

Sacramento County Grand Jury Status Review: Del Paso Manor Water District

SUMMARY

The Sacramento County Grand Jury (SCGJ) issued an investigative report in November 2021 exposing the Del Paso Manor Water District's (DPMWD) troubled operational, safety, and management practices. "Del Paso Manor Water District Flooded with Public Safety Dangers," was initiated in response to a citizen complaint accusing the District's Board of Directors of flagrant misconduct.

Compelling evidence led the jurors to find that, "...the DPMWD's Board of Directors has been reckless and irresponsible in its administration of the District's responsibilities to residents and ratepayers." The SCGJ called into question the District's lack of administrative transparency and its delinquency in examining water quality and aging infrastructure demands, and alerting ratepayers to the fact that critically needed improvements could cost approximately \$18,500 per household.

The SCGJ made eight recommendations in its November 5, 2021, investigative report. This included urging the DPMWD to fulfill its duty to publicly disclose the full extent of the District's immediate and longer-term water quality, delivery, and fire flow infrastructure improvement needs, and importantly, the resulting cost impact on water district ratepayers.

In its status review, the SCGJ has examined both the required and invited responses to its investigation. The District's Board of Directors, in its February 4, 2022 formal response, has agreed with each of the Grand Jury's eight recommendations, stating publicly, "...DPMWD will once again ensure that customers are provided safe drinking water and are advised of the costs of maintaining and improving the systems that distribute it."

The Grand Jury commends the DPMWD's actions to comply with Brown Act open meeting requirements. Additionally, the SCGJ supports the District's formal agreement to perform a 2022 Municipal Service Review (MSR) in coordination with the Sacramento Local Agency Formation Commission (LAFCo). The SCGJ acknowledges that the water district has begun and will continue work to assess a variety of fixes through a newly established registered professional engineering contract.

However, these projects seem to be short-ranged with accomplishments based on current or near-term limited funding availability. The District has committed to, "... initiate a Proposition 218¹ hearing and inform the ratepayers of the costs of capital improvements; assuming the rates are approved and adopted, it will implement the balance of the recommendations set forth in its Water Master Plan and related documents." The SCGJ cautions that no formal timeline for completion of tasks has been publicly provided and greater transparency is needed.

¹ For Proposition 218 Guidelines, see the following link: [csda_guide_proposition_218.pdf \(ca.gov\)](https://www.csd.gov/~/media/CSDA/Proposition%20218%20Guidelines.pdf)

The SCGJ remains concerned that these initial steps do not fully address the water district's complex and costly replacement of aging infrastructure and disclose the many long-term obligations facing the District. This fractured approach falls short of addressing the Grand Jury's principal recommendation. The SCGJ is resolute in stating again that it is imperative that ratepayers be provided with a full and comprehensive disclosure of every major infrastructure improvement project confronting the District. As noted in November 2021, these challenges are very serious, decades long, and bridge the tenure of multiple elected board members and water district staff. The SCGJ points specifically to the financial burden that will ultimately rest on water district ratepayers, a burden that will remain with those same ratepayers until the debt is finally retired. Because these residents now face tens of millions of dollars in district-generated costs, it is absolutely necessary to pursue infrastructure investment, transparently outline costs, and determine revenue needs. Only through a fully vetted process will ratepayers be given a complete picture of the required actions that must be taken to accomplish these very significant infrastructure improvements and ensure a safe water supply.

The DPMWD must communicate its actions to its ratepayers in a meaningful and visible manner. While the Board of Directors is now posting to its public website Brown Act-compliant meeting agendas, board packets, and meeting minutes, the SCGJ is unaware of any strategic communications planning by the water district. The Board of Directors has yet to undertake constituency outreach efforts through such activities as electronic mail or social media updates, printed consumer news, virtual or in-person town hall meetings, or other proactive means.

Finally, the SCGJ is troubled that the cost of repairs needed to assure a safe and adequate water supply might be well beyond the financial means of DPMWD ratepayers. External funding avenues should be explored. The SCGJ recommends that the District's Board of Directors contact state and federal elected officials, as well as state and federal agencies, to open a dialogue about possible monetary resources beyond nominal rate increases or restrictive grant opportunities. This might include funding through such means as the Infrastructure and Jobs Act of 2021 since California is slated to receive \$45 billion in total, with \$3.5 billion targeted to clean drinking water.

METHODOLOGY

For this status update, the SCGJ reviewed the following:

- Responses to the November 5, 2021 SCGJ Investigative Report:
 - DPMWD Board of Directors
 - DPMWD Board of Directors President
 - Sacramento Local Agency Formation Commission
 - Sacramento County District Attorney Anne Marie Schubert
 - Sacramento County Board of Supervisors
 - Sacramento Metropolitan Fire District

- Invited responses to the November 5, 2021 SCGJ Investigative Report:
 - State Water Resources Control Board

- Additional documents and materials:
 - Resolution approving a Consultant Services Agreement with Forsgren Associates, Inc for the position of District Engineer and authorizing the President of the Board of Directors to execute the agreement on behalf of the DPMWD. (February 17, 2022 Board Meeting Packet)
 - Forsgren Associates, Inc. Statement of Qualifications, including Scope of Work, for District Engineer (December 22, 2021 Board Meeting Packet)
 - Request for Proposals for District Engineer (December 7, 2021 Board Meeting Packet)
 - DPMWD Board of Directors Meeting Agendas, Board Packets, and available Minutes and Recordings (December 10, 2021, December 20, 2021, January 4, 2022, January 27, 2022, February 1, 2022, February 17, 2022)

DISCUSSION

DPMWD Response and Actions

Although the DPMWD was legally required to respond to the Sacramento County Grand Jury’s report within 60 days, a written request for an extension of the statutory timeframe was made. This extension was granted to February 4, 2022.

The DPWMD’s Board of Directors formally agreed with each of the eight recommendations made by the Grand Jury, stating that the Board was, “...committed to following through on the recommendations from the Grand Jury.” The Board completed the four procedural recommendations, but the four substantive recommendations remain largely unaddressed and lack any timelines for ensuring the integrity of its water delivery responsibilities. The water district’s four immediate actions were:

1. Hiring new outside counsel to review all meeting agendas and minutes (SCGJ Report Recommendation #6)
2. Conducting Brown Act training for all personnel (SCGJ Report Recommendation #7)
3. Posting all Board of Directors meeting materials to its website in the legally required timeframe (SCGJ Report Recommendation #8)
4. Training the Board of Directors and staff on public notification requirements and procedures. (SCGJ Report Recommendation #4)

The SCGJ placed emphasis on the decades-old status of the DPMWD’s 2009 Master Plan. The water district’s lack of action on that plan caused the SCGJ to doubt the plan’s effectiveness in serving as a current operational blueprint. Further, the SCGJ found in its investigative report evidence that the District’s action to update the Master Plan by contracting with HydroScience Engineering was sidetracked by the former DPMWD Board of Directors itself. The resulting update was issued as a Technical Memorandum, rather than a Master Plan Update. In fact, the SCGJ discovered that the former DPMWD Board of Directors downgraded the report to the Technical Memorandum, and further instructed the engineering consultant to remove certain accurate, but potentially adverse language from its work product. Additionally, the consultant was directed to remove references to fluoridation, water metering, and aging pipes. The analysis

of these relevant issues would have been of significant value in the ratepayer's consideration of costs and benefits for remediation of the water delivery deficiencies.

Through this status review, the SCGJ has learned that the DPMWD Board of Directors has hired a new professional district engineer consultant, Forsgren Associates, Inc., to assist it in both its response to the Grand Jury's recommendations, and its review of the Technical Memorandum developed by its previously contracted firm, HydroScience Engineering. Forsgren Associates, Inc. also has the responsibility to conduct the assessment necessary to initiate the Proposition 218 process. The Board of Directors has acknowledged in its public board meetings that information previously removed from the Technical Memorandum by former board members will now be included for study and evaluation.

There remains concern that the new engineering contract scope of work approved by the DPMWD Board of Directors sidesteps the Grand Jury's major findings and recommendations, which state that the water district should prioritize the full disclosure of the long-term water quality, delivery, and fire flow needs of the district, as well as the resulting cost to district ratepayers. This concern is amplified in the approved proposal from the new consultant, Forsgren Associates, Inc., which states:

“We envision that *low-priority projects* (emphasis added) may represent some variation on a resumption of the infrastructure replacement program originally presented in the 2009 Master Plan. These projects would likely be funded through debt service, though grant funding may be possible. Low priority projects may include the following: Well Replacements; Pipeline Replacements; Emergency Interties; Conjunctive Use; Surface Water Rights Utilization; Metering.”

Notwithstanding the DPMWD's efforts to resolve issues within its current budget, collaboration with LAFCo to complete a new MSR and the intention to undertake a Proposition 218 rate study, there is little evidence of effort by the DPMWD Board to examine and fully disclose all prolonged repair, replacement, and financial shortfalls. Further, a Proposition 218 rate process does not guarantee sufficient funding. Any proposed Proposition 218 rate increase or tax assessment requires majority approval by the voting ratepayers.

The SCGJ is not aware that a DPMWD Action Plan exists for completion of the MSR, a rate study, communications outreach, or the solicitation of external funding.

Other Agency Responses

In addition to the DPMWD, the SCGJ required responses to its initial report from several entities. In this status assessment, the SCGJ finds that only one agency, LAFCo, offered meaningful support to the District. LAFCo submitted an Action Plan detailing each of the steps and associated timeframes necessary to cooperate and support the MSR process. LAFCo publicly shared its MSR Action Plan, and its representatives met with water district officials to move forward with this partnership.

The Sacramento Metropolitan Fire District did state that it had contacted the water district to discuss plans to address insufficient water capacity to fight fires. It noted that the activation of interties with the neighboring Sacramento Suburban Water District and/or use of standby wells, in the event of a major fire, would take 60 to 90 minutes to complete.

The State Water Resources Board, in its response, did not address its failure to complete a follow-up to the Notice of Violation it issued in August 2019 against the DPMWD, admitting that the water district continued to pump millions of gallons of water to its customers in the two months which followed. No other concerns were expressed by the agency about DPMWD's continued provision of water to the public that did not meet potable water safety standards.

Many of the respondents stated that it was not within their legal obligation to engage. Tellingly, respondent agencies also did not cite any legal restrictions that would forbid their cooperation in addressing safety concerns. The Sacramento County Board of Supervisors, in particular, emphasized the aspect that the DPMWD is a fully independent Special District. The Sacramento County District Attorney identified their own discretion not to prosecute the DPMWD for an apparent violation that lacked sufficient evidence for a successful result.

Finally, the SCGJ notes that while the Sacramento County Board of Supervisors, State Water Resources Board and others are under no formal legal requirements to assist the District's mission of providing a safe and adequate water supply, each and every one should represent the vital interests of the DPMWD residents.

FINDINGS

- F1.** The DPMWD Board of Directors has responded to and agreed with each of the eight recommendations contained within the SCGJ report titled, "Del Paso Manor Water District Flooded with Public Safety Dangers." (Issued November 5, 2021)
- F2.** The DPMWD Board of Directors is meeting the requirements of the Ralph M. Brown Act and Public Records Act with regard to providing public meeting agendas, minutes, and board packets in a timely manner. They have also conducted Brown Act training, as recommended by the Grand Jury.
- F3.** The Sacramento Local Agency Formation Commission has agreed to conduct a new Municipal Service Review in coordination with the DPMWD, providing a detailed timeline for completion in 2022.
- F4.** The DPMWD Board of Directors has agreed to initiate a Proposition 218 process to address a rate increase for needed infrastructure improvements.
- F5.** Although the DPMWD Board of Directors has publicly agreed with the recommendations of the Grand Jury's November 5, 2021 report, the District has only begun to publicly address the methodology it will undertake to determine the full extent of the costs to repair infrastructure and make necessary safety improvements.

RECOMMENDATIONS

- R1.** The DPMWD should complete in earnest a full analysis of the 2009 Water District Master Plan, as was the original intent of the HydroScience Engineering contract to complete a Master Plan Update. This should incorporate all short, mid, and long-range repair and replacement needs with well-defined costs.
- R2.** The DPMWD should continue to work with the Sacramento Local Agency Formation Commission to complete a new Municipal Service Review in 2022, in alliance with the timeline developed and provided to the Grand Jury.
- R3.** The DPMWD should develop and publicize its own Action Plans with timeframes for the Municipal Service Review and Proposition 218 process to secure voter approval of necessary rate increases.
- R4.** The DPMWD should develop a strategic communications planning effort to regularly interact with its ratepayers through a variety of direct outreach efforts to ensure constituencies are informed of actions and associated costs to ensure a safe water supply.
- R5.** In the absence of a meaningful response by local leaders and agencies, the DPMWD should look for opportunities at the state and federal levels for funding resources which might help to alleviate the financial hardships confronting its ratepayers.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the SCGJ requests responses as follows:

From the following elected county officials within 60 days:

- Ryan Saunders, President Board of Directors
Del Paso Manor Water District
1817 Maryal Drive, Suite 300
Sacramento, CA 95864
- Jose Henriquez, Executive Officer
Sacramento Local Agency Formation Commission
1112 I Street, Suite 100
Sacramento, CA 95814
- Rich Desmond, District 3
Sacramento County Board of Supervisors
LAFCo Executive Board of Directors
700 H Street
Sacramento, CA 95814

Mail or deliver a hard copy response to:

- Hon. Michael Bowman Presiding Judge
Sacramento County Superior Court
720 9th St.
Sacramento, CA 95814

Please email a copy of this response to:

- Ginger Durham
Jury Commissioner
DurhamG@saccourt.ca.gov
- Erendira Tapia-Bouthillier
Grand Jury
TapiaE@saccourt.ca.gov

INVITED RESPONSES

- Ken Cooley, District 8
California State Assembly Member
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0008
- Richard Pan, District 6
California State Senate
State Capitol, Room 4070
Sacramento, CA 95814
- Ami Bera, District 7
U.S. House of Representatives
Sacramento County Office
8950 Cal Center Drive, Building 3, Suite 100
Sacramento, CA 95826
- Dianne Feinstein
United States Senate
San Francisco Office
One Post Street, Suite 2450
San Francisco, CA 94104

- Alex Padilla
United States Senate
Sacramento Office
501 I Street, Suite 7-800
Sacramento, CA 95814

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Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.