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INVESTIGATION
MERCED COUNTY PUBLIC HEALTH DEPARTMENT
DIVISION OF ENVIRONMENTAL HEALTH
FOOD SERVICES INSPECTIONS

SUMMARY

No division of the Department of Public Health (DPH) has been investigated by a Merced County Civil Grand Jury for at least five years. Inspectors are behind on their food inspections an average of 40%. Some areas of the county are only inspected if a complaint is received because there is not an assigned inspector in a district. Inspectors fill in as needed for the vacant positions. Many businesses that were not on the food inspection list were not reassigned when inspectors retired or moved to other districts. Some facilities with an unsatisfactory rating have not been re-inspected within thirty days as required by law. Clerical and office duties take the food inspectors out of the field. The inspectors are overwhelmed by the workload and morale is low. Hiring of temporary, extra help or volunteer staff should be considered.

Not all the inspectors use the county issued laptops in the field. Online training is available but is not required by the Supervising Environmental Health Specialist (SEHS). Inspectors should complete ongoing training and use the laptops in the field to avoid duplicate work.

The software system is deficient because inspection reports automatically fall off the website after two years and it doesn't interface well with the county's system. An Environmental Health Specialist III spends 50% of his/her time addressing issues of the software system. A study to determine the adequacy of the current software should be completed. The Division of Environmental Health (DEH) should re-evaluate the cost of the current software system.

The database should be checked quarterly to determine the most recent date of inspection. Hospitals, schools and facilities that have lapsed should take priority.

The 2012-2013 Merced County Civil Grand Jury visited forty facilities open for businesses that were not listed on the website. Only one had a current food inspection report.

In the course of our investigation, the Civil Grand Jury was asked by the SEHS to notify DEH of any food facilities that did not show up online.

The Civil Grand Jury was denied requests to observe a food inspection. The Director of the Public Health Department should reconsider allowing this for transparency.

INTRODUCTION/BACKGROUND

The 2012-2013 Merced County Civil Grand Jury elected to investigate the Department of Public Health's Division of Environmental Health. The investigation focused specifically on food safety and facility inspections in the county. No division of DPH has been investigated by the Civil Grand Jury for at least five years.

The primary purpose of the food program is to protect the public from foodborne illnesses and assure that food provided for human consumption is wholesome, properly labeled, advertised, and produced under conditions which are safe and sanitary.

METHODOLOGY

The 2012-2013 Merced County Civil Grand Jury interviewed the Director of Public Health, the Director of the Division of Environmental Health (DDEH), the Supervisor of the Environmental Health Services food program (SEHS), and Environmental Health Specialists (EHS). The DEH food inspections website was evaluated and site visits were conducted of facilities that were absent from the website. Subsequent follow up interviews were made with department management.

DISCUSSION

The Food Services DEH consists of one director, one SEHS, and six EHS when fully staffed. There are currently two EHS vacancies in this department.

INSPECTIONS

In the last three years, from January 1, 2010 through December 31, 2012, the Merced County DEH issued approximately 334 new and change of ownership permanent food facility health permits. There are approximately 900 fixed food facilities and 300 mobile facilities in Merced County. When a new facility opens with an initial inspection, they are entitled to an annual inspection upon payment of operating permit fees. A new facility's blueprint review costs \$600.00. DEH had a raise in food facility permit fees of 2.6% which went into effect in September 2012. Yearly permit/inspection fees vary by seating capacity and type of facility. For the year 2011-2012 the DEH collected an estimated \$621,152.32 from all food related programs, health permits, food facility inspections/re-inspections, and change of ownership inspections. The SEHS stated that revenue is dispersed into administration, food inspection, data management, clerical, and program development.

Chart - Environmental Health Food Program Fees – Effective January 5, 2013¹⁵

<u>FOOD PROGRAM</u>	<u>\$ RATE/FREQUENCY</u>
Food Facility with food preparation (i.e. restaurants, delicatessens)	
0 - 49 seats	395/year
50 - 149 seats	553/year
>150 seats	679/year
Hotel/Motel Continental Breakfast Only	230/year
Bar	425/year
Bakery	425/year
Cafeteria (School)	425/year
School Cafeteria Other-Warehouse	354/year
Commissary	425/year
Satellite Food Distribution Facility	213/year
Restricted Food Service Transient Occupancy Establishment (Bed and Breakfast)	425/year
Cottage Food Operation Class A	59/year
Cottage Food Operation Class B	236/year
Farmers Market (certified)	213/year
Produce Stand	213/year
Farm Stand	236/year
Produce Vehicle	106/year
Food Borne Illness Investigation	118/hour
Vending Machines (per machine)*	
1 - 5 at location	21/year
6 or more at one location	13/year

¹⁵ Merced County Environmental Health Website

*Excludes machines with food or beverage which are not potentially hazardous pursuant to Health & Safety Code (HSC) Section 113938.

Mobile Food Facility

Mobile food facility (Basic Cart) with packaged and/or unpackaged non-potentially hazardous or packaged frozen foods (i.e. produce, baked goods, packaged ice cream bars, packaged frozen meat)	177/year
Mobile food facility (Intermediate Cart) with packaged potentially hazardous food (i.e. hot food sales)	206/year
Mobile food facility (Advanced) with non-potentially hazardous food preparation, sales of raw fish, preparation of hot dogs or coffee-based drinks with milk as an ingredient (i.e. snow cones, fresh popped popcorn, cotton candy, churros)	236/year
Mobile food facility (Deep Fat Fryer, and/or cooked to order carts)	425/year
Single operating site mobile food facility w/non potentially hazardous food	118/year
Single operating site mobile food facility w/potentially hazardous food	177/year
Mobile support unit	213/year
Mobile food facility (Food Preparation Unit)	586/year

Food Bank/Pantry

118/year

Temporary Food Facility

Temporary food facility operating at a weekly or monthly community event less than 25 consecutive or non-consecutive days in any 90 day period	354/event
Temporary food facility - low risk single event	31/event
Temporary food facility – low risk annual fee	154/year
Temporary food facility – high risk single event	88/event
Temporary food facility – high risk annual fee	441/year

Community Event Organizer

Community food events with 2-5 temporary food facilities (1.5 hours)	177/event
Community food events with 6-15 temporary food facilities (2.5 hours)	295/event

Community food events with 16-25 temporary food facilities (3.5 hours)	413/event
Community food events with 26+ temporary food facilities (5.5 hours)	649/event
Swap Meet Prepackaged Food Stands	197/year
Swap Meet/Flea Market Organizer Fee	
2-5 facilities	173/year
6-15 facilities	288/year
16-25 facilities	403/year
26+ facilities	633/year
Retail Market (grocery store)	
<500 sq. ft. (Pre-packaged, non-hazardous food)	30/year
<2,000 sq. ft.	318/year
2,001 - 6,000 sq. ft.	425/year
6,001 - 15,000 sq. ft.	638/year
15,001-30,000 sq. ft.	893/year
>30,001 sq. ft.	1,049/year
Licensed Health Care Facility 16-99 beds	425/year
Licensed Health Care Facility 100-199 beds	638/year
Licensed Health Care Facility 200+ beds	851/year
Plan Checks	
Prepackaged food only, that is non-potentially hazardous food (2.5 hour minimum, each additional hour at hourly rate)	295/each
Unpackaged food, food preparation also prepackaged potentially hazardous food (7 hour minimum, each additional hour at hourly rate)	826/each
Hazard Analysis Critical Control Point (HACCP) Plan Review (3.5 hour minimum, each additional hour at the hourly rate)	413/each
Re-inspection Fee	118/hour

Multiple Food Establishment Fees

Fees shall be set on any premises with multiple food establishments operating under the same business name/ownership, and shall pay the following fees: 100% of annual fee for the type of establishment with the highest prescribed fee, and 70% of each remaining fee. Mobile food facilities and retail food vehicles shall not be included as multiples and shall pay the standard fees.

At the inspection sites, inspectors are not required to wear gloves or hairnets. Inspectors would wear them if requested by the facility or if the State required it.

Food facility inspections are given a point system rating of "good", "satisfactory", and "unsatisfactory" upon completion of the inspection.

- GOOD
 1. No major violations or zero to three minor violations
- SATISFACTORY
 1. One major violation that is corrected during the inspection, and zero to three minor violations: or
 2. Four to six minor violations
- UNSATISFACTORY
 1. One or more major violations not corrected during the inspection, or
 2. One major violation which is corrected during the inspection and four or more minor violations, or
 3. Two or more major violations which were corrected during the inspection, or
 4. Seven or more minor violations.

An example of a minor violation would be dirty floors, no paper towels or sanitizing rinses. An example of a major violation would be inadequate hot water or refrigeration temperatures. Any major violation(s) not corrected during the inspection will result in immediate facility closure. Food facilities rated "unsatisfactory" are required to be re-inspected within thirty days. These re-inspections are billed at \$118.00 an hour.

The inspectors spend an average of 30% of their time on food inspections. Inspectors stated that they were behind on their inspections by an average of 40%. As of July 1, 2012 DEH was down one food inspector and as of January 8, 2013 they were down two inspectors. Firebaugh, Los Banos, Volta and part of Santa Nella currently have no permanently assigned inspector. When there is no permanently assigned food inspector in a district, the remaining inspectors cover the area only when a complaint is received. Some districts have been rotated twice in the last five years, while other districts have been assigned to an inspector for more than five years. Inspectors stated that they are overwhelmed by the workload and morale is low.

Schools are required to have only one inspection per year. The inspection falls somewhere during the school year. If a school receives an unsatisfactory report parents are not notified by DEH. Facility rating information can be found through the county website at www.co.merced.ca.us/environmentalhealth. Convalescent homes that don't fall under the Department of Social Services Community Care Licensing are inspected by county food inspectors. Clubs and lodge kitchens that only serve their members and guests are not required to have inspections. Hospitals are not given any priority for inspections.

The 2012-2013 Merced County Civil Grand Jury was denied a request by the Director of Public Health to personally observe a food inspector conducting a food facility inspection. The reason given was that it could pose a liability for the County and it might make the business owner uneasy. Through research, the Civil Grand Jury discovered that the 2010-2011 San Luis Obispo County Civil Grand Jury¹⁶ had observed three restaurant inspections in their county with no negative impact on the county or the restaurants they had observed. The purpose for their observing the food inspections was to determine whether the county's restaurant inspection process effectively protects the public. This was the same purpose for the Merced County Civil Grand Jury's request.

RESPONSIBILITIES

Each inspector is assigned a list of food facilities to inspect. It is the responsibility of each inspector to visit every facility assigned to them once a year. Each inspector may have from 134 to 200 food facilities assigned. Inspectors' schedules are checked by the SEHS as needed depending on their job performance. Even though the SEHS does an occasional spot check of inspectors during the year, this is inadequate when inspectors are behind an average of 40% of their inspections. EHS general duties include but are not limited to the following programs: food inspections, public swimming pools, substandard housing, smoking cessation programs, reviewing building permits, dairy complaints, water regulations, hazardous materials, well inspections and abandoned vehicles. Their additional miscellaneous duties include preparing and mailing invoices for annual health permits. EHS are required to take time from their regular schedule to help out the DPH with duties such as directing traffic when the County has shot clinics. An added duty of one of the EHS is being responsible for the DEH database management protocols and upkeep on the main computer tracking program Envision Connect. This added responsibility takes up about 50% of this inspector's workday resulting in being 50% behind in inspections. There are two clerical staff assigned to office duties, yet the inspectors are required to help three or four days a month with front desk duties. DEH does not use volunteers or temporary help for clerical duties. The SEHS indicated that inspectors are too busy to train and supervise volunteers. It was also indicated that the filing of paperwork requires some knowledge of Environmental Health and is a complex process.

The SEHS supports staff by handling complaints that would only require a letter and handles food inspections as warranted. The SEHS does not normally rotate inspectors within the county because he/she feels it does not maintain a good rapport with the business owner/operators. The SEHS acknowledged that staff is overwhelmed by the workload. At the time of our investigation the department was looking at hiring two Environmental Health Technicians (EHT) rather than EHS, so that the EHS can concentrate on routine inspections. An EHT cannot conduct food inspections. The SEHS stated that he/she has discussions with staff on job prioritizing. This occurs anywhere from monthly to twice a year; regardless, we found that all inspectors are behind in their inspections.

¹⁶ 2010-2011 San Luis Obispo County Civil Grand Jury Report

ASSEMBLY BILL (AB) 1616

AB1616, known as the California Homemade Food Act, went into effect January 1, 2013. This bill lifts restrictions on the sale of certain home-cooked foods (called cottage food operation) and imposes sanitation and labeling requirements. All operators of these types of businesses must register with the Merced County EHD. The act establishes criteria for permits, cleanliness and food handlers' training. Cottage food products can be sold directly to consumers without an inspection. An inspection is required if there are indirect sales. Both direct and indirect sales are subject to an inspection if there is a complaint.

The bill regulates what can be sold. Baked goods (except those made with cream or meat), candies, nuts, dried fruits, baking mixes, fruit pies, and jams are allowed.

Registration forms and permit applications are available on the Merced County website in the DEH section.

FOOD INSPECTION REPORTS

Food inspection reports are produced on a department issued laptop or are handwritten. If and when an inspector uses their laptop it will document the time of arrival at the food facility. Some inspectors stated that the county issued laptop can malfunction in the field. Examples of some of the malfunctions include freezing, computer shut downs, lack of a power source and printer failure. If the equipment malfunctions or inspectors are non-proficient in the use of the laptop, the inspector will take handwritten notes, give a copy to the owner and transfer them into the database upon return to the office or on the next business day. This results in duplicate work for the inspector. If the laptop is turned off, the entire report is lost. Inspectors stated that if a report isn't entered into the computer right away it is usually because of lack of time. They are not required to notify the SEHS if they fall behind in entering a report. If a report doesn't appear on the computer after two days then it has to be located to see if the report was deleted or not saved. Most inspectors don't check up on their own reports to see if they reached the web site. Inspection reports are available online within twenty-four hours of the report being entered, but it depends on how fast the server is at the time of entry. The SEHS stated that many businesses not found on the website are due to an inspector retiring or moving to another district. Facilities fall off the website if not inspected within two years, but the information stays in the database. There were conflicting statements made by the Director of DEH and the Supervising Environmental Health Specialist as to the purge policy for reports.

DEH uses the Envision Connect System by Decade Software Company, based in Fresno, California, to produce and manage their reports. The Decade Company's Envision Connect database service/maintenance contract for the fiscal year 2011-2012 was \$76,850.00. The software was purchased twenty-plus years ago. Envision Connect System is incapable of interfacing with any county program systems unless Decade Software Company approves the integration. The SEHS stated that there has been a continuing problem with Decade Software Company having "glitches" in transferring

data. Some of the problems involve printing invoices, processing payments, generating permits and inspection reports. An EHS III has been assigned to work with Decade Software Company in resolving problems with the software "glitches." This EHS III spends 50% of the workday addressing computer problems in addition to regularly assigned duties, putting the inspector at least 50% behind in inspections.

POSTING RATINGS

DEH does not use a posted on-site rating system for food facilities in the county. This type of rating would allow the consumer to know what degree of cleanliness the food facility has received. The SEHS stated there is no data available to prove that having a posted rating system in the view of the public improves food safety. He/she also stated that the rating system is a budget issue having to supply the rating letters for the food facilities and is not cost effective.

ON-SITE VISITS/OBSERVATIONS

Each food facility is required to have a current health permit to operate posted in plain sight. A most recent copy of a food inspection report is required to be available upon request.

The 2012-2013 Merced County Civil Grand Jury visited forty food facilities throughout the county over a three month period. Some of the facilities that were randomly visited were restaurants, grocery stores, fish markets, hospital, bakery, yogurt shop, pizza parlor, quick marts and big box stores. When the Civil Grand Jury conducted site visits, they requested to see a copy of the facility's current required health permit and inspection report. Thirty-seven facilities had current health permits on site. Only one newly opened facility had a current inspection report. The other thirty-nine showed no current reports. Three of the facilities the Civil Grand Jury visited, including a hospital, showed an unsatisfactory rating in 2011 and had not received the required thirty day follow up re-inspection. The Civil Grand Jury's findings on these visits indicate DEH is behind on their inspections as per their requirements to inspect facilities yearly and on their thirty day follow ups for facilities that received unsatisfactory ratings.

Numerous food facilities requiring yearly inspections were not listed on the DEH website at the beginning of our investigation. When brought to the attention of the SEHS, the issue was addressed and the website updated. The Civil Grand Jury also noted a facility with an unsatisfactory rating for the past eighteen months. The SEHS sent an inspector to re-inspect that facility the next day. Another facility listed as closed due to major violations on the website was actually open for business. When the SEHS was made aware of this, the website was updated to reflect the correct status.

ENVIRONMENTAL HEALTH WEBSITE

The Merced County DEH online food inspection reports are more user friendly than five of the surrounding counties that offer online reports. Merced County is the only one that lists a rating program based on points for violations at food facilities.

The DEH website (www.co.merced.ca.us/environmentalhealth) provides a wide variety of information. The website contains resources such as: applications, forms, permits, food inspections, food facility plan review, and laws and ordinances. At the time of the 2012-2013 Merced County Civil Grand Jury's investigation the website listed only 683 food facilities. The SEHS stated there are approximately 900 fixed and 300 mobile food facilities. Inspections of the mobile food facilities are not included on the website.

FINDINGS AND RECOMMENDATIONS

F1. In the last two years only complaint-based inspections are completed in Firebaugh, Los Banos, Volta and part of Santa Nella.

F2. Those facilities observed by the 2012-2013 Merced County Civil Grand Jury from December 5, 2012 to March 5, 2013 which received “unsatisfactory” ratings had not been re-inspected within the thirty days as required by law.

F3. As of July 1, 2012 DEH was down one EHS and as of January 8, 2013 they were down two EHS. There has not been any EHS recruitment since 2008.

F4. DEH posted a job listing on November 29, 2012 to hire an EHT. An EHT was hired April 8, 2013.

F5. EHS are required to do other duties beyond inspections, including “volunteering” their work time to do clerical work and aid the DPH as a whole for special events. The inspectors spend an average of 30% of their time on food inspections. Inspectors stated that they were behind on their inspections by an average of 40%.

F6. Inspectors are overwhelmed by the workload and morale is low.

F7. Inspectors are required to do front desk duty three or four days per month due to lack of clerical staff.

R1-7. **The 2012-2013 Merced County Civil Grand Jury recommends DEH should explore bringing in temporary or volunteer staff to do these extra duties to free up more time for EHS to handle their food inspection duties. At least two EHT should be hired to do inspections that don't require an EHS so the EHS can cover their assigned food inspections in their districts.**

F8. The hospital the Civil Grand Jury observed on March 5, 2013 had an unsatisfactory rating and was last inspected June 13, 2011. As of April 27, 2013 DEH had not re-inspected the facility.

R8. The 2012-2013 Merced County Civil Grand Jury recommends hospitals should be given priority for inspections.

F9. The facilities the Civil Grand Jury visited (with the exception of one) had current operating health permits, but the majority didn't have a current inspection report. Therefore, they are not receiving the services that are tied to the annual permit fee.

R9. The 2012-2013 Merced County Civil Grand Jury recommends the yearly permit list should be cross-referenced with the inspection database quarterly to determine the most recent date of inspection. Those facilities that have lapsed should take priority. This would act as a check and balance so the facilities would receive yearly inspections and remain on the website.

F10. Laptops are available to all EHS. Not all inspectors use the assigned laptop to write reports in the field. This results in duplication of work to get it from hand-written form to laptop when they return to the office. Training on the laptop is available online but is not required by the SEHS.

R10. The 2012-2013 Merced County Civil Grand Jury recommends inspectors be required to complete training and use the laptop for all inspections.

F11. DEH does not use an on-site posted rating system to inform consumers of business inspection status.

R11. The 2012-2013 Merced County Civil Grand Jury recommends DEH implement an on-site posted placard rating system. The inspector could carry the appropriate rating placard for placement at time of inspection. This would allow the public to have immediate access to the facility's inspection status and be readily visible. In the future the DEH should look into a Quick Response (QR) code reader to allow consumers the ability to use modern technology to access this information.

F12. The 2010-2011 San Luis Obispo County Civil Grand Jury¹⁷ observed three restaurant inspections in their county with no negative impact on the county or the restaurants they observed.

R12. The 2012-2013 Merced County Civil Grand Jury recommends the DPH consider a more transparent approach to any future Merced County Civil Grand Jury's request to observe a food inspector conducting a food facility inspection.

¹⁷ 2010-2011 San Luis Obispo County Civil Grand Jury Report

F13. The Envision Connect System by Decade Software Company doesn't interface well with the County system. The script for the reports used to trigger upload of food inspection report data to the internet is ineffective.

F14. One EHS III spends 50% of the work day addressing computer problems.

R13-14. The 2012-2013 Merced County Civil Grand Jury recommends DEH conduct a study to determine the adequacy of the current software. If inadequate, the Civil Grand Jury recommends that DEH conduct a feasibility study to determine if a new software program should be purchased. In the future DEH should embrace modern technology such as a QR reader and Smart Phones which could be more efficient and cost effective.

F15. If a facility hasn't been inspected within two years it falls off the website.

R15. The 2012-2013 Merced County Civil Grand Jury recommends reprogramming the software so reports remain on the website beyond two years.

COMMENDATION

The Merced County online food inspection reports are more user friendly than five of the surrounding counties that offer online reports. Merced County is the only one that lists a rating program based on points for violations at food facilities.

GLOSSARY

DDEH	Director of the D ivision of E nvironmental H ealth
DEH	D ivision of E nvironmental H ealth
DPH	D epartment of P ublic H ealth
EHS	E nvironmental H ealth S pecialist
EHT	E nvironmental H ealth T echnician
SEHS	S upervising E nvironmental H ealth S pecialist

DISCLAIMER

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1(a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

This report was issued by the Grand Jury with the exception of one member who was recused due to a potential conflict of interest. That juror was excluded from all parts of the investigation, including deliberations and the making and acceptance of this report.

MERCED COUNTY REGIONAL WASTE MANAGEMENT

SUMMARY

The Hwy 59 Landfill and the Billy Wright Landfill in Merced County are under the authority of Merced County Association of Governments (MCAG) and governed by Merced County Regional Waste Management Authority (MCRWMA). The one exception is the City of Merced, which is a municipal collector. The incorporated cities award franchises for collection of solid waste to private organizations called haulers.

Merced County issues Franchise Agreements to solid waste haulers to provide curbside services for all the unincorporated areas.

Tipping fees from franchise haulers are the major source of revenue for the landfill. All heavy equipment used at the landfill is leased, which requires a loan with interest. An accrual account dedicated to buying heavy equipment when it needs to be replaced should be established.

The methane gas produced at the landfill is not sold; it is burned off. The landfill should work with the U.S. Environmental Protection Agency's Landfill Methane Outreach Program (LMOP), to determine the economic feasibility of gas-to-energy projects and help find financing resources. Grants to fund the start up cost of a methane conversion project should be explored.

The State requires at least 50% of the waste has to be recycled. Merced County has met this requirement because the waste from Foster Farms is added into the total for compost. The county is currently at 70%. Twenty-five to thirty percent of green waste and recycling is contaminated.

Customers are not recycling properly due to lack of recycling information. Multi-lingual door tags explaining what is recyclable and what is not should be used. Public service announcements, town hall meetings, and Municipal Advisory Councils should be used to further disseminate information.

Not all residents in rural areas have curbside recycling and green waste cans. Pickup of curbside recycling cans in rural areas is not cost effective. A monthly-designated area for haulers to pick up recyclables and green waste should be considered.

INTRODUCTION/BACKGROUND

The 2012-2013 Merced County Civil Grand Jury chose to investigate MCAG, focusing on the landfills and the recycling program.

According to their website MCAG is a Council of Governments with responsibility to manage and implement regional transportation, transit, and solid waste disposal services, while providing a public forum for cross-jurisdictional issues. The eleven member MCAG Governing Board includes a Supervisor from each of the five county districts and an elected official from each of the six incorporated cities located within the political boundary of Merced County, California. Incorporated cities are: Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced.

MCAG Goals:

Goal 1: Promote the interests of the public through regional planning.

Goal 2: Communicate effectively to partners and the public to enhance policy decision-making.

Goal 3: Support positive relationships among MCAG directors and member agencies.

Goal 4: Increase MCAG's and member agencies' access to resources.

LANDFILLS

There are two landfill sites: Billy Wright Landfill located at 17173 S. Billy Wright Road, Los Banos and Highway 59 Landfill located at 7040 N. State HWY 59, Merced.

The landfills have always been owned by the Joint Powers Authority (JPA), but contracted with the County of Merced to operate. In 2007 they realized that this might be a conflict of interest so the JPA took over operations as well. [Cite~Merced County Regional Waste Management Authority First Amendment to Second Amendment and Restated Joint Powers Agreement-August 16, 2007] The JPA is made up of the county and the same six cities that are members of MCAG. The landfills are owned by all of these jurisdictions. Each of these has a say on the governing board, the MCRWMA. This collaboration allows them to pool resources and report to the state as a region, which they are required to do annually. The Executive Director of MCAG is also the Executive Director of MCRWMA.

METHODOLOGY

The 2012-2013 Merced County Civil Grand Jury reviewed the operation of the landfills, which included a tour of the Hwy 59 Landfill.

The Civil Grand Jury interviewed administrative personnel from MCAG, the Director of Waste Management, and personnel from Merced County Public Works.

The Civil Grand Jury looked at documents and websites which included:

- Budgets: Fiscal Year (FY) 2010-2011; FY 2011-2012; FY 2012-2013.

- Audits: MCAG and MCRWMA year ending June 30, 2011.
- Franchise Agreements for Collection Areas 1-5, 6, 7, and 8 (see attachment 1) between the County and haulers.
- Merced County Regional Waste Management Authority Solid Waste Revenue Bonds series 2007: the bond for the expansion of the Hwy 59 Landfill and Billy Wright Landfill.
- Water Quality Reports.
- MCAG Online Agenda Packets and Minutes regarding MCRWMA board meetings including the section of the 2011-2012 Audit: Schedule of Findings and Questioned Costs for the Year Ended June 30, 2012.
- Merced County Regional Waste Management Authority First Amendment to Second Amended and Restated Joint Powers Agreement.
- MCAG Transportation Development Act Triennial Performance Audit for the Period July 1, 2008–June 30, 2011.
- Merced Sun-Star Article dated Tuesday, October 16, 2012 Title: “CalRecycle must tackle fraud, debt.”
- SOLID WASTE FACILITY PERMIT number 24-AA-0001 February 14, 2001.
- The MCAG, MercedRecycles, Allied Waste and the CalRecycle websites.

DISCUSSION

FRANCHISE AGREEMENTS

With the exception of the City of Merced, which is a municipal collector, the incorporated cities award franchises for collection of solid waste to private organizations called haulers. Merced County issues franchise agreements with solid waste haulers to provide curbside services for all the unincorporated areas divided into eight different jurisdictions. These franchises are issued under the County Code Chapter 9.08.

The agreements automatically renew unless the Merced County Board of Supervisors (BOS) have issues with the haulers. A five-year notice is required by the BOS and the haulers to terminate the Franchise agreement due to their large investment in equipment, offices, and facilities.

The County receives approximately \$850,000 per year from all haulers. Franchise fees of 7.5% from curbside pickup and 5% from drop boxes go into the County’s General Fund. The Franchise Agreements do not govern drop boxes. This goes into the General Fund in the revenue account called Franchise Revenue.

Once a year haulers may request a rate increase equal to the consumer price index, and the BOS may review the request, and the rates charged to the customers. The BOS may make such rate adjustments as are reasonable and caused by fluctuations in economic conditions.

For solid waste a Franchise Solid Waste Hauler is required. For recycling a private entity may be used. Merced County contracts with its own Franchise Solid Waste Haulers. The contracts are covered in a staff report that goes to the BOS and then with the recommendation of the staff it is usually approved by the BOS. The county Public Works Department handles the contracts with the haulers. The haulers pay the tipping fee at the landfill; they pay the county the franchise fee and then they pay themselves.

LANDFILLS

The Hwy 59 Landfill was expanded using revenue bonds issued in 2007 by the MCRWMA, with maturity dates from 2013 through 2027. In order to get the bonds for the landfill expansion, the JPA for the Waste Management Authority had to show there would be enough generated revenue for the debt service, which is the principle interest on those bonds. There was a rate increase imposed five years ago of 26% (5.2% per year over a five year period) in tipping fees at the landfill which was passed on to the customer through their garbage bill. That revenue pays the debt service on the bond. MCAG is making the debt service payment for the bond. On July 1, 2013 the final 5.2% tipping fee will be imposed. The outstanding bonds total is \$51,036,983.14, including principle and interest. The total interest liability is \$17,621,983.14. These bonds mature on June 1st of the following years 2013 to 2027. The average interest rate for these bonds is 4.30%. These bonds were issued in accordance with Governmental Accounting Standards Board (GASB).

Twenty-five percent of the trash comes from outside of Merced County. Fresno, Tuolumne, Gilroy, Modesto and Turlock send their overages. This provides additional revenue for the landfill. Load limit for the Hwy 59 Landfill is 1500 tons of waste per day.

Twenty-five to thirty percent of green waste and recycling is contaminated, rejected and dumped in the pit. The hauler is fined for each contaminated load.

Dumping of hazardous waste is by appointment or during special days with notification to the public. Electronic waste is banned from the landfill, and collected separately, and sold to a processor in Sacramento.

The landfill is built in such a way that there is no water runoff from the site. The solid waste pits are lined with an impermeable material. This liner's life expectancy is forever as long as it is not perforated. The pit is constructed with a liner, a felt liner, geo-textile liner, clay liner and a gravel layer. A cement ditch that surrounds the landfill catches the outer runoff.

The landfill turns green waste into compost. They save \$600,000 by using their own compost to spread over the liners in the bottom of the pits. The compost acts as a buffer that helps to eliminate perforations. Excess compost is sold to the public. Green waste, because of the EPA regulations, costs more to process than what they can sell it for. All methane gas in the pits is collected through a system of wells and pipes and then burned off. Methane gas is not sold from the landfill. San Joaquin Valley Air District (SJVAD) won't permit the Caterpillar™ generators that are used to generate electricity from the methane gas. Merced is in an Environmental Protection Agency (EPA)

attainment zone; this makes the restrictions more stringent. Methane gas can be used to run heating and cooling systems, can be purified into natural gas, and liquefied or compressed to power garbage trucks and municipal buses.¹⁸ There are over 70 monitoring and extraction wells. They have “hot” wells that need to be monitored daily. A new plume is headed east as a result of capping cell 4. Before capping, the gas was released into the air. The gas has escaped the cap and is causing the plume to head east. In drought years the gas migrates faster. Government regulations require an enormous amount of time to keep the landfills in compliance. SCS Field Services, a private contractor, assists the landfill in providing reports. Compiled reports are sent on schedule to the State Water Resources Control Board, SJVAD, County Division of Environmental Health, Local Enforcement Agency (LEA), County Public Health and to each jurisdiction. Failure to file a report or report problems could result in fines of up to \$10,000 per day.

Lots of garbage bags and gooey stuff contributes to the Landfill’s double-digit contamination of recyclables. The landfill salvages cardboard for recycling. There is a lot of packaging and plastic that doesn’t have any value on the market. They have set aside an area for a recycling process plant, but haven’t found a company that wants to come in to build and operate it.

ACCOUNTING

Tipping fees from franchise haulers are the major source of revenue for the landfill. The estimated revenues for 2012-2013 were budgeted at \$10.1 million. This covers salary, debt and equipment.

Information Technology (IT) services have been upgraded and there are no paper files. Information is virtual and stored on a cloud. The server is located at the landfill site.

There are mechanics at both sites that maintain heavy equipment and pickup trucks. This equipment is worth \$27 million.

All heavy equipment is leased, and when the lease expires the equipment becomes the property of the landfill. The equipment is well maintained, which extends its life. Old equipment only has residual value of the iron. Concrete is crushed/ground by a subcontractor. This is a less expensive alternative to buying or leasing equipment.

The landfill is charged a processing fee for the use of credit cards, which amounts to \$10,000 in the 2012-2013 budget.

EPA regulations require aerial photography and photogrammetry which costs \$45,000. The photos verify compliance.

Antifreeze, batteries, oil, and paint (ABOP) are not accepted at the landfill. Various vendors come and pick them up. Hydrocarbons and pesticides are not accepted.

At the time of the investigation there were forty-three full time employees. Overtime is required because the landfill is open on Saturday for four hours. The workweek is five and one half days. Cross training is provided to facilitate Saturday operations.

¹⁸ <http://www.governing.com/topics/engery-env/Methane-from-Landfills.html>

ENVIRONMENT

The operator shall comply with all federal, state, and local requirements. This facility shall comply with all provisions mandated under the State minimum standards for solid waste handling and disposal.

RECYCLING

The goal of the Merced County Recycling Program is to educate customers who currently have curbside recycling services. The goal of this program is to minimize contamination. When the load is contaminated the hauler is fined. The State requires that at least 50% of the waste has to be recycled. Merced County has met the requirements because the waste from Foster Farms is added into the total for compost. The landfill is currently at 70%. CalRecycle gives a target waste generation number, which is 10.6 lbs. per person. Merced County residents only generate 4.4 lbs. per person.

Each jurisdiction and hauler self-reports recycling commodities total tonnage. Those reports go to MCRWMA and that report goes to CalRecycles in Sacramento a minimum of four times a year. The landfill does not audit those reports.

The BOS has mandated curbside recycling and green waste in all unincorporated urbanized areas. The factor for an area to be classified as an urban area which has curbside recycling is determined by population density, proximity to neighbors and number of neighbors grouped together. The Planning Department's website has the Specific Urban Development Plan (SUDP) maps for the legal boundaries of the towns and cities. These maps were given to the haulers when the board adopted the service. Not all residents in rural areas have curbside recycling and green waste cans. This is determined between the hauler and the BOS.

The BOS implemented the green waste program first, then recycling four years later. The reason they don't do this in the rural areas is because the costs are exorbitant for the amount of diversion credits received to meet the State requirement. Sending two to three trucks to the rural area would cause an increase to the customer's bill. It is not cost effective because the county currently has a diversion rate of 79%. The county is required to have 50% according to AB 939. The State is considering raising the rate to 75%. Atwater collects green waste and Livingston will do so in the foreseeable future.

A Recycling Coordinator was hired, so that the county could have a consistent recycling program. It's up to the individual customer to recycle properly; if they don't, they can be red-tagged. The hauler will give tags three times for contamination in the recycling bin. The third violation can generate a fine. If the load has too much contamination it can't be processed and it ends up in the landfill. The landfill and the haulers are making an effort to get more clean recyclables and green waste. When the recycling program started the economy was good. There was a better market for recyclables. If it's not something that will sell, Newby Island doesn't process it, because the processing costs more than the sales of the item. The landfill has set aside an area for a recycling processing plant, but hasn't found a company that wants to come in to build and operate it.

It is up to the jurisdiction and their council as to what services are provided to customers regarding recycling and green waste. Jurisdictions are not required to have programs. The

landfill doesn't have anything to do with the contracts. However, they did recently consult with Livingston on their contract. Haulers have a list of acceptable commodities they can bring to the landfill. This list is provided to the haulers by the landfill.

For the incorporated cities, each council adopts how recycling is managed. There are drop off locations at both the landfills which are free. Livingston has a drop off location by its Public Works Department for residential and commercial recyclables. Gustine has a drop off location along with bins distributed around the main business area for commercial recycling. These bins are contaminated by people dumping things like couches, clothing and trash that they don't want to haul to the landfill.

The MercedRecycles website has been updated and provides information not only on recycling, but also provides a link to find nearby recycling centers.

THE PROCESS OF HANDLING RECYCLABLES

The householder puts the waste in the right containers. It goes to the landfill; the truck unloads it on the recycling pad and it is checked for contamination. Landfill staff pulls tires and cardboard. If recyclable loads are over 10% contaminated the hauler is charged a fee and the load is dumped in the landfill. If the load is less than 10% contaminated the hauler is charged \$8 per ton to reload it on to a long haul truck. The truck hauls it to Newby Island located in Milpitas, California, operated by Allied Waste. It is unloaded and contents are placed on a sorting line. The JPA contracts with Newby Island, but periodically checks other recycle sorting facilities.

Revenue received from Allied Waste is dependent on the market price for each distinct recyclable commodity. Jurisdictions have accounts with Allied Waste where money is credited when commodities are sold. Checks are sent out infrequently. There have been times when the jurisdictions have had to pay for transportation and disposal based on the market price. If the jurisdiction has a credit with Allied Waste, the money owed is charged against the credit. The contaminated waste reduces the amount paid out. The recycling facility in Newby Island will charge a solid waste dump fee instead of a recycling reimbursement for contaminated loads.

The landfill accepts the following: milk jugs, coffee creamer bottles, detergent bottles, soda and water bottles, shampoo and conditioner bottles. They do not accept plastic not in the form of a bottle or jug, including plastic bags. Newby Island just did a multi-million dollar upgrade on their equipment so it might change what kind of recyclables it accepts.

There has been limited education and enforcement in recycling. There are higher rates of contamination in poorer areas of the county. Reducing contamination requires education and enforcement. It's up to haulers to enforce proper recycling and MCRWMA to educate the public on recycling.

The Public Program Specialist (PPS) worked for MCAG doing public information on recyclables. This person now works for the MCRWMA as Recycling Coordinator/Assistant Analyst (RCAA) at the Hwy 59 Landfill. At the time of our investigation the RCAA worked at the Landfill doing scale house duties and clerical work.

Per CalRecycles website, the Highway 59 Landfill is due to close by 2039. Possible reuse of the land includes a bike and BMX™ track. Methane gas kills plants so it wouldn't be a good choice for a park or green space. Settling of the pit prevents building on the site for twenty years. The site has to be monitored for methane gas for at least thirty years.

The current plan has changed the dump into a sanitary landfill. There is not a current master plan for expansion for Merced County landfills. The next step would be a master plan that looks at long term disposal needs, long term trends in business, sufficient capacity to handle the population, and whether to become a regional landfill. MCRWMA will address the issue within the next two years.

FINDINGS

F1. Twenty-five to thirty percent of green waste and recycling is contaminated, rejected and dumped in the pit. There is not enough recycling education, so customers are not recycling properly. This is causing higher rates of contamination.

F2. All heavy equipment is leased.

F3. The methane gas produced at the landfill is not sold. SJVAD won't permit the use of Caterpillar™ generators that are needed to generate the electricity from the methane gas. Methane gas can be used to run heating and cooling systems, can be purified into natural gas, and liquefied or compressed to power garbage trucks and municipal buses.

F4. Not all residents in rural areas have curbside recycling and green waste cans. This would not be a cost effective program.

RECOMMENDATIONS

R1. The 2012-2013 Merced County Civil Grand Jury recommends placement of door tags. These should be multilingual. This is the cheapest and most effective way. It has been done in other jurisdictions with diverse cultures.

The 2012-2013 Merced County Civil Grand Jury recommends using public service announcements, town hall meetings, and Municipal Advisory Councils to further disseminate information.

R2. The 2012-2013 Merced County Civil Grand Jury recommends an accrual account dedicated to buying heavy equipment when it needs to be replaced.

R3. The 2012-2013 Merced County Civil Grand Jury recommends that MCRWMA participate in the U.S. Environmental Protection Agency's LMOP, a voluntary assistance program that helps to reduce methane emissions from landfills by encouraging the recovery and beneficial use of landfill gas (LFG) as an energy resource. According to their website: (<http://www.epa.gov/lmop/>) "by joining LMOP, companies, state agencies, organizations, landfills, and communities gain access to a vast network of industry experts and practitioners, as well as to various technical and marketing resources that can

help with LFG energy project development.” Grants to fund the start up cost of a methane conversion project should be explored.

R4. The 2012-2013 Merced County Civil Grand Jury recommends a monthly-designated area for haulers to pick up recyclables.

GLOSSARY

AB: Assembly Bill

ABOP: Antifreeze, Batteries, Oil, Paint

ACH: Automated Clearing House Transaction

BOS: Board of Supervisors

CFR: Code of Federal Regulations

DROP BOX: A waste bin ten or more yards which is dropped on site with no weekly service

EPA: Environmental Protection Agency

FY: Fiscal Year

GASB: Governmental Accounting Standards Board

“HOT” WELL: A very active methane gas well that requires constant monitoring

IT: Information Technology

JPA: Joint Powers Authority

LEA: Local Enforcement Agency

LMOP: Landfill Methane Outreach Program

MCAG: Merced County Association of Governments

MCRWMA: Merced County Regional Waste Management Authority

MUNICIPAL COLLECTOR: Incorporated city that is its own hauler

NEWBY ISLAND: Regional recycling plant

PWD: Public Works Department

PPS: Public Programs Specialist

RCAA: Recycling Coordinator/Assistant Analyst

SUDP: Specific Urban Development Plan

TIPPING FEES: Fees haulers pay to dump at the landfill

WDR: Waste Discharge Regulations

Websites:

www.calrecycle.ca.gov

www.mercedrecycles.com

www.mcagov.org

www.alliedwastescco.com

www.governing.com/topics/energy-env/Methane-from-Landfills.html

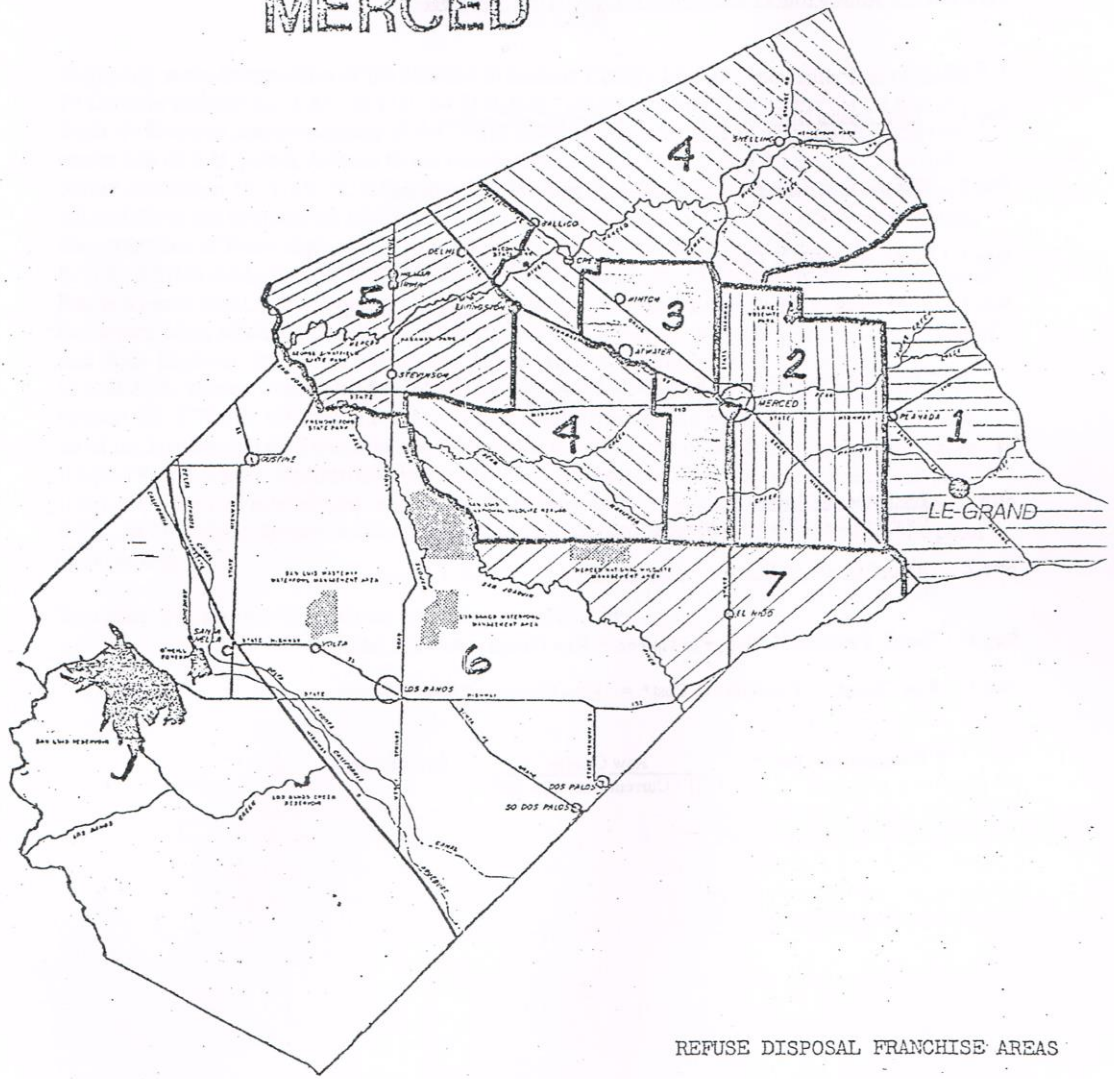
www.epa.gov/lmop/

DISCLAIMER

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1(a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

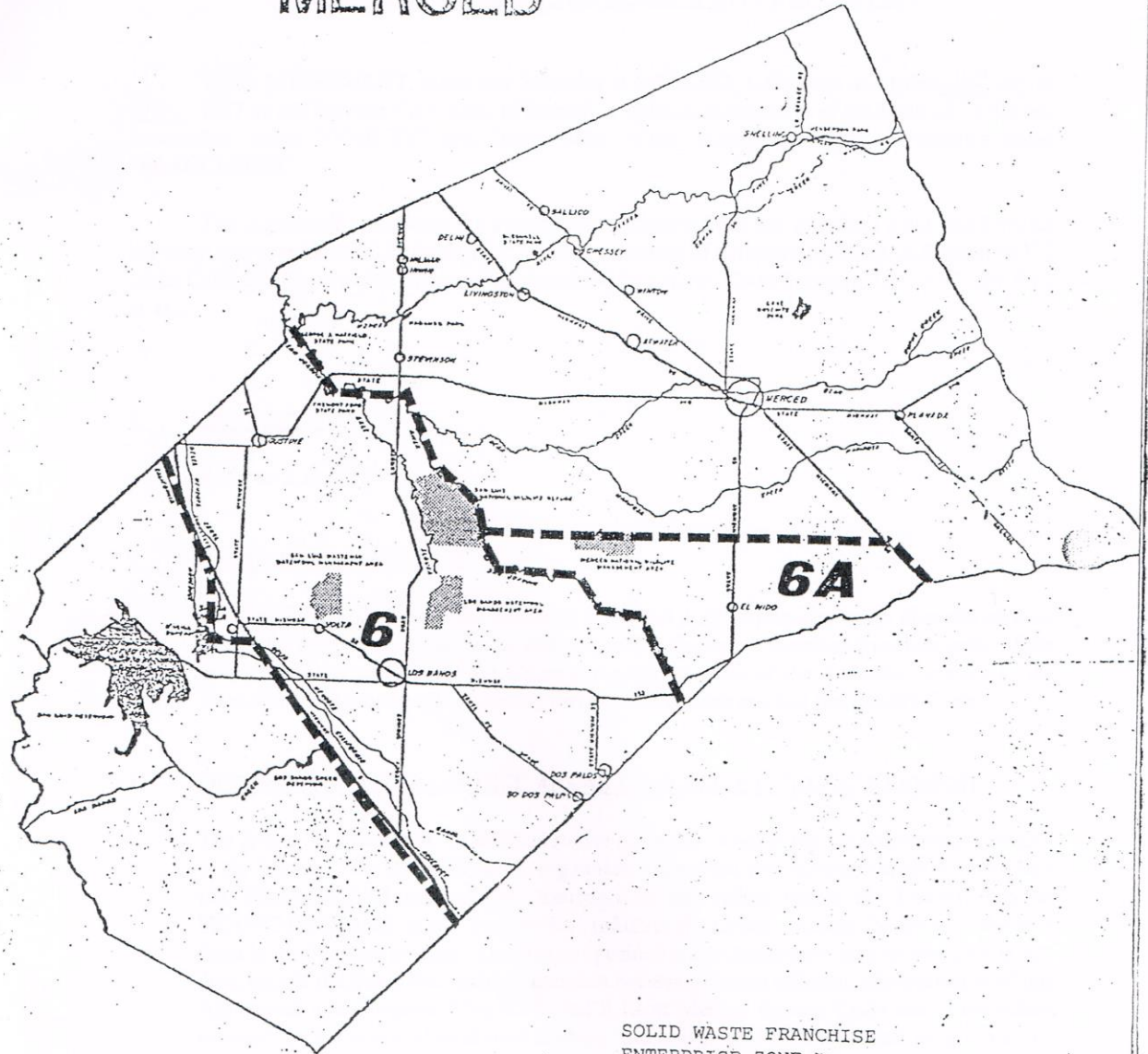
FRANCHISE AGREEMENT COLLECTION AREAS (ATTACHMENTS 1, 2 AND 3)

COUNTY OF MERCED



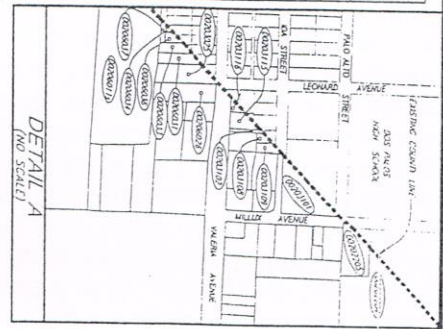
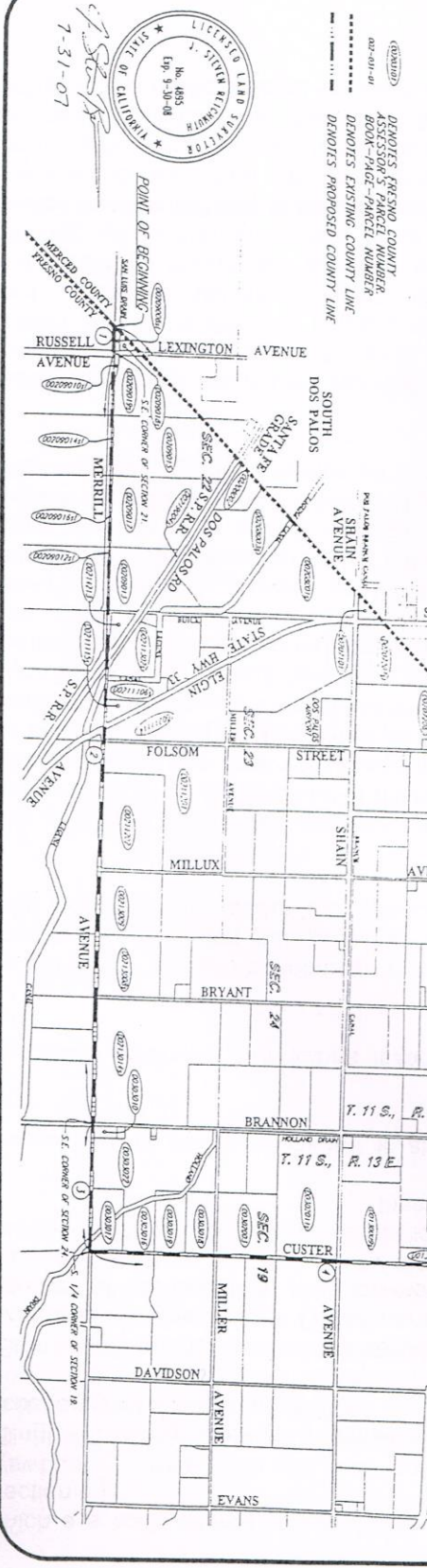
REFUSE DISPOSAL FRANCHISE AREAS

COUNTY OF MERCED



SOLID WASTE FRANCHISE
ENTERPRISE ZONE B
FRANCHISE AREA 6 & 6A

1	5 39°52'00" E	539.80'
2	ALONG SOUTH LINES OF SECTIONS 22, 23 & 24.	
3	ALONG N.E. CORNER TO S.E. CORNER SECTION 24.	
4	ALONG N.E. CORNER OF SECTION 18 TO S.E. CORNER OF SECTION 19 & 18.	
5	NORTH ALONG N-S CENTER LINES OF SECTIONS 19 & 18.	
6	EASTERN ALONG THE NORTH LINE OF SAID SECTION 18 TO THE S.E. CORNER OF THE WEST 1/2 OF SAID SECTION 18 TO THE N.E. CORNER OF SECTION 7, T.11S., R.12E.	
7	NORTHWEST ALONG THE EAST LINE OF SAID WEST 1/2 TO THE N.E. CORNER THEREOF.	
8	EASTERN ALONG THE SOUTH LINE OF THE NORTH 1/2 OF SAID S.E. 1/4 TO AN INTERSECTION WITH THE CENTERLINE OF THE EAST DITCH.	
9	N 47°15'00" W	185.40'
10	N 43°17'30" W	243.50'
11	N 18°48'00" E	298.88'
12	N 16°52'30" W	114.25'
13	N 8°44'00" E	114.25'
14	N 6°58'00" W	585.78'
15	N 18°11'00" W	262.11'
16	N 21°00'30" E	629.43'
17	N 20°02'00" E	109.45'
18	N 10°11'00" W	222.12'
19	N 11°57'30" E	114.53'
20	N 50°19'30" W	239.61'
21	N 49°39'30" W	300.12'
22	N 49°39'30" W	120.19'
23	N 37°09'30" W	198.69'
24	N 37°19'30" W	162.36'
25	S 71°49'00" W	161.22'
26	S 47°21'30" W	189.34'
27	S 70°12'00" W	213.51'
28	N 50°01'30" W	121.29'
29	N 48°44'00" W	162.90'
30	N 25°34'00" W	303.13'
31	S 44°46'30" W	228.94'
32	S 19°39'00" W	196.84'



MERCED COUNTY SHERIFF'S DEPARTMENT: CCW PROGRAM

SUMMARY

The 2012-2013 Merced County Civil Grand Jury investigated nine months of License to Carry a Concealed Weapon (CCW) applications, attached police reports, and background checks. A Sheriff's deputy is assigned to review all applications and makes a recommendation. The Sheriff makes the final decision on who receives and who is denied a CCW.

The Civil Grand Jury noticed inconsistencies with regard to which applications were approved, and which were denied. Applicants that received a CCW were typically citizens of good moral character and with good cause to receive a CCW. A majority of applicants who were denied had similar cause and victim incident history as applicants who received permits. Why these applicants were granted a permit over someone with similar good cause and victim incident history? Were they shown favoritism? The Sheriff's Department should review their procedures to ensure that acceptance and denial of applications are given an equal/fair process. There needs to be consistent criteria for law-abiding citizens to receive a CCW fairly. With higher crime¹⁹ (FBI Crime Statistics, 2010 to 2011, 8% increase in Merced County) and fewer officers, 9-1-1 response time is slower, leaving individuals at higher risk.

The Sheriff's Department should review all denied applications from July 16, 2012 through April 16, 2013, which had similar good cause and victim incident history as approved applications for reconsideration.

INTRODUCTION/BACKGROUND

The 2012-2013 Merced County Civil Grand Jury received a complaint regarding a denied CCW application. The Civil Grand Jury decided to investigate the Merced County Sheriff's Department's CCW permit program to ensure that CCW permits were being granted on a fair and consistent basis.

METHODOLOGY

The 2012-2013 Merced County Civil Grand Jury uses the investigation method of triangulation, which involves research, observation, and interviews.

RESEARCH

The Civil Grand Jury reviewed websites and documents received from various sources. These can be viewed at the end of the report in the footnote section.

¹⁹ FBI Crime Statistics, 2010, 2011. See attached documents.

OBSERVATION

During the investigation, the Civil Grand Jury reviewed nine months of approved and denied CCW applications at the Sheriff's office. There were eighty-one applications from July 16, 2012 to April 16, 2013.

INTERVIEWS

The Civil Grand Jury interviewed the Merced County Sheriff, asked CCW application process questions to Sheriff personnel and interviewed an applicant who was denied a CCW permit.

DISCUSSION

1) APPLICATION PROCESS AND FEES

The application form created by the California Department of Justice is a standardized application used by all counties in the State of California. The following is the process:

- Download the application online on the Sheriff's website²⁰ or pick one up in the office for ten dollars.
- Submit the application as well as a fingerprint Livescan (\$113)
- Background check with the Department of Justice (DOJ) as well as the Federal Bureau of Investigation (FBI).
- Letter approving or denying application is received from the Sheriff.
- If approved applicant must pay an additional forty dollars.
- Pay to take a CCW class (fees vary upon instructor and number of weapons).
- Do a live fire qualification course with the weapons that you choose to carry (up to three).

Renewal is every two years and the fees are twenty-five dollars for the Sheriff's Department and fifty-two dollars for the DOJ. To renew, one must re-qualify with their weapons and pay the fees.

Out of fifty states, California is one of eight that is a "may-issue" or "right-restricted" state. In California, this means that each County Sheriff has the authority to decide how to enforce the state standardized criteria used for issuing permits. This authority

²⁰ Merced County Sheriff CCW Application,
http://www.co.merced.ca.us/documents/Sheriff's%20Department/CCWAPP_1.PDF

is granted to the Sheriff by California Penal Code §12050. Most states (thirty-six) are “shall-issue.” This means that if you are a law-abiding citizen, and can pass the course, you shall be issued a CCW. Two states have laws where the issuing authority has partial discretion over the CCW process, but generally grants to law-abiding citizens. Four states require no permit to carry concealed, and one state, Illinois, does not allow CCW at all, according to the National Rifle Association Institute for Legislative Action.²¹

2) INCONSISTENCIES

The 2012-2013 Merced County Civil Grand Jury investigated nine months of applications and noticed inconsistencies with regard to which applications were approved, and which were denied. Applicants that received a CCW were typically citizens with good moral character and with good cause to receive a CCW. A majority of applicants that were denied had similar cause and victim incident history as those who received permits. The reviewing deputy recommended to the Sheriff that most applications be denied due to inadequate “good cause” and/or deficient “victim incident history.” The application instructs the applicant to explain good cause for a CCW:

“If the CCW license is desired for self-protection, the protection of others, or for the protection of large sums of money, or valuable property, you are required to explain and provide good cause for issuance of the license. For example, has your life or property been threatened or jeopardized? Explain incidents and include dates, times, locations, and names of police agencies to which these incidents were reported.”

A) APPROVED APPLICATIONS

Out of the eighty-one applications over the nine month period, there were a total of twenty-nine approved applications (36% approval rate) to grant permits. Six of the approved applications were automatically granted to judicial employees or spouse of a judicial employee (21% of those approved). The general public approval rate was 28%.

The Civil Grand Jury noted several applications that had been determined to be inadequate by the reviewing officer were later approved by the Sheriff.

There were three approved applications from individuals who had committed crimes including a misdemeanor driving under the influence (DUI), trespassing, and other misdemeanors. These applicants had no victim incident history, were of satisfactory mental state, but had only self-defense listed as their good cause.

²¹ National Rifle Association Institute for Legislative Action, <http://www.nraila.org/gun-laws/gun-law-map.aspx?altTemplate=ilaPrintGunLawMap&title=Right%20To%20Carry%20Laws>

Out of twenty-nine approved applications, withholding the six automatically granted permits, only nine (39%) had both documented incidents, and detailed good cause more than just self-defense.

Only four females out of the thirteen that requested a CCW permit were granted. Three were automatically granted and the fourth was a spouse of a law enforcement officer. The remaining nine denied female applicants included: business owners, police dispatchers, an animal control officer, physician's assistant, church secretary and a farmer. Many of the denied women had good cause such as carrying large sums of cash, threats from work, checking fields in remote areas with no cell service, working alone after dark, and collecting rent at rental properties. Some of these also had incident history such as threats from patients, victims of domestic violence by ex-husbands, vandalized vehicle with hateful words, harassment, and people growing marijuana in the fields they check.

B) DENIED APPLICATIONS

Out of the eighty-one applications over the nine month period, there were a total of fifty-two denied (64%). There were two denied who were noted to have possible paranoia issues. Overall, the denied applicants appeared to be good law-abiding citizens with reasonable justification and cause for requesting a CCW. Many listed "good causes" such as depositing or carrying large sums of money, business ownership, farming in remote areas, working at night, collecting rent, landlord evictions, hauling expensive equipment, and working/living in high crime areas. Many of the applicants were victims of crime, or had a circumstance and/or job that exposed them to a higher chance of becoming a victim of crime.

3) DETAILED COMPARISONS

A. AGRICULTURE

Out of the eighty-one applications, twenty-seven were involved in agriculture, and of these, nine applicants (33%) received a permit. A majority of applicants that were denied had similar cause and victim incident history as those who received permits.

Approved (nine):

1. Male farmer: misdemeanor DUI and trespassing on record, with no victim history, for self-defense.
2. Male farmer: had a CCW in Stanislaus County, limited good cause information, with no victim history, for basic safety and self-protection.
3. Male dairy farmer: trespassers on property, stolen four-wheeler, carries money for purchasing calves, no victim history, wants protection for work.

4. Male, part-time farmer: owns rentals, undocumented burglary, carries cash, no documented victim history.
5. Five other male applicants were involved with agriculture in isolated areas, all with documented police reports of theft and vandalism. Out of the five, four were initially denied by the deputy, but the Sheriff attached a Post-It™ note requesting reconsideration.

Denied (eighteen):

1. Eleven male applicants were involved in agriculture in isolated areas, working with orchards, hay, irrigation, dairy cows, and cattle. Most of them are ranch owners and many of them are employers. Due to the remote nature of their job, they travel a lot and work at night, usually carrying large sums of cash. Four of these cited crime or theft in the area, but had no police reports. Two had police reports documenting numerous thefts and break-ins at their livestock business. Their family member had been shot and killed at this business. None of these applicants had a criminal record.
2. Female Farmer: works and checks fields alone where no cell service is available. Has discovered marijuana grows in fields where working.
3. Male Farmer/Property Manager: owns over twenty properties, carries a lot of cash, family business where he occasionally works has been robbed.
4. Male Farmer: works late after dark, numerous thefts.
5. Male Rancher/Filmmaker: carries expensive equipment, has felt threatened, law enforcement letter of reference.
6. Male Farmer/Coach/Teacher: irrigates, witness to spousal abuse and assault, has been threatened multiple times which was reported to law enforcement, car was broken into.
7. Male Farmer: truck driver, limo driver, irrigates, multiple victim history reports, rental broken into, carries cash from limo bus, witness to attempted suicide and drug deal.
8. Dairy Farmer: six hundred acres to irrigate, carries cash for sale of calves, protection of life, law enforcement reference given.

B) BUSINESS OWNER/PROPERTY OWNER

Out of the eighty-one applications, thirteen were involved solely in business and property ownership, and of those, six (46%) received a permit. A majority of applicants who were denied had similar cause and victim incident history as those who received permits.

Approved (six):

1. Male: reviews properties that he owns, misdemeanor drinking in public, no victim incident history, self-defense.
2. Male: owns rentals and carries large sums of cash, victim of robbery, self-protection.
3. Male: retired military, owner of rentals in a bad neighborhood, carries money, no victim incident history.
4. Male: owner of gun shop, no victim incident history, guns and money.
5. Two other male applicants had businesses and had large sums of money. One of these had committed a misdemeanor. No victim incident history.

Denied (seven):

1. Two applicants (husband and wife): own a business in a bad neighborhood, carry large sums of money, victim incident report documenting theft, and wife was a victim of domestic violence by an ex-husband.
2. Female Business Owner: works late after dark by herself, collects rent from rental properties, carries large sums of cash.
3. Male, Carpentry Business: witness to malicious mischief, carries thousands of dollars of equipment, works in less than desirable areas, protect property.
4. Male, Trucking Business Owner: carries large amounts of cash, has a home and shop with a lot of equipment.
5. Male, Machine Shop Owner: victim of theft multiple times, large sums of cash, self-employed, death threat, documented victim history.
6. Male, Truck Driver: burglary victim, property owner, checks on rentals, serves eviction notices, death threats, denied for insufficient cause.

C) TIES TO LAW ENFORCEMENT/EMERGENCY SERVICES

Out of the eighty-one applications, nine had ties to law enforcement and emergency services, and of those, three (33%) received a permit.

Approved (three):

1. Female, wife of a law enforcement officer: threats had been made, worried about safety.
2. Male, ties to law enforcement: undocumented threats, carries money, worried about safety.
3. Male, Search and Rescue Member: no documented incident history.

Denied (six):

1. Two applicants were female dispatchers. One works for an out of county police department but lives in Merced County. She was advised to apply at her workplace, which is against the regulations of applying in the county that you live in. She commutes alone late at night, denied for “no qualifying incidents.” The other dispatcher who is employed in Merced County was a victim of domestic violence by her ex-husband. She leaves work late at night and has been confronted by people yelling at her about their unhappiness with the department. She feels threatened, but was denied for having only basic safety concerns.
2. Male, Animal Control Officer: Marine veteran, contact with aggressive, angry, and dangerous people.
3. Male, Firefighter: works in remote areas, helps with family business doing twenty-four hour service at client based locations fixing equipment, sometimes in dangerous places, helps family on ranch irrigating.
4. Male, Retired Firefighter: no victim incident history, basic safety concerns.
5. Male, Paramedic: has equipment and drugs, deals with all kinds of different people while on the job (gangs, criminals), safety when out in field.

D) JUDICIAL EMPLOYEE

Out of the eighty-one applications, six were either involved with the judicial system, or their spouse was, and of those, all six received a permit.
(PC§12050(c)(i))

E) MEDICAL

Out of the eighty-one applications, four were involved in the medical field, and of those, one (25%) received a permit. A majority of applicants who were denied had similar cause and victim incident history as those who received permits.

Approved (one):

1. Male, Dentist: writes prescriptions, no victim incident history, self-protection, was labeled as having “inadequate cause” by deputy; however, Sheriff approved. Sheriff wrote on Post-It™ note, “Deposits funds, and carries supplies, medical drugs.”

Denied (three):

1. Male, Doctor: second application, commutes to Fresno at all hours of the night, denied for “no qualifying incidents.”

2. Female, Physician's Assistant (P.A.): works in a "bad neighborhood," numerous threats from patients (who are drug abusers) because she refuses to write pain-killer prescriptions for them, prescription pad stolen from office, feels that her life is in danger, denied for "no qualifying incidents."
3. Male, Dentist: works in a "bad neighborhood," has large sums of money to carry to the bank, medications stored in office, denied for having "no documented incidents."

F) MISCELLANEOUS OCCUPATIONS

Out of the eighty-one applications, twenty-two were in unique and miscellaneous occupations, and of those, four (18%) received a permit. A majority of applicants who were denied had similar cause and victim incident history as those who received permits.

Approved (four):

1. Male: victim of road rage once, occupation not noted.
2. Male: no victim incident history, protection of family.
3. Male: no qualifying victim incident history, protection of family.
4. Male: self-protection, declared by deputy to have insufficient cause and no qualifying incidents but was approved by the Sheriff.

Denied (nineteen):

1. Female: travels for work, carries cash, undocumented incidents of theft and harassment.
2. Male, Software Engineer: self-defense.
3. Male, Utility Technician: home broken into, has four children, protect family.
4. Three male applicants are a handyman, a truck driver, and an insurance agent. The truck driver had a misdemeanor DUI and is on probation. The insurance agent had a misdemeanor. All three of these applicants only expressed basic safety concerns for just cause, but none had qualifying incidents.
5. Male, Business Manager: home theft victim, travels for work with high value items and confidential papers, a man pointed gun at him while he was catching up on work on side of the road.
6. Two males were believed to be paranoid or not of sound mind.
7. Male, Realtor: shows houses at night, no victim incident history, for basic safety.

8. Female, Church Secretary: does cash deposits, works in “bad neighborhood.”
9. Male, Minister: cash deposits and house calls at all hours of day and night, works in “bad neighborhood.”
10. Two Males, Retirees: one travels, for security.
11. Male, Unemployed: storage shed and tool shed broken into (undocumented), lives in rural area, no close neighbors, river runs by property, trespassers, has been confronted, has a driving on suspended license and wet reckless conviction, law enforcement reference given.
12. Male, Cell Phone Carrier Utility Technician: arrives at work locations in remote areas and finds them to have been burglarized (typically theft of copper), self-protection.
13. Male, Business Maintenance Manager: burglary victim, called in to work at all hours.

4. PERMITS FOR LAW-ABIDING CITIZENS

It takes the Merced County Sheriff’s Department an average of twenty minutes to respond to 9-1-1 calls county-wide according to a Merced County of Associated Governments study done in 2008.²²

In the past, the Sheriff has declared smaller budgets as the reason to slow or halt the CCW program. In 2010, there were no permits issued for nine consecutive months. The reason given was financial. However, if Merced County has fewer officers due to budget constraints and more crime occurring in the county (FBI Crime Statistics, 2010-2011, 8% increase in Merced County), every effort should be made to allow law-abiding citizens to protect themselves.

According to the Modesto Bee²³ Stanislaus County Sheriff Adam Christianson issued 1,250 permits in two years even though they had lost a quarter of their force due to budget cuts. This averages out to be 625 per year when Merced County issued twenty-nine in a nine month period. Sheriff Christianson has declared that he will give them to people of “good moral character” who present logical reasons. He was quoted as saying “that despite hundreds more people packing heat in these parts, there hasn’t been a single case of anyone who has abused the system or the privilege.” There have been instances in which citizens were able to protect themselves with their CCW. There are approximately 1,800 additional permits currently being processed. Sheriff Christianson has said he decided to grant more permits partly to help people defend themselves, due to

²² Merced County Association of Governments, Atwater-Merced Expressway Project Report, http://www.mcagov.org/pdfs/2008/AME/DraftEIR/4.14_PublicServices.pdf Page 3

²³ The Modesto Bee, Monday, April 22, 2013. http://www.modbee.com/2013/04/22/2682744/gun-owners-press-sheriff-to-speed.html?story_link=email_msg

fewer deputies and more criminals on the streets since state officials began reducing prison populations a couple of years ago.

Many Merced County law-abiding citizens who were denied CCW permits had similar cause and incident history as those who received permits.

FINDINGS

- F1.** A majority of CCW applicants who were denied had similar cause and victim incident history as those who received permits.
- F2.** A Sheriff's Deputy is assigned to review all applications. The Sheriff, taking the deputy's notes into consideration, makes the final decision on who receives and who is denied a CCW.
- F3.** There were seven applicants granted a CCW who did not supply adequate "good cause" and "victim incident history."
- F4.** There is higher crime and there are fewer officers in Merced County. Response time to 9-1-1 calls is lengthy in the county, leaving residents without protection for longer periods of time.

RECOMMENDATIONS

- R1. and R2.** The 2012-2013 Merced County Civil Grand Jury recommends the Sheriff's Department review their procedures to ensure that approval and denial of applications are given an equal/fair process. The 2013-2014 Merced County Civil Grand Jury should review six months of CCW applications to ensure consistency in the permitting process.
- R3.** The 2012-2013 Merced County Civil Grand Jury recommends the Sheriff's Department review and reconsider all denied applications from July 16, 2012 through April 16, 2013 which had similar good cause and victim incident history as accepted applications.
- R4.** The 2012-2013 Merced County Civil Grand Jury recommends the Sheriff grant CCWs to law-abiding citizens with good cause and reasonable justification.

REQUEST FOR RESPONSE

Pursuant to Penal code section 933.05, the grand jury requests a response.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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ATTACHMENTS

A) FBI Statistics for Merced County 2010

B) FBI Statistics for Merced County 2011

DISCLAIMER

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1(a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

This report was issued by the Grand Jury with the exception of three members who were recused due to a potential conflict of interest. Those jurors were excluded from all parts of the investigation, including deliberations and the making and acceptance of this report.

A) FBI Statistics for Merced County 2010

MO	CTY	SMA	ORI	G	AGENCY NAME	POPULATION	VIOLENT CRIME		PROPERTY CRIME		02/17/12 FORCIBLE		02/17/12 AGGRAVATED BUR-		UCR551000		
							CRIME	MURD	CRIME	MURD	RAPE	ROBBERY	GLARY	LARCENY	MTR VEH	THEFT	ARSON
12	023	CA02309	8D		UPRR: MENDOCINO C		1	128									
12	023	CA02399	8D		HP: MENDOCINO COU		488	1,518	4	43	45	396	515	829	11	117	25
					COUNTY TOTAL	87,841											
12	024	522	CA02406	3	MERCED	78,958	549	2,808	7	33	141	368	633	1,934	241	23	
12	024	522	CA02401	4	ATWATER	28,168	114	1,128	4	6	23	81	322	700	106	14	
12	024	522	CA02402	6	DOS PALOS	4,950	48	171	1	3	5	39	58	105	8	6	
12	024	522	CA02403	6	GUSTINE	5,520	8	175			1	7	69	85	21	1	
12	024	522	CA02404	5	LIVINGSTON	13,058	103	346		4	13	86	163	151	32	6	
12	024	522	CA02405	4	LOS BANOS	35,972	139	1,050	2	4	36	97	323	637	90	3	
12	024	522	CA02412	7	UN OF CA: MERCED		1	18				1		18			
12	024	522	CA02400	9B	MERCED	89,167	484	2,026	12	22	49	401	778	1,227	21	7	
12	024	522	CA02408	9D	UPRR: MERCED COUN			8						8			
12	024	522	CA02410	9D	DPR: FOUR RIVERS		1	7			1			7			
12	024	522	CA02499	9D	HP: MERCED COUNTY		1	507				1	1	72	434		
					COUNTY TOTAL	255,793	1,448	8,244	26	72	269	1,081	2,347	4,944	953	60	

B) FBI Statistics for Merced County 2011

FBI CRIME STATS 2011
By County/City

CRIME BY COUNTY 2011		1/23/13														
MO	CTY	SMA	ORI	G	AGENCY NAME	POPULATION	VIOLENT CRIME	PROPERTY CRIME	MURD	RAPE	FORCIBLE	ROBBER	AGGRAVATED BURGLARY	UCR5	5100	
							CRIME	CRIME	CRIME	RAPE	RAPE	ASSAULT	ASSAULT	LARCENY	MTR	ARSON
12	24	522	CA02406	3	MERCED	79,886	503	3,159	8	20	149	326	802	2,044	313	42
12	24	522	CA02401	4	ATWATER	28,499	129	1,230	5	37	37	87	355	773	102	14
12	24	522	CA02402	6	DOS PALOS	5,008	40	177	3	3	50	37	50	105	22	2
12	24	522	CA02403	6	GUSTINE	5,585	34	148	1	2	5	26	46	81	21	1
12	24	522	CA02404	5	LIVINGSTON	13,212	75	350	5	5	10	60	180	135	35	2
12	24	522	CA02405	4	LOS BANOS	36,395	168	1,177	3	7	29	129	397	676	104	1
12	24	522	CA02412	7	UN OF CA: MERCED		1	39				1	2	37		
12	24	522	CA02400	98	MERCED	90,215	459	2,319	2	22	41	394	767	1,538	14	6
12	24	522	CA02408	9D	UPPR: MERCED COUN			14						14		
12	24	522	CA02410	9D	DPR: FOUR RIVERS			8						2	6	
12	24	522	CA02499	9D	HP: MERCED COUNTY			511						3	87	421
					COUNTY TOTAL	258,800	1,409	9,132	14	61	274	1,060	2,604	5,496	1,032	68