

THE
FRESNO COUNTY



F RAND
*J*URY

2012-2013 FINAL REPORT

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**THE
FRESNO COUNTY**



**GRAND
JURY**

2012-2013 FINAL REPORT

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*N*EVER DOUBT THAT A SMALL GROUP
OF THOUGHTFUL, COMMITTED CITIZENS
CAN CHANGE THE WORLD;
INDEED, IT'S THE
ONLY THING THAT EVER HAS."

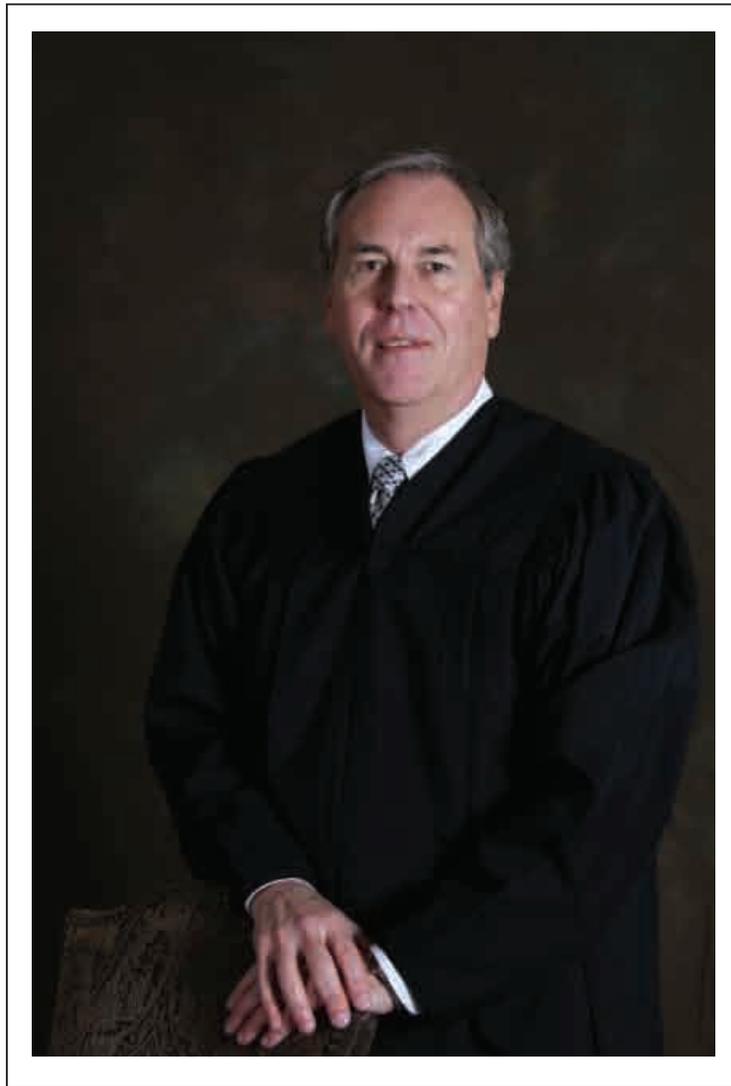
~ Margaret Mead



GRAND
JURY

PRESIDING JUDGE

2012 - 2013



HON. GARY D. HOFF





Superior Court of California County of Fresno

CHAMBERS OF
GARY D. HOFF
Presiding Judge 2012 – 2013

1100 VAN NESS AVENUE
FRESNO, CALIFORNIA 93724-0002
(559) 457-6354
FAX (559) 457-1709

At the beginning of the term of the 2012 – 2013 Grand Jury, the members were advised that being a member of a grand jury is a position of honor and great responsibility. It calls for diligence, impartiality, courage and the exercise of calm and considered judgment. At the outset of their service, they were also advised that the Grand Jury will make an important contribution to local government, and that the judges of the Fresno County Superior Court appreciate and value their service.

This Grand Jury has continued in the fine tradition of their predecessors by diligently acting as the public's watchdog through its investigations and reporting upon certain affairs of local government. The Grand Jury's enthusiastic and dedicated work is sincerely appreciated. The leadership of the foreperson, Mark Kalchik, must be noted, acknowledged and praised. He carried out, with distinction, his responsibility to see that the Grand Jury as a whole, and each of the committees, function effectively and efficiently. The foreperson, along with all members, performed this vital public service with minimal monetary compensation for travel and a small per diem allowance.

All citizens residing in Fresno County are invited and encouraged to apply for the responsible position of service as a grand juror and to continue this important function of public service.

A handwritten signature in blue ink that reads 'Gary D. Hoff'.

Hon. Gary D. Hoff
Presiding Judge 2012 – 2013



County of Fresno
GRAND JURY
COUNTY ADMINISTRATIVE OFFICE

September 18, 2013

To: The Honorable Gary D. Hoff, Presiding Judge
Superior Court of California
County of Fresno
1100 Van Ness
Fresno, CA 93724

Residents of Fresno County

It is my pleasure on behalf of the 2012-2013 Fresno County Grand Jury to submit this final consolidated report of our service year. The report is the culmination of a year of diligent, dedicated commitment to the historical and legal notion of being the citizen watchdog over governmental entities.

Each June, the Grand Jury begins with the random selection of its members by the Presiding Judge of the Fresno County Court from applicants of Fresno County. Four members were holdovers from the previous year's Grand Jury. The service year started in July 2012. The 19 jurors bonded together quickly into a cohesive investigative body. Jurors attended a two-day training course, sponsored by the California Grand Jurors' Association that provided valuable materials and resources.

This Civil Grand Jury may investigate, report, and make recommendations on complaints received from the citizens of Fresno County. It is the responsibility of the citizens of Fresno County to hold their leadership accountable for their conduct and the implementation of the recommendations made by the Grand Jury.

During the course of the year the jury received 40 citizen complaints, 8 generated by prisoners at Pleasant Valley State Prison in Coalinga alleging a variety of issues. The remaining 32 originated from Fresno County citizens. In addition, there were three that were internally generated. As was the policy, all complaints were read to the entire Grand Jury and when appropriate, assigned to a committee. Not all complaints were assigned for committee review as some were deemed to be beyond the purview of the Grand Jury. This led to various investigations which culminated in the six final reports included herein.

The Grand Jury, whether as a subject of investigation or not, evaluated the performance level of various governmental entities within the County of Fresno. For the most part we felt the information received was honest and straight forward.

The Grand Jury supplied several observers at the request of the Elections Department for County elections during the year.

The Grand Jury participated in tours of the following facilities:

- Fresno County Assessor's Office
- Pleasant Valley State Prison
- Fresno County Jail
- Fresno County Juvenile Justice Campus
- Fresno County Morgue
- City of Fresno Police Training Center
- City of Fresno Wastewater Treatment Plant
- City of Fresno Fire Department
- Chinatown Underground

At all of these facilities the Grand Jury was welcomed and given a very informative tour.

No Grand Jury can function in a vacuum. First and foremost I would like to thank Presiding Judge the honorable Gary Hoff for his guidance and assistance. I would also like to thank Deputy County Counsel Art Wille and Chief Assistant District Attorney Kelly Keenan for all of their help with navigating the Grand Jury's legal mandates.

I would also like to give a very special thank you to Fresno County Administrative Office Senior Administrative Analyst Charlotte Tilkes. Her help in transitioning the Grand Jury from administration by Fresno County Superior Court to the Fresno County Administrative Office has allowed the Grand Jury to continue to operate at this high level of professionalism.

Finally, serving the citizens of Fresno County this year was a great honor for all of us. The thoroughness of our reports was a result of everyone's enthusiastic and total commitment to the process. I would especially like to thank the members who stepped forward and served as officers and committee chairmen for their long hours and hard work. I would like to give a special thank you to Lisa Woolf for her work above and beyond her normal duties.

The members of the 2012-2013 Fresno County Grand Jury considered it a great honor to be able to serve the citizens of Fresno County. We strongly encourage all citizens to remain well educated on current issues and to hold elected and appointed officials accountable. We also encourage all citizens to apply and take part in the Grand Jury process.

Sincerely,

Mark F Kalchik, Foreman
Fresno County Grand Jury 2012-2013



THE COUNTY OF FRESNO
2012-2013

GRAND JURY



MISSION STATEMENT

The Fresno County Grand Jury serves as the ombudsman for citizens of Fresno County. The primary function of the Grand Jury, and the most important reason for its existence, is the examination of all aspects of county government and special districts assuring honest, efficient government in the best interests of the people.

Their responsibilities include receiving and investigating complaints regarding county government and issuing reports. A Grand Jury Final Report is issued in June of each year. Grand Jurors generally serve for one year although the law provides for holdovers for a second year to assure a smooth transition.

NAME OF EACH GRAND JURY MEMBER FOR 2012-2013

MONICA BALCH
PETER BARTLETT
SHIRLEY BRUEGMAN
EDGAR (ED) DEATHERAGE
PAUL DYER
WINSTON FULLER
JERRY GUINN
SHARON HANLEY
MARK KALCHIK
RICHARD LEWIS
RICHARD LOWELL
DARLENE POWELL
ROBERT RISCHE, Jr.
LINDA RODGERS
PETER SIMIS
GARRY SNOW
JAMES STAHL
MARY TORRES
LISA WOOLF



THE COUNTY OF FRESNO
2012-2013 GRAND JURY



FRONT ROW *(Left to Right):*

**Darlene Powell, Monica Balch, Linda Rogers, Shirley Bruegman,
Sharon Hanley, Mary Torres and Lisa Woolf**

BACK ROW *(Left to Right):*

**Paul Dyer, Edgar Deatherage, Peter Simis, Peter Bartlett, Jerry Guinn,
Mark Kalchik, Winston Fuller, James Stahl, Garry Snow,
Robert Rische Jr., Richard Lewis and Richard Lowell**



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THE GRAND JURY PROCESS

- ❖ APPLICATION INFORMATION
- ❖ FUNCTIONS
- ❖ COMPLAINT PROCEDURE

APPLICATION INFORMATION

The Fresno County Grand Jury serves as the civil watchdog for the County of Fresno. Their responsibilities include investigating complaints regarding county and city governmental agencies and issuing reports when necessary.

In the early months of each calendar year, the Fresno County Superior Court begins the process for selecting a new grand jury. Those with an interest in serving on the grand jury may contact the Juror Services Manager and ask to be considered as a prospective grand juror. In addition to self referrals, names of prospective grand jurors are suggested by the active and retired judicial officers of the Fresno County Superior Court and the current grand jury members.

The basic qualifications include being a citizen of the United States, being at least 18 years of age and a resident of Fresno County for at least one year prior to selection. Applicants should also be in possession of their natural faculties and have ordinary intelligence, sound judgment and good character. They should be able to speak and write English and have some computer literacy.

Questionnaires are mailed to all prospective grand jurors after the nominations are received. All prospective grand jurors are required to have a background check. All prospective grand jurors must be officially nominated by a sitting Superior Court Judge and may be asked to come in for an interview. The Judges then consider all prospective grand juror nominees. They nominate 30 prospective jurors, who are invited to an impanelment ceremony in mid-June. Names are drawn at random to serve on the nineteen member grand jury. Generally, there are two to four members from the outgoing grand jury who holdover to insure a smooth transition.

Prospective grand jurors should be aware of the responsibilities and time commitment involved. Jurors typically spend a minimum of 40 hours per month on meetings, interviewing, conducting investigations and writing reports. The service period from July 1 to June 30 of the following year.

For additional information or to nominate yourself or someone else, contact the Juror Services Manager at the Fresno County Courthouse, 1100 Van Ness Avenue, Room 102, Fresno, CA 93724-0002 or call 559-457-1605.

FUNCTIONS

History: In 1635, the Massachusetts Bay Colony impaneled the first grand jury to consider cases of murder, robbery and wife beating. By the end of the colonial period the grand jury had become an indispensable adjunct to the government. The U.S. Constitution's Fifth Amendment and the California Constitution call for the establishment of grand juries. The California Constitution provided for prosecution by either indictment or preliminary hearing.

In 1880, statues were passed which added duties of the grand jury to investigate county government beyond misconduct of public officials. Only California and Nevada mandate that civil grand juries be impaneled annually to function specifically as a "watchdog" over county government. California mandates formation of grand juries in every county able to examine all aspects of local government adding another level of protection for citizens.

Functions: The civil grand jury is a part of the judicial branch of government, an arm of the court. As an arm of the Superior Court, the Fresno County Grand Jury is impaneled every year to conduct civil investigations of county and city government and to hear evidence to decide whether to return an indictment. The civil grand jury in its' role as civil "watchdog" for the County of Fresno has two distinct functions:

- ❖ Investigations of allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office under three feasancess: nonfeasance, misfeasance and malfeasance.
- ❖ Civil Investigations and Reporting, the watchdog function, is the PRIMARY duty of a regular Civil Grand Jury. In addition to mandated state functions, the jury may select additional areas to study publishing its' findings and recommendations in a report at the end of the year.

Both the criminal and civil grand juries have the powers to subpoena. The criminal grand jury conducts hearings to determine whether there is sufficient evidence to bring indictment charging a person with a public offense. However, the district attorney usually calls for empanelment of a separate jury drawn from the petit (regular trial) jury pool to bring criminal charges. However, in Fresno County a Superior Court Judge is the determiner of facts relative to holding an individual to answer criminal charges.

Civil Watchdog Functions: Considerable time and energy is put into this primary function of the civil grand jury acting as a the public's "watchdog" by investigating and reporting upon the operation, management, and fiscal affairs of local government (eg Penal Code § 919, 925 et seq.) The civil grand jury may examine all aspects of county and city government and agencies/districts to ensure that the best interests of the citizens of Fresno County are being served. The civil grand jury may review and evaluate procedures, methods and systems used by county and city government

to determine whether more efficient and economical programs may be used. The civil grand jury is also mandated to inspect any state prisons located within the county including the conditions of jails and detention facilities.

Citizen Complaints: The civil grand jury receives many letters from citizens and prisoners alleging mistreatment by officials, suspicions of misconduct or government inefficiencies. Complaints are acknowledged and investigated for their validity. These complaints are kept confidential.

Criminal Investigations: A criminal jury is separate from a civil grand jury and is called for empanelment by the district attorney. A hearing is held to determine whether the evidence presented by the district attorney is sufficient to warrant an individual having to stand trial. Note: This is not the procedure in Fresno County, a Superior Court Judge calls for a criminal jury if a matter continues on in the courts to trial.

The grand jury system as part of our judicial system is an excellent example of our democracy. The grand jury is independent body. Judges of the Superior Court, the district attorney, the county counsel, and the state attorney general may act as advisors but cannot attend jury deliberations nor control the actions of the civil grand jury (Penal Code § Code 934, 939).

*2006 - 2007 Grand Jury Final Report

COMPLAINT PROCEDURE

It is the right of Fresno County residents to bring attention of the Civil Grand Jury matters involving public agencies which may concern them.

Although the Civil Grand Jury has limited statutory ability to provide solutions, all Fresno County residents are encouraged to communicate their grievance to the Grand Jury for its consideration. All complaints received by the Grand Jury are confidential, but they must be signed by the complainant or they will not be acted upon.

A complaint form can be obtained in the following ways:

1. Telephone the Superior Court at (559) 457*1605 and request a citizen complaint form
2. Grand Jury website (www.fresnosuperiorcourt.org)
 - a. Click on jury
 - b. Click on Grand Jury
 - c. Click on complaint form
 - d. Double click on complaint form and print

Sample Complaint Form page follows--



FRESNO COUNTY GRAND JURY

COMPLAINT FORM

ALL COMPLAINTS RECEIVED BY THE GRAND JURY ARE CONFIDENTIAL

COMPLAINTS WILL NOT BE PROCESSED WITHOUT CONTACT INFORMATION AND A SIGNATURE

YOUR NAME: _____

MAILING ADDRESS: _____

CITY, STATE & ZIP: _____

TELEPHONE NUMBER: HOME: (_____) _____ WORK: (_____) _____

BRIEF SUMMARY OF COMPLAINT – INCLUDE DATES OF EVENTS, NAMES OF OFFICIALS, OTHER PERSONS, CITY OR COUNTY DEPARTMENTS AND AGENCIES INVOLVED. (YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY)

THE INFORMATION CONTAINED IN THIS FORM IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

SIGNATURE: _____ DATE: _____

YOU WILL RECEIVE WRITTEN ACKNOWLEDGEMENT OF THIS COMPLAINT AFTER IT IS RECEIVED AND REVIEWED BY THE GRAND JURY.

RETURN FORM TO:

GRAND JURY
c/o FRESNO COUNTY ADMINISTRATIVE OFFICE
2281 TULARE STREET, ROOM 304
FRESNO, CA 93721

FRESNO COUNTY GRAND JURY FINAL REPORTS *and* RESPONSES

2012-2013

Report 1

- ❖ AN INVESTIGATION OF THE FRESNO COUNTY ASSESSOR-RECORDER'S OFFICE

Report 2

- ❖ FRESNO UNIFIED SCHOOL DISTRICT BOARD OF TRUSTEES

Report 3

- ❖ PLEASANT VALLEY STATE PRISON
Review of Current Status of Valley Fever

Report 4

- ❖ INVESTIGATION OF THE NEW MILLENNIUM INSTITUTE OF EDUCATION

Report 5

- ❖ DEL REY COMMUNITY SERVICES DISTRICT

Report 6

- ❖ LITTER CONTROL ON FRESNO COUNTY HIGHWAYS

REPORT #1

**AN INVESTIGATION OF THE
FRESNO COUNTY
ASSESSOR-RECORDER'S OFFICE**



Fresno County
2012-2013 Grand Jury
Report # 1

An Investigation of the
Fresno County Assessor-Recorder's Office

INTRODUCTION

A review was made of past grand jury investigations and it was determined that no investigation had been made of the Fresno County Assessor-Recorder's office since at least 2000. Given the recent publicity regarding the efforts of the recently elected (2010) Assessor to reassess and increase taxes on Williamson Act properties, it seemed like an appropriate County department on which to focus the required investigation.

It must be noted that this investigation was not the result of any complaint from either inside the organization or from any citizen of the county.

BACKGROUND

The Fresno County Assessor-Recorder's Office has the dual role of determining the tax base on which property taxes are assessed and being the keeper of records for officially recorded documents, including property title documents and vital records (marriage, death, and birth certificates).

Like every governmental agency, this department has been hit hard by the recent budget crises. Their budget has been cut from a high of \$12,141,168 in 2008-09 to \$10,323,855 for the 2011-12 fiscal year. Similarly, staff has been reduced from 142 in 2006-07 to 101. Most of this staff reduction has been through retirements and attrition, with some layoffs. As a result, the real property appraiser department has been reduced from its prior configuration of 2 agricultural teams, 1 commercial team and 3 residential teams to 1 agricultural team, 1 commercial team, and 2 residential teams. Each team has 6 to 8 appraisers. A further consequence of this staff reduction is a marked loss of appraiser expertise.

The Assessor's office is somewhat unique within the county structure in that it is one of the few departments that contribute a significant amount of revenue to the county's coffers. The

assessed tax base determines the amount of the property taxes paid within the county. While most of this money is sent to the State, the remaining part represents a significant portion of the county's operating budget.

PROPERTY TYPE	ASSESSMENTS	ENROLLED VALUE	ASSESSMENTS	ENROLLED VALUE
Secured Roll	Roll: 2007-08		Roll: 2012-13	
Residential	233,660	\$40,508,653,880	226,463	\$34,611,695,616
Commercial	11,626	8,421,440,262	11,983	8,797,242,345
Industrial	5,261	3,944,532,312	5,347	4,571,396,224
Other (Ag 71%)	26,581	5,764,364,833	38,659	9,159,606,701
Unsecured Roll	29,607	3,045,299,025	27,912	3,399,812,846
Total Roll	306,735	\$61,784,290,312	310,364	\$60,539,753,732

Source: California State Board of Equalization Report: March 2010; Fresno County Assessor's Office

While the total assessment roll has remained relatively flat since 2007-08 (\$61.7 billion 2007-08 vs. \$60.5 billion 2012-13), the valuations of categories of properties within the roll have changed dramatically, with residential dropping from \$40.5 billion to \$34.6 billion and the category that includes Agriculture increasing from \$5.8 billion to \$9.2 billion during this period. In the 2011-12 roll year, there were over 100,000 properties that recorded a decline in value. While sales of homes were down, the foreclosure activity caused many ownership changes (18,528) and the volume of documents recorded (192,416) remained high during the 2011-12 roll year. The office clearly has to handle a large volume of activity with a much smaller staff.

The appraisal processes of the office are mandated by the California State Board of Equalization (SBE). The SBE publishes the *Appraisal Handbook*, a multi-sectioned guide that all California counties follow. Further, the SBE conducts periodic audits of the practices of each assessor's office. The most recent one is dated March 2010 and was conducted in 2008. They have recently started a new audit with most of the work being done in spring 2013.

PURPOSE OF THE INVESTIGATION

After touring the facilities and interviewing key department heads, it was determined that the primary emphasis of the investigation should be on the effectiveness of the assessor's department in meeting its obligation of fully and accurately preparing the tax roll. We put particular emphasis on agricultural property under the Williamson Act since that had received a significant amount of publicity and it represents a substantial portion of the taxable land in the County.

DISCUSSION

The Assessor-Recorder's Office, in coordination with the Tax Collector, has a significant responsibility. The Assessor's office must apply accurate indices in the valuation of existing properties, new construction and taxable government owned properties. Timely channeling of these findings to the tax rolls is a critical step in eventual funding of governmental agencies. Within the last five years, staffing for the Assessor/Recorder Department has been reduced by 30%. A new County Assessor was elected in 2010. Since then, he has introduced several procedural changes to improve operational effectiveness.

Given this framework, the grand jury proceeded with an investigation which included employee interviews (both staff and management) in Personal Property, Real Property (Agricultural and Residential), Recorder's Office and Tax Department, visitation tours, review of several papers (See sources and References), and a review of documents and forms used in the appraisal of Williamson Act properties.

During the course of the investigation, testimony and visitations revealed some common themes:

- A new computer system is needed to replace the highly manual individual file based system.
- Existing workspace is cramped with file storage and should be reorganized when the new computer system is installed.
- The reduction of appraisers has caused work assignment adjustments such that the appraisers have to spend more time in the office, staffing the desk, manning phones, etc. so that they spend less time in the field. This restricts agricultural appraisers from monitoring changes such as new crops, orchards being torn out or planted, or new buildings on the property.
- Department is compliant with Conflict of Interest policy and practices.
- Anxiety exists within the department about future retirements and loss of experienced staff.
- Staff morale is low due to pay cuts, layoffs, and loss of flex-time work scheduling.
- Appeals are resolved in a timely and professional manner, with appeals very low on Williamson Act properties in spite of a significant increase in assessed valuations.
- Instances were noted of staff finding out about a new change or procedure from the public during a phone call rather than from an internal communication.
- The duties of the office are getting done on time, despite staff reduction.
- Ag/Commercial/Residential appraisal process changes could facilitate more tax revenue.

CONCLUSION

The appraisal of property for taxation purposes is a complex process that necessarily relies on a highly trained and experienced staff, at both the appraiser and support level. When properly done, this process has the potential to yield increased county revenues. In spite of staff and budget cuts the department has continued to produce the tax roll and serve the public in a timely manner. However, the department falls somewhat short in developing, supporting and retaining the staff, which could lead to productivity and quality problems in the future.

FINDINGS

- F101 The Assessor's Office is doing a good job with meeting its basic objectives of providing reasonable service to the public and providing an accurate and timely tax roll to the Tax Collector. Many members of the staff are to be congratulated for their outstanding dedication and pride in their desire to do their jobs and serve the public well.
- F102 The department has lost a number of key personnel through retirement and attrition. As a result, the "institutional memory" has suffered since there does not appear to be any system to cross-train staff in key areas.
- F103 Staff morale is very low. This is to be expected in a time of layoffs and pay cuts. However, management policies and actions, coupled with inadequate internal communication, contribute to the condition.
- F104 With only eight agricultural appraisers covering the largest assessed agricultural base in California, it seems that their time is best spent in the field rather than in the office in Fresno.
- F105 Policies and procedures to address and prevent conflict of interest are present at every level.
- F106 The need to have individual folders available for each parcel creates severe logistical problems in terms of staff time, lost records, and lack of coordination with online records. In addition, the amount of space devoted to these records prevents the reorganization of the office into a more manageable configuration.
- F107 The State Board of Equalization conducts periodic assessment practices audits of the department every few years. These provide a highly structured view of the internal operations of the department. One is currently in the beginning stages.

RECOMMENDATIONS

The 2012-13 Fresno County Grand Jury recommends that the following be implemented:

- R101 Improve internal communication through such efforts as regular staff meetings, email broadcasts, or even "MBWA" (management by walking around). (F103)
- R102 Try to boost morale by publicly recognizing employee achievement and milestones. (F103)
- R103 Work on retaining "institutional memory" through such strategies as succession planning, cross-training, shadowing, and mentoring. (F102)
- R104 Find a way to relieve Ag appraisers of the need to spend time in the office so that more time can be devoted to covering physical inspections of land. (F104)

- R105 Proceed with the current plans for a modern system to automate the records processing and storage functions and to free up needed work space. (F106)
- R106 The Fresno County Board of Supervisors should carefully review the State Board of Equalization audit when it is published to better assess the effectiveness of the department. (F107)

REQUEST FOR RESPONDENTS

Pursuant to Penal Code §933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

RESPONDENTS

- Paul Dictos, Assessor-Recorder (F102, F103, F104, F106, R101, R102, R103, R104, R105)
- Fresno County Board of Supervisors (F107, R106)

SOURCES AND REFERENCES

Assessor's Handbook, California State Board of Equalization,
<http://www.boe.ca.gov/proptaxes/ahcont.htm>

"Audit of Appraisal Information Data Scope, Adequacy, and Timeliness Williamson Act Properties", (author not identified), September 2012

Fresno County Assessment Practices Survey; California State Board of Equalization, March 2010

"The Need for Consistent Assessments of Williamson Act Contract Properties", George Vasquez, San Joaquin Agricultural Law Review, Vol. 21, No. 1, p. 341

Witnesses (None sworn in)

- Members of Assessor-Recorder's Office management and staff
- Member of Tax Collector's Office management

RESPONSES

A. PAUL DICTOS, Assessor Recorder,
County of Fresno
F102 through F104, F106
R101 through R104

B. JOHN NAVARRETTE,
County Administrative Officer,
County of Fresno
F107
R107





County of Fresno

Paul Dictos, CPA
Assessor-Recorder

March 21, 2013

Superior Court of California, Fresno County
Gary Hoff, Presiding Judge
1100 Van Ness Avenue
Fresno, Ca. 93724-0002

Re: Responses to the 2012-2013 Grand Jury Report # 1

Dear Judge Hoff:

In accordance with Penal Code sections 933 and 933.05, the Fresno County Assessor-Recorder has approved the attached responses to the 2012-2013 Grand Jury Report #1 concerning the investigation of the Office of the Fresno County Assessor-Recorder.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Dictos', is written over the word 'Sincerely,'.

Paul Dictos, CPA
Fresno County Assessor-Recorder

Attachments

Cc: Grand Jury

FINDINGS:

F102- The department has lost a number of key personnel through retirement and attrition. As a result, the "institutional memory" has suffered since there does not appear to be any system to cross-train staff in key areas:

The Assessor agrees with the finding and recognizes the importance of maintaining "institutional memory," in this the most vital department of Fresno County. The Assessor took office with a promise to "do more with less" only to find out that the department was already struggling to do more with very much less, and has continued doing so during the last several years. New layoffs- since the issuance of this Grand Jury report- are certainly not helping the situation. The latest round of cuts has left the Office with a staff of 87; 40% less available manpower from a decade ago. Nevertheless, hope is on the way. With the implementation of a modern Property Assessment and Valuation System, the Assessor expects to start cross training.

Cross training is a priority within the Department and the Assessor plans to address areas of operations where cross training can provide the biggest value to address the Assessor's mandates. With over 3/4th of the staff having ten or more years of experience, the in-house expertise and dedication to public service exists for a significant increase in efficiency, ability to address emerging demands, and bench strength.

A critical examination of business operations in the Department was conducted and cross training recommendations given. Some recommendations included; allowing all appraisal staff to input valuation data into the current and proposed assessment systems; elevating all support staff to a higher end standard job proficiency level- sufficient for them to work across the entire Department as operational needs arise; requiring appraisal staff to meet a proficiency standard that would enable all Appraisers to take part in the Assessment Appeals process; allowing management staff to play a more direct role in requesting, encouraging, promoting and supporting individual employee training, both within and outside the Department.

F103- Staff morale is low. This is to be expected in a time of layoffs and pay cuts. However, management policies and actions, coupled with inadequate internal communication, contribute to the condition.

The Assessor agrees with these findings. Continued staff reductions, despite the Assessor's best efforts to operate in such a restrictive environment, have severely weakened and demoralized staff. Given these conditions, the Assessor has been limited in both State mandate and County of Fresno policies to acknowledge reward and encourage exceptional employee performance. The Assessor continues to maintain an open door policy and encourages all employees to come forward with solutions, ideas and improvements that contribute to the overall betterment of workplace morale and conditions.

The Assessor's goal in the recent downsizing effort was:

- *Minimize the number of employees affected by the RIF (Reduction in Force)*
- *Reorganize duties in such a way to reduce layers of management that kept employee issues from freely flowing to the top*
- *Develop a stable organization, reducing the turbulence of recent years that has shaken-up employee security*

F104- With only eight agricultural appraisers covering the largest assessed agricultural base in California, it seems that their time is best spent in the field rather than in the office in Fresno.

The Assessor respectfully disagrees with this finding. Field appraisal duties have been severely impacted by repetitive and restrictive budget cuts to the Department. As a direct consequence of these cuts, Ag Appraisal staff is required to travel longer distances, spend increased amounts of time in the field- away from the office- and limit customer service enquiries and responses. The Assessor understands the importance of adequately and correctly appraising the agricultural properties within the County of Fresno and has implemented processes and procedures to help alleviate some of the challenges facing this Division. The Assessor and Ag Commissioner are working together to share critical data in an effort to assist in the appraisal of Ag properties. Future investments in technology and software will provide 'real time' observation of Ag properties, particularly those in more remote areas of the County. These investments will alleviate some of the current challenges this Division faces.

The Assessor notes that the Office has multiple statutory requirements – mapping, maintaining / updating files, servicing walk-in customers, etc. – and that the current staffing profile represents the optimal usage of manpower within our allotted funding. The bottom line is that there isn't enough funding to perform ANY function to the level the Assessor wishes, and thus having the field appraisers in the office represents the best usage of scarce talent for the time being.

F106- The need to have individual folders available for each parcel creates severe logistical problems in terms of staff time, lost records, and lack of coordination with online records. In addition, the amount of space devoted to these records prevents the reorganization of the office into a more manageable configuration.

The Assessor agrees with the finding and is studying possible solutions to alleviate and minimize the issues noted. The immediate plan is to electronically scan and digitize all 360,000, individual folders before the implementation of the Property Assessment and Valuation System, thus making all the records accessible, available and current to staff-at a click of the keyboard. A RFP (Request for Proposal) was posted on the county's website and sent out to vendors.

The implementation of a proven, modern solution for these folders will immediately alleviate the current storage issues, improve the flow of information both within and outside the Department, strengthen records management, accountability and be more responsive to Fresno County citizens' needs and requests.

RECOMMENDATIONS:

R101- Improve internal communication through such efforts as regular staff meetings, e-mail broadcasts, or even "MBWA" (management by walking around). (F103)

MBWA is the favorite of this Assessor as he gets part of his daily exercise by pacing the office's vast area- two and three times a day. E-mail broadcasts are a regular. Staff meetings, temporarily halted because of turmoil caused by the unexpected layoffs, are back on a regular schedule. Lastly, a suggestion box and a special e-mail address are available to staff for communications with the Assessor. Through the Assessor's open-door-policy, staff can walk in and speak their mind.

R102- Try to boost morale by publicly recognizing employee achievement and milestones. (F103)

Employee achievement and milestones will be recognized. With the implementation of the Property Assessment and Valuation System, we will be in a better position to measure achievement and milestones through use of a workflow system.

R103- Work on retaining "institutional memory" through such strategies as succession planning, cross training shadowing, and mentoring. (F102)

Retaining "institutional memory" is a key goal of this Assessor, though it should be noted that not all such memory is either positive or useful in the ever-evolving environment that the County and this Office finds itself in. Respect for past knowledge, practices, and relationships are crucial: blind allegiance to outmoded processes and ancient rifts between Offices and people are destructive.

While the Assessor is devoted to the maintenance of institutional memory, he is also committed to working across departments and offices to ensure that the County workplace is one that works as a unit to support each employee in every work area.

Though current (and recently reduced) headcounts limit the opportunities to invest in the Office's future via cross-training, the Assessor recognizes the value, increased versatility, and long-term job satisfaction associated with a multi-talented workforce. Succession planning, the ability to promote from within, and the capability to react to changes in workflow are all improved as the result of a thoroughly cross-trained labor pool, and the Assessor has made a comprehensive program a key element of his operation and strategy once the new computerized recordkeeping system is in place. The revised and updated processes inherent in the proposed system can be best leveraged by a widely capable workforce, while the break from inefficient past practices, inherent in the installation of an updated IT solution; will make a good starting point for new training initiatives.

R104- Find a way to relieve Ag appraisers of the need to spend time in the office so that more time can be devoted to covering physical inspections of land. (F104)

The Assessor agrees with the Grand Jury's finding, but goes further to note that his goal is to free appraisers to perform the most cost effective and efficient inspections of Agricultural parcels. The discovery of 4,000 plus acres of mature Almond orchards via Google maps and the latest mapping systems that escaped assessment for fifteen years - at a loss of millions in assessments - stands as proof that certain functions can be more effectively performed in an office environment. By leveraging such modern methods as well as utilizing statistically valid sampling techniques for determination of problem issues (systemic under-reporting of improvements, changes in property usage, etc.), the Assessor believes that appraisers will be able to spend a greater percentage of their time in the field productively. The Assessor's goal, as should be the case for all Offices in this time of strained County finances, is to "do more with less". That goal is a key commitment of this Assessor to the taxpayers of Fresno County.

The Assessor, a professional Accountant (CPA), is a firm believer that even in government, "the bottom line is the bottom line". (See F104)



County of Fresno
COUNTY ADMINISTRATIVE OFFICE
JOHN NAVARRETTE
COUNTY ADMINISTRATIVE OFFICER

September 24, 2013

Honorable Gary D. Hoff
Presiding Judge
Superior Court of California, County of Fresno
1100 Van Ness Avenue
Fresno, CA 93724-2033

Dear Judge Hoff:

On September 24, 2013 the Fresno County Board of Supervisors approved the attached recommended responses to 2012-13 Grand Jury Final Report No. 1, "An Investigation of the Fresno County Assessor-Recorder's Office".

Thank you for the opportunity to respond to this Grand Jury investigative inquiry.

Sincerely,

John Navarrette
County Administrative Officer

Attachment

ATTACHMENT A

COUNTY OF FRESNO

BOARD OF SUPERVISORS

RESPONSE TO THE

2012-13

FRESNO COUNTY GRAND JURY

FINAL REPORT NO. 1



INVESTIGATION OF FRESNO COUNTY ASSESSOR-RECORDER'S OFFICE

Please find below the Fresno County Board of Supervisors' response to the 2012-13 Grand Jury Final Report No. 1.

Finding

F107 Finding 107 (F107): The State Board of Equalization conducts periodic assessment practices audits of the department every few years. These provide a highly structured view of the internal operations of the department. One is currently in the beginning stages.

The State Board of Equalization (BOE) periodically conducts the "Assessment Practices Survey" in each county to determine what practices and procedures used by the county assessor in the valuation of properties are in conformity with all provisions of law.¹ At the conclusion of the survey each county assessor is provided an opportunity to review a draft and file a written response to the survey findings and recommendation; the most recent Fresno County Assessment Practices Survey published by the BOE was in 2013. The most recent BOE survey was conducted in the spring of 2013 and the publication of the survey is not expected until the spring of 2014.

Recommendation

F107 The Fresno County Board of Supervisors should carefully review the State Board of Equalization audit when it is published to better assess the effectiveness of the department.

The BOE distributes the Assessment Practices Survey to state officials, as well as the Fresno County Board of Supervisors, Grand Jury, and Assessment Appeals Board. The Board agrees that the survey should be carefully reviewed and considered in all matters relating to the Assessor-Recorder's Office.

¹ Board of Equalization March 11, 2010: "Fresno County Assessment Practices Survey".

REPORT #2

**FRESNO UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEES**



Fresno County
2012-2013 Grand Jury
Report # 2

Fresno Unified School District Board of Trustees

INTRODUCTION

The Fresno County Grand Jury received a complaint dated June 6, 2012, regarding a Fresno Unified School Board (FUSD) trustee not residing in the area the trustee was elected to represent.

BACKGROUND

Prior to the November 2010 election, FUSD elected its trustees from specific areas. Considered an “at large” election method, this required trustees to live within a specific geographic sub area of the district and be elected by all voters in the entire FUSD.

In the November 2010 election, and in compliance with the California Voters Right Act, FUSD implemented a “by trustee area” election method. Trustees are now required to live within a specific geographic sub area and be elected by the voters in that same sub area.

The following legal documents were reviewed:

FUSD Board Bylaw 9220

“Any person is eligible to be a board member if he/she is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter not legally disqualified from holding civil office, and resides in designated trustee areas.”

Governor’s Code 244 (a)

“Residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.”

Candidate Election Qualifications

Current filing procedure in the Fresno County Elections Office is that an applicant for a FUSD trustee position must provide their current residence address. The election office checks to determine if the applicant is a registered voter and confirms that the address given is in the designated trustee area.

At the completion of the election, the winning candidate is certified by the Secretary of State. Removal from an elected office can only be done by recall vote or quo warranto civil action.

Purpose of Investigation

- Determine if the trustee in question fulfilled the legal requirements of the California education Code and the FUSD Board of Trustees Policy 9220
- Determine when and how bylaws are reviewed and revised
- Determine the authority of the FUSD Board of Trustees to enforce bylaws

Discussion

The grand jury committee conducted an in-depth investigation of the facts pertaining to residency of trustee in question and if the trustee complied with the intent of the law by living in the area in which trustee was elected. The complaint regarding the trustee in question was resolved when the trustee submitted a letter of resignation.

The committee then redirected the investigation as to how the same situation could be prevented from happening in the future. Testimony from several witnesses revealed that the FUSD bylaws are not reviewed and enforced consistently. The established process for reviewing and revising the bylaws is ineffective.

Conclusion

Fresno Unified School District has over 80,000 students and several hundred staff and faculty. Many good things are taking place to improve students' academic performance. The FUSD Board of Trustees and staff should be applauded for making progress. It is now time to continue the advancement of the district and focus on improving the internal governance structure. Honest and open communication is essential. Bylaws need to be kept current and must be enforced.

Findings

- F-201 Review of bylaws is not conducted on a regular basis
- F-202 There is a reluctance to enforce bylaws
- F-203 Current board policy disregards financial accounting regarding trustee absences at board meetings
- F-204 Misunderstandings have caused discord as to how the trustees and district level administrative governance works

Recommendations

- R-201 Schedule an annual review wherein the trustees and administrative staff will discuss the bylaws and how they will be implemented (F201)
- R-202 Annually, all board members will sign an agreement affirming their continued compliance with current bylaws (F202, F203)
- R-203 Bylaw 9220 should be expanded to clarify the importance of abiding with the intent of the residency law (F204)

Request for Respondents

Pursuant to Penal Code 933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others

Respondents

President, Fresno Unified District Board of Trustees with concurrence of other board members. (F201, F202, F203, F204, R-201, R- 202, R- 203)

FUSD Superintendent (F201, R-201)

Sources and References

- Attendance by grand jury committee members at board meeting
- California Voting Rights Act
- California Education Code
- Elections office research
- Interview with complainants
- Interview with FUSD Board of Trustees members
- Interview with FUSD Superintendent
- Interview with FUSD legal counsel
- FUSD Bylaws

RESPONSES

A. MICHAEL HANSON, Superintendent,
Fresno Unified School District
Board of Education

F201

R201

B. MARY BETH DE GOEDE,
Atkinson, Andelson, Loya, Ruud & Romo

F201 through F204

R201 through R203





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ADMINISTRATIVE OFFICE

BOARD OF EDUCATION

Valerie F. Davis, President
Lindsay Cal Johnson, Clerk
Michelle A. Asadoorian
Luis A. Chavez
Christopher De La Cerda
Carol Mills, J.D.
Janet Ryan

SUPERINTENDENT

Michael E. Hanson

May 8, 2013

VIA HAND-DELIVERY

Honorable Gary D. Hoff, Presiding Judge
Fresno County Superior Court
1100 Van Ness Avenue
Fresno, CA 93724-0002

Re: Fresno Unified School District Superintendent Michael Hansen's Response to the Fresno County 2012-2013 Grand Jury Report #2

Dear Judge Hoff:

Pursuant to California Penal Code sections 933 and 933.05, as the Superintendent of Fresno Unified School District ("FUSD" or "District") I have considered the findings and recommendations contained in the 2012-2013 Fresno County Grand Jury Report #2 ("Report") and hereby provide the following response.

OVERVIEW OF SUPERINTENDENT'S RESPONSE

I want to thank the Grand Jury for its recognition of the progress the District is making to improve students' academic performance. I also want to assure the Grand Jury that the Fresno Unified School District Board of Education's ("Board" or "BOE") existing bylaws are wholly consistent with all laws and regulations applicable to California school boards. In addition, the Board regularly updates its bylaws whenever necessary to ensure continued statutory compliance.

As the governing body of the District, the Board is legally obligated to adhere to all of the laws identified in its bylaws. However, it is important to emphasize with respect to many of the requirements contained in the bylaws, the jurisdiction to regulate the conduct and activities of duly elected school board members rests with the electorate, as well as various enforcement agencies including the California Attorney General's Office, and not with the Board.

ENFORCEMENT OF BOARD MEMBER RESIDENCY REQUIREMENTS

The District's method of electing Board members until November 2010 conformed to Education Code § 5030(c), "that each governing board member be elected by the registered voters of the entire school district . . . but reside in the trustee area which he or she represents."

In November 2010, the Board changed its method of electing trustees in order to comply with the California Voting Rights Act by dividing the District into "trustee areas" and requiring that

trustees both reside in and be elected by the registered voters of that trustee area. [Ed. C. § 5030(b).]

Board Bylaw 9220 states that “any person is eligible to be a Board member if he/she is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter not legally disqualified from holding civil office, and resides in the designated trustee areas.”

While Board Bylaw 9220 correctly restates the residency requirements applicable to school board members as set forth in Education Code § 35107, the BOE has no power to resolve disputes over residency and cannot remove a trustee who fails to reside in his/her trustee area.

Such disputes are resolved in one of three ways: resignation of the affected trustee¹; recall by the voters who elected the trustee; or initiation of an Attorney General approved and directed quo warranto proceeding to declare the office vacant. In other words, while trustees must comply with Bylaw 9220’s residency requirements to hold office, only the people, not the BOE, can remove a trustee who fails to maintain residency in his/her trustee area.

SUPERINTENDENT’S RESPONSE TO GRAND JURY’S FINDINGS

Finding F-201: Bylaw review not conducted on a regular basis.

I disagree with Finding F-201 in part.

While the Board’s review of bylaws does not occur on a fixed schedule, the Board does adopt new bylaws and regularly revises existing bylaws whenever required by changes in the law.

SUPERINTENDENT’S RESPONSE TO GRAND JURY’S RECOMMENDATIONS

Recommendation R-201: Schedule an annual review for trustees and administration to discuss bylaws and bylaw implementation.

This recommendation will be implemented.

Consistent with the Board’s response to Recommendation R-201, I will assist the Board in establishing a “Bylaw Review Committee” comprised of the Board President, Board Clerk and one additional trustee. The Committee will be in place for the 2013-2014 school year.

¹ On June 6, 2012, the Grand Jury received a complaint alleging that one of FUSD’s trustees no longer resided in the trustee area the trustee had been elected to represent. According to the Report, the complaint was resolved when the trustee in question submitted his resignation from the BOE.

Judge Gary Hoff

May 8, 2013

Page 3

CONCLUSION

In accordance with the foregoing, I will provide the Board with the assistance necessary to implement Recommendation R-201 to the extent and in the manner set forth above.

Very truly yours,



Michael Hanson
Superintendent

cc: Members of the FUSD Board of Education
Mary Beth De Goede, Esq.

Charlotte Tykes, Sr. Administrative Analyst, Fresno County Administrative Office
Hall of Records, Room 304
2281 Tulare Street
Fresno, CA 93721

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April 5, 2013

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APR 08 2013

ADMINISTRATIVE OFFICE

Honorable Gary D. Hoff, Presiding Judge
Fresno County Superior Court
1100 Van Ness Avenue
Fresno, CA 93724-0002

Re: **Fresno Unified School District Board of Education's Response to the Fresno County 2012-2013 Grand Jury Report #2**

Dear Judge Hoff:

Pursuant to California Penal Code sections 933 and 933.05, the Board of Education ("Board" or "BOE") of the Fresno Unified School District ("FUSD" or "District") met in open session at its regular meeting of March 20, 2013 to consider the findings and recommendations contained in the 2012-2013 Fresno County Grand Jury Report #2 ("Report") and took action to authorize that the following response be submitted on the BOE's behalf.

OVERVIEW OF BOARD'S RESPONSE

The Board of Education greatly appreciates the Grand Jury's recognition of the many good things taking place in the District to improve students' academic performance. The Board also wishes to assure the Grand Jury that its existing bylaws are wholly consistent with all laws and regulations applicable to California school boards. In addition, the Board regularly updates its bylaws whenever necessary to ensure continued statutory compliance.

As the governing body of the District, the BOE is legally obligated to adhere to all of the laws identified in its bylaws. However, it is important to emphasize with respect to many of the requirements contained in the bylaws, the jurisdiction to regulate the conduct and activities of duly elected school board members rests with the electorate, as well as various enforcement agencies including the California Attorney General's Office, and not with the BOE.

ENFORCEMENT OF BOARD MEMBER RESIDENCY REQUIREMENTS

The District's method of electing Board members until November 2010 conformed to Education Code § 5030(c), "that each governing board member be elected by the registered voters of the entire school district . . . but reside in the trustee area which he or she represents."

Judge Gary Hoff
April 5, 2013
Page 2

In November 2010, the Board changed its method of electing trustees in order to comply with the California Voting Rights Act by dividing the District into "trustee areas" and requiring that trustees both reside in and be elected by the registered voters of that trustee area. [Ed. C. § 5030(b).]

Board Bylaw 9220 states that "any person is eligible to be a Board member if he/she is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter not legally disqualified from holding civil office, and resides in designated trustee areas."

While Board Bylaw 9220 correctly restates the residency requirements applicable to school board members as set forth in Education Code § 35107, the BOE has no power to resolve disputes over residency and cannot remove a trustee who fails to reside in his/her trustee area.

Such disputes are resolved in one of three ways: resignation of the affected trustee¹; recall by the voters who elected the trustee; or initiation of an Attorney General approved and directed quo warranto proceeding to declare the office vacant. In other words, while trustees must comply with Bylaw 9220's residency requirements to hold office, only the people, not the BOE, can remove a trustee who fails to maintain residency in his/her trustee area.

BOARD OF EDUCATION'S RESPONSE TO GRAND JURY'S FINDINGS

Finding F-201: Bylaw review not conducted on a regular basis.

The Board of Education disagrees with Finding F-201 in part.

While the Board does adopt new bylaws and does revise existing bylaws whenever required by changes in the law, the Board agrees that its review of bylaws does not occur on a fixed schedule.

Finding F-202: There is a reluctance to enforce bylaws.

The Board disagrees with Finding F-202 in whole.

The Report does not describe which bylaws were not enforced or otherwise include any specific facts regarding the BOE's bylaw enforcement. If Finding F-202 is in reference to the residency requirement contained in Bylaw 9220, the Board has no jurisdiction to resolve residency issues or to remove trustees who do not reside in their trustee area.

¹ On June 6, 2012, the Grand Jury received a complaint alleging that one of FUSD's trustees no longer resided in the trustee area the trustee had been elected to represent. According to the Report, the complaint was resolved when the trustee in question submitted his resignation from the BOE.

Judge Gary Hoff
April 5, 2013
Page 3

Finding F-203: Current Board Policy disregards financial accounting regarding trustee absences at Board meetings.

The Board disagrees with Finding F-203 in whole.

The Report does not include any specific information to support this finding. Like many school districts, FUSD has had a long practice of acknowledging the volume and variety of meetings that trustees are required to attend by paying their full monthly compensation, notwithstanding occasional absences from board meetings.

Finding F-204: Misunderstandings have caused discord as to how the trustees and district level administrative governance works.

The Board disagrees with Finding F-204 in part.

The Report contains no information to support this finding and therefore, it is unclear what facts the Grand Jury relied on to make this finding. The Board acknowledges that there has been discord among BOE members, but the Board disagrees on whether that discord was caused deliberately or whether it was the result of misunderstandings.

BOARD OF EDUCATION'S RESPONSE TO GRAND JURY'S RECOMMENDATIONS

Recommendation R-201: Schedule an annual review for trustees and administration to discuss bylaws and bylaw implementation.

The Board will implement this recommendation.

The Board will establish a "Bylaw Review Committee" comprised of the Board President, Board Clerk and one additional trustee. The Committee will be in place for the 2013-2014 school year.

Recommendation R-202: Annually BOE members will sign an agreement affirming their continued compliance with current bylaws.

The Board will not implement this Recommendation as it is not warranted.

This recommendation is not warranted because nothing in the Report evidences the necessity of an agreement to ensure BOE members' continuing compliance with current bylaws. Moreover, as stated above, the BOE has no authority by agreement or otherwise to remove trustees who do not reside in their trustee areas or otherwise fail to adhere to the bylaws.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Judge Gary Hoff
April 5, 2013
Page 4

Recommendation R-203: Expand Bylaw 9220 to clarify the importance of abiding by the intent of residency requirements.

The Board will implement this recommendation.

Consistent with Bylaw 9220, each BOE member shall annually verify in writing his/her continued residence in the trustee area to which the BOE member was elected to represent. Each BOE member shall submit this verification to the Board Secretary who shall confirm that the BOE member's home address is within the boundaries of his/her trustee area. The Board will approve the verification and its use beginning July 1, 2013.

CONCLUSION

Consistent with this response, the Board of Education for the Fresno Unified School District will implement the Grand Jury's recommendations to the extent and in the manner set forth above.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Mary Beth de Goede

MBD:sah

cc: Members of the FUSD Board of Education
Michael E. Hanson, FUSD Superintendent

Charlotte Tykes, Sr. Administrative Analyst, Fresno County Administrative Office
Hall of Records, Room 304
2281 Tulare Street
Fresno, CA 93721

REPORT #3

PLEASANT VALLEY STATE PRISON *Review of Current Status of Valley Fever*



**Fresno County
2012-2013 Grand Jury
Report # 3**

**Pleasant Valley State Prison
Review of Current Status of Valley Fever**

“The grand jury shall inquire into the condition and management of the public prisons within the county.” Section 919, subdivision (b), of the California Penal Code.

INTRODUCTION

The Fresno County Grand Jury conducted its annual review of the Pleasant Valley State Prison (PVSP). The grand jury visited PVSP on September 26, 2012, and the visit lasted about four hours. The visit included administrative areas (including the warden and key administrative staff), the grounds, Facility D cell block/cells, the library (to include a briefing on information services available), in-patient medical facilities, as well as out-patient medical, dental, and pharmacy facilities. Emphasis was placed on interviewing the PVSP clinical and administrative medical and nursing staff. The entire staff of PVSP was welcoming and openly addressed all questions.

BACKGROUND

PVSP, located at 24863 West Jayne Avenue, Coalinga, California, is the only state prison in Fresno County. The institution opened in November 1994, and encompasses 640 acres on arid as well as cultivated land. According to the PVSP and California Department of Corrections and Rehabilitation’s (CDCR) websites, the prison had an operating budget of \$134 million in 2012, and as of December 31, 2012 employed 1,140 custody and support staff. The prison is officially designed to house 2,216 prisoners assuming one prisoner per cell. On December 31, 2012, PVSP had 3,644 inmates. (See **DISCUSSION, Overcrowding**, below for further details)

Fresno County Grand Jury reports back to 2006-2007 have dealt specifically with medical/dental care (especially Coccidioidomycosis, commonly referred to as Valley Fever), overcrowding, and inmate complaints and appeals procedures. Dental care issues (see 2009-2010 GJ Report # 2) have been satisfactorily addressed, as have the inmate complaints/appeals procedure (CDC 602 process). The 602 process is well described in the 2010-2011 Grand Jury Report # 3. However, Valley Fever (VF) continues to be a cause for complaints from inmates.

PURPOSE OF THE INVESTIGATION

1. Report on the findings and recommendations of previous grand juries.
2. Update the status of overcrowding.
3. Review the current status of the prevention and management of VF since it is an ongoing risk at PVSP and other institutions located in areas endemic to VF, the San Joaquin Valley in particular.

DISCUSSION

Overview

Since 2006 the medical care system for all prisons in California has been in receivership. The Secretary of the CDCR has, therefore, no jurisdiction over medical care services, and must maintain compliance with the directives of the Receiver. Similarly, a Special Master and two U.S. District Court judges preside over mental health, dental services, and issues related to the rights of disabled inmates.

Prisoner Complaints and the 602 Appeal Process

The 602 process appears to be fully implemented. This formal process provides an extensive review and response to each of the inmate's specific issues; this is a two stage process with appeal to higher administrative officials if the inmate is not satisfied with lower level grievance responses. The fact that there has been a great diminution of complaints reaching the grand jury after the 602 process was enhanced and refined, speaks to the success of the process. This applies particularly to medical (VF especially) complaints. This particular issue is discussed further below under "Valley Fever." An excellent discussion of the 602 process in detail can be found in the 2010-2011 Grand Jury Report # 3.

Overcrowding

As stated above, the inmate population on December 31, 2012 was 3,644 as compared with a design capacity of 2,616. Most inmates are housed two per cell. In December 2011, PVSP housed 5,188 inmates, some of whom were lower risk prisoners placed in barracks style in recreational (inside) areas. PVSP no longer houses inmates in this fashion; all are in cells. This reduction in the inmate population is at least partly due to the "re-alignment" plan begun in 2011. Of note, from December 2011 to December 2012, staff levels are down 30%, and the PVSP budget has been reduced by 34%. Further reduction of the population to the design capacity is very unlikely.

Valley Fever

This grand jury (GJ) received two very similar complaints from inmates who alleged multiple violations of standards of placement and care for VF. Both contracted VF while at PVSP; many demands were included. The GJ evaluated all documents submitted to include complaint forms, appeals, medical records, and pertinent procedures and statutes. Well-known infectious disease experts and sources were consulted as needed. Both sets of complaints had gone completely through the 602 process.

For perspective, a summary of VF and its impact on PVSP is important. VF is an infectious, non-contagious disease caused by the *Coccidioides* fungus which forms spores that live dormant in the soil of arid areas such as found in the southwest U.S., but particularly in the San Joaquin Valley of California. When ground containing *Coccidioides* spores is disturbed by cultivation, construction, or wind, the resulting dust containing those spores is inhaled into the lungs, and can lead to a respiratory infection in the form of pneumonia. Most individuals can rid themselves of the fungus with their immune systems; some people are more inherently at risk for acquiring the initial respiratory infection. Some of those will have a dissemination of VF to other parts of the body, particularly the skin, bone, joints, and central nervous system. Despite proper care, a small percentage of those with disseminated disease can succumb from VF.

In 2005 there was an epidemic of VF at PVSP, which to a lesser degree, included the surrounding Coalinga area and Fresno County in general. In 2006 the California Department of Public Health, Center for Infectious Disease conducted an exhaustive retrospective epidemiological study (hereinafter referred to as the Study), the results of which were published in January 2007. The Study found that in 2005 there were 166 inmate cases of VF, 18% of whom required hospitalization when normal outpatient therapy failed to resolve the condition. Of the total cases, 2.4% were fatal, either directly due to VF or combined with other concurrent illnesses (referred to as “co-morbidities”). Inmates housed in Facility C had 3 times the incidence of VF than in Facilities A, B, and D. The number of cases of VF reported by PVSP in 2005 was 3 times that of the entire remainder of Fresno County. Adjacent to PVSP in 2005 there was a large state mental health facility under construction resulting in disruption of the ground in this customarily windy region.

VF strikes certain demographic groups disproportionately when compared to the rest of society. Persons with suppressed immune systems as a result of disease (e.g. HIV) or on medications which are immuno-suppressive (e.g. for arthritis or organ transplant patients) are at very high risk of contracting VF that can spread throughout the body; 30-50% of such individuals will have it spread as compared with only 1% of the population at large. Some groups are more predisposed to contracting VF; African-Americans, Hispanics, Asians, and Filipinos, are disproportionately victims of both respiratory and throughout the body. People who are new to a hyper-endemic area for VF (San Joaquin Valley especially), are more susceptible than locals due to a lack of acquired immunity from active and/or occult VF. Most of the inmates who go in and out of PVSP are from the Los Angeles or San Francisco Bay urban areas.

The Study made four specific recommendations to the CDCR. First, educate staff and inmates about the nature and prevention of VF. Second, consider relocating the highest risk groups to areas that are not hyper-endemic to *Coccidioides*, though the Study admits this in all cases was of questionable feasibility. Third, consider increasing ground cover throughout the prison property for dust suppression. Fourth, consider advising inmates to stay indoors on windy or dusty days and to wet ground while digging. Few PVSP inmates do outside work.

The CDRC, based on the Study, issued a MEMORANDUM in November 2007 throughout its system, Subject: “Exclusion of Inmate-Patients Susceptible to Coccidioidomycosis from Highest

Risk Area Institutions.” The MEMORANDUM defined “susceptible inmate-patients” as “all identified HIV infected individuals, inmates with a history of lymphoma [a cancer of the immune system], those status post organ transplant, those on chronic immune-suppressive therapy, those with moderate to severe COPD [emphysema] requiring oxygen therapy, and Inmate patients with cancer or on chemotherapy.” The MEMORANDUM’s plan was to, where possible, transfer at risk inmate-patients with the highest susceptibility, “... and to ensure that no transfer is to another institution within a hyper-endemic area.” Note: There are eight (8) other prisons in such areas in California.

The two complaints (and appeals) examined by the GJ alleged the following:

- misdiagnosis of VF as pneumonia
- treatment errors in VF management
- failing to educate inmates about VF
- intentionally misdiagnosing VF in 2005 thereby not having to report it to health authorities
- maintaining an unsafe environment against airborne contamination
- keeping treated VF patients at PVSP thereby endangering their recovery
- providing incorrect medications
- refusal to transfer inmate out of PVSP for Hepatitis-C treatment
- refusing to transfer high-risk inmates out of PVSP

Among the demands were:

- immediate transfers
- CDCR guarantee life-time treatment for any and all illness
- discipline medical staff members for their negligence
- monetary damages

Both of these inmates contracted and were treated for VF after 2008.

CONCLUSIONS

Each complaint lodged and demand made was addressed specifically with reference to policies, regulations, and penal code provisions by the PVSP 602 process; there is no evidence that either of the two inmates was denied due process. The CDCR responded appropriately to the Study of the Department of Public Health by issuing a plan which incorporated the substance of the Study’s recommendations. PVSP officials reported the 2005 epidemic appropriately; had they not done so, the Study could/would not have been initiated. There is no evidence by examining the medical records that there was any deviation from a community standard of care in the diagnosis, treatment, or patient education of the inmates whether as out-patients or in-patients. Neither of the complainants qualified for transfer by the written guidelines, or had conditions which could not be handled by PVSP or it’s contracted outside local providers.

Notwithstanding those conclusions above, there are many at-risk patients at PVSP who do not fit the strict exclusions in the CDCR MEMORANDUM but suffer from a number of chronic

illnesses. These illnesses, while not immuno-suppressive *per se*, have been shown to confer higher risks of acquiring VF and not responding well to its treatment if those so afflicted are incarcerated in areas that are hyper-endemic for VF. Under optimal or ideal circumstances the list of exclusions would/should be broader those enumerated in the MEMORANDUM.

FINDINGS

- F301 The overcrowding seen in December 2011 has been significantly reduced.
- F302 Complaints in general, and medical complaints in particular, are being handled well by the 602 process.
- F303 At PVSP there has been a dramatic reduction in the incidence of VF since the Study, and this is likely the result of the CDCR implementing the recommendations of that Study and the completion of nearby construction several years ago.
- F304 An individual once successfully treated for VF will probably have residual scarring of the lung even though in remission, but is not at increased risk of relapse if he/she remains in a hyper-endemic area like PVSP.
- F305 PVSP can decrease its VF incidence by the avoidance of placing inmates in Facility C who are in “at risk” demographic groups or with chronic medical conditions as more broadly defined.
- F306 PVSP can decrease its VF incidence by continually monitoring the status of the air circulation system throughout the entire prison and maintaining optimal functionality.
- F307 The quality of general medical care, and of VF care in particular, received by inmates at PVSP is comparable to that available to non-inmates in Fresno County; PVSP continues to recruit medical personnel to maintain or upgrade its internal medical capabilities.
- F308 There is ample evidence, both posted throughout PVSP and in inmate handouts, that VF education is amply provided.
- F309 Statutes include no provision for former inmates to receive guaranteed lifetime medical care except as available to the general public under state or federal programs. Neither is there any provision of monetary compensation apart from the judicial system.
- F310 The only way to truly reduce inmate risk of contracting VF is not to locate any prisons in hyper-endemic areas; however, broadening the high risk definition would help.

RECOMMENDATIONS

- R301 When possible, prevent housing “at risk” as well as high-risk inmates in Facility C by broadening risk standards. (F305, F310)
- R302 Continue to apply the recommendations of the California Department of Public Health Study regarding minimizing inmate exposure to dust. Ensure that all PVSP facilities have

optimal filtration systems, in high wind conditions restrict outdoor exposure, provide masks and encourage their use, and continue to use ground cover for dust suppression. (F305, F306, F308, F310)

R303 Continue to improve medical facilities and maintain needed staff levels. (F303, F307, F310)

REQUEST FOR RESPONSES

Pursuant to Penal Code 933.05, the Fresno County Grand Jury requests responses to each of the specific recommendations. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for all others.

RESPONDENTS

Jeffrey A. Beard, PhD, Secretary California Department of Corrections and Rehabilitation (F303, F307, F310, R303)

P.D. Brazelton, Warden, Pleasant Valley State Prison (F303, F305, F306, F307, F308, F310, R301, R302, R303)

SOURCES AND REFERENCES

Fresno County Grand Jury Reports from 2008-09, 2009-10, 2010-11, and 2011-12.

Study – California Department of Health, Division of Infectious Diseases, dated January 2007
MEMORANDUM, CDCR, dated November 2007

Medical records (inpatient and outpatient) of two complainants

All documents, including CDCR 602 forms, generated and provided by the two complainants

PVSP Inmate Orientation Handbook (especially medical policies)

Interviews with pertinent key administrative personnel, especially medical, at PVSP

Tour of the grounds, confinement areas, medical facilities, and posted VF warnings at PVSP

RESPONSES

- A. P.D. BRAZELTON, Warden,
Pleasant Valley State Prison
F301 through F310
R301 through R303



DIVISION OF ADULT INSTITUTIONS**Pleasant Valley State Prison**

P.O. Box 8500

Coalinga, CA 93210



May 13, 2013

The Honorable Gary D. Hoff
Presiding Judge
Fresno County Superior Court
1100 Van Ness Avenue
Fresno, California 93724-0002

Dear Judge Hoff:

The following information is submitted in response to the Fresno County Grand Jury's 2012-2013 Report #3, regarding Pleasant Valley State Prison (PVSP).

FINDINGS.

F301. The overcrowding seen in December 2011 has been significantly reduced.

The respondent AGREES. The U.S. Supreme Court order assisted to drastically reduce the prison population.

F302. Complaints in general and medical complaints in particular, are being handled well by the 602 process.

The respondent AGREES. CDCR is very adamant in ensuring the departmental appeal forms are readily available to all inmates/parolees and processed in a timely manner.

F303. At PVSP there has been a dramatic reduction in the incidence of VF since the Study, and this is likely the result of the CDCR implementing the recommendations of that Study and the completion of nearby construction several years ago.

The respondent AGREES. CDCR and the California Department of Public Health (CDPH) have been working together for years and more recently engaged the Centers for Disease Control on a coordinated approach to this complex issue. This state and federal partnership aims to improve mitigation efforts, prevention, detection, and treatment of Valley Fever (Coccidiomycosis).

- F304. An individual once successfully treated for VF will probably have residual scarring of the lung even though in remission, but is not at increased risk of relapse if he/she remains in a hyper-endemic area like PVSP.

The respondent AGREES. CDPH has recently worked with CDCR to evaluate the scientific data available and looked at actions CDCR has taken to mitigate the impact of Valley Fever in the prisons.

- F305. PVSP can decrease its VF incidence by the avoidance of placing inmates in Facility C who are in "At risk" demographic groups or with chronic medical conditions as more broadly defined.

The respondent AGREES. High risk groups, including those with chronic disease or compromised immune systems have been excluded from the Valley Fever (VF) endemic area because they are more at risk of complications. Additionally, CDCR has transferred dozens of high risk inmates out of PVSP and has suspended the transfer of certain high risk inmates into PVSP.

- F306. PVSP can decrease its VF incidence by continually monitoring the status of the air circulation system throughout the entire prison and maintaining optimal functionality.

The respondent AGREES. CDCR is installing high energy filters in prison housing units, replacing the rubber sweeps on all doors entering the housing units and the issuance of surgical masks to the inmate population.

- F307. The quality of general medical care and of VF care in particular, received by inmates at PVSP is comparable to that available to non-inmates in Fresno County; PVSP continues to recruit medical personnel to maintain or upgrade its internal medical capabilities.

The respondent AGREES. PVSP medical staff schedule daily appointments for inmates to be transferred to outside medical facilities (i.e. Hospitals, Private Doctor's office etc.).

- F308. There is ample evidence, both posted throughout PVSP and in inmate handouts, that VF education is amply provided.

The respondent AGREES. In addition to the Educational literature provided to the inmate population, PVSP has created an educational video relative to Valley Fever (Both English/Spanish & Written/Verbal Versions) which is being shown on the inmate video channel six times a day, everyday of the week.

- F309. Statutes include no provision for former inmates to receive guaranteed lifetime medical care except as available to the general public under state or federal programs. Neither is there any provision of monetary compensation apart from the judicial system

The respondent AGREES.

- F310. The only way to truly reduce inmate risk of contracting VF is not to locate any prisons in hyper-endemic areas; however, broadening the high risk definition would help.

The respondent AGREES. CDPH recently made a number of recommendations to CDCR which PVSP adopted, including that high risk groups, including those with chronic disease or compromised immune systems be excluded from the Valley Fever endemic areas.

RECOMMENDATIONS

- R301 When possible, prevent housing "at risk" as well as high-risk inmates in Facility C by broadening risk standards. (F305, F310)

CDCR has suspended the transfer of certain high risk inmates into various prisons and transferred certain high risk inmates out of endemic targeted prisons.

- R302 Continue to apply the recommendations of the California Department of Public Health Study regarding minimizing inmate exposure to dust. Ensure that all PVSP facilities have optimal filtration systems, in high wind conditions restrict outdoor exposure, provide masks and encourage their use. And continue to use ground cover for dust suppression. (F305, F306, F308, F310)

CDCR continues to work with California Department of Public Health, Division of Occupational Safety and Health and requesting assistance in assessing statistical data and to recommend area-specific and appropriate solutions and mitigation efforts.

- R303 Continue to improve medical facilities and maintain needed staff levels. (F303, F307, F310)

As PVSP is not a designated hospital, inmates in need of a higher level of care are transported to outside hospitals/private doctors on a daily basis, in order to receive the proper care required.

The Grand Jury was extremely thorough and engaged staff, inmates, as well as conducting physical plant inspections and records reviews to make their assessment.

I would like to take this opportunity to acknowledge and thank the Grand Jury for their time and interest in improving our facility. State prisons are extremely complex operations and I believe a tremendous effort has been put forth to understand the complexities and to assist us in every way possible.

The Honorable Gary D. Hoff
Page 4 of 4

If you have any questions or require additional information, please contact me directly, at (559) 935-4950, or my Administrative Assistant, Lieutenant K. D. Geringer, at (559) 935-4972.

Sincerely,



P. D. BRAZELTON
Warden

cc: Jeffery Beard, Secretary
Martin Hoshino, Undersecretary (A), Operations
Kathleen Dickinson, Director, Division of Adult Institutions (DAI)
T. L. Gonzalez, Associate Director, General Population Male, DAI
Mark Kalchik, Foreman, 2012-2013/Fresno County Grand Jury

REPORT #4

INVESTIGATION OF THE NEW MILLENNIUM
INSTITUTE OF EDUCATION



Fresno County
2012-2013 Grand Jury
Report # 4

Investigation of the New Millennium
Institute of Education

INTRODUCTION

On September 16, 2012 the *Fresno Bee* published a story detailing problems with a charter school within Fresno Unified School District (FUSD), the New Millennium Institute of Education. The article alleged that the school operated in violation of its charter and perhaps was allowed to continue to operate due to the area it served and the presence of a FUSD board member on its payroll. Subsequently two citizens came forth with formal complaints regarding the school.

After a preliminary review of the issues and interviewing people with knowledge of the school's operations, it was concluded that a full-scale investigation by the grand jury was warranted.

BACKGROUND

California Education Code Section 47600 was enacted in 1992 to permit community members to establish schools that operate independently from the school districts in which they are formed. The intent was to allow more creative ways of delivering curriculum, while still holding the schools accountable for meeting established school outcomes. These "charter schools" could focus on targeting the needs of specific student populations. Each charter was granted initially for a period of five years, with the possibility for subsequent five-year renewals based on satisfactory performance.

While charter schools are established under the authority of a local school board, they operate independently of that board's policies. The chartering school board has a limited oversight role that entails making an annual site visit, designating a contact person, reviewing the fiscal condition of the school, and ensuring the school files all reports required of it.

Charter schools, as well as traditional schools, are funded by the State at a per-student rate that is based on average daily attendance (ADA). There are also several other state and federal funding sources which are based on such factors as poverty, lunch programs, non-English speaking students, etc.

New Millennium Institute of Education (NM) was originally chartered in 1998 by Fresno Unified School District (FUSD) under the auspices of Youth Opportunities Unlimited. This organization underwent name and focus changes and is currently called Fresno Career Development Institute, Inc. (FCDI). It continues to be the sponsoring agency of NM. The school's target

population has always been the at-risk students from the West side of Fresno, most of whom had either dropped out or been expelled from traditional schools.

The article in the Fresno Bee and the complainants alleged that NM was being grossly mismanaged, the students were being poorly educated, and there was no financial accountability. Reference was made to the charter renewal process in 2008 when several stipulations were made of NM, but most of those seemed to have been ignored. Further, the article alleged a change in the method of how the students were taught was made, from a “seated” program to one based almost exclusively on independent study, without approval of FUSD.

PURPOSE OF THE INVESTIGATION

After conducting initial interviews and taking a tour of New Millennium facilities the grand jury decided to make an independent recommendation to Fresno Unified School District as to whether the charter for the school should be renewed, as scheduled, at the end of the 2012-13 school year.

DISCUSSION

In May 2008 the charter of New Millennium was renewed with a set of 14 stipulations that were to have been addressed within one year. The most egregious of these issues was the potential need to repay as much as \$2 million to the State Department of Education (CDE) due to failures within the independent study program to properly document the work completed. As of the fall of 2012 there was little documentation that showed the problems had been resolved. The financial issue, however, was negotiated with the CDE whereby the school is repaying \$800,000 over 8 years.

The grand jury decided against getting involved with the issue of a FUSD Board member being in the employ of NM. A FUSD Board member cannot be an employee of a school within FUSD, but charter schools are considered outside the district, hence such employment is acceptable.

The role of the FUSD board concerning oversight of charter schools was questioned during this investigation. Currently the board only reviews the schools when the charters come up for renewal or they become a regular agenda item. FUSD has a one-person office in charge of oversight responsibilities for charter schools. With currently ten schools to oversee, and with an average of two coming up for renewal every year, this person’s ability to monitor programs for compliance is limited. In the case of a school such as New Millennium, where many sanctions are imposed as conditions of renewal, the school may not receive the necessary scrutiny. It may be advisable for the FUSD board to have a procedure in place to ensure the school remedies the noted problems.

If stability is the cornerstone of a school, NM is a classic example of an organization in constant flux. The leader of the board has not changed, but he is an individual with admittedly no background in education. Since the 2008 charter renewal there have been at least 6 people

overseeing academics, with such titles as superintendent, principal, and vice principal. The board of directors has lost three of its seven members, and the ten person teaching staff has no members who were with the school in 2008. There clearly is a lack of stability and continuity.

This is a school that claims to have the students foremost in mind, but the evidence points that the primary interest is retaining the charter and the funding associated with it. There are numerous examples of actions taken to meet a standard or impress those with oversight, only to revert back to business as usual once the appropriate notice has been taken of the action. These actions range from seeking WASC (Western Association of Schools and Colleges) accreditation to purchasing unnecessary and unused computerized teaching aids.

In an independent study program students are given a packet of assignments that may encompass several subjects. They are expected to work on that packet during the week, at the end of which they are required to meet with a teacher for one hour to discuss the work. There is no formal instruction of the material by the teacher. At the end of the session with the teacher forms are signed, which become the basis for the payment of ADA money by the CDE. Such a system is ripe for abuse and was the basis for the conditions under which the school was required to repay \$800,000 in unearned funds from a 2008 audit.

The CDE code allows for schools to deliver curricula on an independent study basis. It recognizes there is a student population for which this is an appropriate mode of instruction. There is a web page devoted to the subject: "Is Independent Study Right for My Student?" It notes that in order to be successful, students electing independent study need to be motivated and highly committed, with sufficient academic preparation. The students at NM do not fit this profile. These students have either been expelled or have dropped out of traditional programs and are usually performing below grade level upon entry into NM. They require more, rather than less, attention to their academic needs.

The bottom line is this school, which is chartered to target its programs towards the academic success of a particular student population, has failed miserably to accomplish this goal. After fifteen years of operation the test scores of its students are among the lowest within the schools of FUSD, including other charter and continuation schools, with fewer than five percent proficient in any of the core subject areas. Table 1, STAR Test Results by School/District by Year details these results. In addition to the raw data, there is no indication that any progress is being made to correct these deficiencies. In contrast, FUSD test results show that each year its students reach a higher level of proficiency in every subject area. This is what one should expect from a school chartered to serve a specific student profile.

On page 21 of their 2008 renewal petition, New Millennium made a commitment "...ALL students will participate in the STAR and CAHSEE testing opportunities to demonstrate their progress toward meeting state standards" (emphasis theirs). They note that in the latest year available at that time, 2006-07, a significantly higher percentage had participated in the testing process than ever before (this percentage was 87.2%). It should be noted that the very next

year the percentage dropped to 64%. It would appear the commitment was to charter renewal, not the evaluation of student progress.

The poor performance of New Millennium's students cannot be attributed to a lack of funds. With annual revenues in excess of \$2.2 million (over \$9,000 per student) the school seems to be doing very well financially. For the fiscal year ending 6/30/12 the school had a surplus of \$166,000, which led to a net asset balance of \$464,000. This is after repaying \$100,000 to CDE for the 2009 settlement and \$112,000 to FCDI for administrative services. Over \$400,000 went to "other expenses", a category that excludes any student services or support. It appears New Millennium had resources it could have used to provide additional help to its struggling students.

The grand jury interviewed more than a dozen people with knowledge of New Millennium's operations. Only those who are currently associated with the school believed the school's charter should be renewed. Several derisive comments were made concerning the school, including one that said the school was considered a joke by the community. The first-day enrollment numbers (Table 1) indicate support for the school by the local community is declining. The students being served by this school clearly need to be accommodated, but equally clearly, New Millennium is not the answer. There are a number of alternative schools available to these students, both within FUSD and other charter schools. These students deserve a better opportunity at getting their high school diplomas.

CONCLUSION

After almost fifteen years of operation, New Millennium has shown no indication that it is capable of providing a competent education to its target student constituency. The common criteria for comparison of schools is the standardized tests administered annually to all schools and New Millennium has performed at a rate far below that which should be expected of a school chartered expressly to serve a targeted set of students. We recommend the charter not be renewed.

FINDINGS

- F401 New Millennium utilizes a mode of instruction that is largely inappropriate for their student population.
- F402 After fifteen years, no more than five percent of New Millennium's students are proficient in subject matter considered essential for a high school graduate. This is far less than a comparable charter school, S.O.U.L. (Table 1)
- F403 The Fresno Unified School District Board needs to be more involved in ensuring the conditions and stipulations specified in the Memorandums of Understanding and Notices to Cure are responded to in a timely manner and appropriate actions are taken.

RECOMMENDATIONS

The 2012-13 Fresno County Grand Jury recommends that the following be implemented:

- R401 The Fresno Unified School District Board not renew the charter for New Millennium Institute of Education when it comes up for renewal as of July 1, 2013. (F401, F402)
- R402 The Fresno Unified School District Board implement a process, such as using a subcommittee, whereby charter MOU's are reviewed on a timely basis. (F403)

REQUEST FOR RESPONDENTS

Pursuant to Penal Code §933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

RESPONDENTS

- President, Fresno Unified School District Board of Trustees with concurrence of other board members (F401, F402, F403, R401, R402)

SOURCES AND REFERENCES

"Troubled Charter Keeps Getting Chances"; Alan Wileman and Sam Cosby; Fresno Bee, Sept. 16, 2012, pg 1.

California State Department of Education Web Site: <http://www.cde.ca.gov>; numerous references including test results and statutes

2010-11 and 2011-12 Audited Financial Statements for New Millennium Institute of Education

Witnesses Interviewed included but were not limited to:

Board members and administrators of New Millennium Institute for Education
Former teachers and administrators at New Millennium
Board members, administrators, and staff of Fresno Unified School District

ATTACHMENTS

Table 1

STAR Test Results by School/District by Year

New Millennium Institute of Education													
Year	Total enroll 1st Day	Total number tested	Pct Tested	English - Language Arts		History		Mathematics		Science CTS		Science End-of-course	
				Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv
2008	570	365	64.0%	359	3.90%	202	1.50%	224	2.70%	136	2.20%	134	0.70%
2009	264	259	98.1%	254	2.40%	166	4.80%	198	3.00%	59	11.90%	134	2.20%
2010	309	255	82.5%	243	5.30%	147	2.70%	137	6.60%	65	3.10%	75	4.00%
2011	235	176	74.9%	165	2.40%	124	1.60%	98	0.00%	56	0.00%	67	3.00%
2012	184	176	95.7%	167	4.20%	93	1.10%	159	0.60%	48	4.20%	84	4.80%
Cambridge Continuation High School													
Year	Total enroll 1st Day	Total number tested	Pct Tested	English - Language Arts		History		Mathematics		Science CTS		Science End-of-course	
				Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv
2009	241	240	99.6%	240	3.80%	208	5.80%	146	1.40%	77	2.60%	78	12.80%
2010	230	225	97.8%	216	4.20%	195	11.30%	126	4.00%	43	0.00%	51	25.50%
2011	234	232	99.1%	228	3.50%	213	12.70%	198	1.50%	49	10.20%	94	21.30%
2012	245	245	100.0%	242	5.00%	227	16.30%	144	0.70%	49	6.10%	87	11.50%
School of Unlimited Learning (S.O.U.L.)													
Year	Total enroll 1st Day	Total number tested	Pct Tested	English - Language Arts		History		Mathematics		Science CTS		Science End-of-course	
				Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv
2009	185	155	83.8%	151	6.00%	94	8.50%	77	3.90%	43	4.70%	46	13.00%
2010	155	154	99.4%	153	6.50%	117	6.80%	71	2.80%	46	8.70%	64	9.40%
2011	146	132	90.4%	120	10.00%	93	4.30%	64	3.10%	44	4.50%	57	10.50%
2012	147	146	99.3%	138	9.40%	87	6.90%	81	4.90%	43	7.00%	63	6.30%
Fresno Unified School District *													
Year	Total enroll 1st Day	Total number tested	Pct Tested	English - Language Arts		History		Mathematics		Science CTS		Science End-of-course	
				Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv	Students w/scores	Pct Proficient or adv
2009	56,212	55,572	98.9%	52,456	35.90%	15,230	28.50%	51,690	37.10%	15,187	35.00%	13,724	20.50%
2010	55,291	54,868	99.2%	51,442	37.80%	14,836	32.10%	50,646	39.50%	14,932	37.70%	13,171	24.40%
2011	54,550	53,964	98.9%	50,284	39.20%	14,336	34.70%	48,783	40.10%	14,354	39.80%	12,679	26.20%
2012	54,201	53,654	99.0%	49,899	42.10%	14,281	35.70%	49,668	42.30%	14,215	42.30%	12,868	25.90%
* It is noteworthy that in every subject area, each year the percentage of students who are proficient has increased.													

RESPONSES

- A. VALERIE DAVIS, President,
Fresno Unified School District
F401 through F403
R401 and R403





RECEIVED

MAY 10 2013

ADMINISTRATIVE OFFICE

BOARD OF EDUCATION

Valerie F. Davis, President
Lindsay Cal Johnson, Clerk
Michelle A. Asadoorian
Luis A. Chavez
Christopher De La Cerda
Carol Mills, J.D.
Janet Ryan

SUPERINTENDENT

Michael E. Hanson

May 8, 2013

Superior Court of California, Fresno County
Hon. Gary Hoff, Presiding Judge
1100 Van Ness Avenue
Fresno, California 93724-0002

Re: Fresno County 2012-2013 Grand Jury Report #4 dated March 7, 2013

Dear Judge Hoff:

Enclosed please find the response of the Fresno Unified School District Board of Education to the Fresno County 2012-2013 Grand Jury Report #4 dated March 7, 2013.

Please feel free to contact me if you have any questions or concerns related to the enclosed.

Respectfully

Valerie Davis, President
Fresno Unified Board of Education

Enclosure

cc: Fresno County Grand Jury
c/o Fresno County Administrative Office
Attention: Charlotte Tilkes
Hall of Records, Room 304
2281 Tulare Street
Fresno, California 93721

Ref.	Findings	Agree	Partially Disagree	Totally Disagree	Reasons
F401 ¹	New Millennium utilizes a mode of instruction that is largely inappropriate for their student population.	Yes (4)			NMIE has not successfully implemented an educational program, independent study or otherwise.
F402 ²	After fifteen years, no more than five percent of New Millennium's students are proficient in subject matters considered essential for a high school graduate. This is far less than a comparable charter school, S.O.U.L. (Table 1)	Yes (4)			NMIE has failed at meeting Adequate Yearly Progress (AYP) criteria, its California High School Exit Exam (CAHSEE) pass rate has not demonstrated a pattern of growth, the percentage of students scoring proficient or advanced in English Language Arts and Math CSTs has not increased, and it has had a significant drop in its graduation rate. SOUL has performed better than NMIE.
F403 ³	The Fresno Unified School District Board needs to be more involved in ensuring the conditions and stipulations specified in the Memorandums of Understanding and Notices to Cure are responded to in a timely manner and appropriate actions are taken.		Yes (1)	Yes (3)	The Board complies with its oversight obligations as set forth by the Education Code. The District's Charter Office reviews and follows up on all conditions and stipulations related to Memorandums of Understanding and Notices to Cure to charter schools on behalf of the Board. The Charter Office timely notifies the Board of any outstanding issues that may require appropriate action. As in the case of NMIE, the Charter Office, as well as the Financial Services Department, routinely followed NMIE's progress in meeting the conditions and stipulations placed upon it and notified the Board of any deficiencies. For the Board to be more involved in ensuring the conditions and stipulations specified in the MOUs and Notices to Cure are responded to in a timely manner and appropriate actions are taken would require the Board to be involved in the operations of the District which the Board has delegated to its staff.

¹ Four members voted yes. Member Chavez abstained from this vote. Member Cal Johnson recused himself from voting on this response. Member De La Cerda was absent.

² Four members voted yes. Member Chavez abstained from this vote. Member Cal Johnson recused himself from voting on this response. Member De La Cerda was absent.

³ Three members voted yes. Member Asadoorian voted Partially Disagree. Member Chavez abstained from this vote. Member Cal Johnson recused himself from voting on this response. Member De La Cerda was absent.

Ref.	Recommendations	Agree	Partially Disagree	Totally Disagree	Reasons
R401 ⁴	The Fresno Unified School District Board not renew the charter for New Millennium Institute of Education when it comes up for renewal as of July 1, 2013. (F401, F402)	Yes (5)			This recommendation has been implemented. On May 8, 2013, the Fresno Unified School District recommended to deny NMIE's charter renewal petition based on the Charter Review Team's Report of Findings and on the grounds that NMIE presents an unsound educational program, NMIE's operators are demonstrably unlikely to successfully implement the educational program set out in its renewal petition, and the renewal petition does not contain reasonably comprehensive descriptions of required elements of the petition.

⁴ Five members voted yes. Member Cal Johnson recused himself from voting on this response. Member De La Cerda was absent.

Ref.	Recommendations	Agree	Partially Disagree	Totally Disagree	Reasons
R402 ⁵	The Fresno Unified School District Board implement a process, such as using a subcommittee, whereby charter MOU's are reviewed on a timely basis. (F403)			Yes (4)	This recommendation should not be implemented because it is not warranted. Pursuant to Education Code section 47604.32, a chartering authority is responsible for specific oversight duties with respect to each charter school under its authority. The District is compliant. Further, the District has a dedicated Charter Office that works with each charter school to ensure the oversight requirements pursuant to the Education Code are being met, including the preparation and review of Memorandums of Understanding with charter schools. In addition to the Charter Office, the District has a Charter School Review Team made up of representatives from the Charter Office, Accountability Department, Fiscal Services, Human Resources, English Learner Services, Facilities Management, Special Education, Research Evaluation & Assessment, and Legal Counsel who jointly ensure the oversight requirements pursuant to the Education Code are being met, including review of Charter Petitions and Memorandums of Understanding. The review and compliance with Memorandums of Understanding with charter schools is delegated by the Board to its staff. Establishing a Board subcommittee to review MOUs for compliance is operational in nature.

⁵ Four members voted yes. Member Chavez abstained from this vote. Member Cal Johnson recused himself from voting on this response. Member De La Cerda was absent.

REPORT #5

DEL REY
COMMUNITY SERVICES DISTRICT



**Fresno County
Grand Jury 2012 – 2013
Report # 5**

Del Rey Community Services District

INTRODUCTION

The grand jury conducted an inquiry into the Del Rey Community Services District (the District) after receiving formal complaint letters from three Del Rey residents. Interviews with the complainants can be summarized in three general areas.

The governance of the District lacks transparency:

- Residency of elected officials unsubstantiated.
- Board meeting tape recordings are edited with deliberate deletions.
- Board meeting minutes are cursory, delayed, and fail to report closed sessions.
- Despite the fact that large numbers of the District's clients are not fluent in English, the posting of agendas and minutes of meetings are not provided in Spanish; similarly, no Spanish translation services are provided at public Board Meetings.

The District is not responsive to Del Rey residents:

- There is no provision for Spanish-English translation at the District Offices.
- District board members and staff are dismissive or slow to respond to inquiries, petitions, and billing matters from clients/taxpayers.

The District lacks accountability:

- The District has been operating at a loss for year after year.
- Accounting paper trails are non-existent.
- There have been unexplained expenditures of the Local Agency Investment Fund (LAIF) account.
- There have been unauthorized withdrawals from District accounts.

Subsequent to the initial interviews the grand jury thought it important to attend a Board Meeting to gain insight into the District dynamics. A four member delegation attended a meeting on September 6, 2012.

Based on the meeting and allegations, particularly those regarding financial accountability, the grand jury decided to move forward with a full investigation of the District.

BACKGROUND

Special Districts

Special districts are set up in accordance with the Community Service District Law (CA Gov. Code §61000 et seq.) to deliver public services, in particular, water, sewage collection and treatment, street lighting, hospitals, and public parks and recreation. Territorial boundaries are set by the county Local Area Formation Commission (LAFCo). All special districts are under the direction of their own locally elected boards of directors who are responsible to their local electorates.

All special districts are required to hire a public accountant to prepare an annual audit and a self-evaluation by management, called a Management Discussion and Analysis (MDA). These two reports must be submitted to the county auditor annually. The accountant also presents the audit to the members of the Board along with a letter analyzing the financial and management status of the district and offering possible corrective action(s).

Del Rey

The District was established in 1963 to provide water, sewer, solid waste, street lighting, storm drainage, and recreation services to residents of the district. These services are provided on an ongoing basis to an area containing approximately 1,600 residences located south of Sanger. The District employs three full-time employees – a plant manager, a general manager, and an office assistant/secretary. The current general manager has been on the job for two years. The Board of Directors (BOD) has five members who serve four year terms; two and three members are elected in a staggered fashion every two years.

DISCUSSION

In order to evaluate the complaints made about the District, the grand jury interviewed the three complainants, the management of the district, Board members, and the District's public accountant. Additionally, the grand jury reviewed the District's auditor's letters to the Board, audit reports, the LAFCo

report, the Board LAIF account for fiscal years 1995-2012, and the minutes/agendas of the District's board meetings for 2008-2012.

Complaints

To substantiate the allegation that improper draws against the LAIF account were made, the grand jury reviewed the LAIF account for historical content from 1995 to 2007 to gain a better understanding of prior fiscal practices. Then fiscal years 2008 through 2012 were used for the current report. The LAIF account balance in December 1995 was \$687,942. At the June 30, 2007 audit, the account balance was \$284,844. As of July 13, 2012, the LAIF account balance was \$94,967. The current grand jury also reviewed the Grand Jury Final Report 2007-2008 regarding the same complaint of improper expenditures from the LAIF account (identified then as the 1995 Shell Oil Company settlement). The LAIF settlement account was restricted for potential future well cleanup and not to be used for ongoing operating expenses. The findings of the current grand jury are in total agreement with those of the previous grand jury. Records needed to identify how the funds were spent are non-existent, the audit reports indicate these funds were commingled, and the District's auditor has repeatedly and consistently warned the Board against using the LAIF funds to finance operating costs. The auditor's June 30, 2011, Board Letter, as in previous Board Letters, states the deficiencies are serious enough to recommend the Board seek the advice of legal counsel.

The allegation that the District has continued to operate at a loss is fully substantiated by this grand jury's inquiry. The District's records show that the District has been operated at a loss for 17 of the last 18 years. The annual losses have ranged from a low of \$29,448 to a high of \$391,000. In the Board Letter dated September 30, 2011, the auditor reported an operating loss of \$29,448 and noted, "Although this is an improvement from previous years, losses of this magnitude are unsustainable".

The District has violated the law by not maintaining levels of net income as required by the Sewer Bond Covenant. District documents show, "Under the provision of 1996-1 Sewer Revenue Bond Ordinance, the Board of Directors agrees to set aside sewer revenue equal to 1.2 times the combined aggregate amount of principal and interest requirement that shall become due and payable within the next succeeding twelve months". The 2006 through 2008 increase in the sewer service fee schedule was not sufficient to offset the operating expenses and the reserves required to comply with the Sewer Bond Covenant. The District was not in compliance for the years 2008 up to 2011. The District's auditor has warned the Board on multiple occasions that it is in violation of the covenant by not maintaining the required reserves. In the Board Letter dated September 30, 2011, the auditor states the District was not in compliance and "It

becomes imperative that the board addresses the matter and undertakes immediate corrective action”.

Reviews of past Board Minutes have shown an absence of documenting resolutions authorizing fiscal actions. Such actions would include account withdrawals, debt forgiveness, and write-offs of amounts owed to the District. Similarly, records of cash handling are absent over scattered periods of time.

The Board Members have not conducted themselves in a professional manner in accordance with CA Gov. Codes and LAFCo By-laws.

- A Board member simultaneously served in the capacity of Board President as well as the District Manager.
- Non-residents of the District have been allowed to become Board members.
- Board vacancies, which frequently occur from mid-term resignations, are not filled promptly and according to established bylaws, policies, and procedures. This results in many meetings being conducted with fewer than a full Board, and at any point in time, as many as 3 of 5 board members are appointees. On occasions, nepotism seems to prevail in appointing Board members.
- Board meetings are loosely conducted, and disruptive behavior sometimes occurs with little constraint. On at least one occasion a police report was made because of threats of violence due to a Board member became argumentative and combative with a community member during a Board Meeting.

Oversight

In 2001, the California Legislature passed a law that requires LAFCo to study all special districts at least every five years. The Cortese-Knox-Hertzberg Local Government Reorganization Act requires all county LAFCos to conduct Municipal Service Reviews (MSR) prior to updating Spheres of Influence Reviews (SOI). The stated purpose of the MSR is “a comprehensive assessment of the ability of government agencies to effectively and efficiently provide services to residences and users.” The SOI update is designed to determine whether present boundaries serve the public most efficiently. These required reviews were completed in Fresno County in July of 2007. Copies of the MSR and SOI were furnished to the grand jury by LAFCo. A current review by LAFCo was pending at the time of this grand jury investigation.

This grand jury reviewed the MSR describing the District and found while it meets the minimum requirements of the Cortese-Knox-Hertzberg Act, it did not address

the financial condition and management of the District. In preparing his report, the independent contractor hired by LAFCo interviewed only two people. The report ignores, or briefly mentions without comment, several serious concerns, such as the District auditor's warnings about the improper expenditure of restricted funds, the violation of the Sewer Revenue Bond Covenant requirements, and the District's failure to produce an operating budget.

Training

Many small Fresno County special districts, such as this one, suffer from a lack of adequate training of board members and staff. The California Special District Association provides pertinent training to special districts, but the District has never availed itself of that opportunity.

CONCLUSION

The grand jury found grounds to support allegations based on the following CA Gov. Code §61040: (a) A legislative body of five members known as the board of directors shall govern each district; (b) No person shall be a candidate for the board of directors unless he or she is a voter of the district. (c) A member of the board of directors shall not be the general manager, the district treasurer, or any other compensated employee of the district; (d) LAFCo by-laws stipulate district board meetings to be conducted, as specified, in the Brown Act rules of procedures and decorum; (e) LAFCo code #605 provides direction for the replacement of board members and district employees.

It is difficult to verify Del Rey residents' claims that non-residents of the District have served on the Board. The distant location of one member's employment and the home ownership of another gave credence to this complaint. Credence is given to the combative board member since a police report documents witnesses to the event.

In regard to the lack of Spanish translation of public notices and the conduct of public meetings, it has been the District's position that to do so would require a "certified translator" at an unaffordable cost. Such services are, in fact, quite expensive. At the meeting attended by the grand jury, there appeared to be a significant number of bilingual people among the board members and staff to make the deliberations understood in substance despite any lack of certification.

Oversight

Complete oversight of a problem district could well prompt LAFCo to recommend that such a district be merged with an adjoining district. By such a merger, the resulting larger district might achieve economies of scale allowing the new district

to hire more competent management and technical services. In addition, there could be savings in required legal and accounting services spread over a larger income base. Such consolidation would broaden the population base, providing a larger reservoir of eligible residents suitable and knowledgeable to serve as directors and staff.

This investigation represents the second occasion in five years that the District has been subjected to close scrutiny. Both investigations have revealed serious governance deficiencies that demand urgent attention by LAFCo and Fresno County.

FINDINGS

F501 The District's auditor has repeatedly informed the Board of Directors of deficiencies, and they have failed to adequately address them.

F502 In a letter to the BOD dated September 30, 2011, the District's auditor reported an operating loss of \$29,448 noting, "Losses of this magnitude are unsustainable."

F503 The District has operated at a loss for 17 of the past 18 years.

F504 The District is in serious financial trouble due to poor management by the Board of Directors.

F505 The District has failed to maintain reserves required by the Sewer Revenue Bond Covenant.

F506 Not all members of the BOD have conducted themselves properly or performed their duties in accordance with the codes that govern special districts.

F507 The District has inappropriately commingled general funds with those reserved for specific restricted purposes.

F508 Members of the Board have failed to take advantage of training available from the California Special District Association.

F509 Written and sufficiently comprehensive bylaws, policies, and procedures to properly guide the District in all phases of its operations are missing.

F510 The LAFCo MSR pertaining to the District is inadequate in that it does not show the real financial condition of the District when compared to the reports of the District's own auditor.

F511 There is a failure of the District to address the needs of its non-English speaking clients from whom a significant part of its revenue is derived.

F512 The grand jury investigation of the District demonstrates longstanding, deep, and fundamental deficiencies in the management of district operations which have been repeatedly raised over many years without remedy. This is documented by prior grand jury and auditors reports.

RECOMMENDATIONS

R501 The Del Rey Community Services District ceases operating at a loss. (F501-504)

R502 The Del Rey Community Services District maintain reserves required by the Sewer Revenue Bond Covenant (F505)

R503 The Del Rey Community Services District prepares and submits timely budgets and financial reports. (F501, F502, F503, F504)

R504 The Del Rey Community Services District ceases commingling funds and properly segregates their funds. (F507)

R505 The Del Rey Community Services District undertakes ongoing training available for staff and board members from the California Special District Association. (F506)

R506 The Del Rey Community Services District develops plans and programs to resolve the problems outlined by its own auditor in his numerous Board Letters. (F501, F502, F503, F504, F505)

R507 LAFCo require that all MSRs of special districts accurately reflect the financial status and management of the public's funds. (F509)

R508 LAFCo take a more aggressive stance in recommending the merger of this District with another to achieve economies of scale. (F510)

REQUEST FOR RESPONSES

Pursuant to Penal Code §933.05, the Fresno County Grand Jury requests responses to the specified recommendations and findings. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

RESPONDENTS

Executive Director, LAFCo: F509, F510, R507, R508

President of the Del Rey Community Service District Board of Directors with the concurrence of the other Board members: F501, F502, F503, F504, F505, F506, F507, F508, F509, F511, F512, R501, R502, R503, R504, R505, R506.

cc: Fresno County Auditor-Controller/Treasurer-Tax Collector
Fresno County Board of Supervisors

SOURCES AND REFERENCES

1. Complaint letters (3)
2. Interviews with complainants, members of the District Board of Directors and General Manager, District auditor.
3. District auditor's "Board Letter", September 30, 2011.
4. District statements from 2006-2012.
5. LAIF Account statements from 1995-2012.
6. CA Gov. Codes §61040-61048; 61000 et seq.
7. 2007-2008 Grand Jury Final Report # 9
8. Attendance by grand jury committee members at district board meeting.

RESPONSES

- A. ROBERT SILVA, Chairman,
Fresno Local Agency Formation Commision
F501 through F511
R501 through R508
- B. MARIA REYNA, President,
Board of Directors
Del Rey Community Services District
F501 through F512





Fresno Local Agency Formation Commission

July 17, 2013

The Honorable Gary Hoff
Presiding Judge
Fresno County Superior Court
1100 Van Ness Avenue
Fresno, California 93724-0002

Re: LAFCo's Response Fresno County Grand Jury 2012-2013
Report No. 5 – Del Rey Community Services District

Dear Judge Hoff:

The Fresno Local Agency Formation Commission ("LAFCo") is in receipt of the Fresno County Grand Jury's Final Report 2012-2013 No. 5 (the "Grand Jury Report") concerning the Del Rey Community Services District ("Del Rey CSD"). This letter constitutes LAFCo's response to the Grand Jury Report pursuant to Penal Code section 933.

LAFCo has reviewed in detail the Grand Jury Report and appreciates the Grand Jury's interest in investigating and recommending improvements to special district operations. This has been an issue of deep concern to LAFCo for some time. The Grand Jury Report appears to be the latest review into the activities of the Del Rey CSD and we view it as a follow up to the Grand Jury's 2007-2008 Report No. 9, which highlighted similar concerns and made identical recommendations. LAFCo does wonder why at least one of the findings and both recommendations are identical to a report that the Grand Jury released during years 2007-2008. As explained below, it appears to us that the Grand Jury did not review LAFCo's revised Municipal Service Review ("MSR") for the Del Rey CSD, which goes into great detail about the very items discussed in the Grand Jury Report.

Although LAFCo has been asked to respond to two findings and two recommendations contained in the Grand Jury Report, the following is background that we believe is important when evaluating the latest report.

2007-2008 Grand Jury Report and Aftermath

On July 11, 2007, LAFCo adopted the MSR for the Del Rey CSD. Shortly thereafter, in July 2008, the Grand Jury issued its first report alleging, among other things, that the MSR, while legally sufficient, was inadequate and failed to show the real financial condition of the CSD when compared to reports that were conducted by Del Rey's own auditor and analyzed by the Grand Jury. The report also urged LAFCo to

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(i) require that all MSR's of special districts accurately reflect the financial status and management of public funds; (ii) evaluate evidence for the merger of special districts where appropriate; and (iii) to take a more aggressive stance in recommending merger of small special districts to achieve economies of scale.

LAFCo responded to the Grand Jury by agreeing with many aspects of the report and promising to make several changes to the MSR process generally and to the Del Rey CSD MSR specifically. In fact, on August 12, 2009, LAFCo adopted an updated MSR, which went into substantial detail about the Del Rey CSD's operations and discussed opportunities for its merger or dissolution. After the updated MSR was adopted, LAFCo's then Executive Officer, Rick Ballantyne, forwarded the revised report to the Grand Jury, and made it available on the LAFCo website.

As a partial result of the 2007-2008 Grand Jury Report, LAFCo has made additional efforts to review the financial status of special districts and analyze whether or not special districts should be merged with other governmental entities.

2012-2013 Grand Jury Report

As mentioned, LAFCo has reviewed the most recent Grand Jury Report. From the outset, it appears to us that the Grand Jury Report does not consider the revised Del Rey CSD MSR. The Grand Jury Report notes that the Grand Jury reviewed "copies of the MSR and SOI . . . furnished to the Grand Jury by LAFCo." We are unclear which MSR and SOI the Grand Jury reviewed. LAFCo expended substantial time and resources completely revising the MSR and, if the Grand Jury has not reviewed the revised report, we believe that the latest Grand Jury Report observations with respect to the MSR would be inaccurate. As a result, we are attaching the 2009 revised MSR with this reply and specifically call to your attention Sections IV (Financing and Rate Restructuring) and VII (Government Structure and Management Efficiencies).

LAFCo is in the process of preparing a new MSR for the Del Rey CSD and anticipates bringing this document to the LAFCo Commissioners before the end of 2013. We believe that, at least with respect to the MSR, this latest Grand Jury Report might be premature because we see no evidence that it ever evaluated the revised MSR and it certainly has not reviewed the 2013 MSR because that document is being prepared and has not been publicly released.

Moreover, there are two references to the LAFCo "by-laws" and "code" that are unknown to us. The "Conclusions" section states that "(d) LAFCo by-laws stipulate district board meetings to be conducted, as specified, in the Brown Act rules of

procedure and decorum; (e) LAFCo Code #605 provides direction for the replacement of board members and district employees." LAFCo has not adopted bylaws but rather has various adopted Policies and Procedures. The Policies and Procedures, however, do not address how *other* agency board meetings are to be conducted. They are limited to how the *LAFCo* meetings are to be conducted. Similarly, there is neither a LAFCo Policy #605 nor a LAFCo adopted policy on how special district board members or employees are replaced. LAFCo would not have authority to enforce such policies. Rather, various provisions in the Government Code address such matters for other special districts.

MSRs & LAFCo Authority

Government Code Section 56430 requires LAFCO to review municipal services provided in geographic areas appropriate to the service or services to be reviewed, and prepare a written statement of determinations with respect to each of the following:

1. Growth and population projections for the affected area;
2. The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence;
3. Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence;
4. Financial ability of agencies to provide services;
5. Status of, and opportunities for, shared facilities;
6. Accountability for community service needs, including governmental structure and operational efficiencies; and
7. Any other matter related to effective or efficient service delivery, as required by commission policy.

In conducting an MSR, the Commission reviews agencies that provide the identified service or services within the designated geographic area. LAFCO may assess various alternatives for improving efficiency and affordability of infrastructure and service delivery within and contiguous to spheres of influence, including, but not limited to, the consolidation of governmental agencies.

MSRs do not require LAFCO to initiate changes based on service review findings, only to make determinations regarding the provision of public services. LAFCO may use these determinations to help establish or amend spheres of influence or to analyze prospective changes of organization or reorganization. A MSR may lead to a change of organization or reorganization.

It is important to note that LAFCo is limited in its ability to unilaterally effect such changes of organizations or reorganizations. Generally, where an action is initiated by LAFCo, if sufficient protest is received, an election is required for a proposed change of organization to take place. Therefore, while LAFCo may initiate such an action, final approval may require an election. Where a merger of a special district is proposed, consent by an affected city is required.

LAFCo Responses

The following are LAFCo's responses with respect to the specific findings and recommendations contained in the Grand Jury Report:

F501-F508, F511 and R501-R506: LAFCo has no formal response to these findings and recommendations because they are directed to the Del Rey CSD, and otherwise involve the internal administration of the Del Rey CSD. Other than the preparation of the MSR, LAFCo has not independently evaluated the validity of the findings and the appropriateness of the recommendations. As mentioned, LAFCo is in the process of preparing its latest MSR of the Del Rey CSD and will be reviewing the factors addressed above.

F509: *Written and sufficiently comprehensive bylaws, policies, and procedures to properly guide the District in all phases of its operations are missing.*

LAFCo's Response: The Fresno County CAO's office requested that LAFCo respond to this particular finding. Quite frankly, we are uncertain as to why because other than the MSR determination No. 6, "accountability for community service needs, including governmental structure and operational efficiencies," we believe that this finding is directed to the Del Rey CSD. As mentioned, the 2009 MSR went into great detail about the District's organizational deficiencies and LAFCo intends to prepare an additional MSR, which cover the items described in No. 6 above. Moreover, the reference to LAFCo "by-laws" and Code #605, which refers to such policies, is incorrect.

F510: *The LAFCo MSR pertaining to Del Rey is inadequate in that it does not show the real financial condition of the District when compared to the reports of the District's own auditor.*

LAFCo's Response: This finding is identical to finding F510 in the 2007-2008 Grand Jury Report. The revised MSR from 2009 goes into great detail about the Del Rey CSD's financial condition. We encourage the Grand Jury to review this report. Additionally, Fresno LAFCo is preparing a new MSR for the Del Rey CSD, which will further address this matter.

R507: *LAFCo require that all MSRs of special districts accurately reflect the financial status and management of the public's funds.*

LAFCo's Response: Again, this finding is identical to recommendation R909 in the 2007-2008 Grand Jury Report. LAFCo has been implementing this recommendation over the past several years. As we pointed out in 2008, given the large number of cities and special districts in Fresno County, LAFCo has been preparing MSRs in a staggered format over the past several years. This has given LAFCo the time to conduct a more thorough analysis as necessary for each governmental agency. Additionally, LAFCo has contacted the Fresno County Auditor, as well as reviewed each local agency's audits, to determine the accurate financial status and management of the city or special district being reviewed. Moreover, LAFCo has been in contact with other interested stakeholders in the local agency's affairs, including board members and service recipients to verify the information provided by the agency's staff.

R508: *LAFCo take a more aggressive stance in recommending merger of small special districts to achieve economies of scale.*

LAFCo's Response: This finding is also identical to recommendation R908 in the 2007-2008 Grand Jury Report. LAFCo has considered recommendations to merge, dissolve, or modify the boundaries of several districts. As explained above, the law does not give LAFCo the unilateral authority to take such actions. Residents have due process rights to "protest" certain LAFCo decisions and cities, as an example, must consent to take responsibility from underperforming special districts. With respect to the Del Rey CSD, LAFCo has amended the MSR, thoroughly analyzed merger opportunities, and concluded that "the existing structure of the Del Rey CSD as an independent Community Services District may be the most feasible and appropriate governmental structure for continued provision of necessary services."

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LAFCo hopes that the Grand Jury will find the response helpful. Our agency is committed to ensuring that our reviews of cities and special districts are comprehensive and useful. If you have any questions, please do not hesitate to contact LAFCo Executive Officer David Fey at (559) 600-0604.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Silva". The signature is fluid and cursive, with a large initial "R" and "S".

Robert Silva, Chairman
Fresno Local Agency Formation Commission

Cc: LAFCo Commissioners
Del Rey Community Service District

**RESPONSE TO 2012-2013
GRAND JURY REPORT #5
DEL REY COMMUNITY SERVICES DISTRICT**

The Del Rey Community Services District Board of Directors respectfully submits the following response to the 2012-2013 Grand Jury Final Report Number 5:

1. The Board of Directors (BOD) thanks the Grand Jury for its efforts in investigating the complaints. The Board wants to assure the Grand Jury that the BOD takes the complaints seriously and has carefully considered the finding and recommendations of the Grand Jury. However, it is necessary for the BOD to correct the many inaccuracies contained in Report Number 5.
2. Addressing F 501. The BOD is not sure what deficiencies the Grand Jury is addressing, however, the BOD for the last two and one half years has taken substantial steps to address the issue of being out of compliance with the terms of its sewer bond. Over a two plus year period with good financial management the District has established the required reserves prior to the Grand Jury's Report. The District is in full compliance with the conditions of the terms of the sewer bond.
3. Addressing F502. The BOD District through sound financial management has over the last three years has improved its finances. The District is currently operating with a positive cash flow and is continuing to build positive cash reserves.
4. Addressing F503. While it is true that some of the past BOD spent beyond the income produced by the District operations the current BOD and the past two BOD and District Manager has gradually eliminated the operating loss and the District in 2012 and currently year is in much improved financial condition and operating in the black.
5. Addressing F504. As stated in paragraph number 4 the District is in a positive financial condition and was so even before the Grand Jury's visit to the District.
6. Addressing F505. As stated in paragraph number 1 the District is in full compliance with its obligations of the sewer bond.
7. Addressing F506. It is unclear what misconduct this finding is concerning. As far as a past board member not living within the District boundaries the issue was investigated and the Board Member was found to have been legally residing within the District at the time of his service as a Board Member. If the Grand Jury is addressing other issues in this finding the BOD cannot respond without more information.
8. Addressing F507. This finding is assumed to be referring to the expenditures from the LAIF account proceeds for the Shell Oil Settlement that the District Auditor believed to be restricted in their use. The District Counsel has examined the Settlement Agreement in the Shell Oil Suit and has found no restriction on the use of that money. The contaminated wells were replaced and with other funds. District Counsel has advised the former District Auditor year after year that the funds were not restricted. The BOD acknowledges that some of the past BOD spent the funds from the LAIF account to supplement short falls in the budget which instead of spending within the means of the District and or rising fees. That has not taken place within the past two years.

9. Addressing F508. The BOD acknowledges that the Board Members could have taken more advantage of training offered by the California Special District and will endeavor to avail themselves to the training in the future.
10. Addressing F509. The BOD acknowledges that the District Bylaws need to be reviewed and revised. The District has recently adopted a revised Personnel Manual and acknowledges that other Policies and Procedures need to be review and revised.
11. Addressing F511. The District acknowledges that in the past the needs of the non-English speaking clients' needs have not been fully met. The BOD has taken steps to better address this issue within the framework of the budget and is making this a priority.
12. Addressing F512. The BOD acknowledges that in the past practices of some of the former BOD and prior District Management allowed the District to fall into severe financial problems due to poor management. Over the last three plus years the current BOD and the Prior two BOD and current District Manager have made major changes and through sound financial management and good hiring practices have brought the District to a much improved financial position and are committed to continuing that to make necessary changes to further improve the District.

Respectfully submitted by the Board of Directors of the Del Rey Community Services District on September 12, 2013.

A handwritten signature in blue ink that reads "Maria Reyna". The signature is written in a cursive style with a large, looped initial "M".

Maria Reyna
President of the Board of Directors

REPORT #6

LITTER CONTROL ON FRESNO COUNTY HIGHWAYS



Fresno County
2012-2013 Grand Jury
Report # 6

Litter Control on Fresno County Highways

INTRODUCTION

The Fresno County Grand Jury investigated the amount of litter on highways in Fresno County. The members interviewed state, county, and city officials under Penal Code Section 925a for the city and county officials.

DISCUSSION

Interviews revealed that when funding is made available to build highways, there is no money budgeted for maintenance. CalTrans has a limited yearly maintenance budget which is being impacted by the current financial situation.

Four areas that surfaced as needed to remedy the litter problem are: picking up litter, education in schools and communities, media outreach, and law enforcement of trash blowing off trucks.

All of the officials interviewed were aware of the problem and most were trying to implement short term solutions. They realize that well maintained roadways make a difference in how people perceive Fresno County as a desirable place to live and establish a business.

CONCLUSION

The unsightly litter problem along roadways in Fresno County is intensifying. A long term plan of shared budgeting and responsibility is needed.

FINDINGS

F-601 When money is allocated to construct highways, funds are not budgeted for maintenance.

F-602 Additional emphasis on enforcement of laws regarding illegal dumping, improper load coverage, and litter flying or thrown from vehicles is needed.

F-603 Education regarding importance of litter control is needed in our schools and communities.

RECOMMENDATIONS

R-601 The Fresno County Council of Governments (CFCOG) allocate a portion of the Measure C funds to address the litter problem in Fresno County. (F-601)

R-602 As noted in the discussion section of this report, an organizational structure be developed and responsibility assigned for controlling litter on a long term basis. (F-602, F-603)

R-603 CFCOG should align with Keep America Beautiful. (F603)

REQUEST FOR RESPONDENTS

Pursuant to Penal Code 933.05, the Fresno County Grand Jury requests responses to the specified recommendations and findings. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

RESPONDENTS

Amarpreet Dhaliwal, Chairman of the Fresno County Council of Governments (CFCOG) with the concurrence of board members. (F-601, F-602, F-603, R-601, R-602, R-603)

Tony Boren, Executive Director of CFCOG (F-601, F-602, F-603, R-601, R-602, R-603)

RESPONSES

A. TONY BOREN, Executive Director,
Fresno Council of Governments
R601 through R603



August 8, 2013

Superior Court of California, Fresno County
Hon. Gary Hoff, Presiding Judge
1100 Van Ness Avenue
Fresno, CA 93724-0002

Fresno Council of Governments Response to Fresno County Grand Jury Report #6—Litter Control on Fresno County Highways

Recommendation R-601—The Fresno Council of Governments allocate a portion of the Measure C funds to address the litter problem in Fresno County

Fresno Council of Governments Response--Over the course of the last year, Fresno COG has been working closely with Caltrans District 06 to get a better handle on the litter issues facing the freeways and highways in our region. As a part of these efforts, Caltrans has informed us that in addition to the regular Caltrans maintenance staff that are responsible for freeway cleanup, they are currently in the process of contracting with the City of Fresno for up to two 8 man crews from the Fresno County Probation Department to assist with the freeway litter clean-up. In addition, Caltrans has just obtained permission from the California Department of Corrections and Rehabilitation to use two parolee crews of 6 to 8 persons to pick up litter beginning the week of July 8, 2013.

In its presentation to the Fresno COG Policy Board on July 29th, Caltrans staff informed the Fresno COG Policy Board that with the recent addition of the two parolee crews to address the litter problem, it was their belief that there are now adequate labor resources to handle the litter challenges on Fresno County's freeways and highways. Over the course of the next year, Fresno COG staff will work closely with Caltrans District 06 staff to monitor the progress of litter cleanup on our freeways/highways. In the event that it is deemed that we are "slipping behind" with regards to our litter cleanup efforts, Fresno COG staff will bring forward the idea of amending Measure "C" to the Fresno COG Policy Board in order to provide additional resources for litter cleanup.

Recommendation R-602—A organizational structure be developed and responsibility assigned for controlling litter on a long term basis.

Fresno Council of Governments Response—The California Department of Transportation (Caltrans) as the owner-operator of the state highway system is technically responsible for litter clean up on our state highway system, however, Fresno COG through its Measure C program has provided significant regional funding to construct the freeways, and with this in mind considers itself a partner with Caltrans when it comes to the issue of litter on our freeways. In response to R-602, at its meeting on July 29th 2013, the Fresno COG Policy Board provided direction to staff to form a regional subcommittee that will serve as an oversight body focusing on the issue of litter on our Fresno County freeways and highways. Initially this committee will be called the *Fresno County Highway Beautification Committee*, however once the application and alignment processes are completed with the *Keep America Beautiful* organization the name of the committee will change to "*Keep Fresno Beautiful*."

City of Clovis
City of Coalinga
City of Firebaugh
City of Fowler
City of Fresno
City of Hurst
City of Kerman
City of Kingsburg
City of Mendota
City of Orange Cove
City of Parlier
City of Reedley
City of San Joaquin
City of Sanger
City of Selma
County of Fresno

Recommendation R-603—Fresno Council of Governments should align with the *Keep America Beautiful* organization

Fresno Council of Governments Response

At its meeting on July 29, 2013, the Fresno Council of Governments Policy Board gave direction for Fresno COG staff to pursue membership with the *Keep America Beautiful* organization. Fresno COG staff is currently working with the *Keep America Beautiful* organization to establish membership.

If you should have further questions regarding our response to Grand Jury Report #6-Litter Control on Fresno County Highways, please feel free to call me at 559 233-4148 Ext. 204.

Sincerely,



Tony Boren, Executive Director
Fresno Council of Governments