

FLOOD CONTROL: CLOGGED BY BUREAUCRACY AND ATTEMPTS TO TRANSFER RESPONSIBILITY

Synopsis

In March of 2001, the Arroyo Grande Channel Levee section of the San Luis Obispo County Flood Control and Water Conservation District Zone 1/1a was breached following heavy rains. This resulted in the flooding of several hundred acres of agricultural fields, businesses, residences and mobile homes. These heavy damages led to claims against San Luis Obispo County with costs totaling \$1,289,000. The San Luis Obispo County Board of Supervisors responded by reinstating a citizen advisory committee to specifically oversee the Arroyo Grande Creek Flood Control District. This was the first time any citizen oversight group had met in over 20 years for that purpose.

That committee was comprised of concerned residents of the county, many of whom were directly affected by the flood breach. The committee found the zone did not have enough funds to meet the current maintenance requirements. The committee also recommended a study to identify alternative means for clearing the creek and to guard against future flooding. To this end, the Board of Supervisors appropriated \$150,000 for an Alternative Analysis Study to be included in the County Public Works budget of 2002-2003, only to later withdraw that funding.

Origin of the Inquiry

The Grand Jury received a complaint from a county resident whose property was damaged from flooding stemming from the way in which the creek has been maintained.

Authority of the Inquiry

According to the California Penal Code § 925: "The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law."

Method

During the course of the investigation the Grand Jury obtained its information from several sources. The information in this report is a compilation of information received from attending watershed forums, interviewing many county officials, both

elected and appointed, as well as visiting the site. Through the course of the investigation we met with, and interviewed, the Project Manager of the Arroyo Grande Watershed Forum, San Luis Obispo Assistant County Counsel, Executive Director of Environment in the Public Interest, County Public Works Director, County Deputy Director of Public Works for Engineering Services, Coastal San Luis Resource Conservation District Board President, State Division of Flood Management Chief, and a representative from the Environmental Defense Center. We also interviewed the complainant on multiple occasions.

Setting

The Arroyo Grande and Los Berros Creeks, located in the South County area of Arroyo Grande and Oceano, flow into the adjacent lowlands, much of which is, and has been, farmland for generations. A Public Works Department map of the area is included as an Appendix to this report. Serious floods occurred in 1969, 1983, and 1995.

For visitors, and even long time residents, the Arroyo Grande Creek is part of the charm of the Village historical area of Arroyo Grande, but most people know very little about the creek that flows beneath the swinging bridge on its way to the sea. The creek is one of several that flow from higher elevations east of Arroyo Grande, in this case from Lopez Lake. It winds naturally toward the Village with a downhill flow and levels out as it reaches farmland in the area west of Highway 101. This relatively flat area slows the flow of the creek. The levee, built in the 1950's, starts in the farmland near Halcyon and extends three miles, including lower portions of Los Berros Creek.

Early ranchers and farmers used the creek for their crops and animals, but there was often a price to pay when flooding occurred. Documented floods go back to the year 1862 and occurred with regularity from the early 1900's through the 1940's. A huge crop loss in 1952 made it apparent that a project was necessary to improve the creek's ability to move water. In 1957, the U.S. Department of Agriculture (USDA) coordinated construction of the Arroyo Grande Channel Improvement Project.

The high probability of future flooding exists because over the years sedimentation and riparian growth within the creek have restricted the capacity of the stream flow. To monitor and protect the surrounding area, the County Board of Supervisors approved creation of flood control districts 1 and 1/A in the late 1950s. The county attempted to clear the waterway from time to time as the creek channel filled with soil moved from upstream.

Over the years the process for repairing the channel was made more difficult with the increasing number of permits needed before work could begin, the extent of work permitted, and the time limitations for such work. Budgetary constraints further complicate any repair project. Permits are now required from the California Coastal Commission, the U.S. Army Corp of Engineers, the USDA, and other agencies. Because of the complex situation, county engineers have recently coordinated permit applications for maintaining the channel.

Findings

- (1) On March 27, 2003 the San Luis Obispo County Board of Supervisors sent a letter to the California Department of Water Resources (DWR) advising that SLO County was considering relinquishing responsibility for the Arroyo Grande Creek Flood Control Channel to the state.
- (2) On March 28, 2003, a letter from Chief of the DWR Division of Flood Control Management stated that relinquishment by San Luis Obispo County would not resolve the issue. The letter advised that the decision on how to best proceed should be done carefully with public dialogue.
- (3) On April 1, 2003, the San Luis Obispo County Board of Supervisors adopted Resolution No. 2003-105 seeking to transfer responsibility for the Arroyo Grande Channel to the State. That item was not listed on the agenda posted at the SLO County Board of Supervisors' website, and the item was passed as a consent agenda item without any public input.
- (4) One week later on April 8, 2003, the Coastal San Luis Resource Conservation District (RCD) Board President and staff met with SLO County Public Works representatives. A Public Works representative informed the RCD Board President that the \$150,000 Alternative Analysis Study was "off the table" for the fiscal year 2002-2003. The county, believing that it was no longer responsible for any damage that may occur in the coming, or following rainy seasons, then opted not to reallocate funding for the study in the next fiscal year budget, beginning July 1, 2003.
- (5) On June 13 the DWR Chief of Flood Control Management sent a letter to the SLO County Department of Public Works acknowledging the receipt of SLO County Resolution No. 2003-105. The state then told the county that such jurisdictional transfer couldn't even be considered before July 2004, and possibly not until 2005 due to limited resources.
- (6) Each agency says the other has the responsibility; neither is willing to do anything now. In the meantime, probability of floods causing serious damage to the property owners, the public, and farmers increases significantly. Future lawsuits and any insurance claims against the county paid out will ultimately affect the county taxpayer.
- (7) Despite the position of the county on jurisdictional transfer, they were quick to respond after the earthquake of December 22, 2003. The following day the County Public Works Department contracted for repair of four earthquake-damaged locations on the Arroyo Grande channel levee. The county still maintains that it has turned over responsibility for maintenance and repair to the state.

Conclusions

Today the creek is clogged and flows slowly between the levees through the Oceano area, emptying into the ocean south of the vehicle entrance to the beach. Anyone wishing to see first hand the condition of the creek can do so by visiting the 22nd Street Bridge in Oceano. From this vantage point it is possible to look toward the mesa and see that at one time the entire area was a wetland. Nature's power is evident, both in what was once here, and in what is occurring today.

The Grand Jury found that the problem in addressing a waterway with protected wildlife is compounded by the numerous permit requirements found at the state level, and those that are even more restrictive at the federal level. Even within the same agency, whether state or federal, there often are overlapping divisions with differing processes, programs, and priorities.

The Grand Jury determined that the number and nature of the permits required for such a project is dependent upon the nature of the work to be done, which, in turn, is dependent upon the results of required scientific studies. The studies themselves are often very costly and time-consuming. A vast and complex array of mandated public hearings and response must be completed prior to issuance of the permits necessary for a project to address flooding in a creek channel such as Arroyo Grande Creek. Assuming an acceptable alternative solution is identified as a result of any required studies, the proposed project is then dependent upon the time duration of the various permits, the cost of the project, the availability of funding, and seasonal construction restrictions.

In short, the permit process is so difficult, complex, costly and confusing that even the most knowledgeable government official finds it almost impossible to decipher and implement. Even if the agency responsible for a drainage waterway is able to identify and undertake the necessary steps, the cost of such projects must compete with many other capital improvement projects for that government's limited budget funds, an important consideration in the present fiscal climate.

In the opinion of the Grand Jury, by adopting Resolution No. 2003-105, the Board of Supervisors attempted to absolve itself of the long term expense and aggravation of the permit process. Following this action, the Board of Supervisors removed the \$150,000 which had been initially budgeted for the "Alternative Analysis" study. In the opinion of the Board of Supervisors they were no longer responsible for the creek, and so there was no need to perform that study. This action is especially disconcerting because the Grand Jury has been told that the county actually holds an existing permit for some work that could be done on the Arroyo Grande Creek channel. However, the county will not proceed with the work allowed by that permit process because, in the estimation of County Counsel, jurisdiction of the creek maintenance was immediately transferred to the state upon adoption of Resolution No. 2003-105, and county action on that permit would mitigate against the county's position that the state now has responsibility for maintenance of the Creek.

In the meantime, the property owners affected by creek flooding, including the original complainant, are left waiting and wondering if anyone will help them avoid further damage and expense. While the state disagrees that the county transferred jurisdiction by adoption of Resolution No. 2003-105, the one thing both entities agree on is that an appropriate court of authority as a result of litigation could determine maintenance responsibility. That, however, is very small consolation to the threatened property owners.

Many federal, state, county, Coastal Commission and related environmental permits are required for such drainage control work. Further, the cost of any logical solution to repair or maintain the creek channel would be better borne by an agency with sufficient authority and resources.

The U.S. Army Corps of Engineers historically has had responsibility for flood control management in the continental United States. In 1999 the Corps of Engineers performed a preliminary evaluation for potential solutions to the Arroyo Grande flood control problem. Therefore, the Corps may be the appropriate agency to acquire the necessary permits and complete the necessary work to protect the property and residents in this area.

Recommendation

The Grand Jury recommends that the County Board of Supervisors establish a citizens' committee to meet with the appropriate congressional representatives to obtain their assistance in directing the Corps of Engineers to immediately undertake a flood control remediation project to resolve the Arroyo Grande Creek channel flooding problems.

Required Response

As required by California Penal Code Section 933 (c), within 90 days the County Board of Supervisors shall comment to the presiding judge on the findings and recommendations in this report.

Appendix

