



ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486 • PHONE (925) 454-5000

September 19, 2012

Honorable C. Don Clay, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, CA 94612

Subject: *Comments on June 25, 2012 Grand Jury Report*

Dear Judge Clay:

Pursuant to Penal Code §933(c), Zone 7 Water Agency (Zone 7) is submitting these points of clarification on the 2011/12 Grand Jury Report. We thank the Grand Jury for its thoughtful consideration and observations on Zone 7's further separation from the County and concur that Zone 7 is indeed already a public agency subject to the grand jury's reviewing authority.

Zone 7 is one of the three State Water Project (SWP) contractors served by the South Bay Aqueduct (SBA). It supplies treated drinking water to more than 220,000 people in Pleasanton, Livermore, Dublin and the Dougherty Valley area of San Ramon in Contra Costa County. Zone 7 also supplies agricultural irrigation water primarily to South Livermore Valley's vineyards and flood protection to 427 square miles of the Upper Alameda Creek Watershed. Zone 7 was formed in 1957, when local residents within Eastern Alameda County voted to place Flood Control and Water Supply issues under local control. Zone 7 manages its water resources and flood control facilities in an integrated manner to optimize benefits to both.

The Grand Jury Report discussed Zone 7's goals and objectives in seeking separation but failed to mention a key reason for this effort. Zone 7 is seeking separation from Alameda County to become a multi-county agency, allowing registered voters in the Dougherty Valley portion of San Ramon (in Contra Costa County) to be able to vote for and serve on the board while honoring the public mandate of 1957 to retain local control of flood control and water supply issues. It is the Zone 7 Board's commitment to full public representation that is a major goal in seeking separation from the Alameda County Flood Control and Water Conservation District.

Zone 7 is a special district that is nearly autonomous, with a board of directors that is elected by the public within the Alameda County portion of its service area. To separate from the County **would not create a new special district** but would make Zone 7's elections more inclusive, eliminating any nominal dependence on Alameda County. There is no intent to expand Zone 7's existing authority under the Alameda County Flood Control and Water Conservation District Act (Act 20 of the Uncodified Acts in the Water Code and its Section 36 which specifically concerns Zone 7) but simply to better address the existing multi-county distribution of potable water by Zone 7's retailers.

Existing law allows the Zone 7 Board significant authority to make decisions related to Zone 7 activities and personnel. Section 36(2) of the Act states, in part,

Any zone established by the board of supervisors under the provisions of this act lying, in whole or in part, in Pleasanton or Murray Townships, shall be governed and controlled by a board of seven directors elected by the qualified electors residing within the boundaries of the zone.

This language has been in place since 1957. From its inception the Zone 7 Board has had the authority to govern and control the affairs of the Zone, save where there is an express requirement otherwise.

Section 36(3) of the Act states,

*The board of directors of any zone in which directors have been elected as provided in this act shall have the power to make and enforce all needful rules and regulations for the administration and government of the zone. **The zone board may appoint a chairperson, a secretary, and other officers, agents and employees for the board or zone that, in its judgment, may be deemed necessary, prescribe their duties, and fix their compensation.** The officers, agents, and employees shall be appointed under and pursuant to the civil service rules and regulations of the County of Alameda.*

Furthermore, the language of Section 36(4) of the current Act states,

*Notwithstanding any other provision of this act, **the zone board elected pursuant to this section shall govern and control**, in accordance with this act and without further action by the district board [Alameda County Board of Supervisors], **all matters that relate only to the zone** established pursuant to this section. All matters that relate both to a zone established pursuant to this section and to another portion of the district shall be approved by both the zone board and the district board.*

Given that no other zone serves water, all of Zone 7's water activities are under the sole authority of the Zone 7 Board of Directors, including but not limited to those related to purchasing, accounting and investing water funds. Given that all administrative and purchasing decisions for flood protection relate only to money collected from Zone 7's developers and property owners for projects within Zone 7, those functions are also under the sole authority of the Zone 7 Board. Since the flood protection reserves were collected in anticipation of project work within Zone 7, the \$63 million currently in the treasury is maintained and spent under the Zone 7 board's sole authority. In summary, the organizational chart prepared by the County showing the relationship between Zone 7 and the rest of the County accurately reflects existing law (i.e., that Zone 7 is basically autonomous right now). Again, Zone 7 is already a special district and separating from Alameda County would not create a new special district but rather change a dependent special district to an independent one that enables all ratepayers to have a voice and a vote in selecting their representatives on Zone 7's Board of Directors. Zone 7 believes that it is good public policy for our agency to have a more inclusive, more representative electorate.

The Grand Jury report expressed concerns with public access to information about Zone 7's separation efforts. In terms of public notice, Zone 7's agendas and board packages are posted on its website and meetings are open to the public and are reported in the press. For the last year, every monthly board package has included a status report on separation. There has been no lack of public notice on the proposed separation from the County nor has there been a lack of opportunity for the public to participate in the board's regular monthly public meetings that are held in the evenings (to maximize public transparency, similar to local city council meetings and DSRSD board meetings). DSRSD and the City of Dublin unanimously agreed to support the draft separation legislation (copies of letters posted on Zone 7's website) in their own public meetings which provided the public with additional opportunities to participate and comment.

Comments were also made about Zone 7's financial expertise. Zone 7 has a history of excellent fiscal management. When faced with the economic downturn, Zone 7 was one of the first public agencies to recognize the shift, beginning to freeze salaries and reducing the number of staff. In an era of shrinking public budgets, Zone 7 has been extraordinarily successful in constructing infrastructure on a "pay-as-you-go" approach, which has limited the need to increase water rates. Zone 7 has recent experience with an Installment Sale Agreement (ISA), a short-term loan of \$30 million at very favorable interest rates. Zone 7 has, in fact, issued bonds historically and paid them off in full.

Zone 7 is aware that critics have suggested that Zone 7 should consider separation for the water enterprise portion of Zone 7, only. Presumably, this would mean that the Alameda County Flood Control and Water Conservation District would take over operation of flood control functions within Zone 7 in addition to the other nine active zones for which it has responsibility. Zone 7 is strongly opposed to this approach, for several reasons:

- First, experts in water management uniformly agree that the most efficient and cost-effective way to manage water resources is to integrate operations of water supply and flood control facilities, rather than operating or managing them separately. Fragmenting management minimizes effective operations. Separating the water enterprise function would interfere with such integrated water resource management. Any fragmentation of resource management would also result in economic and political inefficiencies in managing the local channels and arroyos, which are currently utilized for both groundwater recharge and for flood protection. In these hard economic times, government efficiencies are even more critical to the public.
- Second, Zone 7 is the institutional manner in which the residents of the Livermore Valley have exercised local control of both the flood protection and water aspects of the business. Again, Zone 7 firmly believes that local control of and local access to agencies in Eastern Alameda County is good public policy.
- Third, the portion of the Alameda Creek Watershed within Zone 7 is geographically and geologically unique, overlying and integrated with the Livermore-Amador Valley Groundwater Basin. The portions of the watershed that are upstream (in Contra Costa County and in Santa Clara County) and downstream (in the Fremont-Newark portion of Alameda County) are relatively separate and are not integrated with the Livermore-

Amador Valley Groundwater Basin, although the upstream portions of the watershed supply water and sediment to this portion of the watershed and Zone 7, in turn, passes water through to the lower watershed. However, it is important that the Stream Management Master Plan, adopted by the Zone 7 board in 2005, is a holistic management program that improves water quality, enhances habitat and manages flood waters, while allowing multiple uses of facilities for recreation and other public purposes.

Zone 7 appreciates your consideration of this additional information. There is more material available on the Zone 7 website, <http://www.zone7water.com/future-separation>. If you have any questions, please feel free to contact either me or Jill Duerig at the number above (or Jill can be reached by email at jduerig@zone7water.com).

Sincerely,

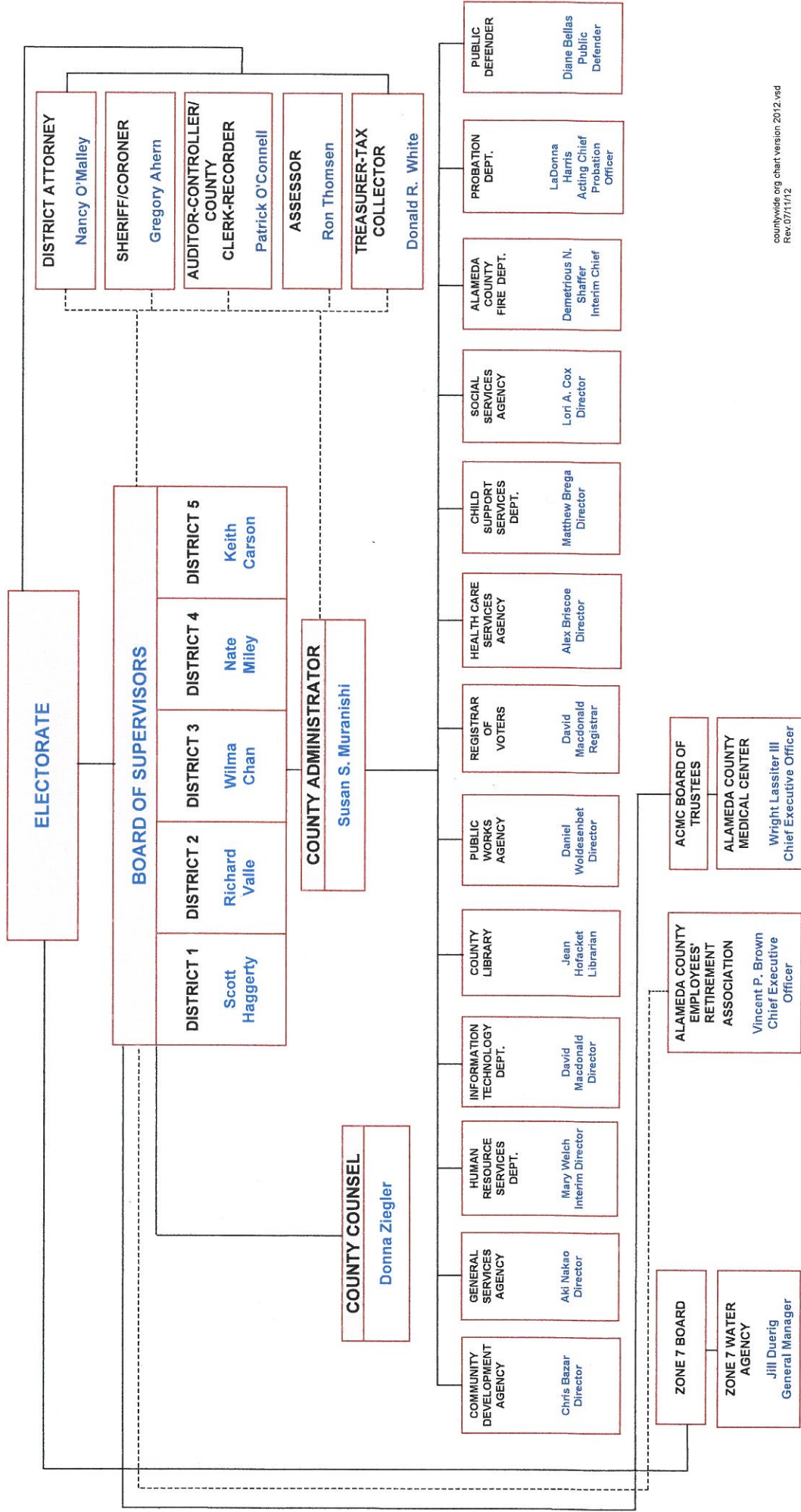


Sarah Palmer, PhD
President, Zone 7 Board Directors

Attachments: County Organization Chart (source: County Website, September 2012)
Additional Comments on Grand Jury Report

cc: Rob Warren, ADA
Alameda County Board of Supervisors
Zone 7 Board of Directors

ALAMEDA COUNTY GOVERNMENT OVERVIEW



Additional Comments on Grand Jury Report

The Alameda County Civil Grand Jury issued its "2011-2012 Alameda County Grand Jury Final Report" on June 25, 2012. The following provides additional information in response to some of the statements made in this report.

Zone 7 is a special district, currently receiving certain services from the County. The Grand Jury's comments concern Zone 7's interest in and efforts towards pursuing additional independence from the Alameda County Flood Control and Water Conservation District.

Issues that were raised in the 2011-2012 Alameda County Grand Jury report are listed below [emphasis added by underlining], followed by Zone 7's [italicized] responses to each:

- "In 2009, Zone 7 commissioned a consulting report to analyze the costs and benefits of becoming an independent special district and to recommend steps to develop its own support serves, which are currently provided by Alameda County, such as payroll, budget, accounting, purchasing, human resources, and risk management."

Separation of Services Report. *The 2009 Management Partners report, posted on Zone 7's website, actually showed efficiencies that could be achieved **within the existing authority granted by AB 1125 in 2003**. Although Zone 7 only partially exercised the new authority granted by this change in the law, the report identifies many more opportunities for savings by more fully exercising existing authority by separating services including payroll, budget, accounting, purchasing, human resources and risk management.*

County Response to 2009 Report. *When discussed with County representatives, Zone 7 was told that the County would prefer if Zone 7 did not "Cherry Pick," and instead take all or nothing. Since Zone 7 currently provides regional flood control services and water resources management throughout Eastern Alameda County (427 square miles), as well as serving potable water to its four retail water agencies (one of whom serves the Dougherty Valley portion of San Ramon), Zone 7 investigated organizational options for continuing to provide these services in a multi-county agency. After completing this research, it appeared the best option was to follow the example of Santa Clara Valley Water District (SCVWD), another wholesale potable water agency with integrated flood management services. SCVWD recently pursued legislation that separated it from Santa Clara County while allowing it to continue to provide **all** the same services without cherry picking any piece of its business. The SCVWD Act was used as a template for SB 1337.*

- “It [Zone 7] contracts with Alameda County Public Works for much of its flood control maintenance...”

Contracting between Zone 7 and the County. The 2012/13 Flood Control Operating Budget (Fund 50) is \$5,654,148. Of this, a contract is issued to Public Works for only \$400,000 (less than 10% of the total) that is largely for vegetative management (spraying/weed control). The contract amendment executed in June 2012 reflects the relationship between District (Public Works) staff and Zone 7 staff. That contract amendment stated, in part, that “under the terms of the Agreement, as well as predecessor agreements, those projects [flood control projects within Zone 7] have been **designed, engineered and supervised by Zone 7**, with the County providing labor because the County can provide that service more economically than other providers” and stated the “County is pleased with and supports Zone 7’s efforts to manage flood risk.”

Integrated Water Resources. In 1957, Zone 7 was formed with an independently-elected board to provide more direct local oversight of water resources in the Pleasanton-Livermore-Dublin area (covering the 427 square mile area served by Zone 7). Zone 7 manages its portion of the Alameda Creek watershed holistically. A single agency that provides both flood protection and water supply services can achieve greater efficiency and effective management of the regional flood control facilities by using them for both recharge of the groundwater basin and for stormwater management. This is particularly true in an area that is geologically distinct from the remainder of the watershed. Zone 7’s “2006 Stream Management Master Plan” presents a state-of-the-industry roadmap for integrated use of flood protection facilities to satisfy water resource needs (such as using streams for groundwater recharge), habitat and recreational enhancements and regional community flood protection of life and property, which has been recognized as an industry standout.

Financing and Managing Flood Control. The County’s current total budget is \$2.6 billion annually with 9,000 employees. County Public Works (serving the other nine active flood control zones) has a budget of \$155 million with 438 employees; about half of this budget goes to flood protection (the remainder to streets, street lighting, graffiti control, etc.). Zone 7’s annual flood operating budget of \$5.6 million would be dwarfed by western Alameda County politics and the Valley’s residents could again lose their local oversight of locally-generated property taxes and setting flood protection project prioritizations if flood control were to revert to the County after 55 years of independent, local oversight.

Financing Development Impacts. Zone 7 has also implemented a

development impact fee so that development pays its own way and that Zone 7 can construct projects that mitigate impacts of development. Projected revenues from this fund in 2012/13 are \$2 million which will go towards funding the development share of the Stream Management Master Program capital projects.

- "It [Zone 7] already receives an external financial audit."

Third Party Audit. Zone 7 does not "receive" an external financial audit (which implies an external entity such as the County provides it) but instead contracts for a third-party audit. Zone 7 has been doing this for many years to assure that adequate fiscal management controls are in place and that its financial records, fiscal controls and accounting procedures are consistent with Government Accounting Policies and Procedures. Periodically, Zone 7 changes auditors to assure that a "fresh eye" reviews basic financial statements. Regardless of the auditor used, Zone 7 consistently receives "clean" audits, showing the public's funds are being adequately protected by the financial team at Zone 7. These audit reports are discussed in public meetings and made available to the public.

- "Zone 7 uses a "pay-as-you-go" approach to funding capital projects, relying on current revenues and reserves; hence, it has never issued bonds and has virtually no financing experience."

Financing History. Zone 7 has recent experience negotiating the Independent Sale Agreement (ISA), a short-term loan of \$30 million with extremely favorable terms. Zone 7 has, in fact, issued bonds historically and paid them off in full. Additional financing experience, should it become necessary in the future due to a change in financial approach, could easily be obtained through contracts, as with other specific professional services.

Excellent Fiscal Management. Zone 7 has a history of excellent fiscal management. When faced with the economic downturn, Zone 7 was one of the first public agencies to recognize the shift, beginning to freeze salaries and reducing the number of staff. In prioritizing core functions, Zone 7 staffing plans do not currently include a need for additional "financing" (bond) experience, or need to employ someone with that expertise, unless the agency's financing philosophy changes and there is an intent to pursue bond financing. Finally, in an era of shrinking public budgets, Zone 7 has been extraordinarily successful in constructing infrastructure on a "pay-as-you-go" approach, which has limited the need to increase water rates."

- “The Grand Jury learned that Zone 7’s goals are:
 - “Getting out from under the county’s cumbersome civil service system
 - “Conducting its own procurement process
 - “Improving its employee recruiting and retention by setting its own salaries
 - “Achieving more flexibility in offering better retirement benefits than those offered by Alameda County.

“However, the Grand Jury notes that few of these reasons represent opportunities for cost savings. In addition, there is considerable risk in creating a new and independent financial structure where there is currently minimal expertise, especially given that the potential savings are identified at only \$350,000 per year.”

Dougherty Valley Needs Representation. Zone 7 is seeking independence from the County to become a multi-county agency, allowing customers in the Dougherty Valley portion of San Ramon (in Contra Costa County) to be able to vote for and serve on the board. It is the Zone 7 Board’s commitment to full public representation that is one of the key goals in seeking separation from the Alameda County Flood Control and Water Conservation District.

Other Benefits to Independence. The first two bulleted comments are accurate and worth separating in themselves. The latter two are not. First, Zone 7 **already** sets its own salaries (in fact, on the preceding page the Grand Jury correctly acknowledges that this has been the case since 1994). Second, in terms of retirement benefits, there was some discussion about retirement options in 2007 (five years ago, when the economy was very different than today). At that time, the Zone 7 board approved MOUs with all four bargaining units which included an agreement to allow discussions about retirement options. A single meeting was held during which there were discussions about employees being able to contribute more for higher benefits so as to keep employer contributions stable (i.e., no net increase in cost to Zone 7). No additional meetings or discussions occurred.

Financial Expertise. Zone 7 has, for decades, managed its own budgets and accounting, analyzing and projecting rates, revenues and expenses and achieving balance without any support from other County funds. The pay-as-you-go policy embraced by Zone 7’s board of directors has resulted in a fiscally conservative yet robust balance of reserves and cash flow. The transition from the assertion of no financing experience (related to incurring bond indebtedness) to an assertion that there is minimal financial expertise is faulty.

Saving Money is Always Important. Saving hundreds of thousands of dollars

in public funds, as identified in the 2009 Management Partners report, is certainly worth pursuing by any public agency in these tight economic times and shows the agency's fiduciary commitment to the public.

- “[I]s it appropriate to create a special water district for an entity that does not provide water directly to the public? How will the public be able to evaluate the district when its services are primarily delivered through other agencies? Although perhaps not the most efficient relationship, currently the county provides at least some financial and administrative oversight.”

Existing Special District. *Zone 7 is already a dependent special district with an independently-elected board. Becoming independent or separate from the Alameda Flood Control and Water Conservation District would not create a new special district but would make Zone 7's elections more inclusive, allowing the public receiving its services outside of Alameda County to vote for its board.*

Public Involvement. *Zone 7 is a Public Water Agency and also a wholesale water utility. As is the case throughout the state, the elected board of Zone 7 holds public meetings, is elected by its constituents and is ultimately responsible to the public. If the public is dissatisfied with the services Zone 7 provides, the rates Zone 7 charges or any other factor, the public can and has voted those Directors out of office.*

Dougherty Valley Needs Representation. *An important exception is the group of customers living in the Dougherty Valley, who cannot vote for the board or serve on the board under the existing Alameda County Flood Control District Act organizational structure. In fact, one of the primary reasons that Zone 7 is seeking separation from the County is to become a multi-county agency, allowing these customers to be able to vote for and serve on the board. It is the Zone 7 Board's commitment to public representation that is a key objective in seeking separation.*

Wholesalers Receive Dual Oversight. *A wholesale water agency receives dual oversight from both members of the public (as described above), as well as its retail customers, the latter providing a more sophisticated oversight than would be provided solely by the public. Three of Zone 7's four retail customers are, in turn, public agencies who often discuss Zone 7 matters such as rates and fees in their own public meetings, allowing the public access in a second, more local, venue.*

Water Supply is Best Separate from Alameda County. *Under AB 1125, the County does not have the authority to provide oversight of Zone 7's water*

enterprise. Therefore, the letter received from the Board of Supervisors which Zone 7 received on June 22, 2012, indicates that the County supports separation of the water enterprise as an independent special district.

County Oversight. Since Zone 7 is in the Upper Alameda Creek Watershed, the letter from the County Supervisors asserts that Zone 7's flood control activities have some impact on the lower watershed which is covered by a separate zone of the Alameda County Flood Control District. Consequently, Zone 7's flood control operations and maintenance budget is folded into the County Flood Control District Budget every year. This does not constitute any actual "oversight" within Zone 7's boundaries. In fact, the language of Zone 7's current contract amendment with the County (quoted above) clearly shows that the County simply provides labor for tasks to be performed under the supervision of Zone 7 staff within eastern Alameda County. In this regard, the County serves as one of our many contractors.

- "If county separation is important, would it not be more appropriate to consolidate with the various cities and water districts to which Zone 7 sells water? Or, should Zone 7 consolidate with Alameda County Water District with which it shares some facilities, even though a range of hills separates their respective areas?"

Separation and Consolidation. Separation from the County and consolidation with other municipal services are not mutually exclusive. However, consolidation details would take years to work out and, in the meantime, Zone 7's customers in the Dougherty Valley remain disenfranchised and all of Zone 7's customers are losing money daily to the inefficiencies described above. One of Zone 7's customers, California Water Service Company, is a privately-owned utility. Two others are city water departments. The fourth is a special district that crosses county lines. None have the same agency boundaries as Zone 7 and, in fact, there are differing politics from city to city.

Studying Opportunities for Collaboration. Regardless of these differences, a six-agency (Pleasanton, Livermore, Dublin, San Ramon, DSRSD and Zone 7) study is currently underway to identify existing instances where the agencies already have integrated specific services (including standing contracts by which Zone 7 operates wells on behalf of DSRSD and DSRSD treats wastewater on behalf of Pleasanton), as well as identifying future opportunities to expand integration of services that would significantly benefit the public; this study is being performed to provide information to the Alameda County LAFCo as part of its current 5-year Municipal Services Review.

Geography and Geology Matter. Consolidation with ACWD makes no sense.

*While both receive water from the State Water Project via the South Bay Aqueduct (as does Santa Clara Valley Water District), there are **no** shared facilities. The distance between the two agencies makes an emergency intertie cost-prohibitive. The hills (and miles) that separate the two districts are filled with commute-hour traffic that makes any sharing of staff ineffective. Given the geographical infrastructure limitations, there would be no fiscal advantage to consolidate ACWD and Zone 7. Furthermore, the two groundwater basins are independent and the geological connections with the watershed are very different.*

- “[T]he Grand Jury is concerned about the lack of public awareness and input. Based on its origin through special state legislation, Zone 7 expects its independence to be granted by Sacramento, not by local voters. Even LAFCO is playing a minor role in this action.”

Public Notice. *Zone 7 is a public agency. Its agendas and board packages are posted on its website and meetings are open to the public and are reported in the press. For the last year, every monthly board package has included a status report on separation. There has been no lack of public notice on the proposed separation nor has there been a lack of opportunity for the public to participate in the board's regular monthly public meetings that are held in the evenings (to maximize public transparency, similar to local city council meetings and DSRSD board meetings). DSRSD and the City of Dublin unanimously agreed to support the draft separation legislation (copies of letters posted on Zone 7's website) in their own public meetings and providing the public with more opportunities to participate and comment.*

Interagency Outreach. *Zone 7 has provided direct outreach to each of the retail water agencies served by Zone 7, as well as to each of the LAFCo members (as well as the Executive Director), in addition to ongoing efforts to keep County (both Public Works and District) staff informed. The existing legislative language (the **Alameda County** Flood Control and Water Conservation District Act), makes it impossible to incorporate the Dougherty Valley, which is in Contra Costa, in a new District providing the same services that Zone 7 currently provides without involving Sacramento.*