

## INVESTIGATION:

### *A Firestorm Raging in Herald*

Herald Fire Protection District

#### SUMMARY

For decades, the Herald Fire Protection District (District) has provided vital fire, rescue and emergency medical services to the Herald community in southeast Sacramento County. The largely volunteer fire department, governed by an elected Board of Directors and strongly supported by the local volunteer firefighters' association, civic organizations and area residents, and has become an integral part of the fabric of this rural farming community. But for the last two years, the District has been torn apart by the residents' intensely vocal criticism of its management of public funds and firefighter personnel, and its lack of transparency with the public. This dissension threatens the District's capability to provide these vital services and its ability to maintain needed support from this close-knit community.

Responding to the residents' allegations, the Sacramento County Grand Jury investigated whether the District's elected Board of Directors is meeting its fiduciary responsibilities to oversee the District's financial affairs, whether the fire chief is properly managing the firefighter personnel, and whether the District board is effectively and transparently adopting and implementing sound governance policies.

As a result of its investigation, the grand jury finds that the board is not responsibly overseeing the District's financial affairs, the fire chief is not properly managing District personnel, and the board is not transparently implementing sound governance policies, particularly with respect to its financial affairs.

With respect to fiscal oversight and management, the District for many years had a bank account that the board intentionally did not disclose to the Sacramento County Department of Finance, as required by law. The District also failed to disclose the existence of this account to auditors hired by the District to audit its finances. For these and other reasons, audits of the District's finances have not been conducted in accordance with generally accepted auditing standards, as required by law. The District's financial accounting system lacks adequate internal controls to ensure against waste and misappropriation of funds.

With respect to personnel management, the District and the fire chief have failed to adopt and implement policies that by law provide firefighter personnel the due process protections in

disciplinary proceedings. District policies do not provide full-time firefighters the opportunity for an administrative appeal of a punitive action, as required by the Firefighters Procedural Bill of Rights Act. The fire chief and his administrative staff have repeatedly demonstrated their lack of knowledge of the Act's requirements.

Finally, the board has not dealt transparently with the public regarding the District's business. As noted, the District failed to disclose the existence of all district bank accounts, as required by law, and failed to disclose one account even to auditors it had hired to audit the District's financial records. Even when subpoenaed, District staff was unable or unwilling to produce the District's financial records for review. At public meetings and in response to requests for information about District finances, board members had not been forthcoming or candid with District residents.

To address and correct these deficiencies, the grand jury recommends that the county auditor conduct an immediate audit of the District's financial statement, according to generally accepted auditing standards; that the District establish adequate internal accounting controls; that the fire chief adopt and implement personnel policies compliant with the Firefighters Procedural Bill of Rights Act and ensure that staff are knowledgeable of the Act's requirements; and that the District explore the feasibility of consolidating its fire and emergency services with a nearby fire district.

Unfortunately, deliberate actions and inactions by the board and administrative staff are undermining the efforts of the proud and dedicated firefighters who serve this community. The vast majority are volunteers who put in long hours to acquire and hone the needed knowledge, skills and abilities to provide essential fire and emergency services to Herald citizens. They do a remarkable job for little pay.

The grand jury believes the fabric of the Herald community is endangered and in crisis because of the District board and fire chief's mismanagement of District affairs. We urge the board and District management to address these issues immediately and in a transparent manner in order to recapture the trust of the community it serves.

## **BACKGROUND**

The Herald Fire Protection District has been a source of community pride for more than six decades when local citizens came forward and volunteered as firemen. Many locals eagerly stepped up to help the District obtain costly, needed fire equip-

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ment. In November 1947, one such organization, the Herald Garden Club, a local women's civic group, purchased a 1929 Chevy Standard Oil delivery truck and had it converted into the first District fire engine. Nearly 40 years later, in 1986, the local "Herald Day" reported that because of the dedicated men and women in the Herald Fire Protection District, "the citizens of Herald were in good hands."

In 2012, many community members were in an uproar about the perceived state of affairs in the District. Once-loyal civic organizations questioned the integrity and management practices of the District, its Board of Directors and its management personnel.

For many years, the District has owned two buildings in the Herald area – the Herald Community Barn and Hendrickson Hall, located adjacent to Station No. 87 – which the District uses for training classes and rents to local civic groups for meetings and to the general public for social gatherings such as weddings and *quinceañeras*. In spring 2012, the District raised the issue of increasing rental fees for the buildings, which caused a well-publicized outcry from Herald citizens and local civic organizations. In October 2012, the District board formally proposed raising the rental fees, which provoked the locals to demand an explanation for the fee increases and a transparent accounting of the District's handling of the building funds. Some citizens and civic organizations demanded answers and an accounting at several District board meetings and through Public Records Act requests. However, the citizenry was dissatisfied with the District's responses to their records requests and demands for justification for the fee increase. The unhappy locals conveyed their concerns to the area media and complained in writing to this grand jury.

Prompted by the community's complaints, the Sacramento County Grand Jury initiated an investigation of the District's fiscal practices with respect to its building funds and accounts. This initial inquiry quickly led the grand jury to identify and investigate a number of related issues, including the District's overall governance and management, its fiscal practices, and its personnel policies and practices. The investigation focused on the following issues:

- 1) Does the District Board of Directors effectively manage the District's fiscal affairs? And does the District have in place sufficient internal accounting controls and provide for accurate and adequate financial audits?
- 2) Has the fire chief adopted and implemented sound, legal personnel policies and practices, including those that comply

with the Firefighters Procedural Bill of Rights Act?

3) Is the District's Board of Directors effectively and transparently implementing sound governance policies and practices?

After investigating these issues, the grand jury concludes that the citizens of Herald are rightly concerned that the Herald Fire Protection District is failing to provide effective governance of the District's business, is failing to maintain sound fiscal and accounting practices, and is failing to implement sound, legal personnel practices. The grand jury recommends that the District Board of Directors address these concerns and correct these fundamental problems.

## APPROACH

The grand jury reviewed the following documents, records and material for this investigation:

- California Government Code sections for special districts;
- Sacramento County Financing Guidelines for special districts;
- Herald Fire Protection District Master Plan (2004);
- Sacramento Local Agency Formation Commission (LAFCo) *Municipal Service Review and Sphere of Influence Update Report on Herald Fire Protection District* (2005);
- The Firefighters Procedural Bill of Rights (California Government Code sections §3250-3262);
- District call logs, financial ledgers, credit card and bank records;
- District audited financial statements;
- Board of Directors policies;
- Fire District employee policies; and
- Fire District website.

For a historical and current understanding of the day-to-day operations, the grand jury interviewed former and current firefighters, members of the Board of Directors, District administrative staff, members of the Herald Volunteer Firefighters Association (HVFFA), accounting firms retained by the District to conduct financial audits, and one complainant. Members of the grand jury also visited the two Herald fire stations. To educate ourselves about the laws and guidelines for California special districts, jury members conferred with the county counsel, the District Attorney's Office, the Department of Finance (DOF), the California Attorney General's Office, current and former fire chiefs of surrounding fire districts, and members of the California Special Districts Association (CSDA).

Grand jurors also attended several board meetings to observe the District board and staff and assess how meetings were

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conducted, the materials provided to the public, interaction between board members and District staff, and interaction between District personnel and the public in attendance.

During the investigation, District personnel in several instances only partially complied with grand jury requests for documentation. Many incomplete documents were submitted and some did not match records, witness testimony or documents the grand jury obtained through other sources.

## **DISCUSSION**

### **Herald Fire Protection District Overview**

The Herald Fire Protection District (the District) is a special district established in 1946 to provide local fire, rescue and emergency medical services to the unincorporated Herald community and surrounding rural areas. Encompassing 96 square miles located in rural southeastern Sacramento County, the District is governed by an elected five-member Board of Directors. The board's core functions are to establish and periodically review and update governance policy for the fire district; monitor the performance of the District fire chief; and oversee an annual operating budget of approximately \$800,000, which is based on revenues derived from local property taxes and grants.

The District is staffed by approximately 20 to 25 volunteer firefighters and several full-time, part-time and intermittent paid employees, including a fire chief, assistant fire chief, two captains and an administrative assistant. The fire chief is a full-time, salaried employee and reports directly to the Board of Directors. The fire chief oversees all administrative and managerial activities, including personnel actions, development of employee policies, and firefighter training exercises.

The District operates two fire stations. Station No. 87 was built in 1975 with the help of a federal grant. It is located on Ivie Road and houses a fire truck bay, a communications dispatch center, sleeping quarters, and the District's administrative office, and serves the western part of the District. This station is staffed daily from 8 a.m. to 4:30 p.m. by two full-time firefighters, the fire chief, and an administrative assistant. Station No. 88, located on Clay Station Road, was partially built by volunteer firefighters. At the present time, it is an unmanned station except during wildland fire season and serves the eastern part of the District. The firefighting staff responds to an average 400 calls per year.

In addition to these two stations, the District has mutual-aid agreements for emergency services with neighboring Sacra-

mento County fire districts, the State of California Department of Forestry and Fire Protection, Sacramento Fire/EMS Emergency Communications Center for dispatch services, Sacramento Municipal Utilities District for emergency responses to decommissioned Rancho Seco, and Cosumnes Community Services District for ambulance services.

The District also owns and manages two buildings next to Station No. 87, the Herald Community Barn and Hendrickson Hall. The District uses these buildings for training classes and also rents them to local civic groups for meetings and to the general public for social gatherings such as weddings and *quinceañeras*.

For many years, the District has received support from the Herald Volunteer Firefighters Association (HVFFA), which has played an integral role in the District. This volunteer civic organization raises funds to support the District's firefighters, and over the years has sponsored numerous events to raise funds to purchase needed fire and medical equipment for the District.

### **Herald Fire Protection District Fiscal Management**

#### *The District's Buildings Account Controversy*

In October 2012, when the Board of Directors formally proposed increasing rental fees for the two District-owned buildings, a handful of citizens and civic organizations protested the increase and demanded justification and an accounting of the building funds. Some citizens filed Public Records Act requests with the District seeking to open the books on the building fund accounts. After the District continued to ignore citizens' repeated requests, a formal complaint was filed with the 2013-14 Sacramento County Grand Jury.

In its investigation into the citizens' complaint, the grand jury uncovered, among other things, an unauthorized bank account the District shared with the HVFFA at the Farmers and Merchants Bank. The grand jury further discovered that the District had for many years improperly used that account to conduct official District business related to the two buildings including rents, cash receipts and building-related services. This practice shielded the existence of these funds and transactions from public knowledge, review and accountability. The board did not disclose this "unauthorized off balance sheet" account to the Department of Finance because it believed, erroneously, that the building rental income would reduce property tax revenues disbursed to the District by the DOF.

This account was a comingled account, used jointly by the Dis-

trict and the HVFFA. The District deposited revenues from building rentals, and the HVFFA deposited funds from its fund-raising activities. The District administrative assistant controlled the checkbook and wrote most of the checks while making the majority of deposits into the account. All the while the HVFFA retained sole signature authority. In contracting to use this comingled account, the District had agreed to pay the HVFFA a fee equal to 10 percent of the deposited funds. In July 2012, however, the HVFFA withdrew their funds and opened a separate account at another bank. The District continued to maintain the account until November 2013 when the board voted to close it and deposit the funds with the Sacramento County treasurer.

From the time the District shared the HVFFA account until it was closed, the District neither disclosed its existence to the Sacramento County DOF nor deposited the funds with the county treasurer, as required by state law. Moreover, the District maintained a revolving/petty cash fund with this account without disclosing its existence to the DOF, as required by state law. Along with this nondisclosure, the petty cash fund did not have the checks and balances with a third party, such as the DOF, reviewing and verifying receipts prior to being replenished. Finally, the District omitted the account from financial statements provided to auditors hired by the District to conduct biennial financial audits, as required by state law.

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***The District shared a bank account with the Firefighters' Association and maintained a revolving/petty cash fund, neither of which was disclosed to the Sacramento County Department of Finance, as required by state law.***

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#### *Audits of the District's Accounts and Records*

State law provides that the county auditor shall make an annual audit of a special district's accounts and records, but further provides that a special district may, by unanimous request of its governing board and unanimous approval of the Board of Supervisors, replace the annual audit with a biennial audit covering a two-year period. Between 2008 and 2011, in lieu of the county auditor's annual audits, the District contracted with a private accounting firm to make biennial audits of the District's accounts and records. The biennial audits of the District's financial statements for 2008 through 2011 were not conducted in accordance with generally accepted auditing standards. Important steps not performed include, among others:

- A proper study and evaluation of the existing internal control environment;
- A determination that expenditures were properly docu-

mented, authorized and incurred, and represent proper charges to the District; and

- A verification of all assets and liabilities of the District.

Review of these biennial audits and the District's accounts and records also revealed a lack of accounting controls and several areas of weakness in the control environment over financial accounting. The most significant weaknesses include the following:

- Receiving unrecorded District cash from citizens of Herald for reservation deposits and associated rental of facilities owned by the District.
- Mixing unrecorded District cash with cash belonging to the HVFFA in the same bank account legally owned and controlled by the HVFFA.
- Receiving unreported cash from citizens of Herald for donations to, or fundraisers for, the HVFFA without accounting for the cash receipts through the District accounting records, systems or reports.
- Lack of asset reconciliations between financial reports and the supporting detail.
- Lack of sufficient accounting detail is maintained to reconcile credit card charges.
- No segregation of duties related to cash receipts, recording and depositing cash, and reconciling the bank accounts. The same person performs all of these functions with no oversight or independent review by District management.
- Payroll input and paycheck distribution are performed by the same person without oversight by District management.
- The administrative assistant physically controlled the HVFFA checkbook. Checks had been written payable to "cash," then personally endorsed and cashed at a bank.
- The administrative assistant has a District credit card, receives the billing statement and submits the statement to the DOF for payment. Oversight includes only a copy of the statement, without supporting evidence, presented to the Board of Directors for a cursory review.

Review of the District's fiscal control environment also revealed other weaknesses in the District's practices, including the following:

- Until December 2013, the District paid a salaried employee unreported cash compensation for non-firefighter services that the employee provided the District. The District intentionally excluded these payments from the employee's earnings so as to understate the income reported on his Form W-2, Wage and Tax Statement.
- The District engaged in material asset purchase transactions

by trading or bartering without any documentation to record the receipt or disposition of assets. In one case, a used school bus was donated to the District and later bartered to a local contractor who fabricated and installed storage shelving on a District vehicle, all without supporting documentation.

- The fire chief authorized District employees and volunteers to fill their personal vehicles with gas from the pumps at the fire station as a form of expense reimbursement. This was done without documentation or proper classification in the District's accounting records.
- The District purchases tools and equipment used in the normal course of conducting its business. The District does not maintain a current listing of District-owned tools and equipment and cannot account for missing, lost or stolen assets.

In September 2013, in response to citizen demand, the District retained a private accounting firm to audit the District's building account. However, in November 2013, the accounting firm terminated its services and declined to perform the audit because the District had failed to provide supporting documentation for the account. The board did not publicly disclose the fact that the accounting firm had declined to perform the audit until April 2014.

### **Herald Fire Protection Personnel Policies and Practices**

State law, codified in the Firefighters Procedural Bill of Rights Act, provides any full-time firefighter and fire chief employed by a public agency certain procedural protections when he or she is subjected to punitive action. Among these procedural protections is an opportunity for an administrative appeal of a disciplinary decision. The District, a public agency, employs several full-time firefighters as well as a fire chief, all of whom are entitled to these procedural protections.

The District has a policy, adopted by the fire chief but not by the board, that sets forth the procedural requirements for punitive action against a firefighter. The policy provides the fire chief with the authority to impose punitive action. Confusingly, the policy melds two separate policies: one that addresses punitive actions taken by the District against a firefighter, and the other that addresses a grievance initiated by the firefighter against the District. The one provides that a firefighter may appeal a punitive action to the fire chief or the District board; the other provides that the firefighter may request review only from the fire chief, and does not expressly provide the opportunity for an administrative appeal. Compounding the confusion and inconsistency, the fire chief has asserted that under the District policy, he has the authority to decide whether or not a firefighter may

appeal, either to him or to the board. In at least one instance, the fire chief denied a terminated firefighter the right to appeal his decision to terminate the firefighter.

District policy for punitive actions not only fails to provide the procedural protections required by the Firefighters Procedural Bill of Rights Act, but District staff responsible for initiating punitive actions are unfamiliar with the state law's requirements. The District administrative assistant, who assists the fire chief in preparing and initiating punitive actions, acknowledged that she is unaware of the Act or its requirements. And the fire chief's interpretation and application of the punitive action policy that he adopted shows that he has limited understanding of the Act's requirements as well.

The fire chief's interpretation and application of the District's punitive action policy raises concerns not only about the fire chief's imposition of punitive action against subordinate firefighters, but also his application of the policy to himself. For example, District policy provides that no individual while on Herald Fire Protection District premises will share any website or material that may be offensive. Over several months, in at least three instances, the fire chief viewed photos of nude and scantily-clad women on his work computer, which were then emailed from his district email account to another firefighter employee, who claimed to be offended. Although the fire chief acknowledged that he had viewed these photos on his work computer and that only he had access to his work computer and email account, he denied sending the photos to his employee. It is readily apparent that the fire chief may have violated the District's policy prohibiting misuse of the work computer. He has interpreted the District disciplinary policy that he is obliged to enforce in a manner that insulates his own conduct and protects him from punitive action.

### **The Board's Development of Governance Policies**

Since its establishment in 1946, the board has adopted numerous District policies. Under its present governance policy, the board is responsible for adopting policies that pertain to the District, but the fire chief is responsible for adopting policies that pertain to firefighting staff and operations. The board does not approve policies adopted by the fire chief.

Many of these policies have not been reviewed and updated in more than 10 years. For example, the board's Master Plan was last updated in 2004. Also, board policy currently provides that the board may remove a director from the board; and the board, in fact, attempted to remove a director from the board in 2013. This policy remains on the books, notwithstanding that the

current board agrees that it lacks authority to remove a director and that the policy is invalid. And, as noted, the District's punitive action policy, adopted by the fire chief, is not compliant with state law.

LAFCo is a countywide commission that is responsible for the consolidation or reorganization of special districts, including fire protection districts. State law requires LAFCo to conduct Municipal Service Reviews of special districts every five years. As part of an MSR, LAFCo evaluates the special district's Master Plan. The Sacramento LAFCo has not conducted an MSR of the District since 2005.

## **FINDINGS AND RECOMMENDATIONS**

**Finding 1.** The District lacks adequate internal accounting controls sufficient to ensure against misappropriation.

**Recommendation 1.** The District should establish adequate internal accounting controls, as identified in this report, to ensure verification of the District's finances against waste or misappropriation of District assets.

**Finding 2.** Since 2008, the District's finances have not been audited in accordance with generally accepted auditing standards, as required by law.

**Recommendation 2.** The county auditor should conduct an immediate audit of the District's financial statements and conduct all future annual audits of the District's finances, as required by law.

**Finding 3.** The District has not adopted or implemented personnel policies compliant with the Firefighters Procedural Bill of Rights Act with respect to punitive actions against full-time firefighter employees, and District staff lacks knowledge of the Act's requirements.

**Recommendation 3.** The District should adopt policies and practices compliant with the Firefighters Procedural Bill of Rights Act and provide training to all staff regarding the Act's requirements.

**Finding 4.** The District has failed to timely review and update as appropriate District governance policies.

**Recommendation 4.** The District should comprehensively review and update as appropriate all District governance policies, including the District's Master Plan.

**Recommendation 5.** The Sacramento Local Agency Formation Commission should conduct a Municipal Services Review of the District and evaluate the viability of consolidating the District's fire and emergency services with another fire district.

## REQUEST FOR RESPONSES

Penal Code sections §933 and §933.05 require that specific responses to the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento County Superior Court by Oct. 1, 2014, from:

- The Herald Fire Protection District Board of Directors, response to **Findings 1, 2, 3 and 4** and their related **Recommendations**.
- The Herald Fire Protection District fire chief, response to **Findings 1 and 3** and their related **Recommendations**.
- Sacramento County Department of Finance, response to **Finding 2** and its related **Recommendation**.
- Sacramento Local Agency Formation Commission, response to **Finding 4** and its related **Recommendations**.

Mail or hand-deliver a hard copy of the response to:

Robert C. Hight, Presiding Judge  
Sacramento County Superior Court  
720 9th Street, Dept. 47  
Sacramento, CA 95814

In addition, email the response to:

Becky Castaneda, Grand Jury Coordinator, at  
castanb@saccourt.com.