

Final Report of the 2012-2013 Mariposa County Grand Jury





Superior Court of the State of California County of Mariposa

F. Dana Walton
Presiding Judge

Wayne R. Parrish
Assistant Presiding Judge

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June 11, 2013

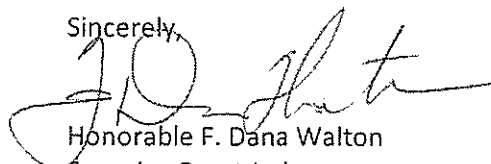
George Caitlyn
3526 Hwy 49 S
Mariposa, CA 95338

Dear Mr. Caitlyn:

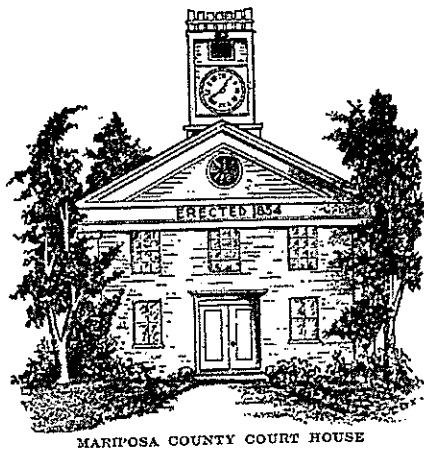
I have read and reviewed the 2012-2013 Mariposa County Grand Jury Final Report.

At this time I wish to personally thank you and the other grand jurors for your work on behalf of the citizens of Mariposa County. Without the dedication of those like you this vital part of our system would certainly fail.

Sincerely,



Honorable F. Dana Walton
Superior Court Judge



Mariposa County Grand Jury

P. O. BOX 789
MARIPOSA, CALIFORNIA

June 12, 2013

The Honorable F. Dana Walton
Judge of the Mariposa County Superior Court
Mariposa, CA 95338

Dear Judge Walton,

The members of the 2012-2013 Mariposa Grand Jury submit the following report constituting Part 2 of our full report. As you know, in late January we concluded a number of investigations and published those findings in a Mid-term Report. In retrospect we are glad that we chose to proceed in this manner as it has allowed us, while still a sitting Grand Jury, to receive the responses coming from the various agencies we reviewed.

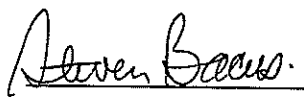
In this installment of our report you will find no new investigations. During the spring we directed our attention to finalizing our responses to various complaints we had received, following up on the Yosemite West Waste Water Treatment Facility investigation and beginning a new, large project with Human Services. We hope that these efforts have assisted and will assist various agencies in delivering excellent services to County residents.


We want to thank a number of County employees spoke with us at some length not as part of any specific investigations but really as important parts of our education and orientation to the issues in the County. This list includes Supervisor Janet Bibby, Sheriff Doug Binnewies, former District Attorney Bob Brown, and County Counsel Steve Dahlem.


We also want to thank the staff of the Superior Court Administration office. In particular Dina Garrett and Desire Leard have patiently coped with our impatience and ignorance in a remarkable and praiseworthy manner.

And finally we thank you, Judge Walton, for allowing us be members of the 2012-2013 Mariposa Grand Jury. It has been a pleasure and an education to serve the County in this way.

Sincerely,


Steve Bacus

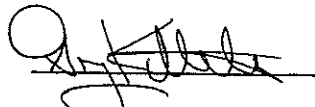

George Catlin (foreman)

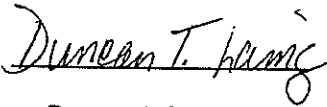

Chery Davis



Yvonne Dixon


Mike Fagalde

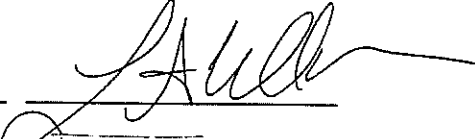

Lynette Jackson


Greg Kittelson


Duncan Laing


Patrick McCall


JR Matchett


Laura Ullmann

Introduction

This second installment of the Report of the Mariposa County Grand Jury for 2012-2013 takes a slightly different form from prior reports. It is more a summary of the processes we have engaged in over the last four months rather than a set of individual investigative reports. We hope that it will be beneficial to the County – especially those leading agencies and those who will serve on future Grand Juries.

In our mid-term report we presented findings and recommendations coming from investigations into the County retirement pensions, the Planning Department, the Yosemite West Waste Water Treatment Facility, the Elections Department, the Technical Services Department, and ourselves, the Mariposa Grand Jury. One of the reasons for filing a mid-term report was that we wanted to still be functioning as a Grand Jury when the responses to that report were made. This would enable us to get a first-hand sense of what was and was not useful to the County.

We found that those responding to the report – as mandated by law – were in broad agreement with the vast majority of our findings. When this was not the case, as with the Elections Department, it was due to a genuine misunderstanding on our part. This mistake can, and in our view should, be corrected in the future by asking department heads to review Grand Jury findings prior to publication. In fact, this simple step indicates the direction we believe holds the most promise for Grand Juries going forward: working in conjunction with County agencies and special districts to try to improve services.

One of the most striking facts about the responses to our findings was that, with one major exception which will be discussed below, no one indicated that we had told them anything they did not already know. In a way, this is very good news. The directors of our various agencies are well aware of the most of the issues within their departments. Of course this result is also a product of the fact that the directors of the various agencies were also the primary source of most of the information we collected. Most of our investigations started with a conversation with the director. After that we would follow up in various ways, but essentially we saw pretty much whatever the agency wanted to show us.

This lack of access to “hidden” material is completely understandable. There are two strong factors that militate against a Grand Jury, or at least this Grand Jury, discovering information a

County agency does not want them to see. The first is that it is very hard for an outsider to “get the real scoop” on any organization. No one likes to air dirty laundry, and the very name “Grand Jury” conjures up images of criminal investigations in which someone is tried and often found guilty. We, of course, hasten to remind all Mariposans that this grand jury is a civil grand jury. We do not take up criminal matters, and we certainly don’t aim to convict anyone. But the association still lingers.

The second deterrent to finding out things directors don’t show us is that such investigations tend to put a Grand Jury in opposition to that director. Yes, with enough effort the Jury might find real problems the director either did not know about or, more likely, did not want made public. While the Grand Jury could then publish what it found, we ask ourselves if that would be the best route to improving agency functioning. Would the director then willingly implement changes to fix what was wrong? Though an affirmative answer is possible in both cases, we suspect oppositional relationships lead to less progress than collaborative ones. Our experience tells us that there is much promise for Grand Juries working in collaborative relationships with County agencies and Special Districts.

Above we mentioned that one agency director provided clear indication that our investigation had been helpful in bringing important matters to her attention. In this case, with the director’s support, we had conducted a written employee survey. Perhaps we asked questions that had not been asked before, perhaps the guaranteed anonymity of a Grand Jury survey encouraged forthright responses, and perhaps this particular director was particularly open to constructive feedback. We do not know exactly what made this investigation apparently so helpful, but it was, and it was the only one in which a survey was employed and reported.

Going forward, we believe working with agency directors to ask their employees and customers what they see about the agency is a service the Grand Jury is uniquely set up to provide. We have recently initiated what we believe is a model start to a cooperative effort along these lines with the Human Services Department. There, near the end of our term, we encountered a director who was eager for information on important staff issues and happy to cooperate with the Grand Jury in seeking it. Though it is still early in the process, we do predict that this director will be more likely to do what he can to implement changes suggested by the data because it is something he has been involved with from the beginning. The Grand Jury does not see itself as a foreign body coming in to “investigate” his department. Rather we see ourselves as citizens charged with the responsibility (among others) of helping County agencies improve services. Working in this way strikes us as one good method of meeting that obligation.

We will close this introduction with a note on the recommendations from our Mid-term Report. Here, as with the findings, our distinct impression was that those in charge had already thought of most of what we recommended. Again, this is good news. Competent, thinking people are

directing our County agencies. Unless a Grand Jury is able to show them a finding they were unaware of, it is unlikely the Grand Jury will make a recommendation that they have not considered. For us, this only underscores the need and opportunity for Grand Juries to work with directors to discover relevant, new information about their agency that will lead to improved services. We hope this will be one of the functions of future Grand Juries, and we are deeply aware that it will require the willing cooperation of the leadership of the many agencies and special districts that serve the County.

In conclusion our recommendations to future Grand Juries are as follows:

1. Work with the department heads to make improvements rather than against them.
2. Provide a draft of your report to the department head for comment before publishing.
3. Work with the department heads to distribute employee surveys.
4. Suggest ways to obtain customer feedback.
5. Publish a mid-term report or strive to complete the final report before March.

Complaints

One of the functions of the Grand Jury is to look into complaints about the functioning of County agencies and special districts. The 2012-2013 Grand Jury reviewed seven complaints: two that were filed near the end of the previous Jury's term and five that arrived during our term.

As will be illustrated below, the nature of the complaints varied widely. However none were frivolous. In every instance the complainant(s) experienced some delivery of services that a reasonable person might question, and in every case the complainant(s) went to considerable trouble to explain the problem clearly enough for the Jury to pursue it. We thank all of those who filed formal complaints, recognizing that doing so in a relatively small community comes with some liability. This is one of the ways the County is able to improve its work, so we do depend on citizens letting the particular agency or the Grand Jury know when something seems amiss. Again, thank you.

Brief summaries of the complaints and our response are as follows:

1. *A complaint concerning the functioning of the Lake Don Pedro Community Service District (LDPCSD).* After a review of the issues, a visit to a meeting of the LDPCSD, discussions with a member of the Mariposa County Board of Supervisors and the County Counsel, and a review of investigations conducted by previous Grand Juries, we conclude that the best remedy for the many problems of this special district is the democratic process. Members of the LDPCSD need to exercise their right to elect directors who will serve their needs.
2. *A complaint concerning certain financial practices at the John C. Fremont Healthcare District.* Upon investigation we found that the matter had already been thoroughly reviewed and corrected by the District's management and Board.
3. *A complaint concerning the quality of services provided to a minor by the Child Welfare Services branch of the Human Services Department.* We discussed the issues with a number of individuals familiar with the case and discovered that a detailed investigation of the complainant's specific allegations would require us pursuing additional court orders because juvenile court privacy laws protect the pertinent information. We chose not to undertake a more complex investigation during our term.
4. *A complaint concerning the County's performance in designing, building and maintaining the Yosemite West Waste Water Treatment Facility.* This complaint initiated the largest

investigation by the 2012-2013 Grand Jury – and one we recommend be continued by the 2013-2014 Grand Jury. The results of our initial investigation are published in our Mid-term Report. Since then we have monitored the County's progress on this matter carefully. In their response to the Mid-term Report of the Grand Jury, the Board of Supervisors agreed that "this project is a priority and needs to be completed in a timely manner." An ad hoc committee was established consisting of two Supervisors, the Public Works Director and two representatives of the Yosemite West Maintenance District Advisory Committee. This committee was charged with making recommendations for correcting the problems with the treatment facility. Its initial meeting produced nine substantial recommendations (See Appendix A). While an engineering firm has been hired to design remedies for the treatment facility, it is currently not clear how much progress has been made on most of the recommendations of the ad hoc committee. It is clear that all the problems with the facility will not be rectified in the current building season. Hopefully enough progress will be made this summer to improve sewage treatment and forestall any fines being levied by the Central Valley Regional Water Quality Control Board, which has already issued a notice of violation.

5. *A complaint concerning the process surrounding a conditional use permit issued by the Planning Department.* By the time we received this complaint the complainant had actually received all the necessary permits to proceed with their plans. We reviewed the permitting process with the Planning Department and they did acknowledge mistakes in handling the case. We are confident they will make every effort to avoid similar errors going forward.
6. *A complaint concerning a blog published by the President of the Lake Don Pedro Community Service District.* Here we concluded that the complainants had a range of legal options which they could pursue against the individual involved and their specific issue was beyond the scope of our mission to examine the procedure operations of county agencies and special districts.
7. *A complaint concerning the management and third party recommendations regarding a conservatorship case.* Because matters relating to the judicial system do not fall under the purview of the Grand Jury, we were not able to address this complaint.

Brief Reports

Over the course of the spring, the Grand Jury conducted a number of interviews and site visits which we will briefly report upon here. In every instance we were acutely aware that we were only seeing what our hosts wanted us to see. These brief reports should in no sense be confused with full investigations where a more complete picture of a county agency or special district is examined.

The Jury is required by law to annually inspect all correctional facilities within the County. A visit to Juvenile Hall is scheduled, and we visited the County Jail and the Mount Bullion Conservation (Fire) Camp. In both instances we observed what appear to be well run facilities where the correctional theme is to treat the inmates with respect and to expect the inmates to, in turn, respect the officers and the institution. With the implementation of AB109 which mandates that an increasing number of convicted persons be held in county jails, the Mariposa jail is becoming crowded. The present jail was designed for men and women being held pre-trial and serving sentences of generally less than one year. Now more people who would have otherwise been sent to serve their time in state prison are being held here for longer sentences.

The Mt. Bullion fire camp is a 110 bed minimum security facility administered by the California Department of Corrections. The inmates provide several services for not only Mariposa but surrounding counties also, as part of the Cal Fire umbrella for Mariposa, Merced and Madera. The camp maintains 5 fire teams that work in conjunction with Cal Fire and provide relief for the regular State Fire Fighters. Some of the alumni have secured full time employment with Cal Fire upon release from custody.

The inmates also provide assistance to the Department of Public Works on projects such as road clearing and brush clearing, thereby saving the county substantial funds on these annual projects. The facility offers several programs for the inmates including the hobby shop where the inmates, who provide their own tools, can make all sorts of hobby projects as gifts and such.

In contrast to the County Jail, Mt. Bullion would prefer to be fully occupied in order to maintain five full crews. However, the impact of AB109 is that non-violent felons are now serving time in county jail instead of state prison. By reducing the number of inmates sent to state prison the pool of inmates available for fire camps is diminished. Very few of the inmates "walk off" or violate the rules as this results in being returned to higher security state facilities.

Members of the Grand Jury interviewed two representatives of the JC Fremont Hospital, a special district of the County. On separate occasions they spoke with the CEO and one of the directors.

JCF Hospital consists of 3 Rural Health Care facilities, 18 swing beds, for either short term or long term care, a 24 hr. Emergency Room, 16 skilled long term care beds, Hospice, and Home Health Care. The Federal Government designates that a Critical Access Hospital (CAH) consists of 24 beds or less and is 27 miles from another hospital or medical facility. JCF falls within this designation. Reimbursements to Critical Access Hospitals are paid at the rate of actual cost to the provider, not at the usual MEDICARE or MEDI-CAL rates.

Day to day operations are good, but the facility is still cash strapped. Small, standalone health facilities like JCF are concerned about the percentage paid by MEDICARE and MEDI-CAL being cut and the cost for patient care will most likely increase.

The hospital district's annual net revenue is about \$16 Million and expenses are near \$18 million. Over \$2 million comes in from "non-operating revenue" such as grants and donations. Eighty percent of all patient revenue is paid by either Medi-Cal or Medicare. The hospital also receives about \$1.8 million from property and sales tax revenue. The district has a need for a grant writer to assist them in reviewing all financial avenues that might lead to an increase in income.

The hospital is trying to partner with an Accountable Care Organization (ACO) or other health care facilities to increase services. If all county residents have some form of insurance the hospital can manage acute care and have less emergency room episodes costing thousands of dollars. The 16 bed Ewing Wing for long term care is losing money.

The California State Earthquake code mandates that by 2030 part or all of the hospital be rebuilt. The hospital is hoping for some exceptions and is waiting for another review.

It is difficult to hire and retain doctors because the pay at rural hospital is lower than in urban areas and most new doctors have large student loan debts to repay. As an incentive, the hospital has helped some new hires by repaying part of their student loans. That might encourage some. Overall, the hospital is needed in the community, but faces some big challenges in the future.

Appendix A

Yosemite West Maintenance District Advisory Committee's Ad Hoc Committee

Notes from Friday, March 8, 2013

Committee Members Present: John Carrier, Jerry Jackman, John Mock

Committee Members Absent: Lee Stetson

The agreed priorities of the Ad Hoc Committee are to make short-term recommendations:

- to mitigate the California Regional Water Quality Control Board's (RWQCB) Notice of Violation (NoV) dated August 30, 2012;

and to make longer-term recommendations:

- to repair the Yosemite West Wastewater Treatment Facility (WWTF); and
- to develop a second water well and address the water system.

The Ad Hoc Committee recognized that:

- There are additional infrastructure issues in Yosemite West, but that the priorities identified at this meeting should be addressed first.
- Identifying funding to pay for infrastructure repairs and improvements is a challenge.
- The NoV from the RWQCB must be mitigated, but any funding mechanism will take time to put in place.
- The actual mitigation work must go forward without delay, even though no funding has been identified.
- Without clarity regarding the \$3+m ballot assessment in 2004 and accounting for monies spent on that rehabilitation work to the Yosemite West WWTF, it is impossible to ask Yosemite West property owners for additional funding, due to a near complete lack of public trust.

- The only way to restore public trust is to provide complete, open and transparent accounting for the 2004 ballot assessment and scope of the repair work done.

The Ad Hoc Committee's recommendations to the Mariposa County Board of Supervisors for immediate action and timely results are:

1. Instruct Public Works Department to aggressively search for and find the written technical report describing the improvements to the Yosemite West WWTF completed in 2006. This report is mentioned in the February 24, 2006 Mariposa County letter signed and stamped by former Director of Public Works Dana Hertfelder, and referenced on page 4/7 "File Review Summary" of the August 30, 2012 NoV. It is important to note that the February 24, 2006 Mariposa County letter certifies that the improvements to the Yosemite West WWTF were constructed in accordance with the plans and specifications developed by Psomas Engineering and that the system is capable of disposing of an average daily flow of 100,000 gallons.
2. Instruct Public Works to determine if the system is in compliance with the permitted average daily flow of 60,000 gallons. Replacing the broken flow meter is the best method. As an interim method, the amount of water pumped from the well can be used.
3. Request Public Works and the Clerk of the Board to locate and make available the Psomas Engineering "Yosemite West Inflow and Infiltration Report" of June 2000, and the Psomas Engineering "Yosemite West Subdivision Build-Out Report" of April 2, 2001. (According to the Engineer's Report for Assessment District No. 01-1, these reports are on file with the Director of Public Works, the Clerk of the Board of Supervisors, and Psomas.)
4. Request County Counsel to provide a written explanation of a determination to pursue or not to pursue legal action against Psomas Engineering for damages to the County and to the Special District resulting from design flaws in the Yosemite West WWTF, noting that this must be addressed immediately to avoid an issue with the statute of limitations.
5. Prepare a full accounting of the 2004 ballot assessment, to include both the scope of work and all fiscal transactions, to be made available to Yosemite West property owners. This should include all payments made to any and all contractors including all work performed by Public Works staff and all work identified as Force Account Work in the Engineer's Report for the Assessment District, and full accounting for all monies received from all sources, including the EPA grant, the USDA loan, Mariposa County, and any other sources.
6. Instruct Public Works and the County Administrative Officer to propose a water and sewer user fee schedule that reflects actual annual operating costs over and above the Annual Costs of the Yosemite West WWTF that are part of the WWTF Project Life Cycle Costs paid for by the 2004 ballot assessment, as identified in the Psomas Engineering plans and specifications. This should be a progressive rate structure starting at usage higher than 3,000 gallons per month, so that higher water usage shall have a

higher per gallon charge, to encourage conservation (as was done in the March 23, 2004 rate increase). The 3,000 gallon per month usage reflects typical resident-owner's usage, whereas higher usage typically reflects rental operations, where such costs are part of the cost of business and can be offset by rental charges. An increase in the hook-up fee should also be included to reflect actual costs of any permitted usage. Comparable rates from Sierra Nevada communities with similar home values and similar water-sewer systems should be used for comparison.

6. Investigate hiring a private firm (such as Provost and Pritchard Consulting Group) to oversee project management rather than the Public Works Department. This will help rebuild public trust and relieve the work load on Public Works staff.

7. Develop an operations and procedures manual for Yosemite West infrastructure that includes determination of mean time before failure for all equipment and a replacement / spares plan, and budget accordingly.

8. Create a web-based platform for sharing maintenance-related information, such as Yosemite West Maintenance District Advisory Committee agendas and minutes, important documents, and technical data (e.g., monthly data for water usage, wastewater flows, etc.)