

***MUNICIPAL SERVICE REVIEW AND
SPHERE OF INFLUENCE UPDATE FOR THE:***



EMPIRE SANITARY DISTRICT

Prepared By:

*Stanislaus Local Agency Formation Commission
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Adopted: August 24, 2011

STANISLAUS

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TABLE OF CONTENTS

| | |
|--|----------|
| Introduction | 1 |
| Service Review Factors and Sphere of Influence Update Process | 1 |
| Background | 2 |
| Authority | 2 |
| Purpose | 2 |
| Classification of Services | 2 |
| | |
| Municipal Service Review | 3 |
| Formation | 3 |
| Services | 3 |
| Capacity | 3 |
| Location and Size | 3 |
| Sphere of Influence | 3 |
| Governance | 4 |
| Personnel | 4 |
| Support Agencies | 4 |
| Funding Sources | 4 |
| Service Review Determinations | 5 |
| Growth and Population Projections | 5 |
| Present and Planned Capacity of Public Facilities, Adequacy of Public Services | 5 |
| Financial Ability of Agencies to Provide Services | 5 |
| Status of, and Opportunities for, Shared Facilities | 5 |
| Accountability for Community Service Needs | 5 |
| Any Other Matter Related to Effective or Efficient Service Delivery | 5 |
| | |
| Sphere of Influence Update | 6 |
| Sphere Determinations | 6 |
| Present and Planned Land Uses | 6 |
| Present and Probable Need for Public Facilities and Services | 6 |
| Present Capacity of Public Facilities and Adequacy of Public Services | 6 |
| Communities of Interest in the Area | 7 |
| | |
| Appendices | |
| Appendix A: Empire Sanitary District Summary Profile | 8 |
| Map 1: Empire Sanitary District Boundary & SOI | 9 |
| Appendix B: Environmental Review | 11 |
| Appendix C: References | 12 |

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Municipal Service Review and Sphere of Influence Update For the Empire Sanitary District

Introduction

The Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000 Act (CKH Act) requires the Local Agency Formation Commission (LAFCO) to update the Spheres of Influence (SOI) for all applicable jurisdictions in the County. A Sphere of Influence is defined by Government Code 56076 as "...a plan for the probable physical boundary and service area of a local agency, as determined by the Commission." The Act further requires that a Municipal Service Review (MSR) be conducted prior to or, in conjunction with, the update of a Sphere of Influence (SOI).

The legislative authority for conducting Service Reviews is provided in Government Code Section 56430 of the CKH Act. The Act states, that "in order to prepare and to update spheres of influence in accordance with Section 56425, the commission shall conduct a service review of the municipal services provided in the county or other appropriate area..." A Service Review must have written determinations that address the following factors:

Service Review Factors to be Addressed

1. Growth and Population Projections for the Affected Area
2. Present and Planned Capacity of Public Facilities and Adequacy of Public Services, Including Infrastructure Needs or Deficiencies
3. Financial Ability of Agencies to Provide Services
4. Status of, and Opportunities for, Shared Facilities
5. Accountability for Community Service Needs, Including Governmental Structure and Operational Efficiencies
6. Any Other Matter Related to Effective or Efficient Service Delivery, as Required by Commission Policy

State Guidelines and Commission policies encourage cooperation among a variety of stakeholders involved in the preparation of a Service Review. This Service Review will analyze the existing and future services for the Empire Sanitary District. The Service Review will also provide a basis for the District and LAFCO to evaluate, and if appropriate, make changes to the Sphere of Influence.

Sphere of Influence Update Process

A special district is a government agency that is required to have an adopted and updated Sphere of Influence. Section 56425(g) of the CKH Act calls for Spheres of Influence to be reviewed and updated every five years, as necessary. Stanislaus LAFCO processes the Service Review and Sphere of Influence Updates concurrently to ensure efficient use of resources. For rural special districts, which do not have the typical municipal level services to review, this Service Review will be used to determine what type of services each district is

expected to provide and the extent to which they are actually able to do so. For these special districts, the spheres will delineate the service capability and expansion capacity of the agency, if applicable.

Background

Special districts are local governments that are separate from cities and counties, yet provide public services such as fire protection, sewer, water, and street lighting. In California, there are over 3,400 special districts with a great diversity of purposes, governance structures, and financing mechanisms. Some districts are responsible for multiple public services or one specific type of public service, as is the case of the Empire Sanitary District.

Authority

The Empire Sanitary District was organized under the Sanitary District Act of 1923, Health and Safety Code, Section 6400 et. seq, and is considered a “registered voter district”, as the board members are elected by the registered voters residing within the district’s boundaries.

Purpose

The District was formed for the purpose of providing sanitary sewer services to the unincorporated community of Empire. However, since 1969, the District has had a contractual agreement with the City of Modesto for sewer disposal services. Under the terms of the agreement, the City agreed to accept and treat the sewage collected in the District’s system and the District agreed to pay a service charge for said service. The City of Modesto, does not however, operate or maintain the sewer collection system for the District.

Classification of Services

As part of this service review, the District provided a listing of the services provided within their boundaries. The Districts are authorized to provide the functions or classes of services (e.g. sanitary sewer collection services) as identified in this report. Due to recent changes in the Cortese-Knox-Hertzberg Act, the District would have to seek LAFCO approval to exercise other latent powers not currently provided.

Service Review – Empire Sanitary District

Formation

The Empire Sanitary District was formed on June 8, 1948.

Services

The District was formed for the purpose of providing sanitary sewer services to approximately 1,488 residential and commercial customers within the unincorporated community of Empire. However, since 1969, the District has had a contractual agreement with the City of Modesto for sewer disposal services. Under the terms of the agreement, the City agreed to accept and treat the sewage collected in the District's system and the District agreed to pay a service charge for said service.

On August 14, 2001, the District and the City renegotiated the original 1969 agreement, whereby the City has agreed to continue to accept sewage from the District's sewer collection system for a period of thirty years. The City of Modesto does not operate the sewer collection system for the District.

The City of Modesto charges the District a flat monthly rate for services to those users (residential and commercial) receiving sewer service from the District. The District is also required to pay the City a connection charge on each dwelling unit or its equivalent, connected to the District's system. The City performs billing services (with the exception of delinquent bill collection) for the District.

Capacity

In 2003, the City of Modesto conducted a six-week capacity study, which determined that the District's collection system was at 90-percent capacity. Daily volumes of sewage collected from the system during the study time period averaged 168,761 gallons per day. The City's study at that time revealed that the District's main pipeline, which connects to the City's system, was at 90% flow capacity, which could potentially result in sanitary sewer overflows. In addition, the majority of the sewage is distributed through old and undersized pipelines. Therefore, the District is required to receive prior written consent from the City before allowing additional users to connect to the District's system.

Location and Size

The District is located in central Stanislaus County, east of the City of Modesto. The District encompasses an area of approximately 427 acres. Of note, there is a residential tract approximately 1 acre in size, which, although it is within the District's Sphere, according to LAFCO records, it has not been annexed to the District.

Sphere of Influence

The District's Sphere of Influence is approximately 428 acres. The entire District's boundaries are within the City of Modesto's Sphere of Influence. When the District's SOI was initially established by LAFCO in November 1984, the following alternatives were proposed:

1. A LAFCO policy that no annexation of District territory except the entire District at once will be approved.

2. The inclusion of LAFCO conditions of annexation approval that require the City to provide sewer service to any problem areas left in the District.
3. An agreement between the City and District under which the City operates the District's collection system. This would be similar to the agreement between Ceres and the Ceres Fire District to alleviate a similar problem.

The Modesto Urban Area General Plan includes the Empire Sanitary District, and designates the area for residential and commercial land uses, which is consistent with the County's General Plan designations. Recent discussions with City Planning staff indicate that the City has no plans in the foreseeable future to annex the area.

Prior to the consideration of any annexation proposal to the City, the City of Modesto should determine their intention for the future of the District. If and when the District territory is entirely annexed to the City, the District may be dissolved and merged with the City or established as a subsidiary district, in which the City Council is designated and empowered to act as, ex-officio Board of Directors.

Governance

Five Board members, elected by the registered voters within the District boundaries, govern the District. Meetings are held on the second Wednesday of each month at 7:00 p.m., at the Empire Community Hall, located at 98 "I" Street, Empire. On a yearly basis, all Board members are required to receive training and updated information regarding the Brown Act.

The District was the subject of a report by the Stanislaus County Civil Grand Jury in 2009-2010 (Case Nos. 10-12C, 10-14C, 10-15C and 10-16C) relating to multiple issues including Boardmember residency, improper meeting procedures, and insufficient budget information (including lack of annual financial audits). On September 8, 2010, the District provided a response to the Grand Jury which indicated agreement with all of the recommendations. The District's response included the steps taken to address the recommendations of the Grand Jury.

Personnel

The District employs the following one (1) Full-time Maintenance Worker and one (1) Part-time Office Manager. The District also contracts for engineering, legal and accounting services.

Support Agencies

The District maintains collaborative relationships with other agencies, such as the: Empire Municipal Advisory Council (MAC), City of Modesto, and Stanislaus County.

Funding Sources

The District's main source of revenue is derived from monthly service charges and connection fees. In 2010, the District adopted a monthly sewer service rate of \$35.75. The District also receives a small portion of the shared property tax revenues from Stanislaus County. The District has recently retained the accounting firm of Charles Strand, CPA to complete an independent audit of the District's financial statements for the last five years (2006-present), as mandated by Government Code Section 26909.

Service Review Determinations – Empire Sanitary District

The following provides an analysis of the six categories or components required by Section 56430 for a Service Review for the Empire Sanitary District:

1. Growth and Population Projections for the Affected Area

The District serves the unincorporated community of Empire. The District currently serves approximately 1,488 residential and commercial customers with sanitary sewer service. According to the County's 2009-2014 Housing Element, the town of Empire has the potential to add an estimated 53 dwelling units, based on current vacant and/or underutilized parcels. However, due to limited infrastructure and resources, it is not expected that any significant population growth will occur within the District boundaries at this time.

2. Present and Planned Capacity of Public Facilities and Adequacy of Public Services, Including Infrastructure Needs or Deficiencies

The present condition of the District's sewer system is in need of improvement and upgrades. The main sewer connection line to the City of Modesto's outflow station is at capacity and undersized. Therefore, the District would need to complete the necessary infrastructure upgrades in order to add capacity to the District's system. Further, any additional connections to the District's sewer system would require prior written consent from the City of Modesto (e.g. Will Serve Letter).

3. Financial Ability of Agencies to Provide Services

At present time, the District appears to have very limited financial resources to address current system deficiencies. In 2010, the District adopted a sewer service rate of \$35 per month. The District should seek possible funding resources from local, state or federal agencies, to correct the current capacity issues within the existing sewer collection system.

4. Status of, and Opportunities for, Shared Facilities

The District does not currently share any facilities with other districts or agencies. However, as mentioned previously, the District has had a contractual agreement with the City of Modesto for sewer disposal services. Under the terms of the agreement, the City agrees to accept and treat the sewage collected from the District's system until 2031. The City of Modesto does not operate the sewer collection system for the District.

5. Accountability for Community Service Needs, Including Governmental Structure and Operational Efficiencies

As an Independent Special District, the Board is required to conform to the provisions of the Brown Act requiring open meetings. The District's governing body consists of a five member Board of Directors elected by the registered voters within the District. In the past, the District has had difficulty maintaining the required number of board members. On January 14, 2010, the District Board voted to suspend the meeting stipends (of \$100 per meeting).

6. Any Other Matter Related to Effective or Efficient Service Delivery, as Required by Commission Policy

None.

Sphere of Influence Update for the Empire Sanitary District

In determining the Sphere of Influence (SOI) of each local agency, the Commission shall consider and prepare determinations with respect to each of the following factors:

1. The present and planned land uses in the area, including agricultural and open space lands.
2. The present and probable need for public facilities and services in the area.
3. The present capacity of public facilities and adequacy of public services that the agency provides, or is authorized to provide.
4. The existence of any social or economic communities of interest in the area if the Commission determines they are relevant.

This document proposes no changes to the District's existing Sphere of Influence (SOI). Rather, it serves to reaffirm the existing SOI boundary. As part of this process, Staff researched the history of the establishment of the District's SOI. A map of the current District boundary and Sphere of Influence is attached in Appendix "A".

The following determinations for the Empire Sanitary District's Sphere of Influence update are made in conformance with Government Code Section 56425 and Commission policy.

Determinations:

1. Present and Planned Land Uses

The District's Sphere of Influence (SOI) includes approximately 428 acres. Territory within the District's boundaries consists of residential and commercial land uses. The District does not have the authority to make land use decisions, nor does it have authority over present or planned land uses within its boundaries. The responsibility for land use decisions within the District boundaries is retained by Stanislaus County and the City of Modesto.

2. Present and Probable Need for Public Facilities and Services in the Area

The District was formed to provide sewer service within its boundary. The present and probable need for this service is not expected to diminish, as the residents within the District are dependent on the sewer services they receive.

3. Present Capacity of Public Facilities and Adequacy of Public Services Provided

The present capacity of the District facilities is hindered by the fact that the sewer system is at capacity and in need of infrastructure improvements. The majority of the District's current sewer lines are undersized and over 30 years old, which thereby limits the District's ability to provide new service connections within its existing boundaries.

4. Communities of Interest in the Area

The unincorporated community of Empire is considered a community of interest within the District's boundaries.

Further, the City of Modesto is also considered to be a Community of Interest, as the entire District's boundaries are located within the City's Sphere of Influence. The City's 2004 adopted Municipal Service Review acknowledges that it the City has agreed to treat the residential and commercial wastewater collected by the District. In addition, there has been no indication by the City of their intent to annex all or a part of any territory within the District's boundaries in the near future.

APPENDIX "A" DISTRICT SUMMARY PROFILE

District: **EMPIRE SANITARY DISTRICT**

Location: Approximately 3 miles southeast of the City of Modesto

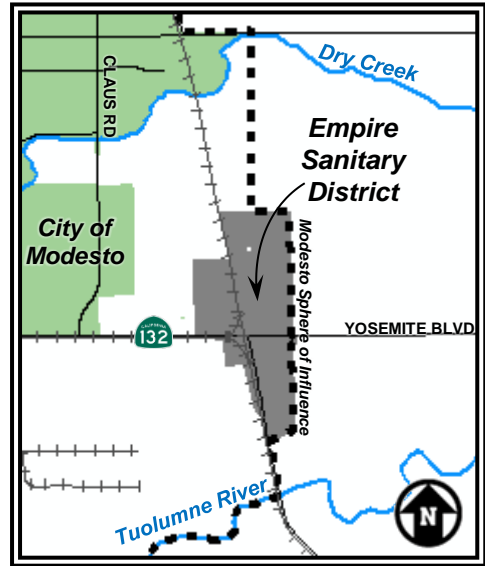
Service Area: Approximately 427 acres

Population*: 3,926 persons (Estimate)

Land Use: Low Density Residential and Commercial

Date of Formation: June 18, 1948

Enabling Act: Sanitary District Act of 1923, Health and Safety Code, Section 6400 et seq



Governing Body: 5 Member Board of Directors, elected by the registered voters within the District.

Administration: The District employs two persons, (1) Part-time Office Manager and (1) Full-time Maintenance Worker

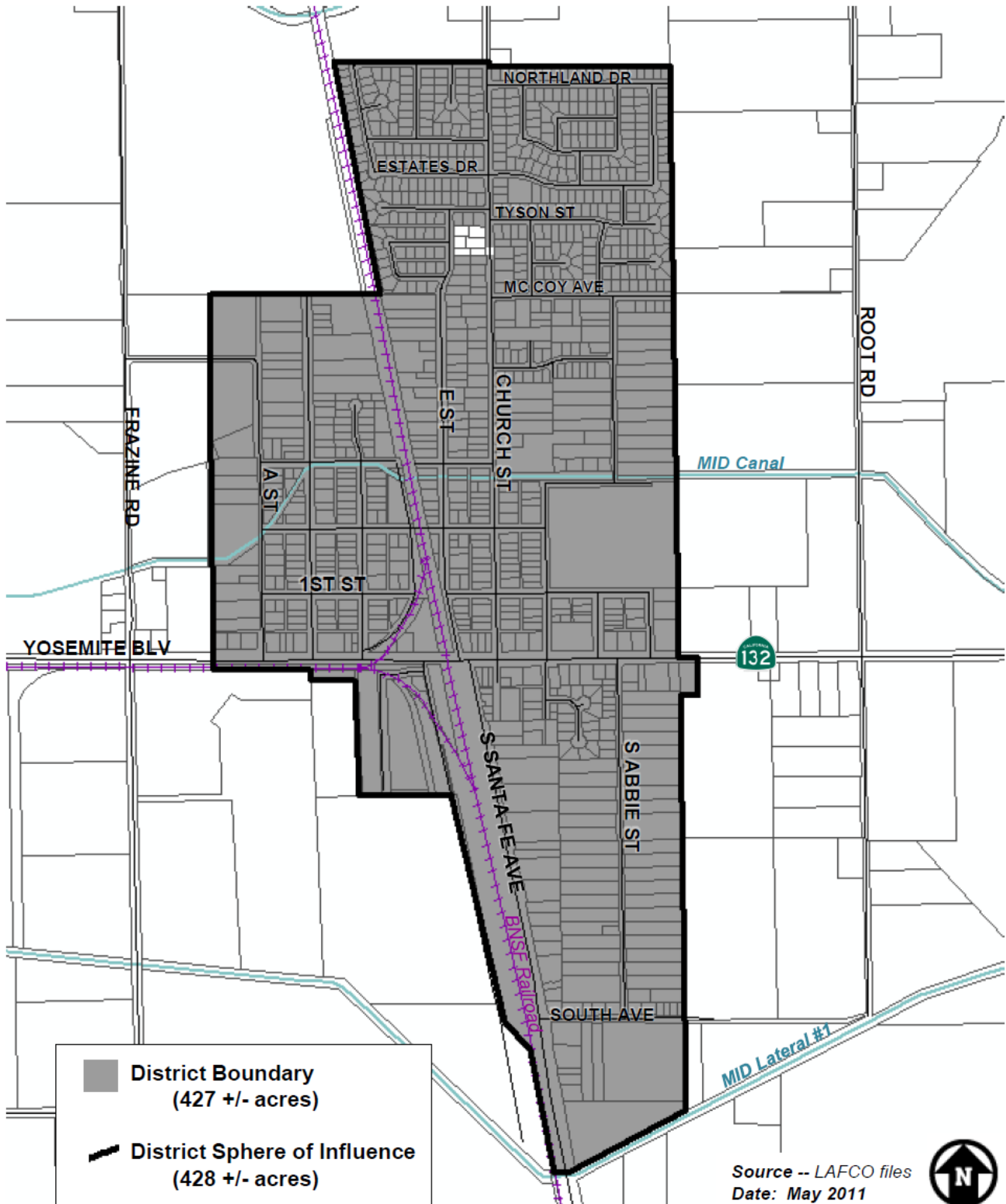
District Services: Domestic sewer service to the unincorporated community of Empire

Budget: Fiscal Year 2008-2009 (Source CA State Controller's Office, 4/26/2011)
Revenues: \$100,920
Expenditures: \$167,837

Revenue Sources: Monthly service and connection fees; property taxes

**Source: 2010 Census*

MAP 1: EMPIRE SANITARY DISTRICT BOUNDARIES AND SPHERE OF INFLUENCE



APPENDIX "B"
NOTICE OF EXEMPTION

TO: Lee Lundrigan – County Clerk-Recorder
1021 "I" Street
Modesto, CA 95354

FROM: Stanislaus LAFCO
1010 Tenth Street, 3rd Floor
Modesto, CA 95354
(209) 525-7660

Title: Municipal Service Review (MSR) and Sphere of Influence (SOI) Updates for the Empire Sanitary District

Description: The Stanislaus Local Agency Formation Commission has prepared a Municipal Service Review (MSR) and Sphere of Influence (SOI) Updates for the Empire Sanitary District. The District is legally authorized to provide sanitary sewer services and as a special district it is required to have an adopted and updated SOI. The Cortese-Knox-Hertzberg Act of 2000 calls for the Service Review to be completed prior to or concurrent with the SOI Update. The Service Review evaluates the public services provided by the District and provides the information base for updating the District's Sphere of Influence. It is recommended that the SOI boundaries for the District reviewed remain unchanged.

Public Agency Approving Project: The Stanislaus Local Agency Formation Commission (LAFCO). The date of the LAFCO hearing on this proposal is August 24, 2011. Contact Person: Marjorie Blom, Executive Officer, (209) 525-7660.

Environmental Determination: The purpose of the environmental review process is to provide information about the environmental effects of the actions and decisions made by LAFCO and to comply with the California Environmental Quality Act (CEQA). In this case it has been determined that this project is exempt from CEQA pursuant to Section 15061 (b)(3) of the State Guidelines. The Stanislaus Local Agency Formation Commission will file this Notice of Exemption upon approval of the MSR and SOI Updates for the District.

Reasons for Exemption: It has been determined with certainty that there is no possibility that the project may have a significant effect on the environment and therefore it is found to be exempt from CEQA pursuant to Section 15061(b)(3) of the State Guidelines. The proposed Sphere of Influence Update and Municipal Services Review does not involve, authorize or permit the siting or construction of any facilities associated with either District. No change to the Sphere of Influence of the Empire Sanitary District is recommended.

Signature: Marjorie Blom

Date: July 13, 2011

Name & Title: Marjorie Blom
LAFCO Executive Officer

APPENDIX “C”

REFERENCES

1. Previous MSR/SOI Update for the Empire Sanitary District, Adopted March 23, 2005.
2. Agreement Between the City of Modesto and Empire Sanitary District dated August 15, 2001.
3. GEOTivity Letter dated January 29, 2003, regarding a capacity study, which monitored an existing Empire Sanitary District sewage pipe located on Hwy 132 & Codoni Road.
4. City of Modesto letter dated November 25, 2003, regarding “Sewer Connections to the City of Modesto’s Collection System”.
5. Stanislaus County Draft 2009-2014 Housing Element, adopted April 20, 2010.
6. 2009/2010 Stanislaus County Civil Grand Jury Report regarding the Empire Sanitary District, June 25, 2010.
7. Auditor-Controller Response to the 2009-2010 Stanislaus County Civil Grand Jury Report – Empire Sanitary District, dated July 16, 2010.
8. Empire Sanitary District Meeting Agenda, September 8, 2010.
9. Empire Sanitary District’s Grand Jury Response Letter dated September, 8, 2010.
10. Stanislaus County Board of Supervisor’s Resolution No. 2010-570 regarding the County’s Consideration and Approval of Response to the 2009-2010 Stanislaus County Civil Grand Jury Final Report, dated September 14, 2010.
11. California State Controller’s Office, “Special District’s Annual Report”, April 26, 2011.
12. City of Modesto Project Review Comment Letter from Jim Alves, Associate Civil Engineer, dated July 7, 2011.

INDIVIDUALS AND AGENCIES CONTACTED

1. Valery Williams, Office Manager, Empire Sanitary District
2. Jim Alves, Associate Civil Engineer, City of Modesto
3. Patrick Kelly, Planning Manager, City of Modesto