

# **A Path to Transparency for Special Districts**

2018-2019 Nevada County Grand Jury

## Summary

Special districts are local government agencies that provide essential services to residents of the districts, including sewage treatment, water, fire protection, operation of parks, maintaining roads, and cemetery operation. There are 24 independent special districts with Nevada County Local Agency Formation Commission (LAFCo) oversight having combined annual operating budgets in excess of \$140 million dollars. Their functions vary based on the type of service(s) they perform, but all are governed by state transparency, conflict of interest, and ethics laws.

The Nevada County Grand Jury (Jury) surveyed 24 Nevada County special districts. Responses were received from each district and all were reviewed.

The Jury found weaknesses in the areas of transparency and outreach. The Jury found that laws have been passed that provide a means for special districts to address these issues. These laws detail:

- the requirement for a website,
- the requirement for posting of agendas on the website,
- the requirement for contact information on the website,
- compliance with Public Records Act requirements using the website, and
- the requirement for a Conflict of Interest policy.

In the interest of transparency, the Jury recommends that each website contain additional information that could be of value to the district's constituents including:

- board member list, length in office of each board member, and their titles;
- staff directory (if applicable);
- archive of agendas and minutes;
- current budget;
- past certified financial audits;
- current bylaws (or formation act);
- map of the district and/or service area; and
- board policies and procedures.

This report provides guidance to assist special districts in their efforts to improve transparency.

## Glossary

<b>Brown Act</b>	Ralph M. Brown Act of 1953
<b>District</b>	A special district in Nevada County (see Appendix A)
<b>Jury</b>	2018-2019 Nevada County Grand Jury
<b>PRA</b>	California Public Records Act of 1968

## Background

The Nevada County Grand Jury has the authority to investigate the functions of special districts within Nevada County. Special districts are forms of local government created by a community to meet a specific need. The 2018-2019 Nevada County Grand Jury (Jury) chose to investigate the management of 24 Nevada County special districts (see Appendix A). These special districts include fire districts, cemetery districts, utility districts, resource conservation districts, sanitation districts, water districts, road districts, and recreation/park districts. The Jury reviewed the finances, staffing, management policies and procedures, training, transparency, and compliance with legal requirements including the Ralph M. Brown Act of 1953 (Brown Act).

The Little Hoover Commission was formed in 1962 to improve government agencies in California. Their report #155 of May 2000 found, “independent special districts often lack the kind of oversight and citizen involvement necessary to promote their efficient operation and evolution.” In their report # 239 of August 2017 one of the commission’s recommendations was that the state should, “. . . expand transparency by requiring every district to have a website with basic information . . .” The Jury found that a number of laws have been passed regarding special district websites.

To ensure transparency and provide an opportunity for public participation in such meetings, the law requires public agencies that maintain a website to post agendas online. Public agencies that maintain a website may meet the requirements by posting a current agenda or a direct link to the current agenda on the agency’s primary homepage. Under either option, AB 2257 (*Local Agency Meetings: Agenda: Online Posting*) requires all current online agenda postings to be:

- downloadable, retrievable, indexable, and electronically searchable by commonly used search applications;
- machine readable and platform independent; and
- available to the public free of charge without any restrictions that would impede the reuse or redistribution of the agenda (i.e., no restrictions on printing the agenda or attaching it to an email).

California legislation SB 929, “Special Districts Internet Web Sites,” will, beginning on January 1, 2020, require every independent special district to maintain a website that clearly lists contact information for the special district, subject to limited special exceptions.

The California Public Records Act (PRA) requires a public agency to permit the inspection of any public record during the agency’s office hours. This requirement can be cumbersome for some districts especially if they do not have normal business hours. AB 2853 (*Local Government: Economic Development Subsidies*) allows an agency to comply with the Act’s inspection requirement by posting any requested public record on its website, and in response to the request for a public record, directing the person requesting such records to the location on the agency’s website where the public record is posted. If, however, the person making the records request subsequently asks for a copy of the record because he or she cannot access or reproduce the record posted online, the agency is obligated to produce a hard copy of the record.

Transparency and accountability help to ensure the electorate is well informed regarding how each special district is performing the people’s business. Three key elements for ensuring transparency are: the submission of annual audited financial reports to the State Controller and to the Nevada County Auditor-Controller, the requirement to adopt a Conflict of Interest policy, and compliance with the Brown Act.

The Fair Political Practices Commission has adopted a regulation that can be incorporated by reference in special district policies to meet the Conflict of Interest requirement (Government Code § 81000 or reference California Code of Regulations [title 2, § 18730] in their policies).

The Brown Act is designed to ensure that government actions and deliberations are conducted openly so that the people “may retain control over the instruments they have created.” Violations can lead to invalidation of local agency actions, payment of a challenger’s attorney’s fees, and in some cases criminal prosecution. Key requirements of the Brown Act are that meetings of a local government agency’s legislative body be open to the public, allow for public comment, and be announced by public notice 72 hours in advance of the meeting. The Brown Act also contains procedures for conducting special meetings, emergency meetings, and closed sessions. The Brown Act limits the ability to discuss certain matters outside of public meetings.

In addition to requiring public access to meetings, the Brown Act also gives the public the right to participate, attend, record, and broadcast public meetings. The public can speak to any subject within the board’s jurisdiction, but the board generally cannot discuss or act upon the item unless it is on the agenda. The Brown Act does allow members to briefly respond to comments or questions from the public, request staff to provide factual information, or request that an item be added to a future agenda. Every agenda for an open meeting must allow members of the public to speak on any item of interest so long as the item is within the jurisdiction of the board. The board may adopt reasonable regulations, including time limits, on public comments. Such regulations must be enforced fairly and without regard for the speakers’ viewpoints.

## **Approach**

The Jury surveyed 24 Nevada County special districts (Districts). A request for information from each district was made. Responses were received from each district and resulted in the analysis contained in the following discussion. The Jury also conducted interviews and performed independent research on California rules and regulations governing special districts.

## **Discussion**

In Nevada County, the 24 Districts surveyed provide a wide variety of governmental functions including firefighting, water, sanitation services, roads, parks and recreation, public utilities, and cemeteries. Most Districts have five board members and a majority of the Districts have paid staff. Their combined annual budgets total in excess of \$140 million with individual district budgets ranging from \$12,800 to \$59.5 million per year. While their functions and sizes are very different, every District is obligated to be responsive to the public. As noted in the

2015-2016 Nevada County Grand Jury report *Being a Better Board Member*, “Many Boards are staffed by well-intentioned and enthusiastic volunteers who may not have the training or knowledge of their responsibilities. The agencies for which they volunteer should take measures to ensure that those volunteers are trained, understand, and accept those responsibilities.”

The Jury analyzed the responses provided by the Districts and determined that the results on ethics and Brown Act training were not satisfactory. As a result the Jury prepared and issued a 2018-2019 report titled *Special Districts’ Compliance with Brown Act and Ethics Laws*.

The Jury then continued its analysis of the responses and found that there were weaknesses in other areas including transparency and outreach. For example, the Jury found that not all Districts have a website, and that some websites were not updated with current information. The Jury also found that laws have been passed that require special districts to address these issues. As described above these laws include the following detail:

- the requirement for a website,
- the requirement to post agendas on the website,
- the requirement for contact information to be available on the website,
- compliance with Public Records Act requirements using the website, and
- the requirement for a Conflict of Interest policy.

To comply with current and future requirements and in the interest of transparency, it is recommended that each website contain additional information of value to the constituents of that district, including:

- board member list, length in office, and titles;
- staff directory (if applicable);
- archive of agendas and minutes;
- current budget;
- past certified financial audits;
- current bylaws (or formation act);
- map of the district and/or service area; and
- board policies and procedures.

Although not required for all special districts, bylaws are a valuable tool to ensure effective practices, consistent processes, and increased transparency. At a minimum, bylaws should include the following list:

- Board composition, terms, and processes for selection or replacement
- Types of meetings and frequency
- Finance
  - Requirements for budget and approval process
  - Spending authority and limits for:
    - Contracts
    - Checking account management

- Credit card usage
  - Reimbursement policies and procedures
  - Records retention policy
- Ethics and Conduct
  - Code of conduct and demeanor
  - Ethics training requirements
  - Conflict of interest policies
- Brown Act compliance requirements

By including this recommended information, special districts will provide their constituencies insight as to the make-up of their leadership, how the district operates, the financial health of the district, documentation of past history, and advance notice of activities and issues to be addressed by the board. This enhanced transparency will give the constituency a better understanding of needs when they are asked to vote for new board members and/or any changes in tax rates requested by the board.

While SB 929 provides exceptions for the requirement of a website in special circumstances, the Jury strongly encourages districts to have a website nonetheless.

## **Findings**

- F1.** Websites are an important way the public can access information about their government, yet not all Nevada County special districts have a website.
- F2.** Existing California law requires convenient access to agendas on special district websites. The public should be encouraged to learn what will be discussed at upcoming board meetings.
- F3.** Legislation which goes into effect January 1, 2020, SB 929, *Special Districts: Internet Web Sites* requires districts to have websites that conform with current transparency requirements, and the legislation further requires that districts list contact information, making it easier for the public to know who is running the District.
- F4.** Meeting PRA requirements can be cumbersome especially for smaller special districts. PRA requirements can be fulfilled by posting the requested document(s) on the District's website.
- F5.** Not all Nevada County special districts meet the requirement of Government Code § 81000 requiring a Conflict of Interest policy, which helps assure the public that the District is running ethically.
- F6.** Inclusion of additional information on special district websites beyond that required by law provides valuable information to District constituents and enhances the transparency of special district activities.

## **Recommendations**

- R1.** All special districts should have a website that complies with SB 929 prior to January 1, 2020.
- R2.** Special districts' agendas should be posted on their websites and have one click access from the home page.
- R3.** Contact information should be posted on the website.
- R4.** Special districts should consider using their websites to fulfill PRA requests.
- R5.** All special districts should adopt a Conflict of Interest policy.
- R6.** All special districts should adopt bylaws or review their existing bylaws before SB 929 goes into effect in January 2020.
- R7.** All special districts should provide information on their websites beyond the minimum requirements of the law to provide transparency for their constituents.

## **Request for Responses**

No responses are requested.

## Appendix A

### Nevada County Special Districts Surveyed

Bear River Recreation and Park District	Ophir Hill Fire Protection District
Beyers Lane Community Service District	Peardale-Chicago Park Fire Protection District
Higgins Fire Protection District	District
Kingsbury Greens Community Services District	Penn Valley Fire Protection District
Lake of the Pines Ranchos Community Services District	Rough & Ready Fire Protection District
Mystic Mines Community Services District	San Juan Ridge County Water District
Nevada County Resource Conservation District	Truckee Cemetery District
Nevada Cemetery District	Truckee-Donner Public Utility District
Nevada County Consolidated Fire District	Truckee-Donner Recreation & Park District
Nevada Irrigation District	Truckee Fire Protection District
North San Juan Fire Protection District	Truckee Sanitary District
Oak Tree Park & Recreation District	Washington County Water District
	Western Gateway Recreation and Park District