

Clerk of the Board
Florence H. Evans



Board of Supervisors
Phil Serna, District 1
Patrick Kennedy, District 2
Rich Desmond, District 3
Sue Frost, District 4
Don Nottoli, District 5

County of Sacramento

January 31, 2022

VIA US MAIL

The Honorable Russell L. Hom, Presiding Judge
Sacramento County Superior Court
720 Ninth Street
Sacramento, CA 95814

Re: Sacramento County Investigative Grand Jury Report Titled, "Del Paso Manor Water District Flooded With Public Safety Dangers"

Dear Judge Hom:

Enclosed is a copy of the Sacramento County response to the recommendations contained in the November 5, 2021 Investigative Grand Jury Report titled, "Del Paso Manor Water District Flooded With Public Safety Dangers." The Board of Supervisors, at their meeting on January 11, 2022, approved this report.

If you have any questions, please contact me at (916) 874-8150.

Respectfully,

A handwritten signature in blue ink that reads "Florence Evans".

Florence Evans, Clerk
Board of Supervisors

FE/as

cc: Ginger Derham, Jury Commissioner, via email only
Erendira Tapia-Bouthillier, Grand Jury, via email only

Enclosures: Executed Board Material

JAN 11 2022

BY Alorence Evans
Clerk of the Board

For the Agenda of:
January 11, 2022

To: Board of Supervisors

Through: Ann Edwards, County Executive

From: Amanda Thomas, Chief Fiscal Officer, Office of Budget and Debt Management

Subject: Response to the November 5, 2021 Investigative Grand Jury Report Titled, Del Paso Manor Water District Flooded With Public Safety Dangers

District(s): Desmond

RECOMMENDED ACTION

1. Adopt this report as Sacramento County's response to the November 5, 2021 Investigative Grand Jury Report Titled, Del Paso Manor Water District Flooded with Public Safety Dangers.
2. Direct the Clerk of the Board to forward a copy of the Board letter to the Presiding Judge of the Sacramento County Superior Court no later than February 03, 2022.

BACKGROUND

The Grand Jury reviews and investigates the performance of county, city, and local governing entities. Investigations of governmental entities can be initiated by the grand jury itself or suggested by citizens. A public report usually follows an investigation with findings and recommendations that must be publicly addressed by the recipients as prescribed in Government Code Sections 933 and 933.05. Responses are then directed to the Presiding Judge of the Superior Court.

Responses to findings and recommendations must follow a specific format, outlined in Penal Code section 933.05, as provided below.

...as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.*
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*

...as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.*
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.*
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.*
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.*

The Code also indicates that responses by the Board of Supervisors are only required to address matters under the Board's purview, as explained in Government Code sections 933(c) and 933.05(c) respectively:

...the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body.

...if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

The Grand Jury issued a report dated November 5, 2021, titled "Del Paso Manor Water District Flooded with Public Safety Dangers" (Attachment 1) based on a formal citizen complaint alleging misconduct by the Del Paso Water District (District). The Grand Jury investigated the District and "uncovered significant evidence documenting serious concerns with the [District's] operational safety and management practices" including a lack of transparency and accountability related to capital improvement needs and costs and related public health and safety risks.

The Grand Jury issued a series of findings and recommendations related to its investigation of the District and requested responses from elected county

officials and governing bodies. Supervisor Frost was included in the list of elected county officials that were requested to respond within a 60-day timeline; however, County Counsel determined that Supervisor Frost as the Chair of the Board of Supervisors does not have legal authority to respond to the Grand Jury report and the report would be presented to the Board of Supervisors.

The Board of Supervisors cannot provide responses to any of the individual findings and recommendations in the report because the Board does not have jurisdiction over issues that were identified, or over the District itself; however, staff met with the District's General Manager and it appears that the District is currently working towards resolving the issues identified in the report.

Below is the Board's response to the Grand Jury Report:

Each of the findings and recommendations in the report pertain to issues specific to the District and over which the Board of Supervisors has no authority; therefore, the Board is not required to provide a response to any specific finding or recommendation. Pursuant to Penal Code section 933(c), the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body..." Penal code Section 933.05, further states that "the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority." The Board of Supervisors does not have any control or authority over matters in the District.

While the District is within the boundaries of the County, it is an independent special district, which is a separate legal entity formed to provide specified services, and governed by a board of directors elected by the voters of the District. While the Board of Supervisors can appoint members to the District Board of Directors when there is a vacancy, this does not confer any authority over the District or its Board. It is not subordinate to other government entities, including the Board of Supervisors.

FINANCIAL ANALYSIS

Departments that contributed to this report absorbed related staff costs within their respective budgets.

Attachments:

Attachment 1: Grand Jury Report titled, Del Paso Manor Water District Flooded with Public Safety Dangers, November 5, 2021

**DEL PASO MANOR WATER DISTRICT
FLOODED WITH
PUBLIC SAFETY DANGERS**

November 5, 2021



Del Paso Manor Water District Well #2, Constructed in 1948

Source: System Improvement Prioritization Report: Jeff Nelson, Engineering Consultant, July 28, 2020

DEL PASO MANOR WATER DISTRICT FLOODED WITH PUBLIC SAFETY DANGERS



Del Paso Manor Water District Well #9, Constructed in 2010

Source: System Improvement Prioritization Report: Jeff Nelson, Engineering Consultant, July 28, 2020

SUMMARY

A formal complaint against the Del Paso Manor Water District (DPMWD) was filed with the Sacramento County Grand Jury in January 2021 accusing the District's Board of Directors of flagrant misconduct. During its comprehensive and detailed investigation to determine the validity of the allegations, the Grand Jury uncovered significant evidence documenting serious concerns with the DPMWD's operational safety and management practices.

The Sacramento County Grand Jury finds 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 District's elected officials have repeatedly failed to hold themselves accountable and have abdicated their primary mission to "provide safe drinking water in accordance with California and federal regulations and to maintain a reliable water supply for water consumption and fire protection." The Board of Directors has concealed their actions from the public by failing to abide by the Ralph M. Brown Act and conduct their business with public transparency. The documents examined support the conclusion that a lack of transparency has been the pattern of District administration for more than a decade. Continual Brown Act violations have hindered the public's ability to be kept apprised of pressing issues and participate in the actions taken or

deferred by the DPMWD's Board of Directors. This has resulted in the Board's suppression of vital public safety information, in violation of its civic duty and responsibility to advise residents of potential safety risks and substantial long-term costs.

Despite receiving repeated capital improvement and operations recommendations from state and local agencies, and its own consultants, the Board has failed to address these needs and inform ratepayers of the projected costs. These proposed projects range from necessary construction of new water wells to replacement of aging pipelines to merging with the neighboring Sacramento Suburban Water District (SSWD). Despite being served a "Cure and Correct Demand Letter" by the Sacramento County District Attorney on November 3, 2020 requiring that specific actions be taken, and a Notice of Violation by the California State Water Resources Control Board Division of Drinking Water (DDW) dated August 23, 2019, the Water District has ignored the direction of the County District Attorney and the legal requirements to properly inform the public about its actions and operations.

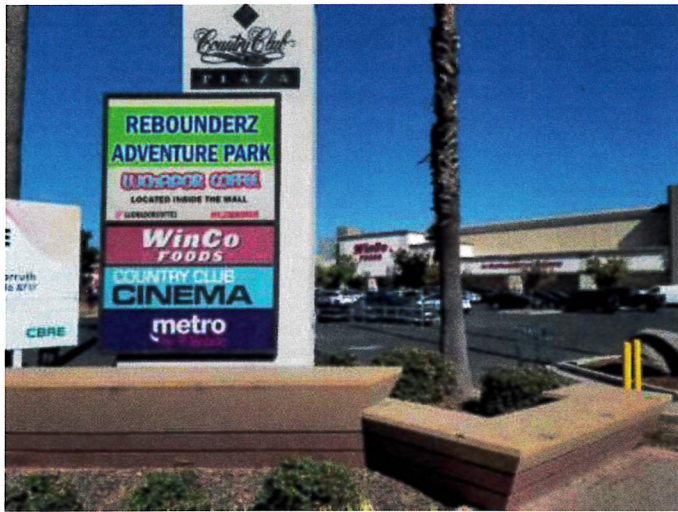
The Water District has not disclosed that the delay in completion of recommended capital improvements impacts the District's ability to function safely, putting residents in potential danger, and ratepayers at risk of significantly higher costs for water service. Examination of documents shows that recommended expenditures cannot be funded with current revenue from District ratepayers and would result in budget shortfalls in the millions of dollars. The July 2021 General Manager's Final Recommendations Report found that a failure to complete an estimated \$35 million in proposed repairs and upgrades could have devastating results. Consumers may be unaware that their drinking water is being supplied almost entirely by just two of the District's eight wells and is delivered through a pipeline structure which is more than 60 years-old. The DPMWD's Board of Directors itself publicly acknowledged in 2009 that it had "aging infrastructure liability" concerns. Yet, more than a decade later, limited action has been taken.

These systemic failures appear to have most recently culminated in the resignation of four General Managers in the past two years. Day-to-day operations and maintenance are carried out by just two operations and maintenance staff. More than half of the elected Board of Directors resigned without notice in September 2021, renegeing on their commitments to responsibly and transparently administer the current and projected public safety and water delivery needs of the District.

The Grand Jury conducted an exhaustive review of thousands of pages of public documents including: DPMWD Consumer Confidence Reports; State of California issued Compliance Inspection Reports; a California State DDW issued Notice of Violation; Regional Water Utility Collaboration Studies; a Sacramento Local Agency Formation Commission (LAFCO) Municipal Service Review (MSR); water quality and contamination reports; the 2009 DPMWD Water District Master Plan; a 2021 Draft Amendment to the DPMWD 2009 Water Master Plan; Service Agreements with Sacramento Suburban Water District; DPMWD Board of Directors public meeting agendas, packets, meeting recordings, and minutes; the DPMWD Board of Directors Policy Manual; and DPMWD financial documents. Additionally, numerous interviews were conducted with officials representing a variety of agencies and organizations in Sacramento County.

The Sacramento Grand Jury recommends that the Del Paso Manor Water District meet its public transparency obligations by publishing and distributing district-wide a public report, and conducting a Special Board Meeting disclosing the extent of the District's immediate and longer-term water quality, delivery, and fire flow infrastructure improvement needs and the resulting cost impact to District ratepayers. The Grand Jury further recommends that in this report and meeting, the DPMWD fully and publicly address the findings of the May 2021 HydroScience Strategic Water Solutions Technical Memorandum, originally authorized by the DPMWD Board as a Proposed Amendment to its 2009 Water District Master Plan, as well as the July 2021 General Manager's Final Recommendation Report. The Grand Jury recommends that a new MSR be performed by LAFCO to review the Water District's governance structures and efficiencies. The last MSR was completed in 2011. The Grand Jury also recommends that the DPMWD prepare its 2021 Consumer Confidence Report and all subsequent annual reports to fully comply with the requirements issued by the State of California. The Grand Jury recommends that all Board of Directors members receive extensive Brown Act training annually. Finally, the DPMWD should have its legal counsel present at all its public meetings with legal counsel review of all meeting agendas, board packets and minutes to assure Brown Act compliance.

BACKGROUND



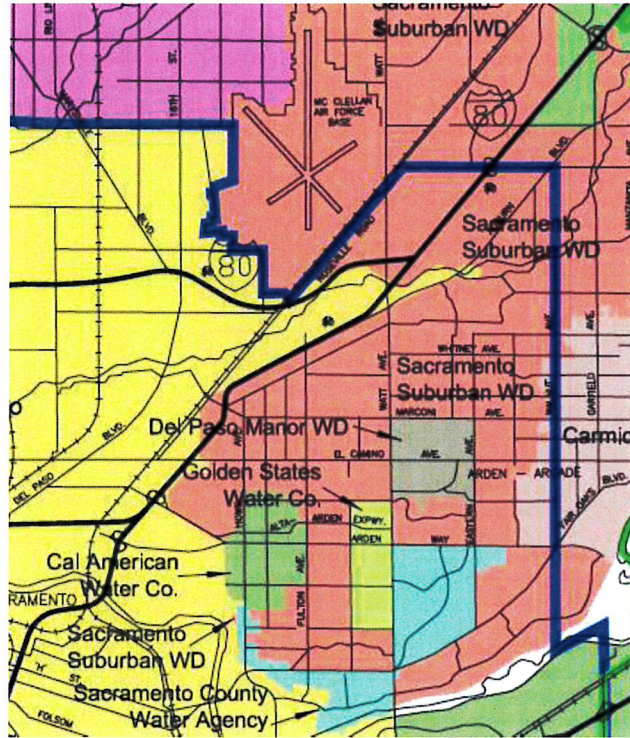
Country Club Plaza



Emigh Hardware

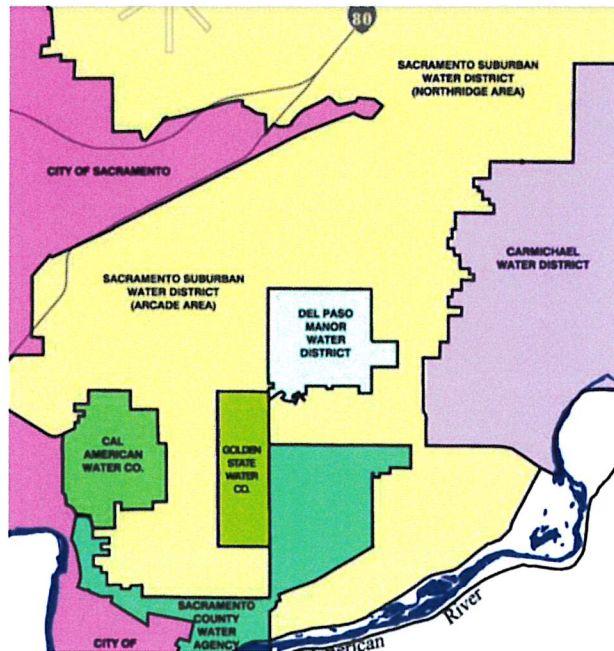
The Del Paso Manor neighborhood was founded in the late 1940s. A rural area at the time, developers began drilling water wells and established the Del Paso Water Company to encourage home development. Area residents formed a Special District in 1955 formalizing the DPMWD. The approximately one square-mile District is bordered by Watt, Marconi, Maryal, and Eastern Avenues (See Figures 1 and 2). One of the busiest intersections in Sacramento County falls within the District. Near the corner of Watt and El Camino Avenues sits the iconic Emigh Hardware and the equally recognizable Sam's Hof Brau and Country Club Bowling Lanes. Across the street, shoppers purchase groceries at WinCo, and movie goers settle into their seats at the Country Club Cinema. Thousands of cars pass through the area daily to access the Interstate 80 corridor.

Figure 1: Arden Arcade Water Purveyors Map



Source: Sacramento County Water Agency

Figure 2: Del Paso Manor Water District Boundary Map



Source: System Improvement Prioritization Report: Jeff Nelson, Engineering Consultant, July 28, 2020

District Service Area and Facilities

The Del Paso Manor Water District uses 100 percent groundwater to provide potable water for residential and commercial consumption and fire suppression. The District serves approximately 1,900 ratepayers; the largest commercial customer is the AT&T Phone Service Center which accesses water largely for its cooling tower. The area is considered “built out,” meaning that it does not have additional land available for future development. While the majority (94 percent) of its customers are residential ratepayers, water use is fairly evenly allocated between residential and commercial clients. The District’s water system is comprised of buried water mains, eight groundwater supply wells (5 Active, 1 Active to Standby and 2 Standby), two interties with the Sacramento Suburban Water District, and individual service connections. However, currently just two wells provide 95 percent of the area’s water supply. (See Figure 3.)

Figure 3: Del Paso Manor Water District Well Status Summary

Well #	Year Built	Capacity (Gallons per Minute)	Production (Gallons)	Status	Actions Required	Projected Repair Cost	Comments
2	1948	600	901,000 (0.2398%)	Active	Significant improvements required: Perform well assessment and upgrade well (possible re-drill)	\$99-199K	Used as backup
3	1949	675		Standby	TCP (<i>Trichloropropane</i>) contamination, rehab. unlikely: Eventually abandon	\$1.6-2.2M	Offline, not used since before 2015
4	1951	550	281,000 (0.0745%)	Active	Significant improvements required: Perform well assessment and upgrade well (possible re-drill)	\$95-180K	Used as backup

5	1955	525		Active	Imperfection in casing being evaluated: Eventually abandon	\$80-160K	Not used since 2017; indirect line with two SSWD wells testing positive for PCE (<i>tetrachloroethylene</i>) and in-line with Well 8
6B	2013	1100	226,159,000 (60%)	Active	Minor Improvements required: Conduct required maintenance	\$10-15K	Primary Well; Replaced Well 6
7	1956	675	172,600 (0.0457%)	Active to Standby	Significant improvement required: Eventually abandon	\$121-191K	Currently not operated; only used in emergencies due to confined spaces and limited access
8	1977	1100	16,329,000 (3.87%)	Standby	PCE contamination, rehab unlikely: Eventually abandon	\$1.5-2.0M	Offline, not used since Oct 2019
9	2010	1522	133,018,000 (35.9%)	Active	Minor improvements required: Conduct required maintenance	\$10-15K	Primary Well; Replaced Well 1
TOTAL		6725	376,860,600			\$3.515-4.96 Million Recommended repairs: \$214-409K	

Sources:

1. *System Improvement Prioritization Report: Jeff Nelson, Engineering Consultant, July 28, 2020*
<https://www.delpasomanorwd.org/files/8ace3e4f7/Board+Packet+28JULY20.pdf>
2. *HydroScience Strategic Water Solutions Technical Memorandum, May 21, 2021*
<https://www.delpasomanorwd.org/files/ce893f556/May+25th+Special+Meeting+Board+Packet.pdf>
3. *General Manager's Final Report; Adam Coyan, July 21, 2021*
<https://www.delpasomanorwd.org/files/63e4fa0f3/Board+Packet+06JUL21.pdf>

District Governing Structure and Oversight

The DPMWD is overseen by a five-member Board of Directors elected at large by the registered voters who reside within the District. However, currently all board members have either been appointed by the Sacramento County Board of Supervisors or assumed their position without a ballot election. All Board members must live within the District's boundaries.

Water Districts are considered "Special Districts" by the State of California. The DPMWD must operate under numerous federal, state, and local laws and regulations governed by such agencies as the U.S. Environmental Protection Agency (EPA) and the California State Water Resources Control Board to ensure water quality and availability. The Board has also adopted its own Policy Manual which is available on its website: <https://www.delpasomanorwd.org/>. Financial reviews are conducted by the California State Controller's Office. Additionally, LAFCO is required by law to prepare periodic MSRs for all local governmental services, including water districts. The DPMWD is also a member of the Sacramento Water Forum, which works with organizations regarding regional water issues such as groundwater management, water supplies, and water conservation.

In July 2009, the District formally issued the Del Paso Manor Water District Master Plan. This was the first time a comprehensive document of this nature had been prepared and adopted by the District. This now 12-year-old Master Plan continues to stand as the District's operational working strategy. In its introduction, this 2009 document clearly states that, "There is an increasing infrastructure liability as the aging wells reach the end of their useful life..." While the scope of the Master Plan focuses on a 25-year horizon, it sets 5, 10, and 25-year milestones for replacing water wells, upgrading equipment, and completing other operational actions. For example, the 2009 Water Master Plan states that all ratepayers will be metered by 2025; to date, no action has been taken. However, in recognition that the 2009 Water Master Plan needs revision, the DPMWD Board of Directors did fund a 2021 Master Plan Update. This draft was completed in May 2021 but has not been approved.

A DPMWD MSR was last completed by LAFCO in 2011. At that time, the review noted that, "... continued water line replacement, water meters, and infrastructure are necessary to sustain current levels of service and meet future demands." Despite recent attempts by LAFCO to conduct a new Service Review, the DPMWD Board of Directors has not approved such an effort, and work on the new MSR has stalled.

Annually, the DPMWD is required by the EPA to provide a Consumer Confidence Report (CCR). The Water District issues this report to its ratepayers as a document titled, "Annual Water Quality Report." Likewise, the California State DDW prepares a Compliance Inspection Report annually; water districts must respond to this Inspection Report and complete recommended operational and maintenance work, if required. The DPMWD is also subject to executing water quality sampling. The results of such testing must be reported through a variety of means including: data sheets, sample siting plans, and monitoring plans. Further, when a water district proposes an action subject to the California Environmental Quality Act (CEQA), it must follow the public participation requirements laid out in the CEQA statutes. Other common state laws governing water districts include the Urban Water Management Plan Act and the Ground Water Management Act. In each instance, the DPMWD is obliged to explain its activities and involve the public.

The Brown Act: A Mandate for Transparency

In tandem with residential and commercial ratepayers and other residents, the Board has the responsibility for decisions impacting the health and safety of the community and its water supply. As a local quasi-legislative body, all members are required to conduct business under the Ralph M. Brown Act (Government Code (GC) §§ 54950-54963, hereinafter “the Brown Act”). This California law was passed in 1953 to ensure public access to meetings of California local government agencies. A host of provisions under the Brown Act specify the requirements on a gamut of public meeting elements which includes meeting notices, agendas, access to meeting materials, and other related matters. For example:

- *The Brown Act* (GC §54954.2) specifically requires that meeting agendas must provide a brief general description (approximately 20 words) of all matters to be discussed or considered in order for members of the public to determine whether to monitor or participate in the meeting. In line with the Brown Act, the DPMWD Policy Manual (Policy #3205) specifies that, “... all board agendas shall include an unambiguous description of each item on the agenda to be discussed,” and that “... description gives notice to the public of the essential nature of business to be considered.” And yet, the agenda descriptions for the posted DPMWD board meetings have typically been vague and general in nature.
- The Brown Act (GC §54957.5) further requires that written material distributed during a public meeting and prepared by the local agency must be available for public inspection at the meeting. This requirement is reiterated in the DPMWD Policy Manual (Policy #3205.5) which states that, “Agenda packages, except for closed session materials, shall be made available to the public once distributed to the Board and posted on the District website (www.delpasomanorwd.org).” This was not the case for a special meeting held on October 20, 2020, when the DPMWD Board did not share documents pertaining to the awarding of a contract using ratepayer funds in the amount of \$56,830 to update its Water Master Plan.

The requirement for public commissions, boards, councils, and other agencies to provide public transparency is considered so vital that a substantial overhaul was made to the Brown Act in 1993. Further, as a result of the COVID-19 pandemic, many California assembly bills are now before the state legislature to update such important public transparency issues as remote access to meetings, internet noticing, and remote public comment rules. It is this lack of transparency and leadership by the DPMWD Board of Directors which the Grand Jury believes places both the District’s water supply and its users in future jeopardy.

METHODOLOGY

During its investigation, the Grand Jury reviewed numerous documents including:

- Citizen complaint to the Sacramento County Grand Jury; the document that prompted investigation of the DPMWD
- Citizen complaint to the Sacramento County District Attorney in 2020 alleging Ralph M. Brown Act violations

- Correspondence, emails, and documentation received via Grand Jury request from the DPMWD, Sacramento Suburban Water District, LAFCO, State Water Resources Control Board (SWRCB) Division of Drinking Water (DDW), the Sacramento County District Attorney, and HydroScience Strategic Water Solutions
- DPMWD public website (www.delpasomanorwd.org)
- DPMWD Master Plan (2009) and Draft Amendment/Technical Memorandums (May 21, 2021 and May 26, 2021)
- DPMWD Meeting Agendas, Meeting Board Packets, and Minutes (2019, 2020, 2021)
- DPMWD Meetings' Audio Recordings (2020, 2021)
- DPMWD Board of Directors Policy Manual (rev. 2020)
- Publication: SWRCB DDW Reference Manual (2020) *Preparing Your California Drinking Water Consumer Confidence Report*
- Publication: California SWRCB Guidance to Water Systems: *Instructions for Tier 2 Chemical or Radiological MCLs Notice Template*
- Reports: DPMWD's *Consumer Confidence Report* (2018, 2019, 2020)
- Report: SWRCB DDW's *2021 Compliance Inspection of DPMWD Public Water System* (2020, 2021)
- Report: July 2021 General Manager's Final Recommendations Report
- PowerPoint Presentation: *System Improvement Prioritization Report: Jeff Nelson, Engineering Consultant*; Presented to the DPMWD Board of Directors, July 28, 2020 (<https://www.delpasomanorwd.org/files/8ace3e4f7/Board+Packet+28JULY20.pdf>)

DISCUSSION

As a result of its relatively small size, the DPMWD is designated as a "Small Water District" and therefore does not meet the existing State of California criteria as an "urban water supplier." It is this "Small Water District" designation which appears to enable the Board of Directors to defer consideration of pressing health, safety, and financial matters. As an example, the Board has consistently delayed action to raise revenue from ratepayers necessary to fund critical infrastructure needs.

Although Brown Act violations may seem minor or even insignificant to some, the Sacramento County Grand Jury believes these violations are key to the investigative report findings. It is important to keep in mind that legislative bodies, regardless of size, are making decisions that use and obligate public funds; impact the health and safety of the public; and, these bodies owe their citizens full transparency in all such matters. Regardless of, or possibly because of the fact the DPMWD serves a modest constituency, its ratepayers and residents deserve a voice equal to that of ratepayers living in a large, metropolitan water district. Brown Act violations including poorly written meeting agendas and meeting minutes do not allow for full public knowledge and participation. And more important, these violations have helped conceal the fact that the Board of Directors has abdicated its mission to ensure safe drinking water and maintain a reliable water supply. As a "Small Water District," the potential burden on ratepayers to fund millions of dollars in repairs and new equipment will fall to a very small group. Costs will not be spread out among tens of thousands of residents; it will fall to just 1,900 ratepayers. Assuming the cost is distributed evenly among the ratepayers, the projected \$35 million to replace the aging pipe

system and install new equipment and wells could cost individual ratepayers an estimated \$18,400.

During its investigative process, the Sacramento County Grand Jury reviewed the section of the DPMWD's website dedicated to its board meetings. The DPMWD has maintained a complete and thorough listing of board meetings and associated materials (agendas, minutes, agenda packets, etc.) on this website dating to 2017. In the Grand Jury's review of past agendas, it was noted that descriptions for agenda items were often generic and did not sufficiently describe the issues that the Board was taking under review for discussion and/or action. Interestingly, Brown Act training was conducted during a Special Meeting (March 4, 2021) of the DPMWD board members by its legal counsel. One of the presentation slides from this training specifically stated, "The agenda descriptions cannot be too vague" along with an example. Unfortunately, even post-training, the pattern of vague agenda descriptions has continued.

The following represents examples of DPMWD Agenda Items as publicly issued:

Agenda Item as Written/Posted	Action Taken by DPMWD Board	Suggested Minimum Agenda Re-wording (20 words)
Special Board meeting on October 20, 2020: 1. Discussion and/or action regarding master plan update	The Board reviewed and discussed three bids to update the DPMWD Master Plan. A contract award, using ratepayer dollars, was approved in the amount of \$56,830.	Discussion on the bids received for the Master Plan Update and action to award a contract not to exceed \$100,000.
Special Board Meeting on July 28, 2020: 1. Presentation and report by Jeff Nelson <ul style="list-style-type: none"> • Discussion regarding Presentation and Report 	Engineering Management Consultant Jeff Nelson presented on the topic of "Water Supply System Assessment Summary." His 90-minute presentation detailed information on the status of each of the DPMWD water wells, needed repairs, cost figures, and recommendations for system improvement prioritization.	Engineering review of the DPMWD Water Supply System Assessment Report. Discuss the recommended repairs, system improvements and associated costs.
General Board meeting on December 1, 2020 1. Discussion and/or action on CIP/PSM Budget	The Board approved the budget for FY 20/21 Capital Improvement Plan (\$595,035) which included \$28,415 for the Master Plan Update; Interest Expense (\$335,300), etc.	Review and approval of FY 2020/21 budget for the Capital Improvement Plan (CIP) in the amount not to exceed \$600,000.

The Grand Jury further reviewed board meeting agendas of neighboring water districts to compare agenda item descriptions. The following examples of agenda items, related to pending contract awards, demonstrate more complete descriptions:

Water District	Board Meeting Date	Examples of Contract-Related Agenda Items
DPMWD	10-20-2020	Discussion and/or action regarding master plan update.
Carmichael Water District	01-09-2021	Professional Services Agreement Award – Design and Engineering Services during Construction, San Juan et al. Pipeline Projects. Staff recommends the Board authorize the General Manager to execute the professional services agreement with West Yost Associates, Inc. for \$210,549 for San Juan Water Line project with a \$ 39,451 contingency for a total not-to-exceed amount of \$250,000.
Fair Oaks Water District	11-09-2020	Discussion and possible action to approve the contract with C.E. Cox Engineering Inc. to complete the Capitola Avenue Main Replacement Project with additional funding request.
Sacramento Suburban Water District	09-21-2020	New Auditing Firm Recommendation: Approve selection of Maze & Associates as the District’s independent auditor as recommended by the Finance and Audit Committee. Authorize the Finance and Audit Committee to execute a contract and engagement letter with Maze & Associates for the 2020 year-end audit.

Although the agenda descriptions above do vary to a degree, the more robust agenda item descriptions provide the public with a greater understanding of the essence of the business to be discussed by the Board and the action pending. Transparency is an essential element to promote and encourage citizen participation in government.

While conducting research for this investigation, the Grand Jury learned that the Sacramento County District Attorney’s Office had also been in contact with the DPMWD regarding Brown Act violations pertaining to: 1. Vague agenda descriptions; and, 2. Failure to provide the public with board packet materials. At its October 20, 2020 Special Meeting, the DPMWD Board of Directors failed to provide the public with copies of bid proposals submitted by three engineering firms for a Master Plan Update contract; only board members had been provided with the bid proposals. A public member specifically requested these bid materials; this request was denied by the board president. After reviewing the formal citizen complaint, the District Attorney’s

Office in November 2020 directed the DPMWP to re-vote on the contract award as the proper way to “cure this violation.”

Despite informing the District Attorney that it had corrected its violation, the DPMWP Board failed to follow the recommend action and did not re-vote on the contract award as they promised the District Attorney’s Office. The DPMWP did place the Master Plan Update contract back on the agenda for its December 1, 2020 meeting as a discussion item. Copies of the bid documents were provided to the public at that meeting and were posted on its website. The draft Master Plan Update was completed by HydroScience Strategic Water Solutions and presented in May 2021. It was briefly posted to the DPMWD website homepage; access is now buried in the May 25, 2021 board meeting packet. Although some Brown Act violations can result in the Board action(s) becoming null and void, neither the public nor the District Attorney’s Office followed the required steps and timeframes concerning the Board’s failure to re-vote.

The Grand Jury also discovered during its investigation that the California State Division of Drinking Water (DDW) issued a Notice of Violation against the DPMWD on August 23, 2019. The highly toxic chemical, PCE (tetrachloroethylene), had been discovered during June 2016 water monitoring of the District’s Well #8. At that time DDW required the DPMWD to begin quarterly monitoring of the well. According to the 2019 CCR, “Quarterly monitoring was not initiated by the DPMWD at that time.” In fact, monitoring of Well #8 did not occur for three years. “The next sample from Well #8 was collected approximately three years later on August 13, 2019,” according to the 2019 CCR. PCE levels were found to be over “the maximum contamination level” forcing the well to be taken off-line in October 2019. The DPMWD did not timely notify its ratepayers about the chemical contamination. Ratepayers were finally notified of the chemical contamination in the CCR issued on July 1, 2020. This clearly violated State rules requiring public notification within 30 days.

This was not the first time that the DPMWD was reprimanded for its failure to report accurate information in its CCR. The California State DDW, in its January 20, 2020 Site Inspection Report, identified numerous concerns with the District’s 2018 CCR. The document’s summary states, “The presentation of data and the reporting inaccuracies in DPMWD’s 2018 CCR do not adhere to DDW’s CCR guidance. As discussed previously, a review of the data indicated there were reportable MCL (maximum contamination level) violations for iron at Wells #2, #4, #5, and #9 (Well #3 was re-permitted as Standby) that should have been included and discussed in the 2018 CCR.” The document summary goes on to state, “One of the primary purposes of the CCR is to accurately convey information about water quality to customers. Inaccurate and incomplete information may provide customers with a false sense of security.” The DDW Site Inspection Report warns the DPMWD that providing water to customers in excess of a Primary MCL, “...increases the risk of litigation by customers who may believe they have been harmed.”

The scope of this investigation is focused on the DPMWD. However, this investigation also points to a general lack of follow through by regulatory agencies to ensure the Water District is meeting its legal requirements to, “provide safe drinking water in accordance with California and federal regulations and to maintain a reliable water supply for water consumption and fire protection.”

While the DPMWD has taken some corrective action following inquiries by the Sacramento County District Attorney's Office and the issuance of a Notice of Violation by the California State DDW, the Board of Directors regularly violates proper public notification procedures. This regular disregard of notice is illustrated by the examples described above. Additionally, despite efforts by LAFCO to provide the public with updated reviews of the Water District and its operations, the DPMWD Board of Directors remains resistant to processes which would better inform the public of its failures to modernize its operations. In the case of the HydroScience Water Master Plan Update, Board members did publicly argue about the language contained within the Update, and ultimately reduced the detailed engineering review to a "Technical Memorandum." Ratepayers have the right to full disclosure by the Board as to the reason this occurred. In this situation, where the relevant documents might be available, they are not easily accessible on the website.

FINDINGS

- F1.** The DPMWD has abdicated its mission to "provide safe drinking water in accordance with California and federal regulations and to maintain a reliable water supply for water consumption and fire protection."
- F2.** The DPMWD has deferred action on the District's 2009 Water Master Plan, the 2011 LAFCO Municipal Service Review, the 2021 HydroScience Strategic Water Solutions Technical Memorandum, and the July 2021 General Manager Final Recommendations Report, all of which outline the urgent need to address the District's critical infrastructure needs for repair or replacement.
- F3.** The DPMWD Board of Directors awarded a \$56,830.00 contract to HydroScience Strategic Water Solutions, to complete a Water District Master Plan Update, without officially taking a public re-vote at its December 2020 board meeting to authorize the contract as required by the Sacramento County District Attorney.
- F4.** During its October 20, 2020 general meeting, the DPMWD Board of Directors failed to provide all of the meeting documents in its board packets to the public. Upon request from the public for the materials, the Board president denied their release to the public as required by both the Brown Act and the Public Records Act.
- F5.** The DPMWD failed to follow the California State Water Resources Control Board, Division of Drinking Water guidance in publicly reporting notable Maximum Contamination Level violations in the required timeframe. Additionally, the DPMWD did not follow the prescribed reporting requirements in the Consumer Confidence Reports (2018, 2019).
- F6.** The agendas for the public meetings of the DPMWD Board of Directors have provided inadequate and vague descriptions of the items to be discussed or acted upon at its General and Special meetings.

- F7.** The ambiguous agenda item descriptions of the DPMWD Board of Directors meetings violate the intent of the Ralph M. Brown Act, which is designed to properly inform the public of the business to be undertaken at public meetings by public officials and to encourage their participation.

RECOMMENDATIONS

- R1.** The DPMWD should publish and distribute district-wide a report, to meet its public transparency obligations, disclosing the extent of the District's immediate and longer-term water quality, delivery, and fire flow infrastructure improvement needs, and the resulting cost impact to water district ratepayers. This report should be the subject of a Special Board Meeting as well. The Grand Jury recommends that this work should begin immediately and be completed within six months.
- R2.** The DPMWD should address the findings and recommendations of the May 2021 HydroScience Strategic Water Solutions Technical Memorandum, originally authorized by the DPMWD as a Proposed Update to its 2009 Water District Master Plan; formal public involvement should be documented to meet the requirements of the Brown Act. This process should begin immediately and be completed within 60 days.
- R3.** A Municipal Service Review should be performed by LAFCO to study and analyze information about the Water District's governance structures and efficiencies. The Grand Jury also recommends that DPMWD fully cooperate with LAFCO to initiate this process by January 31, 2022 for completion of a new Municipal Service Review by June 30, 2022.
- R4.** The DPMWD should notify ratepayers in the required timeframe for any Notice of Violation, including when a water sampling test result exceeds the water Maximum Contaminant Level, along with its corrective actions. The DPMWD Board of Directors and staff should be trained on the public notification requirements and procedures. A new section in the DPMWD Policy Manual should be added to address these public notification requirements. The Grand Jury recommends that the DPMWD complete this training by January 31, 2022, and the Policy Manual should be updated accordingly by March 31, 2022.
- R5.** The DPMWD should prepare its 2021 Consumer Confidence Report and all subsequent annual reports to fully comply with the requirements issued by the State of California. The DPMWD should request that its draft 2021 Consumer Confidence Report be reviewed by DDW to ensure that it meets all of the State requirements before its final release. The review of this draft public document should be completed in May 2022.
- R6.** The DPMWD board meeting agendas and minutes should be reviewed by their legal counsel to ensure that the documents have clear and unambiguous descriptions. The Grand Jury recommends that reviews begin immediately and continue for every meeting.

- R7.** The DPMWD board members and staff should attend annual and detailed Brown Act training sessions with an emphasis on developing unambiguous agenda descriptions. That Brown Act training could include participation in the California Special District Association's Certificate of Excellence Program for District Transparency. The Grand Jury recommends that the Board of Directors conduct its first training session by January 31, 2022, particularly as more than half of the Board members are new.
- R8.** The DPMWD board members and staff must ensure that all materials in the board meeting packets are available to the public 72 hours prior to any Board meeting to avoid any Brown Act violations. The Grand Jury recommends that this begin immediately and continue for every meeting.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the grand jury 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
- Sue Frost, Chair
Sacramento County Board of Supervisors
700 H Street
Sacramento, CA 95814
- Jose Henriquez, Executive Director
Sacramento Local Agency Formation Commission
1112 I Street, Suite 100
Sacramento, CA 95814
- Anne Marie Schubert
Sacramento County District Attorney
901 G Street
Sacramento, CA 95814

From the following governing bodies within 90 days:

- Todd Harms, Fire Chief
Sacramento Metropolitan Fire District
10545 Armstrong Avenue, Suite 200
Mather, CA 95655

Mail or deliver a hard copy response to:

- Hon. Russell Hom
Presiding Judge
Sacramento County Superior Court
720 9th St.
Sacramento. CA 95814

Please email a copy of this response to:

- Ginger Derham
Jury Commissioner
DerhamG@saccourt.ca.gov
- Ms. Erendira Tapia-Bouthillier
Grand Jury
TapiaE@saccourt.ca.gov

INVITED RESPONSES

- Ali Rezvani, Sacramento District Engineer
Division of Drinking Water
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
- Neil McCormick, Chief Executive Office
California Special Districts Association
1112 I Street, Suite 200
Sacramento, CA 95814

Mail or deliver a hard copy response to:

- Hon. Russell Hom
Presiding Judge
Sacramento County Superior Court
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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.