

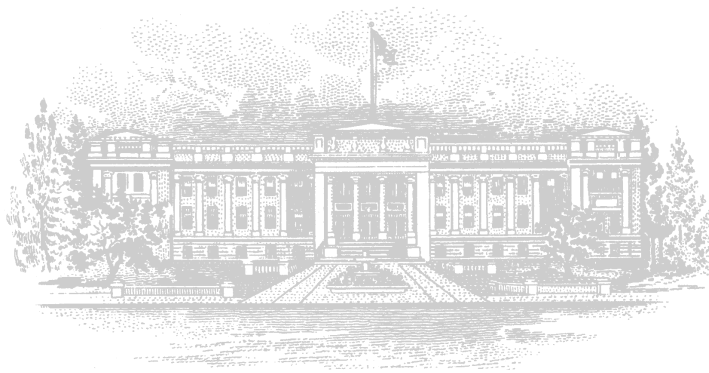
This document is an extract of a larger publication.

civilgrandjury.org is a project of UnGovr.org, a US-based 501(c)(3) nonprofit dedicated to government transparency and public accountability.



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GRAND JURY

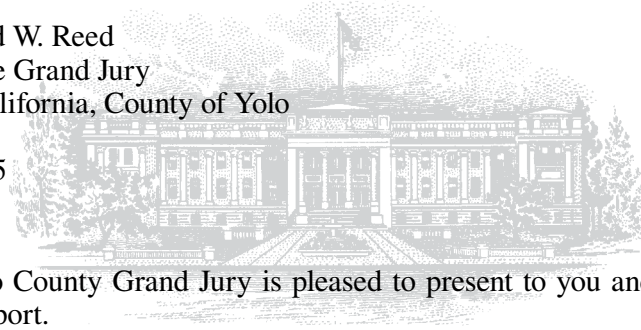
County of Yolo

P.O. Box 2142

Woodland, CA 95776

June 30, 2011

The Honorable David W. Reed
Advising Judge to the Grand Jury
Superior Court of California, County of Yolo
725 Court Street
Woodland, CA 95695



Dear Judge Reed,

The 2010–2011 Yolo County Grand Jury is pleased to present to you and the citizens of Yolo County our Final Report.

The panel considered 33 citizen complaints, including 28 new appeals and five referred from last year's Grand Jury. The complaints alleged problems in 20 departments or agencies within the County, i.e., there was repetition in the matters brought to the Grand Jury's attention, allowing us to combine multiple complaints into one investigation. We initiated five investigations: four on departments based on their responses to the 2009–2010 report and one on the fall 2010 general election. The Grand Jury produced 12 reports: nine based on complaints or follow-up investigations, two on County detention facilities as mandated by California Penal Code, and elections. The majority of the reports were released to the public throughout the spring. Two departments have already responded (appended).

Not all of the investigations resulted in reports. Some matters were unsubstantiated and therefore dropped and others were not timely. Some complaints were received too late to investigate this year but will be referred to next year's Grand Jury for consideration. In addition to the civil investigations, the Grand Jury participated in four criminal indictment hearings at the behest of the District Attorney.

The Grand Jury undertook a poll to determine how much time we invested this year in fulfilling our responsibilities: about 8,000 person hours. This year's panel represented a true cross section of Yolo County citizens in ethnic, cultural, political, economic, and educational diversity. It has been an honor and pleasure to serve as Foreperson of this intelligent, hardworking, thoughtful, challenging, good-humored, lively group of nineteen. Without many extra efforts and long hours of several Jurors, our work could not have been accomplished so early and well. The Grand Jury also wishes to acknowledge the hardworking employees and officials and the citizen volunteers throughout Yolo County who give tirelessly of themselves for the common cause and who aided in the completion of our work.

It has been our privilege to serve the citizens of Yolo County this year.

Kathleen Jean Stock, Foreperson
2010–2011 Yolo County Grand Jury

**The 2010 – 2011
Yolo County Grand Jury**

**Kathleen Jean Stock, *Foreperson,
Woodland***

Maple Avery, *West Sacramento*

Kyle Bartholomew, *Davis*

Virginia L. Gonzales, *Woodland*

Beverly Graham, *West Sacramento*

Marcella Harrison, *Davis*

John W. Jefferson, *Davis*

Thomas Loewen, *Woodland*

John D. Lynn, *West Sacramento*

Rosanne Mandel, *Davis*

Candi Martinez, *Woodland*

James C. Rathbone, *Woodland*

Erik Shank, *Woodland*

James W. Taylor, *Woodland*

Laura Melissa Turben, *Woodland*

Nancy Ullrey, *Woodland*

Darby K. Vickery, *West Sacramento*

Travie J. Westlund, *Davis*

Enid Williams, *Woodland*



ABOUT THE GRAND JURY

The United States Constitution's Fifth Amendment and the California Constitution require that each county appoint a Grand Jury to guard the public interest by monitoring local government. Per California Penal Code 888, the Yolo County Superior Court appoints 19 Grand Jurors each year from a pool of volunteers. These Yolo County citizens, with diverse and varied backgrounds, serve their community as Grand Jurors from July 1st to June 30th. The Yolo County Grand Jury is an official, independent body of the court, not answerable to administrators or the Board of Supervisors.

FUNCTION

The California Grand Jury has three basic functions: to weigh criminal charges and determine whether indictments should be returned (*Pen. Code, § 917*); to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office (*Pen. Code, § 992*); and to act as the public's "watchdog" by investigating and reporting on the affairs of local government (*e.g., Pen. Code, §§ 919, 925 et seq.*). The purposes of any Grand Jury civil investigation are to identify organizational strengths and weaknesses and to make recommendations aimed at improving the services of county and city governments, school districts, and special districts under study. Based on these assessments, the Grand Jury publishes its findings and may recommend constructive action to improve the quality and effectiveness of local government.

Recommendations from the Grand Jury are not binding on the organization investigated. The governing body of any public agency must respond to the Grand Jury findings and recommendations within 90 days. An elected county officer or agency head must respond to the Grand Jury findings and recommendations within 60 days. The following year's Grand Jury will then evaluate and report on the required responses.

The findings in this document report the conclusions reached by this year's Grand Jury. Although all the findings are based upon evidence, they are the product of the Grand Jury's independent judgment. Some findings are the opinion of the Grand

Jury rather than indisputable statements of fact. All reports included in the document have been approved by at least 12 jurors. Any juror who has a personal interest, or might be perceived to have a personal interest, in a particular investigation is recused from discussion and voting regarding that matter. All reports are reviewed by the Grand Jury's legal advisors to ensure conformance with prevailing laws.

While the Yolo County Grand Jury's primary function is civil review of government agencies, it is also called upon to participate in criminal indictments, usually based on evidence presented by the District Attorney. On its own initiative, the Grand Jury may investigate charges of malfeasance (wrongdoing), misfeasance (a lawful act performed in an unlawful manner), or nonfeasance (failure to perform required duties) by public officials.

The Grand Jury investigates complaints from private citizens, local government officials, or government employees; initiates investigations based on ideas generated from the jury; and follows California Penal Code that requires it to inspect the county's jails.

Copies of the Grand Jury's comprehensive final report, consisting of each year's individual reports on departments and agencies and responses to the prior year's report, are available in hard copy at the courthouse and in all public libraries, and on the Grand Jury's website.

Grand Jurors and all witnesses are sworn to secrecy and, except in rare circumstances, records

(continued on page 8)

of meetings may not be subpoenaed. This secrecy ensures that neither the identity of the complainant nor the testimony offered to the Grand Jury during its investigations will be revealed. The Grand Jury exercises its own discretion in deciding whether to conduct an investigation or report its findings on citizens' complaints.

HOW TO SUBMIT A COMPLAINT

Complaints must be submitted in writing and should include any supporting evidence available. A person can pick up a complaint form at the county courthouse, the jail, or any local library; can request it be mailed by calling (530) 406-5088; by writing to the Grand Jury at P.O. Box 2142, Woodland, CA 95776; or can access the Grand Jury's website at www.yolocountygrandjury.org. Complaints should be mailed to P.O. Box 2141 in Woodland or sent to the Grand Jury's e-mail address, grand-jury@sbcglobal.net. It is not necessary to use the printed form as long as the essential information is included in the complaint. Complaints received after February, when the Grand Jury's work is coming to a close, may be referred to the next year's Grand Jury for consideration.

REQUIREMENTS AND SELECTION OF GRAND JURORS

To be eligible for the Grand Jury you must meet the following criteria:

- Be a citizen of the United States.
- Be 18 years of age or older.
- You have been a resident of Yolo County for at least one year before selection.
- You are in possession of your natural faculties, of ordinary intelligence, of sound judgment and fair character.
- You possess sufficient knowledge of the English language.

- You are not currently serving as a trial juror in any court of this state during the time of your Grand Jury term.
- You have not been discharged as a Grand Juror in any court of this state within one year.
- You have not been convicted of malfeasance in office or any felony.
- You are not serving as an elected public officer.

In addition to the requirements prescribed by California law, applicants for the Grand Jury should be aware of the following requirements:

- Service on the Grand Jury requires a minimum of 25 hours per month at various times during the day, evening and weekend. During peak months, 40 hours a month is typical, with more hours for those in leadership positions.
- Jurors must maintain electronic communications to participate in meeting planning, report distribution, and other essential jury functions. Such communications can be supported by computers at local libraries or personal electronic devices.

Each spring, the Yolo County Superior Court solicits applicants for the upcoming year's Grand Jury. Anyone interested in becoming a Grand Juror can submit his or her application to the Court in the spring, usually in April. Application forms are available at the courthouse or from the Grand Jury's website at <http://www.yolocounty.org/Index.aspx?page=786>. Applications are managed by the Jury Services Supervisor, Yolo County Courthouse, 725 Court Street, Room 303, Woodland, CA 95695, telephone (530) 406-6828. The Court evaluates written applications and, from these, identifies and interviews potential jurors to comprise the panel of nineteen citizens. Following a screening process by the Court, Grand Jurors are selected by lottery as prescribed by California law.

INVESTIGATIONS & REVIEWS

The City of Davis Affordable Housing Program

SUMMARY

The Grand Jury investigated allegations of unfairness and misuse of public funds in the administration of the affordable housing program in the City of Davis (the City). The Grand Jury found that the City's efforts and policies administering affordable housing evolved over the past 30 years. The City's original vision was to allow low and moderate income households to achieve home ownership equity without restrictions on the resale value of the properties. There was no lottery procedure to select potential buyers and no open bid procedures to select potential developers.

Approximately 700 low and moderate income households achieved home ownership through the program. Due to the absence of resale restrictions on value, there are currently only 90 homes locked into the affordable housing program. In response to public comment about the loss of homes from the program and perceived unfairness in selecting eligible homeowners and developers, the City successfully evolved an affordable housing program that ensures fairness in the selection process and retains homes in the program.

The City was far less successful with the Davis Area Cooperative Housing Authority (DACHA). DACHA encountered practical and affordability problems from the outset and currently no longer exists as an entity. As of May 2011, the 20 properties built under the auspices of DACHA remained in the affordable housing program, but the DACHA cooperative has dissolved as a legal entity. The City has been involved in a lengthy and expensive legal dispute with the original developers/consultants for several years. This dispute has culminated in a lawsuit by the developers/consultants which seeks to take possession of the DACHA properties and any monetary proceeds from these properties from the City and its citizens. Better initial oversight of DACHA by the City could have prevented this. When the City has a financial interest in a project, especially one based on a new or different concept, the City should provide oversight to ensure that

the project meets its goals and does not result in a loss to the public.

No inappropriate gift or use of public money was made at any time, for any purpose by the City in connection with DACHA. However, the City has incurred losses that may not be recovered and may increase in the future. Better initial oversight of DACHA could have prevented this.

REASON FOR INVESTIGATION

Penal Code section 925(a) states "The grand jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit."

California Penal Code Section 933.1 further provides that "A grand jury may at any time examine the books and records of a redevelopment agency ... 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 agency of authority."

This investigation was initiated in response to complaints about the fairness, alleged cover-up and misuse of public funds in administering the Affordable Housing Program by the City and the Davis Redevelopment Agency (DRA) in general, and DACHA specifically. That these are matters of public interest to the citizens of the City and the Grand Jury is demonstrated by the many articles and public comments published in local media and the filing of multiple lawsuits.

ACTIONS TAKEN

The Grand Jury interviewed City staff and attended City Council meetings to determine and understand the development, evolution and current administration of the affordable housing program in the City. The Grand

Jury reviewed information on the City's web site, communications from the public to and about the City, the ordinance concerning affordable housing, staff communications with the City Council, financial documents including audits, legal documents, and State and Federal government requirements for affordable housing.

The Grand Jury interviewed representatives of affordable housing developers of rental and ownership equity projects and representatives of the City. The Grand Jury also interviewed representatives of Rancho Yolo Senior Community concerning conversion to an affordable housing cooperative in the City.

WHAT THE GRAND JURY DETERMINED

AFFORDABLE HOUSING PROGRAM

The 1990 Ordinance

During the 1970s the City recognized a demand for affordable housing. A variety of housing types and options were available to meet this demand. Redevelopment agencies, including the DRA, were required by state law in 1986 to set aside at least 20% of their tax increment funds for affordable housing. Tax increment funds are generated from property value increases in the redevelopment zone. In 1987 the City Council adopted an inclusionary housing policy in its General Plan that required all new housing subdivisions to include provision for affordable housing. An inclusionary policy is a requirement that all residential projects provide a specified percentage of affordable housing in the development. This inclusionary requirement was subsequently approved as the City's Affordable Housing Ordinance in 1990.

The 1990 requirements, which are still in effect, are: 1) ownership projects with five or more units must have 25% of units be affordable; 2) rental projects with 5 to 19 units must have 25% of units be affordable; and 3) rental projects with 20 units or more must have 35% of units be affordable. The ownership units are usually provided through a combination of on-site development by the for-profit developer and land dedication to the City that is used to develop affordable housing by a local nonprofit housing organization. Affordable rental units are usually either built within the market rate development or through a land dedication by the developer. To date, approximately 1,800 affordable units, of which approximately 1,100 are rental units, have been built in the City under the auspices of this program.

Under the 1990 ordinance a housing unit was considered affordable if it cost no more than 30% of an eligible household's monthly income for rent and utilities. Eligibility requirements for the units ranged from very low to moderate income levels. The moderate category was added in 2005 and suspended in 2009. An extremely low income household is currently defined as one with household income at or below 30% of the Yolo County median income (YCMI) (currently \$72,500 for a family of four) and a moderate income household is one at or below 120% of YCMI. Thus, the maximum household income for inclusion in these would be \$21,750 and \$87,000 respectively. The maximum monthly rent would be 30% of these income levels, divided by twelve.

No equity accumulation restrictions were required in the loan documents or deeds for affordable ownership units under the 1990 ordinance. The City believed any increase in home value should be passed on to the low income homeowners. This meant that the original buyers of the affordable homes could sell the homes at market value to purchasers who had no income restrictions. The sole limitation put on buyers was a requirement they occupy the home for two years. No buyer/tenant selection guidelines such as lotteries were included in the 1990 ordinance.

Evolution and Criticism of the Original Program

Most of the City's approximately 700 affordable housing ownership units were built during the 1990s and early 2000s. Of these 700 units, only 90 still remain in the affordable housing program. The rest were sold at market value with significant profit to the sellers. The resold units lacked affordable housing restrictions such as income restrictions for buyers and equity accumulation limits. The 90 affordable units are: a) 60 units built in Green Terrace during the 1990s, b) the 20 DACHA units built in 2003 and 2004, c) 5 units on Park Santiago, and d) 5 units on Cassel Lane. According to the City, the reason for the slowdown in unit construction is the lack of new building projects in the City over the last 10 years. There are currently five ongoing or proposed developments that include provision for affordable housing. These include 18 affordable units in the Verona subdivision which are currently under construction and approximately 20 to 21 units in the proposed development in Chiles Ranch.

There was considerable public comment as the loss of ownership units from the affordable housing program became apparent. The loss of units from Wildhorse and Simmons Estates in particular aroused significant public debate about whether permitting the sale of affordable

units at market value was an appropriate use of land dedicated by the developers to the affordable housing program. Further questions were raised about the fairness of the selection process for the original low income buyers. The City responded by creating the Affordable Housing Task Force and amending the 1990 ordinance.

In 2005 the City Council amended the Affordable Housing Ordinance, altering the rules in several ways for access to affordable ownership units. The maximum percentage of family income that could be used to pay for housing costs and utilities was raised from 30% to 35% to help the program compete better in the then booming housing market. Resale equity escalation was limited to a small yearly percentage increase of the unit value. This is currently set at a maximum of 3.75% per year. The selection process for rental and ownership equity purchases also received greater scrutiny with provision for equitable selection processes such as lotteries and better oversight to ensure appropriate purchasers/renters. In 2006, the affordable housing ordinance was further amended to require all owners to sign the deed and occupy the unit for the entire ownership period. The City is continuing to review the affordable program and held a workshop in January 2010 to review all aspects of the program to meet the City Council's goal for housing. The City's goal is: "Advance an array of housing options targeting affordability, internal growth, University-related needs and housing needs of special populations."

The downturn in the current economy, combined with the City's limitations on growth, has resulted in less housing development and fewer affordable units becoming available. The downturn has also made the resale of affordable housing units with deed restrictions significantly restricting equity accumulation more of a challenge because of the availability of lower priced regular housing units with no limits on the potential resale profit. Another problem faced by the affordable housing program is the increased difficulty of obtaining financing for low end borrowers in the current market. The financing problem is exacerbated by the City's requirement that it have the "right of first refusal", which means that the City has the option to purchase the affordable unit in the event of sale. This enables the City to assure that any purchaser fulfills the income level requirements of the affordable housing program. Despite these difficulties the City reports significant interest in the affordable housing units in the new Verona development, as well as increased interest in available DACHA units.

The Grand Jury confirmed that the current affordable housing programs are operating as planned, with income

confirmation, open bidding by developers for projects and lotteries of eligible buyers to ensure selection fairness. Tenants/owners informed the Grand Jury that they are satisfied with management of the units and are finding financing at interest rates low enough to keep the units affordable.

DACHA

Regulatory Agreement Basic Structure

DACHA was a limited equity housing cooperative, approved in 2002 by the City of Davis as part of its affordable housing program. Pursuant to the "regulatory agreement" signed by DACHA and the City, members were required to invest approximately \$16,000 to a maximum of \$20,000 to own a share of the cooperative. Annual equity accumulation was restricted to a maximum of 10% of the \$20,000 equity stake, or \$2,000. The houses were owned by the cooperative with the members owning a share in the cooperative organization. As shareholders, residents owned the cooperative as an undivided whole, with the exclusive right to occupy a specific unit within the cooperative. The members were able to claim ownership tax benefits, and upon termination of their membership the initial share price plus any appreciation on the share price was returned. One of the hopes of the developers was that the local businesses would assist their employees with the purchase of the cooperative share to enable them to live in the City where they work.

The regulatory agreement with the City required the cooperative to charge members the minimum "carrying charge". This was essentially a form of rent designed to recover mortgages, taxes and operating expenses. The carrying charges were limited to 30% of 110% of the YCMI to ensure affordability. This was approximately \$1,425 to \$1,568 per month initially, depending on whether the units were two or three bedrooms. The agreement also made DACHA responsible for all management functions, with the City retaining the right to conduct an annual (or more frequently if deemed reasonably necessary by the City) review of the management practices and financial status of the Development.

A Covenant Running with the Land Ensured Continuing Affordability

The regulatory agreement ensured that if units were sold by DACHA, future purchasers would be subject to the restrictions in the regulatory agreement. This was done by including a "covenant running with the land" in both the regulatory agreement and the deeds. This

covenant permanently restricted subsequent purchasers/ owners of the properties in DACHA to the rules embodied in DACHA’s regulatory agreement with the City, ensuring that the units would remain affordable in perpetuity.

An important impact of the DACHA covenant running with the land was that the City intended that the units can never be sold at fair market value. The maximum resale value of the property is determined by arithmetic formula, which is more easily understood by an example. The calculation is based on the “allowable monthly cost burden” for a family purchasing a three bedroom house. The example assumes a 30 year (360 month) mortgage at a 5% interest rate. The maximum allowable income for a family of four at 100% of YCMI is \$72,500, and the allowable monthly cost burden is 35% of \$72,500 divided by 12, or \$2,115 per month. Impounds such as property tax, PMI and hazard insurance are subtracted, leaving \$1,546 per month available to service the mortgage. The allowable monthly cost burden is now multiplied by the number of months in the mortgage. In this example, the amount is \$1,546 x 360 = \$556,410.

The formula now works backward to determine the principal, given the loan’s interest rate. In this example, assuming an interest rate of 5%, the restricted resale price is \$298,881. The results can be obtained using an amortization table. A simple way to summarize this formula is that lower interest rates, increases in the allowable cost burden percentage, and increases in the percentage of area median income used to determine eligibility increase the sale price, and the opposite reduces the calculated value of the home for sale purposes. Table 1 illustrates these calculations.

Although it was intended by the City that the DACHA units would always be subject to the restrictions in the regulatory agreement via the covenant running with the land, there was a limited exception arising from the method of financing. Private banks required that the covenant be subordinated to their rights in the event of foreclosure. This meant that the 13 DACHA units financed by the private banks (River City Bank and First Northern Bank) could be sold at market value to purchasers without income restrictions during a foreclosure sale. City representatives have steadfastly maintained throughout the Grand Jury’s investigation that they know of no other way to remove the restrictive covenant.

DACHA’s Agreement with the Developers/Consultants

Although DACHA was created under the auspices of the City’s affordable housing program, DACHA was a private nonprofit corporation that contracted with a private consultant to assist in development of its housing. DACHA contracted with the consultant to construct a total of 67 units, with the consultant to receive “\$8,000 per unit for units that Consultant obtains from a private developer, where the consultant participates in the financing and marketing of the units, but does not have an active role in the architectural and planning portions of the development... and \$12,000 per units that Consultant initiates the development and participates in all phases of the development...” The consultant also provided extensive noncontractual consulting services, billed at \$120 and \$125 per hour.

DACHA incorporated in December of 2002. The articles of incorporation made the developers/consultants the beneficiary of DACHA’s assets, including the housing units, in the event of DACHA’s dissolution. Although the articles of incorporation thus made the developers/consultants the owner of DACHA’s housing units if DACHA failed, the articles also required the beneficiary to pay off DACHA’s debts. The developers set up DACHA, acted as consultant and broker, designated themselves as beneficiary and selected the original board of directors, which was comprised of prominent members of the community who were to be replaced by tenants as the number of units increased.

TABLE 1	
Allowable Resale Price of DACHA 3 BR Unit – April 2011	
Assumptions:	
1) 100% of county medium income for family of 4 =	\$72,500
2) Allowable monthly cost burden available for PITI = Income x 35% / 12	
3) Property taxes and mortgage and hazard insurance impounded	
4) Mortgage terms = 30 years (360 months) @ 5%	
Calculations:	
1) Family’s annual income	\$ 72,500
2) Allowable monthly cost burden (income x 35% / 12)	\$ 2,115
3) Tax and Insurance Impounds / mo.	(569)
Available for Debt Service / mo.	\$ 1,546
Calculation of Mortgage Payout and Restricted Sales Price:	
Available for Debt Service / mo.	\$ 1,546
4) Term (30 years)	360
Total Mortgage Payout – \$1,546 x 360	\$556,410
Restricted Sales Price (\$1,546 / mo. @ 360 mos. @ 5%)	\$298,881

According to the City, DACHA was a private entity and the City had no direct connection to, or responsibility for, DACHA. The City indicated that although DACHA was established under City rules, partially financed by the City, and the City reserved the right to review the carrying charges and audit DACHA, the City’s role was that of any other lien holder. The City also had the right to appoint a voting member of DACHA’s initial board, but preferred a nonvoting “ex officio” seat. City staff regularly attended board meetings until 2005, when the City appointed a formal board member.

The City’s Initial Involvement with DACHA

The City completed its assessment of DACHA in September of 2002, prior to incorporation. The City’s projections showed DACHA’s projected carrying costs exceeded the City’s rules for low income housing. Accordingly, it was recommended that the City finance the first loan in order to reduce carrying charges by \$200 per month. Even at that level the carrying charges were considered to be at the upper end of compliance with affordable housing rules. City representatives informed the Grand Jury that there was concern at the outset that the complexities of running and financing DACHA could prove difficult for low income buyers who were making their first real estate purchase. It was the City’s understanding that DACHA members were to receive training and a packet of information with a facts and questions handout (FAQ).

A City staff report dated September 2002 requested a legal analysis of the relevant legal documents such as the bylaws, articles of incorporation and loan documents be performed by the City Attorney’s office. This report was presented to the City Council.

Financing DACHA

In December 2002 and January 2003 the DRA approved a loan of \$100,000 for expenses related to creation of DACHA

and \$1,140,000 for the first seven units. These were to be built on Tufts Place. The \$1,140,000 loan was a 30 year loan at 5.5% fixed interest, which was below market rates at the time. DACHA’s monthly mortgage payment to the City was \$6,472.79. The \$100,000 loan was to be repaid in annual installments of \$10,000 beginning in 2013.

The next 13 units were financed by private banks. In order to keep the carrying costs at an amount allowed by the affordable housing rules, very little principal was paid. The payments were essentially “interest only”. In 2003 and 2004, seven additional homes on Arena Drive, Marden Drive and Albany Circle were financed by First Northern Bank. These loans had initial interest rates ranging from 6.25% to 6.67% and prepayment penalties of 5% in the first year, declining by 1% per year in subsequent years. In 2005, River City Bank financed the final six houses on Glacier Place with a loan of \$1,119,000. The interest rate was apparently fixed at 6.37% with a balloon payment of the entire amount due in 2015. Prepayment penalties were 5% during the first two years, decreasing by 1% every two years. Over the course of three years a total of 20 homes were built for DACHA. Table 2 illustrates the sources of financing to construct the 20 DACHA units.

Some of the applicants, who were all selected via lottery of eligible low income buyers, did not have the money required to purchase shares in DACHA. This was during a period of time in the housing market when most people could get a home mortgage with little down payment and minimal credit review. The developers/consultants decided to loan money to DACHA to complete the share purchase requirements. The total of these loans was difficult to determine. It appears to have been

TABLE 2
Financing DACHA’s Construction – 20 Units

	Loan Amount	Avg. Rate	Term	Mo. Pymt.	Yrly. Pymt.	Lender	# Units	Notes
Jan-03	\$100,000	0.0%	120	–	\$10,000	City of Davis RA	–	DACHA formation costs; annual pymts beginning 3/13
Dec-02	\$1,140,000	5.5%	360	\$6,473		City of Davis RA	7	Construct @ Tufts Place
2003-04	\$1,198,000	6.5%	Unk			First Northern Bank	7	Construct @ Arena, Marden, Albany; Interest only
Jun-05	\$1,119,000	6.4%	240	Unk		River City Bank	6	Construct @ Glacier Place; balloon pymt in 2015
2004-05	\$152,000	Var	Var	Unk		Developers/Consultants	-	Personal loan to support purchase of individual shares;
							20	typical loan rate is 5 Year T-Bill plus 2.5%-3%

approximately \$152,000 to \$170,000. Some of these loans included a balloon payment and a prepayment penalty. Interest rates were typically 3% above a specified institutional rate such as five year treasury bills. The net result of these loans was increased economic pressure on DACHA, as repayment was in addition to carrying charges that were already at or beyond the maximum permitted by the regulatory agreement. The City indicated it was unaware of these loans, and that any discussion of the loans would have occurred during closed session of the DACHA board.

Problems with DACHA First Become Apparent

In May 2005, DACHA members wrote the City Council (the City Council members also comprise the Board of the DRA) regarding purported high costs of DACHA above the carrying charges. These included management fees of \$900 to \$1,100 per unit per year, estimated consulting costs of \$690 per unit per year as well as landscaping and utilities of at least \$100 per unit per month. There was also concern about high turnover resulting in property tax increases as well as the approaching need to refinance, potentially increasing carrying charges.

At this point the carrying charges ranged between approximately \$1,520 to \$1,780 per month. Given the real estate boom at the time, DACHA was becoming less competitive in the market. The City responded by appointing a board member to represent its interests, asking staff to perform an analysis of DACHA, and paying \$18,000 for an audit.

DACHA Is Audited

The audit report was delivered in June of 2006. The auditor was unable to complete the fiscal analysis due to DACHA's inadequate record keeping. Financial data such as balance sheets, loan and interest information, and minutes were missing, and there was no adequate explanation for money present in two DACHA accounts. However, the audit raised important questions regarding DACHA's financial viability. The auditor's main concerns were: 1) the absence of reserves that were required. The failure to keep reserves meant that the City would likely be responsible to fill the gap for such items as capital repairs and emergencies; 2) the employment of interest only loans was considered a long term risk to DACHA. They also posed a potential long term risk to city resources as they were an "indefinite debt"; and, 3) most troubling were long term projections by the auditor.

The most optimistic projection assumed a vacancy rate of only 3.5%, and showed a probable net loss for DACHA over 30 years of \$160,000. Under a worst case scenario of applicable variables, including a 5.5 % vacancy rate, the probable loss rose to over \$2,500,000. The audit concluded that DACHA's woes needed to be fixed before DACHA expanded and that it should be compared with other affordable housing models.

The City Becomes More Involved with DACHA

While the audit was pending DACHA cancelled its contract with the consultant and refused to build any further units. A lawsuit ensued and has continued in one form or another to the present. It is beyond the scope of the Grand Jury to prefer one side over the other, or to assess the various legal positions and theories, and this report makes no attempt to do so.

From its inception until March 2007, DACHA regularly made its mortgage payments to the City. From March 2007 to August 2008 the City forbore to collect the mortgage payments in order to enable DACHA to pay its legal fees. The total forbearance amount was \$116,510.22. (18 months times \$6,472.79).

In January 2008, the City decided to refinance DACHA using money exclusively from its redevelopment funds. The City considered the following factors important in making this decision: 1) cash flow problems encountered by DACHA; 2) affordability problems for DACHA members; 3) the small size of the units, the legal problems, and carrying charges in excess of local rents for comparable units made marketing difficult; 4) loan repayments were coming due and some lenders were prepared to reduce prepayment penalties if payment was made in the near term; and, 5) only commercial interest rates were available if the RDA did not refinance.

Another important reason for the refinance was the City's concern that the DACHA housing units remain in the affordable housing program. The covenants running with the land were subordinate to the interests of the private banks in the event of foreclosure. A refinancing by the City would permit the homes to stay in the affordable housing program if the City foreclosed. The City also was concerned about the beneficiary provision in DACHA's articles of incorporation that made a third party the owner of the homes if DACHA dissolved. The loan refinance document made the City the sole beneficiary of the properties in the event of DACHA's dissolution. Additionally, if the City foreclosed it would obtain title to the DACHA properties from DACHA. There would

therefore be no assets in DACHA to go to a beneficiary regardless of who the beneficiary was.

The refinance was completed in June of 2008 and the new regulatory agreement with DACHA was signed in August of 2008. The new agreement between DACHA and the City made the City DACHA's beneficiary if DACHA dissolved. It also changed the maximum carrying charges to 30% of 80% of the YCMI, and continued the requirement that all affordability restrictions be covenants running with the land. This had the effect of making the units more affordable, but also had the effect of reducing the value of the property in the event it became necessary for the City to step in and sell all the properties. At this time the homes were valued at approximately \$235,000 for two bedroom homes and \$293,000 for three bedroom homes.

The amount of the loan was \$4,153,428.62 at 3% over a term of 55 years. Mortgage payments were \$12,877.16 per month. Table 3 shows the use of the refinance loan funds:

Consultant Loans (\$152,000 Principal, \$95,000 Prepayment Penalties & Interest)	\$ 247,030
Primary Loans Repaid	\$ 3,474,399
Private banks for construction	
First Northern	\$1,172,071
River City	\$1,129,151
Davis Redevelopment Authority for Construction	\$1,173,177
Share Stabilization	\$ 202,000
Reserves (Capital, Maintenance, Vacancy)	\$ 230,000
	<u>\$4,153,429</u>

In addition to solving the pressing need to refinance the interest only private bank loans, this refinance was intended to resolve at least three other fiscal issues. First, the \$116,510 that the City forbore was "wrapped into the term" of the refinance loan. The City planned to recoup the money by extending the length of time for repayment. Second, although the original consultant loans were approximately \$152,000, the lien holder refused to waive any prepayment penalties or interest. DACHA borrowed \$247,000 to repay the \$152,000 consultant loan. Third, the \$202,000 share stabilization portion of the loan was made so that DACHA could refund money DACHA shareholders originally paid in excess of \$6,250 per unit. Thus, the share buy in became \$6,250 per unit rather than various amounts up to a maximum of \$20,000. Combined with the reduced carrying charges (30% of 80% of the

YCMI) it was hoped the units were more affordable and marketable.

DACHA Legal Problems

From September 2008 to September 2009 DACHA paid the City the monthly mortgage payments. However, in June of 2009 the lawsuit by the developers/consultants against DACHA went to binding arbitration. The plaintiff asked for \$506,000. This was composed of a demand for \$376,000 in contractual damages for failure to build the additional 47 units (\$8,000 per unit times 47) and approximately \$130,000 for services not enumerated in its contract with DACHA, but which plaintiff asserted had been provided. The arbitrator awarded plaintiff \$331,872 plus 10% interest per annum beginning on June 18, 2009 (\$282,000 for unbuilt units and \$49,872 for noncontractual services). The arbitration award also stated "It is not the task of this arbitrator to wade through years of history between the City of Davis, DACHA and all other interested parties to determine who is right and who is wrong, as to the viability of this model or the financial health of DACHA

or any of the myriad other issues involving these parties. The City of Davis maintains a very commendable goal of affordable housing. Along with this goal, there comes a host of other problems which are not part of this arbitration. One thing is clear from the audit report and that is that the criticisms in the report do not negate the contractual obligations."

In October 2009, DACHA's bank accounts were levied to pay the arbitration award. The \$57,000 in DACHA's bank accounts was seized. To date, this is all that is known by the Grand Jury to have been paid by DACHA. However, the Grand Jury was informed that an attempt is being made to make some low income tenants pay the remaining arbitration award.

The City Forecloses on DACHA

The seizure of funds to satisfy the arbitration award caused DACHA to default on its mortgage payments to the City, which then initiated foreclosure proceedings in December of 2009. From December 2009 until the

foreclosure in April of 2010 the City required that all carrying charges be paid into a trust account created by the City pursuant to California Civil Code sections 2398(c) and (g). The City told the Grand Jury that this was done to prevent attempts to collect the arbitration award from interfering with the City's collection of mortgage payments. During this five-month period not all carrying charges were paid by DACHA shareholders. The total arrearage was \$13,229. The City made no direct attempt to collect the arrearage, instead taking the position that this was up to DACHA's management company. Despite the arrearage, the funds paid into the trust account were adequate to cover DACHA's mortgage obligations.

An important effect of the foreclosure proceedings would be to likely transfer ownership of the 20 affordable housing units from DACHA to the DRA, as the DRA would have a credit in the amount of its \$4,153,429 mortgage at the foreclosure sale. Thus, any competing purchaser would have to spend in excess of \$4,153,429 at the foreclosure sale to obtain the DACHA units. With the shareholders paying their carrying charges to the City rather than DACHA, and the impending foreclosure about to transfer title of the units from DACHA to the City, DACHA would have no assets left upon which to levy to satisfy the arbitration judgment. The original beneficiary would be the beneficiary of no properties in the event of DACHA's dissolution.

In an effort to maintain its rights as a judgment creditor, the prevailing party at the arbitration filed a petition asking that DACHA be declared involuntarily bankrupt in Federal Court in Sacramento. This filing requested the foreclosure proceedings be stopped ("stayed") and a finding that DACHA was not a nonprofit organization, based at least in part on the "share stabilization" refund of \$202,000 to DACHA's members. The Federal Bankruptcy Court denied the request to stay the foreclosure proceedings, denied the petition to force involuntary bankruptcy on DACHA, and awarded DACHA \$45,000 in attorney's fees. The order entering judgment in favor of DACHA stated "Also, DACHA's partial refund of initial member contributions was not a dividend as it only refunded contributions. It was not a distribution or return of investments. And, it was a one time distribution, made with the intention of equalizing the members' interests in DACHA. Paying interest on the partial refunds was not a dividend either because it was consistent with DACHA's bylaws, adopted in 2002 upon its formation."

During the bankruptcy proceedings, a demand was made by DACHA's bankruptcy attorneys upon the City to

release approximately \$30,000 from the carrying charges in the City's DACHA trust account to pay a portion of DACHA's legal fees. The City complied. This was the only payment made by the City for DACHA's attorney fees.

The City's Ownership of DACHA

The City completed its foreclosure on DACHA in mid-2010, becoming the owner of the units. The City paid \$20,267.58 for services to complete the foreclosure. The former shareholders signed leases and are now tenants paying rent rather than carrying charges. From the time of foreclosure through February of 2011 all rent has been paid with the exception of \$763.81 by an exiting tenant. The rent collected has exceeded the costs. However, the tenants no longer pay property taxes or management fees. As the owner of the properties, the City is now responsible for all management and maintenance of these units. The City believes that the staff time, expenses and expertise necessary to continue to manage these units as affordable housing make it impractical to continue as the landlord. In anticipation of these difficulties, in January of 2010 the City began to consider options such as selling or transferring the units to another agency or nonprofit to be leased as affordable housing, or selling the housing units as affordable housing units, with requirements of owner occupancy, a right of first refusal, and restrictions on price appreciation.

Beginning in early 2007 and ongoing to the present, the City has incurred significant legal fees in conjunction with DACHA. In October 2010, the Yolo County Superior Court ordered that the City be added as a defendant to an ongoing lawsuit against DACHA. Although the Court dismissed the claim for monetary damages against the City, it allowed the issue of whether the original consultant or the City is the proper beneficiary of the 20 units in the event of the dissolution of DACHA to proceed to trial. Complainant also contends the refinance and subsequent foreclosure that transferred the title out of DACHA is invalid because the shareholders and board lacked the ability to authorize the transfer. The ownership of the units is at stake. This matter is set for trial in October of 2011. Additionally, a government tort claim for monetary damages was filed against the City. The City rejected this claim and contends it is time barred. On March 21, 2011 the developers/consultants filed a lawsuit against the City based on the tort claim. The lawsuit seeks to take possession of the DACHA properties from the City and its citizens as well as any rents or proceeds from the properties. The City's legal fees to date are well in excess of \$200,000 and mounting.

During the City Council meeting on February 1, 2011 the City was presented with a staff proposal, which was in response to previous council direction, to sell the 20 DACHA units. The staff recommended the units be sold as affordable housing at 100% of YCMI. The resulting proposal would sell two bedroom homes for a maximum of \$209,250 and three bedroom homes for a maximum of \$244,250. Families making as much as 120% of the YCMI were to be allowed to purchase the homes to enlarge the pool of eligible applicants. The maximum sale price for the 20 units totaled \$4,500,000. After deduction of a broker fee of \$270,000, the City hoped to net \$150,000 after repayment to the City of the outstanding loan balance of \$4,081,844. It was unknown whether the City could actually sell the homes for this amount due to the impact the affordability covenants have on the value of the homes.

The developers/consultants alleged that the City's maximum sales price was a change from the sales price in 2008 that decreased the value of the DACHA units by approximately \$1,000,000. It was the City's position that this change made the units more affordable. In April 2011 the City released new valuations for the DACHA units. According to the City the same "affordable" units at 100% YCMI now have a maximum sale value of \$259,829 for two bedroom units and \$298,881 for three bedroom units. If successfully sold for these prices, the City would receive a minimum of an additional \$1,000,000. Settlement negotiations have begun.

Throughout the Grand Jury's investigation, the City has been steadfast in its belief that the restrictive covenants could not be removed. However, during the City Council meeting of February 1, 2011, it was claimed by the developers/consultants that the homes could be sold for market value, provided all profits were recycled into the affordable housing program. The City council has asked that this legal question be researched by the City attorney. Council also asked that a market value appraisal be performed on the 20 DACHA units. The eight two bedroom units appraised at \$275, 000 through \$390,000, and the 12 three bedrooms units at \$320,000 through \$420,000. In total, 20 units appraised at \$7,021,000.

FINDINGS

- F1.** The City has a long established program for affordable housing that has developed over the years by trying different models and using inclusionary programs to mix affordable housing with conventional housing. The City has worked hard to improve the affordable housing program, resulting in a program that has become fairer and more successful for all participants, including developers, renters and ownership housing buyers.
- F2.** The City currently has a well documented affordable housing program. Documents are posted on a web site and are also readily available at a counter at City Hall. The City was very cooperative and provided good information to the Grand Jury concerning the affordable housing program. Much of this information is available for review by the general public.
- F3.** The ownership/equity based affordable housing model is challenging to develop, market and administer. There are many influences on the success of such projects, including unit availability, financing and resale restrictions. The difficulty of ensuring unit costs are competitive with local rents, and the state of the general economy, make it difficult to compete with units that have no restrictions on equity accumulation and the number of eligible buyers.
- F4.** In 1990, the City envisioned the affordable ownership units as a way to permit low to moderate income families to gain wealth through home ownership. This resulted in more than 600 of the approximately 700 affordable ownership units permanently passing out of the program. Due to the City's growth restrictions and the housing bubble, the net result is only 90 units are currently affordable.
- F5.** The DACHA project was approved when other equity type affordable housing projects were being criticized and a new affordable limited equity cooperative was conceived. This was to be a way to keep the units affordable forever and encourage people working in the City to live in the City and possibly have their employers help with the equity payment.
- F6.** Greater care should have been taken initially by the City and the DRA when performing legal analysis of documents such as DACHA's articles of incorporation and bylaws. Had the City been made DACHA's beneficiary at the outset, it is probable that many of the current problems, including the ongoing lawsuit by the original developers/consultants seeking to take possession of the DACHA properties and their rents/proceeds from the City and its citizens, with resulting large attorney fees and staff costs, could have been avoided.

- F7.** The City has maintained that DACHA was a private organization and therefore the City had no greater responsibility to take a more active role than any other lien holder when DACHA was first formed. Although this may be technically or legally accurate, beginning in 2005, the amount of staff time and energy, constant oversight and investment of large amounts of public funds prove this initial attitude was unrealistic. If the City was going to assume the degree of responsibility observed by the Grand Jury, it should have done more from the outset. In particular, more should have been done to assist the shareholders to fulfill their obligation to create a total of 67 affordable housing units. The DACHA shareholders were inexperienced first time home buyers who were required to build and market 67 homes, manage the properties, assure capital improvement reserves were sufficient, and refinance sophisticated commercial loans. A handout with FAQs was insufficient for this purpose.
- F8.** The City’s awareness of financing issues that led it to make the first loan to DACHA, combined with the City’s concern that initial carrying charges were at the maximum level allowed under its affordable housing rules mandated that the City monitor DACHA’s progress carefully. There were not enough eligible buyers with required down payments for shares of DACHA. As a consequence, personal loans with balloon payments and prepayment penalties were made to DACHA in order to attract prospective share purchasers. There was insufficient discussion between the City and the developers/consultants regarding this problem. The City should have exercised its right to appoint a DACHA board member long before it did so in June 2005, when concerns by residents came to light. The failure to take proper cognizance of the developing problems and the failure to appoint a board member earlier was failure of oversight by the City.
- F9.** There were many factors in DACHA’s failure, including the failure of oversight by the City, the collapse of the housing bubble, the recent recession, and the filing of a lawsuit against DACHA. No one factor is found to be the likely primary cause or a substantial factor in DACHA’s failure.
- F10.** The City acted responsibly by making many attempts to preserve DACHA as part of its affordable housing program. These attempts include changing the maximum carrying charges, reducing the cost of the homes, reducing the initial share price to \$6,250 and refinancing the outstanding loans. The City’s actions were made in good faith and with transparency. The Grand Jury found no evidence of a cover up.
- F11.** The loan of \$202,000 to DACHA for share stabilization was not an inappropriate gift of public money. A loan that must be repaid is not a gift. DACHA’s insolvency due to a lawsuit means the loan will not be repaid. However, the filing of a suit and its aftermath does not transform the loan into a gift. Most importantly, even assuming the loan had not been made, the City and the DRA would have faced a significant moral dilemma at the time of foreclosure regarding whether to permit DACHA shareholders to receive a refund of some or all of their share investments, that is for the citizens and their elected representatives to decide.
- F12.** No improper gift of public money was made to pay DACHA’s legal fees. The only money transferred from the City to DACHA to pay attorney fees was \$30,000 from a trust account created to protect the City’s right to collect its mortgage. The money in the account was from the carrying charges received directly from DACHA and therefore was not public money. The City also forbore to collect \$116,510 in mortgage payments to permit DACHA to pay its attorneys. However, this money was “wrapped” into the refinance loan by extending its term and therefore was a loan rather than a gift.
- F13.** During the period of time DACHA’s carrying charges were paid into the City’s trust account, approximately \$13,000 in arrearages occurred. This did not result in any loss to the City or any gift of public money, as simple arithmetic shows that even after deduction of the \$30,000 in attorney fees to defend against the involuntary bankruptcy, the funds in the trust account were more than adequate to make the mortgage payments of \$12,877 per month.
- F14.** Although there may have been serious delinquencies in payments of carrying charges by shareholders to DACHA, there was no failure by DACHA to make mortgage payments to the City. The City was not damaged by any such delinquencies and no public money was lost as a consequence of any such delinquencies.
- F15.** Subsequent to the foreclosure, the City has successfully managed the former DACHA properties and collected almost every penny of rent due. There has therefore been no further loss to

the city or gift of public money subsequent to the foreclosure.

F16. The City’s assumption in February 2011 that it will show a “profit” of \$150,000 upon sale of the DACHA units for \$4,500,000 does not take into account significant costs and is therefore erroneous. Such costs as the audit (\$18,000), foreclosure costs (\$20,000), the forbearance money which will never be recaptured (\$116,510) and the legal fees (over \$200,000) should be considered in any profit/loss calculation. The new sale valuations of April 2011 may cover these expenses, assuming the units can actually be sold at these prices. However, the new valuations are less consistent with the affordable housing concept.

F17. Changes in the calculated value of a unit as a result of either including it in the affordable housing program or changes in the affordable housing rules or covenants do not cause an improper gift of public money to occur. Placing deed restrictions with affordability covenants on the properties is what makes them affordable. To call that a gift of public money is to call all affordable housing such a gift. To the extent the maximum selling price is approximately \$50,000 per unit less than in 2008, it is speculative to say that the units could now be sold at 2008 price points. Perhaps more fundamentally, to sell the units at the higher price level even if possible does not support the affordable housing concept. Unsustainable share costs with expensive financing were major factors in the DACHA debacle from the outset and are to be avoided if at all possible.

F18. No inappropriate gift or use of public money was made at any time for any purpose by the City in connection with DACHA. However, the City has incurred losses that may not be recovered and may increase in the future. Better initial oversight of DACHA could have prevented this.

RECOMMENDATIONS

- R1.** The City and RDA need to be sure their oversight and expenditure of taxpayer dollar responsibilities are taken into account when affordable housing projects meet challenging implementation and sustainability problems.
- R2.** The City and RDA should do a more thorough job of analyzing the risks and benefits of any novel project

before deciding to invest significant taxpayer funds in it. This should include public policy, and legal and financial reviews of any documents that form the basis of such a project.

R3. The City and RDA should do a more careful job of deciding at the outset of any privately developed project involving the investment of significant public funds what the degree of public involvement will be, and ensure the plan has a clear means of implementation.

R4. If the City sells DACHA at market value, it should ensure that all funds received are reinvested in affordable housing.

REQUEST FOR RESPONSES

Pursuant to California Penal Code Sections 933(c) and 933.05, the Grand Jury requests a response as follows:

From the following governing bodies:

- Davis City Council, Findings F4 through F18; Recommendations R1 through R4
- Davis Redevelopment Agency, Findings F4 through F18; Recommendations R1 through R4
- Davis City Attorney, Finding F6; Recommendation R4

DISCLAIMER

This report was issued by the Grand Jury with the exception of two members who may have had a perceived conflict of interest. These jurors were excluded from all parts of the investigation, including interviews, inspections, deliberations, and the making and acceptance of the report.

**Winters Joint Unified School
District
Board of Trustees and
Administration Department**

SUMMARY

The 2010–2011 Yolo County Grand Jury initiated an investigation into the Winters Joint Unified School District (WJUSD) in response to citizen complaints regarding 2009–2010 Board of Trustees’ actions at meetings and treatment of community members, particularly in response to the nonrenewal of a designated employee’s contract at the high school. These allegations concern violations of the Board’s Policies and Bylaws and the State’s open meeting Brown Act. While the Grand Jury’s powers to investigate school districts are limited under the law, it may investigate procedural and operational issues but is not permitted to investigate substantive concerns.

The Grand Jury found a clear conflict of interest in the award of a consulting contract to a WJUSD designated employee’s paramour, not disclosed at the time the award was made. A related violation occurred when the designated employee participated in the selection of the consultant; the designated employee should have been recused from the selection. The Grand Jury found contracting practices which appeared to have conflicts or disqualifying interests. The Grand Jury recommends the Trustees take several actions regarding the no-bid contract inappropriately awarded by a WJUSD designated employee to that person’s paramour. The District was particularly resistive to Grand Jury inquiries and made simple inquiries more procedurally difficult than necessary.

The Grand Jury found that the nonrenewal of another WJUSD designated employee’s contract may have been influenced by the conflict. The Grand Jury found that the WJUSD Trustees violated the Brown Act by failing to place its decision about the nonrenewal properly on the agenda for open roll call. The Grand Jury found multiple examples in which the WJUSD Trustees violated open meeting laws and its own Policies and Bylaws.

The Grand Jury found that the District does not have an adequate method for handling citizen complaints and ensuring provision of adequate and respectful responses. The Grand Jury recommends that the Board of Trustees take immediate steps to abide by its own Policies and Bylaws and the State’s open meeting act. Particularly

egregious behaviors that should be stopped immediately are disrespectful comments and gestures made by the Board to community members during Board meeting public comment periods. The Grand Jury commends the 2010–2011 Board on the steps it has taken to improve meeting professionalism.

The Grand Jury found multiple errors in administering the State’s annual Standardized Testing and Reporting (STAR) testing in April 2011.

REASON FOR INVESTIGATION

The Grand Jury received complaints alleging violations by the WJUSD Board of Trustees and District administration concerning Board governance and open meeting laws. The Board’s decision not to renew a designated employee’s contract in March 2010 proved to be highly divisive and generated numerous requests for investigation by the Grand Jury. The Grand Jury’s investigation expanded to encompass both the 2009–2010 and 2010–2011 school years and identified several other areas of concern. The alleged problems and violations include:

- Conflict of interest in awarding consultant contract
- Ralph M. Brown Act (open meeting) violations
- WJUSD Board of Trustees policy issues and violations
- STAR administration problems

California Penal Code Section 925 provides: “The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant of state law for which the officers of the county are serving in their ex officio capacity as officers of the districts.”

California Penal Code Section 933.5 further provides: “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.” Since assessed property within a school district is subject to a special tax for maintenance of schools in the area, school districts are included in this section.

ACTIONS TAKEN

The Grand Jury interviewed WJUSD Board members, District administrators and staff as well as community members. The Grand Jury reviewed WJUSD Board of Trustee Bylaws, District Policies, Board meeting documents, the Brown Act, WJUSD documents and internal communications.

WHAT THE GRAND JURY DETERMINED

The City of Winters is located in the western portion of Yolo County and was founded in 1875 and incorporated in 1878. The current population is approximately 5,500 with an additional 3,000 residing in the surrounding rural areas. The school district serves approximately 1,630 students attending the following schools: Waggoner Elementary, Shirley Rominger and Winters Middle Schools, Winters High School and Wolfskill Continuation High School.

CONFLICT OF INTEREST IN AWARDING CONSULTING CONTRACT

Rules Concerning Conflict of Interest

“The Board of Trustees desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the District and the public... A Board member or designated employee makes a governmental decision when acting under the authority of his/her office or position votes on a matter, appoints a person, obligates or commits the District to any course of action, or enters into any type of contractual agreement on behalf of the District... Board members and designated employees shall disclose any conflict of interest and as necessary shall refrain from participating in the decision.” (WJUSD Board Bylaws 9270) “Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter... Disqualification shall be required by the Conflict of Interest Code when the designated employee has a financial interest.” (California Government Code 87300 et seq)

District's Designated Employee Conflict of Interest in Award of Consultant Contract

The Grand Jury reviewed all consultant contracts awarded January 2009 through March 2011. The Grand

Jury discovered that a \$20,000 maximum no-bid contract is extant (April 2010 through June 2011). The contract was awarded to a consultant who has an amorous relationship with a WJUSD designated employee who had direct hiring authority. This relationship was not disclosed to the Board prior to the award of the contract. The relationship was later nebulously described as a “personal relationship” after the contract was awarded. The designated employee was then questioned by some on the Board about the appropriateness of the award. The employee informed the Board that District’s lawyers had previously advised the employee that the relationship did not create conflicts in the award process. Seeking legal advice may not qualify as disclosure of a financial interest.

The failure to fully and fairly disclose the existence of a financial or strong personal relationship between the parties to the contract is a violation of State law and District Bylaws. A further violation occurred when the designated employee participated in the selection of the consultant. These violations could allow the District to nullify the contract and consider discipline for the designated employee.

Further Conduct of Consultant

The consultant was hired to review class block scheduling, purportedly based on the consultant’s experience with the subject and as a mathematics consultant in similar schools. The Grand Jury received evidence showing this consultant’s opinion may have been a factor in some Trustees voting not to renew another designated employee’s contract. The consultant opined based on observations made for one day or less at the worksite under the auspices of studying class block scheduling. The designated employee was not informed that the consultant was engaged in a personnel evaluation when the consultant was at the worksite. The Grand Jury learned that some Trustees would have evaluated the consultant’s opinion in a different light and may not have made the nonrenewal decision had they known of the conflict of interest.

Later, members of the community discovered a public link on the consultant’s Facebook page that they found very disturbing and brought their concern to the Board. The reference (from Wikipedia) concerned a slave-turned-butler in the 1800s. The name of the butler was the same as the designated employee whose contract had not been renewed. Subsequently, the Facebook page was removed from the public domain.

District responsiveness to the Grand Jury

The District was particularly resistive to Grand Jury inquiries and made simple inquiries more procedurally difficult than necessary. Mindful of the statutory charge of “watchdog organization,” the Grand Jury will continue to seek access to the District or their representatives with an expectation of respect for the process and confidentiality of the proceedings.

RALPH M. BROWN ACT (OPEN MEETING) VIOLATIONS

The purpose of the Brown Act is to allow the public to attend, observe, monitor, and participate in the decision-making process at the local level of government. “The public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.” (California Government Code 54952) The Brown Act bars public agencies from conducting nonpublic serial meetings, from taking action on items not placed on the agenda, and from limiting public comment.

Requests Regarding Compliance with the Public Records Act

The District provided redacted e-mails to community members regarding the failure to renew a designated employee’s contract in response to a public records request. The Grand Jury received a request to review all e-mails between Board of Trustees and a District designated employee to determine if the redactions were valid.

The Grand Jury reviewed subpoenaed copies of redacted and unredacted e-mails between the Board and District Administration. There was insufficient evidence to opine whether a violation of the public records act occurred. However, it is unclear whether all relevant e-mails and attachments were provided. Due to time constraints, the Grand Jury could not thoroughly investigate the matter.

Nonrenewal of Another Designated Employee’s Contract

A request was made that the Grand Jury investigate the nonrenewal of a designated employee’s contract. California law bars a Grand Jury from inspecting personnel records of school district employees or substantive decisions by school districts such as the actual selection of school personnel. However, the Grand Jury is empowered to investigate what procedure was followed.

WJUSD met in closed session in March 2010 to consider the nonrenewal of a designated employee’s employment contract. “As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.” (California Government Code Sections 54950 et seq, Ralph M. Brown Act)

The Grand Jury determined that the designated employee may have been entitled to notification regarding the Trustees’ decision not to renew the employment contract. No such notice was provided the employee.

Roll Call Vote

The Grand Jury learned that a closed session Board vote was held March 4, 2010, regarding the nonrenewal of a designated employee’s contract. On advice of District counsel, the Board did not report the roll call vote during the open session. The Board later determined it had violated both the Brown Act law and its Bylaws (Government Code 54957.1, Board Bylaws 9321.1). The Board decided to utilize the “correct or cure” procedure that includes placing the item on an upcoming agenda and announcing the roll call vote at the next open meeting, scheduled for March 18.

The “correct or cure” procedure was not placed on the March 18 agenda. Conflicting evidence was provided to the Grand Jury regarding whether the roll call vote was announced at the March 18 meeting. The Grand Jury was unable to obtain any contemporaneous written, audio or video recording evidence verifying that the “correct or cure” roll call was announced at the March 18 meeting. However, on May 6, 2010, minutes of the March 18 meeting were amended to state that the roll call announcement had properly been made on March 18.

Serial Meetings

“A majority of the members of a legislative body shall not...use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. A majority of

members may not develop a concurrence as to action on business through serial meetings, intermediaries, communication or other means of subterfuge.” (Government Code 54950 et seq, Ralph M. Brown Act) Business decisions agreed upon between two or more Board members outside of a public meeting also constitute a violation of WJUSD Board Bylaws Section 9012(a) regarding serial meetings via electronic communications.

School personnel decisions are made in closed session and are not governed by the Brown Act. However, if the deliberations are conducted via e-mail, they are no longer in closed session, lose the protection of confidentiality, and become subject to the Brown Act.

The Grand Jury obtained copies of e-mails that showed Board members were engaging in nonpublic discussions regarding whether to renew a designated employee’s contract. They also engaged in nonpublic discussions regarding the Board’s response to the public outcry about the nonrenewal. Other prohibited subject areas were also discussed. The e-mails indicate that District staff, privy to the communications, knew the Brown Act was being violated.

Public Comments at Board Meetings

Members of the public are encouraged to attend Board meetings and address any item on the agenda. So as not to inhibit public participation, persons attending “shall not be required to sign in, complete a questionnaire, or otherwise provide their name or other information as a condition of attending a meeting.” (Board Bylaw, Section 9323(b), April 16, 2009) The Brown Act permits anonymous public comment, allowing for the Board to request individuals to identify themselves by name only and not in any other way.

The Grand Jury reviewed a sampling of Board agendas from the last two school years. Throughout the two years, agendas require members of the public to complete a Request to Speak form, noting their name and address, and submit it before the first speaker is called for public comment. Requiring speakers to provide more than their names is a violation of the Brown Act and Board Bylaws.

WJUSD BOARD OF TRUSTEES POLICY ISSUES AND VIOLATIONS

The Board consists of seven members. Any person 18 years or older who is a citizen of the state, a resident of the school district, a registered voter and not legally disqualified from holding civil office is eligible to be

elected to the Board without any other qualifications. Members serve a four year term, which is staggered so that as practicable one half of the members are elected in each even numbered year. The Board President is elected from among its members to provide leadership on behalf of the Board and the educational community it serves.

Meeting Misconduct

The Board of Trustees is elected by the community to provide leadership and citizen oversight of the District. “The Board shall ensure that the District is responsive to the values, beliefs, and priorities of the community... Each member is expected to act with dignity and understand the implications of demeanor and behavior. The Board expects its members to act with dignity and govern in a dignified and professional manner, treating everyone with civility and respect.” (Board Bylaws Section 9000 et seq)

The Grand Jury determined that 2009–2010 Board members displayed less than professional conduct during both public and closed session meetings. The Grand Jury determined through substantial evidence that, on multiple occasions, Board members engaged in eye-rolling, snickering, and negative body language. One Board member made an explicit sexual hand gesture mimicking male masturbation, and on another occasion a Board member gave an obscene hand gesture, while community members were attempting to address the Board. Board members raised their voices, “shouted down” people giving public comment and other Board members, and publicly tore up a document provided to them by a community member. Some community members and fellow Trustees felt harassed and intimidated by Board behavior. Harassment is specifically prohibited by WJUSD regulation.

The Grand Jury determined that that 2010–2011 Board of Trustees has made strides to improve its conduct since last year. This year’s Board has sought to improve how the Board operates, including more structure, better management and increased civility.

Board Training Gaps

The Grand Jury determined the Board is not required to attend or sponsor for itself any training with regard to governance, open meetings, Robert’s Rules of Order, or similar subject matter commonly used to conduct public meetings. The District is not required to and does not maintain any written record of training attended by Board of Trustees members.

Trustees did not attend training during the 2009–2010 academic year. Some Board members attended governance training in fall 2010 and additional training is planned for spring 2011, organized by District staff. Board members are expected to participate in professional development and encouraged to attend workshops and conferences relevant to their individual needs or the needs of the Board. Individual current Board members recognized the need for Board training to help them understand their responsibilities and develop “boardmanship” skills.

Citizen Complaint Process

The Grand Jury reviewed the WJUSD Policy Manual that specifies the process for the public to submit written complaints to the District (Section 1312). The public may complain about matters concerning both academic matters and the administration of the District.

The WJUSD Board of Trustees Bylaws establish Board conduct and set the standards of governance. The Bylaws state “To maximize Board effectiveness, and public confidence in District governance, Board members are expected to govern responsibly and hold themselves to highest standard of ethical conduct.” (Board Bylaws 9905(b))

There is a lack of clarity and consistency in the Bylaws regarding the process for submitting, receiving, and responding to complaints from community members and school personnel to the Board. When concerns are brought to the Board through letters and e-mails, there is no clear policy whether such communications constitute complaints and are therefore left to judgment. At times, complainants believe they have submitted complaints but may not receive written responses. The District is unclear about whether a response should be generated and, if so, by whom.

There is a lack of follow up and accountability to ensure issues are resolved. The Board does not seem to embrace its role as overseer of the District. Some Board members and District staff dismiss any issues and concerns expressed by certain community members, viewing them as complainers, characterizing these individuals’ expressions of desires to meet to discuss problems as “disingenuous.” Even written communications among Board members and District staff during the period of January 2010 through May 2010 revealed unprofessional and disrespectful comments.

STANDARDIZED TESTING AND REPORTING RESULTS (STAR) 2011 ADMINISTRATION PROBLEMS

History of STAR

The STAR (Standardized Testing and Reporting) program began in 1998. In this annually administered program, most students in grades 2 through 11 take the State’s academic content standards test plus a nationally normed standardized test. Each school must report individual students’ scores to their parents, and group results are released in mid-August. Schools are required to report these results to the State. Failure to properly report these results can affect funding and accreditation for the school.

Rules regarding which students must take or can be excused from the tests are quite specific. Parents may request in writing to the principal that a student not be tested. The Individual Education Programs (IEPs) of some special education students specify they should not be tested. Other special education students are tested in alternate ways, e.g., in Braille or with extra time, if included in their IEP. English learners, no matter what their proficiency, must take the STAR tests unless excused by their parents or their IEP.

WJUSD STAR Testing Issues

The Grand Jury learned that there was a 10-day window in mid-April 2011 in which STAR testing was to be administered and completed. Numerous problems were identified regarding the planning, training and implementation of the 2011 STAR testing at the Winters High School. The Grand Jury determined that:

- There was an absence of adequate training and preparation provided to staff
- There were no high school administrators present to provide oversight on the day of testing
- There were not enough copies of tests ordered and some students could not be tested
- Staff had advised administration of their concerns prior to the testing date

It is unclear to the Grand Jury why these issues were unresolved prior to the start of testing.

April 13, 2011, was the first scheduled day of testing. On April 14, 2011, the District Administration finally began to address the continuing issues by scheduling additional training for the teachers, securing additional

test copies and rescheduling tests. As of early May 2011, the Grand Jury was unable to determine if the issues were resolved. These problems have led to frustration, confusion and distrust by segments of High School personnel, parents and the Winters community towards District administrators and the Board.

FINDINGS

- F1.** The failure to fully and fairly disclose the existence of financial or strong personal relationship between the parties to a contract is a violation of State law and District Bylaws. A further violation occurred when the designated employee participated in the selection of the consultant. These violations could allow the District to nullify the contract and consider discipline for the designated employee.
- F2.** The consultant may have been a factor in WJUSD’s decision not to renew another designated employee’s contract. Disclosure of the amorous relationship between the consultant and a designated employee may have influenced the Trustees’ decision.
- F3.** The WJUSD Board of Trustees violated the Brown Act by engaging in serial e-mail discussions preparatory to voting.
- F4.** The WJUSD may have violated the Brown Act by failing to provide 24 hour notice to a designated employee whose contract was not renewed.
- F5.** In March 2010, the WJUSD Board itself determined that it violated the Brown Act by failing to report a roll call vote during an open session related to its decision not to renew a designated employee’s contract.
- F6.** A Brown Act violation occurred on March 18, 2010, when the Board failed to place a “correct or cure” procedure on the agenda.
- F7.** The Board’s requirement that the public submit home address information when addressing it is a violation of its Bylaws and the Brown Act and dampens public participation. At most, the Board can require speakers to state their names.
- F8.** There were multiple incidents of errors, poor judgment, and unprofessional behavior by Board members and District staff during the period covered by this report. Viewed together, these actions promoted confusion and distrust within segments of the community and Winters High School staff towards the Board and District Administration that still exists.
- F9.** The Board does not consistently follow its own Policies and Bylaws related to conduct, decorum, civility and respect at public meetings.
- F10.** The explicit sexual gestures made by Board members in the 2009–2010 school year were consistent with harassment and intimidation.
- F11.** There is no requirement that Trustees participate in training on Brown Act, Board Bylaws, Board Governance, meeting management, professional behavior at meetings or other subject matter pertaining to District oversight.
- F12.** The 2009–2010 Board did not receive any training in its roles and responsibilities.
- F13.** The 2010–2011 Board of Trustees is commended for participating in training held in fall 2010 on the Brown Act, Board Governance, leadership and meeting management organized by the District office staff. District staff are planning another governance training for May 2011.
- F14.** There is a lack of clarity and consistency regarding the process and procedure for handling complaints from staff and community members about District administrators submitted to the Board. No response at all or responses that in effect, simply say “Thank you for your letter/sharing your concerns” are not sufficient and can be interpreted as disregarding and demeaning.
- F15.** The District was inadequately prepared for the STAR testing at Winters High School scheduled in mid-April 2011. As of early May 2011, it is unknown whether the District’s attempts to resolve the problems have been successful.
- F16.** The District was particularly resistive to Grand Jury inquiries and made simple inquiries more procedurally difficult than necessary.

RECOMMENDATIONS

- R1.** The Board should seek legal advice regarding the appropriateness of rescinding or otherwise voiding

the consulting contract and the disgorgement of improperly obtained funds.

- R2.** The Board should consider discipline for the designated employee whose actions created a conflict of interest with WJUSD in connection with awarding a consulting contract.
- R3.** All Board members and District administrators should participate in annual mandatory training on Brown Act, Board Governance and Board Bylaws. Trustee participation records should be maintained within the District Office.
- R4.** The Board should immediately discontinue harassing conduct such as sexual and/or obscene gestures, uncivil and rude conduct between Board members and the public.
- R5.** The Board should immediately begin to follow its own Bylaws, Policies and procedures, as well as the Brown Act, including stopping meetings by serial e-mail communications and allowing speakers to disclose only their names at Board meetings.
- R6.** The Board should develop a plan for responding to citizen complaints and monitoring the process to ensure adequate follow-through and resolution.
- R7.** The District and its representatives should familiarize themselves with California Penal Code related to Grand Jury roles and responsibilities in order to minimize confusion and resistance to future Grand Jury investigations.
- R8.** The Board should place this report on an agenda for an upcoming public meeting so the community has the opportunity to listen to and comment on WJUSD responses by September 30, 2011.

REQUEST FOR RESPONSES

Pursuant to California Penal Code Sections 933(c) and 933.05, the Grand Jury requests a response as follows:

From the following governing body:

- The Winters Joint Unified School District, Findings F1 through F16; Recommendations R1 through R8

Woodland Fire Department Emergency Services Fees

SUMMARY

The City of Woodland initiated an emergency services cost recovery fee (Ordinance No. 1506) in 2009 that disproportionately impacts its taxpayers and visitors based on the type of insurance they carry. The City has only received about 20% of the recovery fee revenues it anticipated when the program was started. The recovery fee is poor public policy. The Grand Jury recommends the discontinuation or repeal of the ordinance.

REASON FOR REVIEW

California Penal Code Section 925(a) states “The grand jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit.”

The 2009–2010 Grand Jury reviewed the revenue recovery programs for emergency services provided by the Woodland Fire Department (WFD). The City of Woodland (City) disagreed with many of that Grand Jury’s concerns about the program. (The City’s response is contained in the Appendix to this report.) The 2010–2011 Grand Jury determined that additional investigation was warranted.

ACTIONS TAKEN

The Grand Jury interviewed WFD officers, Yolo County officials, and representatives of Fire Recovery USA (FRUSA), the contracted fee recovery firm. The Grand Jury reviewed Woodland City Council meeting records from all of 2010, City Ordinance No. 1506 and FRUSA contracts, run studies (incident reports) and claim payment records. The Grand Jury reviewed WFD claims filed with FRUSA and related internal records covering July 2009 through February 2011.

WHAT THE GRAND JURY DETERMINED

On June 2, 2009, the Woodland City Council passed an urgency ordinance (Number 1506) that established a recovery fee for emergency services provided by the WFD. The ordinance took effect on July 1, 2009. The impetus for the ordinance was an opportunity to enhance revenue to the City in the midst of severe budget reductions. The WFD's budget was reduced by \$167,000 in Fiscal Year 2009–2010 and the City loaned WFD that amount in anticipation of gaining “backfill” revenue from the new recovery fee.

City Ordinance No. 1506 states “The City may establish and impose user fees for services provided by the Woodland Fire Department in responding to the scene of any incident, including but not limited to motor vehicle accidents, structure fires, and hazardous material spills. The fees shall vary based on the type and amount of service provided, and shall take into account the cost of personnel, supplies, and equipment present or used at the scene.”

The recovery fee is charged to at-fault drivers involved in motor vehicle accidents, owners of properties involved in structure fires, persons responsible for hazardous materials spills, and all others responsible for certain incidents requiring a response by WFD personnel.

“Responsible” parties are not notified directly of their obligation to reimburse the City for WFD costs. Instead, billings are sent directly to the parties’ insurance carriers. Although the insurance carriers are billed directly, the insurance carriers have no obligation to provide coverage or make payments unless the insured is personally responsible for the damages suffered by the City. Although the insurance company is billed, the claim is really against the insured.

The City and WFD do not make a determination of fault, instead the “responsible” party’s insurance company decides fault. There is no public mechanism for the insured to contest fault.

No attempt is made to collect money from “responsible” parties who lack insurance coverage. Only “responsible” parties with specific insurance coverage are held financially accountable.

Billings are linked to the language of the insurance policies of the “responsible” parties. Some insurance policies provide coverage for scene safety, traffic control, or scene clean up. Therefore, incident reports and billings

match this insurance language. For example, to clean up any amount of hazardous waste, such as roadway oil, the City may charge between \$495 to \$2,500.

WFD is only funded by City property taxes. City Ordinance No. 1506 requires “responsible” City taxpayers to pay for WFD services a second time.

Some officials also expressed concern regarding the inherent inequality of the program that treats residents and visitors differently based on the type of insurance they happen to carry. One official forecasts the demise of the program based on this inequality.

Under its contract with the City, FRUSA is entitled to retain 20% of all money recovered from insurance carriers. Although FRUSA publicly states it limits its current fee to 17%, analysis of run data shows that FRUSA has, in fact, been retaining 20% since early 2010. The balance recovered is sent to the City General Fund.

In 2009, FRUSA and the WFD collaborated on a fee justification study that estimated annual billings of approximately \$167,000 by the WFD. In various subsequent documents, FRUSA stated it anticipated collection rates of 60%, 70% and 75%. If realized, FRUSA would have collected \$100,000 to \$125,000, yielding the City \$80,000 to \$100,000 a year. For the first 20 months of the contract, however, the actual billings submitted by the WFD were \$71,000, or 43% of the estimate. Only \$55,000 has been received by the City to date. Annualized, net earnings are about 20% of the \$167,000 originally projected.

The Grand Jury determined the financial documents received from the WFD and FRUSA contained contradictory and incomplete information. The Grand Jury was unable to corroborate the validity of billings and payments, as the data do not match.

The Grand Jury determined that the City implemented the program to recoup the costs WFD would incur and to make up for the budget deficit. The term “found money” was used to describe the City’s attitude about the program. This suggests that there is no cost to WFD to implement City Ordinance No. 1506.

In light of these “found money” comments, the Grand Jury sought to perform a cursory cost/benefit analysis of the program. The Captain at the incident scene is responsible for taking information including the accident description, details of the call and the services WFD provided, and insurance information. The Captain submits

the information to a Battalion Chief for approval. After the approval, the information is entered into the FRUSA website. Average annual salary and benefits for a Captain is about \$75,000. Average annual salary and benefits for a Battalion Chief is about \$100,000. WFD administrative personnel are responsible for coordinating the follow-up with FRUSA and keeping internal records. Average salary and benefits for a Clerk II is about \$42,000.

There were 265 incidents reported through February 2011. If an estimated cost were only \$100 per incident, the cost for the program would be \$26,500. The City collected, over 20 months, approximately \$55,000. The net benefit to the City, over this 20-month period, would be \$28,500. When compared to the estimated billing of \$167,000 that was anticipated in a 12 month period (annually), relatively little money has been “found” in this program.

A study is underway to consider consolidating the Woodland, Davis, West Sacramento, and UC Davis fire districts under a single administrative unit. Woodland is the only district of these that has the recovery fee for emergency services. At least one other municipality in Yolo County has considered adopting the fee, but has put its plans on hold, pending the outcome of the study.

Senate Bill (SB) 49 is now pending in the California Legislature. SB49 would ban a local government from charging a fee or tax to any person, regardless of the person’s residency, for the costs related to dispatching an emergency responder.

FINDINGS

- F1.** City Ordinance No. 1506 deprives “responsible” parties of their due process rights, as the billing process does not provide proper notice or a formal method of contesting findings of responsibility.
- F2.** “Responsible” parties are treated inequitably, depending upon their insurance coverage.
- F3.** Billings are linked to insurance policy language.
- F4.** City Ordinance No. 1506 is a form of double taxation for Woodland property taxpayers.
- F5.** The FRUSA contract has not met its financial goals.
- F6.** Record-keeping by both FRUSA and WFD is inadequate and is not auditable.

- F7.** The time it takes WFD personnel to gather and submit pertinent data does not make economic sense given the important public safety demands on their time.

RECOMMENDATION

- R1.** Repeal City Ordinance No. 1506 or discontinue its enforcement.

REQUEST FOR RESPONSES

Pursuant to California Penal Code Sections 933(c) and 933.05, the Grand Jury requests a response as follows:

From the following governing body:

- Woodland City Council, Findings F1 through F7; Recommendation R1

Esparto Community Services District Brown Act and Ethics Policy Violations

SUMMARY

The Grand Jury investigated allegations of violations by the Esparto Community Services District (ECSD) Board of Directors of the State’s open meeting act and its own ethics policies. The allegations proved to be true. The Grand Jury is concerned about this pattern of violations. The Grand Jury found that Board members are well-intentioned but at times lacking in essential knowledge to oversee the District effectively. The District’s effectiveness is further reduced by the distrust that has developed between the Board and staff. The Grand Jury recommends that the Board attend a variety of training classes to more effectively oversee ECSD. The Grand Jury recommends that the Board take additional steps to improve its communications and relationships with staff and ratepayers.

REASON FOR INVESTIGATION

The Grand Jury received a complaint alleging

violations of California’s Ralph M. Brown Act and violations of the ECSD Ethics Policy and Procedure manual by some Board members. The purpose of the Brown Act is to allow the public to attend, observe, monitor, and participate in the decision-making process at the local level of government. Any deliberations leading to the actions taken by the legislative body must be conducted in the open, including the exchange of facts preliminary to the ultimate decision. Alleged Brown Act violations by the ECSD Board involved exchange of facts and recommendations for action regarding upcoming meeting agenda items and votes via private e-mail. Alleged ECSD ethics policy and procedure violations involved not following channels of communication, teamwork, and treating others with respect. The complaint also alleged that the Board was over-involved with day-to-day management of District business.

California Penal Code Section 925 provides “The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant of state law for which the officers of the county are serving in their ex officio capacity as officers of the districts.”

ACTIONS TAKEN

The Grand Jury interviewed ECSD Board members and staff, reviewed District Policies and Procedures, Board meeting documents, and ECSD internal communications. The Grand Jury obtained and reviewed digital recordings of Board meetings from late 2010 through March 2011, and observed March 2011 Board meetings. The Grand Jury also reviewed the California State Senate publication, “What’s So Special About Special Districts? A Citizen’s Guide to Special Districts in California,” published October 2010, that describes the purpose and governance of community service districts.

WHAT THE GRAND JURY DETERMINED

THE COMMUNITY SERVICES DISTRICT

The State of California defines a special or community services district as a separate local government that delivers a limited number of public services to a geographically limited area. Special districts have four distinguishing characteristics: 1) a form of government, 2) governing boards, 3) provide services and facilities, and 4) defined

boundaries. ECSD provides water, wastewater treatment, and street lighting to the town of Esparto, and similar services to defined areas surrounding Esparto. ECSD currently has 900 water meter connections and an annual combined operating and capital budget of approximately \$1.5 million.

The Esparto Community Services District Board

ECSD was formed in 1960 and is governed by a five-person volunteer Board, elected by the community to serve four-year terms. If a vacancy occurs in the middle of a term, State law provides that either the remaining Board members or the County Board of Supervisors may appoint a replacement, depending on circumstances. Any resident of Esparto may run for office. The Board’s primary function is formulating and evaluating policy. The Board contracts for legal counsel on an hourly basis and has an annual financial audit; otherwise, it does not have outside professional advisors. Regular Board meetings occur monthly although special meetings may be called at any time. Standing committees may include Planning, Ordinance, Personnel, Finance, and Public Relations. None of these committees is currently active at ECSD.

ECSD policy requires Board members receive training on financial disclosure (AB1234, Fair Political Practices Act), sexual harassment, and ethics. The Board is not required to receive an orientation to public utilities operations, how ECSD itself operates, how the Board operates, finances or public governance rules such as the Brown Act. Training is available on operations related subjects through the Special District Institute and California Rural Water Association.

New Board members receive a copy of the ECSD Policy and Procedure manual but do not receive training on the subject matter related to Board operations. Board members differed in their understanding of the status of revisions to the manual, i.e., some believed revisions proposed over the past few years were in fact adopted while others believed revisions were pending. Approved revisions to the manual have not consistently been dated. There is confusion whether there are multiple versions of the manual.

ECSD has a website that is “under construction” and contains only a contact phone number and an e-mail address for the District. Simple information that citizens request is not easily accessible, such as office hours, billing schedules, rate schedules, meeting notices, governance documents, etc.

The Grand Jury listened to several digital recordings of recent Board meetings and attended some meetings. The Grand Jury observed that Robert's Rules of Order or other meeting management techniques were not always used. Many citizens brought legitimate questions and concerns to the Board. However, comments by community members reflected misinformation and innuendo apparently circulated prior to meetings. Since no structured orientation for learning about the business of public utilities exists, some Board members do not understand the District's business operations, its relationship with the county, and District Policies and Procedures. When a Board member raises a question, the consternation that some public utility ratepayers may naturally feel is given unwarranted credence. Fueling the community's fears is the oft-repeated public statement by the Board to the effect that "everything is going to get straightened out now" which erroneously conveys the message that the District had been mismanaged in the past.

The Grand Jury took testimony from witnesses and listened to recordings from recent meetings concerning the District's budget. Although there have been some examples of problems arising due to the turnover in the General Manager position, not all concerns stem from this. The Grand Jury noted that the Board at times did not receive complete or timely responses to its questions about District fiscal operations matters from staff. Through its investigation, the Grand Jury determined that staff may have "cut corners" to expedite getting work completed. The Grand Jury did not investigate if fraud, waste or abuse occurred, nor did it receive any evidence to raise concerns. The Grand Jury determined that the Board requires additional support from staff in accounting and fiscal matters. The Board needs to be fully informed about fiscal matters on a regular basis but there is no financial subcommittee to facilitate this effort.

The Esparto Community Services District Staff

The District employs five full time staff, including the General Manager, two System Operators, an Administrative Assistant, and a Fiscal Services Assistant. The General Manager operates, under policy direction provided by the Board, as the executive director of all functions, services, and activities of ECSD. The General Manager directs the development of overall goals, objectives and policies, oversees the operating and capital improvement budgets, and serves as the primary liaison for ECSD with a variety of city, county, state and federal agencies.

In February 2006, ECSD contracted to hire a General Manager for a five-year term. The Grand Jury learned that, upon arrival, the new General Manager successfully secured a US Department of Agriculture loan for \$5.1 million. Funds were used to upgrade the town's water and sewer infrastructure and construct a modern administration building that centralized operations and equipment management. The General Manager also negotiated real estate trades, consolidating disparate parcels to develop one adequate for the administration building at no cost to the District. That manager retired in December 2010. ECSD is conducting a search for a permanent replacement and has meanwhile contracted with a consulting engineer to serve as Interim General Manager.

The Administrative Assistant reports to the General Manager, operates under general supervision, serves as Secretary to the Board of Directors, and supervises the Fiscal Services Assistant. The Administrative Assistant coordinates or performs a variety of difficult or specialized administrative support functions for the District, including finance, planning, research, public relations, and office support. The position requires three years of increasingly responsible office and administrative work experience. The Fiscal Services Assistant performs account and statistical record keeping related to customer and District records, provides customer services, and performs general office work. The position requires one year of previous work experience in fiscal support and customer service.

In January 2011, ECSD Board appointed a committee of four to screen applications for the position of General Manager. The committee consists of the two newest Board members and two community members. The Grand Jury learned that no one on the screening committee has experience in public utilities management, subject matter expertise in any of the requisite areas such as wastewater treatment and water distribution in municipalities, or human resources recruitment. The Grand Jury noted several discrepancies in the published recruitment materials, the position description and the job advertisement. For example, the two documents are inconsistent as to certifications and the number of years required of administrative experience in a public utility.

The Grand Jury also determined that there is no in-house expertise and no cooperative arrangements with other entities on the subject areas of human resources management or personnel practices. Although the District has only five staff, the Grand Jury determined its human resources matters surface often enough that it should have some expertise available. Often, the District turns to District Counsel for advice, which is costly. The Grand

Jury determined that the Board needs additional training regarding its role in dealing with staff; the staff needs to provide additional support in responding to the Board's human resource questions.

Investigation into Alleged Brown Act and Ethics Code Violations

The Grand Jury reviewed more than 50 examples of internal written communications among Board members that occurred between late 2009 and March 2011. Internal communications were frequently shared with the Yolo County Board of Supervisors and distributed broadly among Esparto residents.

The Grand Jury also took testimony regarding the written communications. The Grand Jury learned that the Board had informally admonished each other in 2010 about alleged Brown Act violations but violators chose to ignore fellow Board members' warnings. In January 2011, a list of communications was presented to the Board and a request was made to have a hearing by the Board on the allegations. The Board voted not to hold a formal hearing on the communications and the matter was dropped.

The Grand Jury learned that Brown Act and ethics policy violations allegations have been raised in recent years with the same individuals with the same lack of resolution. Despite this cycle, the Board has never taken steps to establish an internal procedure to follow when one Board member has concerns that another Board member is violating laws or policies.

The Grand Jury determined that the internal written communications among Board members in late 2009, 2010, and early 2011 violated the Brown Act and ECSD operations and ethics Policies and Procedures on multiple occasions. The relevant ECSD Policies and Procedures are summarized below.

- ECSD Policies 4010.19, 4050.10, 4050.11 and 4050.60 — require all communications between Board and staff to be conducted through the General Manager.
- ECSD Policies 4010.14, 4010.15, 4010.182, 4010.185, 4010.21 and 4010.22 — require Board members to refer District-related questions and complaints brought to their attention to the General Manager and to develop positive working relationship with the General Manager.
- ECSD Policy 4010.17 — requires Board members

to voice any differing opinions during deliberations and then support Board decisions once they have been made. This section precludes the Board's disparaging other Board members, the District, and its staff to the general public.

- ECSD Policies 4010.20 and 4010.23 — remind Board members that the District works as a team and they are part of a whole, not individuals who function independently of each other.
- ECSD Policies 4010.19 and 4050.20 — require Board members to be courteous to each other, the staff, and the public who are present at Board meetings, and focus on issues rather than personalities.
- ECSD Policy 4050.11 — requires information exchanged among Board members before Board meetings to be distributed through the General Manager.
- ECSD Policy 4050.50 — requires Board members to abstain from participating in any matter under discussion in which the member has a personal or financial conflict of interest.
- ECSD Policies 4070.10 and 4070.20 — remind Board members they act as a unit and have no individual authority.

Investigation into Board and Staff Relations

The Grand Jury questioned witnesses regarding teamwork and cohesiveness within the District and, overwhelmingly, the response was negative. The lack of a permanent General Manager is not a factor.

The Grand Jury determined that some of the divisions on the Board coincide with time served on the Board. All Board members appear to be motivated by a desire to serve the community. Serving on such a Board is "a labor of love." Those with greater longevity have greater knowledge of how the District operations work, institutional memory, and institutional perspective about how the District usually does business. These directors do not necessarily agree on matters, but they do share a common knowledge. Newer directors need to learn the various aspects of ECSD operations.

Relationships between the Board and staff have been damaged when neither the Board nor the staff have effectively communicated with each other. The Grand

Jury also determined that there is not effective internal communication among Board members. This lack of communication has created a mutual distrust among all parties.

The Grand Jury determined that the Board does not abide by the ethics policies governing chain of command, micro-management and mutual respect. Staff are now required to send copies of their day-to-day work to the Board and respond to a steady stream of questions. Often the tone of the communications from the Board is demeaning. Responding to Board questions that should be referred directly to the General Manager reduces the time available to address normal job responsibilities and meet customer demands.

Some witnesses expressed concerns that the Board's weaknesses will or have created a poor reputation for the District and may limit the District's ability to attract a top candidate for General Manager. Others noted the Board's inappropriate focus on the day-to-day operations has distracted it from completing its priority projects such as strategic planning, policy manual updates, and evaluating new grant opportunities.

According to the California Senate's "What's So Special" document, citizens who are unhappy with their special service district Boards have the opportunity to challenge them during meetings and vote them out.

FINDINGS

- F1.** Multiple instances of Brown Act violations and ECSD ethics policy violations were committed in the period studied, principally via e-mail. Ethics violations revolve around communications, chain of command, mutual respect, and teamwork. Even after these matters were brought to the attention of the Board, violations continued.
- F2.** The District does not have a process by which the Board can deal with alleged violations of the Brown Act or ECSD Policies and Procedures.
- F3.** The Board has not received training in its roles and responsibilities vis-à-vis the staff so it can honor the chain of command as defined in the District's Policies and Procedures manual.
- F4.** The Board does not follow consistently Robert's Rules of Order or any other meeting management techniques and therefore the meetings are at times unprofessional and chaotic.

- F5.** The Board has had several sections of proposed revisions to the policy manual pending for several months, and some approved sections are not date-stamped, leaving some Board members confused about which version is in effect.
- F6.** The Board is micro-managing the staff by making special requests for business e-mail, questioning well-established business practices, and performing management tasks reserved for the General Manager.
- F7.** Because the Board does not receive orientation in managing public utilities, members are ill-equipped to opine on technical and financial management issues unless they bring expertise with them.
- F8.** The Board does not have adequate accounting and human resources support. As a result, the Board is hampered in its decision-making ability.
- F9.** The District's web page is inadequate and inefficient. A comprehensive web page would inform the public of office hours, service areas, billing and rates, mailing addresses and drop box information, late fee and shut-off policies, service outages, meeting schedules, rate information, and other commonly-asked questions. This would also serve to reduce staff time answering phone calls. Frequently asked questions (FAQ) from community members and customers should be well-known by the District. The lack of a website with a FAQ spot hinders communicating with ratepayers about common questions.

RECOMMENDATIONS

- R1.** Consult with outside agencies to assist the Board in developing best practices to assure its compliance with the Brown Act, the District's Code of Ethics, and other ECSD Policies and Procedures.
- R2.** Reverse the Board practice of not discussing Brown Act and ethics policy violation concerns in public. Encourage free discussion as concerns arise.
- R3.** Require Brown Act and public governance training for Board and staff on a regular basis, preferably annually. ECSD should engage County Counsel or Special District Institute for this.
- R4.** Identify opportunities for Board members who require training on how public utilities/community

service districts are operated. Training should include how to read and interpret financial statements and how fund accounting enterprises work. Utilize County Auditor or outside training with other organizations such as Special District Institute for this purpose. Staff should offer a workshop to Board on how ECSD is run. Training should be repeated once every two years.

- R5.** The Board should conduct an annual workshop for itself to review ECSD organization, functions, and the Policy and Procedure manual. This workshop should include training on how to run effective meetings.
- R6.** Complete revisions to series 4000 and 5000 of Policy Manual that deal with Board operations by September 1, 2011. Provide formal training for the Board and administrative staff no later than November 1, 2011.
- R7.** Consider using a professional facilitator to develop effective communications between and among Board and staff and to assist in completing the District’s strategic plan.
- R8.** Consider revising position descriptions or sharing resources with other municipalities to provide adequate accounting and human resources functionality for the District.
- R9.** Complete the ECSD webpage, as described in F9 above, no later than January, 2012.

REQUEST FOR RESPONSES

Pursuant to Penal Code Sections 933(c) and 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

- Esparto Community Services District Board of Directors, Findings F1 through F9; Recommendations R1 through R9
- Yolo County Counsel, Recommendation R3
- Yolo County Auditor-Controller, Recommendation R4

Washington Unified School District Yolo High School Site Council

SUMMARY

The 2010–2011 Grand Jury investigated the Yolo High School’s (YHS) compliance with State law that requires the formation and approval of a school site council prior to submitting the Single Plan for Student Achievement (SPSA) for funding. YHS did not have a school site council as required when the initial SPSA was submitted to the State. The school was allowed to properly form a site council and resubmit the SPSA.

REASON FOR INVESTIGATION

California Penal Code Section 925 provides “The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in county created pursuant of state law for which the officers of the county are serving in their ex officio capacity as officers of the districts.”

California Penal Code Section 933.5 further provides “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.” Since assessed property within a school district is subject to a special tax for maintenance of schools in the area, school districts are included in this section.

The 2010–2011 Grand Jury received a complaint alleging the SPSA application by YHS for the 2009–2010 school year was approved by a nonexistent school site council.

ACTION TAKEN

The Grand Jury interviewed administrators and staff of YHS and the Washington Unified School District (WUSD) office. The Grand Jury obtained copies of the applications for Title 1 funding for the 2009–2010 school

year as well as other documents related to the school site council.

WHAT THE GRAND JURY DETERMINED

Overview of Yolo High School

YHS, in West Sacramento, is an alternative educational program and during the last eight years the school has had six principals. The school was faced with many challenges, such as disciplinary problems, a lack of continuity in the administration and inconsistent parental involvement.

Overview of SPSA

In 2001, the California Legislature amended the planning requirements for schools that participate in State and Federal categorical programs funded through the Consolidated Application process, creating the SPSA. The purpose of the SPSA is to create a cycle of continuous improvement of student performance, and to ensure that all students succeed in reaching academic standards set by the State Board of Education. School districts must ensure “that school site councils have developed and approved a plan, to be known as the Single Plan for Student Achievement for schools participating in programs funded through the consolidated application process, and any other school program they choose to include.” (Education Code Section 64001(a))

Overview of the Secondary School Site Council

California Education Code sections 64001(a) and (d) require secondary school site councils to develop an SPSA for programs operated at the school or in which the school participates. School site councils must approve the plan, recommend it to the local governing board for approval, monitor implementation of the plan, and evaluate the results.

The composition of the councils, as specified in the Education Code, shall be the principal, representatives of teachers (selected by teachers at the school), other school personnel (selected by other school personnel at the school), parents of students (selected by parents) and students (selected by students attending the school).

During September 2009 YHS held a “back to school night.” There is a discrepancy as to whether or not the parent volunteer sign-up sheet for the school site council was available at “back to school night.” The school and the

District office staff were unable to produce any documents showing that parents or students had volunteered for the site council.

State law requires schools to post site council meeting notices 72 hours prior to the meetings. The school and District office staff were unable to produce any site council meeting notices. There was no documentary or credible oral evidence that site council meetings were held, including agendas, minutes or sign-in sheets. In October 2009, a YHS document (SPSA) was developed, purportedly approved by a valid YHS school site council and was submitted in January 2010 to the WUSD and sent to the State. The SPSA contains an attestation that it was adopted by the school site council at a public meeting on January 13, 2010. The Grand Jury determined a valid YHS school site council meeting did not occur in January 2010.

In early 2010, the WUSD received complaints concerning the lack of an appropriately constituted school site council. The WUSD district office staff instructed YHS to legally constitute a school site council. In the spring of 2010, a site council was formed. A revised SPSA was approved by the council and submitted to the WUSD and the state.

FINDINGS

- F1.** There is no evidence that a properly constituted school site council for YHS existed at the time the SPSA was submitted in January 13, 2010.
- F2.** YHS attested that its SPSA was approved on January 13, 2010 by a valid school site council at a public meeting. No such meeting occurred.
- F3.** The WUSD instructed YHS to properly form a school site council after receiving complaints that no proper site council existed. YHS responded by electing a school site council.
- F4.** A revised plan for State funding was approved by the school site council and submitted in May of 2010.

RECOMMENDATIONS

- R1.** WUSD should monitor the District’s schools to ensure that site councils are properly constituted and valid SPSAs are submitted.

R2. YHS should retain and make available copies of school site council meeting notices, agendas and minutes.

REQUEST FOR RESPONSES

Pursuant to California Penal Code Sections 933(c) and 933.05, the Yolo County Grand Jury requests responses as follows:

From the following governing bodies:

- Yolo High School, Findings F1 through F4; Recommendations R1 and R2
- Washington Unified School District, Findings F1 through F4; Recommendation R1

DISCLAIMER

This report was issued by the Yolo County Grand Jury with the exception of one member of the Grand Jury who may have had a perceived conflict of interest. This juror was excluded from all parts of the investigation including inspections, interviews, deliberations, and the making and acceptance of the reports.

Department of Employment and Social Services Inquiry into Specified Timekeeping and Hiring Issues

SUMMARY

The Grand Jury investigated the Yolo County Department of Employment and Social Services (DESS) timekeeping and management hiring practices. The Grand Jury found management hires met minimum job qualifications. The Grand Jury found no misuse of timekeeping; however, the Grand Jury did find inefficiencies and inadequacies in the area of employee timekeeping.

REASON FOR THE INVESTIGATION

California Penal Code Section 925 provides “The

grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county, including those operations, accounts and records of any special legislative 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 districts.”

The Grand Jury followed up an investigation that was performed by the 2009–2010 Grand Jury. A review of that complaint, the Grand Jury’s final report and the response by DESS identified unresolved concerns regarding: 1) DESS employee timekeeping, 2) DESS management timekeeping, and 3) whether DESS Minimum Qualifications were met in the filling of management positions.

GLOSSARY

The following glossary provides terms and abbreviations used in this report.

ATO: Administrative Time Off. Time off available only to directors and division managers. As part of the management benefit package, up to 40 hours of administrative paid time off may be taken in a 12 month period.

At-will Employees: Employees who are appointed to management positions by the Board of Supervisors. At-will employees are exempt from the Fair Labor Standards Act.

BOS: Board of Supervisors. The elected governing body that makes policy decisions and oversees the county budget and department programs.

By Exception Time Reporting: Absences rather than daily attendance are reported. Employees only report absences from work. If none are reported it is presumed the employee worked a 40 hour week.

CAO: County Administrative Officer. Oversees county including budget and personnel administration.

CDI: County Disability Insurance. CDI is only available to these DESS classifications: Department Director, Assistant Director, Management, Attorney, Confidential and Unrepresented Management.

DESS: Department of Employment and Social Services. Provides employment services, child and adult

protective services and other related social services in Yolo County.

Exempt Employees: Employees who are exempt from the FLSA. Salaried employees who receive predetermined compensation which is not subject to reduction because of variations in the quality or quantity of the work performed. Exempt employees are not required to report absences of less than one day.

FLSA: Fair Labor Standards Act. Federal act that governs how hourly and salaried employees are compensated.

HR: Yolo County Department of Human Resources. Maintains all county employee records and establishes and enforces personnel policies. This department determines job descriptions and minimum qualifications for county positions.

Merit System: A system of recruitment, examination, appointment, promotion, and retention of employees based on merit.

MQs: Minimum Qualifications. The minimum experience and education required to qualify for an advertised vacant position.

XTO: Extra time off. Management employees pledge to take a number of XTO hours off without pay. XTO hours are deducted from pay over 26 biweekly pay periods. Established in response to county's budget shortfall.

ACTIONS TAKEN

The Grand Jury interviewed HR management, DESS management, and representatives of the Information Technology (IT), Accounting and Auditing departments.

The Grand Jury reviewed information on the Yolo County website, Yolo County Administrative Procedures Manual and the following documents:

- Personnel files
- CDI Claim Forms
- CDI Payroll Postings
- Biweekly payroll records
- XTO pledge forms
- Time Studies

The Grand Jury also reviewed the:

- Merit System Audit report
- Yolo County Codes
- MQs for DESS Management
- DESS Performance Surveys for the past two years
- Draft copy of the 2010 proposed Telecom Absence Request Process
- 2010 County Payroll Audit and supporting documents related to the DESS time and attendance reporting method

WHAT THE GRAND JURY DETERMINED

DESS Employee Timekeeping

Differences within Yolo County

Departments within Yolo County use different methods of reporting the amount of time an employee works on a specific job or program. The method used is directed by the department's individual needs, the funding source and unique work hours. DESS is funded by state and federal funds and must follow time allocation reporting requirements prescribed by state and federal regulations in order to be reimbursed for work performed.

Each DESS division submits a quarterly Time Study Report to the State in order to be reimbursed for employee work performed. These reports identify the number of hours employees worked on a specific project or job for each week during the reporting period. Some employees use their calendar to record daily or weekly time and labor; others may rely on their memory. Some employees in one DESS division must use State issued computers due to the type of work being performed. The time study reports and the State computers are not used by DESS for County payroll purposes. These methods make county-wide uniform timekeeping and time allocation difficult.

Time and Attendance

The DESS uses the "by exception" timekeeping method. Absences rather than attendance are reported. An absence request form and a time sheet are completed and submitted to the supervisor only when an employee is requesting leave. Every absence from work requires an absence request and a timesheet approved and signed by a supervisor. Employees are presumed to have worked a regular 40 hour week if no absence request and timesheet are submitted.

The Payroll Clerk reviews all employee time sheets and manually enters leave taken into the PeopleSoft payroll system. Internal controls used by supervisors to monitor an employee's daily attendance at work consist of: 1) the supervisor or a co-worker having direct contact with the employee during the day, 2) employee and supervisor are in close proximity to each other, 3) sign-in by employee using the computer, and 4) the honor system. The time sheets and absence requests are filed and stored. Discrepancies or other issues related to an employee's leave must be manually researched.

PeopleSoft Payroll System

The PeopleSoft software program has been used as the payroll and benefit system in the County since 1999. The County currently uses PeopleSoft 8.9. Departments submit payroll data to the Payroll Clerk in paper form and the data are manually entered into PeopleSoft by the Payroll Clerk. The system tabulates the time sheet data and employee payroll checks are calculated based on the data entered. Time sheet data entered into PeopleSoft is forwarded to the Auditor-Controller's office for a detailed review. For each payroll period, the Auditor-Controller Central Payroll division reviews all timesheet data, sets up payroll actions and processes payroll. The IT Department maintains the PeopleSoft payroll applications.

The Grand Jury learned that PeopleSoft 8.9 does not include a timekeeping function that can capture the number of hours an employee works or the actual time of arrival or departure.

The County has been negotiating with Oracle for a new software module called "Time and Labor". Oracle initially requested \$1,000,000 and is currently willing to accept \$500,000. To date no decision has been made about the purchase and funding has not been identified. This pricing is predicated upon acceptance of the contract.

This new software has two key components. The first component is a fully automated timekeeping system that captures daily attendance for payroll purposes and allows employees to:

- Log in daily time of arrival and departure
- Log in the number of hours worked
- Log in leave taken

The other component is the creation of timekeeping uniformity in the County. The "Time and Labor" system can accommodate the different time and labor requirements that departments such as DESS have. The system would

require data entry of hours worked or leave taken and would allocate the time to specific jobs, projects and leave categories. The Oracle consultant can make adaptations such as electronic real-time recording of employee arrival and departure.

Absence Management System

In August 2010, the County implemented a pilot Absence Management Program developed in-house by IT that is web based. Under the Absence Management Program time and attendance reporting remains "by exception". Employees are still only required to enter absences and not hours worked. IT is working on improvements such as an application that will permit employee timekeeping of arrival and departure and project allocations. The new program offers the following:

- Paper absence requests are no longer required
- Employees use an online Absence Calendar to record absence requests
- Supervisors can view the on-line calendar to ensure employee has sufficient leave
- Absence data will no longer need to be keyed into PeopleSoft
- Leave balances are available online for employee and supervisor view
- All managers can approve absence requests on-line
- Payroll Clerk uploads data into payroll sheet in PeopleSoft
- Discrepancies can be searched on-line, eliminating manual searches

The Grand Jury determined that some DESS divisions are scheduled to implement the pilot program. This new web-based absence management program improves functionality and will be a cost savings to the county; however, it does not capture daily attendance. The cost of the current manual "by exception" time reporting for Yolo County based on 1,100 employees is \$485,378 per year and the cost of the new Absence Management Program is \$119,064 per year for the same number of employees.

DESS Management Timekeeping

The Grand Jury determined that the BOS establishes specific management positions to be classified as at-will positions. Appointments to these management positions are made by the CAO or the DESS Director and the appointed employees serve at the will of the appointing power. These management employees are "exempt employees" because they are paid a predetermined salary

and are not subject to deductions for absences of less than one day. Pursuant to the FLSA, if a management employee comes to work and only stays for one hour, the employee is paid for the full 8 hour day.

The Grand Jury confirmed that management employees receive a benefits package which includes ATO of 40 hours per year and are entitled to CDI benefits which supplement up to 75 percent of leave and salary due to a non-work related injury. CDI allows the employee to continue accumulating sick leave, vacation leave and receive full pay. Once approved for CDI, a management employee may combine sick leave, vacation leave and ATO with CDI leave benefits to total 8 hours per day. In instances where an employee is approved to work part-time, the number of hours worked is combined with CDI leave benefits and other leave types to total 8 hours per day.

The Grand Jury reviewed DESS biweekly Employee Payroll Sheets and CDI Claim Payroll Postings. These documents confirmed the number of hours worked, hours of vacation, sick leave and ATO taken were accurate. The documents also confirmed that the leave taken was accurately combined with CDI paid time off for each two-week pay period during the time frame identified in the complaint. No misrepresentation of timekeeping was found.

DESS Minimum Qualifications in Management Hires

The Administrative Procedures Manual requires that no person may be appointed or hired in any position unless MQs set forth in the employment standards are met. Once the MQs are set they cannot be changed without a recommendation from HR and the approval of the CAO and the BOS. Directors, Assistant Directors or Division Managers cannot make changes to MQs without going through this administrative process.

DESS management MQs and personnel files were reviewed. The MQs for these positions state: “Any combination of experience and education, which provides the required knowledge and skill, is acceptable.” Pursuant to the MQs, employees who met the MQs by combining education and experience were eligible to apply and be appointed as were employees who met the MQs by having the requisite experience.

The Grand Jury verified that all management employees reviewed met the MQs, and no MQs were altered to permit hiring of management employees. All management employees had a Bachelor’s degree, a

Master’s degree or several years of appropriate experience prior to being appointed to the position.

FINDINGS

- F1.** The Grand Jury found no evidence of management misuse of timekeeping or misrepresentation of hours worked.
- F2.** Management employees are not required to report absences of less than one day.
- F3.** DESS does not use a reliable timekeeping system to capture employee time worked on specific projects or jobs.
- F4.** DESS use of “by exception” time reporting requires employees to only report hours not at work, as approved by a supervisor.
- F5.** DESS employees do not report hours worked on a daily basis. Internal controls to monitor hours worked are inadequate, creating the potential for fraud or accidental misrepresentation.
- F6.** The new Absence Management program is an electronic version of “by exception” time reporting. It has the same potential for fraud because internal controls to monitor employee time and attendance are inadequate.
- F7.** IT is attempting to adapt the new Absence Management program to capture timekeeping. The Oracle “Time and Labor” software can accommodate time, labor and daily attendance.
- F8.** The Grand Jury determined that the MQs for management positions were not altered changed or compromised. Employees appointed to management positions met the MQs prior to being appointed.

RECOMMENDATIONS

- R1.** Implement a standard employee time and attendance policy and procedure to report hours worked and leave taken on a daily basis which will alleviate the potential for fraud and will ensure an adequate audit trail exists. The system should provide for supervisorial approval.
- R2.** Identify funds to implement software such as the

Oracle program or the enhanced functions of PeopleSoft to alleviate the potential for time reporting fraud in the department and improve time, labor and attendance inefficiencies and inadequacies.

REQUEST FOR RESPONSES

Pursuant to California Penal Code Sections 933(c) and 933.05, the Yolo County Grand Jury requests responses as follows:

From the following governing bodies:

- Yolo County Board of Supervisors, Recommendation R2
- Yolo County Auditor-Controller, Findings F5, F6, and F7; Recommendations R1 and R2

From the following individuals:

- Yolo County Chief Administrative Officer, Findings F3 through F7; Recommendations R1 and R2
- Director, Yolo County Information and Technology, Findings F6 and F7
- Director, Department of Employment and Social Services, Findings F3 through F7; Recommendations R1 and R2

Woodland Police Department Vehicle Towing Procedures

SUMMARY

Recent court rulings have changed how officers may determine whether or not a vehicle will be towed. The Woodland Police Department follows an established vehicle towing rotation policy.

REASON FOR INVESTIGATION

This investigation was prompted by a citizen's complaint regarding Woodland Police Department's procedure for vehicle towing dispatch (vehicle tow

rotation). The complainant asked the Grand Jury to investigate trends in tow dispatches and the related impact on the community in terms of public safety and liability concerns.

California Penal Code 925(a) states, "The grand jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate departments, functions, and the methods or system of performing the duties of any such city or joint powers agency and make recommendations as it may deem proper and fit."

ACTIONS TAKEN

The Grand Jury reviewed more than a dozen documents, including vehicle towing contracts, dispatch logs, and enforcement agencies' policies. The Grand Jury also conducted interviews with towing company operators, and staff from the Woodland Police Department and Yolo County Sheriff's Department to learn: 1) when and how vehicle tow operators are called to a scene, 2) the trends in the number of dispatches, 3) local law enforcement policies in determining when a vehicle is impounded or left at the site, 4) the costs and potential liability issues involved, and 5) recent court decisions. The Grand Jury reviewed incident reports before and after the implementation of the new community care rule.

WHAT THE GRAND JURY DETERMINED

When Vehicle Tow Operators Are Dispatched

The Grand Jury determined that local law enforcement staff use their discretion, consistent with the guidelines of their agency, to determine when a vehicle should be towed and impounded.

Officers and deputies are expected to assess the unique circumstances of each situation and determine if a vehicle tow is required. Tows are typically mandated when major infractions have occurred, such as major traffic accidents or when the vehicle must be impounded as evidence.

The circumstances under which a vehicle can be towed were recently changed by an appellate court ruling (*Miranda v. City of Cornelius 429F.3d 858*). As a result of this 2006 ruling, the Woodland Police Department adopted a policy in which the officer has gained broader discretion

in determining what is in the community’s best interest (called the “community caretaking rule”) when incidents involve minor infractions. When making a community caretaking assessment, the officer considers the following questions regarding security of the setting: Is the vehicle in a rural, urban, or highway location? Is the vehicle in a high-crime area? Is normal traffic flow affected? Officers also evaluate alternatives to vehicle towing, such as the availability of an alternate driver and the costs incurred when a vehicle is towed and impounded. When a vehicle is not towed, drivers must sign a form consenting to leaving the vehicle at the location and taking responsibility for the parked vehicle.

How Vehicle Tow Operators Are Dispatched

Law enforcement personnel and vehicle tow company operators agreed, through contract, as to what the dispatch process is and how it is generally carried out. All local law enforcement requests for vehicle tow truck operators are routed through dispatch centers using an approved rotation log. Variations exist in the vehicle tow operators’ contracts; i.e., some contracts are limited to urban areas, some operators are limited in the type and number of vehicles they can tow. The dispatch center staff, not the officer at the scene, contacts the company on the top of the rotation list. If that operator does not or cannot respond to the call in a timely manner, the next operator on the rotation log is contacted. The bypassed vehicle tow operator remains at the top of the rotation log for the next requested service.

Figure 1 depicts vehicle rotation tows during four months in 2010 for three companies, with the final column indicating the total number of calls passed by each company.

FINDINGS

- F1.** The Grand Jury found that vehicle towing requests made by local law enforcement staff are given with proper consideration of applicable laws and rules, and with appropriate concern for the best interests of the community and public safety.
- F2.** The Grand Jury found that dispatch center staff are consistently fair in using the agreed upon vehicle tow rotation log.
- F3.** The Grand Jury could not come to any conclusion regarding the impact of the community caretaking rule on public safety.

RECOMMENDATIONS

None

REQUEST FOR RESPONSES

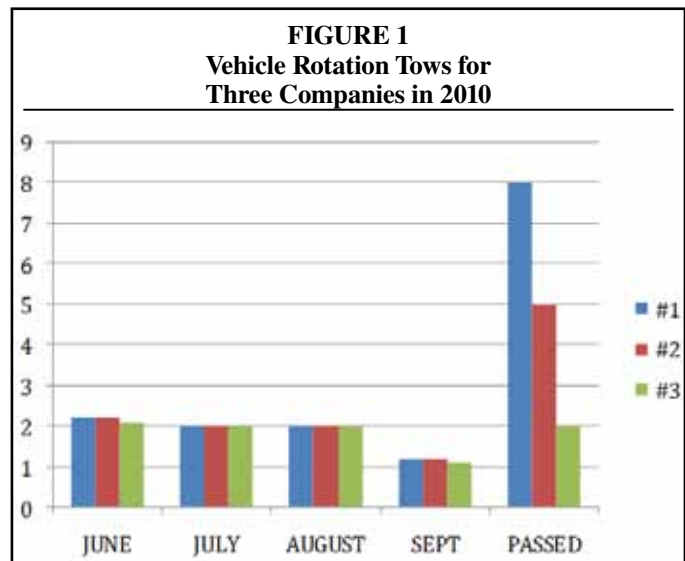
None

DISCLAIMER

This report was issued by the Yolo County Grand Jury with the exception of one member of the Grand Jury who may have had a perceived conflict of interest. This juror was excluded from all parts of the investigation including interviews, deliberations, and the making and acceptance of the report.

COMMENT

The Grand Jury thanks and commends the Woodland Police Department Records Manager for compiling and extracting information for this report.



Yolo County Department of General Services Employee Administration

SUMMARY

The Grand Jury investigated allegations of timesheet falsification within one work group of the Yolo County Department of General Services (DGS). The allegations proved to be unfounded. The investigation revealed a lack of communication both within the DGS and between the DGS and the County Department of Human Resources (HR) regarding personnel policies and procedures, including the recent establishment of a County Whistleblower Policy and Procedure. Subsequent to the investigation, communication between DGS management and employees was observed to have improved. The DGS's method of keeping track of employee time leaves room for falsification of employee hours.

REASON FOR INVESTIGATION

The Grand Jury received a complaint alleging improper overtime payments arising from time sheet falsification in the DGS.

California Penal Code Section 925 provides “The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or 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 districts.”

ACTION TAKEN

The Grand Jury interviewed management and staff in the DGS, as well as management in HR, which is responsible for employee policies and procedures. The Grand Jury also reviewed the Auditor–Controller’s Internal Control Review of the County Payroll System published in December 2010 and interviewed Auditor–Controller’s office staff. The Grand Jury obtained a copy of the Memorandum of Understanding (MOU) concerning the relevant union agreement, the Yolo County Administrative Procedures Manual, an Organizational Chart of the DGS and a copy of the August 4, 2009 changes to the County

of Yolo Administrative Policies and Procedures Manual. The Grand Jury conducted a follow up interview of a DGS staff member several weeks after the initial interviews to determine whether any changes occurred regarding problems the Grand Jury discovered.

WHAT THE GRAND JURY DETERMINED

Departmental Work Schedules and Timekeeping

The DGS has approximately 14 hourly employees performing landscaping and maintenance duties. The landscaping crew arrives at 6 AM and the maintenance crew arrives at 7 AM. All employees are required to wear uniforms to work. The DGS employees arrive at a central location and use County vehicles to drive to their work destinations. The size of the labor pool, combined with the common arrival and departure times at a central location using County vehicles, make it apparent when an employee arrives late, leaves early, or otherwise works a modified schedule. Modified schedules are permitted, making it possible for employees to work a variety of schedules, including 10 hour days, 4 days a week.

The county also has rules permitting special working arrangements under appropriate circumstances for a limited time period. The existence of and purposes for special work arrangements are confidential. Unless an employee chooses to disclose the existence of a special work arrangement, co-workers will not be aware of the circumstances, with misunderstandings and morale problems likely to occur.

The DGS does not have a time clock or other electronic system to accurately record when the hourly employees actually arrive or depart from work. Rather, the employees use a computer to enter their hours into an Excel spread sheet. The spread sheet also records any leave taken (such as vacation or sick leave) and records the employees’ labor allocations to specific projects. Accurate recording of employee hours worked depends on truthful entries by the employee on the spread sheet. The time sheets are printed out and are supposed to be signed by the employee and the supervisor.

Alleged Time Sheet Falsification

The allegations of time sheet falsification pertained to a work group in which not all employees worked the entire shift, coming in and leaving at different times than the regular shift, and using overtime to make up the eight-hour work day even though the standard work schedule

was not being followed. It appeared that time sheets were not being completed according to prescribed reporting standards. The appearance of favoritism existed and a loss of morale among the hourly workers in the DGS ensued. During the course of the investigation, however, these practices ceased.

The Grand Jury reviewed the circumstances surrounding the disparities in the shifts and time reporting for the period in question. The Grand Jury determined that hours were correctly reported and approved by management at all times.

Employee Evaluations

The Grand Jury determined during the interviews that the required annual employee performance reviews were occurring on an inconsistent basis. The failure to review each employee annually was attributed to increased supervisory workload. The two groups of employees start work at different times with just one supervisor which, combined with other increased supervisory workload due to the recent reductions in work force, put increased strain on management.

Yolo County Employee Administration Procedures

The Grand Jury determined that employees in the DGS were not kept up to date by HR about changes in County policies and procedures. DGS employees do not have a personal computer assigned to them to receive e-mails notifying them of policy and procedure updates. They were informed of County policies and procedures during the initial training for new employees, but were not kept current. DGS staff and management have monthly meetings during which safety is the primary topic of discussion. DGS staff and management were unaware that in August 2009 Yolo County adopted a County Whistleblower Policy and Procedure. This program allows staff and supervisors to bypass department management and go directly to the head of HR, who is tasked with supervising personnel issues. The new policy provides that, “The confidentiality of a whistleblower’s identity will be maintained to the extent possible within the legitimate needs of the law and the investigation.”

Follow-up Interview

When the Grand Jury conducted a follow-up interview, it was reported to the Grand Jury that the conditions in the DGS had changed for the better. The Grand Jury was informed that all employee annual reviews had been brought up to date, all employees were arriving properly

attired at the correct times, and that morale seemed to be much improved.

FINDINGS

- F1.** The allegation of timesheet falsification in the DGS was unfounded.
- F2.** DGS morale improved over the course of the Grand Jury investigation.
- F3.** The DGS staff and management were insufficiently informed by HR regarding policy and procedural changes instituted by the County. If the complainant had known the details of the confidential whistleblower program, the employee might have chosen that avenue instead of making a complaint to the Grand Jury.
- F4.** Annual DGS employee evaluations were completed inconsistently. Consistent evaluations could improve communications and help prevent the kind of misunderstanding that resulted in the Grand Jury’s investigation.
- F5.** The DGS’s failure to use electronic timekeeping or software that verifies the actual time of employee arrival and departure perpetuates the potential for fraud.

RECOMMENDATIONS

- R1.** The HR department needs to ensure that all employees are kept up to date about employee policy and procedures and provide a contact if employees have any questions. This could be accomplished by having a Human Resources representative attend monthly DGS meetings several times a year.
- R2.** The DGS management and HR staff should follow up to ensure that employees are evaluated on an annual basis.
- R3.** The County and DGS should institute electronic timekeeping or use software that records actual time of arrival and departure as soon as funds to do so are available.

REQUEST FOR RESPONSES

Pursuant to California Penal Code Sections 933(c) and 933.05, the Yolo County Grand Jury requests responses as follows:

From the following governing bodies:

- Yolo County Department of Human Resources, Findings F3 and F4; Recommendations R1 and R2
- Yolo County Department of General Services, Findings F3, F4 and F5; Recommendations R2 and R3
- Yolo County Board of Supervisors and the Yolo County Auditor-Controller's office, Finding F5; Recommendation R3

Yolo County Elections Office

SUMMARY

The Yolo County Elections Office performed commendably by consistent adherence to protocol and procedures designed to ensure that each vote was counted properly. However, crowded conditions at voting sites with multiple precincts at times led to voter confusion.

REASON FOR VISIT

The California Penal Code Section 925 states that "The Grand Jury shall investigate and report on the operations, accounts, and records of the officers, departments, or 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 districts."

The Grand Jury was invited by the County Clerk-Recorder to observe processing of mail-in ballots at the Elections Office located in Woodland prior to Election Day. The Grand Jury was invited to observe voting sites throughout the County on Election Day (November 2, 2010).

ACTIONS TAKEN

The Grand Jury visited the Elections Office on October 29, 2010. Jurors were provided a facilities tour, observed pre-election processing of mail-in ballots, and spoke with management and staff.

On November 2, 2010, the Grand Jury met with the County Clerk-Recorder, who provided training and materials to assist the Grand Jury in observing polling sites throughout the County.

Observational visitations occurred in both the cities of Woodland, West Sacramento, Winters, and Davis and the unincorporated towns of Esparto, Guinda, Knights Landing, Yolo, Dunnigan, Clarksburg and Zamora. Observations were performed at sites of single polling precincts, combined polling precincts at a single site (one table), and combined polling precincts at sites with multiple tables (2 groups). A rural visitation was made at the Willow Oak Fire Hall.

WHAT THE GRAND JURY DETERMINED

Election Office Observations

The Administrative Election Calendar for the Statewide General Election of November 2, 2010, began on April 21, 2010, and concluded on January 11, 2011. This Calendar consisted of 310 step requirements to administer this election.

Staff at the Elections Office were welcoming and informative regarding the operations of the Elections Office and voting system prior to, during, and post-election day. Office function appeared organized and operated smoothly even during peak periods. Management oversaw and when necessary troubleshoot processing of absentee ballots for counting. Certain steps in processing were performed only by career staff. In other operations, under guidance, temporary staff performed other steps including opening, sorting, and preparing absentee ballots that were either mailed in or dropped off by the voters.

Once sorted, ballots were fed by permanent staff at a rapid pace through large scanners where ballot data was stored on computers until polls closed on election night. All ballots and election equipment were stored in a locked and secure cage prior to the end of shift. Shortly after polls closed, the tabulation process was activated in the computers and absentee ballots were counted within approximately 10 minutes. Results were posted

immediately on the departmental website. The media uses this information along with exit polls to prepare early results predictions.

A variety of checks and balances are built into the tabulation system to ensure counting accuracy. This includes checking signatures on the mail-in ballots against copies of the original voter registration forms that have been scanned into the computer system. In addition, all hard-copy voter registration forms are stored in the Elections Office. Random ballots are hand-counted by teams of four who monitor each other's role in the hand counting.

Observations in the Field Precincts on Election Day

The Grand Jury observed that whether in a city school room, town hall, or rural fire station, each site visited contained the same set-up of equipment, outside and indoor notifications, maps, precinct information and general setup of tables.

Citizens who operated the polling sites were congenial, dutiful, and quick to serve their voters. They were knowledgeable concerning their duties and protocols for performance and ballot assurance.

All polling places visited offered adequate access and accommodation to the voters.

Yuba Community College in Woodland was a combined polling site for two precincts. Each polling site had a separate table, A and B. There was significant crowding with long lines observed at each table. Voter confusion was observed regarding which line was to be used for their precinct table. Some voters discovered they were in the wrong line when they got to the table. A number of voters were observed studying the displayed maps with confusion and uncertainty and required assistance by the polling precinct staff. The temperature was uncomfortably hot.

Davis Veterans Memorial Center was also a combined polling site for two or more precincts, with two tables. Crowded conditions with confusion about which line was appropriate were also observed. The air was stuffy.

St. Martin's Episcopal Church was a combined polling place, with each table serving multiple precincts. Confusion about which line was appropriate was observed.

From observations by the Grand Jury and comments

from voting site staff, it appears as though polling machines designed for the visually impaired were barely utilized. Of all sites visited in Yolo County, only one site in Esparto reported that this type of machine was used.

Other Information as Related by Precinct Polling Staff

In Knights Landing, although disabled access was available through the firehouse, curbside voting was also available to ease comfort level.

In Zamora, a 4-H club was going to meet on election night in an adjacent room to watch the voting process.

In Clarksburg, it was noted that several grade school classes came to the voting precinct to learn firsthand about the voting process.

As the polls neared closing at a precinct in Davis, younger voters who appeared to be of student age were observed rushing in to meet the time deadline of 8:00 pm.

FINDINGS

- F1.** Staff and administrative management at the Elections Office conducted operations in a professional and responsible manner, promoting equal access with unbiased vote recordation, counting procedures and protocol.
- F2.** The use of combined polling precincts that contained two separate sign-in tables (A and B) set up within the same room resulted in crowding and confusion. This became increasingly apparent when voter density rose (for example, after work). The crowding increased the likelihood of uncomfortable facilities.

RECOMMENDATIONS

- R1.** The Grand Jury recommends that the Elections Office consider having one staff member at locations with multiple precincts, assisting voters to the proper precinct table.
- R2.** The Grand Jury recommends that the Elections Office explore additional ways to separate combined multiple polling precincts to assist the voters, improve crowd management and identify ways to keep the voting rooms from becoming uncomfortable.

REQUEST FOR RESPONSES

Pursuant to California Penal Code Sections 933(c) and 933.05, the Grand Jury requests responses as follows:

From the following governing body:

- Yolo County Clerk Recorder, Findings F1 and F2; Recommendation R1 and R2

Yolo County Juvenile Detention Facility

SUMMARY

The staff, programs, and facilities at the Yolo County Juvenile Detention Facility (YCJDF) are exemplary. Medical care and educational opportunities for the minors are of high quality and are easily accessible. Living conditions are humane and appropriate.

REASON FOR VISIT

The 2010–2011 Grand Jury inspected this facility as mandated by California Penal Code Section 919(b), which provides that “The grand jury shall inquire into the conditions and management of public prisons within the county.”

ACTIONS TAKEN

The Grand Jury inspected the juvenile facility in November 2010, and again in February 2011. The Grand Jury reviewed policies and procedures, a sampling of recent incident reports and grievances, and met with management and approximately ten custodial, clinical and educational staff members.

WHAT THE GRAND JURY DETERMINED

The Staff

All management and staff members encountered by the Grand Jury expressed enthusiasm for their work and mission. Many were eager to share their experiences at the YCJDF with the Grand Jury and appeared highly motivated to improve the lives of the minors.

All custodial staff have successfully completed peace officer academy training required by Penal Code section 832, which mandates training in areas such as use of force and physical fitness. All custodial staff completed the required Peace Officer Standards and Training (POST) Academy law enforcement training and most have attained Bachelor’s degrees. Many are bilingual, predominantly in Spanish. YCJDF staff and management are often contacted by other jurisdictions to consult on the effective management of youth detention facilities.

The Facility

The housing units were very clean. Windows, floors, walls, doors, cells, desks, and bedding appeared clean and well maintained. The facility looks new, although it is nearly six years old. The housing units were well-lit, smelled clean, and temperatures were comfortable and well regulated.

Clothing services and meals, including any necessary special diets, are provided by the Monroe Detention Facility. Meals are delivered with the ward’s name and needs written on the meal containers.

All housing, hallway, visiting, booking and exercise areas are under surveillance and recordings are kept for one year.

New exercise yard turf, fully paid using Immigration and Customs Enforcement (ICE) funds, was installed during early 2011.

Quarterly quality assurance meetings are held to discuss any topics affecting the facility and its minors.

Security

The Grand Jury was informed that the YCJDF provides the level of security normally seen in high-level adult facilities. It is one of the most secure juvenile detention facilities on the west coast. The YCJDF is set apart from other juvenile facilities by its modern central control room, which electronically controls the movement of staff and minors throughout the facility.

The Population

There are three housing units known as “pods” at the YCJDF. Each pod has a maximum capacity of 30 minors.

One of the pods was used to house 20 inmates pursuant to a contract with Sacramento County. That pod is now

empty because the contract recently expired, resulting in the return of the inmates to Sacramento County.

A second pod houses the Yolo County population and four to five Tuolumne County minors. This population is comprised of juveniles who are facing charges as adults in Superior Court or juveniles awaiting processing in Juvenile Court.

The third pod contains up to 25 juveniles pursuant to a contract with the Department of Homeland Security. This contract, under the auspices of ICE, utilizes the YCJDF to house a nationwide population of juvenile offenders awaiting resolution of their immigration issues. Many of these juveniles are non English speaking. In 2010 one of them became the first in the nation to obtain a GED while under ICE detention. The YCJDF was informed that the reason for its selection to perform this lucrative contract is due to the high degree of security for its juvenile population.

Programs and Activities

Detainees are taken to Woodland Memorial Hospital to check for medical and mental health problems prior to booking at the YCJDF. This is followed by a screening process that takes up to 72 hours. During the screening process immunizations are updated. Some minors have never been immunized.

There is a medical professional on site during the day and on call at night. A physician is available on call 24 hours a day. Evaluations for medical, dental and mental health needs are done within 96 hours of booking, unless staff determines there is an immediate health risk. Mental health services are available on call, by EMTs, and the Yolo County Department of Alcohol, Drug and Mental Health when needed or requested by a health professional.

The minors are assessed for English competency, math and reading skills. They are advised of YCJDF policies, including disciplinary procedures and their due process rights. Contact with families, when appropriate, is available through mail and weekly visiting.

Education and literacy services are a central focus for the minors. County-funded classes are provided for County students, while ICE funding is used for youths under federal detention. Ninety-seven percent of youths attend classes. Tutoring and library/literacy services are provided on a regular basis. GED testing is available to youths not currently enrolled in an outside school.

The YCJDF relies heavily on community participation. Staff say they “simply could not do what we do without local volunteers.” Services provided by volunteers or by grant funding include mentoring programs and spiritual services, as well as classes on teen parenting, coping skills, and Aggression Replacement Training. Alcoholics Anonymous and Narcotics Anonymous programs are available.

FINDINGS

- F1.** The facility is clean and well-maintained. Living conditions are appropriate, with no overcrowding problems.
- F2.** Medical care and screening are readily available and appear to be of high quality.
- F3.** A wide range of educational and character-building services are available to all minors. Local community volunteers are invaluable for the provision of these services
- F4.** Staff are enthusiastic and well trained.
- F5.** The YCJDF is developing a positive national reputation for its participation in ICE.
- F6.** The YCJDF is a credit to Yolo County.

RECOMMENDATIONS

None

REQUEST FOR RESPONSES

None

Yolo County Jail

SUMMARY

High inmate population and how it is affected by a 1992 Federal Consent Decree continues to be a high priority issue for jail staff. County Jail buildings and grounds are clean and well maintained. Correctional staff have complied with policies and procedures in all areas. The jail facilities receive 80% of their electrical power from an array of solar panels located on the property.

REASON FOR VISIT

Pursuant to Penal Code Section 919(b) “The Grand Jury shall inquire into the conditions and management of the public prisons within the county.”

ACTIONS TAKEN

The Grand Jury inspected the Yolo County Jail in Woodland, which consists of the Monroe Detention Center and Leinberger Memorial Center. The Monroe Center houses the higher risk offenders, while the Leinberger facility houses the lower risk population and inmates serving out jail sentences. The Grand Jury met with the Sheriff/Coroner of Yolo County as well as the Correctional Command Team. Pertinent documents reviewed included jail policies and procedures, a sampling of inmate grievances and responses, and the California Corrections Standards Authority (CSA) report dated November 3, 2010.

The inspection included viewing the “Justice Campus Solar Project”, which was activated July 27, 2010. The Grand Jury also conducted a follow-up meeting with jail command staff.

WHAT THE GRAND JURY DETERMINED

Inmate overcrowding continues as an operational way of life at the jail. Inmate population is limited under a 1992 federal consent decree. The current maximum inmate capacity is 422. Releases pursuant to the decree occur when that number is exceeded. A list of potential inmates to be released is compiled daily by correctional management staff, taking into account the nature of the present charges an inmate is facing coupled with the inmate’s criminal history. Inmates posing the least risk

to the community are considered first for release. During the calendar year 2010, 87 male inmates and 36 female inmates were released per the consent decree. These inmates’ status ranged from unsentenced misdemeanants to felons on probation completing their jail terms.

Funding reductions in the fall of 2010 led to the closure of 30 beds and the layoff of two correctional officers in the female section of the Leinberger facility. This closure dropped the jail’s maximum capacity from 452 to 422. These reductions further contributed to the early release of inmates.

The Grand Jury reviewed a selection of inmate grievances and staff responses and compared them to the provisions of the jail’s Policy Manual. The review found the jail staff responded in a timely manner – within five business days at the first level or seven business days at the second level – and their responses were appropriate and clearly expressed.

The CSA report states the jail is current on all Fire Marshal and health inspections. It noted there was some lack of compliance with the California Code of Regulations due to space issues related to the use of temporary cells. Those cells are in the booking area and are utilized to hold inmates demonstrating or expressing suicidal tendencies. However, the report commended the collaboration between custody staff and medical/mental health personnel in their monitoring of these individuals in rather tight quarters.

A newly-formed canine unit assists correctional officers and sheriff’s deputies with the search for and seizure of contraband throughout the justice complex. The unit was awarded first place at the Western States Canine Conference and Year-end Trials in Reno, Nevada in October of 2010.

The Grand Jury found all hallways in both facilities to be clear of debris, and doors were closed and locked electronically. Booking and holding areas had appropriate access to drinking water and toilet facilities, and the building exterior and grounds were clean and well kept. Sleeping areas, bedding, dayrooms and living areas were clean and well-maintained, with plentiful light and comfortable temperature. Interior and exterior walls were free of graffiti, peeling paint, unpleasant odors, and other signs of deterioration during the inspection. Cell blocks and court holding areas were secured and had access to toilets and drinking water. The kitchen area was sanitary, and all knives were secured by tethered cables.

Inmates receive adequate physical, dental and mental health services through on-site and on-call professional providers. They are offered a wide and ever-expanding array of technological, vocational, literacy, rehabilitation, and socialization programs in the evenings, provided primarily by community volunteers, to promote their transition back to society upon release from custody.

The Justice Campus Solar Project is a photovoltaic field comprised of a solar panel array on the eastern edge of the complex. It is expected to provide 80% of the electrical power used by the jail facilities as well as the Yolo County Juvenile Detention Facility, which is also on the campus.

Two inmate suicides occurred during the year 2010, the first in May and the second in December. Both deaths occurred by asphyxiation. Accordingly, the Grand Jury reviewed two applicable sections in the Monroe Detention Center Operations Manual: “Suicide Prevention” and “Inmate Death”.

The suicide prevention section addresses an inmate expressing suicidal tendencies from the time of arrest and transport to the jail. Additionally, the jail’s Policies and Procedures regarding mental health issues address mental health screening of inmates, suicide prevention, and inmate death. The inmate death section discusses procedures to follow upon a completed suicide. Also, the Grand Jury discussed the circumstances surrounding these deaths with jail command staff.

Neither inmate displayed or expressed any suicidal tendencies at the time of their booking into the facility, nor did they show any such evidence while incarcerated. County Jail staff followed their policies and procedures in response to each suicide.

The County Jail’s Policies and Procedures require a lockdown of all jail facilities upon the initial report of the death, and the immediate area of the death is secured as a crime scene. The only officials allowed in the area are clinical responders, Sheriff’s Office management, and an officer to track and maintain a log of all movement of people in and out of the area. Next, all inmates in the vicinity of the scene are held and not allowed to move to other areas without express approval of the jail commander. The Sheriff and District Attorney are immediately notified, as well as certain Sheriff’s Office officials who would have a professional interest in the case. The County Coroner notifies the next of kin as soon as possible.

Further, all involved staff members are required to write reports on their observations and involvement in the death. The California Department of Justice (DOJ) is notified by report within ten days. All jail logs (cell counts, inmate visits, etc.) that are maintained as part of the jail’s daily operation are secured as evidence.

To date, the DOJ has not contacted jail officials regarding any inquiries regarding these deaths.

FINDINGS

- F1.** County Jail officials continue to struggle with inmate overcrowding. Budget cuts have led to additional early release of inmates. Jail staff are proactive in determining which inmates are to be released from custody.
- F2.** The installation and operation of the photovoltaic solar array is an innovative and creative effort to significantly reduce electricity costs throughout the justice complex.
- F3.** County Jail staff adhered to policy and procedure guidelines concerning health and safety regulations and were responsive to inmate grievances.
- F4.** The County Jail building exteriors and grounds were clean and well maintained. All interior areas were sanitary and free of debris, and cell blocks and holding areas were properly secured.
- F5.** County Jail staff adhered to all policy and procedure guidelines and requirements during their response and investigation of the two suicides. These guidelines include scene preservation, notification of the requisite county and state agencies, and a review of the investigation upon its completion to determine whether any corrective action is necessary.

RECOMMENDATIONS

None

REQUEST FOR RESPONSES

None

DISCLAIMER

This report was issued by the Yolo County Grand Jury with the exception of one member of the Grand Jury who may have had a perceived conflict of interest. This juror was excluded from all parts of the investigation including inspections, interviews, deliberations, and the making and acceptance of the reports.

Yolo County Housing Authority

SUMMARY

The 2010–2011 Grand Jury initiated an inquiry into the Yolo County Housing Authority (YCHA) this year to determine whether and how the agency was implementing resident safety improvements discussed in last year’s Grand Jury report. The Grand Jury determined that YCHA had successfully improved resident safety in several ways.

REASON FOR INVESTIGATION

California Penal Code Section 925 provides “The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in county created pursuant of state law for which the officers of the county are serving in their ex officio capacity as officers of the districts.”

The 2009–2010 Grand Jury investigated resident safety issues at the YCHA Riverbend Senior Manor (RSM) site on Lighthouse Drive in West Sacramento. RSM is an independent living facility that houses senior and disabled residents. The 2009–2010 Grand Jury found shortcomings by YCHA in response to a resident’s complaints regarding a disruptive resident and the emergency pull cord system.

ACTIONS TAKEN

The 2010–2011 Grand Jury investigated RSM to determine whether improvements had been made in the emergency pull cord system such that it serves as a reliable method to notify others when a resident is in distress.

The Grand Jury interviewed last year’s complainant to obtain the resident’s observations of changes made by YCHA in the past year. The resident also provided a written report to the Grand Jury.

The Grand Jury performed a visual inspection of the RSM site including living units, grounds and entryway, walkways, and common areas.

WHAT THE GRAND JURY DETERMINED

Living units for seniors and the disabled are equipped with emergency pull cords in bedrooms and bathrooms. Cords are pulled when residents need emergency assistance and cannot use the telephone. Cords are required to hang free and extend close to the floor to allow access to the system. When the cord is pulled, a light and a horn outside of the resident’s unit are activated, alerting others in the area. Residents are instructed to call 911 when noticing the emergency light or horn.

YCHA inspects the units twice per year. The YCHA finds that about one-third of the units have inaccessible cords. The cords are either blocked by furniture or tied up out of reach.

The Grand Jury interviewed YCHA staff and RSM residents and learned that YCHA is conducting ongoing training sessions with residents regarding the need to keep the cords correctly deployed, and how to use the pull-cord system correctly.

YCHA has relocated the exterior emergency lights to increase their visibility when activated.

While there have been no reports of gang activity with respect to RSM, the site is adjacent to areas that have been impacted by gang activity. Entrance gates, previously left open for years due to the lack of repair and upkeep, have been repaired within the last year. These gates are now closed at dark daily. Several residents expressed the fact that RSM is now a safer place to live due to this one change, the closing of the gates at dark.

The Grand Jury notes that there has been turnover in the RSM office staff since last year. Residents report that staff is more responsive in enforcing resident complaints about those who are violating policies and procedures. For example: a written response is now given to residents who submit a safety complaint instead of a verbal response.

FINDINGS

- F1.** YCHA has increased resident safety via the emergency pull-cord system by relocating emergency lights at RSM. YCHA is providing related resident training which increases resident awareness of how to best utilize the system.
- F2.** YCHA has improved the safety and security of the grounds at RSM.
- F3.** YCHA has improved staff responsiveness to resident safety complaints at RSM.
- F4.** Although there were disagreements between the previous Grand Jury and YCHA, the YCHA acted in response to the 2009–2010 Grand Jury report by improving resident safety. The Grand Jury commends YCHA on resident safety improvements made at RSM in the past year.

RECOMMENDATIONS

None

REQUEST FOR RESPONSES

None

APPENDIX

**RESPONSES TO THE
2009 – 2010
YOLO COUNTY GRAND JURY
FINAL REPORT**



Cache Creek Casino

Yolo County Department of Employment and Social Services

Yolo County Juvenile Detention Facility

Monroe Detention Center

CACHE CREEK CASINO



COUNTY OF YOLO

Office of the County Administrator

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September 28, 2010

Honorable Janet Gaard
Judge of the Superior Court
725 Court Street
Woodland, CA 95695

RE: 2009/2010 Grand Jury Final Report

Dear Judge Gaard:

The following is the response to the 2009/2010 Grand Jury Final Report from the Yolo County Board of Supervisors, the County Administrator, the Director of Human Resources, the Director of the Department of Employment & Social Services and the Chief Probation Officer.

For purposes of readability we have included the Grand Jury's Recommendations in italics.

Impact of Cache Creek Casino Resort on Yolo County

10-01 *"Improve traffic enforcement and warning signage along SR 16 and casino feeder roads."*

The recommendations regarding State Route 16 can be implemented by the State of California, but cannot be implemented by the County of Yolo.

State Route 16 is under the jurisdiction of the State of California, not the County of Yolo. The State authority for traffic enforcement is the California Highway Patrol. The State authority for signage is Caltrans. The County of Yolo does continue to have input in the analysis of State Route 16 needs through ongoing discussions with Caltrans and Yocha Dehe Wintun Nation.

The recommendations regarding feeder roads will be implemented.

The effects of casino traffic on County roads are a matter of ongoing review and analysis. Placement of signage is largely governed by state and federal guidelines and considered on a case-by-case basis by the Yolo County Department of Planning and Public Works. Traffic enforcement on County roads is performed by the Yolo County Sheriff's Department as conditions require and resources allow. The County of Yolo will

CACHE CREEK CASINO

advocate for mitigation measures that address the impacts of proposed casino expansions on feeder roads in future negotiations.

- 10-02** *“Continue to work with Caltrans and the Yocha Dehe Wintun Nation to hasten plans for SR 16 relief between I-505 and Brooks, or identify alternate route(s) to alleviate traffic.”*

This recommendation is currently in the process of being implemented.

The County meets regularly with the Yocha Dehe Wintun Nation (Yocha Dehe Wintun Nation) and Caltrans to discuss traffic-related impacts.

- 10-03** *“Work with the Yocha Dehe Wintun Nation to establish an employee program to subsidize public transportation passes to help reduce the number of cars going to the casino.”*

This recommendation has been implemented.

The Cache Creek Casino Resort has partnered with the Yolo County Transportation District to provide subsidized bus passes to employees of the Resort and continues to refine the routes and schedules as dictated by need and conditions.

- 10-04** *“Pursue greater contribution from the Yocha Dehe Wintun Nation to eliminate the existing funding gap created by criminal activity attributed to the casino.”*

The State compact prevents this recommendation from being implemented as suggested.

The Compact requires the Yocha deHe Wintun Nation to negotiate with the County to mitigate off-reservation impacts of casino expansion projects. Currently the State compact does not provide a legal mechanism to renegotiate off-reservation impacts once an intergovernmental agreement is in place. In future negotiations the County of Yolo will advocate for funding to mitigate casino impacts on the criminal justice system.

- 10-05** *“Before more ACTM funds are granted, develop allocation guidelines that will ensure fairness, transparency, and accountability. Consult with financial and legal professionals within county government to assist in developing the guidelines.”*

This recommendation has been implemented.

We have ACTM evaluation guidelines which are used to make recommendations and ensure transparency and accountability. The Board of Supervisors retains final discretion on allocation of mitigation funds per the prior agreement.

- 10-06** *“The first priorities when mitigation funds become available again should be residents between I-505 and I-5 plus the City of Woodland, along with Valley communities that have not yet received attention.”*

This recommendation can be implemented to the extent it is consistent with the State compact