

Yosemite Alpine Community Services District
P.O. Box 31
Fish Camp, CA 93623

September 29, 2021

The Honorable Michael Fagalde
Presiding Judge
Mariposa County Superior Court
5088 Bullion Street
P.O. Box 28
Mariposa, CA 95338

RE: Response to the Mariposa County 2020-2021 Grand Jury Report

Dear Judge Fagalde:

In compliance with Penal Code Section 933.05, the Yosemite Alpine Community Services District Board of Directors (YACSD BOD) submits this response to the findings and recommendation of the Mariposa County Civil Grand Jury (MCCGJ). This response is in the chronological order of the report.

Sincerely,

Patricia Frey
Chairperson
YACSD BOD

General Response to the Report

Page 50 of the MCCGJ report states: "In July 2016, an 'Irrevocable Offer of Dedication' was recorded by the developer, thereby guaranteeing the YACSD easements on the meadow for their wells."

YACSD BOD response: This simple sentence is deceptive. The Irrevocable Offer of Dedication (IOD) was never presented to the YACSD BOD. It was simply recorded. The BOD learned of the IOD only by chance, when reviewing the Planning Department's website. Even after filing the IOD, the Developer's plans continued to show a parking lot on top of the easement in question. An Agreement to Permit Well Development and to Grant and Relocate Easements was not filed until April 2019.

Page 51 of the MCCGJ quoted from a letter sent to YACSD customers concerning the budgetary process for FYs 2018-2019 and 2019-2020 which stated that: "...Property owners are currently paying \$7.00/1000 gallons and will be billed at that rate on the bills coming out in July 2018.". The MCCGJ goes on to state that "[t]his...sentence gives the impression that the water budget will remain unchanged."

YACSD BOD response: The YACSD BOD disputes this claim by the MCCGJ; the language on the letter is clear that the water **rate** was being billed out at \$7.00/1000 gallons of water used. YACSD bills have always included other charges to cover current and projected future costs of doing business.

Page 52 of the MCCGJ report states: "One would expect to see a Proposition 218 Protest Form with [the protest] mailing."

YACSD BOD response: Including a protest form is not a legal requirement. A clear explanation on how to file a protest was given. For the future, the YACSD BOD will include a protest form for the applicable part of the budgetary process.

Page 53 of the MCCGJ report states: "The CPA who conducted the 2018-2019 audit for YACSD writes: 'The District has not presented Management's Discussion and Analysis [MD&A] or budgetary comparison information that accounting principles generally accepted in the United States of America require be presented to [sic] supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the financial statements in an appropriate operational, economic, or historical context.'"

YACSD BOD response: In an email dated July 27, 2021, the YACSD auditor, Zach Pehling states that he was "never contacted by the grand jury...Most small districts do not include MD&A [and] that only those with dedicated finance teams usually prepare it...in [the YACSD's] case...it is supplementary information." The auditor continues, "[The Grand Jury] is [taking] the paragraph out of context."

Page 53 the MCCGJ report states: "A conveyance must be acknowledged before a notary and recorded with the county recorder, or Recorder of Deeds. The Grand Jury found no evidence of a deed between Umpqua Bank and YACSD at the Mariposa County Recorder's Office" The MCCGJ references the Legal Free Dictionary as its source for this statutory requirement.

YACSD BOD response: In an email dated September 8, 2021 Ryan Jardine of the office of bond counsel Kutak Rock LLP writes: "We don't generally rely upon dictionary.com for filing requirements - in this case there was no regulatory or legal requirement in the State of California to record a Deed in the Recorder's Office."

Page 53 of the MCCGJ report states: "Two knowledgeable YACSD property-owners spoke with an Umpqua Bank representative and were told that the bank owns the 'enterprise' until the repurchase contract is fulfilled."

YACSD BOD response: In an email dated August 12, 2021 Dean Stephens, SVP/Corporate Banking Managing Director for Umpqua Bank writes:
"Umpqua Bank does NOT own the enterprise...without the details of the conversation, I can only assume that the representatives being quoted mis-heard the information as no Umpqua employee would claim that we owned the enterprise given the structure as a Net Revenue Pledge...in the Installment Purchase Contract dated September 01, 2018...there is nothing that indicates the Umpqua Bank 'owns' the enterprise."

Continuing on page 53, the MCCGJ attributes a statement to the YACSD auditor that "...the district entered into a capital lease...from Umpqua Bank."

YACSD BOD response: In an email dated August 24, 2021 the YACSD auditor, Zach Pehling clarified that a Capital Lease to Repurchase and Installment Purchase Contract "are

essentially the same thing but for government agencies I have only seen them structured as ‘capital leases’ to meet California government code.”

In an email dated September 8, 2021, Ryan Jardine of the the office of the bond counsel Kutak Rock LLP indicates that the loan between the YACSD and Umpqua Bank is “[an Installment Purchase Agreement] [and it] is a relatively common financing structure that is utilized in the State of California...[a Capital Lease to Repurchase and an Installment Purchase Contract] are essentially the same structure.”

In the August 16, 2021 submission to the California Debt and Investment Advisory Commission (CDIAC), the Report of Final sale filed by Kutak Rock LLP indicates that loan between the YACSD and Umpqua Bank is an Installment Purchase Contract.

Page 54 of the MCCGJ report states that a Report of Proposed Debt Issuance of a Report of Final Sale had not been filed with the California Debt and Investment Advisory Commission.

YACSD BOD response: This has been corrected.

Response to Findings

F1. YACSD infrastructure is 50 years old and needs to be replaced. The quantity of water the wells were producing was far less than what the district claimed.

YACSD BOD response: While the YACSD infrastructure will need replacing and / or remediation, “...the American Water Works Association (AWWA) estimates average life expectancy for AC pipe... [o]n the West Coast...at 65-105 years...” (Stenstedt, 2019, Leveraging AI section.). The YACSD Board has been discussing the depreciation of assets during the prior two budgeting cycles and continues to move towards definitive ways of undertaking a capital improvement plan.

The YACSD BOD cannot respond to the allegation that “the [District] wells were underproducing far less than what the District claimed”, as the source of this claim is undocumented in the MCCGJ report.

F2. Offers from SilverTip developers that included installing new wells, and infrastructure to provide high quality water were rejected by YACSD BOD.

YACSD BOD response: The YACSD BOD evaluated this offer and attempted to enter into discussions with the Developer to move the YACSD wells to Forest Service land and was rebuffed. The YACSD water is pristine and requires no treatment. There is no question that the pristine quality of the water will be degraded by the development. The amount of water that the development is projected to use in one month is as much or more than that used by the YACSD in an entire year. There is no way to assure that deeper wells placed by the developer will not impact water production by YACSD wells.

F3. The YASCD BOD is understaffed.

YACSD BOD response: The YACSD BOD agrees that the decline of candidates meeting the residency requirements stipulated in its by-laws and willing to serve is an ongoing challenge.

F4. There is a lack of transparency between the board of directors and homeowners, specifically regarding the litigation and proposed settlements with SilverTip developers.

YACSD BOD response: The YACSD BOD disagrees. The MCCGJ has based this finding on allegations by unnamed individuals. To our knowledge, the MCCGJ has not solicited testimony from property owners in support of the YACSD BOD, making the finding unbalanced. Allegations are not automatically true.

F5. YACSD Directors have left the district saddled with a \$514,000 obligation to repurchase their aging water system from Umpqua Bank.

YACSD BOD response: The original loan amount was \$355,000. The YACSD BOD already authorized an additional payment of \$50,000 towards the principle, reducing the amount of interest owed. Securing water access is one of the Board's main functions. The use of the term "saddled" is inflammatory against the YACSD BOD. The YACSD BOD was only able to guarantee the rights for the YACSD to have future access to water through the court system, and that did require funding. It is important to remember that YACSD BOD members are also YACSD customers, subject to the same water rates and fees as everyone else in the District. Board members themselves literally live with the decisions they make.

The characterization that the YACSD "repurchase[d] their aging water system" is false. The YACSD has maintained unbroken ownership of the water system. The YACSD entered into an Installment Purchase contract with Umpqua Bank. Repayment of the loan is by a pledge of future net revenues. The YACSD BOD agrees that the pipeline is closer to the end of its life than the beginning, but the YACSD water tanks are less than 5 years old.

F6. There have been numerous allegations of California Proposition 26, California Proposition 218, Government Code §1090, and Brown Act violations by YACSD Directors, especially in relation to the Conveyance Agreement and Installment Purchase Contract.

YACSD BOD response: The YACSD BOD disagrees with this finding, which the MCCGJ based upon anonymous "numerous" allegations. How many are "numerous"? More than two? Allegations are not automatically true. The YACSD BOD provided the MCCGJ with the same documentation provided to the public concerning the legality and transparency of transactions.

F7. Ethics training is required every two years in accordance with AB1234. According to the YACSD website, all board members are overdue in attending this mandatory training.

YACSD BOD response: All Board members are in compliance (<https://yosemitealpinecsd.specialdistrict.org/mandatory-ethics-training-certificates>).

F8. For fiscal years 2018-2019 and 2019-2020, YACSD is the only entity within Mariposa County on the State Controller's "Failure to File" list for Financial Transactions Report (FTR).

YACSD BOD response: This has been completed.

F9. If built as planned, the SilverTip resort would have increased the number of overnight lodging and therefore, the county's TOT.

YACSD BOD response: The finding implies that the YACSD BOD is responsible for the SilverTip project not proceeding as Mariposa County had hoped. This is perplexing, as the conditional use permit was issued by the Mariposa County Board of Supervisors in 2003.

The SilverTip Developer defaulted on his 5.6 million dollar loan in 2010, declared bankruptcy, and the SilverTip property was put up for auction (Grossi, 2011.) That action certainly slowed development. It also called into question the integrity of the Developer to negotiate in good faith with the YACSD BOD. How is it remotely conceivable that this multi-million dollar corporation reached the point of insolvency because of a tiny CSD defending its water rights?

F10. The EIR reports regarding water quality, and quantity found SilverTip wells would be drawing water from a source isolated from YACSD wells. Likewise, according to analysis, treated effluent from Silver Tip would not contaminate YACSD wells.

YACSD BOD response: “The amount of water in the rocks surrounding a hard rock well is small. Groundwater levels and the well’s yield can decline dramatically during the summers of dry years. (California Department of Water Resources [CDWR], 2011, How Much Water is Stored section).” “Hard rock wells require a source of recharge and a large quantity of water in storage” (CDWR, 2011, How Much Water Will My Well section). Drilling must be done at a very specific point in a major fracture zone containing plenty of water and water must be continually recharged. A neighboring well can interfere with one’s well, depending on connections between rock fractures. Interference between neighboring wells is difficult or impossible to predict in advance (CDWR, 2011, How Do I Know I Have section).

On page 2 of its response, the Central Valley Region California Regional Water Quality Control Board ([RWQCB], 2007) notes that the map presented by the Developer of effluent spray field areas “is not of the scale to definitively show the individual areas and was not intended to indicate that any of the wells on the property would be within the spray field areas.” The responsibility of verification that the YACSD wells would not be contaminated by effluent was deferred to a future Title 22 Use Area Management Plan. “Connection of the aquifers is deemed likely” (RWQCB, 2007, page 4, paragraph 2). Degradation of aquifer is “assumed” (RWQCB, 2007, page 3, paragraph 3.) Because of the lack of documentation concerning the construction of the YACSD wells, an adverse impact of treated effluent on those wells was “unlikely” (RWQCB, 2007, page 4, paragraph 4). Groundwater or surface water “should not be unreasonably degraded” (RWQCB, 2007, page 13, Response to comments 13 and 14).

“Degradation is allowable if deemed in the best interest of the people of the state (RWQCB, 2007, page 13, Response to comments 13 and 14.) In their Statement of Overriding Considerations the Mariposa County Board of Supervisors found that not all of the project’s environmental impacts can be mitigated, but that the project will generate “substantial revenues” (2003, Attachment “C”).

Environmental degradation is apparently acceptable, when none of the persons with authority concerning the development plans for the SilverTip project. will have to live with the degradation of their own drinking water.

F11. MCCGJ believes there have been Brown Act violations by the YACSD BOD.

YACSD BOD response: The YACSD BOD has adhered to the Brown Act. The MCCGJ report has not presented evidence of Brown Act violations.

F12. Comprehensive water testing has not been done since 2002.

YACSD BOD response: This is a misleading statement, implying that the YACSD is out of compliance. The MCCGJ report itself affirms that the YACSD is in compliance with water testing regulations (2021, p. 50, paragraph 3.)

F13. YACSD bylaws state that they do not follow the letter of the law.

YACSD BOD response: The YACSD bylaws were thoughtfully composed and reviewed by Counsel. Over the past 20 years at least 8 different persons have served on the BOD. Their lengths of service have varied. Some terms have overlapped, and others have not. The notion that this variable group of persons crafted a document to be deceptive with an intent to violate the law is illogical.

F14. YACSD is so small that they are unable to staff all positions, as required by state law.

YACSD BOD response: The BOD will investigate contracting with a Manager as a part of the 2022-2023. 2023-2024 budgeting process, which will be completed by June 30, 2022.

F15. The district's bookkeeping, and confidential records are kept on a personal computer.

YACSD BOD response: Records are now backed-up to a thumb drive. Additionally, the BOD is investigating cost-effective options for Cloud-based record keeping.

F16. The current District 5 Board Supervisor has never been invited to, nor attended a YACSD BOD meeting.

YACSD BOD response: All YACSD BOD meetings are legally-noticed. With the exception of legally-noticed closed sessions, they have always been open to all members of the public. While it is not the responsibility of the YACSD BOD to assure that a member of the Mariposa County Board of Supervisors attends YACSD BOD meetings, a specific invitation to the current supervisor has been given, including placing him on the YACSD email list so that he receives all communications sent to YACSD customers.

Response to Recommendations

R5: The MCCGJ recommends AB1234 mandatory ethics training be completed by all YACSD board members within 90 days of the publication of this report.

YACSD BOD response: All BOD members are in compliance.

R6: The MCCGJ recommends that the YACSD review, and revise the district's bylaws to improve the management actions and allow for more property owners to participate in the district's functions within 90 days of the publication of this report.

YACSD BOD response: The BOD will review and vote upon a revision of the YACSD bylaws at its December 4, 2021 meeting to amend language to state that registered voters of the Yosemite Alpine Community Services District may serve on the BOD.

R8. The MCCGJ recommends that all YACSD BOD members obtain the “Certificate in Special District Governance” within 180 days of the publication of this report.

YACSD BOD response: It is not financially feasible for the YACSD BOD to obtain this certificate. The required courses are offered at a conference that would cost the YACSD many thousands of dollars to attend and pay registration fees. There are no other opportunities to take all of the required courses.

R9. The MCCGJ recommends district records be backed up digitally on an appropriate device, or in the cloud within 90 days of the publication of this report.

YACSD BOD response: Records have been backed up onto a thumb drive. The BOD is investigating the purchase of cloud-based software on which to store records. A decision will be made at the regularly scheduled BOD meeting on December 4, 2021. The purchase of a designated computer seems infeasible, as there is no District office and records must be accessed by more than one person.

R10. The MCCGJ recommends that YACSD invite the District 5 Supervisor to their board meetings.

YACSD BOD response: While it is not the responsibility of the YACSD BOD to assure that a member of the Mariposa County Board of Supervisors attends properly-noticed YACSD BOD meetings, a specific invitation to the current supervisor has been given, including placing him on the YACSD email list so that he receives all communications sent to YACSD customers.

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