

**THE
FRESNO COUNTY**



**RAND
JURY**

2007-2008 FINAL REPORT

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**THE
FRESNO COUNTY**



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2007-2008 FINAL REPORT

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PRESIDING JUDGE OF THE FRESNO COUNTY SUPERIOR COURT

HON. HILARY CHITTICK
Presiding Judge for 2008

“Never doubt that a small group of thoughtful
committed citizens can change the world.
Indeed, it is the only thing that ever has.”

Margaret Mead
(December 16, 1901 - November 15, 1978)



Superior Court of California County of Fresno

CHAMBERS OF
HILARY A. CHITTICK
Presiding Judge

1100 VAN NESS AVENUE
FRESNO, CALIFORNIA 93724-0002
(559) 488-3625
FAX (559) 488-3337

At the beginning of the term of the 2007-2008 Grand Jury, the members were advised that membership on a grand jury is a position of honor and great responsibility. It calls for diligence, impartiality, courage, and the exercise of calm and considered judgment. At the outset of their service, they were also advised that the Grand Jury will make an important contribution to local government, and that the judges of the Fresno County Superior Court appreciate and value their service.

This Grand Jury has continued the fine tradition of their predecessors, and their enthusiastic and dedicated work is sincerely appreciated. The leadership and dedication of the foreman, John Tinker, must be noted and acknowledged. The foreman, along with all members, performed this service with no monetary compensation, except for travel and a per diem allowance.

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

A handwritten signature in blue ink, reading "Hilary A. Chittick".

Hon. Hilary A. Chittick
Presiding Judge 2007 - 2008

HON. HILARY A. CHITTICK
PRESIDING JUDGE 2008





June 30, 2008

County of Fresno

GRAND JURY

To the residents of Fresno County:

I am pleased to present the Final Report of the 2007-2008 Fresno County Civil Grand Jury. In California, each county is mandated by the state constitution to have a Civil Grand Jury whose responsibility is to represent the people as a watchdog over any and all government activities within the county. The publication of this report is the culmination of that oversight function.

The Grand Jury is made up of nineteen adult residents of Fresno County who have volunteered for this duty and agreed to serve for a one-year term. Adult citizens residing in Fresno County may apply for membership on the Grand Jury by filling out an application which is available on the Superior Court website (www.fresnosuperiorcourt.org) under the Grand Jury link. A paper copy of the application form may be obtained from the Jury Services Manager of the Superior Court. Those who have filled out applications or have otherwise been recommended to the Court are interviewed by a Superior Court Judge. Thirty of those interviewed are selected to be put into a pool from which the members of the Grand Jury are randomly drawn.

The duty of these jurors is expressed in the oath with which they are sworn. It reads (in part): "I will support the constitution of the United States and of the State of California, and all laws made pursuant to and in conformity therewith, will diligently inquire into, and true presentment make, of all public offenses against the people of this state, committed or triable within this county, of which the Grand Jury shall have or can obtain legal evidence." This sobering responsibility, which requires conducting careful investigations of the operations of public agencies within the county, was undertaken with all due seriousness by this Grand Jury.

A Grand Jury investigation of an aspect of a public agency's activity typically includes obtaining the sworn testimony of the complainant (if there is one) as well as the sworn testimony of department heads, employees, and others who have useful knowledge about the issue at hand. In addition, Grand Jury investigators may make one or more site visits to make first-hand observations. Finally, relevant documents are collected from the agency itself as well as from other sources. All of this evidence is usually collected by a committee of the Grand Jury over a period of several months. It is presented to the entire Grand Jury as it is being collected, in a series of interim reports, so that every Grand Juror can contribute to each investigation as it proceeds.

This Grand Jury called before it 25 public figures. Some of them were elected officials and some were heads of city or county departments. We sometimes also called executives of private agencies with strong interests in and intimate knowledge of city or county government. We are grateful for their willing cooperation in the shared enterprise of providing efficient and honest service to the residents of this county. Some of the reports in this book resulted from investigations of statements made by officials who testified before us.

The Grand Jury is constitutionally required to inspect the prisons within the county. To discharge that duty, members of the Grand Jury personally inspected the main Fresno County Jail as well as the Pleasant Valley State Prison in Coalinga. In addition, the Grand Jury received and responded appropriately to 17 letters from prisoners at Pleasant Valley who made allegations of mistreatment or mismanagement. One of the reports in this book presents the recommendations the Grand Jury made following its investigation of the Pleasant Valley State Prison.

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Finally and, perhaps, most importantly, any person can write to the Grand Jury asking for an investigation of malfeasance or abuse in any county agency, city government, or special district within the county. Indeed, a form for making such a complaint can be obtained either by telephoning the Superior Court (488-3467) and asking for a Grand Jury complaint form or by going to the Superior Court website to download a form. This year the Grand Jury received 31 complaints from residents of Fresno County making allegations of mismanagement or worse in some public agency within the county. Each of these complaints was evaluated, responded to, and every credible complaint was investigated. Some were judged, after preliminary investigation, to be unfounded, but the investigation of others revealed serious problems which the Grand Jury investigated thoroughly. The reports of these investigations are among those contained in this book.

The entire 2007-2008 Fresno County Grand Jury worked very hard to live up to the responsibility implied in the charge to "be the government's watchdog." As the Foreman of the Jury, I want to personally thank each juror for taking a significant part of a year of his or her life to perform this duty. I want to thank them not only for the generous gift of their time but also for their cordial and cooperative spirit which made it possible for nineteen people with diverse backgrounds and experiences to represent effectively the public's interest in overseeing local government.

The officers of the Grand Jury and the heads of the Jury's standing committees play an important role in the smooth functioning of the Grand Jury. This year, they were:

Sergeants at Arms: Dominic Papagni and Charles Wadhams.

Corresponding Secretary: Carol Wynne.

Recording Secretaries: Robert Cooper and Melanie Bloom.

Budget Committee Chair: Robert Cooper.

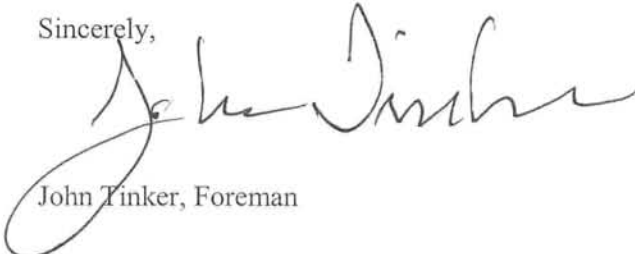
Prison Oversight Committee Chair: Paul Robinson.

Citizen Complaints Committee Chair: Douglas Phillips.

Editing Committee Chair: Melanie Bloom.

Finally, while the Grand Jury operates quite independently, we have benefited greatly during the year from the help and counsel of several other people whose contributions must be recognized. They are: First, Presiding Judge Hillary Chittick, whose sober charge to the Jury set the tone for the year and whose support we always felt and appreciated. Next, Deputy District Attorney John Savronoch and, especially, County Counsel Dennis Marshall, whose legal advice was essential for the successful completion of our work. And, finally, Sherry Spears, Jury Services Coordinator. Without her cheerful and knowledgeable help with countless procedural questions, we would have not have been nearly as effective.

Sincerely,

A handwritten signature in black ink, appearing to read "John Tinker". The signature is written in a cursive style with a large, looping initial "J".

John Tinker, Foreman

TABLE OF CONTENTS

	PAGE
The 2007-2008 Grand Jury	
Grand Jury Composition	iii
Grand Jury Photo	iv
Signature Page	v
Final Reports and Responses	
Report # 1	
Lanare Community Service District	1
Responses.....	10
Report #2	
Homes for People Sleeping on the Street	21
Responses.....	34
Report #3	
Malaga County Water District	45
Responses.....	54
Report #4	
Pleasant Valley State Prison	149
Responses.....	158
Report #5	
City of Kerman Property Sales	167
Responses.....	174
Report #6	
Fresno County Elections	211
Responses.....	218
Report #7	
City and County Air Support Units	221
Responses.....	230
Report #8	
Contract Process and Oversight within the County of Fresno	246
Responses.....	256
Report #9	
Del Rey Community Services District.....	268
Responses.....	276

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THE 2007 – 2008 GRAND JURY

- Grand Jury Composition
- Grand Jury Photo
- Signature Page

GRAND JURY COMPOSITION

This year's Grand Jury was made up of citizens from diverse backgrounds. Several had Ph.D.s, and a number of others had other advanced degrees or certificates. Several had owned their own businesses, while others had worked in law enforcement, education, nursing, government, and the law. Several had extensive involvement in community volunteer work, and six previously served on the Grand Jury. Various cultures, ethnicities, and races were represented. Although all were retired, the ages ranged from 54 to 94 years, three generations representing a wealth of experience and perspective.

THE FRESNO COUNTY 2007-2008 GRAND JURY



FRONT ROW (*Left to Right*)

Pat McLean, Muriel Zahler, Melanie Bloom, Nancy Robinson, Marilyn Watts,
Carol Wynne, June Shamshoian and Robert Cooper

BACK ROW (*Left to Right*)

Gladys Hollie, Douglas Phillips, Ron Baten, Paul Robinson, Duane Barker,
John Tinker, Fred Ray, Charles Wadhams, Jesse McDonald, Dominic Papagni and Ron Van Dyke



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.

John Tinker	John Tinker
Duane Barker	Duane Barker
Ron Baten	Ron Baten
Melanie Bloom	Melanie M. Bloom
Robert Cooper	Robert Cooper
Gladys Hollie	Gladys M. Hollie
Jesse McDonald	Jesse McDonald
Pat McLean	Pat McLean
Dominic Papagni	Dominic Papagni
Douglas Phillips	Douglas Phillips
Fred Ray	Fred W. Ray
Nancy Robinson	Nancy Robinson
Paul Robinson	Paul Robinson
June Shamshoian	June Shamshoian
Ron Van Dyke	Ron Van Dyke
Charles Wadhams	Charles H. Wadhams
Marilyn Watts	Marilyn Watts
Carol Wynne	Carol Wynne
Muriel Zahler	Muriel Zahler

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FRESNO COUNTY GRAND JURY

2007-2008

Final Reports and Responses

- Lanare Community Service District
- Homes for People Sleeping on the Street
- Malaga County Water District
- Pleasant Valley State Prison
- City of Kerman Property Sales
- Fresno County Elections
- City and County Air Support Units
- Contract Process and Oversight within the County of Fresno
- Del Rey Community Services District

REPORT #1

LANARE COMMUNITY SERVICE DISTRICT

FILED

FEB 22 2008

FRESNO COUNTY SUPERIOR COURT

By _____ DEPUTY

**2007-2008
FRESNO COUNTY GRAND JURY**



**FINAL REPORT
#1**

LANARE COMMUNITY SERVICE DISTRICT

INTRODUCTION

Lanare is a small residential area, consisting of two square miles, located approximately four miles west of Riverdale on West Mt. Whitney Ave. It is an economically depressed community of over five hundred people. The community is semi-rural with some homes on small lots while others were built on several acres. The Lanare Community Service District was established in 1971 to service the homes with a potable water source from one well, which has remained in operation to this date. In 2005, the Board of Directors entered into an agreement with Fresno County for a block grant to provide funding for a new water well and water treatment system. Operating expenses began to rise substantially resulting in the failure to pay monthly costs, construction contractors and utility bills. The operation of the new well was shut down because of these rising expenses and the district is now in crisis.

BACKGROUND

The Lanare Community Service District was formed and bylaws were written in August 1971. A Board of Directors that oversees public recreation, provides water, and manages the rental of the Lanare Community Center governs the district.

By 2005, the Board of Directors concluded that the community water well and pump were aging and would soon need to be replaced. In October, the Board entered into a contractual agreement with Fresno County for a federal block grant of \$1.3 million to provide funding for a new well and water treatment system. Funds were approved and the new system was installed.

In October 2006, the new pump, well, and water treatment system were put into service. Operating expenses immediately increased substantially. These expenses included water treatment chemical costs, utility bills, the cost of a state certified water systems manager, office expenditures, insurance coverage, general maintenance, employee salaries and water testing.

In January 2007, the U.S. Federal Government changed its arsenic water standards from 50 parts per million to 10 parts per million. This required additional water treatment, which also increased the operational costs. Monthly operating expenses increased from approximately \$1,000 prior to the installation of the new well to approximately \$12,800 in May, 2007.

The Board determined that the community should have the use of both the old water well and the new water well. Therefore they decided to install plumbing that would connect both wells to the community water system. Additional federal grant monies were requested from Fresno County. The former chairman of the Board of Directors' signature appears on the Fresno County block grant application. However, his term had expired in December 2005, and it appears that he had not been legally re-elected or reappointed and,

therefore, that he was not a member of the Board of Directors when he signed the block grant application. Nevertheless, in January 2007, \$218,400 was provided by Fresno County for this amended project.

A check for a partial payment of \$57,332.10 was made payable to the Lanare Community Service District and was deposited into the Service District's General Fund Account. Instead of paying the contractor who installed and built the water treatment system, the funds were diverted to pay monthly operational expenses consisting of utility bills, chemical treatment costs, employee salaries, and other general operating expenses. The contractor was not paid.

The Board of Directors realized that there were not enough funds from household water hookups to cover operational costs. As a result, in July 2007, the new well, pump and water treatment system were shut down. The Board restarted the old pump and well in order to continue providing water to the community. The utility provider also ordered the Board to pay its electric bill monthly or be shut down. The water chemical treatment company stopped all service to the service district until it paid its bills. The construction contractor continued to demand payment for his work. He eventually placed a lien on the Lanare Community Center building.

SOURCE OF THE PROBLEM

In July 2007, the Fresno County Grand Jury received a complaint concerning the general management of the Lanare Community Service District. After reviewing the complaint, an investigation was commenced.

AREAS OF INVESTIGATION

Violation of the Brown Act: The Lanare Community Service District Board of Directors was conducting business, but on several occasions failed to notify properly the water service district community. They did not send out notices of meetings nor post proposed meetings at the community center or in the newspaper. The Grand Jury was unable to locate most copies of business meeting minutes or official records of meetings. The Grand Jury also learned that the Board of Directors sometimes improperly conducted business meetings behind closed doors. Therefore, it appears that on several occasions the Board conducted business in violation of the Brown Act.

Failure to Maintain Financial Records: The Grand Jury also was unable to locate district financial records. The Grand Jury found that no records were kept of financial transactions other than bank check registers. Further complicating the issue, it appears that some members of the Board of Directors are unable to read or write. The water district requires two signatures on each check that is written. The Grand Jury found that on one occasion a Board member needed a second signature on a check. The Board member asked a second Board member to sign the check. The second Board member was unable to read the check and asked what it was for. The Board member was told to just sign it.

Mismanagement by the Board of Directors: At the time they applied for the federal grant, the Board of Directors failed to calculate accurately the existing residential and commercial water service connections, failed to calculate financial income from water usage and the cost of system operation, and failed to provide needed financial records to the water system operator. In March/April 2007, the Board of Directors temporarily terminated the new water well operation due to lack of funds. The old well was placed back into service.

Only after the new system was shut down did the Board members conduct a survey of the community in an effort to determine how many water connections there actually were. One hundred forty nine connections were found. Some water users had never paid for service, some hookups served several houses on one piece of property, and some residents were using district water to irrigate their alfalfa and to water livestock. One rancher/farmer was also connected to the system, but his property was actually outside the water district service area.

The Board has failed to monitor district revenues. There has been no formal billing process and inadequate records exist to account for collected fees. Most people paid in cash. The amount of payments coming in to the office was between \$2,000 and \$3,000 per month and was not consistently the same. It should have been between \$4,000 and \$5,000 per month at the then rate of \$29 per month per hookup. This question was asked: "Where did the rest of the money go?" The Board of Directors increased the monthly residential fee from \$29 to \$46 per month. The increased rate is still inadequate. It will generate only approximately \$6900 (\$46 x 150 connections). However, approximately \$10,000 per month is needed to operate the complete water system in addition to the cost of salaries for the district manager (\$5,000 per month) and a maintenance employee.

On January 16, 2008, the Grand Jury received a report from the Fresno County Auditor-Controller's Office. The report was titled, "Independent accountant's report on applying agreed-upon procedures." The subject of the report was the Lanare Community Service District's distribution of the \$185,105 block grant. Fresno County sent the grant fund check to pay for construction work on the water system directly to the Lanare Community Service District. The Board of Directors deposited that check into their general fund. Dovali Construction was paid \$158,185 for project 05091 but is still owed \$26,955. Consequently, the contractor has placed a lien on the water service district's community center building. The remainder of the grant funds appears to have been diverted to cover daily operational costs.

During this time period, Board Directors hired family members as office staff and maintenance personnel. The directors also increased their own monthly remuneration from \$25 per meeting to \$75 per meeting, in spite of the financial crisis. The Board also hired a district manager at a salary of \$5,000 per month, which they had no way of paying.

The Grand Jury learned that a former Board Member gave “Will Serve” letters to several members of the community. The “Will Serve” letters promised new water service hookups at no cost, adding to the district’s financial crisis.

On January 14, 2008, the Fresno County Auditor-Controller's Office sent a letter, along with the full Independent Accountant's Report of the grant to the Lanare Community Service District, to the Fresno County District Attorney's Office for their review. The results of that review are pending.

CORRECTIVE ACTIONS

On August 1, 2007, the Board of Directors hired a district manager to oversee day-to-day operations. The manager replaced some staff and reduced the total staff. He also filed a report with the Fresno County Sheriff’s Department seeking criminal prosecution of former employees for misappropriating water service district funds. The manager then looked at all outstanding financial obligations, which totaled approximately \$96,000. The manager contacted all vendors and attempted to make arrangements to satisfy the debts. The debts are still outstanding. He then went to the county seeking assistance for emergency funding. A meeting was scheduled for August 24, 2007 with Fresno County officials. The meeting failed to generate any additional financial assistance. The manager also surveyed the community again to determine who exactly was using district water and what it was being used for. He determined that not all households using water were paying for that usage and that some had never paid. He and the maintenance employee attempted to collect past due funds to bring all accounts current. The Grand Jury was told that monthly revenues have increased substantially as a result of his collection efforts.

CONCLUSION

A state of emergency will exist if the Lanare Service District cannot continue to provide water to the community. Because of mismanagement, unacceptable arsenic levels, and the absence of any other water source, the District is in crisis. The Grand Jury contacted official representatives of the Fresno County Board of Supervisors concerning legal oversight of special districts. However, these representatives told the Grand Jury that neither the Fresno County Board of Supervisors nor any other local governmental agency had any legal authority over special districts. If this district fails to manage itself, however, one solution might be to contract out the management of the water system. The Grand Jury has learned that the Fresno County Public Works Department has contracts with other water or sewer districts to operate and maintain those systems. If that is impractical, the only other option that has been proposed is to dissolve the district and ask the State of California take over its operation.

FINDINGS

- F101 Because of low revenues, the Lanare Community Service District is unable to support itself.
- F102 The Board of Directors violated the Brown Act due to a lack of notification of meetings.
- F103 The District lacks accounting procedures.
- F104 The Board of Directors does not have sufficient expertise to manage the district's daily operation.
- F105 No daily operational records have been maintained, therefore the district is not able to determine a level of service needed for present or future water customers.
- F106 Current water supplied by the district does not comply with Federal Arsenic Level Standards.
- F107 Neither the Fresno County Board of Supervisors nor any other county governmental agency has any legal oversight in governing the Lanare Community Service District.
- F108 A potential emergency exists at the Lanare Community Service District because of insufficient funds, mismanagement, water arsenic levels, and the lack of potable water.

RECOMMENDATIONS

- R101 Hire and maintain competent management staff. (F101, 103, 104)
- R102 Install water meters to all existing customers. (F105)
- R103 Obtain a block grant to fund installation and purchase of water meters. (F101)
- R104 Enforce payment of water usage, which includes collections and water shut off. (F101, 103, 105, 108)
- R105 Establish fees covering actual new hookup expenses. (F101)
- R106 Publish notices of all meetings in accordance with the Brown Act. (F102, 104)
- R107 Establish an annual audit and maintain accounts receivable and expenditures in accordance with recognized accounting practices. (F103, 104, 105)
- R108 Return the new pump and water treatment system to service. (F106)
- R109 Fresno County Board of Supervisors should be prepared to respond and deal with a potential health hazard if the Lanare Service District fails to continue satisfactory operations. (F108)

If the nine recommendations above are not implemented, the Grand Jury makes the two following recommendations. Either:

- R110 Contract with Fresno County Public Works Department to operate and maintain Lanare's water system. (F101, 104)
- R111 Dissolve the district into receivership by the appropriate agency of the State of California. (F101, 103, 104, 105, 106)

REQUEST FOR RESPONSES

Pursuant to Penal Code 933.05, the Fresno County Grand Jury requests responses as follows:

- Lanare Community Service District Board of Directors (R101 - R111; F101 -108)
- Fresno County Board of Supervisors (R109; F108, R110)
- Fresno County Department of Public Works (R110, F108)
- Fresno County Department of Community Health (F108, F106)

Please be reminded that the responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

SOURCES

Lanare Community Service District Records
Fresno County Sheriff's Department
Fresno County Counsel
Fresno County District Attorney's Office
Fresno County District Supervisors Office
Fresno County Elections Office
Fresno County Auditor/Controller's Department
Contractor
Special District Consultants
Oral Interviews

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RESPONSES

A. Lanare Community Service District Board of
Directors

R101 through R111

B. Fresno County Board of Supervisors

R109

C. Fresno County Department of Public Works

R110

D. Fresno County Department of Community Health

F106 and F108

RECEIVED
BY C.W. | DATE 6-17-08

**2007-2008
FRESNO COUNTY GRAND JURY**



**FINAL REPORT
#1**

Lanare Community Services District Response to Fresno County Grand Jury 2007-2008 Final Report #1

R101—Lanare Community Services District has hired Ken Souza as the General Manager. Mr. Souza has become a licensed Water Distribution (D-1) and Water Treatment (T-1) Operator with the State of California Department of Health. Lanare CSD has set up accounting procedures which allow the District to accurately track income and expenses, and is working with Valley Small Business Corporation to establish annual audited financial statements. The District holds monthly Board meetings the first Tuesday of each month, announcements are posted 72 hours before hand, minutes are taken and all Brown Act rules and procedures are followed.

Board training is scheduled to be conducted by California Rural Water Association. (Note; as a Community Services District, Board members are elected from the general population of Lanare, which is made up of poor, under educated, Spanish speaking individuals.)

R102, R103---Lanare has been working with the United States Department of Agriculture to secure a grant for the installation of water meters. The USDA has approved an 80% grant, with the requirement that Lanare obtain the matching 20%. Self-Help Enterprises and California Rural Water Association are assisting the District in locating the matching funds.

Once water meters are installed, the District will be able to control and charge for the water that is actually being used. This has been the problem which has caused the Districts financial issues. A state of the art filtration system was built in 2006-07 to remove arsenic, but there were never any controls over the amount of treated water that was being delivered to the community. This was bad planning by the engineering firm, the County and the District. Lanare never had any financial problems until this “ill-conceived” plant was built. The outside operator, which was hired to “manage” the plant, let the system run for four months before they realized that the amount of treated water that was being delivered to the community was eight times the amount that the engineers had predicted. Consequently, the cost of chemicals, PGE and contracted services was many times the amount of revenue that was being collected from rate payers. This whole “misstep” has put Lanare into a major financial crisis, (\$86,000 in debt).

R104, R105---“Rules of Service” were put into place November 2007, these rules state the fees to be paid for new hookups, late charges, deposits and enforcement (shutoff notices and procedures). As a result, monthly collections have been 96% since December 2007, with the balance being aggressively pursued each month.

R106---All meetings are conducted in accordance with the Brown Act.

R107---Accounting systems have been put into place to maintain accounts receivable and expenditures in accordance with recognized accounting procedures. Work is being done to complete audited financial statements for the past two years.

R108---The new pump has been returned to service (by-passing the filtration system), but until meters are installed, and the cost of running the filtration system can be covered by income from rate payers, the system will not be returned to service.

R110---The District has been in contact with Fresno County, who provided the grant for the filtration system that Lanare cannot afford, and they just “pass the buck” by saying “it is not in their jurisdiction”. Lanare is in Fresno County and is in a financial crisis because of a CDBG grant that was given to a small rural community that could not afford nor manage a water filtration system; this system became required because of changes in the federal arsenic rules. As a result, a major hardship has been placed on one of the poorest communities in the state of California.

R111---The District has been in contact with the California Department of Health (the department that oversees small rural water districts). The Health Department is fully aware of the situation with Lanare; they have made recommendations, which the district has followed. The Health Department is assisting the district in obtaining grant monies for the installation of water meters. The Health Department provided emergency funding for the installation of a “by-pass pipe” which allowed the District to utilize the new pump without running the water through the filtration system (the original design didn’t provide for this by-pass procedure). The Health Department

has also set up monthly testing procedures with the District, which is required by Law.

At this point the State of California is pleased with the progress the Lanare Community Services District has made and is encouraging the installation of water meters as soon as possible.

The Lanare Community Services District has never had any debt until the installation of the filtration system to comply with the Federal Government's new lower requirements for the level of arsenic in the water from 50 parts per billion to 10 parts per billion (Lanare levels have always been 30 parts per billion). The only way to conform to this new rule is to filter the water with costly chemicals to remove the arsenic. In the process of trying to conform to these new rules, Lanare finds itself in a situation that many small communities are faced with; it is not financially feasible to treat the water for arsenic and spread the cost over 150-200 users. The District has corrected past management errors, but it will be a challenge to provide treated water at an affordable cost to the community.



County of Fresno

CHAIRMAN
BOARD OF SUPERVISORS
SUPERVISOR HENRY PEREA – DISTRICT THREE

May 14, 2008

The Honorable Hilary Chittick
Presiding Judge, Superior Court
1100 Van Ness Avenue, Department 20
Fresno, CA 93721

RE: RESPONSE TO THE 2007-08 GRAND JURY FINAL REPORT #1

Dear Judge Chittick:

The Board of Supervisors has approved its official response to the recommendations pertaining to Fresno County contained in the 2007-08 Grand Jury Final Report #1. The response is submitted herewith in fulfillment of Penal Code Section 933(c). Also, please find all other required County department responses enclosed in this packet as well.

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

Sincerely,

Henry Perea, Chairman
Board of Supervisors

Attachments

County of Fresno
Board of Supervisors
RESPONSE TO THE
2007-08
FRESNO COUNTY GRAND JURY
FINAL REPORT #1



LANARE COMMUNITY SERVICE DISTRICT

Please find below the Fresno County Board of Supervisor's response to the 2007-08 Grand Jury Final Report #1.

Findings

F108: A potential emergency exists at the Lanare Community Service District because of insufficient funds, mismanagement, water arsenic levels, and the lack of potable water.

The Board of Supervisors agrees with Finding F1. However, it should be noted that the Fresno County Department of Public Health and Fresno County Supervisor Case have been working with the State to bring to their attention the serious problem in Lanare and urges the State to take action.

Recommendations

R109: Fresno County Board of Supervisors should be prepared to respond and deal with a potential health hazard if the Lanare Service District fails to continue satisfactory operations.

Recommendation will not be implemented. The Lanare Service District, under the authority of the California Department of Public Health, Drinking Water Program, has the obligation to abide by regulations to prevent public health hazards. In the event that a health hazard arises as a result of the unsatisfactory operation of the Lanare water system, the California Department of Public Health should respond as appropriate. The Fresno County Department of Public Health is prepared to assist the California Department of Public Health in dealing with such a health hazard.

R110: Contract with Fresno County Public Works Department to operate and maintain Lanare's water system.

Recommendation will not be implemented. The Fresno County Department of Public Works and Planning does not have sufficient staff resources to operate and maintain the Lanare water system. While the County does operate community water and/or sewer systems for specific community service districts in the eastern portion of the County, the County contracts with a private company to operate and maintain the County Service Areas in the western part of the County.

The Lanare water system could be added to the County's contract; however, there would need to be sufficient revenues generated by the district users to fully fund the contracted services. All of the water and/or sewer systems currently operated and maintained by the County are fully funded by user rates and/or assessments. The County does not subsidize the operation and/or maintenance of any of these systems with County discretionary revenues.




County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
ALAN WEAVER, DIRECTOR

DATE: March 24, 2008

TO: The Honorable Hilary Chittick
Presiding Judge of the Superior Court

FROM: Alan Weaver, Director 
Department of Public Works and Planning

SUBJECT: Fresno County 2007-08 Grand Jury Final Report #1

The Fresno County Department of Public Works and Planning is submitting their response to the Grand Jury Final Report #1 for 2007-08 as follows:

FINDINGS

F108 – *A potential emergency exists at the Lanare Community Service District because of insufficient funds, mismanagement, water arsenic levels, and the lack of potable water.*

The Fresno County Department of Public Works and Planning agrees with the finding.

RECOMMENDATIONS

R110: - *Contract with Fresno County Public Works Department to operate and maintain Lanare's water system.*

The Fresno County Department of Public Works and Planning does not have sufficient staff resources to operate and maintain the Lanare water system. While the County does operate community water and/or sewer systems for specific community service districts in the eastern portion of the County, the County contracts with a private company to operate and maintain the County Service Areas in the western part of the County.

While the Lanare water system could be added to the County's contract, there would need to be sufficient revenues generated by the district users to fully fund the contracted services. All of the water and/or sewer systems currently operated and maintained by the County are fully funded by user rates and/or assessments. The County does not subsidize the operation and/or maintenance of any of these systems with County discretionary revenues.

If you have any questions regarding our response, please contact me at 262-4078.

c: Charlotte Tilkes, Senior Administrative Analyst – CAO
Jeannie Figueroa, Principal Administrative Analyst - CAO



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

March 19, 2008

The Honorable Hilary Chittick
Presiding Judge of the Superior Court

SUBJECT: 2007-08 Grand Jury Report #1 Response

Presiding Judge Hilary Chittick

The Department of Public Health provided regulatory oversight of the Lanare Community Service District's water system until September 1, 2007. Currently the California Department of Public Health, Drinking Water Program has regulatory responsibility of the water system.

The Department is submitting their response to the Grand Jury Final Report #1 for 2007-08 as follows:

FINDINGS:

The Department agrees with Findings #'s 106 and 108.

If you have any questions, please contact me at (559) 445-3200.

Edward L. Moreno, M.D., M.P.H.
Director-Health Officer

ELM:pv

cc: Jeannie Figueroa, Principal Administrative Analyst

Dedicated to Public Health

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REPORT #2

HOMES FOR PEOPLE SLEEPING ON THE STREET

FILED

MAR 04 2008

FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

2007-2008

FRESNO COUNTY GRAND JURY



FINAL REPORT

#2

Homes for People Sleeping on the Street

“And homeless near a thousand homes I stood,
and near a thousand tables pined and wanted food.”

William Wordsworth, “Guilt and Sorrow”

INTRODUCTION

The homeless among us are a challenge to public policy and a reproach to the public conscience.

Currently, large numbers of people are being shielded from homelessness by the efforts and spending of the City of Fresno and Fresno County governments. In addition to government spending, local non-profit health and human resource groups and a plethora of charitable agencies also fight to end homelessness. These public and private programs, often embodying the best efforts of hardworking and well-meaning people, are not effectively coordinated. In spite of their efforts, there are many people living on the streets of Fresno or in the backs of cars each night.

These street people, the “least among us,” are the focus of this Grand Jury report. We recognize that local agencies devote a great deal of money and energy addressing their problems in a piecemeal fashion, but this effort is largely unknown or misunderstood by the public. Many citizens would be surprised to learn that government agencies spend as much as \$100,000 per chronic unsheltered homeless person every year. Yet, the problem persists.

BACKGROUND

The Homeless Population

Chronic unsheltered homeless people exist in every community in Fresno County. The definition for homelessness depends on the purpose and scope of the report or organization dealing with homeless people (see Appendix 1). Articles written about the homeless, for the most part, refer to the people who are living in cars or unsheltered on the street. The chronic unsheltered homeless can be seen sleeping outside on loading docks of buildings, courtyards of shopping centers or strip malls, under the underpasses of freeways, under oleander bushes around freeway off ramps, and in cardboard boxes or makeshift tents. Chronic unsheltered homeless people exist in every community in Fresno County.

However, not all homeless people are derelicts. Some are struggling individuals and families in need of help to find temporary shelter or money for rent or home payments.

Focus of this Report: The Unsheltered Homeless

This Grand Jury report is focused on people sleeping in a place not meant for human habitation or sleeping in an emergency shelter. Homeless encampments lack water, and

restroom facilities. Therefore, sanitation can become a public health problem. Every witness interviewed by the Grand Jury agreed that encampments are not an adequate shelter for the homeless and that something more is needed.

The unsheltered homeless are often afflicted by multiple problems which make them very challenging to serve. For example, it is estimated that 80% of the chronic unsheltered homeless have either drug addiction or an incapacitating mental disorder. The make-up of this group changes every day, and their problems impact almost all governmental services.

This population was dramatically brought to public attention when the City of Fresno and state transportation (Caltrans) officials began cleaning up the encampments of the chronic unsheltered homeless to force them to move elsewhere and to use available social services. After successive cleanups in 2006, personal properties were allegedly destroyed. This led to a lawsuit against the City of Fresno, Caltrans, and other named city officials. A preliminary injunction was issued in November 2007 in Federal Court stopping the City and others from continuing their actions. This trial is scheduled for June 10, 2008 in Federal Court.

The Public Cost of Homelessness

The scattered and piecemeal public services provided to the unsheltered homeless add up to a very large public expense. It has been reported that as much as 50-80% of the total money intended for homelessness is spent on the chronic unsheltered homeless.

The City of Fresno and Fresno County provide law enforcement and health services to the homeless as required by the laws governing law enforcement, hospitals and general governmental services. The funding for this comes from the city's and county's operating budgets. The total costs of caring for the homeless include monies from the state and federal governments, donations, and grants for non-profits providing food, shelter, treatment, transitional housing, education, medical services, police, fire, coroner, and even libraries (the homeless spend time in the library to get out of bad weather). It is difficult to estimate the total amount spent annually in the city and county to deal with the homeless, but it might be as much as \$100 million in Fresno County.

Providing police services to the unsheltered homeless and to the housed population whom their presence impacts presents special challenges and exacts high costs. In general, jail or prison costs are estimated to be three to four times the cost of shelter beds or supportive housing costs in other jurisdictions. In addition, the cost of booking a person who is publicly drunk into the county jail is very high. Fresno City Police have attempted to reduce this cost by contracting with the Fresno Rescue Mission to provide a "drunk tank" beneath a large tent on Rescue Mission property. Instead of booking those who are drunk in public, they are allowed to "sleep it off" on a cot in a supervised area. The Fresno Police Department estimates an annual savings of \$300,000 from this practice.

Based on estimates in other major cities in the United States, each chronic unsheltered homeless person often costs over \$100,000 dollars a year. There are especially large expenses in the delivery of medical services to a homeless population. San Diego County tracked

fifteen homeless people for eighteen months and was able to quantify the medical cost per chronic unsheltered homeless person to be more than \$130,000 per year or \$200,000 for eighteen months. Fifteen homeless people in eighteen months cost the county over \$3 million in un-reimbursed medical care.

A significant problem with providing medical care for the unsheltered homeless is that they have no home to which they can be safely discharged to recuperate. This results in longer hospital stays and more frequent hospitalization, as they never fully recover from their illness or surgery. This obviously results in higher costs. With the cost of hospital stays estimated at between \$1,200-\$1,600 a night, the City of Fresno and Fresno County can little afford to ignore these huge expenses, even if the City/County are not directly responsible for paying the bills.

Community Regional Medical Center (CRMC) does not identify the unsheltered homeless as a specific category in their budget. However in 2007, CRMC provided over \$122 million in uncompensated services to patients, including the homeless, who are uninsured or underinsured. CRMC has more non-reimbursed costs than all of the other hospitals in Fresno County combined. Post discharge planning for the homeless costs CRMC about \$120,000 per year. This expense does not include direct medical care costs, nor food, security, or other operating costs for the homeless patients receiving post discharge services. CRMC social services annually budgets \$500,000 for post discharge services to the homeless. CRMC social workers also regularly refer homeless patients to the Fresno Rescue Mission, Fresno County Mental Health Department, Marjoree Mason Center, and local substance abuse programs.

Sacramento and Bakersfield each has special respite care facilities for the "medically fragile" homeless after discharge. The homeless patients receive shelter, three meals a day, medication storage, other social services, and nurses to teach patients to care for themselves with no direct medical services. In Sacramento, each local hospital contributes \$65,000, and the County contributes \$120,000 annually. All feel that they save money by doing so. The respite shelter beds cost \$120 daily versus over \$1,200 for hospital beds. In approximately one year, one hospital in Sacramento estimated their savings to be \$800,000.

In addition to the costs of services to the homeless, future tax revenues for Fresno County and the cities are impacted by the homeless whose "tent cities" and unsanitary habits discourage the development of business in areas where they stay.

Lack of Coordination of Services for the Homeless

Most services for the homeless are located in downtown Fresno where the Poverello House, the Rescue Mission, mental health residential treatment homes and programs are located. Therefore, there are large concentrations of the homeless nearby. Some services for the homeless are provided by nonprofit agencies, while other services are provided by departments of Fresno County and by the City of Fresno.

However, there is no clear coordination of effort to help the homeless. For example, there is no administrator who has authority to coordinate the homeless efforts of the City of Fresno,

Fresno County, non-profit organizations, and for-profit organizations.

It is also often reported that different city and county departments whose work impacts the homeless do not talk with one another about common problems and the efficiencies that might be realized from coordinated action. For example, the City and County of Fresno both have a Housing and Community Development Division. They administer federal HOME Investment Partnership Program (HOME) funding that requires a five-year plan and an annual action plan with priorities developed by Division Managers. The county and city divisions do not coordinate meetings, goals, or projects.

Another example of opportunities lost because of insufficient coordination is provided by the current operation of the Fresno-Madera Homeless Management Information System (HMIS). This is an on-line computer system that provides countywide information to partner agencies. The system gives the status of services available to the homeless. The system could provide the current number of beds available for the homeless and their locations so that agencies trying to place homeless clients in temporary housing could efficiently utilize available resources. The full potential of this system is not realized, however, because the HMIS system is not receiving data from all agencies that provide services to the homeless.

Non-profit Service Providers

Non-profit agencies in Fresno/Madera counties annually serve 8,000 to 10,000 homeless people including battered or abused women, juvenile boys who need training and housing, families without shelter or food, and the 500 to 600 men and women wandering the streets of Fresno who are the focus of this investigation.

A federal mandate requires that for non-profit organizations to receive Federal Department of Housing and Urban Development (HUD) funding, a continuum of care must be formed that evaluates and coordinates the activities of organizations in their effort to help eliminate homelessness. This mandate also requires a ten-year plan be submitted and approved before funding is approved. The ten-year plan's progress is reported periodically.

The Fresno-Madera Continuum of Care (FMCoC) is a non-profit organization which evaluates and ranks grants for the non-profit agencies that submit proposals. Volunteers now perform its administrative duties with only one paid staff assistant. Annually about \$5 million in grants are approved.

Housing the Unsheltered Homeless

The mayor controls discretionary funds totaling about \$500,000 that can be used for housing the homeless. The City of Fresno, under Mayor Autry's leadership, has recently used funds to provide temporary shelter for the homeless in the form of thirty small, unheated sheds at a total cost of around \$250,000. Services to those in the sheds are directed or supervised by The Poverello House, a non-profit organization that provides help to many chronic unsheltered homeless. These sheds provide short-term help. Currently little or no money is spent in the City of Fresno, or in Fresno County, to develop permanent transitional and

supportive housing for the unsheltered homeless.

Some city and county funds for housing the homeless come from government programs (state and federal) including grants/loans such as Emergency Shelter Grants. The City of Fresno and the Fresno County Housing and Community Development Divisions administer federal (HUD-HOME) funds which are loan programs for builders and developers to help create new affordable housing, rehabilitate housing, acquire land for new construction, and assist in relocation of apartment units where necessary. Currently there are few builders applying for HUD funding to build housing for the chronic unsheltered homeless. Spirit of Women is the only program currently building housing for the homeless using money from a HUD grant.

The City of Fresno also has proposed acquiring land and building long-term housing for the homeless living on the streets. There was a \$3 million item in the Mayor's budget proposal of 2007 to fund this proposal. Authorization to spend this money has not been approved by the Fresno City Council.

These various efforts to provide housing for the homeless have not been effective solutions for chronic unsheltered homeless in Fresno County.

Housing First

“Housing First” programs provide permanent transitional housing and support services for the unsheltered homeless. Clients receiving shelter are not usually required to be drug and alcohol free in order to be provided housing. Support services, including counseling programs to support a drug-free lifestyle, accompany the housing, rather than being a prerequisite to it.

The “Housing First” model was developed in Boston, Massachusetts after a study revealed that the community was paying an exorbitant amount to treat homeless individuals at hospital emergency rooms. The study showed that giving the homeless person clean, warm, and dry shelter reduced medical costs by as much as 70%. Boston went on to construct permanent buildings to provide temporary or transitional housing for the homeless. Other cities including Chicago and Portland claim to have saved money and improved services by establishing a “Housing First” program.

Recent Developments

Recently the City of Fresno and Fresno County have taken what appear to be positive steps to work jointly on the homeless issue. Both governing bodies passed proposals to form a new task force to produce a new ten-year plan to reduce homelessness and to seek additional federal funds. The City of Fresno will hire a new staff person to work with the joint task force, and Fresno County will use existing staff. The City of Fresno is also exploring developing part of the former Hacienda Hotel site to house some homeless families. All of these ideas and proposals are in development, and it is not known whether the city/county efforts will come to fruition and be a help to the local homeless. Also, it is unclear how these proposals, if they are enacted, will impact the non-profit agencies currently providing services

to the homeless. They do appear to be steps in the right direction.

FINDINGS

- F201 The public costs of supporting the unsheltered homeless are very high.
- F202 The total costs associated with the unsheltered homeless in Fresno County are not quantified.
- F203 Fresno County, cities within Fresno County, and many non-profit and for-profit non-governmental organizations attempt to address problems of the homeless.
- F204 There is widespread (almost universal) agreement that the City of Fresno and Fresno County are not coordinating efforts to help solve the problems of the chronic unsheltered homeless.
- F205 The Fresno-Madera Homeless Management Information System (HMIS) is an on-line computer system that provides information about the homeless to partner agencies.
- F206 The HMIS system is not receiving data from all agencies that provide services to the homeless.
- F207 The various efforts currently in place to provide housing for the homeless have not been effective solutions to Fresno's homeless problem.
- F208 "Housing First" programs provide permanent transitional housing and support services for the unsheltered homeless.
- F209 "Housing First," meaning providing housing and supportive social services for the chronically unsheltered homeless, may cost less public money than leaving the homeless on the streets.

COMMENDATION

The Fresno-Madera Continuum of Care, and its member organizations are to be commended for the help they have provided and continue to provide to the homeless in Fresno and Madera Counties.

RECOMMENDATIONS

The 2007-2008 Fresno County Grand Jury recommends:

- R201. City and county identify the costs associated with the chronic unsheltered homeless and report to the public within six months of receiving this report and make an annual report thereafter. (Findings F201, F202)

- R202. City and county governments develop a mechanism to coordinate the programs that strive to reduce or eliminate homelessness in the city and county and to cooperate with non-profit service providers. (Findings F203, F204)
- R203. City and county governments establish a program of permanent transitional housing that provides shelter for the chronic unsheltered homeless along with providing support using established “Housing First” programs as models. (Findings F207, F208, F209)
- R204. City and county governments expand the Fresno-Madera Homeless Management Information System (HMIS) already established at the Fresno County Housing Authority to include all participating service providers dealing with the indigent and homeless including those receiving government monies for any projects that affect the homeless. (Findings F205, F206)

REQUEST FOR RESPONSES

Pursuant to Penal Code & 933.05, the Grand Jury requests that you respond to each specific recommendation as outlined in the attached letter of instruction.

Respondents

1. Fresno County Board of Supervisors. (R201-R204, F201-209).
2. Fresno Mayor. (R201, R202, R203, F201-204, F207-209).
3. Fresno City Council. (R201-R204, F201-209)

RESEARCH DATA

The Grand Jury utilized a variety of resources in its investigation of the chronic unsheltered homeless in Fresno County:

Interviews of representatives or attending meetings from:

1. Various departments of the City of Fresno and Fresno County including the Fresno Police Department and The Health and Human Services Department.
2. The Fresno City Council.
3. The City of Fresno Mayor’s Office.
4. The Fresno County Board of Supervisors.
5. Various non-profit organizations that provide help for the homeless including Fresno-Madera Continuum of Care, Poverello House, Salvation Army, Rescue Mission, Marjaree Mason Center, and Valley Teen Ranch.
6. The Fresno Redevelopment Agency
7. The Economic Development Corporation.
8. Fresno Housing Authority (FHA)

Articles read and information from:

1. Newspaper articles (2000-2007).

2. Internet sites.
3. The Fresno-Madera Continuum of Care 10-year Plan to End Homelessness, 2007.
Street Survey Data, January 2007.
4. Other Fresno-Madera Continuum of Care reports.

Appendix 1

According to the Stewart B. McKinney Act, 42 U.S.C. § 11301, et seq.(1994), a person is considered homeless who “lacks a fixed, regular, and adequate night time residence and has a primary night time residency that is: (A) a supervised, publicly or privately and operated as shelter designed to, provide temporary living accommodations ... (B) an institution that provides a temporary residence for individuals intended to be institutionalized, or (C) a public or private place, not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.” 42 U.S.C §11302(a). The term “homeless individual’ does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or a state law.” 42 U.S.C. §11302(c)

The education subtitle of the McKinney-Vento Act includes a more comprehensive definition of homelessness. This statute states that the term ‘homeless child and youth’ means (A) individuals who lack a fixed, regular, and adequate nighttime residence ... and (B) includes: (i) children and youth who lack a fixed, regular, and adequate nighttime residence, and includes children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; (ii) children and youth who have a primary nighttime residence that is a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings (iii) children and youth who living in cars, parks, public spaces, abandoned buildings, sub-standard housing, bus or train stations, or similar settings, and (iv) migratory children... who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii). McKinney- Vento Act sec 725(2); 42 U. S. C.11435 (2).

Other federal agencies, such as the Department of Housing and Urban Development (HUD), interpret the McKinney-Vento definition to include only those persons who are on the streets or in shelters and persons who face imminent eviction (within a week) from a private dwelling or institution and who have no subsequent residence or resources to obtain housing. This interpretation of homelessness serves large, urban communities, where tens of thousands of people are literally homeless. However, it may prove problematic for those persons who are homeless in areas of the country, such as rural areas, where there are few shelters. People experiencing homelessness in these areas are less likely to live on the street or in a shelter, and more likely to live with relatives in overcrowded or substandard housing (U.S. Department of Agriculture, 1996).

Chronic homelessness is long-term or repeated homelessness. The federal government’s definition of chronic homelessness includes homeless individuals with a disabling condition (substance use disorder, serious mental illness, developmental disability, or chronic physical illness or disability) who have been homeless either 1) continuously for one whole year, or 2) four or more times in the past three years.

(Chronic Homelessness B, National Alliance to End Homelessness Brief- March 2007 4

Pages and Fresno Madera Continuum of Care 2005 Homeless Street Survey and Gaps Analysis, Pages 7 & 8).

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RESPONSES

A. Fresno County Board of Supervisors
R201 through R204

B. Fresno Mayor
R201 through R203
Included with the Fresno City Council response

C. Fresno City Council
R201 through R204



County of Fresno

CHAIRMAN
BOARD OF SUPERVISORS
SUPERVISOR HENRY PEREA – DISTRICT THREE

July 23, 2008

The Honorable Hilary Chittick
Presiding Judge, Superior Court
1100 Van Ness Avenue, Department 20
Fresno, CA 93721

RE: RESPONSE TO THE 2007-08 GRAND JURY FINAL REPORTS #2 and #3

Dear Judge Chittick:

The Board of Supervisors has approved its official responses to the recommendations pertaining to Fresno County contained in the 2007-08 Grand Jury Final Reports #2 and #3. The responses are submitted herewith in fulfillment of Penal Code Section 933(c). Also, please find all other required County department responses enclosed in this packet as well.

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

Sincerely,

Henry Perea, Chairman
Board of Supervisors

Enclosure

County of Fresno
Board of Supervisors
RESPONSE TO THE
2007-08
FRESNO COUNTY GRAND JURY
FINAL REPORT #2



HOMES FOR PEOPLE SLEEPING ON THE STREET

Please find below the Fresno County Board of Supervisor's response to the 2007-08 Grand Jury Final Report #2.

Findings

F201: The public costs of supporting the unsheltered homeless are very high.

The Board of Supervisors agrees with Finding F201.

F202: The total costs associated with the unsheltered homeless in Fresno County are not quantified.

The Board of Supervisors agrees with Finding F202.

F203: Fresno County, cities within Fresno County, and many non-profit and for-profit non-governmental organizations attempt to address problems of the homeless.

The Board of Supervisors agrees with Finding F203. County departments (primarily in the Human Services functional areas) address the needs of the homeless to the full extent of the scope of existing State and Federal programs, eligibility requirements, and existing resource constraints.

F204: There is widespread (almost universal) agreement that the City of Fresno and Fresno County are not coordinating efforts to help solve the problems of the chronic unsheltered homeless.

The Board of Supervisors disagrees with Finding F204. The County Administrative Officer and staff members, along with selected members of the Human Services Departments, began meeting with a group of representatives from the City of Fresno, Federal Agencies, and local non-profits approximately two years ago to address all issues related to all aspects of homelessness. As part of that effort, the County compiled a comprehensive list of all programs that provide some form of shelter for residents of our County. On an annual basis, the County provides shelter for thousands of individuals in hundreds of facilities at a cost of tens of millions of dollars funded through dozens of programs. Each program has different eligibility criteria that include physical disability, mental disability, disease, substance abuse, economic condition, parole status, physical abuse, age, delinquency, etc.

In the summer of 2007, the County joined the City of Fresno to implement short-term measures while seeking a long-term plan to end chronic homelessness. To reach out to the homeless community, the County staffed a City-provided facility in the vicinity of Poverello House to establish eligibility for County-managed programs. That program continues to the present and has generated valuable data on this vulnerable population. In December of 2007, the County joined the City in a joint meeting to work on the long-term plan. That effort first formed a Leadership Council to select community members to serve on a Planning Council that would develop the 10-Year Plan to end chronic homelessness. All segments of the community that have a connection to this issue are involved. As the Plan is completed later in the summer of 2008, the Leadership Council will focus on evaluation of the Plan in terms of cost effectiveness.

F205: The Fresno-Madera Homeless Management Information System (HMIS) is an on-line computer system that provides information about the homeless to partner agencies.

The Board of Supervisors agrees with Finding F205.

F206: The HMIS system is not receiving data from all agencies that provide services to the homeless.

The Board of Supervisors is unable to respond as to whether or not the HMIS system is receiving data from all agencies that provide services to the homeless. However, it should be noted that the County has been a leading advocate for the creation of a Fresno County 211 hotline that will refer any resident to an all-inclusive range of human services available from government agencies, non-profits, and the private sector. This effort, being implemented County by County, has been ongoing in Fresno County for several years and is constantly developing and expanding. Currently, the system operator gathers and maintains information on the services available.

F207: The various efforts currently in place to provide housing for the homeless have not been effective solutions to Fresno's homeless problem.

The Board of Supervisors agrees that the visible evidence of the unsheltered homeless has remained very evident in the large encampments in the metropolitan area and to a lesser degree in other areas of the County. For the thousands that have made the connection to County services, either voluntarily or involuntarily, effective provision of indigent health care, food assistance, emergency shelter in a General Relief facility, residential treatment for substance abuse, intense treatment for seriously mentally ill, foster homes for homeless youth, youth transitional housing, homeowners assistance, and the many programs associated with employment assistance, has provided effective short or long term solutions. The 10-Year Plan is designed to provide long-term solutions to all.

F208: "Housing First" programs provide permanent transitional housing and support services for the unsheltered homeless.

The Board of Supervisors agrees with Finding F208.

F209: "Housing First," meaning providing housing and supportive social services for the chronically unsheltered homeless, may cost less public money than leaving the homeless on the streets.

The Board of Supervisors agrees that this may be true, however further analysis as to where the savings would be made to pay for up front costs associated with implementing a "Housing First" program would be required.

Recommendations

R201: City and county identify the costs associated with the chronic unsheltered homeless and report to the public within six months of receiving this report and make an annual report thereafter.

Fresno County agrees that this is a necessary activity in trying to address the chronic homeless challenges and is committed to working collaboratively with the cities and Homeless Planning Council to identify the costs associated with the chronic unsheltered homeless. The timing of the six month and annual reports would be subject to the ability of the Planning Council to complete such a report.

R202: City and county governments develop a mechanism to coordinate the programs that strive to reduce or eliminate homelessness in the city and county and to cooperate with non-profit service providers.

Fresno County participated in a Joint Session to initiate the process to create a 10 Year Plan to end chronic homelessness. Fresno County also participates on the Leadership Council that oversees the Planning Council comprised of representatives from the business sector, service providers, homeless individuals, faith based sectors, and others. Fresno County is available to participate and coordinate services as needed. The mechanism for coordinating services to the chronically homeless would be identified through the Planning Council actions of which the City and County are members.

R203: City and county governments establish a program of permanent transitional housing that provides shelter for the chronic unsheltered homeless along with providing support using established "Housing First" programs as models.

Fresno County is committed to continue their collaborative efforts with the City of Fresno through the development of the 10 Year Plan to end chronic homelessness. Through this effort, current housing that will work for a "Housing First" type program will be identified. It should also be noted that the Fresno County Department of Behavioral Health and Department of Children and Family Services, through the Mental Health Services Act Housing Program, will be creating local MHSA housing projects for seriously mentally ill clients and families who are homeless or at risk of homelessness.

R204: City and county governments expand the Fresno-Madera Homeless Management Information System (HMIS) already established at the Fresno County Housing Authority to include all participating service providers dealing with the indigent and homeless including those receiving government monies for any projects that affect the homeless.

The Board of Supervisors agrees that it is beneficial to have an information management system of services for the homeless and indigent. The recommendation requires further analysis to evaluate the feasibility of such an expansion.



RECEIVED
BY CW | DATE 6-08-06

Andrew T. Souza
City Manager

May 28, 2008

Mr. John Tinker, Foreman
Fresno County Grand Jury
1100 Van Ness #102
Fresno, CA 93721

Dear Mr. Tinker:

SUBJECT: 2007-2008 GRAND JURY RECOMMENDATIONS

The following contains the City of Fresno's responses to the 2007-2008 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 May 20, 2008.

Recommendation R201

City and County identify the costs associated with the chronic unsheltered homeless and report to the public within six months of receiving this report and make an annual report thereafter (Findings F201, F202)

Response to Recommendation R201

In December of 2007, the City and County met in Joint Session to initiate the process to create a 10 Year Plan to End Chronic Homelessness. Subsequently, a Leadership Council, comprised of officials from the City and County, the Fresno-Madera Continuum of Care, the Hospital Council and others was formed. The Leadership Council met two times and appointed a Planning Council comprised of representatives from the business sector, service providers, homeless individuals, faith-based sectors and others. On April 14th, 2008, representatives of the Leadership and Planning Councils met to discuss a comprehensive, permanent solution for chronic homelessness. The Planning Council appointed chairpersons to guide the development of a 10 Year Plan to End Chronic Homelessness (Plan). The Plan will include a cost benefit analysis addressing the costs of medical treatment, law enforcement services, fire and paramedic services, emergency psychiatric responses as well as impacts to libraries, parks, public facilities and local businesses. The Planning Council has committed to develop a plan within 100 days of the first meeting.

City of Fresno

City Hall • 2600 Fresno Street • Fresno, California 93721-3601
(559) 621-7770 • FAX (559) 621-7776 • www.fresno.gov

Recommendation R202

City and County governments expand the Fresno-Madera Homeless Management Information System (HMIS) already established at the Fresno County Housing Authority to include all participating service providers dealing with the indigent and homeless including those receiving government monies for any project that affect the homeless. (Findings 205,206)

Response to Recommendation R202

The “History, Research, Best Practices” workgroup will be researching and identifying information crucial to the success of the Plan including the history of the homeless problem in Fresno, summarizing and centralizing community plans, resources and data, identifying target populations, and identifying subpopulations at risk. Through this process, service provider resources will also be identified and provided to the Fresno-Madera Homeless Management Information System.

Recommendation R203

City and County government establish a program of permanent transitional housing that provides shelter for the chronic unsheltered homeless along with providing support using established “Housing First” program as models. (Findings F207, F208)

Response to Recommendation R203

As part of the Planning Council, several workgroups were established. The workgroup “Urban and Housing Design, Zoning and Land Use” will be identifying current housing that would work for a “Housing First” type program to provide transitional housing opportunities. Additionally, funding for a Housing First program has been included in Mayor Autry’s proposed budget for fiscal year 2008-2009.

Findings F201

The public cost of supporting the unsheltered homeless are very high.

Response to Findings F201

The City agrees with Finding F201.

Findings F202

The total cost associated with the unsheltered homeless in Fresno County is not quantified.

Response to Findings F202

The City agrees with Finding F202. The 10 Year Plan to End Chronic Homelessness will address this issue and provide statistics specific to the Fresno area.

Findings F203

Fresno County, cities within Fresno County, and many non-profit non-governmental organizations attempt to address problems for the homeless.

Response to Findings F203

The City agrees with Finding F203.

Findings F204

There is widespread (almost universal) agreement that the City of Fresno and Fresno County are not coordinating efforts to help solve the problems of the chronic unsheltered homeless.

Response to Findings F204

While there has been some past coordination challenges, the newly created Leadership and Planning Councils for The 10 Year Plan to End Chronic Homelessness is a coordinated effort including the Fresno County, City as well as participation from private and non-profit groups.

Findings F205

The Fresno-Madera Homeless Management Information System (HMIS) is an on-line computer system that provides information about the homeless to partner agencies.

Response to Findings F205

The City agrees the HMIS is a resource addressing the homelessness issue.

Findings F206

The HIMS system is not receiving data from all agencies that provide services to the homeless.

Response to Findings F206

The City was not aware that the HMIS system was not receiving data from all agencies. Efficiency of service provision is one of the issues to be addressed by the Planning Council.

Finding F207

The various efforts currently in place to provide housing for the homeless have not been effective solutions to Fresno's homeless problem.

Response to Findings F207

The City agrees and has now initiated the Plan as a coordinated effort to provide housing for the homeless.

Findings F208

"Housing First" programs provide permanent transitional housing and support services for unsheltered homeless.

Response to Findings F208

The City agrees that "Housing First" will play a role in the solution for homelessness. The 10 Year Plan to End Chronic Homelessness will address this issue and provide recommendations for implementation. Additionally, funding for a Housing First program has been included in Mayor Autry's proposed budget for fiscal year 2008-2009.

Findings F209

“Housing First” meaning providing housing and supportive social services for the chronically unsheltered homeless may cost less public money than leaving the homeless on the streets.

Response to Findings F209

The City is aware that statistics from other municipalities have validated Finding F209. The 10 Year Plan to End Chronic Homelessness will address this issue and provide statistics specific to the Fresno area.

Sincerely,



Gary Watahira
Deputy City Manager

cc: ~~Natasha Hagaman~~, County Administrative Office
Jeannie Figueroa

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REPORT #3

MALAGA COUNTY WATER DISTRICT

FILED

APR 01 2008

FRESNO COUNTY SUPERIOR COURT

By _____ DEPUTY

**2007-2008
FRESNO COUNTY GRAND JURY**



**FINAL REPORT
#3**

MALAGA COUNTY WATER DISTRICT

“Eternal vigilance is the price of liberty.” Wendell Phillips

INTRODUCTION

As the result of a citizen complaint, the Fresno County Grand Jury has investigated the operations of the Malaga County Water District. That investigation has revealed troubling concerns related to the way this district functions. In some instances, it has failed to recognize, much less comply with, applicable state law. It has also acted in ways that give the impression of misconduct. As is noted in more detail below, valid concerns have yet to be properly addressed by those entrusted with this district’s operations.

BACKGROUND

Special Districts

There are approximately 2300 independent special districts in California. Special districts are a form of local government authorized by state law to meet specific needs that are not being adequately satisfied by the existing governmental structure. For example, when residents want new or higher levels of existing services, they may form a special district to pay for and administer those services.

Special districts are governed by an independent board of directors who are elected by the district voters or appointed to a fixed term of office by either a city council or a board of supervisors. Most districts have five-member governing boards. Some districts have a professional manager to assist the governing officials. The governing board adopts policies that the general manager implements. Members of the district board are trustees of public funds and are bound by their oath to operate under pertinent government regulations and statutes.

Special district revenues come from various sources such as fees, taxes, revenue bonds, and grants. According to existing law, to the extent fees are charged for specific services, those fees must be based on the cost of the service being provided and may not be used to support unrelated activities. Likewise, state law prohibits using public funds for gifts.

The Special District Board of Directors is accountable primarily to the voters and the customers who use their services. Technically, the State provides oversight. For example, special districts must submit annual financial reports to the State Controller and must also follow laws pertaining to public meetings, bonded debt, record keeping, and elections. However, there appears to be no effective follow-up to insure that the districts are in compliance with existing laws.

The California Special Districts Association (CSDA)

The California Special Districts Association (CSDA) is dedicated to advocating and strengthening special district governance by providing services and support to its members.

Through membership in CSDA, special districts may take an active role in educating the general public, their constituents, and legislators as to the important role the special districts play. Additionally, members of CSDA receive access to education and training, insurance programs, legal advice, industry-wide litigation and public relations support, legislative advocacy, capital improvement and equipment funding, collateral design services, and, most importantly, current information that is crucial to a special district's management and operational effectiveness. CSDA offers a full range of training programs and educational seminars specially designed for special district personnel from secretary to board members. Subjects include board policy, community relations, finance, management, legal issues including the Ralph M. Brown Act and conflict of interest/ethics laws, and other important topics.

Malaga County Water District

Malaga County Water District (MCWD) was founded in 1958 and operates under the California Water Code, sections 30000 et seq. It covers a small, low-income, industrialized area located in Fresno County with a population of approximately 1,500 residents and a business community of approximately 250 warehouses and commercial customers.

MCWD is governed by an elected five-member Board of Directors that oversees the water, sewer, and solid waste disposal operations as well as recreational activities. It employs an estimated 13 full-time employees including a manager, water systems operator, wastewater treatment plant operator, maintenance and operations specialist, secretary, and bookkeeper. In addition, independent contractors are hired on a part-time basis for special projects and activities.

Monies are received by MCWD from user fees for water and sewage services and a portion of property taxes designated for community recreation purposes. Revenues are disbursed from a general fund consisting of four budget items: water, sewer, solid waste disposal, and recreation. Expenditures and revenues are assigned to specific budgets at the end of the fiscal year.

ISSUES OF CONCERN

The District Board and its management appear to be ignorant of or indifferent to controlling state laws and regulations. Some of the individuals interviewed were reluctant to cooperate with this Grand Jury's investigation based, in part, on their erroneous belief that the District was exempt from Grand Jury oversight. The District's attitude has contributed to and/or caused the problems noted below.

Commingling of Funds

Monies received from the water, sewer, and solid waste fees, and a portion of the property tax devoted to the recreation budget are placed into a general fund. Expenses for each of these areas are placed into and paid from the general fund. At the end of the fiscal year, the costs of the district are assigned to the various budgets. Since insufficient funds are being received to support desired recreational activities, fees collected for water, sewer, and solid waste are being "loaned" to pay for recreational activities.

While there appears to be no law prohibiting loaning surpluses from the water or waste disposal funds to the recreation park activities, a district's water and other rates must be reasonable and fair. Under the Water Code, fees should be reduced if rates are creating a surplus. If recreation fees and charges are insufficient, they should be raised. If recreation fees and charges cannot be raised, those services should be cut. In any case, if the District loaned money from water to recreation, those monies should be paid back by recreation. A July 21, 2004 independent report noting these problems was distributed to the Board of the MCWD and to the Fresno County Board of Supervisors.

Payment of Health Insurance and In-Lieu-of Monies

Currently, the District offers health insurance for Board members and their families. If a Board member has insurance through an employer, the Board member is paid in-lieu benefits ranging from \$941 to \$1226 per month instead of receiving the health insurance provided through the District. The MCWD Policies and Procedures Manual (dated 1993) authorized payment of accident, health, hospital, and dental benefits for full-time employees of the district. The District was authorized to provide vision care benefits for Board members.

No Board approved policy was found providing Board members with health and dental coverage, other than vision coverage. However the minutes of February 11, 1997 included Board action authorizing in-lieu benefits for Board members already carrying dental, health, and/or vision coverage on recommendation of the Board's legal counsel.

A district may provide health insurance for Board members (see section 31008 of the Water Code). However, there appears to be no authority in the group insurance statutes to pay cash to an officer already having health insurance instead of providing benefits through a group plan adopted by a local agency. According to our counsel, unauthorized cash payments in lieu of health benefits might be subject to criminal prosecution (see, e.g., sections 1222 and 53200-53210 of the Government Code). The 2004 independent report noted the same problem.

Nepotism

The MCWD Board is comprised of one extended family, with the exception of the Board president. One of the responsibilities of the district manager is to interview and hire job applicants. While employment openings are posted at Fresno City College and California State University, Fresno, as well as placed in the Fresno Bee, friends and family of Board members often are hired as independent contractors to fill temporary positions such as lifeguards, referees, babysitters, etc. Indeed, a board member has received compensation as a DJ at social events. These practices raise questions about conflicts of interest.

Use of Public Monies for Purposes Not Provided in the Law

The Grand Jury has been provided accounts payable records which show that monies have been expended for funeral receptions and floral tributes to various families in the community who have experienced a death. However well intended, this appears to be an improper use of district funds. Since members of the Board of Directors are trustees of MCWD funds with the duty to

use them for district purposes, allowing the funds to be used for improper purposes would violate their oaths of office.

Under the California Constitution, the District may not use its monies to confer a gift of public funds, meaning any appropriation for which there is no authority or enforceable claim (*Jordan v. Department of Motor Vehicles* (2002) 100 Cal. App.4th 431, 450, citations omitted. *California Teachers Assn. V. Board of Trustees* (1978) 82 Cal.App.3d 249, 257, citations omitted). The previous independent report noted this statutory violation. Willful appropriation of funds for purposes not authorized by positive law could result in civil and/or criminal action liability.

The Grand Jury believes it is unlikely that a public purpose can be found for either paying funeral expenses of a deceased board member or buying flowers for families in the District having a death in the family.

Violation of the Brown Act

The Brown Act was enacted to insure that the public's business is conducted in public, not in secret. Some members of the community are distressed by practices perceived as secretive.

For example, in order to replace a deceased Board member, the Board solicited letters of self-nomination from the community. A number of individuals responded, including a relative of several Board members. At a public meeting, the Board retired behind closed doors to review the applications and found the applicants to be similarly qualified. The Board members decided to put the names into a hat and pull out the name of the applicant to be selected. The name drawn was that relative of other Board members. The Board returned to the community members at the Board meeting and announced that the selected Board member was the result of a unanimous vote. Some present believed the choice was a foregone conclusion. Although deliberations about personnel matters regarding hired employees of the District must be conducted confidentially, all matters regarding elected officials must be handled publicly. The District's procedure violated the Brown Act and has created the suspicion of favoritism.

Recreation Funds

The Fresno County Grand Jury has reviewed financial records and audit reports of the MCWD and found several areas of concern. For example, the recreation program is required to be self-supporting, meaning that it can only spend what it receives through property taxes and other recreation-generated revenues. It cannot depend upon water or sewer revenues. The Grand Jury has found that the Chairperson of the Board of Directors of the MCWD was warned in a letter from a Certified Public Accountant in March of 2004 that the District's recreation program had operated at a deficit for many years and that, as of June 30, 2003, it owed the Water Fund \$161,320. The MCWD Board of Directors was advised by this CPA as well as by the previously mentioned independent study to limit recreation fund expenditures to no more than property tax and recreation related revenues. They were further advised to make every effort to cut expenditures below anticipated revenues in order to reimburse borrowed funds from the water and sewer funds. Despite these warnings, it appears that this deficit spending has continued.

Staff Training

While it is a member of the California Special Districts Association, the district has failed to take advantage of valuable services available through this and related organizations. For example, a previous board member/interim manager was paid additional compensation to train the present manager. Exposure to outside resources will better enable the district to avoid repeating prior errors and should help implement effective, law-abiding practices. Deliberate ignorance does not benefit the board, its staff, or the public it is sworn to serve.

CONCLUSION

The MCWD Board of Directors and the District Manager have taken steps to address some of the concerns raised by the complainant and revealed during our investigation. However, the focus of this report has been on problem areas that continue to exist. This is especially true when it comes to the way in which the District accounts for and handles district fees. The district also needs to become better informed and to take advantage of training available through organizations such as the California Special Districts Association.

FINDINGS

- F301 The participation of the community was perceived to be unwelcome at Board meetings.
- F302 Monies from the water, sewer, solid waste disposal, and recreation budgets are being commingled. The water and sewer fees must be used only for water and sewer purposes.
- F303 The MCWD Policies and Procedures Manual does not provide health benefits other than vision for Board members. Nevertheless, members of the Board of Directors are receiving monies in-lieu-of health, vision, and dental insurance.
- F304 Independent contracts are awarded to Board members as well as friends and family of the Board members.
- F305 The Board had prior knowledge of probable improprieties.
- F306 A previous independent investigation approved by the MCWD Board and submitted to the Board of Supervisors advised the MCWD Board of inappropriate and illegal practices.
- F307 Public monies were used for purposes not provided in the law, e.g., funeral receptions and flowers to bereaved families.
- F308 A past board member/interim manager trained the present manager at additional cost to the District..
- F309 The Board of Directors has violated the Brown Act.

RECOMMENDATIONS

The 2007-08 Fresno Grand Jury recommends:

- R301 Repay to water, sewer, and solid waste disposal monies borrowed for recreation. (F302)
- R302 Review recreation program and account to bring them into balance and compliance with good business practices. (F302, F304)
- R303 Stop paying money for in-lieu-of health benefits to members of the Board of Directors. (F303)
- R304 Stop dispensing public monies for uses outside of those provided in the law. (F307)
- R305 Board members and appropriate employees should take advantage of workshops and seminars offered by the California Special Districts Association, particularly those relating to ethics. (F302, F306, F307, F308)
- R306 To the extent permitted by law, the MCWD Board of Directors' actions should be done publicly. The participation of the community should be welcomed and respected. (F301, F309)
- R307 The MCWD Policies & Procedures Manual should be revised and updated to reflect current practices. (F303, F304)
- R308 The Board of Directors should avoid all appearance of conflict of interest. (F303, F304, F307)
- R309 The District should stop commingling funds. (F302)
- R310 The Fresno County Auditor-Controller/Treasurer-Tax Collector should conduct an audit as soon as possible of the MCWD. (F302, F303, F304, F307)

REQUEST FOR RESPONDENTS

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

RESPONDENTS

Manager, Malaga County Water District (R301, R302, R305, R307, F301, F302, F303, F304, F307, F308)

MCWD Board of Directors (R301, R302, R303, R304, R305, R306, R307, R308, R309, F301, F302, F303, F304, F305, F306, F307, F309)

Fresno County Board of Supervisors (R302, F305, F306)

Fresno County Auditor-Controller/Treasurer-Tax Collector (R310, F302, F303, F304, F307)

SOURCES AND REFERENCES

MCWD community residents

MCWD present and former managers

MCWD present and former presidents of Board of Directors

MCWD staff

Certified Public Accountant for MCWD

MCWD legal counsel

California State Controller's office

Fresno County District Attorney's office

Fresno County Counsel's office

Fresno County Auditor-Controller/Treasurer-Tax Collector's office

California Special Districts Association

Special Districts Risk Management Association

Sacramento Suburban Water District

Del Paso Manor Water District

MCWD financial statements and audit reports

MCWD Policies and Procedures Manual

MCWD Statement of Cash Receipts & Disbursements October 2006-2007

MCWD Accounts Payable Records October 2006-2007

MCWD Financial Statements/Audit Reports for fiscal years ending 2004, 2005, 2006, 2007

Unaudited Malaga Recreation Department Analysis and Recommendations dated July 21, 2004

Internet research

RESPONSES

- A. Manager, Malaga County Water District
R301, R302, R305 and R307
Included with the Malaga County Water District Board of
Directors Response

- B. Malaga County Water District Board of Directors
R301 through R309

- C. Fresno County Board of Supervisors
R302

- D. Fresno County Auditor-Controller / Treasurer-
Tax Collector
R310

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

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IN RE 2007-2008
GRAND JURY REPORT NO. 3
MALAGA COUNTY WATER DISTRICT

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ORDER DENYING MOTION TO
STRIKE AND/OR REFUSE TO FILE
RESPONSE

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The 2007-2008 Grand Jury has issued Final Report No. 3 with respect to the Malaga County Water District (hereafter referred to as the District). The District has responded to the report, and has included a motion to strike the Grand Jury Report or, in the alternative, a request that the court refuse to accept the Report for filing.

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Courts are empowered to exercise a limited review of a proposed grand jury report to ensure that the report does not exceed the Grand Jury's lawful authority. *People v. Superior Court of Santa Barbara County* (1975) 13 Cal.3d 430. The only issue before the Court, therefore, is whether the report exceeds the Grand Jury's authority.

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1 The District has both assessing and taxing powers within
2 Fresno County (see *County of Fresno v. Malaga County Water*
3 *District* (2002) 100 Cal.App.4th 937), and therefore may be
4 investigated by the Fresno County Grand Jury pursuant to Penal
5 Code section 933.5

6 Penal Code section 933.5 was amended in 1969. The
7 purpose of the amendment was explained in the report of the
8 Assembly Committee On Criminal Procedure, dated June 25, 1969, as
9 follows:

10 "Under existing law grand juries have the
11 right to examine the books and records of
12 any special purpose assessing or taxing
district located wholly or in part in its
county.

13 "This bill ... gives grand juries the
14 additional authority to investigate and
report upon the manner in which the special
15 district carries out its duties.

16 "In effect, grand juries will now be able to
17 investigate and report on sloppy business
practices in addition to their already
18 existing authority to investigate misconduct
or corruption in office."

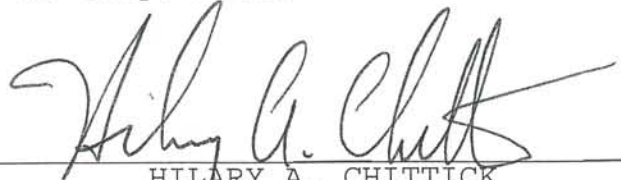
19 Reports of legislative committees may be used to discern
20 legislative intent. (See *Hutnick v. United States Fidelity &*
21 *Guaranty Company* (1988) 47 Cal.3d 456, 465, fn. 7: *Long Beach*
22 *Police Officer's Assn. V. City of Long Beach* (1988) 46 Cal.3d 736,
23 743-746.)

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The report is well within the ambit of the Grand Jury's authority. The Court, therefore, denies the motions of the Malaga County Water District to refuse to accept for filing and/or to strike the Grand Jury Report.

IT IS SO ORDERED
DATED this 2ND day of July, 2008.



HILARY A. CHITTICK
PRESIDING JUDGE OF THE SUPERIOR COURT

LAW OFFICES
COSTANZO & ASSOCIATES

NEAL E. COSTANZO
MICHAEL G. SLATER

A PROFESSIONAL CORPORATION
575 E. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720-2928
(559) 261-0163

FAX (559) 261-0706

OUR FILE NO. 03024-005

June 26, 2008

SENT VIA OVERNIGHT SERVICE

Honorable Hillary A. Chittick
Fresno County Superior Court
Department 70
1100 Van Ness Avenue
Fresno, CA 93724

**Re: Response to 2007-2008 Fresno County Grand Jury
Final Report No. 3 Malaga County Water District**

Dear Judge Chittick:

I represent the Malaga County Water District as its General Counsel. The Fresno County Grand Jury published the above Final Report on April 1, 2008, and delivered a copy to the District, through the mails, the following day, April 2, 2008. Malaga is required to respond or comment on the Report and provide that response or comment to you under the provisions of Penal Code §§933 and 933.05. There is no provision in the statute relating to service of the response or comment on any other person or entity, including the Grand Jury. The response has, nevertheless, been served, by mail, on the persons and entities shown on the accompanying proof of service including the Grand Jury and the Fresno County Board of Supervisors.

Statute requires that the Grand Jury present its Report to you. There is no caption or case number concerning this matter and neither the Grand Jury's Report or the response or comment thereto is required by statute to be in the format of a pleading or formally filed with the court. Both documents are to be presented to the Presiding Judge of the Superior Court. The response is enclosed. It consists of a Resolution of the Malaga County Water District Board of Directors Approving Response, the attached response with an original Declaration of Russ Holcomb in support thereof. An original and one copy of the foregoing are enclosed. There is also enclosed a duplicate original and one copy of the Declaration of Russ Holcomb.

Honorable Hillary A. Chittick
June 26, 2008
Page 2

There is included in the response a motion, application or request that the Grand Jury's Report be stricken from the court's file, or that the court refuse to accept it for filing. The court has inherent authority to take that action according to authorities cited in the response. There is, however, no practice or procedure for setting a hearing on any such motion or application and accordingly, unless the court will consider this motion on the application alone, the court is requested to schedule a hearing so that the motion included in the response can be determined. The court is also requested to acknowledge receipt of the response in whatever manner you deem appropriate, such as returning a file conformed copy.

Thank you for your attention to this matter.

Very truly yours,

COSTANZO & ASSOCIATES


Neal E. Costanzo

NEC/tm

Enc.

cc: John Tinker, Foreman
2007-2008 Fresno County Grand Jury
Fresno County Board of Supervisors
Fresno County Clerk
Malaga County Water District

RESOLUTION NO. 06-24-08

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MALAGA COUNTY WATER DISTRICT APPROVING RESPONSE
TO 2007-2008 FRESNO COUNTY GRAND JURY FINAL
REPORT NO. 3 MALAGA COUNTY WATER DISTRICT**

BE IT RESOLVED, by the Board of Directors (the "Board") of the Malaga County Water District (the "District"), County of Fresno, California, as follows:

WHEREAS, Fresno County Grand Jury published its Final Report No. 3 relating to Malaga County Water District on April 1, 2008. The District was provided with a copy of the Report after its publication on April 2, 2008; and

WHEREAS, Penal Code §§933 and 933.05 require a specific form of response or comment upon the Grand Jury Report by the target of the Report, in this case, the District; and


WHEREAS, the Board of Directors has addressed in a series of closed session meetings the generation of a response or comment to the Grand Jury Report No. 3 and staff has prepared, with the input of the Board of Directors, a response to the said Report, a copy of which is attached and incorporated by reference as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MALAGA COUNTY WATER DISTRICT as follows:

1. The above recited facts are true and correct.
2. The Malaga County Water District hereby adopts the response to 2007-2008 Fresno County Grand Jury Final Report No. 3 Malaga County Water District that is attached to this Resolution as Exhibit A. The District's legal counsel is directed to present the response to the Presiding Judge of Fresno County Superior Court and to serve the response on the appropriate parties or entities, all as prescribed by law.

The foregoing Resolution was passed and adopted by the Board of Directors of the Malaga County Water District at a meeting thereof held on the 24th day of June 2008, by the following vote:

AYES: BOARD MEMBERS: Charles Garabedian, Jr., Salvador Cerrillo, Irma Castaneda, Frank Cerrillo, Jr., and Frank Soto
NOES: BOARD MEMBERS:
ABSENT: BOARD MEMBERS:
ABSTAIN: BOARD MEMBERS:



Charles Garabedian, Jr., President
of the Board of Directors
Malaga County Water District

ATTEST:



Secretary

**RESPONSE TO 2007-08 FRESNO COUNTY GRAND JURY
FINAL REPORT NO. 3 MALAGA COUNTY WATER DISTRICT**

INTRODUCTION

This is the response to the above Grand Jury Report (the "Report") provided for by Penal Code §933(c) and 933.05. The Report wrongly accuses the Malaga County Water District ("Malaga" or "District"), and inferentially current governing Board Members, of "misconduct" and even action that is "subject to criminal prosecution." These accusations, and the conclusions and findings made in the Report are not supported by evidence, although it is known that the Grand Jury received extensive testimony and documents relating to the District's operations. In many cases, the "misconduct" cited in the report is to occurrences in 2004, or earlier, and is conduct that is obviously, directly attributable to Board Members that were recalled by the voters in that year. The Report wrongly attempts to attribute this misconduct to current Board Members which the report incorrectly and sarcastically describes as an "extended family." These accusations have no basis and appear to be premised on the complaint of a purported "citizen" who is not identified.

The report makes broad assertions concerning present allegedly improper expenditures of District funds, but, provides literally no evidentiary support (because there is none) for these assertions. It overstates or simply misinterprets the law purportedly applicable to what amounts to an imaginary state of facts to arrive at these baseless conclusions. The report arrogantly attributes these ill-defined 'improprieties' to the "ignorance" of the law on the part of current Board Members. It is the Fresno County Grand Jury that has engaged in "misconduct," not the District. It is the Grand Jury's report, not any action taken by the District, that arises out of willful ignorance of the law.

MOTION TO STRIKE

The District hereby moves for an order of this court refusing to accept for filing or striking from the files and records of this court this unauthorized report on the ground the report was not issued in conformity with applicable law, and the matters referred to in the report show the Grand Jury has exceeded the limits on its powers and jurisdiction. Because the report amounts to an unauthorized report that was not issued in conformity with applicable law, the District asks the court for an order striking the report from the court files. A Grand Jury is a "judicial body" that is an "instrumentality of the courts of this state." (See *Ex Parte Sternes* (1889) 83 Cal.245, 247; *In Re Shuler* (1930) 210 Cal. 377, 405; *McFarland v. Superior Court* (1948) 88 Cal.App.2d 153, 160). Unfortunately, the Fresno County Grand Jury is, in fact, functioning as an instrument of Fresno County which is using its influence to guide the Grand Jury to target less powerful local governmental entities that the County wishes to control. Regardless, there is no "doubt that a Grand Jury is part of the court by which it is convened," and that it is under the control of the court. (In *Re Gannon* (1886) 69 Cal. 541, 543; *Brown v. United States* (1959) 359 U.S. 41, 49).

Authority of Superior Court to refuse to accept an unauthorized report or one issued in disregard of applicable statutory limitations on authority of the Grand Jury, and those regulating its procedures, is implicit in the statutory provisions establishing definite limits on the Grand Jury's reporting power. (See *People v. Superior Court* (1975) 13 Cal.3d 430, 439-440). Indeed, absence of judicial authority to refuse to file an unauthorized report would render established statutory limits and requirements regulating the Grand Jury's

activities meaningless. The Legislature never intended that the limits on a Grand Jury's reporting powers be so easily evaded. (Id).

The nature of the Grand Jury's oversight authority depends upon what person or entity it is investigating. The Report states, arrogantly:

"Some of the individuals interviewed were reluctant to cooperate with this Grand Jury's investigation based, in part, on their erroneous belief that the District was exempt from Grand Jury oversight. The District's attitude has contributed to and/or caused the problems noted below."

A declaration of the District's General Manager is attached as Exhibit A. The District did question the Grand Jury's ability to investigate Malaga to the extent that it has because controlling statute plainly limits the Grand Jury's authority with respect to the investigation of a "special purpose assessing or taxing district." (See Penal Code §933.5). Accordingly, on being asked about matters that relate to substantive policy and discretionary decisions by the District, the District asked for and received from the chairperson of the Grand Jury its purported statutory authority for conducting the investigation it conducted. The authority provided was Penal Code §925 which does not apply. That section gives the Grand Jury power to investigate and report on the operations, accounts and records of the officers, departments and functions of the County including those operations, accounts and records of any special legislative district or other district in the County created pursuant to state law for which the "officers of the County are serving in their ex officio capacity as officers of the district." Malaga is not a special legislative district in the County for which the officers of the County are serving in an ex officio capacity as officers of the District. It is an independent special district organized and existing under the County Water District Law. (Water Code §30000 et seq). Its officers and directors, as the Report acknowledges, are

elected Board Members or persons appointed to employment or other official positions in the District by the elected Board. Penal Code §933.5, which is the only statutory provision that gives the Grand Jury any power to investigate the activities of a district like Malaga, reads as follows:

"A Grand Jury may at any time examine the books and records of any special - purpose assessing or taxing district located wholly or partly in the county or the local agency formation commission in the county 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 district or commission."

Malaga is not able to find any published Court of Appeal decision that interprets this provision as amended in 1979, but a Court of Appeal decision that interpreted the prior version of the same section held that it was never intended to allow Grand Jury investigations into matters into which the Grand Jury was not otherwise authorized to investigate and was enacted merely to aid the Grand Jury in the exercise of its already existing powers. (See *Board of Trustees v. Leach* (1968) 258 Cal.App.2d 281, 285-286; 46 Ops. Cal. Atty. Gen. 144 (1965)). Following the amendment of the statute, no Court of Appeal has considered it in a published decision; but, the Attorney General has issued an opinion interpreting the language of the newly amended provision.

According to the Attorney General, while the amendment of this section conferred expanded authority upon the Grand Jury with respect to special districts it did not give the Grand Jury the same authority it has over county-controlled districts that are subject to investigation under Section 925. Interpreting the expanded authority to include the right to "investigate and report upon the method or system of performing the duties" of a district, the Attorney General observed that "in common parlance" these terms "connote the means

used or the procedure followed in doing a given kind of work or achieving a specified objective." The Attorney General concludes that although the provision gives the Grand Jury investigative authority with respect to the "operational procedure of any such district," these "procedural considerations" are to be "carefully distinguished from substantive concerns" over which the Grand Jury has no investigatory or oversight authority with respect to an independent special district such as Malaga.

"Thus, the parameter of operational procedure does not extend to an inquiry as to the merit, wisdom, or expediency of substantive policy determinations which may fall within the jurisdiction and discretion of a particular district."

64 Ops. Cal. Atty. Gen. 900 at p. 2.

Thus, the Grand Jury has no authority or jurisdiction to investigate or report on any matter other than the "operational procedure" of a special district. It cannot investigate or report upon the merit, wisdom, or expediency of substantive policy determinations or matters as to which the District has discretion. Substantiative policy or discretionary matters are, of course, the only matters that are addressed in this Report. The Report plainly exceeds the Grand Jury's investigatory and reporting authority and was issued in direct violation of law.

"It would be anomalous for a court of law to participate in the law's violation by filing a report that was itself the statute's violation."

People v. Superior Court, supra, 13 Cal.3d at p. 442.

Because the Report is issued in excess of the jurisdiction and authority of the Grand Jury, it is not appropriately accepted for filing, unless the court wishes to engage in the anomaly of participating in the violation of law by this Grand Jury.

Adding injury to insult, the Grand Jury's Report was issued in direct violation of a statute which the Grand Jury cites in the transmittal letter that accompanied the Report. (See Holcomb Declaration). The Report was received by Malaga through the mail on April 2, 2008. It was published and made available to the media, many of whom, attempted to interview Board Members and District officials concerning the Report the day before, April 1, 2008. (Penal Code §933.05(f)).

Penal Code §933.05(f) reads 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 a final report." [Emphasis Added]

In fact, contrary to the command of the statute, the Grand Jury failed to provide Malaga with a copy of the Report relating to it two working days prior to its public release and only after the approval of the presiding judge of Fresno County Superior Court. The District was provided with a copy of the Report through the mails only. The letter transmitting the Report is falsely dated March 25, 2008. The Report was received through the mails on April 2, 2008. The Report was released to the press, media and publically on April 1, 2008. Malaga adopted Resolution No. 04-08-08, A Resolution of Board of Directors of the Malaga County Water District regarding the Report on April 4, 2008, specifically finding that, based on the evidence before it, the Fresno County Grand Jury violated subdivision (f) of Section 933.05 of the Penal Code by failing and refusing to release the Report to Malaga two working days prior to the public release on April 1, 2008. Malaga has no information whether the release of the Report in this unlawful manner was

ever approved by the presiding judge of Fresno County Superior Court. The Report, in addition to reflecting an investigation in excess of the jurisdiction of the Grand Jury has with respect to a special district, was issued in blatant violation of a statute that is designed to protect the target of a Grand Jury report from the expectable disruptions of its affairs and impairment of its reputation by giving it time to prepare to respond to what are typically, and with respect to this Report, baseless, slanderous and inflammatory criticism. This court has discretion to refuse to file this Grand Jury's Report because it has not been issued in accordance with applicable law and was issued in excess of jurisdiction. (*Los Angeles Times v. Superior Court* (2003) 114 Cal.App. 4th 247, 257; *People v. Superior Court* (1975) 13 Cal.3d 430). A copy of the Malaga Resolution No. 04-08-08 is attached as Exhibit B.

SUMMARY OF RESPONSE

By statute, Penal Code §933.05, the entity subject of an investigation must respond to each finding and each recommendation contained in the Report. The responding party has the option of agreeing or disagreeing, wholly or partly, with any finding and implementing, or not implementing, any recommendation of the Grand Jury. The responding party must provide an explanation of its disagreement with any finding or a refusal to implement any recommendation. The Report makes nine findings (at p. 5) and ten recommendations (at p. 6). The difficulty with responding, in conformity with the requirements of statute, to these findings and recommendations, is that in most cases findings are either pulled from thin air; or, the basis for them is nowhere disclosed in the Report. For example, Finding F301 is that the "participation of the community was perceived to be unwelcome at board meetings." There is nothing in the Report reflecting, and the District has no knowledge of any basis for, any such perception, except as it

relates to the practice of a prior majority of the Board of Directors of the District to thwart, interfere with or disregard members of the community who did appear at board meetings. In this connection, and with respect to most of the remaining findings and recommendations, an understanding of the facts relating to the recall of this prior majority of the Board of Directors and of the District's operations is necessary.

For the relevant time, prior to April 19, 2005, the Board of Directors was comprised of the Chairperson, Florence Valdez and directors Armando Blancas, Angela Landin, Charles Garabedian, Jr., and Salvador Cerrillo.¹

The current General Manager was retained on November 1, 2004. The previous majority of the Board, Valdez, Blancas and Landin was recalled by the electors on April 19, 2005. Charles Garabedian, Jr., and Salvador Cerrillo retained their positions as directors and John Leyva, Irma Castaneda, and Frank Soto were elected by the voters to replace the recalled directors. John Leyva died on May 15, 2007. Frank Cerrillo, Jr., was appointed by the remaining members of the Board to complete Leyva's term on June 26, 2007. Charles Garabedian, Jr., and Irma Castaneda, were re-elected as directors on November 6, 2007. Frank Cerrillo, Jr., was elected as director, receiving the highest percentage of votes cast. Mr. Garabedian was appointed President by the remaining

¹ It appears from the Report that whenever the "Chairperson" of the Malaga County Water District is referred to the reference is to Florence Valdez. For example, at p. 4 in the discussion concerning 'Recreation Funds' there is a reference to the "Chairperson of the Board of Directors" being "warned in a letter from a Certified Public Accountant in March of 2004" of a recreation account deficit as of 2003. Valdez was chairperson at that point. One of the findings (F308) refers to a "past Board Member/Interim Manager" having trained the present manager, at an additional cost to the District. That Board Member was Florence Valdez. The only reference to the current Board President (Charles Garabedian, Jr.) appears in the inappropriate discussion included in the Report concerning "Nepotism" (at p. 3).

members of the Board immediately following the recall and installment of the replacement directors (Leyva, Castaneda, and Soto). He has continually held that position from that date until the present time.

Many of the findings in the Report relate to matters which, according to the Report, occurred prior to the recall. These include the purported receipt or existence of some July 21, 2007, "independent report" (at p. 3 in discussion relating to "Co-mingling of Funds," and at p. 3 in connection with discussion of "Payment of Health Insurance and In Lieu of Monies"), the receipt of the "March of 2004" letter warning of a deficit existing in the recreation fund as of June 30, 2003 (at p. 4, at discussion of "Recreation Funds"), and, as noted previously, the training of the current manager by a past Board Member (Finding F308) and the disallowance of participation by the community at board meetings. (Finding F301).

Accordingly, Malaga responds in the manner in which it is best able given the fact that much of the conduct complained of is by the prior recalled Board Members and the Report lacks any identifiable basis for findings and recommendations relating to the conduct of the District or its Board after the recall.

RESPONSES TO FINDINGS AND RECOMMENDATIONS

Malaga by and through its Board of Directors based upon consideration of the Grand Jury's Report and a review of evidence that is identifiable from the Report responds as follows to the findings and recommendations of the Report.

1. Response to Findings F302, F305, F306, R301, R302, R309 and R310 and "Issue of Concern" Relating to Purported "Co-mingling" of Funds and Status of "Recreation Funds."

At p. 2-3, and at p. 4 there is a discussion of the purported "Co-mingling of Funds" and of "Recreation Funds." Based on the nature of the description, it appears that these discussions, and each of the findings and recommendations identified above all relate to the status of the District's recreation account. As a county water district, Malaga is statutorily authorized to, among other things, provide water and sewer service within its boundaries. (Water Code §§31020, 31100). By special legislation (Water Code §31133), Malaga is empowered to provide recreation for the Malaga community. Thus, Malaga accounts for activity in its general fund by maintaining separate enterprise funds or accounts relating to water, sewer and solid waste service and to recreation.

The Report finds that monies from water, sewer, solid waste disposal and recreation budgets are being co-mingled (at F302) and that a "previous independent investigation approved by the Malaga County Water District Board and submitted to the Board of Supervisors advised the Malaga County Water District Board of inappropriate and illegal practices." [Emphasis Added] The District does not maintain separate bank accounts for water, sewer, solid waste disposal and recreation funds, but does assign revenues and expenses to these various enterprise accounts in budgets and audits. There is no legal requirement that separate bank accounts be maintained or that funds be segregated. Thus, a "co-mingling" of funds is not improper or illegal. The Grand Jury Report cites no basis for its contrary conclusion.

The purported independent investigation "approved" by the Board of Directors appears to be the same document referred to in the Report as a July 21, 2004, "independent report noting these problems"; that is, a deficit in the recreation fund enterprise account shown on Malaga's budgets and audits. This is a reference to an

exceedingly lengthy document prepared by one Luke T. Campagne, an MBA candidate at Fresno State University, apparently as part of the requirements of securing that degree. The Report was indeed presented to the Board, but was never approved by the Board, nor is it any form of an "independent report" or investigation.

Accordingly, the District disagrees with these findings. There is no illegal commingling of funds, no independent investigation or report approved by the Malaga Board and nothing improper in the manner in which the District accounts for its activities. Indeed, as the Report notes, Malaga is required to and does submit annual financial reports to the State Controller (at p. 1) and properly accounts for revenues and expenses. In fact, there was a deficit in the recreation account noted by the certified public accountant that prepared Malaga's audit reports in 2004 (at the time, the now recalled majority was in power), and the Board has, since that recall, taken steps to budget for and repay to the remaining enterprise accounts the amounts by which the recreation account is in deficit. Those attempts have been thwarted by the state's redirection of property taxes due to Malaga to fund its recreation activities to address a state deficit. Deficit spending has not continued. The deficit, instead, has been exacerbated by the state's redirection of funds designated for Malaga's recreation activities.

The Report notes that there is no law that prohibits the loaning of surpluses from the water or waste disposal accounts to the recreation activity account but claims that "under the Water Code" the District's water and other rates must be reasonable and fair. (At p.3). The Water Code does not specify or address how fees are to be set. Instead, those requirements are found in the Fee Mitigation Act, Government Code §66000 et seq. The District's fees have been set in the manner required by that act to represent the anticipated

actual cost of providing those services. The setting of those fees must be, and are, based upon an engineering or nexus study which estimates the cost of providing the service. There is no basis for concluding that the fees so set are too high or too low. Making that determination would require a new engineering or nexus study and additional expenditures of money to prepare it.

The Report recommends that Malaga repay to the water, sewer and solid waste disposal monies borrowed for recreation (R301). The Board is attempting to do so by a series of measures including the raising of fees for recreation activities, and is exploring the levy of an assessment against real property in the District to cover that expense. Beyond this, the District Board has attempted to budget in a manner which will provide for that repayment over time, but its ability to accomplish that has been disrupted by the State's unilateral decisions to divert funds payable to Malaga to balance the state budget.

Malaga does not know what the recommendation No. R302 means. The recreation account is in compliance with "good business practices" and is the subject of annual audits prepared by a certified public accountant. So far as Malaga is aware, this recommendation has already been implemented. The Grand Jury recommends at R309 that the District should "stop co-mingling funds." As noted, the District is not co-mingling funds. It is functioning in the manner in which it is required to function by law. The recommendation is not warranted.

Finally, the Report recommends that the Fresno County Auditor/Controller/Treasurer-Tax Collector should conduct an audit of Malaga County Water District. (R310). But, the Fresno County Auditor/Controller has no jurisdiction or authority to conduct a generalized audit of Malaga. While the County may very well have the ability to audit the

expenditures of funds paid to Malaga by it for specific purposes, it has no general oversight over Malaga and no ability to require that Malaga submit to any audit. As noted by the Grand Jury, Malaga and its Board of Directors are primarily accountable to the voters and customers who use their services. (At p. 1). Malaga is required to submit annual financial reports to the State Controller. It is the State Controller, if anyone, that has any authority to audit Malaga's activities. Thus, Malaga will not implement this recommendation, nor will it permit the Fresno County Auditor/Controller to conduct any such audit. Malaga is an independent special district and must be treated as such.

2. Response to "Issues of Concern" relating to "Payment of Health Insurance and in Lieu of Monies" (Findings F303, F305, and Recommendation R303).

The District does offer health insurance for Board Members and their families. It also offers health insurance for employees and their families. With respect to both employees and Board Members, the District's practice is and continues to be to permit the employee or Board Member to opt out of health insurance coverage and receive, instead, the cost of that coverage that would otherwise be paid by the District, what is referred to in the Report as "in lieu of" payments. The report initially complains about the lack of any approved policy providing for these in lieu of benefits for Board Members. The minutes of Malaga's February 11, 1997, meeting reflect a Board action authorizing those in lieu of benefits for Board Members, but does not reflect any recommendation by the Board's legal counsel that the Board take such action. This appears to be one of several instances in which the Report attempts to single out an individual for criticism without basis. (See p. 3).

Finding F303 is that the Policies and Procedures Manual of the District does not provide for health care benefits for Board Members and that "nevertheless" the Board

Members received in lieu of payments for health care. While the existence of a policy may be a matter relating to the operational procedure of the District, the decision of the Board of Directors concerning propriety of in lieu of payments for employees and Board Members is not. It is instead, a matter of substantive policy within the jurisdiction of the District over which the Grand Jury has no investigatory or reporting authority or oversight. Regardless, rather than recommending the adoption of a policy which reflects the health care coverage practices, the District Board chooses to follow, the Grand Jury crosses the line into evaluating the wisdom, expediency, and even the legal propriety, of the payment of the in lieu of health benefits to Board Members by recommending at R303 that the District stop paying in lieu of benefits to members of the Board. Significantly, the Grand Jury makes no mention of and does not consider the propriety of the in lieu of payments that are made for employees.

To address the lack of the specific policy providing for the in lieu of payments, on June 10, 2008, the District Board adopted Resolution No. 06-10-08, a "Resolution of the Board of Directors of the Malaga County District Amending the Malaga County Water District Policies and Procedures Relating to Medical Expense Insurance and Health, Welfare Benefits," a copy of which is attached as Exhibit C. The adopted policy now provides for the health and welfare benefits that are, in fact, provided to employees and Board Members.

The Report states, without basis that "there appears to be no authority in group insurance statutes to pay cash to an officer already having health insurance instead of providing benefits through a group plan adopted by a local agency." Additionally, the Report states that "according to our counsel, unauthorized cash expenditures in lieu of

health benefits might be subject to criminal prosecution." The Report cites Government Code §§1222, 53200, and 53210, in addition to the purported "2004 independent report." As noted, there is no 2004 independent report. Further, the Grand Jury's counsel is simply wrong. Statute specifically authorizes this form of health care benefit payable to Board Members. The statutes relating to the provision of health and welfare benefits to elected officials are completely silent on whether in lieu of payments are or are not authorized. There is no published court decision which addresses the propriety of cash payments to members of the governing board in lieu of providing health insurance benefits when, in fact, the same benefit is being provided to employees.

The statute provides that "notwithstanding any statutory limitation on compensation or statutory restriction relating to interest in contracts entered into by any local agency, a member of a legislative body may participate in any plan of health and welfare benefits permitted by this article." (Government Code §53208). Health and welfare benefits constitute compensation for services rendered. (*Thorning v. Hollister School District* (1992) 11 Cal.App.4th 1598, 1606-1607). Thus, notwithstanding other statutory limitations on compensation or statutory restrictions relating to interests in contracts entered into by a local agency, members of the legislative body may participate in "any plan of health and welfare benefits permitted by this Article."

The opinion of the unidentified "counsel" for the Grand Jury to the effect that payments in lieu of health benefits are unlawful and might be subject to criminal prosecution is presumably premised on an opinion of the Attorney General (83 Ops. Cal. Atty. Gen. 124) in which the Attorney General comes to that conclusion. Of course, the opinion of the Attorney General is not binding on the court or on the District. While in some

situations an opinion of the Attorney General may be found to be persuasive, it has no presidential value or binding effect whatsoever. (See *Hamilton v. Town of Los Gatos* (1989) 215 Cal.App.3d 1050, 1058; *Homes on Wheels v. City of Santa Barbara* (2004) 119 Cal.App.4th 1173, 1178). An opinion of the Attorney General which misconstrues or misinterprets statutory language is not persuasive. (Id). Determining what is or is not permitted by a statute involves the application of settled principles of statutory construction. The statute is construed so as to effectuate the Legislature's intent and the purpose of the law. (*Regents of the University of California v. Public Employment Relations Board* (1986) 41 Cal.3d 601, 607). If the statutory language is clear and not ambiguous, the court looks no further to determine the meaning of the statute. (*Building Industry Association v. City of Camarillo* (1986) 41 Cal.3d 810, 819). Significance must be given to every part of a statute, if possible. Any construction which makes any word in the statute surplusage is to be avoided. (*Palos Verdes Faculty Association v. Palos Verdes Peninsula Unified School District* (1978) 21 Cal.3d 650, 659).

The Attorney General came to its conclusion by focusing on the definition of "health and welfare benefit" appearing in Section 53200(d). The opinion improperly focuses on a phrase within this definition and on the use of the term "health and welfare benefits permitted by this Article" in Section 53208. It disregards the phrase used in the context of Section 53208 to the effect that a member of the legislative body "may participate in any plan of health and welfare benefits permitted by this Article." The opinion observes that the meaning of the phrase taken out of the context of the definition of "health and welfare benefit" is not defined in the statute. The Attorney General opinion rewrites the statute by

incorporating into the statute definitions that prevail in the insurance industry, at least according to the Attorney General. None of these definitions appear anywhere in the statute and the attempt to add a definition which is not reflected by the language of the statute runs afoul of the most basic tenants of statutory construction. Further, the Attorney General reads the provision of Section 53208 to exclude the reference to "any plan," focusing instead on the words "health and welfare benefits."

By engrafting into the statute definitions of the terms "health and welfare benefit" recognized in the health care field but appearing nowhere in the statute, and disregarding the phrase in Section 53208 that Board Members may participate in "any plan of health and welfare benefits . . .," the Attorney General arrives at the conclusion that "cash payments received in lieu of health insurance benefits would not constitute health insurance benefits as defined and as authorized under the terms of this legislative scheme." Of course, the statute does not provide for health insurance benefits, it provides Board Members the right to benefit from any plan of health and welfare benefits that is made available to employees. Based on misinterpretation of the statute, the Attorney General concludes that a school district could not make cash payments to members of its governing board in lieu of providing them with health insurance benefits and further concludes that the making of such payments "may constitute a criminal offense, depending upon the individual circumstances."

Underscoring the manner in which the Attorney General has misinterpreted statutes relating to health and welfare benefits for Board Members, in 2006 the Attorney General issued a second opinion answering the question of whether a Board Member could redirect the cash value of health insurance benefits to a deferred compensation plan without

violating the statutory limitations upon the amounts of compensation authorized for Board Members. This time, the Attorney General found the "plan" offered by the District to be significant. The District had a cafeteria style benefit plan of which its deferred compensation retirement plan was a part. Under the plan, any employee could forego health insurance and redirect the cash value of that coverage to a deferred compensation or other selected benefit. In other words, the Attorney General found that the in lieu of payments were lawful and authorized by statute and that so long as those in lieu of payments were placed into a deferred compensation plan or used to secure any other kind of benefit being offered by the District under its plan that was permissible because amounts paid for retirement, health and welfare benefits and other identified benefits, are not to be included for purposes of determining salary limitations applicable to Board Members. (89 Ops. Cal. Atty. Gen. 107). Payments made to or on behalf of members of a governing body are no less cash payments because they are placed into a retirement fund. The 2006 Attorney General opinion plainly demonstrates that such in lieu of payments are entirely lawful. Here, the "plan" being offered to employees is one that includes the right to forego health insurance coverage and receive payment for the value of that benefit instead.

In any event, there is no binding authority interpreting the provisions of the Government Code related to health and welfare benefits for Board Members. Resolution of the question is a matter of statutory construction. The statute provides that a Board Member may participate in "any" plan the District provides for health and welfare benefits. The District's plan, as it applies both to employees and to Board Members, dictates that employees who opt out of or forego coverage under the District's health and welfare

insurance are to receive the cash equivalent of what it cost for the District to enroll that person and dependents in the health insurance program. If the cafeteria plan offered by the City addressed in the 2006 Attorney General's opinion is, as the Attorney General puts it, an "important factual difference," bearing on what an entity may make available to members of its governing board. The fact that Malaga follows a plan that provides for payments to employees in lieu of benefits is no less a determinative fact. Benefits are paid according to the "plan." No one would suggest, because they are compensation, that in lieu of payments made to employees are not lawful. The statute expressly provides for a limitation on health and welfare benefits for members of the governing board. The statute provides, simply, that the benefits of the legislative body shall be "no greater than that received by non-safety employees of that public agency" and that members of the legislative body are not eligible to "accrue multiple health and welfare benefits greater than the most generous schedule of benefits being received by any category of non-safety employees." (Government Code §53208.5(b) and (c)).

Directors may participate in any health and welfare plan made available to employees so long as what they receive under that plan is no more generous than what the employees receive. It is only logical and consistent with the statutory language to conclude that where a District makes in lieu of payments to employees under its plan for health and welfare benefits, that the same plan must be made available to Board Members. Doing so is perfectly lawful so long as the benefits received by Board Members are not in excess of what is available to employees.

Responding to F303, the District agrees that prior to June 10, 2008, the Policies and Procedures Manual did not provide for health benefits, other than vision for Board

Members and the members of the Board to receive in lieu of payments, vision and dental insurance. On June 10, Malaga addressed this finding by adopting Resolution No. 06-10-08 which amends the Policies and Procedures Manual to include a policy which describes the District's health and welfare plan available equally to employees and the Board Members. Responding to R303, Malaga will not implement this recommendation because there is no reason to stop the practice of according to Board Members the same benefits that are provided to employees. The recommendation is unwarranted.

3. Response to Issue of Concern regarding "Nepotism," Findings F304, F305, F306 and Recommendation R308.

The Report insults the Board of Directors and individual members by sarcastically referring to it as being composed of "one extended family." The Report asserts that although the availability of independent contractor services positions are appropriately published, the person "often" used to fill those positions (for "lifeguards, referees, babysitters, etc.") are related in an undisclosed fashion to one or more Board Members (Report at p. 3). The Report inappropriately singles out for unwarranted criticism the newly elected Board Member, Frank Cerrillo, Jr.² Director Frank Cerrillo, Jr., is identified by description as a Board Member who has "received compensation as a DJ at" District-sponsored events. The intentional and knowingly false inference is that he received compensation for services rendered while a sitting-member of the Board which, of course,

²The court is specifically requested, pursuant to Penal Code §929, to strike, redact or mask any reference in the Report which is "defamatory or libelous." Here the Report falsely states that Mr. Cerrillo received compensation for providing DJ services for a District function while serving as a Director. This is one of many false and defamatory statements directed against an individual that appears in the Report and the court is specifically authorized to strike this matter from the Report on request.

would "raise questions about conflicts of interest." (See Government Code §1090, 1097 and 87100, et seq.). This is nothing less than a baseless accusation that this individual Director has engaged in prohibited, criminal activity. (See *People v. Honig* (1996) 48 Cal.App4th 289). Grand Jurors are not immune from personal civil liability for their unprivileged, slanderous statements concerning an individual. (*McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162).

Mr. Cerrillo, Jr., was appointed Director by the remaining Directors on June 26, 2007, to fill Leyva's unexpired term. Prior to his appointment, Mr. Cerrillo did provide DJ services for District functions and received compensation for doing so. However, beginning on the date of his appointment, although Mr. Cerrillo continued to provide DJ services for District functions, he did not receive any compensation for that service and donated his services. Mr. Cerrillo has never received compensation for providing DJ services while an appointed or elected Director. That Mr. Cerrillo, Jr.'s, benevolent donation of these services to the District would meet with such disdain from the Grand Jury only underscores the incredibly petty nature of the Grand Jury's issues of concern and their obvious disregard for their obligation to determine the true state of facts through investigation.

It is unclear how the reference to the Board being an "extended family" is relevant to the purported existence of "questions about conflict of interests." The Board is elected by the voters. There is no law which prohibits relatives in any degree from being elected to and serving together on the same Board of Directors for a county water district. Salvador Cerrillo and Frank Cerrillo, Jr., are brothers. The voters overwhelmingly elected Frank Cerrillo, Jr., on November 6, 2007. The voters presumably knew of their relationship when they elected Frank Cerrillo, Jr., at a point in time when his brother was a sitting Board

Member. The composition of the Board, quite simply, reflects the will of the voters. There is nothing that prohibits the people from electing to their Board individuals who are related in one manner or another and in a very small community such as Malaga, relationships such as these are common.

With respect to the hiring of independent contractors, for temporary positions, the only individual hired who was related to any Director was Frank Cerrillo, III. He is the son of Frank Cerrillo, Jr., and the nephew of Salvador Cerrillo. The decision to hire this individual, as a temporary lifeguard at the District's swimming pool followed, a broad-based advertisement for the position and was made by the District Manager, not the Board of Directors. The District Manager hired this individual because a limited number of applicants who possessed the required qualifications and certifications applied and Frank Cerrillo, III, met those qualifications. He was hired by the District Manager at a point in time when Frank Cerrillo, Jr., was not a Director. (See Holcomb Declaration). Malaga is a small community and it is not uncommon for the District Manager to receive applications for temporary positions that are most appropriately filled by qualified residents of the community who may have some familial relationship to a Board Member or employee. There is an individual who is a second nephew or some other distant relation to Salvador Cerrillo serving as a baseball coordinator, temporarily and part time, also hired by the District Manager, for the same reasons. He applied for the position and was the most qualified of the applicants. These hirings by the District Manager do not create any identifiable conflict of interest as that term is defined by law. (Government Code §§1090, 1097 and 87100, et seq.). The statutes relating to conflicts of interest address financial

interests on the part of a District official. There is nothing in any of these hirings that implicates any conflict of interest concern.

This "nepotism" concern results in an unwarranted and baseless finding (F304) that "contracts are awarded to Board Members as well as friends and family of the Board Members." The District disagrees with this finding for the reasons noted. No contract has been entered into between the District and a Board Member. The finding amounts to a defamatory allegation of criminal misconduct clearly directed at Director Frank Cerrillo, Jr. If the Report is accepted for filing, despite the fact that it is unauthorized and not issued in conformity with law, the matter referred to in the "nepotism" discussion and this finding should be redacted under Penal Code §929. There is no impropriety in the selection of the two individuals for temporary positions referred to above and this does not amount to any form of "improprieties." (F305).

There is a lengthy and wholly unnecessary discussion in the Report about the availability of training (primarily ethics training) through the California Special District Association (CSDA) on matters such as "conflicts of interest/ethics law" and other matters. (Report at p. 2). Elsewhere, the Report - without any basis whatsoever - falsely states that the "District has failed to take advantage" of that training.³ The District uses a different entity to provide training that is more specialized in providing training for the specific type

³Here, again, the Report gives as an "example" of the consequence of this supposed "failure" the incurring of additional expense in training of the District Manager by a Board Member for compensation. This unnecessary expense was, of course, incurred because of the actions of the recalled Board Members who, at the time of the retention of the District Manager, had control over the District. That improper conduct by the former Board Member, which was criticized by the two Board Members who remained, has been rectified by the voters' actions in recalling that Board Member.

of agency that Malaga is. From April 2005 forward, each member of the immediately past and current Board has attended and received all available training (including ethics training) and has received certification of having received that training from a different nonprofit agency - Association of California Water Agencies (ACWA). (See Holcomb Declaration).

The "nepotism" matter appearing in the Report seems to be the basis for R308 that the "Board of Directors should avoid all appearance of conflict of interest." While the conflict of interest laws prohibit the potential for divided loyalties or conflict of interest, primarily premised upon a financial interest, those laws do not require individual Board Members to avoid an "appearance of conflict of interest." There must be some concrete basis for concluding the Board Member has a prohibited financial interest. (See *People v. Honig, supra*). Avoiding the appearance of a conflict of interest appears to be a requirement that applies only to lawyers and judges. The recommendation is, therefore not warranted, first because there is no appearance of any conflict of interest based upon any identifiable fact, and second because the mere appearance of a conflict of interest is not prohibited.

None of this relates to any "operational procedure" of the District. It relates, instead, to matters of substantive policy within the jurisdiction of the District (the retention of independent contractors or to the discretion vested by law in each of the Board Members to determine for his or her self the circumstances giving rise to a conflict of interest under the law). None of it is a matter that is subject to investigation or report by the Grand Jury.

4. Response to "Issues of Concern" Regarding Alleged Violations of Brown Act and Finding F309 and Recommendations R305 and R306.

Recommendation 305 - that the Board Members should take advantage of seminars and training of CSDA has already been commented on. The District Board Members have taken advantage of training through ACWA, which is essentially the same type of entity as CSDA, which specializes in providing training to districts who have as their primary function providing water and sewer service. There is simply no reason for making this recommendation. It simply underscores the lengths to which this Grand Jury has gone to disregard the truth in generating their Report. This recommendation that Malaga or its Board Members do something that they have already done, and continue to do, is apparently made only for the purpose of providing factual support for the absolutely baseless - and defamatory - statements that appear in the Report to the effect that the District Board Members or the District in general has failed to "recognize much less comply with applicable state law," has acted in "ways that give the suspicion of misconduct" . . . "appear ignorant of or indifferent to controlling state laws and regulations" or engage in "improper use of District funds." Nowhere does the Report identify any violation of law and it is again, this Grand Jury that is ignorant of what the law does or does not require.

Recommendation R306 is that "to the extent permitted by law, the Malaga County Water District Board of Directors' actions should be done publicly. The participation of the community should be welcomed and respected." It is apparently included in the Report to implement action to correct Finding F309 that the Board "has violated the Brown Act." Consistent with the overall theme of the Report, the Grand Jury falsely attempts to portray the Board as being routinely engaged in violations of the Brown Act. But all the Grand Jury can cite is an action taken at a single meeting. The Grand Jury cites this event - a meeting on June 26, 2007 - when Frank Cerrillo, Jr., was unanimously appointed to fill the vacancy

left following John Leyva's death - as a "example" of "practices" that are "secretive" and, therefore, unlawful because they are in violation of the Brown Act.

How the Board conducts its meetings - and whether it does so in a manner that violates the Brown Act - is not a matter of mere operational procedure that the Grand Jury has jurisdiction to investigate or report on. It is a matter as to which the law provides for specific remedies. It is not the Grand Jury's function to adjudicate whether a violation of the Brown Act has occurred. It is the function of this court and even this court is foreclosed from making that determination if the appropriate administrative remedies have not been pursued or the strict time limits for challenging an allegedly illegal meeting have not been complied with.

In this connection, the Brown Act provides various pre-conditions for challenging an allegedly illegal meeting. (Government Code §54960.1(b)). A written demand must be made of the entity within 90 days of the action taken in order to give the legislative body an opportunity to "cure or correct the challenged action." Having failed to pursue that remedy, and the time limit for doing so having passed, the Grand Jury is precluded from challenging this as a violation or finding that it is a violation.

Neither this court nor the Grand Jury has any jurisdiction to decide now that Malaga violated the Brown Act on June 29, 2007. There was no request to cure and no filing related to this meeting.

Relative to whether a violation did occur, the Grand Jury misrepresents what did occur at this particular meeting. It is clear from the Grand Jury's description of it and from the minutes of the meeting (see Holcomb Declaration) that applications were solicited for appointment to fill the vacancy on the Board of Directors. As shown by the Grand Jury's

Report and as shown by the minutes, the Board Members received and discussed in open session the presentations made by the applicants who were all similarly qualified. The Board determined the only fair manner in which to select one of the applicants was to put names into a hat and pull out a single name. The Board retired into closed session simply for logistical reasons. That is, to write the various names on paper, place those into a hat and to draw a name. They drew Frank Cerrillo, Jr.'s, name. They returned to announce in open session that Mr. Cerrillo, Jr., had been appointed by a unanimous vote. The vote was simply the agreement to choose one of the applicants by drawing a name from a hat which appears to have occurred in open session, not the selection of the name by pulling one name out of a hat.

Although it is unclear from the minutes and tape recording of the meeting, all meetings and actions taken by the Board were in open session. There appears to be no Brown Act violation by virtue of the decision to place names in a hat for a drawing in a different room separated from the public meeting room. The public was appropriately advised of what had occurred. Further, even if there has been a violation of the Brown Act, a single violation, which is all the Grand Jury can point to, certainly does not give rise to any "practice" of violating the Brown Act as the Grand Jury implies. The attempt to designate itself as the final arbiter of whether a violation of the Brown Act has occurred is plainly at odds with Government Code §54960.1 which prescribes the method by which a public entity is determined to have violated or not violated the Brown Act. The statutory remedy is exclusive. The Grand Jury has no basis for complaining about any violation of the Brown Act occurring in June of 2007, even if it had occurred.

5. Response to "Issue of Concern" Regarding "Use of Public Monies for Purposes Not Provided in the Law" and Finding F307 and Recommendation F304.

The Grand Jury claims to have been provided with account payable records which "show that monies had been expended for funeral receptions and floral tributes to various families in the community who have experienced a death." The records referred to are those records provided by the District. What the records show is payment for a few floral arrangements, and a single funeral reception, that of John Leyva. Mr. Leyva was a Director at the time of his death who had served the District in a variety of capacities including as its District Manager and as Director and President of the Board of Directors for a period of more than 35 years. The District does not expend money for funeral receptions in general. It has provided floral tributes for former employees and community members, usually at a cost of about \$35. It does permit the family members of deceased community residents to use the Community Center, at no charge, to have their own reception, the cost of which is borne by them alone. The District has, for many years, adhered to a practice of allowing funeral receptions for deceased community members to be conducted in the Community Center.

After misrepresenting what the District has done relative to funeral receptions and floral arrangements, the Grand Jury, in essence, challenges Malaga to find a "public purpose" for the expenditures. Needless to say, allowing the public to use a public recreational facility, the Community Center in which families are allowed to have their funeral receptions free of charge, is, first of all, not an expenditure. But, even if it were, it is one which promotes a public purpose that Malaga has the authority to promote, recreation. Malaga is not aware of any published case law that addresses whether a floral

arrangement for or payment of expenses for refreshments at a funeral reception for a deceased Board Member/employee is or is not a gift of public funds. However, Malaga notes that it is quite common to see the expenditure of substantial public funds by virtually every county and city in the state for funerals of fire fighters and/or peace officers. Such functions are routinely attended by uniformed personnel with their state, county or city funded equipment present. Malaga speculates that the reason there is no published case law relating to this is because no one would be so petty as to suggest that these minor expenditures intended to honor someone who has provided lengthy or important public service as gifts of public funds.

Malaga notes, however, that the determination of whether or not an expenditure has a public purpose is a matter that is completely within the discretion of the relevant legislative body, here the Board of Directors of Malaga. (*Martin v. Santa Clara Unified School District* (2002) 102 Cal.App.4th 241, 254). It cannot be challenged so long as there is some rational basis for the determination. (*County of Alameda v. Carleson* (1971) 5 Cal.2d 730, 746). Further, an entity formed by the state, including the Grand Jury, is in no position to raise these types of issues because it has no standing to challenge illegal expenditures. (*Zee Toys, Inc. v. County of Los Angeles* (1978) 85 Cal.App.3d 763). It is, of course, well established that supplemental or increased retirement benefits are not gifts of public funds because they are expenditures made as compensation for services previously rendered. (*Holtzendorff v. Housing Authority of City of Los Angeles* (1967) 250 Cal.App.2d 596, 623). Similarly, paying a small amount of money for a floral arrangement for a deceased Board Member/employee who has provided in excess of 35 years of dedicated and important service to the District can also be legitimately viewed as an

expenditure that is made as compensation for previously rendered services. Floral arrangements for former or current employees or family members is similarly compensation. Floral arrangements for community members who are rate payers serves to promote good will. At a bare minimum, Malaga has a rational basis for coming to this conclusion. It's determinations in this regard are, therefore, beyond challenge.

CONCLUSION

For the foregoing reasons, the Grand Jury's Report should be stricken from this court's files or, at a minimum, the multiple slanderous comments contained therein directed at specific individuals on Malaga's Board of Directors should be eliminated. The Grand Jury's Report is not worth the paper it is printed on. It exceeds its authority because Malaga is a special district, not a county-controlled agency as the Grand Jury erroneously believed. The Grand Jury simply has no authority to investigate or report on Malaga's discretionary policymaking functions. Malaga and its Board of Directors are answerable to the voters and customers of its services. They are answerable to the state regulatory authorities. They are not answerable to a county grand jury.

Dated: June 25, 2008

COSTANZO & ASSOCIATES

By: 
Neal E. Costanzo

**DECLARATION OF RUSS HOLCOMB IN SUPPORT OF
RESPONSE TO 2007-2008 FRESNO COUNTY GRAND JURY
FINAL REPORT NO. 3 MALAGA COUNTY WATER DISTRICT**

I, RUSS HOLCOMB, declare:

1. I am the General Manager of the Malaga County Water District ("Malaga"), having been appointed to that position on November 1, 2004. I was trained when I was initially hired by a former Board Member, Florence Valdez, who was compensated by the District for the time spent in training me. At subsequent District Board meetings, Ms. Valdez was criticized by two other Board Members, Salvador Cerrillo and Charles Garabedian, Jr., as well as individuals who appeared at the meeting, including John Leyva, concerning her receipt of compensation for providing this training.

2. When I was appointed, the Board of Directors consisted of Valdez, Armando Blancas, Angela Landin, Charles Garabedian, Jr., and Salvador Cerrillo. Valdez, Blancas and Landin were recalled by the voters on April 19, 2005, and John Leyva, Irma Castaneda, and Frank Soto were elected to fill their positions. John Leyva died on May 15, 2007. Frank Cerrillo, Jr., was appointed by the remaining members to complete Mr. Leyva's unexpired term on June 26, 2007. A copy of the minutes of the Board meeting from that date in addition to the minutes of the June 21, 2007, meeting are attached and incorporated by reference as Exhibit A. Charles Garabedian, Jr., and Irma Castaneda were reelected on November 6, 2007, and Frank Cerrillo, Jr., was elected as a Director (by the highest percentage of votes for that election) on that date.

3. On being contacted by representatives of the Grand Jury for Fresno County and receiving requests for appearances by District officials (including myself) and requests for documents, I asked Melanie M. Bloom, the Chairperson of the Grand

Jury, for statutory authority allowing the Grand Jury to investigate and report on Malaga's affairs. In response, she provided me with a Memorandum dated July 9, 2008, a copy of which is attached and incorporated by reference as Exhibit B. I referred this Memorandum to the District's Counsel who issued the January 18, 2008, letter to Melanie Bloom with a copy to me that is included in Exhibit B and incorporated by this reference.

4. The only July 21, 2004, document or report presented to the Board of Directors that I am aware of or able to identify is a lengthy document prepared by one Luke T. Champagne, an MBA candidate at Fresno State University. The document was not approved by the Board of Directors.

5. I make all hiring decisions for temporary/contracted positions such as lifeguards or persons providing temporary or part-time assistance in conducting recreation activities at the District. Before Frank Cerrillo, Jr., was appointed to the Board, I hired his son, Frank Cerrillo, III, to serve as a temporary/contracted lifeguard, because he was one of a number of individuals who had applied, after the District had advertised this position, as he had the appropriate qualifications and certifications. I also hired a softball coordinator on a temporary/contracted basis who is a distant relative of Salvador Cerrillo. I hired this individual because he was the most qualified for the position of those who had applied. Every person hired to fill these and other temporary/contracted positions was hired by me without involvement by any Board Member.

6. Attached and incorporated by reference is Exhibit C are true and correct copies of Certificates of Attendance for each of the Board Members who has served at

any time after the recall election on April 19, 2005, showing their attendance at ethics training provided by the Association of California Water Agencies "ACWA"). The Board Members bi-annually attend this training provided by ACWA in addition to seminars and training on a multiple of other matters relating to the District's operations.

7. The Report of the Fresno County Grand Jury relating to Malaga County Water District was not received by the District until April 2, 2008, when the document was received through the mail. It was accompanied by a letter dated March 25, 2008. The Fresno County Grand Jury publically released their Report on April 1, 2008, and I and a number of Board Members and other District officials were contacted by the press seeking comments to a Grand Jury Report critical of Malaga's operations that we had not yet received. A copy of the Grand Jury's letter dated March 25, 2008, showing the receipt stamp of April 2, 2008, reflecting the date on which it arrived at the District office through the mails is attached and incorporated by reference as Exhibit D.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Dated: June 20, 2008



Russ Holcomb

EXHIBIT A

Item No. 6A

**ACTION SUMMARY MINUTES
BOARD OF DIRECTORS MEETING
MALAGA COUNTY WATER DISTRICT
3580 SOUTH FRANK STREET
FRESNO, CALIFORNIA 93725
TUESDAY, JUNE 26, 2007, 7:00 P.M.**

1. **CALL TO ORDER:** Meeting called to order by President Garabedian at 7:00 p.m.
2. **ROLL CALL:**
- 2A. **Directors Present:** President Charles Garabedian, Jr., Vice President Salvador Cerrillo, Director Irma Castaneda, Director Frank Soto
- 2B. **Others Present:** Russ Holcomb, Richard Hargrove, Randy Nickel, Frank Cerrillo, Lupe Cerrillo, Laurie Cortez, and Clara Miranda

3. **CERTIFICATION:**

Certification was made that the agenda was posted 72 hours before the meeting

4. **SEATING OF NEW BOARD MEMBER:**

President Garabedian administered the Oath of Office to Frank Cerrillo, and immediately following, was thereby seated as the newly appointed Board member.

5. **PUBLIC COMMUNICATIONS:**

Any member of the public may address the Malaga County Water District Board on any item(s) of interest within the jurisdiction of the Board, not appearing on the Agenda. The Board will listen to all communications, however in compliance with the Brown Act; the Board cannot take action on items that are not on the agenda. Public may also address the Board on agenda items at the time they are addressed by the Board. Anyone wishing to speak is requested to wait until recognized by the Board President.

No Public Comments at this time

Item 7E was moved up by President Garabedian

- 7E. **Fiscal Budget 2007/2008 – Randy Nickel, CPA:** Districts Budget will be presented at the meeting with changes made during the 2007/2008 Budget Workshop held June 21, 2007. Board members reviewed the previous changes made and several brief discussions were held on the revised budget. It was recommended that the Board approve the FY 2007/2008 District Budget as presented and modified.

SCGCC MOTION BY DIRECTOR SOTO, SECONDED BY VICE PRESIDENT CERRILLO, AND BY A 5-0 VOTE, APPROVED THE FY 2007/2008 DISTRICT BUDGET

7E. **Fiscal Budget 2007/2008 – Randy Nickel, CPA Continued:**

Brief discussion held on the proposed jogging track and the start-up date for the project. Manager reported on the process for this project.

6. **CORRESPONDENCE:**

6A. **California Integrated Waste Management Board:** "Notice to Proceed" for the Tire Derived Grant Program for FY 2006/2007. Manager reported on this project.

6B. **Hargrove & Costanzo – State Disability & Other Insurance Programs:** Legal Counsel's review of SDI and other insurance program requirements. President Garabedian reported on the items reviewed in the letter. Brief discussion followed.

7. **REGULAR BUSINESS:**

7A. **MINUTES:**

Minutes of the Regular Board Meeting of June 12 and Special Meeting of June 21, 2007.

CSGCC MOTION BY VICE PRESIDENT CERRILLO, SECONDED BY DIRECTOR SOTO, AND BY A 5-0 VOTE, APPROVED THE MINUTES OF JUNE 12TH AND JUNE 21ST, AS SUBMITTED

7B. **BILLS PAYABLE/FINANCIAL STATEMENT:** No Bills Payable/Financial Statement for this meeting

7C. **RESOLUTIONS:**

1. **Resolution No. 06-26-07 (A):** A Resolution calling General District Election – Amendment to Resolution 5-10-07. Amendment was to add the newly appointed board member Frank Cerrillo, to the Resolution.

CSGCC MOTION BY VICE PRESIDENT CERRILLO, SECONDED BY DIRECTOR SOTO, AND BY A 5-0 VOTE, APPROVED RESOLUTION 06-26-07(A), AS SUBMITTED AND MODIFIED

2. **Resolution No. 06-26-07 (B):** A Resolution of the Board of Directors of the Malaga County Water District Approving the form of and authorizing the Execution and Delivery of a Sixth Amended Joint Powers Agreement. President Garabedian reported on the SDRMA insurance and the amendment as recommended by SDRMA.

CSGCC MOTION BY VICE PRESIDENT CERRILLO, SECONDED BY DIRECTOR SOTO, AND BY A 5-0 VOTE, APPROVED RESOLUTION 06-26-07 (B), AS SUBMITTED

7. **REGULAR BUSINESS CONTINUED:**

- 7D. **Provost & Pritchard Engineering Group:** 2007/2008 On-going Engineering Services Proposal. A brief discussion followed on the fees for engineering services.

CSGCC **MOTION BY VICE PRESIDENT CERRILLO, SECONDED BY DIRECTOR SOTO, AND BY A 5-0 VOTE, APPROVED THE 2007/2008 ON-GOING ENGINEERING SERVICES AGREEMENT, AS SUBMITTED**

8. **ENGINEER'S REPORT:**

CAPITAL IMPROVEMENT PROJECTS:

- 8A. **North Avenue Water Line:** Final Retention Payment has been submitted for review and approval. Construction is 100% complete.

SCGCC **MOTION BY DIRECTOR SOTO, SECONDED BY VICE PRESIDENT CERRILLO, AND BY A 5-0 VOTE, APPROVED FINAL PAYMENT, PENDING THE 35 DAY WAITING PERIOD OF NOTICE OF COMPLETION, FILED MAY 30, 2007**

- 8B. **Well 1 & 6 Improvements (WFH):** The Bid Opening was held on June 21, 2007. The apparent low bidder is Hobbs Construction at \$25,686. The Bid packages are being reviewed; a summary of bids will follow under separate cover. No Action Required – this was for information only.

9. **RECREATION REPORT:**

Recreation items will be covered under Manager's Report

10. **GENERAL MANAGER'S REPORT:**

10A. **District Updates:**

1. **Grants Update:** Jogging Track & Tire Amnesty Grant Approved = \$70,000+.
2. **Park Lighting Project:** Phase I Installed/Operating – Additional 100 lights to add
3. **Non-Working Street Light:** Message from Shannon Koontz, PG&E was submitted for review. No action was required.
4. **Alley Clean-Up:** Set for next Tuesday 07/03/07

10B. **Other:**

1. **Recreation/Committee Meeting:** Next Meeting 06/28/07 @ 5:30pm@Rec. Center
2. **Community Bar-B-Q:** 07/01/07 – Updates – Almost Everything in Place. Brief discussion followed.
3. **Horseshoe Tournament:** Sign-Up Sheets are part of the program. Brief discussion followed on the trophies for this event and on the prizes for the raffles.
4. **FYI's:** Various informational items were presented.

10B. Other Continued:

Director Soto asked on the jogging track, how long do we have to finish it? Manager stated, the District has about a year to finish the project. The driveway will have to be moved as well. Brief discussion followed. Tire Amnesty was a grant that President Garabedian helped obtain during the most recent visit to Sacramento with Steve Samuelian.

11. PRESIDENT'S REPORT:

President Garabedian reported he received a letter from the County Administrative Officer Bart Bohn regarding the deadline to sign up for a Enterprise Zone Job Creation in Progress Workshop. The letter was received one day before the deadline to sign up. President Garabedian stated, he will attend the workshop.

12. DIRECTOR'S REPORT(S):

Vice President Cerrillo reported on the sprinkler system as Mr. Gonzales should have a report on the total cost estimate for this by the next Board meeting.

Vice President Cerrillo reported the attendance for the Summer Camp Out was very good and everyone had a good time. At the next recreation meeting we can discuss what can be improved and what worked. **Director Castaneda** also gave a report on the Summer Camp Out. She also reported that the kids really had a good time.

Director Soto reported his neighbors are complaining about the dust coming from Heppner Iron & Metal. Discussion followed. Manager will address this issue.

13. LEGAL COUNSEL'S REPORT:

No Legal Counsel's Report for this meeting

14. CLOSED SESSION:

Board Adjourned to Closed Session at 7:49 p.m.

Board returned from Closed Session at 8:24 p.m. to report action taken during Closed Session, as follows: **Personnel:** Jess Alvarez's request to receive the remaining balance of his 1997 Sick Leave was granted. Manager was directed to present an amendment to the resolution that authorized the original disbursements, to now include the disbursement of the remaining balances, when requested.

15. ADJOURNMENT:

Meeting Adjourned at 8:25 p.m.



**ACTION SUMMARY MINUTES
BOARD OF DIRECTORS
SPECIAL MEETING
3580 SOUTH FRANK STREET
FRESNO, CALIFORNIA 93725
THURSDAY, JUNE 21, 2007, 5:30 P.M.**

1. **CALL TO ORDER:** Meeting called to order by President Garabedian at 5:35 p.m.
2. **ROLL CALL:**
 - 2A. **Directors Present:** President Charles Garabedian, Jr., Director Irma Castaneda, Director Frank Soto
 - 2B. **Directors Absent:** Vice President Salvador Cerrillo
 - 2C. **Others Present:** Russ Holcomb, Richard Hargrove, Randy Nickel, Frank Cerrillo, Laurie Cortez, Alicia Fernandez, Amado Fernandez, Maria Fernandez, Priscilla Fernandez, Vicente Fernandez, Johnny Hernandez, Sally Medina, Henry Murrieta, Patricia Padilla and Clara Miranda
3. **CERTIFICATION:**

Certification was made that the agenda was posted 24 hours before the meeting
4. **PUBLIC COMMUNICATIONS:**

Any member of the public may address the Malaga County Water District Board on any item(s) of interest within the jurisdiction of the Board, not appearing on the Agenda. The Board will listen to all communications, however in compliance with the Brown Act; the Board cannot take action on items that are not on the agenda. Public may also address the Board on agenda items at the time they are addressed by the Board. Anyone wishing to speak is requested to wait until recognized by the Board President.

No Public Communications were made at this time
5. **REGULAR BUSINESS:** Vice President Cerrillo arrived at 5:47 p.m.

2007/2008 Budget Workshop – District Accountant, Randy Nickel, CPA: Review/Discussion & Recommendations for the 2007/2008 District Budget. Randy Nickel and the Board reviewed the draft budget for fiscal year 2007/2008 covering water, sewer and recreation. Randy reported on the 2007/2008 budget estimates for revenues; expenditures and other budget considerations. Report also followed on the proposed budget items for the wastewater treatment plant as recommended by Tony Morales. One item listed was a new pick-up truck, which the Manager was already budgeting for in the proposed budget. Discussion followed on the industrial customers considered significant dischargers as Michael Taylor was recommending a 10% increase on the minimum charge as they haven't been increased since 2003 while the rest of the district customers have had an increase. Discussion also held on increasing the penalty fee for all the customers including the businesses. After some discussion on this, it was the consensus of the Board to increase the rates for the significant dischargers effective October 1st, 2007 and they will be notified July 1st. Further action to be taken at next regular meeting of June 26, 2007.

6. **OPEN BOARD POSITION - BOARD MEMBER CANDIDATES:** All Board Member Candidates will be given 10 minutes or less to address the MCWD Board of Directors regarding their qualifications, ask/answer questions.

The candidates gave a brief report on their qualifications for the position of District Board Member as follows in order of presentation: Henry Murrieta; Patricia Padilla; Johnny Hernandez; Vicente Fernandez; Frank Cerrillo and Sally Medina

Discussion followed

7. **CLOSED SESSION:** Board went into Closed Session at 7:31 p.m. and came out of Closed Session at 7:50 p.m. to make the following announcement:

By unanimous decision, the Board appoints Frank Cerrillo to fill the Board Member vacancy. Mr. Cerrillo will take his Oath of Office and be seated at the next Board meeting.

8. **ADJOURNMENT:** Meeting adjourned at 7:55 p.m.

EXHIBIT B

MEMO

TO: Russ Holcomb, Manager
Malaga Water, Sewer, and Recreation District

FROM: Melanie M. Bloom
Fresno County Grand Jury

DATE: January 9, 2008

RE: Documents establishing grounds to provide monies in lieu of health insurance to board members

In the November 21, 2007 memo from the Grand Jury committee examining the Malaga Water, Sewer, and Recreational District, I requested "A copy of the document authorizing the payment of in-lieu-of monies in place of health insurance coverage." I thought the policies and procedures manual would provide that information. After examining the policies and procedures manual dated 1993, the Grand Jury committee found authorization for vision coverage only. Please provide the document that authorizes payment for health insurance as well as the document that authorizes the payment of in-lieu-of monies to those board members who already have health insurance.

At the meeting with the committee, you asked for the authorization that permits the Grand Jury to examine special districts. This authorization is contained in Penal Code 925: "The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county, including those . . . of any special legislative district or other district . . . created pursuant to state law for which the officers of the county are serving in their ex official capacity as officers of the districts."

Please provide the requested documents as soon as possible because the committee is in the process of writing its report. If I can be of any assistance, contact me at melanieb@csufresno.edu or at 435-7467. Thank you for assisting us in completing our responsibilities as a Grand Jury committee.

NEAL E. COSTANZO
MICHAEL G. SLATER

LAW OFFICES
COSTANZO & ASSOCIATES
A PROFESSIONAL CORPORATION
575 E. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720-2928
(559) 261-0163

FAX (559) 261-0706

OUR FILE NO. 03024-005

January 18, 2008

Via Facsimile (559) 431-3201

Ms. Melanie M. Bloom
Fresno County Grand Jury

Re: Malaga County Water, Sewer and Recreation Districts

Dear Ms. Bloom:

We represent the Malaga County Water District (hereinafter the "Water District") as general counsel, and have served in that capacity for many years. We are writing in response to your memo dated January 9, 2008, to Russ Holcomb, Manager of the Water District. You requested that the Water District "provide the document that authorizes payment for health insurance as well as the document that authorizes the payment of in-lieu-of monies to those board members who already have health insurance." Mr. Holcomb forwarded the memo to our office because our office would have drafted such document or documents and would have, in the normal course of business, retained a copy thereof. Unfortunately the resolution adopted by the board is very old. As the Water District has, and continues to do so, we will diligently search for the document or documents you seek. However, documents drafted by our firm during this time period (which I believe to be at least 10 years ago) are located in our archives, rather than our computer data base or current files, so it may take some time to comply with your request. We appreciate your continued patience regarding this matter.

In the meantime, we would direct your attention to Government Code §§ 53200 through 53210. These sections, among other things, allow payments of the type which are the subject of the Grand Jury's examination, which we would, as the California Attorney General does, characterize as payments for authorized reimbursements rather than an "in-lieu-of" payment. In addition to allowing such payments, these Government Code sections also allow a local agency or its legislative body to approve of such plans, in providing health and welfare benefits to its officers and employees. Payment for such benefits to Board members who receive health and welfare benefits from a source other than the Water

LTRD-B-1.DOC;1

Ms. Melanie M. Bloom
January 18, 2008
Page 2

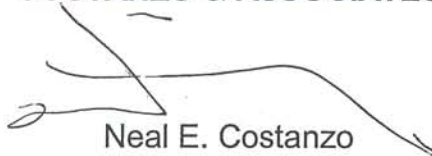
District are specifically authorized by statute. These types of payments are not only authorized by statute, but are also common among agencies throughout the state.

Your memo provides a response to Mr. Holcomb's query regarding the Grand Jury's authorization to conduct an examination of the Water District. Your response quotes Penal Code § 925. Penal Code § 925 does not apply to the Water District because, the Water District is an independent district. In other words, Penal Code § 925 does not apply to a district of which county officials are not "serving in their ex officio capacity as officers of the district[s][.]," in the same manner in which Penal Code § 925 does not apply to a city. Therefore, the Grand Jury does not have authorization to conduct this examination under Penal Code § 925. If, as appears to be the practice of the Grand Jury, there is some plan to issue a report critical of how the Water District operates we would expect that before doing so you would insure that the Grand Jury is not acting in excess of its jurisdiction. Our research indicates that you have no power to investigate or report on activities of an independent district.

The foregoing notwithstanding, we will forward to you the document or documents requested, as soon as it/they are located. If you have any further questions or concerns regarding this matter, please do not hesitate to give me a call.

Very truly yours,

COSTANZO & ASSOCIATES



Neal E. Costanzo

NEC/tm
cc: Russ Holcomb

EXHIBIT

C

Certificate of Attendance

THIS CERTIFIES THAT CHARLES E. GARABEDIAN, JR.
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on MAY 9, 2006
(Print the date on the line above)

 Association of
California Water Agencies
Since 1910
Leadership Advocacy Information
910 K St., Suite 100
Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT FRANK C. SOTO
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on MAY 10 2006
(Print the date on the line above)

 Association of
California Water Agencies
Since 1910
Leadership Advocacy Information
910 K St., Suite 100
Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT Irma Castaneda
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on May 10, 2006
(Print the date on the line above)


 Association of
California Water Agencies
Since 1970
Leadership Advocacy Information
910 K St., Suite 100
Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT SALVADOR A CERRILLO
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on MAY 13, 2006
(Print the date on the line above)


 Association of
California Water Agencies
Since 1970
Leadership Advocacy Information
910 K St., Suite 100
Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT Russ Holcomb
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on MAY 9, 2006
(Print the date on the line above)

 Association of
California Water Agencies
Since 1910
Leadership Advocacy Information
910 K St., Suite 100
Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT John Leyva
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on MAY 9, 2006
(Print the date on the line above)

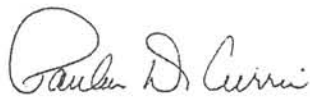
 Association of
California Water Agencies
Since 1910
Leadership Advocacy Information
910 K St., Suite 100
Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT CHARLES E. GARABEDIAN, JR.
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Tuesday, May 6, 2008, Marriott Hotel, Monterey, CA



Signature of Representative



Association of
California Water Agencies
Since 1910
Leadership Advocacy Information

910 K St., Suite 100
Sacramento, CA 95814-3577

Certificate of Attendance

THIS CERTIFIES THAT IRMA CASTANEDA
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Wed., May 7, 2008, Colton Rm, Monterey Conference Center, Monterey, CA



Signature of Representative



Association of
California Water Agencies
Since 1910
Leadership Advocacy Information

910 K St., Suite 100
Sacramento, CA 95814-3577

Certificate of Attendance

THIS CERTIFIES THAT SALVADOR A. GERRILLO
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Wed., May 7, 2008, Colton Rm, Monterey Conference Center, Monterey, CA

Paul D. Currie

Signature of Representative



Association of
California Water Agencies
Since 1910
Leadership Advocacy Information

910 K St., Suite 100
Sacramento, CA 95814-3577

Certificate of Attendance

THIS CERTIFIES THAT FRANK GERRILLO, JR.
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Wed., May 7, 2008, Colton Rm, Monterey Conference Center, Monterey, CA

Paul D. Currie

Signature of Representative



Association of
California Water Agencies
Since 1910
Leadership Advocacy Information

910 K St., Suite 100
Sacramento, CA 95814-3577

Certificate of Attendance

THIS CERTIFIES THAT FRANK SOTO
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Wed., May 7, 2008, Colton Rm, Monterey Conference Center, Monterey, CA



Signature of Representative



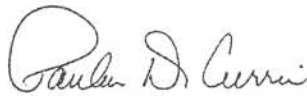
Association of
California Water Agencies
Since 1910
Leadership Advocacy Information

910 K St., Suite 100
Sacramento, CA 95814-3577

Certificate of Attendance

THIS CERTIFIES THAT RUSS HOLCOMB
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Wed., May 7, 2008, Colton Rm, Monterey Conference Center, Monterey, CA



Signature of Representative



Association of
California Water Agencies
Since 1910
Leadership Advocacy Information

910 K St., Suite 100
Sacramento, CA 95814-3577

EXHIBIT D



County of Fresno

GRAND JURY

March 25, 2008

Manager
Malaga County Water District
3580 S. Frank Ave.
Malaga, CA 93725

The enclosed Grand Jury Final Report #3 2007-2008 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).

The public release of the final report #3 will be on Tuesday, April 1, 2008. A limited number of copies will be available on this date on a first-come/first-serve/in-person basis (one copy per person) in the Juror Services Division on the 1st floor of the Fresno County Courthouse at 1100 Van Ness Avenue. The final report #3 will also be available on the Fresno County Superior Court Web page at www.fresnosuperiorcourt.org. When you reach the Superior Court home page click on “Jury” and then “Grand Jury”. You will find the report indexed by 2007-2008.

Pursuant to Penal Code Section 933, responses to the Final Report are required 60 days from the date of public release for elected county officer or agency head and 90 days from the date of public release for all other public agencies. Subsection (c) of Penal code 933 reads in part;

“(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

1100 Van Ness Avenue • Fresno, California 93724-0002

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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) 488-3467 between the hours of 8:00 a.m. – 5:00 p.m., Monday through Friday.

John Tinker, Foreman
2007-2008/Fresno County Grand Jury

RESOLUTION NO. 04-08-08

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MALAGA COUNTY WATER DISTRICT REGARDING THE
"2007-2008 FRESNO COUNTY GRAND JURY FINAL REPORT NO. 3"**

BE IT RESOLVED, by the Board of Directors (the "Board") of the Malaga County Water District (the "District"), County of Fresno, California, as follows:

WHEREAS, on April 1, 2008, the Fresno County Grand Jury released to the press, the County of Fresno and publically in general its "2007-2008 Fresno County Grand Jury Final Report No. 3" relating to Malaga County Water District; and

WHEREAS, despite the requirements of applicable law (Penal Code §933.05(f)) requiring the Grand Jury to provide to the affected agency a copy of the Report relating to it two (2) working days prior to its public release, and only after the approval of the presiding judge of the Fresno County Superior Court, the District was merely provided with a copy of the Report through the mails, by a letter falsely dated March 25, 2008, which the District received on April 2, 2008, after the Report had been released to the press, media and publically; and

WHEREAS, the Report cites "issues of concern" and then proceeds to identify, if at all, and by description only, District officials, including individual members of the current Board of Directors and accuses the District and the Board of Directors each of "conflicts of interest," "improper use of District Funds," a "violation of the Brown Act," "deficit spending" in disregard of a warning ostensibly received by the Chairperson of the Board of Directors in March 2004, and inferentially, misuse of District funds and as demonstrating "ignorance" and a variety of other sundry misconduct, the precise nature and basis for which is nowhere accurately or adequately disclosed in the Report; and

WHEREAS, based upon its review of the Report, and the Board's own knowledge of the facts relating to the "issues of concern" referred to in the Report including the Board and the District employees' full, complete and cooperative disclosure and cooperation in the Grand Jury's investigation (contrary to the assertion that appears in the Report that the District failed to "cooperate" with the "investigation"), the Board finds and determines that the Report is based upon virtually none of the information that is known to have been provided to the Grand Jury by testimony received by it by and through officials of this District, but appears premised solely and completely on information received from the purported citizen complaining about the District referred to in the Report and that there is no solid evidentiary or legal basis for many, if not all, of the findings and recommendations

made by the Grand Jury which plainly disregard both the evidence it actually received and the law that it attempts to apply in the Report; and

WHEREAS, the Board, based on what appears in the Report and its knowledge of the facts that relate to the "issues of concern" referred to therein finds and concludes that much of the matters that are characterizes as improper or as misconduct attributable to the District is conduct directly engaged in or attributable to one of three former members of this Board of Directors who were duly recalled by the voters in April 2005, subsequent to the events described in the Report, most of which appear to have arisen in 2004; and

WHEREAS, the District is statutorily required to provide comments by its governing board to the Report and the comments provided must comply with specified legal criteria established by statute and the statutory scheme relating to comments to the Grand Jury Report contemplates the making of a request to the presiding judge of the Fresno County Superior Court to either refuse to file the Grand Jury's Report or to strike it from the court files as not in compliance with applicable law which would involve the court in adjudicatory activity and involve litigation so that consideration of the development of a response to the Report is properly considered in closed session pursuant to Government Code §54956.9 based on existing facts and circumstances and the advice of legal counsel; and

WHEREAS, based on the matters cited as "issues of concern" in the Report there is a significant exposure to litigation against the District based upon the accusations, most of which appear to be false, made in the Grand Jury's Report; and

WHEREAS, comments by the governing body of the District are required to be submitted to the presiding judge of the Fresno County Superior Court 90 days after release of the Grand Jury Report, which occurred prior to the District's receipt of it on April 1, 2008, so that those comments must be received by the Superior Court on or before June 30, 2008, and that development of the Report requires consideration by this Board of facts which must be, but have not been, investigated or otherwise developed by this Board bearing on the veracity of the conclusions, findings and recommendations of the Grand Jury Report.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Legal counsel of the Malaga County Water District and the General Manager, are directed to prepare the appropriate comment and response to the 2007-2008 Fresno County Grand Jury Final Report No. 3 (Malaga County Water District) for submission to the presiding judge of Fresno County Superior Court and to present to this Board of Directors a final response and comment on or before June 24, 2008.

2. By at least a two-thirds vote, there is added to the agenda for April 8, 2007, one item of anticipated litigation so that the Board may consider and discuss in closed session the development or drafting of the appropriate response to the Grand Jury Report and that in the opinion of the Board of Directors, based upon existing facts and

circumstances, the Report creates a significant exposure to litigation against the District and, therefore, further discussion and consideration of the Board of any response to the Grand Jury Report, other than the final response, shall be conducted and heard in closed session of this Board.

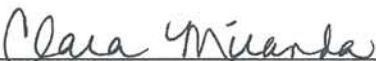
The foregoing Resolution was passed and adopted by the Board of Directors of the Malaga County Water District at a meeting thereof held on the 8 day of April by the following vote:

- AYES: BOARD MEMBERS: Cerrillo, Soto, Garabedian, Castaneda, Cerrillo Jr.
- NOES: BOARD MEMBERS: None
- ABSENT: BOARD MEMBERS: None
- ABSTAIN: BOARD MEMBERS: None



 Russ Holcomb, General Manager

ATTEST:



 Clerk/Administrative Assistant

RESOLUTION NO. 06-10-08

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MALAGA COUNTY WATER DISTRICT AMENDING
MALAGA COUNTY WATER DISTRICT POLICIES AND
PROCEDURES RELATING TO MEDICAL EXPENSE INSURANCE
AND HEALTH AND WELFARE BENEFITS**

WHEREAS, the Board of Directors of Malaga County Water District is authorized to adopt, and has adopted, a Personnel Policy Manual entitled Malaga County Water District Policies and Procedures, which contains a comprehensive listing of current policies duly adopted by the Board of Directors from time to time and includes policies and procedures related to health and welfare benefits and medical expense insurance; and

WHEREAS, Policy No. 2110 et seq of the said policies and procedures is the policy relating to health and welfare benefits and Policy No. 2110.10 relates specifically to medical expense insurance; and

WHEREAS, the Board of Directors desires to amend Malaga County Water District's Policies and Procedures relating to health and welfare benefits and specifically to medical expense insurance to reflect the prevailing policy of the District to pay to both employees and Directors who choose not to participate in the health benefits plan provided by the District, a payment each month in the cash equivalent of the amount that the District would otherwise have incurred to enroll and maintain the Director or employee in the health benefits plan provided for by the District.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Malaga County Water District as follows:

Section 1. The above recited facts are true and correct.

Section 2. The Malaga County Water District Policies and Procedures, Policy No. 2110.10 shall be and hereby is amended so that the policy reads as it is set out in Exhibit A attached and incorporated by reference.

Section 3. The attached Policy No. 2110.10, Exhibit A, effectively modifies and amends Policy No. 2110.10, entitled Medical Expense Insurance and the General Manager is directed to include the newly adopted Policy No. 2110.10 in the Malaga County Water District's Policies and Procedures, by making appropriate modifications to said policies and procedures consistent with this Resolution and to notify all employees and Directors of the District of the making of said amendment to said policy.

Passed and adopted by the Board of Directors of the Malaga County Water District at their meeting held on this 10th day of May, 2008, by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAIN: BOARD MEMBERS:

Charles Garabedian, Jr., President
Board of Directors of the Malaga County Water
District

ATTEST:

Secretary

**MALAGA COUNTY WATER DISTRICT
POLICIES AND PROCECURES**

Policy Title: Health and Welfare Benefits

Policy No. 2110

2110.10 Medical Expense Insurance. Accident, health, hospital and dental insurance to cover non-occupational injuries and sickness (the "Health Benefits Plan") for probationary and full-time employees in all job classifications, and their dependents, shall be provided by the District. The scope of coverage and the payment of premiums is subject to periodic review and revision by the Board of Directors. Members of the Board of Directors of the District may participate in the Health Benefits Plan provided by the District to employees. The Health Benefits Plan for Directors will be available only to active members of the Board of Directors and shall be unavailable after a Director is no longer an elected or appointed official of the District. In accordance with Government Code §53208.5, the benefits provided to Directors by the Health Benefits Plan may not be greater than the most generous schedule of benefits being received by any group of employees of the District. Family members of the Directors are also eligible for participation in the Health Benefits Plan. Directors who elect not to participate in the Health Benefits Plan provided by the District and employees who do not participate in the Health Benefits Plan provided by the District shall be entitled to reimbursement for actual expense incurred in procuring and maintaining health care coverage, or incurred by virtue of a required deductible or co-payment obligation incurred by the Director or employee either for health care benefits procured from a source other than the health care benefits provided by the District and shall be entitled to reimbursement for all actual expense incurred for deductibles, co-payments or other expense for maintaining health care coverage. Employees and Directors, in lieu of receiving health care coverage for themselves and their dependents who elect not to participate in the Health Benefits Plan provided by the District shall receive a payment each month, in the cash equivalent of the amount that the District would have otherwise incurred to enroll and maintain the Director or employee in the Health Benefits Plan provided by the District (hereinafter referred to as 'In Lieu of Payments'). A Director may direct and upon such direction the District will pay such In Lieu of Payments into a tax deferred retirement benefit plan or account designated by the Director.

**MALAGA COUNTY WATER DISTRICT
POLICIES AND PROCECURES**

Policy Title: Health and Welfare Benefits

Policy No. 2110

2110.10 Medical Expense Insurance. Accident, health, hospital and dental insurance to cover non-occupational injuries and sickness (the "Health Benefit Plan") for probationary and full-time employees in all job classifications, and their dependents, shall be provided by the District. The scope of coverage and the payment of premiums is subject to periodic review and revision by the Board of Directors. Members of the Board of Directors of the District may participate in the Health Benefits Plan provided by the District to employees. The Health Benefits Plan for Directors will be available only to active members of the Board of Directors and shall be unavailable after a Director is no longer an elected or appointed official of the District. In accordance with Government Code §53208.5, the benefits provided to Directors by the Health Benefits Plan may not be greater than the most generous schedule of benefits being received by any group of employees of the District. Family members of the Directors are also eligible for participation in the Health Benefits Plan. Directors who elect not to participate in the Health Benefits Plan provided by the District and employees who do not participate in the Health Benefits Plan provided by the District shall, be entitled to reimbursement for actual expense incurred in procuring and maintaining health care coverage, or incurred by virtue of a required deductible or co-payment obligation incurred by the Director or employee either for health care benefits procured from a source other than the health care benefits provided by the District and shall be entitled to reimbursement for all actual expense incurred for deductibles, co-payments or other expense for maintaining health care coverage.

**DECLARATION OF RUSS HOLCOMB IN SUPPORT OF
RESPONSE TO 2007-2008 FRESNO COUNTY GRAND JURY
FINAL REPORT NO. 3 MALAGA COUNTY WATER DISTRICT**

I, RUSS HOLCOMB, declare:

1. I am the General Manager of the Malaga County Water District ("Malaga"), having been appointed to that position on November 1, 2004. I was trained when I was initially hired by a former Board Member, Florence Valdez, who was compensated by the District for the time spent in training me. At subsequent District Board meetings, Ms. Valdez was criticized by two other Board Members, Salvador Cerrillo and Charles Garabedian, Jr., as well as individuals who appeared at the meeting, including John Leyva, concerning her receipt of compensation for providing this training.

2. When I was appointed, the Board of Directors consisted of Valdez, Armando Blancas, Angela Landin, Charles Garabedian, Jr., and Salvador Cerrillo. Valdez, Blancas and Landin were recalled by the voters on April 19, 2005, and John Leyva, Irma Castaneda, and Frank Soto were elected to fill their positions. John Leyva died on May 15, 2007. Frank Cerrillo, Jr., was appointed by the remaining members to complete Mr. Leyva's unexpired term on June 26, 2007. A copy of the minutes of the Board meeting from that date in addition to the minutes of the June 21, 2007, meeting are attached and incorporated by reference as Exhibit A. Charles Garabedian, Jr., and Irma Castaneda were reelected on November 6, 2007, and Frank Cerrillo, Jr., was elected as a Director (by the highest percentage of votes for that election) on that date.

3. On being contacted by representatives of the Grand Jury for Fresno County and receiving requests for appearances by District officials (including myself) and requests for documents, I asked Melanie M. Bloom, the Chairperson of the Grand

Jury, for statutory authority allowing the Grand Jury to investigate and report on Malaga's affairs. In response, she provided me with a Memorandum dated July 9, 2008, a copy of which is attached and incorporated by reference as Exhibit B. I referred this Memorandum to the District's Counsel who issued the January 18, 2008, letter to Melanie Bloom with a copy to me that is included in Exhibit B and incorporated by this reference.

4. The only July 21, 2004, document or report presented to the Board of Directors that I am aware of or able to identify is a lengthy document prepared by one Luke T. Champagne, an MBA candidate at Fresno State University. The document was not approved by the Board of Directors.

5. I make all hiring decisions for temporary/contracted positions such as lifeguards or persons providing temporary or part-time assistance in conducting recreation activities at the District. Before Frank Cerrillo, Jr., was appointed to the Board, I hired his son, Frank Cerrillo, III, to serve as a temporary/contracted lifeguard, because he was one of a number of individuals who had applied, after the District had advertised this position, as he had the appropriate qualifications and certifications. I also hired a softball coordinator on a temporary/contracted basis who is a distant relative of Salvador Cerrillo. I hired this individual because he was the most qualified for the position of those who had applied. Every person hired to fill these and other temporary/contracted positions was hired by me without involvement by any Board Member.

6. Attached and incorporated by reference is Exhibit C are true and correct copies of Certificates of Attendance for each of the Board Members who has served at

any time after the recall election on April 19, 2005, showing their attendance at ethics training provided by the Association of California Water Agencies "ACWA"). The Board Members bi-annually attend this training provided by ACWA in addition to seminars and training on a multiple of other matters relating to the District's operations.

7. The Report of the Fresno County Grand Jury relating to Malaga County Water District was not received by the District until April 2, 2008, when the document was received through the mail. It was accompanied by a letter dated March 25, 2008. The Fresno County Grand Jury publically released their Report on April 1, 2008, and I and a number of Board Members and other District officials were contacted by the press seeking comments to a Grand Jury Report critical of Malaga's operations that we had not yet received. A copy of the Grand Jury's letter dated March 25, 2008, showing the receipt stamp of April 2, 2008, reflecting the date on which it arrived at the District office through the mails is attached and incorporated by reference as Exhibit D.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Dated: June 20, 2008



Russ Holcomb

Item No. 6A

**ACTION SUMMARY MINUTES
BOARD OF DIRECTORS MEETING
MALAGA COUNTY WATER DISTRICT
3580 SOUTH FRANK STREET
FRESNO, CALIFORNIA 93725
TUESDAY, JUNE 26, 2007, 7:00 P.M.**

1. **CALL TO ORDER:** Meeting called to order by President Garabedian at 7:00 p.m.
2. **ROLL CALL:**
- 2A. **Directors Present:** President Charles Garabedian, Jr., Vice President Salvador Cerrillo, Director Irma Castaneda, Director Frank Soto
- 2B. **Others Present:** Russ Holcomb, Richard Hargrove, Randy Nickel, Frank Cerrillo, Lupe Cerrillo, Laurie Cortez, and Clara Miranda

3. **CERTIFICATION:**

Certification was made that the agenda was posted 72 hours before the meeting

4. **SEATING OF NEW BOARD MEMBER:**

President Garabedian administered the Oath of Office to Frank Cerrillo, and immediately following, was thereby seated as the newly appointed Board member.

5. **PUBLIC COMMUNICATIONS:**

Any member of the public may address the Malaga County Water District Board on any item(s) of interest within the jurisdiction of the Board, not appearing on the Agenda. The Board will listen to all communications, however in compliance with the Brown Act; the Board cannot take action on items that are not on the agenda. Public may also address the Board on agenda items at the time they are addressed by the Board. Anyone wishing to speak is requested to wait until recognized by the Board President.

No Public Comments at this time

Item 7E was moved up by President Garabedian

- 7E. **Fiscal Budget 2007/2008 – Randy Nickel, CPA:** Districts Budget will be presented at the meeting with changes made during the 2007/2008 Budget Workshop held June 21, 2007. Board members reviewed the previous changes made and several brief discussions were held on the revised budget. It was recommended that the Board approve the FY 2007/2008 District Budget as presented and modified.

SCGCC MOTION BY DIRECTOR SOTO, SECONDED BY VICE PRESIDENT CERRILLO, AND BY A 5-0 VOTE, APPROVED THE FY 2007/2008 DISTRICT BUDGET

7E. **Fiscal Budget 2007/2008 – Randy Nickel, CPA Continued:**

Brief discussion held on the proposed jogging track and the start-up date for the project. Manager reported on the process for this project.

6. **CORRESPONDENCE:**

6A. **California Integrated Waste Management Board:** "Notice to Proceed" for the Tire Derived Grant Program for FY 2006/2007. Manager reported on this project.

6B. **Hargrove & Costanzo – State Disability & Other Insurance Programs:** Legal Counsel's review of SDI and other insurance program requirements. President Garabedian reported on the items reviewed in the letter. Brief discussion followed.

7. **REGULAR BUSINESS:**

7A. **MINUTES:**

Minutes of the Regular Board Meeting of June 12 and Special Meeting of June 21, 2007.

CSGCC MOTION BY VICE PRESIDENT CERRILLO, SECONDED BY DIRECTOR SOTO, AND BY A 5-0 VOTE, APPROVED THE MINUTES OF JUNE 12TH AND JUNE 21ST, AS SUBMITTED

7B. **BILLS PAYABLE/FINANCIAL STATEMENT:** No Bills Payable/Financial Statement for this meeting

7C. **RESOLUTIONS:**

1. **Resolution No. 06-26-07 (A):** A Resolution calling General District Election – Amendment to Resolution 5-10-07. Amendment was to add the newly appointed board member Frank Cerrillo, to the Resolution.

CSGCC MOTION BY VICE PRESIDENT CERRILLO, SECONDED BY DIRECTOR SOTO, AND BY A 5-0 VOTE, APPROVED RESOLUTION 06-26-07(A), AS SUBMITTED AND MODIFIED

2. **Resolution No. 06-26-07 (B):** A Resolution of the Board of Directors of the Malaga County Water District Approving the form of and authorizing the Execution and Delivery of a Sixth Amended Joint Powers Agreement. President Garabedian reported on the SDRMA insurance and the amendment as recommended by SDRMA.

CSGCC MOTION BY VICE PRESIDENT CERRILLO, SECONDED BY DIRECTOR SOTO, AND BY A 5-0 VOTE, APPROVED RESOLUTION 06-26-07 (B), AS SUBMITTED

7. **REGULAR BUSINESS CONTINUED:**

- 7D. **Provost & Pritchard Engineering Group:** 2007/2008 On-going Engineering Services Proposal. A brief discussion followed on the fees for engineering services.

CSGCC **MOTION BY VICE PRESIDENT CERRILLO, SECONDED BY DIRECTOR SOTO, AND BY A 5-0 VOTE, APPROVED THE 2007/2008 ON-GOING ENGINEERING SERVICES AGREEMENT, AS SUBMITTED**

8. **ENGINEER'S REPORT:**

CAPITAL IMPROVEMENT PROJECTS:

- 8A. **North Avenue Water Line:** Final Retention Payment has been submitted for review and approval. Construction is 100% complete.

SCGCC **MOTION BY DIRECTOR SOTO, SECONDED BY VICE PRESIDENT CERRILLO, AND BY A 5-0 VOTE, APPROVED FINAL PAYMENT, PENDING THE 35 DAY WAITING PERIOD OF NOTICE OF COMPLETION, FILED MAY 30, 2007**

- 8B. **Well 1 & 6 Improvements (WFH):** The Bid Opening was held on June 21, 2007. The apparent low bidder is Hobbs Construction at \$25,686. The Bid packages are being reviewed; a summary of bids will follow under separate cover. No Action Required – this was for information only.

9. **RECREATION REPORT:**

Recreation items will be covered under Manager's Report

10. **GENERAL MANAGER'S REPORT:**

10A. **District Updates:**

1. **Grants Update:** Jogging Track & Tire Amnesty Grant Approved = \$70,000+.
2. **Park Lighting Project:** Phase I Installed/Operating – Additional 100 lights to add
3. **Non-Working Street Light:** Message from Shannon Koontz, PG&E was submitted for review. No action was required.
4. **Alley Clean-Up:** Set for next Tuesday 07/03/07

10B. **Other:**

1. **Recreation/Committee Meeting:** Next Meeting 06/28/07 @ 5:30pm@Rec. Center
2. **Community Bar-B-Q:** 07/01/07 – Updates – Almost Everything in Place. Brief discussion followed.
3. **Horseshoe Tournament:** Sign-Up Sheets are part of the program. Brief discussion followed on the trophies for this event and on the prizes for the raffles.
4. **FYI's:** Various informational items were presented.

10B. Other Continued:

Director Soto asked on the jogging track, how long do we have to finish it? Manager stated, the District has about a year to finish the project. The driveway will have to be moved as well. Brief discussion followed. Tire Amnesty was a grant that President Garabedian helped obtain during the most recent visit to Sacramento with Steve Samuelian.

11. PRESIDENT'S REPORT:

President Garabedian reported he received a letter from the County Administrative Officer Bart Bohn regarding the deadline to sign up for a Enterprise Zone Job Creation in Progress Workshop. The letter was received one day before the deadline to sign up. President Garabedian stated, he will attend the workshop.

12. DIRECTOR'S REPORT(S):

Vice President Cerrillo reported on the sprinkler system as Mr. Gonzales should have a report on the total cost estimate for this by the next Board meeting.

Vice President Cerrillo reported the attendance for the Summer Camp Out was very good and everyone had a good time. At the next recreation meeting we can discuss what can be improved and what worked. **Director Castaneda** also gave a report on the Summer Camp Out. She also reported that the kids really had a good time.

Director Soto reported his neighbors are complaining about the dust coming from Heppner Iron & Metal. Discussion followed. Manager will address this issue.

13. LEGAL COUNSEL'S REPORT:

No Legal Counsel's Report for this meeting

14. CLOSED SESSION:

Board Adjourned to Closed Session at 7:49 p.m.

Board returned from Closed Session at 8:24 p.m. to report action taken during Closed Session, as follows: **Personnel:** Joss Alvarez's request to receive the remaining balance of his 1997 Sick Leave was granted. Manager was directed to present an amendment to the resolution that authorized the original disbursements, to now include the disbursement of the remaining balances, when requested.

15. ADJOURNMENT:

Meeting Adjourned at 8:25 p.m.

Item No. 7A

**ACTION SUMMARY MINUTES
BOARD OF DIRECTORS
SPECIAL MEETING
3580 SOUTH FRANK STREET
FRESNO, CALIFORNIA 93725
THURSDAY, JUNE 21, 2007, 5:30 P.M.**

1. **CALL TO ORDER:** Meeting called to order by President Garabedian at 5:35 p.m.
2. **ROLL CALL:**
 - 2A. **Directors Present:** President Charles Garabedian, Jr., Director Irma Castaneda, Director Frank Soto
 - 2B. **Directors Absent:** Vice President Salvador Cerrillo
 - 2C. **Others Present:** Russ Holcomb, Richard Hargrove, Randy Nickel, Frank Cerrillo, Laurie Cortez, Alicia Fernandez, Amado Fernandez, Maria Fernandez, Priscilla Fernandez, Vicente Fernandez, Johnny Hernandez, Sally Medina, Henry Murrieta, Patricia Padilla and Clara Miranda
3. **CERTIFICATION:**

Certification was made that the agenda was posted 24 hours before the meeting
4. **PUBLIC COMMUNICATIONS:**

Any member of the public may address the Malaga County Water District Board on any item(s) of interest within the jurisdiction of the Board, not appearing on the Agenda. The Board will listen to all communications, however in compliance with the Brown Act; the Board cannot take action on items that are not on the agenda. Public may also address the Board on agenda items at the time they are addressed by the Board. Anyone wishing to speak is requested to wait until recognized by the Board President.
No Public Communications were made at this time
5. **REGULAR BUSINESS:** Vice President Cerrillo arrived at 5:47 p.m.

2007/2008 Budget Workshop – District Accountant, Randy Nickel, CPA: Review/Discussion & Recommendations for the 2007/2008 District Budget. Randy Nickel and the Board reviewed the draft budget for fiscal year 2007/2008 covering water, sewer and recreation. Randy reported on the 2007/2008 budget estimates for revenues; expenditures and other budget considerations. Report also followed on the proposed budget items for the wastewater treatment plant as recommended by Tony Morales. One item listed was a new pick-up truck, which the Manager was already budgeting for in the proposed budget. Discussion followed on the industrial customers considered significant dischargers as Michael Taylor was recommending a 10% increase on the minimum charge as they haven't been increased since 2003 while the rest of the district customers have had an increase. Discussion also held on increasing the penalty fee for all the customers including the businesses. After some discussion on this, it was the consensus of the Board to increase the rates for the significant dischargers effective October 1st, 2007 and they will be notified July 1st. Further action to be taken at next regular meeting of June 26, 2007.

- 6. **OPEN BOARD POSITION - BOARD MEMBER CANDIDATES:** All Board Member Candidates will be given 10 minutes or less to address the MCWD Board of Directors regarding their qualifications, ask/answer questions.

The candidates gave a brief report on their qualifications for the position of District Board Member as follows in order of presentation: Henry Murrieta; Patricia Padilla; Johnny Hernandez; Vicente Fernandez; Frank Cerrillo and Sally Medina

Discussion followed

- 7. **CLOSED SESSION:** Board went into Closed Session at 7:31 p.m. and came out of Closed Session at 7:50 p.m. to make the following announcement:

By unanimous decision, the Board appoints Frank Cerrillo to fill the Board Member vacancy. Mr. Cerrillo will take his Oath of Office and be seated at the next Board meeting.

- 8. **ADJOURNMENT:** Meeting adjourned at 7:55 p.m.

MEMO

TO: Russ Holcomb, Manager
Malaga Water, Sewer, and Recreation District

FROM: Melanie M. Bloom
Fresno County Grand Jury

DATE: January 9, 2008

RE: Documents establishing grounds to provide monies in lieu of health insurance to board members

In the November 21, 2007 memo from the Grand Jury committee examining the Malaga Water, Sewer, and Recreational District, I requested "A copy of the document authorizing the payment of in-lieu-of monies in place of health insurance coverage." I thought the policies and procedures manual would provide that information. After examining the policies and procedures manual dated 1993, the Grand Jury committee found authorization for vision coverage only. Please provide the document that authorizes payment for health insurance as well as the document that authorizes the payment of in-lieu-of monies to those board members who already have health insurance.

At the meeting with the committee, you asked for the authorization that permits the Grand Jury to examine special districts. This authorization is contained in Penal Code 925: "The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county, including those . . . of any special legislative district or other district . . . created pursuant to state law for which the officers of the county are serving in their ex official capacity as officers of the districts."

Please provide the requested documents as soon as possible because the committee is in the process of writing its report. If I can be of any assistance, contact me at melanieb@csufresno.edu or at 435-7467. Thank you for assisting us in completing our responsibilities as a Grand Jury committee.

NEAL E. COSTANZO
MICHAEL G. SLATER

LAW OFFICES
COSTANZO & ASSOCIATES
A PROFESSIONAL CORPORATION
575 E. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720-2928
(559) 261-0163

FAX (559) 261-0706
OUR FILE NO. 03024-005

January 18, 2008

Via Facsimile (559) 431-3201

Ms. Melanie M. Bloom
Fresno County Grand Jury

Re: Malaga County Water, Sewer and Recreation Districts

Dear Ms. Bloom:

We represent the Malaga County Water District (hereinafter the "Water District") as general counsel, and have served in that capacity for many years. We are writing in response to your memo dated January 9, 2008, to Russ Holcomb, Manager of the Water District. You requested that the Water District "provide the document that authorizes payment for health insurance as well as the document that authorizes the payment of in-lieu-of monies to those board members who already have health insurance." Mr. Holcomb forwarded the memo to our office because our office would have drafted such document or documents and would have, in the normal course of business, retained a copy thereof. Unfortunately the resolution adopted by the board is very old. As the Water District has, and continues to do so, we will diligently search for the document or documents you seek. However, documents drafted by our firm during this time period (which I believe to be at least 10 years ago) are located in our archives, rather than our computer data base or current files, so it may take some time to comply with your request. We appreciate your continued patience regarding this matter.

In the meantime, we would direct your attention to Government Code §§ 53200 through 53210. These sections, among other things, allow payments of the type which are the subject of the Grand Jury's examination, which we would, as the California Attorney General does, characterize as payments for authorized reimbursements rather than an "in-lieu-of" payment. In addition to allowing such payments, these Government Code sections also allow a local agency or its legislative body to approve of such plans, in providing health and welfare benefits to its officers and employees. Payment for such benefits to Board members who receive health and welfare benefits from a source other than the Water

Ms. Melanie M. Bloom
January 18, 2008
Page 2

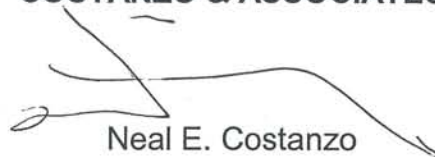
District are specifically authorized by statute. These types of payments are not only authorized by statute, but are also common among agencies throughout the state.

Your memo provides a response to Mr. Holcomb's query regarding the Grand Jury's authorization to conduct an examination of the Water District. Your response quotes Penal Code § 925. Penal Code § 925 does not apply to the Water District because, the Water District is an independent district. In other words, Penal Code § 925 does not apply to a district of which county officials are not "serving in their ex officio capacity as officers of the district[s][.]," in the same manner in which Penal Code § 925 does not apply to a city. Therefore, the Grand Jury does not have authorization to conduct this examination under Penal Code § 925. If, as appears to be the practice of the Grand Jury, there is some plan to issue a report critical of how the Water District operates we would expect that before doing so you would insure that the Grand Jury is not acting in excess of its jurisdiction. Our research indicates that you have no power to investigate or report on activities of an independent district.

The foregoing notwithstanding, we will forward to you the document or documents requested, as soon as it/they are located. If you have any further questions or concerns regarding this matter, please do not hesitate to give me a call.

Very truly yours,

COSTANZO & ASSOCIATES



Neal E. Costanzo

NEC/tm
cc: Russ Holcomb

Certificate of Attendance

THIS CERTIFIES THAT CHARLES E. GARABEDIAN, JR.
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on MAY 9, 2006
(Print the date on the line above)

 Association of
California Water Agencies
Since 1910
Leadership Advocacy Information
910 K St., Suite 100
Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT FRANK C. SOTO
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on MAY 10 2006
(Print this date on the line above)

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910 K St., Suite 100
Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT Irma Castaneda
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on May 10, 2006
(Print the date on the line above)


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California Water Agencies
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Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT SALVADOR A CERRILLO
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on MAY 13, 2006
(Print the date on the line above)

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Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT Russ Holcomb
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on MAY 9, 2006
(Print the date on the line above)


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California Water Agencies
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Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT JOHN LEYVA
(Print your name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
on MAY 9, 2006
(Print the date on the line above)

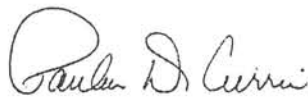
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910 K St., Suite 100
Sacramento, CA 95814-3577

Dawn A. Hummel
Signature of ACWA Representative

Certificate of Attendance

THIS CERTIFIES THAT CHARLES E. GARABEDIAN, JR.
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Tuesday, May 6, 2008, Marriott Hotel, Monterey, CA



Signature of Representative



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Sacramento, CA 95814-3577

Certificate of Attendance

THIS CERTIFIES THAT IRMA CASTANEDA
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Wed., May 7, 2008, Colton Rm, Monterey Conference Center, Monterey, CA



Signature of Representative



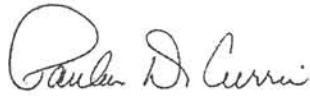
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Certificate of Attendance

THIS CERTIFIES THAT SALVADOR A. GERRILLO
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Wed., May 7, 2008, Colton Rm, Monterey Conference Center, Monterey, CA



Signature of Representative



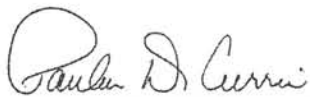
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THIS CERTIFIES THAT FRANK GERRILLO, JR.
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Wed., May 7, 2008, Colton Rm, Monterey Conference Center, Monterey, CA



Signature of Representative



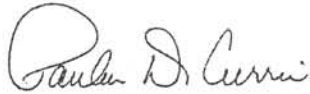
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Sacramento, CA 95814-3577

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THIS CERTIFIES THAT FRANK SOTO
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Wed., May 7, 2008, Colton Rm, Monterey Conference Center, Monterey, CA



Signature of Representative



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Sacramento, CA 95814-3577

Certificate of Attendance

THIS CERTIFIES THAT RUSS HOLCOMB
(Print name on the line above)

Attended "Conduct & Ethics: Training for Water Agency Officials"
On Wed., May 7, 2008, Colton Rm, Monterey Conference Center, Monterey, CA



Signature of Representative



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Sacramento, CA 95814-3577



County of Fresno

GRAND JURY

March 25, 2008

Manager
Malaga County Water District
3580 S. Frank Ave.
Malaga, CA 93725

The enclosed Grand Jury Final Report #3 2007-2008 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).

The public release of the final report #3 will be on Tuesday, April 1, 2008. A limited number of copies will be available on this date on a first-come/first-serve/in-person basis (one copy per person) in the Juror Services Division on the 1st floor of the Fresno County Courthouse at 1100 Van Ness Avenue. The final report #3 will also be available on the Fresno County Superior Court Web page at www.fresnosuperiorcourt.org. When you reach the Superior Court home page click on “Jury” and then “Grand Jury”. You will find the report indexed by 2007-2008.

Pursuant to Penal Code Section 933, responses to the Final Report are required 60 days from the date of public release for elected county officer or agency head and 90 days from the date of public release for all other public agencies. Subsection (c) of Penal code 933 reads in part;

“(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

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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) 488-3467 between the hours of 8:00 a.m. – 5:00 p.m., Monday through Friday.

John Tinker, Foreman
2007-2008/Fresno County Grand Jury



County of Fresno

CHAIRMAN
BOARD OF SUPERVISORS
SUPERVISOR HENRY PEREA – DISTRICT THREE

July 23, 2008

The Honorable Hilary Chittick
Presiding Judge, Superior Court
1100 Van Ness Avenue, Department 20
Fresno, CA 93721

RE: RESPONSE TO THE 2007-08 GRAND JURY FINAL REPORTS #2 and #3

Dear Judge Chittick:

The Board of Supervisors has approved its official responses to the recommendations pertaining to Fresno County contained in the 2007-08 Grand Jury Final Reports #2 and #3. The responses are submitted herewith in fulfillment of Penal Code Section 933(c). Also, please find all other required County department responses enclosed in this packet as well.

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

Sincerely,

Henry Perea, Chairman
Board of Supervisors

Enclosure

County of Fresno
Board of Supervisors
RESPONSE TO THE
2007-08
FRESNO COUNTY GRAND JURY
FINAL REPORT #3



MALAGA COUNTY WATER DISTRICT

Please find below the Fresno County Board of Supervisor's response to the 2007-08 Grand Jury Final Report #3.

Findings

F305: The Board had prior knowledge of probable improprieties.

The Board of Supervisors is unable to comment regarding the prior knowledge of the Malaga County Water District (MCWD) Board, an independent agency. The Board of Supervisors has no authority over the MCWD and as such, no authority to investigate allegations of improprieties.

F306: A previous independent investigation approved by the MCWD Board and submitted to the Board of Supervisors advised the MCWD Board of inappropriate and illegal practices.

There is no record of the Board of Supervisors receiving the previous independent investigation. As noted earlier, the Board of Supervisors has no authority over the MCWD and as such, no authority to investigate allegations of inappropriate and illegal practices.

Recommendation

R302: Review recreation program and account to bring them into balance and compliance with good business practice.

Recommendation will not be implemented by the Fresno County Board of Supervisors as it has no authority over the MCWD.



County of Fresno

Vicki Crow, C.P.A.

Auditor-Controller/Treasurer-Tax Collector

April 29, 2008

The Honorable Hilary Chittick
Presiding Judge
California Superior Court, Fresno County
1100 Van Ness Ave., Dept. 70
Fresno, CA 93721

RE: Response to the 2007-2008 Grand Jury Final Report – Malaga County Water District

Dear Judge Chittick:

The Auditor-Controller/Treasurer-Tax Collector (ACTTC) is referenced in Recommendation R310. The following is the Auditor-Controller/Treasurer-Tax Collector's official response to the recommendation of the Grand Jury.

MALAGA COUNTY WATER DISTRICT

The Malaga County Water District (District) is in compliance with California Government Code Section 26909 which states in part:

- a) The county auditor shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of every special purpose district within the county for which an audit by a certified public accountant or public accountant is not otherwise provided. In each case, the minimum requirements of the audit shall be prescribed by the Controller and shall conform to generally accepted auditing standards.
- b) Where an audit of a district's accounts and records is made by a certified public accountant or public accountant, the minimum requirements of the audit shall be prescribed by the Controller and shall conform to generally accepted auditing standards, ***and a report thereof shall be filed with the Controller and with the county auditor of the county in which the district is located. The report shall be filed within 12 months of the end of the fiscal year or years under examination.***

P.O. Box 1247 / Fresno, California 93715-1247 / (559) 488-3496 / FAX (559) 488-3493
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The Financial Reporting and Audits Division of the ACTTC Department has on file a copy of the District's audited financial statements for the year ended June 30, 2007. The report appears in order and compliant with Generally Accepted Accounting and Auditing Standards. The ACTTC is not required to perform an audit under this circumstance. However, the Certified Public Accountant's Management Letter which accompanies the audited financial statements does not address the concerns stated by the Grand Jury.

Government Code Section 26910 states:

The auditor may at any reasonable time and place examine the books and records of any special purpose assessing or taxing district located wholly in the county.

Government Code Section 26910 allows the ACTTC to examine the books of any special purpose district. The ACTTC could perform a full audit or a limited scope audit if determined appropriate. While it is possible additional issues could be found, I am doubtful that we would do significantly more than provide additional substantiation to the findings of the Grand Jury. These findings should be addressed by the District regardless of this Department's involvement. I can, however, schedule an audit if there is a compelling purpose to do so.

Sincerely,



Vicki Crow, C.P.A.
Auditor-Controller/Treasurer-Tax Collector

VC/fsl

Cc: Alan Weaver, Director/Public Works & Planning

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REPORT #4

PLEASANT VALLEY STATE PRISON

FILED

APR 09 2008

FRESNO COUNTY SUPERIOR COURT

By _____ DEPUTY

**2007-2008
FRESNO COUNTY GRAND JURY**



**FINAL REPORT
#4**

Grand Jury Committee Report
2007-2008

Report #4

PLEASANT VALLEY STATE PRISON

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

INTRODUCTION

The Grand Jury has conducted its annual review of the Pleasant Valley State Prison (PVSP). That has included follow-up to issues raised by the prior year’s Grand Jury as well as concerns that were not previously addressed. Improvements have been noted, but challenges still exist. Some problems allegedly are statewide, while others appear to be unique to this facility. The PVSP staff is aware of the ongoing concerns and appears to be attempting to address them.

BACKGROUND

Pursuant to State law, our Grand Jury is obligated to examine the operation and conditions of any prisons located within Fresno County. Currently there is one such facility, the Pleasant Valley State Prison, which is located at 24863 West Jayne Avenue in Coalinga. This institution was opened in November of 1994 and covers 640 acres. According to its website, as of Fiscal Year 2006-2007, it had an annual operating budget of \$195 million and a total staff of 1,388. Its designed bedspace capacity is listed as 2,616, but the count is given as 5,188.

According to its mission statement,

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

Inmate programs include vocational, academic, and religious programs as well as community service crews, arts in corrections, and computers for schools.

AREAS INVESTIGATED

Since July of 2007, the Grand Jury has received few complaints from inmates concerning the operations of PVSP. However, inmates have not been reluctant to raise concerns using other legal and administrative avenues. As part of our current investigation, we have not only visited the prison, we have also examined some of these public records. Among the themes that have been reiterated over the years are inmate concerns over the adequacy of medical care, conditions at the prison, and the responsiveness of the staff to inmate complaints and administrative appeals.

Prior Grand Jury Recommendations

As part of its report, the 2006-2007 Grand Jury focused primarily on the issue of medical care provided by Pleasant Valley State Prison. Its recommendations included (1) providing a secure wing for patient-inmates at the Coalinga Regional Medical Center, (2) providing adequate laboratory equipment for the Correctional Treatment Center, (3) implementing a more sophisticated medical record storage system and adequate storage facility, and (4) revising the pay scale for physicians and nurses.

As noted in more detail in the 2006-2007 report, this is an area that currently falls under the jurisdiction of a receiver appointed by the federal court. The receiver's response to last year's report agreed with many of the Grand Jury's findings, but not necessarily with its recommendations. His responses to the Grand Jury's report included the following: (1) he agreed with the findings supporting the recommendation for a secured wing for patient-inmates, this recommendation was being evaluated, but it had not been implemented and may not be implemented because of statewide priorities and options; (2) the recommendation concerning laboratory equipment had been implemented; (3) the receiver agreed with the recommendation concerning a better medical record storage system and facility, but that recommendation has not yet been implemented; and (4) the recommendation for improving the pay scale had been implemented along with other changes to improve working conditions, orientation, and training.

Our current investigation has confirmed that the medical staffing situation at the prison has improved. Local support for a secured wing at the medical center still remains, but no attempt has been made to implement the potential cost savings noted by last year's Grand Jury. Furthermore, a new federal receiver has been appointed; and some of the prior receiver's actions have been questioned. Whether the progress that has been made will be undermined by the change in the receiver and the state's budget problems is unclear.

Valley Fever

Medical care has been an ongoing problem throughout the state's prison system. There have been complaints about the timeliness of medical care, the adequacy of that care, the competence of the medical staff, lost medical records, and delays in processing and resolving medical appeals. This has also been true of the Coalinga prison.

In addition, Valley Fever (coccidioidomycosis) is notorious in the Coalinga area. This infection is caused by a fungus that lives in certain arid-type soils. Its spores are released into the air when the soil is disturbed by wind, farming, construction, and other activities. It is an ongoing concern that affects the health of both inmates and staff.

While the prison has not maintained records prior to 2003 and was unable to provide precise statistics on the number of individuals afflicted with this condition (e.g., due to duplicate testing), the information that is available indicates the following number of reported cases: 128 (2003/2004), 150 (2005), 514 (2006), and 137 (2007). There were also 13 Valley Fever-related deaths during the period 2005 through 2007 with five in 2005, five in 2006, and three in 2007.

Local prison officials are well-aware of this situation and appear to have taken reasonable steps to identify and address the problems associated with high-risk inmates. Among other things, a statewide exclusion of inmates susceptible to coccidioidomycosis was expanded on November 20, 2007.

So far, attempts to eliminate Valley Fever have not been successful. For example, the prison administration has concluded that some proposed environmental solutions to containing Valley Fever's ground source are impracticable because of the air-borne nature of this disease.

Inmate Complaints

Inmates who are dissatisfied with their conditions or treatment have the right to seek redress within the prison system. Complaints may be addressed informally or formally, with separate procedures existing for processing medical complaints. The formal process has multiple levels of review including the prison staff, the Warden, and ultimately the Director of the Department of Corrections and Rehabilitation. According to the prison, 4,011 complaints were assigned for action in 2007. During the 12-month period preceding February 1, 2008, it is estimated that an average of 358 first and second level appeals were being processed monthly within the prison.

The guidelines for the administrative review process are formalized in Title 15 of the California Code of Regulations. These regulations specify the actions that must be taken and the time frames that apply at each level of the administrative appeal process. Inmates who are dissatisfied with an administrative response may seek relief outside the prison system, e.g., by filing writ petitions with the courts.

The prison was unable to calculate how much it costs to process an inmate appeal. A “ball park” estimate of \$1,000 was mentioned, but it could not be sustained. An attempt by prison staff to develop an accurate estimate was deemed to be cost prohibitive, considering all the factors involved. For example, the informal level of review is not tracked by the Inmate Appeals Office, which is staffed by two coordinators, two office technicians, and one program analyst. The Medical Appeals Office is separate and is composed of eight staff members. Yet, the prison says that this does not include every person involved because “every employee is subject to responding to an appeal.”

Over the years, there have been many assertions of inmate complaints being mishandled, lost, and/or not processed within the time frames specified by the state’s own regulations. The prison admits that it is not in full compliance with the time frames noted in the regulations. However, it claims that training is provided on an on-going basis to inform the staff of the importance of processing appeals; and reports are generated to monitor and address overdue appeals. The prison also speculates that a majority of complaints regarding lack of responsiveness may arise at the informal level of review.

At the time of our visit to the prison, the staff informed us that regular inmate appeals were being processed within specified time constraints, but medical appeals were backlogged due in part to staffing problems. In February, we were informed that the Medical Appeals Office was now fully staffed; and the prison was current except for “minimal overdue appeals” in some areas. As of early March, the prison claimed to be in compliance with the regulations “by over 95%” (with 17 first-level responses overdue as of February 1, 2008); but complete statistics were not available because of “computer system limitations.” For example, the Inmate Appeals Tracking System (IATS) does not provide reports indicating which appeals are forwarded from one level to the next in the administrative appeal process, nor does it provide complete appeal tracking involving inmates transferred from one institution to another. Allegedly, Headquarters is evaluating IATS; and funding is being sought to improve its capabilities.

When inmates believe that their appeals are not being properly handled, they often turn to other agencies, including, but not limited to, the Grand Jury and the courts. For example, each year the Fresno County Superior Court receives hundreds of inmate petitions, many of which relate to alleged problems at PVSP. Each of these must be filed, processed, researched, and resolved. While most are summarily denied, others may require the filing of formal responses (usually by the Attorney General’s office), the appointment of counsel for the inmate, hearings, and the rendering of a judicial decision. Disgruntled inmates may also seek relief from the federal courts and from the courts of appeal.

In sum, the costs associated with the inmate complaint process extend far beyond the incomplete provincial amounts reported by PVSP.

Prison Responsiveness

During our visit to the prison, the Grand Jury was impressed by the hospitality, cooperation, and openness of the people we met. We saw what we wanted to see, and our

questions were answered without reservation. We were also informed that additional information would be provided upon request.

However, as has been alleged by some inmates, getting timely feedback did not always go as expected. For example, on February 8, an e-mail was sent to the prison seeking clarification and additional facts on information that had been provided for our review. When there was no response, a follow-up phone call was made; and a message was left on February 19. No response. On February 21, a second telephonic message was left requesting that the prison confirm that it had received the February 8 e-mail and asking for a response date. Again, there was no response. On March 4, we were finally able to make contact. Only then were we informed that the prison was working on getting the information we had requested. Indeed, much of it was transmitted later that morning. The belated explanation for the delay was the priority given to preparing fiscal and budget reports.

This Grand Jury does not doubt the sincerity, dedication, or hard work of the people involved. However, when it comes to communication, perception can undermine even good intentions and sometimes has more influence than facts. It should be normal practice to respond promptly to inquiries—especially when confirmation is requested—to affirm that the request has been received and is not being ignored. Failure to do so is a disservice to all involved, undermines credibility, breeds mistrust, encourages repetitive actions, and increases costs.

As with prison inmates, the prolonged silence that greeted our inquiries left us to speculate about the status of our requests. If the Grand Jury, which has a legal mandate to examine prison operations, is overtly ignored, can we expect that inmate requests are being treated any better? While the prison representative was apologetic for the delayed responses to our inquiries, based on our experience, it appears the prison needs to improve its communication protocols.

Internal Controls

The allegation of financial criminal misconduct by two pharmacists at PVSP has brought into question the adequacy of existing financial controls. This prison is a state facility and is monitored by other state agencies. While the Department of Finance and the Department of Correctional Health Care Services perform audits of all health care operations, apparently it was the Department of Corrections and Rehabilitation that found the discrepancies that initiated this particular criminal investigation.

The issue of financial oversight appears to implicate statewide procedures that extend beyond the territorial jurisdiction of this Grand Jury and which, in part, fall under the general oversight of the federal receiver. Because of the ongoing criminal investigation, limited information was available for our review at this time. However, this is an issue that a future Grand Jury may want to investigate in greater detail.

SUMMARY

The prison population exceeds the bed space for which it was originally designed. The decision to build this facility in its present location increased health risks that have adversely affected both inmates and staff. While the medical treatment situation at the prison has improved, further improvements have been hampered by concerns that allegedly extend to the prison system in general.

Inmate complaints increase the costs of operating prisons, costs that extend beyond the walls of the prison facility. To a certain extent, complaints are inherent in the nature of the prison environment. However, just as inmates are expected to follow existing regulations, so too the prison staff is obligated to comply with those regulations.

Finally, good business practices require prompt response to complaints and inquiries, even when the workload is hectic. If this is not part of the current training process, the prison should make changes to insure that this aspect of good communication practices is not overlooked.

FINDINGS

- F401. There has been an increase in the medical staffing at PVSP that appears to have improved the availability of medical care.
- F402. The state has not yet implemented the cost-savings recommendation to establish a secured wing for patient-inmates at the Coalinga Regional Medical Center despite continued local support for this proposal.
- F403. The need for an improved medical record storage system remains.
- F404. Valley Fever continues to be an ongoing threat to inmates and staff despite attempts to minimize its impact.
- F405. The prison's administrative tracking system provides incomplete information on inmate complaints and appeals.
- F406. While there have been alleged improvements, the prison is still not in complete compliance with the appeal processing time constraints established by controlling regulations.
- F407. Failure to resolve inmate complaints through the existing administrative process results in increased costs both to the prison and to other governmental agencies.
- F408. The prison staff does not always acknowledge and promptly respond to complaints and inquiries including those of the Grand Jury.

RECOMMENDATIONS

- R401. Continue to work on improving the medical care provided to inmates. (F402, F403, F404)
- R402. Look for new ways to minimize the threat of Valley Fever. (F404)
- R403. Upgrade the prison computer system. (F405)
- R404. Either comply with or seek changes to the regulations governing inmate appeals. (F406)
- R405. Seek to anticipate and resolve inmate concerns before they become complaints. (F407, F408)
- R406. Acknowledge and respond promptly to inquiries. (F408)

REQUEST FOR RESPONSES

Pursuant to section 933.05 of the Penal Code, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations.

RESPONDENTS

J. Clark Kelso, Federal Receiver (All findings and recommendations.)
James E. Tilton, Secretary, California Department of Corrections and Rehabilitation (All findings and recommendations.)
James A. Yates, Warden, Pleasant Valley State Prison (All findings and recommendations.)

SOURCES AND REFERENCES

Complaints filed with the Grand Jury
Public records and reports of the Fresno County Superior Court
Interviews and written responses provided by the PVSP
PVSP website
California Penal Code
California Code of Regulations

RESPONSES

A. J. Clark Kelso, Federal Receiver

R401 through R406

Not received by publication date

B. Matthew L. Cate, Secretary, Department of
Corrections and Rehabilitation

R401 through R406

C. James A. Yates, Warden, Pleasant Valley State
Prison

R401 through R406

OFFICE OF THE SECRETARY

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



June 30, 2008

The Honorable Hilary Chittick
Presiding Judge
Fresno County Superior Court
1100 Van Ness Avenue
Fresno, CA 93724-0002

Dear Judge Chittick:

**RESPONSE TO FRESNO COUNTY GRAND JURY COMMITTEE REPORT ON
PLEASANT VALLEY STATE PRISON, 2007-2008, FINAL REPORT #4**

This letter provides a formal response to the 2007-2008 Fresno County Grand Jury Report regarding Pleasant Valley State Prison (PVSP). The named Respondent, Mr. James Tilton, retired from his position as the California Department of Corrections and Rehabilitation (CDCR) Secretary on May 16, 2008. I have been appointed to succeed Mr. Tilton as Department Secretary and I am providing this response on behalf of the Office of the Secretary. The Grand Jury investigation and most of its findings and recommendations relate only to PVSP. I am informed that Warden James A. Yates addressed the issues related to PVSP in a May 5, 2008, letter to the court. Warden Yates' letter provides CDCR's reply for those issues.

This letter responds to the findings and recommendations that implicate CDCR headquarters' responsibilities and functions.

FINDINGS:

F402. The State has not yet implemented the cost-savings recommendation to establish a secured wing for patients-inmates at the Coalinga Regional Medical Center despite continued local support for the proposal.

F402. The respondent agrees with the finding.

F405. The Prison's administrative tracking system provides incomplete information on inmate complaints and appeals.

F405. The respondent agrees with the finding.

RECOMMENDATIONS:

R401. Continue to work on improving the medical care provided to inmates, (F402, F403, F404).

R401. CDCR has implemented this recommendation. It continues to work with the Office of the Receiver to improve the medical care system for inmates.

R402. Look for new ways to minimize the threat of valley fever, (F404).

R402. CDCR has implemented this recommendation. The agency continues to work with experts and appropriate State agencies to research this disease and minimize its potential impact to staff and prisoners. At the facility level, inmates and staff have received education and training about valley fever. Additionally, CDCR transfers inmates deemed to have compromised immune systems to prisons where valley fever infection is less likely, thus minimizing the risk of contracting and spreading the disease to the larger prison population.

R403. Upgrade the prison computer system, (F405).

R403. CDCR is in the process of gathering information to update the Inmate Appeals Tracking System (IATS) to provide greater functionality for both headquarters and institutional staff. It is anticipated the system will improve tracking and reporting of appeal data, including the concerns the Grand Jury noted in its report. Additionally, staff training will accompany the updated IATS to ensure staff is able to generate appeal data to effectively and efficiently manage the inmate appeal process. CDCR hopes to have IATS updated within 24 months. Ultimately, the IATS will be integrated with the CDCR's Strategic Offender Management System (SOMS) by 2013, which will provide unparalleled information sharing. As Warden Yates noted in his response, implementation of the updated IATS is dependent upon legislative approval and funding and also continued approval and funding for the completion of the SOMS project.

CDCR appreciates the Fresno County Grand Jury's observations and will appropriately integrate them into its decision-making process when managing issues that impact PVSP.

The Honorable Hilary Chittick
Page 3

Please contact Senior Staff Counsel, Michael Hanretty, at 916-445-6897 if you have any questions or concerns.

Sincerely,



MATTHEW L. CATE
Secretary

cc: J. Clark Kelso, Federal Receiver
James A. Yates, Warden, Pleasant Valley State Prison, CDCR
William J. Sullivan, Associate Director, General Population Levels III/IV,
David Runnels, Undersecretary, Operations
Scott Kernan, Chief Deputy Secretary, Adult Operations
Suzan Hubbard, Director, Division of Adult Institutions
Terri Mc Donald, Associate Director, Division of Adult Institutions
George Giurbino Associate Director, Division of Adult Institutions
William Joe Sullivan, Associate Director, Division of Adult Institutions
Richard Subia. Associate Director, Division of Adult Institutions
Wendy Still, Associate Director, Division of Adult Institutions
Linda Barnett, Associate Director, Division of Adult Institutions
John Tinker, Foreman, 2007-2008 Fresno County Grand Jury

DIVISION OF ADULT INSTITUTIONS

PLEASANT VALLEY STATE PRISON

P.O. Box 8500

Coalinga, CA 93210



May 5, 2008

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

Dear Judge Chittick:

**RESPONSE TO FRESNO COUNTY GRAND JURY COMMITTEE REPORT
PLEASANT VALLEY STATE PRISON 2007-2008, FINAL REPORT #4**

The following information is submitted in response to the Fresno County Grand Jury's 2007-2008 Report #4, regarding Pleasant Valley State Prison.

FINDINGS.

F401. There has been an increase in the medical staffing at Pleasant Valley State Prison (PVSP) that appears to have improved the availability of medical care.

F401. The respondent AGREES. Increased staffing has improved the availability of healthcare.

F402. The state has not yet implemented the cost-savings recommendation to establish a secured wing for patients-inmates at the Coalinga Regional Medical Center despite continued local support for the proposal.

F402. The respondent AGREES. It is my understanding that the Office of the Receiver is evaluating this option.

F403. The need for an improved medical record storage system remains.

F403. The respondent AGREES. Construction of an additional medical records storage unit has been completed. However, the funding process to complete this structure took so many years that the population demands have exceeded the additional storage space constructed. It is my understanding that the Receiver is aware of the inadequate records space and is evaluating options.

F404. Valley Fever continues to be an ongoing threat to inmates and staff despite attempts to minimize its impact.

F404. The respondent AGREES. As stated, California Department of Corrections and Rehabilitation (CDCR), has taken every reasonable measure to minimize the risk of inmate's and staff contracting "Valley Fever." This is a disease indigenous to the central valley, and poses a threat to every citizen in central California, including the staff and inmates of PVSP. We believe the CDCR's proactive approach to this public health menace has heightened awareness and greatly improved the healthcare of staff, inmates and the local community. For example, PVSP's medical staff tests every inmate for Valley Fever who presents with any of the signs or symptoms, which are very subtle. This would not be common in any other setting.

F405. The Prison's administrative tracking system provides incomplete information on inmate complaints and appeals.

F405. The respondent AGREES. Computer tracking programs could be improved. Agency strategies have been outlined to improve Information Technology in coming fiscal years. Staffing has already been increased to improve service.

F406. While there have been alleged improvements, the Prison is still not in complete compliance with the appeal processing time constraints established by controlling regulations.

F406. The respondent AGREES. While tremendous progress has been made, there is room for improvement. In addition, the agency is moving forward with policy changes in the coming year that will streamline tracking and processing.

F407. Failure to resolve inmate complaints through the existing administrative process results in increased costs both to the Prison and to other governmental agencies.

F407. The respondent AGREES. (See above F406).

F408. The Prison staff does not always acknowledge and promptly respond to complaints and inquiries including those of the Grand Jury.

F408. The respondent PARTIALLY AGREES. It is clear that one individual felt extreme personal feeling of frustration when **one** of the numerous inquiries made to the Prison in connection with the Grand Jury's investigation was not responded to as quickly as he would have desired. I apologize for the fact that the individual to who the inquiry was directed to was unavailable;

however, I personally have made myself and the Chief Deputy Warden available to address any issues or concerns from the Grand Jury. We did not receive a single telephone call, email or letter regarding this particular issue. Thus, while we acknowledge that the inquiry was not handled in the way that the individual would have preferred, we believe that he could have received prompt assistance by other means known and available to him.

RECOMMENDATIONS.

R401. Continue to work on improving the medical care provided to inmates, (F402, F403, F404)

R401. The recommendation has been implemented, as we continue to work with the Office of the Receiver and continue to improve medical care.

R402. Look for new ways to minimize the threat of Valley Fever. (F404)

R402. This recommendation has been implemented. Education efforts have proven to be helpful, for both staff and inmates, and the agency continues to work with scholars in the academic field to research this disease. Appropriate precautions are observed to minimize the risk of inmates deemed to have compromised immune systems, by transferring them to alternate prisons, as determined by medical professionals.

R403. Upgrade the Prison computer system. (F405)

R403. The recommendation has not yet been implemented, but will be implemented in the future. The specific time frame is contingent on legislative funding by the legislature, but is anticipated to be completed by 2013.

R404. Either comply with or seek changes to the regulations governing inmate appeals. (F406)

R404. The recommendation has not yet been implemented, but will be implemented in the future. We do make every effort to fully comply with inmate appeal regulations; however, proposed regulation changes are anticipated in the coming year which will improve tracking, and improve timeliness of appeal responses.

R405. Seek to anticipate and resolve inmate concerns before they become complaints. (F407, F408)

R405. The recommendation has been implemented, and continues to be our objective.

R406. Acknowledge and respond promptly to inquiries. (F408)

R406. The recommendation has been implemented. We make every reasonable effort to promptly acknowledge and respond to inquiries. We shall continue to strive for the highest level of professional communication.

The Grand Jury notes that they were impressed with the Prison, the hospitality, the cooperation of staff, and the openness of the people they met. They also state that they do not doubt the sincerity, dedication or hard work of my staff. These are very common statements made by everyone who visits PVSP. We take great pride in the work we do for the public, and to provide for public safety in the most efficient and effective manner possible.

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.

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

Respectfully,



JAMES A. YATES
Warden

cc: J. Clark Kelso, Federal Receiver
James E. Tilton, Secretary, California Department of Corrections and Rehabilitation
William J. Sullivan, Associate Director, General Population Levels III/IV, Division of Adult Institutions
John Tinker, Foreman, 2007-2008/Fresno County Grand Jury

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REPORT #5

CITY OF KERMAN PROPERTY SALES

FILED

APR 21 2008

FRESNO COUNTY SUPERIOR COURT

By _____ DEPUTY

**2007-2008
FRESNO COUNTY GRAND JURY**



**FINAL REPORT
#5**

CITY OF KERMAN PROPERTY SALES

“[C]ity officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members . . . [nor] shall . . . city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.” Section 1090 of the Cal. Gov. Code.

INTRODUCTION

In response to citizen concerns that were addressed to us, the Fresno County Grand Jury has conducted an investigation of the procedures used by the City of Kerman to dispose of surplus property. The specific focus of our investigation was on the sale of surplus vehicles to a city council member and to a city employee. These transactions have raised questions about possible conflict of interest, “insider trading,” and violations of state law.

BACKGROUND

City of Kerman

The City of Kerman is located at the crossroads of State Route 145 and Highway 180. According to its website, this once-small town has experienced “phenomenal growth” over the past several years, claims to be one of the fastest growing cities in West Fresno County, and considers itself to be “the business and commercial center for West Fresno County.”

The policy-making board of the city is the Kerman City Council, which has five members, including the mayor. Its policies are administered by the City Manager, who is appointed by the Council. “[B]road-based input into the affairs of the City” allegedly is obtained from various commissions, boards, and citizen advisory committees appointed by the Council.

Sale of Surplus Vehicles

In October of 2007, the City of Kerman, through its Department of Public Works, attempted to dispose of 10 surplus vehicles by way of sealed bids. This sale had been authorized earlier in the year by the City Council. According to the March 21, 2007 records, the Council declared these vehicles to be “surplus property” and directed staff “to establish the minimum price for each item and sell the vehicles *by sealed bid to the highest bidder on a date previously published and noticed in a local newspaper*” (emphasis added). The conditions of sale were duly published twice in the local newspaper.

Nine of the 10 vehicles were considered to be “scrap.” These included two Dodge pickups with campers, a Ford F150 pickup, five Ford Crown Victorias, and a Ford Taurus. The minimum bids established for these nine vehicles ranged from \$300 to \$500.

The tenth vehicle was another Ford Crown Victoria, but it had a higher minimum bid requirement of \$800 because it was deemed to be in “fair” condition.

The “Bid Submittal Sheet” noted, “The highest bid on each vehicle will be awarded.” It further stated that the vehicle would be awarded to the next highest bidder if the item were not paid for within 10 days.

When the bidding deadline arrived, only one bid had been received. That was submitted on the operable Ford Crown Victoria by a city employee who had worked on that car. No bids were received on the other nine vehicles. This sole bidder was subsequently allowed to withdraw his bid on the Ford; and on November 28, 2007, that vehicle was sold to him for only \$300 (\$500 *below* the advertised minimum bid). When no other offers were made on the remaining vehicles, all nine were sold for \$845 to a member of the City Council who had been present at the March 21 City Council meeting and who had an auto sales and towing business. This amount was based on new “minimum bids” of \$75 to \$125 per vehicle.

There is currently no evidence that the sale of these vehicles was done by way of sealed bids, nor has the Grand Jury been provided with any evidence that the new minimum bids were published as directed by the City Council. It also appears that there is no “Policy Directive” in existence for the sale of surplus property. Instead, these transactions were based in part on memos and directives that had been issued to the city’s staff by the City Manager.

INVESTIGATION

Our investigation has not produced evidence of any intentional wrongdoing. Nevertheless, because of the way in which the sale of this property was conducted, negative perceptions have resulted. In the Grand Jury’s view, the City of Kerman needs to reconsider the way in which it handles these types of transactions.

First, it appears that some individuals involved in the sale of surplus property were unaware of the restrictions contained in section 1090 of the Government Code. As noted above, it says in relevant part that “city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” It also says that “city officers or employees [shall not] be purchasers at any sale or vendors at any purchase made by them in their official capacity.” Furthermore, section 87100 says, “No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” There is a need to publicize and follow both the letter and the spirit of these laws. All who are involved in contracts and other government financial transactions should be made aware of these and related conflict-of-interest code sections.

Second, the procedures used by Kerman to dispose of surplus property appear to be based on administrative memos and directives rather than policies formally adopted by the City Council. Whenever possible, the City of Kerman should standardize and publicly adopt its procedures in line with controlling law. That is, it should establish formal procedures to govern activities such as the sale of surplus property and insure that the bidding process and subsequent actions are well-publicized and open to all.

Third, it is not clear that disposal of these surplus vehicles followed the directives authorized by the Council. Putting the vehicles up for auction, voiding the auction process, and then selling the vehicles to “insiders” gave the appearance of impropriety, even if those involved acted with the best of intentions. When there is a delegation of authority, care should be taken to insure that adequate controls are established. This includes proper feedback to the governing authorities.

Finally, it is important that governmental operations be as transparent as circumstances allow. Whenever possible, this means the public’s business should be conducted in public. Some of the actions done in this case appear to have been based on informal attempts by some to remedy an issue without formal public scrutiny. However well-intended, this has resulted in perceptions of favoritism. Such shortcuts should be avoided to protect the integrity of the governmental process.

SUMMARY

As the City of Kerman has publicly noted, it is no longer just another small town. While the sale of these vehicles is not a matter of great financial concern, it does raise questions about the way in which such sales are conducted. In order to protect the public’s confidence in its governmental institutions, the City should update its procedures to insure Council directives are being properly followed and to emphasize that both the letter and the spirit of the law are being obeyed.

FINDINGS

- F501. Some who were involved in this sale were not aware of relevant conflict-of-interest laws.
- F502. The procedures used by the City staff to dispose of surplus property appear to be based on administrative memos and directives rather than on policies formally adopted by the Council.
- F503. A City employee was allowed to purchase one of the vehicles for less than his original bid when no other bids were received.
- F504. Nine of the vehicles were purchased by a member of the City Council that had authorized the sale of these vehicles.

F505. The vehicles were sold for less than the minimum bid requirement originally specified for these vehicles.

RECOMMENDATIONS

The 2007-2008 Grand Jury recommends:

- R501. All who are involved in contracts and other government financial transactions be made aware of existing conflict-of-interest laws. (F501)
- R502. Formal policies concerning the sale of surplus property be adopted by the City Council. (F502)
- R503. The Council be fully informed of the results of any Council-approved sales and approve any proposed modification of the authorized sale process. (F505)
- R504. Proper notice of sales and of any proposed revisions to a previously noticed sale be provided to the public to insure that all have an equal opportunity to bid on the property being sold. (F502, F503, F504, F505.)

REQUEST FOR RESPONSES

Pursuant to section 933.05 of the Penal Code, 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 receipt of this report and 90 days for others.

RESPONDENTS

City Council, City of Kerman (All findings and recommendations)
Ron Manfredi, City Manager, City of Kerman (All findings and recommendations)
Kenneth Moore, Director of Public Works, City of Kerman (All findings and recommendations)

SOURCES AND REFERENCES

City Staff
Community citizens
Public documents

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RESPONSES

A. City Council, City of Kerman
City Council, City of Kerman (Updated Response)
R501 through R504

B. Ron Manfredi, City Manager, City of Kerman
R501 through R504
Included with the City Council response

C. Kenneth Moore, Director of Public Works, City of
Kerman
R501 through R504
Included with the City Council response



City of Kerman

"Community Comes First"

Trinidad M. Rodriguez
850 S. Madera Ave.
Kerman, CA 93630-1741
Telephone: 559-846-9380
FAX: 559-846-6199

June 4, 2008

Honorable Hilary Chittick
Presiding Judge Fresno Superior Court
Department 70
Fresno County
1100 Van Ness Ave.
Fresno, California 93724-0002

RE: Final Report #5 – 2007 – 2008 Fresno County Grand Jury: City of Kerman Property Sales

Honorable Judge Chittick:

This letter and attachment is the City of Kerman's City Council response to the 2007 -2008 Fresno County Grand Jury Final Report #5 pursuant to Penal Code section 933 subsection (c). The Kerman City Council at its May 7, 2008 staff meeting officially received the Grand Jury's Report and considered a staff report addressing concerns and "Findings and Recommendations" of Final Report #5. At this meeting the City Council voted to take the following action:

The Council agrees with the Findings of Final Report #5 and adopts the Grand Jury Recommendations and Staff responses as presented and instructs staff to respond in like manner to the Grand Jury. Furthermore, staff is instructed to return in 60 to 75 days with formal policy recommendations and to comply with the other recommendations set forth in Final Report #5.

The Council approved the attached report and recommendations:

City Council Meeting May 7, 2008 Agenda Item 7.D Fresno County Grand Jury Report – City Property Sales

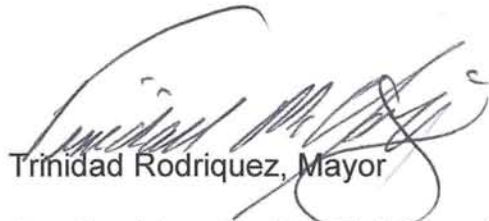
City of Kerman Response - Fresno County Grand Jury Final Report #5 2007 -2008

It is anticipated that these recommendations will be implemented within the next 45 days.

Furthermore, the City Attorney was directed to work with the City Manager to identify and train City employees involved in contracts and other government financial transaction regarding existing conflict-of-interest laws.

If additional information is necessary please contact City Manager, Ron Manfredi (846-9387 and/or City Attorney, Mark Blum (846-9356)

Sincerely,



Trinidad Rodriguez, Mayor

Cc: Grand Jury, City Council, M. Blum, R. Manfredi, K. Moore

I concur with the foregoing responses and comments.

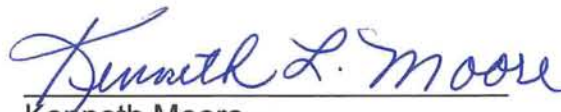
Dated: June 06, 2008



Ron Manfredi
City Manager

I concur with the foregoing responses and comments.

Dated: June 06, 2008



Kenneth Moore
Director of Public Works

City Council Meeting May 7, 2008 Agenda Item 7.D Fresno County Grand Jury Report – City Property Sales

City of Kerman Response - Fresno County Grand Jury Final Report #5 2007 -2008

On April 15 or 16th a Grand Jury Final Report #5 2007-2008 was delivered by US Mail in regards to "City of Kerman Property Sales". This report was made public on Monday, April 21st and subsequent articles appeared in the Fresno Bee and Kerman News. The report was an investigation of the sale of surplus vehicles by the City Public Works Dept.

On behalf of the City staff I wish to apologize to the City Council and citizens of Kerman for this embarrassing situation and sloppy work on our part. While the mistakes made in this process were due to efforts to save money and time in streamlining the process; they were nevertheless mistakes both of process and rule. As City Manager I am both embarrassed and regretful for not providing greater direction and control over the process. While meeting the bare minimum advertising requirements we should have made a greater effort, as we have previously done, to advertise and promote the availability of these vehicles.

While the Grand Jury investigation states that: "Our investigation has not produced evidence of any intentional wrongdoing"; it rightfully concludes that the City's written policies are lacking and must be formalized.

Shortcuts were taken to save money and time. However, as a public agency and public servants we must realize such processes must be transparent without a hint of any favoritism or sloppiness.

A formal response to the Grand Jury will be made within the 60-day time limit. Furthermore, the City will proceed with enacting the four Grand Jury recommendations:

1. All who are involved in contracts and other government financial transactions be made aware of existing conflict-of-interest laws.

Reponses: City Attorney will conduct training sessions for all such employees.

2. Formal policies concerning the sale of surplus property be adopted by the City Council

Response: Under the direction of the City Manager and review of the City Attorney, the City Clerk will investigate and develop recommended City policies to present to City Council for adoption (within next 60 to 75 days).

3. The Council be fully informed of the result of any Council-approved sales and approve any proposed modifications of the authorized sale process.

Response: Formal polices re: sale of surplus property will address alternatives if initial sales efforts are not successful. Staff will provide Council with a written report of any transactions re: such sales.

4. Proper notice of sales and any proposed revisions to previously noticed sale be provided to the public to insure that all have an equal opportunity to bid on the property being sold.

Response: In this situation and others City has complied with proper notification procedures. However, in the future City will exercise "extra effort" to inform the public with information to appropriate businesses involved with like materials and publications such as the City Utility Newsletter which is distributed with the City wide Utility bills.



City of Kerman

"Community Comes First"

Ron Manfredi
City Manager
850 S. Madera Ave.
Kerman, CA 93630-1741
Telephone: 559-846-9384
FAX: 559-846-6199

September 2, 2008

Honorable Hilary Chittick
Presiding Judge Fresno Superior Court
Department 70
Fresno County
1100 Van Ness Ave.
Fresno, California 93724-0002

RE: Update on Actions following Final Report #5 – 2007/08 Fresno County Grand Jury: City of Kerman Property Sales

Honorable Judge Chittick:

This letter is provided as a follow-up in response to the 2007 -2008 Fresno County Grand Jury Final Report #5.

On August 6, 2008 the City Council approved Resolution No. 08-57, Adopting a Policy and Procedure for Sale of Surplus Property by the City of Kerman. After the meeting this document (enclosed) was distributed and made available to all departments that periodically have surplus property to vend.

In correlation with the new Policy and Procedure for Sale of Surplus Property, on August 25, 2008 the City Attorney of the City of Kerman provided training to City of Kerman Management and Mid-Management staff who are involved in contracts and other government financial transactions regarding conflict-of-interest laws. The training was titled "Smart Decision Making in Public Employment." Attached are the hand-outs from that training.

The City of Kerman is thoroughly committed to furthering the education of all staff responsible for prudent ethical decisions. Future trainings will be planned to advance this effort.

Sincerely,

Ron Manfredi
City Manager

Cc: Grand Jury, City Council, M. Blum, K. Moore

Enclosures

COPY

RESOLUTION NO. 08-57

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF KERMAN ADOPTING A POLICY AND PROCEDURE
FOR SALE OF SURPLUS PROPERTY BY THE CITY OF KERMAN**

WHEREAS, The City of Kerman (the "City") deems it advisable to adopt written policies for the sale of City's excess, obsolete or surplus property, so that such property can be sold for its reasonable value or salvage value; and

WHEREAS, the sale of excess, obsolete, or excess property should be accomplished in a manner that is fair, impartial, and that serves the general welfare of the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KERMAN DOES HEREBY FIND, DETERMINE AND RESOLVE to adopt the POLICY AND PROCEDURE FOR SALE OF SURPLUS PROPERTY BY THE CITY OF KERMAN attached hereto as Exhibit "A", and directs the Officers and Employees of the City to comply with said policies and procedures when disposing of excess, obsolete, or surplus property of the City of Kerman, so that such property can be sold for its reasonable value or salvage value in a manner that is fair, impartial, and serves the general welfare of the City.

The foregoing resolution was adopted at a regular meeting of the City Council members of the City of Kerman on the 6th day of August, 2008, and passed at said meeting by the following roll call vote:

- AYES: Jones, Stockwell, Dhaliwal, Rodriguez, Sidhu
- NOES: None
- ABSENT: None
- ABSTAIN: None

ATTEST:



 L. RENEE HOLDCROFT
 CITY CLERK



 TRINIDAD M. RODRIGUEZ
 MAYOR

EXHIBIT "A"

POLICY AND PROCEDURE FOR SALE OF SURPLUS PROPERTY BY THE CITY OF KERMAN

Scope of Policy

This policy shall govern the sale by the city of any and all vehicles, tools, equipment, or other personal property which has been deemed excess or unnecessary for city operation. For the purposes of this policy, "property" or "personal property" shall mean any item, object, thing or right which is not real property. Sale of real property shall be governed by the applicable requirements of the California Government Code, California Redevelopment Law or other applicable rule or regulation, and not by this policy.

Determination of Excess or Surplus Status and Valuation of Property

Department heads shall provide to the City Manager a written recommendation concerning any property they believe should be considered to be excess or surplus to their department's or the City's needs. The City Manager shall determine whether the property is excess or surplus and shall memorialize his determination by signing his approval or disapproval of the written recommendation and indicating the date of such action.

Upon a determination that the property is excess or surplus, the City Manager, or if designated by the City Manager, the appropriate department head, shall determine whether the property may be disposed of by sale to the public, or whether another method of disposal is required. If disposition is to be by sale, the City Manager or the designated department head shall make an estimation of value based upon methods that a reasonable businessperson would use in evaluating property of similar nature. For example, if the property is a used motor vehicle, an automobile valuation website or advertisements in a local newspaper may provide a basis for valuation; if the property is specialized equipment, a dealer in used equipment of that kind may provide a basis for valuation; for less valuable property, the evaluator may rely upon his or her experience and judgment in setting a fair value. The evaluator shall make and maintain a written notation of his or her determination of value and a brief description of the basis for such determination. Absent evidence of fraud, collusion, or intentional misconduct, the evaluator's determination shall be conclusive for purposes of this policy.

Property Valued at Under One Hundred Dollars

Any property to be sold with an estimated value of less than one hundred dollars (\$100.00) may be sold without any public bidding to any eligible party paying a fair price. Notice of such proposed sale shall be posted at City Hall listing the item and the amount at which it will be sold for at least one week prior to such sale being approved by the City Council. Prior to Council approval of the sale, any eligible person may offer to pay a higher price for the item to be sold.

If a price higher than the one posted is offered, the item may be sold at the highest price offered without further posting. If more than one eligible party has offered only the posted price for the

item, then the City Clerk shall determine by drawing lots or other random method which of those offering the posted price shall purchase it. If no bids are received, the City Manager shall have discretion to re-value the item and post it again, or to dispose of the property for salvage value.

Property Valued Between One Hundred (\$100) and Five Hundred (\$500) Dollars

Any property to be sold with an estimated value of between one hundred dollars (\$100) and five hundred dollars (\$500) shall be sold by inviting public to present sealed bids in the following manner:

Notice of such sale describing the items to be sold along with notice of where the item may be inspected shall be posted in three public places at least four weeks prior to the bid opening. Furthermore, notice of invitation for sealed bids shall be published at least twice in a paper of local circulation. Such publication shall occur between the twenty-eighth to the twelfth day prior to the opening of bids. The City Manager, or a designated department head, may also publish notice of such sale in appropriate trade or other publications. If no sealed bids or no acceptable sealed bids are received, the process set forth in this section shall be repeated. If a second bid period does not obtain any acceptable sealed bids then the property may be sold under the procedures outlined in Section "Property Valued at Under One Hundred Dollars."

For the purposes of this policy, "acceptable sealed bid" means a bid of not less than 50% of the estimated value of the item, and which has been delivered to the City Clerk in a sealed envelope which identifies the item being bid upon, but the envelope does not bear any indication of the identity of the bidder or the amount of the bid

Property Valued at Over Five Hundred (\$500) Dollars

Any property to be sold with an estimated value of over five hundred dollars (\$500) shall be sold by inviting public bids in the following manner: notice of such sale describing the items to be sold along with notice of where the item may be inspected shall be posted in three public places at least four weeks prior to the bid opening. Furthermore, notice of invitation for bids shall be published at least twice in a paper of local circulation. Such publication shall occur between the twenty-eighth to the twelfth day prior to the opening of bids. The City Manager, or a designated department head, may also publish notice of such sale in appropriate trade or other publications. If no bids or no acceptable bids are received, the process set forth in this section shall be repeated. If a second bid period does not obtain any acceptable bids then the property may be sold under the procedures outlined in above Section "Property Valued at Under One Hundred Dollars."

Sale of Surplus Property to Eligible Persons and to City Employees

A person shall be eligible to offer to purchase and to purchase property pursuant to this policy, if the person is:

1) a member of the public unless that member is related as a parent, sibling, spouse, child or grandchild to, or is owned in part, or controlled or influenced by, an ineligible City Employee or Officer; or

- 2) a City employee, but only if the property is:
 - a. Offered for sale through the process of a sealed bid, or.
 - b. Offered for sale through an auctioneer, where the auction is to be appropriately announced as being open to the general public.

When an employee submits a sealed bid or takes title to surplus property, the employee shall sign a disclaimer under penalty of perjury stating he/she is eligible to complete such purchase because the officer or employee did not participate in the decision that the city property involved was surplus or could be sold, or in the valuation process, or in the advertising or posting process, and that such sale is not prohibited by other applicable law or regulation.

A city officer or employee shall be ineligible to purchase the property when the officer or employee participated in the decision that the city property involved was surplus or could be sold, or in the valuation process, or in the advertising or posting process, or if such sale is prohibited by other applicable law or regulation.

These prohibitions shall be construed to prohibit the employee from purchasing or coming into ownership of said property, either directly or through intermediaries or persons or entities related as a parent, sibling, spouse, child or grandchild to, or is owned in part, or controlled or influenced by, an ineligible City Employee or Officer.

Any violation of this policy may result in disciplinary action, including termination of employment or office, and civil or criminal prosecution.

Mailing Notice of Proposed Sale

The City Manager or any appropriate department head may, in his discretion mail notice to dealers or other individuals he thinks might be interested in any property to be sold by the city. Additionally, any individual may file a request with the city to receive notice of any property of the city to be sold. Any person requesting notice of the sale of city property must pay an annual twenty-five (\$25.00) fee to cover the cost of handling and mailing notices.

Sale or Auction of Certain Police Items

Sale and/or auction of standard items such as office furniture and computers etc. will be handled as delineated in this policy. However, disposal of excess weapons, ammunition, bullet resistant vests and vehicle light bars and similar equipment used for law enforcement must be handled separately, by the police department. These and similar items are very sensitive and should not be sold or auctioned to the general public. Disposition of these and similar items shall be governed by Police Department Policy and Procedure.

Approval by Council

No sale of any city-owned property will be final until presented to and approved by the City Council at a regular meeting of the Council. All sales made will be subject to such approval. Approval by the Council shall be deemed to be conclusive proof of the reasonableness and fairness of the price paid, and that such sale was for common good of the City and its residents.

AGENDA

SMART DECISION MAKING IN PUBLIC EMPLOYMENT (OR WHAT YOU WON'T ENJOY SEEING ON YouTube)

Public Trust and General Ethical Principles When Serving the Public

- The City and its employees and officers are stewards of the public's resources (taxes, money, property, and equipment)
- The City and its employees and officers are committed to service to the public which is available to all on a fair and unbiased basis--no favoritism
- has as its goal the promotion of the well-being of the community

The Basic Rule From Ancient Times to Modern Life

- The Golden Rule: Do Unto Others As You Would Have Them Do Unto You
- The 20th Century Rule: Would You Want to See Your Name in That Headline?
- The 21st Century Rule: How Would This Look on YouTube?

Beauty May Be Only Skin Deep, But Appearances (and First Impressions) Count

Handout: Key Ethics Law Principles

Basic Conflict of Interest Analysis

Handout: Can I Vote? Overview of Conflicts Laws

- What is a conflict of interest?
- How do I know if I have one?
- The importance of public perception in close cases
- Legal consequences of conflicted interests and illegal transactions

Conflicts of Interest When the City Buys or Sells Property

- Competitive Bidding Requirements (Handout, page 9)
- Government Code 1090's Blanket Prohibitions: No matter how good the deal, the City says "No Deal" (Handout, page 15)
- The City's Surplus Property Sale Policy (Handout, page 20)

Discussion of Hypotheticals & Questions

Adjourn

Key Ethics Law Principles

FOR PUBLIC SERVANTS

Note that the following are not statements of law, but rather principles the law is designed to achieve. The goal in providing this list is to identify the kinds of issues addressed by public servant ethics law. If an issue arises for you under these principles, consult your agency counsel.

PERSONAL FINANCIAL GAIN

Public officials:

- ◆ Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests (see reverse for list of types of financial interests).
- ◆ Cannot have an interest in a contract made by their agency.
- ◆ Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- ◆ Cannot influence agency decisions relating to potential prospective employers.
- ◆ May not acquire interests in property within redevelopment areas over which they have decision-making influence.

PERSONAL ADVANTAGES & PERKS

Public officials:

- ◆ Must disclose all gifts received of \$50 or more and may not receive gifts aggregating to over \$390 (2007-8) from a single source in a given year.
- ◆ Cannot receive compensation from third parties for speaking, writing an article or attending a conference.
- ◆ Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- ◆ May only be reimbursed for actual and necessary expenses consistent with their agency's reimbursement policy.
- ◆ Cannot participate in decisions that may affect (positively or negatively) their personal interests.
- ◆ Cannot accept free transportation from transportation companies.
- ◆ Cannot send mass mailings at public expense.
- ◆ Cannot make gifts of public resources or funds.
- ◆ Cannot receive loans over \$250 from those within the agency or those who do business with the agency.

GOVERNMENT TRANSPARENCY

Public officials:

- ◆ Must disclose their financial interests.
- ◆ Must conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- ◆ Must allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.
- ◆ Must disclose information about significant (\$5000 or more) fundraising activities for legislative, governmental or charitable purposes.

FAIR PROCESSES

Public officials:

- ◆ Have a responsibility to assure fair and competitive agency contracting processes.
- ◆ Cannot participate in decisions that will benefit their immediate family (spouse/domestic partner or dependent children).
- ◆ Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- ◆ Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- ◆ Cannot participate in entitlement proceedings – such as land use permits – involving campaign contributors (does not apply to elected bodies).
- ◆ Cannot solicit campaign contributions of more than \$250 from permit applicants while application is pending and for three months after a decision (does not apply to elected bodies).
- ◆ Cannot represent individuals before their agency for one year after leaving agency service.
- ◆ Must conduct public hearings in accordance with due process principles.

A Public Official's Conflict Of Interest Checklist

KEY CONCEPTS

- ✓ A public agency's decision should be based solely on what best serves the public's interests.
- ✓ The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- ✓ Having a conflict of interest does not imply that you have done anything wrong; it just means you have financial or other disqualifying interests.
- ✓ Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials. Don't take that risk.

BASIC RULE

A public official may not participate in a decision – including trying to influence a decision – if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official's agency may be prevented from even making the contract.

WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. Talk with your agency counsel 1) early and often 2) when an action by your public agency 3) may affect (positively or negatively) 4) any of the following:

- ✓ **Income.** Any source of income of \$500 or more (including promised income) during the prior 12 months for you or your spouse/domestic partner.
- ✓ **Business Management or Employment.** An entity for which you serve as a director, officer, partner, trustee, employee, or manager.
- ✓ **Real Property.** A direct or indirect interest in real property of \$2000 or more that you or your immediate family (spouse/ domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies), and options to purchase. Be especially alert when any of these are located within 500 feet of the subject of your decision.
- ✓ **Personal Finances.** Your or your immediate family's (spouse/ domestic partner and dependent children) personal expenses, income, assets, or liabilities.
- ✓ **Gift Giver.** A giver of a gift of \$390 or more to you in the prior 12 months to you, including promised gifts.
- ✓ **Lender/Guarantor.** A source of a loan (including a loan guarantor) to you.
- ✓ **Contract.** You or a member of your family would have an interest (direct or indirect) in a contract with the agency.
- ✓ **Business Investment.** An interest in a business that you or your immediate family (spouse/domestic partner and dependent children) have a direct or indirect investment worth \$2000 or more.
- ✓ **Related Business Entity.** An interest in a business that is the parent, subsidiary or is otherwise related to a business where you:
 - Have a direct or indirect investment worth \$2000 or more; or
 - Are a director, officer, partner, trustee, employee, or manager.
- ✓ **Business Entity Owning Property.** A direct or indirect ownership interest in a business entity or trust of yours that owns real property.
- ✓ **Campaign Contributor.** A campaign contributor of yours (applies to appointed decision-making bodies only).
- ✓ **Other Personal Interests and Biases.** You have important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on your ability to make a fair decision.

WHAT WILL HAPPEN NEXT?

Agency counsel will advise you whether 1) you can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the State Attorney General to weigh in.

EVEN IF IT'S LEGAL, IS IT ETHICAL?

The law sets only minimum standards. Ask yourself whether members of the public whose opinion you value will question whether you can act solely in the public's interest. If they might, consider excusing yourself voluntarily from that particular decision-making process.

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SKU: 1604 Price: \$5 (for set of five)

Can I Vote? Overview of the Conflicts Laws

"My home is near the proposed new shopping mall. Can I vote on the issue at next month's Planning Commission meeting?"

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act's conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the "big picture" level and to help guide you to more detailed resources.

Stripped of legal jargon:

- You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests, **and**
- a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act "on general principles" or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. **The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).**

Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most, if not all, mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

- **This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.**
- **Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.**
- **The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.**

Here are the eight steps:

- **Step One:** Are you a "public official" within the meaning of the rules?
- **Step Two:** Are you making, participating in making, or influencing a governmental decision?
- **Step Three:** What are your economic interests? That is, what are the possible sources of a financial conflict of interest?
- **Step Four:** Are your economic interests directly or indirectly involved in the governmental decision?
- **Step Five:** What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?
- **Step Six:** The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?
- **Step Seven:** If you have a conflict of interest, does the "public generally" exception apply?
- **Step Eight:** Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

Public Official

Step One : Are you a "public official," within the meaning of the rules?

The Act's conflict-of-interest rules apply to "public officials" as defined in the law. This first step in the analysis is usually a formality - you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency's conflict-of-interest code, you are a "public official." If you file a Statement of Economic Interests (Form 700) each year, you are a "public official" under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency's legal counsel or the FPPC.

Governmental Decision

Step Two : Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- **Make** a governmental decision (for example, by voting or making an appointment).
- **Participate** in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).
- **Influence** a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising *discretion or judgment* with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

When you have a conflict - Regulation 18702.5 (special rule for section 87200 public officials)

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Library and Publications section of the FPPC's website at <http://www.fppc.ca.gov>.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must publicly identify in detail the economic interest that creates the conflict, step down from the dais **and must then leave the room**. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any non-public information regarding the decision.
- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.
- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

- The Arroyo City Council is considering widening the street in front of council member Smith's personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.
- Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she **may not** sit in the public area and listen to the discussion.
- Supervisor Robertson rents a home to a county employee. The county employee is the subject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session **but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him.** He may not attend the closed session or obtain any non-public information from the closed session.

Economic Interests

Step Three : What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment.** You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more.
- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.
- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more, and also in certain leasehold interests.
- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) \$500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse's or registered domestic partner's income, a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent or more of a

business, you are considered to be receiving "pass-through" income from the business's clients. In other words, the business's clients may be considered sources of income to you.

- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who has given you gifts which total \$360 or more (**changes to \$390 or more beginning January 1, 2007**) within 12 months prior to the decision about which you are concerned.
- **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the "personal financial effects" rule. If these expenses, income, assets or liabilities are likely to go up or down by \$250 or more in a 12-month period as a result of the governmental decision, then the decision has a "personal financial effect" on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.

Directly or Indirectly Involved?

Step Four : Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in " and therefore directly affected by " a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations if you have questions as each case arises. Note also that the next step in the analysis " applying the right standard to determine whether an impact is material " depends in part on whether the interest is directly or indirectly involved. The regulations , Sections 18704 through 18704.5 , and other helpful information can be found on the FPPC's web site, <http://www.fppc.ca.gov>.

Materiality (Importance)

Step Five : What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word "material" is akin to the term "important." You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your agency counsel or the FPPC. However, to understand the rules at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.
- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.
- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.
- The rules vary by the size and situation of the economic interest. For example, a moment's thought will tell you that a \$20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

Does a Conflict of Interest Result?

Step Six : Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests. What does "sufficiently likely" mean? Put another way, how "likely" is "likely enough?" The Political Reform Act uses the words "reasonably foreseeable." The FPPC has interpreted these words to mean "substantially likely." Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

"Public Generally" Exception

Step Seven : If you have a conflict of interest, does the "public generally" exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the "public generally" exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The "public generally" exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific segments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the "public generally" exception can be found on the FPPC website at <http://www.fppc.ca.gov> under regulations 18707-18707.9.

Are you required to participate?

Step Eight : Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act's conflict-of-interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, which

result from the financial interests of the decision-makers.

- Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.
- Understand the "big picture" of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.
- Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much, if not more, on the facts of your particular situation as it does on the law.
- Don't try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the "big picture." You'll then be able to look up or ask about the particular rules you need to apply to any given case.
- Don't be afraid to ask for advice. It is available from your agency's legal counsel and from the FPPC.

An important note'

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code §§81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC's web site, <http://www.fppc.ca.gov>. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line "1-866-ASK-FPPC" as far in advance as possible.

How to Contact Us:

- **Mail:**
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814
- **Website:**
www.fppc.ca.gov
- **Telephone:**

Toll-free advice line: 1-866-ASK-FPPC(1-866-275-3772)

Regular line: 1-916-322-5660

Enforcement hot-line: 1-800-561-1861

(revised 7-27-05)

§ 7.1.05 BIDDING.

(A) **General Requirement.** Competitive bidding for public works contracts for public projects over \$5,000 is required for general law cities, Cal. Pub. Cont. Code § 20162, and redevelopment agencies, Cal. Pub. Cont. Code § 20688.2. A project may not be split into smaller portions to avoid the competitive bidding requirement. Cal. Pub. Cont. Code § 20163. If the public entity has elected to be subject to the uniform construction accounting procedures under Cal. Pub. Cont. Code §§ 22000 *et seq.*, then certain less formal procedures may be available for contracts less than \$100,000. Cal. Pub. Cont. Code § 22032. Note that although state general law bidding procedures do not bind charter cities where the subject matter of the bid constitutes a municipal affair, *R & A Vending Services, Inc. v. City of Los Angeles*, 172 Cal. App. 3d 1188, 218 Cal. Rptr. 667 (1985), the Public Contract Code applies to charter cities in the absence of an express exemption, a city charter provision, or ordinance that directly conflicts with the Public Contract Code. Cal. Pub. Cont. Code § 1100.7.

(B) **Public Project.** Public project is defined for bidding purposes as: (1) the erection, improvement, painting, or repair of public buildings and works; (2) work in streams, bays, etc.; (3) street or sewer work, except maintenance or repair; and (4) furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers. Cal. Pub. Cont. Code § 20161. Under certain circumstances, leases of city property may be considered public works contracts subject to bidding requirements. *See Boydston v. Napa Sanitation District*, 222 Cal. App. 3d 1362, 272 Cal. Rptr. 458 (1990).

(C) Exceptions to Competitive Bidding.

(1) **Emergency.** Contracts may be awarded without competitive bidding if the legislative body makes a finding by a four-fifths vote that an emergency exists. Cal. Pub. Cont. Code §§ 1102, 20168, 22050.

(2) **Professional Services.** Contracts for professional services such as private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms need not be competitively bid, but must be awarded on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Cal. Gov't Code § 4526. However, if the professional services are too closely akin to the work typically performed by public works construction contractors (for example, some services performed by construction managers), then competitive

bidding may be required. *City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court*, 7 Cal. 3d 861, 103 Cal. Rptr. 689 (1972).

(3) **Special Services.** The legislative body of any public or municipal corporation may contract with and employ any persons for the furnishing to the corporation special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required. Cal. Gov't Code § 53060. The test as to whether services are special services depends on the nature of the services; the necessary qualifications required of a person furnishing the services; and the availability of the service from public sources. *California School Employees Association v. Sunnyvale Elementary School District*, 36 Cal. App. 3d 46, 60, 111 Cal. Rptr. 433 (1973).

(4) **Design-Build.** Design-build is a method of project delivery in which the design and construction functions are contracted from a single entity, called the "design-build entity". Cal. Pub. Cont. Code § 20209.5. Charter cities may use design-build if there is a specific city charter provision or ordinance that authorizes the design-build project delivery method. Cal. Pub. Cont. Code § 1100.7. On the other hand, general law cities may not employ design-build unless specifically authorized by statute and approved by the city council. Currently, design-build is permitted in cities within Solano and Yolo Counties, and in the City of Stanton, Cal. Pub. Cont. Code § 20175.2.

Practice Tips:

- 1) In limited circumstances, competitive bidding is not required when it would be impossible or not in the public interest. *Graydon v. Pasadena Redevelopment Agency*, 104 Cal. App. 3d 631, 164 Cal. Rptr. 56 (1980), *cert. denied*, 449 U.S. 983, 101 S. Ct. 400, 66 L. Ed. 2d 246 (1980).
- 2) Construction project management services under Cal. Gov't Code § 4526 is not considered a design-build project. Construction project management services are subject to public bidding and prevailing wage requirements.

(D) Notice Inviting Bids.

(1) **Contents of the Notice.** The notice inviting bids must set a date for opening of bids. The timing, content and method of publishing the notice are described in Cal. Pub. Cont. Code §§ 20164 and 4104.5 and Cal. Gov't Code § 53068. Additional information which must be included in the notice inviting bids is described below.

(2) **Bid Addenda.** If the city issues a bid addendum that results in a material change to the invitation, the date and time for submitting bids must be extended by

no less than 72 hours. Cal. Pub. Cont. Code § 4104.5.

(3) **Mandatory Pre-bid Conference or Job Walk.** If required, a mandatory pre-bid conference or job walk must not take place in less than five days from the initial publication of the notice calling for bids. The notice calling for bids must clearly indicate the time, date and location of the mandatory conference or job walk. Cal. Pub. Cont. Code § 6610.

(E) **Presentation of Bid and Security.** All bids must be sealed and accompanied by security of at least ten percent of the bid amount to guarantee the bid. The city cannot consider a bid from a bidder who fails to provide the required security. Cal. Pub. Cont. Code §§ 20170 - 20171. Rules governing forfeiture of bid security are contained in Cal. Pub. Cont. Code §§ 20172 through 20174 and limit the amount of forfeiture to the difference between the low bid and the second low bid.

(F) **Award.**

(1) **Lowest Responsible Bidder.**

(a) In General. The contracts for competitively bid public projects must be awarded to the lowest responsible bidder. Cal. Pub. Cont. Code § 20162. The process for selecting the lowest responsible bidder includes a determination of: (1) which bidder is lowest monetary bidder; (2) whether or not the lowest monetary bidder submitted a responsive bid; and (3) whether or not the lowest monetary bidder is responsible. City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court, 7 Cal. 3d 861, 103 Cal. Rptr. 689 (1972); Taylor Bus Service, Inc. v. San Diego Board of Education, 195 Cal. App. 3d 1331, 241 Cal. Rptr. 379 (1987). If the lowest monetary bidder is responsible and submits a responsive bid, the contract must be awarded to the lowest monetary bidder even if another bidder is more responsible. City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court, 7 Cal. 3d 861, 103 Cal. Rptr. 689 (1972). A city that improperly awards a bid to any bidder other than the lowest responsible bidder may be liable for reimbursing the low bidder's actual cost in submitting the bid, but will not be liable for the low bidder's lost profits. Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority, 23 Cal. 4th 305, 315-16, 96 Cal. Rptr. 2d 747 (2000).

(b) Lowest Monetary Bidder. The invitation for bids must be written so that there is a clear method to compare bids and determine which bid is the lowest monetary bid. Konica Business Machines U.S.A., Inc. v. Regents of University of California, 206 Cal. App. 3d 449, 253 Cal. Rptr. 591 (1988). When bidders are required to include calculations on the bid form, a clause in the invitation for bids will be enforced if it clearly indicates that the unit price

amounts will take precedence over the calculated line item amounts. Pozar v. Department of Transportation, 145 Cal. App. 3d 269, 193 Cal. Rptr. 202 (1983). If two or more bids are the same and the lowest, the city may accept the one it chooses as the lowest monetary bidder. Cal. Pub. Cont. Code § 20166.

(c) Additive and Deductive Bids. A local agency may include items of work in the bidding documents to be bid in the alternative, as additions to or deductions from its base bid price. Cal. Pub. Cont. Code § 20103.8. However, the procedure for selection of alternates must be such as will not create an opportunity for favoritism. The method used to select the accepted alternates must be from among those methods described in the statute and must be declared in advance in the bid solicitation. If the public agency does not specify a method, the lowest bid will be the lowest bid prices on the base contract without consideration of prices on the additive or deductive items. Cal. Pub. Cont. Code § 20103.8(a)

(d) Responsive Bid. A bid must conform to the material terms of the bid package. Menafee v. County of Fresno, 163 Cal. App. 3d 1175, 210 Cal. Rptr. 99 (1985). A bid is responsive if it promises to do what the bidding instructions demand. Valley Crest Landscape, Inc. v. City Council, 41 Cal. App. 4th 1432, 1438, 49 Cal. Rptr. 2d 184 (1996). Responsiveness should be determined from the face of the bid. Taylor Bus Service, Inc. v. San Diego Board of Education, 195 Cal. App. 3d 1331, 241 Cal. Rptr. 379 (1987). A bid may be responsive even if there is a discrepancy in the bid, as long as the discrepancy is inconsequential, that is, the discrepancy must not: (1) affect the amount of the bid; (2) give a bidder an advantage over others (e.g., give a bidder an opportunity to avoid its obligation to perform); (3) be a potential vehicle for favoritism; (4) influence potential bidders to refrain from bidding; or (5) affect the ability to make bid comparisons. Ghillotti Construction Co. v. City of Richmond, 45 Cal. App. 4th 897, 53 Cal. Rptr. 2d 389 (1996).

(e) Responsible Bidder. A responsible bidder is one who is able to perform the contract if awarded. To be considered responsible, the bidder must demonstrate the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the public works contract. Cal. Pub. Cont. Code § 1103. A range of factors may be used to determine bidder responsibility including performance history, reliable financial information, bonding and insurance capacity, public works experience, personnel, litigation history and others.

(2) Bid Protests.

(a) Responsibility. If a city intends to reject a bid based on non-responsibility, prior to the award of the contract, the city must give notice to the

bidder of any evidence reflecting upon his responsibility, afford him an opportunity to rebut such adverse evidence, and permit him to present evidence that he is qualified to perform the contract. However, due process does not compel a quasi-judicial proceeding prior to rejection of the bid. City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court, 7 Cal. 3d 861, 871, 103 Cal. Rptr. 689 (1972). A finding of non-responsibility must be supported by substantial evidence. Boydston v. Napa Sanitation District, 222 Cal. App. 3d 1362, 1369, 272 Cal. Rptr. 458 (1990).

(b) Responsiveness. A bidder determined to be nonresponsive is entitled to notice of that fact and is entitled to submit materials, in a manner defined by the city, concerning the issue of responsiveness. The city is not required to conduct a hearing, however, and need not produce findings. Taylor Bus Service, Inc. v. San Diego Board of Education, 195 Cal. App. 3d 1331, 1343, 241 Cal. Rptr. 379 (1987).

(G) Bid Rejection. The legislative body may, in its discretion, reject all bids without having to give a reason. Cal. Pub. Cont. Code § 20166. If no bids are received the legislative body may then dispense with competitive bidding. *Id.* If all bids are rejected and the legislative body resolves by a four-fifths vote the project can be performed more economically by day labor or through open market purchases of materials and supplies, it may dispense with further public bidding. Cal. Pub. Cont. Code § 20167. *See also* Cal. Pub. Cont. Code § 20102 (if the public agency determines to proceed by day labor, the work will be performed in accordance with the same plans and specifications).

(H) Mistakes.

(1) Changing the Bid. Once a bid is opened, the bidder may not thereafter change the bid. Cal. Pub. Cont. Code § 5101. Clerical errors in listing subcontractors may be corrected if the proper procedure is followed. Cal. Pub. Cont. Code § 4107.5.

(2) Consent to Withdrawal. In the case of bid mistakes, the awarding authority may consent to a withdrawal of the bid if the bidder establishes that the requirements of Cal. Pub. Cont. Code § 5103 have been satisfied, and the public entity documents the facts in support of relief. Cal. Pub. Cont. Code § 5101(a).

(3) Legal Action for Relief. When the public entity refuses to relieve the bidder of its bid, the contractor may, within 90 days, file an action to seek relief. Cal. Pub. Cont. Code §§ 5101(a), 5102.

(4) Prohibition to Further Bidding. A bidder who claims mistake or forfeits

its bid security cannot participate in further bidding on the same project. Cal. Pub. Cont. Code § 5105.

(I) **Other Reference.** For a good discussion of bid errors and irregularities, see Brown, E., *California Public Works Projects: Managing Contracts and Resolving Disputes* (Publishers Design Group, 1999-2000 ed.).

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§ 2.3.05 PROHIBITED CONTRACTS.

(A) Basic Prohibition.

(1) City officers and employees may not have financial interests in contracts made by them or by any board or body of which they are members. Cal. Gov't Code § 1090. These provisions were enacted before the Political Reform Act and reflects the common law prohibition against self dealing. *See Berka v. Woodland*, 125 Cal. 119, 57 P. 777 (1899); *Stockton P. & S. Co. v. Wheeler*, 68 Cal. App. 592, 597, 229 P. 1020 (1924); *City of Oakland v. California Construction Co.*, 15 Cal. 2d 573, 576, 104 P.2d 30 (1940).

(2) The provisions of Cal. Gov't Code § 1090 were not repealed by the enactment of the PRA. *See City of Vernon v. Central Basin Water District.*, 69 Cal. App. 4th 508, 81 Cal. Rptr. 2d 650 (1999); 59 Cal. Op. Att'y Gen. 604, 617 (1976). In any situation, a person must act in a manner that satisfies the requirements of both the Public Records Act and Cal. Gov't Code § 1090. *See Cal. Gov't Code § 81013*; 59 Cal. Op. Att'y Gen. 604, 617 (1976). Consequently, if a member of a body or board that authorizes a contract has a financial interest in the contract, the member may avoid a violation of the PRA by abstaining from participation in the decision, but such abstention will not avoid a violation of Cal. Gov't Code § 1090, unless the member's financial interest is a "remote" or "non-interest" under the exception as discussed below.

(B) When Government Code Section 1090 Applies. The provisions of Cal. Gov't Code § 1090 apply in two basic situations. First, if the financially interested city officer or city employee is a member of a board or other body that actually approves or executes the contract (i.e. a city council), the potential conflict prohibits the city from entering into the proposed contract, regardless of whether or not the officer participates in or abstains from the actual decision. *See Thomson v. Call*, 38 Cal. 3d 633, 649, 214 Cal. Rptr. 139 (1985), *cert. denied*, 474 U.S. 1057, 106 S. Ct. 796, 88 L. Ed. 2d 773 (1986). Second, if a staff or advisory board member has a financial interest in a contract with the city, there is a conflict only if that staff or advisory board member actually participates in making the contract. *See Fraser Yamor Agency, Inc. v. County of Del Norte*, 68 Cal. App. 3d 201, 137 Cal. Rptr. 118 (1977); 82 Cal. Op. Att'y Gen. 126, 129 (1999). In either case, if such a contract is made, the city may void it. *See Cal. Gov't Code § 1092.*

(C) To Whom Government Code Section 1090 Applies. Virtually all board members, officers, employees and consultants of a public entity are considered public officials under Cal. Gov't Code § 1090. *See Thomson v. Call*, 38 Cal. 3d 633, 214 Cal. Rptr. 139 (1985), *cert. denied*, 474 U.S. 1057, 106 S. Ct. 796, 88 L. Ed. 2d 773 (1986) (council member); *City Council v.*

McKinley, 80 Cal. App. 3d 204, 145 Cal. Rptr. 461 (1978) (parks and recreation board member); *People v. Vallerga*, 67 Cal. App. 3d 847, 136 Cal. Rptr. 429 (1977) (county employee); 70 Cal. Op. Att’y Gen. 271 (1987) and *Campagna v. City of Sanger*, 42 Cal. App. 4th 53, 49 Cal. Rptr. 2d 676 (1996) (contract city attorney); 46 Cal. Op. Att’y Gen. 74 (1965) (consultant); *Millbrae Association for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 69 Cal. Rptr. 251 (1968) (advisory board member); *Schaefer v. Berinstein*, 140 Cal. App. 2d 278, 295 Cal. Rptr. 113 (1956) (person in advisory position to contracting agency); *California Housing Finance Agency v. Hanover/California Management & Accounting Center, Inc.*, 148 Cal. App. 4th 682, 692, 56 Cal. Rptr. 3d 92 (2007) (attorney whose official capacity carries the potential to exert “considerable” influence over the contracting decisions of a public agency is an “employee” under Cal. Gov’t Code § 1090, regardless of whether he or she would be considered an independent contractor under common law tort principles).

(D) **Contract Making.** The prohibition in Cal. Gov’t Code § 1090 applies to all conduct of a public official who participates in making of the contract, including preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitations for bids and subsequent modifications to a contract and “follow-on” contracts. *See Millbrae Association for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 69 Cal. Rptr. 251 (1968); *Stigall v. City of Taft*, 58 Cal. 2d 565, 25 Cal. Rptr. 441 (1962); *People v. Sobel*, 40 Cal. App. 3d 1052, 115 Cal. Rptr. 532 (1974); *City Council v. McKinley*, 80 Cal. App. 3d 204, 212, 145 Cal. Rptr. 461 (1978); *City of Imperial Beach v. Bailey*, 103 Cal. App. 3d 191, 162 Cal. Rptr. 663 (1980); 81 Cal. Op. Att’y Gen. 134 (1998). However, participation in a statutorily mandated process in connection with the sale of property through eminent domain is not subject to Cal. Gov’t Code § 1090. *See Santa Clara Valley Water District v. Gross*, 200 Cal. App. 3d 1363, 1369, 246 Cal. Rptr. 570 (1988). The provisions of Cal. Gov’t Code § 1090 may serve to prohibit a former public official from benefiting from a contract after the official leaves office. 81 Cal. Op. Att’y Gen. 134 (1998); *Stigall v. City of Taft*, 58 Cal. 2d 565, 25 Cal. Rptr. 441 (1962); *City Council v. McKinley*, 80 Cal. App. 3d 204, 212, 145 Cal. Rptr. 461 (1978). *But see* 66 Cal. Op. Att’y Gen. 156 (1988); 63 Cal. Op. Att’y Gen. 868 (1980); 63 Cal. Op. Att’y Gen. 19 (1980). The Attorney General has opined that although a city council’s approval of the renewal, sale, assignment, or transfer of cable television franchise held by a city council member constitutes the making of a contract, the contract

might not be prohibited if the rule of necessity could be applied under a particular set of circumstances. *See* 76 Cal. Op. Att’y Gen. 118 (1993); 88 Cal. Op. Att’y Gen. 106 (2005).

(E) **Financial Interest.** The financial interest of the public official may be either a direct or indirect interest. *See People v. Deysher*, 2 Cal. 2d 141, 146, 40 P.2d 259 (1934) (a “devious and winding chain” of indirect interests); *Thomson v. Call*, 38 Cal. 3d 633, 214 Cal. Rptr. 139 (1985) (a complex multiparty transaction); *People v. Honig*, 48 Cal. App. 4th 289, 55 Cal. Rptr. 2d 555 (1996) (interest need not be direct or material); *Fraser Yamor Agency, Inc. v. County of Del Norte*, 68 Cal. App. 3d 201, 137 Cal. Rptr. 118 (1977) (shareholder insulated from contract payments); *People v. Vallerga*, 67 Cal. App. 3d 847, 136 Cal. Rptr. 429 (1977) (contingent payment); *People v. Sobel*, 40 Cal. App. 3d 1046, 115 Cal. Rptr. 532 (1974) (primary shareholder in contracting party); *People v. Watson*, 15 Cal. App. 3d 28, 92 Cal. Rptr. 860 (1971) (debtor creditor relationship); *Neilsen v. Richards*, 75 Cal. App. 680, 243 Cal. Rptr. 697 (1928) (spousal property); 69 Cal. Op. Att’y Gen. 255 (1986) (spousal property); 66 Cal. Op. Att’y Gen. 376 (1983) (public officers to receive commissions); 58 Cal. Op. Att’y Gen. 670 (1975) (public official is employee of contract provider); 86 Cal. Op. Att’y Gen. 133 (2003) (council member’s law firm providing pro bono services to the city).

(F) **“Remote Interest” and “Non-interests” Exception.** “Remote” interests in a contract do not create a conflict if the officer or employee publicly discloses his or her financial interest, abstains from influencing or attempting to influence any member of the body in the making of the contract, the interest is noted in the body’s official records, and the legislative body authorizes the contract in good faith by a sufficient vote without counting the vote of the party with the remote interest. *See* Cal. Gov’t Code § 1091. That section contains a long list of remote financial interests. The provisions of Cal. Gov’t Code §§ 1091.1, 1091.2 and 1091.5 list circumstances which are considered “non-interests” and therefore not subject to the prohibition of Cal. Gov’t Code § 1090.

(G) **“Salary Exception”.** The receipt of salary, per diem, or reimbursement for expenses from a government entity is a non-interest “unless the contract directly involves the department of the government entity that employs the officer or employee.” Cal. Gov’t Code § 1091.5(a)(9).

(H) **Existing Contracts.** The provisions of Cal. Gov’t Code § 1090 are

not violated if a public official has an interest in a contract which has been entered into before the official assumes office. The contract may continue in force until its expiration. It may not, however, be amended, extended or renegotiated. It is not clear whether it may be assigned, if such assignment requires the consent of the legislative body. *See City of Imperial Beach v. Bailey*, 103 Cal. App. 3d 191, 162 Cal. Rptr. 663 (1980); 76 Cal. Op. Att’y Gen. 118 (1993).

(I) **Enforcement.** When a public official has violated Cal. Gov’t Code § 1090, several serious penalties may be imposed. *See* Cal. Gov’t Code § 1097. Even good faith reliance on the advice of the city attorney that one’s conduct is legal will not constitute a defense. *People v. Chacon*, 40 Cal. 4th 558, 53 Cal. Rptr. 3d 876 (2007). Nor can an official convicted of violating Cal. Gov’t Code § 1090 maintain a legal malpractice action against such government attorney. *Chapman v. Superior Court*, 130 Cal. App. 4th 261, 29 Cal. Rptr. 3d 852 (2005). The maximum penalty for a willful violation is a felony conviction with a maximum fine of \$1,000 or imprisonment in the state prison and the official is “forever disqualified from holding any office in this state.” Also, a contract made in violation of Cal. Gov’t Code § 1090 is void and payment prohibited. Cal. Gov’t Code §§ 1092, 1095; *Thompson v. Call*, 38 Cal. 3d 633, 214 Cal. Rptr. 139 (1985), *cert. denied*, 474 U.S. 1057, 106 S. Ct. 796, 88 L. Ed. 2d 773 (1986).

Practice Tips: No city employee, including the city attorney, should participate on behalf of the city, in making that employee’s own contract with the city. If the city requires legal advice on the city attorney’s contract, the city attorney cannot provide it. As to contract city attorneys, *see* 2 Cal. Code Regs. § 18700(d)(3), the FPPC’s McEwen Advice Letter No. I 92 481, the Eckis Advice Letter No. A 93 270, *Campagna v. City of Sanger*, 42 Cal. App. 4th 533, 49 Cal. Rptr. 2d 676 (1996) and *People v. Gnass*, 101 Cal. App. 4th 1271, 125 Cal. Rptr. 2d 225 (2002). These authorities consider the application of the PRA to a contract city attorney participating in the making of his or her contract with the city and participation in city decisions which could affect the amount of fees paid to that contract attorney.

(J) **Statute of Limitations.** The statute of limitations to prosecute a violation of Cal. Gov’t Code § 1090 is three years, and is tolled until the crime is discovered. *See* Cal. Penal Code §§ 801, 803(c). The courts interpret “discovery” to require reasonable diligence by persons or agencies with legal duty to report and investigate crimes. *See People v. Zamora*, 18 Cal. 3d 538, 572, 134 Cal. Rptr. 784 (1976); *People v. Honig*, 48 Cal. App. 4th 289, 55 Cal. Rptr. 2d 555 (1996); *People v. Swinney*, 46 Cal. App. 3d 332, 340-44, 120 Cal. Rptr. 148 (1976); *People v. Kroneyer*, 189 Cal. App. 3d 314, 340, 234 Cal. Rptr. 442 (1987). The statute of limitations

to avoid a contract based upon a violation of Cal. Gov't Code § 1090 must be commenced within four years after the plaintiff has discovered, or in the exercise of reasonable care should have discovered, a violation. Cal. Gov't Code § 1092(b).

Practice Tips: The four year statute of limitations set forth in Cal. Gov't Code § 1092(b) to avoid a contract for a violation of Cal. Gov't Code § 1090 may render obsolete the decision in *Brandenburg v. Eureka Redevelopment Agency*, 152 Cal. App. 4th 1350, 62 Cal. Rptr. 3d 339 (2007) (Cal. Gov't Code § 1090 challenge to the approval of a development and disposition agreement is subject to one year statute of limitations applicable to actions upon a "statute for a penalty or forfeiture.").

techsupport@amlegal.com

**POLICY AND PROCEDURE FOR
SALE OF SURPLUS PROPERTY
BY THE CITY OF KERMAN**

Scope of Policy

This policy shall govern the sale by the city of any and all vehicles, tools, equipment, or other personal property which has been deemed excess or unnecessary for city operation. For the purposes of this policy, "property" or "personal property" shall mean any item, object, thing or right which is not real property. Sale of real property shall be governed by the applicable requirements of the California Government Code, California Redevelopment Law or other applicable rule or regulation, and not by this policy.

Determination of Excess or Surplus Status and Valuation of Property

Department heads shall provide to the City Manager a written recommendation concerning any property they believe should be considered to be excess or surplus to their department's or the City's needs. The City Manager shall determine whether the property is excess or surplus and shall memorialize his determination by signing his approval or disapproval of the written recommendation and indicating the date of such action.

Upon a determination that the property is excess or surplus, the City Manager, or if designated by the City Manager, the appropriate department head, shall determine whether the property may be disposed of by sale to the public, or whether another method of disposal is required. If disposition is to be by sale, the City Manager or the designated department head shall make an estimation of value based upon methods that a reasonable businessperson would use in evaluating property of similar nature. For example, if the property is a used motor vehicle, an automobile valuation website or advertisements in a local newspaper may provide a basis for valuation; if the property is specialized equipment, a dealer in used equipment of that kind may provide a basis for valuation; for less valuable property, the evaluator may rely upon his or her experience and judgment in setting a fair value. The evaluator shall make and maintain a written notation of his or her determination of value and a brief description of the basis for such determination. Absent evidence of fraud, collusion, or intentional misconduct, the evaluator's determination shall be conclusive for purposes of this policy.

Property Valued at Under One Hundred Dollars

Any property to be sold with an estimated value of less than one hundred dollars (\$100.00) may be sold without any public bidding to any eligible party paying a fair price. Notice of such proposed sale shall be posted at City Hall listing the item and the amount at which it will be sold for at least one week prior to such sale being approved by the City Council. Prior to Council approval of the sale, any eligible person may offer to pay a higher price for the item to be sold.

Sale or Auction of Certain Police Items

Sale and/or auction of standard items such as office furniture and computers etc. will be handled as delineated in this policy. However, disposal of excess weapons, ammunition, bullet resistant vests and vehicle light bars and similar equipment used for law enforcement must be handled separately, by the police department. These and similar items are very sensitive and should not be sold or auctioned to the general public. Disposition of these and similar items shall be governed by Police Department Policy and Procedure.

Approval by Council

No sale of any city-owned property will be final until presented to and approved by the City Council at a regular meeting of the Council. All sales made will be subject to such approval. Approval by the Council shall be deemed to be conclusive proof of the reasonableness and fairness of the price paid, and that such sale was for common good of the City and its residents.

Hypotheticals

1. The Senior Center is selling an old reception desk. Can Micah in Finance buy it?
2. The Range Officer has declared 2 old targets as obsolete and therefore surplus. Can he buy them?
3. The City has abandoned an easement that adjoins a City Council member's land. Can she buy it at its appraised fair market value?

Page 08-20

Ethics Law Resources

Expense Reimbursement/Use of Public Resources Issues. The Institute has published a guide on laws relating to use of public resources. Also check out sample expense reimbursement policies.

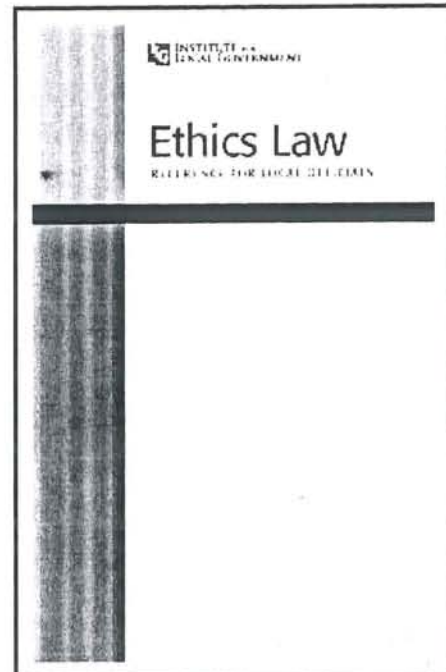
General Resources on California Ethics Laws

- *Ethics Law Reference for Local Officials* provides more detail on key ethics laws relevant to public service. The guide also alerts officials to the consequences of violating those laws and provides illustrations of problem situations.
- *Success in Public Service: What You Need to Know Before You Are Appointed or Elected* provides a general overview of ethics laws that apply to public service, as well as practical tips that help potential candidates assess how these laws might affect them and their service. Thinking about these impacts in advance can help them make informed choices, and perhaps avoid ethical missteps. The Institute is grateful to the law firm Best Best & Krieger LLP for sponsoring this publication.
- *Key Ethics Law Principles for Public Servants* summarizes the kinds of issues and financial interests that ought to trigger a conversation with one's agency counsel about what the law requires. The double-sided cardstock format is portable enough to keep with public agency agenda packets and the like.
- *Ethics Law Compliance Best Practices Checklist* helps local agency officials assess their compliance practices. The checklist includes a series of questions agency officials can ask themselves to determine whether their agency is employing all the "best practices" available to minimize the likelihood of missteps vis-à-vis the ethics laws. Thanks go to Best Best & Krieger LLP for making it possible for the Institute to develop this resource.
- *Walking the Line: What to Do When You Suspect an Ethics Problem* answers the question "what steps might an official take when he or she suspects wrongdoing at his or her agency?" The Institute is grateful for the generous support of Hanson Bridgett in producing this resource
- *Taking Chances with Ethics Laws: A High Stakes Gamble* explains the legal, financial and personal consequences of ethics law missteps.
- *Deciding When Not to Participate in an Agency Decision: Abstentions and Disqualifications* discusses the differences between being disqualified from participating in a matter and voluntarily abstaining.
- *Revolving Door Restrictions for Local Officials* answers frequently asked questions.
- *Resources for Further Reading* provides links to Fair Political Practices Commission and Attorney General ethics law resources.

Ethics Law Training Resources (AB 1234). State law requires specified local officials (those who receive compensation for their service or are eligible to have their expenses reimbursed) to receive two hours of ethics training every two years. Find out where the Institute is offering such sessions locally. Can't attend a session? Check out our self-study opportunities. We also offer lots of resources for AB 1234 trainers.

Check out more discussions of ethics law:

- *Fiduciary Duties and Public Service (Western City, February 2008)*



Ethics Law Reference for Local Officials provides more detail on key ethics laws relevant to public service.

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REPORT #6

FRESNO COUNTY ELECTIONS

FILED

MAY 29 2008

FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

**2007-2008
FRESNO COUNTY GRAND JURY**



**FINAL REPORT
#6**

FRESNO COUNTY ELECTIONS

“Democracy is the recurrent suspicion that more than half of the people are right more than half the time.” E.B. White

INTRODUCTION

A number of problems in the election process have been reported in various areas of the United States. These have included equipment problems, lost ballots, too few polling places, inadequate documentation, and poorly trained workers. The Fresno County Grand Jury is aware of these problems and felt that it would be in the interest of the voters of Fresno County to have their election process studied to determine the diligence, transparency, and accountability of the system.

BACKGROUND

This Grand Jury study began with the November 6, 2007 election and continued through the February 5, 2008 primary election. Many aspects of the process were observed, both in small localized elections and in the county-wide primary election. In addition, the Grand Jury toured election headquarters, election storage facilities, and the printing plant. The headquarters and storage areas are County owned, but printing is under contract with The Presort Center in Fresno.

Regulation of the voting process is governed by state law and is administered by the Secretary of State. During the course of this study, several directives were issued by the State and implemented by the Election Department.

OBSERVATIONS

Personnel

All elections in Fresno County are under the supervision and leadership of the Fresno County Clerk/Registrar of Voters. This is an elected position. The Election Department has a permanent staff of about 25 employees. Approximately 1,500 individuals were recruited to assist during the February 2008 primary election. Temporary employees and select high school students are paid to work as precinct workers. Many volunteers work during the election period and on election night to do clerical work and observe the tabulating process. County management employees work as driver teams on election night. County security personnel provide transportation and operational security.

Facilities

The Grand Jury inspected the County warehouse on Hamilton Street where all election equipment and records are maintained. Although other county departments use this facility, the equipment for the 558 election precincts is maintained and secured in a separate area. A training room used for precinct workers is located at this facility and is used by other county organizations when not needed by the Election Department. During the period of this study, an approximately 9,000 square foot addition was constructed especially for the storage of election equipment. The new addition was ready for use during the February 5th primary election.

Equipment

Besides the standard precinct materials (tables, voting stands, etc.), Fresno County has, since 1999, used the ACCU-VOTES 2000 system. Voter documentation (a "paper trail") is maintained in order to guarantee an open and transparent system. In addition to the actual ballot, this is done by way of a paper tape and memory card located in each voting machine. These totals must match with the number of ballots cast in that machine. If the numbers are not correct, the votes are then hand counted. After being verified, the tape and the matching memory card are kept in a secure location to assure the integrity of the vote.

In every polling place, there is a special machine for handicapped voters. This machine enables those with visual, hearing, or other problems to cast their vote. This machine also has a paper tape and memory card for verification purposes.

Scanning machines are used to verify the signatures on vote-by-mail ballots. These machines are similar to standard fingerprint scanners in that they compare the signature on the ballot to the signature on the voter's registration card. Any questionable signatures are then examined and verified by specially trained employees.

The Ballot

Each county designs its own ballot or ballots. In the primary election, eight different ballots were used in Fresno County. The Republican ballot was a "closed ballot." This means that only registered Republicans could use that ballot. On the other hand, the Democrat Party allowed "decline to state" voters and the American Independent Party to use their ballot. Instructions for this use were clearly stated in the voter instruction brochure; but apparently these instructions were not read, were misunderstood, or were ignored. This caused considerable confusion at the precinct level. Some voters were upset with precinct workers as this matter was difficult to explain at the polling place.

Vote-by-mail ballots are used exclusively when there are fewer than 250 registered voters in a precinct. In the February primary, Fresno County had 118 "vote-by-mail precincts."

Tabulating the Vote

After the polls close, the memory cards on the ACCU-VOTES 2000 machines are removed and transported to election headquarters, where they are tabulated. The tabulation room is off limits to all but authorized personnel. A monitor screen and a large window are provided for observers to watch the activity of the workers and equipment. Periodically, totals are released to the public and the media.

Besides those who vote at the polls, many vote by mail. The voter's signature on the mailed envelope is compared to the original registration application. If the signature is correct, the ballot is stripped from the envelope and visually inspected for any tears or imperfections that will render it unscannable. These ballots are then put in a press to help remove fold marks and stored away until polls are legally closed. It is only then that the vote-by-mail ballots are tabulated.

All unused material is sealed and is required to be stored for 22 months after certification. It is then destroyed by shredding.

Cost Analysis

While it was not within the scope of this study to determine comparative cost factors, it was apparent from the beginning that a savings of county tax dollars was quite possible. As a cost saving measure, many election officials felt that both special elections and primary elections should be done by mail only. This appears to be supported by the experience of the State of Oregon. For example, the 2000 Oregon election was held by mail and resulted in reported cost savings of approximately \$3,000,000. In addition, Oregon reported a voter turnout of 80 percent of the registered voters.

In Fresno County, there were 352,661 voters registered for the February 5th primary election. Only 176,314 votes were cast. Of those, 95,151 were by mail-in ballots. Yet, a total of 440 precincts were established to accommodate those who did not vote by mail at an estimated cost of over \$500 per precinct, not including equipment and excess printed material. While there would be an increased cost in mailing ballots to all voters, such mailings are done at bulk rate and would appear to be far less costly than the expenditures incurred by the current process. While it is not clear that Oregon's experience can be duplicated in California or would be appreciated by all voters, its potential efficiencies and effectiveness are worth investigating.

Canvassing the Vote

"Canvassing the vote" is the term used to indicate an audit of the vote, including ballots, supplies and equipment used in the election. State election law calls for an audit (physical count) of one percent of the precincts. This was done as required by law in the elections observed by the Grand Jury. No errors or omissions were noted.

CONCLUSION

The Grand Jury's investigation was limited in focus, but involved extensive observation of the particular elections involved. We encountered none of the major problems that seem to have plagued election systems in other parts of the country. To the contrary, the Fresno County Elections Department and the election system appear to be operated competently in a transparent manner.

FINDINGS

- F 601. Adequate working and storage space is available to accommodate election needs.
- F 602. Security and responsibility were demonstrated in all phases of the system that were observed.
- F 603. The Election Department, its staff, and volunteers were able to accomplish their election responsibilities satisfactorily within the constraints of State law.
- F 604. The voting machines, scanners, special handicapped screens, and tabulating equipment are approved for use in California and meet the needs of the voters of Fresno County.
- F 605. Differing instructions by the Republican and Democrat parties resulted in voter confusion at some polling precincts during the presidential primary.

F 606. Subject to the constraints of state law, expansion of the vote-by-mail ballot process may result in cost savings and increased voter participation.

RECOMMENDATIONS

R 601. Post special enlargements of political party voting instructions at polling sites in primary elections for quick reference by voters. (F605)

R 602. The Election Department should continue to look into ways, including proposing changes to state law that may increase the efficiency and effectiveness of the election process. (F606)

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses to each of the recommendations and findings. Please be advised that the responses from elected officials are due within 60 days of the release of this report.

RESPONDENT

The Fresno County Clerk/Registrar of Voters shall respond to these recommendations and findings.

RESOURCES

- 1) Interviews with Election Department officials and staff.
- 2) Interviews with voters.
- 3) Observations:
 - a) Certification of Parlier Unified School District recalls petitions.
 - b) City of Selma and special district vote tabulation.
 - c) Warehouse and storage facilities.
 - d) Ballot printing facilities.
- 4) Newspapers and other print media.
- 5) State generated voter information pamphlets.
- 6) Grand Jury members worked at precincts and as observers on Election Day.
- 7) Internet

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RESPONSES

A. Fresno County Clerk / Registrar of Voters
R601 through R602



County of Fresno
COUNTY CLERK / REGISTRAR OF VOTERS
VICTOR E. SALAZAR

October 9, 2008

The Honorable Hilary Chittick
Presiding Judge, Superior Court
1100 Van Ness Avenue
Fresno, CA 93721

Dear Judge Chittick:

The following constitutes the response of the County Clerk/Registrar of Voters to the Findings and Recommendations of the Fresno County Grand Jury Final Report related to the Fresno County Clerk's office.

FINDINGS

The Department generally concurs with Findings F 601 through F 606. With regard to F 605, there were five specific writings directed to voters. These included instructions in the Fresno County Sample Ballot and Voter Guide and the California Official Voter Information Guide. Postcards were also mailed to all non-partisan voters and written instructions were conspicuously posted in each polling place. Additionally, media releases were sent out. Thus, the Elections Department initiated a comprehensive campaign to advise non-partisan voters of their options.

RECOMMENDATION

R 601: The Department has implemented this recommendation.

R 602: The Department agrees with this recommendation and will continue to explore opportunities to increase efficiency and effectiveness of the election process.

Sincerely,

Victor E. Salazar
COUNTY CLERK/REGISTRAR OF VOTERS

CC: County Administrative Office
Board of Supervisors
Grand Jury

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REPORT #7

CITY AND COUNTY AIR SUPPORT UNITS

FILED

JUN 19 2008

FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

2007-2008
FRESNO COUNTY GRAND JURY



FINAL REPORT

#7

CITY AND COUNTY AIR SUPPORT UNITS

Can two live as cheaply as one?

BACKGROUND

The Grand Jury began this investigation after receiving testimony asserting that significant savings might be realized by consolidating the air support units of the Fresno City Police and the Fresno County Sheriff's Departments. In order to investigate this possibility, the Grand Jury interviewed law enforcement personnel from both agencies. On-site inspections of both facilities were conducted and documents describing the experience of other law enforcement agencies with air support units were examined.

History

In 1996 the City of Fresno Police Department, hereafter referred to as the City, acquired its first helicopter. In 1997 the Fresno County Sheriff's Department, hereafter referred to as the County, acquired its first helicopter. The City and the County each currently operate with two helicopters and one fixed wing aircraft. The City and County operate with little or no coordination of activities and or equipment.

The City and County have had some preliminary discussions about integration, but not consolidation. The Grand Jury has been told that they are discussing building a jointly used facility on three acres near the CHP location at Fresno Yosemite International Airport. They would share the cost of acquiring the property and constructing the hanger and office areas. The City proposes 9,700 square feet of hanger space plus 1,560 square feet of office space for their current and future needs. The County's requirement would be similar. This integration could also include joint purchase and storage of fuel.

Mission

The missions of the two agencies, while they overlap to some extent, are significantly different.

City

The City air patrol lists its primary function as officer and public safety. The City pilots provide surveillance and patrol support. Their average response time, when they are in the air in the city, is less than one minute. When providing this support, the pilots are not expected to land and apprehend offenders on the ground. In addition, the City pilots are not expected or trained to fly in mountainous terrain and atmospheric conditions that the County pilots are exposed to. In addition to its use of helicopters for patrol support, the City uses its Cessna 206 for routine patrols of facilities from the Westside to the Sierra under a Homeland Security grant.

County

In addition to patrol support, a central purpose of the County air support is search and rescue. The County provides support for lost and/or injured hunters, hikers and skiers in the mountainous areas of the county as well as effecting rescues from rivers, lakes and

streams in the area. The County also provides assistance, through mutual aid agreements, to the surrounding six counties from Kern County on the south to Stanislaus County on the north. In addition, the County provides search and rescue for the Lemoore Naval Air Station as a result of the Navy's moving their search units out of the valley.

The County pilots require extensive training in order to be able to fly at high altitudes and in sometimes treacherous situations. To achieve this expertise requires a minimum of six months of exclusively high elevation training. Under normal flight operation it would take three years for an experienced pilot to be proficient at the high elevations where the County provides rescue services.

In addition, because of the remoteness of much of Fresno County, a helicopter pilot might be the first officer on the scene of an emergency. He would be expected to land and secure the scene while a patrol officer was still responding. He also could be the second officer on the scene when a patrol officer needs assistance.

Equipment

City Aircraft

Aircraft utilized by the City consists of two American Euro Copters, model EC 120, and a Cessna 206 fixed wing airplane. The EC 120 seats 5 people comfortably and is air conditioned. It has a maximum payload, persons and equipment, of 1598 pounds. It can fly to a maximum elevation of 9,250 feet. It can hover at a maximum elevation of 7,600 feet. These helicopters are suitable for the City's patrol support function but, because of their relatively low operating ceiling, they are not suitable for search and rescue operations in the mountains of Fresno County.

County Aircraft

The County uses two McDonnell Douglas 500E helicopters. The 500E seats 4 people and is not air conditioned. The maximum payload of persons and equipment is approximately 1200 pounds. These planes have a maximum operating elevation of 13,900 feet and a hovering maximum of 8,500 feet. The County prefers the 500E because of its rapid response capability and because its relatively high operating ceiling is needed for the County's mountain search and rescue mission. It flies at a maximum of 175 MPH and cruises at 155 MPH. The County also has a 2003 Cessna 206 that is used for surveillance and other law enforcement functions.

City Hanger Facilities

The City leases a typical "T" design hanger at Fresno Yosemite International Airport (FYI) which has 7084 square feet plus office space. This space is divided into four separate areas which were not originally designed for easy access between rooms. In order to access these areas, it was necessary to cut holes in the interior walls that are not of normal doorway configuration. This makes it difficult to use the space efficiently. An additional defect of this hanger is that it has no restroom. Officers must use facilities that are approximately 150 feet away accessed through a locked gate.

County Hanger Facilities

The County leases a hanger at FYI with an open design of 7285 square feet plus office and restroom space. This design is more efficient than the City's and allows all aircraft to be easily moved in and out of the hanger.

COSTS

The air support operations of the City and County are inherently very expensive. Even under the best of circumstances this equipment costs a great deal of money.

Equipment costs

City

The current replacement cost for each of the helicopters used by the City is \$1.2 - \$1.7 million, depending on the additional equipment ordered. One of the City's helicopters now has approximately 3,300 hours of flight time, while the other helicopter has approximately 1,600 hours. The City's Cessna 206, a 1968 model, was purchased used in July, 2006, at a cost of \$169,000. It currently has 4,695 hours of flight time; 300 hours have been accumulated since it was purchased.

County

The current replacement cost for each of the County's McDonnell Douglas helicopters is \$1.2 to \$1.3 million. The maximum flight time allowed on a helicopter's airframe before it has to be retired is 16,000 hours. One of the county helicopters has 11,600+ hours of flight. The other has 7,500 flight hours. The County's Cessna has approximately 695 flight hours.

Fuel Storage and Delivery Costs

Neither the City nor the County owns its own fuel storage facility. In different ways, this appears to result in costly inefficiencies.

City

The City owns a 1,000 gallon fuel trailer that is topped off twice per weekday by Scott Aviation at a cost just over \$6.00 a gallon as of mid May 2008. It appears that, because the City does not purchase fuel in bulk, the City is paying a premium cost for fuel.

County

The Grand Jury has been told that the County has purchased 60,000 gallons of fuel and had it placed in storage with Atlantic Aviation. They were also negotiating to purchase an additional 16,000 gallons of fuel at \$4.15 per gallon as of mid May 2008. Testimony to the Grand Jury indicated that, although the County has realized a savings by purchasing its fuel in bulk, it is paying fuel premiums due to the facts that it does not own its own storage facility or fuel trailer. The County is required to pay a premium of \$.20 per gallon to Atlantic to store their fuel. Because they do not have their own fuel trailer, they must have their fuel delivered by Atlantic Aviation. As a result, the County pays an

additional premium of \$1.05 per gallon to have their aircraft fueled. This delivery cost was reported to the Grand Jury to be \$2,900 in an average month. The Grand Jury has been told that the County requested to purchase a fuel trailer at a cost of \$18,000-\$20,000 at least two years ago. At the time of this investigation, the contract to purchase a trailer had not been approved. It is clear that the County would realize a significant savings over time if it owned a fuel trailer.

ASSESSING CONSOLIDATION

The Grand Jury has found that the missions, the pilot training associated with those missions and the equipment of the City and County are significantly different. The County states that one of its missions for these aircraft is search and rescue while the City's stated mission is officer support. The County pilots could easily perform the patrol support function which is the principal activity of the City pilots, but the City pilots would require substantial additional training in order to perform the high-altitude search and rescue function performed by the County.

Also, with regard to equipment, the Grand Jury has been told that neither agency's helicopters are well suited to perform the mission of the other agency. The City's helicopters cannot operate safely at the high altitudes required to perform the mountain search and rescue function performed by the County and the County's helicopters are reported to be unacceptably noisy for frequent urban patrol support.

While new helicopters that could perform both the patrol support and mountain search and rescue functions of the two services could be purchased and pilots could be retrained, the short-run costs would be large and would outweigh any immediate benefits.

Both the City and County own Cessna 206 fixed-wing airplanes. These two planes have identical capabilities and the pilot training for flying these planes for the City and County is not different. At the current time, neither of these planes is fully used. For example, it appears that each of these planes is flown an average of less than fifteen hours per month. This offers the opportunity for cost savings for both the City and the County if they could share the use of one fixed-wing plane. By cutting the capital cost in half (by owning one plane instead of two) and by sharing the maintenance costs, genuine cost savings could be realized in the long run.

While the full consolidation of the two services does not appear to be feasible, at least in the short run, there are significant efficiencies as well as meaningful economies that could be realized if the City and County air support units would construct combined hanger facilities, purchase a bulk fuel storage tank which they could share, and if the County could purchase a fuel trailer, so that they could fuel their own aircraft. A jointly owned fuel storage tank would enable both the City and the County to realize the economy of purchasing fuel in bulk. This should save money for the City. The County currently purchases its fuel in bulk but, because it does not have its own storage facility, it must pay a premium for fuel storage. This would be saved by a joint City/County

storage facility. In addition, the County pays a substantial premium for fuel delivery which would be saved if it owned its own fuel trailer.

Clearly, the shared hanger would provide increased convenience and efficiency, especially to the City, whose current hanger arrangements are quite inadequate. In addition, the changes in fuel storage and delivery which this report proposes offer the possibility of significant economies that would begin immediately.

NEW OPPORTUNITIES

The isolation of some county communities presents situations where the County could be of great public service to those residents. Witnesses told the Grand Jury that the County could provide assistance with small grass or structure fires if the helicopters were equipped with a “Bambi Bucket.” This is a canvas bucket that would allow the pilots to pick up 108 gallons of water and disperse it to contain or extinguish small fires in remote areas.

Also, the County has looked at purchasing a Super Huey helicopter as a platform for decreasing costs for search and rescue. The Grand Jury has been told that a typical rescue costs \$1,000-\$1,500 an hour with 20 people and that it takes 4-5 hours to assemble the necessary people and equipment. With the larger helicopter, 10-12 people could be on site within 30 to 45 minutes. This could be the difference between life and death as well as a significant savings to the county. The service to the public cannot be measured.

CONCLUSION

The Grand Jury began this investigation to examine the possibility that significant savings might be realized by consolidating the air support units of the Fresno City Police and the Fresno County Sheriff’s Departments. The Grand Jury has concluded that the missions, pilot training, and helicopters of the two agencies are so different that consolidation is impractical in the immediate future.

On the other hand, there appear to be significant savings and other benefits to be achieved by purchasing a single hanger facility with a bulk fuel storage tank which could be shared by both agencies. In addition, the County could realize meaningful savings by purchasing a fuel trailer. This would allow savings that would begin immediately.

An additional area of possible cost savings lies in the more efficient use of fixed-wing airplanes. Both the City and the County have Cessna 206 aircraft that are being under-utilized. One fixed-wing aircraft could be used for both agencies.

FINDINGS

F701 The City helicopter cannot provide necessary coverage for the County.

F702 The City is paying too much for fuel because they have not purchased in bulk.

- F703 The County purchases fuel in bulk but is paying too much to have their fuel delivered because they do not have a fuel trailer.
- F704 The County can be a good public servant by equipping its helicopters to assist in fighting small fires.
- F705 Fixed-wing aircraft of both agencies are under utilized.
- F706 The City and County currently lease separate hanger facilities. The City hanger is inadequate because its design is inefficient and lacks restroom facilities

RECOMMENDATIONS

- R701 The City and County purchase joint hanger, fuel storage, and maintenance facilities. (F706)
- R702 The City and County consolidate bulk fuel purchases, storage and handling. (F702, F703)
- R703 The City and County share one fixed-wing aircraft for their duties. (F705)
- R704 The County equip its helicopters with fire fighting capabilities. (F704)
- R705 The County purchase a fuel trailer. (F703)

REQUEST FOR RESPONSES

Pursuant to Penal Code & 933.05, the Grand Jury requests that you respond to each specific recommendation as outlined in the attached letter of instruction.

Respondents

- Fresno City Council (R701, R702, R703, F702, F705, F706)
- City of Fresno Police Chief (R701, R702, R703, F701, F702, F705, F706)
- Fresno County Sheriff (R701, R702, R703, R704, R705, F703, F704, F705, F706)
- Fresno County Board of Supervisors (R701, R702, R703, R704, R705, F703, F704, F705, F706)

SOURCES

- City of Fresno Police Department Staff Interviews
- Fresno County Sheriff’s Department Staff Interviews
- Internet sources relating to law enforcement use of air supports
- Inspection of Hanger Facilities

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RESPONSES

- A. Fresno City Council
R701 through R703

- B. City of Fresno Police Chief
R701 through R703
Included with the City Council response

- C. Fresno County Sheriff
R701 through R705

- D. Fresno County Board of Supervisors
R701 through R705

AGENDA ITEM NO. 9:30am B

COUNCIL MEETING 8/26/08

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER



August 26, 2008

FROM: ANDREW T. SOUZA, City Manager
Office of the City Manager

BY: GARY WATAHIRA, Deputy City Manager
Office of the City Manager

SUBJECT: APPROVE RESPONSES TO THE GRAND JURY REPORT #7

KEY RESULT AREA

Customer Service – State Mandate

RECOMMENDATION

Staff recommends that the City Council approve the attached responses to the Fresno County Grand Jury.

EXECUTIVE SUMMARY

On June 19, 2008, the Fresno County Grand Jury released its Final Report # 2007-2008. The Final Report #7 2007-2008 contains recommendations and findings addressing City and County Air Support Units. Per State statute, the City must respond to the Findings and Recommendations of the Grand Jury. The responses must be approved by the City Council before they are transmitted to the Grand Jury, and are due to the Fresno County Grand Jury no later than 90 days after the release of the report.

BACKGROUND

On June 19, 2008, the Fresno County Grand Jury released its Final Report #7 2007-2008. City staff has worked with the Police Department in preparing the attached responses to the Grand Jury report.

This year, the Grand Jury chose to study the following City and County Air Support Unit issues:

- Consolidation of services
- Description of Equipment
- Equipment Costs
- Fuel Storage and Delivery Costs

Each Grand Jury report offers Findings, Conclusions and Recommendations. Per State statute, the City must respond to the Findings and Recommendations of each chapter of the report that relates to the City. As is customary, City staff prepared the initial draft responses for Council consideration. For ease of reading, the

responses are denoted in bold italics under each Finding and Recommendation. Once the Council approves the responses, they will be forwarded to the Grand Jury.

FISCAL IMPACT OF RECOMMENDATIONS

None

Attachment

*City Responses to Grand Jury Report
2007-2008 Grand Jury Final Report #7*

August 26, 2008

Mr. John Tinker, Foreman
Fresno County Grand Jury
1100 Van Ness #102
Fresno, CA 93721

Dear Mr. Tinker:

SUBJECT: 2007-2008 GRAND JURY RECOMMENDATIONS

The following contains the City of Fresno's responses to the 2007-2008 Grand Jury Findings and Recommendations. The responses to the findings were prepared by City staff and approved by the City Council of the City of Fresno on August 26, 2008.

Recommendation R701

The City and County purchase joint hanger, fuel storage and maintenance facilities (Findings F706)

Response to Recommendation R701

The City agrees with the Grand Jury's findings, conclusions and recommendations regarding the Fresno Police Department and the Fresno County Sheriff's Department acquiring a joint hanger, fuel storage and maintenance facilities. Early in 2008, a potential joint hanger was located at Fresno Yosemite International Airport; however there was not enough square footage to accommodate 6 aircraft, office space, and an open maintenance area. The Fresno Police Department will continue to explore possible options to obtain a properly sized hanger that will meet the needs of both agencies Air Units. The Fresno Police Department is currently in communication with the Fresno County Sheriff's Department regarding several potential hanger locations such as American and Freeway 99 and Central and Hayes Avenue. Please see R702 and R703 regarding fuel storage and use. Please see F706 for response to joint maintenance facilities.

Recommendation R702

The City and County consolidate bulk fuel purchases, storage and handling (Findings F702, F703)

Response to Recommendation R702

The City agrees with the Grand Jury's findings, conclusions and recommendations regarding fuel storage and delivery costs. The Fresno Police Department will explore the feasibility of making joint bulk fuel purchases in conjunction with the Sheriff's Department and sharing the 1000 gallon fuel storage container with the County allowing both agencies to utilize one shared fuel dispensary. The City of Fresno is also working on a contract with the City Attorney's Office regarding a Federal Government program which allows municipalities to purchase fuel without paying sales tax.

Recommendation R703

The City and County share one fixed wing aircraft for their duties (Findings F705)

Response to Recommendation R703

The City disagrees with the Grand Jury's finding regarding the City and County sharing one fixed wing aircraft for both agencies. Sharing one fixed wing aircraft between two large agencies is not recommended due to the potential of having numerous missions occurring at the same time which would require two separate aircraft operating simultaneously on two different missions. Please see F705 for further explanation on fixed wing use by the City.

Findings F701

The City helicopter cannot provide necessary coverage for the County.

Response to Findings F701

The City agrees with the Grand Jury's findings, conclusions and recommendations regarding the Fresno Police Department utilizing our EC-120 helicopter to patrol the metropolitan area within the City of Fresno. Our helicopter is not designed for high altitude mountain rescue operations. The Sheriff's Department helicopter meets the needs of the County and their pilots are trained to work in high altitude environments. The City agrees that it would not be an efficient use of either agencies aircraft or personnel to be utilized in an environment that would require specific aircraft and training to ensure maximum safety for both city and county air crews.

Findings F702

The City is paying too much for fuel because they have not purchased in bulk.

Response to Findings F702

The City agrees with the Grand Jury's findings, conclusions and recommendations regarding the Fresno Police Department purchasing larger quantities of fuel in conjunction with the Fresno County Sheriff's Department in order to save costs. Please see response R702 for further.

Findings F705

Fixed-wing aircraft of both agencies are under utilized.

Response to Findings F705

The City disagrees with the Grand Jury's findings, conclusions and recommendations regarding the Fresno Police Department under utilizing the Cessna 206 fixed wing airplane. Currently our flight logs show that our fixed wing aircraft has flown 1,300 hours and not 300 hours since its purchase as shown in the Grand Jury Report. In 2007, the average number of hours flown per month was 75.8 hours. In 2008, the average number

of hours flown per month has been 26 hours and it is anticipated this average will continue to increase during summer months. The missions significantly decreased during the winter months due to fewer surveillances and inclement weather.

The Fresno Police Department fixed wing has been utilized for numerous missions involving local, state and federal agencies. These missions range from major narcotic's investigations, organized crime surveillance and anti terrorism missions. The fixed wing aircraft has been instrumental in making significant felony arrests and assisting with the seizure of large amounts of illegal drugs and cash from major drug dealers.

In addition, our fixed wing aircraft pilot(s) spend a significant number of hours in a standby mode on the ground waiting for further instruction from various lead investigators when the violator becomes static and is no longer moving. Even though the pilot and aircraft are not in the air flying, the need to have a pilot in standby mode on the ground is important to ensure the aircraft can be in the air without delay which allows ground units to remain uncompromised when the fixed wing creates distance between officers on the ground and the person(s) being followed.

Findings F706

The City and County currently lease separate hanger facilities. The City hanger is inadequate because its design is inefficient and lacks restroom facilities.

Response to Findings F706

The Fresno Police Department agrees with the findings, conclusions and recommendations regarding the current hanger accommodations being utilized. It is our desire to acquire a larger hanger that will provide enough space for both the City and County to house 6-8 aircraft which would allow for future growth. In addition, as funding becomes available, it is our goal to ensure that this joint hanger has adequate office space, maintenance work space area and on site restrooms for personnel. Please see R701 for related information.

Additional Comments

For clarification purposes, please see the following information which provides additional explanation regarding the original published Grand Jury Report.

Page 1 – Under the History heading - The three acres near the CHP hanger is not available per Airport Administration.

Page 2 – Equipment – The correct maximum payload for the EC 120 is 1,653 pounds and the ceiling (max altitude) is 20,000 feet. The EC 120 max speed is 170 mph and cruise speed at 138 mph.

Page 3 – Fuel Storage and Delivery costs – City – Fuel trailer is topped off once per week.



County of Fresno

GRAND JURY

June 12, 2008

Council President Blong Xiong
Councilmember District 1
City of Fresno
2600 Fresno St.
Fresno, CA 93721-3620

The enclosed Grand Jury Final Report #7 2007-2008 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).

The public release of the final report #7 will be on Thursday, June 19, 2008. A limited number of copies will be available on this date on a first-come/first-serve/in-person basis (one copy per person) in the Juror Services Division on the 1st floor of the Fresno County Courthouse at 1100 Van Ness Avenue. The final report #7 will also be available on the Fresno County Superior Court Web page at www.fresnosuperiorcourt.org. When you reach the Superior Court home page click on “Jury” and then “Grand Jury”. You will find the report indexed by 2007-2008.

Pursuant to Penal Code Section 933, responses to the Final Report are required 60 days from the date of public release for elected county officer or agency head and 90 days from the date of public release for all other public agencies. Subsection (c) of Penal code 933 reads in part;

“(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

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- 1 -

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) 488-3467 between the hours of 8:00 a.m. – 5:00 p.m., Monday through Friday.

John Tinker, Foreman
2007-2008/Fresno County Grand Jury



Margaret Mims
Sheriff
Fresno County Sheriff's Office

September 4, 2008

Presiding Judge Hilary Chittick
Fresno Superior Court
1100 Van Ness Avenue
Fresno, Ca 93724

Dear Honorable Chittick:

2007-2008 GRAND JURY FINAL REPORT #7 - RESPONSE

FINDINGS

F703: Respondent agrees with the finding. The existing lease agreement does not allow for this department to fuel its aircraft. By purchasing fuel in bulk quantities we realize a substantial savings over retail fuel prices even with the addition of the storage and unloading surcharge. Although there is a significant startup cost of approximately \$25,000 to purchase the fuel trailer there will be significant savings after the first year due to the decrease in surcharges. Once the existing lease is modified or a new lease is approved with the allowance of fueling the purchase of a fuel trailer can be completed.

F704: Respondent disagrees partially with the finding. Although there is potential benefit from the equipping of helicopters to assist in fighting small fires it detracts from the primary air operations mission of the department which is patrol support.

F705: Respondent agrees with the findings. Prior to being released for general law enforcement duties the fixed wing aircraft was restricted to narcotics related missions. Since being released there has been a marked effort to expand the usage of this aircraft for other law enforcement duties including patrol and detective support as well as Homeland Security related functions.

F706: Respondent agrees with the findings as they relate to currently leased separate facilities.

RECOMMENDATIONS

R701: Recommendation requires further analysis. Currently there is no known existing facility that provides the necessary hangar, office and maintenance space required to co-locate the air support units of both departments. Discussions have been ongoing and

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there is general consensus between the two departments as to the benefits of co-locating air support operations. Currently, it appears that in order to accommodate the space requirements of both departments a new facility would need to be constructed. A critical component of this implementation would be the development of an above or below ground fuel storage facility that would meet the needs of both departments. The City and County will continue their efforts to locate an adequate facility or site location that will meet the needs of both departments. It may be necessary to have separate facilities for rotor aircraft and fixed wing aircraft if adequate space cannot be identified at a location with a suitable runway for the fixed wing aircraft.

R702: Recommendation requires further analysis. The Fresno County Sheriff's Department is currently serviced by Atlantic Aviation who is the FBO (Fixed Base Operator) for our location at Fresno Yosemite International (FYI) Airport. The Fresno Police Department is currently serviced by Scott Aviation who is the FBO for their location at FYI. At the present time it is not feasible to consolidate bulk fuel purchases, storage and handling due to the current location of each unit at FYI and the requirement to utilize the fuel services of the respective FBO for that area of the airport. Should an adequate facility be located or built allowing both units to co-locate the consolidated purchase, storage and handling of fuel can be accomplished.

R703: Recommendation requires further analysis. Although the two fixed wing airplanes owned by the city and county are very similar they are also very different in regards to capabilities and responsibilities. The Sheriff's airplane was initially purchased and deployed as a tool to assist in drug investigations and is equipped with a powerful gyro camera and video surveillance system. The Sheriff is the Operational Area (the county and all political subdivisions within the county) coordinator for Law Enforcement Mutual Aid. Part of the Sheriff's responsibility in this role incorporates issues related to Homeland Security throughout the county including support to the cities within the county. As part of this effort the airplane has been equipped with a video downlink system which will utilize the airplane as a transmission platform allowing for remote observation of such incidents as major crime scenes, natural disasters, wildland fires, or floods. This remote observation allows for the use of real time information by departmental or governmental emergency operations centers in the response and mitigation to a major event.

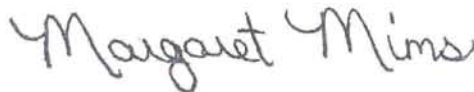
Since being released from narcotics only investigations there has been a marked effort to increase utilization of the airplane. Part of this effort has included the addition of a second pilot. This pilot will supplement the existing pilot whose primary job duties are to supervise the Extradition & Transportation Unit in the Jail.

R704: Recommendation requires further analysis. The primary mission of the Sheriff's Air Support Unit is patrol support. Additionally, the helicopter plays a substantial role in the Sheriff's responsibility for search and rescue. Adding fire fighting capabilities to the

mission of the air unit would detract from the primary mission of law enforcement support. Although this capability could be useful on rare occasion it is unlikely that it would provide any significant benefit to the community. Adding this to our mission would also require specific task oriented training which would reduce our already limited training and flight time.

R705: Recommendation requires further analysis. The option of purchasing a fuel trailer has been discussed during the past year however the existing contract with Atlantic Aviation precludes this department from fueling our aircraft. Although Atlantic Aviation is willing to allow us to modify the existing lease agreement regarding self-fueling of our aircraft it was determined by Fresno County General Services that a new lease agreement needed be written. The new lease agreement was not approved by the Fresno County Facilities Planning Committee when presented in June. Until such time that a new lease is approved or the existing lease is modified we will be unable to purchase a fuel trailer and begin fueling our aircraft.

Sincerely,

A handwritten signature in cursive script that reads "Margaret Mims".

Margaret Mims, Sheriff



County of Fresno

CHAIRMAN
BOARD OF SUPERVISORS
SUPERVISOR HENRY PEREA – DISTRICT THREE

September 23, 2008

The Honorable Hilary Chittick
Presiding Judge, Superior Court
1100 Van Ness Avenue, Department 20
Fresno, CA 93721

RE: RESPONSE TO THE 2007-08 GRAND JURY FINAL REPORTS #7 and #8

Dear Judge Chittick:

The Board of Supervisors has approved its official responses to the recommendations pertaining to Fresno County contained in the 2007-08 Grand Jury Final Reports #7 and #8. The responses are submitted herewith in fulfillment of Penal Code Section 933(c). Also, please find all other required County department responses enclosed in this packet as well.

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

Sincerely,

Henry Perea, Chairman
Board of Supervisors

Enclosure

County of Fresno
Board of Supervisors
RESPONSE TO THE
2007-08
FRESNO COUNTY GRAND JURY
FINAL REPORT #7



CITY AND COUNTY AIR SUPPORT UNITS

Please find below the Fresno County Board of Supervisor's response to the 2007-08 Grand Jury Final Report #7.

Findings

F703: The County purchases fuel in bulk but is paying too much to have their fuel delivered because they do not have a fuel trailer.

The Board of Supervisors agrees that the County purchases aviation fuel in bulk when economically feasible; however, the Board cannot speak to the issue of paying too much to have aviation fuel delivered and would defer to the Sheriff's response to the Grand Jury dated September 4, 2008.

F704: The County can be a good public servant by equipping its helicopters to assist in fighting small fires.

The Board of Supervisors agrees that fighting fires is a critical function; however, this is not the mission or a mandate of the County.

F705: Fixed-wing aircraft of both agencies are underutilized.

The Board of Supervisors cannot speak to this issue and would defer to the Sheriff's response to the Grand Jury dated September 4, 2008.

F706: The City and County currently lease separate hangar facilities. The City hangar is inadequate because its design is inefficient and lacks restroom facilities.

The Board of Supervisors agree that the City and County currently lease separate hangar facilities; however, the Board cannot speak to the issue regarding the City's hangar facility.

Recommendations

R701: The City and County purchase joint hangar, fuel storage, and maintenance facilities.

The recommendation requires further analysis. The Board of Supervisors would request that the Sheriff continue to actively pursue consolidation with the City if it is determined that consolidation is economically feasible and beneficial for service delivery and bring any necessary recommendations to the Board.

R702: The City and County consolidate bulk fuel purchase, storage and handling.

The recommendation requires further analysis. The Board of Supervisors would request that the Sheriff continue to actively pursue consolidation with the City if it is determined that consolidation is economically feasible and beneficial for service delivery and bring any necessary recommendations to the Board.

R703: The City and County share one fixed-wing aircraft for their duties.

The recommendation requires further analysis. The Board of Supervisors would request that the Sheriff continue to actively pursue consolidation with the City if it is determined that consolidation is economically feasible and beneficial to providing the service and bring any necessary recommendations to the Board.

R704: The County equip its helicopters with fire fighting capabilities.

Although the Board of Supervisors understands the importance of fire fighting, this is not the mission or a mandate of the County. In addition, implementation of such a recommendation would require additional resources and training of County staff.

R705: The County purchase a fuel trailer.

The Board would defer to the Sheriff to provide a recommendation to the Board regarding purchasing a trailer for aviation fuel.

REPORT #8

CONTRACT PROCESS AND OVERSIGHT WITHIN THE COUNTY OF FRESNO

FILED

JUL 02 2008

FRESNO COUNTY SUPERIOR COURT

By _____ DEPUTY

**2007-2008
FRESNO COUNTY GRAND JURY**



FINAL REPORT

#8

CONTRACT PROCESS AND OVERSIGHT WITHIN THE COUNTY OF FRESNO

INTRODUCTION

Fresno County faces a severe budget shortfall for 2008-2009. Given the economic climate, the 2007-2008 Grand Jury believed it would be advisable to look into the general efficiencies in county government. Additionally, previous investigations of other entities indicated potential problems in the process of awarding contracts and in the oversight of these contracts. The Grand Jury thus pursued a general investigation into the County of Fresno process of awarding contracts for goods and services and the oversight of the millions of dollars spent annually on contracts.

BACKGROUND

The Grand Jury began its investigation by examining how contracts were awarded through the Fresno County Purchasing Department. To investigate the oversight of contract monies, the Grand Jury examined the operations of the County Auditor-Controller/Treasurer-Tax Collector (hereafter referred to as the Auditor). Personnel from the County Administrative Office were also interviewed because they have both purchasing and regulatory authority. Finally, the Grand Jury selected two county departments (Sheriff and Elections) as a sample to examine the contract process and oversight at the departmental level. It is to be understood that the departments selected were not intended to be representative but were selected for convenience due to Grand Jury time constraints.

The Purchasing Process within the County of Fresno

The Board of Supervisors is the vested contracting agent for the County of Fresno. It delegates most of its day-to-day authority to the County Administrative Officer (referred to hereafter as the CAO), who in turn delegates most of his authority to the Director of General Services, who employs purchasing agents. The County of Fresno has an extensive set of written guidelines and procedures contained in the Fresno County Purchasing and Procedures Manual (hereafter referred to as the Purchasing Manual). It is maintained and updated as needed by the CAO. The manual provides guidelines to assure those seeking County contracts a fair, competitive and professionally handled process free of politics. In addition, these procedures assure receiving the best price, goods, and services for the public's money.

Most contracts are awarded through a Request for Quotations (RFQ) for purchases of a specific identifiable product or service, such as a desk or paper. RFQs are awarded solely on price. Requests for Proposals (RFP) are for a specific need such as jail meals that have requirements that can be satisfied in more than one manner. RFPs are awarded based on price, service and judgment as to whether the company can perform. If all bids are essentially equal, preference is given to local vendors.

Departments initiate the contract process by providing the Purchasing Department within General Services (hereafter referred to as Purchasing) with specifications for their contract needs. Purchasing combines specific departmental specifications with their standard legal contract terms and then issues the RFP/RFQ to businesses or individual service providers. After the bids are received, an evaluation committee is convened. The committee includes stakeholder departments and mandated members (County Counsel, the Auditor-Controller, and Purchasing who is a nonvoting member).

Purchasing can sign contracts below \$100,000. Contracts for larger amounts need Board of Supervisor approval.

The County of Fresno is in the process of limiting sole source agreements (agreements with a single vendor without a competitive bid process) and Evergreen Contracts (contracts with unspecified or unending renewals). Sole source agreements are appropriate if there is no other vendor who can supply a certain product or service. Testimony indicated that sole source and Evergreen Contracts, when not absolutely necessary, cost the citizens more money and/or reduce revenues to the County. In addition, sole source agreements may be more susceptible to conflict of interest problems.

The CAO and General Services, with input from the departments, are continually revising and updating the Purchasing Manual. A large-scale revision was completed in March 2006 after a consultant's report in September 2005 uncovered purchasing and oversight problems within the Sheriff's Department. The CAO has the responsibility of promoting best practice and stewardship of the public's money.

The CAO handles any serious contract problems directly. The CAO is also the regulatory agent if a department tries to circumvent the open and public purchasing process or the process of evaluating sealed bids.

Grand Jury Concerns Regarding Purchasing

Of the estimated \$1.7 billion County budget, approximately \$80-90 million goes through Purchasing. The department has 10 staff members (3 clerical and 7 buyers). All current employees have been in their jobs for at least 10 years, and it is estimated that about one half will retire within 2-5 years. Currently, Purchasing is working with fewer staff members than a few years ago. According to testimony, the department is understaffed; but the length of service and experience of the existing personnel allows them to keep up with most of the workload. Nevertheless, less critical contracts are now sometimes being automatically renewed or given less scrutiny. Limited personnel now result in some purchasing processes taking longer. There have been complaints from department heads regarding this.

Purchasing routinely notifies the departments when a contract is about to expire. Occasionally, however, departments let the time frames get too short to award a contract. Under these time constraints, General Services can complete the contracting process while still making it competitive and fair without an RFP. It is more work for General Services, requiring emergency

justification and management intervention. Department Heads need to be more aware of when contracts are expiring so the contract process can be completed in a timely fashion.

The Grand Jury sought clarification of what constitutes an emergency necessitating bypassing normal purchasing processes. The Purchasing Manual clearly states in several places that unless the emergency is reported to and ratified by either the Purchasing Manager or Board of Supervisors the cost will be illegal and may be the responsibility of the individual. It also states “lack of planning, failure to meet administrative deadlines or other requirements NEVER constitutes an emergency” (Fresno County Purchasing & Contract Procedures Manual, March 2006, Pages 4-9, 4-10).

Testimony also indicated that some department heads need to be more familiar with the Purchasing Manual and other County policies and procedures manuals as well as their own department’s bargaining agreements.

Some testimony reflected concern about occasional inappropriate involvement of some members of the Board of Supervisors in the process of bidding and awarding contracts. When a county official questioned these Supervisors about their involvement, they withdrew from the process. The Grand Jury remains concerned about the possible future intrusion of Supervisors in the process of awarding contracts and monitoring the performance of contracts.

Use of Purchasing by Two Departments

The Purchasing Manual was revised in 2006 following an investigation into purchasing practices in the Sheriff’s Office. Under a new Sheriff, the Sheriff’s Department now appears to be using Purchasing for contracts and appropriate disposal of surplus property.

The Grand Jury reviewed the Sheriff’s contracts pertaining to the Inmate Welfare Trust Fund (IWF). IWF requires two contracts, one for secure telephone services for inmates and the other for commissary services for inmates. The companies providing services generate revenue by charging inmates for telephone use or commissary items and then pay a portion of their revenue (per their contract) back to the Sheriff into this special trust fund. The IWF monies are to be used for special vocational or treatment programs, library and research books, and other goods and services to benefit the inmates while they are housed in the jail. Funds are also used to repair intentional damage and to pay IWF staff salaries. Sheriff’s personnel must justify that the expenditures benefit the inmates. The Sheriff’s personnel assigned to the IWF use the normal purchasing process when the contracts are up for renewal and have not reported any problems with the process.

The Fresno County Registrar of Voters (hereafter referred to as Elections) does not use Purchasing in all cases. Under state law, the Elections Department has been granted an exemption from using County purchasing services. For example, Section 13001 of the California Elections Code states in part, “All payments shall be made in the same manner as other county or city expenditures are made. The elections official, in providing the materials required by this division, need not utilize the services of the county or city purchasing agent.” Each individual

who testified about the exemption interpreted its purpose, use, and scope differently. This has caused friction between Purchasing and the Elections Office.

Purchasing's objection to Election's bypass of the normal process was that sole source agreements were often used without documentation of need. The Department also indicated that many purchases cost more than if professional buyers had negotiated them. In one instance, Elections submitted a \$5,000 freight charge from San Francisco that Purchasing negotiated down to \$1,000. Purchasing believes their buyers would do a better job of maximizing the benefit from the public's money.

Monitoring and Oversight of County Contracts

Monies spent must be accounted for to make sure they are being properly used. This is part of the checks and balances within the county. In the County of Fresno, the primary level of monitoring and oversight is within the department using the contracted goods or services. The Auditor is required to provide a higher level of oversight. The highest level of oversight on contracts and all expenditures is the CAO on behalf of the Board of Supervisors. Since there are levels of authority on purchases, there also need to be tiered levels of oversight to determine that monies are being used properly and effectively.

Monitoring of Contracts by the Department User

Each department contracting for outside goods or services is responsible for oversight. For example, the Sheriff's personnel assigned to the IWF monitor the two contracts that fund it. Contracting firms are required to submit monthly reports of activity, and contract activities are monitored by various reports and by investigating complaints about the services. Testimony indicated that this level of monitoring was usually adequate to insure vendor compliance. Testimony further indicated that there were procedures to end contracts with non-compliant vendors.

However, there is no practical way for Sheriff's personnel to monitor whether the information given by the firms and contained in the reports is accurate. Another higher level of monitoring is needed, which is supposed to be the Auditor. In the case of the IWF, audits are mandated; and in fact, there is an IWF audit committee consisting of the Auditor, County Counsel, General Services, and two members of the Board of Supervisors. In this case there is additional oversight. Nevertheless, the Grand Jury remains concerned about periodic external auditing of County contract expenditures from the Auditor and CAO. There do not appear to be adequate resources for auditing in other cases.

The Auditing of Contracts

The Auditor is the elected official responsible for County collection and disbursement of revenues, general accounting and financial services (including investing a \$2.6 billion portfolio), and oversight of County spending through the auditing function. As of March 2008, the entire office had a total of 121 positions with 15 positions vacant and not scheduled to be filled.

The auditing function is a very small part of the overall office. There are only eight positions to conduct audits, but there are two vacancies and no schedule to fill the positions. The six auditors can only complete an estimated 18 audits per year. There are some mandated audits that must be completed. For example, special funds used in child abduction cases are mandated to be audited. There are many unfunded mandates, which the County still has to audit. Therefore, much of the six auditors' time is mandated.

The Auditor's Office should have a schedule of contracts, departments and other entities to be audited annually. With so few auditors, the time between audits has gotten longer. Testimony indicated best practice requires department audits to be done on a regular basis with each department audited every three years. However, the last department audited was Public Works, which was completed three years ago. The Auditor stated that audits of contract providers could no longer be done because of staff shortages. In addition, practically speaking, audits are now performed only on a risk assessment basis, that is, from complaints, length of time since last audit, the presence of other audits, findings from previous audits, and problems that could increase the risk of lawsuits.

The CAO's Office

The CAO also has responsibility for another level of oversight within the County. This office is responsible for assuring the Board of Supervisors that information contained in budget items is correct, including contracts.

In the past, the CAO also has provided oversight through operational audits. An operational audit provides information about an individual department's organization or structure, salaries, chain of command, mission and priorities, and staff allocations to mandated and non-mandated functions. Operational audits provide information for decision making about salary levels, management structure, and where cuts can be made without harming a department's fundamental mission. Testimony indicated that present staffing levels in the CAO's Office are too low to perform operational audits.

CONCLUSION

The County of Fresno Purchasing Manual provides a procedure for awarding contracts through a consistent, fair, and competitive process. County departments in charge of the process appear to be conscientious in the discharge of their duties although they are limited by staff shortages.

In the case of the Registrar of Voters, the election code provides exemptions from the County's competitive bid process for some purchases, which creates tension between Elections and Purchasing. It also appears to sometimes result in unnecessary costs to the County.

Critical procurement and oversight departments have had unfilled vacancies during the County's recent years of budget problems. This has resulted in the CAO's Office, the Auditor's Office, and Purchasing being understaffed to the point of not being able to adequately fulfill their vital roles. These three departments serve the entire County of Fresno. Increasing the staff in the CAO's Office as well as in the Auditor's Office and in Purchasing may result in overall cost

savings, better services to the public, increased efficiencies, better decision making on budget issues, and more transparent operations in the County of Fresno. The ability to monitor all County expenditures is critical to maximizing the use of public monies. Testimony to the Grand Jury clearly indicated that these administrative departments understood that with current budgetary constraints the County is unable to provide additional staff.

However, the Grand Jury believes that long-term County budget problems could increase without properly funding those departments crucial to the proper expenditure and oversight of monies. The County of Fresno currently allocates approximately 80% or more of its discretionary fund to safety departments -- District Attorney, Public Defender, Sheriff, and Probation. The Grand Jury believes proper funding levels to the CAO's Office, the Auditor and Purchasing would provide more and better public service delivery, including better use of monies for safety departments.

FINDINGS

- F801 The Fresno County Board of Supervisors has not been filling crucial positions within the Purchasing Department that are needed to insure fair competitive bid process.
- F802 The Fresno County Board of Supervisors has not been filling crucial positions within the Auditor's Office that are needed to insure proper collection and expenditure of public money and provide necessary insight.
- F803 The Auditor is unable to use the best practice of conducting departmental financial audits every three years.
- F804 Contract and provider audits cannot be done regularly.
- F805 Approximately one-half of the current Purchasing staff will be retiring within the next three years leaving an experience and knowledge gap.
- F806 Some department heads are complaining about the length of time it takes to procure goods and services through Purchasing.
- F807 The Fresno County Purchasing Manual contains procedures to insure fair, cost effective contracting.
- F808 Some department heads and staff are not well versed on all County policy and procedures including the Fresno County Purchasing and Procedures Manual.
- F809 Departments provide primary oversight of their contracts.
- F810 The California Election Code allows the Election Department to bypass some County purchasing procedures.

- F811 Ambiguity in the California Election Code causes friction between Purchasing and Elections.
- F812 In a few instances, a Fresno County Supervisor and/or staff member has been involved in evaluating bids or in other ways inserting themselves into the purchasing process.
- F813 The Fresno County Board of Supervisors has not been filling positions within the CAO's Office that are needed to provide oversight.
- F814 Operational audits enable the CAO to make recommendations for best practice and efficiencies.

RECOMMENDATIONS

- R801 The Fresno County Board of Supervisors adequately staff the Purchasing Department to insure a fair, competitive contracting process. (F801)
- R802 The Fresno County Board of Supervisors adequately staff the Auditor-Controller/Treasurer-Tax Collector's Office to insure adequate oversight. (F802)
- R803 Audits occur on a consistent periodic basis. (F803, F804)
- R804 General Services provide training in its policies and procedures to new department heads and departmental staff involved in purchasing. (F808)
- R805 The Registrar of Voters fully utilize the existing County resources to ensure that purchases are made as economically as possible. (F810, F811)
- R806 The Board of Supervisors adequately staff the CAO's office to insure oversight of expenditures of public monies. (F813)
- R807 The CAO resume operational audits of departments on a regular basis. (F814)

REQUEST FOR RESPONSES

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

RESPONDENTS

Fresno County Board of Supervisors, R801, R802, R806, F801, F802, F813
 County Administrative Officer, R806, R807, F813, F814
 Director of General Services, R804, F808
 Fresno County Clerk/Registrar of Voters, R805, F810, F811
 Auditor-Controller/Treasurer-Tax Collector R802, R803, F802, F803, F804

SOURCES AND REFERENCES

Interviews:

- County Administrative Officer personnel
- Auditor-Controller/Treasurer-Tax Collector's Office personnel
- Purchasing Department personnel
- General Services Department personnel
- Sheriff's Department personnel
- Fresno County Clerk/Registrar of Voters personnel

The Fresno Bee

Fresno County Purchasing & Contract Procedures Manual

Report on Purchasing Operations and Procedures of the County of Fresno, California,
International Consulting and Contracting, Donald L. Woods, J.D., C.P.M., September 20, 2005.

Federal and State Elections Codes

Budget documents

E-mails

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RESPONSES

A. Fresno County Board of Supervisors
R801, R802 and R806

B. County Administrative Officer
R806 through R807

C. Director of General Services
R804

D. Fresno County Clerk / Registrar of Voters
R805

E. Auditor-Controller / Treasurer-Tax Collector
R802 through R803



County of Fresno

CHAIRMAN
BOARD OF SUPERVISORS
SUPERVISOR HENRY PEREA – DISTRICT THREE

September 23, 2008

The Honorable Hilary Chittick
Presiding Judge, Superior Court
1100 Van Ness Avenue, Department 20
Fresno, CA 93721

RE: RESPONSE TO THE 2007-08 GRAND JURY FINAL REPORTS #7 and #8

Dear Judge Chittick:

The Board of Supervisors has approved its official responses to the recommendations pertaining to Fresno County contained in the 2007-08 Grand Jury Final Reports #7 and #8. The responses are submitted herewith in fulfillment of Penal Code Section 933(c). Also, please find all other required County department responses enclosed in this packet as well.

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

Sincerely,

Henry Perea, Chairman
Board of Supervisors

Enclosure

County of Fresno
Board of Supervisors
RESPONSE TO THE
2007-08
FRESNO COUNTY GRAND JURY
FINAL REPORT #8



CONTRACT PROCESS AND OVERSIGHT WITHIN THE COUNTY OF FRESNO

Please find below the Fresno County Board of Supervisor's response to the 2007-08 Grand Jury Final Report #8.

Findings

F801: The Fresno County Board of Supervisors has not been filling crucial positions within the Purchasing Department that are needed to insure fair competitive bid process.

The Board of Supervisors agree that due to fiscal constraints, positions have been cut or held vacant within the Purchasing Division; however, the General Services Department makes every effort to prioritize and allocate staff to maintain integrity in the competitive bid process.

F802: The Fresno County Board of Supervisors has not been filling crucial positions within the Auditor's Office that are needed to insure proper collection and expenditure of public money and prove necessary insight.

The Board of Supervisors agree that due to fiscal constraints, positions have been cut or held vacant within the Auditor's Office; however, the Auditor makes every effort to prioritize and allocate staff to insure proper collection and expenditure of public money and prove necessary insight.

F813: The Fresno County Board of Supervisors has not been filling positions within the CAO's Office that are needed to provide oversight.

The Board of Supervisors agree that due to fiscal constraints, positions have been cut or held vacant within the CAO's Office which impacts the office's ability to provide proper operational oversight; however, the CAO makes every effort to prioritize and allocate staff to the most critical areas after responding to mandated activities.

Recommendations

R801: The Fresno County Board of Supervisors adequately staff the Purchasing Department to insure a fair, competitive contracting process.

The recommendation has been implemented as Board of Supervisors prioritizes limited discretionary revenues while insuring that the Purchasing Division is staffed to maintain integrity in the competitive contracting process. If the fiscal situation improves, the Board will consider funding requests for additional staffing for the Purchasing Division.

R802: The Fresno County Board of Supervisors adequately staff the Auditor-Controller/Treasurer-Tax Collector's Office to insure adequate oversight.

The recommendation has been implemented as Board of Supervisors prioritizes limited discretionary revenues while insuring that the Auditor's Office is staffed to provide adequate oversight. If the fiscal situation improves, the Board will consider funding requests for additional staffing for the Auditor-Controller/Treasurer-Tax Collector's Office.

R806: The Board of Supervisors adequately staff the CAO's Office to insure oversight of expenditures of public monies.

The recommendation has been implemented as Board of Supervisors prioritizes limited discretionary revenues while insuring that the CAO's Office is staffed to complete the most critical tasks and functions. If the fiscal situation improves, the Board will consider funding requests for additional staffing for the CAO's Office.



County of Fresno

ADMINISTRATIVE OFFICE
BART BOHN
COUNTY ADMINISTRATIVE OFFICER

September 10, 2008

The Honorable Hilary Chittick
Presiding Judge, Superior Court
1100 Van Ness Avenue, Department 20
Fresno, CA 93721

RE: RESPONSE TO THE 2007-08 GRAND JURY FINAL REPORT #8

Dear Judge Chittick:

The following is the County Administrative Officer's response to the Findings and Recommendations of the 2007-08 Fresno County Grand Jury Final Report #8.

Findings

F813: The Fresno County Board of Supervisors has not been filling positions within the CAO's Office that are needed to provide oversight.

The County Administrative Officer agrees that due to fiscal constraints, positions have been cut or held vacant within the CAO's Office which impacts the office's ability to provide proper operational oversight; however, the office makes every effort to prioritize and allocate staff to the most critical areas after responding to mandated activities.

F814: Operational audits enable the CAO to make recommendations for best practice and efficiencies.

The County Administrative Officer agrees with the finding.

Recommendations

R806: The Board of Supervisors adequately staff the CAO's Office to insure oversight of expenditures of public monies.

The County Administrative Officer will continue to prioritize to ensure the most critical tasks and functions are completed with limited staffing.

R807: The CAO resume operational audits of departments on a regular basis.

The CAO concurs that operational audits enable the CAO to make recommendations for best practices and efficiencies. Therefore, as funding and resources become available operational audits will resume as necessary.

Sincerely,

John Navarrette
Interim County Administrative Officer

cc: Board of Supervisors

Hall of Records / 2281 Tulare Street, Room 304 / Fresno, California 93721 / Phone (559) 488-1710 / Fax (559) 488-1830

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County of Fresno

DEPARTMENT OF GENERAL SERVICES
JOHN A. NAVARRETTE, DIRECTOR

August 18, 2008

Administration
2220 Tulare Street
Suite 1600
Fresno, CA 93721
(559) 488-1721
Fax: 488-1988

Facility Services & Purchasing

Facility Services
4590 E. Kings Canyon
Fresno, CA 93702
(559) 456-7242
Fax: 488-7848

Purchasing
4525 E. Hamilton
Fresno, CA 93702
(559) 456-7110
Fax: 456-7831

Fleet Services
4551 E. Hamilton
Fresno, CA 93702
(559) 456-7530
Fax: 456-7483

Graphic Communication
844 Van Ness
Fresno, CA 93721
(559) 493-3121
Fax: 443-1536

Security
2220 Tulare Street
Suite 1600
Fresno, CA 93721
(559) 488-6785
Fax: 488-1988

Honorable Hilary Chittick
Presiding Judge
Fresno County Superior Court
1100 Van Ness Avenue
Fresno, CA 93721

Honorable Judge Chittick:

The following constitutes the County of Fresno, Department of General Services' response to Fresno County 2007-08 Grand Jury Report #8, specifically to Finding F808 and Recommendation R804 assigned to the Director of General Services.

F808: Some department heads and staff are not well versed on all County policy and procedures including the Fresno County Purchasing and Procedures Manual.

The department agrees with the findings.

R804: General Services provide training in its policies and procedures to new department heads and departmental staff involved in purchasing.

The recommendation has not yet been implemented in full, but will be implemented in the future.

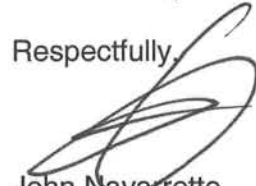
As in the past, the Department of General Services Purchasing Division continues to provide training to departments regarding purchasing policies and procedures. Training is provided regarding general purchasing processes and procedures, specific areas of interest, as well as when new processes/procedures are implemented. Training videos are also available on-line through the Purchasing Division's website. Training is scheduled by the Purchasing Division or may be at the request of individual departments as determined by each department head.

Honorable Hilary Chittick
August 18, 2008
Page 2

Beginning in 2009, the Department of General Services Purchasing Division will offer training sessions for new department heads and departmental staff involved in purchasing. The training will include general purchasing policies and procedures and will be offered semi-annually. Individual department training will continue to be done as requested.

If you have questions regarding this matter or require additional information, please contact me at 488-1721.

Respectfully,



John Navarrette
Director of General Services

cc: Board of Supervisors
John Tinker, Foreman, 2007-08 Fresno County Grand Jury
Bart Bohn, County Administrative Officer
Jeannie Figueroa, Principal Administrative Analyst
Anita Powell, Senior Administrative Analyst
Victor Salazar, County Clerk/Registrar of Voters



County of Fresno
COUNTY CLERK / REGISTRAR OF VOTERS
VICTOR E. SALAZAR

August 28, 2008

The Honorable Hilary Chittick
Presiding Judge, Superior Court
1100 Van Ness Avenue
Fresno, CA 93721

Dear Judge Chittick:

The following constitutes the response of the County Clerk/Registrar of Voters to the Findings and Recommendations of the Fresno County Grand Jury Final Report #8 2007-2008.

FINDINGS

The Department concurs with Findings #F810 and #F811.

RECOMMENDATION

R805: The Department generally concurs with the Grand Jury recommendations. An exception is taken to the use of the standard County purchasing process for purchases of necessary election supplies where the process is too lengthy to meet timeframes required to meet election deadlines. In those instances, the application of the California Election Code would be appropriate.

Sincerely,

Victor E. Salazar
COUNTY CLERK/REGISTRAR OF VOTERS

CC: County Administrative Office
Board of Supervisors
Grand Jury
General Services



County of Fresno

Vicki Crow, C.P.A.

Auditor-Controller/Treasurer-Tax Collector

July 31, 2008

The Honorable Hilary Chittick
Presiding Judge
California Superior Court, Fresno County
1100 Van Ness Ave., Dept. 70
Fresno, CA 93721

RE: Response to the 2007-2008 Grand Jury Final Report No. 8

Dear Judge Chittick:

The Auditor-Controller/Treasure-Tax Collector (ACTTC) is referenced in Findings F802, F803 and F804, and in the corresponding Recommendations R802 and R803. The following is the Auditor-Controller/Treasurer-Tax Collector's official response to the findings and recommendations of the Grand Jury.

Finding F802

We agree that crucial auditor positions within the ACTTC office remain unfilled. The department lost funding for two auditor positions two years ago due to budget reductions. Last year, positions that became vacant were held open to help meet the Board of Supervisor's (BOS) imposed salary saving targets. Four months ago, we began a recruitment to fill the two vacant auditor positions the report notes and two other positions, vacant due to transfers that were completed in June. Subsequent to initiating this process, hiring controls were put in place requiring the County Administrative Officer's approval to recruit and fill positions. Although, we received approval to move ahead with our recruitment, the BOS implemented a hiring freeze shortly after, preventing our department from interviewing candidates.

Recommendation R802

We strongly support the Grand Jury's recommendation. As of July 22nd, the BOS waived the hiring freeze for our department allowing us to continue the recruiting of our vacant auditor positions. We will fill these positions as quickly as possible.

Findings F803 and F804

We agree that we are currently unable to conduct departmental audits as frequently as desired. As the report notes, this is due to limited funding for the auditor positions necessary to conduct these audits. We also agree that we are unable to perform regular contract and provider audits due to the same limitation. Audits provide important fiscal oversight and are essential for good business management. This is especially true during tight economic years.

Recommendation R803

We concur that audits should occur on a consistent periodic basis. Ideally, we would benefit from a larger audit unit. However, given the limitations of our budget, we are currently addressing this issue by redefining our audit approach to ensure maximum audit coverage with the staff we have. Our auditors are beginning the project of assessing the risk of all internal control systems and financial processes, across the county, by department. We will make this risk determination based on factors such as environment (regulation, changes in management or organizational structure, workload issues, etc.) the number and volume of financial transactions, history of previous audit findings (including Grand Jury reports), the inherent risk of accounts or transactions and audit coverage by external auditors. We will then audit the processes and internal control systems that are determined to be the highest risk first and afterward, these will continue to be audited most frequently. Other systems with a lower risk rating will be reviewed on a less frequent rotation. This approach will allow us to visit multiple departments each year to review and report on their critical control systems. The purchasing and contracting functions are examples of processes that will be rated during the county-wide risk assessment. Due to the volume and nature of these transactions, it is likely that in some departments, these processes will be rated as relatively high-risk areas and will be audited accordingly. While we are shifting resources to audit certain functions of all departments with a high frequency, we will continue to perform some full financial statement audits, where we will audit all financial functions, for certain funds and, periodically, for individual departments as well. Additionally, the unit will continue to meet its obligations to perform mandated and contracted audit and other engagements.

Clarification

We would like to clarify a statement made on page four of the report under the section: *Monitoring and Oversight of County Contracts*. The report states there is an Inmate Welfare Trust Fund (IWTF) audit committee consisting of the Auditor, County Counsel, the Director of General Services, and two members of the BOS. The committee referred to is actually the County of Fresno's Audit Committee. This committee is not specific to the IWTF. The committee reviews all audits conducted by the ACTTC's internal audit unit, as well as the annual audit of the County's Comprehensive Annual Financial Report conducted by its' external auditor.

Sincerely,



Vicki Crow, C.P.A.
Auditor-Controller/Treasurer-Tax Collector

VC/fsl

cc: Bart Bohn, County Administrative Officer
Board of Supervisors

REPORT #9

DEL REY COMMUNITY SERVICES DISTRICT

FILED

JUL 02 2008

FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

**2007-2008
FRESNO COUNTY GRAND JURY**



**FINAL REPORT
#9**

Del Rey Community Services District

A complaint from a citizen regarding the Del Rey Community Services District showed concerns with the district's management and accounting. These complaints involved: (1) Challenging the inappropriate expenditure of funds received in 1995 from a settlement with Shell Oil Company for polluting Del Rey's water wells; (2) Operating the district at a loss for a number of years; (3) Violating the law by not maintaining required levels of net income as required by Sewer Bond Covenants; and (4) Failure to produce an operating budget for a number of recent years. The Grand Jury agrees that there are governance problems to be addressed. The Del Rey Community Services District's auditor has repeatedly referred to these failures. The Board has taken little action to correct them.

Recently, the Grand Jury published reports on the Malaga County Water District and the Lanare Community Service District showing common problems. In the public interest, it is our intent in this report to deal with the Del Rey Community Service District (Del Rey) and encourage improvements to the oversight of all of Fresno County's special service districts.

BACKGROUND

Special Districts

Special districts are set up in accordance with community service district law (Ca Gov Code § 61000 et seq.) to deliver public services particularly in water, sewage collection and treatment, street lighting, hospitals, and public parks and recreation. Territorial boundaries are set by the county Local Area Formation Commission (LAFCO); and, after they are formed, all special districts are under the direction of their own locally elected boards of directors who are responsible to their local electorates.

All special districts are required to hire a public accountant to prepare an annual audit which must be submitted to the County Auditor together with a self evaluation by management called a Management Discussion and Analysis (MDA). The accountant also presents the audit to the Board of Directors together with his "Board Letter" analyzing the financial and management status of the district and offering possible corrective action.

Del Rey

The Del Rey Community Services District was established in 1963. The District was formed to provide water, sewer, solid waste, street lighting, storm drainage, and recreation services to residents of the district. These services are provided on a continuing basis to an area containing about 1,200 residents located south of Sanger. The District employs two full-time employees -- a plant manager and a general manager.

DISCUSSION

In order to evaluate the complaint made about Del Rey, the Grand Jury interviewed the complainant, the General Manager of the District, members of the Board of Directors, the Director of the Fresno County Public Works Department, and the County Auditor. The District Auditor's letters to the board, LAFCO's reports, the Shell Oil Company "Settlement Agreements and Release of All Claims," and Del Rey's audit reports were also obtained and reviewed.

Complaints

The first complaint made to the Grand Jury was that funds received in the Shell Oil Company settlement by Del Rey have been improperly expended. The Grand Jury received copies of the 1995 settlement documents from San Francisco Superior Court Action No. 956170. The main settlement, which involved Shell Oil and other chemical companies, stated that Del Rey was to receive \$580,000.00 as compensation for "past, present, continuing or future presence of DBCP and/or EDB" in three of Del Rey's drinking water wells. Two smaller settlements from other defendants in this case awarded Del Rey \$70,800.00 and \$416.16 respectively. While we have been unable to fully substantiate the complainant's allegations because records needed to identify how the funds were spent are non-existent, audit reports indicate that these funds were commingled; and the District's auditor explicitly warned Del Rey's Directors that they were improperly expending restricted settlement money to cover current operating costs. In several Board Letters, the auditor noted a deficiency so serious that he recommended the Board members seek legal counsel.

With regard to the second complaint, that Del Rey has operated at a loss, the Grand Jury found grounds to support that allegation. The Board's records showed that the District had been operated at a loss for 13 of the last 14 years. The losses have ranged from a low of \$39,000 to a high of \$391,000. The District's auditor reported to Del Rey an operating loss of \$154,269 in a Board Letter dated January 31, 2008. He noted, "Losses of this magnitude are unsustainable." Recently, the Board inaugurated a three-step fee increase to address this problem.

The third complaint is that the District has violated the law by not maintaining levels of net income required by the Sewer Bond Covenant. The Grand Jury finds grounds to support that allegation. Del Rey documents show, "Under the provision of 1996-1 Sewer Revenue Bond Ordinance, the Board of Directors agreed to set aside sewer revenue equal to 1.2 times the combined aggregate amount of principal and interest requirement that shall become due and payable within the next succeeding twelve months." The Board's auditor has warned the Board on more than one occasion that it is in violation of the covenant by not maintaining their required reserves.

With regard to the fourth complaint, that the District has failed to produce an operating budget for a number of recent years, the Grand Jury believes that this allegation is supported. The Grand Jury requested these budgets from both the General Manager and

the Board. They have not been provided. Moreover, the district auditor has reported difficulty in preparing timely annual audits because of the lack of prompt financial reports.

Oversight

In 2001, the Legislature of California passed a law that requires LAFCO to study all special districts at least every five years. The Cortese-Knox-Hertzberg Local Government Reorganization Act requires all county LAFCOs to conduct Municipal Service Reviews (MSR) prior to updating Spheres of Influence Reviews (SOI). The stated purpose of the MSR is “a comprehensive assessment of the ability of government agencies to effectively and efficiently provide services to residences and users.” The SOI update is designed to determine that present boundaries delineate an area served that is the most efficient to the public. These required reviews were completed in Fresno County in July of 2007. Copies of the MSR and SOI were furnished to the Grand Jury by LAFCO.

The Grand Jury obtained the MSR describing Del Rey and found that, while it meets the minimum requirements of the Cortese-Knox-Hertzberg Act, it was inadequate as a complete description of the financial condition and management of that district. In preparing his report, the independent contractor hired by LAFCO interviewed only two people involved in the operation of the District and, perhaps as a result, the report does not reveal the grave problems mentioned by the District’s auditor. The report ignores or briefly mentions without comment several serious concerns, such as the District Auditor’s warnings about the improper expenditure of restricted funds, the violation of the Sewer Revenue Bond Covenant requirements, and the District’s failure to produce an operating budget.

Oversight of a problem district might also be achieved by merging with an adjoining district. This might also achieve economies of scale allowing the resulting larger district to hire more competent management and technical services. In addition, there could be savings in required legal and accounting services spread over a larger income base.

Training

Many small Fresno County special districts such as Del Rey, Lanare, and Malaga seem to suffer from the common problem of lack of adequate training of Board members and staff. The California Special District Association provides such training, but small special districts often fail to take advantage of the opportunity.

FINDINGS

F901 The District Auditor has repeatedly informed the Board of Directors of the Del Rey Community Services District of deficiencies which they have failed to adequately address.

- F902 In his letter to the Board of Directors dated January 31, 2008, the District Auditor reported an operating loss of \$154,269 noting, "Losses of this magnitude are unsustainable."
- F903 Del Rey has operated at a loss for 13 of the past 14 years.
- F904 Del Rey is in serious financial trouble due to poor management by the Board of Directors.
- F905 Del Rey has failed to prepare operating budgets for recent years.
- F906 Del Rey has failed to maintain reserves required by the Sewer Revenue Bond Covenant.
- R907 Del Rey has failed to provide timely financial reports.
- F908 Del Rey has commingled funds reserved for specific purposes.
- F909 Members of the Board of Directors and staff of Del Rey have failed to take advantage of training available from the California Special District Association.
- F910 The LAFCO MSR pertaining to Del Rey is inadequate in that it does not show the real financial condition of the District when compared to the reports of the District's own auditor.
- F911 The LAFCO SOI could evaluate evidence for the merger of special districts where appropriate.
- F912 The Grand Jury investigation of the Del Rey Community Services District, as well as the Malaga County Water District and Lanare Community Service District, show problems with the management of special service district operations.

RECOMMENDATIONS

The citizen's complaint letter represents the third special district complaint investigated during this Grand Jury's present term (2007-2008). The investigations of each of these special districts revealed serious governance deficiencies. Therefore, we make the following recommendations:

- R901 The Del Rey Community Services District stop operating at a loss. (F901-F904)
- R902 The Del Rey Community Services District prepare annual budgets. (F905)
- R903 The Del Rey Community Services District maintain reserves required by the Sewer Revenue Bond Covenant. (F906)

- R904 The Del Rey Community Services District submit timely budget and financial reports. (F905, F907)
- R905 The Del Rey Community Services District stop commingling funds and properly segregate their funds. (F908)
- R906 Del Rey Community Service District seek ongoing training available for staff and board members from the California Special District Association. (F909)
- R907 Del Rey Community Service District develop plans and programs to resolve the problems outlined by its own auditor in his numerous Board Reports. (F901-F908)
- R908 LAFCO take a more aggressive stance in recommending merger of small special districts to achieve economies of scale. (F911)
- R909 LAFCO require that all MSRs of special districts accurately reflect the financial status and management of the public's funds. (F910)

REQUEST FOR RESPONSES

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

RESPONDENTS

LAFCO: R908, R909, F910, F911.

Del Rey Community Service District Board of Directors: R901-R907, F901-F909

Cc: Fresno County Auditor
 Fresno County Board of Supervisors

RESOURCES

1. Complaint letter
2. Interviews with complainant, members of Del Rey Board of Directors and General Manager, LAFCO, Fresno County Auditor, Fresno County Director of Public Works.
3. Del Rey's auditor's "Management Letters" to the Board from 1995 to 2008
4. Del Rey's statements from 1994-2007
5. Settlement Agreement and Release dated March 14, 1995 and May 1, 1995 representing the litigation represented as the "Shell Oil Settlement," actually American Vanguard Corporation and its subsidiaries

6. County Auditor's response to the Grand Jury regarding Malaga County Water District dated April 29, 2008.
7. Ca Gov Codes 61000-61009, 56000, 26909-26910.
8. 2007-2008 Grand Jury Reports:
 - a. "Lanare Community Service District."
 - b. "Malaga County Water District."

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RESPONSES

A. LAFCO

R908 through R909

B. Del Rey Community Service District Board of
Directors

R901 through R907



Fresno Local Agency Formation Commission

August 20, 2008

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

Subject: *LAFCo's Response Fresno County Grand Jury Report – Del Rey Community Services District*

Dear Judge Chittick:

The Fresno Local Agency Formation Commission ("Fresno LAFCo") is in receipt of the Fresno County Grand Jury's Final Report No. 9 (the "Grand Jury Report") concerning the Del Rey Community Services District ("CSD"). On behalf of Fresno LAFCo, this letter constitutes the Commission's response to the Grand Jury Report pursuant to Penal Code section 933.

Fresno LAFCo has reviewed in detail the Grand Jury Report and appreciates the time taken and the detail provided by the Grand Jury regarding the Del Rey CSD. Although Fresno LAFCo adopted a Municipal Service Review ("MSR") concerning Del Rey CSD, a large number of the findings (F901-F909 and F912) and recommendations (R901-R907) contained in the Grand Jury Report are directed toward the Del Rey CSD and involve the administration of the District. Fresno LAFCo is not in the position to reply to the specific findings and recommendations that directly apply to Del Rey CSD. As more fully described below, Fresno LAFCo either fully or partially agrees with the findings and recommendations contained in the Grand Jury Report that are applicable to LAFCo.

As you know, Local Agency Formation Commissions ("LAFCO") are independent regulatory commissions created by the California Legislature to control the boundaries of cities and most special districts. Although LAFCOs are not enforcement agencies, their principal act—the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code section 56000 *et seq.*) charges LAFCOs with discouraging sprawl and encouraging orderly government. As part of this mandate, this Act requires LAFCOs to conduct MSRs prior to updating the spheres of influence for each city and most special districts within its county. The Act also required each LAFCO to complete an MSR and sphere of influence update for each city and most special districts by January 1, 2008. The MSR is designed to be a comprehensive assessment of the ability of the government agencies to effectively and efficiently provide services to residents and users.

At the time the MSR was prepared for Del Rey CSD, the Act required that each MSR contain a written statement of determinations with respect to each of the following areas:

- (1) Infrastructure needs or deficiencies;
- (2) Growth and population projections for the affected area;
- (3) Financing constraints and opportunities;
- (4) Cost avoidance opportunities;
- (5) Opportunities for rate restructuring;
- (6) Opportunities for shared facilities;
- (7) Government structure options, including advantages and disadvantages of consolidation or reorganization of service providers;
- (8) Evaluation of management efficiencies; and
- (9) Local accountability and governance.

Effective January 1, 2008, the Legislature consolidated the MSR requirements to six comprehensive categories, which effectively cover the same areas of operation and governance.

In order to comply with the Act, Fresno LAFCo had to complete MSRs and sphere of influence updates for 15 cities and approximately 123 special districts in Fresno County. As a result, Fresno LAFCo hired consultants to prepare the reports and then the Commission considered and adopted each report.

The public was provided notice of the hearings pursuant to state law and the vast majority of reports were prepared during calendar year 2007, making the preparation and adoption of the MSR an extraordinary undertaking considering Fresno LAFCo's limited resources. While most local agencies were quite cooperative, there were several special districts that ignored our repeated requests for information or provided incomplete documentation to us.

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

F901-F909, F912 and R901-R908: As mentioned, Fresno LAFCo has no formal response to these findings and recommendations because they are directed to Del Rey CSD, and otherwise involve the internal administration of Del Rey CSD. Other than the preparation of the MSR, Fresno LAFCo has not independently evaluated the validity of the findings and the appropriateness of the recommendations. Fresno LAFCo is conducting a more comprehensive analysis of Del Rey CSD and is amending the MSR for Del Rey CSD. Since the issuance of the Grand Jury Report, Fresno LAFCo staff and alternate public member, Joe Chaidez, a certified public accountant, have met with Del Rey CSD's chair, Jose Leija, to begin this process.

F910: *The LAFCo MSR pertaining to Del Rey is inadequate in that it does not show the real financial condition of the District when compared to the reports of the District's own auditor.*

LAFCo's Response: Fresno LAFCo partially agrees with this finding. The Grand Jury Report acknowledges that the MSR met the minimum requirements of the Act. We believe that Fresno LAFCo staff contacted the County of Fresno and requested comments on the MSR and there was no response to this request. LAFCo does agree, however, that the MSR did not show the current financial condition of Del Rey CSD when compared to the District's own audit. In fact, Fresno LAFCo's consultant requested this information from the Del Rey CSD but was not given the District's most recent audits. As mentioned, LAFCo is in the process of amending the MSR for the Del Rey CSD to ensure that it is comprehensive and accurately reflects the current financial condition of the District.

F911: *The LAFCo SOI could evaluate evidence for the merger of special districts where appropriate.*

LAFCo's Response: Fresno LAFCo partially agrees with this finding. Typically, Fresno LAFCo staff and its consultants work together to prepare recommendations for the Commission to consider regarding the merger of special districts. Each MSR adopted by the Commission evaluated merger possibilities in the Section entitled "Government Structure and Management Efficiencies." Fresno LAFCo received several recommendations by its consultants to merge, dissolve, or modify the boundaries of several districts and has, or is in the process of, acting upon those recommendations. However, irrespective of the conclusion the report would make, the Commission believes that the MSR for Del Rey CSD should have more fully evaluated the possibility of merging all or some of its functions with another agency.

R908: *LAFCo take a more aggressive stance in recommending merger of small special districts to achieve economies of scale.*

LAFCo's Response: This recommendation has been implemented. As mentioned, as a result of the MSR process, LAFCo considered recommendations to merge, dissolve, or modify the boundaries of several districts. The Act does not give LAFCo the unilateral authority to take such actions. Residents typically have due process rights to "protest" certain LAFCo decisions. With respect to the Del Rey CSD, Fresno LAFCo is amending the MSR and will determine whether or not merging that District is feasible and beneficial to the residents served by the District.

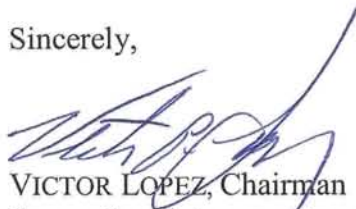
R909: *LAFCo require that all MSRs of special districts accurately reflect the financial status and management of the public's funds.*

LAFCo's Response: This recommendation will be implemented over the next five years. Fresno LAFCo is legally required to complete another round of MSR's by no later than January 1, 2013. Given the large number of cities and special districts in Fresno County, Fresno LAFCo is committed to preparing the MSRs in a staggered fashion during the next several years. This will give LAFCo the time to conduct a thorough analysis of each governmental agency. Additionally, Fresno LAFCo will contact, and make best efforts to receive, comments from the Fresno County Auditor, as well as each local agency's audits, to determine the accurate financial status and management of the city or special district being reviewed. Moreover, Fresno LAFCo will attempt to contact other interested stakeholders in the local agency's affairs, including board members and service recipients to verify the information provided by the agency's staff.

Fresno LAFCo acknowledges that this was the first time MSRs have been prepared for our cities and special districts and that they were prepared within a relatively short period of time. We believe, however, that the information and experiences gained through the preparation and consideration of these first MSRs will provide a base from which to grow from during the future.

LAFCo hopes that the Grand Jury will find the response helpful. Our agency is committed to ensuring that our reviews of cities and special districts are comprehensive and useful. If you have any questions, please do not hesitate to contact LAFCo Executive Officer Rick Ballantyne at 495-0604.

Sincerely,



VICTOR LOPEZ, Chairman
Fresno Local Agency Formation Commission

cc: John Tinker, 2007-2008 Fresno County Grand Jury Foreman
Mr. Juan Leija, Chairman, Del Rey Community Services ` District

Del Rey Community Services District

Where Raisin is King

DEL REY COMMUNITY SERVICES DISTRICT RESPONSE TO 2007-2008 FRESNO GRAND JURY FINAL REPORT #9

The Del Rey Community Services District Board of Directors respectfully submits the following responses to the 2007-2008 Grand Jury Final Report Number 9:

1. The Board of Directors thanks the Grand Jury for its efforts in investigating the complaints. The Board wants to assure the Grand Jury that the Board is aware of the problems the District has faced in the past and the challenges that the District faces in putting the District on a firm financial footing.

The Board had started to address many of the issues cited by the Grand Jury in its report prior to the receiving the Grand Juries Recommendations.

2. Addressing the first complaint The Jury is correct in stating that District records as to how the DBCP settlement moneys have been expended are deficient.

3. Corrective Action.

The District has hired a temporary worker to locate minutes of meetings and listen to tapes of the Meeting of the Board of Directors to identify Board authorization for expenditures made from the LAIF account where the money was deposited.

4. Addressing the issue that the District improperly expended restricted settlement money;

F901 The District auditor was under a misunderstanding as to the use of the money being restricted. The settlement moneys in the total amount of \$651,216.16 was received to compensate the District for wells that were contaminated by DBCP in the ground water. There were no restriction placed on the use of the settlement money. The Board of Directors chose to replace the contaminated wells by obtaining grant money to drill new wells instead of using the settlement money. The Board deposited the settlement money into the LAIF account to establish a reserve operating account which then appears to have been used to offset budget shortfalls over the years. There is still in excess of \$160,000.00 in that account. While the records of what the moneys were specifically use for are incomplete and the District is in the process of trying to retrieve those records the use of the money was not restricted to any specific purpose and could be used for any legitimate District purpose.

5. Addressing the second complaint; the District has in operated at a loss for 13 of the past 14 years.

That is accurate. The current Board passed increases in the Wastewater Treatment fees, the Solid Waste collection fees and the Street Lighting fees to provide revenues that are sufficient to pay for the expense of providing the services. The fees for these services have been inadequate to pay for the cost of providing these services for many years. In addition the District has obtained a new industrial discharge customer that will be on line in August. This will provide additional revenue to the District.

The District has hired a consultant to go through the accounting and bookkeeping procedures and to make recommendation to the District on improving its bookkeeping and accounting procedures. They have recommended acquiring a new computer system able to run better accounting software to provided much needed accountability concerning income and expense tracking. They have recommended immediate changes be made in banking practices and segregation of accounts. The District has adopted these recommendations and is making the needed changes.

F901-F904; R901 The consultants are assisting the District in the preparation of the 2008-2009 budget so that it reflects realistic income expectations and a spending plan that stays within the budget. The District will continue to prepare annual budgets and will do so in a timely manner.

Del Rey Community Services District

Where Raisin is King

6. Addressing the third complaint. The District violated the law by not maintaining levels of net income required by the Sewer Bond Covenant. F906, R903

In 2006 the Board of District adopted a new Sewer Service fee schedule for residential, industrial and commercial customers. The final increase in fees adopted in that fee schedule went into effect on July 1, 2008. With that increase the sewer services fee will be sufficient to cover the operating expenses including the reserves required to be maintained to comply with the Sewer Bond Covenant.

7. Addressing the fourth complaint that the District has failed to produce any operating budget for a number of recent years. F905, R902, R904

The District has adopted budgets for at least the last two years. However the budgets have not been based upon accurate data and therefore were of little or no use. See Districts response in paragraph 3 of item 5 above for the action taken by the Board to correct the problem.

8. Addressing Recommendation R906:

The District will take advantage of the resources of the California Special Services District Association. In addition the District is in the process of hiring a New District Manager and a New Waste Water Treatment Plant Manager to replace the two employees who left the District. The District has received application for very well qualified applicants for the District Manager possession with MBA degrees and good accounting background. The consultant that the District hired will provide training to the person who is hired. By hiring well qualified persons to fill these possessions and providing initial training and ongoing training to staff many of the prior problems can be avoided. In addition the five member Board of Directors is short one Director. A new Director will either be appointed by the existing Board Members or be elected in the November Election. District Council will provide orientation training to the Board when that possession is filled. That training will include Board Member duties and responsibilities and restriction as well as training on the Brown Act. This training will be repeated on periodic bases as changes in the law or the composition of the Board.

Respectfully Submitted;



Juan Homer Leija President