunities may contact Jon Liang at jjliang@marincounty.org. Jon will provide more specific updates to homeowners as more information becomes available.

Recommended Action: Recommend the District resubmit the application with the required Match Commitment letter addressed to Cal OES indicating that if the District is awarded and the Board of Supervisors accepts the grant funding that up to \$25,000* from Flood Zone 7 funds for staff application and administrative costs.

*The actual amount will be proportionate to how many homeowners in Santa Venetia benefit from the grant.

e. Community Rating System (CRS) Program Update

The Community Rating System (CRS) is a voluntary program for National Flood Insurance Program (NFIP) participating communities. The goals of the CRS program are to reduce flood damages to insurable property, strengthen and support the insurance aspects of the NFIP, and encourage a comprehensive approach to floodplain management. The County entered into the CRS program for the unincorporated communities in order to earn its residents flood insurance premium discounts for the County's implementation of floodplain management practices that exceed the minimum requirements of the NFIP. **The Flood Control District encourages homeowners to ask their insurers to prove that they received the CRS discount of 15%. For reference, the NFIP community identification number in Marin County is 06041C.**

Item 7. Annual and Preventive Maintenance Work Program

a. Pump Stations

Individual pumps and motors are scheduled for major maintenance on a six year interval at each of the Zone's five pump stations. In addition to major maintenance, preventive maintenance at all pump stations also takes place every year and includes the inspection, testing, and as needed replacement of electrical and mechanical components. Below are highlights for each pump station for work completed this year and scheduled for the upcoming fiscal year (FY) 2017-2018.

For FY 2016-2017:

SV 1 Pump Station: Preventive maintenance was performed on one of the four pumps. Pump #4 was removed and serviced as part of the six-year maintenance cycle. As part of this maintenance, pump #4 was found to have significant

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corrosion and needed repair. The cost was \$6,712. Preventive maintenance of the remaining three pumps was postponed to 2017-2018 due to the need of their service this winter.

For FY 2017-2018:

SV 1 Pump Station: Preventive maintenance to be performed, with pump #1, pump #2, and pump #3 scheduled to be removed and serviced for maintenance this summer.

SV 4 Pump Station: Preventive maintenance to be performed, with pump #1 scheduled to be removed and serviced for maintenance this summer.

SV 5 Pump Station: Preventive maintenance to be performed, with pump #1 scheduled to be removed and serviced for maintenance this summer.

b. Vegetation:

Prior to each winter season, the District (usually with Conservation Corps North Bay) performs annual vegetation maintenance along Birch-Mabry Ditch, Estancia Ditch, and Castro Ditch. Additional areas are mowed to reduce fire fuels.

c. Timber-Reinforced Berm

The biannual inspections of the Timber-Reinforced Berm ("TRB", formerly known as "floodwall") are scheduled for this summer. Properties along Vendola Drive where permission was granted by private owners will receive early notice from staff regarding their specific inspection date. The remaining 11 properties where permission was not granted by private owners will continue to receive an entry form requesting their signature.

This year, TRB inspections will only be completed if private property owners give District staff permission to enter. Last year, AB requested a discussion at this meeting of strategies to improve property owner responsiveness. As a result, AB member, Russ Greenfield went door-to-door to encourage residents to grant District staff permission to enter. We hope to continue efforts this year to obtain permission from the remaining 11 properties. It will require a collaborative effort from all residents along Vendola Drive to ensure the TRB is properly maintained for community safety and to reduce the risk of tidal flooding.

Item 8. Gallinas Watershed Program Final Report

The Gallinas Watershed Program is comprised of our partnering agencies: Flood Control Zone No. 6, Flood Control Zone No. 7, County Service Area No. 6, Las Gallinas Valley Sanitary District, and City of San Rafael. We would like to thank these partners for supporting the program over the past few years and for their many contributions to the development of Program products that sought solutions to reduce flood risk, increase local re-use of sediments, and increase resiliency to sea level rise.

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These products included: Santa Venetia Interior Drainage Study, Las Gallinas Levee Evaluation (Santa Venetia), Lower Gallinas Creek Sea Level Rise Vulnerability Assessment, Gallinas Creek Geomorphic Dredge Assessment, McInnis Marsh Restoration Feasibility Study, Upper Gallinas Creek Restoration Opportunities Assessment.

The final report is the last deliverable of the Program. It describes the current and historical conditions in the watershed; summarizes each of the studies and assessments; and draws connections among them. The public draft of the final report was released for public comment in mid-November 2016 and comments were accepted through January 31, 2017. We received over 50 comments. The final was released on March 31, 2017.

The Final Report and all other Program deliverables are posted on the Gallinas Watershed webpage:

http://www.marinwatersheds.org/gallinas_creek_flood_protection.html.

Item 9. Outreach Plan Regarding a Potential Zone 7 Revenue Measure

District staff anticipates a maintenance budget shortfall by the end of 2017. In 2016, the Gallinas Watershed Program polled the watershed and Zone 7 specifically to gauge support for a revenue measure. At that time, polling results did not show that Zone residents would approve a special tax measure to fund maintenance and improvement projects. Based on these results, additional outreach, education and resident input was recommended.

In November 2016, the Advisory Board created an ad-hoc subcommittee of two Board members to work with staff to develop and implement an outreach plan over the next year. Russ Greenfield and Jackie Garcia were named to the subcommittee. Jon Liang and Laurie Williams have worked closely with the subcommittee to broadcast the key messages: that the community of Santa Venetia relies on levees and pump stations to protect it against flooding; these local flood facilities require annual maintenance and periodic upgrades to maintain their effectiveness and efficiency; and that current funds are not adequate.

Calendar of Completed and Proposed Actions:

October 2016 – Participation at Flood Fair (done)

November 2016 – Article #1 in SVNA Communicator- Getting to Know Jon Liang (done)

January 2017 – DPW Facebook and Twitter posts of storm and King Tides (done)

Jan/Feb – Article #2 in SVNA Communicator Big Issue - Protecting Against Floods (done)

February – Baseline Survey via SurveyMonkey (done)

March – Pump Station Open House (done)

Mar/April - Article #3 in SVNA Communicator - Bene da Silva (done)

June – SVNA community meeting - Jon & Bene: Levees/Summer maintenance

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May/June - Article #4 in SVNA Communicator – Z7 Q&A (Qs from survey and PS Open House)

June – Post-outreach Survey via SurveyMonkey

June – Town Hall meeting with Damon Connolly

June – Levee workshop and/or PS#2 Open House

July/Aug - Article #5 in SVNA Communicator – Pump Maintenance

July – NextDoor (or other social media) post about upcoming Levee Inspections

July – Vegetation management workshop/Dumpster Day

August - Santa Venetia Marsh walk with MC Parks

Sept/Oct - Article #6 in SVNA Communicator – Building Maintenance

Sept – SVNA Labor Day Picnic booth/table (Russ)

Oct - SVNA community meeting? Winter Prep Report

Nov/Dec - Article #7 in SVNA Communicator – Election results/Storm Protocols

In February 2017, we conducted an online poll via SurveyMonkey. We used NextDoor and SVNA to get the word out, and we received 155 responses. Over 90% of respondents owned property in Santa Venetia, but 25% did not know if they lived within Zone 7. 65% did not know about the FEMA CRS program that results in flood insurance discounts. 60% would vote to fund improved maintenance of pump stations and critical infrastructure. Staff will present these and other results and findings from the online survey.

Item 10. Zone 7 FY 2017-18 Budget Review

The Zone 7 budget for FY 2017-2018 (begins July 1, 2017 and ends June 30, 2018) will be presented to the Board of Supervisors at a hearing this summer. A proposed budget summary for FY 2017-2018 and FY 2016-2017 (revised) will be presented to the AB by Staff for review. AB will also discuss and may recommend an action regarding anticipated maintenance budget shortfalls, potential revenue measures and associated schedules.

Recommended Action: Recommend Board of Supervisors approve budget.

Item 11. Schedule Next Meetings

Staff recommends scheduling an Advisory Board meeting in June to decide whether to recommend to the District Board of Supervisors that they place a revenue measure on the ballot. The advisory board will need to recommend an action for the Board of Supervisors by late June in order to meet County elections deadlines for placing items on the November 7, 2017 ballot,

Recommended Action: Schedule a special advisory board meeting in June to decide whether to recommend to the Marin County Board of Supervisors that they place the revenue measure on the ballot.

COUNTY OF MARIN

3. BROWN ACT

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards, and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”

THE RALPH M. BROWN ACT (Government Code Section 54950, et seq.)

General

The Brown Act embodies the philosophy that public agencies exist for the purpose of conducting public business, and the public has the right to know how its “collaborative decisions” are being made. It represents the determination of the balance that should be struck between access on the one hand, and the need for confidential candor on the other. There is a presumption in favor of access, with exceptions for confidentiality where there has been a demonstrated need. The exceptions are construed narrowly.

The Brown Act may be divided into six topics: to whom does the Act apply, what is a meeting, the agenda requirements, the public’s rights, closed sessions, and consequences for violation.

1. Bodies covered by the Brown Act
 - A. Legislative bodies of local agencies, e.g., boards, commissions, councils and committees. Also applies to person who is elected as part of body who has not yet taken office.
 - B. Does not apply to individual decision makers, e.g., department heads, legislative bodies acting in judicial capacity, bodies created by single

decision maker.

- C. “Local agencies” include cities, counties, school districts, special districts, municipal corporations, etc. (There is a separate law for state agencies.) Factors used in assessing “localness” include geographical coverage, duties of the agency, existence of oversight, provisions concerning membership, and appointment.
- D. “Legislative bodies” include governing bodies and their subsidiary bodies, e.g., boards, commissions, committees or other bodies of a local agency that are created by charter, ordinance, resolution or ‘normal action’ of a legislative body. This applies regardless of “temporary v. permanent,” and “advisory v. decision making.”
- E. Standing committees are those which have continuing jurisdiction over a particular subject matter (e.g. budget, finance, legislation) or whose meeting schedule is fixed by resolution or action of the body that created the committee. Even if comprised of less than a quorum of the governing body, a standing committee is subject to the Brown Act.

- F. There is a specific exception for “non-standing” (or ad hoc) advisory committees that are composed of less than a quorum of the legislative body that serves a limited or single purpose, is not perpetual, and will be dissolved once its specific task is completed.
- G. If a legislative body designates less than a quorum of its members to meet with representatives from another body to exchange information, a separate body is not formed. However, if less than a quorum meets with another agency to perform a task, e.g., make a recommendation, a separate legislative body is formed.

2. What is a meeting?

- A. Any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate on any matter within its jurisdiction. Can include lunches, social gatherings, board retreats.
- B. Serial meetings fall under the provisions of the Brown Act if they are for the purpose of developing a concurrence as to action to be taken.
 - 1. A serial meeting is a series of communications (whether in person or by phone or other media), each of which individually involves less than a quorum, *but* which, taken as a whole, involve a majority of the commission’s members. Examples include meetings of commission members’ intermediaries, chain communications (a@b@c), and hub communications (a@b, a@c).
 - 2. ‘Concurrence as to action to be taken’ includes substantive matters that are or are likely to be on a commission’s agenda, but does not include purely housekeeping matters (e.g., times, dates and locations of upcoming meetings.)
- C. Exemptions for: 1) individual contacts between members of the public and commission members; 2) *conferences open to the general public which involve issues of interest to the body; 3) *community meetings; 4) meetings of other bodies under same local agency; or 5) social or ceremonial occasions, as long as a majority of the members do not discuss application of specific issues to the legislative body.

(*as long as majority does not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.)

3. Notice and Agenda Requirements

- A. Every regular meeting of a legislative body of a local agency must be preceded by a posted agenda.

An agenda must be posted at least 72 hours prior to meeting in a location accessible to the public 24 hours a day, 7 days a week. The agenda should contain a brief general description (generally no longer than 20 words are required) of each action or discussion item to be considered, including items to be considered in closed session.

The purpose is to notify members of public of items in which they may wish to participate.

The agenda must contain opportunity for public testimony. The legislative body may impose reasonable time limitations. The legislative body cannot take action on a matter raised for the first time during "public comment" if the item is not on the agenda.

- B. Exceptions:

1. Special meeting – requires 24 hours notice, no business may be considered except that for which meeting was called.
2. Emergency meeting - (crippling disasters, strikes, public health and/or safety threats) may be called on one-hour notice and requires majority vote of the body. No closed session permitted.
3. Urgency item – if there is a need to add an item to an existing agenda for immediate action and the need to take action came to the attention of the local agency subsequent to the agenda being posted (requires vote of 2/3 of entire body, or if fewer than 2/3 are present, 100% of all remaining members). This exception requires a degree of urgency. A "new" need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline.
4. Adjournments and continuances - need not be separately posted if subsequent meeting is continued for no more than five days. However, a copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

- C. Public Testimony - agenda must contain opportunity for public testimony. May impose reasonable time limitations. Cannot take action on matter raised for first time in "public comment" if item not on agenda.

- D. Location of meetings - must generally be within geographic boundaries of the body's jurisdiction, except for compliance with law or court order, to inspect real property, meetings of multi-agency significance, nearest available facility if body has none available, meeting with state or federal officials to discuss regulatory issues, nearby facility to discuss facility itself, visit to legal counsel to reduce fees.

4. Rights of the Public.

- A. Access generally means the right to be notified of items to be considered (agenda), to attend meetings of legislative bodies without identifying oneself, to record the meeting, to have access to documents distributed to members of the legislative body¹, not to pay for the agency's costs in complying with the Brown Act, to be free from discrimination, and to provide public comment. No meeting can be held in a facility that is inaccessible to the disabled.
- B. Legislative bodies may provide greater public access than required by the Brown Act.

5. Permissible Closed Sessions.

The Brown Act begins with a strong statement in favor of open meetings; private discussions among a majority of a legislative body are prohibited, unless expressly authorized under the Brown Act. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter must be discussed in public.

***In general, most advisory commissions do not hear matters which would qualify for a closed session. However, since there are some exceptions such as the Personnel Commission and Retirement Board, a brief discussion of the subject follows.**

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees.

¹ Recent legislation (SB343) amends Section 54957.5 of the Government Code. The new law requires that a writing that relates to an agenda item for an open session of a regular meeting shall be made available for public inspection at the time the writing is distributed to all, or a majority of all, the members of the legislative body. In order to comply with the requirement to make writing that is distributed after the 72-hour posting "available" for public inspection, the local legislative body must make the writing available at a public office location that the agency shall designate for this purpose. Therefore, each local agency is required to list the address of that office or location on the agenda for all meetings of the body. Staff should also be prepared to provide additional copies of the supplemental material to the public at the meeting.

Closed sessions require three types of notice— agenda, pre-closed session announcement, and post-closed session report of action taken. The agenda must state the specific statutory exemption that applies.

A. Litigation and attorney-client privilege.

1. Existing litigation – includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The legislative body may meet to receive updates on the case from attorneys, participate in developing strategy as the case develops, or to consider alternatives for resolution of the case. Generally an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation that requires actions that are subject to public hearings cannot be approved in closed session.
2. Potential litigation – closed sessions are authorized for legal counsel to inform the legislative body of facts and circumstances that suggest that the local agency has significant exposure to potential litigation. The Brown Act lists six separate categories of such facts and circumstances (Government Code section 54956.9(b))
3. Initiation of litigation – a closed session may be held when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

B. Personnel exception.

1. Applies to appointment, employment, evaluation of performance, discipline or dismissal of public employee.
2. Employee may request hearing be conducted in public only if purpose is to discuss specific instances of misconduct. Employee has right to 24 hours notice of any closed session to hear specific complaints or changes. However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation.
3. Employee does not include elected officials, independent contractors, member of legislative body.
4. Must pertain to particular employee, not employees in general. No abstract discussions regarding creation of new positions, unless workload discussion involves performance of a specific employee. May not be used for discussion or action on proposed compensation, except for a disciplinary reduction in pay.

C. Real Estate Negotiations

1. A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency.
2. After real estate negotiations are concluded, approval of the agreement and the substance of the agreement must be reported.

D. Labor Negotiations

A legislative body may meet in closed session to instruct its bargaining representatives on employee salaries and fringe benefits. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

E. Grand Jury Testimony

A legislative body may testify in private before a grand jury, either individually or as a group.

F. License Applicants with Criminal Records

G. Public Security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, or to the public's right of access to public services or facilities.

H. Multijurisdictional Drug Law Enforcement Agency

6. Consequences of Violation.

A. Criminal penalties. Misdemeanor where action taken in violation of the act.

B. Civil remedies:

1. Injunction, mandamus, declaratory relief
2. Action may be voided following notice to correct, which must be received within 90 days, and acted on within 30 days, lawsuit filed within 15 days.

C. Attorney fees

1. Awarded against agency, not individual.

7. Further information/full text

If you would like additional information regarding the Brown Act or you would like the full text, please visit the California Attorney General's website at www.ag.ca.gov/index.htm and/or the California State Code website at www.leginfo.ca.gov/calaw.html and search for Government Code 54950.

Marin Independent Journal
Tuesday, July 10, 2001

Charter board in violation of meeting act

Judge sends directors back to school

By Con Garretson *IJ* reporter

The Novato Charter School Board of Directors broke the state's open meetings law several times last year and board members could face fines or jail time *if* future violations occur, a judge has ruled.

Also, board members and the school's director must attend a seminar on the Ralph M. Brown Act in the next six months under the terms of a final judgment and permanent injunction signed last week by Marin County Superior Court Judge Lynn Duryee.

Officials said they weren't certain, but it might be the first such judgment against a public agency in Marin County. An expert on the Ralph M. Brown Act said it is the first time that such a legal ruling has been made against a California charter school under the 48-year-old law. Novato Charter School officials, without admitting wrongdoing, settled a civil complaint filed by the Marin County District Attorney's Office resulting from a December letter signed by a group of school parents, said Deputy District Attorney Robert Nichols, who investigated the case.

At issue are seven instances in which the board failed to meet the requirements of the state public meetings law in the second half of 2000, including failure to properly notify the public of meetings, the agendas of closed sessions and decisions made during such sessions.

The judgment notes that the charter school, established in 1996, "has limited resources and experience regarding compliance with the Ralph M. Brown Act."

The act, established by the state Legislature, is designed "to ensure the accountability of government officers and to enable citizens' oversight of government agencies by keeping official decision-making processes as open as possible to public knowledge and participation," according to the California First Amendment Coalition.

The act sets out regulations governing public information on meetings and open and closed sessions. Nichols said there was no evidence that the board or the director *intended* to break the Brown Act, which could have led to an even rarer criminal prosecution.

"Our belief was that the violations in this case were more erroneous than intentional," he said. The judgment does not specifically identify the board members — Philip Hallstein, Curt Kruger, Jeanette Longtin, Janine Perra and Mary Williams, but applies to them and school Director Rachel Bishop, who also was not named.

Nichols said the Brown Act typically applies only to elected officials, but in this case Bishop was included because of the role she plays in setting and conducting public meetings. Bishop did not return a call left at the school yesterday.

“All I can really say in response to any question you may ask is that we have been advised by our attorneys to make no comment other than to say that the issue has been resolved,” Longtin said yesterday.

Nichols said the judgment, which included an order to pay \$2,500 in DA investigative costs, also will apply to all future board members and directors. Each future violation could mean a maximum \$1,000 fine, six months in jail or both, he said. Fines could apply to individuals and the school, he said.

“This is probably something that other charter schools would want to be aware of”

–Terry Francke~ general counsel. California First Amendment Coalition

The same penalties would apply to public officials or agencies convicted of a criminal violation of the Brown Act, however, no one has ever been found guilty of the misdemeanor, said Terry Francke, general counsel for the California First Amendment Coalition.

“Wow,” Francke said. “It’s the first time I’m aware of that a court has ever dealt with a Brown Act issue against the board of a charter school. This is probably something that other charter schools would want to be aware of.”

Francke said Novato Charter School officials could have argued that the school did not fall under the auspices of the Brown Act, although it is a public school with teachers paid by the Novato Unified School District. Because the issues will not be heard by a state appeals court, the decision will not become a state legal precedent, he said.

The violations came to light after some parents became frustrated by the way former eighth-grade teacher Chris Topham was fired by the board behind closed doors. The board failed to disclose what items were discussed on closed session agendas and what actions were taken during them, the parents wrote, both violations of the state open meetings law. Other meetings were not publicized in the manner required by the Brown Act, they wrote.

Topham, who could not be reached yesterday, was not advised of his option under the law to have his termination hearing in an open session; said Ann Falletta of Petaluma, who pulled her two children out of the school. Topham later financially settled with the school for legal costs and other expenses from his unsuccessful fight for reinstatement, she said.

Seven of the 24 children in Falletta’s daughter’s eighth-grade class left for other schools after Topham was fired. Her daughter, Ashlan, followed Topham to Summerfield Waldorf School in Santa Rosa, where he still teaches.

Falletta brought the violations to the attention of the First Amendment Project of Oakland and was advised to write a letter to the school board and the district attorney’s office to “correct” the wrongdoing. Once the letter was received, Falletta said the violations ceased for the most part.

“The board is required to notice any public meetings in an accessible way 72 hours in advance,” Falletta said. “There was one time (earlier this year) that the only notice was posted in a courtyard of the school at 3 p.m. on Friday for a special meeting on Sunday, and it was closed all weekend. That’s not following the spirit of the law.”

Falletta said she did not know much about the Brown Act until she began doing research on public access laws. “The more I looked into it the more I realized this is a tool for newspaper people,” Falletta said. “Everything I read said, ‘Call your editor. Well I don’t have an editor. It’s really a journalist’s bailiwick.’”

Marin Independent Journal
Friday, March 1, 2002

Sanitary District settles complaint

Las Gallinas Valley board accused of violating meeting law

By Con Garretson
IJ reporter

The Las Gallinas Valley Sanitary District yesterday settled a civil complaint that accused board members of violating the state's open meetings law by deliberating in private. It was only the second judgment against Marin elected officials in connection with violations of the Ralph M. Brown Act, according to Marin Deputy District Attorney Bob Nichols, who led an investigation by his agency.

The settlement approved by Judge Lynn Duryee and filed yesterday, indicates the violations were made up of district matters being deliberated and decided upon by a majority of directors outside of a meeting setting, which is two separate violations. The illegal meetings did not have an agenda, nor were they publicized by a public notice, which made up the two other alleged violations in this case, according to the court documents.

In settling the lawsuit without admitting wrongdoing, the district agreed to pay \$7,500 in district attorney investigative expenses and have board members attend a seminar on the Brown Act, a term that was met in January.

Fact Sheet: The ERAF Property Tax Shift

In 1992, the State of California found itself in a serious deficit position. To meet its obligations to fund education at specified levels under Proposition 98, the state enacted legislation that shifted partial financial responsibility for funding education to local government (cities, counties and special districts). The state did this by instructing county auditors to shift the allocation of local property tax revenues from local government to “educational revenue augmentation funds” (ERAFs), directing that specified amounts of city, county and other local agency property taxes be deposited into these funds to support schools.

In fiscal 2012-13, the annual impact of the ERAF shift is a shortstopping of some **\$6.8 billion** from cities, counties, special districts and the citizens those entities serve. Since their inception, the ERAF shifts have deprived local governments of nearly **\$110 billion**. Counties have borne some 73 percent of this shift; cities have shouldered 16 percent.

The state has provided some funding to local governments that it considers mitigation of ERAF. However, the vast majority of these funds are earmarked for particular purposes. Moreover, a relatively small portion of these funds has gone to cities. In 1992, California voters approved Proposition 172, which provided sales tax funding for police, fire and other public safety programs. Proposition 172 funds will provide about \$2.8 billion to local government in FY2012-13, **leaving local citizens facing a \$4 billion net ERAF gap in FY 2012-13**. Considering all state subventions that the Legislative Analyst defines as “ERAF mitigation,” the net ERAF impact on cities is over \$900 million in the current year.¹

As a part of the budget agreement that put Proposition 1A of 2004 on the ballot to protect city revenues from additional shifts and state takeaways, cities counties and special districts agreed to contribute an additional \$1.3 billion per year in FY04-05 and FY05-06. Although these ERAF III shifts ended in FY06-07, the original on-going shifts that began in 1992-94, have not been reduced at all.² Proposition 1A, which passed by an unprecedented 84% yes vote, constitutionally protects major city revenues from additional shifts to the state and strengthens local government’s ability to get reimbursement for unfunded mandates. However, it did not provide local governments with any new revenue nor reduce or alter the ERAF I and II shifts.

The ERAF takeaways have had real impacts on Californians’ quality of life and the attractiveness of local communities to business. City residents have experienced the following consequences of the ERAF shift:

- Cuts in human services, including parks, libraries and other community services

¹ Cities not including the City/County of San Francisco.

² Subsequent to the transfer of these funds, they are reallocated within each county back to cities and counties to compensate for the state’s repeal of the VLF backfill in 2004 and the temporary ¼ cent sales tax shift to support the state deficit reduction bonds. However, this mechanism does not alter the existence or real effect of the ERAF I and II shifts.

- Deferred maintenance on the public's investment in its infrastructure
- Greater pressure for increases in local taxes, fees and assessments
- Reductions in reserves and greater reliance on debt rather than cash financing for capital improvements

All of this comes at a time when California's population is growing rapidly and is creating demands for additional services and facilities. Indeed, the population growth in cities (57 percent) has exceeded the statewide population growth rate (46 percent) over the past 20 years.

mjgc

Impacts of ERAF and Proposition 172 (\$ in millions)

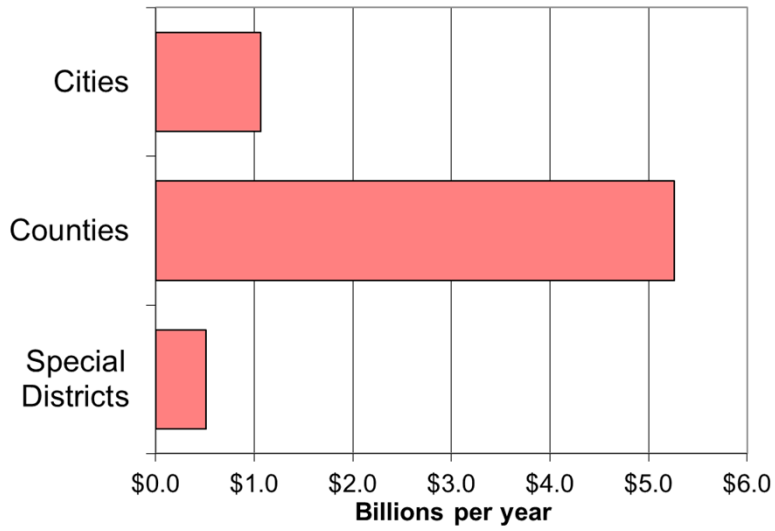
ERAF	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12e	2012-13e	Sum		
Cities	-216	-483	-525	-523	-518	-511	-574	-606	-652	-704	-760	-807	-1,204	-1,271	-1,060	-1,149	-1,191	-1,155	-1,133	-1,098	-1,064	-17,204		
Counties	-544	-2,374	-2,583	-2,567	-2,540	-2,665	-2,787	-2,934	-3,181	-3,447	-3,688	-3,930	-4,555	-4,882	-5,128	-5,618	-5,781	-5,658	-5,601	-5,427	-5,259	-81,149		
Spec Districts	-212	-252	-281	-285	-279	-271	-316	-339	-339	-364	-384	-409	-797	-841	-556	-607	-625	-600	-546	-529	-512	-9,344		
Redev't Agencies	-200	-65	-65	0	0	0	0	0	0	0	-75	-135	-250	-250	0	0	0	-1,700	-350	0	0	-3,090		
	-1,173	-3,175	-3,454	-3,374	-3,337	-3,447	-3,677	-3,879	-4,171	-4,515	-4,906	-5,281	-6,806	-7,244	-6,743	-7,374	-7,597	-9,114	-7,630	-7,054	-6,835	#####		
											#####	#####	#####	#####	#####	#####	#####	#####	#####	#####	#####	#####	0.9690	0.9690
																								Sum
Proposition 172		1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12e	2012-13e	Total		
Cities		84	88	92	91	104	109	123	131	134	130	139	149	161	163	163	142	134	140	150	161	2,279		
Counties		1,301	1,400	1,510	1,595	1,682	1,757	1,974	2,153	2,096	2,143	2,274	2,456	2,653	2,695	2,697	2,346	2,210	2,316	2,478	2,651	37,258		
Spec Districts		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
		0	1,385	1,488	1,602	1,686	1,786	1,877	2,119	2,283	2,218	2,273	2,413	2,606	2,814	2,859	2,804	2,530	2,272	2,456	2,628	2,812	39,537	
											0.9689	1.0701	1.0741	1.0784	1.0153	0.9979	0.8721	0.9445	#####	1.0700	1.0700			
																							Sum	
ERAF net of Prop172		1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12e	2012-13e	Total	
Cities		-216	-399	-437	-431	-426	-407	-465	-483	-570	-630	-668	-1,055	-1,110	-896	-986	-1,048	-1,021	-993	-948	-903	-12,762		
Counties		-544	-1,073	-1,183	-1,057	-945	-983	-1,030	-960	-1,028	-1,351	-1,544	-1,656	-2,098	-2,229	-2,432	-2,921	-3,435	-3,448	-3,285	-2,949	-2,607	-33,205	
Spec Districts		-212	-252	-281	-285	-279	-271	-316	-339	-339	-364	-384	-409	-797	-841	-556	-607	-625	-600	-546	-529	-512	-8,303	
Redev't Agencies		-200	-65	-65	0	0	0	0	0	0	-75	-135	-250	-250	0	0	0	-1,700	-350	0	0	-3,090		
		-1,173	-1,789	-1,966	-1,772	-1,651	-1,662	-1,812	-1,782	-1,887	-2,285	-2,633	-2,868	-4,201	-4,430	-3,884	-4,514	-5,109	-6,769	-5,174	-4,426	-4,023	-57,360	

Sources: PSAF (Prop 172) actuals through 2000-01 from State Controller. ERAF and PSAF actuals by agency from Calif State Assn of Counties survey of County Auditors. FY11-12 and FY12-13 are estimated. Updated Aug 12.

Loss to E.R.A.F.

annual statewide in 2012-13

[Chart 2A](#)

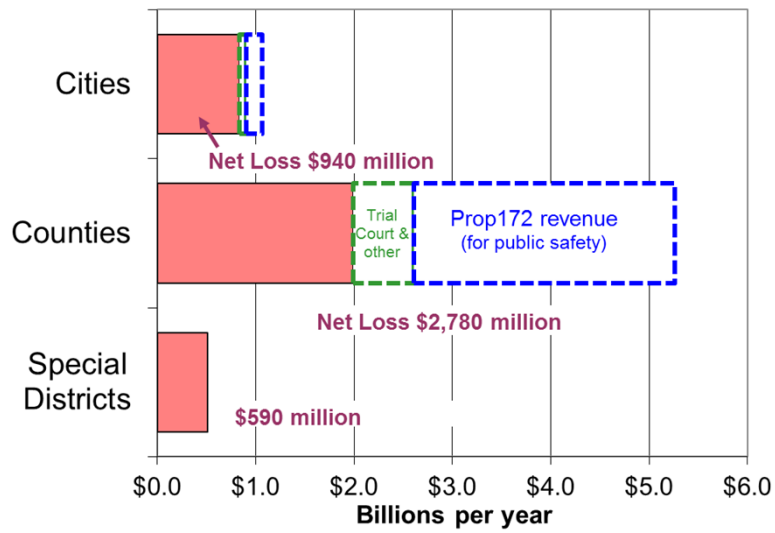


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Net Loss: E.R.A.F. & "Mitigations"

annual statewide in 2012-13

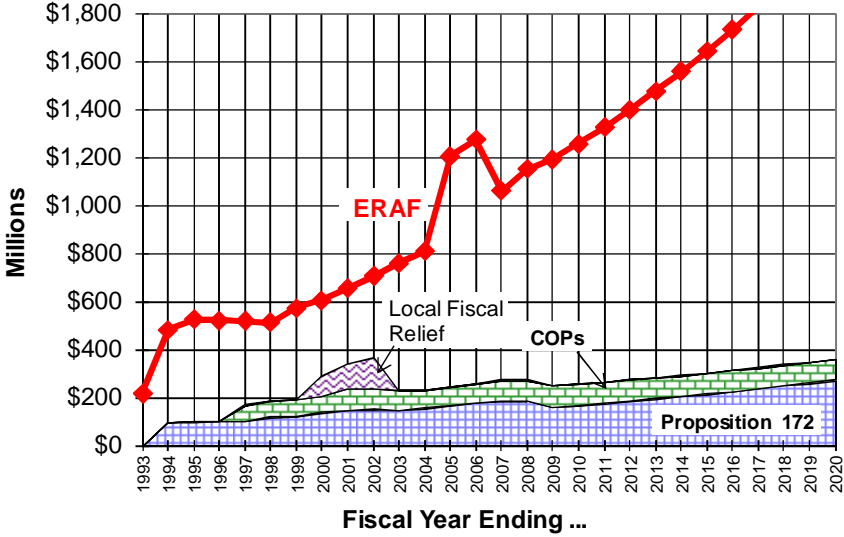
[Chart 2B](#)



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Chart 3A

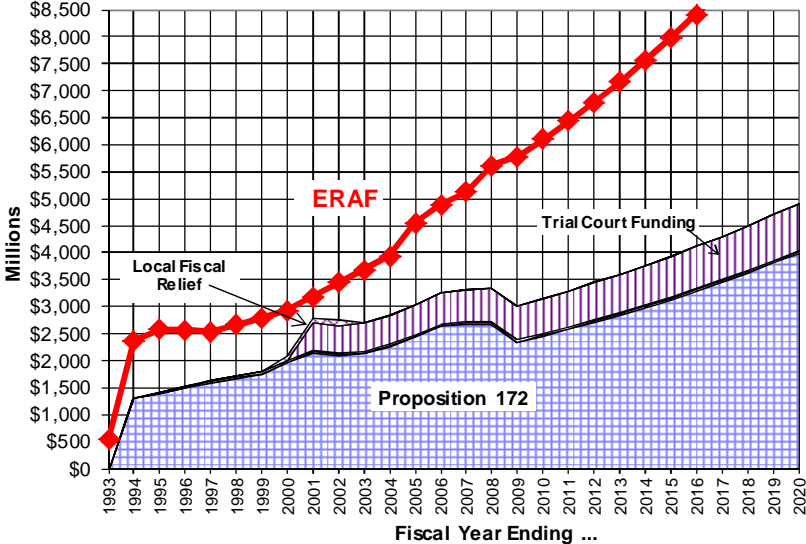
ERAF versus "Mitigations" - Calif Cities



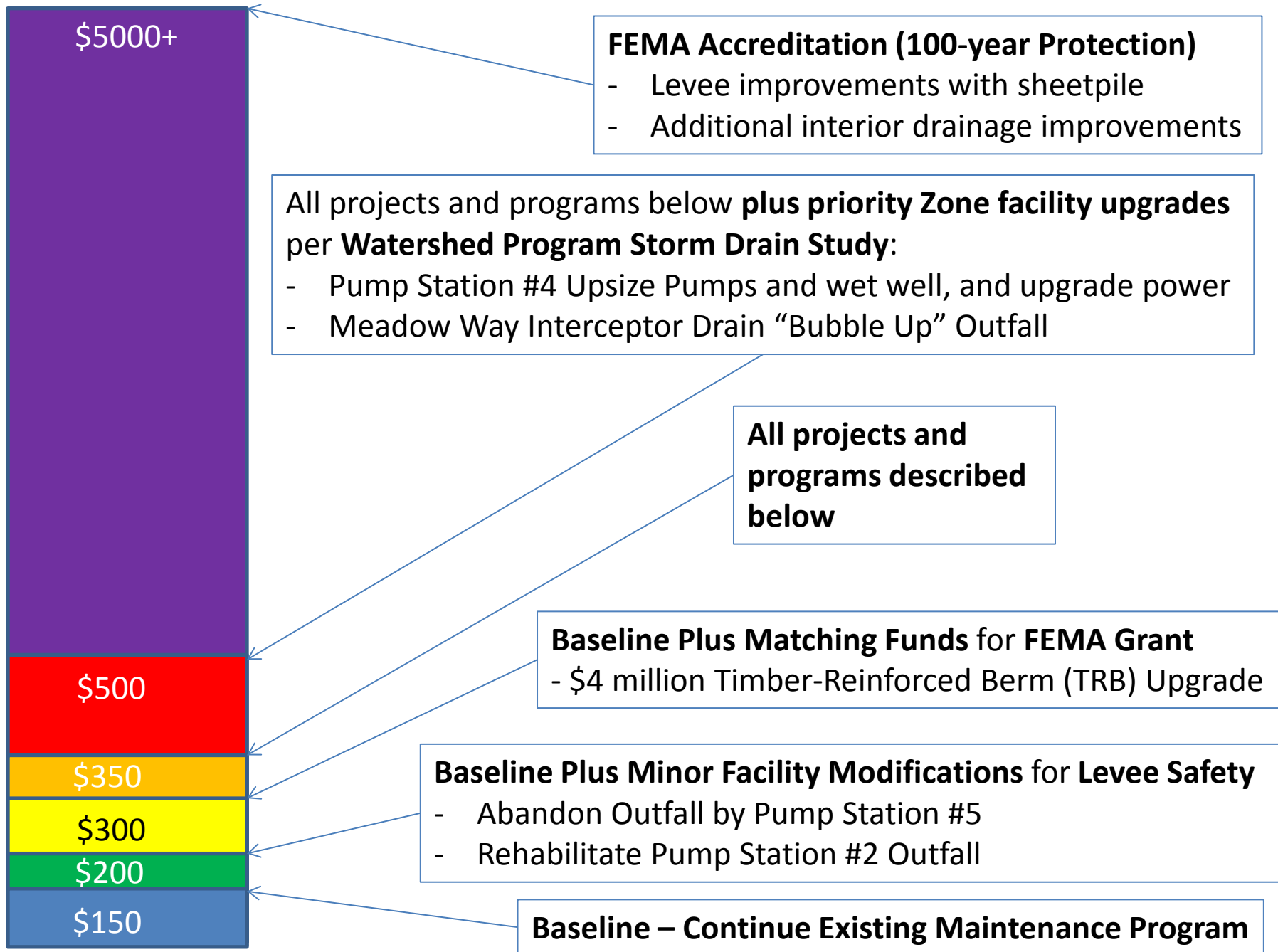
Assumes average annual ERAF growth at 5.5%, average annual Prop 172 growth at 5%

Chart 3B

ERAF versus "Mitigations" - Calif Counties



Assumes average annual future ERAF growth at 5.5%, average annual Prop 172 growth at 5%



ESTIMATED 5-YEAR BUDGET NEEDS

FY 2015-2016 Fund Ending Balance:

\$ 359,605

Account Description	FY 2015-16 Actuals	FY 2016-17 Budget (Revised)	FY 2017-18 Proposed	FY 2018-19 Estimate	FY 2019-20 Estimate
Labor Costs					
Pump and Gate Operation and Maintenance	\$ 88,513	\$ 100,000	\$ 103,000	\$ 106,090	\$ 109,273
Levee and Ditch Maintenance/Other Storm Response	\$ 48,824	\$ 60,000	\$ 61,800	\$ 63,654	\$ 65,564
Engineering (Survey, Studies, Design, Construction Mgmt)	\$ 29,035	\$ 50,000	\$ 51,500	\$ 53,045	\$ 54,636
Property and Right-of-Way Management/Real Estate	\$ 1,510	\$ 10,000	\$ 10,300	\$ 10,609	\$ 10,927
Administration	\$ 9,216	\$ 10,000	\$ 10,300	\$ 10,609	\$ 10,927
Other/Indirect Overhead	\$ 9,943	\$ 10,000	\$ 10,300	\$ 10,609	\$ 10,927
Salaries, Benefits, and Overhead	\$ 187,041	\$ 240,000	\$ 247,200	\$ 254,616	\$ 262,254
Professional Services	\$ 27,277	\$ 32,418	\$ 5,000	\$ 5,000	\$ 5,000
Utilities	\$ 12,043	\$ 20,000	\$ 15,000	\$ 15,450	\$ 15,914
Facility Rental (meeting locations and file storage)	\$ 857	\$ 1,500	\$ 1,000	\$ 1,000	\$ 1,000
Maintenance & Repair - Equipment					
SV1 Pump Station - all 4 pumps Maintenance		\$ 15,293			
SV2 Pump Station - pump No. 1 Maintenance				\$ 20,000	
SV2 Pump Station - pump No. 2 Maintenance		\$ 7,467			\$ 20,000
Minor Upgrades at Pump Station No. 2	\$ 13,940	\$ 9,450	\$ 5,000		
SV3 Pump Station - pump No. 1 Maintenance				\$ 25,000	
SV3 Pump Station - Back-up pump Maintenance	\$ 24,083				
SV4 Pump Station - pump No. 1			\$ 25,000		
SV4 Pump Station - pump No. 2				\$ 25,000	
SV5 Pump Station - pump No. 1 Maintenance			\$ 25,000		
SV5 Pump Station - pumps No. 2 & No. 3 Maintenance				\$ 50,000	
Pump/Generator Fuel		\$ 2,000	\$ 2,060	\$ 2,122	\$ 2,185
Precipitation Gauge Maintenance **	\$ 2,245	\$ 2,250	\$ 3,000	\$ 3,090	\$ 3,183
Estancia Pump Repairs and Potential Upgrades	\$ 4,786	\$ 12,781			
Replace Tide Gate at Meadow Way Ditch	\$ 2,629				
Repair Bolted Manhole Cover on Sunny Oaks Interceptor					
Wet Well Cleaning (new permit requirements)	\$ 548	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Pump Station Security	\$ 1,125	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200
Maintenance Contingency and Miscellaneous	\$ 118	\$ 16,540	\$ 42,940	\$ 44,228	\$ 45,555
Maintenance & Repair - Land & Buildings					
Vegetation/Sediment Maintenance and Storm Response	\$ 4,953	\$ 20,800	\$ 21,424	\$ 22,067	\$ 22,729
Tree/Fence Repair	\$ 1,655	\$ 6,000	\$ 6,180	\$ 6,365	\$ 6,556
Gopher Control	\$ 2,260	\$ 25,000	\$ 25,750	\$ 26,523	\$ 27,318
Timber-Reinforced Berm (includes carry over from prior year)	\$ 21,302	\$ 74,750	\$ 50,000	\$ 50,000	\$ 50,000
Supplies and Permits	\$ 3,290	\$ 30,560	\$ 15,000	\$ 15,450	\$ 15,914
Other Misc Services and Supplies	\$ 4,250	\$ 8,000	\$ 8,240	\$ 8,487	\$ 8,742
Service and Supplies	\$ 127,362	\$ 291,009	\$ 256,794	\$ 325,982	\$ 230,295
Total Expenditures	\$ 314,403	\$ 531,009	\$ 503,994	\$ 580,598	\$ 492,550
Revenues***	\$ 415,220	\$ 417,296	\$ 419,383	\$ 421,479	\$ 423,587
Reserves	\$ 359,605	\$ 245,892	\$ 161,280	\$ 2,162	\$ (66,801)

Discretionary expenses that may need to be performed on an emergency basis:

Abandon Outfall Adjacent to Pump Station No. 5					\$ 50,000
Timber-Reinforced Berm Improvement Project*			\$ 283,333	\$ 283,333	\$ 283,333
Meadow Way Ditch Sump Structure					\$ 40,000
Rehabilitation of Pump Station No. 2 Outfall					\$ 250,000
Pump Station Structure at Pump Station No. 2					\$ 50,000
Pump Station No. 4 Upgrade (power, wet well, pumps)					\$ 370,000

Annual Sum: \$ - \$ - \$ 283,333 \$ 283,333 \$ 1,043,333

Grand Total: \$ 1,609,999

Shortfall if implementing all projects: **\$ 1,676,800**

Note: Design, management and environmental costs to implement not included

*For \$1M grant match with \$3M from FEMA HMGP over 3-year period, includes redirecting funds from other line items.

**Includes system-wide costs + \$750 cost for new San Rafael Gauge.

***Includes approximately \$200,000 in Educational Revenue Augmentation Funds.