

EL DORADO COUNTY  
2015-2016 GRAND JURY  
REPORT



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**MOSQUITO FIRE PROTECTION  
DISTRICT DYSFUNCTION**

CASE 15-01 • APRIL 14, 2016

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Public Release  
APRIL 21, 2016

# EL DORADO COUNTY 2015-2016 GRAND JURY

## *MOSQUITO FIRE PROTECTION DISTRICT DYSFUNCTION*

Case 15-01 • April 14, 2016

### **BACKGROUND**

El Dorado County's Mosquito Fire Protection District (MFPD) and more than 380 other fire protection districts in California draw their statutory authority from fire protection district law – California Health & Safety Code §13800.

Every fire protection district is governed by a board of directors. The Mosquito Fire Protection District's five-member elected board of directors is independent of any county supervision and has no state oversight. MFPD employs administrative staff and firefighters as availability and funding allow. Administrative staff consists of the fire chief and one clerical staff; some limited administrative functions are also provided by the board of directors.

The Mosquito Fire Protection District is primarily a district of volunteers. Firefighting and medical response roles are fulfilled by the chief, full-time and seasonal staff that may be employed from time to time, and volunteers. The majority of firefighters, emergency medical technicians, and first responders are volunteers. The number of volunteers varies, mostly due to availability and willingness of community members to undertake that role.

#### **Special Note**

The grand jury investigation did not examine the Mosquito Fire Protection District performance during routine or emergency response to fire or medical situations.

According to statute, district boards must meet at least once every three months. The MFPD Board has met mostly on a regular monthly schedule for a number of years. A three-member majority of the district board constitutes a quorum for the transaction of business. A recorded majority vote is required for each board action and meetings are subject to the provisions of the Ralph M. Brown Act.

Small fire protection districts, as well as many counties and county districts, were adversely affected by the 2007–2009 recession. A precipitous drop in real property assessed valuation and an increased number of foreclosures impacted county real estate tax collections, while Proposition 13 continued to cap the tax rate, limiting the district's ability to meet increasing costs. Those effects continue to the present day.

In 2014, and again in 2015, the El Dorado County Board of Supervisors authorized supplemental *patch* funding to several small fire protection districts, including MFPD. To qualify for the funding, fire protection districts were required to pursue annexation or consolidation of services with other fire protection districts. They were also required to report how the funds were used within the district.

The MFPD was one of nine fire protection districts that the 2007–2008 El Dorado County Grand Jury recommended “*should make a good faith effort to reach consolidation agreements*” with other fire protection districts. Consolidation efforts by MFPD have been met with little success. They are too small in every respect, including available revenue, to be an attractive partner.

## METHODOLOGY

- Reviewed fire protection district statutes
- Reviewed MFPD board agendas and minutes
- Reviewed MFPD policies and procedures
- Interviewed current and past employees of the MFPD
- Interviewed current and past volunteers of the MFPD
- Interviewed current and past MFPD board of directors
- Interviewed citizens served by the MFPD
- Reviewed past grand jury reports and many other documents
- Consulted with El Dorado County Elections officials
- Consulted with fire protection district experts

## DISCUSSION

Incumbents were not challenged in the biennial elections from 2004 to 2010. Because candidates ran unopposed they did not appear on the election ballot. While not improper or illegal, it suggests a lack of community participation. The first non-incumbent in a decade was elected in 2012.

The general election of November 4, 2014 elected three new members to the MFPD Board of Directors. The first meeting of that newly elected board was in December of 2014.

As stated in the background section, all small fire protection districts were affected by the 2007-2009 recession. The Mosquito Fire Protection District’s ability to raise funds has been particularly impacted. During its formation in 1977, a crucial method to obtain revenue was omitted; no mechanism was included to provide automatic adjustments to parcel assessments based upon inflationary pressures. The property tax assessment for the MFPD has been \$204 per parcel per year whether or not it is developed; this assessment can be increased only by a vote of the district electorate.

The MFPD operated on a more or less even keel under the direction of longtime Fire Chief Leo Chaloux until his retirement in 2006, followed by Chief Davis for another six years. Then, a series of temporary chiefs were unable to maintain a steady presence. Coupled with an inexperienced board, an ensuing upheaval triggered a split of the board and community into several factions precipitating a hostile relationship. This hostility became detrimental to the stability of the district and adversely affected the number of community members willing to step forward and volunteer.

During much of 2014 and into 2015, the MFPD was actively looking for a permanent fire chief. They were ultimately successful in their search; a new fire chief was sworn in during a board meeting on June 20, 2015. Later that day, during a closed session, three of five members of the board, a majority, voted to decrease an employee's rate of pay that had previously been increased when the employee *filled in* performing some of the functions normally provided by the fire chief.

Still later that same day, a board member who had been absent during the earlier board meeting and upon learning about the pay reduction, circulated several e-mails among board members, suggesting the need for an *emergency* or *special* board meeting. The grand jury discovered that by June 22, two board members had resigned, with one citing improper behavior by several directors including Brown Act violations. The issue of the employee's rate of pay became more contentious – two of the three board members who had voted for the decrease were no longer on the board.

During a review of board meeting minutes, the grand jury noted that the August 13, 2015 minutes indicated two new directors were present. There was no mention in any minutes of two directors having resigned, postings of openings on the board, nor the selection of two new board members. Investigation found the vacancies were filled appropriately even though no minutes were published reflecting this until it was brought to MFPD's attention by the grand jury. It was also noted during the review of minutes that actions taken by the board referenced agenda items by number. However, no agenda was posted on the web site making it virtually impossible to discern what action had actually been taken.

Since August of 2015, there have been several reports of *name calling* and the use of inappropriately crude and vulgar language at board meetings by directors directed at other directors.

In September of 2015, a board member resigned and then rescinded that resignation. In October 2015, yet another board member resigned and also recanted.

As the grand jury investigated in the fall of 2015, it became abundantly clear that the district was in a state of dysfunction – on the verge of being unable to govern effectively.

The grand jury also noted that board meeting minutes had not been posted to the district website for meetings since September 26, 2015. This has only recently been rectified.

The grand jury discovered that the continual turnover of personnel included a component whereby family members were in potentially conflicted positions. For example, a board member's spouse was also a district employee. Those conflicts were initially troubling, but experts informed the grand jury that it was very common in a fire district like Mosquito, and was almost a necessity in a small community district of mostly volunteers.

The grand jury learned from skilled county professionals that this dysfunction may be attributable to board members entering into governmental board service without foreknowledge of and experience with governance. By its very nature governance is not naturally possessed. Rather, it is assimilated knowledge of law and procedure – skills usually acquired over time through training and experience.

In January of 2016 while the grand jury investigation was ongoing, the board president resigned as president while remaining on the board. The vice president *assumed* the role and duties of president while district policies or bylaws had no explicit directions as to what should occur should the president resign.

On February 18, 2016 one board member resigned via e-mail. At a special meeting later that same day, three more board members tried to resign en masse. However, that would have left the board without a quorum. Instead, they resigned one at a time and the remaining board members appointed replacement board members while maintaining a quorum. However, this process failed to comply with the timing and noticing provisions contained in Government Code § 1770 - 1780 which govern filling vacancies.

After the meeting, the sole remaining elected board member informed the El Dorado County Board of Supervisors that the MFPD board lacked a quorum. The board of supervisors posted vacancies for applicants and appointed two members to the MFPD Board on March 15, 2016. The MFPD Board now has a quorum enabling them to conduct business and ultimately fill the two remaining vacancies in accordance with Government Code § 1770 - 1780.

## FINDINGS

- F1. The MFPD Board of Directors was inexperienced and dysfunctional.
- F2. There have been numerous Brown Act violations by the board. There is a propensity of calls for *emergency* board meetings when no true emergency exists. The Board goes into closed session inappropriately to discuss salaries
- F3. Board minutes had not been posted to the district web site in a timely manner.
- F4. Turmoil and turnover in the chief's position since 2012 has led to board members directing day-to-day administration and operations.
- F5. The current part time fire chief lives approximately 2.5 hours from the district.

## **RECOMMENDATIONS**

- R1. Newly appointed board members should successfully complete the Fair Political Practice Commission AB1234 Local Ethics Training.
- R2. The MFPD Board of Directors should reach out to the county board of supervisors, California Special Districts Association, or others in county government for additional training and coaching on the Brown Act and effective governance.
- R3. Agendas and minutes should both be posted on the MFPD website in a timely manner. Minutes should not refer only to an agenda item unless the agenda is also available.
- R4. The MFPD administration and Board need to be more active in seeking annexation or consolidation of services with other fire protection districts. Alternatively, they need to secure additional funds by creating a ballot measure to increase parcel assessments.
- R5. The board members should support the fire chief taking control of the day-to-day administration and operations.
- R6. The fire chief should likely reside closer to, if not actually in, the district to effectively maintain control.
- R7. The bylaws and/or policies should be amended to provide a process to select officers, such as the president, if the office becomes vacant.

## **REQUEST FOR RESPONSES**

Responses to both findings and recommendations in this report are required by law in accordance with California Penal Code §933 and §933.05 from the Mosquito Fire Protection District Board of Directors before July 20, 2016.

Address responses to:

The Honorable Suzanne N. Kingsbury  
Presiding Judge of the El Dorado County Superior Court  
1354 Johnson Blvd.  
South Lake Tahoe, CA 96150

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a *Word* or *PDF* file to facilitate the economical and timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at: [courtadmin@eldoradocourt.org](mailto:courtadmin@eldoradocourt.org).

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

# **MOSQUITO FIRE PROTECTION DISTRICT**

**8801 ROCK Creek Road**

**Placerville, CA 95667**

**(530) 626-9017**

June 10, 2016

The Honorable Suzanne N. Kingsbury  
Presiding Judge of the El Dorado County Superior Court  
1354 Johnson Blvd.  
South Lake Tahoe, CA 96150

EL DORADO COUNTY 2015-2016 GRAND JURY CASE 15-01, MOSQUITO FIRE  
PROTECTION DISTRICT DYSFUNCTION

The El Dorado County Civil Grand Jury conducted an investigation of the functionality of the Mosquito Fire Protection District's elected leadership. Their final report was published on April 10, 2016. Pursuant to California Penal Code Section 933 and 933.05, the following four (4) pages along with MFPD Policy 1-02 also consisting of four (4) pages constitute the District's response to the findings and recommendations.

*Theresa M Stuart*

Theresa M. Stuart, President  
Mosquito Fire Protection District

## **RESPONSE TO FINDINGS**

F1. The MFPD Board of Directors was inexperienced and dysfunctional.

**Response:** The respondent agrees with this finding.

F2. There have been numerous Brown Act violations by the board. There is a propensity of calls for *emergency* board meetings when no true emergency exists. The Board goes into closed session inappropriately to discuss salaries.

**Response:** The respondent agrees with this finding.

F3. Board minutes had not been posted to the district web site in a timely manner.

**Response:** The respondent agrees with this finding.

F4. Turmoil and turnover in the chief's position since 2012 has led to board members directing day-to-day administration and operations.

**Response:** The respondent agrees with this finding.

F5. The current part time fire chief lives approximately 2.5 hours from the district.

**Response:** The respondent agrees with this finding.

## **RESPONSE TO RECOMMENDATIONS**

R1. Newly appointed board members should successfully complete the Fair Political Practice Commission AB1234 Local Ethics Training.

**Response:** This recommendation has been implemented.

All current Board members have completed this course. The requirement that future Board Members complete this course is contained in revised Policy 1-02-08 (Board Members and Meetings) adopted at the Regular Board Meeting on June 9, 2016 and attached to this document.

R2. The MFPD Board of Directors should reach out to the county board of supervisors, California Special Districts Association, or others in county government for additional training and coaching on the Brown Act and effective governance.

**Response:** This recommendation has been implemented.

The Board solicited assistance from the El Dorado County Board of Supervisors and El Dorado County Counsel to no avail. MFPD Board President was then directed to schedule a workshop, through District's legal counsel, covering relevant portions of the Brown Act. The workshop will take place on July 6, 2016. The public as well as directors of other local community organizations will be invited to attend. Further, Policy 1-02-12, now requires that similar workshops be held in the first quarter of each odd calendar year.

R3. Agendas and minutes should both be posted on the MFPD website in a timely manner. Minutes should not refer only to an agenda item unless the agenda is also available.

**Response:** This recommendation has been implemented.

All approved minutes for calendar year 2016 have been added to the website. To ensure that this situation does not reoccur, the duties of the Board Clerk emphasize the need for clear and complete meeting minutes as well as the importance of maintaining this portion of the MFPD website.

R4. The MFPD administration and Board need to be more active in seeking annexation or consolidation of services with other fire protection districts. Alternatively, they need to secure additional funds by creating a ballot measure to increase parcel assessments.

**Response:** This recommendation requires further analysis.

The core issue is the fiscal viability of the MFPD. The Board gives the resolution of this matter its highest priority.

The possibility of annexation has been explored. However, at public meetings during the past two years, the public has soundly rejected the idea of annexation. The public places a very high value on receiving protection from a fire station that is located physically in the community. Also, the station is valued as a quasi-community center.

Consolidation of services has also been explored. In 2014 the District approached Garden Valley, Georgetown and El Dorado County with a proposal to "share" the Fire Chief's duties. The approach was rejected by all three Districts. The reported reasons for the rejections were (1) the remoteness of Mosquito, and (2) Mosquito's fiscal inability, in the long term, to sustain the arrangement without degrading the current level of service. Later in 2014, the District explored sharing some clerical and minor administrative duties with the neighboring districts. In preliminary discussions, MFPD learned that their costs associated with this form of "sharing" would approximately equal those of retaining the District employee to do the work. Currently, task sharing is not a viable option.

With this said, the Board is committed to exploring avenues to cause the MFPD to become fiscally viable. We feel that the answer may be found in a combination of three possibilities:

- Increase parcel fees in our district.
- Seeking and obtaining additional financial assistance from other sources.
- Balance the level of service with our fiscal resources.

A draft analysis and subsequent plan-of-action will be put in place on or before the October, 2016 Board meeting.

R5. The board members should support the fire chief taking control of the day-to-day administration and operations.

**Response:** This recommendation has been implemented.

The newly seated Board met with the Chief in April, 2016 to review and discuss both parties' expectations. The Chief's role and responsibilities are defined in his current contract. Less defined were the Board's role and responsibility. At the April, 14, 2016 regular board meeting, a committee was formed to examine the entire Policy Manual. Foremost was the committee's responsibility was the examination and updating Policy Manual Chapter 1 which deals with District administration. While this examination is on-going, the committee's submission of revised Policy 1-02 (Board Members and Meetings) does, in more specific terms, define the role of the Board and Board Members. That amended policy was adopted at the June Board Meeting and is attached for reference.

R6. The fire chief should likely reside closer to, if not actually in, the district to effectively maintain control.

**Response:** This recommendation will not be implemented at this time.

Sustainable funding is the core issue facing the District. While the Board is sympathetic to the concept of a "dual role" Chief – a firefighter/administrative Chief who lives locally – we believe that addressing the MFPD Chief's residency at this time is unwarranted. The District's future, including the level and type of staffing, will certainly be contingent upon the outcome of Recommendation R4. If a viable fiscal solution is implemented and the District continues to exist as an entity, then the Board will re-examine the expectations for the District Chief's position to determine if the "dual role" concept or the "part-time administrative Chief" concept best serves the community's needs.

R7. The bylaws and/or policies should be amended to provide a process to select officers, such as the president, if the office becomes vacant.

**Response:** This recommendation has been implemented

Policy 1-02, amended and adopted at the June, 2016 Board Meeting, specifies the succession of officers in sub-section 1-02-03 (attached).

