



**NAPA COUNTY GRAND JURY
2015-2016**

June 6, 2016

FINAL REPORT

NAPA RIVER RECLAMATION DISTRICT

NAPA RIVER RECLAMATION DISTRICT

SUMMARY

Special districts are a form of local government created by a local community to meet a specific need. Limited tax bases and competing demands for existing tax revenue make it hard for cities and counties to provide all the services their citizens desire. When residents or landowners want new services or higher levels of existing services, they can form a special district to pay for and administer them.

Special districts in Napa County are under the jurisdiction of the Napa County Local Formation Commission (NCLAFCO), a state-mandated agency that oversees their boundaries, services and governance. In reviewing past Grand Jury reports and looking generally at other resources, the jury found that the “special districts” in Napa County have not often been reviewed. Thus, we began our work with an inquiry into NCLAFCO to get an overall picture of the 23 special districts in the county.

Although the Grand Jury’s inquiry raised questions about the performance and function of NCLAFCO, we chose not to investigate it at this time to allow the recently-installed Executive Officer time to establish policies and procedures that may alleviate the issues.

In looking at NCLAFCO, however, the jury received information that led us to focus our work, and this report, on the Napa River Reclamation District (NRRD). NRRD is a special district formed over 40 years ago to "maintain the existing flood control levee" protecting 150 lots currently containing 135 occupied homes, fronting the Napa River in the Edgerly Island/Ingersoll area.

Witness testimony and documentary evidence the jury reviewed shows that NRRD has never successfully performed its function because the levees are private property and NRRD has not taken the steps to gain the right of access to the levees or raised the funds to maintain, repair or improve them.¹

Similarly, despite the obvious disconnect between NRRD’s mandate and its actual practices, neither its Board of Trustees (comprised solely of district residents) nor NCLAFCO’s Commissioners (comprised of a majority of County Supervisors and city appointees) has taken steps to dissolve the district or to reorganize it with the authority necessary to do its job.

The Grand Jury’s concern is that poorly maintained and inadequately sized levees plus subsidence and a rising water level in the bay will eventually produce a flood event that needlessly endangers people and property and costs significant taxpayer dollars. Our recommendation is that NRRD or NCLAFCO take all steps needed to legally empower NRRD so that it can set levee standards and regulations, enforce them and fund all necessary repairs, rehabilitation and construction. In other words, NRRD should be required to do the job it was

¹ NRRD was originally named Edgerly Island Reclamation District. In 1985, when it obtained sewer authority, the district was renamed NRRD. Although the district currently operates a wastewater treatment facility, the status of that facility and its operation are not included in this report.

formed to do and be given the tools to do so, or it should be divested of its reclamation/flood control authority.

GLOSSARY

BOS	–	Napa County Board of Supervisors
NCLAFCO	–	Napa County Local Agency Formation Commission
NRRD	–	Napa River Reclamation District
Subsidence	–	A gradual settling or sudden sinking of the earth's surface owing to subsurface movement of earth materials.

BACKGROUND

Napa County Local Agency Formation Commission (NCLAFCO)

NCLAFCO has jurisdiction over the 23 special districts in our county,² including the cities of American Canyon, Calistoga, and St. Helena and the Town of Yountville. Non-city districts range from cemetery districts to sanitation districts to a district specializing in mosquito abatement. Combined non-city assets appear to be in excess of \$100 million, and many districts have the authority to tax and/or assess residents within their boundaries. All are operated by a Board of Directors, some of whom are “independent” (i.e., residents elected by residents) and some who are “dependent” (i.e., the Napa County Board of Supervisors sits as the district’s directors).

NCLAFCO is responsible for performing “sphere of influence” and “municipal service” reviews and “governance” studies for all districts within its jurisdiction. According to its website (emphasis added):

- “LAFCO establishes, amends, and updates spheres of influence to designate the territory it believes represents the appropriate future service area and jurisdictional boundary of the affected agency. ...**LAFCO reviews and updates each local agency’s sphere every five years as needed.**” [sic]
- “**LAFCO prepares municipal service reviews every five years** in association with updating local agencies’ spheres of influence. The intent of municipal service review is to inform LAFCO with regard to understanding the availability and performance of governmental services provided within their respective jurisdictions prior to making sphere of influence determinations. ...Municipal service reviews may also lead LAFCO to take other actions under its authority, such as initiating a reorganization involving two or more public agencies.”
- “**LAFCO periodically prepares governance studies to consider the advantages and disadvantages associated with reorganizing local agencies.** These studies are generally prepared in response to a determination adopted by LAFCO as part of an earlier municipal service review. These studies generally

² According to most recent (2013) list on NCLAFCO website.

focus on exploring whether an alternative governance structure may be more efficient and effective in terms of costs and services with respect to addressing the needs of the affected community.”

NCLAFCO has an Executive Officer and a part-time clerical staff person, and is governed by a board of five commissioners, comprised of two county supervisors and two “city selection” appointees (from American Canyon, Calistoga, Napa, St. Helena or Yountville), with a member from the public selected by the other four commissioners.

NCLAFCO’s current Executive Officer was appointed in 2015. The previous permanent Executive Officer was in the post less than a year, and there were interim appointees between the two permanent appointments. Therefore, although the Grand Jury believes that there may be some issues with the structure and operation of NCLAFCO itself, we chose not to investigate it at this time to allow the new Executive Officer time to establish policies and procedures that may alleviate concerns that appear to exist.

Other than NCLAFCO, the Grand Jury is not aware that any impartial entity reviews the operation of the special districts in the county.

Napa River Reclamation District (NRRD)

NRRD was originally established in February 1974 (as the Edgerly Island Reclamation District).³ It was requested by residents, and encompasses the area between 1222 Milton Road and 1998 Milton Road (see Appendix C-1), comprised of the Edgerly Island and Ingersoll tracts. There are 150 lots with approximately 135 occupied first and second homes. Although NRRD is governed by a Board of Trustees consisting of five property owners/residents, it is, as explained above, subject to NCLAFCO’s oversight and jurisdiction in the form of Sphere of Influence and Municipal Service reviews and Governance studies.⁴ Legal services for NRRD are provided through a contract with County Counsel's office.

NRRD’s principal purpose is to operate and maintain the river-side levees along Milton Road. In its original assessment of the need for the NRRD, NCLAFCO reported: “**The proposed district would operate, maintain and improve an existing privately owned levee (each property owner owns a portion of the levee) for flood control purposes** and would de-water the area...” This was because “[t]he levee, as constructed, [was] not substantial enough for the Napa County Flood Control and Water Conservation District to assume liability for its maintenance.”

NRRD, however, has never maintained the levee(s) and makes no pretense of being responsible for doing so. Its website states (emphasis added):

³ NRRD is separate from and not associated with Napa County Flood Control or Public Works, and the levees within the district are not included in the recent and ongoing work in downtown Napa.

⁴ Notably, NCLAFCO has performed only one Sphere of Influence review (2007), one Municipal Service review (2005) and one Governance review (2006) in the last 15 years, despite the information on its website that the SOI and MSR should be undertaken every five years.

Each property owner within the district owns their levee and has the responsibility for using reasonable care to maintain his portion of the levee. If an owner negligently fails to maintain his levee and as a result of that negligence flooding and damage is caused to his neighbors, then that negligent property owner can be held liable for the damages resulting to his neighbors.⁵ (emphasis added)

On its “Welcome” page, NRRD does not even mention levee maintenance (emphasis added):

About the District

The Napa River Reclamation District #2109 (NRRD) **provides sanitary sewerage service to the residents** of the Ingersol and Edgerly Island tracts on Milton Road, Napa, CA.

Elsewhere, the district reiterates, **“The main purpose of the NRRD is to operate and maintain a sanitary sewer treatment facility** that serves approximately 148 properties on Milton Road.” (emphasis added). Again, this is not the reason for which NRRD was created.

In fact, witnesses have consistently testified that NRRD has no right or obligation to operate or maintain, repair or reconstruct the existing private levees. Notably, when the Grand Jury pressed for specific legal or other authority to support this contention, County Counsel's office refused to provide such information, despite stating in a 2011 letter that NRRD had "no obligation" to repair a levee behind a resident's home.

The upshot is that NRRD has authority over less than 1% of the levee(s)⁶ that protects Edgerly Island and the Ingersoll tract: over 99% of the levee is not regulated as to height, width, strength, construction materials, use or access. This in no way fulfills NRRD's purpose, and everyone with a stake in the operation and oversight of NRRD either knew or should have known about it and should have taken steps to address it.

METHODOLOGY

The Grand Jury interviewed representatives of:

- Napa County Board of Supervisors/NCLAFCO Commissioners
- Napa County Counsel's office
- Napa County Flood Control and Water Conservation District
- Napa County Public Works, Environmental and Planning Department
- NCLAFCO staff (current and previous)
- NRRD Board and staff

⁵ See also, Appendix B, containing a form letter NRRD sends to each resident prior to the rainy season, again disclaiming any responsibility for the levees.

⁶ NRRD owns two half-lots, each with 25 feet of levee. Therefore, as fee owner of the property, NRRD is responsible for that portion of the levee.

The Grand Jury reviewed minutes of:

- NRRD Board meetings
- NCLAFCO Commissioner meetings

The Grand Jury reviewed correspondence and documents obtained from:

- NRRD (including engineering reports)
- NCLAFCO

The Grand Jury reviewed information from the websites of:

- NRRD
- NCLAFCO
- Various local newspapers
- Other internet research sources (including information on subsidence, water level and tide issues)

DISCUSSION

Although NRRD is a small district with a specialized function, it is important for the public to be aware that, for the 40+ years of its existence NRRD has basically failed to perform its essential mission of levee control and maintenance.⁷ Equally—or perhaps more—important to the public interest is that NRRD's residents and directors, NCLAFCO Commissioners (which include elected Supervisors), NRRD's attorneys and a number of County employees either are aware or should have been aware of these failures, but have not taken steps to remedy the situation.

The following facts confirm a chronology of an intentional lack of action by all parties that supports the conclusions of the Grand Jury:⁸

- In 1978, only four years after NRRD was formed, NCLAFCO recommended that the district reorganize as a county water services district in order to fulfill the purpose(s) for which it was created. At that time, NCLAFCO also found that annual property tax revenues were “inadequate to maintain the ...levee for which the District is currently responsible” and that the existing levees “are in moderately good shape structurally but are deficient in height mainly due to settlement.”
- In 1985, NCLAFCO reported that NRRD had not adopted a plan of reclamation, that “[i]ndividual private property owners continue to be responsible for levee

⁷ Although there has not been major flooding in the district for a number of years, the Grand Jury believes that is irrelevant to the issues of whether NRRD is functioning as it was created to do and to what will happen when the next flood occurs.

⁸ Please see Appendix A-1 for a comprehensive chronology prepared from documents reviewed by the Grand Jury and Appendix A-2 for a district history from NRRD’s website.

maintenance,” and that the “residential-level of protection required” was not being met.

- In 2001, NRRD sued two residents, claiming that they had created a public nuisance by failing to raise the height of the levee behind their property. The court initially ruled in favor of NRRD, ordering the residents to increase the height of their levee. The court’s final ruling, however, was in favor of the residents on the grounds that NRRD, as a public agency, could not bring a suit for nuisance. The Grand Jury could not find that NRRD ever appealed the ruling, leaving the district to continue without any means to enforce its recommended levee guidelines
- NCLAFCO’s 2005 Municipal Service Review of NRRD (the only one conducted since that time) made the following determinations:
 1. “Levee control is currently provided informally by constituents, who own and maintain their portion of the levee. Attempts by the District to establish centrally organized levee control have been rebutted by its constituents.”
 2. “The potential for flooding represents a public health concern as the District’s sewer treatment and storage facilities would be subject to inundation.”
 3. NRRD has “not established a revenue source to fund reclamation services.”⁹
- In 2006, “[b]ased on the advice of its counsel,” the NRRD Board asked NCLAFCO to consider reorganizing the district to remove its reclamation authority so as “to mitigate its potential liability [to the NRRD and its directors] in the event of future flooding.” Reorganization into a community service district was the preferred option. NCLAFCO produced a Governance Study recommending that “reorganization into a community service district is the preferred option [to meet] current and future needs.”
- In 2007, LAFCO completed a Sphere of Influence review of NRRD (the only one conducted since that time), noting that NRRD continued to fail in performing its essential function.
- Based on the conclusions of its reviews, in January 2008, NCLAFCO staff recommended that NCLAFCO Commissioners proactively take the steps necessary to reorganize NRRD into a community services district. NCLAFCO Commissioners, however, failed to authorize that action.
- In April 2011, in response to a claim by residents that NRRD “correct the levee condition” behind their home, NRRD’s attorney stated that the District has “no ...obligation [to] maintain the levee.”

⁹ According to NRRD’s website, the sanitary sewer service fees are collected on the county tax roll, pursuant to Sections 5471 through 5473.11 of the California Health and Safety Code.

- In February 2016, NCLAFCO began NRRD's "Municipal Services" and "Sphere of Influence" reviews, and noted in the April Executive Director's report that "[a] checklist has been delivered and the agency has confirmed no comprehensive update is needed. The checklist is expected to be presented to the Commissioners for approval in August 2016." Completing the updates is listed as a number "3" priority out of three.
- NRRD's March 2016, minutes state: "A motion was made ... to send a letter to Napa County LAFCO agreeing with their recommendation that an MSR and SOI for our district could be postponed for as much as five (5) years. The motion passed."

This neglect is overlaid with the consensus of professional and lay sources that subsidence along the Napa River continues, and that the level of the bay feeding the river is rising. Therefore, each year that nothing is done to improve the levees in NRRD is likely a year closer to flooding. Anecdotally, for instance, on a site visit in January 2016, the levee appeared to be 6" or less above the Napa River water line in a number of places.

FINDINGS

- F1:** NRRD is not now performing, and never has performed, the essential levee control and maintenance responsibilities for which it was created.
- F2:** All parties with oversight of NRRD either know or should have known of NRRD's continued failure to perform. These parties include the NRRD Board of Directors, NCLAFCO Executive Director(s) and Commissioners, and Napa County Counsel's office.
- F3:** Despite being aware of NRRD's failures, all stakeholders—including NRRD residents and directors—have failed or refused to remedy the situation.
- F4:** Despite NRRD clearly not performing its essential levee maintenance function, County dollars have been spent to partner with NRRD on various stop gap projects such as sand bag facilities and dewatering pumps.
- F5:** A. If NRRD floods, County facilities (Milton Road) could be damaged, first responders (fire, EMS, etc.) could be at risk serving NRRD residents, and the district's underground sewer system could fail, possibly causing a serious health and safety issue to residents and responders, as well as significant public or private property damage.
- B. In the event of a flood in NRRD, it is unclear what the responsibility and liability would be for Napa County and its taxpayers. During its investigation, the Grand Jury became concerned that the county would have to pay for the flood damages because state and federal agencies likely would not pay for the errors of local authorities in failing to make sure that NRRD was empowered and funded to take necessary precautionary steps.

- F6:** Geologic information the Grand Jury reviewed and witness testimony indicate that, due to subsidence and rising levels of the Napa River and surrounding wetlands in coming years, existing levees within NRRD will be inadequate to protect properties in the district.
- F7:** NRRD contracts with the County for its legal services. Counsel assigned by the County to NRRD refused to participate in a Grand Jury interview without a subpoena, and, upon appearing, refused to answer some basic questions. Therefore, the Grand Jury has been unable to ascertain important information as to NRRD’s legal responsibilities and liabilities.
- F8:** NCLAFCO has not timely reviewed NRRD as to “Sphere of Influence,” “Municipal Services,” or “Governance” and NCLAFCO Commissioners have not followed well-reasoned staff recommendations in reviews that have been done.

RECOMMENDATIONS

- R1:** The County BOS should direct County Counsel to render a written opinion, that will be made public, on the respective liabilities and responsibilities of NRRD and the County arising from NRRD's failure to perform its essential function(s).
- R2:** NRRD and NCLAFCO should take all steps necessary to ensure that NRRD has all enforcement and funding authority necessary to perform the levee maintenance, rehabilitation and construction functions for which it was created. Alternatively, NRRD should be reformed so that it is responsible only for providing sewer services.
- R3:** NCLAFCO should, within the next six months, complete comprehensive Sphere of Influence, Municipal Services and Governance reviews of NRRD.
- R4:** If NRRD continues to be responsible for reclamation and flood control services, NCLAFCO should consider reforming the NRRD Board to include independent, non-resident members should it become apparent that an all-resident board is reluctant to take actions to ensure the enforcement and funding necessary to bring all levees into compliance and to maintain them. As an alternative, the Board of Supervisors could consider creating a revenue source for NRRD at the county level.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the grand jury requests responses as follows:

From the following individuals:

NCLAFCO Executive Officer: **F2, F3, F4, and F8; R1, R2 and R3**

From the following governing bodies:

Board of Supervisors: **F4, F5A, F5B; R1**

Board of Trustees, NRRD: **F1, F2, F3, F5A and F6; R1 and R3**

NCLAFCO Commissioners: **F2, F3 , F4, and F8; R1, R2, and R3.**

County Counsel: **F5B and F7; R1**

INVITED RESPONSES

None

APPENDICES

Appendix A-1 –NRRD Chronology

Appendix A-2 –NRRD History

Appendix B –Form letter from NRRD to homeowners disclaiming responsibility for levee maintenance

Appendix C-1 - Map

Appendix C-2 - Photographs

DISCLAIMER

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.

APPENDIX A-1
(emphasis added)

CHRONOLOGY FROM DOCUMENTS REVIEWED BY GRAND JURY

- In February 1974, NRRD was formed by County Board of Supervisors and was charged with “reclaiming [the land within its boundaries]” and completing any work of reclamation works in progress and [with] the maintenance, protection and repair of said reclamation and reclamation works.”
- As early as 1978, NCLAFCO recommended that NRRD reorganize as a county water services district, noting that annual “assured” property tax revenue is “inadequate to maintain the approximately 8,000 feet of levee for which the District is currently responsible” and that the existing levees “are in moderately good shape structurally but are deficient in height mainly due to settlement;”
- In 1985, NCLAFCO reported that NRRD “has yet to adopt a plan for reclamation of District lands which is necessary if the District is to accomplish the purposes for which it was created,” and that “[i]ndividual property owners continue to be responsible for levee maintenance. Thus the level of inundation throughout the Dist falls short of the residential-level protection required [defined as 100 yr storm]” (the Napa County Board of Supervisors never has acted on the reorganization issue);
- In 1987, NRRD was sending letters to district residents noting that the Board had “received a report that during normal high tides water has been observed passing through the levee on your property,” but explaining that “**all levees are privately owned and the responsibility of the property owner upon whose property the levee is located**” and that “[d]amages to the property of others, caused by the failure of your levee are your responsibility.” The letter also contained “recommendations” on levee height, maintenance and access; (emphasis added)
- In 2001, NRRD sued residents, claiming that they had created a public nuisance by failing to raise the height of the levee behind their property. The court initially ruled in favor of NRRD, mandating the residents to increase the height of their levee. The court’s final ruling, however, was in favor of the residents on procedural grounds: the judge found that NRRD, as a public agency, could not bring a suit for nuisance. The ruling was never appealed, leaving NRRD to continue without any means to enforce its recommended levee guidelines;
- NCLAFCO notes from late 2004 indicate that the *Keenan* court opinion “ruled the District was responsible for establishing a fund to maintain levees,” “[i]f the community votes against an assessment [for the levee maintenance fund], the Board says it will ask LAFCO to reorg ...to a sewer-only agency,” and that NRRD’s Board is “concerned about liability issues in the event of a flood;”

- 2005 notes from NCLAFCO state that NRRD never adopted levee operation and maintenance standards, never adopted bylaws, and had no easements by which to reach or access the levees for inspection or maintenance;
- NCLAFCO’s 2005 Municipal Service Review of NRRD makes the following determinations:¹⁰
 1. “Levee control is currently provided informally by constituents, who own and maintain their portion of the levee. Attempts by the District to establish centrally organized levee control have been rebutted by its constituents.”
 2. “The potential for flooding represents a public health concern as the District’s sewer treatment and storage facilities would be subject to inundation.”
 3. NRRD has “not established a revenue source to fund reclamation services.”
- A 2006 NCLAFCO governance study of NRRD states, “Based on the advice of its counsel, the [NRRD] Board has asked LAFCO to consider reorganizing NRRD to remove its reclamation authority to mitigate its potential liability in the event of future flooding,” and that “reorganization into a community service district is the preferred option [to meet] current and future needs;”
- In 2007, LAFCO completed a Sphere of Influence review of NRRD, noting (1) “The District has not demonstrated its ability to provide an adequate level of reclamation service to the area in a manner that is consistent with its principal act,” and (2) “As previously determined by the Commission, there is a strong need for organized ...reclamation services in the form of uniform levee control;”¹¹
- In January 2008, NCLAFCO took the “unique step of initiating the ‘reorganization’ [of NRRD] into a new community services district,” but, also according to NCLAFCO notes, “[t]he Commission elected to take no action w/respect to reorganization of NRRD;”
- In April 2011, in response to a claim by residents, NRRD’s County Counsel stated that “the District has no such obligation” to “maintain the levee;”
- At the request of NRRD, in 2014 NCLAFCO looked into converting the district into a Geologic Hazard Abatement District, but no action was ever taken; and

¹⁰ Even though NCLAFCO is to conduct “Municipal Service Reviews” every five years, this is the only review it has made of NRRD.

¹¹ NCLAFCO generally conducts “Sphere of Influence” reviews every five years, this is the only review conducted to date of NRRD.

- In February 2016, NCLAFCO began NRRD's "Municipal Services" and "Sphere of Influence" reviews, and noted in the April Executive Director's report that "[a] checklist has been delivered and the agency has confirmed no comprehensive update is needed. The checklist is expected to be presented to the Commissioners for approval in August 2016." Completing the updates is listed as a number "3" priority out of three.

- NRRD's March 2016, minutes state: "A motion was made... to send a letter to Napa County LAFCO agreeing with their recommendation that an MSR and SOI for our district could be postponed for as much as five (5) years. The motion passed."

APPENDIX A-2
(emphasis added)

CHRONOLOGY FROM NRRD WEBSITE

Napa River Reclamation District History
As Told by Larry Hoffman, District Manager 1984-2008

Pre 1950

Some houses on river in Ingersoll Tract. Fishing Resort at end of Milton Road.

1950

Edgerly Island subdivision with five blocks and four stub streets by the Pritchetts. The Pritchett family executed a Covenant Agreement with property owners. **It stated that each property owner was responsible for maintenance of their levees. If they didn't, it would be done for them and they would be billed. It also stated that nothing was to be built on top of the levee, not even trees. Many property owners ignored the Covenant Agreement and built upon the levee. Covenant not enforced. The covenant expired in 1970.**

1970 –1980

The Napa River Improvement Association was the governing body during this time and was supported by the Napa County Board of Supervisors and County Counsel. Members ran and maintained the old flood pumps with help from County Flood Control when flooding occurred.

1974

Edgerly Island Reclamation District was formed. An assessment was collected on the property tax bill. About \$6,000 was collected in 1976 and 1977. **New tax laws in 1978 removed the assessment tax and some of the tax collected had to be returned. The district went broke and never got around to filing a Reclamation plan with the state.** The improvement association kind of melted into the reclamation district.

1979

Property owners surveyed for new assessment and less than 50% agreed so it never went to vote.

State Water Quality Control and County Environmental Health mandate Milton Road residents hook up to a domestic sewer service. The association collects \$20 from most residents to get \$2,500 matching funds and form a committee to explore how to provide sewer service.

County gives District for easements for Streets, Brazos, Edgerly, James and Pritchett.

County gives District 3 Flood Control easements to reclamation district (flood gate next to 1800 Milton, pump pipes and pump house between 1812 and 1816)

County gives District old flood pumps and some funds to operate on.

1979- 1984

Sewer Treatment Plant designed and built for two million dollars of which the district paid 2 ½ percent (\$700 per lateral on each property).

Ingersoll Tract annexed into the district. **Name changed from Ederly Island Reclamation District to Napa River Reclamation District.**

1983

Severe flooding in January and December. District has engineering report done on levees.

1984

Ten foot elevation stakes placed on levee. Property owners told to bring their levees up to correct elevation. Unfortunately, many property owners either made shoddy, temporary repairs or did nothing.

1986 –1988

Chairman Dennis Spain tried to get the District to do a reclamation plan and assessment but received little support from peers and property owners. Levee maintenance declined.

1998

Severe flooding in February. Property owners given a deadline by District to fix their levees.

1998 –2002

Legal notices sent to property owners to fix levees. Many levees repaired to some degree, some not.

2003

District sues property owners as public nuisance for not fixing their levees. District wins case but is later overturned on appeal because the District, under state water code, cannot use public nuisance laws.

APPENDIX B
(emphasis added)

ANNUAL OWNER LETTER FROM NRRD WEBSITE

Typical Pre-flood Season Notice To Homeowners

The following is a typical notice to homeowner which is sent out before the winter rainy season:

NAPA RIVER RECLAMATION DISTRICT #2109
1501 MILTON ROAD
NAPA, CA 94559

Phone xxxxxxxxxxxxxxxx
Fax xxxxxxxxxxxxxxxx

WINTER IS APPROACHING.....BE PREPARED

The Napa River Reclamation District would like to remind the property owners/residents of the District (xxxx Milton Road to xxxx Milton Road) of the following:

1. Levee Maintenance: **It is the responsibility of each property owner to maintain the levee on their property.** The District recommends a 10 foot high water tight levee. This levee is to be continuous with the neighboring levees.
2. Levee Access: In time of emergency, it is important that the District/County has access to the levee. Each property owner needs an 8 foot wide access to the levee. Building upon the levee is discouraged as it interferes with emergency inspections and repairs.
3. Sewer Operations During Flooding or a Power Outage: **If water covers any part of Milton Road or the area loses electrical power, the sewer system may shut down without notice.** When the system is down please do not flush toilets or use drains.
4. Sewer Cleanouts: The cleanouts on your property to the sewer system must be air and water tight in order to keep ground water from flooding the system and to control odors. Please insure that your roof and yard drains are NOT hooked up to the sewer system. Please make sure the cleanouts are closed properly.

Drainage Ditches: Please do not put anything in the big roadside ditch. The ditch is drained by pumping and any debris in the ditch can ruin the pump causing the road to flood. Please keep the drainage on your property in good condition so storm water can get to the ditch easily.

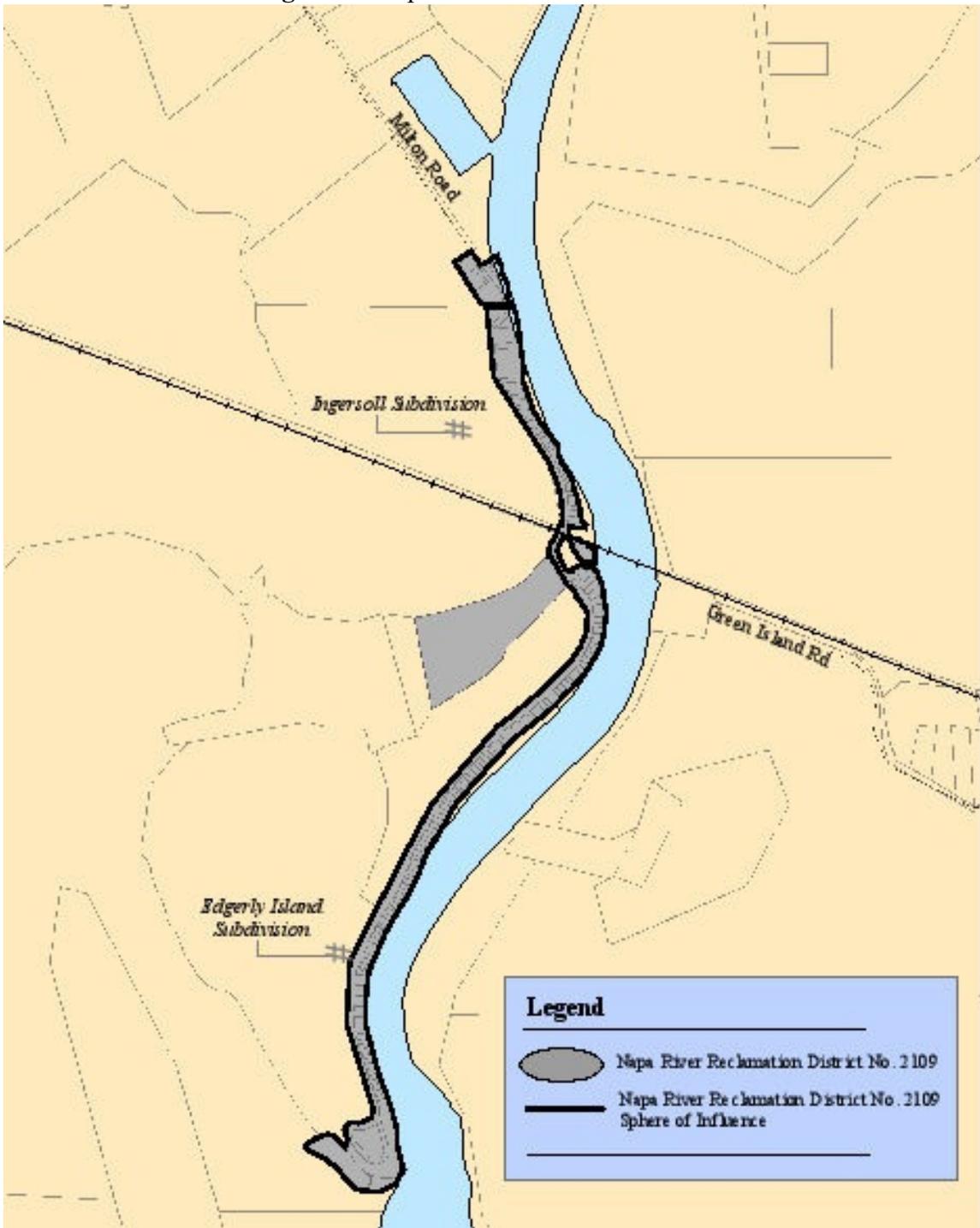
Sand & Sandbags: In the event of flooding, sand and sandbags will be available at the district office, 1501 Milton Road.

Be prepared to fill and haul your own bags.

If you have any questions or suggestions the District Board meets at 7 PM on the first Thursday of each month at the Fire House. These meetings are open to the public. You may also leave a message at the District office by calling xxxxxxxxxx or email

APPENDIX C-1

Figure 1. Napa River Reclamation District



Map source: Local Agency Formation Commission of Napa County
http://www.napa.lafco.ca.gov/uploads/documents/SOIMap_NapaRiverReclamationDistrict.pdf

APPENDIX C-2

Figure 2. Aerial View of Edgerly Island



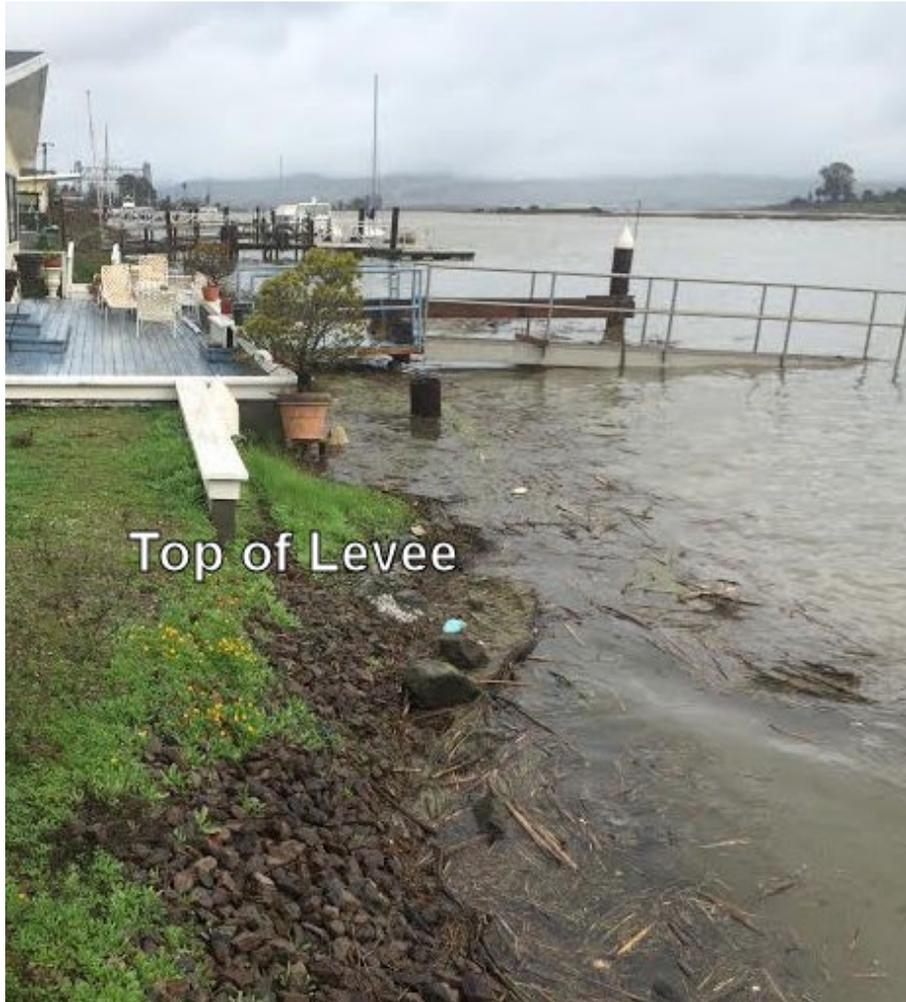
High tide waters push into the slough on the west side of the development; there is only a partial levee protecting the west side. The Napa River abuts against the levee on the east side.

Figure 3. Levee Access Restricted by Boat Docks and Piers



Note that at low tide most sections of the levee are only 2-3 feet above the river; they are much less at high tide.

Figure 4. Edgerly Island Levee at High Tide



Note the partial submersion of a boat pier and the overbuilding of the levee with piers and a home's deck.