

THE  
FRESNO COUNTY



RAND  
JURY

2011-2012 FINAL REPORT

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**THE  
FRESNO COUNTY**



**RAND  
JURY**

**2011-2012 FINAL REPORT**

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*"THE FIRST DUTY*  
*of*  
**SOCIETY**  
**IS JUSTICE."**

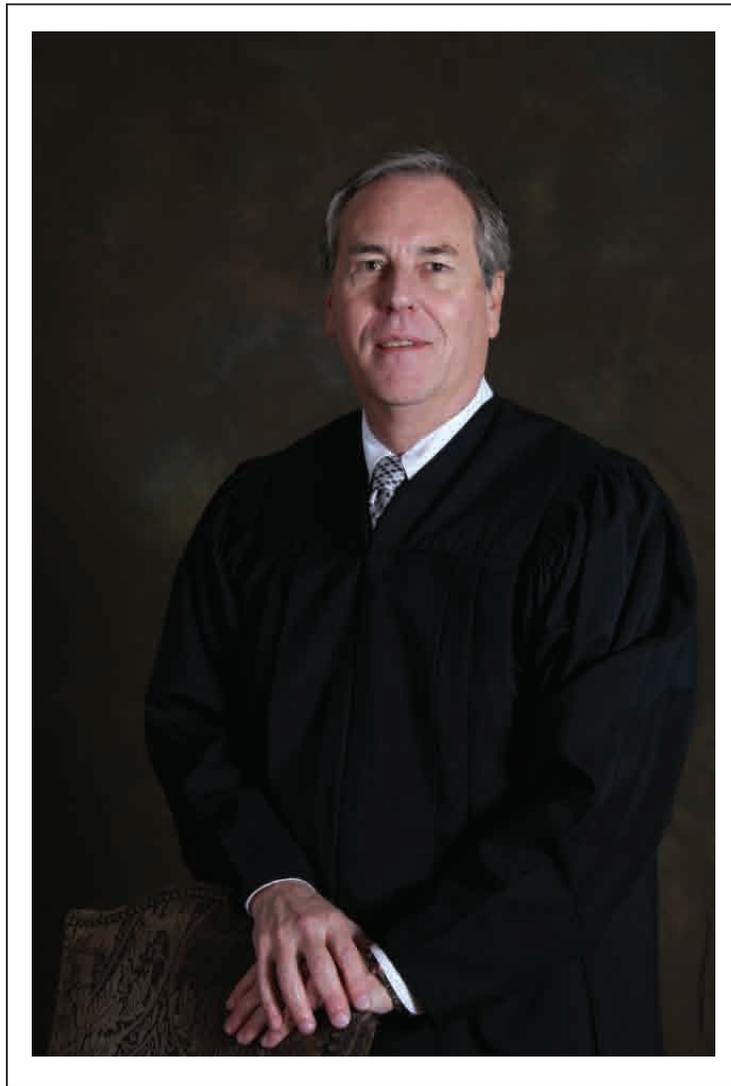
*Alexander Hamilton*  
FOUNDING FATHER (1755-1804)



**GRAND**  
**JURY**

**PRESIDING JUDGE**

*2011 - 2012*



**HON. GARY D. HOFF**





# Superior Court of California County of Fresno

CHAMBERS OF  
GARY D. HOFF  
Presiding Judge 2011-2012

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

At the beginning of the term of the 2011-2012 Grand Jury, the members were advised that being a member of a grand jury is a position of honor and great responsibility. It calls for diligence, impartiality, courage and the exercise of calm and considered judgment. At the outset of their service, they were also advised that the Grand Jury will make an important contribution to local government, and that the judges of the Fresno County Superior Court appreciate and value their service.

This Grand Jury has continued in the fine tradition of their predecessors, and their enthusiastic and dedicated work is sincerely appreciated. The leadership and dedication of the foreperson, Steven Fortner, 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 service as a grand juror and to continue this important function of public service.

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

Hon. Gary D. Hoff  
Presiding Judge 2011-2012



# County of Fresno

## GRAND JURY

July 22, 2012

To: The Honorable Gary Hoff  
Residents of Fresno County

It is my pleasure on behalf of the 2011-2012 Fresno County Grand Jury to submit this final consolidated report of our service year. The report is the culmination of a year of diligent, dedicated commitment to the historical and legal notion of citizen oversight of governmental entities.

This jury began its service year June 2011 with the selection process. Eight members were holdovers from the previous year's grand jury. The nineteen jurors bonded together quickly into a cohesive investigative body. All jurors completed a two-day training course, sponsored by the California Grand Jurors' Association that provided valuable materials and resources.

During the course of the year the jury received 64 citizen complaints, 18 generated by prisoners at Pleasant Valley State Prison in Coalinga alleging a variety of issues. The remaining 46 originated from Fresno County citizens. As was the policy, all complaints were read to the entire grand jury and when appropriate, assigned to a committee. Not all complaints were assigned for committee review as some were deemed to be beyond the purview of the grand jury. Sixteen investigations were started culminating in the five final reports included herein.

The grand jury, whether as a subject of investigation or not, evaluated the performance level of various governmental entities within the County of Fresno. For the most part we felt the information received was honest and straight forward. A re-occurring theme was budget restriction forced by diminished resources.

Previous grand jury reports were reviewed to determine if any follow-up investigations were warranted. It was this grand jury's determination that not enough sufficient time has elapsed to warrant follow up.

The grand jury supplied several observers at the request of the Elections Department for local county elections. The grand jury would also like to thank the Juvenile Justice Campus, the Fresno County Coroner, The Yosemite International Airport, and the Federal Court for providing us with tours of their facilities.

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

No grand jury can function without help and support. First and foremost I would like to thank Presiding Judge the honorable Gary Hoff for his guidance and assistance. I would also like to thank County Counsel Art Wille and Chief Assistant District Attorney Kelly Keenan for all of their help with navigating the grand jury's legal mandates.

I would also like to give a very special thank you to Court Division Manager Sherry Spears. Her advice and help to this and previous grand juries are what have allowed the grand jury to operate at this high level of professionalism.

This civil grand jury investigated, reported, and made recommendations on complaints received from the citizens of Fresno County. It is the responsibility of the citizens of Fresno County to hold leadership accountable for their conduct and the implementation of the recommendations made by the grand jury.

The members of the 2011-2012 Fresno County Grand Jury have considered it a great honor to be able to serve the citizens of Fresno County. We strongly encourage all citizens to remain well educated on current issues and to hold elected and appointed officials accountable. We also encourage all citizens to apply and take part in the Grand Jury process.

A handwritten signature in black ink, appearing to read "Steve Fortner". The signature is written in a cursive, flowing style.

Steven J. Fortner, Foreman  
Fresno County Grand Jury 2011-2012



**THE COUNTY OF FRESNO**  
*2011 - 2012*

**GRAND JURY**



### **MISSION STATEMENT**

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

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

### **NAME OF EACH GRAND JURY MEMBER FOR 2011-2012**

<b>JULTEANA AGUAYO</b>
<b>RON BATEN</b>
<b>NENE CASARES</b>
<b>ANITA DODSON</b>
<b>BOB FARMER</b>
<b>STEVE FORTNER</b>
<b>JERRY GUINN</b>
<b>DENISE HAAS</b>
<b>LARRY HENDRICKSON</b>
<b>MARK KALCHIK</b>
<b>HANK KING</b>
<b>MOSES MARTINEZ</b>
<b>SHERI MCKEIGHAN</b>
<b>GERALD PELOIAN</b>
<b>JAMES PREBLE</b>
<b>JIM SHEPARD</b>
<b>TOM SKYPECK</b>
<b>GARY TATHAM</b>
<b>LISA WOOLF</b>



THE COUNTY OF FRESNO  
**2011-2012 GRAND JURY**



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

**Nene Casares, Julteana Aguayo, Gary Tatham, Anita Dodson, Bob Farmer,  
Gerald Peloian, Sheri McKeighan, Denise Haas, Lisa Woolf and James Preble**

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

**Jim Shepard, Tom Skypeck, Mark Kalchik, Steve Fortner,  
Larry Hendrickson, Ron Baten, Jerry Guinn, Hank King and Moses Martinez**





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# **THE GRAND JURY PROCESS**

- ❖ **APPLICATION INFORMATION**
- ❖ **FUNCTIONS**
- ❖ **COMPLAINT PROCEDURE**

# APPLICATION INFORMATION

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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

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**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 criminal charges.

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

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

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

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

The grand jury system as part of our judicial system is an excellent example of our democracy. The grand jury is 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 § Code 934, 939).

\*2006 - 2007 Grand Jury Final Report

# COMPLAINT PROCEDURE

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

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

A complaint form can be obtained in the following ways:

1. Telephone the Superior Court at (559) 457\*1605 and request a citizen complaint form
2. Grand Jury website ([www.fresnosuperiorcourt.org](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 FINAL REPORTS *and* RESPONSES

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2011-2012

## Report 1

- ❖ CITY OF SANGER  
Ordinance 1113 - Measure L

## Report 2

- ❖ ANNUAL REVIEW  
Fresno County Pleasant Valley State Prison

## Report 3

- ❖ COALINGA-HURON LIBRARY DISTRICT

## Report 4

- ❖ CITY AND COUNTY OF FRESNO CONTRACTS  
*with the* Central California SPCA

## Report 5

- ❖ “THE FRESNO FACTOR”

# **REPORT #1**

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## **CITY OF SANGER ORDINANCE #1113 - MEASURE L**



FILED

APR 03 2012

FRESNO COUNTY SUPERIOR COURT

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

**2011-2012**  
**FRESNO COUNTY GRAND JURY**



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

**Fresno County  
2011 - 2012 Grand Jury  
Report # 1**

**City of Sanger  
Ordinance 1113 - Measure L**

---

## **INTRODUCTION**

In response to a citizen's complaint, the Fresno County Grand Jury 2011-2012 investigated the City of Sanger's processes and procedures used to develop and then place Measure L on the November 2010 general election ballot. Measure L would change the way the citizens elect the mayor and city council members. The mayor would be elected at large rather than by the council members: council members would be elected by districts rather than elected at large.

The complaint was due to concerns with the process used to develop Ordinance 1113 which became Measure L. The grand jury interviewed nine (9) witnesses and evaluated numerous documents in the preparation of this report.

## **BACKGROUND**

Prior to the November 2010 election, the City of Sanger had five (5) council districts electing representatives at large, and the sitting City Council selected the mayor from the council members. Ordinance 1113, approved by the Sanger City Council in August 2010, established the election of City Council members by district. The ordinance created four (4) districts from which the voters within each district may vote only for a council member living in that district. The ordinance also provided for the at large election of the mayor by all voters.

The ordinance also defined the specific geographic boundaries to create the new districts.

For several years there had been discussions among the City Council members regarding the formation of new council districts, including the at large election of the mayor. Consideration of implementing these changes began in March 2010, but the Council did not adopt Ordinance 1113 at that time because supporting data was deemed inaccurate. In July 2010, the ordinance, with modifications, was accepted and placed on the Council's August 5, 2010 consent agenda. At the August 5, 2010 Council meeting, Ordinance 1113 was approved via the consent agenda and was placed on the November 2010 ballot as Measure L.

Measure L was approved by 57.11% of the voters, 42.89% opposed, with only 8% of the registered voters voting.

## PURPOSE OF THE INVESTIGATION

The grand jury investigated the complaint to determine the following:

- Was drafting of Ordinance 1113 based upon inaccurate and misleading data?
- Was faulty and/or manipulated data presented to the Sanger City Council?
- Was Measure L clearly explained and presented to the voters?
- Was there deception, corruption and manipulation by City Council members and City Administrative staff in placing Measure L on the ballot?

## DISCUSSION

Because the 2010 census results were to be issued in March 2011, the question is why the City Council saw the need to place Measure L on the November 2010 ballot, incurring an additional expense to the city when, in fact, the districts would, by law, need to be re-evaluated after the new census data became available.

Was the Sanger City Council fully aware of the qualifications of the source used for the development of the district boundaries?

Measure L established specific geographic voting boundaries. These exact district boundaries would soon be out of date as the Sanger population is updated per the 2010 census. Changes would likely require that they be redrawn. Once redrawn: would they need to have voter approval?

The proposed ordinance was presented at the March 4, 2010 City Council meeting. At that meeting, the City Attorney, in writing, informed the City Council that in addition to the 2000 census data, a Fresno County Department of Public Works and Planning (FCDPWP) analyst had estimated the population growth for newly annexed developments to arrive at a theoretical population for each of the new districts.

The grand jury heard testimony that the data presented at that time was not accurate.

The ordinance was presented again at the July 15, 2010 Council meeting with modifications stating that the FCDPWP provided the data which was instrumental in creating the districts.

The grand jury heard testimony supported by documentation that on August 4, 2010, the Interim City Manager was aware that the FCDPWP had not been officially involved in creating the data.

At the August 5, 2010 City Council meeting, Ordinance 1113 was included on the consent agenda. The ordinance included a map indicating the proposed new district boundaries along with supporting data.

At that meeting a document was read to the City Council stating that the FCDPWP was not involved in providing the data, but in fact, an employee of that department compiled the data on the employee's own computer, *pro bono*.

No information regarding the Hispanic population and the need to redraw the boundaries at the completion of the 2010 census was presented at the August 5, 2010 City Council meeting. Without this information included, the proposed ordinance was approved unanimously by the three (3) council members present (a minimum quorum). The background information provided by the City Attorney for the ordinance, as passed, continued to state that the computer data system of the FCDPWP was used in developing the data.

Citizens' complaints to the City Council regarding the data obtained to place Measure L on the ballot suggest that their concerns were not addressed.

California Elections Code (Section 21600-21606) states that data from the previous census are to be used to establish districts which reflect the ethnic and population demographics of a city or county for a particular election.

In this case, the 2000 census data was used and the *pro bono* FCDPWP analyst estimated the population growth for the newly annexed City of Sanger developments to arrive at a theoretical current population. The new districts were formed by using Environmental Systems Research Institute (ESRI) mapping software. (This program assists in interpreting the data to make decisions based on the best information available.) The four new districts had been balanced for total population and ethnicity. The map attached to the ordinance showed the proposed boundaries and population estimates. In his recommendation for the passage of Ordinance 1113, the City Attorney reiterated that the FCDPWP computer data system was used to establish the redistricting data.

As a result of the passage of Measure L, sitting council members who had been elected at large were each assigned a district to represent. There is currently one district without a council member living in that district, and one district in which two council members reside. This issue, however, will correct itself when elections are held in November 2012.

## **CONCLUSION**

The citizens of Sanger voted to approve Measure L with 57.11% voting yes with 8% of registered voters casting a ballot. No arguments against the measure appeared on the ballot.

The grand jury did not find any evidence of illegal activity involved in the development of Measure L. However, there are many questions as to why redistricting was placed on the ballot before the 2010 census data was available.

The grand jury heard testimony of misrepresentation of information as to the source of the data being used to draw the district boundaries. The grand jury investigation found that the FCDPWP was not involved in the process of creating the districts and/or developing the ethnic demographics as was represented to the City Council and the citizens. An employee of the FCDPWP, who was approached by a Sanger City staff employee, created the proposed district boundaries. As previously stated, the employee agreed to do the analysis *pro bono*. Testimony was given to the grand jury that it was made clear prior to the adoption of the ordinance that Sanger city administrators were aware that the demographic data was not done under the auspices of the FCDPWP.

City administrators and legal council should have known and made the Sanger City Council aware that there is a requirement to have a contract or a formal agreement for the performance of these services by the FCDPWP. According to the Director of the FCDPWP, there was no agreement between Fresno County and the City of Sanger, or an application for agreement to perform the work.

The Interim City Manager and City Attorney at the time of the adoption of Ordinance 1113/Measure L are no longer with the City of Sanger. Following passage of the ordinance, a new City Manager was hired and a new City Attorney has been retained.

## **FINDINGS**

**F101** Measure L was placed on the ballot to meet the November 2010, election deadline.

**F102** The supporting demographic data was questionable and not verifiable prior to the release of the 2010 census data.

**F103** The data presented to the Sanger City Council was represented to be an official project of the FCDPWP.

**F104** There are documents that reflect that a FCDPWP computer was used by the analyst to correspond by email with City of Sanger administration.

**F105** The 2000 census figures were used to create district demographics.

**F106** With the release of the 2010 census, the districts defined in Measure L will be redrawn in accordance with Federal elections code (Section 1973 of Title 42 of United States Code as amended).

**F107** With the absence of one City Council member and the resignation of the Mayor, prior to the August 5, 2010 meeting, the three remaining members of the Council were considering for approval a significant change in the voting procedures of the City.

**F108** The grand jury did not find evidence of illegalities in placing Measure L on the ballot.

**F109** While the former City Attorney had concerns regarding some misinformation prior to the passage of the ordinance, not until March 3, 2011 did he publicly disclose his concerns that the data was questionable.

**F110** The cost to the City of Sanger to place Measure L on the 2010 ballot was approximately \$5,000.

**F111** A national demographics company has been retained at a cost not to exceed \$20,000 to establish districts that comply with the 2010 census.

**F112** Wording from the original ordinance regarding the need to redistrict after the 2010 census was omitted from the final ordinance as presented and approved. This would have alerted the voters of the financial impact to comply with the Voting Act requiring redistricting after every census.

**F113** There are financial penalties imposed upon a city for failure to complete redistricting using the 2010 census figures by November 1, 2011.

## RECOMMENDATIONS

**R101** Sanger City Council should complete and use the new demographic data developed from the 2010 census to redistrict. (F102, F103, F105, F106, F111, F113)

**R102** Sanger City Council should be certain that any changes in redistricting comply with state and federal election laws. (F102, F103, F105, F106)

**R103** The City of Sanger should have processes in place to validate agreements with other agencies and consultants for work to be performed. (F102, F103, F104, F109)

**R104** Acting within election codes, the Sanger City Council, or a committee established by them, may determine the district boundaries to be approved by the voters based on data submitted by an accredited demographic source. (F105, F109, F111, F112)

**R105** The Sanger City Council should improve its communication with the citizens of Sanger. Procedures need to be adopted to ensure transparency to develop the trust needed to conduct city business. (F101, F102, F103, F107, F109, F112)

**R106** The Sanger City Council should be receptive of and attentive to the concerns and issues brought to them by the citizens of Sanger. (F109, F112)

**R107** When enacting legislative measures, such as Measure L, the Sanger City Council should be aware of possible extra costs that could be incurred if timelines and guidelines are not followed. (F101, F102, F110, F111, F113)

## 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 60 days of the receipt of this report and 90 days for others.**

## RESPONDENTS

Sanger City Council (F101, F102, F103, F104, F106, F107, F111, F112, R101, R102, R104, R105, R106, R107)

Brian Haddix, Present Sanger City Manager (F106, F110, F111, F113, R101, R103, R104, R107)

Jeff Kuhn, Present Sanger City Attorney (F106, R103)

## **SOURCES AND REFERENCES**

Audio recordings of Sanger City Council meetings  
City of Sanger official web site  
Copies of Sanger interoffice memos  
Sanger City Council meeting agendas  
Copies of E-mails  
Internet searches  
Newspaper articles  
California Elections Code (Section 21600-21606)  
United States Election Code Section 1973 of Title 42

Witness interview and recorded sworn statement  
    Former city employees  
    City of Sanger citizens  
    Current city employees  
    Sanger City Council members  
    Fresno County Public Works employee  
    Fresno County Elections Department staff

# RESPONSES

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- A. BRIAN HADDIX, City Manager,  
City of Sanger  
F101 through F112  
R101 through R107





# City of Sanger, California

*"A Community of Caring"*

1700 7<sup>th</sup> Street  
Sanger, California 93657  
(559) 876-6300 Extension 1300  
FAX (559) 875-8956

June 21, 2012

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

Re: Responses to 2011-2012 Grand Jury Report # 1

Dear Judge Hoff:

In accordance with Penal Code sections 933 and 933.05, the Sanger City Council has approved the attached responses to the 2011-2012 Grand Jury Report #1 concerning the City of Sanger's Ordinance 1113 – Measure L. On behalf of the City of Sanger, we would like to express our appreciation to the Grand Jury for its hard work in investigating Ordinance 1113 – Measure L.

Sincerely,

C. Brian Haddix  
City Manager

cc: City Council  
City Attorney  
City Clerk

52/H  
6-25-12  
28

**City of Sanger's Responses to Findings and Recommendations of  
2011-2012 Grand Jury Report # 1 on Ordinance 1113 – Measure L**

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**FINDINGS**

F101 Measure L was placed on the ballot to meet the November 2010, election deadline.

*The City agrees with this Finding.*

F102 The supporting demographic data was questionable and not verifiable prior to the release of the 2010 census data.

*The City agrees that the supporting demographic data was questionable and could not be verified at any time.*

F103 The data presented to the Sanger City Council was represented to be an official project of the FCDPWP.

*The City agrees with this Finding and notes that the data, although represented to the public to be an official project of the FCDPWP, was never a project of the FCDPWP, official or otherwise.*

F104 There are documents that reflect that a FCDPWP computer was used by the analyst to correspond by email with City of Sanger administration.

*The City agrees with this Finding.*

F105 The 2000 census figures were used to create district demographics.

*The City disagrees with this Finding, and believes it is not possible to accurately determine whether the 2000 census figures were used, since the final figures did not add up.*

F106 With the release of the 2010 census, the districts defined in Measure L will be redrawn in accordance with Federal elections code (Sections 1973 of Title 42 of United States Code as amended).

*The City agrees with this Finding.*

F107 With the absence of one City Council member and the resignation of the Mayor, prior to the August 5, 2010 meeting, the three remaining members of the Council were considering for approval a significant change in the voting procedures of the City.

*The City agrees with this Finding.*

F108 The grand jury did not find evidence of illegalities in placing Measure L on the ballot.

*The City agrees with this Finding that no illegalities were found, given the scope of the Civil Grand Jury.*

F109 While the former City Attorney had concerns regarding some misinformation prior to the passage of the ordinance, not until March 3, 2011 did he publicly disclose his concerns that the data was questionable.

*The City disagrees with this Finding. The former City Attorney had expressed issues with the data and process in March of 2010 but chose not to express the same concerns in July and August of 2010 although the public raised stronger concerns at that time. It was not until the new city council further investigated the issue on March 3, 2011 that concern was once again shown.*

F110 The cost to the City of Sanger to place Measure L on the 2010 ballot was approximately \$5,000.

*The City disagrees with this Finding and notes that the \$5000 figure does not include the cost of staff time and attorney's fees associated with the Measure.*

F111 A national demographics company has been retained at a cost not to exceed \$20,000 to establish districts that comply with the 2010 census.

*The City disagrees with this Finding and notes that the final cost of the demographer's work was \$22,500; further, the City notes that the demographer's task was to recommend, rather than establish, districts that comply with the 2010 census. The City further notes that the districts ultimately adopted by the City Council were developed and submitted for consideration by members of the public rather than by the demographer, although the demographer reviewed the "public" redistricting plan and advised that it complies with the census and all legal requirements for City Council districts.*

F112 Wording from the original ordinance regarding the need to redistrict after the 2010 census was omitted from the final ordinance as presented and approved. This would have alerted the voters of the financial impact to comply with the Voting Act requiring redistricting after every census.

*The City agrees with this Finding.*

F113 There are financial penalties imposed upon a city for failure to complete redistricting using the 2010 census figures by November 1, 2011.

*The City agrees there was a November 1, 2011 statutory deadline to complete redistricting using the 2010 census but is not aware of any such financial penalties. In addition, the California Elections Code gives the City until July 23, 2012 to complete its redistricting for the November 2012 council elections without penalty.*

## RECOMMENDATIONS

R101 Sanger City Council should complete and use the new demographic data developed from the 2010 census to redistrict. (F102, F103, F105, F106, F111, F113)

*This recommendation will be implemented with the adoption of a new redistricting plan that will be effective for the November 2012 City Council elections.*

R102 Sanger City Council should be certain that any changes in redistricting comply with state and federal election laws. (F102, F103, F105, F106)

*This recommendation will be implemented with the adoption of a new redistricting plan, which came about with the help of consultant Douglas Johnson of National Demographics Corporation.*

R103 The City of Sanger should have processes in place to validate agreements with other agencies and consultants for work to be performed. (F102, F103, F104, F109.)

*This recommendation has been implemented through a contracts index system maintained by the City Clerk's office.*

R104 Acting within election codes, the Sanger City Council, or a committee established by them, may determine the district boundaries to be approved by the voters based on data submitted by an accredited demographic source. (F105, F109, F111, F112)

*This recommendation will be implemented with the adoption of a new redistricting plan, which came about with the help of consultant Douglas Johnson of National Demographics Corporation. Note that under California Elections Code section 21600 et seq., voter approval is not required for adjustments to council district boundaries made in response to each decennial federal census.*

R105 The Sanger City Council should improve its communication with the citizens of Sanger. Procedures need to be adopted to ensure transparency to develop the trust needed to conduct city business. (F101, F102, F103, F107, F109, F112.)

*This recommendation has been implemented through expanded use of the City's website, the monthly publication of Inside Sanger describing City Hall activities, the City's issuance of a variety of press releases, the City Council's periodic holding of Town-Hall-type meetings, the holding of regular and special meetings of the City's Park & Recreation, and Tree & Landscaping advisory committees, and the Measure S Citizens' Oversight Committee, and the inclusion of informational inserts in the City's monthly utility bills. The City is now committed to transparency in its operations and will continue to strive for improvements in its communications with local residents.*

R106 The Sanger City Council should be receptive of and attentive to the concerns and issues brought to them by the citizens of Sanger. (F109, F112.)

*This recommendation has been implemented through direction to the new City Manager and his Department Heads to promptly respond to concerns and issues brought forward during the "Public Forum" of each City Council meeting, to concerns and issues passed along by each Council Member, and of course to concerns and issues brought directly to City staff members on a daily basis. The City is committed to being very receptive and attentive to the concerns and issues of our local residents and will continue to strive for improvements in its responses to such concerns and issues.*

R107 When enacting legislative measures, such as Measure L, the Sanger City Council should be aware of possible extra costs that could be incurred if timelines and guidelines are not followed. (F101, F102, F110, F111, F113.)

*This recommendation has been implemented through direction to the new City Manager and his Department Heads to provide complete and timely information to the City Council and the public concerning the expected and potential fiscal impacts of recommended actions. The City staff will continue to be vigilant in identifying such impacts and making them known to the Council and public in a timely manner.*

# REPORT #2

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ANNUAL REVIEW

*of*

FRESNO COUNTY

PLEASANT VALLEY STATE PRISON



FILED

APR 06 2012

FRESNO COUNTY SUPERIOR COURT

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

**2011-2012**  
**FRESNO COUNTY GRAND JURY**



**FINAL REPORT**  
**#2**

# **Fresno County Grand Jury 2011 – 2012 Annual Review Fresno County Pleasant Valley State Prison**

## **INTRODUCTION**

The Fresno County Grand Jury conducted its annual review of the Pleasant Valley State Prison (PVSP) on October 20, 2011. The review is 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 was welcomed and provided with an assessment of the facility by the warden and the prison staff.

This Fresno County Grand Jury is civil in nature and any action taken by the Fresno County Grand Jury narrowly focuses on the compliance with established policy and procedures contained in the California Code of Regulations, Title 15.

## **BACKGROUND**

The PVSP, located at 24863 West Jayne Ave, Coalinga, California is the only state prison within Fresno County. This institution was opened in November 1994 and covers 640 acres. With a current operating budget of \$117.4 million, it has a custody and support staff of 1,456. As of January 5, 2012, the prison housed 3,757 prisoners in a facility designed to house 2,616.

## **Purpose of Investigation**

- Conduct annual review of the PVSP as mandated.
- Review the findings and recommendations of the 2010-2011 Fresno County Grand Jury Report on the PVSP.
- Review the reorganized CDCR Form 602/22, Inmate Complaint Process.

## **Discussion**

### **1. Review previous findings and recommendations**

The 2010- 2011 Grand Jury found that closed CDCR Form 602/22 complaints were stored in an unsecured area.

### **2. Review CDCR Form 602/22 Process**

Upon entering PVSP, inmates receive a PVSP Orientation Handbook, which includes all necessary steps to complete the CDCR Form 602/22. Prison Administrative Appeals is the internal grievance process through which prisoners, and in some situations non-prisoners, may file a complaint against prison personnel to challenge a prison policy or practice. Complaints generally regard conditions of confinement, disciplinary actions

and redress appeal procedures. These complaints are subject to Title 15, Article 8, utilizing CDCR Form 602/22.

The regulations specify the actions and timelines that apply at each step of the process. All inmates have the right to appeal any decision, action, condition, policy, or regulation of the department that adversely affects them. Inmates dissatisfied with an administrative response may seek relief outside the prison system by filing a lawsuit with the courts. The forms are available in all housing units, and anyone may assist the inmate in completing the appeal form at each step. The inmate must sign, date and submit the document within the time required for each step in the process.

The previous Fresno County Grand Jury (2010-2011) received 28 complaints between July 1, 2010 and December 31, 2010. After the change to the CDCR Form 602/22 process, there were no further complaints received by the grand jury as of the end of its term on June 30, 2011.

The main reason for this decrease in complaints is the reorganized process of CDCR Form 602/22. Assembly Bills 109 and 117, which took effect October 1, 2011, also known as "Inmate Realignment", should continue this trend.

CDCR Form 602/22 was reviewed by the Regulations and Policy Management Branch (RPMB) and key changes were made. The CDCR Form 602 process can take as long as 120 days for completion. If the inmate did not agree with the prison's resolution to the CDCR Form 602, he could request a CDCR Form 22, Request for Interview, to informally address the complaint. Upon review by prison officials of the complaints, the majority were found to be minor in nature.

The Inmate Appeals Branch (IAB) recommended starting the complaint process with CDCR Form 22. The intent was to place more emphasis on the informal process in an effort to quickly resolve complaints before the formal CDCR Form 602 process needs to be initiated.

## **Conclusion**

CDCR Forms 602/22 are now stored in a secure area in compliance with the 2010-2011 Fresno County Grand Jury's recommendation. Upon completion of the process, the Forms 602/22 complaints are shredded in accordance with California Code of Regulations, Title 15, Crime Prevention and Corrections.

The reorganized CDCR Form 602/22 process has resulted in a drop in formal CDCR Form 602 prisoner complaints received by the Fresno County Grand Jury.

The Fresno County Grand Jury noticed evidence of overcrowded conditions: prisoners were being housed in bunk beds in gym and day room areas. This could be a safety issue.

The overcrowding conditions are being reduced by the passage of AB 109 and 117.

The Fresno County Grand Jury's inspection of the PVSP found the facilities to be clean and well-maintained.

## **Findings**

- F201 CDCR Form 602/22 complaints are now stored in a secure area.
- F202 The Fresno County Grand Jury found evidence of overcrowding.
- F203 The Fresno County Grand Jury observed sleeping bunks located in the gym and day use areas of the prisoner housing units, potentially creating blind spots.
- F204 PVSP provides resources for inmates to initiate and complete the grievance process.
- F205 California Code of Regulations, Title 15, Article 8 provides the process for administrative appeals of internal grievances.

## **Recommendations**

- R201 Continue to reduce overcrowding. (F202, F203)
- R202 As prisoner population decreases, housing of prisoners in gym and day use areas should be eliminated. (F202, F203)
- R203 Continue to monitor and evaluate the CDCR Form 602/22 process. (F204, F205)

## **Request for Responses**

Pursuant to Penal Code Section 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 all others.

## **Respondents**

- Matthew L. Cate, Secretary, CDCR (F202, F203, R201, R202, R203)
- Paul Brazelton, Warden, PVSP (F202, F203, R201, R202, R203)

## **Sources and References**

- 2010 – 2011 Fresno County Grand Jury Report #3
- California Penal Code
- Interviews with PVSP administrative staff
- Pleasant Valley State Prison Inmate Orientation Handbook
- Pleasant Valley State Prison web site
- Reviewed relevant PVSP documents including CDCR 602/22
- State of California, California Code of Regulations, Title 15, Crime Prevention and Corrections, updated January 1, 2011
- The Fresno Bee

# RESPONSES

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- A. PAUL BRAZELTON Warden,  
Division of Adult Institutions, State of California  
Pleasant Valley Prison  
F201 through F205  
R201 through R202
- B. KATHLEEN L. DICKINSON Director,  
Division of Adult Institutions, State of California  
Department of Corrections and Rehabilitation  
F202 through F205  
R201 through R203



DIVISION OF ADULT INSTITUTIONS  
PLEASANT VALLEY STATE PRISON  
P O Box 8500  
Coalinga, California 93210-8500



**RECEIVED**



April 5, 2012

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

Dear Judge Hoff:

RESPONSE TO FRESNO COUNTY GRAND JURY COMMITTEE REPORT  
PLEASANT VALLEY STATE PRISON 2011-2012, FINAL REPORT #2

The following information is submitted in response to the Fresno County Grand Jury's 2011-2012, Final Report #2, regarding Pleasant Valley State Prison (PVSP).

FINDINGS:

F201 CDCR Form 602/22 complaints are now stored in a secure area.

*The respondent AGREES. All active appeals are stored within a locked room only accessible to Inmate Appeals Personnel. All exhausted appeals are stored outside the secured perimeter of the Prison in a locked conex.*

F202 The Fresno County Grand Jury found evidence of overcrowding.

*The respondent AGREES.*

F203 The Fresno County Grand Jury observed sleeping bunks located in the gym and day use areas of the prisoner housing units, potentially creating blind spots.

*The respondent AGREES.*

F204 PVSP provides resources for inmates to initiate and complete the grievance process.

*The respondent AGREES. Several steps were in place to ensure the inmate population was made aware of the changes to the appeal process. A training*

*video was broadcasted by way of local programming depicting the new process. Inmate Appeals staff met with the Men's Advisory Council (MAC) providing them with information relative to the new appeals process, and Inmate/Parolee CDCR Forms (602) and (22) are readily accessible in all inmate housing areas.*

F205 California Code of Regulations, Title 15, Article 8 provides the process for administrative appeals of internal grievances.

*The respondent AGREES.*

#### RECOMMENDATIONS:

R201 Continue to reduce overcrowding. (F202, F203)

*On April 4, 2011, Governor Brown signed into legislation Assembly Bill (AB) 109, Public Safety Realignment. AB 109 is historic legislation designed to close the revolving door of low-level offenders cycling in and out of an expensive state prison system by shifting key responsibilities and funding to counties, which can more effectively sanction and rehabilitate offenders.*

*On May 23, 2011, a three judge panel affirmed the US Supreme Court's decision to reduce California's prison population to 137.5 percent of design capacity within two years. Pursuant to the order, CDCR will need to reduce its population by roughly 33,500 fewer inmates.*

*As result of this legislation, PVSP has reduced its inmate population allowing for the deactivation of all non-traditional housing; such as, gymnasiums and dayrooms.*

R202 As prisoner population decreases, housing of prisoners in gym and day use areas should be eliminated. (F202, F203)

*As previously indicated, PVSP has deactivated all non-traditional housing.*

It should be noted the Grand Jury was extremely thorough and engaged staff and inmates, as well as conducting physical plant inspections and records reviews to make their assessment.

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

The Honorable Gary D. Hoff  
Page 2

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

Sincerely,

A handwritten signature in black ink, appearing to read "P. D. Brazelton". The signature is stylized and somewhat cursive.

PAUL D. BRAZELTON  
Warden (A)

cc: Matthew L. Cate, Secretary  
Terri McDonald, Undersecretary (A), Operations  
Kathleen Dickinson, Director (A), Division of Adult Institutions (DAI)  
T. L. Gonzalez, Associate Director (A), General Population Male, DAI  
Steven Fortner, Foreman, 2011-2012/Fresno County Grand Jury

**DIVISION OF ADULT INSTITUTIONS**

DIRECTOR'S OFFICE

P.O. Box 942883

Sacramento, CA 94283 0001



June 27, 2012

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

Dear Judge Hoff:

This letter is being submitted in response to the Fresno County Grand Jury's report on the reorganized Inmate Appeals Process at Pleasant Valley State Prison. On behalf of the California Department of Corrections and Rehabilitation (CDCR), we would like to thank the representatives of the Fresno County Grand Jury for the opportunity to respond to their findings and recommendations, and for their professionalism and personal interest in CDCR's efforts to improve operations. A response to each is enclosed herein.

If you have any questions or concerns, please call my office at (916) 445-7688.

Sincerely,

  
KATHLEEN L. DICKINSON  
Director (A)  
Division of Adult Institutions

Enclosure

cc: Matthew L. Cate, Secretary  
Terri McDonald, Undersecretary, Operations  
M. D. Stainer, Deputy Director (A), Facility Operations, Division of Adult Institutions

6/28  
7-3-12

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
 RESPONSE TO THE FRESNO COUNTY GRAND JURY  
 REVIEW OF THE INMATE APPEALS PROCESS AT  
 PLEASANT VALLEY STATE PRISON

ITEM #	Findings	Recommendations	Action taken/ Proposed plan	COMPLETION DATE	COMMENTS/ STATUS
F202 (R201) (R202)	"The Fresno County Grand Jury found evidence of overcrowding."	"Continue to reduce overcrowding." "As prisoner population decreases, housing of prisoners in gym and day use areas should be eliminated."	On April 4, 2011, Governor Brown signed into legislation Assembly Bill (AB) 109, Public Safety Realignment. AB 109 is historic legislation designed to close the revolving door of low-level offenders cycling in and out of an expensive state prison system by shifting key responsibilities and funding to counties, which can more effectively sanction and rehabilitate offenders.  On May 23, 2011, a three judge panel affirmed the U.S. Supreme Court's decision to reduce California's prison population to 137.5 percent of design capacity within two years. Pursuant to the order, CDCR will need to reduce its population by roughly 33,500 fewer inmates.	On-going	PVSP has reduced its inmate population allowing for the deactivation of all non-traditional housing; such as, gymnasiums and day rooms.
F203 (R201) (R202)	"The Fresno County Grand Jury observed sleeping bunks located in the gym and day use areas of the prisoner housing units, potentially creating blind spots."	"Continue to reduce overcrowding." "As prisoner population decreases, housing of prisoners in gym and day use areas should be eliminated."	CDCR agrees with the findings, and the same action applies as listed above	On-going	As previously indicated, PVSP has deactivated all non-traditional housing.
F204 (R203)	"PVSP provides resources for inmates to initiate and complete the grievance process."	"Continue to monitor and evaluate the CDCR Form 602/22 process."	CDCR agrees with the findings.	On-going	N/A
F205 (R203)	"California Code of Regulations, Title 15, Article 8 provides the process for administrative appeals of internal grievances."	"Continue to monitor and evaluate the CDCR Form 602/22 process."	CDCR agrees with the findings.	On-going	N/A

# REPORT #3

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## COALINGA-HURON LIBRARY DISTRICT



FILED

APR 24 2012

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

**2011-2012  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#3**

**Fresno County  
2011 - 2012 Grand Jury  
Report #3**

**Coalinga-Huron Library District**

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**INTRODUCTION**

In response to complaints received from citizens and patrons of the Coalinga Public Library, the 2011-2012 Fresno County Grand Jury investigated actions taken by the Board of Trustees of the Coalinga-Huron Library District (C-HLD) and the Administration of the Coalinga Library.

**BACKGROUND**

In 1912, the citizens of Coalinga voted the library district into being as a school/library district. The current Coalinga Library was completed in September 1955. It was remodeled and expanded in 1993 to provide space for reference materials and computers. Today, the C-HLD is one of only two special-district libraries in the State of California operating under section 18300 of the Education Code that addresses joint library and school districts.

In 1998, Fresno County voters passed Measure B, a sales tax, which benefited all thirty-three libraries in the county. Benefits included expanded library hours, the ability to purchase more books, and Internet access. In 2004, residents voted to extend the measure to 2013 in appreciation of Measure B's positive impact.

Measure B also funds public library construction, acquisitions, programs and operations. Funds can only be used to supplement existing expenditures, and cannot supplant existing funding. Measure B made it possible for the C-HLD to increase its budget for new books, and make building and landscaping improvements at both the Coalinga and Huron libraries. In 2008, portions of Measure B funds enabled the C-HLD Board to hire a consulting firm to prepare a strategic plan for library improvements.

According to a 2007-2008 survey conducted under the auspices of the C-HLD, library use sharply increased. The Library sought a consultant to conduct a Community Needs Assessment and a Plan of Service that included recommendations for meeting the needs of the served communities.

The C-HLD voted to retain Aaron Cohen Associates, Ltd. to conduct a Community Needs Assessment & Plan of Service for the Coalinga and Huron Libraries. This led to the decision to hire Noll & Tam Architects and Planners on May 25, 2010, to develop plans for renovation of both libraries.

## **PURPOSE OF THE INVESTIGATION**

The grand jury was asked to investigate the complaints to determine the following:

- Appropriateness of procedures used for "weeding" approximately 20,000 books from the Coalinga Library timeline.
- Accuracy of and protocols for recording the C-HLD Board's minutes of meetings.
- Propriety of decisions regarding the expenditure of funds allocated for renovation of the Coalinga and Huron Libraries.
- Working relationship between library staff and management.
- Effectiveness of communication by the C-HLD Board and Library Administration with the community.

## **DISCUSSION**

As stated in the 2008 C-HLD Strategic Plan, the mission of the C-HLD is to be customer-focused, operating efficiently and effectively as a team. Included in this plan was a recommendation to consider the formation of a separate library district with its own board.

The grand jury heard testimony from numerous citizens who voiced concerns that library staff was instructed by management to discard thousands of books from the Coalinga Library. During 2009-2010 approximately 20,000 books were removed. The weeding process drew valley-wide media coverage.

The grand jury heard testimony of inadequate record-keeping and tracking of books and other memorabilia removed from the library's collection. Testimony indicated that items were removed by employees for personal use without authorization. Also, testimony indicated that receipts were not always kept for sales of books/materials to staff.

Questions surfaced during interviews before the grand jury regarding the accuracy and documentation of events that took place during C-HLD Board meetings. This required the grand jury to procure copies of the minutes to corroborate the Board's actions.

There was public concern that the expenditure of Measure B and other public funds were not properly managed. Some of these expenditures were earmarked for the planning and renovation of the Coalinga and Huron Libraries. The grand jury heard concerns that the monies were spent for renovation of the Coalinga Library without formal Board approval.

Based on testimony to the grand jury, architectural plans for the Coalinga Library remain at the City of Coalinga Planning Department, resulting in no commencement of the renovation. Although \$305,000 has been spent on architectural fees, additional expenses need to be approved to proceed with the renovation process.

Allegations were made during interviews of distrust and dislike between library staff and management. The grand jury initially focused its investigation of library management, working relationships and weeding of books.

During the grand jury's investigation, the Director of Library Services District and the associate librarian left their positions, one through retirement and one through resignation.

The C-HLD is governed by the same board of trustees as the Coalinga-Huron Joint Unified School District (C-HJUSD), and they meet at different locations on the same night. According to testimony, this structure exists to benefit the working relationship between the library and school district. During the interview process, it became apparent to the grand jury that sufficient time is not allotted for the C-HLD to conduct business. The C-HLD Board adjourns its meeting after 30 minutes to convene its school board meeting at another location.

The grand jury heard testimony that record-keeping pertaining to books and other memorabilia removed from the library's collection was inadequate. Testimony indicated that items were removed without authorization by employees for personal use. Also, receipts were not kept for sales of books/materials to staff. This brought about concerns within the community.

## **CONCLUSION**

After reviewing available information from interviews and documents, the grand jury concluded that many of the concerns brought forth in this complaint could have been eliminated or severely lessened if there had been better communication and more transparency by the C-HLD Board and the Coalinga Library Administration/ Management with the communities they serve.

Prior notification and communication by library administration regarding the extensive book weeding that was to occur could have lessened the community uproar.

The C-HLD Board and the library administration need to remember that their number one responsibility is to meet the needs of the community they serve (the taxpayers) as best they can. It is evident that this is not occurring as neither of the above entities is properly following the mission statement set forth by the C-HLD.

Because both boards meet on the same night, the thirty-minute time frame of the C-HLD Board meetings causes much of this communication and transparency problem.

The C-HLD Board and the C-HJUSD Board are currently governed by the same individuals. The grand jury concludes that the community's needs can best be served by the C-HLD and C-HJUSD Boards becoming two separate entities comprised of two different groups of people.

The C-HLD Board meeting minutes were difficult to follow and information was not clearly presented.

C-HLD library employee handbook policies and procedures need to be updated.

The current system does not adequately account for all materials that permanently leave the library.

## **FINDINGS**

- F301 The extensive weeding of books at the Coalinga Library created public distrust due to lack of communication.
- F302 The C-HLD Board does not always have adequate time to conduct library board business and respond to community concerns. The C-HLD Board adjourns its meetings after thirty minutes to convene its school board meeting at another location.
- F303 The same board members govern both the C-HLD and the C-HJUSD.
- F304 While the grand jury's investigation was proceeding, the associate librarian resigned her position, and the director of library services retired.
- F305 Minutes of some C-HLD Board meetings were difficult to follow and did not easily yield essential information.
- F306 All expenditures undertaken by the C-HLD were verified by board minutes given to the grand jury.
- F307 The C-HLD Board's mission statement is not fully followed by the board or library management/administration.
- F308 Some library policies/procedures (e.g., record keeping) are inadequate.
- F309 To date, there have been no renovations started on the Coalinga Library.
- F310 Based on information provided to the grand jury, architectural plans for the Coalinga Library remain at the City of Coalinga Planning Department. Although \$305,000 has been spent on architectural fees, additional funding will need to be approved to proceed with renovation.

## RECOMMENDATIONS

- R301 The C-HLD Board and the C-HJUSD Board should become separate entities made up of two different groups of people. (F302, F303)
- R302 The C-HLD Board and the C-HJUSD Board should meet on different dates so community members would be able to attend both meetings. (F302, F303)
- R303 The C-HLD Board should require a roll call vote on all voting decisions. (F303)
- R304 The Coalinga-Huron Library's weeding policy should be consistent with Fresno County's / the American Library Association's guidelines. (F301, F308)
- R305 C-HLD Board Meetings need to be electronically recorded. (F303, F305, F306)
- R306 Minutes of the C-HLD Board Meetings need to be more detailed and written in a format that is easy to follow. (F303, F305, F306)
- R307 C-HLD policies and procedures need to be updated. (F301, F308)
- R308 C-HLD needs to have comprehensive records and receipts of all transactions regarding books and other materials permanently removed from the library. (F301, F308)
- R309 The C-HLD Board and Library Administration/Management need to effectively communicate with the community. (F301, F302, F303, F305, F307, F310)
- R310 In following their mission statement, the C-HLD Board and Library Administration/Management/Staff need to make operations and customer relations a priority. (F301, F302, F303, F307, F308)
- R311 The C-HLD Board and the Library Administration/Management need to become more transparent and accessible to the community. (F301, F302, F303, F305, F307, F308, F310)
- R312 The C-HLD Board needs to oversee improvement in the working relationship between the Coalinga Library Administration/Management and staff which will, in turn, improve the atmosphere and help customer relations. (F302, F303, F307, F308)
- R313 The C-HLD mission statement should be the guide for all library operations. (F307)
- R314 The grand jury suggests that the renovation of the Coalinga Library should not be further delayed. (F309, F310)

## **REQUEST FOR RESPONDANTS**

Pursuant to Penal Code Section 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**

Sylvia Archibald, Coalinga Library Director (F301, F305, F307, F308, F309, F310, R304, R307, R308, R309, R310, R311, R312, R313, R314)

Roger Campbell, Superintendent of the Coalinga-Huron Joint Unified School District (F302, F303, R301, R302)

Sylvia Hunt, Coalinga-Huron Library District Board President (F301, F302, F303, F305, F306, F307, F308, F309, F310, R301, R302, R303, R304, R305, R306, R307, R308, R309, R310, R311, R312, R313, R314)

Ron Ramsey, Coalinga Mayor (F309, F310, R314)

Ramon Zubiri, Coalinga-Huron Joint Unified School District Board President (F302, F303, R301, R302)

### **Sources and References**

American Library Association Bibliography – Weed to achieve: a fundamental part of the public library mission?

Building Improvements Report – Coalinga Library (Noll & Tam)

C-HLD Budget 2010-2011

C-HLD Employee Handbook

C-HLD Financial Records 2010-2011

C-HLD Policy and Procedures

C-HLD Strategic Plan of 2008

C-HLD Weeding Policy

California Education Code

Coalinga-Huron Unified School District Library District Audited Financial Statement  
2009-June 30, 2010

Coalinga newspaper articles

Community Needs Assessment & Plan of Services for C-HLD

Complainant

Fresno Bee newspaper articles

Fresno County Public Library Weeding Standards

Internet Searches

Interviewees

Library Staff

Noll & Tam (Floor Plans) Renovation Project – Coalinga Library

Proposal for Community Needs Assessment & Plan of Service for C-HLD



## *Superior Court of California County of Fresno*

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### **MEDIA ADVISORY**

April 23, 2012

**For More Information, Contact:**  
Sherry Spears, Juror and Public Services Manager  
Media Coordinator  
(559) 457-1605  
[sspears@fresno.courts.ca.gov](mailto:sspears@fresno.courts.ca.gov)

**What: Release of 2011-2012 Grand Jury Final Report #3**

**When: Monday, April 24, 2012**

The 2011-2012 Fresno County Grand Jury will release Final Report #3 on Monday, April 24, 2012.

The Grand Jury issues a consolidated Final Report at the end of its fiscal term, but may issue midterm final reports at any time during its term of service.

The report will be available in pdf format on the Fresno County Superior Court website at [www.fresnosuperiorcourt.org](http://www.fresnosuperiorcourt.org), click on "Jury" and then "Grand Jury"; the report will be indexed by the number and the year.

###



# County of Fresno

GRAND JURY

April 17, 2012

Sylvia Archibald, Director of Library Services  
Coalinga-Huron Library District  
305 N. 4th Street  
Coalinga, CA 93210

The enclosed Grand Jury Final Report #3 2011-2012 has been provided to you pursuant to Penal Code section 933.05, subdivision (f), which states as follows;

“A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. **No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.**”

(Emphasis added).

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“(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and

county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury...”

This is the only notice that you will receive of the Grand Jury’s Final Report and your legal obligations. If you have any questions you may call the Grand Jury Liaison, Sherry Spears, at (559) 457-1605 between the hours of 8:00 a.m. – 5:00 p.m., Monday through Friday.

*Steven Fortner, Foreman*  
*2011-2012 Fresno County Grand Jury*



# County of Fresno

GRAND JURY

April 17, 2012

Roger Campbell, Superintendent  
Coalinga-Huron Joint Unified School District  
657 Sunset Street  
Coalinga, CA 93210

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*Steven Fortner, Foreman*  
*2011-2012 Fresno County Grand Jury*



# County of Fresno

GRAND JURY

April 17, 2012

Sylvia Hunt  
Coalinga-Huron Library District Board President  
657 Sunset Street  
Coalinga, CA 93210

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*Steven Fortner, Foreman*  
*2011-2012 Fresno County Grand Jury*



# County of Fresno

GRAND JURY

April 17, 2012

Ron Ramsey, Mayor  
Coalinga City Council  
155 W. Durian  
Coalinga, CA 937210

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*Steven Fortner, Foreman*  
*2011-2012 Fresno County Grand Jury*



# County of Fresno

GRAND JURY

April 17, 2012

Ramon Zubiri  
Coalinga-Huron Joint Unified School District Board President  
657 Sunset Street  
Coalinga, CA 93210

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*Steven Fortner, Foreman*  
*2011-2012 Fresno County Grand Jury*

# RESPONSES

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- A. ROGER B. CAMPBELL Superintendent,  
Coalinga-Huron Joint Unified School District  
F302  
R301 through R302
- B. RAMON J. ZUBIRI Board Member,  
Coalinga-Huron Joint Unified School District  
F302 through F303  
R301 through R302
- C. SYLVIA HUNT Board Member,  
Coalinga-Huron Joint Unified School District  
F301 through F310  
R301 through R314
- D. SYLVIA ARCHIBALD Library Director,  
Coaling-Huron Library District  
F301 through F310  
R304 through R314





# COALINGA-HURON JOINT UNIFIED SCHOOL DISTRICT

"TOGETHER WE CAN MAKE IT HAPPEN"

657 SUNSET STREET  
COALINGA, CA 93210

(559) 935-7500  
FAX (559) 935-5329

June 5, 2012

Fresno County Grand Jury  
Steven Fortner, Foreman  
1100 Van Ness Ave.  
Fresno, CA 93724-0002

*RE: RESPONSE TO FINDINGS (GRAND JURY FINAL REPORT #3):*

F302 - The C-HLD Board meets on the second meeting of the month when the C-HJUSD has two meetings. The C-HLD will meet at the same single meetings when C-HJUSD has only one meeting. The C-HLD meets prior to the 6:30 p.m. starting time for the C-HJUSD meeting. It is unclear of the starting time for the C-HLD meetings, but there have been occasions when the start of the C-HJUSD meeting was delayed due to the length of the C-HLD meeting. The meetings are not held at the same location, but are held in the same community.

F302 - The members of the C-HLD Board are the same for the C-HJUSD Board. The members are elected for the both boards during the same election, although the C-HLD Board does not appear on the ballot.

*RESPONSE TO RECOMMENDATIONS:*

R301 - Having two separate boards consisting of different elected individuals would benefit both the C-HLD and the C-HJUSD.

R302 - Once two separate boards are established then two different meeting days and times should be established. This would permit C-HLD to conduct their meetings without a limited timeframe and would allow for better representation and participation from the community members. It would also make allowances for other individuals to be involved in one of the two districts, if they wish to participate.

Roger B. Campbell   
Superintendent

---

**Board of Trustees:**

Ramon J. Zubiri, President; Francisco J. Chavez, Vice President; Sylvia Hunt, Clerk; Patty Alvarado, Member; Johny Albrecht, Member

**Administration:**

Roger B. Campbell, Superintendent  
Joseph E. Casarez, Associate Superintendent of Instructional Services  
Jim Allen, Assistant Superintendent of Business Services  
Scott Yeager, Director of Human Resources  
Shirley Marsh, Director of Accountability & Curriculum



# COALINGA-HURON JOINT UNIFIED SCHOOL DISTRICT

**"TOGETHER WE CAN MAKE IT HAPPEN"**

657 SUNSET STREET  
COALINGA, CA 93210

(559) 935-7500  
FAX (559) 935-5329

June 13, 2012

Fresno County Grand Jury  
Steven Fortner, Foreman  
1100 Van Ness Ave.  
Fresno, CA 93724-0002

**RE: RESPONSE TO FINDINGS (GRAND JURY FINAL REPORT #3):**

F302 - I have been on the School District and Library District's Board of Trustees for over 20 years. On the second meeting of the month we always convened the Library Board meeting as our one and only meeting of the month. We would from time to time convene a special meeting if it was deemed necessary. In the past two years as the issues became contentious and controversial, our regular Library times ran over into our School Board meeting starting time of 6:30 p.m. It is true that the Library meetings are held at different places than the School Board meetings.

F303 - Same boards - We were created by legal vote and instrument in 1912 as one and the same vote. When I was first elected to the School Board in 1991 I did not realize that I was also elected to the Library Board, no one informed me or contacted me to educate me or as is often done to curry favor. I missed my first meeting, much to my chagrin, however, I rarely missed another meeting, that I can remember.

**RESPONSE TO RECOMMENDATIONS:**

**R301** – I believe that given the scope of interest and clientele that the two boards serve, it would be in the best interest of the District that we have two (2) separately elected boards that would serve the C-HLD and the C-HJUSD and be a better fit for the communities of Coalinga and Huron.

**R302** – This is the best case scenario for our District. The people of our District are really energized about the Library and its operations. The meeting attendees have some very real and serious passions about the actions of our Board and its contracted consultants and architects. I believe that had there been better attendance and research by our Board, we would not have arrived at this state of evolvement. We have quite a few people who have been very diligent in their research into our dealings and are very committed to make our libraries what they could have been. It is obvious that our concerned citizens are driven by the overwhelming love for our libraries.

Ramon J. Zubiri  
Board Member

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**Board of Trustees:**

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**Administration:**

Roger B. Campbell, Superintendent  
Joseph E. Casarez, Associate Superintendent of Instructional Services  
Jim Allen, Assistant Superintendent of Business Services  
Scott Yeager, Director of Human Resources  
Shirley Marsh, Director of Accountability & Curriculum

May 31, 2012

The Honorable Gary D. Hoff  
Fresno Superior Court  
1100 Van Ness Avenue  
Fresno, Ca. 93724

Re: Coalinga District Library Grand Jury Responses

Dear Honorable Judge Hoff:

Please find attached my responses to the Grand Jury #3 Final Report for your review. I offer these responses, after much time and thought, with the hope that we can now move forward.

Our Libraries are gems in our communities and deserve the very best we can offer for our patrons.

Respectfully submitted:

Sylvia Hunt, Board Member  
510 W. Madison St.  
Coalinga, Ca. 93210

559 935 8411

59A  
5/31/12

May 8, 2012

Sylvia Hunt: Responses to Grand Jury as requested.

Please be advised that I am not now nor have I been President on the Library Board since December 2011. My responses are to the best of my knowledge at this time.

F301: A new Weeding Policy is currently being developed for adoption.

F302: A new calendar for 2012-2013 is being studied for adoption. The calendar will include dates, times, places.

F303: Currently operating status is by State Statute. Statute was voted in by public vote. I believe the Special District status would have to be voted out by the citizens of Coalinga and Huron.

F304: True

F305: Verbatim minutes were not being kept until the minutes became an issue. Board meetings are now being taped and reported verbatim.

F306: True

F307: Mission statements changed often. I don't know if the Board was always made aware of the changes.

F308: Procedures on daily sales such as pencils, old books, obsolete decorations, were not reported to the Board. Staff felt it was insignificant. Corrective procedures are being discussed with staff by administrator for best process to be implemented.

F309: Administrator is currently working on obtaining quotes for AC system Coalinga Site. I believe ADA Compliance and safety issues will be top priority.

F310: Architects were hired to modify plans for Huron Branch. Plans have been readied for "going to bid". I believe ADA Compliance and safety issues will be addressed first.

R301: CHLD Board & CHJUSD Board becoming separate entities will need (I believe) to be studied (the pros, cons, and legal issues) because it exists by state statute (F302, F303)

R302: Annual calendar for 2012 – 2013 for dates, time, and places is currently being discussed for Board action. Length of time for meetings will be extended I believe. Special meetings for special issues can be and are scheduled with a 24 hour notice. (F302, F303)

R303 Under advisement. Resolutions have always called for roll call vote (303)

R304: Current Director is developing Weeding Policy using American Library Association and Fresno County Library as resource for Board action. Prior weeding was done per policy as far as I know. (F301, F308)

R305: Board meetings are currently being tape recorded. Implemented last year. (F303, F305, F306)

R306: Verbatim minutes are being reported to board for approval. Implemented last year. (F303), F305, F306)

R307: Work in progress (F301, F308)

R308: Director is working on best method to correct problem. Director has purchased a cash register for recording daily pencil and other incidental sales. Staff is currently being trained for appropriate use. (F301, F308)

R309: Director and Board are working on the progress of this policy. (F301, F302, F308, F305, F307, F310)

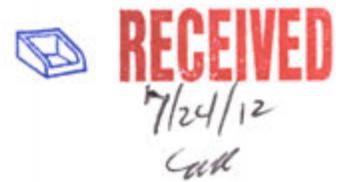
R310: Director and staff are working on a new Mission Statement to be presented to Board for approval. (F301, F302, F303, F307, F308)

R311: I have a listed phone number, the school district has my e-mail address on its home page, my address is listed in local phone book, I shop locally, dine locally, visit schools and library activities often, staff knows me by first name. I have always made myself accessible and continue to do so. (F301, F302, F303, F305, F307, F308, F310)

R312: Work in progress. Last year, two Board members were appointed by the Board to meet with all staff to listen to their complaints. They met with every employee and recorded their remarks. The complaints were reviewed by the board and sent to the District's attorney. There were no grievable offenses identified, mostly comments were about their dislike of the Associate Librarian. The Director was disliked as well. The new Director is working hard to gain the respect, and the trust of the staff. (F302, F303, F307)

R313: Work in progress. The director and staff are working on new Mission Statement. (307)

R314: The renovation process has begun on the Huron Branch. We have an absolute beginning deadline in order not to lose our Federal Grant. We are also working on quotes for our Coalinga Branch's AC system repairs. Work in progress. (F309, F310)



## REQUEST FOR RESPONDANTS

Pursuant to Penal Code Section 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

Sylvia Archibald, Coalinga Library Director (F301, F305, F307, F308, F309, F310, R304, R307, R308, R309, R310, R311, R312, R313, R314)

Roger Campbell, Superintendent of the Coalinga-Huron Joint Unified School District (F302, F303, R301, R302)

Sylvia Hunt, Coalinga-Huron Library District Board President (F301, F302, F303, F305, F306, F307, F308, F309, F310, R301, R302, R303, R304, R305, R306, R307, R308, R309, R310, R311, R312, R313, R314)

Ron Ramsey, Coalinga Mayor (F309, F310, R314)

Ramon Zubiri, Coalinga-Huron Joint Unified School District Board President (F302, F303, R301, R302)

### Sources and References

American Library Association Bibliography – Weed to achieve: a fundamental part of the public library mission?  
Building Improvements Report – Coalinga Library (Noll & Tam)  
C-HLD Budget 2010-2011  
C-HLD Employee Handbook  
C-HLD Financial Records 2010-2011  
C-HLD Policy and Procedures  
C-HLD Strategic Plan of 2008  
C-HLD Weeding Policy  
California Education Code  
Coalinga-Huron Unified School District Library District Audited Financial Statement 2009-June 30, 2010  
Coalinga newspaper articles  
Community Needs Assessment & Plan of Services for C-HLD  
Complainant  
Fresno Bee newspaper articles  
Fresno County Public Library Weeding Standards  
Internet Searches  
Interviewees  
Library Staff  
Noll & Tam (Floor Plans) Renovation Project – Coalinga Library  
Proposal for Community Needs Assessment & Plan of Service for C-HLD

S. Archibald

These events took place before I started my employment. I will do my best to answer.

F301: Extensive weeding done prior to my employment with the district. It was said to be in line with the ALA general guidelines.

F305: minutes of board meeting as I understand were taken and transcribed by a non-board member- the administrative assistant of the library did and still does the minutes.

F307: The mission at the time of arrival for employment was to make customers a priority and to work as a team. Discontent seem to create obstacles.

F308: I have modified and created some policies and procedures. Still working on others. Have procured a cash register with training for staff in order to improve money record keeping. Also bill pay and reporting has moved to the CPA office. Weeding is done on a regular basis so as to keep manageable records of discards.

F309: NO

F310: The plans were returned to Coalinga in Jan 2012.

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R304: Yes

R307: Since my employment I have been working on it.

R308: Yes, Working on improvements including informing staff re: the permanent removal of district property.

R309: Yes

R310: Yes

R311: Understood

R312 No Comment

R313: Mission statement modified to include such.

R314: After the Huron remodel Coalinga will be next.

# REPORT #4

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CITY AND COUNTY  
OF FRESNO CONTRACTS  
*with the*  
CENTRAL CALIFORNIA SPCA



FILED

MAY 03 2012

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

**2011-2012  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#4**

**Fresno County  
2011 - 2012 Grand Jury  
Report #4**

**City and County of Fresno Contracts  
with the Central California SPCA**

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**INTRODUCTION**

In response to a citizen's complaint, the Fresno County Grand Jury 2011-2012 investigated the contractual relationships between the City and County of Fresno and the Central California Society for the Prevention of Cruelty to Animals (CCSPCA). The complaint alleged inefficient use of government funds, poor record-keeping, inadequate service, inhumane treatment of animals, and secrecy of the CCSPCA.

**BACKGROUND**

The City and the County of Fresno have contracted with the CCSPCA for pound services since 1951.

A county is required to impound all dogs found running at large in violation of Food & Agricultural Code (F & A) Section 31105.

The board of supervisors may appoint proper persons to take up, impound, and kill dogs pursuant to this division [of the code] or may enter into a contract with any humane society or other organization or association [for such services]. (F & A Section 31106 & Subsection 31106(a))

First established in 1946 as the Fresno Humane Society, the Humane Society was responsible for enforcing animal control laws and preventing cruelty to animals. In 1958, the organization was reorganized as the Central California Society for the Prevention of Cruelty to Animals and the Fresno Humane Society.

The 1992-1993 Fresno County Grand Jury received a complaint with regard to the operation of the CCSPCA. The complainant alleged that 1) the CCSPCA has no accountability to the City and/or the County of Fresno, 2) the files of the CCSPCA are improperly kept, 3) the CCSPCA does not treat animals humanely, 4) the staff of the CCSPCA are not properly trained, and 5) animals are being sold out of the back door.

The Fresno County Grand Jury of 1992-1993 investigated these allegations; subsequent investigations were conducted in 1993-1994 and 1994-1995 by the Fresno County Grand Juries. Reports for each of these investigations are on file.

The 2011-2012 Fresno County Grand Jury reviewed IRS Form-990 records of the CCSPCA which revealed that since mid-1997 the City and County of Fresno have supplied approximately fifty percent of CCSPCA's annual revenue. During the same timeframe, the funding supplied by the City and County was more than fifty percent of expenses.

In previous years, the Board of Directors of the CCSPCA held meetings open to the public. Recently, the Board decided that as a nonprofit organization with no governmental agent on the board they are not bound by the Brown Open Meeting Act and, therefore, the meetings were closed to the public.

## **PURPOSE OF THE INVESTIGATION**

1. Evaluate allegations within the purview of the grand jury.
2. Determine the grand jury's jurisdiction with regard to the complaint.
3. Assess the transparency of the CCSPCA regarding its operation, communication with the public and governmental agencies, and its use of public funds.

## **DISCUSSION**

As background, the grand jury studied the contracts between the CCSPCA, the City and County of Fresno. In addition, the grand jury studied the reports submitted to the City and County of Fresno from the CCSPCA, the external audit documents, as they relate to the contracts, and correspondence between the CCSPCA and the City and County of Fresno.

Representatives of the City and County of Fresno were interviewed.

Due to the CCSPCA being a nonprofit corporation that was not established by or operated as an agent of a city or county agency, the grand jury's powers to investigate activities of the CCSPCA are limited by the contract with the City and County of Fresno as per California Penal Code (PC), Section 933.6. The grand jury may investigate whether the city or county contracts are being fulfilled and whether the use of taxpayer funds for this purpose has merit and whether the use of taxpayers' funds is being maximized.

As part of the filings with the IRS, a nonprofit organization is required to file a Form 990. The 2009 Form 990 filed by the CCSPCA states that its bylaws are available to the public upon request.

Recently a request for the bylaws of the CCSPCA was made. After being told the bylaws were not readily available. An official of the CCSPCA explained that the request for the bylaws must

be made in writing, stating the reason for the request and its anticipated use. The request would go before the Board of Directors for a vote of approval before the bylaws would be provided. It has been noted that as of 3-28-2012 the CCSPCA bylaws are now posted on their website. Exactly when they were posted is unclear.

The 2009 IRS Form 990 states the CCSPCA's Board meetings are open to the public. Our investigation revealed that the Board meetings are now closed to the public. A letter from the CCSPCA stated that because the CCSPCA is a nonprofit organization it is not required to open its meetings to the public. A recent request by a local public official to attend a CCSPCA Board meeting was denied.

Currently, neither the City nor the County of Fresno regularly audits financial records of the CCSPCA as authorized in the contracts. Further, even though an employee of the County of Fresno routinely visits the facilities, the City of Fresno does not follow this procedure.

The grand jury requested the CCSPCA's documentation relating to financial records, audit reports, agenda and minutes, euthanasia and adoption reports and other relevant documents and reports from 2007 to present. The grand jury requested that this documentation expressly include the expenditures by category for each contracted service with the City and County of Fresno. The CCSPCA denied the request, stating it did not have the staff to fulfill the request and was not required to comply, per PC Section 933.6. The City and County contracts have sections allowing either of them to audit the CCSPCA's books to determine how the money is being utilized.

The contracts require that separate information be kept, showing what charges are related to City and County of Fresno expenses, as opposed to CCSPCA normal operating expenses. No audit information has been found for the time period from 2001 to present that would indicate what money is being used specifically for these separate expenses.

## **CONCLUSION**

- CCSPCA is an important community asset for the citizens, pets and wildlife of the City and County of Fresno.
- The City and County of Fresno have contracted for and funded approximately \$3 million per year to the CCSPCA to provide effective animal control services.
- CCSPCA fulfills a dual role as both a private, nonprofit organization and as a contractor to the City and County of Fresno for animal control services.
- The documents submitted by the CCSPCA to the City and County of Fresno do not fully account for the use of all funds received.
- The CCSPCA does not open its Board meetings to the public.

## **FINDINGS**

- F401 The organizational status of the CCSPCA does not fall under PC Section 933.6.
- F402 Both the City and County of Fresno have the right to audit the CCSPCA's use of public funds and records relating to these contracts.
- F403 Under its contract with the CCSPCA, the County Board of Supervisors can request that a CCSPCA representative attend a Fresno County Board of Supervisors meeting to answer questions regarding the contract.
- F404 The CCSPCA's meetings have been closed to the public and to local elected officials.
- F405 The CCSPCA has not been audited by the County of Fresno for at least ten years.
- F406 The CCSPA does not adequately detail the expenditures and does not report all of the information required by the City of Fresno contract.

## **RECOMMENDATIONS**

- R401 The City and County of Fresno should establish a procedure to process complaints received regarding the CCSPCA. The Board of Supervisors and City Council can request that a representative of the CCSPCA attend their meetings to respond to any matter arising from their contracts. (F401, F402, F403, F404)
- R402 Because the City and County of Fresno provide over half of the operating funds of the CCSPCA, it should be transparent and more accountable to the taxpayers of Fresno. (F402, F403, F404, F405)
- R403 The City and/or County of Fresno should conduct an audit of the CCSPCA to determine whether it has complied with the 1992 audit recommendations. (F402, F405)
- R404 The City and County of Fresno should receive monthly and annual reports in the format originally agreed to by the City of Fresno and the CCSPCA. (F402, F403, F404)
- R405 The City and/or County of Fresno should have representation at the CCSPCA Board of Directors meetings to monitor CCSPCA's spending of public funds and provide transparency to the public. (F402, F404)

## REQUEST FOR RESPONDENTS

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

### RESPONDENTS

City of Fresno, Parks, After School, Recreation & Community Services (F402, R402, R403, R404, R405)

County of Fresno, Department of Public Health (F402, R401, R402, R403, R404, R405)

Vicki Crow, Fresno County Auditor (F402, F403, R401, R402, R403)

Fresno City Council (F401, F402, F404, F405, R402, R403, R404, R405)

Fresno County Board of Supervisors (F401, F402, F404, F405, R401, R402, R403, R404, R405)

## SOURCES

### **Records**

1992-1993, 1993-1994, and 1994-1995 Grand Jury Reports - CCSPCA

Animal Adoption 08-10

Annual Rabies Control Activities 2007-2010

CCSPCA City Contracts 1999-2000, 2000-2001, and 2001-2002

CCSPCA City Contract Addendums Nos. 1 - 10

CCSPCA City Report

CCSPCA Financial Statement 6-30-08, 6-30-09, and 6-30-10

CCSPCA Report 2007 – 2011

Channel 26 News

Channel 30 News

City of Fresno Municipal Code

Communications with the CCSPCA

County of Fresno Agenda Item 46 (CCSPCA Contract) 2007-2008

County of Fresno Agenda Item 54 (CCSPCA Contract) 2008-2009

County of Fresno Agenda Item 40 (CCSPCA Contract) 2009-2010

County of Fresno Agenda Item 53 (CCSPCA Contract) 2010-2011

County of Fresno Agenda Item 43 (CCSPCA Contract) 2011-2012

County of Fresno Ordinance

Fresno Accounting Paperwork 2010-2011

Fresno County Payments to CCSPCA 07-11

Internet Searches

IRS Tax Forms 1997 – 2009 (via Guide Star)

KMJ Radio Station 580  
SPCA Revenue Fiscal Report 10-11  
The Fresno Bee

**Interviews**

Complainant

Member from Fresno County Department of Public Health

Member of the City of Fresno City Council

Member of the County of Fresno Board of Supervisors

Member from Parks, After School, Recreation & Community Services

# RESPONSES

---

- A. DEBORAH A. POOCHIGIAN  
Chairman, Board of Supervisors,  
County of Fresno  
F401 through F405  
R401 through R405
- B. EDWARD MORENO Director-Health Officer,  
County of Fresno  
F402  
R401 through R405
- C. VICKI CROW Auditor-Controller/  
Treasurer-Tax Collector,  
County of Fresno  
F402 through F403  
R401, R402 and R403
- D. BRUCE A. RUDD Assistant City Manager,  
City of Fresno  
F401 through F402, F404 through F405  
R402 through F405





# County of Fresno

## BOARD OF SUPERVISORS

Chairman <b>Deborah A. Poochigian</b> District Five	Vice-Chairman <b>Henry Perea</b> District Three	<b>Phil Larson</b> District One	<b>Susan B. Anderson</b> District Two	<b>Judith G. Case</b> District Four	<b>Bernice E. Seidel</b> Clerk
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June 25, 2012

The Honorable Gary D. Hoff  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

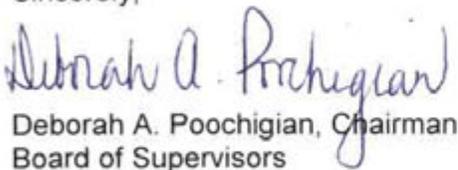
RE: RESPONSE TO THE 2011-2012 FRESNO COUNTY GRAND JURY FINAL REPORT #4

Dear Judge Hoff:

The Board of Supervisors and Department of Public Health have approved their official responses to the findings and recommendations pertaining to Fresno County contained in the 2011-12 Grand Jury Final Report #4. The responses are submitted herewith in fulfillment of Penal Code Section 933(c).

On behalf of the Fresno County Board of Supervisors and the Department of Public Health, 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,

  
Deborah A. Poochigian, Chairman  
Board of Supervisors

Enclosure

County of Fresno  
Board of Supervisors  
and  
Department of Public Health  
RESPONSE TO THE  
2011-2012  
FRESNO COUNTY GRAND JURY  
FINAL REPORT #4



**CITY AND COUNTY OF FRESNO CONTRACTS WITH THE CENTRAL CALIFORNIA  
SPCA**

Please find below the Fresno County Board of Supervisors' response to the 2011-2012 Grand Jury Final Report #4.

**Findings**

**F401: The organizational status of the CCSPCA does not fall under PC Section 933.6.**

Section 933.6 of the California Penal Code states... "A grand jury may at any time examine the books and records of any nonprofit corporation established by or operated on behalf of a public entity the books and records of which it is authorized by law to examine, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such nonprofit corporation."

Since the SPCA was not established by nor is it operated on behalf of a public entity, Section 933.6 does not apply.

**F402: Both the City and County of Fresno have the right to audit the CCSPCA's use of public funds and records relating to these contracts.**

The County of Fresno has the right to audit records related to its contracts.

**F404: The CCSPCA's meetings have been closed to the public and to local elected officials.**

The CCSPCA has notified the County that its meetings are no longer open to the public. The Executive Director of the CCSPCA has indicated that County Board Members can participate in CCSPCA Board meetings if requested to be placed on their agenda.

**F405: The CCSPCA has not been audited by the County of Fresno for at least ten years.**

This finding is correct.

**Recommendations**

**R401: The City and County of Fresno should establish a procedure to process complaints received regarding the CCSPCA. The Board of Supervisors and City Council can request that a representative of the CCSPCA attend their meetings to respond to any matter arising from their contracts. (F401, F402, F403 and F404)**

As a matter of practice, Fresno County responds to all complaints from County constituents regarding services provided by the CCSPCA. Future animal control service contracts will also include a complaint response provision. The Fresno County contract includes a provision that allows for the County to request a CCSPCA representative attend County Board of Supervisors' meetings to address issues regarding contracted services.

**R402: Because the City and County of Fresno provide over half of the operating funds of the CCSPCA, it should be transparent and more accountable to the taxpayers of Fresno. (F402, F403, F404 and F405)**

Contractors funded with any amount of public funds should be expected to fully disclose expense detail and comply with any other reporting provisions as outlined in a contract.

**R403: The City and/or County of Fresno should conduct an audit of the CCSPCA to determine whether it has complied with the 1992 audit recommendations. (F402 and F405)**

The CCSPCA has not been audited by the County in over ten years; therefore, the Board supports an audit by the Fresno County Auditor-Controller/Treasurer-Tax Collector.

**R404: The City and County of Fresno should receive monthly and annual reports in the format originally agreed to by the City of Fresno and the CCSPCA. (F402, F403, F404)**

The CCSPCA has been providing the County with reports in accordance with the reporting provision of the Fresno County contract. Future animal control service contracts may include more comprehensive data reporting provisions.

**R405: The City and/or County of Fresno should have representation at the CCSPCA Board of Directors meetings to monitor CCSPCA's spending of public funds and provide transparency to the public. (F402 and F404)**

Regular attendance at the board meetings of contract service providers is not the County's preferred method of monitoring the spending of public funds; rather, it is through clear reporting provisions and diligent contract monitoring that fiscal accountability from a contractor can be achieved. County staff has attended CCSPCA Board meetings to discuss specific issues. The CCSPCA has extended an invitation for County staff or board members to attend board meetings to discuss issues when necessary.



**County of Fresno**  
**DEPARTMENT OF PUBLIC HEALTH**  
**EDWARD L. MORENO, M.D., M.P.H.**  
**DIRECTOR-HEALTH OFFICER**

June 6, 2012

Honorable Gary D. Hoff  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Ave.  
Fresno, CA 93721

Re: Response to the 2011-2012 Fresno County Grand Jury Report #4  
*City and County of Fresno Contracts with the Central California SPCA*

Dear Judge Hoff:

On May 1, 2012 the Fresno County, Department of Public Health received Grand Jury Report #4. The Department of Public Health is the contract administrator for the current and previous contracts between the County of Fresno and the Central California SPCA.

Following are my comments on 2011-2012 Fresno County Grand Jury Final Report #4.

Findings

The department agrees with Finding #402.

Recommendations

401: As a matter of practice, the Fresno County Department of Public Health responds to all complaints from County constituents regarding services provided by the SPCA. Future animal control service contracts will also include a complaint response provision. The Fresno County contract includes a provision that allows for the County to request a CCSPCA representative attend County Board of Supervisors' meetings to address issues regarding contracted services.

402: Contractors funded with any amount of public funds should be expected to fully disclose expense detail and comply with any other reporting provisions as outlined in a contract.

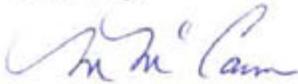
403: The CCSPCA has not been audited by the County in over ten years; therefore, the Department supports an audit by the Fresno County Auditor-Controller/Treasurer-Tax Collector.

Honorable Gary D. Hoff  
Presiding Judge  
June 6, 2012  
Page 2

404: The CCSPCA has been providing the County with reports in accordance with the reporting provision of the Fresno County contract. Future animal control service contracts may include more comprehensive data reporting provisions.

405: Regular attendance at the board meetings of contract service providers is not the County's preferred method of monitoring the spending of public funds; rather, it is through clear reporting provisions and diligent contract monitoring that fiscal accountability from a contractor can be achieved. County staff has attended CCSPCA Board meetings to discuss specific issues. The CCSPCA has extended an invitation for County staff or board members to attend board meetings to discuss issues when necessary.

Sincerely,



<sup>17</sup> Edward L. Moreno, M.D., M.P.H.  
Director-Health Officer

ELM:DP:kk

Cc: Board of Supervisors  
John Navarrette, County Administrative Officer  
Steve Fortner, Foreman, 2010-2011/Fresno County Grand Jury  
Brandi L. Orth, County Clerk/Registrar of Voters

***Dedicated to Public Health***

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# County of Fresno

VICKI CROW, C.P.A.

AUDITOR-CONTROLLER/TREASURER-TAX COLLECTOR

July 13, 2012

Grand Jury, Foreman  
2220 Tulare Street, Plaza Level  
Fresno, CA 93721



**RECEIVED**

7/24/12  
CJW

**RE:** Responses to 2011-12 Fresno County Grand Jury Report #4

Please find attached, the County of Fresno Auditor-Controller/Treasurer-Tax Collectors responses to the 2011-12 Grand Jury Final Report #4 findings F402 & F403 and recommendations R401, R402, & R403.

Should have any questions or comments regarding our responses, please contact Lawrence Seymour, Accounting-Financial Division Chief, at 600-1373.

Sincerely,

Vicki Crow, CPA  
Auditor-Controller/Treasurer-Tax Collector

VC:LS

[Attachment]

## **ATTACHMENT**

### **Grand Jury Report #4 Central California Society for the Prevention of Cruelty to Animals Findings & Recommendations County of Fresno Auditor-Controller/Treasurer-Tax Collector Responses**

The County of Fresno Auditor-Controller/Treasurer-Tax Collector agrees with the finding (F402) and recommendations (R402 & R403). We are in contact with the Central California Society for the Prevention of Cruelty to Animals (CCSPCA), County of Fresno Public Health Department, and the City of Fresno, and are in the process of conducting a contract audit of the CCSPCA for the fiscal year ended June 30, 2012. Upon completion, the audit report will be presented to the County of Fresno Audit Committee and will be placed on the County of Fresno's website. A copy of the completed audit will be forwarded to the Grand Jury. We anticipate, with cooperation from the City of Fresno, County of Fresno Department of Public Health, and the CCSPCA, that the audit will be complete within 90 days.

Although the Auditor-Controller/Treasurer-Tax Collector concurs with your finding (F403) and recommendation (R401), it is not within the powers and authorities of this office to compel CCSPCA management and personnel to report to the County of Fresno Board of Supervisors or the City of Fresno Council. We would defer to those bodies for corrective actions regarding these findings.



**BRUCE A. RUDD**  
Assistant City Manager

The Honorable Gary D. Hoff  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

Re: Response to 2011-2012 Fresno County Grand Jury Report #4  
*City and County of Fresno Contracts with the Central California SPCA*

Dear Judge Hoff:

The following contains the City of Fresno's responses to the 2011-2012 Grand Jury Findings and Recommendations. The responses to the findings were prepared by City staff on behalf of the Mayor and City Council and approved by the City Council of the City of Fresno on August 16, 2012.

**FRESNO CITY COUNCIL RESPONSES TO 2011-2012 GRAND JURY REPORT #4**

**Finding 401: The organizational status of the CCSPCA does not fall under PC Section 933.6.**

Response: Section 933.6 of the California Penal Code states that, "A grand jury may at any time examine the books and records of any nonprofit corporation established by or operated on behalf of a public entity the books and records of which it is authorized by law to examine, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing those duties of such nonprofit corporations.

While the CCSPCA is operating on behalf of the City in providing those services listed under the Agreement, neither the CCSPCA nor its parent corporation SPCA was established by or operated on behalf of a public entity. Therefore, Penal Code Section 933.6 does not apply to the CCSPCA.

**Finding 402: Both the City and County of Fresno have the right to audit the CCSPCA's use of public funds and records relating to those contracts.**

Response: Under the City's Agreement with CCSPCA, the City has the right to examine and audit CCSPCA's records pertaining to the services provided to the City with their funds. In addition, the City and County have incorporated additional reporting requirements into its recently released Request for Proposal (RFP) that should improve the level of monitoring and reporting required by a new vendor.

**Finding 404: The CCSPCA's meetings have been closed to the public and to local elected officials.**

Response: The Executive Director of the CCSPCA has informed the Fresno City Council that their meetings are no longer open to the public. However, the Executive Director has stated to Council that any request to appear before the CCSPCA Board will be considered for placement on the Board's next agenda.

**Finding 405: The CCSPCA has not been audited by the County of Fresno for at least ten years.**

Response: The City of Fresno does not have sufficient information regarding whether the County of Fresno has audited the CCSPCA during the past ten years. However, both the County and City have issued a Request for Proposals that includes language that will allow both agencies to effectively monitor the performance of a new provider

**Recommendation 402: Because the City and County of Fresno provide over half of the operating funds of the CCSPCA, it should be more transparent and more accountable to the taxpayers of Fresno. (Findings 402, 403, 404, 405)**

Response: Additional steps have been incorporated into the Animal Control Services RFP that should provide for a higher level of accountability to the public. While a point of discussions within the community, it should be noted that the City has agreements with other non profits in which City resources are provided without a requirement to have public meetings.

**Recommendation 403: The City and/or County of Fresno should conduct an audit of the CCSPCA to determine whether it has complied with the 1992 audit recommendations. (Findings 402 and 405)**

Response: The City Council would support an audit of the CCSPCA whether it is by the Fresno County Auditor-Controller/Treasurer-Tax Collector or any other qualified independent auditor.

**Recommendation 404: The City and County of Fresno should receive monthly and annual reports in the format originally agreed to by the City of Fresno and the CCSPCA. (Findings 402, 403 and 404)**

Response: Article IV of the Agreement between the CCSPCA and the City does provide for monthly and annual reports regarding service activities, income and an expense, complaints regarding services rendered, and dog bites and has been providing that information upon request. The City has taken steps to insure that such reporting is provided as required under a new Agreement.

**Recommendation 405: The City and/or County of Fresno should have representation at the CCSPCA Board of Directors meetings to monitor CCSPCA's spending of public funds and provide transparency to the public. (Findings 402 and 404)**

Response: As stated above, the new RFP contains provisions that will improve the level of reporting being provided by a new vendor. It should also be noted that the City has historically provided funding and/or facilities to other non profits in which the City does not require representation.

Responses by City of Fresno, PARCS Department are included below.

**ATTACHMENT A**

**CITY OF FRESNO, PARCS DEPARTMENT RESPONSES TO 2011-2012 GRAND JURY REPORT #4**

**Finding 402: Both the City and County of Fresno have the right to audit the CCSPCA's use of public funds and records relating to those contracts.**

Response: Under the City's Agreement with CCSPCA, the City has the right to examine and audit CCSPCA's records pertaining to the services provided to the City with their funds.

**Recommendation 402: Because the City and County of Fresno provide over half of the operating funds of the CCSPCA, it should be more transparent and more accountable to the taxpayers of Fresno. (Findings 402, 403, 404, 405)**

Response: Additional steps have been incorporated into the Animal Control Services RFP that should provide for a higher level of accountability to the public. While a point of discussions within the community, it should be noted that the City has agreements with other non profits in which City resources are provided without a requirement to have public meetings.

**Recommendation 403: The City and/or County of Fresno should conduct an audit of the CCSPCA to determine whether it has complied with the 1992 audit recommendations. (Findings 402 and 405)**

Response: The City would support an audit of the CCSPCA whether it is by the Fresno County Auditor-Controller/Treasurer-Tax Collector or any other qualified independent auditor.

**Recommendation 404: The City and County of Fresno should receive monthly and annual reports in the format originally agreed to by the City of Fresno and the CCSPCA. (Findings 402, 403 and 404)**

Response: Article IV of the Agreement between the CCSPCA and the City does provide for monthly and annual reports regarding service activities, income and an expense, complaints regarding services rendered, and dog bites and has been providing that information upon request. The City has taken steps to insure that such reporting is provided as required under a new Agreement.

**Recommendation 405: The City and/or County of Fresno should have representation at the CCSPCA Board of Directors meetings to monitor CCSPCA's spending of public funds and provide transparency to the public. (Findings 402 and 404)**

The Honorable Gary D. Hoff  
Re: City Responses to Grand Jury Report  
August 16, 2012  
Page 5

Response: As stated above, the new RFP contains provisions that will improve the level of reporting being provided by a new vendor. It should also be noted that the City has historically provided funding and/or facilities to other non profits in which the City does not require representation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce Rudd".

Bruce Rudd  
Assistant City Manager

c: Councilmembers  
Steve Fortner, Foreman 2010-2011/Fresno County Grand Jury  
Yvonne Spence, City Clerk

# REPORT #5

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“THE FRESNO FACTOR”



FILED

MAY 24 2012

FRESNO COUNTY SUPERIOR COURT

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

**2011-2012  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#5**

**Fresno County**  
**2011-2012 Grand Jury**  
**Report #5**  
**“The Fresno Factor”**

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## **INTRODUCTION**

In response to a complaint, the Fresno County Grand Jury investigated the working relationship between the City of Fresno and the construction industry, particularly dealing with the construction of city projects.

## **BACKGROUND**

Historically, there has been a contentious relationship between the construction industry and the City of Fresno, which became commonly known as “The Fresno Factor.”

## **PURPOSE OF INVESTIGATION**

- Examine the term “Fresno Factor” as it is used by the construction industry to describe experiences in dealing with the City of Fresno.
- Explore complaints of poor relationships between the City of Fresno, the Public Works divisions, their employees, and independent contractors.
- Determine if these relationships cause added expense to the City and the taxpayers.

## **DISCUSSION**

Numerous individuals from the City of Fresno, other cities, and from the construction industry were interviewed during this investigation.

There was near unanimous agreement from interviewed construction industry representatives that dealing with the City of Fresno Public Works Department – in particular the Construction Management and Traffic & Engineering Services Divisions – was difficult at best, and has been the case for decades. The term “Fresno Factor,” as a general description of problems encountered by the construction industry in dealing with the City, surfaced early in the investigation.

The original use of the term “Fresno Factor” included the City of Fresno’s dealings with many types of businesses. Currently, the term is almost exclusively used in reference to the construction industry.

No one could recall how and when the term “Fresno Factor” came into being. From interviews with City personnel, there were some who acknowledged this term as descriptive of difficulties, others who denied awareness of the term, and it was even described as an “urban legend.”

This report presents information from statements by representatives of the construction industry and city employees and administrators.

## **FROM THE CONSTRUCTION INDUSTRY REPRESENTATIVES:**

The construction industry representatives interviewed by the grand jury expressed their opinions that the risk management requirements of the City were difficult and excessive. Testimony was heard that some bonding agencies questioned a contractor's interest in doing business with the City as bonds are necessary for a project. Furthermore, the grand jury heard testimony that surety companies may have refused to issue bonds. If so, the increased cost for the bonds would be passed on to the City in the form of higher bid amounts.

Contractors acknowledged that often, if not always, there are unforeseen problems with any construction project.

Contractors also contended that the cost for covering risk associated with a project usually falls totally on the contractor rather than the City or treated as an expense shared by both. Accordingly, contractors increase their bids to cover unforeseen problems or do not bid a project. A City administrator said that some bids tended to be outrageously high for City construction projects.

One source of conflict expressed by some contractors interviewed by the grand jury were problems encountered with the City's Traffic & Engineering Services Division. The major source of frustration is in resolving problems that arise during the course of construction. Projects can be halted for seemingly insignificant issues, and the time it takes to resolve an issue can be significant. Any inspector can put a stop to a job. These delays can cause excessive costs to the contractor for time lost on a project. When a problem presents itself, often a change order must be filed with the City which can take days to resolve.

The grand jury was told an uncooperative attitude exists in the Public Works Department. The grand jury heard testimony that it has been said that some City field-level employees feel that bosses come and go, but that they will be there forever.

One of the issues identified by contractors is the retention of fees held by the City. To help alleviate this problem, the City, as of January 2012, reduced the project retention fee from 10% to 5%. In addition, this fee could be held from 35 to potentially more than 90 days after the notice of completion is issued, causing financial difficulties for the contractors.

Contractors feel that City inspectors in the field seem to lack the authority to resolve problems, or choose not to exercise what authority they may have to resolve issues on site.

During testimony it was suggested that the grand jury examine the processes and working relationships at the Fresno Yosemite International Airport (FYI) because the situation there reportedly modeled good working relationships with contractors. The grand jury was told that FYI administration has written its own specifications, has dedicated inspectors and an on-site construction manager with the authority to negotiate solutions as problems arise. These procedures have created a favorable working relationship with contractors. However, it should be noted that airport work is predominately federally funded, and as an enterprise zone, FYI operates as an entity apart from the city. Therefore, it is bound by different requirements and restrictions, perhaps giving the airport management more leeway to relax the City of Fresno specifications.

There is a long-term culture that exists within the Public Works Department. The grand jury was told that in the past, the "Fresno Factor" attitude existed from the top down. The attitude seems to be prevalent with the staffs of the Construction Management and Traffic & Engineering Services Divisions for many years.

Testimony was given that the Traffic & Engineering Services Division personnel have no interest in working with contractors to minimize costs. Instead they increase costs to the contractors with unnecessary demands.

Another identified concern was that the City of Fresno has its own construction crews and equipment over and above those needed for usual City maintenance. When working on a project the City crews do not need to adhere to the same requirements as independent contractors. The City does not need to bid the job, does not need a bond, and the problem resolution issues are minimal compared to those encountered by independent contractors. When City crews are not working on a city construction project, however, the equipment and employees stand down; the City cannot engage in competitive construction projects outside the city.

The grand jury heard testimony that doing business with the City of Clovis was much easier. Clovis cross-trains staff in the Clovis Planning and Development Services Department to handle problems that arise in the course of a project. The delay in resolving problems is shorter than in Fresno. A facilitating factor may be that the staff is housed in the same location.

From the construction industry the grand jury heard that there is no "Clovis Factor" or "Visalia Factor." Their consensus was that it is unique to Fresno working conditions. When asked if the City of Fresno Construction Management and Traffic & Engineering Services staffs were moved to Clovis, Visalia or Madera, what would happen? Reply: It would be called "The Clovis Factor," "The Visalia Factor" or "The Madera Factor."

#### **FROM THE CITY OF FRESNO REPRESENTATIVES:**

City representatives generally acknowledge the existence of the "Fresno Factor." Some say it's an "urban legend," some say it doesn't exist; one department head testified that he did not know what it was, while others say it's a problem that is getting better but still exists at some level. City administration is generally aware of the so-called "Fresno Factor"; however, some felt it held little merit.

One City representative described the "Fresno Factor" in terms of "legitimate" and "non-legitimate" risk issues in regards to unforeseen problems. In this person's opinion, a "legitimate" aspect of the "Fresno Factor" is risk avoidance by the City of Fresno, and that the city should go from "no risk" to "risk sharing" with contractors. "Non-legitimate" would be accusations that the City is too demanding and unreasonable when holding contractors to the terms of a contract.

A member of the City administration acknowledged that the City's insurance requirements are restrictive. Testimony was heard that the City Attorney's office is working to make the language in the project specifications more acceptable to both parties and move from "risk avoidance" to "risk sharing."

In the past, the City had a Dispute Review Board (DRB). The board consisted of a representative of the City, an independent contractor and a third party selected by these two. This board was charged with resolving disputes that arose between the city and contractors during the duration of a project. The DRB process is no longer being used.

The Associated General Contractors (AGC) has worked with the City to adopt new language for the Claims and Disputes section of the city specifications to the satisfaction of both parties. The revisions of the Claims and Disputes section of the City of Fresno specifications have been completed. There are other issues with the specifications that have not been agreed upon and remain with the City Attorney's office. These specifications have been the source of some contention between the City and the contractors. Testimony was heard that the language used for the last edits was exactly as the AGC requested.

There is conflicting opinion within the City as to the necessary number of construction management inspectors.

During the past approximately eight years, there have been 12 full-time and part-time Public Works Department Directors. The current director, who has been in place for 4 1/2 years, and with the support of the Mayor and City Manager, is aware of most of the issues presented herein and is actively interested in resolving problems.

Within the past few years, the City of Fresno initiated discussions with the construction industry to discuss ideas to resolve what appears to be a contentious atmosphere.

## **CONCLUSION**

Neither the contractors nor the City of Fresno can be said to be without responsibility or free from criticism.

City Administration, in conjunction with the City Attorney's office, is working to resolve issues to make working relationships more equitable for all parties. Efforts to improve relationships are ongoing and must continue.

Adding to the tension between the City and contractors is the practice of the City using city equipment and personnel rather than hiring an independent contractor. This allows less restrictive specifications and working conditions for the job (no bids, no bonds, etc.) that are inequitable as between the parties.

As provided in the State of California's False Claim Act, a contractor filing a false claim can be made to pay three (3) times the amount of the claim, providing an additional protection for the city.

There is no equitable conflict resolution process in place. In January 2011, the DRB model was presented to City Administration. The City has not yet responded; the modification of the process is under review. These efforts must continue to resolution.

Contractors must realize that the City Administration and the staff of the Public Works Department must look out for the City's interests in the enforcement of codes and specifications, in addition to keeping costs of projects in line.

The grand jury concluded that there is a "Fresno Factor." The City Administration is aware of these issues and has expressed its interest in working to create an atmosphere of cooperation with the construction industry. Any changes to directives and/or procedures to cure the "factor" issue must come from the top down at City Hall, and changes in attitude and procedures from those who work directly in the field with a project must be made.

## **FINDINGS**

- F501 There is a "Fresno Factor."
- F502 Upper-level City management is aware of issues between the City and contractors and have demonstrated interest in making corrections. There has been an attempt in the past few years to address the "Fresno Factor."
- F503 The relationship and procedures used by the Construction Management Division and the Traffic & Engineering Services Division has caused increased expenses which will be passed on to the City as contractors anticipate costs incurred during a construction project.
- F504 Some contractors have developed a working relationship with the City under which they are able to avoid many of the difficulties discussed herein.
- F505 Some contractors are reluctant to bid a project for the City of Fresno because of the "Fresno Factor."
- F506 City employees and equipment are used for projects in lieu of independent contractors.
- F507 There is a "business as usual" attitude among some City employees that detracts from efficiency and effectiveness.

## **RECOMMENDATIONS**

- R501 Enact and institute the Dispute Review Board process. (F501, F502, F503, F507)
- R502 Administration needs to change employee attitude to dispel the "business as usual" "Fresno Factor." (F501, F502, F503, F505, F507)
- R503 Public Works Department and the construction industry representatives should meet at least semi-annually to resolve concerns. (F501, F502, F503, F504, F505, F507)
- R504 Procedures must be implemented to inform and educate the construction industry about the City's efforts and limitations. (F501, F502, F503, F504, F506, F507)
- R505 When working on a construction project the City should adhere to the same standards that are imposed upon the construction industry. (F501, F502, F503, F506, F507)
- R506 The City should review its risk management policies in light of the State of California's False Claim Act. (F501, F502, F503, F505)
- R507 Caution and restraint should always be exercised to avoid overuse of city crews and equipment where independent contractors could be efficiently utilized. (F501, F506, F507)

## **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 60 days of the receipt of this report and 90 days for others.**

## **RESPONDANTS**

Mark Scott, Fresno City Manager (F501, F502, F503, F505, F506, F507, R501, R502, R503, R504, R505, R506, R507)

Patrick Wiemiller, City of Fresno Public Works Director (F501, F502, F503, F505, F506, F507, R501, R502, R503, R504, R505, R506, R507)

Associated General Contractors, San Joaquin District (F501, F502, F503, F504, F505, F506, F507, R501, R503, R504)

Clint Olivier, President, Fresno City Council (F501, F502, F503, F505, F506, F507, R501, R502, R503, R504, R505, R507)

## **SOURCES AND REFERENCES**

Witness interview and recorded affirmation statements:

- City of Fresno Administration
- Public Works Department employees
- Independent Contractors
- Associated General Contractor representatives

Documentation:

- On-line City of Fresno Public Works Department site
- City of Fresno Organizational Chart
- City of Fresno specifications on Claims and Disputes (REV.05-09)
- City of Fresno specifications on Claims and Disputes (REV.01-12)  
with contractor comments
- Fresno Yosemite International Airport Department  
Citizen's Academy document, April 3, 2012
- False Claims Act, California Government Code §§ 12650-12655

# RESPONSES

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- A. CLINT J. OLIVIER Council President,  
City of Fresno  
F501 through F503, F505 through F507  
R501 through R507
- B. PATRICK N. WIEMILLER Public Works Director,  
City of Fresno  
F501 through F503, F505 through F507  
R501 through R507
- C. MARK SCOTT City Manager,  
City of Fresno  
F501 through F503, F505 through F507  
R501 through R507
- D. DAVID K. JONES  
AGC of California  
F501 through F507  
R501, R503 through R504





**CLINTON J. OLIVIER**  
Council President

October 11, 2012

Steven J. Fortner, Foreman  
2011-2012 Fresno County Grand Jury  
1100 Van Ness Avenue, Room 102  
Fresno, CA 93724-0002

RE: FRESNO COUNTY 2011-2012 GRAND JURY REPORT #5 RESPONSE  
RESPONSES OF COUNCIL PRESIDENT, CLINTON OLIVIER  
CITY OF FRESNO

Dear Foreman Fortner,

Below please find my response to Report #5 and what you have titled "The Fresno Factor." Specifically, you have requested me to respond to Findings F501, F502, F503, F505, F506, and F507, and to respond to Recommendations R501, R502, R503, R504, R505, R506, and R507.

**F501 There is a "Fresno Factor."**

I agree some small business people and private contractors believe there is a "Fresno Factor." It is something I have encountered in talking with everyone from a restaurant owner to a small auto repair garage all the way up to a major single family housing developer. This perception is regrettable, and I believe it is the responsibility of the city council to work to change it by passing good policy that enables contractors to begin and finish projects in a timely and cost efficient manner.

**F502 Upper-level City management is aware of issues between the City and contractors and have demonstrated interest in making corrections. There has been an attempt in the past few years to address the "Fresno Factor."**

I hope that is the case. If our City Manager says it is, then I have full confidence that he and his staff are working to correct any barriers. Addressing the problem should be priority one for the administration as well as the City Council.

**F503 The relationship and procedures used by the Construction Management Division and the Traffic & Engineering Services Division has caused increased expenses which will be passed on to the City as contractors anticipate costs incurred during a construction project.**

To a policy maker, this information is disturbing and needs more study. In business, time is money, and anytime a government's bureaucracy impedes business, it is disturbing to me. As policymakers, the day-to-day operations within a bureaucracy are left to the city manager, but it is important we act when something such as the above is occurring.

**F505 Some contractors are reluctant to bid a project for the City of Fresno because of the "Fresno Factor."**

I agree, and it is extremely regrettable. Nearly every local politician runs for office on the platform of making the City friendly to contractors and small businesses. It just requires the political will to do it once those persons are elected. If the City government can be made more business friendly, the word will get out to contractors and business people, and they will choose to locate here. More activity translates to more jobs and increased tax revenue. When the opposite occurs, the results can be catastrophic for a community such as ours. The City Council is aware of this problem and I believe is working to address it.

**F506 City employees and equipment are used in project in lieu of independent contractors.**

I have met with the Public Works director and believe his explanation to be correct: "The City uses independent contractors for over 90% of its street pavement projects and for practically 100% of all other types of projects. The City uses its own employees and equipment only in those instances where internal use is the most efficient and effective way to deliver a specific project."

**F507 There is a "business as usual" attitude among City employees that detracts from efficiency and effectiveness.**

As policymakers, Council members are not involved in day-to-day city operations. The Council has to trust that the City Manager and his staff are working to provide a positive work environment and that employees are motivated and enthusiastic about the jobs they do. It is critical to providing excellent customer service and growing our city's business community and ultimately its tax base. I hope that our employees understand this, as it is critical that they do. I have met with the City Manager and concur with his answer that the "City will continue to train and develop its staff to ensure that attitudes are healthy and supportive of a high standard of service delivery."

**R501 Enact and institute the Dispute Review Board process.**

I defer to city management: "The City will continue to conduct a dispute resolution process as has been agreed to by the City and the Association of General Contractors."

**R502 Administration needs to change employee attitude to dispel the "business as usual" "Fresno Factor."**

I agree. See my answer for F507. I believe excellent customer service is critical and it is my hope that our employees provide it in a consistent way. Personally, my office only receives very critical phone calls on a rare basis, but I am confident the administration recognizes this and trains accordingly. When those calls come in, my staff and I work directly with the office of the City Manager to resolve any problems. I believe all council offices do. This kind of approach to addressing these problems usually results in some kind of resolution that is satisfactory to the contractor or business person. This is something that should be taken into account: the Council office's involvement. We are able to solve many problems this way and it is evidence that the full-time council is a success and is very cost-effective.

**R503 Public Works Department and the construction industry representatives should meet at least semi-annually to resolve concerns.**

I defer to the Public Works director's comment "We will continue to do so. We used to meet quarterly with the industry, but at the industry's request last year, we have reduced the frequency to semi-annually." The Council should continue to monitor these meetings through its contact with the BIA and other contractors in an effort to provide policy guidance in case the meetings become unproductive and there is a breakdown in this critical information flow."

**R504 Procedures must be implemented to inform and educate the construction industry about the City's efforts and limitations.**

I am aware the Administration wishes to use the meetings referenced above to inform and educate the contractor community. If that community expresses a wish for a better information flow it needs to be addressed as soon as possible.

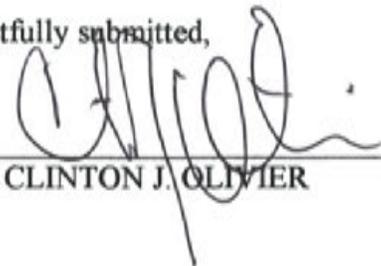
**R505 When working on a construction project the City should adhere to the same standards that are imposed upon the construction industry.**

Here I must defer to the expert opinion of our Public Works director "The only difference I am aware of is that the work of the City's street crews are inspected by the street crew supervisor, rather than by a construction management inspector. That is the only difference that in process, the standards are (and will continue to be) the same."

**R507 Caution and restraint should always be exercised to avoid overuse of city crews and equipment where independent contractors could be efficiently utilized.**

Here I must defer to the expert opinion of our Public Works director "Absolutely so. Given that the City uses independent contractors for over 90% of its street pavement projects and for practically 100% of all other types of projects; I doubt that that any other practice is realistic."

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Clinton J. Olivier", written over a horizontal line. The signature is stylized and cursive.

CLINTON J. OLIVIER

City Hall  
2600 Fresno Street, 4<sup>th</sup> Floor  
Fresno, California 93721  
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Patrick N. Wiemiller  
Public Works Director

October 4, 2012

Steven J. Fortner, Foreman  
2011-2012 Fresno County Grand Jury  
1100 Van Ness Avenue, Room 102  
Fresno, CA 93724-0002

RE: FRESNO COUNTY 2011-2012 GRAND JURY REPORT #5 RESPONSE  
RESPONSES OF PATRICK WIEMILLER, DIRECTOR  
CITY OF FRESNO

Dear Foreman Fortner,

Below please find my response to Report #5 and what you have titled "The Fresno Factor." Specifically, you have requested me to respond to Findings F501, F502, F503, F505, F506, and F507, and to respond to Recommendations R501, R502, R503, R504, R505, R506, and R507.

**F501 There is a "Fresno Factor."**

I recognize that some private contractors perceive there is a "Fresno Factor."

**F502 Upper-level City management is aware of issues between the City and contractors and have demonstrated interest in making corrections. There has been an attempt in the past few years to address the "Fresno Factor."**

I agree with this finding.

**F503 The relationship and procedures used by the Construction Management Division and the Traffic & Engineering Services Division has caused increased expenses which will be passed on to the City as contractors anticipate costs incurred during a construction project.**

I disagree with this finding as it lacks evidence. The City will remain diligent in reviewing and determining if procedural changes are necessary to prevent undue increases in expenses.

**F505 Some contractors are reluctant to bid a project for the City of Fresno because of the "Fresno Factor."**

I agree with this finding.

**F506 City employees and equipment are used in project in lieu of independent contractors.**

I believe the finding as stated is misleading. The City uses independent contractors for over 90% of its street pavement projects and for practically 100% of all other types of projects. The City uses its own employees and equipment only in those instances where internal use is the most efficient and effective way to deliver a specific project.

**F507 There is a “business as usual” attitude among City employees that detracts from efficiency and effectiveness.**

I disagree with this finding, but the City will continue to train and develop its staff to ensure that attitudes are healthy and supportive of a high standard of service delivery..

**R501 Enact and institute the Dispute Review Board process.**

The City will continue to conduct a dispute resolution process as has been agreed to by the City and the Association of General Contractors.

**R502 Administration needs to change employee attitude to dispel the “business as usual” “Fresno Factor.”**

To the extent that there is any need to change attitudes, the City will take the necessary steps to do so through training and development.

**R503 Public Works Department and the construction industry representatives should meet at least semi-annually to resolve concerns.**

We will continue to do so. We used to meet quarterly with the industry, but at the industry's request last year, we have reduced the frequency to semi-annually.

**R504 Procedures must be implemented to inform and educate the construction industry about the City's efforts and imitations.**

But we will continue to use this forum to inform and educate.

**R505 When working on a construction project the City should adhere to the same standards that are imposed upon the construction industry.**

The only difference I am aware of is that the work of the City's street crews are inspected by the street crew supervisor, rather than by a construction management inspector. That is the only difference that in process, the standards are (and will continue to be) the same.

**R506 The City should review its risk management policies in light of the State of California's False Claim Act.**

This has been done.

Page 3  
October 4, 2012

**R507 Caution and restraint should always be exercised to avoid overuse of city crews and equipment where independent contractors could be efficiently utilized.**

Absolutely so. Given that the City uses independent contractors for over 90% of its street pavement projects and for practically 100% of all other types of projects, I doubt that that any other practice is realistic.

Respectfully submitted,



Patrick N. Wiemiller  
Director



Mark Scott  
City Manager

October 4, 2012

Steven J. Fortner, Foreman  
2011-2012 Fresno County Grand Jury  
1100 Van Ness Avenue, Room 102  
Fresno, CA 93724-0002

RE: FRESNO COUNTY 2011-2012 GRAND JURY REPORT #5 RESPONSE  
RESPONSES OF MARK SCOTT, CITY MANAGER  
CITY OF FRESNO

Dear Foreman Fortner,

Below please find my response to Report #5 and what you have titled "The Fresno Factor." Specifically, you have requested me to respond to Findings F501, F502, F503, F505, F506, and F507, and to respond to Recommendations R501, R502, R503, R504, R505, R506, and R507.

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I recognize that some private contractors perceive there is a "Fresno Factor."

**F502 Upper-level City management is aware of issues between the City and contractors and have demonstrated interest in making corrections. There has been an attempt in the past few years to address the "Fresno Factor."**

I agree with this finding.

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**F507 There is a "business as usual" attitude among City employees that detracts from efficiency and effectiveness.**

I disagree with this finding, but the City will continue to train and develop its staff to ensure that attitudes are healthy and supportive of a high standard of service delivery.

**R501 Enact and institute the Dispute Review Board process.**

The City will continue to conduct a dispute resolution process as has been agreed to by the City and the Association of General Contractors.

**R502 Administration needs to change employee attitude to dispel the "business as usual" "Fresno Factor."**

To the extent that there is any need to change attitudes, the City will take the necessary steps to do so through training and development.

**R503 Public Works Department and the construction industry representatives should meet at least semi-annually to resolve concerns.**

We will continue to do so. We used to meet quarterly with the industry, but at the industry's request last year, we have reduced the frequency to semi-annually.

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This has been done.

Steven J. Fortner, Foreman  
October 4, 2012  
Page 3

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Absolutely so. Given that the City uses independent contractors for over 90% of its street pavement projects and for practically 100% of all other types of projects, I doubt that that any other practice is realistic.

Respectfully submitted,

A handwritten signature in blue ink that reads "Mark Scott". The signature is written in a cursive, flowing style.

Mark Scott  
City Manager



**AGC  
CALIFORNIA**

The VOICE of the Construction Industry

*"It's good business to do business with an AGC member."*

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August 16, 2012

Steven Fortner, Foreman  
County of Fresno, Grand Jury  
1100 Van Ness Avenue  
Fresno, Ca. 93724-0002

The enclosed is a response to the Final Report #5 as requested by the Fresno County Grand Jury. The Members of the Associated General Contractors of California work with many public agencies throughout the State of California. Our member contractors complete 70% of all public work projects in the state.

The goal of our local contractors is to promote a good working relationship with public agencies while proving the most productive amount of work for the least costs. We hope our comments are constructive and will lead to a better relationship with the City of Fresno.

Sincerely,

David K. Jones  
AGC of California  
2307 N. Fine Avenue  
Fresno, Ca. 93727  
[jonesd@agc-ca.org](mailto:jonesd@agc-ca.org)  
559-252-6262



## Response to Fresno County 2011-2012 Grand Jury

### Report #5 “The Fresno Factor”

#### Response to the FINDING:

**F501** There is a “Fresno Factor.”

The contractors agree, the construction industry has known about the “Fresno Factor” for the last 20+ years.

**F502** Upper-level City management is aware of issues between the City and contractors and has demonstrated interest in making corrections. There has been an attempt in the past few years to address the “Fresno Factor.”

The contractors agree, upper-level City management has been made aware because the construction industry as well as the surety industry has brought the issue to the forefront. The City Manager, City Attorney & Public Works Director have all been made aware of the industry’s concerns. Little in the way of productive changes have occurred even with quarterly liaison meetings, (City & construction industry), over the last several years. The City of Fresno Airport Department recognized the existence of the “Fresno Factor” some years back and made significant strides to erase this image.

**F503** The relationship and procedures used by the Construction Management Division and the Traffic & Engineering Service Division has caused increased expenses which will be passed on to the City as contractors anticipate costs incurred during a construction project.

The contractors agree, which means the tax payer will pay these increases. It is unknown what increases this may cause in claims or higher bids. The City traffic control requirements often times far exceeds those requirements of their own maintenance crews as well as neighboring public agencies. The inability of the CM field staff to make to make quick decisions and provide direction often leads to unnecessary claims and delays.

**F504** Some contractors have developed a working relationship with the City under which they are able to avoid many of the difficulties discussed herein.

The contractors agree, this often times depends on the department that contractors are working for, i.e. the water department and the airport. Additionally, it is believed that some companies receive preferential review of traffic control plans.

**F505** Some contractors are reluctant to bid a project for the City of Fresno because of the “Fresno Factor.”

The contractors agree, given a choice contractors prefer to bid with other public agencies, (preferred owner). When contractor estimating resources are limited, the City of Fresno may receive fewer bids as a result of the “Fresno Factor” (the City is not the owner of choice). Surety companies may question the wisdom of the contractor’s decision to bid with the City.

**F506 City employees and equipment are used for projects in lieu of independent contractors.**

The contractors agree, the City is a charter city and has a bid threshold of \$123,000. Meaning any job costing \$123,000 or less doesn't have to be publicly bid and can be completed by City forces. This threshold amount is reviewed every July. Unfortunately, the City does not keep track of the construction costs for labor, material or equipment the same way contractors do. A project, such as the Tower District reconstruction at Van Ness & Olive in 2009 is estimated by contractors to cost over \$400,000, yet the City has estimated its value at around \$200,000. Other recently completed projects by City forces that most likely exceed the \$123,000 threshold include the Highway City Improvements and the Pinedale Area Improvements.

**F507 There is a "business as usual" attitude among some City employees that detracts from efficiency and effectiveness.**

The contractors agree, direction must come from the top to make changes. Examples of quick, easy & affective changes could include: more than one person to approve traffic control plans, accepting traffic control plans more than 48 hours before the start of work, etc. Also, the Construction Management Group should focus on cooperation in solving construction problems and disputes rather than take the present "superior" and adversary position.

## Response to Recommendations

**R501 Enact and institute the Dispute Review Board process.**

The contractors agree, smaller project may need a modified dispute review process, (i.e. projects under \$10 Million).

**R503 Public Works Department and the construction industry representatives should meet at least semi-annually to resolve concerns.**

The contractors agree, there needs to be a vehicle to help resolve concerns, (possibly a third party). Although this has occurred in the past, little in the way of substantive change has been made. A different format and participants may be needed to promote real dialogue and change.

**R504 Procedures must be implemented to inform and educate the construction industry about the City's effort and limitations.**

The contractors agree, we can get the word out which could help with construction costs. If the construction industry is aware of the City's effort and limitations the industry may be able to assist with effective changes that will work for all parties.