

**2005-2006
STANISLAUS COUNTY
CIVIL GRAND JURY**



Final Report
Honorable Marie Sovey Silveira
Presiding Judge of the Superior Court

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STANISLAUS COUNTY CIVIL GRAND JURORS

2005-2006

Honorable Marie Sovey Silveira

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Donald George Moore, Sr.
Leinani April Neves
Seena A. Rhine
Pamela L. Toombs**

*The Stanislaus County Civil Grand Jury
Serves the cities of:*

Ceres
Highson
Modesto
Newman
Oakdale
Patterson
Riverbank
Turlock
Waterford

As well as the following communities:

Crows Landing
Denair
Empire
Grayson
Hickman
Keyes
Knights Ferry
La Grange
Salida
Valley Home
Vernalis
Westley



STANISLAUS COUNTY CIVIL GRAND JURY

Post Office Box 3387 • Modesto, California 95354 • (209) 558-7766 • Fax (209) 558-8170

The 2005-2006 Stanislaus Civil Grand Jury has finished its year and completed its final report. A synopsis of our work is available for review. Having served as the foreperson for the Stanislaus Civil Grand Jury for the last two years, I am reminded of the words by Nobel Laureate writer and philosopher, Albert Camus, "integrity has no need for rules." This quote reflects the essence of the members of the Civil Grand Jury. I was afforded the opportunity to work with two diversified panels of jury members, and the similarity of each panel is that they both had integrity and were determined and absorbed into discovering the truth. Our mission is to provide an unbiased oversight and function as the citizen's watchdog.

Some may perceive that our work is imprudent, ill advised and does not accomplish significant transformations. However, the Civil Grand Jury report enlightens our officials and the public of recommended and essential improvements. Our elected officials will hopefully adhere to the suggestions and implement the necessary corrections. Our community has improved from past civil grand jury investigations, and I am confident that this year's report will also have significant impact in improving the efficiency in our local government.

With the support of our local Superior Court and its administrative staff, the civil grand jury process continues to unveil areas of concern by our citizens. This year's panel has been fortunate to work with an extraordinary presiding judge, Judge Marie Sovey Silveira, and an exceptional Superior Court Administrator, Mike Tozzi. We are grateful to have had both as accessible counsels when requested.

This year's panel of dedicated citizens has volunteered countless hours of investigative work to uncover the findings in each complaint. They are to be complimented on their comprehensive report.

It has been an honor and I am appreciative to have served as foreperson of the Stanislaus Civil Grand Jury for the last two years. I have been enlightened in the process and recognize that the Civil Grand Jury's energetic efforts bring positive change and progress to our community.

Sincerely,

Cheryl Merritt
Civil Grand Jury Foreperson
Fiscal Year 2005-2006



Superior Court of the State of California

COUNTY OF STANISLAUS

P.O. BOX 3488
MODESTO, CALIFORNIA 95353

MARIE SOVEY SILVEIRA, JUDGE

TELEPHONE
(209) 525-7794

June 29, 2006

Our Civil Grand Jury

Dear Citizens:

It is my great privilege and honor to write to you about the service of the Civil Grand Jury and to recognize them for their outstanding public service to this county.

We are all familiar with jury duty--that civic duty that we are asked to perform when summoned by the Jury Commissioner. Typically jury duty is a sacrifice of time and service that citizens make when they decide the outcome of a criminal or civil trial. Most jury trials are completed within a matter of days or a few weeks. We know, and we sincerely appreciate, the service that each person makes when serving on a jury.

Few people understand, however, that the Civil Grand Jury is a panel that is very different from regular jury duty. The purpose of the civil grand jury is to confidentially investigate complaints about public agencies including the county, local cities, local utilities, school districts, hospital districts, and other services critical to the safety and welfare of all the citizens. Civil grand jurors are strictly volunteers. Civil grand jurors serve for one full year, meeting regularly, and, occasionally, grand jurors will agree to extend service through a second year. There is a substantial commitment of time and true dedication to the community from each of the civil grand jurors. Upon the completion of each confidential investigation, the Civil Grand Jury prepares a report and makes recommendations for the benefit of the community.

The Civil Grand Jury has 19 members, who live throughout the county; they have diverse backgrounds, ages and ethnicity. They are unified by their desire to serve, to investigate, to collaborate and to improve the lives of all. These volunteers take an oath to "diligently inquire into...all public offenses" and they promise not to disclose any information that they receive in the course of their investigations. This is a tremendous responsibility. We are extremely fortunate to have them.

Our Civil Grand Jury system has received the full support of the bench and our administrative staff for many years. It is for that reason that we truly understand the value the Civil Grand Jury has been to citizens, employees, special districts, cities and the county. The reports that have been written and filed have helped our governmental agencies, have righted wrongs and have assisted in setting direction for the future.

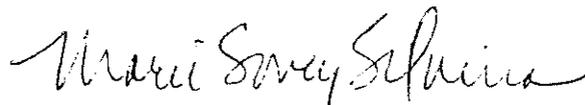
June 29, 2006

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You can read more about the Civil Grand Jury at our website www.stanct.org. Past reports and the responses from the agencies or persons affected by those reports are available online. It is the first step to getting involved.

In conclusion, the Civil Grand Jury is a tremendous asset to all of us. To those who have nominated citizens for Civil Grand Jury service, to all citizens who have agreed to serve and to all citizens who have served on the Civil Grand Jury, we sincerely thank you for your interest, your involvement and your dedication to this extremely important task.

Very truly yours,

A handwritten signature in cursive script that reads "Marie Sovey Silveira".

Marie Sovey Silveira, Presiding Judge
Stanislaus County Superior Court

What is the Civil Grand Jury?

WHAT IS THE CIVIL GRAND JURY?

- **The Civil Grand Jury is empowered to investigate complaints** from citizens, civic groups, government employees and others about the operations of county and city governments and the conduct of their officers and employees. The Civil Grand Jury may also investigate complaints about special districts and school districts.
- **The Grand Jury is the guardian of public trust in local government.** This is known as the “Civil Watchdog” function. The Grand Jury exists to assure honest and efficient government.
- **Certain functions of the Grand Jury are mandated by law**, such as examining the condition of the detention facilities within the county. The Grand Jury is mandated to audit the books, records and accounts of county offices and to contract for an outside auditor to conduct such audits.
- **Committees are formed to study citizen complaints.** The Grand Jury itself also selects additional areas that it wishes to study/investigate. The Grand Jury publishes its findings, conclusions and recommendations in a single report for each investigation.
- **Final Reports and Responses.** The complete set of all reports released in a given fiscal year constitutes the Final Report of the Civil Grand Jury. Each individual report is labeled as Part One, Part Two, etc. as each is a single part of the Final Report. Each separate report, and in turn the Final Report, is distributed to the public officials, libraries, and the press.
- Agencies or departments, which are the subjects of investigations, are required to respond to the findings and recommendations within 60 days, and 90 days in certain cases, from the date of the receipt of the report. All reports and responses are available for viewing on the Grand Jury website: <http://www.stanct.org/courts/grandjury/index.html>.
- **Grand Jury Complaint Forms** may be obtained from the office. Complaints presented in the form of a letter will be accepted, but it is desirable to use the form whenever possible. A complaint form is also available from the website.
- **Grand Jury Confidentiality.** In all Grand Jury proceedings and investigations members and staff are sworn to maintain secrecy. All

complaints are handled with the utmost confidentiality. The complainant's name is never divulged or used in a written report.

- **While the Grand Jury is a part of the judicial system**, it is an entirely independent body. Whereas the State Attorney General, the Presiding Judge of the Superior Court, The District Attorney, and the County Counsel, may act as its advisors, they cannot control the actions of the Grand Jury except to ensure legality. The Grand Jury is an institution not answerable to any administration, politician, or legislator. It is the overseer of the public interest.
- **The selection of the Civil Grand Jury is a process directed by the Presiding Judge** of the Superior Court and involves names which have been randomly selected from the master jury pool, names which have been submitted by community leaders, and those citizens requesting an application. Every person who responds (that meets initial requirements) in the affirmative that he or she wants to serve is afforded an interview with the Presiding Judge. The court seeks to select a cross section of the community based on geographical location, skills, age, sex and ethnic background. Out of those interviewed, the Judge selects 30 names. On July 1st, 19 names or fewer if there are "holdovers" from the prior term's panel, and four alternates are drawn to become the new Civil Grand Jury. Civil Grand Jurors volunteer to serve for one fiscal year, or longer, as applicable for holdover jurors.

***Civil Grand Jury
Selection Process***

2005-2006

**2005-2006 CIVIL GRAND JURY
SELECTION PROCESS**

PHASE I: INITIAL SELECTION PROCESS

Letters mailed to:

- A. 400 names were randomly selected from the Master Jury Pool of 374,464 names.
- 35 responded interested (8.75%)
 - 190 responded as not interested (47.50%)
 - 131 did not respond (32.75%)
 - 44 were returned as undeliverable(11.00%)
- B. 170 Community Leaders were asked to submit names.
- 12 responded with names (7.00%)
 - 158 did not respond (93.00%)
- C. 24 names of 22 persons were submitted by 170 Community/Union Leaders.
- 9 responded interested (37.5%)
 - 2 had already been contacted and responded interested (8.33%)
 - 5 responded not interested (20.83%)
 - 1 was disqualified or withdrew (4.17%)
 - 7 did not respond (29.17%)
- D. 27 persons asked for an application to serve.
- 18 responded interested (66.7%)
 - 6 responded interested, but later withdrew (22.2%)
 - 3 did not respond (11.1%)
- E. 27 persons from last years' selection process were contacted.
- 5 responded interested (22.2%)
 - 1 had already been contacted and responded interested (3.70%)
 - 2 responded interested, but later withdrew (7.40%)
 - 2 responded not interested (7.40%)
 - 17 did not respond (63.00%)

F. Persons from 13 cities received questionnaires via random selection.

<u>City</u>	<u>Number</u>	<u>Percentage</u>
Ceres	30	(7.50%)
Denair	06	(1.50%)
Hickman	01	(.25%)
Hughson	05	(1.25%)
Keyes	01	(.25%)
Modesto	211	(52.75%)
Newman	09	(2.25%)
Oakdale	19	(4.75%)
Patterson	21	(5.25%)
Riverbank	12	(3.00%)
Salida	19	(4.75%)
Turlock	60	(15.00%)
Waterford	06	(1.50%)
Total	400 random names	

G. Persons from 6 cities received questionnaires after having their names submitted by Community Leaders.

<u>City</u>	<u>Number</u>	<u>Percentage</u>
Hughson	03	(13.6%)
Modesto	14	(63.6%)
Newman	01	(4.6%)
Patterson	01	(4.6%)
Riverbank	01	(4.6%)
Turlock	02	(9.0%)
Total	22 submitted names	

H. Persons from 5 cities requested an application:

<u>City</u>	<u>Number</u>	<u>Percentage</u>
Hickman	01	(3.70%)
Modesto	18	(66.67%)
Oakdale	05	(18.52%)
Riverbank	01	(3.70%)
Turlock	02	(7.41%)
Total	27 requested an application	

I. Persons from 6 cities were contacted from last years' applicants:

<u>City</u>	<u>Number</u>	<u>Percentage</u>
Ceres	01	(3.70%)
Modesto	16	(59.26%)
Oakdale	01	(3.70%)
Riverbank	02	(7.41%)
Salida	02	(7.41%)
Turlock	05	(18.52%)
Total	27 were contacted from last years' applicants	

PHASE II: INTERVIEWS:

- A. There were 60 prospective jurors scheduled for interviews. Forty-five completed the interview process; 15 persons withdrew or did not appear.
- B. Of the 30 persons selected 22 were male and 8 were female.
- C. Of the 30 persons selected; 9 requested an application, 4 responded to a letter sent to last years' applicants for reapplication, 9 had their names submitted, and 8 names came from the random selection process.

PHASE III: THE FINAL NINETEEN:

- A. Sixteen names were drawn at random. One person was from last year's grand jury was appointed Foreperson by the Presiding Judge. Two others from last year's panel were holdovers. Four additional names were drawn as alternate members.
- B. Two persons (or 10.52%) requested an application, 3 persons (or 15.79%) from last year's selection process were contacted, 6 persons or (31.58%) were submitted by Community Leaders, 5 persons or (26.32%) were from the random selection, and 3 persons or (15.79%) were held over from the previous year's grand jury.

- C. The 19 members of the Civil Grand Jury for 2005-2006 come from the following cities and communities:

<u>City</u>	<u>Number</u>	<u>Percentage</u>
Modesto	13	(68.42%)
Oakdale	01	(5.26%)
Patterson	01	(5.26%)
Riverbank	02	(10.53%)
Turlock	02	(10.53%)
Total	19 members	

- D. 10 (52.6%) are male, 9 (47.4%) are female.
- E. Occupations include the following: Regional Planner, Retired Fork Lift Driver, Homemaker, Retail Business Owner, Retired Clerk, Security Police Officer, Retired Teacher, Hairdresser, Retired State Health Inspector, Professor, Self-Employed Farmer/Bookkeeper, Retired Deputy Superintendent, Retired Telecommunications Manager/Engineer, Client's Rights Advocate, Insurance Agent, Real Estate Agent.

Subjects of Investigation

**City of Modesto
Grand Jury Case # 06-20
2005-2006**

SUMMARY

The Stanislaus County Civil Grand Jury (CGJ) received a complaint from a resident living in the North Beyer Park District, which became known as Community Facilities District 1997-1 (CFD 1997-1.) The resident previously presented a complaint, containing five issues, to City of Modesto staff and the Modesto City Council. The resident has not been satisfied with the City's response to his complaint.

The CGJ investigation found that the City of Modesto had corrected four of the five issues referenced in the resident's complaint. The remaining claim, "reserve funds are being eroded by an ever escalating stream of administrative and consulting fees," the CGJ found to be true.

The CGJ, after reading the appropriate government code sections, the Modesto Policies and Procedures Manual, and the language of the CFD, recommends that all monies from CFD 1997-1, used for administrative, consulting, and/or audit purposes, shall be returned to the fund. The CGJ also recommends that all future CFD 1997-1 funds be used only for the purposes specified in the CFD language.

INTRODUCTION

The Community Facilities District Act of 1982 allows local governments, with the approval of those living within the identified subdivision - or the property owners before there is a subdivision - to create a special taxing plan to pay for the installation and maintenance of improvements that primarily benefit those living in that subdivision. When a new subdivision is proposed within the City of Modesto Master Plan, the city may designate the new subdivision as a Community Facilities District (CFD) for the installation and maintenance of storm drains, parks, medians, off-sight improvements, etc. The North Beyer Park subdivision was designated as Community Facilities District 1997-1.

The complaint submitted to the CGJ was specific to CFD 1997-1. CFD 1997-1 was one of the earliest CFDs created by the City of Modesto, and as such is different in its design than subsequent CFDs. Current CFDs have a portion of the taxes collected designated for the administrative costs of maintaining the CFD. CFD 1997-1 does not have an administrative cost component.

According to a City of Modesto Audit Committee Report, November 17, 2004, "CFD 1997-1 was formed to provide funding for the installation of landscape medians and planter strips along Oakdale Road and Coffee Road, as well as, funding for ongoing maintenance of landscape medians along Oakdale Road, Coffee Road, and the future Pelandale Expressway (now Pelandale/Claratina.)"

CFD 1997-1 consists of 464 single-family residence parcels and two mixed-use parcels. Although all of the residential parcels are fully developed, the mixed-use parcels are not. The installation of the medians on Coffee and Oakdale Roads cannot take place until development of the mixed-use parcels takes place. The land needed to fully widen the roadway and to install the medians and planting strips will need to be dedicated by whoever develops these properties.

Under CFD 1997-1, the installation of the Pelandale medians will not take place until the roadway is built out to the planned six-lane expressway. The installation of the medians will be accomplished as part of the roadway construction, but the maintenance cost of those medians will be provided by CFD 1997-1.

As of the June 30, 2004, CFD Status report, a sum of \$128,710.18 in total maintenance special tax revenues for CFD 1997-1 had been collected (between 1997 to 2003). Interest payments on this fund totaled \$186.00, for a total amount of \$128,896.18. Administration costs of \$37,792.00 have been spent, leaving \$91,104.00. Collection of the CFD 1997-1 tax was temporarily discontinued in 2003 by action of the Modesto City Council.

The citizen complaint asked the CGJ to investigate the following:

- 1) The City of Modesto has no idea how much money they have collected for the North Beyer Park Community Facilities District (CFD 1997-1) or what they spent the money on.
- 2) The reserve funds are being eroded by an ever-escalating stream of administrative and consulting fees.
- 3) The City of Modesto will not allow an election to change the Community Facilities District (CFD.)
- 4) The City of Modesto needs to maintain better oversight on their special districts. The administrative and consulting costs must be controlled.
- 5) The consultant's charges should be subject to review.

The CGJ integrated those issues into the following:

- 1) Does the City of Modesto have accurate records to show the amount of money collected and expended for CFD 1997-1?
- 2) How has CFD 1997-1 been administered; what amount of funds are being spent on administration, auditing, and consulting fees; and what level of management does the City of Modesto exercise in the administration of Community Facilities District funds?
- 3) Is there a provision in law for an election to change an existing Community Facilities District and under what circumstances?

METHOD OF INVESTIGATION

The CGJ interviewed the following:

- Complainant, Case #06-20.
- Representative of the Attorney's office, City of Modesto.
- Representative of the Engineering Staff, City of Modesto.
- Representative of the Planning Department, City of Modesto.
- Current and previous administration officials of the City of Modesto.

The following documents were reviewed:

- Financial report for CFD 1997-1, June 4, 2004.
- Report of Fiscal Year 2003/04 expenditures for CFD 1997-1, April 25, 2005.
- Notice to Homeowners regarding the suspension of special tax levies between 2003 and 2006 for CFD 1997-1.
- Performance Audit of CFDs 1996-1, 1997-1, 1998-1, 1998-2, 2000-2, 2001-1 for the year 2003.
- CFD Act of 1982.
- City of Modesto CFD Status Report for CFD 1997-1 dated 2002, 2003, and 2004 by Goodwin Consulting.
- City of Modesto Policies and Procedures for the formation and administration of CFDs, Adopted September 1996, amended 10/96, 3/98, 4/98, 6/98, 9/98, 8/99, 10/99, 1/02, 4/04, and 6/04.
- California Government Code Sections 53332, 53312.7, 53343.

FINDINGS

1. Accuracy of records for revenues and expenditures of CFD 1997-1 funds.

The City of Modesto presented the CGJ with several financial audits and account reviews for the North Beyer Park CFD 1997-1. The spreadsheets show the revenue and expenses for CFD1997-1. The Consultant's Performance Audit of CFD 1997-1, as reviewed by the City of Modesto's Audit Committee at their November 22, 2004 meeting, verified the accuracy of the spreadsheets.

These records, and the responses from City Staff during sworn testimony before the CGJ, indicate that the City of Modesto has maintained an accurate and responsible record of the taxes collected and the expenditures paid from the CFD 1997-1 account. The Capital Investment Plan indicates the anticipated future expenditures for CFD 1997-1.

2. Level of management the City of Modesto exercises in the administration of Community Facilities District funds; the amount of funds being spent for administrative and consulting fees, and the control of consultant charges.

Management of CFDs

Administrative direction to local agencies desiring to create a Community Facilities District is provided in Government Code Section 53312.7(a), "On or after January 1, 1994, a local agency may initiate proceedings to establish a district pursuant to this chapter only if it has considered and adopted local goals and policies concerning the use of this chapter." ("Goals and Policies to be Adopted Before Initiation of Proceedings to Establish District.")

The City of Modesto has met this requirement by adopting "*Policies And Procedures for the Formation, Annexation and Administration of Community Facilities Districts Created Pursuant to the Provisions of The Mello-Roos Community Facilities Act Of 1982.*" (adopted September 3, 1996 Policy Manual.)

The Policy Manual specifies the City's intent to use the Mello-Roos Act to provide for the financing of City owned and operated infrastructure and services. The Policy Manual, p. 26, further establishes the staff/administrative infrastructure to oversee CFDs and defines the duties of the District Administrator post formation/post annexation.

Currently, a division within the City Manager's office oversees the CFDs for the City of Modesto. The City Manager, one Senior Structural Engineer, one Administrative Office Assistant, and two CFD Administrative Officers (who share one position) comprise the CFD Administration division.

Services paid from the CFD 1997-1 account

The City of Modesto, as the legislative body, has established administrative and financial services for the management of the nine (9) CFDs within the City's jurisdiction. CFD administration employees bill the CFD for working time spent on CFD services, including responding to questions from citizens, providing reports and documents, and an annual audit/ financial reporting program for CFD 1997-1. The City has been utilizing consultants to perform some of these services. During sworn testimony before the CGJ several City staff members contended that this section of Policy Manual indicates that these are necessary administrative/ financial services and the "CFD must pay its own way."

Government Code Sections 6250 through 6276.48, The California Public Records Act, includes inquiries regarding CFDs. Under this Code, public agencies must give access to view the records of the CFD at no cost, and if a citizen requests a copy of that report, he can only be charged the direct cost of duplication, usually \$.10 to \$.25 per page. Charges for search, review and deletion are not allowed.

The Policy Manual does not define "services." The CGJ reviewed the definition of services applicable to a CFD, as stated in Government Code Section 53313, "Services Which May Be Provided." The definition of services eligible under this government code section does not support the City's practice of charging administrative fees for answering questions, committee work, or other administrative functions.

Government Code section 53343, "Use of Charges," states, "A Community Facilities District may be established under this chapter to finance any one or more of the following types of services within an area ..." Administrative, audit, and consulting fees are not included as authorized "services."

Government Code Section 53343.1 "Annual Report" only requires this report if requested by a person who resides in or owns property in the district. The district may charge a fee for the report not exceeding the cost of preparing the report.

There is no provision for an administrative services component. The Policy Manual (page 7) states: "all City administrative and consultant costs, including those of the District Administrator, related to administration of a CFD and incurred after formation shall be included within the *special tax formula* (emphasis added) in accordance with applicable provisions of law."

However, CFD 1997-1, as one of the first Community Facilities Districts enacted by the City of Modesto and unlike current CFD programs, does not have the "*special tax formula*" (an administrative account.)

The City Attorney's office informed the CGJ that, "There are two special tax components in the North Beyer Community Facilities District: a one-time Facilities Special Tax and an annual Maintenance Special Tax. Administrative expenses are included within the Maintenance Special Tax component."

Based on the time of issuance of the administrative component section of the Policy Manual (July 18, 2000), the lack of the special tax formula, the cited Government Code sections, and the opinion from the City Attorney's office, the administrative fees policy does not apply to CFD 1997-1.

To date, the CFD has been unable to construct the medians, because (1) insufficient tax monies have been collected for the construction projects and (2) the medians cannot be installed until property owners/developers on both Oakdale Road and Coffee Road dedicate the necessary right-of-way to construct the full roadway width.

Additionally, while CFD 1997-1 have been sitting for nine years without being used for the purposes for which they were intended, the city has continued to deduct CFD funds to pay for services not authorized by CFD 1997-1 language or account design. The City's practice of charging for annual audits and reports is not supported by Government Code Sections 53343, 53343.1, or the Policy Manual. Therefore, the CGJ finds that the City is performing unnecessary financial functions and charging in a manner not provided for in the language or design of CFD1997-1. The City may not charge administrative, auditing, or consulting fees against CFD 1997-1 until CFD 1997-1 enters its landscape maintenance phase.

3. The provision in law for an election to change an existing Community Facilities District is found in the following sections of the Government code.

Government Code Section 53332(a). "Petition For Changes In Facilities, Services, Or Taxes":

If a petition signed by 25 percent or more of the registered voters residing in the district, or by the owners of 25 percent or more of the territory within the district, is filed with the legislative body requesting that proceedings be commenced to change the types of public facilities or services financed by the district or that the rate or method of apportionment of an existing special tax be changed, or that a new special tax be levied, the legislative body shall within 40 days thereafter adopt a resolution of consideration in the form specified in Section 53334 to make those changes within the community facilities district ...

The following exchange took place between the CGJ and a representative of the City Attorney's Office:

CGJ: "If a proposal to dissolve a community facilities district is submitted to the qualified electors of the district and two-thirds (2/3) of the qualified electors are in favor of the dissolution, is the vote binding on the City?"

Interviewee: "Government Code Section 53338(b) provides that if two thirds of the votes cast on a proposition are in favor of the proposed change, then the legislative body is required to adopt a resolution determining that the proposed change is lawfully authorized."

The law clearly provides a method for altering a CFD by election. The outcome of that election is binding on the City of Modesto as the legislative body. However, according to Government Code Section 53332(b), "Any petition filed by the landowners shall be accompanied by the payment of the fee which the legislative body determines. That fee may be imposed in an amount sufficient to compensate the legislative body for all costs incurred in conducting proceedings to change the district pursuant to this article."

RECOMMENDATIONS

1) Accuracy of records for revenues and expenditures of CFD 1997-1 funds.

- The records provided to the CGJ established that the City of Modesto has maintained an accurate and responsible record of the taxes collected and the expenditures paid for the CFD 1997-1 account.

No recommendation.

2) Level of management the City of Modesto exercises in the administration of Community Facilities District funds; the amount of funds being spent for administrative and consulting fees, and the control of consultant charges.

- The Mello-Roos Community Facilities Act Of 1982 allows the agency to charge for the formation, annexation, and administration of a new CFD. The agency can charge for bond development and sales, but the agency **cannot** charge citizens for inquires, questions, request for copies, etcetera.

The records indicate that:

- a. The City of Modesto Resolution 2000-376, adopted July 18, 2000, permitting a special tax formula for administrative fees, but Resolution 2000-376 was adopted after the formation of CFD 1997-1, and therefore does not apply to CFD 1997-1.
 - b. Neither the Government Codes nor the Policy Manual support the current program of annual financial audits and reports. Therefore, Government Code 53343.1, which allows charges for specified facilities and services only, does not support the City's current practice of charging CFD 1997-1 for administrative and financial "services" and is not allowed.
- The CGJ recommends that fees deducted from CFD 1997-1 accounts for administrative and/or financial services shall be reimbursed to CFD 1997-1 account by the City of Modesto within 180 days. The CGJ further recommends that this account be frozen against any further charges unless specified as approved expenditures by the language of the CFD 1997-1.

3) California law provides for an election to change an existing Community Facilities District and specifies under what circumstances.

- Government Code 53332, petition for changes in facilities, services, or taxes, establishes that there is provision for altering a CFD and the decision of the electors is binding on the City of Modesto as the legislative body.

No recommendation.

City of Modesto
Grand Jury Case # 06-26
2005-2006

SUMMARY

A complaint was received by the 2005/2006 Stanislaus County Civil Grand Jury (CGJ) from a resident of the unincorporated neighborhood known as the Del Rio community. The complaint concerned alleged violations of Proposition 218, "Right to Vote on Taxes Act" Article XIII C and XIII D, which occurred when the Modesto City Water District (District) established its current water rates implemented in January 2005. The alleged violations included:

1. The notice informing the public of the new rate schedule was inadequate because it did not contain proper notification of the time for a public hearing or a justification for the new rates.
2. The water rate policy of Proposition 218 violated the provision requiring that a parcel be charged only its proportional costs.
3. There was a misuse of funds by using monies collected for uses other than water.
4. The process was not only illegal but unfair to the Del Rio community as that community pays more than other customers in the District.

The CGJ sought to understand the provisions of the law, compare the costs between Del Rio and the rest of the District, and determine, if possible, what was fair and equitable. The CGJ obtained many documents, including a sample comparison between similar-sized lots within the City of Modesto (City) and Del Rio and a table containing all the flat rate and metered customers in the District. The CGJ conducted several interviews.

The CGJ found no evidence that the notification letter was improper with respect to either the time of a public hearing or a justification for the new rates. The CGJ determined that there were many opinions as to how Proposition 218 should be interpreted. The CGJ took no stand on these opinions but left those interpretations to the courts. The CGJ found that since September 19, 1999, all water funds are placed in separate accounts called Enterprise Funds and used exclusively for water.

The CGJ concluded that there is no difference in the rate structure between Del Rio and the rest of the District's customers which are billed on a metered rate. Del Rio does, however, pay more than most customers due to (1) being exclusively metered, (2) having large lots (most of which are greater than 17,000 square feet) and (3) having extensively landscaped properties. The other area that is exclusively metered is the unincorporated area of Grayson, which has comparatively small lots.

The CGJ obtained from the City of Modesto a comparison of ten similar-sized lots (greater than 17,000 square feet) within the City limits and Del Rio. This City report compared the charges of both areas as to the actual metered costs in 2004 and 2005 as well as what the costs would have been in 2004 and 2005 if billed at a flat rate. The City report included the total number of customers in all its jurisdictions, which are on both flat and metered rates.

The sampling of costs with similar-sized lots within the city limits indicate that more than half the bills in the City are lower than they would have been, billed at a flat rate. Most of the City lots are not of the same type of extensively landscaped residential property as Del Rio. The single property, located in the Fleur de Ville subdivision, that matches Del Rio in landscaping also matches in costs. Eight out of the ten city properties are located within areas of the lowest socio-economic sections in Modesto. The amount of landscaping in these areas is generally limited, compared to other areas in Modesto. Based on the small sample obtained, it's possible that with average usage the charges for metered water would be higher than that of a flat rate.

The CGJ made no recommendations for issues concerning the Notification, Proportionality and Use of Funds.

Concerning the issue of Fairness to Del Rio, the CGJ recommends that the Modesto Public Works Department shall:

- Conduct an extensive evaluation of the actual customer cost between metered and flat rates. The study is to compare like properties, including such variables as lot size, similar landscapes, and house size.
- Compare the charges of all presently metered residential parcels as to what the charge would be under a flat rate for the year 2005.

The CGJ recommends that the Modesto City Council:

- Develop an equitable rate schedule including the data obtained in the two comparison studies recommended in the above (1) and (2) with other information gathered from other rate studies. Until such time as all properties are under the same rate plan, an effort should be made to make the present system as equivalent as possible.
- Develop a schedule as to when each area not yet billed as metered will be converted and read as metered. Those customers already metered but not yet read as such shall be converted to metered bills as quickly as possible.

INTRODUCTION

A complaint was received by the 2005-06 CGJ concerning the revised water rates implemented in January 2005 for the District. The complaint asserted that the District violated Proposition 218 when establishing these rates. Alleged violations of the Proposition included:

1. The notice informing the public of the new rate schedule was inadequate because it did not contain proper notification of the time for a public hearing or provide a justification for the new rates.
2. The water rate policy violated the Proposition's provision requiring that a parcel be charged only its proportional costs.
3. There was a misuse of funds by using monies collected for uses other than water.
4. The unincorporated Del Rio community, by being metered, was being charged more than other areas within the District and, in effect, was subsidizing other users. (The District encompasses the City of Modesto and several outlying areas.)

The CGJ attempted to understand Proposition 218, received interpretations from public and private sources, and viewed an opinion of the Supreme Court of California. The CGJ did not attempt to create its own interpretation.

Two issues limit the scope of this investigation:

1. Many of the parties involved in developing the initial report and recommendations that came from that report are no longer involved with the City of Modesto. These include Foresight Consulting, the firm that compiled the water rate study for the City, and former City employees responsible for input into the issue. These former employees include the Public Works Director, City Attorney and Financial Director.
2. The water rates imposed in January 2005 are now under review by the City. A reported shortfall of monies collected under the rate schedule is being investigated by the City of Modesto.

The CGJ investigated the following:

1. Notification of water rates and justification for rates
2. Proportional costs
3. Use of water funds
4. Access to information
5. Flat and metered rate schedules
6. A Comparison of similar-sized lots between Del Rio and Modesto City customers
7. Fairness of Rates to Del Rio
8. Ownership of water system

METHOD OF INVESTIGATION

The CGJ obtained the following documents:

1. Text of Proposition 218 "Right to Vote on Taxes Act"
2. Coupal, Jonathan. "Proposition 218: The Drafter's Statement of Intent." Cal-Tax Digest , February 1997
3. Doering, John P., Assistant County Counsel, Stanislaus County "Proposition 218 Overview," March 14, 2002
4. Reports authorized and prepared for the City of Modesto by Foresight Consulting Services:
 - Final Report, "Water Utility Cost of Service Rate Study," September 3, 2004
 - Appendix E Water Rate Mode Tables, September 3, 2004
5. West & Yost Associates Engineer's Report, "Justification and Cost Allocation for Proposed Water System Improvements," September 2, 2004
6. Letter of notification of the new water rate schedule, (September 2004)
7. List of current number and areas of customers now on metered rate and flat rate schedules
8. Sampling of charges between similar lots within Modesto city limits and Del Rio during 2004 and 2005 calendar years
9. Information regarding lawsuits
 - *Richmond v. Shasta Community Services District* (2004) 32 Cal 4th 409
 - *Bighorn Desert View Water Agency v. Beringson* (July 20, 2004) 120 Cal. App 4th 890 (Supreme Court docket S127525)
10. Letter from Morrison & Foerster, a law firm representing the Del Rio Homeowners Association, November 22, 2004
11. Copies of water bills from a Del Rio customer for 2005
12. State of California " Accounting Standards and Procedures For Counties" section 1.08, b (1)
13. Minutes of the Modesto City Council, March 7, 2006

Persons interviewed:

1. Complainant
2. Director of Public Works Department, City of Modesto
3. Director of Finance Department, City of Modesto
4. Interim attorney for City of Modesto
5. Former attorney for City of Modesto
6. Official from City of Waterford

Meetings attended:

1. Modesto City Council meeting, February 28, 2006
2. Public Rate Review workshop on April 11, 2006, convened by the direction of the Modesto City Council

FINDINGS

Since Proposition 218 was adopted by the voters of California in 1997, issues concerning the breadth and detailed application of Proposition 218 have been questioned. Some public corporations and private citizen organizations (and their attorneys) have chosen how they will apply, understand, and advocate for their interpretation of the Proposition. California courts have reviewed some aspects and legal issues created by Proposition 218. The Supreme Court of California has published at least one decision regarding certain types of charges and water rates that must be developed and approved pursuant to procedures of Proposition 218. As recently as June 7, 2006, the Supreme Court heard oral arguments in another case based on the interpretation of some aspects and application of Proposition 218. The Court will publish its opinion within ninety days. The CGJ did not attempt to create its own interpretation.

1) Notification of Water Rates and Justification for Rates

Del Rio alleged that the notice did not contain proper notification of the time for a public hearing and a justification for the new rates. The CGJ found that the notice contained the following information:

- The District mailed the notice, "Proposed Water Rate Increase and of Public Hearing" to all property owners in the District.
- A public hearing was scheduled for November 23, 2004, for "hearing" public testimony and receiving written protests on the proposed "Water Rate Increase."
- The rate schedule for 2005 and ensuing years was included for both flat rate (by lot size) and metered rates (by size of pipe and usage.)
- The notification stated that the proposed rates would take effect January 1, 2005.
- The notice stated that the increase was needed to fund operation, maintenance, and replacement costs. The improvements were necessary to rehabilitate, upgrade, and replace the existing water distribution system.
- A protest form was included with the notice which gave instructions on where and when to return it.

2) Proportional Costs

Del Rio alleged that the water rate policy violated the Proposition's provision requiring that a parcel be charged only its proportional costs.

Fees collected under the proportional cost provision of Proposition 218, fall into four areas. They include:

- Revenues derived from fees *shall not exceed the funds required to provide the property-related service.* (Article XIII D, §6 (b)(1).)
- Revenues shall not be used for any purpose other than that for which the fee was imposed. (Article XIII D §6 (b)(2).) (b)(3).)
- The amount of a fee imposed may not exceed the proportional cost of the service attributed to the service. (Article XIII D §6 (b)(4).)
- The fee imposed must be for a service used by, or immediately available to the owner in question and not based upon potential or future use of a service. (Article XIII D §6 (b)(4).)

Under sworn testimony, the CGJ determined that it would be impossible to develop any rate schedule if each parcel were charged just what it costs for individual water delivery. As one of Modesto's legal experts testified: "If you had fifty-thousand customers, you'd have fifty-thousand rates, and we don't think the law meant that. It would be impractical and impossible to calculate rates that way."

- The Modesto legal counsel stated the issue of proportionality in the following way: "It's just like getting car insurance or life insurance. It is cheaper for everybody if we are all in a pool. You can spread out the cost. I do not think when they drafted (Proposition) 218 that they thought about that. If you take the argument that Del Rio is entitled to a different rate than Modesto or Grayson, it's the same thing. Then it is a slippery slope and you are going to slide all the way to the bottom where water rates are calculated house by house, street by street."
- The CGJ determined through extensive investigation that there was considerable disagreement between Del Rio's legal council and the City of Modesto's legal counsel as to how each of these sections of the law is to be interpreted and applied. The CGJ did not take a position on these opinions of law. It is up to the courts to make these determinations.

3) Use of Water Funds

As a result of the 1999/2000 Civil Grand Jury Report, water and other funds are no longer being transferred into the general fund. As of September 1999 funds are kept within the Modesto City Water District in separate accounts known as Enterprise Funds. (Enterprise Funds are funds designed for specific uses and are established for accounting purposes. Defined in section 1.08, b. (1) of the State of California "Accounting Standards and Procedures for Counties," May 2003.) According to sworn testimony, these funds are used to provide service to the entire system and designated for the projects as they occur. There is an accumulation of reserve funds within the

Enterprise Fund to pay for capital projects. According to the Foresight Report, the rates should “generate revenue adequate to meet the utility’s operating costs as well as projecting new capital and sources of supply costs.”

- The CGJ determined that the District is accounting for water costs and revenues separately from other non-water related accounts.

4) Access to Information

- The CGJ found that obtaining specific information concerning actual costs of water delivery and cost of usage to specific geographic areas is extremely difficult to obtain from the City. The Del Rio community tried repeatedly to get such information so they could analyze what it cost Modesto to provide water to its area and the rest of the District.
- The CGJ attended one public forum and a City Council meeting and found that, in both instances, specific water delivery cost information justifying the rates is non-existent or vague. Decisions on how to “fix” the schedule or even to determine if there is or is not enough money to run the system cannot be done with any validity when it is so difficult to get detailed financial information. Under sworn testimony, the Chief Financial Officer stated that the city’s financial computer system is not readily able to produce reports that provide detailed financial information on specific costs.
- The City Public Works Department did supply the CGJ with the information requested regarding a list of metered and flat rate properties and a comparison sample of metered customers in Del Rio and the City. The information arrived almost two months after the request was made (one month after due). This delay could be the result of a lack of ease within the system to retrieve such data. An upgraded system would serve the city and the public well, so that essential data from which to determine water rates and other utilities can be readily available.

5) Flat and Metered Rate schedules

The former rate schedule was a three zone system in which residential customers differed in the amount paid, dependent upon which geographical area the customer resided. Zone 3 had the lowest rate, followed by the other two zones. Under the new water rate system, the former three zone system with different rates was replaced by three different rate classifications:

- Residential
- Industrial
- Commercial

All residential areas are billed under one of two rates, depending if their area is metered or on a flat rate. The "blending" of rates, from the previous three zones, equalizes the burden of any one area having to pay more than another area.

- Flat rate schedules are based upon lot size, regardless where the property lies within the District (Appendix 1 for details.)
- A metered rate schedule is based upon the amount of water consumed and is the same for all residential areas within the District (Appendix 1 for details.)
- In December 2005 there were 55,185 customers within the Modesto jurisdiction (City limits) that were either on a flat rate schedule or were metered but billed at a flat rate. In the Modesto jurisdiction 9998 were metered and billed as such.
- Within the areas of the following cities that are served by the Modesto Water District including Ceres, Turlock, and Waterford, as well as the unincorporated areas of Salida, Del Rio, Grayson and Empire, 8103 customers were on flat rate schedule or were metered but billed at a flat rate. Except for Del Rio and Grayson (the only two areas fully metered and billed as such) 2009 customers were metered and billed as such.
- The total number of customers within and outside Modesto which have meters but not currently being read is 17,117. (Appendix 3 for detailed table)

6) A Comparison Of Similar-Sized Lots Between Del Rio and Modesto City Customers (Appendix 4, for details.)

The CGJ obtained from the City of Modesto a comparison of ten similar sized lots (greater than 17, 000 square feet) within the City limits and ten within Del Rio. This City report compared the charges of both areas as to the actual metered costs in 2004 and 2005 as well as what the costs would have been if billed at a flat rate.

- In 2005, for the sampled lots, the yearly range of charges for Del Rio over a flat rate charge was between \$47.88 and \$633.12 with an average difference of \$287.90.
- In 2005, for the sampled lots within the City, the difference compared with flat rates ranged between negative \$248.36 and \$556.17 with an average difference of \$8.12. This was due to six of the ten customers using less water than the average flat rate charge. In viewing the lots, it was noticed that seven lots were not extensively landscaped or watered.
- The one lot comparable to the landscaping of Del Rio was in the Fleur de Ville subdivision and had an increase of \$499.65 more than a flat rate charge in 2005. The consumption of water for the ten Del Rio properties dropped in seven out of ten cases from 2004 to 2005. This drop is consistent with an

expert's testimony that overall, when parcels are switched from flat rates to metered rates consumption also drops.

- The average consumption for the ten Del Rio properties in 2005 was 5880 ccf (consumption cubic feet) which translates into 43,392.4 gallons per month or 1466 gallons per day (one cubic foot of water equal 7.48 gallons.)
- The average consumption for the ten Modesto properties in 2005 was 3396.7 ccf which translates into 25,407.4 gallons per month or 846.9 gallons per day.
- In order for the cost of metered water and flat rate to be equivalent, a customer with a lot size greater than 17,000 square feet would consume just over 25,000 gallons per month or an average of 840 gallons per day (2005.)
- Costs were compared for 2005 as the rates were converted in June 2004 from flat rate to metered in the Del Rio area. This resulted in part of the year being on different rate schedules.

7) Fairness of Rates to Del Rio

Del Rio is the only discrete area besides Grayson that is billed as all metered rates. Since Grayson generally has a much smaller lot size resulting in less water usage, the impact for Del Rio being metered is greater than any other single area. As the change from flat rate to metered rate in Del Rio occurred about the same time as an increase in rates it is difficult to separate the effect that each change had upon the charges for water.

- Another issue that impacted Del Rio more than other areas is that Del Rio was in the previous Zone 3 which historically paid less than Zones 1 or 2. The increased costs for Del Rio was exacerbated by being one of the few areas changed to meters, which has a greater impact on larger landscaped lot sizes as more water is consumed.
- The CGJ found no evidence to show that Del Rio was singled out to pay a different rate than any other area with the same parameters (metered large lots.) The claim by Del Rio that they pay up to ten times the cost of someone living in the City does not hold up with the evidence presented by the City. Without a comparison of all properties, both metered and flat rate, this assertion cannot be verified. It is possible that a person could pay ten times more than another if one compared the smallest lot size or least amount of water used with a metered rate on a large lot with an excessive amount of water use. This would appear to be an exception, not the rule. Del Rio does, in general, pay more than most customers due to large lot sizes, usage and being exclusively metered.
- With the small sample reviewed, it is not possible to accurately predict which system costs the consumers more overall. After looking at most of the properties listed in

the sample, the CGJ predicts that a parcel with a well landscaped yard, with normal grass and plants, would cost more under a metered plan. The public has been given no data from the City as to the comparability of the two rates when translated into actual monthly charges.

- In the sample of similar-sized lots, four were in the Modesto High or Mark Twain area, two in the Airport district, one in South Modesto, one in a middle class property, and one in Fleur de Ville. This sample can hardly be representative for all of Modesto. It may well reflect what areas within the City are on metered water with lot sizes of approximately one half acre in size.
- The conversion to metered water as quickly as possible for all areas that have meters but not read would be more equitable for all customers. The conversion would probably be more expensive for most customers, but more reflective of their water usage. There are now over 17,000 customers with unread meters. The City's plan to convert to meters (outside in) (outlying areas first and gradually include inside the city limits) can be seen as unfair to the outlying areas already converted (Del Rio and Grayson.) The evidence comparing the number of meters read between 2004 and 2005 showed very little effort to convert flat rate users to metered users either within the city or in the outlying areas. In Salida, for instance, 59 parcels are on a flat rate, 819 on a metered rate, and 3516 are metered but billed at a flat rate.
- At the March 7, 2006, City Council meeting the Board passed a resolution authorizing \$5,000,000 per year for the installation of water meters. This resolution was passed, without a plan stating which area would have meters installed and when such areas would be read as metered.
- While impractical, considering that all properties within a water district must be eventually metered under state law, the fairest solution is that all residential areas remain on a flat rate until all are converted to a metered rate.
- There is no way to make water rates and charges totally fair. Under a flat rate plan, there is no way to control the amount of usage nor is there an incentive to conserve. Those customers paying under a metered rate appear to be paying more than flat rate customers with similar, well landscaped properties. Those properties with very little landscape or outside watering generally pay less under a metered rate. Paying for usage seems to be the most equitable solution. Ultimately, as previously stated, all properties in California within a water district must be metered.

8) Ownership of Water System

Del Rio and Waterford were offered the opportunity to obtain part of the Del Estes water system from Modesto that previously serviced their area. Waterford, thus far, has been satisfied with Modesto handling the system, but a new subdivision in Waterford

has set up its own district which is not associated with Modesto. Del Rio elected not to obtain its own water district from the City. The complainant stated that Del Rio probably could not get the votes from its own residents necessary to obtain the district from Modesto. This was primarily due to the fear of potential costs for future repairs. The former attorney for the City of Modesto testified that the City would have been willing to "give it to them."

RECOMMENDATIONS

1. Notification of Water Rates and Justification for Rates

No recommendation.

2. Proportional Costs

No recommendation.

3. Use of Water Funds

No recommendation.

4. Access to Information

No recommendation.

5. Flat and Metered Rate Schedules

No recommendation.

6. A Comparison Of Similar-Sized Lots Between Del Rio and Modesto City Customers

No recommendation.

7. Fairness of Rates to Del Rio

The CGJ recommends that the Modesto Public Works Department:

- Conduct an extensive evaluation of the actual customer cost between metered and flat rates. The study is to compare like properties, including such variables as lot size, similar landscapes, and house size.
- Compare the charges of all presently metered residential parcels as to what the charge would be under a flat rate for the year 2005.

The CGJ recommends that the Modesto City Council:

- Develop an equitable rate schedule including the data obtained in the two comparison studies recommended in the above (1) and (2) with other information gathered from other rate studies. Until such time as all properties are under the same rate plan, an effort should be made to make the present system as equivalent as possible.
- Develop a schedule as to when each area not yet billed as metered will be converted and read as metered. Those customers already metered but not yet read as such shall be converted to metered bills as quickly as possible.

8. Ownership of Water System

No recommendation.

This report of the City of Modesto is issued by the 2005-2006 Civil Grand Jury with the exception of two members of this Civil Grand Jury who are residents of Del Rio. These Grand Jurors were excluded from all parts of the investigation, which included interviews, deliberations, and the making and acceptance of this report. This report is based on the information obtained from outside sources with none of the information being obtained from the excluded Grand Jurors.

APPENDIX

1. Notification of Proposed Water Rate Increase
2. Proposition 218, "Right to Vote on Taxes Act" Article XIII C and XIII D
3. City of Modesto: List of Jurisdictions and Metered vs Flat Rate Summary
4. City of Modesto "Del Rio Comparison"



City of Modesto
 City Clerk
 P.O. Box 642
 1010 Tenth Street, Suite 6600
 Modesto, CA 95353

**NOTICE OF
 PROPOSED WATER RATE INCREASE
 and of
 PUBLIC HEARING**

↓ window of #10 envelope

<<Owner Name1>>
 <<Address1>>
 <<Address2>>
 <<Address3>>
 <<Address4>>

DRAFT
 September 3, 2004

THE CITY OF MODESTO GIVES NOTICE that

1. The City is proposing to increase Water Rates. The purpose of the proposed increase is to fund operation, maintenance and replacement costs related to providing water service to properties within the Modesto Water Service Area. The improvements are necessary to rehabilitate, upgrade and replace existing water distribution and treatment facilities as well as all related administrative and incidental costs, including the costs of the hearing shown below and the costs of financing the water improvements.
2. The proposed schedule of rates for 2005 through June 30, 2009 is shown in the table below. If the rate increases are approved, it is proposed that they will commence to be collected beginning with the January 1, 2005 water bills and will continue to be collected until otherwise modified by the City. The Water Rates will not exceed the maximum amounts shown without another written notice to the property owners. All increases will occur as of July 1 of each subsequent year.
3. Before taking final action on the proposed rate increase, the City Council will hold a **PUBLIC HEARING on Tuesday, November 23, 2004, at 5:30 p.m. in the City Council Chambers, 1010 Tenth Street, Basement Level, Modesto.** The Public Hearing will be for hearing public testimony and receiving written protests on the proposed Water Rate Increase. The Council may continue the hearing from time to time without further written notice.
4. Any property owner may file with the City Clerk, at any time before the end of the Public Hearing, a written protest against the proposed rate increase. The protest must identify the property, the property owner, and be signed by the owner of the property or an authorized representative of the owner of the property.

A protest form has been provided below for your use. The written protests may be hand delivered or mailed to the City Clerk at the City's address shown above. To be counted, the City Clerk must receive a written protest not later than the end of the Public Hearing specified above. Protests by telephone, fax, or e-mail will not be accepted. A majority protest exists if, upon the end of the Public Hearing, there are valid written protests submitted by owners of a majority of the properties subject to the proposed rate increase. A majority protest will result in the rate increase not being imposed. Note that no more than one protest per parcel may be submitted.

5. To get additional information about the proposed rate increase, contact: Customer Service at (209) 577-5395 or e-mail: waterrates@modestogov.com

Additional written material relating to protest procedures are available at the above City Clerk address during regular business hours.

Proposed Monthly Metered Water Rates (by meter size)						Proposed Monthly SFR Flat Water Rates*					
	Year 1 1-Jan-05	Year 2 1-Jul-05	Year 3 1-Jul-06	Year 4 1-Jul-07	Year 5 1-Jul-08		Year 1 1-Jan-05	Year 2 1-Jul-05	Year 3 1-Jul-06	Year 4 1-Jul-07	Year 5 1-Jul-08
Volume-based Rate (\$/hcf)	\$0.84	\$1.01	\$1.16	\$1.22	\$1.28	0-5,000 sq. ft. lot	\$24.47	\$29.36	\$33.77	\$36.45	\$37.23
Fixed Monthly Meter Charge (in addition to volume-based charges)						5,001-7,000 sq. ft. lot	\$27.81	\$33.37	\$38.38	\$40.30	\$42.31
5/8"-3/4" meter	\$9.01	\$10.82	\$12.44	\$13.06	\$13.71	7,001-11,000 sq. ft. lot	\$33.00	\$39.60	\$45.54	\$47.82	\$50.21
1" meter	\$12.78	\$15.34	\$17.64	\$18.52	\$19.45	11,001-17,000 sq. ft. lot	\$35.03	\$42.04	\$48.34	\$50.76	\$53.39
1-1/2" meter	\$22.13	\$26.55	\$30.53	\$32.06	\$33.66	Over 17,000 sq. ft. lot	\$41.19	\$49.42	\$56.84	\$59.68	\$62.55
2" meter	\$33.38	\$40.06	\$46.06	\$48.37	\$50.79						
3" meter	\$63.43	\$76.12	\$87.53	\$91.91	\$96.51						
4" meter	\$97.19	\$116.63	\$134.13	\$140.83	\$147.88						
6" meter	\$190.95	\$229.14	\$263.51	\$276.68	\$290.51						
8" meter	\$303.49	\$364.19	\$418.82	\$439.76	\$461.75						
10" meter	\$434.84	\$521.80	\$600.07	\$630.08	\$661.58						
12" meter	\$809.95	\$971.95	\$1,117.74	\$1,173.62	\$1,232.31						

SFR = Single Family Residential

* If a SFR property has a water meter that is read, then the appropriate Metered Water Rate will be used.

hcf = hundred cubic feet

Beginning on July 1, 2009, maximum rates will be adjusted each year thereafter by the annual change in the Consumer Price Index (CPI), Urban Wage Earners and Clerical Workers Series for the San Francisco CMSA, as prepared by the California Department of Finance, Demographics Research Unit. The actual rates to be levied each year will be not exceed the adjusted maximum rates in any given fiscal year without notification of the property owners.

The proposed rate increase(s) are based on currently available information. Your actual bills are rounded and may be slightly different than listed above. If your service is metered, your rate increase will be directly affected by your water usage. State law requires that all property owners affected by the rate increase(s) be given the opportunity to protest the proposed rate increase(s).

Protest Form

If you would like to protest the proposed Water Rate Increase, you may complete this Protest Form, detach it, and mail it to the Modesto City Clerk, P.O. Box 642, Modesto, CA 95353 or hand deliver to the City Clerk's office, 1010 Tenth Street, Sixth Floor, Modesto, CA 95354. In order for this form to be counted as a valid protest against the proposed rate increase, this form must be signed and delivered to the City Clerk no later than the end of the Public Hearing on November 23, 2004. *Only one protest is allowed per property.*

Assessor's Parcel Number: <<APN>>

Parcel Address: <<Situa Address>>



I protest the proposed water rate increase to fund operation, maintenance and replacement costs related to providing water service to properties within the Modesto Water Service Area.

I hereby declare under penalty of perjury that I am the owner of the above listed property or the authorized representative of the owner of the above listed property.

Please sign here: _____

APPENDIX II

Text of Proposition 218

This initiative measure adds Articles XIII C and D to the California Constitution.

RIGHT TO VOTE ON TAXES ACT

SECTION 1. TITLE. This act shall be known and may be cited as the "Right to Vote on Taxes Act."

SECTION 2. FINDINGS AND DECLARATIONS. The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

SECTION 3. VOTER APPROVAL FOR LOCAL TAX LEVIES. Article XIII C is added to the California Constitution to read:

ARTICLE XIII C

SECTION 1. Definitions. As used in this article:

(a) "General tax" means any tax imposed for general governmental purposes.

(b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) "Special district" means an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary

functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

SEC. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

SEC. 3. Initiative Power for Local Taxes, Assessments, Fees and Charges. Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature

nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

SECTION 4. ASSESSMENT AND PROPERTY RELATED FEE REFORM.

Article XIII D is added to the California Constitution to read:

ARTICLE XIII D

SECTION 1. Application. Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

- (a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.
- (b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.
- (c) Affect existing laws relating to the imposition of timber yield taxes.

SEC. 2. Definitions. As used in this article:

- (a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.
- (b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."
- (c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.
- (d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.
- (e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

SEC. 3. Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

- (1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.
- (2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.
- (3) Assessments as provided by this article.
- (4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

SEC. 4. Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable,

and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

SEC. 5. Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent

increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

SEC. 6. Property Related Fees and Charges. (a) *Procedures for New or Increased Fees and Charges.* An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) *The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.*

(2) *The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.*

(b) *Requirements for Existing, New or Increased Fees and Charges.* A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) *Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.*

(2) *Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.*

(3) *The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.*

(4) *No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.*

(5) *No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.*

(c) *Voter Approval for New or Increased Fees and Charges.* Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) *Beginning July 1, 1997, all fees or charges shall comply with this section.*

SECTION 5. LIBERAL CONSTRUCTION. The provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

SECTION 6. SEVERABILITY. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

List of Jurisdictions and Metered vs. Flat Rate Charge Summary

Number of Accounts			Month		
Jurisdiction	Inside/Outside	Bill Type	June '05	Dec '05	
Modesto	Inside	Flat Rate	39,397	39,464	
		Metered Rate	8,362	8,398	
		Meter Billed At Flat Rate	10,903	11,201	
	Inside Total			58,662	59,063
	Outside	Flat Rate	3,074	3,060	
		Metered Rate	1,586	1,600	
		Meter Billed At Flat Rate	1,466	1,460	
Outside Total			6,126	6,120	
Modesto Total			64,788	65,183	
Salida	Inside	Flat Rate	59	59	
		Metered Rate	807	815	
		Meter Billed At Flat Rate	3,514	3,513	
	Inside Total			4,380	4,387
	Outside	Metered Rate	4	4	
		Meter Billed At Flat Rate	3	3	
		Outside Total			7
Salida Total			4,387	4,394	
Ceres	Inside	Flat Rate	1,338	1,333	
		Metered Rate	390	390	
		Meter Billed At Flat Rate	159	159	
	Inside Total			1,887	1,882
	Outside	Metered Rate	3	3	
		Meter Billed At Flat Rate	1	1	
		Outside Total			4
Ceres Total			1,891	1,886	
Del Rio	Inside	Metered Rate	343	348	
	Inside Total		343	348	
	Outside	Metered Rate	2	2	
	Outside Total			2	2
Del Rio Total			345	350	
Empire	Inside	Flat Rate	584	584	
		Metered Rate	258	257	
		Meter Billed At Flat Rate	234	233	
	Inside Total			1,076	1,074
	Outside	Meter Billed At Flat Rate		1	1
Outside Total				1	
Empire Total			1,076	1,075	
Grayson	Inside	Metered Rate	273	273	
	Inside Total		273	273	
Grayson Total			273	273	
Hickman	Inside	Flat Rate	83	83	
		Metered Rate	30	30	
		Meter Billed At Flat Rate	70	70	
	Inside Total			183	183
Hickman Total			183	183	
Turlock	Inside	Flat Rate	361	360	
		Metered Rate	31	31	
		Meter Billed At Flat Rate	30	30	
	Inside Total			422	421
Turlock Total			422	421	
Waterford	Inside	Flat Rate	1,228	1,228	
		Metered Rate	477	479	
		Meter Billed At Flat Rate	446	446	
	Inside Total			2,151	2,153
Waterford Total			2,151	2,153	
Grand Total			75,516	75,918	

Data Represents *billable* accounts, defined as locations that have been set up for billing.

It is important to note that not all locations are currently billing at any given time. This is due to a number of factors not the least of which is vacancies and temporary suspension of service for remodeling and/or rebuilding.

Fiscal and Calendar year end data is provided. The data is "as of" the last day of the month indicated.

City of Modesto - Del Rio Comparison

2004

Loc ID	Assessors Parcel Number	Address	Acres	Meter Install Date	Year End Type	Year End Rate	Converted from Flat to Metered Rate In '04	04 Actual Charges	Charges if Flat All Year	Difference	Meter Consumption (Cubic Feet)
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Del Rio - Locations > 17,000 S.F.

		COUNTRYVIEW DR	0.57	Aug-98	Metered	1" Meter	Jun-04	\$ 647.51	\$ 312.96	\$ 334.55	68,100
		COUNTRYVIEW DR	0.52	Jun-87	Metered	1" Meter	Jun-04	\$ 546.00	\$ 312.96	\$ 233.04	49,900
		BLOSSOMVIEW PL	0.49	Oct-03	Metered	1" Meter	Jun-04	\$ 678.89	\$ 312.96	\$ 365.93	72,900
		BING WAY	0.48	Feb-01	Metered	1" Meter	Jun-04	\$ 580.17	\$ 312.96	\$ 267.21	55,700
		COUNTRY CLUB DR	0.47	Mar-90	Metered	1" Meter	Jun-04	\$ 781.82	\$ 312.96	\$ 468.86	90,700
		COUNTRY CLUB DR	0.46	Sep-97	Metered	1" Meter	Jun-04	\$ 615.95	\$ 312.96	\$ 302.99	61,700
		COUNTRY CLUB DR	0.46	Oct-03	Metered	1" Meter	Jun-04	\$ 550.69	\$ 312.96	\$ 237.73	50,800
		BELTIS DR	0.46	Oct-05	Metered	1" Meter	Jun-04	\$ 1,008.81	\$ 312.96	\$ 695.85	133,800
		HARTLEY DR	0.45	Aug-03	Metered	1" Meter	Jun-04	\$ 522.58	\$ 312.96	\$ 209.62	46,000
		OAKMONT DR	0.45	Mar-93	Metered	1" Meter	Jun-04	\$ 691.51	\$ 312.96	\$ 378.55	74,600

Modesto - Locations > 17,000 S.F.

		LEONARD AVE	0.52	Oct-99	Metered	1" Meter	Prior to '04	\$ 217.84	\$ 493.32	\$ (275.48)	5,800
		MUGUET CT	0.50	Nov-97	Metered	1" Meter	Prior to '04	\$ 689.86	\$ 312.96	\$ 376.90	88,500
		SANTA RITA AVE	0.52	Aug-00	Metered	1" Meter	Prior to '04	\$ 748.41	\$ 493.32	\$ 255.09	62,500
		S SANTA CRUZ AVE	0.52	Jul-00	Metered	1" Meter	Prior to '04	\$ 294.74	\$ 493.32	\$ (198.58)	18,200
		S MARTIN LUTHER KI	0.45	Oct-97	Metered	1" Meter	Prior to '04	\$ 653.96	\$ 493.32	\$ 160.64	53,900
		FLORENCE AVE	0.47	Oct-97	Metered	1" Meter	Prior to '04	\$ 276.51	\$ 493.32	\$ (216.81)	17,000
		VERNON AVE	0.49	Oct-97	Metered	1" Meter	Prior to '04	\$ 623.58	\$ 493.32	\$ 130.26	51,900
		FIGARO AVE	0.40	Oct-97	Metered	1" Meter	Prior to '04	\$ 363.28	\$ 493.32	\$ (130.04)	24,000
		RIO GRANDE AVE	0.40	Oct-97	Metered	1" Meter	Prior to '04	\$ 446.91	\$ 312.96	\$ 133.95	46,600
		TORRID AVE	0.41	Oct-99	Metered	1" Meter	Prior to '04	\$ 523.02	\$ 493.32	\$ 29.70	52,200

APPENDIX 4

City of Modesto - Del Rio Comparison

Loc ID	Assessors Parcel Number	Address	Acres	Meter Install Date	Year End Type	Year End Rate	2005		Difference	Meter Consumption (Cubic Feet)	
							Converted from Flat to Metered Rate In '05	05 Actual Charges			
Del Rio - Locations > 17,000 S.F.											
		COUNTRYVIEW DR	0.57	Aug-98	Metered	1" Meter	Prior to '05	\$ 817.05	\$ 543.66	\$ 273.39	66,900
		COUNTRYVIEW DR	0.52	Jun-87	Metered	1" Meter	Prior to '05	\$ 591.54	\$ 543.66	\$ 47.88	45,000
		LOSSOMVIEW PL	0.49	Oct-03	Metered	1" Meter	Prior to '05	\$ 931.62	\$ 543.66	\$ 387.96	80,700
		BING WAY	0.48	Feb-01	Metered	1" Meter	Prior to '05	\$ 631.31	\$ 543.66	\$ 87.65	49,600
		COUNTRY CLUB DR	0.47	Mar-90	Metered	1" Meter	Prior to '05	\$ 1,176.78	\$ 543.66	\$ 633.12	107,900
		COUNTRY CLUB DR	0.46	Sep-97	Metered	1" Meter	Prior to '05	\$ 732.19	\$ 543.66	\$ 188.53	60,300
		COUNTRY CLUB DR	0.46	Oct-03	Metered	1" Meter	Prior to '05	\$ 775.37	\$ 543.66	\$ 231.71	64,600
		BELTIS DR	0.46	Oct-05	Metered	1" Meter	Prior to '05	\$ 1,031.45	\$ 543.66	\$ 487.79	92,900
		HARTLEY DR	0.45	Aug-03	Metered	1" Meter	Prior to '05	\$ 707.35	\$ 543.66	\$ 163.69	56,500
		OAKMONT DR	0.45	Mar-93	Metered	1" Meter	Prior to '05	\$ 920.95	\$ 543.66	\$ 377.29	82,100
Modesto - Locations > 17,000 S.F.											
		LEONARD AVE	0.52	Oct-99	Metered	1" Meter	Prior to '04	\$ 307.16	\$ 543.66	\$ (236.50)	14,200
		MUGUET CT	0.50	Nov-97	Metered	1" Meter	Prior to '04	\$ 1,043.31	\$ 543.66	\$ 499.65	92,005
		SANTA RITA AVE	0.52	Aug-00	Metered	1" Meter	Prior to '04	\$ 1,099.83	\$ 543.66	\$ 556.17	98,100
		S SANTA CRUZ AVE	0.52	Jul-00	Metered	1" Meter	Prior to '04	\$ 360.39	\$ 543.66	\$ (183.27)	20,400
		S MARTIN LUTHER KI	0.45	Oct-97	Metered	1" Meter	Prior to '04	\$ 371.56	\$ 543.66	\$ (172.10)	22,000
		FLORENCE AVE	0.47	Oct-97	Metered	1" Meter	Prior to '04	\$ 323.51	\$ 543.66	\$ (220.15)	16,900
		VERNON AVE	0.49	Oct-97	Metered	1" Meter	Prior to '04	\$ 505.91	\$ 543.66	\$ (37.75)	37,000
		FIGARO AVE	0.40	Oct-97	Metered	1" Meter	Prior to '04	\$ 295.30	\$ 543.66	\$ (248.36)	13,900
		RIO GRANDE AVE	0.40	Oct-97	Metered	1" Meter	Prior to '04	\$ 551.75	\$ 543.66	\$ 8.09	40,500
		TORRID AVE	0.41	Oct-99	Metered	1" Meter	Prior to '04	\$ 659.13	\$ 543.66	\$ 115.47	52,600

City of Patterson
Grand Jury Case # 06-01, 06-03
2005-2006

SUMMARY

The Stanislaus County Civil Grand Jury (CGJ) received a request from the Patterson City Council (Council) and a related citizen complaint to investigate the mishandling of the building permit fees in the City of Patterson (City.) The complaints contained three main issues:

- 1) The failure to deposit building permit fees (primarily checks) in the amount of \$8.3 million over a five-year period.
- 2) The process by which the Financial Oversight Committee (FOC) was formed, the membership of the committee, bias and conflict of interest, and the Council's acceptance of its final report.
- 3) The ability of the CGJ to be a fair and unbiased body in resolving this issue in spite of the fact that a FOC member was a past CGJ member.

The CGJ interviewed complainants, council members, representatives from Maze & Associates, Precision Inspection Company, Inc. (Precision) and city employees. The CGJ also reviewed a number of documents pertinent to the case, and toured the administrative offices in the City.

The investigation determined the mishandling of checks involved a breakdown in communication and procedure among and between Precision employees and city staff. The city's building department used contract staff supplied by Precision. The finance and building departments critical to processing the checks were not communicating verbally or electronically. No particular city employee was in charge of the day-to-day operation, or acted as a liaison between Precision and city staff to assure that checks were properly accounted for and deposited on a daily basis. In violation of section 2.3 of the Precision contract, a contract employee was holding, handling and storing checks without authorization. City officials were negligent in providing information and training to city employees in regard to Precision's contractual obligations and its importance to the daily depositing of building permit fees. Over a five-year period, these failures became routine for the building permit, finance and Precision employees.

The Council, by recommendation of the Mayor, created the FOC on January 18, 2005. The purpose of the FOC was to monitor and provide feedback regarding the independent auditors, Maze & Associates, who were hired by the Council to investigate the mishandling of the checks. The investigation revealed no conflict of interest with the members of the FOC or Council in regards to their direct work with Maze & Associates. However, the CGJ, through sworn testimony, concluded that the FOC **did** have a bias against City staff. The formation of the committee and membership was limited and lacked written direction from the Council regarding authority and procedures to report their progress. On May 3, 2005, city records indicate that the Council did not either endorse or reject the FOC's final report.

Through sworn testimony, it was learned that on April 9, 2005, the Mayor met with the FOC to provide additional information that he felt the citizens of Patterson were entitled to know. As a result, the FOC expanded their final report to include personnel issues. The CGJ found that the scope of the report was beyond what was authorized by the Council and released to the media without prior Council approval. For this reason, the CGJ recommends that the FOC's report be expunged from City records.

The CGJ discovered that the Mayor had an outstanding check in the building permit office in the amount of approximately \$30,000 for over a year, and that check was one of the undeposited checks in question. His check represents an economic interest, and as such, should have disqualified him from this issue under Government Code 87100.

A member of the FOC served on the 2003/2004 CGJ. Each year a new 19-member jury panel is selected by the Superior Court to investigate and write final reports. The CGJ requires a super majority vote of 12 members to take any action. As a result, one person independently cannot control or influence the outcome of investigations and reports filed by the CGJ. The FOC member in question is not a member of the 2005/2006 CGJ.

INTRODUCTION

Complaints 06-01C and 06-03C requested that the CGJ investigate the concerns relative to the mishandling of building permit funds in the amount of \$8.3 million and the formation and final report of the Council appointed FOC. The CGJ determined through sworn testimony that the issue of undeposited checks first came to the City's attention formally in August of 2004 and was triggered by a developer inquiry. Checks were found in drawers, on desks, and were taken home by a contract employee. Upon further research the City Manager ultimately advised the Council of the problem in October 2004.

The following are issues the CGJ investigated:

1. The process in which the FOC was selected and the definition of its assignment.
2. A possible conflict of interest or bias in regard to the members of the FOC and/or the Council.
3. The acceptance/approval of the FOC report and recommendations to the Council.
4. Mishandling of building permit checks from 1999 to 2004 in the amount of \$8.3 million.
5. The City's response and action to address undeposited checks.
6. The ability of the CGJ to be a fair and unbiased body in resolving the allegations set forth based on the fact that an FOC member was a past CGJ member.

METHOD OF INVESTIGATION

The CGJ interviewed complainants, council members, and representatives from Maze & Associates, Precision, and city employees. The CGJ also reviewed a number of documents pertinent to the case, and toured the administrative offices in the City.

Interviews

- Complainant
- Citizen of the community
- Council Member
- Representative of Precision Inspection Company Inc.
- Representative of Maze & Associates
- City of Patterson officials and Administrative staff
- City of Patterson employees current and past

Documents Reviewed

- Contract between Maze & Associates and the City of Patterson
- Contract between Precision and the City of Patterson
- City of Patterson Organizational chart
- City of Patterson Policy and Procedural Manual
- Conflict of Interest Form 700 for Council and senior Administrative staff
- City of Patterson agendas and minutes from October 2004 to January 2006
- Newspaper reports
- Job descriptions for employees of the City
- Oversight Committee report

- Maze & Associates reports
- Internal letters and e-mails
- City of Patterson Personnel Policies and Procedures
- City of Patterson Audit reports, 1996 through 2005
- City of Patterson Management Letters for 1996-2000, 2004 and 2005
- Mayors and Council members Resource Guide 2005 League of California Cities
- Government Code 87100

Site Visits

- Tour of City offices

FINDINGS

1) The process in which the FOC was selected and the definition of its assignment.

- The Council, by recommendation of the Mayor, created the FOC on January 18, 2005. From testimony, the intent of the Council was to have the FOC oversee the building permit audit by Maze & Associates. On February 1, 2005, the Council approved a new scope of work for Maze & Associates to audit the services of the building department. The two-member FOC did not include representatives from the community, Maze & Associates or Precision Systems personnel. In addition, written direction by the Council in regard to the committee's assignment was not established, including procedures to report their progress.

2) A possible conflict of interest in regard to the members of the FOC.

- The FOC was composed of only two members: a Council member who was also a past Finance Department employee, and a private citizen that was also a past City Treasurer. The CGJ's investigation, including a review of the documents pertaining to the FOC's assignment to work with and act as liaison to Maze & Associates, found no conflict of interest within the Committee.
- The CGJ interviewed the members of the FOC and the Mayor under sworn testimony, and concluded that the committee members **did** have a bias against City staff. Additionally, at the April 9, 2005 meeting, the Mayor exercised his influence with the FOC to expand the Committee's report to include personnel issues.

- The CGJ also discovered that the Mayor had an outstanding check (valued at approximately \$30,000) on file in the Building Permit office (for over a year) and that his check was one of the undeposited checks. This appears to represent a type of economic interest that would disqualify him from this issue under Government Code section 87100.

Government Code section 87100 - No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

3) The acceptance/approval of the FOC report and recommendations to the Council.

- The FOC met on April 9, 2005, to discuss the final draft of their report. In addition to the two committee members, the Mayor also attended this meeting. Under sworn testimony it was determined that the FOC decided to expand its initial draft report to include City personnel matters.
- On April 14, 2005, prior to the Council receiving the FOC report a Committee member prematurely released its report to the press. Prior to the next Council meeting on April 15, 2005, coverage of the report was in the *Patterson Irrigator*.
- The reports by Maze & Associates and the FOC were put on the agenda for the Council meeting of April 19, 2005.
- At the April 19, 2005 Council meeting, there was substantial public comment concerning the FOC's report. There was no action taken by the Council other than to reschedule a closed session meeting for April 22, 2005, to consider the FOC's report.
- According to the April 22, 2005 meeting minutes, the Council did not go into closed session but approved the following:
 1. To not have a closed session
 2. To refer the check handling matter to the CGJ
 3. To not take any personnel action until the matter is completed
 4. To refer items on tonight's (April 22, 2005) agenda to future Council meetings
- On April 25, 2005, the City Attorney advised the Council, in writing, that the FOC exceeded its authority and recommended that they disassociate themselves from the report.

- At the May 3, 2005 Council meeting, the Mayor moved to approve the following statement... "The lack of the Council's direct response to the Accounting Oversight Committee report is not to be construed as an endorsement of the report. It represents the view of the two committee members. The release of the report to the newspapers was not authorized by the City Council."
- The records indicate that the Council did not either endorse or reject the FOC's Report.

4) Mishandling of building permit checks from 1999 to 2004 in the amount of \$8.3 million.

In the 1990s, the City contracted with Precision to handle their construction permit and inspection process due to its rapidly expanding developments. Precision was responsible for the day-to-day building permit activities. The CGJ investigated the building permit system at Patterson and found the following major flaws leading up to the 2004 breakdown in the processing of building permits and fees:

- The Community Development Director, who presented Precision's annual contract to the Council for renewal, was involved in the daily contract activities, and had the Precision contract employee handling permits in his department. The Director did not accept financial responsibility for administering and overseeing Section 2.3 of the Precision contract.
- There was no particular city employee assigned the responsibility for the implementation of the Precision contract.
- There was no department level training or communication to discuss the requirements of the Precision contract to ensure a citywide staff understanding of the contract.
- Precision's contract, section 2.3, requires that its employees not handle any permit fees and that payments go directly to finance to be deposited. The CGJ found that, inconsistent with the contract, a Precision employee was handling and holding permit fees for extended periods of times.
- The contract had been in operation for nearly 8 years, and over the course of time city employees were familiar with the fact that Precision's employees were handling permit fees. The lack of administration of the contract lead to complacency among city and contract employees resulting in improper processing of permits and handling of funds. Checks and cash were frequently left either on or in the building department's desk overnight.

- The job of the Precision employee was to input the permit information into a building department computer system and give it a number. This information stayed within the building department and was not transferred either manually or electronically to the finance department. It was only when the Precision contract employee directly provided the permit and fees to the finance department that the information was transferred and funds deposited.
- The CGJ determined through sworn testimony that the city's accounting and building permit systems were not integrated, and thus made it impossible to cross check building permit activity between the finance and building departments.
- One of Precision's employees was asked by city staff to perform tasks outside the scope of its contract. This diverted the attention of the Precision employee away from its contract responsibilities and duties.

5) The City of Patterson's response and action to address unresolved deposited checks breakdown.

The CGJ determined through sworn testimony that the issue of undeposited building permit fee checks first came to the city's attention formally in August of 2004 when triggered by a developer inquiry. Checks were found in drawers, on desks, and were taken home by a contract employee. Upon further research the City Manager ultimately advised the Council of the problem in October 2004. The Council took the following actions to resolve the problem:

On November 1, 2004 the Council contracted with Maze & Associates to analyze the City's \$8.3 million undeposited building permits funds and the City's processes for building permits. The March 18, 2005 report to the Council, Maze was able to reconcile all but \$32,779.14. Since that day all checks, including the \$32,779.14, have been reconciled. In addition, Maze calculated the lost interest on undeposited checks to determine the financial impact on the City. Total interest lost was reported to be \$126,866.13. Precision Systems has agreed to reimburse the City for its expenses of the audit plus any lost interest.

- Maze concluded its report with the following recommendations:
 1. The numerical sequence of building permits issued must be accounted for at least monthly.
 2. Amounts collected for building permits must be balanced with the dollar value of permits issued by Precision each month.

3. City employees must receive and immediately deposit all checks without exception; Precision employees should not be allowed to receive checks under any circumstances.
 4. The number and value of building permits issued to a developer should be reconciled with the number of homes built and permit revenues collected at the conclusion of each phase of the development.
 5. The accounting for permits issued each month discussed in Recommendation 1 above should be used to reconcile the issued Permit file (currently held by Finance) with the amount of Precision's bill.
 6. Precision Systems should be requested to obtain a SAS 70 audit of its system.
 7. The Community Development Department should analyze the effect of unrecorded construction on service levels and infrastructure already in place.
- In March of 2006, the CGJ conducted a site visit to the City of Patterson to observe their records and systems. During this visit the CGJ made the following observations:
 1. The Building Permit log is available online and contains each permit's status. There are no skipped sequences on the log.
 2. The City has continued to research the remaining imbalance, which has now been reconciled.
 3. All checks are only given to the finance department by the applicant and immediately deposited.
 4. The City uses the "Springbrook Accounting" system. It is an integrated, modular system that allows the City to monitor the status of permits from any authorized computer terminal in any department.
 5. The City has hired an "in-house" building official and changed contractors to perform the plan review and inspections.
 6. There is a daily reconciliation of permit fees and monies collected. There is also a monthly reconciliation of permit fees and general ledger entries.

- 6) The ability of the CGJ to be a fair and unbiased body in resolving the allegations set forth, based on the fact that an FOC member was a past CGJ member.**

The FOC member in question was on the 2003/2004 CGJ. Each year a new 19-member jury panel is randomly selected by the Superior Court to investigate and write final reports. The CGJ requires a super majority vote of 12 members to take any action. A previous CGJ member has no knowledge or input into any current CGJ investigations. The FOC member in question is not a member of the 2005/2006 CGJ.

RECOMMENDATIONS

- 1) The process in which the FOC was selected and the definition of its assignment.**

The CGJ recommends that the Patterson City Council develop a written policy regarding the establishment of Special Assignment/Ad Hoc Committees. This policy shall direct that committees authorized by the Council, include representation from the City Council, City employees and the public at large, as required to perform the committee's assignment in an objective and professional manner. The Council shall clearly define the duties, responsibilities, scope, authority, timeline, and interim and final reports.

- 2) A possible conflict of interest or bias in regard to the members of the FOC and/or the Council.**

The CGJ recommends that the above written policy include the following:

- Candidates for appointment by the Patterson City Council to Special Assignment/Ad Hoc Committees should be questioned regarding any potential or ongoing economic or personal conflicts of interest or bias.
- Any real or perceived conflicts of interest shall disqualify the candidate from appointment to the committee.
- The policy shall also disqualify any Council member with any real or perceived conflicts of interest from participating in the selection, assignment, work, or reports of Special Assignment/Ad Hoc Committees.

3) The acceptance/approval of the FOC's report and recommendations to the Council.

The records indicate that the City Council did not either endorse or reject the FOC's Report. The CGJ, through sworn testimony and the review of documents, has found that the scope of the report was beyond what was authorized by the Council. For this reason, the CGJ recommends that the FOC report be expunged from the City's records.

4) Mishandling of building permit checks from 1999 to 2004 in the amount of \$8.3 million.

- The City of Patterson continues to implement the recommendations of the Maze & Associates' report and that they are integrated into the City Policy and Procedures Manual.
- When the City implements a new contract or related process, a responsible staff member shall be assigned as the contract manager and they shall be held responsible for the implementation, training, coordinating, and monitoring of the terms of the contract.
- The City conduct periodic meetings involving contract implementation by staff and management and should be conducted to answer questions, address problems, and identify process improvements and other issues.

**City of Riverbank
Grand Jury Case #06-06
2005-2006**

SUMMARY

The Stanislaus County Civil Grand Jury (CGJ) received a citizen complaint regarding the City of Riverbank's (City) business practices and operational procedures. The CGJ investigated the following allegations:

- The City does not implement its external auditor's recommendations consistently and/or in a timely manner.
- The City increased water and sewer rates without notification to property owners required by Proposition 218.
- The City is lax in its credit card policy... "has no receipts and no real records."
- The City did not properly bid nor obtain approval for the purchase of a truck-mounted hydraulic crane.
- The City's accounting system did not charge employee retirement benefits to the correct accounts for the City Attorney.
- Monies to pay for projects were charged to the wrong accounts.
- The City claims that "growth will pay its way" yet it plans to reimburse a developer for installing infrastructure improvements using 40% of the sales tax revenues from a store in the development.

The CGJ interviewed the complainant, City officials, administrative staff, a representative of the City external audit firm and legal counsel in regard to Proposition 218. CGJ members also toured the City offices.

Through sworn testimony and document review, the CGJ determined that the City did not implement all the recommendations of the auditor. In some instances, audit recommendations were repeated over four years before being implemented. It should be noted that the City, over time, has implemented or is in the process of implementing the auditor's recommendations.

In 2001, the City increased their water rates. A public hearing was held, but the City failed to mail notices to the affected property owners, a violation of Proposition 218.

In reviewing procurement (credit) card statements and procedures between the period of December 2004 and November of 2005, it was found there were numerous statements that did not have the appropriate signatures and dates. In addition, it was determined that credit card holders were not always attaching receipts to their credit card statements. As a result, payments were being made without proper documentation, a violation of the City's "Procurement Card Procedures."

A truck-mounted hydraulic crane in the amount of approximately \$100,000 was purchased through a change order and funded from the State of California Department of Water Resources Revolving Loan and was not approved by the City Council. It was discovered that the city does not have a process for Council review of major change orders to projects.

In regard to City accounts not being properly charged, the CGJ did agree with the complainant. Upon investigation, the CGJ found that the City had corrected the error prior to any funds being disbursed. Further investigation found that the City reviews charges to accounts prior to disbursement.

The City collects a growth related System Development Fee from businesses locating in a new development. In the example cited by the complainant, the original developer advanced the total development infrastructure cost. He is currently being reimbursed, not from sales tax, but from the System Development Fees paid by other businesses locating in the development. The new "growth" businesses are paying System Development Fees and therefore "paying their way."

INTRODUCTION

The CGJ received a complaint requesting the investigation of the mishandling of funds and internal accounting procedures by the City. During the investigation other areas of concern were identified and researched.

ALLEGATIONS

1. The City does not implement its external auditor's recommendations consistently and/or in a timely manner.
2. The City increased water and sewer rates without notification to property owners required by Proposition 218.
3. The City is lax in its credit card policy... "has no receipts and no real records."
4. The City did not properly bid nor obtain approval for the purchase of a truck-mounted hydraulic crane.
5. The City's accounting system did not charge employee retirement benefits to the correct accounts for the City Attorney.
6. Monies to pay for projects were charged to the wrong accounts.
7. The City claims that "growth will pay its way" yet plans to reimburse a developer for installing infrastructure improvements using 40% of the sales tax revenues from a store in the development.

METHOD OF INVESTIGATION

INTERVIEWS

1. Complainant.
2. Administrative staff and employees of the City of Riverbank.
3. Representative of the City external audit firm.
4. Legal counsel in regard to Proposition 218.

DOCUMENTS

1. 1995-2005 City of Riverbank audit reports and management letters.
2. Pre- and post-authorization forms for travel and business expenses.
3. City of Riverbank Council (Council) minutes 1996 through 2005 approving or denying the auditor's reports.
4. Bid quotations, invoice and state loan accounting documents for a truck-mounted hydraulic crane purchased in 2001.
5. Development Agreement between the City and the Browman Development Company establishing reimbursement of public infrastructure improvements.
6. Ordinance No. 2003-010 approving the reimbursement to the developer, August 11, 2003.
7. The City of Riverbank workers compensation policy.
8. List of employees who have been issued procurement cards.
9. A copy of the purchasing activity on all procurement cards for the past twelve months with pre- and post-authorizations and rationale for purchases made.
10. Current and past City policies, procedures, manuals and administrative regulations.
11. Operations and maintenance budget.
12. City of Riverbank operating expense reports.
13. 1998 City of Riverbank Sewer Bond Prospectus.
14. City of Riverbank sewer rate study, Nolte and Associates, July 1997.
15. "City of Riverbank Policies Pertaining to Norms of Operation and Rules of Order and Procedures of City Council."
16. City of Riverbank Policies and Procedures for credit cards, workers compensation, contracting, and bidding.
17. *Mayors and Council Members Resource Guide 2005*, the League of California Cities.
18. A Council resolution authorizing the City Manager to approve budget adjustments up to \$5,000.
19. City of Riverbank Out-of-State travel policy.
20. City of Riverbank Capital asset policy.
21. Assessment and Property-Related Fee Reform - Proposition 218.

SITE VISITS

1. Administrative offices of the City of Riverbank.

FINDINGS

Each allegation will be followed by the CGJ's findings.

- 1) **The City does not implement its external auditor's recommendations consistently and/or in a timely manner.**

The CGJ reviewed the last ten years of audit reports and management letters (auditors recommendations) filed by the City's Auditors. The City did not receive management letters for 2001 through 2003. It was determined that not all of the recommendations made by the auditor during this period were implemented consistently and in a timely manner. The records show that in some instances the auditor made the same findings and recommendations four years in a row. During sworn testimony it was stated that auditor's recommendations are not always binding and the City can elect to implement what it thinks is important. The CGJ determined that the majority of the auditor's recommendations were either implemented or are in the process of being implemented. (Table 2)

- 2) **The City increased water and sewer rates without notification to property owners required by Proposition 218.**

- Proposition 218 became law in January 1997. The following are the procedures an agency must conduct to comply with Proposition 218 before increasing fees or charges to property owners:
 1. The agency must provide written notice by mail of the proposed increase in fees or charges to property owners.
 2. The agency must conduct a public hearing on the proposed increase in fees or charges.
 3. The agency must receive voter approval to increase fees or charges with the exception of water, sewer and refuse collection fees.
- The CGJ determined, under Proposition 218, that agencies are allowed to establish a formula or use an index for fees after sending notices to the property owners and conducting a public hearing to consider rate adjustments. As a result, it can increase rates, per the formula, or index on an annual basis without notifying property owners. Since this is not considered a new fee adjustment, but a continuation of the formula or index, this provision is allowed. This automatic adjustment still needs to meet the test of collecting revenues no greater than the actual cost to provide the service. The CGJ reviewed Proposition 218 and interviewed an expert legal consultant with regard to its implementation.

- Through sworn testimony and records review, the CGJ determined that the City in 2000 increased its sewer rates (property related fees and charges) by sending notices to 4,335 property owners and conducted a public hearing. Since this was an increase in sewer rates including an annual Consumer Price Index (CPI) adjustment, the City was not required to receive voter approval. In 2001, the City also increased its water rates including the adoption of a CPI adjustment. Procedurally, for the 2001 water adjustment, the City conducted a public hearing but failed to send notices to the property owners of record as required by Proposition 218.

3) The City is lax in its credit card policy...“has no receipts and no real records.”

- The CGJ reviewed the Procurement Card Procedures approved by Council in September 2004. The procedures require that appropriate receipts be attached to the procurement card statements. The department head will review, sign, date and forward these statements to the Finance Department. The Finance Director shall review (for consistency with policy), approve, sign and date the procurement card statement. The CGJ reviewed procurement card statements from December 2004 through November 2005. It was found that there were numerous statements that did not have the appropriate signatures and/or dates (Table 3.)
- The CGJ investigation determined that the procurement card holders were not always attaching receipts to their statements.
- The CGJ reviewed the City's Public Resource Policy (PRP), approved on April 24, 2006. The CGJ determined that the City has a policy specific to what types and categories of expenses they will pay. The PRP is a reasonably comprehensive expense policy. The CGJ noted that in the review of the procurement card statements some business lunches were being charged without complete explanation. The PRP does not set forth a definition of business lunches, nor does it establish guidelines for employees to be reimbursed for qualified business lunches.

4) The City did not properly bid nor obtain approval for the purchase of a truck-mounted hydraulic crane.

- In 2001 the City formally bid an upgrade and expansion of its Waste Water Treatment Plant (WWTP) with the bid going to Kirkwood-Bly, Inc. for \$625,700.
- The project was funded through a State of California Department of Water Resources “State Revolving Loan” in the amount of \$623,132.

- During the execution of the Kirkwood-Bly, Inc. contract several change orders resulted in a savings to the project of approximately \$100,000.
- The City was able to enhance the operation of the WWTP through the purchase of a truck-mounted hydraulic crane with the surplus funds.
- The City used its WWTP contractor, Kirkwood-Bly, Inc., to bid and purchase the crane. Table 1 reflects the results of Kirkwood-Bly, Inc.'s bidding process.

Table 1
Summary of Proposed truck-mounted Crane Bids

Item	National Model 500D	Terex Model TC3063	Manitowoc Model 1561C
Cost of truck-mounted crane	\$86,996.00	\$93,258.00	\$89,210.00
Contractor labor, material and markup	4,349.80	4,662.90	4,460.50
Contractor Quote	\$91,345.80	\$97,920.90	\$93,670.50
Freight	1,800	0	0
Sale Tax and Licensing	8,102.63	8,509.79	8,140.41
Total	\$101,248.43	\$106,430.69	\$101,810.91

The state provided close oversight of the City's purchases through an accounting of the payments to contractors and others.

- After selection of the winning crane bidder, the City made some minor enhancements to the crane specification, which did not affect the bid process.
- The project engineer, Public Works Director and the contractor, approved the Change Orders to the Kirkwood-Bly Inc. contract.
- The state approved the purchase for inclusion in the loan and paid the crane company.
- There were no funds that were expended without State approved invoices.

- From the records and sworn testimony, the CGJ determined that the City did purchase a crane for approximately \$100,000. The purchase process was accomplished through the City's WWTP contractor who received three bids. The award was made to the lowest cost bidder and payment was made by the state.
- Although the WWTP was accomplished at a lower cost, the addition of the purchase of the truck mounted hydraulic crane was a major modification to the scope of the project. The Council did not approve the change order. The City has no process for Council review of major change orders to projects.

5) The City's accounting system did not charge employee retirement benefits to the correct accounts for the City Attorney.

The CGJ investigated several accounts to test for proper charges. The 2004 records indicate a specific journal entry to the City's Retirement Account on behalf of the City Attorney. The City Attorney is not a participant in the City's retirement program. Under sworn testimony, the City's Senior Management Analyst/City Clerk reviewed the documents and did clarify that, in the report made public, an incorrect allocation was shown. The staff member also clarified that before payments are made to the retirement or insurance carriers, the personnel list and amounts are reviewed and checked for accuracy. The specific example cited was found to be in error. It was corrected and not paid as a retirement plan charge for the City Attorney.

6) Monies to pay for projects were charged to the wrong accounts.

City Account 108 is established for sewer capital improvements. An item of the WWTP expansion included \$15,649.40 for environmental mitigation. The WWTP project included repair of a collapsed levee and related environmental damage. The repair costs were charged to Account 108. This account is for future capital improvements to the existing sewer system. The required environmental mitigation was considered to be a capital improvement of the existing system and therefore an appropriate charge to Account 108.

7) The City claims that "growth will pay its way" yet it plans to reimburse a developer for installing infrastructure improvements using 40% of the sales tax revenues from a store in the development.

- The City entered into a development agreement with Browman Development Company for the Browman Development (Crossroads Community Specific Plan), Agreement No. 02-2003. The Council approved the agreement on a 3 to 0 vote with one abstention and one absent. The agreement provides for the developer to install the total public infrastructure improvements and later be reimbursed for all of his costs except for his allocated share of system development fees. The agreement provides a safety net for the developer. It

committed 40% of the sales tax revenue from a single existing Crossroad's business to reimburse the developer if the business park did not attract tenants as planned.

- There have been new businesses within the development paying their share of project System Development Fees, thereby making funds available to reimburse Browman Development Company as well as generating additional revenues for the community.
- Under sworn testimony, the CGJ determined that no sales tax revenues have been used to reimburse the developer. The system development fees have been collected and used for this purpose.
- As an example of "how growth is paying its way" the City just increased its single family residential System Development Fee from approximately \$11,000 to \$25,354 per lot.

RECOMMENDATIONS

Each allegation will be followed by the CGJ's recommendation.

- 1) **The City does not implement its external auditor's recommendations consistently and/or in a timely manner.**

When the auditor's report is presented to Council, the City Manager shall present an action plan for recommendations being considered for implementation. The report shall clearly justify the reasons why an audit recommendation is not going to be implemented. The Council shall review the action plan for consistency with the external auditor's recommendation. The Council shall exercise its authority to ensure the City's finance office is complying with good business practices and general accounting principles.

- 2) **The City increased water and sewer rates without notification to property owners required by Proposition 218.**
 - The City shall comply with the principles and provisions of Proposition 218 when raising water, sewer and refuse collection fees and charges. Specifically, when establishing a new formula or index, the City will properly mail notices to the affected citizens and conduct legal public hearings before adjustments are made to City service charges.
 - The CGJ recommends that annual "CPI index rate" adjustment be posted on the City's web site and in its offices for viewing by the public.

3) The City is lax in its credit card policy...“has no receipts and no real records.”

- The City Finance Director and employees **shall** follow the “Procurement Card Procedures” adopted by the Council in September 2004 by attaching receipts and having them properly authorized and dated. Not following the “Procurement Card Procedures” could potentially lead to litigation at the expense of the citizens of Riverbank.
- The City’s “Public Resources Policy” shall be amended to include a business lunch policy.

4) The City did not properly bid nor obtain approval for the purchase of a truck-mounted hydraulic crane.

The Council shall develop or modify its existing bidding ordinance to require any change order greater than 5% of the total project cost be submitted to Council for final approval.

5) The City’s accounting system did not charge employee retirement benefits to the correct accounts for the City Attorney.

No recommendation

6) Monies to pay for projects were charged to the wrong accounts.

No recommendation

7) The City claims that “growth will pay its way” yet it plans to reimburse a developer for installing infrastructure improvements using 40% of the sales tax revenues from a store in the development.

No recommendation

This report of the City of Riverbank is issued by the 2005-2006 Civil Grand Jury with the exception of one member of this Civil Grand Jury, who is a resident of Riverbank. This Grand Juror was excluded from all parts of the investigation, which included interviews, deliberations, and the making and acceptance of this report. This report is based on information obtained from outside sources with none of the information being obtained from the excluded Grand Juror.

**Table 2
Management Letter Recommendations**

Management Letter	1996	1997	1998	1999	2000	2004	2005
General Fund-Fund Balance Deficit	X						
Reconciliation of Cash	X			X			
Internal Controls	X	X	X	X		X	
Accounts Receivable	X	X	X				
Investment Policy	X	X					
Operating Deficits-Enterprise Funds	X	X	X				
Budgets Practices	X						
Warrant Register	X						
Self Insurance	X	X					
Encumbrances	X	X					
Consolidation of Funds-Storm Drain	X	X	X	X	X		
Account Manual	X	X	X	X	X		
Staffing-Finance	X	X					
Inactive Funds	X	X		X	X		
Community Development Block Grant	X		X				
Authorized Account Signers	X						
Outstanding Checks & Reconciliation Procedure		X					
Year 2000 Issue		X	X				
Purchase Orders				X	X		
Documentation For Manual Checks				X			
Accounts Payable Invoices				X			
Fixed Assets						X	
Credit Card Policy						X	X
Housing Grants/Loan Receivables						X	X
Budget Controls						X	
Accounting Procedures		X					
Accounting Adjustments							X

**Table 3
Credit Card Statement Findings**

Year-Month	Cardholder Signature & Date	Approving Official & Date
2004-December	Six Statements NOT Signed and NOT Dated One Statement Signed but NOT Dated	Seven Statements NOT Approved and NOT Dated
2005-January	Three Statements Signed and Dated One Statement NOT Signed and NOT Dated	Four Statements NOT Approved And NOT Dated One Statement Approved and Dated
2005-February	One Statement NOT Signed and NOT Dated Three Statement Signed and Dated One Statement Signed but NOT Dated	Five Statements NOT Approved and NOT Dated
2005-March	Four Statements Signed and Dated One Statement NOT Signed but Dated One Statement Signed but NOT Dated	Five Statements NOT Approved and NOT Dated One Statement Approved and Dated
2005-April	Five Statements Signed and Dated	Five Statements NOT Approved and NOT Dated
2005-May	Five Statements Signed and Dated One Statement Signed but NOT Dated	Five Statement NOT Approved and NOT Dated One Statement NOT Approved but Dated
2005-June	Eight Statements Signed and Dated	Eight Statements NOT Approved and NOT Dated
2005-July	Seven Statements Signed and Dated	Six Statements NOT Approved and NOT Dated One Statement Approved but NOT Dated
2005-August	One Statement Signed but NOT Dated Seven Statements Signed and Dated	Eight Statements NOT Approved and NOT Dated
2005-September	Six Statements Signed and Dated One Statement NOT Signed and NOT Dated	Seven Statements NOT Approved and NOT Dated
2005-October	Seven Statements Signed and Dated	Seven Statements NOT Approved and NOT Dated
2005-November	Four Statements Signed and Dated One Statement Signed but NOT Dated	Four Statements NOT Approved and NOT Dated One Statement Approved and Dated

Patterson Del Puerto Health Care District
Grand Jury Cases # 06-32, 06-33, 06-34, 06-38
2005-2006

SUMMARY

In April 2006, the Civil Grand Jury (CGJ) received four complaints concerning the Del Puerto Health Care District (District.) These complaints are comprised of Brown Act violations, District inefficiencies in scheduling and waiting times, administrative interference with a doctor's provision of care causing possible harm to patients, and a conflict of interest among the administrative staff.

The CGJ reviewed applicable laws regarding the Brown Act, the Health Insurance Portability and Accountability Act of 1996 (HIPPA) requirements, government publications and reports, and District agendas and minutes from past proceedings. The CGJ also conducted interviews with key District personnel, members of the Del Puerto Health Care District Board (Board), and complainants.

The CGJ determined that a letter dated April 28, 2006, to the District established intent to litigate their inefficiencies, administrative interference and potential harm to patients. As personnel and matters of litigation are out of the purview of the CGJ, these issues will not be addressed.

The CGJ concluded that although some of the actions alleged in sworn testimony may have violated the Brown Act, these actions did not appear to compromise the public's participation in meetings. During the investigation it became apparent that while there was no intent to violate the Brown Act, the District will need to refine skills with additional training and mentoring to improve their working relationship with the public.

The CGJ recommends the following:

- 1) The Brown Act is very specific in regard to its requirements for an open meeting. The District shall implement an aggressive training session for all officials conducting the public's business, particularly in areas that provide for public comment or interaction with the Board.
- 2) Although the Brown Act requires at least a 24-hour notice for special meetings, the Board shall consider scheduling them consistent with the publication of the local biweekly paper. The Board shall also ensure that the notices and any other matters available that are of interest to the general public are included on the District's telephone answering system.

- 3) The District shall develop and approve competitive recruitment and hiring policies and implement them through its "Clinic Policy Manual."

INTRODUCTION

In April 2006, the CGJ received four complaints concerning the District. The four complaints originated at a time when the Medical Director for the District, asked to terminate his contract and requested to begin new contract negotiations. The complaints can be categorized as follows:

- 1) Brown Act Violations:
 - a. Intimidation of a member of the public who wished to speak at a public Board meeting.
 - b. A Board member publicly requiring that members of the audience identify their selves in order to speak.
 - c. The Board has conducted too many special meetings.
 - d. The Board inappropriately called closed sessions.
 - e. The classification of a contract physician as a public employee for the purpose of calling a closed session.
 - f. The Board conducted secret ballots.
 - g. The Board withheld information from the public.
- 2) The district is inefficient.
- 3) Appointments are scheduled every 15 minutes.
- 4) Two-hour waits for scheduled appointments.
- 5) Administrative interference with a doctor's provision of care.
- 6) Harm to patients due to the interference of the District administration.
- 7) Violation of the patient/physician privilege of confidentiality.
- 8) A conflict of interest among the administrative staff at the District.

METHOD OF INVESTIGATION

The CGJ conducted its investigation from March through April 2006 and included many sources of information and documented facts. Major sources included the following:

- 1) Interviews with District personnel including the complainants, members of the Board, the District Administrator/CEO and the former contract Medical Director.
- 2) Announced field trip to the District facilities.
- 3) Review of applicable laws regarding Brown Act and patient confidentiality.
- 4) A review of the agendas and minutes of the District's meetings.
- 5) Public information including government publications and reports and other pertinent sources.

With the exception of field interviews, all other interviews were scheduled in advance and conducted under oath during recorded testimony. Local newspaper articles were reviewed to identify key recent events and how they were presented to the public. Pertinent Internet sites were reviewed and relevant documents downloaded for reference and retention.

STATEMENT OF FACTS

- 1) Government Code sections 54950-54963, The Ralph M. Brown Act. See Appendix 1 for the full text.
 - a. Section 54954.3 (c) – provides for no restriction on speech.
 - b. Section 54953.3 – A member of the public is not required to register his/her name.
 - c. Section 54956 – A special meeting may be called at any time with 24-hour advance notice.
 - d. Section 54957 - A closed session may be called for certain defined reasons.
 - e. Section 54957 (b) (1) – A closed session may be held to discuss certain personnel issues.
 - f. Section 54957 (b) (4) – An independent contractor functioning as an officer may be considered an employee.
 - g. Section 54954 (e) - Specific agenda description of employee related closed session item.
 - h. Section 54957 (5) - Reporting the Board actions coming out of a closed session.
- 2) Government Code section 87100 – Defines a conflict of interest.
- 3) The iCare Contract.
 - a. On June 20, 2003, the District entered into a contract with iCare Professional Corporation (iCare) for the provision of specialized health care by “. . . physicians, nurse practitioners, physician assistants and other allied health professionals . . .” A physician, the President of iCare Professional Corporation, was named in said contract to provided a minimum of 30 hours/week of direct patient care as well as

serve as Medical Director for the District.

- 4) Health Insurance Portability and Accountability Act of 1996, (HIPAA) Patient/Physician Privilege. HIPAA establishes standards for the privacy of patient health related information. It gives patients privacy rights over their health information and sets rules and limits on who can look at and receive such information. HIPAA has four parts:
 - Electronic transactions and code set
 - Security
 - Unique identifier
 - Privacy
- 5) The April 28, 2006, letter to the District from the President of iCare, describes various issues between the District and iCare. Among the issues identified are the following; administrative support, communications, billing, Brown Act violations, personnel termination, HIPAA violations, and other items. iCare also requested that the District enter into negotiations with iCare for the purpose of payment of all fees owed to iCare through April 15, 2006, and damages. The letter concludes with an admonition that if the matter proceeds to litigation, iCare will seek punitive damages.

FINDINGS

- 1) The letter dated April 28, 2006 to the District establishes intent to litigate several of the issues identified in the complaints. Personnel and matters of litigation are out of the purview of the CGJ and as such those issues will not be addressed in this report.
- 2) Under sworn testimony it was reported that on January 26, 2006, a member of the District Board interrupted and may have appeared to intimidate a member of the public wishing to speak during a public comment section of the agenda.
- 3) Under sworn testimony, and viewed on DVD video, a member of the Board requested a speaker to identify himself or be removed from the building during the public comment portion of the agenda. The member of the public continued to speak without identifying himself and was not removed.
- 4) The District has its regular meeting monthly. During October 2005 through May 2006, the District had an equal number of regular and special meetings. All meetings were properly noticed and minutes prepared for each meeting.
- 5) The CGJ reviewed the agendas and minutes of the Board meetings. Contrary to the complainant's allegations, the District's Board meeting minutes reported any action taken in public or in closed session.

- 6) On December 17, 2005 the Board received two letters dated December 16, 2005 from the President of iCare. The first letter provided a 120-day notice to terminate the iCare contract under Article VI, section 6.3, and the second letter offered to renegotiate the contract. The Board posted a special meeting notice on December 23, 2005, for a December 26, 2005, meeting at the District headquarters. Included on the agenda was a closed session item, "Employee Performance Evaluation, Clinic Medical Director."

The minutes reflect that on coming out of closed session, in open session, the Board voted to accept the iCare letter of termination, and took no action regarding the offer to renegotiate.

- 7) Under sworn testimony, the CGJ determined that the District's Executive Director had been hired from a consulting firm that was providing contract services to the District. The consultant had been performing the work of the Executive Director and then was hired for that position as a permanent employee. In addition, the brother of the owner of the consulting firm, who was also an employee of the firm, was hired by the District to provide consulting services.

Government Code section 87100 defines a conflict of interest as having the decision-maker have a financial interest in the hiring of staff or consultants. Although the CGJ found no conflict of interest involved, there are no competitive hiring practices in place at the District.

RECOMMENDATIONS

- 1) The District shall implement an aggressive training session for all officials conducting the public's business, particularly in areas that provide for public comment or interaction with the Board.
- 2) Although the Brown Act requires at least a 24-hour notice for special meetings, the Board shall consider scheduling them consistent with the publication of the local biweekly paper. The Board shall also ensure that the notices and any other matters that are of interest to the public are recorded on the District's telephone answering system.
- 3) The District shall develop and approve competitive recruitment and hiring policies and implement them through its "Clinic Policy Manual."

APPENDIX 1

Selected Sections of the California Government Code

Ralph M. Brown Act

1. Section 54954.3 (c) (no restriction on speech)

The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

2. Section 54953.3 – (public not required to register)

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

3. Section 54956 (Special Meeting Notice)

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

4. Section 54957 (Closed Sessions)

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with

the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

- (b) (1) *Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.*
- (2) *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.*
- (3) *The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.*
- (4) *For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this subdivision shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.*

5. Section 54957 (b) (4) (employee definition)

For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative

body or other independent contractors. Nothing in this subdivision shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461,32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

6. Section 54954.5 (closed session description - Public Employee Performance Evaluation)

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

7. Section 54954 (e) (Specific agenda description of Closed Session item)

With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISSMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

8. Section 54957 (5) (reporting the actions coming out of a closed session)

Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting

during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

Conflict of Interest

9. Section 87100 (conflict of interest)

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Stanislaus County Health Services Agency
Grand Jury Case # 06-16
2005-2006

SUMMARY

On September 6, 2005, the Civil Grand Jury (CGJ) authorized an investigation of Stanislaus County Health Services Agency (HSA) Strategic Plan, and an examination of the recent reductions in health care provided to the medically underserved.

Stanislaus County provides a high level of health care services to indigents, low income, and uninsured patients. State law requires that the County provide health care to indigents and the poor. The health services provided to the indigent and poor represent only 11% of the total patients served by HSA. Since 1997 the County has lost over \$23 million due to HSA deficits. The HSA Strategic Plan (Plan) focuses primarily on either obtaining status as a Federally Qualified Health Center-Look-Alike (FQHC-LA) or obtaining favorable state legislation to increase revenues. Neither strategy is assured. The CGJ concluded that a more proactive approach to bring the HSA into fiscal balance is necessary.

First, the Stanislaus County Board of Supervisors (BOS) should identify secure funding sources equal to the level of health care services they authorize. The BOS should eliminate previous indebtedness by early pay off of the 2005 Note and dedicate the interest revenue from the health related Tobacco Securitization Bond proceeds to HSA.

Second, a more aggressive approach to fiscal management of HSA is required. Collection of management data is hampered by separate and uncoordinated information systems as well as incorrect classification of expenses. Expense reduction and clinic consolidation should be the current focus until additional or enhanced revenue is obtained. Multi-year financial contingency planning must be an ongoing priority for the BOS. County Center II, (CCII) should be evaluated for upgrading. Consolidation of clinic services at that location may be more economical than increasing long-term lease costs at other sites. HSA financial reporting to the BOS and the Health Executive Committee should be accomplished monthly.

The County is beginning to make progress in several of the identified areas. However, aggressive management by the BOS and the County Chief Executive Office is required to avoid any future failures similar to the revenue shortfall that occurred at the closing of the County Hospital in 1997.

INTRODUCTION

On September 6, 2005, the CGJ authorized an investigation of the County's HSA Plan, and an examination of the recent reductions in health care provided to the medically underserved.

Stanislaus County provides a high level of health care services to indigents, low income and the uninsured. State law requires that the County provide health care to indigents and the poor. The health services provided to the indigent and poor represent only 11% of the total patients served by HSA.

The CGJ reviewed the 2005 Plan during the investigation of a separate complaint involving the HSA. About the same time, the BOS took action resulting in a reduction of health services to the County's medically underserved population. The Plan reported that the HSA has incurred approximately \$22.2 million in deficits since July 1, 1997. The Plan was intended to provide a path to solvency for the agency. The BOS approved the Strategic Plan, which led to service reduction for the medically underserved.

The CGJ reviewed the HSA Plan and noted the large and continuing annual financial losses the County has experienced since 1997. The reduction of specific health services to a segment of the County's population was examined. Two issues involving funding requirements and management approach were identified. The structure of this report separates the two issues into discreet sections, each with its own statements of facts, findings, and recommendations.

I. *Funding* – The areas investigated include:

- Loss of Funding
- Number of patients served
- HSA deficits
- The Tobacco Settlement
- Stanislaus County Promissory Note
- Funding solutions
- HSA facilities
- FQHC-LA
- Pending legislation

II. *Management* - The areas investigated include:

- Valid management data
- Multi-year budgeting
- Contingency planning
- Expense classification
- Administrative costs
- Facility planning and sales

- BOS/staff communications
- Information technology systems

Although the Plan was intended to solve the financial problems of the HSA, its major thrust relies on the County applying for and obtaining designation as a FQHC-LA or obtaining state legislation that would qualify certain costs as Certified Public Expenditures, (CPE.) Realization of either possibility would bring the benefit of additional federal funding. Neither strategy is guaranteed.

METHOD OF INVESTIGATION

The CGJ conducted its investigation from September 2005 through April 2006 and included many sources of information and documented facts. Major sources included the following:

- 1) Interviews
 - a. Interviews with County personnel including directors, managers, department heads specialists, and elected officials (Appendix 1.)
 - b. Interviews with other health providers within the County.
- 2) Field Trips - Announced and unannounced field trips to HSA facilities
 - a. County Center 2 (Scenic.)
 - b. Medical Arts Building.
 - c. Paradise Medical Clinic.
- 3) Document Review
 - a. Review of applicable laws regarding the provision of health programs and services.
 - b. Reviews of CGJ Reports, CGJ 2001/2002 03-12-c and CGJ 2002/2003 03-23.
 - c. Public information including government publications and reports and other pertinent sources.
 - d. Documents reviewed by the CGJ are listed in Appendix 3.
- 4) Surveys of adjacent County health programs (Appendix 2.)

With the exception of field interviews, all other interviews were scheduled in advance and conducted under oath during recorded testimony. Local newspaper articles were reviewed to identify key recent events and how they were presented to the public. Pertinent Internet sites were reviewed and relevant documents downloaded for reference and retention.

I. FUNDING

STATEMENT OF FACTS

1. California Welfare and Institutions Code, section 17000, requires Counties “to provide health care services to all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospital or other state or private institutions.”
2. California Welfare and Institutions Code, section 17001, provides for the BOS to adopt standards of aid and care for the indigent and dependent poor.
3. The California Constitution Article 16, section 18 (a) “forbids any County from incurring any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters . . .”
4. California Government Code, section 29009, states, “In the proposed and final budgets the budgetary requirements shall equal the available financing.” This is restated in Article 1 of the County Budget Act contained in Appendix B of the State of California Accounting Standards and Procedures.
5. HSA Clinic and Ancillary Services have been established as an Enterprise Fund. Government Code section 25261 requires that the County Board of Supervisors of each County make available such amounts as are necessary to establish each fund and to maintain budgetary unit solvency.
6. The County budget process includes a proposed and final budget with quarterly reports. This process allows for funding adjustments to be considered and approved by the BOS to meet any additional needs or reductions mid-year, and to take appropriate action as required in a timely fashion.

FINDINGS

The BOS approved the amount and level of mandated health care to indigents, low income and uninsured citizens of Stanislaus County, which was not consistent with their commitment to corresponding levels of funding.

After many years of heavy HSA losses, in 2004 and 2005 the County chose to commit a source of non-tax base health related revenues to pay back the deficits over an eighteen-year period. This, however, did not lead to any additional or consistent sources of funds to HSA. There are other approaches for funding HSA that the BOS should evaluate and employ immediately.

Loss of Funding

Up until 1997, the County Hospital provided medical care to a large share of low income and indigent patients. To compensate the hospital for the higher cost of caring for low income patients they received additional revenue through "Medicare Disproportionate Share" funding. Under sworn testimony the CGJ found that the BOS received erroneous information leading them to believe that they would retain this funding even though they closed the hospital.

Patients Served

HSA provides health services and levels of care for patients that are beyond the level mandated. The County is required to provide health care by the Welfare and Institutions Code to a limited group of indigent patients. Indigent care represented only 11.6 percent of total costs for HSA. In fiscal years 2004 and 2005, the payer mix was:

Payer	Percent of Total
Medi-Cal	40.6
Medicare	12.9
Medi-Cal Managed Care	9.2
Insurance	5.9
Personal Self Pay	7.9
County	1.7
Other	10.2
Indigent Care	11.6
Total	100%

Deficits

1. HSA did not have adequate funding to meet budget requirements from fiscal years 1997 through 2001 and 2003. Table 1 summarizes the financial results for HSA from 1997 through 2005. Line 18, Total Revenue and Gains, or Losses states that from 1997 through 2001 the HSA operated at a deficit ranging from \$1.1 million to \$8.2 million per year. In 2003 another deficit of \$3.7 million was incurred. The years of 2002, 2004, and 2005 all operated within a balanced budget reflecting adequate County funding. Table 1 data was extracted from each of the County's annual Independent Auditor's Reports and Financial Statements for fiscal years 1997 through 2005.

2. The Plan contains a three-year financial projection incorporating reduced levels of financial support from the County beginning with \$7.44 million in fiscal year 2005/06 and ending with \$3.75 million in fiscal year 2007/08 plus additional County matching funds of \$161,075. Planned net income for the three year plan is:

<u>Fiscal Year</u>	<u>Net Income*</u>
2005/06	\$312,863
2006/07	(\$107,630)
2007/08	(\$2,013,283)

* Parenthesis indicates a loss.

Elimination of the losses is dependent on increased state and federal reimbursements through designation of selected clinics as an FQHC-LA or successful state legislation designed for that purpose.

Tobacco Settlement

1. In November 1998 the national tobacco industry and the states settled many areas of litigation involving the use of tobacco products. As a result, California received approximately \$25 billion in annual payments through 2025. Stanislaus County participated in the settlement and was successful in receiving a share of the payments from the tobacco industry.

2. In 2002 the BOS securitized Tobacco Settlement payments by joining with other counties and receiving a secure and discounted payment immediately rather than waiting for the 25-year stream of payments. The \$52.4 million bond proceeds were deposited into the County's Tobacco Endowment Fund.

Table 1
Stanislaus County Health Services Agency
Fiscal Year Ending June 30

	1997	1998	1999	2000	2001	2002	2003	2004	2005
1 Patient Revenue	\$49,095,880	\$36,919,861	\$24,584,692	\$25,808,254	\$27,814,933	\$34,631,723	\$32,024,793	\$32,606,790	\$33,925,990
2 Other Revenue	\$1,624,672	\$3,125,343	\$5,149,579	\$2,824,373	\$5,377,967	\$5,211,563	\$6,827,858	\$6,284,714	\$4,218,090
3 Total Operating Revenue	\$50,720,552	\$40,045,204	\$29,734,271	\$28,632,627	\$33,192,900	\$39,843,286	\$38,852,651	\$38,891,504	\$38,144,080
4 % Change		-21.05%	-25.75%	-3.70%	15.93%	20.04%	-2.49%	0.10%	-1.92%
5 Operating Expenses	\$51,657,486	\$44,134,100	\$37,803,640	\$36,685,313	\$35,109,778	\$37,652,584	\$37,421,335	\$39,000,172	\$40,741,917
6 % Change		-14.56%	-14.34%	-2.96%	-4.29%	7.24%	-0.61%	4.22%	4.47%
7 Net Operating	(\$936,934)	(\$4,088,896)	(\$8,069,369)	(\$8,052,686)	(\$1,916,878)	\$2,190,702	\$1,431,316	(\$108,668)	(\$2,597,837)
8 Non-Operating Gains/Losses:									
9 Intergovernmental Revenue	\$10,735,582	\$14,097,349	\$0	\$0	\$0	\$0	\$0	\$0	\$573,736
10 Operating Transfers Out	(\$11,239,730)	(\$14,679,548)	(\$491,025)	(\$1,157,491)	(\$5,595,165)	(\$5,777,500)	(\$5,783,613)	(\$5,773,677)	(\$7,041,569)
11 Operating Transfers In	\$636,954	\$692,292	\$835,510	\$2,878,543	\$2,276,509	\$4,510,861	\$1,295,321	\$14,958,102	\$9,695,819
12 Interest Income	\$31,575	\$35,484	\$115,121	\$37,557	\$30,236	\$22,720	\$13,010	\$8,452	\$11,464
13 Interest Expense	(\$332,981)	(\$378,483)	(\$607,716)	(\$835,427)	(\$951,859)	(\$932,298)	(\$735,267)	(\$344,700)	(\$557,275)
14 Other	\$0	(\$9,560)	\$16,387	(\$20,876)	(\$168,819)	\$0	\$0	\$0	\$0
15 Capital Contributions	\$0	\$0	\$0	\$0	\$0	\$65,886	\$63,120	\$133,483	
16 Loss On Disposal of Asset	\$0	\$0	\$0	\$0	\$0	\$0	\$0	(\$41,641)	
17 Non-Operating Losses	(\$168,600)	(\$242,466)	(\$131,723)	\$902,306	(\$4,409,098)	(\$2,110,331)	(\$5,147,429)	\$8,940,019	\$2,682,175
18 Total Revenue and Gains	(\$1,105,534)	(\$4,331,362)	(\$8,201,092)	(\$7,150,380)	(\$6,325,976)	\$80,371	(\$3,716,113)	\$8,831,351	\$84,338
Charity Care (See Note 5)									
19 % of Operating Expenses									12.6%
20 Operating Expenses									\$48,340,761
21 Charity Expenses									\$6,090,936

Notes:

1. Source: Annual Independent Auditor's Reports.
2. Parenthesis indicates a loss.
3. 1999 represents the first full year of operation after the closure of the Stanislaus County Medical Center on November 30, 1997.
4. 2004 Interest Expense includes the 2003/4 Interfund Notes debt service and will include principle and interest payments through 2021. Interest in 2005/6 is expected to be \$545,053 and rise to \$786,098 in 2009/10.
5. 2004 Transfers In reflects a release of the remainder of the DMC \$12 million contract payment from 1997 amounting to \$7,390,482 patients.
6. Charity Care is described in the Auditor's Report and reflects uncompensated patient care and community service expenses based on the percentage of charity care

Stanislaus County Promissory Note

1. In September 2004 the County issued a 15-year promissory note to itself in the amount of \$20,489,032 to recover past HSA deficits and to bring audited financial statements in line with state law requiring balanced budgets. The source of funds for payments on this note is the interest from the Tobacco Securitization Endowment Fund in the amount of approximately \$1.2 to \$2.1 million per year.
2. In September 2005 the County revised the note to include an additional \$3.2 million increasing the note principle to \$ 23,725,144 with payments extending over eighteen years. At the sole discretion of the BOS the note may be extended for fifteen additional consecutive one-year periods.
3. In January 2006 the BOS approved the securitization of an additional \$20 to \$30 million of Tobacco Settlement revenue. The resulting bond proceeds would be deposited into an endowment fund, similar to the first Securitization Bond, and the interest income would be available for any general governmental purpose or for capital expenditures.

Internal Funding Solutions

1. Under sworn testimony, a knowledgeable witness identified two potential sources of revenue that could be used to reduce or retire the internal note. Both sources are based on increased discretionary revenue becoming available to the BOS through tax revenues. The two sources identified were the Property Taxes/Current Secured (budget account number 10000) and Property Taxes/In-Lieu Vehicle License (budget account number 12710.)
2. The Property Taxes/Current Secured account had an actual 2004/05 fiscal year revenue of \$25,606,297 and an anticipated budget increase of \$ 2.7 million in the 2005/06 fiscal year. The Property Tax/In-Lieu Vehicle License account had actual, 2004/05 fiscal year revenue of \$34,705,289 and an anticipated budget increase of \$ 11.3 million in 2005/06. These two revenue accounts will outpace any other discretionary revenue source. The witness further suggested that a percentage of the revenue growth could be dedicated to pay off the internal note. As an alternative, the witness suggested that a percentage of increased revenue from the accounts could be directed specifically to HSA for the benefit of the medically underserved population of the County.

County HSA Facilities

1. The December 6, 2005, Facility Plan proposed to vacate a portion of CCII and/or sell the Medical Arts Building. Under sworn testimony the CGJ was advised that the County is considering sale of CCII. Sale of either CCII or the Medical Arts Building would generate additional funds to support any County governmental use.

2. The CGJ toured CCII to evaluate its condition. Although some buildings are over 50 years old they have been remodeled and maintained over time. However, bringing buildings up to current code may present a significant cost problem to HSA.

Federally Qualified Health Center Look Alike Designation

1. The Plan's major step to financial solvency is dependent on the HSA's ability to obtain FQHC-LA status to increase funding, as well as the need to dedicate approximately \$3.9 million per year from the County's General Fund.

2. In 2006 the BOS authorized hiring a consultant to assist staff in determining if HSA could receive additional funds by being classified as a FQHC-LA. A sworn witness reported that this would result in a \$1.2 to \$3 million reimbursement of additional federal funds. However, FQHC-LA also requires that control of the HSA shall be turned over to a new independent Board of Directors. A minimum of fifty-one percent of the Board must be composed of clinic system users. Also the BOS would have to reinstate a comprehensive list of health care services (some which have been terminated at the time of this report.)

Pending Legislation

The BOS is pursuing additional Medi-Cal reimbursement by supporting state legislation, Assembly Bill 959 (AB 959). If passed this bill would qualify certain HSA expenditures as CPE and increase the level of reimbursement from Medi-Cal and indirectly involve federal financial participation. The County cannot accept increased funds under AB 959 if they are a FQHC-LA.

Skyrocketing Healthcare Cost

A recent study of high hospital costs by the Institute for Health & Socio-Economic Policy sights two of Modesto's hospitals, one being the **most costly in the nation**. (See Appendix 3, #36.)

RECOMMENDATIONS

Health care in Stanislaus County is an important and vital asset to all residents. The County has adopted a commitment to "A Healthy Community" in its mission statement and maintaining a high level of health care to the medically underserved has been a part of this ongoing pledge. Funding of this important County service requires firm commitments be made to minimize past obligations as well as to identify and commit future sources of revenue to maintain solvency. The CGJ recommends that:

- 1) **Deficits** - The BOS shall insure that decisive action is expeditiously taken, when necessary, to eliminate department deficits to avoid similar problems experienced during 1997 - 2001, and 2003. Actions could include allocating additional revenue and/or reducing expenses.
- 2) **Tobacco Settlement/Stanislaus County Promissory Note** - The BOS retire the 18-year internal note through an accelerated pay off using additional, discretionary revenues. As soon as the internal note is retired the BOS direct annual interest from the Endowment Fund (for both Tobacco Securitization bond issues) to annual funding of HSA.
- 3) **Internal Funding Solutions** - Revenue from the Property Taxes/Current Secured and Property Taxes/In-Lieu Vehicle License be prioritized by the BOS so that a significant share is allocated to retire the internal note.
- 4) **County HSA Facilities** - The BOS order a Building Utilization Study of CCII to determine an estimated cost needed to bring the facility to a condition allowing for greater use by HSA. The availability of grant funds should be explored to identify any possible sources of additional revenue.
- 5) **FQHC-LA Designation** - The BOS continue to pursue FQHC-LA status; however, contingency plans should be developed identifying alternative sources of revenue to fund HSA in the event the County is unsuccessful in this effort.
- 6) **Pending Legislation** - The BOS pursue and support legislation to increase Medi-Cal reimbursements through passage of AB 959. However, neither this legislation nor the BOS' application to become a FQHC-LA guarantees success or an increase in funding.
- 7) **Skyrocketing Healthcare Cost** - The BOS endeavor to participate in organizations that actively attempt to resolve the high cost of health care specifically in Stanislaus County. Endorse and support legislation that encourages active competition among health care providers while maintaining levels of quality health care. Further, in an effort to contain health care costs within HSA, efforts should be made to encourage new businesses to provide a percentage of their payroll towards their employee's health care insurance.

(Recommendations for Management section is provided under that section.)

II. MANAGEMENT

The management systems used by the County are often muddled by inconsistent data, changes in reporting methods, incompatible computer systems, and a lack of timely reporting of significant trends in troubled departments such as HSA. This has led to hesitation by CEO and HSA management personnel in maintaining adequate cost control and appropriate reporting to the BOS.

STATEMENT OF FACTS

- 1) The BOS commissioned specialist consultants that provided them with studies and reports concerning HSA and the County's legal health care obligations. The BOS, at this time, have not entirely implemented the recommendations contained in the consultant reports.
- 2) With the 1997 closing of the hospital at CCII the BOS had to consider the *transitioning of services from a hospital to an ambulatory clinic*. They hired an expert consultant to assist HSA in that transition. In November 1998, the BOS received a Medical Clinic Operational Assessment report from The Camden Group. The Camden Group identified six themes for improvement.
 - Clarify the strategic direction of HSA through setting clear service and funding priorities. Based on these priorities, establish measurable performance targets and monitor performance regularly.
 - Create a responsive organization and functional structure based on the realities of ambulatory care today in order to create a viable cost structure. This requires focus on management leadership to improve accountability, efficiency, and *communication*.
 - Restructure financial services in order to strengthen HSA's ability to maximize revenue and provide management and staff with necessary financial information.
 - Enhance operational systems to maximize patient access and satisfaction.
 - Redesign workflow processes to enhance efficiency and financial performance.
 - Clarify the respective roles and responsibilities between HSA and the Scenic Faculty Medical Group ("SFMG.")

The report emphasized the following issues:

1. Identification of clear goals and related performance standards
2. Lack of financial information
3. Continuing losses
4. High general and administrative expenses
5. Billing and payment
6. Level of detail in management information
7. Lack of standardized policies and procedures

Other specific issues were identified concerning organizational structure and the use of a hospital based "Meditech" billing system in a clinic environment.

3) In March 2005, a second review by The Camden Group reported several improvements since 1997 but suggested the following areas for continued review:

- Aggressive renegotiation of the Blue Cross Contract to increase revenue
- HSA administrative overhead is higher than industry benchmarks
- Write-offs are taken too soon rather than pursuing aggressive collection activities
- The need to improve the collection rates from Medicare, insurance and other payers
- HSA salaries and benefits are higher than industry benchmarks.
- Review of the SFMG contract for performance improvements
- Duplication of efforts between SFMG and HSA
- HSA currently uses a hospital based billing system rather than one specifically designed for clinics, which leads to additional staff time and inefficiency.
- Need to determine the cost/benefit ratio for the Residency Program.

4) In the CGJ's review of the audited financial reports it was noticed that there were high levels of "Transfers Out" of HSA ranging from \$14.7 million (1998) to \$1.2 million (2000) with \$7.0 million in 2005 (See Table 1.) Transfers Out represents dollars that flow out of HSA. Upon closer review and discussion with County staff it was determined that a significant amount of these out-going dollars are for operating expenses.

5) Although the Camden Group's two reports were referenced in the Plan, under sworn testimony it was determined that they were not asked to review and comment on the effectiveness of the Plan.

6) California Government Code Section 29126.2 provides for the Auditor to review and issue financial reports and recommendations.

FINDINGS

Valid Management Data

The County uses two data processing systems to track expense and prepare reports for HSA. These systems do not readily communicate with each other and consequently more staff time is required to generate management data and reports resulting in inefficiency.

Multi-Year Budgeting

A multiple year budget plan would enable management to monitor the current year with feedback for impact on future years. The CGJ found no detailed multi-year budgeting by the County.

Contingency Planning

There is no back-up budget plan in the event that the Plan assumptions regarding FQHC-LA or CPE qualification fail to materialize.

Expense Classification

1. Government Accounting Principles are not strictly followed regarding the classification of certain HSA operating expenses. Under sworn testimony, the CGJ was informed that the State of California Accounting Standards and Procedures for Counties requires that "interfund transfers out are financial outflows to other funds of the government reporting entity that are not classified as services provided and used, reimbursements or loans."
2. During the April 7, 2006, Grand Jury Audit Exit Conference with the 2005 external auditor, Macias Gini & Company, the CGJ asked if certain costs in the HSA "Transfers Out" would best be classified as operating expenses and shown as such. The auditor answered that the costs would be more appropriately shown as operating expenses.

Administrative Costs

The HSA administrative costs were identified in both Camden Group reports as being higher than industry benchmarks.

Facility Planning and Sales

1. Although the County is in the process of analyzing the potential sale of the Medical Arts Building (MAB) there is not a study being done to reduce the costs of the clinics operation through further consolidation as recommended in the Camden report.
2. There is no facility cost analysis for the sale and replacement of County facilities.

3. The proposed facilities relocation plan relies on a decision to close the MAB in preparation for a sale. The Women's Health and High Risk Ob Gyn services are to be relocated to the McHenry Clinic while Pediatrics is to be relocated to CCII. However, as a secondary goal, staff proposes to close CCII. The MAB will be vacated, but at the same time is used as a fall back position to accommodate the Specialty Clinics and Urgent Care should CCII close. Furthermore, in the proposal to relocate Pediatrics to CCII, it is assumed that the Family Practice Building would be available even though the larger CCII building may be closed. The plan is summarized on Table 2.
4. Ancillary Services (Laboratory, Radiology, Pharmacy, and Rehabilitative Services) is currently located at CCII. The plan suggests that some of the Ancillary Service Clinics be relocated to CCII Family Practice Clinic building after it is vacant. However, if the Family Practice Clinic and the Residency Program are moved to Paradise, it would follow that the Ancillary Services would also move to Paradise to keep associated services near the patients and providers.
5. It appears that the objective of the plan is to move HSA operations out of MAB and CCII. Most operations would be moved to the Paradise Medical Office where additional leased space is required. The annual lease cost of the Paradise Medical Office is \$521,412 or \$1.60/square foot for the existing lease.

Table 2

Health Service Agency Facility Plan

	Practice	Current Location	New Location	Notes
1	Family Practice Clinic	CC2	Paradise	Remodel
2	Residency Program	CC2	Paradise	Remodel
3	Family Practice	Paradise	NC	
4	Family Planning	Paradise	NC	
5	Primary Medical Care	Paradise	NC	
6	Woman's Health	MAB	McHenry	To vacate MAB
7	High Risk Ob Gyn	MAB	McHenry	To vacate MAB
8	Behavioral Health	Paradise	Paradise+	Additional leased space
9	Pediatrics	MAB	CC2	Family Practice Building If CC2 closed then MAB
10	Women, Infants, & Children	Paradise	Safety Center	
11	Library	Paradise	Paradise+	Additional leased space
12	AMR	Paradise	Paradise+	Additional leased space
13	Specialty Clinics	CC2	NC	If CC2 is closed then MAB
14	Urgent Care	CC2	NC	If CC2 is closed then MAB
15	Community Services Agency	Paradise	Paradise+	Additional leased space

Notes:

1. Source: November 15, 2005, Proposed Facilities Plan for the Health Services Agency Clinics
2. CCII = County Center II
3. MAB = Medical Arts Building
4. Paradise+ = Additional leased space at the current Paradise Road location
5. NC = No change in location

BOS/Staff Communications

The Community Health Advisory Committee was established to focus on health issues as a result of the closing of the County hospital. Subsequently, the Health Executive Committee (HEC) was established and the former committee discontinued in 2001. Membership on the HEC includes two members of the BOS. The Committee met five times in 2005 to discuss HSA and other matters. Review of the Committee minutes finds that there was little if any discussion of HSA's ongoing financial performance, which should have been of primary importance.

Information Technology Systems

1. The County's Report to Management for the Fiscal Year Ended June 30, 2005, identified several issues that caused them to recommend a centralized Information Technology Systems (ITS) operation. The external auditor recommends that there be a... "County-wide IT administrative policies and procedures governing system and application security protection of IT assets, and system and application change management."

2. County staff has started a "Business Technology Strategy" review. The preliminary documentation indicates seven goals. Included as goal number three is a reference to "... standardization in *approaches* to Information Technology ...". Currently, there is no goal to *standardize* the County's information technology systems.

RECOMMENDATIONS

1. Valid Management Data - The BOS should establish a common standard for information systems that will easily provide for more frequent reporting of financial and management performance. It should also reduce the cost and complexity caused by operating and maintaining multiple types of information systems.

2. Multi-Year Budgeting - The BOS shall direct that a three-year HSA budget plan be prepared in sufficient detail so that management can be involved in monitoring department performance and making corrections when necessary.

3. Contingency Planning - Successful designation of all or a part of HSA as a FQHC-LA is not guaranteed, and neither is the enactment of advantageous state legislation. The BOS shall establish a contingency plan with specific actions to be taken in 2006/07 aimed at reducing real costs now rather than rely entirely on efficiency improvements to achieve a balanced budget.

4. Expense Classification - Management review of financial data is essential to understanding trends in operating departments. The County CEO shall review and insure that all operating costs are correctly identified and categorized as such, rather than "transfers out."

5. Administrative Costs - The Camden Group identified administrative costs as being excessive compared to industry benchmarks. The County Chief Executive Officer should undertake a management audit of HSA to determine the effectiveness of management structure and its costs. A review of HSA management structure should be undertaken for its appropriateness to a clinic operation.

6. Facility Planning and Sales - The County shall explore further clinic consolidation focusing on the outlying facilities. The BOS shall order an engineering/economic facility study to determine the economics of remodeling and upgrading County Center II for the purpose of clinic consolidation and ancillary services at this location and avoid additional, expensive, long-term leases.

7. BOS/Staff Communications - The Auditor/Controller should issue independent, public reports and recommendations to the BOS concerning any County department that is experiencing or is projected to incur deficits. These reports and recommendations shall be done in a timely fashion to allow management to take aggressive action necessary to insure a balanced budget.

The CEO shall provide monthly financial oversight reports to the BOS for County departments that are experiencing deficits. HSA should provide information or data directly to the BOS or through the Health Executive Committee. Elected officials should provide greater proactive oversight, guidance and direction.

8. Information Technology Systems - The BOS should establish specific policy for uniform, countywide implementation of standardized ITS. The policy should be focused on bringing the separate, splintered implementation into a uniform system over time.

(Recommendations for Funding section is provided under that section.)

APPENDIX 1

Interviews Conducted

1. September 29, 2005 Stanislaus County Chief Executive Officer
2. October 5, 2005 Stanislaus County Managing Director, Health Services Agency
3. November 28, 2005 Stanislaus County Manager III – Auditor Controller
4. November 28, 2005 Chief Executive Officer, Golden Valley Health Center
5. December 7, 2005 Member of Stanislaus County Board of Supervisor
6. December 9, 2005 Stanislaus County Chief Financial Officer, Health Services Agency
7. December 15, 2005 Past Hospital Director
8. December 15, 2005 Stanislaus County Chief Financial Officer, Health Services Agency
9. January 10, 2006 Stanislaus County Deputy County Counsel
10. January 30, 2006 Stanislaus County Treasurer/Tax Collector
11. February 2, 2006 Stanislaus County Assistant Executive Officer
12. February 8, 2006 Stanislaus County Auditor/Controller
13. February 10, 2006 Stanislaus County Assistant Executive Officer
14. February 16, 2006 Stanislaus County Auditor/Controller
15. March 1, 2006 Stanislaus County Assistant Executive Officer
16. March 22, 2006 Stanislaus County Auditor/Controller
17. April 24, 2006 Stanislaus County Interim Managing Director, Health Services Agency

APPENDIX 2

Comparison of Adjacent County Health Plans

	Merced	Alameda																
1. Compliance w/ Govt. Code 17000	a. Medical Assistance Program MAP (Adults): Contracts with Mercy Medical Center (Catholic Health Care West) b. Child Health and Disability Prevention (Children) pays for follow up services on a claims-made basis. c. Correctional and Juvenile Detention Services: Contracts w/California Forensic Medical Group and paid by Sheriff and Probation out of General Fund.	The County has 5 Medical Centers and 28 Community Based Organizations, which provide indigent care through contracts. The Medical Centers are operated as separate entities such as the Alameda County Medical Center.																
2. Org Chart	Three Directors-HSA, Mental Health and Public Health.	Under the HSA there are 4 Departments: Admin. and Indigent Care, Behavioral Health, Public Health, and Environmental Health.																
3. Annual Financials-Program Expenses	<table border="0"> <tr> <td></td> <td align="center">2003</td> <td align="center">2004</td> <td align="center">2005</td> </tr> <tr> <td>First Five</td> <td align="right">\$2,924,475</td> <td align="right">\$3,631,801</td> <td align="right">\$4,483,650</td> </tr> <tr> <td>MAP</td> <td align="right">\$5,044,866</td> <td align="right">\$4,455,289</td> <td align="right">\$1,652,485</td> </tr> <tr> <td>Indigent</td> <td align="right">\$806,953</td> <td align="right">\$331,294</td> <td align="right">\$285,747</td> </tr> </table>		2003	2004	2005	First Five	\$2,924,475	\$3,631,801	\$4,483,650	MAP	\$5,044,866	\$4,455,289	\$1,652,485	Indigent	\$806,953	\$331,294	\$285,747	2004/05 Health Services \$21,396,000 Measure A = ½ cent Sales Tax
	2003	2004	2005															
First Five	\$2,924,475	\$3,631,801	\$4,483,650															
MAP	\$5,044,866	\$4,455,289	\$1,652,485															
Indigent	\$806,953	\$331,294	\$285,747															
4. Deficit Program	Merced has not had a deficit program.	No deficit Financing																
5. 2005/06 Budget	First Five – Tobacco Tax - \$5,759,342 MAP – CHIP, CHDP, JAMS - \$5,344,189	2005/06 Budget (Millions) Indigent Care – \$68.3 Behavioral Health – 22.9 Criminal Justice – 2.7 Public Health - .9 EMS - 5.2 Total - 100.0 Net County Share \$33.5																
6. Number of Patients	2004/05 Unique Patient Visits – 11,256 MAP – 60	FY 2004-05 Unduplicated Indigent – 53,655																
7. Budget and Monitoring	Budget Process: Proposed Budget - June Final Budget - August Mid-Year Report – January/February Quarterly Auditor Reports	Monthly meetings of the Board's Health Care Services Committee. Quarterly Department Reports sent to CAO for review.																
8. Effectiveness	Yes- March 2002	Ongoing Internal Review																

APPENDIX 3

Documents Used In This Report

1. California Welfare and Institutions Code section 17000 – 170030.
2. California Constitution Article 16, Public Finance.
3. California Government Code section 29000-29009.
4. "State of California Accounting Standards and Procedures" - County Budget Act.
5. California Government Code section 25261.
6. "Background and Financial Policies, Budget Process," Stanislaus County.
7. "Health Services Agency Strategic Plan Report," 2005.
8. "Health Services Agency Clinic and Ancillary Services Three Year Projections," November 29, 2005.
9. "Tobacco Settlement at a Glance," National Association of Attorney Generals.
10. Agenda Item – "Approval to proceed with Tobacco Settlement Asset-backed Bonds," BOS, June 6, 2000.
11. Agenda Item – "Final Budgets including an explanation of the Series 2004 Stanislaus County Note," BOS, September 14, 2004.
12. "County of Stanislaus Series 2005 A Stanislaus County Note."
13. Agenda Item - "Refunding, Refinancing of the 2002 Tobacco Settlement Bonds", BOS, January 17, 2006.
14. "Tobacco Securitization Summary."
15. Agenda Item – "Acceptance of a Health Services Agency – Strategic Assessment Report and Related Actions," BOS, March 22, 2005.
16. Agenda Item – "Proposed Facility Plan for the Health Services Agency Clinics and Related Services," BOS, November 15, 2005.
17. Agenda Item – "Approval of Health Services Agency Facility Plan," BOS, December 6, 2005.
18. "FQHC Look-Alike Program Summary," Bureau of Primary Health Care.
19. "RFP No.05-49-KJM Federally Qualified Health Center Look-Alike Consultant," BOS, November 28, 2005.
20. California Government Code section 29126.2 – The Auditor may issue reports and make recommendations.
21. California Assembly Bill 959, Assembly Member Frommer, February 18, 2005.
22. "Health Service Agency of Stanislaus County, Modesto, California, Medical Clinic Operational Assessment," The Camden Group, November 25, 1998.
23. "Health Services Agency of Stanislaus County, Modesto, CA, Strategic Assessment," The Camden Group, March 17, 2005.
24. Definition of Transfers-Out, Health Services Agency - Operating Transfers In/Out, HSA Allocation, FY2001 through FY2005 Clinic and Ancillary Operating Transfers-Out Detail, County Auditor.
25. "April 7, 2006 Grand Jury Audit Exit Conference Meeting Minutes."
26. "FY03/04 Benchmarking Report," The Camden Group.
27. 2005 "Health Executive Committee Meeting Minutes."

28. "Business Technology Strategy Power Point Summary" and supporting documents, County staff.
 29. "County of Stanislaus California, Report to Management For the Fiscal year Ended June 30, 2005," Macias, Gini and Company, LLP.
 30. "Patient Volumes for the Last 10 Years and Projected Budget for 2006 through 2008," November 16, 2005.
 31. "Appointment of Interim Health Services Agency Managing Director," CEO, January 24, 2006.
 32. "Mid-Year Financial Report 2005/06," February 28, 2006.
 33. "Health Services Agency Organization Chart," January 12, 2006.
 34. "Financial Statements and Report of Independent Certified Public Accountants, Stanislaus Medical Center Enterprise Fund," June 30, 1993 through June 30, 2005.
 35. Agenda Item – "Discontinuing the Community Health Advisory Committee in favor of the Health Executive Committee," September 23, 2003.
 36. "The Third Annual IHSP Hospital 200-The Nation's Most - and Least – Expensive Hospitals, Fiscal Year 2003/2004," Institute For Health and Socio-Economic Policy, December 13, 2005.
http://www.calnurses.org/research/pdfs/IHSP_Hospital_200_2005.pdf.
 37. "Medicare Disproportionate Share (DSH) Payments," Lynn Davis Boyle, June 5, 2006.
<http://www.aamc.org/advocacy/library/teachosp/hosp0003.htm>.
 38. Case 03-12-C, Civil Grand Jury Final Report 2001/2002, June 2002.
 39. Case 03-23, Civil Grand Jury Final Report 2002/2003, June 2003.
- "Budget Unit Financing Use Detail, Health Services Agency" – June 30, 1997 though June 30, 2006.
 - "Proposed and Final Budget for 2004-2005," Stanislaus County.
 - "2005-2006 Final Budget," Stanislaus County.
 - "Stanislaus County Health Services Agency, Modesto California Billing Department Review and Update," The Camden Group, May 23, 2000.

**Stanislaus County Commissary
Grand Jury Case # 06-30
2005-2006**

SUMMARY

The Stanislaus County Civil Grand Jury (CGJ) received a complaint that alleged unreasonable pricing of commissary items for sale to inmates incarcerated in Stanislaus County correctional facilities. The complaint further stated that the "Stanislaus County Sheriff's Department and the Commissary Support Services are taking advantage of inmates and their families in the form of "price gouging."

After reviewing various county policies and procedures, interviewing the Jail Detail Commander/Member of the Inmate Welfare Fund Committee (IWFC) and considering relevant sections of the California Penal Code, the CGJ found that the complaint did not have merit.

- (1) Stanislaus County commissary prices are established in accordance with county policy and the California Penal Code, section 4025 which states in part that ". . . the sale prices of the articles offered for sale at the store shall be fixed by the sheriff." The CGJ found that the commissary rates are established by the Custodial Account Clerk (CAC) who researches, reviews and compares bids for commissary items,¹ subject to approval by the IWFC.²
- (2) The CGJ found that the Stanislaus County commissary prices are reasonably comparable to San Joaquin County Jail (SJCJ), a correctional facility of similar size and nearby geographic location. The CGJ also compared policies, procedures and pricing with Deuel Vocational Institute (DVI), a state correctional institution. The CGJ found that due to the size and buying power of DVI, its prices are generally lower. The CGJ found that the cost of commissary items in Stanislaus County is reflected by the needs of the inmate population. The prices are not unreasonable.
- (3) Commissary profits are distributed in accordance with California Penal Code, section 4025 which states in part that ". . . Any profit shall be deposited in an inmate welfare fund (IWF) to be kept in the treasury of the county. The money and property deposited in the inmate welfare fund shall be expended by the sheriff primarily for the benefit of the inmates confined in the jail." Based on documentation and sworn testimony, the CGJ found that profits generated from commissary sales are being utilized for the benefit of the inmates.

¹ Adult Detention Division Manual (Manual), Section 7 p. 24.

² Id. at 27.

INTRODUCTION

The CGJ received a complaint that alleges commissary items for sale in correctional facilities in Stanislaus County are higher priced than commissary items sold at the California Department of Corrections (CDC) Canteen Services [a.k.a. Deuel Vocational Institute]. The complaint alleges that the Stanislaus County Sheriff's Department and Commissary Support Services are taking advantage of the inmates and their families in the form of "price gouging."

The purpose of the CGJ investigation was to determine:

- 1) How commissary prices in Stanislaus County correctional facilities are established.
- 2) If those commissary prices are reasonable by making a comparison to both San Joaquin County Jail (county) and Deuel Vocational Institute (state) commissary prices.
- 3) Whether commissary profits are distributed according to the law and county policy.

METHOD OF INVESTIGATION

The CGJ reviewed the following documents:

Stanislaus County:

- Auditor-Controller Policy And Procedure [purchasing guidelines]
- Adult Detention Division Policy Manual (Manual) for Inmate Welfare Fund-Commissary (pages 121-122 and 124-127)
- Commissary Rules and Regulations (11/05)
- Commissary Delivery Schedule
- Contract Overview Process
- February 2006 Inmate Welfare Expenditure and Revenue Statement
- Inmate Commissary [order form/price list]
- Inmate Welfare Budget
- Jail Commissary Budget
- Refocus Budget

San Joaquin County:

- Commissary Distribution Policy
- Commissary Pricing List
- Commissary Procedure Manual
- Commissary Store Pricing Procedures
- Pricing Procedure
- Vendor Selection and Purchases

Deuel Vocational Institute (DVI):

- General Population Canteen Price List (January 2006)
- Inmate Welfare Fund Monthly Statements (April 2006)
- Mainline Canteen List (March 2006)
- Monthly Canteen Report (March to May 2006)
- Preliminary Inmate Services Allotments for the Fiscal Year 2005/06

California Penal Code:

- Section 4025 authorizes the Sheriff of each county to operate and set prices for a commissary.
- Section 5005 authorizes the State Department of Corrections to operate a canteen at any state prison and the authority for the Director to set prices and select items for sale.
- Section 5006 establishes an inmate welfare fund/inmate canteen fund for the purpose of distributing profits for the benefit of the inmates.

The CGJ interviewed the Jail Detail Commander from the Stanislaus County Sheriff's Department /Member of the Inmate Welfare Fund Committee (IWFC).

The CGJ toured the following correctional facilities in Stanislaus County:

- Downtown Men's Jail
- Safety Center
- Honor Farm
- Juvenile Hall

STATEMENT OF FACTS

(1) According to the Manual, regarding the Inmate Welfare Fund-Commissary, the Custodial Account Clerk (CAC) duties are as follows:

- Act as Committee's Secretary
- Maintain the Inmate Welfare Fund Capital equipment inventory
- Maintain on file copies of all inmate purchase orders charged to the IWF
- Oversee all of the Jail Store Purchases³

In addition, the Manual requires that the IWF "moneys [sic] will be expended for the benefit, education and welfare of the inmate."

³ Id. at 25.

(2) California Penal Code, section 4025 states as follows:

(a) The sheriff of each county may establish, maintain and operate a store in connection with the county jail and for this purpose may . . . sell these goods, articles and supplies for cash to inmates in the jail.

(b) The sale prices of the articles offered for sale at the store shall be fixed by the sheriff. Any profit shall be deposited in an inmate welfare fund to be kept in the treasury of the county.

(e) The money and property deposited in the inmate welfare fund shall be expended by the sheriff primarily for the benefit, education, and welfare of the inmates within the jail. Any funds that are not needed for the welfare of inmates may be expended for the maintenance of the county facilities.

(3) California Penal Code, section 5005 states in part as follows:

The Department may maintain a canteen at any prison or institution under its jurisdiction for the sale to persons confined therein . . . the Director shall specify what commodities shall be sold in the canteen. The sale prices of the articles offered for sale shall be fixed by the director at the amounts that will, as far as possible, render each canteen self-supporting.

(4) California Penal Code, section 5006 states in part as follows:

All moneys [sic] now held for the benefit of prisoners . . . shall be deposited in the Inmate Welfare Fund of the Department of Corrections in the State Treasury which fund is hereby created.

FINDINGS

The CGJ found the following:

- 1) Stanislaus County, San Joaquin County and Deuel Vocational Institute have established a commissary/canteen consistent with the California Penal code.
- 2) Prices for commissary/canteen items are set by the Sheriff / Director of the correctional facility.

3) Prices of commissary/canteen items are set according to the particular county or state policy. These policies and procedures differ between (1) Stanislaus County and San Joaquin County, and (2) Stanislaus County and DVI.

- In Stanislaus County, the Custodial Account Clerk (CAC) oversees all of the jail store purchases⁴ and “prices charged in the store will be established by the CAC and approved by the IWFC. Adjustments will be made periodically to keep pace with inflation.”⁵ In SJCJ, the Material Specialist is responsible for pricing items which may be priced at 40% above cost.⁶ While there is no percentage above cost stated in Stanislaus county policy and procedures, there is no significant difference in the process of pricing commissary items between this county and SJCJ. The CGJ found that there is also no significant difference between the prices of commissary items in the two counties, which are of similar size and within the same geographic region.

- When comparing Stanislaus County commissary price lists and procedures to those of DVI, overall DVI procedures result in prices that are set lower. The DVI Prison Canteen Managers (PCMs) maintain an overall 65% average mark-up but may still have the option to set different mark-ups on non-contract selling price items.⁷ Although there are minimal differences in pricing DVI canteen items versus county commissary items, DVI canteen items were found to be priced lower than Stanislaus County commissary items.

4) The list of commissary items differ from county to county, county to state, and facility to facility.

5) Both state and county correctional facilities operate an IWF.

CONCLUSION

1) According to sworn testimony, state correctional facilities like DVI have greater buying power than county facilities and therefore are able to set canteen prices lower than commissary prices.

⁴ Id.

⁵ Id. at p. 27.

⁶ SJCJ Pricing Procedure, dated 07/08/05.

⁷ Preliminary Inmate Services Allotments for the Fiscal Year 2005/06 at p. 1.

- 2) According to sworn testimony, commissary prices and commissary item availability may be impacted by factors such as the prison population, the cultural diversity of the inmates and the geographic location of the facility. After considering the price differences between items sold in Stanislaus County correctional facilities and items sold in DVI, the CGJ found that the Stanislaus County commissary prices were not unreasonable.
- 3) According to sworn testimony with respect to the IWF, and review of budgets and revenue statements,⁵ the CGJ found that the Stanislaus County Sheriff's Department is in compliance with state law. Stanislaus County has utilized IWF money to maintain commissary operations and to provide inmate programs such as vocational, educational and rehabilitation programs.

RECOMMENDATIONS

The CGJ has no recommendations.

⁵ In reference to the following: February 2006 Inmate Welfare Expenditure and Revenue Statement; Inmate Welfare Budget; Jail Commissary Budget; and the Refocus Budget.

**Stanislaus County Men's Jail Medical Care
Grand Jury Case # 06-21
2005-2006**

SUMMARY

The Stanislaus County Civil Grand Jury (CGJ) received a complaint from a citizen who was incarcerated for three days in the Stanislaus County Downtown Men's Jail (jail). The complainant alleged that jail medical staff and jail personnel denied him his prescribed medication and other medical treatment.

After interviewing witnesses and reviewing relevant policies, procedures and medical records, the CGJ found that the complainant was denied his personal medication and the medical staff and jail personnel did not provide adequate medical follow-up due in part to the lack of communication between medical staff, the complainant's healthcare providers and law enforcement personnel.

The Stanislaus County Sheriff's Department and California Forensic Medical Group (CFMG) who serves as jail medical staff (1) shall revise existing policies and procedures; and (2) develop new policies and procedures whereby medical staff and jail personnel will communicate effectively and in a timely manner regarding an inmate's medical condition.

To ensure quality and humane healthcare is provided to inmates, the CGJ recommends that the new policies and procedures must include the following:

- 1) The arresting officer shall immediately report to the booking officer any known medical condition and/or known medical treatment the inmate received prior to his arrest. The booking officer shall then report this information to the receiving officer who shall then report or communicate this medical information directly to medical staff to avoid any gaps in appropriate medical care and treatment provided to the inmate.
- 2) The current jail medical screening form shall be revised to include a question about whether the arrestee received *any* medical treatment before being arrested or booked in jail. The current policy is inadequate in that it requires reporting information only when the inmate has received medical treatment at an emergency center (e.g. hospital.) This revision to current policy would provide medical staff with a more comprehensive and accurate inmate medical history to effectively treat the inmate.

- 3) Jail policy shall include a directive whereby all of the inmate's records from arrest to booking be made available and reviewed by medical staff after the jail medical screening form is completed and the clerk/officer has determined that further medical evaluation is necessary by medical staff.
- 4) Jail personnel shall follow current policy that states, "prescribed medications belonging to an arrestee will immediately be turned over to medical staff unless otherwise directed by medical personnel".¹
- 5) The Sheriff's Department and CFMG should jointly establish a complaint process whereby inmates who have a complaint regarding their medical treatment while incarcerated may complain to a supervising officer or supervising nurse to investigate and address the inmate's medical concerns immediately.

INTRODUCTION

A citizen complaint was received regarding inadequate medical treatment while incarcerated in the men's jail. The complainant contended that during his three-day incarceration, he was denied his prescribed medication that he brought to jail with him and denied appropriate medical assistance and care during the time he was in jail. Medical records indicated that the complainant was a retired 66 year old man with multiple serious health conditions which included: diabetes type II, hypertension, hyperlipidemia, and coronary artery disease with post Percutaneous Transluminal Coronary Angioplasty (PTCA) with five stents in place. With no prior arrest record, this was the complainant's first experience in jail. A domestic dispute was the basis of his arrest. When the complainant was booked in jail, the booking/receiving officer took possession of the complainant's nitroglycerin tablets and placed them in jail storage. The complainant claims that when he requested his personal nitroglycerin tablets, he was denied. Despite complaining of chest pains and requesting medical assistance from nursing staff, the complainant claims that he did not receive necessary medical treatment in a timely manner.

The purpose of the CGJ investigation was to determine:

- 1) The policies and procedures currently in place regarding medical treatment for inmates incarcerated in jail.
- 2) If the jail personnel and medical staff complied with these policies and procedures.
- 3) Whether the existing policies and procedures were adequate.
- 4) Other findings.

¹ See, Men's Jail Procedure Manual ("Jail Manual") at page 10.

Relevant Policies and Procedures

- *Adult Detention Division Policy Manual (Adult Manual)* states as follows:

RECEIVING SCREENING – The Sheriff of Stanislaus County will provide comprehensive health care services by qualified personnel in order to protect the health and well being of all persons detained or incarcerated within the detention facilities. Health screening is a system of structured inquiry and observation designed to:

- Prevent newly arrived persons who pose a health or safety threat to themselves or others from admittance to the general population.
 - Rapidly transport newly admitted persons to needed health care.²
- *Stanislaus County Adult Facility Policy and Procedure Manual (County Manual)* regarding the subject of Pre-Detention Medical Evaluation/Intake Health Screening Policy states as follows:

It is the policy of the jail medical program that no arrestee who displays obvious signs of trauma or acute illness or who reports a history of recent trauma or whose circumstances of arrest suggest the probability of trauma be incarcerated without first undergoing medical evaluation.³

In application of the above policy, the County Manual also states that it is the responsibility of the arresting officer to report any evidence of trauma or acute illness to the reception officer and the reception officer to observe the arrestee for any visible signs of trauma and to question the arresting officer concerning any recent history or trauma.

The policy also states that the Reception Officer shall ask the arrestee the following questions:

1. Is there any trauma that may have been sustained during the arrest process?
2. Is there any other acute illness or injury in the past 24 hours?
3. Have you been seen by a private doctor or in an emergency room in the past 24 hours?
4. Have you refused medical treatment from anyone in the past 24 hours?⁴

² Adult Detention Division Policy Manual (“Adult Detention Manual”) at page 42.

³ Stanislaus County Adult Facility Policy & Procedure Manual (“County Manual”) at page 203. Authority Reference: CCR Title 15, Section 1207; IMQ Standard #302 (E).

⁴ Id. at 204.

- According to adult facility procedure, "if the arrestee is taken to an emergency treatment center for medical evaluation and clearance, prior to booking, documented evidence of such evaluation, treatment and clearance must be returned to the jail so as to become part of that inmate's medical record."⁵
- *Stanislaus County Adult Detention Division Medical Screening* form provides that "if the answer to any of the questions indicated is yes, medical [staff] must be called and respond to booking to evaluate inmate".⁶
- According to the Jail Manual when officers secure property of an arrestee, the procedure will include but is not limited to, taking custody of all personal effects and personal property of the arrestee.
 1. Prescribed medications belonging to an arrestee will immediately be turned over to medical staff [emphasis added] unless otherwise directed by medical personnel.
 2. Prescribed medications belonging to an arrestee to be cite [sic] released will normally be placed in the arrestee's property.
 3. Medical staff must give approval prior to allowing inmates to consume/take medication.⁷

METHOD OF INVESTIGATION

Members of the CGJ toured the following correctional facilities in Stanislaus County:

- Downtown Men's Jail
- Safety Center
- Honor Farm
- Juvenile Hall

The CGJ interviewed the following witnesses:

- Complainant
- California Forensic Medical Group, Inc. (CFMG) Registered Nurse, Regional Program Manager for Amador, Calaveras, Tuolumne and Stanislaus County Jail.

The CGJ reviewed the following documents:

- Stanislaus County Adult Facility Policy and Procedure Manual and Pre-Detention Medical Evaluation/Intake Health Screening Policy (pages 203-205).
- Stanislaus County Adult Detention Division Policy Manual (pages 39-45).
- Stanislaus County Adult Detention Division Medical Screening form (JAIL 171L)
- Men's Jail Procedure Manual (pages 1-22).

⁵ Id. at 205.

⁶ See, Stanislaus County Adult Detention Division Medical Screening form # JAIL 171L.

⁷ Jail Manual at page 10.

- Statistics on Deaths that Occurred in Stanislaus County Correctional Facilities from 2000-2005.
- Complainant's private medical records.
- Complainant's jail records: arrest, booking, and medical records.
- Complainant's Emergency Medical Treatment records
- California Forensic Medical Group, Inc. (CFMG) policy records and forms.

FINDINGS

1) All relevant policies and procedures were not followed in providing complainant with necessary and appropriate medical treatment.

- According to the County Manual regarding the subject of "Pre-Detention Medical Evaluation/Intake Health Screening Policy", the arresting officer should have communicated the fact that the complainant had received emergency medical treatment from an emergency medical technician prior to arrest. In this case, the arresting officer's report was filed the next day indicating evidence of trauma or acute illness. After reviewing booking records, no evidence could be found to confirm that the reception officer was made aware of this information so that he/she could then advise medical personnel of the complainant's emergency medical treatment prior to booking in the jail.
- The complainant did not receive medical treatment in a hospital although jail policy requires that this medical information be transferred and included in an inmate's medical record. However, the complainant did receive emergency medical treatment from an emergency medical technician and the arresting officer was aware of this treatment. Based upon a comprehensive review of all of the complainant's jail records, no evidence was found to confirm the booking officer was made aware of this treatment upon receiving the complainant in the jail. The jail policy only requires documented evidence of medical treatment be returned to jail to become part of inmate's medical record if the arrestee is taken to an emergency treatment center (e.g. hospital.) However, the policy does not include reporting medical treatment if the inmate received treatment outside of a hospital (e.g. ambulance treatment.)⁸
- CFMG medical staff should have checked complainant's blood pressure more frequently. Medical records indicate that the complainant had a diagnosis of hypertension (high blood pressure.) According to sworn testimony from the CFMG Regional Registered Nurse, high blood pressure should be monitored closely. In fact, she testified that good medical practice is to check blood pressure every four hours but current practice and procedure in the jail is to check the patient every 12 hours. In this case, jail medical records indicate that the complainant's blood pressure was only checked approximately every 24

⁸ Reference to County Manual at page 205.

hours. Although the medical screening form was completed correctly in this case, the timeliness of medical follow-up was questionable at best.

- Jail personnel failed to follow the Jail Manual that provides when securing property of an arrestee, “prescribed medications belonging to an arrestee will immediately be turned over to medical staff unless otherwise directed by medical personnel.”⁹ Receiving jail personnel did not follow policy and instead stored the complainant’s nitroglycerin medication without handing over the medication directly to medical staff who could have then consulted with the inmate’s personal doctor about the inmate’s medical needs or allowed the inmate to carry some of his medications with him.
- Although policy specifically states that “medical staff must give approval prior to allowing inmates to consume/take medication”,¹⁰ this approval could not have happened in this case because medical staff was never made aware that the complainant had nitroglycerin medication or that it was in jail storage with the complainant’s other personal property. Although the medical staff eventually administered nitroglycerin to the complainant, the undue delay could have been avoided had jail staff followed procedure.

2) The existing jail and medical policies and procedures are not adequate due to the apparent lack of communication and documentation in providing medical treatment to the complainant.

- Under sworn testimony, the CGJ found that CFMG medical staff did not receive copies of the arresting officer’s report. As a result, CFMG staff was not informed of the complainant’s prior emergency medical treatment or the complainant’s prescribed medication he carried on his person during the booking process. There is no evidence of timely and direct communication between the arresting officer, booking officer and treating medical staff in order to promptly advise medical staff of the inmate’s subsequent emergency medical treatment or the nitroglycerin medication he carried when he was arrested.
- Based on review of both jail records and CFMG medical records, there was no evidence of written or verbal communication between the emergency medical technicians who treated the complainant prior to incarceration and CFMG medical staff in order to provide consistent and appropriate follow-up medical treatment.
- Based on review of CFMG medical records and the complainant’s personal medical records, there is no evidence of written or verbal communication between treating medical staff and complainant’s primary care physician.

⁹ Jail Manual at page 10.

¹⁰ Id at 10.

- Based on review of the complainant's booking records, there is no evidence that the Intake Property Form completed by the receiving officer was made available to medical staff to advise medical staff of complainant's nitroglycerin medication so that they could provide medical treatment accordingly. This information would have also provided the opportunity for medical staff to comply with jail policy to approve that the complainant have access to his own prescribed medication.¹¹
- Jail personnel complied with county policy and jail policy by completing the pre-screening form for additional information and appropriately referred the inmate to the medical department. However, the form is inadequate because it does not prompt the question that inquires whether the inmate has received *any* medical treatment in the last 24 hours. If this question were included in the screening form, when CFMG medical staff reviewed the referral form, they would be immediately aware of potentially critical medical information to provide appropriate and timely medical treatment to the inmate.

3) Other Findings: Lack of Quality Medical Treatment

- Stanislaus County contracts with CFMG to provide all medical care for all correctional facilities within Stanislaus County. CFMG is responsible for training, supervising and managing its entire medical staff. CFMG medical staff are required to follow their own company policies and procedures; they are also required to follow all county and jail policies and procedures.
- CFMG medical staff and the CFMG doctor should have followed-up with their patient (complainant) in a timely manner. Despite medical necessity noted in the records and the complainant's known chronic medical conditions recorded by medical staff, medical records indicated that the CFMG medical doctor did not conduct a physical examination of the patient. Instead, the CFMG doctor conducted only a file review over 24 hours after the complainant was booked in jail. While the CFMG Physical Assessment form was completed with notations showing a blood pressure of 240/120, forehead and scalp trauma, hypertension and noted his allergy to diabetic medication, the CFMG doctor did not conduct a physical examination or meet the complainant in person.
- According to the nurse's sworn testimony, a diabetic's blood sugar should be reviewed and monitored closely by medical staff. The complainant's medical jail records indicate that he was diabetic and noted minimal necessary medical treatment for this condition.

¹¹ Id.

- According to jail medical records and sworn testimony from both witnesses interviewed, the complainant received high blood pressure medications but over 24 hours after his arrest. Given the complainant's high blood pressure condition well documented in the medical records, and current blood pressure condition monitored in jail, the complainant's personal doctors should have been contacted to determine if blood pressure medication was medically necessary immediately.
- Within 2 days of being released from jail, as substantiated by medical records and emergency medical technician (EMT) records, complainant was transported via ambulance and hospitalized to treat an uncontrolled blood pressure condition. According to the complainant's medical records, his cardiologist stated that the complainant's unstable angina resulted from his lack of medical treatment while in jail (e.g. not taking his blood pressure medications appropriately.)
- According to sworn testimony, new inmates are not automatically placed on prescribed medications due to current circumstances (e.g. if they have used drugs or alcohol prior to arrest).
- According to CFMG policy and sworn testimony, patients who require nitroglycerin medication should carry at least 3 nitroglycerin pills on their person. In this case, according to booking records, the complainant's nitroglycerin pills were removed from his possession upon booking and locked with his personal property to be accessed upon release from jail. Although CFMG medical staff administered nitroglycerin to the complainant, they did so over 30 hours after his arrest, which was unnecessarily delayed and could have been avoided.
- According to sworn testimony, some CFMG nursing staff are insensitive to inmate/patient needs and do not listen to legitimate medical complaints or concerns.

RECOMMENDATIONS

Based upon the findings, the CGJ makes the following recommendations:

- 1) In order to avoid inconsistent or inadequate medical care and treatment for inmates incarcerated in the jail or other correctional facilities in Stanislaus County, the Sheriff's Department and CFMG shall revise existing policies and procedures and/or develop new policies and procedures. The purpose of these changes is to ensure medical staff and jail personnel communicate effectively and in a timely manner to provide quality health care for inmates incarcerated in Stanislaus County correctional facilities. This policy and procedure shall include the following:

- The arresting officer, upon arrival to jail, should report *any* known medical condition and/or known emergency medical treatment to booking officer/receiving officer who should then report/communicate this important medical information directly to medical staff to avoid any gaps in appropriate medical care and treatment provided to the inmate. The new procedure must consider the fact that written reports are not submitted typically on the same day of the arrest and since medical concerns require timely follow-up and treatment for the inmate, the arresting officer must report medical issues immediately.
- When the jail medical screening form is completed and the clerk/officer has determined that further medical evaluation is necessary by medical staff, jail policy shall make all of the inmate's records from arrest to booking available to medical staff, and to be reviewed by medical staff in a timely manner.
- The jail medical screening form (Jail Form 171L) shall include a question about whether *any* emergency medical treatment was received before arrest or prior to booking. The inquiry should not be limited to only to emergency center (e.g. hospital) treatment. This more complete medical history would aid medical staff in providing timely and appropriate medical care for inmates.
- Jail personnel shall not violate current jail procedure whereby medication must be delivered to medical to distribute to inmate as needed.
- The County and CFMG shall improve its medical screening process to include a procedure by which officers will document and advise medical staff of prescribed medication held in custody to ensure inmate's health is not compromised by withholding necessary prescribed medication.
- CFMG medical staff should address inmate/patient needs and listen to legitimate medical complaints or concerns. CFMG management should consider implementing sensitivity training to medical nursing staff to ensure both quality and humane medical care is provided to inmates in all of the Stanislaus County Correctional Facilities.
- In an effort to ensure quality medical treatment is provided to inmates in all of the Stanislaus County Correctional Facilities, the Sheriff's Department and CFMG medical staff should establish a complaint process whereby inmates who have a complaint regarding medical treatment may complain to a supervising officer or supervising nurse to investigate and address the inmate's medical concerns within a reasonable period of time.

Reference Materials



STANISLAUS COUNTY CIVIL GRAND JURY CITIZEN COMPLAINT FORM

Post Office Box 3387, Modesto, California 95354 . (209) 558-7766 . Fax (209) 558-8170

THIS COMPLAINT IS AGAINST:

Name/Title

Organization

Address

City, State, Zip Code

Telephone

DATE RECEIVED

GRAND JURY CASE NUMBER

COMMITTEE ASSIGNMENT

MY COMPLAINT AGAINST THE ABOVE IS:

OTHER PERSONS OR AGENCIES CONTACTED:

DESCRIBE THE ACTION YOU WANT THE GRAND JURY TO TAKE:

COMPLAINANT

Name

Address

City, State, Zip Code

Home/Work Phone

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

Signature

Date

ALL COMMUNICATIONS TO THE GRAND JURY ARE CONFIDENTIAL
(See back for instructions)

MISSION STATEMENT:

The primary function of the civil grand jury is to provide unbiased oversight and to investigate complaints from citizens about the operations of county and city government, school districts and special districts, as required by law.

The grand jury assures citizens that government is operating efficiently and in an ethical, honest manner. The grand jury investigates policies and procedures and makes recommendations to improve local governmental operations.

INVESTIGATIONS:

The civil grand jury conducts three types of investigations.

- **Mandatory investigations**--those that the California Penal Code requires the grand jury to undertake.
- **Discretionary investigations**--those over which the legislature has given the grand jury jurisdiction, but has stated it is not required.
- **Citizen complaints**--those complaints within the jurisdiction of the grand jury received from a citizen. The statutes preclude the grand jury from considering complaints on matters currently before the court, matters that are the subject of litigation, matters involving agencies located outside the county, matters involving privately held companies and matters involving the fiscal and administrative operations of the Superior Court.

ACCEPTANCE:

Anyone may ask the grand jury to investigate. Whether the jury chooses to investigate such a complaint is entirely in its discretion. Deciding factors include such things as determining if the complaint falls within the jurisdiction of the grand jury, if the facts warrant an investigation, whether the jury has sufficient time to conduct a proper investigation, and if a previous grand jury has already reviewed the topic of the complaint.

FINAL REPORTS:

The findings and recommendations of those complaints and issues the jury chooses to study are published in a final report. Reports are distributed to public officials and to the community at large through the media, public libraries and the Internet. Statutes require the entities reported on to respond.

CONFIDENTIALITY:

In all its proceedings and investigations the grand jury is sworn to maintain complete secrecy. The members of the grand jury apply the same objective standard of conduct and responsibility to all persons and entities, and are not influenced by sentiment, conjecture, sympathy, public feelings, passion, or prejudice.

TERM OF SERVICE:

The grand jury's term of service begins July 1st and ends June 30th of the following year.

PROCESS:

The grand jury will acknowledge receipt of your complaint. Mail the form to: **Stanislaus County Grand Jury, Post Office Box 3387, Modesto, California 95354.**

ACTION REQUESTED:

Please identify the specific problem and describe the circumstances. Present your complaint with all available evidence and submit copies of relevant documents. Attach additional pages if necessary.

HOW THE GRAND JURY PROCESSES A COMPLAINT

- All complaints should be submitted in writing and signed. There is a complaint form available for citizen use. Complaints are the property of the full grand jury. (See sample complaint form.)
- The grand jury may choose to examine or to disregard anonymous complaints.
- As soon as possible after a complaint is received, the foreperson will determine if the complaint is within the jurisdiction of the grand jury. If deemed acceptable, the complaint will be entered into the computer database and an office file and a case-tracking sheet prepared. The foreperson will then assign it to the appropriate committee. Each member of the grand jury will receive a synopsis of the new case printed from the database that will be distributed at the next full panel meeting. All members of the committee will receive a complete copy of the complaint.
- All complaints will be assigned a file number. The computer database and the office file will both reflect the same number. To keep track of the complaints for a particular fiscal year, the following numbering system was devised.

Example: 06-06-C. All complaints for the fiscal year 2005-2006 would be given a 06 number. The numbers following the year signify the sequential order in which that complaint was received. The letter(s) following the numbers designate the following:

C	Citizen
GJ	Grand jury initiated investigation
C.C.	Case closed

Example: 06-14-C. Fiscal year 2005-2006, 14th case received, from a citizen.

Example: 06-12-C.C. Fiscal year 2005-2006, 12th case received, case closed.

- All complaints are acknowledged in writing. The letter is signed by the foreperson and acknowledges receipt of the complaint. Each jury can prepare its own letter.
- The jurors to whom the case has been assigned investigate the complaint more thoroughly to determine whether it is legitimate, has substance, and is within the jurisdiction of the grand jury. During this preliminary investigation, the case is in **PHASE 0**. If all three concerns are answered affirmatively, the committee will recommend to the full panel to accept the case. If not, the case will be presented to the grand jury for a vote to reject it.

- If the case is closed due to lack of validity or jurisdiction then no report is written.
PHASE 1.
- Once the complaint has been judged worthy of investigation, the committee to whom it has been assigned will meet to determine how to conduct their investigation. The case has been accepted and is now in **PHASE 2.**
- The assigned committee will conduct all proceedings in the handling of the complaint. No other jury member should engage in activity regarding the complaint unless requested by the committee chairperson. Any jury member having information regarding aspects of the complaint or complainant should inform the chairperson. The committee chairperson will advise the foreperson of ongoing activities and review progress with the full panel at the regular meeting.
- The committee should consider interviewing the complainant(s) first. By interviewing the complainant, the committee can receive a more detailed explanation of the complaint and it allows the complainant to bring in additional documents supporting the allegations. The subject of the complaint should also be interviewed during the investigation. All witnesses interviewed will be sworn to tell the whole truth and will be admonished not to reveal to anyone what he or she or the grand jury said during the interview.
- Part of the investigation may involve reading or reviewing documents. Examples are minutes of meetings, agendas, certificates, licenses and court orders. Jurors are encouraged to visit the office, site or facility being investigated. The committee can make an appointment, or show up unannounced as long as there are at least two panel members. Jurors must wear their grand jury identification badge when making a site visit.
- At the conclusion of the investigation, those most intimately involved with the case will write the final report.
- During the writing of the report, the case is in **PHASE 3.**
- Once the investigating committee has written the final report, it will be distributed to the Editorial Committee. **PHASE 4.**
- The report is put on the Full Panel Agenda and read and approved by the full grand jury. **PHASE 5.**
- The Presiding Judge reads and approves the report for accurate legal content.
PHASE 6.

- Once the report has been approved and signed off by the Presiding Judge, the case is closed--**PHASE 7**. The grand jury publishes its findings, conclusions and recommendations in a single report for each investigation. The complete set of all reports released in a given fiscal year is the Final Report of the civil grand jury. Each individual report is labeled as Part One, Part Two, etc. as each is a single part of the Final Report. The approved report is released to the entity in question two working days prior to it being released to the public and the press. The bound final report released at the end of the fiscal year will include all those reports released separately.
- A closing letter will be written informing the complainant that the investigation is completed. The complainant receives a copy of the Final Report once it becomes public.
- The entity who is asked to respond to the findings and recommendations have 90 days to submit a response. Elected officials have 60 days to respond.
- All Final Reports will be available for public review on the civil grand jury website located at: <http://www.stanct.org/courts/grandjury/index.html>.
- Response received from the entity--**PHASE 8**. Response added to the response book in the grand jury library and added to the website. The fact that the response has been received is noted in the database.
- The response is also given to the Follow Up Committee for review and discussion at a full panel meeting. The response is also mailed to members of the outgoing grand jury if that panel conducted the investigation.

CIVIL GRAND JURY FLOW CHART

Phase	Definition
Phase 0	Preliminary investigation to establish validity and proper jurisdiction.
Phase 1	Case closed due to lack of validity or jurisdiction. No report written.
Phase 2	Case accepted. Committee investigating complaint.
Phase 3	Committee is writing the Final Report.
Phase 4	Editorial is editing the Final Report.
Phase 5	Grand jury reads and approves the Final Report.
Phase 6	Presiding Judge reads and approves the Final Report.
Phase 7	The case is closed. The Final Report is released to the entity two working days prior to it being released to the public.
Phase 8	Response received from the entity.

How to Respond to Recommendations

Responses

The California Penal Code §933(c) specifies both the deadline by which responses shall be made to the Civil Grand Jury Final Report recommendations, and the required content of those responses.

Deadline for Responses

All agencies to which recommendations are made are directed to respond to the Presiding Judge of the Stanislaus County Superior Court,

- Not later than 90 days after the Civil Grand Jury submits a final report on the operations of a public agency, the governing body of that agency shall respond to the findings and recommendations pertaining to the operations of that agency.
- Not later than 60 days after the Civil Grand Jury submits a final report on the operation of a County agency, the elected head governing that agency shall respond to the findings and recommendations pertaining to the operations of their agency.
- Information copies of responses pertaining to matters under the control of a county officer or agency are to be sent to the Board of Supervisors.
- A copy of all responses to the Civil Grand Jury reports shall be placed on file with the clerk of the public agency and the Office of the County Clerk, or the city clerk when applicable.
- One copy shall be placed on file with the applicable Civil Grand Jury by, and in the control of, the currently impaneled Grand Jury, where it shall be maintained for a minimum of five years.

Content of Responses

For each Civil Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame if it is to be implemented later.
- The recommendation will not be implemented because it is unwarranted or unreasonable, with supportive explanation.

SEND AN ORIGINAL AND THREE (3) COPIES
OF THE RESPONSES
TO THE FINAL REPORT RECOMMENDATIONS TO:

Superior Court- Stanislaus County
Presiding Judge Marie Sovey Silveira
PO Box 3488
Modesto, CA 95353