

RIO VISTA GRAND JURY COMPLAINTS

2010-11 Solano County Grand Jury

I. SUMMARY

The Solano County Grand Jury received multiple complaints from the citizens of Rio Vista regarding a few aspects of City governance. While none of these topics warranted findings and recommendations, the Grand Jury felt a responsibility to report its actions taken and information reviewed to the citizens of Rio Vista. The Grand Jury determined the four issues discussed below unfounded and/or corrected.

II. INTRODUCTION

The Solano County Grand Jury receives complaints from the citizens of the County and reviews these complaints as to whether they fall under its jurisdiction and warrant investigation. The Solano County Grand Jury is not required to respond to a complainant if the Grand Jurors decide not to pursue a complaint.

The term of the Grand Jury runs from July 1 through June 30 of the following year. Toward the end of each term, the main focus of the Grand Jury is the preparation of final reports to be published for public review. Under certain circumstances, the Grand Jury may not have sufficient time to address complaints received during the latter part of a term, and often refers these complaints to the incoming panel.

During the second half of the 2009-10 Grand Jury's year of service a number of complaints from citizens of Rio Vista were received which Grand Jurors were unable to act upon. As part of the Grand Jury's continuity process in transitioning activity from the outgoing Grand Jury (2009-10) to the incoming Grand Jury (2010-11), the outgoing Grand Jury recommended these complaints be considered during the new term. The 2010-11 Grand Jury began its own independent evaluation and analysis of the complaints. Subsequently many of the same citizens resubmitted similar complaints on many of the same subjects directly to the current Grand Jury.

To bring closure to these issues, and as a courtesy to the citizens of Rio Vista, the Grand Jury decided to issue this informational report. The Grand Jury reviewed the following issues:

- Proposition 218 sewer service rate increase-protest tally irregularities (**Section III**)
- Violation of Proposition 218 – transfer of funds for use other than water and sewer service purposes (**Section IV**)
- City of Rio Vista's disallowance of ballot initiative to reduce water and wastewater service rates (**Section V**)
- Mismanagement or misappropriation of Community Development Block Grant Funds (**Section VI**)

III. PROPOSITION 218 SEWER SERVICE RATE INCREASE-PROTEST PROCESS IRREGULARITIES

INTRODUCTION

On May 8, 2009, the City of Rio Vista notified its citizens of the City Council's intention to raise the Beach and Northwest (NW) wastewater service rates. The City sent this notification to all registered parcel owners and wastewater service users 47 days prior to the public hearing and protest tally, as required by Proposition 218. The notification letter included all the information required by Proposition 218.

METHODOLOGY

- Reviewed several Grand Jury complaints filed by the citizens of Rio Vista
- Reviewed City of Rio Vista Resolution #2009-025
- Reviewed Rio Vista Interim City Clerk's email dated April 13, 2011
- Reviewed *City of Rio Vista Wastewater Rate Analysis Final Report-March 30, 2009* prepared by Willdan Financial Services
- Reviewed California Constitution, Article 13 D-All Sections (Proposition 218)
- Reviewed California Government Code §53755(b)
- Interviewed the Rio Vista Interim City Clerk

STATEMENT OF FACTS

One complaint, which the Grand Jury did not pursue due to the lack of specific information required for further investigation, listed several unsubstantiated allegations implying misconduct by City employees.

Another complaint stated that no detailed engineer's report prepared by a registered professional engineer certified by the State of California was available or existed as the basis for the new wastewater service rates. The Grand Jury requested the City to provide the required report and received in return the *City of Rio Vista Wastewater Rate Analysis Final Report-March 30, 2009* prepared by Willdan Financial Services. The Grand Jury's review of this report found it fully met the requirements of Proposition 218.

In response to another complaint, the Grand Jury interviewed the Interim City Clerk of Rio Vista to investigate the tallying of protests as specified by Rio Vista Resolution #2009-025 and to inspect all 71 protests rejected for various reasons. The Interim City Clerk rejected 30 protests for being duplicates for the same parcel. Government Code §53755(b) only allows one protest per parcel. The Interim City Clerk rejected 41 protests because of unverifiable signatures on protests submitted by either the parcel owner of record or the registered user of wastewater services at that location. The Grand Jury inspected each of the rejected protests and found those decisions to be correct and appropriate. A total of 31 rejected protests caused the protest to fail.

The Grand Jury received several complaints regarding inadequate notice of the rate increases. These complaints had no basis because the notification letters were sent 47 days prior to the

public meeting. This is in compliance with the requirement that notice be sent out 45 days prior to the public meeting.

IV. VIOLATION OF PROPOSITION 218 – TRANSFER OF FUNDS FOR USE OTHER THAN WATER AND SEWER SERVICE PURPOSES

INTRODUCTION

The principal complaint concerns water and sewer rates in 2008-09. It states the manner in which rates increased violated Proposition 218 (Prop 218). Attachments and exhibits provided with the complaint appear to focus on the City of Rio Vista’s practice of revenue payments to the General Fund from Water and Sewer funds listed as Payment in Lieu of Taxes (PILOT). It is noted that the amount represents 10% of the revenue generated by Water and Sewer service.

METHODOLOGY

- Reviewed complaint with attachments and exhibits
- Reviewed Independent Auditor’s (Maze & Associates) Report on City of Rio Vista Basic Financial Statements for fiscal Year end June 30, 2007
- Reviewed Independent Auditor’s (Maze & Associates) Report on City of Rio Vista Basic Financial Statements for fiscal Year end June 30, 2008
- Reviewed City of Rio Vista Basic Financial Statements and Independent Auditor’s (Caporicci & Larson) Report for fiscal Year end June 30, 2009
- Reviewed City of Rio Vista Annual Budget for Fiscal Year 2008-09
- Reviewed City of Rio Vista Annual Budget for Fiscal Year 2009-10
- Reviewed memo from Solano County District Attorney dated February 24, 2010
- Reviewed Sacramento County Grand Jury Report dated January 6, 2010
- Reviewed Internet based articles relating to understanding Proposition 218 and related litigation

STATEMENT OF FACTS

Review of Basic Financial Statements for fiscal year end (6/30) 2007, 2008 & 2009 reflects the following entries relating to the revenue activity (Fiscal year 2010 Financial Statements not on file).

Year	Description	Revenue
2006	The Line Item report within the 2008-09 Budget reflected the actual totals for 2006	\$266,204
2007	The Changes in Governmental Net Assets Report for Governmental Activities reflected a Utility Tax revenue totaling \$300,529 (compared to \$266,204 in 2006). The Statement of Activities Report reflected the same total but categorized it as Payment-In-Lieu-of-Taxes.	\$300,529
2008	The Changes in Governmental Net Assets Report for Governmental Activities reflected a Utility Tax revenue totaling \$284,372 (compared to	\$284,372

	\$300,529 in 2007). The Statement of Activities Report reflected the same total but categorized it as Payment-In-Lieu-of-Taxes.	
2009	The Changes in Governmental Net Assets Report for Governmental Activities reflected a Utility Tax revenue totaling \$0 (compared to \$284,372 in 2008). The Statement of Revenues, Expenses and Changes in Fund Net Assets Report reflected the same total but categorized it as Payment-In-Lieu-of-Taxes. NOTE: The CPA firm commented on the decrease in General Revenues of \$1,318,301 (or 22%) from the prior year being due in part to the discontinuance of the payment received from the water and sewer fund in lieu of taxes.	\$0

Review of Annual Budget Line Item Report and Basic Financial Statements for fiscal year end (6/30) 2007, 2008 & 2009 reflects the following entries relating to the General Fund and Water & Sewer fund activity (Fiscal year 2010 Financial Statements not on file).

Year	Fund/Account Number/Name	Revenue	Expense
2006	General/010-0590-5914/Payment in Lieu of Taxes - Water	\$94,278	
	General/010-0590-5916/Payment in Lieu of Taxes - Sewer	\$171,926	
	Water/080-0300-0800-7383/ Payment in Lieu of Taxes		\$94,278
	Sewer/088-0300-0885-7383/ Payment in Lieu of Taxes		\$171,926
2007	General/010-0590-5914/Payment in Lieu of Taxes - Water	\$102,719	
	General/010-0590-5916/Payment in Lieu of Taxes - Sewer	\$197,810	
	Water/080-0300-0800-7383/ Payment in Lieu of Taxes		\$102,719
	Sewer/088-0300-0885-7383/ Payment in Lieu of Taxes		\$197,810
2008	General/010-0590-5914/Payment in Lieu of Taxes - Water	\$102,522	
	General/010-0590-5916/Payment in Lieu of Taxes - Sewer	\$181,850	
	Water/080-0300-0800-7383/ Payment in Lieu of Taxes		\$102,522
	Sewer/088-0300-0885-7383/ Payment in Lieu of Taxes		\$181,850
2009	General/010-0590-5914/Payment in Lieu of Taxes - Water	\$0	
	General/010-0590-5916/Payment in Lieu of Taxes - Sewer	\$0	
	Water/080-0300-0800-7383/ Payment in Lieu of Taxes		\$0
	Sewer/088-0300-0885-7383/ Payment in Lieu of Taxes		\$0
	COMMENT: The approved 2008-09 Budget appears to include estimated revenues for Payment in Lieu of Taxes of \$112,858 (Water) and \$267,197 (Sewer). However, year end actuals reflect nothing was assessed. The 2009-10 Budget also shows \$0 in 08-09 actuals and nothing planned in 09-10 budget. The CPA commented this revenue source was discontinued. No explanation of what changed was noted.		

The City of Rio Vista is not the only city that has been accused of not complying with Prop 218 requirements. There have been lawsuits dating back to at least 1999 involving various cities and taxpayer organizations. The rulings in the courts have been confusing and many times

conflicting as time has gone on. Uncertainty regarding Prop 218 provisions has resulted in some important provisions not being completely clear. Issues in several court cases appear to revolve around what is or is not a properly related fee. Additionally, questions arise out of cities imposing a Utility User Tax, Franchise Fee, or collecting Payment In Lieu of Taxes.

The California Supreme Court in 2006 ruled in *Bighorn-Desert View Water Agency v. Vergil* that fees for property related services, such as water, sewer and garbage, are subject to Prop 218's cost-of-service rules. This overruled a case against the City of Los Angeles from 1999 and cities relying on that case that had been using their water, sewer or garbage utilities to raise money for their General Funds had to stop that practice. There are several appellate decisions holding that charging Payments-In-Lieu-of-Taxes as a component of public utility rates violates Prop 218.

The City of Rio Vista has taken corrective measures to discontinue the practice of posting Payments-In-Lieu-of-Taxes effective with fiscal year 2009.

V. CITY OF RIO VISTA'S DISALLOWANCE OF BALLOT INITIATIVE TO REDUCE WATER AND WASTEWATER SERVICE RATES

INTRODUCTION

As a result of the City of Rio Vista raising water and wastewater service rates, the Rio Vista Taxpayer's Association submitted a ballot measure to roll back these rates to previous levels.

METHODOLOGY

- Reviewed Rio Vista City Council meeting minutes, May 6, 2010
- Reviewed Election Code §9201

STATEMENT OF FACTS

As part of the City Clerk's official duties, he or she must determine the acceptability of all initiatives placed on the ballot. The Interim City Clerk contacted the City Attorney for assistance in determining the acceptability of the Rio Vista Taxpayer Association's ballot measure. The City Attorney found the ballot measure unacceptable due to the petition text not complying with the Election Code §9201: "... [the] first page of each section shall contain the title of the petition and the text of the measure."

VI. MISMANAGEMENT OR MISAPPROPRIATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

INTRODUCTION

The 2010-11 Solano County Grand Jury conducted a preliminary investigation into a citizen complaint that the City of Rio Vista mismanaged and inappropriately implemented 2005

Community Development Block Grant (CDBG) funds to make Americans with Disabilities Act (ADA) improvements. The complaint indicated the City did not comply with citizen participation, procurement, and reporting requirements of the CDBG program. Additional concerns expressed included discrepancies with activity budget amounts, eligible activities and change orders.

METHODOLOGY

The scope of the review focused primarily on determining what actions on investigating the complaint were undertaken by the California Department of Housing and Community Development (DHCD), which is charged with administering and overseeing the CDBG. A Request for Information relating to CDBG Grant Number 05-STBG-1624 was sent to DHCD.

- Reviewed available information received with citizen complaint
- Examined various CDBG Program documents supplied by DHCD:
 - Notice of Funding Availability
 - Application for Funding
 - General Allocation Package
 - Grant Agreement
 - ADA Guide for Small Towns
- Examined City Internet websites for meeting minutes
- Reviewed correspondence between DHCD, complainant, and the City of Rio Vista
- Reviewed memo from September 21, 2010 conference call between Rio Vista staff, consultants, and representatives from DHCD
- Reviewed City of Rio Vista's November 5, 2010 response to the complaint and September 21, 2010 conference call

STATEMENT OF FACTS

On March 23, 2006, the City of Rio Vista received a Community Development Block Grant (05-STBG-1624) in the amount of \$891,700 for ADA compliance projects. Initial allocations were categorized under the following activities: Public Works (Streets/Parking); ADA Facility Improvements (City Hall, Fire Department, and Police Department); Pool and Park Improvements; General Administration; and Activity Delivery.

A Rio Vista resident reportedly submitted a formal complaint to DHCD in December 2009 but received no response. The citizen delivered his complaint narrative and reference documents to DHCD again on February 24, 2010 (which were received February 26, 2010) and filed the complaint with the 2009-10 Solano County Grand Jury. A letter was sent to the complainant requesting more information on the outcome of any communication with DHCD. No response was received by the end of the 2009-10 Grand Jury term, and the case was referred to the 2010-11 Grand Jury to consider. Because there was no new information the case was closed on July 13, 2010. Subsequently, the complainant resubmitted the complaint to the 2010-11 Grand Jury, which was received October 12, 2010, stating DHCD was unresponsive due to staff shortages and changes in personnel. The Grand Jury reviewed the information available and decided to substantiate whether DHCD had investigated.

The Grand Jury obtained information specific to the Rio Vista grant from DHCD. The documents indicate that DHCD, as the administering agency, investigated and evaluated the details expressed in the complaint. As a result of that investigation, DHCD placed a hold on two funds requests it received on July 13, 2010. These two requests were submitted by the City on July 9, 2010 totaling \$842,588 that represented costs incurred from October 1, 2008 through May 30, 2010.

On September 21, 2010, a conference call involving representatives from DHCD and City of Rio Vista staff and consultants addressed concerns expressed in the complaint. The discussion addressed each item in the complaint. The City refuted the claims of mismanagement and responded with clarification of how it properly implemented the activities and followed the program requirements in regard to the contract. The agency requested the City submit back-up documentation including photos of grant activities. The City supplied the narrative, documentation, and photos in November 2010. On January 20, 2011, the agency issued a letter stating the responses submitted satisfactorily addressed and clarified the issues brought up in the citizen complaint and that they were acceptable. The agency lifted the hold placed on the funds requests. DHCD also indicated that although its review of the complaint was resolved, it would conduct a site visit later this year to monitor.

COURTESY COPIES

Rio Vista City Council Members
Rio Vista City Clerk
Rio Vista City Attorney
California Department of Housing and Community Development
Trilogy Home Owner's Association

This is an informational report. No response is required