

CITY OF CALISTOGA

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July 17, 2012

The Honorable Mark S. Boessenecker
Presiding Judge
Superior Court of the State of California
County of Napa
825 Brown Street
Napa, CA 94559

Subject: Grand Jury Final Report on Measure A
City of Calistoga Response

FILED

AUG 22 2012

Clerk of the Napa Superior Court
By: C. Bunn
Deputy

Honorable Judge Boessenecker:

The City of Calistoga has received and reviewed the subject Grand Jury Final Report dated May 1, 2012. As requested by the Grand Jury and pursuant to the provisions of the Penal Code and applicable law, the City of Calistoga is providing this letter to respond to Finding 3 and Recommendations 11.

Finding 3:

"Solage Resort Drainage Project should not have been paid with Measure A funds as the City of Calistoga had no duty to pay that \$600,000 cost".

Response:

We disagree with this finding. The Grand Jury was incorrect to assume (on page 12 of the Final Report) that Solage Resort billed \$600,000 to pay for the resort's own drainage mitigation. The total cost of drainage infrastructure improvements constructed by the Solage resort was \$1,645,254.58, as independently verified by Coastland Engineering. Of this amount, \$207,408.14 was paid for by Solage, to construct drainage improvements to mitigate the stormwater impacts from Solage's development. The remaining approximate \$1.4 million was attributable to the City's public infrastructure improvements, which were needed to implement the City Council approved Southeast Drainage Master Plan of October 2004. Of the approximately \$1.4 million for the City's drainage improvements, \$600,000 was reimbursed to the Solage Resort from Measure A funding.

The Grand Jury was also incorrect to conclude (on page 12 of the Final Report) that Measure A funds "may only be used for projects that legally require payments from a given jurisdiction." There is no such requirement in the Measure A Ordinance. The City would also note that its duty to reimburse the Solage resort for these supplemental capacity drainage improvements was established by a reimbursement obligation agreement approved by the Calistoga City Council on January 18, 2011, prior to the payment release of \$600,000 to the Solage resort.

Recommendation 11:

“Any further requests by the City of Calistoga for Measure A funds for the Mt. Washington tank and Solage projects be denied and the City be required to return any unspent Measure A tax revenue forwarded to it for these matters”.

Response:

We disagree with this recommendation. The City of Calistoga reasserts that the use of Measure A funding for the Mt. Washington water storage tank project was justified within the language of the Measure A ordinance, and was properly approved by the Napa County Flood Protection and Watershed Improvement Authority. The City has no further requests for Measure A funding associated with the Solage resort. However, the City has a contractual obligation on the Mt. Washington water tank construction project to expend \$435,000 in Measure A funding in Fiscal Year 2012/13. The construction is approximately 50% complete, and this funding is essential to the completion of the project and fulfillment of the City’s contractual obligations.

Calistoga’s Measure A Expenditures:

Over the past 10 years, the City of Calistoga has used its authorized Measure A funding allocation for projects that benefit the citizens of Calistoga, as follows:

- In November 2003, the City expended \$125,739 toward an engineering study on the feasibility of dredging its Kimball Reservoir. Unfortunately, that study showed that dredging the reservoir would be economically unfeasible. The City intends to perform future lower-cost maintenance dredging with Measure A funding.
- In April 2005, the City expended \$117,470 to construct drainage improvements in its lower Grant Street area. This project alleviated localized flooding problems near Calistoga High School.
- In June 2008, the City expended \$16,000 to repair a failed culvert at Fisher Street. This project mitigated flooding along Lake Street.
- In June 2009, the City expended \$3,161,700 for debt service payments on USDA loans for Kimball Reservoir Water Treatment Plant improvements. The improvements included a new water main from the Kimball water treatment plant to the City and upgrades to the Kimball water treatment plant, which will improve water supply reliability.
- In June 2009, the City expended \$2.7 million for the Mt. Washington Water Tank project. This project enhances Kimball Reservoir water supply reliability in several ways that are described later in this letter.
- In October 2010, the City expended \$600,000 in Measure A funding toward the supplemental off-site drainage improvements that were constructed by the Solage resort project. These drainage improvements have alleviated major flooding problems, particularly at the Chateau Calistoga senior mobile home park. This funding was not applied toward drainage mitigations resulting from the Solage resort project’s added hardscape.

- In January 2012, the City expended \$1.1 million toward replacement of the Kimball Reservoir intake tower, drain valve, bypass structure, and water rights protection costs, all enhancing Kimball Reservoir water supply reliability. After extensive consultation with hydrological, biological, and legal experts, a bypass plan was approved by the Calistoga City Council in August 2011, and a bypass structure was constructed and completed in March 2012. Design of the intake tower and drain valve replacement is scheduled for FY2012/13. Construction of the intake tower and drain valve replacement is scheduled for FY2013/14, after the completion of the Mt. Washington Water Tank project.

Mt. Washington Water Storage Tank:

The Grand Jury's Final Report strongly objects to the City's use of Measure A funding on the Mt. Washington Water Storage Tank project. The City believes, and the County Flood Protection and Watershed Improvement Authority agreed, that the water tank project supports Kimball Reservoir "water supply reliability." Several points of clarification are noted here, as follows:

- The Mt. Washington water storage tank is needed, along with the City's existing Feige Canyon water storage tank, so that Kimball Reservoir can be fully drained for maintenance dredging, intake tower replacement, and/or drain valve replacement. In a seismic event, the City may be directed by the State Division of Safety of Dams to open the reservoir's emergency drain valve to prevent failure of the earthen dam. In the event of such a seismic event and dam failure, catastrophic flooding could occur. A flooding inundation map is attached, showing the area of flooding in the event of a dam failure at Kimball Reservoir. This scenario and map were provided to the Grand Jury, but no mention of this flooding danger was noted in the Final Report. Over the past several years, and most recently in February 2012, the State Division of Safety of Dams has urged the City to repair the drain valve. Without having the Mt. Washington water storage tank in operation, there would be insufficient water storage to serve the City's existing population during a time when Kimball Reservoir can be drained for repairs.
- Currently, the City's primary water storage facility is a 1 million gallon storage tank at Feige Canyon. That Feige Canyon tank is old and needing major maintenance or replacement. The State Department of Public Health has urged the City to perform major maintenance, and has also noted that the City has *inadequate* water storage for its existing population. The City's Fire Chief has concerns for adequate water flow in the event of a major fire event. There are also fragile water mains crossing the Napa River at 2 bridge crossings, with Feige Canyon water storage tank being on the south side of the Napa River. The reliability of Kimball Reservoir water supply requires that adequate water storage be maintained in the City of Calistoga and adequate water storage exist on both sides of the Napa River. The Kimball water treatment plant does not store treated water, except for a minor amount held for disinfection contact time. Reliable storage of Kimball water must be accommodated for the City's existing population.

- One of the water mains from Kimball Reservoir and adjacent to Kimball water treatment plant is an old brittle transite water main that runs under private vineyard property and under the Napa River. It has not been maintained in decades. The City intends to abandon that line in the future. If that old water main were to break, it may take the Kimball water treatment plant off-line for several days, during which time the City's existing population would require additional water storage to meet daily demand and water for fire protection.

Legal Fees and Expenses:

The Final Report's discussion of Legal Fees and Expenses (pages 13 through 17) indicate that the Grand Jury misunderstood the purpose and nature of the expenses. The expenses referred to on page 15 of the Final Report are all related to evaluating and addressing the public trust impacts of Kimball Reservoir, as well as defending the City's operation of the reservoir from a claim that would have potentially eliminated it as a source of water for City residents. In 2009, an individual filed a lawsuit against the City seeking private damages in connection with the City's diversions of water, and also asserting a "public trust" claim to require the City to release substantial amounts of water from Kimball Reservoir throughout the year for the benefit of fish downstream. An analysis performed by the City's hydrologist during the course of the litigation revealed that the releases sought by the plaintiff would have effectively eliminated Kimball Reservoir as a source of water for the City's residents. In order to ensure that the public trust claim would not jeopardize Kimball Reservoir as a water supply, the City undertook an investigation of the effect of the reservoir on downstream habitat. This required the retention of professional hydrologists and biologists, as well as consultation with State regulatory agencies, to determine how the City could operate Kimball Reservoir in a manner that would keep fish downstream in good condition while still maintaining water supply integrity. This process culminated in the adoption of an Interim Bypass Plan in August 2011 that will govern the operation of the reservoir while an instream flow study is conducted to garner further site-specific information regarding the impact of the reservoir on Kimball Creek. The Interim Bypass Plan requires the City to make changes in reservoir operations, including but not limited to the installation of infrastructure improvements that allow for large bypass flows during certain key times of year.

Costs for services from MBK Engineers, Mike Podlech, and Somach, Simmons & Dunn were incurred to develop the Interim Bypass Plan. Costs incurred for Miksis, Blakely Construction, Groeniger & Company, Pace Supply, and Harold Smith & Son relate to implementation of the infrastructure upgrades needed to carry out the operational recommendations in the Interim Bypass Plan. And finally, the costs for services from McDonough, Holland & Allen and Burke, Williams & Sorensen were incurred for advising the City on the development of the Interim Bypass Plan, and for defending against, and ultimately prevailing on, the public trust claim while the Interim Bypass Plan was developed. These expenses were separate from, and not used in conjunction with, legal defense against the plaintiff's claims for damages.

Additional Clarifications to the Final Report:

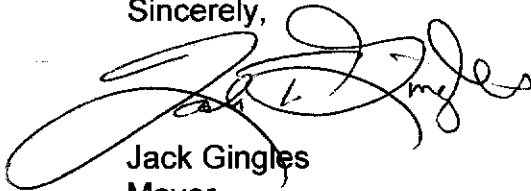
Although the Grand Jury did not request additional responses, the City of Calistoga would desire to include the following clarifications to the Final Report:

- The Final Report on page 10, bullet note (1) notes, "*The water tank substantially increases the storage capacity of the City, hence supports growth and new development.*" With zero growth, the City would need this storage tank.
- Page 10, bullet note (2) points out that the City's Measure A justification for the tank is unfounded, since the State had mandated the tank years earlier and the tank was a new addition to the City's water system. The City agrees that it also needed the water tank for other reasons. However, the water tank also supported "stabilization and enhancement of Kimball Reservoir".
- Page 10, bullet note (3) notes that the water tank will hold NBA water, and thus should be disqualified. The City has never denied that the water tank will hold a mixture of Kimball Reservoir and other water. However, the Measure A ordinance only prohibits imported water for "Replacement" projects. The water tank is not a "Replacement" project.
- Page 10, bullet note (4) notes that the water tank is not intended for flood control or watershed protection. As described above, the water tank contributes to flood control by facilitating the repair of the Kimball drain valve and intake tower, which if not repaired could lead to catastrophic flooding. Regardless, Section 8 of the Measure A ordinance does specifically allow for projects that stabilize water supply reliability. The Mt. Washington water storage tank project does stabilize Kimball Reservoir's water supply reliability.
- Again on page 11, the report concludes that by increasing the City's (deficient) water storage capacity, the water tank is "*supporting growth*". As noted above, the water storage was needed regardless of growth.
- On page 11, the report states that Calistoga deviated from established public works rules by having Solage complete the infrastructure improvements, in order to avoid public bid and contracting regulations. Having a developer construct public off-site improvements with supplemental capacity is a common practice in municipal development, and should not be equated to circumventing public contracting rules.
- On page 12, referencing the water pipeline along Silverado Trail, the report implies that this was needed for the Solage Resort. The water line was needed for the Mt. Washington Water Tank, and the Solage Resort agreed to construct it at the time of their resort construction, so as to avoid future City construction during resort operation.

- The report on page 13 describes the public trust claim as the City "*violated its public trust for its failure to allow some bypass of water.*" The City has historically bypassed water from Kimball Reservoir.
- On page 17, the report notes, "*After aggressively contesting all the issues for two years, the suit was concluded on the eve of the trial when the City finally conceded to the environmental demands sought by the plaintiff. The City resolved the suit by agreeing to allow some flow from Kimball Reservoir downstream to the Napa River for the benefit of fish and other wildlife. If the City had properly analyzed its legal position and acknowledged its responsibility earlier, most if not all of the legal costs and expenses could have been avoided.*" The City did not concede to the plaintiff demands. Again, the City has historically bypassed water from Kimball Reservoir.

Thank you for your efforts in assuring that all branches of county and city government are being administered honestly, effectively, and in the best interest of Napa County Citizens. If you have any questions regarding these responses, please contact us at 707-942-2805. You may also contact Mr. Dan Takasugi, the City's Public Works Director and City Engineer, at 707-942-2828.

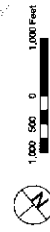
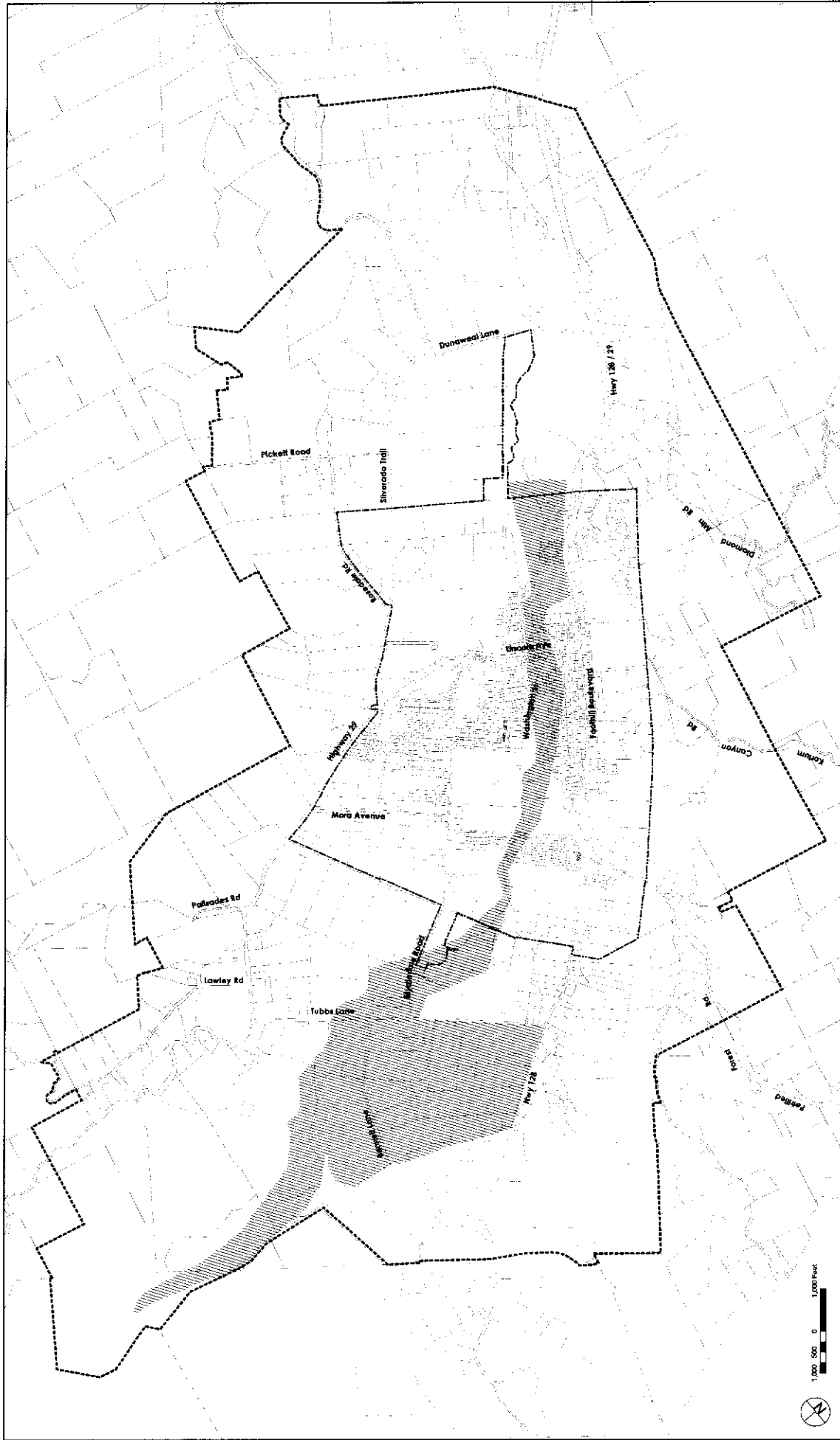
Sincerely,




A handwritten signature in black ink, appearing to read "Jack Gingles", with a large, stylized flourish extending to the left.

Jack Gingles
Mayor

Richard D. Spitler
City Manager

Attachment: Kimball Dam Failure Flooding Inundation Map



-  Planning Area
-  City Limits
-  Inundation Area

KIMBALL DAM INUNDATION AREA



CITY OF CALISTOGA
2008