

# Responses to the 2012-2013 Grand Jury Report

Every year, when the annual Santa Cruz County Grand Jury Report is published, designated agencies are requested to respond to the findings and recommendations of the report. These responses may agree, partially disagree, or disagree with the findings, and may indicate that recommendations have already been implemented, will be in the future, or will not be implemented, or that further analysis is required.

Comments may also be added to the responses. When a response agrees with a recommendation, further comments are optional. In case of complete or partial disagreement, or in response to recommendations for action, comments should be provided as part of the response.

For each report, the collected responses are published in a separate file on the [grand jury's section of the county's public website](#). Note: The responses are provided as received, and have not been edited, except for minimal formatting to make them appear correctly on this web page.

## Report: [Pajaro Valley Water Management Agency](#)

This report requested responses from the following:

1. Board of Directors, Pajaro Valley Water Management Agency: Findings 1-4; Recommendations 1-4
- **Finding 1: The Board of Directors has not been acting on the Material Weaknesses or Control Deficiencies listed in each audit for the last five years.**
    - Mary Bannister, General Manager, for Rosemary Imazio, Chair: **DISAGREE**

During the time period covered in the report, extreme financial hardship resulting from an adverse outcome in litigation brought the Agency to the very brink of bankruptcy or dissolution, forcing the Board of Directors to make severe budget cuts and layoffs that greatly impaired the Agency's ability to function. Thanks to the hard work and vision of this Board of Directors, the Agency has weathered this crisis and has put the Agency back on course to fulfill our important mission of balancing our groundwater basin. The Board of Directors has been acting on the Material Weaknesses and Control Deficiencies listed in each audit for the last five years. As funding has allowed, staff has been added to ensure adequate accounting controls are in place. In May, prior to the release of the Grand Jury's report, our Administrative Services Manager reported to the Administrative/ Finance Committee and Board of Directors the measures taken to rectify each of the items noted in the most recent audit.

- **Finding 2: The PVWMA minutes and agenda materials fail to document whether the Administrative/Finance Committee has been forwarding or initiating any discussion regarding the Material Weaknesses or Control Deficiencies in their audit recommendations to the Board in the last five years.**

- Mary Bannister, General Manager, for Rosemary Imazio, Chair: **PARTIALLY DISAGREE**

Meeting minutes are recorded in conformance with the policy recommended by the California Special Districts Association and are “action minutes.” Accordingly, discussions that did not result in Board actions are not necessarily included in the minutes. The Admin/Finance Committee and Board receive a presentation from our auditors annually, summarizing the results of the audit and their management letter describing their findings and recommendations. Care will be taken to ensure that all materials distributed to the committees and Board related to the audit are included in the meeting records.

- **Finding 3: The Agency’s 2011-12 audit shows the PVWMA Long Term Debt to be over \$41 million, which does not appear to comply with Section 511 of their Agency Act limiting outstanding debt to \$300,000.**

- Mary Bannister, General Manager, for Rosemary Imazio, Chair: **DISAGREE**

The Financial obligations referenced in the Grand Jury report are pursuant to Section 510, which authorizes the Agency to “cause construction or other work to be performed or carried out by contracts or by the agency under its own supervision” and further, Section 801 provides authority to issue bonds. Section 511, identified by the Grand Jury, does not broadly limit the amount by which the Agency can finance Agency projects or programs. That section refers to the amount of “negotiable promissory notes” that can be outstanding at one time, but does not specifically define what is meant by the term “negotiable promissory notes.” The term, however, is typically used to refer to a promissory note that is unconditional and readily salable (See, Whaley DJ. (2012). Mortgage Foreclosures, Promissory Notes, and the Uniform Commercial Code. Western State University Law Review). None of the Agency’s financial obligations would appear to qualify under this definition.

- **Finding 4: The Grand Jury’s investigation revealed numerous instances of Agency failure to properly define and carry out roles of staff and Board of Directors.**

- Mary Bannister, General Manager, for Rosemary Imazio, Chair: **DISAGREE**

The Agency Board and staff have very effectively defined roles, demonstrated by the survival and successes of the past 5 years in the face of near financial

collapse. A recycled water facility has been constructed, along with over 20 miles of distribution pipeline. 10,000 acre feet of supplemental water has been delivered to coastal growers and 8,000 acre feet of flood waters have been recharged into the coastal aquifers. \$48 million in grant funding has been secured, greatly reducing the financial impact of these projects to the rate payers. Refunds of over \$11 million were made while staff was reduced by half and all financial obligations were fully and timely met. We have had clean, unqualified audits each of those years. Staff and the board attend training, seminars and workshops regularly to maintain their skills and expertise fulfilling their roles and responsibilities.

- **Recommendation 1: The Board of Directors should direct the staff to correct Material Weaknesses and Deficiencies before the following year's audit and provide a review of the corrections to the board.**

- Mary Bannister, General Manager, for Rosemary Imazio, Chair: **HAS BEEN IMPLEMENTED**

This has been done for Fiscal Year 2011/12 as documented in the May 22, 2013 audit responses.

- **Recommendation 2: The Board should direct the Administrative/Finance Committee to include discussion of auditor-reported Material Weaknesses or Deficiencies of any type in its annual recommendations to the board.**

- Mary Bannister, General Manager, for Rosemary Imazio, Chair: **HAS BEEN IMPLEMENTED**

As noted above, the Admin/Finance Committee and the Board routinely review the results of the annual audit, and discuss any material weaknesses and deficiencies of any type described therein, on an annual basis.

- **Recommendation 3: The Board should address the apparent conflict between the Agency's current debt and the limits set in the Agency Act.**

- Mary Bannister, General Manager, for Rosemary Imazio, Chair: **WILL NOT BE IMPLEMENTED**

There is no conflict between the Agency's current debt and the limits set in the Agency Act. The Board may wish to consider legislative action to amend the Act to clarify what is meant by the term "negotiable promissory notes" or to delete the language referenced in Section 511.

- **Recommendation 4: The Board should employ a qualified CPA to conduct a full forensic examination of the Agency financial records and procedures, and submit a report to the Board recommending changes guiding the Board to exert financial oversight for its required fiduciary responsibility.**

- Mary Bannister, General Manager, for Rosemary Imazio, Chair: **WILL NOT BE IMPLEMENTED**

The Agency disagrees with Recommendations R4's presupposition that the Board does not "exert the financial oversight for its required fiduciary responsibility." In fact, a qualified CPA conducts annual audits of the Agency's finances. The 2012-13 audit is underway and results will be reported to the Board in the fall. In addition, the Agency's project expenditures have been audited by state and federal granting agencies and found to be accurate and correctly booked. On the other hand, a full forensic examination is typically performed for the purpose of investigating suspected criminal acts such as embezzlement or fraud. Although the Grand Jury's report noted an instance in which fraudulent charges were made on an Agency gasoline card, it failed to mention that the fraud was uncovered by the Agency's own staff and immediately reported to law enforcement authorities. None of the findings contained in the Grand Jury's report would appear to support the necessity of a full-blown forensic audit under these circumstances.