

# **MYSTIC MINE ROAD COMMUNITY SERVICES DISTRICT DYSFUNCTIONAL DISTRICT**

## **Summary**

The Mystic Mine Road Community Services District is an independent special district responsible for public road maintenance services in the area of Mystic Mine Road in unincorporated Nevada County. The Mystic Mine Road Community Services District is governed by a Board of Directors elected by the district's voters.

The Nevada County Grand Jury received a citizen complaint regarding the Mystic Mine Road Community Services District. In the process of investigating the complaint, the Nevada County Grand Jury found that the Mystic Mine Road Community Services District has incomplete by-laws and has two vacant seats on the Board of Directors.

The Nevada County Grand Jury also found that the current annual property tax assessment is not being used to properly maintain all public roads within the Mystic Mine Road Community Services District.

## **Reasons for Investigation**

On October 9, 2013, the Nevada County Grand Jury (Jury) received a complaint regarding the Mystic Mine Road Community Services District (District). The complaint alleged lack of diligence by the Mystic Mine Road Community Services District Board (Board) in carrying out its responsibilities for road maintenance of all roads within the District.

## **Background**

Special Districts are a form of local government created by a community to meet a specific need. Most of California's special districts perform a single function such as sewage, water, fire protection, pest management, or cemetery management. There are approximately 2,300 independent special districts in California, each governed by an independent board of directors elected by the registered voters of the District or appointed to a fixed term of office by either a city council or a county board of supervisors. There are 24 independent special districts in Nevada County.

The District is an independent special district supported by public funds. It was established by the Nevada County Board of Supervisors (BOS) in 1981. It has no full time employees and the Board is comprised of volunteers.

The District is governed by a five-member Board elected by the registered voters during the general election held in November. The members of the Board serve four-year terms.

The Board is responsible for setting policy and general administrative procedures in conformance with the California Government Code §54950 et seq., commonly known as the Ralph M. Brown Act (Brown Act). The Board is required to meet in regular session with an agenda posted in a location of community access.

## **Procedures Followed**

The Jury interviewed a member of the Board, a staff member of the Nevada County Counsel's Office, a staff member from the Nevada County Local Area Formation Commission (LAFCo), a Nevada County Consolidated Fire District official, and residents of the District. The Jury also reviewed related documents.

## **Facts**

- Fa. 1** The District was established in 1981 by the BOS Resolution 81-243.
- Fa. 2** The BOS Resolution 81-243 includes a plot plan encompassing the boundaries of the District.
- Fa. 3** The BOS Resolution 81-243 states all roads in the district must be maintained.
- Fa. 4** The District is governed by a five-member Board elected by the registered voters of the District.
- Fa. 5** There are two vacant positions on the Board as of March 5, 2014.
- Fa. 6** California Government Code §61045 requires that all community service districts adopt By-Laws.
- Fa. 7** The 2012-13 Jury issued a report which stated in part the By-Laws were incomplete.
- Fa. 8** There are 97 parcels in the District.
- Fa. 9** The budget of the District has been funded since 1981 through an annual assessment of \$120.00 per parcel within the District. This works out to a total of \$11,640 annually.
- Fa. 10** There have been two ballot measures to increase the assessment per parcel to adequately maintain the roads in the District but these measures have been defeated by the registered voters in the District.
- Fa. 11** There are a number of ancillary roads within the District boundaries which should be maintained.

- Fa. 12** Ancillary roads in the District have not been maintained by the District due to lack of funds.
- Fa. 13** Only Golden Eagle and Mystic Mine Roads are maintained.
- Fa. 14** The Nevada County Counsel staff member reviewed the BOS resolution 81-243 and stated all roads in the District must be maintained.
- Fa. 15** An interviewee stated the tax monies collected each year (97 parcels times \$120 per parcel assessment = \$11,640) were spent in total each year on road maintenance.
- Fa. 16** Per the Nevada County Auditor-Controller Office, as of March 5, 2014, there is a current balance of \$23,205 in the District accounts.
- Fa. 17** California Government Code §26909(a)(2) requires special districts to have regular independent audits performed by a certified public accountant or public accountant. §26909(a)(5) allows alternate accounting procedures.
- Fa. 18** The independent audit fees average approximately \$1,700 per year.
- Fa. 19** Independent audit fees amount to approximately 15% of the District's annual budget.
- Fa. 20** The President of the Board can authorize up to \$1,000 immediately for emergency repairs per Mystic Mine Board Resolution 2013-02.
- Fa. 21** The District has not used competitive bidding process when road maintenance is needed.
- Fa. 22** It is estimated that it would cost \$250,000 to \$500,000 to upgrade the roads in the District to meet current county standards.

## **Findings**

- Fi. 1** Upon review of the District's By-Laws, the Jury determined there has been no progress in updating them since the report by the 2012-2013 Jury.
- Fi. 2** Alternate audit procedures allowed in §26909(a)(5) of the California Government Code may help reduce the costs of regular audits.
- Fi. 3** The District did not properly report to the Jury when asked about the fund balance held by the office of the Nevada County Auditor-Controller.
- Fi. 4** The District is remiss in its duty to use a competitive bidding process to attempt to control maintenance and repair costs. Thus, the District does not have a way of knowing whether they are getting fair value for their money.

## **Recommendations**

- R. 1** The Board should update and complete the By-Laws.
- R. 2** The Board should develop and implement a financial plan to use resources to maintain all roads, including ancillary roads within the District.
- R. 3** The Board should request bids when planning routine or annual road maintenance.
- R. 4** The Board should obtain quotes from qualified audit firms and select that which would be most cost-effective. The Board should also investigate alternate audit procedures with the Nevada County Auditor-Controller Office.

## **Responses**

Mystic Mine Road Community Services District Board of Directors: Findings: 1-4,  
Recommendations: 1-4  
Due Date: September 23, 2014

October 2, 2014

Keith Overbey, Foreman  
2014-2015 Nevada County Grand Jury  
950 Maidu Avenue  
Nevada City, California 95959

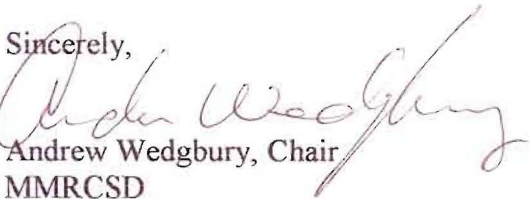
Dear Mr. Overbey:

Please find enclosed the amended response to Recommendation Number Four for the 2013-14 Grand Jury Report that you requested. Since our initial response I have been investigating alternative auditing procedures, both with the Auditor/Controllers Office and other district personnel. The Auditor/Controllers Office restated that each District is responsible for acquiring its own independent audit, and that their office does not have the resources to manage the audits for smaller Districts.

Mystic Mine Community Services District currently has a contract with Smith and Newell of Yuba City for auditing services and I have found after talking with personnel from other small districts and the California Small District Association that their fee is very cost effective. However, by end of fiscal year 2014-15, our District will obtain three quotes from other qualified firms for auditing our district.

If you have any further questions concerning this issue, please feel free to contact me at 530 272-7138.

Sincerely,

  
Andrew Wedgbury, Chair  
MMRCSD

August 5, 2014/ Amended October 2, 2014 in response to inquiry about Recommendation Number Four by Foreman Keith Overbey.

*Responses to 2013-2014 Grand Jury Findings and Recommendations for MMRCSD*

**Findings**

1. Upon review of the District's By-Laws, the Jury determined there has been no progress in updating them since the report by the 2012-2013 Jury

**Disagree**

**The Board reviewed and revised the By-Laws in January and February, and the new By-Laws were approved by the Board and posted March 25, 2014.**

2. Alternate audit procedures allowed in §26909(a)(5) of the California Government Code may help reduce costs of regular audits.

**Agree**

3. The District did not properly report to the Jury when asked about the fund balance held by the office of the Nevada County Auditor-Controller

**Agree**

4. The District is remiss in its duty to use a competitive bidding process to attempt to control maintenance and repair costs. Thus, the District does not have a way of knowing whether they are getting fair value for their money.

**Partially Disagree**

**The District has a long history of using competitive bidding for maintenance and repair work. It has also used multi-year contracts in order to be cost-effective. However, over the past two years the District has been lax in consistently obtaining bids. It has relied on a handful of proven contractors instead of bidding every road maintenance job.**

## **Recommendations**

1. The Board should update and complete the By-Laws

**The recommendation has been implemented.**

**The Board reviewed and revised the By-Laws in January and February 2014, and the new By-Laws were approved by the Board and posted on March 25, 2014.**

2. The Board should develop and implement a financial plan to use resources to maintain all roads, including ancillary roads within the District.

**The recommendation has been implemented.**

**The Board has identified road problem areas and has developed a priority and cost estimate list for the areas in most need of repair. All roads within the District will be inspected for damage and the damaged areas prioritized for repair within the timeframe and scope of budgetary limits.**

3. The Board should request bids when planning routine or annual road maintenance.

**The recommendation has been implemented.**

**The next series of road repairs have been let for bid and three companies have responded. Future road repairs will be let for bid.**

4. The Board should obtain quotes from qualified audit firms and select that which would be most cost-effective. The Board should also investigate alternate audit procedures with the Nevada County Auditor-Controller Office.

**The recommendation has not yet been implemented, but the District will obtain quotes from qualified audit firms by June 30, 2015.**

**The District has found it difficult in the past to find audit firms that will service small districts such as our own. The Board has investigated the firms and procedures used by other small districts in our area and has found the firm we currently have a contract with to be very cost effective. The Board has investigated alternative audit procedures with the Auditor/Controller Office and they restated the requirement that each district is responsible for being audited by an independent auditor.**