

This document is an extract of a larger publication.

civilgrandjury.org is a project of UnGovr.org, a US-based 501(c)(3) nonprofit dedicated to government transparency and public accountability.



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June 17, 2016

Members of the 2015-2016 Grand Jury  
Contra Costa County  
725 Court Street  
Martinez, CA 94553

Dear Grand Jury Members:

On behalf of the Judges of the Contra Costa County Superior Court, I wish to thank you for your service as members of the 2015-2016 Grand Jury. Your dedication in pursuit of the public objectives entrusted to you under the law was exceptional and is very much appreciated not only by us, but by all citizens of this county. You are to be commended for your work and accomplishments.

A special thanks is due, of course, to your foreperson, Michael Simmons. It is due largely to his leadership skills that your work was conducted so harmoniously and well.

Since the time of our founding fathers, the role of the Grand Jury has been to protect the public against abusive, corrupt, and/or wasteful governmental practices. By making constructive suggestions on how our county's governmental bodies can operate more effectively and efficiently, you have continued to perform that function in a most positive way. You should be proud of your service.

Thank you very much.

Very truly yours,

A handwritten signature in blue ink that reads "John T. Laettner". The signature is written in a cursive style with a large initial "J".

JOHN T. LAETTNER  
Supervising Judge of the  
2015-2016 Grand Jury

**SUPERVISING JUDGE OF THE  
CONTRA COSTA COUNTY CIVIL GRAND JURY**



Photography by S. Todd Rogers Photography

**HONORABLE JOHN T. LAETTNER**  
2010 - Present



June 17, 2016

Honorable John T. Laettner  
Judge of the Superior Court  
Contra Costa County  
725 Court Street  
Martinez, CA 94553

Dear Judge Laettner,

On behalf of the 2015-2016 Contra Costa County Civil Grand Jury, it is my honor to submit our final report. The report is a compilation of investigations that contain findings and recommendations regarding government agencies within our jurisdiction.

During our year of service, we met dozens of dedicated government employees and we appreciate their cooperation in our investigations. The citizens of Contra Costa County can be proud of their workforce.

I would like to express our appreciation for your oversight of this past year's Civil Grand Jury. We also would like to express our thanks and gratitude for the support of Elisa Pantaleon, the Superior Court Administrative Assistant. Additionally, the support of Rebecca Hooley, the County Counsel advisor to the Civil Grand Jury, for the many hours spent reviewing, editing, and advising on each individual report.

Finally, I would like to personally thank each Grand Juror for the many hours they spent and their dedication and commitment to investigating, interviewing, writing, and debating the merits of each report. As with previous Grand Juries, we hope that these efforts will bring positive meaningful change to County, Cities, and Special Districts within our County.

Sincerely,

A handwritten signature in blue ink that reads "Michael W. Simmons".

Michael W. Simmons, Foreperson  
2015-2016 Contra Costa County Civil Grand Jury

**THE 2015-2016 CONTRA COSTA COUNTY  
CIVIL GRAND JURY**

**OFFICERS**

MICHAEL SIMMONS, FOREPERSON, San Ramon  
MICHAEL MOORE, FOREPERSON PRO TEMPORE, Alamo  
JANET GOWER, SECRETARY, Concord

**MEMBERS**

LUCINDA CARTWRIGHT  
Martinez

CHUCK LEGGE  
Orinda

BOB FINLAYSON  
Walnut Creek

LIZ LEWIS  
Martinez

PETER FRIEDMAN  
Pleasant Hill

HAROLD MANTLE  
Lafayette

BRITT HABEGGER  
Walnut Creek

JIM MELLANDER  
El Sobrante

BARBARA HANNAFAN  
Martinez

KAREN O'NEILL  
Danville

BILL HEMMELSBACH  
Bay Point

ED QUINNAN  
San Pablo

SERENE HUBBARD  
San Ramon

DAN SIMONS  
San Ramon

PAUL LAU  
Danville

GREG VILLASERAN  
Walnut Creek

**CONTRA COSTA COUNTY CIVIL GRAND JURY  
2015-2016**



**Back Row:**

Dan Simons, Michael Moore, Britt Habegger, Ed Quinnan, Michael Simmons, Harold Mantle,  
Bob Finlayson, Jim Mellander, Chuck Legge, Bill Hemmelsbach,

**Front Row:**

Paul Lau, Greg Villaseran, Serene Hubbard, Janet Gower, Lucinda Cartwright, Honorable John  
Laettner, Barbara Hannafan, Karen O'Neil, Peter Friedman, Liz Lewis




**The 2015-2016 Contra Costa County**

**Grand Jury**

**Approved this Final Report**

**On June 17, 2016**



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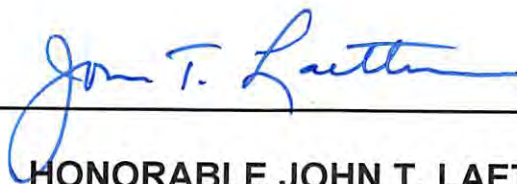
**MICHAEL SIMMONS**

**Foreperson**

**I accept for filing this Final Report of the  
2015-2016 Contra Costa County Grand Jury**

**On**

**June 17, 2016**



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**HONORABLE JOHN T. LAETTNER**

**Supervising Judge of the 2015-2016 Grand Jury**

**A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY CIVIL GRAND JURY**  
725 Court Street  
Martinez, California 94553

**Report 1601**

# **COMPLIANCE AND CONTINUITY REPORT**

Contact:  
Michael Simmons  
Grand Jury Foreperson  
925-957-5638

## **COMPLIANCE AND CONTINUITY REPORT**

The Contra Costa County Civil Grand Jury is impaneled annually to investigate city and county government, special districts and certain non-profit corporations to ensure that their functions are performed in a lawful, economical and efficient manner. Findings and recommendations developed from these investigations are contained in the reports signed by the Grand Jury Foreperson and the Grand Jury Judge. Responses to these reports must be made within certain time constraints and in accordance with specific formats pursuant to 933 and 933.05 of the California Penal Code. These responses to recommendations must include one of the following legally permitted options:

- The recommendation has been implemented.
- The recommendation has not yet been implemented, but will be implemented in the future.
- The recommendation requires further analysis.
- The recommendation will not be implemented because it is not warranted or is not reasonable.

The 2015-2016 Grand Jury reviewed 13 reports from the 2014-2015 Grand Jury. There were 31 letters, with copy of applicable report, mailed out to the different entities from whom responses were required. These 13 reports made a cumulative total of 78 recommendations to the various 31 recipients, of which 53 responses (68%) stated that the recommendation(s) have been or will shortly be implemented and 17 (22%) responses stated the recommendation required further analysis. For further explanation and clarification of subject responses to recommendations, refer to their full responses posted online. Responses to the 2014-2015 Grand Jury reports are posted on the Contra Costa County Grand Jury website in their entirety and can be viewed at:

<http://www.cc-courts.org/index.cfm?fuseaction=Page.ViewPage&pageId=7346>

The Grand Jury believes it is important for future Grand Juries to continue to review these responses and to be vigilant in seeing that recommendations that have been accepted have been carried out. In this manner, the commitment and hard work of past and future Grand Juries will result in positive changes for the citizens of Contra Costa County.

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**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1502  
UNDERUTILIZATION OF CALFRESH IN CONTRA COSTA COUNTY**

***Recommendation #1: The County should organize an event to educate select city managers, economic development officers and local Chambers of Commerce Representatives about (a) the economic gains to be realized from increased CalFresh participation, and (b) how to sponsor their own local enrollment events, after identifying funds to do so.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #2: The County should recruit representatives of local businesses, such as business associations and/or Chambers of Commerce, area farmers markets, and cities with high concentrations of prospective CalFresh recipients for membership in the CalFresh Partners Group.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #3: The County should issue a press release announcing May as CalFresh month and emphasizing the economic gains for local businesses that result from increased CalFresh participation. In addition to other local newspapers, the press release should be sent to the Contra Costa County edition of the Chamber Link, the weekly newsletter of the Association of Chambers of Commerce, which reaches over 10,000 recipients in Contra Costa County.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #4: The County should extend CalFresh enrollment outreach to schools, senior centers, and senior housing, either directly or through the CalFresh Partners Group, after identifying funds to do so.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #5: After identifying the necessary funds, the County should return budgeted FTE staffing for EHSD to last year’s levels, and use County temps as necessary to meet and maintain that staffing level after determining the legality of doing so.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation requires further analysis.

***Recommendation #6: After identifying the necessary funds, the County should fast-track the current project to streamline the recruitment and hiring processes by Human Resources, after considering the various legal requirements governing the County’s recruitment and hiring.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation has been implemented.

***Recommendation #7: Within 60 days, the County should correct the signage at office locations with CalFresh information and application intake capability to include the hours of operation and notice of CalFresh (or “Food Stamps”) presence outside of the building, and directions to CalFresh information or service (preferably bilingual) inside the office if no greeter or knowledgeable receptionist is present.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #8: The County through its Department of Information and Technology should (a) prioritize the resolution of firewall issues that currently prevent remote access of existing CalFresh applications; (b) support EHSD’s expansion of the text messaging system, “PROMPTLY” to CalFresh; (c) investigate feasibility of internet-based communication modes such as Skype for EHSD, (d) add a link to 511 to the CalFresh website, and (e) mention 511 in the menu options in the automated telephone answering system, after identifying funds to do so.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #9: The County should schedule a series of meetings between those departments that administer need-based programs to explicitly encourage increased cross-program referrals.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation has not yet been implemented, but will be implemented in the future.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1503  
TIME FOR A NEW LOOK AT PENSION COSTS**

**The County Could Save Nearly \$100 Million a Year through a Sensible  
and Fair Approach to Pension Reform**

<p><b><i>Recommendation #1: The County Board of Supervisors and the Board of Directors of CCCFPD should establish a task force to review all options available to reduce the burden of the County and CCCFPD’s pension obligations, including efforts to bring about a reform in California public pension law. The task force should:</i></b></p> <ul style="list-style-type: none"> <li>• <b><i>Confirm with the County’s or CCCERS’s actuaries what level of potential savings in pension costs could be achieved through negotiations with employees hired before 2013 for reductions in pension benefits for future employment periods.</i></b></li> <li>• <b><i>Review with qualified legal counsel what strategies are available to seek a change or clarification in California law to assure changes to future pension benefits for current employees are proper subjects of collective bargaining. Such strategies might include participation in a state ballot initiative, the filing of “friend of court” legal briefs, sponsoring clarifying language for the Meyers-Milias-Brown Act, or including changes to future pension benefits for current employees as a subject for collective bargaining negotiations.</i></b></li> <li>• <b><i>Recommend what limits the Boards should establish as a matter of policy on any such reductions in future pension benefits for current employees, such as a minimum benefit tied to PEPPRA rates as set for in this report.</i></b></li> <li>• <b><i>Recommend a policy for keeping the County’s and CCCFPD’s employee groups informed of the Boards’ intentions on any strategies for change so as to assure employees that any changes would be subject to collective bargaining and minimums set forth in the Boards’ minimum benefit policy.</i></b></li> <li>• <b><i>Recommend a policy for keeping County citizens fully informed of the potential costs of any changes in pension benefits negotiated with the County’s and CCCFPD’s employee groups.</i></b></li> </ul>	
<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

<p><b><i>Recommendation #2: The task force should be formed within 90 days and be required to report back to the Boards with its recommendations within 90-120 days.</i></b></p>	
<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #3: Establish a special web page on the County web site where citizens can easily track by means of a pension “dashboard” the costs and size of the County’s and CCCFPD pension obligations and the progress on its plans to reduce their costs.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1504  
 AVERTING BAY AREA RAPID TRANSIT DISTRICT STRIKES**

**Putting the Riders First**

***Recommendation #1: BART Board of Directors should adopt a negotiation method that is built on trust, communication and transparency.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
BART Board of Directors	The recommendation has been implemented.

***Recommendation #2: BART Board of Directors should immediately re-open negotiations with their labor unions to agree on the process for future negotiations.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
BART Board of Directors	The recommendation requires further analysis.

***Recommendation #3: BART Board of Directors should review and negotiate the use of an independent arbitrator during labor negotiations, who can decide any major financial and work rule issues pursuant to the baseball style arbitration process.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
BART Board of Directors	The recommendation requires further analysis.

***Recommendation #4: BART Board of Directors should monitor the implementation of the recommendations made in Agreement Dynamics Inc.'s report that it has chosen to adopt.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
BART Board of Directors	The recommendation has been implemented.

***Recommendation #5: Contra Costa County Board of Supervisors should adopt a plan to mitigate the effects of any future BART strikes on county residents.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation requires further analysis.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1505  
RICHMOND HOUSING AUTHORITY**

**Managing the Agency**

***Recommendation #1: After identifying the space needs, and identifying and allocating the funding necessary to do so, RHA should move the Executive Director and staff, except the Finance Department, to the same work location.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Richmond Housing Authority Board of Commissioners	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #2: After identifying and allocating the funding necessary to do so, RHA should consider hiring an experienced front-line manager to supervise employees who work in its HCV program.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Richmond Housing Authority Board of Commissioners	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #3: After identifying and allocating the funding necessary to do so, RHA should develop and make available a written policy for staff to use in implementing the LIPH and HCV Programs.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Richmond Housing Authority Board of Commissioners	The recommendation has been implemented.

***Recommendation #4: After identifying and allocating the funding necessary to do so, RHA should develop and provide its staff with a Policy and Procedures manual concerning RHA’s policies, procedures, and expectations for staff performance.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Richmond Housing Authority Board of Commissioners	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #5: All employees should receive annual performance evaluations.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Richmond Housing Authority Board of Commissioners	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #6: After identifying and allocating the funding necessary to do so, all RHA employees should receive ongoing training in customer service and quality control procedures.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Richmond Housing Authority Board of Commissioners	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #7: RHA should establish and enforce standards for timely responses to customer complaints, including, but not limited to those complaints related to building maintenance and safety/security concerns.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Richmond Housing Authority Board of Commissioners	The recommendation has been implemented.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1506  
OFFICE OF THE PUBLIC GUARDIAN**

**Caring for Those Who Can No Longer Care for Themselves**

***Recommendation #1: The Contra Costa County Public Administrator should update its Public Guardian Policy and Procedures Manual to comply with California law and California Judicial Council’s report on best practices by June 30, 2016.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #2: To comply with California law, the Contra Costa County Public Guardian should accept all referrals for probate conservatees when there is an imminent threat to the person’s health or the safety of the person’s estate, regardless of whether the person is in or going to be placed in a supervised living arrangement.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #3: To comply with California law, the Contra Costa County Public Guardian should begin an investigation within two business days after receiving a referral alleging that a person’s health is in imminent danger or that there is an imminent threat to the safety of a person’s estate.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #4: To comply with California law, the Contra Costa County Public Guardian should establish a policy of keeping a probate conservatee in his or her own residence if that is the least restrictive living arrangement in which the conservatee can be safe.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #5: To comply with California law, the Contra Costa Public Guardian should ensure that all deputy conservators meet certification requirements, as required by the State of California, by June 30, 2016.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #6: The Board should consider separating LPS and probate public guardians.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #7: The Board should consider placing the probate conservatorships with Adult Protective Services in the Employment and Human Service Department's Aging and Adult Services Unit.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #8: The Contra Costa County Public Guardian should follow California Judicial Council's best practices by requiring deputy conservators to meet with each probate conservatee at least once a month and to keep a log of such visits.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #9: The Contra Costa County Public Guardian should adopt a line item to its budget specifically for the needs of probate conservatees before the Public Guardian has access to their assets.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1507  
OPPORTUNITIES FOR CHANGE IN THE COUNTY HEALTH AND  
HUMAN SERVICES SYSTEM**

**Merging the Healthcare System with a Larger Private or Public System  
Merging the County Health and Human Services Departments**

<b><i>Recommendation #1: The County should consider merging or partnering the healthcare system with a larger private or public healthcare system that would provide administrative oversight, broader access to physician specialists, clinics and hospitals, and increased healthcare options.</i></b>	
<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation requires further analysis.

<b><i>Recommendation #2: If the County is successful merging the healthcare system, the County should consider merging the two primary departments that would remain in Contra Costa Health Services- Pubic Health and Behavioral/Mental Health- with the Employment and Human Services Department, creating a Health and Human Services Department. The County should find funding to commission a report outlining the full benefits and detriments of merging EHSD with Public Health and Behavioral/Mental Health Services.</i></b>	
<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation requires further analysis.

<b><i>Recommendation #3: If the County is successful merging the healthcare system, the county should consider merging CCHS’ Environmental Health and Hazardous Materials Program with the Department of Conservation and Development and merging Emergency Medical Services with the Contra Costa Fire Protection District.</i></b>	
<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation requires further analysis.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1508  
THE UNDERUTILIZATION OF THE MARSH CREEK DETENTION  
FACILITY**

**Overcrowding at the Martinez Detention Facility**

***Recommendation #1: The SO should consider ways to fund the restoration of MCDF Wings A and B.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
The Contra Costa County Sheriff's Office	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #2: The SO should consider providing medical staffing 24-hours a day, seven days a week and a pharmacy at the MCDF, and ways to fund such staffing and the pharmacy.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
The Contra Costa County Sheriff's Office	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #3: Once Recommendations 1-2 have been accomplished, the SO should consider broadening the classification of MCDF inmates so that the facility will be fully utilized.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
The Contra Costa County Sheriff's Office	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #4: If the State does not award SB 863 jail construction funds to the County, the SO should consider alternative plans and associated funding methods to reduce inmate occupancy at the Martinez Detention Facility.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
The Contra Costa County Sheriff's Office	The recommendation requires further analysis.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1509  
THE BENEFITS OF THE CALIFORNIA CONNECTIONS TO  
SUCCESS ACT TO CONTRA COSTA COUNTY**

**Its impact on Foster Youth Who are Aging Out and Emancipated**

***Recommendation #1: Contra Costa County Children and Family Services should continue to pro-actively inform foster care youth about “AB’s 12’s” programs.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has been implemented.

***Recommendation #2: Contra Costa County Children and Family Services Program should consider establishing more local housing options for aging out and emancipated youth, and identify funds to do so.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #3: Contra Costa County Children and Family Services Program should continue to provide scholarship opportunities for youth so that they can have financial support while being trained or educated.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has been implemented.

***Recommendation #4: The County should continue to support the dedicated and professional skills offered by the ILSP service providers.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has been implemented.

***Recommendation #5: The County should maintain the Gold Mine database to monitor the progress and outcomes for County foster youth served by the County programs in order to help make future funding decisions about support services for foster youth.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has been implemented.

# CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1510 COMMUNITY COURTS

## Unburdening the Traditional Court System

<b><i>Recommendation #1: The city should consider establishing a Community Court.</i></b>	
<b>RESPONDENT</b>	<b>RESPONSES</b>
City of Antioch	The recommendation will not be implemented because it is not warranted or is not reasonable.
City of Brentwood	The recommendation will not be implemented because it is not warranted or is not reasonable.
City of Clayton	The recommendation has been implemented.
Town of Danville	The recommendation has been implemented.
City of El Cerrito	The recommendation will not be implemented because it is not warranted or is not reasonable.
City of Hercules	The recommendation will not be implemented because it is not warranted or is not reasonable.
City of Lafayette	The recommendation has not yet been implemented, but will be implemented in the future.
City of Martinez	The recommendation has not yet been implemented, but will be implemented in the future.
Town of Moraga	The recommendation has not yet been implemented, but will be implemented in the future.
City of Oakley	The recommendation has not yet been implemented, but will be implemented in the future.
City of Orinda	The recommendation has not yet been implemented, but will be implemented in the future.
City of Pinole	The recommendation will not be implemented because it is not warranted or is not reasonable.

City of Pleasant Hill	The recommendation requires further analysis.
City of Richmond	The recommendation has not yet been implemented, but will be implemented in the future.
City of San Pablo	The recommendation will not be implemented because it is not warranted or is not reasonable.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1511  
COUNTY TIMEKEEPING PRACTICES**

**Need for Accuracy in Recording Time and Remedies for Inaccuracy**

***Recommendation #1: The County should require timesheets or the system of time reporting to include a signed attestation of accuracy from the reporting employee and employee’s supervisor or manager.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has been implemented.

***Recommendation #2: The County should require department supervisors or managers to periodically review attendance and time records to ensure both accuracy and completeness.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation has been implemented.

***Recommendation #3: The Auditor-Controller’s Office should consider codifying timekeeping and pay code procedures for each department, and identifying funds to do so.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Auditor-Controller	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #4: The County should make timekeeping and pay code procedures promulgated by the Auditor-Controller’s Office, along with associated training, available to all payroll clerks and included in the new employee orientation.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #5: The County should direct all departments to place salaried employees' schedules in the Time Schedule Collection Website as required in the March 6, 2014 bulletin from the office of the Auditor-Controller.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation has been implemented.

***Recommendation #6: The Auditor-Controller's Office should explore possible ways to reduce the number of pay codes to a more manageable level.***

RESPONDENT	RESPONSES
Contra Costa County Auditor-Controller	The recommendation has been implemented.

***Recommendation #7: The county should consider developing whistleblower procedures for employees reporting suspected timekeeping fraud, posting these procedures on the County's intranet, and identifying funds to carry out these activities.***

RESPONDENT	RESPONSES
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #8: The Auditor-Controller's Office should consider including timekeeping practices in operational audits and recommending corrective action for all timekeeping deficiencies identified and identifying funds to carry out these activities.***

RESPONDENT	RESPONSES
Contra Costa County Auditor-Controller	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #9: The County should adopt a semi-monthly pay cycle for all employees which will eliminate the need for an option to take a monthly advance.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Contra Costa County Board of Supervisors	The recommendation will not be implemented because it is not warranted or is not reasonable.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1512  
THE RODEO-HERCULES FIRE DISTRICT CHIEF’S EMPLOYMENT  
AGREEMENT**

**A Question of Transparency**

***Recommendation #1: The RHFD Board should attempt to re-open negotiations with the chief concerning his current employment agreement with RHFD to allow for proper notice under the Brown Act.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
RHFD Board of Directors	The recommendation requires further analysis.

***Recommendation #2: The RHFD Board should properly identify all items on its agendas and include accurate descriptions of each agenda item.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
RHFD Board of Directors	The recommendation has been implemented.

***Recommendation #3: The RHFD Board should record each director’s vote on reportable actions from closed session in the meeting minutes of every Board meeting.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
RHFD Board of Directors	The recommendation has been implemented.

***Recommendation #4: The RHFD Board members should receive training on the Brown Act immediately upon taking office and no less than every two years afterward.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
RHFD Board of Directors	The recommendation has not yet been implemented, but will be implemented in the future.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1513  
RALPH M. BROWN ACT**

**“The People of the State Do Not Yield Their Sovereignty to the  
Agencies Which Serve Them”**

***Recommendation #1: Rodeo-Hercules Fire District, Reclamation District 799, and WCCUSD should have annual training in the Brown Act for its board members and support staff.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Rodeo-Hercules Fire Protection District	The recommendation requires further analysis.
West Contra Costa Unified School District	The recommendation has not yet been implemented, but will be implemented in the future.
Reclamation District 799	The recommendation has not yet been implemented, but will be implemented in the future.

***Recommendation #2: Rodeo-Hercules Fire District should have annual training concerning how to draft agendas that comply with the Brown Act.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Rodeo-Hercules Fire Protection District	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #3: Rodeo-Hercules Fire District should consider maintaining a website of the District’s minutes and agendas, and identify funds to do so.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Rodeo-Hercules Fire Protection District	The recommendation requires further analysis.

***Recommendation #4: Rodeo-Hercules Fire District, Reclamation District 799, and WCCUSD should have a link for citizens to post concerns about possible Brown Act infractions, and identify funds to do so.***

RESPONDENT	RESPONSES
Rodeo-Hercules Fire Protection District	The recommendation requires further analysis.

***Recommendation #5: Rodeo-Hercules Fire District, Reclamation District 799, and WCCUSD should have a link to an organization such as The First Amendment Coalition (thefirstamendmentcoalition.org) for both Cure and Correct and Cease and Desist letters, with instructions, and identify funds to do so.***

RESPONDENT	RESPONSES
Rodeo-Hercules Fire Protection District	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #6: Rodeo-Hercules Fire District, Reclamation District 799, and WCCUSD Boards should consider voting to extend the review period for contracts involving large financial commitments.***

RESPONDENT	RESPONSES
Rodeo-Hercules Fire Protection District	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #7: Rodeo-Hercules Fire District, Reclamation District 799, and WCCUSD should have sufficient hard copies of supporting documents of items to be discussed in closed sessions before the closed sessions begin, and the ability to make and distribute sufficient copies if necessary.***

RESPONDENT	RESPONSES
Rodeo-Hercules Fire Protection District	The recommendation will not be implemented because it is not warranted or is not reasonable.

***Recommendation #8: Rodeo-Hercules Fire District should consider conducting its closed sessions prior to the beginning of an evening meeting rather than the end because members of the public are less likely to be present to comment at a late hour on matters reported out of a closed session.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
Rodeo-Hercules Fire Protection District	The recommendation requires further analysis.

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT – 1514  
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT:**

**Bond Program & Citizens’ Bond Oversight Committee  
A Case Study in Stymied Oversight**

***Recommendation #1: The School Board should eliminate the following six member positions from CBOC at the expiration of their terms, to eliminate any concerns about conflicts of interest.***

- ***Five members, one recommended by each member of the Board of Education***
- ***One member representing the Contra Costa Building and Construction Trades Council***

<b>RESPONDENT</b>	<b>RESPONSES</b>
WCCUSD School Board of Education	The recommendation requires further analysis.

***Recommendation #2: The School Board should change the School Board discretionary category of “Public Employees Union Local 1” to that of an “at large” position from the general community in order to allow for a greater pool of qualified candidates to apply.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
WCCUSD School Board of Education	The recommendation requires further analysis.

***Recommendation #3: The School Board should create an independent selection committee to select new nominees for CBOC, comprised of the CBOC Chair and a designated appointee from CBOC, two members from the Board of Education, and School Superintendent or designee, for a committee of five. Selection should be based on merit and be a transparent process to ensure public confidence in this vital selection process.***

<b>RESPONDENT</b>	<b>RESPONSES</b>
WCCUSD School Board of Education	The recommendation requires further analysis.

***Recommendation #4: WCCUSD should provide CBOC members with complete, detailed and comprehensive financial data relating to the expenditure of bond revenues and items put to vote on the board agenda at least 7 days in advance of the board meetings, in order to permit meaningful and effective review and oversight.***

RESPONDENT	RESPONSES
WCCUSD School Board of Education	The recommendation has been implemented.

***Recommendation #5: WCCUSD should allow CBOC full access to the CBOC website.***

RESPONDENT	RESPONSES
WCCUSD School Board of Education	The recommendation has been implemented.

***Recommendation #6: WCCUSD should not change or add items to CBOC’s website without the permission of the CBOC Chair.***

RESPONDENT	RESPONSES
WCCUSD School Board of Education	The recommendation has been implemented.

***Recommendation #7: WCCUSD should provide CBOC with accurate, understandable and timely financial and non-financial reports concerning bond-funded projects as well as other relevant information requested on the bond construction program as least monthly.***

RESPONDENT	RESPONSES
WCCUSD School Board of Education	The recommendation has been implemented.

***Recommendation #8: WCCUSD should provide CBOC with a comprehensive master plan for the school construction projects within the next three months and as requested by CBOC.***

RESPONDENT	RESPONSES
WCCUSD School Board of Education	The recommendation has not yet been implemented, but will be implemented in the future.

**Recommendation #9: WCCUSD should provide timely and comprehensive training to all new CBOC members on a timely basis. The following training materials, at a minimum, should be provided to all new CBOC members within one week of their appointment:**

- (a) California League of Bond Oversight Committee recommended Best Practices**
- (b) San Diego County Taxpayers Association “Oversight Committee Best Practices” Guide**
- (c) California Coalition for Adequate School Housing “Proposition 39 - Best Practices Handbook”**
- (d) Little Hoover Commission 2009 Report “Bond Spending: Expanding and Enhancing Oversight”**
- (e) California League of Cities “A Guide to The Ralph M. Brown Act”**
- (f) State Controller’s Office 2011 Audit Report on the Los Angeles Community College District’s bond construction program**

<b>RESPONDENT</b>	<b>RESPONSES</b>
WCCUSD School Board of Education	The recommendation has been implemented.

**Recommendation #10: The School Board should follow all of its policies.**

<b>RESPONDENT</b>	<b>RESPONSES</b>
WCCUSD School Board of Education	The recommendation has been implemented.

**Recommendation #11: The School Board should ensure that the CBOC contains a member from each category required by California Education Code Section 15282.**

<b>RESPONDENT</b>	<b>RESPONSES</b>
WCCUSD School Board of Education	The recommendation has not yet been implemented, but will be implemented in the future.



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY  
725 Court Street  
Martinez, California 94553


Report 1602

# Protecting Our Groundwater Resources

Who's Minding the Storage?

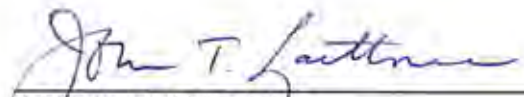
APPROVED BY THE GRAND JURY:

Date: May 10, 2016

  
MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: May 6, 2016

  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1602

## **Protecting Our Groundwater Resources**

### **Who's Minding the Storage?**

**TO: Board of Supervisors, County Assessor, and City Councils for the Cities of El Cerrito, Pittsburg, Richmond, and San Pablo**

#### **SUMMARY**

Due to a fourth consecutive year of drought in California (State), residents and governmental agencies are increasingly focusing on the fact that water is a critical and limited resource. The anticipated drought relief from this year's El Niño storms has not completely remedied the drought situation. Even as the State's reservoirs fill again, many parts of the State are still experiencing a groundwater deficit. The need to use this valuable resource more wisely is clear.

Water agencies within Contra Costa County (County) are starting to more closely monitor and conserve our groundwater. Groundwater is contained within an aquifer (an underground geological formation able to store and yield water). The Sustainable Groundwater Management Act of 2014 (SGMA) mandates formation of management agencies for groundwater basins identified as 'medium' and 'high' priority by the California Department of Water Resources (DWR). Three of the eight basins that are either within or partially extend into the County have this designation: Tracy Sub-Basin; Livermore Valley Basin; and East Bay Plain Basin. For all other groundwater basins, agency formation is optional under SGMA.

This report concerns the protection of groundwater basins in the County. It concludes that more can and should be done to monitor the groundwater supply in the County, including the over 2,500 domestic water and irrigation wells, and to preserve and enhance the quantity and quality of groundwater in the County.

The Grand Jury's recommendations include:

- Preparing and distributing cautionary health information about domestic water wells.

- Identifying and mapping the existing domestic and irrigation wells in the County to check their status and safety.
- Forming a Groundwater Advisory Council to include stakeholders: (i) to support and participate in agency formation under SGMA, (ii) to advise the Board of Supervisors on the status of the wells that currently exist in our County, and (iii) to make recommendations to enhance and protect our Groundwater resources.
- Directing the Contra Costa Water Agency to participate in the formation of groundwater sustainability agencies (for both the medium and low priority groundwater basins) and the development of sustainability plans.
- Directing the Environmental Health Division (EHD) and the Flood Control District to cooperatively pursue matching grants afforded by State Proposition 1 to assist Disadvantaged Communities (DACs) to maximize groundwater protection.

## **METHODOLOGY**

The Grand Jury conducted interviews, attended public meetings and technical presentations, and reviewed documents. More specifically, we interviewed, and/or obtained information from sixteen senior and junior level specialists from:

- Contra Costa Assessors Office
- Contra Costa Environmental Health Division
- Contra Costa Department of Public Works
- Contra Costa Flood Control District
- Contra Costa Department of Conservation and Development
- Contra Costa Water District (CCWD)
- Diablo Water District (DWD)
- East Bay Municipal Utilities District (EBMUD), and various cities within the County that produce all or part of their domestic water supply from groundwater sources

The Grand Jury attended meetings and witnessed technical presentations at or by:

- Contra Costa Water District (CCWD)
- East Bay Municipal Utilities District (EBMUD)
- San Francisco Bay Regional Water Quality Control Board
- Bay Area Integrated Regional Water Management
- East Contra Costa County Integrated Regional Water Management
- California Water Resources Control Board
- East County Water Management Association
- East Bay Leadership Council (Water Task Force)

- Contra Costa Local Agency Formation Committee (LAFCO)
- The Board of Supervisor's Transportation, Water, and Infrastructure Committee (TWIC)

The Grand Jury studied and reviewed documents relating to water wells and groundwater issues including:

- County ordinances related to domestic wells
- The Sustainable Groundwater Management Act (the new groundwater law)
- Various groundwater basin studies prepared by Luhdorff & Scalmanini, Norfleet Consultants, and DWR, including Bulletin 118
- Water-industry standards, Government and Non-Governmental Organization (NGO) documents related to groundwater, well drilling, and groundwater quality

## BACKGROUND

The population of California has more than doubled in the past 50 years. During this time, California has experienced three periods of drought: 1976-1977; 1987-1992; and the current drought, which started in 2012.

In 2020, the 20X2020 Water Conservation Law, which mandates a reduction of water consumption by 20% per capita from the base year (2005), will come into effect. The State is currently meeting that goal because of severe drought cutbacks, but historically consumption increases (bounces back) when a drought abates.

Groundwater has always been essential in California. Due to variable precipitation and droughts, California has relied on groundwater when surface water is scarce. According to a fact sheet prepared by DWR and other water experts:

- *More than eighty percent of Californians rely, in part, on groundwater for their drinking water.*
- *Many rural areas and small urban areas rely entirely on groundwater, as well as some larger cities, such as Fresno.*
- *Even in wet years, groundwater is over a third of the state's total annual water supply and increases up to sixty percent in dry years.*
- *Groundwater basins are one of the most cost-effective and environmentally friendly places to store water locally during wet years.*
- *Collectively, groundwater basins are the state's largest reservoirs – more than ten times the size of all its surface reservoirs combined.*

- *There are eight groundwater basins that either entirely or partially underlie the “footprint” of our County.*

## **DISCUSSION**

To better identify and understand this complex subject, the report has been divided into the following sections; groundwater, wells, concerns, and path forward.

### ***GROUNDWATER***

Groundwater is water that fills the pore spaces in the earth, the ground beneath your feet. By way of example, a ground water basin can be thought of as sand in a bathtub or marbles in a jar to which water is added. The coarser the material, (sand, pebbles, and gravel), the more space there is for water to be stored. This storage space is called an aquifer.

When the County was first settled, groundwater supply was sufficient for its population, but as the population grew, groundwater was impacted by the increased demands on it. This was exacerbated by periodic droughts and, in urban areas, by contamination from septic sources and diffusion of adjacent higher salinity water brought on by well over-drafting (the pumping of water from a groundwater basin or aquifer in excess of the supply flowing into the basin).

In the early part of the last century, surface waters captured and transported from the Sierra snowmelt and locally from the San Joaquin River, were tapped to provide a more reliable water source for the growing population. Nevertheless, for a significant number of families in exurban and rural areas of the County, groundwater remains an important source for both domestic and irrigation purposes. In East County, many disadvantaged communities (DACs) rely on groundwater for all or part of their water needs. Consequently, water quality issues in these areas have a greater impact in the absence of affordable water alternatives. (For more information about DACs in our County see Appendix 1)

#### **Groundwater Resources within Contra Costa County –**

The County’s footprint overlays all or parts of eight groundwater basins. The shaded areas in Figure 1 below indicate the groundwater basins. The northwest corner contains the northern end of the East Bay Plain Basin. Proceeding east across the northern edge are Arroyo del Hambre Valley, Ygnacio Valley, Clayton Valley, Pittsburg Plain, and the Tracy Sub-Basin. The San Ramon Valley and (an extension of) the Livermore Valley basins are in the southwest corner of the County. Compared to more agricultural Bay Area counties, the County has much smaller and in some cases lower quality basins.

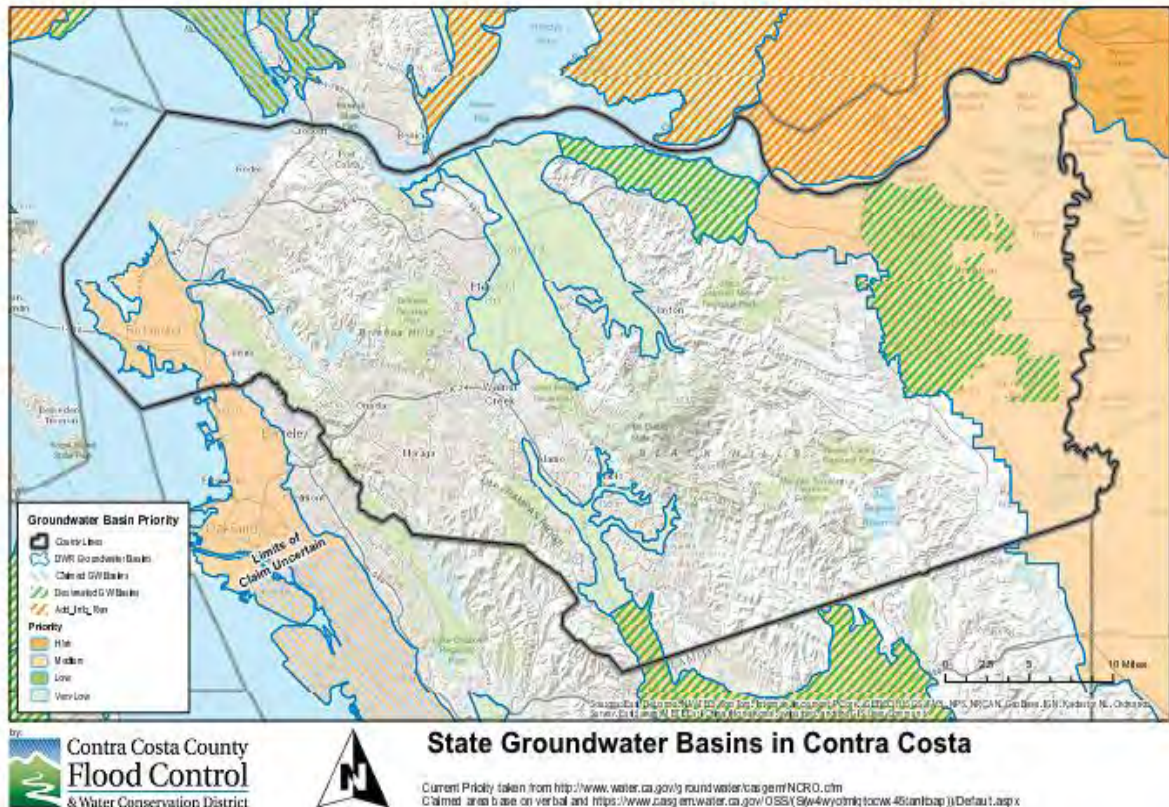


Figure 1- Groundwater Basins in Alameda and Contra Costa Counties

(Consult Table 3 in Appendix 4 for additional data obtained from DWR Bulletin 118.)

### Sustainable Groundwater Legislation –

Last year the Sonoma County Civil Grand Jury evaluated sustainable groundwater for its county. In their report, they provided the following summary of the SGMA:

*In November 2014, the State Legislature passed the Sustainable Groundwater Management Act (SGMA). It supersedes and strengthens previous legislation (AB 3030) that addressed groundwater management. It provides for the formation of Groundwater Sustainability Agencies (GSA's) to oversee each defined groundwater basin. It appropriated \$100 million toward the formation of GSA's. While only 'medium' and 'high' priority basins are required to form GSA's, the Act allows and encourages GSA formation for 'very low' and 'low' priority basins.*

Each GSA is responsible for assuring that groundwater monitoring wells reflect the true condition of the aquifer; pumping records are accurate; all necessary studies and modeling of groundwater basins have been identified and performed; and all decisions about how to achieve sustainability goals are properly validated.

While forming a GSA that is not legally mandated may appear to add an additional layer of bureaucracy, there are three potential advantages of doing so:

- (i) elucidation of how much available water exists within a defined basin;
- (ii) confirmation of how much water could be sustainably withdrawn on an annual basis or during an emergency and;
- (iii) agreement on who is entitled to withdraw from it.

For instance, if a basin confirmed to have unfilled space was intentionally charged with surplus water during wet years, basin users should agree on the rate at which the “water charger” may remove that water – for instance, a rate that would not negatively impact other basin users. It would also be important to agree that other users could not increase their withdrawal rates beyond their respective historical use. The GSA reaches, documents, and enforces these understandings and agreements

### **Planning for Groundwater Sustainability –**

To comply with the SGMA, each designated basin will need a detailed plan that addresses SGMA requirements. These requirements include:

- (i) a description of the basin’s parameters and characteristics;
- (ii) measurable objectives for achieving sustainability;
- (iii) a timeline and milestones for accomplishing the defined goals;
- (iv) provisions for monitoring and timely reporting of performance and;
- (v) verification that the plan aligns with general plans of the applicable city/cities and the County.

The Groundwater Sustainability Plan (GSP) has to consider all of the above criteria. To complete a GSP, the GSA will need to collect data on the current water extraction and recharge rates. It also needs to have studies conducted that better characterize the basin’s holding capacity, its ability to recharge, and its maximum extraction rate. SGMA provides authority for the GSA to obtain information about how much water is being extracted. Each GSA is also empowered to fund its own operations and enforce its own rules. However, stakeholders can opt out of SGMA requirements by demonstrating to the DWR that their basin is being managed sustainably.

### **Status of Groundwater Sustainability Agencies in the County –**

A GSA is currently being formed for the Tracy Sub-basin. Participants include Diablo Water District, CCWD, East Contra Costa Irrigation District, Byron-Bethany Irrigation District, the cities of Antioch and Brentwood, the Town of Discovery Bay, and the County Water Agency. The County is considering full membership in this GSA based on a recommendation by TWIC.

A GSA for the East Bay Plain basin, which is primarily within Alameda County but extends into the County, is being formed under the leadership of EBMUD. The team

working on formation of this GSA intends to work with the Contra Costa cities that overlie the basin and the County.

Previously, EBMUD had considered petitioning to sever the portion within the County from its “medium” priority status because it has limited storage capacity compared to the rest of the basin and the groundwater is degraded from salt-water intrusion in some areas. Nevertheless, the East Bay Plain basin contains producing wells, some of which are being used to water parks and public landscaping. In fact, as recently as 2009, a new well was drilled in El Cerrito. Also, the Richmond and El Cerrito General Plans acknowledge the potential benefits of using groundwater for emergencies such as an earthquake or an extended supply disruption.

Given that Richmond and San Pablo both had active municipal wells up into the 1930s that pumped over one million gallons per day, those cities might consider reassessing drilling new wells for irrigation and emergency use. According to a 1998 study produced by Norfleet Consultants, “Since [the over pumping and saltwater intrusion that occurred in the 1920-1930 era] groundwater levels have recovered and it is likely that they are now at 1880 levels or higher.”

The Pittsburg Plain basin is classified as “low” priority and therefore does not require the formation of a GSA. Even though municipal wells in the Pittsburg Plain basin are extracting over 2000 acre-feet/year, the basin has historically shown itself to be sustainable. It would be useful to determine the basin’s maximum capacity and suitability for enhanced storage. However, without stakeholder (municipal well owners) consensus that GSA formation would be beneficial, (and there has been none from municipal users) it would take the County’s or City of Pittsburg’s involvement to push agency formation forward.

The San Ramon Valley and the Ygnacio Valley basins are also classified as “low” priority. While there are slightly more than four hundred individual wells removing water from each basin, there have been no documented reports of permanent lowering of the water table. If the storage capacity of these basins were better understood, they might also be used for banking surplus water for future irrigation use. Again, GSA formation could be beneficial in establishing a mechanism for allowing such a banking plan to go forward.

### **Constraints on Use of Groundwater within Contra Costa County –**

Water quality in parts of basins within the County has been compromised by misuse. Water quality problems include saline intrusion, toxic plumes from prior industrial activity, and the risk of introduction of new contaminants from undocumented abandoned wells. The risks of recontamination discourage cleanup of the existing groundwater basins for use as underground reservoirs and particularly affect industrial areas such as Richmond and along the northern waterfront from Martinez to Antioch.

Even where chemical pollution is only a minor concern, the overall quality of naturally

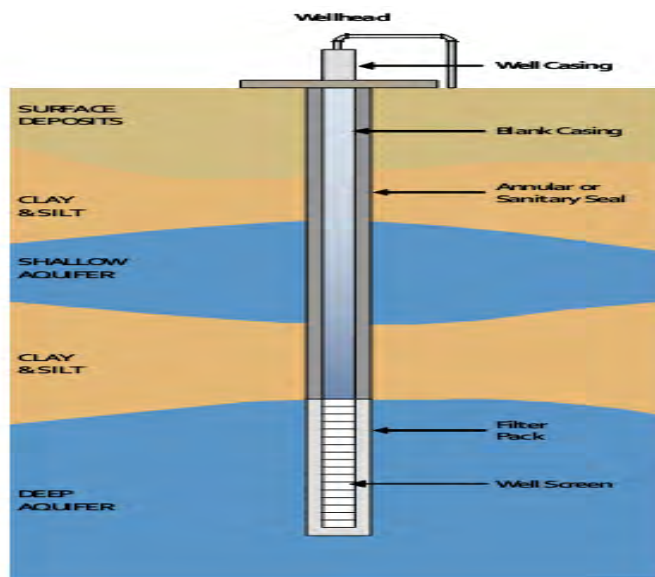
occurring water represents a problem for use and additional storage. High total dissolved solids (TDS), i.e. hardness and other naturally occurring elements and compounds (various salts, arsenic, boron, and hexavalent chromium), are issues that must be evaluated before moving forward.

The geological structure of the County's basins is inferior compared to the basins in the surrounding Bay Area counties and the large, highly permeable basins in Southern California. The latter contain thick layers of coarse sand and gravel that are ideal for water storage. Contra Costa's groundwater basins are smaller because the water-bearing layers are thinner, and often overlain with clay. The clay layers act as "aquitards" that inhibit natural recharging of the groundwater basins. However, despite these facts, significant amounts of water are currently being sustainably withdrawn to support domestic, industrial, and agricultural needs.

### **WELLS: ACCESSING GROUNDWATER IN CONTRA COSTA COUNTY**

#### **Wells and Well Drillers – (for description of different well types, see Appendix 2)**

Modern water wells have common features: a bore hole: a sleeve or liner called a "casing" that extends down the previously drilled hole to reach the aquifer; a sanitary seal that fills the annular space between the casing and the hole; a well pad on which the well head assembly rests; and the pump/motor/water conduit piping that extracts the water. Figure 2 shows a schematic representation.



*Figure 2 – Schematic Drawing Showing Completed Well (DWR)*

When a well is abandoned, it is required to be plugged with an approved material to a specified depth from the ground surface. Plugging is nothing more than removing the pump and internal piping and filling the space with the approved material.

## **Well Permitting and Inspection –**

In the mid-1980s the County passed ordinances that mandated permitting and inspection of all wells, including domestic and agricultural water wells. Since these ordinances were established to protect public health, enforcement was assigned to EHD, a branch of the County Health Department. EHD is responsible for permitting individual wells, inspecting well completions, and maintaining well records.

In order to drill wells in the County, each well drilling contractor must be bonded and possess a current (valid) state contractor's license. Both the County and the State maintain lists of licensed drillers.

EHD is responsible for monitoring and documenting one-hundred twenty small water service systems (those with up to one hundred ninety-nine service connections) that serve small communities, the public in commercial establishments, and remote regional parks.

EHD has no mandate to monitor individual households (single connection) or two related households sharing a well on the same parcel. A single test for contamination at well completion is all that is required. In comparison, most of the small systems the County monitors require routine bacteriological, chemical (including a more frequent test for nitrates), and radiological testing.

Although periodic testing and treatment of well water is recommended, private owners are not required to do so unless testing after well completion finds harmful bacteria in the water that was present prior to the drilling process.

Individuals using well water are at greater risk than those using municipal water, since the well water requires minimal testing, while municipal water is tested several times a day. According to Joan Brunkard, PhD. of the Centers for Disease Control and Prevention, the lack of testing impedes researchers trying to understand the scope and severity of disease outbreaks that could be linked to contamination from septic systems.

## **Well Documentation –**

The EHD records each well completion (sealing of the well to prevent future contamination from surface or near surface water) and documents that the water source meets State water quality requirements. Each completed well record is filed in a folder. Folders are ordered by street address. Since 2002, well records have been electronically entered into a database for easier access. Older records are slowly being entered into this database as resources become available. There is no current deadline for all older records to be electronically entered. EHD staff does not know how many operational or abandoned well records are in their paper files. There may be many wells for which the County may not have documentation because EHD well records only go back to the mid-1980s.

Those undocumented wells and abandoned wells that have a breach in the casing or well head can be a potential health risk to nearby wells that are properly sealed. These compromised wells provide a “short cut” for contaminants from the earth’s surface to travel to deeper water bearing zones from which drinking water is extracted. Figure 3 illustrates an entry point for contaminants.



A cracked well casing may allow surface water and contaminants into your well. One of the most common water quality issues associated with a cracked well casing is the presence of coliform bacteria. Other chemicals can also be introduced into the well through the cracked casing. Consult a water quality professional, such as a licensed well driller, to repair or replace the cracked casing.

*Figure 3 – Entry Point for Contaminated Water to Reach the Aquifer (DWR)*

As part of the well permitting process EHD notifies the County Assessor’s Office when wells are put into service. The Assessor’s Office shows or notes the presence of wells in the parcel files that it maintains. Such records can only be accessed manually (one at a time), which makes it difficult to identify all wells in the County since there are roughly 360,000 such records.

DWR maintains the well log records for drilling contractors going back to the early 1950s. These records document the date completed; the well type (domestic water, irrigation, monitoring, etc.); the well depth; the street address (in most cases); and, most importantly, geographic coordinates (latitude and longitude).

According to DWR’s website, “In June 2015, Senate Bill 83 amended California Water Code §13752....to allow public access to Well Completion Reports. However, the law requires the DWR to comply with *The Information Practices Act of 1977*, redacting personal information from the Well Completion Reports before making them public. Since there are about 800,000 reports on file with the Department, it requires a significant effort to redact the personal data from all reports. DWR is in the process of redacting the personal information with the goal of making all Well Completion Reports available online at no charge within the next year.”

There are over 17,000 wells in the County, although the majority are either monitoring wells or test wells. Test wells are usually plugged soon after completion. Domestic water and irrigation wells account for over 2500 of the total number of wells. The DWR data are organized on an Excel spreadsheet, so the active well locations can be converted into the County Geographic Information System (GIS) as a discrete overlay.

This “water well overlay” can identify the location of known water wells, as well as help confirm the status of old wells. It can also assist in locating possible abandoned wells so that they can be inspected to verify that they are correctly sealed.

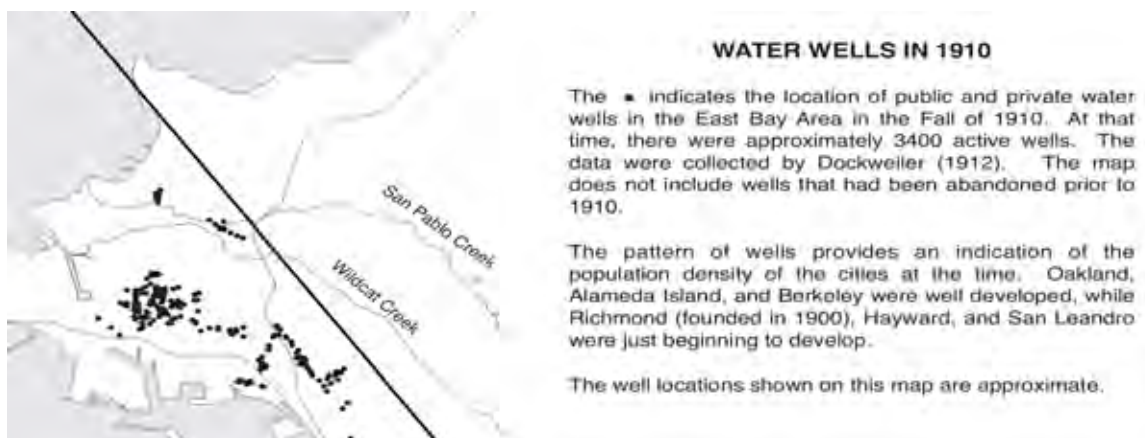
The distribution of domestic water and irrigation wells by associated groundwater basin is summarized in Table 2 in Appendix 2.

Performing a review of historical maps, United States Geographical Service (USGS) topographic maps, and old fire insurance maps (known as Sanborn Maps) also could aid in locating old wells to determine if they have been correctly abandoned.

The 1999 East Bay Plain Beneficial Use Study, prepared using data collected by Norfleet Consultants, identified the locations of wells dating back to at least 1910 in West County. Figure 4 shows the part of the data relating to West County. The black diagonal line represents the location of the Hayward Fault.

The 1999 Report recommended undertaking well abandonment programs by appropriate county agencies in areas where groundwater resources are at risk.

The 1999 Report also noted that EBMUD’s backflow preventer installation records are a good indication that backyard wells existed at those addresses. EBMUD records show that over 600 backflow preventers were installed in El Cerrito, Richmond and San Pablo. It is uncertain whether similar records are kept by other water districts within the County, which could be used to verify the existence of wells in areas served by the districts.



*Figure 4*  
1910 Map showing existing public and private well in the Richmond Area  
(From 1998 Report Prepared by Norfleet Consultants)

The original information collected by Dockweiler over 100 years ago was largely performed by door-to-door canvassers. It has long since been lost, but could be regathered.

## **CONCERNS**

### **Groundwater Availability –**

As California endures its fourth year of drought, there have been media reports of wells going dry and families being forced to haul water. These reports concern the Tassajara Valley in the southern part of the County where a defined groundwater basin does not supply the wells. Historically there have been problems during drought years in the area west of Briones Regional Park and along Marsh Creek Road. Last year EHD attempted to survey domestic well owners about seasonal or drought-related problems, but only received a limited response. The reason for the low response is not known but suggests that there is not a widespread issue with wells in other parts of the County.

As the drought persists, some drillers' backlogs have increased and a few have extended their workweek to 6 days to meet demand. While this might suggest an increase in construction of domestic or irrigation wells, EHD records for the County do not show this to be the case. There has only been a modest increase in well construction over the past 5 years and many of the new wells were associated with new building construction. EHD data shows that only 258 well permits were issued in the past 5 years. The peak year was 2014 when 84 permits were issued.

### **Groundwater Quality –**

DWR states that unused and abandoned wells can provide a pathway for contamination to reach aquifers used as drinking water sources. "The risk of groundwater contamination increases when other wells are operating, since pumping can draw poor quality water down the abandoned well and into the drinking water aquifer."

The lack of any testing or reporting requirement places families that are reliant on groundwater from their wells for domestic purposes at a greater risk compared to families using municipal water, who have their water tested dozens of times each day. The absence of testing is also an obstacle for researchers who are trying to understand the scope and severity of disease outbreaks that could be linked to faulty septic systems. The predominance of these issues falls within DACs.

Groundwater in the County can be high in total dissolved solids, commonly termed "hardness," and other contaminants such as arsenic, boron, chloride, hexavalent chromium and nitrates that must be filtered out or blended with higher quality water before distribution. Sometimes the limit (maximum permissible amount) on these "impurities" is driven by public health concerns. For example, the Beacon West community well on Bethel Island was recently found to contain arsenic levels more than double the current State Primary Drinking Water Standards. Previously controlled by the Department of Public Health, the maintenance of these standards now comes under the State Water Resources Control Board. Low interest loans from the State Revolving Fund were obtained in order for the community to drill a new, deeper well to reach higher quality water. Other times the "limits" are aesthetic: taste, color, odor and

usability without in-home water softening.

While lower quality groundwater is unsuitable for many uses, it may be used for irrigation. Where such water is available, it could be blended into recycled water distribution systems in summer months.

The County's stated water-related goals and policies in its current General Plan include:

- *To employ alternative drainage system improvements which rely on increased capacity to lessen or eliminate the need for structural modifications to water courses, whenever economically possible*
- *Preserve watersheds and groundwater recharge areas....*
- *Preserve and enhance the quality of surface and groundwater resources*
- *Provide development standards in recharge areas to maintain and protect the quality of groundwater supply*
- *Develop a program that fosters the participation of public agencies, private organizations, and individuals in the development of watershed management practices....*

These goals and policies confirm the County's interest in protecting its groundwater resource and in encouraging the broadest participation of its citizens in reaching those goals.

### **THE PATH FORWARD**

While the groundwater basins within the County are not as large or productive as those in surrounding counties, these basins can contribute to the local water supply. When issues related to basin capacity, sustainable withdrawal rate, recharge, and water quality are resolved; the basins can make an important contribution during times of peak demand, extended drought or emergencies.

Thousands of domestic water and irrigation wells are known to exist throughout the County. Historical records indicate that thousands more, which cannot be fully accounted for, may have been improperly abandoned or left to deteriorate. This represents a potential public health risk that needs to be addressed.

## FINDINGS

- F1. With the exception of Community and non-Community wells, the County is not required to provide oversight of individually owned wells; aside from permitting well construction and inspecting wells upon completion.
- F2. Improperly maintained wells or wells that are located too close to surface contaminants or failing septic systems risk contamination, which also may lead to the contamination of neighboring wells.
- F3. Improperly abandoned wells or undocumented wells can threaten groundwater quality because improper construction or maintenance may result in breaches in these wells that permit ground contaminants to reach potable water in lower water bearing strata.
- F4. The lack of a comprehensive and readily accessible County database of wells hinders the ability to track wells to assure they are either properly maintained or correctly abandoned.
- F5. EHD and the County Assessor can access DWR well log data, water district backflow preventer installation records, and related historical data that tie well locations to specific property parcels.
- F6. Residents of the County who live in disadvantaged communities are more likely to have their sole potable water source come from domestic wells, which have fewer checks on water quality than municipal water sources derived from surface water. County Flood Control and EHD have the data to assess those most at risk. With this information they would be able to develop projects eligible for Proposition 1 matching grants, i.e., projects that could enhance water quality and reduce risk of well contamination during flood conditions.
- F7. A “Groundwater Advisory Council” may coordinate stakeholders to help achieve the water-related goals and policies articulated in the County General Plan, as well as raise public awareness about groundwater issues in the County.
- F8. There is insufficient data to confirm either a maximum sustainable withdrawal rate or storage capacity for any of the groundwater basins within the County.
- F9. The County can choose to support the formation of GSAs for “low” and “very low” risk basins, even though not required by the SMGA.
- F10. GSAs can be helpful in elucidating how much available groundwater exists within a defined basin; how much water can be sustainably withdrawn on an annual basis or during an emergency and in helping stakeholders reach agreement about who is entitled to withdraw from a groundwater basin.

- F11. Three GSA agencies are in the early stages of formation: one for the East Bay Plain, one that incorporates the “thumb” of the Livermore Valley Basin, and one for the Tracy Sub-Basin.
- F12. Approximately \$100 million has been allocated by Proposition 1 (2014) to support GSAs in developing sustainability plans.
- F13. Based on historical records and more recent hydrological studies, the City could access more groundwater for landscape watering and emergency purposes.
- F14. To help establish the Pittsburg Plain basin’s sustainable yield and storage capacity, the City of Pittsburg could initiate formation of a GSA for this basin.

### **RECOMMENDATIONS:**

- R1. As funds are identified or become available, the Board of Supervisors should consider directing EHD to update their website alerting domestic well owners about the risks of not periodically checking the water quality of their potable water wells, and preparing an informational brochure containing the same cautionary information.
- R2. As funds are identified or become available, the Board of Supervisors should consider directing appropriate County departments to review the well records and databases of DWR, water districts, and the County to document well locations, develop a county-wide database, and map the locations as an overlay on the County GIS.
- R3. As funds are identified or become available, the County Assessor should consider verifying that the assessed value of each parcel reflects the presence or absence of wells by reviewing assembled well data and, where discrepancies between records are identified, confirming whether a well exists and its status, active or abandoned.
- R4. As funds are identified or become available, the Board of Supervisors should consider directing EHD and the County Flood Control District to jointly review proposed flood control projects to determine how to design or modify the projects to protect local wells, and the groundwater below, in DACs.
- R5. The Board of Supervisors should consider establishing a Groundwater Advisory Council to further promote public awareness about groundwater conservation and protection.
- R6. The Board of Supervisors should consider directing the County Water Agency to become involved in the formation of GSAs in the County and to periodically report to the Board on the status of each GSA.

- R7. The Board of Supervisors should encourage each water district whose sphere of Influence overlays “low” and “very low” priority groundwater basin in the County to form a GSA to analyze its groundwater basin and determine its potential for expansion and exploitation.
- R8. As funds are identified or become available, the City should consider consulting hydrological specialists to provide advice about the best locations for accessing groundwater for landscape irrigation and emergency purposes.
- R9. As funds are identified or become available, the City of Pittsburg should consider forming a GSA for the “low priority” Pittsburg Plain groundwater basin in order to establish its practical sustainable yield and maximum storage capacity.

## REQUIRED RESPONSES

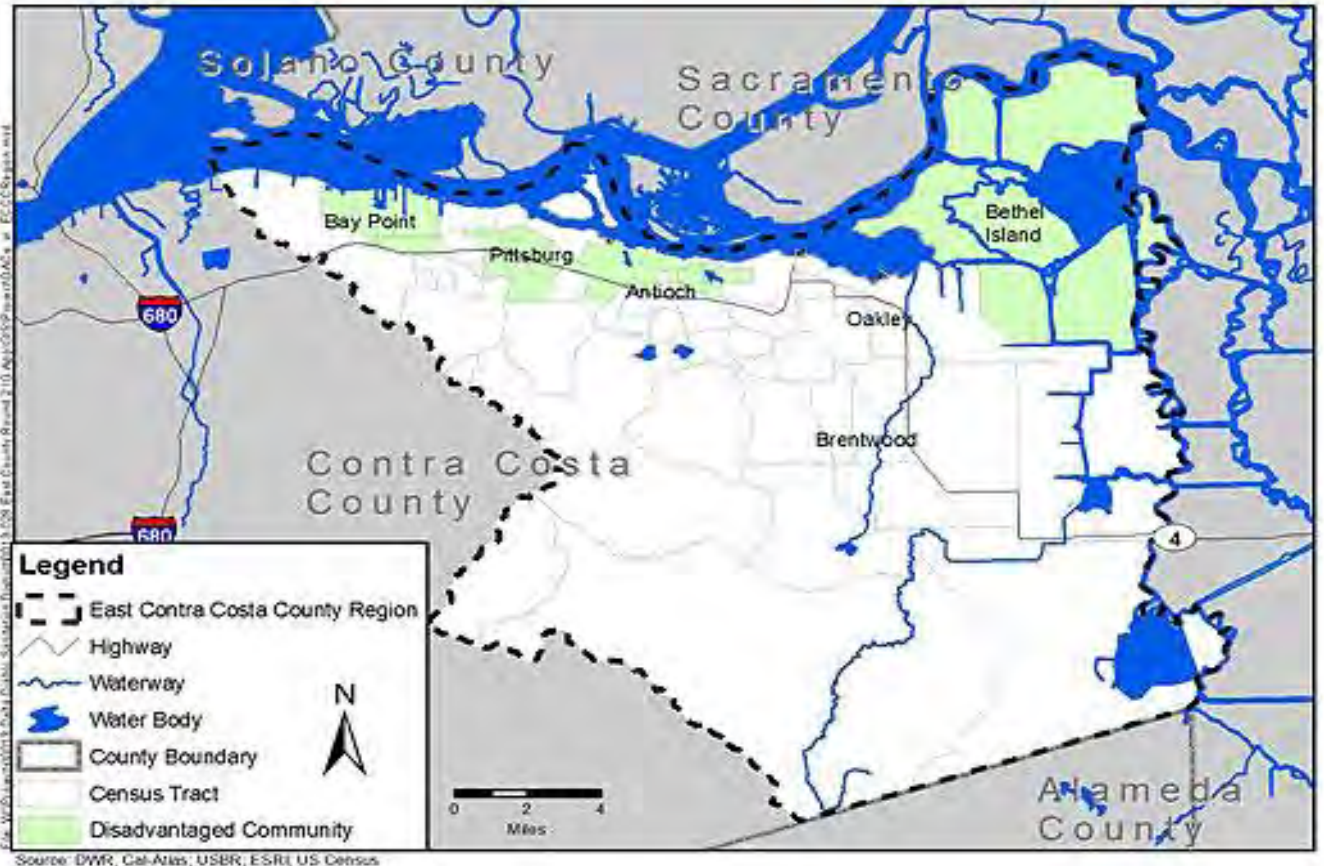
	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County Board of Supervisors	1-12	1-2, 4-7
Contra Costa County Assessor	5	3
El Cerrito City Council	13	8
Richmond City Council	13	8
San Pablo City Council	13	8
Pittsburg City Council	14	9

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson  
 725 Court Street  
 P.O. Box 431  
 Martinez, CA 94553-0091

# APPENDIX 1

## Disadvantaged Communities in Contra Costa County

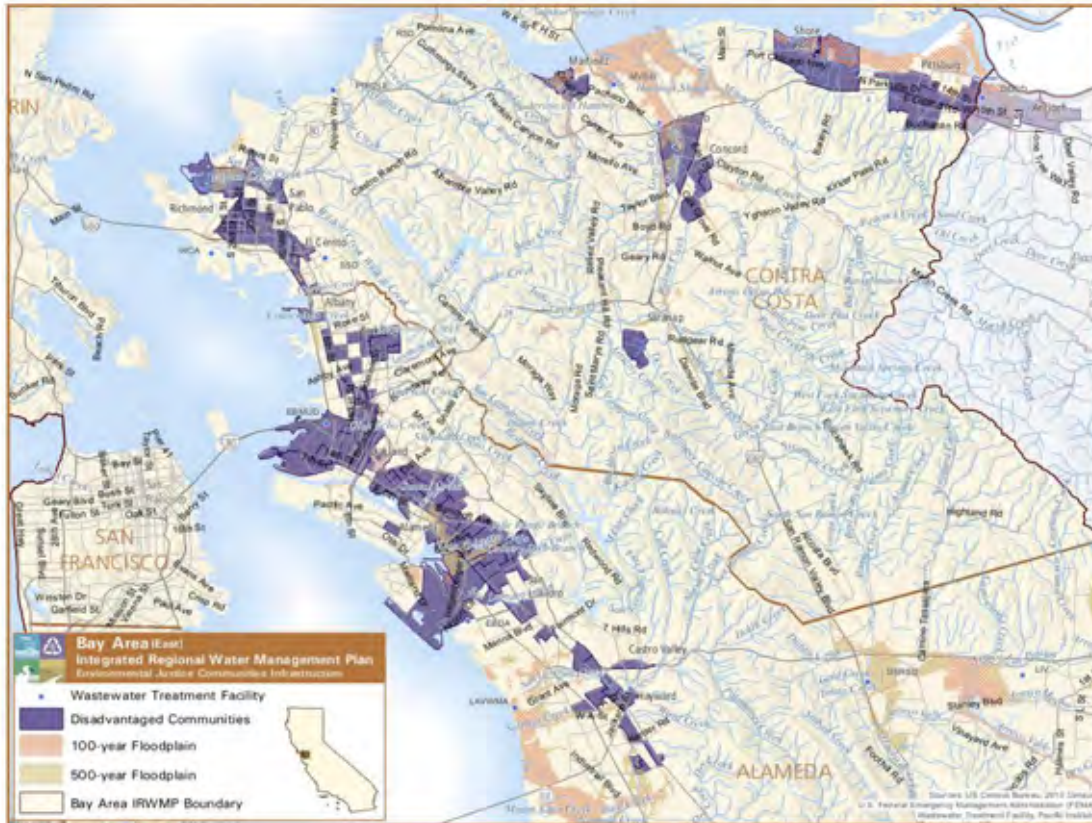


*Map of Disadvantaged Communities (DACs) in the East County Region*

The map shown above was taken from the East Contra Costa County Integrated Regional Water Management Plan (ECCCIWMP) website. The website describes DACs as follows:

According to the 2012 Proposition 84 and 1E Guidelines, a 'disadvantaged community' (DAC) is defined by the State of California as a community with an annual median household income (MHI) that is less than 80 percent of the statewide MHI (Public Resources Code (PRC), 75005(g)).

A community with an MHI of \$48,706 or less is considered a DAC. Under past grant funding applications, approximately 19% of the Region's area qualifies as DAC, while 23% of its population lives within a DAC. As of the 2015 IRWM Plan update, this number had dropped to 19% of the region's population qualified as DAC, reflecting some recovery from the recent economic downturn.



DACs in West and North County *Regions*  
*(The map also shows portions of Alameda County)*

**Critical Water Supply and Water Quality Needs of DACs in the Region –**

Many water supply and water quality issues facing DACs in the Region relate to requirements to maintain drinking water quality that meets applicable standards, the threat of damage from flooding, and a strong reliance on Delta supplies. Increase costs of supplies or treatment have disproportionately adverse effects on DACs, whose limited resources may threaten their access to drinking water if costs grow too high. Bethel Island, which is entirely DAC, relies on groundwater for its drinking water. This groundwater has high levels of arsenic, and projects are currently being developed to address this issue. [Note: At least one of these projects has now been completed.]

**Issues of special concern to DACs in the Region include:**

- Improved water supply reliability/reduced reliance on Delta supplies
- Water quality of groundwater supplies used to supplement Delta supplies
- Infrastructure renovations necessary to assure continued reliability of the minimum quality and quantity of water
- Affordability programs to offset the rising costs of water service
- Flood and stormwater management projects designed to protect disadvantaged communities from flooding impacts

## APPENDIX 2

### Smaller Community Wells –

EHD monitors the water quality reports required to be submitted for smaller community wells (up to 199 individual connections) and periodically visit the sites to verify their condition. Monitoring of larger water systems is the responsibility of the State. There are approximately thirty community water systems that EHD oversees. In addition, there are over ninety other smaller water systems, including commercial establishments, churches, parks, and much smaller “State Small Water Systems,” that the State delegated to EHD for oversight. In some cases these systems required disinfection and filtration systems. Table 1 summarizes both community and municipal wells within the County.

#### Water Systems in Contra Costa County

Table 1

Type of System	Number of Systems	Approximate Population Served
<b>Community</b>		
Very Large (>100,000)	3	550,000
Large (10,001 – 100,000)	6	222,925
Medium (3,301 – 10,000)	0	0
Small (501 – 3,300)	0	0
Very Small (>15 connections, 0-500)	31	4,643
State Small (5-14 connections)	14	200
Local Small (2-4 connections)	27	150
<b>Non-Community</b>		
Non-Transient	15	3,650
Transient	51	4,057

*Source: Presentation by EHD to LAFCO – January 2016*

## Municipal Wells –

Several cities and communities, including Bay Point, Bethel Island, Brentwood, Discovery Bay, Oakley (Diablo Water), and Pittsburg, rely on groundwater for all or a portion of their potable (i.e., drinkable) water. When good quality surface water is available, it is blended with the well water to improve overall water quality.

## Domestic and Agricultural Irrigation Wells –

The DWR data for domestic and irrigation wells summarized in the Appendix does not include information on annual extraction rates. A rough estimate could be performed based on the well casing size, the acreage associated with the well or wells, and the type of crop grown. East Contra Costa Irrigation District (ECCID) normally uses their pre-1914 surface water “right” in lieu of pumping groundwater. In dry years it has a contract with CCWD to sell its surface water, and use groundwater for the crops that would normally get surface water irrigation. Table 2 sets forth the number and type of well for a specific groundwater basin within the County.

Well Location vs. Groundwater Basin

Table 2

Ground-water Basin	Tracy Sub-Basin	Pittsburg Plain	Clayton Valley	Ygnacio Valley	Arroyo Del Hambre Valley	San Ramon Valley	East Bay Plain	Other
Domestic Wells	1152	18	89	264	0	171	8	194
Irrigation Wells	111	21	18	199	2	232	9	284

## APPENDIX 3

### **Notes from DWR Bulletin 118 –**

#### *Arroyo del Hambre Valley, Clayton Valley, Pittsburg Plain, Tracy (Sub), and Ygnacio Valley Basins*

Within the CCWD service area, groundwater use is limited (CCWD 2011). The use of existing CCWD wells at the Mallard Well Fields is limited because of the threat of contamination from adjacent industrial areas. The City of Pittsburg operates two municipal wells from the Pittsburg Plain Groundwater Basin (Pittsburg 2011). The City of Martinez operates up to two wells in the Arroyo del Hambre Valley Groundwater Basin to provide irrigation water to a municipal park (Martinez 2011). In Bay Point, the Golden State Water Company operates three municipal wells.

#### *San Ramon Valley Groundwater Basin*

Groundwater use is limited within the San Ramon Valley Groundwater Basin located in southern Contra Costa County. Local wells are used for small agricultural activities and landscape irrigation by individual landowners.

#### *Livermore Valley Groundwater Basin*

In the Livermore Valley Groundwater Basin, Zone 7 Water Agency administers oversight of the groundwater basins used for water supply and provides water to California Water Service Company, Dublin San Ramon Services District, City of Livermore, and City of Pleasanton. Zone 7 Water Agency only withdraws groundwater that has been recharged using surface water supplies (Zone 7 2010). The California Water Service Company, Dublin San Ramon Services District, and City of Pleasanton also withdraw groundwater (California Water Service Company 2011h; DSRSD 2011; City of Livermore 2011; City of Pleasanton 2011).

Zone 7 Water Agency manages the groundwater levels and quality in the Livermore Valley Groundwater Basin to maintain groundwater levels that would avoid subsidence and provide emergency reserves for the worst credible drought (DWR 2006q, 2013d).

Zone 7 Water Agency artificially recharges the Livermore Valley Groundwater Basin with local surface water supplies and SWP water by releasing the surface waters into the Arroyo Mocho and Arroyo Valle (Zone 7 2005, 2010). The infiltrated water is then pumped from the groundwater basin for various uses, mostly during the summer and during drought periods when local surface water supplies are diminished and the available SWP water supplies are less than the entitlement value Zone 7 Water Agency, City of Livermore, City of Pleasanton, Dublin San Ramon Services District, and California Water Service Company are permitted to withdraw groundwater from this sub-basin.

In 2009, the Zone 7 Water Agency began operation of the Mocho Groundwater Demineralization Plant (Zone 7 2010). This plant is a wellhead treatment plant that produces potable water using reverse osmosis to remove TDS and hardness from the Main Basin.

## APPENDIX 4

### Summary of Groundwater Basins in Contra Costa County

Information extracted from California DWR Bulletin 118 Data

Table 3

Basin Name <i>NI = No Information</i>	Pittsburg Plain	Clayton Valley	Ygnacio Valley	San Ramon Valley+'thumb' of Livermore Valley	East Bay Plain within Contra Costa County	Arroyo del Hambre Valley	Tracy Sub-basin within Contra Costa County
Basin Number	2-4	2-5	2-6	2-7	2-9.4	2-31	5-22.15
Surface Area (Acres)	11,600	17,840	15,500	10,620 (est.)	7,000 (est.)	790	115,000 (est.)
Storage Capacity/ Groundwater in Storage	NI	NI	NI	NI	NI	NI	NI
Water Bearing Formations	NI	> 700 feet	> 700 feet	NI	NI	NI	NI
Groundwater Level Trends	NI	1976-1977 1987-1992 Dropped and Recovered	1976-1977 1987-1992 Dropped and Recovered	1976-1977 1987-1992 Dropped and Recovered	NI	NI	NI
Groundwater Quality	450-5737 mg/L 1821 mg/L Avg.	328-864 mg/L	NI	NI for SRV 450 mg/L Avg. for Livermore Valley	364-1420 mg/L	NI	210-7800 mg/L Higher salinity wells nearer Delta
Last Update	2004	2004	2004	2004	2004	2004	2006



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY  
725 Court Street  
Martinez, California 94553


Report 1603

# Pension Reform

If Not Now, When?

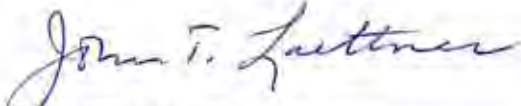
APPROVED BY THE GRAND JURY:

Date: May 10, 2016

  
MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: May 6, 2016

  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1603

**Pension Reform**

**If Not Now, When?**

**TO: BOARD OF SUPERVISORS**

**SUMMARY**

Contra Costa County carries extremely large pension liabilities, which may get worse due to uncertainties in the financial markets. Because of a long-standing California legal precedent, pension benefits to be earned in future periods are not negotiable, while wages and other benefits are subject to negotiation during the collective bargaining process. This grand jury recommends that the County seek a change or clarification of this legal precedent in light of subsequent legislation, thereby clearing the way for fair and sensible pension reform through collective bargaining.

Absent such reform, the County faces serious financial risks, as pension liabilities appear to be on a relentless upward path. The likely consequences of increasing pension costs are service cutbacks and staff layoffs. It is even conceivable, should the pension cost problem reach crisis proportions, that the County would have to consider bankruptcy reorganization, with all the arbitrary and unfair consequences that could flow from such an action. For these reasons this grand jury believes the time to act on pension reform is now.

A Glossary of useful terms for issues discussed in this report can be found in the Appendix. Each term included in the glossary is set in *italics* the first time it appears in this report.

**BACKGROUND**

*Defined benefit* pension plans (such as the County's) are financed by means of funds invested on behalf of the individual members of the plans. Both individual members and their employers make contributions to the funds each year, ideally in amounts sufficient to pay for the pension benefits earned during that year. In addition to annual contributions to the pension funds, the funds' *investment returns* are retained and

reinvested for the benefit of the members and finance a major portion of the pension benefits. For example, the County's pension fund projects that investment returns on the fund's assets will cover more than 50% of the ultimate costs of the County's pensions. For defined benefit plans to work as designed it is critical that the annual contributions from members and employers plus investment earnings be sufficient to cover the projected future costs of the pensions. When these financial underpinnings to a pension fund fall short, the fund charges the public employer for the amount of the shortfall. These shortfalls, known as *unfunded actuarial accrued liabilities (UAALs)* have become significant debts for public jurisdictions throughout California—including the County—that offer defined benefit pension plans to their employees.

The Stanford Institute for Economic Research estimates that, as of year-end 2013, California public pension systems as a whole were short \$281.5 Billion of what they require to assure the pensions will be paid when they fall due. This estimated shortfall amounts to about \$22,210 for each household in California, without including the unfunded liabilities of one the largest pension funds, the California State Teachers Retirement System (CALSTRS). Paying down these unfunded pension liabilities is a major reason why pension costs have absorbed increasing percentages of county, city and state budgets over the last 15 years.

The state of California has taken some important steps to address these costs. In 2012, the governor signed into law the *PEPRA* (Public Employees' Pension Reform Act) reform bill, which made significant reductions in pension benefits to be earned by public employees hired after January 1, 2013. However, PEPRA made only modest changes in pension benefits earned by employees hired before that date. That was contrary to the recommendation of the state's Little Hoover Commission, which had warned in a 2011 report that limiting pension reform to new employees was not a sufficient remedy for the pension problem:

"The problem, however, cannot be solved without addressing the pension liabilities of current employees. The state and local governments need the authority to restructure future, unearned retirement benefits for their employees. The Legislature should pass legislation giving this explicit authority to state and local government agencies. While this legislation may entail the courts having to revisit prior court decisions, failure to seek this authority will prevent the Legislature from having the tools it needs to address the magnitude of the pension shortfall facing state and local governments." (Emphasis added.)

In fact, overall pension costs have continued to rise since the enactment of PEPRA, though at a somewhat lower rate as more employees who were hired after January 1, 2013 enter the system. Thus, pension boards and public employers have continued to deal with rising pension liabilities by means of increasing pension contributions from members and their employers. For example, CALPERS, the state's largest pension plan, has announced plans to increase the contributions required by its members and their employers. The Contra Costa County Employees' Retirement Association

(CCCERA), the entity that manages the County's pension fund, effectively increased member and employer contributions in 2014 when it reduced the *assumed investment rate* on its pension fund assets from 7.75% to 7.25%. Member and employer contribution rates increase whenever the assumed rate of return on the pension fund is decreased, because actuaries must then assume that a smaller portion of the required funding for pension obligations will be covered by investment returns.

There are limited options for reducing pension-funding shortfalls:

1. Increasing contributions to the pension fund;
2. Reducing pension benefits;
3. Increasing investment returns on the assets of the pension fund.

The first two options have adverse financial impacts on one or more groups, which explains why pension reform is a difficult and contentious issue. Higher contributions from public employers come at a cost: they must be funded either by higher taxes or reduced public services; e.g., library or park cutbacks, reduced police patrols, longer medical and fire response times. Higher contributions from members mean lower take-home pay. Reductions in pension benefits adversely affect employees who view the pension benefit as an important element of their compensation for services rendered.

It is not surprising, then, that governments and plan members have often turned to higher investment returns as an apparently painless "magic bullet" to close the funding gap. Assuming a high rate of return on fund assets does not come at a cost to any group—at least initially—and does not require any reduction in benefits. However, employers and plan administrators have often made the unwarranted assumption that high investment returns will continue indefinitely. When returns inevitably fall below such unrealistic assumptions, the impact on pension liabilities is severe. In California the public employer (e.g., the County) is solely responsible for making up the shortfall.

The grand jury believes that funding for the pension liabilities the County and other districts have undertaken needs to be addressed realistically, without rosy assumptions about investment returns. Difficult as they may be, these issues must be addressed through adequate contributions to the pension funds, and by negotiations with labor groups over the levels of pension benefits to be earned in the future.

## **DISCUSSION**

### The County's Huge Pension Liability

The County has reported in its Recommended Budget for fiscal year 2016-2017 that it carried an unfunded pension liability of \$1.155 Billion as of December 31, 2014. This figure also includes the unfunded pension liability of the Contra Costa County Fire Protection District (ConFire), which the County routinely includes in its pension liability reports. The unfunded pension liability is also known as the unfunded actuarial accrued

liability or (UAAL). It represents the amount of money the County has yet to set aside in order to cover employee pension benefits already earned that the County will be required to pay in the future. It also represents the amount by which the CCCERA pension fund is not fully funded with respect to the County's pension liabilities.

The money the County should set aside today to cover future pension benefit payments is actually much less than what the ultimate payouts will be, since any money contributed to the CCCERA pension fund should increase in value over time from investment returns. By the same token, the contributions held back from the pension fund do not accumulate any investment earnings that could reduce the UAAL. Unless the short-funded CCCERA pension fund can generate investment returns that exceed the 7.25% assumed annual rate, the County will have to make up the UAAL gap in the future by means of increased contributions to the pension fund. The County and ConFire also have outstanding over \$329 Million in pension obligation bonds (POBs) that were issued in earlier years for the purpose of raising funds to contribute to CCCERA in order to reduce the County's UAAL obligations. Without the funds raised from the POBs, the County's pension UAAL would be substantially larger.

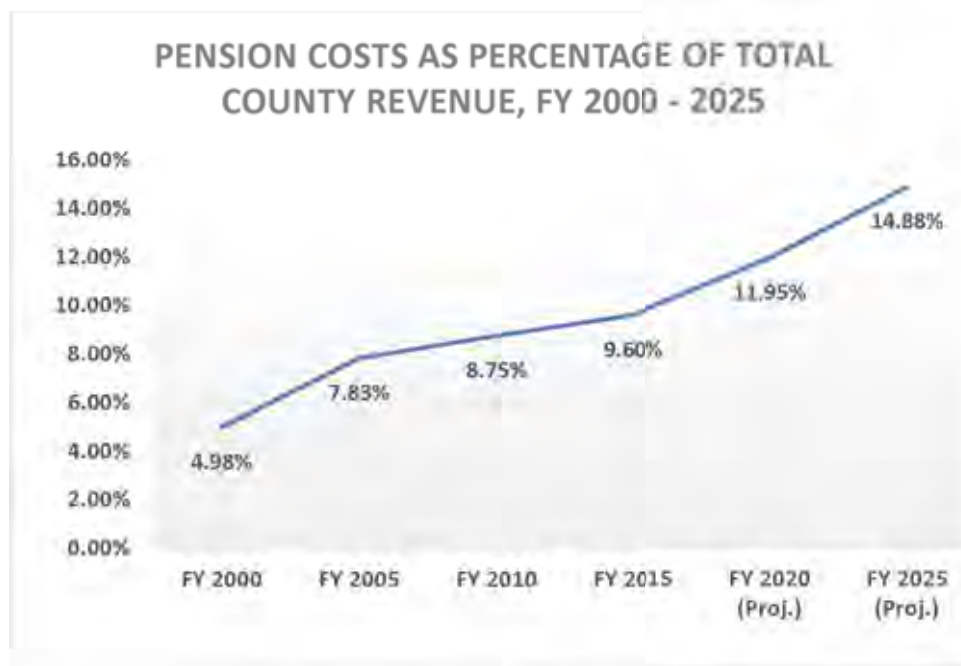
The \$1.155 Billion unfunded liability figure is based on an *assumed investment rate of 7.25%* per year. CCCERA has assumed it will earn this rate of return each year on its pension fund, compounded over the entire period the County's employees are working or receiving pension benefits. However, many financial analysts question whether the 7.25% annual return assumption in today's investment environment is realistic. Private employers typically assume a much lower rate when calculating their liability in a defined benefit pension plan. AT&T, for example, discloses in its 2014 Annual Report that it assumes a compound rate of return on its pension fund assets of 5.75% per year. In CCCERA's own case, its actuary discloses in the latest actuarial report that the CCCERA pension fund has over the ten-year period ended December 31, 2014 earned an average annual return of 6.58%, rather than its currently assumed rate of 7.25%.

The County's comprehensive annual financial report (CAFR) for the fiscal period ended June 30, 2015 contains a vivid illustration of the importance of the assumed investment rate in calculating the size of the County's unfunded pension liability. The CAFR reports its net unfunded pension liability to CCCERA as \$925 Million instead of \$1.115 Billion, due to certain timing differences. However, the CAFR also discloses that the unfunded pension liability would increase to \$1.8 Billion in the event this liability was calculated using an assumed investment rate of 6.25% per year. Thus, in an inherently uncertain financial environment, a change of only one percent per annum in the rate of return would nearly double the size of the County's unfunded pension liability!

The County's \$1.155 Billion unfunded pension liability well exceeds the \$539 Million it spent on public protection services in its 2015 fiscal year as well as the \$445 Million it spent on public assistance during that year. However, the unfunded pension liability is not due immediately. Under the *UAAL amortization policy* adopted by CCCERA, the County is permitted to treat the unfunded liability as a long-term debt payable over a

period of 18 years.

The County's annual pension costs consist of its employer contributions to the "normal costs" of the pension benefits earned each year plus its amortized payment on the UAAL. The annual pension costs are a large and growing percentage of the County's total budget. During the 15-year period from fiscal year 2000 through fiscal year 2015, the County's revenues grew from \$1.347 Billion to \$3.217 Billion, a compound annual growth rate of 5.97% per year. By comparison, during this same period the County's pension costs (again, including those of ConFire) grew from \$67.06 Million to \$308.9 Million, a compound annual growth rate of 10.72% per year. Pension costs now amount to 9.6% of total County Revenues as compared to 4.98% 15 years ago. If these trends continue, pension costs will amount to approximately 11.95% of County revenues in five years, and 14.88% of revenues in 10 years, as illustrated in the chart below.



Another way to see the growth in pension costs is to compare two illustrations the County has prepared in the past five years showing the amount of pension costs incurred for every dollar of salary paid its employees. Here was the breakdown in 2010:

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## In Contra Costa, for every dollar being spent on salary...

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... we spend 40 cents on pension



... and ANOTHER 41 cents on other benefits

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Here is the breakdown today:

**for every dollar being spent on permanent salary ...**



**... we spend 53 cents on pension**



**... and ANOTHER 51 cents on other benefits**

These figures and charts show the County already faces an enormous financial challenge in managing its unfunded pension liabilities. Unfortunately, the 2015 declines in the stock markets mean that the challenge is about to get larger. At a special CCCERA Board meeting on February 25, 2016, the Board's advisers reported that the return on the pension fund for the year 2015 was 1.9%, the lowest return since the Great Recession year of 2008. The 1.9% figure is well short of the 7.25% target return by 5.35 percentage points. The latest CCCERA actuarial report advises that for each percentage point the actual return falls below the 7.25% target return, the County will be required to contribute 9.9% of its CCCERA salary base to make up the funding deficit. Based on the County's current payroll of \$572 Million included in the CCCERA pension plan, this lower than target investment return for 2015 will likely increase the County's unfunded pension liability by over \$300 Million.

CCCERA follows a five-year "*asset smoothing policy*" for recognizing annual investment returns above or below the 7.25% target return. Thus, CCCERA's actuaries will phase in the 2015 investment return shortfall over five years and will offset it against the remaining above-target gains from 2012 and 2013 that are likewise being phased in over five years. Further, because of its UAAL amortization policy CCCERA will allow the County to pay off the 2015 phased-in shortfall over 18 years. Nevertheless, if not offset by above-target gains from other years, the additional annual cost of the 2015 deficit alone to the County could, based on CCCERA's latest actuarial report, amount to over \$21 Million per year for 18 years.

This cost estimate makes no allowance for increases in the pension liability that may arise from abnormal pay raises following current contract negotiations between the County and its labor organizations. As recently reported in the press, the County has agreed to pay increases starting July 1, 2016 of 5% per year over the next three years to its deputy sheriffs, with an additional one time 2.5% increase for sheriffs with over five years of service. That rate of increase exceeds the 4.75% assumed rate of salary increase for a safety member with five or more years of service the CCCERA actuaries currently use in calculating future pension costs.

### The Peculiar California Pension Rule

Because of the large increases in its pension liabilities that can arise from investment returns falling below the assumed 7.25% annual rate of return, the County is constantly at risk of debt increases that arise for reasons outside its direct control. Further, unlike all other elements of employee compensation, the County cannot manage its pension liabilities by negotiating reduced pension benefits at the collective bargaining table. That means the County is left with layoffs, service cutbacks, cuts in salary or health benefits, or tax increases as the remaining tools available to meet pension liabilities, which the County is legally obligated to pay.

Why is the amount of the pension benefit to be earned excluded from collective bargaining? The reason for this peculiar state of affairs is rooted in a series of legal

cases that began before public employees had collective bargaining rights. The first of the cases dealt with an instance of seemingly bad behavior by a city council in Long Beach, California. In the 1947 case of Kern vs. Long Beach, the city council decided to terminate a pension program for its employees just 32 days before one of its employees was due to begin receiving his pension after 20 years of city service. Not surprisingly, the California Supreme Court frowned on such apparently unfair treatment of a long-time city employee. The Court held that once a pension system was in place the employee in question was entitled to a reasonable pension for the time he or she served the city. That might well have ended matters, but the City of Long Beach proved to be a repeat offender when it later sought to impose higher costs and reduced benefits on the members of its pension plan. In the 1955 case of Allen vs. City of Long Beach, the California Supreme Court held that once an employee was enrolled in the city's pension plan, the city was not only barred from terminating pension benefits as an element of compensation for such employees, but was also prohibited from imposing any alterations in its pension plan which result in a disadvantage for employees unless accompanied by "comparable new advantages."

The 1955 decision, while likely reflecting some exasperation by the Court over what appeared to be another instance of bad behavior by the City of Long Beach, resulted in a highly inflexible legal precedent. Known as the "*California Rule*", it bars a public employer in California from ever reducing the level of pension benefits—even those yet to be earned in future periods—below those that existed on the first day of the employee's term of service.

This precedent has remained part of California law despite numerous important changes protecting the rights of public employees that have occurred in other parts of the California legal framework since 1955. The most important of these changes is the Meyers-Milias-Brown Act of 1968. That Act guarantees the right of public employees to engage in collective bargaining over the terms and conditions of their employment. Public employers have a corresponding obligation to bargain in good faith with their employees. A state agency, the Public Employment Relations Board (PERB), can impose penalties on public employers that engage in unfair labor practices or fail to engage in good faith bargaining.

### The California Rule Should be Challenged

The California Rule thus stands as a peculiar exception to the standard practice of negotiating all salary and benefits for public employees at the collective bargaining table. We believe there are two important reasons to challenge the Rule's exclusion of pension benefits from collective bargaining. The first is cost savings. As Report 1503 of the 2014-2015 Grand Jury (Report 1503) pointed out, doing no more than adjusting the amount of the pension benefit all County employees earn in future years to the PEPRA levels earned by employees hired after January 1, 2013 could save the County over \$95 Million a year. The second is fairness. Fairness to County employees is a key consideration in any pension reform proposal. Pursuing pension reform at the

bargaining table assures employees the following protections:

- Changes in pension benefits would only affect the benefits to be earned in future years. Pension benefits earned in previous pay periods would not be affected.
- Changes would be subject to good faith bargaining obligations on the part of the County and negotiated by labor representatives accountable to the employee groups.
- Changes could be negotiated in a way that pays particular attention to the interests of different groups of employees. For example, pension benefit reductions (and corresponding lower pension contributions deducted from a paycheck) could be limited to tiers of employees with fewer years of service. Such employees may have a greater interest in securing higher take-home pay rather than higher pension benefits that will only be paid many years distant.

### The Policy Decision on Pension Reform Rests with the Board of Supervisors

The Board of Supervisors should seriously consider adopting a policy to seek judicial clarification or reform of the California Rule on pensions in light of California law that now guarantees collective bargaining for public employees. The Board is the designated authority within the County to make the required political, financial and value judgments required to go forward with such a policy. We set forth later in this report some specific ideas on how the Board might proceed to mount a legal challenge to the California Rule without putting the County's financial position at risk pending the outcome of the challenge. In its policy deliberations, we believe the Board should review carefully the following questions:

1. Is it right that the California Rule should allow pension costs to crowd out other budget priorities?
2. Is it right that the cost of pension benefits earned by County employees today should be paid by the County over 18 years, thereby assuring that a significant part of those costs will be passed on to taxpayers who are now students in junior and senior high school?
3. Is it right that the cost of pension benefits, already a huge unfunded debt, may at some point so stress the County's resources that a severe and draconian financial restructuring could become necessary, imposing hardships on retirees, employees, and County citizens?

The Crowding-Out Problem. The County faces severe budget constraints. Previous grand jury reports have cited various projects and services that have been deferred or cut back due to budget issues, including maintenance and upkeep of County facilities, plans for an improved and modernized crisis operations center, funding unmet needs in the foster care system, and building facilities for rehabilitation programs in the County jail system. Budget issues also affect employee pay. This year much attention has

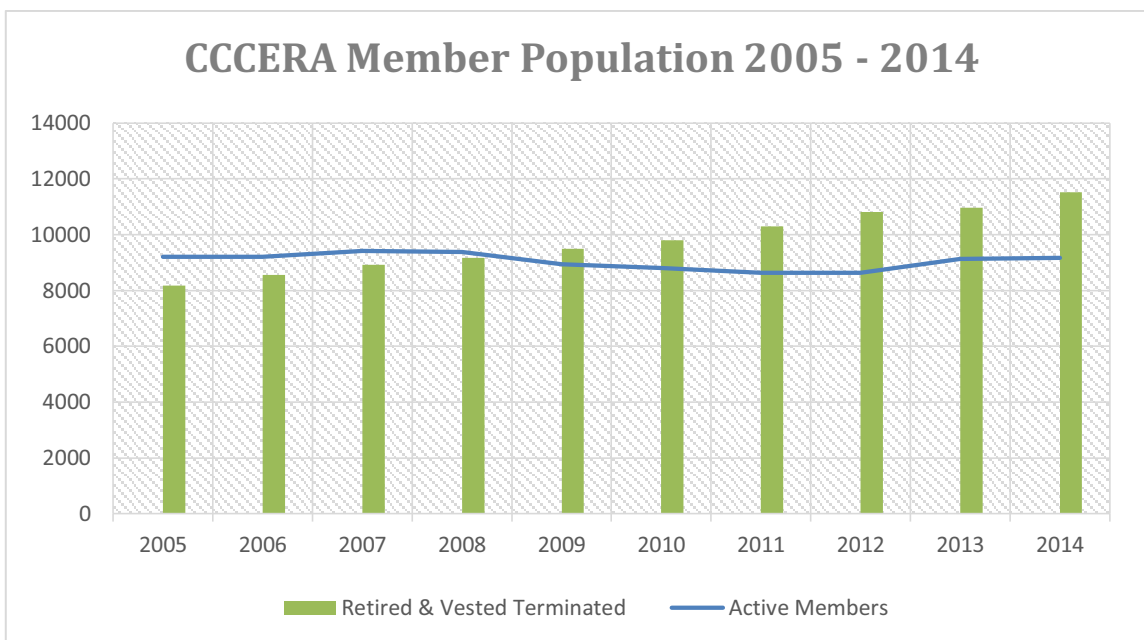
focused on the challenges the County faces in retaining an experienced pool of deputy sheriffs to maintain an adequate level of public safety services in the County. Below average pay of the County's deputy sheriffs as compared to neighboring jurisdictions seems to be at the core of the retention problem. In general, the County's employees have only had modest pay raises at best since the onset of the financial crisis in 2008 – 2009. The root of these problems is a shortage of available funds. As noted in Grand Jury Report 1503, a large pool of funds could be made available for all of these purposes (nearly \$100 Million annually in that Report's estimate) if the County were able to negotiate the level of future pension benefits to be earned by all employees down to the same level as that for its PEPRA employees.

Passing on Today's Costs to the Next Generation. A large part of the County's annual pension cost is its cost (a) to reduce the UAALs generated by investment return shortfalls in the CCCERA pension fund and (b) to cover payments on long-term pension obligation bonds (POBs) that were issued in earlier years (e.g., 2003 in the case of the longest outstanding POBs) to reduce those UAALs. The UAALs are the funds still needed to cover the County's future pension obligations for services already performed. As noted above, the County is permitted to pay down its UAALs over an amortization period of 18 years.

The 18-year UAAL amortization period, combined with the use of long-term pension obligation bonds to cover unfunded pension liabilities, has troubling consequences. These pension debts cover the costs of services rendered in the past. This means that the taxpayers who pay off these debts for services rendered are not the same taxpayers who received the services. It is as if a homeowner were being asked to pay part of the cost of a gardener who had mowed the lawn ten years ago before the homeowner even bought the house. Put another way, the 18-year amortization of UAAL debt and the long-term final maturity dates for the POBs mean that young children in the County are being tabbed to pay costs for services their parents or grandparents received. That seems unfair as well as unsound, and it is unique in terms of how we generally believe wage and salary payments should be assessed. The costs should be assessed on those who received the benefit and were in a position to review the quality and type of service they received.

Potential Hardships for Employees and Retirees. Most County employees likely do not consider the risk of the County failing to pay their pensions as something to worry about. The common viewpoint is that governmental jurisdictions never go away and they have taxing power to assure that all their obligations can be met. It then becomes convenient to assume high rates of return on the pension fund ("we will earn enough on our investments to cover all the costs") or to treat the unfunded pension liability like a long-term mortgage that can be paid off over many years. However, the pension liability problem cannot be postponed forever. The County has already seen the high cost of its pension obligations crowding out budget allocations for other services and needs, including employee salary levels. Further, as the chart below shows, the membership

of CCCERA is now composed of more retirees and vested but non-contributing members than active members, and this ratio has increased every year since 2005.



As CCCERA membership matures, relatively fewer contributing members will be supporting an ever-increasing number of retirees. That means the County will be facing greater risks from changes in the investment returns on the CCCERA pension fund because the total active payroll relative to the pension liabilities will become smaller over time. Furthermore, the County faces the risk of an even sharper drop in the supporting payroll in the event one of the pension reform measures currently being promoted for the 2018 ballot becomes law. Either of those measures (discussed in more detail later in this report) would require voter approval before employees hired after January 1, 2019 could become members of the CCCERA plan under its current terms. If the entry of new employees into CCCERA were cut off, the financial contributions from active members would drop substantially. In that event the County could face substantially higher risks of increased pension costs if investment returns on the pension fund fell below the assumed annual growth rate of 7.25%.

These financial and demographic risks should be weighed carefully in the Board's policy deliberations. Rising pension costs have been a major factor in driving cities into bankruptcy. In California, this has happened to Vallejo, San Bernardino, and Stockton. If the size of the County's pension debt were to become unmanageable, the County could be forced to restructure its debts, including its pension liabilities, through bankruptcy.

The powers of a bankruptcy court are extensive. Its powers extend to restructuring pension benefits in ways that could appear arbitrary and unfair to those affected by the

bankruptcy. The court may reduce not only future unearned pension benefits but also already-earned pension benefits. Thus, the legal protection provided to pensions by the California Rule is not absolute even if it were to remain unchanged. In the Stockton Bankruptcy case decision of February, 2015, the judge emphasized that he had the power to alter pension benefits as part of his authority to confirm a fair and just reorganization plan for the city. With specific reference to the California Rule (which he referred to as the “Vested Rights Doctrine”), he had this to say:

“. . . the Contracts Clauses of the Federal and State Constitutions, as implemented by California's judge-made “Vested Rights Doctrine,” do not preclude contract rejection or modification in bankruptcy.”

Accordingly, the Board’s policy deliberations on seeking reform now of the California Rule through a linkage to collective bargaining should seriously consider the risks to employees and retirees should a bankruptcy filing ever become necessary. A restructuring of pension benefits in bankruptcy could impose far greater hardships on employees than what they would experience from a change to the California Rule that preserved collective bargaining protections.

The grand jury does not see bankruptcy or financial insolvency as a near-term risk for the County at this time. However, we believe the County should so manage its financial obligations that the risk of a bankruptcy, with all of its attendant hardships and inequities, will never have to be considered.

### The Pivotal Role of Collective Bargaining Since 1968

Tying pension reform to collective bargaining stands on firm legal ground. Collective bargaining has now become fully embedded in the legal fabric of California as the essential means for negotiating the terms of employment between public employers and their employees. The courts have not, however, yet taken up a case seeking to reconcile the system of collective bargaining with the implied “contract” for pension benefits that was established in the 1955 Allen case. There is, nevertheless, strong evidence to suggest the 1968 Meyers-Milias-Brown Act was intended to cover all items of compensation and benefits to be earned by public employees, including pension benefits. The Act itself states that collective bargaining established for public employees “...shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment.”

In a 1998 case, Public Employees Association vs. City of Fontana, a California appellate court explained the strong policy in the law favoring collective bargaining as follows: otherwise, the “employer [would be required] to negotiate over working conditions with any number of employees, thereby defeating the Act’s goals of ensuring stability in labor management relations and the right of employees to join and be represented by an employee organization.” More recently, a December 29, 2015 ruling by the Public

Employment Relations Board (PERB) found that the City of San Diego had violated the terms of the Meyers-Milias-Brown Act by failing to negotiate with the employee unions over the Mayor's plan to bring a pension reform proposal to San Diego voters by means of a ballot initiative. The PERB decision included this statement:

“The City does not dispute that pension benefits are generally a negotiable subject and, aside from its argument that the Mayor's pension reform proposal was brought as a citizens' initiative, which we reject, it has offered no other reason why PERB should disregard long-standing private and public-sector precedent treating pension benefits as negotiable.” (Emphasis added.)

### Preferable Methods to Seek Reform of the California Rule

The California Rule arose originally from a lawsuit filed against a local jurisdiction—the City of Long Beach. Reform of the Rule could likewise arise from a legal challenge filed by a California local jurisdiction, such as the County. Should the Board of Supervisors choose to challenge the California Rule in court, it would no doubt prefer a method that offered both a good prospect of success and that did not subject the County's financial position to substantial risk in the event the challenge was not successful. With those twin objectives in view, here are some legal options the Board might consider with their legal counsel:

1. Advancing the reform argument through amicus curiae legal briefs filed in other pending cases
2. Support for a pension reform initiative or legislation that links pension reform to collective bargaining procedures
3. Bargaining with one or more of its employee unions for changes in future pension benefit rates, subject to the condition that a court first rules that such benefits are covered by the collective bargaining law
4. Moving for a declaratory judgment after any of its labor groups have expressed opposition to negotiating on future pension benefits

Amicus Briefs. An *amicus curiae* or “friend of the court” brief enables an entity not a party to the case to make legal arguments to the court in order to apprise the court of broader public or other interests that may be at stake in the case. The County, as a member of the California State Association of Counties (CSAC), has already participated in one amicus brief relating to pension reform. CSAC filed an amicus brief in a 2014 case supporting a plaintiff's effort to block a pension reform initiative in Ventura County that sought to replace the county's defined benefit pension plan with a *defined contribution plan*. Should an appropriate case arise, the County either on its own initiative or through CSAC, could file an amicus brief urging the court to reform the California Rule so as to recognize the authority of labor organization representatives to negotiate the rates of pension benefits to be earned in future employment periods.

Initiative or Legislative Reform. The initiative process would offer an avenue for reform in the manner recommended in this report if it sought to tie pension reform to the collective bargaining system. There are currently two reform initiatives announced for the 2018 California ballot sponsored by former San Jose Mayor Chuck Reed and former San Diego Councilman Carl DeMaio. However, these initiatives do not include provisions intended to tie pension reform to collective bargaining. Rather, they would require voter approval before any employees hired after January 1, 2019 could be enrolled in a defined benefit pension plan similar to the County's current plans. They would not take any steps on pension reform for employees hired before that date.

Should a local legislator at the County's request sponsor legislation to amend the Meyer-Milias-Brown Act to make explicit that unearned pension benefits are subject to collective bargaining, an avenue could open for a straightforward legal test of the California Rule. The amendment, if passed by the legislature and signed by the governor, would likely be challenged in court by an interested labor group, and the County would have an opportunity to take part in the legal case as an amicus or interested party depending on the circumstance. In either case, the County would be participating simply as a legal participant and would not have its financial position at material risk before the case was decided.

Labor Agreements with Contingent Terms. There is precedent in the County for negotiating a term of a labor agreement related to pension benefits that is contingent on a change in the law. In a number of previous labor agreements, starting with a 2006 memorandum of understanding with the Deputy Sheriffs Association (DSA), the County agreed to a term that would have permitted employees to elect a lower rate of pension benefits to be earned over the course of the agreement. The attraction for the employee would have been a corresponding reduction in his or her required contributions to the pension fund, resulting in higher take-home pay. The term was contingent on certain changes occurring in the law, including state legislation and a private letter ruling from the IRS.

In like fashion, the County could negotiate reductions in the rates of pension benefits to be earned in the future contingent on a court first having ruled that such reductions were proper subjects of collective bargaining. This approach would require two conditions to move forward: agreement by the labor bargaining unit and a legal challenge filed against the agreement by some group or organization seeking to uphold the California Rule.

Declaratory Judgment. Should none of the labor groups choose to cooperate in a challenge to the California Rule, California law provides another alternative for the legal challenge without undue risk to the County. A *declaratory judgment action* is a legal action designed to resolve a legal question before one or both parties to a dispute have taken steps that may have damaging consequences in an uncertain legal situation. The California Code of Civil Procedure provides for such legal actions "... in cases of actual controversy relating to the legal rights and duties of the respective parties ...."

To take advantage of the declaratory judgment alternative, the County would have to show that a “case or controversy” exists with one of its labor organizations on the issue whether pension benefit rates are subject to collective bargaining. Such a case could arise if the Board declared a policy or set forth a demand that in an upcoming bargaining session labor representatives should be prepared to negotiate the rates of pension benefits to be earned along with wage rates and other benefits. Should the bargaining unit refuse to negotiate on future pension rates because of the California Rule, an “actual controversy” over legal rights and duties might exist that meets the requirements for a declaratory judgment.

There are likely other opportunities that could arise for the County to seek legal reform of the California Rule by means of an action for a declaratory judgment. The benefit of a declaratory judgment action is the opportunity it presents to mount a challenge to the California Rule without forcing the County to take action that could be very expensive to reverse or undo.

### Conclusion

Fair and sensible pension reform remains an urgent priority for the County. The costs of its pension obligations continue to rise despite the PEPRA reforms of 2013. The largest liabilities on the County’s most recent financial statement relate to pensions: its net pension liability of \$925 Million and its outstanding pension obligation bonds of \$329 Million. Despite the size of this obligation the County has only limited options to manage it. The size of the liability will depend each year on the investment results of the CCCERA pension fund. Because of legal precedent in California that has not yet been challenged, the County has not negotiated with its labor organizations over the rates of future pension benefits to be earned. Such benefits should in our judgment be included in collective bargaining negotiations. To do so, the Board should seriously consider various avenues to challenge the California Rule in court. Such a change would be supported by sound legal arguments and could yield the County, if successful, an important tool to move forward on pension reform through collective bargaining.

## FINDINGS

- F1. The County's largest outstanding debts relate to its pension liabilities. The unfunded pension liabilities of the County (including ConFire) as calculated by the CCCERA actuaries in September 2015 total \$1.155 Billion. In addition to this UAAL figure, the County (again including ConFire) has outstanding \$329 Million of long-term pension obligation bonds.
- F2. The County's unfunded pension liability will increase in any year in which the rate of return on the CCCERA pension fund does not reach at least 7.25%.
- F3. According to the most recent CCCERA actuarial report, for every 1% drop below the CCCERA assumed rate of return of 7.25% the County's unfunded pension liability will increase by a figure equal to 9.9% of the County payroll of employees enrolled in the CCCERA pension plan. Based on its current payroll of over \$572 Million that means the reported return of 1.9% achieved by the CCCERA pension fund in 2015 could result in an increased County UAAL of over \$300 Million before actuarial five-year smoothing adjustments are made.
- F4. Unlike all other elements of compensation that it negotiates with the labor organizations, the County does not negotiate the rate of pension benefits employees will earn in future salary periods.
- F5. The reason the County does not negotiate such pension benefits is due to a long-standing legal precedent in California, known as the California Rule, which holds that public employees are covered by an implied contract on their first day of service guaranteeing that the level of pension benefits they earn each year may not be decreased in future years unless replaced by benefits comparable in value for the employee.
- F6. The California Rule is based on a case that was decided before public employees had the right to organize and engage in collective bargaining in California.
- F7. The County has not taken steps to challenge or seek legal clarification of the California Rule in a California court.
- F8. Negotiating the terms of future pension benefits to be earned could result in substantial cost savings for the County if permitted by a court ruling.
- F9. There are legal avenues open to the County to seek judicial clarification or reform of the rule without subjecting the County to major financial risks if the challenge proves unsuccessful.

## RECOMMENDATIONS

R1. The Board of Supervisors should seriously consider adopting a policy of seeking judicial clarification or reform of the California Rule.

R2. The Supervisors should consider empaneling a task force, a study group, or an internal committee to examine options for challenging the California Rule that would weigh the following considerations:

- Potential cost savings for the County;
- Potential resources to be freed up for other priorities such as service enhancements and other wage and benefit improvements;
- Opportunities to participate as an amicus curiae in existing legal cases;
- Opportunities for challenging the California Rule through legal proceedings such as a declaratory relief action that would not expose the County's financial position to undue risk in the event of an adverse result; and
- Whether the County should undertake the legal challenge alone or in cooperation with other jurisdictions or organizations with a common interest in the issue, such as the California State Association of Counties (CSAC).

R3. The Supervisors should consider issuing a formal statement on their policy toward seeking reform of the California Rule, with an explanation of how they propose to manage their unfunded pension liability in the event no steps are taken to reform or adjust the California Rule.

R4. The Supervisors should consider securing a legal opinion from outside counsel experienced in the field of pension and collective bargaining law on the merits of a legal challenge to the California Rule based on the argument that the Rule should now be modified based on California's collective bargaining system for public employees.

## APPENDIX

### **Glossary of Terms**

**Actuarial Accrued Liability.** This is the total amount of funding the pension fund should have on hand in order to assure that there will be sufficient funds available in the future to pay the pension benefits that have been earned by employees on the date the liability calculation is made. The actuaries calculate this liability based on certain actuarial assumptions about mortality rates, retirement rates, turnover rates, and investment returns the actuaries assume will be earned by the pension fund on a compounded basis over the long term.

**Actuarial Value of Assets.** This value refers to the market value of assets in the pension fund after adjusting for any investment gains or losses using the fund's asset smoothing policy.

**Amicus Curiae.** This term (literally translated as friend of the court) refers to an entity or organization that is not a party to a particular lawsuit but that is permitted by the court to advise it in respect to some matter of law that directly affects the case in question.

**Asset Smoothing Policy.** This policy refers to the practice of stretching out the recognition of annual market gains or losses on a defined benefit pension fund, as compared to the assumed investment return for the fund, over a period of years. CCCERA follows a five-year smoothing policy. For example, if the CCCERA fund falls short of its assumed investment rate of 7.25% by five percentage points, the fund would recognize that loss at a rate of 1% a year over a period of five years.

**Asset Volatility Ratio.** This ratio is equal to the market value of the assets in the pension fund divided by the total projected payroll used for calculating contributions to the pension fund. In the case of CCCERA that ratio is currently 9.9, meaning that for every percentage point by which its pension fund falls below its assumed investment rate, the UAAL will increase by 9.9% of projected payroll.

**Assumed Investment Rate of 7.25%.** This is the assumed rate of investment return on its pension fund that CCCERA uses for calculating the *normal cost* of the pension benefits earned by County employees each year. It is also the rate CCCERA uses to discount to present value the future cost of the pension benefits to be paid. The assumed investment rate is a compound annual growth rate, not simply an average annual rate. That is, in order to keep pace, in any year in which CCCERA does not earn its assumed rate of 7.25% it must make up the shortfall in a following year (either through additional earnings or employer contributions) in addition to the assumed annual rate of 7.25% for the following year.

**California Rule.** This term refers to a legal precedent established by a California Supreme Court decision in 1955. It held that California public employees are subject to an implied pension contract from their first day of employment forward. The pension contract provides that the rate of pension benefits to be earned in future years may never be decreased unless replaced by a benefit comparable in value for the employee. The practical effect of this precedent is that public employers in California do not negotiate pension benefit rates with their employees, in contrast to negotiations that take place over all other wages and benefits to be earned.

**CCCERA** – the Contra Costa County Employees’ Retirement Association. This is the entity that administers pension benefits and runs the pension fund to which the County makes contributions to pay for pension benefits earned by its employees. CCCERA is organized under a law passed in 1937 that authorized California counties to set up defined benefit pension plans for their employees.

**COLA** – a cost of living adjustment. This is an enhancement to a pension benefit based on increases in the applicable cost of living index, subject to certain caps, usually 2% or 3% per year.

**Declaratory Judgment Action.** This is a legal action designed to enable parties to resolve a legal dispute before either party has taken steps that may cause or incur a liability that could lead to damages or other remedies awarded by a court.

**Defined Benefit Plan.** This is a pension plan that provides for a stated benefit to be paid to participants during their retirement years. Generally, the benefit is defined by a formula. For example, 3% of base salary for each year of services, so that an employee with 25 years of service at age 55 could retire under that formula with a beginning pension equal to 75% of his or her base salary. Pension benefits are usually enhanced by cost of living adjustments, also called COLAs. Payment of the defined benefit is guaranteed by the employer.

**Defined Contribution Plan.** This is a retirement plan under which the employer makes defined contributions into a retirement fund for the benefit of its employees. The amount of the ultimate benefits paid out in retirement is dependent on the investment results in the retirement fund and is not guaranteed by the employer.

**Investment Return.** This is the rate of earnings on the pension fund from dividends, interest, and capital gains, computed as a percentage of the average value of the fund.

**Normal Cost.** This is the amount of contributions to a defined benefit pension fund required each year to fund the pension benefits earned by employees during that year of service. The figure is calculated by actuaries and is based on certain actuarial assumptions about mortality rates, retirement rates, turnover rates, and investment returns the actuaries assume will be earned by the pension fund on a compounded basis over the long term.

**PEPRA** – The Public Employee Pension Reform Act. This Act, passed in 2012, established a new level of pension benefits for all state and other public employees in California who were hired on or after January 1, 2013. The new pension benefit levels were lower than those prevailing for existing employees, leading to a two-tiered level of benefits for employees based on their respective dates of hire.

**Unfunded Actuarial Accrued Liability (UAAL).** This is defined as the extent to which the *Actuarial Accrued Liability* of the pension plan exceeds the *Actuarial Value of the Assets* in the pension fund supporting the plan.

**UAAL Amortization Policy.** This policy stipulates the amount of the payments that must be made to the pension fund each year by the employer to pay down the UAAL in equal installments. In the case of CCCERA, the UAAL pay down period is 18 years, meaning that 1/18 of each year's net UAAL is charged to the employer each year as an additional pension cost payable to CCCERA.

## **SOURCES AND REFERENCE MATERIALS**

For purposes of this report the Grand Jury interviewed, met with, or sought records from 15 different County, city, special district, state, CCCERA, and employee or research organization officials or representatives who had responsibility for certain aspects of pension benefit issues. We reviewed a number of relevant reports and articles, including the following:

1. The County Comprehensive Annual Financial Report for its fiscal year ended June 30, 2015.
2. The CCCERA Actuarial Valuation and Review as of December 31, 2014, prepared by its actuary, Segal Consulting.
3. Letter dated September 2, 2015 from Segal Consulting to the Deputy Chief Executive Officer of CCCERA setting forth the Unfunded Actuarial Accrued Liability by Employers based on the December 31, 2014 Actuarial Valuation.
4. Agenda for Special Meeting of CCCERA Board Members dated February 25, 2016.
5. Letter dated March 2, 2016 from Segal Consulting to the Chief Executive Officer of CCCERA setting forth the actuary's latest five-year projection of Employer Contribution Rate Changes Based on Estimated 2.4% Gross Market Value Investment Return for 2015.
6. Little Hoover Commission, report entitled Public Pensions for Retirement Security, published in February, 2011.
7. The online materials regarding unfunded pension liabilities provided by The Stanford Institute for Economic Research. The relevant materials can be found at [pensiontracker.org](http://pensiontracker.org).
8. The Annual Report of AT&T for calendar year 2014, pages 65-67.

We also reviewed a number of California reported legal cases on pension or employee benefit issues, including those cited in the text of our report. These are the full case citations for the cases mentioned in our report:

1. Kern vs. City of Long Beach, 29 Cal.2d 848 (1947).
2. Allen vs. City of Long Beach, 45 Cal.2d 128 (1955).
3. San Bernardino Public Employees Association v. City of Fontana, 67 Cal. App. 4th 1215 (1998). The quotation included in the text is found at page 1220 of the reported case decision.
4. In re City of Stockton, California, Debtor; US Bankruptcy Court, Eastern District of California; 526 B.R. 35 (Bankr E.D. Cal. 2015). The quotation in the text is from page 39 of the reported decision.
5. City of San Diego (2015) PERB Decision No. 2464-M.
6. The chart on page 11 of the Report is compiled from data found on page one of the CCCERA Actuarial Report prepared by Segal Consulting and referred to above.

The text of the Meyers-Milias-Brown Act can be found at California Government Code, sections 3500 – 3511.

California Code of Civil Procedure Section 1060 provides the statutory authority for declaratory judgment actions in California.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Board of Supervisors	1 - 9	1 - 4

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson

725 Court Street

P.O. Box 431

Martinez, CA 94553-0091



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY  
725 Court Street  
Martinez, California 94553

Report 1604

**Are Our Schools in Compliance with the  
“EpiPen” Law, SB 1266?**

It Could be a Matter of “Life or Death”

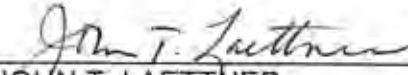
APPROVED BY THE GRAND JURY:

Date: 5/31/16

  
MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 5/31/16

  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1604

**Are Our Schools in Compliance with the “EpiPen” Law, SB 1266?**

It Could be a Matter of “Life or Death”

**TO: Contra Costa County Superintendent of Schools , Contra Costa County Office of Education; District School Boards for Acalanes Union High, Antioch Unified, Brentwood Union, Byron Union, Canyon, John Swett Unified, Knightsen Elementary, Lafayette, Liberty Union High, Martinez Unified, Moraga, Mt. Diablo Unified, Oakley Union Elementary, Orinda Union, Pittsburg Unified, San Ramon Valley Unified, Walnut Creek, and West Contra Costa Unified**

## **SUMMARY**

Effective January 1, 2015, California law Senate Bill (SB) 1266 requires all public schools to stock epinephrine auto-injectors (Pens). Schools must provide Pens to school nurses or trained personnel who have volunteered to administer them to students who are suffering, or reasonably believed to be suffering from, a severe allergic reaction.

This report concerns implementation of this law by public schools in the County and their compliance with it. Most but not all schools are in compliance, although not all schools responded to the investigation.

Recommended actions include:

- Annual verification of K-12 public schools compliance under SB 1266
- Determining the practical and legal issues related to Pen use at offsite school events
- Determining the practical and legal issues related to Pen use at pre-schools under the direction of Contra Costa Office of Education

## **METHODOLOGY**

The Grand Jury:

- Conducted a mail survey of Contra Costa’s eighteen public school districts (K-

12)--243 schools in all. Contra Costa County Office of Education schools (i.e., juvenile detention facilities) and charter schools were not included in the survey.

- Conducted telephone interviews with BioRidge Pharma, the order processor for Pens
- Reviewed the California School Nurses Organization (CSNO) website
- Conducted on-site school visits

## **CONFLICT DISCLAIMER OF INTEREST**

One or more Grand Jurors recused themselves due to a possible conflict of interest and did not participate in the investigation, preparation, or approval of this report.

## **BACKGROUND**

Sending a child off to school each morning requires daily preparation – a computer with today's homework, permission slips, gym shoes, lunch and most importantly, for a child with severe allergies, allergy medication.

Anaphylactic shock is a severe allergic reaction. A recent law, SB 1266, defines anaphylactic shock as a potentially life-threatening hypersensitivity to a substance. A severe allergic reaction can restrict airways in the lungs, severely lower blood pressure, and cause suffocation by swelling of the tongue or throat. Food is the most common allergen. Other common allergens (or triggers) include biting or stinging insects, medications, and latex. At times, the trigger is unknown.

According to Food Allergy Research & Education (FARE), a national nonprofit organization, anaphylaxis affects one in every thirteen children under eighteen or an average of two children in every classroom. The Center for Disease Control and Prevention (CDC) reports this number to be one in every twenty-five children and says that about one in every four students that have a severe and potentially life-threatening reaction at school had no previously known food allergy. The CDC reports that food allergies are on the rise. A study released in 2013, revealed that food allergies among children:

- Are the leading cause of anaphylaxis outside the hospital setting;
- Increased approximately fifty percent between 1997 and 2011;
- Resulted in 300,000 ambulatory-care visits a year among children under eighteen; and
- Cost nearly twenty-five billion dollars per year.

Epinephrine (adrenaline) is a medication that can reverse anaphylactic shock. It is administered as a shot using an auto-injector, often referred to as a "Pen". According to the National Food Allergy Association guidelines, epinephrine is the first-line of treatment for life-threatening allergic reactions. A delay of minutes in administering epinephrine can result in death. Hospitals admit about 9,500 children each year for some form of food allergy.

To assist public schools in responding to instances of anaphylactic shock, the California legislature passed SB 1266, which adds section 4119.2 to the Business and Professions and Education Code and section 49414 to the Education Code. The new law requires school districts, county offices of education and charter schools to provide Pens to school nurses and other personnel trained in the use of such Pens.

Additionally, each private elementary and secondary school in the State may voluntarily determine whether to make emergency Pens and trained personnel available at its school.

## **DISCUSSION**

SB 1266, which became effective January 1, 2015, requires, rather than simply allows, California public schools, county offices of education and charter schools to stock Pens. Schools must provide Pens to school nurses or trained personnel who have volunteered to administer them to students who are suffering, or reasonably believed to be suffering from, an anaphylaxis reaction.

In the County, there are approximately 180,000 students at K -12 public schools, special education classes offered the local education agency, charter schools, and Horizon schools. Over 1,200 of these students have their own epinephrine injectors kept in their school's emergency medical cabinet. However, there likely are many more who have an allergy, but that allergy is unknown to their parents or caregivers. While the estimates vary of those students with allergies unknown to their parents or caregivers, a reasonable range for such students in the County is somewhere between 6,000 students (based on the CDC's number of one in twenty-five experiencing an allergic reaction) to 12,650 students (based on FARE estimates of one student in thirteen).

### **SB 1266 and What It Means**

SB 1266 requires all California public schools, the county office of education and charter schools to:

- stock epinephrine auto injectors in case of student emergency; and
- train school nurses or at least one volunteer to administer Pens to students who are suffering or reasonably believed to be suffering from an emergency anaphylaxis reaction.

The law also requires the Superintendent of Public Instruction to establish minimum standards of training for the administration of epinephrine auto-injectors. The standards must be based on commonly accepted standards and the Superintendent must review the adequacy of the standards at least once every five years.

Public schools, county offices of education and charter schools must keep and maintain prescriptions up-to-date for Pens. As of November, all of Contra Costa public school districts had a prescription for Pens on file.

The law's only concerns Pen use at a public school or county office of education school. The California School Nurses Organization's (CSNO) website, as revised March 2015, states:

*"The law does not address field trips or other off site school activities. CSNO recommends that school nurses work with their districts to develop policies and procedures that address activities outside of the school site, considering school nurse staffing and other challenges with regards to evenings and weekends."*

Additionally, early childhood education centers, identified, as California Preschool Instructional Network by the Contra Costa Board of Education, are not required to stock Pens. FARE research estimates that nearly six million or eight percent of children (nationally) have food allergies – young children are most affected. Casual exposure to allergens presents a greater risk to young children who frequently put their hands in their mouths. Depending on the amount of contact and the location of the contact, these reactions are occasionally more serious. Failure to promptly treat food anaphylaxis with epinephrine is a risk factor for fatalities.

### **Training of Staff and Volunteers**

Each school may designate one or more school volunteers be trained to administer Pens. Volunteers must receive an initial training as well as annual refreshers. SB 1266 establishes that training shall include all of the following:

- Techniques for recognizing symptoms of anaphylaxis.
- Standards and procedures for the storage, restocking, and emergency use of epinephrine auto-injectors.
- Emergency follow-up procedures, including calling the emergency 911 telephone number and contacting, if possible, the pupil's parent and physician.
- Recommendations on the necessity of instruction and certification in cardiopulmonary resuscitation
- Instruction on how to determine whether to use an adult epinephrine auto-injector or a junior epinephrine auto-injector, which shall include consideration of a pupil's grade level or age as a guideline of equivalency for the appropriate pupil weight determination. Additionally, the training must be consistent with the most recent Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs published by the Federal Centers for Disease Control (CDC) and Prevention. The current CDC guidelines recommend:
  - Accommodations or services needed for the allergic child to be safely included in activities like allergen-free classrooms and allergy-friendly seating arrangements.
  - Provision of instructions for treatment of allergic reaction posted in the cafeteria, establishment of designated allergy-friendly seating during meals (open to any child eating foods free of identified allergens), rapid access to epinephrine auto-injectors in cases of food allergy emergency, and training in use for staff.

The law also states:

*"A school district, county office of education or charter school shall ensure that each employee who volunteers will be provided defense and indemnification by the school district, county office of education or charter school for any and all civil liability. The school district, county office of education or charter school must also notify each volunteer that the volunteer is being provided with defense and indemnification for any and all civil liability associated with administering epinephrine auto-injectors."*

### **Procurement and Funding of Pens**

Schools receive two boxes of Pens at no charge once per calendar year from Mylan Specialty, the manufacturer. Schools that have used the Pen for an emergency may receive replenishment Pens from Mylan Specialty at no cost if they complete a replenishment form detailing the incident resulting in Pen use. If the Pen expires, schools may order more at a discount. The Pen has a shelf life of twelve to eighteen months.

CSNO recommends that school nurses work with school districts to develop and implement documentation procedures ensuring proper care, follow-up, and the replenishment of medications in a timely manner. Additionally, CSNO suggests the information to be reported to the CSNO website at:

<http://www.csno.org/step-up-and-be-counted.html>

### **Survey of Schools to Monitor Compliance**

The Grand Jury mailed surveys in November 2015 to Contra Costa's K-12 public school in eighteen districts, 243 schools in all. The Grand Jury evaluated the following four responses from each school to determine compliance with the law:

- How many regular EpiPens® are on hand for emergency use at your school?
- How many EpiPen Jr® are on hand for emergency use at your school?
- How many trained volunteers or nurses can administer EpiPen® at your school?
- Does your school have a prescription for EpiPens® on file?

The following schools were not in compliance with SB 1266 as of March 2016:

Antioch Unified School District

Mission Elementary

Live Oak

Kimball Elementary

Antioch High

Prospect High Alternative

Bridges

Fremont Elementary

Belshaw Elementary

## Bidwell Continuation High

The Grand Jury had insufficient information to complete its evaluation of the following schools as of March 2016:

### West Contra Costa Unified School District

El Cerrito High

Dover Elementary

Richmond High

Korematusu Middle

Downer Elementary

Ellerhorst Elementary

## FINDINGS

- F1. Mylan Specialty Division supplies Pens at no cost to public schools in the district.
- F2. Mylan Specialty Division will replace Pens at public schools in the district that have expired at a discounted cost.
- F3. FARE and CDC statistical information project a range of 4 percent to 7.7 percent of students (7,200 to 13,850 out of the estimated 180,000 students in Contra Costa County's eighteen school districts) that may have an allergy that is unknown to parents and undiagnosed.
- F4. Over 1,200 students in Contra Costa County's eighteen school districts have Pens with their names located in the school emergency medicine cabinet.
- F5. SB 1266 does not clearly address the use of Pens at off-campus school activities or events.
- F6. SB 1266 does not cover California Preschool Instructional Network centers.
- F7. SB 1266 does not require follow up procedures for reporting the use of a Pen.
- F8. After more than a year, one or more schools in the Antioch School District are not in full compliances with SB 1266.
- F9. It is unknown whether all of the schools in the West Contra Costa School District are in compliance with SB 1266.

## RECOMMENDATIONS

- R1. The West Contra Costa Unified School District should contact those schools within their district and verify the schools are in compliance with SB 1266
- R2. The Antioch Unified School District should contact those schools found not to be in compliance with SB 1266 and ensure they become compliant by the beginning of the 2016-2017 School year.

- R3. Each of the School District Boards should direct the School District Superintendent to contact all schools in their district at the start of each school calendar year to confirm that they are compliant with the requirements of SB 1266.
- R4. Each of the School District Boards should direct their School District Superintendent to report to the Board at the start of each school calendar year that the School District is compliant with the requirements of SB 1266.
- R5. The Contra Costa County Superintendent of Schools should contact his or her schools at the start of each school year to confirm that the schools are compliant with the requirements of SB 1266.
- R6. Contra Costa County Superintendent of Schools should consider reporting to the Board of the Contra Costa Office of Education at the beginning of each school calendar year the status of compliance of the County to SB 1266.
- R7. The Contra Costa Office of Education should consider recommending to the California Preschool Instructional Network that preschools within its network first evaluate the practical and legal considerations of administering Pens to students and, if permissible, follow the mandate set forth in SB 1266 as closely as reasonably possible.
- R8. The School Districts should consider the practical and legal issues of supplying Pens for field trips and other off-site school events, and working with school nurses to develop policies and procedures for their use at these events.
- R9. The Contra Costa Office of Education should consider the practical and legal issues of supplying Pens for field trips and other off-site school events, and working with school nurses to develop policies and procedures for their use at these events.
- R10. The School Districts should consider working with school nurses to develop policies and procedures for reporting the use of Pens.
- R11. The Contra Costa Office of Education should consider working with the Contra Costa Superintendent of Schools and school nurses to develop policies and procedures for reporting use of the Pens.
- R12. The School Districts should consider helping parents understand the risks of anaphylaxis and the protocols in place for emergency administration of epinephrine. The School Districts should consider "identifying funds" to carry out these activities.
- R13. The Contra Costa Office of Education should consider helping parents understand the risks of anaphylaxis and the protocols in place for emergency administration of epinephrine. The Contra Costa Office of Education should consider "identifying funds" to carry out these activities.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa Office of Education Board	F3 – F7	R7, R9, R11, R13
Contra Costa County Superintendent of Schools	F1 – F7	R5, R6, R11
Acalanes Union High School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Antioch Unified School Board	F1 – F3, F5, F7, F8	R2 – R4, R8, R10, R12
Brentwood Union School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Byron Union School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Canyon School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
John Swett Unified School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Knightsen Elementary School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Lafayette School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Liberty Union High School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Martinez Unified School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Moraga School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Mt. Diablo Unified School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Oakley Union Elementary School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Orinda Union School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Pittsburg Unified School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
San Ramon Valley Unified School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Walnut Creek School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
West Contra Costa Unified School Board	F1 – F3, F5, F7, F9	R1, R3, R4, R8, R10, R12

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson

725 Court Street

P.O. Box 431

Martinez, CA 94553-0091



**A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY**  
725 Court Street  
Martinez, California 94553


Report 1605

## **Caring for the Victims**

**Commercial Sexual Exploitation of Children in Contra Costa County**


APPROVED BY THE GRAND JURY:

Date: May 10, 2016

  
\_\_\_\_\_  
MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: May 6, 2016

  
\_\_\_\_\_  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1605

# Caring for the Victims

## Commercial Sexual Exploitation of Children in Contra Costa County

**TO: Contra Costa County Board of Supervisors  
Contra Costa County Sheriff  
The City Councils for the following cities: Antioch, Brentwood,  
Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette,  
Martinez, Moraga, Oakley, Orinda, Pinole, Pittsburg, Pleasant  
Hill, Richmond, San Ramon, San Pablo, Walnut Creek**

### SUMMARY

Human trafficking is a nationwide problem. In Contra Costa County, law enforcement and other agencies identified at least 108 victims of human trafficking from June 2014 through June 2015; of those cases, thirty-nine involved minors exploited for sex.

The County organized its official response to the problem of human trafficking by organizing a “Coalition of Zero Tolerance for Human Trafficking Summit” in January 2015. The Coalition set up a broad framework for understanding and dealing with human trafficking, which began with training two hundred employees of the Employment & Human Services Department (EHSD) and its interagency partners (County agencies and non-government organizations). EHSD assigned the more difficult problem of caring for commercial sexual exploitation of children (CSEC) to Children and Family Services (CFS), a bureau of EHSD.

CFS started work on a protocol to establish a comprehensive system of care for victims of CSEC, a system that did not previously exist in the County (the “CSEC Protocol”). By October 2015, the CSEC Protocol was complete and submitted to the California State Department of Social Services. However, by March 2016, more than a year after the Coalition Summit, the CSEC Protocol was yet to be fully communicated throughout the County, much less implemented. Many of the interagency partners who are to assist in implementing the Protocol (particularly the police departments of the cities, victim advocates in the District Attorney’s (DA) Office and Juvenile Hall) were unaware of their

part in the Protocol and the role of the other agencies.

Until the Protocol is fully implemented, Contra Costa County still does not have a comprehensive system of care for victims of CSEC.

## **METHODOLOGY**

In its 7-month investigation, the Grand Jury:

- Reviewed the pertinent legal statutes on human trafficking and CSEC, both California and Federal,
- Researched State and County documents and reports on the issue,
- Joined meetings of the Coalition for Zero Tolerance for Human Trafficking and the CSEC Steering Committee,
- Visited Juvenile Hall, the Family Justice Center and Calli House for discussions,
- Interviewed representatives and social workers at the Employment & Human Services (EHS) Department, including the Children & Family Services (CFS) bureau,
- Interviewed Probation Department personnel,
- Interviewed police officers from several cities, who worked directly on sex crimes, drugs, domestic violence and human trafficking,
- Interviewed personnel from non-governmental organizations (NGOs) dealing with sexual violence and CSEC victims,
- Interviewed victim advocates from various agencies.

## BACKGROUND

Human trafficking exists in Contra Costa County as it does throughout the United States. It is today's version of slavery. Its victims are exploited due to their lack of resources and sophistication, and treated as commodities rather than as human beings.

Human trafficking exists in four forms:

- Labor trafficking,
- Adult sex trafficking,
- Commercial sexual exploitation of children (CSEC),
- Domestic servitude.

The citizens of Contra Costa County are living with this form of slavery hidden in their midst.

In 2012, California Attorney General Kamala Harris released her report - "The State of Human Trafficking in California" (the AG Report). In the AG Report, Ms. Harris states that human trafficking as a criminal business enterprise (\$32 billion globally) is second only to the drug trade in annual revenues. The AG Report's most important recommendation is that government agencies and the community should take a victim-centered approach in dealing with this crime.

Perhaps the most appalling category of human trafficking is the sexual exploitation of children. Children sexually exploited for commercial reasons cannot legally consent to sex and, therefore, are not willing prostitutes. Victims of CSEC are initiated into sexual slavery between 12 to 14 years old on average. The majority of these children are American citizens according to the County Coalition's Human Trafficking summit report. Typically, they are victims of physical abuse, sexual assault, and psychological and emotional manipulation by adults, i.e., the pimps and the johns. The trauma, stemming from months or years of sexual abuse and emotional manipulation is complex and extensive. For this reason, the County Coalition against Human Trafficking suggests County personnel (law enforcement and social workers) who interact with the CSEC children should be trauma-informed, i.e., properly trained and aware of the complex trauma that the children have undergone.

This Grand Jury report concentrates on the County's efforts to identify, rescue and care for these children and to restore to them a life that is safe, secure and productive.

## DISCUSSION

Prior to the AG Report and the first County summit meeting in January 2015, the County had no formal plan or protocol to address CSEC.

County agencies began to develop that protocol by focusing on the applicable law. Section 236.1 of the California Penal Code addresses human trafficking (including CSEC). With respect to CSEC victims, it provides:

- *“Any person who causes, induces, or persuades a person who is a minor to engage in a commercial sex act is guilty of human trafficking.”*
- *“Consent by a victim of human trafficking who is a minor at the time of commission of the offense is not a defense to a criminal prosecution under this section.”*

The following two provisions on CSEC are set forth in the Welfare and Institutions Code:

- Section 300. *“... a child who is sexually trafficked as described in 236.1 of the Penal Code or who receives food and shelter in exchange for, or who is paid to perform sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child... is within the jurisdiction of the juvenile court which may adjudge that person to be a **dependent child of the court** .... These children shall be known as commercially sexually exploited children.”* (Emphasis added.)
- Section 300.2 *“... the purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of [such] children.”*

In January 2015, three years after the AG Report, the Contra Costa County District Attorney called for a summit on human trafficking. Chaired by a senior manager from EHSD, a multi-disciplinary coalition was formed called the Coalition for Zero Tolerance for Human Trafficking.

In June 2015, the Coalition Chair issued a memo to the Board of Supervisors stating that a comprehensive system of care for victims of CSEC does not exist in Contra Costa County. The memo also said that the best practice for care of victims of CSEC might be the Family Justice Centers in Richmond and Concord. These are multiservice centers – “one-stop-shops” – for victims of domestic violence.

Under state law, EHSD is designated as the lead agency for setting up a system of care for the victims of human trafficking in Contra Costa County. In March 2015, the Coalition tasked CFS, a division of EHSD, with organizing a CSEC Steering Committee.

The Committee was to prepare an interagency protocol (the “CSEC Protocol”) for the care of victims of CSEC in Contra Costa County.

In developing a protocol, the Committee acted in accordance with Welfare and Institutions (WIC) Code sections 16524.6– 16524.11, These WIC sections provide, in part:

- 16524.6 “...in order to adequately serve children who have been sexually exploited, it is necessary that counties develop and utilize a multidisciplinary approach to case management, service planning and provision of services.”
- 16524.6 “... that counties develop and utilize interagency protocols to ensure services are provided as needed to this population.”
- 16524.7. (a) (1) “There is hereby established the Commercially Sexually Exploited Children Program. This program shall be administered by the State Department of Social Services.”
- 16524.7. (a) (2) “The department, in consultation with the County Welfare Directors of California, shall develop an allocation methodology to distribute funding for the program. Funds allocated shall be utilized to cover expenditures related to the costs of implementing the program, prevention and intervention services, and training related to children who are victims of commercial sexual exploitation.”
- 16524.7. (a) (4) “Funds provided to the counties electing to participate in the program shall be used for prevention activities, intervention activities and services to children who are victims, or at risk of becoming victims, of commercial sexual exploitation.”
- 16524.7. (a) (4) (D) [A key mandate to the funding allocation is] “hiring county staff trained and specialized to work with children who are victims of commercial sexual exploitation to support victims and their caregivers, and to provide case management interagency and cross-departmental response.” (Emphasis added.)

In October 2015, the CSEC Steering Committee was renamed CSEC Protocol Oversight Committee. The Committee submitted the “Interagency Protocol for Serving Commercially Sexually Exploited Children in Contra Costa County” (the “CSEC Protocol”) to the State Department of Social Services. This move allowed the County to participate in California’s CSEC Program, thereby qualifying for funds to support victims of CSEC.

The State Department of Social Services initially released \$25,000 to the County for CSEC planning. In early 2016, the State then released \$277,628 as a Tier II grant for training and actual services for victims of CSEC. The State also earmarked \$82,107 as “Augmentation for Federal CSEC activities.”

The CSEC Protocol sets up the framework for collaboration and coordination among County agencies, cities and NGOs providing rescue, protection and care for victims of CSEC.

The Protocol states, in part:

- *“This Protocol has been created and adopted by the CSEC Protocol Oversight Committee.”*
- *“Contra Costa County Children & Family Services (CFS) will be responsible for providing leadership and staff support for the CSEC Protocol Oversight Committee.”*
- *“[The Committee, led by CFS,] will implement and oversee the Interagency Protocol.”*
- *“Additionally, the [interagency] partners will create protocols (within their own agencies or NGOs) to aid in the identification, assessment and delivery of services to CSEC youth in the community.”*
- *Mental Health, under County Health Department should “perform assessment of a CSEC victim’s mental health and recommend services.”*

The Protocol also contains a flow chart that shows the coordinated response for a victim of CSEC from the community, law enforcement and CFS. At all of the major decision points, referrals to CFS and hotline calls to CFS are the key initial action points. In essence, CFS is the proposed hub and navigator for care of victims of CSEC.

To date, over 200 CFS personnel have received basic training, a starting point for training staff to care for victims of CSEC. Additional training is necessary for the specialization of certain personnel to act as the “navigators” for the victims of CSEC within Child Welfare. This carries out the mandate of Section 16524.7 of the Welfare & Institutions Code, which requires *“hiring county staff trained and specialized to work with children who are victims of commercial sexual exploitation.”* (Emphasis added.)

Because Contra Costa County lacks foster parents with specialized training to handle victims of CSEC, social workers often must place these children in foster homes outside of the County. Although a concern and a cause of additional expense to the County, the benefit may be that it puts more distance between the victim of CSEC and his or her exploiters.

Training for law enforcement personnel (police officers and deputy sheriffs) in interviewing victims of CSEC needs to be more victim-centered and trauma-informed. Many officers do not have even basic CSEC training, only a short briefing on the

subject. This lack of training may contribute to the unwillingness of a majority of suspected victims of CSEC to name their pimp exploiters or to accept needed social services and mental health appraisal/therapy. These youths are usually distrustful of police. Estimates of cooperation by victims of CSEC are uniformly low. Such estimates run from a high of 2 out of 10, to 2 out of 100, with one estimate of “zero cooperation.” The non-cooperation behavior may also be due to the coercion and manipulation practiced by the children’s exploiters.

Perhaps indicative of the lack of CSEC training for law enforcement first responders, the DA’s Office has prosecuted fewer cases of CSEC pimps in 2015 than it has in previous years.

The current typical referral practice among law enforcement personnel (city police, the DA’s Office and Juvenile Hall) who encounter CSEC youth is to call in Community Violence Solutions (CVS), a non-government organization (NGO) specializing in domestic violence, sexual assault and trafficking victims. Although well regarded in its area of expertise, CVS has limited resources. Whether future referrals to CVS will continue remains unknown, since the new Protocol proposes that the hub of care for victims of CSEC should be CFS, not CVS.

Law enforcement also calls in the victim advocates from the DA’s Office. These advocates navigate victim assistance for the law enforcement community. Victim advocates respond first by keeping the victims of CSEC safe, usually within Juvenile Hall, and providing them with therapy, using non-Health Department therapists, who are paid for by victim compensation funds.

As a pragmatic measure, law enforcement sometimes books suspected victims of CSEC into Juvenile Hall under various statutes in the Welfare and Institutions Code dealing with crimes committed by youth. Such bookings allow authorities to keep victims of CSEC under protective custody, away from their exploiters. It also provides Probation and CVS time to assess the situation and to give these youth access to therapy and social services. However, Juvenile Hall rarely consults CFS social workers in these situations. Due to this lack of consultation with CFS, a non-criminal hold order for the child is seldom requested. Placing the child in Juvenile Hall on a criminal charge runs the risk of exposing the child to criminal behavior. Once in Juvenile Hall, most victims of CSEC are uncooperative and ultimately released back to their next of kin where they will likely walk back to their exploiters. Return of these children to an unsafe situation conflicts with the mandate of Section 300 of the Welfare & Institutions Code, which is *“to provide maximum safety and protection to children who are currently being physically, sexually, or emotionally abused.”*

Calli House, part of the Contra Costa Health Department’s Homeless Youth Services, is another facility, separate from Juvenile Hall and CVS, which is available for CSEC support services. Calli House provides temporary health, therapy and housing assistance to runaway minors in the County. Occasionally, upon request by CVS or CFS, it takes in suspected victims of CSEC who are not booked into Juvenile Hall. CFS

does not have an equivalent county-funded temporary housing facility for victims of CSEC.

The County lacks a centralized database covering all CSEC arrests, referrals and pending cases. Such data would be extremely valuable both in assisting law enforcement in tracking down the exploiters, as well as providing a broader and more complete picture of the victims of CSEC and treatment options with the highest chances of success. Some city police departments share CSEC data with the FBI and the DA's Office. Juvenile Hall shares resident data with CVS when called in to assist on suspected victims of CSEC. The DA's Office shares CSEC data with CVS, when utilizing the Children Interview Center for forensic interviews with suspected victims. CFS has its own CSEC data for its child welfare cases. However, such departmentalized data tracking is no substitute for a comprehensive and centralized database open to all agencies within the County.

## FINDINGS

- F1 A comprehensive system of care for victims of CSEC still has not been fully implemented in Contra Costa County.
- F2 The County is now 15 months into developing and implementing this comprehensive system of care for victims of CSEC that it began developing in January 2015.
- F3 A CSEC Protocol, which provides a comprehensive system of care for victims of CSEC, was prepared under the leadership of CFS.
- F4 The CSEC Protocol provides the framework for cooperation and coordination among the County, its cities and NGOs.
- F5 The State Department of Social Services has released Contra Costa County's allocations of CSEC monies under the Commercially Sexually Exploited Children Program administered by the State Department of Social Services.
- F6 Many social workers in CFS, law enforcement, officers in Juvenile Hall and victim advocates in the DA's Office are not implementing the CSEC Protocol because they have not seen it.
- F7. CFS, the leader of the Oversight Committee, has not followed up with its interagency partners that have signed off on the Protocol, but have not submitted their own CSEC department plan/protocols to the Oversight Committee.
- F8 CFS lacks personnel who can act as the hub of all CSEC referrals from law enforcement by assessing the health, psychiatric and physical needs of victims of CSEC and who can navigate these services for them.
- F9. Suspected CSEC victims are being arrested and booked into Juvenile Hall for their own safety pursuant to various statutes under the Welfare & Institutions Code, relating to infractions and crimes committed by youth, while the County assesses the appropriate health and social services to provide.
- F10. The County has not provided funding to CFS for temporary housing facility for victims of CSEC.
- F11. No single database covering all CSEC-related arrests, referrals and pending cases exists in the County.
- F12. Due to the lack of a single database in the County covering all CSEC-related arrests, referrals and pending cases, the County does not know the number of victims of CSEC and where they are located.

- F13. County personnel and law enforcement dealing with victims of CSEC are well-meaning, compassionate and dedicated people trying to make the best of a very difficult situation.
- F14. Most County personnel and law enforcement dealing with victims of CSEC lack in-depth CSEC training, necessary facilities for temporarily accommodating the victims and a clear-cut plan of action, which lays out how to rescue, protect and serve the victims of CSEC in a manner that is caring and trauma-informed.

## **RECOMMENDATIONS**

- R1 The Board of Supervisors should review the Interagency Protocol for Serving Commercially Sexually Exploited Children in Contra Costa County finalized in October 2015.
- R2 The Board of Supervisors, City Councils and Sheriff's Department should consider recommending that all CSEC interagency partners, as listed in the CSEC Protocol, in Contra Costa County adopt their own CSEC protocols and submit them to CFS for approval.
- R3 The Board of Supervisors should consider directing CFS, as the lead implementing bureau, to follow up on the required plans and protocols from the interagency partners, as listed in the CSEC Protocol, implementing the CSEC Protocol.
- R4 The Board of Supervisors should consider directing CFS to expand its CSEC Response Flow Chart to include all critical steps to be taken for the welfare of the child victim, including mental health evaluation by the Health Department and child Welfare hold requests by the social workers.
- R5 The Board of Supervisors should consider directing CFS to train or hire specialized CSEC personnel who will serve as points of primary referral and assist in navigating the services provided to victims of CSEC utilizing funds provided by the State Department of Social Services.
- R6 The Board of Supervisors should consider directing CFS to follow the model of the Family Justice Centers in assisting victims of CSEC navigate the multitude of available services.
- R7 The Board of Supervisors should consider seeking funds to acquire or lease a physical facility to temporarily house victims of CSEC, which would allow suspected victims of CSEC to be placed in a legal, non-criminal temporary hold, rather than having law enforcement book the child into Juvenile Hall with a criminal charge.
- R8 If the County secures funding to construct or lease a CFS physical facility, the Board of Supervisors should consider housing specialized CSEC navigators at the facility, similar to the model used by the Calli House.

R9 The Board of Supervisors, City Councils, and Sheriff's Department should consider recommending that all first responders (usually law enforcement) refer suspected victims of CSEC to specialized and dedicated CSEC personnel, to be established within CFS.

R10 The Board of Supervisors should direct CFS to formulate CSEC training programs, containing different emphases for different County departments, interacting with victims of CSEC.

R11 City Councils and Sheriff's Department should direct law enforcement to avail themselves of CSEC training programs formulated by CFS.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County Board of Supervisors	F1-14	R1-10
Contra Costa County Sheriff's Department	F6, F7, F9, F11-F14	R2, R9, R11
City of Antioch	F6, F7, F9, F11-F14	R2, R9, R11
City of Brentwood	F6, F7, F9, F11-F14	R2, R9, R11
City of Clayton	F6, F7, F9, F11-F14	R2, R9, R11
City of Concord	F6, F7, F9, F11-F14	R2, R9, R11
City of Danville	F6, F7, F9, F11-F14	R2, R9, R11
City of El Cerrito	F6, F7, F9, F11-F14	R2, R9, R11
City of Hercules	F6, F7, F9, F11-F14	R2, R9, R11
City of Lafayette	F6, F7, F9, F11-F14	R2, R9, R11
City of Martinez	F6, F7, F9, F11-F14	R2, R9, R11
City of Moraga	F6, F7, F9, F11-F14	R2, R9, R11
City of Oakley	F6, F7, F9, F11-F14	R2, R9, R11
City of Orinda	F6, F7, F9, F11-F14	R2, R9, R11
City of Pinole	F6, F7, F9, F11-F14	R2, R9, R11
City of Pleasant Hill	F6, F7, F9, F11-F14	R2, R9, R11

City of Pittsburg	F6, F7, F9, F11-F14	R2, R9, R11
City of Richmond	F6, F7, F9, F11-F14	R2, R9, R11
City of San Pablo	F6, F7, F9, F11-F14	R2, R9, R11
City of San Ramon	F6, F7, F9, F11-F14	R2, R9, R11
City of Walnut Creek	F6, F7, F9, F11-F14	R2, R9, R11

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson

725 Court Street

P.O. Box 431

Martinez, CA 94553-0091



**A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY**  
725 Court Street  
Martinez, California 94553

Report 1606

# Reclaiming our Water

More Complicated than it Might Appear

APPROVED BY THE GRAND JURY:

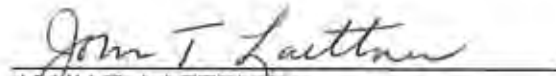
Date: May 24, 2016



MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: May 20, 2016



JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contact: Michael Simmons  
Foreperson  
925-957-5638

Contra Costa County Grand Jury Report 1606

## **Reclaiming our Water**

**More Complicated than it Might Appear**

**TO: Contra Costa County Board of Supervisors; City Councils of the Cities of Concord, San Ramon, and Walnut Creek; Boards of Directors for Central Contra Costa Sanitary District, Contra Costa Water District, Dublin San Ramon Services District, and East Bay Municipal Utilities District**

### **SUMMARY**

The recent drought has raised public awareness about the idea of using more recycled wastewater for irrigation and industrial purposes. The Grand Jury launched an inquiry into what obstacles were preventing water recycling from occurring on a broader scale.

While the recent El Niño storms provided some respite from the current drought, it is too soon to know if this is the end of this drought cycle or just a short pause to the start of a much longer mega-drought.<sup>1</sup> In either event, recycled and recovered water are key factors in achieving sustainable solutions to the water problems within Contra Costa County (County).

More can be done to maximize the use of recycled and reclaimed water in the County, but the infrastructure is not in place and any increase in supply must be carefully balanced with customer demand. Other obstacles in pursuing such a plan include: infrastructure cost, quality of the recycled water, identifying willing customers, facilitating water and wastewater utility cooperation, and potential legal challenges under California's Proposition 218.<sup>2</sup> Another challenge lies in the comparative cost of

<sup>1</sup> *The West Without Water – B. Lynn Ingram and Frances Malamud-Roam (2013) and studies done for Contra Costa Water District note that tree ring and other historic evidence (such as changes in Delta salinity levels) suggest California experienced several hundred-year-long droughts in the past 1000 years.*

<sup>2</sup> (<http://www.californiataxdata.com/pdf/proposition218.pdf>)

desalinization plants. In Southern California brackish water desalination costs around \$1600/acre-foot, and sea water desalination costs around \$2400/acre-foot. By comparison, Central Valley Project water, which is used in this County, costs around \$600/acre-foot at the point it is delivered to the treatment plant.

We learned that little is being done to increase capture of stormwater for reuse. Additionally, opportunities exist for supplying recycled water to industrial users, and “wheeling” the previously supplied fresh water to other customers in the County.

This report makes recommendations that address these findings. They include:

- Facilitating (possibly through a Task Force) the formation of a Joint Powers Authority (JPA) to: (i) integrate efforts to use recycled wastewater, (ii) capture stormwater, and (iii) revisit desalination options to supplement the County's water needs
- Promoting siting of desalination demonstration plants by making unused or under-used County land available for lease
- Promoting public awareness, education and involvement by forming a Water Reuse Advisory Council that includes citizen stakeholders and technology experts to advise the Board of Supervisors
- Adopting ordinances that promulgate recycling and recovery of water on a county-wide basis, with appropriate rules for planned communities and large commercial buildings
- Emphasizing capture and reuse of stormwater where possible in all new County flood control projects
- Promoting on-site capture and reuse of stormwater wherever practical
- Facilitating the use of satellite wastewater treatment plants, where appropriate



**Los Vaqueros Reservoir (CCWD)**

## **GLOSSARY OF TERMS AND ACRONYMS**

**Acre-feet per year (afy)**—1 acre-foot = 325,851 gallons or 1233.5 cubic meters  
**Million gallons per day (mgd)**—1 million gallons per day = 1121 afy  
**Brackish Water**— saline water with TDS between 1,000 to 10,000 parts per million  
**California Department of Water Resources (DWR)**  
**Central Valley Project**— irrigation project managed by U.S. Bureau of Reclamation  
**Clean Water Act**— federal law governing pollution of surface water  
**Desalination**— removal of salts and dissolved solids from saltwater (brackish or sea)  
**Direct Potable Reuse (DPR)**—wastewater cleaned sufficiently for direct reuse  
**Humidification Dehumidification (HDH)**—alternative desalination technology  
**Indirect Potable Reuse (IPR)**—term for wastewater cleaned sufficiently for indirect reuse  
**Integrated Regional Water Management Plan (IRWMP)**  
**Joint Powers Authority (JPA)**—two or more government agencies that have agreed to work together on projects of common interest  
**Local Agency Formation Commission (LAFCO)**—its charter is to encourage orderly and efficient provision of services, including water, sewer and flood control  
**Megawatt-hour (MWh)**—a unit of electrical consumption or usage  
**National Pollutant Discharge Elimination System (NPDES)**  
**Reverse Osmosis (RO)**—membrane separation desalination technique  
**Potable Water**—water safe enough to drink and cook with, i.e., free from harmful pathogens and contaminants  
**Solar Desalination (SD)**—alternative desalination technology using heat and/or photovoltaic energy from the sun  
**State Water Project (SWP)**—irrigation project managed by State of California  
**Tertiary Treatment**—advanced treatment (following secondary treatment) that produces higher quality water with essentially all suspended matter removed, and (usually) some reduction in nutrient content  
**Title 22 Recycled Water**—treated wastewater suitable for industrial or agricultural reuse, but not potable quality  
**Total Dissolved Solids (TDS)**—dissolved salt or mineral constituents in water  
**Wheeling**—allowing someone else's water to be moved (either notionally or actually) through your transmission system into the users system; usually for a fee

## BACKGROUND

But for the drought, much less attention would have been paid to California's Water Action Plan (known as the 20x2020 Plan). This plan calls for a permanent 20 percent reduction in water use. The Plan uses 2005 as its base year, and will "consider recycling as a means to achieve [the reduction]." It emphasizes that "it is essential for California to expand the use of recycled water." The published plans for both Contra Costa Water District (CCWD) and East Bay Municipal Utilities District (EBMUD) also propose increases in water recycling.

As the drought continued through the summer and fall of 2015, news accounts brought the public's attention to the potential for treating more wastewater to the "tertiary level" and recycling (redirecting) it for industrial and irrigation needs. Some wastewater districts serving Contra Costa are already providing recycled wastewater to industrial, commercial, and municipal users, but further use of this resource is being slowed by a combination of financial and anticipated legal obstacles.

This inquiry focuses on opportunities for expanding water recycling and recovery of our existing local water resources. It also explores how obstacles to these goals may be overcome.

As a drought or regional water shortage progresses, there is a hierarchy of choices to be made. These include:

1. *Conservation* – It is the easiest and least costly to quickly implement.
2. *Recycling of wastewater* – It is the next least costly and disruptive. Wastewater is close to the users' service area, but requires further treatment to make it useable and a distribution infrastructure to deliver it to customers.
3. *Stormwater* – It is only intermittently available but infrastructure must also exist for its capture, storage, and distribution. The reliability and practicality of this resource is both site and climate specific. It was, however, an integral factor in helping Australia through its 10 year-long drought.
4. *Desalination* – It is usually the most expensive, environmentally disruptive, and energy intensive.

In the most severe situations, all four approaches are required.

### **What the Experts Are Saying –**

At the January 2016 Water 2.0 Conference in Sacramento, John Laird, State Secretary of Natural Resources, made some pointed observations:

- California's population is expected to grow by 25 percent over the next generation thus increasing the demand for water.
- Our water infrastructure was designed for a climate that no longer exists.

- We need to build an infrastructure that will match the new climate reality.
- Water conservation works only if you have a reliable underlying water supply.
- While the public wants to believe that if you invest more you will get more of what you invest in (water), the reality may be that you are only protecting the limited supply you currently have (or possibly even less than you currently have).
- Given the facts above, the public needs to be kept informed so that they understand the reality and are on-board when decisions are made.

At the same conference, Felicia Marcus, the Chair of the State Water Resources Control Board, commented that:

- Low interest (1 percent) state revolving-fund loans are available for recycled water and stormwater projects.
- Recycling and stormwater capture projects are also eligible for Proposition 1 matching dollars.
- The Water Board's internal priorities are: permit streamlining (to speed the approval process for new projects), groundwater recharge regulations, and indirect potable reuse regulations.

These comments suggest that the State's regulators are reacting to both long-term and short-term water supply issues by encouraging local entities to take action. However, responsible local entities may not yet be ready to take these suggested steps.

#### **History of Water Reuse–**

In some areas of the country wastewater is already being purified and disinfected up to potable quality for reuse.<sup>3</sup> The California Department of Water Resources (DWR) is currently drafting state-wide rules under which tertiary treated recycled water can be further purified before reintroduction (either indirectly or directly) into potable water systems. Definitive rules for "potable reuse" in California must be issued by the end of 2016.

California was once at the forefront of water recycling. In 1962, the Montebello Forebay Groundwater Recharge Project, a groundwater recharge project using recycled water, was inaugurated in Los Angeles County. More recently the Chino Desalter Authority came on line. That project, using collected stormwater to recharge the aquifer, extracts groundwater that was previously contaminated with nitrates, purifies it using Reverse

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<sup>3</sup> *Wichita Falls and El Paso (TX) are both involved in Direct Potable Reuse (DPR) projects.*

Osmosis (RO) technology, and sells the potable product to retail customers in nearby communities.

According to Laura Martin of *wateronline.com*, California has more groundwater recharge Indirect Potable Reuse (IPR) projects than any other state. The DWR has reviewed and approved each of these projects. Locally there are two RO plants in Alameda County and one in Santa Clara County that treat groundwater to potable quality. In 2008-2009, several Bay Area water districts cooperated in an experimental RO Plant at Mallard Slough to verify costs and feasibility of desalinating brackish river water. The plant demonstrated its feasibility but was later removed because it was not economically viable. Although the calculated cost of the potable water was roughly \$1000/acre-foot, it could not compete with \$600/acre-foot Central Valley Project water.

Twenty years ago, EBMUD and Dublin San Ramon Services District (DSRSD) formed a Joint Powers Authority (JPA) to distribute recycled water to supplement the water supply during the dry summer months. The partnership built a tertiary treatment plant and a "trunk line" to distribute the recycled water. DSRSD personnel operate the plant, and together with EBMUD share in the JPA's operating expenses. They distribute the recycled water primarily to commercial water customers who use the recycled water for irrigation (in lieu of less available potable water). Both EBMUD and DSRSD benefit through this partnership: DSRSD reduces the amount of wastewater it would otherwise have to pump into the San Francisco Bay, and EBMUD benefits from not having to supply more valuable drinking water for irrigation purposes.

## **DISCUSSION**

### ***Water Recyclers and Existing Customers –***

Statewide, urban water agencies currently recycle about a third of potentially recyclable water – 300,000 acre-feet per year (afy) of 900,000 afy. In Contra Costa County, seven wastewater treatment plants are producing recyclable water (Title 22 quality) suitable for use outside their plants for industrial and irrigation purposes. The majority of this water is supplied to two power plants in Pittsburg and an oil refinery in Richmond. Golf courses, public parks, public school landscaping, and median strips use almost all of the balance. Dust suppression at concrete batch plants and public filling stations also use the remaining small fraction. Table 1 summarizes the suppliers and the recycled amounts. Currently, almost 25 percent of wastewater is recycled during the peak summer months. This is slightly lower than the state-wide average; however, all this water is non-potable quality – thus is underutilized during winter months, when it is not needed for irrigation.

**Table 1 – Suppliers and Users of Recycled Water in Contra Costa County**  
(Most to least)

Treatment Plant	Effluent Treated, (Average Dry Weather Flow), mgd	Outside Plant Use, mgd	Comments Million Gallons per Day = mgd
Central San (CCCSD)	30	2.9 (available) 0.6 (used)	0.6 mgd committed to Zones 1 &2 plus Fill Station
Delta Diablo	12.8	7.3	During hottest summer days 100% to Calpine, purple pipe irrigation, and public "Fill Station"
West County SD	6.5	5.8	Essentially 100% of capacity is spoken for by Chevron
City of Richmond	6.03	0	Discharged to the Bay; effluent is too salty for recycling
Pinole/Hercules	3.5	0	Discharged to Bay
City of Brentwood	3.2	0.5	Purple pipe to golf courses and parks; also "Fill Station"
Ironhouse SD	2.26	1.0	Ag application; the rest goes into river
Discovery Bay CSD	1.8	0.6	Local irrigation
Dublin San Ramon SD	1.6 (from Contra Costa)	1.5 (returned to Contra Costa)	Purple pipe to golf courses and parks; also "Fill Stations"
Mt. View SD	1.25	0	100% is being fed into a marsh for wildlife habitat
Rodeo SD	1.14	0.01	Minor amount for in-plant landscape
Crockett CSD	0.93	0	Discharged to Bay
Byron SD	0.1	0	Discharged to Marsh Creek
<b>TOTALS</b>	<b>71.11</b>	<b>17.31</b>	<b>Average = 24.3%*</b>

\* This is the annual average. The percent recycled increases in hot summer months and decreases in winter months.

***Potential Recyclers and Potential Customers –***

There are 13 wastewater treatment plants serving the County. Also, there are several industrial sites that treat and then discharge their internally generated wastewater

directly into the Delta or the Bay. If some of this discharged water was further treated, it could be reused at the industrial sites instead of discharged. This would lower these sites' demand for higher quality outside water. However, it is unclear if this plan is currently economically viable.

Central Contra Costa Sanitary District (CCCSD) has the greatest potential capacity to recycle water. Even so, its ability to process Title 22 quality water for export is currently limited to roughly 3 mgd. To increase its capacity CCCSD would need to construct additional filtration units and related infrastructure. Industrial customers (Shell Martinez, and Tesoro Golden Eagle refineries) would be potential users of any such recycled water. Apart from industrial users, CCCSD is expanding its system for distributing recycled water to local golf courses. Table 2 summarizes the players, potential quantities available for reuse, and the potential needs. There are other smaller projects that would use on-site or satellite treatment plants to "harvest" a portion of the wastewater stream for golf course irrigation, before sending the balance on to the main treatment plant. Cost would be borne by the user.

**Table 2 – Potential or Planned Recycled Water Projects**

<b>Treatment Plant</b>	<b>Customer/Project</b>	<b>Quantity Required, mgd</b>	<b>Timeline and/or Comments</b>
CCCSD	Shell Martinez (cooling, process and boiler make-up water)	10	2020 and beyond – insufficient treatment capacity currently exists to supply full demand
CCCSD	Tesoro Avon (cooling, process and boiler make-up water)	10	2020 and beyond – insufficient treatment capacity currently exists to supply full demand
CCCSD	Concord Naval Weapons Station Redevelopment (residential and commercial)	2.5	2020 and beyond – treatment capacity currently exists to supply full demand
EBMUD (partner/w Pinole and/or Rodeo SD)	Phillips 66 Rodeo	2.8 (Phase 1) 0.9 (Phase 2)	Purchase agreement would have to be negotiated and a dedicated treatment plant built.
DSRSD-EBMUD	San Ramon Valley, Phase 2	0.43	Expansion of system to Bishop Ranch – 2017

The County is below the statewide average of 33 percent recycled water use. To reach "average", customers in the County must use an additional 6.2 mgd of recycled water. (The County's 2005-2020 General Plan includes a policy to "encourage the construction

of wastewater disposal systems designed to reclaim and re-use treated wastewater..."). DSRSD and EBMUD will start construction in 2017 on Phase 2 of the San Ramon Valley Recycled Water Project, which will add 3.6 miles of recycled water pipeline to connect Bishop Ranch Business Park to the distribution system. However, the project is only expected to add 0.43 mgd of recycled water usage.

#### ***The Water Suppliers –***

EBMUD has two dams on the Mokelumne River plus several local reservoirs in the County. It also has an option to buy water from Yolo County during drought years and an intake structure (Freeport) on the Sacramento River to route that water to its existing aqueducts. Additionally, EBMUD is studying "groundwater banking" with San Joaquin County water authorities. This involves intentionally flooding farm land during the winter months to increase percolation into the aquifer for later use. EBMUD plans to increase its use of recycled water by 20 mgd over the next 25 years.

CCWD has rights to use up to 195,000 afy of Central Valley Project (CVP) water.

The "rights" are administered by the U.S. Bureau of Reclamation and can be reduced or curtailed in drought years. In addition, CCWD has a drought year agreement with East Contra Costa Irrigation District (ECCID) to option its 1914 senior surface water rights. It also has Los Vaqueros Reservoir (current capacity 160,000 acre-feet) to help buffer the impact of multiyear droughts. CCWD recently completed a "wheeling" agreement with EBMUD, which allows it to take its CVP water at the Freeport intake structure when capacity is available, rather than from its existing facilities on the San Joaquin River.

CCWD's 10 Year Capital Improvement Plan mentions recycling, but lacks details about specific projects. The page in the Plan that mentions recycling states that any recycling project will *be equally funded by grants and untreated water rates*. Approximately ten percent of CCWD's current water demands are met with recycled water supplied by others under various Memoranda of Understanding. CCWD plays no direct role in supplying the recycled water to customers.

DSRSD gets its water from Alameda County Zone 7 Water District. The wholesale price of \$1300/acre-foot is passed directly through to DSRSD's customers as part of the total water bill. It also treats wastewater to Title 22 quality and distributes it via its recycled water pipeline to larger users. DSRSD is entirely dependent on Zone 7 for its fresh water supply, and Zone 7 is heavily reliant on the State Water Project (Lake Oroville) for its water.

The remaining water purveyors in the County rely on water from CCWD in whole or in part or rely exclusively on groundwater wells to meet their customers' needs. The major water suppliers in the greater Bay Area are becoming more connected through the use of inter-ties and agreements to wheel water to meet emergency situations or when conveyance capacity is available.

### **Where the County Government Fits in –**

The County's General Plan contains a broad principle (under section 8-di) that encourages that wastewater disposal systems be designed to reclaim and reuse treated wastewater. Beyond that, there is no explanation in the Plan on the actions the County will take.

The County interfaces with the various water and wastewater districts through the Board of Supervisors' Transportation, Water and Infrastructure Committee (TWIC). Contra Costa LAFCO, an independent agency with countywide jurisdiction, also interacts with these districts. Both receive periodic reports from the districts on their plans and activities. LAFCO has the additional responsibility of managing boundary issues and periodically assessing the financial stability of each district. The County and LAFCO have not assigned personnel to act as a watchdog or play a facilitator role in the areas of recycled or reused water.

### **Obstacles to Overcome for Recycled Water Projects –**

Before any recycled water project can be implemented, issues related to cost, operations, water quality, customer base, regulatory and legal compliance, financing and timing must be addressed. Additional obstacles are the need to obtain consent from the water supplier and the perception on the part of the water suppliers that their water rights and allocations might be impaired.

### **Projects Worth Pursuing –**

RMC Water and Environment recently completed a recycled water study for CCCSD.<sup>4</sup> Among other options, the study considered adding 20 mgd tertiary treatment and ammonia removal capacity. Under this option, a 42-inch diameter pipeline would connect the Shell and Tesoro oil refineries to supply cleaned wastewater for cooling towers and for refinery process water. As a result, an equivalent quantity of CCWD fresh water would be "freed up" for other uses. The estimated cost to add capacity and treat the recycled water is \$820/acre-foot ( $\pm$  30%). While this figure is higher than the \$650/acre-foot CCWD currently charges wholesale customers for raw canal water, it is anticipated that some customers would be willing to pay more for a secure supply.

With the expansion of its Los Vaqueros Reservoir, CCWD will be able to "bank" some of the newly available water and offer it to other regional water districts, like DSRSD. DSRSD and their water supplier, Alameda County Zone 7, both need additional water to support a growing customer base. After the expansion is completed, CCWD could potentially wheel the water via the proposed Transfer-Bethany-Pipeline to the South Bay Aqueduct, which connects to Alameda Zone 7's system. The responsible parties would need to negotiate the terms of such a project, including its financing, the water

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<sup>4</sup> CCCSD's *RECYCLED WATER WHOLESAL OPPORTUNITIES – March 2016 – prepared by RMC Water and Environment*

recipients, the price per acre-foot, and operation and ownership of the equipment and infrastructure. One mechanism to move such a project forward would be for the parties to enter into a JPA.

Other potential projects are small scale IPR projects. For example, DSRSD is studying injection and recovery wells as a means of fully utilizing its current recycled water capacity. CCCSD also has a capacity surplus of Title 22 quality water. That water could be treated to IPR quality and used for an injection and recovery well demonstration project with CCWD.

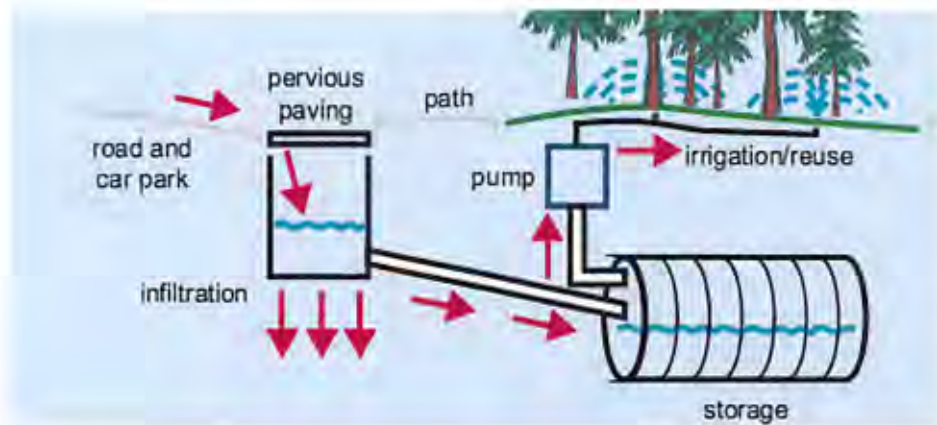
#### **Stormwater Capture and Reuse –**

The National Resources Defense Council (NRDC) recently graded California "D" in stormwater capture and reuse. Southern California, however, is aiming to increase its efforts in this area, with an ultimate goal of meeting at least ten percent of its total water needs from this source. According to the NRDC "capturing urban stormwater runoff in Southern California and the SF Bay Area could increase the water supply by as much as 630,000 afy while reducing a leading cause of surface water pollution." The City and County of San Francisco is also actively addressing capture and reuse of urban runoff. They recently passed ordinances mandating that new commercial buildings over a certain size must recover both gray water and stormwater for reuse on premises. This approach is most likely to yield significant benefits in high-density urban areas.

The Public Policy Institute of California lobbied for reforms to State Propositions 218, 26, and 13 to exempt water-related projects from the two-thirds majority vote requirement for new assessments, fees, charges or special taxes. The court in *Griffith v. Pajaro Valley* (2013) found that fees charged by water agencies, including flood control districts, for projects related to water or sewer services are exempt from the two-thirds majority voting requirement under Proposition 218. Thus, fees can be assessed for projects relating to capture and reuse without a two-thirds majority vote. As this remains a contentious issue, flood control districts are reluctant to go forward with capture and reuse projects until case law has been further established.

The Watershed Atlas of Contra Costa identifies 16 specific watersheds comprising roughly 513,280 acres. Assuming that future rainfall only averages 12 inches per year and that half of that rainfall soaks into the exposed soil, the remaining runoff still adds up to over 250,000 afy of locally available water. If only half of the runoff was captured, it would exceed the amount currently supplied by CCWD to its 500,000 customers. However, projects to maximize stormwater capture have not yet been identified in the County.

Australia is a leader in implementing innovative systems for stormwater capture. Two schematics for surface stormwater capture and underground storage systems are shown:



**Underground Storage Scheme (NSW Dept. of Environ. & Conservation-2006)**



**Surface Swale Scheme (NSW Dept. of Environ. & Conservation-2006)**

Various "water-advocates" agree that regional self-reliance and multi-benefit solutions are keys in achieving a sustainable, reliable water infrastructure. The focus on stormwater management by the County and its nineteen cities relates almost exclusively to compliance with NPDES stormwater discharge permits. These municipalities do not have plans for capturing stormwater for beneficial use, except to the extent that it promotes retention of pollutants that might otherwise be released into the San Francisco Bay or Delta.

The storage capacities of groundwater basins in the County have not yet been quantified. Even if significant (tens of thousands of acre-feet) storage capacity were identified, well drilling data collected by US Geological Service and California DWR suggest that augmented recharging could be difficult. Contra Costa's basins have layers of impermeable and low permeability clays that slow percolation, thus natural percolation from the surface is limited in many areas. Additionally, geological faults impede the flow of groundwater from one area to another.

#### **Desalination Options –**

The most prevalent technology for desalination, Reverse Osmosis (RO), involves forcing water molecules through filtering membranes at high pressure to remove salts

and other impurities. Sea water systems require 2 cycles (stages) to produce fresh water. Brackish water requires only one cycle to produce fresh water and, thus, is a less expensive source than sea water. The process is slightly more efficient when the inlet water is warmer.

A large sea water desalination plant was just completed in Carlsbad, CA, which is producing fresh water for approximately \$2200 to \$2400/acre-foot. Recent RMC estimates for producing DPR quality water from wastewater supplied by CCCSD ranged from \$2200 to \$2300/acre-foot, a cost that is on a par with sea water desalination, but higher than brackish water desalination. This suggests that in certain scenarios brackish water desalination might be a less costly option than recycling wastewater up to potable quality.



**Bank of Desalination Membrane Filtering Tubes**

RO is considered to be a "mature" technology, meaning it is unlikely that there will be breakthroughs in the near future that will drive either construction or operating costs down. According to the California Energy Commission in 1980 it took 36 MWh of electricity to produce one acre-foot of desalinated water. Currently only 3.5 MWh is needed – which is roughly fifty percent energy efficiency – extremely good for an industrial process. By comparison, almost the same amount of energy is needed to import an equal quantity of surface water to Los Angeles and San Diego from the Colorado River.

At least two emerging technologies may place less demand on the electric grid in the future: solar desalination (SD) and humidification dehumidification (HDH) desalination. The former uses solar concentrators and panels to produce fresh water and salt cake

from brackish water. The latter is designed to use waste-heat (hot air) to promote evaporation on one side of a heat transfer surface and condensation of fresh water on the other. "Dewvaporization" is one variation of the HDH process. It uses a common heat transfer surface and is theoretically even more energy efficient. Although pilot plants have been tested with both methods, thus far there is little interest in taking the next step to an industrial scale operation. Appendix 2 contains a discussion of other desalination options.

The U.S. Bureau of Reclamation funded an HDH pilot plant. One of the goals for the project was to "develop methods to make desalting more efficient through promotion of dual-use facilities in which waste energy could be applied to desalting water." The 5,000 gallons/day pilot plant is located at a wastewater treatment plant near Phoenix, Arizona. The HDH process uses low-grade heat and waste heat to promote evaporation of the wastewater stream. A similar plant could be built at CCCSD. It uses natural gas from the adjacent landfill as fuel for drying its treated solid waste; thus, waste heat should be available for an HDH desalination plant.

Regardless which technology is selected, water professionals believe that desalination plants will ultimately be part of the water reliability solution. In addition to treating water from the San Francisco Bay and the Delta, they also can upgrade groundwater that contains a high level of total dissolved solids (TDS). Such water is currently blended with higher quality surface water, limiting the amount that can be used.

The California Legislature is considering allowing "surplus" solar power to be used for desalination projects at below market price. This would make such projects an even more attractive alternative.

#### **The Cost of Doing Nothing –**

If nothing is done, the result may be higher rates for less water. While some environmentalists view this as a "least worst" outcome that will rein-in wasteful practices and minimize environmental impacts, there are disadvantages:

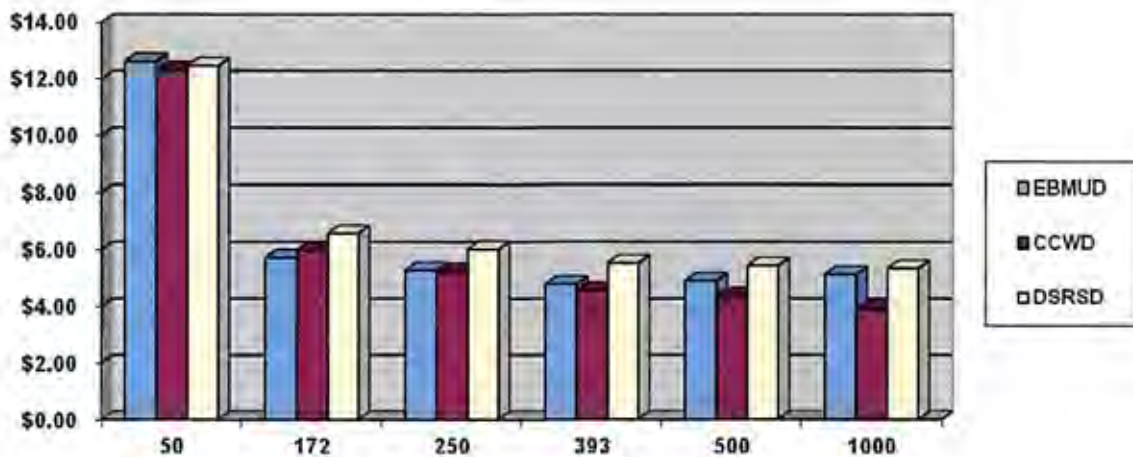
- It adversely affects lifestyle choices, such as: outdoor pools, home gardens and orchards, and landscaping
- It discourages new industries that need water to operate their businesses from locating here
- It leaves the County's residents at the mercy of the weather and reliant on stored water reserves

If water conservation is the only approach used, customers could end up paying almost as much each billing cycle while using less water. On the other hand, if the water shortage is approached using a combination of water conservation and water treatment, customers may ultimately pay less than water conservation alone. This is because a

water supplier can increase its profitability by providing treated water to its customers. Increasing the amount of water delivered generally does not increase a water supplier's fixed costs and can help to cover those costs. The fixed costs come from debt financing of infrastructure that must be paid off (such as the Los Vaqueros Reservoir and the Freeport Intake on the Sacramento River), employee salaries, and maintenance costs on equipment that must be kept in operation regardless of the amount of water passing through.

The bar chart (Table 3) illustrates conservation's unavoidable consequence: the first few gallons of water used become more expensive as total consumption decreases. This may seem counter-intuitive, given that the unit rates incorporated on tiered-rate water bills show progressively higher unit costs when the "life-line" quantity is exceeded. However, the reality is the fixed "service charge" is added on top of whatever amount of water is used.

**Table 3 – Unit Cost Bar Chart**



**Vertical-axis = dollars/unit (748 gallons) based on a 61 day billing cycle**  
**Horizontal-axis = average gallons per day over 61 day billing cycle**

Water providers recently pointed out that water conservation has resulted in "drastic losses in revenue needed for infrastructure investments and fixed cost recovery (costs incurred regardless of amount of water used – representing about 70 percent of customer bills)." A recent Fitch Ratings survey revealed that 78 percent of municipal water agencies have already, or plan to, adjust rates to offset losses from mandatory conservation. Clearly the downside of conservation is that the retail customer will not be saving much money for using less water.

## Final Observations –

- Water supplies are not growing, but population is.
- Desalination of brackish water (where available) needs to be revisited. Estimated costs are slightly lower than DPR quality water and public acceptance could be easier to gain.
- The estimated costs for IPR and DPR remain relatively high, even though the energy cost to operate the plants should be lower than desalination plants.
- Unless CCCSD can get a State or Federal grant to increase its capacity for recycled water, it cannot be cost competitive with raw canal water supplied by CCWD to their industrial customers.
- State matching grant money and low-interest loans are available for recycled water and desalination projects.
- Recycling Title 22-quality water to year-around customers has a better chance to maximize its use, provided willing customers can be signed up.
- Both mandated conservation and recycling water potentially reduce water purveyors' revenue resulting in upward pressure on billing rates.
- Stormwater should be part of the water sustainability solution – even though its expected contribution will be limited.
- The Board of Supervisors could (through a Task Force) be an effective facilitator in the formation of a recycled water JPA.
- The Board of Supervisors could (through an Advisory Council) be an effective facilitator in educating and encouraging the participation of the public.

## FINDINGS

- F1. Among obstacles to using more recycled water are: determining who will pay for installing the necessary infrastructure and distribution system; finding a willing customer; and minimizing the financial and legal impacts to the current potable water purveyor.
- F2. Water purveyors and wastewater processors can share water treatment costs and revenues under a JPA.
- F3. State matching grants and low-interest loans are available for small indirect potable reuse projects, which could potentially increase water supply.
- F4. Indirect potable reuse projects are ideal for areas in the County where other new water sources are unavailable.
- F5. It is difficult to develop large recycled water projects without the cooperation and commitment of water purveyors and customers.
- F6. Where recycled water can be wheeled to one customer, it could "free up" an equivalent amount of fresh water that could then be wheeled to another customer who might be willing to pay more, thus creating "win-win" results for recycled water projects.
- F7. While stormwater capture and reuse has potential for contributing to the County's long-term water needs, the County has focused on NPDES compliance.
- F8. Contra Costa County and its cities could adopt water saving and recycling ordinances for large commercial buildings, similar to those adopted in other large urban locations such as San Francisco.
- F9. Satellite wastewater treatment plants are feasible in situations where the user is distant from existing recycled water distribution systems, needs water for irrigation, and is able to meet the costs to build and operate the plant.
- F10. The County is below the State average in use of recycled water.
- F11. Desalination technology continues to evolve, including smaller scale solar powered and HDH ("Dewvaporation") pilot plants, although neither has been developed to full commercialization.
- F12. Citizen involvement (possibly through an Advisory Council) is a key to getting buy-in for recycle and IPR/DPR projects because it is citizens who pay for, consume, and depend on a reliable source of pure water.
- F13. There is no single point of contact for water recycle and reuse issues in the County.

## RECOMMENDATIONS

- R1. The Board of Supervisors should consider facilitating (possibly through a Task Force) the formation of a JPA to promote water recycling, stormwater capture and desalination projects.
- R2. CCCSD and CCWD should explore the feasibility of cooperatively developing an IPR Injection Well Project.
- R3. CCCSD, CCWD, and DSRSD should consider the formation of a JPA to expand CCCSD's tertiary treatment capacity in order to free up fresh water for domestic and commercial customers.
- R4. The Board of Supervisors should consider directing that priority be given to capture and reuse of stormwater where possible in all new County flood control projects.
- R5. The Board of Supervisors should consider adopting ordinances that promulgate recycling and recovery of water on a County-wide basis.
- R6. The city should consider adopting requirements relating to the use of reclaimed water for planned communities and large commercial buildings to maximize its use.
- R7. The district should consider facilitating the use of satellite wastewater treatment plants, where appropriate.
- R8. The Board of Supervisors should consider adopting a County goal to exceed the State average for recycled water use and establish a target date.
- R9. The County and Districts should consider meeting to discuss each District's need for land for demonstration of scaled-up recycling and desalination projects using green technologies, which may qualify for State grant money, and the County's ability to lease such land.
- R10. To promote public awareness and citizen involvement, the Board of Supervisors should consider establishing a citizen's "Water Reuse Advisory Council" which includes citizen stakeholders and technology experts to advise them on all water reuse issues affecting the County.
- R11. The Board of Supervisors should consider designating a single point of contact within County government for water recycle/reuse issues or establishing a permanent water sustainability subcommittee under their Transportation, Water and Infrastructure Committee to advise the committee on water reuse issues.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County Board of Supervisors	F1, F2, F7-F8, F10-F13	R1, R4, R5, R8-R11
Board of Directors for the Contra Costa Water District	F3-F6, F9	R2, R3, R7, R9
Board of Directors for the Central Contra Costa Sanitary District	F3-F6, F9	R2, R3, R7, R9
Board of Directors for the Dublin San Ramon Services District	F3-F6, F9	R2, R3, R7, R9
Board of Directors for the East Bay Municipal Utilities District	F9	R7, R9
Concord City Council	F8	R6
San Ramon City Council	F8	R6
Walnut Creek City Council	F8	R6

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson

725 Court Street

P.O. Box 431

Martinez, CA 94553-0091

## APPENDIX 1

### METHODOLOGY

The Grand Jury surveyed a cross-section of wastewater treatment agencies; attended various public meetings at agencies, special districts, and boards; and conducted sixteen interviews with managers, technical specialists, and water industry consultants from:

- Cities that treat their own water and/or wastewater
- Contra Costa Central Sanitary District (CCCSD)
- Contra Costa Clean Water Program (CCCWP)
- Contra Costa Water District (CCWD)
- County Departments with responsibility for water-related issues
- Delta Diablo (DD) – formerly Delta Diablo Sanitary District
- Diablo Water District (DWD)
- Dublin San Ramon Services District (DSRSD)
- East Bay Municipal Utilities District (EBMUD)
- East Bay Leadership Conference – Water Task Force
- East Contra Costa County Integrated Regional Water Management (Plan)
- East County Water Management Association (ECWMA)
- Local Agency Formation Commission (LAFCO)
- San Francisco Bay Regional Water Quality Control Board (SFBRWQCB)

## APPENDIX 2

### OTHER DESALINATION OPTIONS–

The information below expands on some other technologies available for desalination. Electrodialysis and Forward Osmosis were not previously discussed in the report.

#### Electrodialysis (ED)–

ED is an ion exchange membrane process that uses electrical potential as a driving force to remove salts from brackish or sea water. Reportedly the process operates most efficiently with brackish water containing less than 3,000 TDS. This technology may be best suited to smaller projects. According to Lee and Moon (in *Desalination – Water from Water*), a 10,000 cubic meter capacity plant could produce desalinated water for \$0.83/m<sup>3</sup> or about \$1024/acre-foot. However, brine disposal costs would have to be added.

#### Forward Osmosis (FO)–

FO is an osmotic process similar to reverse osmosis, but instead of a pressure gradient, it uses a higher concentration “draw” solution as the driving force to move water across a semi-permeable membrane. This produces a less concentrated solution on the draw side of the membrane from which the water must then be extracted. A pilot or demonstration plant was built by NASA Ames Research Laboratory recently. According to McCutcheon and Bui, (in *Desalination – Water from Water*), “FO promises to enable low cost desalination with improved recovery and fouling resistance...” For wastewater treatment it could be “hybridized” with existing RO units. In this scenario it would act as a pre-filter to skim out the water from an otherwise unprocessed waste stream.

### ADDITIONAL REFERENCES AND SUGGESTED READING–

*Water 4.0: the Past, Present and Future of the World's Most Valuable Resource*, David Sedlak; (Yale University Press: New Haven, CT), 2014

*Desalination – Water from Water*, Jane Kucera, Editor; (Scrivener Publishing: Beverley, MA), 2014

*Desalination with a Grain of Salt – A California Perspective*, Heather Cooley, Peter H. Gleick, and Gary Wolff; (Pacific Institute: Oakland, CA), June 2006

*Desalination Engineering: Planning and Design*, Nikolay Voutchkov; (McGraw-Hill: New York, NY), 2007



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY  
725 Court Street  
Martinez, California 94553


Report 1607

**DELTA LEVEES IN CONTRA COSTA  
COUNTY**

How Well Do We Protect This Vital Safety System?

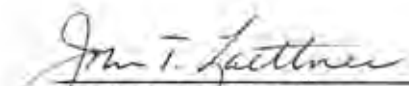
APPROVED BY THE GRAND JURY:

Date: 5/31/16

  
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MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 5/31/16

  
\_\_\_\_\_  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1607

## **DELTA LEVEES IN CONTRA COSTA COUNTY**

### **How Well Do We Protect This Vital Safety System?**

**TO: The Boards of Trustees of All Contra Costa Reclamation Districts; the Contra Costa Board of Supervisors; the Contra Costa Tax Collector; the Contra Costa County Clerk Recorder Elections Division; Contra Costa County LAFCO; and the City Council of Oakley**

### **SUMMARY**

Some say about Contra Costa County's Delta levees, "It's not a question of *if* but *when* they will fail." Others disagree. They say that these levees can continue indefinitely to perform successfully *if* they are constantly and proactively monitored and maintained, and receive appropriate improvements as conditions evolve. The answer to this "if or when" debate is of vital interest to the County.

The Delta levees form a critical bulwark against flooding that could have disastrous consequences for the County and even the State. The levees, most of which were built more than a century ago, originally protected privately owned land. This land was reclaimed from marshland for agricultural use, and was sparsely populated by the landowners and possibly a few farmworkers. Today, these levees protect much more:

- the lives and property of 28% of Contra Costa County's population (based on the 2010 census, although the number continues to grow),
- infrastructure that is critical to the County and region (including major roads and highways, a railroad line, oil and gas wells and pipelines, power transmission lines, and aqueducts and canals that supply water to nearly 2/3 of the State), and
- the quality of Delta water that could be exposed to excessive saline levels due to the incursion of seawater.

Many of these levees are fragile, subject to degradation from natural forces and from the effects of human activities. While the Reclamation Districts (Districts) that own and/or manage the levees have done much to protect and maintain them, often aided by State financial support, more can be done, even within the limits of the Districts' financial resources.

This report recommends focusing on three major areas: sharing of resources and knowledge among Reclamation Districts, education of residents of the Districts as to the reasons behind levee rules and regulations, and increased involvement and participation by the various entities that benefit from the protection afforded by the levee system.

## **METHODOLOGY**

In conducting its investigation and preparing this report, the Contra Costa County Grand Jury performed the following:

**Interviewed and/or obtained information from representatives of the following public agencies and Reclamation Districts, including professional engineering firms that provide engineering support to the Reclamation Districts:**

California Department of Water Resources; Contra Costa County Flood Control; Contra Costa County Department of Public Works/Engineering Services; Contra Costa County Department of Conservation and Development; Contra Costa County Local Agency Formation Commission; Contra Costa Water Department; Contra Costa County Flood Control; Contra Costa County Tax Collector; Contra Costa County Clerk Recorder Elections Division; Ironhouse Sanitary District; Bethel Island Municipal Improvement District, Reclamation Districts 799 (Hotchkiss), 800 (Byron-Discovery Bay), 830 (Jersey Island), 2025 (Holland), 2026 (Webb), 2059 (Bradford), 2065 (Veale), 2122 (Winter), and 2137 (Dutch Slough).

**Conducted site visits to the following Reclamation Districts:**

Bethel Island Municipal Improvement; District; 799 (Hotchkiss); 800 (Byron-Discovery Bay); 2024 (Orwood and Palm); 2025 (Holland); and 2065 (Veale).

**Attended Board Meetings and/or reviewed agendas and minutes from the following public agencies and Reclamation Districts:**

Contra Costa LAFCO; Contra Costa Board of Supervisors; Contra Costa Water Agency; Reclamation Districts 799, 800, and 2059.

**Reviewed numerous publications of various public agencies, including but not limited to the following:**

Department of Water Resources reports and bulletins; Delta Stewardship Council email notices and interim Delta Levee Investment Strategy reports and studies; Delta Risk Management Strategy (DRMS); Delta Overview; United States Geological Survey

reports; Contra Costa County Local Agency Formation Commission (LAFCO) 2015 Municipal Service Review (MSR); Reclamation District 799's 5 year plan; CalFed Bay-Delta Program documentation; Contra Costa County 2014 Delta Water Platform; Bulletin 192-82; U.S. Army Corps of Engineers bulletins; California Water Fix bulletins; Contra Costa Water District newsletter and reports; State Investments in the Delta report; Contra Costa Board of Supervisors 2016 State Legislative Platform/Guiding Policies; Delta Protection Commission 2015 Annual Report; Delta Risk Management 2016 Assessment District Feasibility Study.

## **CONFLICT OF INTEREST DISCLAIMER**

One or more Grand Jurors recused themselves due to a possible conflict of interest and did not participate in the investigation, preparation or approval of this report.

## **BACKGROUND**

The first levees in the County, which are in the western portion of the Delta, were built on reclaimed marshlands from 1868 through the 1870s using manual labor. Those early builders thought --- incorrectly, as it turned out ---- that levees of 3 to 5 feet in height and 12 feet wide at the base would suffice to protect the newly reclaimed lands. Private landowners using manual labor and horse-drawn wagons built these levees out of the surrounding peat soils. Although excellent soil for agricultural purposes, peat proved not the best material for levee construction as it compacts, subsides, and erodes readily. Those levees failed frequently, and the enclosed lands were flooded almost annually.

The advent of the steam-powered clamshell or "grabber" dredges in the late 1800s allowed levees to become higher and broader. Additionally, the use of river-bottom soils with higher clay and mineral content resulted in stronger levees. But even though stronger than the smaller peat levees, the bottom-soil levees were still subject to frequent breaks or "breaches" and/or high water levels washing over the top of the levee ("overtopping"). Those failures resulted in flooding and destruction of the privately owned farms and ranches occupying the land behind the levees. These old agricultural levees still form the base, or footprint, of the majority of levees in Contra Costa County today, raised and/or otherwise strengthened on a piecemeal basis over the past century.

Like the vast majority (over 730 of the approximately 1,115 miles) of Delta levees, all of the levees in the County's portion of the Delta are "non-project" or "local" levees. Other levees known as "project" levees (comprising 385 miles of the Delta levees) form part of an authorized federal flood control project on the Sacramento and San Joaquin River systems. Project levees conform to the highest level of flood protection standards (See

Appendix 1 for a diagram of the various levels of flood protection construction standards), and are inspected by and eligible for rehabilitation by the Army Corps of Engineers. Unlike project levees, our non-project levees were constructed, enlarged, and maintained over the last 130 years by local reclamation districts. These districts are locally funded by parcel tax assessments and governed by locally-elected boards. They have jurisdiction over and responsibility for the levees that protect their District's enclosed lands.

Built at significant expense with modern equipment, materials and engineering techniques, project levees meet the highest standards in flood protection. The improvements necessary to bring the older non-project levees up to these standards are largely beyond the available financial resources of local reclamation districts. Aside from the financial challenges, reclamation districts face a moving target in planning major capital improvements to their levees because levee-construction standards continue to evolve as conditions in the Delta change over time.

Today even the non-project levees are commonly 15 to 20 feet high, 16 feet wide at the top or "crown" and wider at the base, with typically a 2 to 1 slope ratio from crown to base. The levees incorporate modern techniques and materials, as the reclamation districts work to bring the old agricultural levees up to current standards. Nonetheless, many still do not meet the current standards for urban or even non-urban levees. (See Appendix 1.) As land has subsided and sea levels have risen, much of the land protected by these levees is now 10 to 15 feet below sea level, making continual improvement essential to avoid overtopping and consequent flooding.

In addition to overtopping, levees may fail due to breaches. Breaches can occur suddenly or gradually, usually due to physical hazards, which we discuss later in this report. Management of these hazards requires what levee superintendents and consulting engineers have described as "constant vigilance": regular and frequent physical inspections of the levees and immediate attention to trouble spots. Failure to prevent, or at least promptly curtail, breaches could lead to major flooding resulting in loss of lives, property, and infrastructure, and possible impairment of the quality of water drawn from the Delta sources.

As with many other improvement projects, limited financial resources constrain the maintenance efforts of most reclamation districts. In general, the maintenance and improvement work to the levees are financed by assessments levied by reclamation districts. Additionally, the California Department of Water Resources (DWR), recognizing the importance of infrastructure within the Reclamation Districts, provides some supplemental financial support for qualified levee maintenance work through its Subventions Program, grants for qualified improvements through the Special Projects Program, and in situations of pending or potential emergency, Directed Action Grants. These funding mechanisms, and their limitations, are discussed later in this report.

In addition to the districts' financial constraints, old homes, fishing shacks, and other structures have been built on or within the levees' structural framework or sphere in

some of the populated zones. These structures may stand in the way of desired improvements, and even complicate the visual inspections of the levees, thus inhibiting early detection of seepage and/or other early warning signs of the need for preventative work.

The future of the Delta has long been the subject of ongoing discussion and debate, with various state and regional agencies as well as private advocacy groups proposing plans with differing, sometimes conflicting, objectives. Not only do their priorities differ, but also their proposed strategies for achieving their desired objectives. The one certainty is that none of these plans will soon be ready for full implementation. For the immediate future, we must rely on the integrity of the existing levees. Two events of the past decade illustrate quite dramatically the vital importance of these levees, which serve the purpose of protecting property well beyond the land actually enclosed within them:

The August 2009 collision of a bulk carrier ship with Bradford Island. On a calm, clear evening, August 27, 2009, a 570-foot bulk carrier vessel was outbound from the Port of Stockton when it grounded, lost steering, and hit the levee at Bradford Island. The collision damaged approximately 150 feet of levee, causing a serious breach. The journal, the *Professional Mariner* reported as follows:

“The breach jeopardized drinking water quality for 23 million people,” said David Mraz, chief engineer with the Delta-Suisun Marsh Office of the state Department of Water Resources. “Had the levee broken, salt water would have been drawn into the Delta (from San Francisco Bay) and contaminated the region’s fresh water supply with salt.”<sup>1</sup>

Contractors worked around the clock over a three-day period with dozens of trucks and bulldozers to make repairs using sand, silt, and clay—all from the island—to buttress and stabilize the levee. That initial repair work cost nearly \$800,000, and then, because these materials compressed and settled over time, required several additional months of close monitoring.

The District’s Project Manager, John Cunningham, said, “DWR advised him that it would have cost the State closer to \$50 million had they not succeeded in closing the breach and preventing a full flood with that quick action.”<sup>2</sup> The State paid the District’s costs under the Directed Action Program.

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<sup>1</sup> The complete news-article can be found at: <http://www.professionalmariner.com/December-Jauary-2009/Bulk-carrier-seriously-damages-levee-in-Sacramento-San-Joaquin-River-Delta/> .

<sup>2</sup> A fuller description of the incident from the perspective of island residents can be found at: [http://californiaspigot.blogspot.com/2010\\_10\\_01\\_archive.html](http://californiaspigot.blogspot.com/2010_10_01_archive.html)

The June 3, 2004 levee breach on Jones Tract. The Jones Tract is located in the San Joaquin County portion of the Delta, which is adjacent to Contra Costa County. Its 2004 levee breach and subsequent flood demonstrated the far-reaching impact, and importance of the Delta levees to the County and to the entire state. Governor Schwarzenegger declared a State of Emergency on June 4. By June 30, the severity of this flood's effect on key infrastructure and the State's water supply led to a Presidential Declaration of Emergency. This declaration authorized FEMA reimbursement of certain costs of responding to this major disaster.

This "sunny-day breach" of the Upper Jones Tract levee led to what was initially estimated to be approximately 150,000 acre-feet of water flooding the Jones Tract at a time when Contra Costa Water District (CCWD) was pumping from both of their easternmost intake stations in the Delta. According to CCWD's Fall 2004 newsletter, about half that intake was then flowing to Los Vaqueros Reservoir and the rest was going directly to their treatment plants for transmission to customers.

Risks to the water supply were twofold: more salinity due to increased amounts of seawater flowing into the Delta from San Francisco Bay and/or leached from the inundated soil reaching the CCWD intake conduits, and floodwaters contaminated with chemicals and fuel used in the Jones Tract for agricultural purposes. CCWD stopped pumping from their Old River Intake Station and began rapid-response testing and monitoring of water quality. Ultimately the saline content reached levels that necessitated halting flows to the Los Vaqueros Reservoir. As a result, the reservoir entered peak demand summer operations well below the maximum capacity that had been projected. CCWD had to pump water from Los Vaqueros Reservoir, with its lower-than-anticipated volume to fill demand; at the same time, work to pump the floodwaters off the island continued.

Gaining control of the flood was challenging, and repairs were difficult, complicated by key infrastructure within the flood zone. Of particular concern were the Burlington Northern-Santa Fe rail-line and EBMUD's Mokelumne Aqueduct, both of which also run through Contra Costa County. It took four weeks to plug the levee breach, and the full recovery required federal as well as state resources. After removing more than 160,000-acre feet of water, the involved agencies finally succeeded in de-watering the island in December 2004.

DWR estimated the direct cost of containing the flood, levee repair, and island pump-out to be \$30 million. This does not include the cost of lawsuits filed against a number of defendants, including the Reclamation District, DWR and other state agencies, and even the company that provided rodent control services on the island. (The flood washed away all forensic evidence, making it impossible to establish the cause of the flood with certainty. However, most sources consider burrowing rodent activity --- i.e. one of the physical hazards we discuss later in this report --- the most probable cause of the breach and subsequent flood.)

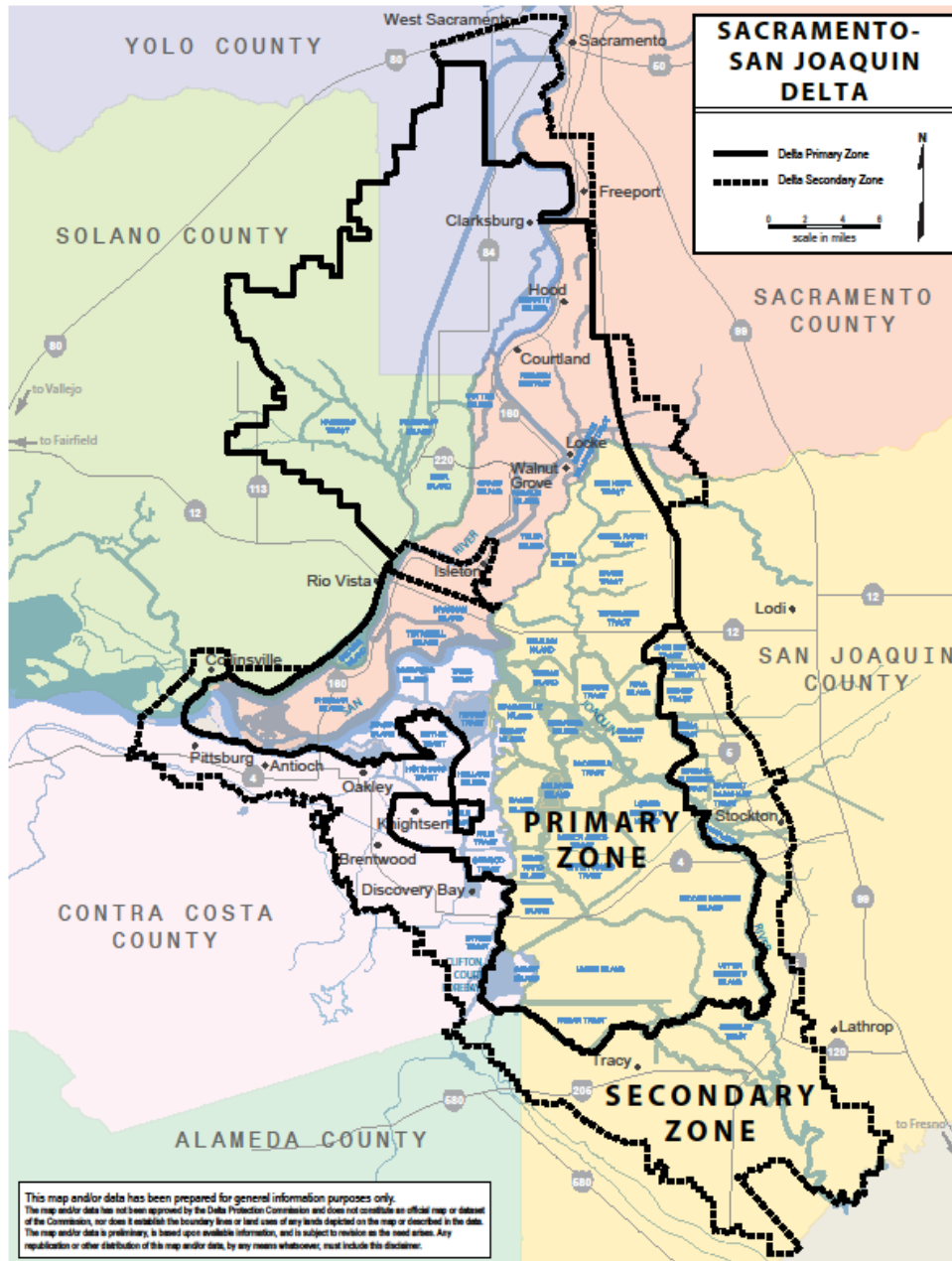


*DWR Photos: June 2004 Jones Tract Breach and Flood*

In view of all these immediate risks with far-reaching impact, steps should be taken to ensure that our County's Delta levees continue to perform their function successfully.

## **DISCUSSION**

There are 14 special districts (13 reclamation districts and 1 municipal improvement district) in Contra Costa County that have responsibility for levee services within the Delta. They are shown in the following map, along with the Primary and Secondary Zones of the Delta as defined in the California Water Code, Section 12220. Many of the districts are islands; others have responsibility for levees that protect lands only partially surrounded by water.



*Contra Costa County Reclamation Districts  
(Map Courtesy of Delta Protection Commission)*

The western portion of the Delta includes eight islands that the State’s Department of Water Resources (DWR) deems critical to preventing saline (i.e. seawater) intrusion. Six of these eight islands are located in the County. These islands become particularly important during multi-year droughts such as that of the last four years. To prevent saltwater intrusion arising from less fresh (river) water flowing into the Delta, DWR had to install temporary rock barriers, one on False River between Jersey and Bradford Islands, to protect the state’s water quality. The following map shows these islands:



According to the November 15, 2015 Municipal Service Review (MSR) of Reclamation Districts by the County's Local Agency Formation Commission (LAFCO), the 14 Districts are responsible for levees and population as shown in the table on the following page.

Reclamation District Name and Number	Population		Total Miles of Levees	Miles at HMP Standard	Miles at PL84-99 Standard	Miles at FEMA Standard
Bethel Island Municipal Improvement (BIMID)	2,137*		14.5 (11.5 Agriculture 3 Urban)	11.5	8**	
Hotchkiss (799)	969		11.7 (8.5 Agriculture 3.2 Urban)	5.2		
Byron (800)	13,352***		18.9 (12.4 Agriculture 6.5 Urban)		9.7****	18.9
Jersey Island (830)	3		15.5	14.8		
Orwood/Palm (2024)	8		14.6		14.6	
Holland (2025)	27		11		11****	
Webb (2026)	0		12.9	12.9	6.25**	
Bradford (2059)	63		7.5	7		
Veale (2065)	14		5.1	4.2		
Quimby Island (2090)	1		7	7		
Coney Island (2117)	4		5.48	5.4	4.12**	
Bixler (2121)	5		2			
Winter Island (2122)	0		5	1.5		
Dutch Slough (2137)	2		3.8	3		
Contra Costa County Delta Total	10,889		139.48 (126.78 Agriculture 12.7 Urban)	79.2	43.97	18.9

\*Population doubles during the summer.

\*\* Levees that meet the higher PL84-99 standard also meet, by default, the HMP standard. Some of the agricultural miles meeting the HMP standard have been improved to meet the higher PL84-99 standard.

\*\*\* includes residents inside the old RD boundary, but on elevated peninsulas outside the newer urban levees.

\*\*\*\*Levees that meet the PL84-99 Standard may apply for the Army Corp of Engineers Rehabilitation and Inspection Program (RIP). Once accepted, they must pass biannual eligibility ACE inspections to continue to participate.

LAFCO's MSR relies on self-reporting from these districts to evaluate their financial and administrative ability to maintain the integrity of the levees. In assuring that their levees perform adequately, all of these districts face similar challenges, financial and otherwise, in dealing with the risks. As levee conditions are extremely dynamic, conditions reported at one time will not necessarily be accurate a relatively short time later. While the County's levees are performing adequately now, constant and proper management of hazards is essential to maintain that performance.

Physical hazards. Levee breaches typically result from impairment of the levee by any one or a combination of the following:

- uneven settling or subsidence,
- wind and/or wave action on the water side of the levee, with the added risk that unrepaired flooding of one island can increase the intensity of wind and/or wave action on surrounding islands due to the wider expanse of open water,
- erosion of the "crown" (i.e., the top) or dry side of the levee,
- trees that may pull out significant soil from the levee if toppled by storm activity,
- vegetation that may die and leave a conduit for water into or through the levee,
- activities of burrowing rodents, and/or
- human activities, including construction on or through the levee itself or damage to ancillary equipment, such as pumps.

These hazards, other than human activities, can be successfully managed by regular and frequent monitoring and prompt repair when discovered. To accomplish this, those districts that have levee superintendents or district managers who perform the functions of levee superintendent, typically conduct regular, frequent levee patrols. These patrols look for signs of physical hazard, and watch for any unexpected seepage. A certain amount of seepage is normal, and it takes a combination of experience, familiarity with levees, and knowledge of past problem areas to recognize abnormal seepage, and to recognize the early signs of the above hazards.

Challenging as this is, there is no "school for levee maintenance" or any other authoritative training program or textbook to guide levee superintendents. The job of levee superintendent can only be learned by doing, preferably under the initial supervision of or at least consultation with an experienced incumbent. The only other reference source for levee superintendents is the districts' consulting engineer, who is a valuable, but costly, resource. The levees in districts that have little or no population and/or only minimal financial resources are at a greater risk since these districts seldom have the staff to do regular levee patrols. They typically rely on the property owners, who have a stake in the integrity of the levees to protect their property interests, and a consulting engineer, who may serve several reclamation districts. In these instances, the consulting engineer becomes even more important.

Even with the availability of a consulting engineer, levee inspection and maintenance is not easy. In addition to distinguishing normal seepage from problematic seepage, and noting early indications of the latter, the levee superintendent must balance levee

inspection and maintenance with environmental concerns. For example, the tall grass that grows on most levees helps to prevent erosion, but requires mowing to prevent overgrowth obscuring the levee surface and hampering visual inspection of the levee. However, wildlife regulations may prohibit mowing during the spring nesting season for certain birds. The levee maintenance program must address this seasonal prohibition and schedule mowing accordingly.

Further, other wildlife regulations provide that levee maintenance may not cause any “net loss of habitat”. Whenever maintenance requires removal of habitat to facilitate inspection, do preventative work, or make minor repairs, regulations require “mitigation,” i.e., implanting or expanding similar habitat. Some districts, such as Bethel Island, have their own mitigation site, where they plant replacement vegetation. Other districts make use of “mitigation banks” which are independent sites located elsewhere from the district where the district can pay for planting and maintenance of habitat equivalent to that which they cannot directly replace.

In addition to the long learning curve for new levee superintendents, lack of equipment or supplies can hamper timely performance of repair work. Most districts maintain stockpiles of basic supplies such as sand for sandbags, shovels, gravel, and plastic sheeting. Districts place these supplies at strategic locations near particularly vulnerable portions of the levee and at the district equipment yard. Some districts are unable to afford to maintain a full complement of supplies, such as adequate quantities of rock for “riprap” (the rocks that line and buffer the wet side of the levee from wave action) and heavy equipment, such as earthmoving equipment. Where necessary, districts rely on informal mutual-aid agreements.

Human activities that can endanger a levee's integrity pose special challenges. These activities include construction work on the levee, driving or parking heavy vehicles in inappropriate places on the crown of the levee, and vandalism and theft of copper wiring and other materials from pump stations. Such damage occurs primarily in those districts that have a significant number of full-time residents. As those districts have become aware of the potential risk, they have tried to take appropriate precautions, such as burglary preventions at the pump-houses, and the use of inspections and permitting procedures to control construction activities.

Districts such as Bradford Island, which is only accessible by ferry, or Jersey Island, where the population of three is supplemented only by day-visitors who come to the Island to fish, hike, or bird-watch, are able to adeptly control human hazards to the levees. Other districts, such as Bethel Island or Hotchkiss Tract, have a significant number of permanent, fulltime residents, many of whom have homes built in close proximity to the levees. For most of these homes, the levee is essentially part of their “yard”. Nearly all of them have boat docks on the water side of the levee, accessed by crossing the crown of the levee. In the more populated districts, the usual control on human activities that affect the levee is through an “encroachment” permitting process. The permitting process involves the district’s board, in consultation with the levee

superintendent, district manager, and/or consulting engineer, verifying that permitted construction does not potentially impair the structural integrity of the levee.



*GJ photos: Pictures of levee crowns*

However, many district homeowners are not fully aware of, have forgotten, or may have chosen to disregard the district's permitting procedures. Older structures may pre-date current standards and protocols. The levee superintendent or district manager must watch for violations as part of the regular levee patrol, and explain to violators why the activity in question endangers the integrity of the levee, and therefore the safety of all residents. (See Appendix 2 for a typical permit application with instructions for application and approval.) Websites can offer a means of easy access for residents seeking information and an application form. However, only five Districts have a website. In the others, residents or prospective residents must go to the District office – not always located in the District itself – for forms, instructions, and answers to questions related to construction permit requirements.

Attempting to stop individual violations of permit procedures on a case-by-case basis is something of a “Band-Aid” approach to levee safety. A better approach to encourage compliance with current levee standards and protocols, as well as to encourage homeowners about to undertake major remodeling that they should upgrade to current standards, is to educate the population about the reason for the levee standards and protocols in the first place, the dangers of a flood. In addition to levee protocols and regulations prepared and enforced by each reclamation district, there are numerous resources available that describe the hazards facing all levees and the potential dangers to all residents if these hazards are not properly managed. Greater understanding of the reasons for the rules should bring more willing adherence to levee protocols and construction standards.

One particularly good resource, not specific to the County but providing a good basic explanation of facts about levees and necessary precautions that should be taken to maintain them, is a 2010 brochure prepared by the American Society of Civil Engineers,

“So, You Live Behind a Levee”. It can be found and downloaded from their library at [www.ASCE.org](http://www.ASCE.org). Other brochures are available online or in hard copy from DWR, county and/or city flood control divisions, and at many district offices. One more excellent although generic (i.e. lacking consideration of California’s unique environmental requirements) resource, geared as much to levee owners and/or operators as to residents, is USACE’s “Levee Owner’s Manual for Non-Federal Flood Control Works, available at [www.nfrmp.us/docs/USACE](http://www.nfrmp.us/docs/USACE).

Additionally, there are a number of levee safety videos produced by DWR, and some by the Army Corp of Engineers that address basic concerns that apply to both project and non-project levees. One such video is “How Levees Fail, How We Fix Them”, available on YouTube or at [www.floodassociation.net/resources](http://www.floodassociation.net/resources).

County flood control divisions and planning departments also have available a number of brochures about the National Flood Insurance Program. This program emphasizes the precautions necessary when living in a flood plain. Federal mortgage lenders require that borrowers living near levees that are not FEMA certified and accredited levees (those that meet the highest construction standard for urban levees) obtain flood insurance coverage.

Likewise, educational sessions about emergency flood response programs can serve a dual purpose. Residents who participate in these sessions will have heightened awareness of the potential dangers posed by floods. They are better prepared to react appropriately in such an event. The residents also gain a better understanding of the reasons for levee regulations and protocols, and so are less likely to circumvent the district permitting process.

Lack of staff impedes aggressive outreach such as that done in neighboring Sacramento County, which holds a “Flood Fair” each October, in recognition of “Flood Preparedness Month”. There are also other, less resource-intensive forms of educational outreach such as seasonal mailers or online bulletins. A problem with mailers though, is that without already high public awareness, recipients often discard them unopened. Including them with other timely (pre-storm season) “high-interest” or mandatory mailings from other County departments or agencies, such as property tax bills or voter information, could increase their effectiveness in raising public awareness.

Those districts that publish newsletters or have websites often include flood-safety and emergency response bulletins just ahead of storm season. Their newsletters can also include explanations of the specific need for and intended uses of the benefit assessments that appear in residents’ property tax bills. (See Appendix 3 for just such a sample newsletter.) All these educational or informative efforts have the potential to heighten awareness of the potential flood danger and increase residents’ understanding that the actions of one affect the safety of all – powerful motivation to follow and support levee regulations and protocols.

Financial Challenges and Available Support. Many reclamation districts lack the financial resources to do more than basic maintenance work. The expense of improvements that would bring their levees to a higher standard is often beyond their capacity. Although expensive, these improvements are necessary to prevent overtopping during major storms, especially storms that occur in concert with unusually high seasonal tides (known as “King tides”). The majority of the funding for the work comes from the property owners themselves. This can be a severe hardship for those districts with relatively small numbers of property owners. These smaller districts often struggle to find funds for even basic needs. (See Appendix 3, a Bradford Island newsletter and informational insert explaining their Prop 218 assessment.)

Several sources of financial support are now available from the State, through DWR, to supplement the assessment-based revenue of the districts: the Subventions Program, special projects grants, and Directed Actions.

- Subventions program – This is a cost-sharing program, with the State currently reimbursing 75% of the cost of qualified levee maintenance work after the first \$1,000 per mile. However, the reimbursement is limited to levee maintenance, not to support of ancillary equipment, no matter how essential that equipment might be. For example, clearing ditches of vegetation is eligible, but not pump repair.

It is also important to note that the reimbursement cycle is nearly two years. For example, a proposal submitted by July 1, 2015, for the 2015-16 fiscal year, will receive formal acceptance by November 1, 2015. Before receiving reimbursement from the State, the district submits final invoices after the close of the fiscal year on June 30, 2016. Next, DWR and the Department of Fish and Wildlife (DFW”) physically inspect the work to confirm that it was done according to the application and also to confirm that there was no net loss of habitat. After any challenges, appeals, and/or discussion, DWR authorizes payment of the final invoices, to the extent that it accepts the work. Actual disbursement of funds to the District may not occur until well into the spring of 2017.

This two-year reimbursement cycle presents challenges to small districts, as does the responsibility for paying 25% of the costs (plus first \$1,000 per mile). The Districts have little if any funding other than assessments to pay the costs of the first two-year cycle. Once through that first two-year cycle, they can usually manage the reimbursement cycle on a rolling year-to-year basis. However, the 25% of the cost remains a financial challenge every year. Further, California Prop 1E, which funds this program and supports most of the basic maintenance work, is due to sunset this year. Many districts’ plans hinge on the outcome of a current proposal to remove that sunset.

- Special Projects funding – DWR sends out a request for proposals for levee improvement projects when they know how much is available in a given year,

i.e., \$60 million this past fiscal year, with a limit of \$15 million per district per project. The districts' proposals, first a short form and then a complete application with engineering specifications and drawings, go through two sequential grading and ranking processes. Staff engineers and biologists evaluate the proposals, assigning points based on priorities set forth in the Delta Reform Act.

Special projects require less cost share by the district, i.e. typically 10% retained and 90% reimbursed, and may allow some advance partial funding, depending on the scope of the project. The documentation requirements are greater than for the Subventions Program. For the most part, districts submit monthly status reports and invoices, and obtain DWR approval before paying the contractor for completed work.

- Directed Actions – This program is a “special circumstances” program. In the face of a pending or potential emergency with implications for the state water supply, the DWR Director can authorize funding for emergency action. Examples include the repairs to the Bradford Island levee damaged by the ship collision in 2009, and an agreement with Jersey Island to make emergency improvements in preparation for the December 2005/January 2006 “Pineapple Express” storm front. Had that winter storm overtopped the levees of Jersey Island, it is highly likely that additional islands would have also flooded and thus endangered the water supply for the State.

The table below shows the amounts received by each district through the Subventions and Special Projects Programs, in dollars and as a percent of total district revenues. Revenue other than that from these state programs is comprised of the assessments received from district property owners. The difference in non-State-funded revenue between the more populous districts (i.e. Bethel Island, Hotchkiss, and Byron) and the less populous districts reflects the financial advantage of a larger assessment base. However, the financial needs of the smaller districts for levee maintenance and improvement are not proportionately less. In fact, the smaller districts are just as likely to contain, and be responsible for protecting, key infrastructure and/or to provide a barrier to seawater intrusion

*(Information provided by LAFCO MSR 2015)*

Reclamation District Name and Number	Total Revenues	Subventions Program (SP)	Special Projects Program (SPP)	Percent of Total from State
Bethel Island Municipal Improvement (BIMID)				
2012-2013	\$553,746	\$130,653	\$6,762	24.8%
2013-2014	\$543,271	\$66,934	\$30,440	17.9%
Hotchkiss (799)				
2012-2013	\$513,910	\$87,825	0	17.0%
2013-2014	\$681,759	\$76,003	\$165,340	35.4%

Byron (800)				
2012-2013	\$1,487,371	\$128,341	0	.09%
2013-2014	\$1,451,294	\$31,295	0	.02%
Jersey Island (830)				
2012-2013	\$4,235,078	\$232,273	\$3,437,133	86.6%
2013-2014	\$3,738,175	\$881,860	\$2,300,000	85.1%
Orwood/Palm (2024)				
2012-2013	\$3,366,749	0	\$3,050,412	91.6%
2013-2014	\$524,506	\$67,880	\$140,939	39.8%
Webb (2026)				
2012-2013	\$615,689	\$201,683	0	32.8%
2013-2014	\$2,456,735	Included in SPP	\$2,256,677	91.9%
Bradford (2059)				
2012-2013	\$2,229,692	\$6,358	\$1,916,597	86.2%
2013-2014	\$523,123	\$192,672	0	36.8%
Veale (2065)				
2012-2013	\$63,762	0	0	0
2013-2014	\$531,720	\$33,620	\$399,600	81.5%
Quimby Island (2090)				
2012-2013	\$151,716	\$76,716	0	50.6%
2013-2014	\$106,407	\$103,872	0	97.6%
Coney Island (2117)				
2012-2013	Not Reported	Not Reported	Not Reported	0
2013-2014				
Bixler (2121)				
2012-2013	\$5,000	0	0	0
2013-2014	\$5,000	0	0	0
Winter Island (2122)				
2012-2013	Not Reported	Not Reported	Not Reported	0
2013-2014	Not Reported	Not Reported	Not Reported	0
Dutch Slough (2137)				
2012-2013	\$750,395	\$560,315	0	74.7%
2013-2014	\$1,111,946	\$910,316	0	81.9%

Increasing urbanization where development is allowed (i.e. in the Delta Secondary Zone) offers potential for financial benefit beyond the increased revenue generated by a parcel assessment on new district residents. As developers seek approval to build new communities, the appropriate planning agencies can consider including financial support of existing levees in the requirements for approval. For example, the East Cypress Corridor Plan approved by the City of Oakley for development of annexed land located in the interior of Hotchkiss Tract (Reclamation District 799) included \$11 million for reconstruction, improvement, and pump replacement for existing levees. This funding was in addition to the cost borne by the developer in building a new FEMA certified and accredited interior “ring” levee surrounding the Summer Lake Development.

It is important to note that FEMA certification and accreditation do not require physical inspection of the levee. Certification is based on FEMA’s review of documentation that the levee meets design construction standards for at least the one-percent-annual chance (or “100-year”) flood. Accreditation requires confirmation of the adequacy of the

operation and maintenance plan provided by the levee owner. As FEMA's own literature states: "Levee certification does not warrant or guarantee performance, and it is the responsibility of the levee owner to ensure the levee is being maintained and operated properly." FEMA further states: "FEMA accreditation is not a health and safety standard – it only affects insurance and building requirements."

Future Opportunities. As noted above in the "Background" section, many other entities besides residents of the districts benefit from the protection of the levees. State and local agencies are now discussing how a broader population of such beneficiaries might equitably share in the cost of maintaining and/or improving these levees.

In March 2016, the Delta Protection Commission began a workshop that includes a series of meetings tasked with developing a fair system of "beneficiary-pays" funding for needed levee maintenance and improvements. This is in conjunction with the Delta Stewardship Council's Delta Levee Investment Strategy, also still in progress, that is trying to assess the value of all assets – including key infrastructure --- within each reclamation district, protected by each district's levees. The "beneficiary-pays" workshop expects to conclude by June 2016. It then will make recommendations to the Delta Stewardship Council. The Council will give the recommendations consideration in pursuing future legislation, but there is no certainty the recommendations will be implemented.

In the meantime, Contra Costa Water District has spearheaded an interagency cooperative venture to accomplish much-needed improvements to the levees in Bacon Island (Reclamation District 2028), which is adjacent to the County, lying within San Joaquin County. Reclamation District 2028 submitted the application to DWR for Special Project funding to improve 4.7 miles of levee along Old River and to create areas of native grassland and scrub shrub habitat. Reclamation District 2028 will be the contracting agency with DWR and provide in-kind funding through staff time and land taken out of production for habitat and levee materials. Others that will benefit from the project also will help to finance it through funding or in-kind services.

In February 2015, DWR selected this project for \$10.2 million in grant funding, approximately 97% of the project cost of \$10.57 million. The beneficiaries of the project will participate as follows:

- Reclamation District 2028 will be responsible for the environmental review, permitting, design and implementation.
- Alameda County Water District, Contra Costa Water District (CCWD), Metropolitan Water District, Santa Clara Valley Water District and Zone 7 will provide monetary contributions to the Project.
- East Bay Municipal Utility District and San Francisco Public Utilities Commission will provide in-kind technical support and implementation support.
- CCWD will serve as the fiscal agent for the agencies' financial contributions.
- Pacific Gas & Electric (PG&E) will provide in-kind service through relocation of a high-pressure natural gas line and overhead electrical lines.

Where do we go from here? The answer to the “if or when” question posed at the beginning of this report depends on what we do locally to protect the County’s Delta levees while agencies with the authority to set policy continue to debate issues that will determine the long-term future of the Delta. Meantime, we all have a stake in the integrity of the existing levees. They are today’s line of defense against flooding with catastrophic potential for Contra Costa County and for much of the State as well. We must all pay attention to, and encourage support of the everyday, practical and sensible activities that keep these levees safe, to the benefit of all of us.

## **FINDINGS**

- F1. The portion of the Delta that lies within Contra Costa County includes six of the eight western islands, deemed by the State to be of particular importance to preventing seawater intrusion that would impair the quality of water for nearly two-thirds of the State, including much of the East Bay area.
- F2. Loss (i.e. submersion) of any of the six islands in the Delta within Contra Costa County has potential to affect adversely much more than just Contra Costa County.
- F3. Key infrastructure located within the Contra Costa County reclamation districts benefits the entire County, including major County roads and highways, a rail-line, PG&E power transmission lines, natural gas wells, petroleum pipelines, Contra Costa Water District intakes, pumping stations, and portions of both the Contra Costa Canal and EBMUD’s Mokelumne aqueduct.
- F4. The levees in the County’s portion of the Delta have been built up or otherwise strengthened on a piecemeal basis over the century or more of their existence.
- F5. Because the levees remain vulnerable to natural hazards and human activities, they require constant vigilance – i.e., frequent inspection coupled with timely maintenance and prompt repairs.
- F6. The Army Corp of Engineers inspects federal levees, as well as non-federal levees that qualify for the Rehabilitation and Inspection Program.
- F7. All of our County’s levees are non-federal levees and the only non-federal levees in the County that qualify for participation in the Rehabilitation and Inspection Program are in Holland and Byron Reclamation Districts.
- F8. The only levees in the County that are independently evaluated for structural integrity are those in Reclamation Districts 800 and 2026, Holland and Byron.
- F9. LAFCO’s MSR of the reclamation districts, which it performs every 5-years, focuses on financial and administrative management of the districts.

- F10. LAFCO relies on self-reported information from the districts, without physical inspection, to evaluate how well the districts are maintaining the integrity of the levees for which they are responsible.
- F11. There is no formal or standardized educational or training resource available to the districts for levee inspection, maintenance, and repair, which can support new levee superintendents or managers while they acquire the experience to recognize problems early, learn how to appropriately respond, and learn how to balance environmental regulations with maintenance protocols.
- F12. Levee management requires recognizing seasonal timeframes and juggling multiple deadlines, including preparing for storm season and the “no-mowing” period, when local bird populations nest, as well as timely application for the subvention and/or special projects funding programs.
- F13. Unpermitted encroachments can hinder visual inspection of the levee surface and create new structural weaknesses or potential conduits for seepage.
- F14. Education about the potential danger of unpermitted encroachments can be a highly effective management tool for mitigating this type of hazard because increased understanding of the potential consequences of such encroachments can support longer-term adherence to levee regulations and protocols.
- F15. Since early recognition of potential trouble spots and prompt repair work are critical to maintaining levee integrity, while resources for levee patrols are limited, the presence of an educated and aware residential population can supply additional eyes to provide the constant vigilance that is crucial to safeguarding the levees.
- F16. In addition to permitting procedures and intermittent newsletters, there are other opportunities to educate the public, and especially residents of reclamation districts, about the hazards that can damage or impair the levees.
- F17. Explaining the hazards to levees by multiple means at appropriate times -- i.e., just before the start of storm season in the fall – can help to keep awareness at a heightened and effective level.
- F18. Efforts to educate and raise public awareness could be enhanced by cross-departmental and/or cross-agency cooperation such as including Flood Control safety bulletins with other seasonally appropriate, apt-to-be-read or mandatory mailings such as property tax bills or voter information packets.
- F19. It takes nearly 2 years from the application date for reclamation districts to receive reimbursement for levee maintenance work approved by DWR under the Subventions Program.

- F20. The cost of the initial funding required of reclamation districts under DWR's Subventions Program can be prohibitive for some reclamation districts, resulting in under-utilization of this highly beneficial program.
- F21. Some reclamation districts that are unable to maintain the staff, equipment, and material stockpiles needed for emergency major repairs, rely on informal mutual-aid arrangements.
- F22. Planning agencies can require that developers who seek to develop areas within reclamation districts financially contribute to existing levees as a condition of approval of their proposed developments, as was done with the East Cypress Corridor Plan for residential development in the interior of Hotchkiss Tract, Reclamation District 799.
- F23. The feasibility of interagency cooperative ventures to accomplish levee improvements has been demonstrated by multi-agency coalition for to improve the levees in Reclamation District 2028, Bacon Island.

## **RECOMMENDATIONS**

- R1. After identifying the necessary funding, LAFCO should consider including independent physical inspections of levee conditions, in addition to the self-reported evaluations of the conditions, in the MSRs of all County reclamation districts, if necessary by hiring an independent engineering firm to perform this function.
- R2. After identifying the necessary funding, the County reclamation districts should collaborate in establishing and supporting a shared website, possibly approaching one of the Districts that already has a website to take the lead. This website should include "Best Practices", a calendar of date- or seasonal-specific tasks, such as preparation for nesting season when certain work is prohibited, and dates when Subventions Program applications are due, and a common log of significant levee incidents to identify and track historical trouble spots.
- R3. After identifying the necessary funding, the County reclamation districts should consider taking turns hosting a short, local, annual conference for all District Board members and staff. Each conference should include an educational presentation on a matter of common interest, such as changes in regulations or levee standards, new technology or procedures for levee work, new sources of funding, and/or most effective techniques for successful grant applications.
- R4. After identifying the necessary funding, reclamation districts should consider adding a "training module" for new and re-elected Board members to their required governance training (i.e. Brown Act and Ethics). This "module" or session should cover the district's levee regulations and protocols, the consequences of noncompliance with regulations and protocols, flood preparedness, and

emergency response training – or at minimum a “back to basics” session with the consulting engineer to cover these concerns.

- R5. Reclamation districts should formalize, or at a minimum document, all “Mutual Aid” agreements for future reference as reclamation district personnel change over time.
- R6. After identifying the necessary funding, the County Tax Collector should consider including informational material on flood preparedness or levee safety precautions, available at no charge from our County Flood Control or Central Valley Flood Control Agency or DWR, with every property tax bill that has an address within a reclamation district.
- R7. After identifying the necessary funding, the County Clerk Recorder should consider including informational material on flood preparedness or levee safety precautions, available at no charge from our County Flood Control or Central Valley Flood Control Agency or DWR, with election materials sent to addresses within a reclamation district.
- R8. After identifying the necessary funding, the Board of Supervisors should consider directing the County Planning Department to provide each applicant for new construction or major remodeling in unincorporated areas within a reclamation district with a brochure or direction to an online website explaining levee safety rules and regulations, along with the reasons for same, applicable to their particular reclamation district and to require that each applicant confirm receipt of the brochure or link to website by initialing.
- R9. The Oakley City Council should direct the Oakley Planning Commission to provide each applicant for new construction or major remodeling within a reclamation district in the City of Oakley with a brochure or direction to an online website explaining levee safety rules and regulations, along with the reasons for same, applicable to their particular reclamation district and to require that each applicant confirm receipt of the brochure or link to website by initialing.
- R10. The Board of Supervisors should consider directing the appropriate planning and/or land use departments to follow the precedent established by the East Cypress Corridor Project and condition approval of proposals for new residential or commercial development, where allowed on any unincorporated County land in a reclamation district, on financial support of the existing levees.
- R11. The City of Oakley should consider following the precedent established by the East Cypress Corridor Project and conditioning approval of proposals for new residential or commercial development, where proposed on Oakley’s annexed land in a reclamation district, on financial support of the existing levees.

R12. After identifying the necessary funding, the Board of Supervisors should consider directing the County’s Transportation, Water, and Infrastructure Committee to establish a task force or initiate a staff study to investigate ways to encourage and facilitate grant-seeking coalitions of urban water agencies and/or other beneficiaries of the levee system, on smaller-scale projects with shorter time horizons than those currently being investigated by the Delta Protection Commission (i.e. similar to but including even smaller-scale projects than the Bacon Island improvement coalition).

R13. After identifying the necessary funding, the Board of Supervisors should consider directing the County’s Transportation, Water, and Infrastructure Committee to establish a task force to investigate possible ways for the less-advantaged reclamation districts to obtain interim funding, including but not limited to grants or low-interest rate loans, to cover the initial two-year lag-time to obtain reimbursement for essential levee maintenance work from the Subventions Program.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County LAFCO	9, 10	1
The Board of Trustees of Bethel Island Municipal Improvement District	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 799 (Hotchkiss Tract)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 800 (Byron Tract)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 830 (Jersey Island)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 2024 (Orwood/Palm Tract)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 2025 (Holland Tract)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 2026 (Webb Tract)	4, 5, 11 – 17, 21	2 - 5

The Board of Trustees of Reclamation District 2059 (Bradford Island)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 2065 (Veale Tract)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 2090 (Quimby Island)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 2117 (Coney Island)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 2121 (Bixler Tract)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 2122 (Winter Island)	4, 5, 11 – 17, 21	2 - 5
The Board of Trustees of Reclamation District 2137 (Dutch Slough)	4, 5, 11 – 17, 21	2 - 5
The Contra Costa County Tax Collector	16 - 18	6
The Contra Costa County Clerk Recorder Elections Division	16 - 18	7
The Contra Costa County Board of Supervisors	1 - 3, 19, 20, 22, 23	8, 10, 12, 13
The Oakley City Council	1 – 3, 19, 20, 22	9, 11

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson

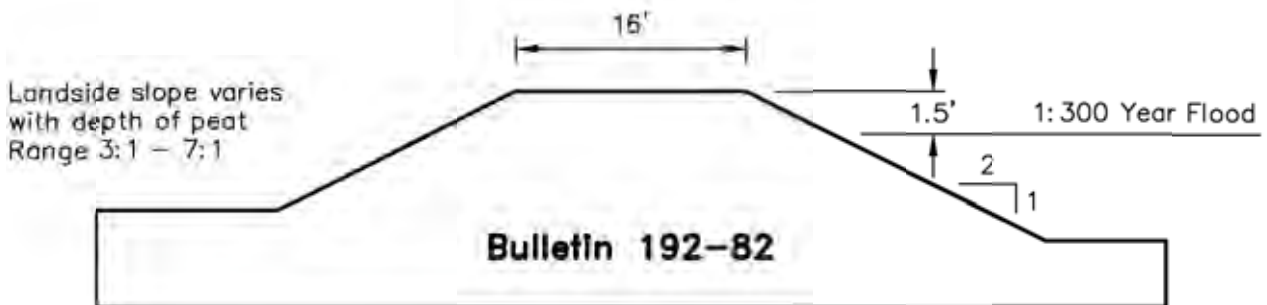
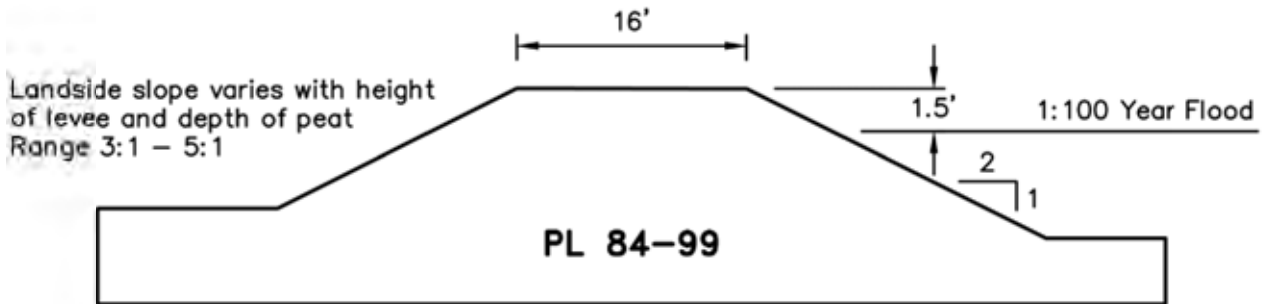
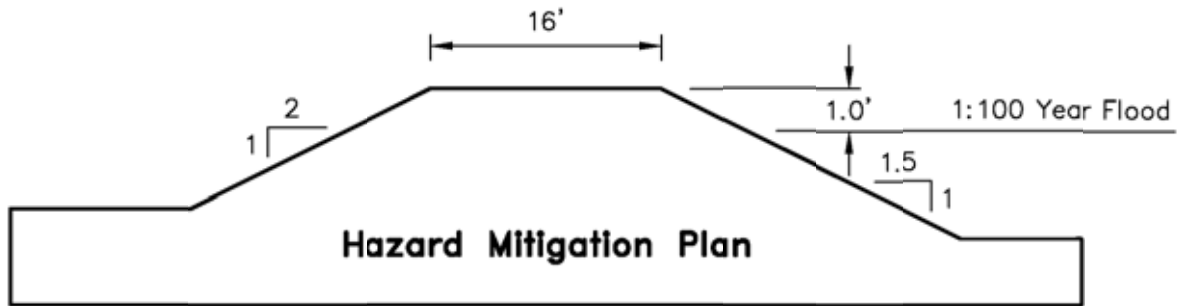
725 Court Street

P.O. Box 431

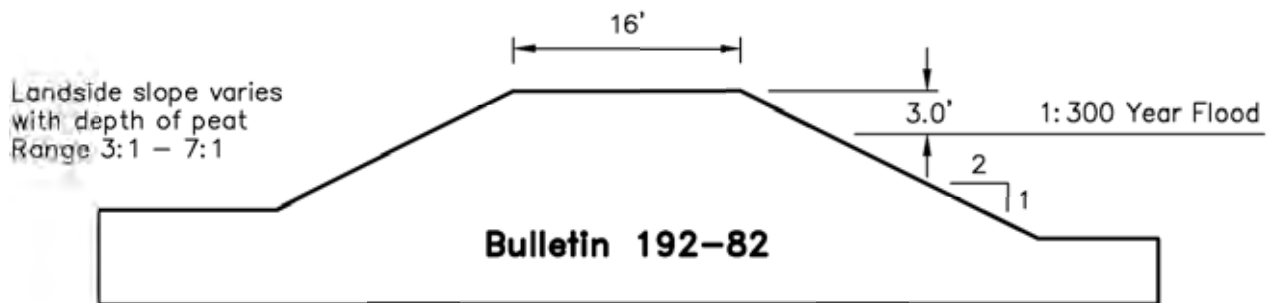
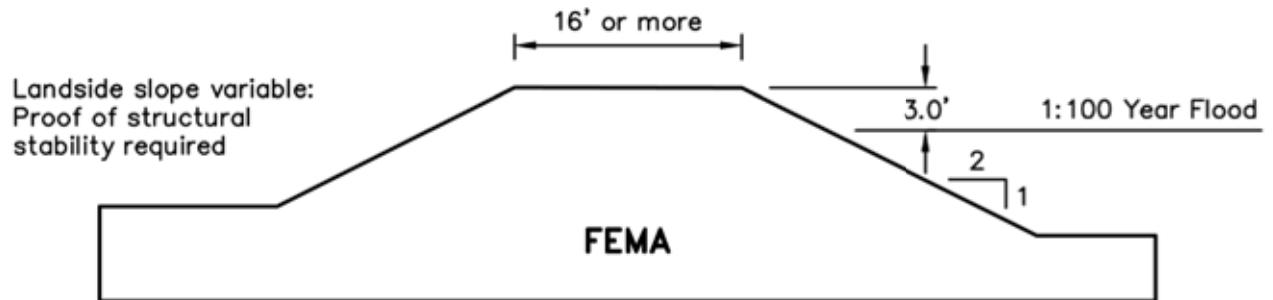
Martinez, CA 94553-0091

**APPENDIX 1: Delta Levee Standards**

**Agricultural**



# Urban



## **APPENDIX 2: SAMPLE PERMIT APPLICATION**

For District Use  
Application No. \_\_\_\_\_  
Application Fee \$ \_\_\_\_\_

### **APPLICATION FOR ENCROACHMENT PERMIT**

1. Name and Address of Property Owner/Applicant:

Name of Owner/Applicant                      Address - ZIP Code                      Telephone No.

\_\_\_\_\_  
\_\_\_\_\_

2. Location - Assessor's Parcel No. \_\_\_\_\_ District Tract No. \_\_\_\_\_

3. Description of encroachment \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

4. Required Exhibits - Please check those items submitted:

- a. \_\_\_\_\_ Location or vicinity map, to scale, showing location of proposed work in relation to known topographic features, to allow visitation to site and inspection of work.
- b. \_\_\_\_\_ A complete plan of the proposed work to scale, showing dimensions, and relationship of the proposed work to adjacent levee or waterway.
- c. \_\_\_\_\_ One or more cross sections of the levee, berm and waterway area with dimensions and elevations of the levee crown, levee toes, floodplain, low water, etc., with reference to a District identified bench mark (see Section VIII.7b of the District Regulations) should be indicated. Reference may be made to the District levee survey, where applicable.
- d. \_\_\_\_\_ Profile of existing or proposed levees, fills, or other obstructions on the levee or in the waterway or overflow areas with reference to a known datum.
- e. \_\_\_\_\_ Additional plans, sections, details which might be pertinent or useful in regard to the review of this application.
- f. \_\_\_\_\_ Proposed schedule of construction for development or project.
- g. \_\_\_\_\_ Provide any additional information that may assist the District in evaluating the proposed project's effect on the District's levee and the District's ability to normal maintenance and maintenance during times of emergency.

The undersigned Property Owner/Applicant agrees to reimburse the District for its costs and expenses associated with the review of this Application.

Property Owner/  
Applicant's Signature(s) \_\_\_\_\_ Date \_\_\_\_\_

**The Applicant is advised to consult with the District about encroachment limitations before preparing this application. This Application must be signed by the Property Owner.**

## **APPENDIX 3: SAMPLE (BRADFORD ISLAND) NEWSLETTER WITH PROP 218 ASSESSMENT INSERT**

# Bradford Rec. Dist. 2059

Volume 1, No. 4

~Transparency In Our Public Agency~

November 2015

### **2015/16 ASSESSMENT STICKER SHOCK**

If you haven't already paid it, the first installment of your 2015/16 property tax bill is late after today, Dec 10th. You probably did a double take at the amount so let us say this again...this high assessment is only for this first year. *See included insert*

*"With four people you can create one very strong kind of energy, but if you can get 65 people working together, and swinging together, that's a whole other kind of energy."*  
Chuck Mangioni

### **Barrier Breached October 1, 2015:**



The Victory II re-power is scheduled for the end of December to accommodate the corn harvest and taking livestock to market. (*Read more pg. 3*)

Work began in September to remove the Emergency Drought Barrier placed across False River this past July under the Governor's Executive Order.

The rock barrier was breached October 1 and the District has been informed that the entire structure, including the abutments will be removed. The king piles (shown in photo to left) will be cut off and capped.

We knew that Bradford Island played a critical role as one of the Eight Western Delta Islands but in the last five years, this tiny island has become pivotal to an increasing number of California's strategic water initiatives.

This newsletter provides a recap of events over the last five years that are impacting our assessments today.

It also provides an overview of initiatives and recent actions impacting the island.

We will also be providing you with an update of accomplishments, most recently in the past two years, as well as goals projected for the next two years.

## Proposition 218 (Insert)

The District realizes that there may be some confusion regarding the Proposition 218 assessment election that was recently conducted and which passed by majority vote. The following information is provided to help clarify the issue.

**District Finances:** Contra Costa County is the de facto Treasurer of Bradford Reclamation District 2059 (the District). As such, the assessments levied by the District are collected by the County twice a year along with the parcel property tax and any other special fees. Beginning this year, you will see two District assessments on your tax bill—CB and TU. *See Example Figure 1*

**Assessments:** Code CB represents the \$313,605 assessment passed on May 4, 2010 that sunsets after this year. Starting in fiscal year 2016/17 (July 1, 2016 – June 30, 2017), assessment Code CB rolls back to the 2009/10 maximum assessment of \$158,000 and continues at that rate forever—it **cannot be raised**.

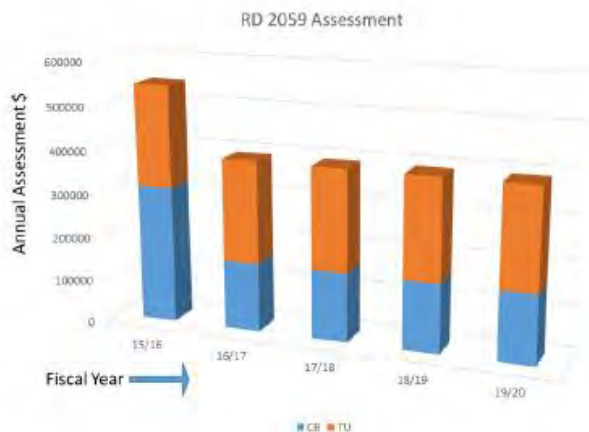
Code TU - O&M (Operations and Maintenance) represents the supplemental \$232,406.90 assessment approved on August 4, 2015 which begins fiscal year 2015/16 and sunsets in five years. *See Figure 2* If you would like to know what your 2009/2010 rate plus your new O&M (Operations and Maintenance) supplemental rate will be, please email a formal request to the District Manager at [angelia\\_bradford@sbcglobal.net](mailto:angelia_bradford@sbcglobal.net).

Figure 1

SPECIAL TAXES & ASSESSMENTS			
DESCRIPTION	CODE	INFORMATION	AMOUNT
RECL DIST 2059 ✓	CB	(925) 209-5480	\$4,537.50
MOSQUITO & VECTOR	DV	(925) 867-3400	\$54.10
EMERGENCY MED B	DY	(925) 646-4690	\$20.00
RECL DIST 2059 O&M ✓	TU	(925) 209-5480	\$3,981.52

The combined assessment will be at its highest rate ( $\$313,605 + \$232,406.90 = \$546,011.90$ ) for **ONLY ONE (1)** year—the 2015/16 fiscal year. From that point forward, the District’s annual assessment through 2019/20 will be \$390,406.90, just **\$76,801.90 more than the 2010 Proposition 218 assessment**. *See Fig. 2*

Figure 2



## RD 2059 PROPOSITION 218 FINANCIAL FACTSHEET

Your assessment dollars are used to fund the operation, maintenance and improvement of the District's flood control works to include its levees, ditches, and pump station. In addition, the assessments fund the District general operations to include administration, contract services and the ferry.

The economic downturn starting in 2008 had a substantial impact on the District. Numerous landowners experiencing difficulty paying their annual assessments, a pump station desperately in need of repair, increasing ferry repair bills, a ship running into the levee and a devastating fire on the island all contributed to financial problems for your District. The current assessment was not sufficient to cover District obligations.

The first Prop 218 to raise the landowner assessment cost the District ~\$35,000 and took two attempts to pass. The 1st attempt in February 2009 failed to pass. The 2nd attempt in May 2010 passed, but with a rollback in 5 years to 2009-2010 assessment rates—obligating the District to another Prop 218 in fiscal year 2014-2015 and costing the District another \$45,000+.

Between 2010 and 2015, a new pump station was built at a cost of \$365,000 and we finished the levee upgrade project. On the downside, old debts had gone too long, the District paid out \$49,000 in claims from the levee upgrade project, OES and the Bank of Stockton were calling its debts, and the State and County had serious reservations about the District's financial ability to continue.

**2009 Proposition 218 Failed Attempt:** Public hearing for voting on February 9, 2009 to increase assessment beginning in fiscal year 2009-2010 and continue indefinitely. The total maximum assessment would be \$295,000. Highlights include:

### Capital Improvement Assumptions:

- Year 1 Pump Station relocation/reconstruction of \$682,062.60 paid off by 2028-2029
- Year 1 Non-reimbursable Subventions Ditch cleaning and culvert repair of \$148,593.68

### Debt Service Assumptions:

- Year 2 begin annual P&I payment of \$95,300 on short term loan of \$830,656.28 assuming 15 yr @8%
- Outstanding OES (Office of Emergency Services) debt from 1983 flood (\$50,000) not included in debt reduction model
- Outstanding DFA (Delta Ferry Authority) debt not included in debt reduction model

### Budget Assumptions:

- Year 2 addition of UnReimbursable Levee Maintenance (annual Ditch Cleaning) \$7575.97 with 5% escalation
- Year 2 Expanded Ferry Service \$15,000
- Rent, utilities, telephone, postage, etc not included in District O & M

**2010 Proposition 218 (CB):** Public hearing for voting on May 4, 2010 to increase assessment beginning in fiscal year 2010-2011. The total maximum assessment would be \$313,605. Highlights include:

### Assessment Ballot Propositions:

- Proposed maximum annual assessment subject to an annual increase of 1.5% and shall expire after fiscal year 2015-2016.
- Beginning with fiscal year 2016-2017, the maximum annual assessment shall revert back to the 2009-2010 maximum annual assessment rates
- Replacement of the pump station by September 30, 2011 a condition or the maximum annual assessment shall revert back to the 2009-2010 maximum annual assessment rates
- The above propositions were conditional for a yes vote by Rosetta Resources, the current mineral rights holders

### Capital Improvement Assumptions:

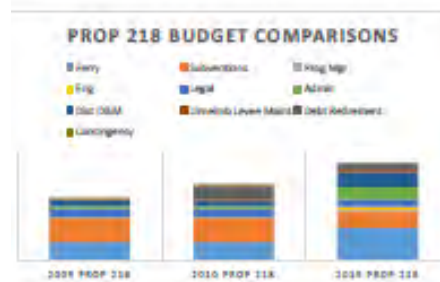
- Year 1 Pump Station relocation/reconstruction of \$682,062.60 paid off by 2028-2029
- Year 1 Non-reimbursable Subventions Ditch cleaning and culvert repair of \$148,593.68
- Year 1 Prop 218 proceeding of \$32,020

### Debt Service Assumptions:

- Year 2 begin annual P&I pmt of \$95,300 on short term loan of \$862,676.28 assuming 15 yr @8%
- Outstanding DFA (Delta Ferry Authority) debt (\$41,740) not included in debt reduction model:

The current board began paying down all debts in fiscal year 2013 – 2014 and in two years has reduced its debt load by 50%--preventing the State from taking over the District. Remember, your Board members are landowners just like you. They pay the same assessments and are not reimbursed for their time, travel, or attendance at any meetings. We believe the SUPPLEMENTAL (TU) assessment will go down because:

- Pending collection of \$81,805.82 in past due assessments, the pump station debt is reduced to \$112,067.18
- All additional debt paid from pending foreclosure sale (past due assessments on parcels)
- With the debt reduced early, the Board has the option to reduce the assessment (proviso that future Boards act responsibly)



In closing, it is important to remember the District may not exist in 5 years due to pending State strategic initiatives; funding for the island will probably be radically different in 5 years which made a 5 year sunset to the August Prop 218 not a mistake but a necessity.

- Outstanding OES (Office of Emergency Services) debt from 1983 flood (\$50,000) not included in debt reduction model
- Carr and Ferrell legal invoices not included in debt reduction model (~ \$130,000)

**Budget Assumptions:**

- Additional hours for District Administrator approved by Board not captured in budget
- Year 2 addition of UnReimbursable Levee Maintenance (annual Ditch Cleaning) \$7575.97 with 5% escalation
- Year 2 Expanded Ferry Service \$15,000

**2015 Proposition 218 (TU):** Public hearing for voting on Aug 4, 2015 to increase assessment beginning in fiscal year 2015-2016. The total maximum assessment would be \$232,406.92. Highlights include:

**Assessment Ballot Propositions:**

- Final maximum annual assessment reduced by \$97,105.26 from initial proposed maximum annual assessment of \$329,512.18 based on landowner input from two public workshops as well as two special Trustee Board meetings
- A 5-yr sunset provision added based on landowner input, a review of strategic initiatives impacting the District, the anticipated reduction in ferry expenses due to the DWR funded upgrades to the Victory II, and the District's improved financial status due to its 50% debt pay down over the last two years

**Revenue Assumptions:**

- \$0 revenue from ferry tickets since unknown quantity. Landowners (according to Contra Costa County Assessor's Office listed as owner of parcel) no longer pay usage fee (tickets)

**Debt Service Assumptions:**

- OES debt (paid \$32,200 since Mar 2012) to be paid off in fiscal year 2015-2016
- Carr and Ferrell \$76,500 settlement paid in \$10,000 annual installments (first installment paid 2014-2015 fiscal year)
- Bank of Stockton debt (paid \$326,127 since 2014) retire \$23,000 in warrants annually.
- Should any past due assessments be paid in full, such revenue shall be used to retire additional warrants.

**Budget Assumptions:**

- Increased Administrative costs to cover payroll and additional approved hours for District Manager
- Increased District Engineer costs to reflect actual costs of engineering for District strategic initiatives such as Emergency Drought Barrier permit issues or flood control issues
- Increased Unreimbursable Levee Maintenance to accurately reflect costs for annual ditch cleaning
- Increased DFA (Delta Ferry Authority) to accurately reflect increased monthly assessment to anticipated \$9,900 per month



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY  
725 Court Street  
Martinez, California 94553

Report 1608

**Welfare Fraud Investigation  
In Contra Costa County**

Looking Hard Enough?

APPROVED BY THE GRAND JURY:

Date: June 14, 2016

Michael Simmons  
MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: June 6, 2016

John T. Laettner  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1608

## **Welfare Fraud Investigation in Contra Costa County**

### **Looking Hard Enough?**

**TO: Contra Costa County Board of Supervisors**

### **SUMMARY**

Contra Costa County (County) dispenses public assistance (CalFresh, CalWorks, and In-Home Support Services) for the State of California Department of Social Services (CDSS). General Assistance is a separate program, funded by the County, for unemployed, low-income residents. In 2015, the County distributed about \$185 million for all public assistance programs through the Employment and Human Services Department (EHSD) to roughly 10,000 recipients. This Grand Jury investigation reviews the role of welfare fraud investigations in these County administered benefit programs. The report finds that Contra Costa's welfare fraud detection, prosecution and overpayment collection underperforms compared to efforts statewide and in six of the other eight Bay Area counties, primarily due to insufficient fraud investigation and EHSD overpayment staff as well as insufficient DA staff dedicated to welfare fraud prosecution. Fraud identified in 2015 amounted to \$1,170,529. This Grand Jury recommends hiring additional Welfare Fraud Investigators, creating and staffing a new position of Welfare Fraud Investigator Technician, as well as hiring overpayment workers, a DA Welfare Fraud Inspector, and an additional Deputy District Attorney.

### **METHODOLOGY**

The Civil Grand Jury reviewed the public assistance programs of Contra Costa County as administered by EHSD. The Grand Jury interviewed personnel in EHSD, representatives of the District Attorney's office, and of the California Welfare Fraud Investigators Association. The California Department of Social Services (CDSS) was contacted by email, and addresses were obtained for statewide and county public assistance databases. We also researched State and County reports on the issue. For background, previous Grand Jury Investigations on Welfare Fraud prepared by Monterey, Los Angeles and Santa Clara County Grand Juries were also reviewed.

## BACKGROUND

The federal, state and county governments are responsible for assisting individuals and families in need. They provide public assistance through a variety of programs. Each program has particular economic qualifications for benefits eligibility. These programs include CalFresh (food stamps), CalWorks (welfare), In-Home Supportive Services, and General Assistance. The integrity of public assistance programs is monitored through fraud detection and fund recovery. These efforts to reduce welfare fraud over the years have yielded millions of dollars in net cost savings annually to the citizens of California and protect the interests of those in genuine need.

The California Department of Social Services (CDSS) is the state agency responsible for providing aid, services and protection to needy children and adults in California through CalWorks, CalFresh, and In-Home Supportive Services. The management and distribution of these benefits is delegated to California's fifty-eight counties. In Contra Costa County, the Employment and Human Services Department (EHSD) operates the programs.

The federal government provides most of the funding for CalWorks and In-Home Supportive Services and the County contributes 2.5 percent. The U.S. Department of Agriculture funds CalFresh. The table below, "Employment & Human Services Assistance Paid", shows the total amount of public assistance in Contra Costa County. MediCal, which is administrated directly by the State of California, is another state program.

In 2015, the total cost of the three programs in the County – CalWorks, CalFresh and General Assistance – was approximately \$185 million, of which the County paid \$4.4 million which includes the County's 2.5% contribution for CalWorks payments. The previous two years, total benefits dispensed were slightly higher.

The number of recipients on CalWorks and General Assistance has fluctuated over the years. Based on the table below, the number of recipients is declining.

## Employment & Human Services Assistance Paid

Source: CalWIN Management Report MRD036R

and California Dept. of Social Services Reports DFA 256 (amounts line 20) & DFA 296 (counts line 8)

Period	CalWORKs Benefits Paid	CalWORKs Average Monthly Count of Cases Paid	CalFresh Benefits Paid	CalFresh Average Monthly Count of Cases Paid	General Assistance Benefits Paid	General Assistance Average Monthly Count of Cases Paid	Medi-Cal Average Monthly Count Active Cases
Jan-Dec 2013	\$ 56,519,654	12,514	\$ 129,430,213	33,392	\$ 3,698,720	1,650	59,287
Jan-Dec 2014	\$ 57,945,170	10,351	\$ 127,270,179	35,299	\$ 3,685,970	1,606	84,717
Jan-Dec 2015	\$ 55,564,522	9,686	\$ 126,578,008	35,801	\$ 3,034,746	1,390	120,460

### County Share of Cost

CalWORKs	2.5%
General Assistance	100%

CDSS reimburses the counties for distribution and administration costs (which includes fraud investigation and prosecution) of CalWORKs, CalFresh, In-Home Supportive Services and MediCal, but not General Assistance. In Contra Costa County, EHSD tracks staff time spent on each of these programs for reimbursement by CDSS. In 2015, EHSD entered into a contract with the DA's office for \$414,000 to investigate and prosecute welfare fraud cases. CDSS reimburses this cost. Last year, the County received approximately \$3 million in administrative reimbursements, as well as recovered fraud overpayments and court ordered fraud reimbursements. CDSS uses a formula to calculate the maximum annual administrative reimbursement, which depends on the amount of public assistance disbursed by the County.

To give counties an incentive to operate welfare fraud programs, the California Welfare and Institutions Code, Section 11486(j) provides that each county receive an amount equal to 12.5% of the actual amount of aid repaid or recovered by a county, as a result of fraud detection. This is an increase from the previous 2.5% incentive. Recovered funds are the amounts collected on errors caused by clients and include recoveries from grant reductions, closed case debts, and tax intercept collections. In fiscal year 2015, the County recovered \$144,691.

The passage of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (popularly called Welfare Reform) enhanced the availability of electronic verification systems, which decreased the incentives for attempted welfare fraud. Federal and state agencies use these databases to provide data matches of CalWORKs and CalFresh recipients to local agencies including EHSD. This "data mining" indicates if recipients are receiving income, have jobs, or have experienced other changes that could affect their eligibility for benefits. These reports also allow EHSD to determine the accuracy of income and/or family composition statements reported by recipients. This information helps prevent or quickly identify fraud, and can aid in the prosecution of those that commit fraud. The result of such timely action is to

shorten the duration of any fraudulent payments, as well as to recoup overpayments, either through garnishment of future benefit payments or collection actions by EHSD.

EHSD manages the accurate distribution of public funds through the following steps:

1. Intake;
2. Fraud prevention/detection (including the Special Investigative Unit); and
3. Collections by the Overpayments Unit.

Fraud prosecution is the responsibility of the District Attorney's Office. The following is a description of each process and the services provided.

### **The Intake Process – Fraud Early Detection**

Intake occurs when an applicant makes an application for public assistance. In Contra Costa County, an applicant may apply at one of EHSD's four regional offices:

- Richmond
- Hercules
- Antioch
- Pleasant Hill

An applicant first meets with an eligibility worker (EW) who checks the applicant's information (name, age, number of children, income, residence, etc.) and verification supplied (e.g. social security number, citizen or legal alien status, current residence or intention to reside in the County). The EW then crosschecks the information with the Income and Eligibility Verification System (IEVS), a statewide system required by federal law and maintained by CDSS. IEVS identifies persons who may be ineligible for benefits because they:

- Have failed to report or misreported their actual earnings;
- Are ineligible for cash aid or food stamps due to receipt of Supplemental Security Income;
- Are receiving unemployment or disability insurance benefits
- Are receiving cash aid or food stamp benefits concurrently in two or more counties or cases;
- Have been convicted of a drug-related felony;
- Are not U.S. citizens; and
- Are criminal fugitives.

Provided that the applicant is eligible, the EW then determines if there is a need for immediate assistance – cash can be provided by the next day or food stamps can be made available within 3 days – and calculates the maximum amount of cash and/or food stamps. To receive cash assistance the applicant must be fingerprinted. An

electronic benefit card is issued or money can be directly deposited into the applicant's bank account. DMV and prison felons' reports are also checked. Applicants are also required to sign a waiver allowing the County to inspect their residence and employment to verify application information.

## **EHSD Fraud Prevention and Detection**

Fraud prevention and detection are an integral part of EHSD's overall management of public assistance programs. The County, through EHSD, has primary responsibility for determining eligibility and computing grant amounts. If fraud is suspected, and discrepancies are found in the information supplied on an application, then benefits are denied.

Fraud occurs when an applicant knowingly and willfully makes a false statement, suppresses or withholds information to receive aid, or prevents a denial, discontinuance, or reduction of aid. To reduce the chance of fraud, the intake unit performs the following steps:

- Inform the applicant of what information is needed to determine eligibility and why that information is needed;
- Review rights and responsibilities of participating in the program with the applicant;
- Explain to the applicant that any change in status or income, e.g. new job, must be promptly reported and complete information be given to the Overpayment Worker;
- Document the applicant's level of understanding of reporting responsibilities;
- Advise the applicant of the penalty for making false statements or that failing to report relevant information might affect eligibility; and
- Require the applicant to provide fingerprints (when necessary) and permission for EHSD Welfare Fraud Investigators to conduct an unannounced home visit (UHV) to verify eligibility and income.

EHSD has a number of methods to detect fraud. EHSD eligibility staff are trained to ask questions and verify the information in each initial application and renewal. Every case is reviewed by a supervisor prior to approval. When there is a concern that information provided in connection with a CalWorks, CalFresh or General Assistance application may not be accurate or fraud is suspected, the EW initiates an electronic referral through the Early Fraud Investigation (EFI) referral system, an automated system that speeds up reporting of suspected fraud. If the EW suspects that eligibility was fraudulently established, the case, after review by a supervisor, is forwarded to the Overpayment Unit. The Overpayment Unit is responsible for completing a fraud investigation, and, if evidence indicates that the overpayment exceeds \$2,500, forwarding the case to the DA after review by the Fraud Prevention Supervisor.

The Overpayment Unit takes some or all of the following actions depending on the status of the case:

- Denying the case (benefits);
- Discontinuing the case;
- Reducing benefits; and
- Referring the case for overpayment computation and collection.

Applicants who are determined to be ineligible are prevented from collecting benefits and recipients who are determined to have engaged in fraud are terminated from future aid benefits.

### **Special Welfare Fraud Investigative Unit (SIU)**

Each of California's fifty-eight counties has the authority to determine the responsible department for the Special Welfare Fraud Investigative Unit (SIU). Twenty-seven SIUs are located in county welfare/health services departments, twenty in district attorney's offices, nine in a cooperative between a welfare/health services department and the DA's office and two in the sheriff's office.

The SIU in Contra Costa County historically was housed in the District Attorney's Office until the creation of an Early Fraud Investigation Unit in EHSD in 1993. As a result of this change, the County now has two separate groups of Welfare Fraud Investigators, and is the only Bay Area County to do so.

Significant changes have occurred, starting in 1993, which affect the organization and operation of SIUs. Some of the major issues that the County's SIU has had to deal with in conducting investigations include budget and staff reductions, welfare reform, regulation changes, newer, more advanced computer systems (i.e., CalWin), electronic benefit assistance (debit card), and client reporting responsibility changes.

Welfare Fraud Investigators employed by EHSD receive fraud alerts from the EW of suspicious information about eligibility and/or income. The investigators research the applicant's information through the IEVS, EHSD records, DMV, social security administration, and contact with past employers. The most important match listings used are the Integrated Fraud Detection Wage Match (IFD 440) and the Beneficiary Earning Exchange Record (BEER). Both provide recent wage information that alert investigators to a recipient's unreported employment. If there is sufficient cause, EHSD will list the case for an unannounced home visit (UHV). Once listed, the Welfare Fraud Investigators have up to thirty days to conduct an unannounced home visit to the applicant's stated address. The investigators may also perform field investigations such as talking to neighbors and past employers.

To maintain program integrity, CDSS requires each county to conduct UHVs. Other means of investigation, if the resident is not home when investigators arrive, may involve questioning neighbors, accessing DMV information, and checking at the local

schools and previous employers. Current procedures require counties to send out notification letters and at least two more UHV attempts. CDSS regulations dictate that if the Welfare Fraud Investigators cannot perform an UHV within sixty days, the benefits can be terminated with overpayment to be collected.

Several years ago, CDSS regulations required renewals or reporting to the EHSD field office to be done quarterly, but this requirement has been relaxed. Recipients are now only required to check in and renew their benefits annually. Since reporting is relatively infrequent, making fraud more difficult to detect, some recipients may avoid reporting new jobs or changes in the household.

San Diego County (SDC) has been using a more aggressive approach to fraud prevention and detection since 1997. SDC's approach is referred to as Project 100 (P-100). As part of SDC's eligibility verification process for CalWorks applicants, even if there is no obvious reason for denial, the Welfare Fraud Investigator makes an unannounced home visit. EHSD has chosen not to implement a similar program.

Another type of fraud involves grocery stores fraudulently cashing Electronic Benefit Transfer (EBT) card balances without physically selling groceries. An additional scam involves recipients claiming that they have lost their EBT cards and asking for replacement cards. Pursuing EBT fraud perpetrators is difficult. To gather evidence to pursue prosecution against them entails elaborate surveillance and sting operations with multiple officers. This type of fraud detection and investigation is usually performed by state investigators working for CDSS or the federal government. However the federal government has recently asked counties for assistance.

Citizens also may report suspected public assistance fraud by telephone or email to CDSS, EHSD or the DA's Office. During 2014-2015, EHSD received 414 phone calls to its fraud reporting line and 14 complaints of potential fraud via the email address on its website.

### **Collections by the Overpayment Unit**

Federal and state regulations mandate that counties collect and recover welfare benefits overpayments due to fraud, inadvertent client errors, and administrative errors. The County's Office of Revenue Collection previously performed this duty, but was disbanded in October 2010, and collection activities were transferred to EHSD Overpayments Unit. EHSD may reduce payments to current welfare recipients to repay debts, and initiate collection actions against former recipients. EHSD initiates collection actions through the following:

- Voluntary payment –Current or former recipients are sent a series of letters demanding repayment:
  - Payment plans can be established,
  - Payments may be made by check, money order, or even credit card.

- Welfare Intercept System (WIS) – This program is administered by the California Department of Social Services Fraud Bureau for CalWorks and CalFresh debts:
  - CalWorks debts are eligible for Franchise Tax Board (FTB) intercepts,
  - CalFresh debts are eligible for both FTB and U.S. Treasury/IRS offset,
  - Repayments are collected by the State FTB or Federal IRS from tax refunds or other payments and used to offset the debts.
- Court-ordered Debt (COD) Program – Court ordered debts are fines, fees, and restitution orders imposed by a court.

### **County District Attorney’s Efforts to Combat Fraud in Public Assistance Programs**

The Contra Costa County District Attorney’s Office receives investigative referrals from various sources, including community complaints, allied law enforcement agencies, and the overpayment unit of EHSD. When an EHSD referral appears to exceed \$2500 in fraud, it is forwarded by the EHSD Fraud Manager to the Public Assistance Fraud Unit at the District Attorney’s Office for review and possible further action.

The DA Senior Inspector assigned to a public assistance fraud case works with the EHSD Fiscal Compliance Accountant to conduct a joint investigation. At the conclusion of the investigation, the findings are submitted to EHSD and the Deputy District Attorney assigned to public assistance fraud, as appropriate, for consideration of administrative action and/or criminal prosecution.

In the past year, the Public Assistance Fraud Unit of the DA’s Office received approximately 300 referrals. The senior inspector in the DA’s Office verifies the information in the case file and, if deemed necessary, collects additional information. For various reasons referrals are sometimes closed at the investigation stage, including a lack of evidence, and/or possible defenses to such charges. All cases that proceed to prosecution are investigated and then reviewed by the assigned attorney.

A single senior inspector is assigned to the Public Assistance Fraud Unit, along with one Deputy District Attorney who reviews prosecution referrals to determine whether to file criminal charges. As part of the job description, the DA Inspector in Contra Costa County wears a firearm while on duty. The one senior inspector is currently overloaded with backed-up cases and is unable to initiate internal fraud investigations or participate in EBT fraud investigations with other agencies.

People charged with welfare fraud are usually charged with perjury for lying on the eligibility form. If the amount of fraud exceeds \$950, it is considered a felony. Most of those charged with welfare fraud choose to plead to a lesser charge rather than risk having a felony conviction. At that point, benefits are terminated and the County begins collection proceedings to collect overpayments.

## Internal Fraud

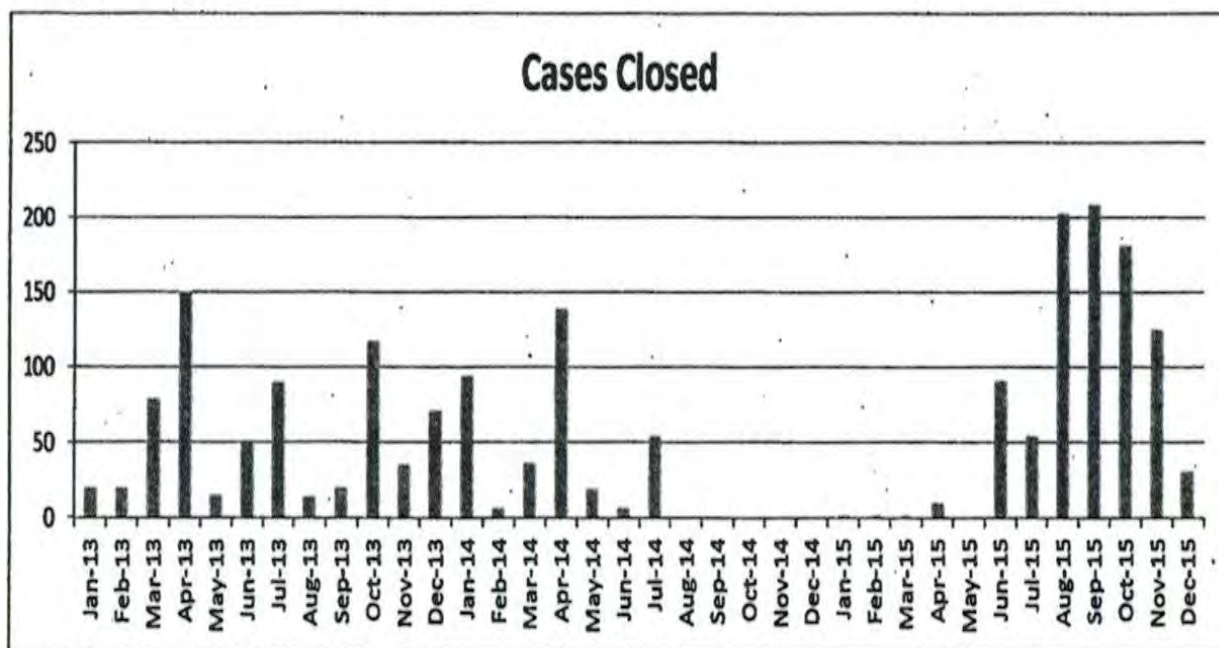
Internal fraud can occur when an EHSD employee conducts or facilitates illegal or fraudulent activity. Examples of internal fraud include intake workers setting up fictitious recipients to collect benefits or issuing EBT cards for their own use. While internal fraud is not the subject of this report, two cases of internal fraud were detected in the past three years.

A Los Angeles County grand jury investigation in 2008-2009 reported an internal fraud rate of 6.5 referrals per 1000 employees. The County only has 17 employees in the EHSD intake section, who help to process approximately \$185 million in benefits annually. While there is no evidence of fraud being committed by these employees, this does not mean that EHSD should not maintain safeguards to protect the integrity of the process.

Typical internal security procedures implemented by counties include multiple and random reviews of approved eligibility cases, and a three step security procedure in the loading and disbursement of EBT cards.

## DISCUSSION

It was brought to the Grand Jury's attention that the flow of welfare fraud cases referred to the District Attorney's Office dropped precipitously in 2014. Below is a graph of EHSD monthly welfare fraud cases closed from January 2013 to December 2015.



As reflected in the chart, the number of welfare fraud cases referred to the District Attorney's Office dropped precipitously in 2014, raising the following questions:

1. What was the cause of the case referral slowdown?
2. Was there a plan to remedy the situation?
3. How does Contra Costa County's welfare fraud detection, prevention and prosecution program compare with other Bay Area counties?

The three tables below show the public assistance recovery totals for the past three years. The tables include court ordered restitution and repayment from successfully prosecuted cases.

<b>July 1, 2014 to June 30, 2015</b>	<b>Program Type</b>	<b>Cash Collection</b>	<b>Grant Reduction &amp; EBT Repayments</b>	<b>Annual Totals</b>
	<b>CalWorks</b>	\$147,793	\$158,491	\$306,284
	<b>CalFresh</b>	\$234,364	\$601,925	\$836,288
	<b>IHSS</b>	\$14,960	--	\$14,960
	<b>General Assistance</b>	\$13,097	--	\$13,097
	<b>RECOVERY TOTALS</b>	<b>\$410,214</b>	<b>\$760,416</b>	<b>\$1,170,629</b>

<b>July 1, 2013 to June 30, 2014</b>	<b>Program Type</b>	<b>Cash Collection</b>	<b>Grant Reduction &amp; EBT Repayments</b>	<b>Annual Totals</b>
	<b>CalWorks</b>	\$317,099	\$584,598	\$901,697
	<b>CalFresh</b>	\$1,135,966	\$1,441,387	\$2,577,353
	<b>IHSS</b>	\$21,358	--	\$21,358
	<b>General Assistance</b>	\$12,032	\$15,143	\$27,175
	<b>RECOVERY TOTALS</b>	<b>\$1,486,455</b>	<b>\$2,041,128</b>	<b>\$3,527,583</b>

<b>July 1, 2012 to June 30, 2013</b>	<b>Program Type</b>	<b>Cash Collection</b>	<b>Grant Reduction &amp; EBT Repayments</b>	<b>Annual Totals</b>
	<b>CalWorks</b>	\$281,673	\$541,014	\$822,687
	<b>CalFresh</b>	\$983,961	\$1,354,840	\$2,338,801
	<b>IHSS</b>	\$23,657	--	\$23,657
	<b>General Assistance</b>	\$9,551	\$13,206	\$22,757
	<b>RECOVERY TOTALS</b>	<b>\$1,298,842</b>	<b>\$1,909,060</b>	<b>\$3,207,902</b>

Total recovery for CalWorks, CalFresh, IHSS and General Assistance totaled \$1,170,629 in the year July 1, 2014 to June 30, 2015. The total recovery in the previous year July 1, 2013 to June 30, 2014 was \$3,527,583. This is a drop of about two thirds. To compare the level of welfare fraud efforts, the recovery to payment ratio was 0.68% in 2014. In 2013, it was 1.87% or roughly three times the 2014 recovery rate.

For the period July 1, 2013 to June 30, 2014, a total of \$3,527,583 in fraudulent payments were recovered based on 1,019 referrals during this period. Of this amount, the County received \$253,860 of the recovery, \$226,685 was returned to the County by CDSS and \$27,175 was directly recovered in General Assistance benefits.

The below tables compare County welfare fraud detection to statewide totals, the other eight Bay Area counties, and San Diego County for the three monthly periods of July 2015, January 2015 and July 2014. These periods were selected as “snap shots” of fraud investigation performance. January and July were chosen to take into account seasonal differences. They are six months apart because counties may double count fraud cases listed in consecutive months. CDSS has an extensive fifty-six column list of welfare fraud statistics. These tables are used to compare fraud investigation performance, not to expose any particular performance statistic. The data demonstrate the poor performance of the County welfare fraud detection during these periods.

In July 2015, the percentage of applications set aside for investigation was roughly 15% statewide. San Diego County and the nine Bay Area counties had the following rates of investigation:

- Contra Costa County, 4.5%;
- Alameda County, 28%;
- Napa County, below 2%;
- Marin County, below 2%;
- San Francisco County, 25%;
- Santa Clara County, 23%; and
- San Diego County, 56%

The California Association of Welfare Fraud Investigators considers San Diego to have the most effective fraud control program in California.

In January and July 2015, the statewide percentage of applications pulled for investigation was about 15%. The County’s percentage, at less than 5% for these two months, was well below the statewide percentage of applications investigated.

Eight of the nine counties of the Bay Area have Special Investigative Units (SIU) within their social services departments. Contra Costa County maintains a separate welfare fraud investigation team in the District Attorney’s Office. Unlike Contra Costa County, which has staff in the District Attorney’s Office dedicated to investigating and prosecuting fraud, the District Attorney’s Offices of other Bay Area counties assign welfare fraud cases generically. According to the California Association of Welfare Fraud Investigators, SIUs are typically situated in the urban counties’ social services departments, while in the Central Valley; the SIUs are in the District Attorney’s office. The SIU for San Diego County’s P100 program, which has the highest investigation rate in the state, is in the District Attorney’s Office.

County Comparison of Welfare Fraud Efforts July 2015

	Fraud Unit Type <sup>2</sup>	Total Investigations Available column 5	Completed Investigations Column 6	% Applications Investigated	Fraud Referrals Column 6a	% Fraud Investigation	Benefit Adjustment <sup>3</sup> Columns 8+9+10	% Benefit Adjustment
Statewide July 2015	n/a	153861	22659	14.7%	7520	4.9%	2140	1.4%
Alameda County July 2015	County Social Services	6786	1876	27.6%	310	4.6%	114	1.7%
Marin County July 2015	Health and Human Services	1544	29	1.9%	18	1.2%	3	0.2%
Napa County July 2015	Social Services	626	9	1.4%	7	1.1%	0	0.0%
San Francisco City/County July 2015	Human Services Agency	1290	322	25.0%	250	19.4%	53	4.1%
San Mateo County July 2015	Aging and Adult Services DHCS	807	154	19.1%	75	9.3%	36	4.5%
Santa Clara County July 2015	Social Services Agency	761	176	23.1%	137	18.0%	0	0.0%
Solano County July 2015	Health and Social Services	3686	476	12.9%	215	5.8%	52	1.4%
Sonoma County July 2015	Human Services Dept.	673	149	22.1%	141	21.0%	1	0.1%
San Diego County July 2015	District Attorneys Office	3357	1872	55.8%	500	14.9%	393	11.7%
Contra Costa County July 2015	Social Services EHS	2731	123	4.5%	57	2.1%	26	1.0%

NOTES:

1. Column numbers refer to data columns of the CDSS monthly welfare fraud database ([www.cdss.ca.gov/research/](http://www.cdss.ca.gov/research/))
2. Fraud Unit Type refers to the supervisory county department of the welfare fraud investigation unit (SIU)
3. Investigations closed and benefits adjusted

County Comparison of Welfare Fraud Efforts January 2015

	Fraud Unit Type <sup>2</sup>	Total Investigations Available column	Completed Investigations Column 6	% Applications Investigated	Fraud Referrals Column 6a	% Referrals for Fraud	Benefit Adjustment <sup>3</sup> Columns 8+9+10	% Benefit Adjustment
Statewide Jan 2015	n/a	155040	24560	15.8%	7935	5.1%	4278	2.8%
Alameda County Jan 2015	County Social Services	6551	1648	25.2%	443	6.8%	138	2.1%
Marin County Jan 2015	Health and Human Services	1591	38	2.4%	17	1.1%	7	0.4%
Napa County Jan 2015	Social Services Dept.	546	7	1.3%	6	1.1%	2	0.4%
San Francisco City/County Jan	Human Services Agency	3943	186	4.7%	115	2.9%	77	2.0%
San Mateo County Jan 2015	Aging and Adult Services DHCS	862	157	18.2%	64	7.4%	36	4.2%
Santa Clara County Jan 2015	Social Services Agency	6826	186	2.7%	115	1.7%	35	0.5%
Solano County Jan 2015	Health and Social Services	2936	539	18.4%	295	10.0%	109	3.7%
Sonoma County Jan 2015	Human Services Dept.	1658	225	13.6%	86	5.2%	13	0.8%
San Diego County Jan 2015	District Attorneys Office	3561	2089	58.7%	712	20.0%	546	15.3%
Contra Costa County Jan 2015	EHSD (Social Services)	2362	69	2.9%	32	1.4%	25	1.1%

NOTES:

1. Column numbers refer to data columns of the CDSS monthly welfare fraud database ([www.cdss.ca.gov/research/](http://www.cdss.ca.gov/research/))
2. Fraud Unit Type refers to the supervisory county department of the welfare fraud investigation unit (SIU)
3. Investigations closed and benefits adjusted

Comparison of County Welfare Fraud Efforts July 2014

	Fraud Unit Type <sup>2</sup>	Total Investigations Available Column 5	Completed Investigations Column 6	% Applications Investigated	Fraud Referrals Column 6a	% Referrals for Fraud	Benefit Adjustment <sup>3</sup> Columns 8+9+10	% Benefit Adjustment
Statewide July 2014	n/a	149021	29518	19.8%	9433	6.3%	5420	3.6%
Alameda County July 2014	County Social Services	6266	1189	19.0%	319	5.1%	106	1.7%
Marin County July 2014	Health and Human Services	1573	57	3.6%	19	1.2%	13	0.8%
Napa County July 2014	Social Services Dept.	527	50	9.5%	25	4.7%	3	0.6%
San Francisco City/County July 2014	Human Services Agency	5750	191	3.3%	128	2.2%	100	1.7%
San Mateo County July 2014	Aging and Adult Services DHCS	797	190	23.8%	78	9.8%	59	7.4%
Santa Clara County July 2014	Social Services Agency	689	227	32.9%	169	24.5%	35	5.1%
Solano County July 2014	Health and Social Services	2557	570	22.3%	260	10.2%	77	3.0%
Sonoma County July 2014	Human Services Dept.	2673	319	11.9%	165	6.2%	1	0.0%
San Diego County July 2014	District Attorney's Office	4265	2652	62.2%	870	20.4%	673	15.8%
Contra Costa County July 2014	EHSD (Social Services)	2151	118	5.5%	45	2.1%	30	1.4%

NOTES:

1. Column numbers refer to data columns of the CDSS monthly welfare fraud database ([www.cdss.ca.gov/research/](http://www.cdss.ca.gov/research/))
2. Fraud Unit Type refers to the supervisory county department of the welfare fraud investigation unit (SIU)
3. Investigations closed and benefits adjusted

These tables contain monthly data from the state's fifty-eight counties showing raw fraud reported to CDSS. Fraud referrals are cases forwarded to the District Attorney's office for prosecution. The "benefits adjustment" column refers to those cases where fraud was suspected, but the recipients are still eligible and their benefits were appropriately adjusted. The County has been underperforming in welfare fraud detection, prosecution and collection, particularly in the summer of 2015, due to some of the following factors:

- The County has an inadequate number of Welfare Fraud Investigators. While there are five approved positions, currently only two of those are filled. The position requires Police Officer Standards and Training (POST) certification. However, candidates who have POST certification prefer to work as police officers or deputy sheriffs instead of as Welfare Fraud Investigators, which pays less. While the salary of Welfare Fraud Investigators is on par with other counties such as Alameda, Los Angeles, and Sacramento, the pension and health care contribution of \$18 per \$100 of salary is approximately double the average contribution of other California counties. Only Napa County had a higher pension contribution of \$22 per \$100 of salary. Additionally, those with POST certification who are willing to take these investigator positions are usually retired from police work or medically retired and already drawing a pension. The last Welfare Fraud Investigator who left County employment in early 2015 was a retired police officer. Currently, there are no investigators located in the Richmond EHSD offices, while ideally there should be two.
- Penal Code section 832 requires welfare investigators to be POST certified and trained for arrest and search procedures. Since Contra Costa County is a POST academy member, Welfare Fraud Investigators can take certification classes and use the Sheriff's training facilities in Pittsburg to maintain their POST certification. Nevertheless, the County Board of Supervisors adopted a policy, which has been in force for at least 12 years, prohibiting these investigators from wearing firearms when they perform unannounced home visits.
- Investigative staff in non-peace officer classifications. Investigative technicians or aides can be used to perform office work processing and case documentation while allowing Welfare Fraud Investigators to conduct more UHVs and field investigations. The investigative technicians or aides are not required to be POST certified, and are paid substantially less than Welfare Fraud Investigators. Furthermore, the labor and benefit costs related to this position are eligible for almost full reimbursement by CDSS. To fund this position, one of the five (5) approved Welfare Fraud Investigator positions could be changed to an investigative technician or aide position. As noted previously, 3 of the 5 openings are vacant.

In the summer of 2015, approximately 300 cases were referred to the DA's office with the help of the two temporary overpayment workers hired in the spring of 2015. Due to

concerns about statute of limitations lapsing on CalFresh cases, which have a statute of limitations of 4 years, the oldest cases were prioritized. (CalWorks and General Assistance do not have a time limit for prosecution.)

Approximately 2,300 fraud cases are still pending for possible referral to the DA's office. There is an apparent discrepancy in the number of cases between EHSD and the DA's Office due to the way referrals and cases are counted by the different agencies. For example, when a referral is sent over for alleged Cash Aid and Food Stamps fraud, EHSD counts it as 2 referrals, while the DA's Offices counts it as one because it was committed by one person. Not all cases are prosecuted as some cases do not have sufficient evidence to pursue.

In fiscal year 2015, the 300 cases yielded \$1.3 million in recovered benefits; by extrapolation, the pending 2,300 cases could yield \$10 million. However, many of the initial 300 cases were high priority cases, and many, if not most, of the pending 2,300 cases are low yield in comparison, which could make potential loss recovery less than \$10 million.

### **Welfare Worker Training**

CDSS mandates that new eligibility workers receive a minimum of 8 hours of fraud prevention and detection training when hired and 4 hours of refresher training annually. The refresher training is required for eligibility supervisors as well. Currently, the annual Fraud Prevention and Techniques refresher training is conducted by UC Davis to maintain continued expertise of staff and supervisors to perform this work. Training time and individual training requirements of each employee are tracked by EHSD.

### **In-Home Supportive Services**

In 2013, CDSS published a Uniform State Protocol for In-Home Supportive Services (IHSS) cases that changed the investigation and prosecution processes of these cases statewide. This protocol mandates that any suspected IHSS fraud cases in excess of \$500 be referred to the California Department of Health Care Services (DHCS) for investigation. However, the protocol permits a county to enter into a Memorandum of Understanding with DHCS to allow the county to investigate this type of fraud. The most common forms of fraud are providers knowingly billing for services not performed or billing for care of more beneficiaries than they actually serve.

### **CDSS 2006 Fraud Prevention and Detection Study**

In 2006, CDSS published a ten-year statistical study on fraud prevention and detection activities in the CalWorks and CalFresh programs. The data indicates that efforts to maintain program integrity and measurements of those efforts differed significantly among counties.

Recurring themes for promising approaches and “Best Practices” were found during the study. However, the list of recommendations in the study is not included as many of them have already been implemented or are not applicable to the County. The list of findings is reported below:

- Open communication between the Special Investigation Units, DA, County eligibility workers, and fraud administrative staff fosters positive working relationships and teamwork;
- Training Strengthens the Quality of Referrals:
  - Periodic training keeps investigators updated on changes in eligibility criteria,
  - Providing fraud training for eligibility staff more frequently than annually maintains increased awareness of fraud prevention and detection techniques,
  - Training activities enhance working relationships between fraud and eligibility staff and allow for a change in the focus of investigations when a current fraud trend is discovered.
- Technology Supports Communication;
- Early Fraud Detection Saves Money:
  - Early fraud detection provides the best opportunity to maximize resources and avoid the higher costs of long-term investigations, prosecutions, and collection activities,
  - Several counties have innovative programs that may include home visits and fraud prevention interviews as part of the application process. Examples include San Diego’s Project 100 and Riverside’s Fraud Review and Early Detection (FRED) program,
  - Some counties use fraud staff in non-peace officer classifications, such as Investigative Technicians and Investigative Aides, to perform fraud prevention activities.
- Recording civil judgments and enforcing civil judgments on real property sales appears to be a successful way to collect; and
- Referral of overpayments to a private law firm or agency for collection is another collection approach that works in Los Angeles County.

## **DA Fraud Investigations**

The Public Assistance Fraud Unit of the DA’s Office investigates referrals it receives from EHSD. For some of these cases, the DA’s Office decides not to pursue some of these referrals for reasons that include lack of evidence, possible defenses to such charges, or expiration of the statute of limitations to prosecute the fraud. Approximately 200 pending cases are currently being processed by the DA’s Office. The District Attorney Welfare Fraud Prosecution staff is working at capacity. Having an additional senior inspector could expand the District Attorney’s investigations into welfare fraud, EBT trafficking and internal fraud violations.

## **EHSD Referrals to the DA**

In the summer of 2015, the District Attorney contacted EHSD and expressed concern over the lack of fraud referrals from EHSD to the DA's Office. EHSD explained that due to a personnel shortage, there was a backlog of approximately 2400 cases awaiting overpayment review by EHSD staff. Such reviews are generally the first step in the identification of fraud.

Ten (10) years ago, there had been 20 EHSD employees who did such reviews: ten employees handling general case reviews (intake), and ten employees exclusively handling the overpayment reviews required to file a criminal case. The two units were consolidated into the current IEVS Unit. As of May of 2015, this unit had five full time employees and two part time specialists.

In addition, EHSD did not refer potential prosecutions where they determined that there had been administrative errors by their staff. Such errors included the failure of EHSD to take action when an applicant/recipient reported information that would have materially impacted the applicant/recipient's grant of aid, and also when EHSD could not locate documents which might be needed in the prosecution (e.g. copies of identification and signed documents).

As previously discussed, having EHSD fraud investigative staff in non-peace officer classifications, such as investigative technicians or investigative aides, to perform office work processing case documentation might have avoided some of these administrative errors. Furthermore, most of the labor costs and benefits associated with this position are eligible for reimbursement by CDSS.

To remedy these problems, the DA's Office and EHSD agreed that cases of administrative error should be referred to the DA's Office in certain circumstances. EHSD also is considering seeking Board of Supervisors approval to create two specialist positions dedicated to overpayment calculations. These would replace the two temporary workers who were hired to assist in processing the backlog.

## **Conclusion**

Public assistance programs in the County totaled about \$185 million in benefits in 2015 for roughly 10,000 recipients. Fraud detection efforts to weed out overpayments, fraud, and criminal activity have been underperforming compared to efforts statewide and in six (6) other bay area counties. Fraud referral cases declined to below 1 percent in 2015. This coincided with the drop in the number of welfare fraud workers and Welfare Fraud Investigators at EHSD.

In July 2015, the County took the first step to improve welfare fraud prosecution by sending 300 referrals to the DA's Office. Since the number of welfare fraud referrals

has also increased, EHSD is actively recruiting additional Welfare Fraud Investigators and two additional full time staff in the overpayments unit.

Most of the salaries and benefits of Welfare Fraud Investigators, EW, overpayment workers, and DA staff come at little cost to the County because they are reimbursable by CDSS. In addition, CDSS has increased the incentive for fraud recovery to 12.5 percent of all fraud recovered in the CalWorks, CalFresh and In-Home Supportive Services programs. Through these mechanisms, the County could fully staff welfare fraud programs at little cost.

The issue of Public Assistance Fraud is an important one for the County, and one which must be addressed to ensure that public funds are awarded only to needy and qualified recipients, and that those who steal public funds are properly punished. Investigation and prosecution sends a message to the county taxpayers that their taxes are being used for problems that need to be fixed. Finally, when the County acts as a welfare fraud watchdog, criminals and people willing to commit fraud are discouraged from doing so.

## **FINDINGS**

- F1. There is an estimated backlog of 2,300 welfare fraud cases being processed in the fall of 2015.
- F2. Approximately 300 welfare fraud cases have been released for review to the DA from July through December 2015.
- F3. Although the amount of money distributed by EHSD in the three main programs is roughly \$185 million annually, the County only pays \$4.4 million of this amount, while the remainder of these benefits are paid for by the federal and state government.
- F4. The ratio of recovered money to total payments was less than 1 percent in 2014 and 1.87 percent in 2013.
- F5. The lack of staff to process suspected fraud cases is one of the primary reasons Contra Costa County did not recover more monies from welfare fraud in 2013 and 2014.
- F6. Contra Costa County has the third lowest welfare fraud referral rate in the nine county Bay Area and is at one-third of the statewide rate.
- F7. There are currently two Welfare Fraud Investigators and one Welfare Fraud Investigator Supervisor.
- F8. EHSD is authorized to fill five Welfare Fraud Investigator positions.

- F9. The County has difficulty hiring and retaining Welfare Fraud Investigators.
- F10. EHSD and HR have been unsuccessful in filling three Welfare Fraud Investigator positions over the past 18 months.
- F11. The main reason the County has difficulty hiring and retaining Welfare Fraud Investigators is that a potential candidate with POST certification can receive better pay by becoming a police officer or a deputy sheriff instead of a Welfare Fraud Investigator.
- F12. As a practical matter, the County is limited to hiring retired or medically retired police officers with POST certification for Welfare Fraud Investigators.
- F13. With the backlog of approximately 2,300 referrals, EHSD hired two (2) temporary Overpayment Unit workers to assist the four (4) current full-time Overpayment Unit workers clear the backlog.
- F14. Each temporary Overpayment Unit worker is limited to working no more than 1000 hours per year in that position.
- F15. County policy prohibits Welfare Fraud Investigators from carrying handguns while conducting unannounced home visits, even in dangerous areas of the County.
- F16. Some counties hire fraud investigative staff in non-peace officer classifications, called Investigative Technicians, to perform office work processing case documentation and allowing fraud investigators to conduct more UHVs and field investigations.
- F17. Investigative Technicians are not required to be POST certified and are paid at a lower salary range than Welfare Fraud Investigators.
- F18. The County is reimbursed by CDSS for approximately 80 percent of the labor cost in administering CalWorks, CalFresh, and In-Home Supportive Services and investigating fraud related to these programs.
- F19. The County does not receive reimbursement for the cost of the administering General Assistance and investigating potential fraud related to those benefits.
- F20. Because the State shares 12.5 percent of monies recovered for the overpayment of benefits related to CalWorks, CalFresh, and In-Home Supportive Services, hiring additional fraud investigation officers and Overpayment Unit Workers would cost the County little.
- F21. The Senior Inspector in the DA's Welfare Fraud Investigation Unit is authorized to carry a handgun.

F22. The County DA's Office has only one senior inspector and a Deputy District Attorney assigned for welfare fraud prosecution.

F23. If the County hires more senior inspectors, they could conduct investigations into EBT card fraud, internal fraud, and in-home supportive services violations.

## RECOMMENDATIONS

R1. The Board of Supervisors should consider, in order to make the position more attractive with higher net pay, offering non-benefitted status to candidates for Welfare Fraud Investigator, after reviewing the legal and policy-related considerations of doing so.

R2. The Board of Supervisors should consider allowing Welfare Fraud Investigators to wear firearms at their personal discretion while conducting UHVs.

R3. To allow the Welfare Fraud Investigators time to perform more in-field investigations such as UHVs, the Board of Supervisors should consider directing EHSD to create a position classification for Fraud Investigation Technicians or Aides, who would prepare and process case documentation.

R4. The Board of Supervisors should consider directing EHSD to hire two full time EHSD Overpayment Unit workers to fill the currently open positions.

R5. As EHSD fraud referrals increase, and as funding is identified and made available, the District Attorney should consider increasing the number of Senior Inspectors and Deputy DAs so that investigations can also be done on Electronic Benefit Transfer card fraud and internal fraud within EHSD.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Board of Supervisors	F1 - F20	R1 - R5
Contra Costa County District Attorney	F21 - F23	R5

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553-0091



**A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY**  
725 Court Street  
Martinez, California 94553

Report 1609

# Human Trafficking

APPROVED BY THE GRAND JURY:

Date: June 14, 2016



MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: June 6, 2016



JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1609

## Human Trafficking

**TO: City Councils for the following cities: Antioch, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Ramon, San Pablo, Walnut Creek; Contra Costa County Sheriff's Department; Contra Costa County Board of Supervisors**

### SUMMARY

Human trafficking (trafficking) is slavery. It is everywhere and the full extent is not known. The principal forms of human trafficking are:

- Adult sex trafficking, commonly associated with prostitution
- "Commercial Sexual Exploitation of Children" (CSEC), a subset of sex trafficking
- Labor trafficking
- Domestic Servitude.

California is a magnet for human trafficking, attractive because of its need for cheap labor, its vibrant economy and its access to global travel.

Human trafficking can occur in our own neighborhoods, but often goes unnoticed and unreported. Masquerading as a legitimate business, trafficking uses social media and moves freely from region to region to avoid detection by law enforcement. Adult sex trafficking is the most readily recognized form of trafficking and attracts the most community interest, but forced labor often involves more victims.

California's first anti-trafficking bill, enacted in 2005, makes the trafficking of humans a felony and assists victims of such trafficking. Following the enactment of this legislation, local jurisdictions have made substantial changes in their approach to the apprehension and prosecution of trafficking.

Successful apprehension of perpetrators requires a multi-faceted effort. Various levels of law enforcement, from the FBI, to state agencies dealing with labor violations, to local law enforcement, are involved in stopping human trafficking. Hard pressed to function alone, the most successful efforts by local jurisdictions rely on coordinating with a

number of state and federal agencies. Investigations are labor intensive and can take years before yielding results.

The number of trafficking victims in Contra Costa County is unknown. No one agency is responsible for collecting and reporting statistics about victims. After apprehension, the primary avenues for victims to seek assistance are through Community Violence Solutions (CVS), a non-governmental agency (NGO), and victim-witness advocates through the County District Attorney's Office, and/or the FBI in coordination with the County.

The new paradigm places law enforcement on the front line in assessing victim needs. The first step for law enforcement is determining whether there has been human trafficking. If law enforcement determines that there has been trafficking, the victim may be referred to CVS or Victim-Witness Advocates, which seem best able to provide services. Skill in the initial assessment can make the difference as to whether the victim will communicate with the officer and/or accept a referral to social services. Proposition 35, passed in 2012, requires all field officers and investigators to complete a minimum two-hour training in human trafficking no more than six months after hire. The Commission on Police Officer Standards and Training (POST) video *Human Trafficking: Identify and Respond* provides the approved course on handling human trafficking complaints. It introduces the subject, but understandably fails to incorporate county-specific guidelines for successful victim assessment or referral. An expanded training package designed for presentation over a period of weeks, and consisting of multiple modules was released in 2014. The State does not currently require this training.

Community awareness is a key factor in identifying human trafficking. Some efforts have been made to raise awareness about traffickers and their victims; for instance, District Attorney staff occasionally give presentations to community groups and to local law enforcement about the problem and; posters throughout the County provide information about stopping human trafficking. These strategies for working at the neighborhood level appear to be effective in Alameda County, which has implemented a community-based program called the Human Exploitation and Trafficking (H.E.A.T.) Watch Program.

The lead multi-disciplinary task force charged with addressing human trafficking in Contra Costa County is the Zero Tolerance for Human Trafficking Coalition. In 2015, the coalition produced a protocol for victims of CSEC and is now considering developing operating guidelines for serving trafficking victims.

## **CONFLICT OF INTEREST DISCLAIMER**

One or more Grand Jurors recused themselves due to a possible conflict of interest and did not participate in the investigation, preparation or approval of this report.

## BACKGROUND

Human trafficking is the third most prevalent crime in the United States, behind only narcotics and gang-related activities. Statistics from the U.S. Department of Justice and the State provide a snapshot of trafficking today:

- Over 80% of the victims of human trafficking, are born in the United States;
- The U.S. State Department conservatively estimates 14,500 - 17,500 people are trafficked annually in the U.S.;
- In the U.S., over 80% of reported trafficking cases are sex trafficking, rather than labor;
- Over 70% of labor trafficking victims who were not born in the United States, entered the United States on legal visas;
- Of those identified as victims of labor trafficking, 62% are 25 years or older compared to 13% of confirmed sex trafficking victims; and
- The average age for girls entering into trafficked prostitution or pornography is 12-14 years.

The State of Human Trafficking in California (2012) issued by the California Attorney General notes that “...*trafficking [in California] as a criminal enterprise is second only to the drug trade in annual revenues.*” Approximately 80% of human trafficking activity occurs in three “hotspots”, the San Francisco Bay Area, Los Angeles and San Diego.

California Penal Code 236.1 (paraphrased below) provides that human trafficking involve one or more of the following acts:

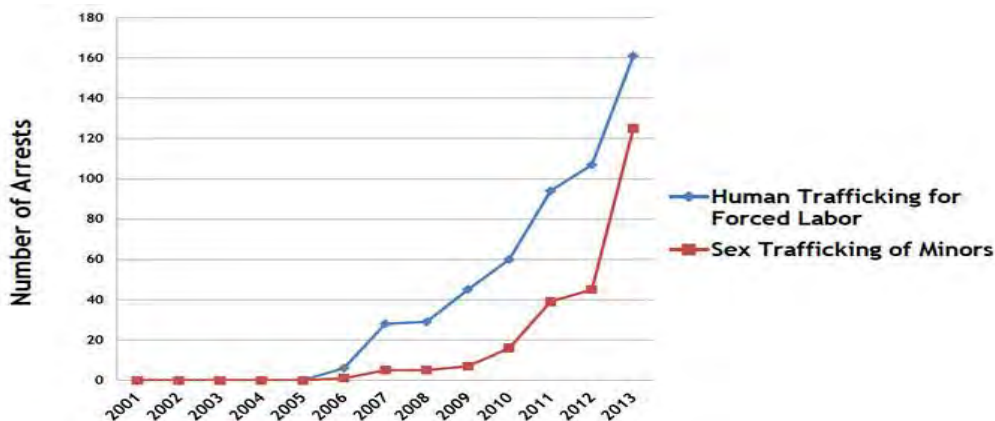
- **Coercion:** causing a person to believe that failure to perform an act would result in serious harm or physical restraint;
- **Deprivation of personal liberty:** accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace or threat of unlawful injury;
- **Duress:** a direct or implied threat of force, violence, danger, hardship or retribution sufficient to cause a reasonable person to acquiesce in or perform an act which he or she would otherwise not have submitted; or
- **Forced labor or services:** labor or services obtained or maintained through force, fraud, duress or coercion, or equivalent conduct that would reasonably overbear the will of the person.

### California’s Response to the Human Trafficking Problem

In 2005 California enacted its first anti-trafficking law (AB22) making human trafficking a felony and assisting its victims. Along with a related bill, (SB180), the legislation also established the California Alliance to Combat Trafficking and Slavery (CA ACTS) Task Force to review California’s response to human trafficking. Proposition 35, which passed in 2012, increases prison terms for traffickers and requires sex traffickers to register as sex offenders. It also requires that all law enforcement officers assigned to

field or investigative duties take a minimum of two hours of training in handling human trafficking complaints by July 1, 2014.

The effect of Proposition 35 in increasing the number of arrests related to human trafficking is shown in the graph below.



Source: California Attorney General Statistics

Statewide there were nine federally funded task forces established between 2010 and 2014. The task forces are comprised of federal, State, and local law enforcement, non-governmental organizations (NGOs) and city and county governments. They continue to play an important role in building awareness to combat human trafficking. As attention to the problem has grown, more local task forces and working groups have been established. Key in the East Bay are the Alameda County District Attorney's Human Exploitation and Trafficking (H.E.A.T) Unit, established in 2005, and Contra Costa County's Zero Tolerance for Human Trafficking Coalition, established in 2013.

## DISCUSSION

The Bay Area is a magnet for traffickers due both to its location and to its economy. Easy access to international travel facilitates the importation of workers. A thriving service industry employing low skilled, low paid workers creates a market for undocumented immigrants, and a vibrant tourist industry attracts travelers looking for sex. The multi-jurisdictional law enforcement response to a projected spike in sex trafficking connected with the 2016 Super Bowl raised public awareness of the opportunistic nature of this enterprise. As with any entrepreneur, traffickers follow the money.

### Adult Sex Trafficking: A Changing Industry

Under the law, prostitution is not necessarily trafficking, and pimps are not necessarily traffickers, unless the offense entails loss of personal liberty, duress, or the victim is

under age. The evidence shows, however, that the majority of adult women arrested for prostitution are victims of human trafficking.

The character of sexual exploitation has changed dramatically with the advent of technology and social media. While street prostitution still exists (particularly in low-income areas and cities), the industry is increasingly moving under cover. For example:

- An explosion of websites designed to expedite the sex trade (e.g. Backpage, City Vibe, and even Craigslist), allow prostitutes and their pimps to connect with clients electronically;
- Pimps can solicit potential victims under cover of apparently innocent social media encounters through forums such as Facebook and Twitter;
- Disposable cell phones, elaborate networks of connected user names and aliases, and other sophisticated strategies can obscure the direct relationship between the exploiter and the victim; and
- Prostitution operations are increasingly mobile, changing locations to avoid detection or find better commercial opportunities. Operations can encompass multiple regions including cities, counties, states, and even countries.

Trafficking often is connected with other illegal activity. For instance, an arrest for narcotics, gang activity or domestic violence can frequently reveal sex trafficking as well. One of the reasons for this connection may be that gangs appear to be turning to sex trafficking as an additional source of revenue.

### **Labor Trafficking: The Tip of the Iceberg**

Labor trafficking is notoriously difficult to identify, and difficult to prosecute. It often involves multiple victims and, in contrast to prostitution, many victims are not U.S. citizens. Uncovering labor trafficking frequently requires paying attention to things that just don't look right. According to guidelines distributed by the California Attorney General, some signs that may indicate labor trafficking include:

- Working excessively long and/or unusual hours, perhaps being prohibited from taking breaks or other unusual restrictions at work;
- Being controlled (e.g., workers being transported to and from worksites in groups);
- Lacking passports or other forms of identification; no financial records or bank accounts; and
- Fearful of speaking to someone else alone.

These indicators may point to the existence of a trafficking operation, but not always. Often, the first sign of potential labor trafficking involves a complaint, either by a victim or from an astute observer.

Labor traffickers typically engage in businesses that appear to be legitimate, and the investigation of trafficking often hinges on uncovering fraudulent and/or illegal business practices. Business owners may cheat on income and employment taxes, workplace rules, wage and hour regulations, workmen's compensation insurance, health and safety requirements, and/or immigration laws. They defraud their employees of fair compensation and the workplace protections to which they are entitled by law resulting in a situation that is no better than indentured servitude.

Often called the "Al Capone Approach", after the infamous gangster who was finally successfully prosecuted for tax evasion, the investigation and prosecution of labor trafficking frequently entails interagency cooperation. The State Department of Industrial Relations (DIR), the Employment Development Department (EDD) and the Department of Insurance (DI) often work with the District Attorney's Office during labor trafficking investigations. A senior DIR official explained, "Labor traffickers are cheaters", and "...at base, a labor trafficking investigation starts with an investigation of fraud".

### **A Look at the Data: How Much Trafficking is There?**

County reports about the number of adult human trafficking victims differ, making an overall assessment of the size of the problem difficult. There is no comprehensive source dealing with trafficking victims.

Based on a survey of nineteen city police departments and the Contra Costa County Sheriff's Department regarding the number of incidents of adult sex trafficking, labor trafficking, and CSEC occurring between January and August 2015, seven jurisdictions reported at least one incident. As reported by these jurisdictions, eighty-six incidents involved adult sex trafficking, sixteen involved CSEC victims and one incident involved labor trafficking. Additionally, there were eight arrests for pimping of underage girls.

The survey also asked about the number of department personnel trained to deal with human trafficking. All responding departments stated that at least some officers had received training.

The table below summarizes a Zero Trafficking Coalition report on victims identified and served by its “grant partners” for the period from June 2014 through June 2015.

	Total	Adults	Minors
Sex trafficking	103	64	39
Sex+Labor	4	4	
Labor	1	1	
<b>Total Victims</b>	<b>108</b>	<b>69</b>	<b>39</b>
<b>Citizenship</b>			
U.S.	99	62	37
Non U.S.	9	7	2
<b>Gender</b>			
Female	106	63	38
Transgender	2	1	1

The Coalition statistics understate the true number of victims because they show only victims who received services from one or more the NGOs associated with the Coalition. Victims who were not referred to services, or who refused a referral, or who went to service providers not associated with the Coalition, are not included. Accordingly, it is difficult to determine the overall number of victims in the County.

For 2011 through 2015, the District Attorney reports the following number of criminal cases filed for human trafficking:

- Thirty-five filings for 2011 through 2013:(an average of eleven per year);
- Five filings during 2014; and
- Seven filings during 2015.

### **Investigation and Prosecution**

Investigators and patrol officers must deal with the complex realities of human trafficking enterprises, often hidden from sight. These enterprises move between jurisdictions to avoid scrutiny, take advantage of technology to maintain and attract their clientele and victims, and use intimidation and duress to prevent victims from leaving or reporting the crime to outsiders.

A successful trafficking investigation hinges on many factors. Local concern can make apprehending suspected traffickers a law enforcement priority. Most police agencies are operating with resource constraints, and there is every incentive to put ongoing (and visible) crime first. Investigating trafficking is time intensive and often takes months (or years) to build a case. Historically, prostitution has received most of the attention because local citizens are aware and concerned. It is not clear, however, whether

citizens typically understand the link between prostitution and trafficking. Labor trafficking, even less obvious to the public eye, has not yet achieved similar recognition.

In at least one instance since 2014, the FBI offered to assist some Contra Costa cities with massage parlor stakeouts. These cities declined the offer, citing the need to focus their limited resources on higher priorities. The FBI also conducts an annual one-week “sweep” in the Concord/Pittsburg/Antioch area (Operation Cross Country) in partnership with local police departments. Not all agencies participate even though the FBI provides substantial personnel and financial assistance to augment those of the local police departments.

When cities place a priority on identifying trafficking operations, the results are notable. For example, there has been a high level of public concern about the possibility of illegal activity associated with the multitude of massage parlors in the City of Pleasant Hill. Since 2013, the Pleasant Hill Police Department has staged forty-one undercover investigations of sixteen massage parlors yielding nine arrests on suspicion of prostitution.

California Assembly Bill 1147- The Massage Therapy Reform Act took effect on January 1, 2016. The Act empowers cities and counties to close massage businesses that have been involved in illegal activities and provides municipalities with other leverage, such as a certification requirement for massage parlors.

Consistent training and intensive exposure help investigators and patrol officers become experts at identifying the signs of human trafficking. Investigators need be able to sense what is going on beneath the surface of a seemingly ordinary encounter. It can take years to develop familiarity with the subtle signs of trafficking. In this rapidly changing arena, familiarization with trends, patterns, and best practices is critical. While most officers receive introductory POST training, practical training occurs on the job, and is also provided by more experienced officers. In this rapidly evolving field, advanced training and networking with other law enforcement agencies provides critical enhancements to the local experience. Not all police departments in the County have a formal training plan in this area, although officers may receive training from time to time.

Regional task forces such as the Bay Area H.E.A.T. Coalition (BAHC) provide additional training and networking opportunities. BAHC is a regional network of law enforcement, County first responders, NGOs, community organizations, and elected officials who come together to share best practices and developments. More than 2,000 professionals have been connected through BAHC. Few Contra Costa law enforcement staff routinely attend these meetings despite their value in keeping track of trends in the wider Bay Area.

An interdisciplinary approach to policing recognizes the relationship between crimes that are more obvious and trafficking, which is often hidden. Trafficking is frequently related to drug crimes, gang activity, and domestic violence. Understanding and

capitalizing on that relationship is often the key to discovering and apprehending traffickers. Most law enforcement departments assign one officer or detective as the contact point in the investigation of suspected trafficking cases. However, the single point of contact model can generate an overwhelming workload unless adequate support is available.

The Pittsburg Police Department uses a “street team” of three detectives, each with specialized drug, gang, or domestic violence experience. This team receives advanced training about identifying and responding to human trafficking. With this training and the range of knowledge shared among the three detectives, the street team has an increased ability to identify victims of trafficking while investigating crimes within one of their specializations. Moreover, the sharing and coordination of effort increases the efficiency and effectiveness of the team.

Local law enforcement is able to build a case for prosecution through close coordination with federal and state law enforcement agencies. Some trafficking is purely local, but most of it respects no borders. Both the federal and state governments have an interest in trafficking investigations at the local level. For example, sex trafficking across state lines is a federal offense of interest to the FBI and violation of labor laws attracts attention from various state agencies.

Contra Costa County gets high marks from state and federal partners for its aggressive approach in the investigation and prosecution of both sex and labor trafficking cases.

- Investigating labor trafficking operations can sometimes have a substantial payoff. One Contra Costa case involving the Golden Dragon Restaurant in Brentwood expanded to include multiple restaurants in several counties, 120 victims, over \$500,000 in cash seized, and at least \$120 million in fraud charges.
- Highly visible recent sex trafficking prosecutions in Contra Costa show how extensive such operations can be. Danville residents James Joseph and Avisa Lavassani, were indicted for operating a sex trafficking ring extending as far as Miami, Cleveland, and New York, which generated tens of thousands of dollars per month. This operation, housed in an unremarkable home in an upscale neighborhood, involved more than 15 known victims. A multi-agency FBI task force working with San Ramon, Danville police, and the District Attorney’s Office successfully arrested the traffickers after a lengthy investigation.

A proactive approach to monitoring the activities of suspected traffickers can identify and apprehend hidden perpetrators. Electronic communications are increasingly the tool of choice for sex traffickers to communicate with potential customers, schedule appointments, and identify potential victims. Police departments are now using the same tools to follow suspects and to identify potential trafficking operations.

In addition to monitoring various websites and other social media, several databases are useful in the fight against human trafficking:

- ARIES, which is maintained by the Contra Costa Sheriff's Office, includes data about known offenders including residences, job histories, gang affiliations, arrest history, and even tattoos;
- Thorn's Spotlight, which provides information about suspected trafficking networks, focuses on identifying victims, and is able to filter and search digital images of victims appearing in online advertisements;
- Online software developed by the University of California *Technology and Human Trafficking Initiative* detects possible cases of online sex trafficking;
- Human Trafficking Reporting System (HTRS), which is funded by the Department of Justice, provides national, regional, and local statistics about human trafficking; and
- SafetyNet, maintained by Alameda County, collects comprehensive data about child sex trafficking.

The ability to disguise one's identity through social media and "dating" websites can be as beneficial to law enforcement as it is to perpetrators, allowing law enforcement to enter the hidden world of sex trafficking. Some departments designate a person to routinely monitor websites suspected of being used for trafficking as a way of discovering potential criminal activity.

Involved citizens, aware of their local environment, can be the key to first identifying suspected trafficking. Many investigations begin with a tip from a concerned citizen. The Golden Dragon investigation (above) began with a complaint from a restaurant employee. A recent sex trafficking case in Dublin was discovered when neighbors became concerned with unusual activity in and around a neighborhood home. Alameda County has developed a comprehensive program of community engagement, as discussed further below.

## **Victim Assistance**

Current practice puts law enforcement in the forefront of dealing with trafficking victims. Recognizing that many prostitutes are unwilling participants and victims, rather than partners, of their pimps resulted in a shift away from the criminalization of prostitution. Similarly, individuals subjected to labor trafficking (particularly the undocumented) are now considered victims, instead of "aliens" to be deported.

While apprehension of traffickers requires coordination and cooperation among law enforcement agencies, appropriately attending to the needs of the victims requires a different set of skills. Conditioned through mental and physical intimidation, trafficking victims typically do not trust or communicate with law enforcement. However, they are crucial to the prosecution of trafficking cases. To bridge the communication gap, law enforcement relies on specially trained advocates. The victim-centered approach

requires that victim's needs are assessed and, based on that assessment, victims are referred to appropriate services to help them adjust to life after trafficking. For the most part, police and detectives sympathize with the victims, but often do not have the skills to elicit witness information or to convince them to walk away from "the life". Reported success varies widely, but victims often strongly resist efforts by police officers to turn in their abusers, provide witness statements, or seek assistance from available service agencies. Asked about his success in convincing prostitutes to get help, one detective responded "...basically zero."

Police involvement is necessarily short term, and dealing with victims after the original contact falls to a variety of County agencies and NGOs. Most police officers interviewed knew of and/or used Community Violence Solutions (CVS) for short-term help. The District Attorney's Office and social service NGOs also provide victims of trafficking with services from specialists. This relationship between victims and these agencies can be lengthy. One source estimates that it can take between twelve and sixteen separate attempts (and sometimes years) before the victims successfully manage to leave "the life".

### **Organizing the Process: A New County Approach**

The Zero Tolerance Coalition is currently producing operating guidelines for handling adult sex and labor trafficking victims, including guidelines for multidisciplinary teams to provide case review and coordination. The draft guidelines should be completed by December 2016. Two summits in 2015 and 2016 involving representatives from multiple counties, social service agencies, law enforcement and the community served to focus the effort to complete these guidelines. The Coalition is working closely with Alameda County's H.E.A.T. Program, which has been a leader in addressing the human trafficking problem since 2006. By working with H.E.A.T., Contra Costa County will be able to leverage its efforts to prevent trafficking, identify it when it occurs and provide a coordinated approach to victim assistance.

### **A Model to Emulate: Alameda County's H.E.A.T. Program**

Set up in January 2006, the Alameda County District Attorney's H.E.A.T. Unit has prosecuted 427 human trafficking cases. Of these cases, 312 cases (81%) resulted in convictions. The H.E.A.T. Unit continues to be the State's most prolific prosecutor of human trafficking cases. The H.E.A.T. Unit prosecutes offenders for human trafficking, child sexual assault, kidnapping, and other serious crimes. The H.E.A.T. Program developed a collaborative strategy for combatting human trafficking. Successfully implemented in the Bay Area and other communities, the strategy encompasses:

- Robust community engagement;
- Training for law enforcement;
- Vigorous prosecution;

- Education of and advocacy to policy makers; and
- Wrap-around services for victims/survivors.

This strategic approach recognizes that the program is only as strong as the involvement and commitment of law enforcement agencies, County service providers, prosecutors, and the community.

The H.E.A.T. website contains a full explanation of each area. The community engagement and law enforcement training aspects explained on the website could be particularly useful components of a new Contra Costa County Human Trafficking Protocol.

Implementation of H.E.A.T. Watch Neighborhood Programs enhances community engagement. The programs raise awareness that stopping human trafficking is a priority. This effort includes systematic guidelines for communities interested in setting up H.E.A.T. Watch Programs, webinars, hotlines, newsletters, training and outreach events and even H.E.A.T. Watch Radio. Social media, such as Facebook and Twitter, help law enforcement find victims. Alameda County also uses outdoor billboards and bus signs to raise awareness.

To address the law enforcement side of controlling human trafficking, the Alameda County H.E.A.T. Watch Program developed a comprehensive law enforcement-training curriculum. This curriculum provides a detailed outline and many training materials focused on first responders, who are typically law enforcement.

Training materials also deal with investigating and developing a case that can withstand the scrutiny of the court and defense counsel. Additionally, the training materials explain where law enforcement should focus resources and how to develop evidence that establishes the essential elements of the crime.

## **CONCLUSION**

As attention to the extent and consequences of human trafficking has grown, law enforcement in Contra Costa County has made significant strides in investigating suspected trafficking and prosecuting the traffickers. Identifying and assisting the victims remains a significant challenge, requiring the coordinated efforts of both law enforcement and the community. The operating guidelines for victim identification and assistance under development by the Zero Tolerance Coalition should include a comprehensive action plan for addressing both law enforcement issues and victim needs similar to that used in Alameda County.

## FINDINGS

- F1. The San Francisco Bay Area is one of three “hot spots” for human trafficking in California, along with Los Angeles and San Diego.
- F2. The emphasis in human trafficking cases has shifted from solely prosecution to a “victim-centered” approach in which the needs of persons who have been trafficked receive equal consideration.
- F3. Effectively identifying and apprehending traffickers requires knowledge of the local environment and criminal activities acquired through years of experience.
- F4. Most police officer training related to human trafficking is acquired through working with more experienced officers and victim advocates.
- F5. The required two-hour POST Training Video in dealing with human trafficking complaints provides a general basis, but more intensive training found in the POST 2014 training manual contains in-depth coverage of the issues important to officers assigned to trafficking cases.
- F6. Successful apprehension and prosecution of traffickers often involves coordination and cooperation among local, State and federal agencies.
- F7. City law enforcement and Contra Costa County Sheriff’s Department have no comprehensive or consistent method for analyzing data about the number and type of adult trafficking victims. More data that is complete is needed to define the magnitude of the problem and to support decisions about victim services and resource allocation.
- F8. City law enforcement and Contra Costa County Sheriff’s Department does not always use resources offered by State and federal for joint “sting” and “sweep” operations.
- F9. Trafficking frequently occurs in combination with other violent crimes and its victims often have a history of abuse and trauma.
- F10. The use of specialist multidisciplinary teams in high crime areas can increase the likelihood that trafficking will be recognized as a component of other crimes.
- F11. Public awareness is a critical factor in identifying potential human trafficking activity.
- F12. The County’s efforts to build a broad public awareness of human trafficking has primarily been a poster campaign beginning in 2015.
- F13. The Zero Tolerance for Human Trafficking Coalition is developing operating guidelines for case review and coordination to be completed in December 2016.
- F14. A comprehensive approach to dealing with human trafficking includes robust community engagement; training law enforcement in responding to human trafficking incidents; vigorous prosecution of perpetrators; education of and advocacy to policy makers; and wrap-around services for victims/survivors.

## RECOMMENDATIONS

- R1. City law enforcement agencies and the Sheriff's Department should consider incorporating expanded training for officers assigned to trafficking-related duties.
- R2. City Law enforcement agencies and the Sheriff's Department should consider increasing collaboration with State and federal law enforcement to expand "sweeps" and "stings" in high crime areas.
- R3. City Law enforcement agencies and the Sheriff's Department should consider the benefits of assigning multidisciplinary teams in areas with significant drug, gang and/or prostitution activity to assist in identifying trafficking activities.
- R4. The County Board of Supervisors should consider identifying funds to assign the Zero Tolerance Coalition to take a leadership role in developing report formats, collecting and reporting on comprehensive data about adult and child trafficking in Contra Costa County.
- R5. The County Board of Supervisors should consider directing the Zero Tolerance Coalition to develop a multi-disciplinary approach in dealing with human trafficking, after identifying funds to do so.
- R6. The County Board of Supervisors should consider directing the Zero Tolerance Coalition to develop and implement a systematic plan for building community awareness of human trafficking, after identifying funds to do so.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Antioch City Council	F1 – F11, F14	R1 – R3
Brentwood City Council	F1 – F11, F14	R1 – R3
Clayton City Council	F1 – F11, F14	R1 – R3
Concord City Council	F1 – F11, F14	R1 – R3
Danville City Council	F1 – F11, F14	R1 – R3
El Cerrito City Council	F1 – F11, F14	R1 – R3
Hercules City Council	F1 – F11, F14	R1 – R3
Lafayette City Council	F1 – F11, F14	R1 – R3
Martinez City Council	F1 – F11, F14	R1 – R3
Moraga City Council	F1 – F11, F14	R1 – R3
Oakley City Council	F1 – F11, F14	R1 – R3
Orinda City Council	F1 – F11, F14	R1 – R3
Pinole City Council	F1 – F11, F14	R1 – R3
Pittsburg City Council	F1 – F11, F14	R1 – R3
Pleasant Hill City Council	F1 – F11, F14	R1 – R3
Richmond City Council	F1 – F11, F14	R1 – R3
San Ramon City Council	F1 – F11, F14	R1 – R3
San Pablo city Council	F1 – F11, F14	R1 – R3
Walnut Creek City Council	F1 – F11, F14	R1 – R3
Contra Costa County Sheriff's Department	F1 – F11, F14	R1 – R3
Contra Costa County Board of Supervisors	F11 – F14	R4 – R6

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson

725 Court Street

P.O. Box 431

Martinez, CA 94553-0091



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY  
725 Court Street  
Martinez, California 94553

Report 1610

**Contra Costa County Office of the  
Public Defender**

Who Is Entitled to Public Legal Representation?

APPROVED BY THE GRAND JURY:

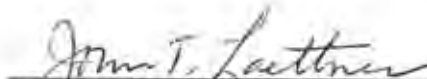
Date: May 24, 2016



MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: May 20, 2016



JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contact: Michael Simmons  
Foreperson  
925-957-5638

Contra Costa County Grand Jury Report 1610  
**Contra Costa County Office of the Public Defender**  
**Who Is Entitled To Public Legal Representation?**

**TO: Contra Costa County Board of Supervisors**

**SUMMARY**

The Sixth Amendment of the United States Constitution entitles persons charged with a crime to legal counsel. However, what happens when a person cannot afford an attorney? In such cases in Contra Costa County, the Public Defender provides legal counsel to those individuals. (As used in this report, the term "Public Defender" refers to the Contra Costa County Office of the Public Defender, the attorneys and other staff members in the office, rather than any particular individual.)

In Contra Costa County, the Public Defender provides legal counsel for criminal defendants who cannot afford their own attorneys. The cost of this legal representation is borne by the County of Contra Costa through the collection of taxes.

Defendants seeking defense counsel provided by the Public Defender must first inform the court of their inability to afford their own legal counsel. The Court may choose to have a defendant fill out a financial disclosure form or have the County gather information to determine eligibility. In Contra Costa County, the Public Defender determines the defendant's financial eligibility.

This Grand Jury report finds a potential for public abuse of the Office of the Public Defender when a defendant provides financial information that is neither attested under penalty of perjury nor vetted for accuracy.

## METHODOLOGY

The Grand Jury examined the policies, procedures and financial criteria by which a person charged with a criminal offense in Contra Costa County, qualifies for representation by the Public Defender.

## BACKGROUND

The Sixth Amendment to the United States Constitution provides that “In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.”

However, individuals charged with crimes have not always been entitled to have counsel provided at no charge. The following timeline describes efforts by individuals and case law that finally guarantee the right to counsel for all individuals.

- (1893) at the Chicago World's Fair, California's first female attorney, Clara Shortridge Foltz, proposed the idea of a public defender.
- (1914) the Board of Supervisors for Los Angeles County appointed Walton J. Wood to be the first public defender in the United States.
- (1921) California Legislature extended the public defender system to courts throughout the state.
- (1932) *Powell v. Alabama*, 287 U.S. 45, the United States Supreme Court held that the indigent defendants, unable to afford their own attorneys and accused of a capital crime, had the right to a court appointed attorney.
- (1942) *Betts v. Brady*, 316 U.S. 455, the Supreme Court ruled that an indigent defendant, even in a capital case, had no right to court appointed counsel unless the defendant was illiterate, of low intelligence generally, or caught up in a particularly complicated trial.
- (1963) *Gideon v. Wainwright*, 372 U.S. 335, which overruled *Betts v. Brady* in part, guaranteed legal representation in criminal cases to defendants who are unable to afford to pay their own attorneys.

Not all counties in California use a public defender to represent those who cannot afford their own legal representation. For example, San Mateo County has a private defender program, which contracts with the San Mateo County Bar Association to provide indigent criminal defense.

The Contra Costa County Office of the Public Defender mission statement reads:

*“The Contra Costa County Office of the Public Defender is dedicated to ensuring justice for indigent persons accused of crimes in Contra Costa County. Our overriding goal is to serve the best interests of our clients in*

*everything that we do. We dedicate all available resources to our clients' cases, thereby ensuring that they receive excellent, individualized representation. Justice can only be served when the most vulnerable among us are treated with the same attention, dignity and respect as the most powerful. The Contra Costa County Office of the Public Defender strives to uphold this principle in everything that we do."*

In the cases of conflict of interest, the accused indigent can also avail himself of the services of the Alternate Defender Office and the Criminal Conflict Panel.

The staff of both the Public Defender and the Alternate Defender are employees of Contra Costa County. The Contra Costa Bar Association provides attorneys for the Criminal Conflict Panel through a contract with the County. Attorney fees for the Criminal Conflict Panel are also a County expense.

#### The Alternate Defender Office

The Alternate Defender Office falls under the umbrella of the Office of the Public Defender, but is a separate division, separated by an ethical firewall. The offices are independently supervised, and neither side shares information with the other. The Alternative Defender represents those who cannot afford their own attorney when conflicts of interest prevent the Public Defender from representing a defendant. Multiple defendants charged in the same case is one of the more common conflicts that arise. In such cases, the Alternate Defender will represent one of the defendants.

#### Criminal Conflict Panel

The Criminal Conflict Panel is an independent body of attorneys that represents defendants when the Public Defender and Alternate Defender cannot. The services of the Criminal Conflict Panel often are called upon when three or more defendants are charged in the same case. A referral to the Criminal Conflict Panel may also occur when both the Public Defender and Alternate Defender are operating at capacity or are overburdened (overloaded) with cases and are unable to accept additional clients. The Contra Costa County Bar Association works under contract with Contra Costa County to administer the Criminal Conflict Panel.

## **DISCUSSION**

A public defender is an attorney, licensed by the State Bar of California, appointed by the court to provide legal representation to those financially unable to afford a private attorney. The mission of the Contra Costa County Office of the Public Defender is to ensure justice for indigent persons by providing an attorney to those persons charged with a crime.

The Contra Costa County Office of the Public Defender represents adults charged with crimes (misdemeanor or felony) or violations of probation. It also represents minors (persons under 18 years of age) charged in juvenile or adult court. Additionally, the court often appoints the Public Defender to represent persons in proceedings relating to involuntary civil mental health commitments under the Lanterman-Petris-Short Act (LPS). The Public Defender does not represent persons accused of traffic violations or any code infraction, which cannot result in a jail sentence. The Public Defender also does not represent persons involved in civil, family law, or immigration cases.

The eligibility standards for the services of the Public Defender in Contra Costa County are generally in-line with the eligibility standards of other counties. Even persons who are only being questioned by the police, who have not been arrested or charged with a crime, may request the services of the Public Defender. The court will refer persons who are out of custody to the Public Defender at their first court appearance (arraignment) when they inform the court of their inability to afford their own attorney. At that time, the court provides the defendant with a date to return to court with an attorney from the Public Defender. For a person who is in custody, the court provides sufficient time to permit a representative of the Public Defender to visit the person before the next court date. During the initial client interview, a paralegal, law clerk, or attorney will inquire as to the client's ability to afford his or her own counsel. The interview is used to:

- Determine financial eligibility
- Discuss the client's background
- Explain the overall process
- Discuss the specifics of the client's case

#### Determining Financial Eligibility

Subdivision (c) of California Penal Code section 987 states in part:

*"In order to assist the court in determining whether a defendant is able to employ counsel in any case, the court may require a defendant to file a financial statement or other financial information under penalty of perjury with the court or, in its discretion, order a defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to employ his or her own counsel. If a county officer is designated, the county officer shall provide to the court a written recommendation and the reason or reasons in support of the recommendation. The determination by the court shall be made on the record. Except as provided in Section 1214, the financial statement or other financial information obtained from the defendant shall be confidential and privileged and shall not be admissible in evidence in any criminal proceeding except the prosecution of an alleged offense of perjury based upon false material contained in the financial statement."*

Subdivision (c) of California Penal Code section 987 further states as follows:

*“The financial statement shall be made available to the prosecution only for purposes of investigation of an alleged offense of perjury based upon false material contained in the financial statement at the conclusion of the proceedings for which the financial statement was required to be submitted. The financial statement and other financial information obtained from the defendant shall not be confidential and privileged in a proceeding under Section 987.8.”*

In other words, this latter part of Section 987(c) provides that perjury charges can be brought against persons who provide false information on the financial statement.

The Contra Costa County courts have delegated the duty of inquiring into a defendant's ability to employ legal counsel to the Public Defender. The Public Defender considers several factors in determining the defendant's financial eligibility for representation:

- Financial information regarding employment (See Appendix for eligibility form)
- Assets
- Money owed to creditors
- Family size
- Other sources of income
- The nature and severity of the charges

A staff member of the Public Defender completes the eligibility questionnaire with information provided by the client. The client is required to sign the questionnaire, but is not required to do so under penalty of perjury. Supervising or senior attorneys answer the client's questions regarding financial eligibility. The Public Defender neither requires clients to provide documentation supporting the accuracy of the information nor does the Public Defender conduct an independent financial fact check or inquiry.

The Public Defender's current policy on this subject states:

*“While it is difficult to quantify financial eligibility, if a single person has a net monthly income of \$4,000 or more and/or owns a home with equity in excess of \$150,000, eligibility should be reviewed by a Supervising or senior attorney. (The interviewer can add \$300 per each dependent before seeking review.) The income of other persons in the home related to the client should be taken into account. The client should be informed that at the end of the case, attorneys' fees will be assessed by the court. These fees are not collected by our office.”*

Financial screening is not required for minors, nor are the financial circumstances of the parents or legal guardian taken into consideration. The policy of the Public Defender states:

*"If the parent is present, the parent should be told that the court, not our office, may assess attorney's fees and other costs at the end of the case."*

The court referred 16,955 new clients to the Public Defender during 2015. The Public Defender rejected thirty-four of these cases (0.2%) for not qualifying as indigent. The Public Defender and Alternate Defender handled 14,360 of all qualifying cases. The remaining 2,561 cases (15.1% of the total cases) were handled by the Criminal Conflict Panel. Of the 2,561 cases referred to the Criminal Conflict Panel, 82.2% or 2,105 of the cases were referred to the Panel because the Public Defender and Alternate Defender lacked the capacity to handle additional cases.

### Conclusion

The Office of Public Defender refers many cases to the Criminal Conflict Panel. The vast majority of these referrals are because the Office of Public Defender is working at capacity and, thus, does not have the ability to take on another case.

Defendants may be more likely to underreport financial resources to qualify for the services of the Public Defender, because financial information is neither signed under penalty of perjury nor verified. This abuse of the right to defense, by ineligible defendants, detracts from the Public Defender's capacity to carry out its mission to provide a defense to those indigent defendants who have no alternative. In addition, abuse by ineligible defendants using the Office of Public Defender, Alternate Defender, or Criminal Conflict Panel taxes the resources of Contra Costa County and, ultimately detracts from the County's ability to provide its citizens with other services.

The County can minimize the potential for defendants fraudulently qualifying for the Public Defender's services. Such changes might result in:

- Fewer cases taken on by the Office of Public Defender resulting in fewer cases referred to the Criminal Conflict Panel.
- Defendants eligible for public representation receiving even better representation.
- A financial savings to Contra Costa County.

## **FINDINGS**

- F1. The Office of Public Defender is dedicated and committed to providing the best legal defense possible to those defendants who qualify for its services.
- F2. Persons applying for the services of the Public Defender do not sign the financial screening questionnaire under penalty of perjury.
- F3. The Public Defender does not verify the financial information provided by individuals applying for its services.
- F4. The Public Defender refers some potential clients to the Criminal Conflicts Panel because the Public Defender is operating at capacity.
- F5. Without verifying financial eligibility it is impossible to ascertain an individual has fraudulently obtained representation from the Office of the Public Defender.
- F6. Section (c) of California Penal Code section 987 contemplates that a defendant may be prosecuted for perjury based upon false material contained in the financial statement.

## **RECOMMENDATIONS**

- R1. The Public Defender should require the potential client referred by the court to attest under penalty of perjury to the accuracy of the information provided to the Public Defender.
- R2. To verify the information provided on the financial eligibility questionnaire form. The Public Defender should develop guidelines concerning when documentation of financial circumstances is required and the type of such documentation, such as prior year tax return, employment pay stubs or advices, utilization of credit services, etc.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County Board of Supervisors	F1 – F5	R1, R2

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Civil Grand Jury – Foreperson

725 Court Street

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Martinez, CA 94553-0091

## Appendix

OFFICE OF THE PUBLIC DEFENDER  
CONTRA COSTA COUNTY

ELIGIBILITY QUESTIONNAIRE TO OBTAIN SERVICES OF THE PUBLIC DEFENDER

Applicant's Name \_\_\_\_\_ Charge(s) \_\_\_\_\_

1. EMPLOYMENT

Are you working now?    yes\_\_\_    no\_\_\_

Employer \_\_\_\_\_

Monthly take-home pay \$\_\_\_\_\_    Do you have a job waiting?    yes\_\_\_    no\_\_\_

2. FINANCIAL

Did you or any member of your family receive any of the following in the past year? \_\_\_

AFDC	\$_____	Social Security	\$_____
General Assistance (GA)	\$_____	Other (Disability)	\$_____

3. FAMILY

Are you:    married\_\_\_    single\_\_\_    divorced\_\_\_    separated\_\_\_    widowed\_\_\_

Name of husband or wife's employer: \_\_\_\_\_

Husband or wife's monthly take-home pay: \$\_\_\_\_\_

Do you have children?    yes\_\_\_    no\_\_\_    How many?    \_\_\_\_\_

If yes, do they live with you?    yes\_\_\_    no\_\_\_

4. HOUSING

How much do you pay for:    rent \$\_\_\_\_\_    house payment \$\_\_\_\_\_

5. ASSETS

Savings account	\$_____	Cars & other vehicles	\$_____
-----------------	---------	-----------------------	---------

Checking account	\$_____	House/Equity	\$_____
------------------	---------	--------------	---------

Cash \$\_\_\_\_\_

6. Do you OWE money? (Please list ALL bank loans, personal loans, charge accounts, child support, medical bills, car payments, etc.)

<u>Owed to:</u>	<u>Monthly Payment</u>	<u>Balance Due</u>
_____	\$_____	\$_____
_____	\$_____	\$_____
_____	\$_____	\$_____
_____	\$_____	\$_____

7. CUSTODY

Out:    Bail posted \$\_\_\_\_\_    O.R. \_\_\_\_\_

In:    Bail set \$\_\_\_\_\_    Hold \_\_\_\_\_

Applicant's Signature \_\_\_\_\_ Date \_\_\_\_\_

Attorney \_\_\_\_\_ Accepted \_\_\_\_\_ Rejected \_\_\_\_\_

FORMS: ELIG.FRM rev. 10/01/90



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY  
725 Court Street  
Martinez, California 94553

Report 1611

**Maintaining a Stable Environment for  
our Special Education School  
Children and Staff**

APPROVED BY THE GRAND JURY:

Date: 6/15/16



MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 6/15/16



JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

## **Maintaining a Stable Environment for our Special Education School Children and Staff**

**TO: Contra Costa County Superintendent of Education; Contra Costa  
County Board of Education**

### **SUMMARY**

Contra Costa County Office of Education (COE) operates five Special Education schools specifically targeted for special needs children. These special needs children include those who are autistic, those with severe physical and developmental disabilities, and those who are wheelchair-bound, needing around-the-clock assistance. State law requires an Individual Education Plan (IEP) for each student. These IEPs are developed annually by the parent(s) of the student, his or her teacher, and school psychologist. The IEP is the plan for the student's progress during that school year. The schools provide K-12 instruction only, but serve students up to and including age 22. In many cases, students of different ages may be mixed together in a single classroom according to their mental capabilities, to sustain continuity of learning.

It is vital that the learning environment in special education schools be one of compassion and serenity to foster the learning process, notwithstanding the behavior issues that may arise with special needs children. Those personnel involved with special needs children must be compassionate, properly credentialed, and trained to administer to the "special" needs of special education children. They must have the confidence and support of the students, their parents and school administrators.

For at least the past three years staff reports persisted of a hostile work environment at two of the COE special needs schools, which are located in Brentwood (subsequently referred to in this report as the "Brentwood Schools"). During this period, a number of qualified teachers claimed they sought transfers, had retired or were forced out by the principal when they expressed concerns about the school environment. A number of these complaints were communicated through union representatives to the COE. However, the complaints were not resolved to the satisfaction of the teachers and staff at the Brentwood Schools until the complaints were aired at public meetings of the County Board of Education in the fall of 2015. At the Board's October 21, 2015 meeting, a representative of the teachers' union announced that a majority of teachers

at the Brentwood Schools had signed a “vote of no confidence” in the principal of the Brentwood Schools. The complaints were raised again by teachers and others at the County Board meeting on November 4, 2015. Shortly thereafter the principal of the Brentwood Schools resigned and a replacement was appointed by the County Superintendent of Schools.

The matter took years to squarely address because teachers and staff at the Brentwood Schools perceived there was no clear and protected procedure in place for filing complaints with the COE about their principal without fear of retaliation. Further, the problem might have been resolved after it was first brought to the attention of the COE and CBOE had those bodies acted decisively at the onset of the complaints.

The Grand Jury recommends that appropriate and well understood internal complaint procedures be put in place that assure employees and teachers that complaints about working conditions supported or tolerated by higher-level administrators will receive professional attention from the Superintendent’s office or the CBOE without fear of retaliation or adverse treatment.

## **Acronyms**

COE	= Contra Costa County Office of Education (Superintendent)
CBOE	= County Board of Education (Trustees)
IEP	= Individual Education Plan
SELPA	= Special Education Local Plan Area
IA	= Instructional Assistant (Classified employee)
CTA	= California Teachers Association (Teacher’s union)
Local One	= Classified employees union
IR	= Incident Report
UCP	= Uniform Complaint Procedures
SARC	= School Accountability Report Card

## **METHODOLOGY**

For purposes of this report and to investigate and confirm the accuracy of the complaint, the Grand Jury performed the following tasks:

- Researched the relevant California statutes governing county Boards of Education and Superintendents of Schools in California;
- Examined the COE website;
- Interviewed representatives of the COE; the CTA; Public Employees Union, Local One; SELPA; current and former school personnel at the Brentwood Schools;
- Visited and toured one of the Brentwood Schools;
- Attended CBOE public meetings; and
- Reviewed minutes and audio recordings of public meetings of CBOE held on October 21, 2015 and November 4, 2015.

## CONFLICT OF INTEREST DISCLAIMER

One or more Grand Jurors recused themselves due to a possible conflict of interest and did not participate in the investigation, preparation or approval of this report.

## BACKGROUND

The Grand Jury investigated allegations of a hostile working environment at the Brentwood Schools, including the following:

- The forced transfer of teachers;
- “Early retirement” of both teachers and clerical personnel;
- Unethical and improper fraternization among administrators, teachers and instructional assistants; and
- The improper use of instructional assistants to perform functions requiring appropriately credentialed special education teachers.

It was alleged that the principal created this hostile work environment and that this atmosphere had been in existence for more than three years. In September 2015, over 60 percent of the teachers at the Brentwood schools voted “no confidence” in the principal of the Brentwood Schools.

The California State Education Code sets forth the roles and responsibilities of both the elected County Superintendent of Schools, as well as the five elected trustees of the CBOE. The Education Code provides who has responsibility for investigating and resolving issues of a hostile working environment in county schools and who is charged with oversight of the safety and well-being of the special education students in these schools.

Many special education programs in Contra Costa County are located at school sites within specific unified school districts, and are under the “subject matter jurisdiction” of the school superintendents of those unified school districts with oversight by the local school boards. However, the special education programs operated by the COE are specialized programs that are not under the jurisdiction of a local school district.

The County special education programs have been created to serve students whose IEPs show special needs that are beyond the ability of a local school district to serve their educational requirements and to properly and safely care for them during the school day, either within or outside of a general school population. The COE administers these special education school programs in Contra Costa County. The student’s district of residence provides the funding to pay for the placement of the student in the COE’s classrooms and programs. The COE charges a student’s “home” district approximately \$44,000 per student per year for the County-operated special education programs. These funds are allocated by the Contra Costa County SELPA office to the special education schools based upon demonstrated need.

## Discussion

Complaints concerning the principal and the working environment at the Brentwood schools date back to at least 2012. The specific allegations about the working environment included the following:

- Instructional assistants allegedly made home visits, participated in IEP sessions, represented the school principal at meetings, and delivered messages, including reprimands, to various program staff members at the direction of the principal.
- The principal allegedly arranged improperly to have one or more instructional assistant positions reclassified so that certain instructional assistants could receive substantial increases in compensation.
- The reclassification allowed these instructional assistants to continue performing activities for which they were not properly qualified.
- New classified positions are supposed to be based upon demonstrated need but there was no need.
- The reclassified instructional assistants were granted pay increases retroactive to the beginning of the school year when, in fact, the new positions had not been authorized at that time.
- The unapproved activities of the instructional assistants, prior to creation of the new position, may have been used to justify the creation of the new position.

The complaints and concerns regarding the principal at the Brentwood Schools, also included allegations that the principal favored some teachers and staff, while seeking to arouse fear and mistrust in others. Allegedly, teachers and staff lacked a mechanism to voice their concerns about these issues and feared that airing their concerns would lead to retaliations or other adverse impacts on their job security or careers. The COE school policies did not set forth a specific procedure for making complaints regarding an immediate superior or peer without risk to one's job security or standing. Nor did the Brentwood Schools provide anonymous "suggestion" or "complaint" boxes.

According to the Grand Jury's sources, while complaints and concerns about an alleged hostile working environment had been voiced in varying degrees by teachers and staff at the Brentwood schools since at least 2012, matters reached a head in late 2015. It was reported to the Grand Jury that by this time, various teachers and staff, as well as the parents of certain special needs children, became concerned about the safety of staff and students at the Brentwood Schools. In September 2015, the teachers recorded a CTA vote of "no-confidence" in the Brentwood School's principal with the assistance of their union representative. On October 21, 2015, forty-plus staff, teachers, and parents from the Brentwood Schools appeared in front of the CBOE in a public meeting. Seventeen of them spoke at the public meeting about matters relating to personnel and student safety. At this CBOE meeting, the CTA union representative provided to each Board member and to the COE a packet containing copies of written complaints from teachers and staff at the Brentwood Schools as well as the vote of "no confidence" in the principal of the schools. Many of the complaining staff from the

Brentwood Schools reappeared in front of the CBOE on November 4, 2015, again voicing the same complaints. A number of them stated they felt there was nowhere else for them to complain.

Educational professionals interviewed by the Grand Jury agreed that good staff morale and positive parent attitudes are critical to the success of special need students. As one of them put it, "If the teachers and parents are happy, the kids are happy!" In this case, the professionals also expressed the opposite: the tension and apprehension on the part of the involved teachers and staff had a negative impact on the students, many of whom are non-verbal, but communicate their emotional feelings by facial expression, body movement and other non-verbal means. In at least one case, it was reported that parents had removed their student from the school due to the hostile environment. The stakes in resolving "hostile environment" issues early are important in any organization. They are particularly important in a special needs school.

### **The Role of the Unions in Resolving Member Complaints**

Credentialed teachers and instructional assistants are represented by unions, with teachers represented by the California Teachers Association (CTA), and "classified" employees, such as instructional assistants and clerical staff, by Public Employees Union, Local One. Each union assigns a representative to the respective teachers and staff at each school. Additionally, each school, or "unit", has its own elected local union leadership and representatives.

Unions encourage their local representatives to resolve personnel issues at the local "unit" level rather than refer them to the union leadership for action by means of an official contract grievance or by other submitted complaint. Once a complaint by a union member is received by the union, the union is obligated to meet with the COE and apprise them of the complaint. The union keeps contemporaneous notes of these meetings with COE personnel in case the complaint escalates. Both unions maintain files of all correspondence with the COE as well including, but not limited to, formal letters and emails.

In this case, union representatives met with COE on a number of occasions, starting in 2012 to voice concerns about the working environment in the Brentwood Schools. Had the COE undertaken a more vigorous investigation of these complaints and acted on them, the problem in the working environment at the schools might well have been resolved earlier and avoided the public outcry that occurred at the October 21, and November 4, 2015 CBOE public meetings.

Both union contracts are published on the COE website at:

<http://www.cccoe.k12.ca.us/supe/hr/agreements.html>

While the CTA-COE contract relates to credentialed teachers, the Local One-COE contract for “classified” employees such as clerical and instructional assistants has a listing of specific and agreed-upon positions under the contract. The COE may not employ anyone who is “classified” in any other position other than those on this listing without going through a labor-management “Reclassification Committee”. The job descriptions for “classified” employees are generated through collective bargaining by the union and COE.

No changes to job classifications are allowed except through the reclassification process. This process is required whether the job description is revised or whether a new position is created. For example, there is a job description on the list for an “Instructional Assistant”, but there was no job description prior to June 1, 2014 for a “Behavioral Support Assistant”. Employees classified according to a specific job description must adhere to that description unless they change jobs on the contract list. They are not permitted to perform duties not in their assigned description, nor may they perform duties in other job descriptions without being properly assigned.

The reclassification of one or more instructional assistants to the position of Behavioral Support Assistant does not appear to have been done according to the requirements of the contract, and this may have contributed to the perception of a biased work environment by other teachers and staff. The COE has now reversed this reclassification by reducing hours worked, restructuring duties and correspondingly reducing compensation for the new job classification.

### **Union and Other Complaint Procedures**

In neither union contract is there any specific protocol or procedure for teachers and staff subject to these contracts to file complaints about their colleagues or their immediate supervisors. The only mention in the contracts relating to complaints is the process known as the “Uniform Complaint Procedure” (UCP).

The UCP is a general complaint procedure created by the California Department of Education and issued by the COE, applicable to complaints by pupils, parents, and staff members. It does not set forth specific avenues for a teacher or staff member to file a complaint against a superior without fear of retaliation or other adverse impact, other than the protections afforded against retaliation provided by applicable law. In practice, teachers or classified employees typically file such complaints with their respective union, with the hope that the union can resolve it. Because such complaints do not typically meet the definition of a formal “grievance” under the terms of the union contract, the only recourse the union representative has is to try to resolve the matter informally. In such cases, the union representative brings the complaint to the attention of the COE, meet with COE representatives, and seeks to resolve the matter. However, there does not appear to be an appeals process if the COE refuses or fails to resolve such informal complaints. Further, there is no written policy or procedure on the COE’s part that

defines how an “investigation” of a union complaint, as opposed to a formal grievance, is to be conducted, by whom, how long it will take, and who is privileged to participate in it.

When the complaints about the working environment at the schools were not resolved by the COE after discussions with union representatives, staff and teachers felt they had no other recourse but to bring their concerns to the attention of the County Board of Education (CBOE) at a public meeting on October 21, 2015. However, at that meeting, the Superintendent advised the CBOE that issues relating to personnel in County schools were matters falling solely under the Superintendent’s jurisdiction and not a matter for the CBOE.

Regardless of the legal responsibility for personnel issues, the Superintendent and CBOE should cooperate to put together a complaint procedure that is both effective and preserves due process. Such a procedure would assure teachers and staff that their complaints will receive serious, impartial, and prompt attention, even when they concern a superior. The process should result in an explanation of what action will be taken in response to the complaint, or reasons why no action will be taken after careful review.

## **Other Matters of Concern in the Special Needs Schools**

### **1. Incident Reports (IRs)**

Special Education programs involve, by definition, “Special Needs Children”. Many of these children are non-verbal and are so severely disabled that they are confined to wheelchairs and need on-duty nurses during the school day to watch over them so they do not injure themselves, to administer appropriate medications, and to provide needed hygiene.

In all cases, behavior must be closely monitored as these children may lash out at other children or hurt themselves. When such incidents occur, a form known as an Incident Report (IR) must be completed by the teacher, reviewed by the school psychologist, and routed to the school principal for review and acceptance. The IR is required to be completed by credentialed staff.

There did not appear to be a formal training program at the Brentwood Schools for dealing with IR procedures, nor was a training handbook provided to teachers and staff regarding policies and procedures at the Brentwood Schools. The matter of IR procedures appears to have been covered only through verbal instructions at the beginning of each school year.

In some cases, instructional assistants were permitted to complete the form. These IRs are filed in the child’s personnel file at the school, with a copy sent to the COE. No evidence was found that the COE maintained a separate file of these IRs, or maintained any log of acceptance. It was reported that any time an IR was completed, the child’s parent was verbally notified. There does not appear to be a written policy or procedures

in place to handle IR reporting. Without reporting procedures, the COE and the local school administrator likely lack the ability to track and trend IRs. Such tracking and trending can indicate patterns of behavior, which enable appropriate corrective action. Local police have been called to the Brentwood Schools from time to time due to either mandatory reportable situations of suspected child abuse, or severe behavioral situations involving students. No evidence of a centralized file was found of these police interventions at the Brentwood School, nor were any copies ever forwarded to COE subsequent to each event. There likewise does not appear to be any written policy or procedure in place at the COE to track police intervention and reporting. Again, a lack of policies or procedures may handicap the COE in its ability to track and trend such occurrences and then determine the appropriate corrective action.

## **2. School Evaluations:**

Currently the only published “scorecard” for Special Education programs is the School Accountability Report Card (SARC):

<http://www.cccoe.k12.ca.us/stsvcs/sarcs.html>

This report is a generalized report that applies to all public schools and does not have relevant measures that apply only to Special Education schools. Thus, it is difficult for a parent to obtain any objective measures or benchmarks that reflect the quality of instruction and outcomes achieved of any given program at a special needs school. Instead they have to rely on word of mouth information from other parents or involved professionals to make decisions on which school would best serve their child.

While the very nature of IEPs is to provide “individual education plans”, they can still be measured as to their overall effectiveness, and again track and trend the goals that were or were not met. It was also learned the SELPA office does not track and trend how specific Special Education schools are performing.

## **FINDINGS**

- F1. There are over three years of complaints about a hostile work environment at the Brentwood Special Education Schools operated by the COE (Brentwood Schools).
- F2. Complaints of a hostile work environment at the Brentwood Schools were made known to COE from at least 2012 through 2015, both verbally and in writing by various entities including the two labor unions representing staff at the school locations.
- F3. Although complaints continued to be made about a hostile work environment at the Brentwood Schools from at least 2012 through 2015, the complaints were not resolved to the complainants’ satisfaction.

- F4. A vote of no confidence in September, 2015 by the Brentwood Schools teachers against the principal was passed by over 60 percent of CTA members.
- F5. On at least two occasions, evidenced by audio recordings and the published CBOE meeting minutes, teachers appeared at the Board of Education public meetings to voice their complaints about the work environment at the Brentwood Schools.
- F6. Over forty teachers appeared at the COE/CBOE public meeting on October 21, 2015 and seventeen of those teachers were permitted to make public comment.
- F7. The perceived hostile working environment at the Brentwood Schools may have had a detrimental impact on the students themselves, many of whom reportedly expressed signs of distress through body movement, sounds or facial expressions.
- F8. There is no written protocol for staff of the Brentwood Schools to follow in deciding if, how, and when to file an incident report on any incident occurring in their classroom or facility.
- F9. Verbal instructions, but not written instructions, are given to staff of the Brentwood Schools at the beginning of each school year concerning when and how to file an incident report.
- F10. Incident reports are not logged into any central index either at the Brentwood Schools or the COE.
- F11. Incident reports are not tracked and trended for possible patterns or recurrent problems either by the Brentwood Schools or the COE.
- F12. Neither the Brentwood Schools nor the COE have a written protocol concerning who should complete, review, and respond to incident reports.
- F13. At times, incident reports at the Brentwood Schools have not been given to the school psychologist for review prior to being finalized, as required in the verbal briefings to school staff.
- F14. Currently incident reports are only filed in the student's personnel folder and a copy is forwarded to the COE, but no copy is maintained elsewhere at the Brentwood Schools.
- F15. The incident report form used at the Brentwood Schools requires the class teacher of the student involved in the incident, school psychologist, and principal to sign the form.
- F16. Incident reports at the Brentwood Schools were sometimes completed by an Instructional Assistant.

- F17. It was reported that police were called to the Brentwood Schools on a number of occasions.
- F18. There is no written protocol requiring the Brentwood Schools to maintain a record of police visits, nor to require them to report the event to the COE.
- F19. The Brentwood Schools do not provide their staff with a handbook to inform them of school protocols and complaint procedures.
- F20. Instructional Assistants at the Brentwood Schools are not provided a handbook concerning rules and requirements related to the job.
- F21. Instructional Assistants at the Brentwood Schools are not required to attend orientation meetings at the beginning of each school year.
- F22. The Brentwood Schools have no protocol that would allow school staff to make anonymous suggestions concerning how to improve the school environment.
- F23. There is no procedure or mechanism that allows staff at the Brentwood Schools to anonymously report concerns to the COE about issues with peer staff and Peter supervisors, such as personality conflicts, favoritism, nepotism, or hostile work environment.
- F24. The Brentwood Schools, the COE, and the CBOE do not maintain a record by special education school location for the reason of staff turnover, e.g., transfer, resignation, retirement, etc.
- F25. The COE publishes School Accountability Report Cards (“SARC”) on its website that provide an annual picture of the schools in the County under the auspices of the COE.
- F26. While there are published SARCs for several special education locations, the data published, other than the front page, does not accurately pertain to the schools named.

## **RECOMMENDATIONS**

- R1. The COE should consider tracking and trending complaint data at the Brentwood Schools by location to better identify the nature and extent of staff concerns, and to respond to such complaints promptly; after identifying funds to do so.
- R2. The COE should provide all Brentwood Schools’ staff with written instructions as to when, how, and to whom incident reports should be copied and routed.
- R3. The COE should require each of the Brentwood Schools to maintain a log of incident reports, in addition to filing a report in a student’s personnel file. The COE

should require that each incident report and any accompanying analysis be forwarded to the COE for their review to decide the appropriate follow-up action, if any.

- R4. The COE should require that instructions for completing incident reports provide that the incident report be completed only by the class teacher before being forwarded to the school psychologist, principal and the COE.
- R5. The COE should consider establishing a written protocol to require a log of incident reports and require each of the Brentwood Schools to maintain a file of incident reports so that they may be easily retrieved.
- R6. The COE should consider regularly reviewing incident reports from the Brentwood Schools to determine any patterns, needed corrective action, and follow up necessary to ensure such corrective action was accomplished, and requiring school principals to do the same; after identifying funds to do so.
- R7. The COE should consider producing an employee handbook for the Brentwood Schools which is reviewed and approved by the COE, and regularly updated; after identifying funds to do so.
- R8. The COE should require that all staff of the Brentwood Schools receive a copy of a handbook for employees, and updated copies.
- R9. The COE should consider requiring that instructional assistants at the Brentwood Schools attend the part of the annual orientation for teachers that relates to Instructional Assistants; after identifying funds to do so.
- R10. The COE should consider requiring each of the Brentwood Schools to maintain a suggestion box to provide a mechanism for staff to anonymously provide ideas concerning how each school environment could be improved.
- R11. The COE should consider regularly reviewing with Brentwood Schools' administration suggestions received to determine if there are any transferable best practices that could be shared with other schools.
- R12. The COE should consider immediately drafting a written protocol that will allow Brentwood Schools' staff to bring concerns to the attention of the COE in a timely manner and without fear of possible retaliation so as to preclude further escalation to a grievance or vote-of-no-confidence level; after identifying funds to do so.
- R13. The COE should create a form that can be used in a staff exit interview that clearly indicates the reason for terminating employment with the Brentwood Schools.
- R14. The COE should consider requiring that information in forms completed during exit interviews concerning reasons for employment termination at the Brentwood

Schools be categorized so that specific trends can be detailed for use in recruiting and retaining employees and this accumulated data can be reduced to an annual report to the CBOE and made available to the public; after identifying funds to do so.

R15. The COE should consider creating SARCs applicable to Special Education programs that track data such as performance, progress of the special education programs and IEP goals met to give a true picture of the effectiveness of the programs offered.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
County Office of Education Superintendent	F1 – F26	1-15
County Board of Education	F4, F5, F6 & F24	N/A

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson

725 Court Street

P.O. Box 431

Martinez, CA 94553-0091



**A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY**  
725 Court Street  
Martinez, California 94553


Report 1612

# **Foster Care Under AB 403**

**A Disconnect Between Policy and Reality?**

**APPROVED BY THE GRAND JURY:**

Date: 6/14/16

  
\_\_\_\_\_  
MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 6/10/16

  
\_\_\_\_\_  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1612

## **Foster Care Under AB 403**

### **A Disconnect Between Policy and Reality?**

**TO: Contra Costa County Board of Supervisors**

#### **SUMMARY**

In January 2017 a new law, AB 403 (Stone) will go into effect. This law requires the California Department of Social Services (CDSS) to begin a multi-year plan for replacing privately run group foster homes with short-term residential treatment centers (STRTC). These specialized treatment centers are to serve as homes where foster youth will stay no more than six months before moving to a foster home.

Each California county must create a plan to implement the requirements of the new law and be prepared to place all youth currently living in group homes into foster homes. For Contra Costa County (County) this requires finding foster parents or close relatives to provide homes for approximately 150 of the County's most vulnerable youth.

The County has made conscientious efforts to comply with the law (including formulating its own plan as required by CDSS). However, a significant gap remains between what is currently planned and what must ultimately be accomplished.

While restructuring the current group home system is desirable, there are not enough foster homes with the specialized training and experience needed to handle the youth presently living in group homes. Transferring these youths into foster homes, without an appropriately funded, carefully thought out and managed program, risks failing them.

#### **METHODOLOGY**

The Grand Jury conducted multiple interviews with County staff and representatives of non-government organizations, reviewed official reports, visited a Foster Family Agency (FFA- See Glossary) home, and conducted on-line research to obtain information regarding foster care in the County.

## BACKGROUND

Foster care has been a hot topic since the State of California passed AB 403 to end the “warehousing” of youth in group homes. Under this plan, youth in group homes will be placed into kinship caregiver homes or foster family homes. AB 403 also seeks to place youth who are new to foster and group homes with relatives or close family friends whenever possible. AB 403 increases the financial support given to relatives or close family friends to the same level that non-relative foster parents receive.

One of the many important functions of County government is to operate the foster care system as mandated by the CDSS. The purpose of the foster care system is to protect children under 18 who have lost their biological parents or who are otherwise unable to live with their biological families or close friends.

Currently, the County has a shortage of foster family homes to care for youth in group homes. Group homes are used as a last resort for foster youth who are too difficult to handle in a typical foster family home. Group homes are relatively expensive to operate and the outcomes of youth placed there have been statistically worse than those placed in foster family homes.

The County has the responsibility of finding foster parents willing to accept these children and raise them as their own. The County, through CDSS, reimburses the foster parents for the living expenses of the foster child at rates set by the State. It also monitors foster placements and furnishes services and support to the foster parents.

In October 2015, there were 1,523 youth and other dependents under the jurisdiction of the County’s Child Welfare Services (CWS). The breakdown of those under CWS jurisdiction was as follows:

- Youth under CWS jurisdiction in all types of home-based foster care = 801
- Youth under CWS jurisdiction still at family residence = 566
- Youth under CWS jurisdiction placed with group homes = 156
- Youth placed out-of-County = 384
- Youth placed with care of relatives (kinship care) = 307
- Youth placed with in-County foster homes (not kinship care) = 110
- Supervised independent living and other types of care = 60

While there are 338 “non-related, licensed foster homes” in the County, not all of these homes are a match for the youth that currently need fostering. The above breakdown shows there are currently 156 foster youth placed in specialized group homes (with up to five other foster children). These youths cannot be placed in individual foster homes because of physical and/or behavioral issues. The staff in the group homes have specialized knowledge and experience in handling these challenging youth. In addition, the group homes have social workers and support staff available and, depending on the

level of care, some provide health services as well. In Contra Costa County, the group homes are operated by Youth Homes Inc. of Pleasant Hill, Paradise Adolescent Home of San Ramon, and Aspiranet of Antioch.

Once a foster child turns 18 years old, he or she has the option to leave the system or stay in foster care for up to three more years. The youth opting to extend their foster care are provided for by the County until they reach the age of 21 and do not necessarily require individual foster home placement.

CFS has yet to measure how foster youth fared after being in the program, such as whether they graduated with a GED and/or were able to go to college, become employed, etc. While it is difficult to gather such data about outcomes, this data can be obtained from reports that are written about each youth as they exit or age out of the system, and is important in helping to determine which foster care situations yielded the best results.

### **AB 403**

To better meet the needs of youth in foster care and to promote positive outcomes for these youth as they transition out of foster care, the California legislature passed AB 403 in October 2015. AB 403 requires the following changes:

- An update to the assessment process so that the first placement is the right one
- Establishment of core services and support for foster youth, their families and resource families
- Strengthened training and qualifications for resource families providing care to foster youth and congregate care (Group Homes) facility staff
- To the extent that the children are provided needed services and support, a transition from congregate care to foster family home based care with resource families
- Transformation of group homes into a new category of congregate care facility defined as Short-Term Residential Treatment Centers (STRTCs)
- Revision/increase the foster care rate structure
- Requirement that STRTCs and treatment foster family agencies be certified by counties through their mental health plans
- Performance evaluations of providers

The CDSS believes that recruitment of non-related caregivers alone will be insufficient to meet the foster care needs of the County. Greater effort must therefore be made to find, retain and support related caregivers. However, simply finding related caregivers is also insufficient. These relatives will most likely need to be provided with support and services in their home.

Research has shown that foster youth placed in kinship (related) care experience fewer placements and improved well-being. These youth are more likely to have frequent and consistent contact with siblings and birth parents, which can aid in reunification efforts. The same research suggests that these foster youth: i) will have fewer negative emotions about being placed into foster care than youth placed with non-relatives; ii) are less likely to run away; and iii) are more likely to graduate from high school.

AB 403 increases reimbursement for care by a close relative (kinship care) to the same level as for care by non-relative foster parents. While kinship care is desirable, there are often difficulties in qualifying such families. They may not meet the standards required for state licensing. For example, the house may not have the required number of bedrooms or someone living in the household may have a criminal record that disqualifies the household (although this disqualification standard is less than clear).

On November 18, 2015, the County sent CDSS its *2015 Foster and Relative Caregiver Recruitment, Retention and Support Plan*, as required by law. The Plan contains 16 proposals for finding a sufficient number of home-based family and kinship care family settings for youth currently in group homes. This plan anticipates finding short term capacity for 94 low-risk youth and long-term capacity for 30 high risk youth currently in group homes. The latter group of 30 youth would remain in STRTC until considered ready for relocation to a home-based family setting with related or non-related caregivers.

The plan proposes finding 124 appropriately trained and supported foster parent families. CDSS has provided the County until January 2017 to implement the plan. To achieve the goals outlined in AB 403, the County has requested \$3.4 million in funds from CDSS. The latest of three responses from CDSS on March 2, 2016 allocated \$443,938 to be spent on six of the proposed county programs by June 30, 2016. The County plans to use these funds for programs prior to the state imposed spending deadline. However, the County also recently requested an extension to spend the funds, as the current schedule does not permit sufficient time to set up and prepare contractual agreements for services.

## DISCUSSION

In her 2014 book about the broken foster care system, *To the End of June: The Intimate Life of American Foster Care*, author Cris Beam writes, *“And yet nobody – not the kids, not the foster or biological parents, not the social workers, the administrators, the politicians, the policy experts – thinks the system is working.”*

Foster care is intended to provide a temporary safe haven for children who are abused and/or neglected. However, temporary is not always brief. On average, a foster child spends 23 months in foster care, often living in multiple foster homes. Nearly 20 percent of foster children experience 10 or more placements.

The current outcome for most foster youths is disgraceful and heart breaking. Almost 40 percent end up homeless, another 40 percent will be incarcerated, and only 20 percent will lead relatively stable, productive lives.

AB 403 is designed to restructure and eventually replace the state's system of foster group homes. The group homes are meant to provide therapy and care for the state's most troubled youths. In recent years, however, several group homes have come under intense scrutiny because of sexual abuse allegations, drug prescription overuse, violence and frequent runaways.

The law, based on a 56-page report from the CDSS, is intended to overhaul group homes, which are viewed as ineffective and costly. Under the new law, group homes will undergo a new accreditation process, retrain staff, and will be designed to provide intensive, short-term assistance to youth. The legislation also aims to improve the process by which children are assessed, so that they are placed in STRTC's that will best meet and treat their specific needs. Additionally, CDSS will create a new, more rigorous method of oversight.

There is much support for the elimination of group homes under AB 403: "You have to break eggs to make an omelet." Unfortunately, there are certain youth who manifest such extreme behavior that it is unsafe or unreasonable to place them in a family-based setting. However, group homes must never be viewed as a long-term placement option. Rather, group homes must only be used as a short-term treatment option, a clearly defined step in the permanency/treatment process. This will require group home providers to have the capacity to provide short-term treatment. These providers must also be team players in a broader collaborative planning process and be willing to transfer youth as quickly as possible to less restrictive, permanent foster homes.

For AB 403 to work in Contra Costa County, the County must meet a number of challenges, such as recruiting and training an increased number of compassionate foster families, including the relatives of foster children. These families must be sufficiently supported and have the skills to nurture and develop youth who may have suffered years of trauma and can exhibit difficult and in some cases violent behavior. If the County can find such families, fewer youth may need to enter the group care system. Group homes will be reclassified as STRTCs and used only for youth whose mental health and other needs are most extreme. However, youth currently living in group homes will not be relocated until foster parents are recruited, trained and ready to accept them. It is anticipated that AB403 will not be fully implemented until January 2019.

The challenge is finding enough of those qualified foster caregivers, or as they will be called "Resource Parents." AB 403 provides more than \$17 million to recruit foster care caregivers in California. Each county is required to report to CDSS the number of families that the county needs to recruit, how the county intends to meet the need, and how much the recruitment effort will cost. The County submitted a plan on November

18, 2015, requesting \$3.4 million in funding to achieve the goals of AB 403 and was granted \$443,938 on a one time basis.

Between October 2010 to October 2015, the number of Licensed Foster Homes in the County dropped from 421 homes to 338 homes. Over the same period, new license applications were relatively flat at 100 per year, while the number of new licenses issued dipped from an average of 60 per year to below 50 per year. Foster home closure averages increased from slightly over 40 per year at the start of the period to 71 per year at the end. During the past several years, the County made up for the deficit in county licensed foster homes by placing foster youth in out-of-county foster homes.

The County needs to recruit additional foster families to care for the 384 youth currently in foster homes outside of the county. Most of these youth are expected to remain with their current foster parents. However, with the advent of AB403, other counties may have a reduced surplus of foster homes, as their own group homes are closed and displaced foster group home youth will need to be placed in their “home” county. Accommodating youth who are currently fostered out-of-county, but who may return to CCC, adds additional urgency to the recruitment of foster families in the County.

To house the youth presently in group homes, assuming only one youth to a home, the County would need to add 124 caregiver homes. This shortage is exacerbated by attrition among foster families (those opting out of the system). In the past 5 years, the attrition rate was about 50 foster caregivers each year. The most common reasons for attrition are: i) their foster children were adopted; ii) the youth were termed out; or iii) the caregiver decided to retire; and iv) lack of resources to support their care. For these reasons, replacement foster homes must be found,

Finally, many of the County’s currently available foster parents want to adopt youth in the birth to 5 years-old age group and are not willing to foster youth who are teenagers, and often have difficult behavior issues. Consequently, to comply with AB 403, the County needs approximately 174 (the current shortfall of 124 foster homes plus 50 for the expected attrition rate) new homes with foster parents willing and able to handle teenage youth. The County has not performed a gap analysis to determine the number of foster parents needed to accommodate various categories of youth from group homes.

Several child welfare experts anticipate that many current California group homes will close rather than meet the bill’s new, more stringent requirements. These experts worry that if the foster family recruiting effort fails, the bill will only increase pressure on an already stressed system. Consequently, the existing group homes will need to continue operating, and the foster youth currently residing at the group homes will be given six month extensions until qualified foster homes can be found.

Marie K. Cohen, a former social worker in the District of Columbia, sees this as a major flaw in the legislation and has written about it for the Chronicle of Social Change, a

California-based child welfare website. She asks, *“If you have a drastic shortage of foster homes and you are closing group homes, where are these children going to go?”* The County’s “2015 Foster and Relative Caregiver Recruitment, Retention and Support Plan” lists 16 proposed program activities. The activities in the plan include providing child respite care for foster parents, mental health supportive services for caregivers, hiring a caregiver recruiter, and providing direct financial support to relatives. Total cost of proposed programs if approved by CDSS would be \$3.4 million annually. At this time, the County alone has been granted only \$443,938, and this amount must be spent by June 30, 2016. This leaves the County \$2,956,062 short of what the County has determined it needs to be successful, and is also required to spend the provided funds without proper research and Requests for Proposal (RFP).

To comply with AB 403, the County needs two full time recruitment coordinators, among other necessities. The current coordinator’s time is shared with two other major job assignments. Past coordinators managed to recruit 40 new foster parents each year on average. Last year, only 11 new foster parents were recruited, an all-time low.

Hiring foster parent recruiters is both a challenge and a key to implementing AB 403. The recruiters need to work weekday evenings and weekends for better access to potential foster parent recruits, and should present in front of different groups including faith-based organizations. To this end, the job classification for foster parent recruiter should be revised and updated. Furthermore, the recruiters must be trained about how and where to recruit the best possible candidates. While FFA’s Chief Executive Officer frequently recruits foster parents, rather than line personnel, higher level County staff do not appear to be as actively involved in the recruiting process.

In the 2009-2010 Grand Jury Report # 1011 “Our Foster Children are in Jeopardy,” the Grand Jury reported the recruiting unit, then called Home Finding Unit, had been reduced from a staff of 8 to 2.9 Full Time Equivalents. To compare, there is now only one employee acting as the foster home recruiter, allocating just half her time to recruiting new foster home families.

The County generally uses foster families recruited by County staff before using a family recruited by FFA, because County personnel know those families better than FFA recruited families. Additionally, cost plays a factor in the County’s decision since an FFA family costs two-thirds more than a County-recruited family.

To succeed in complying with AB 403 and meeting the needs of the County’s foster youth, experienced foster parents must be recruited and retained and close relatives, who are willing and able to take on foster youth, must be located. Identifying and recruiting “empty nest” families who have successfully raised children and for whom the modest foster allowance (payment) may be less important, is one strategy for finding experienced foster parents.

AB 403 places great emphasis on finding a close relative to take a child. It is often time-consuming for CFS staff to locate close relatives and persuade them to foster a child. Such placements often involve extra expense when the close relative lives out of state or outside the country because CFS must monitor the placement. The County plan anticipates that, if successful, close relative placements will absorb 30 of the foster children currently in group homes. Success is not assured, however, since it is presumed that kin or close family friends have already been contacted and asked to take a child into their care, but have not agreed to do so.

Part of the solution to the foster home shortage is to expand the use of kinship care by training and paying these “replacement parents.” There is a current program called “Approved Relative Caregiver” (ARC) which pays to adult relative caregivers of federally ineligible children the basic rate paid for other children who are federally eligible. ARC recognizes a policy preference for relative caregivers and enables the funding to support such placements. Eligible relative caregivers must be approved and live in California. Caregivers who are approved must meet health and safety standards that mirror those for licensed foster parents. Further, the children must be under the jurisdiction of the California juvenile court in a county that has opted in to the ARC Program, not be federally eligible under Title IV-E of the Social Security Act, and live in California.

The County could retain non-profits to help recruit and train experienced foster families that have successfully raised a foster child. The non-profit would earn a finder’s fee, such as a percentage of the monthly reimbursement rate, for each new experienced foster parent used by the County. The current monthly reimbursement rate is \$1200 per month.

Potential cost savings from reduced dependence on group homes can be calculated as follows based on a monthly reimbursement rate for foster families of \$1,500 per month:

- Current cost for 80 foster children living in group homes:
  - \$8,000/month (avg.) x 80 youths = \$640,000/mo.
- Bonus funds (included in cost above) to reserve group home space:
  - 80 youths x \$2,000 = \$160,000
- Current cost for 80 foster children living in foster homes:
  - \$1,500/mo. x 80 youths = \$120,000/month.
- Additional mental and social services at foster homes:
  - \$500/mo. x 80 youths = \$40,000/month
- Comparison:
  - Group homes = \$640,000 versus foster homes= \$160,000 (\$120,000 + \$40,000).

**Total monthly savings would be ≈ \$640,000 - \$160,000 = \$480,000/mo. or \$5.76 million annually.**

For these savings to be realized, 80 group home children would be moved into special needs caregiver homes—a tall order, since there are only five active FFAs in the county. The reality is that the projected “savings” will have to be spent up-front to recruit and provide wraparound support for the new resource foster parents. Based on current rates of recruitment, it will take several years of sustained, focused recruitment by the County and FFAs to locate and train a sufficient number of new foster family resource parents to the level required.

Recruitment of new resource parents to make up the shortfall would also help out-of-county foster children move back to the County. Current costs to administer the out-of-county youth would be reduced as there would be less travel time to out-of-county locations and increased efficiency to supervise in-county homes.

The best way to ensure the “resource parent” system works is to increase the pool of homes available. The placement staff can select the resource parent who they think is the best fit rather than be forced to take the only foster home available or to place the youth out-of-county.

### **Foster Care and Mental Health**

Currently, when foster youth first come into the CFS system, they usually go to a County CFS placement center, where an initial assessment of their needs is conducted, including a mental health screening. Mental Health is a division of the County that deals with mental health related issues. Currently Mental Health does not have specialized staff to evaluate foster youth, nor does it provide guidance in placing these youth with foster parents. By law the County has just 23 hours to evaluate a child who is being placed in foster care, select a foster home and coordinate the child’s move to foster care. There have been occasions when the required screening by Mental Health was not completed before the selection of the foster home. This leads to a lack of vital information needed to guide the placement decision and could pose risks to the youth and the foster parents.

CFS and Mental Health have had conflicts in the past that management has failed to resolve. This situation will become more critical as many of the youth in group homes have mental health issues that pose unique behavioral challenges.

The County’s mental health professionals are prevented by the terms of Memoranda of Understanding (MOUs) from providing after-hours care, which is often when that care is most needed. Consequently, the County has to outsource these services after hours to independent mental health contractors, such as Seneca, at increased expense to the County. The need for such care is likely to increase as the youth residing in group homes who have behavior issues transition to new foster homes. In addition, continuing mental health care when youth are moved from one foster parent to another can be difficult.

Obtaining mental health records regarding diagnosis, treatment and prognosis of foster youth poses another challenge for CFS trained staff in providing mental health care to foster youth. This data is critical to the assessment and placement of these children. However, HIPAA regulations and client privacy can make it difficult to obtain these important records when support activities are separated into different departments.

There is an urgent need for family counseling to assist the family in crisis and prevent the youth going into foster care, unless absolutely necessary. For example, youth have been placed into foster care after receiving Mental Health care after a crisis at their home under Section 5150,<sup>1</sup> because the parents did not want them to return home.

There are many potential advantages to creating a Mental Health unit in CFS:

- Better coordination between CFS and Mental Health services
- Faster and more comprehensive assessment of new foster youth coming into CFS may contribute to a better informed selection of foster parents
- Better understanding and communication between the placement unit and mental health professionals on all issues regarding foster youth
- Better understanding by mental health professionals of the intricacies of providing foster youth services
- Quicker and better identification of the best type of ongoing therapy needed for foster youth
- More “just in time” therapy for youth, foster parents, kinship care givers, and group home staff, as mental health professionals would be more easily accessible
- Enhanced training of new and existing foster parents in relationship management and de-escalating potential crisis situations
- Ready availability of specialized and experienced mental health professionals able to coach and counsel CFS staff, Foster parents, and foster youth as situations arise
- Closer monitoring and tracking of all therapists treating foster youth
- Better identification of those therapists who are able to achieve the best outcomes with foster youth, and better ability to identify therapists who do not achieve consistent positive results
- Improved ability to assist in the training of relative care givers and increased guidance as to the availability of family counseling services

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<sup>1</sup> Section **5150** is a section of the California Welfare and Institutions Code (WIC) (in particular, the Lanterman–Petris–Short Act or "LPS") which authorizes a qualified officer or clinician to involuntarily confine a person suspected to have a mental disorder that makes him or her a danger to self and others.

- Better training of CFS staff in all mental health issues and quicker diagnoses, treatment recommendations and prognoses of the foster youth
- Less friction and better coordination between two large County departments
  - For example, County has initiated a Continuous Quality Improvement (CQI) [see Glossary] process to evaluate the handling of cases to determine lessons learned, resources that worked, and various compliance aspects. At present, this process is done by CFS staff and does not include personnel from Mental Health who are frequently key players in the therapy programs needed by the youth and could add valuable insights.

### **Changes to the Foster Care Model**

The big change in foster care attributed to California’s “Continuum of Care Reform” (CCR) is exemplified in the role of a “foster family,” soon to be rebranded in California as a “resource family.” The practice of a foster child going into a group home and basically remaining in the “foster care system” until they age out is ending. Group home placement or “congregate care,” as some refer to it, is being dismantled and reconstructed as only a short-term service provider.

Therapeutic Foster Care has moved to center stage as the intervention of choice for children and youth, including those who have been commercially sexually exploited (CSEC) and whose lives have been impacted by trauma and adverse childhood experiences.

The role of the traditional foster parent is transforming into a “professional” parent who serves as a resource for the foster child. There will no longer be “long-term foster care.” In the new system, resource parents will only provide short-term care to help expedite the child’s move to permanency.

Under this new model, resource parents will provide the following types of care:

- Emergency shelter services
- Short-term foster care bundled with permanency services and support
- Therapeutic Foster Care, with resource parents playing a critical role in the treatment process in order to stabilize children’s behaviors and enhance successful permanency placement
- Adoption/guardianship, with resource families becoming the child’s permanent family

Many County-recruited foster families tend to be younger and some are mainly interested in taking foster youth with the hope of eventual adoption. So, while there may be a number of potential foster parents on the rolls, the number can be deceiving in

that few are available for the placement of teenage youth. The majority of the group home foster youth needing placement are teenagers.

### **Foster Family Agency (FFA)**

By statute, FFAs are organized and operated on a non-profit basis and are engaged in recruiting, certifying, and training foster parents; providing professional support to foster parents; and finding homes (other temporary or permanent) placements for children who require more intensive care. Licensed FFAs often work to move children who are residing in group homes into foster homes after the County has been unsuccessful in finding foster homes for them.

Foster parents certified by FFAs tend to be more experienced and many were previously foster parents under the County system. FFA management provides more support than the County does to these parents. FFAs furnish social workers and their caseloads are approximately 50% less than the County social worker caseloads (average FFA social worker has a caseload of 15 foster youth compared to an average of 30-35 for a County social worker). FFAs are also often faith-based, such as Hosanna Pathways and Agate Homes.

### **Faith-Based Foster Parents**

Experts have reported that many faith-based foster parents are successful as they usually had many activities to engage the foster child and make them feel more at home. Additionally, faith communities can provide support for the families who take on the challenge of parenting children who need extra care and attention. For this reason, these communities have the potential to be a center of caring and hope for children who have suffered neglect, abuse, and disappointment.

Some of the positive reasons to seek recruiting foster parents in communities of faith include the following:

- The shared faith of people within a congregation can provide comfort and support to families in times of crisis.
- Congregations provide an extended family network for foster and adoptive families that often need that support, especially when they are raising children with serious physical, emotional, and/or behavioral problems.
- Children in the child welfare system desperately need to feel a sense of belonging and connection, and they often find this as a member of a religious family and a church congregation.
- Families recruited through their religious institutions often come to see foster care and adoption as a way of living out their faith, answering a calling, and making a difference in the world.

- In addition to needing a strong community of people to support them, adoptive families sometimes need crisis-intervention services. A church or synagogue can provide a safe, familiar setting for counseling and other professional services.

To the extent that faith-based foster parents are more motivated and can more easily draw on community support, the outcomes of faith-based foster children are often better than children fostered in secular homes. Children tend to stay with faith-based families longer than the average and the youth gain an increased sense of belonging to a community. Before such a placement is made, the foster child is informed that the foster parents are religious and attend church services and programs regularly. To be part of this foster family, the foster child is expected to participate in their religious practices. If the foster youth declines, then the child is placed into another available foster home.

To be effective, child welfare professionals need to recognize that faith, religion, spirituality, and community are significant dimensions of the human experience and can have a powerful influence on people's well-being. When we connect foster youth with families in their communities, as well as the right social services, we provide youth a better opportunity to develop their talents, interests and social lives within a community to which they feel connected.

## **Conclusion**

Being a foster parent is not easy and requires special skill sets and training to succeed. While there are many reasons people become foster parents, some people do so because they have a higher calling based on love of another human being or as a commitment to their spiritual faith.

The deadline for full implementation of AB 403 is January 2019. This allows the County limited time to react and respond to the challenge of finding, training and supporting enough parents willing to foster children who have extreme mental health or other needs.

The County needs to redouble its efforts to locate, recruit and support more kinship and foster care givers, enhance its current programs, seek more funding to support the transition of youth now in group homes, as well as to provide in-county space for those youth placed in out-of-county care. This work must be done in time to comply with the January 2019 deadline set and to provide the County's most vulnerable youth with more permanent care, and avoid what one interviewee described as "a train wreck waiting to happen".

## FINDINGS

- F1. The attrition rate of families in the County who are willing to foster children is high.
- F2. Many potential foster parents have been eliminated from the list of currently available foster parents, after it was found that they were only interested in adopting and were not willing to take in older foster youth.
- F3. The County uses FFAs after first trying to locate suitable potential homes in the County system.
- F4. The foster caregivers identified through FFAs are sometimes more experienced, and receive more support and training from the FFA.
- F5. FFA social workers have lighter caseloads than County social workers.
- F6. There is a shortage of available, qualified foster homes in the County, as evidenced by the 384 youth that are currently located in out-of-county foster homes.
- F7. CFS selects foster parents recruited by the County instead of by FFAs because they cost approximately 40 percent less and the County foster parents are better known to the CFS Placement team as they were selected, trained and licensed by the County.
- F8. The County has not performed a “gap” analysis to specifically identify the type of foster homes most needed.
- F9. There is a shortage of foster parents willing and able to take in teenagers.
- F10. Foster family recruitment efforts have not kept up with the need for foster families.
- F11. The CFS recruiting position, which is the position that is responsible for foster parent recruitment, has not been filled and is currently staffed by one person on a half-time basis.
- F12. CFS is not accumulating information to help measure outcomes of County foster youth and determine which providers are the most effective (where applicable).
- F13. Mental health professionals do not participate in the new CFS Continuous Quality Improvement process.
- F14. The County Mental Health Department does limited screenings/assessments of new foster youth.

- F15. CFS Placement staff often does not have a complete mental health diagnosis, suggested treatment plan or prognosis prior to placing a new foster youth with foster parents.
- F16. Ongoing mental health therapy for foster youth is frequently not as effective as it could be because it is difficult to arrange and often interrupted due to the movement of youth between foster homes.
- F17. Out-of-county placement strains the resources of CFS both monetarily and in terms of staff time as CFS staff have to travel to wherever the foster youth is located.
- F18. CFS is experiencing significant challenges in coordinating with all the necessary agencies involved to meet the requirements of AB 403.
- F19. The outcomes of faith-based foster children are often better than for children fostered in secular homes, as their stay with such families is longer than the average and the youth gain an increased sense of belonging to a community.
- F20. Current MOUs or job classifications do not permit sufficient flexibility to allow for mental health professionals to respond after hours to situations that arise in the treatment of foster youth.
- F21. Based on the current costs of Group Home care, millions of dollars of State support money will be saved when foster youth transition to individual foster families.
- F22. High level executives at FFAs frequently recruit foster parents, whereas lower level line personnel usually perform this function at the County.

## RECOMMENDATIONS

- R1. The Board of Supervisors should consider creating a special task force with staff from CFS, Mental Health, County administration, Group Home facilities, and Foster Parents Association to assess the potential safety impact on the community to place foster youth currently in group homes into less qualified foster parent homes.
- R2. The Board of Supervisors should consider directing this Task Force (R1) to track progress of the recruiting and training of kinship care and new foster families, and network with surrounding counties as to best practices in recruiting and supporting resource families.
- R3. The Board of Supervisors should consider directing the Task Force (R1) to explore the feasibility of creating a Mental Health Unit within CFS that would be responsible for the initial assessment and providing and/or supervising ongoing mental health care for foster youth.
- R4. The Board of Supervisors should consider directing CFS to carefully monitor the costs of supporting a foster family and lobby the CDSS for more financial support for wraparound services to these families based on the documented actual costs.
- R5. The Board of Supervisors should consider making it a priority to hire at least two full time foster family recruiters, who are classified to be able to work flexible hours, and are expected to be involved with higher level staff in recruiting presentations to recruit new Foster parents, at such time as funds to do so become available. .
- R6. The Board of Supervisors should consider directing CFS to organize more recruitment presentations to prospective foster families, including scheduling some of these presentations on weekday evenings and weekends.
- R7. CFS should reach out to FFAs to increase foster parent recruitment efforts and consider paying a fee to FFAs for each foster family recruited that resides in the County.
- R8. The Board of Supervisors should consider directing CFS to create specific transition plans for County youth currently in Group Homes, including plans to conduct in depth mental health screenings of those transitioning youth to certify that they are safe to move from the relative safety of the Group Home environment into care of qualified foster parents, and plans for frequent follow up visits by CFS to the new foster parents to ensure the move is successful.
- R9. The Board of Supervisors should consider directing CFS to review all current out-of-county placements to determine if and when any can be safely brought back to the County.
- R10. The Board of Supervisors should consider directing CFS to create a more defined database of all available foster parents, including those identified through FFAs, to identify available foster parents' particular skills, backgrounds and other pertinent attributes, such as whether they reside in-county and out-of-county, and to enable the Placement Unit to more quickly identify the best match for youth in the system.

- R11. When a foster youth may have mental health issues, the Board of Supervisors should consider requiring CFS to include a mental health professional in the Continuous Quality Improvement process, and also requiring that the process is coordinated with Continuous Quality Improvement processes used by FFAs, so that all Continuous Quality Improvement methods track and trend essentially the same issues.
- R12. The Board of Supervisors should consider directing CFS to track outcomes of foster youth in the county and then trend these outcomes to guide future policy decisions.
- R13. The Board of Supervisors should consider negotiating amendments to the applicable MOUs to make certain job descriptions/classifications for mental health professions to make working hours more flexible so these mental health care professionals can respond to after-hours situations that arise in the treatment of foster youth.

## REQUIRED RESPONSES

	<b><u>Findings</u></b>	<b><u>Recommendations</u></b>
County Board of Supervisors	F1 - F22	R1 - R13

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson

725 Court Street

P.O. Box 431

Martinez, CA 94553-0091

## **Glossary of Terms and Acronyms**

ARC = Approved Relative Caregiver (A screened and qualified relative of the foster youth)

CCR = Continuum of Care Reform (The name of the reform legislation initiated to improve foster care)

CFS = Child and Family Services (The division responsible for foster care and part of EHSD)

CDSS = California Department of Social Services

Congregate care = Group Foster Homes

CQI = Continuous Quality Improvement (The industry term for Quality assurance programs incorporating a "Lessons Learned" approach)

CSEC = Commercially Sexually Exploited Children

EHSD = Employment and Human Services Division

FFA = Foster Family Association (The designation of all nonprofit Foster Care agencies that are not County run)

HIPAA = Health Insurance Portability and Accountability Act (of 1996)

Kinship care = Care provided by relatives of Foster youth

MOUs = Memoranda of Understanding

RFP = Request for Proposal

STRTC = Short Term Residential Treatment Centers (The name given by the CDSS to the facilities that will replace the current Group Homes)

## Appendix 1

### AB 403 (Stone): Foster Youth: Continuum of Care Reform

#### **BILL SUMMARY**

AB 403 is a comprehensive reform effort to make sure that youth in foster care have their day-to-day physical, mental, and emotional needs met; that they have the greatest chance to grow up in permanent and supportive homes; and that they have the opportunity to grow into self-sufficient, successful adults.

AB 403 addresses these issues by giving families who provide foster care, now known as resource families, with targeted training and support so that they are better prepared to care for youth living with them. The bill also advances California's long-standing goal to move away from the use of long-term group home care by increasing youth placement in family settings and by transforming existing group home care into places where youth who are not ready to live with families can receive short term, intensive treatment. The measure creates a timeline to implement this shift in placement options and related performance measures.

The measure builds upon many years of policy changes designed to improve outcomes for youth in foster care. It implements recommendations from CDSS's 2015 report, *California's Child Welfare Continuum of Care Reform*, which were developed with feedback from foster youth, foster families, care providers, child welfare agency staff, policymakers, and other stakeholders.

#### **PROBLEM BACKGROUND**

For over a decade, California has implemented policies to reduce the number of children in out-of-home foster care placements, which has resulted in a decline from a high of over 100,000 youth in foster care in 1999 to about 60,000 in 2014. These policy changes have included preventative efforts to reduce the likelihood that a child is removed from his or her home, early intervention in child welfare cases, and assistance with finding children permanent homes with relatives and through adoption.

County child welfare agencies provide services to about 95 percent of youth in foster care, including

making arrangements for where the youth will reside and who will care for and take responsibility for the youth. Juvenile probation departments are responsible for the care of remaining 5 percent of foster youth.

"Continuum of care" refers to the spectrum of care settings for youth in foster care, from the least restrictive and least service-intensive (for instance, a placement with an individual foster family or an extended family member) to the most restrictive and most service-intensive (for instance, a group home with required participation in mental health treatment and limits on when the youth can leave the facility).

Most youth in foster care are placed in homes with resource families, but about 3,000 youth live in group home placements, also known as congregate care. Over two-thirds of the youth in congregate care have remained in such placements longer than two years, and about one-third have lived in such placements for more than five years.

Foster youth who live in congregate care settings are more likely than those who live with families to suffer a variety of negative short- and long-term outcomes. Such placements are associated with the creation of lifelong institutionalized behaviors, an increased likelihood of being involved with the juvenile justice system and the adult correctional system, and low educational attainment levels. Further, children who leave congregate care to return to live with their families are more likely than those who were in placed in family-based care to return to the foster system.

In spite of these well-known problems associated with this type of placement, too many children continue to be placed in, and remain living in, congregate care settings which do not always meet their needs or provide stable, supportive homes. AB 403 addresses this issue through a variety of policy changes.

#### **COMPONENTS OF AB 403**

To better meet the needs of youth in foster care and to promote positive outcomes for those youth as they

## AB 403 (Stone): Foster Youth: Continuum of Care Reform

transition out of foster care, AB 403 implements the following policy changes:

- Updates the assessment process so that the first out-of-home placement is the right one.
- Establishes core services and supports for foster youth, their families, and resource families;
- Strengthens training and qualifications for resource families providing care to foster youth and congregate care facility staff;
- To the extent that the children are provided needed services and support, transitions children from congregate care into home-based family care with resource families;
- Transforms group homes into a new category of congregate care facility defined as Short-Term Residential Treatment Centers (STRTCs);
- Revises the foster care rate structure;
- Requires STRTCs and treatment foster family agencies to be certified by counties through their mental health plans;
- Evaluates provider performance.

AB 403 accomplishes the above in the following ways:

**Home-Based Family Care:** Reducing placements in congregate care settings will require specially trained resource families to be available to care for youth in home settings, either in resource families approved by a county or through a Foster Family Agency (FFA). AB 403 increases efforts to recruit and train families to meet the needs of foster youth as they step down from short-term residential placement settings with high service levels to less restrictive settings.

**Residential Treatment:** In order to reduce reliance on congregate care as a long-term placement setting, AB 403 narrowly redefines the purpose of group care. Group homes will be transitioned into a new facility type, STRTCs, which will provide short-term, specialized, and intensive treatment and will be used only for children whose needs cannot be safely met initially in a family setting. AB 403 establishes a timeline for this transition.

**Providing Core Services:** FFA programs, STRTCs, and social workers will provide core services and supports to foster youth and their placements. Depending on the type of placement and needs of a youth in foster care, core services may include: arranging access to specialized mental health treatment, providing transitional support from foster placement to permanent home placement, supporting connections with siblings and extended family members, providing transportation to school and other educational activities, and teaching independent living skills to older youth and non-minor dependents.

**Cost:** AB 403 establishes that both congregate care facilities and FFAs will offer the same level of core services to children at a rate that correlates with the level and type of services they provide. Social workers will provide additional core services and support to resource families. An initial state investment will lead to reduced placement costs, and to lower societal costs from improved outcomes.

**Performance Measures and Outcomes:** A multi-departmental review team will focus on the programs' administrative and service practices, and overall performance, to ensure providers are operating programs that use best practices, achieve desired outcomes for youth and families and meet local needs. To bolster this work, a satisfaction survey of youth and families will be used to determine their perception of the services they received, including whether the services were trauma-sensitive, and to provide feedback that can help programs serving youth and families make continuous quality improvements.

### SUPPORT

- California Department of Social Services (sponsor)

### OPPOSITION

- None received

### FOR MORE INFORMATION

Contact: Arianna Smith  
Office of Assemblymember Mark Stone  
Phone: (916) 319-2029  
[arianna.smith@asm.ca.gov](mailto:arianna.smith@asm.ca.gov)

## Appendix 2

CONTRA COSTA COUNTY		EMPLOYMENT & HUMAN SERVICES DEPARTMENT			
<b>FOSTER CARE &amp; KINGAP RATES</b>					
AID PAYMENT COMPUTATIONS					
<b>LICENSED FOSTER HOME/RELATIVES/NREFM RATES EFFECTIVE 7/1/15</b>					
AGE	0-4	5-8	9-11	12-14	15-21
Basic Monthly	\$688	\$744	\$783	\$820	\$859
Basic Daily	\$23	\$25	\$26	\$27	\$29
<b>EMERGENCY FOSTER HOME AND DIFFICULT TO PLACE RATES EFFECTIVE 7/1/15</b>					
EFH	\$30	\$32	\$31	\$33	\$32
EFH w/ DTP	\$33	\$34	\$36	\$38	\$38
<b>KINGAP/NRLG RATES EFFECTIVE 7/1/15 FOR GUARDIANSHIPS ESTABLISHED PRIOR TO 5/1/11</b>					
AGE	0-4	5-8	9-11	12-14	15-21
Basic monthly	\$503	\$547	\$586	\$646	\$708
<b>KINGAP/NRLG RATES EFFECTIVE 7/1/15 FOR GUARDIANSHIPS ESTABLISHED ON OR AFTER 5/1/11</b>					
AGE	0-4	5-8	9-11	12-14	15-21
Basic monthly	\$688	\$744	\$783	\$820	\$859
<b>FOSTER FAMILY AGENCY RATES EFFECTIVE 7/1/15</b>					
AGE	0-4	5-8	9-11	12-14	15-21
	\$1789	\$1866	\$1923	\$1992	\$2060
<b>FAMILIES FIRST FOSTER FAMILY AGENCY RATES (FROZEN RATES) 7/1/15</b>					
AGE	0-4	5-8	9-11	12-14	15-21
	\$1867	\$1867	\$1923	\$1992	\$2060
<b>ALTERNATIVE FAMILY SERVICES FOSTER FAMILY AGENCY RATES (FROZEN RATES) 7/1/15</b>					
AGE	0-4	5-8	9-11	12-14	15-21
	\$1865	\$1866	\$1923	\$1992	\$2060
<b>INTERIM INTENSIVE TREATMENT FOSTER FAMILY AGENCY RATES EFFECTIVE 7/1/15</b>					
ALL AGES	LEVEL I \$5741 Previously Levels A & B	LEVEL II \$4958 Previously Levels C & D	LEVEL III \$4194 Previously Level E		
<b>MINOR MOTHER INFANT SUPPLEMENT EFFECTIVE 1/1/08</b>					
For rates applicable to SB 500/720 (Minor Dependents in Foster Care) refer to Desk Guide FC 500					
Foster Home/FFA/THPP/THP +FC/SILP/Kin-GAP			\$411 per month		
Group Home			\$890 per month		
<b>TRANSITIONAL HOUSING PLACEMENT PROGRAM RATE EFFECTIVE 7/1/07 Ages 16-17</b>					
Contra Costa County			\$3805		
<b>TRANSITIONAL HOUSING + FC PROGRAM RATE EFFECTIVE 7/1/15 Ages 18-21</b>					
Remote and Single Staffed Site			\$3007		
Host Family Model			\$2393		

CLOTHING ALLOWANCES EFFECTIVE 1/1/08					
(Paid to all placements including legal guardians) Refer to FC CA 400					
AGE	0-4	5-8	9-11	12-14	15-21
Initial*	\$252	\$252	\$252	\$252	\$252
Supplemental**	\$252	\$252	\$252	\$252	\$252
* Initial: \$252 maximum per dependency period for all age groups					
** Supplemental: \$252 annual maximum					
\$100 State Supplemental has been eliminated effective FY 11/12					
Annual Clothing allowances have been eliminated effective 2013. Host rates still apply for children residing out of county.					
GROUP HOME RATES EFFECTIVE 7/1/15					
RCL 7					\$5960
RCL 8					\$6557
RCL 9					\$7150
RCL 10					\$7746
RCL 11					\$8339
RCL 12					\$8935
RCL 13					\$9538
RCL 14					\$10,130
REGIONAL CENTER VENDORIZED RATES EFFECTIVE 1/1/16					
1	\$1014	4C	\$3767		
2O	\$2187	4D	\$4041		
2S	\$2428	4E	\$4332		
3O	\$2548	4F	\$4631		
3S	\$2861	4G	\$4978		
4A	\$3317	4H	\$5351		
4B	\$3543	4I	\$5878		
Effective 11/15 the P&I expense rate is \$131 and is only paid when the child received SSI/SSP benefits.					
REGIONAL CENTER/DUAL AGENCY NON-VENDORIZED RATES EFFECTIVE 7/1/15					
Under 3 years old					\$1013
3 years and older					\$2265
REGIONAL CENTER/DUAL AGENCY NON-VENDORIZED SUPPLEMENT TO THE RATE EFFECTIVE 7/1/07					
LEVEL 1					\$250
LEVEL 2					\$500
LEVEL 3					\$750
LEVEL 4					\$1000
SBI63 WRAPAROUND RATES EFFECTIVE 7/1/15					
Stepping Down From RCL Level 10/11			\$8,043 (nonfed)	\$4,022 (federal)	
Stepping Down From RCL Level 12/13/14			\$9,538 (nonfed)	\$4,769 (federal)	
EDUCATION TRAVEL REIMBURSEMENT					
Distance from FC placement to School of Origin	Rate per month per child	Public Transportation Flat Rates -Monthly			
Up to 3 miles	\$0	Low	\$25		
4 to 8 miles	\$58	Medium	\$50		
9 to 13 miles	\$154	High	\$75		
14 to 18 miles	\$250				
19 to 23 miles	\$347				
24 or more miles	\$443				
FC 400 (Revised January 2016) DESK GUIDE					



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY  
725 Court Street  
Martinez, California 94553

Report 1613

# Human Resources Management

Adrift on the Sea of Change

APPROVED BY THE GRAND JURY:

Date: 6/14/16



MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 6/10/16



JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1613

**HUMAN RESOURCES MANAGEMENT**

**Adrift on the Sea of Change**

**TO: Contra Costa County Board of Supervisors, Contra Costa County Administrator, Contra Costa County Human Resources Department**

**SUMMARY**

Human Resources Department (HR) in Contra Costa County (County) is in the midst of change. After many years of struggling to meet the demands of the County's many departments, and to define its role in a complex personnel management environment, HR is poised to take advantage of a new opportunity resulting from a major systems upgrade effort. In 2015, HR was directed to "go paperless". For an organization that depended on paper documents in every stage of its work, the directive posed a major challenge. This report will focus on the operations of Personnel Services Unit.

Systems are now in the implementation phase that will change the way HR and other County departments, which it serves, do their work. It may also change the organizational relationships between HR and those departments, and the relationships within HR itself.

However, more can be done to help HR fulfill its vital role within County government, including:

- Hiring a permanent HR Director as soon as is reasonably possible;
- Developing a Strategic Vision (plan) to guide HR;
- Reviewing and revising the Personnel Services Manual;
- Reviewing and revising personnel management regulations and salary; regulations (in concert with affected parties);
- Working with the County Administrator to end the delegated authority for the Health Services Department;
- Recognizing the importance of proactive, countywide classification and compensation review and HR staffing to facilitate that effort; and
- Beginning a comprehensive review of the current job classification structure to reduce complexity and address inconsistencies or conflicts.

## BACKGROUND

Contra Costa County is a multifaceted, complex organization. Approximately 10,000 employees, multiple Memoranda of Understanding (MOUs), 1,400 job classifications, outmoded computer systems, lack of clarity about personnel rules, and a system that relies on handwritten paper documents, only partially describe the HR management challenge that the County continues to face. Paper transactions, often transmitted by interoffice mail or hand carried have been the rule in HR. In fiscal year 2015, the HR Transactions Unit manually processed 27,548 individual transactions (all paper) or about 2,300 per month.

In 2014, the HR Director resigned and the Department was struggling. In the absence of a permanent Director, HR focused on maintenance of effort, reacting to departmental requests rather than managing the overall Human Resources system in the County. Lack of direction, lack of agreement about the role that HR should play vis-à-vis other County departments and the public, poor communication with some of the departments it served, overwhelming workload, employee turnover, and low marks for promptness in managing recruitment and hiring were epidemic. Complaints about inefficient procedures and non-responsiveness were frequent; departments “did their own thing” in an effort to meet their own staffing goals. HR’s pivotal role in payroll processing was error-prone and inconsistent. However, other County departments lacking consistent training in personnel procedures and responding to the internal objectives of their own department management—also bore some of the responsibility. Antiquated computer systems exacerbated the difficulties.

Looking to automation for help, the County chose to tackle timekeeping first. In 2012, the County contracted with ADP to install a new timekeeping system. In the meantime, individual departments also designed homegrown systems or used off-the-shelf software to manage internal personnel processes like timecards and personal leave management.

After three years, ADP’s system was terminated when it became clear it could not accommodate the County’s complex personnel structure. Complicating the software problems were difficulties with a key personnel system—PeopleSoft. Originally installed in 1999, its last update was in 2000. Oracle Corporation (PeopleSoft’s owner) is no longer able to support this obsolete version.

Frustration with actual and perceived obstacles, particularly delays in hiring and recruitment, prompted some departments to request independence from HR altogether. The County’s two largest departments, Health Services (HSD) and Employment and Human Services (EHSD) each requested “delegated authority” – the permission to manage many of their own personnel operations.

Health Services received delegated authority, while EHSD did not. The HSD experiment (from the perspective of most sources external to HSD) has created more

problems than it solved. Transparency has suffered, error rates have risen and communication continues to be a problem. Lack of oversight has led to problems such as position misclassification, incorrect use of overtime and inconsistent attention to personnel rules.

### **Changing times at HR**

In 2014, after two unsuccessful attempts to recruit a new HR Director, the County hired a consultant to provide high-level advice about human resource matters. The County also sought to address the inefficiencies resulting from a largely paper-based operation. A directive was issued to “eliminate the paper” and to “streamline” operations. The need to manage internal HR operations and systemize the growing need for HR services led to the hiring of a new HR Assistant Director.

The County began its move toward streamlining HR’s operations by implementing an online job application system, which proved very successful. Ninety-nine percent of all job applications are now filed online. The rest of the application review and selection process remains largely manual. The County contracted with Cherry Road Consulting (a PeopleSoft partner) to move the PeopleSoft system from version 8.1 to version 9.2. The County further decided to replace its existing recruitment and hiring software (NeoGov) with another Oracle product (Taleo).

Implementation of the new software systems is fully underway, with anticipated “go live dates” of October 2016 for PeopleSoft and December 2016 for Taleo. These systems, once fully operational, will eliminate much of the paper flow and will provide enhanced abilities to monitor key elements of the recruitment and onboarding process. Onboarding refers to recruitment, hiring, and processing new County employees. Front-end editing will allow more accurate data entry and facilitate some “self-service” functions (e.g. benefit selection) for employees. Most importantly, the systems will improve accountability. Time-stamping at each step in every process will track who did what, and when. Management information “dashboards” will allow managers to monitor workload and identify problems.

The literature on the impact of automation on organizations is extensive, and one conclusion is almost universal: Automation changes the way we work and the culture in which that work is done. Managing employee resistance to change is fully as important as successful installation of the new computer systems. Likely some employees have concerns about learning and understanding the coming technical and procedural changes. However, automation will provide better management information, making it easier to monitor workflow and improve accountability on many levels. For the County, solving technical problems will create an unprecedented opportunity to address the organizational issues of managing the County’s human resources system.

## **DISCUSSION**

### **HR management in a nutshell: Complexity begins with the rules**

A multiplicity of rules governs County personnel management. The County operates under the Merit System<sup>1</sup>, as do most public jurisdictions in California. Key merit system principles include the following:

- Employee selection and advancement should be determined on the basis of relative ability, knowledge and skills after fair and open competition, which assures that all receive equal opportunity;
- Employees and applicants should receive fair and equitable treatment without regard to race, color, religion, age, national origin, gender, disability or political affiliation; and
- Equal pay should be provided for work of equal value.

Moreover, most positions in the County fall under union rules. There are 16 unions, 19 MOUs, and 42 bargaining units. The MOUs establish work rules, pay, benefits and other employee related issues. The Personnel Management Rules (PMRs) implement the Merit System and specify procedures for most HR management operations. The County's PMRs last significant revision happened in 1982. The Salary Regulations, last updated in 1983, govern salary administration, conditions of employment, training, etc. With all of these rule systems operating simultaneously, control of countywide personnel management presents a significant challenge.

### **Complexity reflects County organization**

The County has 25 separate departments with budgeted positions ranging from less than 30 to over 3,000. These departments operate in a semi-autonomous manner with regard to personnel management. In fact, some of the larger departments include personnel management units comparable in size (on a per capita basis) to HR. These units are responsible for a variety of personnel transactions including payroll reporting, time sheets, leave tracking, and performance appraisal. Two examples of the impact of organizational complexity follow:

- The 2014-2015 Grand Jury Report 1511 investigated County timekeeping practices. It found that 230 separate pay codes were required for recording variable compensation governed by various MOUs. Substantial variance in the accuracy of timekeeping reports occurs because multiple payroll clerks in multiple departments are responsible for submitting payroll reports. These personnel do not receive standardized trainings, so the likelihood of errors is

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<sup>1</sup> California Code of Regulations, Title 2, Division 5

high. When payroll reports are submitted to the Transactions Team in HR, employees are responsible not only for inputting the reports but also for verifying their accuracy. The volume of data that must be input combined with complexity of the time code structure, auditing transactions for compliance with personnel rules, rule compliance, and the time pressure associated with payroll processing can affect accuracy.

- Inconsistent communication, decentralized authority, and internal departmental objectives, particularly in larger departments, make effective position control difficult. For example, of the approximately 1,400 separate job classifications in the County, 364 are “single person classes”. Management positions are not the only ones occupied by only one employee. Departments will sometimes request a new job class, which is functionally equivalent to a position in another department, but is justified based on presumed unique characteristics. HR has not always been effective in controlling these requests when HR recommendations run counter to departmental priorities. This pays off for the department, but adds another position to be added to an MOU and more complexity for the County.

HR management operates in a conflicted environment. Charged with implementing personnel rules, but widely disrespected by the departments it serves and with little real authority to challenge departmental decisions or effect change, HR is placed in a position where the most prudent option is to be reactive rather than proactive.

### **HR Department organization**

County HR management has three functions:

- Recruitment and initial selection, which includes advertising; resume/qualifications assessment, testing and development of an applicant list from which the hiring department selects its employees;
- Classification and compensation, which includes job analysis for current positions, job design for new positions and compensation analysis for both present and new positions; and
- Management of a broad array of health care and retirement benefits for approximately 10,000 active employees and 8,000 retirees through HR’s Employee Benefits Administration.

HR is organized into three divisions:

- Personnel Services Unit (PSU), which includes both recruitment and classification;
- Employee Benefits Administration; and
- Administrative Support, which includes computer technical support and transactions management.

## Reorganization

The effort to streamline HR's operations began with an internal reorganization of the PSU. A key objective was changing internal procedures for managing recruitment and selection to improve productivity and accountability.

Prior to 2015, one supervisor was responsible for both recruitment and classification. The staff working under this supervisor (Human Resources Consultants), performed both functions. The supervisor assigned each Consultant to work with a specific number of departments. The reorganization nominally separated recruitment from classification and compensation. A second supervisor was hired, allowing one supervisor to oversee recruitment and the second to oversee classification and compensation. Additionally, several vacant positions were filled.

The reorganization, however, was more apparent than real. Departmental assignments have remained unchanged; experienced and new Consultants may still handle both recruitment and classification duties. This has led to confusion in lines of authority and communication as a single Consultant may report to different supervisors depending on which task he or she is performing. Much of the training is on-the-job. Employees report that existing documentation is not necessarily helpful in specifying job duties or procedures.

### **Functional differences: A growing need for comprehensive classification review**

Recruitment and classification require different skills and expertise, with classification considered the more complex and time-consuming of the two. While the current trend is to separate the two functions organizationally<sup>2</sup>, in the County's HR this is not the case. HR's current configuration does not allow for the separation of recruitment from classification. HR employees consider classification as an opportunity for promotion, having gained sufficient departmental knowledge through managing individual recruitments. However, the current organization does not allow for classification specialists since all employees are still expected to be generalists.

Recruitment is a continuing function with tight deadlines and many processes to manage. Of necessity, the primary focus of HR is on managing recruitment demands. Job classification and compensation review occurs on an ad hoc basis when a new position or classification change is requested, but overall review and adjustment of the classification structure has less priority.

Appropriate classification and compensation review is key to ensuring that Merit System rules are followed (equal pay for equal work) and that each job classification accurately

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<sup>2</sup> See Evan Berman, et.al., *Human Resource Management in Public Service*, SAGE Publications 2016

reflects the required qualifications, experience and duties. One result of the County's complex structure is that the number of job classes has grown without consistent attention to the *relationships* between classes and across departments, resulting in a large number of classes.

### **Recruitment and selection: Causes of delay**

Perceived delay in hiring new employees has been a recurring concern of the departments served by HR. In the first nine months of 2015 HR processed 326 recruitment requisitions, which included 29 from EHSD and 98 from HSD. Twelve of the requisitions from EHSD and HSD were designated as "continuous". Continuous recruitments apply to job classifications with many employees (e.g. clerical staff, Welfare Eligibility Workers etc.) where there is high staff turnover and a constant need for new hires. Application review, testing and selection occur at defined intervals maintaining a current list of potential employees. The process for running continuous recruitments is well defined, so they often serve as a training ground for new HR Consultants.

Individual recruitments occur when there is a vacancy in a class that does not have a continuous list, or when a new position is requested. For new positions, the Consultant assigned to the recruitment must first complete a job analysis and compensation review, working closely with the requesting department. This process can take considerable time. Additionally, the County Board of Supervisors must approve (and possibly fund) the proposed position before recruitment can begin.

### **One system, many steps**

*The Personnel Services Unit Procedures Manual* (last updated in 2007) specifies each step in the recruitment and selection process and who is involved during those steps. The following is a very simplified description of the major steps:

1. As soon as a vacancy is confirmed, the department with the vacancy issues a requisition request to HR (AK-9);
2. A job announcement and description is developed by HR and the requesting department, which the requesting department must approve;
3. An announcement is circulated and applications opened;
4. Applications are entered electronically by applicants and evaluation starts concurrently with opening;
5. The application period ends, at which time rejection letters are sent to non-qualifying applicants; after the rejection letters are sent, non-qualifying applicants have 5-days to appeal the decision. (5 working days, effectively 7 days);
6. Invitations mailed to qualifying candidates;
7. A written exam is held; the results of the exam are tabulated and analyzed by an outside firm;

8. Applicant takes other tests, as required (up to five different job related skills tests depending on the job);
9. Oral exam is held, if required;
10. The final employment list is developed (two days after the last exam is completed and scored); and
11. Employment list is sent to department for selection and hiring.

The average time to complete a recruitment from requisition to filling a vacancy is less than three months (87 days). However, the time varies widely. The process can be complicated (and lengthened) by several factors, including:

- Background checks (if required);
- Departmental delays in issuing the AK-9 as soon as a vacancy occurs;
- Errors in the AK-9 requiring return to the department for correction;
- Delays in approving job announcements;
- The 5 day appeal period;
- Using U.S. mail to send rejection and acceptance letters;
- Scheduling tests;
- The number of tests and exams held; and
- Timely selection of an oral board by the department (if required).

As noted above, job analysis and compensation review for new positions can substantially lengthen the time required.

Once the requesting department receives the list, HR's direct role in the process ends. However, departmental action (or inaction) can result in hiring delays. For example, a department may decide to wait to fill a position or not to fill it at all; or may make inaccurate representations to new hires regarding salary and benefits, which requires HR to rectify the errors.

The posted job descriptions also affect recruitment. The HR Consultant assigned to the individual recruitment is responsible for making sure that job descriptions and descriptions of minimum qualifications needed to do the job are accurate and up to date. HR has not taken a proactive approach to evaluating how well existing job descriptions actually describe the work to be done and whether minimum qualifications are realistic, instead, performing individual job position analysis only when requested. The influence of technology, for instance, can make some current qualification requirements irrelevant or inadequate. Recruitments also can fail because there simply are not enough qualified candidates applying.

### **Improving communication and training**

In the past, HR frequently received low marks for communication with other departments, but the problem went both ways. The new management team has exerted considerable effort to meet with departments to discuss issues and arrive at solutions. As a result, communications have improved and there is a new spirit of

cooperation from HR. Improved communication will facilitate identifying and addressing departmental training needs.

The lack of an ongoing HR training program for departmental staff who deal with personnel-related functions contributes to recruitment delays, document errors and confusion about HR processes. Outdated documentation does not help. While HR provides occasional training to particular departments on request, it has no consistent training plan for departments. In mid-2015, HR hosted a 6-part training program for departmental staff, informally dubbed “HR Academy”. Attended by more than 40 departmental staff, the event was well received, although the curriculum was developed by a consultant and was not targeted specifically to the County. To date it has not been repeated.

Employee turnover in the County poses a challenge in ensuring that new employees are effectively taught relevant rules and procedures. The County’s practice of relying on “on the job” training was noted repeatedly in our interviews. In a rule-bound environment such as the County, leaving the training responsibility to departmental employees (who themselves may be unclear about the rules) can create problems.

There is also a critical need to train staff how to implement the new systems. The PeopleSoft consultants have developed extensive training materials and plans for introducing the systems across all County departments. The training will include both printed materials and interactive instruction. This should greatly improve consistency and control of these complex processes. PeopleSoft has hired a “Change Manager” to assist HR and other County departments with technical and organizational issues.

### **Future opportunities: Creating a strategic vision for HR**

With respect to many of the processes and challenges discussed above, new automation will have significant benefits. For example:

- Documents will “flow” seamlessly between the originator and the receiver, instead of arriving by inter-office mail, courier or other “low tech” methods;
- Accuracy will increase, e.g., front end editing minimizes errors by blocking access to incorrect entries;
- “Consumers” will be able to input their own data, e.g., new hires will be able to select from a menu of customized benefit plans and blocked from plans not approved;
- Accountability will be enhanced, e.g., documents will be time stamped to minimize confusion about who did what, when;
- Management “dashboards” will provide managers with a variety of customized program and project management data; and
- The onboarding process will be clarified and major gaps will be alleviated, (e.g., consistent format and schedule for issuing offer letters, automatic confirmation of hire.

Solving the technical aspects of human resources management through automation is only part of the picture, however. The organizational issues that affect personnel management throughout this complex County remain to be resolved. An example of the advantage automation can bring to these organizational issues is illustrated by the following:

- Automation can create an opportunity for HR to begin addressing the complexity problem and to improve accountability across all County departments. Engaging in a comprehensive effort to rationalize the classification structure is long overdue. As the recruitment process becomes automated and the steps within it come to be seamless, HR can focus on improving the classification structure. HR faces a key decision in deciding how to staff that effort for maximum benefit, whether by creating specialists, continuing to use the generalist model, or some combination of the two.
- Developing a consistent approach to departmental training and *a commitment to providing training on a regular basis* will not only improve accuracy and timeliness, but also can also increase communication and proactive problem solving between HR and the departments it serves.
- The size of County government makes the need for some decentralization of HR functions inevitable. However, accountability resulting from improved management information can allow HR to consider the questions: What HR functions can be effectively decentralized without sacrificing appropriate HR oversight, and which functions should be centralized?

Devoting attention to issues such as these will go a long way toward improving HR's efficiency and effectiveness as well as enhancing HR's relationship with the departments it serves. Defining a more proactive role for HR will require strong leadership for the department. As the focus on systems implementation ends, the need for a permanent Director to move the department forward will be increasingly critical.

## FINDINGS

- F1. HR has been without a permanent Director since mid-2014.
- F2. A consultant has provided high-level advice to the County Administrator concerning to human resources since March 2015. The consultant's principal focus has been on preparing the department for major computer system upgrades.
- F3. Recruitment and classification of County workers is governed by a complex set of rules.
- F4. Decentralization of personnel management in large departments has negatively impacted communication, transparency and adherence to personnel rules.
- F5. The Delegated Authority granted to the Health Services Department to manage many of their own personnel operations has exacerbated difficulties the Health Services Department experiences related to personnel management rather than solved them. Lack of oversight from HR has led to problems such as position misclassification, incorrect use of overtime and inconsistent attention to personnel rules.
- F6. The Personnel Management Regulations have not been updated since 1982, the Salary Regulations have not been updated since 1985, and the Personnel Services Procedures Manual has not been revised since 2007.
- F7. HR was directed to streamline its operations and eliminate paperwork due to ongoing concerns about delays in the recruitment and selection process.
- F8. The principal computer system used by HR, PeopleSoft, has not been upgraded for years.
- F9. Most HR transactions are still largely manual.
- F10. A major effort managed by HR and Cherry Road Consultants is underway to upgrade PeopleSoft and to install a new recruitment and "onboarding" system called Taleo.
- F11. New computer systems will significantly streamline HR processing by eliminating most paper documents, facilitating tracking and process management and providing customized management information both to HR and departmental managers.
- F12. The HR Personnel Services Unit is responsible for both recruitment and selection, and classification and compensation for 25 departments.

- F13. Recruitment represents the bulk of ongoing work in the HR Personnel Services Unit.
- F14. In April, 2015, the PSU reorganized to separate the recruitment function from the classification function, which are now separately supervised.
- F15. The reorganization did not result in an effective separation of recruitment from reclassification work because work is assigned by County department rather than by the type of work, blurring the lines of communication and supervision within HR.
- F16. The complexity of the County personnel class structure creates many problems resulting in a need for a comprehensive classification review. Appropriate classification and compensation review is key to ensuring that Merit System rules are followed (equal pay for equal work) and that each job classification accurately reflects the required qualifications, experience and duties.
- F17. The continuing demands of the current recruitment process leave inadequate time to concentrate on broader classification and compensation analysis required to begin revising and rationalizing the current classification structure, in addition to simply responding to department requests.
- F18. Lack of consistent HR training for staff handling personnel matters in the departments that HR serves has sometimes resulted in confusion, communication problems, delays and errors.
- F19. The goals of the PeopleSoft upgrade and the Taleo implementation are to streamline recruitment and hiring and improve management accountability and control. This can create opportunities for addressing needed organizational and procedural change.
- F20. The Cherry Road Consulting group has assigned a Change Manager to assist HR and other county departments with both the technical and organizational issues associated with system implementation.

## **RECOMMENDATIONS**

- R1. The Board of Supervisors should consider hiring a permanent HR Director as soon as is reasonably possible.
- R2. The Board of Supervisors should consider directing HR to develop a strategic plan that (1) defines HR's role and authority in personnel management vis a vis the departments it services (2) provides the degree to which centralizing specific personnel management processes is feasible and advisable, and (3) provides what processes can or should be decentralized to the departments.

- R3. The Board of Supervisors should consider directing HR to assess the skills and abilities of current staff as a basis for rationalizing the separation of Recruitment from Classification, and develop a staffing plan to maximize the benefit of the new configuration.
- R4. The Board of Supervisors should consider directing the County Administrator to end the delegated authority to the Health Services Department for personnel actions.
- R5. HR should assess the potential impact on HR staffing resulting from withdrawal of the delegated authority.
- R6. The Board of Supervisors should consider directing HR, in coordination with County Counsel, the County Administrator and County department heads, to review and update the Personnel Management Regulations and the Salary Regulations as needed.
- R7. The Board of Supervisors should direct HR to review and update the Personnel Services Manual as needed.
- R8. The Board of Supervisors should consider directing HR to begin a comprehensive review of the current County job classification system and develop recommendations for change as appropriate.
- R9. The Board of Supervisors should direct HR to implement an organized departmental outreach and training effort to ensure that all County departments fully understand HR's policies and procedures.
- R10. The Board of Supervisors should consider directing HR to play a key role in the Change Management effort.

**REQUIRED RESPONSES**

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County Board of Supervisors	F1 – F20	R1 – R10

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson  
 725 Court Street  
 P.O. Box 431  
 Martinez, CA 94553-0091



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY

725 Court Street  
Martinez, California 94553

Report 1614

**Where Will We Live?  
The Affordable Housing Waiting List  
is Closed.**

APPROVED BY THE GRAND JURY:

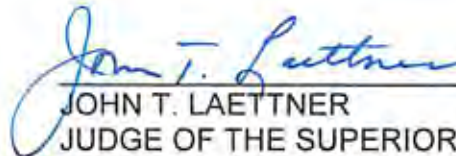
Date: 6/14/16



\_\_\_\_\_  
MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 6/15/16



\_\_\_\_\_  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1614

**Where Will We Live?  
The Affordable Housing Waiting List is Closed.**

**TO: City Councils of Antioch, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pinole, Pleasant Hill, Pittsburg, Richmond, San Pablo, San Ramon, Walnut Creek and the Contra Costa County Board of Supervisors**

**SUMMARY:**

The Bay Area is one of the most expensive regions in the world to live and work. Our County has a housing crisis that demands our immediate attention. Lack of affordable housing in Contra Costa County negatively affects our citizens and economy. Government lawmakers and fair shelter advocates call housing “affordable” when a household pays no more than 30 percent of its total income for housing costs. Income levels determine who qualifies for Affordable Housing (AH). Those qualifying include a range of households from formerly homeless individuals to first-time homebuyers. AH can include rental and homeownership; single-family and multi-family; and new or rehabilitated units. The Bay Area has an extensive network of for-profit and non-profit housing developers that create well designed, well managed AH. Despite their efforts, the demand far outstrips the supply.

California housing element law, California Government Code section 65580 et seq., mandates that every city provide its fair share of AH. Since 2007, the cities in the Bay Area, including in Contra Costa County, have failed to issue the requisite number of building permits to meet their share allocations.

President of the Bay Area Council, Jim Wunderman, warned that “water isn’t the only thing that is in short supply in the Bay Area. Our region is growing, our economy is humming, but the housing shortage could be our Achilles heel.” He called for California’s housing problems to receive the same decisive action that is being undertaken to combat the drought. In a recent Bay Area Council housing poll, 67 percent of residents complain that it is harder to find a place to live in the Bay Area compared with a year ago.

The Grand Jury surveyed all nineteen cities in the County to learn about the resources implemented to address the shortage of AH. More than 70 percent of the County’s cities have adopted ordinances that mandate developers build a certain percentage of new home projects at below-market prices for people with lower incomes. Financial

tools used by the cities include housing impact fees, linkage fees, in lieu fees, and density bonuses. Some cities have donated publicly owned land, vacant land for infill, and property for renovation to non-profit housing developers in an effort to alleviate their city's AH crises. Our investigation revealed however, that ordinances, builder incentives, housing fees, and donations are not enough to solve the shortage of AH and the County and cities can and should do more. What is missing we discuss in the four focus areas of this report:

1. Public awareness about AH;
2. Governmental resources available to communities, builders, and developers for AH;
3. Contra Costa cities' performance in meeting the need for AH; and
4. Improving and centralizing information regarding the availability of AH to ensure that those who may qualify can readily learn and keep informed of AH opportunities.

## **METHODOLOGY**

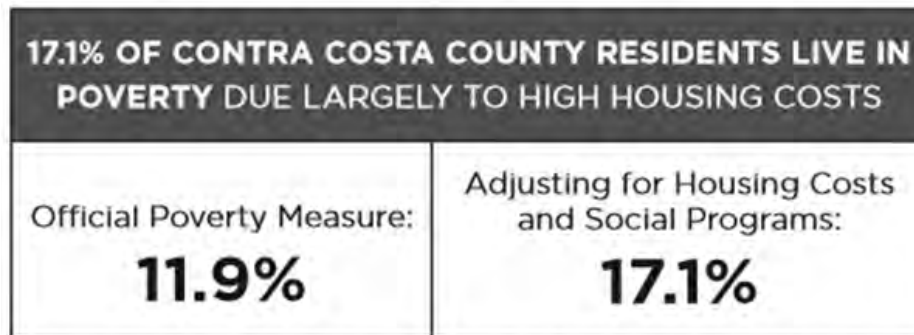
In conducting its investigation and preparing this report, the Grand Jury performed the following tasks:

- Interviewed selected city and County staff and representatives of:
  - for-profit and non-profit builders and developers,
  - AH advocacy organizations, and
  - area-wide quasi-governmental agencies.
- Attended meetings of:
  - the County Board of Supervisors,
  - regional organizations,
  - city councils,
  - municipal planning commissions.
- Reviewed:
  - published court decisions,
  - public materials,
  - online documents,
  - Contra Costa County and city websites.
- Prepared and submitted to each city within the County a written survey pertaining to AH, and reviewed and analyzed the responses of each city (Appendix 1)

## DISCUSSION

### Why should AH matter to the residents of Contra Costa County?

A 2015 East Bay Housing Organization (EBHO) report states that:



Source: The Stanford Center on Poverty and Inequality with the Public Policy Institute of California. California Poverty by County, 2012.

### RENTERS NEED TO EARN 3.5X MINIMUM WAGE TO AFFORD AVERAGE ASKING RENTS

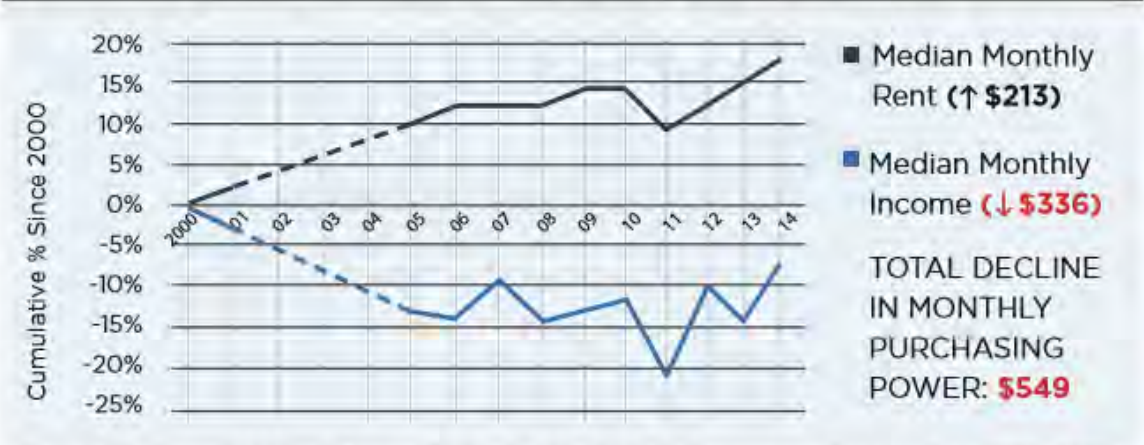


Source: 2015 Real Answers average apartment rent data, HUD 2015 County Section 8 Program Income Limits.



- Seventeen percent of County residents live in poverty, in which high housing costs play a significant role.
- Inflation adjusted median rent has increased seventeen percent since 2000 while the median renter income has declined seven percent.

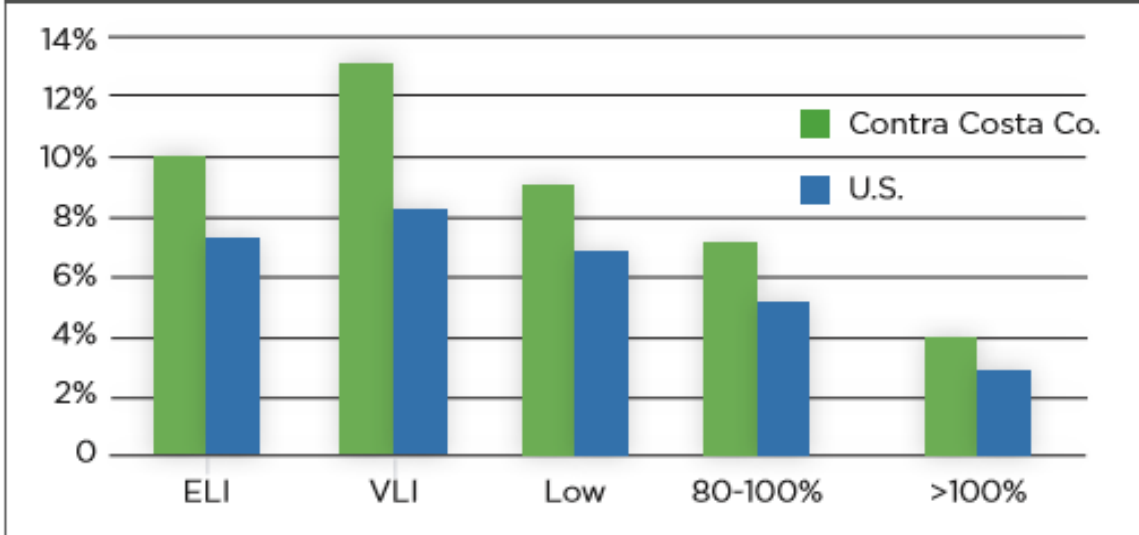
**INFLATION ADJUSTED MEDIAN RENT HAS INCREASED 17% SINCE 2000 WHILE MEDIAN RENTER INCOME HAS DECLINED 7%**



Source: US Census 2000 and Annual ACS Data 2005-2014. Median rents and incomes from 2001-2004 are estimated trends.

- Renters need to earn three and one-half times the minimum wage to afford average-asking rents of \$1,768 per month, reflecting upward pressure on rents in the Bay Area and the County, driven by a resurgent economy and increased demand.

**OVERCROWDING FOR CONTRA COSTA'S LOWER-INCOME RENTERS IS 43% HIGHER THAN THE NATIONAL AVERAGE**



SOURCE: CHPC analysis of 2007-2011 CHAS data.

The chart above shows the higher percentages in the County who fall within the lower income categories (low, very low [VLI], and extremely low [ELI]) as compared to the comparable percentages nationwide.

## WHO IS BEING LEFT OUT OF THE CONTRA COSTA COUNTY RENTAL MARKET?

Average Asking Rent: \$1,768		Hours/week of work needed to afford average asking rent
Job Category	Mean Hourly Wage	
Medical Assistants	\$19.38	70
EMTs & Paramedics	\$17.77	77
Preschool Teachers	\$17.35	78
Janitors & Cleaners	\$14.87	91
Retail Salespersons	\$13.89	98
Waiters & Waitresses	\$11.50	118

SOURCE: CHPC Analysis of 2014 Bureau of Labor statistics and 2015 Real Answers average rent data.

- Between 2010 and 2014, County real estate had the highest sales price increase (50 percent) in the Bay Area.
- From fiscal year 2008-2009 to fiscal year 2013-2014, the County lost seventy-one percent of state and federal funding for AH, a loss of \$39,500,000.

Communities thrive when people have safe and stable housing; when they live near their jobs, schools, and places of worship; when families can build roots and meet diverse neighbors; and when we use resources wisely, greening our housing and preserving open space. AH residents are seniors and people with disabilities on a fixed income, as well as teachers, retired military personnel, car mechanics, childcare workers, and others who work in our communities.

In addition to the obvious benefits of helping residents, AH can benefit the wider community in significant ways:

- Providing housing for the local workforce, especially lower wage earners;
- Revitalizing distressed neighborhoods;
- Directing economic benefits to the local community, such as increased jobs and sales taxes; and
- Promoting economic and social integration while building community.

## Government Efforts to Achieve AH

In June 2015, the *East Bay Times* ran an article entitled, “*Bay Area Housing Crisis May Cause NIMBY Attitudes to Wane*”. NIMBY is an acronym for “not in my backyard”. Bay Area residents seem to be willing to challenge this attitude as two-thirds now believe it is tougher to find a place to live, and over half are ready to embrace higher density housing in their neighborhoods to tackle the problem. Seventy-six percent of Bay Area residents want policy makers and developers to direct their efforts toward the creation of certain types of housing. Specifically, respondents want the focus on housing for low and middle-income people.

In the County, population continues to increase, bringing constant pressure on state and local governments to focus on housing affordability. Various state and local laws and ordinances are available to cities in the County and the greater Bay Area to address the shortage of AH.

### Housing Element

California Housing Element law (California Government Code section 65580 et seq.) is the State’s primary market-based means to increase housing supply, affordability, and provide opportunities for private builders without unduly constraining housing development. The County and its nineteen cities each have a Housing Element plan certified by the California Department of Housing and Community Development (HCD), detailing their goals pertaining to AH.

### Association of Bay Area Governments (ABAG)

ABAG is the comprehensive regional planning agency and Council of Governments (COG) for the nine counties and 101 cities and towns of the San Francisco Bay Region. The region encompasses Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma counties. As the COG for the Bay Area, ABAG is responsible for regional land use planning and coordination with local governments. The State sets the housing needs and ABAG allocates the housing goals for the nine Bay Area Counties by income levels set by the federal Housing and Urban Development agency (HUD). While land-use planning is fundamentally a local issue for city governments, the availability of housing is a matter of statewide importance. Housing element laws require local governments to be accommodating and accountable to meet projected housing needs. The cities maintain local control over where and what type of development should occur while providing the opportunity for the private sector to meet market demand.

The following is a summary of housing permits issued for all Bay Area jurisdictions for the period between 2007 and 2014. This data was compiled primarily from Annual Housing Element Progress Reports (APRs) filed by jurisdictions with the California Department of Housing and Community Development (HCD). In certain instances when APR data was not available but permitting information could be found through other sources ABAG made use of the data sources below:

- Adopted and certified housing elements for the period between 2007 and 2014
- Draft housing elements for the period between 2014-2022
- Permitting information sent to ABAG directly by local planning staff

Note: Given that calendar year 2014 is in-between the 2007-14 and the 2014-2022 RHNA cycles, HCD provides Bay Area jurisdictions with the option of counting the units they permitted in 2014 towards either the past (2007-2014) or the current (2014-2022) RHNA cycle. ABAG did not include 2014 permitting information in this report for jurisdictions that requested that their 2014 permits be counted towards their 2014-2022 allocation. Those jurisdictions are indicated by an asterisk (\*).

Bay Area	Very Low (0-50% AMI)			Low (50-80% AMI)			Moderate (80-120% AMI)			Above Moderate (120%+ AMI)			Total		
	RHNA	Permits Issued	Percent of RHNA Met	RHNA	Permits Issued	Percent of RHNA Met	RHNA	Permits Issued	Percent of RHNA Met	RHNA	Permits Issued	Percent of RHNA Met	RHNA	Permits Issued	Percent of RHNA Met
Alameda	10,017	3,095	31%	7,616	1,699	22%	9,078	1,140	13%	18,226	13,681	75%	44,937	19,615	44%
Contra Costa	6,512	1,353	21%	4,325	1,035	24%	4,996	3,654	73%	11,239	10,758	96%	27,072	16,800	62%
Marin	1,095	250	23%	754	256	34%	977	219	22%	2,056	818	40%	4,882	1,543	32%
Napa	879	135	15%	574	71	12%	713	268	38%	1,539	960	62%	3,705	1,434	39%
San Francisco	6,589	3,920	59%	5,535	1,481	27%	6,754	1,234	18%	12,315	13,468	109%	31,193	20,103	64%
San Mateo	3,588	702	20%	2,581	641	25%	3,038	746	25%	6,531	6,080	93%	15,738	8,169	52%
Santa Clara	13,878	3,798	27%	9,567	2,692	28%	11,007	2,371	22%	25,886	35,962	139%	60,338	44,823	74%
Solano	3,038	283	9%	1,996	481	24%	2,308	1,067	46%	5,643	3,141	56%	12,985	4,972	38%
Sonoma	3,244	715	22%	2,154	826	38%	2,445	1,033	42%	5,807	3,065	53%	13,650	5,639	41%
Bay Area Totals	48,840	14,251	29%	35,102	9,182	26%	41,316	11,732	28%	89,242	87,933	99%	214,500	123,098	57%

## Regional Housing Needs Allocation (RHNA)

Government Code sections 65580-65589.8, also known as the Regional Housing Needs Allocation (RHNA), set forth the state-mandated process for identifying the total number of housing units by affordability level that each jurisdiction should accommodate.

Income categories established by HUD for 2015 in the County are:

- **Extremely Low** – A subset of the very low-income regional housing need, defined as households earning less than thirty percent of the median household income: family of four earning \$28,050 or less per year.
- **Very Low** – Defined as households earning less than fifty percent of the median household income: family of four earning \$28,051 to \$46,750 per year.
- **Low Income** – Defined as households earning fifty to eighty percent of the median household income: family of four earning \$46,751 to \$71,600 per year.
- **Moderate Income** – Defined as households earning eighty to one-hundred twenty percent of the median household income: a family of four earning \$71,601 to \$112,200 per year. The median income for the County falls within this category at \$93,500 per year.
- **Above Moderate Income** – Defined as households earning over one-hundred twenty percent of the median household income: family of four earning more than \$112,200 per year.

Between 2007 and 2014, municipalities in the Bay Area collectively issued permits for 57 percent of the RHNA. Housing permits were skewed toward units for higher income consumers, meeting 99 percent of the RHNA for above-moderate income housing, but only 28 percent for moderate-income housing, 26 percent for low-income housing, and 29 percent for very low income housing.

The next eight-year RHNA cycle, 2014-2022, for the County and cities, projects a lower allocation than the RHNA for 2007-2014. HCD made an adjustment to account for abnormally high vacancies and unique market conditions due to prolonged recessionary conditions, high unemployment, and unprecedented foreclosures in parts of the Region.

ABAG Final Regional Housing Need Allocation for the County 2014-2022

**FINAL REGIONAL HOUSING NEED ALLOCATION, 2014-2022** Adopted by the ABAG Executive Board on July 18, 2013

**Contra Costa County**

	Very Low	Low	Moderate	Above Moderate	Total
Antioch	349	205	214	680	1,448
Brentwood	234	124	123	279	760
Clayton	51	25	31	34	141
Concord	798	444	559	1,677	3,478
Danville	196	111	124	126	557
El Cerrito	100	63	69	166	398
Hercules	220	118	100	244	682
Lafayette	138	78	85	99	400
Martinez	124	72	78	195	469
Moraga	75	44	50	60	229
Oakley	317	174	175	502	1,168
Orinda	84	47	54	42	227
Pinole	80	48	43	126	297
Pittsburg	392	254	316	1,063	2,025
Pleasant Hill	118	69	84	177	448
Richmond	438	305	410	1,282	2,435
San Pablo	56	53	75	265	449
San Ramon	516	279	282	340	1,417
Walnut Creek	604	355	381	895	2,235
Unincorporated	374	218	243	532	1,367
<b>Contra Costa Total</b>	<b>5,264</b>	<b>3,086</b>	<b>3,496</b>	<b>8,784</b>	<b>20,630</b>

 Association of Bay Area Governments

For the County (including all 19 Cities and the unincorporated areas of the County), the proposed RHNA translates to 20,630 new units or just under 11 percent of the Bay Area's total units. The 2014-2022 RHNA allocation is more reflective of the planning environment in the County; more specifically, it reflects both the broader policy of channeling new growth to infill areas with existing transportation infrastructure as well as to discourage growth outside of the County's urban limit line.

Senate Bill 375, "The California Sustainable Communities, and Climate Protection Act of 2008," established a new framework for the RHNA. SB 375 requires each of the state's



## Inclusionary Housing Ordinances (IH)

The most popular city response to AH has been incorporating “Inclusionary Housing” (IH) ordinances in the Housing Element. In California, between 1990 and 2003, the numbers of communities with IH more than tripled—from 29 to 107 communities—meaning about 20 percent of California communities now have IH ordinances. Also called Inclusionary Zoning, seventy-eight cities in the Bay Area, including fourteen cities in the County, have some type of IH policy in place.

The purpose of inclusionary zoning laws is to prevent people from being excluded from affordable housing in the communities where they live or work. IH ordinances require developers to sell a certain percentage of their new homes at below market prices. Most cities designate between 10-15 percent of new units as affordable, though some require as high as 20 percent, others as low as 4 percent. The cities’ IH laws specify a threshold number of units before the ordinance takes effect.

The California building industry sued, claiming that the mandate to sell a certain percentage of homes at below market pricing was a “taking” of their property and violated the Takings Clause of the U.S. and state constitutions. Last year, in an important victory for AH advocates, in the case of California Building Industry Association v. City of San Jose, 61 Cal. 4th 435 (2015) the California Supreme Court upheld the City of San Jose’s IH ordinance, stating:

*“The proper constitutional inquiry is a far less exacting one: whether the requirements of San Jose’s inclusionary housing ordinance are reasonably related to the city’s legitimate interest in alleviating the municipality’s chronic shortage of low-and moderate-income housing generally.”*

The Court had no difficulty in concluding that there was no violation of the Takings Clause under the U.S. or state constitutions. The Court found that the city could regulate land use because it has a legitimate interest in easing the chronic shortage of AH even if it reduces builders’ profits. The builders appealed this decision to the U.S. Supreme Court. In March 2016, the U.S. Supreme Court left intact the state court’s ruling.

Bay Area cities started adopting inclusionary zoning in 1973, and were among the first cities in California to begin experimenting with this policy tool. However, 50 Bay Area cities with inclusionary zoning have produced fewer than 7,000 affordable units since 1973. Contrast this with ABAG’s estimate that the region needs 24,217 AH units per year. At current rates, cities with inclusionary zoning will only produce four percent of the regions estimated AH needs for the next eight-year cycle, 2014-2022.

Opponents say that IH has had a negative impact on homebuyers, local governments, and builders. They argue that inclusionary zoning has failed to create more AH because price controls do not get to the root of the problem and the real causes of AH shortages are government restrictions. Supply has not kept up with demand due to artificial restrictions attributed to land-use regulation. One recent study found that 90

percent of the difference between physical construction costs and the market price of new homes is land use regulation.

A number of cities in the County add substantial fees to the cost of development to pay for additional public benefits or to mitigate inconvenience, traffic and other effects from new housing. Builders call these add-ons the “Christmas Tree List”. These additional costs often act as a deterrent to the development of new AH. When selling a percentage of units at below market, someone must make up that difference. Taxpayers and market rate buyers bear the cost of the mandated affordable units.

One of the great advantages of inclusionary zoning programs is that there is not a significant dollar cost to the city for the creation of the affordable home. The corollary is that inclusionary housing works best where the housing market is strong; that is, where private builder/developers want to build because they believe there is strong market potential and that people will buy or rent the homes they build.

This June, San Franciscans voted to pass Proposition C, the affordable housing charter amendment. Prop C will double the amount of inclusionary housing that must be included in new, market-rate developments. Twenty-five percent of new apartments or condos would have to be deemed affordable. In addition, Prop C requires developers to include ten percent middle income housing so that San Franciscans such as teachers and nurses can afford to live in the communities they serve. This measure ensures that both low-income and middle-income housing will be built in the same development as luxury condos. Bay Area city and county residents are watching this proposition closely.

### Density Bonus Law

Density bonuses allow more units to be built on a property than would otherwise be allowed under zoning ordinances. In exchange for the density bonus, more AH units must be built. Allowing developers to increase the total number of housing units in a development helps to offset the building costs that the developers incur but cannot recover from the sale of below market price units. Other incentives included under density bonus laws that help make the development of AH economically feasible are:

- Reduced parking requirements;
- Reduced setback and minimum square footage requirements; and
- Ability to donate land for the development of AH to earn a density bonus.

These other incentives often are even more helpful to a project than the density bonus itself.

### Other Incentives Used By Cities

#### 1. Accessory Dwelling Units

Under the California Second Unit Law (AB) 866, cities may allow homeowners to build secondary units (known as “in-law” or “granny units”). The purpose is to

increase the inventory of very low- and low-income housing without increasing service needs or additional government investment.

## 2. Infill Housing

Infill housing on vacant or underutilized sites within already developed areas is included in many cities' Housing Element to increase AH. According to an article published by the Greenbelt Alliance, "*Strategies for Fiscally Sustainable Infill Housing*":

*"A city's costs associated with building more housing are twofold. First, there are the initial costs of building or upgrading the infrastructure to serve the new housing; this may include building new roads, upgrading sewage and water capacity in the area, and building new facilities. Second, cities pay for many of the ongoing public services for the residents in the area, including police, fire, parks, and libraries. These ongoing costs also include operations and maintenance for the roads, sewage, and other infrastructure."*

Infill housing can lower both initial and ongoing costs to cities by taking advantage of excess capacities in existing infrastructure and locational efficiencies.

## 3. Fees Paid by Developers to Fund AH

The following fees paid by developers and builders to fund AH are detailed in the cities' Housing Element laws or Inclusionary Zoning ordinances:

### a) Housing Impact Fees

Developers of market-rate commercial and residential units pay an impact fee based on the square footage or number of new units built in a development. These fees contribute to the development or preservation of AH for residents.

### b) In Lieu Fees

Nearly seventy percent of IH ordinances include an in lieu fee provision for developers. This fee allows developers to pay to the city a dollar amount based on square footage, instead of actually building AH. These fees go into specially designated accounts, segregated from a city's general fund, and are used for the development of AH units and housing element mandates. These fees can fund programs compatible with AH goals such as rent relief, down payment assistance, or property renovation for sale. In lieu fees give developers a broader choice in implementing AH mandates. They can seal the deal when cities and developers are bargaining for new permits.

### c) Linkage Fees

A portion of the jobs created by new commercial development—hotel, retail, office, etc.—are often low paying. The employees in these positions cannot

afford market-rate housing. Commercial linkage fees, also known as job-housing linkage fees, help ameliorate some of the housing impacts generated by such projects. A Job-Housing Nexus Analysis is required to measure the connection between the construction of new commercial buildings, employment, and the need for AH. The analysis ends with a cost per-square foot for that building to provide housing for employees who would live in the locality if they could afford to do so.

#### AH funding available to cities:

- Home Investment Partnerships Program (HOME): assists cities, counties, and nonprofit community housing development organizations (CHDOs) to create and retain AH, by for example, rehabilitation, new construction, and acquisition and rehabilitation, for both single-family and multifamily projects, and predevelopment loans by CHDOs. All activities must benefit lower-income renters or owners.
- Community Development Block Grant (CDBG): The primary purpose of the CDBG program is to develop viable urban communities by providing decent housing, a suitable living environment, and expanded economic opportunities principally for persons of low income. The County's goal is to develop and conserve viable communities in areas where blight and disinvestment threaten residents' safety, vitality, and productivity. These funds contribute to projects that benefit urban County residents.
- HOME Investment Partnerships Act (HIPA): The purpose of the HIPA program is to expand the supply of decent, safe, sanitary, and AH for very low and low-income households. The County, as the Urban County representative, and the Cities of Antioch, Concord, Pittsburg, and Walnut Creek, are a group for purposes of participation in the HIPA program. The City of Richmond operates an independent HIPA program. HIPA fund contributions acquire, rehabilitate, and construct housing for lower-income households in the group area.

#### Other programs used by Bay Area Cities to finance AH:

- Housing Trust Funds: These funds, sponsored by legislation, ordinance, or resolution, can be earmarked only for AH. The key characteristic of a housing trust fund is that it receives ongoing revenue from dedicated sources of public funding, such as local fees or loan repayments. The key benefit of this type of trust is that it provides an on-going and dedicated source to fund needed housing.
- Community Land Trusts: Non-profit community based organizations supported by the city or county whose mission is to provide AH in perpetuity by owning land and leasing it to those who live in houses built on that land.

## IS THE COUNTY MEETING ITS FAIR SHARE ALLOCATION OF AH?

### Bay Area Progress in Meeting 2007-2014 RHNA

CONTRA COSTA COUNTY	Very Low (0-50% AMI)			Low (50-80% AMI)			Moderate (80-120% AMI)			Above Moderate (120%+ AMI)			Total		
	RHNA	Permits Issued	Percent of RHNA Met	RHNA	Permits Issued	Percent of RHNA Met	RHNA	Permits Issued	Percent of RHNA Met	RHNA	Permits Issued	Percent of RHNA Met	RHNA	Permits Issued	Percent of RHNA Met
Antioch	516	8	2%	339	20	6%	381	834	219%	1,046	381	36%	2,282	1,243	54%
Brentwood	717	192	27%	435	58	13%	480	175	36%	1,073	1,608	150%	2,705	2,033	75%
Clayton	49	-	0%	35	1	3%	33	2	6%	34	46	135%	151	49	32%
Concord*	639	2	0%	426	-	0%	498	8	2%	1,480	216	15%	3,043	226	7%
Danville <sup>2</sup>	196	2	1%	130	84	65%	146	101	69%	111	287	259%	583	474	81%
El Cerrito	93	142	153%	59	38	64%	80	13	16%	199	163	82%	431	356	83%
Hercules <sup>3</sup>	143	-	0%	74	-	0%	73	-	0%	163	153	94%	453	153	34%
Lafayette <sup>2</sup>	113	47	42%	77	8	10%	80	8	10%	91	170	187%	361	233	65%
Martinez	261	48	18%	166	-	0%	179	4	2%	454	148	33%	1,060	200	19%
Moraga	73	-	0%	47	-	0%	52	-	0%	62	9	15%	234	9	4%
Oakley*	219	242	111%	120	191	159%	88	874	993%	348	331	95%	775	1,638	211%
Orinda	70	72	103%	48	20	42%	55	22	40%	45	137	304%	218	251	115%
Pinole	83	2	2%	49	1	2%	48	10	21%	143	59	41%	323	72	22%
Pittsburg	322	79	25%	223	126	57%	296	666	225%	931	839	90%	1,772	1,710	97%
Pleasant Hill	160	9	6%	105	1	1%	106	8	8%	257	194	75%	628	212	34%
Richmond	391	74	19%	339	153	45%	540	243	45%	1,556	892	57%	2,826	1,362	48%
San Pablo	22	-	0%	38	1	3%	60	35	58%	178	-	0%	298	36	12%
San Ramon	1,174	196	17%	715	255	36%	740	302	41%	834	2,247	269%	3,463	3,000	87%
Walnut Creek	456	150	33%	302	25	8%	374	19	5%	826	1,206	146%	1,958	1,400	72%
Contra Costa County*	815	88	11%	598	53	9%	687	330	48%	1,408	1,672	119%	3,508	2,143	61%
County Totals	6,512	1,353	21%	4,325	1,035	24%	4,996	3,654	73%	11,239	10,758	96%	27,072	16,800	62%

Between 2010 and 2014, County real estate had the highest median price increase (50 percent) in the Bay Area. For the period 2007-2014 RHNA, the County had the best rate of success in the Bay Area in meeting its AH goals at 62 percent, but still fell far short. Of the 27,000 units assigned in the County, less than 16,800 building permits were issued. Most concerning is that in the County, permits issued for the very low and low-income RHNA units were less than 25 percent of allocated need or less than fourteen hundred units.

According to East Bay Housing Organizations (EBHO), the County needs 39,759 more affordable rentals to meet immediate demand in the Extremely Low Income (ELI) and

Very Low Income (VLI) categories. Please see chart below. Since 2010, the nine counties of the Bay Area have added less than 10,000 units of housing per year, 50 percent of the rate of construction from previous decades.



SOURCE: NLIHC Analysis of 2013 ACS PUMS.

Builders’ key issues/problems with meeting AH goals

Builders are the producers of AH. They are key players in bringing the vision and solutions to the housing shortage. They are partners in helping cities achieve their fair share goal of AH. However, loss of government funding, as well as marketplace factors and the Great Recession created the perfect storm, presenting impediments to the construction of AH:

- From fiscal year 2008-2009 to fiscal year 2013-2014, the County lost 71 percent of state and federal funding, a loss of over \$34 million in redevelopment funds. Redevelopment agencies facilitated the development of AH through land acquisition and transfer, and provision of predevelopment funding. The result is that many cities have closed housing programs and cut staff.

**FROM FY 2008-09 TO FY 2013-14 CONTRA COSTA COUNTY  
LOST 71% OF STATE AND FEDERAL FUNDING**

FUNDING SOURCE	FY 2008/2009	FY 2013/2014	% CHANGE
HUD	\$11,748,233	\$9,149,237	-22%
HCD (Prop. 46 & Prop 1C)	\$9,474,560	\$7,312,544	-23%
MHSA	\$0	\$0	0%
Redevelopment	\$34,784,527	\$0	-100%
<b>TOTAL</b>	<b>\$56,007,320</b>	<b>\$16,461,781</b>	<b>-71%</b>

SOURCE: CHPC tabulations of Redevelopment Housing Activities Report and HUD's CPD program formula allocations. State housing bond funding from Propositions 46 and 1C provided by HCD. MHSA program funding provided by CalHFA.

- There is a lack of developable land and the land that can be developed is expensive.
- Local development standards for height limits, lot coverage maximums, and parking requirements that lead to reduction of the number of units that can be built on a given site impedes construct of AH.
- Cities often have a lengthy development application and permit process.
- Cities also often require the developers pay add-on fees for infrastructure.
- High local development impact fees can add fifty to one hundred thousand dollars in development costs per single-family unit according to the Contra Costa County Consortium's 2015-2020 Consolidated Plan.
- The County has an urban limit line to concentrate development and protect open space. This policy increases the cost of available land, which increases the cost of development.
- One of the biggest challenges for builders of price-controlled units is alerting qualified buyers to the availability of low income housing due to a lack of comprehensive and easily-accessible directories for potential renters to gain information about such housing. Some builders estimate that the administrative cost of selling price-controlled homes is about double that spent on market-rate homes. Builders front the direct administrative costs, and the financing costs of carrying unsold inventory while searching for qualified buyers.

Results of the Contra Costa Grand Jury 2015-2016 AH Survey of Cities

The 19 cities in the County have differing policies and practices pertaining to AH. (See Appendix 1, Survey re AH) Highlights of these policies and practices and the tools used to address their AH shortages include:

## AH Laws in the County

- All cities have a 2015 certified “Housing Element”, which details their respective plans for reaching their RHNA allocation.
- All cities have a Density Bonus Ordinance, with the exception of Lafayette, which was considering adopting such an ordinance at the time of this report.
- Thirteen cities and the County have restrictions on condominium conversions.
- Three cities have ordinances for rent stabilization: Concord, Danville, and Hercules.
- None of the cities has a rent control ordinance.

## Inclusionary Zoning

- Fourteen cities and the County have enacted an IH ordinance with a Below Market Rate Policy: Brentwood, Concord, Danville, El Cerrito, Hercules, Martinez, Oakley, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon, and Walnut Creek.
- Sixteen cities have enacted an IH ordinance with in lieu fees: Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Martinez, San Ramon, Walnut Creek, Moraga, Oakley, Pinole, Pittsburg, Pleasant Hill, Richmond, and San Pablo.
- The formula for calculating in lieu fees varies by city.
- Over one-half of the cities and the County allow builders to pay in lieu fees rather than build AH in new developments.
- Half of the cities allow developers of new housing to build AH elsewhere in the city, which is determined by the city.
- The threshold number of units above which the city required AH varied from a high of twenty-five (Brentwood) to a low of one (Walnut Creek) with an average of eight.

## Builder Linkage Fees

- Nine cities have Housing Impact fees: Antioch, Brentwood, Hercules, Martinez, Pinole, Pleasant Hill, Richmond, San Pablo, and Walnut Creek.
- Seven cities have commercial linkage fees: Antioch, Brentwood, Martinez, Pinole, Richmond, San Ramon, and Walnut Creek.

## Public Awareness of Availability of AH

- Only one city, Brentwood, maintains a list or directory of AH units for rent or sale within the community. All other cities delegate to the builder or developer of the AH property maintenance of the AH list.
- Only the city of Brentwood maintains a waiting lists or lists of interested potential candidates for AH in the community. All other cities direct interested residents to contact the AH developer, builder, or management company.

- Most affordable ownership housing is provided and managed by developers of for profit market rate housing who are responsible for locating and selling to qualified consumers.
- Pleasant Hill is the only city in the survey with no deed restricted housing. Maintaining the affordability of a property that is deed restricted for lower income households is an important element of affordable home program management. Reselling or re-renting deed-restricted units to another qualified household maintains an inventory of AH. (See Table Appendix 2)

Anyone looking for AH in the County has to be persistent and patient and access numerous sources of information, repeatedly and often. For example: *East Bay Housing Organization's (EBHO) 2015-2016 AH Guidebook* suggests the following for those seeking AH:

1. Frequently check the websites of non-profit developers.
2. Call them and ask for a list of properties, including those in development. If they have an interest list, have your name placed on the list for properties that meet your needs and income level.
3. Get on as many waitlists as you can. When a waitlist opens, call the property. Ask for an application, or go to the property to get an application. Submit it by the deadline.
4. Once you have submitted your applications, let each property know if you move, or change your phone number. In order to remain on a waitlist, you must be in regular contact with the site manager of each property. Ask to find out the best way to do this.
5. Apply to as many AH properties as you can. Be persistent, do not get discouraged, and advocate for more AH in your community.
6. You can also call 211 for help and advice.

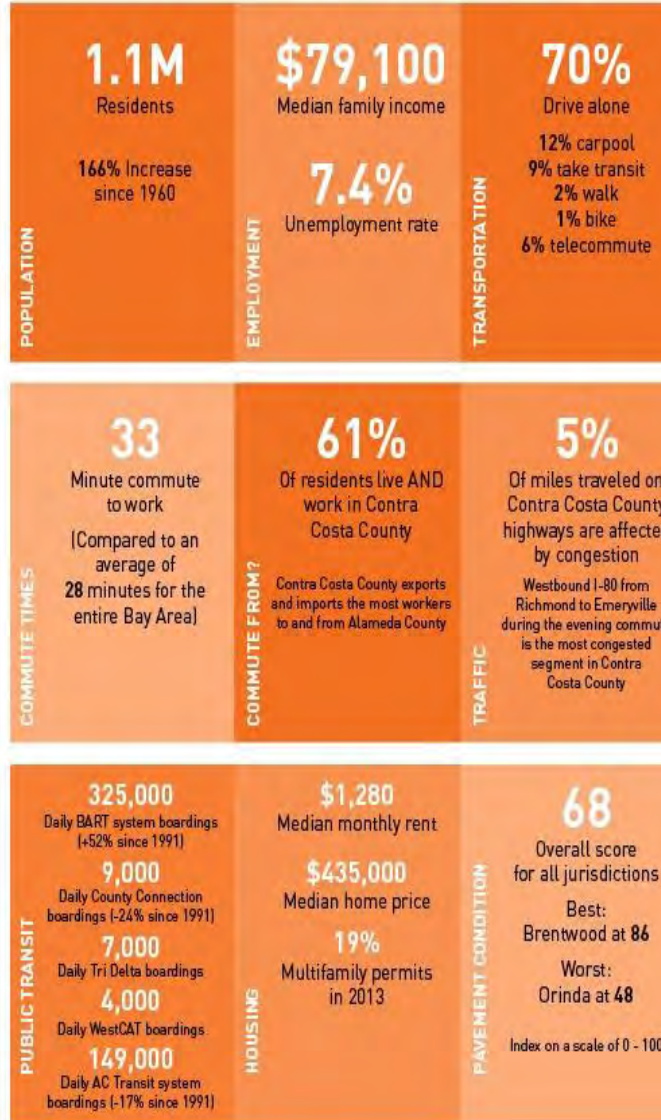
### **THE FUTURE: *PLAN BAY AREA 2040***

The 1.1 million residents of the County have a strong interest in protecting the wealth of features that make it a magnet for people and businesses. ABAG's *Plan Bay Area 2040* looks forward to a sustainable pattern of regional growth that will help preserve the Bay Area's unique quality of life. The Plan meets the requirements of California's climate law (Senate Bill 375, Steinberg) to decrease transportation-related greenhouse gas emissions and accommodate all needed housing growth within our region's borders.

# COUNTY FOCUS

## Contra Costa County Today

Plan  
BayArea  
2040



From 2010 to 2040, Contra Costa County is projected to experience 11 percent of the regional housing growth, adding an estimated 93,390 homes. The County will also take 11 percent of the region's job growth, adding an estimated 70,300 jobs, the majority of which will be in PDAs. Both jobs and housing growth will cluster along San Pablo Avenue in the western part of the County, including Richmond, as well as in the suburbs of Antioch, Pittsburg, Walnut Creek, and San Ramon. The most transformative growth will occur at the former Concord Naval Weapons station, where a new Regional Center with over 17,000 jobs and 12,000 homes will rise near BART.

# Contra Costa

- All but three of Contra Costa’s jurisdictions have designated PDAs
- PDAs make up 7 percent of urbanized area in county
- Include seven of the PDA Place Types—only “urban neighborhood” is missing

## Forecast 2010–2040 Growth in PDAs

2010–2040	% Growth	Share of County
Jobs	60%	59%
Households	115%	61%

Place Type	Number
City Center	1
Employment Center	1
Mixed-Use Corridor	7
Regional Center	1
Suburban Center	5
Transit Neighborhood	9



*Plan Bay Area 2040* recommends mixed-income housing production and locally-led planning in PDAs. PDAs are locally identified, infill development opportunity areas within existing communities. They are generally areas of at least 100 acres where there is local commitment to developing more housing along with amenities and services to meet the day-to-day needs of residents in a pedestrian-friendly environment served by transit. To be eligible to become a PDA, an area has to be within an existing community, near existing or planned fixed transit or served by comparable bus service, and planned for more housing.

It is important to note that for purposes of compliance with state law, the requirement is simply that jurisdictions demonstrate that there is adequate zoned capacity by listing possible parcels on which an adequate number of housing units could be built. In other words, these sites are markers for where jurisdictions assure that housing development could go, but not necessarily, where future housing will go. Ultimately, actual development is driven by developer interest, the availability of financing or subsidy sources (in the case of deed-restricted AH), and where developers expect to maximize their investment.

PDAs will play a primary role in accommodating expected future growth. Overall, the existing households in the PDAs will increase 115 percent to over 100,000 households by 2040 while employment in Contra Costa PDAs will increase 60 percent to almost

188,000 jobs. About 60 percent of both new employment and new households will occur in PDAs. To view the PDA interactive website go to:

<http://gis.abag.ca.gov/website/PDAShowcase/>

### Conclusion

We can no longer afford to ignore the housing crisis in the County. AH is imperative as we plan for the future. Middle class families and professionals cannot afford to enter the housing market in the communities in which they work. Evicted renters become homeless, because they cannot afford escalating housing cost increases. The Bay Area News Group reports almost daily about the shortage of AH. Cities and counties do not generally build the houses. However, we look to our city and County boards and planners to lead us into a future community where we can all afford to live and thrive.

## FINDINGS

- F1. PDAs recognize the importance of housing near transportation and jobs for developing prosperous communities.
- F2. *Plan Bay Area 2040* seeks to combine transportation, jobs and housing as a solution to the needs of our growing population.
- F3. While State law mandates that ABAG conduct the RHNA process, a city is not required to subsidize and/or build the units; it is only required to demonstrate that local zoning will not impede development.
- F4. While State law mandates that ABAG conduct the RHNA process, the County is not required to subsidize and/or build the units. It is only required to demonstrate that local zoning will not impede development.
- F5. Inclusionary zoning programs provide incentives and regulatory waivers to builders and developers who produce both affordable and market rate homes within the same project.
- F6. The city's Inclusionary Housing ordinance helps to provide AH in that city.
- F7. The County's Inclusionary Housing ordinance helps to provide AH in the County.
- F8. Inclusionary Housing Ordinances sometimes include the option for the developer to pay in lieu fees instead of constructing AH units.
- F9. The city supplements the shortage of funds for AH by requiring builders to pay impact fees, in lieu fees, or other construction and remodeling fees.
- F10. Infill costs less to service than new development because it takes advantage of the existing infrastructure.
- F11. The elimination of redevelopment agencies resulted in a reduction of the number of AH units constructed in the city by eliminating a major source of funding for affordable development projects.
- F12. The city delegates to the builder, owner, or management company of AH properties the responsibility for gathering and validating AH clientele information, as well as maintaining lists of potentially interested buyers.
- F13. There is no accessible centralized information source for available AH, which compounds the problems created by the AH shortage for those who are searching for affordable housing.

## RECOMMENDATIONS

- R1. The city should consider increasing AH in PDAs.
- R2. The city should consider adopting an Inclusionary Housing Ordinance.
- R3. The city should explore rehabilitating existing housing stock as AH for purchase or rental, and identify funding to do so.
- R4. The County should explore rehabilitating existing housing stock as AH for purchase or rental, and identify funding to do so.
- R5. The city should explore increasing existing “impact fees” or “linkage fees” or enacting such fees in order to generate revenue with which to assist funding of AH.
- R6. The city should consider designating an employee within the city’s planning or housing department to coordinate with property management to maintain current waiting and interest lists of available AH and ensure information is posted on the city website, and identifying funding to do so.
- R7. The city should consider seeking federal, state, and local funding sources for AH.
- R8. The city should consider partnering with for-profit and not-for-profit builders to secure land suitable for AH, and identify funding to do so.
- R9. The County should consider seeking federal, state, and local funding sources for AH.
- R10. The County should consider partnering with for-profit and not-for-profit builders to secure land suitable for AH, and identify funding to do so.
- R11. The city should consider undertaking an education initiative in the earliest phase of affordable planning projects in order to alleviate community concerns regarding AH, and identify funding to do so.
- R12. The County should consider undertaking an education initiative in the earliest phase of affordable planning projects in order to alleviate community concerns regarding AH, and identify funding to do so.
- R13. The city should consider identifying all infill and vacant land not in PDAs and encourage use of it for AH through tax incentives, density bonuses, etc.
- R14. The County should consider identifying all infill and vacant land not in PDAs and encourage use of it for AH through tax incentives, density bonuses, etc.
- R15. The city should consider creating an easily accessible, online central repository with all relevant information on deed-restricted housing units to assure that inventory of AH is maintained, and identify funding to do so.

R16. The County should consider creating an easily accessible, online central repository with all relevant information on deed-restricted housing units to assure that inventory of AH is maintained, and identify funding to do so.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County Board of Supervisors	F1, F2, F4, F5, F7, F10, F13	R4, R9, R10, R12, R14, R16
City Council of Antioch	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Brentwood	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Clayton	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Concord	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Danville	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City of Council El Cerrito	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City of Council Hercules	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City of Council Lafayette	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Martinez	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Moraga	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15

City Council of Oakley	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Orinda	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Pinole	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Pleasant Hill	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Pittsburg	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Richmond	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of San Pablo	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of San Ramon	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15
City Council of Walnut Creek	F1 – F3, F5, F6, F8 –F13	R1 – R3, R5 – R8, R11, R13, R15

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson

725 Court Street

P.O. Box 431

Martinez, CA 94553-0091

## Appendix 1

Contra Costa Civil Grand Jury 2015-2016  
Survey re Affordable Housing  
December 2015

City:

Person Responding: \_\_\_\_\_

Contact information:

(email) \_\_\_\_\_ (phone) \_\_\_\_\_

What is the “threshold” number of residential units in a development project above which requires affordable housing?

Does (City) require a builder or developer of a new residential project or proposal greater than the “threshold” number of residential units to provide affordable housing within the project?

If not within the proposed project or proposal, is the builder or developer required to provide affordable housing elsewhere within (City)?

What steps, if any, does (City) take to confirm that a builder or developer is complying with its obligation to provide affordable housing as a component of its development in (City)?

What record does (City) maintain regarding compliance by a builder or developer with the obligation to provide affordable housing?

If a builder or developer is required to provide affordable housing elsewhere within (City), who determines and how is the alternate location for affordable housing determined?

Does the city permit payment of funds by the developer or builder “in lieu” of providing affordable housing? If yes, how and when does this occur?

How does (City) calculate the amount of an “in lieu” payment?

Does (City) deposit “in lieu” funds into a segregated or “trust account” specifically for “in lieu” funds? If yes, how are “in lieu” funds tracked or accounted for?

Has (City) received payment of “in lieu” funds within the period 2007-2014? If yes, what is the total \$\$ amount of “in lieu” funds received by the City within the period 2007-2014?

What is the current “in lieu” \$\$ balance held by (City)?

Does (City) have a plan or protocol for the expenditure of “in lieu” funds, including a time frame within which the funds must be spent and an amount of funds to be spent? If yes, and the plan or protocol is included in an ordinance, please cite or refer to the ordinance by number.

Is (City) required to spend those funds on affordable housing within (City) city limits?

What is the total \$\$ amount of “in lieu” funds spent by (City) on affordable housing within the period 2007-2014?

Has any affordable housing been constructed in (City) within the period 2007-2014.

How many units of affordable housing currently exist in (City) in each of the following income categories? Very Low \_\_\_\_\_ Low \_\_\_\_\_ Moderate \_\_\_\_\_ Above Moderate \_\_\_\_\_

How many units of affordable housing are deed restricted in (City)?

Does (City) maintain a record of inquiries to (City) from candidates for affordable housing? If yes, for how long is such a record maintained?

Does (City) maintain a record of responses to inquiries from candidates for affordable housing and referrals of such candidates to appropriate (City) or private resources? If yes, for how long is such a record maintained?

How does (City) inform candidates for affordable housing that such housing is or will become available within (City)?

Does (City) maintain a central list or waiting list of candidates for affordable housing? If not, is such a waiting list maintained elsewhere or by any entity other than (City)?

If a waiting list is maintained, how many people are currently on the waiting list or lists for affordable housing in (City)?

Has the number of people on the waiting list for affordable housing changed from 2007 to 2014? If the number has increased, by how much? If the number has decreased, by how much?

Does (City) select the management company to manage affordable rental housing within (City)? If yes, what are the criteria used in the selection of the management company? If not, who selects the management company and does (City) have input into the selection of the management company?

What is the name of the management company or companies managing affordable housing within (City)? Does (City) require reporting by the management company or

companies to (City)? If yes, please provide a copy of the most recent report from each management company.

What is the name and contact information of the (City) staff person or department administrator most knowledgeable about affordable housing within (City)?

What are the major obstacles to providing affordable housing within (City)?

How is (City) addressing these obstacles?

## Appendix 2

### CONTRA COSTA COUNTY AFFORDABLE HOUSING POLICIES

City	Commercial Linkage Impact	HOLDING IMPACT FEE	Inclusionary zoning/in-Lieu fees	Density Bonus Ordinance	GENERAL TRUST FUND	Taxes or Fees Dedicated to Housing	Affordable Housing Complements	Znd Dwelling	Acquisition/Rehabilitation/Conversion Program	Condo Conversion Ordinance
Antioch	Yes	YES	No	YES	YES	No	Yes	Yes	Yes	Yes
Brentwood	Yes	YES	YES	Yes	No	No	Yes	Yes	No	Yes
Clayton	No	NO	UC	YES	No	No	Yes	Yes	No	Yes
Concord	No	NO	UC	YES	No	Yes	Yes	Yes	Yes	Yes
Danville	No	NO	YES	YES	No	No	N/A	N/A	Yes	Yes
El Cerrito	No	NO	YES	Yes	No	No	N/A	N/A	Yes	Yes
Hercules	No	YES	YES	YES	No	No	N/A	N/A	Yes	Yes
Lafayette	No	NO	No	UC	No	No	Yes	Yes	No	No
Martinez	YES	YES	No	YES	No	No	NO	Yes	Yes	Yes
Moraga	No	NO	No	YES	No	No	No	Yes	Yes	Yes
Oakley	No	NO	YES	YES	YES	Yes	Yes	Yes	No	No
Orinda	No	NO	No	YES	No	No	N/A	N/A	Yes	Yes
Pinole	YES	YES	YES	YES	No	No	N/A	N/A	Yes	No
Pittsburg	No	NO	YES	YES	No	No	Yes	Yes	No	No
Pleasant Hill	No	YES	YES	YES	No	No	N/A	N/A	Yes	Yes
Richmond	YES	YES	YES	YES	No	No	Yes	Yes	Yes	Yes
San Pablo	No	YES	YES	YES	YES	Yes	Yes	Yes	Yes	No
San Ramon	Yes	NO	YES	YES	No	No	Yes	Yes	Yes	Yes
Walnut Creek	YES	YES	YES	YES	No	No	Yes	Yes	Yes	Yes
Contra Costa County Unincorporated	No	NO	No	YES	No	No	Yes	Yes	Yes	Yes

UC= Under consideration  
N/A=info Unavailable



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY  
725 Court Street  
Martinez, California 94553


Report 1615

**TRUANCY AND CHRONIC ABSENCE  
IN CONTRA COSTA COUNTY  
SCHOOLS**

**Empty Desks = Empty Futures + Full Prisons + Big Dollar Losses**

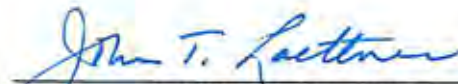
APPROVED BY THE GRAND JURY:

Date: 6/14/16

  
MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 6/15/16

  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1615

**Truancy and Chronic Absence in Contra Costa County Schools**

**Empty Desks = Empty Futures + Full Prisons + Big Dollar Losses**

**TO: Contra Costa County Office of Education; District School Boards for Acalanes Union High, Antioch Unified, Brentwood Union, Byron Union, Canyon, John Swett Unified, Knightsen Elementary, Lafayette, Liberty Union High, Martinez Unified, Moraga, Mt. Diablo Unified, Oakley Union Elementary, Orinda Union, Pittsburg Unified, San Ramon Valley Unified, Walnut Creek, and West Contra Costa Unified; City Councils of Antioch, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pinole, Pleasant Hill, Pittsburg, Richmond, San Pablo, San Ramon, Walnut Creek**

**SUMMARY**

Every school day, thousands of students across Contra Costa County (County) are absent from school. Based on truancy rates in the 2014-2015 school year, the public schools in Contra Costa County were ranked among the worst, 46<sup>th</sup> of 58 California counties. Out of 180,000 students in the County, 10,000 of them had at least three unexcused absences during the school year—the definition of “truancy”. Those who were “chronically absent”—that is, absent for any reason 10 percent or more of the school year, were an even larger number.

Elementary schools in the County also ranked last out of nine local counties in the truancy rate, with a truancy rate of 28.6 percent. This bodes poorly for our future correction of the problem as most of these elementary truants develop poor attendance habits for the rest of their school lives.

These empty school desks have deep social and fiscal impacts on Contra Costa County. For example, 83 percent of chronically absent students in kindergarten and 1<sup>st</sup> grade are unable to read at grade level by 3<sup>rd</sup> grade, and are four times more likely to drop out before high school graduation. Furthermore, 80 percent of the young adults in the justice system were truant or chronically absent students. Their detention in the legal system now costs the County millions of dollars.

Additionally, chronic absenteeism causes a severe loss of funding to the schools. The State reimburses schools based on a formula heavily weighted to the attendance of each student. The County lost over \$36 million in school funding in the 2014-2015 school year due to students absent from school. This funding loss not only affects those students who are absent, but also reduces funding for the rest of the students, and deprives the County of needed money for deserving school programs.

Students missing from school not only miss gaining an education, they also miss learning important life/work skills. Chronic absence from school has links to other negative consequences for the County, including increased daytime crime, unemployment, higher prison populations, and increased social service costs that drain County resources. Young people lacking a high school diploma face much higher odds of life as a County dependent rather than as a positive contributor to the community.

This report discusses the fundamental reasons for truancy and chronic absenteeism from school. We outline current anti-truancy programs and what needs to be done in the future to better address the problem.

Simply put, the missing student is both the problem and the answer. Solve why the student is absent and find the means and resources to help them stay in school. Increased student attendance means more funding to the district so any modest improvement pays the district back with increased revenue and student achievement.

In short, this report emphasizes the need to invest in our children now and help give them a future, or pay for it later with lower graduation rates, higher prison populations, and social service costs to last a lifetime. If we fail these students, we also fail ourselves.

## **METHODOLOGY**

The Grand Jury conducted an eight-month investigation, consisting of interviews, individual school district surveys, and research.

Those interviewed included the following:

- County School officials;
- School District administrators;
- Law enforcement officials;
- Local family counseling agencies who assist students with attendance issues
- Nationwide Non-Government Organizations (NGOs) that work on attendance initiatives and grant funding;
- Local NGOs, who are in partnership with the County to improve attendance rates in our schools and provide educational programs for struggling students;

Research materials included the following:

- California Attorney General’s 2013, 2014 & 2015 Report on California’s Elementary School Truancy & Absenteeism Crisis – “In School + On Track 2015”
- California Department of Education (CDE) data
- Review of current attendance programs and successful attendance tracking tools
- Past Grand Jury reports from other counties
- “Truancy and Schools” by Ken Reid
- 1999 KidsData.com (a national resource for information and statistics about kids in the County)
- Program materials from “Attendance Works”, a nationwide initiative to promote best practices for increasing school attendance

The Grand Jury also attended truancy and parent court proceedings.

## **BACKGROUND**

Nationwide studies show that as many as 7.5 million students are chronically absent from school each year. In California, one in five elementary school students are truant based on data from the California Department of Education. Furthermore, a report published by the California State Attorney General, Kamala Harris, *In School + On Track 2015*, estimates that statewide, 8 percent of elementary school students are chronically absent.

There is an important difference between “truancy,” which is an unexcused absence covering more than three days in a school year, and “chronically absent,” which means any absence, whatever the reason, that covers more than 10 percent of the school year, or roughly two days a month. Students who are chronically absent from school endanger their futures and sow seeds of future costs and problems for the County.

Time away from the classroom hurts a student’s chances to succeed in life. Students who miss school may face lifelong economic consequences. Studies show that chronically absent students feed the school to prison pipeline. Over 80 percent of prison inmates were truant or chronically absent when they were students.

While success in school is dependent upon many factors, being present every day is critical, particularly for low-income students and minority students, who face a variety of educational barriers. Truancy and chronic absences is a distinct predictor of low student achievement and high school dropout rates.

Important warning signs can be seen as early as pre-K and kindergarten-age children who show a pattern of chronic absences. Studies show that this pattern predicts poor attendance and academic performance in later grades. Over 80 percent of chronically absent students in kindergarten and 1st grade are unable to read at grade level by the

3rd grade and are four times more likely to drop out than children who can read at grade level. By 6th grade, chronic absence is a leading indicator that a student will drop out of high school. By 9th grade, chronic absence is even a better predictor of dropout rates than 8th grade test scores.

Consequently, keeping children in school and learning at the earliest grade levels is key to creating good attendance habits and keeping students on pace with their classmates. Yet, many elementary students miss valuable learning time due to chronic absenteeism, and develop a damaging pattern that continues through later years.

## **DISCUSSION**

The County school system consists of 18 school districts located from Richmond to San Ramon to Byron. Including, special education, charter schools, and continuation schools, there are approximately 180,000 students from kindergarten to 12<sup>th</sup> grade. Each year approximately 60,000 of these students are chronically absent and/or truant.

The County's school districts have a diverse economic and ethnic makeup. This diversity is reflected in truancy and student absentee rates. For example, the Richmond School District has the lowest per capita income levels in the County and the lowest attendance rate: approximately 62 percent. On the other hand, the San Ramon Valley School District has one of the highest per capita incomes and the highest attendance rate at 97 percent.

Not surprisingly, the State has given special financial assistance to low-income districts through the "Local Control Funding Formula" (LCFF) program. Most funds for school operations are no longer supplied from local property and sale taxes. Instead, the State funds education district-by-district using a system of identifying and funding triggers with a base funding level. There are funding boosts if the students live in a low-income school district or in a district with high numbers of English as second language (ESL) learners versus a more affluent district with relatively few ESL students. A key part of the funding formula for all districts, however, is average daily attendance (ADA) that must be tracked and reported to the State.

Given how schools are funded, financial loss to a school from chronic student absences can be severe. The cost of running a school is fixed. Teachers, administrators, janitors, maintenance workers, bus drivers must be paid regardless of the number of students that show up. Other fixed costs include building utilities and maintenance.

Consequently, for both educational and fiscal reasons school administrators say, "Our goal is to make sure every student is in class and getting the education they deserve."

### Weaknesses in the Current System for Improving Student Attendance

Despite the importance of tracking and promoting higher school attendance, complete and accurate data about schools' rates of chronic absenteeism does not exist. In the

absence of this information, other indicators, including truancy rates (which are reported), are used as proxies for the chronically absent rates. The focus of this report is “chronically absent” students who are missing more than 10 percent of the school year. Various studies show that in the County, similar to the state and nation, the students who are chronically absent from school are those most likely to fail to graduate, to enter the welfare rolls, or to wind up in prison. High “chronically absent” rates also have a severe financial impact on the County and its school districts. In 2015, Contra Costa County school districts lost an aggregate \$36,029,637 of State ADA funding solely because of the number of students absent from class.

Comparative data on truancy rates also reveal a disturbing picture for the County. The truancy rate for the County’s students exceeds the statewide truancy average and the average for nearby Alameda County. In fact, Contra Costa County ranked one of the worst, 46 out of 58 total counties in the State for their truancy rate in the 2014-2015 school year.

Truancy Rates 2014-2015 School Year	Percent of student population
California	31.1
Alameda County	27.0
Contra Costa County	38.9

There are many causes for truancy and chronic absences. Diverse and complex reasons make it difficult to create a one size fits all solution. Each student has a unique history and some need very personalized support or incentives to improve their attendance patterns. The most effective programs are those that take an early intervention and holistic approach that includes careful evaluation of each individual student, including his or her family circumstances, ethnic background, English language skills, physical or mental challenges and individual aptitude levels.

Personalized student programs of this kind and the needed support to facilitate them cost money and require passionate individuals who make attendance their priority. Personalized programs show the most promise of yielding results that can put a student on a better path to success in school, thereby lessening the probability that the student will one day become a future burden on the community.

However, implementing and maintaining successful programs to improve attendance is not easy. As one administrator put it, “there are so many tasks required of our teachers each day already” and another explained, “For decades a student’s attendance was taken, not tracked and evaluated.” In general, schools are dealing with many issues. Focusing on daily attendance patterns, prevention and awareness often competes with other priorities for funding and attention by school administrators. Such competing

priorities and limited resources are the biggest challenges to overcome in programs to improve student attendance rates.

### Information Gaps Exist

While individual school districts in the County collect some data on chronically absent students, the districts are not required to report this data to a central office in a consistent format. That means the collected data is not aggregated and shared countywide. California is one of only four states in the nation that does not have a statewide attendance tracking system.

With the passage of the Local Control and Accountability Plan (LCAP), California Education Code section 15497, in 2013, each school district is now required to develop a goal-oriented local plan to improve district schools in eight priority areas, one of which is to promote student engagement to improve attendance rates. The plans are to be developed by teachers, parents, and others in the community. Although the introduction of the LCAP requirements appears to have led to some modest attendance improvements in the County, gaps still exist in the processes and infrastructure used by the school districts to improve student attendance rates. One of the key gaps is a lack of centralized and detailed data collection on chronic absence rates.

Without good data to reveal the depth of the problem, other key data indicators must be used to get a better understanding of the chronic absence problem. Each of these indicators has been linked, either positively or negatively, to chronic absence rates. These indicators are the following:

- High school graduation rates;
- Economically disadvantaged/advantaged locations;
- Students' academic achievement at grade level;
- Truancy and parent court statistics; and
- Existing programs- impact and success rates of improving attendance.

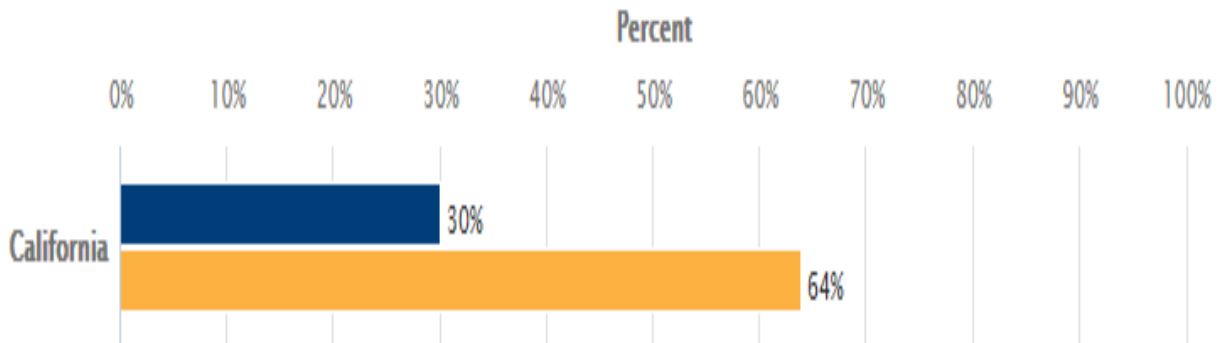
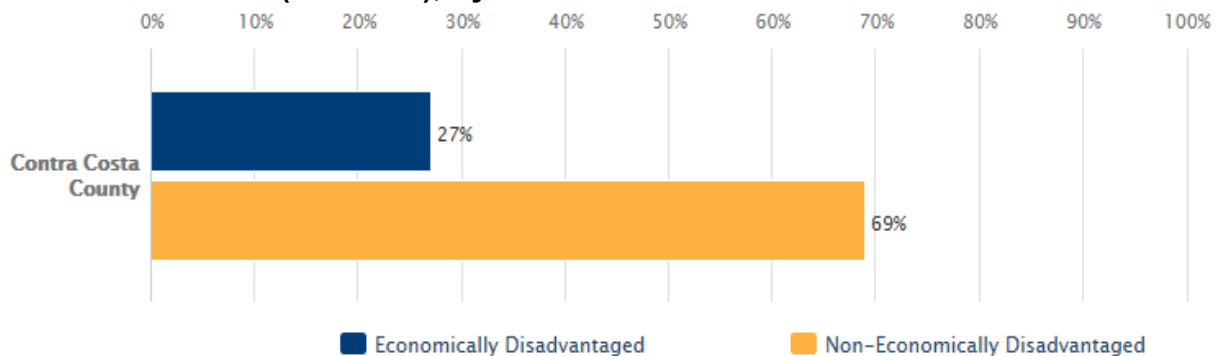
High school graduation is the benchmark, not only for an individual's future prosperity, but also for the prosperity of a county. In the County over 8 percent of 12<sup>th</sup> graders did not graduate last year. Data is not currently available to know how many of those non-graduates were chronically absent or truant. However, the law now requires school districts to collect and report this data.

### Economically Disadvantaged Students

In certain school districts within the County, there are a significant number of families and students who struggle financially and are considered economically disadvantaged. The available data suggest that economically disadvantaged students are more likely to struggle with attendance since they face more challenges in getting their basic needs met. These students are at greater risk of being absent and not reading at their grade level in the early years.

The bar graph below shows that 73 percent of the economically disadvantaged students in the County are below the standard achievement rank for their grade level in English and Language Arts and are at risk for becoming dropouts. On the other hand, only 31 percent of the County’s *non-economically disadvantaged* youth fail to meet the standard. In fact, the County’s non-economically disadvantaged youth exceeded the state average for their peers in these same proficiency tests.

**Students Meeting or Exceeding Grade-Level Standard in English Language Arts (CAASPP), by Socioeconomic Status: 2015**



Chronic absences among economically- disadvantaged students are of particular concern because the patterns show they are likely to be struggling academically compared to their peers.

To address problems affecting students in economically disadvantaged districts, the State is now requiring school districts to report designated at-risk-student groups along with their ADA (Average Daily Attendance) reports. The State provides additional funding to districts based on the percentage of disadvantaged students who fall into the specified subgroups. Districts may use such additional funds for additional teachers, health programs, counseling, campus security, resource officers, and even meal assistance. This additional funding is provided through LCFF. More funding, of course, does not alone assure a solution to the chronic absence problem in the economically

disadvantaged districts. The key to improving the matter is applying such funds to the needs of each district. For example:

1. The school district may need to address real and urgent social issue in a child's life, such as family abuse or neglect.
2. The student may have an urgent need for food and shelter.
3. The student may have medical or other health issues that need attention.
4. The student may need bus passes if the family has no transportation options readily available.
5. The student may need counseling or other special services.

Child Services is called in severe cases. At times, the chronic absence of a student is the only sign that something is wrong in the student's home, although there are many more underlying problems.

Even with additional funding under the LCFF formula, the economically disadvantaged districts have distinct challenges. The chronically absent rates in these districts are still higher than in the more affluent districts like San Ramon Valley and Orinda Union that receive little to no special LCFF revenues. The data suggest that family and demographic factors play a larger role than simply school funding in contributing to student absentee rates.

All of this underscores the importance of setting the right priorities for funding programs to improve school attendance. The key to any program's success is focus and effectiveness. To help get a student back on track and to "beat the odds" arising from chronic absence from school will depend heavily on tailoring programs that address the particular needs of the student--whether the barrier is family problems, financial barriers, psychological issues or language challenges.

#### Inconsistencies among School Districts' Attendance Programs

The County's school districts do not have compatible systems to track student attendance nor do they have a common protocol to analyze the attendance of each student. Thus, it is difficult for County education leaders to identify those students who are chronically absent. Without such information, education leaders have difficulty pinpointing students who need assistance.

The problem is not unique to Contra Costa County. There is no standard attendance tracking system for the County or the State. Instead, each district has an independent tracking system for the students in their districts. This attendance information is only shared if requested, at which time it is uploaded or, in some cases, hand entered into another system.

The lack of standard tracking tools has particular impact on foster youth and homeless students since they are more transient and harder to track. School districts such as Mt.

Diablo Unified School District have an administrative team to help foster youth with their school placement and the subsequent adjustment to the new school. However, other districts do not have such a team in place. As districts do not have standard graduation requirements and do not assign the same credit value for classes, it is more challenging to assist foster youth to plan for graduation as these youth often transfer between districts.

If each school district had an effective tracking system to identify the chronic absence problem and strong infrastructure in place, it would help those students most in need. If data from the system were accessible at a central County office, trends and particular problems identified could be shared with other districts as appropriate. Through better data collection, each school should be able to more quickly identify a student struggling with attendance and step in before they are too far off track.

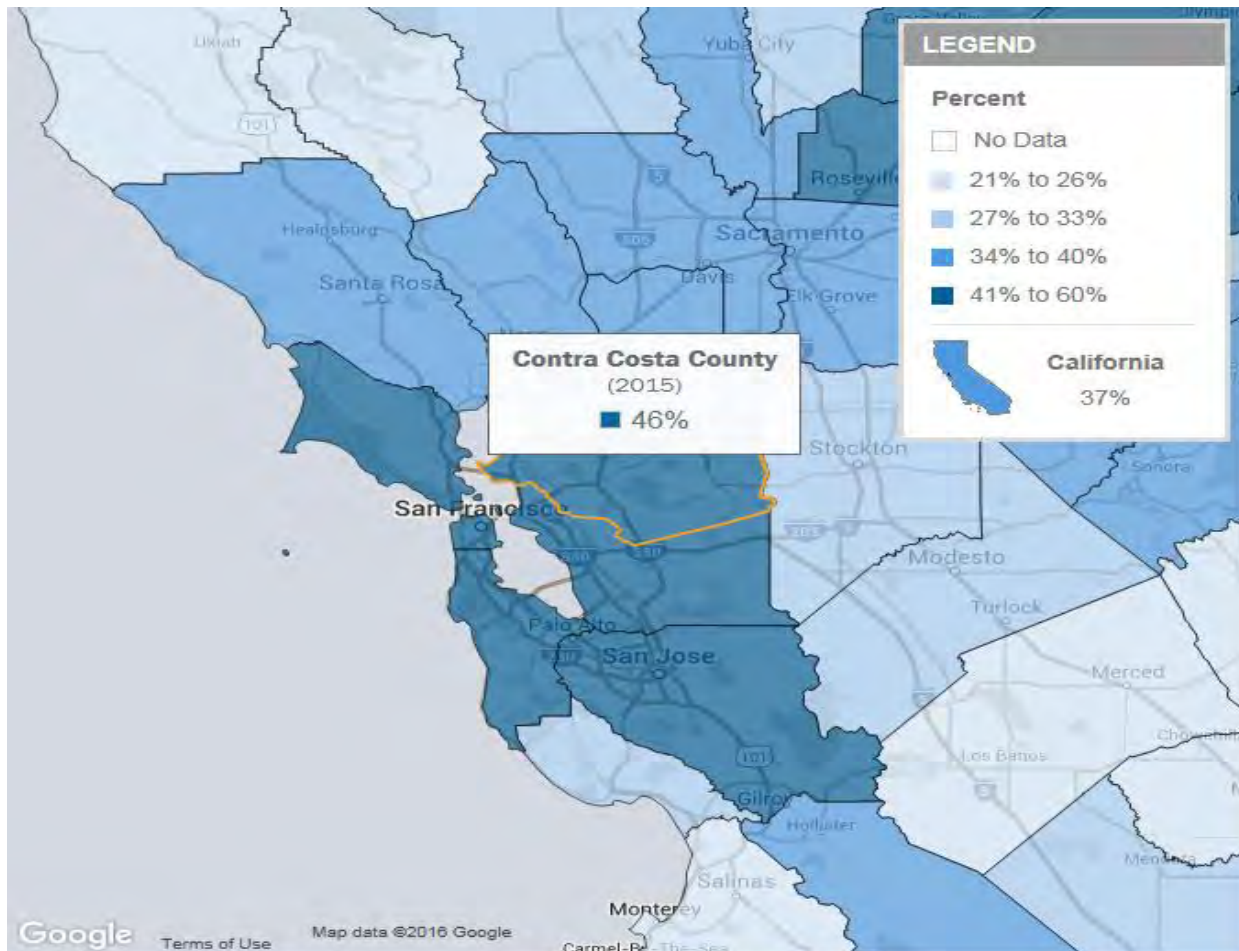
### The Special Problem of Elementary School Absences

Studies have shown that a pattern of absences at an early age in school can set a downward path that a student may not be able to make up later. Despite these findings, many parents believe that elementary school absences are not as serious a matter as absences in later school years. The most common parental misconceptions are the following:

1. Regular attendance in grades K-3<sup>rd</sup> grade is not as important as in later years.
2. Students will catch up in school before they get to high school.
3. Missing consecutive days is more harmful than just a few days here or there.
4. As long as the parent approves of the reason for the absence, it should not be as serious a concern.

These misconceptions may have contributed to less than 50 percent of the County's 3<sup>rd</sup> grade students achieving a grade-level reading score. The map on the following page shows that only 46 percent of all public school students in the County are reading at grade level by the 3<sup>rd</sup> grade.

## Students in Contra Costa County reading at grade level by 3<sup>rd</sup> grade



*Data Source: California Dept. of Education, California Assessment of Student Performance and Progress (CAASPP) results (Nov. 2015)*

The studies show that students not reading at grade level by third grade are four times more likely to drop out later and fail to graduate from high school.

School officials and educators agree, “When students are truant or chronically absent from elementary school, they fall behind academically.” They are less likely to graduate from high school, and are more likely to be unemployed, on public assistance, and victims or perpetrators of crime.

Elementary school truancy is a serious problem in the County; the County ranked at the bottom of the nine Bay Area counties with an elementary school truancy rate just over 28 percent. The chart on the following page shows the truancy rates for all Bay Area counties compared to Contra Costa County.

County	Elementary school truancy rate
Alameda	23.8%
Contra Costa	28.6
Marin	10.7%
Napa	6.2%
San Francisco	22.7%
San Mateo	12.9%
Santa Clara	14.4%
Solano	18.6%
Sonoma	11.9%

Source: California attorney general

An important case study reached the following conclusions about high school student dropout rates in relation to chronic absences in early school years:

- Recognizing poor attendance patterns early and finding a way to solve the problem helps more students graduate.<sup>1</sup>
- Students with regular elementary and middle school attendance graduated 95 percent of the time and had less than a 5 percent dropout rate.
- Students with a good attendance rate in the early years of school, but who begin to disengage in 5<sup>th</sup> and 6<sup>th</sup> grades became chronically absent in later years and drop out of high school at about a 25 percent rate.
- Students who start out with poor attendance, take two paths:
  - Those who improve their attendance significantly by 8<sup>th</sup> grade drop-out 10 percent of the time.
  - Those whose attendance become worse by 8<sup>th</sup> grade drop-out 20 percent of the time.

### What Programs and Tools Work to Improve School Attendance?

An effective plan to improve school attendance and reduce the chronically absent rate in the County's schools must include the following:

1. Individual Improvement Plans: Tailor attendance improvement plans for each individual chronically absent student, recognizing that each case is unique.

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<sup>1</sup> See Jason Schoeneberger's 2012 study, "Longitudinal Attendance Patterns Developing High School Dropouts" This study shows the importance of building good attendance habits in the early grades and continuing to attend school regularly through middle school. While emphasizing the dangers for the student of the odds of graduating dropping dramatically in cases of chronic absence in the elementary years, it did offer some hope for those who achieve an attendance turnaround by the 8<sup>th</sup> grade.

Students have different problems depending on their family’s financial circumstances; their English language skills; conflicts that may exist in their homes; the parenting skills and encouragement provided by their parents or caregiver; mental or physical challenges; and medical issues.

2. Emphasize Importance of Attendance in Elementary School: As noted, patterns and habits of regular attendance—and their disturbing counterpart, chronic absence—start in elementary school with consequences that can be far-reaching.
3. Make Regular School Attendance a Priority Goal in School and District Budget Plans: Schools and the school districts need to focus attention and resources on improving regular attendance. Higher attendance rates lead directly to higher state education grants that are tied to ADA rates. Districts should recognize that the “return on investment” for spending on programs to improve school attendance reaps rewards financially, as well as in better futures for the students and the community.
4. Improved Absence Tracking Systems: To measure improved attendance results and to help verify which programs work, the districts need accurate and easily accessible data in order to track attendance patterns by school. Each district also needs details on how each school used their LCCF funding to improve attendance.
5. Build Community and Parent Support: The County, cities, and districts should take initiatives to educate and inform the public of the importance of improving school attendance—for better student futures, for better and stronger communities, and for the increased financial support that will flow to their community schools from state funding.

This report explores below in more detail the programs that have worked to improve school attendance.

### Individual Improvement Plans - SART and SARB

There are state laws in place that provide some frameworks to meet the special needs of students with school attendance problems or school behavior problems. The key components of this framework are the “School Attendance Review Team (SART) and the “Student Attendance Review Board” (SARB) processes. The SART and SARB process is set forth in the State Education Code sections 48320 through 48325. The law was enacted to enhance the enforcement of compulsory education laws and to divert students with school attendance or behavior problems from the juvenile justice system until all available resources have been exhausted.

Education Code Section 48321 provides several organizational structures for School Attendance Review Boards (SARBs) at the local and county level to create a safety net for students with persistent attendance or behavior problems. Although the goal of SARBs is to keep students in school and provide them with a meaningful educational experience, SARBs do have the power, when necessary, to refer students and their

parents to court, the county probation department, or to a district attorney mediation program.

Elements of the SART and SARB processes have shown promise in reducing chronic absenteeism rates. The SART process is an early intervention process for cases of chronic school absences that takes effect before the SARB process begins. During the SART process the student and his family (parents) meet with school representatives (typically a counselor, the Child Welfare and Attendance representative, the principal and/or vice principal, and anyone else at the school who may be relevant to the case) to discuss the reasons for the chronic absenteeism of the student.

The family and student are then assessed by the SART team to determine the root cause of the attendance issues. The team compiles an individual action plan to make improvements. The plan may include special tutoring, or even basics such as providing a bus pass for transportation to and from school. The SART team typically asks for a contract of commitment to attend school, which is signed by the student and his or her parents.

If a student's attendance does not improve after the SART process has completed, he or she is designated a "habitual truant". The student and his or her parent/guardian may then be required to attend a SARB hearing. The SARB's function is to act as the last step before schools engage with prosecuting authorities to deal with the truancy issue.

At a hearing, SARB committee members identify the core problem and its contributing factors through discussion with the parents of the truant student and the student. The objective is to tailor strategies to improve the student's attendance. By doing so, the SARB members can determine if available community resources – such as County health care services, County welfare services, nutritional counseling or alternative transportation options – can resolve the truancy problem.

If a SARB determines that available community resources can resolve the attendance problem, the SARB will refer the student and parent to the relevant service providers and may require proof of participation in those services.

In practice, the parents also enter into a SARB "contract;" its main goal being to improve student attendance. If a parent fails to respond to the directives of a SARB, either by failing to attend the SARB hearing in the first instance or failing to comply with the SARB contract, the SARB will generally refer the matter for criminal prosecution.

Students and parents in the County who disregard or ignore the SARB process and are still chronically absent are then directed to the County's "new parent" court or, for high school students, teen truancy court.

Truancy court meets twice a month in downtown Martinez. The tools the judge employs to encourage school attendance are limited to the resources available in the County.

These include a delay in obtaining a driver's license, 25 hours of tutoring, sessions with a mental health counselor, drug education and cognitive behavior modification classes on Saturdays (Stay Alive at 25).

Some students still resist and the Court, in extreme cases, may require ankle monitors attached to the high school age student to track them during the school day. The DA's Office has an investigator who then monitors the student's whereabouts during school hours. These tracking methods appear to have had some success as they provide the student a ready excuse to avoid hanging out with the wrong crowd, and instead, attend class.

The elements of the SART, SARB and truancy court processes that have been the most effective in combating truancy are those that focus individually on the problems faced by each student, and then are reinforced by intervention from the school representatives or, in the extreme cases, by a superior court judge through the truancy or new parent court.

West Contra Costa Unified School District (WCCUSD) once had a teen truancy court in Richmond. This court facilitated attendance by parents and students in the district who are struggling with regular attendance. Without having a local teen truancy court, fewer referrals come in to Martinez from WCCUSD. The new parent court in Martinez has a high caseload that could be better managed if there were additional court locations and staff available to facilitate the program.

#### Engage at Elementary School Level

As noted above, the importance of good attendance habits during the student's elementary school years is often overlooked. Emphasizing individual action plans to address the early stages of truancy at county school districts can be part of the solution. Elementary-aged students are generally relatively willing to cooperate in initiatives to encourage school attendance, provided they have family support. The districts, in turn, can take the steps necessary to focus family attention on the importance of early school attendance and assist families in overcoming any financial or logistical hurdles that may prevent their child from getting to school on a regular basis.

#### Make Regular School Attendance a District Budget Priority.

As previously emphasized, the missing student is the answer to the missing funds. Solve why the student is absent and find the money to help them stay in school. Increased student attendance means more funding to the district so any modest improvement pays the district back with increased revenue and student achievement.

While 100 percent attendance is virtually impossible according to school administrators, achieving an incremental improvement of one percent can be a difficult (but achievable) task. Even a one percent increase in a school's ADA rate could add substantially to that school's funding. Most school districts that report spending less than \$50,000 on truancy

and chronic absence programs, recouped between \$500,000 and \$1 million dollars in ADA funding because of modest investments in awareness and prevention programs. Accordingly, making improved school attendance a budget priority should pay for itself. It may well, if successful, even result in additional much needed funds for the school district budget—a “win-win” for all concerned.

Despite the very attractive return on investment (or multiplier effect) from investing in programs to improve school attendance rates, most of the school districts have little to no general fund budget for attendance tracking, truancy prevention tools or truancy awareness programs. Districts that qualify through LCFF funding criteria for millions of dollars to help support students in improving their attendance are the rare exceptions.

These funds target specific subgroups and provide critical resources and programs for those students most at risk. However, even those LCFF funded districts do not appear to have systems in place that accurately track chronic absenteeism or that analyze what aspects of their programs are most effective in improving attendance and the annual cost of these programs.

School districts that do not qualify for special LCFF or federal funding to combat chronic absenteeism have to fund and implement their own support programs. The number of students in need in the latter districts is generally less, reflecting the smaller number of economically disadvantaged students. However, these students are at risk of being left behind if the districts do not fund such support programs.

Most truancy programs have factors in common. They identify the family as the primary source of a student’s attendance problem and operate on the assumption that the sole effective solution to getting the student back on track is uncovering and then removing the barriers preventing regular attendance.

Some programs are effective in helping students get back on track and stay there. However, since the COE has few programs and limited funding, it is up to the school districts and the COE to prioritize their spending on the most effective programs.

The truancy court run by the Contra Costa County Superior Court has an effective partnership with the Lincoln Child Center. The Center provides hands-on family counseling services that have been highly effective in reducing chronic absenteeism. They provide everything from help in finding housing to mental health care for the student. However, these types of programs are expensive because of the depth of care and resources needed to assist the families. For some students, Medi-Cal benefits fund half of Lincoln Child Center fees. However, this leaves these vital programs vulnerable with only short term funding and a complete dependence on non-profit contributions to sustain temporarily these vital programs.

There is no long-term plan to guarantee ongoing funding for NGOs like the Lincoln Child Center. Yet funding of these NGOs by school districts would be a very wise investment

if they in fact increase school attendance. Such funding would ultimately pay for itself by lowering rates of chronic absenteeism, and by increasing ADA funding.

These programs provide a valuable service to the students who are most in need, yet they could help even more students if they were expanded. Without these types of programs, the County is likely to lose ADA funding and without assistance, many of these children are not likely to graduate.

### Effective Data Collection and Software

All of the school districts in the County use a computer based attendance-tracking system. Each teacher records whether a student is present or absent on a desktop computer screen. The information is uploaded into the master computer in the school front office. If the teacher forgets to collect attendance, the front office notifies the teacher before the end of the day to do so.

Some of the school districts use the “Aries Attendance Tracking” system. Other districts such as WCCUSD use “Power School” and San Ramon Unified School District uses “Infinite Compass”. Each system has its pros and cons, and the cost of the systems varies.

Regardless of the system used, an effective anti-truancy program relies on prompt analysis of attendance data to discern problems and trends. Ideally, the analysis should be performed at the school and individual student level. One such initiative—the “Attendance Works” initiative—offers just such analysis and data tracking.

“Attendance Works” is a nationwide nonprofit initiative that offers assistance, best practices, and attendance tools to help school districts improve attendance in their districts. They work with large governmental agencies such as the US Department of Education, the State Department, and even the White House to get grant funding for improving attendance. They help school districts across the country write grant applications to secure funding for attendance programs, counselor’s tools, materials to prevent absenteeism, and awareness about the importance of school attendance.

With the help of Applied Survey Research, “Attendance Works” uses self-calculating spreadsheets for school districts called the “District Attendance Tracking Tools” (DATTs). The companion tools are the “School Attendance Tracking Tools” (SATTs), which provide school-level analysis down to the individual student level.

DATTs and SATTs are Excel files embedded with formulas, tables, and charts, designed to work with a school’s student information system. School districts can upload attendance data and receive analysis of chronic absence rates by school, grade and racial/ethnic breakdowns, as well as a list of absentee students. While they do not replace a district’s regular data system, the Attendance Works tools are helpful for

providing a snapshot of the levels of chronic absenteeism in the school or district and the ability to view information in real time to address the issues quickly.

The DATT and SATT software is available free of charge from Attendance Works. While Attendance Works requests that users share their summary data for research purposes, it is only shared externally either with permission from the school district or on an anonymous basis.

Only 5 of the County's 18 school districts participate in the Attendance Works Pilot Program started by the COE, which began during the 2015 school year. The school districts that did not participate in this program were either not invited or did not accept an invitation to join.

To share best practices in reducing chronic absences, Attendance Works holds regular meetings with the following five (5) school districts: Martinez, Mt. Diablo, WCCUSD, John Swett, and Pittsburg. The school districts that participate report receiving great benefit from each meeting and say the opportunity to speak with other school districts is welcome and always helpful.

"Sharing best practices and common challenges just makes sense," said a top-level school official. Another administrator related that they never leave a meeting without learning something or sharing something new with the group. The administrators who attend these workshops vary but usually are school leaders and support staff directly involved with the attendance process, student services, or counselors who work directly with students needing support.

The keys to effective data collection as reported by Attendance Works are as follows:

1. Actionable Data- needs to be accurate, accessible, and regularly reported.
2. Capacity Building- expands ability to interpret data and work together to adopt best practices.
3. Shared Accountability- ensures monitoring and incentives to address chronic absence.

Attendance Works has all the features needed to track and trend individual attendance and is widely accepted by those that have used it.

### Community Engagement and Awareness

School districts participate in the Attendance Awareness month, facilitated by the COE, each September. However, the COE does little to promote this as a countywide event. It mainly provides handouts and banners to school districts to place up around their schools.

Some elementary schools have been more creative, such as those in the John Swett school district. That district recently had attendance competitions between classrooms. In another awareness raising activity, the County recently had an art contest around the theme of attendance saying “Every School Day Counts”. San Ramon Valley Unified School District encourages the parents to notify the school if they take their children on week or longer vacations. The school district can then have the teacher prepare a week or longer lesson for the student while they are gone.

The State pays the school district if the student completes the vacation plan and in turn, the student is not counted as absent. Countywide, more can be done to make an impact with the month long attendance program campaign and to make parents more aware of common misconceptions about attendance and what role they play in the education of their children.

The countywide attendance slogan is “Every Day Counts”. This should be a well-known phrase that is drilled into parents and children as they try to ensure that their children have good attendance. Community reinforcement and peer pressure can have positive results on school attendance rates.

### Other Program Ideas

#### 1. Daytime Curfews

A daytime curfew is another promising idea for reducing truancy and chronic absenteeism in the County’s schools. Cities that have a daytime curfew see a reduction of juvenile daytime crime. In Contra Costa County, police report that 60 percent of juvenile crime occurs between 8 am and 3 pm on weekdays, during school hours. Some of the local cities now have curfews imposed between 8 am and 1 pm. The curfew deters “hangout” sites, decreasing the incentives for the children to leave school. The only cities the Grand Jury was able to confirm having daytime curfew ordinances were eight of Contra Costa’s 19 cities including Pittsburg, Richmond, El Cerrito, San Pablo, Hercules, Pinole, Martinez and Concord.

Few school administrators, and fewer students, are aware of whether cities in their district have a daytime curfew. However, many school administrators believe that a daytime curfew would be helpful and a logical policy to have in effect to encourage school attendance.

For cities that do not have a daytime curfew it often has to do with setting legal priorities for officers who spot truant students out during school hours. In some cases, officers report that their priorities are directed elsewhere than to lower priority truancy issues. Where there is no daytime curfew then there is no legal obligation for the police officer to intervene. Imposing a daytime curfew for

students should be seriously considered in view of the positive impact it may have on school attendance rates.

## 2. County Office of Education (COE) Involvement

The COE meets monthly with district superintendents; however, truancy and attendance is not usually an agenda item for these meetings. Monthly COE meetings could be a useful forum for school superintendents to discuss chronic absenteeism and those programs and initiatives that have been most effective in their districts in addressing this issue.

## 3. Designated Staff for Improving School Attendance

The information collected by each district, how often it is shared, and to what extent it is discussed within each district varies tremendously. Some districts produce and regularly distribute attendance reports to their schools containing rates of chronic absenteeism, which helps to quickly identify the students most in need of support. However, other districts in the County do not have the tools or infrastructure in place to collect, track and monitor this information on a regular basis.

Many do not have designated staff or comprehensive data collection in place to gather and provide administrators current data. Those districts that have a well-staffed and dedicated team to manage, track and respond to data, are able to better identify those students in need and provide support more quickly. Having dedicated staff in each district focused on improving school attendance is essential to an effective anti-truancy effort and successful plan to reduce chronic absenteeism.

## Conclusion

An empty seat in the classroom means a child is not getting the education they deserve and need to succeed in life. The reason a child does not attend school regularly can vary, be complex and require significant support, or be as simple as needing a bus pass. If we never find out what the barrier is then we have failed to help that child receive the education they deserve. And if we do find out, but then lack the infrastructure or ability to help, then we have failed.

The County has caring and competent school administrators who understand the importance of a child being in school. District superintendents and staff understand what is required of them. With the new LCAP, which requires more structure and purpose around taking attendance, many struggle with a lack of a well-developed strategy and infrastructure. Districts with certain (State designated) student populations qualify for LCFF funding and have an opportunity to use those funds to significantly reduce their chronically absent rates.

The COE could provide strong leadership to train, facilitate and assist school districts in working more closely with each other to improve the County's ADA. A higher ADA rate is a "win-win" result that deserves greater resources and attention by the districts and the COE.

With a modest investment, and strong leadership the County can help the school districts improve their overall attendance. Attendance is not just something we should do but rather an indicator of how a child is doing in life. In this fast-paced modern society, there is little time to catch up once you fall behind.

Early focus on elementary school attendance is a cost effective way to improve long-term educational outcomes, and in turn, improve lives. With a concerted effort and a designed plan, student attendance can improve. The County's school districts should make sure they have done all they can to provide its children with the educational skills needed to compete and succeed in today's rapidly changing world.

## FINDINGS

- F1. Based on truancy rates, during the 2014 – 2015 school year the County ranked among the worst in the State, 46<sup>th</sup> out of 58 counties.
- F2. Based on chronic absences during elementary school, during the 2014 – 2015 school year the County ranked last out of the nine Bay Area counties.
- F3. The SART and SARB programs help maintain and improve attendance rates, thereby increasing ADA funding for each school in the district and in the COE.
- F4. Not all County school districts comply with the requirement found in California Education Code section 15497 that each district collect, track and report its chronically absent rates in an annual LCAP.
- F5. The COE does not currently know the chronically absent rates for all of the County's school districts because the COE lacks relevant data needed to perform the analysis.
- F6. To identify students with attendance issues and quickly address these issues, the school district needs complete and accurate data about attendance and a well-developed support infrastructure.
- F7. The school district has its own software system for collecting attendance information and its own process and standards for collecting, storing and utilizing the truancy attendance information gathered, which are not necessarily the same as other districts in the County.
- F8. Without a centralized attendance system or compatible software among school districts, it is challenging to get a complete picture of a student's attendance profile and patterns over multiple years or across districts.
- F9. Some school districts have little communication with other school districts and the COE about best practices, common achievement goals, and best data systems regarding attendance.
- F10. The California Attorney General, Kamala Harris 2015 report, *"In-School and on Track"*, indicates that over 80 percent of chronically absent students in kindergarten and 1<sup>st</sup> grade are unable to read at grade level by 3<sup>rd</sup> grade. These students are four times more likely to drop out than children who can read at grade level.
- F11. The city does not have a daytime curfew.

- F12. The city that has and enforces a daytime curfew sees less daytime and juvenile crime.
- F13 Chronically absent or truant students, who do not get back on track before age 18, are more likely to drop out of high school before graduation.
- F14 Parent and Truancy Courts offer attendance support and are one of the last opportunities to alter a student's attendance behavior.
- F15 Attendance improvement programs used by the County's Juvenile Courts, such as the Lincoln Child Center, ankle monitors, drug and mental health counselors and tutoring classes lack long-term funding.
- F16 The school districts that have Truancy or Resource Officers who connect directly with students, help get chronically absent or truant students back on track.
- F17 There is currently no teen truancy court in the WCCUSD area.
- F18 The WCCUSD does not provide sufficient staff to process chronically absent students through the Parent or Truancy Court in Martinez.
- F19 The amount and allocation of funds provided by the State and spent by the COE for LCFF oversight activities and instructional programs is not reported in detail by the COE, making it difficult for the public to discern the size of the programs targeting attendance improvement and their impact on attendance rates.

## RECOMMENDATIONS

- R1. The COE should consider developing a comprehensive multi-year plan for improving attendance rates that has annual goals.
- R2. The COE should consider assessing each school district's capacity to collect, track and improve attendance, and identifying funds to do so. As part of this assessment, the COE should:
- a. Define the unique make up of each school district's student population.
  - b. Analyze which attendance systems are used in the County.
    - i. How many different ones are there?
    - ii. Are they compatible and able to share data?
    - iii. Do they all provide the critical information needed to track chronically absent rates and attendance patterns in their schools?
  - c. Determine what additional training and support school districts need to meet their goals and improve their attendance.
  - d. Determine which school districts lack effective programs to ensure improvement in attendance.
  - e. Provide an overview of the SART and SARB programs, and delineate the partners with whom they work in the County, and the services provided to the students in need.
- R3. The COE and the BOS should consider providing financial support to the Parent and Truancy Courts in Martinez by providing a multi-year funding plan for critical tools and programs to help struggling families most in need: e.g., funding of Lincoln Child Center, counseling programs, ankle monitors, drug use prevention and treatment, and identifying funds to do so.
- R4. The COE should consider helping WCCUSD reinstate a local parent and truancy court by providing the juvenile courts in Richmond information on the need for these programs and support for best practices and programs.
- R5. The COE should encourage all school districts to participate in the Attendance Works program and to use the free tools provided.
- R6. All school districts should consider participating in the Attendance Works program.
- R7. If a school district declines to participate in Attendance Works, the COE should consider asking for a written explanation as to why the district declined to participate and what programs the district is currently using that would be comparable.
- R8. The COE's office should consider placing attendance as a standing agenda item at its monthly meeting with school district superintendents.

- R9. School districts should raise parent awareness concerning how to prevent a student's school absence from affecting ADA funding or the student's truancy rate.
- R10. COE should consider creating a centralized attendance data system for the County that would include regularly uploaded information from school districts about school absences and ADA data, and identifying funds to do so.
- R11. COE should provide training in advanced tracking techniques with free tracking tools that would be compatible across schools and districts in the County, such as Attendance Works and Aries attendance tracking software, and identifying funds to do so.
- R12. Each school district should consider designating staff to collect, track, and analyze, attendance data in order to follow up on students that appear to be at risk, and identifying funds to do so.
- R13. The COE should help to close the communication gaps among the districts by creating an atmosphere of dedication and communication that encourages districts to freely share highlights and best practices at monthly meetings.
- R14. The school district should consider incentivizing schools to seek increased ADA funding by means such as splitting the additional ADA money between the district and the school for achieving increased ADA funding.
- R15. The COE should consider identifying funds to produce an annual County attendance report that would be publically available countywide, both online and in hardcopy, which includes:
- a. Data on measurable goals. (who achieved, who fell short)
  - b. Highlighted area for both teachers and students, telling their success stories.
  - c. Description of the increased funding from improved ADA countywide and what new programs help to contribute to the result.
  - d. Information about district graduation rates, college enrollment, English learners and economically disadvantaged students.
  - e. Information about programs available and encourage families to seek help before their child falls behind.
- R16. The COE should consider encouraging city councils that do not have a daytime curfew to pass and enforce one.
- R17. The City should consider adopting a policy to promulgate, enforce, and promote a daytime curfew.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
County Office of Education	F1 – F10, F12 – F19	R1 – R11, R13, R15 - R16
Acalanes Union High School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Antioch Unified School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Brentwood Union School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Byron Union School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Canyon School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
John Swett Unified School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Knightsen Elementary School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Lafayette School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Liberty Union High School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14

Martinez Unified School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Moraga School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Mt. Diablo Unified School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Oakley Union Elementary School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Orinda Union School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Pittsburg Unified School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
San Ramon Valley Unified School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
Walnut Creek School District	F3-F4, F6 – F10, F13-F16	R6, R9, R12, R14
West Contra Costa Unified School District	F3-F4, F6 – F10, F13-F18	R6, R9, R12, R14
City Council of Antioch	F11-F12	R17
City Council of Brentwood	F11-F12	R17
City Council of Clayton	F11-F12	R17
City Council of Concord	F12	R17

City Council of Danville	F11-F12	R17
City Council of El Cerrito	F12	R17
City Council of Hercules	F12	R17
City Council of Lafayette	F11-F12	R17
City Council of Martinez	F12	R17
City Council of Moraga	F11-F12	R17
City Council of Oakley	F11-F12	R17
City Council of Orinda	F11-F12	R17
City Council of Pinole	F12	R17
City Council of Pleasant Hill	F11-F12	R17
City Council of Pittsburg	F12	R17
City Council of Richmond	F12	R17
City Council of San Pablo	F12	R17
City Council of San Ramon	F11-F12	R17
City Council of Walnut Creek	F11-F12	R17

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Civil Grand Jury – Foreperson  
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P.O. Box 431  
Martinez, CA 94553-0091

## Glossary of Terms

The following definitions from the “In School + On Track 2015” report are listed below:

Truancy	In California, a student is truant if he/she is absent or tardy by more than 30 minutes without a valid excuse on 3 occasions in a school year.
Habitual Truancy	A student is habitually truant if he/she is absent without a valid excuse for 5 days during a school year.
Chronic Truancy	A student is chronically truant if he/she is absent without a valid excuse for at least 10 percent of the school year.
Chronic Absence	In California, chronic absence is defined as being absent for any reason (excused or unexcused) for at least 10 percent of the school year. Thus, in a 175 or 180-day school year, a student who misses 18 days of school or more is chronically absent.
Excused Absence	Valid excuses may include illnesses, doctor or dentist appointments, personal reasons justified by a parent or guardian and other reasons within the discretion of school administrators.

## Appendix

### LOCAL CONTROL FUNDING FORMULA:

The enabling legislation was signed into law in 2013 and implemented in 2014. It allocates funding grants based on average daily attendance for students in each school district. The additional resources are allocated to districts based on the following, disadvantaged subgroups-low income, ethnically at risk, English learners, foster youth and homeless youth.

These funds are used to provide critical infrastructure for those students most at risk and replaced the previous K–12 finance system, which had been in existence for roughly 40 years.

For the COE, the LCFF establishes separate funding streams for oversight activities and instructional programs.

As part of the LCFF, school districts, COE's, and charter schools are required to develop, adopt, and annually update a three-year Local Control and Accountability Plan.

### LOCAL CONTROL AND ACCOUNTABILITY PLAN:

Original estimates provided by the State Department of Finance in 2013–14 indicated there would be an additional state cost of approximately \$18 billion available for the school districts and take eight years to phase in completely. There would be \$58 million for COEs and it would take two years to phase in completely.

In 2013, the State of California also put in place the LCAP, which requires each school district, charter school and county office of education to:

- Complete an annual report for the State addressing their school district's eight state priorities.
- Address "Pupil Engagement" – A state priority measured by reporting school and high school dropout rates
- Set improvement goals and an action plan to achieve them.

### The SARB process

It begins when the school sends out their first letter to the family indicating that child has missed too much school. This is usually three to five unexcused absences. Some school districts have a centralized letter process that verifies this child does not have extenuating circumstances that would make sending a letter insensitive, such as loss of a relative or a severe injury. However a centralized letter process (while more sensitive) also requires additional dedicated staff that have real-time-data-tracking of all students in the system. Some districts only use an automated service, which makes it more difficult to intercept any letter that should not go out. Next, they send out two subsequent letters,

if the child continues to be absent. Then they invite the parent(s) to the SART meeting, which is followed by the SARB panel. Finally, if none of this works, the case is referred to court.

#### The COE's LCFF funding

The COE instructional programs are funded through an alternative education grant as follows:

- Provides a uniform base grant per ADA for certain pupils served by county offices (on probation, probation referred, and expelled pursuant to EC Section 48915 (a) or (c)).
- Targeted pupils are those classified as English learners (EL), meet income requirements to receive a free or reduced-price meal (FRPM), foster youth, or any combination of these factors (unduplicated count).
- COEs also receive a concentration grant equal to 35 percent of the base grant multiplied by ADA and the unduplicated percentage of targeted students exceeding 50 percent of enrollment.
- Provides a uniform base grant per ADA for juvenile court school pupils. Additionally, all juvenile court school pupils are deemed to be eligible for the supplemental and concentration grants provided for unduplicated pupils.
- Other pupils served by COEs are funded based on the LCFF funding of their home school district.



A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY  
725 Court Street  
Martinez, California 94553

Report 1616

**OUR CHILDREN IN NEED**

WHY ANOTHER REPORT?

APPROVED BY THE GRAND JURY:

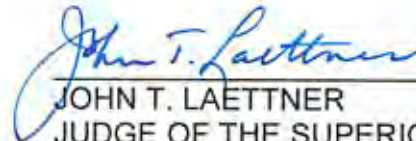
Date: 6/14/16



MICHAEL SIMMONS  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 6/15/16



JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1616

**OUR CHILDREN IN NEED  
WHY ANOTHER REPORT?**

**TO: CONTRA COSTA BOARD OF SUPERVISORS**

**DISCUSSION**

This Grand Jury has submitted five reports that highlight the plight of the most vulnerable citizens in this county: young children who have severe disabilities, who have no family, or whose family neglects them, abuses them, or is unable to support them. Those reports are 1605, Commercial Sexual Exploitation of Children (CSEC); 1609, Human Trafficking; 1611, Maintaining a Stable Environment for our Special Education School Children and Staff; 1612, Foster Care; and 1615, Truancy and Chronic Absences in Contra Costa County Schools. Each of those reports states its separate findings of fact and recommendations on its specific subject.

So, why another report?

This report looks at those findings and recommendations as a whole. It repeats some of their findings verbatim. And it adds one finding and four policy-based recommendations which are addressed to the Board of Supervisors. The reason for this report is that the County's existing and well-meaning programs are not doing their jobs, because of inadequate staffing and financing. Some of the County's employees are doing heroic work on behalf of the children. But these programs are insufficient to ensure that the County's children are safe, secure, and have the educational and community resources that they need. And the tragic results of those insufficiencies are falling on the County's most vulnerable children: Our Children In Need.

The lives of these children can be saved, or improved, by the County increasing:

1. By a multiple—the personnel and the facilities dedicated to their protection;
2. The training, coordination, and administrative resources for their protection; and
3. The funds necessary to do the job—not a marginal increase over a prior year, but rather an increase which demonstrates a renewed commitment by the County to protect Our Children In Need.

## FINDINGS

### From report 1605, CSEC:

- F1 A comprehensive system of care for victims of CSEC [children in need] still has not been fully implemented in Contra Costa County.
- F2 A CSEC Protocol, which provides a comprehensive system of care for victims of CSEC, was prepared under the leadership of Children and Family Services (CFS).
- F3 The CSEC Protocol provides the framework for cooperation and coordination amount the County, its cities and NGOs.
- F4 Many social workers in CFS, law enforcement, officers in Juvenile Hall, and victim advocates in the DA's Office are not implementing the CSEC Protocol because they have not seen it.
- F5 CFS, the leader of the Oversight Committee, has not followed up with its interagency partners that have signed off on the Protocol but have not submitted their own CSEC department plan/protocols to the Oversight Committee.
- F6 CFS lacks personnel who can act as the hub of all CSEC referrals from law enforcement by assessing the health, psychiatric and physical needs of victims of CSEC and who can navigate these services for them.
- F7 Suspected CSEC victims are being arrested and booked into Juvenile Hall for their own safety pursuant to various statutes under the Welfare & Institutions Code relating to infractions and crimes committed by youth, while the County assesses the appropriate health and social services to provide.
- F8 The County has not provided funding to CFS for [a] temporary housing facility for victims of CSEC.
- F9 Due to the lack of a single database in the County covering all CSEC-related arrests, referrals and pending cases, the County does not know the number of victims of CSEC and where they are located.
- F10 County personnel and law enforcement dealing with victims of CSEC are well-meaning, compassionate and dedicated people trying to make the best of a very difficult situation.
- F11 Most County personnel and law enforcement dealing with victims of CSEC lack in-depth CSEC training, necessary facilities for temporarily accommodating the victims, and a clear-cut plan of action which lays out how to rescue, protect and serve the victims of CSEC in a manner that is caring and trauma-informed.

### **From report 1609, Human Trafficking:**

- F12 The emphasis in human trafficking cases has shifted from solely prosecution to a “victim-centered” approach in which the needs of persons who have been trafficked receive equal consideration.
- F13 Effectively identifying and apprehending traffickers requires knowledge of the local environment and criminal activities acquired through long experience.
- F14 Successful apprehension and prosecution of traffickers often involves coordination and cooperation among local, state and federal agencies.
- F15 City law enforcement and Contra Costa County Sheriff’s Department have no comprehensive or consistent method for analyzing data about the number and type of trafficking victims. More data that is complete is needed to define the magnitude of the problem and to support decisions about victim services and resource allocation.
- F16 City law enforcement and Contra Costa County Sheriff’s Department does not always use resources offered by state and federal agencies for joint “sting” and “sweep” operations.
- F17 Trafficking frequently occurs in combination with other violent crimes and with a history of abuse and trauma.
- F18 Public awareness is a critical factor in identifying potential human trafficking activity.
- F19 The County’s efforts to build a broad public awareness of human trafficking has primarily been a poster campaign beginning in January 2015.
- F20 The Zero Tolerance for Human Trafficking Coalition is developing operating guidelines for case review and coordination to be completed in December 2016.

### **From report 1611, Maintaining a Stable Environment for our Special Education School Children and Staff:**

The discussion section of that report defines the children in need who are to be served by special education programs:

*“Contra Costa County Office of Education (COE) operates five Special Education schools, specifically targeted for special needs children. These special needs children include those who are autistic, those with severe physical and developmental disabilities, and those who are wheelchair-bound, needing around-the-clock assistance.”*

*“It is vital that the learning environment in special education schools be one of compassion and serenity to foster the learning process, notwithstanding the behavior issues that may arise with special needs children. Those personnel involved with special needs children must be compassionate, properly credentialed, and trained to administer to the “special” needs of special education children. They must have the confidence and support of the students, their parents, and school administrators.”*

*“...Special Education programs involve, by definition, “Special Needs Children”. Many of these children are non-verbal and are so severely disabled that they are confined to wheelchairs and need on-duty nurses during the school day to watch over them so they do not injure themselves, administer appropriate medications, and provide needed hygiene.*

*In all cases, behavior must be closely monitored as these children may lash out at other children or hurt themselves. When such incidents occur, a form known as an Incident Report (IR) must be completed by the teacher, reviewed by the school psychologist, and routed to the school principal for review and acceptance. The IR is required to be completed by credentialed staff.”*

- F21 There are over three years of complaints about a hostile work environment at the Brentwood Special Education Schools operated by the COE (Brentwood Schools).
- F22 Complaints of a hostile work environment at the Brentwood Schools were made known to COE from at least 2012 through 2015, both verbally and in writing by various entities including the two labor unions representing staff at the school locations.
- F23 The perceived hostile working environment at the Brentwood Schools may have had a detrimental impact on the students themselves, many of whom reportedly expressed signs of distress through body movement, sounds, or facial expressions.
- F24 There is no written protocol for staff of the Brentwood Schools to follow in deciding if, how, and when to file an incident report on any incident occurring in their classroom or facility.
- F25 Incident reports are not logged into any central index either at the Brentwood Schools or the COE.
- F26 Incident reports are not tracked and trended for possible patterns or recurrent problems either by the Brentwood Schools or the COE.

- F27 Neither the Brentwood Schools nor the COE have a written protocol concerning who should complete, review, and respond to incident reports.
- F28 At times, incident reports at the Brentwood Schools have not been given to the school psychologist for review prior to being finalized, as required in the verbal briefings to school staff.
- F29 The incident report form used at the Brentwood Schools requires the class teacher of the student involved in the incident, school psychologist, and principal to sign the form.
- F30 Incident reports at the Brentwood Schools were sometimes completed by an Instructional Assistant.
- F31 It was reported that police were called to the Brentwood Schools on a number of occasions.
- F32 There is no written protocol requiring the Brentwood Schools to maintain a record of police visits, nor to require them to report the event to the COE.
- F33 The Brentwood Schools do not provide their staff with a handbook to inform them of school protocols and complaint procedures.
- F34 Instructional Assistants at the Brentwood Schools are not provided a handbook concerning rules and requirements related to the job.
- F35 The COE publishes School Accountability Report Cards (“SARC”) on its website that provide an annual picture of the schools in the County under the auspices of the COE.
- F36 While there are published SARCs for several special education locations, the data published, other than the front page, does not accurately pertain to the schools named.

**From report 1612, Foster Care:**

The Background section of the Foster Care report (page 2) identifies approximately 1500 children who are under the jurisdiction of the County’s Welfare Services.

- F37 The attrition rate of families in the County who are willing to foster children is high.
- F38 Many potential foster parents have been eliminated from the list of currently available foster parents, after it was found that they were only interested in adopting and were not willing to take in older foster youth.

- F39 The County uses FFAs (non-profit Foster Care Agencies that are not County run) after first trying to locate suitable potential homes in the County system.
- F40 The foster caregivers identified through FFAs are sometimes more experienced, and receive more support and training from the FFA.
- F41 FFA social workers have lighter caseloads than County social workers.
- F42 There is a shortage of available, qualified foster homes in the County, as evidenced by the 384 youth that are currently located in out-of-county foster homes.
- F43 The County has not performed a “gap” analysis to specifically identify the type of foster homes most needed.
- F44 There is a shortage of foster parents willing and able to take in teenagers.
- F45 Foster family recruitment efforts have not kept up with the need for foster families.
- F46 The CFS recruiting position, which is the position that is responsible for foster parent recruitment, has not been filled and is currently staffed by one person on a half-time basis.
- F47 CFS is not accumulating information to help measure outcomes of County foster youth and determine which providers are the most effective (where applicable).
- F48 Mental health professionals do not participate in the new CFS Continuous Quality Improvement process.
- F49 The County Mental Health Department does limited screenings/assessments of new foster youth.
- F50 CFS Placement staff often does not have a complete mental health diagnosis, suggested treatment plan, or prognosis prior to placing a new foster youth with foster parents.
- F51 Ongoing mental health therapy for foster youth is frequently not as effective as it could be because it is difficult to arrange and often interrupted due to the movement of youth between foster homes.
- F52 Out-of-county placement strains the resources of CFS both monetarily and in terms of staff time as CFS staff have to travel to wherever the foster youth is located.

- F53 CFS is experiencing significant challenges in coordinating with all the necessary agencies involved to meet the requirements of AB 403.
- F54 Current MOUs or job classifications do not permit sufficient flexibility to allow for mental health professionals to respond after hours to situations that arise in the treatment of foster youth.
- F55 Based on the current costs of Group Home care, millions of dollars of State support money will be saved when foster youth transition to individual foster families.
- F56 High level executives at FFAs frequently recruit foster parents, whereas lower level line personnel usually perform this function at the County.

**From report 1615, Truancy:**

- F57 Based on truancy rates during the 2014 - 2015 school year, the County ranked among the worst in the State, 46<sup>th</sup> out of 58 counties.
- F58 Based on chronic absences during the elementary school year 2014 - 2015, the County ranked last out of the nine Bay Area counties.
- F59 Not all County school districts comply with the requirement found in California Education Code section 15497 that each district collect, track and report its chronically absent rates in an annual LCAP.
- F60 The COE (County Office of Education) does not currently know the chronically absent rates for all of the County's school districts because the COE lacks relevant data needed to perform the analysis.
- F61 To identify students with attendance issues and quickly address these issues, the school district needs complete and accurate data about attendance and a well-developed support infrastructure.
- F62 (Each) school district has its own software system for collecting attendance information and its own process and standards for collecting, storing and utilizing the truancy attendance information gathered, which are not necessarily the same as other districts in the County.
- F63 Without a centralized attendance system or compatible software among school districts, it is challenging to get a complete picture of a student's attendance profile and patterns over multiple years or across districts.
- F64 Some school districts have little communication with other school districts and the COE about best practices, common achievement goals, and best data systems regarding attendance.

- F65 The California Attorney General, Kamala Harris' 2015 report, *"In-School and on Track"*, indicates that over 80 percent of chronically absent students in kindergarten and 1<sup>st</sup> grade are unable to read at grade level by 3rd grade. These students are four times more likely to drop out than children who can read at grade level.
- F66 [Some cities in the County do] not have a daytime curfew.
- F67 [Cities that have] and enforce a daytime curfew see less daytime and juvenile crime.
- F68 Chronically absent or truant students, who do not get back on track before age 18, are more likely to drop out of high school before graduation.
- F69 Parent and Truancy Courts offer attendance support and are one of the last opportunities to alter a student's attendance behavior.
- F70 Attendance improvement programs used by the County's Juvenile Courts, such as the Lincoln Child Center, ankle monitors, drug and mental health counselors, and tutoring classes, lack long-term funding.
- F71 The school districts that have Truancy or Resource Officers who connect directly with students, help get chronically absent or truant students back on track.
- F72 There is currently no teen truancy court in the WCCUSD (West Contra Costa Unified School District) area.
- F73 The WCCUSD does not provide sufficient staff to process chronically absent students through the Parent or Truancy Court in Martinez.

## **NEW FINDING IN THIS REPORT, BASED ON THE ABOVE FINDINGS.**

- F74 The present levels of personnel, support, and financing are inadequate to protect the County's children in need.

## **RECOMMENDATIONS**

- R1. The Board of Supervisors should enact the recommendations directed to them made in Grand Jury reports 1605, 1609, 1612, and 1615.
- R2. The Board of Supervisors should issue a policy statement of the County's intention to provide the personnel, facilities, training, and administrative support necessary to protect the county's children in need.
- R3. The Board of Supervisors should create a position of "Youth Advocate", with the power to:

- a. Investigate all county agencies charged with providing services to children;
- b. Report his/her findings and recommendations to the Board of Supervisors and to the public every six months;
- c. Recommend to the Board of Supervisors the amount of money necessary to accomplish his/her recommended actions; and
- d. Advocate before the Board of Supervisors on all matters related to children in need.

R4. The Board of Supervisors should issue a policy statement of the County's intention to provide material increases in the funding for the county's agencies in order to create, and accomplish the recommendations of, the Youth Advocate in protecting our children in need, and identify the funds to do so.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County Board of Supervisors	F74	R1 – R4

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