

**THE  
FRESNO COUNTY**



**RAND  
JURY**

**2009-2010 FINAL REPORT**

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FRESNO COUNTY**



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JURY**

**2009-2010 FINAL REPORT**

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**PRESIDING JUDGE OF THE FRESNO COUNTY SUPERIOR COURT**

**HON. M. BRUCE SMITH**  
Presiding Judge for 2009-2010



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**“YOU CANNOT ESCAPE THE RESPONSIBILITY  
OF TOMORROW BY EVADING IT TODAY.”**

*Abraham Lincoln*



**ROBERT L. DUERKSEN, M.D.**  
September 16, 1930-December 1, 2010

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*This Final Report of the Fresno County Grand Jury, 2009-2010  
is lovingly dedicated to the memory of Dr. Bob.*

*It was our pleasure to have served with him on the  
Fresno County Grand Jury during 2009-2010.  
His wisdom, insight and perspective were invaluable to us  
and he will be missed.*

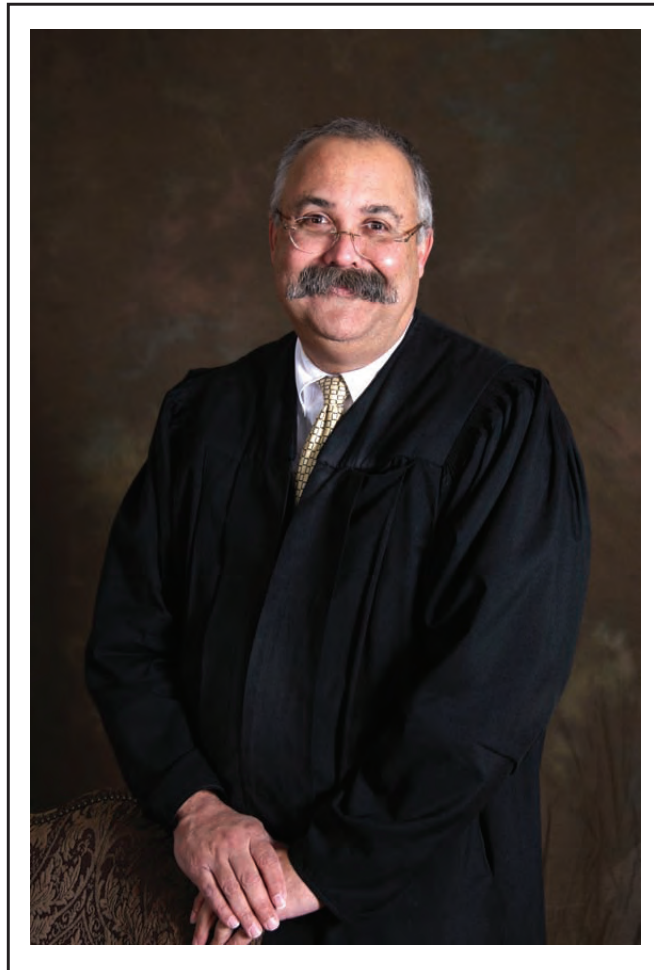
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**GRAND JURY PRESIDING JUDGE**  
**2010**

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**HON. M. BRUCE SMITH**





## Superior Court of California County of Fresno

CHAMBERS OF  
M. BRUCE SMITH  
Presiding Judge 2009 - 2010

1100 VAN NESS AVENUE  
FRESNO, CALIFORNIA 93724-0002  
(559) 457-2033  
FAX (559) 457-2035

**At the beginning of the term of the 2009-2010 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 the fine tradition of their predecessors, and their enthusiastic and dedicated work is sincerely appreciated. The leadership and dedication of the foreperson, Vonda Epperson, must be noted, acknowledged and praised. Several new and innovative procedures were adopted this year, which will enhance the operations of future grand juries in this county. The foreperson, along with all members, performed this service with minimal monetary compensation, for travel and a small per diem allowance.**

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

Hon. M. Bruce Smith  
Presiding Judge 2009 - 2010



# County of Fresno

## GRAND JURY

June 30, 2010

To the residents of Fresno County:

Each July, nineteen civic-minded citizens are sworn in to serve as Fresno County Grand Jurors for the next fiscal year. I have had the privilege to serve with eighteen of Fresno County's best over the past year.

Our oaths were given to us in June 2009 by Fresno County's Presiding Judge, the Honorable M. Bruce Smith and we immediately began work on July 1, 2009.

We began the year by attending training presented by the California Grand Jurors' Association. Our training lasted for two days and was held in Visalia.

We had a busy and production year. Our grand jury worked between sixty and eighty hours per month and produced twelve reports for the year.

We also participated in eleven tours of the following facilities:

- United States District Courthouse
- Pleasant Valley State Prison
- Claremont Custody Center
- Fresno County Jail
- Juvenile Justice Center
- Dickey Youth Center
- Craycroft Youth Center
- Fresno City Public Works Center
- EMS Dispatch Center
- The Presort Center
- Hamilton Elections Facility

At all of these facilities we were welcomed and presented with an informative tour.

Our grand jury had six working committees. Those committees were: Criminal Justice, chair, Gary Gladding; City/County, chair, Lew Pond; Health/Human Services chair,



Dave Martin; Schools/Library, chair, Deborah Brannon; Special Districts, chair, Rod Coburn; and Editing, chair, Vonda Epperson. All of our members were actively involved on our committees, sometimes serving on multiple committees at once.

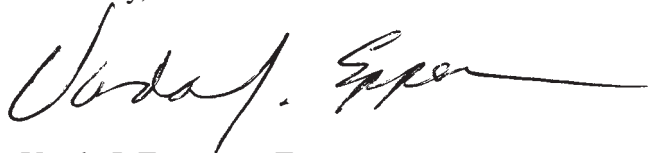
The 2009-2010 grand jury was privileged to receive an extensive education on city and county government from approximately thirty officials and from our tours of government operations.

Our work could not have been done without the support of Presiding Judge M. Bruce Smith and County Counsel Arthur Wille who meticulously went over reports before publication to the public. Their support was invaluable and appreciated. We could not have operated as efficiently without the help and assistance of Deputy District Attorney, John Savrnock, who provided us with outstanding legal assistance and guidance. Last but certainly not least, we depended on Sherry Spears, Court Division Manager and Juror and Public Services Media Coordinator. She gave us her guidance, advice, and counsel and always with a smile.


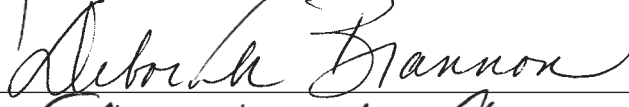



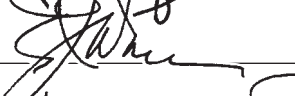




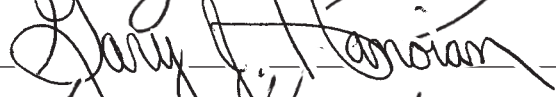


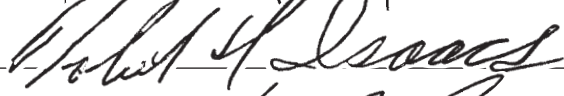

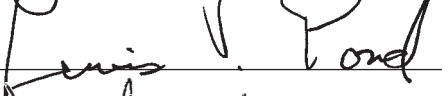



Special recognition must be given to two of our members who provided help and assistance far and above what was expected. During the report editing process, juror Jim Vaux performed all data entry, conversions and formatting while sorting through changes from multiple drafts often with two or more jurors talking at once. Our recording secretary, Rod Coburn provided extraordinary meeting minutes with acute attention to detail and accuracy. We often referred to his minutes in clarifying our decisions.

It has been a privilege for all of us to serve the citizens of Fresno County this past year.

Sincerely,

A handwritten signature in black ink, appearing to read "Vonda J. Epperson", with a long horizontal flourish extending to the right.

Vonda J. Epperson, Foreperson  
Fresno County Grand Jury 2009-2010

Rick Barclay	
Deborah Brannon	
Elizabeth Cantu	
Rod Coburn, D.D.S.	
Craig Cooper	
Elvin Dau	
Robert L. Duerksen	
Vonda J. Epperson	
Gary L. Gladding	
Gary Greenberg	
Gary J. Hanoian	
Susan Hayashi	
Rowena A. Hustedde	
Robert Issacs	
Dave Martin	
Lewis V. Pond	
Modesto "Ray" Rivera	
Mark Vaughan	
Jim Vaux	

# THE COUNTY of FRESNO 2009-2010 GRAND JURY



## **FRONT ROW** (*Left to Right*)

Ray Rivera, Deborah Brannon, Rowena Hustedde, Vonda Epperson,  
Elizabeth Cantu, Susan Hayashi, Gary Greenberg

## **MIDDLE ROW** (*Left to Right*)

Robert Issacs, Elvin Dau, Robert Duerksen, Dave Martin, Gary Hanoian, Rick Barclay

## **BACK ROW** (*Left to Right*)

Mark Vaughan, Jim Vaux, Craig Cooper, Rod Coburn, D.D.S., Gary Gladding, Lew Pond



## 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.

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# THE GRAND JURY PROCESS

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- 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 is 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, statutes 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 to criminal charges.

**Civil Watchdog Functions:** Considerable time and energy is put into this primary function of the civil grand jury acting as 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 in which individuals can volunteer for civic duty on behalf of their community. The grand jury is an 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 § 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 grievances 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](http://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**  
1100 VAN NESS AVENUE, ROOM 102  
FRESNO, CALIFORNIA 93721

**COMPLAINT FORM**

**ALL COMPLAINTS RECEIVED BY THE GRAND JURY ARE CONFIDENTIAL**

Date: \_\_\_\_\_  
Your Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
City, State & Zip: \_\_\_\_\_  
Telephone Number: Home (   )                      Work (   )

BRIEF SUMMARY OF COMPLAINT - Include dates of events, names of officials, other persons, city/county departments and agencies involved. (Attach additional sheets if necessary).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The information contained on this form is true, correct, complete to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**COMPLAINTS WILL NOT BE PROCESSED WITHOUT A SIGNATURE.**

You will receive written acknowledgment of this complaint after it is received and reviewed by the Grand Jury. This complaint is to be mailed to the address shown above.

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# FRESNO COUNTY GRAND JURY

## 2009-2010

### **Final Reports and Responses**

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- Claremont Custody Center
- Pleasant Valley State Prison
- Inquiry Into the Practices and Procedures Used by the Fresno County Sheriff and Fresno County Coroner Regarding a Case of Death by Suicide
- Metropolitan Museum of Arts and Science
- Granite Park Project
- Fresno County Employees Retirement Plan
- Parlier Noise Complaints
- Fresno County Mental Health Board
- Orange Cove Fire Protection District
- Orange Cove BMX Park
- Caruthers Unified School District
- Law Enforcement in County Islands





# REPORT #1

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**CLAREMONT CUSTODY CENTER**



FILED

DEC 03 2009

FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPUTY

**2009-2010**  
**FRESNO COUNTY GRAND JURY**



**FINAL REPORT**  
**#1**

**Fresno County  
2009 – 2010 Grand Jury  
Report # 1**

**Claremont Custody Center  
Coalinga, CA**

---

## **INTRODUCTION**

In 1987, the Governor of California signed into law Senate Bill 1591, designed to relieve overcrowding conditions in the state prisons. The law provided for the State Department of Corrections to negotiate long-term contracts with local governments to build and operate minimum-security facilities for the custody of parole violators (Level I & II inmates). The city of Coalinga was the first of five California cities to participate in the State program. Claremont Custody Center (CCC) is owned and operated by the city of Coalinga, CA. They are contracted by the State of California to house state inmates. They operate following California Department of Corrections and Rehabilitation guidelines and Pleasant Valley State Prison is their hub facility.

This year the grand jury examined the operation and condition of CCC in Coalinga, CA on September 17, 2009. We were welcomed by the staff of CCC and various members of the Coalinga city government.

## **BACKGROUND**

The CCC was built in 1990 as a Return to Custody Center (RTC) for women. Prior to opening its doors the designation was changed to Community Correctional Facility (CCF). The first prisoners arrived in February of 1991. In 1992 the State of California decided to move the females to the women's prison in Chowchilla, CA. The facility then began housing state male inmates with less than 18 months left on their sentence.

A CCF is a prison that is either owned and operated by a private contractor or city/county government and contracted by the state to house state inmates. This is done as a means for the state to save money because a contractor can house inmates for less money than what it would cost the state to house the same inmates. Currently, CCC can house and care for an inmate for an average cost of approximately \$22,600 per year. This is compared to approximately \$49,000 per year for inmates housed in the state prison system according to the California Department of Corrections and Rehabilitation (CDCR) Fourth Quarter 2008 Report. This represents a significant cost savings.

The facility was built on approximately ten acres of land, two miles outside the city of Coalinga. It has 514 beds in two separate housing units with an administration building between the housing units. The population currently is 350 inmates. Thus, the existing facility is under-utilized. The occupancy rate in the Coalinga facility is consistent with other private correctional centers in the state of California.

The housing units provide dormitory living with the two housing units divided into seven dormitories. One dorm is specifically utilized for housing inmates awaiting classification or inmates with disciplinary issues.

The administration building contains the administrative offices, inmate receiving and release, a centralized kitchen with two dining rooms, laundry facilities, medical clinic, inmate library, visiting room and commissary.

### CCC Staff

The CCC currently employs sixty-four full-time and four part-time correctional staff members and thirteen non-correctional staff members. All are employees of the city of Coalinga and report to the Coalinga Chief of Police. The staff also includes five educators employed through West Hills Community College and the Coalinga/Huron Unified School District.

### CDCR Staff

The State of California has assigned to CCC one California Department of Corrections & Rehabilitation Captain, three Case Counselor I positions and one Case Counselor II.

The Captain monitors the CCC in order to insure contract compliance relating to the Penal Code, CDCR's Department Operations Manual (DOM) and Title 15 of the California Administrative Code. In addition, the Captain also supervises the Case Counselors. The Case Counselors are assigned a caseload of inmates for which specific duties must be accomplished.

### Medical:

Inmates that are housed at CCC must meet a minimum medical and dental requirement. This is due in part, to the fact that they do not have a full-time medical staff. However, there is a nurse's station that has a nurse (LVN) on duty daily and a Family Nurse Practitioner (FNP) that comes every Thursday. Any acute medical problems are sent to Pleasant Valley State Prison (PVSP) medical service.

### Inmates:

Inmates, once classified, are assigned to either a work program or educational opportunities.

### Inmate Work Assignments:

Inmates assigned to work provide the following services:

- Cooks
- Clerks
- Culinary Laborers
- Barbers
- Laundry Services
- Porters
- Maintenance Recreation Coordinators
- Outside Landscaping Crews

### Educational Opportunities:

The CCC provides educational opportunities to inmates. The CCC partners with the Coalinga-Huron Unified School District, West Hills Community College District and the Tulare Adult School to facilitate and provide a quality education.

By working with the Coalinga-Huron Unified School District and West Hills Community College District, the CCC establishes an educational curriculum designed to provide inmates the opportunity to develop personal, educational, vocational, social, and behavioral skills necessary for achieving a more normal lifestyle.

Full-time education courses provided by the Coalinga-Huron Unified School District include, but are not limited to, General Education Development (GED), Adult Basic Education (ABE), and English as a Second Language (ESL) courses.

Short-term academic and vocational education courses currently provided by the West Hills Community College District are available to inmates as well.

Additional academic and vocational training courses include, heavy equipment operation and computer skills. Other courses are currently under consideration for addition to the curriculum.

The Pre-Release program provides the opportunity for inmates to enhance the life skills necessary for release and return to public life. This program is a process designed to bridge the gap from dependent facility living to experiencing successful, self-directed community adjustment. The Pre-Release program is designed to be available to inmates regardless of their eligibility for work furlough or discharge.

Currently, the Pre-Release program is a joint venture between the CCC and West Hills Community College District. This course is considered a credit/no credit course, so units are not included in calculation of the individual grade point average (GPA). Inmates successfully completing the course will receive credit for completion as well as a certificate of completion from West Hills Community College.

### Animal Shelter:

The city of Coalinga and CCC entered into a joint venture to build and operate a state of the art animal shelter utilizing inmate labor. The animal shelter was built on CCC prison property. This saved the city 1.1 million dollars in construction costs. In addition, the animal shelter is maintained and animal care is provided by inmate labor, which gives an ongoing cost savings to the city.

### Service Center:

The city of Coalinga redirected the city Vehicle Fleet Service Center to the CCC, which allowed the city to operate with one less mechanic. The two remaining city mechanics supervise an eleven-member inmate crew as follows:

- 8 mechanics
- 1 clerk to facilitate paperwork
- 1 tool room clerk
- 1 porter

## **ISSUE OF CONCERN**

There is concern regarding the existing contract with the State of California and the overall budgetary situation. The CCC may be forced to reduce their inmate population because of the prisoner release program currently under consideration by the Governor and state legislature. The existing twenty-year contract with the State expires in 2010 and the construction of CCC was financed with a thirty-year bond. If the prison population diminishes there will be a negative financial impact to the city of Coalinga.

## **CONCLUSION**

The grand jury feels the State of California under-utilizes the private prison system for level I & II inmates. The private detention facilities in Coalinga, Delano, Adelanto, Shafter, Taft and Susanville have a budgeted capacity of 2,961 beds. The population on September 14, 2009 was 1,930 inmates, which represented an occupancy rate of only 65.2%. Because of this high vacancy rate and since the cost for housing inmates is less than those in the State prison system; we feel the CDCR should consider transferring selected level I & II inmates from overcrowded prisons to CCC and other private prisons within California.

## **FINDINGS**

- F201 The vocational education programs in the private prison system prepares the inmates for release into civilian life.
- F202 Educational opportunities at CCC are comparable to those offered through the CDCR system.
- F203 The private correctional centers established in California are under-utilized.
- F204 CCC utilized inmate labor to create a community animal shelter that has generated a cost savings to the city of Coalinga for initial construction and ongoing maintenance and animal care.
- F205 CCC can house and care for inmates at a substantial savings compared to the state prison system.
- F206 The Vehicle Fleet Service Center at CCC provides the city of Coalinga with cost effective vehicle maintenance and provides job-training opportunities for inmates.

## **RECOMMENDATIONS**

The 2009-2010 Fresno County Grand Jury recommends the following be implemented:

- R201 The CDCR should initiate a study to determine if it is economically feasible and logistically practical to send more Level I & II inmates to CCC and private correctional centers in accordance with Senate Bill 1591.  
(F203, F205)

---

***FY 09-10 Fresno County Grand Jury***

## **REQUEST FOR RESPONDANTS**

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.

### RESPONDANTS

- Bill Skinner, City Manager – Coalinga, CA (F201 - F206, R201)
- Matthew Cate, Secretary of California Department of Corrections and Rehabilitation (F201 - F206, R201)

### SOURCES AND REFERENCES

- Interviews with CCC staff
- Claremont Custody Center web site
- California Penal Code
- CDCR Fourth Quarter 2008 Report
- Senate Bill 1591



# RESPONSES

---

- A. Bill Skinner, City Manager – Coalinga, CA  
R201
  
- B. Matthew L. Cate, Secretary, California Department of  
Corrections and Rehabilitation  
R201

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155 W. Duran Avenue  
Coalinga, CA 93210

Phone (559) 935-1533  
FAX (559) 935-5912  
www.coalinga.com

July 15, 2010

County of Fresno  
Grand Jury  
1100 Van Ness Avenue  
Fresno, CA 93724-0002

Dear Ms. Epperson:

The City of Coalinga is in receipt of the Grand Jury Report Final Report #1, dated December 3, 2009 regarding the Claremont Custody Center.

The City of Coalinga has carefully and thoroughly reviewed the report, including the conclusion, findings and recommendations contained therein.

The City of Coalinga concurs with all the Findings (F201-F206) of the Grand Jury Report, as well as, supports the Grand Jury's recommendation to the State CDCR.

The City is very appreciative of the effort and attention to detail contained in the report.

If you should have any questions, comments and/or would like to discuss the City's position in greater detail, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "Bill Skinner", written over a horizontal line.

Bill Skinner,  
City Manager

**OFFICE OF THE SECRETARY**

P.O. Box 942883  
Sacramento, CA 94283-0001



February 25, 2010



Ms. Vonda Epperson, Foreman  
2009-2010 Fresno County Grand Jury  
1100 Van Ness Avenue  
Fresno, CA 93724-0002

Dear Ms. Epperson:

I am in receipt of the county of Fresno Grand Jury letter of November 25, 2009, identifying the Grand Jury Final Report (#1 2009-2010), regarding their tour of the Claremont Custody Center (CCC) on September 17, 2009. The CCC is a "Public" Community Correctional Facility (CCF), owned and operated by the City of Coalinga, through contract with the California Department of Corrections and Rehabilitation (CDCR), which houses eligible inmates at the facility. The final report allows the CDCR to respond and identify, for the Grand Jury, its commitment to reductions in future operating costs to house inmates.

As noted in the final report, the CDCR is aware that the private facilities throughout the State have experienced a high number of vacancies. On September 17, 2009, the CCC housed 346 inmates, or 67.3 percent of its 514 budgeted capacity. As of January 12, 2010, the CCC population was 419, or 81.5 percent of its budgeted capacity. These numbers are lower than desired due primarily to the present scarcity of lower-level inmates meeting the eligibility criteria for these facilities. The federal courts have assumed control of inmate health care and have implemented strict mandates on inmate access to health care. These public/private facilities do not have the immediate health care services required and/or needed by inmates with medical concerns; therefore, such inmates are ineligible for CCF placement.

The CDCR concurs with the Grand Jury's finding that the CCC and other CCFs can be utilized to oversee lower-level, less-dangerous inmates at a reduced cost. To increase the number of inmates eligible for placement at these facilities, the Department has analyzed the inmate classification processes with a goal to increase inmate CCF eligibility. Additionally, the Department has recently implemented an increase in the "time remaining to serve" for inmates at these facilities from 18 to 24 months, thereby making more inmates eligible for CCF placement. These steps have increased the public/private facility populations.

As always, the CDCR welcomes and encourages tours of our contracted facilities by the Grand Jury as an avenue to enlighten the public of our ability to operate successfully through community partnerships.

Ms. Vonda Epperson, Foreman  
Page 2

If you have any questions or require further clarification, please contact Scott Kernan, Undersecretary, Operations, at (916) 323-6001.

Sincerely,

A handwritten signature in black ink that reads "Matthew L. Cate". The signature is written in a cursive style with a large, stylized "M" and "C".

MATTHEW L. CATE  
Secretary

cc: Scott Kernan, Undersecretary, Operations  
Terri McDonald, Chief Deputy Secretary, Adult Operations  
George J. Giurbino, Director, Division of Adult Institutions  
R. J. Subia, Deputy Director, Division of Adult Institutions  
James Hartley, Associate Director (A), Division of Adult Institutions  
Dalinda Harman, Chief, Community Correctional Facilities Administration

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# REPORT #2

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**PLEASANT VALLEY STATE PRISON**





FILED

JAN 25 2010

FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPUTY

**2009-2010  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#2**

**Fresno County  
2009 – 2010 Grand Jury  
Report # 2**

**PLEASANT VALLEY STATE PRISON**

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**INTRODUCTION**

In compliance with section 919, subdivision (b), of the California Penal Code, "The grand jury shall inquire into the condition and management of the public prisons within the county." The Fresno County Grand Jury has conducted its annual review of the Pleasant Valley State Prison (PVSP). This report addresses issues raised by prior grand juries and complaints received from inmates at PVSP. The grand jury initially visited PVSP on August 25, 2009 with a follow-up visit on September 17, 2009. On both occasions the grand jury was graciously welcomed and provided with a frank assessment by the warden and prison staff. The staff also adequately answered our questions and provided requested background information.

**BACKGROUND**

Pursuant to state law, the grand jury is obligated to examine the operation and condition of any state prison located within Fresno County. Currently there is one facility, PVSP, which is located at 24863 West Jayne Avenue, in Coalinga, California. This institution was opened in November 1994 and covers 640 acres. According to their website, as of Fiscal Year 2006/2007, it had an operating budget of \$195 million. There are 1,388 custody and support staff currently employed at PVSP. The prison was designed to house 2,616 Level I, III and IV inmates. However, on the first day we visited, the inmate population was 4,958. There are two inmates per cell with others housed in the gymnasium sleeping on bunk beds

**Mission Statement:**

PVSP provides long-term housing and services for minimum, medium and maximum custody inmates. Productivity and self-improvement opportunities are provided for inmates through academic classes, vocational instruction and work programs. PVSP provides mental health services through the Correctional Clinical Case Management System (CCCMS). The Correctional Treatment Center provides medical diagnostic evaluation and treatment for inmates, including those in need of Mental Health Crisis Bed housing.

**Inmate programs include:**

- Vocational: Air Conditioning and Refrigeration, Auto Body Repair, Auto Detailing, Auto Mechanics, Auto Paint, Building Maintenance and Repair, Carpentry, Consumer Electronics, Electrical, Graphic Arts, Janitorial, Landscaping and Gardening, Laundry, Machine Shop, Masonry, Mill & Cabinet, Office Machine Repair, Office Services and

Related Technology, Plumbing, Precision Instrumentation, Small Engine Repair and Welding.

- Academic: Adult Basic Education, Computer Assisted Instruction, Distance Learning, Elementary and Secondary Education Act Program, English as a Second Language, GED, High School, Incarcerated Youth Offender Program, Independent Study Program, Literacy Program, Pre-Release, Recreation, Re-Entry – Bridging Education Program and Substance Abuse Program/Education.
- Other programs include Community Service Crews, Religion, Arts in Corrections and Computers for Schools.

## **ISSUES OF CONCERN**

### AREAS INVESTIGATED

The grand jury continues to be concerned about previous problem areas and prior recommendations. This report focuses on the status of previously mentioned concerns. The problem areas previously reported were 1) provisions for a secure medical wing, 2) concern over Valley Fever, and 3) the need for adequate office space for the medical staff.

### PRIOR GRAND JURY RECOMMENDATIONS

As part of its report, the 2008-2009 Fresno County Grand Jury focused on medical care provided by PVSP. Its recommendations concerning health care were to continue to work with the community to establish a secure wing for inmates at the Coalinga Regional Medical Center (CRMS), to look for ways to minimize the threat of Valley Fever and to provide adequate office space for medical staff.

As reported in previous grand jury reports, all medical issues are now under the jurisdiction of a receiver appointed by the federal court. In the past, some recommendations were followed. However, physicians and dentists still do not have adequate office space and the secure wing at CRMS may be mitigated if the state can justify building a locked facility for minor surgeries on the PVSP grounds.

As part of the inspection process this year, the 2009-2010 Fresno County Grand Jury split into two groups to review the current status of the records-keeping process and Dental/Medical practices.

### RECORDS REVIEW

The group reviewed reports and manuals outlined in the *Jail Inspection Handbook* issued by the California Grand Jury Association. Records inspected included: grievances, crime incidents reports, fire marshal reports, outside contracts, educational opportunities and the California Department of Corrections & Rehabilitation (CDCR) Operations Manual. Overall, it was found that the PVSP is up to date and in accordance with regulations outlined in Title 15 of the California Administrative Code, which oversees the California state prison system. The staff at PVSP was very helpful and accommodating.

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***FY 09-10 Fresno County Grand Jury***

## STATUS OF THE FEDERALLY MANDATED RECEIVERSHIP

The Federal Receivership established on February 14, 2006 is making progress toward resolving medical issues outlined in the class action suit, Plata v. Schwarzenegger. However, according to the Receiver's Twelfth Tri-Annual Report dated 09/29/09 both political and economic problems still occur and subsequently may impede progress. The following conclusions were reported,

*'With the Receiver's agreement to a healthcare facilities construction program funded by AB 900 lease-revenue bonds and implemented by CDCR, the Receivership has entered a new and, hopefully, more productive phase. The year-long disagreement between the Administration and the Receivership over the details of capital improvements slowed down our overall progress and diverted our attention from implementation of other important elements of the Turnaround Plan of Action to contentious negotiations over construction and time and effort spent in litigation.*

*Over the course of the last six months, we have restructured our internal organization and begun the process of reintegrating with CDCR the executive leadership and management of the healthcare program. This process of reintegration is a crucial step towards establishing a sustainable healthcare program that can be managed by the State. The collaborative spirit demonstrated by many State employees has helped smooth this process.*

*The most significant risk to our future progress is the State's continuing budget crisis. Although last year is likely to have been the worst budget year within the current cycle, next year promises more multi-billion dollar deficits, more cuts to State programs, and more fights over State priorities. The Receivership has worked very hard this year to establish programs and initiatives to reduce our expenditures so that we would be better positioned to face next year's budget deliberations. Maintaining momentum through a fiscal crisis of this magnitude will test all of our leadership and executive skills, but maintaining that momentum is crucial to our success. We have completed 40 percent of our action items, but that means that 60 percent of our work remains unfinished. Most of the action items among the 60 percent are underway and proceeding, albeit with some delays. Our focus must be on completing this unfinished work as promptly and cost effectively as our resources will allow."*

## DENTAL/MEDICAL REVIEW

The Dental and Medical Review groups filed separate reports. It should be noted that the members are both highly qualified. The member of the grand jury that conducted the dental review is a retired dentist and the member that conducted the medical review is a retired physician.

### DENTAL REVIEW - 09/17/09:

Perez v. Tilton, N.D. Cal. No. C-05-5241, filed December 2005, reached a stipulated settlement in August 2006, resolving a class action lawsuit regarding dental care provided by CDCR prisons.

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***FY 09-10 Fresno County Grand Jury***

Senior members of the PVSP dental staff were interviewed and one treatment office was observed. The stipulated agreement's conclusions for dental care improvement were reviewed and evaluated. In complying with the settlement, the increased dentist staffing levels have addressed deficiencies in patient care. Staffing levels approximate the agreement goals. There are currently ten full-time and one half-time dentists on staff. Treatment records, with complete results of patient evaluations, are consistent with generally accepted standards of care. Emergency and routine care are similarly in agreement.

Senior dentists supervise treatment, quality control, mentoring and internal continuing education. The evaluation conclusion is that dental care meets generally accepted standards of care.

However, the physical plant has deficiencies, which could compromise patient care. Office space is limited, which is a function of the PVSP facility size. Rectifying the deficiencies will require allocation of additional funding by CDCR.

The treatment suite has side-by-side dental units within close proximity without structural barriers. One of the treatment units contains a radiation exposure unit for intraoral imaging. The dental equipment is current, appears appropriately maintained and with infection transmission barriers, as required, in place. Adjacent to the treatment unit room is a support area containing instruments previously used in patient treatment, readying for disinfections and/or sterilization. In the proximity to the 'dirty' instruments are 'clean' instruments, which are finished with their disinfections/sterilization process.

An inmate sent the grand jury a complaint relating to current dental care. The prisoner was interviewed and a professional evaluation was obtained through the interview process. His complaints are consistent with many seen in the civilian population where only limited treatment is available.

#### MEDICAL REVIEW – 09/17/09:

Since the lawsuit and implementation of the Federal Receivership, things have improved significantly. Improvements consist of better salaries and working conditions.

There are currently ten doctors on staff. A majority of the doctors are full-time employees. The doctors work during the day and there is a nurse on duty at night. There is a nurse's clinic open until 10 PM. It takes approximately an hour if the doctors are called to come in after hours. If necessary, an inmate can be referred to an outside facility.

For minor cases, an inmate is given a ducat, which puts him in the "sick call" line in the morning. After hours, he may go to a guard who will arrange for acute help.

Medical-Dental staff has advised us they need a locked facility at PVSP for performing minor surgical procedures and post-operative care. Currently, they have to send patients to outside facilities for treatment. This detracts from the acute care at PVSP. Furthermore,

sending out patients for care increases the cost and requires additional correctional officer's time.

### Valley Fever Status:

Prison staff, hospital personnel, guards and inmates are all versed in Valley Fever. The prison yards are covered with grass, gravel and concrete preventing the spreading of cocci spores. In addition, there is no longer any major construction on or near the premises.

When an inmate exhibits flu-like symptoms and cough, Valley Fever is considered a possibility. Hospital staff is proactive with respect to treatment and, depending on symptoms, will start combined antibiotic and Valley Fever medication.

A cocci serology is sent to UC Davis for testing. However, it takes two to three weeks to get the results. If the test comes back negative, the Valley Fever treatment is stopped. But, if the test is positive, the inmate will continue on long term Valley Fever medication. They will follow this course with periodic serology testing and if the inmate worsens he will be hospitalized in a private hospital where the local doctors will follow him.

During the period 2008 – 2009 there were no deaths from Valley Fever. Previously, there were up to thirty or forty cases of Valley Fever diagnosed every month. Now there are only ten or fifteen occurrences each month.

In the past, fifty to seventy inmates were hospitalized each year. Currently a few require hospitalization. Usually, the most sensitive inmates are new to the area and suffer decreased immunological function.

There is an adequate nursing staff, but they tend to be young with a high turnover rate. In addition, educational seminars are held regularly for the nurses.

Medical personnel noted that they could use more personnel and greater working space. This has been a chronic problem.

The grand jury has received numerous complaints regarding the medical treatment at PVSP. These complaints included treatment of valley fever, high blood pressure, skin conditions, dental care and various other ailments. Upon review of medical and dental records and interviews with medical personnel and inmates the grand jury has concluded that the inmates at PVSP are receiving adequate and appropriate medical and dental care and no further action is needed.

## **CONCLUSION**

While the location of the prison has inherent health risks for Valley Fever and other respiratory issues, medical care in general at PVSP and particularly with respect to Valley Fever is much improved. Statistics show a definite drop in cases and the grand jury believes that the medical staff should be commended.

PVSP is providing medical and dental care equivalent to that received by most patients outside the prison system and is addressed on a timely basis. However, budget constraints

may at least temporarily limit additional personnel, services and/or renovations to existing facilities.

## **FINDINGS**

- F101      The observed two-chair dental operatory lacks sufficient structural radiation protection for patients and staff in the adjacent dental chair. No structural radiation barrier between chairs exists to control scatter radiation separate from the imaging unit.
- F102      There is insufficient separation in the sterilization area for "dirty" dental instruments from "clean" instruments following removal from the sterilizer.
- F103      Office space for dentists and physicians is insufficient.
- F 104      There is no locked surgical facility for minor injuries and post-operative care; therefore PVSP must transport inmates out of the area for care. This creates a negative impact on the utilization of staff.

## **RECOMMENDATIONS**

The 2009-2010 Fresno County Grand Jury recommends that the following be implemented:

- R101      Install a radiation protection wall between dental units. (F101, F102)
- R102      Provide sufficient counter space to allow for the separation of sterilized dental instruments from non-sterilized instruments. (F101, F102)
- R103      Provide sufficient office space for Dental and Medical staff. (F103)
- R104      Conduct a financial analysis to determine the feasibility of building a locked facility for minor surgeries and post-operative care on the grounds of PVSP. (F104)

## **REQUEST FOR RESPONDANTS**

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.

### RESPONDANTS

- James A. Yates, Warden Pleasant Valley State Prison (F101 – F104, R101 – R104)
- Matthew Cate, Secretary of California Department of Corrections and Rehabilitation (F101 – F104, R101 – R104)

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***FY 09-10 Fresno County Grand Jury***

## SOURCES AND REFERENCES

- Interviews with warden and staff
- Pleasant Valley State Prison web site
- California Penal Code
- Jail Inspection Handbook issued by the California Grand Jury Association
- Receiver's Twelfth Tri-Annual Report dated 09/29/09
- 2008-2009 Fresno County Grand Jury Report
- Radiation Safety in Dental Practice: A Study Guide and Excerpts from the California Radiation Control Regulations Pertaining to Dental Practice, 1996
- CDC: Guidelines for Infection Control in Dental Health-Care Settings -- 2003



# RESPONSES

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- A. James A. Yates, Pleasant Valley State Prison  
R101 through R104
  
- B. Matthew L. Cate, Secretary, California Department of  
Corrections and Rehabilitation  
R101 through R104  
Not received by publication date

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**DIVISION OF ADULT INSTITUTIONS**  
**PLEASANT VALLEY STATE PRISON**  
P.O. Box 8500  
Coalinga, CA 93210



March 29, 2010

The Honorable M. Bruce Smith  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724-0002

Dear Judge Smith:

**RESPONSE TO FRESNO COUNTY GRAND JURY COMMITTEE REPORT  
PLEASANT VALLEY STATE PRISON 2009-2010, FINAL REPORT #2**

The following information is submitted in response to the Fresno County Grand Jury's 2009-2010 Report #2, regarding Pleasant Valley State Prison (PVSP).

**FINDINGS.**

**F101. The observed two-chair dental operatory lacks sufficient structural radiation protection for patients and staff in the adjacent dental chair. No structural radiation barrier between chairs exists to control scatter radiation separate from the imaging unit.**

F101. The respondent AGREES. However, per Division of Correctional Health Care Services Policies and Procedures, Chapter 3.3, RADIATION PROTECTION PROCEDURES, it states during each exposure staff shall either stand at least six feet from the useful beam or stand behind a protective barrier. Existing space meets this requirement, per the Chief Dental Officer.

**F102. There is insufficient separation in the sterilization area for "dirty" dental instruments from "clean" instruments following removal from the sterilizer.**

F102. The respondent AGREES. Additional counter space would provide greater separation of instruments.

**F103. Office space for dentists and physicians is insufficient.**

F103. The respondent AGREES. This is an issue that has been previously discussed in Grand Jury responses, and the Office of the Receiver has provided a timeline to address this need.

**F104. There is no locked surgical facility for minor injuries and post-operative care; therefore, PVSP must transport inmates out of the area for care. This creates a negative impact on the utilization of staff.**

F104. The respondent AGREES. However, the issue of construction would be problematic, due to Valley Fever concerns. A locked medical unit within the local hospital, Coalinga Regional Medical Center, may be a more viable option. This issue will be shared with the Office of the Receiver.

#### RECOMMENDATIONS.

**R101. Install a radiation protection wall between dental units. (F101, 102)**

R101 This recommendation has not been implemented, as it is not required. However, the suggestion will be shared with Healthcare Services for consideration of upgrading existing dental space.

**R102. Provide sufficient counter space to allow for the separation of sterilized dental instruments from non-sterilized instruments. (F101, 102)**

R102. This recommendation has been implemented. Additional counter space has been installed.

**R103. Provide sufficient office space for Dental and Medical staff. (F103)**

R103. The recommendation has not yet been implemented, but will be implemented in the future. The specific time frame is contingent on legislative funding by the legislature, but is anticipated to be completed by 2013.

**R104. Conduct a financial analysis to determine the feasibility of building a locked facility for minor surgeries and post-operative care on the grounds of PVSP. (F104)**

R104. The recommendation has not yet been implemented. This issue is under the purview of the federal receiver. The Office of the Receiver is considering options to better utilize staff resources and improve the efficient delivery of healthcare, including possible construction of additional medical units.


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 believe the statement, ***“the grand jury has concluded that the inmates at PVSP are receiving adequate and appropriate medical and dental***

***care and no further action is needed,***” is reflective of the progress made by both PVSP and the California Department of Corrections and Rehabilitation, in general.

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.

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

Respectfully,



JAMES A. YATES  
Warden

cc: J. Clark Kelso, Federal Receiver  
Matthew Cate, Secretary, California Department of Corrections and Rehabilitation  
William J. Sullivan, Associate Director, General Population Levels III/IV, Division of Adult Institutions  
Vonda Epperson, Foreman, 2009-2010/Fresno County Grand Jury

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## REPORT #3

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# **INQUIRY INTO THE PRACTICES AND PROCEDURES USED BY THE FRESNO COUNTY SHERIFF AND FRESNO COUNTY CORONER REGARDING A CASE OF DEATH BY SUICIDE**





FILED

MAR 02 2010

FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPUTY

**2009-2010  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#3**

**Fresno County  
2009-2010 Grand Jury  
Report # 3**

**Inquiry into the Practices and Procedures Used by the  
Fresno County Sheriff and Fresno County Coroner Regarding a  
Case of Death by Suicide**

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## **Introduction**

The Fresno County Grand Jury received a citizen's request to investigate a ruling by the Fresno County Coroner of a death by suicide. The grand jury assigned a committee to review the request and do a preliminary investigation. Upon the completion of the preliminary investigation, the committee recommended that a full grand jury investigation be conducted.

## **Background**

The following chronological activities occurred:

On May 30, 2008 Sheriff's Deputies were dispatched to the scene of a possible suicide at approximately 2:36 PM. The text of the call stated that the reporting party's son advised her that his girlfriend had just shot herself. Deputies obtained the apartment number and entered the apartment at 3:06 PM with a key provided by the management. The Deputies conducted a safety sweep and located an African-American female adult lying naked on the floor. A rifle was located near the body. An ambulance was requested at approximately 3:13 PM; Fresno County Fire Fighters arrived and pronounced the female dead. The Deputies locked the door and waited for homicide detectives. The investigation involved the death of an African-American female of approximately 21 years old. It was determined by Deputies that death was due to a large bullet wound to the right side of the head. The apparent entry wound was approximately 2-3 inches above the right temple. The exit wound was a small hole slightly above the opposite side of the entry wound. The weapon used was a Kel-Tec 16 rifle. Deputies canvassed the area and conducted interviews of various residents in the apartment complex. Most residents did not observe anything except that one heard loud music coming from the apartment and that the music ceased about 3:00 PM. A Deputy from the "Crimes Against Persons" Unit arrived at 3:47 PM. Deputy Coroner's arrival was not documented in the Sheriff's log, however it was noted in the Deputy Coroner's report that she arrived with the Coroner. The Coroner arrived at 8:40 PM and left at 9:10 PM. The Deputy Coroner left at 10:26 PM and all persons were gone by 11:47 PM. The first Deputies to arrive and all ensuing personnel filed separate reports.

## **Issues of Concern**

As part of its investigation, the grand jury formed a committee to review pertinent reports and question various witnesses to determine if proper policies and procedures were followed.

### Discrepancies in Reports:

- 1) The Coroner's Certificate and Verdict stated that the decedent died on the 30<sup>th</sup> day of May 2008. However, in another section of the Certificate and Verdict it was stated the incident occurred at an unknown date and time.
- 2) A Gun Shot Residue (GSR) kit was used at the scene. However, it was not sent out for analysis until the grand jury began its investigation. The results were not returned until August 27, 2009.
- 3) Sexual assault kit and blood samples were taken at the scene and given to a Fresno County Sheriff's Investigation Bureau (IB) technician. However, no written results from any tests were provided.
- 4) Deputy Coroner's report states, "The death was not witnessed." However, a Deputy Sheriff interviewed by the grand jury stated that he spoke to an eye witness who was present at the scene.
- 5) Deputy Coroner's report states there was no answer at the door of the apartment where the alleged incident occurred and was subsequently "kicked-in" by Sheriff's officers. However, a Sheriff's report and sworn witnesses reported that a key was received from the property manager to enter the apartment.
- 6) An IB technician stated that a wet towel was on the bed. However, the video taken at the scene showed the towel was actually on the floor.

### Additional Concerns:

- 1) In one Deputies' report it was stated that a pair of pants were found in the living room with blood stains. However, no tests were taken to determine the origin of the blood.
- 2) A trashcan was found in the kitchen/living room area that contained a bloody washcloth without any explanation of how it got there.
- 3) The weapon used in the incident was found under a barbell with no plausible explanation of how it got under the barbell.
- 4) GSR analysis revealed that there was not enough particle evidence to provide conclusive results that the gunshot was self inflicted.
- 5) The Coroner relied on the decedent having experienced "cadaver spasm" as a reason for declaring at the scene that the death was a suicide. However, research (see below) indicates that with cadaver spasm the weapon would still be in the hands of the decedent

and it was not.

*Cadaver spasm reference from Wikipedia, the online encyclopedia:*

*Cadaveric spasm, also known as instantaneous rigor, cataleptic rigidity, or instantaneous rigidity, is a rare form of muscular stiffening that occurs at the moment of death, persists into the period of rigor mortis and can be mistaken for rigor mortis. The cause is unknown, but usually associated with violent deaths happening with intense emotion. Cadaveric spasm may affect all muscles in the body, but typically only groups, such as the forearms, or hands. Cadaveric spasm is seen in cases of drowning victims when grass, weeds, roots or other materials are clutched, and provides proof of life at the time of entry into the water. Cadaveric spasm often crystallizes the last activity one did prior to death and is therefore significant in forensic investigations, e.g. clinging on a knife tightly.*

*Cadaver spasm reference from Everything2.com:*

*A cadaveric spasm can sometimes occur when a person is instantly killed by violent means (such as by a gunshot to the head or a stab to the heart). It doesn't happen when a person is killed by being burned to death. The key thing is that the person's skeletal muscles have to be working at the moment of death. In the spasm, the person's muscles seize up; the condition can be (and sometimes is) mistaken for rigor mortis. This condition can be useful to crime scene investigators because whatever the person was holding at the moment they were killed will be literally clutched in a death grip; such items can include hanks of hair or rags of clothing from their murderer.*

- 6) The apparent eyewitness (boyfriend) was never tested for GSR.
- 7) The primary Sheriff's detective never filed a report.
- 8) No tests were taken to determine the origin of the bloody handprints on the weapon.
- 9) Blood was apparent on the bottom of the decedent's feet in crime scene photos, but is not explained in any report.
- 10) The downward angle of the entry of the bullet into the closet and wall was such that the head had to be in a position that the Coroner or other witnesses could not explain.
- 11) A majority of witnesses who came before the grand jury stated that it was a suspicious death and that some things were not compatible with it being a suicide.
- 12) According to the Coroner's procedures in the absence of a suicide note, further investigation must mention a possible motive for the decedent to commit suicide.

## **Conclusion**

After reviewing the available reports, interviews, photographs and videos, the mode of death remains questionable in the grand jury's opinion. As noted in the concerns listed above, there were many discrepancies provided in the various reports and interviews.

The investigation appears to have concluded prematurely once the Coroner declared it was death by suicide at the scene even though a majority of witnesses stated the death was suspicious.

It appears that established policies and procedures of the Fresno County Coroner's Office and practices for the Sheriff's Department were not followed during the course of the investigation.

## **Findings**

- F301 The majority of those interviewed felt the death was "suspicious."
- F302 "Cadaver Spasm" is an uncommon phenomenon and as such the weapon would remain in the grip of the victim. In this case the weapon was found under a barbell in the same room as the decedent.
- F303 There are many inconsistencies in the available written reports from the two investigating agencies.
- F304 Procedures were not followed by the Coroner's Office.

## **Recommendations**

The 2009-2010 Fresno County Grand Jury recommends that the following be implemented:

- R301 The Coroner should reconsider the finding of "suicide". (F301 – F304)
- R302 All the Sheriff's reports regarding this case should be completed. (F303)

## **Request For Respondents**

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

- David M. Hadden, MD, Fresno County Coroner (F301 – F303, R301)
- Margaret Mims, Fresno County Sheriff (F301 – F303, R302)

## **Sources and References**

- Review of all reports from the Fresno County Sheriff's Department and Fresno County Coroner's Office.
- Witness interviews
- Fresno County Coroner Policy and Procedure Manual
- Wikipedia, the online encyclopedia
- Everything2.com

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# RESPONSES

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- A. David M. Hadden, M.D., Coroner, County of Fresno  
R301
- B. Margaret Mims, Sheriff, County of Fresno  
R302


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# County of Fresno

**DAVID M. HADDEN, MD**  
**PUBLIC ADMINISTRATOR – CORONER**  
**OFFICE OF PUBLIC ADMINISTRATOR – CORONER – PUBLIC GUARDIAN**

**DATE:** March 24, 2010  
**TO:** The Honorable M. Bruce Smith  
Presiding Judge of the Superior Court  
**FROM:** David M. Hadden, MD, Coroner-Public Administrator/  
Public Guardian   
**SUBJECT:** **2009-2010 Grand Jury Report #3 Response**

The Fresno County Coroner-Public Administrator/Public Guardian's Office is submitting their response to the Grand Jury Final Report #3 for 2009-10

## **FINDINGS**

**F301** - The Majority of those interviewed felt the death was "suspicious."

The Coroner also felt that this death was suspicious. That is why a forensic pathologist was sent to the scene.

**F302** – "Cadaver Spasm: is an uncommon phenomenon and as such the weapon would remain in the grip of the victim. In this case the weapon was found under a barbell in the same room as the decedent."

While cadaver spasm (sic) is an "uncommon phenomenon," it does not follow that "as such the weapon would remain in the grip of the victim." In Dr. Spitz's book, Medicolegal Investigation of Death, fourth edition, page 105, cadaveric spasm "is converted almost immediately" thus allowing time for the weapon to be dropped especially in the view of possible recoil.

**F303** - There are many inconsistencies in the available written reports from the two investigating agencies.

Since the information for the written report was obtained at different times from different sources, there may well be some discrepancies. None of the discrepancies noted impinge upon the diagnosis of suicide

760 West Nielsen Avenue / Fresno, California 93706  
Telephone: Public Administrator (559) 268-0139  
Coroner (559) 268-0109  
Public Guardian (559) 268-0139

The Honorable M. Bruce Smith, Presiding Judge  
March 24, 2010  
Page Two

**F304 - Procedures were not followed by the Coroner's Office**

It is unclear which "procedures" were not followed by the Coroner's Office. If it is referring to Item 12 on page 3 of the 2009-2010 Grand Jury report where it states that "in the absence of a suicide note, further investigation must mention a possible motive for the decedent to commit suicide," we can find no such procedure nor would we expect such a finding since in many suicides there is no apparent reason and it would be impossible to mention a possible motive.

**RECOMMENDATIONS**

**R301 - Coroner should reconsider the finding of "suicide".**

Our investigation included an evaluation by a forensic pathologist with experience of over 5,000 autopsies. He made the evaluation after 2 hours at the scene working with the homicide detectives and in full realization of the cadaveric spasm that he diagnosed. As always if further evidence is uncovered, we are eager to incorporate that into our final diagnosis.

If you have any questions, please contact me at 268-0139.

Cc: Each Member of the Board of Supervisors  
County Administrative Office  
Fresno County Grand Jury



Margaret Mims  
Sheriff  
Fresno County Sheriff's Office

April 26, 2010

M. Bruce Smith, Presiding Judge  
Fresno Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724

Re: 2009-2010 Grand Jury Report #3

Dear Judge Smith:

This letter constitutes the statutory response to the 2009-2010 Grand Jury Report #3 pertaining to the Fresno County Sheriff's Office.

#### **General Comments**

As the Sheriff of Fresno County I appreciate the interest and work of the Grand Jury as reflected in Report # 3 of the 2009-2010 Grand Jury. In our response to the Grand Jury I want to assure the citizens of Fresno County that all death investigations are meticulously investigated to ascertain the cause of death and to determine whether or not a crime has been committed.

2009-2010 Grand Jury Report #3 pertains to the death of Ms. Joy Aloniss Littlejohn (FSO Case # 08-20312). On May 30, 2008 the Field Services Bureau (Patrol) requested the Sheriff's Homicide Unit to respond to the scene of a questionable death. A full compliment of Detectives and Crime Scene Technicians responded to 577 E. Alta Avenue, Apartment 213, Fresno, CA, which is located in an urban area of unincorporated Fresno County.

Typically, when responding to a questionable death investigation the Fresno Sheriff's Homicide Unit responds with a Detective Sergeant, and three Homicide Detectives. The Sergeant supervises the investigation. Two Detectives interview involved parties and witnesses and the third Detective oversees the identification, collection and preservation of evidence from the scene.

One of the two Detectives is commonly named the Primary Investigator. The Primary Investigator is responsible for coordinating the efforts of investigating, documenting and compiling all necessary evidence to determine the cause of death and whether the death of the victim was accidental, self-inflicted, or at the hand of another.

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One of the two Detectives is commonly named the Primary Investigator. The Primary Investigator is responsible for coordinating the efforts of investigating, documenting and compiling all necessary evidence to determine the cause of death and whether the death of the victim was accidental, self-inflicted, or at the hand of another. The Primary Homicide Detective also determines if there is any criminal liability for the death of the victim and if so, develop probable cause for an arrest and assist in the prosecution of the responsible party. The second detective is the Secondary Investigator. He or she assists the Primary Investigator with their case duties and assures the investigation is complete if the Primary Investigator cannot complete the investigation. The third detective is called the Scene Investigator. As stated before he or she assists Crime Scene Technicians in identifying, collecting and preserving evidence from the crime scene

The Fresno County Sheriff's Office does not have a Procedure Manual that is specific for Homicide Detectives. Homicide Detectives are trained in best practices by attending California Peace Officer Standards and Training (POST) approved courses in the subject matter. Incumbents of the Fresno County Sheriff's Homicide Unit are also mentored and trained by senior members of the unit. The Fresno County Sheriff's Homicide Unit has a long history of being an effective investigative body, which has solved many complicated death investigations.

The Fresno County Sheriff's Office's reports regarding Case # 08-20312 are now complete. After review of all reports it has been determined that all Detectives involved in this questionable death case conducted an appropriate and competent investigation. The management of this case was well within the high expectations and professionalism of the Fresno County Sheriff's Office and within establishes policies, procedures, practices and the law. Based on the totality of the evidence, witness statements, and forensic evaluations Detectives made the determination that Joy Littlejohn caused her own death by a single, self inflicted gunshot to her head. Detectives were unable to uncover any other evidence that would lead to an alternative determination. The Fresno County Sheriff's Office has closed this case as a Suicide.

Based on the outcome of this investigation, I am confident that the Sheriff's Homicide Unit properly investigated this death investigation. Nonetheless, it is important to understand that if in the future legal, credible, and verifiable new information is developed that would lead a reasonable investigator to believe this case does not involve a suicide, but a homicide, this case will be reopened. Nothing in Grand Jury Report #3 provides any new information that would lead to the reopening of this case.

### **Fresno County Sheriff's Office Responses to 2008-2009 Grand Jury Report #3**

#### **2008-2009 Grand Jury Report Findings**

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**F301** The majority of those interviewed felt the death was “suspicious.”

**Response**

Agree. Upon receiving the call for service, which reported a suicide Patrol Deputies responded to the scene and discovered what they believed a “questionable death”. By definition a questionable death is a suspicious death. The Homicide Unit is routinely not requested when Patrol Deputies encounter a death that has all the circumstances of a suicide. Patrol Deputies acted properly by calling for the Homicide Unit based on the evidence presented at the scene.

The Homicide Unit’s response was the normal and appropriate response for a Homicide Investigation. Three Homicide Detectives responded to the call to investigate along with the Crime Scene Unit. Detectives early in the investigation were able to identify and meet with a witness to Ms. Littlejohn’s death. It was their task to determine if he had witnessed the suicide or was responsible for the death.

The initial response of all Sheriff’s personnel was in accordance with the initial belief that this investigation involved a questionable death that required the meticulous investigation by the Homicide Unit. Based on the totality of the evidence, witness statements, and forensic evaluations Detectives determined Joy Littlejohn caused her own death by a single, self inflicted gunshot to her head.

**F302** “Cadaver Spasm” (sic) is an uncommon phenomenon and as such the weapon would remain in the grip of the victim. In this case the weapon was found under a barbell in the same room as the decedent.

**Response**

Disagree. “Cadaveric Spasm” is a medical determination made by a Forensic Pathologist not by Sheriff’s Detectives. Based on the training received by Homicide Detectives “Cadaveric Spasm” is but one piece of evidence that is searched for when investigating a death. Based on the size and weight of rifle, documented injuries, blood evidence and Gun Shot Residue (GSR) it is within the realm of possibilities that the rifle came to rest as it did; under the extension of a barbell after the single shot was fired. To describe the weapon as being under a barbell is inaccurate and misleading. Based on photographic evidence of the scene the weapon is under the extension of the barbell and not under the barbell. The position of the weapon in of itself doesn’t not prove or disprove suicide or murder.

**F303** There are many inconsistencies in the available written reports from the two investigating agencies.

**Response**

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Disagree. After the review of Sheriff's Office Reports all appear to be consistent with each other. It is beyond the scope of the Sheriff's authority to review all Coroner's Office reports involving this case. The one glaring inconsistency between the Sheriff's and Coroner's reports is the method of entry into the victim's apartment. It has been confirmed that Patrol Deputies used a key when they initially made entry into the apartment. Force was not used to make entry. The Sheriff's Office will make its reports available to the Coroners Office so conflicts may be corrected. To characterize the written reports of the two agencies as having "many Inconsistencies" is inaccurate.

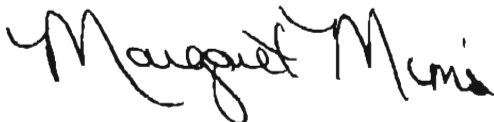
**2008-2009 Grand Jury Report #3 Recommendations**

**R302** All the Sheriff's reports regarding this case should be completed. (F303)

**Response**

Agree. Some reports regarding this case were not completed fully when the Grand Jury subpoenaed them. Some Detectives write their reports using Microsoft Word, because of its editing capabilities. Once their reports are completed the Detectives "cut and paste" (electronically transfer) the document into our Automated Field Report (AFR) application. AFR is the formal program that has to be used to produce an official Sheriff's Office Report. It was determined that Detectives had completed their reports, but had not transferred them into AFR. All reports have since been entered into AFR.

Respectfully submitted,



Margaret Mims  
Sheriff

*Dedicated to Protect & Serve*

# REPORT #4

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**METROPOLITAN MUSEUM  
OF ARTS AND SCIENCE**





FILED

MAR 16 2010

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2009-2010  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#4**

**Fresno County  
2009 - 2010 Grand Jury  
Report # 4**

**METROPOLITAN MUSEUM OF ARTS AND SCIENCE**

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**INTRODUCTION**

In 2007, the City of Fresno agreed to guarantee a commercial loan to the Fresno Metropolitan Museum of Arts and Science (Met). The proceeds of the loan were used to cover cost overruns on the renovation of the historic building used for museum exhibitions. In 2009, the Met defaulted on the loan, causing the City to have to use its General Fund to pay off the loan. Because of the controversy surrounding this issue, the Fresno County Grand Jury reviewed the process used by the City leading to the approval of the loan guarantee.

**BACKGROUND**

In 1982, the Met acquired the old Fresno Bee building, built in 1922 at the southwest corner of Van Ness and Calaveras Avenues. Subsequently, two of the five floors of the building were remodeled for use as a museum of arts and sciences. In 2004, The Board of Directors of the Met approved a long range plan that included expansion of the exhibition space into the third and fourth floors and removal of two additions to the main building added in the 40's and 50's. With a budget of \$15 million, raised primarily by donations, a contract was awarded for these improvements. The museum was closed in the summer of 2005 and construction commenced.

In June 2007, representatives of the Met Board met with City officials to discuss additional financing requirements. During construction, it was found additional improvements were needed that were not included in the original contract. These included removing lead based paint, asbestos remediation and seismic upgrades. Some of this added work had been completed, but construction was forced to halt when available funds were exhausted. The estimated cost to complete the work and satisfy existing liens was an additional \$15 million. The Met requested the City provide assistance allowing the work to be completed so the facility could reopen.

There was testimony before the grand jury that this request was first discussed at a meeting attended by the Mayor, City Manager, Met representatives, one Council member, and community leaders. Subsequently, a proposal for a direct City loan to the Met was presented by City staff at the June 19, 2007 City Council meeting. Council minutes and interviews with Council members indicated concern with the direct loan concept and the Met's ability to repay the loan. Also some members were upset because they had no prior knowledge of the proposal.

Discussion of the proposal continued at the Council meetings on June 26 and July 31. During these meetings, Met representatives expressed confidence in their ability to obtain long term financing. However, it was indicated they had not been able to obtain a short-term loan to complete the project. By the July Council meeting, the proposal had evolved into a plan in which the City would guarantee a short-term loan from a local lender. The proceeds of this loan would be used to complete the renovation of the building and pay off the liens. Concurrently, the Met would pursue long term tax-exempt bond financing. The bond would be used to remove, or "take out," the short-term loan, releasing the City from its financial obligation.

Under IRS regulations, non-profit organizations qualifying under section 501(c) 3 may carry out capital improvements with tax-exempt bonds through "conduit" financing by a governmental entity. The ability to obtain this financing is based solely on the financial strength of the non-profit organization and repayment is the responsibility of that organization.

The proposal was presented to the Fresno City Council on July 31, 2007. After discussion, the Council unanimously approved a resolution and a Contingent Debt Purchase Agreement. Under the agreement, the City guaranteed a loan of \$15 million from United Security Bank, due in full on June 30, 2008. If the Met defaulted and the City had to step in, the City would acquire title to all Met properties, including several unimproved parcels adjacent to the museum.

The renovation was restarted with the loan proceeds and the Met reopened in November 2007. Concurrently, the Met moved ahead to obtain the tax exempt financing, but ran into difficulties caused by the growing fear of recession and instability in the credit markets. At the request of the Met, the Council and the lender approved three loan extensions. Under the final extension, the bond financing would have to be in place by June 30, 2009. The Met was ultimately unsuccessful in obtaining bond financing. Consequently, the City had to pay off the \$15 million loan.

## **PURPOSE OF THE INVESTIGATION**

The grand jury investigated this matter to determine:

- The rationale used by the City Council to approve the proposal
- If the City had an established process to review proposals of this nature
- The degree of diligence applied by the City

### **Lack of Conformance with City Codes and Policies**

In researching to determine if there was an established review process, it was found that Section 7-912 of the City Code, effective July 12, 1985, requires that information on the qualifications and financial status of the applicant be made available to the City Council. This section directs that background checks also be performed on applicants for financial assistance. In addition, the City's Economic Development Policy and Program requires a developer to submit a business plan showing the proposed financing for the venture, including estimated expenses and revenues. This section further requires that the business plan be reviewed by an independent consultant hired by the City but paid for by the applicant. Tax-exempt revenue bond financing for non-profit organizations is quite specialized and relies on a number of highly

trained professionals. The grand jury determined a Bond Feasibility Consultant would have been an appropriate choice of an independent consultant to review the business plan.

The grand jury requested the City provide documents showing these requirements were followed. The City was unable to do so. No background checks were performed and no business plan was provided. The Council may waive the requirement for the business plan. However, it was not done in this instance. The only financial information provided prior to the July 31 action by the Council, was a summary of all expenditures and projected additional costs. This was previously given to the Council on June 26, 2007.

### **Rationale for City Council Support**

The previous Mayor and several Council members were interviewed to determine their views on the project. Those interviewed stated that museums are an important cultural feature of a major city. They further stated this museum was a key element of the cultural arts district just north of downtown and vital to the City's plans for downtown rejuvenation. For these reasons, the Met was very deserving of assistance.

When the Council members and the Mayor were asked whether more diligence should have been applied to the decision, many stated they were confident the Met would secure long term financing but the proposal was "going to be approved anyway." Some Council members indicated that they felt pressure from community leaders to approve the proposal.

### **Other Lack of Due Diligence**

The grand jury found other evidence of failure by the City to exercise due diligence. Because the museum's physical structure dated to 1922, it could be reasonably expected to contain lead-based paint and asbestos plus require seismic safety upgrades. The City did not request an explanation of the Met's failure to identify these issues. The Met was also not asked to disclose any steps they may have taken to hold responsible their architect, engineer or other consultants who should have looked for evidence of these issues. Consultants for projects of this nature must carry "errors and omissions" insurance for this purpose.

The City did not have an appraisal made of the property prior to executing the agreement even though the City's guarantee was secured by a first trust deed on the property.

The stated purpose of the short-term loan was to complete the project so that the museum could reopen. Met representatives assured the City that long term bond financing would be obtained within six months. The museum had already been closed for two years. The City Council did not deliberate whether saving another six months delay would be worth the \$15 million risk to the General Fund.

Met representatives stated the tax-exempt financing was ultimately not possible because the economic downturn dried up available credit. The grand jury was unable to fully evaluate this conclusion. However, the tax-exempt bond process reached a critical stage as the recession was looming in the summer of 2008.

## **Better Business Act**

On May 21, 2009, the City Council amended Section 7-912 of the City Code to allow the Council to expand current powers in Section 7-912 and the Economic Development Policy and Program. This action was taken because of losses sustained by the City as a result of prior economic development initiatives. The Council then approved by resolution a "Better Business Act" whose stated purpose is to address the lack of existing policies and procedures requiring a comprehensive evaluation and investigation before providing financial assistance to the private sector. The resolution establishes specific mandates for screening of applicants, assessment of risk, and equity contribution by the developer. It also sets a \$1 million financial assistance threshold for application of the new criteria.

However, the grand jury believes that the prior Section 7-912 and the Economic Development Policy and Program provided the powers and guidance the City needed to thoroughly evaluate the Met proposal. In fact, certain aspects of the Better Business Act may discourage future participation by the private sector when it would be of economic development benefit to the City. These include the possibility of a personal guarantee requirement by the developer and "Super Majority" votes by the Council.

## **CONCLUSION**

Because there had been no discussion of the possibility of failure, the City had no plan for absorbing the loss. The grand jury concludes that the City's lack of diligence was due primarily to a desire to approve the project in spite of its possible risks. Because this was not openly acknowledged, other interested parties and members of the public at large were not sufficiently informed about the possible impact on the City General Fund. It is unlikely that the City under current economic conditions will approve any similar proposal. However, by assisting the Met almost without question, the City Council has set a precedent for future Councils.

## **FINDINGS**

- F401 In reviewing the request from the Met for financial assistance, the City of Fresno staff did not provide information on qualifications and financial status to the Council and did not perform background checks on Met principals, all as required by City Code Section 7-912.
- F402 The City staff did not require the Met to produce a business plan for the project as required by its Economic Development Policy and Program. This requirement was not waived by the City Council.
- F403 The City did not obtain an appraisal of the property prior to approval of the proposed loan guarantee, even though the City's guarantee was secured with a first trust deed on the property.

- F404 The City did not investigate the reasons the Met project was 100% over budget.
- F405 Council members stated the assistance was necessary and appropriate because a major city should finance arts and culture and because the Met was a key part of the planned cultural arts district.
- F406 Council members also stated they had confidence in the Met's ability to secure long term financing.
- F407 Council members stated they felt pressure from community leaders.
- F408 Council members acknowledged that they did not request more diligence because "the Met proposal was going to be approved anyway."
- F409 The City did not deliberate the question of whether helping the Met reopen six months earlier than otherwise possible was worth the \$15 million risk to the General Fund.
- F410 Met representatives stated before the grand jury that long term financing through a tax-except revenue bond was ultimately not possible because the economic downturn in 2008 dried up available credit.
- F411 The City Council, the staff and the Mayor should have demanded more documentation on the financial status of the Met and cost overruns.
- F412 Codes and policies of the City in place prior to adoption of the "Better Business Act" provide sufficient guidance for evaluating and selecting applicants for City financial assistance.

## **RECOMMENDATIONS**

The 2009-2010 Fresno County Grand Jury recommends the following:

- R401 The City shall comply with all current City Code and policy requirements while assessing any future requests for development assistance. (F401, F402, F412)
- R402 The City should employ other situation specific due diligence to similar requests and apply precautions as necessary. (F403, F404, F405, F409, F411, F412)
- R403 The City should hire appropriate independent consulting assistance when examining issues beyond staff expertise and provide that documentation to the City Council prior to their deliberations. (F402, F412)

## **REQUEST FOR RESPONDANTS**

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 sixty days of the receipt of this report and ninety days for all others.

### **RESPONDANTS**

- Ashley Swearingin, Mayor, City of Fresno (F401-F404, F409, F411, F412, R401-R403)
- Fresno City Council (F403, F404, F405, F409, F411, F412, R401-R403)
- Andrew T. Souza, City Manager - Fresno (F401-F404, F409, F411, F412, R401-R403)
- Current Fresno City Manager (F401-F404, F409, F411, F412, R401-R403)

### **SOURCES AND REFERENCES**

- Documents provided by the City of Fresno
- DVD's of City Council meetings
- Fresno Bee articles
- Fresno City Code
- Fresno Comprehensive Economic Development Policy and Program
- Interviews with current and former City Council members, the former Mayor, and current and former City staff
- Interviews with representatives of the Metropolitan Museum of Arts and Science
- IRS Code
- Minutes of City Council meetings

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# RESPONSES

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- A. Ashley Swearengin, Mayor, City of Fresno  
R401 through R403
- B. Fresno City Council  
R401 through R403  
Responses received only from Lee Brand and Andreas Borgeas
- C. Andrew T. Souza, City Manager, City of Fresno  
R401 through R403  
Not received by publication date
- D. Bruce Rudd, Interim City Manager, City of Fresno  
R401 through R403  
Not received by publication date

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REC BY [Signature] ED 7/6/10

MAYOR ASHLEY SWEARENGIN

June 24, 2010

Ms. Vonda Epperson, Foreman  
Fresno Grand Jury  
1100 Van Ness Avenue  
Fresno, California 93724-0002

RE: RESPONSE TO GRAND JURY REPORTS #4 AND #5

Dear Ms. Epperson:

Attached are responses to Grand Jury Reports #4 (Fresno Metropolitan Museum) and #5 (Granite Park Project). The responses are transmitted on my behalf as Mayor and on behalf of new City Manager Mark Scott. As the responses explain, neither Mr. Scott nor I held our City of Fresno positions during the time periods covered in the two Grand Jury reports. While this limits our historical perspective, we have done our best to respond fairly and accurately to the Grand Jury findings and recommendations.

The Fresno City Council discussed the reports during its June 17, 2010, meeting, but Councilmembers were unable to reach a common response. Therefore, members of the City Council may respond individually. In fact, I believe some may have already done so. Please understand that three members of the City Council were serving during the time covered in the report. One member was in office during a portion of the time, and three were elected after the time period. As such, it was impractical to seek a single, joint response to the two reports. Members of the City Council fully appreciate the significance of the issue being addressed – as do officials in the Mayor and City Manager's Offices. The entire City organization has focused on the Granite Park and Metropolitan Museum (the "Met") project lessons. New City policy has been adopted to promote effective, open and informed decision processes in the future.

We hope the attached responses will demonstrate the City's understanding of the issue identified in the Grand Jury's reports. As always, we remain available for further communication.

Sincerely,

Ashley Swearengin  
Mayor

cc: Larry Westerlund, City Council President  
Members of the City Council  
James Sanchez, City Attorney  
Mark Scott, City Manager

CITY OF FRESNO  
CITY HALL • 2600 FRESNO STREET • FRESNO, CALIFORNIA 93721-3600  
(559) 621-8000 • FAX (559) 621-7990 • www.fresno.gov

1 FRESNO COUNTY 2009-2010 GRAND JURY REPORT #4

2 METROPOLITAN MUSEUM

3 Thank you for the opportunity to address the Grand Jury findings and recommendations  
4 concerning the Fresno Metropolitan Museum project ("the Met"). This response is submitted  
5 on behalf of the Mayor, City Council and current City Manager. Please note that the Mayor,  
6 City Manager and two of seven City Councilmembers were not in office during the time period  
7 covered in the Grand Jury report. Therefore, portions of the response that relate to past events  
8 are reflective of our research, but not necessarily direct experience. Our responses to the  
9 Grand Jury's recommendations do, of course, represent our collective commitment to the  
10 future.

11 California Penal Code Section 933.05 requires that respondents address each specific finding  
12 and state whether we agree, disagree, partially agree/disagree, or indicate why we cannot  
13 respond. For each recommendation, we are required to indicate if we have already adopted,  
14 will adopt, partially adopt, or reject the recommendation. Some of our comments are  
15 repetitive, but it is the format required by code.

16 As preface to our responses, we think it is important that the Grand Jury and public recall the  
17 historical context of the City's decisions relating to the Fresno Metropolitan Museum. In 2007,  
18 when the City agreed to guarantee the construction loan, the building construction work was  
19 virtually complete. There was every expectation that the museum would open to the public,  
20 which it ultimately did.

21 In 2007, the City agreed to guarantee what was expected to be a temporary bridge loan  
22 between construction and permanent financing. The Met was expected to replace the  
23 temporary loan with a tax-exempt bond issuance, which was common for nonprofit projects at  
24 that time. In 2007, there was reasonable expectation that fundraising objectives could be met.  
25 Certainly, no one in Fresno or elsewhere in the country had reason to expect the catastrophic  
26 failures in the international capital markets, banking industry or philanthropic community. The  
27 City considered its loan guarantee to be supportive of the arts revitalization of the Downtown  
28 within the context of 2007. It was not considered a significant risk. While historic events show  
29 it was misplaced hope, it was the context of the time of the decision. As we will indicate below,  
30 the Mayor and City Council have taken proactive steps to avoid a repeat of these  
31 circumstances, especially through adoption of the Better Business Act in 2009.

32 The responses below address the Grand Jury's Findings and Recommendations in Report #6, in  
33 accordance with Penal Code Section 933.05, subdivision (f). These responses are the official  
34 approved responses of all current City officials, including the Mayor, City Council and City  
35 Manager.

36 **FINDINGS**

37 **F401** In reviewing the request from the Met for financial assistance, the City of Fresno staff  
38 did not provide information on qualifications and financial status to the Council and  
39 did not perform background checks on Met principals, all as required by City Code  
40 Section 7-912.

41 *The City disagrees in large part. City staff, and subsequently the City Council through*  
42 *open discussion in public sessions of the City Council, were aware of the significant*  
43 *financial challenges facing the Met.*

44 **F402** The City staff did not require the Met to produce a business plan for the project as  
45 required by its Economic Development Policy and Program. This requirement was not  
46 waived by the City Council.

47 *The City agrees that a business plan was not produced prior to the agreement to*  
48 *guarantee the loan. However, as part of the agreement between the City and the Met,*  
49 *the museum was required to complete, submit, and follow a business plan, including*  
50 *definition of fundraising efforts.*

51 **F403** The City did not obtain an appraisal of the property prior to approval of the proposed  
52 loan guarantee, even though the City's guarantee was secured with a first trust deed  
53 on the property.

54 *The City agrees with Finding F404. However, the issue before the Council at the time*  
55 *was not whether the project constituted an investment that would yield a return, nor*  
56 *that the loan was appropriately sized to the appraised value of the property. The issue*  
57 *at hand was whether the City would provide the exact amount of financial backing that*  
58 *would allow the Met to finish the construction required to open the museum to the*  
59 *public. Regardless of appraisal value, the loan backing necessary for this was*  
60 *approximately \$15 million. The City agrees that when the loan guarantee was exercised,*  
61 *the City was left with an asset valued at that time at less than \$15 million.*

62 **F404** The City did not investigate the reasons the Met project was 100% over budget.

63 *The City disagrees. The project condition was well understood. The City was aware of*  
64 *the asbestos, design and other technical problems that caused the Met to be over*  
65 *budget. The decision making was based on whether or not to attempt to save a*  
66 *treasured community institution. The City was abundantly aware that there was risk*  
67 *involved in the transaction, but ultimately took the risk upon the belief that it was better*  
68 *to try to save the Met Museum from closure than see it close immediately. The risk was*

69 *backed by a contractual Agreement between the City and the Museum, which called for*  
70 *a specific fund-raising and business plan, as well as regular status reports on financing*  
71 *and other matters. What was not foreseen at the time, however, was the dramatic*  
72 *decline in the economy, which made it impossible to carry out the fundraising and*  
73 *business plan.*

74 **F405 Council members stated the assistance was necessary and appropriate because a**  
75 **major city should finance arts and culture and because the Met was a key part of the**  
76 **planned cultural arts district.**

77 *The City cannot comment directly on matters that were discussed in non-public session*  
78 *with the Grand Jury. Minutes of the City Council meeting discussion support this finding.*

79 **F406 Council members also stated they had confidence in the Met's ability to secure long**  
80 **term financing.**

81 *The City cannot comment on Finding F406, as it relates to matters that took place in*  
82 *non-public sessions with the Grand Jury. Again, meeting minutes from the City Council*  
83 *support this finding.*

84 **F407 Council members stated they felt pressure from community leaders.**

85 *The City cannot comment on Finding F406, as it relates to matters that took place in*  
86 *non-public sessions with the Grand Jury.*

87 **F408 Council members acknowledged that they did not request more diligence because**  
88 **"the Met proposal was going to be approved anyway."**

89 *The City cannot comment on Finding F406, as it relates to matters that took place in*  
90 *non-public sessions with the Grand Jury.*

91 **F409** The City did not deliberate the question of whether helping the Met reopen six  
92 months earlier than otherwise possible was worth the \$15 million risk to the General  
93 Fund.

94 *This question would seem to be implicit in the entire City Council deliberation concerning*  
95 *the Met loan. Within the context of 2007, it was viewed as a reasonable risk.*

96 **F410** Met representatives stated before the grand jury that long term financing through a  
97 tax-exempt revenue bond was ultimately not possible because the economic  
98 downturn in 2008 dried up available credit.

99 *The City cannot comment on Finding F406, as it relates to matters that took place in*  
100 *non-public sessions with the Grand Jury. This conclusion appears consistent with historic*  
101 *knowledge.*

102 **F411** The City Council, the staff and the Mayor should have demanded more documentation  
103 on the financial status of the Met and cost overruns.

104 *The City disagrees. The City had ample documentation and information on the cost*  
105 *overruns and financial matters of the Met. The decision made by the City was a*  
106 *calculated risk. Several matters outside of the City's control or knowledge, such as just*  
107 *how dramatically the economy declined, were unknown at the time and could not have*  
108 *been ascertained by the City.*

109 **F412** Codes and policies of the City in place prior to adoption of the "Better Business Act"  
110 provide sufficient guidance for evaluating and selecting applicants for City financial  
111 assistance.

112 *The City disagrees. The Better Business Act was adopted to provide a clear course of*  
113 *action for the City to follow when evaluating requests for financial assistance in the*  
114 *future.*

115 **RECOMMENDATIONS**

116 **The 2009-2010 Fresno County Grand Jury recommends the following:**

117 **R401** The City shall comply with all current City Code and policy requirements while  
118 assessing any future requests for development assistance. (F401, F402, F412)

119 *The City has already implemented and will continue to comply with Recommendation*  
120 *R401. The City Council adopted the Better Business Act in 2009, which governs how the*  
121 *City evaluates and assesses requests for development assistance.*

122 **R402 The City should employ other situation specific due diligence to similar requests and**  
123 **apply precautions as necessary. (F403, F404, F405, F409, F411, F412)**

124 *The City has implemented Recommendation R402. Again, the City Council adopted the*  
125 *Better Business Act in 2009 and we agree that situation specific due diligence will always*  
126 *be necessary.*

127 **R403 The City should hire appropriate independent consulting assistance when**  
128 **examining issues beyond staff expertise and provide that documentation to the City**  
129 **Council prior to their deliberations. (F402, F412)**

130 *The City has implemented Recommendation R402. The Better Business Act requires the*  
131 *use of appropriate consulting.*





Lee Brand  
Councilmember  
District 6

March 25, 2010

Fresno County Grand Jury  
1100 Van Ness Ave  
Fresno, CA 93724

Re: Final Grand Jury Reports Number 4 and 5 for the Met Museum and Granite Park

Dear Grand Jury Members:

First of all, thank you for your public service by serving on the Grand Jury. I realize that all of you have committed many hours of your valuable time in your investigation of the Granite Park and Met Museum public-private ventures.

The comments and opinions expressed in this letter are mine alone and do not reflect any official City position or the opinions of any other members of the Fresno City Council, the Mayor, or any other City official. My comments concern both the Granite Park and the Met Museum reports and the discussion of existing City policies for qualifications for applicants for City financing and the Better Business Act.

I was sworn in as a Fresno City Council member on January 6, 2009, and I was not a member of the Council when the decisions were made to have the City guarantee the loans for the Met Museum and Granite Park. Within a few months after being sworn in, the Council received notification that the City was going to be responsible for the loan guarantees on the Met Museum and Granite Park that were provided a few years earlier. I asked the City Attorney's office for copies of relevant City policies regarding applicants for City financing. I was stunned when I discovered the only then current written policies governing applicants for City financial assistance were a few paragraphs long and insufficient along with outdated policies from two decades ago. The recent public-private venture failures and the long list of others inspired me to write the Better Business Act.

In both Grand Jury reports it was stated that Section 7-912 and the Economic Development Policy and Program provided the powers and guidance the City needed to thoroughly evaluate both the Met proposal and the Granite Park proposal. I respectfully disagree with your conclusion. Below I will provide a cursory review of those policies and explain why I disagree. I will also discuss the Better Business Act and how its enhanced due diligence and oversight policies will substantially improve future evaluations of public-private ventures.

#### **Review of Fresno Municipal Code Section 7-912**

Fresno Municipal Code Section 7-912, Qualifications of Applicants for City Financing provides general guidelines for screening of applicants requesting financial assistance on private projects. This ordinance

is only half a page long and provides minimal criteria for selecting and evaluating private sector proposals for City financial assistance. The language in this code section is too vague and does not provide detailed due diligence policies. It states, ".....the City Manager or his designee shall cause an investigation to be made of the facts stated in each application for City financing." That leaves a lot of latitude for the City Manager to interpret the breadth and scope of any investigation. This code section also provides for a criminal background check. A criminal background check is useless without a more comprehensive financial analysis. Projects have failed because the principals are unqualified; under financed; over leveraged; and projects are inadequately collateralized and not because the principals were criminals.

Section 7-912 does not require an appraisal of real property used as collateral in a loan guarantee. Section II, Item (9) of the Better Business Act requires that any real property used as collateral for a loan guarantee must have an M.A.I. appraisal. This section also requires a Phase One Environmental Report. This report would have identified the lead based paint and asbestos problems and raised red flags. These are fundamental due diligence items that should be a part of any loan review regarding real property used as collateral in a City loan guarantee.

Let me elaborate on why Section 7-912 is inadequate. I can start with the obvious. Nearly every public-private venture the City entered into over the past 30 years has been a failure. You have to look long and hard to find any success stories. Code Section 7-912 does not adequately define financial assistance. It states, "...whether such assistance consists of loans, grants, bond issuance or otherwise." If you refer to Section 2 (financial assistance) of the Better Business Act you will see a much more detailed definition of financial assistance. Over the years, there have been many clever ways to receive assistance from the City that were never envisioned when Code Section 7-912 was written many years ago.

### **Economic Development Policy and Program**

The only other policy document that addressed applicants for financial assistance was the amendment to the Comprehensive Economic Development Policy and Program that was adopted by the Fresno City Council on May 12, 1987, and subsequently amended on June 26, 1990. The amendment adopted on June 26, 1990, requires that a private applicant must complete a business plan to obtain city financial assistance. The policy states, "Such business plan would be produced directly or indirectly by the applicant company, in form and content acceptable to the City, and must contain financial forecasts and such information appropriate to a business plan." This is too vague. You cannot be detailed enough in a thorough due diligence analysis of an applicant requesting financial assistance. Do you think any private bank would review applications for financial assistance on such vague terms?

The most glaring shortcoming of this policy is that it gives the City Council the option to not require business plans. It states, "The City Council may, at its discretion, waive on a case-by-case basis the requirement for submission of a business plan."

Section II (2) of the Better Business Act specifies the requirements for a business plan including three year forecasts of monthly income statements, balance sheets and cash flow projections. A timeline for achieving project and financial goals and making debt service payments is also required. More importantly, all business plan projections must be independently verified for the net economic impact

on our community. Most proposals for City financial assistance tout the number of jobs created or increase in the tax base. An Economic Impact Report is conducted by a private consultant to objectively measure the true impact of any prospective proposal and separates fact from hyperbole.

A business plan is only one of several components of a detailed due diligence evaluation of an applicant asking for financial assistance. Proper and prudent due diligence screening would also include detailed information on the principals, major stockholders, and board of directors, and an independently verified review of their personal financial statements and tax returns. It would also include detailed company financial information such as three years of financial statements, tax returns, a list of banking references, a schedule of contingent liabilities and obligations not appearing in the balance sheets, unfunded pensions or deferred payments. All of this information would be independently verified.

### **Better Business Act**

When I wrote the Better Business Act, I drew upon my many years of business experience. I spent countless hours researching the best practice policies of other cities' policies dealing with applicants for financial assistance. In the end, I developed due diligence policies that fuse the best practices of other cities and a private sector banking model. The Better Business Act was supported by the Mayor and approved unanimously by the City Council last May.

Both Grand Jury reports discuss the Better Business Act. The Grand Jury believed that certain aspects of the Better Business Act may discourage future participation by the private sector when it would be of economic benefit to the City. The reports went on to suggest that certain provisions of the Act such as a personal guarantee requirement by the developer and a super majority, five vote by the Council for final approval were onerous and too restrictive. My first response to the Grand Jury is that it is not the policy or mission of the City to be a lender of last resort for private sector business proposals. There is a big difference from providing economic development incentives to applicants with a proven track record to giving loans to start up companies or well intentioned non profits. I can assure you that nearly everyone who came to the City asking for financial assistance for their project had first been turned down by private lending institutions. I deliberately made it more difficult for any private sector applicant to receive financial assistance from the City. That is why I included a super majority, five vote approval requirement to raise the threshold. Only the strongest, well managed business with the biggest potential for an economic return for the City should be considered. In the end, the City is engaged in a risk-reward evaluation and the City should always err on the side of caution.

Most private sector applicants requesting financial assistance from the City will be structured as Limited Liability Corporations (LLC). Principals using this legal structure limit their liability and do not expose their personal assets. The LLC is typically a shell with little or no assets. In the event of failure or bankruptcy the City will have no collateral or means to recover its investment. Unless an applicant can demonstrate at least a 50% net equity (based on percentage of the proposed City financial assistance amount) in the proposed project or can provide sufficient collateral the prudent move is to require personal guarantees or reject the applicant. In the recent negotiations of lease terms with the Fresno Grizzlies, principals agreed to personally guarantee one year's lease payments.

The Grand Jury reports did make mention of political influences affecting the decision making process for public-private ventures. The old City financial assistance policies did not discourage political influence in the decision making process because they were inadequate, too vague and lacked transparency requirements. The well structured and defined policies of the Better Business Act compel a thorough objective analysis of any given project. The required City Manager report that includes all financial and supporting documents; the fiscal impact of the project on the General Fund; an economic impact study and risk assessment will make it difficult for Council members to ignore the facts. All of these reports, studies and all documents provided in the investigative phase will be available for public viewing. This transparency was missing under the old policies.

The Grand Jury report for Granite Park under recommendation R504, recommended that the City should review its current management policies and procedures to assure that effective project management and oversight measures are in place. Both of the older policies in Section 7-912 and the Economic Development Policy and Program contain no oversight language or policies. Section III of the Better Business Act provides for implementation and oversight policies. Detailed oversight policies are provided that include access to records; independent audits; monitoring disbursement of funds; and a required annual report by the City Manager and City Attorney on the status and progress of all private sector projects.

In both Grand Jury reports under recommendations R403 and R503, it was recommended that the City should hire independent consulting assistance when examining issues beyond staff expertise. There is a brief reference to using independent consultants in the Economic Development Policy and Program amendment of June 26, 1990 in section E (b). This section states that the applicant company will pay for consultant costs but later concedes that the consultant costs would be reimbursed if a deal is reached between the applicant and the City. In contrast, the Better Business Act requires that applicants not only pay City consultant charges but that they also must pay for City staff time charges. Furthermore, the applicant must consent, in writing, to pay for City billing and outside consultants before the investigative phase will begin.

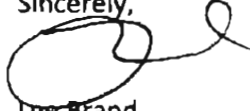
### **Application of the Better Business Act**

The first test of the Better Business Act was the lease negotiations with the Fresno Grizzlies late last year. The principals of the Grizzlies were reluctant to provide requested documents at first, particularly personal financial and tax documents. Over the course of a three month due diligence investigation the Grizzly organization and principals provided every document requested by the City Attorney's office pursuant to the provisions of the Better Business Act. The Council and the Mayor elected to hire a professional sports consultant to assist the City in 1) determining fair market value for the stadium lease using a comparative analysis of other Triple A teams; 2) conducting a detailed analysis of the operations and management of the Fresno Grizzlies including examining all financial records, tax records, partnership documents, loan documents, existing lease agreements with the City, Pacific Coast League documents and any other documents relative to this negotiation; and 3) helping the City develop deal points in the negotiations with the Fresno Grizzlies. The City also hired an outside CPA and an outside attorney to provide detailed accounting and legal review. Approximately \$150,000 in consulting costs were billed to and paid by the Fresno Grizzlies prior to the final Council vote to approve the modified lease terms.

By the end of the due diligence investigation the City Council was in a position to make an informed decision that was based on a thorough, objective review of all relevant facts and figures. This included a comprehensive 151 page report prepared by the sports consultant. The final agreement reached with the Grizzlies offered the team concessions based on comparable stadium deals and required the team to recapitalize their organization by infusing over one million dollars; enter into an unprecedented revenue sharing agreement with the City; provide personal guarantees by principals to secure \$1.5 million or one year's lease payments; maintain a capital reserve fund; conduct annual audits by an independent accounting firm at their expenses and other significant provisions that improved the City's security in the stadium lease deal.

The Better Business Act will not guarantee that there will never be mistakes made on public-private ventures. It provides a clear path and direction but will only work if future City staff and elected officials choose to follow it. Thank you for giving me the opportunity to share my thoughts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee Brand', with a large, stylized flourish extending to the right.

Lee Brand,  
Fresno City Council Member, District 6



ANDREAS BORGEAS  
COUNCILMEMBER

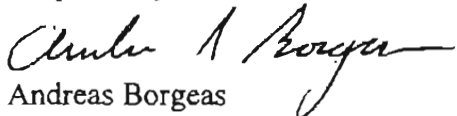
March 18, 2010

Dear Hon. M. Bruce Smith,

While I anticipate the Fresno City Council will provide more detailed responses, please accept this letter as my personal response to Grand Jury Final Report #4 2009-2010 and Grand Jury Final Report #5 2009-2010. Pursuant to Section 914.1, I am providing the following statement:

During the periods of time in which deliberations and approving votes occurred, I was not a member of the Fresno City Council. I assumed office as the representative of District #2 on January 6, 2009.

Respectfully,

  
Andreas Borgeas

CITY OF FRESNO

# REPORT #5

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## **GRANITE PARK PROJECT**





**FILED**

MAR 09 2010

FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPUTY

**2009-2010  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#5**

**Fresno County  
2009 – 2010 Grand Jury  
Report # 5**

**GRANITE PARK PROJECT**

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**INTRODUCTION**

Over the past few years, the Fresno Bee has contained a number of articles on Granite Park, a troubled and now failed development project on the City's east side.

Granite Park is a sport and retail complex that was being developed by two different but related entities. In 2004, the Fresno City Council approved City assistance to the sports portion. The grand jury reviewed the process leading to this action, and this report presents its findings, conclusions and recommendations.

**BACKGROUND**

In 1987, the Fresno City Council adopted a Comprehensive Economic Development Policy and Program to further a number of City objectives, including expansion of the City's economic base, generation of jobs, and revitalization of declining neighborhoods. The program identifies several strategies to achieve these objectives, including development incentives, use of public improvements to stimulate growth, and coordination of Federal, State and local economic development activities.

In 2002, the City was approached by a developer, The Zone Sports Center, LLC, (LLC) that was seeking development assistance for a 42-acre parcel near the northeast corner of Cedar and Dakota Avenues. The developer had purchased this property in 1997. The original plan had been to create a complex of indoor and outdoor sports facilities on the entire site that would attract sports leagues from throughout the region and individual users. This plan did not materialize and several alternative concepts were explored in subsequent years. These plans included a joint retail and sports development and a totally commercial scheme with a Cineplex. By 2002, the developer had settled on a sports/retail concept but had not been able to get financing. The City looked at a number of development incentives but no plan was considered feasible.

In 2004, the LLC approached the City again. By that time, the LLC had developed an 18-acre portion of the parcel as a sports park. Improvements consisted of batting cages, soccer fields, a concession stand, and three baseball and softball fields with tall wooden fences painted to replicate famous venues such as Wrigley Field and Fenway Park. The improvements cost several million dollars, privately financed in part with a \$5 million construction loan. However, there was no permanent source of financing.

With strong support from the Councilman whose district included the parcel, City staff was directed to work with the developer to identify a possible plan of assistance. Staff presented such a plan to the City Council for its consideration on December 21, 2004. The plan called for the 18-acre site with sports improvements to be split off, encumbered with the \$5 million construction loan, and the remaining 24-acres to be developed with retail uses. Title to the sports site would be transferred to a non-profit organization, Granite Park Kids Foundation, Inc (Foundation). The retail site would be developed by the LLC.

The LLC and the Foundation were not constituted as separate, freestanding entities. The principal partner in the LLC was also the negotiator and primary contact for the Foundation. Many of the officers and board members of the Foundation were either partners in the LLC or their relatives.

The LLC found a private lender willing to provide financing to pay off the \$5 million construction loan, but subject to a loan guarantee by a third party. Under the proposal recommended by staff, the City would be the guarantor. In the event of default by the Foundation, the City would assume responsibility for payment of the loan balance and would take title to the sports field and all of its improvements. The terms of the loan included amortization over 25 years but with all outstanding principal and interest due at the end of the fifth year. Implicit in this arrangement was the need for the Foundation to reach a level of success over the five-year period to support long term permanent financing.

The plan was the subject of a proposed Economic Development Agreement (Agreement) presented to the Council on December 21, 2004. The Economic Development Director and Finance Director/City Controller wrote the staff report to the City Council that presented this plan. It recommended approval, stating the project would be "viable" and would generate more than 700 direct jobs. As a further inducement, the City Parks Department and the public would have use of the sports facilities at no cost during various times in the year. For example, soccer fields were to be available to the public every day from 2:00 to 5:00 p.m. In addition, a number of Friday nights and weekends were reserved for City league softball.

After presentation by staff, testimony by the developer, and considerable discussion, the Council approved the Agreement. The LLC was also a signatory to the Agreement. Under its terms, the LLC was required to develop 100,000 square feet of retail uses by June 30, 2006.

From the start, the Foundation found itself in financial difficulty. The Foundation's tax returns for 2005 show that income from donations, operations and endorsements covered approximately half of the sports facility's \$1,100,000 in expenses. Payments on the loan were being made from a debt reserve fund of \$500,000 that had been established from loan proceeds at the request of the City. This reserve fund was to be used for debt retirement only in the event that the Foundation's cash flow was impacted by unforeseen circumstances. Further, the Children's Play Area was not constructed by December 1, 2005 as required by the Agreement.

A status report to the Council by staff dated May 23, 2006 identified factors contributing to the Foundation's problems including excess rain and theft of materials from the site. Construction delays were also being experienced on the retail side because of rain and because of delays in review by the City Development Department. However, some of these latter delays were due to changes in the plan requested by the LLC. The retail delays in turn reduced anticipated sponsorship revenues to the Foundation because they were tied to completion of retail venues.

The Foundation's troubles were never resolved in spite of forbearance by the lender and waiver of some covenants by both the lender and the City. In April 2009, the lender exercised its rights under the loan guarantee. The current status of the property is that the City has been indemnified on the outstanding liens and is moving forward in the foreclosure process.

## **PURPOSE OF THE INVESTIGATION**

The grand jury investigated the project to determine the following:

- The rationale used for Council approval of loan guarantee and other assistance.
- The degree to which the project conformed to the City's Economic Development Policy and Program and other City requirements.
- The City's degree of due diligence in reviewing the proposal.
- The role of City staff.

### **Rationale for City Council Support**

According to Council minutes and interviews by the grand jury, former and current Councilpersons who supported assistance to the Foundation did so for a variety of laudable reasons, including the following:

- a. The productive reuse of a large inner city parcel.
- b. The hope that the project would spark other development and help to revitalize this declining neighborhood.
- c. The addition of recreational opportunities in an area that was deficient in parks and playgrounds.
- d. The generation of many jobs in an area of low income and high unemployment.

A tape recording of the December 21, 2004 Council meeting was not available. The minutes of the meeting indicate Council members expressed concerns about the project, including lack of information on operating expenses, the precedent it would set, the security for the loan guarantee, and why the guarantee was required. However, after responses from staff and the developer, the loan guarantee was approved by a Council vote of 6 to 1.

Supportive Council members said staff assured them the proposal was financially sound. They had faith the City staff would not recommend approval if this was not the case. In addition, they stated if the project went under, at least the City would have title to additional recreational facilities within a neighborhood where they were badly needed.

Comments against the proposal included, "the City should not be a bank." There was also concern the Council had not been allowed by the former Mayor and former City Manager to see the developer's financial statements.

Many of the Council members interviewed by the grand jury expressed a general concern that they were not provided with adequate access to information. A repeated theme was "You don't know what you don't know, so you don't ask." Another point of concern of most Council

members was the former Mayor's policy forbidding meetings between themselves and a department head unless a member of the Mayor or City Manager's staff was present.

### **Lack of Conformance with City Codes and Policies**

The grand jury determined the City did not perform due diligence, as required by its codes and policies, when it reviewed the request from the LLC.

#### **City Code Section 7-912**

Section 7-912 of the Fresno City Code, effective July 12, 1985, applies to applicants for financial assistance from the City. It states that information with respect to the qualifications and financial status of an applicant be made available to the Council. This section directs that background investigations be made on the partners in a development proposed for assistance. The City was not able to produce evidence showing that background checks were performed. Further, no information on qualifications and financial status such as financial statements was provided to the Council.

All elected and appointed City officials interviewed by the grand jury appeared to be unaware of the requirements in Section 7-912.

#### **Business Plan**

Section B, Business Plan Requirement of the City of Fresno Comprehensive Economic Development Policy and Program (effective June 26, 1990) requires the following:

- a. Submission of a business plan whenever the City would provide financial assistance to an entity proposing a project in the City. The plan must include financial forecasts and other information appropriate to a business plan.
- b. Review of the plan by an appropriate City-engaged independent consultant, with the cost of such review borne by the company.

The Policy provides the requirement for submission of a business plan may be waived on a case-by-case basis.

A business plan for a real estate development should contain a "pro-forma" identifying the costs of the development, including financing, and the projected revenue stream. A properly prepared pro-forma is critical in determining a "go/no go" of a development proposal. The further requirement for an independent consultant is essential for a project's objective review.

During its investigation, the City provided a document to the grand jury purporting to be a portion of the business plan submitted by the Foundation. This document contains no financial data and the non-financial portions of the plan appear dated. It was determined that the Finance Director/ City Controller was the primary point of contact on City staff. In testimony, the City Finance Director was insistent that business plans with pro-formas were reviewed and approved, but the City has not been able to produce copies of these documents. (Under State law, local agencies are to retain public documents for a minimum of five years.) Further, the Finance Director's statements regarding the existence of the business plans were inconsistent. No one else interviewed reported that they had seen any plans. In any event, no independent

consultant was hired to review a business plan. Further, none of the project approvals given by the City Council waived the requirements for a business plan and consultant review.

Few of the City officials interviewed were aware of the requirement for a business plan.

Notwithstanding the fact that staff did not furnish the background and financial information required by codes and policies, the grand jury believes the City Council should have demanded this information in the general course of reviewing this project.

### **Other Lack of Diligence**

City staff and City Council did not fully evaluate several "red flags" that should have resulted in a cautious approach to the project. These include:

- a. The principal partner in the LLC, who also represented the Foundation in contacts with the City, was a local accountant with no apparent background in land development.
- b. At the time the LLC approached the City in 2004; several million dollars of sports related improvements had been constructed on the "back 20 acre" portion of the parcel. However, these improvements had been financed with a construction loan, and the developer had no plan for permanent financing.
- c. The LLC had been operating the sports park for several months, but had apparently concluded that it was not viable without restructuring and City assistance.
- d. There are examples of successful private sports parks in the Western U.S., but none like the sports/retail development proposed by the LLC. This called for a survey of the other parks as part of a careful review of the proposal's viability.
- e. Inability to acquire private financing without a third party guarantee.

### **Poor Staff Support**

#### **Deficient Staff Report**

A City Council relies on a properly prepared staff report for all information relevant to the Council's consideration of a proposal. The December 21, 2004 staff report to the City Council in support of assistance to the Granite Park project was deficient or even misleading in several respects.

- a. It failed to inform the Council of the City's own requirements for background checks and a business plan. Rather, it stated that the assistance was in accordance with the City's Economic Development Policy.

- b. It assured the Council that the "project" was viable but it was not possible to tell from reading the report whether the "project" was the sports fields, the retail portion of the site, or both.
  - c. Because no business plans were submitted, the staff had no basis for determining the viability of either development.
  - d. The report was silent on the identification of the revenues that the Foundation would use to amortize the loan the City would be guaranteeing.
  - e. Similarly, the report did not outline the ownership structure, specifically, the Foundation taking title to the sports fields subject to the \$5 million in construction liens while the LLC retained title to the remainder, free of these liens.
  - f. The report contains no assurance that frequent free public use of the sports park mandated by the Agreement would not impact negatively on the ability of the Foundation to repay the loan.
  - g. In addition to stating that the "project" would be viable, the report predicts that over 700 jobs and close to \$1 million of tax revenue would be produced, primarily by the retail portion. However, no business plan was ever submitted for the retail portion. Thus, it could not be analyzed for its viability.
- 

#### Lack of Project Management

The grand jury interviews with City staff show that after approval of the Agreement, the project had no designated project manager or contract compliance officer. Possibly for this reason, many requirements in the Agreement were not met by the Foundation. These included written confirmation by the IRS of tax-exempt status as a 501(c) 3 corporation, maintenance of that status with the IRS, submission of regular status reports by the developer, submission of financial statements prepared in accordance with generally accepted accounting principles, and failure by the developer to construct a children's play area by December 1, 2005.

Without a project manager, there was no established method for coordination of the several City departments who were involved in the project. Also, no one had responsibility for preparing status reports for the Council and upper management as required by the joint Agreement.

#### Lack of Oversight by City Manager

It was apparent to the grand jury that the City Manager's office did not provide sufficient oversight on this project.

- a. It is probable that the December 21, 2004 staff report was not reviewed by the City Manager's office prior to release.
- b. The City Manager did not designate a project manager/contract compliance officer.

- c. Council members expressed concern about lack of information on the project.
- d. The few communications to Council following approval of the Agreement were generally done at the initiation of lower level staff.

### Conflict of Interest

The Finance Director/Controller at the time of Council approval of the proposal acknowledged later entering into a consulting relationship with the principal partner in the LLC. This occurred about seven months after the Economic Development Agreement had been approved and just after the Director had left City employment for a position with another local public entity. As a consultant, the former Director was to work primarily with City Council to get City approvals for the LLC (retail) portion of the development. The arrangement ended after the City Manager became aware of it and sent a letter to the former Director asking that it be terminated.

By entering into the consulting relationship, the Finance Director was assisting a project that the Director had recently recommended for approval before leaving the City. The grand jury believes that the Director had a "revolving door" conflict of interest and should not have entered into a business relationship with the developer.

During testimony, it was learned by the grand jury that the City does not regularly provide ethics training for its staff.

### **Better Business Act**

On May 21, 2009, the City Council amended Section 7-912 of the City Code to allow the Council to expand current powers in Section 7-912 and the Economic Development Policy and Program. This action was taken because of losses sustained by the City as a result of prior economic development initiatives. The Council then approved by resolution a "Better Business Act" whose stated purpose is to address the lack of existing policies and procedures requiring a comprehensive evaluation and investigation before providing financial assistance to the private sector. The resolution establishes specific mandates for screening of applicants, assessment of risk, and equity contribution by the developer. It also sets a \$1 million financial assistance threshold for application of the new criteria.

However, the grand jury believes that the prior Section 7-912 and the Economic Development Policy and Program provided the powers and guidance the City needed to thoroughly evaluate the Granite Park proposal. In fact, certain aspects of the Better Business Act may discourage future participation by the private sector when it would be of economic development benefit to the City. These include the possibility of a personal guarantee requirement by the developer and "Super Majority" votes by the Council.

### **CONCLUSIONS**

The City's failure to perform appropriate diligence to the review of the Granite Park project, as required by existing codes and policies, exposed the City unnecessarily to the possible loss of \$5 million in General Funds. Without the background and financial information required by the codes and policies on due diligence, the City Council could not responsibly consider the proposal. For the same reason, other interested parties and the public at large did not have a true understanding of the proposal and its risks.



Primary responsibility for the failure of the City to perform the diligence required by its codes and ordinances and for providing adequate oversight falls upon staff, including the City Manager, Economic Development Director and Finance Director/Controller. Ultimate responsibility for the failure to perform this diligence falls upon the Mayor, who is empowered under the City Charter with enforcing all laws and ordinances and with employing all staff. Responsibility for the final result must be shared by the City as an entity, including staff, the City Council and the Mayor.

## **FINDINGS**

- F501 In reviewing the request from the LLC and Foundation for financial assistance, City staff did not obtain information on the background and financial status of the corporations nor perform background checks on the principals as required by City Code Section 7-912.
- F502 City staff did not require the LLC and Foundation to produce a business plan for the project as required by its Economic Development Policy and Program. This requirement was not waived by the City Council.
- F503 The City Council should have demanded background and financial information before voting on the proposal.
- F504 The City Council approved assistance to the Granite Park Kids Foundation based in part upon staff assurances that the Foundation and Zone Sports Center proposals were feasible and would provide needed recreational facilities and generate many jobs and added tax revenue.
- F505 Council members who voted for the proposal said staff assured them it was financially viable. They stated they had faith staff would not recommend approval if this was not the case.
- F506 The City did not look into other "red flags" e.g. lack of development experience, prior failure by developer to develop the site, inability to obtain private financing without a guarantor and existing liens on the property.
- F507 No basis could be found to support the staff's conclusion in the December 21, 2004 staff report that the Foundation and LLC's projects were viable.
- F508 The project did not have a project manager/contract compliance officer.
- F509 The City Manager did not provide adequate oversight of the project.
- F510 The Finance Director/City Controller had a "revolving door" conflict of interest when the individual entered into a consulting relationship with the developer after leaving City employment.
- F511 The City does not consistently conduct ethics training for staff.
- F512 City Code Section 7-912 and the City's Economic Development Policy and Program provided the powers and guidance the City needed to thoroughly evaluate the Granite Park project.

- F513 The grand jury's investigation was hampered by the City's recent destruction of audio and video recordings of Council meetings that occurred more than four years ago.
- F514 Many Council members interviewed by the grand jury expressed a general concern that they were not given adequate access to information.
- F515 During testimony, current and former Council members stated that the City Council should bear primary responsibility for the outcome of the project.

## **RECOMMENDATIONS**

The 2009-2010 Fresno County Grand Jury recommends the following:

- R501 The City shall comply with all City Code and policy requirements in assessing any future requests for development assistance. (F501, F502, F512)
- R502 The City should employ other due diligence specific to the situation for similar requests and apply precautions as necessary. (F506)
- R503 The City should hire appropriate independent consulting assistance when examining issues beyond staff expertise. (F502)
- R504 The City should review its current management policies and procedures to assure that effective project management and oversight measures are in place. (F508, F509)
- R505 The Mayor and Administration should operate on the basis of the open sharing of information so that Council members do not lack the information necessary to make responsible decisions. (F514)
- R506 The City should provide annual ethics training for employees. (F510, F511)
- R507 The City should retain videos and tape recordings of all City Council meetings indefinitely (F513)

## **REQUEST FOR RESPONDANTS**

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 sixty days of the receipt of this report and ninety days for all others.

### **RESPONDANTS**

Ashley Swearingin, Mayor, City of Fresno (F501, F502, F506-F513, R501-R507)  
 Fresno City Council (F506, F511- F513, R502-R507)  
 Andrew T. Souza, Former Fresno City Manager (F501, F502, F506-F513, R501-R507)

SOURCES AND REFERENCES

- Documents provided by the City
- Fresno Bee articles
- Fresno City Code
- Fresno Comprehensive Economic Development Policy and Program
- Interviews with current and former City Council members, the former Mayor, and current and former City staff.
- Minutes of City Council meetings

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# RESPONSES

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- A. Ashley Swearingin, Mayor, City of Fresno  
R501 through R507
- B. Fresno City Council  
R502 through R507  
Responses received only from Lee Brand and Andreas Borgeas
- C. Andrew T. Souza, City Manager, City of Fresno  
R501 through R507  
Not received by Publication Date
- D. Bruce Rudd, Interim City Manager, City of Fresno  
R501 through R507  
Not received by Publication Date

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RE  
BY *[Signature]*

ED  
7/16/10

## MAYOR ASHLEY SWEARENGIN

June 24, 2010

Ms. Vonda Epperson, Foreman  
Fresno Grand Jury  
1100 Van Ness Avenue  
Fresno, California 93724-0002

RE: RESPONSE TO GRAND JURY REPORTS #4 AND #5

Dear Ms. Epperson:

Attached are responses to Grand Jury Reports #4 (Fresno Metropolitan Museum) and #5 (Granite Park Project). The responses are transmitted on my behalf as Mayor and on behalf of new City Manager Mark Scott. As the responses explain, neither Mr. Scott nor I held our City of Fresno positions during the time periods covered in the two Grand Jury reports. While this limits our historical perspective, we have done our best to respond fairly and accurately to the Grand Jury findings and recommendations.

The Fresno City Council discussed the reports during its June 17, 2010, meeting, but Councilmembers were unable to reach a common response. Therefore, members of the City Council may respond individually. In fact, I believe some may have already done so. Please understand that three members of the City Council were serving during the time covered in the report. One member was in office during a portion of the time, and three were elected after the time period. As such, it was impractical to seek a single, joint response to the two reports. Members of the City Council fully appreciate the significance of the issue being addressed – as do officials in the Mayor and City Manager's Offices. The entire City organization has focused on the Granite Park and Metropolitan Museum (the "Met") project lessons. New City policy has been adopted to promote effective, open and informed decision processes in the future.

We hope the attached responses will demonstrate the City's understanding of the issue identified in the Grand Jury's reports. As always, we remain available for further communication.

Sincerely,

Ashley Swearengin  
Mayor

cc: Larry Westerlund, City Council President  
Members of the City Council  
James Sanchez, City Attorney  
Mark Scott, City Manager

CITY OF FRESNO  
CITY HALL • 2600 FRESNO STREET • FRESNO, CALIFORNIA 93721-3600  
(559) 621-8000 • FAX (559) 621-7990 • www.fresno.gov

1 FRESNO COUNTY 2009-2010 GRAND JURY REPORT #5

2 GRANITE PARK PROJECT

3 Thank you for the opportunity to address the Grand Jury findings and recommendations  
4 concerning the Granite Park project. This response is submitted on behalf of the Mayor, City  
5 Council and current City Manager. Please note that the Mayor, City Manager and four of seven  
6 City Councilmembers were not in office during the time period covered in the Grand Jury  
7 report. Therefore, portions of the response that related to past events are reflective of our  
8 research, but not necessarily direct experience. Our responses to the Grand Jury's  
9 recommendations do, of course, represent our collective commitment to the future.

10 California Penal Code Section 933.05 requires that respondents address each specific finding  
11 and state whether we agree, disagree, partially agree/disagree, or indicate why we cannot  
12 respond. For each recommendation, we are required to indicate if we have already adopted,  
13 will adopt, partially adopt, or reject the recommendation. Some of our comments are  
14 repetitive, but it is the format required by code.

15 The responses below address the Grand Jury's Findings and Recommendations in Report #5, in  
16 accordance with Penal Code Section 933.05, subdivision (f). These responses are the official  
17 approved responses of all City officials, including the Mayor, City Council and City Manager.

18 **FINDINGS**

19 **F501** In reviewing the request from the LLC and Foundation for financial assistance, City  
20 staff did not obtain information on the background and financial status of the  
21 corporations nor perform background checks on the principals as required by City  
22 Code Section 7-912.

23 *The City disagrees. City staff indicate that they conducted a review of the financial*  
24 *status of the LLC and its principals. Staff reviewed the documents at the offices of the*  
25 *LLC and its principals and legal counsel, but did not make copies or return with the*  
26 *documents, as the LLC did not want private business documents being subject to Public*  
27 *Records Act provisions. The passage of the Better Business Act has changed this*  
28 *practice, as it is now policy that any entity desiring financial assistance from the City*  
29 *must provide financial documentation, which then becomes public record.*

30

31



32 **F502** **City staff did not require the LLC and Foundation to produce a business plan for the**  
33 **project as required by its Economic Development Policy and Program. This**  
34 **requirement was not waived by the City Council.**

35 *The City partially agrees. There was not a formal written plan. However, the*  
36 *development and operating plans for the Granite Park location were clearly known by*  
37 *City staff and underway, including construction schedules and revenue and expenditure*  
38 *statements when the loan guarantee was made. The City Council did vote upon this item*  
39 *in public session. There was no need to waive the requirement for a business plan*  
40 *because the Economic Development Policy was a policy of the Council, subject to the*  
41 *discretion of the Council.*

42 **F503** **The City Council should have demanded background and financial information before**  
43 **voting on the proposal.**

44 *We agree that decisions should always be properly researched so that informed*  
45 *decisions can be made.*

46 **F504** **The City Council approved assistance to the Granite Park Kids Foundation based in**  
47 **part upon staff assurances that the Foundation and Zone Sports Center proposals**  
48 **were feasible and would provide needed recreational facilities and generate many**  
49 **jobs and added tax revenue.**

50 *The City agrees. At the time this effort was put forth, the belief was that this project was*  
51 *feasible and would be an amenity that was not found elsewhere in the City. The financial*  
52 *prospects for retail development were much greater in December, 2004, when the*  
53 *former Mayor and staff recommended moving forward with the loan guarantee. A*  
54 *number of factors, particularly economic and weather, eventually doomed the project.*

55 **F505** **Council members who voted for the proposal said staff assured them it was financially**  
56 **viable. They stated they had faith staff would not recommend approval if this was not**  
57 **the case.**

58 *The City cannot comment on the factual accuracy of comments asserted in Finding F505,*  
59 *as it relates to conversations that took place in non-public sessions with the Grand Jury*  
60 *to which the City was not a party.*

61 **F506** The City did not look into other “red flags” e.g. lack of development experience, prior  
62 failure by developer to develop the site, inability to obtain private financing without a  
63 guarantor and existing liens on the property.

64 *The City disagrees. City staff and Council members were aware of the risk involved in the*  
65 *transaction, specifically the lack of experience of this developer. The decision to become*  
66 *involved in this project was a calculated risk, made with the understanding that the*  
67 *community in which the project is located has been historically underserved with*  
68 *amenities of this kind, and that, should the development fail, at a minimum the City*  
69 *would be adding open space and recreation opportunities for an underserved*  
70 *community.*

71 **F507** No basis could be found to support the staff’s conclusion in the December 21, 2004  
72 staff report that the Foundation and LLC’s projects were viable.

73 *The City cannot respond to this Grand Jury conclusion. Clearly there was consideration*  
74 *and discussion of the subject. And clearly, any 2004 beliefs in the viability of the project*  
75 *have been proven wrong.*

76 **F508** The project did not have a project manager/contract compliance officer.

77 *The City agrees. This was a private project, not a City project, so the City did not have a*  
78 *project manager overseeing the project. City staff kept abreast of the difficulties the*  
79 *developer was experiencing as the project progressed, however, there was no*  
80 *contractual relationship with a project manager or contract compliance official. It*  
81 *should be noted, however, that a person in such a role would not likely have influenced*  
82 *the project outcome, which was severely affected in part by economic conditions.*

83 **F509** The City Manager did not provide adequate oversight of the project.

84 *It is difficult to respond specifically to such a broad statement. The City did not control*  
85 *the project. We agree that different actions would be taken if the same circumstances*  
86 *arose today.*

87 **F510** The Finance Director/City Controller had a “revolving door” conflict of interest when  
88 the individual entered into a consulting relationship with the developer after leaving  
89 City employment.

90 *The City cannot comment on Finding F510, as the City had no ability to direct or control*  
91 *the actions of the Finance Director/Controller after she left employment with the City.*  
92 *The City has no factual knowledge that the Controller’s recommendation to Council*  
93 *about this project was influenced in any way by the developer.*

94 **F511** The City does not consistently conduct ethics training for staff.

95 *The City disagrees. The City does conduct ethics training for staff, consistent with State*  
96 *law, both in terms of content and frequency.*

97 **F512** City Code Section 7-912 and the City's Economic Development Policy and Program  
98 provided the powers and guidance the City needed to thoroughly evaluate the Granite  
99 Park project.

100 *The City agrees in that these two citations do provide guidance and direction for staff to*  
101 *follow when evaluating projects. The Better Business Act further strengthens the City's*  
102 *processes related to evaluating requests for City support.*

### 103 **RECOMMENDATIONS**

104 **The 2009-2010 Fresno Grand Jury recommends the following:**

105 **R501** The City shall comply with all the City Code and policy requirements in assessing any  
106 future requests for development assistance. (F501, F502, F512)

107 *The City has already implemented and will continue to comply with Recommendation*  
108 *R501.*

109 **R502** The City should employ other due diligence specific to the situation for similar  
110 requests and apply precautions as necessary. (F506)

111 *The City has already implemented Recommendation R502. The Better Business Act,*  
112 *passed in 2009, clearly delineates the due diligence that the City must undertake for any*  
113 *development where City assistance of \$1 million or more is requested.*

114 **R503** The City should hire appropriate independent consulting assistance when examining  
115 issues beyond staff expertise. (F502)

116 *The City has already implemented Recommendation R503. Under the Better Business*  
117 *Act, the City is required to hire independent consultation assistance.*

118 **R504** The City should review its current management policies and procedures to assure that  
119 effective project management and oversight measures are in place. (F508, F509)

120 *The City has already implemented Recommendation R504. The Granite Park project was*  
121 *not controllable as a City project, but staff would provide oversight of an appropriate*  
122 *nature under the Better Business Act.*

123 **R505** The Mayor and Administration should operate on the basis of the open sharing of  
124 information so that Council members do not lack the information necessary to make  
125 responsible decisions. (F514)

126 *The City has already implemented Recommendation R505.*

127 **R506** The City should provide annual ethics training for employees. (F510, F511)

128 *The City has already implemented Recommendation R506. Again, the City readily*  
129 *complies with all State laws concerning ethics training and guidance for staff.*

130 **R507** The City should retain videos and tape recordings of all City Council meetings  
131 indefinitely. (F513)

132 *The City has already implemented Recommendation R507. In 2009, the City put*  
133 *technologies into place that allow the digital recording and storage of all City Council*  
134 *meetings.*

Lee Brand  
Councilmember  
District 6

March 25, 2010

Fresno County Grand Jury  
1100 Van Ness Ave  
Fresno, CA 93724

Re: Final Grand Jury Reports Number 4 and 5 for the Met Museum and Granite Park

Dear Grand Jury Members:

First of all, thank you for your public service by serving on the Grand Jury. I realize that all of you have committed many hours of your valuable time in your investigation of the Granite Park and Met Museum public-private ventures.

The comments and opinions expressed in this letter are mine alone and do not reflect any official City position or the opinions of any other members of the Fresno City Council, the Mayor, or any other City official. My comments concern both the Granite Park and the Met Museum reports and the discussion of existing City policies for qualifications for applicants for City financing and the Better Business Act.

I was sworn in as a Fresno City Council member on January 6, 2009, and I was not a member of the Council when the decisions were made to have the City guarantee the loans for the Met Museum and Granite Park. Within a few months after being sworn in, the Council received notification that the City was going to be responsible for the loan guarantees on the Met Museum and Granite Park that were provided a few years earlier. I asked the City Attorney's office for copies of relevant City policies regarding applicants for City financing. I was stunned when I discovered the only then current written policies governing applicants for City financial assistance were a few paragraphs long and insufficient along with outdated policies from two decades ago. The recent public-private venture failures and the long list of others inspired me to write the Better Business Act.

In both Grand Jury reports it was stated that Section 7-912 and the Economic Development Policy and Program provided the powers and guidance the City needed to thoroughly evaluate both the Met proposal and the Granite Park proposal. I respectfully disagree with your conclusion. Below I will provide a cursory review of those policies and explain why I disagree. I will also discuss the Better Business Act and how its enhanced due diligence and oversight policies will substantially improve future evaluations of public-private ventures.

#### **Review of Fresno Municipal Code Section 7-912**

Fresno Municipal Code Section 7-912, Qualifications of Applicants for City Financing provides general guidelines for screening of applicants requesting financial assistance on private projects. This ordinance

is only half a page long and provides minimal criteria for selecting and evaluating private sector proposals for City financial assistance. The language in this code section is too vague and does not provide detailed due diligence policies. It states, ".....the City Manager or his designee shall cause an investigation to be made of the facts stated in each application for City financing." That leaves a lot of latitude for the City Manager to interpret the breadth and scope of any investigation. This code section also provides for a criminal background check. A criminal background check is useless without a more comprehensive financial analysis. Projects have failed because the principals are unqualified; under financed; over leveraged; and projects are inadequately collateralized and not because the principals were criminals.

Section 7-912 does not require an appraisal of real property used as collateral in a loan guarantee. Section II, Item (9) of the Better Business Act requires that any real property used as collateral for a loan guarantee must have an M.A.I. appraisal. This section also requires a Phase One Environmental Report. This report would have identified the lead based paint and asbestos problems and raised red flags. These are fundamental due diligence items that should be a part of any loan review regarding real property used as collateral in a City loan guarantee.

Let me elaborate on why Section 7-912 is inadequate. I can start with the obvious. Nearly every public-private venture the City entered into over the past 30 years has been a failure. You have to look long and hard to find any success stories. Code Section 7-912 does not adequately define financial assistance. It states, "...whether such assistance consists of loans, grants, bond issuance or otherwise." If you refer to Section 2 (financial assistance) of the Better Business Act you will see a much more detailed definition of financial assistance. Over the years, there have been many clever ways to receive assistance from the City that were never envisioned when Code Section 7-912 was written many years ago.

### **Economic Development Policy and Program**

The only other policy document that addressed applicants for financial assistance was the amendment to the Comprehensive Economic Development Policy and Program that was adopted by the Fresno City Council on May 12, 1987, and subsequently amended on June 26, 1990. The amendment adopted on June 26, 1990, requires that a private applicant must complete a business plan to obtain city financial assistance. The policy states, "Such business plan would be produced directly or indirectly by the applicant company, in form and content acceptable to the City, and must contain financial forecasts and such information appropriate to a business plan." This is too vague. You cannot be detailed enough in a thorough due diligence analysis of an applicant requesting financial assistance. Do you think any private bank would review applications for financial assistance on such vague terms?

The most glaring shortcoming of this policy is that it gives the City Council the option to not require business plans. It states, "The City Council may, at its discretion, waive on a case-by-case basis the requirement for submission of a business plan."

Section II (2) of the Better Business Act specifies the requirements for a business plan including three year forecasts of monthly income statements, balance sheets and cash flow projections. A timeline for achieving project and financial goals and making debt service payments is also required. More importantly, all business plan projections must be independently verified for the net economic impact

on our community. Most proposals for City financial assistance tout the number of jobs created or increase in the tax base. An Economic Impact Report is conducted by a private consultant to objectively measure the true impact of any prospective proposal and separates fact from hyperbole.

A business plan is only one of several components of a detailed due diligence evaluation of an applicant asking for financial assistance. Proper and prudent due diligence screening would also include detailed information on the principals, major stockholders, and board of directors, and an independently verified review of their personal financial statements and tax returns. It would also include detailed company financial information such as three years of financial statements, tax returns, a list of banking references, a schedule of contingent liabilities and obligations not appearing in the balance sheets, unfunded pensions or deferred payments. All of this information would be independently verified.

### **Better Business Act**

When I wrote the Better Business Act, I drew upon my many years of business experience. I spent countless hours researching the best practice policies of other cities' policies dealing with applicants for financial assistance. In the end, I developed due diligence policies that fuse the best practices of other cities and a private sector banking model. The Better Business Act was supported by the Mayor and approved unanimously by the City Council last May.

Both Grand Jury reports discuss the Better Business Act. The Grand Jury believed that certain aspects of the Better Business Act may discourage future participation by the private sector when it would be of economic benefit to the City. The reports went on to suggest that certain provisions of the Act such as a personal guarantee requirement by the developer and a super majority, five vote by the Council for final approval were onerous and too restrictive. My first response to the Grand Jury is that it is not the policy or mission of the City to be a lender of last resort for private sector business proposals. There is a big difference from providing economic development incentives to applicants with a proven track record to giving loans to start up companies or well intentioned non profits. I can assure you that nearly everyone who came to the City asking for financial assistance for their project had first been turned down by private lending institutions. I deliberately made it more difficult for any private sector applicant to receive financial assistance from the City. That is why I included a super majority, five vote approval requirement to raise the threshold. Only the strongest, well managed business with the biggest potential for an economic return for the City should be considered. In the end, the City is engaged in a risk-reward evaluation and the City should always err on the side of caution.

Most private sector applicants requesting financial assistance from the City will be structured as Limited Liability Corporations (LLC). Principals using this legal structure limit their liability and do not expose their personal assets. The LLC is typically a shell with little or no assets. In the event of failure or bankruptcy the City will have no collateral or means to recover its investment. Unless an applicant can demonstrate at least a 50% net equity (based on percentage of the proposed City financial assistance amount) in the proposed project or can provide sufficient collateral the prudent move is to require personal guarantees or reject the applicant. In the recent negotiations of lease terms with the Fresno Grizzlies, principals agreed to personally guarantee one year's lease payments.

The Grand Jury reports did make mention of political influences affecting the decision making process for public-private ventures. The old City financial assistance policies did not discourage political influence in the decision making process because they were inadequate, too vague and lacked transparency requirements. The well structured and defined policies of the Better Business Act compel a thorough objective analysis of any given project. The required City Manager report that includes all financial and supporting documents; the fiscal impact of the project on the General Fund; an economic impact study and risk assessment will make it difficult for Council members to ignore the facts. All of these reports, studies and all documents provided in the investigative phase will be available for public viewing. This transparency was missing under the old policies.

The Grand Jury report for Granite Park under recommendation R504, recommended that the City should review its current management policies and procedures to assure that effective project management and oversight measures are in place. Both of the older policies in Section 7-912 and the Economic Development Policy and Program contain no oversight language or policies. Section III of the Better Business Act provides for implementation and oversight policies. Detailed oversight policies are provided that include access to records; independent audits; monitoring disbursement of funds; and a required annual report by the City Manager and City Attorney on the status and progress of all private sector projects.

In both Grand Jury reports under recommendations R403 and R503, it was recommended that the City should hire independent consulting assistance when examining issues beyond staff expertise. There is a brief reference to using independent consultants in the Economic Development Policy and Program amendment of June 26, 1990 in section E (b). This section states that the applicant company will pay for consultant costs but later concedes that the consultant costs would be reimbursed if a deal is reached between the applicant and the City. In contrast, the Better Business Act requires that applicants not only pay City consultant charges but that they also must pay for City staff time charges. Furthermore, the applicant must consent, in writing, to pay for City billing and outside consultants before the investigative phase will begin.

#### **Application of the Better Business Act**

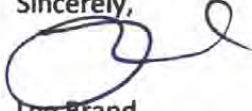
The first test of the Better Business Act was the lease negotiations with the Fresno Grizzlies late last year. The principals of the Grizzlies were reluctant to provide requested documents at first, particularly personal financial and tax documents. Over the course of a three month due diligence investigation the Grizzly organization and principals provided every document requested by the City Attorney's office pursuant to the provisions of the Better Business Act. The Council and the Mayor elected to hire a professional sports consultant to assist the City in 1) determining fair market value for the stadium lease using a comparative analysis of other Triple A teams; 2) conducting a detailed analysis of the operations and management of the Fresno Grizzlies including examining all financial records, tax records, partnership documents, loan documents, existing lease agreements with the City, Pacific Coast League documents and any other documents relative to this negotiation; and 3) helping the City develop deal points in the negotiations with the Fresno Grizzlies. The City also hired an outside CPA and an outside attorney to provide detailed accounting and legal review. Approximately \$150,000 in consulting costs were billed to and paid by the Fresno Grizzlies prior to the final Council vote to approve the modified lease terms.



By the end of the due diligence investigation the City Council was in a position to make an informed decision that was based on a thorough, objective review of all relevant facts and figures. This included a comprehensive 151 page report prepared by the sports consultant. The final agreement reached with the Grizzlies offered the team concessions based on comparable stadium deals and required the team to recapitalize their organization by infusing over one million dollars; enter into an unprecedented revenue sharing agreement with the City; provide personal guarantees by principals to secure \$1.5 million or one year's lease payments; maintain a capital reserve fund; conduct annual audits by an independent accounting firm at their expenses and other significant provisions that improved the City's security in the stadium lease deal.

The Better Business Act will not guarantee that there will never be mistakes made on public-private ventures. It provides a clear path and direction but will only work if future City staff and elected officials choose to follow it. Thank you for giving me the opportunity to share my thoughts.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Brand", with a large, stylized flourish extending to the right.

Lee Brand,  
Fresno City Council Member, District 6



ANDREAS BORGEAS  
COUNCILMEMBER

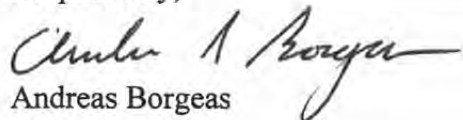
March 18, 2010

Dear Hon. M. Bruce Smith,

While I anticipate the Fresno City Council will provide more detailed responses, please accept this letter as my personal response to Grand Jury Final Report #4 2009-2010 and Grand Jury Final Report #5 2009-2010. Pursuant to Section 914.1, I am providing the following statement:

During the periods of time in which deliberations and approving votes occurred, I was not a member of the Fresno City Council. I assumed office as the representative of District #2 on January 6, 2009.

Respectfully,

  
Andreas Borgeas

# REPORT #6

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## **FRESNO COUNTY EMPLOYEES RETIREMENT PLAN**



**FILED**  
MAR 23 2010  
FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPUTY

**2009-2010  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#6**

**Fresno County  
2009 - 2010 Grand Jury  
Report # 6**

**Fresno County Employees Retirement Plan**

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**INTRODUCTION**

The Pulitzer Prize winning author, Roger Lowenstein wrote: "The Unions push for benefits that are beyond the ability of governments to properly fund. The unions get their promises; the politicians get to satisfy a powerful constituency. And by shortchanging their pension funds, they can run their budgets on borrowed time and put off the necessity to tax until later generations."

Journalist Steven Greenhut, in his current book, wrote "This plundering of treasuries, made possible by aggressive union tactics and spineless politicians, results in higher taxes and massive debts that ultimately will be borne by our grandchildren. The current situation is 'unsustainable'."

In its' current publication, Connections, California State Teacher's Retirement System (CalSTRS) notes "...historic market declines show investments alone cannot close the funding gap. Closing the gap will require future legislative action to increase contributions made by school districts and the state...not in an emergency requiring us to resolve the contribution gap immediately, but the sooner a solution is found, the lower the cost."

The Fresno County Grand Jury 2005-2006 concluded "The retirement benefits as currently defined are forcing Fresno County further and further into debt...based on this rate of acceleration, the County will be facing insurmountable debt in the near future."

The 2008-2009 San Francisco Civil Grand Jury labeled their report "Pensions, Beyond our Ability to Pay." In their discussion of employee benefits and associated costs, the 2006-2007 Marin County Grand Jury noted, "...a frank discussion will only occur if public pressure stiffens the spines of elected officials to make tough decisions about benefits, taxes and services."

**BACKGROUND**

Against this backdrop, the 2009-2010 Fresno County Grand Jury commenced reviewing the retirement plan's current financial solvency, future funding requirements, and future service impacts upon the citizens of Fresno County. Administered by Fresno County Employee Retirement Association (FCERA), the benefit policies are the resultant decisions of the Fresno Board of Supervisors (BOS), the Board of FCERA, and California court decisions, all superimposed upon the "The County Employees Retirement Law of 1937" (CERL).

In the enactment of CERL, the public sector was attempting to compete with the private sector for employees. CERL protected public employees, and provided for retirement benefits

sufficient to assure recruitment and retention of a competent and qualified local government workforce. The law requires counties to provide their employees a defined benefit pension plan (DB plan). It also requires the establishment of a retirement board, which has the fiduciary duty as trustee to administer the retirement plan. In Fresno County, it is FCERA.

Subsequent court decisions and settlement decisions have augmented the 1937 Act in determining current retirement benefits. Known as the "Ventura Decision," the California Supreme Court mandated a change in the method for calculating pension benefits for members and their beneficiaries by retirement systems governed by CERL. An additional lawsuit, the "Ventura 2 Cases" was resolved when the San Francisco Superior Court issued a Judgment approving a revised settlement agreement. This lawsuit also involved County of Fresno employee unions, who were upset that the County was using excess earnings in the retirement fund to make its annual employer contributions to the fund. The negotiated agreement sought to resolve all outstanding issues relating to the determination of "compensation earnable." Union officials and county administrators jointly negotiated the resultant enhanced benefits. The county administrators were not arms length negotiators, as they personally benefited by the enhanced benefits.

While the above benefits are vested, unvested (not permanent) benefits are the result of past "excessive earnings." The resultant county pension benefits are described in the 2005-2006 Fresno County Grand Jury's report: "...Fresno County retirement benefits are the most generous in the State."

In a more general sense, the Marin County Civil Grand Jury concluded in 2005 "...public sector pensions are substantially more valuable than private sector pensions. For Miscellaneous employees in Marin, pensions are 2 to 3¼ times more valuable as private sector pensions; for safety employees, they are 2 ½ to 4 times as valuable."

In order to understand the difference between the pension plan provided to Fresno County employees and the type of pension plans provided to most private sector employees, it is necessary to understand the difference between a "Defined Benefit Pension Plan" (DB plan) and a "Defined Contribution Pension Plan" (DC plan).

A DB plan guarantees at a certain age, the employee will be given an agreed percentage of his/her salary, irrespective of investment return. Thus the employer takes the investment risk inherent in market fluctuations, while the employee is riskless.

A DC plan provides benefits, similar to 401(k) plans. It does not guarantee the amount of retirement benefit, only that the annual contributions are made according to the benefit plan provisions. Thus the private-sector employee bears the risk of investment declines and they may outlive their retirement resources.

## **INVESTIGATIVE PROCESS**

The Fresno County Grand Jury interviewed members of the Board of Supervisors, current and former members of the FCERA Board of Retirement, senior County administrators and FCERA administrators.

The grand jury reviewed information provided by FCERA, an actuarial valuation, various Fresno Bee articles and articles from other public information sources. The grand jury conducted Internet searches on related retirement benefit plan issues, in addition to evaluating numerous

articles projecting future investment returns (“the new normal”), consistent with FCERA’s asset allocation. The grand jury analyzed the tiers of employment for the purposes of determining retirement benefits.

In the process of discerning the strength of the current plan, the grand jury is aware other California counties, i.e. Kern and Orange, have instituted plan variations within the past five years. Due to the complexity of reviewing retirement plan documents and the nuances contained therein, the grand jury notes their existence as a possible matrix for further BOS evaluation.

The grand jury is also aware that California legislative remedies may be necessary to implement the above variations or other changes in Fresno County’s retirement benefits. Of particular importance are the melding a DC plan with, or instead of, the DB plan, and the reallocation of contributions between the employer and the employee, and the additions of additional employment tiers.

The grand jury also noted Fresno County has implemented employment levels (Tier II & III) in an attempt to address further unfunded liabilities. But, the impact has not been significant because of an unofficial hiring freeze.

As a part of the investigation, Memorandums of Understanding (MOU) were observed. The MOU’s provide the contractual framework between the twenty-six employee bargaining units and the County. Their financial impact upon the retirement system cries for consistency in form.

Through multiple interviews with multiple people, it became very obvious that decisions by the majority of the BOS on employment benefits are often without an actuarial fiscal impact study, as it relates to the County’s contribution to the retirement system. Hence the decision makers did not evaluate the long-term fiscal implications.

## ISSUES OF CONCERN

The 2009-2010 Fresno County Grand Jury has completed an analysis of the current Fresno County Employee’s Retirement System and has come to the conclusion that it is unsustainable. In order to explain our conclusion, we begin by summarizing what has transpired over the past several years.

During the past ten years, Fresno County has increased the retirement pay guaranteed to some employees by over 40%. An example of this would be a non-Safety Employee in 1998 would have been able to retire after 30 years of service at age 60 at 70.12% of pay. In 2009, that same employee would be able to retire at age 60 after 30 years of service at 98.20% of pay.

Currently a Safety Employee who has worked for Fresno County for 25 years will be able to retire at age 55 at 81.87% of his/her salary. In 1999, a Safety Employee who worked for 25 years would have been able to retire at age 55 at 65.5% of his/her salary (Fig. #1).

Fig. #1

Year	Non-Safety Employee Benefits	Safety Employee Benefits
1998	70.12% (Age 60)	65.50% (Age 55)
2008	98.20% (Age 60)	81.87% (Age 55)



Prior to 1998, the system was fully funded without any bond indebtedness. Since March 1998, the fund has had to borrow \$567,391,000 in the form of Pension of Obligation Bonds (POB). Including principle and interest, the total amount that will be paid at maturity is over one billion dollars (\$1,089,124,322). As of December 18, 2009, these bonds represent 66.6% of the total debt that Fresno County owes.

In 2008 and 2009, the stock market suffered its worst losses since the Great Depression. This reduced the FCERA Retirement Fund from \$3 billion to \$2.2 billion.

In 1999, the Fresno County Employees' Retirement Fund was in such good condition that it was fully funded, in other words, it had no (zero) Unfunded Actuarial Accrued Liability (UAAL). By the end of Fiscal Year 2008 - 2009, FCERA's total unfunded retirement liabilities have grown to over one billion dollars (\$1,458,387,000). This is a combination of \$779,787,000 in UAAL and \$678,600,000 in deferred market losses yet to be recognized for actuarial purposes.

Projecting forward, the actuary assumed a negative market return of 16.0% for Fiscal Year 2008 - 2009 plan year. Additionally, it is assumed the fund would earn 0% market rate of return for the Fiscal Year 2009-2010 plan year before reverting to an 8% per year assumed investment return.

Based on these assumptions, the UAAL will grow to over one billion dollars (\$1,721,000,000) by FY 2013 (Fig. #2).

Fig. #2

FY Year	UAAL & Deferred Market Losses
1999 - 2000	\$0
2008 - 2009	\$1,458,387,000
2013 - 2014	\$1,721,000,000 est.*

\* Based on actuary's letter to FCERA dated August 14, 2009

During the most recent ten-year period, Fresno County has increased its contributions to the Fresno County Employees' Retirement Association (FCERA) from \$6,005,000 in Fiscal Year 1998 - 1999 to \$112,421,346 in Fiscal Year 2008 - 2009 (Fig. #3). This is an increase of 432%.

Fig. #3

FY Year	Fresno County Total Retirement Contribution
1998 - 1999	\$6,005,000
2008 - 2009	\$112,421,346
2010 - 2011	\$143,280,000 est.*
2013 - 2014	\$221,400,290 est.**

\* Actuarial Valuation and review as of June 30, 2009

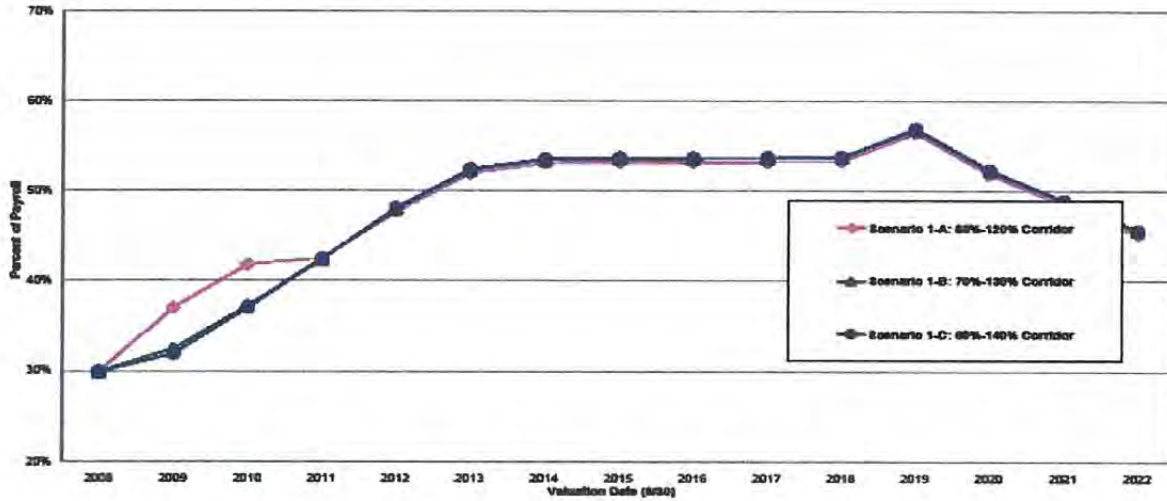
\*\* Based on actuary's letter written to FCERA dated August 14, 2009 and payroll dated June 30, 2009.

The contributions required of the County will remain at a very high level for a period of several years. This can be seen on Fig. #4 (below) from the actuary's report of August 14, 2009. The chart shows that projected employer (County) rates will move from approximately 29.99% of payroll in 2008 to approximately 52.4% of payroll in 2013. Assuming that payroll stays at the June 30, 2009 level, this will equate to County contributions of approximately \$112,421,346 in 2008 up to \$221,400,290 in 2013. It will stay at this level each year until a gradual

decline beginning in 2019. In other words, the County will soon have to start contributing over \$100 million more each year to the retirement fund than it does today, and it will have to do this for a period of almost ten years. To dramatize this further, if the only solution the County had to this crisis was to lay off employees, more than 1,000 would have be separated from County employment.

Fig. #4

**Exhibit 3-1: Projected Employer Rates for Scenarios 1-A, 1-B and 1-C**  
 Assuming Investments Earn a Market Return of -16.0% in 2008/2009, 0% in 2009/2010, and 8% Thereafter  
 5 Year Smoothing Period



Valuation Date (6/30)	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Scenario 1-A: 80%-120% Corridor	29.9%	37.0%	41.9%	42.5%	47.7%	52.0%	53.1%	53.3%	53.3%	53.3%	53.3%	56.6%	51.9%	48.5%	45.2%
Scenario 1-B: 70%-130% Corridor	29.9%	32.5%	37.2%	42.5%	48.1%	52.4%	53.5%	53.7%	53.7%	53.7%	53.7%	56.9%	52.3%	48.9%	45.6%
Scenario 1-C: 60%-140% Corridor	29.9%	31.9%	37.1%	42.5%	48.1%	52.4%	53.5%	53.7%	53.7%	53.7%	53.7%	56.9%	52.3%	48.9%	45.6%
Ratio of AVA to MVA (No Corridor)	108%	131%	130%	120%	108%	101%	100%	100%	100%	100%	100%	100%	100%	100%	100%

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SEGAL

Over the past few years, Fresno County has increased its contributions to the Fresno County Employees' Retirement Plan from 15.20% (6.41% contribution plus 8.79% POB) of each employee's annual salary in Fiscal Year 1998-1999, to 42.17% (33.91% contribution plus 8.25% POB) in Fiscal Year 2010-2011. This is an increase of 277%.

Illustrating what this increase has meant to the County is to compare the Average Annual Salary between June 30, 1998 and June 30, 2009 and apply these contribution factors accordingly. As of June 30, 1998, the average annual salary for a Fresno County employee was \$36,228. As of June 30, 2009, the average annual salary for a Fresno County employee was \$57,043. In 1998, Fresno County contributed \$5,507 toward the average employees' Retirement Program. In 2010, that contribution will be \$24,037 because of both salary increases and the percent required to be contributed to the employees' Retirement Program. Based on the August 14, 2009 Actuary's letter to FCERA, it is projected that the contribution rate will grow from today's 42.1% to 60.6% in 2013 (Fig. #5).

Fig.#5

<b>FY Year</b>	<b>Avg. Annual Salary Per Employee</b>	<b>Fresno County Retirement Contribution</b>
<b>1998 - 1999</b>	\$36,228	\$5,507
<b>2010 - 2011</b>	\$57,043	\$24,037
<b>2013 - 2014</b>	\$57,043*	\$34,568

\* Assuming the Annual Salary Per Employee doesn't change from June 30, 2009

FCERA benefits are in addition to Social Security benefits. In 2010, Fresno County must also contribute 7.65% for most County employees toward Social Security and Medicare benefits.

The independent actuary hired by FCERA recommended Fresno County contribute \$143,280,000 to the Fresno County Employees' Retirement Fund for the Fiscal Year 2010-2011 based on June 30, 2009 actuarial valuation. This recommended contribution is based on an assumed investment return of 8%, which contrasts with the last five-year actual net investment return of 3.1%. If deferred losses were recognized immediately, the actuary indicates the \$143,280,000 is 60% of what should be contributed based on current market conditions and actuarial valuations. Reflecting actual market conditions, the contribution should be \$238,800,000.

## **CONCLUSION**

During the past ten years, both the pension benefits and pension cost for the Fresno County Employees' Retirement Plan has become unsustainable. These costs are diverting funds away from normally provided services to the citizens of Fresno County.

Unless a plan of action is created and implemented, retirement plan contributions will gobble up revenues designed for normally provided county services. Our funding goal should be to bring the retirement system back into the balance it was ten years ago. Without firm assertive will from the majority of the BOS, Fresno County will ultimately be unable to meet its obligations to both its citizens and its retirees.

During our multiple interviews, the grand jury perceived a mixed sense of urgency from County leadership in addressing the impending County fiscal disaster. Several remedial suggestions were raised in the interviews, including but not limited to increasing the County's bond indebtedness and hope for improvement in the financial markets. However, the predominant solution suggested is reduction in the number of employees. While employee reduction helps in the short-term, it does not eliminate the long-term structural deficit. Additional measures are necessary to prevent Fresno County's financial demise.

## FINDINGS

- F601 FCERA administers the Fresno County Retirement Plan. The employee and named beneficiaries receive benefits that include a retirement benefit, and benefits for both non-service connected and service connected disabilities. Also available are an advance on social security option, a non-vested health benefit, cost of living adjustments, and a supplemental benefit for pre-2001 retirees. In addition, county retirees receive Social Security benefits.
- F602 The pension and benefits plan currently afforded to Fresno County employees exceeds most programs offered in the private sector. Further, Fresno County's retirement plan is among the most generous in the State of California.
- F603 During an eleven-year period, Fresno County's total unfunded retirement liabilities have grown from \$0 to over \$1.4 billion as of June 30, 2009 and projected to grow to over \$1.7 billion by 2013.
- F604 Over the past ten years, Fresno County has had to increase its retirement contribution per employee from \$5,507 per year to \$24,037. It is projected by the actuary to increase to \$34,568 in FY 2013.
- F605 Over \$1 billion of the FCERA assets have been lost in the financial markets. In FY 2008 – 2009, the net market rate of return for FCERA was negative 16%.
- F606 It appears past Boards have been reluctant to challenge demands made by the twenty-six bargaining units, thus imperiling the County's fiscal soundness. Consistency in MOU's appears lacking.
- F607 In its current form, the Fresno County Retirement Plan is financially unsustainable.
- F608 The Board of Supervisors has not created a fiscally responsible action plan to avoid Fresno County's financial collapse.
- F609 It appears some Board of Supervisors' decisions on employee salaries and retirement benefits were made without current and accurate actuarial analysis on the future fiscal implications of their decisions.
- F610 In Fresno County, most County employees and the general public are unaware of the current financial condition of Fresno County government.
- F611 Fresno County negotiators on employment issues have not always been "arms length negotiators," in that they directly benefit from the results of the negotiations.
- F612 Future changes in the employee benefits may require legislative amendments by the California State Legislature.

## RECOMMENDATIONS

The 2009-2010 Fresno County Grand Jury recommends the following:

- R601 The Board of Supervisors must immediately create a Retirement Plan Financial Accountability task force, including but not limited to County Administrative Officer, County Counsel, FCERA Administrator, County Tax Collector/Auditor, Employee Representatives, augmented by financial, legal experts, and county citizens with knowledge of retirement benefit issues. The task force's objective is the creation of a short-term solution to the current crisis, and to determine a long-term solution, which balances benefits with revenues. (F601-611)
- R602 Fresno County administration shall create an aggressive educational program for all Fresno County citizens explaining the current financial situation, and request support in resolving the fiscal deficit. (F610)
- R603 The Board of Supervisors shall direct their administrators to develop a consistent MOU and policy/procedures, which eliminate any pretense of conflict of interest with any county negotiator and the negotiation subject. (F606, 611)
- R604 The Board of Supervisors must require current actuarial information for its decision-making. (F609)
- R605 The Board of Supervisors must actively support legislation to amend the 1937 Act (CERL) to modify retirement benefits from a Defined Benefit Plan to a Defined Contribution Plan or a mixture of the two. (F612)

## REQUEST FOR RESPONDANTS

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 sixty days of the receipt of this report and ninety days for all others.

### RESPONDANTS

- Fresno County Board of Supervisors (F601 – F612, R601- 605)
- John Navarrette, Fresno County Chief Administrative Officer (F601 – F612, R601- 605)
- Roberto Peña, Retirement Administrator – FCERA (F601 – F610, R601- 605)

## SOURCES AND REFERENCES

- 2004-2005 Marin County Civil Grand Jury Report, *The Bloated Retirement Plans of Marin County, Its Cities and Towns* (Revised)
- 2006-2007 Marin County Grand Jury, *Retiree Health Care Costs: I Think I'm Gonna be Sick*
- 2009 County Employees' Retirement Law of 1937, California Govt. Code section 31450 et seq.
- A Report by the 2008-2009 San Francisco Civil Grand Jury, *Pensions Beyond our Ability to Pay*
- Actuary's letter to FCERA dated August 14, 2009
- Actuarial Valuation of Fresno County Retirement System as of June 30, 1998 – The Segal Company
- Actuarial Valuation of Fresno County Retirement System as of June 30, 2009 – The Segal Company
- All members of the current Fresno County Board of Supervisors
- August 20, 2008 Fresno County Employees' Retirement Association Handbook
  - *CalSTRS Connections*, Winter 2010
  - County Employees' Retirement Law of 1937, California Govt. Code sections 31450 et seq.
  - FCERA Member Retirement Handbook, October 1, 1998
  - FCERA Member Retirement Handbook, August 20, 2008
  - Fresno Bee
- Fresno County Administrative Office response to the 2005-06 Fresno County Grand Jury Interim Report #1
- Fresno County Auditor-Controller's Office
- Fresno County Employees' Retirement Association (FCERA)
  - Fresno County Grand Jury 2005-2006, *Pension Plan Report*
  - Fresno County Retirement System As of June 30, 1998
  - Judicial Council Coordination Proceeding No. 4049, Fresno County Superior Court Case Nos. 605588-3, 608028-7, 634171-3 County Employees' Retirement Law of 1937, California Govt. Code sections 31450 et seq.
  - Kern County Employees' Retirement Association (KCERA)
- Minutes of January 21, 2009 meeting of FCERA
  - Orange County Employees' Retirement System (OCERS)
  - Roger Lowenstein, *While America Aged*, The Penguin Press, New York, 2008
  - Steven Greenhut, *Plunder! How Public Employee Unions are Raiding Treasuries, Controlling our Lives and Bankrupting the Nation*, Forum Press, 2009

# RESPONSES

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- A. Fresno County Board of Supervisors  
R601 through R605
- B. John Navarrette, Fresno County Chief  
Administrative Officer  
R601 through R605
- C. Roberto Pena, Retirement Administrator,  
Fresno County Employees' Retirement Association  
R601 through R605

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Judith G. Case, Chairman  
Supervisor, District 4  
Board of Supervisors

June 8, 2010

The Honorable M. Bruce Smith  
Presiding Judge, Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

RE: RESPONSE TO THE 2009-10 GRAND JURY FINAL REPORT #6

Dear Judge Smith:

The Board of Supervisors and County Administrative Officer (CAO) have approved their official responses to the recommendations pertaining to Fresno County and the CAO contained in the 2009-10 Grand Jury Final Report #6. The responses are submitted herewith in fulfillment of Penal Code Section 933(c).

On behalf of the Fresno County Board of Supervisors and the County Administrative Office, we would like to take this opportunity to thank the Grand Jury for their hard work and to assure them that Fresno County takes the concerns raised in these reports very seriously.

Sincerely,

Sincerely,

Judith G. Case, Chairman  
Board of Supervisors

John Navarrette  
County Administrative Officer

Enclosure

**County of Fresno**  
**Board of Supervisors**  
**and**  
**County Administrative Officer**  
**RESPONSE TO THE**  
**2009-10**  
**FRESNO COUNTY GRAND JURY**  
**FINAL REPORT #6**



## FRESNO COUNTY EMPLOYEES RETIREMENT PLAN

Please find below the Fresno County Board of Supervisors' and County Administrative Officer's response to the 2009-10 Grand Jury Final Report #6.

### Findings

**F601: FCERA administers the Fresno County Retirement Plan. The employee and named beneficiaries receive benefits that include a retirement benefit and benefits for both non-service connected and service connected disabilities. Also available are an advance on social security option, a non-vested health benefit, cost of living adjustments, and a supplemental benefit for pre-2001 retirees. In addition, county retirees receive Social Security benefits.**

The Board of Supervisors and County Administrative Officer (CAO) partially agree with the finding. FCERA (Fresno County Employees' Retirement Association) does administer Fresno County's retirement plan and County employees and their named beneficiaries do receive benefits. However, there is not always a cost of living adjustment (e.g., in the current fiscal year the cost of living adjustment was -0.5%) and County employees who have met the prescribed criteria are eligible for Social Security benefits as are many other employees of other agencies.

**F602: The pension and benefits plan currently afforded to Fresno County employees exceeds most programs offered in the private sector. Further, Fresno County's retirement plan is among the most generous in the State of California.**

The Board of Supervisors and County Administrative Officer agree with the finding. Fresno County's retirement plan is generous for long-term employees in Tier 1. More recent retirement plans Fresno County has implemented (e.g., Tier 2 and 3) have reduced the benefit levels for newer employees. At this time, the County has begun a comparative analysis with private sector retirement benefits.

**F603: During an eleven-year period, Fresno County's total unfunded retirement liabilities have grown from \$0 to over \$1.4 billion as of June 30, 2009 and projected to grow to over \$1.7 billion by 2013.**

The projected increases are calculated on an actuarial basis, not a market basis. Based on known market recovery since June 30, 2009 it is expected that the actuarial estimate for June 30, 2010 for unfunded retirement liabilities will be lower than earlier projections. Future projections will be adjusted based on changes in plan assumptions, experience, and market conditions.

**F604: Over the past ten years, Fresno County has had to increase its retirement contribution per employee from \$5,507 per year to \$24,037. It is projected by the actuary to increase to \$34,568 in FY 2013.**

The Board of Supervisors and County Administrative Officer agree with the mathematical calculation. The actuary's projected increases are based on averages, not per employee costs. Contribution per employee is based on individual employee wages. As noted in comments to F603 above, future projections will be adjusted based on changes in plan assumptions, experience, and market conditions.

**F605: Over \$1 billion of the FCERA assets have been lost in the financial markets. In FY 2008-2009, the net market rate of return for FCERA was negative 16%.**

The Board of Supervisors and County Administrative Officer agree that the actuary's report presented to the Retirement Board on August 21, 2009 indicated this loss and negative rate of return.

**F606: It appears past Boards have been reluctant to challenge demands made by the twenty-six bargaining units, thus imperiling the County's fiscal soundness. Consistency in MOU's appears lacking.**

The Board of Supervisors and County Administrative Officer agree that consistency is lacking in employee memorandums of understanding (MOU's). At the Board's direction, the CAO is working with the Personnel Services Division to review MOU's to identify inconsistencies. During meet and confer opportunities, Labor Relations staff have had various discussions with labor representatives in an effort to "clean up" inconsistencies and improve the County's position while upholding legally executed agreements.

**F607: In its current form, the Fresno County Retirement Plan is financially unsustainable.**

The Board of Supervisors and County Administrative Officer partially agree with the finding. Fresno County has implemented new retirement tiers. In addition, Fresno County is continuing to work on new retirement tiers that provide an adequate retirement benefit to employees at a reduced cost to the County. Further analysis of long-term costs of the retirement system is ongoing.

**F608: The Board of Supervisors has not created a fiscally responsible action plan to avoid Fresno County's financial collapse.**

The Board of Supervisors and County Administrative Officer disagree with the finding. Fresno County has implemented new retirement tiers. Fresno County has approved a balanced budget each year. Fresno County recently received notice of its bond rating continuing at the highest level for short-term borrowing with a ratings upgrade by Standard and Poor's of the County long-term underlying rating. Fresno County is also continuing to work on additional retirement tiers that provide an adequate retirement benefit to employees at a reduced cost to the County.

**F609: It appears some Board of Supervisors' decisions on employee salaries and retirement benefits were made without current and accurate actuarial analysis on the future fiscal implications of their decisions.**

The Board of Supervisors and County Administrative Officer partially agree with the finding. Decisions made by the Fresno County Board were based on information available at that time and complied with requirements of the 1937 Retirement Act. Fresno County requested and the Fresno County Retirement Board agreed to increase the frequency of actuarial analysis of retirement costs from every two years to annual analysis to improve the timeliness of information. The Board of Supervisors recently issued a Request for Proposal to hire an independent actuary to provide advice to the County regarding retirement costs.

**F610: In Fresno County, most County employees and the general public are unaware of the current financial condition of Fresno County government.**

The Board of Supervisors and County Administrative Officer disagree with the finding. All Fresno County employees receive annual statements from FCERA. The Fresno County Personnel Services Division sends annual statements to employees regarding individualized earnings and benefits. The CAO presents quarterly budget reviews to the Board. These reviews are posted on the County's website for access by all County employees and the public. The CAO presents his annual recommended budget to the Board with postings of all related budget documents on the County's website.

**F611: Fresno County negotiators on employment issues have not always been "arms length negotiators," in that they directly benefit from the results of the negotiations.**

The Board of Supervisors and County Administrative Officer partially agree with the finding. There is no direct benefit to negotiators on individual MOU discussions. In the event of a countywide benefit, all employees are affected. To the extent that negotiations result in a decrease in salary or benefits, as in the case of furloughs, that apply to all county employees generally, management labor negotiators also are subject to such reductions.

**F612: Future changes in the employee benefits may require legislative amendments by the California State Legislature.**

The Board of Supervisors and County Administrative Officer cannot respond to this finding as the Board and CAO are uncertain of the meaning of this finding. Future changes to employee benefits may or may not require legislation. State legislation, referred to as the 1937 Act, enabled counties to provide retirement benefits to employees. Future legislative changes could place more restrictive guidelines on retirement or could increase flexibility for County retirement systems depending on policy decisions of the legislature.

### **Recommendations**

**R601: The Board of Supervisors must immediately create a Retirement Plan Financial Accountability task force, including but not limited to County Administrative Officer, County Counsel, FCERA Administrator, County Tax Collector/Auditor, Employee Representatives, augmented by financial, legal experts, and county citizens with knowledge of retirement benefit issues. The task force's objective is the creation of a short-term solution to the current crisis, and to determine a long-term solution, which balances benefits with revenues.**

The recommendation was implemented prior to the release of the Grand Jury Final Report #6. At Board direction on March 9, 2010, the CAO created a task force with all necessary parties. The task force will be reviewing retirement plan options and will be developing recommendations for Board consideration in FY 2010-11.

**R602: Fresno County administration shall create an aggressive educational program for all Fresno County citizens explaining the current financial situation, and request support in resolving the fiscal deficit.**

The recommendation reflects current practice. All Board meetings and the County's budget hearings will continue to have public television coverage via the public access channel. In addition, all agenda item and budget documents will continue to be available on the County's website. Moreover, all Board members keep office hours and conduct town hall meetings when appropriate. All recommendations for resolving any fiscal issues will continue to be welcomed.

**R603: The Board of Supervisors shall direct their administrators to develop a consistent MOU and policy/procedures, which eliminate any pretense of conflict of interest with any county negotiator and the negotiation subject.**

Regarding consistencies of MOUs, the recommendation is being implemented. All MOUs have been reviewed and inconsistencies have been identified. Labor Relations staff will continue to, during meet and confer opportunities, have discussions with labor representatives in an effort to "clean up" inconsistencies while complying with the Fair Labor Standards Act and Public Employment Relations Board requirements. With respect to the asserted conflict of interest, the County will consider the recommendation in light of its legal obligations under the law to meet and confer and financial constraints.

**R604: The Board of Supervisors must require current actuarial information for its decision-making.**

The recommendation reflects current practice. The Board will continue to comply with all 1937 Retirement Act requirements. As stated in F609, Fresno County requested and the Fresno County Retirement Board agreed to increase the frequency of actuarial analysis of retirement costs from every two years to annual analysis to improve the timeliness of information. The Board of Supervisors recently issued a Request for Proposal to hire an independent actuary to provide advice to the County regarding retirement costs.

**R605: The Board of Supervisors must actively support legislation to amend the 1937 Act (CERL) to modify retirement benefits from a Defined Benefit Plan to a Defined Contribution Plan or a mixture of the two.**

The recommendation requires further review. Through the task force process described above, the Board will continue to work towards providing employees a reasonable retirement benefit at a reduced cost to the County. Alternatives to consider could include a defined contribution plan, changes to the defined benefit plan, or a combination of these.



Roberto L. Peña  
Retirement Administrator

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
BOARD OF RETIREMENT  
Eulalio Gomez, Chair  
James E. Hackett, Vice Chair  
Michael Cardenas  
Nick Cornacchia  
Franz Criego  
Vicki Crow  
Steven J. Jolly  
Phil Larson  
John P. Souza  
Ronald S. Frye, Alternate

June 21, 2010

Honorable M. Bruce Smith  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue, Room 102  
Fresno, California 93724-0002

Re: Response to Grand Jury Report

Dear Judge Smith:

In Compliance with Penal Code sections 933 and 933.05, the Board of Retirement of the Fresno County Employees' Retirement Association hereby responds to the 2009-2010 Grand Jury Final Report #6 ("Report").

### FINDINGS

**F601 FCERA administers the Fresno County Retirement Plan. The employee and named beneficiaries receive benefits that include a retirement benefit, and benefits for both non-service connected and service connected disabilities. Also available are an advance on social security option, a non-vested health benefit, cost of living adjustments, and a supplemental benefit for pre-2001 retirees. In addition, county retirees receive Social Security benefits.**

Response: The Board agrees that these benefits are available to County employees. To more accurately describe the administration of the County retirement system: The retirement system is known as the Fresno County Employees' Retirement Association ("FCERA"). FCERA is administered by its duly elected and appointed Board of Retirement. FCERA has the responsibility of prudently funding the benefits promised by the County and other participating districts in the County to their respective employees.

**F602 The pension and benefits plan currently afforded to Fresno County employees exceed most programs offered in the private sector. Further, Fresno County's retirement plan is among the most generous in the State of California.**

Response: The Board neither agrees nor disagrees with the generalized comparisons contained in this finding. A variety of benefits are afforded to different Fresno County employees based upon their classification (i.e., general or safety) and benefit tier. The Board agrees, however, that the benefit formula for FCERA General Tier 1 members provides a higher benefit than the formulae available to most General members in the State of California.

**F603 During an eleven-year period, Fresno County's total unfunded retirement liabilities have grown from \$0 to over \$1.4 billion as of June 30, 2009 and projected to grow to over \$1.7 billion by 2013.**

Response: The Board agrees that, as of June 30, 1998, according to the Board of Retirement's actuarial valuation as of that date, FCERA's actuarial value of assets exceeded its then actuarially projected liabilities. To more accurately describe FCERA's financial condition, as of June 30, 2009: According to the Board's actuarial valuation as of that date, the present value FCERA's actuarial projected liabilities exceeded the actuarial value of its assets by approximately \$780 million. In addition, as a result of the Board's five year "smoothing" of investment gains and losses (which is a policy employed by many public retirement systems in California), FCERA had losses of approximately \$713 million, which will be recognized over the subsequent four years. These projections were based on certain assumptions and methodologies recommended by the actuary and adopted by the Board. At least every three years, the Board adjusts its projections to account for actual experience. Factors such as mortality rates, benefit formulas, growth in County payroll and investment gains and losses all account for year-to-year variations in these projections. FCERA's actuary provided numerous different projections based on different assumptions in its August 14, 2009 letter, one of which was the projected \$1.7 billion in "unfunded retirement liabilities" by 2013 referred to in this finding. Like all actuarial projections, these projections may or may not materialize in actual experience.

**F604 Over the past ten years, Fresno County's has had to increase its retirement contribution per employee from \$5,507 per year to \$24,037. It is projected by the actuary to increase to \$34,568 in FY 2013.**

Response: The Board agrees with the estimated contributions per employee over the last twelve (rather than ten) years. With respect to the projected FY 2013 retirement contributions from the County, FCERA's actuary provided numerous projections based on numerous different assumptions in its August 14, 2009 letter, one of which was the projected increase in County contributions referred to in this finding. Like all actuarial projections, these projections may or may not materialize in actual experience.

**F605 Over \$1 billion of the FCERA assets have been lost in the financial markets. In FY 2008 - 2009, the net market rate of return for FCERA was negative 16%.**

Response: FCERA disagrees that over \$1 billion of its assets have been lost in the financial markets. Between October 2007 and March 2009, the market value of FCERA's investments declined by approximately \$1 billion, but, since March, 2009, the market value of FCERA's assets has increased by approximately \$500 million. In the aggregate, FCERA has had a net positive return on its investments over time. For example, for the ten-year period ending June 30, 2009, FCERA experienced an average annual rate of return on its investments of approximately 3.8%, on a market value basis. For the twenty-year period ending June 30, 2009, FCERA experienced an average annual rate of return on its investments of approximately 7.95%, on a market value basis.



**F606 It appears past Boards have been reluctant to challenge demands made by the twenty-six bargaining units, thus imperiling the County's fiscal soundness. Consistency in MOU's appears lacking.**

Response: As this finding appears to be a statement relating to the County's Board of Supervisors (and not the FCERA Board of Retirement), the FCERA Board neither agrees nor disagrees with this finding.

**F607 In its current form, the Fresno County Retirement Plan is financially unsustainable.**

Response: The sustainability of FCERA depends upon the long term financial soundness of its participating employers, the performance of FCERA's investments over the period benefits are being paid and other demographic factors. As long as the County and other participating employers satisfy their obligations to timely make contributions, the FCERA Retirement Plan is financially sustainable.

**F608 The Board of Supervisors has not created a fiscally responsible action plan to avoid Fresno County's financial collapse.**

Response: As this finding is a statement about the County Board of Supervisors, the FCERA Board neither agrees nor disagrees with this finding.

**F609 It appears some Board of Supervisors' decisions on employee salaries and retirement benefits were made without current and accurate actuarial analysis on the future fiscal implications of their decisions.**

Response: As this finding is a statement about the County Board of Supervisors, the FCERA Board neither agrees nor disagrees with this finding.

**F610 In Fresno County, most County employees and the general public are unaware of the current financial condition of Fresno County government.**

Response: The FCERA Board neither agrees or disagrees with this finding.

## RECOMMENDATIONS

**R601 The Board of Supervisors must immediately create a Retirement Plan Financial Accountability task force, including but not limited to County Administrative Officer, County Counsel, FCERA Administrator, County Tax Collector/Auditor, Employee Representatives, augmented by financial, legal experts, and county citizens with knowledge of retirement benefit issues. The task force's objective is the creation of a short-term solution to the current crisis, and to determine a long-term solution, which balances benefits with revenues. (F601-611)**

Response: In March 2010, the Board of Supervisors directed the County CAO to form a task force of this nature and the CAO has since put together that task force. The FCERA Board supports all efforts, which are consistent with applicable law, to help ensure the short and long term financial soundness of FCERA and all of its participating employers, including the County of Fresno. FCERA will make all reasonable efforts to provide whatever information may be necessary for such a task

June 21, 2010

Page 4 of 4

force to complete its mission. Please note, however, that the FCERA Administrator cannot participate in policy decisions regarding the appropriate level of benefits for County employees. Such policy decisions are the responsibility of the County Board of Supervisors and are subject to collective bargaining and other labor laws.

**R602 Fresno County administration shall create an aggressive educational program for all Fresno County citizens explaining the current financial situation, and request support in resolving the fiscal deficit. (F610)**

Response: The FCERA Board supports all programs designed to bring greater understanding to the public regarding the operation of the County of Fresno and FCERA.

**R603 The Board of Supervisors shall direct their administrators to develop a consistent MOU and policy/procedures, which eliminate any pretense of conflict of interest with any county negotiator and the negotiation subject. (F606, 611)**

Response: Collective bargaining is between the County of Fresno and the employees' bargaining units. FCERA will provide all appropriate public information to the parties engaged in that process, upon request.

**R604 The Board of Supervisors must require current actuarial information for its decision-making. (F609)**

Response: The FCERA Board supports the Board of Supervisor's compliance with Government Code section 7507 and all other applicable laws regarding the requirement that it obtain actuarial information regarding the projected cost of benefits before granting those benefits.

**R605 The Board of Supervisors must actively support legislation to amend the 1937 Act (CERL) to modify retirement benefits from A Defined Benefit Plan to a Defined Contribution Plan or a mixture of the two. (F612)**

Response: The constitutional and statutory mandate of FCERA and its Board is to administer the benefits that the County and other participating districts grant, in compliance with the County Employees' Retirement Law of 1937 and other applicable law. FCERA and its Board take no position on the pros or cons of legislation designed to change the laws that they administer. Thus, the FCERA Board has no views on this recommendation. If the law changes, FCERA will prudently administer the new law.

Please contact me at 559.457.0350 if you have any questions.

Sincerely,



Roberto L. Peña  
Retirement Administrator

cc: Fresno County Board of Supervisors

# REPORT #7

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## **PARLIER NOISE COMPLAINTS**



FILED

MAY 05 2010

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2009-2010  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT**

**#7**

**Fresno County  
2009 - 2010 Grand Jury  
Report # 7**

**Parlier Noise Complaints**

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**INTRODUCTION**

The 2009-2010 Fresno County Grand Jury received a complaint letter from a citizen residing in the City of Parlier. The letter was about loud noise in and around the complainant's neighborhood. The complainant called with noise nuisance complaints to the City Police Department and concerns were raised with other City officials, but the noise problems continued.

**BACKGROUND**

Parlier is a community of approximately 13,000 residents located in the agricultural area of eastern Fresno County. Thirty-six percent of the population is below the poverty level and 97% of its residents are Hispanic. The economic base is agricultural and many farm workers live in the city during the summer months.

During testimony, concerns were first brought to the attention of the City in 2004, at a time when the City did not have a noise ordinance. The complainant was told a general nuisance complaint would have to be filed before action could be taken. The first such complaint was filed in 2005, resulting in a response from a police officer who revealed the complainant's identity during the process of responding to the call. The complainant was then fearful of continuing to express concerns regarding noise in the City.

In August 2008, the Parlier City Council adopted a noise ordinance. However, the noise problems continued in spite of the passage of the new ordinance.

On May 20, 2009, a concerned resident requested the existence of the noise ordinance be published in the local newspaper so all City residents would be aware of it as well as the penalties for not adhering to the ordinance. Not all participants were satisfied with the results of the meeting and indicated the Police Chief in particular did not seem responsive to their concerns during the meeting.

**PURPOSE OF THE INVESTIGATION**

1. To determine the extent of the noise problem in the City of Parlier.

2. To ascertain the role of the Police Department in responding to noise complaints.
3. To review Parlier's noise ordinance to determine its effectiveness in abating the noise problem.

## **EXTENT OF THE NOISE PROBLEM**

To determine the extent of the noise problem, the grand jury requested data from the Police Department and conducted interviews with residents. The Police Department provided Complaint History/Case Search Reports for the period of May 30, 2008, through September 27, 2009. Through the sixteen months covered by the reports, a total of 540 noise complaints were filed, an average of 34 per month. Complaint calls averaged higher in the warmer months of the year, 39 per month from May to October, and 26 per month from November through April. Even though the noise ordinance was adopted in August 2008, the average number of calls per month did not decline over the succeeding sixteen-month period. This is an indication that its passage has not had an impact on the noise problem.

Incident Reports provided by the Police Department were used to gather names of persons who had complained about noise. Members of the grand jury interviewed eight of these people. Certain patterns emerged from the noise complaint records and interviews:

- Whether the noise came from a car radio, a disc jockey, or a loud party, the problems were not new to residents and had been ongoing for years.
- Most of the complaints concerned loud parties occurring on the weekends.
- When the police responded, the noise would stop, but it would almost always resume again once the police departed.

## **ROLE OF THE POLICE DEPARTMENT**

Calls for police service in the City of Parlier are first received by Fresno County Sheriff's Dispatch, who dispatches the Parlier Police Department. The Police Department maintains a record of the calls as well as final disposition. The Police Department is solely responsible for addressing noise complaints in the community.

## **THE PARLIER NOISE ORDINANCE**

The noise ordinance was adopted by the City Council on August 8, 2008. The grand jury was able to obtain a copy of the ordinance as adopted, but the City was not able to furnish a Certificate of Publication showing that adoption of the ordinance was properly noticed within 15 days of its final passage in a newspaper of general circulation as required by California Government Code Section 36933 (a). Government Code Section 36933 (b) provides that the ordinance shall not be valid or take effect unless notice of its

adoption is made in accordance with this section. The ordinance as adopted contains the following provision:

Section 6.13.040 VIOLATIONS AND PENALTIES:

- A. No person shall make, cause, suffer or permit to be made any offensive noises which disturb or annoy people of ordinary sensitiveness or which are so harsh or so prolonged or unnatural or unusual in their use, time or place as to cause physical discomfort to any person and which are not necessary in connection with any lawfully conducted activities.
- B. No person shall, between the hours of ten o'clock (10:00) P.M. and eight o'clock (8:00) A.M., make cause, suffer or permit to be made any offensive noise within the vicinity of any building or place regularly used for sleeping purposes.
- C. Except as provided hereinafter, a violation of this chapter shall be an infraction. Any person who violates any section of this chapter and is cited for such a violation, and who within forty-eight (48) hours after receiving such a citation again violates the same section, shall be guilty of a misdemeanor.

In addition to a citation and a misdemeanor, the ordinance has a third form of penalty. Section 6.13.070 provides that when the Police Department responds to a location where offensive noises are occurring more than once within a consecutive twelve hour period, the person responsible for the noise shall be liable for the cost to the City of the second call and any further responses.

The ordinance also contains the following provision allowing an exception to the general provisions:

SECTION 6.13.030: Exceptions

- F. Outdoor gatherings, public dances, and shows, provided said events are conducted pursuant to a license/permit issued by the city.

The ordinance also contains a provision allowing sound amplifiers, as follows:

SECTION 6.13.090: SOUND AMPLIFIERS; PERMITS REQUIRED No person shall use or cause to be used at any place in the city on public or private property any sound amplifying device or equipment without first having secured a permit to do so from the city.

## **DISCUSSION**

During the sixteen-month period for which the grand jury obtained records, there were a total of 540 noise complaint calls and only one citation was issued. The grand jury notes that in 38 instances, the police responded to a second complaint at the same address within 24 hours, usually on the same evening. The responding officer on a second call



can readily determine an earlier noise nuisance call was made to the same address. However, in none of the 38 instances was a citation issued. Because of the few citations issued, no misdemeanors were filed per Section 6.13.040.C. The City's records also show that no attempts at cost recovery were made against repeat offenders pursuant to Section 6.13.070.

The grand jury notes the number of citations issued by a police department against offensive noise should not be the total indicator of an effective and responsive noise abatement program. The grand jury believes a successful program would have a balanced strategy of warnings and, as necessary, citations or other direct enforcement actions.

The grand jury determined that neither of the two permits called for in the ordinance have been activated with permit forms and procedures. The City does have a "Residential Festivities Event Form" for residents who plan on having a party or other such event. The form makes reference to the Noise Ordinance and to another provision of the Parlier Municipal Code prohibiting the serving of alcoholic beverages to minors. However, this procedure is not mandatory and is not explicitly authorized by the ordinance. Furthermore, the form is completed at City Hall, not the Police Department, and no record of the event on the form is provided to the police.

During testimony with police officers, it was clear that the patrol officers are not aware of the provisions of the ordinance, including the misdemeanor, cost recovery, and permit sections. Further, no training sessions have been held to orient staff to the ordinance to assure familiarity with its provisions and consistency of enforcement. Effective noise abatement depends very much on gaining the cooperation of residents. There have been no discussions of the most effective procedures to use to gain this cooperation, such as warnings for first time violators.

Notwithstanding that police personnel have not been trained on the Noise Ordinance, the grand jury believes that the ordinance as currently written is virtually unenforceable because of its contradictory and confusing provisions. For example, the ordinance can be construed to have two different definitions of "Offensive Noise." Also, the permit for outdoor gatherings, public dances and shows would appear to cause confusion with the permit for outdoor amplification. Both permits may be interpreted by an applicant as allowing noise that may violate other provisions of the ordinance such as the prohibition of offensive noise between the hours of ten o'clock (10:00) p.m. and eight o'clock (8:00) a.m. within the vicinity of a building used for sleeping purposes.

The ordinance appears to be a compilation of selected provisions of many ordinances. Instead, it should be clear, concise, and easily understood by residents as well as City staff. The grand jury recommends adoption of a revised ordinance that establishes clear performance measures, may allow exemptions from certain sources such as construction equipment during prescribed hours, and does not allow other types of noise by permit.

It is apparent that no analysis of complaints has been performed by police management to develop strategies to improve compliance. For example, the record of calls shows there are obvious "hot spots" in the community that are the source of many noise complaints. Over the sixteen-month period of the reports, eighty (80) complaints (15% of the total) were generated by noise at addresses on only two streets, Milton and Young Avenues, or at intersections of these streets with other streets.

Elected city officials were interviewed and most indicated they were unaware of the large number of complaints, and violators should be cited. The officials stated they want to see complaint reports if the noise problems continue. City management stated they prefer to give warnings rather than citations because so many residents have low incomes. They agreed the City needs to be stricter with enforcement of the noise ordinance.

Interviews with representatives of Police Management showed concern that the City Council, while appearing to be supportive of the ordinance, does not want the ordinance strictly enforced.

The grand jury obtained a tape of the City Council meeting of May 20, 2009 during which concerns were expressed concerning the elevated level of noise in the City. The grand jury believes that the tape demonstrated the Police Chief as being defensive about criticism of his department and non-responsive to suggestions for improved enforcement. The Mayor and City Council, on the other hand, appeared to be supportive of the need for better noise abatement and did not appear reluctant to address the issue. The meeting ended with the following statement from the Mayor: "OK. The message is clear. We've got to find a better way to address the problem." Unfortunately, there was no direction to the Police Chief and City Manager to analyze the problem and return to the Council with a follow up report. The grand jury believes that the City Manager should have recommended this course of action to the Council in the absence of direction.

During interviews, City officials placed great emphasis on the fact that Police Department Policy does not allow officers on patrol to speak to a person causing loud noise unless this occurs in response to a noise complaint. The grand jury believes the officer should have the discretion to issue a warning or citation without a citizen's complaint.

## **FINDINGS**

- F701 There is a demonstrated noise nuisance problem in the City of Parlier.
- F702 During the period May 2008 through September 2009, 540 noise complaints were filed with the City, but only one citation was issued.
- F703 In August 2008, in response to concerns regarding noise from residents, the City Council adopted a noise ordinance.

- F704 Notice of the adoption of the ordinance was not made in a local newspaper of general circulation as required by California Government Code Section 36933.
- F705 The City has implemented a "Residential Festivities Request Form" that does not clearly tie to the noise ordinance.
- F706 The Police Department has not been trained on the provisions of the ordinance. Further, no uniform procedures to enforce the ordinance have been instituted.
- F707 The permit processes called for by the noise ordinance have not been implemented.
- F708 Current Police Department policy forbids an officer on patrol from speaking with any person apparently responsible for excessive noise unless that occurs in response to a noise complaint.
- F709 Notwithstanding Findings 703, 705, 706, and 707, the grand jury believes the noise ordinance is difficult to enforce because of its complexity and contradictory language.
- F710 At the May 20, 2009, meeting of the Parlier City Council, the Mayor and Council expressed concern with the noise problem but did not provide clear direction to staff to follow up on the issue.
- F711 The grand jury believes the City Council and Police Chief have not provided the leadership necessary to address the issues surrounding noise abatement in the City of Parlier.

## RECOMMENDATIONS

- R701 With the assistance of the Police Chief and as necessary the City Attorney, the City Manager shall prepare a report for the City Council identifying the following:
  - a. The number of noise complaints received by the Police Department over a representative period of time.
  - b. Identification of any problems experienced by the Police Department in attempting to respond to noise complaint calls.
  - c. Any recommended amendments to the current noise ordinance.
  - d. Proposed uniform procedures for the Police Department following passage of any amendments, including permit forms.
  - e. Proposed public outreach program identifying the noise complaint enforcement process and asking for resident cooperation. (F701 – F710)
- R702 Amendments to the noise ordinance should strive toward simplification, elimination of duplicate or contradictory provisions, and effectiveness of enforcement. (F709)

- R703 A clear and effective permit process should be established if called for by the ordinance. (F707)
- R704 There should be proper publication of the revised noise ordinance in the local newspaper in accordance with California Government Code Section 36933. (F704)
- R705 The Police Chief shall demonstrate leadership in the development and execution of a comprehensive approach to noise abatement, including the following:
- a. Identification of barriers to enforcement.
  - b. Analysis of complaint patterns and frequencies and development of appropriate enforcement strategies.
  - c. Training of all uniformed officers in the provisions of the noise ordinance and its enforcement procedures.
  - d. Development of community support for noise control.
  - e. Hold all members of the Police Department responsible for their part in the abatement process.
  - f. Be held responsible for the ultimate outcome. (F711)
- R706 The City Manager and Police Chief should explore with the City Attorney the legality or appropriateness of an officer on patrol warning or citing a resident who is causing excessive noise. (F708)

## REQUEST FOR RESPONSES

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 sixty days of the receipt of this report and ninety days for all others.

## RESPONDENTS

Armando Lopez, Parlier Mayor and Parlier City Council (F701, F703, F704, F709, F710, R701, R702)  
 Lou Martinez, Parlier City Manager (F701 – F711, R701 – R706)  
 Ishmael Solis, Parlier Police Chief (F701 – F711, R701 – R706)  
 Parlier City Attorney (F708, F709, R701, R705, R706)

## SOURCES

- Documents provided by the City.
- Documents provided by the Police Department
- Interviews with elected and appointed City officials.
- Interviews with members of the police department.
- Interviews with City of Parlier residents.
- Minutes and tapes of City Council meetings.

# RESPONSES

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- A. Armando Lopez, Mayor, City of Parlier  
and Parlier City Council  
R701 through R702
- B. Lou Martinez, City Manager, City of Parlier  
R701 through R706
- C. Ishmael Solis, Police Chief, City of Parlier  
R701 through R706  
Included in City Manager response
- D. Parlier City Attorney  
R701, R705 through R706  
Included in City Manager response

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RECEIVED  
BY 7/6/10 | DATE

June 21, 2010

Vonda Epperson, Foreman  
Fresno County Grand Jury, (2009-2010)  
1100 Van Ness Avenue  
Fresno, CA 93724

Foreman Epperson:

Please accept this letter in response to Grand Jury Final Report #7 2009-2010 regarding the City of Parlier Noise Ordinance.

Based on one of the Grand Jury Findings it was determined that our Existing Noise Ordinance was out of compliance due to the Notice of Adoption of the ordinance not being published in a local newspaper as required. Our City Attorney advises that we cannot retroactively publish any legal notices. City staff is therefore rectifying the situation by resubmitting the Noise Ordinance for City Council adoption. All publications and review time-lines are being adhered to, as required, with the new Noise Ordinance becoming effective July 17, 2010. Those residents who were cited prior to this date will have their fines reimbursed.

We have followed the recommendations provided in Grand Jury Final Report #7 in the resubmitted Noise Ordinance with a more clear and effective permit process and the City Manager and Police Chief providing regular Noise Ordinance updates at City Council Meetings.

Within the next 30 days our Council, and the Grand Jury, will receive a report from staff addressing your recommendations and their effect on our resubmitted Noise Ordinance. We appreciate that your investigative review has assisted us in making our Noise Ordinance more effective and more comprehensive.

Respectfully,

Armando Lopez, Mayor



**A Federally Designated  
Rural Renewal Community.**

• Incorporated November 14, 1921 •

July 28, 2010

Vonda Epperson, Foreman  
Fresno County Grand Jury, (2009-2010)  
1100 Van Ness Avenue  
Fresno, CA 93724

Foreman Epperson:

Please accept this letter in response to Grand Jury Final Report #7 2009-2010 regarding the City of Parlier Noise Ordinance.

We are enclosing a copy of our Report to the City Council regarding your Findings and Recommendations.

Based on one of the Grand Jury Findings it was determined that our Existing Noise Ordinance was out of compliance due to the Notice of Adoption of the ordinance not being published in a local newspaper as required. Our City Attorney advises that we cannot retroactively publish any legal notices. City staff is therefore rectifying the situation by resubmitting the Noise Ordinance for City Council adoption. All publications and review time-lines are being adhered to, as required, with the new Noise Ordinance becoming effective July 17, 2010. Those residents who were cited prior to this date will have their fines reimbursed.

We have followed the recommendations provided in Grand Jury Final Report #7 in the resubmitted Noise Ordinance with a more clear and effective permit and enforcement process. Also the City Manager and Police Chief provide regular Noise Ordinance updates at City Council Meetings.

Respectfully,

Lou Martinez, City Manager



# REPORT TO PARLIER CITY COUNCIL

Date: July 28, 2010

Subject: Noise Ordinance

From: Lou Martinez, City Manager



In April of this year the 2009-2010 Fresno County Grand Jury responded to a complaint letter from a resident of the City of Parlier. The letter was about loud noise in and around the complainant's neighborhood and that problems continued after calling for Police Department assistance. The Grand Jury conducted an investigation and submitted a Final Report # 7 which is enclosed. The report includes recommendations for the City of Parlier to improve its Noise Ordinance.

One recommendation related to the proper noticing of the Noise Ordinance in the newspaper. Because the notice was not legally published as required the current Noise Ordinance is not valid. We have since properly noticed the item with the new ordinance taking effect July 17, 2010. All residents who were cited prior to this date will have their fines reimbursed. During this time staff has used the opportunity to improve the enforcement process.

With the assistance of Police Chief Ishmael Solis and City Attorney Dale Bacigalupi the following responds to the Grand Jury Report.

## **FINDINGS:**

F701-The City is in agreement that there is a demonstrated noise nuisance problem in the City and therefore implemented a Noise Ordinance in August of 2008.

F702-The Police Department made attempts to educate the public regarding the Noise Ordinance through newspaper articles and public contact. Based on the economic status of Parlier residents the directive was issued to warn the citizens rather than issue citations. The department has made strides to correct any inefficiency and will be issuing more citations.

F703-The Parlier Municipal Code Ordinance # 2008-03 was adopted on August 07, 2008 pertaining to Noise.

F704-The notice of adoption was provided to the local newspaper for circulation however due to a lack of follow-up the publication did not occur as required. Therefore the Noise Ordinance is not valid. A new publication was correctly made with the new Noise Ordinance taking effect July 17, 2010.

F705-The Residential Festivity Request Form, or non-formal permit, has been restructured to provide information pertaining to the type of request being made and identifying the responsible person. The request form can be utilized as a noise Permit if necessary. The request form also explains PMC 6.13.040 noise violations and PMC 9.21.050 social host ordinance, possession or consumption of an alcoholic beverage by minors.

F706-Initially only the shift Sergeants were advised of the implementation of the new Noise Ordinance. This has been changed to provide a four hour training block for noise nuisance calls or events to all Police Officers.

F707- The permit request has been reviewed and is being implemented following the requirements of PMC 6.13.090.

F708-Police Officers are now able to speak to the public regarding excessive noise even when not responding to a noise complaint.

F709-The Parlier City Attorney has reviewed the ordinance and has patterned it after the City of Reedley Noise Ordinance to make it less complex.

F710- At future meetings of the City Council more concise direction was provided to the Police Department regarding the Noise Ordinance. After September 2009 warnings were minimized. During the period of September 09 to May 2010 162 complaints were received and 52 citations were issued.

F711- In September 2009 more specific direction was provided to the officers for a more precise and definite enforcement of the Noise Ordinance.

#### **RECOMMENDATIONS:**

R701-

- a. The Council has asked for and will be provided ongoing Noise Ordinance reports at Council meetings as well as response to Noise Ordinance calls will be included in their weekly Department Head Update Reports. The number of noise complaints is recorded with the Sheriff department under CAD- QUERY. Each call is issued an event number and outlines the time called in, time dispatched, time of arrival, time cleared and disposition. This information will be provided to the Council.

- b. Several issues have been identified by the Parlier PD. Complaints are received by the Sheriff department and they in turn dispatch officers. The issue is that noise calls are deemed a low priority call and can be held by the Sheriff dispatcher until officers clear higher priority calls. Therefore a call can be held by dispatchers and when the officers respond to the noise call all is quiet. We will work with the Sheriff's department to remedy this issue.
- c. Recommendations for changing the Noise Ordinance are currently being reviewed by our Council, City Attorney and staff as the new ordinance is being implemented.
- d. Procedures are being continually reviewed to improve the execution of the Ordinance and address the issues that provide for accomplishment of the Noise Ordinance intent.
- e. We have implemented a Public Information program to notify and inform all residents of pertinent City business information through a regular newspaper article identifying specific city rules and regulations along with available city services. Staff is participating in a Community Task Force that addresses graffiti, vandalism and noise. Notices can also be provided to each citizen via their utility bill.

R702-Staff agrees that any amendments to the Noise Ordinance should simplify and emphasize the effectiveness of proper enforcement.

R703- The permit request form has been developed and follows the requirements of PMC 6.13.090.

R704-The revised Noise Ordinance publication notice was provided for proper publication within the time frame required.

R705-The Police Chief agrees that the Noise Ordinance is an important part of maintaining harmony and quality of life issues for the City. He agrees and accepts responsibility for his Department and the proper enforcement of the Ordinance. Training of officers and research of complaints will be foremost in directing the future of the Noise Ordinance in Parlier.

R706-Discussions have been held regarding warning and citing violators of the ordinance. Current practices indicate that warnings do nothing to abate the problem, whereas citations are receiving more respect for the ordinance.

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# REPORT #8

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## **FRESNO COUNTY MENTAL HEALTH BOARD**



**FILED**

**MAY 17 2010**

**FRESNO COUNTY SUPERIOR COURT**  
By \_\_\_\_\_ DEPUTY

**2009-2010**  
**FRESNO COUNTY GRAND JURY**



**FINAL REPORT**  
**#8**

**Fresno County  
2009 - 2010 Grand Jury  
Report # 8**

**Fresno County Mental Health Board**

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**INTRODUCTION**

Conflict of interest has been an ongoing issue with the members of the Mental Health Board of Fresno County (MHB). As of August 27, 2009, five members had resigned and left the MHB. The conflict issue was brought to a head by several articles published in the Fresno Bee. Specifically, two articles in the Fresno Bee, dated August 11, 2009 and August 27, 2009 listed the resignations and reasons for them.

**BACKGROUND**

All counties in the State of California have a MHB. They are all required by state law and serve as a public advisory board on children's and adult mental health issues. County MHB's are authorized in the Welfare and Institutions Code (WIC), Section 5604. The Fresno board is supplemented by the Board of Supervisors (BOS) Minute Orders dated February 23, 1993 and March 9, 1993 and amended by the laws of Minute Order dated June 5, 2007.

Membership is comprised of 22 members (21 plus a BOS member as ex-officio non-voting member). Fifty per cent (50%) of the members shall be consumers, or the parents, spouse, sibling, or adult children of consumers, who are receiving or have received mental health services. At least twenty percent (20%) of the total shall be consumers and twenty per cent (20%) shall be families of consumers. The remainder may be individuals who have experience and knowledge of the mental health system. Members should reflect the ethnic diversity of the client population of the county.

The board has several duties including, reviewing and evaluating community mental health needs, services, facilities and specific problems, reviewing county agreements entered into pursuant to Section 5650 of the WIC. They also advise the governing body and local mental health Director as to any aspect of the local mental health program, review and approve the procedures used to ensure citizen and professional involvement at all stages of the planning process. The board shall be included in the selection process of the Mental Health Director prior to the vote of the governing body. The board will review and comment on the County's performance outcome data and communicate its findings to the State Mental Health Commission (California Mental Health Planning Council).



## PURPOSE OF THE INVESTIGATION

Due to the extensive coverage of conflict of interest and information received in interviews of various persons associated with the MHB, the grand jury decided to investigate the conflict of interest, recruitment, and the workings of the MHB.

## DISCUSSION

### Conflict of Interest

Accusations of conflict of interest among the MHB members have been prevalent for years. One of the basic provisions of Section 564 (d) of the WIC prohibits any employee or paid member of the governing body, of a mental health contract agency from being members of the MHB. In 2006, two (2) members of the MHB were alleged ineligible and resigned due to their affiliation with two contract providers under the Fresno Mental Health plan. In fact, one member indicated on their application that either they or their spouse did have a disqualifying employment, however, they were still appointed.

In August 2009, five additional members resigned due to a conflict of interest. During interviews with previous MHB members not all felt they had a conflict, even though it was quite clear to the grand jury these members were employed by a contract agency. In addition, one member wrote a bid for services that the MHB was to consider. The only way to indicate having a conflict was for the applicant to do so on the application. The definition of a conflict of interest was not delineated on the application. A new supplemental questionnaire was proposed as of November 3, 2009 and is in a draft form. However, this questionnaire does not adequately address the conflict of interest issue.

The BOS Administrative Policy #35 is the Conflict of Interest for Board Appointees. However, it is generic and the Policy does not speak directly to the Mental Health Board or state specifically what constitutes such conflict so applicants can make a conscious decision.

### Recruitment

Of the twenty-two (22) members allowed on the MHB, currently there are only seven (7) members including one BOS member. The grand jury interviewed a member of the BOS and most administrative assistants to the BOS. During interviews, questions were asked concerning criteria used to evaluate applicants, directions received from the BOS member, and whether they have turned anyone down for appointment. Most responses were that an application comes to a specific BOS member and is only from their district. The Clerk to The Board reviews the application for basic qualifications. The Supervisor of the District contacts the applicant as necessary. The Supervisor may nominate the person, usually on the Consent Calendar, which is then approved by the entire BOS.

There was little evidence of active recruitment done by BOS members. However, it must be pointed out that there are one hundred (100) Boards and Commissions in Fresno County that get their appointments from the BOS. Also, a Supervisor is a member of twenty-two (22) other Boards or Commissions and an alternate on six (6) others.

Membership on the MHB has lapsed into a few reappointed members and some new appointees. This composition does not reflect the diversity of the consumers in the County. There is no pay for the position and there is frustration in that constituents in the far reaches of the county cannot afford to travel to meetings. This is reflective of the current economic climate. One administrative assistant indicated they used press releases and publish vacancies in the local newspapers. This has not proven to be an effective recruiting strategy. This is an advisory board and the MHB recommendations do not have to be accepted. While recruitment remains difficult, diverse and innovative ways should be used to build a strong, representation on the MHB.

### Workings of the MHB

For a number of years, many conflicts of interest have surfaced. These conflicts continued to mount through the period of investigation. Some members believed there was a conflict and some of the implicated members did not. The issues appeared to get personal, and on one occasion a member changed a board meeting without bringing the change to the whole board for approval. Some members stated that they received ethics training and some stated there was no requirement. At one point, a member said the board was dysfunctional. Because of divisiveness, they had a difficult time working as a group and making specific suggestions to the Director of Behavioral Health.

Strong leadership by the BOS member may have resolved some internal Board conflicts. However, an analysis of the BOS member's attendance from July 25, 2007 to December 30, 2009 (30 months) indicates that they were absent seventeen (17) of the thirty (30) meetings. While their administrative assistant usually sat in for them, strong leadership was lacking. As previously noted the BOS member sits on twenty-two (22) other committees or boards. This indicates the lack of attention any Commission or Board receives. A review of the BOS minutes indicates virtually no reporting of activity of the MHB. The MHB seeks to have input in the process of selecting the Director of Behavioral Health, however they have not demonstrated they are a cohesive group.

## **CONCLUSION**

The grand jury believes the membership of the MHB is inadequate to address the concerns of both adult and children's mental health needs in Fresno County. Having only seven (7) members severely restricts the diversity of the membership. We do not believe enough has been done to ensure the applicants understand conflicts of interest. These should be resolved prior to the applicant being appointed. The grand jury also believes more innovative recruitment must take place to ensure representation, which reflects the consumer population. We also believe that the BOS member must provide strong leadership. That strong leadership is particularly reflected by their actions showing the importance of the MHB.

## **FINDINGS**

F801 There have been both conflicts of interest and the appearance of conflicts of interest with the members of the MHB.

- F802 The MHB has too many vacant positions to reflect the diversity of the community that it serves.
- F803 The supplemental application for membership on the MHB does not adequately address conflict of interest issues.
- F804 The BOS does not do enough to recruit qualified people to the MHB.
- F805 The BOS member has too many demands on his/her time to devote the necessary time to the MHB.
- F806 The MHB members do not work well together and at times their personal conflicts get in the way of conducting business.
- F807 The current BOS member did not personally participate in over half of the meetings of the MHB during a thirty (30) month period.

## **RECOMMENDATIONS**

- R801 The MHB members need training as to what constitutes a conflict of interest and how to resolve the appearance of conflicts. (F801)
- R802 The BOS needs to fill vacancies on the MHB with quality applicants. (F802)
- R803 The BOS must review and revise the supplemental application for the MHB. (F803)
- R804 The BOS needs to look for innovative ways to improve the recruitment of MHB candidates and should address the issue of countywide representation. (F804)
- R805 The BOS must review their participation on the MHB and all boards to ensure they are not overextending themselves and can provide strong leadership when necessary. (F805, F807)
- R806 The MHB needs training in Team Building skills. (F806)

## **REQUEST FOR RESPONSES**

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 sixty days of the receipt of this report and ninety days for all others.

## RESPONDENTS

Fresno County Board of Supervisors (F801 – F807, R801 - R806)

Fresno County Board of Supervisor's representative to the Mental Health Board (F805, R805)

Chairperson, Fresno County Mental Health Board (F801, F806, R801, R806)

## SOURCES

- Fresno County BOS Administrative Policy #35 describing Conflict of Interest
- Interview with various Behavioral Health Department representatives.
- Interviews with current members of the MHB
- Interviews with prior members of the MHB
- Interview with a member of the BOS
- Interviews with several administrative assistants to the BOS
- Various articles from the Fresno Bee

# RESPONSES

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- A. Fresno County Board of Supervisors  
R801 through R806
- B. Fresno County Board of Supervisors' Representative  
to the Mental Health Board  
R805
- C. Fresno County Mental Health Board, Chairperson  
R801 and R806

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Judith G. Case, Chairman  
Supervisor, District 4  
Board of Supervisors

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August 12, 2010

The Honorable M. Bruce Smith  
Presiding Judge, Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

RE: RESPONSE TO THE 2009-10 GRAND JURY FINAL REPORT #8

Dear Judge Smith:

The Board of Supervisors has approved their official responses to the recommendations pertaining to Fresno County contained in the 2009-10 Grand Jury Final Report #8. The responses are submitted herewith in fulfillment of Penal Code Section 933(c).

On behalf of the Fresno County Board of Supervisors, I would like to take this opportunity to thank the Grand Jury for their hard work and to assure them that Fresno County takes the concerns raised in these reports very seriously.

Sincerely,

A handwritten signature in black ink, appearing to read 'Judith G. Case', is written over a faint, larger version of the same signature.

Judith G. Case, Chairman  
Board of Supervisors

Enclosure

**County of Fresno**  
**Board of Supervisors**  
**RESPONSE TO THE**  
**2009-10**  
**FRESNO COUNTY GRAND JURY**  
**FINAL REPORT #8**





## Fresno County Mental Health Board

Please find below the Fresno County Board of Supervisors' (BOS) response to the 2009-10 Grand Jury Final Report #8.

### Findings:

**F801 There have been both conflicts of interest and the appearance of conflicts of interest with the members of the MHB.**

The Board of Supervisors is unable to agree or disagree with the finding. Conflict of Interest and Ineligibility to Serve as a Mental Health Board Member are two different concepts. The Board of Supervisors does agree that some members of the MHB have been statutorily ineligible to serve as a MHB member. Members have resigned due to ineligibility to serve on the MHB. Furthermore, as noted in the response to R803 the supplemental application was revised to further address this issue.

Conflict of Interest relates to whether a MHB member has a sufficient financial interest in a particular decision to be voted on by the MHB that the MHB member must abstain from the vote. The Board of Supervisors is unable to agree or disagree that MHB members have had such financial interests in particular MHB decisions."

**F802 The MHB has too many vacant positions to reflect the diversity of the community that it serves.**

The Board of Supervisors partially agrees with the finding. The W&I Code sets out specific requirements regarding membership on the MHB. Unfortunately, these requirements also limit the pool of candidates that the BOS can appoint as members of the MHB, which can make it difficult for the MHB to reflect the ethnic diversity of the client population in the county. Nonetheless, the Board of Supervisors has made an effort to increase the number of applicants.

**F803 The supplemental application for membership on the MHB does not adequately address conflict of interest issues.**

The application form was revised in March 2010 to adequately address the issue of ineligibility to serve. It should be noted that the supplemental application is not intended to address conflict of interest issues (see response to F801).

**F804 The BOS does not do enough to recruit qualified people to the MHB.**

The Board of Supervisors disagrees with the finding. Board members make a concerted effort to recruit and appoint qualified people to the MHB. However, as indicated earlier, the limited pool of candidates applying that meet the requirements can make this effort challenging. Nonetheless, the BOS will continue to appoint qualified candidates as members to the extent possible.

**F805 The BOS member has too many demands on his/her time to devote the necessary time to the MHB.**

The Board of Supervisors disagrees with the finding. The BOS acknowledge the critical needs of the MHB as well as other advisory boards. Due to being assigned to multiple boards, commissions, and committees, the previous BOS member could not attend all MHB meetings. However, if unable to attend, the BOS member always had a representative present. The current BOS member has attended all MHB meetings except when the meetings were changed by the MHB and as a result created a conflict with the BOS member's commitment to another organization. BOS members will continue participation on the MHB and the various advisory boards and commissions, as well as committees. It should be noted that the BOS position on the MHB is not a voting position.

**F806 The MHB members do not work well together and at times their personal conflicts get in the way of conducting business.**

The Board of Supervisors disagrees with the finding. The BOS has not observed inappropriate behaviors. However, the BOS recognizes that due to the diversity of mental health experience as well as the knowledge of the MHB members, they will not always agree on relevant issues and/or discussions. The BOS will continue to advocate for the inclusion of diverse voices and/or opinions from the members of the MHB, the consumers, family members, citizens and stakeholders in the decision-making process regarding services for persons living with mental illness.

**F807 The current BOS member did not personally participate in over half of the meetings of the MHB during a thirty (30) month period.**

The Board of Supervisors partially disagrees with the finding. See response to Finding #F805.

**Recommendations:**

**R801 The MHB members need training as to what constitutes a conflict of interest and how to resolve the appearance of conflicts. (F801)**

The recommendation reflects current practices. As part of the process, new members are provided on-line ethics trainings and reference materials, and are provided copies of Administrative Policy #1, Code of Ethics, as well as Administrative Policy #35, Conflict of Interest – Board Appointees for review.

**R802 The BOS needs to fill vacancies on the MHB with quality applicants. (F802)**

The recommendation reflects current practices. The BOS appoints candidates from the community as well as the mental health industry that have the related mental health experience, knowledge, and skills to the extent possible based on applicants.

**R803 The BOS must review and revise the supplemental application for the MHB. (F803)**

The recommendation has been implemented. The supplemental application was revised March 16, 2010 to further address the issue of ineligibility to serve. In addition, the MHB Bylaws provide language on members being "free" of conflict of interest issues.

**R804 The BOS needs to look for innovative ways to improve the recruitment of MHB candidates and should address the issue of countywide representation. (F804)**

As the recommendation indicates, it is a challenge to develop innovative ways to improve recruitment of MHB candidates; however, the BOS is committed to the goals and objectives of the MHB that will best serve the community as a whole. The Board of Supervisors will continue to make a concerted effort to recruit applicants that meet the W&I Code requirements.

**R805 The BOS must review their participation on the MHB and all boards to ensure they are not overextending themselves and can provide strong leadership when necessary. (F807)**

The Board of Supervisors is committed to serve as a non-voting member of the MHB as well as other advisory boards. The BOS will continue to support and provide leadership to continue the efforts of the MHB and other advisory boards and/or committees to the extent possible.

**R806 The MHB needs training in Team Building skills. (F806)**

The recommendation will not be implemented unless the MHB determines that such training will be beneficial to the MHB. The Board of Supervisors has not noted the need for team building training.



# County of Fresno

ADVISORY BOARDS AND COMMISSIONS

July 12, 2010

Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93724-0002

Your Honor:

Enclosed are the responses to the Grand Jury Final Report #8 2009-2010 as is required of me as the Chairperson of the Fresno County Mental Health Board by Penal Code Section 933.

Sincerely,

Curtis A. Thornton, Chair  
Mental Health Board

cc: County of Fresno  
Board of Supervisors  
Hall of Records, Third Floor  
2281 Tulare Street  
Fresno, CA 93721

4441 E. Kings Canyon Road· Fresno, California 93702  
[www.fresnohumanservices.org](http://www.fresnohumanservices.org)

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RESPONSE TO 2009-2010 FRESNO COUNTY GRAND JURY FINAL REPORT #8  
REGARDING FRESNO COUNTY MENTAL HEALTH BOARD

FINDINGS

F801 There has been both conflicts of interest and the appearance of conflict of interest with the members of the MHB.

**Response:** *Some years ago there was a concern within the Executive Committee of the MHB regarding conflicts of interest with members on our Board. It is our understanding that when this was taken to the County Counsel's office that we were told that this is a matter for the Board of Supervisors (BOS) to deal with, not our Board. As a result when further conflicts arose more recently, our Board did not take any action. We were glad to see this issue come into the light of day last August. As far as we know, none of our current members have a conflict of interest as defined by the law. After the events of last August our Board passed a resolution asking any of our members that have a conflict to resign. Our resolution also called for periodic reminders to be given about conflicts at our meetings. Our Board is not authorized to take any action directly concerning any members who might have conflicts. The California Welfare and Institutions Code (WIC), which enumerates the duties of county mental health boards also provides that the Board of Supervisors can assign other duties to the local mental health board. Accordingly, the BOS could authorize the MHB to remove, by its own action, members deemed to have a conflict of interest as defined by State law, or County ordinance or regulation.*

F-806 The MHB members do not work well together and at times their personal conflicts get in the way of conducting business.

**Response:** *The findings gave no specific examples so this item is difficult to respond to, especially the reference to "personal conflicts". It is true that our meetings get "heated" at times. We not only have a diverse board with a variety of backgrounds and strongly held opinions, those that attend our meetings are very much the same in that regard. Our membership includes mental health consumers and family members who have very strong convictions and passion. Although our differences are not partisan in nature, we often have opinions that are very polarized much as is seen on the national scene politically. There might very well be differences of opinion on our Board, but it is the Chair's belief that for the most part we have worked together better over recent months, and that we have been quite effective in making specific suggestions to our new Mental Health Director. But, there has still been differences arise, and it can be anticipated that this will continue to happen. While some might see this as totally negative, there is great value in hearing both sides of issues, expressed in a strong and passionate way, prior to action taking place.*

## RECOMMENDATIONS

R801 The MHB members need training as to what constitutes a conflict of interest and how to resolve the appearance of conflicts.

**Response: Assembly Bill 1234 and Regulations 18371 adopted by the California Fair Practices Commission require that local officials receive a two hour ethics training within a certain time after assuming an office and periodically every two years thereafter. This training deals specifically with the conflicts of interest issue. We are not aware of any other available training on this subject. While several of our members had complied with this requirement prior to the events of August 2009, many had not. Since that time, our board has received regular reminders at our meetings and via e-mail as to who has taken the training and who has not, along with strong encouragement for those who have not taken the training to do so. As a result, only one of our current members has not completed the training in a timely manner. Our Board is not authorized to take any action directly concerning any members who have not completed their training in a timely manner. The BOS could authorize the MHB to remove, by its own action, members deemed to have not completed this training in a timely manner.**

R806 The MHB needs training in Team Building skills.

**Response: Perhaps the MHB would benefit from training of this type. The Chair has initiated a contact with the California Institute for Mental Health (CIMH) inquiring as to whether they might be able to provide such training for our board. Previously, CIMH has offered to provide training for us, and this might very well be an area that they could address. At this time, we are not aware of other means of obtaining such training. One area of concern regarding any training is the requirements of the Brown Act which states that all meetings of a majority of the members of public body must be open to the public. This does not present a problem with the ethics training previously discussed because the training is done by MHB individually. It would seem that a training in team building skills, of necessity, be one involving the MHB as a group. Any gathering of a majority of the MHB members where the group would receive information or discuss the views of the various members on issues pertinent to the business of the MHB would trigger the public meeting requirement. Upon receiving positive response from CIMH, we will seek their direction regarding this issue.**

# REPORT #9

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**ORANGE COVE FIRE  
PROTECTION DISTRICT**





**FILED**

MAY 17 2010

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2009-2010  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#9**

**Fresno County  
2009 - 2010 Grand Jury  
Report # 9**

**Orange Cove Fire Protection District**

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**INTRODUCTION**

The 2009-2010 Fresno County Grand Jury received a complaint from a citizen about the management of the Orange Cove Fire Protection District (District), which handles emergencies within the City of Orange Cove in Fresno County and parts of Tulare County. The District has a "volunteer" fire department with firefighters paid by call. A committee was formed to determine if proper management practices, procedures and policies had been established and were being followed.

**BACKGROUND**

Orange Cove is a city of approximately 11,000 residents located in eastern Fresno County. This small agriculturally based community has grown almost 40% since the year 2000.

The management of the District resides with the three person Board of Commissioners who are elected for staggered four year terms. Vacancies occurring mid-term are filled by appointment or special election.

During testimony, it was determined the three member Board of Commissioners (Board) which manages the Orange Cove Fire Protection District has been lax in its oversight, not providing the required leadership in support of the volunteer fire department. While the grand jury does not recommend the Board micromanaging every day functions of the fire department, it should ensure that adequate written administrative/management policies exist, and are current, incorporating current legislation, best practices, and reflect changes within the department. In addition, issues of compliance with current training standards and equipment maintenance have been ignored.

Since there have been many changes to the Board and with the position of Fire Chief in the last five years, continuity of policies, foresight and overall direction have been sorely lacking and/or poorly communicated within the department. The current Fire Chief has brought many new ideas and expectations to the department, which have not been readily accepted by all of its members. In an attempt to introduce a new era of professionalism within the department, the new Fire Chief needs full support from the Board of Commissioners. As a result, the spirit and morale within the Orange Cove Fire Department is low. Stress levels have risen and the overall commitment of the volunteers has suffered.

## PURPOSE OF THE INVESTIGATION

1. To determine the extent of possible management deficiencies and lack of Board leadership of the Orange Cove Fire Protection District.
2. To determine if proper written policies and procedures exist and are adhered to.
3. To determine if all employment policies are handled equally and without bias.
4. To determine if all firefighters are trained properly, all licenses and certifications are current, complying with government codes and standards.
5. To determine if all firefighting equipment meets performance standards.
6. To determine if all tax revenue, grants, strike force monies and donations are being properly received and expenditures are consistent with approved budget items.

## DISCUSSION

Many accusations and allegations were articulated during interviews and the distrust and dislike between several members of the District became apparent. The grand jury focused its initial investigation on management and personnel issues. However, we became aware of additional concerns regarding administrative practices and record keeping. For many years, management practices and firefighting training were conducted on the presumption "it's always been done this way" without regard to best practice methods and standards.

Inadequate revenue sources have affected the ability to consistently provide proper training and record keeping. The Fire District is chronically under-funded. However, we cannot excuse the lack of appropriately updating many of the district's written policies since 1991. This is a basic management function that should never be ignored. It has led to confusion and lack of continuity regarding the way things get done and, in some cases, not get done. The district is a member of several professional associations and Joint Powers Agreements [JPA], all of which, in addition to the district's liability carriers, have documents and/or manuals to create a contemporary set of policy and procedures.

In addition, no volunteer, commissioner or employee of the Orange Cove Fire Protection District has ever received a complete manual containing basic policies, procedures, organization charts, benefits, explanation of vacation or sick leave, disability programs and/or uniform reimbursement. The grand jury feels a printed manual would clarify many misconceptions and improve communications within the District. This will also reduce the threat of reactionary decisions by the Board. If all District guidelines, policies, and procedures are written, decisions will be made out of the district philosophy, rather than as needed.

When the current Fire Chief was hired, established procedures were not in place by the Fire District Board, which included the announcement of the vacancy and the process for

making the selection recommendation to the Board, which makes the ultimate selection. Consequently, the Board did not establish a screening committee, which is common in similar situations. Instead, the Board assigned two Commissioners to an Ad Hoc committee, which some in the community felt violated the Brown Act. However, it was not substantiated. Even though a highly qualified candidate was identified and hired, it would have been prudent to include District firefighters and other citizens in the process of narrowing the applicants to 3 or 4 individuals for the Board to interview, prior to their final selection. Procedurally, this should be considered in the future since it allows community participation and provides for an open, transparent process.

The Board needs to remind itself that it represents and manages a fire department that's paid by call and should be more inclusive in its decision-making process. As we stated earlier, the grand jury doesn't condone micromanaging, however, unilateral decisions are rarely popular and can lead to unrest among the personnel. They should also expand its representation from a three person Board to a five person Board to include additional points of view and ensure diversity.

In the absence of a clear employment policy, there appears to be some unsettling conflicts. Irregularities have come to light during the grand jury investigation that may need further scrutiny. Currently, there is a harassment allegation suit pending with the Equal Employment Opportunity Commission.

Another issue involves the current Assistant Fire Chief. When he was Fire Chief, he exceeded the annual amount of hours worked (960 hours) while receiving retirement benefits from the California Public Employees Retirement System (CalPERS). In addition, he receives full health insurance benefits from a policy issued by Tulare County. However, he may not be eligible due to his part-time employment status. According to his most recent health benefit application, he also has Medicare Part A and B coverage. Full Tulare County coverage may be an unneeded duplication of benefits, thus a waste of district funds in paying for the coverage, irrespective of the legality of receiving the benefit.

A policy implemented by the Board in November 2009 involves their 16/24-hour pay policy. Under the direction of the Board, firefighters are only paid for sixteen hours for every twenty-four hours worked. Eight hours are donated to the District. Nevertheless, the practice appears to violate various laws and regulations and needs further scrutiny.

Revenue issues must also be addressed in order to provide the District with adequate funds to operate efficiently in the future. Their traditional revenue sources include property taxes, strike force monies, government grants and community fund raisers. In the past, lack of money has been their excuse for not computerizing personnel records, call records, time sheets, verification of compliance with training/certification, continuing education updates, required equipment testing, reimbursement/payment guidelines, mutual aid agreements, DMV records, drug testing results, background checks, ethics training, sexual harassment/discrimination training, written job descriptions and other important agreements and/or contracts. The new Fire Chief is addressing these issues; however, they should never have been ignored for so long.

The City of Orange Cove (City) established a Redevelopment Agency (RDA). Despite numerous attempts to secure a copy of any agreement between the RDA and the District, the grand jury was unable to do so. City administration denies the existence of a financial agreement between it and the District. This assertion appears to contradict the County of Fresno's schedule of levies, which includes an RDA return of \$4,730.35 for the 2009-10 fiscal year. The county's schedule of levies reveals 48.6% of the District's total revenues (\$213,867) were taken by the RDA in 2009 -10 fiscal year, which is consistent with the two previous years' percentage. Thus, between \$104,000 and \$110,000 are annually taken by the RDA from the district's gross revenue levy.

In an effort to stem the massive 2009 -10 budget deficit of the State of California, the governor suspended Proposition 1A. The suspension resulted in the District having \$7,305 taken from its property tax revenues and diverted to Sacramento. The funds are supposed to be repaid, with interest, at some future date. However, this current shortfall further adversely impacts the District.

Lack of funds has been used as an excuse, by previous Fire Chiefs, to stop participating in operational meetings conducted by the Office of Emergency Services (OES) and regional meetings of the California Fire Chiefs Association (CalChiefs). Attendance in these meetings qualifies them to be included in State and Federal Strike Force revenues for fighting wild fires in other parts of the State or out of State. In the past, these activities provided over \$100,000 in additional annual revenue for their efforts. The cost for attending these meetings should be considered an investment instead of an expense.

Annual financial audits have occasionally been late because the accountant wasn't always provided with the needed records in a timely manner. The Board rarely questioned the reports even though they often included factual inaccuracies, typos, lack of detailed line items and insufficient explanations. In addition, there is a City account for federal grant money that is never mentioned in the annual audit. It appears that the same auditor has been used for over 20 years and the Board has ignored auditor recommendations for segregation of duties. In 2009, the auditor was retained for an additional three years, apparently without the Board securing additional bids for auditing services.

The Board does not receive a monthly balance sheet with adequate detail for proper review. It was noted during our interviews that expenses have been moved from one line item to another without Board approval.

It was also discovered during the grand jury interviews that the property insurance ratings for residents of Orange Cove is higher than it could be because the District quality evaluation rating by the International Organization of Standards (ISO) is too high. The ISO is an independent organization that serves insurance companies, fire departments, insurance regulators, and others by providing information about risk.

The ISO measures relevant data and assigns a Public Protection Classification (PPC) – a number from 1 to 10. Class 1 represents exemplary fire protection and Class 10 indicates that the area's fire-suppression program does not meet ISO's minimum criteria. The PPC evaluates the community's fire alarm and communications system; the fire department equipment, staffing and training; and, the condition and maintenance of the hydrants.

The ISO classification for Orange Cove is currently an issue of much debate. The grand jury cannot support a specific rating, as records obtained by its committee do not include an ISO rating. However, in sworn testimony, a rating of 5 for the city, and 8 for the county was given. In other sworn testimony, the similar rating was 8/10. Depending on the insurance carrier, a lower ISO rating may result in insurance premium savings to residents and business owners throughout the community.

## **CONCLUSIONS**

Personality differences and poor leadership by past Fire Chiefs hamper growth opportunities within the District and the fire department. The main problems seem to emanate from the activities of the last two Fire Chiefs. While they were able to maintain a viable fire department for a number of years, they failed to comply with new standards for training, accurate record keeping and proper personnel management practices.

In addition, these same two former Fire Chiefs seem to want to interfere with the new Fire Chief's efforts to upgrade the department. Their interference has caused dissension within both the community and the District. Under their watch, they have directly cost the District money by not sending representatives to the OES meetings in order to qualify for Strike Force monies. They have also cost the community money by not qualifying for a lower ISO rating. They are a continuous source of unrest and must step aside from their current duties in order for the District to function properly and move forward.

Even though many problems exist within the Orange Cove Fire Protection District, the grand jury feels they provide the community with reliable and dedicated service. If additional revenue can be found and training is upgraded as planned; the future of the District is very promising.

## **FINDINGS**

- F901 With few exceptions, written Policies and Procedures have not been completely revised since January 15, 1991.
- F902 Clear communications within the Fire District/Department is poor.
- F903 A clear, concise, defined policy for filling Board vacancies does not exist.
- F904 The Board has not always acted in a non-partisan and independent manner. Some members of the Board do not fully support the Fire Chief's efforts to upgrade the fire department.
- F905 Recurring ethics and sexual harassment training is not scheduled for members of the Board and the Fire Department.
- F906 Personnel records and job descriptions are insufficient, lacking detail and are not fully computerized.

- F907 Firefighters do not always have sufficient certification to meet training standards and may lack appropriate DMV licenses/endorsements to operate all the department equipment, consistent with California statutes. Thus property owners' insurance appears impacted with higher premiums.
- F908 Reimbursement for unused sick leave/vacations/overtime/holiday time-off are not clearly defined or written, thus potentially being unequally managed.
- F909 The Assistant Fire Chief may be receiving Health Insurance benefits without meeting the program eligibility requirements and in the past appears to work more hours than allowed by CalPERS.
- F910 Prior to the current Fire Chief, the Fire Department stopped participating in the operational meetings of the Office of Emergency Services and regional meetings of the California Fire Chiefs Association, negating their participation in, and earning Strike Force revenue.
- F911 Annual audit reports are not closely scrutinized by the Board.
- F912 District monies are sometimes moved from one line item to another without Board approval.
- F913 Property tax revenues may be disproportionately allocated to the RDA, thus depriving the District with vitally needed revenues.
- F914 Firefighters are only paid for sixteen hours for every twenty-four hours worked (16/24 hour pay policy).
- F915 The loss of Proposition 1A funds was not acknowledged by the Board.

## **RECOMMENDATIONS**

- R901 Written "Policies and Procedures" need updating to comply with current regulatory and legislative changes, for all aspects of the District. A "Volunteer's Reference Manual" should be developed. (F901)
- R902 The Fire District Board should ask the City of Orange Cove for inclusion on their website. The District Board meeting agendas, job openings, the "Volunteer's Manual" in PDF format and other pertinent items should be included on the website for community access. (F902)
- R903 The Board and Fire Chief should approach the City of Orange Cove and ask for consistent annual financial support, assisting its endeavor to improve its ISO classification. (F907, F913)
- R904 The Board should change their By-Laws to prevent former Fire Chiefs from being on the Board of Commissioners, eliminate the position of Assistant Fire Chief and

identify a replacement to cover the Fire Chief's responsibilities in his absence. (F904, F909)

R905 The Board should consider:

- Increasing the Board of Commissioners membership from three to five allowing at least one position from outside the District.
- Computerization of all department records.
- Scheduling annual ethics and sexual harassment training for all Board members and firefighters, including the proper retention of compliance records.
- Pursuing all revenues available and due to the District.
- Hiring a competent and experienced Administrative Assistant to assist the Fire Chief in his efforts to develop a department database.
- Requiring annual audit reports delivered to the Board, one week prior to the review Board meeting, allowing a thorough evaluation and discussion with the District auditor.
- Creating a policy to change the auditor every 3-4 years.
- Investigating the health benefits provided to the Assistant Fire Chief.
- Reviewing the "16/24 hour pay policy."
- Through the California Special Districts Association (CSDA), the Board should evaluate participation in their Prop 1A Securitization Program, which allows for retrieval of lost 2009 revenues. (F903-915)

## REQUEST FOR RESPONSES

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 sixty days of the receipt of this report and ninety days for all others.

## RESPONDENTS

- Board of Commissioners - Orange Cove Fire Protection District. (F901 – 915, R901 – 906)
- Kevin Gildea - Fire Chief, Orange Cove Fire Department (F901 – 903, F905 – 908, F910, R901, R903)
- Alan Bengyel, Orange Cove City Manager (F913, F915, R902, R903)

## SOURCES

- California Fire Chiefs Association website
- California Special Districts Association [CSDA] website
- Certified Public Accountant
- City of Orange Cove website
- County of Fresno – Prop 1A Suspension Certification, November 6, 2009
- County of Fresno – Schedule of Levies 2009-10, 2008-09, 2007-08



- County of Tulare website
- Documents provided by the Orange Cove Fire Protection District
- Fire Agencies Insurance Risk Authority [FAIRA] website
- Fire Agencies Self Insurance System [FASIS] website
- Fire Districts Association of California [FDAC] website
- Internal Revenue Service Publication 15-A
- International Organization for Standardization (ISO) website
- National Fire Protection Association, NFPA 1720 Standard website
- Past Secretary for the Orange Cove Fire District
- Past and present members of the Board
- Past and present Fire Chiefs – Orange Cove Fire Protection District
- Representatives from Fresno County Tax Collector/Auditor's office
- Several current firefighters

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# RESPONSES

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- A. Board of Commissioners, Orange Cove Fire Protection District  
R901 through R906
- B. Kevin Gildea, Fire Chief,  
Orange Cove Fire Department  
R901 and R903
- C. Alan Bengyel, City Manager, City of Orange Cove  
R901 and R903

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**ORANGE COVE FIRE PROTECTION DISTRICT**  
**550 Center Street**  
**Orange Cove, CA 93646**  
**559-626-7758**

Fresno County Grand Jury  
1100 Van Ness  
Fresno, CA 93724-0002

TO: Fresno County Grand Jury

SUBJECT: Responses

The following are responses to the Grand Jury Report #9 concerning the Orange Cove Fire Protection District.

**F901** - With few exceptions, written Policies and Procedures have not been completely revised since January 15, 1991.

You are correct in the statement that with few exceptions, our policies are out of date. Chief Gildea is fully aware of this situation and had discussed it with the board and is in the process of rewriting new policies and manuals as time permits. The board will review these upon their completion.

**F902** – Clear communications within the Fire District/Department are poor.

Clear communications has possibly been poor due to the lack of policy and procedure manuals. The volunteers have not been in total unison for the betterment of the department. Again, Chief Gildea is holding Captains meetings once a month and volunteer meeting twice a month, at which time all members have the opportunity to express their concerns. Also, a new chain of command will be instituted, which hopefully will help this situation. Their chain of command will be clearly established, which will aid in information flow.

**F903** – A clear concise, defined policy for filling Board vacancies does not exist.

It is not the Board's function to create a "policy" for filling vacancies. That policy is clearly defined in the applicable CA Codes, a) accepting resignations or end of term for a Board member, b) posting the opening for public reading and applications, c) reviewing the applications and awarding the position, d) and all must be accomplished within specific time frames as established by California law.

California law, that is the "policy" the Board is obligated to follow.

The above request has been made by Manuel Ferreira, Current Chairman of the Board.

**F904** – The Board has not always acted in a non-partisan and independent manner. Some members of the Board do not fully support the Fire Chief's efforts to upgrade the fire.

There has been a difference of opinion to the word support within the community and possibly the Board. Hopefully, as the other existing problems are solved, we will have greater unison in the Board and the community.

**F905** – Recurring ethics and sexual harassment training is not scheduled for members of the Board and the Fire Department.

Again the conclusions are correct, we do not have a current and up-to-date policy on ethics and sexual harassment training. Chief Gildea and the Board are fully aware of this. The Chief is evaluating this and is currently in the process of scheduling training for the Board and the volunteers which will bring us up to code. The Board adopted a current policy on Aug 2, 2010.

**F906** – Personnel records and job descriptions are insufficient, lacking detail and are not fully computerized.

Personnel records are lacking in many areas. In the past, there have not been physicals or former background checks on the volunteer personnel. With the new organization chart that is being instituted, each member will have a job

description covering his duties and responsibilities. Hopefully, as funds come available, these items will be computerized.

**F907** – Firefighters do not always have sufficient certification to meet training standards and may lack appropriate DMV licenses/endorsements to operate all the department equipment, consistent with California statues. Thus property owners' insurance appears impacted with higher premiums.

The volunteers haven't had sufficient training to meet the certification of the volunteer firefighter #1, and that is being corrected as fast as possible. No member is driving equipment that isn't certified by DMV for that particular unit. Most members have current CPR cards and those who haven't are being scheduled for the training. Infectious disease training has also been taught to the members. In regards to the high insurance premiums, the Board dedicated funds for hydrant testing. Also, the volunteers raised money for a new hose tester. These two items, along with the others listed above should help to lower our insurance premiums in the future.

**F908** – Reimbursement for unused sick leave/vacations/overtime/holiday time-off are not clearly defined or written, thus potentially being unequally managed.

New policies will be written covering these issues and adopted by the Board.

**F909** – The Assistant Fire Chief may be receiving Health Insurance benefits without meeting the program eligibility requirements and in the past appears to work more hours than allowed by CalPERS.

This item should be again reviewed by the Board as it also pertains to a budget issue. We will be reviewing Tulare County's policy.

**F910** – Prior to the current Fire Chief, the Fire Department stopped participating in the operational meetings of the Office of Emergency Services and regional meetings of the California Fire Chiefs Association, negating their participation in, and earning Strike Force revenue.

Currently Chief Gildea had been able to attend these meetings and is taking an active role in the Fire Chief Association. Hopefully, he will be able to

gain information on training and grant applications which will benefit our department in the future. Chief Gildea will be attending OES meetings.

**F911** – Annual audit reports are not closely scrutinized by the Board.

With this new bookkeeping system, Board members should be able to scrutinize the books for income and expenditures in a more efficient manner. The board should have the annual audit two weeks prior to the review by the Board and the Auditor.

**F912** – District monies are sometimes moved from one line item to another without Board approval.

Again, with the new bookkeeping system, hopefully the Board can review the expenditures line by line in comparison to the budget. The Board will have a line item budget.

**F913** – Property tax revenues may be disproportionately allocated to the RDA, thus depriving the District with vitally needed revenues.

This issue has been before the Orange Cove City Council in prior years. Your Grand Jury report indicates that the City Manager could not locate any agreements or documentation to support the deductions from the OCFPD'S "Adjusted Gross Levy". The "contribution" of nearly 50% is the highest of the fifteen entities listed on the "Schedule of Levies 2009-2010" for the County of Fresno.

On June 28, 2010, I submitted a Public Records Act request to the City of Orange Cove for authentication and details regarding the RDA "contribution". After a review of H & S Code 33675, I do not see any legal requirement for confiscating "RDA" funds for the City of Orange Cove.

I am in the process of preparing a similar request to Vicki Crow, Fresno County Auditor-Controller, regarding this same issue. Perhaps she may have some documentation or other justification for passing these funds to the City of Orange Cove.

The above request has been made by Manuel Ferreira, Current Chairman of the Board.



**F914** – Firefighters are only paid for sixteen hours for every twenty-four hours worked (16/24 hour pay policy).

This may not be consistent with current labor law, and is being reviewed by the Chief and the paid personnel. It will come to the Board for final resolution.

**F915** – The loss of Proposition 1A funds was not acknowledged by the Board.

No acknowledgement was required. The letter dated October 29, 2009, from Vicki Crow, CPA, Auditor-Controller for County of Fresno, “Prop 1A Suspension Certification” notified our District and many other entities of their share of the \$32.3 Million that was withheld.

OCFPD amount is \$12,376. I have contacted the Finance Director at City of Orange Cove and he confirmed that the OCFPD can carry that \$12,376 as a receivable for accounting purposes. Interest rate from State is unknown at this time. This was discussed at the Board meeting on January 10, 2010

These funds were withheld based on the Governor’s “Prop 1A Suspension Proclamation”, dated July 24, 2009.

The above request has been made by Manuel Ferreira, Current Chairman of the Board.

Recommendations:

**R901** – Written “Policies and Procedures” need updating to comply with current regulatory and legislative changes, for all aspects of the District. A “Volunteers Reference Manual” should be developed. (F901)

These may have been neglected in the past. The Board is processing requests to other similar agencies and professional associations for samples of existing documentation that we can use as a guideline. This is another work in process that will evolve as the Board and Volunteers have time for creating an Index and assigning segments to individuals to draft various aspects of the two manuals.

**R902** – The Fire District Board should ask the City of Orange Cove for inclusion on their website. The District Board meeting agendas, job openings, the “Volunteers Manual” in PDF format and other pertinent items should be included on the website for community access. (F902)

The City website is currently under major reconstruction (July 2010). The City does not have an in-house webmaster or IT department. They contract all work to a third party. The FY 2010-11 Budget calls for a 50% or more reduction in the funds for the website and IT functions.

The Board will review this matter and determine if and when we can implement a website. The logical solution may be establishing a free-standing website similar to the OCPD website.

In the interim the meeting agendas can be e-mailed to ALL INTERESTED parties without a website (and virtually no cost) – similar to the process used by the City (they e-mail the agenda and provide a download section on the website for supporting documents) and the OCPPD (agendas are e-mailed for every meeting scheduled). E-mail lists for Board and Volunteers are already in our files. Lists for community groups such as Chamber of Commerce, Orange Cove Citizens Patrol, many school district employees, and other interested parties can be requested.

Job openings can be posted on a variety of free web sites and also e-mailed.

**R903** – The Board and Chief should approach the City of Orange Cove and ask for consistent annual financial support, assisting its endeavor to improve its ISO classification. (F907,F913)

Elimination of the City’s RDA deduction (\$106,709 in FY 2009-10) will seriously improve the cash available for operations.

Searching out private sector funding (grant providers, foundations, and trusts) for some of our equipment, training and operational requirements. In addition, the Board may consider requests to local businesses and families to be included in their estate planning. This can provide long-term income.

**R904** – The Board should change their By-Laws to prevent former Fire Chiefs from being on the Board of Commissioners, eliminate the position of

Assistant Fire Chief and identify a replacement to cover the Fire Chief's responsibilities in his absence. (F904, F909)

Historically, anyone that is resident of the District can be a candidate for the Board of Directors. This is an issue that has been discussed by a small group within the Fire Department who have their own agenda.

**R905** – The Board should consider:

Increasing the Board of Commissioners membership from three to five allowing at least one position from outside the District.

Many of our problems in the past months were the result of only two active members. Our understanding is that the County Board of Supervisors can accomplish this without an election to increase the size. We are requesting clarification from the BOS on this matter.

Computerization of all department records.

We do not have the personnel. A grant is pending with USDA. It was submitted in March 2010.

Scheduling annual ethics and sexual harassment training for all Board members, and firefighters, including the proper retention in compliance records.

See response to F905.

Pursuing all revenues available and due to the District.

See response to Proposition 1A and RDA "contributions" above.

Hiring a competent and experienced Administrative Assistant to assist the Fire Chief in his efforts to develop a department database.

This involves both a budget function ("competent and experienced" do not come cheap). In addition there may be updated or improved computer hardware to consider for a functional department.

Requiring annual audit reports delivered to the Board one week prior to the review Board meeting, allowing a thorough evaluation and discussion with the District auditor.

This is a reasonable suggestion. The Board will coordinate with the Chief and auditor as to timing and submission of completed account records to the auditor.

Creating a policy to change the auditor every 3-4 years.

When an audit firm has multiple partners, a partner rotation is acceptable under the Sarbanes-Oxley Act every five years. "Fresh eyes" looking at data is always a good idea. Positive suggestions (budget, processing, data element, etc.) may also result.

Investigating the health benefits provided to the Assistant Fire Chief.

Previous response above applies.

Reviewing the "16/24 hour policy." See F914.

The Board will request documentable input from the Chief and Firefighters.

Through the California Special Districts Association (CSDA), the Board should evaluate participation in their Prop 1A Securitization Program, which allows for retrieval of lost 2009 revenues. (F903-915)

This item should be placed on the next meeting agenda, if adequate information is available and the District qualifies to participate in this bond sale.

Respectfully submitted,

Orange Cove Fire Protection District Commissioners

Manuel Ferreira  
Robert Terry  
Lee Bailey



RECEIVED  
BY // DATE 8/1/11

## Orange Cove County Fire Protection District

550 Center St. • Orange Cove, California 93646-2251  
Business Ph. (559) 626-7758 • Fire or Emergency Ph. 911  
Fax (559) 626-3909  
e-mail: ocfpd@hotmail.com

RECEIVED  
BY // DATE 8/1/11

To: Fresno County Grand Jury

From: Chief Gildea

The following is my reply to the sections of the Grand Jury report. Thank you for the Grand Jury's work in looking at our operation. It is helpful to have others look at your operation from time to time. I have approached the report and findings as an opportunity for our agency to improve its operations. I assumed command of the Orange Cove Fire District on November 9, 2009. Many of the problems identified in the Grand Jury's findings were addressed, or in the process of being addressed prior to the start of the Grand Jury investigation. It is my hope that at the other end of this investigation that OCFPD will emerge as a better run Fire District, and that further we will provide a better, more efficient service to the citizens we serve.

F901 With few exceptions, written policies and procedures have not been completely revised since January 15, 1991

The Existing policy manual is out of date. It needs a total re-evaluation of the existing policies, as well as many new policies for issues that have never been addressed. I intend to have a new modern policy manual in place very soon. Several policies have been re-written, and there are several new policies as of this writing, but we will essentially start over with a new policy manual. All policies will be discussed in open meeting prior to adoption. An operations manual will be developed in conjunction with the policy manual.

F902 Clear communications within the fire district/department is poor.

I am in the process of addressing this problem from two fronts. The new policy manual will be a big help as far as having clear policies that reflect a modern fire department. Currently there is no chain of command in place within OCFPD, currently everyone essentially works for the Chief. This leads to exceeding a reasonable span of control at most incidents. I wish to reorganize the leadership structure of the department. This will involve each member assigned to a specific Captain, and each Captain will be assigned to a specific Chief Officer. The Chief Officers will report to the Fire Chief. We will have a very clear chain of command; every member will know his or her place in the chain of command.

I have also started having monthly meetings for all Officers of the District. I am sharing the content of the monthly board meeting with all Officers, and I am giving them an opportunity to provide input on proposed changes and issues prior to my taking them to the board.

F903 A clear, concise, defined policy for filling board vacancies does not exist.

I will work under the Fire Boards direction to have a policy in place. This will also be reviewed by the Elections Office of both Fresno and Tulare County. I will also encourage the board to seek legal advice on this issue.

F905 Recurring ethics and sexual harassment training is not scheduled for members of the board and the fire department.

I am currently lining up harassment training for our agency. This training will be provided very soon. OCFPD will have a policy in place for how often this training is to be repeated. OCFPD has a harassment discrimination policy in the by-laws that were re-written in 2009. This policy was specifically re-endorsed in the boards August 2010 meeting. This is a simple modern policy that was professionally written by our legal counsel. This is our most modern policy on this subject. All new policies in this area will mirror this existing portion of our bylaws.

I will write a modern ethics policy, and provide ongoing training on this subject as needed.

F906 Personnel records and job descriptions are insufficient, lacking detail and are not fully computerized.

OCFPD has some record keeping issues. There is no policy in place that gives clear direction on record keeping and reporting. There is no records retention policy at this time. As of this writing the personnel records now have some order; all personnel, both current and former member's records that were found are in one file drawer. These are kept behind locked doors at all times, and are now secure. I have evaluated several affordable fire department record keeping software suites that are designed for fire department record keeping. I have identified one product that will meet our needs. I have applied for a grant through USDA rural development in March 2010 for this software. This software will maintain our personnel and training records electronically. This software will also track our statistics and run reports as well as all hydrant testing, hose records, and vehicle maintenance and testing. OCFPD will purchase software before the end of 2010 even if we are not successful in our grant request.

Complete job descriptions will be written for all positions when the reorganization spoken of in F902 is complete and approved by the board. I anticipate some new positions that will need job descriptions.

F907 Firefighters do not always have sufficient certification to meet training standards and may lack appropriate DMV licenses/endorsements to operate all the department equipment consistent with California statutes. Thus property owners insurance appears impacted with higher premiums.

Certifications and licenses have not been a priority historically at OCFPD. One of my first policy revisions was the requiring of the proper drivers license for the operation of our apparatus. All firefighter

currently operating our apparatus are properly licensed with the State of California DMV. If a firefighter does not have the proper license, they do not operate our equipment, no exceptions.

We have covered the following areas in recent training to start bringing our responders more current with training requirements. CPR training and certification was offered. Most of our responders are currently certified in CPR. All new members will be offered this training within their first six months. This training will be offered to all members every two years. Infection control and prevention class was taught to all members. Infection control will be reviewed every other year from this time forward. First aid training has been incorporated into many training sessions. The bulk of our calls for service are for medical aid, this is why this training received early attention. We will continue to send people for emergency medical technician training as we can afford. We will have one first responder starting EMT training in August 2010.

OCFPD has recently started the training and skills checks necessary to be certified at the level of volunteer firefighter with the State of California. This training will take roughly one year to complete. I am working with several outside instructors to help provide this training. The value of this training is that all members will receive the same instruction as to how each task that is performed on the fire ground. This training will also have a skills portion where each member will need to demonstrate proficiency before they can become certified by the State of California. I have also applied for a grant to send six of our firefighters to a fire academy. These six firefighters will receive training that will allow them to be certified to the level of firefighter one with the State of California at the completion of this course.

At the completion of the volunteer firefighter certification we will be working on a wildland "red card" for all members. Our goal will be to keep all members red card compliant.

F908 Reimbursement for unused sick leave/ vacation/overtime/holiday time off are not clearly defined or written, thus potentially being unequally managed.

A new policy will be developed along with the other policies mentioned to address the short comings mentioned.

F910 prior to the current Fire Chief, the department stopped participating in the operational meetings of the office of emergency services and regional meetings of the California Fire Chiefs Association, negating their participation in and earning strike team revenue.

The current Fire Chief is attending the Central Valley Fire Chiefs association meeting as well as the OES area meeting each month. This may help us move up the strike team list. Chief Gildea has accepted the technical committee chair with the Central Valley Fire Chiefs association, and has developed, and maintains the associations Facebook page. One other major area that will benefit OCFPD is that through these meetings we will participate in regional grants for training and equipment. Decisions on regional

grant funding are often made at these meetings, in the recent past we have not had a voice in this process.

R901 Written policies and procedures need updating to comply with current regulatory and legislative changes, for all aspects of the district. A volunteer reference manual should be developed.

As mentioned in F901, a new policy and operations manual will be developed.

R903 The board and the Fire Chief should approach the City of Orange Cove and ask for consistent annual financial support, assisting it's endeavor to improve its ISO classification.

I have met with Orange Cove City Manager Alan Bengyel concerning a consistent pass through from the RDA. He gave me some input, but no agreement has yet been reached. I will be meeting with our board of directors to discuss these options. When a plan is formed we will approach the City of Orange Cove with a workable plan that will serve both sides.

Sincerely

A handwritten signature in black ink, appearing to read "Kevin Gildea". The signature is written in a cursive, flowing style.

Kevin Gildea

Fire Chief OCFPD





Mayor:  
**VICTOR P. LOPEZ**

Mayor Pro Tem:  
**GLENDA HILL**

City Council Members:  
**BERTHA DEL BOSQUE**  
**GILBERT GARCIA**  
**ESTHER GONZALEZ**

Incorporated Jan. 20, 1948  
633 Sixth Street  
Orange Cove, California 93646  
Phone: (559) 626-4488  
FAX: (559) 626-4653

City Manager:  
**ALAN J. BENGUEL**  
(559) 626-4488

Finance Director:  
**MANUEL SANDOVAL**  
(559) 626-4488

City Clerk:  
**JUNE V. BRACAMONTES**  
(559) 626-5100

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August 25, 2010

Fresno County Grand Jury  
1100 Van Ness Ave.  
Fresno, CA. 93724-0002

Re: Grand Jury Final Report #9, 2009-2010

Dear Grand Jury Members:

As required under Penal Code Section 933, I am providing the following responses as detailed and recommended by Report #9 for the 2009-2010 fiscal year.

F913:

Property tax revenues may be disproportionately allocated to the RDA, thus depriving the District with vitally needed revenues.

Although the City of Orange Cove does not appear to have an agreement between the RDA and the Fire District, it is apparent that Fresno County is using a formula that allows the pass-through RDA funds to be forwarded to the District. A recent updated report from the County indicating the amounts owed to the various districts such as the Mosquito Abatement, Reedley College, the Cemetery District and the Fire District indicated amounts owing said districts various amounts dating back to 2004 in response to the ERAF allocations. In addition, the RDA return as identified by the county's schedule of levies had indicated a total of \$4730.35, when in actuality; City records indicate total payout for the 2009-2010 fiscal year as \$12,803. It is unclear why the county's payout record is substantially less than that actually recorded. I have asked for accurate accounting as to verifiable amount as well as why the discrepancy.

F915:

The loss of Proposition 1A funds was not acknowledged by the Board.

The Fire District's loss of 1A funds in the amount of \$7,305 mirrors similar losses throughout the State by special districts as well as municipal and county government. The City of Orange Cove's loss was \$326,000 which is a significant impact to this community as it is for the rest of the community's in the State. Although the State of California

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RENEWAL COMMUNITY**

intends to pay back those funds with interest in three years, the financial impact has been difficult for all of us including the Fire District. Unfortunately, there is no other choice.

R902:

The Fire District Board should ask the City of Orange Cove inclusion on their website. The District Board meeting agendas, job openings, the "Volunteers' Manual" in PDF format and other pertinent items should be included on the website for community access.

The City of Orange Cove is still in the process of totally updating its' current website. We have already tied in the newly formed Police Dept. and within the next 90 days will be completing the city's tie-in with the Fire Protection District. Currently, the city's own agenda's and all pertinent information are available and will be expounded upon to include a tie-in to the District.

R903:

The Board and Fire Chief should approach the City of Orange Cove and ask for consistent annual financial support, assisting its endeavor to improve its ISO classification.

The City has already initiated dialogue regarding continued funding support to assist the District. Currently, during the 2009-2010 fiscal year, the City has provided \$100,000 in direct funds to ease their financial burdens for this fiscal year as well as submitted 5 grants in which 3 were funded to assist their operations. Total matching funds from the city's coffers amounting to an additional \$46, 500 this year alone. We will continue to provide grant-writing assistance with or without matching grant requirements.

To date, the City of Orange Cove has provided the following:

- . \$10,000 for special equipment in the 1996-1997 fiscal year.
- . \$10,000 for financial assistance for the 1997-98 fiscal year.
- . \$30,000 for a 1999 CDBG Grant upgrade for the water truck/engine.
- . \$260,000 for a 2000 CDBG Grant fire truck.
- . \$24,000 for a CDBG Grant Vector truck/upgrade pump.
- . \$80,000 for a water tender fire tanker from the RDA.
- . \$2800 for 13 pagers.
- . \$12,432 for new hoses for the Fire District.

Total amount provided was \$429,232.

Thank-you for your input and recommendations regarding the Orange Cove Fire Protection District, the City of Orange Cove and its' Redevelopment Agency. If additional information is required, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan J. Bengyel", with a long horizontal flourish extending to the right.

Alan J. Bengyel,  
City Manager  
City of Orange Cove  
Executive Director  
Orange Cove RDA

- C. Mayor & City Council
- D. Encl.

**Manuel Ferreira**  
**Member, Board of Directors**  
**Orange Cove Fire Protection District**  
550 Center Street  
Orange Cove CA 93646  
559-626-7758 ... cell 559-318-0857

July 16, 2010

TO: Fresno County Grand Jury

SUBJECT: Response to Grand Jury Report #9, Orange Cove Fire Protection District

Prior to my responding to the Findings and Recommendations outlined in the Grand Jury Report, I have two specific comments about the substance and implied allegations within the report.

- 1) My second and third reading of the complete report confirmed my initial reaction that most of this report and the conclusions were skewed in one direction. The language and implications are favoring one small group within the District and Volunteers organization.
- 2) There was little or no indication that my answers and comments articulated at my Grand Jury appearance made the published version of the report. I do not have a photographic memory, or the ability for "transcript quality recall" of my answers to questions, but I am very disappointed with what I will refer to as the 'integrity of the testimony documentation process'.

The following are my response to the Grand Jury Findings and Recommendations, regarding Grand Jury Report #9;

**FINDINGS:**

***F901*** – *With few exceptions, written Policies and Procedures have not been completely revised since January 15, 1991*

That specific problem is being addressed. It is a work in progress. As you know, the Board members are volunteers and there are substantial hours donated to the community. My Board appointment commenced in February, 2009, and I have devoted considerable time to the learning curve for this responsibility.

***F902*** – *Clear communications within the Fire District/Department are poor.*

"Clear communication" can change depending on who is speaking and who is listening. There may be problems as you have pointed out in the report. However, as in many organizations and groups there are cliques and sub-groups that have their own agenda.

***F903*** – *A clear, concise, defined policy for filling Board vacancies does not exist.*

It is not the Board's function to create a "policy" for filling vacancies. That policy is clearly defined in the applicable CA Codes, a) accepting resignations or end of term for a Board member, b) posting the opening for public reading and applications, c) reviewing the applications and awarding the position, d) and all must be accomplished within specific time frames as established by California law.

California law, that is the "policy" the Board is obligated to follow.

***F904*** – *The Board has not always acted in a non-partisan and independent manner. Some members of the Board do not fully support the Fire Chief's efforts to upgrade the fire department.*

All of the current Board members support productive and lawful improvements in the Fire Department operations. Rather than stating "Some members", it would be more logical for your report to specify "John Jones" or "Samantha Gomez". Vague references to people and circumstances provide outsiders and partisan players in the Department to draw invalid conclusions.

The Fire Chief was hired by a Board that did not include the current Board leadership. However, the Fire Chief works for and at the pleasure of the current Board of Directors. We value his expertise and experience, but the Board has a sworn responsibility to manage the District, and that includes the Fire Chief

***F905*** – *Recurring ethics and sexual harassment training is not scheduled for members of the Board and the Fire Department.*

"Ethics", are you making reference to the; a) political ethics training required by AB1234, b) moral principles and values, c) general business ethics in our complex world?

Two of the current Board members have completed the required Ethics Training. It is my intention to have the Board require all Volunteer Firefighter officers (Volunteer Chief, Captains, etc.), and all volunteers on an optional basis, to complete the required CA ethics training ... this can be completed on line here - <http://localethics.fppc.ca.gov/login.aspx> - at no cost to the District or the volunteer.

The reason this ethics education is required; 1) all of the District employees and volunteer leadership will be aware of ethical responsibilities of the Board members, and 2) the legal and ethical limitations of the Board members. The on-line course includes general ethics principles, conducting meetings, conflict of interest, communication with legal counsel, and more.

Sexual Harassment Training ... California law AB 1825 (CA Government 12950.1) does not require the District to provide the bi-annual training for supervisors (based on employee count). However, as we currently have two gender related complaints in the District, we must take action to ensure a level playing field for all employees and volunteers.

The following EEOC guidelines provide an excellent starting point;

"An employer should ensure that its supervisors and managers understand their responsibilities under the organization's anti-harassment policy and complaint procedure. Periodic training of those individuals can help achieve that result. Such training should explain the types of conduct that violate the employer's anti-harassment policy; the seriousness of the policy; the responsibilities of supervisors and managers when they learn of alleged harassment; and the prohibition against retaliation."

This is another work in progress and will receive appropriate attention in 2010.

***F906*** – *Personnel records and job descriptions are insufficient, lacking detail and are not fully computerized.*

Several months ago I provided the Fire Chief with the attached form, "Orange Cove Fire Department Volunteer Data Sheet". The Board members need this type of employee and volunteer data to have a better understanding of total operations.

The Fire Chief refused to provide the information when requested. The Board may not be able to comply with computerization of these personnel type records, but the data will be made available to the Board immediately.

***F907*** – *Firefighters do not always have sufficient certification to meet training standards and may lack appropriate DMV licenses/endorsements to operate all the department equipment, consistent with California statutes. Thus property owners' insurance appears impacted with higher premiums.*

My attempt to obtain current information (see above F906) was rebuffed by the Chief. Historically the Board may have depended on the Training Captain and Volunteer Chief to see that the Volunteers were properly trained and certified. That must now be changed, and the Board take a more active role in requiring up to date certification confirmation.

***F908*** – *Reimbursement for unused sick leave/vacations/overtime/holiday time-off are not clearly defined or written, thus potentially being unequally managed.*

This is another somewhat vague and undefined charge. Without details – persons, dates, and circumstances – it is difficult to provide an intelligent answer. IF this is an attempt by a small group of individuals to retaliate against one or two prior Fire Chiefs, then it should be so stated and the issue can be properly addressed. If it is simply a poorly defined problem, the Board will address that when adequate information to support the claim is revealed.

***F909*** – *The Assistant Fire Chief may be receiving Health Insurance benefits without meeting the program eligibility requirements and in the past appears to work more hours than allowed by CalPERS.*

Most or all of the benefits indicated above were approved by the Board prior to my appointment. The current Board Chair and I reaffirmed those items for the Assistant Fire Chief.

See response to F908 above.

For anyone that follows the current news, items F908 and F909 are not unique to the OCFPD. There is neglect and rampant abuse of retirement throughout California. Both of these issues will be addressed and resolved

**F910** – *Prior to the current Fire Chief, the Fire Department stopped participating in the operational meetings of the Office of Emergency Services and regional meetings of the California Fire Chiefs Association, negating their participation in, and earning Strike Force revenue.*

I have been advised that it was a management decision by the then Fire Chiefs based on budget restrictions, daily operations, and personnel availability. New and on-going revenue sources are always a welcome issue. However, participation may be limited by the availability of equipment and personnel.

**F911** – *Annual audit reports are not closely scrutinized by the Board.*

Was this information based on comments by a Board member(s) or others within the overall organization?

**F912** – *District monies are sometimes moved from one line item to another without Board approval.*

See response to F911 above.

**F913** – *Property tax revenues may be disproportionately allocated to the RDA, thus depriving the District with vitally needed revenues.*

This issue has been before the Orange Cove City Council in prior years. Your Grand Jury report indicates that the City Manager could not locate any agreements or documentation to support the deductions from the OCFPD's "Adjusted Gross Levy". The "contribution" of nearly 50% is the highest of the fifteen entities listed on the "Schedule of Levies 2009-2010" for the County of Fresno.

On June 28, 2010, I submitted a Public Records Act request to the City of Orange Cove for authentication and details regarding the RDA "contribution". After a review of H & S Code 33676, I do not see any legal requirement for confiscating "RDA" funds for the City of Orange Cove. See attached eMail copy.

I am in the process of preparing a similar request to Vicki Crow, Fresno County Auditor-Controller, regarding this same issue. Perhaps she may have some documentation or other justification for passing these funds to the City of Orange Cove.

**F914** – *Firefighters are only paid for sixteen hours for every twenty-four hours worked (16/24 hour pay policy).*

I have no response to this item at this time.

**F915** – *The loss of Proposition 1A funds was not acknowledged by the Board.*

No acknowledgement was required. The letter dated October 29, 2009, from Vicki Crow, CPA, Auditor-Controller for County of Fresno, "Prop1A Suspension Certification" notified our District and many other entities of their share of the \$32.3 Million that was withheld.

OCFPD amount is \$12,376. I have contacted the Finance Director at City of Orange Cove and he confirmed that the OCFPD can carry that \$12,376 as a receivable for accounting purposes. Interest rate from State is unknown at this time.

These funds were withheld based on the Governor's "Prop1A Suspension Proclamation", dated July 24, 2009.

**RECOMMENDATIONS:**

**R901** – *Written "Policies and Procedures" need updating to comply with current regulatory and legislative changes, for all aspects of the District. A "Volunteers Reference Manual" should be developed. (F901)*

These may have been neglected in the past. I am processing requests to other similar agencies and professional associations for samples of existing documentation that we can use as a guideline. This is another work in process that will evolve as the Board and Volunteers have time for creating an Index and assigning segments to individuals to draft various aspects of the two manuals.

**R902** – *The Fire District Board should ask the City of Orange Cove for inclusion on their website. The District Board meeting agendas, job openings, the "Volunteers Manual" in PDF format and other pertinent items should be included on the website for community access. (F902)*

The City website is currently under major reconstruction (July 2010). The City does not have an in-house webmaster or IT department. They contract all work to a third party. The FY 2010-2011 Budget calls for a 50% or more reduction in the funds for the website and IT functions.

The Board will review this matter and determine if and when we can implement a website. The logical solution may be establishing a free-standing website similar to the OCPD website.

In the interim the meeting agendas can be eMailed to ALL INTERESTED parties without a website (and virtually no cost) – similar to the process used by the City (they eMail the agenda and provide a download section on the website for supporting documents) and the OCPPD (agendas are eMailed for every meeting scheduled). eMail lists for Board and Volunteers are already in our files. Lists for community groups such as Chamber of Commerce, Orange Cove Citizens Patrol, many school district employees, and other interested parties can be requested.

Job openings can be posted on a variety of free web sites and also eMailed.



**R903** – *The Board and Chief should approach the City of Orange Cove and ask for consistent annual financial support, assisting its endeavor to improve its ISO classification. (F907, F913)*

I have initiated one action to that end. Elimination of the City's RDA deduction (\$106,709 in FY 2009-2010) will seriously improve the cash available for operations. ALL budgets for ALL cities, counties, and states are greatly reduced during these trying financial times. However, this Board will continue to remind the City of the excellent service they receive from the District and Fire Department.

Searching out private sector funding (grant providers, foundations, and trusts) for some of our equipment, training and operational requirements. In addition, the Board may consider requests to local businesses and families to be included in their estate planning. This can provide long-term income.

**R904** – *The Board should change their By-Laws to prevent former Fire Chiefs from being on the Board of Commissioners, eliminate the position of Assistant Fire Chief and identify a replacement to cover the Fire Chief's responsibilities in his absence. (F904, F909)*

Historically, anyone that is resident of the District can be a candidate for the Board of Directors. This is an issue that has been discussed by a small group within the Fire Department who have their own agenda.

As to the position of Assistant Chief that will be a matter to negotiate with the Volunteers and the public we serve.

**R905** – *The Board should consider:*

- *Increasing the Board of Commissioners membership from three to five allowing at least one position from outside the District.*

A five member Board has been an issue for me since being appointed. Many of our problems in the past months were the result of only two active members. My understanding is that the County Board of Supervisors can accomplish this without an election to increase the size. I am requesting clarification from the BOS on this matter.

- *Computerization of all department records.*

We do not have the personnel, talent or skill to accomplish that task in house at this time. A grant may be sought for this one-time, but significant, cost and project.

- *Scheduling annual ethics and sexual harassment training for all Board members, and firefighters, including the proper retention in compliance records.*

See response to F905.

- *Pursuing all revenues available and due to the District.*

See response to Proposition 1A and RDA “contributions” above.

- *Hiring a competent and experienced Administrative Assistant to assist the Fire Chief in his efforts to develop a department database.*

This involves both a budget function (“competent and experienced” do not come cheap) and settlement of a current personnel issue. In addition there may be updated or improved computer hardware to consider for a functional department.

- *Requiring annual audit reports delivered to the Board one week prior to the review Board meeting, allowing a thorough evaluation and discussion with the District auditor.*

This is a reasonable suggestion. The Board will coordinate with the Chief and auditor as to timing and submission of completed accounting records to the auditor.

- *Creating a policy to change the auditor every 3-4 years.*

When an audit firm has multiple partners, a partner rotation is acceptable under the Sarbanes-Oxley Act every five years. “Fresh eyes” looking at data is always a good idea. Positive suggestions (budget, processing, data element, etc.) may also result.

- *Investigating the health benefits provided to the Assistant Fire Chief.*

Previous response above applies.

- *Reviewing the “16/24 hour policy.”*

The Board will request documentable input from the Chief and Firefighters.

- *Through the California Special Districts Association (CSDA), the Board should evaluate participation in their Prop 1A Securitization Program, which allows for retrieval of lost 2009 revenues. (F903-915)*

This item should be placed on the next meeting agenda, if adequate information is available and the District qualifies to participate in this bond sale.

Respectfully submitted,



Manuel Ferreira  
Member, Board of Directors  
Orange Cove Fire Protection District

# Orange Cove Fire Protection District

## Board of Directors

550 Center Street, Orange Cove CA, 93646-2251 ... (559) 626-7758.

### Orange Cove Fire Department Volunteer Data Sheet

Name: \_\_\_\_\_

Address: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: Cell: \_\_\_\_\_ Land: \_\_\_\_\_

eMail: \_\_\_\_\_

Recruited By: \_\_\_\_\_ Date: \_\_\_\_\_

Training and Certifications:

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Chief's Comments: \_\_\_\_\_

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Board's Comments and Interviews: \_\_\_\_\_

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Volunteer Resigns or Discharged: \_\_\_\_\_

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Orange Cove Fire Protection District  
Manuel Ferreira, Board of Directors

TO: June Bracamontes - Public Records Ombudsperson  
Alan Bengyel - City Manager

SUBJECT: Public Record Act request - Orange Cove Redevelopment Agency

DATE: June 28, 2010

The Fresno County Grand Jury Report #9, Orange Cove Fire Protection District, makes reference to the Orange Cove RDA (page 4, first paragraph). The County of Fresno Schedule of Levies for FY 2009-2010, prepared by Vicky Crow, reports that the "Adjusted Gross Levy" for the OCFPD was \$213,867, and \$106,709 (49.9%) was deducted as "H&S 33676 Contribution".

I have reviewed Health and Safety Code 33676 and do not see any authority for TAKING (Contribution?) this money from the OCFPD. That \$106,000 will facilitate a better Orange Cove Fire Department. This Board is fully capable of investing those funds in a productive manner. This Board needs to control our own financial destiny. Those funds will provide the OCFPD with the fiscal ability for matching funds required for selective grants and joint funding from Homeland Security and other government agencies.

This request is for any agreement or documentation;

1. Where OCFPD agreed to share our Adjusted Gross Levy, or any other name that may apply, on an annual basis. NOTE - the Grand Jury Report states that "City administration denies existence of a financial agreement between it and the District."
- 2.. I am requesting that you search all records for the OCFPD and the RDA or any other agency name that may apply, from 1980 to the current year.
3. *If no agreement is located*, then please provide copies any correspondence to/from the City or OCFPD that refers to RDA funds.
4. *If no agreement or correspondence can be located*, then please have City Manager Alan Bengyel provide an explanation as to why the City is entitled to take these funds on an annual basis.

Please call (559) 318-0857 or eMail ([ferreira.m@sbcglobal.net](mailto:ferreira.m@sbcglobal.net)) when the above is available.

Thank you for your anticipated cooperation.

Manuel Ferreira  
Member, Board of Directors  
Orange Cove Fire Protection District

**CALIFORNIA PUBLIC RECORDS ACT - CODE 6250**

California Government Code 6250

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=06001-07000&file=6250-6270>

California Attorney General booklet - re: CA Public Records Act

[http://www.ag.ca.gov/publications/summary\\_public\\_records\\_act.pdf](http://www.ag.ca.gov/publications/summary_public_records_act.pdf)

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# REPORT #10

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## **ORANGE COVE BMX PARK**





**FILED**

JUN 01 2010

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2009-2010**

**FRESNO COUNTY GRAND JURY**



**FINAL REPORT**

**#10**

**Fresno County  
2009 - 2010 Grand Jury  
Report # 10**

**Orange Cove BMX Park**

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**INTRODUCTION**

The grand jury received questions regarding the operations of the City of Orange Cove and the building of a Bicycle Motor-Cross (BMX) Park in the City. The grand jury understood it was built with the thought in mind that it would attract national groups. It seemed unusual to the grand jury, a professional BMX Park was built in a city whose demographics would not support a multi-day event. Further, the City does not have sufficient infrastructure to support groups that would normally be associated with state or national organizations. There are no hotels, R.V. Parks, or sufficient restaurant capacity to support large groups.

**PURPOSE OF THE INVESTIGATION**

The grand jury formed a sub-committee to investigate the construction of the BMX Park, known as the Diane Feinstein Skate and BMX Park. Many people were interviewed concerning the justification for building the park, including its funding. The Committee elected to limit their inquiry to funding issues and related concerns regarding BMX equipment loss.

**DISCUSSION**

Interviews revealed the City decided to build a BMX Park next to the Skate Park. Testimony indicates that the BMX Park was built under an emergency declaration thus allowing the park to be built without competitive bids. However, after interviewing several witnesses and reviewing City Council minutes, no justification for the emergency declaration was found. No record was found that an emergency declaration was adopted by the City Council prior to the grant application to the State of California and the subsequent commencement of construction.

An emergency declaration is normally used to provide immediate, essential city services such as wells, wastewater, fire suppression, etc. that support the health or welfare of the people. However, a city official stated in this instance that the emergency declaration was needed to expedite construction of the BMX Park in time to hold enough regional events to qualify for a State competition. The official touted the benefit to the city for hosting the two-day State event. The grand jury noted that when the State event was

held, the city received little financial benefit, as they did not have the tourism infrastructure to support incoming visitors.

A reason given to the grand jury by city officials for building the park were for recreational activities for the kids of Orange Cove, which serves as a gang deterrent. Because the cost of competition BMX bikes range from \$1,000 to \$3,000, few, if any, children or their families in Orange Cove possessed competition BMX bikes before or after the building of the park. The City bought six bikes and associated parts for City youth recreation. The National Bike League (NBL) also donated six bikes for Orange Cove to form a team and to compete in their sanctioned BMX races. The City was unable to document which bikes they purchased and which were donated to their team.

For the record, the security guard took possession of all twelve bikes. Subsequently, the security guard signed purchase orders for over \$8,000 for parts and accessories to upgrade the twelve bikes.

The committee visited Orange Cove to view the park, the bikes and equipment associated with the bikes. The park is located within the City and across from the high school. The park was in excellent condition and was esthetically pleasing. There were only a few signs of graffiti and that was located in the Skate Park that is in the same complex and adjacent to the BMX facility. The park was locked and the committee was told that it is open only on weekends. We were also told that nobody uses the BMX Park and the Skate Park is rarely used.

The grand jury noted no bikes are available for public use because the building housing the bikes was broken into and they were stolen. No theft report was filed with the Sheriff's Office. Security cameras surround the facility, however they were not reviewed for two reasons. One person testified burglars cut the lines to the cameras and they did not record; however an inspection showed the lines were not cut. Another person stated the positioning of the cameras and the glare from the lights from the school across the street prevented them from recording properly. There was no burglar alarm on the shed and no telephone line was connected to the building.

In the past, the city employed a security guard to protect the BMX Park. It was subsequently determined the guard did not possess a valid security guard card issued by the State of California, thus the guard was terminated. We received testimony that one of the bikes was offered for sale on Craig's List by the former security guard. The sale took place in a parking lot in Reedley between the guard and a private citizen. The security guard stated that the bikes were given to him by the NBL and he had the right to sell them and keep the proceeds.

Currently, the City of Orange Cove does not operate the park but maintains it on an as-needed basis. They have turned operation over to the NBL. No formal signed agreement was produced by the city to show the contractual relationship. The current arrangement leaves open liability issues. During an interview with an NBL official, it was stated that they liked the park, but were unaware of the bikes being stolen. They did acknowledge giving the bikes to the Orange Cove BMX Team so they could compete.

The NBL claims they do not maintain the BMX Park. When they have a competition, they have a contact within the City and the City opens the park for them.

The City sought a grant to cover seventy percent (70%) of the construction costs through the Office of Grants and Local Services (OGALS) of the Department of Parks and Recreation for the State of California. A grant for \$490,000.00 was approved by the State, with the city to provide 30 percent (30%) matching funds, or \$210,000.00. To expedite the construction of the park, without competitive bidding, the Mayor declared an emergency without City Council approval. M.C. 3.08.100 requires that those expenditures of \$15,000.00 or more go out for competitive bidding. The grand jury was unable to substantiate any competitive bidding except for the asphalt used on the banks of the BMX Park. There are no facts supporting an emergency as required by Municipal Code (M.C.) 3.08.070. While the park needed to host three regional events to qualify for a State event, it does not qualify as an emergency. Part of the facilities that were to be built have not been completed such as restrooms and a snack bar.

The State has not paid the City for money spent because of lack of financial and construction documentation. Outstanding issues include lack of competitive bidding substantiation, questionable vendor invoices and checks, which were written to vendors for amounts greater than the invoices. City officials stated they could produce the bids and reconcile the differences. However, this has not been completed to the satisfaction of OGALS even after two years. The latest attempt by the City to support their claim has been forwarded to the Audit Department of the California Department of Parks and Recreation.

The grand jury did not find that the City appointed a Project Manager. We did, however, find the security guard at the site assumed some managerial functions including issuing purchase orders and signing construction change orders without proper authorization. The City Financial Officer (CFO) was not involved in the project. Testimony revealed that the CFO was never brought into planning or discussions involving any Capitol Projects.

## **CONCLUSION:**

The grand jury found the City did not appear to follow its Municipal Code for declaring an emergency. The City violated Municipal Code 3.08.100, which requires any expenditure of more than \$15,000.00 go through competitive bidding. The City had no Project Manager and the security guard performed some of those duties. The grand jury could not find any plausible rationale for building a BMX park that could benefit the children, as they did not have bikes, nor did they have access to those provided by the City. Without the proper tourism infrastructure, little revenue was generated for the City.

Any benefit to the children being able to compete on a high level of BMX racing disappeared when the bikes were stolen and/or sold. The City does not control the BMX Park any longer, but maintains it as needed and is still planning to build a snack bar and restrooms. There is no written formal agreement between the NBL and the City of

Orange Cove allowing the NBL to operate the BMX Park for scheduled events. Lax record maintenance has resulted in insufficient documentation of the project.

## **FINDINGS**

- F1001 A City official stated that an emergency declaration was adopted by the City Council, allowing for construction of the BMX Park without competitive bidding. However, no record of an emergency declaration could be found.
- F1002 A City official touted the economic benefits to the City for hosting a two-day event. The City did not realize those benefits.
- F1003 The City purchased BMX bikes for use by the children of Orange Cove, however, they were unable to provide ownership documents.
- F1004 There are currently no City owned BMX bikes available for use by the children of Orange Cove.
- F1005 No burglar/security alarm was connected to the building on the BMX Park site that contained the various BMX equipment and bikes.
- F1006 The Fresno County Sheriff's Office was not notified of the burglary at the BMX Park and the loss of equipment and bikes.
- F1007 The BMX Park security guard stated under oath that the six BMX bikes were donated to the City team were given to him. He further stated that he had the right to sell them and keep the proceeds. However, no documentation was submitted to support this claim.
- F1008 The City no longer manages the BMX Park. The grand jury could not find a written agreement between the City and the NBL for management of the park.
- F1009 The California Department of Parks and Recreation has not reimbursed the City of Orange Cove due to irregularities in City accounting practices.
- F1010 The City did not provide bids showing it used the competitive bidding process except for a contract to place asphalt on the banks of the BMX track.
- F1011 The City paid vendor invoices for more than the corresponding invoice amount.
- F1012 The City did not appoint a Project Manager to supervise the project and be responsible for construction change orders.
- F1013 The City Financial Officer (CFO) was excluded from the BMX project or any other capital improvement projects.

## RECOMMENDATIONS

- R1001 The City should follow its Municipal Code and vote on any emergency declaration. (F1001)
- R1002 The City officials need to factually support their rationale for the economic benefits to the City. (F1002)
- R1003 The City should have an inventory system accounting for all City owned property. (F1003, F1007)
- R1004 City storage facilities should have a functioning security system. (F1005)
- R1005 All breaches of the law should be reported to the appropriate law enforcement agency or agencies in a timely manner. (F1006)
- R1006 A formal agreement between the NBL and the City of Orange Cove must be completed. (F1008)
- R1007 The City should hire an independent auditor for reconciliation of payments and invoices for the BMX Park project. (F1009, F1011)
- R1008 The City should adhere to their Municipal Code and submit for competitive bidding any items over \$15,000.00. (F 1001, F1010)
- R1009 The City should appoint a Project Manager for all capital projects that exceed the \$15,000.00 threshold. (F1012)
- R1010 The CFO should be involved in all capital projects in the City. (F1013)

## REQUEST FOR RESPONSES

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 sixty days of the receipt of this report and ninety days for all others.

## RESPONDENTS

Alan Bengyel, City Manager, City of Orange Cove (R1001, R1003-R1010)

Orange Cove City Council (R1001, R1002, R1006 - R1009)

## SOURCES

- Documents provided by the City of Orange Cove.

- Interviews with various members of the Orange Cove City Council.
- Interviews with various previous and present City officials.
- Interviews with concerned citizens of Fresno County.

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# RESPONSES

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- A. Alan Bengyel, City Manager, City of Orange Cove  
R1001, R1003 through R1010
  
- B. Orange Cove City Council  
R1001 through R1002, R1006 through R1009

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Mayor:  
VICTOR P. LOPEZ

Mayor Pro Tem:  
GLENDA HILL

City Council Members:  
BERTHA DEL BOSQUE  
GILBERT GARCIA  
ESTHER GONZALEZ

Incorporated Jan. 20, 1948  
633 Sixth Street  
Orange Cove, California 93646  
Phone: (559) 626-4488  
FAX: (559) 626-4653

City Manager:  
ALAN J. BENGYEL  
(559) 626-4488

Finance Director:  
MANUEL SANDOVAL  
(559) 626-4488

City Clerk:  
JUNÉ V. BRACAMONTES  
(559) 626-5100

August 25, 2010

Fresno County Grand Jury  
1100 Van Ness Ave.  
Fresno, CA. 93724-0002

Re: Grand Jury Final Report #10, 2009-2010

Dear Grand Jury Members:

As required under Penal Code Section 933, I am providing the following responses as detailed and recommended by Report No. #10 for the 2009-2010 fiscal year.

In addition to response R1001 and responses R1003-R1010, I am also responding to R1002 which was assigned to the Orange Cove City Council.

R1001:

The City should follow its Municipal Code and vote on any emergency declaration.

The City concurs. The emergency declaration which is a subject of this report was initiated per the previous City Manager who is now deceased. That legitimacy of that action has been questioned by this Grand Jury and the California Parks and recreation Department auditors. The current City administration has researched this issue and provided all required information and documentation to these bodies. Our response is to indicate that any emergency declaration, required in the future, will follow proper Orange Cove Municipal Code procedures.

R1002:

The City officials need to factually support their rationale for the economic benefits to the City.

The BMX Park facilities are part of a long term recreation project in the City of Orange Cove. The facilities are part of the Senator Dianne Feinstein Park area. The concept for the Feinstein Park actually began in the 2003-2005 time period. This park has always been envisioned as multi-use park recreation area with skateboarding, BMX racing and

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open field sports area. Construction of these components has been ongoing, up to this time, as resources become available. The final vision for the Feinstein Park is to serve as a local and regional location for recreational amenities serving Orange Cove and the surrounding area.

The City 2004 applied for a specific California Parks and Recreation grant for a \$490,000 allocation which was approved. The criteria for the grant had nothing to do with economics for the facility other than assuring that the city would commit its appropriate funding match for completion of the project. The issue of “sufficient infrastructure to support groups” was never an evaluation criterion for consideration of grant approval. Instead, the explanation for the requested need was to establish the facility as was constructed.

Actually, there are at least 5 to 8 restaurants in existence in Orange Cove that serve this community of 10-11000 persons daily and on weekends. Other restaurants exist in Dinuba, Reedley and Cutler – Orosi, within 10 to 12 miles from Orange Cove. Although Orange Cove hosts no hotels, hotel accommodations are located in the same communities of Dinuba and Reedley which are frequented by out of area travelers regularly. Gasoline is sold by at least 3 Orange Cove businesses that service local town and visitor needs. In today’s age, travelers cover these distances without any major inconvenience for regular or special recreational event venues, such as could occur in Orange Cove.

The rationale for economic benefit was not required for the California Parks and Recreation grant. However, local users and out of area users of the Feinstein Park will spend dollars in Orange Cove and the immediate communities, which support the local economies. In regards to the input regarding the type of construction wanted and needed for the new park, the firm of Space Designs along with approximately 200 youth from in and around the surrounding community provided their comments as to what the proposed BMX park should look like with the type of amenities and construction that was popular with the age group from pre-teen to 25 years of age.

R1003:

The City should have an inventory system accounting for all City owned property.

This has been instituted and subsequently reinforced during the current administration. Key departments of the city which include the Public Works Division, Finance and Administration Division and the newly created Orange Cove Police Department are in charge of maintaining an inventory system in place. All city owned property, particularly special use items, will be logged into an inventory accounting system.

R1004:

City Storage facilities should have a functioning securing system.

Over the past 12 months, the City has been instituting security system measures for all City buildings and storage facilities. The City currently operates two private security

camera systems for these areas. The current 2010-2011 Orange Cove Municipal budget has at least \$50,000 allocated for additional security camera support projects in the City. The City will continue to upgrade its security apparatus for City owned and open public areas.

R1005

All breaches of law should be reported to the appropriate law enforcement agency or agencies in a timely manner.

The City concurs. There was, in fact, a report submitted to the Fresno County Sheriffs Office. It is identified as Case No. #090022318, dated 10/20/09. The City will continue to work with all law enforcement agencies as well as our newly formed Orange Cove Police Department in this area.

R1006

A formal agreement between the NBL and the City of Orange Cove must be completed.

The City concurs. A "Use Agreement between the City of Orange Cove and the National Bicycle League Inc." is being currently being considered by the Orange Cove City Council and is hoped to be ratified by the September Council meeting.

R1007:

The City should hire an independent auditor for reconciliation of payments and invoices for the BMX project.

The City has been working extensively with the State of California Parks and Recreation Department for more that 18 months to provide all documentation for reconciliation of payments and invoices for the BMX project. The City has responded to two separate information requests with duplicate information, from Parks and Recreation, for their review of the project. No other information has been requested. The City will consider other independent auditor person(s) to assist in this effort as necessary, but it appears that California Parks and Recreation has all information from Orange Cove City Hall, at this time. The City is willing to engage other outside auditor support if needed.

R1008:

The City should adhere to their Municipal Code and submit for competitive bidding any items over \$15,000.

The City concurs. The current policy is to have the CFO and City Engineer to coordinate bidding procedures with the City Manager and City Clerk in adherence with Municipal Code requirements

R1009:

The City should appoint a Project Manager for all capital projects that exceed the \$15,000 threshold.

The City concurs. The current policy is to have the City Engineers' office involved in all capital projects in the City. The current City Engineer has over 20 years experience in public projects and California Code bidding requirements. This has been instituted with the current City Manager's administration.

R1010:

The CFO should be involved in all capital projects in the City.

The City concurs. The current policy is to have the CFO and the City Engineer involved in all capital projects in the City. This policy has been instituted with the current City Manager's administration.

Thank-you for your input and recommendations that the City of Orange Cove is diligently pursuing and will most certainly prevent a situation from ever occurring in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan J. Bengyel". The signature is fluid and cursive, with a large initial "A" and "B".

Alan J. Bengyel,  
City Manager  
City of Orange Cove

- C. Mayor & City Council
- D. Encl.



Incorporated  
January 20, 1948

## *Glenda Hill -Mayor Pro Tem*

*City of Orange Cove  
633 6<sup>th</sup> Street, Orange Cove, CA 93646  
Office (559)626-4488 ext. 214  
Cell (559)285-2332*

July 30, 2010

Honorable Presiding Judge  
Fresno County Grand Jury 2009-2010  
1100 Van Ness Avenue  
Fresno, California 93724-0002

RE: Fresno County 2009-2010 Grand Jury Report # 10—Orange Cove BMX Park

The enclosed comments are in response to the The Grand Jury Report #10 2009-2010 in which I am requested to reply to the Grand Jury with my comments or concerns. I was elected to the Orange Cove City Council in November 2006. In December 2006 I took office, however the BMX Project was already in progress. In review of the BMX file that was kept with our City Clerk and my own records after I took office, I will to the best of my ability to address the questions that you have asked for a response from me.

R1001- The City Council Agenda dated August 8, 2007 under the Consent Calendar # 3 was listed the confirmation of Emergency Bidding procedures at the BMX Track. No back up data was given to the City Council to support this item. The City Council minutes of August 8, 2007, page 4, reflect me asking questions regarding work being done and buying a starting gate for the BMX Track that was priced over \$15,000.00. To use an emergency declaration to purchase a starting gate to meet a BMX event does not fall under the criteria for an emergency declaration. There was no threat or danger of a health or a safety issue which must accompany a declaration of an emergency. I hold firm that improper procedures were implemented and carried out on the BMX project. The city has a Municipal Code for a emergency declaration and clearly the code was not followed. The city official that stated that an emergency declaration was adopted by the City Council, allowing for construction of the BMX Park without competitive bidding should be held accountable or charged with misrepresentation or possible perjury.

R1002-The economic benefits to the City for hosting a 2-Day event was very minimal or possibility even a loss to the city. The competitors set up their own food vendors and brought their own RV's or camping equipment to stay on the BMX grounds. The City provided public works staff for the event as well as all the electricity and over head lighting if needed. I never saw any report stating the City received economic benefits from the 2-day event.

A Federal Rural Renewal Community

R1006- Al Roybal with the NBL approached the City Council in 2009 asking to use the BMX Park for the practices on a regular basis and for BMX events through out the year. We were told that a contract was going to be executed, however a year later, I as a councilperson have yet to see or approve the agreement. All contracts are to come to the City Council for their approval. It appears that the City management team has not followed through with this particular contract which could leave the City in a not so pleasant situation. A contract should be negotiated for the safety of the City before any further use of the BMX Track with the NBL, especially for liability purposes.

R1007-I do agree that the City should hire an independent auditor for the reconciliation of payments and invoices for the BMX Park project. Our current City Manager and Finance Director were not here when this project was started, therefore it would be to the Cities benefit to have an outside auditor perform an audit to bring clarity and truth to the monies that was spent and to check the invoices to verify what really happened. I believe this is what is needed to be transparent and open with the Tax payers money that was spent on this project.

R1008-In review of all the documentation and findings regarding the City's Municipal Code and the competitive bidding process, it is clear that the City of Orange Cove did not follow the proper guidelines and Municipal Codes that is to regulate this project. The statements from the Grand Jury report on page 1. of your report with regard to the discussion section that contained interviews and personal testimony from the security guard and the City Official were clearly in error which their actions and decisions demonstrated. These two individuals should be held accountable for their actions. The City Manager that the City has now came in 2008 and was not here when the BMX Park was being built so any verbal information that was given to the Grand Jury by our current City Manager would need to have written back up documents for his findings or answers on any subject that the Grand Jury asked of him to verify accuracy of his answers.

R1009-I believe that a Project Manager other than the City Manager be assigned to projects over the \$15,000.00 threshold. The oversight on City Projects is very crucial to ensure that the monies for these projects is spent correctly and procedures are followed that are honest and ethical. The project Manager would have to have the knowledge and understanding of the Municipal Codes and the State and Federal funding requirements for City projects that use taxpayer money. If this procedure were in place, hopefully violations and irregularities would be prohibited from our city projects. If a project manager was assigned to the BMX project I would hope that the irregularity of the Security Guard signing a purchase invoice for \$8,000.00 to buy bike parts from the company Bombshell for expensive and upgraded parts to be put on the loaner bikes that were used by youth that did not have a bike to practice with would be caught and prohibited from making the unauthorized purchase.. Please note that the security guard was an Independent Contractor, under contract and not an employee, but took liberty to purchase items and to make decisions related to the construction of the Track. I would like to see this process be corrected and come into compliance so the items mentioned that are in error would be stopped.



If you have any other questions or require further information, please do not hesitate to call me at the City of Orange Cove, City Hall 626-4488 ext. 5 or cell phone (559) 285-2332.

Respectively Submitted,

A handwritten signature in cursive script that reads "Glenda Hill". The signature is written in black ink and features a large, decorative flourish at the beginning of the word "Glenda".

Glenda Hill  
Mayor Pro-Tem  
City of Orange Cove

# **MINUTES**

## **ORANGE COVE CITY COUNCIL MEETING**

**7:30 P.M.**

**WEDNESDAY, AUGUST 8, 2007**

**(Meeting held at City Hall Council Chambers)**

**633 Sixth Street, Orange Cove, California**

**Victor P. Lopez, Mayor**

**Diana Guerra Silva, Mayor Pro Tem**

**Councilman Joel Lizaola**

**Glenda Hill, Councilwoman**

**Bertha Del Bosque, Councilwoman**

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### **A. CALL TO ORDER AND ROLL CALL:**

Mayor Victor P. Lopez called the meeting to order and requested roll call:

Council present: Mayor Victor P. Lopez, Councilman Joel Lizaola, Councilwoman Glenda Hill and Councilwoman Bertha Del Bosque

Council absent: Mayor Pro Tem Diana Guerra Silva,

Staff present: Bill Little, City Administrator, Attorney Jim McBreary and City Clerk June V. Bracamontes

### **B. INVOCATION:**

Invocation by City Clerk June Bracamontes

### **C. PLEDGE OF ALLEGIANCE:**

Mayor Lopez led the pledge of allegiance.

### **D. ORAL/WRITTEN COMMUNICATIONS:**

- 1. PUBLIC COMMENTS: (This time is set aside for any person to address The City Council pertaining to items not already on the agenda)**

No Public comments.

- 2. PRESENTATION BY THE SHERIFF'S DEPARTMENT RE: MONTHLY ACTIVITY REPORT**

Mr. Homer Montelongo, Area Detective, reported on the activity for the month of July 2007.

Councilwoman Bertha Del Bosque and Councilman Joel Lizaola commended the Sheriff's Department in doing a great job.

Councilwoman Glenda Hill asked if staying within the hours. Per Montelongo putting more hours in.

**CITY COUNCIL MINUTES OF AUGUST 8, 2007**

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**3. PRESENTATION BY THE KINGS COUNTY AREA PUBLIC TRANSIT AGENCY RE: AGRICULTURAL INDUSTRIES TRANSPORTATION SERVICES**

Executive Director Ron Hughes of Kings County Area Public Transit Agency, presented to Council the KCAPTA Vanpool program and the Agricultural Industries Transportation Services (AITS) Vanpool program with a 12 to 15 minute Power Point Presentation.

The Vanpool program consist of 311 vans that transport correctional facilities personnel and farm workers to their respective work sites. This program provides farmworkers safe and reliable transportation at a reasonable cost.

This service is provided in the Orange Cove Area by calling the Kings County Area Public Transit Agency.

**E. CONSENT CALENDAR FOR THE APPROVAL OF THE FOLLOWING ITEMS:**

(It is recommended that the items be acted on simultaneously unless a separate discussion and/or action is requested by a Council Member)

- 1. CITY WARRANTS**
- 2. CITY COUNCIL MINUTES OF JUNE 27, 2007**
- 3. CONFIRMATION OF EMERGENCY BIDDING PROCEDURES AT BMX TRACK**
- 4. APPLICATION FOR THE USAGE OF SHERIDAN PARK ON AUGUST 10, 2007 FROM 5:00PM TO 8:00 P.M. FOR A HEALTH FAIR REQUEST BY THE ORANGE COVE MIGRANT HEADSTART (WAIVE ALL FEES AND INSURANCE**
- 5. APPLICATION FOR THE USAGE OF THE VPL CENTER FOR A WEDDING RECEPTION REQUEST BY MARIA QUINTANILLA ON FEBRUARY 2, 2008 (DEPOSIT AND SECURITY RECEIVED)**
- 6. APPLICATION FOR THE USAGE OF THE VPL CENTER FOR A 15<sup>TH</sup> BIRTHDAY CELEBRATION ON FEBRUARY 16, 2008 REQUEST BY RAMON MORENO (DECORATION ON FEBRUARY 25, 2008) (DEPOSIT AND SECURITY RECEIVED)**

## CITY COUNCIL MINUTES OF AUGUST 8, 2007

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**Councilwoman Glenda Hill requested to discuss item #1 and #3 of the Consent Calendar.**

Regarding item #1 of the consent calendar the following warrant numbers were presented by Councilwoman Glenda Hill and needed clarification as follows:

1. Warrant Number: 020838 re: Chase Bank. Per Bill Little explained sound system were bought for the 4<sup>th</sup> of July Celebration tried the City Credit Card did not go through and charge the amount on his own personal credit card Chase Bank and requested the City to reimburse it back to his Chase Bank Card. Rather paying him paid Chase Bank directly wanted it done this way.
2. Warrant Number: 020952 re: Department of Conservation. Per Bill Little per State Law they have legal right, things they have done for us . They have the right to charge us for.
3. Warrant Number: 020899 re: Purchase of a \$2900 lap top that controls the sound system and a \$2100 for projector. The Events Committee needed to purchase these items which are located at the Victor P. Lopez Center per David Lopez, Chairman of the Events Committee
4. **Warrant Number: 020898 re: Parts for BMX Park. Operational expense for the Bike Track, grant does not necessary take care of this. Per Bill Little, we have \$60,000 budgeted for this expense.**
5. **Warrant Number: 020894 re: Bike Rack for the BMX Park which is on the Mayor's son's van since he hauls bikes around. Which is can be removed but placed as a permanent attachment. Question about liability will be covered per Bill Little.**
6. Warrant Number: 020961 re: Light speed. This was for the Joe Serna Project.
7. Warrant Number: 020912 re: Chris Lopez purchase of helmets. Per Bill Little never was paid, Vendor was asked to get a business license. Per Mayor Lopez business closed down and selling helmets at 50%.
8. Warrant Number: 020920 and 020913: Made out to Jose Marron. Mr. Marron is responsible in packing the 509 USDA grant. Rehab for homes. Title and credit report. Reimburse \$500. Program is available.
9. **Warrant Number: 020896 and 020867: Orange Cove Hardware. Per Bill Little the grant is to build a BMX Track, they are not going to pay every dime. Items to build the BMX Track cost associated to the running a association when it comes to BMX Track, getting track ready, need hoses, rakes which would come from a hardware store, per Bill Little. Per Mayor Lopez received half a million for the park can shift those funds. Received \$301,000 to do the boxing center, snack bar, monies can be shifted if the government allows us to do it.**

## CITY COUNCIL MINUTES OF AUGUST 8, 2007

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Per Bill Little, City asked NBL to sponsor the construction of the BMX track facility. Saved on the design fees. Time frame is limited. The time NBL was involved had 3 months in order to qualify for the 2007 season. Field engineering received bids. A lot of savings.

10. Warrant Number: 020871: Parkson Corp. Parts for the Wastewater Clarifier.
11. Warrant Number: 020818: Valley Pump. For the Starting and finish towers for the BMX Park. Per Bill Little provided the engineering work. Per Bill Little was included in the Emergency Declaration.

Bill Little went over item #3 during this time since the BMX Track was being presented by Councilwoman Glenda Hill. Discussion regarding the starting gate. Councilwoman Glenda Hill indicated that she is not saying that the gate isn't a good gate, knows that there are grant guidelines and stipulations and making sure we stay in the liabilities.

The City obtained informal arms length bids from both Halopoff Construction and Aspen Contractors. Bids are available to review per Bill Little.

Normal procedure is to design it, sealed bids, award the bids, all engineering is done by the city per Bill Little.

Per Mayor Lopez the money is there, the state will come in and city will certify that the funds were spent on the BMX park. The city was certified by NBL and the city has the best BMX park.

The procedures were done per emergency provisions per government code emergency requirements to get the best possible deal for the city per City Administrator Bill Little and getting the best prices/deal.

Mayor Lopez requested a motion for the Consent Calendar.

Upon the motion by Councilwoman Bertha Del Bosque and seconded by Councilman Joel Lizaola, Council approved the Consent Calendar. Councilwoman Glenda Hill opposes anything pertaining to the BMX Park due to the liability of the grant, needs more data. Per Mayor Lopez indicated let the record show that Councilwoman Glenda Hill opposes item #1 and item #3.

### E. OLD BUSINESS:

#### 1. PRESENTATION BY DAVID LOPEZ OF THE EVENTS COMMITTEE RE: ACTIVITIES

David Lopez, Chairman of the Events Committee, would like to do an activity for the kids back to school event. Looking at August 19<sup>th</sup>. Special rates on water slides for 5 hours costing \$1090 from 1:00 to 5:00 p.m. at the Gene Welch Field.

Councilwoman Glenda Hill would like to hear about the expense report on the Event Committee. Asked who is keeping the account on the funds. Per David Lopez indicated that Phyllis is taking care of it. Per Mario Villarreal monies go back to the City.

August 1, 2010

Honorable Presiding Judge  
County of Fresno  
Juror Services Division  
1100 Van Ness Avenue  
Fresno, CA 93724-0002

**RE: Fresno County 2009-2010 Grand Jury  
Report #10 – Orange Cove BMX Park**

Honorable Presiding Judge:

First and foremost I would like to thank the Grand Jury for allowing me the opportunity to respond and allowing me to give my personal opinion to the 2009-2010 Grand Jury Report #10 referencing the Orange Cove BMX Park.

Per the report, the following is my responses to R1001, R1002, R1006-R1009 as required by the Grand Jury Report #10:

**R1001 – The City should follow its Municipal Code and vote on any emergency declaration.**

The specific emergency declarations referenced in this report were prior to my election (Nov 2008). However in preparation for my duties as a Council member, I did attend several Council meetings and it was obvious that the prior Council (excluding Glenda Hill) were very dependent on former City Administrator Bill Little and Mayor Victor Lopez in their decision making process. Based on my observations, there did not appear to be a significant amount of independent research and analysis by the Board members.

The community of Orange Cove can be assured that I will insist that the current Council will adhere to the true meaning of "emergency declaration". If lives, property, and the well being of Orange Cove citizens are not at stake, there will be NO emergency declaration.

**R1002 – The City officials need to factually support their rationale for the economic benefits to the City.**

I assume that this recommendation is in reference to the "economic benefits" that were proposed for the BMX and Skate Park projects. After a review of some of the documents attached to the Grant proposal - specifically the Project Summary (one page) and the Project Selection Criteria (22 pages + charts, graphs, track layouts, etc.) – someone with a gifted imagination, and a lack of practical experience in an economically challenged community, wrote the reports.

Most, if not all of the grant proposal information, was created in 2004-2006 prior to my being elected to the Council. I seriously doubt that I would have given this

information the same degree of credibility that Lopez, Little, and three of the Council members provided.

I and other members of the current Council are very concerned and involved with Economic Development for Orange Cove. Projects such as the BMX and Skate Parks are not going to create property tax paying infrastructure and most important JOBS for members of the community. To this day, the BMX & Skate Parks are seldom used by the youth of this community.

The Industrial Park and the SFR's in North Central Orange Cove are under way. Other projects are being coordinated through the Fresno County Economic Redevelopment Corporation with whom we have a contractual relationship. In addition the City is upgrading the website to provide a better "snapshot" of Orange Cove for business prospects. The new OCPD website provides the same service as related to public safety ... a key element in a business decision to relocate.

**R1006 – A formal agreement between the NBL and the City of Orange Cove must be completed.**

It was my understanding that this was an on-going project handled by the City Manager. The NBL was in the process of acquiring or implementing a non-profit Corporation to be used exclusively for the Orange Cove BMX project. Then there was to be a formal agreement with the NBL. I intend to personally follow-up with the City Manager to evaluate the progress for this process – legal entity for Orange Cove and a contractual relationship with NBL.

**R1007 – The City should hire an independent auditor for reconciliation of payments and invoices for the BMX Park project.**

Our City Finance Director has prepared voluminous reports and documentation for the audit. However, it appears that the current agreement negotiated by the City Manager is about the best we can expect after the less than professional job the City did on this project.

Hiring an Independent Auditor at this late date would be an extra expense that will not provide an adequate ROI for the City. The current plan in the works by the City Manager will recoup some of the funds and much of the mismanaged funds will never be reconciled. There does not appear to be any appetite to search out and punish any persons responsible. The former City Administrator, who was the designated Project Manager is deceased and his performance bond and estate are beyond the reach of the City.

**R1008 – The City should adhere to their Municipal Code and submit for competitive bidding any items over \$15,000.**

The community of Orange Cove can be assured that I will insist that the current Council adhere to the Codes applicable to the required bidding procedures. That is the tried and true method of ensuring that the taxpayers are getting the best quality product and service for the dollars spent. You can be assured that our current infrastructure and other projects are being bid as required by law.

**R1009 – The City should appoint a Project Manager for all capital projects that exceed the \$15,000 threshold.**

My review of the Grant Application for the BMX project revealed that there was a Project Manager designated. James W. (Bill) Little was named on page 17 of the Project Selection Criteria. He is now deceased (May 2008).

Based on the CA Parks and Recreation audit, there was obviously considerable mismanagement. To compound the problem as pointed out by Parks and Recreation, Victor Lopez, Jr (son of mayor Victor Lopez) was involved in some (or a lot depending on who you speak with) of the paper work, approving change orders, setting up change orders and issuing City purchase orders for products and services. Invoices and other documents have been located to verify this information.

If you have any questions or require further information, please do not hesitate to call me at Orange City Hall (559) 626-4488 or cell phone at (559) 393-0411.

Sincerely,

A handwritten signature in cursive script that reads "Gilbert Garcia".

Gilbert Garcia  
Councilman  
City of Orange Cove



**RECEIVED**  
BY *[Signature]* | DATE 8-3-10

To Presiding Judge;  
Grand Jury Report #10  
Orange Cove BMX Park

Your Honor

I was elected council member on Nov. 2008 and had no involvement in the decision making on the BMX project. I totally agree on grand jury findings of this matter.

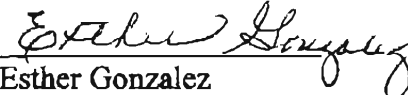
I have reviewed city council agenda minutes dating back to August and September 2006, where this project was brought up as an urgency item. I also found that segments or phases of said project should have been put out to bid and were not. The person in charge of security at the Diane Feinstein Skate Park (Victor Lopez Jr.) was not qualified to direct or change work orders as project progress, and he was most involved.

These are just some of many times that the former city council and present mayor have abused public monies. Their irresponsibility and negligence has caused our city thousands of dollars. Mayor Victor P. Lopez and councilmember Bertha Del Bosque as well as former councilmember Diana Guerra-Silva and Joel Lizaola should be accountable for their negligent decisions. The now deceased former city administrator, Bill Little has been put under the bus to many times. The man was no saint. He covered way too much for Mayor Victor P. Lopez and council members mentioned above. Mr. Bill Little worked as city administrator at pleasure of the council. Ultimately, Mr. Little was given direction according to majority vote.

City Hall should be dissected as in a forensic audit.

Thank for your time.

Respectfully

  
Esther Gonzalez  
Councilwoman  
City of Orange Cove

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# REPORT #11

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**CARUTHERS UNIFIED SCHOOL  
DISTRICT**



**FILED**

JUN 10 2010

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2009-2010  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#11**

**Fresno County  
2009 - 2010 Grand Jury  
Report #11**

**Caruthers Unified School District**

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**INTRODUCTION**

One of the areas the grand jury is charged with is investigating school districts within Fresno County. The grand jury can either initiate an investigation or act upon a citizen's complaint.

**BACKGROUND**

The grand jury received a citizen's complaint that alleged misappropriation of Quality Education Investment Act Funds (QEIA) by the Caruthers Unified School District (CUSD) and lax or non-existent monitoring of QEIA funds by the Fresno County School's Office of Education. Additional issues raised by the complaint included allegations of poor oversight and questionable hiring practices by the CUSD Board.

**DISCUSSION**

Senate Bill 1133, Article 1.8, commencing with the California Education (EC) Section 52055.700, known as the Quality Education Investment Act of 2006 (QEIA), authorizes school districts and other local educational agencies to apply for funding for elementary and secondary schools and charter schools. Funds are available for use in performing various specified measures to improve academic instruction and student academic achievement.

Specifically, QEIA funds are to improve the quality of academic instruction and the level of student achievement in schools in which there are high levels of poverty and complex educational needs. Additionally funds are to supplement, not supplant, existing programs.

The 2009-2010 demographic data showed CSUD is located in rural Fresno County where most families are employed in the support of agriculture. Data showed seventy-two percent (72%) of the school's students were Hispanic, seventeen percent (17%) were Caucasian, ten percent (10%) were Asian and one percent (1%) were African American. Eighty-seven percent (87%) participated in the free and reduced lunch program and sixty-three percent (63%) were English Learners. The grand jury also found that one hundred percent (100%) of the teaching staff was fully credentialed.

The grand jury reviewed the QEIA monitoring report written for the 2008-2009 school year. It showed the average teacher experience met or exceeded the target goal and significant progress had been made in class size reduction. The average class size for

grades K-3 was 20.4 pupils. The Fresno County Superintendent of Schools Office performs this monitoring process annually for the life of the grant.

The California Basic Educational Data system (CBEDS) directs staffing and is the basis for the class size. CBEDS are completed and reported to the State in October. School population fluctuates during the school year. The CUSD was to keep class sizes low in order to enhance the learning experience.

The human resources office of the CUSD posts job vacancies on the Internet and permanent and temporary employees within the district are given the opportunity to apply first. Any unfilled vacancies are then opened to qualified applicants outside the district. As an example, the Assistant Superintendent was asked to apply for the position of Superintendent by the School Board and subsequently he was selected as Superintendent. Currently, the Assistant Superintendent's position has not been filled.

## **CONCLUSIONS**

The grand jury found the CUSD was judicious in the expenditure of their funds and the Fresno County Office of Education appropriately monitored all QEIA monies. During interviews, the grand jury found the administration very forthcoming with all information and was well versed in the use of QEIA funds and their application. In addition, the hiring practices of the district did not show any irregularities.

## **FINDINGS**

F1101 The Caruthers Unified School District has utilized allocated QEIA funds appropriately.

F1102 The Caruthers Unified School District correctly adheres to all required hiring practices when recruiting candidates for permanent and temporary vacancies within the school district.

## **RECOMMENDATIONS**

R1101 The CUSD should continue to remain vigilant to ensure QEIA funds are fairly allocated. (F1101)

R1102 The CUSD should continue to closely monitor its employment practices to ensure compliance. (F1102)

## **REQUEST FOR RESPONSES**

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 sixty days of the receipt of this report and ninety days for all others.

## RESPONDENTS

No response required.

## SOURCES

- Fresno County Office of Education
- Interviews with CSUD teachers, administrators, and program managers.
- Interviews with members of the monitoring component of QEIA funds from Fresno County Office of Education.
- Interview with a Fresno Unified School District program manager.
- Interview with the complainant.
- QEIA Guidance and Application Form.
- Review of the Single Plan for Student Achievement.
- Senate Bill 1133



# RESPONSES

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A. No Response Required

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# REPORT #12

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## **LAW ENFORCEMENT IN COUNTY ISLANDS**



**FILED**

**JUN 25 2010**

FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPUTY

**2009-2010**

**FRESNO COUNTY GRAND JURY**



**FINAL REPORT**

**#12**

**Fresno County  
2009 - 2010 Grand Jury  
Report #12**

**LAW ENFORCEMENT IN COUNTY ISLANDS**

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**BACKGROUND**

Early in its term, the grand jury took up the question of Fresno County contracting with the Fresno Police Department (FPD) for law enforcement services in County islands. This idea has been a topic of discussion in the local government and law enforcement communities for some period of time. This is because it would seem to offer potential efficiencies and cost savings.

Proposals for reorganization of law enforcement services between the City of Fresno and Fresno County have been ongoing for over 25 years. Very little has resulted from this discussion, although there has been recent agreement to combine several functions including evidence storage, child predator monitoring and processing of prisoners. The grand jury applauds these initiatives.

A plan developed by the FPD in March 2009 proposed that FPD provide law enforcement in island areas under contract to the County. After informal discussions between the Chief of Police and the Sheriff, the Chief sent a letter to the Sheriff dated April 15, 2009 asking for data that would allow for a determination of (1) FPD staffing levels required to respond to calls for service under the proposal, and (2) current Sheriff's Office costs of providing the services in County islands. The difference between the two, if positive, would be cost savings to Fresno County.

Due to the funding crisis now facing our local governments, the grand jury believes the parties involved should seriously pursue an analysis for the provision of FPD law enforcement services within County islands.

**DISCUSSION**

The Fresno County Sheriff's Office (FSO) has divided the County into four areas for purposes of providing law enforcement services, three of which are generally located in rural areas. As indicated on the attached map (See Addendum), the fourth area, Area 2, includes the cities of Fresno and Clovis as well as the larger Fresno Metropolitan Area. Within the City limits of Fresno, a number of small areas have stayed unincorporated, as the City has grown. These have come to be known as "County islands." There are 19 of these areas within the Fresno city limits, as shown on the map. The islands total 10.6 square miles in size and have a population of 37,199 as determined by the 2000 Census. Also per the 2000 Census, the City of Fresno had an area of 110.8 square miles and a population of 427,652. The largest County islands are in the Northwest,

South and Southeast portions of the community and are known as Fig Garden/Van Ness, Mayfair, and Sunnyside, respectively.

Traditionally, law enforcement agencies with adjacent jurisdictions struggle with boundary confusion. A call from a resident in one jurisdiction may result in law enforcement response from the wrong agency or with units from both agencies showing up at the scene. In the case of County islands, the areas are generally small and have irregular boundaries. These facts greatly magnify the potential for jurisdictional uncertainty. To mitigate-disputes, Memoranda of Understanding have identified responsibilities of each agency for some special circumstances. These precautions have reduced confusion, but according to the testimony given by both FSO and FPD personnel, the fact of separate jurisdictions between the City and County islands still works against efficiency in the course of ordinary policing activities.

The Sheriff's Office has subdivided Area 2 into five beats, all but one of which includes unincorporated areas that are not County Islands. However, there are still concerns:

- County islands are not large enough to warrant full-time deputy patrols in each island.
- When a call for service comes in from a County island, quite often a unit must respond by travelling from another unincorporated area through a portion of the City to get to the call.
- The delay is aggravated if a backup unit is necessary that must also come from another unincorporated area.

If law enforcement is provided by one entity throughout the City and its County islands, there will be less boundary confusion and shorter response times. These improvements in efficiency could reduce the cost and may increase the level of law enforcement services. Articles in the January 31 and February 21, 2010 editions of the Fresno Bee provided a comprehensive overview of the County island issue.

The grand jury believes that a rational discussion of the pros and cons of an FPD contract in County islands cannot take place unless and until an analysis of possible cost savings is completed. The grand jury approached this question hoping that such an analysis was within its reach. However, it was not, for two major reasons:

- (1) The issue became more politically charged during the past year because of concerns by County island residents that this would lead to annexation by the City.
- (2) The Sheriff and FPD use incompatible databases. For the FPD to make an accurate projection of law enforcement contract charges, detailed County call for service data must be provided. This includes the type and priority of event, response time, beat number, event location, final disposition, etc. The FSO has this data, but it appears the data will need to be entered manually into FPD's computer program. After much trial and error working with staff from the FSO and FPD, the grand jury concluded that it was not possible to identify with any degree of certainty whether any cost savings would result from the proposal.

The grand jury is appreciative of the cooperative efforts shown by management of both the FSO and the FPD as this issue was examined. However, it was clear from staff testimony there has been little discussion of this issue between members at the two agencies. Such discussion will be essential because of the highly technical nature of the analysis that is required to assess the proposal.

## CONCLUSION

In this time of dire financial stress, local governments are being faced with the necessity of eliminating or severely reducing services long relied upon by taxpayers. The grand jury believes that it is therefore incumbent upon each layer of government to seriously examine proposals that offer the potential for increased efficiency and reduced costs. Provision of contract law enforcement services by the FPD within County islands is just such a proposal.

The grand jury believes that under the current environment, an independent third party must conduct the analysis. This may be the Joint Powers Authority formed in 2007 to implement consolidation of certain City and County law enforcement functions or other citizen's advisory group formed for the purpose of analyzing the cost savings potential of this proposal.

The grand jury would like to emphasize that it has no recommendation for the use of any savings, which may result if both parties adopt the proposal.

## FINDINGS

- F1201        The provision of law enforcement services within County islands by the Fresno Police Department has been a topic of discussion for a number of years because of the potential efficiencies and cost savings that could result.
- F1202        The proposal has become highly politically charged in recent months because of opposition by County island residents who are fearful of a change or because of concerns that this would lead to annexation of the County islands to the City of Fresno.
- F1203        Because of revenue losses resulting from effects of the current recession, local governments are under increasing financial stress.
- F1204        Analysis of a proposal for FPD law enforcement in County islands is hampered by the current political climate and by lack of compatibility between County and City law enforcement data systems.
- F1205        Because of the current political climate, there has been little contact between the staffs of the FSO and FPD on this very important issue.



F1206 The political environment surrounding the proposal would cast doubt on the objectivity of a study completed by either party to the issue.

## RECOMMENDATIONS

R1201 An independent review and analysis be conducted by a third party to determine:

- The cost to Fresno County of a contract with the Fresno Police Department to provide law enforcement services within the County islands.
- The savings to Fresno County, which may be realized if law enforcement services by the Sheriff's Office within the County islands were no longer required.

R1202 The cost of the review and analysis should be shared equally by the City and County.

## REQUEST FOR RESPONSES

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 sixty days of the receipt of this report and ninety days for all others.

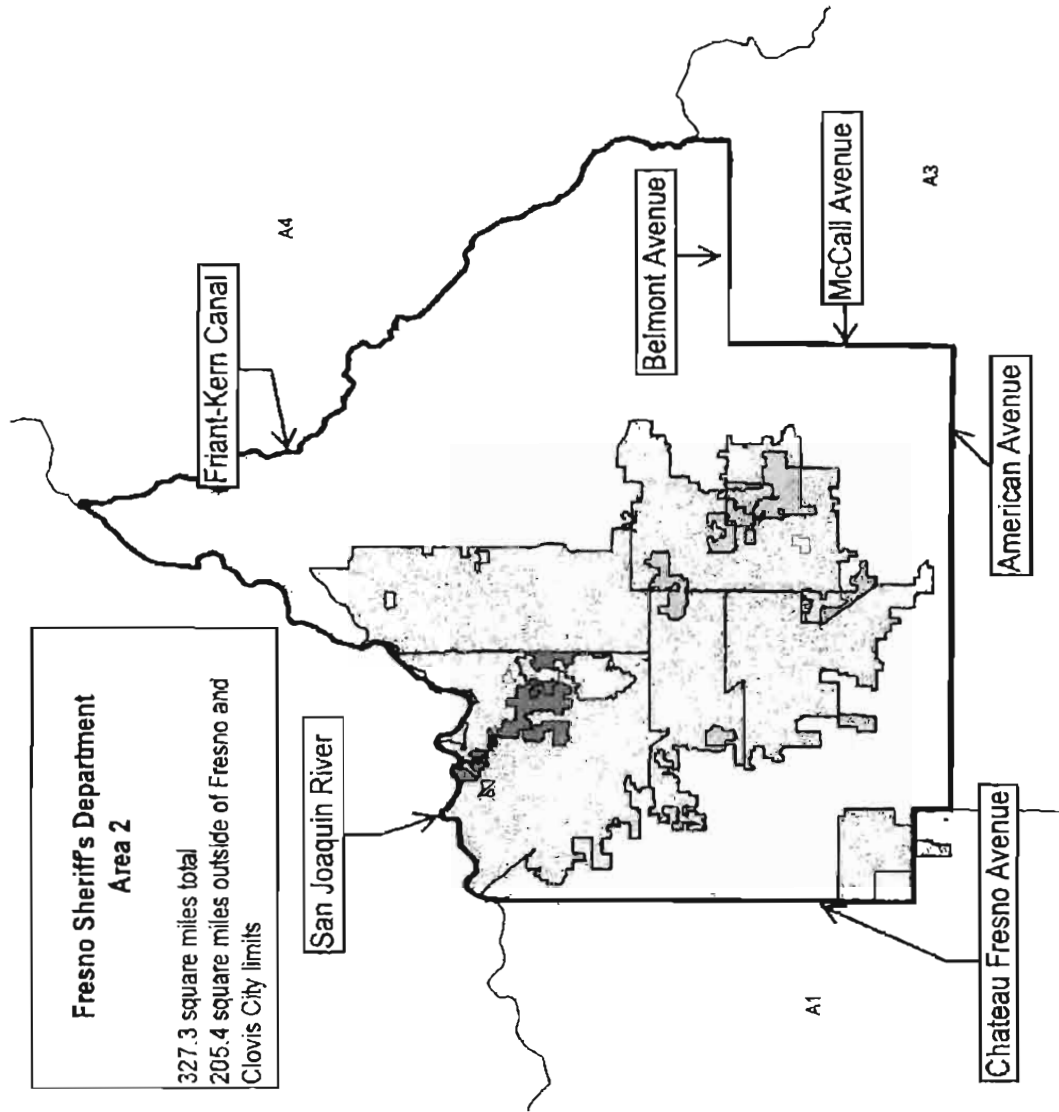
## RESPONDANTS

- Ashley Swearengin, Mayor of Fresno (R1201, R1202)
- Jerry Dyer, Fresno Police Chief (R1201, R1202)
- Fresno County Board of Supervisors (R1201, R1202)
- Margaret Mims, Fresno County Sheriff (R1201, R1202)

## SOURCES

- Fresno Bee
- Fresno County Board of Supervisors agenda and minutes
- Information and data provided by the FPD and FSO
- Interviews with management of the Fresno Police Department and the Fresno County Sheriff's Office
- Interviews with FPD and FSO staff members

**Addendum – County Islands inside Fresno City Limits**



# RESPONSES

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- A. Ashley Swearengin, Mayor, City of Fresno  
R1201 through R1202
- B. Jerry Dyer, Police Chief, City of Fresno  
R1201 through R1202
- C. Fresno County Board of Supervisors  
R1201 through R1202
- D. Margaret Mims, Sheriff, County of Fresno  
R1201 through R1202

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MAYOR ASHLEY SWEARENGIN

August 18, 2010

The Honorable M. Bruce Smith  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724-0002

Re: Responses to Grand Jury Final Report #12

Dear Judge Smith:

We appreciate the opportunity to respond to the Grand Jury's Final Report #12 regarding Law Enforcement in County Islands. Following you will find our required response to your report.

Although not required to respond to the Grand Jury's Findings, the Respondents wish to provide the following response to Finding 1205: *"Because of the current political climate, there has been little contact between the staffs of the FSO and FPD on this very important issue."*

**Response:** We wish to clarify Finding 1205. While the City and Sheriff's Office are not currently meeting and actively working to find efficiencies for law enforcement, over the past 18 months there have been a number of meetings and interactions between the Sheriff, her executive staff, the Mayor of Fresno, the Fresno City Manager, Police Chief, and executive staff members of the Fresno Police Department. These meetings identified several operational areas between our two law enforcement agencies where efficiencies could be obtained. As the Grand Jury's report acknowledges, one such efficiency was the co-location of both agencies' Sex Offender Registration Units at the County Satellite Jail facility. Fresno PD co-located its Sex Offender Registration Unit (PC 290 Unit) in May 2010, in order to streamline the registration process. The co-location has resulted in such efficiencies as ensuring registration status is kept current when registrants move from the City to the County, and providing a registration and interview area that is not accessible to the general public, where registrants are more comfortable providing additional details as to their status.

Another efficiency identified through these meetings resulted in a Memorandum of Understanding for a pilot project between our agencies allowing the Fresno Police Department to book felony prisoners directly into the Fresno County Jail instead of duplicative booking first by Fresno PD and then also by the Sheriff's Office.

In addition to the Sex Offender Registration co-location and direct booking initiative, the meetings that took place between the City of Fresno and the Fresno Sheriff's Office also included at the City's request the subject of policing within County islands.

While these informal discussions were underway, negative mailers were sent out by the Fresno Deputy Sheriff's Association to all County island residents within the City of Fresno alleging incapacities of the Fresno Police Department and falsely asserting mass annexation by the City of Fresno, which exacerbated an already difficult political climate. Shortly after these mailers were distributed, the Sheriff's Office indicated they would no longer be willing to discuss a contract for policing services in the County islands, and the meetings between the City and Sheriff's Office stopped.

We offer this clarification to acknowledge the efforts that have previously been made and to demonstrate our willingness to work through the complex and volatile issues related to policing in the County islands.

Pursuant to the Grand Jury's request, the Respondents offer the following responses to Recommendations R1201 and R1202.

**R1201:** An independent review and analysis be conducted by a third party to determine:

- The cost to Fresno County of a contract with the Fresno Police Department to provide law enforcement services within the County islands.
- The savings to Fresno County which may be realized if law enforcement services by the Sheriff's Office within the County islands were no longer required.

**Response:** Respondents agree with this recommendation.

**R1202:** The cost of the review and analysis should be shared equally by the City and County.

**Response:** Respondents agree with this recommendation.

In closing, we are grateful to the Grand Jury for their review of law enforcement in County islands and are hopeful that new light can be shown on this issue. We would like to reiterate that the City is willing to cooperate in any manner possible to further study and examine efficiencies that can come from the Sheriff contracting with the Fresno Police Department to police in County islands. However, the Grand Jury must recognize that many County island residents have clearly expressed their views and are only interested in receiving law enforcement services from the Sheriff's Office even though savings and efficiencies from a consolidated approach can already be documented.


The Fresno County Sheriff and the Board of Supervisors are elected to represent their constituents' views. Therefore, we respectfully remind the Grand Jury that if policing services within the County islands is to advance, there must be clear support for the concept from the residents. While we believe the independent analysis you have recommended will help document potential benefits to the public and will gladly participate, we are in no way certain that the analysis alone will cause support for the concept among County island residents. In addition to the analysis of efficiencies, there must also be public dialogue, town hall meetings and other facilitated discussion with County island residents, law enforcement, and elected officials to understand and address concerns residents may have.

Again, thank you for your assessment of this issue. If you have any questions, please feel free to contact Mayor Swearingin's office at 621-7900 or Chief Dyer's office at 621-2222.

Sincerely,



Ashley Swearingin, Mayor



Jerry Dyer, Chief of Police



**Judith G. Case, Chairman**  
**Supervisor, District 4**  
**Board of Supervisors**

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September 28, 2010

The Honorable M. Bruce Smith  
Presiding Judge, Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

RE: RESPONSE TO THE 2009-10 GRAND JURY FINAL REPORT #12

Dear Judge Smith:

The Board of Supervisors has approved their official responses to the recommendations pertaining to Fresno County contained in the 2009-10 Grand Jury Final Report #12. The responses are submitted herewith in fulfillment of Penal Code Section 933(c).

On behalf of the Fresno County Board of Supervisors, I would like to take this opportunity to thank the Grand Jury for their hard work and to assure them that Fresno County takes the concerns raised in these reports very seriously.

Sincerely,

Judith G. Case, Chairman  
Board of Supervisors

Enclosure



**County of Fresno**  
**Board of Supervisors**  
**RESPONSE TO THE**  
**2009-10**  
**FRESNO COUNTY GRAND JURY**  
**FINAL REPORT #12**



## Law Enforcement in County Islands

Please find below the Fresno County Board of Supervisors' (BOS) response to the 2009-10 Grand Jury Final Report #12.

### Findings:

**F1201 The provision of law enforcement services within County islands by the Fresno Police Department has been a topic of discussion for a number of years because of the potential efficiencies and cost savings that could result.**

The Board of Supervisors agrees that the topic of law enforcement services within County islands has been discussed for many years. However, at a public meeting in December 2009, residents of County islands clearly advised the Board of Supervisors that they were pleased with services provided by the Sheriff's Department and did not want a change from the current arrangement. Furthermore, a district in a County island contracts for enhanced service levels from the Sheriff's Office. Moreover, individual members of the Board are in regular contact with constituents who would be affected by the change the Grand Jury advocates and a significant majority of residents disfavor it.

**F1202 The proposal has become highly politically charged in recent months because of opposition by County island residents who are fearful of a change or because of concerns that this would lead to annexation of the County islands to the City of Fresno.**

The Board of Supervisors does not accept your premise with the finding. Law enforcement in the unincorporated county is under the authority of the elected sheriff. The elected sheriff has publicly stated that she will not relinquish her duty to provide law enforcement services in unincorporated County islands within the City of Fresno. She is entrusted with the authority to make the decision of whether patrol services are provided directly by the Sheriff's Office or contracted to another agency.

There is opposition among county residents for a broad range of reasons. Some residents of unincorporated areas are concerned about annexation. The residents of county islands have become more vocal and active in verbalizing their preferences for the Sheriff's Department to continue to provide services in County islands and exercising their rights as taxpayers to live where they choose and to pay for quality services of their choosing. Simply put, they chose to live where they live in an unincorporated area and most seem to prefer it that way.

**F1203 Because of revenue losses resulting from effects of the current recession, local governments are under increasing financial stress.**

The Board of Supervisors agrees that the economic downturn has had an effect on the services and budgets of the County of Fresno as well as the City of Fresno.

**F1204 Analysis of a proposal for FPD law enforcement in County islands is hampered by the current political climate and by lack of compatibility between County and City law enforcement data systems.**

The Board of Supervisors disagrees with the findings. As stated in the response to F1201, County island residents have strongly voiced their preferences for Deputy Sheriff

patrol services. Compatibility of law enforcement data systems between the County and FPD does not affect this preference.

**F1205 Because of the current political climate, there has been little contact between the staffs of the FSO and FPD on this very important issue.**

The Board of Supervisors disagrees with the finding. The Sheriff and her management staff met with the Fresno PD Chief and his management staff, the Mayor of Fresno, the Chairman of the Board of Supervisors, County Administrative Officer, and Fresno City Manager on more than one occasion to discuss this issue. In addition, the Sheriff's Office has discussions on a regular basis with all law enforcement agencies in Fresno County including the FPD regarding various law enforcement issues. Furthermore, the Sheriff's Office and FPD, along with other law enforcement agencies, work together on various task forces and regional public safety issues.

In the past year, the Sheriff's Office has contracted with several law enforcement agencies to provide dispatch services on a regional basis. The Sheriff's Office and the FPD have also co-located sexual offender registration services to streamline services and reduce costs. Moreover, data management systems are compatible with 14 of the incorporated cities in Fresno County for shared information and discussions are ongoing with FPD to find data sharing opportunities.

**F1206 The political environment surrounding the proposal would cast doubt on the objectivity of a study completed by either party to the issue.**

The Board of Supervisors disagrees with the finding. The Sheriff's Office has provided information, as requested, to complete various reviews by outside parties. If there was support to study this issue, the Sheriff would continue to cooperate, provide the requested information, and develop the necessary analysis.

**Recommendations:**

**R1201 An independent review and analysis be conducted by a third party to determine:**

- **The cost to Fresno County of a contract with the Fresno Police Department to provide law enforcement services within the County islands.**
- **The savings to Fresno County, which may be realized if law enforcement services by the Sheriff's Office within the County islands were no longer required.**

The recommendation will not be implemented at this time until the elected Sheriff, who has jurisdiction over this issue, agrees and supports an independent study. The Board of Supervisors will continue to encourage the Sheriff to identify areas where services can be consolidated and bring those recommendations to the Board for action.

**R1202 The cost of the review and analysis should be shared equally by the City and County.**

It is premature to respond to this recommendation.



Margaret Mims  
Sheriff  
Fresno County Sheriff's Office

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August 22, 2010

M. Bruce Smith, Presiding Judge  
Fresno Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724

RE: 2009-2010 GRAND JURY REPORT #12 — LAW ENFORCEMENT IN COUNTY ISLANDS

Dear Judge Smith:

This letter constitutes the statutory response to the 2009-2010 Grand Jury Report #12 pertaining to the Fresno County Sheriff's Office.

#### FINDINGS

F1201      The provision of law enforcement services within County islands by the Fresno Police Department has been a topic of discussion for a number of years because of the potential efficiencies and cost savings that could result.

**Partially agree. This has been a topic of discussion for a number of years. The discussion has included the Fresno Police Department conduct these law enforcement services in addition there has been discussion that the City of Fresno contract with the Fresno County Sheriff's Office to provide law enforcement services to City areas in proximity to the County Islands.**

F1202      The proposal has become highly politically charged in recent months because of opposition by the County island residents who are fearful of a change or because of concerns that this would lead to annexation of the County islands to the City of Fresno.

**Partially agree, this has become politically charged but not due to the residents of County islands. Their fear and concerns are real and should not be minimized. Media influence has been a major source of making this a politically charged issue.**

*Dedicated to Protect & Serve*

**I have attended a number of meetings in various forums over the past year specific to this topic and have personally sponsored some town hall meetings. My intent is to read the constituency on their feelings as to not just annexation, but contract policing with the City of Fresno Police Department. In addition, I have a citizen's advisory group of over 30 residents from all parts of the county, both rural and urban, incorporated cities (including Fresno) and unincorporated areas, as well as numerous daily personal contacts with residents from across the county. In each of these group forums and personal interactions the overwhelming message that I hear from my constituency is that, they are not interested in having their police services provided by the City of Fresno Police Department. I hear this from county island residents as well as rural residents on the fringes of metropolitan Fresno/Clovis. I have also received feedback from City of Fresno residents who are concerned that should the Fresno Police Department contract and provide service to County islands, their service would be reduced.**

**What this report does not take into account is the will of those residents living in the county islands. This is both disappointing and disturbing. Disappointing that the grand jury did not take any input from the residents of the county islands (reference page 4 under Sources) as the only input noted in the report was from the Fresno Bee, the Board of Supervisors, data from both agencies, and interviews with management and staff at both agencies. What is disturbing is that while the grand jury has recognized that the issue is politically charged – and presumably why – the grand jury has chosen not to seek any input from the actual county island residents. Taking input from a newspaper over input from the citizens of this county makes for an incomplete report. The grand jury should not presume that a newspaper speaks for the residents. The county island residents should have had a voice in this report.**

F1203

Because of revenue losses resulting from effects of the current recession, local governments are under increasing financial stress.

**Agree. I agree with the grand jury assertion that there has been a reduction in revenue, which has caused financial stress for local government. This is self-evident. However, money is not the main point. This discussion needs to play out for the last time so that the citizens of this county can exercise their will and have it carried out by their elected officials. While financial savings are an important responsibility of every government official, both elected and appointed, there are two greater points more important than money; the will of the people and the Sheriff's sworn constitutional and statutory duty.**

*Dedicated to Protect & Serve*

**First and foremost, county island residents are paying the Sheriff's Office for their front line law enforcement service through their taxes. In other words, they are footing the bill and understand very well what they are getting. Judging by my interactions with these residents the vast majority are more than satisfied with the law enforcement service I provide. Why should outsiders dictate a political agenda contrary to the residents' will? It is presumptuous at best for these individuals and entities to attempt to dictate how another person spends their dollar, including a tax dollar. That tax dollar is given thoughtful consideration by the legislative branch of county government in the five elected members of the Board of Supervisors, then passed on to the executive branch of county government, the elected Sheriff, to implement. While I recognize that all taxpaying citizens contribute to one degree or another to the County general fund and in turn, the Sheriff's Office, it is those residents living in unincorporated areas that receive their front line law enforcement services from the Sheriff.**

**It is not the fault of the County islands residents that these islands exist. This is a result of poor planning and annexations practices of the past. The elimination of these islands by annexation must be put to a vote of those living in these areas.**

**All Fresno County residents, whether they live in a city or in the unincorporated areas, receive traditional Sheriff's services such as court security, prisoner custody, civil process, records keeping, permits, etc. Only those residents who live in unincorporated areas or those living in a city who contracts with the Sheriff receive the service of front line law enforcement. Residents of most cities receive their front line law enforcement services from their local city police. Tax sharing agreements between cities and counties account for municipal services, such as a police department.**

**The right of self-determination far outweighs the "potential" for efficiencies or even costs savings. Self-determination is a concept that emanates from the very core of our constitutional republic. The residents of unincorporated neighborhoods are satisfied with their police service as delivered by the Sheriff's Office. It is for them, and them alone to decide their service provider because they are paying for it.**

**City police officers are statutory officers and can come, go, or be altered at the will of their legislature. Elected Sheriffs are constitutional officers and changing the State Constitution is a distinctly different matter. Under Article XI Sheriffs are required as one of four elected County Offices. Sheriffs have specific**

*Dedicated to Protect & Serve*

**responsibilities and are granted broad powers and authority under the Constitution to carry out their obligations and ministerial duties. Statutory officers do not.**

F1204 Analysis of a proposal for FPD law enforcement in County islands is hampered by the current political climate and by lack of compatibility between County and City law enforcement data systems.

**Partially agree. The data systems in use are different. All municipal law enforcement agencies in Fresno County use the Fresno County Sheriff's Office Records Management System (RMS) except the City of Fresno. The City's size and number of calls for service can justify a stand alone system. The term 'current political climate' is vague and ambiguous.**

F1205 Because of the current political climate, there has been little contact between the staffs of the FSO and FPD on this very important issue.

**Partially agree, the staff members of the Fresno County Sheriff's Office and the Fresno Police Department interact on a continuous basis on a variety of areas of mutual concern. There has been little emphasis on the desires of the citizens we serve. Until they decide otherwise by a vote of the residents of the County islands, I will not abdicate my responsibility to them to deliver law enforcement services.**

***California Government Code 54950 –***

***In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.***

***The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.***

***Dedicated to Protect & Serve***

## RECOMMENDATIONS

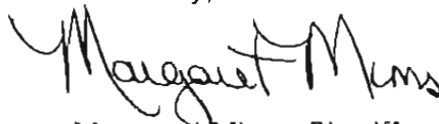
- R1201 An independent review and analysis be conducted by a third party to determine:
- The cost to Fresno County of a contract with the Fresno Police Department to provide law enforcement services within the County islands.
  - The savings to Fresno County, which may be realized if law enforcement services by the Sheriff's Office within the County islands were no longer required.

**An independent review would require funding that would be provided by the Fresno County Board of Supervisors. The funding is not currently available in the Sheriff's Office budget. Any additional revenue received by my office will be used to reestablish essential law enforcement and correctional functions.**

- R1202 The cost of the review and analysis should be shared equally by the City and County.

**See answer to R1202**

Sincerely,

A handwritten signature in black ink that reads "Margaret Mims". The signature is written in a cursive style with a large initial "M".

Margaret Mims, Sheriff

*Dedicated to Protect & Serve*





# GRAND JURY



2009-2010