

**Stanislaus County - Landfill
Civil Grand Jury Case No. 03-19 GA
2002-2003**

REASON FOR INVESTIGATION

A formal complaint was received concerning Stanislaus County's expansion of the existing Fink Road Landfill.

The Civil Grand Jury found the following questions most significant:

1. Was the county honest regarding the need to purchase the 2100 acres?
2. Was the expenditure of public funds necessary and appropriate?

BACKGROUND

The Fink Road landfill started operation in 1973. It opened as the Geer Road Landfill closed.

The state's solid waste management law, Assembly Bill 939, required Stanislaus County to demonstrate existing landfill capacity for a minimum of 15 years. A Siting Element committee from the nine incorporated cities of Stanislaus County and the Stanislaus County Board of Supervisors evaluated 21 potential disposal sites for landfill expansion and selected the one on Fink Road.

Pursuant to state law, the Stanislaus County Local Task Force on Integrated Waste Management (LTF) was created. The LTF is composed of representatives from the county's nine incorporated cities and the County Department of Environmental Resources. They are guided by the Countywide Integrated Waste Management Plan (CIWMP) and the State Integrated Waste Management Act.

Pursuant to the Siting Element, the county purchased 354 acres in 1997 from the Beltrans (Beltran Property). In 1999 the county purchased 2100 acres from the Vogels (Vogel Property). This investigation focuses on the Vogel property.

PROCEDURES FOLLOWED

The Civil Grand Jury conducted individual interviews and requested and reviewed various documents.

The Civil Grand Jury conducted fourteen interviews. Those interviewed included:

1. Senior County Officials
2. County landowner
3. County Supervisors
4. A County Consultant
5. City of Modesto Officials
6. San Diego County Public Works Officials

Records requested and/or reviewed included:

1. Stanislaus County staff reports regarding landfill.
2. Stanislaus County Board of Supervisors Action Agenda Summaries.
3. Summary of Laws, Regulations, Policies, and Actions regarding Fink Road Landfill Expansion.
4. Stanislaus County Five Year Countywide Integrated Waste Management Plan Review (CIWMP) December 9, 2002.
5. Real Estate Appraisers and Consultants appraisal of possible expansion areas: 1-Beltrans and 2-Shoemake/Vogel Fink Road landfill.
6. Stanislaus County Final Draft Siting Element, November 1995.
7. Consulting Contract Agreements among Stanislaus County, CEO and Consultant for independent contractor services.
8. Confidential memorandum to county senior staff from the county consultant, from regarding analysis of city of Modesto's August 2002 submission to vacating the existing negative declaration, etc.
9. Contracting communities restructuring analysis summary.
10. Memo to county staff members from county consultant regarding comments on Waste to Energy Asset Management Plan, City's comments March 20, 2001.
11. County consultant's professional services bills.
12. Landfill Valuation Study for Stanislaus County prepared by county consultant October 1998 and January 1999.
13. Memo regarding recommendations for modifying existing PG&E contract for the sale of electricity from Waste-To-Energy Facility (WTE).
14. Draft Environmental Impact report for the Fink Road Landfill Expansion Project dated November 7, 2001.
15. Tabbed binder containing public documents about the Fink Road Landfill Expansion Project.
16. Sunflower Ranch Management Inc. Farm Management Contract.
17. Joint Technical document Fink Road Landfill Expansion, Stanislaus County, dated November 1, 2001.

18. Final Environmental Impact Report for Proposed Geer Road Landfill Expansion December 1982.
19. Stanislaus County Comprehensive Annual Financial Report for Fiscal Year ending June 30, 1992.
20. Joint Technical Document Fink Road Landfill Expansion County of Stanislaus November 1, 2001.
21. 1985 Environmental Impact Report of Fink Road Landfill.
22. Memo to county CEO from county consultant on March 4, 1999, about overall restructuring of the WTE transaction and privatization of the landfill.
23. Memo dated January 15, 2003, from Modesto Solid Waste Program Manager regarding Fink Road Landfill Issues.
24. Agreement of Sale and Escrow Instructions, May 18, 1999, for Stanislaus County, Vogel property owners and Fidelity National Title Insurance Company.
25. Memorandum from City of Modesto to Civil Grand Jury with documents reflecting opposition of cities of Newman and Patterson to expanding the Fink Road Landfill from 40 acres to 219 acres.
26. U.S. Fish and Wildlife Service comments regarding the November 7, 2001 Draft Environmental Impact Report for the Fink Road Landfill Expansion Project
27. Human Health Risk Assessment Fink Road Landfill prepared by SCS Engineers in Long Beach, California, March 2000.
28. Proposal for Design, Construction, Quality Assurance, Planning, and Permitting Services, Fink Road Landfill prepared by SCS Engineers in Dublin and Modesto, CA, on August 15, 1996.
29. Preliminary Geotechnical and Hydrogeologic Investigation Fink Road Landfill Expansion Area Stanislaus County, October 29, 2001.
30. Preliminary Geohydrologic Investigation Workplan Enlarged Expansion Area Fink Road Landfill.
31. Master Agreement for Professional Services between Stanislaus County and Stearns, Conrad, and Schmidt Consulting Engineers, Inc., a Virginia company doing business as SCS Engineers, on May 25, 1999, and numerous SCS Engineering documents.
32. Critical Environmental Constraints Analysis Fink Road Landfill and Surrounding Lands Stanislaus County, May 29, 1987, prepared by SCS Engineers.
33. Proposal for Feasibility Study Enhanced Bioreactor Landfill Fink Road Landfill, Stanislaus County, prepared by SCS Engineers September 28, 2000.
34. Letter from Stanislaus County Public Works to SCS Engineers with purchase order and agreement to complete the revisions to the Initial Study for the Soil Transfer Project at Fink Road Landfill.
35. Records from the City of Modesto Solid Waste Department.
36. State of California Accounting Standards and Procedures for Counties, Chapter 13.
37. California Government Codes 25252, 25261 and 30200.
38. Memo dated July 15, 1996, between senior county civil engineer and Vogel property owner.
39. A draft letter of intent from Norcal Waste Systems to the City of Modesto.

FINDINGS

1. On October 17, 1995, the Beltran property appraisal was submitted to the Stanislaus County Public Works Department
2. On January 23, 1996, the Stanislaus County Board of Supervisors approved the Siting Element, which is required by California law and which provides for a minimum of 15 year capacity.
3. On May 25, 1999, the Board of Supervisors' Action Agenda Summary used the 1995 Siting Element as justification for the purchase of the Vogel property.
4. The only property identified in the Siting Element was the original Beltran property -- 354 acres -- and not the 2100 acre Vogel property.
5. The Siting Element adopted by the county in 1995 allowed the county to expand the landfill by approximately 350 acres.
6. In the Siting Element adopted in 1995, the county "tentatively reserved" 300 acres for landfill expansion.
7. On April 25, 1996, the Vogel property owner offered to sell to county 394 acres at \$2,800 per acre.
8. On July 15, 1996, the Vogel property owner offered to sell to county the 394 acres at a price in the range of \$900-\$2,800 per acre.
9. No further records regarding Vogel-County negotiations for the 394 acres were found or obtained subsequent to the July 15, 1996, memorandum.
10. On February 11, 1997, the Beltran property purchase of 354 acres for \$381,000 was approved by the Stanislaus County Board of Supervisors.
11. On May 29, 1997, the Beltran Environmental Impact Report included an 83 acre footprint to handle 12 million cubic yards of waste. The capacity of this 83 acres would be reached in year 2076 based upon use projections.
12. On August 10, 1998, the county consultant's contractual duties consisted of valuation and the potential privatization of the landfill and the importation of waste from other counties to Stanislaus County.
13. On January 11, 1999, the county consultant submitted to county CEO a report regarding the privatization and valuation of the landfill.
14. On March 16, 1999, the Stanislaus County Board of Supervisors authorized the Stanislaus County CEO to negotiate purchase of 2100 acres of Vogel property for expansion of the landfill.
15. On May 25, 1999, the Stanislaus County Board of Supervisors authorized purchase of 2100 acres of Vogel property at a cost of \$14,000,000. This price is approximately \$6,600 per acre.
16. The county and the taxpayers have lost the use of and interest income on the \$14 million.
17. The county and the taxpayers have lost the property tax revenue on said land.
18. On July 25, 1999, the county consultant's compensation was increased and contract extended.
19. In May 2000, county consultant provides Stanislaus County staff a draft letter of intent with Norcal Waste Systems to include medical waste.
20. On January 30, 2001, the County Board of Supervisors voted to pursue the county consultant's proposal for importation of waste from other counties to Stanislaus County

21. On October 8, 2002, the Stanislaus County Board of Supervisors voted to revise the Environmental Impact Report to accommodate a smaller site.
22. CEO Special Project funds were expended to evaluate the concept of expanding and selling the landfill to a private company prior to the Vogel property purchase.
23. CEO Special Project funds were expended also to study importation of medical waste and garbage from other communities.
24. No county official, elected or hired, publicized the concept of privatization prior to or subsequent to the Vogel property purchase.
25. No county official, elected or hired, publicized the concept of medical waste and garbage from other communities prior to the Vogel purchase.
26. On December 9, 2002, prior to obtaining approval of the nine incorporated cities of Stanislaus County, the Five Year CIWMP final report was sent to the California Integrated Waste Management Board with an incorrect map.
27. One supervisor testified to the Civil Grand Jury that he knew of the CEO's possible plans for the landfill and another supervisor testified he did not know.
28. The California Government Code says the Board of Supervisors can establish enterprise funds. Activities which may be accounted for in enterprise funds are designated in regulations adopted by the State Controller and printed in Accounting Standards and Procedures for Counties.
29. Enterprise funds are intended to finance current operations, repay long-term liabilities and meet capital outlay requirements. Neither a deficit nor a gain in an enterprise fund should become large.
30. The County Auditor/Controller has fiduciary responsibility over all county expenditures including enterprise funds.
31. Wrongful expenditures of public funds can lead to personal liability against the Stanislaus County Board of Supervisors, the county CEO and the county Auditor/Controller.
32. The county consultant testified that the WTE plant will last 40-50 years.
33. One supervisor testified to the Civil Grand Jury that the expenditure of \$14 million was not significant considering the "\$980 million" county budget.

CONCLUSIONS

1. The 1997 Beltran property purchase satisfied all county landfill disposal capacity needs through 2076, as provided by the 1995 Siting Element.
2. The Vogel property purchased in 1999 for \$14 million was not necessary for county landfill needs.
3. The \$2 million Environmental Impact Report expenditure on the Vogel property in 1999 was not necessary for landfill needs.
4. Stanislaus County lost property tax revenue of at least \$60,000 per year and interest of \$320,000 per year on the \$16 million spent on the Vogel property.
5. The County Board of Supervisors and/or the CEO did not fully disclose their plans for the landfill projects.
6. The position of the supervisors was inconsistent about their knowledge of the CEO's plans for the Vogel property.

7. The Stanislaus County Board of Supervisors did not thoroughly investigate nor question the Vogel purchase before voting affirmatively.
8. The manner in which the Vogel property was purchased demonstrated a lack of proper procedure and oversight in Stanislaus County government.
9. A lack of checks and balances is demonstrated by the county staff's December 9, 2002, five year review sent to the California Integrated Waste Management Board. The review included the wrong site map. It was sent without prior approval of the nine incorporated cities. This was in blatant disregard of the October 8, 2002, directive of the Board of Supervisors.
10. There appears to be inconsistencies in the rules regarding purchases made from an enterprise fund or for maintaining prudent capital reserves.

RECOMMENDATIONS

1. "Contracts for Services" between Stanislaus County and consultants should be reviewed and monitored by the Board of Supervisors.
2. The Stanislaus County Board of Supervisors should thoroughly investigate and question all agenda items before voting on them.
3. The Board of Supervisors should closely monitor the activities of their committees, the CEO and his staff.
4. The Board of Supervisors should develop a policy that acknowledges the seriousness of ethics violations and provides redress.
5. The Board of Supervisors should develop a policy that requires all county personnel to receive annual ethics and conflict of interest training.
6. The county should expand public notices regarding meetings and agendas by publishing in county newspapers.
7. Language used in public notices should be clear enough for the general public to understand and know about the issues pending before the County Board of Supervisors.
8. Public officials should understand that expenditure of public money should be treated seriously.
9. The County Auditor/Controller should exercise his fiduciary responsibilities for all county expenditures including enterprise funds.
10. The Board of Supervisors should sell the excess land to reimburse the landfill enterprise funds enabling interest to resume and property tax revenue to be restored to the county.