

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

570



FROM: Executive Office

SUBMITTAL DATE:
September 13, 2016

SUBJECT: Response to the 2015-2016 Grand Jury Report: Palo Verde Resource Conservation District

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve with or without modification, the attached response to the Palo Verde Resource Conservation District to the 2015-2016 Grand Jury Report. Direct the Clerk of the Board to immediately forward the Board's finalized responses to the Grand Jury, to the Presiding Judge and to the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND:

Summary

Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board and that a response be provided to the Presiding Judge of the Superior Court within 90 days.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$	\$	\$	\$	
SOURCE OF FUNDS: N/A				Budget Adjustment:	
				For Fiscal Year: 15/16	

C.E.O. RECOMMENDATION:

APPROVE

BY: *Ivan M. Chand* 9/16/2016
Ivan M. Chand

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
Nays: None
Absent: None
Date: September 13, 2016
xc: E.O. Grand Jury

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

Prev. Agn. Ref.: District: Agenda Number:

3-6

- Positions Added
- Change Order
- A-30
- 4/5 Vote

**RESPONSE TO
2015-2016 GRAND JURY REPORT
Palo Verde Resource Conservation District (PVRCD)**

Following is the response of the Riverside County Board of Supervisors and County Counsel to the above referenced Grand Jury Report.

FINDING NO. 1:

The McCoy Wash Flood Improvement District (McCoy Improvement) was established in December 1987 as part of PVRCD. On December 9, 1991, the district was split into two separate special districts by resolution of the PVRCD board of directors without obtaining the approval of LAFCO. This was done to accommodate McCoy Flood Control District (McCoy District) to establish the power to assess Blythe citizens within McCoy Wash area for construction of the dam. Arrangements were established with the County to collect these funds.

The PVRCD does not have the authority to establish the McCoy District as a special district. The PVRCD, under provision of Division 9 of the California Public Resources Code¹, does have the authority to form an improvement district for constructing, both in or for the improvement district, one or more flood prevention improvements, including structural and land treatment measures.

The PVRCD resolution reads as follows:

***RESOLUTION OF THE BOARD OF DIRECTORS OF PALO
VERDE RESOURCE CONSERVATION DISTRICT***

Whereas Palo Verde Resource Conservation District (PVRCD) has sponsored the creation of the McCoy Wash Flood Control District (McCoy), and furthermore that McCoy is now a separate Special District with a directorship concurrent to that of PVRCD and furthermore, that McCoy receives property tax revenues that are for the sole benefit of McCoy.

Herewith be it resolved the Riverside County Auditor-Controller's Office is requested to establish a Trust type "fund" for McCoy (request attached) for the purpose of properly segregating McCoy revenues and expenses from those of PVRCD.

RESPONSE: Respondent disagrees with this finding.

The resolution adopted by the PVRCD on December 9, 1991 did indeed create a distinct entity, i.e., the McCoy Wash Flood Control Improvement District. However, the McCoy Wash Flood

¹ Unless otherwise noted, all "section" references are to the *California Public Resources Code*.

Control Improvement District is not a “special district” that required LAFCO approval. It is an “improvement district” that is managed by PVRCD’s Board of Directors.

This finding is most likely noted because the PVRCD inaccurately referred to the McCoy Wash Flood Control Improvement District as “special district” in the formation resolution. That reference does not invalidate adoption of the formation resolution. The McCoy Wash Flood Control Improvement District was properly formed pursuant to *Public Resources Code* sections 9801 *et seq.* and is operating as such.

RECOMMENDATION NO. 1:

The resolution of 1991 be voided. The County Auditor-Controller cancel the requested audit from the McCoy District and include them as a part of the PVRCD for audit.

RESPONSE: The Respondent disagrees with this recommendation.

The 1991 resolution properly authorized creation of the McCoy Wash Flood Control Improvement District.

FINDING NO. 2:

The PVRCD has not submitted an audited financial statement to the Controller or the County Auditor-Controller's office since 2007. Government Code §26909 requires a financial report be filed annually with the Controller and with the County Auditor-Controller within 12 months of the fiscal year. The PVRCD has received a letter of non-compliance from the County Auditor-Controller's office giving the district until December 21, 2015, to comply. To date the PVRCD has ignored the County Auditor-Controller's request.

RESPONSE: Respondent agrees with this finding.

When informed of PVRCD’s failure to comply with the annual audit mandate, Chairman Benoit took a leadership role in an effort to bring the PVRCD into compliance with all applicable laws. Chairman Benoit engaged County Counsel to advise and assist the PVRCD with any legal issues, including compliance with the annual audit requirement. Section 9418 states that the PVRCD may request legal services from County Counsel; however, no such request was made prior to Chairman Benoit’s involvement with this matter.

Section 9528 clearly states that “[a]n annual of the books, accounts, records, papers, money, and securities shall be made as required by Section 26909 of the Government Code. However, Government Code section 26909 authorizes alternatives to the annual audit. The County Counsel’s Office will be assisting the PVRCD in this regard.

RECOMMENDATION NO. 2:

The board of directors be overseen by Riverside County Counsel and instructed to comply with California Government Code. §26909 (a)(2).

After combining the two districts, the PVRCD has sufficient funds to complete the required audit and comply with the County Auditor-Controller's request.

RESPONSE: Except for combining the two districts, Respondent has implemented this recommendation.

County Counsel and the PVRCD have been conducting a comprehensive review of PVRCD's management, operations and finances. County Counsel is exploring alternatives to the annual audit mandate and will advise the PVRCD of its options, if any, in complying with its fiscal reporting duties. The decision as to whether the two districts should be combined is a matter exclusively within the jurisdiction of the boards of those two districts.

FINDING NO. 3:

The duties of the PVRCD board of directors have been performed in an inconsistent manner. The PVRCD Secretary/Treasurer stated:

The Supervisors have the ability to provide significant relief, contingent on moving all funds into the "county financial system," and gaining Supervisors' approval. This action would remove us from AUDIT to REVIEW status.

The PVRCD has not in the past nine years requested this action. The California Association of Resource Conservation Districts and various list servers are used to find potential funding sources. The PVRCD had chosen not to perform any service that could provide an income to the district such as requesting grants and loans from both state and federal sources. They had not requested assistance from the California Department of Conservation, Division of Land Resource Protection, RCD Assistance Program. They have no policies and procedures in place, do not have a budget, and they do not have regularly scheduled meetings. The directors have the ultimate fiscal responsibility for the district's financial management.

RESPONSE: Respondent agrees with this finding.

When informed of PVRCD's failure to comply with the annual audit mandate, Chairman Benoit took a leadership role in an effort to bring the PVRCD into compliance with all applicable laws. Chairman Benoit engaged County Counsel to advise and assist the PVRCD with any legal issues, including compliance with the annual audit requirement. Section 9418 states that the PVRCD may request legal services from County Counsel; however, no such request was made prior to Chairman Benoit's involvement with this matter. The County Counsel's Office will be assisting the PVRCD in this regard.

RECOMMENDATION NO. 3:

The PVRCD establish and follow procedures for operating an RCD such as those outlined in the California Resource Conservation District Handbook as follows:

- Director's basics
- Power and authority
- Organization and administration
- District finances
- Partnership
- Planning

RESPONSE: Respondent has implemented this recommendation.

As mentioned above, County Counsel and the PVRCD have been conducting a comprehensive review of PVRCD's management, operations and finances. Upon completion of the review, County Counsel will assist PVRCD in establishing all necessary policies and procedures.

FINDING NO. 4:

Documents provided by the board of PVRCD have shown evidence of incompatibility of office, pursuant to California Government Code §1099(a) which states:

A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible.

California Government Code §1099 says that offices are incompatible when any of the following circumstances are present:

1. Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.
2. Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
3. Public policy considerations make it improper for one person to hold both offices.

Additionally, one director holds an elected office (City Councilperson) while serving on the Board of Directors of the PVRCD, who did not disclose this on his March 25, 2016, filed Fair Political Practices Commission 700 Form.

RESPONSE: Respondent disagrees with this finding.

This finding states neither the facts nor analysis that is required to conclude a violation of Government Code section 1099. Based upon the information presented to date, The County Counsel's Office is unable to conclude that there has been a violation of Government Code section 1099.

RECOMMENDATION NO. 4:

The Board of Supervisors vets appointments to offices on RCDs and special districts for incompatibility.

RESPONSE: Respondent has implemented this recommendation.

The Board of Supervisors has and will continue to thoroughly vet all appointees for incompatibility and compliance with Government Code section 1099 with the assistance of the County Counsel's Office and the Clerk of the Board.