

Continuity Committee

Re: Responses to the 2010-2011 Stanislaus County Civil Grand Jury Final Report

Section 933(c) of the California Penal Code provides:

No later than 90 days after the Grand Jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the Presiding Judge of the Superior Court on the findings and the recommendations pertaining to matters under the control of the governing body.

Notices were sent to all agencies or persons from which it was determined that a response was required for a specific section of the 2010-2011 Stanislaus County Civil Grand Jury (SCCGJ) Final Report. These responses were monitored carefully. Responses were received from all agencies and persons in a timely manner.

Eight agencies, representing sixteen cases were investigated by the 2010-2011 SCCGJ:

Part One:	Cases 11-01C, 11-02C, 11-03C, 11-04C 11-05C, 11-06C, 11-07C, 11-08C, 11-18C City of Patterson
Part Two:	Case 11-09C Oak Valley District Hospital
Part Three:	Case 11-10C Stanislaus County Sheriff
Part Four:	Case 11-15C Child Protective Services
Part Five:	Case 11-30GJ County Jail & Detention Facilities Inspections
Part Six:	Case 11-31GJ Stanislaus County Audit
Part Seven:	Case 11-32GJ Special District Audit Requirement
Part Eight:	Case 11-43GJ Stanislaus County Coroner's Facility Inspection

Thirteen of these cases required responses and the SCCGJ's recommendations were forwarded to the respective agencies and persons of interest. Three cases did not require a response (11-15C, 11-30GJ, 11-31GJ).

Seven of the responding agencies accepted the recommendations of the 2010-2011 SCCGJ.

The response from the City of Patterson (cases 11-01C, 11-02C, 11-03C, 11-04C 11-05C, 11-06C, 11-07C, 11-08C, 11-18C) required a counter response from the SCCGJ. Report 12-27GJ Continuity Report: Patterson is attached. No further response was requested from the City of Patterson.

Case 11-32GJ Special District Audit Requirement, required substantial follow up by the Stanislaus County Auditor-Controller. An additional report (12-28GJ Continuity Report: Special Districts) was generated by the 2011-2012 SCCGJ. Responses are requested from the Stanislaus County Auditor-Controller, the Stanislaus County Board of Supervisors and the Special Districts that remain out of audit compliance.

This continuity report is issued by the 2011-2012 Stanislaus County Civil Grand Jury. No members of the grand jury volunteered to recuse themselves due to a perceived conflict of interest.

2011-2012 Stanislaus County Civil Grand Jury Report 12-27GJ

Review of the City of Patterson's Implementation of 2010-2011 Findings and Recommendations

Introduction

The 2010-2011 Stanislaus County Civil Grand Jury (SCCGJ) submitted a seven-part report on the City of Patterson and the conduct of past and present councilmembers.¹ A response to the report, received from the City Council, on September 28, 2011, disagreed with most of the 2010-2011 findings. An unsolicited and voluntary response from Councilmember Dominic Farinha, also received on September 28, 2011, rejected all findings involving Councilmember Farinha. Identification of which 2010-2011 SCCGJ report Mr. Farinha was responding to was not included.

For confidentiality reasons, the SCCGJ does not reveal identities of individuals involved in its investigations. Any names listed in this document were revealed by the City of Patterson, the council members and/or their attorneys. The SCCGJ neither confirms nor denies whether the names listed were part of the investigation.

The primary function of the SCCGJ is to provide unbiased oversight and to investigate complaints from citizens about the operations of county and city government, school districts and special districts, as required by law. The grand jury is one means to inform citizens that government is operating efficiently and in an ethical, honest manner. The grand jury investigates policies and procedures and makes recommendations to improve local governmental operations. It has no power to enforce its recommendations. It only informs citizens about some of the legislative and administrative work of their local governments. All grand jury investigations and reports are approved by at least a 60% supermajority vote of the entire grand jury panel.

The 2011-2012 SCCGJ only reviewed the requested response from the City of Patterson and implementation of the recommendations in the 2010-2011 panel's report with specific focus on the Brown Act and AB1234 (Ethics) Training.

Job Description for the City Attorney

The 2010-2011 SCCGJ recommended that "An actual job description for the position of City Attorney should be created to list job specifics, transparent billing practices and schedule of evaluations as part of this contract/job description." The SCCGJ notes that the City of Patterson has adopted an ordinance relating to the City Attorney position, including a job description.

¹ Stanislaus County Civil Grand Jury, 2010-2011 Reports and Responses
http://www.stanct.org/Content.aspx?page=grand_jury_final_reports

Brown Act, Government Code 54956.8

The 2010-2011 SCCGJ noted violations of the Brown Act and made recommendations. The 2011- 2012 SCCGJ reviewed the content of the posted City of Patterson Council Meeting Minutes from July 1, 2011 to December 31, 2011 for compliance with the Brown Act.

The closed session City Council agenda for November 1, 2011 contained the following item:

Conference with Real Property Negotiator per Government Code Section 54956.8. Properties 131-015-055, 131-014-011, 047-058-003, 131-015-003, 131-015-004, 131-015-019, 131-015-020. Negotiation Parties JAMKE, Carol Nunes Etal, Grewal, Manmeet S & Jaskiran K, Keystone Flex Associates LLC II, John Ramos, Wong Family Trust, Virginia Azevedo et al, City of Patterson. Location/Price Negotiations.

The Brown Act allows a legislative body to meet in closed session to discuss the purchase, sale, exchange or lease of real property. The agenda item quoted above does not provide the nature of the negotiation, the public purpose of the proposed acquisition, and the respective roles of the named parties (such as, owner, broker, developer). The November 1, 2011 closed session agenda item does not sufficiently inform the citizens of Patterson about the proposed project and does not fulfill the intent of the Brown Act. The SCCGJ recommends:

R1: Continued attention by the City to the letter and spirit of the Brown Act in all matters that come before the City Council.

AB1234 Ethics for Public Office Training, Government Code 53235

AB1234 (Training in Ethics) is required for all elected and appointed officials every two years, beginning January 1, 2006. Newly elected or appointed officials must receive the training within one year. The 2010-2011 SCCGJ recommended: "All Patterson City Council members shall post their AB1234 Ethics Training results on the City website to ensure compliance. The City Clerk shall monitor this requirement and place upcoming AB1234 expiration dates on the public agenda."

The City of Patterson currently posts the Mayor's and each councilmember's compliance with AB1234 on its website (<http://www.ci.patterson.ca.us>). The SCCGJ notes the constructive measures taken by the City to implement AB1234 training, and recommends:

R2: Further monitoring and public notice toward full and continuous compliance.

The 2011-2012 SCCGJ suggests that the measures implemented by the City of Patterson be followed by all public entities and officials in the county, with regard to disclosure to the public each legislative member's compliance with AB1234 (Ethics Training). This training is available online at no cost.

Use of the term *fiduciary* by the SCCGJ

The September 28, 2011 response by the City of Patterson took issue with the use of the term *fiduciary* by the 2010-2011 SCCGJ.

"... states in pertinent part that Council Member A failed to disclose a fiduciary conflict of interest with a landlord/commercial developer. (The word 'fiduciary' is clearly misused here and throughout the document. We will respond to this finding as though you meant the word "financial."")".

The City of Patterson response does not address the findings.

The 2011-2012 SCCGJ finds that the term *fiduciary* used in the 2010-2011 SCCGJ reports is appropriate. [Fiduciary *Law*. A person to whom property or power is entrusted for the benefit of another.]

The 2011-2012 SCCGJ reviewed the 2010-2011 SCCGJ City of Patterson Reports (11-01C, 11-02C, 11-03C, 11-04C, 11-05C, 11-06C, 11-07C, 11-08C, and 11-18C), and finds they are supported by facts and evidence.

All other 2010-2011 SCCGJ findings, not specifically addressed in this response have been forwarded (by the 2011-2012 SCCGJ) to the Stanislaus County District Attorney.

No response is requested.

**Stanislaus County Civil Grand Jury
Review of the Special District Audit Requirement
Case 12-28GJ Continuity Report**

Summary:

The 2010-2011 Stanislaus County Civil Grand Jury (SCCGJ) submitted report Case #11-32GJ, a review of the Special District Audit requirements per California Government Code (CGC) Section 26909. There are thirty-six districts within Stanislaus County that the Civil Grand Jury has authority to conduct audit reviews. The Special Districts are on a two-year audit cycle.

The 2010-2011 report found seven districts out of audit requirement compliance and in varying phases to meet those requirements.

As of April 2012, the following two of these seven special districts have completed the audit requirements.

- Woodland Fire Protection District – Unqualified Opinion
- Sand Creek Flood Control – Unqualified Opinion

Five are still pending completion.

- Monterey Park Tract Community Service
- West Port Fire Protection District
- Riverdale Park Community Service
- Knights Ferry Community Service
- East Stanislaus Resource Conservation

Glossary:

CGC Section 26909 California Special District Audit Requirements.

Unqualified Opinion: Auditor's opinion of a financial statement, given without any reservations. Such an opinion basically states that the auditor feels the company followed all accounting rules appropriately and that the financial reports are an accurate representation of the company's financial condition.

Qualified Opinion: Qualified Opinion report is issued when the auditor encountered one of two types of situations which do not comply with generally accepted accounting principles; however the rest of the financial statements are fairly presented.

Methodology Of Investigation:

The 2010-2011 Stanislaus County Civil Grand Jury requested that the Stanislaus County Auditor-Controller contact these Special Districts to develop a timeline and to ensure completion of the required audits. The Stanislaus County Auditor-Controller contacted each Special District and maintained a detailed log of all contacts with each Special District and their audit firms in an effort to ensure the completion of these audits.

Findings:

- F1: Monterey Park Community Service has not been audited since 1995.
- F2: The lack of money available to Monterey Park Community Service District and lack of proper record-keeping resulted in a failed attempt by the Stanislaus County Auditor-Controller to hire a firm to perform a forensic audit as recommended by the 2010-2011 SCCGJ report. An audit of Monterey Park would require the District borrow funds from Stanislaus County and be approved by the Board of Supervisors. Stanislaus County personnel would then have to complete the audit.
- F3: Westport Fire District is out of audit compliance for the fiscal years 2008/09 and 2009/10.
- F4: Riverdale Park Community Service outstanding audits include the fiscal years 2003/04, 2004/05, 2005/06, 2006/07, 2007/08, 2008/09, 2009/10. As of April 2012, the financial information to complete the 2005/06, 2006/07, 2007/08, 2008/09, 2009/10 audits has not been submitted to their auditors.
- F5: Knights Ferry Community Services is in arrears for audit compliance for 2005/06, 2006/07, 2007/08, 2009/10 and the audit for 2010/11 is due June 30, 2012. Audits for 2005/06 and 2006/07 cannot be completed due to the lack of financial information. The remaining years are in various stages of completion.
- F6: The East Stanislaus Resource Conservation audits have been completed, receiving a Qualified Opinion. However, as of March 2012, the audits had not been presented to the Board and the audits, as of April 2012, have not been received by the SCCGJ or the Stanislaus Auditor-Controller.
- F7: During the course of follow up one entity requested information to extend the audit period from two years to five years.

Recommendations:

- R1: The Stanislaus County Auditor-Controller should place the issue with respect to an audit of the Monterey Park Community Service District on the agenda of the Stanislaus County Board of Supervisors.
- R2: Westport Fire District should submit a time-line for completing its audits to the SCCGJ and the Stanislaus County Auditor-Controller, with a progress update every 30 days until the audits are completed.
- R3: Riverdale Park Community Service should submit a time-line for completing its audits to the SCCGJ and the Stanislaus County Auditor-Controller with a progress update every 30 days until the audits are completed.
- R4: Knights Ferry Community Service should submit a time-line for completing its audits to the SCCGJ and the Stanislaus County Auditor-Controller with a progress update every 30 days until the audits are completed.
- R5: The East Stanislaus Resource Conservation should submit the completed, Board-approved

audits to the SCCGJ and the Stanislaus County Auditor-Controller.

- R6: An audited financial report is designed to provide citizens, taxpayers, customers, investors and creditors with a general overview of the District's finances and to demonstrate the District's accountability for the money it receives. These Special Districts are responsible to their public. CGC Section 26909:

A special district may, by unanimous request of the governing board of the special district, with unanimous approval of the board of supervisors, replace the annual special audit with a biennial audit covering a two-year period or, if the district's annual budget does not exceed an amount specified by the board of supervisors, an audit covering a five-year period.

A two-year audit cycle provides ample time for the submission and completion of this responsibility. No extensions of audit time frames should be entertained.

- R7: CGC Section 26909, provides:

If, after considering identified conditions and events and management's plans, the auditor concludes that substantial doubt about an entity's ability to continue as a going concern for a reasonable period of time remains, the audit report should include an explanatory paragraph to reflect the conclusion.

A special district's inability to produce auditable financial statements, and/or a habitual audit non-compliance status, places reasonable doubt as to the entity's ability to continue as an independent going concern.

The 2011-2012 SCCGJ recommends that the Stanislaus County Board of Supervisors review and take action to consolidate or dissolve Special Districts that do not comply with audit requirements.

- R8: For the benefit of public disclosure, the Stanislaus County Auditor-Controller should submit to the Stanislaus County Board of Supervisors an annual report on the audit compliance status of all Stanislaus County Special Districts. The report should include;
- The disclosure of any non-compliant Special District audits and all years for which the non-compliance status continues to exist.
 - The types of opinions that may be expressed per CGC Section 26909; Unqualified, Qualified, Adverse or Disclaimer of Opinion.
 - Make a recommendation to the Board of Supervisors as to the ability of the Special District to continue as an independent going concern.

This report is issued by the 2011-2012 Stanislaus County Civil Grand Jury. No members of the grand jury volunteered to recuse themselves due to a perceived conflict of interest.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code §929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil

Grand Jury investigation.

Requests For Responses:

Stanislaus County Auditor-Controller
Stanislaus County Board of Supervisors
Monterey Park Tract Community Service
Westport Fire District
Riverdale Park Community Service
Knights Ferry Community Service
East Stanislaus Resource Conservation