

## CALAVERAS COUNTY GRAND JURY

May 27, 2004

The Honorable John E. Martin  
Calaveras County Superior Court  
891 Mountain Ranch Road  
San Andreas CA 95249-9709

Dear Judge Martin:

Pursuant to California Penal Code Section 933, the Calaveras County 2003-2004 Civil Grand Jury respectfully submits its Final Report. It is with a great deal of pleasure and pride that the Grand Jury presents its Final Report which represents a culmination of countless hours of hard work and dedication by those of us who had the privilege to serve the citizens of Calaveras County as members of the grand jury.

We were impaneled on July 1, 2003 as a diverse group of 19 individuals who came together as a trained collegial body. We were assigned the responsibility to investigate 23 citizen complaints concerning local government entities and special districts and, where appropriate, to initiate Grand Jury investigations into areas of concern to the Jury. Based on guidelines for civic Grand Juries in California, the full panel heard each complaint and voted by quorum whether to investigate. Pursuant to Penal Code 925 the grand jury selected number of other departments, functions, and County operations to investigate.

Our experience as Grand Jurors has reinforced our belief in the Grand Jury system. Through the publication of this Final Report the public can be made aware and remain confident that its local government representatives are effectively and efficiently serving the citizens and taxpayers.

We want to thank elected officials, and employees of the numerous County offices, special districts, and joint power agencies who were contacted and graciously took time to educate, answer our questions, and explain the operations of their respective areas of responsibility.

Special accolades should go the Spencer Batchelder, David Sirias, and James Jones, Calaveras County Legal Counsel; Jeff Tuttle, District Attorney; Cathe Juarez, Administrative Office Technician; Cathy Johnson, Legal Office Clerk; and, the staffs of the Administrative Office and the Auditor-Controllers Office who graciously donated hours of research and support.

Sincerely,

CATHRYN A. JACKSON  
Foreperson

**2003-2004 GRAND JURY  
FINAL REPORT**

The 2003-2004 Calaveras County Grand Jury approved this Final Report on May 27, 2004.

S/ \_\_\_\_\_  
Cathryn A. Jackson, Foreperson

I accept for filing this Grand Jury Final Report for the year 2003-2004, and certify that it complies with Title V of the California Penal Code, on June 14, 2004.

S/ \_\_\_\_\_  
The Honorable John E. Martin  
Presiding Judge of the Superior Court

Any persons interested in receiving a copy of this 2003-2004 Grand Jury Final Report may do so by contacting the Calaveras County Administrative Office, or requesting to view a copy of the Final Report at the main Calaveras County Library, located in San Andreas, or by accessing the County website:

[www.co.calaveras.ca.us](http://www.co.calaveras.ca.us)

A condensed version of the Final Report will also be disseminated to the public via the local newspaper with the largest distribution in Calaveras County, on July 1, 2004.

**MEMBERS OF THE  
2003-2004 CALAVERAS COUNTY GRAND JURY**

Cathryn Jackson, Foreperson

Mark Wheeler, Foreperson Pro Tem

Kurt Allen

Michelle Murphy

Robert Belmont

Lou Papais

Robert (Wayne) Fry

Matthew Pujolar

Michele Garcia

Colleen Robertson

Robin Hazelwood

Anthony Shillinger\*\*

Abigail Howard

Jerry Tabaracci\*

Candace Kalasek

Alice Taylor

Warren (Buck) King

Barbara Whitmire

Dorothy Moser

\*alternate

\*\*served seven months

## **WHAT IS A GRAND JURY?**

The Grand Jury has its roots in early Anglo-Saxon custom and law. It was a body of notable citizens who were chosen to protect the community from the King. In the United States today there are two types of Grand Jury: Civil and Criminal.

The true power of the Grand Jury's oversight function lies in disclosing inefficiency, unfairness, wrongdoing, and violations of public law and regulations in local governments. It is "the power of the press." Valuable information is obtained by meeting with County officials, visiting departments and facilities and conducting research. An annual visit to prison facilities is mandatory. The Grand Jury must recommend an independent Certified Public Accountant who audits the financial condition of the County.

Grand Jury oversight findings are contained in reports describing problems encountered and solutions recommended. These findings will be released in a formal Final Report, which goes to affected departments and agencies June 30 of each year. A condensed version is submitted to the public as a newspaper release July 1 of each year. All elected officers or heads of agencies who are required to respond must do so within 60 days. The governing body of any public agency must respond within 90 days.

Grand Jurors serve a one-year term and are compensated based on actual days served (average of three days per month). The current rate is \$15 per day plus round-trip mileage for personal vehicle use.

Grand Jury applications are mailed out through random Department of Motor Vehicles and Voter Registration files. A Superior Court Judge screens returned applications and chooses 30 candidates. A final panel of 19 jurors is picked by random drawing on July 1 of each year. Jurors are sworn in as officers of the court.

## **THE GRAND JURY IN CALIFORNIA**

The first California Penal Code contained statutes providing for a Grand Jury. Early Grand Juries investigated local prisons, conducted audits of County books, and pursued matters of community concern. The role of the Grand Jury in California is unique in that, by statutes passed in 1880, the duties included investigation of County Government.

Except where separate civil and criminal Grand Juries are authorized, the California Grand Jury system provides for one Grand Jury for each county.

A civil Grand Jury's function is to inquire into and review the conduct of local government and special districts. The Grand Jury system in California is unusual in that Federal and County Grand Juries in most states are concerned solely with criminal indictments and have no civil responsibilities.

California is one of the States that initiates criminal prosecution by either indictment or complaint.

California is one of only seven states that provide for the investigation of County government by a Grand Jury, beyond alleged misconduct of public officials.

Authority for the Grand Jury system is found in the Fifth Amendment of the US Constitution and in Article 1, Section 23 of the California Constitution, which states: "...One or more Grand Juries shall be drawn and summoned once a year in each County."

## **CALAVERAS COUNTY GRAND JURY**

The Calaveras County Grand Jury is a judicial body sanctioned by the Superior Court to act as an extension of the Court and the conscience of the community. In California, the conduct of the Grand Jury is delineated in Penal Codes 888 through 945. The Grand Jury is an investigative body created for the protection of society and enforcement of its laws. Grand Jurors are officers of the Superior Court, but function as an independent body. Jurors are selected for one year beginning July 1 and may choose to stay on one more year with the approval of the Superior Court Judge. One unique provision of the Grand Jury is its power, through the Superior Court, to aid in the prosecution of an agency or individual they have determined to be guilty of an offense against the people.

The major function of the Calaveras County Grand Jury is to examine County and City government and special districts to ensure their duties are being lawfully executed. The Grand Jury reviews and evaluates procedures, methods, and systems utilized by these agencies to determine if more efficient and economical programs may be used for the betterment of the county's citizens. It is authorized, but not limited, to make inquiry into charges of willful misconduct or negligence by the public officials or the employees of public agencies. Neither official request nor public outcry should force the jury to undertake an inquiry it deems unnecessary, frivolous, or undesirable.

The Grand Jury is required to investigate the conditions of jails and detention centers, and to investigate complaints made by or on behalf of inmates. It is also authorized to inspect and audit the books, records and financial expenditures of all agencies and departments under its jurisdiction, including special districts, joint power agencies and non-profit agencies, to ensure funds are properly accounted for and legally spent.

The Grand Jury generally limits its investigations to the operations of governmental agencies, charges of wrongdoing within public agencies, and the performance of unlawful acts by public officials. The Grand Jury cannot investigate disputes between private parties or matters in litigation.

### **SPECIAL ACKNOWLEDGEMENTS FOR EDUCATIONAL ACTIVITIES**

The following public officials took time from busy schedules to present overviews of their areas of responsibility. Jurors appreciated the understanding and improved competency gained from these well-prepared overviews.

Spencer Batchelder, County Counsel  
Linda Churches, Auditor/Controller  
Terri Rivera, Auditor  
Randy Metzger, Assessor  
Brian Moss, Environmental Health  
Tom Tryon, Board of Supervisors Chair  
Ray Waller, Director Building Department

Terri Beaudreau, Director Cal-Works  
Dennis Downum, Sheriff  
Jearl Howard, Agricultural Commissioner  
Tom Mitchell, Administrative Officer  
Howard Stohlman, Director Technological  
Services  
Jeffrey Tuttle, District Attorney

## **HOW TO CONTACT THE GRAND JURY**

Citizens of Calaveras County who wish to be considered for service on the Grand Jury, or those who wish to file a complaint may do so in writing to:

Foreperson  
Calaveras County Grand Jury  
P. O. Box 1414  
San Andreas CA 95249

Complaint forms may be requested by calling (209) 754-5860 or by downloading a blank complaint form from the Grand Jury website at

[www.co.calaveras.ca.us/departments/grand\\_jury.html](http://www.co.calaveras.ca.us/departments/grand_jury.html)

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# **COUNTY AUDIT REPORT**

## **REASON FOR INVESTIGATION**

One of the areas of concern of the Grand Jury is its responsibility for selecting a State Certified public accounting firm experienced in the auditing of California counties, investigating complaints and reviewing the performances of all County departments. Pursuant to Penal Code Section 925, the Grand Jury shall investigate and report on the operations, account and records of the aforementioned County Departments.

## **PROCEDURES**

The Grand Jury reviewed the audit report of the firm of Bartig, Basler and Ray (BB&R), Year End June 30, 2003, conducted an on-site review of County records, and interviewed the County Administrative Officer (CAO), the CAO staff, the Auditor/Controller, the Human Resources Department Manager, the BB&R auditors, and two County Supervisors.

## **FINDINGS**

1. BB&R's recommendation that Human Resources initiate the setup and on-going maintenance of payroll data has not been implemented.
2. After an investment of more than \$750,000, the computer system software (Bi-Tech) is not fully implemented throughout County offices. The Auditor/Controller management staff is working, on an average, an extra 10 to 20 hours per week because of the difficulty of the conversion process in the Human Resources and other departments. This increases the likelihood of errors and the possibility of fraud.
3. An error was discovered in the sale of excess county automobiles. There was authorization for four automobiles to be sold at auction and five were actually sold. Authorization for the sale of the fifth vehicle was given after the fact.
4. There is a lack of control of accounts receivable that resulted in the misplacement of at least three checks payable to the County. The issuer verified that one check, in the amount \$5,517.06, was cashed. The Auditor/Controller office has no record of that transaction, but is currently investigating.

## **RECOMMENDATIONS**

Findings 1. & 2. The full implementation of the Bi-Tech software system will address BB&R's recommendations and maximize our investment in the software. The CAO and the Board of Supervisors must ensure cooperation between the departments and the software developer. The Board of Supervisors should review the contract with Bi-Tech to ensure fulfillment of installation and training agreements.

Finding 3. The CAO must implement a system of policies and procedures to govern the liquidation of County property. A good system of checks and balances would entail the involvement of at least two people involved in each such transaction.

Finding 4. Efforts must continue to locate the misplaced incoming checks and a better tracking system must be established to prevent future losses.

**RESPONSE REQUESTED**

Board of Supervisors

County Administrative Officer

## **OUTSTANDING RESPONSES FROM PRIOR YEARS**

Pursuant to Penal Code 933, respondents have a specified period of time in which they must officially respond to the recommendations as set forth in the Grand Jury's Final Report. Elected officials must respond to the Grand Jury's findings within 60 days and appointed officials within 90 days. The current Grand Jury is responsible for ensuring that last years required respondents have submitted answers to recommendations. The current Grand Jury may also selectively investigate the progress and implementations of changes promised by these agencies and departments.

After reviewing all responses received this year, the Grand Jury determined that several departments and agencies have either not responded or have not adhered to promises made in their official responses. Some of these matters remain unresolved after a period of two or more years.

The Grand Jury also reviewed Grand Jury Final Report Recommendations from two previous years. This review disclosed that there are financial procedures that still remain unsettled. In the Management Report Year End June 30, 2002, BB&R made 51 recommendations to various agencies. In the Management Report Year End June 30, 2003, 10 of those recommendations were repeated.

Listed below are the recommendations from this year's Grand Jury, which will require an adequate response by the deadlines as outlined above. These recommendations are listed by County Department.

### Human Resources Department/County Administrator's Office

The Auditor/Controller's office continues to perform HR functions related to payroll. Bi-Tech, the automated payroll and accounting software system, should be brought up to date and fully implemented, relieving Auditor/Controller's staff of these extraneous duties.

Year End and Monthly Closing procedures need to be completed. The Auditor/Controller has already devised a Certification of Monthly Accounting Review form and this form should be made available for immediate use.

Timely deposit of Flexible Spending Account refunds.

### Planning and Code Compliance Departments

Trust Fund Balances need to be recorded in detail and reconciled monthly against the Auditor-Controller's records. All but one prior year has been completed. An estimated date of completion for this project must be provided to the 2004-2005 Grand Jury.

### Building Department

Reconcile Trust Funds monthly against records maintained by the Auditor-Controller's office.

Probation Department

Accounts Receivable software needs to be corrected so that it reflects total amounts received and shows the aging of past due receivables.

Trust Accounts have not been reconciled since September 2001. An account technician is working with the Auditor's office and should stay with this project until it is completed.

RESPONSES REQUESTED

County Administrator's Office

Human Resources Department & Risk Management Director

Planning Department

Code Compliance

Sheriff's Department and/or Probation Department

Building Department

## **TOBACCO SETTLEMENT FUNDS**

### **REASON FOR INVESTIGATION**

The Grand Jury received a complaint alleging misuse of tobacco settlement funds by Calaveras County.

### **PROCEDURES**

The Grand Jury interviewed the County Administrator, reviewed "Summary of the Attorneys General Master Tobacco Settlement Agreement" from Assembly on Federal Issues (AFI) Health Committee, reviewed "State Management and Allocation of Tobacco Settlement Revenue 2003" from the State Health Department, and reviewed the County's expenditure records of these funds.

### **FINDINGS**

The Grand Jury concluded there were some questions as to how the Tobacco funds were being utilized. The Tobacco Settlement Agreement states that the funds are to be distributed as follows: health care, long-term care, tobacco-use prevention, research, education, children & youth, tobacco farmers, endowment and budget resources, and other. In Calaveras County, portions of the funds have been distributed to the Sheriff's Department and the Office of Education and the balance was placed in a trust fund. Exact disbursement within those departments is undocumented.

### **RECOMMENDATIONS**

Funds must be disbursed according to the agreement set up at the National Conference of State Legislatures. Further investigation by the Board of Supervisors must be undertaken to insure that Calaveras County is complying with the agreement.

### **RESPONSE REQUESTED**

Board of Supervisors

## **VALLEY SPRINGS PUBLIC UTILITY DISTRICT (VSPUD)**

### **REASON FOR INVESTIGATION**

A complaint was received alleging that VSPUD increased its water rate by 84%; doubled its sewage rate; and that a conflict of interest exists between the VSPUD and one of the Directors.

### **PROCEDURES**

The Grand Jury interviewed the VSPUD Manager, Engineers, County and State Officials, VSPUD Board Members, and property owners. The Grand Jury examined VSPUD Board Meetings minutes; VSPUD budgets, audit reports, ledgers, and administrative documents; engineering documents; election office documents, and grant deeds.

### **FINDINGS**

1. There is a dual conflict of interest in one Director's position as a member of the Board of VSPUD. This Director has a financial interest in the district since the District employs the Director's spouse. Further, the Director's spouse was promoted by Board action in which that Director voted.
2. VSPUD did not distribute Consumer Confidence Reports in accordance with State Water Quality Control Board regulations.
3. A perception of impropriety exists because of the many familial relations between Board members, management, and employees of the VSPUD.
4. There is a lack of effort on the part of VSPUD to raise consumer awareness of District business. Agendas are not published in time period prescribed in Government Code Section 54950 et seq.
5. VSPUD Board Meeting records are not maintained in compliance with Government Code 54950 et seq. Personnel actions are voted on without reference to prior Board discussion, which is a violation of Government Code 61226.
6. VSPUD bookkeeping and general record keeping is confusing and in violation of California Penal code 933.1. When asked to produce personnel records, including applications, performance evaluations and exit interviews, VSPUD staff responded that no personnel files are kept. Absence of this documentation is in violation of Government Codes 19800, 19801, 19992, 1992.1, 1992.2, 6200, 6201, and 6203.
7. Seventy-six of the District's 276 consumers are using less than 2,000 gallons of water per month but are being charged a base rate of 6,000 gallons per month. This translates into a very high cost-per-gallon for low-volume consumers.
8. The VSPUD office is located in the home shared by a Director and the District Manager. This marital relationship promotes privatization of a public utility and raises issues of

nepotism and unprofessional hiring practices and contributes to the perception that this family unit owns the water district. The home address is listed in the telephone directory as the office of VSPUD; there is no signage at this address to indicate that the location is the VSPUD business office. There is a building at 150 Sequoia Street in Valley Springs, which does bear a VSPUD sign but does not serve as the official VSPUD office. Public postings of Board meetings do not include a street address for those meetings.

9. VSPUD Directors are paid approximately \$200 per meeting, whereas Directors of similar-sized water districts in this area are paid zero to \$50 per meeting. This is in violation of Government Code 61207.
  
10. VSPUD does not advertise for labor bids in accordance with California Public Contract Codes 20600 through 20602.

### **ACTION**

Finding 1. Proof of conflict of interest was forwarded to the Fair Political Practices Commission for further investigation.

Finding 2. In a letter to VSPUD, the Water Quality Control Board directed that VSPUD comply with regulations requiring a water system to mail or otherwise deliver a copy of each year's Consumer Confidence Report to each customer.

### **RECOMMENDATIONS**

Finding 3. Establish a Policy and Procedure Manual, which outlines precise hiring procedures, and includes job descriptions, minimum requirements for each position, and Board-approved salary schedules in accordance with Equal Opportunity Commission regulations. This would validate that each employee hired is the most qualified candidate available for the position, thereby diminishing the perception of impropriety.

Finding 4. Maintain strict compliance with regulations relating to advertising meeting dates and agendas per Government Code 54954.2.

Finding 5. VSPUD Board Meetings must follow posted agendas, and meeting minutes should clearly detail the business conducted in order to verify compliance with the Government Code 54950 et seq.

Finding 6. VSPUD must upgrade accounting and record keeping procedures to comply with Government Code.

Finding 7. The Grand Jury recommends that the District revise its rate structure to benefit the water user and VSPUD. For example, the minimum usage base rate should be removed; and the per-gallon rate should be increased from \$0.005 to \$0.006, with a \$3 meter fee (surcharge) per customer per month.

Finding 8. Establish a permanent office with regular hours and conduct District business from that location.

Finding 9. Reduce the Directors' fees to bring them more in line with fees paid to Directors in similar districts

Finding 10. All contracts over \$3,500.00 should receive a minimum of three bids and all subject bids should be posted in the local newspaper with the largest subscription base. No contractor should be accepted without a State license. Emergency work may be done on an on-call basis and, when feasible, should be done by a licensed contractor.

Finding 11. VSPUD legal counsel should thoroughly interpret the requirements of the Brown Act to each Board Director so they fully understand both their obligation to conform to the requirements and the penalties for non-conformance.

**RESPONSE REQUESTED**

VSPUD Board of Directors

VSPUD Manager

## **CALAVERAS COUNTY WATER DISTRICT (CCWD)**

### **REASON FOR INVESTIGATION**

A complaint was filed against CCWD alleging, “the majority of Board discretionary activities are either unnecessary, inappropriate, frivolous, or outright boondoggles.”

### **PROCEDURES**

The Grand Jury examined CCWD legislative platform approved by Board and compared this to a list of proposed CCWD projects prepared by management and presented to the Board for approval.

### **FINDING**

CCWD has undertaken the pursuit of programs not consistent with its approved Legislative Platform, which is a violation of California Government Code 56824.12.

### **RECOMMENDATIONS**

CCWD Board of Directors must thoroughly review all projects presented for approval to ensure compliance with its own legislative platform. Management should provide adequate operational training to each Director to better prepare them to govern the district.

### **RESPONSE REQUESTED**

Calaveras County Water District Board of Directors

## **CALAVERAS COUNTY WATER DISTRICT (CCWD)**

### **REASON FOR INVESTIGATION**

A complaint was received against Calaveras County Water District (CCWD) requesting an investigation of the actions made by management and the Board of Directors. The complainant alleged questionable hiring procedures, acts of conspiracy, conflicts of interest, acts of fiscal mismanagement, and that three members of management have conspired to enhance their personal financial future at the cost of the ratepayers of CCWD. The complainants allege that the CCWD Chief Counsel engaged in self-dealing with public tax dollars in violation of the State Bar Code of Ethics.

### **PROCEDURES**

The Grand Jury reviewed CCWD policy manuals, budgets, Board minutes and other documentation submitted by the complainant. The Grand Jury interviewed witnesses and obtained valuable information and support from the District Attorney and County Counsel.

### **FINDINGS**

1. The Grand Jury received a lack of cooperation in the production of documents required to prove or disprove the Chief Counsel's alleged self-dealing.
2. Witnesses claim that hiring of certain employees did not follow Board-approved policy. The Grand Jury found that, in one instance, an individual was selected, a job was created, and Board policy modified to accommodate the position. In a separate instance, a practice of handpicking employees resulted in the hiring of a senior staff member who did not meet the minimum qualifications of the position.
3. In-house legal counsel created a management unit benefit package, with an enhanced retirement benefit package, to include lifetime health, dental and vision coverage. This enhanced, lifetime package is available after only two years of service.
4. The California State Public Employees' Retirement System (CalPERS) enjoyed a few years of over-funding due to favorable investments. CCWD pays both employer and employee contributions to the fund. During the period of over-funding, CCWD was not required to pay the employer contribution. After the terrorist acts of September 11, 2001, and subsequent stock market downswing, CalPERS notified all public agencies that employer contribution would not only be reinstated but also increased up to an additional 3% of employee's annual salary, starting in 2004. This increase, up to 10% of employees' salaries in retirement contribution, was presented to the Board by management as having no financial impact. The pending rate increase and its financial impact should have been brought to the attention of the Board.
5. Staff advised management that it is bad financial practice to allow the water assessment revenues to support the sewer operations in order to avoid the impact of rate increases.

6. A letter written by a former senior-management employee on behalf of six employees alleged that the District's management took improper actions. This letter was addressed to the Board of Directors and hand-delivered to the District office. The letter did not reach the Board in open session; but, in closed session, an edited version was presented as an anonymous letter. This was not only an act of tampering with the mail, but it also deprived the Board of crucial insight on the detailed actions.
7. Employees informed Directors by telephone and by letter of management's callous treatment of and lack of respect for District employees. The employees received no response.

## **ACTION**

Finding 1. The Grand Jury submitted the results of this investigation, including documentation, to the California State Bar Association, in connection with allegations that the CCWD Chief Counsel engaged in self-dealing with public tax dollars in violation of the State Bar Code of Ethics.

## **RECOMMENDATIONS**

Finding 2. The Board of Directors must insure that hiring practices are stringently followed.

Finding 3. Since this is an increased expense to the District, which will impact rate payers for many years, the Board of Directors must examine whether two years employment is an appropriate vesting period by doing a comparison study of retirement benefit packages in similar special districts in California.

Finding 4. Management must present complete and accurate pertinent data, including potential financial impact on the District, to the Board. The Board of Directors must be diligent in efforts to verify information presented by management and adhere to their mission statement, which reads in part, "The governing body is dedicated to protecting, enhancing, and developing our water resources to the highest beneficial use for Calaveras County, while maintaining cost-conscious, reliable service, and our quality of life, through responsible management."

Finding 5. Board should audit financial practices regarding sewer operations.

Finding 6. Management and staff must not censor correspondence addressed to members of the Board of Directors. A policy should be established whereby correspondence can go directly to the Board rather than through staff and management. The original letter in question should be made available to the Board for review and consideration.

Finding 7. The Board of Directors should respond to all communications from the public and employees, and must encourage communication and complaints by constituents.

**RESPONSE REQUESTED**

Chair, Calaveras County Water District Board of Directors  
Calaveras County Water District General Manager

## **GENERAL REPORT CONCERNING SPECIAL DISTRICTS**

### **REASON FOR INVESTIGATION**

During the course of the year, the Grand Jury received six complaints and inquiries relating to Special Districts, which alleged nepotism, fiscal mismanagement, violations of the Brown Act, questionable hiring and termination practices, and callous attitudes towards employee and consumer needs.

### **PROCEDURES**

The Grand Jury studied budgets, Board meeting minutes, employee hiring and orientation policies, and operational procedures. Seventeen interviews were conducted with complainants, Directors, District employees, County employees, and County Supervisors.

### **FINDINGS**

1. The Grand Jury found that the governing members of Special Districts displayed an over-all lack of knowledge of the rules and regulations governing Special Districts. While there are State agencies that have the authority to impose sanctions for Code violations, the Grand Jury serves as the only monitoring body over Special Districts. The Grand Jury can only refer violations to the appropriate State agencies for investigation.

2. California Penal Code Section 933.5 states that a Grand Jury may at any time examine the books and records of any special-purpose district. In the course of our investigations, we have requested such records and those requests were not uniformly honored. Additionally, the District Attorney did not handle our requests for subpoenas in a timely manner and the subpoenas were never issued. This hampered our ability to complete our investigations.

### **RECOMMENDATIONS**

Finding 1. County Counsel should provide annual training to elected Board members to insure their understanding of the Brown Act and other applicable California government codes, and the penalties for non-compliance.

Finding 2. The District Attorney's Office should take a more supportive role in the processing of requests for subpoenas by the Grand Jury.

### **RESPONSE REQUESTED**

Calaveras County District Attorney

Calaveras County Counsel

## HUMAN RESOURCES COUNCIL (HRC)

### **REASON FOR INVESTIGATION**

A complaint was filed alleging gender bias with regard to the hiring practices of the Human Resources Council.

### **PROCEDURE**

The Grand Jury reviewed the HRC's Hiring and Recruiting Policy and their Applicant Screening Form, and interviewed the Human Resources Administrator and reviewed documentation of the facts surrounding the procedures followed in filling the job in question.

### **FINDINGS**

1. For each job opening, an application Screening Committee of at least two people is established. This committee selects from three to ten applicants for interviews. An applicant may be disqualified based on a lack of qualifications, skills or experience; incomplete or falsified application; or if the maximum number of qualified applicants has been received. For this particular job opening there were 12 applicants, six male and six female. Four applicants, one male and three female, were chosen for interview by a three-person panel.
2. The HRC's Human Resource administrator followed all applicable guidelines as set forth in their board-approved recruitment and hiring policies.
3. There was no proof that discrimination occurred during the applicant screening process at the Human Resources Council.

### **RECOMMENDATION**

None.

### **RESPONSE REQUESTED**

None.

**COUNTY ADMINISTRATOR'S OFFICE**  
**Human Resources and the Auditor/Controller's Office**

**REASON FOR INVESTIGATION**

For the past two years, the annual Management Report of independent auditors, Bartig, Basler & Ray, Inc., (BB&R), has recommended a segregation of personnel management and payroll duties between the Human Resources Department and the Auditor/Controller's Office.

**PROCEDURES**

The Grand Jury interviewed the County Administrative Officer, the Auditor/Controller, and the Human Resources Department manager, as well as BB&R auditors.

**FINDINGS**

The Auditor/Controller's Office implemented a software program called Bi-Tech six years ago and the Human Resources Department began implementation of this program only within the past year. Bi-Tech is a personnel management software program designed to automate all personnel, payroll, and accounting functions. The program is designed for the HR Department to drive the system. The difficulty lies in the fact that HR should have been the department of initial use, inputting employee data that could subsequently be used by the other related county departments. Currently, the HR Department is working with Bi-Tech to convert Auditor/Controller data into the HR portion of the database. The conversion process has been difficult and costly. Further, our County's Technology Services Department does not have the training to support this software program.

**RECOMMENDATIONS**

Since the implementation of the Bi-Tech system would address the concerns of BB&R, it is our recommendation that the CAO ensure cooperation between the departments and the software provider until such time that the system is operating to the satisfaction of all involved County departments. The CAO should continue to involve the Technology Services Department in the on-going implementation of this program.

**RESPONSE REQUESTED**

Board of Supervisors  
County Administrative Officer  
Technology Department

## **AREA 12 AGENCY ON AGING (AREA 12)**

### **REASON FOR INVESTIGATION**

Area 12 is an organization that oversees the provision of services to seniors within a five-county area. Area 12 answers to a governing body made up of representatives from each of the five involved counties and is governed by a Joint Powers Agreement. Common Grounds is the provider of home-delivered and congregate meal-site senior meals in Calaveras County.

This investigation is a continuation of last year's Grand Jury investigation as well as a response to a complaint submitted to this year's Grand Jury. The complainant repeated allegations of mismanagement of funds and embezzlement.

The problems between Calaveras County and Area 12 are long standing. Continued media coverage about Area 12's role in providing services to seniors in Calaveras County provides further grounds for investigation.

### **PROCEDURES**

The Grand Jury interviewed the Executive Director of Area 12, staff of the County Administrator's Office, Chair of the Board of Supervisors, current and prior Board of Supervisors' representative to the JPA, Common Grounds Executive Director, a representative of the California Department of Aging, and the Senior Senator of California Senior Legislature. Grand Jury members visited the San Andreas Senior Center, and attended meetings of the JPA, Area 12, Board of Supervisors, and the Commission on Aging. Records were reviewed at Area 12 and at Common Grounds.

### **FINDINGS**

1. Calaveras County citizen representation on the Advisory Council of Area 12 is minimal.
2. The Calaveras County Board of Supervisors' representative has not been adequately involved in the JPA, and the adversarial relationship between the two entities has at times affected services to seniors. There has been recent improvement in this area and currently there is a Calaveras County Supervisor and an alternate attending the monthly JPA meetings.
3. Calaveras County has opted to provide meals to all eligible seniors without a waiting list. The County has not fully met its obligation to pay the financial deficit that results when more meals are provided than were funded.
4. There appears to be a discrepancy between Area 12's and providers' records. The Grand Jury's suggestion to the Board of Supervisors that an independent auditor be assigned was denied. The Grand Jury did not uncover evidence of embezzlement; an independent audit could confirm or negate these allegations.
5. In the past, Area 12 has provided limited training to Common Grounds staff. The State has issued a mandate that requires Area 12 to train service providers in documentation

and reporting of services. The director of the meals provider agency, Common Grounds, stated that there has been some improvement in recent months in the training received from Area 12. Area 12 has monitored the operation and Common Grounds is awaiting the results.

6. Although seniors who receive either home delivered meals or congregate meals are expected to pay a stated fee insofar as they are able, this information is not being well communicated to them. Contributions from meal recipients would help offset the cost that the County would owe in the future.
7. There has been minimal fundraising in Calaveras County for the senior meals programs. Other member counties have engaged in such activities.
8. San Andreas Senior Center currently operates independently from Area 12, utilizes a mostly-volunteer staff, and engages in its own fundraising activities.

## **RECOMMENDATIONS**

Finding 1. Citizens of Calaveras County are encouraged to participate in the Advisory Council of the Area 12. There are currently five vacancies. For applications and information on the Council, call 209-532-6272 or 209-754-5575.

Finding 2. The Board of Supervisors must demonstrate commitment to and active participation in the providing of services to seniors through the JPA.

Finding 3. The Board of Supervisors must authorize an audit to determine amount of money owed, if any, to Area 12, and must pay any deficit or justify the non-payment.

Finding 4. The Grand Jury reiterates its recommendation that Calaveras County Board of Supervisors authorize an audit to determine whether these discrepancies do exist.

Finding 5. Area 12 should continue the training and monitoring of service providers. Penalties should be imposed upon service provider agencies for non-compliance with training and procedural requirements.

Finding 6. During the needs-assessment process and the meal-delivery process, it must be made clear to the meal recipients that they are expected to pay for the meals to the extent that they are able. Procedures for collection and recording of collection must be instituted.

Finding 7. Common Grounds should institute fundraising programs in Calaveras County to help offset the cost of delivering meals to seniors.

Finding 8. No recommendation.

**RESPONSE REQUESTED**

Board of Supervisors

Executive Director, Area 12 Agency on Aging

Area 12 Agency on Aging Governing Board

Common Grounds

## **MARK TWAIN/ST. JOSEPH'S HOSPITAL**

### **REASON FOR INVESTIGATION**

The review was conducted pursuant to California Penal Code Section 925, which states, in part, "...investigations may be conducted on some selective basis each year." The Grand Jury had not visited the hospital in over ten years.

### **PROCEDURES**

The Grand Jury met with the President of the hospital and the head of the nursing staff, and was given an overview of hospital operations and a tour of the facilities. A five-year Facility Plan was provided to the Grand Jury.

### **FINDINGS**

Mark Twain/St. Joseph's Hospital is a not-for-profit, 48-bed general acute care, full-service facility serving all of Calaveras County. It was established in 1951 and the new Hospital was built in 1996. It has a 50-member staff of physicians. Clinics, located in Arnold, Angels Camp, Copperopolis, and Valley Springs, are supported by the hospital.

The 5-year Facility Plan includes:

- 2005 Improve parking, a building for materials, management, and linen services.
- 2006 Upgrade 18-bed north wing, and construct new nurses' station complex.
- 2007 Improve parking and demolition of existing B-Occupancy building.
- 2008 Magnetic Resonance Image system will be installed.

### **RECOMMENDATION**

No recommendations.

### **RESPONSE REQUESTED**

No responses requested.

## **CALAVERAS WORKS**

### **REASON FOR INVESTIGATION**

The review was conducted pursuant to California Penal Code Section 925, which states, in part, "...investigations may be conducted on some selective basis each year." There were no complaints investigated by the Grand Jury regarding any of the Calaveras Works operations.

### **PROCEDURES**

The Grand Jury interviewed the Director of Calaveras Works and toured the Calaveras Works facility.

### **FINDINGS**

Calaveras Works is one of the largest County Departments, with 80 paid staff and 10 extra-hires who work on an as-needed basis. The department administers all Human Services provided by the County. The department is in compliance with relevant State requirements, although staffing remains a challenge. A further challenge is the probable reduction in revenue from the State. These reductions will directly affect the grants and services available to the social service customer.

### **RECOMMENDATION**

No recommendation.

### **RESPONSE REQUESTED**

No response requested.

## **CALAVERAS COUNTY SHERIFF'S OFFICE AND JAIL**

### **REASON FOR INVESTIGATION**

Penal Code section 919 requires that the Grand Jury inquire annually into the condition and management of public detention facilities within the county.

### **PROCEDURES**

The Grand Jury visited the County Jail to observe general conditions, staffing and inmate procedures. The Grand Jury interviewed the Sheriff's Department staff and inmates.

### **FINDINGS**

The Minimum Standards for Local Detention Facilities as outlined in Titles 15 and 24 of the California Code of Regulations governs the Calaveras Sheriff's Department and Jail. Utilizing a process that allows a facility to apply standards in place at the time of construction, the detention facility continues to pass Board of Corrections inspections. The Grand Jury found the facility well managed and exceptionally well maintained, in spite of the age of the building. Interviews with both male and female inmates revealed no complaints about the facility or the treatment of inmates by County Jail staff.

The present facility, built in 1963, had a 47-bed capacity and currently houses 65 inmates. An increase in population led to a Court Order in January of 1992 limiting the jail population to sixty-five inmates. Adult misdemeanor offenders serve little, if any, detention, thereby increasing recidivism rates within the County. To some degree, a revolving door exists for most misdemeanor offenders.

A provision for the replacement of the current County Jail facility is being proposed. County Jail staff are concerned that small facilities may not be competitive with those of larger counties, whose scale of operation serves a higher population with lower unit costs.

### **RECOMMENDATION**

The 2003-2004 Grand Jury encourages the Board of Supervisors and the County Sheriff to inform the Grand Jury of any revisions to the "Calaveras County Adult Detention Facility Needs Assessment" and report any progress toward the construction of a new jail facility.

### **RESPONSE REQUESTED**

Board of Supervisors  
County Sheriff

## **CALAVERAS COUNTY PLANNING DEPARTMENT**

### **REASON FOR INVESTIGATION**

Complainants allege that a 2,400 square foot metal building was erected in 1996 in violation of County codes. The complaint states that had proper procedure been followed, including a Planning Commissioners' Public Hearing, the original corner offset variance request would have been denied. The complainants have been disputing this since 1996 and for the third time are requesting a Grand Jury investigation. The complainants have requested that the County rectify this situation by purchasing the property and removing the structure.

### **PROCEDURES**

The Grand Jury interviewed complainants and County officials and reviewed prior Grand Jury reports.

### **FINDINGS**

1. The 1999-2000 Grand Jury report states, "The error which led to the issuance of the permit for this building represents a failure of local government to protect the interests of both property owners and their neighbors by maintaining and enforcing reasonable building requirements." However, the property owner applied for and received all necessary building permits, and built the structure in accordance with them.
2. The Planning Department has acknowledged that errors were made in the permit process and has agreed to more strictly adhere to local government building codes. The Planning Department attempted to appease the complainants by offering to landscape the property to improve its aesthetics. The Building Inspector requested the owner determine the cost of removing 15 feet of the building covering the front easement encroachment. The owner of the structure has not cooperated with either suggestion.
3. Calaveras County Planning Commission Resolution No. 2001-79 revoked the disputed Setback Variance, No. 1996-07, thereby finding in favor of the complainants.
4. Per Section 17.24, not all requests for variances require a public hearing although the Planning Variance Request Application form suggests that a public hearing and notification will always follow. This results in public confusion.

### **RECOMMENDATIONS**

Findings 1. & 2. There is no logical remedy that can be found that would not lead to potential litigation; therefore, the Grand Jury has no recommendation.

Finding 3. The Board of Supervisors should institute Review Standards for Code Compliance as soon as possible to ensure fairness and protect neighborhoods as well as the County.

Finding 4. The Calaveras County Planning Variance Request Application form should be changed to reflect that a public hearing and notification does not apply to all variance requests.

**RESPONSE REQUESTED**

Board of Supervisors

Planning Commission

Calaveras County Planning Department

## **PERFORMING ANIMALS WELFARE SOCIETY (PAWS) ARC 2000**

### **REASON FOR INVESTIGATION**

A complaint was made against the Calaveras County Planning Department regarding its oversight and review of the PAWS Arc 2000 project. The Performing Animal Welfare Society is an organization dedicated to the health and welfare of abused, neglected and retired exotic animals. This non-profit organization owns a 2,800-acre parcel located near San Andreas. The facility is designed to replicate the animals' natural habitat. The complainant states that Arc 2000 failed to meet conditions set forth in the Conditional Use Permit (CUP) and the Planning Department failed to adequately monitor the project. There were five alleged violations cited in the complaint:

1. Development is within the 100-foot non-development buffer zone.
2. A river crossing was created without required streambed alteration permits.
3. There is inadequate inclusive fencing.
4. Roadways within the project do not meet CUP specifications.
5. The Planning Department staff provided false information to the Calaveras County Board of Supervisors.

### **PROCEDURES**

The Grand Jury reviewed documentation from the Planning Department, and maps and aerial photographs of the above-mentioned property and adjoining parcels. The Grand Jury interviewed the director and staff of PAWS and toured the grounds of the San Andreas site.

### **FINDINGS**

1. The Conditional Use Permit states that no development can occur within the buffer zone. This issue was addressed by the Department of Fish and Game. That department determined that moving the eight-foot chain link fence within the buffer zone would likely result in a greater impact on the integrity of the buffer zone than to leave it in place. The Department of Fish and Game considers this issue closed.
2. The river crossing in question is not part of the PAWS project and does not fall under the CUP. Agreements regarding river crossing and the new easement road were made between previous property owner and the adjacent landowner. This legal contract was a pre-condition of the sale of the property to PAWS. PAWS has agreed to maintain the road for fire access.
3. The enclosure fencing is an eight-foot chain link fence and is in compliance with the CUP. Inspection and maintenance of the fence is performed and documented on a

regular schedule. United States Department of Agriculture has inspected the fence and made recommendations, which were promptly addressed. No citations were given.

4. The Grand Jury found that the roadways within the project met the CUP specifications.
5. The Grand Jury was unable to find any evidence to substantiate the claim that false information was provided by the Planning Department staff to the Calaveras County Board of Supervisors.

**RECOMMENDATIONS**

None

**RESPONSE REQUESTED**

None

## **CITY OF ANGELS PLANNING DEPARTMENT**

### **REASON FOR INVESTIGATION**

A complaint was made against the Building Official of the City of Angels Camp regarding the construction of a retaining wall on Sonora Street in Angels Camp. New home construction commenced on three adjacent lots on Sonora and Mountain View Streets in Angels Camp. One of the owners chose to dig into the hillside to create a building site while the immediate neighbor imported over 5,000 cubic yards of fill dirt, which resulted in a dramatic change of topography. This necessitated the construction of the retaining wall. The complainant states that the Building Department allowed construction of a retaining wall that is not consistent with the engineered plan on file with the City. The specific complaints are:

- That the plans for the wall are labeled Garden Retaining Wall but the sole purpose of this wall is structural, not for a garden.
- That the major portion of this wall's footing is in and on new non-compacted fill dirt.
- That the plans show a retaining wall constructed on level ground. There is no provision for building on a slope.
- That there were several deviations from the plans on file. The wall was built "backwards" to the engineered design on file with the City.

### **PROCEDURE**

The Grand Jury visited the properties on Sonora and Mountain View Streets and inspected the retaining wall. The Building Official was interviewed and allowed the Grand Jury to review the plans for the wall in question.

### **FINDINGS**

1. The wall required an engineered plan regardless of what it was called.
2. The Building Department granted a building permit with the grading and fill inclusive and no separate grading permit was issued at the outset of the project. The Building Official recommended building a step-foundation on the pre-existing slope as opposed to a slab built on grade and fill, given the location of the building site. In the Appendix (Chapter 33-0 Excavation and Grading) of the 2001 Uniform Building Code (UBC) Sections 3306 it is stated that no person shall do any grading without first having obtained a grading permit from the Building Department. Section 3309.4 requires plans from a State certified civil engineer. Soil compaction testing was performed and deemed satisfactory by the testing company. According to the soil testing report, tests were only performed underneath the homesite, and not along the retaining wall.
3. Visual inspection of the site showed essentially level ground behind the wall.

4. The plans clearly show the concrete block erected on the fill dirt side of the footing while in fact the wall was constructed on the opposite side of the footing. The retaining wall's footing was installed opposite of what the engineer's drawing shows. The engineered plan depicts a tieback into the hillside and a French drain running alongside the footing. Because the footing was installed backwards, the drain was installed on top of the footing, which could change the dynamics of the drain.

The only engineered plan submitted to the Building Official was a Detailed Sectional Drawing (End View). No other plans have been submitted to show the total length of the wall and the elevation changes. The drawing on file shows the elevation of the wall to be eight feet, eight inches tall. In fact, the wall is over nine feet tall in some areas and less than eight feet tall in others.

There should be a drain on the southeast corner of the retaining wall but no drain outlet was seen. There were no site drainage plans, only a sectional drawing (end view) that has been changed as a result of the change in the footing.

5. On the wall there are noticeable cracks and several areas where grout is absent and it is apparent that broken blocks had been installed. The civil engineer stated the wall was structurally sound even with the deviations from his plan on file with the City and signed off on his final inspection. He sent a letter instead of a revised drawing and claims he added tiebacks to compensate for the mistake on the installation of the footing. The tiebacks were shown on the original sectional (end-view) drawing. The total number of tiebacks is not on file.

### **RECOMMENDATIONS**

In situations of engineered grading, which involve soil tests, soil compaction tests, and special drainage considerations, a complete set of plans should be submitted. Since there were deviations from the original plan, the Building Department should require that revised plans be filed before the project passes final inspection.

### **RESPONSE REQUESTED**

Angels Camp Building Official

## **THE 2003-2004 CALAVERAS COUNTY GRAND JURY RECOMMENDATIONS TO SUCCESSORS**

We found that the traditional mid-term startup of the Final Report Editing Committee provided a challenge in the preparation of the final report. Therefore, we suggest that the Final Report Editing Committee be formed and become active at the beginning of the Grand Jury term. Immediate formulation of the final report format will simplify the process of drafting individual committee reports. Following the approval of the format by a quorum of the Grand Jury, the Final Report Editing Committee should hold an in-depth report writing training session. It is expected that a final report draft be submitted to the Final Report Editing Committee upon completion of each individual committee investigation.

This year's Grand Jury formed a Grand Jury Office Maintenance Committee, which took responsibility for file maintenance and organization. We recommend that this committee be continued and be formed at the beginning of the Grand Jury term.

Before empanelment on the Grand Jury, each juror attends a two-day training session. A follow-up session in August or September would be very helpful in the application of the training to actual Grand Jury service.

## **REQUIREMENTS OF RESPONDENTS**

Effective January 1, 1997, there was an extensive change in the law affecting respondents and responses to Grand Jury findings and recommendations. The legal requirements are contained in California Penal Code, Section 933.05. The full text of the law follows.

Each Respondent should become familiar with these legal requirements and, if in doubt, should consult legal counsel prior to responding.

For the assistance of all Respondents, Penal Code Section 933.05 is summarized below.

### **How to Respond to Findings**

The responding person or entity must respond in one of two (2) ways:

- 1) That you agree with the finding.
- 2) That you disagree wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons for the disagreement.

### **How to Report Action in Response to Recommendations**

Recommendations by the Grand Jury require action. The responding person or entity must report action on all recommendations in one of four (4) ways:

- (1) The recommendation has been implemented, with a summary of the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis. If a person or entity reports in this manner, the law requires a detailed explanation of the analysis or study must be submitted to the officer, director, or governing body of the agency being investigated.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

### **Budgetary or Personnel Recommendations**

If either a finding or recommendation deals with budgetary or personnel matters of a County department headed by an elected officer, both the elected officer and the Board of Supervisors shall respond if the Grand Jury so requests. While the Board of Supervisors' response is somewhat limited, the response by the department head must address all aspects of the findings or recommendations.

### **Appearance Before the Grand Jury**

Prior to the publication or release of Grand jury findings, the Grand Jury may request a personal appearance by the person or entity to discuss the proposed findings.

### **Advance Release of Grand Jury Report Disclosure Prohibited Prior to Public Release**

Two working days prior to release of the Final Report, the Grand Jury will provide a copy of the portion of the report to all affected agencies or persons. *No officer, agency, department, or governing body of a public agency shall disclose the contents of the report prior to its public release.*

### **Time to Respond, Where and To Whom to Respond**

Penal Code Section 933(c), depending on the type of Respondent, provides for two different response times and to whom you must respond:

- (1) Public Agency: The governing body of any public agency must respond within ninety (90) days. The response must be addressed to the Presiding Judge of the Superior Court.
- (2) Elected Office or Agency Head: All elected officers or heads of agencies who are required to respond must do so within sixty (60) days, to the Presiding Judge of the Superior Court, with an information copy provided to the Board of Supervisors.

The Presiding Judge of the Calaveras County Superior Court is:

The Honorable John E. Martin  
Calaveras County Superior Court  
891 Mountain Ranch Road  
San Andreas CA 95249-9709

**California Penal Code**  
**Section 933.05**

(a) For purposes of subdivision (b) of Section 933, as to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- 1) That the Respondent agrees with the finding.
- 2) That the Respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each Grand Jury finding, the responding person or entity shall indicate one of the following actions:

- (1) The recommendation has been implemented, with a summary of the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis. If a person or entity reports in this manner, the law requires a detailed explanation of the analysis or study must be submitted to the officer, director, or governing body of the agency being investigated.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a County agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A Grand Jury may request a subject person or entity to come before the Grand Jury for the purpose of reading and discussing the findings of the Grand Jury report that related to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the Grand Jury shall meet with the subject of that investigation regarding that investigation, unless the Court, either on its own determination or upon request of the foreperson of the Grand Jury, determines that such a meeting would be detrimental.

(f) A Grand Jury shall provide to the affected agency a copy of the portion of the Grand Jury report relating to that person or entity two (2) working days prior to its public release and after the approval of the Presiding Judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the Final Report.