



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

2008-2009

Final Report on

**THE NAPA COUNTY FLOOD
CONTROL and WATER
CONSERVATION DISTRICT
Napa County Flood Protection Sales Tax
Measure A**

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NAPA COUNTY GRAND JURY
P.O. BOX 5397
NAPA, CALIFORNIA 94581

June 2, 2009

The Honorable Raymond A. Guadagni
Presiding Judge
Superior Court of the State of California
County of Napa
825 Brown Street
Napa, CA 94559

Dear Judge Guadagni,

Pursuant to Section 933(a) of the California Penal Code, the 2008-2009 Napa County Grand Jury submits to you its Final Report on The Napa County Flood Control and Water Conservation District: *Napa County Flood Protection Sales Tax Measure A*. Our investigation of this subject was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury – to protect the interests of the citizens of Napa County.

This is the eleventh in a series of final reports we will be issuing before our term ends. I would like to acknowledge the hard work and dedication of the Grand Jury which our report reflects. It is a privilege and a pleasure to work with them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "William E. Trautman".

William E. Trautman
Foreperson
2008-2009 Napa County Grand Jury



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To the Citizens of Napa County:

The 2008-2009 Napa County Grand Jury, as a function of its charge to investigate and report to the citizens of Napa County on their local governmental agencies and districts, conducted an investigation of the Napa County Flood Control And Water Conservation District (Flood Control District). The Flood Control District was last investigated by the 2001-2002 Grand Jury. The earlier report focused primarily on the acquisition of the property required to support construction of flood control works.

Despite the Department of the Army's commitment, on behalf of the U.S. Army Corps of Engineers, to pay at least 50 percent of the City of Napa Flood Control Project costs, the Flood Control District has expended \$1,413,799 in payment to a lobbying firm for this project.

When asked about Measure A funding for the Carmen Group Inc., the Flood Control District stated: "District revenues are derived from a combination of Measure A, State Subventions and grants. All Carmen Group invoices have been paid from these sources." The Grand Jury's question regarding Measure A funding remains unanswered.

At the time of the Grand Jury investigation, the City of St. Helena had expended no funds for design, engineering or construction on two of the three flood control components authorized by Measure A for St. Helena.

The Board of Supervisors (BOS) never appointed the full complement of sixteen (now seventeen) members to the Measure A Financial Oversight Committee (FOC) at any one time. Given the strictly reactive charter of the FOC, this is probably of no consequence with one exception. Specifically, The BOS has never appointed the authorized Certified Public Accountant (CPA) to the FOC.

Respectfully submitted,

The 2008-2009 Napa County Grand Jury

The Napa County Flood Control and Water Conservation District Napa County Flood Protection Sales Tax Measure A

SUMMARY

The 2008-2009 Napa County Grand Jury, as a function of its charge to investigate and report to the citizens of Napa County on their local governmental agencies and districts, conducted an investigation of The Napa County Flood Control and Water Conservation District (Flood Control District). The Flood Control District was last investigated by the 2001-2002 Grand Jury. The earlier report focused primarily on the acquisition of the property required to support construction of flood control works.

Despite the Department of the Army's commitment, on behalf of the U.S. Army Corps of Engineers, to pay at least 50 percent of the City of Napa Flood Control Project costs, the Flood Control District has expended \$1,413,799 in payment to a lobbying firm for this project.

Through September 30, 2008, the City of St. Helena has paid the Carmen Group Inc., a lobbying firm, a total of \$785,308 (unaudited actual) from Measure A revenues.

At the time of the Grand Jury investigation, the City of St. Helena had expended no funds for design, engineering or construction on two of the three flood control components authorized by Measure A for St. Helena.

California Revenue and Taxation Code, Section 7285.5.(3) requires that Measure A "includes an expenditure plan describing the *specific* (emphasis added) projects for which the revenues from the tax may be expended." However, the wording of the Measure A components relative to the Unincorporated Areas of the County is apparently sufficiently broad to cover a variety of ongoing studies and projects.

When asked about Measure A funding for the Carmen Group Inc., the Flood Control District stated: "District revenues are derived from a combination of Measure A, State Subventions and grants. All Carmen Group invoices have been paid from these sources." The Grand Jury's question regarding Measure A funding remains unanswered.

The Board of Supervisors (BOS) never appointed the full complement of sixteen (now seventeen) members to the Measure A Financial Oversight Committee (FOC) at any one time. Given the strictly reactive charter of the FOC, this is probably of no consequence with one exception. Specifically, The BOS has never appointed the authorized Certified Public Accountant (CPA) to the FOC.

BACKGROUND

In 1998, the citizens of Napa County passed the Napa County Flood Protection Sales Tax Measure A (Measure A), a twenty year, half percent sales and use tax increase to fund County flood control projects. Measure A established the Napa County Flood Protection and Watershed Improvement Authority (NCFPWIA) under the California Revenue and Taxation Code. One of the specific requirements of the Code is to include an expenditure plan describing the specific projects for which the revenues from the tax may be expended. Measure A identifies the use of the tax revenues as follows:

The revenues generated by the Flood Protection Sales Tax shall be used to fund the projects included in the Plan. The revenues shall also be utilized to fund reasonable costs incurred in the administration of the Napa County Financial Oversight Committee and Technical Advisory Panel which are established by this Ordinance.

A Joint Powers Agreement (JPA) was established in November 1998 between the County of Napa, the NCFPWIA, the Flood Control District, and the cities of American Canyon, Napa, St. Helena and Calistoga and the Town of Yountville. The purpose of the JPA is to provide equitable distribution of the Flood Protection Sales Tax revenues, debt financing for projects, project substitution, fund accounting, contract relationships and administrative support for the FOC.

In February of 2000, the Flood Control District entered into a Project Cooperation Agreement (PCA) with Department of the Army for the construction of the Napa River Project. This PCA provides that the Flood Control District contribute a minimum of 25 percent, but not to exceed 50 percent, of total project flood control costs; the balance to be paid by the Department of the Army.

The Flood Control District is governed by a Board of Directors consisting of eleven members. The Board consists of the five Napa County Supervisors (each of whom has two votes), the Mayor of Napa (who has two votes), the Mayors of St. Helena, American Canyon, Yountville and Calistoga (who each have one vote), and one Napa City Council member (who has one vote).

One member of the 2008-2009 Napa County Grand Jury has on-going financial dealings with the Flood Control District and therefore recused himself from all aspects of this investigation.

METHODOLOGY

Documents Reviewed

- Napa County Flood Protection Sales Tax Measure A (Measure A)
- Joint Powers Agreement Regarding the Use and Equitable Distribution of Flood Protection Sales Tax Revenues, November 18, 1998

- Measure “A” Financial Oversight Committee Guidelines (Revised June 14, 2006)
- Project Cooperation Agreement between the Department of the Army and the Napa County Flood Control and Water Conservation District, February 1, 2000
- California Revenue and Taxation Code, Section 7285
- Measure “A” Financial Oversight Committee Guidelines, Revised June 14, 2006
- U.S. Code: Title 31, Subtitle II, Chapter 13, Subchapter III, § 1352 (US CODE: Title 31,1352), Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.

Interviews Conducted

- Members and representatives of the BOS and FOC
- A representative of the City of St. Helena
- Concerned citizens

DISCUSSION

Use of Sales Tax Revenues

City of Napa Flood Protection

Measure A specifies the following components involving the City of Napa:

- A dry bypass channel around the Oxbow
- A tidal and floodplain terrace
- Wetlands to be created on the east and west banks of the Napa River
- Toxics throughout the project area to be cleaned up
- New bridges to be constructed, which do not act as obstructions during flooding
- Maintenance roads/recreation trails from Kennedy Park through downtown Napa
- Set-back levees and floodwalls to be constructed
- Properties purchased/relocated to implement the Plan
- Capital improvement maintenance

In February of 2000, the Flood Control District entered into a Project Cooperation Agreement (PCA) with Department of the Army for the construction of the Napa River Project. This PCA, which was anticipated when the Measure A was proposed, provides the Flood Control District contribute a minimum of 25 percent, but not to exceed 50 percent, of total project flood control costs; the balance to be paid by the Department of the Army. The Flood Control District’s share will be paid from Measure A tax revenues.

County-Wide Flood Protection

Measure A specifies the following components involving County-wide projects not involving the City of Napa:

- Angwin/Deer Park. Stabilization and enhancement of existing water reservoirs for flood protection and water reliability; stabilize water quality
- City of American Canyon. Implement the Flood Control and Storm Drain Master Plan; restore wetlands by replacing the existing wastewater treatment facility

- City of Calistoga. Stabilization and enhancement of Kimball Reservoir; flood protection drainage improvements in the Grant Street area and other critical areas to protect residents and businesses from flooding
- City of St. Helena. Flood management measures for the Napa River, Sulpher Creek, York Creek and other tributaries; construct urban stormwater run-off facilities at Fulton, McCorkle, Mills and other areas; stabilization and enhancement of Bell Canyon Reservoir or other existing reservoirs for the purpose of flood protection and water supply reliability
- Unincorporated Areas of Napa County. Flood damage reduction projects including elevating/relocating structures, including bridges, in the floodway and floodplain; agricultural watershed and stormwater runoff management improvements planned jointly by the agricultural industry, the County, the Napa County Resource conservation District and the Department of Fish and Game
- Town of Yountville. Flood protection for the Town's mobile home parks and surrounding areas; Hopper Creek and Beard Ditch improvements and restoration for flood protection

Although Napa County is now more than halfway through the Measure A 20 year period, as of this investigation, the City of St. Helena has expended no funds for design, engineering or construction on two of the three components authorized (construct urban stormwater run-off facilities at Fulton, McCorkle, Mills and other areas; stabilization and enhancement of Bell Canyon Reservoir or other existing reservoirs).

The California Revenue and Taxation Code, Section 7285.5.(3) requires that Measure A “includes an expenditure plan describing the *specific* [emphasis added] projects for which the revenues from the tax may be expended.” However, the wording of the Measure A components relative to the Unincorporated Areas is apparently sufficiently broad to cover a variety of ongoing studies and projects. For example, in August 2006 (nearly eight years after the voters approved the Measure A expenditure plan), \$200,000 of Measure A funds were authorized by the BOS to conduct multiple special flood studies as a result of the December 31, 2005, storm and “other prior storms.”

Lobbying Expenses

City of Napa Flood Protection

In 1998 the citizens of Napa County approved Measure A with the understanding half of the required funds for the City of Napa Flood Protection project would be provided by sales and use tax and the other half of the funding would be provided by the Department of the Army. The 2000 PCA with the Department of the Army formally committed the Army to this funding.

Since Measure A was passed, \$1,413,799 was expended through June 30, 2008, by the Flood Control District in a contract with The Carmen Group Inc. With respect to the City of Napa Flood Protection project, the lobbying effort was not to obtain flood project funding, but to accelerate the rate of funding appropriations. The Flood Control District currently pays The Carmen Group Inc. \$375/hour for a lobbyist's time. The Grand Jury

formally asked the Flood Control District: “Of the \$1,413,799 paid to the Carmen Group, how much and for which years, was billed to Measure A funds?” The District replied: “District revenues are derived from a combination of Measure A, State Subventions and grants. All Carmen Group invoices have been paid from these sources.” Although it might appear from this response that identified revenue sources are co-mingled, this is not the case; Measure A revenues must be maintained separately. The Grand Jury’s question regarding Measure A funding remains unanswered.

In defense of the lobbying effort, the Flood Control District stated:

These lobbying activities have resulted in an increase of funds allocated by Congress to the Corps of Engineers for use on the Napa Project for each fiscal year as follow:

<i>Fiscal Year</i>	<i>President’s Proposed Budgeted Amount</i>	<i>Congressionally Appropriated Amount</i>
<i>FY 2000</i>	<i>4,500,000</i>	<i>3,500,000</i>
<i>FY 2001</i>	<i>4,000,000</i>	<i>4,000,000</i>
<i>FY 2002</i>	<i>5,500,000</i>	<i>7,000,000</i>
<i>FY 2003</i>	<i>5,000,000</i>	<i>9,000,000</i>
<i>FY 2004</i>	<i>7,500,000</i>	<i>10,000,000</i>
<i>FY 2005</i>	<i>7,000,000</i>	<i>16,000,000</i>
<i>FY 2006</i>	<i>6,000,000</i>	<i>12,000,000</i>
<i>FY 2007</i>	<i>9,000,000</i>	<i>14,000,000</i>
<i>FY 2008</i>	<i>7,500,000</i>	<i>10,800,000</i>
<i>Total</i>	<i>56,000,000</i>	<i>86,300,000</i>

The Grand Jury found some of the \$1,413,799 was expended for administrative services (currently billed at \$110/hour by The Carmen Group) to ensure, for example, that required paperwork is submitted to the proper governmental agencies. In addition to the direct payment of \$1,413,799 to The Carmen Group, Measure A funds were expended by County and municipal officials for travel to Washington D.C. to assist in this acceleration effort. These efforts are, of course, in addition to those provided by our elected representatives in the United States House of Representatives and Senate.

It is the position of The Office of the County Counsel that lobbying expenditures under Measure A are appropriate in seeking the acceleration of PCA federal funding. There may be an issue, though, in utilizing Measure A funds to obtain more than the 50 percent obligation under the PCA or for projects not identified in Measure A.

City of St. Helena

Through September 30, 2008, the City of St. Helena has paid Carmen Group Inc. a total of \$785,308 (unaudited actual) from Measure A revenues. During the Grand Jury’s investigation it was advised:

To date the lobbying effort has been to get on the Water Resources Development Act (WRDA) list. St. Helena expects to receive \$19 million. Carmen Group work involves certification administration as well as the lobbying effort. The WRDA funds would be used to reimburse Measure A funds so that additional work can be done.

On November 9, 2007, St. Helena flood control work became a part of the WRDA enacted through Public Law No: 110-114. The portion of this Law as it applies to St. Helena is as follows:

Public Law No: 110-114

SEC. 5054. ST. HELENA, CALIFORNIA.

(a) In General - The Secretary may construct a project for flood control and environmental restoration, St. Helena, California, substantially in accordance with the plan for the St. Helena comprehensive flood protection project dated 2006 and described in the addendum dated June 27, 2006, to the report prepared by the city of St. Helena entitled 'City of St. Helena Comprehensive Flood Protection Project,' Final Environmental Impact Report, and dated January 2004, if the Secretary determines that the plans and designs for the project are feasible.

(b) Cost - The total cost of the project to be constructed pursuant to subsection (a) shall be \$30,000,000, with an estimated Federal cost of \$19,500,000 and an estimated non-Federal cost of \$10,500,000.

(c) Reimbursement - The non-Federal interest shall be reimbursed for any work performed by the non-Federal interest for the project described in subsection (a) that is in excess of the required non-Federal contribution toward the total cost of the project, if the Secretary determines that the work is integral to the project.

Financial Oversight Committee

Purpose:

The FOC's oversight is basically limited to looking at Measure A revenue expenditures after the fact and informing the citizens of Napa County about these expenditures. The purpose of the FOC, as defined by Measure A, is as follows:

The Financial Oversight Committee's purpose and charge is to inform the public regarding the expenditure of Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Measure A by the Authority and the electorate.

Duties:

The duties of the FOC, as defined by Measure A, are summarized as follows:

Providing the public with information regarding the manner in which the expenditure of Flood Protection Sales Tax proceeds...has occurred.

Reviewing the expenditure of the Flood Protection Sales Tax proceeds ...and proceeds received as a result of the issuance of any bonds or other obligations payable from the Flood Protection Sales Tax proceeds...and causing to be prepared an annual audit regarding the use of these proceeds.

Reviewing the financial impact of all projects, planned and approved, utilizing the Flood Protection Sales Tax proceeds...and advising the public whether such projects are consistent with the purpose, spirit, intent and language of this Measure A.

Informing the public if there is an expenditure of the Flood Protection Sales Taxes...which is inconsistent with the purpose and intent of this Measure A.

In addition to the specific provisions of Measure A cited above, additional guidance is provided by the *Measure "A" Financial Oversight Committee Guidelines* approved by the BOS.

Membership:

Measure A requires the BOS to appoint sixteen members, representing the various communities in the County, to the FOC. These members include: one representative for each of the five Napa County City/Town Councils; one recommended by the BOS; two representatives of the business community; one representative of local media; one representative of the Napa County Taxpayers Association (this organization no longer exists); two representatives recommended by the environmental community; one representative recommended by the Friends of the Napa River; two representatives recommended by the agricultural industry; and a certified public accountant (CPA) "whose practice includes auditing public agencies, but who is not currently acting as an independent auditor in the case of any incorporated area within the County of Napa or the County of Napa." In addition to these sixteen members, the FOC can recommend to the BOS up to two additional members.

The members of the FOC are not compensated for their service on the Committee with the exception of the CPA who may be compensated at a rate not to exceed that commonly charged by CPAs in the City of Napa.

In January 1999, one of the two additional members was assigned as a representative of the Health and Human Services community. This assignment was made at the request of the *Napa Valley Coalition of Non-Profit Agencies* (a Napa based not-for-profit 501(c)(3) organization). The eighteenth membership assignment was made to Napa County Taxpayers in October 2007. This assignment permitted the taxpayer representation, originally envisioned by the now defunct *Napa County Taxpayers Association*, to be met without having to formally modify Measure A.

As of the preparation of this report, the following positions were unfilled: Health and Human Services, Local Media, City of Napa, one of the two Environmental Community positions, and the CPA. The BOS has never appointed the full complement of sixteen (now seventeen) members to the FOC at any one time. Given the strictly reactive charter of the FOC, this is probably of no consequence with one exception. Specifically, the BOS has never appointed a CPA to the FOC.

Based on the purpose and duties of the FOC, and the complexity of the financial dealings of the NCDPWIA, the Grand Jury asked why the CPA position had not been filled. There was no definitive answer to the question other than that neither the FOC nor the Flood Control District Board of Directors had never made a specific request to the BOS to have that position filled. The County Executive Officer (CEO) in Board Agenda Letters prepared regarding appointments to the Measure A FOC routinely inserts the following information under “Background and Discussion”:

The purpose and charge of the FOC is to review and inform the public regarding the expenditure of Flood Protection Sales Tax proceeds generated as a result of the enactment of Measure A. Members of the FOC need to possess a strong understanding of the type and nature of expenditures associated with the Napa River/Napa Creek flood Protection Project as well as the other projects funded through Measure A throughout the County, and the ability to review budgetary documents with a particular emphasis on capital project expenditures.

The Grand Jury agrees with the CEO in this assessment and recommends a CPA be appointed by the BOS to assist the FOC in the discharge of its fiscal responsibilities.

Reporting:

The FOC publishes an annual overview of Measure A financial activities. This report notes that more detailed financial information is available at the Flood District’s web site. The expenditure categories in the annual overview and web site documents do not make it possible to identify lobbying expenditures (direct payment to lobbying firms and related County/municipality travel).

FINDINGS

The 2008-2009 Grand Jury finds:

1. The BOS has never appointed a CPA to the FOC.
2. The City of St. Helena has expended no funds for design, engineering or construction on two of the three components authorized by Measure A.
3. Flood Control District expended \$1,413,799 in payment to the lobbyist Carmen Group Inc. through June 30, 2008. The actual amount charged to Measure A revenues was not determined by the Grand Jury.
4. The City of St. Helena has paid the Carmen Group Inc. a total of \$785,308 (unaudited actual) from Measure A revenues through September 30, 2008.

5. The wording of the Measure A project components relative to the Unincorporated Areas is apparently sufficiently broad to cover a variety of ongoing studies and projects resulting from events occurring significantly after Measure A was enacted.
6. The expenditure categories in the FOC annual overview of financial activities and related web site documents do not make it possible to identify lobbying expenditures (direct payment to lobbying firms and related County/municipality travel).

RECOMMENDATIONS

The 2008-2009 Grand Jury recommends:

1. The BOS appoint a CPA to the FOC.
2. The City of St. Helena initiate design, engineering and construction of the remaining components authorized by Measure A.
3. The Measure A Financial Oversight Committee identify lobbying expenses (direct payment to lobbying firms and related County/municipality travel) in the annual report.

REQUEST FOR RESPONSES

The 2008-2009 Grand Jury request responses from:

1. The Board of Supervisors for recommendation 1.
2. The City of St. Helena for recommendation 2.
3. The Measure A FOC for recommendation 3.

GLOSSARY

BOS	Napa County Board of Supervisors
CEO	Napa County Executive Office
CPA	Certified Public Accountant
FOC	Financial Oversight Committee – created by Measure “A”
JPA	Joint Powers Agreement
NCDPWIA	The Napa County Flood Protection and Watershed Improvement Authority, a public authority established pursuant to Section 7285.5 of the Revenue and Taxation Code
Flood Control District	The Napa County Flood Control and Water Conservation District, a flood control district organized under the laws of the State of California
PCA	Project Cooperation Agreement
TAP	Technical Advisory Panel – created by Measure “A”
WRDA	Water Resources Development Act