

NEVADA COUNTY CONSOLIDATED FIRE DISTRICT BOARD OF DIRECTORS

Summary

The Nevada County Consolidated Fire District is an independent special district responsible for fire protection and emergency medical services in the unincorporated areas in and around Grass Valley, California and Nevada City, California. The Nevada County Consolidated Fire District is governed by a Board of Directors elected by the district's voters.

The Nevada County Grand Jury received three citizen complaints regarding the Nevada County Consolidated Fire District. In the process of investigating these complaints, the Nevada County Grand Jury found the Nevada County Consolidated Fire District Board of Directors, both collectively and individually, have fallen woefully short in their roles and responsibilities as board members of a public agency and failed to follow or voluntarily chose to ignore their internal policies and procedures, as well as California's open meeting laws, known as the *Ralph M. Brown Act*.

The Nevada County Grand Jury found the Nevada County Consolidated Fire District Board of Directors is dysfunctional and is wracked by discord, acrimony, back-biting, and mistrust among Board Members. As such, the meetings of the Nevada County Consolidated Fire District Board of Directors are acrimonious and lack professionalism, civility, and respect between Board Members. Additionally, the Board has exhibited a lack of civility, decorum, and respect toward some employees of the Nevada County Consolidated Fire District.

The Nevada County Grand Jury found there is an expectation of a higher standard of behavior by the Nevada County Consolidated Board of Directors as individuals elected to positions of public trust by the citizens of the Nevada County Consolidated Fire District.

The Nevada County Grand Jury found there is a complete breakdown of organizational and chain-of-command structure within the Nevada County Consolidated Fire District. The Nevada County Consolidated Fire District Board of Directors has undermined the authority of the Fire Chief as the Chief Executive Officer of the Nevada County Consolidated Fire District and inserted themselves into a management role in violation of internal by-laws and policies and procedures.

The Nevada County Grand Jury found the Nevada County Consolidated Fire District's lack of executive leadership and micromanagement by the Nevada County Consolidated Fire District Board of Directors fostered an unhealthy working environment for administrative staff. This led to personal hostility among administrative staff, the Nevada County Consolidated Fire District Board of Directors, and the Nevada County Consolidated Fire District employees. This unhealthy environment led to the physical separation of administrative staff, resulting in additional time and effort being expended to provide administrative services.

The Nevada County Grand Jury found the Nevada County Consolidated Fire District lacks a comprehensive administrative policy and procedures manual. Currently, the numerous and various codes, by-laws, policies, rules, and ordinances promulgated by the Nevada County Consolidated Fire District are inadequate, vague, often in conflict, and contain provisions allowing the Nevada County Consolidated Fire District Board of Directors to “pick and choose” the governing rules it wishes to follow and those it wishes to ignore.

The Nevada County Grand Jury found the Nevada County Consolidated Fire District Board of Directors failed to utilize the services of legal counsel to provide advice to board members. The Nevada County Consolidated Fire District Board of Directors repeatedly entered into financial agreements which are inadequate, incomplete, unwritten, and lack protection for the Nevada County Consolidated Fire District. These actions, in turn, caused excessive and unexpected expenditures by the Nevada County Consolidated Fire District.

The Nevada County Grand Jury found the Nevada County Consolidated Fire District Board of Directors failed to take appropriate action in response to allegations of employee and Board violations of internal rules, regulations, policy, procedures, and ordinances.

The Nevada County Grand Jury found the credibility to negotiate collective bargaining agreements by the Nevada County Consolidated Fire District Board of Directors is questionable, due to close personal relationships between some directors and the leadership of the Nevada County Professional Firefighters, Local 3800 of the International Association of Fire Fighters.

The Nevada County Grand Jury recommends the members of the Nevada County Consolidated Fire District Board of Directors attend training regarding the roles and responsibilities of board members in a special district. The members of the Nevada County Consolidated Fire District Board of Directors should conduct themselves, collectively and individually, in a manner expected of persons elected to positions of public trust.

The Nevada County Grand Jury recommends the Nevada County Consolidated Fire District Board of Directors should work with the Fire Chief to develop a comprehensive policy and procedures manual. This policy and procedures manual should include thorough review of all financial agreements to protect the Nevada County Consolidated Fire District from excessive expenditures. Additionally, the Nevada County Consolidated Fire District Board of Directors should actively seek out the advice and expertise of legal counsel as required in the policy and procedures manual.

The Nevada County Grand Jury recommends the Fire Chief should have clear authority to implement the newly developed policy and procedures and to manage the day-to-day operations of the Nevada County Consolidated Fire District. Conversely, the Nevada County Consolidated Fire District Board of Directors should respect the organizational structure and chain of command structure and not interject themselves into the management of the day-to-day operations of the Nevada County Consolidated Fire District.

The Nevada County Grand Jury recommends the members of the Nevada County Consolidated Fire District Board of Directors maintain a professional relationship with the leadership of employee bargaining units to ensure there is no perception of impropriety and undue influence on decision making.

The Nevada County Consolidated Fire District Board of Directors should improve existing policies to facilitate open communication among the Nevada County Consolidated Fire District Board of Directors, staff, and the public. Finally, the Nevada County Grand Jury recommends the Nevada County Consolidated Fire District Board of Directors, the management, and staff work together to restore the public trust and rebuild the public image of the Nevada County Consolidated Fire Protection District.

Reasons for Investigation

In 2012, the Nevada County Grand Jury (Jury) received three citizen complaints regarding the Nevada County Consolidated Fire District (NCCFD). The complainants requested the Jury review the actions of the NCCFD Board of Directors (Board) for failures in following prescribed rules, regulations, and ordinances. The complainants also alleged possible violations of open meeting laws by the Board.

The Jury has the authority to investigate special purpose assessment or taxing districts, including those commonly known as special districts, in Nevada County.

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 district's voters or appointed to a fixed term of office by either a city council or a county board of supervisors. There are twenty-four independent special districts in Nevada County.

The NCCFD is an independent special district supported by public funds. The NCCFD is made up of approximately thirty-two full-time personnel. The NCCFD budget for 2012-2013 is approximately \$5,300,000. The NCCFD is responsible for approximately 150 square miles of western Nevada County and serves an estimated 35,000 residents.

The NCCFD is governed by a seven-member Board elected by district voters. The Board is responsible for setting policy and general administrative procedures. The Board meets in regular session every month. These meetings take place at 7:00 pm on the third Thursday of each month and are open to the public.

In the general election of November 2012, two new members were elected to the Board. One incumbent Board member was returned to office by district voters.

Procedures Followed

The Jury interviewed 20 individuals including members of the staff of the NCCFD; the NCCFD Board; the Nevada County Professional Firefighters Union, International Firefighters Association, Local 3800 (Local 3800); the Nevada County Board of Supervisors; and the public. The Jury also reviewed related documents including Board Meeting Agendas and Minutes, material from the NCCFD website, NCCFD staff reports, NCCFD governing documents, e-mails, written documentation prepared by Board members, quotations of Board members in the media, and audio recordings of Board Meetings.

The Jury's investigation focused on the time period of November 2011 through the present.

Facts

General

- F.A.1.** The NCCFD is governed by a seven-member Board elected by registered voters of the NCCFD during the general elections held in November. The members of the Board serve four-year terms.
- F.A.2.** The past Chairperson served until January 1, 2013.
- F.A.3.** The Board selected a new Chairperson, effective January 1, 2013. The new Chairperson served until March 15, 2013, when he resigned as Chairperson. The resignation was accepted by the Board on March 21, 2013. A new Chairperson was appointed by the Board on March 21, 2013.
- F.A.4.** The California Special Districts Association provides education and information to board members and staff of special districts in California on their roles and responsibilities.
- F.A.5.** The Nevada County Local Agency Formation Commission (LAFCo) provides education and information to board members and staff of special districts in Nevada County on their roles and responsibilities.
- F.A.6.** The NCCFD budgets monies for the education and training of Board members.
- F.A.7.** All members of the Board completed ethics training in compliance with the state requirements for local officials.

- F.A.8.** Some members of the Board stated they knew of other educational and training opportunities but chose not to attend.
- F.A.9.** *California Government Code* section 54950 et seq., commonly known as the *Ralph M. Brown Act* (Brown Act), is the California state law which outlines the responsibilities and requirements of open public meetings held by the governing board of a public agency, including
- defining a special district as a public agency,
 - defining a meeting of a governing board of a public agency to include any gathering of a quorum of its members to discuss or transact business under the governing board’s jurisdiction,
 - requiring a public agency to notice the public of the agenda of a regularly scheduled meeting of the governing board of the public agency at least 72 hours in advance of the scheduled meeting,
 - requiring a public agency to notice the public of the agenda of a special meeting of the governing board of the public agency at least 24 hours in advance of the scheduled meeting,
 - requiring the public agency to notice the public of the agenda of an emergency meeting of the governing board at least one hour in advance of the scheduled meeting,
 - allowing the governing board of a public agency to enter into closed or executive session regarding specified agenda items,
 - requiring the governing board to report in open session any action taken on specified agenda items in closed or executive session.
- F.A.10.** The firefighter employees of the NCCFD are represented by a labor organization, the Nevada County Professional Firefighters, Local 3800 of the International Association of Fire Fighters (Local 3800).
- F.A.11.** The President of Local 3800 is an employee of the NCCFD.
- F.A.12.** Referring to a NCCFD employee, a Board member stated in an open meeting, “We ought to fire the son of a b.... right now”.
- F.A.13.** The Jury has observed Board members, during an open meeting, engaging in a personal discussion and disparaging each other regarding fire stations named after each Board member.
- F.A.14.** A Board member, during a public meeting, belittled and disparaged advice given to the Board by NCCFD staff.
- F.A.15.** A Board member has filed a complaint with the Nevada County District Attorney, alleging misappropriation of public funds by employees of the NCCFD.

- F.A.16.** A Board member has filed a complaint with the Nevada County District Attorney's Office, alleging extortion and conspiracy by two other Board members.
- F.A.17.** During an open, public meeting, a Board member referred to the Brown Act as "a roadblock to getting anything done".

Administration of the NCCFD

- F.A.18.** The *Nevada County Consolidated Fire District By-Laws* (By-Laws), section 6.3(b), titled *Duties of the Fire Chief*, states, in part,
- "The Chief has the responsibility for the overall management of all operations of the District."
- F.A.19.** The Fire Chief is in charge of day-to-day operations of the NCCFD.
- F.A.20.** The Board formally placed the Fire Chief on administrative leave on April 19, 2012.
- F.A.21.** A temporary Division Chief was named by the Board on March 23, 2012 to fulfill the duties of the Fire Chief.
- F.A.22.** The By-Laws, Section 3.2(b), titled *Board of Directors, General Powers and Duties*, states
- "The Board has the responsibility to establish the overall policies of the District regarding the scope and level of service to be provided, and should not direct day-to-day management of the District."
- F.A.23.** A Board member has publicly stated, "They [staff] weren't following instructions. They wanted to confuse the issue. We [the Board] are the ones in charge, they are supposed to follow our orders."
- F.A.24.** Under the NCCFD organizational structure, the Finance Manager and the Finance Administrative Assistant report directly to the Fire Chief.
- F.A.25.** A member of the administrative staff refused to comply with a request from the temporary Division Chief to produce NCCFD documentation.
- F.A.26.** Due to personal conflicts, financial and administrative employees are physically located in two separate locations, approximately six miles apart.

- F.A.27.** The Finance Manager/Office Manager and the Finance Administrative Assistant are located at 10135 Coyote Street, Nevada City, California.
- F.A.28.** The Fire Chief, the Division Chief, a Battalion Chief, the Human Resources Administrator, the Board Secretary, and the Operations Services Specialist are located at 11329 McCourtney Road, Grass Valley, California.
- F.A.29.** Members of the NCCFD staff stated they were fearful of and intimidated by the mismanagement and micromanagement by the Board.
- F.A.30.** Members of the NCCFD staff stated they feared employment termination because of intimidation by the Board.
- F.A.31.** Members of the Board stated they were aware of the perceived hostile work environment at the NCCFD.

Policies and Procedures

- F.A.32.** The NCCFD does not have a comprehensive policy and procedures manual.
- F.A.33.** The NCCFD has various rules, resolutions, policies, and ordinances regarding various subject matters.
- F.A.34.** Section 4.13(d) of the NCCFD By-Laws, titled *Transactions of the Board*, states
- “By a majority vote, and for good cause shown, the Board of Directors may approve a variance from the strict application of District ordinances, resolutions, and policies.”
- F.A.35.** Section 1.1.1 of the *Nevada County Consolidated Fire District Personnel Code*, titled “*Purpose of this Code*” states, in part,

“...The small number of employees of the District, however, requires that management be allowed considerable flexibility in the application of these policies.”

Underutilization of NCCFD Legal Counsel

- F.A.36.** The Board has contracted with a private attorney to provide legal counsel to the Board and to NCCFD staff.

F.A.37. The Board met, in either regularly scheduled meetings or in special meetings, on 33 occasions between January 20, 2011 and March 21, 2013.

F.A.38. The Board Agendas and Board Minutes indicate the Board discussed and/or took action on numerous agenda items, in both open and closed sessions, without the benefit of legal counsel being present, including in part

- Review Complaints Against a Public Employee,
- Conference with Labor Negotiators,
- Public Employee Release,
- Conference with Real Property Negotiators,
- Anticipated Litigation,
- Conference with Legal Counsel – Anticipated Litigation,
- Public Employee Evaluation,
- Public Employee Matter,
- Public Employee Personnel Matter.

F.A.39. The NCCFD’s legal counsel was present on three of the 33 occasions between January 20, 2011 and March 21, 2013, according to Board Minutes.

Special Tax Assessment Election of 2012

F.A.40. In the fall of 2011, the Board determined the cost of providing emergency services was increasing while the NCCFD’s revenues were not keeping pace, due to the economic downturn.

F.A.41. The NCCFD website states that during the economic downturn the Board had

- reduced overhead and administrative costs by not filling employee positions that were vacated through attrition,
- not provided NCCFD employees with cost-of-living salary increases for the previous four years,
- negotiated a 7% salary decrease for NCCFD firefighters,
- negotiated with all NCCFD employees to have employees pay a portion of their medical insurance premiums,
- closed three fire stations, on a rotating basis, to reduce costs.

F.A.42. The NCCFD’s website stated funding received from the special tax measure would ensure the NCCFD

- keep all existing fire stations open and stop station closures on a rotating basis,
- preserve rapid emergency response time to all emergency calls,
- preserve local emergency medical services and rescue services,

- maintain current protection from wildland fires,
- prevent the layoff of critically needed firefighting personnel,
- spend all funds to maintain emergency services.

F.A.43. At the Board’s regularly scheduled meeting on November 17, 2011, the Board decided to hold a vote-by-mail election to seek approval of a special tax measure on properties located within the NCCFD.

F.A.44. The Board chose not to utilize the Nevada County Elections Office to administer the election as the Board did not want to wait for the scheduled primary election in June 2012.

F.A.45. The NCCFD’s website indicates the timeline for the vote-by-mail election.

- The ballots would be mailed to registered voters on February 6, 2012.
- The completed ballots were to be returned to the NCCFD by March 6, 2012.
- The election result would be announced at the regularly scheduled Board meeting on March 15, 2012.

F.A.46. At the Board meeting on March 15, 2012, the Fire Chief announced the special tax measure had passed.

Letter of No-Confidence

F.A.47. On February 21, 2012, Local 3800 prepared a letter to the Board stating the members of Local 3800 had, “...NO CONFIDENCE in the abilities of [the Fire Chief] with matters regarding collective bargaining, management, leadership and integrity.”

F.A.48. This letter was presented to the Board Chair and a Board member on February 24, 2012 by the President of Local 3800.

F.A.49. The Board Chair and Local 3800 President did not present the no-confidence letter to the Board because both felt it could possibly affect the on-going special tax measure election.

F.A.50. On Saturday, February 25, 2012, the Board Chair sent a copy of the no-confidence letter to two Board members by electronic mail (e-mail).

F.A.51. On Monday, February 27, 2012, the Board Chair spoke to all Board members individually by telephone regarding the no-confidence letter.

F.A.52. On Monday, February 27, 2012, the Board Chair and two Board members met with the NCCFD’s legal counsel regarding the no-confidence letter.

F.A.53. On Monday, February 27, 2012, the Board Chair and two Board members met with the Fire Chief regarding the no-confidence letter.

F.A.54. On Monday, February 27, 2012, the Board Chair sent an e-mail to all Board members, stating the Board Chair and two Board members, acting as the “Ad Hoc Committee on District Restructuring” would “deal with” the issue of the no-confidence letter.

F.A.55. Section 5.3 of the NCCFD By-Laws, titled *Duties of Board Officers*, states

“(a) The Chairman The Chairman shall preside at Board meetings and generally perform such other duties as directed by the Board. The Chairman shall have authority outside of regular meetings to make decisions concerning the following:
(1) Procedural issues relating to meetings such as the agenda, noticing, time and place, etc.,
(2) Providing the Chief with guidance as to the interpretation of Board action.”

F.A.56. Section 5.5 of the NCCFD By-Laws, sub-titled “*Committees*” states

“The Board may, from time to time, form other committees as are necessary.”

F.A.57. A Board member was asked, by the Jury, why the Board Chairman had unilaterally established a committee in violation of NCCFD By-Laws, he replied, “The By-Laws do not say the Board has to vote on it.”

F.A.58. On Wednesday, February 29, 2012, the Board Chair sent an e-mail to all Board members, which reads, in part,

“Let’s be very aware of the Brown Act in our communications. A “give and take” in email can and likely would be construed as a violation of the Act. These are questions that we can resolve in other ways.

If you have any questions that need attention, please send them to Directors [Board Member], [Board Member] or myself, and we will do our very best to integrate your concerns into our ongoing discussions. The Ad Hoc committee has be (sic) ability to work on this and then report back to the whole Board, where we can have further discussions in non-public session concerning protected employee issues. Please understand, any questions you may have, or suggestions are very important to us, so do not fail to share concerns and questions with the Ad

Hoc committee; I will guarantee that they will be seriously considered. It is just the discussion among Board members that may result in subsequent decisions are prohibited.”

- F.A.59.** A majority of the Board members stated they responded to the Board Chairman’s e-mail regarding the no-confidence letter.
- F.A.60.** The *Opinions of the Attorney General of California* (84 Ops. Cal. Atty. Gen. 30 (2001)) states a majority of the governing board violates the Brown Act if the members e-mail each other regarding current issues under the governing board’s jurisdiction.
- F.A.61.** On Thursday, March 1, 2012, the Ad Hoc Committee on District Restructuring and the Board’s legal counsel met with representatives of Local 3800 regarding the no-confidence letter.
- F.A.62.** There are no agendas or minutes of any scheduled regular meeting or special meeting of the full Board between February 16, 2012 and March 15, 2012.

NCCFD Board Meeting of March 15, 2012

- F.A.63.** At the regularly scheduled Board meeting on March 15, 2012, the Board met in closed session to “Review Complaint against a Public Employee.”
- F.A.64.** In the closed session, the Board voted 7-0 in an affirmative vote of confidence in the Fire Chief.
- F.A.65.** The Board was notified by the representative of the Fire Chief that the Board was required to report the action in open session.
- F.A.66.** The Board told the Fire Chief and his representative that they would not report the vote in open session.
- F.A.67.** A Board member reported, in open session, the Board had “directed the Chairman how to proceed, and he will be following up in the next couple of days.”
- F.A.68.** After the Board meeting, there was an alleged physical altercation between the Fire Chief and a NCCFD employee.
- F.A.69.** A representative of Local 3800 telephoned a Board member to report the alleged altercation between the Fire Chief and the NCCFD employee that same night.

- F.A.70.** The Board member contacted was a Reserve Deputy Sheriff with the Nevada County Sheriff's Office (NCSO) at the time of the telephone call.
- F.A.71.** The representative of Local 3800 requested the Board member investigate the alleged altercation in the Board member's capacity as a Reserve Deputy Sheriff of the NCSO.
- F.A.72.** The Board member declined to intervene and directed the representative to report the altercation to the NCSO.
- F.A.73.** The representative then reported the alleged altercation to the NCSO. An on-duty Deputy Sheriff responded and took a report.
- F.A.74.** The NCSO forwarded an investigative report to the Nevada County District Attorney's Office (NCDA) for review. After review, the NCDA declined to file any criminal charges in the matter.

Lack of Fiduciary Responsibility - Employee Concessions

- F.A.75.** On November 17, 2011, the Board decided to seek voter approval of a special tax measure.
- F.A.76.** At a special meeting of the Board on December 1, 2011, the Board approved *Nevada County Consolidated Fire District Resolution R11-17*, entitled *Resolution Authorizing Execution of Memoranda of Understanding Concerning Compensation and Benefits with the Classified District Employees* (Resolution 11-17).
- F.A.77.** Attachment "A" of Resolution 11-17 is entitled, *Memorandum of Understanding Between Nevada County Consolidated Professional Firefighters, IAFF Local 3800 December 1, 2011 through December 31, 2012* (MOU).
- F.A.78.** Section 5, also known as Clause 5 of the MOU, entitled *Salary Schedule*, states, in part,
- “(b) The EMPLOYEES and the DISTRICT have agreed to postpone merit increases for the term of this MOU... Merit increases shall take place on the employee's next evaluation date in Calendar year of 2013 and will not be retroactive back to the 2011-2012 Fiscal Year.”
- F.A.79.** Section 13, also known as Clause 13 of the MOU, titled *Holidays*, states, in part,

“(d) The EMPLOYEES and the DISTRICT have agreed to postpone the holiday pay... This section will be reinstated on January 1, 2013 and will not be retroactive back to the 2011-2012 Fiscal Year.”

F.A.80. On March 15, 2012, it was announced the special tax measure had passed.

F.A.81. At the regularly scheduled Board meeting on September 20, 2012, the Board met in closed session for “Conference with Labor Negotiators.”

F.A.82. The Board Minutes of September 20, 2012, states, in part,

“...Director [Board Member] made the following motion in Open Session:

MOTION: To reinstate all Local 3800 members merit increases Section 5 Article B, and Holiday Pay Section 13, Article D, retroactive to July 1, 2012. This motion will not change any members hire date, evaluation date, or scheduled merit date. In the future, all Local 3800 employees shall receive merit and other wage and salary increases pursuant to the MOU, notwithstanding the Concession Side Letter of Agreement dated December 1, 2011.

Director [Board Member] seconded. MOTION unanimously carried after a roll call vote.”

F.A.83. At a regular meeting of the Board on November 15, 2012, the Board approved *Nevada County Consolidated Fire District Resolution R12-25* (Resolution 12-25), titled *Resolution Authorizing A Side Letter of Agreement Between The Nevada County Consolidated Fire Professional Firefighters, IAFF Local 3800 And The Nevada County Consolidated Fire District*.

F.A.84. Resolution 12-25 states, in part,

“**WHEREAS**, the BOARD and the EMPLOYEES have agreed to reinstate the current MOU that is in full effect from December 1, 2011 through December 31, 2012, and which reinstates Merit Step Increases outlined in clause 5(b) and reinstates Holiday Pay as outlined in clause 13(d), retroactively to July 1, 2012;...”

F.A.85. The Board approved Resolution 12-25 on a 6-1 vote.

F.A.86. The NCCFD estimated the cost of the reinstatement of merit step increases and holiday pay to NCCFD firefighters was approximately \$20,000 for the period of July 1, 2012 through December, 2012.

Lack of Fiduciary Responsibility - Employee Health Savings Accounts (HSA)

F.A.87. At a special board meeting on December 1, 2011, the Board unanimously passed Resolution 11-17.

F.A.88. Resolution 11-17 includes four attachments outlining MOUs with four separate employee bargaining units.

F.A.89. The MOUs were later extended by the Board through December 31, 2013.

F.A.90. The MOUs state, in part, “The agreement shall remain in its full force and effect until renegotiated or superseded by successor agreement.”

F.A.91. Each attachment includes a Section 6, titled *Medical Insurance*. Sub-section (b) of section 6 reads, in part,

“The DISTRICT agrees to pay 80% of the offered HSA accounts annual deductible. The 80% shall be deposited into the Employee’s HSA account at the beginning of each calendar year...”

F.A.92. NCCFD staff recommended to the Board that it make deposits into employees’ HSA accounts on a quarterly basis. The Board did not follow the recommendation.

F.A.93. The employees’ HSA accounts are the property of the employees named on the contribution form. The NCCFD has no control or authority over any monies that the NCCFD deposits into the HSAs.

F.A.94. During the first four months of 2013, three employees retired from the NCCFD.

F.A.95. On retirement, the three employees received the balance remaining in their HSAs, totaling approximately \$14,000.

Lack of Fiduciary Responsibility - Contracts

F.A.96. The Board met in a closed session at a special meeting of the Board on March 20, 2012 to “Review Complaint Against a Public Employee.”

- F.A.97.** The NCCFD legal counsel, on behalf of the Board Chairman, reported out of the closed session that the Board had decided “to obtain an outside investigator which the Chairperson had been authorized to facilitate...”
- F.A.98.** Section 7.1 of the By-Laws titled *Authority to Bind District* states
- “No member of the Board, officer, agent, or employee of the District shall have any authority to bind the District by any contract, to pledge its credits, or to execute any instrument on behalf of the Board, except as authorized by ordinance or resolution by the Board.”
- F.A.99.** An independent contractor was verbally contracted, by a Board member, to conduct a personnel investigation into the alleged physical altercation between the Fire Chief and a NCCFD employee.
- F.A.100.** The Board did not vote to enter into a contract with the independent contractor for the investigative services.
- F.A.101.** A Board member was asked by the Jury what protected the NCCFD from possibly incurring excessive costs for the contractor’s services. The Board member replied, “... we knew it wasn’t going to cost that much.”
- F.A.102.** The NCCFD subsequently paid the independent contractor for the investigation, preparation, and presentation of a report without a contract in place.
- F.A.103.** A Board member kept the original investigation report in his home for an extended period of time.
- F.A.104.** On February 26, 2008, the NCCFD executed a contract with a private individual, titled, *Independent Clerical Contractor Agreement* (Agreement).
- F.A.105.** The Agreement was executed by the Fire Chief on behalf of the NCCFD.
- F.A.106.** There is no record of the Board approving the Agreement and a subsequent Amendment to the Agreement.
- F.A.107.** Neither the Agreement nor the subsequent Amendment specifies a minimum or maximum number of hours to be worked by the contractor within a specified time period.

Racially Insensitive Material Circulated

F.A.108. Section 1.4.13 of the *Nevada County Consolidated Fire District Personnel Code* (Personnel Code), titled “*Electronic Communications Systems Policy*” states, in part,

“Electronic communications, including the contents of NCCFD owned computers, telephones, and facsimiles are the properties of the District. ... This policy is meant to set forth guidelines regarding access to and disclosure of information/messages sent or received by NCCFD employees using the system. ... The Internet, e-mail, phone mail or any other communication or information system of NCCFD is not to be used in any way that may be disruptive, offensive to others, or harmful to morale. Violators of this policy will be subject to disciplinary action, up to and including discharge, for any violation reasonably believed to have been committed.”

“NCCFD treats all computer files, including e-mail sent or received, as District-related information. NCCFD has the capability and reserves the right, with or without notice, to access monitor, review, copy, and/or delete any computer files, including e-mail sent or received... If employees make incidental use of the computer system for personal files or e-mail, employees should not expect personal files or e-mail to be protected from review by the District. Accordingly, employees should not use the computer systems to create or transmit any information they wish to keep private...”

“... Use of the computer system to engage in any communications that are in violation of this or any NCCFD policy is strictly prohibited. NCCFD prohibits the display or transmission of sexually explicit images, messages, cartoons (sic), or any transmission or use of communications that contain profane or offensive language, ethnic slurs, racial epithets, or anything that may be construed as harassment, or disparagement of others based on their race, color, national origin...”

F.A.109. On Monday, November 5, 2012, a candidate for a position on the NCCFD Board, forwarded an e-mail, titled “Hooked on Ebonics?” containing a video segment to a Board member.

F.A.110. In the General Election held on Tuesday, November 6, 2012, the candidate was elected to a four-year term as a member of the Board.

- F.A.111.** The Board member forwarded the e-mail to the Local 3800 President, stating, “Hey, [Local 3800 President], you need to watch this, it is like talking with our administration!!”
- F.A.112.** The administrative staff of the NCCFD has a staff member who is of African-American ethnicity.
- F.A.113.** The Board member is on the Personnel Committee, responsible for negotiating employee collective bargaining agreements with representatives of Local 3800, including the Local 3800 President.
- F.A.114.** On Friday, November 9, 2012, the Local 3800 President forwarded the e-mail to a Battalion Chief of the NCCFD, utilizing the NCCFD e-mail system.
- F.A.115.** On Friday, November 9, 2012, the Local 3800 President was an employee of the NCCFD.
- F.A.116.** The Nevada County Professional Firefighters, Local 3800 is an affiliate of the International Association of Fire Fighters (IAFF).
- F.A.117.** The IAFF website, www.iaff.org, states, in part,
- “The International Association of Fire Fighters’ policy concerning discrimination and harassment is clear and unambiguous—the IAFF is opposed to any kind of discrimination...”

Closed Sessions of the Board

- F.A.118.** In the General Election of November 6, 2012, two new members were elected to the Board.
- F.A.119.** The Board met in closed session during a regularly scheduled meeting on November 15, 2012.
- F.A.120.** The Vice-Chairman of the Board invited two members of the public, identified as the two top vote-getters in the election, into the closed session.
- F.A.121.** The Nevada County Elections Office had not yet certified the results of the General Election of November 6, 2012 as of the Board’s meeting date.
- F.A.122.** NCCFD staff, citing provisions of the Brown Act, cautioned the Board not to invite the two members of the public into the closed session.

- F.A.123.** The Vice-Chairman publicly disagreed with the NCCFD staff and continued to insist the two members of the public be included in the closed session.
- F.A.124.** After discussion, the Board entered into closed session. The two members of the public did not attend the closed session.
- F.A.125.** The Board met in closed session during a regularly scheduled meeting on December 20, 2012.
- F.A.126.** The Board admitted a member of the public, identified as the spouse of a NCCFD employee, into the closed session.
- F.A.127.** There is no record of the NCCFD’s legal counsel being present at either the meeting of November 15, 2012 or December 20, 2012.
- F.A.128.** 46 *Ops. Cal. Atty. Gen. 34,35 (1965)* of the *Opinions of the Attorney General of California* states that interested members of the public may not be admitted to a closed session of the governing board while the remainder of the public is excluded.

Hiring of Finance Administrative Assistant

- F.A.129.** Section 2.2.5 of the Personnel Code, titled “*Notification of the Board*” states, in part,
- “Whenever a vacancy occurs..., the Chief shall notify the Board in writing...”
- F.A.130.** Section 2.2.1 of the Personnel Code, titled “*Hiring Procedures General*” states, in part,
- “(a) Hiring procedures shall be competitive and by such character as fairly to test and determine the qualifications, fitness and ability of competitors actually to perform the duties of the class or position for which they seek appointment.”
- F.A.131.** Section 2.2.2 of the Personnel Code, titled “*Policy Regarding Open Versus Promotional Hiring*” states,
- “(a) The Board shall determine whether a vacant position in the Classified Service shall be filled by open or promotional examination.

(b) Selection by Promotional Examination may be used when it appears to the Board that there are sufficient qualified employees to provide a competitive selection likely to produce a highly qualified employee to fill the position.

(c) Otherwise selection shall be by Open Examination.”

F.A.132. Section 2.2.6 of the Personnel Code, titled “*Announcement of Openings*” states, in part,

“...the Chief shall make public announcements of all job openings at least ten days prior to the closing date for acceptance of applications. The job announcement shall be posted at all staffed District facilities...”

F.A.133. The Board met in a regularly scheduled meeting on December 20, 2012.

F.A.134. This meeting was attended by three members of the Jury.

F.A.135. On a motion of the Vice-Chairman, and on a roll-call vote, the Board passed *Nevada County Consolidated Fire District Resolution 12-28 (R12-28)*, establishing “the Position and Job Description for a Part-Time Classified, Permanent Finance Administrative Assistant.”

F.A.136. The NCCFD has no record of any notification from the Chief to the Board regarding a vacancy for the job position of Part-Time Classified Permanent Finance Administrative Assistant.

F.A.137. R12-28 does not include any language in which an individual is named to fill this position. There was no action taken by the Board to fill this position with any individual.

F.A.138. A Board member asked if the NCCFD should make a public announcement of the job vacancy. After discussion, the Board took no action on the Board member’s question.

F.A.139. The NCCFD has no record of a public announcement of an open or promotional examination for the position of Part-Time Classified Permanent Finance Administrative Assistant.

F.A.140. On January 3, 2013, the NCCFD hired an individual into the permanent position of Part-Time Classified, Permanent Finance Administrative Assistant.

F.A.141. The individual hired was an independent contractor with the NCCFD at the time of hiring. The individual hired was not an employee of the NCCFD.

- F.A.142.** The Board met in a regularly scheduled meeting on January 17, 2013.
- F.A.143.** The Board amended the draft Board Minutes of December 20, 2012, to reflect that the Board had offered the position of Part-Time Classified, Permanent Finance Administrative Assistant to a named individual. The Board, by unanimous vote, accepted the amended *Board Minutes of December 20, 2012*.
- F.A.144.** After this meeting, the NCCFD staff notified the Board Chairman that the Fire Chief had not notified or recommended to the Board of the need to fill the vacancy for the Part-Time Classified, Permanent Finance Administrative Assistant on December 20, 2012.
- F.A.145.** The NCCFD staff notified the Board Chairman that the Board had not taken any action to hire an individual to fill the position of Part-Time Classified, Permanent Finance Administrative Assistant on December 20, 2012.
- F.A.146.** The NCCFD staff voiced concern, "...just want to make sure we are doing business correctly and when we have a public document..., have a good understanding as to why/how it was done."
- F.A.147.** The Board Chairman replied, "Not a big deal. Everyone knew the intent of the Board. She is already hired. If we need to formalize the actual hiring of [Name] we can do it as a follow up procedural issue at the next board meeting."
- F.A.148.** There is no agenda item, on subsequent Board Agendas to date, for Board approval of the hiring of an individual into the position of Part-Time Classified, Permanent Finance Administrative Assistant.

Findings

- F.I.1.** The Board is dysfunctional, lacks credibility, and is wracked by discord, acrimony, back-biting, and perceived mistrust among Board members.
- F.I.2.** The Board, collectively and individually, has fallen woefully short in its roles and responsibilities as a governing board of a public agency.
- F.I.3.** The Board has failed to follow or has knowingly chosen to ignore the various NCCFD rules, ordinances, and regulations, as well as California's open meeting laws.
- F.I.4.** Members of the Board failed to take advantage of available training on their roles and responsibilities.

- F.I.5.** Some members of the Board knowingly chose to ignore provisions of the Brown Act and NCCFD internal by-laws, rules, regulations, and ordinances in order to affect public opinion during the special tax assessment election.
- F.I.6.** Board meetings are conducted in a manner lacking professionalism, civility, decorum, respect, and common courtesy between Board members.
- F.I.7.** There is a total breakdown of organizational structure and chain-of-command structure within the NCCFD.
- F.I.8** The Board has undermined the authority of the Fire Chief as the Chief Executive Officer of the NCCFD.
- F.I.9.** The Board has assumed the role of Chief Executive Officer of the NCCFD in violation of internal by-laws, rules, regulations, and ordinances.
- F.I.10.** The NCCFD lacks a comprehensive policy and procedures manual.
- F.I.11.** Many of the codes, by-laws, policies, rules, procedures, resolutions, and ordinances promulgated by the Board and administration of the NCCFD are inadequate, vague, and in conflict.
- F.I.12.** The conflicts in the various codes, by-laws, policies, rules, procedures, resolutions, and ordinances allow the Board to “pick and choose” the policies and procedures the Board wishes to follow and those it wants to ignore.
- F.I.13.** The Board failed to seek advice from and utilize its contracted legal counsel regarding potentially litigious issues.
- F.I.14.** The Board has shown its lack of fiduciary responsibility by repeatedly entering into financial agreements which lack protection for the NCCFD and fail to meet the requirements of their own rules, regulations, policies, procedures, and ordinances.
- F.I.15.** The Board has shown its lack of fiduciary responsibility by entering into employee collective bargaining agreements which led to excessive and unexpected expenditures by the NCCFD.
- F.I.16.** The lack of executive leadership of the NCCFD and the micromanagement of the NCCFD by the Board have created and fostered an unhealthy working environment for administrative staff, leading to hostility and mistrust among the administrative staff, the Board, and NCCFD employees.
- F.I.17.** The atmosphere of hostility and mistrust has caused the physical separation of administrative staff, leading to additional time and effort being expended to provide administrative services.

- F.I.18.** Some members of the Board have exhibited a lack of civility, decorum, and respect toward the employees of the NCCFD.
- F.I.19.** Board members should be held to a higher standard of behavior due to their election by citizens of the NCCFD to positions of public trust.
- F.I.20.** The Board and NCCFD administration have failed to investigate and adjudicate allegations of employee violations of the NCCFD rules, regulations, policy, procedures, and ordinances.
- F.I.21.** The closeness of the personal relationship between some Board members and the administration of Local 3800 places the Board's credibility in question during collective bargaining with Local 3800.
- F.I.22.** Not only is the circulation of racially offensive material by the Local 3800 President in violation of the human relation tenets promulgated by the International Association of Fire Fighters, it is also in direct conflict with the NCCFD personnel code.

Recommendations

- R.1.** All members of the Board should actively seek out and attend training regarding the roles and responsibilities of board members in special districts.
- R.2.** The Board should work with the Fire Chief to develop a comprehensive policy and procedures manual consistent with existing federal, state, and local laws and regulations.
- R.3.** The Board should ensure the policies and procedures manual includes thorough review of all contracts and agreements to protect the NCCFD from unexpected, unnecessary, and excessive expenditures.
- R.4.** The Board should actively seek the advice and expertise of legal counsel in all matters that may lead to potentially litigious issues.
- R.5.** The Board should ensure the Fire Chief has clear authority to implement the newly developed policy and procedures manual and to manage the day-to-day operation of the NCCFD.
- R.6.** The Board, collectively and individually, should not subvert the NCCFD organizational structure and chain of command and should not interject themselves into the management of the day-to-day operations of the NCCFD.

- R.7.** The Board should develop and implement policy to facilitate open and ongoing communication with NCCFD personnel.
- R.8.** The Board members should conduct themselves in a manner consistent with the public's expectations of persons elected to positions of public trust.
- R.9.** The Board should maintain a professional relationship with Local 3800 to ensure there is no perception of impropriety or undue influence on decision making by the Board.
- R.10.** The Board, management, and staff should forge an active partnership in the rebuilding of the NCCFD's public image and should actively communicate with their constituents to restore and maintain the public's trust.

Responses

Nevada County Consolidated Fire District Board of Directors: Date: September 13, 2013

Response I.2. The Nevada County Consolidated Fire District Board of Directors disagrees with this finding.

The Nevada County Consolidated Fire District Board of Directors have not fallen short in their roles and responsibilities, but rather, had to take a leadership role to address the following critical issues:

1. Over the past two years, the NCCFD has suffered from a series of dramatic and significant events which occurred, due to the loss of its entire senior leadership, including our Fire Chief, two Battalion Chiefs, a Division Chief, the Human Resources Director, and the Board Secretary. The personnel left either due to retirements or resignations for a variety of reasons.
2. Exceptional decreases in tax revenue that threatened to significantly reduce the scope and scale of emergency services to our community.

ACTION TAKEN:

Because of the series of events beyond our control and occurring over this same period of time, the Nevada County Consolidated Fire District Board of Directors was called upon to take action far beyond the limited roles normally expected of Boards of Directors driving a unified effort by all District employees to pass a Tax Initiative to preserve existing emergency services to our constituents.

Individual Directors stepped into the leadership vacuum to provide coaching, experience and support for firefighting staff that had been poorly developed for leadership roles by previous management. This action also led to discovering significant problems in District operations, policies, and procedures.

An ad hoc Board Committee was formed to work with Joint Operational Area partners, Grass Valley and Nevada City, in place of departed experienced staff to fully understand, evaluate and preserve joint operational processes. This corrective action was taken to protect and benefit all citizens of Western Nevada County, actually strengthening our operations at a time when these operations could have fallen apart.

In February of 2013, the Board turned to an outside consultant, FireForceOne, and met its Director Ronny Coleman, a nationally known expert in Fire Management. FireForceOne was hired by the Nevada County Consolidated Fire District to conduct a nationwide search for the recruitment and appointment of the District's next Fire Chief. As an adjunct to that charge, FireForceOne determined that it was critical to the successful appointment of the new Fire Chief that a clear understanding of the pertinent historical factors and current issues facing the District be identified. Therefore, FireForceOne conducted internal and external interviews of the District's various stakeholders. Interviews included all District Board Members, all District Chief Officers, a significant number of rank and file members at all ranks and fire and administrative employees of the cities of Nevada City and Grass Valley.

A key finding of this effort was the need for leadership that went beyond understanding how to fight fires, but also brought heightened attention to the management issues and development of people and focused as well on significant improvements in District policies and processes. The Board's goal was to take the district beyond the realm of a patchwork of previously independent fire districts into that of a well managed, modern and professional emergency service. As a result of FireForceOne's consultant efforts, job qualifications for a new Fire Chief were established and a national search was initiated. In July 2013, the hiring of a new Fire Chief occurred meeting these requirements.

Finding I.3.

The Board has failed to follow or has knowingly chosen to ignore the various NCCFD rules, ordinances, and regulations, as well as California's open meeting laws.

Response I.3. The Nevada County Consolidated Fire District Board of Directors partially agrees with this finding.

The Board has not purposely failed or chosen to ignore the various NCCFD rules, ordinances, and regulations, as well as California's Open Meeting Laws. The Board acknowledges huge challenges that the District faced over the past two years as presented above. There is no question that both as individuals and as a Board, we have made inadvertent mistakes. Without sufficient staff support and without formal expertise and counsel, errors may have occurred.

The Board has made a due diligence effort to understand and operate within existing policies and procedures. Recognizing the need, District legal counsel became more actively engaged in all areas of Board activity, including development of Board Meeting Agendas and Meeting procedures and/or operations starting in March of 2012. The seven Directors on the Board fully recognize the need to improve and continue their commitment to do so.

Finding I.4.

Members of the Board failed to take advantage of available training on their roles and responsibilities.

Response I.4. The Nevada County Consolidated Fire District Board of Directors agrees with this Finding.

Currently all members of the Board have attended the required training, but the focus of our efforts has been to try to understand the shape, scale, and scope of the issues facing the District. With a workload far beyond expectations, Board Members may have inadvertently prioritized non-essential training too low.

Finding I.5

Some member of the Board knowingly chose to ignore provisions of the Brown Act and NCCFD internal by-laws, rules regulation, and ordinances in order to affect public opinion during the special tax initiative.

Response I.5. The Nevada County Consolidated Fire District Board of Directors partially agrees with this finding.

Many members of this Board repeatedly have urged caution with communications and procedural details to minimize the potential for violation of California's open meeting laws. While errors may have occurred, the Board rejects the idea that members knowingly ignored these regulations. Since March, 2013, integration of Legal Counsel into Agenda planning and Board Meeting procedures and processes has led the Board to avoid conflicts and any potential violations of the Brown Act from occurring. Since June of 2013 Legal Counsel has been asked to attend all Board meetings to ensure that additional errors are avoided.

Finding I.6.

Board meetings are conducted in a manner lacking professionalism, civility, decorum, respect, and common courtesy between Board members.

Response I.6. The Nevada County Consolidated Fire District Board of Directors disagrees with this Finding.

Free and open disagreement is the linchpin of democracy. Open and honest debate is necessary to the development of politically acceptable solutions. Board Members choose to serve in order to provide direction and oversight. There are times when conflict and strong opinions surface when addressing very difficult issues and also when dealing with significant stress and the possibility of change. Yet, working through this conflict can result in more aggressive questioning, more detailed oversight, and better solutions. The Board does not encourage personal conflict, but rather encourages working beyond conflict to create a better District.

Finding I.7.

There is a complete breakdown of organizational structure and chain of command within the Nevada County Consolidated Fire District.

Response I.7. The Nevada County Consolidated Fire District Board of Directors partially agrees with this Finding. The Board acknowledges there was a lack of leadership that occurred in February 2012, Local 3800 of the Nevada County Professional Firefighters Union submitted a "No Confidence" vote to the Nevada County Consolidated Fire District Board of Directors against its then Chief. This action, and a subsequent alleged physical altercation between the Chief and a District employee, led to his early retirement which significantly impacted the chain of command in the District. The Board, in an effort to obtain the time necessary to initiate a proper search for a quality Fire Chief, requested the District Training Officer to assume the role of Interim Chief. Further It quickly became apparent with the unexpected loss of our entire senior leadership, including our Fire Chief, two Battalion Chiefs, a Division Chief, the Human Resources Director, and the Board Secretary, that the District was in a severe crisis.

The Board is troubled by the statement that “there has been a complete breakdown of organizational structure and chain of command...” which completely ignores the very credible job that has been done by all firefighters that have stepped into leadership roles because of the departure of the entire cadre of senior leadership in the last two years. This District has not faltered in its mission because of the quality of NCCFD firefighters who are still delivering incredible emergency service to our constituents, saving lives, delivering babies, extinguishing wildfires with the confidence of excellent training and well seasoned experience. The Grand Jury does a grave disservice with the wording of this Finding, whereby creating unnecessary doubt in the minds of our community about our firefighters’ ability to deliver quality emergency services when needed.

Finding I.8.

The Board has undermined the authority of the Fire Chief as the Chief Executive Officer of the NCCFD.

Response I.8. The Board does not agree with Finding I.8. as it makes it sound like the entire Board of Directors set out on a purposeful mission to undermine the authority of the Fire Chief. This is not the case. For many years the Board had respected the chain of command and permitted the leadership to handle its internal issues without undo interference. By late 2012, after the resignation of the Fire Chief and further efforts by the Board to understand the internal working of the District, became apparent that significant employee issues, even conflicts, had long gone unattended, poorly addressed and/or ignored. In addition, there had been no quality succession planning and developmental training implemented. The leadership vacuum left was difficult to fill. There was a crisis at hand and the level of existing expertise was insufficient to meet the needs of the District.

Finding I.9

The Nevada County Consolidated Fire District Board of Directors has and assumed the role in violation of internal by-laws and policies and procedures.

Response I.9

The Board does not agree with Finding 1.9.

As an oversight Board, no Member is on site observing employee activities on a day to day basis, and if issues are not clearly and quickly brought to the Board Meeting in formal Staff Reports, it is difficult to see how relevant information can be relayed to a Board that is maintaining the chain of command. In a situation where temporary leadership lacks, some of the experience necessary, the Board acknowledges that individuals from the Board may have provided an unprecedented level of support, advice, and direction in attempts to fill the perceived leadership vacuum. Even today, it is safe to say that no Board Member knows the full story. The Board of Directors is very cognizant and sensitive to the impact this unfortunate chain of events had on the District’s employees, its constituents, and even to the Board itself.

Finding I.10

The Nevada County Consolidated Fire District lacks a comprehensive policy and procedures manual.

The Nevada County Consolidated Fire District Board of Directors agrees with this Finding.

Finding I.11

Many of the codes, by-laws, policies, rules, procedures, resolutions, and ordinances are inadequate, vague, and in conflict.

The Nevada County Consolidated Fire District Board of Directors agrees with this Finding.

Finding I.12. The conflicts in the of the codes, by-laws, policies, rules, procedures, resolutions, and ordinances allow the Board to “pick and choose” the policies and procedures the Board wishes to follow and those it wants to ignore.

Response I.12 The Nevada County Consolidated Fire District Board of Directors strongly disagrees with this Finding.

Existing operational structures are a legacy of the consolidation process over the years. The Board formally recognized this issue in late 2012 and began addressing this issue in February 2013 purchasing an external software package and service to more fully ensure compliance with Federal, State and local regulations. When fully developed , probably in 2014, the District Policies and Procedures will more closely align to “best in class” practices.

This Board is adamant in its desire to create a District that is transparent to our constituents and community, as well as fair and supportive of our employees.

Finding I.13

The Board failed to seek advice from and utilize its contracted legal counsel regarding potentially litigious issues.

Response I.13 The Nevada County Consolidated Fire District Board of Directors agrees with these Findings.

The Board acknowledges that this had been the general practice within the District in the past. However, beginning with the "No Confidence" vote issue discussed above in 2012, the District has used Legal Counsel much more frequently to avoid potential problems, liability and/or conflicts. Since March 2013, Legal Counsel has been a part of all Board Meetings, including reviewing Board Agendas, culminating with a formal vote to have Counsel present at all Board Meetings in June 2013.

Finding I.14

The Board has shown its lack of fiduciary responsibility by repeatedly entering into financial agreements which lack protection for the NCCFD and fail to meet the requirements of their own rules, regulations, policies, procedures and ordinances.

Response I.14. The Nevada County Consolidated Fire District Board of Directors disagrees with these Findings.

The Board disagrees with this finding as this finding uses the term "repeatedly" when suggesting that NCCFD either enters into financial agreements which lack protection for the District or fail to meet the requirements of its own rules, regulations, policies, procedures and ordinances. However, that data is incomplete as the findings providing supporting date for only four issues.

The Board would like to address the three issues in detail: 1) the contractual suspension and reinstatement of "merit increases", 2) the hiring of an private investigator without publicly posting the opportunity and entertaining multiple candidates to investigate alleged violation of district rules and alleged criminal conduct by a district officer, 3) and the hiring of a district contractor as a permanent, part time employee again without publicly posting the opportunity and entertaining multiple candidates.

1) In late 2011, the District was suffering from a very severe budget shortfall due to the cumulative effects of the economic downturn that began in 2008. Many cost cutting efforts had already been taken, including reduction of safety training, postponement of building and vehicle maintenance and travel. Re-evaluating the budget for 2011-2012, the District could see that it was faced with an unsustainable financial situation; and that, by the end of the fiscal year, in July 2012, the District would have spent down its entire financial reserves and leaving the District in debt. Furthermore, projecting expected tax revenues for the budget year 2012-2013, the District, without reserves and owning budget deficit, would face drastic cuts to its services to its stakeholders. At minimum, the District would have to lay off six firefighters and permanently close at least one fire station. Any unforeseen changes in the District would mean further service cuts. This is the basis for the 2012 Tax Initiative.

However, careful analysis indicated that even with all the reductions already made, the cost of running the election would dissipate District reserves so fast that it would be in the hole long before the end of the fiscal year, and additional savings had to be found that would keep NCCFD solvent until the outcome of the election could be determined. Thus, in late 2011, Local 3800 agreed to suspend "merit raises" for any individuals that earned them. It must be clear that merit raises are an integral part of a firefighter's career. Eliminating them would completely restructure all agreements with the firefighters, and that, even when in place for a short period of time, suspended merit increases can significantly impact a firefighters career compensation and even their retirement program.

During the first six months of 2012, eight firefighters earned merit increases, but as per the MOU these eight individuals did not receive them. This saved the District about \$25,000 by the end of the fiscal year; and after borrowing from restricted fund, NCCFD finished the 2011-2012 fiscal year with only \$15,000 in its account.

In July, once the District knew it could count on the funds generated by the Tax Initiative, the Board discussed the unfairness of letting these six individuals be denied their earned merit increases while other District employees had not made similar sacrifices. The Board acted to reinstate these employees merit increase as of July 1, 2012 rather than waiting until January 1, 2013 as indicated in the MOU, ensuring that their compensation was only delayed by six months. This decision was reported in the press without it ever being noted that there were only six individuals impacted by the action, nor was there any comment

about the unfairness of the original agreement. The District owes a debt of gratitude to these six firefighters. It was their sacrifice that permitted NCCFD to end the 2011-2012 fiscal year solvent.

The Board believes that the early reinstatement of merit increases, when funds became available, was a fair, open and honest way of demonstrating our appreciation for their individual sacrifices, and restarting their career tracks.

2) In March of 2012, the members of an ad hoc Board Committee including the Board Chair became aware of alleged violation of district rules and alleged criminal conduct by a district officer. The Board Chair immediately contacted District Counsel to determine the best way of addressing this event to protect the rights of the parties involved and the District's interests. It was determined that in order to proceed, the District had to move quickly to obtain an external investigation of the incident.

A Special Meeting of the Board was held on Thursday, March 20, 2012 and, in Closed Session to "Review Complaint Against A Public Employee," and the Board determined that the ad hoc committee should proceed with an investigation, and granted permission for the committee to find an investigator to independently investigate the incident and provide a report for Board discussion and action. It was reported out of closed session that the ad hoc committee would follow up on the complaint. To protect the privacy of the employees involved, and to proceed as rapidly as possible to determine the risk to the District, the normal process for obtaining contractors for the formal investigation was not followed. The full Board approved the contract for the investigation at the next regular Board Meeting. It is important to note that this investigation cost the District \$936.84, and our Personnel Code specifically states that "The purchasing officer may, without bidding or prior Board approval, make single purchases not to exceed \$5000." The Board believes that this exemption applies to the Board as well.

3) In March of 2012, after reviewing the contract of a part-time contractor, the Deputy Chief determined that this contractor's status might be approaching the state mandated limits for consideration as a "temporary" employee. However, since the Administration staff had recently been reduced by half, and since the knowledge and skill possessed by the "temporary" employee could not easily be replaced, it would be best for the District to employ the contractor as a permanent employee, saving costs, training and time at a moment when the District's clerical needs were critical. This proposal was approved for these reasons by the Board. It is the Board's intention to follow all of the District's processes and procedures whenever possible, but the Board also recognizes that those policies and procedures do not cover all the exigencies that may occur. We will always reserve the right to respond to unusual, timely circumstances as necessary to protect the District. The Board will also seek legal advice from District Legal Counsel when necessary to avoid potential problems, liabilities and conflicts.

Finding I.15.

The Board has shown its lack of fiduciary responsibility by entering into employee collective bargaining agreements which led to excessive and unexpected expenditures by the NCCFD.

Response I.15. The Nevada County Consolidated Fire District Board of Directors disagrees with this Finding.

The Grand Jury has accurately presented the facts in the case of the Employee Health Savings Accounts (HSA), but has incorrectly interpreted those facts. HSA accounts are uniquely beneficial to employees with certain specific medical insurance needs, and also provide a unique cost savings to the district over the cost of traditional Medical Insurance programs. These facts and benefits to both the employee and the District were thoroughly discussed before Resolution 11-17 was passed, and during the re-approval of those contracts in 2012 for the current year. Due to the timing of required payments for the HSA contracts, individuals terminating their service with NCCFD may "appear" to receive an undeserved cash payment.

This occurred for the first time in 2012, and future negotiations with service providers and collective bargaining agreements will attempt to address this perception, but the overall cost savings to the district of HSA accounts is still substantial. The Board stands by its decision on this issue; expenditures were neither unexpected nor excessive.

Finding I.16.

The lack of executive leadership of the NCCFD and the micromanagement of the NCCFD by the Board have created and fostered an unhealthy working environment for administrative staff, leading to hostility and mistrust among the administrative staff, the Board, and NCCFD employees.

Response I.16. The Nevada County Consolidated Fire District Board of Directors agrees with these Findings.

The Board recognizes that the loss of senior leadership and financial hardship have taken a toll on the working environment for all District employees and to an over involvement of the Board in District operations.

In April, 2013 the Board authorized the search and acquisition of an Interim Chief when Division Chief chose to retire. The new Interim Chief was hired on June 26, 2013. The Interim Chief was specifically given the task of re-establishing the appropriate chain of command in anticipation of acquiring a permanent Fire Chief within 90 days. The newly hired Fire Chief took office on August 5, 2013.

Finding I.17.

The atmosphere of hostility and mistrust has caused the physical separation of administrative staff, leading to additional time and effort being expended to provide administrative services.

Response I.17. The Nevada County Consolidated Fire District Board of Directors disagrees with this Finding.

As stated, this finding, building on Finding I.16, clearly suggest that the movement of some staff to remote offices was a result of the lack of executive leadership and Board micro-management. This was not the case. Previous District leadership, at a time when a majority of the current Board was not even on the Board, chose to separate administrative staff as a way of solving personnel issues. It is clear, in hindsight, that that decision was a poor one, the legacy of which has further exacerbated District issues. New executive leadership has addressed the issue. The administrative staff is no longer physically separated as of August 8, 2013. All administrative staff is located at Station 91, 11329 McCourtney Road, in Grass Valley.

Finding I.18. Some members of the Board have exhibited a lack of civility, decorum, and respect toward the employees of NCCFD.

Response I.18. The Nevada County Consolidated Fire District Board of Directors disagrees with this Finding.

The Board has never heard a formal complaint from any employee of the District indicating a Board Member has acted improperly toward an employee. The Board disagrees with this finding because it feels it cannot take any responsibility for an individual Board Member's demeanor.

Finding I.19.

Board members should be held to a higher standard of behavior due to their election by citizens of the NCCFD to positions of public trust.

Response I.19. The Nevada County Consolidated Fire District Board of Directors disagrees with this Finding.

Board Members are elected officials, and as such are not subject to Board sanction, discipline or punishment. In addition, even healthy Board discussions may become heated when divergent perspectives come in conflict. Our democratic process does not regulate speech, only actions. While the Board recognizes its collective responsibility, it has no authority to impose any "standard" on an individual member.

Finding I.20.

The Board and NCCFD administration have failed to investigate and adjudicate allegations of employee violations of the NCCFD rules, regulations, policy, procedures, and ordinances.

Response I.20. The Nevada County Consolidated Fire District Board of Directors disagrees with this Finding.

The Nevada County Consolidated Fire District Board of Directors can find no statement of facts in the Grand Jury Report that indicates the Board or the NCCFD administration have failed to investigate and adjudicate allegations of employee violations as indicated in this Finding. It is impossible to determine what is being referenced in this Finding. The Board must disagree with this Finding because it is vague and unsubstantiated.

Finding I.21.

The closeness of the personal relationship between some Board members and the administration of Local 3800 places the Board's credibility in question during collective bargaining with Local 3800.

Response I.21. The Nevada County Consolidated Fire District Board of Directors disagrees with this Finding. The Nevada County Consolidated Fire District Board of Directors disagrees with this Finding. This is a very small community; and the Fire Service in general is an even smaller and tighter community with similar interests and opinions. During the recent interviewing process, essentially all of the candidates had been Union members in their career, and several had been Union officers. Nearly all of our Board Members have been members of the Fire or Police service or both, and several have been Board members for many years. Friendship is not a viable reason for doubting the Board's credibility. What is important is how a friendship with a Union member or a member of the Administration is managed by the individual Board Member. Again, the Board has no authority to manage or regulate that friendship.

Finding I.22.

Not only is the circulation of racially offensive material by the Local 3800 President in violation of the human relation tenets promulgated by the International association of Fire Fighters, it is also in direct conflict with the NCCFD personnel code.

Response I.22. The Nevada County Consolidated Fire District Board of Directors agrees with this Finding.

All The Board members have all attended training and are willing to receive ongoing training so as to benefit the Board in fulfilling its duties and responsibilities.

Grand Jury Recommendations

1. All members of the Board should actively seek out and attend training regardless of the roles and responsibilities in Special Districts.

Response:

Training contractors have been identified. Appropriate training will be identified and be made available to all board members in the next ninety days.

2. The Board should work with the Fire Chief to develop a comprehensive policy and procedures manual consistent with existing federal, state, and local laws.

Response:

The Nevada County Consolidated Fire District Board of Directors formally recognized the need for improved policy and procedures in January 2013. The Board has also authorized the purchase and implementation of Lexipol Comprehensive Emergency Services Policy Manual. The Lexipol addresses issues related to risk management, liability, safety and best practices for emergency service suppliers. It will help the District comply with current statutory laws, stay abreast of court decisions and keep up with the evolution of best practices.

A committee consisting of a Board Member, District administrators and Labor representatives has begun working through all the details to ensure that critical issues relevant to the District are fully integrated into the system. Once this complex work is completed in 2014, the finished product will be submitted to both the Board of Directors and local bargaining units for approval and implementation.

3. The Board should ensure the policies and procedures manual includes thorough review of all contracts and agreements to protect the NCCFD from unexpected, unnecessary, and excessive expenditures.

Response:

The Nevada County Consolidated Fire District Board of Directors recognizes the need for review and update of ficial policies and procedures. The Board has already initiated work with the District Administration to review existing policies and processes. It is expected that this effort will integrate best practices for financial management as developed in cooperation with District

Auditors, and enhance financial transparency. This effort will take a significant amount of work by an administration that is currently working on a significant number of critical issues. The work will be addressed as part of the policy and procedure work in recommendation 2.

4. The Board should actively seek the advice and expertise of legal counsel in all matters that may lead to potentially litigious issues.

Response:

The Board formally requested District Counsel be present at all Board Meetings in July. Current practice is now to have Counsel review all agendas.

5. The Board should ensure the Fire Chief has clear authority to implement the newly developed policy and procedures manual and to manage the day-to-day operation of the NCCFD.

Response:

The Employment Contract for the New NCCFD Fire Chief, as of August 5, 2013 states:

A. The Fire Chief shall serve as the principal and highest ranking administrator and official for District and shall be in charge of the day to day operations of District, including without limitation, the supervision of all other District employees and shall report to, and be directly accountable to, the Board of Directors.

B. The Fire Chief shall perform all duties prescribed by the laws, rules, and regulations of the State of California, the United States of America, and the District's Board, and shall carry out all lawful directions of the Board. The Fire Chief is not required to take direction from a single Board member or carry out any orders by a single Board member. Directions will come from the Board of Directors through the Chairman of the Board.

C. Duties and responsibilities shall be as set forth in the job description for the position to which the Fire Chief is assigned, or as may be revised from time to time by the Board after consultation with the Fire Chief, as determined necessary for the effective and efficient operations of the District. (For current assignment, see Appendix "A".)

6. The Board, collectively and individually, should not subvert the NCCFD organizational structure and chain of command and should not interject themselves into the management of the day-to-day operations of the NCCFD.

Response:

The interactions of the Board with the Fire Chief are clearly spelled out in Section C of the Fire Chief's contract mentioned above. The actions that the Grand Jury refers to in this Finding 1.9 took place over about a three to four month period. Further actions by the Board other than to provide oversight have ceased in this manner. The hiring of an experienced organizational manager as Interim Chief with excellent communication skills and following the chain of command have helped assure that such mistakes have not reoccurred. The new Fire Chief has been hired and we expect that our new permanent Fire Chief will ensure that organizational roles are fully respected.

7. The Board should develop and implement policy to facilitate open and ongoing communication with NCCFD personnel.

Response:

The previous Grand Jury Recommendation clearly insists that the Chief be recognized as the person responsible for all day-to-day operations at NCCFD. Beyond that, any citizen or employee of the District, under the Brown Act, is free to address the Board at the appropriate time in any formal Board Meeting.

Facilitating "open and ongoing communications with NCCFD personnel beyond that allowed in public meetings might quite easily be interpreted as "subverting the NCCFD organization structure and chain of command." It is therefore very difficult to understand what the Grand Jury is proposing by imposing this recommendation on the Board. For this reason, no further action will be taken on Recommendation 7 will not be implemented.

8. The Board members should conduct themselves in a manner consistent with the public's expectation of persons elected to positions of public trust.

Response:

It is apparently not clear to the Grand Jury that the behavior of individual Board Members is not something that can be mandated by the Board of Directors of NCCFD or even by the Grand Jury. As indicated in Recommendation 1. The Board, as an entity, can and will affirm that the appropriate civility and decorum be maintained at all times and all employees, participating citizens and fellow Board Members are treated with respect; it will also ensure that Board members receive relevant training on the responsibilities of Special District Board Members. But it must be clearly understood that the Board cannot take responsibility for the comments, demeanor, or actions of any specific Board Member. This recommendation will not be implemented.

9. The Board should maintain a professional relationship with Local 3800 to ensure there is no perception of undue influence on decision making by the Board.

Response:

To start with, The Nevada County Consolidated Fire District Board of Directors believes that this recommendation is badly worded, and therefore it is uncertain as to what is actually being recommended. Perhaps it should read "undue influence on decisions made by the Board."

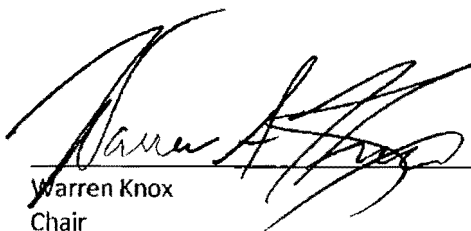
The Board can only assume that the Grand Jury is making this recommendation in reference to Finding I. 21. above. If this is so, then the Board, as an entity can and will strive to develop and maintain a strong, cooperative, open, and professional relationship with Local 3800. If, however, the Grand Jury is suggesting that any individual Board Member refrain from developing or maintaining close personal relationships with a Local 3800 member or officer, or a close personal relationship with any other member of the community, then this Board can only state that such a recommendation will not be implemented.

10. The Board, management and staff should forge an active partnership in the rebuilding of NCCFD's public image and should actively communicate with their constituents to restore and maintain the public's trust.

Response:

The Nevada County Consolidated Fire District Board of Directors believes that it has already taken significant steps to identify and remedy critical issues within the District. It has engaged a nationally known expert consultant to assess the District's management needs, developed a job description that provides for the meeting of those needs. This process produced an outstanding group of management candidates to run the District. Consequently, the Board obtained the services of an experienced Fire Chief that has demonstrated his abilities as both an effective manager and leader. It has developed a partnership with Local 3800 on the implementation of a much more comprehensive set of policies and procedures using the Lexipol system to ensure clear operating principals in the future. And It has worked with our Joint Operational Area partners to ensure that the existing cooperative agreements continue to develop and maintain existing cost-effective emergency services to our community.

Although the Board did not agree with many of the findings listed in the Grand Jury Report, the Board is committed to providing quality service and will take the appropriate actions necessary to move forward in a positive manner. This is just the beginning of the new Nevada County Consolidated Fire District, and we believe it will only get better.



Warren Knox
Chair

For:
Nevada County Consolidated Fire District
Board of Directors