

2019 – 2020 Civil Grand Jury

SAVED BY THE TRASH, BUT FOR HOW LONG? Financing Supplemental Law Enforcement in the Southern Coachella Valley Community Services District

Summary

In 1985, California passed the first consolidated Local Agency Formation Commission (LAFCO) Act, the Cortese-Knox-Hertzberg (CKH) Local Government Reorganization Act. Under that framework, citizens formed the Southern Coachella Valley Community Services District (the District) in December 1986. It now provides supplemental law enforcement to a 139 square mile area in the southern Coachella Valley. Today the District includes about 23,000 people within the unincorporated communities of Mecca, Thermal, Oasis, and Vista Santa Rosa.

For 35 years, the flat property tax formula used to finance supplemental law enforcement from the Riverside County Sheriff's Department (RCSD) has not changed. However, the District's costs have increased. To manage this financial situation, the District reduced the number of Sheriff's personnel.

In 1989, the District exercised its authority to begin solid waste management (encompassing trash collection, disposal, and related activities). The District established a Rubbish Fund. The District permitted the private hauler to conduct the waste collection business in exchange for a fee (Franchise Fee).

In 2016, the District faced a deficit in the law enforcement fund. Rather than further reducing enforcement personnel, the District began taking money from its Rubbish Fund via what the District called a loan. The loan has not been repaid, and there is no documented plan to do so. As of June 30, 2019, the District had "borrowed" \$495,868, leaving \$383,618 remaining as Rubbish Fund liquid assets. The District continues to "borrow" money from the Rubbish fund because the income in the Law Enforcement Fund is inadequate.

The District's Independent Auditor in the Annual Report wrote that unless the District finds new revenue for law enforcement, the District may no longer be viable. Based on our examination of financial statements, the Grand Jury agrees. The District will eventually run out of funds. The only foreseeable alternative is to go back to the voters with a ballot measure to increase the property tax supporting supplemental law enforcement.

The District mandates rubbish collection as part of property ownership. Because the waste collection is no longer optional, and a condition of property ownership, the Franchise Fee income used for waste collection and other related activities becomes subject to Proposition 218, which became part of the California Constitution.

Article XIID Section 6, 2b2 says:

“Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.”

Based on our consultation with qualified legal tax experts, the Grand Jury believes that the District violates Proposition 218 and Article XIID of the California Constitution.

The Grand Jury recommends that the District's Board of Directors (Board) should place a ballot measure increasing the tax for law enforcement on the November 2020 general election. If this is not feasible considering the current Covid-19 crises, it should be done as a special election. It also recommends that the Board of the District use Franchise fees from the waste haulers as intended: exclusively for waste collection and community clean-up activities.

Background

To coordinate growth in Municipalities and Special Districts such as Water, School, Electricity, Law Enforcement, etc., new California legislation in 1963 required each California county to establish a Local Agency Formation Commission (LAFCO). The purpose was to advise, coordinate, and approve the formation of new Municipalities and Special Districts (such as Community Service Districts) effectively and efficiently, avoiding overlapping boundaries.

In February 1985, the Riverside County Board of Supervisors (Board of Supervisors) approved a request to create the Southern Coachella Valley Municipal Advisory Council. The Board of Supervisors tasked the Council to explore the formation of a new Community Services District (CSD) that would primarily provide supplemental law enforcement in a 139 square mile area located southeast of the City of Coachella and to the border of the Salton Sea, encompassing the unincorporated communities of Mecca, Thermal, Oasis, and Vista Santa Rosa¹. Formation documents approved by Riverside County LAFCO allowed the District to provide such other services and facilities at a later date (latent power). These could include, but not be limited to, emergency health and ambulance service, sewage disposal service,

¹ Executive Officer, Memorandum to LAFCO, 27 Feb. 1986

streetlights, road maintenance and repair, animal control, and rubbish service².

Some Demographics of the District

The communities in the District have their distinct characteristics but share many commonalities in income, education, and employment. Compared to the rest of the Coachella Valley, the communities are financially more stressed. Many live below the USA poverty threshold (<http://worldpopulationreview.com/us-cities>). Agricultural work dominates. The population varies seasonally because of migrant farmworkers. Many permanent residents and migrants work in the agricultural sector while others find employment in the service and construction sectors, driving to communities west of the area. The median age ranges between 27-38. These factors may affect the outcome of a vote to increase property taxes.

Agriculture with such crops as date palms, grapes, citrus, and seasonal row crops predominates the area from the Salton Sea in the south and stretching northwest toward the City of Coachella. The Eastern Coachella Valley is one of California's most important agricultural producing areas. The residential use within the area primarily provides housing for the agricultural workers in the valley.

Thermal, located west of State Route 111 and south of the City of Coachella, contains light industrial, some residential, and commercial uses. The County owns the Desert Resorts Regional Airport, located close to the Thermal Sheriff's station that serves this part of Riverside County.

Located southeast of Thermal and east of State Route 111, Mecca predominantly houses permanent residents working in the Valley's agricultural sector. Areas are also set aside for light industrial and commercial use. The Library building houses the District's office.

Oasis, another valley agricultural community, is located along State Route 86 southeast of Valerie Jean. The community benefits from the realigned State Route 86 trade route to Mexico.

Vista Santa Rosa is an important producer of date crops. Rural residential uses are also prevalent, with an emphasis on equestrian activities, including polo facilities.

About 4,500 citizens are registered to vote out of a population of about 23,000, inclusive of children and non-citizens.

The average income of the residents does not reflect the economic richness of its production.

² Petition by registered voters, to the Riverside County Board of Supervisors 1985

The Proposal for Supplemental Law Enforcement and the Vote

In February 1986, 15.3% (265) of the eligible voters (1,727) in this area requested that the November ballot include the proposal, exceeding the threshold of 10% required by California State law. On November 4, 1986, eligible voters in the proposed special District approved the formation of the District by 66% to 34% (480 for and 181 against)³.

A citizen volunteer board of five people (the Board) that live in the District comprises the organization. The Board sets policies and procedures, meeting monthly. A hired manager administers the day to day operations, hiring a certified public accountant (CPA) and Auditor. The Sheriff Deputies report to the Board at their monthly meetings. In the case of an urgent situation, the Deputies keep the Board apprised of the situation.

Voters voted for an assessment of \$66 per residential unit, \$88 per commercial unit, plus \$1 per acre (minimum of 1 acre per parcel) of developed or undeveloped property with a \$20 minimum. Without going back to the voters for a tax increase, growth in revenue could only be accomplished by:

- taxing new residential or commercial structures on undeveloped land
- transformation of a single-family to multi-family units
- replacing residential units with business units, or
- an enlargement of the District through the annexation of nearby unincorporated communities.

The tax placed on the tax rolls contained no inflation escalator, which left any changes to the tax to the voters' consent⁴.

Enhancing Law Enforcement

The Council requested the Sheriff's Department to give a cost estimate of the Sheriff's function. The Sheriff recommended starting with three personnel in the high crime areas of Greater Thermal and unincorporated Coachella at the cost of \$144,738. The Sheriff was to review the plan 16 months later.

The proposal outlined the objectives as:

- Reducing burglary and theft by 15%
- Reducing vandalism by 10%
- Increasing crime prevention projects in businesses and farms by 20% if citizens so desired this.
- Reducing response times by 25%

³ Resolution No. 86-528 Riverside County (CA) Board of Supervisors December 2, 1986

⁴ Before the passage of Prop 218, a tax increase required only a simple majority of the voters voting on the measure

Before the establishment of the District, the Sheriff's Department averaged two sworn personnel and supervision by marked patrol units, within this area, 24 hours/day. Lengthy response times ranged from 21-48 minutes throughout the region⁵. Residents and businesses reported significant losses, primarily due to theft and vandalism⁶.

Enter the Rubbish Activity

In 1989, the District asked the Riverside County's LAFCO for the authorization to provide Solid Waste Collection Service. The District asserted that local control would best serve the community by:

- Providing days when hard-to-get-rid of trash would be accepted
- Providing trucks to patrol for illegally dumped items
- Mandating trash service
- Arresting and citing illegal dumpers

Previously Riverside County collected rubbish using a private hauler on a "by request basis," six days a week. The County did not mandate waste collection before the District began providing this function.

LAFCO approved this "latent" power, a power given, but not yet exercised in the District's establishment. In addition to the General Fund for Law Enforcement, the District established this second function, accounting for it in the Rubbish Fund.

The District contracted with a private hauler to provide this service and negotiated a Franchise Fee. That is, the District receives a percentage of the total revenue the hauler gets from its customers. Effectively, this "rental income" for the District gives the private hauler the right to conduct its business and is negotiated in some detail in the Contract between the District and the hauler. Such franchise fees are standard and are in general use. The private hauler handles billing and collection activities. The franchise fee today totals 12%, up from 10%.

In 2017 the District gained approval from the Auditor/Controller to place trash collection fees for residential properties on property owners' property tax bill. Riverside County now collects residential property trash collection fees. Charges for trash collection from commercial properties continue to be administered by the private hauler.

The District performs two functions and has no employees. The Board hired a management company to do or outsource the duties necessary for those two functions. The Board, a volunteer group of up to five citizens who live in the District, oversees the management company and authorizes payment of

⁵ Ben Clark, Sheriff, "Southern Coachella Valley Patrol Enhancement Program" Feb. 1985

⁶ Milton Karahadian, letter to Sheriff Ben Clark, November 21, 1984

the various bills for service. It is a simple arrangement: two functions, no employees, one paid manager to do, or arrange for the administrative work.

Reason for the Investigation

In annual reports of 2017 through 2019, the independent financial Auditor of the District expressed concern about the District's financial viability as a "going concern."^{7, 8} The Grand Jury chose to examine the District to discover why that is, how it developed, and offer recommendations that might alleviate that concern.

METHODOLOGY

The Grand Jury investigated the establishment of the District and current operational and financial situation of the District through the examination of historical and current documents, interviews, and members of the Grand Jury attended two Board meetings.

Documents Examined

- Yearly audit reports by the District's independent Auditor from 2012 to 2019
- The operating budgets of the District from 2004 to 2019
- The Desert Sun Newspaper article on the District's finances, October 1, 2019⁹
- Ballotpedia.org August 2010 regarding the outcome of Proposition J in 2010
- Memorandum to voters of the District, July 15, 2010, regarding Proposition J
- The website for another CSD that contracts supplemental law enforcement services
- Franchise Agreement between the current waste collector, and the District
- E-Mail yearly memorandum from the waste collector to Riverside County Auditor/Controller dated July 13, 2018

⁷ See Appendix A

⁸ "Going Concern," is a term used in Generally Accepted Accounting Principles (GAAP) to refer to the continuing financial viability of an organization

⁹ Lopez, Ricardo "*\$258K Deficit Jeopardizing East Valley Law Enforcement*", The Desert Sun, October 1, 2019, Palm Springs, CA.

Interviews Conducted

- Captain of the Thermal Station of the Riverside County Sheriff Department (RCSD).
- General Manager and Board Chairperson of the District
- General Manager from a similar district formed for supplemental law enforcement
- Members of the Riverside County District Attorney's office
- Managers from private haulers in Riverside County
- Legal experts in the field of property taxes and special taxes
- Three board members of the Mecca-North Shore Community Council
- The Fourth District Supervisor Riverside County Board of Supervisors
- Four city managers in Riverside County where residential rubbish service charges are collected through the County tax rolls
- Executive officer at LAFCO
- Staff from the office of Riverside County's Auditor/Controller

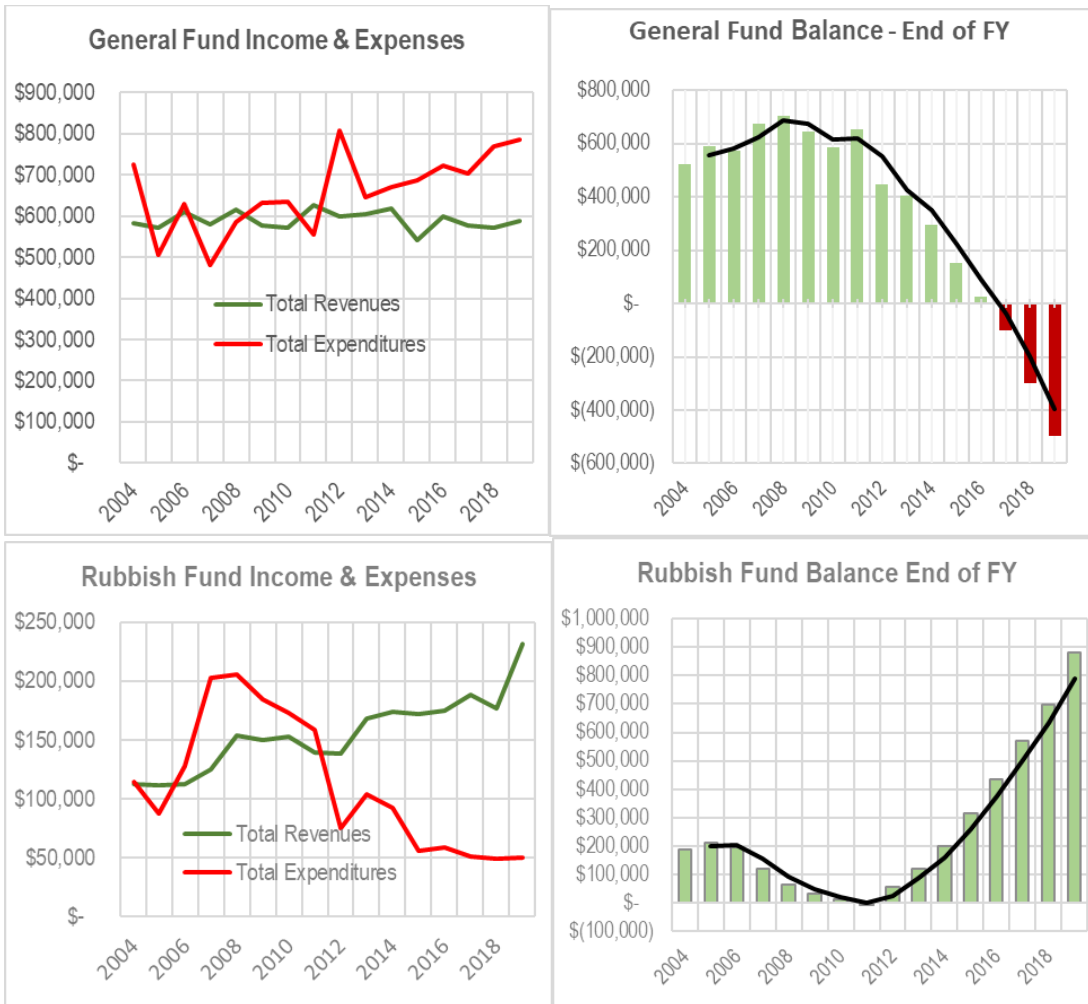
INVESTIGATION

The Financial Picture Over the Years.

The tax placed on the tax rolls for supplemental law enforcement contains no inflation escalator. As structured, the District has limited means of increasing its revenues but unlimited exposure to fluctuating costs. Over time, inflation has forced the District to reduce headcount in the supplemental law enforcement function.

To understand the District's current situation, the Grand Jury researched its formation in 1986 and its decision to become involved in managing waste collection. The Grand Jury examined the financials produced by their Independent Auditor to comprehend the cash flows in the two accounts and the balance sheet at the end of the Fiscal Year (FY). The Grand Jury chose to begin with FY ending June 30, 2004, through FY 2019, 16 years, to gain an understanding of the income, expenditures, and balance sheets of the two accounts.

The following tables show revenue, expenses, and fund balances for the General and Rubbish Funds for fiscal years 2004 through 2019.



Note that expenses have exceeded revenues in the General fund for 12 of the last 16 years.

LAFCO Oversight

The Grand Jury found that LAFCO has no responsibility for oversight after the formation of a District. The Cortese-Knox-Hertzberg (CKH) Local Government Reorganization Act of 2000 mandates that LAFCO generate a Municipal Service Review (MSR) every five years. LAFCO prepares MSRs as an aid in reviewing “spheres of influence” (SOIs). An MSR will include information relevant to a specific service, an agency, or a geographic region. Based on the MSR, the Commission will make determinations concerning several factors, including expected growth, service and facility capacity, the financial ability of agencies to provide services, opportunities for shared facilities and improved efficiency, and governmental structure alternatives. They have not done so for the Southern Coachella Valley Community Services District since 2005. That service review is a comprehensive study designed to better inform LAFCO, local agencies, and the community about the provision of municipal services.

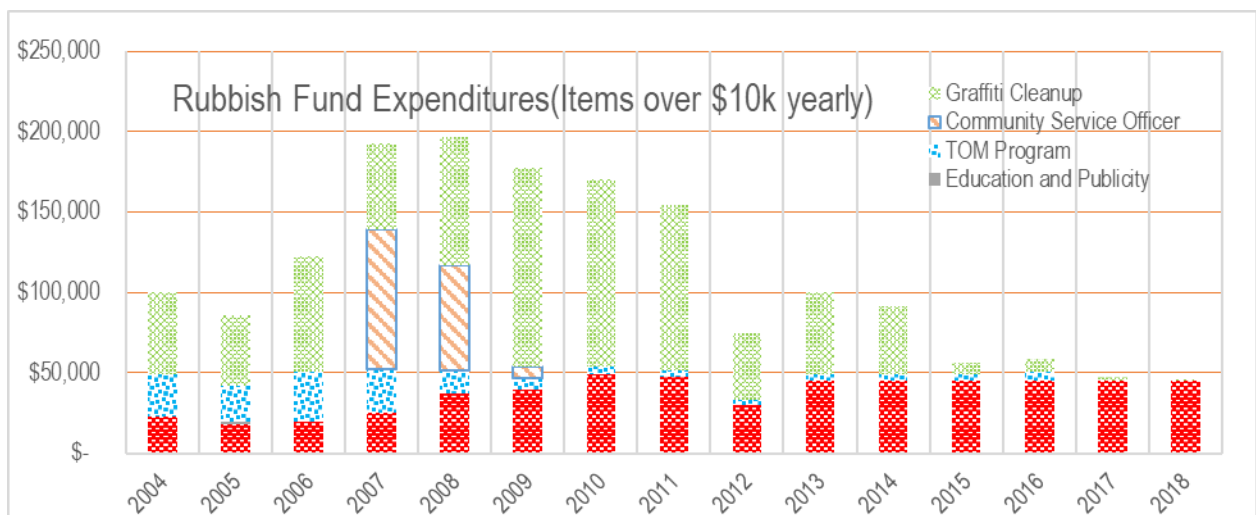
Ballot Measure in 2010 to Increase the Fixed Tax, Proposition J

In 2010, seeing the mismatch of revenue and costs, the District proposed a tax hike to voters in an August 2010 special election. The District asked for a one time increase of \$19 on Residential Units and \$22 on Commercial Units. It also requested linkage to the Consumer Price Index for the Los Angeles-Riverside-Orange County California area for future rate changes.

Proposition 218, previously passed in 1996, requires that 2/3rds of the voters voting on the measure to vote yes. The vote on Proposition J garnered fewer voters voting than at the District's inception. It failed 174(for)-339(against) (34%-66%)¹⁰.

Cutting Waste Management Related Activities and Subsidizing Law Enforcement

Reviewing the District's audited financials, the Grand Jury found that the bulk of the expenses in years 2004-2008 in the Rubbish fund were related to waste management and the closely related activities of graffiti clean-up, providing a site for disposal of large items called TOM, and trash abatement (community clean-up). Over the next years, these services and corresponding expenses were reduced or eliminated, resulting in a growing cash surplus in the Rubbish account, as shown in the table below.



The District began using some of this surplus to finance the increasing cost of law enforcement in 2016, characterizing the subsidy as "borrowing."¹¹ However, when the Grand Jury requested that the District provide loan documents showing repayment, interest rate, and other documentation of the

¹⁰ https://ballotpedia.org/Southern_Coachella_Valley_Community_Services_District_Special_Measure_J (August 2010)

¹¹ Resolution No 2016-04, Southern Coachella Valley Community Services District Board November 17, 2016

characteristics of a loan, none were provided. The General Fund is now at a deficit of \$495,868, which it has borrowed from and owes to the Rubbish Fund according to the Annual Audit Report¹².

The Grand Jury noted in examining the District's financial statements that none of the "borrowed" funds have been repaid from the General Fund back to the Rubbish Fund.

In the most recent audited financial report, the fund spent about \$50,520 on Rubbish related expenses, versus a franchise fee income of \$231,786. The Rubbish Fund balance has grown to \$879,247. By lending much of that balance to the General Fund, the Rubbish Fund's primary activity has become a secondary source of revenue for supplemental law enforcement. The Grand Jury is concerned that this money no longer serves as funding for waste management and community clean-up, as intended.

Proposition 218

Proposition 218 was passed by California voters in 1996 and incorporated into the California Constitution as Articles XIIC and XIID. Article XIIC provides definitions for General Tax, Local Government, Special District, and Special Tax: "'tax' means any levy, charge, or exaction of any kind imposed by a local government."¹³ It requires that special taxes and increases in those taxes must be approved by 2/3rd of those voting.

Article XIID Section 6, 2b2 says:

"Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed."

The District mandates rubbish collection as part of property ownership. Because waste collection is no longer optional and is a condition of property ownership, the Franchise Fee income used for waste collection and other related activities is a tax subject to Proposition 218.

The Grand Jury consulted with qualified legal experts, including a well-known California Taxpayers' Association specializing in property tax. They indicated that the General fund could only finance law enforcement expenses. The Rubbish fund income can only pay for the costs related to the waste management function. Thus, by subsidizing law enforcement with the Rubbish Fund, the District appears to be in violation of Proposition 218 and Article XIID of the California Constitution.

¹² Southern Coachella Community Services District. 2019 *Annual Audit Report*. Riverside, CA: Teaman, Ramirez & Smith, Inc. 2019 Print

¹³ California Constitution, Article XIII, Section 1(e)

The Grand Jury noted an August 24, 1989 memorandum from the executive officer of LAFCO to the Local Agency Formation Commission, subject LAFCO 89-48-4, regarding activation of the latent power for refuse collection, that the following was written in "Comments."

*"The District indicates that the cost of collection and disposal will be paid through user fees, and no financing will be required to extend service. Additionally, the District may enter into franchise agreements with local haulers, which would provide additional fee revenue to be **used to improve waste collection and disposal in the area.**"* (our emphasis)

The Grand Jury believes that the District may violate the terms under which LAFCO grants its latent power for solid waste collection services.

Where to from Here?

The expenses related to the law enforcement function in the District are currently subsidized by money "borrowed" from the trash, the Rubbish Fund. The subsidy "saves" the law enforcement function from further downsizing. However, the Sheriff Deputies cost will eventually exceed the money available in the Rubbish Fund, as the increasing cost of the supplemental law enforcement will outstrip the revenue from the Franchise Fee. In Thermal, the RCSD's station provides the police service for this part of the County with 84 sworn officers as of October 2019. Besides the supplemental law enforcement for the District, the neighboring cities of Coachella and Indio also contract with the Sheriff Department for police service.

Should the District dissolve, the policing by the Sheriff Deputies headquartered in Thermal would continue. The District would lose the three sworn officers for the District, one sergeant, and two deputies. They function primarily as investigators and community outreach personnel. They can be first responders when they are the first on the scene. They can also be called for duty outside the District should a significant police presence be needed elsewhere in the County.

The District suffers primarily from property crime in the form of larceny (breaking in and robbing) (35-38%) and motor vehicle theft (20%). Rounding out the top 5, burglary including burglary from vehicles (16%), domestic violence (12%), and recovered stolen vehicles (9%).

These statistics come from the incidents reported to the Sheriff's office. In interviews, we learned that with the change in the enforcement of and the implementation of immigration laws and statutes, many who live in the District now hesitate to report certain crimes because they desire anonymity.

As currently staffed, the District has inadequate funding for its law enforcement function, which is why its Independent Auditor for the past three

years has expressed concern about the District as a "going concern." It has borrowed from the Rubbish account to supply the needed revenue to fund law enforcement, which appears to be in violation of Proposition 218.

The District does not disagree with this "going concern" assessment¹⁴. The Board has established a sub-committee composed of two members of the Board to recommend a ballot measure for the November 2020 election. The District has until August 7, 2020, to present wording to the Registrar of Voters for the November ballot. Its urgency may make a special election necessary.

If the ballot measure fails, the District might choose to reduce its expenses on Law Enforcement. Alternatively, the District might decide to dissolve. It could try to annex other nearby communities and expand its tax base. However, through interviews and attending Board meetings, we understand that no community is interested. If the District dissolves, then discussions with the County would seem to follow to determine the responsibility for any supplemental law enforcement activities that would remain as well as solid waste collection and disposal services.

FINDINGS

1. The District can no longer fund the law enforcement function solely through the fixed property tax.
2. A flat, un-adjustable property tax to finance this ongoing cost-variable service requires going back to the voters repeatedly to raise the tax.
3. Based on discussion with tax experts, it appears that the use of rubbish fund money may be in violation of Proposition 218 and the California Constitution, Section XIIC, and Section XIID, requiring that money designated for one function cannot be used for another.
4. The rubbish fund has less money available to clean up the community, such as graffiti abatement and removal.
5. LAFCO has not written a Municipal Service Review (MSR), which was to be done every five years, since 2005.

RECOMMENDATIONS

¹⁴ See Appendix A

1. The Board put forth a ballot measure for the November 2020 election or a special election to adequately fund the District.
2. The ballot measure recommended by the Board include an appropriate escalator to keep up with the cost of the service, perhaps tying it directly to the price of the Sheriff 's services.
3. Prior to the ballot measure, the Board get a legal opinion on whether their current "borrowings" can survive a challenge in court.
4. The Board spend the proceeds of the franchise fee exclusively for community clean up.
5. LAFCO immediately conduct a Municipal Service Review (MSR) for the District and the surrounding communities, as written in the LAFCO Municipal Service Review Guidelines¹⁵.

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:

- The Southern Coachella Valley Community Services District Board of Directors for Findings and Recommendations numbers 1 – 4.

From the following governing bodies within 90 days:

- The Riverside County LAFCO for Finding and Recommendation number 5

INVITED RESPONSES

- The Sheriff of Riverside County California, Findings number 1 and Recommendation number 2
- The Supervisor of Riverside County, California's 4th District, Findings and Recommendations numbers 1 – 4.

¹⁵ Governor's Office of Planning and Research, "LAFCO Municipal Service Review Guidelines."
http://www.sbclafco.org/Portals/29/Proposals/ServiceReviews/20090203_LAFCO_MSRGuidelines.pdf

APPENDIX A

From the Auditor's 2019 Annual Audit Report¹⁶

"9. Contingencies

Going Concerns and Management's Plan

As shown in the basic fund financial statements, the District's General Fund had a negative change in fund balance of \$(197,979) and had a negative fund balance of \$(495,868) for the fiscal year ended June 30, 2019. Further, the District's General Fund has had recurring periods in which expenses/expenditures significantly exceeded revenues. These factors raise substantial doubt about the District's ability to continue as a going concern. The District's management has taken action to improve the financial positions of the District in subsequent fiscal years. In the 2016-2017 fiscal year, the District's Board of Directors unanimously passed a resolution to borrow funds from the waste fund to pay for expenses assigned to the general fund. In the 2018-2019 fiscal year, the District's Board of Directors unanimously passed a resolution to set long-term plans to secure financial security for District operations which include:

- The annexation of new territories increasing funding for supplemental law enforcement services*
- Increase assessment rates within the next three years*
- Optionally, decreased services provided as needed to maintain a balanced budget*

The ability of the District to continue as a going concern is dependent on the progress of the items mentioned above. The financial statements do not include any adjustments that might be necessary if the District is unable to continue as a "going concern." "

¹⁶ Southern Coachella Community Services District. 2019 *Annual Audit Report*. Riverside, CA: Teaman, Ramirez & Smith, Inc. 2019 Print.

From the Auditor's Annual Audit Report¹⁷

Southern Coachella Valley Community Services District			
Governmental Funds			
Statement of Revenues, Expenditures and Changes in Fund Balance			
Year Ended June 30, 2019			
	General	Rubbish	Total Gov't Funds
Revenues			
Special Assessments	\$586,814		\$586,814
Franchise Fees		\$225,135	\$225,135
Investment Earnings		\$6,651	\$6,651
Total Revenues	\$586,814	\$231,786	\$818,600
Expenditures			
Services and Supplies			
Insurance	\$4,613		\$4,613
Membership	\$4,150		\$4,150
Office Expense	\$1,432		\$1,432
Professional Services	\$103,410	\$45,000	\$148,410
Law Enforcement	\$656,971		\$656,971
Rent and Lease Expense	\$9,600	\$3,600	\$13,200
Utilities	\$4,617		\$4,617
Graffiti Cleanup		\$1,920	\$1,920
Total Expenditures	\$784,793	\$50,520	\$835,313
Excess (Deficiency) of Revenues			
Over Expenditures	(\$197,979)	\$181,266	(\$16,713)
Fund Balance - Beginning	(\$297,889)	\$697,981	\$400,092
Fund Balance - Ending	(\$495,868)	\$879,247	\$383,379

Report Issued: 07/06/2020
 Report Public: 07/09/2020
 Response Due: 10/09/2020

¹⁷ Southern Coachella Community Services District. 2019 *Annual Audit Report*. Riverside, CA: Teaman, Ramirez & Smith, Inc. 2019 Print