

# MONO COUNTY GRAND JURY

---



Final Report  
2013-2014

# TABLE OF CONTENTS

Judge’s Filing Decree.....	1
Jury Foreperson’s Letter to the Judge.....	2
The Grand Jury System.....	3
Grand Jury Advisors.....	4
Grand Jurors .....	5
Matters Investigated	
1314.01: Mono County Department of Social Services.....	6-11
1314.02: Town of Mammoth Lakes Proposed Materials Recovery Facility (MRF).....	12-26
1314.03: Mammoth Lakes Tourism.....	27-33
1314.04 Continuity Committee Follow up to Mono County Assessor’s Office Case#11-01.....	34-35
1314.05 Continuity Committee Follow up to Mono County Administrator/Human Resources Case #1213.04.....	36-38
Jail and Probation Department Tours.....	39-44

## LOGO

Laura Patterson Design

## COVER

Haven Kiers

## LAYOUT

Alyse Caton

## PRODUCTION

Don Sage & Alyse Caton

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MONO

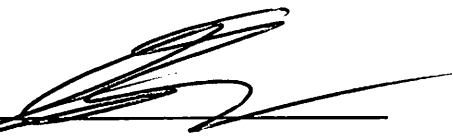
IN RE:

2013-2014 Grand Jury

GENERAL ORDER

I certify that the 2013-2014 Mono County Grand Jury Final Report complies with Title Four of the California Penal Code and direct the County Clerk to accept and file the final report as a public document.

Dated this 16 day of Sept 2014.

  
STAN ELLER  
Presiding Judge of the Superior Court



## GRAND JURY OF MONO COUNTY

---

P.O. Box 3994

Mammoth Lakes, CA 93546

Heidi Helbig  
Grand Jury Foreperson 2013-2014

June 22, 2014

The Honorable Judge Stan Eller  
Mono County Superior Court  
P.O. Box 1037  
Mammoth Lakes, CA 93546

Dear Judge Eller,

It is my honor to submit the Final Report of the 2013-2014 Mono County Grand Jury. This report covers investigations of Mono County, the Town of Mammoth Lakes, two continuity reports, and a summary of findings from the mandatory Mono County Jail tour. We are also forwarding a complaint that we think would be good for the 2014-2015 Grand Jury, to look into, should they find the complaint viable and worth further investigation.

With the valuable support of Hector Gonzalez, Executive Officer of the Court, the jurors undertook a detailed training program developed by the California Grand Jurors Association. The training was excellent and greatly enhanced the effectiveness of the Grand Jury as it carried out its role of reviewing operations of local government in Mono County.

My experience as a foreperson has been an honor and a privilege. I found it extremely interesting and rewarding to be able to facilitate the work of team as we conducted the business of the Grand Jury.

I would like to thank:

- Judge Stan Eller for providing us the opportunity to serve.
- County Counsel Marshall Rudolph and District Attorney Tim Kendall for all their help in sorting through all of our questions and giving us great insight.
- Court Executive Officer Hector Gonzalez and Executive Assistant Alyse Caton for all their guidance and support.
- All of the local government officials and staff who educated us on the functions and inner workings of numerous governmental entities
- My Assistant Foreperson-Sandy Hogan, who made my job easier through all of her support, guidance, and great work.
- And to all my other Grand Jurors who really stepped up to the plate and did remarkable investigations.

Sincerely,

Heidi Helbig  
Foreperson-2013-2014

## THE GRAND JURY SYSTEM

Shrouded in secrecy, the functions of a Grand Jury are not widely known. The following summary describes what a Grand Jury is and does:

The Grand Jury system dates back to 12<sup>th</sup> century England during the reign of Henry II. Twelve “good and lawful men” were assembled in each village to investigate anyone suspected of crimes. The jurors passed judgment based on what they themselves know about a defendant and the circumstances of the case. It was believed that neighbors and associates were the most competent to render a fair verdict. By the end of the 17<sup>th</sup> century, the principle that jurors must reach a verdict solely on the basis of evidence was established, and that practice continues today. Although California Supreme Court decisions have curtailed the historical criminal indictment function, the Grand Jury still serves as an inquisitorial and investigative body functioning as a “watchdog” over regional government.

The Mono County Grand Jury, as a civil Grand Jury, is not charged with the responsibility for criminal indictments except in the case of elected or appointed county officials. Its primary function is the examination of county and city government, including special legislative districts such as community service districts and fire protection districts. The Grand Jury seeks to ensure that government is not only honest, efficient and effective, but also conducted in the best interest of the citizenry. It reviews and evaluates procedures, methods and systems used by governmental agencies to determine compliance with their own objectives and to ensure that government lives up to its responsibilities, qualifications and the selection process of a Grand Jury are set forth in California Penal Code Section 888 et seq.

The Grand Jury responds to citizen complaints and investigates alleged deficiencies or improprieties in government. In addition, it investigates the county’s finances, facilities and programs. The Grand Jury cannot investigate disputes between private citizens or matters under litigation. Jurors are sworn to secrecy, and all citizen complaints are treated in strict confidence.

The Mono County Grand Jury is a volunteer group of 11 citizens from all walks of life throughout the county. Grand jurors serve a year-long term beginning July 1, and the term limit is two consecutive years. Lawfully, the Grand Jury can act only as an entity. No individual grand juror, acting alone, has any power or authority. Meetings of the Grand Jury are not open to the public. By law, all matters discussed by the Grand Jury and votes taken are kept confidential until the end of term.

One of the major accomplishments of a Grand Jury is assembling and publishing its Final Report. This document is the product of concentrated group effort and contains recommendations for improving various aspects of governmental operations. When it is completed, the Final Report is submitted to the presiding judge of the Superior Court. After release by the court, it is directed first to county department heads for review, then to the communications media. The Final Report is a matter of public record, kept on file at the court clerk’s office. It is also available on line at: [www.monocourt.org](http://www.monocourt.org).

## **Grand Jury Advisors**

**Stan Eller**

Judge, Superior Court, Mono County

**Hector Gonzalez Jr.**

Executive Officer, Superior Court, Mono County

**Tim Kendall**

District Attorney, Mono County

**Marshall Rudolph**

County Counsel, Mono County

**Alyse Caton**

Executive Assistant, Superior Court, Mono County

## Grand Jurors

### 2013-14 Grand Jurors

Heidi Helbig, Foreperson  
Mammoth Lakes

Jon Boyer  
Mammoth Lakes

Zane Davis  
Lee Vining

Noelle Deinken  
Mammoth Lakes

John Milne  
Mammoth Lakes

Janette Redd Williams  
Mammoth Lakes

Sandy Hogan, Assistant Foreperson  
Mammoth Lakes

Sharon Clark  
Mammoth Lakes

Jay Deinken  
Mammoth Lakes

Mary Ann Dunigan  
Mammoth Lakes

Jes Schwartzkopf  
Crowley Lake

**Mono County Grand Jury 2013-2014**  
**Mono County Department of Social Services**  
**Case #1314.01**

**Summary:**

The 2013-2014 Mono County Grand Jury received a complaint, dated May 21, 2013, regarding actions of the Mono County Department of Social Services (Complaint). The Grand Jury accepted the matter for investigation.

The Grand Jury finds that the issues raised in the Complaint did not have merit, because some were unsubstantiated and because others were based on the complainant's erroneous interpretation of applicable laws and regulations. A recommendation was made to improve the Department of Social Services procedure for internal investigations.

**The Complaint:**

On May 21, 2013, the 2013-2014 Mono County Grand Jury received a Complaint from a Mono County resident (Complainant) concerning the Mono County Department of Social Services (DSS). According to the Complaint, Complainant was a client of DSS from 2010 to 2013, in connection with multiple applications, under the CalFresh and Medi-Cal programs, seeking benefits for Complainant and her minor children. The Complaint included copies of many documents from the DSS.

Allegations made in the Complaint included:

Complainant was "subjected to discrimination and harassment" by her DSS eligibility worker.

Complainant was wrongly denied Medi-Cal benefits.

Complainant's Medi-Cal benefits were improperly discontinued.

Complainant received communications from DSS in Spanish, after telling DSS that she spoke only English.

Complainant was refused information and documentation needed to use the Medi-Cal program.

Food stamps were improperly withheld from Complainant.

Complainant's "civil rights" were violated.

After the Complaint was reviewed and discussed by the Grand Jury, a unanimous recommendation was made to conduct an investigation, and a committee of three grand jury members (Committee) was formed for that purpose.



## **The Method:**

The Committee developed a three step process to investigate the allegations in the Complaint:

1. Review the extensive documentation provided in the Complaint. Establish a time line of relevant events cited in the Complaint and identify possible discrepancies and inconsistencies.
2. Locate additional relevant documentation to a) develop a general understanding of the mission, planning, and procedures of the MCDSS and b) confirm or refute the allegations in the complaint.
3. Identify and interview individuals who might be able to provide additional information relevant to the validity of the allegations in the complaint.

## **The Investigation:**

Mono County Department of Social Services (DSS)

The mission of the Mono County Department of Social Services is to serve, aid, and protect needy and vulnerable children and adults residing in Mono County in ways that strengthen and preserve families, encourage personal responsibility, and foster independence.

DSS includes several divisions that determine eligibility and human services in accordance with state and federal regulations:

Child Welfare Services: Child Protective Services, including Prevention, Intervention, Placement, and Foster Care.

Adult Protective Services (APS): In-Home Support Services and Conservator case work.

Economic Assistance (Eligibility): Medi-Cal, County Medical Services Program, CalFresh, CalWORKs, and General Assistance.

Employment and Training: Welfare to Work, Workforce Investment Act, and Career Services Centers in Mammoth and Walker.

In addition, DSS manages the Mono County Senior Services Program, serves as the Public Conservator, and operates county wide emergency shelters.

### CalFresh

The CalFresh program (formerly known as Food Stamps and federally as SNAP -- Supplemental Nutrition Assistance Program), is designed to add to a family's food budget to put healthy and nutritious food on the table. The program issues monthly benefits that can be used to buy food at markets and grocery stores. Most CalFresh households are subject to a gross income determination test.

### Medi-Cal

Medi-Cal provides health coverage for children, parents with deprived children, pregnant women, aged individuals and those who are blind or disabled according to Social Security rules. Each of these programs has different eligibility requirements. Eligibility for Medi-Cal is based on a number of factors, and may include a requirement for the recipient to pay a share of the cost for medical expenses.

### Economic Conditions

During the time period addressed by the Complaint, a protracted downturn in the economy of Mono County was significantly impacting DSS. An article in the Mammoth Times in 2011, for example, noted that a “historic spike” in poverty occurred in Mammoth Lakes at the Mono County Department of Social Services in the spring of 2011 (Willoughby, Poverty rises in Mono County, Mammoth Times, September 23, 2011). While the norm had been approximately 15 people seeking relief daily, those numbers had risen as high as 90 per day.

### Interview with the DSS Director

The Committee interviewed the Director of DSS on November 20, 2013. The Director provided the Committee with an overview of the services provided by DSS and some of the procedural details involved in processing applications for CalFresh and Medi-Cal benefits. The Director corroborated the negative effect of economic conditions during the time period at issue, noting that the workloads of DSS employees had generally increased significantly.

The Director provided the Committee with copies of useful information concerning the operation of DSS, including extensive budgeting information that also detailed the functions of the department.

The Committee learned from the Director that Complainant had filed additional complaints, involving essentially the same subject matter as the Grand Jury complaint, with two California state agencies (California Department of Social Services and Health and Human Services Agency). At the Committee’s request, after the interview the Director promptly provided the Committee with copies of the documents with which each of the state agencies resolved these complaints.

### Complaint Filed with California Department of Social Services

Complainant requested a hearing with the California Department of Social Services on the grounds that Mono County and the assigned eligibility worker unfairly determined Complainant’s Medi-Cal share of cost. Responding to the request, an administrative law judge conducted a hearing on July 10, 2013. In a decision dated September 2, 2013, the judge examined the law and the facts in extensive detail, concluding that Mono County correctly determined the Medi-Cal share of cost. The judge dismissed the claim of unfair treatment, noting that the agency had no jurisdiction to address this claim.

Complaint filed with State of California—Health and Human Services Agency, Department of Health Care Services.

Complainant filed a complaint with the Department of Health Care Services, alleging race, sex and ethnicity discrimination by the DSS staff.

In response, Mono County DSS conducted an internal investigation, then submitted a "Civil Rights Complaint Investigation Report" to the Department of Health Care Services on July 25, 2013. The DSS report concluded that the complaint was "unsustained" with respect to the Complainant being discriminated against on the basis of race, sex or ethnic group orientation. On August 9, 2013, an EEO Specialist at the Department of Health Care Services responded, approving closure of the complaint on the basis that there was no information to support Complainant's allegations of disparate treatment.

The decision of the California Department of Health Care Services, however, did not provide details regarding the findings. For this reason, the Committee asked the Director for, and was provided, a copy of the July 25, 2013 report.

#### July 25, 2013 Mono County DSS Civil Rights Complaint Investigation Report

The report showed that Complainant missed deadlines for required responses, which delayed actions by DSS. Although the primary cause of the delay was Complainant's failure to timely respond, additional delay was also introduced at one point when the eligibility worker overlooked a response from Complainant. In mitigation, this was apparently primarily due to an overwhelming caseload, leading to a large number of items awaiting action by the eligibility worker.

The report found that Complainant failed to provide substantive evidence to back up the claims of discrimination.

#### Conclusion of Investigation

After review of the Committee's investigation by the full Grand Jury, a letter was mailed to Complainant on March 24, 2014, in which Complainant was informed that the Grand Jury had investigated the complaint. The letter identified the information that the Grand Jury had considered and noted that the Grand Jury had found no substantial evidence to corroborate the allegations in the complaint of discrimination, harassment, or irregularities in determining applicant eligibility for state or county benefits.

The letter concluded by inviting Complainant to contact the Grand Jury if Complainant wished to provide any additional evidence to substantiate the allegations.

The Grand Jury received no response from Complainant as of May 28, 2014.

#### **Findings and Recommendations:**

1. **Finding:** Complainant did not provide any credible evidence to substantiate claims of discrimination and harassment by her DSS eligibility worker.

**Recommendation:** None.

2. **Finding:** Complainant did not provide any credible evidence to substantiate claims that Complainant's civil rights were violated.

**Recommendation:** None.

3. **Finding:** Complainant's Medi-Cal benefits were correctly calculated according to applicable laws and regulations.

**Recommendation:** None.

4. **Finding:** No evidence was found to substantiate Complainant's claim that communications by DSS were in Spanish rather than English.

**Recommendation:** None

5. **Finding:** Complainant's assertion that information about and documentation for the Medi-Cal program was withheld may have resulted from Complainant's misunderstanding of DSS procedures intended to reduce duplication of materials (multiple languages used in form documents to mention availability of materials in other languages).

**Recommendation:** None

6. **Finding:** Food stamps were not improperly withheld from Complainant.

**Recommendation:** None

7. **Finding:** The current Director of DSS began serving in this position recently and was not the director during the time period on which the complaint was based.

**Recommendation:** After the Director has one or two years' tenure in the position, the Grand Jury should consider an overall review of DSS operations to generally determine how effective DSS is operating and to specifically examine whether the DSS workload continues to be heavily impacted by adverse economic conditions.

8. **Finding:** Complainant's failure to comply with reasonable DSS procedural requirements substantially contributed to the denial and termination of benefits that Complainant would have otherwise received in a timely manner.

**Recommendation:** None.

9. **Finding:** DSS procedures failed to correlate documents received from applicants with the deadlines to which those incoming documents were responding. As a result, one of Complainant's responses, because it was overdue, was overlooked by DSS for a period of time since it was not prioritized for handling before other submittals, which were responding to more recent deadlines.

In mitigation, this deficiency in DDS procedures did not cause a problem until a major increase in DSS cases (due to economic conditions) caused eligibility workers at DSS to experience large increases in their workloads. Furthermore, the problem would not have occurred but for Complainant's failure to submit the response at issue in a timely manner.

**Recommendation:** As soon as DSS became aware of this problem, it revised its procedures to ensure that this problem did not occur in the future. For this reason, the Grand Jury finds no need to make any further recommendation.

10. **Finding:** The July 25, 2013 Mono County DSS internal investigation contained a number of factual errors and lacked adequate detail in some findings.

**Recommendation:** DSS should consider establishing a procedure to ensure that internal investigations are reviewed for accuracy and completeness.

**Mono County Grand Jury 2013-2014**  
**Town of Mammoth Lakes**  
**Proposed Materials Recovery Facility (MRF)**  
**Case #1314.02**

**Summary:**

On April 22, 1992, Glenn Thompson, then-Town Manager for the Town of Mammoth Lakes, wrote the following to Bill Mayer, Mono County's Chief Administrative Officer: "I have informed Council that I consider solid waste issues and costs to be the 'ticking time bomb' with the potential to unravel the fiscal safety nets of all local governments. I think it very important that we work to make the situation known to our citizens. ... I really believe we have a tiger by the tail and we need to be both aggressive and cautious."

That time bomb is still ticking, and the tiger still being held by the tail. And, after more than 20 years, information about solid waste issues facing the Town and the County is not generally known. In this report, we examine allegations relating to secretive planning of solid waste solutions by the Town of Mammoth Lakes and find that responsibility for the lack of public knowledge and participation lies, in large part, with Town government.

Since the early 1990s, the Town of Mammoth Lakes has considered building a Materials Recovery Facility (MRF) to enhance its ability to meet state law requirements for diverting solid waste from landfills. Sometime after 2007, discussions about a potential MRF took a turn away from the public eye, and were conducted instead in closely-guarded business negotiations and closed sessions of Town Council — closed sessions which, while noticed for apparently appropriate purposes, exceeded the limited scope of what's legally permissible under the Brown Act. These two issues, lack of transparency and Brown Act violations, are the subject of this report.

**The Complaint:**

The Grand Jury received two citizen complaints, both alleging in essence that the Town of Mammoth Lakes (TOML), through its Town Council and staff, pursued a secret plan with Waste Connections Inc., the Town's exclusive franchisee for solid waste disposal, to use "public trust" monies collected in trash bills to purchase real property for the purpose of expanding the Solid Waste Transfer Station in the Industrial Park, including plans to build and operate a Materials Recovery Facility (MRF). The gist of both complaints was that, in so doing, the Town allegedly violated the Brown Act, which requires California public agencies to conduct business in open and public meetings.

**The Method of Study:**

The investigation began in November, 2013, with interviews of the two complainants as well as a staff member associated with the Town of Mammoth Lakes.

The Grand Jury then obtained thousands of pages of documents from the Town by means of a subpoena and requests under the California Public Records Act. The documents produced included agreements, correspondence, emails, memoranda, Town Council agendas and minutes,

flyers, consultants' reports, and handwritten notes, all relating to solid waste issues. We also obtained documents from other sources, including minutes of meetings of the Mono County Board of Supervisors and the Mono County Solid Waste Task Force. The Grand Jury then summarized the documents in chronological order, creating a listing approximately 100 pages in length that spanned the time period from 1991 through the present. With that, we were better equipped to grasp in context the complex series of events that the documents depicted.

Thereafter, we interviewed nine additional witnesses, all associated with the Town of Mammoth Lakes in one capacity or another, including all members of Town Council. We were unable to obtain much information of substance from most of the Town Council members. We did not conclude that they deliberately withheld information, but rather that they had failed to retain, understand, and recollect information that would allow us to be confident of informed decisions on solid waste issues. The staff members we interviewed, both current and past, generally seemed to be more well-informed. But given the recent reductions and turnover in staff, "institutional memory" has been damaged.

Based on the information derived from these sources, we then made findings, as discussed below.

#### **Discussion:**

In 1989, AB 939 became law in California, requiring cities and counties to divert at least 25% of all solid waste from landfills by 1995 and 50% by the year 2000. At least as early as 1992, the Town of Mammoth Lakes began making efforts to comply, adopting a Source Reduction and Recycling Element in the Town's General Plan. Historically, however, the Town has had difficulty in complying with state waste diversion mandates.

Mammoth Disposal has been the Town of Mammoth Lakes' exclusive franchisee for solid waste disposal for many years. In February, 1992, the Town entered into a 10-year exclusive franchise agreement that, among other things, called for Mammoth Disposal to build, operate, and maintain a MRF to help with diversion efforts. To date, however, the only MRF that has ever been built — if it can even be called a MRF — is capable only of removing cardboard from the waste stream and baling it for export to market. Programs are also in place for recycling of aluminum, plastic and glass, E-waste, and used oil and batteries, but not as part of a MRF.

By way of background, a MRF is a facility designed to receive, separate, and prepare recyclable materials for marketing to end-users (manufacturers). MRFs support communities in their efforts to protect the environment by diverting recyclable materials from landfill disposal, recapturing and reusing resources. A MRF can enhance a community's efforts to comply with waste diversion mandates imposed by California law.

There are at least two types of MRFs — "dirty" and "clean." By our understanding, a "dirty" MRF would include a single-stream operation, in which all garbage/trash — including food waste, other refuse, and recyclables — is disposed of in one receptacle, which is then transported to the MRF, where it is separated by hand, mechanical means, or both, in order to recover recyclable materials before disposing of the remainder in a landfill. A "clean" MRF, on the other hand, would not accept all garbage/trash, but rather only recyclable materials that have been separated at the source from other forms of solid waste. It may well be that there are gradations between "clean"

and “dirty,” as even recyclable materials could be soiled before separation at the source. According to the Town, the MRF at issue in this investigation was intended to be a “clean” MRF, although that is subject to some dispute.

In June, 1999, Waste Connections, Inc., purchased Mammoth Disposal and thereafter operated it as a subsidiary. At that time, Town Council approved transfer of the exclusive franchise agreement to the parent corporation. Although set to expire in 2002, Council later adopted a resolution extending the agreement through May 31, 2007. After that, several shorter-term extensions were approved in order to afford time to complete negotiations on a successor franchise agreement, which remains in force to this day. There will be more on that agreement later in this discussion.

In 2000, the Town commissioned SCS Engineers to evaluate the feasibility of constructing a MRF. The report, dated September 26, 2000, concluded that a MRF was not feasible at that time because the Town’s waste stream did not include the types and quantities of recyclable materials that would make it financially viable.

On September 7, 2005, with an eye toward the May 2007 expiration of the exclusive franchise agreement with Mammoth Disposal, Town Staff presented Council with an agenda bill explaining the need to consider expanded recycling facilities for the Town in light of AB 939 diversion requirements. The bill also identified several policy issues to be considered in providing for trash collection and sought Council’s direction on whether to pursue renewal, extension, or replacement of the solid waste franchise agreement with Mammoth Disposal. In response, Council directed staff to establish an *ad hoc* Solid Waste Committee to study the issues and report back.

The Solid Waste Committee issued a report to Council dated March 23, 2006, covering the issues discussed in the September 7, 2005 agenda bill. Among other things, the Committee indicated its belief that all solid waste customers should share in the cost of complying with State solid waste diversion requirements, a process that would be complicated by having multiple trash haulers operating in the Town. The members also recommended continuing the practice (established in 1998) of having a single, secure solid waste transfer station located in the Industrial Park, offering residential self-hauling along with optional curbside pickup (in lieu of the previous system of multiple drop-off points located throughout Town, which had resulted in undesirable conditions).

In addition, the Solid Waste Committee examined whether the Town should subject solid waste franchise agreements to a competitive bidding process, or perhaps even grant franchises to multiple haulers. The report notes, however, that Mammoth Disposal owns the land on which the Solid Waste Transfer Station (SWTS) is situated, and it would therefore have a significant advantage in any bidding process. Other bidders would be forced to incorporate the added cost of either leasing the SWTS from Mammoth Disposal or acquiring an alternative site. The Solid Waste Committee also believed that having multiple trash haulers would also result in increased truck traffic and the possibility of increased trash and litter, with haulers “cherry picking” plum accounts and remaining customers being forced to shoulder increased costs. Under these circumstances, the Committee recommended that the Town maintain an exclusive franchise system until such time as it could acquire ownership of the Solid Waste Transfer Station site owned by Mammoth Disposal, as well as an adjacent parcel for expansion. As such an acquisition would require a significant capital outlay, the Committee unanimously recommended making the purchase through a renegotiated and extended franchise agreement with Mammoth



Disposal, which would allow for the costs to be spread out over a number of years and also foster an orderly transition upon its expiration, when the franchise could be subjected to a meaningful competitive bid process.

The Solid Waste Committee also looked specifically at whether the Town should build a MRF. Committee members reviewed the 2000 report prepared by SCS Engineers, which concluded that the Town's waste stream was insufficient for a MRF to be economically viable. The Committee's report also cites staff visits to MRFs located in Truckee and South Lake Tahoe, where they learned that the facilities' "solid waste volumes ... do not financially support those operations." The Committee acknowledged that future increases in mandatory solid waste diversion rates might someday require that a MRF be built in the Eastern Sierra, but did not foresee such increases in the near-term. Thus, based on an informal cost/benefit analysis, the Committee recommended against proceeding with a Town-sponsored MRF at that time, adding that if inclusion of a MRF provision were required in the solid waste franchise agreement, all costs and financial risks of construction and operation should be borne by the franchisee.

Council accepted the Solid Waste Committee's report on April 23, 2006. On September 6, 2006, the issue came before Council again, with Council at that time authorizing staff to move forward with negotiations toward a new long-term exclusive solid waste franchise agreement with Mammoth Disposal based on the recommendations in the Solid Waste Committee's report. In support of this authorization, Council explicitly found that it was infeasible for a solid waste provider other than Mammoth Disposal to acquire or provide the land necessary to accommodate construction of another solid waste transfer station, nor was it practical to have more than one solid waste provider given the financial and logistical barriers to entry. This finding, along with a finding of jeopardy to public health, safety and welfare, formed the legal basis for dispensing with a competitive bid process, which ordinarily would have been required under Town Ordinance Section 12.40.090.

Negotiations between the Town and Mammoth Disposal began shortly thereafter, and continued for more than three years. Late in that interim, with the expectation that a final agreement would be reached by July 1, 2009, the Town Manager sought Mammoth Disposal's signature to a "Deal Points" commitment letter outlining certain terms that the parties expected would affect customer rates. With the deal points nailed down, the Town could then proceed with satisfying legal requirements for a public hearing on increased solid waste disposal rates in sufficient time to finalize the franchise agreement by July 1, as anticipated.

Both parties signed the "Deal Points" letter and, on March 31, 2009, the Town mailed formal notices to solid waste disposal customers and parcel owners of the proposed increases, which would be the subject a public hearing on May 20, 2009. The Notice of Public Hearing disclosed generally that the proposed increases would "cover the costs of the services to be provided, and the cost of acquiring land for the transfer station, including, costs of labor, utilities, supplies, equipment, gasoline, land, facilities, and franchise fees."

The agenda bill for the May 20, 2009, public hearing expanded on the information given in the Notice, summarizing the key points of the "Deal Points" letter as follows:

1. The Town will offer a five year franchise agreement to Waste Connections, Inc. The Town will pursue acquisition of the transfer station land through a purchase option during the five year agreement and will extend the agreement another twenty (20) years if the option is exercised. The Town will issue debt to acquire ownership and spread out the payments in the rate structure over the term of the agreement. The acquisition price of the transfer station site has been locked in at current appraised value.
2. The Town will pursue acquisition of the Mammoth Firewood parcel adjacent to the transfer station site. This acquisition is necessary to expand the transfer station site to accommodate future growth of trash and recycling in the Town of Mammoth Lakes. The Town will issue debt to acquire ownership and spread out the payments in the rate structure over the term of the agreement.
3. The transfer station site will be torn down eventually and rebuilt to increase efficiencies and to accommodate future growth in trash disposal and recycling services. This would be a Town project and would be publicly financed with the costs passed through in the rate structure.

Ultimately, the citizens of the community will own hard assets including the transfer station land and facilities and the Town will have control of our own destiny with respect to all solid waste and recycling programs, including the ability to competitively bid out future franchise agreements. It is critical to note that this entire project is focused on the long-term realities the Town faces with future solid waste and recycling management and requirements from the State of California.

The minutes of the May 20, 2009, public hearing reflect that Michael Grossblatt, former Personnel Director and Assistant to the Town Manager, publicly outlined the information in the agenda bill, noting that the new franchise agreement itself would come forward for approval at a later meeting. After a discussion, which included “whether the Town takes possession of the parcel on which the facilities are and will be constructed,” the item was opened to public comment. According to the minutes of the meeting, only one member of the public spoke: “Martin Orrick asked if the increases would be less in the event the proposed parcel is not purchased; Mr. Grossblatt responded that they would be less, and that another public hearing would be conducted.”

The minutes further reflect that nine protest letters had been submitted by members of the public. A review of these letters shows that none of the protestors commented on the proposed purchase of real property. In addition, a tenth letter was submitted, not to protest the rate increase, but rather to request certain service improvements (e.g., a payment drop box, improved lighting, etc.).

The Town Clerk reported that the rate protests did not constitute a majority. After further discussion, Council adopted Resolution 09-27, approving the rate increases as proposed. There is no mention of a proposed MRF for the site in any of these documents.

By December 16, 2009, the Town had completed negotiations with Mammoth Disposal on the terms of a new franchise agreement. On that date, Council held a public hearing to consider Resolution 09-79, authorizing the Mayor to execute the new “Waste Collection Franchise

Agreement Between the Town of Mammoth Lakes and Mammoth Disposal Company” (hereafter, the “Franchise Agreement”). The Resolution passed, and the Franchise Agreement went into effect on January 1, 2010. While initially set to expire on December 31, 2014, the agreement afforded Mammoth Disposal the option to extend the term for an additional five years. Mammoth Disposal exercised this option early in 2014 and, thus, the Franchise Agreement is now set to expire on December 31, 2019.

The agenda bill prepared by staff for the December 16, 2009, Town Council hearing provides an extensive review of the Franchise Agreement’s major terms and, because it is written in plain English and provides information about the meaning and intent of rather complex contractual provisions, it bears inclusion here.

Section 8 of the Franchise Agreement contemplates two real property acquisitions: (1) the Expansion Parcel (sometimes called the Mammoth Firewood Lot); and (2) the Transfer Station site itself, owned by Mammoth Disposal. The agenda bill explains this section as follows:

The existing transfer station is at or close to capacity and, in coming years, may become unable to accommodate the Town’s waste management and recycling needs. This was the core issue of the Solid Waste Committee’s summary report. To this end, the Town and Mammoth Disposal mutually agree that an improvement and expansion of the transfer station is needed and the parties have agreed upon a preliminary improvement plan which will demolish and replace the current transfer station site. In order to accomplish this goal, staff has been negotiating for over a year with the owners of the adjacent Mammoth Firewood (“Expansion Parcel”) property for purchase of that property for the expansion process. Rate increases to pay for the acquisition of the Expansion Parcel have already been approved by the Town Council (as discussed in Article 10 of the proposed agreement and as approved by Resolution 9-27) assuming a deal can be reached on the parcel. Section 8.02 in the proposed agreement outlines the Town’s acquisition of the Expansion Parcel.

Another stated goal of the Solid Waste Committee’s summary report was the recommendation of eventual Town ownership of the existing two acres currently owned by the Franchisee to allow for the future bidding of the franchise agreement down the road. This was the most contentious issue negotiated between the Town and Waste Connections for the past three years. Section 8.03 outlines the terms and conditions of the Town’s option to purchase these premises. As stated earlier in this agenda bill, the Town retains the right to purchase the premises at a pre-determined price of \$2,273,000. This price was based on an independent appraisal in December 2008. The Town retains an option to purchase the premises during the first five years of the proposed Franchise Agreement through December 31, 2014. If the Town forgoes this option and purchases the premises during the five year extension period, the price of the two acres will be set by a new appraisal. Before the purchase of the premises can be completed, the Town will have [to] schedule a new Proposition 218 hearing before the Town Council [can] implement new rate increases for this purchase. If this transaction goes through, the term of the proposed Franchise Agreement will be extended for twenty years (20) to pay off and

amortize the property acquisition. Transfer of title, however, will pass to the Town of Mammoth Lakes upon the close of escrow.

Article 8 is the cornerstone of this proposed Franchise Agreement and should be viewed as an investment in the Town's future with respect to the provision of solid waste and recycling services to the Mammoth Lakes community.

Section 10 of the Franchise Agreement, "Franchisee Compensation and Rate Adjustments," addresses financing for acquisition of the Expansion Parcel, among other things. The agenda bill explains:

Section 10.02(b)(3) discusses the impending rate increases allocated toward the anticipated debt payment for the Expansion Parcel acquisition. In essence, the Franchisee will make an annual payment of \$180,000 in quarterly installments to the Town of Mammoth Lakes. These monies have been approved in the Proposition 218 hearing back on May 20. If the Expansion Parcel is not acquired, the Town has the option to forgo the rate increases associated with the \$180,000.

In other words, the rate increases that were approved by Council in May 2009 included an upward adjustment to be paid by consumers. Under this provision of the Franchise Agreement, Mammoth Disposal would pass this part of the increase through to the Town, at \$180,000 annually, paid in quarterly installments.

Again, there is no mention of a MRF in any of the documentation — not in the Franchise Agreement, not in the agenda bill, not in the Notice of the Meeting, and not in the Meeting Minutes. Even so, Town records show that a MRF had long been on the radar screen. For example, the Town at one point identified a MRF program as part of a Plan of Correction it submitted to CalRecycle. In a letter to the Town dated January 31, 2007, a CalRecycle official pointed this out and warned that if the Town's reported diversion rates fell below the mandated 50% level, the lack of the promised MRF would be considered in deciding whether to initiate a Compliance Order process.

The Town responded on March 5, 2007, informing CalRecycle that it didn't actually intend to build a MRF *per se*, as it had previously commissioned a study that concluded that a MRF wasn't economically feasible. However, it had secured support from Mammoth Disposal and intended to expand the current Solid Waste Transfer Station's "capacity with additional acreage and a new baler," along with "a site plan with a better traffic flow and increased capacity for receiving and storing recyclables and divertible material. Plans are to purchase the site (totaling 3 acres), finalize an agreement with Mammoth Disposal, and commence environmental review and permitting."

These plans never materialized. As noted in a 2010 Solid Waste Program Evaluation conducted by HDR, a consulting firm, for Mono County, "[T]he Town staff discussed with HDR that they have already studied installing MRF components at the [Mammoth Disposal Transfer Station] and determined them to be too costly at the scale of operations involved."

Eventually, renewed discussions of a MRF were jumpstarted when, on February 23, 2011, CalRecycle notified the Town of its intention to conduct a review to determine whether the Town was complying with diversion mandates. The review would include looking at the Town's

programs as well as evaluating the materials actually being disposed. If found to be out of compliance, the letter warned, the next step would be to consider a compliance order against the Town, with the potential for penalties of up to \$10,000 per day.

Throughout this time, and going back to 2006, Town staff had been negotiating the proposed purchase of the Expansion Parcel (Firewood Lot), as well as the Transfer Station site itself. Council was updated on progress of the negotiations from time to time in closed sessions and provided staff with further direction toward these efforts. These meetings were noticed in Town Council meeting agendas under the Brown Act exception for real property negotiations. One of these closed sessions took place on December 16, 2009, the meeting in which Town Council authorized the Mayor to sign the Franchise Agreement. Many others followed.

## THE BROWN ACT

As discussed in the California Attorney General's pamphlet, *The Brown Act, Open Meetings for Local Legislative Bodies*, the Brown Act (California Government Code section 54950, *et. seq.*) governs meetings conducted by local legislative bodies, including Town Council. Its purpose is to facilitate public participation in local government decisions and to curb misuse of the democratic process through secret legislation, while at the same time striking a balance with legitimate needs for confidential candor, debate, and information gathering. While the Act confers a presumption in favor of public access, it also provides specific exceptions to open meeting requirements where the government has established a need for confidentiality. Courts have construed these exceptions narrowly. Where matters are not subject to a closed meeting exception, the Brown Act has been interpreted to mean that all of the deliberative processes by legislative bodies, including discussion, debate, and acquisition of information, be open and available for public scrutiny.

One of the Brown Act's exceptions authorizes closed meetings for real property negotiations. Under this exception, a local body may meet in closed session to advise its negotiator concerning the "price" and "terms of payment" in connection with a specific transaction. Court decisions have indicated that the intent of this exception reflects the realities of the commercial marketplace and the need to prevent the person(s) with whom the local government is negotiating from sitting in on the session at which the negotiating terms are developed.

Any such closed session must be preceded by an open session in which the body orally announces the matter to be discussed, identifying the real property in question, the individual who will act as its negotiator, and the persons with whom its negotiator may negotiate. These same items must be disclosed in a properly noticed written meeting agenda as well. Under safe harbor provisions of the Brown Act, the property in question should be identified by a street address, or if no street address exists, a parcel number or other unique reference.

According to witnesses, Town Council members received training on the requirements of the Brown Act upon taking office, usually through the League of California Cities and the Town Attorney. All Council members acknowledged having received such training. Only one current Council member (as of April 2014) appeared to have any real knowledge or understanding of the Brown Act's intent or provisions. Most stated that they relied on the Town Attorney for guidance as he attends all closed sessions, usually in person but occasionally by telephone.

Our review of agendas and minutes for Town Council meetings at which closed sessions took place under the real property negotiations exception raised several concerns about Council's compliance with the Brown Act. These concerns were confirmed through witness testimony. First, despite the fact that a street address for the Expansion Parcel is readily available, it was never described by reference to street address in meeting agendas. Instead, it was at times described as the Mammoth Firewood lot, or by reference to the names of its owners, or by parcel number. Second, Council repeatedly held closed sessions prior to regular meetings, sometimes as early as 4:00 p.m. before the public normally arrived and before those who work normal business hours would be able to attend. In many cases, there was no oral announcement of the matter in an open meeting before Council went into closed session, as the Brown Act requires. Both of these irregularities, it seems, militated against public awareness and discussion of the agenda items at issue — purchase of the Expansion Parcel in particular.

Moreover, the evidence we reviewed leads us to conclude that, to the extent that Council gathered information about, established policy, and gave direction on proposed plans for a MRF, those discussions took place in closed sessions that were noticed for the purpose of real property negotiations. Again, the Town Attorney attended each of these meetings, usually in person, but occasionally by telephone.

For example, the February 2, 2011 Town Council Agenda noticed closed sessions, both at the beginning and end of the agenda. The closed session at the end of the meeting included at least eight separate matters, all of which are lumped together in a single paragraph, as is typically the case in Town Council agendas. This makes them difficult to separate. The third item concerns real property negotiations relating to APN-200-050, which (by reference to County records) we identified as 59 Commerce Drive, which is the site of the Solid Waste Transfer Station and Mammoth Disposal. Buried further down in the paragraph, after several other items, the closed session agenda notes that there will be discussion relating to acquisition of "Mammoth Firewood, APN 37-200-08." Oddly, with regard to the Transfer Station parcel, the agenda identifies a Town official as the representative for the "prospective seller" and a County official as the "prospective buyer," even though the Town did not own the property — Mammoth Disposal did.

We found nothing in the thousands of pages of documents the Town produced, and received no oral evidence, to indicate that the Town ever actively negotiated with the County over a purchase/sale of the Transfer Station, although we saw reams of documentation about the negotiations between the Town and the Mammoth Firewood lot owners. There are neither written meeting minutes nor video/audio recordings made during closed session, so we cannot know with certainty what was actually discussed in the closed session on February 2, 2011. However, we find it unlikely that it was restricted to the price and terms of payment of the Town's sale to the County of land it did not own. Consequently, this item appears to be questionable given the Brown Act limitations on the scope of real property negotiations.

Notwithstanding the lack of minutes and recordings of closed sessions, the Grand Jury received oral testimony from several witnesses indicating that MRF plans and other matters relating to solid waste were repeatedly discussed in closed session, purportedly under the real property negotiation exemption in conjunction with the price and terms of payment for the proposed purchase of the Expansion Parcel and the Transfer Station. According to one witness, whom we found credible, when purchase of the Expansion Lot was on the closed session agenda, it was essentially always about the MRF.

This testimony is supported by documentary evidence that shows Town Council on more than one occasion exceeded the scope of the Brown Act exception for real property negotiations during closed sessions. One example is a confidential memorandum dated March 6, 2013, prepared by staff for a closed session noticed in the agenda for that day's Town Council meeting at 4 p.m. (an hour before the regular Council meeting) under the Brown Act exception for real property negotiations on the Expansion Parcel. The memorandum, bearing the subject line, "Mammoth Firewood Acquisition," includes handwritten notes by a staff member, who acknowledged having made them during the closed session. These notes make clear that the memorandum's contents were fully discussed, and that the discussion exceeded the limits of the Brown Act real property negotiation exception.

The memorandum first reviews negotiating terms for the Expansion Parcel, including the price to be offered, with a handwritten notation indicating that Council directed staff to offer a lower purchase price than had initially been sought.

The memorandum then continues with a discussion of "Long Term Solutions for Trash" and "Parcel Fees for Mono County." According to the handwritten notes, the discussion included MRF facility costs, possible alternatives to Benton Crossing Landfill, and parcel fees paid by Mammoth Lakes property owners to support Mono County's solid waste disposal program. These matters, while perhaps tangentially related (at best) to a purchase of the Expansion Parcel, fall outside the narrow exception for real property negotiations. They could have and should have been the subject of discussion at a public meeting so that Mammoth Lakes residents could be informed of and provide input on the overall scope of solid waste issues facing the Town, as well as the County.

In addition, a staff email dated December 11, 2012, states, "During the Council closed session meeting last Wednesday, December 5, 2012, the Council made clear that the Town's plans for a Transfer Station/MRF remains a priority and they are interested in moving the project forward." This provides further written corroboration of the fact that discussions of a MRF took place in closed sessions.

In fact, between 2007 and July 2013, we found only one discussion of a MRF that took place in a noticed open session of Town Council. That discussion occurred on May 16, 2012, when Town staff sought Council's approval of a letter to CalRecycle seeking an extension of time for the Town to comply with State-mandated diversion requirements. At that time, CalRecycle's compliance review of the Town was well under way and the Town was awaiting the results. In addition, AB 341 had been signed into law, and within a short time, would increase diversion rates to a *goal* of 75% by 2020. Council approved the letter to CalRecycle (which was later sent off bearing a date of June 27, 2012), thereby committing to a timeline for, among other things, finalizing a MRF plans and construction schedule by Winter 2012, and beginning construction by Spring 2013.

CalRecycle delivered its Staff Report and Evaluation of the Town's compliance efforts on November 2, 2012, recommending a good faith finding of compliance based on the Town's reasonable efforts, despite the fact that commercial and residential recycling programs remained problematic at that time. The report notes Mono County's expressed concerns that a MRF in Mammoth Lakes would have long-term, irreparable impacts on the County's solid waste program. The report also recommended that "CalRecycle consider conducting an interim review of the Town's recycling efforts toward the end of 2013. This will allow the town adequate time to fully

implement the Commercial Recycling Program and evaluate the existing residential recycling program.” The report also noted that “Staff will continue to monitor the progress of the potential construction and operation or potential use of a MRF in the Town’s annual progress reports to CalRecycle.” Thereafter, CalRecycle’s Board adopted the Staff Report’s recommendations and notified the Town accordingly on December 6, 2012.

On November 14, 2012, Town staff discussed its plans for a MRF in a meeting of the Planning Commission, as part of an informational item following up on the results of the CalRecycle compliance review. In a memorandum prepared for the occasion, staff described the MRF in general terms as “a purpose-built, state-of-the-art facility that can more effectively intake, handle and process recyclable materials” and said the Town generates approximately 80 percent of the total waste stream of Mono County, a balance not likely to change in the future. “Because of this, Town staff has strongly recommended that the MRF be built where the most waste is generated, to maximize convenient access [to] the facility for waste generators and haulers, and to minimize resources spent trucking waste to a more distant location. CalRecycle agrees with this and supports this proposal viewing the construction of the MRF as a critical step for the Town in meeting its compliance efforts.”

The memorandum also described the Town Council’s approval of the June 27, 2012, letter to CalRecycle seeking an extension of time for compliance, citing it as a “firm commitment to build the MRF within Town Limits.” The Grand Jury notes that, while the letter may be taken as a commitment to build a MRF, there is no mention in the letter that a MRF is to be built “within Town Limits.”

Continuing, the staff memo also states: “There has been some concern from the County regarding the financial impact to the landfill with diversion of waste to a location inside the Town Limits. The landfill is set to close in 2023 and DWP, who owns the land on which the landfill is located, has indicated that there will be no extensions to this timeframe. However, options for the Town to effectively address its twelve-year history of non-compliance, without implementing the MRF in the location proposed, are very limited. It may be necessary to proceed, despite the County’s concerns, in order to avoid more serious potential enforcement actions, including significant financial penalties, being imposed by the State. There may also be a need, and an opportunity for the Town to take a lead in helping to address broader regional solid waste issues.”

In the oral discussion that followed, staff reiterated the County’s concerns and acknowledged them as valid, but emphasized that the Town is committed to pursuing a MRF. They also discussed the idea of regional participation in the MRF plans, noting that it would make sense to have partners. At the end of the discussion, staff emphasized that the Town is “up against the timeline with the State now.” Citing a need to move aggressively, staff said, “We’re sticking to the timeline set in the letter,” and that they would update the Planning Commission as matters progressed.



Even so, as of late 2012, revived discussions with the Expansion Parcel's owners were unsuccessful, resulting in delays. (In fact, the parties have not reached agreement as of the date of this report.) As of March 31, 2014, Town records reflect a balance of \$622,516.27 collected from customers under the Franchise Agreement to finance this purchase. These funds are being held by the Town "in trust" for this specific purpose. The Grand Jury reviewed accounting records, and the Town Manager confirmed by email dated April 24, 2014, that there have been no expenditures to date from this fund.

In addition, correspondence with CalRecycle indicates that the Town regarded the award of a new solid waste franchise agreement as a "critical component of funding for the development and operation of the MRF," and thus expected to begin negotiations with Mammoth Disposal early in 2013, before proceeding with the MRF. This, too, has resulted in delay, as negotiations have yet to be completed.

Finally, despite the fact that proposed plans for the MRF had to that point proceeded largely outside public view, Mammoth Lakes residents became better informed as a result of events leading up to and culminating in a July 5, 2013 meeting of the homeowners association for The Trails, a housing development located within close proximity to the Transfer Station and Expansion Parcel. At that meeting, opponents of the project presented information about the proposed MRF, some of which Town staff later contended was inaccurate. (Although staff had initially agreed to attend and participate in the meeting, they were unable to do so for personal reasons.) A meeting of the Town/County Liaison group followed on July 11, at which the MRF was discussed publicly, with a staff report prepared by employees of the Town and the County. The report essentially recommended that the Town's plans for a MRF be placed on hold while stakeholders pursued a regional solution. At that meeting, there was an announcement that Town Council would hold a closed session at its regular meeting on July 24, 2013, to again discuss purchase of the Expansion Parcel.

Before the July 24 closed session, the Town received approximately 16 letters from members of the public, primarily homeowners in The Trails, protesting the location of the MRF and purchase of the Expansion Parcel. After the closed session, one of the Council members announced that no action had been taken, and that there would be an extensive public process regarding the MRF regardless of the Town's decision or timing on the Expansion Parcel.

Thereafter, in a regular meeting of Town Council on December 18, 2013, there was a properly agenzized discussion of solid waste issues, without specific mention of a MRF. After 45 minutes of discussion, including staff presentations and public comment, Council directed staff to complete an analysis to evaluate sites with capacity to accommodate larger scale recycling and a solid waste transfer station, including costs of improvement and impacts to disposal rates. The information was to be brought back to Council in early 2014.

The matter of solid waste reappeared on Town Council's agenda for April 2, 2014, with a presentation of five potential sites for a MRF/transfer station in close proximity to the Town. A sixth alternative would locate a MRF in Inyo County, but would still require a transfer station site close to Town. After staff presentations, public comment, and discussion, Council gave consensus for staff to move forward with further research.

## **Findings and Recommendations:**

1. **Finding:** Between 2009 and July 2013, there was only one discussion of the proposed MRF in an open session of Town Council, although Town staff were actively working on a proposed project during portions of that time. Aside from this single discussion, Council as a whole held other discussions relating to the MRF and other solid waste issues in closed sessions, purportedly under the Brown Act exception for real property negotiations. Such discussions should have been limited to the price and terms of payment to be negotiated for purchase of the Expansion Parcel or the Solid Waste Transfer Station, in accordance with the notice given in the agenda. Discussions that went beyond this limited scope, including whether and where to build a MRF, broader solid waste issues (e.g., Mono County parcel fees), and long-term solutions, violated the Brown Act because they were, at best, only tangentially-related to the proposed transactions. They were and are the public's business. They could have and should have been discussed in open Council meetings where the public could participate.

## **Recommendations:**

1. Closed sessions of Town Council should be recorded. Recordings should be kept for a period of at least three years. The recordings would not, of course, be released except as authorized by law. Recording closed sessions will heighten Council's awareness of the Brown Act's limitations. It will also allow for subsequent follow-up to ensure that Council adheres to the law.
2. All Town Council members and managerial staff should be required to attend regular periodic training on the Brown Act, the Public Records Act, and the public's right to information about what their government is doing — the people's business. In light of our findings, particular attention should be given to the Brown Act requirements for closed Council sessions, including the scope of permissible discussions under the various exceptions and their narrow construction by California courts. Such training should be documented. In addition, the Town Attorney should consider taking a more active role in advising Council on the proper scope of closed session discussions as the discussions occur, perhaps by reviewing agenda bills in advance and by actively advising Council members if and when a discussion may be heading beyond legal limits.
3. While the proposed purchase of real property, including the Expansion Parcel, its financing through a rate increase, and the planned use of the Solid Waste Transfer Station/Expansion Parcel to expand the Town's solid waste operations, was minimally disclosed in public notices and hearings in 2009, we found only one explicit mention of the proposed MRF thereafter during a public Town Council meeting (*i.e.*, the June 2012 letter to CalRecycle seeking an extension of time to comply and setting out a timeline for construction of a MRF). There was little evidence presented demonstrating that information about any MRF proposal was ever actively disseminated to the public. The consequences of this lack of public discussion became evident by July 2013, as rumor and speculation had been circulating about the project and its anticipated cost. At

about that time, and based on information that may or may have not been accurate, concerned citizens made their opinions known. Thereafter, following the closed session on July 24, 2013, Council announced that any further MRF plans would proceed publicly. At the present time, it appears Council has been and will continue to adhere to this commitment. As Council knows, it is engaged in the people's business. Effective government depends on public trust. Such trust is undermined when governmental officials (elected or otherwise) withhold, or appear to withhold, information about the people's business. Thus, we recommend that Council adhere not only to the letter of the Brown Act, but to its spirit as well, and actively foster the principle of open government. Questions will no doubt arise in the future about the propriety of particular issues for closed session discussion. When they do, we recommend that Council choose always to err on the side of public disclosure, participation, and discussion.

4. In the future, citizens who are concerned about possible Brown Act violations by Town Council may immediately contact the Mono County District Attorney for assistance. The DA's office has assured the Grand Jury that it is prepared to investigate and resolve such matters expeditiously. Making a citizen's complaint to the Grand Jury remains an alternative, of course, but we believe a more prompt investigation and resolution through the DA's office could better serve the public interest in open government.

2. **Finding:** Despite the fact that a street address for the Expansion Parcel was readily available, it was never described in the closed session portion of Town Council agendas by reference to such an address. Instead, it was at times described as the Mammoth Firewood lot, or by reference to the names of its owners, or by Assessor's Parcel Number.

**Recommendation:** Real property should always be identified in closed session notices in such a way that it may be readily identified by the public. Doing otherwise could be construed as an attempt to avoid public interest and discussion. (See Recommendation 3, Finding No. 1.) Using the Assessor's Parcel Number, for example, when a street address is available, should be avoided.

3. **Finding:** Council repeatedly held closed sessions prior to regular meetings, sometimes as early as 4:00 p.m. In many cases, there was no oral announcement of the matter in an open meeting before Council went into closed session, which the Brown Act requires.

**Recommendation:** While Finding No. 3 may be viewed as a technicality, we think that, in the interest of building and maintaining public trust, Council should be scrupulous in following the requirements of applicable law. In addition, the minutes of any such Council meeting should always accurately reflect that a public meeting was properly opened and the required announcement made before Council went into closed session, even if members of the public were not then present. Following the law fosters public trust. Doing otherwise can serve only to discourage public attendance, awareness, and discussion. We also recommend that Council seek to schedule meetings at times that maximize the opportunity for public participation.

4. **Finding:** In pursuing this investigation, we were unable to obtain much information of substance from most Town Council members. We did not conclude that these witnesses deliberately withheld information, but rather that they had failed to retain, understand, and

recollect information that would allow us to be confident of informed decisions on solid waste issues or, in fact, other issues, in the future.

**Recommendation:** It is understood that service on Town Council is part-time, poorly compensated from a financial standpoint, and that most Council members engage in other full-time employment during their terms in office. The Grand Jury offers no remedy for this situation. We are concerned, however, because lack of time and preparation by these officials does not bode well for the prospect of informed policy and decision-making. Staff members, on the other hand, generally seemed to be more well-informed. But given the recent reductions and turnover in staff, “institutional memory” has been damaged. Under these circumstances, it is all the more important for Council to foster full public participation in local policy and decision-making. We recommend that, moving forward, Town Council and staff rededicate themselves to working openly and in partnership with the people they serve. Council should also take full advantage of current staff’s knowledge by directing the Town Manager to ensure that Council is fully informed of all reasonable solutions, alternatives, and consequences to issues under their consideration.

5. **Finding:** Town Council agendas for closed sessions typically lump multiple matters into a single paragraph. This makes them difficult to read and understand.

**Recommendation:** Agendas for closed sessions of Town Council should list each item separately. We note that this is the Mono County Board of Supervisors’ practice.

The Mono County Grand Jury closed the investigation of this matter on June 10, 2014.

**Mono County Grand Jury 2013-2014**  
**Mammoth Lakes Tourism**  
**Case # 1314.03**

**Summary:**

The Grand Jury conducted a preliminary inquiry into the operation of Mammoth Lakes Tourism (MLT). We reviewed documentary information provided by the organization and interviewed three witnesses: a Town finance department employee, MLT's executive director, and the chair of its board of directors.

To the limited extent of our review, the Grand Jury is satisfied that MLT is operating with a reasonable degree of transparency and has adequate financial controls in place.

However, given the limited scope of our review, and in light of the recently-imposed assessment for the Mammoth Lakes Tourism Business Improvement District (TBID), we recommend that a more thorough investigation be carried out by the Grand Jury in two years.

**The Issue:**

The Grand Jury made this inquiry on its own initiative, given the recent imposition of the TBID and the clear public interest in ensuring that MLT uses its public funding in the best interests of the community it serves. We were particularly interested in examining the degree of transparency with which MLT operates as well as the extent to which it has implemented basic financial controls.

**The Method of Study:**

The investigation began in December 2013 with an interview of the interim finance director for the Town of Mammoth Lakes. This was followed by a Public Records Act request to MLT seeking production of broad documentation, including:

1. Revenues received each year since its inception;
2. Expenditures each year since its inception;
3. Total compensation by year, including salary, wages and benefits, for each officer, director, and employee of Mammoth Lakes Tourism;
4. Annual financial reports and audits for Mammoth Lakes Tourism since its inception;
5. A description of job duties for each officer, director, and employee of Mammoth Lakes Tourism;

6. For each officer, director, and employee of Mammoth Lakes Tourism, a statement of qualifications or resume for that individual's job;
7. Form 700s (conflict of interest disclosure statements) for each officer, director, and employee;
8. Expense reimbursements for each officer, director, and employee since inception;
9. Copies of all contracts with vendors;
10. MLT policies; and
11. Articles of Incorporation and Bylaws.

We then interviewed MLT's executive director and the chair of its Board of Directors. Thereafter, MLT provided the following additional documents:

12. The current MLT budget;
13. 2012 and 2013 Return on Investment studies by Leisure Trends;
14. March 2014 Interactive Report;
15. 2014 Mammoth Lakes Tourism Facts and Figures;
16. March 2014 Monthly Report; and
17. 2013-14 Measure A Proposed Master Budget.

**Discussion:**

MLT was incorporated on June 15, 2010, as a California non-profit mutual benefit corporation. It is exempt from both federal and state taxes. According to its Bylaws, its principal purpose is "to engage in such activities as are meant to improve the tourism industry in the Town. These may include activities outside the Town that are in furtherance of these purposes."

MLT was formed for the purpose of assuming, by contract, tourism-related functions that were previously performed by Town government. At the outset, this was done by means of a month-to-month contract. That changed on November 20, 2013, when Town Council approved a long-term agreement that went into effect retroactively as of July 1, 2013 (the "Agreement").

MLT's compensation under the terms of the Agreement consists of the following for fiscal years 2013-2014 through 2017-2018:

1. 2.5% of the Transient Occupancy Tax (TOT) collected by the Town; and

2. The entire amount of the Business License Tax collected by the Town, less \$215,562 per year, provided as part of the Town's financial restructuring plan.

These sums are paid after a deduction for the Town's administrative costs which, under the Agreement, may not exceed \$10,000 per year. According to the finance department employee we interviewed, the maximum \$10,000 deduction does not cover the Town's administrative costs.

In addition, the Town collects and passes through to MLT all TBID funds, "less funding support for the Town's employee assigned to TBID collection, enforcement, and related work as agreed upon" by MLT and the Town.

In exchange, MLT provides the Town "all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional services related to Town's tourism, attraction, marketing, and branding" as more fully described in an attachment to the Agreement (Exhibit A, Scope of Services and Deliverables).

The contract expires on June 30, 2018, which coincides with the five-year TBID assessment.

MLT is governed by a nine-member Board of Directors, none of whom are compensated. Three of these positions are appointed and serve no specified term — one each designated by Mammoth Lakes Chamber of Commerce, Mammoth Mountain Ski Area, and Town Council. The other six serve two- or three-year terms and are elected by the Board of Directors — two from the lodging industry, and one each from restaurants, retail, cultural arts/special events, and "at large" interests within the Town.

MLT's day-to-day operations are overseen by an executive director. The executive director is also responsible for directing six other employees:

1. director of marketing;
2. director of international sales and marketing;
3. director of interactive marketing;
4. marketing manager;
5. media relations manager; and
6. marketing assistant.

We reviewed resumes and job descriptions for each of the incumbents in these positions. In each case, the incumbent's skills appeared to be reasonably well suited to their assigned responsibilities. We also reviewed compensation information for each, including the executive director, which we also found reasonable in each case.

### Transparency

MLT, as a nonprofit corporation designated by the Town to perform Town functions, constitutes a

local legislative body. It is therefore subject to open meetings requirements under California's Brown Act (Government Code section 54950, *et seq.*). By all appearances, MLT complies with these requirements, properly noticing meetings of its Board and permitting public access and participation.

MLT is also subject to the California Public Records Act (Government Code section 6250, *et seq.*), which gives the public a right of access to documents and records "concerning the conduct of the people's business." As discussed above, the Grand Jury submitted a Public Records Request to MLT. Our written request was dated February 26, 2014. MLT responded on March 20, 2014, with documents and information responsive to most of the categories specified in the request. The only exceptions were to the requests for salary information and expense reimbursement records for each employee. In both cases, MLT objected (through its attorney) that producing the information would violate affected employees' personal privacy rights.

In lieu of specific salary information, MLT initially produced "salary ranges" for each employee. After further discussion, however, MLT agreed (through its attorney) that specific salary information is not protected by the individual right of privacy and that it would produce the records as requested. The Grand Jury never received these records, however, a fact that we attribute to an oversight on MLT's part as well as our own failure to follow up.

MLT initially refused to produce employee expense records altogether, because of the possibility that they could include employees' private financial information such as social security numbers or credit card numbers. After further discussion, MLT agreed (through its executive director) to allow us to examine the original expense records in the offices of its accounting firm, and to make copies of the records as warranted (with private financial information removed).

In addition to the records request, we interviewed MLT's executive director and the chair of the organization's Board of Directors. We found both to be open, cooperative, and helpful during the interview process; they even volunteered additional information we had not asked for. In addition, they agreed to provide us with other information we had not previously requested, and followed through promptly.

An organization's website is another important opportunity for transparency. We reviewed MLT's website - [VisitMammoth.com](http://VisitMammoth.com) - which the executive director acknowledged is not without problems. This website predates MLT's involvement and has been rebuilt once since then, but has outlived its useful life as a medium to draw visitors to Mammoth Lakes. We found that it is not user-friendly. Specific examples of deficiencies include: lack of a comprehensive calendar and downloadable pdf version of the visitor guide. These recommendations had already been made to MLT by others and, as stated, they are aware of the problems. MLT is currently working on a revamped website that it expects to launch by Thanksgiving 2014. The development process includes an assessment of needs as well as auditing the current website to identify additional flaws.

We noted the difficulty at present in finding information about MLT on the web, either on the Town website or on MLT's current website. While we understand that it might not be advantageous to include nuts and bolts information about MLT as an organization on a website designed to increase tourism, having such information readily available to concerned citizens via the web would enhance MLT's efforts with regard to transparency. The Grand Jury learned that MLT has



anticipated this concern and is preparing to launch a new website — [MLTIndustryinsider.com](http://MLTIndustryinsider.com), which will have more in-depth information about the business end of MLT. This website will be available to the general public.

On April 30, 2014, MLT gave a 1-1/2 hour presentation to the public on its marketing plans for summer 2014. The presentation included information about MLT's revenues, expenditures, and accomplishments in fiscal years 2012 and 2013, including the return on investment as shown by studies commissioned by MLT. Each of the MLT employees who were in town introduced themselves and explained what they do for the organization.

MLT also makes an annual report and presentation to Town Council. This information is open and available to the public.

### Financial Controls

Since MLT's inception, the accounting firm of Porter & O'Dell has handled its day-to-day accounting needs. Payroll is done by direct deposit, prepared by Porter & O'Dell. For accounts payable, checks are cut every two weeks. The executive director organizes the payables and presents them to MLT's treasurer (an office held for a one-year term by a member of the Board of Directors). The treasurer reviews and approves the payments, which are then submitted to Porter & O'Dell. Porter & O'Dell prepares the checks. The executive director is authorized to sign checks up to \$500. Over that amount, checks must be countersigned by a member of the Board's Executive Committee (*i.e.*, the chair, vice-chair, secretary or treasurer).

The Town pays MLT all revenues due under the Agreement by check (not electronic deposit). The executive director deposits the checks. MLT maintains a checking and savings account specifically for TBID funds, and separate checking and savings accounts for Measure A funds (TOT and Business License Tax). This makes it easier for MLT to track the expenditure of TBID monies, which by law must be used to provide specific benefit to businesses subject to the assessment.

This year, for the first time, Porter & O'Dell prepared audited financials on behalf of MLT. The audited financials cover fiscal years (ending June 30) 2011, 2012, and 2013. The Grand Jury was provided with only a draft, as the final reports had not yet been completed.

We independently reviewed employee expense records, finding them generally reasonable and appropriate. We noted that, in general, MLT employees charge business-related travel and meal expenses to credit cards for which they are personally responsible. They then recover their costs by submitting claims for reimbursement. The only exception is the executive director, who instead uses a "company credit card." This credit card may also be used by other MLT employees, with the executive director's permission, for MLT's general business expenses, such as advertising and office supplies. The executive director is responsible for turning over credit card receipts for this account, including his travel/entertainment expenses, to Porter & O'Dell, which uses them to reconcile and pay the periodic credit card statement.

In general, employee travel and entertainment expense receipts include a statement of the business purpose and the names of each participant. However, we saw too many instances in which this information was not provided. This led to a concern about possible lack of adequate enforcement of this requirement.

Finally, we also reviewed copies of MLT's policies. In particular, we noted that under Paragraph 3.5.5 of the Agreement, MLT is required to provide each of its employees with a copy of the Town's Fraud Policy and then provide the Town with a signed statement by each employee certifying that they received and read it. As of May 2, 2013, when we interviewed MLT representatives, the organization had not yet complied with this provision.

### **Findings and Recommendations:**

1. **Finding:** Mammoth Lakes Tourism appears to operate with a reasonable degree of transparency. It appears to comply with open meeting requirements under the Brown Act and responded appropriately to the Grand Jury's Public Records Act request. It has also made appropriate efforts to disseminate information about its operations to the public by means of a public event on April 30, 2014, and [VisitMammoth.com](http://VisitMammoth.com). Its leaders acknowledged that the quality of the website is not up to par, and that there are plans to launch a re-vamped website by Thanksgiving 2014. They also acknowledged that more detailed financial information about MLT and its operation is not currently available on the web, but that this will be remedied with the impending launch of [MLTIndustryinsider.com](http://MLTIndustryinsider.com).

**Recommendation:** Ensure that a new, user-friendly [VisitMammoth.com](http://VisitMammoth.com) goes live by Thanksgiving 2014. In addition, ensure that [MLTIndustryInsider.com](http://MLTIndustryInsider.com) contains sufficient information to allow concerned citizens to make an informed assessment of MLT's performance, including information on operations, marketing plans, budgets, revenues, expenses, audited financials, Board agendas and minutes, relevant travel statistics and trends, and return on investment. When this website is ready to go live, it should be widely advertised within the Town.

2. **Finding:** Bookkeeping and accounting services are provided by an independent accounting firm, Porter & O'Dell. Payroll is done by direct deposit, prepared by Porter & O'Dell. For accounts payable, checks are cut every two weeks. The executive director organizes the payables and presents them to MLT's treasurer (an office held for a one-year term by a member of the Board of Directors) for approval. The treasurer reviews and approves the payments, which are then submitted to Porter & O'Dell. Porter & O'Dell prepares the checks. The executive director is authorized for amounts up to \$500. Over that amount, checks must be countersigned by a member of the Board's Executive Committee (*i.e.*, the chair, vice-chair, secretary or treasurer).

**Recommendation:** None.

3. **Finding:** In general, MLT employees charge business-related travel and meal expenses to credit cards for which they are personally responsible. They then recover their costs by submitting claims for reimbursement. The only exception is the executive director, who instead uses a credit card billed directly to MLT. This credit card is also used by other MLT employees, with the executive director's permission, for MLT's general business expenses, such as advertising and office supplies. The executive director is responsible for turning over credit card receipts for this account, including his travel/entertainment expenses, to Porter & O'Dell, which uses them to reconcile and pay the periodic credit card statement.

**Recommendation:** The Grand Jury reviewed the executive director's expenses as

charged on the MLT credit card and found them appropriate, even fairly modest. In the interest of increased accountability, however, we recommend that the executive director be required to use the same procedure as other employees for travel and entertainment expenses — that is, charge these costs to a separate credit card for which he is personally responsible and then submit expense reimbursement claims.

4. **Finding:** In reviewing employee expense records, we found the expenses incurred to be reasonable and appropriate. We did note, however, that receipts for business meals/entertainment too frequently failed to identify the business purpose for the expense and the names of the persons who attended.

**Recommendation:** Receipts for meals/entertainment should always identify the business purpose and names of the persons who attended.

5. **Finding:** Paragraph 3.5.5 of the Agreement requires MLT to provide each of its employees with a copy of the Town’s Fraud Policy. MLT is then required to provide the Town with a signed statement by each employee certifying that they have received and read it. As of May 2, 2013, MLT had not complied with this provision.

**Recommendation:** MLT should immediately comply with Paragraph 3.5.5 of the Agreement.

The Mono County Grand Jury closed the investigation of this matter on \_\_\_\_\_, 2014.

**Mono County Grand Jury 2013-2014  
Continuity Committee  
Follow up Report to 2013 follow up (undocumented) of Mono County Assessor's Office  
Case #11-01  
Case #1314.04**

**Introduction and Background:**

The Continuity Committees are standing committees that perform follow up of cases from previous years. In the 2014 Grand Jury report, there are two Continuity Committee reports. In addition, this report covers general findings from an undocumented follow up done by the 2013 Mono County Grand Jury, in response to the detailed Mono County Assessor's Office report (Case #11.01). This second follow up was initiated because of continuing concerns expressed in the 2013 follow up, because the Assessor position was at that time being filled by the Assistant Assessor, and because the position was expected to be filled soon by a newly appointed Assessor. The 2014 follow up report focused on two areas: previous unanswered concerns and how the office was functioning under the newly appointed Assessor.

**The Method:**

The follow up included interviews of the current Assistant Assessor, the appointed Assessor, and a County Supervisor. Note that the current Assistant Assessor was the Acting Assessor at the time of the initial Grand Jury follow up in 2013.

**Previous concerns:**

The concerns in the 2013 undocumented follow up were almost entirely those voiced by the Assistant Assessor. At the time of the 2013 follow up, Mono County's Chief Administrative Officer (CAO) and Finance Director did not voice concerns about, and may not have been aware of, problems in the functioning of the Assessor's office, other than some personality conflicts and tension in the office atmosphere. In the 2013 follow up, the Assistant Assessor's concerns were identified as backlogs in appeals and in mapping because of understaffing. She said the appeals backlog was due to the process taking longer, because the appeals were always returned to the original appraiser. The mapping problem occurred because maps were prepared in a format that was unusable for appeals. She also said in house training was needed so that all employees would be "on the same page".

**2014 Committee Report:**

The Assistant Assessor was interviewed in Bridgeport on April 9, 2014.

She stated that she was very pleased by how the office was currently functioning. According to her, some personality conflicts continue, but an effort is being made to keep politics out of the office and the atmosphere is much calmer. One additional staff member has been added, and a mapping specialist is now on staff who is skilled in Geographic Information Systems (GIS), and who is doing an outstanding job, according to the Assistant Assessor. As a consequence, appeals are moving forward very quickly and, with the exception of some commercial properties, are now being resolved within a year. Maps are now also available to the public.

She also stated that appraisals of property transfers and new construction are all being done in the field.

The appointed Assessor was interviewed on June 9, 2014. He has worked in the Assessor's Office since 1992, except for a period between 2009 and 2013, and was appointed Assessor in 2013. He feels the office is working very satisfactorily, although he would like to add one more staff member as an office manager. He confirmed the information provided by the Assistant Assessor. He said the mapping effort is moving ahead very well and that the change to the new GIS format will allow the entire county to be mapped, then narrowed and made accessible for particular purposes, such as emergency services and public works.

The Assessor said there are no backlogs now, except for 1,600 mining claims and certificated air carrier appeals. The mining claims, which have never been evaluated before, are now being prioritized. The air carrier appeals (two commercial airlines) are tied up in litigation. Also, two current large appeals are expected to be resolved in the next fiscal year. There are a few private residences and business properties also awaiting completion.

All current reassessments should be finished by the end of June, according to the Assessor. He confirmed that all transfers of ownership, as well as all appeals, are being accomplished in the field.

Both in house and outside formal structured training is being provided. Those appraisers with advanced certification are receiving 12 hours of annual training; those without the certification are receiving 24 hours. There are also monthly evaluations to ascertain if any additional training is needed. All appraisers are currently up to date in training.

He also noted that there are some conflicts and personality differences in the office that continue. The staff gets the work accomplished, but they need to work more effectively as a unit, rather than in two separate groups.

A County Supervisor was also interviewed and his testimony mirrored that of the appointed Assessor and the Assistant Assessor.

#### **2014 Findings:**

1. The Assessor's Office appears to be working more efficiently since the last report. Assessments, appeals and reassessments are current, with the exception of the mining claims. The mapping situation has been resolved to the satisfaction of those interviewed, and the conflicts and tension among staffers, if not gone, appear to have eased.

#### **2014 Recommendation:**

2. The Grand Jury commends the progress that has been made and encourages the Assessor's Office to continue with improvements in the future.

**Mono County Grand Jury 2013-2014  
Continuity Committee  
Follow Up Report of Mono County Administrator/Human Resources Case #1213.04  
Case #1314.05**

**Introduction and Background:**

The Continuity Committees are standing committees which do follow up of cases from previous years. In the 2013/2014 Grand Jury report, there are two Continuity Committee reports. This follow up report covers selected findings from Case #1213.04, which specifically dealt with the orientation and basic training of County employees, and the documentation of that training.

**The Method:**

The committee contacted the new County Administrative Officer (AO), scheduled an appointment to meet with him and the HR staff interviewed the previous year, and noted the items in the report to be discussed. The committee met with the AO, the Officer Manager, and the Personnel Technician who provides orientation training to all employees. The AO provided the committee with a written summary of the County 2014 Follow Up for each Finding in the report which contained a recommendation for improvement, with two attachments. The findings, recommendations, County Response, and the County 2014 Follow Up statements for each finding are noted below.

**2013/14 Committee Report:**

2. **2012/13 Finding:** Mono County has written personnel and PC policies on the internet which have been in effect and available for many years; although some of the posted documents have been superseded.

**2012/13 Recommendation:** The County should review the policies posted on the County web site and make sure that they are the most current versions. All older versions should be removed.

**2012/13 County Response:** The County agrees with the finding and has implemented the recommendation. Documents on the County website are undergoing review to ensure they are the current version.

**County 2014 Follow Up:** The website has been updated and only includes current policies.

8. **2012/13 Finding:** Documentation of orientation training attendance is informal and appears incomplete. Of the eighteen employees randomly chosen, only three were on the orientation training list. Two of the three did not have a notation that they had attended orientation training, and the third had a question mark (?) in that column.

**2012/13 Recommendation:** As a minimum, have each employee sign an acknowledgement form that they have reviewed the orientation book, and file this in the

personnel file. An alternative might be to have the training sign-in sheet submitted to the Office Manager for entry into the electronic data base.

**2012/13 County Response:** The County agrees with the finding and will implement the recommendation alternative which is most effective, as soon as reasonably practicable.

**County 2014 Follow Up:** The County has implemented a sign-in sheet at new employee orientation; the HR Generalist supplies this completed sheet to the Office manager for entry into the electronic database. A sample is attached.

9. **2012/13 Finding:** Of the eighteen employees randomly chosen, the employee personnel file spreadsheet showed that the most effective record of training was the IT acknowledgement form (fourteen out of eighteen employees); some long-term employees had two of these forms. Next most consistent was the "Disaster Services" acknowledgement for a majority of employees. All but one permanent employee file held the acknowledgement form for the "Personnel Rules" packet, and the MOU packet for employees covered by a union contract.

**2012/13 Recommendation:** Continue and expand use of acknowledgement forms.

**2012/13 County Response:** The County agrees with the finding and will implement the recommendation as soon as reasonably practicable.

**County 2014 Follow Up:** HR has continued to provide acknowledgement forms to new hires on their first day; this includes the acknowledgement forms for: IT Policy, applicable MOU and Personnel System for each new hire.

In addition, the AO noted that additional appropriate acknowledgement forms are being instituted for new employees, "going forward in time", and also noted that more electronic forms, such as time sheets and personnel forms are also being instituted electronically, rather than in the manual personnel records.

10. **2012/13 Finding:** Of the eighteen employees randomly chosen, the electronic training database showed that six employees had no training noted. Two of these were new-hires of less than one year, but others were longer term employees. The majority were not permanent employees, and the database went back to 2007 or earlier, incorporating earlier training records.

**2012/13 Recommendation:** Incorporate orientation training records into this database, as the orientation training is a complete and detailed overview of County policies and procedures and is required for each County employee.

**2012/13 County Response:** The County agrees with the finding and will implement the recommendation as soon as reasonably practicable.

**County 2014 Follow Up:** (Same response as #8) The County has implemented a sign-in sheet at new employee orientation; the HR Generalist supplies this completed sheet to the Office manager for entry into the electronic database. A sample is attached.

11. **2012/13 Finding:** Documentation of employee training is incomplete and fragmented. While appropriate training may be taking place, the current record keeping does not clearly demonstrate which employees have or have not completed required training on County policies and procedures.

**2012/13 Recommendation:** The Grand Jury recommends that all employee training be documented in a single searchable electronic file. The file should be audited annually to assure that all required policy and procedure training has been offered and completed. This file should cover new and existing employees, "At-Will" and temporary employees, and elected and appointed officials and should include initial training and required updates to training.

**2012/13 County Response:** The County agrees with the finding and will implement the recommendation as soon as reasonably practicable.

**County 2014 Follow Up:** All of the training that is provided or supported by the CAO/Risk Management Department is documented and included in the electronic database. Department specific training documentation stays within the department.

The AO further explained, as a part of the 2014 Follow Up, the reason why department-specific training is not a part of the CAO/Risk Management electronic database, even though the Orientation Training and other basic training such as computer use, disaster training, safety and personnel policies are included in it. The CAO/Risk Management electronic database is required by Trindel, a JPA (Joint Parties Agreement) self-funded Insurance Company consisting of eleven rural counties. Trindel functions as a county's "watchdog", and encourages good behavior by offering lower premiums to those counties whose training records and policies are well documented and established. The various levels and separation of training documentation was not made clear in last year's committee report, even though it was noted that, for example, the Sheriff's Department kept all of its own personnel files. The AO explained that for a number of departments, such as the Sheriff's Department, Social Services, Mental Health, Probation, Public Health and others, specific State licensing and certification is required, in addition to confidentiality requirements of each department. Because the State has its own electronic database which it monitors, departments submit their training records directly to the State, and also maintain it within the departmental training records. Therefore, while employees of those departments will have "basic training" reflected in the County's electronic database which is monitored by Trindel, their personnel files containing additional training and licensing are often protected for reasons of confidentiality, and maintained separately in each department.



## **Mono County Grand Jury 2013-2014 Jail and Probation Department Tours**

### **Introduction and Background:**

Penal Code Section 919 (b) requires that the Grand Jury annually inquire into the condition and management of the public prisons within the county. To comply with that requirement, six members of the 2013-2014 Grand Jury toured the Bridgeport Jail (the "Jail") and interviewed the Mono County Sheriff (the "Sheriff"). In addition, the Grand Jurors toured the Probation Department facility in Bridgeport (the "Probation Department"), and interviewed the Chief Probation Officer.

Prior to enactment of AB109 in October of 2011, non-serious felons sentenced for more than one year would be incarcerated in the State penitentiary system. These inmates are now housed in the Jail as a result of AB 109. The State continues to incarcerate offenders who commit serious, violent, or sexual crimes. Housing long-term non-serious felon inmates has increased the workload for both the Jail and the Probation Department, although both departments receive some funding as a result of the law. An AB 109 grant allowed the Sheriff's Department to replace its aging dispatch equipment.

### **Jail Tour:**

The focus of the 2013/14 Grand Jury's jail and probation department tour was an inquiry and follow-up to last year's in-depth tour and written report. The Grand Jurors again met with the Sheriff, then toured the jail with the Sheriff and Sergeant. After having lunch with the Sheriff and the Sergeant, they met with two inmates and interviewed each individually. Each inmate had been in a State facility previously. The female inmate had been in Chowchilla State Prison, and was happy to be in the Bridgeport Jail, as her family lives in Bridgeport and she has the opportunity to see them each week. She stated that the Jail was much more "low key" than state prison, the officers try their best to be courteous, but they are "by the rules". When asked what she would like to see, she stated that she would like more time for counseling. A counselor comes each Friday, but the session is very short, often 15 minutes. She has also taken advantage of AA counselors, who visit on Sunday. When asked how often she got outside work duties, she stated that it was very limited for the women inmates, less than once per several months, and that they also did not usually get their three hours per week in the recreation "cage". She stated that both were probably due to the lack of female officers. She said that the inmates' handbook was helpful in understanding the rules.

The male inmate was not from Mono County, and although he is a "trustee" and works in the kitchen, serves food, and also works in the laundry, he is lonely and misses his family and friends in San Diego. He has been on the inmate work program for eight months, and feels that there should be more "straight ground rules" for all, stating that "some work more than others". He also said that the guards here were better than in San Diego, where "you hated them". The Bridgeport Jail is much smaller and more monotonous, according to him.

### **Follow-ups from 12/13 Grand Jury tour:**

1. **12/13 Finding:** The Grand Jury found that the Jail and Juvenile Hall are clean and well maintained. Both operations have budgetary limitations but are working well within those limitations. Given the physical limitations and understaffing of the Jail, it seems to be very well run. The prisoners seem to be treated humanely. The Sheriff and Sergeant were professional, helpful and were rightfully proud of their operation.

**12/13 Recommendations:** None

**13/14 Finding:** The Grand Jurors found no change from 12/13 concerning the condition of the Jail and treatment of the prisoners. The comments from the two inmates who were interviewed, show that no matter how well Mono County operates its jail, not everyone will be happy.

2. **12/13 Finding:** The Grand Jury found that AB 109 has not yet seriously impacted the functions of the Jail. Staff, however, predict that the number of full-time prisoners will increase to 15 by the end of this year. There is a concern about mixing career criminals with those who have merely slipped up and the Grand Jury found that this problem will only become more extreme as the Jail houses more long-term inmates.

**12/13 Recommendation:** The County should be planning ahead to determine a viable solution to housing long-term inmates as a result of AB 109.

**13/14 Finding:** The Grand Jurors found no change from 12/13, other than there are now 4 women, at least two of whom are long-term inmates. The jail's capacity is 48, with occupancy ranging between 33-36, including 8 male long-term inmates.

3. **12/13 Finding:** The Grand Jury found that the Voluntary Work Assignment program is valuable to both inmates and the community, yet the amount of time that inmates can volunteer in this program is limited due to current staffing levels.

**12/13 Recommendation:** The Voluntary Work Assignments program (community service) is excellent and serves a useful purpose to society and gives inmates a sense of purpose. The outdoor work is healthy, both mentally and physically. With additional staff, the program could be expanded to 7 days a week and the Grand Jury recommends that additional staff be hired for this purpose.

**13/14 Finding:** The Grand Jurors found that one additional staff has been hired with AB109 (CCP) funding. Generally, 2 days per week are spent in the North County, and two days per week in the south county. It appears that the women inmates do not have as much opportunity to participate in this program, likely because of the small number of women inmates and lack of women officers.

4. **12/13 Finding:** The Grand Jury found that there are only two cook staff members and when one is sick or on vacation, the other staff person must work additional and/or consecutive days to ensure that the inmates are fed.

**12/13 Recommendation:** A third cook, possibly as a part-time position if feasible, should be hired to allow the 2 current cooks regular time-off and to fill-in during emergencies.

**13/14 Finding:** The Grand Jurors found no change from 12/13.

5. **12/13 Finding:** The Grand Jury found that during non-business hours, the Jail and Dispatch operations have limited staff which could pose a concern for both inmates and Jail employees. The Grand Jury found that minimum Jail staffing of two persons on a shift at one time seems low, especially when one of the staff is the 911 operator and dispatcher.

**12/13 Recommendation:** The Grand Jury recommends that a minimum staffing standard should be established and adhered to as a matter of safety for both inmates and Jail employees. Additional staff should be hired.

**13/14 Finding:** The Grand Jurors found no change from 12/13. During the day other personnel are often present or available, but during evening hours it is rare that anyone else is present other than one dispatcher and one jailer. The dispatcher cannot leave that post to serve as a backup, which presents a very serious safety issue for the jailer. Two recent assault incidents (not during the evening) emphasized the critical importance of having at least one extra person available to assist.

6. **12/13 Finding:** the Grand Jury learned that the 911 Dispatch system and the prison electronic controls systems are reaching the end of their life expectancy. The Board of Supervisors is aware of the need to replace these systems; however, replacement funding has not yet been implemented.

**12/13 Recommendation:** The 911 Dispatch and Computer Control System replacement will have to be addressed soon and will be a significant cost to the County. As a result, the Grand Jury recommends that the County should be budgeting now and planning ahead for this eventuality.

**13/14 Finding:** The Grand Jurors found that the dispatch and computer control system have been completely replaced, with funding from AB109 (CCP), and the new equipment is a big improvement.

7. **12/13 Finding:** The Grand Jury found that the lack of physical and mental recreation and classroom learning opportunities for the inmates needs to be mitigated, especially with the recent addition of long-term prisoners. The Jail, as it now stands, does not have available space for classrooms and the exterior exercise yard is small and depressing. The 3-5 hours of outside exercise per week is insufficient.

**12/13 Recommendation:** The Grand Jury therefore recommends funding for a classroom for inmates and outside additional space for outdoor programs, and plus an expansion of the existing Jail (or, ideally, a new facility).

**13/14 Findings:** The Grand Jurors found the following:

- The exercise yard has not changed, and while some inmates have more outside time now due to the expanded work program, those who do not participate in this program have only the State-required minimum 3 hours per week available to them in the exercise yard. The women may not have that much time, according to the female inmate, possibly because of the lack of women officers available to provide oversight.

- A work order is in progress to move the current Emergency Operations Center (EOC) from its current location (dining room) in the old Jail to a facility located nearby. Once this is completed, current planning is to convert the current EOC into a classroom training facility for inmates, with costs as yet unknown to do the remodeling.

**13/14 Recommendation:**

- Explore additional ways of adding books to the library
- Explore ways of adding training opportunities, using prisoners' skills whenever possible.

**Additional 13/14 findings and recommendations by the Grand Jurors:**

1. Counseling

One of the prisoners interviewed said that prisoners get very little counseling (approximately 15 minutes per week) to help them learn how to properly deal with life and avoid the mistakes that landed them in prison, once they are released.

**Recommendation:** Increase the amount of time for counseling for inmates who request it.

2. Changes in State law

The Sheriff spends considerable time in a conference call every week, learning about changes in state law that require compliance by the Jail. This is an additional burden placed upon the Sheriff by AB109.

**Recommendation:** None

3. Mono County Supervisors

Currently all departments are experiencing budget cuts. Understanding issues involving the effects of AB109 on the Jail is important so that the Board can work more collaboratively with the Sheriff.

**Recommendation:** The new Board of Supervisors should receive a tour of the Jail, similar to the one given to the Grand Jury, focusing on the impacts of AB109.

**Probation Department Tour:**

After the interviews, the Grand Jurors met with the Chief Probation Officer in the Probation Department facility. That facility is also used as a temporary holding facility (maximum 96 hours hold) for juveniles. Six Probation Officers, including two "lead officers in-training" work out of the Mammoth Lakes office. The Chief Probation Officer had previously been a warden in a state prison in a "death row" facility, and stated that the "poster child for the Mono County jail" is a young male, 25'ish, white drug user. Because of split sentences, many of these come over to probation after serving some of their time in the Jail.

## Follow-ups from 12/13 Grand Jury tour:

8. **12/13 Finding:** The Grand Jury found that the CASA program is highly effective in Inyo County in working with juveniles, and that building upon this program in Mono County could be beneficial.

**12/13 Recommendation:** The Grand Jury recommends the establishment of a County wide Juvenile Services Advisory Board. The Grand Jury also recommends funding and encouraging the CASA program by offering training and volunteer recruitment.

**13/14 Finding:** The Grand Jurors found that the CASA (Court Appointed Special Advocate) program is now established, under contract with Wild Iris. Two juveniles are now in the program, and two others have been placed in foster homes.

9. **12/13 Finding:** The Grand Jury found that there is no statewide database for probationers or juveniles, which means that there is no inter-county exchange of information. In fact, this prevents the Department from communicating with the Court itself.

**12/13 Recommendation:** None

**13/14 Finding:** The Grand Jurors found that while the statewide database is still not in place, Mono County now has an inter-county system between the Court, Sheriff's Department, and Mammoth Lakes Police Department. The District Attorney's office is not yet automated.

**Recommendation:** Continue to improve the system of data exchange, including the District Attorney's office and the Probation Department, if it is not already a part.

10. **12/13 Finding:** The Grand Jury found that there are approximately 130 drug offenders on probation, yet there are no resources such as half-way houses available in Mono County. The Grand Jury found that the Probation Department was under-staffed which limits the amount of contact dedicated to each probationer.

**12/13 Recommendation:** The Grand Jury recommends hiring two to three additional Probation Officers as each Probation Officer currently has a large caseload (80-130 cases). Additional staff would insure that more home visitations occur.

**12/13 Recommendation:** The Grand Jury recommends that the County seek funding for a halfway house, similar to the one once located in Mammoth Lakes.

### 13/14 Findings of the Grand Jurors:

- The Probation Department now has six officers, and two are "lead officers" in training.
- The sale of the old halfway house in Mammoth Lakes has been held up due to a breach of contract issue, and therefore no progress has been made recently.

11. **12/13 Finding:** The Grand Jury found that the front door to the Juvenile Hall/Probation facility is not sufficiently secured. The Grand Jury also found that the facility lobby is open

and there is no physical barrier to prevent irate individuals from accessing staff and/or the facility.

**12/13 Recommendation:** The Grand Jury recommends providing security in the existing Juvenile Hall/Probation building by constructing a counter/partition in the lobby area and strengthening the exterior door locking mechanism

**13/14 Findings by the Grand Jurors:**

- The Grand Jurors found that security is somewhat improved, in that the front door is permanently locked, with a peephole and a doorbell.
- There is still no physical barrier to prevent irate individuals from accessing staff and/or the rest of the facility.

**13/14 Recommendation:** The Grand Jury recommends that a physical, locking barrier be installed in the lobby, and an electronic release mechanism for the front door so that the employee does not have to go to the door to open it.